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# CONTROLLING DESIRES

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Sexuality in Ancient Greece and Rome

Kirk Ormand

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This one is for Ella.

# Ten

## Legal and Illegal Sex in Ancient Rome

This chapter treats two different kinds of evidence: first, I present a brief discussion of some of the comments about sexual behavior in the corpus of Cicero, the most famous Roman orator of his day. Most of these comments come from his speeches, though Cicero also wrote rhetorical treatises and philosophical works (as well as poetry, most of which is now lost). In the case of Cicero's speeches, we know exactly when they were delivered and usually know with considerable precision what the context is. On the other hand, because of the way Roman courts worked, we cannot take everything that Cicero says literally; when he gives a legal speech, he must attack his opponents, and sexual slurs and innuendos were fair game in such attacks. While it is likely that Cicero exaggerates when describing the vices of his great enemies, Gaius Verres, P. Clodius Pulcher, and the notorious Clodia, these diatribes are nonetheless useful. Even if what Cicero says about Clodius is not true, it is helpful for us to know what sorts of sexual rumors would be considered particularly damaging.

The other set of evidence is both more objective and less precise: in the second half of this chapter, I discuss some of the texts of Roman laws that impose penalties for certain kinds of sexual behavior. These laws come to us in the form of digests, that is, encyclopedic compilations of the Roman legal code. The most important of these digests, that of Justinian, was written in the mid-sixth century CE, though it drew on the works of second- and third-century jurists Ulpian and Paulus. In some cases, we have good information on the historical context of specific laws; in others, it is not clear exactly when they were passed or under what circumstances. The digest, then, can be taken as giving useful information about the legal situation in the later Roman Empire, but we cannot always assume that the laws in it applied to earlier periods.

### CICERO

Before discussing the sorts of things that Cicero said about his enemies in public speeches, it will be worthwhile to review the contexts of those

speeches. In brief, Cicero's speeches fall into two broad categories: legal speeches, delivered in a court of law, and political speeches, usually delivered before the senate. In both cases, we should imagine that the speeches were delivered before a crowd of people. Criminal cases in the late republic took place in the Roman forum, before a jury of people from the senatorial class, and potentially with an audience of passers-by and interested parties.

In terms of content, these legal speeches are somewhat freer than what one would expect in a modern courtroom. Although ultimately, any criminal case came down to a question of whether or not the accused had broken a law, the kinds of evidence that were considered acceptable were quite broad. A prosecutor was generally at pains to attack the character of the accused to establish that she was the kind of person who might have performed the crime. What is more, if we take some of Cicero's comments seriously, this kind of evidence was considered more persuasive and more reliable than the evidence provided by witnesses, whose testimony could be influenced or bought.

A word is also necessary about these witnesses. Citizens, if witnesses, provided evidence much in the way that modern witnesses do: they provided sworn testimony, either in person or in the form of signed statements. If a slave was to provide testimony at a criminal trial, however, he or she was subjected to physical torture. The Roman conception of slaves was such that their testimony was considered of no value unless extracted in this way.<sup>1</sup> Here also there was room for manipulation. A person accused of a crime might manumit his or her slaves before coming to trial; once freed, such slaves could not be forced to testify under torture. (In his speech on behalf of Caelius, Cicero implies that Clodia has done just this.)

When we consider political speeches, the procedure is different, but the content may not be. Speeches before the senate might be in favor of a new law, but they might also consist of personal attacks. In a celebrated series of speeches in the year 44 BCE, for example, Cicero launched a public attack on Mark Antony, who had been Cicero's lifelong enemy and a supporter of Julius Caesar before his murder. Officially, Cicero's speeches had the aim of urging the senate to declare that Antony was an "enemy of the state." In practice, this meant that Cicero was declaring open season on his opponent, and he wasted no opportunity to defame Antony in both personal and professional terms. Among these speeches, needless to say, are some choice remarks about Antony's sexual behavior; and so this sort of rhetorical performance can also provide us with information about what was, and was not, considered acceptable. The slurs against Antony may or may not be true, but even if not true, they inform us of attitudes and assumptions of the time.

Cicero's speeches, both legal and political, then, contain any number of brief, sexually charged attacks on his enemies, and I will discuss a few of these brief comments before turning to a more carefully contextualized discussion of his *Pro Caelio*. A few patterns are worth noting: first, as we have seen before, there is no invective against men who are attracted to boys (*pueri*) per se. Cicero does often criticize his opponents for a lack of

self-control in such attractions. On the other hand, any action that could be interpreted as womanish, including being the penetrated partner in a love affair, was fair game. We should also note that Cicero does not assume any sort of exclusivity in sexual desires: men who are criticized for having profligate affairs with women are also subject to charges of being effeminate themselves, or to being slaves to their desires for boys. Cicero's rhetoric, then, strongly supports Williams's notion that Rome is divided into men and non-men, the former characterized by impenetrability and self-control, the latter by effeminacy and no self-control at all.<sup>2</sup>

Cicero's prosecution of Verres provides us with some early examples. Verres had been the governor of Sicily in the 70s BCE; during that time, he had engaged in "corruption." As a provincial governor, Verres' power in Sicily was virtually unchecked, and he used his position to extort money from local Sicilians by a variety of schemes. Once his governorship was ended, Cicero brought a suit against him on behalf of the Sicilian people. The speeches against Verres are lengthy and convey a wealth of information about Roman provincial government in general. At various points, however, Cicero is particularly keen to attack Verres' character. At the end of his second speech, he engages in some pointed speculation about what Hortensius, the defending counsel, will say on Verres' behalf:

But now what will Hortensius do? Will he minimize the charges of avarice by praising his [Verres'] restraint? But he is defending the most immoral, the most lustful, the most despicable man. Or will he divert your attention from his notorious worthlessness by calling attention to his bravery? But it is not possible to find a man less inclined to action, more lazy, more a man among women or more a dirty little woman among men. But [he might say] that his manners are pleasant. Who is more rude? Who less civilized? Who is more cocky? But perhaps these qualities do not harm anyone. Who has ever been more harsh, who more treacherous, who more cruel? (*Against Verres* 2.2.92)

Clearly Cicero is not interested in limiting himself to a single mode of attack. It is not enough that Verres has one or two bad qualities. The prosecution provides a series of such qualities, affecting nearly every aspect of public and private life.

Among this panoply of insults are two that are of particular interest for this study: Verres is *libdinosissimus*, "the most lustful," of men. His lack of control over bodily lusts fits in with his other forms of immoral, cheating, cruel behavior. Even more specific, however, is the comment that Verres is "a man among women and a dirty little woman among men." The phrase "a man among women" begins as something of a surprise. Cicero uses here the term *vir*, a word that normally indicates a proper Roman man, as opposed to *homo*, a more derogative word for "man" that Cicero normally uses when describing his enemies. As Santoro L'Hoir points out about the word *homo*, "its use in reference to slaves, freedmen, foreigners, and even the dimmer lights of the municipal aristocracy, renders it a likely word for political invective. To call a member of the upper classes, who would normally be termed a *vir*, a

*homo*, is an effective way of diminishing his status."<sup>3</sup> But it turns out that the use of *vir* here is deliberate: Verres is a *vir* "among women," which is to say, not so among men. There may even be a suggestion that he is too sexually active with women. The real point comes, however, in the next phrase. The suggestion that Verres is a woman among men must suggest that he has been penetrated by other men in sex, and the distaste that this is meant to engender in Cicero's audience is indicated by the adjective *impura*, "dirty," and the diminutive form of the word for woman that Cicero employs; that is, Verres is not even a woman among men: he is a *muliercula*, a "little woman." His character as a Roman man has been completely demolished.

In the preceding example, clearly Cicero is not using modern categories of sexuality to attack Verres. The point is not that he has sex with men (though that is implied) since he also has sex with women in the same sentence; rather, we should take both parts of the sentence as insulting, and both parts as impugning his manhood. The gender of his sexual partner does not matter so much as the fact that in both sexual situations, he is less than a full Roman *vir*. We might want to speak of Verres' implied passivity as a sexual identity, but again, it is important to read that passivity in terms of a larger pattern of lacking self-control. This is made even more clear by a later passage, in which Cicero details some of Verres' lavish spending of Sicilian plunder:

In this place he, praetor of the Roman people, guardian and protector of the province, spent his summer days in daily dinner parties with women, no men present at the table except Verres himself and his young son—and rightly, I could have said that there were no men present, without exceptions, since it was only those two. Sometimes the freedman Timarchides was added; the women were all wellborn and married, except for one daughter of the actor Isidorus, whom he had abducted from a Rhodian flute player because of his passion. There was a certain woman named Pipa, the wife of Aechrius of Syracuse, about whom several verses were quite popular throughout Sicily, dealing with his desire for her. (*Against Verres* 2.5.81–82)

Here Verres is clearly active in sex and clearly involved with women. But the description is nonetheless scandalous on several fronts. The expense involved in continuous dinner parties is inappropriate. Worse is the fact that Verres' passion for the daughter of Isidorus leads him to two outrageous behaviors: first, her abduction, and second, introducing the daughter of a mime actor into the company of noble married women. All of this indicates a man out of control, which leads to the crack that "no men were present" since Verres, by his behavior, has shown himself not a *vir*. This is better understood as gender deviance than as sexuality.

A later speech, Cicero's prosecution of Cataline for conspiracy against the Roman government, is peppered with descriptions of Cataline's character. In another context, Cicero says that he himself was initially taken in by Cataline's charms (*Pro Caelio* 5.12), but in the speeches *Against Cataline*, his portrayal is of a man who uses those charms for evil and disgraceful ends:

Indeed, what seductive charms were ever present in any young man as much as they were in him? He loved some men most foully, and he was a slave, most disgracefully,

to the passion of others. To some he promised the enjoyment of their lusts, to others the death of parents, not only by encouragement, but even by assistance. (*Against Cataline* 2.8)

Cicero suggests that at times, Cataline was penetrated in sex—at least, that is how I take the phrase “was a slave to the passion of others.” But again, this behavior is not particularly more disgraceful than other aspects of his behavior, including his seduction (and implied penetration) of young men. As with other such examples, the point of this invective is not that having desires for young men is in itself disgraceful, but in penetrating these *citizen* men, he is destroying their manhood, an act that should be seen as parallel in intent and effect to the one that follows, offering to help kill their parents. Cataline’s lusts, and his seductive charms, know no bounds, and both lead to the destruction of the most basic limits of Roman moral behavior.

A passage just a page later describes the effect of Cataline on the crowd who follows him. After the stock accusation that they have squandered their inheritances (another sign of lack of self-control), Cicero lets out the rhetorical stops:

[These men] reclining at banquets, embracing unchaste women, debilitated with drink, stuffed with food, crowned with garlands, smeared with scented oils, made feeble with illegal sex, they talk drunkenly in their conversations about the slaughter of noble men and the arson of Rome. (*Against Cataline* 2.10)

Cataline’s men are the very picture of depravity, engaging in every appetite to excess while they plot the downfall of the Roman Republic. This is not sexuality per se; rather, sexual misbehavior is one part of a picture of general moral dissolution.

Such examples could be multiplied from Cicero’s speeches almost endlessly. I provide here only one other extended passage, from Cicero’s brutal speeches against Antony, made in 44 and 43 BCE, shortly before Antony came to an agreement with Octavian (the future Augustus Caesar) and had Cicero put to death. In this passage, Cicero narrates a story of Antony’s sexual life, beginning with his boyhood. Again, what is remarkable about Antony’s sexual proclivities is how unrelentingly they are indulged and how, even when a man, Antony is mastered by his passions, rather than master of them:

Do you wish, then, that we should examine you from boyhood? Yes, I agree; let us start from the beginning. Do you remember that while still in boy’s clothes you went bankrupt? You will say, “that is my father’s fault.” I give you that point. For it is a defense full of filial devotion. . . . You took up a man’s clothing, which you immediately rendered a prostitute’s toga.<sup>4</sup> From the first you were a common whore, with a set price for your disgrace, and not a small price. But soon Curio intervened, who led you away from your prostitute’s profession and, as if he had given you a citizen woman’s robe, he set you up in a stable and secure marriage. No boy ever bought for the sake of lust was ever under the rule of his master as you were under the rule of Curio. (*Phillipics* 2.44–45)

As often in Cicero, there is such a density of insults here that the sense almost turns against itself. First, it seems, Antony himself played that part of a

prostitute. There are several mutually reinforcing implications to this statement: first, that Antony was the penetrated partner; next, that it was well known that he was sexually available; and finally, the fact that he did this at least in part from venial motives. The price to have sex with him was, evidently, not cheap. All of this is unacceptable behavior and speaks to a combination of depravity and poor financial management on Antony’s part.

Antony’s phase as a prostitute, however, came to an abrupt end when he fell in love with Curio. Now, Curio was a so-called boy, a young man who should have been the passive partner in a relationship with the young adult Antony. We might think that this would be an improvement, but in Cicero’s hands, it is simply another opportunity for abuse. Antony’s relationship with Curio is likened to a marriage, and it seems that Antony is the wife. This relationship is a full inversion of what Antony, as an adult man, should be doing, namely, entering into a marriage with a woman. Though Cicero does not specify who is the passive partner in this relationship, he implies it through his description of the power in the relationship. Antony should be a master of whatever boy he is in love with. But in this case, because Antony has no control over his own lust, Curio has become *his* master. There is a strong implication here that even the sexual roles in this affair were reversed. If Antony is under Curio’s control, perhaps he is still playing the penetrated role. The entire description of Antony’s life is an inversion of gender norms and shows Antony to be less than a man: first because he could not manage his estate, then because he was a prostitute (and presumably penetrated), and then because he had no control over his lust for a citizen boy.

That, however, is not all. It appears that Curio had, in the course of this relationship, put up a small fortune in money on Antony’s behalf, and moreover, that Curio’s father disapproved of his relationship with Antony (as well he might). Cicero here presents himself as the savior of the young man:

Curio himself, burning with desire, assured me that he would go into exile, since he was not able to bear the longing for you, if you were parted from him. What a great evil of the most prosperous family I mitigated, or rather, bore myself. I convinced the father that he should pay off his son’s debt, that he should redeem through the family’s resources this youth, full of promise and spirit and intelligence, and that he should prohibit the young man through his authority and power as a father not only from intimacy with you [Antony], but even from meeting with you. (*Phillipics* 2.45–46)

Here we see quite clearly the Roman concern with an improper lover’s effect on a good (if misled) citizen boy. Curio, here, is not held to be at fault. He is not of age and not fully responsible for his behavior. If Antony has corrupted him through an improper passion, then it is the job of Curio’s father and other concerned members of the adult community to protect him and to redeem him for the sake of his future as an adult male.

Antony, then, has played every reprehensible part possible in this review of his youth and early manhood. He has been so passive, and so venial, in his affections as to be likened to a prostitute. He has fallen madly in love with a citizen boy, to the extent that the boy completely rules over him, inverting the natural order of power. And in this relationship with a citizen boy,

Antony has played the part of an active, adult partner, but a bad one. He has so corrupted the youth that Curio is at risk of destroying his entire future as an adult male. Curio can only be rescued by concerned onlookers and the firm hand of his father.

Can we say, then, that Antony possesses a sexuality? In modern terms, he might look from some parts of the preceding passages like a homosexual. But elsewhere Cicero chastises the same man for his slavish devotion to the Egyptian queen Cleopatra as well as mocking him for an adulterous relationship with Fulvia. It is not that he only loves boys, then. Is he, in Roman terms, a passive? At times, and in the suggestion that Curio has made him a wife, it seems that he continued in this role for too long. But even here, the distinguishing mark of his sexual behavior is not that he adopts one role or the other, but that he is never in control. It is difficult to map this characteristic onto any modern notions of sexuality. If, however, we accept the essential quality of Roman manhood as that of being in control, it is easy to understand this portrayal of Antony as a gender deviant.

#### THE *PRO CAELIO* AND THE SEXUAL LIFE OF CLODIA

In 63 BCE, while consul, Cicero had exposed the conspiracy of Cataline and had put Cataline himself to death. The legality of this execution was, at the least, open to question, and in 58 Cicero's political enemy Publius Clodius Pulcher succeeded in having Cicero exiled from Rome. Over the next two years, however, Clodius engaged in a series of increasingly violent threats against noble Roman men, and the senate recalled Cicero from exile in 57.

In the meantime, a young protégé of Cicero named Marcus Caelius had strayed from Cicero's circle of influence, begun renting a flat from Clodius, and entered into an extramarital affair with one of Clodius's two sisters (both of whom would have been known as Clodia under the Roman system of nomenclature). This Clodia had previously been married to a stern Roman politician named Quintus Metellus Celer. Metellus had died under somewhat suspicious circumstances in 59—Cicero suggests that Clodia poisoned him—and after his death, Clodia appears to have become a rather independent woman. She was possessed of considerable wealth, and although legally she was under the guardianship of her natal family, here likely represented by her brother Clodius, Cicero paints a picture of a woman who is largely independent.<sup>5</sup>

The love relationship soured at some point, and it appears that Clodia arranged to have Caelius prosecuted. The case was brought to trial by a young man named Atratinus, but in Cicero's defense speech (we do not have the speeches of the prosecution), Cicero implies that the real hand behind the attack is that of Clodia. Five charges were brought against Caelius; Cicero, who spoke last, defended his friend and former pupil against the last two, of which only the last is fully understood. It appears that Caelius was charged with trying to obtain poison for the purpose of killing Clodia, and that he had done so to avoid repaying a loan which Clodia had made to him. The

speech is remarkable in many ways, but perhaps most important is that it launches an all-out attack on Clodia as a sexually profligate, unrestrained citizen woman. We have seen how capable a verbal assailant Cicero can be, and we have seen as well that he is not above exaggeration for rhetorical effect. Nonetheless, his portrayal of Clodia gives us some insight into the real fears that Roman men had about unrestrained female sexual behavior.

In attacking Clodia for her affair with Caelius, however, Cicero is on tricky ground. He must make Clodia seem morally reprehensible, while portraying Caelius as innocent of any serious violations. He accomplishes this by arguing, first, that Caelius has been the target of slander because of his uncommon good looks (*Pro Caelio* 3.6). Later, he argues in several places that whatever minor lapses Caelius may have had, they can be ascribed to youthful indiscretion. Indeed, Cicero suggests, Caelius has been up to no more hijinks than many another noble Roman:

And there have been many men of the highest order and most famous citizens, judges, both in our time and in that of our fathers and ancestors, who, when the passions of youth had simmered down, have been outstanding in their more stable years for virtue. I prefer not to mention any of them by name; you yourselves remember them. For I do not wish to tarnish the greatest praise of a brave and noble man with mention of even the smallest fault. (*Pro Caelio* 18.43)

This is not to say that anything goes for the youth. Cicero is, in fact, quite clear about what the limits of such behavior should be, and this again provides us with a clear map of Roman moral concerns:

True and upright reason need not always prevail; let desire and pleasure sometimes defeat reason, so long as in this sort of thing the following rule and limit is held: a youth should protect his own sexual temperance, and not destroy another's; he should not squander his patrimony, nor should he be ruined with debts; he should not attack the home and reputation of another, nor bring shame upon the chaste, stain upon the pure, or scandal upon the good; let him not threaten with violence, nor take part in conspiracy, and let him avoid crime. (*Pro Caelio* 18.42)

This list is a virtual catalogue of the limits that I have been discussing. The signs of someone who is truly out of control are that he squanders his patrimony and that his sexual adventures are harmful to his own reputation or to others'. So long as he remains within these limits, there is no real problem.

If young men are to be allowed some sexual freedom, however, this is not true of recently widowed women. At several points, Cicero defends Caelius's affair with Clodia by arguing that Clodia has, in fact, acted like a prostitute. Her sexual license thereby becomes absolutely inexcusable, at the same time that it provides an excuse for Caelius's peccadilloes. The most stunning of these passages comes about midway through the speech. Cicero pretends that he is not talking about Clodia, but by the end of the speech, it becomes clear that he means exactly her:

Here and now I will explain the situation, though I will not name any woman. So much I leave unsaid. If there were a woman, not married, who opened her house to the pleasures of all, and who openly situated herself in the life of a prostitute; who became

accustomed to attending the dinner parties of men outside her family; if she did this in the city, in the gardens, in the crowd at Bath; if at last she carried herself not only with the step of a prostitute, but with the decorations and companions of one; if not only in the openness of her looks, not only the freedom of her speech, but even in the embraces, kisses, beach parties, boat parties, dinner parties, she showed herself not just a prostitute, but a forward and brazen prostitute; if a young man by chance were with such a woman, which would you say, Lucius Herrenius—is he an adulterer? Or a lover? Is he destroying [her] chastity, or is he satisfying desire? I pass over the wrongs you have done me, Clodia, and I put aside the memory of my grief; the things that were done against my family in my absence, I pass over; may these things which I have said not be said against you. (*Pro Caelio* 20.49–50)

Again, it is important to remember that what Cicero says Clodia has done should not be taken as objective fact. But what he says she has done, fundamentally, is that she has violated the principle that women should remain private, within the sphere of their families. Even the fact of attending a dinner party, specifically a dinner party hosted by men outside the family (*alienissimi viri*), becomes an indication of sexual misbehavior and cause for reproach. Every aspect of Clodia's manner is a sign of her sexual availability: the way she walks, dresses, looks, kisses, embraces, talks—all is too public and not appropriate for a Roman matron.

On the other hand, when we look at this picture without the lens of moral disapprobation, it provides considerable information about Clodia's economic and social freedom. Dinner parties, beach parties, and boat parties all cost money. Evidently, Clodia has the wherewithal to provide such entertainments and is able to do so without the interference of her formal guardians. Cicero's not-very-veiled accusation is important specifically because it links this kind of economic and social freedom with an assumption of wild and profligate sexual freedom; in the high-blown rhetoric of the passage, it is not even enough to call Clodia a prostitute. She becomes a forward and brazen prostitute, a woman who is not bound even by the modesty of normal whores.

Earlier in the speech, Cicero indulges in a bit of mock theater to attack Clodia. He reproaches her in the voice of two of her relatives: the first, an ancestor, the famously stern Appius Claudius Caecus, who represents old-fashioned Roman morals. There are few surprises here: Appius Claudius reprimands Clodia, again, for having relations with men who are outside of the circle of her family and suggests that she has not lived up to the example of her famous ancestors. Her sexual misbehavior, then, is a betrayal of her class status:

Woman, what did you have to do with Caelius, with this young man, with this man outside the family? . . . When you had married into a most famous family from a family of the highest rank, why were you so connected to Caelius? Was he a kinsman? related by marriage? a friend of your husband? None of these. What then was it, unless some sort of boldness and lust? If the images of the men in our family did not influence you, did not that descendent of mine, that is Quinta Claudia, inspire you to be a competitor in the contest of womanly glory for praise for our house? Did not that Vestal virgin Claudia, who embraced her father as he was celebrating a triumph and did not allow

him to be dragged from the chariot by a hostile tribune of the plebs inspire you? (*Pro Caelio* 14.34)

It is interesting that Appius Claudius has little to say about Clodia's general activities. He does not go on at length about her beach parties and boat parties. The fact that she has strayed outside of the family circle is evidence enough for him that improper behavior is going on. Moreover, for Appius, Clodia's behavior is conceived of primarily as a crime against her family. Her activities hurt the reputation of the family, she does not increase the "praise for our house," and so on. Perhaps most telling, she does not live up to the example of her ancestor the Vestal virgin (also named Clodia), whose act of bravery is specifically one of filial devotion.

Less concerned with family name is the next speaker whom Cicero impersonates, namely, Clodia's brother, and Cicero's great enemy, Publius Clodius Pulcher. This Clodius was a constant target for Cicero; earlier in his career, he had evidently dressed as a woman to infiltrate an all-women's festival and visit Caesar's wife there, and Cicero made frequent mention of this bit of cross-dressing.<sup>6</sup> In this speech, he also suggests several times that Clodius and Clodia had engaged in incestuous sexual relations, an insult that was apparently a matter of rumor in Rome.<sup>7</sup> So it is not surprising that Clodius is described in terms that are less than virile:

From your relatives, then, I will choose someone, and in particular your little brother, who is the most urbane of that crowd; who loves you very much and who, for some reason or another—maybe it was fear and those empty night-time terrors—when he was little, always used to sleep with his older sister. (*Pro Caelio* 15.36)

In addition to the not very subtle implication of incest, the fact that Clodius is "urbane" carries a somewhat negative connotation. He is a bit slick and worldly and not tied down by old-fashioned Roman values.

That being the case, it is something of a surprise when Cicero imagines that he, too, would be critical of Clodia's behavior. The terms of his criticism, however, are entirely different than those of the earlier Appius Claudius:

You saw a young neighbor boy; his beauty, his height, his face and his eyes struck you; often you wished to see him; you were often in the same gardens; as a noble woman, you want to keep this young man bound by your favors, this young man with miserly and cheap father; you are not able; he kicks, he rejects you, he does not think your gifts to be so great; so—find someone else. You have gardens on the Tiber, deliberately set up in that spot, where all the youths come to swim. From there you can make arrangements any day. Why are you so bothered by this one who rejects you? (*Pro Caelio* 15.36)

Needless to say, the real Publius Clodius would never have made this speech. Part of its rhetorical effect comes from the fact that it makes Clodius morally reprehensible at the same time that it uses his overly liberal moral stance to criticize Clodia. In brief, "Clodius" suggests that Clodia spends her time buying boys anyway. If she is going to be a sexual libertine, why get emotionally attached to any one of her toys? The audience members are meant to take

exception both to Clodia's behavior—she should not be making “arrangements” daily on the Tiber with young aquatically talented youth—and to the amoral attitude toward sex that “Clodius” espouses.

Equally damning in the preceding speech of “Clodius,” though, is the suggestion that Clodia wants to use her own riches to separate Caelius from his miserly father. Clodia is figured here as an inversion of the proper wife, a woman who draws sons out of their fathers' houses, rather than being a daughter who leaves her own house to join that of her husband. The fact that she does so by means of economic largesse makes the behavior all the worse; her sexual promiscuity is matched, and here made possible, by an equally liberal attitude toward financial resources. She is the very picture of an out-of-control woman, sleeping around, buying boys, engaging in pleasure with no regard for traditional familial values or limits.

Some other passages illustrate the way that Clodia's sexual improprieties spill over into other areas of social behavior. At one point in the argument, Cicero must discuss whether or not Caelius has conspired with Clodia's slaves in the alleged attempt to poison her. Cicero raises an important question: what kind of slaves would these be?

But to what kind of slaves [did he entrust his fortunes]? For this matters a great deal. To those slaves, whom he knew were not used to the normal state of servitude, but were accustomed to live more easily, more freely, in greater intimacy with their mistress? For who does not see, judges, or who does not know, that in a house of this sort, in which the mother of the family lives in the manner of a prostitute, in which nothing happens that can be made public, in which strange lusts, expenditures, finally every unspeakable vice and outrage happens—who does not know that here the servants are not servants, to whom everything is entrusted, through whom everything is carried out, who take part in these same pleasures, to whom secrets are entrusted, who even benefit a certain amount from her daily expenditure and extravagance? (*Pro Caelio* 23.57–58)

It is not enough that Clodia has inverted gender norms by herself pursuing young men, and that she poses a threat to those young men's families. Her sexual behavior is assumed to also necessarily erase the boundary between free and slave. The suggestion is just below the surface that Clodia engages in sexual activities with her slaves. This, however, is perhaps too shocking a suggestion for Cicero to make explicitly. But again, in Clodia's household, according to Cicero, there are no social limits at all. This is complete chaos.

Finally, and perhaps most threatening of all, Cicero suggests that Clodia, through her sexual charms and considerable financial capabilities, has corrupted some of the male Roman nobility. Apparently, the prosecution has claimed that Caelius had arranged for a friend, Lincinius, to hand over the poison to Clodia's slaves in the public baths. Clodia, alerted to the plot, arranged for some men to hide in the baths and capture Lincinius at the moment of transfer. Cicero makes a good deal of fun of this imagined scene and of the men who, allegedly, will provide their testimony about it:

Indeed I was eagerly waiting to hear the names of these noble men [*vir*], who witnessed the poison being handed over; for so far they have not yet been named. But I do not doubt that they are very serious men, since, in the first place, they are intimate with such a woman, and second since they have undertaken this assignment, to stuff themselves in the baths. This is a task that she could never have assigned to anyone but the most honorable and most full of dignity, no matter how powerful she is. (*Pro Caelio* 26.63)

The line about Clodia's power is paramount here; the point is that these men have been directed to do something more than a bit embarrassing by Clodia, and evidently, they were happy to do so. As Cicero has already explained, for this group of men to hide in the baths, they would have had to remove their clothes. There is more than a hint of sexual impropriety, then, in “stuffing” themselves naked in the baths to lie in wait, and the audience is predisposed to realize that they are anything but “most honorable” and “most full of dignity.”

A bit later, Cicero again makes clear that these men are, shockingly, at the beck and call of Clodia, a woman. They become a parody of good Roman soldiers:

I can hardly wait to see these distinguished young men who are, first, intimate with this rich and wellborn woman, and second, strong men who were positioned by their female commander in an ambush in the garrison at the baths. From them I will ask, how did they hide themselves, and where? Was it a bath tub, or a Trojan horse, which hid so many invincible men, men waging this womanly war? (*Pro Caelio* 28.67)

The military language in the passage only serves to emphasize how unmanly these men are. Rather than fighting a real battle, they are in a garrison at the baths; they are ruled by a female commander, an *imperatrix*. Even the form of battle that they undertake is an ambush, a cowardly and effeminate mode of conflict. The point of all this rhetoric is, however, not just that these men are effeminate and ridiculous. Because they have willingly submitted themselves to Clodia, whose character Cicero has already established as that of a prostitute, they have essentially jettisoned their status as Roman men. As such, their testimony, which has not yet taken place (and may not, after Cicero's speech) is of no value.

Cicero presents Clodia's sexual activity, then, as breaking down the social order on several fronts. Clodia herself does not behave as a proper woman should: her aggressive pursuit of young men, her use of economic resources to seduce them away from their families, makes her into an uncontrolled, sexually voracious prostitute. Her household, Cicero says, makes no distinction between slaves and free Romans. And the men over whom she maintains a seductive influence, either through money or through her own charms, have themselves been emasculated, made into the sexual soldiers of this “female commander.” In Clodia we see the Roman man's worst fears about female sexuality: not only that women are sexually voracious, but that that very quality of sex out of control will spread through all registers



of society—social, economic, cultural, military—and destroy the boundaries by which that society defines itself.

If we believe Cicero, Clodia does have a sexual morphology; that is, her walk, dress, and manner demonstrate her sexual character. Is there, in Clodia, a notion of sexual identity? Only in the broadest definition of that term. Clodia's sexual tendencies are not different in kind from those of other women; rather, what makes Clodia a threat to Cicero is the fact that there is no man to keep those sexual drives and desires under control. Her sexuality, then, is simply that of being a woman. It is her social position—still young, still attractive, widowed, rich, and surrounded by useless and corrupt male family members—that makes her sexual desires and activities dangerous.

### LAWS REGULATING SEX

In none of the examples discussed previously is Cicero accusing anyone of sexual behavior that is against the law. He may go so far as to suggest that both Antony and Clodia acted like prostitutes, but unlike the examples from Greek oratory in the previous section, he does not suggest that their sexual behavior is illegal; rather, he uses their perversions of gender norms to launch broad attacks on their characters and render them unconvincing to the Roman juries, or in Antony's case, to the Roman Senate. While this sort of attack was as frequent as it is interesting, it does not tell us what, if any, sexual acts were considered illegal in Rome. In the following discussion, I will talk about just that. The reader should know that much of what I say in the next section is still highly controversial; I have made decisions about what I think is correct, but other scholars disagree with me.

#### *Stuprum*

*Stuprum* is a general term in Roman law for sex with any illegitimate partner, that is, anyone other than a man's wife, or slave, or paid prostitute. The word can be used in a more general sense, meaning simply "disgraceful sex," applied, for example, to sex with prostitutes; but when used in a legal sense, it always involves sex (sometimes forced) with a male or female citizen.<sup>8</sup> As such, *stuprum* was considered a crime against the *pudicitia*, "sexual integrity," of a married woman, an unmarried woman or girl, a man, or a boy.

It has sometimes been argued, however, that a particular law against *stuprum*, the *lex Scantinia*, outlawed same-sex *stuprum*, and that this therefore indicates a distinction in Roman law between homosexual and heterosexual illicit sex. The controversy surrounding the *lex Scantinia* is quite complex, not least because we do not have the text of the law, only scattered references to it. The issue is further complicated by the fact that the law is often cited in conjunction with another law, the *lex Julia de adulteriis coercendis* (Julian law concerning adultery). The argument has been that if the *lex Julia* covered

adultery, which is only possible with women, then the *lex Scantinia* may have been distinguished from it by addressing specifically *stuprum* with boys.

This argument fails, however, on several counts. The most important is that *stuprum* was clearly already illegal before the *lex Julia* was passed during the Augustan period, and the vast majority of references to *stuprum* speak of violations against "wives and children" and fail to distinguish in any way an offence against a citizen boy and an offence against a citizen girl or woman. Indeed, the Justinian *Digest* records the law against *stuprum* as follows:

Whoever has convinced a boy who has not assumed an adult cloak to allow *stuprum* or another crime, after having abducted or bribed his attendant; or who has solicited a woman or girl, or done anything for the purpose of corrupting her sexual integrity [*pudicitia*]; or who has offered a gift or given money by which he might convince her to do it; if the crime has been carried out, he is punished by death; if not carried out he is deported to an island. Attendants who have been corrupted are subject to the ultimate punishment [i.e., death]. (*Digest* 47.11.2)

There is no reason to suspect from this statement of the law that *stuprum* with a boy is conceived of as legally different from *stuprum* with a girl or woman. The question, then, is why the *lex Julia* needed to be passed; that is, how was this law distinct from the *lex Scantinia* against *stuprum*?

Williams has argued, I think correctly, that the *lex Julia* was distinct in that it singled out the offence of *adultery*, which is to say, sex with another man's wife. This is an especially pernicious subset of *stuprum* because it could result in illegitimate children; that is, it could corrupt the bloodlines of Roman families. The penalties for such behavior were evidently quite harsh, and significantly also contained provisions for punishing the woman involved in the adultery: "If convicted, the guilty party faced banishment, loss of property, and permanent social disabilities: a woman could never again marry a free-born citizen, and a man was deprived of certain basic legal rights, becoming *intestabilis* and *infamis*."<sup>9</sup> The *lex Julia*, then, appears to have been a more specific law concerning a subset of infractions that would have been considered *stuprum*; but what distinguishes it is not that the object of *stuprum* is female per se, but that she is already married to another man.

This picture is complicated by the fact that, in some cases, it appears that some later authors will refer to the *lex Julia* when talking about *stuprum* with a woman and the *lex Scantinia* when discussing *stuprum* with a boy or man. The most pointed of these, Juvenal's second satire, has been used as evidence that the *lex Scantinia* referred specifically to *stuprum* with males.<sup>10</sup> In that poem, however, the narrative distinctions are not entirely clear. A speaker, identified as a *cinaedus*, accuses a woman named "Laronia" of adultery. He does so by naming her with the law itself: "Where, *lex Julia*, are you sleeping now?" Laronia responds by saying, "If laws and rights are going to be called up, the Scantinian ought to be cited first" (Juvenal *Satire* 2.36–44). Since the man Laronia responds to has been identified as a *cinaedus*, and therefore potentially sexually passive, indeed the law that might apply to him is the *lex Scantinia*; Williams has further suggested that the *lex Scantinia* might

have meted out punishments for the passive partner as the *lex Julia* did for the adulteress. But in any case, the gist is that the *cinaedus* calls Laronia an adulteress, using the *lex Julia* to refer to that crime; that she responds by citing the *lex Scantinia* on *stuprum* does not prove that that law referred only to sex with men, and multiple other sources suggest that it did not.

Such a reading is further supported by the definition of *stuprum* preserved in the Justinian *Digest* and attributed to the third-century CE jurist Modestinus:

That man commits *stuprum* who keeps a free woman for the purpose of an affair rather than for marriage, excepting, of course, a concubine. Adultery takes place with a married woman; *stuprum* happens with an unmarried woman [*vidua*, which can mean “widowed” or “unmarried”] or a maiden [*virgo*], or a boy [*puer*]. (*Digest* 48.5.35)

Adultery, here, calls for a specialized definition, and one that might be legally a bit tricky. One can keep a concubine for the purposes of sex, even if she is a citizen. The distinction there is that she is known to be available for this sort of a relationship; that is, she has already forfeited the citizenship status that the other women in the citation have not. But the category of *stuprum* is defined to include all possible types of partners other than married women: unmarried older women, unmarried girls, or boys. There is no indication here or elsewhere in the *Digest* that *stuprum* with boys is thought of as qualitatively different from *stuprum* with unmarried women or girls.

### Penalties for Passivity?

The Justinian *Digest* does contain some provisions that punish men specifically for being passive in sex, at least if they do so willingly. (There are no laws against active homoerotic behavior per se, though obviously, any act of *stuprum* was illegal.) Of particular concern in recent years has been the question of whether taking the passive role in sex could result in a significant loss of citizenship rights. As we saw in the previous section of this book, being passive in sex did not automatically lead to loss of citizenship rights in Greece, though it could subject one to accusation of being a prostitute. A person who was proven to be a prostitute in Athens experienced *atimia*, a loss of civic rights. The relevant term for Roman law is *infamis*; falling under the category of *infames* was not in itself illegal, but it could result in substantial civic restrictions, with different repercussions for people of different classes. A member of the senatorial class might be removed from that class, while members of lower classes could lose voting rights. If marked with *infamia*, a man could be prevented from representing himself or others in court, could be prevented from bringing legal actions in court, and could be declared unable to create a will. The penalties for *infamia* are quite broad.<sup>11</sup>

As with many aspects of Roman law, there are more ways than one by which a man could be marked with *infamia*. Originally, it appears, the distinction was made by a group of Roman magistrates known as censors. These censors were charged with maintaining the rolls of people who belonged to

the senatorial and equestrian classes, and if they “noted” a person with *infamia* (by literally marking their name on the list), then such a person became *infamis*. The censors made such notations on the basis of a wide variety of moral lapses and, in theory at least, reviewed the rolls of *equites* (the class of Roman “knights,” second in status only to the senatorial class) each year in a public ceremony. Somewhat later in the Republic, another group of magistrates known as praetors further developed legal definitions of *infamia*. The praetors oversaw the functioning of the courts in Rome and published a yearly edict, which had the force of law. At some point in the late Republic, the praetors’ edict defined what kinds of people should be considered *infames*; Amy Richlin argues, quite plausibly, that this edict reflected the general practice of censors making such decisions.

So much is agreed on by scholars of Roman law. The issue becomes more controversial, however, when we try to determine if being passive in sex could have resulted in a man being “noted” with *infamia*. Here is a literal translation of Justinian’s *Digest*, section 3.2.1, the first section “Concerning Those Who Are Noted with Infamia”:

The words of the praetor say: He is noted with *infamia*: who has been discharged from the army because of disgraceful conduct, either by his general or by someone who has authority to act in this matter; who has gone onto the stage either for the purpose of acting or for declaiming; who has acted as a procurer; who has been convicted in court of having brought an action for the purpose of false accusation or for collusion; who has been convicted, or settled a charge [with guilt] of theft, of robbery with violence, of injury, of trickery and fraud in his own name; who has been convicted in his own name in a case of partnership, tutelage, mandate or deposit, with no contrary judgment; who, after the death of a son-in-law, when he knows the son-in-law to be dead, during that time when it is customary to mourn for a husband, has given in marriage a woman who was under his authority; or who has married such a woman knowingly without the order of him, under whose authority she was; or who has allowed anyone who is under his authority to marry such a woman as is described above; or who in his own name and not under the orders of someone who had authority over him, or in that of one, male or female, whom he had under his authority, has at the same time held two betrothals or two marriage agreements.

Needless to say, there is a considerable level of specificity in this law, particularly regarding marital contracts, and it is quite interesting to note the protections offered to recent widows. What is conspicuously lacking from this detailed specification, however, is any indication that particular sexual activity results in a notation of *infamia*, other than acting as a procurer. We might suspect that the idea of discharge from the army for disgraceful conduct (*ignominia*) hides some illicit sexual activity, but in fact, the gloss of Ulpian on this passage does not mention any such activity. It does specify that anyone convicted of the *lex Julia* (i.e., convicted of adultery) is automatically marked with *infamia* because such a conviction results in an automatic dishonorable discharge (*Digest* 3.2.2.3).

My reader may be confused as to why I have gone on at this length about something that is not there. I have done so because scholars have, at times,

suggested that men who accepted the passive role in sex (in Roman terms, *pati muliebria*) were, under the praetor's edict, marked with *infamia*.<sup>12</sup> Their argument is based, however, on a reading of the previous section of the Justinian *Digest*, that is, not section 3.2.1, but section 3.1.1.6, which continues a discussion of those people who are subject to a particular restriction, that they cannot make an application to the court on behalf of others. Because the interpretation of this text hangs on the repeated appearance of a single word, I provide here the Latin text as well as a literal English translation:

*Removet autem a postulando pro aliis et eum, qui corpore suo muliebria passus est. si quis tamen vi praedonum vel hostium stupratus est, non debet notari, ut et pomponius ait. et qui capitali crimine damnatus est, non debet pro alio postulare. item senatus consulto etiam apud iudices pedaneos postulare prohibetur calumniae publici iudicii damnatus. et qui operas suas, ut cum bestiis depugnet, locaverit.*

He removes from bringing action on behalf of others also that man, who with his body has suffered womanly things. But if anyone has been raped by the violence of robbers or enemies, he ought not be [so] *noted*, as Pomponius also says. And that man who has been condemned of a capital crime ought not bring action on another's behalf. Likewise the man condemned of false accusation [*calumnia*] in the public court is prohibited from bringing action by order of the senate, even to the lower courts. Also that man who has hired himself out to fight with beasts [i.e., in gladiatorial combat].

The difficulty here is simply that the writer of the *Digest* uses the word *noted* (*notari*) to discuss this case, and this word calls to mind the structure of the definition in the following section, where certain kinds of people are noted with *infamia*. In fact, an early and influential discussion of the *Digest*, that of A.H.J. Greenidge in 1894, treats this passage as meaning “noted with *infamia*.”<sup>13</sup> The only problem is that this is not what the Latin says; this passage occurs in a list of people prevented from a particular civic right, whom the praetor has found “*notable* for their foul behavior” (*personas in turpitudine notabiles*).<sup>14</sup> Notable indeed, but this need not mean “to be noted as *infamis*.” In brief, there is simply no evidence from the *Digest* that states that men who have “suffered womanly things” (*pati muliebria*) are subject to declaration of *infamia*.

That having been said, the objection can still be raised that men who have “suffered womanly things in their bodies” are, in fact, prevented from full participation in Roman political life. They cannot bring actions to court on behalf of another person, and in this regard, they are made parallel to gladiators, those condemned of a capital crime, women, and persons who are blind. The fact that people who have been raped are not so disqualified indicates that the law is concerned with the intent of the person who is being so penetrated. Clearly, then, the Romans considered those who are willingly penetrated by another man to be, in some respect, incapable of full participation. We may see, as Catherine Edwards has, a similarity in the categories of actors, gladiators, and men who are sexually passive in that they are all men whose bodies are used by other men for pleasure and who therefore are

not in full control of their bodies.<sup>15</sup> But Williams argues about this particular restriction that it is surprising specifically in being so narrowly limited; men who have been penetrated retain nearly all their rights as Roman citizens. Unlike the modern category of homosexual, moreover, there is little evidence here that men who are passive in sex are demonized or thought of as medically pathological.<sup>16</sup>

## CONCLUSIONS

Neither the legal codes nor the references in Cicero's speeches indicate that any particular orientation or attitude toward sex was considered illegal in ancient Rome. What was illegal was the penetration of Roman citizens (whether boys, girls, or women), with a particular emphasis on the illegality of adultery. The law, then, seems primarily occupied with protecting the integrity of Roman bodies and maintaining the purity of Roman family bloodlines. In this regard, Roman law is sharply different from most modern Western codes of law, which have, variously in various areas and various times, made the practice of sodomy a criminal offence.<sup>17</sup>

On the other hand, it is clear from the use that Cicero makes of his opponents' sex lives that the Romans had clear sexual norms for men and for women. Men were expected to exercise rigorous self-control, and an essential part of this entailed maintaining their gender identity as masculine. That meant dressing, moving, eating, spending, and generally behaving appropriately, but perhaps the surest way to attack a man's manhood was to suggest that he was passive in sex. For added piquancy, Cicero could suggest that not only was the man in question passive, but that he also sold himself as a sexual object. Women, as the attack on Clodia makes clear, were not to pursue men and were to keep their sexual relations strictly private and their social relations within their natal or marital family groups. A woman who ventured outside of these social boundaries even for events not obviously sexual, such as dinner or boating parties, could be attacked as acting like a prostitute.

A curious asymmetry rules over this understanding of gender roles. If a man was passive (and is said therefore to “suffer womanly things” in sex), then this became a marker of his lack of self-control, of his unlimited and decadent appetite for sex. Antony, in the preceding discussion, provides a characteristic example. Women, then, were assumed to be similarly without limits and in need of masculine control. When, however, a woman like Clodia began to act like a man—by actively pursuing her own erotic life, by exercising her own economic transactions—she was not portrayed as possessing masculine self-control; rather, she became a kind of hyperfeminine figure, even more voracious and uncontrolled than a so-called normal woman. The default position, then, and one that all Romans (but especially men) had to constantly guard against, was that of giving in to sexual desire. Masculinity was won after a hard fight by limiting desire, controlling sexual activity, and controlling the sexual activity of women under one's authority.

For a boy, or a young man like Caelius or Curio, the great danger was that he would be seduced into a feminine role of uncontrolled appetite. If he had a strong friend like Cicero to save him, he could be molded into a proper Roman man. If, however, his companion was a thoroughly feminized man like Antony or Cataline, the dangers were very great. The signs of his debauchery would be clear: a wasted patrimony, a tendency for luxurious dress and behavior, and a virtual enslavement to his erotic desire. These themes are taken up with a vengeance, and interestingly transformed, by the erotic poets of the Republic and early Empire, who provide the bulk of material for the next chapter.

## Eleven

### Roman Poetry about Love and Sex

In this chapter, I will focus primarily on Catullus, a writer of the late Roman Republic who was contemporary with Cicero. Catullus's erotic poetry was highly influential on a series of poets who came after him, including Horace, Tibullus, Propertius, and Ovid. These poets continued the tradition of writing relatively short, highly personal poems depicting erotic experience.<sup>1</sup> Most of their poems describe, or assume, heteroerotic relations, but not all. These later poets celebrated in particular the idea of the (male) lover who was entirely enslaved to his beloved, unable to control his passion for her. Their poems develop a persona of the lover, familiar to us from a later romantic tradition, who presents the practice of love as an alternative to the traditional pursuits of Roman men. After a thorough discussion of Catullus, I bring in a few examples from Propertius and Tibullus, but as in other chapters, any full treatment of the Roman erotic poets is beyond the scope of this book, and the interested reader is strongly encouraged to read their poems in translation herself.

I give more room to Catullus in this chapter than to the other erotic poets because he provides the most varied range of emotional positions when it comes to sex. In addition to poems to boyfriends and girlfriends, he writes about boyfriends and girlfriends to other men—friends, rivals, and enemies. In one poem, he appears the hapless, soft, and dominated lover, in the next, the aggressive potential rapist of his critics. While the other elegiac poets are particularly rich subjects for the study of gender relations (especially the role of women in Augustan Rome), Catullus provides the most complex example of masculine sexual subjectivity.

#### CATULLUS

At about the same time that Cicero was attacking Clodius, Clodia, and Cataline in the Roman courts, a small group of poets was thriving in Rome. Among the most celebrated, and the one whose poems have survived in