FEMINAE PROBROSAE AND THE LITTER

I. DOMITIAN'S CORRECTIO MORUM

In a passage from his biography of Domitian, Suetonius offers details of this emperor's program of moral reform, which the author styles correctio morum.1 One measure is directed against "disgraced women," feminae probrosae (8.3):

... probrosis feminis lecticae usum ademit [sc. Domitianus] iusque capiendi legata hereditatesque. . . .

He [sc. Domitian] took away from disgraced women the use of litters, as well as the right of receiving inheritances and legacies.

Who were the feminae probrosae? This discussion attempts to answer this question, after reviewing briefly the history of the problem, by examining Domitian's denial of the use of the litter to these women. Unlike the testamentary disabilities,2 moderns have all but completely ignored this aspect in discussion of the passage. I argue that the penalty best suits adulteresses as the sole targets of repression in this instance. The result has a bearing on our understanding of elite male Roman attitudes to disapproved female behavior. It matters whether and to what extent various types were treated the same way at law, for example, adulteresses, prostitutes, and actresses. That lawmakers punished such women in a similar way is not a priori impossible, but the reality turns out to be more nuanced than moderns often assume.

II. MODERN VIEWS ON THE FEMINAE PROBROSAE

The measure whereby Domitian removed the ius capiendi (that

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is, *capacitas*, the right to receive testamentary bequests) from and forbade litters to *feminae probrosae* has been at the center of a debate for the last century and one-half. The controversy goes back to Savigny, who believed, on the basis of this passage and another from Suetonius,\(^3\) that numbers of upper-class women had taken up certain dishonorable professions\(^4\) in order to marry anyone they wished, namely, freedmen, without becoming ineligible for bequests and, if unmarried, to escape the penalties for *stuprum* under the adultery law\(^5\) and to claim full *capacitas* on the ground that now, as disgraced persons, they were barred from marrying *ingenui* and so remained unmarried (again, if they did not marry freedmen) by compulsion of law. According to Savigny, Domitian attempted to discourage such behavior by completely depriving the "disgraced women" of *capacitas*.

Though now recognized as untenable,\(^6\) Savigny's view has been widely accepted over the years. Moreover, even where the precise details of Savigny's solution have provoked disagreement, his argument has shaped the scholarly discourse for over 150 years.\(^7\) Of crucial importance is the fact that all subsequent scholars subscribe to Savigny's premise that Domitian's measure was formulated as a

\(^3\) Suet. *Tib.* 35.2.

\(^4\) F. C. von Savigny, *System des heutigen römischen Rechts* 2 (Berlin 1840) 556 specifies only lenocinium, but seems to have had a broader range in mind when he speaks of "den ehrlosen Frauen" (557). He was not so much concerned to identify the *feminae probrosae* as to determine the nature and purpose of Domitian's measure, as S. Solazzi, "Attorno ai Caduca," *Scritti di diritto romano* 4 (Naples 1963) 265-379 (= ANap. 61 [1942] 71-225) remarks at 336.

\(^5\) Savigny, *System* 2.556-57 explicitly considers only the exemption of unmarried women under the law, drawing no connection with the role of Vistilia, a married woman (Tac. *Ann.* 2.85.1-3), in the controversy to which Suet. *Tib.* 35.2 alludes (below).

\(^6\) For a refutation of Savigny's argument, see R. Astolfi, *La Lex Iulia et Papia*\(^4\) (Padua 1996) 57-61.

\(^7\) For example, M. Humbert, *Le remariage à Rome: Étude d'histoire juridique et sociale* (Milan 1972) 173 n. 11 proposes a variant of Savigny's thesis whereby the women punished by Tiberius and Domitian fraudulently have themselves inscribed on the rolls of the *feminae probrosae* in order to enjoy the *ius capiendi*, which he believes was superior for prostitutes than for wives. But the passage dealing with Tiberius (Suet. *Tib.* 35.2) concerns an offense against the adultery law, not the *lex Iulia et Papia* (see below). Moreover, it would perhaps have been impossible for women in any of the professions prohibited under this law to escape the penalties of celibacy or marriage contrary to the statute. Prostitutes could expect a *quarta* in the former situation, hardly an inducement in itself to a life of prostitution, when full capacity could be had through marriage and children: see McGinn, *Prostitution*, Ch. 3. It is worth noting that Savigny wrote before the discovery of the *Gnomon* of
generalized norm, not as a measure limited in its object to a few specific individuals.

For nearly a century, Savigny's thesis went without serious examination. Nearly everyone simply assumed that the term *feminae probrosae* or "disgraced women" referred, at minimum, to prostitutes and actresses. In 1938, Nardi, the first to undertake a detailed analysis of the principal text, concluded that the *probrosae* were characterized by their sexual immorality and on this basis he limited the category strictly to prostitutes, procuresses, and actresses. The purpose of the measure was to check "the extraordinary increase" of such women which he postulated in the first century, a development arising from "the extreme moral degradation" of the early years of the Principate and the practical possibility of obtaining such benefits as exemption from the penalties of the marriage law. For this modification of Savigny's thesis, Nardi found himself bitterly attacked by Solazzi, who criticized—rightly—his assumption that the early empire saw an enormous increase of actresses, prostitutes, and procuresses and—less felicitously—his failure to include other types of women prohibited under the marriage regulations of the Augustan *lex Iulia et Papia*.

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9 E. Nardi, "La incapacitas delle feminae probrosae," *Studi Sassaresi* 17 (1938) 151–78.


11 Like Savigny, Nardi imagines full capacity to be possible for members of these professions. Neither scholar mentions Quint. IO 8.5.19, which suggests *capacitas* was partial for prostitutes, at least unmarried ones, in my view: McGinn, *Prostitution*, Ch. 3.

12 Solazzi, "Caduca" 334–51.

13 Solazzi, "Caduca" 337–39. These are adulteresses caught in the act and women condemned in a criminal court (for any crime).
In the most recent comprehensive examination of the problem, Astolfi\(^\text{14}\) follows Solazzi in broadly extending the category of *feminae probrosae* to almost all the women contained in the marriage prohibitions of the law (freedwomen are explicitly excepted), but appears to echo Nardi in arguing that Domitian’s aim was not so much to close a loophole in the statute (Savigny’s position) as to repress certain kinds of unacceptable behavior.\(^\text{15}\)

The most remarkable aspect of Astolfi’s analysis is his construction of a category of *feminae probrosae*. He begins with prostitutes, since *probrum* is associated with them in a legal text (Marcel. D. 23.2.41 pr.). He equates their status with that of procuresses on the basis of another passage (Ulp. D. 23.2.43.6). Under the *lex Iulia*, both types were forbidden to marry *ingenui* and were marked with *probrum*. Astolfi then argues for the inclusion of actresses, since they are mentioned with prostitutes and procuresses respectively in a pair of legal texts.\(^\text{16}\)

This is doubtful. The inclusion of the actress in the first text is, if not an interpolation, the product of very particular circumstances.\(^\text{17}\) In any case, the text concerns an SC passed pursuant to the adultery statute, not the *lex Iulia et Papia*.\(^\text{18}\) The second places the actress and prostitute on the same level for a very specific reason: both were forbidden to marry members of the senatorial order. This does not mean that their legal status was in every respect the same, since, even under the *lex Iulia* itself, actresses were allowed to wed non-senatorial *ingenui*.

A third text introduced by Astolfi in support of his argument is from a constitution of Justinus (C. 5.4.23.3 [a. 520–523]), which, at most, concedes to repentant, unmarried ex-actresses (*caelibes* under the statute) some rights in inheritance. In fact, it is best understood as confirming preexisting statutory privileges such women enjoyed in testamentary and intestate inheritance (“legibus”), for


\(^{15}\) This behavior is labelled *probrositas* by Astolfi, *LIP*\(^\text{4}\) 49. The word is not, as far as I can determine, classical (not in OLD; L & S s.v. give only Salvian: see Gub. Dei 3.46, 50) and I prefer to avoid its use, insofar as it reifies a “category” which I argue included only one type of disgraced woman or indeed, at minimum, only one woman.

\(^{16}\) Astolfi, *LIP*\(^\text{50}\) 50: “... l’attrice (scaenica), equiparata alla lena in D. 48.5.11(10).2 Pap. 2 de adult. e alla prostituta in Paul. 2 ad I. I et P. 931 D. 23.2.47.”


example, as *exceptae personae*. To take this constitution as evidence *a contrario* for the content of Domitian's measure is to understand the latter to forbid, *inter alia*, succession on intestacy to its objects, which is extremely unlikely, given the way in which the report of Suetonius is worded.

Astolfi goes on to list adulteresses caught in the act, women condemned in a criminal court, and even ex-prostitutes, ex-pimps, and ex-actresses. At this point the argument grows tendentious: with every new inclusion, the thinner the reed upon which the whole roster of *feminae probrosae* rests.

III. THE CONTENT OF DOMITIAN'S MEASURE: THE LITTER

In the history of this question, the discussion has focussed on Domitian's denial of testamentary *capacitas* to the *probrosae*. Not much attention has been given the other penalty laid down by this emperor, the removal of the right to be borne in a litter. In antiquity, and generally in Europe until the beginning of the nineteenth century, this, like other modes of transportation, was accessible only to the rich; the poor walked. The litter was a large, heavy...
piece of equipment, costly by itself, and which required the further expense of anywhere from two to eight slaves to carry it. Proof of the expense it entailed is found in the writings of moralists, who attack its use as an extravagance. Ownership of a litter and the appropriate number of bearers was regarded as a hallmark of the wealthy and socially important, a status symbol.

Use of the litter had been regulated by Julius Caesar, who restricted this, like the wearing of certain types of expensive clothing, to certain occasions and with reference to age and (presumably) social rank (Suet. Iul. 43.1; Euseb.-Hieron. Chron. 156H specifies that women without husbands or children and under 45 years of age were barred). Apparently only ingenui were permitted the privilege, to judge from the right of use granted the imperial freedman Harpocras (Suet. Claud. 28). Among women, it was typically associated with the rich and respectable. Performance of public religious rites required transportation. The issue of entitlement to various forms of transportation was of perennial interest to female members of the Roman elite.

Wives of senators were typically carried in litters (Dio [in Xiph.] 57.15.4; see also Sen. Ben. 1.9.3; Dio 56.43.2, 60.2.3). Lecticae (and lecticarii) ranked among the essential belongings of the materfamilias, listed as items to be left to her in a legacy by her husband (Ulp. D. 32.49 pr.). They were used by the mothers of Antony and Augustus (Plut. Ant. 9.4; Suet. Aug. 94.4). Horace lists the litter among the obstacles presented to the would-be lover of a married woman, in contrast to the easily accessible prostitute (Serm. 1.2.96–100). A closed litter protected a woman's sense of shame by shielding her

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24 On its size and outfitting, Lamer, RE lectica 1057, 1095, 1097–99; on the number of bearers, Lamer, 1089–90.
25 The litter has found critics both ancient (Sen. Const. 14.1, Cons. Marc. 16.2, Brev. Vit. 12.6, Ben. 3.28.5 [cf. 1.9.3], Ep. 22.9, 31.10, 80.8, 110.17) and modern: L. Friedländer, Darstellungen aus der Sittengeschichte Roms in der Zeit von August bis zum Ausgang der Antoninen 1 (Leipzig 1919) 293 (cf. 145).
26 Catull. 10; Sen. Const. 14.1; Iuv. 3.240, 6.351, 10.35; see F. Kolb, "Zur Statussymbolik im antiken Rom," Chiron 7 (1977) 239–59 (at 243 n. 18).
from lascivious glances. Two counter-examples help make the point clear. Treating an animal like the daughter of an upper-class family by putting it in a litter is a fair sign of madness (Hor. Serm. 2.3.214). The arrival in lecticae of “respectable” women at the scene of an orgy contributes to the reprehensible quality of their behavior (Iuv. 6.309; cf. 351).

Certainly, there is evidence that the girlfriends of wealthy men had access to litters, but the lectica would have been beyond the reach of the commercial prostitute. Admittedly, if meretrices had availed themselves of litters, Domitian’s intervention might have aimed at keeping the boundary firm between respectable and non-respectable women. There is, however, no independent evidence for this problem, and it is striking (if we can trust our sources) that the moralists did not notice it. All other considerations suggest adulteresses were the ones punished.

In sum, while it is not utterly impossible that this penalty was aimed at prostitutes, the likelihood is that upper-class adulteresses were denied the privilege of using a litter. Along with a loss of capacitas, this denial was a means to social degradation. Like ordinary prostitutes, with whom, thanks to Augustus, they shared a mode of dress, henceforth they would go on foot.

IV. FEMINAE FAMOSAE: A FALSE LEAD?

If the argument that Domitian punished adulteresses is correct, Savigny’s intuition about the connection between Tib. 35.2 and Dom. 8.3 turns out to be correct, broadly speaking. Both passages concern the repression of adultery in different ways. Probrosae is a synonym for the term famosae, which appears in the former passage:

Feminae famosae, ut ad evitandas legum poenas iure ac dignitate matronali

29 Tert. Pall. 4.9. Women in open litters were criticized: Iuv. 4.21; see the sources at Brown, “Litter” 269–70.
30 See Catull. 10 (scortillum is plainly an insult, not a description of the woman’s profession). Use of the lectica aperta by Antony’s friend Cytheris scandalized Cicero: Att. 10.10.5 (with J. N. Adams, “Words for ‘Prostitute’ in Latin,” RhM 126 [1983] 321–58 [at 350]), 10.16.5, Phil. 2.58 (cf. Plut. Ant. 9.4). The magna amica of Iuv. 4.20 is surely an adulteress. See also Prop. 4.8.78; Ovid Ars 1.488, Rem. 663–65 (doubtful).
31 Chione’s alta sella at Iuv. 3.136 is not a litter, but a proseda used for soliciting business: Lamer, RE lectica 1068. According to Tertullian (Pall. 4.9), when respectable women began to behave like prostitutes they abandoned the use of litters.
33 See McGinn, Prostitution, Ch. 5.
exsolverentur, lenocinium profiteri coeperant, et ex iuventute utriusque ordinis profigitissimus quisque, quominus in opera scaenae harenaeque edenda senatus consulto teneretur, famosi iudicii notam sponte subibant; eos easque omnes, ne quod refugium in tali fraude cuiquam esset, exsilio adfect [sc. Tiberius].

Women with a reputation for unchastity had begun to make profession of the practice of procuring, in order to avoid, by abandoning the rights and status of respectable women, the penalties laid down by statute-law, and the most dissolute young men from the senatorial and equestrian orders were voluntarily undergoing the degradation incumbent upon adverse judgment in a iudicium famosum, so as not to be liable under the senate’s decree on public exhibition of their services on stage and in the arena; all those men and women he [sc. Tiberius] punished with exile, so that no one could escape the consequences of having circumvented the law.

In other words, both phrases mean “sexually disgraced women” or, in their respective contexts, “adulteresses.” This observation raises two more questions about Domitian’s move. For the Tiberian passage we have the evidence of Tacitus (Ann. 2.85.1–3) and Papinian (D. 48.5.11[10].2), which shows that Suetonius’ presentation of the incident is far from exact.34 The earlier measure was directed at only one woman, not a number of them. This was Vistulia, who had attempted to escape prosecution for adultery by registering with the aediles as a prostitute. The senate’s decree did not, however, stop at punishing her, but laid down a prohibition designed to repress similar behavior in the future.35 Did one, several, or a relatively large number of women motivate Domitian to act? Precisely what form did the repression take?

The problem of the number of women cannot be resolved without more evidence, but Suetonius’ fondness for the rhetorical plural should caution against supposing that these were very numerous. As Nardi has observed,36 all of the other items in Dom.

34 Suetonius’ generalization of Vistilia to plural, unnamed women as well as his uniting of her offense to that of those senatorials and equestrians who were attempting to evade a ban on public performances encouraged early editors of the fragmentary Tabula Larinae to fill lacunae with references to the Vistilia incident. For a spirited (though to my mind unpersuasive) defense of this position, with full bibliography, see now V. Giuffrè, “Altre notazioni esegetiche sul senatoconsulto c.d. di Larino,” SDHI 61 (1995) 795–801.

35 This does not exhaust the inconsistencies between the different accounts, but simply sets down those important for an understanding of Dom. 8.3; see McGinn, “SC” 288–90.

36 Nardi, “Incapacitas” 152: he holds for a generalized norm for the probrosae all the same.
8.3, except for the measure on equestrian seating in the theater, concern specific individuals. If we integrate this point with Grelle’s argument that most of the other measures given by Suetonius in this passage are to be associated with Domitian’s exercise of the *censoria potestas*, a solution to the second problem can be discerned.

Not all of the items listed in *Dom.* 8.3 are directly linked to the censorship—Suetonius is simply interested in the emperor’s overall program of moral reform. An important element of this was the new campaign against adultery, which came at the same time or perhaps slightly later, in the form of imperial legislation, but at any rate before 90, the date of Martial’s sixth book (Mart. 6.2, 4, 7; cf. Dio [in Xiph., Zon.] 67.12.1). Grelle, while accepting Astolfi’s broad conception of *feminae probrosae*, draws a connection between this measure and Domitian’s repression of adultery. He is, in my view, half correct.

V. CONCLUSION: DOMITIAN AND ADULTERESSES

Domitian punished certain individual adulteresses, as part of his program of moral reform (*correctio morum*). This act was followed by a renewal, to all appearances a sharpening, of the *lex Iulia* on adultery. Domitian did not promulgate the latter measure *qua* censor (the censors did not enact laws), but while he was censor, following a specific act or series of acts, condemning one or more adulteresses, and depriving them of the use of litters as well as the right to receive testamentary bequests. The important point is that the punishment of the *probrosae* and the renewal of the adultery law

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37 Grelle, “*Correctio morum*” 346 with n. 25 includes the degradation of the dancing senator and the uxorious *eques* mentioned at Suet. *Dom.* 8.3.
41 Republican censors did not punish women directly, but it does seem possible that Domitian acted against adulteresses in his capacity as censor. Such an implication may be found in Dio’s account (Dio [in Xiph., Zon.] 67.12.1) of the punishment of both men and women for adultery in A.D. 91. (Grelle, “*Correctio morum*,” 346 & 350 holds for an imperial edict.) Censorial action perhaps explains the language of Mart. 6.2, 6.4 & 91 (cf. Statius *Silvae* 4.3.10 & 14, with its mention of censor and *leges*: the latter apparently did not include the adultery law itself).
are two separate things. The latter receives no mention from the biographer, any more than he treats at Tib. 35.2 the generalized norm which accompanied the punishment of Vistilia. The pattern and purpose of repression in both cases is the same, even if the specific form it took was different.

The negative result of this enquiry is perhaps more important than the positive. We learn that the behavior of adulteresses, prostitutes, and actresses was not—in this instance, at least—lumped together as equally deserving of condemnation. The opposite result would suggest a fairly strong current of misogyny in elite male thinking, so that the distinction has some significance. These three types were all socially disgraced, but this fact did not automatically translate into the same status at law.42

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