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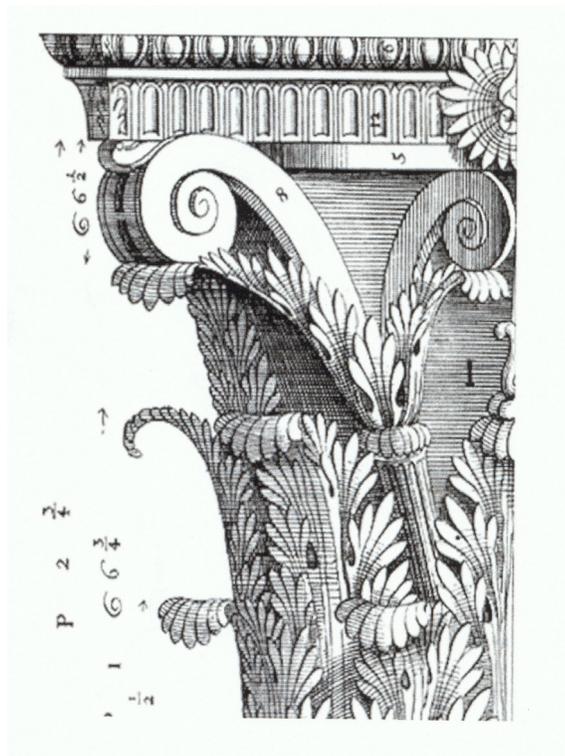
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**Edited by:**

Craig Cooper/ Edward Anson

Joseph Roisman / P.V. Wheatley / Ian Worthington



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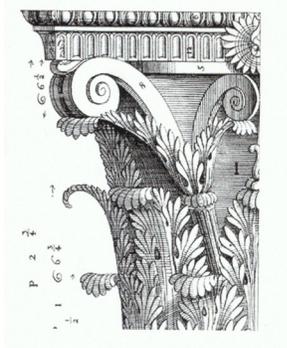
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Volume 22 (2008)

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# **Something Old, Something New...**

## **Augustan Legislation and the Challenge of Social Control**

Thomas A.J. McGinn

### *1. Social Control and Status-Maintenance.*

Augustus' interest in social control is easily demonstrated.<sup>1</sup> The division of the city of Rome into fourteen districts, the revival (if that is the correct word) of the post of city prefect, and the constitution of the *vigiles*, urban cohorts, and praetorians are obvious examples of this. His administrative reforms (for example, in the judiciary and in city planning) were thorough and, to judge from the fact that they were maintained and elaborated by his successors, effective. He used magisterial powers to revise the rolls of citizens, senators, and equestrians. What did he hope to accomplish through legislation?

The answer is to be sought in an area of social control I define as status-maintenance. My concern lies with the category of laws often described as social or moral legislation. These are typically thought to consist of the laws on electoral misbehavior, ostentatious consumption, marriage, adultery, and the manumission of slaves. A number of difficulties are worth exploring, above all, how to define the category, which laws to include and which to exclude. I argue that the theme of social control, as crystallized in the issue of status-maintenance, does a better job of characterizing Augustus' legislative aims than the traditional tags of 'moral' or 'social'. By referring to some statutory trends often overlooked in this context, such as regulations on public performance by members of the elite, clothing, and even taxation, common programmatic elements can be illustrated without over-stressing the coherent design of the program itself. We can then perhaps better understand the legislation I would argue to lie at the core of Augustus' program of social control, the laws on ostentatious consumption, manumission, marriage, and adultery.

The idea of social control, defined, for reasons that will soon become obvious, in terms of a general concern with status-maintenance, also makes possible a clearer understanding of the success these measures enjoyed, as calibrated against what can reasonably be inferred about Augustus' intentions. It also allows a better comparison with legislation in these areas both before and after his reign. Of no small interest in this connection is the reception of his laws by later emperors and jurists. What emerges is a better appreciation of how Augustus managed a system of symbols, tied to the manipulation of status that aimed to achieve a sophisticated and at times subtle exercise of social control.

Here is a summary of my argument. Scholars have been, as a rule, precise neither

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<sup>1</sup> This essay has benefited from the comments of members of appreciative and helpful audiences in Ann Arbor, Austin, Catania, Hanover, Los Angeles, and Rome. I am particularly grateful to Clifford Ando, Adriaan Lanni, Andrew Riggsby, Roberta Stewart, and Michael White.

about what characterizes some of Augustus' legislation as "social" or "moral" in nature nor about exactly which laws fall into this classification. I suggest that his interest in social control through status-maintenance helps us understand them better, both as individual statutes and as a category. I begin by examining some laws that are not usually classed as social or moral to show how this concern with social control was more pervasive than it might otherwise appear, and then move on to discuss legislation that might fairly be regarded as lying at the heart of this category. One chief concern throughout the discussion concerns the effectiveness of these laws, and the light this factor is able to shed on Augustus' intentions in framing them in the first place. In other words, how serious was he about enforcing his rules, and to what extent were they in fact respected, as far as we can tell? I do not argue that all of these laws were effective, or that those that were effective were equally so, but I do conclude that most were more successful than they are usually assumed to have been. I reach this conclusion in part through examination of the concepts of legal symbolism and expressive law, which help clarify important aspects of the enforcement of the rules deriving from this category of Augustan legislation. The question of enforcement leads us, of course, right back to the problem of social control. As we shall see, it is also of relevance to the issue of legislative intent and, in turn, to the problem of how to define this category of laws.

## 2. *Social and/or Moral Legislation.*

We begin with the modern concept of social and/or moral legislation. Of course, Augustus tells us himself in the *Res Gestae* that on three occasions (in 19, 18, and 11 B.C.) he refused the offer by Senate and People of the post of *curator legum et morum* with supreme power and without a colleague, instead carrying out the Senate's mandate through the exercise of his tribunician power.<sup>2</sup> This claim is buttressed by details in Suetonius and Dio, somewhat inconsistent as they are.<sup>3</sup> Scholars have - logically enough perhaps - been encouraged by this evidence to conclude that the series of *leges Iuliae* passed in 18-16 B.C. represent the core of a program of moral and/or social legislation. Most do not stop there, however, including in this category, for example, the manumission laws passed in 2 B.C. and A.D. 4, which had of course other sponsors than Augustus himself.<sup>4</sup> Is this extension consistent with Augustus' own statements in the *Res Gestae* about his legislative activity? Not literally, to be sure, but is it correct to include a

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<sup>2</sup> Augustus *RG* 6.

<sup>3</sup> Suet. *Aug.* 27.5; Dio 54.10.5.

<sup>4</sup> What follows is a sample of how some of the most important works in the scholarship fill out the category. Gardthausen 1896/1964 902-912 has the laws on marriage, adultery, ostentatious consumption, manumission, electioneering, theater-seating, treason, and violence; Last 1934 has the manumission, marriage, and adultery laws; Jones 1970 63, 131-143 has the laws on marriage, adultery, ostentatious consumption, manumission, and electioneering; Kienast 1992 98, 137-139 has marriage, adultery, ostentatious consumption, and electioneering; Galinsky 1996 128-140 has the marriage and adultery laws on a primary level, manumission on a secondary level; Treggiari 1996 has the laws on marriage, adultery, manumission, and ostentatious consumption.

law that, in chronological terms, technically is consistent with his claims, such as the *lex Iulia de ambitu*, but otherwise hard to justify?<sup>5</sup>

I do not mean to imply for moment that I consider electoral bribery to be anything but antisocial and immoral,<sup>6</sup> but want to question the usefulness of that reflection in understanding the emperor's purpose. If Augustus had passed a murder statute at this time I think we could all agree that killing people is, in general, antisocial and possibly immoral so that this law too would fit the rubric. But why stop with electoral bribery,<sup>7</sup> manumission, or even theater-seating?<sup>7</sup> All laws were ideally grounded in *mores*.<sup>8</sup> Suetonius helpfully asserts that the first emperor received the *morum legumque regimen* for life, buttressing the assumption that all of his salubrious statutes might qualify for this status.<sup>9</sup> This way, incidentally, we could take the different lists of moral and/or social laws set forth by various scholars and regard them not as mutually exclusive where they fail to coincide, but as components of one big list. This conclusion, doubtful as it is, depends in part in taking phrases like *legum et morum* and *morum legumque* as hendiadys, not a good idea, perhaps, at least in the sense of completely overlapping categories.<sup>10</sup>

In sum, scholars have over the years constructed the category of Augustan social and/or moral legislation in a variety of ways, usually without defining the category itself or even noticing the differences among themselves. The trend has been simply to assume a meaning for the category and then list or discuss some individual laws thought to be representative. At best this approach is vague and unsatisfactory; at worst it is lacking in logic and coherence.

Now that we have taken that notion apart it remains to put it back together. The theme of social control, with particular emphasis on defining and maintaining status-

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<sup>5</sup> For a sophisticated attempt, only partially successful in my view, to link electioneering to sumptuary legislation, see Daube 1969 125-127. Daube's thesis suggests that some laws might lie along a spectrum of legislation that is more or less social / moral in nature rather than fall into distinct "either/or" categories. Even so, the *lex Iulia de ambitu* would fall outside the core classification, in my view.

<sup>6</sup> See Severy 2003 50 for a cogent argument on this point.

<sup>7</sup> Resistance to the theater had a long history at Rome, as did its popularity. Regulation, such as the assignment of seating based on rank in the *lex Iulia theatralis* (c. 20 B.C.), can be read as part of Augustus' response to both trends, and so perhaps as more than just a remedy for the problem of confusion and disorder in the distribution of ranks mentioned by Suetonius (*Aug.* 44.1). Like his sumptuary legislation, this attempt at status-maintenance had Republican precedent, notably the *lex Roscia* of 67 B.C., though it was more thorough in its design and probably extended to the amphitheater as well: see Rawson 1987/1991; Edmondson 1996 84-95, 99-101, 109-110; Gunderson 1996 123-126, 132-133. Even where there was no such legislative precedent, a similar argument can be made, for example, in the case of the *lex Iulia de senatu habendo* of 9 B.C., which seems to have converted custom into law, like other elements of the Augustan program: see Talbert 1984 222-224.

<sup>8</sup> On the (ideal) relationship between law and custom, i.e. generally accepted notions of morality, see Bellen 1987 322-329; Treggiari 1994 86-87.

<sup>9</sup> Suet. *Aug.* 27.5. Cf. Bellen 1987 315.

<sup>10</sup> In other words, the words *et* and *-que* are both conjunctive and disjunctive, not just the former, as Bellen 1987 311-315 317 argues. My usage of the term "social / moral" is similar: below.

distinctions, I argue is well-suited to this task. I do not claim to be able to illustrate the significance of every detail of every law passed under Augustus, a self-defeating enterprise, as we have already seen. The end result will be less an iron-clad category of laws than a sense of what impelled Augustus to pass so many of them. That Augustus himself conceived of, or at least wished to present, his legislation as a unity is suggested by the reference he makes to his *novae leges* in the *Res Gestae*.<sup>11</sup> The use of the adjective “new” is striking, not just because of the apparent pleonasm, but also because of its idealizing, non-pejorative sense. Augustus describes these statutes as both 1) a restoration of practices of the ancestors (*maiores*) that had fallen into oblivion and 2) an institution at his own initiative of practices to be imitated by posterity. This Janus-like insistence on looking forward and backward is of course an essential element of Augustus’ political message and can notionally be taken to describe his entire legislative agenda.<sup>12</sup> It is also important for comprehending the role that social control, particularly as defined through status-maintenance, played in this program.

### 3. *Public Performance, Clothing, and Taxation.*

In order to explore in detail the contents of this category of legislation, I propose to begin with three aspects of the Augustan program that have received little or no attention in terms of social and/or moral reform: restrictions on public performances by members of the elite, regulations on clothing, and taxation. We will examine not only the contents of these laws regarding status-maintenance, but also the difficult question of their success or failure. Both themes are central to the question of Augustus’ purpose with regard to law and social control.

The issue of public performance seems first to have arisen in 46 B.C., when a senator volunteered to fight in the arena as a gladiator.<sup>13</sup> Julius Caesar vetoed this debut, but did allow equestrians to compete. In 38 B.C. yet another senatorial volunteer was thwarted, and this time a *Senatusconsultum* was passed banning the practice outright to senators and (very likely) their sons.<sup>14</sup> The ban probably extended to the stage as well as the arena; in any case this was the law at the date of yet another extension in 22 B.C., which embraced grandsons of senators and, it seems, equestrians as well.<sup>15</sup> We have evidence that these strictures were repeatedly violated, so much so that in A.D. 11 Augustus

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<sup>11</sup> Augustus *RG* 8.5: “Legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi.” (“Through new laws passed at my instance I reintroduced many exemplary practices of our ancestors that were by now in our time on the wane and I myself handed down to our descendants exemplary practices of many kinds for their imitation.”).

<sup>12</sup> So Bellen 1987 315, though I would dispute the assertion (316) that these are precisely the same laws as those referenced at *Res Gestae* 6. See also now Milnor 2005 146.

<sup>13</sup> Dio 43.23.5.

<sup>14</sup> Dio 48.43.2-3.

<sup>15</sup> Dio 54.2.5.

actually retreated, and allowed equestrians to fight in the arena.<sup>16</sup> New restrictions were not long in coming, however, and in that same year an *SC* was passed that forbade all freeborn persons, under 20 years if female and under 25 if male, to make agreements to perform in public, both on stage and in the arena.<sup>17</sup> Tiberius, however, granted another exemption for equestrians in games given by his sons in A.D. 15.<sup>18</sup> For us this legislative history culminates in the *SC* of 19 recorded on the Larinum tablet that attempts to close a series of loopholes and more effectively to prevent members of the senatorial and equestrian orders from appearing on stage or in the arena.

This evidence allows us to make a series of brief observations. First and most obvious, the concern of this legislation was with status-appropriate behavior, a concern that characterizes much of Augustus' legislation.<sup>19</sup> Next, its unpopularity and lack of success is palpable. Both Augustus and Tiberius thought it politic to attempt to maintain the integrity of the ban by granting exemptions from time to time, at least to equestrians. Finally, the reliance on *SCC* instead of comitial legislation hardly puts these initiatives into a separate category of sorts. I note that Augustus' claim in the *Res Gestae* to have carried out the Senate's mandate through promulgating legislation on the basis of his *tribunicia potestas*,<sup>20</sup> while usually understood as a reference to the comitial laws passed in 18-16 B.C., can also embrace his sponsoring of *SCC*, at least in these years. We now know that the main function of the *tribunicia potestas* under the early Principate was to conduct proceedings in the Senate, a point of no small significance for our comprehension of Augustus' claim.<sup>21</sup>

Next in order are regulations on clothing.<sup>22</sup> Augustus famously enjoined the aediles to enforce public wearing of the toga by males in the center of Rome and forbade wearers of dark-colored garments (i.e. not the toga) to sit in the *media cavea* of the theater.<sup>23</sup> He renewed the annual equestrian *transvectio*, whose participants wore a uniform of *trabea* and crown of olive leaves. Members of the Senate and their sons were allowed the privilege of the *latus clavus*, the broad purple stripe on the tunic that signified membership in that order.<sup>24</sup> Cassius Dio reports that Augustus allowed only senatorial

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<sup>16</sup> Dio 56.25.7-8. For the violations, see Levick 1983 107-108, who has a useful discussion of the history of this legislation, upon which I rely. See also Edwards 1993 123-166; Edmondson 1996 104-108; Gunderson 1996 136-142.

<sup>17</sup> *Tab. Lar.* 17-21.

<sup>18</sup> Dio 57.14.3.

<sup>19</sup> Kienast 1992 98, 137-139 emphasizes this aspect, though almost exclusively with regard to the senatorial order. See also Baltrusch 1989 158. Augustus' law on Senate procedure is relevant here: see above in the notes.

<sup>20</sup> Augustus *RG* 6.2.

<sup>21</sup> Rowe 2002. See also Millar 1984 52; Moreau 2003 477.

<sup>22</sup> What follows is taken from McGinn 1998 154-155.

<sup>23</sup> Suet. *Aug.* 40.5, 44.2.

<sup>24</sup> See Henderson 1963 66; Talbert 1984 11; Demougin 1988 150-156.

magistrates to wear purple clothing.<sup>25</sup> Finally, I argue that the *lex Iulia* on adultery prescribed the toga for adulteresses, on the basis of an analogy with the usage of prostitutes, for whom the law may have stipulated the same garment, legislating what had only been a customary association of that garment with that profession. The regulation of the clothing of adulteresses was even more a novelty, in that the only sources that mention this usage are written after the passage of the law.<sup>26</sup> In just this one detail, then, the adultery law lives up to the title of this paper. It comes up for discussion again below.

Regulations on clothing were perhaps particularly difficult to enforce. There is plenty of evidence for the usurpation of elite status symbols by unqualified Romans, a phenomenon that has been well studied, notably by Meyer Reinhold.<sup>27</sup> On the other hand, we know from the comments of Juvenal and Martial that many Romans regarded the toga as a cumbersome garment at best, and one has the sense that a number of them wore this only when absolutely necessary, especially outside of Rome.<sup>28</sup> In the capital, the aediles must have been awfully busy, if it is right to assume that serious attempts at enforcement of the rules were made. As for prostitutes, the sources attest a variety of interesting items of clothing for them that had nothing to do with the toga. Convicted adulteresses may have been kept to their togas while relegated to whatever barren, rocky, and remote island spelled their destiny, if anyone cared.

Despite these challenges, I think it difficult to assume that these regulations were not meant to be enforced, or obeyed.<sup>29</sup> That is to say that although it is sufficiently clear that they were concerned with the management of symbols, there was nothing exclusively or inertly symbolic about the rules themselves, a theme to which I shall return, in the context of the Augustan sumptuary law.<sup>30</sup> For now, we can note, along with an historian of the Middle Ages, that the clothing-code can serve as a central instrument of authority when the social and political order needs to be stabilized or redefined.<sup>31</sup> For this to have been true, however, we must imagine such regulations to be more than a matter of mere prescription.

Finally, there is a law on taxation, namely, the *lex Iulia de vicesima hereditarium*, strictly of uncertain date, though conventionally located in or near A.D. 6.<sup>32</sup> This established a tax rate of five percent on estates, whether left through bequest or on

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<sup>25</sup> Dio 49.16.1.

<sup>26</sup> Olson 2002 (and Olson 2006) has a rather confused critique of my argument on the dress of prostitutes and adulteresses. Its difficulties cannot be disentangled here, however.

<sup>27</sup> Reinhold 1981/2002. On the theme, see more recently Lendon 1997.

<sup>28</sup> Mart. 1.49.31, 3.4.6, 10.47.5, 10.96.11-12, 12.18.5, 17; Iuv. 3.171-172.

<sup>29</sup> Cf. Culham 1997 197-198.

<sup>30</sup> In other words, the clothing was symbolic, but not the norm itself, at least not exclusively so. Compare the sometimes broad responsibilities of the officials in Greek cities tasked with enforcing women's clothing regulations: Ogden 2002.

<sup>31</sup> Jussen 2000 176-177.

<sup>32</sup> See, for example, Wesener 1958 2471.

intestacy, provided they were above a certain value - though the precise cutoff remains unknown - and were not left to close relatives - here again the precise range eludes us.<sup>33</sup> The proceeds went to fund the military treasury that provided pensions for veterans.<sup>34</sup> Dio asserts that Augustus got the idea from Caesar, and that it had been tried before, but discarded. The law stipulated a vigorous regime for its enforcement governing the opening of wills, establishing for example when, where, and before whom this should happen.<sup>35</sup>

We cannot be certain how effective this enforcement regime was, though no immediate difficulties are reported in funding the *aerarium militare*.<sup>36</sup> What is of interest is the way in which the law set forth a failsafe way of accomplishing its goals. One aim was to support the maintenance of status in families over the generations; another was to fund the treasury.<sup>37</sup> So those liable to the tax had a choice. Keeping bequests within the family promoted the first goal. Here it would seem good to know the precise range of family members exempted under the law. There are two plausible models.<sup>38</sup> One was laid down by the mid-Republican *lex Furia testamentaria* (before 169) on eligible legatees, which embraced relatives including the sixth degree, seventh in the case of second cousins, and was taken up by the Augustan marriage law, which allowed bequests to stand when made to such family members even when they had violated its strictures.<sup>39</sup> An inner circle of family entitlement, however, was recognized by the praetorian regime on undutiful wills, which effectively extended only to the third degree.<sup>40</sup> For once, the uncertainty over the content of the rule does not matter very much, since the evidence we have on testamentary practice suggests that most willmakers kept their bequests within that range.<sup>41</sup> Husbands and wives may have been exempted as well, simply on the basis

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<sup>33</sup> Dio 55.25.5-6. Plin. *Pan.* 40.1-2 attributes the exemption of small estates to a reform by Trajan: Gardner 2001 205.

<sup>34</sup> For other sources of funds for this treasury see Wesener 1958 2471.

<sup>35</sup> On provisions for enforcement introduced by the law and subsequent to its passing, see Wesener 1958 2475. For evidence of the administration for the collection of the tax, see De Ruggiero 1922 729-733.

<sup>36</sup> Caracalla, on the other hand, found himself constrained to launch an aggressive campaign to increase revenue, including doubling the tax rate and expanding the base: Dio (in *Exc. Val.*, Xiph.) 77.9.4; Ulp. D. 1.5.17; Ulp. *Collatio* 16.9.3.

<sup>37</sup> See Nicolet 1984 108-111.

<sup>38</sup> The notoriously fluid social usages, including language, surrounding the Roman family reveal its nature as a social construct, and one, moreover, heavily penetrated by political considerations, especially after the establishment of the Principate: see Frier and McGinn 2003 3-10. For an analogy from another culture, see Davidoff et al. 1999 9-10, 79, 83.

<sup>39</sup> This is the majority view: De Ruggiero 1922 728. On the *exceptae personae* under the marriage law, see Wallace-Hadrill 1981 73-76; Heyse 1994 121.

<sup>40</sup> The idea that the exemption embraced only the *sui heredes* overlooks the praetorian regime on succession: see Wesener 1958 2472. The same might be said of Wesener's proposal (2474) that only relatives in the first degree (parents and children) were exempted before the time of Trajan, which is, moreover, based on a misreading of Plin. *Pan.* 39.1-2.

<sup>41</sup> Champlin 1991 103-130. Champlin's evidence undercuts the argument of Gardner 2001 213 that a

that Augustus favored marriage as a matter of public policy.<sup>42</sup> Refusal, however, to keep within the statutory limits, whatever they were, meant supporting the other goal pursued by the law, funding the *aerarium militare*.

By way of summary, we can say that the three different legislative traditions examined in this section appear to have differed in terms of their effectiveness. That prohibiting public performance by members of the elite does not seem to have been very effective during Augustus' reign, to judge from the repeated concessions, violations, sharpening of the rules, and attempts at the closing of loopholes on record. The efficacy of the regulations on clothing is more difficult to evaluate, though skepticism seems appropriate regarding the successful enforcement of the rules, at least those not directly relevant for members of the upper classes, especially in the long run. This does not mean that they were not intended to be enforced, of course. By way of contrast, the statute taxing inheritances was effective in terms of its design, in that it set up a mechanism through which failure to support the goal of maintaining family status from one generation to the next would succeed in supporting that of providing state revenue, and vice versa. As ever, we do not possess much detail on enforcement, but there is no good reason for skepticism on this score, at least for many years after Augustus' reign.

In terms of their concern with status-maintenance, all three examples are relevant to the category of Augustan social / moral legislation. Because its goal of raising money for the treasury was, in terms of its design, at least as important as that of maintaining family status, I would argue that the statute on the inheritance tax lies outside the core of this category, falling somewhere along a spectrum that would include all examples of such legislation. As for the regulations on public performance and appropriate dress, these appear to rank closer to the core of the category, since they are more exclusively concerned with status-maintenance. It is difficult to characterize them as belonging to the core itself, however, since they lack the scope and complexity, or what might even be termed the sheer ambition, of the statutes examined below.<sup>43</sup> An exception occurs for rules that are in fact a part of one of those laws, such as the regulations on clothing featured in the *lex Iulia* on adultery. We should place all the rest of these rules, together with the prohibitions on public performance by members of the upper classes, at the fringes of the core classification.

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“chronic shortage of heirs in the immediate family” encouraged testators “to dissipate property outside the family” and explains in turn the wider range of eligibility under the *lex Furia*, for example. It is risky, as a rule, to read social practice so directly from legal provisions. Gardner concludes that the tax exempted at most, aside from spouses, relatives within the third degree, a solution that remains possible, though far from proven.

<sup>42</sup> Gardner 2001 214 argues for this exemption on the basis that property from both parents eventually went to their mutual children. The policy behind the *lex Iulia et Papia*, which rewarded both marriage and the raising of children, suggests, however, that if husbands and wives were exempt from the tax, even childless couples might so qualify, at least to some extent.

<sup>43</sup> A similar argument can be made for the *lex Iulia theatralis*, on which see above.

#### 4. *The Core of Augustus' Social / Moral Legislative Program*

We move on to a consideration of a series of statutes that most scholars regard as part of Augustus' social / moral legislation and that I argue to lie at its core. While it might be possible to entertain a modest optimism on the enforceability of the Augustan inheritance tax, this is much more difficult for the *lex Iulia sumptuaria*, a statute that stands at the heart of the Augustan program on social control. This law, passed, probably, in or near 18 B.C., placed limits on certain forms of ostentatious consumption, at minimum concerning expenditures on banquets.<sup>44</sup> The emperor's concern with status-maintenance seems perfectly clear with this statute. The issues of enforcement and, beyond this, of efficacy are precisely what raise some difficulties. It is the last of a long series of sumptuary legislation passed throughout the mid- to late Republic, a series notorious for its utter ineffectiveness.<sup>45</sup>

A wealth of comparative evidence on sumptuary legislation from late medieval and early modern Europe encourages no great confidence in the efficacy of these measures - there are even some indications that legislators in these later periods knew from the start that, as we say in Tennessee, this dog would just not hunt.<sup>46</sup> The ancient sources rather abet this presumption to the extent they present the history of such laws as a chapter in the annals of *Sittenverfall*.<sup>47</sup> More than one scholar has been encouraged by these facts to propose that Roman sumptuary legislation was purely symbolic, that is, it was exclusively intended to make a statement about values rather than directly to influence behavior.<sup>48</sup>

But it seems hazardous to try to read legislative intent so directly from legislative effect. Let one example suffice, the hoary chestnut of the Mann Act.<sup>49</sup> What is more, we simply do not have much information on how most of these laws were enforced.<sup>50</sup> Offenders were, it seems, liable to the censorial *nota* and, at least in theory, the repressive mechanism of a trial generated by an *actio popularis*.<sup>51</sup> An important exception lies with

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<sup>44</sup> Some scholars propose clothing regulations were embraced by this law as well: Rotondi 1912/1990 447; Sauerwein 1970 159. But see Venturini 2004 356-357.

<sup>45</sup> See de Ligt 2002 3-5 for a recent summary. For more detail, see Baltrusch 1989 40-131; Bottiglieri 2002.

<sup>46</sup> See Hunt 1996 325-356; Levy 2003 339.

<sup>47</sup> Bottiglieri 2002 8, 22, 83-102, 131; Venturini 2004 360-361.

<sup>48</sup> De Ligt 2002 11-12; Rosivach 2006/7 on the *lex Fannia* of 161 B.C.: "The law was impractical, and hence symbolic" (quotation at 1).

<sup>49</sup> This law, passed by the U.S. Congress in 1910 to combat the "White Slave Trade", is well-known among legal historians as an example of disjuncture between legislative intent and application. See the classic statement in Levi 1949 27-57.

<sup>50</sup> For a suggestion that the *lex Orchia* of 181 B.C. was long in force, see Venturini 2004 365. The fact that, eighteen years after its passing in 161, it was thought necessary to extend the scope of the *lex Fannia* beyond the confines of the city of Rome through the passage of the *lex Didia* suggests that this too was far from utterly ineffective: Bottiglieri 2002 140; cf. 175. On evidence for the efficacy of the *lex Licinia* (passed before 103), see Bottiglieri 159 and below.

<sup>51</sup> Bottiglieri 2002 114; Venturini 2004 368-371.

the sumptuary law passed by Julius Caesar in 46 B.C. Significantly, perhaps, this occurs at a time when such sanctions as just named were unavailable or ineffective, just as the sumptuary laws themselves seem to have been disregarded more than previously.<sup>52</sup> Suetonius tells us that Caesar placed guards in the markets to seize foods that were illegal and, when this provision failed, sent soldiers to banquets to do the same.<sup>53</sup> There is nothing especially symbolic about snatching food from the jaws of a hungry diner.<sup>54</sup>

We know nothing for certain about the enforcement of the Augustan sumptuary law, though we might reasonably infer from later measures of Tiberius that the Senate and/or the aediles played a role.<sup>55</sup> It seems unreasonable in any case to assume that this was any less vigorous than that which Caesar devised for his statute. The fact that either Augustus or Tiberius (Gellius is not certain which) raised the limits on spending imposed by the law suggests a serious (and pragmatic) campaign of enforcement.<sup>56</sup> As for the matter of its failure, we do well to remember that our chief witness for this is the Tacitean Tiberius, whose testimony we might well hesitate to accept at face-value.<sup>57</sup>

In fact, there are two important episodes from the reign of Tiberius that prompt caution in assuming the inevitable and automatic failure of this law. The first occurred in A.D. 16, when pursuant to an attack on ostentatious consumption, an *SC* was passed outlawing the use of solid-gold vessels as table service and the wearing of silk clothing by men.<sup>58</sup> Neither measure, so far as we know, had been part of the Augustan sumptuary law. When one of the sponsors pressed for sterner, and much broader, measures, he was opposed by Asinius Gallus, who in a speech reported by Tacitus attempts to justify aristocratic competition through ostentatious consumption (or at least certain forms of this), an argument that asserts itself from time to time in the face of what seems the dominant ideology of parsimony (though here it is conditioned by Tacitus' presentation

<sup>52</sup> See Bottiglieri 2002 166-172.

<sup>53</sup> Suet. *Iul.* 43.2, supported, though vaguely, by Dio 43.25.2. Cicero's sarcasm, though far from probative of the law's success, does at least suggest Caesar was serious about enforcement: *Att.* 13.7.1, *Fam.* 9.15.5, 9.26.4.

<sup>54</sup> Those who believe Republican sumptuary legislation was purely "symbolic" must dismiss this evidence out of hand: Rosivach 2006/7 11 n. 49. His argument that the lack of evidence for prosecutions under these laws demonstrates their utter ineffectiveness is paradoxical, to say the least. It is sometimes assumed that sumptuary laws other than Caesar's had no penalties. Wyetzner 2002 27 describes them as *leges imperfectae*. Both Gellius (2.24.1) and Macrobius (3.17.6) mention penalties. They do not, however, say what they were. More generally, one can note the statement of Carlo Venturini 2004 371, which to my mind amounts to an important argument about the expressive function of law: "...il legislatore repubblicano si applicò all'elaborazione di regole meticolose in materia suntuaria ma non volle spingersi a prevedere strumenti sanzionatori capaci di garantire la loro effettiva efficacia."

<sup>55</sup> Suet. *Tib.* 34.1; cf. Tac. *Ann.* 2.33; Dio 57.15.1.

<sup>56</sup> Gell. 2.24.15.

<sup>57</sup> Tac. *Ann.* 3.52-54. Baltrusch 1989 101 argues for the law's failure on the basis both of Tiberius' declaration that such legislation was futile, which is supposed to justify his refusal to legislate, and of his own modifications of the Augustan statute. This seems rather self-contradictory, in part because it takes the evidence of Tacitus uncritically.

<sup>58</sup> Tac. *Ann.* 2.33; Dio 57.15.1-2.

of it as a sign and symptom of the collapse of *mores*).<sup>59</sup> Gallus won the day, because, according to Tacitus, he successfully validated the corrupt practices of his listeners with his specious moralizing. Tiberius is said to have rejoined that this was no time for the exercise of censorial powers but that if there were any slippage in the *mores*, a reformer would not be lacking. This nicely closes the circle of mutual hypocrisy Tacitus constructs for emperor and Senate in this period, but hardly allows us to conclude that the laws were ineffective.

It is possible, despite the evident differences in content, to view this Tiberian *SC* as sufficiently related in its purpose to the *lex Iulia sumptuaria* so as to merit classification in the core category of the Augustan social / moral legislation. The same point holds for at least some of the *SCC* passed pursuant to the Augustan marriage and adultery laws during the reign of Augustus himself or early in that of Tiberius.<sup>60</sup> In such cases, it is the relationship of a particular statute to others in the category that counts decisively for its classification as social / moral.

The second episode took place in A.D. 22, when the aediles for that year charged that the *lex Iulia sumptuaria* was being routinely evaded and proposed new measures to deal with this problem.<sup>61</sup> It seems that the limits set by the law were circumvented by stipulating sham prices, while aristocrats in conversation could not resist bragging about what they had *really* paid. Tiberius responds in a letter to this legislative initiative on the part of the aediles.<sup>62</sup> Here he refuses to take action as requested, citing the futility of such legislation as an historical fact: just as many of the laws promulgated by the ancestors have been rendered invalid through oblivion, so many of Augustus' statutes have suffered the same fate through sheer contempt. Sumptuary laws either cannot be enforced or, if they are, the cure is worse than the disease. Whether they are enforced or not the emperor is held to blame for the inevitable ill effects. It is clear that the Tacitean Tiberius fully subscribes to a theory of *Sittenverfall*. Tacitus then embarks on an excursus in which he argues that the situation (eventually) improved, that is, resort to ostentatious consumption by members of the elite subsided, without benefit of legislation.<sup>63</sup> The process culminates with the reign of Vespasian, but seems to have been well underway long before this.

In neither case discussed by Tacitus does it seem safe to assume the utter failure of the Augustan law. The first instance is strictly irrelevant to the issue of the statute's enforcement, as far as we can tell. In the second, repression of its violation seems like a fairly straightforward matter, despite Tiberius' protestations of its futility. Worth noting is the evident contradiction between what he says on the first occasion and what he says on the second; in Tacitus' presentation, he is not just a hypocrite, but a subtle and sophisticated hypocrite, while the senators, though no less hypocritical, are perhaps to be

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<sup>59</sup> Bottiglieri 2002 47-49; Venturini 2004 372, 380.

<sup>60</sup> For these, see McGinn 1998 71-72, 92, 240, and below.

<sup>61</sup> Tac. *Ann.* 3.52.

<sup>62</sup> Tac. *Ann.* 3.53-54.

<sup>63</sup> Tac. *Ann.* 3.55.

regarded as less subtle in their ways.<sup>64</sup> One conclusion to draw from all this is that already early in the reign of Tiberius a double problem had crystallized. Two forms of aristocratic competition had to be managed. One was of a more traditional kind: competition in ostentatious consumption that might violate the sumptuary law. Equally if not more dangerous from the perspective of the emperor was competition manifested in the prosecution of such lawbreaking. The relationship between these two challenges can be presented in terms of a paradox.

A threefold paradox emerges regarding such legislation, in fact. The first concerns the futility of breaking, as opposed to enforcing, the law. Violating the law, while seeking to escape the consequences of this, was in a sense pointless, since the social value of ostentatious consumption lay in being seen squandering resources, not in successfully covering this up. In other words, evading the law defeated the purpose of evading the law. Given this, enforcement could not have been terribly difficult in many cases, since aristocrats would feel compelled to reveal the extent of their lawbreaking to derive the full social advantage from it. The second concerns the conflict between the different forms of aristocratic competition the emperor had to manage, as we saw just above. To the extent he was successful in repressing elite competition in resort to ostentatious consumption he had to be concerned with repressing elite competition in resort to the repression of ostentatious consumption. Third, the political burden placed on the emperor's shoulders was a heavy one indeed. He bore the blame for the negative consequences from either choice available to him. Not enforcing the law fostered a situation of brazenly illegal conduct that undermined the moral legitimacy of his rule and compromised perceptions of his political authority. To this extent the effects were potentially destabilizing. Enforcing the law threatened the position of a number of socially prominent but politically harmless aristocrats, rendering (needlessly?) problematic the option of avoiding political life, with potentially destabilizing consequences here as well. The *princeps* was to blame both for laws that did not function and those that functioned too well. Tiberius judged the political costs of (enhanced) enforcement too high. It is not to be taken for granted that Tacitus agreed with him.

Livy, in his presentation of the debate over the abrogation of the *lex Oppia*,<sup>65</sup> has been thought to reflect contemporary concerns over the Augustan legislation.<sup>66</sup> If so, the fuss raised in the context of the debate, along with the mere fact that it was thought necessary to repeal a sumptuary law, not to speak of Cato's determined opposition to the repeal,

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<sup>64</sup> Note the assessment by Bottiglieri 2002 15 of Tiberius' praise for the aediles contained in his letter: "L'ironia sullo zelo degli edili cade dall'alto." This is matched in my view by the historian's irony-laced presentation of Tiberius' sensitivity over the ill effects of enforcing this legislation, a sensitivity that might have been rather more appropriately deployed in the enforcement of the law on *maiestas* later in his reign.

<sup>65</sup> Liv. 34.1.

<sup>66</sup> Nörr 1974 74. Milnor 2005 154-179 discusses Livy's account of the repeal in light of the Augustan marriage and adultery laws, which for her define the Augustan social legislation (Milnor 144). I would point to this as another subtle instance in which different elements of the Augustan program relate to one another. The sumptuary law was not inevitably and exclusively designed to check ostentatious consumption on the part of Roman males.

might encourage some skepticism about the utter ineffectiveness of the later statute.<sup>67</sup>

More to the point perhaps is that we may not fully understand the law's purpose, a problem in attempting to assess its effects. These are directly related to the matter of status-maintenance and beyond this to social control. If it is correct to argue that Augustus in promulgating the *lex Iulia sumptuaria* had goals that set him apart from the legislators of the mid-Republic, namely, to discourage rivals from arising within the senatorial order and further to prevent its members, many of whom suffered financially amid the political disorders of the late Republic, from bankrupting themselves through ostentatious expenditure,<sup>68</sup> the law might on the whole be judged a success. It was perhaps too successful, to the extent it allowed or even encouraged persecution of apolitical or at any rate harmless members of the senatorial order. This has a double implication, one that is more or less political, as just stated, the other more or less economic in nature (these categories cannot be neatly separated, of course).

There was not the same perceived social benefit, as in the past, in protecting the assets of such persons from dissipation so that they might be reserved for the maintenance of an aristocratic family's political profile across the generations. With respect to other, politically active, members of the aristocracy, however, this was a key purpose connecting Augustan sumptuary legislation with its Republican precedents. If so, Tiberius' famous refusal to legislate in A.D. 22 can perhaps be read as an acknowledgment of the law's success, as defined here, as well as an indication that he had discovered other, more effective means to promote the very same aims.<sup>69</sup>

Later emperors seem by and large to have taken Tiberius as a model in this regard, but it seems reductionist to assume that Augustus' law was completely pointless. It may have turned out that the real challenge to the policymaker here was not the strength of the political class, but its weakness. So the success of the legislation may not have depended on its enforcement, at least not in any obvious sense.<sup>70</sup> If we are right to assume that Augustus successfully engineered a differentiation between political power and social status on the level of the senatorial order (a point discussed further below), then ostentatious consumption might have served as an important outlet for members of the

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<sup>67</sup> See Bottiglieri 2002 106, 118. According to the Tiberian-era Valerius Maximus, in 97 B.C. (at the latest) a tribune deemed it necessary to abrogate a sumptuary law, the *lex Licinia*, for which action the censors expelled him from the Senate: Val. Max. 2.9.5, with Bottiglieri 2002 160-161.

<sup>68</sup> See Baltrusch 1989 153-154 (for the political, economic, and social motives behind the Republican tradition see 102). Conserving patrimony had an obvious, if indirect, connection with the aims of the *lex Iulia et Papia*: below.

<sup>69</sup> For some of Tiberius' non-legislative methods, see Baltrusch 1989 155-157. Even here he had an Augustan precedent: Dio 55.13.6.

<sup>70</sup> A similar point holds for the *lex Iulia de ambitu*. See Mod. D. 48.14.1 pr. Daube's argument that sumptuary laws were designed to protect the interest of the stingy among the Roman elite presupposes a higher level of adhesion among that group than is usually granted for this legislation: Daube 1969 121-128. All the same, it does seem possible that certain groups among the aristocracy of the mid-Republic were able to use these laws as a justification of a parsimonious lifestyle, an argument that implicitly relies, I would maintain, on a theory of the expressive function of law: see Venturini 2004 371.

elite rendered harmless by the effects of this split.<sup>71</sup> Allowing them to be punished for it might have led to destabilizing effects in the context of the new system. Shutting down an opportunity to compete with one's peers through lavish display left the purely political arena as the logical alternative. This is not to deny that, as we saw above, the conservation and transmission of patrimony across the generations were an important concern of this law, just as they played a role in other aspects of the Augustan social / moral legislation. In any case, the experience of the sumptuary law points up a central challenge to Augustus' legislative approach to social control in relation to the upper classes. This was much more counterintuitive than it might seem, and not just because of the oft-cited intractability of the *mos maiorum*.<sup>72</sup>

Status-maintenance is an obvious theme of the Augustan laws regulating manumission of slaves, which begin with the *lex Fufia Caninia* of 2 B.C. and continue with the *lex Aelia Sentia* of A.D. 4 and the *lex Iunia (Norbana)*, which rounds off this category even if it dates as late as A.D. 19.<sup>73</sup> Simply by limiting the numbers of slaves freed, Augustus sought to make better slaves and better masters.<sup>74</sup> Richer ones too, for the latter case, in that the law helped preserve patrimonies by discouraging dissipation of a major asset class.<sup>75</sup> Within the constraints imposed by the law, decisions about manumission remained under the discretion of owners, who were bound to exercise their judgment all the more carefully now, while slaves would in theory be compelled to compete for this privilege, as part of the operation of a meritocracy of virtue visible in other aspects of Augustan legislation.<sup>76</sup> Though sumptuary legislation obviously can be concerned only with wealthy persons, these laws would have touched persons with only a slave or two, and of course the slaves themselves, suggesting that Augustus' concerns with status-maintenance reached far beyond the upper classes.<sup>77</sup> Manumissions performed in violation of the first law were void; in the case of the latter two, the ex-slave was, under certain circumstances, consigned to the underprivileged category of Junian

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<sup>71</sup> See Hopkins 1983 174-175, 196.

<sup>72</sup> See the comments of Black 1998 1-2, 68-70, 163-164 on the behavior of law with respect to social status.

<sup>73</sup> See Bellen 1987 340-342.

<sup>74</sup> For a sense of the problems envisaged, see Dion. Hal. 4.24.4-8. Cf. the Discipline Ordinance of Reformation Augsburg (1537), which encouraged better behavior on the part of servants so that they might with greater moral justification claim their place in civic society, at the same time it insisted on compartmentment from masters and mistresses consistent with their elevated status, all in the service of a return to an idealized past: Roper 1989 55.

<sup>75</sup> See Daube 1969 119-121.

<sup>76</sup> Especially, but not only, in the context of the marriage legislation, virtue might be viewed as a kind of expertise. See McGinn 1998 80-84.

<sup>77</sup> Persons of decidedly modest means might own slaves in the Roman world: Bradley 1994 10-12. Thus, Augustus was concerned even to order hierarchy on the sub-elite level. Here (though admittedly among the upper classes as well) some master-slave relations would have been more symmetrical than others, generating a potential for conflict, even violent conflict: see Gould 2003 103, 108.

Latin.<sup>78</sup> The details of enforcement, though of interest, are not controversial, and cannot detain us here.<sup>79</sup> One of the more interesting aspects of these laws are the dates at which they appear, at some remove from the group of *leges Iuliae* associated with social / moral legislation. This fact points to the largely experimental nature of the Augustan Principate overall. Resort to legislation in this context is an important development, signifying, as it were, part of an institutionalization of the institution.<sup>80</sup> At the same time, reform by statute represented simply one more element in the continuous improvisation that marked Augustus' rule, and so contributed to its lasting success.<sup>81</sup>

The Augustan marriage legislation, to take two laws as one, known by the composite title *lex Iulia et Papia*, was concerned with status-maintenance in myriad ways, too many to offer more than a sense of the main lines right now.<sup>82</sup> It is worth observing first that marriage in many societies serves as perhaps the ultimate status-marker.<sup>83</sup> The law stipulated two sets of marriage prohibitions predicated on status - one for members of the senatorial order, for which it famously provided the first definition at law, the other for all other freeborn persons. Augustus himself did not invalidate marriages contracted contrary to his rules, evidently responding to the principle that “[w]hat the law would control, it first legalized”.<sup>84</sup> This legislation also created two new privileged statuses - married persons and an even loftier category of married with children. The law additionally defined for each of these a corresponding underprivileged status, namely *caelibes* and *orbi*.<sup>85</sup>

Encouraged by the fierce ancient polemic over the law, modern scholarship has tended to take a dim view of its efficacy in moral and/or demographic terms.<sup>86</sup> There are,

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<sup>78</sup> See Berger 1953 s.v. *lex Fufia Caninia, Latini Iuniani*.

<sup>79</sup> Especially telling is documentary evidence that extends, albeit sporadically, over centuries: Bradley 1994 10-12, 155-157. Daube's theory of protection of the interests of the stingy among the elite has some attraction regarding the manumission laws, explaining their appeal to many owners who did not wish to free large numbers of slaves but felt social pressure to do so, until the law gave them an excuse not to manumit: see Daube 1969 119-121, an expressive law theorist *avant la lettre*.

<sup>80</sup> See Eder 2005 28.

<sup>81</sup> See Gruen 2005 42-44.

<sup>82</sup> More detail and bibliography in McGinn 1998 Chapters 3 and 4; McGinn 2002.

<sup>83</sup> See McGinn 2002 for Rome.

<sup>84</sup> Hartog 2000 168. Cf. Grossberg 1985 335 n. 70 on a modern instance of a preference for penalties over nullification of marriages contracted contrary to law. Marriages contracted contrary to the Augustan prohibitions for members of the senatorial order were rendered void by an *SC* passed under Marcus Aurelius and Commodus: McGinn 1998 72.

<sup>85</sup> Aside from other penalties imposed by the law, the unmarried were forbidden to attend public spectacles and banquets, and were evidently allotted less desirable seats in the theater, perhaps as a later softening of an absolute ban. Like soldiers, the married, at least married men, were publicly recognized for their service to the State. In this way the marriage legislation tied in, directly or indirectly, with the *lex Iulia theatralis*: see Rawson 1987/1991 esp. 525-526, 542.

<sup>86</sup> See, for example, Raditsa 1980, a contribution distinguished by its pessimism and modernism. More recently, Parkin 2003 98, 202 simply assumes the failure of this legislation.

of course, some notable exceptions. Dieter Nörr argues that the statute established a mechanism for enforcement that, insofar as it was balanced between the goals of revenue and reproduction, was in a sense fail-safe. The State could not lose in that one aim succeeded in proportion to the failure of the other.<sup>87</sup> Andrew Wallace-Hadrill identifies the purpose of redistribution as operating on one further level, in that the State's income from confiscated bequests enhanced its ability to support the fruitful but needy.<sup>88</sup> Finally, it seems likely that the marriage prohibitions were rarely disregarded on the level of the elite, since upper-class spouse selection was much more conservative than the dictates of the law.<sup>89</sup> Worth noting is that the criticism, though it occasionally suggests resentment at the fact of the law, does not impugn its moral and demographic purposes, as though these were beyond question.<sup>90</sup> This may be taken as a sign that Augustus had successfully appropriated the symbolic capital of the Roman tradition on these matters, an impression that is confirmed by the readiness of later emperors to legislate in its support.<sup>91</sup>

The Romans recognized a public interest in marriage both before and after the law was passed.<sup>92</sup> The jurists were no less enthusiastic than Augustus' successors, to judge from the frequency and substance of their holdings on the interpretation of the law. There is a programmatic statement - such statements are rare in the sources that have come down to us - from the second-century jurist Terentius Clemens that is worth repeating: "...the statute was enacted for the common good, namely, to promote the procreation of children, [and so] is to be furthered through interpretation."<sup>93</sup>

Deserving of further comment is the fact that, in setting forth its two categories of marriage prohibitions, the legislation defined, for the first time at law, membership in the *ordo senatorius*, here extending over four generations in the direct line of male descent.<sup>94</sup> What this meant was that a senator's sons, grandsons through those sons, and great-grandsons through both (as well as their sisters in each case) enjoyed membership in the order without having to sit in the Senate, that is, bearing the risks and burdens of a

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<sup>87</sup> Nörr 1981 354. Even under the Republic, "Political success did not guarantee political successors": Hopkins 1983 32.

<sup>88</sup> Wallace-Hadrill 1981 72.

<sup>89</sup> McGinn 2002. See Wiesner-Hanks 2001 222 for a cross-cultural statement.

<sup>90</sup> See for example Nörr 1974 76-78, 104-106. The mere fact of the law occasioned some resentment, on the ground that legislation was in principle ill-suited to address social problems: Tac. *Ann.* 3.25-28, with Milnor 2005 144-145.

<sup>91</sup> Augustus' successors came to employ a similar principle of social control through status-maintenance in their promotion of local aristocrats throughout the Empire: see White 1995 esp. 56; White 1998 esp. 334.

<sup>92</sup> For an apposite parallel from eighteenth-century England, see Staves 1990 5-7, 11.

<sup>93</sup> Ter. Clem. (5 *ad legem Iuliam et Papiam*) D. 35.1.64.1: "...legem enim utilem rei publicae, subolis scilicet procreandae causa latam, adiuvandam interpretatione."

<sup>94</sup> Paul. (1 *ad legem Iuliam et Papiam*) D. 23.2.44 pr. Hopkins 1983 126-127, 190-191 criticizes the idea that the Senate was a hereditary aristocracy under the Empire. He is correct, to the extent that the senatorial order and the Senate had been viewed as one and the same.

political career. In this way, Augustus created a useful differentiation between political participation and social status.

As a result of this move, the full implications of which Augustus could not possibly have foreseen, the motive for a non-senator to join that body might have been sharpened, because the stakes were now higher, while at the same time it was reduced for members of the next three generations, who were guaranteed senatorial status without having to be senators. It is interesting that the latter trend runs counter to the point behind granting the *latus clavus* to sons of senators, suggesting that Augustus had an interest both in encouraging continuity in the ranks of this body and in providing a sort of escape hatch for those opting out of a political career.

This element finds echoes in two Tiberian *SCC* from the year 19. One outlawed public performance by members of the senatorial and equestrian orders, with a reference to four generations evidently in both the male and female line for the former case and three generations in both lines (plus siblings of equestrians) for the latter, while the other prohibited prostitution - though in essence pursuant to the Augustan adultery law - by members of the equestrian order to the third generation in both lines (plus wives of equestrians), a rule that probably applied to senatorials too, perhaps for one more generation.<sup>95</sup> These details suggest the presence of subtle links between these various traditions of legislation. It is possible to argue on this basis that the statutes directed at marriage, adultery, and public performance share important elements of lawmaking in this period that is both 'moral' and 'social' in terms of its concerns with status-maintenance. These connections further erode the significance of formal distinctions between comitial laws and decrees of the Senate.

We do well here to set forth the argument regarding maintenance of senatorial and especially consular status during the Republic and Principate advanced by Keith Hopkins and Graham Burton over two decades ago. This may be summarized, in the main lines that concern us, as follows.<sup>96</sup> According to Hopkins and Burton, many of the sons and grandsons of politically successful men did not pursue senatorial careers during the Republic, more from reasons of political failure than biological. This trend is even more easily discernible under the Empire. In each case the inner core of the elite was better able to sustain its political success over time than the outer margins, creating a kind of two-tier system of status-maintenance.<sup>97</sup> This development received formal recognition under the Empire in the distinction between ordinary and suffect consuls. The political system not only permitted but encouraged movement into and out of it. In the late

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<sup>95</sup> *Tab. Lar.* 7-9; *Tac. Ann.* 2.85.1. The latter was prompted by the actions of Vistilia (and Vistilia alone), a woman of senatorial rank who claimed an exemption as a prostitute from prosecution under the adultery law. While it is possible that the Senate issued more than one enactment in the Vistilia case, one punishing her and one that was more general in content (a suggestion of P.A. Brunt), it seems more likely that Tacitus is indulging his taste for the rhetorical plural with "gravibus senatus decretis". See McGinn 1992 281-286. In any case, the phrase cannot refer to the *Larinum SC* on public performance. For a different view, see Spagnuolo Vigorita 2002 38, 42, 135-141.

<sup>96</sup> Hopkins 1983 esp. 38-51, 64-69, 96-98, 112-117, 124-125, 134-137, 154, 170-175, 190-198.

<sup>97</sup> The overall thesis is not as new as claimed: Treggiari 1985 261; Runciman 1986 261-262.

Republic, to be sure, the political elite overall (though not uniformly) failed to reproduce itself in biological, not just social, terms.<sup>98</sup> Low elite fertility posed a challenge to emperors, making it necessary to fashion a complex mechanism for social replacement.

Some caveats are in order. The authors tend to move easily, to the minds of some critics rather too easily, now from holders of the consulship to members of the Senate as a whole, now from office-holders and Senate-members to the Roman aristocracy writ large, however that may be defined.<sup>99</sup> Mere membership in the Senate counted for a great deal, certainly from the perspective of the vast majority of persons living in Rome's dominions.<sup>100</sup> Continuity within the core elite perhaps merits greater emphasis than it receives.<sup>101</sup> Refusal to engage in (as opposed to "withdrawal from") political life on the part of the sons and grandsons of senators was probably motivated more by increased competition, first, from members of the local Italian upper classes, and later, more emphatically, from representatives of the provincial elites, than by fear of an emperor's violent behavior.<sup>102</sup> All the same, though the thesis advanced by Hopkins and Burton cannot be followed on many points of detail (a further example is their assumption that "the Augustan laws failed") and much of it lies beyond proof, it retains a broad plausibility, above all on the point of the nature and extent of social replacement.<sup>103</sup> The phenomenon helps us understand better some of the effects of Augustus' legislation, if not also some of the motives behind this.

Overall, one effect of Augustus' interest in status-maintenance might have been to assist the emperor in managing competition (that which mattered was now ever more exclusively political in nature) on the highest levels of the upper classes, making the Senate more accessible to outsiders, well-qualified outsiders, from his perspective. Thus, if anything, the legal definition of the *ordo senatorius*, offered for the first time by the marriage legislation, rendered it more permeable, a trend not inconsistent with the ruler's own interest.

With the adultery law too Augustus relied on or, better, reinvented a series of traditional statuses in an effort to shape behavior, namely, the disgraced husband-pimp, overly complaisant in his wife's adultery, the lowly adulteress configured as a prostitute, and the exalted *materfamilias* or *matrona*.<sup>104</sup> Modern reaction to this statute has been

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<sup>98</sup> For some interesting (if only partial) parallels with the modern demographic transition see Miller 1998 251-252.

<sup>99</sup> See Duncan-Jones 1984 272-273; Shaw 1984 454-456.

<sup>100</sup> Bradley 1986 269-270.

<sup>101</sup> Shaw 1984 457-458.

<sup>102</sup> Shaw 1984 462-466.

<sup>103</sup> Treggiari 1985 261-262; Runciman 1986 263-264.

<sup>104</sup> For more detail on the *lex Iulia de adulteriis coercendis*, see McGinn 1998 Chapters 4 and 5. The law contained a clause prohibiting a husband from alienating Italic land in his wife's dowry without her consent, just as the *lex Iulia et Papia* forbade him to manumit a dotal slave without her permission: Moreau 2003 469-473. The aim was to raise the status of women within marriage. In this way (and in others) it complements the marriage legislation: see Milnor 2005 150-152; Treggiari 2005 144-146. In the modern

even more uniformly negative than that for the marriage legislation.<sup>105</sup> Is this pessimism justified?

Much of the twentieth-century opinion on the Augustan social / moral legislation in its various shades of black traces its roots to the views of Ronald Syme in *The Roman Revolution*. The idea that any part of this reform program might have had largely or exclusively symbolic purposes seems to fit well with Syme's argument that Augustus hid his quest for power behind a constitutional facade.<sup>106</sup> This idea has met with notable resistance in recent years, however. One scholar has questioned the nature of the facade as facade, describing this as a structural element and not mere window-dressing: "...the elusive form of the principate was also its substance."<sup>107</sup> In a related vein, others have pointed out that recovering the actual motivations of the ancients is often impossible and that perceptions and representations form an important aspect of the reality we can study.<sup>108</sup> Still others have attacked Syme's reliance on "crisis theory" as an explanatory model for political developments during Augustus' reign and cast doubt on the very existence of a facade, chiefly by denying that Augustus ever claimed to restore the Republic.<sup>109</sup>

These criticisms are substantial,<sup>110</sup> yet Syme's influence on subsequent scholarship has been sufficiently strong to justify a closer appraisal of his views. Syme focused his attention almost exclusively on political relationships among members of the elite and was notoriously uninterested in ideology, prejudice, religious sentiment or even moral conviction, except perhaps as a function of such relationships.<sup>111</sup> Self-interest for Syme consistently trumped ideals as an explanation both of political action and of political structure, prompting Arnaldo Momigliano's famous complaint about the book "Spiritual interests of people are considered much less than their marriages."<sup>112</sup> It is difficult to imagine Sir Ronald taking the social legislation very seriously.

In fact, that is exactly what he does. Syme's treatment of the Augustan "moral and sumptuary legislation", as he terms it,<sup>113</sup> is more nuanced and sophisticated than one might expect from such broad characterizations of his work. He describes the purpose of the laws as "to bring the family under the protection of the State" and views them as

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scholarship the adultery law also serves as a nice illustration of the connection drawn by feminist historians between "men's history" and "women's history": Scott 1999 30-32.

<sup>105</sup> See again Raditsa 1980.

<sup>106</sup> See, for example, Syme 1939/1960 7.

<sup>107</sup> Linderski 1990 (the quotation is at 48).

<sup>108</sup> Millar 1984 40, 56; Crook 1996b 113-177, and below.

<sup>109</sup> Crook 1996a; Crook 1996b; Judge 1997.

<sup>110</sup> Even if Augustus did not claim to restore the Republic, Augustan archaism was more than just an aesthetic, as Judge 1997 72 (in criticism of Galinsky 1996) might be taken to imply.

<sup>111</sup> See Stone 1971 56, 62-65.

<sup>112</sup> Momigliano 1940 76.

<sup>113</sup> For the phrase see Syme 1939/1960 442.

responding to a real need, the collapse of morals in the late Republic as evidenced above all in the sexual and marital behavior of women.<sup>114</sup> He is alert, as we might expect, to what he terms the “duplicity” of Augustus’ social program, which he identifies chiefly in the emperor’s claims to resurrect a glorious past that was “imaginary or spurious”. He does try to have it both ways here, claiming that such measures were unnecessary back when the urban aristocracy was in its prime, while strongly implying that a Golden Age never in fact existed. But he insists all the same that suspicion of fraud is not enough to cast doubt on the effectiveness of these statutes.<sup>115</sup> So they are far from symbolic, and far more than merely a facade, in the way in which these terms are often understood.

Syme’s attitude toward the social / moral legislation is in tune with his position on the Principate itself, in that he recognizes this as something terrible, deplorable, but necessary, at least in the sense of more acceptable than the likely alternative. In other words, he can be described as a legislator from perspicacious despair of human nature. Where his outraged moral sentiment seems to have misled him is in his focus on women’s behavior inside and outside marriage as the sole or main driving force behind the legislation.<sup>116</sup> It is reductionist to postulate women’s indulgence in serial monogamy or extramarital sex as the heart of the problem, as though members of the other gender were no more than shocked bystanders to these pursuits, and naive to assume that a good share of the contemporary complaints registered on this score was anything more than a matter of perception or even fabrication.<sup>117</sup>

Beyond this familiar theme Syme cites, as a motive behind the legislation, the alleged emancipation of Roman women, specifically as reflected in the separate marital property regime that allowed *sui iuris* women ownership and control of their own estates, notwithstanding tutors. It is widely recognized today, however, that upper-class Roman women were never “emancipated” and in fact were scarcely in need of such a thing. There was nothing new in the first century B.C. about non-*manus* marriage, which predated the XII Tables and for all we know was common by the mid-Republic, or the rules on separate marital property, which legal sources seem to suggest were grounded in the *mores*.<sup>118</sup> If Augustus shared Syme’s analysis he might have been tempted to pass a law abolishing non-*manus* marriage or at least the peculiar rules governing marital property, but there is no evidence for this, of course. If anything the legislation he did

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<sup>114</sup> Syme 1939/1960 443-449 (quotation at 444).

<sup>115</sup> Syme 1939/1960 452-453.

<sup>116</sup> See Syme 1939/1960 444-445.

<sup>117</sup> For salutary skepticism over the high rate of adultery in the late Republic, see Edwards 1993 36. See also Culham 1997 194.

<sup>118</sup> On the (misleading) idea of emancipation for Roman women, which ultimately derives from nineteenth-century feminist critiques of contemporary marriage, see Winter 2003 8-9. On marriage without *manus* see Treggiari 1991 32-34. The date of the introduction of the separate marital property regime is equally uncertain, but it flourished in the mid-Republic, to judge from Cato’s complaints about it in 169 B.C. (*apud* Gell.17.6.1). Emperors and jurists strictly attribute the ban on gifts of significant value between spouses to the *mores* or *maiores*, a prohibition that must be reckoned as an essential aspect of the separate property regime: Ulp. D. 24.1.1; Caracalla *apud* Ulp. D. 24.1.3 pr.

promote, not to speak of the establishment of the monarchy itself, tended to raise women's status.<sup>119</sup> One may usefully compare, for example, the pro-woman measures of the *lex Iulia et Papia* with the anti-female *Tendenz* of the Republican *lex Voconia* (169 B.C.).<sup>120</sup> It is perhaps advisable to abandon *cherchez la femme* as an explanation of the Augustan social / moral legislation in both its purpose and its effects.<sup>121</sup> A more promising alternative is to take these laws, as with other aspects of Augustus' policies, neither as an unreflecting response to crisis nor as a product of a long-meditated design, but instead as part of a series of experiments, some of which proved more successful than others.<sup>122</sup>

To return to the adultery statute, we may observe that, despite modern misgivings, the reception of this law by emperors and jurists was as enthusiastic as that for the marriage law, if not more so. It is hardly unusual for an elite to seek to define its collective identity through sexual regulation.<sup>123</sup> This is not to say that enforcement was at all times rigorous. Enforcement of the *lex Iulia* on adultery seems to have operated in cycles, with aggressive campaigns launched by emperors such as Domitian and Septimius Severus.<sup>124</sup> All the same, it is rash to conclude that the law was somehow a failure. It contained some rather serious deterrents, such as severe penalties, including the confiscation of a portion of patrimony large enough by itself to compromise one's social status, and the complicated self-help provisions of the *ius occidendi*.<sup>125</sup>

There is no evidence Augustus was interested in enacting a zero-tolerance policy on adultery, any more than Sulla hoped perhaps utterly to eliminate murder through the *lex Cornelia*. The law's requirement that a woman accused of adultery be divorced prior to

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<sup>119</sup> On the legislation, see McGinn 1998 Chapters 3-6; McGinn 2002, and above in the notes; on the Principate, see Syme 1986 80; Culham 1997. In late medieval and early modern England, the growth of the Yorkist and early Tudor monarchy promoted elite woman's access to patronage and encouraged their physical presence at court, enhancing their status and role overall: Harris 2002 12-13. One can more generally contrast the medieval period, in which women were not completely answerable for their actions because deemed to be under male control, and the early modern period, when women were increasingly vulnerable to criminal prosecution, a cause and consequence of their improved status: Wiltenburg 1992 16. The enhancement of women's status is thus often grounded in heightened efforts at controlling them, a trend linked in various historical contexts to a regime's consolidation of power: see Scott 1999 47. I note the thesis, which I find unpersuasive, advanced by Arthur that woman's status diminished under the Principate: Arthur 1977 78-86 (= [with minor changes] 1987 96-104).

<sup>120</sup> See Heyse 1994 123-124.

<sup>121</sup> As Syme himself comes very close to doing in his later work, where he argues that the position of women in the late Republic should be read as a sign of cultural vitality and not moral decadence: Syme 1964 16-17; Syme 1986 443; cf. 168.

<sup>122</sup> See Levick 2003.

<sup>123</sup> Wiesner-Hanks 2001 62, 222.

<sup>124</sup> For a discussion of the effectiveness of the law see Treggiari 1991 294-298. Cf., for example, Cicu 1986 257, who assumes that Domitian's revival proves the failure of Augustus' law.

<sup>125</sup> See McGinn 1998 142-147, 202-207. Those with a knowledge of the details of the *ius* can begin to appreciate its role in status-maintenance. For cogent observations on the related subject of 'crimes of honor' and relative status, see Gould 2003 79.

her prosecution is sufficient proof of that. Augustus, an experienced adulterer himself, may have accepted that not all adultery could be curbed, but he could reasonably expect to reduce its incidence and to discourage, or at least to punish, some more egregious instances. To an extent, his seriousness of purpose in this matter can be gauged from the fact that this is the only criminal law statute clearly identifiable as such in the group of laws I am discussing.<sup>126</sup>

##### 5. *Legal Symbolism and Expressive Law.*

One way to arrive at a sense of the purpose behind and the effectiveness of Augustus' social / moral legislation is to reevaluate what is meant by legal symbolism in this context. There are at least two useful ways to do this. First, we can recognize that law plays a part in a symbolic exchange between the emperor and his subjects. This relationship has been relatively well studied in such areas as imperial cult,<sup>127</sup> building programs (especially as part of a cultural program to be received and imitated),<sup>128</sup> and in various other types of political relations, above all those operating between ruler and provincial communities. These were carried on by means of a repertoire of symbols that included rituals, buildings, coinage, and public expressions of gratitude.<sup>129</sup> Law, as Fergus Millar points out, is but one element in the exchange of symbols that characterized this relationship. He cites, among other examples, the Edicts of Cyrene, the public display of which, together with one or more statues of Augustus, represented the emperor both verbally and visually.<sup>130</sup>

A second way of reevaluating the role played by symbolism with this legislation is to recognize that legal symbolism is not necessarily inert or passive, nor is it inconsistent with the enforcement of the rules. Far from a mere literary exercise, “[i]n the law, language is an instrument of power.”<sup>131</sup> In the last decade or so there has been a great deal of interest in what is called the expressive function of law (sometimes referred to by the shorthand phrase “expressive law”), the idea that people obey legal rules not out of a rational calculation of how this fits with their own preferences, but because law has the power to change those preferences by altering the social meaning of a particular action, whether it is wearing a seatbelt while driving, not smoking in a bar, or cleaning up after one's dog.<sup>132</sup> The new law finds a justification in social morality in large part because of the appearance, or even the reality, that a community consensus supports it. The law wields enormous symbolic power then, by prompting an internalization of the norms it

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<sup>126</sup> This is not to say that it was the only criminal law statute promulgated by Augustus. On his criminalization of offenses against the *mos maiorum* see Bellen 1987 338.

<sup>127</sup> Price 1984; Fishwick 1987-2005; Gradel 2002.

<sup>128</sup> Zanker 1988 esp. 265-333.

<sup>129</sup> Millar 1984.

<sup>130</sup> Millar 1984 47-53.

<sup>131</sup> Grossberg 1985 302.

<sup>132</sup> For a good survey of recent work in this field see Geisinger 2002, to whom this summary owes a great deal.

expresses.

This is not to say of course that law necessarily entails control. The move from the ideology of order and status-maintenance as enshrined in statute to a real and measurable impact on social behavior is never assured. Expressive law theory is no better than traditional economic rationalism in predicting law-abiding behavior or in illustrating exactly why some laws are notably unsuccessful, just as its analysis of the mechanism of cause and effect in the popular reception of legal norms remains a tad murky. In part this is explained by the complexity of human psychology and sociology: the same rules have different effects on different groups and individuals.<sup>133</sup> A Foucauldian would point out, rightly, that reform has the potential to undermine rather than strengthen the values it attempts to uphold.<sup>134</sup> To get a sense of how this works one might usefully compare the engagement of the tradition of Rabelaisian literature with the sixteenth-century Reform movement(s) with Ovid's reception of the adultery law of Augustus.<sup>135</sup> From the poet's perspective this legislation seems downright antisocial. We cannot assume that where social change does seem to occur, for example, an evident post-Augustan decline in the interest of members of the upper classes in performing on stage or in the arena, that this can be directly attributed to a change in the law. On a broader level, it would be incorrect merely to assume that the political changes attendant upon the advent of the Principate could sustain the burden of global social change, at least in the short run.<sup>136</sup>

It is not difficult, all the same, to find evidence of a positive reception of Augustus' work, or at least some important aspects of it. When a gladiator's four children publicly begged the emperor Claudius for their father's discharge, this appeal was received with great enthusiasm by the crowd in attendance. Claudius granted the request, and then impressed upon the spectators the value of bearing children, since they had brought such great benefit "even to a gladiator." The incident provokes Suetonius to rare praise of this emperor's wit: "this was really very pointed and timely".<sup>137</sup> Apuleius, defending himself against the imputation of improper motives and behavior in marrying Pudentilla, is able to counter the insinuations of his adversaries over the inappropriateness of the wedding's remote location by citing the Augustan marriage legislation, which contains no proviso on where a wedding should be held: "Indeed, the *lex Iulia de maritandis ordinibus* nowhere in its text lays down a prohibition of this kind: 'let no man be married in a country house.'"<sup>138</sup> His opponents had not, to all appearances, been arguing that this

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<sup>133</sup> See Gould 2003 109, 126, 136, 167. So multiple reasons can stand behind the success of law in changing mores: Biancalana 1988 328.

<sup>134</sup> In support of this perspective see just Tac. *Ann.* 3.25-28 with Edwards 1993 57.

<sup>135</sup> On the former, see Roper 1994 5-8; on the latter, Spagnuolo Vigorita 2002 33-37; Gibson 2003 25-37; Davis 2006 78-82, 119, 125-127.

<sup>136</sup> See Roper 1994 148-150.

<sup>137</sup> "Illud plane quantumvis salubriter et in tempore...": Suet. *Claud.* 21.5.

<sup>138</sup> "Lex quidem Iulia de maritandis ordinibus nusquam sui ad hunc modum interdicat: 'uxorem in villa ne ducito'": Apul. *Apol.* 88.3. Of the two Augustan marriage laws, the *lex Iulia* contained prohibitions against certain types of marriage partners, making it the appropriate one to cite here. The description of this legislation as "infamous" by Osgood 2006 435 reflects a popular type of moralizing modern judgment; see

aspect of Apuleius' behavior was illegal. He makes a moral, not a legal, argument from the text of the law.<sup>139</sup>

Aulus Gellius describes how the very early Romans honored the elderly among them, preferring age to birth and wealth, for example. He does not speak of legal privileges but social respect, evinced, for example, in younger men escorting older ones home from a dinner party. This began to change in the wake of the Augustan marriage legislation: "but after it was recognized that offspring were necessary for the community as a whole, and resort was had to rewards and incentives to promote an increase in the Roman birth rate, those who had wives and those who had children were thereafter preferred in certain matters to older men who had neither wives nor children."<sup>140</sup> Gellius goes on to detail one of the privileges accorded by the law to the married and fruitful, namely priority in assuming the consular *fascēs*; once this had been the prerogative of the older consul of the pair.<sup>141</sup> The author is specifically reporting all the same how a hallowed social usage had been successfully altered by a law. I believe he is also making a larger point about the law's success in changing a deeply embedded set of social values.<sup>142</sup> In any case, the passage is invaluable testimony to the power of the expressive function of law in antiquity.

A particularly illuminating example of the positive reception of Augustan legislation comes from one of his own freedmen, the fable-purveyor Phaedrus. In one story,<sup>143</sup> a freedman, hoping for an inheritance, wrongly accuses his mistress of an adulterous affair to her husband, his former master. The latter, beset by rage, bursts into his wife's bedroom, finds a man in her bed and runs him through with a sword. When the dust settles, he discovers that he has slain their son, whom the wife had placed in her bed to safeguard his chastity. He then kills himself out of remorse. Prosecutors drag the wife to the centumviral court in an effort to deny her succession to her husband's property, on the ground of adultery. The result is a hung jury; the case is simply too complicated for the jurors to reach a verdict. Then Augustus, as *princeps ex machina*, enters to dispense justice.

The normative function of storytelling has been well-studied in regard to other cultures.<sup>144</sup> Because our story invokes Augustus as the problem-solver in a legal case, the

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above.

<sup>139</sup> In a provincial context, compliance with the law and assertions of respect for it are elements in a complex self-fashioning, forming part of a claim to identity as "Roman". This is a nice illustration of the power of the expressive function of law, and one which I think it unlikely Augustus was able to foresee. On claims to Roman identity made in this speech, see the comments of Bradley 2000 and Osgood 2006 esp. 434-439.

<sup>140</sup> "Sed postquam suboles civitati necessaria visa est et ad prolem populi frequentandam praemiis atque invitamentis usus fuit, tum antelati quibusdam in rebus qui uxorem quique liberos haberent senioribus neque liberos neque uxores habentibus": Gell. 2.15.3.

<sup>141</sup> Gell. 2.15.4-8.

<sup>142</sup> See Parkin 2003 115.

<sup>143</sup> Phaedrus 3.10.

<sup>144</sup> Meyer and Bogdan 1999.

connection between emperor, law, and social control could not be clearer.<sup>145</sup> Nor should we view this reception of imperial justice as an isolated example. This much is suggested, for example, by a glance at the pro-adultery-law tradition of the declamations, with which Phaedrus' fable bears a more than superficial resemblance.<sup>146</sup> Though the venue in this case is the centumviral court and not the criminal *quaestio* on adultery, the accusers are very nearly able to exploit popular prejudice against this offense in order to destroy an innocent woman.

Perhaps it is not surprising that someone like Phaedrus on the margins of the elite would have a relatively big stake in the matter of status-maintenance. But the implications of Augustus' interest in using law as a tool of social control loom larger. Thanks to the work of Roger Gould, we now understand better than ever how ambiguity over relative rank produces conflict that is more frequent and more violent the greater the uncertainty and/or rate of change.<sup>147</sup> This lack of clarity over status and social hierarchy and its disorderly consequences, in highly simplified form, represent the condition of Roman society in the late Republic that Augustus sought to counter with his legislation. Interestingly enough, some of the same developments that posed a challenge to the lawgiver also helped equip him with a cadre of trained professionals, the jurists, to assist him in his labors.<sup>148</sup> In any case, it is perhaps best to regard as Augustus' own contribution the design of legislation that attempted to appropriate the future by defining the present moment in ideological terms borrowed from the past.<sup>149</sup>

## 6. Conclusion.

Augustus' interest in social control, easily demonstrated in other aspects of his political program, found important expression in the legislation that was passed during his reign. This holds above all for that which modern scholars have characterized as social and/or moral. His interest in such control manifests itself clearly in concerns both with status-maintenance and enforcement found in this legislation. Statute law was for him a means to assert status-distinctions considered to be of traditional import, at the same time that it encouraged status-appropriate behavior. Augustus aimed to ensure that the right people held the right status(es). We can trace applications of this approach in various aspects of his legislative program, including regulations on public performance, clothing, and taxation. Such an interest on his part is just as visible, or even more so, in laws that I argue to lie at the heart of the category of social / moral legislation, namely the statutes on sumptuary behavior, manumission of slaves, marriage, and adultery.

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<sup>145</sup> See Henderson 2001 33-55, who, to be sure, detects a certain subversive streak in Phaedrus' tale, about which I remain skeptical.

<sup>146</sup> Henderson 2001 47-51 has useful examples of the treatment of the *ius occidendi* in the rhetorical exercises. For contemporary claims of success for Augustus' legislation, see the evidence gathered by Edwards 1993 58-59.

<sup>147</sup> Gould 2003.

<sup>148</sup> See Frier 1985 esp. 269-287; Wallace-Hadrill 1997/2005 14-16; McGinn 2001.

<sup>149</sup> See Bellen 1987 320-321.

It emerges that the category of social / moral legislation is a flexible one, with some laws lying at its center and others at its fringes. I argue that the regulations prohibiting public performances by members of the upper orders and most of the rules on appropriate dress fall on the margins of the core of this category. The law imposing a tax on inheritances lies a bit further out along the same spectrum. This list, like the one given just above, is by no means intended to be exhaustive.

We should not assume that Augustus began with a concrete, coherent social / moral program and simply executed this according to plan. Rather, his legislative initiatives in this area (and others) show distinct signs of improvisation. Where necessary, his statutory rules were supplemented or even revised. The most prominent example is perhaps the revamping of parts of the *lex Iulia de maritandis ordinibus* through the *lex Papia Poppaea*, but there are many others. Distinctions between comitial legislation (*leges*) and decrees of the Senate (*senatusconsulta*) bear no obvious weight when we come to assess the meaning and the content of the category of social / moral. The same holds for distinctions between laws bearing the name of Augustus himself (*leges Iuliae*), whether they were passed in a narrow range of time or not, and those bearing the names of other sponsors (such as the *lex Aelia Sentia*, for example). In some cases involving a few follow-up statutes passed early in the reign of Tiberius, we do well perhaps not to insist too much on the literal meaning of “Augustan”, though obviously this is a point that cannot be carried too far. What matters for the assignment of a law to this category is, first, the principle of social control evinced through status-maintenance, second, the complexity and scope of a particular piece of legislation, and, third, its relation in some cases to other statutes already identified as social / moral.

The other important aspect of social control relates to the issue of enforcement. Modern scholars have in general been overly pessimistic about the success of this legislation. Augustus, to all appearances, did intend for his rules to be enforced. This is not to argue that all of these laws were successful or that the successful ones were equally successful. But it is useful in this connection to try to understand what the emperor was attempting to accomplish through his resort to legal symbolism and its relationship to the social meaning of certain behaviors. His efforts, and the results he was able to achieve, seem more comprehensible when viewed through the lens of modern theories on the expressive function of law. Augustus, as he tells us himself in his *Res Gestae*, set out to change Roman mores through his legislation. One of his basic aims was to preserve Roman society as decidedly hierarchical in nature, while allowing some limited opportunities for upward social mobility, ideally for those whose behavior was consistent with an improvement in their status. In other words, he set out to create a “meritocracy of virtue”. Despite some notable failures, he seems to have enjoyed a significant measure of success overall.

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