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VII.13 On punishments established by the emperors against the debauchery of women

- The Spirit of Law - Book VII. Consequences of the different principles of the three governments with respect to sumptuary laws, to luxury, and to the condition of women -
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The Julian Law established a penalty on adultery. But far from this law, and others made on that subject since, being a sign of their sound morals, they were on the contrary a sign of their depravity.

The whole political system with respect to women changed in the monarchy. The pretension was no longer to establish the purity of their morals but to punish their crimes. New laws were made to punish those crimes only because violations which were not those crimes were no longer being punished.

The frightful moral excesses quite obliged the emperors to make laws to halt shamelessness at a certain point, but it was not their intention to correct morality in general. Positive facts related by the historians prove this better than all those laws could ever prove the contrary. We can see in Dio the conduct of Augustus in this regard, and how, both in his prætorship and in his censorship, he eluded the demands made to him. [1]

What we do find in the historians is rigid judgments handed down under Augustus and Tiberius against the shamelessness of a few Roman ladies ; but in acquainting us with the spirit of those reigns, they acquaint us with the spirit of those judgments.

Augustus and Tiberius intended mainly to punish the debauchery of their women relatives. They were punishing not moral dissoluteness, but a certain crime of impiety or lese-majesty which they had invented, [2] useful for respect, and useful for their vengeance. Which is why the Roman writers rise up so loudly against this tyranny.

The penalty of the Julian law was mild. [3] The emperors hoped that judgments would increase the penalty of the law they had made. This was the subject of the historians' invectives. They were not examining whether the women deserved to be punished, but whether the law had been violated in order to punish them.

One of the principal aspects of the tyranny of Tiberius was the abuse he made of the old laws. [4] When he wanted to punish some Roman lady beyond the penalty imposed by the Julian Law, he re-established the domestic court against them. [5]

These provisions with respect to women regarded only the senators' families, and not the people's. They wanted pretexts for accusations against the great, and women's deportments could provide them in abundance.

In sum, what I have said about moral soundness not being the principle of the government of one man alone was never better verified than under these first emperors, and anyone who doubts this has only to read Tacitus, Suetonius, Juvenal and Martial.

[1] As they have brought to him a young man who had married a woman with whom he had earlier had an improper relationship, he long hesitated, daring neither to approve nor to punish these things. Finally, regaining his composure : "The seditions have been the cause of great harm," he said ; "let us forget them." (Dio, book LIV.) The senators having requested statutes pertaining to women's morals, he eluded this request, saying that they should chastise their wives, as he did his own ; upon which they entreated him to tell them how he treated his wife (a most indiscrete question, it seems to me).

[2] *Culpam inter viros et fœminas vulgatam gravi nomine læsarum Religionum appellando, clementiam majorum suasque ipse leges egrediebatur* ['Calling, as he did, a vice so habitual among men and women by the awful name of sacrilege, he went far beyond the indulgent spirit of our ancestors, beyond indeed his own legislation.'] (Tacitus, *Annals*, book III).

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[3] This law is related in the Digest ; but the penalty is not listed. It is assumed that it was nothing but relegation, since the penalty for incest was only deportation (Leg. *si quis viduam*, following *De questionibus*).

[4] *Proprium id Tiberio fuit scelera nuper reperta priscis verbis obtegere* (Tacitus [*Annals*, book IV, ch. 19]).

[5] *Adulterii graviores pœnam deprecatus, ut exemplo majorum propinquis suis ultra ducentissimum lapidem removeretur, suasit. Adultero Manlio Italiâ atque Africa interdictum est* [‘For her adultery, he deprecated the severer penalty, and advised that she should be removed by her kinsfolk, after the example of our forefathers, to more than two hundred miles from Rome. Her paramour, Manlius, was forbidden to live in Italy or Africa.’] (Tacitus, *Annals*, book II, ch. 50)