

may find fault with her hard hands. She was content with nothing but what she did for herself. There was never a topic she thought she knew well enough. She remained virtuous because she never committed any crime.

While she lived she so guided her two young lovers that they became like the example of Pylades and Orestes – one house would hold them both and one spirit.⁷ But now that she is dead, they will separate, and each is growing old by himself. Now instantly damage what such a woman built up; look at Troy, to see what a woman once did. I pray that it be right to use such grand comparisons for this lesser event.

These verses for you your patron – whose tears never end – writes in tribute. You are lost, but never will be taken from his heart. These are the gifts he believes the lost will enjoy. After you no woman can seem good. A man who has lived without you has seen his own death while alive. He carries your name in gold back and forth on his arm, where he can keep it, possessing Potestas.⁸ As long as these published words of ours survive, so long will you live in these little verses of mine.

In your place I have only your image as solace;⁹ this we cherish with reverence and lavish with flowers. When I come with you, it follows in attendance. But to whom in my visiting can I trust a thing so venerable? If there ever is anyone to whom I can entrust it, I shall be fortunate in this alone now that I have lost you. But – woe is me – you have won the contest – my fate and yours are the same.

The man who tries to harm this tomb dares to harm the gods: believe me, this woman, made famous by this inscription, has divinity.

48. *Athenodora. Athens, Christian period (Kaibel 176. G)*

Good Athenodora of Attica, wife of Thaumasius, filled with God's influence. She bore children and nursed them when they were infants. Earth took this young mother and keeps her, though the children need her milk.

49. *Urbana, housewife. Rome, 3rd cent. AD (CIL VI.29580 = ILS 8450. L)*

Sacred to the gods of the dead. To Urbana my sweetest, chastest, and rarest wife. Surely no one more distinguished ever existed. She deserved honour also for this reason, that she lived every day of her life with me with the greatest kindness and the greatest simplicity, both in her conjugal love and the industry typical of her character. I added this so that those who read may understand how much we loved one another. Paternus set this up in honour of his deserving wife.

50. *Macria Helike, a Christian. Rome, 2nd/3rd cent. AD (Greek verses in Kaibel 727 = Peek 1164. G)*

Her husband, who is still alive, has in his heart a memorial to his own wife after her irrevocable fate. Wayfarer, I have written this on a stone tablet, [a record] of what she was like. She had looks like golden Aphrodite, but she also had a simple soul dwelling in her breast. She was good, and abided by all God's laws. She absolutely broke none of them. She has brought joy to her survivors. She began as a slave, but now has won the crown of freedom.¹⁰ She bore three live children, and she was the mother of two sons. After she had seen the third, a female, she left her life painlessly, on the eleventh day. She had an incredible beauty, like an Amazon's, to inspire passion more when she was dead than when she was alive.¹¹ She lived simply for 20 years. This dark tomb conceals Macria Helike.

Literary sources

'A woman who never had women's defects'

Daughter of a hero, wife of an aristocrat and mother of champions of the Roman people, Cornelia was admired for her virtue, fidelity and, not least, her intelligence. She was the standard by which Roman matrons were measured and has been remembered as the ideal of Roman womanhood for two millennia. For other texts on Cornelia, see nos. 259, 260.

51. *Cornelia's noble nature. Misenum, 2nd cent. BC (Plutarch, Life of Gaius Gracchus 4.3, 19.1-3. G)*

(4.3) The people of Rome honoured her not less for her children than for her father, and in later times set up a bronze statue of her with the inscription, 'Cornelia, Mother of the Gracchi'.

(19.1-3) Cornelia is said to have borne these and all her misfortunes nobly and magnanimously, and to have said about the shrines where they were buried that their bodies had received worthy tombs. She herself spent her days in the area called Misenum, and did not change her customary way of life. She had many friends and entertained her friends, and there were always Greeks and learned men in her company, and all the kings exchanged gifts with her. She particularly enjoyed discussing with visitors and friends the life and habits of her father Scipio Africanus, and she was most admirable because she did not grieve for her sons and talked to her audience without weeping about their sufferings and their accomplishments, as if she were telling stories to them about the ancient heroes of Rome.

Some thought that she had lost her mind because she was old and had suffered so greatly, and that she had become insensible because of her misfortunes, but these people were themselves insensible of how much

nobility and good birth and education can help people in times of sorrow, and that for all the attempts of virtue to prevent it, she may be overcome by fortune, but in her defeat she cannot be deprived of the power of rational endurance.

52. *Tiberius chooses to die in place of Cornelia. Rome, 2nd cent. BC*
(*Plutarch, Life of Tiberius Gracchus*, 1.2-5. G)

[Tiberius and Gaius Gracchus] were the sons of Tiberius Gracchus, who had been censor and twice consul in Rome and had celebrated two triumphs, but derived the greatest honour from his virtue. Because of this, Scipio, the general who fought against Hannibal, offered Tiberius his daughter Cornelia in marriage, even though he had not been Tiberius' friend, but rather the opposite.

A story is told that Tiberius once caught a pair of snakes on his bed; the soothsayers considered the omen and did not let him kill or free both of them, but instead offered him a choice, that if the male were killed it would cause Tiberius' death, and if the female, Cornelia's. So Tiberius, both because he loved his wife, and because he thought that it was more fitting for him to die since he was older, and she was still young, killed the male snake, and let the female go. And not long after that he died, leaving twelve children who had been born to him and Cornelia.

Cornelia took over the children and the household, and proved herself so sensible and motherly and generous that it seemed that Tiberius had made a good decision when he chose to die on behalf of such a woman. When Ptolemy¹² offered to share his kingdom with her and proposed marriage, Cornelia refused. She remained a widow, and of her children, only a daughter survived, who married Scipio the younger, and the two sons, the subjects of these biographies, Tiberius and Gaius. After they were born she raised them in such a laudable manner that, although they were generally agreed to be the most naturally gifted of all Romans their virtue was regarded as having come from their education rather than their birth.

53. *Womanly virtue (Valerius Maximus, Memorable Deeds and Sayings 6.7.1-3. Rome, 2nd-1st cent BC. L)*

The the historian Valerius Maximus chooses three examples of womanly virtue. Loyalty to a husband appears to have been the highest excellence a woman could attain (cf. Arria, no. 170, and Fannia, no. 172)

Tertia Aemilia, the wife of Scipio Africanus and the mother of Cornelia,¹³ was a woman of such kindness and patience that, although she knew that her husband was carrying on with a little serving girl, she looked the other way, [as she thought it unseemly for] a woman to prosecute her

great husband, Africanus, a conqueror of the world, for a dalliance. So little was she interested in revenge that, after Scipio's death, she freed the girl and gave her in marriage to one of her own freedmen.¹⁴

When Quintus Lucretius [Vespillo] was proscribed by the triumvirs, his wife Turia¹⁵ hid him in her bedroom above the rafters. A single maidservant knew the secret. At great risk to herself, she kept him safe from imminent death. So rare was her loyalty that, while the other men who had been proscribed found themselves in foreign, hostile places, barely managing to escape the worst tortures of body and soul, Lucretius was safe in that bedroom in the arms of his wife.¹⁶

Sulpicia, despite the very close watch her mother Julia was keeping on her so that she would not follow her husband to Sicily (he was Lentulus Crussellio, proscribed by the triumvirs), nevertheless put on slave's clothing and, taking two maids and the same number of manservants, fled secretly and went to him. She was not afraid to risk proscription herself, and her fidelity to her proscribed spouse was firm.¹⁷

Invective

'Miserable sorrows for men'

54. *Pandora. Boeotia, early 7th cent. BC (Hesiod, Works and Days 42-105. G)*

In an epic that explains how and why man's life is now so hard, read as a school text throughout antiquity, Hesiod describes how woman was given to man's representative Epimetheus ('Afterthinker') as punishment for his brother Prometheus' ('Forethinker') crimes against Zeus. Later in the poem he offers advice on picking a wife.

For the gods have hidden away and are hiding from men the means of life. If they weren't, you could easily work just for a day to get what would keep you for a year, even if you remained idle – you could put your rudder away over the fireplace, and the work of oxen and of toiling mules would disappear.

But Zeus hid the means of life because he was angry in his heart, because crooked-minded Prometheus deceived him. That is why he devised for men these miserable sorrows. Zeus had hidden fire. But good Prometheus son of Iapetus stole it back for men, away from Zeus the Deviser; he hid it from Thunderer Zeus in a hollow reed.

So Zeus became angry at him and told him: 'Son of Iapetus, since you can devise better than everyone, are you glad that you stole fire and tricked my mind? That theft will be a big pain for you and for men in the future, for I'll give them in return for the fire an evil which they can all enjoy in their hearts while putting their arms round an evil of their very own.' So Zeus spoke, and laughed, father of gods and men.

something unkind about women? By Zeus, may I perish then! They are the best possessions one can have. Medea was an evil woman, but Penelope was a good thing; some might criticise Clytemnestra, but I'll set Alcestis against her. Maybe someone else will criticise Phaedra – but, by Zeus, there must be another good wife! Who? Oh, poor me, I've run out of good women, and I still have so many more bad ones to talk about.

64. *The price of a wife. Athens, 4th cent. BC (Alexis, Fr. 150 PCG. G)*

Poor men! We sold away our freedom of speech and our comfort and lead the life of slaves with our wives. We're not free. We can't say we don't pay a price for their dowries: bitterness and women's anger. Compared to that, a man's is honey, for men forgive when someone does them wrong, but women do you wrong and keep on recriminating. They control what doesn't belong to them and neglect what they should control. They break their promises. When there's nothing wrong, they say they're sick every time.²⁶

65. *Wives and courtesans compared. Athens, 4th cent. BC (Amphis, Fr. 1 PCG. G)*

An excerpt from a lost comedy.

Besides, isn't a 'companion' (*hetaera*) more well-intentioned than a wedded wife? Yes, far more, and most understandably. For a wife remains at home contemptuous because of the law, but a 'companion' knows that a man must be bought by her attentions or she will need to go and find another.

66. *An overbearing wife. Athens, 4th cent. BC (Menander, Fr. 333 Koerte. G)*

A husband complains that his wife Crobyle, whom he married for her money,²⁷ has made him get rid of a pretty female slave whom he liked.

Now our beautiful heiress can sleep on both sides. She has accomplished a great and remarkable feat; she has thrown out of the house the girl who was causing her trouble, as she wanted to. So now everyone can look at Crobyle's face and see that she is that famous woman, my wife and ruler. That face she has – 'jackass among apes', as the saying goes. I won't mention the other night that was the beginning of my many problems – poor me, I took Crobyle as wife. She may have brought me ten talents, but she has a nose one cubit long! How can one live with someone so overbearing? By Olympian Zeus and Athena, impossible! The girl is a

good servant, and quicker than a word. 'Take her away!' Who can argue with her?²⁸

67. *The dangers of literacy. Athens, 4th cent. BC (Menander, Synkrisis I, 209-10 Jäkel = Fr. 702 Kock. G)*

Versions of this statement, originally attributed to the comic poet Menander, were copied out by school children in the 4th cent. AD.²⁹

A man who teaches a woman to write should recognise that he is providing poison to an asp.

68. *The disadvantage of a rich wife. Rome, late 1st cent. AD (Martial, Epigrams 8.12. L)*

A satirist offers his opinion of the husband-wife relationship.

Are you asking why I don't want to take a rich wife? I don't want a husband for a wife. Let the matron, Priscus, stay beneath the husband; otherwise woman and man can't be equals.

69. *Juvenal on women in general. Rome, 2nd cent. AD (Satire 6, exc. L)*

Ancient biographers, characteristically confusing poet and poetry, regarded this famous satire as factual evidence that Juvenal hated women. Stories of the same type were attributed to Lucretius (1st cent. BC), because of his caustic statements about marriage in Book 4 of his *De Rerum Natura*.

Eppia, though the wife of a senator, went off with a gladiator to Pharos and the Nile on the notorious walls of Alexandria (though even Egypt condemns Rome's disgusting morals). Forgetting her home, her husband, and her sister, she showed no concern whatever for her homeland (she was shameless) and her children in tears, and (you'll be dumbfounded by this) she left the theatre and Paris the actor behind. Even though when she was a baby she was pillowed in great luxury, in the down of her father's mansion, in a cradle of the finest workmanship, she didn't worry about the dangers of sea travel (she had long since stopped worrying about her reputation, the loss of which among rich ladies' soft cushions does not matter much). Therefore with heart undaunted she braved the waves of the Adriatic and the wide-resounding Ionian Sea (to get to Egypt she had to change seas frequently).

You see, if there's a good reason for undertaking a dangerous voyage, then women are fearful; their cowardly breasts are chilled with icy dread; they cannot stand on their trembling feet. But they show courageous spirit in affairs they're determined to enter illicitly. If it's their *husband*

who wants them to go, then it's a problem to get on board ship. They can't stand the bilge-water; the skies spin around them. The woman who goes off with her *lover* of course has no qualms. She eats dinner with the sailors, walks the quarter-deck, and enjoys hauling rough ropes. Meanwhile the first woman gets sick all over her husband.

And yet what was the glamour that set her on fire, what was the prime manhood that captured Eppia's heart? What was it she saw in him, that would compensate for her being called *Gladiator*?³⁰ Note that her lover, dear Sergius, had now started shaving his neck, and was hoping to be released from duty because of a bad wound on his arm. Moreover, his face was deformed in a number of ways: he had a mark where his helmet rubbed him, and a big wart between his nostrils, and a smelly discharge always dripping from his eye. But he was a *gladiator*. That made him look as beautiful as Apollo's friend Hyacinth. This is what she preferred to her children and her homeland, her sister and her husband. It's the *sword* they're in love with: this same Sergius, once released from service, would begin to seem like her husband Veiento.

Do you care about a private citizen's house, about Eppia's doings? Turn your eyes to the gods' rivals. Hear what the Emperor Claudius had to put up with. As soon as his wife thought that he was asleep, this imperial whore³¹ put on the hood she wore at night, determined to prefer a cheap pad to the royal bed, and left the house with one female slave only. No, hiding her black hair in a yellow wig she entered the brothel, warm with its old patchwork quilts and her empty cell, her very own. Then she took her stand, naked, her nipples gilded, assuming the name of Lycisca, and displayed the stomach you came from, noble Britannicus. She obligingly received customers and asked for her money, and lay there through the night taking in the thrusts of all comers. Then when the pimp sent the girls home, at last she went away sadly, and (it was all she could do) was the last to close up her cell – she was still burning, her vagina stiff and erected; tired by men, but not yet satisfied, she left, her face dirty and bruised, grimy with lamp smoke, she brought back to her pillow the smell of the brothel.

Isn't there anyone then in such large herds of women that's worth marrying? Let her be beautiful, graceful, rich, fertile, let her place on her porticoes her ancestors' statues; let her be more virginal than the Sabine women (the ones that with their dishevelled hair brought the war with Rome to an end);³² let her be a phoenix on earth, something like a black swan – but who could stand a wife who has every virtue? I'd rather have (much rather) a girl from Venusia than you, Cornelia, mother of the Gracchi, if along with your great excellence you bring a snob's brow and count your family's triumphs as part of your dowry.³³

All chance of domestic harmony is lost while your wife's mother is living. She gets her to rejoice in despoiling her husband, stripping him naked. She gets her to write back politely and with sophistication when

her seducer sends letters. She tricks your spies or bribes them. Then when your daughter is feeling perfectly well she calls in the doctor Archigenes and says that the blankets are too heavy. Meanwhile, her lover, in hiding shut off from her, impatient at the delay, waits in silence and stretches his foreskin. Maybe you think that her mother will teach her virtuous ways – ones different from her own? It's much more productive for a dirty old lady to bring up a dirty little girl.

There's hardly a case in court where the litigation wasn't begun by a female. If Manilia can't be defendant, she'll be the plaintiff.³⁴ They'll draw up indictments without assistance, and are ready to tell Celsus the lawyer how to begin his speech and what arguments he should use.

Who doesn't know about the Tyrian wrappers and the ointment for women's athletics? Who hasn't seen the wounds in the dummy, which she drills with continual stabbings and hits with her shield and works through the whole course of exercise – a matron, the sort you'd expect to blow the trumpet at the Floralia³⁵ – unless in her heart she is plotting something deeper still, and seriously training for the actual games? How can a woman who wears a helmet be chaste? She's denying her sex, and likes a man's strength. But she wouldn't want to turn into a man, since we men get so little pleasure.

Yet what a show there would be, if there were an auction of your wife's stuff – her belt and gauntlets and helmet and half-armour for her left leg. Or she can try the other style of battle – lucky you, when she sells her greaves. Yet these same girls sweat even in muslin, even the thinnest little netting burns their delicacies. Look at the noise she makes when she drives home the blows her trainer showed her, at the weight of her helmet, how solidly she sits on her haunches (like the binding around a thick tree), and laugh when she puts her armour aside to pick up her chamber-pot.

You ask where these monsters come from, the source that they spring from? Poverty made Latin women chaste in the old days, hard work and a short time to sleep and hands calloused and hardened with wool-working, and Hannibal close to the city,³⁶ and their husbands standing guard at the Colline Gate – that kept their humble homes from being corrupted by vice. But now we are suffering from the evils of a long peace. Luxury, more ruthless than war, broods over Rome and takes revenge for the world she has conquered. No cause for guilt or deed of lust is missing, now that Roman poverty has vanished. Money, nurse of promiscuity, first brought in foreigners' ways, and effete riches weakened the sinews of succeeding generations. What does Venus care when she's drunk? She can't tell head from tail when she eats big oysters at midnight, and when her perfume foams with undiluted wine, when she drinks her conch-shell cup dry, and when in her dizziness the roof turns round and the table rises up to meet two sets of lights.

An even worse pain is the female who, as soon as she sits down to

dinner, praises Vergil and excuses Dido's suicide:³⁷ matches and compares poets, weighing Vergil on one side of the scale and Homer on the other. Schoolmasters yield; professors are vanquished; everyone in the party is silenced. No one can speak, not a lawyer, not an auctioneer, not even another woman. Such an avalanche of words falls, that you'd say it's like pans and bells being beaten. Now no one needs trumpets or bronzes: this woman by herself can come help the Moon when she's suffering from an eclipse.³⁸ As a philosopher she sets definitions on moral behaviour. Since she wants to seem so learned and eloquent she ought to shorten her tunic up to her knees³⁹ and bring a pig to Sylvanus⁴⁰ and go to the penny bath with the philosophers. Don't let the woman who shares your marriage bed adhere to a set style of speaking or hurl in well-rounded sentences the enthymeme shorn of its premise. Don't let her know all the histories. Let there be something in books she does not understand. I hate the woman who is continually poring over and studying Palaemon's⁴¹ treatise, who never breaks the rules or principles of grammar, and who quotes verses I never heard of, ancient stuff that men ought not to worry about. Let her correct her girlfriend's verses – she ought to allow her husband to commit a solecism.

Pauper women endure the trials of childbirth and endure the burdens of nursing, when fortune demands it. But virtually no gilded bed is laid out for childbirth – so great is her skill, so easily can she produce drugs that make her sterile or induce her to kill human beings in her womb. You fool, enjoy it, and give her the potion to drink, whatever it's going to be, because, if she wants to get bloated and to trouble her womb with a live baby's kicking, you might end up being the father of an Ethiopian – soon a wrong-coloured heir will complete your accounts, a person whom it's bad luck to see first thing in the morning.

70. *Bereavement. Rome, late 1st cent. AD (Martial, Epigram 9.30. L)*

Antistius Rusticus died on the savage shores of Cappadocia. O land guilty of a doleful crime, Nigrina brought back her husband's bones in her arms and complained that the trip was too short; and as she gave the sacred urn to the tomb, which she was jealous of, she saw herself twice bereft of her stolen spouse.

71. *Cicero on Clodia. Rome, 56 BC (Cicero, Pro Caelio 13-16.⁴² L)*

Not a comic poet speaking in generalities but a deadly serious advocate in a court of law, Cicero directs his sarcasm and considerable wit against a specific woman. Speaking last in the defence of Marcus Caelius Rufus, a former protégé, Cicero deliberately blurred the formal charges under the law against riot and amused the jury, restive because it had been empanelled on a holiday, with his spicy portrait of the already notorious Clodia, arguing that she had sponsored the prosecution for personal

reasons. With what amounted to character assassination, he paid off an old grudge of his own against her brother Clodius (see below, p. 292).

(13) The accusations are two: the gold and the poison. And the same person is on the scene for both. The gold is supposed to have been taken from Clodia⁴³ and the poison to have been procured to use on her. Everything else is slander, not accusations, better suited to malicious gossip than a court of law. 'Adulterer, lecher, briber' are insults, not accusations. ... I see the author of these two charges, the source, I see a specific person, a mind. 'He needed gold; he took it from Clodia, without witnesses, and kept it for as long as he needed it.' That's the clear proof of an uncommon intimacy. 'Then he decided to kill her, stirred up those he could, got the poison, established the place, and brought it.' Again, this is clear proof of a deep hatred, conceived after having been cruelly jilted.

In this trial, gentlemen of the jury, we are concerned only with Clodia, a noble woman and a notorious one, but I will say no more than is necessary about her to rebut the accusations. However, you, Gnaeus Domitius,⁴⁴ smart as you are, understand perfectly that we are concerned only with this woman. If she does not affirm that she lent the gold to Marcus Caelius, if she does not accuse him of having procured the poison for her, our conduct is inappropriate. To use the name of Roman matron when the respect owed to respectable women does not allow it! If, however, this woman were removed from the case, the accusers no longer have a head nor any means to attack Caelius. And surely another thing entirely would be the vigour that I would use were it not for the animosity between me and this woman's husband – excuse me, brother, I always make that mistake. Now, however, I am obliged to proceed with circumspection; and I will not push beyond the limits that my obligations to my client and the case itself demand. And furthermore I never considered it wise to make an enemy of a woman, especially one who is generally considered everybody's friend.

(14) But I would nevertheless begin by asking her whether she wants me to adopt with her a severe, solemn, old-style tone, or whether she prefers something more easy-going and modern. If she prefers the austere style, then I shall have to summon up from the underworld one of those beards – no, not one of the fashionable jobs that she likes so much, but a really serious hairy beard out of the portraits and statues of days gone by – to reprimand her and to speak in my place. Then she can't blame me! Let us imagine, therefore, that there appears a member of her own family: let's conjure up the famous Caecus, the Blind (it will be easier on him, as he can't see her).⁴⁵ If he were to rise up right now, he would say something like this:

'Woman, what do you have in common with Caelius? With a youth, a stranger? Why were you so intimate with him as to lend him the gold, or so inimical as to fear poison from him? Did you not see your father as

V. Legal Status in the Roman World

'If the woman is in her own power ...'

Early Rome

'Romulus compelled the citizens'

107. *The laws of the kings. Rome, 8th/7th cent. BC (FIRA², vol. 1, p. 3. Tr. ARS, rev. L)*

Although the history of Rome's regal period is based in large part on legend, and was so in antiquity, tradition was strong, and many of Rome's laws and customs, committed to writing much later, have their roots in the distant past. The laws attributed to the kings of Rome and the Twelve Tables, which follow, have been reconstructed by modern editors from these later citations.

Laws attributed to Romulus, the founder; traditional dates, 753-716 BC

4. Romulus compelled the citizens to rear every male child and the first-born of the females, and he forbade them to put to death any child under three years of age, unless it was a cripple or a monster from birth. He did not prevent the parents from exposing such children, provided that they had displayed them first to the five nearest neighbours and had secured their approval. For those who disobeyed the law he prescribed the confiscation of half of their property as well as other penalties.

6. By the enactment of a single ... law ... Romulus brought the women to great prudence and orderly conduct ... The law was as follows: A woman united with her husband by a sacred marriage¹ shall share in all his possessions and in his sacred rites.

7. The cognates sitting in judgment with the husband ... were given power to pass sentence in cases of adultery and ... if any wife was found drinking wine Romulus allowed the death penalty for both crimes.

9. He also made certain laws, one of which is severe, namely that which does not permit a wife to divorce her husband, but gives him power to divorce her for the use of drugs or magic on account of children² or for counterfeiting the keys or for adultery. The law ordered that if he should divorce her for any other cause, part of his estate should go to the wife and that part should be dedicated to Ceres. Anyone who sold his wife was

sacrificed to the gods of the underworld.

10. It is strange ... when he established no penalty against patricides, that he called all homicide patricide.

11. If a daughter-in-law strikes her father-in-law she shall be dedicated as a sacrifice to his ancestral deities.

Laws attributed to Numa Pompilius; traditional dates, 716-673 BC

9. On the Vestal Virgins he conferred high honours, among which was the right of making a will while their fathers lived and of doing all other juristic acts without a guardian.

12. A royal law forbids the burial of a pregnant woman before the child is extracted from the womb. Whoever violates this law is deemed to have destroyed the child's expectancy of life along with the mother.

13. A concubine shall not touch the altar of Juno. If she touches it, she shall sacrifice, with her hair unbound, a ewe lamb to Juno.

108. *The Twelve Tables (excerpts). Rome, 450 BC (traditional date) (FIRA², vol. 1, p. 23. Tr. ARS. L)*

These laws, the basis of Roman civil law, have their origins in what the Romans called *mos maiorum*, the tradition of their ancestors. The codification and publication of the ancestral laws on twelve bronze tablets in the Roman Forum represented a victory for the plebeian class, which hitherto had been subject to prejudiced legal interpretations by the patricians. Though some of the laws became outdated, the code was never abolished.

Table IV. Paternal power

1. A notably deformed child shall be killed immediately.
3. To repudiate his wife, her husband shall order her ... to have her own property for herself, shall take the keys, shall expel her.³
4. A child born within ten months of the father's death shall enter into the inheritance ...

Table V. Inheritance and guardianship

1. ... Women, even though they are of full age, because of their levity of mind shall be under guardianship ... except Vestal Virgins, who ... shall be free from guardianship.⁴
2. The conveyable possessions of a woman under guardianship of male agnates⁵ shall not be acquired by prescriptive right unless they are transferred by the woman herself with the authorisation of her guardian ...
4. If anyone who has no direct heir dies intestate, the nearest male agnate shall have the estate.
5. If there is not a male agnate, the male clansmen shall have the estate.

6. The agnatic relatives are guardians of those who are not given a guardian by will.⁶

Table VI. Ownership and possession

5. ... If any woman is unwilling to be subjected in this manner to her husband's marital control, she shall absent herself for three successive nights in every year and by this means shall interrupt his prescriptive right of each year.⁷

Table X. Sacred law

4. Women shall not tear their cheeks or shall not make a sorrowful outcry on account of a funeral.

109. *Husbands' punishment of wives in early Rome (Valerius Maximus, Memorable Deeds and Sayings 6.3.9-12, 1st cent. AD. L)*

Egnatius Metellus⁸ ... took a cudgel and beat his wife to death because she had drunk some wine. Not only did no one charge him with a crime, but no one even blamed him. Everyone considered this an excellent example of one who had justly paid the penalty for violating the laws of sobriety. Indeed, any woman who immoderately seeks the use of wine closes the door on all virtues and opens it to vices.

There was also the harsh marital severity of Gaius Sulpicius Gallus.⁹ He divorced his wife because he had caught her outdoors with her head uncovered: a stiff penalty, but not without a certain logic. 'The law,' he said, 'prescribes for you my eyes alone to which you may prove your beauty. For these eyes you should provide the ornaments of beauty, for these be lovely: entrust yourself to their more certain knowledge. If you, with needless provocation, invite the look of anyone else, you must be suspected of wrongdoing.'

Quintus Antistius Vetus felt no differently when he divorced his wife because he had seen her in public having a private conversation with a common freedwoman. For, moved not by an actual crime but, so to speak, by the birth and nourishment of one, he punished her before the crime could be committed, so that he might prevent the deed's being done at all, rather than punish it afterwards.

To these we should add the case of Publius Sempronius Sophus¹⁰ who disgraced his wife with divorce merely because she dared attend the games without his knowledge. And so, long ago, when the misdeeds of women were thus forestalled, their minds stayed far from wrongdoing.

110. *The first divorce for sterility. Rome, 235 BC (Aulus Gellius, Attic Nights 17.21.44, 2nd cent. AD. L)*

In the 519th year after the founding of Rome,¹¹ Spurius Carvilius Ruga -

on the advice of his friends - became the first Roman to divorce his wife for sterility. He swore an oath before the censors that he had taken a wife in order to have children.

111. *Punishment for adultery. Rome, 2nd cent. BC (Aulus Gellius, Attic Nights 10.23, 2nd cent. AD. L)*

An excerpt from a speech of Marcus Cato¹² on the life and customs of women of long ago and on the right of the husband to kill a wife caught committing adultery.

Those who have written about the life and culture of the Roman people say that women in Rome and Latium 'lived an abstemious life', which is to say that they abstained altogether from wine, called *temetum* in the early language, and that it was the custom for them to kiss their relatives so they could tell by the smell whether they had been drinking.¹³ Women, however, are said to have drunk the wine of the second press, raisin wine, myrrh-flavoured wine and that sort of sweet drink. These things are found in these books, as I said, but Marcus Cato reports that women were not only judged but also punished by a judge as severely for drinking wine as for committing adultery.

I have copied Cato's words from a speech called *On the Dowry*, in which it is stated that husbands who caught their wives in adultery could kill them: 'The husband,' he says, 'who divorces his wife is her judge, as though he were a censor;¹⁴ he has power if she has done something perverse and awful; if she has drunk wine she is punished; if she has done wrong with another man, she is condemned to death.' It is also written, regarding the right to kill: 'If you catch your wife in adultery, you can kill her with impunity; she, however, cannot dare to lay a finger on you if you commit adultery, nor is it the law.'

The Roman jurists¹⁵

'This woman does not seem to have a just defence'

The following texts derive from the writings of the Roman jurists, the legal specialists who emerged as the primary architects and interpreters of Roman private law during its classical period (50 BC-AD 250). The term 'Roman law' is used to refer to a system of legal norms which evolved from many different sources, including statutes (*leges*), such as the Twelve Tables (above, no. 108), edicts of magistrates, decrees of the senate, and pronouncements of the emperor. The most abundant and influential source for Roman law, however, is the body of jurisprudence developed in the writings of the Roman jurists.

The jurists have no counterparts in the Anglo-American system of law. They constituted an elite of legal professionals whose primary work was construing and refining the law Romans used in bringing lawsuits (*actiones*) against each other.

The legal literature produced by the jurists does not constitute 'the law' in

the sense of statute or legislation. Nor do their writings record judgments or opinions delivered in the courts to decide cases. Rather, the jurists functioned in an advisory capacity, consulting with those using and administering the legal system. Their opinions were applied directly to cases heard in the Roman courts. They drew upon both factual situations and hypothetical cases to discuss and develop points of law. Consequently, much of the interest of these texts is in the details of the situations presented. As the imperial bureaucracy grew, the jurists increasingly served the emperors as legal experts.

The jurists produced an enormous body of legal literature primarily intended to be read and studied by other jurists. The selections below draw from a number of different types of juristic works. The *Institutes* of Gaius (nos. 112, 113, 132) was a textbook in four books aimed at legal instruction. The *Rules* (*Regulae*) of Ulpian (nos. 117, 133, 137, 141) and the *Opinions* (*Sententiae*) of Paul (nos. 188, 135, 123, 146) are later epitomes, or collections, attributed to the works of these jurists. The remaining material excerpted here is from the *Corpus Iuris Civilis*, the compilation of Roman law ordered by the Emperor Justinian shortly after his accession at Constantinople in AD 527. This work consists of several parts, of which the *Digest* is the single largest surviving source for Roman private law (it is about one and a half times the length of the Bible). Promulgated late in AD 533, the *Digest* consists of excerpts from juristic literature, reorganised into 432 titles in fifty books. Each individual excerpt is cited by reference to book number, title number, and then the individual *lex* or opinion, including the name of the jurist and the particular legal work from which it is drawn (for example, no. 116, *Digest* 23.2.36, Paul, *Questions*, book 5). The other parts of the *Corpus* are the *Institutes*, a textbook modelled on that of Gaius, and the *Codex*, a compilation of imperial responses (*constitutiones*) to legal petitions, some from as early as the second century AD. Another portion of the *Corpus*, the *Novels* (*Novellae*), preserves later pronouncements of Justinian and is not relevant here, but see no. 291.¹⁶

On women's status within the family
 "The daughter still continues in guardianship"

112. *On guardianship* (Gaius, *Institutes* 1.144-5, 190-1. Tr. Gordon and Robinson. L)

The jurist Gaius (his family name and origin are unknown) was active as a teacher of law in the second century AD (150-180). Although he was apparently not one of the influential jurists of his own day, his work as a teacher and writer was much valued in the post-classical period. His *Institutes* is especially important since it has survived more or less in its original form and, as the basis for Justinian's *Institutes*, exerted a tremendous influence on later legal education in Europe.

By the time Gaius was writing, guardianship of women was a mere form, and by the reign of Constantine (306-337), it had vanished altogether.

(144) Where the head of a family has children in his power he is allowed to appoint guardians for them by will. That is, for males while under

puberty but for females however old they are, even when they are married. For it was the wish of the old lawyers that women, even those of full age, should be in guardianship as being scatterbrained.¹⁷ (145) And so if someone appoints a guardian in his will for his son and his daughter and both of them reach puberty, the son ceases to have a guardian but the daughter still continues in guardianship. It is only under the Julian and Papian-Poppaeian Acts that women are released from guardianship by the privilege of children. We speak, however, with the exception of the Vestal Virgins, whom even the old lawyers wished to be free of restraint in recognition of their priesthood; this is also provided in the Twelve Tables.

(190) There seems, on the other hand, to have been no very worthwhile reason why women who have reached the age of maturity should be in guardianship; for the argument which is commonly believed, that because they are scatterbrained they are frequently subject to deception and that it was proper for them to be under guardians' authority, seems to be specious rather than true. For women of full age deal with their own affairs for themselves, and while in certain instances that guardian interposes his authorisation for form's sake, he is often compelled by the praetor to give authorisation, even against his wishes. (191) For this reason, a woman is not granted any action against her guardian on account of the guardianship; but where guardians are dealing with the affairs of male or female children, when the wards grow up the action on guardianship calls the guardians to account.

113. *Patria potestas and adoption* (Gaius, *Institutes* 1.97-8, 100-1, 103-4. Tr. Gordon and Robinson. L)

The jurist Gaius gives later interpretations of the concept of *patria potestas*, the power of the father over his own family, which was a fundamental principle of Roman law. Compare the laws given in the Twelve Tables (above no. 108), some of which, since the original text is lost, have been reconstructed from Gaius' paraphrase.

(97) We have just set out the rules under which our real children fall into our power.¹⁸ This also happens with those whom we adopt. (98) Adoptions can be done in two ways, either by authority of the people or through the jurisdiction of a magistrate, for instance a praetor. ... (100) That form of adoption effected by the people takes place nowhere except Rome; but the latter form commonly takes place in the provinces before the provincial governors. (101) Women are not adopted by the authority of the people; this is the received opinion. On the other hand, women too are commonly adopted before the praetor or, in the provinces, before the proconsul or legate. ... (103) Another feature common to both kinds of adoption is that people unable to have children, eunuchs, can adopt. (104) But women

cannot adopt by any method, because they do not have power even over their real children.

114. *Patria potestas* (Justinian, *Institutes* 1.9 pr.-3; 1.11 pr., 10. L)

(1.9 pr.) Our children, the issue of a valid Roman marriage, are in our power. (1) Marriage or matrimony is the union of male and female, involving shared life together. (2) The power which we have over our children is a right peculiar to Roman citizens, for there are no other men who have such control over their children as we have. (3) Therefore whoever is born of you and your wife is in your power, just as he who is born of your son and his wife, that is to say, your grandson and granddaughter, are equally in your power, and your great-grandson and great-granddaughter, and so forth. But the child born of your daughter is not in your power, but in that of its own father.

(1.11 pr.) Not only are our natural children under our authority as we have already stated, but those whom we adopt as well ... (10) Women also cannot adopt because they have not even power over their own children, but by the indulgence of the emperor they can do so by way of consolation for the children they have lost.

115. *Guardianship* (Justinian, *Codex* 9.10.1. L)

This text records a pronouncement of the Emperor Constantine in AD 326.

When a guardian violates the chastity of his female ward, he shall be sentenced to deportation, and all his property shall be confiscated to the treasury, though he deserves to have suffered the penalty which the law imposes on rapists.

116. *Guardianship* (Digest 23.2.36; 48.5.7. L)

(23.2.36) (Paul,¹⁹ *Questions*, book 5) A guardian or a curator cannot marry an adult²⁰ who is committed to his care, unless she has been betrothed to, or intended for him by her father, or where the marriage takes place to comply with a condition in his will.

(48.5.7) (Marcianus,²¹ *Institutes*, book 10) A guardian who takes his female ward as a wife in violation of the decree of the senate is not legally married to her; and a guardian or curator can be prosecuted for adultery if he marries a ward under twenty-six years of age who has not been betrothed to him or intended for him, or named for this purpose in her father's will.

117. *Guardianship* (Ulpian, *Rules* 11.1. L)

The jurist Domitius Ulpianus, or Ulpian, was a native of Tyre but a Roman

citizen. Together with Paul (see no. 118), he served as clerk at the court of Papinian²² while the latter was praetorian prefect (AD 205-211). The last of his several posts was that of praetorian prefect, which he held from 222 until his assassination by the praetorian guard in 223. Ulpian was an enormously prolific writer, whose works account for forty per cent of the *Digest*. The *Rules* (*Regulae*) are a post-classical epitome of his work.

Guardians are appointed for males as well as for females, but only for males under puberty, on account of their infirmity of age; for females, however, both under and over puberty, on account of the weakness of their sex as well as their ignorance of legal matters.

118. *Pregnancy, status and paternity* (Paul, *Opinions* 2.24.1-9. L)

The jurist Julius Paulus, or Paul, was, along with his younger contemporary Ulpian, an extraordinarily prolific jurist of the late classical period. He served as a clerk to the praetorian prefect Papinian and on the imperial council of Septimius Severus (AD 193-211). It is possible that he also became praetorian prefect during the reign of Alexander Severus (AD 222-235). Although his exact dates are unknown, most of his writings date from the reign of Commodus (AD 180-192) to that of Alexander Severus. He wrote more than eighty-five works in more than three hundred books, perhaps the most important of which was the commentary on the Edict of the Urban Praetor, in 80 books. The *Opinions* (*Sententiae*) was an anthology of selections from the works of Paul (and possibly of other jurists) compiled towards the end of the third century AD. It would have served as a concise summary of the principles of law and is valuable for preserving many juristic texts in a pre-Justinianic form.

(1) If a female slave conceives, and has a child after she has been manumitted, the child will be free.

(2) If a free woman conceives and has a child after having become a slave, the child will be free; for this is demanded by the favour conceded to freedom.

(3) If a female slave conceives, and in the meantime is manumitted, but, having subsequently again become a slave, has a child, it will be free; for the intermediate time can benefit but not injure freedom.

(4) A child born to a woman who should have been manumitted under the terms of a trust is born free, if it comes into the world after the grant of freedom is in default.

(5) If, after a divorce has taken place, a woman finds herself to be pregnant, she should within thirty days notify either her husband or his father to send witnesses for the purpose of making an examination of her condition: and if this is not done, they shall in any event be compelled to recognise the child of the woman.

(6) If the woman does not announce that she is pregnant, or does not admit witnesses sent to make an examination of her, neither the father