

❧ Chapter Five ❧

THE FORCES OF  
LAW AND ORDER

Corpora Vestales oculi meretricia cernunt,  
nec domino poenae res ea causa fuit.

—Ov. *Tr.* 2.311–312

VICE VERSUS SQUAD

If a policy of moral zoning was in fact established in the Roman Empire, its implementation almost certainly would have been the responsibility of the aediles in the capital and their equivalents in towns outside Rome. Such a role in designing and enforcing a policy of this kind logically raises the question of comparison with other cultures, where the police or other officials enjoyed similar responsibilities. Unfortunately, if there is a case to be made that the aediles and their like resembled something like the modern vice squad, the comparison will not stand—unless one looks not at the goal of regulating or repressing prostitution but, if anything, at the results that have been achieved. Rome’s lack of zoning regulations may thus be compared with the failure of such regulations in more recent periods.

Before we assess the state of affairs for Rome, let us grasp the essence of the modern regulationist trend, which began in early nineteenth-century Paris and was widely imitated, or at least found parallels, elsewhere.<sup>1</sup> In the United

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1. The fundamental study of nineteenth-century French regulationism is by Corbin, *Women for Hire* (1990). See also Harsin, *Policing Prostitution* (1985); Bernheimer, *Figures of Ill Repute* (1989); Clayton, *Painted Love* (1991).

States, for example, a series of municipal campaigns sought to push prostitution to the edges of the urban landscape, both in the absolute sense and in relation to legitimate businesses and respectable neighborhoods. In a way the idea was to render the visible invisible.<sup>2</sup>

The thesis of moral zoning assumes a model for Rome of the formation and implementation of rules with which I find myself in broad sympathy.<sup>3</sup> It must be admitted, however, that this model is difficult to reconcile with some broader historical assumptions often made about the nature of law finding and administration in the Roman Empire.<sup>4</sup> According to the latter, it might seem anachronistic to argue for a regulationist regime at Rome that embraced such zoning. To put the matter in the form of a double question: Were the Romans capable of designing an effective system of moral zoning? And on a deeper level, were they capable of developing anything we might recognize as public policy regarding prostitution?<sup>5</sup>

#### CONSTRUCTIVE POLICY

A negative response to the second question would, of course, make the first unnecessary. For this reason, the second question will be the focus of my discussion. What is needed is a definition of public policy with which most historians will agree and that is reasonably clear without being culturally specific, either to ancient Rome or to the modern West, for example.<sup>6</sup> Our best resort

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2. See Hobson, *Uneasy Virtue* (1990) 25.

3. See, for example, Laurence, *Roman Pompeii* (1994) 80, who states, while drawing a link between the law's treatment of *popina* and brothel, "There was a distinction between the morally good elite and the rest of the population. This is important, because the elite controlled, managed and enforced the law and imposed their will upon the population of the city." These premises seem fairly unassailable to me. I also emphatically agree with Wallace-Hadrill, "Public Honour and Private Shame" (1995) 56, when he writes that "... ideologies could indeed shape the life of a Roman city." Elsewhere, Wallace-Hadrill, "Emperors and Houses" (2001) 132, sketches a link between policy and political form that in my view cries out for further study.

4. For a primitivist perspective on public-health legislation, see Cilliers, "Public Health" (1993).

5. The second question is put, albeit in even broader form, by Bradley, "Prostitution" (2000) esp. 473–75. Space limitations allow me to do but scant justice here to his query.

6. In the case of the latter, the point is to avoid anachronism. I therefore prefer to conceive of "policy" in the simplest, most lowbrow way possible. For a deployment of the word "idea" in this way on roughly similar grounds, see Hacking, *Social Construction of What?* (1999) 228 n. 12. Those who assume that public policy on prostitution is the property of modern liberal democracies might contemplate the disturbing alacrity that totalitarian regimes have shown at times in formulating and executing policy on prostitution: Paul, *Zwangsprostitution* (1994); Hicks, *The Comfort Women* (1997); Falck, *VEB Bordell* (1998). Nor is policy merely a feature of the modern age. For some pre-

is the dictionary, which provides the following definition: “a course or principle of action adopted or proposed by a government, party, business, or individual, etc.,”<sup>7</sup> with the rather obvious qualification that what renders a policy “public” is its adoption or proposal by the state or its representatives.<sup>8</sup> By adopting such a definition, we avoid prejudging the kind of policy the Romans developed in regard to the location of brothels, meaning in effect the aims, level of sophistication, and effectiveness of this policy.<sup>9</sup>

As in the case of using comparative evidence, a subject discussed in chapter 1, a difficulty arises here with arguments from social constructionism. In essence a radical constructionist might oppose my method on two scores. First, if there is no Roman word or concept for public policy, how can we justify introducing this term into our analysis? Should we not attempt to understand the Romans on their own terms, without danger of the distortion posed by a modernizing conceptual apparatus? Second, even if we accept this point, given that sexuality is a social construction, meaning that each and every culture will show in this area its own forms of meaning, often manifested in a matrix of rules, regulations, laws, and policies, what possible good can come from such comparisons?

In the face of evidence that is weak at best, it is desirable and even necessary to rely on analogy.<sup>10</sup> Where it is a matter of attempting to establish a link between action and motives, which is to describe the very heart of policymaking on the definition of policy presented above, the explanation should be comprehensible to us either on a rational or at least an empathetic level.<sup>11</sup> The logical alternative is resort to a crude determinism.<sup>12</sup> If we fail to exploit comparable data, specifically from societies that have various policies in regard to prostitution, we are guilty of a cultural relativity that bodes ill for the illumination of past experience, since this experience is rendered more remote

modern approaches regarding prostitution see, for example, McGinn, *Prostitution, Sexuality, and the Law* (1998) 207–15; more generally, McGinn, *ESH* (1994) s.v. “Prostitution.”

7. *Oxford Dictionary* (1997) s.v. “policy’.”

8. See, for example, *American Heritage Dictionary*<sup>3</sup>, s.v. “public policy,” which has the following definition: “The policy or set of policies forming the foundation of public laws, esp. when not yet formally enunciated.” The idea of political choice is key: see Hacking, *Social Construction of What?* (1999) 184.

9. Given my definition, policy might refer to any political choice, even to the refusal to act: see Hacking, *Social Construction of What?* (1999) 184.

10. Hacking, *Social Construction of What?* (1999) 199–200.

11. Collin, *Social Reality* (1997) 109.

12. See Horden and Purcell, *Corrupting Sea* (2000) 48–49.

and inaccessible by the very untenable premise of such relativity.<sup>13</sup> Rejection of a comparative approach begs a very big question. In other words, it proves only what it is trying to assume.

We might even question whether it is really worth looking for a Roman concept of public policy.<sup>14</sup> After all, most ancient historians seem comfortable with deploying a series of modern conceptual frameworks to describe aspects of Roman experience for which they lack a precise equivalent, such as “family,” “economy,” “society,” “ideology,” “law,” and, yes, “concept.”<sup>15</sup> We permit ourselves to use these terms without inverted commas more often than not.<sup>16</sup> We might as well add “policy” in all of its flavors, among them public, social, and legal, to the list.<sup>17</sup> In so doing, we recognize that both ancient and modern perceptions belong equally to the history of ideas and that there is no valid a priori reason to prefer Roman constructions to our own.<sup>18</sup> This does not mean rejecting Roman perceptions out of hand, but using them judiciously. The construction of a polarity between modernism and primitivism will lead neither to accuracy nor to clarity.<sup>19</sup>

One caveat is therefore in order. It is crucial to guard against the assump-

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13. See Collin, *Social Reality* (1997) 32, 47–48, 52–54, 59, 84–85. For a brief catalog of primitivist errors, see Horden and Purcell, *Corrupting Sea* (2000) 337 (cf. 338).

14. See the considerations offered at Collin, *Social Reality* (1997) 213.

15. See the comments of Morel, “Artisanat” (2001) 259. Students of Roman urban planning have well noted that there is no word in Latin that communicates what we mean by “city” in either its demographic or economic sense: Vismara, “*Civitas*” (1994) 49. There is much value here in relying on the Foucauldian premise that different forms of knowledge can exist for different cultures: Hacking, *Social Construction of What?* (1999) 170, 209. Different forms can also coexist within the same culture: Collin, *Social Reality* (1997) 215. This stands as a useful example of the fact that the moderate constructionist has much to learn from the radical constructionist.

16. “Quotation marks” are catnip to the radical constructionist: see the discussion in Collin, *Social Reality* (1997) 66–69, 121. A similar purpose is achieved by the negating qualifier, such as the adjective “ancient” in the phrase “the ancient economy.” For an appraisal, see Horden and Purcell, *Corrupting Sea* (2000) 146, 301. Yet another example is “the ancient city.” For the moderate constructionist, it is a matter of determining where to draw a line, as opposed to rejecting the use of quotation marks entirely.

17. See Collin, *Social Reality* (1997) 213. Not all terms can be accommodated under the rainbow of Foucauldian forms, to be sure. For example, as noted in chap. 1, Foucault himself and some of his followers deny that sexuality existed before the nineteenth century: see Karras, “Review Essay” (2000).

18. See Horden and Purcell, *Corrupting Sea* (2000) 13, 93; Veyne, “*Plèbe*” (2000) 1169–70; Morel, “Artisanat” (2001) 244.

19. Horden and Purcell, *Corrupting Sea* (2000) 181. For a forceful presentation of this perspective in the context of the Roman economy, which condemns the view I criticize as “sociological manichaeism,” see Carandini, “Columella’s Vineyard” (1983) esp. 178–81, 186, 201–2; see also the remarks of Lo Cascio, “Introduzione” (2000) 10.

tion that in the matter of policy the modern world shows a higher level of sophistication than the facts sustain.<sup>20</sup> The difficulty lies not only in the idea that modern policymaking is inevitably very highly sophisticated in the rationality of its aims and process—though even here any current appraisal will have to be revised downward in the wake of the Florida presidential election debacle of 2000—but above all in the effectiveness of its results.<sup>21</sup> For example, even in a modern market economy, not all transactions consist of market exchanges; that is far from the case.<sup>22</sup>

This problem of assuming the sophistication of policy in more recent periods is a particularly delicate matter for policy on prostitution, where the historical record is, in a word, bleak.<sup>23</sup> For this precise reason resort to an abundance of comparative evidence is useful for provoking a spirit of skepticism. Excessive piety toward the ancient sources leaves us vulnerable to their capacity for self-delusion and self-interest.<sup>24</sup> At bottom, there is nothing really “primitive” about primitivism. It is yet another form of modern constructionism, though more often than not it is advanced without self-recognition as such.<sup>25</sup>

The advocates of a moral zoning theory find themselves in an awkward position because they must reason back from their perception of the success of a policy to its existence in the first place.<sup>26</sup> This difficulty makes the moral zoning hypothesis per se neither anachronistic nor impossible, however, a

20. It seems easier for the ancient historian to admit the limits of Roman power than those operating for modern states. More generally, see the cogent remarks of Searle, *Construction of Social Reality* (1995) 90–92, 117. For some choice examples from the history of the Mediterranean that serve to illuminate the point, see Horden and Purcell, *Corrupting Sea* (2000) 149, 290, 294, 359. The discussion in Carandini, “Columella’s Vineyard” (1983) is also useful.

21. We do well to keep in mind that there are often vast differences in policy, sometimes amounting to the simple matter of its presence or absence, among modern polities that are in many respects very similar, including Western democracies in Canada, the United States, and Western Europe: see Nivola, *Laws of the Landscape* (1999) 5, 22–23, 27, 32, 100 n. 40; Rybczynski, “City Lights” (2001) 69–70. These nations sometimes show important regional differences as well: see Nivola, 28, on the significant differences, in terms of stringency, of urban land-use plans among the German *Länder*.

22. Temin, “Market Economy” (2001) 180. See also, Horden and Purcell, *The Corrupting Sea* (2000) 567 in criticism of F. Braudel.

23. This is unfortunately as true for modern, even contemporary, approaches to prostitution as it was for the ancient. Thus, the vagaries of Roman policy on prostitution are at best cold comfort for the primitivist: see McGinn, *Prostitution, Sexuality, and the Law* (1998) chap. 10, with the bibliography given in McGinn, *ESH* (1994) s.v. “Prostitution.”

24. See Horden and Purcell, *Corrupting Sea* (2000) 147.

25. See Horden and Purcell, *Corrupting Sea* (2000) 342.

26. Awkward though it may be, this position is all too familiar to the Roman historian. For a good discussion, see Peachin, review of *Rome and the Enemy* (2000).

point that will be developed further below. A brief defense must suffice for now. "More damaging . . . than the deficiencies of the evidence is a mistaken conclusion from those deficiencies: the conclusion that the processes of the reception and diffusion of ideas were as meagre as are the literary accounts of them."<sup>27</sup> There are many facts about their physical and social world(s) that the Romans did not recognize or articulate, at least in a way that has come down to us.<sup>28</sup> It is especially easy to take for granted the (non)existence of a policy where there is a gap between intention and result.<sup>29</sup> In this context, the notion of "accidental policy" has potentially great significance.<sup>30</sup> The "law of unintended consequences" has been little studied in this field.<sup>31</sup> Policies can fail, suffer from lax, partial, or puritanical enforcement, conflict with each other, resist change, or be conspicuous by their absence.<sup>32</sup>

The success of almost any policy can be affected by economic constraints.<sup>33</sup> The very notion of "success" must itself be measured by a realistic appraisal of what is possible and what is intended. Few, for example, would insist that a policy on criminal law that failed to eliminate all crime was a failure.<sup>34</sup> A good example of the enormous influence the lack of a policy can enjoy, taken from an area of study relevant to the general theme of zoning, is shown by the development of urban sprawl, which is encouraged in part by the nonexistence of a national land-use statute in the United States.<sup>35</sup>

In other words, bad, ineffective, or even nonexistent policy still matters.<sup>36</sup> Sometimes of course the act of judging the success of a policy depends on developing a precise idea of what the policy really is, not always as easy a task as it might seem.<sup>37</sup> At the same time, the fact that few policies are implemented with complete success should discourage pure speculation about their

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27. Horden and Purcell, *Corrupting Sea* (2000) 288.

28. See Hacking, *Social Construction of What?* (1999) 80–84, for a useful treatment of nominalism versus inherent-structuralism (a.k.a essentialism). It is always easier, of course, to attack one or the other than to deploy either in the service of historical explanation. For example, Hacking, 220, has a good discussion of problems that arise in reconciling a sense of universalism with a careful survey of relevant ethnographic data. For striking examples of Roman silence on things that matter to us, see Horden and Purcell, *Corrupting Sea* (2000) 259 (the water mill), 288 (more generally on the history of technology).

29. See Searle, *Construction of Social Reality* (1995) 4, on taking social reality for granted.

30. See Nivola, *Laws of the Landscape* (1999) 3, 12, 89.

31. For an important exception, see Marx, "Ironies of Social Control" (1981).

32. See Nivola, *Laws of the Landscape* (1999) 28, 52–53, 58, 71, 74, 78, 90–91.

33. Reynolds, *Economics of Prostitution* (1986) 61; Best, *Controlling Vice* (1998) 8.

34. See Best, *Controlling Vice* (1998) 10.

35. Nivola, *Laws of the Landscape* (1999) 27.

36. See Searle, *Construction of Social Reality* (1995) 19.

37. Best, *Controlling Vice* (1998) 32–34.

“true” purpose. So, for example, we can reasonably suppose that the exorbitant rate imposed on prostitutes by the Coptos Tariff from Egypt (108 drachmas) was not fully enforceable, since its mere existence would have encouraged attempts at evasion.<sup>38</sup> That does not mean the purpose of this high rate was anything but making money for the state.<sup>39</sup> The mere fact of exacting a fee might serve another purpose, that of social control, to which end evidently a flat rate of four drachmas was demanded of all women.

Perhaps most importantly, to ignore questions of policy on prostitution is to turn a blind eye to an important way in which patriarchal societies imagine, express, and indulge the male interest.<sup>40</sup> Tolerance of prostitution, so easy to construe as the absence of policy, should not be taken for that which it is not.<sup>41</sup> It is moreover impossible to understand the phenomenon of deviance without coming to grips with social control.<sup>42</sup> It is crucial here to avoid casual assumptions and false distinctions between state and nonstate activity.<sup>43</sup> The line between them shrinks almost to the disappearing point in the Roman economy of prostitution.

The view I have outlined is I believe consistent with the broad definition of public policy adopted above. A modern conceptual framework, accompanied by the introduction of relevant comparative evidence, is no luxury but a necessity in light of the gaps and silences on the subject of women in the historical record, examination of which depends on careful inference for anything like a coherent understanding.<sup>44</sup>

This brings us, in reverse order, to the first of our two questions. On the surface, it seems perfectly possible that the Romans could have enacted some form of zoning. The Romans were experts in counting and measuring the peoples and places they had conquered and were equally accomplished in the art of town planning. Though moderns have exaggerated their achievements in the latter field, their skill at developing street plans and placing public build-

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38. *I. Portes* 67 = OGIS 2.674 = IGR 1.1183 (Coptos A.D. 90), with discussion in McGinn, *Prostitution, Sexuality, and the Law* (1998) 281–82. Add Young, *Rome’s Eastern Trade* (2001) 47–51.

39. Montserrat, *Sex and Society* (1996) 131, argues that the point of the high rate for prostitutes was to create a “symbolic demarcation.”

40. See Paul, *Zwangsprostitution* (1994) 135.

41. On tolerance as an important strain in public policy on prostitution in past time, see McGinn, *ESH* (1994) s.v. “Prostitution.”

42. Best, *Controlling Vice* (1998) 6.

43. See Horden and Purcell, *Corrupting Sea* (2000) 376.

44. See Skinner, “Rescuing Creusa” (1986) 3; Joshel, *Work* (1992) esp. 3–24; Scheidel, “Silent Women 1” (1995) 202.

ings in the urban mix suggests they might, in fact, have attempted to zone brothels.<sup>45</sup> The placement of the temple of Venus Erycina, with its explicit identification with venal sex, outside the Porta Collina, is suggestive.<sup>46</sup> Denial of burial, at least informally, to prostitutes and pimps is itself an exclusion for which we have vague evidence.<sup>47</sup> Rules for the placement of cemeteries are themselves an example of ancient zoning practice.<sup>48</sup> In fact the city of Rome was characterized by a series of boundaries—physical, ritual, economic, and legal.<sup>49</sup> Why not moral or sexual ones as well?

The Roman boundary par excellence was of course that of the city itself, the *pomerium*, which straddled all of the four categories just named.<sup>50</sup> A clear demarcation of this kind allowed for the practice of what we might describe as “zoning out” or, more precisely, repression. It facilitated the expulsion from the city of certain groups at different times, among them adherents or members of certain religions, ethnic groups, or professions.<sup>51</sup> The last category is of particular interest for us. For example, the censors forced actors out of Rome in 115 B.C.<sup>52</sup> A whole series of persons, activities, and things considered (ob)noxious were routinely placed outside the city, including undertakers,

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45. For the first point, see Nicolet, *Space, Geography, and Politics* (1991); for the second, see Perring, “Spatial Organisation” (1991) (whose distinction between intentional, i.e., official and unconscious, i.e., social and economic, spatial organization might be drawn more firmly); Laurence, “Modern Ideology” (1994); Owens, “Residential Districts” (1996) 12–14 (who discusses the adaption of Greek usage in urban design to Roman needs). Roman city planning is notable for its almost inexhaustible variety. For some examples, see Di Vita, “Urbanistica” (1994); Trouset, “Organisation” (1994) esp. 608; Vismara, “Civitas” (1994). For a more general survey, see Gros and Torelli, *Storia dell’urbanistica*<sup>3</sup> (1994); and now Parrish, “Introduction” (2001).

46. On the temple, see McGinn, *Prostitution, Sexuality, and the Law* (1998) 25. Add Wiseman, “Stroll on the Rampart” (1995) 22; Orlin, “Second Temple” (2000). There is no need to assume the presence of sacred prostitution.

47. *CIL* 1<sup>2</sup> 2123 = 11.6528 = *ILS* 7846, with McGinn, *Prostitution, Sexuality, and the Law* (1998) 65. The *Tabula Larinas*, containing an SC from A.D. 19, may indicate that those who were engaged in dishonorable professions were denied an official burial, though this is far from certain: *Tab. Lar.* 14–15. On the subject of the denial of burial, see Hope, “Contempt and Respect” (2000) 116–20.

48. See Lindsay, “Death-Pollution” (2000) 170–71. These rules appear to have had a special force regarding the official demarcation of space for the Roman city: see Horden and Purcell, *Corrupting Sea* (2000) 434–35.

49. I owe this series to Patterson, “On the Margins” (2000) 86. See also Champlin, “*Suburbium*” (1982) 97.

50. The literature is extensive. See, for example, Hinard, “Rome dans Rome” (1991) who also discusses how certain religious festivals served to define space in the capital.

51. For the exclusion of Egyptian cults, see Patterson, “On the Margins” (2000) 92. For the expulsions of Jews, see Smallwood, *Jews under Roman Rule*<sup>2</sup> (2001) index s.v. “Rome.”

52. Cassiod. *Chron.* (under consuls for 115 B.C.), with McGinn, *Prostitution, Sexuality, and the Law* (1998) 41–42.

brick production, and wild animals destined for the city's games.<sup>53</sup> We might also regard the prohibitions against dumping bodies and other refuse in or near the city as a type of zoning regulation.<sup>54</sup>

These regulations were presumably inspired by considerations of pollution, public safety, or both. Other displacements occurred for economic reasons. As John Patterson has shown, the institution of a customs-boundary helped put a number of businesses on the urban margin, as did the requirements of a massive distribution system designed chiefly for agricultural products coming into the city.<sup>55</sup>

Of course, the expulsion of actors from the city was not permanent. The sources contain no mention of the exclusion, even of a temporary nature, of pimps and prostitutes. Their status was arguably as low as that of performers, if not lower. This suggests that in the case of pimps and prostitutes policy considerations were different from those that operated for actors. The same must have been true for undertakers. We might argue that they were relegated to working outside the city boundary because of their lower status, but in fact we have no evidence to suggest they were inflicted with the core set of civic disabilities accruing to prostitutes, pimps, actors, and gladiators. Fear of pollution might be advanced as a reason for the policy on undertakers, but a more important reason might be perhaps concerns with public health.<sup>56</sup>

The existence of such concerns, however, does not necessarily mean they were translated into public policy. It is noteworthy, for example, that medical expertise on questions of public health was directed at the individual's welfare and not the formation of public policy that might have advantaged an entire city.<sup>57</sup>

Roman policy toward prostitution contained elements of what we would call regulationism, but only in a limited way.<sup>58</sup> Roman officials were not, in

53. Morel, "Topographie" (1987) 131; Bodel, "Dealing with the Dead" (2000) esp. 135–44; Patterson, "On the Margin" (2000) 92–93; Morel, "Artisanat" (2001) 248. See *lex Ursonensis* ch. 76 for a ban on large tile works within the town boundaries.

54. See Bodel, "Dealing with the Dead" (2000) 134; Hope, "Contempt and Respect" (2000) 111.

55. Patterson, "On the Margins" (2000) 94–95.

56. See the views of Bodel, "Dealing with the Dead" (2000); Lindsay, "Death-Pollution" (2000). For the core set of civic disabilities inflicted on prostitutes and the other three types named in the text, see McGinn, *Prostitution, Sexuality, and the Law* (1998) chap. 2.

57. Nutton, "Medical Thoughts" (2000) 71–72.

58. The aedilician regulations listed by Laurence, *Roman Pompeii* (1994) 80–81; Wallace-Hadrill, "Public Honour and Private Shame" (1995) 45, 50–51, which deal with the consumption of certain edibles in *popinae*, the wearing of togas in the Roman Forum by male citizens, the registration of prostitutes, and even the supervision of the practice of prostitution, prove nothing about zoning brothels.

terms of their training, methods, and responsibilities, the ancient version of the modern *police des mœurs*.<sup>59</sup> As previously suggested, we have no evidence of any regulation of prostitution regarding zoning, which means we have to contemplate a sort of regulationism without regulations.<sup>60</sup> Fair enough. Construing policy in the absence of discourse is a familiar task for the historian.<sup>61</sup> As suggested in the previous chapter, however, the Romans did not perceive a need for the physical or symbolic separation of brothels from respectable society.

The failure of the comparison drawn here between ancient and modern official approaches to prostitution, however, lies in more than just a matter of identifying or classifying a type of official policy. Wallace-Hadrill and Laurence not only argue for a regulationist regime for the Romans that embraced zoning, but assume this regime was successful, at least in Pompeii. Their perspective is unusual to say the least, given the recent historiography on prostitution. The consensus among scholars is that the highly sophisticated regulationist regime at modern Paris, for example, was a miserable failure.<sup>62</sup>

The nineteenth-century Parisian system did not, in fact, include a general system of zoning as postulated for Pompeii. Instead, efforts were limited to managing the moral geography of prostitution through regulations on public solicitation or at most through minor prohibitions on brothel-location.<sup>63</sup> This is one reason why Balzac can refer to the entire city of Paris as a brothel.<sup>64</sup> In regard to segregating venues for prostitution, Alexandre Parent-Duchâtelet,

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59. Laurence, *Roman Pompeii* (1994) 143, seems to assume something like the opposite when he cites Alain Corbin, the greatest authority on the nineteenth-century Parisian vice squad, as support for his theory that the aediles' registration of prostitutes was meant to enforce a moral geography.

60. Wallace-Hadrill, "Public Honour and Private Shame" (1995) 51, draws a connection between traffic regulations and the symbolic cleanliness of the city.

61. See the cogent observations of Best, *Controlling Vice* (1998) 139.

62. See Corbin, *Women for Hire* (1990) 115–85 (a chapter entitled "The Failure of Regulationism"); Gilfoyle, "Prostitutes in History" (1999) 121–22.

63. See the zoning rules from the 1878 Paris regulations, as translated by Flexner, *Prostitution in Europe* (1914) 405: "[Public prostitutes] are not permitted to be in the vicinity of churches (Catholic or Protestant), schools and lycées, covered arcades, boulevards, the Champs-Élysées, the railway stations and their approaches, and the public parks. They are not permitted to live in houses in which there are boarding-schools or day-schools." The last sentence, as well as the general context, might well suggest that the rules regarding the vicinity of churches and so on pertain to public solicitation. Otherwise, this is a very mild form of zoning for brothels, which does not amount to segregation. See Flexner, *Prostitution*, 175–79; Corbin, *Women for Hire* (1990) 55–56, 84–86, 205 (other French towns were more aggressive, at least on paper); Clayson, *Painted Love* (1991) 15.

64. Bernheimer, *Figures of Ill Repute* (1989) 38; see also 159, 165; Harsin, *Policing Prostitution* (1985) 316.

that great connoisseur of sewer and brothel, argued that policymakers could not prevent prostitution from locating itself in whatever areas it found congenial (much like water seeking its own level, it seems), so that attempts to contain it in designated areas were bound to fail.<sup>65</sup> Even where they existed, zoning regulations that aimed at segregating brothels from respectable society have tended to be more ideological than practical in their implications.<sup>66</sup>

The evidence does not in any reasonable sense support the theory that Rome had a full-scale nineteenth-century regime, whether successful or not. In other words, my difficulty with the argument made by the advocates of the moral zoning theory does not have to do with the problem of anachronism or with the plausibility of their model in general terms, but lies instead with some of the inferences they draw from the comparative evidence.<sup>67</sup> To accept even a modified version of the zoning thesis, it would be helpful to address the following sorts of questions, albeit necessarily, given the lack of evidence, in speculative form. How did the aediles in the capital communicate such regulations to the authorities elsewhere?<sup>68</sup> Who was the authority ultimately responsible for making sure these regulations were enforced? Did this take place at the instigation of central authority by imperial decree, *senatus consultum*, comitial law, or through a more capillary process, as some scholars posit for the municipal rules contained on the *Tabula Heracleensis*? Did this originate during the Republic or Principate?<sup>69</sup> Before we can accept the idea that zoning regulations were the norm, we must resolve, even if in the abstract, the issue of how such regulations were communicated and enforced.

If we focus on Pompeii, and resist the temptation to view zoning as an

65. Bernheimer, *Figures of Ill Repute* (1989) 20.

66. Corbin, *Women for Hire* (1990) 85–86, 205, 317; Bernstein, *Sonia's Daughters* (1995) 176; Hershatter, *Dangerous Pleasures* (1997) 9, 213–14, 274. Some laws designed to segregate prostitution never got off the ground: Hill, *Their Sisters' Keepers* (1993) 134–36.

67. On the invocation, unpersuasive in my view, of the nineteenth-century ideology of the sewer for Roman prostitution, see chap. 3. Laurence, *Roman Pompeii* (1994) esp. 70, 73, 87, argues for the physical isolation (above all from members of the elite) of prostitution at Pompeii. He relies on comparisons that show the topography of urban deviance as, in part, the result of policy, to be sure, but a result that is unanticipated and undesired, and on comparisons that represent solutions to urban problems, which are largely, indeed almost exclusively, utopian in nature: see B. Cohen, *Deviant Street Networks* (1980) 1–7; S. Cohen, *Visions of Social Control* (1985) 206–7.

68. Most scholars believe that the duties of aediles in the capital and those of their equivalents elsewhere were very similar; for a recent challenge to this view, see Andrés Santos, “Función jurisdiccional” (1998).

69. It is awkward that the duties spelt out for aediles (evidently at Rome) in the *Tabula Heracleensis* (20–82) and for their equivalents (in the Latin municipalities of Spain) in the Flavian Municipal Law (chap. 19) do not mention brothel-zoning. We might argue that one or both—especially the first—is incomplete, but there is no other evidence of this kind.

empire-wide phenomenon, the case is at first glance plausible. Local regulations did notably zone members of certain professions out of certain cities. For example, embalmers were excluded from Egyptian Thebes—but not Oxyrhynchus—and gladiators from Rhodes, on the analogy of executioners who were also forbidden to enter the city.<sup>70</sup>

There have been, at different times, successful local attempts to clean up prostitution, like the one that occurred in late twentieth-century New York City's Times Square.<sup>71</sup> Other examples range from the experiment in the famous Storeyville quarter of early twentieth-century New Orleans, to the less well-known experiments with vice districts in cities such as Houston in the same period.<sup>72</sup> Such policies have required a significant investment of money, manpower, and political will, but they often have succeeded for a time at least in keeping much of the rest of those cities, to borrow a phrase from Garrison Keillor, "almost pure."

This rosy scenario must be qualified, however. The success enjoyed by such campaigns has typically been limited in its scope so that its effects have been narrow and imperfect and its time-frame temporary at best. Furthermore, they have operated, paradoxically enough, in the context of an official policy of repression of prostitution, something foreign to the Romans.<sup>73</sup> Given the nature of this evidence, we might expect that such regulationism for the Romans was nothing but a sporadic, local phenomenon and perhaps enjoyed some limited measure of success in the event that adequate resources were devoted to it. There is not, however, attestation even of this much.

Finally, we might look to a premodern model for zoning prostitution, such as that found in medieval Germany. This tradition shows not only that a variety of approaches were taken but also that some significant changes were introduced over time. We see, for example, an emphasis on zoning as a form of regulation, or even toleration, metamorphose over time into an emphasis on

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70. For evidence and discussion, see Bodel, "Dealing with the Dead" (2000) 142–43, 148. Bodel observes that funerary workers were commonly pushed to the margins of towns.

71. On this, see now Traub, "Land of the Naked Cowboy" (2002).

72. For these two examples, see Mackey, *Red Lights Out* (1987) 290–387. For mid-nineteenth-century San Francisco, see Tong, *Unsubmissive Women* (1994) 112–13.

73. Pre-Giuliani street-sweeping campaigns generated little but cynicism in the end: see Decker, *Prostitution* (1979) 109–10. See also, on the limits of, and problems with, police intervention, Decker, 176, 198, 271, 339; Mackey, *Red Lights Out* (1987) 200 (who notes civil suits enjoyed greater success than criminal sanctions in the late nineteenth- and early twentieth-century United States), 265, 299, 397; Best, *Controlling Vice* (1998) 87–97 (who shows that the failure of a modest and informal policy of regulation in nineteenth-century St. Paul sparked a series of futile attempts at repression).

zoning as a first step toward repression.<sup>74</sup> In most towns the municipal brothel, or *Frauenhaus*, was itself located centrally, as we might expect of a public institution, or at least in a place deemed easily accessible to clients.<sup>75</sup> Nonofficial brothels were illegal but were often tolerated within certain bounds.<sup>76</sup> The municipal brothels were rather heavily regulated, with rules governing hours and days of operation, and prostitutes' clothing, as well as prostitutes' freedom of movement generally.<sup>77</sup> Prostitutes were allowed, and even encouraged, to attend church, though even there they were zoned; they had to remain apart from the respectable congregation, at least in the later period.<sup>78</sup>

The period from the middle of the fifteenth century onwards saw a renewal and a sharpening of existing regulatory norms, as well as tougher enforcement of these rules. The reasons for this greater intensity were various—the perception that the existing policy was a failure, increased hostility toward prostitutes and their trade, a heightened sensitivity to, and sense of stronger purpose regarding, the forms of political organization and administration.<sup>79</sup> Obviously, the change in policy was informed by the same complex of factors that led to the Reformation and the Counter-Reformation.

One aspect of this change was the more uniform repression of unofficial brothels. These brothels were closed and their prostitutes were expelled from the city, or at minimum a greater effort was made to control them. A good example of the latter approach occurred in the city of Strasbourg. In 1469 an attempt was made systematically to list all the brothels in the city. Additional limits were placed on the mobility of “official” prostitutes, that is, those from the municipal brothel. The idea was to segregate venal sex and its practitioners within the confines of the municipal brothel. This policy reached its culmination in the latter part of the fifteenth century, while in the next, municipal brothels were closed throughout Germany and the rest of Europe.<sup>80</sup>

This example should be sufficient to show that there is nothing necessarily “modern,” and thus anachronistic, about the idea of zoning brothels as

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74. See P. Schuster, *Frauenhaus* (1992) 42. See also B. Schuster, *Freien Frauen* (1995) 44, 50, 73–75.

75. Schuster, *Frauenhaus* (1992) 27, 34, 42–45, 54–55.

76. See Schuster, *Frauenhaus* (1992) 125.

77. P. Schuster, *Frauenhaus* (1992) 61–64, 145–53; B. Schuster, *Freien Frauen* (1995) 56–57, 99, 131–33, 179.

78. Schuster, *Frauenhaus* (1992) 172–73.

79. P. Schuster, *Frauenhaus* (1992) 157–58. See also B. Schuster, *Freien Frauen* (1995) 97, 219, 397.

80. See Schuster, *Frauenhaus* (1992) 159–74.

advanced by Laurence and Wallace-Hadrill. There are some elements of the German picture in fact that may well have been present for Rome, such as aedilician oversight of clothing regulations and hours of operation for brothels. What is lacking is evidence for the officially regulated location of brothels, centrally or elsewhere, as well as an Augustinian ethic (chapter 3) that would have motivated this regulation.

We might, however, refuse to postulate the existence of such norms, either for the empire as a whole, or locally, for Pompeii, and still credit the existence of a pattern of segregation of brothels that was generated by an “accidental policy,” as described above. There is, in fact, one very good candidate for an official policy that might have produced this unintended consequence. This is the tax on prostitutes instituted by emperor Caligula in A.D. 40, which was set at a high rate and enforced with great vigor, and which in many places—though probably not at Pompeii—was collected by the military.<sup>81</sup> It is very reasonable to ask whether the operators of brothels, eager to escape the expense exacted by the tax and the depredations often inflicted by its collectors, moved their venues to hidden and inconspicuous locales. The brothels of Pompeii, however, though some are more noticeable than others, are simply not that inconspicuous overall. It is difficult, at the same time, to imagine another example of a policy that might have had a similar, wholly unintended, effect.

Beyond accidental policy, one further candidate remains and that is an informal policy that limited the locations of brothels and perhaps also checked the movements of prostitutes themselves. Examples are found in late nineteenth-century St. Paul, Minnesota, where police enforced a policy of regulation against the grain of a policy of outright prohibition at law, as well as in late twentieth-century Nevada, where the rules segregating prostitutes from the communities in which they worked were not always enacted into law.<sup>82</sup> This kind of policy almost inevitably requires the cooperation of police and brothel operators for implementation. Yet it is one of the most difficult to trace because, at least in the examples known to me, the policy, intended to control deviants, is itself somewhat deviant. There is no evidence the Romans practiced such a policy.

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81. See McGinn, *Prostitution, Sexuality, and the Law* (1998) chap. 7.

82. For St. Paul, see Best, *Controlling Vice* (1998); for Nevada, see Albert, *Brothel* (2001) 48 (whose grasp of the precise meaning of the term “unofficial” does not seem firm).

## OFFICIAL BUSINESS

Certainly policies often fail, and the historical record suggests that policies on prostitution fail more often than most. Sometimes the failure is due not so much to a poorly designed policy, but to a compromise solution among various ideologies and/or strategies. Therefore it is unreasonable to the point of misleading to expect a coherence to a policy that may be somewhat contradictory or simply unsatisfactory in consequence of the different forces at work upon it. At Pompeii, for example, it is easy to posit a policy promoting the segregation of brothels running counter to the desire of property owners who wanted to make the most profitable use of their urban real estate.<sup>83</sup> On the ground, the results might look very mixed, not to say confusing, with zoning functioning better in some parts of the city than in others, or not at all.

If regulationism of this sort failed at Rome itself and in other Roman cities like Pompeii, however, the preferable view is that this occurred because it never was attempted in the first place. The aediles were not able to keep burial places outside the city of Rome free from prostitutes,<sup>84</sup> though of course there is no evidence that they even tried. The aediles were responsible for keeping the streets clean and clear, a task at which they did not always succeed to judge from the need for imperial intervention signaled by Martial.<sup>85</sup> Caligula's punishment of Vespasian for his ineffectiveness as an aedile is also relevant.<sup>86</sup> In short, the aediles sometimes failed at their responsibilities by Roman standards, which are very different from our own.<sup>87</sup>

I do not intend to deny here that the aediles were concerned with public morals.<sup>88</sup> These magistrates were certainly no strangers to prostitution. They were entrusted with the oversight of brothels, just as they were with other businesses and places of popular entertainment.<sup>89</sup> What exactly were their responsibilities in this regard? The sources are generally vague and unhelpful,

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83. I owe this point to Professor Dennis Kehoe.

84. This is to judge from Mart. 3.93.15.

85. Mart. 7.61.

86. See Suet. *Vesp.* 5.3.

87. For a sense of this difference, see Scobie, "Slums" (1986) esp. 407–22, with the qualifications of Laurence, "Writing the Roman Metropolis" (1997). Further elucidation may be sought now among the essays collected in Dupré Raventós and Remolà, *Sordes Urbis* (2000).

88. We might go as far as to claim that the aediles functioned in a sense as "petty censors": McGinn, "SC from Larinum" (1992) 283; see also McGinn, *Prostitution, Sexuality, and the Law* (1998) 201–2. I argue that the *regimen morum* routinely embraced (male) prostitutes and pimps: *Prostitution, Sexuality, and the Law*, esp. 40–44. We are still very far from a regime for moral zoning, however.

89. For the evidence and a more detailed statement, see McGinn, *Prostitution, Sexuality, and the Law* (1998) 201–2; cf. 60. To the literature on aediles' duties, add Frayn, *Markets and Fairs in Roman Italy* (1993) 117–32; Andrés Santos, "Función jurisdiccional" (1998).

but allow a few useful conclusions to be drawn. The aediles' main role regarding prostitution was to preserve public order, as can be inferred by a remark of Seneca's in which he directly or indirectly names brothels, taverns, and baths as "places fearing the aedile" ("loca aedilem metuentia").<sup>90</sup> The importance of this main role may be judged from the potentially or actually violent and criminal atmosphere that reigned in many brothels (chapter 3).

The evidence often makes it difficult, however, clearly to distinguish the aediles' main responsibility from some of their other tasks. Aediles may have entered brothels and taverns to repress illegal gambling.<sup>91</sup> They also may have enforced the rules forbidding the sale of certain foods in brothels where food was sold.<sup>92</sup> Couples resorting to brothels as assignation houses, in order to evade the strictures of the Augustan law on adultery, may have fallen under the aediles' purview.<sup>93</sup>

Did the aediles enforce hours of operation for venues of prostitution? A rather opaque line of the satirist Persius might refer to such a practice: ". . . if a *nonaria* should teasingly pluck the beard of a Cynic philosopher" (" . . . si Cynico barbam petulans nonaria vellat").<sup>94</sup> If *nonaria* signifies "nine-o'clock girl" in reference to the legal opening time for brothels, this would mean on our reckoning that brothels remained closed until 1:30 to 2:30 P.M. depending on the season.<sup>95</sup>

This theory is based on the explanation of an ancient commentator, who writes about the passage, "The woman called a *nonaria* is a prostitute, because in the good old days (*apud veteres*) they used to solicit from the ninth hour, so that young men would not visit them in the morning, having neglected their military training" ("*nonaria dicta est meretrix, quia apud veteres a nona hora prostabant, ne mane omissa exercitatione militari illo irent adulescentes*").<sup>96</sup>

There are a number of problems with the commentator's interpretation, to be sure.<sup>97</sup> First, as modern scholars emphasize, there is no certainty that Per-

90. Seneca *Vita Beata* 7.3. See chap. 9 for a fuller discussion of this passage. For the aediles' maintenance of public order in brothels, see McGinn, *Prostitution, Sexuality and the Law* (1998) 201 with n. 489.

91. See, for example, Mart. 5.84.3–5, which concerns aedilician intervention in a tavern; cf. 14.1.3. For gambling in brothels and taverns, see chap. 3.

92. See chap. 2.

93. See chap. 7.

94. Persius 1.133.

95. See Bickerman, *Chronology of the Ancient World*<sup>2</sup> (1980) 15.

96. Schol. *ad Pers.* 1.133. No suitable modern edition of this ancient scholiast exists; the text must be consulted, for example, in Jahn, *Saturae*<sup>4</sup> (1910) 17.

97. This interpretation is not compromised, however, by the assertion of Nonius Marcellus that prostitutes (the ones he terms "prostibula") would solicit night and day: Non. Marc. 684L. So also the reference to the unfortunate client playing the slave in a brothel both night and day: [Quint.] *Decl.* 15.2.

sus is referring to prostitutes here, and not slave girls associated with the festival of the Nones, as a passage of Plutarch's suggests.<sup>98</sup> The fact that the scholiast places the practice in the past does not encourage confidence either. The reference to the usage of the *veteres* has a whiff of *Sittenverfall*-theory about it, while the postulated concern with the neglect of military training seems too just-so to be true. It is, in fact, contradicted by another scholium, this one to Juvenal, that explains Messalina's alleged nocturnal expedition to the brothel in the following way: "Because beforehand prostitutes on account of the celebration of sacred rites used to solicit customers the whole night long beginning at the ninth hour, they were also called "*nonariae*" ("Quoniam antea meretrices propter sacrorum celebrationem ab hora nona totam noctem prostabant, inde etiam 'nonariae' dictae sunt").<sup>99</sup>

Unfortunately, this explanation is no more credible than the first—just what sacred rites occurring most of the day, every day are in question here? Finally, we would expect a concern with public order to be manifested in the regulation of closing hours rather than that of opening hours, as we find with the rules for the medieval German brothel.<sup>100</sup> The scholiasts communicate one important matter to us, however, namely that the *idea* of regulating a brothel's operating hours was not foreign to antiquity. The notion of opening hours hardly excludes the possibility that closing hours were enforced as well.

If we turn from the text of the scholiast to that of the satirist, the picture is not quite so bleak. A reference to a prostitute seems more at home in a satire than one to the "slave-girls of the Nones" (or whatever), especially in the context of a challenge to the authority of a Cynic philosopher, given, for example, the ancient tradition on Diogenes and Lais.<sup>101</sup> We have a reference to the aedile smashing fraudulent weights and measures in Arretium just three lines above. And in the very next line, the last one of the poem, we find "I grant them [the *nonaria* and the Cynic] the Edict in the morning, Callirhoe after lunch" ("his mane Edictum, post prandia Callirhoen do").<sup>102</sup> Commentators ancient and modern take this as a reference to the Praetor's Edict, but it seems

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98. Plut. *Camil.* 33 with Jenkinson, *Persius* (1980) 76; Harvey, *Commentary* (1981) 54; Lee, *Satires of Persius* (1987) 87. See, however, Kibel, *Satiren* (1990) 284.

99. Schol. *ad Iuv.* 6.116.

100. Schuster, *Frauenhaus* (1992) 63–64.

101. See, for example, Davidson, *Courtesans and Fishcakes* (1998) 114. On Satire's challenge to authority, see McGinn, "Satire and the Law" (2001). Horace has the beard of a Stoic plucked at *Serm.* 1.3.133–34.

102. *Pers.* 1.134.

just possible that the aedilician is meant.<sup>103</sup> So Persius closes his first satire with the assertion and negation of authority, not so much of the aediles' in the matter of brothel-regulation, but of his own as a moral teacher. In this way, he urges his reader to respect the operating hours of the brothel in a twofold sense.

I conclude that Persius's satire perhaps refers to the regulation of brothels by the aediles, but we cannot know for sure. If the argument is correct that the aediles stipulated operating hours for brothels, they did so with an eye to maintaining public order. It would be imprudent to try to draw too many conclusions from this however. We are skating on very thin ice here, but the evidence is still more conclusive than that for zoning brothels.

Aside from overseeing brothels and other haunts of prostitutes and their clients, aediles were assigned another task of possible relevance to the regulation of prostitution, namely, that of maintaining status distinctions. They accomplished this, in part, through the famous aedilician register of prostitutes, which was established, I have argued, pursuant to the *lex Iulia de adulteriis coercendis* and which was abandoned after it was brought into disrepute in A.D. 19, when a woman of senatorial rank named Vistilia attempted to shield herself from being prosecuted for adultery by registering as, and so claiming exemption under the law for being, a prostitute.<sup>104</sup> The point of the registry was not simply to establish eligibility for the statutory exemption but to place a symbolic boundary between respectable and nonrespectable women.<sup>105</sup>

The aediles also helped preserve status distinctions by enforcing the use of appropriate clothing. According to Suetonius, this responsibility was assigned to the aediles by Augustus, who was moved to quote Vergil's tag about the *gens togata* when he saw a crowd of men in dark-colored clothing at a public meeting.<sup>106</sup> Regulation soon followed:

Suet. *Aug.* 40.5:

Negotium aedilibus dedit, ne quem posthac paterentur in Foro circave nisi positis lacernis togatum consistere.

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103. I take the reference to Callirhoe to be at minimum sexual and think it likely is connected with prostitution, though disagreement reigns on its precise meaning: Jenkinson, *Persius* (1980) 76; Harvey, *Commentary* (1981) 54–55; Lee, *Satires of Persius* (1987) 87; Kibel, *Satiren* (1990) 286–87.

104. McGinn, *Prostitution, Sexuality and the Law* (1998) 197–201, 216–19.

105. McGinn, *Prostitution, Sexuality and the Law* (1998) 207–15.

106. Verg. *Aen.* 1.282.

*He (Augustus) assigned to the aediles responsibility for enforcing the rule that no one in future was to appear in the Forum and its environs except without a cloak and wearing a toga.*

I suggest that the same Augustan adultery law that enjoined the registration of prostitutes also called for the aediles to enforce proper dress for prostitutes (the toga) and respectable women (the *stola*), at least in the center of Rome.<sup>107</sup> This aspect of aedilician responsibilities stands out from the others, even those regarding prostitution, in its reliance on a statute for authorization.

The aediles were also responsible for intervening in special situations of crisis that threatened public order. As we have seen in chapter 2, brothels were in such constant need of water that particular personnel—called in the sources *aquarioli*—were sometimes appointed to the task of acquiring it. In 50 B.C. a scandal erupted over the illegal diversion of public water to private enterprises, including brothels. The practice was denounced by M. Caelius Rufus in a speech at a public meeting.<sup>108</sup> This speech is mentioned in a work on aqueducts by Frontinus, which was composed some one hundred and fifty years later when the capital evidently faced a similar set of difficulties:<sup>109</sup>

Front. *Aqu.* 76.1–2:

Ac de vitii eiusmodi nec plura nec melius dici possunt, quam a Caelio Rufo dicta sunt in ea contione, cui titulus est “De Aquis.” quae nunc nos omnia simili licentia usurpata utinam non per offensas probaremus: inriguos agros, tabernas, cenacula etiam, corruptelas denique omnes perpetuis salientibus instructas invenimus.

*And concerning abusive practices of this sort [the illegal channeling of public water for private use] no more can be said—and it cannot be said any bet-*

107. See McGinn, *Prostitution, Sexuality, and the Law* (1998) 154–61.

108. See also Caelius’s reference in a letter to Cicero of 50 B.C. to his battle with *tabernarii* (shopkeepers) and *aquarii* (water-supply specialists): Cic. *Fam.* 8.6.4

109. For details such as the date of Caelius’s speech, the parts of Frontinus’s work that might directly quote this speech, and the relationship of the speech to a comment made by Cicero in 56 B.C. that refers to the use of water in brothels, see Rodgers, “Frontinus” (1982); Bruun, “Water for Roman Brothels” (1997); Butrica, “Using Water 1” (1999); Butrica, “Using Water 2” (1999). I accept that “inriguos . . . invenimus” is a quotation from Caelius Rufus that Frontinus deploys to characterize the problems of his own day, but am less certain that this holds for what immediately precedes in the text and do not believe that six years earlier at *Cael.* 34 Cicero refers to the *illegal* diversion of water by brothels. For a possible example of Frontinus altering a quotation to suit his grammar, see Crawford, *Roman Statutes* 2 (1996) 729–30.

ter—than by Caelius Rufus in the speech he gave at that public meeting entitled “On the Waters.” Now that all of these usages are appropriated with a similar lack of respect for the law, would that we not bestow an illegal approval upon them! For we find irrigated fields, taverns, even private apartments, in short, every brothel in town equipped with a permanent set of (illegal) water-runoffs.

For Frontinus, the true scandal was evidently that no one in his day was scandalized by such practices.<sup>110</sup> One wonders what motivated the aediles to look the other way when confronted with such obvious illegality. The answer to this puzzlement is given below. Unfortunately, however, the chief focus of Caelius Rufus’s concern was precisely responsibility for the water supply, which the aediles shared with the censors during the Republic, not the oversight of brothels in their own right.<sup>111</sup> So the incident adds little to our understanding of the official regulation of prostitution.

The aedilician oversight of brothels seems largely to have been embedded in the oversight of commerce and the maintenance of public order overall. This is why the result is similar for the epitomator Justin’s report of Dionysius’s squabbling with pimps before the “aediles” of Corinth.<sup>112</sup> We might suppose Justin is reading the competence of the Roman aediles to adjudicate disputes with pimps into the non-Roman historical record. If we can correctly assume that this account reflects a Roman practice, it may well fall within, or at least have grown out of, the aediles’ general oversight of commercial activity and not just that of brothels.<sup>113</sup>

Like civilian officials in other areas with no military presence, the aediles in some Roman cities may have been charged with collecting the tax on prostitutes that was launched by Caligula.<sup>114</sup> The role aediles played—at Pompeii certainly—in overseeing street vendors<sup>115</sup> may have embraced streetwalking prostitutes as well, that is, prostitutes who did not work in brothels. We know also from Pompeii that the aediles leased space to merchants in such public areas as the arches of the amphitheater.<sup>116</sup> Given the abundant literary evi-

110. The last person we know (before Frontinus) to have been scandalized by misappropriation of public water resources was Pliny the Elder (*NH* 31.42), whose account together with the other evidence suggests that this was a constantly recurring problem.

111. Mommsen, *Staatsrecht* 2.1<sup>3</sup> (1887/1969) 436, 508; De Kleijn, *Water Supply* (2001) 93–98.

112. Iustinus 21.5.7.

113. On this, see Mommsen, *Staatsrecht* 2.1<sup>3</sup> (1887/1969) 499–504.

114. See McGinn, *Prostitution, Sexuality, and the Law* (1998) chap. 7.

115. Gassner, *Kaufläden* (1986) 15.

116. *CIL* 4.1096–97b, 1115, 2485.

dence suggesting prostitution was practiced in these venues, it is possible that the aediles were thus indirectly involved in the business of venal sex.<sup>117</sup> We may safely conclude that the aediles' chief interest in regard to prostitution, like that of the Roman state itself, was to make as much money as possible out of it.

A glimpse of the cozy relationship between brothels and aediles may be obtained from the proximity of electoral inscriptions, supporting candidates for the position of aedile, to the walls of brothels (such as the Purpose-Built Brothel)<sup>118</sup> and other establishments, such as taverns and inns, which were presumably overseen by these officials.<sup>119</sup> I concede that these inscriptions are of dubious value for identifying the individual occupants, yet the overall pattern seems suggestive of a relationship somewhat similar to that between brothels and the authorities in nineteenth-century New York City, where in one case, a brothel was located next door to a police station, an arrangement both parties found mutually convenient in a variety of ways.<sup>120</sup> This stands in contrast to say, Reformation Augsburg,<sup>121</sup> or even late twentieth-century New York City, where no "Sex Workers for Giuliani" posters have been reported. In this one regard alone, we can reasonably argue the aediles resemble the modern vice squad, though it is perhaps accurate to stress that they were more vice than squad.

The economic exploitation of venal sex by the Roman state and its representatives might take the form of taxes, lease payments, or (it is safe to speculate) bribes. Why bribes, given that prostitution was decidedly legal in the Roman world? Those who have never worked in an establishment where the definition of illegal behavior (including police behavior) is almost entirely a matter of police discretion may be surprised to learn that even the highly regulated and—to all appearances—eminently law-abiding brothels of contemporary Nevada must factor in payments to the police as a cost of doing busi-

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117. See chap. 2 for this evidence. Given the shallowness of the arcades at Pompeii, the crib rather than the brothel may serve as the model for a venue of prostitution here.

118. *CIL* 4.817–18, with Franklin, "Games and a *Lupanar*" (1985/6) 323.

119. DeFelice, *Roman Hospitality* (2001) 132.

120. Hall, *Their Sisters' Keepers* (1993) 150; see also 125, 146–48, 152–54, 158, 292 (police officers living in brothels); Gilfoyle, *City of Eros* (1992) 86–87, 251–56. Brothels and streetwalkers were perceived as universal in this period: Hill, 197–99, 212. We might compare the arrangements in Pompeii with those in a Nevada county in 1967, where the sheriff owned the two local brothels: Symanski, "Prostitution in Nevada" (1974) 376.

121. In 1532 the city council abolished the municipal brothel at the instigation of Lutheran clergy: see Roper, "Discipline and Respectability" (1985) 3; Roper, *Holy Household* (1989) 89.

ness.<sup>122</sup> In the Roman city, for example, bribery might help eliminate the need for tedious negotiation over the meaning of “legal water supply.”

Public order, naturally, was another concern, but this could have been secured without resort to zoning. The evidence for specific details of zoning is, as we have seen, thin; the arguments rather speculative. The profit motive, at any event, appears to have been paramount.

We might still argue that the evidence given above does not absolutely preclude the possibility of a local, that is, municipal, segregation of brothels, and I would agree with this premise, at least in the abstract. Let us suppose for a moment that there did exist a policy at Rome favoring the relegation of prostitution to the back streets. How would this be implemented in a town like Pompeii? More importantly, just what moral code was our Roman vice squad supposed to enforce? Here are, in summary, some of the more plausible reactions upper-class Romans may have had to prostitutes and brothels in their midst. One is not to see them at all or to see them only in a light that asserted the viewer’s dignity in contrast to what he or she deemed pathetic and ridiculous. Another is to view brothels as manifestations of Hellenistic luxury, whether for good or ill, but with the edge removed; in other words, to view them through a romanticizing or fantasizing lens. The third possibility is that Romans reacted to brothels with outright disapproval, resentment, and indignation. All three reactions are possible, and no one reaction precludes the possibility of the others. Only the third could have led to a campaign of moral zoning, and this one is the least well attested and, in my opinion, the most unlikely for the ancient Romans.<sup>123</sup>

For what it is worth, the dream-interpreter Artemidorus holds that encountering prostitutes in a dream is utterly and unreservedly auspicious, while brothels themselves are almost always a bad sign.<sup>124</sup> There is no guaran-

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122. Reynolds, *Economics of Prostitution* (1986) 120. On police discretion and its implications in the implementation of policy, see Marx, “Ironies of Social Control” (1981). On the law-abiding tendencies of Nevada brothels and the reasons for these, see Symanski, “Prostitution in Nevada” (1974) 375.

123. Compare the ideal function of the police force in nineteenth-century Britain: “[t]he constables’ [sic] role was to act as a ‘domestic missionary,’ translating and mediating bourgeois values in working-class communities, which historians describe as a radical effort to remake working-class culture and to root out the traditional social and sexual habits of the poor” (Mahood, *Magdalenes* [1990] 120).

124. Artemid. 1.78, 4.9, with the minor qualification (which rather proves the rule) that dreaming of being able to leave a brothel is a good sign. If someone dreams his wife is a prostitute in a brothel (and is wearing purple clothing!), this simply signifies the husband’s profession, especially if the profession is something shameful, like collecting taxes: 4.42.

tee that what is valid in a dream also holds in actual experience, though this is certainly true for the inauspiciousness of brothels in real life, as we saw in chapter 3.<sup>125</sup> At a minimum, the evidence of Artemidorus makes it difficult to argue for the third option.

Private law and public regulations placed limits on the ability of property owners to dispose of their urban real estate as they pleased, but these limits were small in number and narrow in scope.<sup>126</sup> These rules dealt not only with threats to the safety of persons and property, such as the threat of fire, but also with what we might describe as aesthetic or quality-of-life concerns, such as the proper height of buildings, the regular flow of water, the integrity of joint structures, access to light, and even the preservation of the view. Public regulations, where they existed, were exclusively oriented toward issues of safety, especially the threat of fire, whereas for all other issues it was left to neighbors to enforce or even to create in the first place liability for infringements. No evidence exists, for example, of an urban servitude designed to prevent or allow operation of a business that might have been deemed simply undesirable, such as a brothel or *popina*, but the important point is that at most this was an area of the law governed by private arrangement, not by the intervention of the state, which tended to give property owners fairly free discretion.

Indeed, scholars have noticed that the Romans lacked law that repressed what we consider to be offenses against public decency.<sup>127</sup> The delict of outrage (*iniuria*), though it might under certain circumstances be used to punish the expression of *turpia verba* (obscene language), was framed as an offense against individual victims, not the community as a whole, which did, of course, maintain an interest in its enforcement.<sup>128</sup> Partly for this reason, we cannot be absolutely certain about how the Romans conceived of such offenses, apart from what they regarded as breaches of upper-class decorum.<sup>129</sup>

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125. The heft of Artemid. 1.78 (4.9 refers back to this passage) seems to concern a visit to the brothel, and not simply the brothel itself.

126. See for the material in this paragraph especially Rainer, *Bestimmungen* (1987); also Saliou, *Lois des bâtiments* (1994), with the comments of Scarano Ussani review of *Lois des bâtiments* (1998).

127. Cipriani and Milano, "Atti osceni" (1996) 106.

128. On *iniuria*, see Kaser, *Privatrecht* 1<sup>2</sup> (1971) 623–25. For repression of *turpia verba*, see Ulp. D. 47.10.15.21. That this delict was used against prostitutes soliciting clients seems implausible to me.

129. See, for example, Cic. *Fam.* 9.22 (which suggests that great differences of opinion existed on this subject), *Off.* 1.126–28, with Meyer-Zwiffelhofer, *Phallus* (1995) 24–48; Dyck, *Commentary on Cicero, De Officiis* (1996) 300–309. See also Cipriani and Milano, "Atti osceni" (1996) esp. 123. I would amend their analysis of Tac. *Ann.* 15.37.3, so that the *gestus motusque obsceni* of the women at Nero's party are made not just by the prostitutes but by their notional

Indecent behavior on the part of members of the lower orders was to be expected.<sup>130</sup> However deplorable, this behavior was not punishable per se under the law.<sup>131</sup> One way of putting the point, at the risk of oversimplification, is that for the Romans, above all for Roman women, what mattered was not where you were, but who you were.

Also puzzling is the lack of a coherent legal position on nuisance-abatement. In general, modern doctrine on the subject allows for relatively easy recourse against those whose actions are a source of discomfort to their neighbors. This has even proved, within limits, effective against brothels, as noted above. Rome had no such doctrine. There the operation of a brothel would have had to produce actual physical damage to a neighbor's property in order to ground an action under the *lex Aquilia*, a theoretical possibility rendered even more remote by the evident exclusion from liability of loss resulting from the normal use of property.<sup>132</sup> A famous juristic text shows that, for members of the Roman elite, brothels operating on their urban properties was quintessentially a matter of business as usual.<sup>133</sup> As we saw in chapter 2, no one was in a better position to profit from the sale of sex than they were.

### “SEX CLUBS”

As I have shown so far, the evidence makes it difficult to argue for a policy of zoning brothels. This conclusion is supported, in my view, by the recent linkage demonstrated by Guzzo and Scarano Ussani between explicit representations of actual, that is nonmythological, persons engaged in sexual acts and

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opposites and, in this context, mirror images, namely, the respectable women stationed on the other side of the pool of water. In the eyes of the historian, it is the conjuncture of the two types of women that gives real offense

130. See the comments of Edwards, *Politics of Immorality* (1993) 190–91, who points out that the upper classes largely discounted bad behavior from their inferiors. What really caused them concern was similar behavior on the part of members of the elite. See also Meyer-Zwiffelhofer, *Phallus* (1995) 46.

131. So Ovid can write that the owner of the prostitutes seen by the Vestals goes unpunished: Tr. 2.311–12. Whatever the man's status, I think it fair to assume that the prostitutes went unpunished as well.

132. See Johnston, *Roman Law in Context* (1999) 71–72. Johnston, 75, cites a text suggesting that, by analogy to water, smoke from a smelly cheese factory might be regulated by servitude: Alf.-Aristo-Ulp. D. 8.5.8.5. In other words, in the absence of private agreement to the contrary, damages might be sought. There is no evidence that noise—whether from baths, brothels, or other establishments—ever received such treatment at law: Johnston, 76. To be sure, some businesses deemed (ob)noxious tended to be located on the periphery of Rome: see n. 53 above.

133. Ulp. D. 5.3.27.1 with McGinn, *Prostitution, Sexuality and the Law* (1998) 328–29.

the practice of prostitution in brothels and other venues of public resort.<sup>134</sup> When such representations do appear in private dwellings, they more often than not are found in slave quarters or areas of the house separate from the master's own living and recreational/hospitality areas. The authors, with some justification, suggest that these facilities, which were decorated like brothels and which were often equipped with a separate side entrance, functioned precisely as brothels.<sup>135</sup> This is an attractive hypothesis, especially when the crib or brothel had not only separate access from, but no direct physical access to, the *domus* itself.<sup>136</sup>

In cases, however, where there was access to the *domus* and especially no independent entry, such as the House of the Vettii, the hypothesis of on-site sale of sex seems more doubtful. High-status Pompeians might well find a way to tolerate a brothel on their property, even one that was right next door, but not one in their own *domus*, even if it was located in the slave quarters. Given the social animus and legal disabilities directed against pimps, operating a brothel in the *domus* might be a little risky for anyone with even a pretension to social respectability. If entry was possible through the servants' entrance, the risk might be mitigated, though perhaps not in cases where there was direct access to the *domus* itself.

To be clear, there are three possible configurations and two possible uses. Where the erotic art in question was in a part of the house accessible only from the street, this was quite possibly a brothel. Where there were both internal and external means of access, a brothel seems less likely. Where there was only internal access, a brothel is very unlikely. But then to what use were such rooms put?

What we have in some or all of the houses in question is not a brothel in the commercial sense, but rather a private "sex club."<sup>137</sup> These were designed to reproduce the atmospherics of actual brothels, down to the details of artistic decoration. The phenomenon represents another instance of the importation of public elements into private dwellings.<sup>138</sup> It is not, of course, the case that these houses were real (i.e., commercial) brothels, or that they attest to a

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134. Guzzo and Scarano Ussani, *Veneris figurae* (2000) 9–35. The linkage, as argued in chap. 4, is not airtight, but it is sufficient to demonstrate a tendency or preference.

135. Guzzo and Scarano Ussani, *Veneris figurae* (2000) 31–33.

136. The examples given are the cribs at 7.13.15 and 16 and the brothels at 1.10.5 (no. 5), 7.3.26–28 (no. 19), 7.4.44 (no. 21: doubtful), 7.9.32 (no. 25), 9.5.19 (no. 36): Guzzo and Scarano Ussani, *Veneris figurae* (2000) 31 with n. 130.

137. I employ this term for lack of a better alternative, having canvassed "private brothel," "rumpus room," and others. Its modernizing flavor dictates the use of quotation marks.

138. This phenomenon is well demonstrated by Wallace-Hadrill, *Houses and Society* (1994) 17–37.

kind of “private” prostitution that existed alongside the commercial. Admittedly, this idea seems difficult to accept, particularly if we postulate that on certain occasions the services of actual prostitutes were sought for these places, as seems likely. But I believe that it holds true, since a requirement for status as a true brothel was the indiscriminate admission of the public, a fact Caligula seems to have understood very well, when he installed a brothel on the Palatine in Rome.<sup>139</sup>

I do not mean to imply here that a Roman could not strive—more or less successfully—to reproduce the ambience of a brothel in his private home. This was achieved by a man named Gemellus, who hosted a dinner party with some rather high-profile guests in 52 B.C., which may have helped set the precedent for the Pompeian “sex clubs”:

Val. Max. 9.1.8:

Aeque flagitiosum illud convivium, quod Gemellus, tribunicius viator, ingenui sanguinis sed officii intra servilem habitum deformis, Metello Scipioni consuli ac tribunis plebis magno cum rubore civitatis comparavit: lupanari enim domi suae instituto, Muciam et Fulviam, cum a patre tum a viro utramque inclitam, et nobilem puerum Saturninum in eo prostituit. probrosae patientiae corpora, ludibrio temulentae libidini futura! epulas consuli et tribunis non celebrandas sed vindicandas!

*Just as scandalous<sup>140</sup> was that dinner-party which Gemellus, a messenger for the tribunes who was of free birth but disgraceful, below the bearing of a slave, in his behavior toward his superiors,<sup>141</sup> staged for the Consul Metellus Scipio and the Board of Tribunes of the Plebs, to the great embarrassment of the community. What he did was to set up a brothel in his house, in which he prostituted Mucia and Fulvia,<sup>142</sup> both women distinguished not only by their fathers but by their husbands, as well as a well-born boy named Saturninus.*

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139. See McGinn, “Caligula’s Brothel” (1998) and chap. 1.

140. The previous anecdote, at Val. Max. 9.1.7, deals with Clodius’s misconduct in regard to the Bona Dea episode. For the significance of this sequence of anecdotes for the passage under discussion, see below in the text.

141. Cf. the translation of Shackleton Bailey, *Valerius Maximus* 2 (2000) 301, who understands Maximus’s objection here as connected to Gemellus’s position as a *tribunicus viator*: “. . . but by employment base below servile condition. . . .”

142. Shackleton Bailey, *Valerius Maximus* (2000) 300 n. 8 prefers, with others, to read the names of Mucia, the daughter of Scaevola Augur and ex-wife of Pompey, and Fulvia, of undistinguished parentage but married in turn to Clodius, Curio, and Mark Antony, in place of those of Munia and Flavia, as transmitted by the manuscripts. For a defense of the latter, see Bauman, *Women and Politics in Ancient Rome* (1992) 239 n. 8.

*Bodies shamefully compliant, destined to be the sport of drunken lust! Banquet not fit for enjoyment by a Consul and Tribunes but for punishment!*

We can infer from this passage that it was acceptable, at least for some members of the apparitorial *curiae*, to attempt to curry favor with the magistrates they served by entertaining them, just not with the kind of party described here. That is the point of Maximus's criticism of Gemellus's sense of *officium*,<sup>143</sup> and not that Gemellus's position as *tribunicus viator* was below slavish, which even as hyperbolic moral criticism or mere snobbery goes too far. Though about three-quarters of the *viatores* known to us were freedmen, some were equestrians or municipal officials. They were on the whole an upwardly mobile group, a number of whom became quite wealthy,<sup>144</sup> and it is worth noting that Gemellus himself, about whom nothing else is known, is credited by the author with having some version of an upper-class house (*domus*). Impugning such men as a gratuitous piece of upper-class snobbery might make a certain amount of sense,<sup>145</sup> but it is hard to see why they should be ranked below slaves for this purpose. Maximus is instead interested in what this incident shows about the corruption of relationships between social superiors and inferiors in the late Republic. In his view, Gemellus had a very perverse view of his responsibilities toward the tribunes he served as a messenger.

Pimping for the tribunes was, in short, considered inappropriate. This is where Gemellus's slavishness comes in. What exercises Maximus the most, however, is not the pimping, or even the installation of a brothel in the private home, but the alleged prostitution of persons of high status. For this reason, the excellent editorial emendations of the women's names from the obscure Munia and Flavia of the manuscript tradition to the better-known Mucia and Fulvia, already plausible on other grounds, acquire some further justification. The higher the status, the greater the outrage at the allegation.

The substitutions also make sense in light of Mucia's and Fulvia's connec-

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143. *Officium* in the sense of duty/favor performed by a socially subordinate person to a superior hardly exhausts the meaning of this word in the context of Roman patronage: see Saller, *Personal Patronage* (1982) 15–21.

144. See Purcell, "Apparitores" (1983) 152–54, with the case histories of the *tribunicii viatores* Geganius Clesippus and Julius Salvius at 140–41 and 163, respectively.

145. It is perhaps less gratuitous if we accept the argument that Maximus was himself a down-on-his-luck aristocrat, even a patrician: see Skidmore, *Practical Ethics* (1996) 113–17. Such a person might well be expected to resent the ambition of a social climber like Gemellus, but unfortunately the precise social status of our author remains a matter for speculation.

tions by marriage to prominent *Populares*.<sup>146</sup> Maximus seems to be mining in this section of his work a vein of anti-Popularist tradition, attributing various kinds of sexual depravity to *Populares*. He begins with the notorious outrage (“*famosa iniuria*”) inflicted on well-born youths attributed to Scribonius Curio,<sup>147</sup> continues with Clodius’s embroilment in the Bona Dea scandal, which evidently necessitated the bribing of jurors at Clodius’s trial for *incestum* (“impurity”)<sup>148</sup> through the prostitution of women and young men of respectable status at a high price, and then the passage under discussion, and finally culminates with the worst of the lot, Catiline, whose “especially criminal lust” for Aurelia Orestilla led him to poison his own son.<sup>149</sup> What concerned Maximus was not the cause of the *Optimates* versus the *Populares*, a struggle which he must have viewed as a dead letter, but the theme of sexual corruption in high places and the political overtones of that corruption.<sup>150</sup> The status of the alleged “prostitutes” actually makes it less, rather than more, likely that they participated in Gemellus’s brothel party, given the conventions of Roman moral discourse. The Romans were all too ready to level the charge of “prostitution” against women and men of high rank in the event of sexual impropriety, real or imagined.<sup>151</sup>

Skepticism about the identity of the participants does not, however, enjoin skepticism about the event itself, which seems too rich in incidental detail (e.g., the name and professional position of the host are given even though neither Maximus nor his source can have cared very much about

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146. For their husbands, see n. 142. As for the *nobilis puer* Saturninus, some have connected him with the family of the Appuleii Saturnini, which suggests a fine *Popularis* pedigree in the person of the erstwhile ally of Marius and tribune of 100 B.C., L. Appuleius Saturninus. Shackleton Bailey, *Valerius Maximus* 2 (2000) 301 n. 9, argues him however to be a Sentius Saturninus, grandson of the praetor of 94 B.C., or his brother, that is, from a family that was much less politically prominent, but which reached the consulship under Augustus, and one which evidently had connections to *Popularis* politicians like Curio and Antony. See Shackleton Bailey *ibid.* and the references to his own work he provides.

147. Val. Max. 9.1.6.

148. Val. Max. 9.1.7: “the services of women and young men of high status were bought at a large sum and paid out to members of the jury in place of a bribe” (“... noctes matronarum et adulescentium nobilium magna summa emptae mercedis loco iudicibus erogatae sunt”).

149. Val. Max. 9.1.9: “. . . praecipue Catilinae libido scelestae. . .”

150. See the discussion of political figures from the late Republic, especially Marius, Cinna, and Sulla, by Bloomer, *Valerius Maximus* (1992) 147–84.

151. On such allegations made regarding women of high status, such as Julia the daughter of Augustus and Messalina the wife of Claudius, see McGinn, *Prostitution, Sexuality, and the Law* (1998) 168–70. For men, see the invective launched by Cicero against Antony and Scribonius Curio at *Phil.* 2.44–45, with McGinn, 159.

either in their own right) to be pure invention. If Gemellus did, in fact, set up a *lupanar* in his house, it is worth asking the following questions: Just how did he go about this? Did he install masonry beds? Commission erotic paintings? Scratch a few “hic bene futui” (“I had a good fuck here”) and/or price-graffiti on the wall?

Suetonius, when he describes Caligula’s establishment of a brothel on the Palatine, provides a clue as to what decorative choices Gemellus might have made. He writes that the imperial *lupanar* consisted of a series of small rooms (*cellae*) that were furnished in a manner appropriate to the high-class setting.<sup>152</sup> The latter detail suggests masonry beds were not present, but rather something much more luxurious. Of course, we cannot say for sure that Gemellus’s house was decorated in a similar fashion, since it could not, it seems fair to say, aspire to the standard of luxury attained by Caligula’s palace. We can, however, tell from Suetonius’s description that what mattered in designing a *lupanar* (chapter 7) was not the inclusion of the masonry bed, which was characteristic of some Purpose-Built Brothels, but the division of space into small rooms or cubicles. As a consequence, we cannot doubt that Gemellus resorted to this arrangement, and we might further speculate that erotic art was another feature of his brothel-in-a-house. We cannot, however, ascertain whether it included erotic graffiti, smoking lamps, patchwork curtains, and the rest. Instead, we can only remind ourselves of the extreme difficulties inherent in the evidence and criteria available to us for the purpose of identifying Roman brothels.

One way out of the present dilemma is to postulate that Gemellus’s establishment, whoever actually staffed it, was a pretend brothel and not a real one. The same is true of the Pompeian “sex clubs,” which were, I argue, intended to reproduce the ambience of the brothel without necessarily duplicating its features in exact detail. Juvenal implies that a person might accomplish this without trying very hard, let alone deliberately attempting to establish something resembling an actual *lupanar* in the home. The satirist criticizes some forms of after-dinner entertainment popular among the elite, such as the lyrics of songs performed by troupes of dancers from Cadiz, as too obscene for the brothel-prostitute, as if that were really possible.<sup>153</sup>

In the opinion of some Romans, simply inviting actual pimps and prostitutes to mix with respectable guests was enough to raise the prospect of a

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152. Suet. *Cal.* 41.1, with McGinn, “Caligula’s Brothel” (1998) esp. 95.

153. Iuv. 11.162–78 (165–66 are spurious: see chap. 4).

brothel-in-a-domus.<sup>154</sup> We find, for example, Cicero castigating several of his enemies, such as Verres, Piso, and Antony, for this practice.<sup>155</sup> The evidence suggests that the link between the brothel and the upper-class *domus* was never far from the imagination either of Roman moralists or of those who chose to ignore their precepts. Though indirect, the evidence is valuable in regard to how the Romans themselves might have viewed the “sex clubs,” as found at Pompeii. In fact it is difficult to see how the moralizing directed against the brothel-in-a-domus could not apply to “sex clubs” with equal force. It is just that the former involved members of the elite in some way, thus winding up in the literary record. All the same, visiting one might have been viewed as less dishonorable than visiting an actual brothel, something which upper-class Romans did only at risk to their reputation.

It is worth remarking that these private “sex clubs” were, as far as we know from Pompeii, not very numerous. Once the possible examples of true brothels included in appendix 1 are excluded, the following examples are left as possibilities (see figs. 18 and 19, as well as maps 4 and 5):<sup>156</sup>

- 1.9.1–2. *Casa del Bell'Impluvio*.<sup>157</sup> In *cubiculum* 11, just off the atrium, the only one of three paintings to survive (now itself badly damaged) shows a man and woman in bed evidently preparing to make love. Though the painting does not show actual lovemaking, it seems more explicit than allusive in nature.
- 1.13.16.<sup>158</sup> In summer *triclinium* (dining room) 3, a poorly preserved painting shows a man and woman making love on a bed.

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154. For negative attitudes on the socializing of upper-class Romans with prostitutes, see Suerbaum, “Sex und Crime” (1993) esp. 98.

155. Cic. *Verr.* 2.3.6, 2.4.83, (cf. 2.5.81–82, 137), *Red. Sen.* 11, 14, *Phil.* 2.15, 62–63, 69. In the last passage, Cicero accuses Antony of converting his bedrooms into *stabula* and his dining rooms into *popinae*. We may interpret this passage as suggesting the rooms were physically made over, but I think the point remains that bad company makes a home a brothel. At any rate, it is interesting to note that Cicero, like Maximus and Suetonius, does not bother to throw erotic art in anyone’s face in order to make this argument. See Treggiari, “Upper-Class House” (1999) 49–50. For what I take to be an echo of *Phil.* 2.69, see *HA Pesc.* 3.10.

156. For the moment I look past the distinction drawn by Guzzo and Scarano Ussani, *Veneris figurae* (2000) 33, between “allusive” and explicit depictions of sex. The former occur (at most) in two of the examples given, the *Casa del Bell'Impluvio* and the House of Iucundus.

157. See Clarke, *Looking at Lovemaking* (1998) 148–53; Guzzo and Scarano Ussani, *Veneris figurae* (2000) 33.

158. See Clarke, *Looking at Lovemaking* (1998) 187–94; Guzzo and Scarano Ussani, *Veneris figurae* (2000) 25–26, 29–31.

- 5.1.10, 23, 25–27. House of L. Caecilius Iucundus.<sup>159</sup> A painting on the wall of the peristyle shows a man and a woman on a bed either just before or after lovemaking. To the right of the painting is a bedroom with double alcoves that has paintings of Mars and Venus, Bacchus, and Erato. These evidently were intended to continue the theme of amorous pleasure.
- 6.14.41–42. *Casa dell'Imperatrice di Russia*. See below in the text.
- 6.15.1, 27. House of the Vettii.<sup>160</sup> The secluded Room x<sup>1</sup>, reached through a servants' *atrium* (off the main *atrium*) and then through the kitchen has three wall paintings of heterosexual couples making love in bed. Two of these are still quite legible. (For a glimpse of one of these, and the room itself, see figs. 18 and 19.)
- 9.8.3, 6, a. *Casa del Centenario*.<sup>161</sup> Room 43, with its two erotic wall paintings, was very secluded indeed. To reach it, one had to pass through an *atrium*, down a corridor, through a *triclinium* (Room 41), and then an antechamber (Room 42). The paintings each show a heterosexual couple making love in bed.
- 9.12.9.<sup>162</sup> This recently, only partially excavated house has a *cubiculum* x preceded by a small antechamber. *Cubiculum* x has three paintings of varying erotic content, including a badly preserved depiction of a man and woman making love on a bed.

As we saw in chapter 4, sexual stimulation might not serve as the only, or in some cases even the primary, purpose behind erotic art, even for some explicit examples. As in the case of other kinds of art, erotic art could function at least in one sense as a social marker—it asserted a house-owner's aspirations to participation in a widespread and easily recognizable aspect of elite culture. Partly for this reason, and not simply for its “allusive” quality, we may question whether the presence of the erotic painting in the House of Iucundus is enough to warrant the argument that the bedroom next to the painting was a “sex club.” By the same token, the *triclinium* in the small house at 1.13.16 seems a relatively weak case, though here the erotic representation is explicit.

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159. See Clarke, *Looking at Lovemaking* (1998) 153–61; Guzzo and Scarano Ussani, *Veneris figurae* (2000) 33.

160. See Clarke, *Looking at Lovemaking* (1998) 169–77; Guzzo and Scarano Ussani, *Veneris figurae* (2000) 26, 31–35.

161. See Clarke, *Looking at Lovemaking* (1998) 161–69; Guzzo and Scarano, *Veneris figurae* (2000) 26–27, 33.

162. See Guzzo and Scarano Ussani, *Veneris figurae* (2000) 33; Varone, “Programma” (2000).

The rooms from the *Casa del Bell'Impluvio* and the last partially excavated house at 9.12.9 are more likely examples of private "sex clubs," while the most probable examples of all are the rooms from the *Casa del Centenario* and the House of the Vettii. The relative seclusion within each house of the last two instances was perhaps grounded less in a desire for privacy than in a desire to advertise one's wealth and status. The possibility of placing such a room in a relatively remote location meant the owner had a great deal of space of which to dispose. A friend allowed access to such an intimate part of the house would be made aware of his own close relationship to the owner.

An interesting distinction emerges all the same between our two most prominent examples. The architectural and decorative context of the *Casa del Centenario* exudes an aura of luxury and refinement, while that of the Vettii does quite the reverse. The latter, in a sort of "slumming" manner, appears more faithfully to reproduce the atmospherics of the brothel. The former provides a salutary reminder that it is reductive to assume that these facilities and others like them were used only for sex. In fact the rooms in Roman houses could be quite flexible in their uses, and these "sex clubs" were presumably no exception. The principle of multiple use is more difficult, though not impossible, to argue for Room x<sup>1</sup> in the House of the Vettii, which stands forth as our firmest example of a "sex club." For this reason, I have included two photographs of this establishment (see figs. 18 and 19). The popular theory that this room was a retreat allotted to a favored cook does no real harm to its standing as a "sex club," though we should be prepared to concede that he must have been a very good cook.

These six examples, even if all can be credited, probably did not exhaust the number of private "sex clubs" in Pompeii. Guzzo and Scarano Ussani list eight examples of explicit erotic paintings now in the Naples Museum whose provenance is unknown. One of these evidently came from the *triclinium* 7 facing the *atrium* in the *Casa dell'Imperatrice di Russia* (6.14.41-42), which might therefore count as a seventh possible example.<sup>163</sup> At most, the evidence would allow us to posit fourteen such clubs. This is, of course, if we assume that all of the detached paintings in the Naples Museum derived from different locations. Other paintings may have been lost, destroyed before they were recorded, or never found. It would be rash to assume that there were very many of these, however.

Whether we agree with Guzzo and Scarano Ussani that brothels operated in the context of private homes or adopt my view that these establishments

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163. Guzzo and Scarano Ussani, *Veneris figurae* (2000) 27-28.

were private “sex clubs,” the principle of moral zoning seems fatally compromised. Whether members of the local elite exploited persons they owned and property they inhabited in the service of prostitution, or whether they utilized their resources to mimic this practice in pursuit of pleasure for themselves and their guests, or even for members of their domestic staffs, the result is very much the same. Certain elements of the Pompeian upper classes were deeply implicated in prostitution, at a minimum through their attempt to reproduce its ambience in their private dwellings. Where they refused to draw a clear and unambiguous line between the public *lupanar* and aristocratic *domus*, we should hesitate to do so ourselves.