

TIBERIUS AND THE *LEX PAPIA POPPAEA*

A clause of the *lex Papia Poppaea* extended from the six months laid down by the *lex Iulia de maritandis ordinibus* to eighteen the time within which divorcees were to remarry.¹ It is the aim of the present paper to investigate the possible reasons for this change in the law.

The fact that the time was extended in the case of widows as well as of divorcees suggests that the general tendency was towards the relaxation of the provisions of the existing law; it was no doubt unpopular among wide circles in Rome,² a fact which in itself may be sufficient to account for the lengthening of the legal interval in case of divorcees. Yet the limit of one year within which widows had to remarry granted by the *lex Iulia* seems to have taken into account the customary *annus lugendi* observed by them;³ it is possible that considerations of an analogous nature were conducive to the extension of the waiting time for divorcees by the *lex Papia Poppaea*. In fixing the maximum time limit for remarriage at six months the *lex Iulia* in some cases, viz. when the divorce took place during the first three months of a pregnancy, rendered the remarriage of pregnant divorcees statutory. Now our evidence shows that palingamous unions involving pregnant divorcees, and possibly widows, were regarded as scandalous, if not legally dubious. Plutarch (*Pomp.* 9.2–4; *Sull.* 33 3–4) lists as a tyrannical act of Sulla that he and his wife Metella persuaded Pompey to divorce Antistia and marry Metella's daughter Aemilia though she was married and pregnant at the time; shortly after the marriage she died in childbirth.⁴ But of course the case that attracted most notoriety and still scandalized

¹ Ulp. *epit.* 14: *Feminis lex Iulia a morte viri anni tribuit vocationem, a divortio sex mensum: lex autem Papia a morte viri biennii, a repudio anni et sex mensum.*

² cf. H. Last, *CAH X*, 453.

³ cf. A. Watson, *The Law of Persons* (Oxford, 1967) 40.

⁴ Another affair that caused much scandal at the time — not to mention the outrage of later Christian writers — was the younger Cato's divorce of Marcia, her marriage to the wealthy Hortensius, and her subsequent remarriage to Cato after Hortensius' death (*Plu. Cat. mi.* 25; *App. BC* 2.99; *Luc.* 2.329 ff. *Str.* 11.515; *Quint.* 3.5.11; 10.5.13; *Tert. Apol.* 39;

public opinion after a century and a half is that of the marriage of Octavian and Livia in 38 B.C.E., shortly after the pregnant Livia divorced her first husband Ti. Claudius Nero.⁵ That there must have been religious doubts about the propriety of the union is shown by the fact that the pontifical college was approached in the matter.⁶ According to Dio Cassius the reply of the pontifices stated that the marriage was proper if there was no doubt about the pregnancy — in other words, *perturbatio sanguinis*⁷ might have posed an obstacle. Yet, adds Dio, the pontifices would have given a positive reply even if it were not justified: probably the same is meant by Tacitus' poignant phrase *consultum per ludibrium pontifices*.

However, despite the apparently satisfactory response of the priestly college it was thought better to postpone the marriage until Livia gave birth. Though our literary sources are unanimous in the tradition that the marriage took place when Livia was six months pregnant — hence the satirical verse τοῖς εὐτυχοῦσι καὶ τρίμηνα παῖδιά — it is known that Drusus was born on January 14, 38 while the marriage of the future Augustus and Livia was celebrated three days afterwards.⁸ The unanimity of our literary tradition in face of the established fact suggests that it has vituperation at its root and that a certain social stigma was attached to the union, whatever the legal position.⁹

It is possible that the altered time limit for the remarriage of

August. *de fide et op.* 7.10; *de bono coni.* 18.21; Jerome, *adv. Iov.* 1.46; *Salv. Gub. Dei* 7.103). Plutarch alone among our authorities records that Marcia was pregnant at the time of her divorce: the fact that, despite the attacks on Cato's morals, no charges were made against him on this count seems to point to Marcia and Hortensius consummating their marriage only after her delivery (cf. *infra*).

⁵ D. C. 48.44; Tac. *Ann.* 1.10; 5.1; Suet. *Aug.* 62.2; 69.1; *Tib.* 4.3; *Calig.* 25.1; *Claud.* 1.1; Vell. 2.79.1; 95.1; Porphy. *ad Hor. c.* 4.4.27-28; *epit. Caes.* 1.23.

⁶ Though there is no evidence to this effect it is just possible that these doubts were connected with Octavian's being a patrician (as was Livia by birth) and the likelihood that their marriage took the form of *confarreatio*.

⁷ On this concept and the problems connected with it in Roman, and especially in Rabbinic Law see R. Yaron, *Ad secundas nuptias convolare, Symbolae...M. David* (Leiden, 1968) I,263ff.

⁸ See the *fasti Verulani* on Jan. 14 and 17 (easily accessible in Ehrenberg and Jones, *Documents...of Augustus and Tiberius* (Oxford, 1955) pp.45, 46) and Suet. *Claud.* 11.3; cf. R. Seager, *Tiberius* (London, 1972) 10 ff.

⁹ The entire body of evidence together with discussion also in *PIR*² C 857 pp. 195 ff. In my mind there can be no doubt that the correct facts are given by the epigraphic rather

divorcees in 9 C.E. was connected with yet another matrimonial affair in the family of the Princeps. The death of Agrippa in 12 B.C.E. involved important changes in the household of Augustus, who was determined on ensuring a smooth succession to the position of Princeps: until Agrippa's two sons, Gaius and Lucius, grew up and assumed the roles their grandfather had destined for them, a new husband had to be found for Julia, Augustus' only daughter, to watch over the boys' future and education. This husband was most obviously to be sought, and eventually found, in Tiberius, the eldest son of Augustus' wife Livia, and a man of considerable experience already in public life. He was married at the time, to Vipsania Agrippina, Agrippa's daughter: although the marriage has been arranged when the girl was only a year old it turned out to be unexpectedly happy. Nevertheless Tiberius dutifully divorced the beloved Vipsania, who was to be married in her turn to Asinius Gallus, Pollio's ambitious son, and was engaged to Julia, for whose morals he seems to have cared little.¹⁰ There is another aspect of these well-known transactions which seems to have been overlooked, though it is relevant to our inquiry. It appears that at the time both women concerned were pregnant, Julia, to be delivered of Agrippa Postumus, and Vipsania, whose child apparently did not survive. It is possible that this fact can explain two somewhat curious points pertaining to the proceedings. First, though Tiberius was engaged to Julia shortly after Agrippa's death, and, as it stands to reason, immediately after he divorced Vipsania, it was not until his return from the Pannonian campaign late in the next year — i.e. some eighteen months after Julia was bereft of her husband — that the wedding took place.¹¹ Indeed Suetonius tries to explain this fact away, once (*Tib.* 7.2) by stating that

than the literary evidence. Livia's participation in the remarriage feast (*D.C.* 48.44.3) is not a sufficient reason to deny her having given birth three days previously. Cf. also J. Carcopino, *Le mariage d'Octave et de Livie et la naissance de Drusus*, *R. H.* 161 (1929), 225 ff.

¹⁰ *Nep. Att.* 19.4; *Tac. Ann.* 1.12; *Suet. Aug.* 63.2; *Tib.* 7.1; *D.C.* 54.31.2; 35.4; 57.2.7; see also J.H. Corbett, *The Succession Policy of Augustus*, *Latomus* 33 (1974), 87 ff., who argues that Augustus had already designated Tiberius as his heir after the death of Agrippa.

¹¹ For the date of Agrippa's death (late March 12 B.C.E.) see M. Reinhold, *Marcus Agrippa, A Biography* (Geneva, N.Y., 1933) 125 ff.; of Tiberius' and Julia's wedding (after the campaign of 11 B.C.E.) see Seager, *op. cit.* 25; G.V. Sumner, *Germanicus and Drusus Caesar*, *Latomus* 26 (1967), 427 f.

the marriage was concluded *confestim* and at another place (*Aug.* 63.2) by attributing the delay to Augustus' protracted deliberation in the choice of a new husband for his only daughter. However, Tiberius' delay despite the urgency that was attached to all matters concerning the succession to the Principate can perhaps be best explained by his reluctance to marry Julia while still with child — a reluctance that incidentally does well agree with certain conservative traits of his character. Another well-known, yet interesting fact is Tiberius' life-long — and, according to one version, fatal, — hatred for Asinius Gallus, Vipsania's second husband. Obviously Tiberius' love for Vipsania and their enforced divorce may be a valid and sufficient reason for this hatred. Nevertheless it may have another aspect to it: Dio (57.2.7) tells us that Gallus, adding insult to injury, claimed Tiberius' son Drusus as his own. This claim seems plain nonsense and is, as a matter of fact, dismissed as such.¹² But a rational explanation of Gallus' boast may be given, perhaps, and so we need not assume that he uttered a patent falsehood. Gallus' remark may have related to Tiberius' second child, born after he divorced Vipsania: since that child did not survive Dio or his source may easily have taken the remark to relate to the only son of Tiberius known to him. Vipsania's second child may have been born after her second marriage took place — and, indeed, if at the time of her divorce she was still in the first third of her pregnancy this must have been so; there being no doubt that a woman in her position would obey the provisions of the *lex Iulia de maritandis ordinibus*. Thus a case of *perturbatio sanguinis* would arise, a substantial justification for Asinius Gallus' claim of paternity. These speculations gain considerable strength when one considers the only alternative explanation of Gallus' boast, namely that he was voluntarily admitting adultery, a claim which could have hardly endeared him to the author of the *lex Iulia de adulteriis coercendis*.

So far we have reviewed the personal reasons Tiberius may have had to welcome a change in the terms of the *lex Iulia de maritandis ordinibus*. The historical circumstances in which the *lex Papia Poppaea* was passed focus the attention on Tiberius and render more credible the assumption that he personally influenced the legislation.

¹² R.S. Rogers, *Studies in the Reign of Tiberius* (Baltimore, 1943) 93. For the relationship between these two men see also D.C.A. Shotter, Tiberius and Asinius Gallus, *Historia* 20 (1971), 443 ff.

After his return to grace and his adoption in 4 C.E. Tiberius spent most of his time campaigning on the northern frontiers of the Empire. In the winter of 9/10 C.E. he attained the peak of his power and influence as heir apparent to Augustus,¹³ as he proved to be the last support of the septuagenarian Princeps after the *clades Varianae*. The successful termination of the Pannonian war by the crown-prince and field-marshal stood in marked contrast to the disaster that had befallen the legions on the Rhine. Though only the *atrox fortuna* that had bereaved Augustus of heirs of his blood¹⁴ had induced him to adopt his stepson, Tiberius, as it turned out, was equal to the task of defending the Empire and carrying out Augustus' policies. No appreciation of the last years of Augustus' rule can be complete without taking into account Tiberius' role during this period. Every important decision must have been taken and every new policy formed with the understanding that ultimately it would have to be executed by Tiberius; hence the assumption is ready at hand that Augustus made sure to coordinate his decisions and policies with his destined heir. One wonders whether Tiberius' universally acknowledged adherence to his predecessor's policies¹⁵ after his accession was not due at least in part to the fact that these policies reflected his own views and preferences as well.

As long as Augustus reigned Tiberius was prominent only in military affairs. The reason seems to be that responsibility was divided to a certain extent between the Princeps and his heir apparent and Tiberius was content to wield his influence in domestic affairs behind the scenes. Possibly the train of events of which the passage of the *lex Papia Poppaea* was one can give us a rare glimpse into Tiberius' behind-the-scenes activities during Augustus' lifetime.

The successful conclusion of the Pannonian campaign and Tiberius' return must have taken place in the autumn of 9 C.E., shortly before the arrival of the disastrous news from Germany,¹⁶ which eventually caused

¹³ cf. Seager, *op. cit.* 46 ff.

¹⁴ Suet. *Tib.* 23; cf. *res gestae* 14.

¹⁵ Tac. *Ann.* 4.37: *omnia facta dictaque eius (scil. divi Augusti) vice legis observem* and cf., e.g., Seager, *op. cit.* 174 ff.

¹⁶ On this and what follows see E. Hohl, *Die Siegesfeiern des Tiberius und das Datum der Schlacht im Teutoburger Wald*, *S—B Deutsche Ak. Wiss. Berl., Gesellschaftswiss. Kl.*, (1952) 1.

his triumph to be delayed.¹⁷ The agitation for a change in the Augustan marriage-laws began at about the same time, but it is to be dated definitely after Tiberius' arrival, with which it was linked, to be sure¹⁸. Although Dio attributes the agitation to the Equites this need not have been the whole story,¹⁹ and the fact that the new law affecting the remarriage of divorcees coincided with what seems to have been a matter of some personal sensitivity to Tiberius may provide a clue to his involvement in the legislation.

As has been shown, Tiberius may have had good reasons, of a personal character, to desire a change in the terms of the *lex Iulia*: the time was ripe both for Tiberius to demonstrate that he was interested in more than defending the borders of the Empire and for Augustus to acknowledge the right of his designated heir and successor to have his say in domestic affairs. Of course there was a general desire for relaxation of the marriage-laws and probably Augustus was subjected to a fair amount of pressure in this direction: but this does not necessarily mean more than that Tiberius made good use of the general mood of the upper classes for his private ends, and that Augustus, conceivably, made a conciliatory gesture to satisfy the wishes of the Knights as well as of his adopted son.

There is no exact evidence concerning the date of the passage of the *lex Papia Poppaea* save, of course, the *terminus ante quem* of M. Papius Mutilus and Q. Poppaeus Secundus leaving office at the end of 9 C.E.: that it may have been close to this date is suggested both by the short time elapsed since Tiberius' arrival in the autumn and by the crowded events of next January, which saw him in a position of unprecedented prominence.

On January 16 Tiberius at last celebrated his victory over the

¹⁷ Suet. *Tib.* 17; on the veracity of his account as against Dio cf. Hohl, *op. cit.*

¹⁸ D. C. 56.1 ff. Hohl misdates the agitation for the *lex Papia Poppaea* to the spring of 9 C.E. This is inconceivable both because Tiberius fighting in the North could not have arrived at Rome in the spring, viz. at the beginning of the campaigning season, and because the *suffecti* M. Papius Mutilus and Q. Poppaeus Secundus entered office only on July 1.

¹⁹ Collusions between the Equites and Tiberius should not be rejected out of hand; the later careers of Sejanus and Macro were to a certain extent symptomatic of the growing influence of Equites under the Julio-Claudians.

Pannonians,²⁰ and on the same day he dedicated the temple of Concordia Augusta²¹ vowed by him in his and his late brother Drusus' name sixteen years earlier.²² It is remarkable that that day was the anniversary of Octavian's having received the title Augustus in 27 B.C.E.²³ The celebrations were concluded the next day, January 17, with the dedication of the *ara numinis Augusti* by Tiberius.²⁴ It has been noticed²⁵ that the coincidence of that date with that of Augustus' and Livia's wedding anniversary²⁶ could not have been mere chance, but rather was meant as a demonstration that Tiberius had been finally and irrevocably received into the family of the Princeps. Tiberius, only a few weeks previously, had brought to bear his influence on the terms of the *lex Papia Poppaea*, and so his prominence at the festivities on his mother's wedding anniversary must have put the final seal on the reconciliation in the Imperial family. Tiberius was not a man to forgive easily (one may remember his vindictiveness against Asinius Gallus) and his scruples and the timing of his divorce and remarriage give some idea of how much he must have resented his own mother's divorce and remarriage. The passage of the *lex Papia Poppaea*, which now eliminated the possibility that pregnant divorcees might be forced to remarry, seems to have taken into account Tiberius' susceptibilities and could have been taken by him as a tacit gesture by Augustus in acknowledgement of the justice of his views; the dedication of an altar to the Princeps on his and Livia's wedding anniversary marked Tiberius' final reconciliation and the redressing of whatever wrong might have been done in his view.

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²⁰ The date is given by the *fasti Praenestini* (Ehrenberg-Jones p. 45); the year correctly argued (with a table of alternative proposals) by Hohl, *op. cit.*; see there also for the exact nature of the victory-celebrations.

²¹ *Fasti Verulani* and *Praenestini* (Ehrenberg-Jones p. 45). Also on Jan. 1, 7, B.C.E. Tiberius linked his triumph with the dedication of a sacred precinct to Livia (D. C. 55.8.1 ff.).

²² D. C. 55.8.1 ff.

²³ Evidence in Ehrenberg-Jones p. 45.

²⁴ *Fasti Praenestini* (Ehrenberg-Jones p. 4). For the correct year and sequence of events see D.M. Pippidi, La date de l'*ara numinis Augusti* de Rome, *REL* 11 (1933), 453 ff.

²⁵ L.R. Taylor, Tiberius' *Ovatio* and the *Ara Numinis Augusti*, *AJP* 58 (1973), 188.

²⁶ *Fasti Verulani* (Ehrenberg-Jones p. 46).