



Altering Infamy: Status, Violence, and Civic Exclusion in Late Antiquity

This paper investigates the application of the legal stigma of *infamia* (disrepute) in Late Antiquity. The legal status is used as a lens through which to view the changing systemic, religious, and social landscapes between the reigns of Diocletian and Justinian, indicating the various uses and, ultimately, abuses of the status, as well as the marked consequences of expanding its definition. The use of the legal status to marginalize religious deviants in particular is inspected. This analysis reveals that the amendment of *infamia* to include heretics, apostates, and pagans signals the use of classical law to define orthodoxy and to articulate the anxiety over the pagan-Christian religious transition. The unforeseen consequences of *infamia*'s expansion were the abetment of violence in the fourth and fifth centuries. Moreover, the disqualification of religious deviants from serving on curial councils had a noticeable impact on some municipalities in the later empire, and may have created a loophole with which to avoid curial service altogether.

In 537 CE, Justinian wrote to the Praetorian Prefect, John the Cappadocian, concerning Jews, Samaritans, and heretics serving as curials and apparitors.¹ The emperor conceded that while these people were indubitably “detestable men whom our right and pure faith has not even now enlightened,” they were not exempted from their civic duties based on their religion. He did, however, maintain that these religious deviants be stripped of their *privilegia*, the protective trappings of public office, and treated like those who lived *in turpitudine*.² The established

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1. Just. Nov. 45.

2. Just. Nov. 45.pr: *respuendos homines, quibus nondum hactenus recta et immaculata fides illuxit*. Both the honors and the restrictions on the municipal elite were a source of great concern; the

privilegia of public office included protection from flogging, torture, and being forcibly taken to other provinces.³ This meant that the detestable curials and apparitors would be both legally and physically vulnerable once their rights were taken away. Heretics, pagans, and apostates had already received the perpetual brand of *infamia* (“disrepute”) in the fourth century; a legal status dating to the Republic, which deprived individuals of certain rights: bringing a *popularis actio* (“popular action”) in court, serving as an assessor, being called as a witness, and eligibility for civic office.⁴ As I will investigate, Justinian’s decision to allow *infames* to serve as curials and apparitors signifies a marked alteration in the civic capabilities of *infames* between the Republic and the sixth century. The shift also raises larger questions concerning the definition of *infamia* in Late Antiquity, Roman attitudes towards the body, and the later imposition of curial *munera*.

I. INTRODUCTION

In the Republic and early empire, legal *infamia* resulted from certain civil lawsuits, public criminal trials, or employment in specific professions.⁵ Only in the fourth century CE was the stigma applied to those who did not conform to religious standards. The amendment of *infamia* to include these religious deviants signals and upholds the well-documented anxiety over the pagan-Christian religious transition in the legal sources.⁶ Of particular interest among the schol-

earlier *Theodosian Code* transmits 192 laws (section 12.1) just governing the duties and privileges of decurions.

3. Assumedly, Justinian’s note that decurions could not *ad aliam deducantur provinciam* is a protection from abduction (cf. Augustine’s allegations that elites were snatched out of North Africa in *Ep.* 10*) rather than being sent to the mines. Just. Nov. 45.pr: *honore vero fruantur nullo, sed sint in turpitudine fortunae, in qua et animam volunt esse. Sic igitur eis de hoc dispone.* Concerning the safety of decurions from corporal punishment, see *CJ.* 2.11.5. Regarding the classification of persons as *in turpitudine*, Ulpian notes that in the Praetor’s Edict (preserved in the *Digest* of Justinian), those who were *in turpitudine notabiles* (“disgraced persons due to their turpitude”) were in the “second class” of persons delineated by the edict, i.e., those that could not represent others in legal actions (Ulp. *Dig.* 3.1.1.5). This class included any man who *corpore suo muliebria passus est* (“suffered womanly things with his body”), men condemned on capital charges, and men who were hired as beast fighters for the arena (*ibid.* 6).

4. Those found guilty of *haeretici dogmatis* (“heretical dogmas”) were to sustain *infamia*, according to the edict of 380 (*CTh.* 16.1.2.1=*CJ.* 1.1.1.1), and elites with any rank found guilty of heresy and performing sacrifices (i.e., acting as a pagan) were given *infamia* in 391 (*CTh.* 16.7.5). Manichaeans were declared to be *infames* and *probrosi* in 372 (*CTh.* 16.5.3), and their *infamia* was reiterated in a law of 381 (*CTh.* 16.5.7). Donatists experienced *infamia* from 414 (*CTh.* 16.5.54). Jews were often associated with pagans, heretics, and apostates and granted like disabilities (*CTh.* 16.7.3.1 [383]). Caroline Humfress notes the inferred *infamia* attached to Jews in this law (2008: 138n.35).

5. Crook 1967: 83 argues it was likely applied to all those convicted in criminal trials. The jurist Macer suggests it could only follow a crime tried in public court (*iudicium publicum*) and certain other *actiones*: robbery, theft, violence, and *iniuria* (*Dig.* 48.1.7).

6. Just to name a few: MacMullen 1997; Errington 2006: 171–260; Noethlichs 2006.

arly approaches to this period is James Rives' demonstration that Roman laws on magic shifted from focusing on detrimental actions in the Republic to focusing on religious deviance in Late Antiquity.⁷ In this paper, I concentrate on the expansion of *infamia* from the fourth to sixth centuries, and argue that—in a similar mode to laws on magic—laws pertaining to *infamia* expanded from moral and social concerns to include religious ones. I use the status as a lens through which to view the changing systemic, religious, and social landscapes between the reigns of Diocletian and Justinian, indicating the various uses and, ultimately, abuses of the status, as well as the marked consequences of expanding its definition.

Although numerous scholars have distinguished the changing concepts of citizenship and status within the later Roman empire, none have fully explored the shifts in the application of legal *infamia* or the implications of this expansion.⁸ While largely overlooked, the legal augmentation of the status's scope represents one of the major trends in the later empire, and, as it will be shown, had many implications both intentional and unintentional. First, in order to delineate the nature and gravity of the status, a synopsis of the definition, codification, and disabilities carried by legal *infamia* is provided.⁹ While it has been proposed that the status was detrimental only to the elite and did not play a large part in the day-to-day lives of disreputable persons, legal and literary evidence in fact demonstrates that there was a judicial and physical vulnerability connected to *infamia* from its beginnings in the Republic that placed *infames* at a disadvantage in court and made them susceptible to violence.¹⁰

Second, a section will indicate the imperial use of the status in Late Antiquity. Perhaps harkening back to the example provided by Augustus's redefinition of *infamia*, fourth century emperors used it to communicate the censorial role of the emperor and to delineate shameful behavior. Moreover, beginning with Diocletian, *infamia* began to be used in a novel way: in order to reify religious beliefs and marginalize religious deviants. By the end of the fourth century, the deprivation of honor was regularized as the initial step for marginalization. The use of *infamia* to proscribe religious sects continued throughout the fourth century, but would have unforeseen repercussions. A third section then investigates one

7. Rives 2003. Rives notes that magic should be retained as a heuristic category, and claims that, "it is the only term fluid enough to function as an inclusive rubric for this shifting set of concerns" (313).

8. For a close reading, see Sherwin-White 1973. For the changes introduced by Caracalla, see especially: 275–87. For the *constitutio Antoniniana* and the expansion of citizenship: Wolff 1976. Also note Millar 1983: 76–96 and Garnsey 2004: 133–55. Regarding disrepute: the work of Humfress 2008: 128–42 has begun to investigate the issues of citizenship and heresy, as does Lo Nero 2001: 146–64.

9. Only a cursory examination of *infamia* as it appears to have been applied in the Republic and Principate is offered in this article. For expansive studies, see Greenidge 1894 and Kaser 1956.

10. For the view of *infamia* as an elite penalty with little day-to-day effect, see Riggsby 2010: 73–74, Knapp 2011: 280–81.

such unintended consequence of marginalizing heretics, pagans, and apostates as *infames*: susceptibility to violence. I contend that the lack of legal redress put these newly outcast *infames* at corporal risk, and may have contributed to the increase in violence—especially against heretics—within Late Antique cities. Additionally, the often ambiguous constructions of heresy and orthodoxy contributed to a new sense of extra-legal license among the populace, a fact that facilitated the shifting of judgments from the courtroom to the forum. It will therefore be important to consider the implications of *infamia* in explaining the rise in popular violence from the fourth century onward.¹¹

After investigating the social repercussions of expanding the definition of *infamia* to include religious deviants, a final section explores the civic impact. The status traditionally disqualified men from serving in key civic positions within Late Antique cities; however, there was much debate over this policy during times of economic hardship. The legal evidence between Diocletian and Justinian points to confusion and reversals over the eligibility of *infames* for civic offices and demonstrates that attempts to redraw the socio-legal margins to exclude those adjudged as heretics, pagans, and apostates affected some cities to a greater degree than previously thought. Justinian's reactions in the *Novels* point to the fact that laws on *infamia* may have contributed to the decline in curial councils from the fourth century onward. Moreover, the purposeful exclusion of *infames* from councils that were themselves increasingly viewed as onerous may even have made deliberate *infamia* an option for those looking to avoid curial service. All of these modifications should ultimately lead us to reconsider whether the perpetual expansion of acts that incurred the stigma of *infamia* at an imperial rather than municipal level may have led to an overall diminution in its force as a socio-legal instrument.

Before proceeding to the analysis itself, a few points must be made concerning evidence, definitions, and methodology. Particularly in regard to the Republic and early empire, I will rely on legal evidence that is admittedly both deficient and problematic for the modern historian wishing to evaluate the efficacy and impact of law in the Roman Mediterranean. It must always be kept in mind that the Late Antique juridical assemblages of Theodosius and Justinian are predominantly abbreviations of classical law rather than direct copies, requiring us to proceed cautiously in any attempt to reconstruct the legal system of the Republic and early empire fully or accurately. Much of our legal evidence for Republican practices comes from Christian compilers of the *Digest* of Justinian living in the sixth century; men who pored over millions of lines of jurist texts—often reducing and amending them to please the emperor.¹² Among the imperial jurists themselves there was frequently much confusion, a fact that some

11. For violence in Late Antiquity, see Gaddis 2005; Drake 2006, 2011.

12. Humfress 2005. Humfress notes that Justinian's law codes put "new wine in old skins" (161).

emperors attempted to clarify by ranking which jurists should be adhered to first.¹³ Viewing the Republic and Principate through the later bifocals of imperial legal compilers is hazardous, but can be supplemented at least in part with literary and epigraphic evidence that is more contemporary, even if these sources carry their own caveats.

Attacking someone's moral fiber and calling them an *infamis* was a literary trope often employed by elite writers such as Cicero and Tacitus.¹⁴ These instances point to the social impetus behind legal *infamia*, but they also reveal the complications of working with literary citations of it. As many have recognized about *infamia*, the subject itself is extremely complex and hard to define, yet significant in that it "enshrines very characteristic Roman attitudes."¹⁵ It is frequently difficult to distinguish between legal *infamia* and the social idea of *infamia* in literary sources. Thus, when someone is accused of *infamia* or is called *infamis*, it must always be determined whether it is a reference to their actual legal standing or simply an attack on their character. The "moralizing distortion" of elite authors that convicted persons in the court of public opinion (rather than citing a legal judgment) means each piece of literary evidence must be considered individually.¹⁶ However, in utilizing the legal evidence, I have generally interpreted citation of the term *infamia* as indicative of legal *infamia*. Beyond the use of this evidence to establish who was and was not *infamis*, the limitations of the legal evidence in reflecting social realities should also be recognized. Although not a direct illustration of Roman society, these laws can be used effectually in order to point to attempts at establishing continuity, expressions of imperial will, and anxieties within Roman society.¹⁷

II. THE CONCEPT OF INFAMIA AND ITS DISABILITIES

The legal stigma of *infamia* harmed one's *existimatio* ("reputation").¹⁸ The degree to which a citizen's *existimatio* was diminished was originally indicated in the Republic with *notae* (marks) that were placed next to a person's name on the

13. Cf. *CTh.* 1.4.1.

14. Cicero enjoyed hurling about the damning language of *infamia*, especially in courtroom orations. In his prosecution of Verres alone, he used the term over twenty times. Even in his letters, he often uses it to portray the degradation of one's *existimatio* or denote immoral actions, rather than outright legal *infamia* as given by the courts (*Ad Att.* 4.17.2). Similarly, Tacitus often applies it to reproachable behavior (*Ann.* 6.7), even among non-Romans, e.g., when he notes that among Germanic tribes, those that flee from battle often kill themselves in order to end their *infamia* (*Ger.* 6: *multique superstites bellorum infamiam laqueo finierunt*).

15. Crook 1967: 83.

16. McGinn 1998: 9.

17. Barnish et al. remark on the use of Roman law codes as sources, concluding: "The overall picture of government given by the Codes is, then, as much symbolic as practical. . ." (2000: 166).

18. On the juxtaposition of *infamia* and *existimatio*, see Greenidge 1894: 1. The jurist Callistratus defined *existimatio* as "the state of uninjured *dignitas* approved by law and custom" (*existimatio est dignitatis inlaesae status, legibus ac moribus comprobatus* [*Call. Dig.* 50.13.5.1]).

census rolls.¹⁹ The censor calculated the civic worth of an individual based on the degree to which a person upheld Roman *mores*.²⁰ Literature could also serve to reassert or reinvent these ideas of *existimatio* over time, and to establish an ideological framework with which aristocrats could view themselves and society.²¹ As such, both law and literature transmitted ideas of *existimatio* and its antithesis, *infamia*, into the later empire; although what constituted each could and did change over time. The condition of *infamia* was mediate or immediate: mediate *infamia* resulted from conviction in cases deemed *actiones famosae*, including fraud, theft, violence, or abuses in partnership or tutelage, while immediate *infamia* was attached, *ipso iure*, to certain unseemly trades. This professional *infamia* applied to prostitutes, musicians, theatrical workers, gladiators, and funeral workers. The status functioned in order to demark incorrect behavior, as a judicial threat to coerce persons into paying debts or abiding by contracts, and as a disabling tool that cut off those deemed morally reprehensible from enjoying the benefits of being a Roman citizen. These benefits included eligibility for civic office, certain judicial rights, and corporal protection.

Exclusion from civic offices was a key element of the disgraceful status, since, in the Republic and early empire, holding office was viewed as a mark of prestige and the principal outlet for honor available to local elites. While ineligibility may have meant little to an enslaved gladiator or pimp, elite citizens in municipal cities regarded curial office as pivotal.²² The acts and professions that received *infamia* were enumerated in the Praetor's Edict, or *edictum perpetuum*, and together with imperial pronouncements served as a reference guide to those officials presiding over courts in Rome and the provinces.²³ The edict instructed them as to who

19. The marks were formally called *notae censoriae*. See Cic. *Pro. Clue.* 46.129. Livy notes: “[the censorship] was invested with the regulation of the *mores* and discipline of the Romans” (*ut morum disciplinaeque Romanae penes eam regimen* [4.8.2]).

20. Dion. Hal. 20.13.3: “But the Romans, throwing open every house and extending the authority of the censors [τὴν ἀρχὴν τῶν τιμητῶν] even to the bed-chamber, made that office the overseer and guardian of everything that took place in the homes.” trans. Cary.

21. Habinek 1998: 45–49. Habinek notes that Roman literature, “draws upon and enhances other forms of social authority” (*ibid.* 3).

22. Evidence for the exclusion of disreputable persons from municipal office is provided by the *tabula Heracleensis*, a bronze tablet erected in the Italian town of Heraclea around 45 BCE, which instituted a legal ban on numerous classes of people holding municipal offices: *CIL* I², 593=Crawford 1996 I: 355–91n.24. Those excluded were persons convicted of theft and other criminal misdeeds, those who perjured themselves in court, those sentenced to exile, those thrown out of the military in disgrace, gladiators, prostitutes, pimps, and actors (*ibid.* 1.110–114). The *tabula Heracleensis* likely transmits Julius Caesar's *lex Julia municipalis*. While a tablet does not directly characterize these unseemly persons as *infames*, the Praetor's Edict indicates that the Roman courts referred to such individuals as *infames*.

23. Though technically mutable prior to its codification under Hadrian in c. 130, the Praetor's Edict changed little from year to year at Rome itself. The jurist Salvius Julianus codified the praetor's edicts for the *praetor urbanus*, the *praetor peregrinus*, and some of the aedilician edicts c. 130, but appears to have changed them little (Schiller 1978: 432). Enumeration of *infames*: cf. *Dig.* 3.2, titled *De his qui notantur infamia*. Use in the provinces: Cic. *Ad Att.* 6.1.15. The praetors essentially

was able to exercise certain legal rights and who was disabled. These disabilities in fact helped to define the social hierarchy of the later empire after Caracalla's grant of citizenship to virtually all free male inhabitants in 212 CE. The bequest changed the dynamics of Roman *civitas* and resulted in new divisions such that "the primary distinction in Roman law now was not even between citizen and noncitizen, but between free and degrees of legal disability."²⁴ Status was a determining factor in judicial matters for the duration of the Roman empire; the level of *dignitas* or rank held by an individual always determined their treatment within the courts.

In addition to the ineligibility for municipal office, the status of *infamia* carried numerous legal disabilities. Limited accusatorial rights were given to those people deemed morally corrupt, infamous persons were prevented from postulating for others, and were discredited as witnesses.²⁵ The low opinion of *infames* as witnesses is pointed to in the opinion of Arcadius Charisius, a jurist under Diocletian and Constantine who wrote extensively on witnesses and who recommended that if a legal matter required an arena fighter or a "similar person" (*similem personam*)—i.e., an *infamis*—to give evidence, the testimony should not be believed without torture—as was the case with the testimony of slaves.²⁶ Suetonius describes the reaction to ignoble witnesses in court, writing that an equestrian accused of lewd behavior was incensed at having prostitutes called as witnesses against him.²⁷ The declaration of someone as *infamis* and the citation in court that a man's profession made him either a *persona turpis* ("sordid person") or otherwise disgraced were key considerations in judicial decisions.²⁸ Those men whose *existimatio* was tarnished were at a distinct disadvantage by comparison to those with full civic status when they stood before judges in Rome and in the provinces; furthermore, defamed persons had fewer means to acquire capital and little legal recourse when wronged.²⁹ An *infamis* business person likely often

provided *formulae* that could be followed by provincial governors. Here Cicero says that in his own provincial edict he will leave some things ἀγγραφον ("unwritten"), but generally follow the praetor's edict (*ad edicta urbana*) at Rome.

24. Mathisen 2006: 1036.

25. In his handbook *On the Duties of the Proconsul* in the early third century CE, Ulpian advised proconsuls to consider the reputation (*aestimatio*, a synonym for *existimatio*) and status (*dignitas*) of an accuser when making decisions (Ulp. *Dig.* 48.2.16). Likewise, Callistratus suggested that all judges establish the status of a witness first to see if he was competent: "whether his life is honorable and inculpable, or whether he has been branded with disgrace ('*notatus*') and is liable to censure" (*et an honestae et inculpatae vitae an vero notatus quis et reprehensibilis* [Call. *Dig.* 22.5.3]).

26. Arc. Char. *Dig.* 22.5.21.2. Admissible testimony from slaves often came from torture (cf. Cic. *Pro Cluen.* 63.176).

27. Suet. *Claud.* 15.4. For the civic disabilities of prostitutes in particular, see McGinn 1998: 21–64. For the rage of the *eques*, on having prostitutes testify against him, see *ibid.* 63–64.

28. Garnsey 1970: 231.

29. Paul. *Dig.* 47.23.4. Gardner has concluded that being an *infamis* would have had little impact on the life of most ordinary Roman citizens, but she dismisses these disabilities all too quickly as having little impact (1993: 154).

encountered problems he was unable to solve through legal means: a *leno* (pimp) whose clients skipped out on their tab at the brothel, or, say, a *lanista* (gladiatorial trainer) who had rented his *familia* (troupe) to a wealthy aedile who would not honor his contract.³⁰ The status could also significantly affect an individual's physical treatment.³¹

A final damaging feature of *infamia* was its association with corporal punishment. Not only were *infames* barred from civic office and legally vulnerable in court, they were physically at risk both in public and within the courts.³² The corporal vulnerability experienced by *infames* was due to the fact that in Roman social relations, reputation operated as a security blanket; control of one's body advertised status. As has been previously pointed out, *infames* and slaves shared a commonality in that neither could guard their body from assault or being violated.³³ Conversely, the elite were a protected class, both corporally and legally. This is exemplified in Apuleius's *Metamorphoses*, when Fotis warned Lucius that a group of wealthy youths (*factio nobilissimorum iuvenum*) roved the street committing acts of violence and murder with no fear of the Prefect's troops.³⁴ Many local customs similarly denote the elevated corporal rights of citizens. A telling passage in Philo notes that in Alexandria, the scourge used on a person was determined by status. The lower-status Egyptians received a damaging scourge, whereas Alexandrian citizens were beaten explicitly by a fellow Alexandrian with a flat blade that was less injurious.³⁵ Certain disreputable acts, such as adultery, were in fact so damning that they immediately stripped a person of their corporal protection altogether, and made them more open to physical retribution. Yet even within the context of retribution for adultery, status was a consideration. Augustus's adultery laws established that husbands could only kill certain kinds of adulterers: pimps, gladiators, condemned criminals, freedmen of the family, and slaves.³⁶ In other words, a husband could immediately kill already

30. McGinn notes: "A pimp who was a prospective litigant might therefore find it inconvenient to appear before the praetor even in pursuit of a just claim. Any pimp who did dare to make an appearance offered the magistrate an opportunity to demonstrate firmness on the issue of where those without honor stood in his court" (1998: 52).

31. Garnsey 1970. Also note Harries 1999: 141–42; Garnsey later stated: "Citizenship was and never ceased to be a juridical status, giving access to Roman private law, the law that governed personal, family, and commercial relations. This remained the case in Late Antiquity, and any evaluation of the role of Roman citizenship in the late Roman empire has to take cognizance of this fact" (2004: 138).

32. Cf. Edwards 1997: 73–74; Robinson notes: "To use torture on free men, let alone *honestiores*, in civil cases was quite unheard of, although it was used on slaves (and infamous persons such as gladiators); it is hard to imagine anything more outrageous to the Roman sense of dignity" (2007: 123).

33. Glancy 2002: 27–28.

34. Apul. *Met.* 2.18.

35. Phil. *Flacc.* 80. On Egyptians and corporal punishment, see Pearce 2007: 58.

36. Marc. *Dig.* 48.5.25.

degraded people at will, while fathers generally reserved the right to kill all kinds of adulterers.

The link between *infamia* and corporal punishment is particularly evident in the opinions of the jurists. As previously cited, torture appears to have been applied to *infames*, and corporal punishment itself was often strongly associated with the penalties assigned to dishonorable acts. In the mid second century CE, Marcellus noted that an assault with *fustes* (clubs often wielded by soldiers) alone did not make someone *infamis*; a judicial verdict had to precede the beating.³⁷ Although shame inducing, a beating in the streets did not, in fact, transform one into an instantaneous *infamis persona*. The link is similarly evident in a rescript of 238, in which the emperor Gordian states that a nephew should not fear for the reputation of his uncle who was lashed with a rod, if “a decision carrying the stain of infamy” was not given prior to the lashing.³⁸ Here there is evidence that corporal punishment visually advertised a degraded status to the public, even if a judicial verdict had not been handed down.

The anxiety expressed by the nephew over the status of his uncle can be understood in light of the Roman belief that any beaten body was a dishonored body.³⁹ Since the first century BCE, the *lex Porcia* protected citizens and, as the thrashing taken by the apostle Paul most famously exemplifies, Roman citizens were not supposed to be flogged or tortured.⁴⁰ As expressed in the previously noted opinion of Arcadius Charisius that gladiators and other disreputable people only serve as witnesses if subjected to torture first, a person devoid of *dignitas* did not warrant the physical protection of the citizen. Physical treatment was correlated with one’s status, and Roman citizens—at least in the Republic and imperial period—were considered far too dignified to be treated in the same way as slaves. Together with the civic and legal disabilities, the vulnerabilities that accompanied a stigma of *infamia* demonstrate that it was not merely an innocuous label, but rather had numerous repercussions. As such, shifts in the definition of *infamia* could and did have consequences far beyond simply announcing new boundaries for shameful behavior.

37. Marc. Dig. 3.2.22.

38. CJ. 2.11.14.

39. Glancy 2002: 124.

40. Cic. Rab. Per. 12; Liv. 10.9.4: *Porcia tamen lex sola pro tergo ciuium lata uidetur, quod graui poena, si quis uerberasset necassetue ciuem Romanum, sanxit* (“The Porcian law, however, appears to have been passed for the protection of the citizens in life and limb alone, for it imposed grave penalties if any one killed or scourged a Roman citizen”). Paul’s flogging by *fustes* and, later, a whipping by a *flagellum*: Acts 16: 22, 22: 24–25.

III. IMPERIAL MODIFICATIONS TO INFAMIA IN LATE ANTIQUITY

Officially or unofficially, emperors often took on the role of censor.⁴¹ This began with Augustus, who adopted the formal title prior to revising the senatorial lists. The *princeps* further promoted a return to conventional Roman *mores* through his social legislation regarding marriage and adultery. His Julian marriage laws attempted to safeguard a newly prescribed, inherited elite and to “legislate shame.”⁴² In the process, the laws functioned to further segregate *infames* such as prostitutes and actresses from respectable society.⁴³ Augustus’s efforts essentially criminalized adultery, and hearkened back to the Republican tradition that was *infamia* in order to legitimize it.⁴⁴ Furthermore, his social legislation used *infamia* in novel ways that perhaps provided a model for his Late Antique successors, many of whom were similarly interested in social legislation. As it will now be investigated, in the fourth century, *infamia* and other *notae* of disrepute continued to function as statements and tools. They persisted in advertising the censorial role of the emperor and demarking shameful behaviors, however, the status could also be wielded to politically and socially immobilize perceived moral pollutants within the Roman state.⁴⁵

From the fourth century, *infamia* was used in many of the same ways that it had been in the Republic and early empire; however, its scope widened to include religious deviants. In his program to renew the traditional religion of Rome, Diocletian attached an indistinct stigma of disrepute to Manichaeans and Christians. His attempt to stigmatize, disable, and disband these sects would set a precedent for the use of *infamia* against heretical sects, pagans, and apostates by subsequent Christian emperors. It was Constantine who fully realized the utility of the status. In much the same manner that Augustus had recognized *infamia* as a means of delineating his idealized social hierarchy, Constantine

41. While use of the title fell out of vogue after the emperor Domitian, Roman emperors continued to operate as one in regard to the senatorial lists and through legislation (Talbert 1984: 27). Note Valerian’s refusal to the emperor Decius to serve as censor, since that was a role only the emperor could fill (HA. *Val.* 6).

42. Treggiari 1991: 195. Senatorial status could be inherited for up to three generations (including the senator himself), even if a family member was not himself a senator. Paul, *Dig.* 23.2.44.pr. See Talbert 1984: 39. Talbert admits the definition could be fuzzy.

43. Dio 54.16.1. The *lex Julia maritandis ordinibus* (18 BCE) and the *lex Julia de adulteriis* were later followed up by the *lex Papia Poppaea* (9 CE). They are referred to collectively as the *lex Julia et Papia*. For repercussions in terms of informers and land confiscations, see Tac. *Ann.* 3.28. The legislation wielded *infamia* as a social boundary line: Senators and their descendants were not to marry freedwomen, actresses, or the daughters of actresses (Paul, *Dig.* 23.2.44).

44. Augustus’s severe *lex Julia de adulteriis* criminalized adultery by banishing the offending woman, branding her with *infamia*, and confiscating part of her dowry. In regard to men, those that didn’t report the adultery of their wives were accused of *lenocinium*, and, as pimps, were thus legally *infamis*. Soldiers caught breaking the adultery laws were also considered *infames*.

45. A key example of the use of disrepute to dissuade shameful behaviors is the *senatus consultum* of 19 CE found in Larinum (*AE* 1978, 145). See Levick 1983: 108–10.

likewise attempted his own social rectification, thereby signaling his *potestas* by enacting legislation that regulated the private lives of those within the empire. The subsequent imperial policies of emperors such as Valentinian and Theodosius points to the declaration of *infamia* as the normative first step in censuring both actions and people viewed as corrosive within the state; however, its regularization and the difficulty in discerning many of these new *infames* made new individuals vulnerable to attack, excluded increasing numbers from municipal offices essential to the economic health of the empire, and rendered the status an increasingly blunt tool.

The expansive infliction of *infamia* on religious sects stemmed from Diocletian's course of action against the Manichaeans and the Christians. The *Collatio legum Mosaicarum et Romanarum*, a collection of Roman laws likely compiled in the late fourth century, records a rescript of Diocletian against the Manichaeans, issued in 302.⁴⁶ Addressed to the Proconsul of Africa, Julianus, the rescript records Diocletian's justification of action against the Manichaeans before ultimately revoking civic rights. Diocletian asserts that those men with *dignitas* who had established "principles of virtue and truth" should be obeyed, and expresses fear that previously tranquil and loyal communities within the Roman empire would become infected (*inficere*) with the Persian superstition of Manichaeism.⁴⁷ The target was initially the Manichaean leaders: the known leaders and theologians within the sect were to be killed and their writings burned, and those followers who did not repent were to have their property confiscated (to be given to the imperial *fiscus*) and to receive a capital punishment as well. Public officials who were found to be Manichaeans were to have their property confiscated and to be sent to the mines for going over to the *infamem sectam* (infamous sect).⁴⁸ It is important to note that the language of the law does not indicate that Diocletian recognized all Manichaeans as legally *infamis*. Although the fate of the Manichaean leaders and those public officials who identified as Manichaean was certainly much worse than the disabilities traditionally carried by the stigma, the emperor perhaps used the adjective *infamis* at this time not in the legal sense, but rather to portray the otherness of the sect. The socially revered—the *honorati*, those of *dignitas*, and other persons of rank (*maiores personae*)—are plainly contrasted with the followers of the new, turpid, and infamous Manichaean sect.⁴⁹

The sources for Diocletian's initial edict against the Christians in 303, which began the "Great Persecution," are admittedly biased toward Christians; however, the use of deprivation of honor as an initial step in marginalizing people is evident. Lactantius reports that Diocletian and Galerius published an edict "depriving

46. *Collatio legum Mosaicarum et Romanarum* 15.3.1–8. Hyamsom 1913: 130–33; Frakes 2011: 191–92, 233–34.

47. *Ibid.* 15.3.2: *dignati sunt, quae bona et vera...*

48. *Ibid.* 15.3.7: *Si qui sane etiam honorati aut cuiuslibet dignitatis vel maioris personae adhuc inauditam et turpem atque per omnia infamem sectam.*

49. Diocletian's critique of Manichaeism as "new" is discussed further in Corcoran 2000: 70.

the Christians of all honors and dignities,” but then goes on to explain why: “ordaining also that, without any distinction of honor or degree, they should be subject to torture, and that every kind of lawsuit should be received against them.”⁵⁰ Although Lactantius does not state explicitly that it was *infamia* that was attached to Christians, it was certainly tantamount to it. The decree stripped citizens of corporal and legal rights, and exposed them to attack. Eusebius further notes that the edict lowered those of rank to ἄτιμοι—the Greek synonym for *infames*—and concurs with Lactantius’s assertion of the loss of status for those of rank and the revocation of their *libertas*.⁵¹ When considering Diocletian’s edicts, it is essential to view his actions not only as an attempt to shame the Manichaeans and Christians by depriving them of honor, but also to make them both physically and legally vulnerable. Without the armor that was citizenship and rank, these newly minted outcasts were susceptible to physical assault at will, without legal redress. Although Diocletian knew he could not legally convict every Manichaean, he opened them up to popular abuses by the deprivation of honor. This broad application of *infamia* certainly had parallels in the application of the status to professions, but Diocletian’s use of the status established a paradigm for its later use against heretics, apostates, and pagans.

Under Constantine, the invocation of *infamia* continued to be applied in a traditional manner: to outcast those perceived as dangers to the state, to delineate social classes, and to “preserve the dignity” of civic offices. An example of Constantine’s employment of *infamia* is provided by the Arian controversy in the early fourth century. Feeling as though his courtly friends and the emperor at Constantinople had deserted him, the Alexandrian presbyter Arius wrote to Constantine around the year 332–333 CE. Socrates’ fifth century *Historia Ecclesiastica* preserves Constantine’s reaction to this letter, which—to the emperor—appeared to threaten a schism. Socrates claims that in response to the perceived threat, the emperor wrote a letter to Church bishops and the people. In it, he ordered all Arians to henceforth be called Porphyrians and the works of Arius to be burned. He justified his actions against the bishop by comparing Arius to Porphyry: “Since Arius has imitated evil and impious persons, it is just that he should undergo the like ἀτιμία.”⁵² As was the case with the Christian ἄτιμοι in Eusebius, we cannot be certain that the stigma of disrepute handed down by Constantine, which Socrates translates into Greek, is *infamia*; however, ἀτιμία was used by Greek writers as a translation of *infamia*.⁵³ The episode is an early indicator that the orthodox versus

50. Lact. *De Mor. Per.* 13.1: *carerent omni honore ac dignitate, tormentis subiecti essent, ex quocumque ordine aut gradu venirent, adversus eos omnis actio valeret...*

51. Eus. *H.E.* 8.2.4: καὶ τοὺς μὲν τιμῆς ἐπειλημμένους ἀτίμους.

52. Soc. *H.E.* 1.9.30: Ἄρειος δίκαιός ἐστιν τὴν αὐτὴν ἐκείνοις ὑπέχειν ἀτιμίαν.

53. Dio Cassius (56.25.7) refers to the ἀτιμία attached to persons who fought in the arena—i.e., gladiators who, we know from the Praetor’s Edict and the inscription from Larinum (*AE* 1978, 145), were officially *infamis*. The translation of *fama* versus *infamia* into τιμή versus ἀτιμία is further seen in Plutarch’s (*Cic.* 13.2–3) account of the *lex Roscia theatralis* of 67 BCE. He notes that when the

non-orthodox began to be couched in terms of a juxtaposition that Romans had long understood: *fama* and *infamia*.

While the definition of *infamia* was expanded to apply to new religious groups under Constantine, the utility of *infamia* in demarcating the elite endured. A law of Constantine, issued in July of 336, ruled that certain honorable men—senators, *perfectissimi*, those within the ranks of the duumvirate or quinquennialiate in the municipalities, and those who held the position of flamen or a civil priesthood of a province—could not legitimize children born from unions with certain disreputable women.⁵⁴ This included children produced from unions with a slave woman, the daughter of a slave woman, a freedwoman, the daughter of a freedwoman—whether she be a Roman or Latin—an actress, the daughter of an actress, the keeper of a tavern, the daughter of a tavern keeper, a low and degraded woman, the daughter of a procurer or a gladiator, or a woman who sells wares in public. The emperor ruled that the penalty for those honorable men who attempted such legitimization was that they “suffer the brand of *infamia* and become foreigners from Roman laws.”⁵⁵ The law indicates that these unions were being treated as legitimate; furthermore, in the same way that Augustus used his social legislation to project his legitimacy and *potestas*, Constantine’s regulation of the social sphere was aimed more at a display of domination than an earnest attempt at “Christianization.”⁵⁶

Although the emperor Julian may have described Constantine as an “innovator and disturber of ancient laws,” many modern scholars have pointed out that Constantine was not a legal revolutionary.⁵⁷ In many ways, Constantine was a man of tradition, following in the legal footsteps of the emperors Augustus and Diocletian in legislating within the social sphere.⁵⁸ Accordingly, Constantine appears to have used the traditional language of *infamia* as an advertisement of his identification with Republican sentiments, an alignment communicated in a rescript dated to between 313 and 315:

The doors to *dignitas* will not be open to the infamous (*famosi*) or to the disreputable (*notati*), nor to those who are sullied by crime or turpitude of life, nor to those whom *infamia* separates from the gathering of honorable men.⁵⁹

praetor Marcus Otho organized the equestrians in the theater “according to honor” (ἐπὶ τιμῆ) the people perceived it as a mark of dishonor (τὴν ἀτιμίαν) to themselves.

54. *CTh.* 4.6.3. (July 21, 336).

55. *Ibid.* *maculam subire infamiae et peregrinos a Romanis legibus fieri*. For an introduction to Constantine’s use of civil law to modify the social sphere, see Humfress 2006: 205–22.

56. Evans Grubbs 1995: 319.

57. *Amm.* 21.10.8: *novatoris turbatorisque priscarum legum*. Cf. Humfress 2006: 208.

58. Nathan 2000: 57. For Constantine’s social legislation, see *ibid.* 55–73.

59. *CJ* 12.1.2: *Neque famosus et notatus et quos scelus aut vitae turpitudine inquinat et quos infamia ab honestorum coetu segregat, dignitatis portae patebunt*.

The rescript bears resemblance to the civic exclusion of disreputable people in Republican laws. Furthermore, it exemplifies the range in terms and categories for those considered disreputable—*famosi*, *notati*, those guilty of a crime, those who led a dishonorable life—all of whom appear to warrant segregation. Constantine's exclusion of *infames* from civic offices was a return to the Republican idea that *infamia* excluded one from office; however, Constantine had no way of knowing that the population of *infames* would grow markedly during the course of the fourth century, as *infamia* continued to be used to contour orthodoxy.

Following Constantine, the legal status of *infamia* continued to be an important device, particularly in defining orthodox practice. However, in evaluating the later laws that rendered heretics, apostates, and pagans as *infames* under Roman law, one must be careful not to view the legislation in a vacuum. *Infamia* was still applied to many of the traditional deviants, trades, and criminals, but was expanded to include new groups. Furthermore, applying *infamia* to religious deviants was an increasingly emblematic move, one that hearkened back to the Republic and legitimized imperial actions, while simultaneously transforming these new *infames* into physically and legally vulnerable individuals. The first Christian edict against Manichaeans, issued by the emperor Valentinian I in 372, had similar language to Diocletian's rescript on the sect, but singled out all Manichaeans caught assembling to be treated "as *infames* and *probrosi*."⁶⁰ In essence, Valentinian communicated his discontent with the Manichaeans and provided a license to treat these persons as one would an *infamis*. It was not until 381 that the proper "branding" of Manichaeans as *infames* took place, under Theodosius I.⁶¹ All Manichaeans then lacked testation rights, known as the *testamenti factio*—a core power of Roman citizenship—and the property bequeathed by a Manichaean could be confiscated by imperial authorities. Whereas the Manichaeans under Diocletian had been viewed as potential traitors within the Roman state, Samuel Lieu explains the actions of Theodosius in marginalizing the Manichaeans in terms of a new construction of treason: "In the mind of Theodosius, Christianity and citizenship were coterminous and anyone who denied Christ automatically made himself an outlaw of the Christian Roman society."⁶² The harboring of heretics was further seen as contributing to outlawry, and was punished as such.⁶³ By the late fourth century, the Manichaeans had become a demonized "other"

60. *CTh.* 16.5.3: *ut infamibus atque probrosis a coetu hominum segregatis*. The term *probrosus/a* is a moralizing adjective, rather than a legal class. It is most often associated with disgraced women, as when Suetonius reports that *feminae probrosae* were penalized by the emperor Domitian (Suet. *Dom.* 8). It is likely parallel to being a *turpis* woman, who could also not inherit from a will (Tryph. *Dig.* 29.1.41.1).

61. *CTh.* 16.5.7pr: *sub perpetua inustae infamiae nota*.

62. Lieu 1992: 147.

63. Samellas notes: "The notion of collective responsibility for any opinions deviating from orthodoxy, for the harbouring of heretics, was a transference in the ecclesiastical sphere of the legal philosophy that deemed necessary the imposition of severe penalties on whoever harboured fugitive slaves, bandits, deserters, and, certainly, heretical bishops" (2010: 358).

within the empire, and as such, received the traditional signifier of marginality: *infamia*.

A significant shift in the definition of *infamia* occurred with a law of Theodosius I in 380 CE. It was at this juncture that the status was applied not simply to specific heretical sects, but to all persons who did not embrace the *nomen* of catholic Christianity.⁶⁴ This would, arguably, apply to apostates, pagans, and heretics collectively, though successive laws would address pagans as receiving the brand of *infamia*.⁶⁵ Although sects such as the Eunomians received a lesser diminution in status—they were declared *intestabiles*, thus revoking their ability to make a valid will—other sects were declared *infamis* outright, such as the troublesome Donatists who proliferated in North Africa.⁶⁶ Bishops such as Ambrose and Augustine had key parts in driving this legislation and encouraging law to be used as a means of strengthening Nicene Christianity. By the end of Theodosius's reign, the procedural "first step" in delegitimizing a group had become their declaration as *infames*, however, there were wider implications for applying such severe penalties to broad and ambiguous groups within the empire. Whereas gladiators, pimps, or actresses were rather conspicuous and accepting of their status, religious deviants were not always distinguishable, nor did they recognize the labels of "heretic" or *infamis*. Moreover, how did one implement such broad regulations?

A significant problem that arose from the legislation directed at religious deviants was enforcement. It was unclear who was to prosecute these heretics and how exactly one could identify a Manichaean, Eunomian, Donatist, or any other "heretic" or "pagan." No federal prosecutor stood at the ready in order to arraign these new *infames*; it was rather the responsibility of private citizens to bring suit or to undertake vigilante justice—a practice often used to combat brigands in antiquity.⁶⁷ As Caroline Humfress demonstrated in regard to the courts, this "criminalization of heresy" in the fourth and fifth centuries had broad implications: it constructed an increasingly complex legal sphere within which to navigate and a new environment rife with new loopholes and arguments for legal experts to explore.⁶⁸ The social sphere had become similarly more complex: by the late fourth century, many communities (in particular those in North Africa, Asia Minor, and Gaul) had become fractured by religious differences. This posed a problem since

64. *CTh.* 16.1.2.1: *Hanc legem sequentes christianorum catholicorum nomen iubemus amplecti, reliquos vero dementes vesanosque iudicantes haeretici dogmatis infamiam sustinere.*

65. A law of 391 branded apostates and pagans with perpetual *infamia* (*CTh.* 16.7.5).

66. Eunomians: *CTh.* 16.5.17 (389); Donatists: *CTh.* 16.6.4.1 (405); 16.5.54 (414). In the midst of the mud slinging over Donatism, Optatus of Milevis (ca. 384) wrote that Felix, the consecrator of Caecilian, was tried and cleared from every *infamia* upon his reputation (*Opt. Contra Don.* 1.27). Edwards argues for a dating of the work firmly at 384 or later (1997: xviii).

67. Fuhrmann 2012: 53 notes that most brigand policing was likely done by impromptu civilian posses. These posses were a common policing technique within the empire, depended on in a state with very little oversight.

68. Humfress 2008: 140–41.

the status of *infamia* was itself a construction that took for granted a universal sense of honor.⁶⁹ The expansion of *infamia* to include religiously deviant groups was a use of classical law and vocabulary to marginalize new peoples; however, these new socio-legal margins were largely ineffective in discouraging heretical sects, and the imperial administration was incapable of enforcing the laws to their full extent.⁷⁰ An unnoticed repercussion of declaring certain sects *infamis* was the issuance of a social license that—along with the sanctions provided by teachings of the Church—facilitated the growth of religious violence in the fourth and early fifth centuries.

IV. LEGITIMATING VIOLENCE IN LATE ANTIQUITY

In the Republic and early empire, citizen bodies were protected symbols of *existimatio*. Alternately, *infamis* bodies lacked the privilege of control. Although violence was always a part of everyday life in the empire, it was particularly common against *infames*. Brothels and bars were dodgy areas, and prostitutes were in constant danger of being raped.⁷¹ Gladiators were beaten by one another for sport and could be physically punished by the *lanista* who oversaw them. In regard to entertainers, actors could be publicly beaten at any time up to the reign of Augustus, who amended the rule to require that magistrates only abuse actors in the theater during the games.⁷² Though actors were often slaves, it does not appear that officials acted any differently exacting punishments against slave actors versus the freeborn entertainers.⁷³ In his defense of a client who had raped an actress, Cicero even stated that the man acted in accordance with a well-established tradition at stage shows.⁷⁴ These cases indicate that the physical treatment of *infames* was often commensurate with their position within society. A distinguishing feature is that even if *infames* were often treated poorly, Romans never wished to abolish prostitution or to do away with gladiators or entertainers completely. The criminalization of heresy and paganism were unique in that these new *infames* were often cast as persons who could and should be coerced back into the fold.

69. Barton 2001: 18.

70. Brown notes that there was a “systemic incompetence” in the imperial administration that hindered enforcement, but points out that law also depended heavily on local magistrates: “the imperial government continued to depend, to a very large extent, for its effectiveness, on the consensus of a widely diffused network of local elites” (1995: 38–39).

71. McGinn: 2004: 88–89. Clark notes, “It is unclear how they could have had any legal redress against rape, unless they could bring a charge of injury” (1993: 29). In Rome, the neighborhood most associated with violence and vandalism was the Subura, a district where ignoble professionals and their houses of ill repute proliferated (Liv. 3.13 Cf. Eyben 1993: 19, 104).

72. Suet. *Aug.* 45.3.

73. Brown 2002: 235n.41.

74. Cic. *Planc.* 12.30. *quodam in scaenicos iure maximeque oppidano.*

Interrogations of the ideologies and stimuli that drove the apparent rise in violence in Late Antiquity have been especially popular in the last two decades. Since Ramsay MacMullen inquired as to why theological disputes were so frequently “brought to the point of bloodshed,” many anthropological, theological, political, and social reasons have been proposed for the religious aggression in the fourth through sixth centuries.⁷⁵ In contributing to this ongoing debate, I will return to a fundamental question that has previously been addressed but not satisfyingly answered: “What conditions allow such oppressors to prevail?”⁷⁶ Investigations into the many factors that facilitated the turn towards coercion, including Christian attempts at redefinition, the new ideas of martyrdom in the later fourth century, and the effect of energetic new converts, are all integral pieces of the puzzle. Yet another piece to be considered further is whether the legal declaration of heretics, apostates, and pagans as *infames* abetted the creation of this popular culture of violence within some Late Antique cities and served to further legitimize the violence of oppressors towards those convicted—either in court or in personal opinion—as religious deviants.

As any police investigator or historian will tell you, motives are a hard thing to establish. It is undeniably difficult to gauge to what degree the state creation of a growing population of ambiguous *infames* with limited legal redress enabled or contributed to the escalated level of violence in Roman communities from the fourth century to the reign of Justinian. However, a brief look at Christian views on the use of force and a reconsideration of public punishments meted out to both “heretics” and the elite can perhaps help us to understand why individuals may have felt justified in acts of violence. First, through an exploration into the inflammatory speech in Augustine, attitudes towards coercion and belief in the use of law to encourage conversion can be understood. Second, a reconsideration of the recorded acts against “heretics” as those predicated against *infames* can perhaps also help us to better understand popular rationalizations for assaults. The legal marginalization of heretics, apostates, and pagans reviewed in the last section did not, themselves, compel Christians to violence, but the recasting of these people as *infames* may have served to affirm and legitimize extant animosities. When these laws are understood in conjunction with the proliferation of ecclesiastical writings on the legitimate use of force and the visible infliction of corporal punishment on elites, changes in popular attitudes toward violence and

75. MacMullen 1990: 275. Cf. The overview on Late Antique violence in Drake 2006: 1–14 is invaluable, and the theological-anthropological explanation of Carlos E. Galvaó-Sobrinho in that volume (321–331) is a novel approach. For the role of violence in defending communal boundaries, see Sizgorich 2009. Also note Shaw’s recent evaluation of the conflict between the Donatist and Catholic churches in North Africa (2011).

76. Drake 1996: 5; 2011. For the role of martyrdom in understanding violence, see Gaddis’s remark: “Discourses of martyrdom and persecution formed the symbolic language through which Christians represented, justified, or denounced the use of violence” (2005: 70).

the body come into clearer focus, revealing a milieu wherein physical aggression could emerge.

The influential writings of Augustine came to promote the use of force, often using scripture to justify corporal punishments against heretics.⁷⁷ In one such sermon, Augustine cited Luke 14, where Jesus recounted the story of a lord who bid his servant gather people to enjoy a feast. When the invited did not come freely, the lord ordered the servant: “Go into the highways and the hedges, and compel them to come in, that my house may be filled” (14: 23). The bishop cited the passage in order to legitimize and defend the persecution of persons deemed outside the orthodox faith. Frustrated with the Donatists proliferating in North Africa, he stated (between 411 and 420), that the use of force outside was necessary, so that freedom could arise once they—i.e., heretics and schismatics—were inside the fold.⁷⁸ Augustine proclaimed: “Let them be dragged from the hedges, wrenched from the thorns.”⁷⁹ The recalcitrance of the Donatists to these measures is glimpsed at earlier, when, in a letter to Donatist bishops in 396 or 397, Augustine noted that Donatists did not want to correct their crimes, nor did they respond to the use of violent tactics meant to coerce them back into the fold and deliver them from eternal punishments.⁸⁰ Augustine felt as though he was doing the heretics a favor by intimidating them back to the true faith; however, the Donatists were not inclined to agree—either that they were heretics or that they needed coercing.

Augustine’s manipulation of the Luke parable inverts an old debate in Christianity concerning the use of force. In an open letter to Scapula, the proconsul of Africa, written sometime after 212, Tertullian had protested the proconsul’s persecution of Christians and expressed both the necessity for religious freedom and the inefficacy of using force: “However, it is a fundamental human right and a power of nature. . . . It is assuredly no part of *religio* to compel *religio*.”⁸¹ Tertullian’s reasoning was increasingly silenced in the late fourth and early fifth centuries, particularly in North Africa, where heresies were widespread.⁸² As it has already been shown, the state itself—often influenced by ecclesiastical leaders—attempted to coerce people from the pagan and heretical hedges to the orthodox table through the conventional application of *infamia* in the fourth century. The result of such

77. Possidius’s *Vita Augustini* (c. 432) recounts that even during his lifetime, Augustine’s writings had empire-wide influence and were translated into Greek (v. *Aug.* 7, 11). A prime example is Augustine’s immediate influence during the Pelagian heresy. He held great sway among the North African bishops and with the emperor, and was a ferocious letter writer. For his strong influence on canon law, see Munier 2003.

78. Aug. *Serm.* 112.

79. *Ibid.* 112.8.

80. Aug. *Ep.* 43.8.21.

81. Tert. *Ad Scap.* 2.2: *Tamen humani iuris et naturalis potestatis est . . . Sed nec religionis est cogere religionem.*

82. Christians did still struggle with these earlier pacifist views, but increasingly “pushed them aside” following Constantine (Swift 1970: 533).

laws was certainly an increase in lawsuits, accusations, and confiscations, but, when combined with writings such as Augustine's, a socio-legal warrant comes increasingly into focus that may have empowered certain persons to commit acts of aggression.

Physical assaults appear especially directed towards heretics. An episode from the *Life of Mani*, a biography of the third century prophet of Manichaeism, exemplifies that assaults against perceived heretics predated the imperial laws that criminalized their sects. Mani was seized by the hair, beaten, and treated "as if [he] were a heretic."⁸³ Mani, like all accused of heresy, did not classify himself a "heretic." Moreover, there were not typically clear visual or geographic delineations of heretics.⁸⁴ Unlike the prostitutes, actors, and gladiators who coexisted with the rest of the populace in urban centers, these *infames* could lurk anywhere, and Christians were urged to seek them out. Particularly volatile were the extremist Circumcellions that roved the North African countryside in Augustine's time. While some of these zealots were brought to the Episcopal courts to be tried properly, the laity often dealt with them as robbers, and fought them off in displays of vigilante justice.⁸⁵

The lack of corporal deference for perceived heretics and the increased use of law as a license for religious violence are frequently evident in accounts of Late Antique acts of aggression. In the case of Macedonius, the bishop of Constantinople reinstated by Constantius, heretics were searched out and sometimes even branded with a hot iron as *infamis*. Using an imperial edict as a warrant, the bishop used monks as a personal militia to carry out persecutions against orthodox Catholics and Novatians. Socrates Scholasticus claimed that Macedonius tortured clerics and forced women and children to undergo baptism, and clearly points to the edict of Constantius as providing license to Macedonius and his followers.⁸⁶ Sozomen remarked that many had possessions confiscated, lost the rights of citizenship, and others were even branded on the forehead with an iron instrument.⁸⁷ Macedonius's treatment of some "heretics" was much the same way as a calumniator or runaway slave was treated in Roman society: with a brand of infamy on the forehead.

Both Macedonius and the farmers terrorized by Circumcellions are demonstrative of the fact that many bishops and laypeople often did not wait for a legal conviction of those they adjudged "heretics," taking it upon them-

83. *Life of Mani*, 100 (trans. Gardner and Lieu 2004: 65) = *P. Colon.* 4780. The *Life of Mani* was likely compiled after his death in 270, but the Greek codex was likely not published until the fourth or early fifth century.

84. Cameron notes, "In Late Antiquity all Christians who asked themselves the question called themselves orthodox. . . . To describe oneself as a heretic is in essence a logical contradiction" (2008: 107).

85. *Aug. Ep.* 88.9 (406 CE).

86. *Soc. Schol. H.E.* 2.38.

87. *Soz. H.E.* 4.2.

selves to punish the accused within the popular court: the forum.⁸⁸ In his *Dialogue on the Life of John Chrysostom*, Palladius relates the dispute between the bishop Theophilus of Alexandria and monks who followed the teachings of Origen, the so-called “Tall Brothers.”⁸⁹ Following an Alexandrian synod held in 400 that convicted the monks as heretics and exiled them from their monasteries, the brothers traveled from Nitria to Alexandria to hear justification for the sentence. Confronting the monks, Theophilus was overcome with rage, and wrapped a *pallium* around the neck of one of the Tall brothers, a monk named Ammonius. Hitting him in the jaw, and giving him a bloody nose with his fists, he demanded of the monk “Anathematize Origen, you heretic!”⁹⁰ Palladius—a vehement supporter of John Chrysostom—was certainly demonizing the bishop for acting on his emotions; however, it is necessary to ask to what degree the bishop Theophilus felt entitled to commit acts of violence toward these monks.⁹¹ In his eyes, he pronounced these men heretics and ergo *infames*. As such, their rights against torture and corporal punishment towards citizens were not applicable, exposing the “Tall Brothers” to physical attack. It should be recognized that an important part of legitimizing the attack was Theophilus’s public accusation of heresy. Although Roman legal process dictated that a trial should have followed an accusation of heresy, Theophilus took it upon himself to act as judge and to hand down a sentence upon the monks.

Literary sources suggest that violence towards “heretics” was not always in the name of establishing doctrinal supremacy. Often emboldened by imperial support, some sought conversion, while others simply sought money or fame. Socrates Scholasticus alleges that in the beginning of the fifth century, Theodosius, the Bishop of Synada armed clerics so as to root out and extort money from alleged heretics—using a combination of accusations, coercion, and physical intimidation to get money.⁹² In the cases of both Macedonius and Theodosius, the legal declaration of heretics as *infames* only added a legal tool to the arsenal of religious zealots or those out to extort money. Moreover, as Augustine and Ambrose exemplify, the fight against heresy in the name of the “true faith” was viewed as praiseworthy. A Lydian epitaph dated to around 378 CE records the accomplishments of a bishop of Apollonis named Makedonios, who purportedly followed the lead of the apostles, led an ascetic life, and “took up the fight

88. Humfress notes the expense of bringing persons to court may have also lessened the number of prosecutions (2007: 31).

89. The “Tall Brothers” were a group of four Egyptian monks: the bishop Dioscorus, Ammonius, Eusebius, and Euthymius. Theophilus convened an Alexandrian synod in 400 that convicted Isidore and the Tall Brothers of heresy (Origenism) and extravagant asceticism.

90. Pall. *Dial. Vit.* 6 (=PG 47.23) trans. Meyer 1985: 44: Αἰρετικῆ, ἀναθεμάτισον Ὀριγενῆν.

91. For the construction of Theophilus as a “bishop-tyrant” used by Palladius in juxtaposition to John Chrysostom, see Gaddis 2005: 253.

92. Soc. Schol. *H.E.* 7.3.

against all heresy, preserving the true faith of the fathers of the catholic church.”⁹³ The inscription presents the struggle against heretics as a virtuous undertaking, something that had been proclaimed literarily earlier by the likes of Irenaeus and Eusebius, but was now even etched on an epitaph. Certainly, the imperial legislation condemning heretics did not conjure the tension between various religious sects, but the declaration of these persons as *infames* did strip many of protective status and legitimize popular violence in a world increasingly filled with public displays of supremacy and physical assault.

In addition to the promotion of force in ecclesiastical writing and the valorization of combating heresies, the shift toward religious coercion can perhaps be seen as part of a more widespread increase in the public display of violence. The visible use of torture and corporal punishment against the curial class appears to have been on the rise in the fourth century; a development that further degraded established honor boundaries and made physical protection a status symbol.⁹⁴ Though often taken for granted by local magistrates in the Republic and early empire, full protection from physical punishment became increasingly rare.⁹⁵ Although the Theodosian Code alludes to the increased use of corporal punishment on local elites and the growing exclusivity of full protection, writers such as Libanius and Synesius provide more insight into the social reality for curials. In the spring of 363, Libanius wrote a letter to an official named Alexander in Tarsus, noting that when a governor approached, men usually fled to the mountains or endured beatings rather than pay taxes.⁹⁶ In 388, he reports that the governor of Syria, Eustathius, had a curial beaten with a leaden whip. Similarly, Synesius, writing in 411, noted that the military commander Andronicus of Berenice had come up with thumb-screws and other torture devices that he used on all levels of society, even keeping people of status from fleeing the city.⁹⁷ Ammianus reports that under Valentinian, there was an order that three decurions from several cities be executed, whereupon the prefect Florentinus remarked to the emperor that if there were not three magistrates to round up, they would have to just wait until there were.⁹⁸ All this points to the growing acceptance of corporal pun-

93. TAM V, 2.1406; trans. Rapp 2005: 291: ὅς δὴ καὶ κατὰ πά-/σης αἰρέσεως ὀπλισάμενος τὴν ἀληθῆ τῶν πατέρων τῆς καθολικῆς ἐκκλησίας διεσώσατο <πίστιν> . . .

94. Brown remarks, “many notables found themselves treated in the same violent and high handed manner as were members of the lower classes” (1992: 53). See Jones 1964: 749–50, 1310n.88. Also note De Ste. Croix 1981: 472–73.

95. Constitutions from 349/50 and 359 affirm the protection of curials from corporal injury—claiming to remove “fear of corporal offence” from the office—and emphasize the security of the curial’s *dignitas* (CTh. 12.1.39). Yet in 376, the emperors decreed that while decurions were exempt from beatings with cords (*fidiculae*) and other torture instruments, only the chief (*decemprimi*) decurions were exempt from beatings with leaden scourges (*plumbata*) (CTh. 9.35.2).

96. Bradbury, trans. 2004: no. 97, 135.

97. Syn. Ep. 79.

98. Amm. Marc. 27.7.7.

ishment and pain as part of day-to-day life, and the increasing avoidance of curial duties.⁹⁹

Both the literary and legal evidence illustrate that anxieties over bodily harm became even more pronounced in the later empire and the use of physical punishment more regularized at all levels. Even within monastic culture, the increased use of corporal punishment to promote discipline and reverence to God brought about controversy.¹⁰⁰ Indubitably, as displays of violence rose, traditional Roman views of the protected citizen-body were further eroded, and perhaps made violence more socially acceptable. It had previously been understood that *existimatio* was reflected in the control of one's own body, but this was increasingly not the case in the later empire. Though elites were only supposed to be reprimanded by designated judges and superiors, the traditional inviolability of decurions was severely injured by state-imposed corporal punishments. The elite were more susceptible to public humiliation than ever before, a fact that—when combined with the economic burdens of curial office that will now be examined—may have discouraged many from fulfilling their curial duties altogether. It is this amalgam of bodily threat, excessive economic expectation, and eroded notions of honor and dishonor that perhaps compelled some elites to turn to the status of *infamia* as a shelter rather than the shameful stigma it once was.

V. CREATING A LOOPHOLE

Economic stress was often concurrent with the religious turmoil in the empire. It is only within the context of the crisis of the third century and Diocletian's expansive economic program, for instance, that we can understand an undated rescript preserved in the *Justinian Code*, wherein the Emperors Diocletian and Maximian wrote to an unknown administrator named Charito outlining the *munera* that infamous persons were required to perform:

Although *infames personae* are allowed no honors which are accustomed to be imparted on men who bear a good name, nevertheless they are not exempt from curial or municipal liturgies.¹⁰¹

Indubitably, Diocletian's rescript is an about-face from the position presented in the Republican *tabula Heracleensis* and the imperial opinion of Severus and Antoninus, which reiterated the belief that a brand of *infamia* excluded persons

99. Harries 1999: 133.

100. Disciplinary beatings also appear regularized within monastic culture. As Gaddis points out, the excessive use of force by bishops was similarly controversial (2005: 259–60).

101. *CJ.* 10.59.1: *Infames personae, licet nullis honoribus, qui integrae dignitatis hominibus deferri solent, uti possunt, curialium tamen vel civilium munerum vacationem non habent.*

from holding the decurionate.¹⁰² A possible explanation for this reversal is that economic hardship caused Diocletian and Maximian to revise the traditional civic regulations. This would allow disreputable persons to hold positions within local municipal councils, although they explicitly would not obtain the customary laudations and *honores* that a member of the elite with intact *dignitas* would expect. It must be considered whether Justinian later returned to Diocletian's imposition of curial service on the disreputable out of similar economic necessity. Certainly the legal evidence indicates that there was much confusion over the eligibility of *infames* in the curial councils—both at the local and the imperial levels—which perhaps stifled Justinian's efforts to halt curial exemptions, created a loophole for *infames* (a status which now included heretics, apostates, and pagans), and paved an unrecognized “escape route” for persons hoping to avoid curial duties.

In the previously explored Constantinian rescript of 313/315, the emperor reinstated the ban repealed by Diocletian that barred *infames* from serving as decurions. Although the curial councils are not mentioned directly in Constantine's rescript, the idea that *infames* should be outcast and segregated from all honorable men—as if a quarantined contagion—is patent. Under Constantine, there was still an association of honor with the curial councils, even if the burdens of office were increasingly avoided through new routes. Although Constantine wished to restore honor to the decurionate, in 380, the issue of staffing the curial councils became further complicated by the declaration of all pagans and heretics as *infames*.¹⁰³ The law now made thousands technically ineligible for curial service and open to prosecution. Moreover, while accusations of heresy could certainly profit the imperial *fiscus* initially in terms of income and new properties, it was detrimental to the city council in the long term, in that it disqualified elites (now poor anyway) from serving the central nervous system of the city: the curial council.

As the central government strengthened in the later fourth century, there followed a decline in the institution of the decurionate in terms of its prestige, the influence it wielded, and, as we have seen, the corporal protection it afforded its members.¹⁰⁴ Intensive studies of the phenomenon often point to its transformation from honor to burden between the Republic and later empire, but it should be noted that not all cities were themselves in a state of decline between the fourth and sixth centuries, many simply experienced decay within their municipal

102. Rescript of Severus and Antoninus: *CJ.* 2.11.3. The emperors noted that there were sentences of both perpetual and temporary infamy, and thus, in the case of temporary *infamia*, an elite could once again serve as a decurion after his sentence of *infamia* had expired.

103. *CTh.* 16.1.2.1=*CJ.* 1.1.1.1.

104. See especially Banaji 2001. Banaji expounds on the decline in landowners in local councils in the East and the shift toward a new imperial bureaucracy (115–17). Also note Lenski 2002: 274–76.

administration.¹⁰⁵ Since the Republic, decurions had served as important economic benefactors to the municipal *fiscus*; through their services to the city—and later their entry fees—these men helped to support their towns.¹⁰⁶ However, a pivotal problem was that as the position became more economically burdensome, the elite increasingly avoided curial offices by several means, including appointments within the Church, exemption through military service, service in the senate, and through posts in the imperial administration.¹⁰⁷ These alternate routes to prestige compounded the problem at the municipal level, forcing many emperors to limit exemptions and impose curial service more stringently. The status symbol was no longer service, but rather exemption.

As the council decreased in its ability to confer prestige or, as we have seen, even provide corporal protection (except to a select few *principes*), emperors may have begun to view it as a means of punishing religious deviants while keeping the councils afloat. A rescript of Theodosius II from 438 attempted to stop heretics from avoiding curial duties and expressed that immunity was a privilege that heretics could not attain.¹⁰⁸ This is not to say that Theodosius II condoned heresy—as Book 16 of the Theodosian Code indicates, this is far from the case—but rather demonstrates that the emperor himself recognized that the military and imperial administration did not have the means or the might to drive out every heretic. It may also be evidence that some were already persons attempting to use heretical status as a means of avoiding their curial duties.

Declaring one's self a heretic and thus an *infamis persona* could, as we have seen, have dire repercussions legally and in terms of corporal protection; however, there is evidence that elites began to use the loophole provided in order to avoid the increasingly taxing and sometimes dangerous duties placed on the curial orders in Late Antique cities. In much the same way, at least one woman had previously used a loophole within Augustus's *lex Julia de adulteriis* by declaring herself a prostitute.¹⁰⁹ At that time, a senatorial woman named Vistilia notoriously exploited the allowance by registering as a prostitute (thereby becoming *infamis*) so as to avoid prosecution as an adulteress.¹¹⁰ Though Vistilia signifies an anomaly rather the norm in regard to reactions to the marriage laws, her case should here

105. Jones 1964: 757–63. For a comprehensive examination of the role and laws that governed decurions, see Langhammer 1973.

106. For the development of the *summa honoraria* in reaction to economic pressures in the second century CE, see Garnsey 1971.

107. Cameron 1998: 324; Garnsey 1998: 3. The *curiales* were essentially converted into publicans in a sense; men responsible for raising the land tax for the empire. The position also became hereditary.

108. *CJ.* 1.5.7.

109. The judicial interpretations of Augustus's adultery law were extensive: Ulp. *Dig.* 48.5.1–45. Cf. Ulp. *Dig.* 48.5.14 and the mention of the loophole in *CTh.* 9.7.1 (326).

110. Tac. *Ann.* 2.85. Though it may have been only Vistilia, Suetonius supports the incidence of matrons who registered as prostitutes in order to evade the adultery laws (*Suet. Tib.* 35.2). In 19 CE, a *senatus consultum* reacted to Vistilia's case and tried to ensure that such cases of elite prostitution would not be tolerated.

serve as an example that *infamia* could be viewed an alternative. Certainly those that attempted to use the loophole realized that the stigma was not permanent. As Humfress has crucially pointed out, conversion could suspend legal penalties (a fact exemplified by abjuration testaments from Lydia dated to between 428 and 431).¹¹¹ As such, it must be at least considered whether purposeful ignominy was simply a temporary status change that could then be recanted if necessary.

Recognizing the continued collapse of the curial council, Justinian would also embark on a program to revivify them. His concern over the decaying state of municipal councils was already evident in his response to John the Cappadocian preserved in another *Novel*, this one from 535—two years before the letter to John concerning Jews, Samaritans, and heretics.¹¹² Attempting to bind those born into the curial order to serve as decurions, the emperor noted that the more he worked to commit these men to their duty, however, “the more the curials plotted every trick with which they evaded our just and right enactments and against the interest of the *fiscus*.”¹¹³ He further claimed that, in order to avoid the new property regulations that gave the city council a quarter of a curial’s property at death, curials began to sell off their property and engage in unlawful marriages that produced non-heirs—preferring to die in poverty without legal children to inherit their property than serve on the local council.

Justinian’s response to the petition in 537 CE that began this article—in which he imposed curial duties on Jews, Samaritans, and heretics—came amid these concerns over the municipal councils, but also during a time of extreme flux in the Roman Mediterranean as a whole. The Roman empire of Justinian was markedly smaller than that of Constantine, and one in which heterodox groups were omnipresent.¹¹⁴ It had been only three years since Justinian, with Belisarius’s help, had reconquered North Africa, an area that had been ruled over by the Arian Vandals. Other parts of the Latin West, such as Ostrogothic Italy, also had strong Arian contingencies. In the East, other convicted heresies, such as Montanism, persisted as well. While Justinian still attacked heretics and Jews with damning legislation, he perhaps recognized—like Theodosius II—that heresy was a difficult thing to extirpate completely. Moreover, it would take time to convert the newly conquered territories. Torn between promoting orthodoxy and keeping municipalities economically viable, Justinian here accepted the existence of heretics in some curial councils. He would simply justify his decision to allow

111. Humfress 2007: 252. Concerning the conversions of these Lydian “heretics,” see Millar 2004.

112. *Just. Nov.* 38.

113. *Just. Nov.* 38.1: *tantum omnem adinvenierunt curiales artem adversus ea quae recte iusteque sancita sunt et contra fiscum.*

114. Upon his accession in 527, Justinian’s empire included the Balkan area north of the Danube, Asia Minor, Egypt, Palestine, Northern Mesopotamia, and Syria. In 534 Justinian had wrested North Africa from the Arian Vandals, but in 537, he was only at the beginning of a twenty-year war to take back Italy from the Ostrogoths. For heretical sects in the empire, see Procopius’s notes on the prevalence of heterodox sects and Justinian’s bloody attempts to combat them (*Hist. Arc.* 11.14).

religious deviants to serve as curials by revoking *privilegia* and casting it as a penalty. His decision only further indicates that curial councils were no longer the outlets of prestige they had been in the Republic and early empire, and thus the exclusion of religious deviants from them no longer served its intended purpose of representing the *existimatio* of a community. As it has been shown, Constantine's reversal of Diocletian's ruling that *infames* could serve in the curial councils had a greater impact on the health of the decurionate than previously understood. It was further damaged following the declaration of heretics, apostates, and pagans as *infames*. Justinian's writings reveal the continued complications of declaring religious deviants *infamis*, and demonstrate that they were at once outcasts and necessities to the economic functioning of the Late Antique city. In the sixth century, the stigma of *infamia* was neither as cohesive nor as clearly defined as it had once been, but then again, neither was the empire.

VI. CONCLUSION

By the late fourth century, and certainly by the fifth, the legal use of *infamia* had a broader scope than ever before. Priests who bought an office were branded with infamy, as were judges who took bribes, persons who usurped honors, illegal professors, and those who asked for an imperial rescript to overturn their sentences, just to name a few.¹¹⁵ As we have seen, legal *infamia* continued to be used in a traditional manner in many respects, but was not as unified as it had been in the Republic, when it had been galvanized by a more collective social notion of *infamia*. The status remained an imperial tool with which to censure improper behavior, to marginalize those deemed moral and social pollutants, and to prescribe the social hierarchy. Yet the continual broadening of the construction of *infamia* for both religious and systemic purposes may have ultimately contributed to its decay. Many no longer upheld the expanding imperial definition of dishonor—except when it suited their purposes.¹¹⁶

The traditional imposition of *infamia* rested on a collective notion of honor and dishonor that did not survive into Late Antiquity. In regard to civic honors, Late Antique “heretics” and Christians both certainly had their own internal system of clerical offices and titles that may have partially replaced the lure of public yet costly civic honors provided by curial councils. Moreover, within heterodox communities, whole populations were now considered legally *infamis*, but were not viewed locally as such. This development complicated the prosecution of heresy on a local level, and perhaps facilitated the use of *infamia* as a means

115. Cf. *CJ* 1.3.30.6 (469); *CJ* 2.4.41 (395); *CJ* 1.16.1 (384).

116. See Harries' assertion that “Laws which bore down hard on those who fled their responsibilities in guilds or councils, or which outlawed sacrifice or other forms of religious deviance, were indeed a reflection of imperial policy, but their timing and addresses may be determined by local factional conflicts” (1999: 214).

of avoiding the curial duties stipulated by imperial mandate. Elite Romans were concerned with status, which was part and parcel of the idea of shame: honor is most valuable when it is scarce, and disrepute is a more effective tactic when used sparingly. In *The World of Odysseus*, Moses Finley wrote: “It is in the nature of honour that it must be exclusive, or at least hierarchic. When everyone attains equal honour, then there is no honour for anyone.”¹¹⁷ The same might be said for dishonor. When it is kept focused and supported socially by the populace, legal disrepute can be an effective measure. In Late Antiquity, however, the status of *infamia* became ambiguous, overused, manipulated, and, in many communities, was no longer an effective social policing technique. Constructions of honor and dishonor were never monolithic concepts, but in the late empire, notions of dishonor had become as fractured and uneven as the empire itself.

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117. Finley 1977: 118.

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