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# Don't Ask Us for *Lex*. Body Exhibition and Forms of Exclusion

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**Abstract:** The essay deals with the many boundaries set and exceeded by Roman Law when human corporeality is involved. In particular, the focus is on the strict correlation between body expression and socio-juridical marginalization, clearly visible in the case of prostitution in ancient Rome, but also in acting and in fighting in the arenas, activities sharing the same goal as prostitution: they were designed to bring pleasure to the senses. These forms of marginalization differ from the inexorable limit, already decrypted by Roman Law, set by humankind's bodily nature to the action of Law: Law is not in the position to "have the last word" on matters concerning human life, on which nature alone can "lay down Law."

**Keywords:** human body in roman law, socio-juridical marginalization, prostitutes, actors, gladiators, infamous performers, corporal punishment, law and literature

## 1 The human body as a "crumbling wall"

What is the body? To what extent is a man to dispose of his body? In order to answer these complex questions, inserted within the context of the ambiguous debate on the juridical *status* of the human body, one must deal with a number of limits. First of all, it should be recognized that, regardless of how advanced our scientific understanding might be, the Law cannot – or at least should not – go beyond certain physical and biological "confines" of the human experience. The legal nature of the human body, as well as its birth and its death, are matters that lie outside the scope of the Law, which therefore should refrain from a "pan-juridicalization"<sup>1</sup> of the treatment of the human body; however, case law has on many occasions decided to break the silence perpetuated on these topics by legislation and legal theory. In spite of this bad habit, which case

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<sup>1</sup> Luigi Garofalo, "Principi e ordinamento romano: una riflessione sulle orme di Fritz Schulz," in *Fondamenti e svolgimenti della scienza giuridica. Nuovi saggi* (Torino: Giappichelli, 2015), 1–14, 13.

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law seems all too eager to perpetuate, the “human nature” and the definition of what constitutes a “human body” remain inexorable data in the handling of which the Law should show the utmost restraint.<sup>2</sup>

The legislator, just as the generation of poets referred to by Eugenio Montale in his famous poem “Non chiederci la parola”<sup>3</sup> [Don’t ask me for words], could never find a norm able to define what a man is or what a human body is.

*Non chiederci la parola che squadri da  
ogni lato  
l'animo nostro informe, e a lettere di fuoco  
lo dichiari e risplenda come un croco  
perduto in mezzo a un polveroso prato.  
Ah l'uomo che se ne va sicuro,  
agli altri ed a se stesso amico,  
e l'ombra sua non cura che la canicola  
stampi sopra uno scalcinato muro!  
Non domandarci la formula che mondi  
possa aprirti,  
sì qualche storta sillaba e secca come un  
ramo.  
Codesto solo oggi possiamo dirti:  
ciò che non siamo, ciò che non vogliamo.*<sup>4</sup>

Don't ask me for words that might define  
our formless soul, publish it  
in letters of fire, and set it shining,  
lost crocus in a dusty field.  
Ah, that man so confidently striding,  
friend to others and himself, careless  
that the dog day's sun might stamp  
his shadow on a crumbling wall!  
Don't ask me for formulas to open worlds  
for you: all I have are gnarled syllables,  
branch-dry. All I can tell you now is this:  
what we are not, what we do not want.<sup>5</sup>

What the Legislator can do when referring to human life does not actually differ from what the poet can do: the poet can only portray, with a few poor words (“all I have are gnarled syllables, branch-dry”), the precariousness of the human condition, which is described as a shadow cast “on a crumbling wall.”

The wall – a recurring image in Montale’s poetry to symbolize the concept of “limit” – represents the limited condition in which human knowledge is faced

<sup>2</sup> Garofalo, “Principi,” 13. As for the appropriateness of whether or not the legal rule can “invade vital worlds,” see Stefano Rodotà, *La vita e le regole*, (Milano: Feltrinelli, 2009), 9. See also, Walter Benjamin, “Per la critica della violenza” [1921] and “Destino e carattere” [1921], in *Angelus Novus. Saggi e frammenti*, ed. Renato Solmi (Torino: Einaudi, 2014): 5–30, 31–38.

<sup>3</sup> Eugenio Montale, “Non chiederci la parola,” in *Ossi di seppia* [1925], ed. Piero Cataldi and Floriana d’Amely (Milano: Mondadori, 2017), 58–59. In “Non chiederci la parola” Montale expresses a refusal of a poetic art considered outmoded by his generation, that was a generation of men shocked by a historical event of unimaginable cruelty: the Great War, as noted by Giuseppe Gazzola, *Montale, the Modernist* (Firenze: Olschki, 2016), 15–17. On this aspect of Montale’s poetry, see Gianfranco Contini, *Una lunga fedeltà. Scritti su Eugenio Montale* (Torino: Einaudi, 2002), 82.

<sup>4</sup> Montale, “Non chiederci la parola,” *Ossi di seppia* [1925], 58–59.

<sup>5</sup> Montale, “Don’t ask me for words,” in *Cuttlefish Bones*, trans. William Arrowsmith (New York: Norton & Co., 1994), 41.

with issues related to the Laws of life. Topics such as the nature and the legal status of human bodies present insurmountable limits even for the scientific investigation, which can no longer guarantee any kind of certainty.<sup>6</sup> Such a negative condition also affects the field of humanistic knowledge: the era in which the Poet revealed “in letters of fire” the magic formula unveiling the human essence is over.<sup>7</sup>

Montale says: “Don’t ask me for words that might define our formless soul,” since the only certainty to which the contemporary man can aspire is a negative truth, a knowledge accessible only by contrast: “All I can tell you now is this: what we are not, what we do not want.” Any truth proclaimed on these issues would be nothing more than a fictitious truth.<sup>8</sup>

Just like Montale claimed that the poet should refrain from giving any precise and absolute definition of Man, the legislator should avoid ruling on matters such as the human nature, since the legislator’s “word” is even more pervasive than that of the poet. The legislator’s word is a “Law,” a *lex*, which etymologically means just a solemn “word,” to then take on the meaning of Law in the sense of a word that establishes, decides and deliberates. But no *lex* could ever be pronounced on subjects such as the human body essence, an area that is ontologically impossible to “determine” as it is only “verifiable” and “detectable.”

Going back to the roots of western legal thought, we can find that ancient Roman Law was not particularly concerned with cataloguing the living body. The most recent Roman legal theory has rightly pointed out that Roman *ius*, in its entirety, was created in the sole interest of men in the flesh, so that the “living body,” rather than an entity in need of juridical characterization, was itself the principle lying at the heart of natural Law.<sup>9</sup>

The *prudentes*, in fact, created a “human-centric” system of regulations, i. e. a system primarily concerned with *personae*,<sup>10</sup> to be conceived not as “individuals equipped with personality,” but rather – what I could describe

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6 Federico Leoni “Unità e scomposizioni corporee,” *Aperture. Rivista di cultura, arte e filosofia* 3 (1997): 126–131, 131, asserts that the “madness of body knowledge” lies in the “pretension to tell the truth of the body.”

7 See Romano Luperini, *Montale e l'allegoria moderna* (Napoli: Liguori Editore, 2012), 17.

8 That Montale’s poetry originates from a negative position, from a belief in non-existence or from a non-gnosis, has been underlined also by Maria Sampoli Simonelli, “The Particular Poetic World of Eugenio Montale,” *Italian Quarterly* 3.10 (1959): 42–55.

9 Emanuele Stolfi, “La nozione di ‘persona’ nell’esperienza giuridica romana,” *Filosofia politica* 21.3 (2007): 379–392, 382–383.

10 On the evolution of the ambiguous juridical notion of *persona*, from Roman Law to the present day, among many, see the contributions of Giovanni Boniolo, Gabriele De Anna, Umberto Vincenti, *Individuo e persona. Tre saggi su chi siamo* (Milano: Bompiani, 2007).

with the colorful expression of Luigi Garofalo – as protagonists on the stage of the Law.<sup>11</sup>

What we owe to Roman jurisprudence, therefore, is not just the creation of a body of provisions applicable to the entirety of human social life, but also a “negative” elaboration of a *ius* which knew how to stop before the confines of human life. With respect to issues of corporeity in Roman Law, Luigi Garofalo wrote of a general awareness by the ancient jurists of a “need to halt,” so as not to venture too far into domains they perceived as not being pertinent to their scientific endeavors. As rightly pointed out by the author, the Roman *scientia iuris* acknowledged the existence of a fundamental and primeval limit guiding the Law’s interactions with the human body. In this sense, I subscribe to the idea of an “*equilibrata ‘finitezza’ romana*”<sup>12</sup> popularized by Garofalo, which is to say a “measured Roman finiteness” to tackle questions which today would be discussed under the nomenclature of Bio-Law.

## 2 The human body as a tool to cross borders

While the above considerations are undoubtedly valid for assessing the (non-)existence of life (Roman jurists, in fact, try to avoid giving a definition of what constitutes “life in and of itself,” leaving determinations of the kind rather to common knowledge than to formal descriptions<sup>13</sup>), they will not be useful with respect to notions on what does and does not constitute a “lawful” use of one’s own body. Conversely, a critical reading of the relevant sources suggests that certain types of body “expression” were anything but indifferent to the Law.

It is undeniable that we, as men, have always found “uses” for our bodies which could be viewed as an expression of an inescapable dominion over our own self<sup>14</sup> and, therefore, cannot be prevented. This subject should be strictly related

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**11** See Garofalo, “Principi,” 12, who echoes the famous metaphor of the *persona* as the “actor’s mask” coined by Cicero in the *De officiis* and also employed by Thomas Hobbes, *Leviathan* [1651], ed. Richard Tuck (Cambridge: Cambridge University Press, 1991), 111–115.

**12** Garofalo, “Principi,” 12.

**13** Garofalo, “Principi,” 13.

**14** Pier Giuseppe Monateri, “Bioetica e biodiritto. Dal potere sulla nuda vita all’antropologia costituzionale,” *The Cardozo Electronic Law Bulletin* (2008): 1–8, 4, speaks of unavoidable *de-facto* powers “on life, or rather on the materials of which life is made”. See also Maria Michela Marzano Parisoli, “Il corpo tra diritto e diritti,” *Materiali per una storia della cultura giuridica* 29.2 (1999): 527–552, 549.

to the disputed and ancestral – even if unexpressed for a long time – question: who is the owner of a human body? As far as the proprietary relationship between a person and its body is concerned, from both a juridical and philosophical point of view, one could mention Kant, who, in his *Lectures on Ethics*<sup>15</sup> and *The Metaphysics of Morals*,<sup>16</sup> maintains that the body is “me,” and it is not “mine.” If I “am” my body, I could not be a property of mine, because the ownership could be established only between a “subject” and an “object.”<sup>17</sup> In this perspective, as long as a “human body” could never be considered as a “thing,” even the mere statement “my body” is seen as inaccurate.<sup>18</sup> Such an approach is endorsed by all those scholars who deny the applicability of the paradigm of the *dominium* to the legal questions related to the human body, as the “human being” is something too valuable to be understood through the dichotomy *res/persona*.

However, as a matter of fact, even if the default rule is that there are no property rights in the human body, certain social phenomena – such as prostitution – express an unavoidable *de-facto* power exercised by each man on their own body<sup>19</sup>: the chance to determine the use of it for profit represents a natural faculty lying with each individual, toward which the legal order can intervene only within certain limits.

Nevertheless, it is no secret that those who use their bodies in certain ways, for example by placing them on the market, as prostitutes do,<sup>20</sup> suffer various forms of social marginalization which themselves can sometimes have legal implications.

With the present essay, I wish to emphasize the many boundaries set and exceeded by Roman Law when dealing with human corporeality. In particular, I

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**15** Immanuel Kant, *Lectures on Ethics* [1925], ed. Peter Heath and Jerome B. Schneewind, trans. Peter Heath (Cambridge: Cambridge University Press, 2001).

**16** Immanuel Kant, *The Metaphysics of Morals* [1797], ed. and trans. Mary Gregor (Cambridge: Cambridge University Press, 1996).

**17** On the “double truth of the belonging” see, among many, Paolo Zatti, “Principi e forme del ‘governo del corpo’,” in *Trattato di biodiritto*, ed. Stefano Canestrari, Gilda Ferrando, Cosimo Marco Mazzoni, Stefano Rodotà and Paolo Zatti (Milano: Giuffrè, 2011): 99–135.

**18** Federico Leoni, “L’inappropriabile,” in *Al limite del mondo. Filosofia, estetica, psicopatologia*, ed. Federico Leoni and Mauro Maldonato (Bari: Dedalo, 2002): 67–88, 76. See Paolo Zatti, “Il corpo e la nebulosa dell’appartenenza: dalla sovranità alla proprietà,” in *Per uno statuto del corpo*, ed. Cosimo Marco Mazzoni (Milano: Giuffrè, 2008): 69–108, 82–83.

**19** For an interesting reinterpretation of Kantian thought – expressed in Immanuel Kant, *Groundwork of the Metaphysics of Morals* [1785], trans. Herbert J. Paton (New York: Harper, 1964), 96 – in connection with prostitution, see Yolanda Estes, “Moral Reflections on Prostitution,” *Essays in Philosophy* “*The Philosophy of Sex and Love*” 2.2 (2001): Article 10.

**20** See Margaret Jane Radin, *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts, and Other Things* (Cambridge, MA: Harvard University P, 1996), 131–153, who lists sexual services among the “contested commodities.”

will focus on the strict correlation between body expression and socio-juridical marginalization, clearly visible in the case of prostitution in ancient Rome, which is why my enquiry will focus especially on the activity itself as well as on the various limitations connected to its exercise.

In this respect, my questions are: “why was prostitution so shameful?” and – most of all – “why should shame determine legal prescriptions?” In exploring these issues, I shall try to underline the fundamental role played by the prostitute’s body as a “key element” of Roman *meretricium*. Starting from the juridical definition of prostitution provided by Ulpian as “drawing profit from the body” (*corpore quaestum facere*), it may be assumed that the disrespectful position held by prostitutes resulted by the nonchalant use of the human body as a mere means to achieve some goal.

In order to support this argument, some sources where actors and gladiators are involved will be included in the present work. Such people, as they were labeled as *infames personae*, usually equated to prostitutes, were exposed to the same legal limitations and subjected to a regime different from that of free Romans with regard to corporal punishment.

In other words, my aim is to examine the position of prostitutes in ancient Rome by stressing the interdependence between Roman juridical construction of “prostitution” and marginalization suffered by prostitutes, as it emerges from juridical and literary sources. In this respect, references to literary sources, not just ancient ones, will be particularly useful: literature often sheds light on Law’s gaps, elucidates Law’s limits and highlights Law’s exclusions.<sup>21</sup> Therefore, as Roman legal reasoning never questioned directly what a man can do with his own body, I believe that a combined study of Law and Literature is a valid tool to achieve a more thorough understanding of the metaphoric “trespass” affecting the individual’s social sphere of those who misused their bodies.

### 3 The prostitution of *Liberae Mulieres* in ancient Rome

Within the framework of Roman Law, in the classical age prostitution was certainly not illegal.<sup>22</sup> As we understand from Suetonius’s *De vita Caesarum*,

<sup>21</sup> Jane B. Baron, “Law, Literature, and Problems of Interdisciplinarity,” *Yale Law Journal* 108 (1999): 1059–1085, 1060.

<sup>22</sup> Jane F. Gardner, *Women in Roman Law and Society* (London-Sydney: Croom Helm, 1986), 132.

Emperor Gaius introduced a tax on the earnings of *meretrices*, who had to pay to the State *quantum quaeque uno concubitu mereret*.<sup>23</sup> Nevertheless, the legal *status* of women who followed some stigmatized professions, such as prostitution, was subject to a range of legal limits.

In Justinian's Digest, as well as in other legal texts, it seems that prostitutes were labeled as "*infames personae*," and because of this they were debarred from getting married to freeborn Roman citizens. Moreover, they were not allowed to give witness in a Court of Law or to inherit from someone. In other words, Roman Law collected a whole series of "limiting" effects, coinciding with the disapproval with which *mos maiorum* met the women who commodified their bodies, to turn them into legal limitations. Consequently, it seems to me that *ab antiquo* certain uses of one's body led to a social exclusion closely associated with a variety of legal marginalizations.

But first, we have to discover the significance of the prostitute's body for the legal qualification of an act as being meretricious in nature. This will require a special focus on the evidences of freeborn *meretrices*: from a strictly legal perspective, slaves forced into prostitution<sup>24</sup> by their *dominus* were considered to be mere objects; not more than a *res* at the disposal of a third party. It is in fact hard to assess whether in the eyes of the Law the slave, as it was considered to be a "thing," a *res*, was seen as a "mere body" or as "someone in possession of a body." As it is known, the figure of the slave in ancient Rome<sup>25</sup> has undoubtedly been the object of many contrapositions, for the most part ingenerated by the very essence of the institution of slavery itself, whose outlines had been drawn quite differently by *ius civile*, on the one hand, and *ius naturale* on the other.<sup>26</sup>

The complexity of the question at hand can be found also in the ancient literary sources. Especially Seneca's philosophical reflections bring to light the underlying tensions at the heart of the schism between the slave's body – a

<sup>23</sup> See Suet. *Cal.* 40. See, on the taxation of Roman prostitutes, Thomas A.J. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome* (New York-Oxford: Oxford University p, 1998): 248–287 and Carla Fayer, "Meretrix." *La prostituzione femminile nell'antica Roma* (Roma: L'Erma, 2013): 619–642.

<sup>24</sup> It is however undeniable that the prostitution of the slaves was by far the most widespread: see, among many, Amalia Sicari, *Prostituzione e tutela giuridica della schiava. Un problema di politica legislativa nell'impero romano* [Bari: Cacucci, 1991].

<sup>25</sup> On whose juridical condition, with particular attention to the delicate issue of its subjectivity, among many, see Ollis Robleda, *Il diritto degli schiavi nell'antica Roma* (Roma: Università Gregoriana Editrice, 1976): 68–98.

<sup>26</sup> Ulp. 43 *ad Sab.* D. 50.17.32.

possible object of contracts such as *emptio venditio*, an entity at the service and under the complete control of the *dominus* – and the slave’s mind, an entity *sui iuris*, free and independent, incapable of being subject to someone else’s *dominium* (Sen. *benef.* 3.20).

Although the intricate problem of the relation between the legal *status* of *res* as being descriptive of the slaves’ position in ancient Rome and the qualification of their bodies is not the main focus of this article, the above digression underlines the likelihood that, in the case of prostitution of slaves, the good put up for sale was the slave in its entirety.

I should therefore like to focus my enquiry on the fate of *meretrices liberae*, i. e. freeborn women, *cives Romanae* placed by Roman Law in the category of *personae*, and not in that of *res*: only for the prostitutes *liberae et cives*, in fact, does a “conceptual scission” between the “corporeity” (objective aspect) and the “personality” (subjective aspect) of a human being seem conceivable.

A look at the relevant literary sources reveals that in ancient Rome prostitution was a particular way of earning money available also to freeborn citizens. An example of a free woman who autonomously chose to pursue such activities was Cynthia,<sup>27</sup> the muse of the poet Propertius, who throughout her lifetime enjoyed multiple relationships with many affluent men and whose demeanor – perhaps due to the poet’s jealousy, but certainly also in tribute to the social conventions of the time – had often been characterized as deplorable and similar to famous Greek *hetaerae* such as Lais, Thais and Phyme.<sup>28</sup>

Another famous example of voluntary prostitution put into practice by an *ingenua* is that of the “meretrix Augusta,” the Emperor’s insatiable wife Messalina who – according to Juvenal’s parody – would spend her nights attending run-down brothels and selling her body under the pseudonym of Licisca (Iuv. 6.116–132).<sup>29</sup>

<sup>27</sup> See Guy Fau, *L’émancipation féminine dans la Rome antique* (Paris: Les Belles Lettres, 1978), 104–108; Alison Keith, *Propertius: Poet of Love and Leisure* (London: Bristol Classical P, 2008), 86–114.

<sup>28</sup> Prop. 2.5, 2.6, 2.8, 2.9. See Saara Lilja, *The Roman Elegists’ Attitude to Women* (Helsinki: Soumalainen Tiedeakatemia, 1965), 145–148; Francesca Lamberti, “‘Meretricea vicinitas’. Il sesso muliebre a Roma fra rappresentazioni ideali e realtà ‘alternative’,” in *El Cisne. Prostitución femenina en la experiencia histórico-jurídica*, ed. Evelyn Höbenreich, Viviana Kühne, Rosa Mentxaka and Esperanza Osaba 3 (Lecce: Edizioni Grifo, 2016): 35–72, 58–60.

<sup>29</sup> See Elda Biggi, “Venere a Roma: la prostituta italiana,” in *Gli affanni del vivere e del morire. Schiavi, soldati, donne, bambini nella Roma imperiale*, ed. Nicola Criniti (Brescia: Grafo, 1991): 73–87, 77.



## 4 The female body as a “key element” of Roman prostitution

A sort of “objectification” of the prostitute’s body emerges mainly from an exegetical analysis of certain fragments of Ulpian’s comment to the marital prohibitions determined by the *lex Iulia et Papia*.<sup>30</sup> Before taking a closer look at those fragments, it is worth pointing out that the entire reasoning of the Jurist works on the premise of free women selling their bodies: in fact, for the *lex Iulia et Papia* to be applicable, it would not have made sense to define the concept of “prostitute” including in it also a category of women – namely slaves – already forbidden to get married. The following text is taken from the Digest:

Ulp. 1 ad l. Iul. et Pap. D. 23.2.43 pr.: *Palam quaestum facere dicemus non tantum eam, quae in lupanario se prostituit, verum etiam si qua, ut adsolet, in taberna cauponica vel qua alia pudori suo non parcat. 1. Palam autem sic accipimus passim, hoc est sine dilectu: non si qua adulteris vel stupratoribus se committit, sed quae vicem prostitutae sustinet. 2. Item quod cum uno et altero pecunia accepta commiscuit, non videtur palam corpore quaestum facere.*

This extract – which gives an insight into the necessary elements according to which women were considered prostitutes – will not be examined in its entirety. Given the rather specific focus of my study, it shall be sufficient to point out that the type of prostitution which Ulpian commented on was a practice strictly connected to the concept of *palam quaestum facere*, i. e. a way of acquiring income through a public and undifferentiated exposure in an open trading system.<sup>31</sup> In other words, the Roman *meretrix* was a woman who put herself in a market available and accessible to anyone.

What matters the most is the expression *palam corpore quaestum facere*, used by Ulpian to describe the craft of the *meretrix*. Such a definition (which translates as: “to gain openly through the body”) is rather frequent in other legal fragments always to signal prostitution, and it also appears in the ancient *Tabula Heracleensis* of the I century B.C., in which women working as prostitutes

<sup>30</sup> See McGinn, *Prostitution*, 70–104.

<sup>31</sup> For a short bibliography of the scholars of Roman Law who commented the Ulpian’s text, see Maria Federica Merotto, “Il corpo mercificato. Per una rilettura del ‘meretricium’ nel diritto romano,” in *Il corpo in Roma antica. Ricerche giuridiche*, ed. Luigi Garofalo 2 (Pisa: Pacini, 2017): 243–283, 257, nt. 56.

were described as *queive corpore quaestum fecit fecerit*. It is in fact known that the words *corpore quaestum facere*, in the legal jargon, were often employed as a synonym for prostitute.

The mentioning of the *corpus* (the body) alongside the phrase most frequently used to describe meretricious activities in ancient Rome, namely *quaestum facere*, might not be a mere chance: presented in this context, the ablative *corpore* seems to be indicative of the real object employed as a remunerative tool, that is the body. And since the body represented the material instrument through which the courtesans were able to earn money, in the “legalistic eyes” of Ulpian, the body served as the constituent element of a circumstance that was very much in the interest of the Law to regulate. The insistence on the relevance of the *corpus* as the primary economic resource might suggest that the prostitute’s body was considered as a “concrete entity” which, upon payment, the client could enjoy for a certain amount of time.

In my view, the intuition that the reference to the *corpus* contained in the first part of the commentary on the *lex Iulia et Papia* might not be purely accidental is further confirmed hereinafter, when Ulpian says that the occupation of a pander is not less disgraceful than the practice of earning through the body (Ulp. 1 *ad l. Iul. et Pap.* D. 23.2.43.6: *Lenocinium facere non minus est quam corpore quaestum exercere*). While the jurist’s attention is mainly focused on the doings of procurers and procuresses, in defining these two figures, the measure of comparison remains, nonetheless, the condition of the prostitutes as well as the particular object of trade – namely the body – which is mentioned once again in relation to women who commodify their bodies.

But a crucial point of interest for my enquiry is to be found in Ulp. 1 *ad l. Iul. et Pap.* D. 23.2.43.9: *Si qua cauponam exercens in ea corpora quaestuarium habeat, ut multae adsolent sub praetextu instrumenti cauponii prostitutas mulieres habere, dicendum hanc quoque lenae appellatione contineri*. Here Ulpian claims that the epithet *lena* can also indicate a woman who conducts a tavern containing *corpora quaestuarium*, i. e. taverns wherein reside “bodies available for trade,” “bodies used as a source of income.” The fact that *corpus* is now presented in the accusative case is useful to further identify the body as the true object *quaestuarium*, in other words, the prostitutes’ true source of income.<sup>32</sup>

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<sup>32</sup> Such a reconstruction is aided by the comparison with Ulp. 6 *ad ed.* D. 3.2.4.2, where Ulpian mentions “*quaestuarium mancipia*”: see Merotto, “Il corpo mercificato,” 258–260.

## 5 The “legal marginalization” suffered by prostitutes in Roman law

Ulpian was not the only jurist to connect the concept of *corpore quaestum facere* to meretricious activities. This expression can be found in other texts that comprise the Digest or similar legal collections wherein the legal repercussions of harlotry are discussed.

For instance, Paulus states that the daughter of a Senator who has lived in prostitution (*corpore quaestum fecerit*) or has been an actress (*artem ludicram fecerit*), or has been convicted of a criminal offence, can marry a freedman with impunity: for she who has been guilty of such depravity is no longer worthy of honor (Paul. 2 *ad l. Iul. et Pap.* D. 23.2.47: *Senatoris filia, quae corpore quaestum vel artem ludicram fecerit aut iudicio publico damnata fuerit, impune libertino nubit: nec enim honos ei servatur, quae se in tantum foedus deduxit*).<sup>33</sup>

Also, Modestinus and Marcianus consider the instrumentalisation of women's bodies to be legally relevant. Modestinus states that where a man lives with a free woman, it is not considered concubinage but genuine matrimony only if she does not acquire gain by means of her body (Mod. 1 *reg.* D. 23.2.24: *In liberae mulieris consuetudine non concubinatus, sed nuptiae intellegendae sunt, si non corpore quaestum fecerit*), while Marcianus makes clear that the freedwoman of another can be kept in concubinage as well as a woman who is born free, especially if she is of a low origin, or has lived by prostitution (Marc. 12 *inst.* D. 25.7.3 *pr.*: *In concubinatu potest esse et aliena liberta et ingenua et maxime ea quae obscuro loco nata est vel quaestum corpore fecit*).

We can therefore achieve an understanding of how important and widely spread the concept of *corpore quaestum facere* was in juridical writings to identify prostitutes and, at the same time, determine the legal consequences it gave rise to. As a matter of fact, women who practiced prostitution were stripped of their good reputation and honor which, in turn, negatively impacted their legal capacity, most prominently with regards to *ius connubii*.

A sort of “legal marginalization” borne by those who made a profit out of the selling of one's own body affected multiple legal areas. For example, within the Succession Law context, Suetonius reports that Domitian deprived prostitutes of the faculty to receive inheritance and bequests (Suet. *Dom.* 8). Likewise,

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<sup>33</sup> See Riccardo Astolfi, *La “Lex Iulia et Papia”* [1970] (Padova: Cedam, 1996), 97, nt. 10; Anne Duncan, “Infamous Performers: Comic Actors and Female Prostitutes in Rome,” in *Prostitutes and Courtesans in the Ancient World*, ed. Christopher A. Faraone and Laura K. McClure (Madison: The University of Wisconsin P, 2006): 252–273, 256.

the jurist Tryphoninus talks about a rescript by which the Divine Hadrian banned a woman who is suspected of being dissolute from taking anything under the will of a soldier (Tryph. 18 *disp.* D. 29.1.41.1: *Mulier, in qua turpis suspicio cadere potest, nec ex testamento militis aliquid capere potest, ut divus Hadrianus rescripit*<sup>34</sup>).

The commercialization of the human body had negative implications also for Procedural Law: in Roman Law, the integrity of witnesses was a fundamental value and had to be carefully investigated; in consideration of the personal characteristics of a witness, attention was paid to whether his life was honorable and without blame, or whether he had been branded with infamy and was liable to censure (Call. 4 *de cogn.* D. 22.5.3 pr.). In Call. 4 *de cogn.* D 22.5.3.5 we learn that prostitutes were unable to give testimony (although, in this particular fragment, prostitutes are not defined to by reference *corpore quaestum facere*, but rather in more generic terms such as *quaeve palam quaestum faciet feceritve*).<sup>35</sup> According to Callistratus's words, among other cases of inabilities, the *lex Julia de vi* provided that the one who has hired himself out to fight with wild beasts (*quive ad bestias ut depugnaret se locaverit*) shall be permitted to give testimony. The reasons were that certain persons, such as gladiators<sup>36</sup> and prostitutes, should not be allowed to testify on account of the notorious infamy of their lives.<sup>37</sup>

To sum it up, the fact that in ancient Rome prostitution was a legal source of income, did not preclude its generally sensed immorality. To the contrary, the sources reveal that *corpore quaestum facere* was considered to be so morally reprehensible that, once practiced, it left an indelible trace on the woman's reputation. Ulpian's words are evocative: Ulp.1 *ad l. Iul. et Pap.* D. 23.2.43.4: *Non solum autem ea quae facit, verum ea quoque quae fecit, etsi facere desiit, lege notatur: neque enim aboletur turpitudine, quae postea intermissa est.* Ulpian says that the Law brands with infamy not only a woman who practices prostitution, but also one who has formerly done so, even though she has ceased to act in this manner. The reason is that the *turpitudine*, once established, is not removed even if the turpitude's source is subsequently discontinued.<sup>38</sup>

<sup>34</sup> See Astolfi, *La "Lex Iulia et Papia"*, 53–55.

<sup>35</sup> See also Ulp. 8 *de off. proc.* CO. 9.2.2.

<sup>36</sup> See, on gladiators, Georges Ville, *La gladiature en Occident des origines à la mort de Domitien* (Roma: École française de Rome, 1981).

<sup>37</sup> See McGinn, *Prostitution*, 61–64.

<sup>38</sup> See Astolfi, *La "Lex Iulia et Papia"*, 51–53.

## 6 The human body as a toy

At this point, I would like to give an assessment of what has emerged so far: notwithstanding the lack of precise data on the topic, reading the legal sources concerning *meretricium*, it is possible to conclude that the true object of prostitution (in the etymological sense of the term, from *pro statuere*, “to place in front”, “to show upfront”) was the woman’s body.

The abovementioned juridical fragments, in fact, frame the “body” as being the centerpiece of the *definitio* of prostitution: in my view, the fact that the earnings are not described as being derived by way of *operis*, nor *libidine* or *voluptate* is relevant to the overall interpretation of this article. Such expressions are charged with allusiveness and involve some abstract concepts, so much so that they would have fitted the commodification of mere sexual activities better; yet, it was the prostitute’s body that, as a tangible object, was put at the disposal of the client; it was the prostitute’s body that, for Roman Law, was the specific means of making money. In brief, as *corpore* is an ablative, a case which in the Latin language performed an instrumental function, we can conclude that the body served as the concrete instrument through which courtesans were able to *quaestum facere*.

In all likelihood, it was therefore the commodification of the body the “mediated source” of all the legal limitations mentioned by the various jurists. Anyway, even without reference to the literal datum incorporated in the legal definition of *meretricium*, there are reasons to believe that the negative repercussions summarized above were a direct consequence of the commodification of prostitutes’ bodies.

It is not a mere coincidence, in fact, that other *infames personae* who both prostitutes and procuresses were regularly compared to and who were subjected to the same limitations – namely actors<sup>39</sup> and gladiators – performed professions which required them to make their bodies a public entertainment: exposing themselves to public view, with their bodies objects of fascination and desire, actors were perceived to be analogous to prostitutes; “like prostitutes, their bodies had to please, as did those of gladiators.”<sup>40</sup>

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**39** See Boris Warnecke, “Histrio,” *RE* 8 (Stuttgart: J.B. Metzlersche Buchdruckerei, 1913): 2116–2128; Franz Altheim, “Talaris ludus,” *RE* 4A (Stuttgart: J.B. Metzlersche Buchdruckerei, 1931): 2061–2063; Tenney Frank, “The Status of Actors at Rome,” *Classical Philologie* 26.1 (1931): 11–20; William M. Green, “The Status of Actors at Rome,” *Classical Philologie* 28.4 (1933): 301–304. More recently, see Ernesto Bianchi, “Appunti minimi in tema di ‘infamia’ dell’attore nel regime pretorio,” *TSDP* 6 (2013): 1–13.

**40** Catharine Edwards, “Unspeakable Professions: Public Performance and Prostitution in Ancient Rome,” in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton:

That infamy stems precisely from the fact that actors and gladiators “showed” and “used” their bodies in an open and public way can also be inferred from Ulpian’s words, reporting Labeo’s definition of “stage:” Ulp. 6 *ad ed. D. 3.2.2.5: Ait praetor: “qui in scaenam prodierit, infamis est.” scaena est, ut Labeo definit, quae ludorum faciendorum causa quolibet loco, ubi quis consistat moveaturque spectaculum sui praebiturus, posita sit in publico privatove vel in vico, quo tamen loco passim homines spectaculi causa admittantur. eos enim, qui quaestus causa in certamina descendunt et omnes propter praemium in scaenam prodeuntes famosos esse Pegasus et Nerva filius responderunt.* The *scaena*, i. e. the stage, is any place whether public or private, or on the street, where anyone appears or moves about making an exhibition of himself, provided that it is a place where persons, without distinction, are admitted for the purpose of viewing a public show.<sup>41</sup> I therefore do not find it irrational to assume that the condition of *infamia* these individuals had to endure can be traced back to the specific way of earning a living which they all shared: “in the theaters, arenas, and brothels of Rome, the infamous openly sold their own flesh.”<sup>42</sup>

Prostitution, acting, and fighting in the arenas also shared the same goal: they were designed to bring pleasure to the senses. As Catharine Edwards pointed out, in Latin sources the term *voluptas* is regularly used to define the experience of watching the games, as well as of the more commonly recognized pleasures of the flesh: Livy speaks of the *voluptas* of watching gladiators in the arena (Liv. 41.20); Tertullian exhorts Christians to abjure the *spectaculorum voluptates*, i. e. the pleasures of the shows, warning against *voluptatum vim*, i. e. the force of these pleasures (Tert. *spect. 1*).<sup>43</sup>

In this respect, interesting reflections on the use of the human body as a source of enormous pleasure to the common people<sup>44</sup> have been made in connection with the *munera* that were organized during the *damnationes ad*

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Princeton University P, 1997): 66–95, 81, while Duncan, “Infamous Performers,” 252, maintains that prostitutes and actors were often equated as both “were thought to be people who ‘faked it’ for a living.”

<sup>41</sup> About theatre performances in ancient Rome, see Danila Manciola, *Giochi e spettacoli* (Roma: Quasar, 1987), 30–49.

<sup>42</sup> Edwards, “Unspeakable Professions,” 67.

<sup>43</sup> See also Cic. *Mur.* 74; Suet. *Tib.* 42.2. On this topic, see Edwards, “Unspeakable Professions,” 83.

<sup>44</sup> About the “bloody appetites” of the Roman people speaks Sen. *tranq.* 2.13; *epist.* 95.33; *clem.* 1.25.1.

*ludos* and *ad bestias*.<sup>45</sup> In this context, the convicts' bodies<sup>46</sup> were viewed as a sort of "living *mass media*,"<sup>47</sup> a powerful means at the Emperor's disposal to amuse the crowd.<sup>48</sup>

Most recent studies have indeed pointed out the close connection between *ius punendi* and ownership, by the person that exercised it, of an almost all-encompassing dispositive power over the *reus*, a condemned person who, as a consequence of conviction itself, was deprived of all rights normally granted to an individual; thus, the *reus* was simply viewed as a "body," employed to achieve the purposes of the legal system.<sup>49</sup> Especially during the Princedom, the *reo's* body was meant to be a means of "dynamic" and "interactive" connection, something that the imperial power could fruitfully employ to solicit the *voluntas spectandi* of the crowd, hence triggering and reinforcing a psychological mechanism of "emotional dependency" in the spectator.<sup>50</sup>

## 7 The two-way correspondence between body exhibition and corporal punishment

Keeping in mind the comparison to the treatment of the body of the culprit who could be condemned *ad ludos* or *ad bestias*, some sources on the punishment of offences committed by gladiators and actors are worth considering. The persons

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45 About the *damnationes ad ludos* and *ad bestias*, see Jérôme Carcopino, *La vita quotidiana a Roma* (Roma, Bari: Laterza, 1978), 278–279; Ville, *La gladiature*, 232–240; Manciola, *Giochi*, 50–71; Cinzia Vismara, *Il supplizio come spettacolo* (Roma: Quasar, 1990), 25–26, 42–60.

46 See Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris: Gallimard, 1975), 9–40.

47 Maria Chiara Passera, Ruggero Rubisse, "Il rapporto tra pena e corpo," in *Il corpo in Roma antica. Ricerche giuridiche*, ed. Luigi Garofalo 1 (Pisa: Pacini, 2015): 217–248, 244.

48 On the importance of the *munera* as an Emperor's instrument, see Carcopino, *La vita quotidiana*, 239, 273–274 and Paul Veyne, *Le pain et le cirque: sociologie historique d'un pluralisme politique* (Paris: Seuil, 1976), 701–706; see also Gian Luca Gregori, "Ludi" e "munera", *25 anni di ricerche sugli spettacoli d'età romana* (Milano: LED, 2011), 27, who explains that the distribution of seats to watch the *munera* was also used as a means of capturing voters' votes. On execution as a spectacle, see Vismara, *Il supplizio*, 42–45, and, with reference to modern times, see Michela Marzano, *La morte come spettacolo. Indagine sull'horror reality* (Milano: Mondadori, 2013).

49 Passera, Rubisse, "Il rapporto," 241–248.

50 Passera, Rubisse, "Il rapporto," 246, speak of an "almost Pavlovian" emotional addiction. The strong connection between the public and the Emperor during the *munera* is also underlined by Carcopino, *La vita quotidiana*, 276.

in question, aside from being subject to all the limitations that have been accounted for above, were degraded from a perspective of Roman Criminal Law<sup>51</sup> so as to almost put them on the same level as slaves. With respect to corporal punishments, in fact, the body of slaves and *cives* was considered very differently.

In Roman Law, “the rightlessness and degradation of the slave were made manifest in countless ways, but particularly through sexual exploitation and physical abuse;”<sup>52</sup> the slave lacked corporal integrity, so much so that “rape – of both male and female slaves – represented only an extreme example of the daily violence threatened or inflicted upon the slave who had no recourse for retaliation without evoking further violence.”<sup>53</sup> On the contrary, protection from corporal punishment and from torture was one important privilege related to Roman citizenship.<sup>54</sup> The capital punishment was not generally imposed on a Roman citizen, just because it was seriously detrimental to his physical integrity. We learn this, for example, in Cicero, who speaks with horror of corporal punishment inflicted on a Roman citizen.<sup>55</sup> As for torture, the general rule was that only slaves could suffer it (Ulp. 8 *de off. procons.* D. 48.18.1.1: *Verba rescripti ita se habent: “ad tormenta servorum ita demum venire oportet, cum suspectus est reus et aliis argumentis ita probationi admovetur, ut sola confessio servorum deesse videatur”*), while all other people would be tortured to force them to testify only in exceptional cases, such as high treason (Arcad. *l.S. de test.* D. 48.18.10.1: *Sed omnes omnino in maiestatis crimine, quod ad personas principum attinet, si ad testimonium provocentur, cum res exigit, torquentur*).

Well, as liability to corporal punishment was one of the most vivid symbols of the distinction between free and slaves in Rome, it is emblematic that, as for slaves, torture and certain types of corporal punishment could be applied to gladiators, actors and other similar persons. Public performers, even if Roman citizens, were subjected to corporal punishment from the late Republic; we know

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51 See Richard A. Bauman, *Crime and Punishment in Ancient Rome* (London, New York: Routledge, 1996).

52 Keith Bradley, *Slavery and Society at Rome* (Cambridge: Cambridge University P, 1994), 28.

53 Roberta Stewart, *Plautus and Roman Slavery* (Oxford: Wiley-Blackwell, 2012), 80. For a clarification on the role of slaves as a “sexual tool” in the Roman social context founded on marriage, see Kyle Harper, *Slavery in the Late Roman World, AD 275–425* (Cambridge: Cambridge University P, 2011), 281–285.

54 On the possibility of applying public or private corporal punishment exclusively to slaves, see Moses I. Finley, *Schiavitù antica e ideologie moderne*, trans. Elio Lo Cascio (Roma - Bari: Laterza, 1981), 122.

55 Cic. *Rab. perd.* 12.



it from Suetonius, who talks about an ancient law of beating actors anywhere and everywhere (Suet. *Aug.* 45: *coercitionem in histriones magistratibus omni tempore et loco lege vetere permissam ademit praeterquam ludis et scaena*).<sup>56</sup> In a number of cases, the penalty was stricter if the offender was an actor. We know that the *lex Iulia de adulteriis coercendis* allowed the husband to kill the man who commits adultery with his wife only if the adulterer, caught in the husband's house, was an actor or another infamous person (Paul. Sent. 2.26.4: *Maritus in adulterio deprehensos non alios quam infames et eos qui corpore quaestum faciunt, servos etiam, excepta uxore quam prohibetur, occidere potest*).<sup>57</sup>

Acting was even considered an offence itself, moreover severely punished, if committed by a soldier: Menander says that the soldier who became a buffoon should undergo capital punishment (Macer 2 *de re milit.* D. 48.19.14: *Quaedam delicta pagano aut nullam aut leviolem poenam irrogant, militi vero graviorem. nam si miles artem ludicram fecerit vel in servitute se venire passus est, capite puniendum Menander scribit*).<sup>58</sup>

In another interesting legal source, it is said that gladiators “and other similar persons” should be trusted only if they were under torture (Arcad. *l.S. de test.* D. 22.5.21.2: *Si ea rei condicio sit, ubi harenarium testem vel similem personam admittere cogimur, sine tormentis testimonio eius credendum non est*).

The possibility of infringing the fundamental rule of the intangibility of the body of a freeborn Roman citizen for the *infames personae* who gained money through the body, might mean that being prepared to reduce one's body to a mere “instrument of someone else's pleasure” entailed being prepared to give up on the protection normally reserved to *liberae personae*. The body of “public entertainers,” same as the body of slaves or people handed the death sentence, was viewed as a thing that could be “punished” and “tortured,” most likely because, having been reified by its own proprietor, by that point it had been considered to be devoid of any value.

From a specular viewpoint, therefore, one can notice the strong correlation in Roman Law between the “use of the body,” on the one hand, and the provisions applicable, on the other, thereby allowing, depending on the case, for a sort of “conscious confusion” of cause and effect: on the one side, the body of the culprit, destined to receive corporal punishment, was so worthless as to

<sup>56</sup> Duncan, “Infamous Performers,” 255.

<sup>57</sup> See also Macer. 1 *publ.* D. 48.5.25 pr. On sexual offences in Roman Criminal Law, see Olivia F. Robinson, *The Criminal Law of Ancient Rome* (London: Duckworth, 1995), 54–73.

<sup>58</sup> On military crimes in Roman Law, see Michele Carcani, *Dei reati, delle pene e dei giudizi militari presso i romani* (Napoli: Jovene, 1981).

qualify for being treated as a “toy” for the entertainment of the masses; on the other, public entertainers, because they voluntarily chose to make their bodies available to the “entertainment of all,”<sup>59</sup> could receive corporal punishment. Since they chose to offer their bodies, gladiators, actors, and prostitutes, most likely were considered to be both infamous and freely punishable just because they placed themselves at the same lowest level of slaves and culprits, whose bodies were seen as mere flesh at the mercy of others.

## 8 The use of the body in literature: between reason of exclusion and means of elevation

So far, we have mainly discussed the legal limits that Roman Law associated with certain uses of the human body. The main type of restrictions affecting prostitutes, actors and gladiators, however, concerns the social sphere: since the beginning of time, society has always marginalized those who employed their bodies in ways that were considered “deplorable.” This marginalization has been attested to countless times in literary sources. Cicero, for example, counted acting among the most infamous crafts an individual could pursue (Cic. *off.* 1.150); Tertullian, in his *De spectaculis* storms against the theatre and all those women who have already killed off the last remaining fragments of honor and dignity. Actors and mimes live in fear of showing themselves to the public, which symbolizes social marginalization and a clear distinction between a society with and without honor (Tert. *spect.* 17.4: *ipsae illae pudoris sui interemprices de gestibus suis ad lucem et populum expavescentes semel anno erubescunt*). The boundary metaphor is particularly visible when Tertullian states that all the deplorable behaviors normally found in theatres, instead of being made visible to everyone, should stay in the shadows, relegated to a dark corner, so that they do not dim the light of day (Tert. *spect.* 17.3: *locus, stipes, elogium, etiam quibus opus non est, praedicatur, etiam [taceo de reliquis] quae in tenebris et in speluncis suis delitescere decebat, ne diem contaminarent*).

Aside from the above-mentioned marginalization, however, those who practice certain uses of the body, at times, also inspire a change for the better. Human body has always had a strong capacity to seduce, entertain, hypnotize, and can open many doors that would otherwise remain closed. So, continuing

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<sup>59</sup> Jean-Pierre Baud, *L'affaire de la main volée. Une histoire juridique du corps* (Paris: Seuil, 1993), 91, defines the gladiator's body as a “*corps-jouet*.”

with the border metaphor, making one's own body available to others also allows many metaphorical lines to be overcome "in positive."<sup>60</sup>

Also in Roman Law, alongside the stigmatization of prostitutes, gladiators, and actors, there ran an increasing allure. Think of the famous freedwoman Citeride, narrated by Cicero, Virgil and Ovid. She, prostitute, actress, and mime, besides being the lover of many visible men, received honors worthy of a respectable matron, so much so that Marco Antonio presented her in public as if she were his wife. Cicero himself (Cic. *Tusc.* 2.41) exalts the bravery of the gladiators, personalities that, although despised, were also celebrated as heroes and were seen as a reminder of maleness, military courage and virtue.<sup>61</sup>

There are very many literary sources, not only ancient, showing the use of the body as a means of personal elevation. The *Dame aux Camélias*, the "most charming mistress in Paris," "was always present at every first night, and passed every evening either at the theatre or at the ball" and lived "covered with diamonds" in a beautiful apartment.<sup>62</sup> In *Vanity Fair*, thanks to her unconventional charm Becky Sharp manages to be "admitted to be among the 'best' people;" during a selected party, Becky performs and sings so well that she grabs all the praises of the aristocratic guests of Lord Steyne, including the Royal Personage, who "declared, with an oath, that she was perfection." Little Becky's triumph was at supper-time: "she was placed at the grand exclusive table with his Royal Highness" and "she was served in gold plate."<sup>63</sup>

But the "positive" overcoming of boundaries generated by the use of one's own body for the enjoyment of others is often nothing more than an illusion. Marguerite Gautier and Becky Sharp, no matter how close they may have come to the *beau monde*, were never really part of it. "Thus, do what she will, the fallen creature shall never rise!"<sup>64</sup> In these words, which evoke the ancient statement of Ulpian "*neque enim aboletur turpitude, quae postea intermissa est*", one can summarize the whole story of the *Dame aux Camélias*, totally

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<sup>60</sup> Such ambivalence is ascribable to a recurrent pattern well described by Peter Stallybrass, Allon White, *The Politics and Poetics of Transgression* (London: Methuen, 1986), 5.

<sup>61</sup> Edwards, "Unspeakable Professions," 69, 77, nt. 43. About the prestige and shame of the people fighting in the arena see Ville, *La gladiature*, 334–344. See also Carcopino, *La vita quotidiana*, 276, who talks about the fame conquered by the victorious gladiators, who were dared by women and assimilated to the most famous pantomimes.

<sup>62</sup> Alexandre Dumas Fils, *The Lady of the Camellias* [1848], trans. Edmund Gosse (New York: Werner, 1902), 14, 147.

<sup>63</sup> William M. Thackeray, *Vanity Fair* [1846–1848] (London: The Zodiac P, 1948), 412, 421, 422.

<sup>64</sup> Alexandre Dumas Fils, *La Dame aux Camélias. (Camille.) A Play in Five Acts* [1852] (New York: Rullman, 1880), 29: further references in the text, abbreviated as DC.

excluded and rejected from the same bourgeois universe that has helped to create her.<sup>65</sup> Such inexorable exclusion can be seen in Armand's father's words, when begging Marguerite to leave his son: "purified though you are, in Armand's eyes and in mine by your feelings, you are not purified in the eyes of society, which will never see in you aught but your past, and will pitilessly close its doors to you."<sup>66</sup>

To complete the picture, the hypnotic power of the body is undoubtedly a "dangerous" power, like the "dangerous beauty"<sup>67</sup> of Veronica Franco: her beauty took her to the most influential rooms of the Venetian aristocracy and even to the thalamus of the king of France, but also before the Inquisition Court where she was tried for witchcraft.

## 9 The body in the sexual act and Veronica Franco's "corporal neoplatonism"

It is precisely the autobiographical poetics of Veronica Franco<sup>68</sup> that allow us to make some further suggestions on the meaning of the body in the sexual act and on the profession of the prostitute (albeit placed in Renaissance Venice). As mentioned in paragraph 2 above, my investigation is developed between Law and Literature. For this reason, before I conclude, I wish to emphasize the role of the body as the material object granted by the prostitute through a reading of some lines of the famous Italian prostitute lived in the sixteenth century.

Veronica's *Terze rime* can be considered as being representative of the profession of prostitution, especially given that the famous Venetian *meretrice et scrittora* does not shy away from emphasizing the prerogatives of her line of

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<sup>65</sup> Roland Barthes, *Mythologies* [1970], ed. and trans. Annette Lavers (London: Paladin, 1973), 111–113.

<sup>66</sup> DC, 27.

<sup>67</sup> This is a reference to the movie *Dangerous Beauty* about the life of the famous Venetian courtesan, based on Margaret F. Rosenthal, *The Honest Courtesan. Veronica Franco Citizen and Writer in Sixteenth-Century Venice* (Chicago, London: The University of Chicago P, 1992).

<sup>68</sup> See Alvise Zorzi, *Cortigiana veneziana: Veronica Franco e i suoi poeti, 1546–1591* (Milano: Camunia, 1986); Arturo Graf, "Una cortigiana fra mille: Veronica Franco," in *Attraverso il Cinquecento* (Torino: Loescher, 1888): 215–366; Elvira Favretti, *Figure e fatti del Cinquecento veneto* (Alessandria: Edizioni dell'Orso, 1992), 71–95; Maria Luisa Doglio, "Scrittura e 'offizio di parole' nelle lettere familiari di Veronica Franco," in *Lettera e donna. Scrittura epistolare al femminile tra Quattro e Cinquecento* (Roma: Bulzoni Editore, 1993): 33–48.

work, using a strategy of self-promotion by exalting, in a very intriguing and direct way, the excellence of her amatory virtues.<sup>69</sup>

The repudiation, in her works, of any abstract form of transcendence in favor of the search for the concrete manifestations of love, appears to me to be reconcilable with the legal definition of “prostitute” outlined in Roman Law. Just like the Roman *meretrix* conceded her own body to *quaestum facere*, Veronica viewed her own body as the principal object and instrument of pleasure; an object that she conceded and used as a courtesan. Such an enhancement of the body is clear in the poem *S'esser del vostro amor potessi certa* [If I could be certain of your love]:

*Poi ch'io non crederò d'esser amata,  
né 'l debbo creder, né ricompensarvi  
per l'arra che fin qui m'avete data,  
dagli effetti, signor, fate stimarvi:  
con questi in prova venite, s'anch'io  
il mio amor con effetti ho da mostrarvi;  
ma s'avete di favole desio,  
mentre anderete voi favoleggiando,  
favoloso sarà l'accetto mio;  
e di favole stanco e sazio, quando  
l'amor mi mostrerete con effetto,  
non men del mio v'andrò certificando.  
Aperto il cor vi mostrerò nel petto,  
allor che 'l vostro non mi celerete,  
e sarà di piacervi il mio diletto*<sup>70</sup>;

Since I will not believe that I am loved,  
nor should I believe it or reward you  
for the pledge you have made me up to now,  
win my approval, sir, with deeds:  
prove yourself through them, if I, too,  
am expected to prove my love with deeds;  
but if instead you long for fictions,  
as long as you persist in spinning out tales,  
my welcome to you will be just as false;  
and, when, fatigued and annoyed by fictions,  
you show me your love in deeds,  
I will assure you of mine in the same way.  
I will show you my heart open in my breast,  
once you no longer hide yours from me,  
and my delight will be to please you<sup>71</sup>;

Franco's poetry has been recognized as “Corporal Neoplatonism”<sup>72</sup> due to the fact that the philosophical reflections of her poetry consist in the conception of the human body as the *locus* of the sublime.<sup>73</sup> In her poems, Veronica focuses on a need for love that is felt in the concrete presence of the lover, from whom she does not expect abstract devotion, but a real, lively and true presence.

69 Stefano Bianchi, ed., *Poetesse italiane del Cinquecento* (Milano: Mondadori, 2003), 108.

70 Veronica Franco, *Rime* [1575], ed. Stefano Bianchi (Milano: Mursia, 1995), 57.

71 Veronica Franco, *Poems and Selected Letters*, ed. and trans. Ann Rosalind Jones and Margaret F. Rosenthal (Chicago-London: The University of Chicago Press, 1998), 63.

72 Cesare Catà, “Un Rinascimento tra Petrarca e passione. Il Neo-platonismo ‘corporeo’ della poesia di Veronica Franco,” *La Parola del testo. Semestrale di filologia e letteratura europea dalle origini al Rinascimento* 2 (2009): 357–373.

73 Catà, “Un Rinascimento tra Petrarca e passione,” 363.

In the poetess's *Terze Rime* we witness the revolution of the *topos* of "platonic love" characterizing Petrarca's *Canzoniere*<sup>74</sup>: Francesco Petrarca's abstract and sublimated notions of love can be best described in the *desio di favole*, to which Franco set in opposition an *amore mostrato con effetto*, i. e. through effective actions and through the body:

*Certe proprietàti in me nascose  
vi scovrirò d'infinita dolcezza,  
che prosa o verso altrui mai non  
espose,  
con questo, che mi diate la certezza*

*del vostro amor con altro che con lodi,  
ch'esser da tai delusa io sono avezza:  
più mi giovì con fatti, e men mi lodi,*

*e dov'è in ciò la vostra cortesia  
soverchia, si comparta in altri modi.*<sup>75</sup>

Certain qualities concealed within me,  
I will reveal to you, infinitely sweetly,  
which prose or verse has never shown  
another,  
on this condition: that you prove your love  
to me  
by other means than compliments, for I  
take care not to be fooled by them;  
please me more with deeds and praise me  
less,  
and where your courtesy overflows into  
praise,  
distribute it in some other way.<sup>76</sup>

In *Questa la tua fedel Franca ti scrive* [This your faithful Franca writes you] the object of desire is an *Apollo in scienza e sembianza*, which further leads us to infer that the true object of love is the lover's body itself, that is to say the lover in his concreteness:

*Subito giunta a la bramata stanza,  
m'inchinerò con le ginocchia in  
terra  
al mio Apollo in scienza ed in  
sembianza*<sup>77</sup>;

The moment I reach the room I have longed for,  
I will bow down, my knees on the ground,  
before my Apollo in knowledge and beauty.<sup>78</sup>

In this respect, it has been said that, unlike the Petrarchan conception, "for the lyrical I of Franco's poetry, the lover's body is, at the same time, the lover's soul."<sup>79</sup> Moreover, the same aspect is clearly present when Veronica Franco considers the lover's absence which creates a yearning and a suffering that can be felt "*in corpore*, felt within one's flesh and blood."<sup>80</sup> Emblematically, the

<sup>74</sup> Catà, "Un Rinascimento tra Petrarca e passione," 366.

<sup>75</sup> Franco, *Rime*, 57.

<sup>76</sup> Franco, *Poems and Selected Letters*, 63.

<sup>77</sup> Franco, *Rime*, 63.

<sup>78</sup> Franco, *Poems and Selected Letters*, 75.

<sup>79</sup> Catà, "Un Rinascimento tra Petrarca e passione," 364. [My translation]

<sup>80</sup> Catà, "Un Rinascimento tra Petrarca e passione," 364. [My translation]

poetess defines this nostalgia for the lover's body as martyrdom, so as to give voice to the physical perception of a type of suffering that is, in and of itself, without form:

*Ben vi ristorerò de le passate*

*noie, signor, per quanto è 'l poter mio,  
giungendo a voi piacer, a me bontate,  
troncando a me 'l martir, a voi 'l  
desio.*<sup>81</sup>

I'll willingly make up to you for past  
suffering,  
my lord, as far as my power allows,  
bringing pleasure to you, good to myself,  
ending my suffering and your desire.<sup>82</sup>

The constant search for the lover's body, therefore, is a way to express that also the courtesan's body was an object of desire that was given to (and paid for by) the client. Through a diachronic comparison of Roman fragments and Renaissance poetry, we can thus observe that the Roman definition of prostitution as *corpore quaestum facere* conveys the same idea of "skillful use of the body" to please the client celebrated by the Venetian poetess.

## 10 Conclusion

After this evocative digression, we may draw some conclusions. Human corporeality brings certainly many boundaries to the surface. First of all, it could be said that the bodily substance of a man represents a physical and tangible boundary, a metaphorical frontier not fully penetrable by the legislator. Hence the title of this essay which, echoing the title of Montale's famous poem, aims at conveying the first inexorable limit set by humankind's bodily nature to the action of Law: the Law is not in the position to "have the last word" on matters concerning human life, on which nature alone can "lay down Law".

On the other hand, no Law could ever completely forbid the natural and personal disposability that everyone has of their own body. Again, with the example of prostitution in mind, I believe we can glimpse another type of limits set by the body to the Law in the proclaimed "lack of interest" which has always characterized the relation between Law and sexuality.<sup>83</sup> The Law tolerates a few types of body commodification because of the awareness that it is not possible to completely prevent them. In this regard, I agree with Marella

<sup>81</sup> Franco, *Rime*, 64.

<sup>82</sup> Franco, *Poems and Selected Letters*, 77.

<sup>83</sup> Maria Rosaria Marella, "Sesso, mercato e autonomia privata," in *Trattato di biodiritto*: 887–914, 889.

who, with reference to the rule *in pari causa turpitudinis* (a rule today generally applicable to exchange of money between prostitute and client), said it is a “mechanism which, while excluding sex for payment from the market, regulating it surreptitiously as exceptional in relation to the market itself, confirms the indifference of the Law towards it and speculatively its opacity in relation to the Law.”<sup>84</sup>

However, even though not prohibited, some uses of the body cause “limiting effects” to the detriment of those who perform them. As we have seen, in Roman Law, these “boundaries” that first had been sanctioned by a sense of justice of the collectivity, were also transposed into the *ius*, which attributed to some uses of the body both legal limitations as well as a crossing of limitations set by the Law itself. Commodification and exposure of the body not only brought about an “abstract” marginalization through the introduction of a series of prohibitions to perform certain legal actions, they also led to an overstepping of fundamental boundaries that were anchored in the Law itself, like the physical intangibility of the *civis* who of his own accord to use his body as an object of entertainment for others.

Other confines related to the use of the body can be found in some social barriers that could be surreptitiously overcome “positively” by those who employ their bodies for the pleasure of others. As already seen, however, at least in the past, the “positive overcoming of borders” never resulted in a real and lasting welcome in the *élite*, which, after all, has always regarded prostitutes, actors, and other public performers as individuals to be sidelined.

I will conclude with the last border that I see exceeded or, better said, “shifted” with regard to the human body. Nowadays, in Western societies, on the one hand, Legislators<sup>85</sup> and Judges<sup>86</sup> rule on human life, on the other hand, the manifest exhibition of one’s own body seems a practice not only “normal” but also “ennobling”: actors, models, soubrette, and dancers are daily divinized. Entities praised by the masses, icons of style and models of life to imitate, these individuals, showing worldwide their bodies, achieve the highest peaks of society.

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**84** Marella, “Sesso,” 887 [My translation].

**85** For an overview of supranational legislative interventions dealing with the body (mainly related to the medical field), see Mariachiara Tallacchini, “Habeas Corpus? Il corpo umano tra non-commerciabilità e brevettabilità,” *Bioetica* 4.6 (1998): 531–552, 549; Giorgio Resta, “La disposizione del corpo. Regole di appartenenza e di circolazione,” in *Trattato di biodiritto*: 805–854, 814–816.

**86** For an overview of the judge’s role in Bio-Law, see Roberto Conti, *I giudici e il biodiritto. Un esame concreto dei casi difficili e del ruolo del giudice di merito, della Cassazione e delle Corti europee* (Roma: Aracne, 2014).



Thus, a diachronic comparison reveals that the concept of “human life,” which for Roman Law represented an impassable boundary, seems to have turned into an obstacle to overcome through the most refined judicial elaborations. Breach of decorum and disrespect for one’s own body, which under Roman Law caused social marginalization and even legal limitations, today represent a powerful means of achieving lastingly the most coveted goal of fame, which is today a synonym of social elevation and respect.

In other words, what was once a “limit” and “edge” related to human body, today appears turned into an “obstacle” and “target.” In such a change, as far as human corporeality is concerned, I observe a final shift – all the more acute in that the comparison is between two worlds separated by two thousand years of history – of the line marking the circle of the operativeness of Law, on the one hand, and of respectable society, on the other.

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