

AUGUSTUS, JULIA AND THE DEVELOPMENT OF EXILE *AD INSULAM**

In 2 B.C.E. a major scandal broke in Rome: Augustus' daughter Julia was accused of adultery, condemned by her father and sent away from the city.¹ Most of her lovers were also exiled, although at least one of them was forced to commit suicide. The scandal has been the subject of a great deal of scholarly attention, although less work has been done on the subject of this paper, the punishment meted out to Julia and her alleged lovers. My argument is that Julia's exile and that of her lovers is the first time exile to a specific place was used as a punishment in Roman law, that is, that Augustus invented the penalty to deal with this specific crisis.² I will also argue that it was under the influence of Augustus' decision to send Julia to Pandateria, now known as Ventotene, a small island off the Italian coast, that islands became fixed as the standard places of exile in the Principate. This use of islands in the empire is well

* I would like to thank M. Griffin, P. White and the journal's anonymous reader for their comments and suggestions. All remaining errors are, of course, my own.

¹ The major ancient sources are Suet. *Aug.* 65, Vell. 2.100.2–5, Dio Cassius 55.10.12–16, Sen. *Ben.* 6.32.1–2; these and others are collected in E. Fantham's recent biography of Julia, *Julia Augusti: The Emperor's Daughter* (London, 2006), at 138–46. Needless to say, they do not agree on all points. The scandal has been examined in great detail and at great length, but basic problems remain controversial: for example, whether this was in fact a conspiracy, and if so, what its goals were. The best examination of the case from a legal standpoint (the charges and procedure) remains R. Bauman, *The Crimen maiestatis in the Roman Republic and Augustan Principate* (Johannesburg, 1967), 198–206, although his conclusion that there was a charge of *maiestas* is not universally accepted. R. Syme, 'The crisis of 2 BC', *Bayerische Akademie der Wissenschaften* 7 (1974), 3–34 = *Roman Papers*, vol. 3 (Oxford, 1984), 912–36, favours the notion that the charge of adultery concealed the crime of treason; P. Sattler, 'Julia und Tiberius: Beiträge zur römischen Innenpolitik zwischen der Jahren 12 v. und 2 n. Chr.', in W. Schmitthenner (ed.), *Augustus* (Darmstadt, 1969), 486–530 makes a similar argument. R. Bauman, *Women and Politics in Ancient Rome* (London, 1992), 105–19, places the crime and scandal within the context of Augustus' moral programme and his recent elevation to *pater patriae*.

² The English term 'exile' may serve to translate a number of Latin terms beyond the Latin *exsilium*. It can refer to the legal penalties of *deportatio* (capital exile, in which the exile loses his Roman citizenship) and *relegatio* (in which the exile retains his Roman citizenship), both of which developed during the Principate; it may also be used to translate the Latin *aquae et ignis interdictio* (banishment from fire and water), which, as will be described later, is not in origin a legal penalty. *Exsilium* itself may refer to voluntary exile or to banishment, and is not a word used only in legal contexts; it is, however, part of a technical phrase, *solum vertere exilii causa*, which refers to a Roman's decision to take up the citizenship of a new city, usually as the result of a criminal trial. In general in this paper I will use the English 'exile' to refer to an enforced absence from Rome, and will use the technical Latin terms where appropriate.

For Julia's relegation as the first attested case of exile to an island, see G. Amiotti, 'Primi casi di relegazione e di deportazione insulare nel mondo romano', in M. Sordi (ed.), *Coercizione e mobilità umana nel mondo antico* (Milan, 1995), 245–58; also M. Braginton, 'Exile under the Roman emperors', *CJ* 39 (1943–4), 391–402, at 393, and S. Bingham, 'Life on an island: a brief study of places of exile in the first century AD', *Studies in Latin Literature and Roman History* 11 (2003), 376–99, at 397–9. Amiotti mentions a case of relegation to an island for the purpose of religious purification in 171 B.C.E. (Pliny *HN* 7.36), but this is not relevant to the criminal law. For exile in the Principate in general, see Braginton and Bingham, as well as P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford, 1970), 111–22.

attested, but the reason for it has not been explained³; indeed, the practice of sending exiles to specific places is, in light of the history of exile in the Republic, a surprising development, and one which provides evidence for the impact of the authority of the Princes on the criminal and penal law far beyond the decisions taken in his own court.

It is all too easy to see this use of islands as a development which requires no explanation. Island exile is a long-established part of our mental landscape: an Alcatraz or Robben Island can attain an iconic position less frequently granted to land-locked prisons. Islands, and particularly distant islands, are perceived as secure places for the most dangerous prisoners: Napoleon was able to return from Elba, so in his second exile he was sent to St. Helena in the South Atlantic. But the practice of sending individuals to a specific place (let alone to an island) was entirely alien to the practice of exile in the late Republic.⁴ Even after *aquae et ignis interdictio* was included as the penalty of certain laws, the individual was free to choose where he would live, although exiles might be required to remain a certain distance from Rome and could not settle in a community of Roman citizens. Islands were popular choices for exiles, but they were not the only options: an exile was as likely to choose to live in Smyrna, Athens or Massilia as in Rhodes or Mitylene.⁵

Although it was used as a penalty by the end of the Republic, exile was in origin seen not as a punishment but as a way of avoiding punishment. Rather, as Polybius describes (6.14.7), citizens on trial for major crimes could go into voluntary exile to avoid the consequences of conviction. They would leave Rome and take up the citizenship of some allied state. This act (*solī mutatio*) was then enforced by a plebiscite imposing *aquae et ignis interdictio* and preventing them from returning to Rome. The date at which exile first appears as a *poena legis* is a matter of some controversy, as the Roman evidence is itself contradictory. There are two key passages: first, the claim found in the Digest that *deportatio* was the penalty of some of the *leges Corneliae*, although these are under the Empire punished by death, and second, Cicero's claim at *Pro Caecina* 100 that *exsilium* is never found as a penalty in Roman law. The first would seem to imply that exile was included as a legal penalty in Sulla's criminal laws; the second, that as late as 69 B.C.E., exile was not found as a *poena legis*.

Given that the authors excerpted in the Digest do not always provide evidence for the original penalty of the law, and given that Cicero's language is quite strong, one might prefer the later date. But although the jurists may substitute *deportatio* for its older equivalent, *aquae et ignis interdictio*, they also clearly contrast the penalty written in the law from that currently administered and can be taken to indicate that the *poena legis* was *interdictio*:

³ Amioti (n. 2) and Bingham (n. 2) both describe the practice in some detail, but neither presents a reason for it.

⁴ See G. Kelly, *Exilium: A History and Prosopography of Exile in the Roman Republic* (Diss., Bryn Mawr, 1999) for the development and details of exile in the Republican period; E. Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (Paderborn 1978), 62–127 is also worthwhile.

⁵ X. Lafon, 'Les îles de la mer Tyrrhénienne: entre palais et prisons sous les Julio-Claudiens', in C. Bertrand-Dagenbach, A. Chauvot, M. Matter, J.-M. Salamito (edd.), *Carcer: Prison et privation de liberté dans l'antiquité classique* (Paris, 1999), 149–61, at 151, suggests that exiles tended to choose ports, whether on islands or on the mainland. This is a tempting hypothesis, as social and political isolation were among the chief disadvantages of this kind of exile.

Legis Corneliae de sicariis et veneficis poena insulae deportatio est et omnium bonorum ademptio. Sed solent hodie capite puniri, nisi honestiore loco positi fuerint, ut poenam legis sustineant: humiliores enim solent vel in crucem tolli vel bestiis subici, altiores vero deportantur ad insulam.

The penalty of the Cornelian law on murder and poisoning is deportation to an island and the confiscation of all property. But today [those found guilty] are usually punished capitally, unless they are of a higher rank, with the result that they suffer the penalty of the law. For those of the lower orders are usually thrown to the beasts or crucified, while the more elevated are deported to an island. (*Dig.* 48.8.3.5)

The jurists often use *deportatio* as a synonym for *aquae et ignis interdictio*, and here the contrast Marcian draws between that penalty and the penalty administered under the Principate strongly suggests that the penalty written in the law, and largely ignored at the time of writing, was in fact *aquae et ignis interdictio*.⁶ Grasmück provides a tempting explanation for the insertion of exile into the legal penalties by Sulla, that it served as a means of moderating and regularising the legal use of violence in the Roman Republic after the disruption of civil war and proscription.⁷ I find Grasmück's larger argument convincing, as otherwise the inclusion of exile in the criminal law is difficult to explain. I would further suggest that in the *Pro Caecina* passage, Cicero is using exile in the strictest sense to refer to *solum vertere causa exilii*, the process of going into exile, rather than the decree of *aquae et ignis interdictio*, which made it necessary for the citizen to leave Rome. Cicero's language supports this interpretation:

Exsilium enim non supplicium est, set perflugium portusque supplici. nam qui volunt poenam aliquam subterfugere aut calamitatem, eo solum vertunt, hoc est sedem ac locum mutant. itaque nulla in lege nostra reperietur, ut apud ceteras civitates, maleficium ullum exsilio esse multatum, sed cum homines vincula, neces ignominiasque vitant, quae sunt legibus constitutae, confugiunt quasi ad aram in exsilium.

For exile is not a punishment, but a refuge and harbour from punishment. Those who wish to escape some penalty or misfortune emigrate, that is, change their home and place of residence. And so nowhere in our laws is it found, as in other cities, that any misdeed is punished by exile, but when men wish to avoid the chains, execution and infamy which are prescribed by law, they flee into exile as if to an altar. (*Caec.* 100)

It is significant that he uses the term *solum vertere* to explain what he means by *exsilium*, rather than a reference to interdiction. This would suit his larger argument in this part of the speech, that citizenship cannot be lost except by the action of the individual citizen in taking up a new form of citizenship. Cicero's language in this passage does not rule out the possibility that *aquae et ignis interdictio* was used as a penalty prior to 69 B.C.E.. Although this is not the most natural interpretation of the

⁶ Also interesting is the description of the *lex Cornelia de falsis* at *Dig.* 48.10.33: *si quis falsis constitutionibus nullo auctore habito utitur, lege Cornelia aqua et igni ei interdictur*. It seems unlikely that this refers to some later version of the law.

⁷ Grasmück (n. 4), 102–9. Kelly, (n. 4), 30–1 finds the evidence of Cicero irrefutable and that of the Digest suspect. He suggests, at 33, that the *lex Pompeia de vi* of 52 is the earliest likely candidate. The first firm example of *aquae et ignis interdictio* as a legal penalty is found in decrees relating to Cicero's exile, but it seems to me that if this were the first instance of the use of this penalty as a *poena legis*, Cicero would have had more to say on the subject of this unnatural and revolutionary penalty in the speeches delivered after his return. The *lex Tullia de ambitu* of 63 may also be relevant, although it institutes a form of relegation, rather than *aquae et ignis interdictio*, as the guilty party may return to Rome after ten years.

passage if taken outside this context, it is worth bearing in mind that this section of the *Pro Caecina* may not have been delivered orally, and thus that the more technical use of language found here might have been appropriate.⁸ Whatever the date of the change, a place of exile was never specified, although the exile might be required to remain a certain distance from the city. Beyond that, no limits were placed on the exile: banishment in the later Republic was always *from* and never *to*.

The nearest parallel to the use of exile to a specific place as a criminal penalty in the late Republic occurs during the debate about the fate of the Catilinarian conspirators, as recorded by Sallust. In the course of the discussion, Julius Caesar proposes that the conspirators be held indefinitely as prisoners in Italian towns:

Sed ita censeo: publicandas eorum pecunias, ipsos in vinculis habendos per municipia quae maxime opibus valent, neu quis de iis postea ad senatum referat neve cum populo agat.

I move as follows: that their property be confiscated and they themselves held imprisoned in the strongest of the Italian towns, and that after this no one may refer their case to the Senate or bring it before the people. (Sall. *Cat.* 51.43)

Despite Caesar's claims to the contrary, this is quite an innovation, much more than the summary execution of conspirators in arms against the state, for which there were, as Cato's speech demonstrates, good historical precedents (52.30–1). It seems to represent a combination of imprisonment and exile, if the *municipia* are understood to be the kind of Italian cities which were deemed suitable for exiles before the Social War and the extension of Roman citizenship throughout Italy. But the emphasis here is on imprisonment: the reference to *vinculis* makes that quite clear. The connection between imprisonment and exile to a specific place did not escape the Romans: much later, Marcian refers to exile *ad locum* as 'chaining to an island' (*insulae vinculum*, *Dig.* 48.22.5). Imprisonment was at least as alien to the Roman system of punishments as exile was; Sallust does not suggest that Caesar's proposal was rejected because the penalty was itself revolutionary, but if the proposal was really made and rejected, that may have been a factor in the final division.⁹

During the Republican period, we do encounter a practice that looks very like exile to a specific place, but it is not part of the criminal law: rather, it seems that fathers had the right to exile dependent children, either by sending them to a family property or to some other location. This action is usually described by the term *relegare*, a verb also used for the non-capital form of exile developed during the Principate. There was, it seems, no need for a formal announcement or a trial, although the father was expected to consult a *consilium* of some sort; there was also no need for a crime to have been committed. In one popular example of filial devotion, T. Manlius Torquatus was sent to the country by his father on a vague charge of bad character.¹⁰

⁸ B. Frier, *The Rise of the Roman Jurists: Studies in Cicero's Pro Caecina* (Princeton, 1995), 98 suggests that *Caec.* 95–102 was added when the speech was published. For the distinction between *solum vertere* and *aqua et igni interdicere*, see J.L. Strachan Davidson, *Problems in the Roman Criminal Law* (Oxford, 1912), 2.28, useful despite his belief that the *interdictio* was a death sentence.

⁹ It is possible that Caesar planned to institute a punishment of this kind during his dictatorship, but there is no evidence that he did so; he did make *aquae et ignis interdictio* harsher by including the confiscation of the exile's property (*Cic. Phil.* 1.21–3; *Suet. Jul.* 42). The belief that imprisonment should not be used as a punishment continued well into the Principate (e.g. *Dig.* 48.19.35).

¹⁰ For Manlius, see *Livy* 7.4, *Cic. Off.* 3.31.112, *Val. Max.* 5.4.3 and 6.9.1, and *Sen. Ben.* 3.3.7.

In the case of Sextus Roscius, defended by Cicero on a charge of patricide, it seems that Roscius' accusers claimed that his father had relegated him simply because the elder Roscius did not approve of his son. This case provides some evidence of how informal this punishment could be: Cicero claims that there was no relegation at all, but that the father sent his son to the countryside because he trusted him to look after the family estates (Cic. *Rosc. Am.* 44). Presumably no *consilium* was involved, since the prosecution could have called its members as witnesses. We do know of a *consilium* summoned by L. Tarius Rufus, who discovered that his son was plotting to kill him, if only because here Augustus himself took part (Sen. *Clem.* 1.15.2–8). The process in this case seems very like that of *cognitio*, with the son given the opportunity to speak in his defence and others to speak in a sort of prosecution; those present to take part in the *consilium* were expected to vote on the son's guilt and his punishment (4). It is possible that women divorced for adultery were also regularly punished by a domestic tribunal: when Tacitus describes Tiberius' decision to allow Appuleia Varilla's male relatives to remove her from the city after she had been charged with adultery, he uses the term *exemplo maiorum* (*Ann.* 2.50). The man charged along with her is banished from Italy and Africa, but is not sent to a specific place.

It is thus possible that Augustus' decision to send Julia away from the city was the traditional response of a Roman *paterfamilias* to a guilty child. It is true that the villa on Pandateria was not a working estate, but it was a villa owned by the Princeps and probably used as a summer retreat: a *villa maritima* rather than a *villa rustica*.¹¹ All of the Pontine islands were imperial property, and luxurious villas were scattered over them: a few on Pontia (modern Ponza) and at least two on Pandateria.¹² The villa usually identified as Julia's has a panoramic view of the sea and includes many features typical of the *villa maritima*: an odeon, an *ambulatio*, an *exedra*, baths and *triclinia*. A second villa on the island would have provided more shelter from the wind during the winter months.¹³ In addition to these islands, Augustus owned a great deal of property around Rome and the Bay of Naples; this particular site was probably chosen because it was close to the city, where he could keep an eye on Julia.¹⁴ He did

¹¹ F. Coarelli, *Italia centrale* (Rome, 1985), 436–8 notes both its size and its panoramic position.

¹² Lafon (n. 5), 151 provides the salutary reminder that these islands were used as sites for *villegiatura* as well as for imprisonment.

¹³ The villa usually identified as Julia's is that on the Punta d'Eolo, a large building on the north end of the island with views over the sea in three directions; it was oriented to maximise exposure to the sun while remaining sheltered from the wind. For the luxurious elements typical of the *villa maritima*, see L. Jacono, 'Un porto duomillenario', *Atti del III Congresso Nazionale di Studi Romani*, vol. 1 (Rome, 1934), 318–24, at 320. The villas seem to have returned to their original use as vacation spots for Augustus' family after Julia left them: bricks bearing the stamp of one of the Augusta's freedmen have been found at the site, and a nice bust of Tiberius now in the museum on Ventotene was probably not part of Julia's collection. For Julia's life in exile, see also Lafon (n. 5), Bingham (n. 2), 383–5 and Fantham (n. 1), 89–90.

¹⁴ I agree with Bingham's conclusion about the locations chosen for Julia and other members of Augustus' family (n. 2), 383: 'No doubt its proximity to the mainland would have allowed these exiles to be easily monitored and reports to be received in the capital, yet they would still be isolated from any supporters.' For the place of the villas on Pandateria among Augustus' properties in the coastal islands, see X. Lafon, *Villa Maritima: Recherches sur les villas littorales de l'Italie romaine* (Rome, 2001), 229–332. The fact that Tiberius was, at this time, also in a kind of quasi-exile on the island of Rhodes may have contributed to Augustus' choice of an island for Julia's banishment, although their situations were very different; in fact it may be more likely that Julia's banishment and the common association of Rhodes with exile encouraged Romans at the time and later to interpret Tiberius' voluntary retirement as exile.

not need to keep her on an island; indeed, a few years later he moved her to a house in Rhegium. None the less, when sending other family members away in later years it does seem that Augustus preferred islands: the younger Julia was sent to Trimerus, an island off the coast of Apulia, and Agrippa Postumus was moved from Surrentum to Planasia when his exile was made permanent.

Julia and her children were subject to Augustus' *patria potestas*, and their relegations can be explained solely with reference to a domestic tribunal. The treatment of Julia's alleged lovers is a different matter. We know the fates of two of them: Iullus Antonius was killed or forced to commit suicide, and Sempronius Gracchus was sent to Cercina, a small island off the North African coast. In addition to Antonius and Gracchus, Velleius mentions a Scipio, T. Quinctus Crispinus Sulpicianus, Appius Claudius and other unnamed senators and *equites* (2.100.4); a Greek philosopher named Demosthenes can be added to the list (Macrob. 1.11.7). Dio claims that Antonius was not the only one to be forced to commit suicide, and that the others were sent to islands (55.10.15).¹⁵ The first observation is not widely accepted, and this may make the second seem unreliable as well. Cercina would certainly be an unusual choice for an exile, especially one who, like Gracchus, had a young son with him: Tacitus notes that the boy grew up without access to élite Roman culture and education, which would not have happened had Gracchus been able to settle in a city like Rhodes or Mytilene (*Ann.* 4.13.3). It is usually assumed that Julia's lovers were sent to islands under the provisions of the *lex Iulia de adulteriis coercendis*; comments such as Bauman's, that 'most of the culprits, including Julia herself, were sentenced to *relegatio* under Augustus' adultery law', are not uncommon.¹⁶ I believe that this assumption should be questioned: first, it is not clear that Julia's lovers were punished according to the *lex Iulia*, and second, it is not clear that relegation to an island was already part of the penalty of the law.

The process by which the men accused of adultery with Julia were convicted and punished is not clear. There are three possibilities: by the *quaestio* set up by the *lex Iulia*, by the senate acting as a court, or by the Princeps himself. There is no direct evidence for any of these, but I believe that we may none the less make a good guess. It does not seem that the Senate regularly served as a court during Augustus' reign, and what evidence there is for this practice comes from his later years.¹⁷ A few years after Julia's conviction we find Augustus dealing with cases involving himself or members of his family *in camera*; Agrippa Postumus was banished in this way, although Augustus asked the Senate to ratify his decision.¹⁸ Ovid was tried behind closed doors for some indiscretion related to the household of the Princeps, and in his case, as in

¹⁵ See Syme (n. 1), 926 for the identities and families of the men named by Velleius.

¹⁶ R. Bauman, *Crime and Punishment in Ancient Rome* (London, 1996), 54.

¹⁷ See R.J.A. Talbert, *The Senate of Imperial Rome* (Princeton, 1984), 460–4 for some suggestions about the development of the Senate's jurisdiction; he notes the possibility that 'no systematic or formal explanation' may be appropriate, but that the Senate's powers increased unofficially under Augustus' encouragement (462–3). See also Bauman (n. 16), 52–3, Garnsey (n. 2), 17–64; Garnsey makes the important point that under the Julio-Claudian emperors, the senatorial court was often under the direct influence of the Princeps (42). There might also be some combination of the three processes. J.S. Richardson, 'The Senate, the courts and the S. C. de Cn. Pisone patre', *CQ* 47 (1997), 510–18, at 517, suggests that the Senate acquired the effective power to make decisions in cases of *maiestas* even when the formal judgment would be made and carried out by the praetor; most interesting is his suggestion that this is what might have occurred in the case of Gallus in 26 B.C.E.

¹⁸ For political cases tried by the emperor *in camera*, see J. Crook, *Consilium Principis: Imperial Councils and Counselors from Augustus to Diocletian* (New York, 1975), 106.

this one, it is not entirely clear what the charge actually was. It seems clear from his poetry that the place of his exile was determined solely by Augustus, and that the emperor might have changed the sentence at will, had he wished to do so. Even more interesting is the treatment of Antonius' son Lucius, who was sent to Massilia in 2 B.C.E. as well; Bingham considers this a case of exile, although Tacitus is more ambiguous (*specie studiorum nomen exilii tegetur*, *Ann.* 4.44.3).¹⁹ The case is indicative of the dual nature of Augustus' powers: his official powers were augmented by his personal status and encouraged the centralisation of justice in his hands. Bauman notes that although Augustus did not have a court in the formal sense, he did hear cases, and although he attempts to identify three separate types of cases (a domestic court, a personal court which heard cases related to Augustus' own position, and his personal *cognitio* of common-law crimes), it is difficult to see what distinction there is in terms of process.²⁰ The best evidence that Julia's adulterers were tried by the emperor's personal *cognitio* rather than by the relevant *quaestio* lies in the fact that the penalties themselves were set by Augustus personally: Tacitus, for example, writes that by classifying adultery with Julia as treason, Augustus exceeded both traditional clemency and his own legislation (*nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur*, *Ann.* 3.24).²¹ The *ipse* in that sentence seems conclusive. Seneca draws the opposite lesson about Augustus' clemency, but maintains that the Princeps himself determined the penalty; his somewhat unlikely claim is that Augustus' decision to send the adulterers away was meant to keep them safe (*quod quoscumque ob adulterium filiae suae damnaverat, adeo non occidit, ut dimissis quo tutiores essent, diplomata daret*, *Clem.* 1.10.3). It seems that the Senate was informed not just of the identities of Julia's lovers but also of their punishment. Presumably this was done by letter, and possibly even by the same letter that informed them of Julia's fate.

Was this penalty an unusual one? Velleius implies that it was not, but that the men paid the same penalty as for adultery with any woman (*quas in cuiuslibet uxore violata poenas pepercissent, pepercere cum Caesaris filiam et Neronis violassent coniugem*, 2.100.5). He may mean relegation to an island. The implication is that they were guilty of a much more serious crime, almost certainly treason.²² Tacitus, in the passage already quoted above, implies the opposite:

Ut valida divo Augusto in rem publicam fortuna ita domi improspira fuit ob impudicitiam filiae ac neptis quas urbe depulit, adulterosque earum morte aut fuga punivit. Nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur.

¹⁹ Bingham (n. 2), 394–5. The case should probably be compared to that of Decimus Silanus, one of the younger Julia's lovers, who also was understood to be in exile even though he had not been formally charged or convicted (Tac. *Ann.* 3.24.3).

²⁰ Bauman (n. 16), 53–7.

²¹ The Senate ratified Augustus' exile of Agrippa Postumus, although his fate was decided by the emperor; this may provide a useful parallel. See Y. Thomas, 'Remarques sur la juridiction domestique à Rome', in J. Andreau and H. Bruhns (edd.), *Parenté et stratégies familiales dans l'antiquité romaine* (Rome, 1990), 449–74, at 472.

²² Dio Cassius (55.10.15) claims that Antonius was put to death for aiming at the monarchy; this is probably an anachronism. Velleius insists that Antonius' suicide was entirely voluntary, although Bauman (n. 16), 54, is probably right to see it as the first case of the *liberum mortis arbitrium*.

Although Augustus' public life was prosperous, he was unfortunate in his private life because of the unchastity of his daughter and granddaughter; he drove them from the city and punished their lovers with death or exile. For, by calling a habitual vice among men and women by the awful name of sacrilege and treason, he himself exceeded the clemency of our ancestors and his own laws (*Ann.* 3.24).

Which laws was Augustus accused of exceeding in condemning the adulterous couples to exile or death? They cannot be the legislation that provided for trials for the *crimen maiestatis*, because that was a capital crime, regularly punished by exile or death. It seems more likely that the legislation that Augustus overstepped was the *lex Iulia de adulteriis*, which defined non-capital penalties for adultery. Tacitus seems to be referring to Augustus' failure to use his own procedures to punish adultery within his household and suggesting that the penalties he decreed exceeded those fixed in his own legislation. He may have only Antonius' death in mind when he suggests that their punishment was excessive, but that seems to me to be stretching the sense of the Latin. In any case, Tacitus implies that whatever happened in 2 B.C.E. and C.E. 8, the punishment was not dictated by the *lex Iulia*. This is not entirely surprising: although the charges brought in the emperor's personal court were classified according to the *ordo iudicorum publicorum*, the Princes had a great deal of freedom in setting the punishment.²³ He was not bound by the penalty of any law, even those he had written. Moreover, there was some blurring between adultery and treason in this case, which would have encouraged the use of more severe penalties. In general, it seems that when it came to punishing individuals involved in scandals within his own house, Augustus had a great deal of latitude for unofficial action.

That said, once Julia and her lovers were exposed, Augustus had no choice but to inflict some kind of punishment: even had he wanted to ignore the scandal, his own moral legislation forced his hand. The Julian laws on marriage and adultery were an important part of Augustus' restoration of the Roman state; they were both revolutionary and unpopular, and Augustus himself could hardly be seen to be trying to circumvent them.²⁴ A detail preserved in Seneca indicates the damage done to Augustus' public image: the very forum and rostra where the father decreed his law on adultery served as a stage for his daughter's adulteries (*forum ipsum ac rostra, ex quibus pater legem de adulteriis tulerat, filiae in stupra placuisse*, *Ben.* 6.32.1). The assumption that relegation to an island was automatic and dictated by the *poena legis* is based on the testimony of Paulus:

Adulterii convictas mulieres dimidia parte dotis et tertia parte bonorum ac relegatione in insulam placuit coerceri, adulteris vero viris pari in insulam relegatione dimidiam bonorum partem auferri, dummodo in diversas insulas relegentur.

²³ Bauman (n. 16), 50; A.H.M. Jones, 'Imperial and senatorial jurisdiction in the early principate', *Historia* 3 (1954–5), 464–88, at 481.

²⁴ The bibliography for the Augustan legislation on morals and marriage is large. See, among others: K. Galinsky, 'Augustus' legislation on morals and marriage', *Philologos* 125 (1981), 126–144; J. Gardner, *Women in Roman Law and Society* (Bloomington, 1986), 121–34; C. Edwards, *The Politics of Immorality in Ancient Rome* (Cambridge, 1993); R. Bauman, 'Some notes on the structure and survival of the *Quaestio de adulteriis*', *Antichthon* 2 (1968), 68–93. There is quite a lot of material on the prosecution of adultery under the *lex Iulia* at *Dig.* 48.5, most of which relates to procedure. The sections on punishment (48.5.21–6) focus on the powers of the *paterfamilias* to kill his daughter and her lover. I will suggest below that this power also encouraged the acceptance of Augustus' right, whether as father or as emperor, to punish Julia's lovers in the same manner that he punished his daughter.

Women convicted of adultery are to be punished by the loss of half their dowry and a third of their property, and by relegation to an island; but male adulterers by the loss of half their property and the same type of relegation, provided that they are sent to separate islands (Paulus, *Sententiae* 2.26.14).

This was the penalty in force either in Paulus' time (mid-third century) or a little earlier; it is not necessarily the text of the law itself, and the final section, which ensures that the lovers are not sent to the same island, may well be a later addition. It is possible that relegation was not originally part of the penalty of the law; Brasiello, for example, points out that a mixed penalty of this kind would have been unprecedented.²⁵ If relegation to an island were part of the original penalty, that too would have been an innovation: the first case of exile to a specific place used as a punishment. As noted above, the legislation was revolutionary, and it is worth asking whether Augustus would have called attention to the innovation involved in criminalising adultery by instituting an entirely new kind of penalty as well. One might also wonder how he came to invent such a penalty, including the use of islands, without any earlier precedent. It seems more likely that the penalty established in 18 B.C.E. was solely pecuniary and that relegation was added to it at a later date.

But if Augustus did not send Gracchus and Julia's other lovers to islands under the provisions of the adultery law, how did he do it? The answer lies in the observation that it is difficult to distinguish Augustus' trial and sentencing of his daughter as a *paterfamilias* in a domestic tribunal from Augustus' use of a private *consilium* as a court for ordinary Roman citizens as Princeps. The problem would be especially severe in this particular case: not only were trials touching the Princeps himself regularly held behind closed doors, but in this case Seneca suggests that he was distraught and acted hastily (*Ben.* 6.32.2). Suetonius includes the detail that he avoided other people in the days immediately after the revelation about Julia (*abstinuitque congressu hominum*, *Aug.* 65). It seems possible that Augustus might have condemned the adulterers in private, on his own, possibly even without consulting a *consilium*, as it seems he did with Julia. This would have been entirely untraditional, as well as a gross expansion of his official powers, but in the circumstances, there was no one to stop him.²⁶ It was normal for a father punishing a male relative to summon a *consilium* of *amici* as well as near relatives, and in practice it might be difficult to tell the difference between a *consilium* of that sort, summoned by Augustus as father, and one summoned by Augustus as Princeps. The blurring between the two kinds of process led to a blurring of the kinds of penalties that could

²⁵ U. Brasiello, *La repressione penale nel diritto romano* (Naples, 1937), at 95. See also: W. Kunkel, 'Quaestio I', *RE* 24.1 (1963), 720–86, at 770; Bauman (n. 24), 80, n. 95; O. Robinson, *The Criminal Law in Ancient Rome* (London, 1995), 66. Bauman has also suggested that even after relegation became part of the *poena legis*, it was not applied in all cases, for purely practical reasons; he estimates that during the second century, the court dealt with at least 600 cases each year. If everyone found guilty was relegated, we might have to imagine whole colonies of adulterers on the islands commonly used for exiles. He suggests that the *lex Iulia* was revised in 2 B.C.E., although, if my argument here is correct, this date is too early for the inclusion of relegation in the penalties of the law. Lafon (n. 5), 151 believes that relegation to an island was limited to members of the higher classes by the late third century.

²⁶ Normally, a *consilium* called to sentence a woman would include only close family members, while one used to punish a dependent son would include *amici* as well as relatives. Augustus might well use a similar sort of *consilium* for criminal cases as he would when punishing a male relative. For the importance of gender to the composition of domestic *consilia*, see Thomas (n. 21), 466–8. He notes (471) that there is no evidence that Augustus took any counsel in punishing Julia.

be inflicted in each case: even if magistrates in the Republic had the right to exile Roman citizens, they did not have the right to send them to specific places.²⁷ But in a case that concerned Augustus himself so closely, it would have been impossible to question his actions. Moreover, Augustus' own adultery legislation would have lent support to the principle that he had the right to punish his daughter's lovers, even if it did not include this specific punishment: the *lex Iulia* both limited and enshrined the father's power to kill an adulterous daughter by stating that he could do so only in his own house, and only if, having caught the lovers in the act, he killed both of them at once (*Dig.* 48.5.24.4). One might argue that if a father had the right to kill his daughter's lover he might also have the right to inflict some lesser penalty, and indeed the jurists assume that the father also had the right to inflict physical violence on the couple.²⁸ None the less, the problem remains that exile to a specific place is a sentence unknown to the Roman penal law, but the principle that the father has the right to inflict a similar penalty on both his daughter and her lover may have operated in Augustus' favour.

It is generally the case that the emperor's use of *cognitio* contributed to the development of new penalties during the Principate; in this instance, I would argue that Augustus' personal authority, combined with his increased control of the territory of the empire, led to the establishment of a new kind of penalty. Only the Princeps had the power to ensure that those banished actually went where they were supposed to and stayed there, by assigning soldiers to accompany and guard them, and by making their oversight the responsibility of provincial governors.²⁹ Brasiello notes that *relegatio* originates in the power of the *paterfamilias* and that it was most often used by the emperor and his representatives, rather than by magistrates.³⁰ Augustus' ability to exile Gracchus and the others to islands has no constitutional basis; the simple fact is that in cases where Augustus' own person was seen to be involved there were few limits on his powers.

The innovation is an important one: exile to a specific place very quickly became part of the criminal law, and the specific place used was almost always an island. When discussing forms of exile, the authors excerpted in the Digest use *ad insulam* interchangeably with *ad* or *in locum*. Augustus, as noted above, sent both his granddaughter and his adopted son to islands; later emperors continued the trend of using the islands off the coast of Italy as places of exile for their nearest relatives.³¹ According to Braginton, the first case of deportation to an island was that of Vibius Serenus in C.E. 23. But Cassius Severus was already exiled to Crete in C.E. 8; this was probably some kind of relegation set by the Senate, rather than by Augustus (*Tac. Ann.* 4.21.3).³² Indeed, the fact that Ovid was not sent to an island when he was relegated is something of an anomaly.³³ It seems that the habit of assigning exiles to specific places, almost always islands, spread quickly from the emperor's private court

²⁷ And in fact the evidence for magistrates exiling Roman citizens in good standing is poor.

²⁸ This point is made explicit at *Dig.* 48.5.23.3: *sed qui occidere potest adulterum, multo magis contumelia poterit iure adficare*. A husband might restrain an adulterer for up to twenty hours to gather evidence, and this right was extended to the father, as well (*Dig.* 48.5.26).

²⁹ Bingham (n. 4), 379–80.

³⁰ Brasiello (n. 25), 292–4 cites *Dig.* 48.22.14.2. T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 23, also notes that the criminal penalty of relegation had its origin in the domestic sphere; it must have entered the criminal law somehow.

³¹ Lafon (n. 5), 161 provides a list.

³² Braginton (n. 2), 393.

³³ Bingham (n. 2), 400.

to other contexts. In C.E. 12, it was formalised. From this point on, all Romans subject to *aquae et ignis interdictio* or later to *deportatio* were to be sent to islands:

Ἐπειδὴ τε συχνοὶ φυγάδες οἱ μὲν ἔξω τῶν τόπων ἐς οὓς ἐξωρίσθησαν τὰς διατριβὰς ἐποιούντο, οἱ δὲ καὶ ἐν αὐτοῖς ἐκείνοις ἀβρότερον διήγον, ἀπηγόρευσε μηδένα πυρὸς καὶ ὕδατος εἰρχθέντα μήτε ἐν ἡπείρῳ διατρίβειν μήτε ἐν νήσῳ τῶν ὅσαι ἔλαττον τετρακοσίων ἀπὸ τῆς ἡπείρου σταδίων ἀπέχουσι, πλὴν Κῶ τε καὶ Ῥόδου Σάμου τε καὶ Λέσβου· ταύτας γὰρ οὐκ οἶδ' ὅπως μόνας ὑπεξείλετο.

As there were many exiles who were either living outside of the districts to which they had been banished or were living too luxuriously in the proper places, he ordered that no one who had been debarred from fire and water should live either on the mainland or on any island within fifty miles of it, except Cos, Rhodes, Samos and Lesbos; for he made an exception for these alone for some reason (Dio Cassius 56.27.2–3).³⁴

The exception of Cos, Rhodes, Samos and Lesbos seems to associate this form of exile with the traditional voluntary exile of the Republic: Cicero uses Rhodes and Mytilene as a kind of shorthand for typical places of exile (for example at *Fam.* 4.7.4, 7.3.5). The mixture of tradition and revolution is typical of the Augustan Principate. It is worth noting, however, that when these traditional places are suggested, they can be rejected in favour of the harsher islands that became the norm for exile under the Principate: the rocky and infertile islands of the Cyclades.³⁵ Juvenal's geography includes 'the cliffs and rocks of the Aegean, crowded with noble exiles', (*aut maris Aegaei rupem scopulosque frequentes exulibus magnis*, 13.246–7), and Plutarch, who devotes a significant amount of space in his essay on exile to the praise of islands, singles out rocky and inhospitable places like Gyaros and Cinaros as the kind of places an exile should actually choose to live in (*Mor.* 602C). Bingham's catalogue of exiles in the first century C.E. provides evidence that in fact exiles were almost universally sent to islands.³⁶

The preference for islands as places of exile is clear in the provisions of the Digest. Even where individuals did not have to be sent to islands, it seems that provincial governors were expected to choose an island if one was available: governors are instructed, when relegating people to a specific place, to select an isolated spot (*desertior*) if an island is not available (*Dig.* 48.22.7.9); they could also apply to the emperor for an island if there were none in their province (48.22.7.1). Prefects of Egypt had the ability to relegate to the Oasis, and this power is described by Ulpian as analogous to the ability to relegate to an island (*est quoddam genus quasi in insulam relegationis in provincia Aegypto in Oasin relegare*, 48.22.7.5). Deportation could not be inflicted by a provincial governor, but *deportati* were always assigned to a specific

³⁴ Sardinia is the manuscript reading; it has been emended by Boissvain to Samos, which would provide a better fit with the other islands mentioned. Lesbos, Rhodes and Cos were the sort of places which were popular with Roman exiles in the Late Republic; Sardinia was considered a rather harsh place of exile (Tac. *Ann.* 2.85). The legislation also limited the kinds of property exiles could own. Garnsey (n. 2), 112, n. 5 notes that this piece of legislation is not well-connected to the text around it, and may be an amalgam of more than one piece of legislation passed at different times. Even so, it may be safe to believe that there was some legislation limiting exiles to islands passed late in Augustus' reign.

³⁵ Tac. *Ann.* 6.3.3. That the choice of harsher places of exile was policy, at least by the later empire, is seen from the evidence of Modestinus: *item distant etiam in loci qualitate, quod cum relegatio quidem humanitus transigitur, deportatis vero solent hae insulae adsignari, quae sunt asperimae quaeque sunt paulo minus summo supplicio comparandae* (Modestinus fr. 2); see Bingham (n. 2), 392–4.

³⁶ Bingham (n. 2), 397–9.

place either by the emperor or his representative, and this was, it seems, always supposed to be an island (48.22.6). Moreover, the option of sending individuals to a specific place enabled the development, over the following century, of a graded range of types of exile, from temporary relegation in which the exile may choose where to live to deportation to an island (48.19.4, 48.19.28.13); this hierarchy served as a parallel for the upper orders to a range of punishments (from forced labour to the aggravated death penalty) used against *humiliores*.³⁷

The evidence of the *Digest*, when taken with that of the literary and historical sources, presents a situation in which islands are the natural location for exile. It may seem difficult, faced with this testimony, to imagine that the choice of islands was a response to a specific political situation by a specific individual: that Augustus had sent his daughter to an island villa and, in need of a way to punish at least one of her lovers, decided to inflict a similar punishment on him, despite the likelihood that there was no precedent or constitutional basis for treating a Roman citizen in this way. But in an excellent chapter on the political history of Augustus' reign, John Crook argued against the habit of viewing the institutions of the Principate as '...the product of deliberation and the drawing board, whereas they need to be seen as arising, incomplete and tentative, out of the vicissitudes of a continuing political story'.³⁸ The developing use of islands as places of exile is, I would argue, one example of this point: in extending his wholly traditional treatment of Julia to men over whom he had a different kind of authority, Augustus inadvertently created a new penalty. That penalty was so useful that he continued to send individuals to specific locations, most prominently members of his own family, but within a few years the punishment seems to have been extended to others, such as Ovid and Cassius Severus. Around C.E. 12, less than fifteen years after Julia's punishment, all exiles were limited to islands; over the following centuries the identification of islands with exile became fixed. Augustus' extension of his powers set off a wave of innovation, culminating not in a single penalty but in a hierarchy of new punishments to be elaborated on and inflicted by his successors.

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³⁷ See, for example, *Dig.* 48.8.3.5, 48.19.38. At *Dig.* 48.19.28.13–15 we see two separate hierarchies, one of types of exile and the other of types of forced labour. See Jones (n. 23), 121.

³⁸ J. Crook, 'Political history, 30 B.C. to A.D. 14', *CAH* 10 (Cambridge, 1996), 70–112, at 70.