

## NE SPADONES FIANT: DOMITIAN'S EMASCULATION BAN\*

### ABSTRACT

*This article questions the prevailing opinion that Domitian's prohibition of castration was intended as a protective measure designed to check masters' abuses on their slaves, as part of a larger trend towards more enlightened attitudes towards slavery among the Romans. While brutal, castration was the only type of mutilation which increased the monetary value of slaves. Banning it curtailed slaves' chances of social climbing and narrowed their channels towards positions of power. The emasculation ban is, instead, better understood as one of the many measures directed towards the control of the sexual behaviour and the sumptuary practices of the Roman elite. Introduced as a censorial decree, the ban gave Domitian the opportunity to act as the upholder of Republican traditions at the same time as he impinged on the private lives of his subjects and put senators and equestrians under his thumb. The article also argues that, contrary to what is usually argued, the constant re-enforcement of the prohibition to castrate by Domitian's successors is an indication of the effectiveness of the Roman legal machinery and its capacity to reach the most distant corners of the Roman empire.*

**Keywords:** Domitian; castration; eunuchs; censorial powers; sumptuary laws; Roman law

Emperor Domitian has traditionally been portrayed as a bloodthirsty tyrant. Ancient sources depict him as cruel, paranoid and authoritarian, debauched, deceitful and unpredictable.<sup>1</sup> Some modern historians have questioned this portrayal, arguing that it is too dependent on a literary tradition that identified with the senatorial faction which was more hostile to Domitian's policies and political preferences.<sup>2</sup> A reappraisal of the evidence has revealed an emperor who was considerably better prepared for the job than has traditionally been believed and who was a reasonable administrator.<sup>3</sup> The reaction of other sectors of the Roman population to his assassination, particularly in the provinces and the army, indicates that he was not as universally hated as senatorial propaganda would lead us to believe.<sup>4</sup> This does not mean, however, that the literary

\* An early version of this article was presented at the ISPCS 43rd Annual Conference, Ben Gurion University in the Negev, Israel, May 2014. I thank Alex Imrie and Laura Donati for reading different versions of the article; Manuela Rocchi for reading the final version and helping me find the article's elusive structure; and *CQ*'s readers for helpful comments.

<sup>1</sup> Suet. *Dom.* 10.1–14.4; Tac. *Agr.* 3; Cass. Dio 67.1.1–67.3.2, 67.12.1–5, 67.14.4; Plin. *Ep.* 4.9.1–2, 9.13.4; Plin. *Pan.* 33.4, 47.1, 48.3, 49.1–2, 95.3; Juv. 2.29–33.

<sup>2</sup> K.H. Waters, 'The character of Domitian', *Phoenix* 18 (1964), 49–77, especially 65–8; B.W. Jones, *Domitian and the Senatorial Order* (Philadelphia, 1979), 34–45 and B.W. Jones, *The Emperor Domitian* (London and New York, 1992), especially 160–3 and 180–2; P. Southern, *Domitian: Tragic Tyrant* (London and New York, 1997), 34–44; D. Schnurbusch, 'Rationalität und Irrationalität. Die Flavii in der Sicht der biographischen Forschung', in A. Winterling (ed.), *Zwischen Strukturgeschichte und Biographie* (Munich, 2011), 277–94, at 286–9; J. Gering, *Domitian, dominus et deus? Herrschafts- und Machtstrukturen im Römischen Reich zur Zeit des letzten Flaviers* (Rahden, 2012), 193–200.

<sup>3</sup> Jones (n. 2 [1979]), 8–12 and Jones (n. 2 [1992]), 72–98; Southern (n. 2), 24–33; Gering (n. 2), 303–5; R. Syme, 'The imperial finances under Domitian, Nerva and Trajan', *JRS* 20 (1930), 55–70; P.M. Rogers, 'Domitian and the finances of state', *Historia* 33 (1984), 60–78.

<sup>4</sup> Suet. *Dom.* 23.1. Epigraphic evidence shows that Domitian was not 'universally execrated ...

tradition has to be rejected completely. Even Domitian's staunchest advocates acknowledge that he was an autocrat, who could suppress dissent harshly and act tyrannically.<sup>5</sup>

It is puzzling that such an unlikeable figure should be credited with having greatly limited masters' abilities to violate physically the bodies of their slaves by prohibiting the castration of boys. More than a century of scholarship has placed this prohibition among a series of policies aimed at protecting slaves from abuses.<sup>6</sup> Southern, for example, has even described it as evidence for 'the humane side of [Domitian's] character'.<sup>7</sup> Such a policy, however, would better suit a compassionate ruler rather than a tyrannical autocrat who otherwise showed little interest—other than sexual—in the welfare of slaves.<sup>8</sup> Authors such as Buckland, Watson, Finley and Bradley have taken a more pessimistic standpoint. They have minimized the importance of the ban and questioned its effectiveness, arguing that its re-enactment by later emperors shows that it did little to protect slaves (see below).

The prevalent view on the castration ban, however, is predicated upon a misunderstanding of Domitian's aims, the nature of our Roman legal sources, and the way in which Roman criminal law worked. On the one hand, it is questionable that this prohibition was intended as a protective measure, part of a larger change in Roman attitudes towards slavery. Slaves' welfare does not seem to have been the primary motive of the emperor's decision. On the other, contrary to the prevailing consensus, there are good reasons to think that the ban was effective and worked exactly as the emperor intended it to work. With these two widespread ideas dispelled, it will become clear that the prohibition is much better understood when analysed in the context of the Roman tradition of moral and sumptuary laws and in view of the role emperors had to perform when they assumed censorial powers and attempted to reform uses and customs.

Despite Domitian's tyrannical reputation, his decision to outlaw castration was highly praised by the literary tradition.<sup>9</sup> Suetonius also claimed that Domitian regulated the price of eunuch sales, a claim unsupported by other sources (*Dom.* 7.1):

[and that] the Senate's condemnation was widely ignored': J.D. Grainger, *Nerva and the Roman Succession Crisis of AD 96–99* (London and New York, 2003), 51.

<sup>5</sup> Waters (n. 2), 71–2; Jones (n. 2 [1979]), 43–4 and 101–2. This revisionist view, however, has been rejected by R.P. Saller, 'Domitian and his successors: methodological traps in assessing emperors', *AJAH* 15 (2000), 4–18 and by M. Griffin, 'The Flavians', in A.K. Bowman, P. Garnsey and D. Rathbone (edd.), *CAH, vol. XI. The High Empire, A.D. 70–192* (Cambridge, 2000), 1–83, at 76–83. Griffin also pointed out that Domitian was deemed tyrannical by most educated Romans, not only by later emperors' sycophants: M. Griffin, 'The unlikeable emperor', *CR* 43 (1993), 113–16, at 115.

<sup>6</sup> E. Ciccotti, *Il tramonto della schiavitù nel mondo antico* (Turin, 1899), 261–71; W.W. Buckland, *The Roman Law of Slavery* (Cambridge, 1908), 36–8; R.H. Barrow, *Slavery in the Roman Empire* (London, 1928), 46–7; W.L. Westermann, *The Slave Systems of Greek and Roman Antiquity* (Philadelphia, 1955), 114–15; P. Guyot, *Eunuchen als Sklaven und Freigelassene in der griechisch-römischen Antike* (Stuttgart, 1980), 45–51; O. Robinson, 'Slaves and the criminal law', *ZRG* 98 (1981), 213–54; G. Boulvert and M. Morabito, 'Le droit de l'esclavage sous le Haut-Empire', *ANRW* 2.14 (1982), 98–182, at 115–18; A. Watson, *Roman Slave Law* (Baltimore, 1987), 120–9; K.R. Bradley, *Slaves and Masters in the Roman Empire: A Study in Social Control* (Oxford, 1987), 123–9; K.R. Bradley, *Slavery and Society at Rome* (Cambridge, 1994), 170–3; S. Knoch, *Sklavenfürsorge im römischen Reich. Formen und Motive* (Hildesheim, 2005), 111–22; P.J. du Plessis, *Borkowski's Textbook on Roman Law* (Oxford, 2015), 94–5; P. Hunt, *Ancient Greek and Roman Slavery* (Hoboken, NJ, 2018), 203–6.

<sup>7</sup> Southern (n. 2), 39.

<sup>8</sup> S. Gsell, *Essai sur le règne de l'empereur Domitien* (Paris, 1893), 87 lists decisions by Domitian which were detrimental to slaves. *Dig.* 48.3.2.1 is particularly illustrative.

<sup>9</sup> *Mart.* 6.2, 9.5(6), 9.7(8); *Stat. Silv.* 3.4.73–7, 4.3.13–15; *Philostr.* *VA* 6.42; *Amm. Marc.* 18.4.5.

castrari mares uetuit; spadonum, qui residui apud mangones erant, pretia moderatus est.

He forbade the castration of males; he put down the price of the eunuchs who remained under the power of slave mongers.

According to Cassius Dio, Domitian forbade castration even though he was in love with a eunuch called Earinus, a relationship which outlasted the prohibition for at least almost a decade (67.2.2–3):<sup>10</sup>

πᾶν γὰρ τὸ ὑπὲρ τοὺς πολλοὺς ἀγαπηθὲν τε ὑπ' αὐτῶν καὶ δυνηθὲν ἐν ἐχθροῦ μοίρα ἐτίθετο. καὶ διὰ τοῦτο, καίπερ καὶ αὐτὸς Ἐαρίνου τινὸς εὐνούχου ἐρῶν, ὅμως, ἐπειδὴ καὶ ὁ Τίτος ἰσχυρῶς περὶ τοὺς ἐκτομίας ἐσπουδάκει, ἀπηγόρευσεν ἐπὶ ἐκείνου ὕβρει μηδένα εἶν ἐν τῇ τῶν Ῥωμαίων ἀρχῇ ἐκτέμνεσθαι.

[Domitian] placed amongst his enemies anyone who was loved above the rest by [Vespasian and Titus] and who had gained influence. And because of this, although he himself was in love with a certain eunuch Earinus, none the less, since Titus had got eagerly involved with emasculated boys, so as to show insolence towards him, he forbade that from that moment onwards anyone within the Roman empire should be castrated.

No legal text has survived, however, that ascribes the emasculation ban to Domitian. The jurist Venuleius Saturninus credits it to a *senatus consultum* from the consulship of L. Neratius Priscus (*PIR*<sup>2</sup> N 350) and M. Annii Verus (*PIR*<sup>2</sup> A 118), during Nerva's reign, which punished castration with the confiscation of half of the convict's property (*Dig.* 48.8.6: *Venuleius Saturninus libro primo de officio proconsulis*):<sup>11</sup>

is, qui seruum castrandum tradiderit, pro parte dimidia bonorum multatur ex senatus consulto, quod Neratio Prisco et Annio Vero consulibus factum est.

He who handed over a slave for castration shall be fined half his property, according to a *senatus consultum* which was enacted in the consulship of Neratius Priscus and Annii Verus.

It is difficult to say whether this *senatus consultum* merely revalidated Domitian's original decree or innovated on it, but the former is probably the case. After all, despite their proclaimed hatred for Domitian, his successors did not radically break away from his policies.<sup>12</sup> The re-enactment of the emasculation ban as a senatorial decree could well have been a gesture of good will towards the Senate from Nerva, who, knowing how lethal senatorial hostility had been to Domitian, did his utmost to avoid alienating the Senate. To court its favour and restore its prestige, he would have introduced some legislation not as imperial edicts and decrees but as *senatus consulta*, a common practice during the Imperial period.<sup>13</sup> Some of these senatorial decisions may have built upon or even just confirmed Domitian's decisions and innovations.<sup>14</sup>

<sup>10</sup> C. Henriksen, 'Earinus: an imperial eunuch in the light of the poems of Martial and Statius', *Mnemosyne* 50 (1997), 281–94; C. Vout, *Power and Eroticism in Imperial Rome* (Cambridge, 2007), 167–212.

<sup>11</sup> R. Syme, 'The consuls of A.D. 97: addendum', *JRS* 44 (1954), 81–2. That Nerva too forbade castration is confirmed by Cass. Dio 68.2.4.

<sup>12</sup> K.H. Waters, 'Traianus Domitiani continuator', *AJPh* 90 (1969), 385–404.

<sup>13</sup> R.J.A. Talbert, *The Senate of Imperial Rome* (Princeton, 1984), 432–3.

<sup>14</sup> C.L. Murison, 'Cassius Dio on Nervan legislation (68.2.4)', *Historia* 53 (2004), 343–55, at 352. Sometimes Nerva revalidated Domitian's decisions without passing them through the Senate. In a letter quoted by Pliny (*Ep.* 10.58.10), Nerva declared that Domitian's replies to individual petitions remained legally valid. So did Trajan: see, e.g., Plin. *Ep.* 10.66, 10.72.

Undated references to the ban are found in the works of the jurist Marcianus and in the *Pauli Sententiae* (*Dig.* 48.8.3.4–5: *Marcianus libro quarto decimo institutionum*):

et qui hominem libidinis uel promercii causa castrauerit, ex senatus consulto poena legis Corneliae punitur. legis Corneliae de sicariis et ueneficis poena insulae deportatio est et omnium bonorum ademptio.

And he who castrates a man for the sake of lust or of a good sale, according to a *senatus consultum*, is subject to the penalty of the *lex Cornelia*. The penalty of the *lex Cornelia* of assassins and poisoners is deportation to an island and the total confiscation of property (*Pauli Sententiae* 5.23.13):

qui hominem inuitum libidinis aut promercii causa castrauit castrandumue curauit, siue is seruus siue liber sit, capite punitur, honestiores publicatis bonis in insulam deportantur.

He who castrated or arranged the castration of an unwilling man for the sake of lust or of a good sale, [no matter] whether he is a slave or a free man, shall suffer capital punishment; people of higher rank should be deported [after] having their property confiscated.

Unlike Venuleius, Marcianus and the *Pauli Sententiae* do not qualify the confiscation of property envisaged by the prohibition, a difference which I will discuss later.

Why did Domitian show a sudden concern about this specific mutilation? There is no doubt that the operation of castration could be gruesome. Even if ‘steps were taken to make the process less dangerous’, badly cauterized wounds could lead to a painful death.<sup>15</sup> Despite its harshness and the risks it entailed, however, emasculation was seldom regarded as a punishment and its consequences were not always detrimental to slaves.<sup>16</sup> Masters sometimes cut their slaves’ tongues and fingers off, gouged their eyes, or broke their limbs (for example *Mart.* 2.82; *Gal. Anim. Pass.* 4; *AE* 1971, 88). These actions rendered slaves almost worthless and dispensable.<sup>17</sup> None the less, during the Principate at least, no emperor ever made slave masters criminally accountable for mutilating the bodies of their slaves.<sup>18</sup> Domitian, however, banned the only type of mutilation which made slaves more expensive and desirable. This selective check of masters’ violence against their slaves should at least bring into question the widespread idea that the emperor’s main concern was the protection of slaves’ bodily integrity.

Domitian’s interest in this specific type of mutilation is even more puzzling if we take Roman attitudes towards eunuchs into account. Most Roman authors from the Early Principate are bitterly hostile towards eunuchs and show little sympathy for them, probably reflecting a widespread view among the Roman upper classes.<sup>19</sup>

<sup>15</sup> V.L. Bullough, ‘Eunuchs in history and society’, in S.F. Tougher (ed.), *Eunuchs in Antiquity and Beyond* (London, 2002), 1–17.

<sup>16</sup> True, *Mart.* 2.60 implies that castration could be used to punish slaves who had adulterous relationships with their masters’ wives or daughters. But most castrations were performed when boys were young, not as chastisement for their sexual misdeeds.

<sup>17</sup> A slave thus maimed was regarded as *morbosus* (‘diseased’) (*Dig.* 21.1.13; *Gaius*). A slave whose tongue had been cut off or had had his fingers or arms mutilated was not regarded as ‘healthy’ (*sanus*) (*Dig.* 21.1.8: *Vlpianus*; *Dig.* 21.1.10.pr.: *Vlpianus*).

<sup>18</sup> Under the *lex Aquilia*, mutilating somebody else’s slave was not regarded as a criminal offence against the slave’s corporal integrity either but as an infringement of the property rights of the master, who had to be compensated monetarily. No criminal punishment was envisaged for those against whom the action was brought (*Dig.* 9.2.2.pr.: *Gaius*).

<sup>19</sup> While S. Tougher, ‘The aesthetics of castration: the beauty of Roman eunuchs’, in L. Tracy (ed.), *Castration and Culture in the Middle Ages* (Cambridge, 2013), 48–72 is right that Roman attitudes towards eunuchs were not universally negative, I disagree with his contention that it was the Galli who ‘play[ed] a key role in establishing a negative perception of eunuchs in Rome’ (56). Hostility

Eunuchs were usually portrayed as a cumulus of vices, physically and morally corrupt.<sup>20</sup> They were deemed treacherous and disloyal.<sup>21</sup> Martial and Juvenal despised their effeminacy and lack of virtue and depicted them as perpetrators of adultery and illicit sex.<sup>22</sup> Tacitus regarded the castration of males as an abominable oriental custom. He claimed that the Parthians did not despise eunuchs, implying that the Romans did (*Ann.* 6.31). This social reprobation makes eunuchs unlikely candidates to incite the protective instincts of the emperor, especially when other slaves were left to the mercy of their masters' whims.

Paradoxically, despite the disgust they generated, eunuchs were highly appreciated as sophisticated servants and luxury items. They were highly 'valued for their attractiveness and desirability' at least since the second century B.C.<sup>23</sup> Eunuchs being the ultimate slave, masters paid exorbitant prices for them, as a brief survey of the literature will show.<sup>24</sup> Pliny the Elder claimed that a certain Clutorius Priscus paid fifty million *sestertii* for Paezon, one of Sejanus' eunuchs.<sup>25</sup> Juvenal complained about parents who gave their children to castration tempted by a good monetary gain (10.304–6). The jurist Vivianus claimed that people castrated boys to make them more expensive (*pretiosiores*, *Dig.* 9.2.27.28: *Vlpianus*). In a sixth-century list of slave prices, a skilled eunuch is valued three times as much as a normal slave (*Cod. Iust.* 7.7.1.5). Unsurprisingly, ownership of eunuchs became a token of conspicuous consumption amongst the higher ranks of Roman society.<sup>26</sup> More importantly, being regarded as sophisticated and desirable servants meant that, as in other monarchical ancient and medieval societies, some eunuchs gained power and notoriety within the imperial court during the Julio-Claudian and Flavian dynasties.<sup>27</sup> They come off the stage during the Antonine period, but resurface

towards eunuchs was not restricted to this priestly group. In Late Antiquity, views became more positive as eunuchs occupied key positions in the imperial bureaucracy: Y. Rotman, 'The paradox of Roman eunuchism: a juridical-historical approach', *SCI* 34 (2015), 129–50; G. Sidéris, "'Eunuchs of light'", in S.F. Tougher (ed.), *Eunuchs in Antiquity and Beyond* (London, 2002), 161–76.

<sup>20</sup> Hor. *Carm.* 1.37.9; Petron. *Sat.* 23.

<sup>21</sup> Tac. *Ann.* 4.10–11 and 12.66; Suet. *Claud.* 44.2.

<sup>22</sup> Mart. 5.41, 6.67, 10.52, 10.91, 11.81; Juv. 1.22, 6.366–78, 10.311–13.

<sup>23</sup> Tougher (n. 19), 63.

<sup>24</sup> The definition of eunuchs as 'the ultimate slave' is by O. Patterson, *Slavery and Social Death* (Cambridge, MA and London, 1982), 299–333.

<sup>25</sup> Plin. *HN* 7.129. Though exaggerated, the sum shows that the Romans believed that people could spend large amounts of money on emasculated boys.

<sup>26</sup> Maecenas, Drusus and Sejanus, for example, owned eunuchs: Sen. *Ep.* 114.6; Tac. *Ann.* 4.10; Plin. *HN* 7.129.

<sup>27</sup> Well-known examples are Lygduus (Tac. *Ann.* 4.8), Claudius' favourite Posides (Suet. *Claud.* 28.1), Halotus, courtier of Claudius and Nero (Tac. *Ann.* 12.66; Suet. *Claud.* 44.2, *Galb.* 15.2), and Sporus, castrated and 'married' to Nero (Suet. *Ner.* 28.1; Cass. Dio 62.28.2–3). According to Cassius Dio, Titus was very fond of eunuchs and even Domitian had a eunuch lover (67.2.3). On eunuchs as the quintessential court slave in places such as Assyria, Babylonia, Achaemenid and Sasanian Persia, and Han China, see A.J.S. Spawforth (ed.), *The Court and Court Society in Ancient Monarchies* (Cambridge, 2007), *passim*; K. Deller, 'The Assyrian eunuchs and their predecessors', in K. Watanabe (ed.), *Priests and Officials in the Ancient Near East* (Heidelberg, 1999), 303–11; L. Llewellyn-Jones, 'Eunuchs and the royal harem in Achaemenid Persia (559–331 BC)', in S.F. Tougher (ed.), *Eunuchs in Antiquity and Beyond* (London, 2002), 19–49; M.H. Dettenhofer, 'Eunuchs, women and imperial courts', in W. Scheidel (ed.), *Rome and China: Comparative Perspectives on Ancient World Empires* (Oxford, 2009), 83–99.

during the reign of Caracalla.<sup>28</sup> According to Lactantius, Diocletian killed the powerful court eunuchs he and previous emperors had relied upon before (*De mort. pers.* 15), but eunuchs gained notoriety and influence again with Emperor Constantius II (A.D. 337–361; *Amm. Marc.* 18.4.2–5). In Late Antiquity and in the Byzantine era, they occupied prominent positions of power in the imperial court and in the military.<sup>29</sup>

This apparent contradiction should not surprise us. Ambivalent attitudes towards subordinate groups are not uncommon. Immigrants, for example, are often associated with contradictory traits, some more positive than others.<sup>30</sup> Subordinate groups can even be particularly appreciated for some jobs and gain prominence in certain professions or in the state bureaucracy even in societies which otherwise discriminate against them.<sup>31</sup> By the same token, disgust towards and lust for eunuchs could coexist for centuries. But what made eunuchs beautiful and desirable was precisely the operation of castration.<sup>32</sup> It seems odd, therefore, to regard the castration ban as part of a more general protective policy when its effect was to make slaves less desirable and to curtail their possibilities to climb up the social ladder, become affluent and politically influential, and even enjoy a comfortable life after manumission.

According to Cassius Dio, what moved Domitian was a deep-seated hatred for the memory of his brother, who had a penchant for emasculated boys (confirmed by Suet. *Tit.* 7.1). This, however, seems to have much more to do with Dio's literary construction of the emperor's character than with the real motives behind the legislation. The relationship between the two brothers may not have been based upon great fondness and affection.<sup>33</sup> But, as Waters has shown, the *odium* Domitian allegedly felt for his brother is a post-assassination construct.<sup>34</sup> In Suetonius' biography of the emperor, instead, the ban is included in an itemized list of imperial initiatives to modify established customs (*in communi rerum usu*), such as the suspension of distribution of bread baskets (*sportula*), the reinstating of public dinners (like those of Augustus:

<sup>28</sup> Cass. Dio 72.17.2. The silence of our sources does not mean that there were no eunuchs in the Antonine court. Remarkably, however, no Antonine-court eunuch ever achieved the prominence and political influence of their Julio-Claudian and Flavian counterparts, let alone of late antique *castrati*. Despite the parallels with Earinus, it is unlikely that Hadrian's lover Antinous was a eunuch: M.B. Charles and E. Anagnostou-Laoutides, 'The sexual hypocrisy of Domitian: Suet., *Dom.* 8, 3', *AC* 79 (2010), 173–87, at 185. Vout (n. 10), 139–40 points out that the fourth-century poet Prudentius imagined Antinous as castrated (*C. Symm.* 1.271–3) but only as a way of criticizing Hadrian using the male-male marriage topos associated with earlier bad emperors; according to P. Guyot, 'Antinous als Eunuch: zur christlichen Polemik gegen das Heidentum', *Historia* 30 (1981), 250–4, at 253, Prudentius' version 'hardly reflects historical reality' (my translation).

<sup>29</sup> K. Hopkins, *Conquerors and Slaves* (Cambridge, 1978), 172–96; D. Schlinkert, 'Der Hofeunuch in der Spätantike: ein gefährlicher Außenseiter?', *Hermes* 122 (1994), 342–59; W. Stevenson, 'The rise of eunuchs in Graeco-Roman antiquity', *JHSex* 5 (1995), 495–511; H. Scholten, *Der Eunuch in Kaisernähe. Zur politischen und sozialen Bedeutung des praepositus sacri cubiculi im 4. und 5. Jahrhundert n. Chr.* (Frankfurt and New York, 1995); S. Tougher, *The Eunuch in Byzantine History and Society* (London and New York, 2008), especially 36–53; S. Tougher, *The Roman Castrati: Eunuchs in the Roman Empire* (London and New York, 2020), especially 79–98.

<sup>30</sup> See C. Reyna, O. Dobria, G. Wetherell, 'The complexity and ambivalence of immigration attitudes: ambivalent stereotypes predict conflicting attitudes toward immigration policies', *Cultural Diversity and Ethnic Minority Psychology* 19 (2013), 342–56.

<sup>31</sup> Jews under Muslim rule famously became prominent physicians, craftsmen, merchants and moneylenders despite the restrictions imposed on them by their *dhimmi* status: M. Botticini and Z. Eckstein, 'Jewish occupational selection: education, restrictions, or minorities?', *The Journal of Economic History* 65 (2005), 922–48.

<sup>32</sup> Tougher (n. 19), 50.

<sup>33</sup> Jones (n. 2 [1979]), 20.

<sup>34</sup> Waters (n. 2), 64.

Suet. *Aug.* 74), and the banning of actors from the stage (Suet. *Dom.* 7.1). These measures can be seen as part of an actively interventionist policy of social engineering and control which constituted 'a recurrent motive in Flavian propaganda, from the beginning of the dynasty'.<sup>35</sup>

The moralistic undertones of the emasculation ban are better seen in the legal sources that allude to it. According to Marcianus, the decree of the Senate sought to punish the castration of a man for the sake of satisfying one's sexual urges or making a good sale (*libidinis aut promercii causa*).<sup>36</sup> Irrespective of whether these represent how Domitian originally devised his prohibition or a later re-elaboration by the Senate, the wording is revealing. The emphasis is not so much on the slave's welfare, let alone on the preservation of his masculinity and bodily integrity, as on the reasons that led Romans, particularly from the upper echelons of society, to seek eunuchs: lust and profit.<sup>37</sup> That this moralistic tone may stem from Domitian's original prohibition becomes more plausible if we consider in what capacity he may have introduced it, a question which is elusive in the sources.

The exact date of Domitian's ban is not known. Eusebius placed the ban in the year 2098 of the Abrahamic era (A.D. 82; Jer. *Chron.* 272F), that is, at the beginning of Domitian's reign. Most scholarship has followed suit and accepted an early date (82 or 83).<sup>38</sup> Jones, however, implies that this dating stems from 'Suetonius's apparent confusion of pontifical, legislative and censorial material' and argued that the ban was introduced at least three years later during Domitian's perpetual censorship.<sup>39</sup> This is confirmed by Statius, who ascribes the emasculation ban to the censor (*Silv.* 4.3.14–15).<sup>40</sup>

et censor prohibet mares adultos  
pulchrae supplicium timere formae.

and the censor forbids mature males  
to fear suffering for their handsome looks.

As Statius was not just contemporary with the events but also a poet at the imperial court, his testimony is fairly reliable. We can, therefore, safely conclude that Jones is right and that Domitian decreed his prohibition as part of the censorial *correctio morum*, which he embarked on in 85.<sup>41</sup>

<sup>35</sup> F. Grelle, 'La *correctio morum* nella legislazione flavia', *ANRW* 2.13 (1980), 340–65, at 352 (my translation).

<sup>36</sup> The author of the *Pauli Sententiae* uses the same language, as he was probably quoting a common source.

<sup>37</sup> Only with Hadrian is the lost virility mentioned (*Dig.* 48.8.4.2: *Vlpianus*).

<sup>38</sup> Gsell (n. 8), 84; Grelle (n. 35), 342–3; Guyot (n. 6), 45; Boulvert and Morabito (n. 6), 117; Watson (n. 6), 123; R.A. Bauman, 'The résumé of legislation in Suetonius', *ZRG* 99 (1982), 81–127, at 122 n. 197.

<sup>39</sup> Jones (n. 2 [1979]), 107, 78. Suetonius' account is organized thematically. *Dom.* 7 deals with Domitian's innovations and custom reforms, 8.1–2 with Domitian's administration of justice, and 8.3–5 details how he used the powers traditionally wielded by the censor (e.g. allocating the front rows in the theatres to the *equites*, curbing extravagance, etc.) and the *pontifex maximus* (e.g. punishing unchaste Vestal Virgins, deconsecrating burial grounds, etc.).

<sup>40</sup> Murison (n. 14), 351.

<sup>41</sup> Numismatic evidence shows that Domitian assumed censorial powers during his eleventh consulship, in the early months of 85, and proclaimed himself censor for life towards the end of that year. *RIC* 328–31, 333–4, 336, 339, 342–3, 345, 351, 356–8, 372, 374, 377, 381–5, 388–9, 391–3, 395 include some variations of the phrase *censoria potestas*. *RIC* 396–8, 416, 420, 422 have *censor perpetuus*, a title used only by Domitian. See T.V. Buttrey, 'Domitian's perpetual

Initially concerned with conducting the census, the office of censor gradually expanded its powers, intruding even into the private realm.<sup>42</sup> Expelling a senator from the Senate or depriving a knight from his public horse was often justified by an appeal to their lack of compliance with the *mos maiorum*. As this was never formally defined, it gave censors extensive clout and allowed them to target all sorts of behaviours regarded as a danger to the state or to the moral fabric of the Roman Republic. One particular area censors turned their attention to was the curbing of luxury and extravagance. This preoccupation gained centrality as the Roman Republic expanded and opportunities for conspicuous consumption, wealth displays and sexual dissipation widened.<sup>43</sup> During the Early Empire, the office came to be associated with the control of the sexual morality of the upper classes. Tellingly, Plutarch wrote that the censors' main concern was to preserve Roman citizens from the allure of pleasure (*Vit. Cat. Mai.* 16):

κορυφή δέ τις ἐστὶ τιμῆς ἀπάσης ἡ ἀρχὴ καὶ τρόπον τινὰ τῆς πολιτείας ἐπιτελείωσις, ἄλλην τε πολλὴν ἐξουσίαν ἔχουσα καὶ τὴν περὶ τὰ ἥθη καὶ τοὺς βίους ἐξέτασιν. [...] φύλακα καὶ σωφρονιστὴν καὶ κολαστὴν τοῦ μηδένᾳ καθ' ἡδονὰς ἐκτρέπεσθαι καὶ παρεκβαίνειν τὸν ἐπιχώριον καὶ συνήθη βίον ἠροῦντο.

This office [the censorship] was atop all civic honours, and was, in a way, the culmination of a political career. It entailed a large variety of powers, including the examination of citizens' customs and lives ... they chose a man to watch, admonish and punish that no one should be led astray by pleasures and deviate from his native and customary mode of life.

It is unsurprising, therefore, that emperors would seize any opportunity to use censorial powers (*ensoria potestas*) or the position itself to present themselves as the bulwark and safeguard of Republican moral and sexual righteousness, while acting as autocratic rulers.<sup>44</sup> 'Correcting customs' was a very effective mechanism to show muscle, to impinge on the private life of the emperor's subjects and to get rid of enemies.<sup>45</sup> In this sense, the emasculation ban should be seen not as an imperial attempt to protect slaves from abuses but as one more in a long list of provisions directed at controlling and disciplining the behaviour of private citizens, especially but not only from the upper echelons of society.

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Coupled with this understanding of the emasculation ban as a protective measure is the notion that the prohibition was not particularly effective and that, consequently, it had to

censorship and the numismatic evidence', *CJ* 71 (1975), 26–34; B.W. Jones, 'Some thoughts on Domitian's perpetual censorship', *CJ* 68 (1973), 276–7; Gsell (n. 8), 54.

<sup>42</sup> Dion. Hal. *Ant. Rom.* 20.13.3. This paragraph follows A.E. Astin, 'Regimen morum', *JRS* 78 (1988), 14–34.

<sup>43</sup> Unsurprisingly, this led to an inflation of sumptuary laws: Astin (n. 42), 24; G. Dari-Mattiacci and A.E. Plisecka, 'Luxury in ancient Rome: scope, timing and enforcement of sumptuary law', *ACLE Working Paper 2010–03* (2012), 1–26.

<sup>44</sup> Augustus famously rejected the office (Suet. *Aug.* 27; Cass. Dio 54.2.1), but exercised censorial power for five years from 19 B.C. (Cass. Dio 54.10.5). Claudius was the first emperor to assume the censorship (Tac. *Ann.* 11.13, 11.25; Suet. *Claud.* 16). Both Vespasian and Titus held the censorship temporarily (Suet. *Vesp.* 8.1, *Tit.* 6.1), but Domitian assumed the title for life (n. 41 above).

<sup>45</sup> B. Parsi-Magdelain, 'La cura legum et morum', *RD* 42 (1964), 373–412.



be modified and re-enacted. Our legal sources' disagreement on the penalty envisaged by the ban has given credence to this view. According to Marcianus and the *Pauli Sententiae*, those who performed castration were deported and lost everything they owned. Conversely, Venuleius Saturninus claimed that offenders were fined only *half* of their possessions (*pro parte dimidia bonorum multatur*) and was silent about deportation. Bradley saw this difference between the jurists' interpretation of the consequences of the ban as proof that 'Domitian's original order had had little effect'.<sup>46</sup> This, however, makes little sense: it is difficult to see how making the penalty more lenient would have turned it more effective rather than less. Murison speculated that the *senatus consultum* alluded to by Marcianus was the original Domitianic resolution, while the tamped down version mentioned by Venuleius was Nerva's attempt to continue Domitian's policy and 'cast the net wider' prompted by 'the necessity of further action'.<sup>47</sup> While this cannot be entirely ruled out, it is more likely that Domitian promulgated his ban as a censorial edict rather than as a Senate resolution. It is also unlikely that a prohibition would have expanded its scope by becoming half as harsh. Guyot saw Nerva's leniency as an attempt to break away from his predecessor's authoritarian policies.<sup>48</sup> Hadrian and other post-Nervan emperors, however, specified that performing castrations was punished capitally by deportation and confiscation of property without making any qualifications on the share to be confiscated.<sup>49</sup> It is hard to believe that they would have preferred to follow the maligned Domitian rather than the 'good emperor' Nerva.

Venuleius' half seizure of property contradicts all legal evidence on Roman capital punishment.<sup>50</sup> Only non-capital offences entailed a partial confiscation of property and *relegatio*, which could result in loss of honours and even of status but did not involve loss of citizenship (*Dig.* 48.22.14.1: *Vlpianus*).<sup>51</sup> Conversely, by the late first century A.D. capital punishment entailed the execution of *humiliores* and the *deportatio* of *honestiores*, a type of exile which 'involved loss of citizenship [and] loss of property'.<sup>52</sup> Besides, unlike Marcianus and the *Pauli Sententiae*, Venuleius barely uses 'operative words', namely the words of the document cited by the jurist which 'set out the principle of law' and which are a good indication that a commentary of a jurist preserves some of the original wording of the law.<sup>53</sup> Crucially, instead of verb phrases such as Marcianus

<sup>46</sup> Bradley (n. 6 [1987]), 128.

<sup>47</sup> Murison (n. 14), 353.

<sup>48</sup> Guyot (n. 6), 47.

<sup>49</sup> Leo I (457–474), for example, stated that the punishment for selling a castrated boy had to be the harshest possible (*poena grauissima, Cod. Iust.* 4.42.2).

<sup>50</sup> Pace O.F. Robinson, *Penal Practice and Penal Policy in Ancient Rome* (London and New York, 2007), 34. See *Dig.* 48.1.2 (Paulus), 48.4.11 (Ulpian), 48.8.3.5 (Marcianus), 48.9.1 (Marcianus), 48.6.10.2 (Ulpian). A woman punished capitally had her dowry confiscated: *Dig.* 48.20.3 (Ulpian).

<sup>51</sup> Several imperial rescripts forbade the confiscation of part or all property of temporarily relegated persons: *Dig.* 48.22.7.4 (Ulpian). *honestiores* relegated in perpetuity had only half of their property confiscated: *Dig.* 48.7.1.pr. (Marcianus), *Pauli Sententiae* 5.30b.1. The supply of abortive drugs and aphrodisiacs was punished with *relegatio* and a partial confiscation of the convict's property. None the less, the penalty became capital if the man or woman who took the drugs died: *Pauli Sententiae* 5.23.14. Under the *lex Iulia de vi priuata*, only a third of the property of the condemned person was confiscated, but the punishment was explicitly non-capital: *Dig.* 48.2.12.4 (Venuleius), 48.7.1.pr. (Marcianus), 48.20.3 (Ulpian).

<sup>52</sup> P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford, 1970), 112. *deportatio* is a mid second-century term that replaced the traditional locutions for capital exile, *exsilium* and *interdictio aqua et igni*: *Dig.* 48.19.2.1 (Ulpian).

<sup>53</sup> T. Honoré, *Emperors and Lawyers* (Oxford, 1994<sup>2</sup>), 54. The words in question are *homo, libido, promerx, castrare, capite punire* or *poena legis Corneliae punire*. Venuleius uses only the gerund *castrandum*.

and Hadrian's *poena legis Corneliae puniri/teneri* (*Dig.* 48.8.4.2) or the *Pauli Sententiae* and Constantine's *capite puniri* (*Cod. Iust.* 4.42.1), Venuleius has *multare*, even though *multa* was a sub-capital fine.<sup>54</sup> Venuleius seems to have misinterpreted what penalty the emasculation ban entailed.<sup>55</sup> It would follow that Nerva's Senate was only confirming Domitian's original prohibition without innovating on its consequences, let alone making it more lenient.

Despite the harshness of the prohibition, demand for eunuchs remained high and it was duly supplied with imports, mostly from the East.<sup>56</sup> Several imperial rescripts indicate that the practice was not eradicated even within the borders of the Roman empire, where boys continued to be castrated. In a famous rescript to Egnatius Taurinus, proconsul of Baetica (*PIR*<sup>2</sup> E 34), Hadrian expounded on the legal consequences of castration (*Dig.* 48.8.4.2: *Vlpianus libro septimo de officio proconsulis*):

idem diuus Hadrianus rescripsit: 'constitutum quidem est, ne spadones fierent, eos autem, qui hoc crimine arguerentur, Corneliae legis poena teneri eorumque bona merito fisco meo uindicari debere, sed et in seruos, qui spadones fecerint, ultimo supplicio animaduertendum esse: et qui hoc crimine tenentur, si non adfuerint, de absentibus quoque, tamquam lege Cornelia teneantur, pronuntiandum esse. plane si ipsi, qui hanc iniuriam passi sunt, proclamauerint, audire eos praeses provinciae debet, qui uirilitem amiserunt: nemo enim seruuum inuitum sinentem castrare debet, neue quis se sponte castrandum praebere debet. at si quis aduersus edictum meum fecerit, medico quidem, qui exciderit, capitale erit, item ipsi qui se sponte excidendum praebuit.'

The Deified Hadrian also stated in a rescript: 'It has been established that men should not be made eunuchs, and those who are charged with this crime are liable to the penalty of the *lex Cornelia* and their property has to be deservedly confiscated by my treasury. But also slaves who castrated others shall be punished with the severest penalty. And those who are liable for this crime, if they were not present [in court], they have to be tried *in absentia* as if they were liable under the *lex Cornelia*. It is clear that, if those who have suffered this damage demand justice, the governor of the province has to listen to those who have lost their virility. For no one should castrate a freeman or a slave, either against his will or with his consent. Nor should anyone offer himself spontaneously to be castrated. And if anyone acts against my edict, the physician who extirpated [the organs] shall suffer capital punishment, as shall he who offered himself to be extirpated.'

Hadrian ordered that whoever performed a castration had to be exiled and have his property confiscated if they were free. If they were slaves, they had to be executed (*ultimum supplicium*), as they could not own property which could be confiscated.<sup>57</sup> *constitutum quidem est* indicates that he was drawing upon existing legislation, either Domitian's prohibition or its re-enactment by a *senatus consultum* during Nerva's

<sup>54</sup> On *multa*: R.A. Bauman, *Crime and Punishment in Ancient Rome* (London and New York, 1996), 1–2.

<sup>55</sup> Or perhaps Tribonian and his team or another copyist misquoted him. Editing mistakes and erroneous quotes are not uncommon in the *Digest*: D. Pugsley, 'Some reflections on the compilation of Justinian's *Digest*', *IJ* 19 (1984), 350–9, at 352.

<sup>56</sup> Marcianus lists Indian eunuchs (*spadones Indici*) among the imports subject to custom duties (*uectigal*): *Dig.* 39.4.16.7. On late antique eunuch imports from Persia, Armenia and the Caucasus, see Rotman (n. 19), 133–4.

<sup>57</sup> This last provision seems to be Hadrian's own elaboration. The use of the conjunctions *sed et* ('but also') implies that the emperor was likely presented with a slave who had performed a castration and so the emperor had to decide what type of punishment was due. Having slaves performing castrations may have been a way to get round the prohibition. If slaves were caught, their masters would lose them but would be spared of the punishment. I thank Laura Donati for bringing this to my attention.

reign.<sup>58</sup> Hadrian sent another rescript to Ninnius Hasta (*PIR*<sup>2</sup> N 101), proconsul of Africa in 128 and 129 (*Dig.* 48.8.5: *Paulus libro secundo de officio proconsulis*):

hi quoque, qui thlibias faciunt, ex constitutione diui Hadriani ad Ninnium Hastam in eadem causa sunt, qua hi qui castrant.

Those who crush the testicles [of a man], by a constitution of the Divine Hadrian addressed to Ninius Hasta, are of the same class as those who castrate.

Ninnius Hasta's letter to the emperor has not come down to us, but the story is easy to reconstruct. *castrare* means to cut someone's testicles off with a sharp tool—a knife or a scalpel. *thlibias facere* involves the removal of testicles by pressing or squeezing, sometimes by accident.<sup>59</sup> Ninnius Hasta was presumably presented with a man whose testicles had been removed by crushing. If he interpreted the verb *castrare* in its strict sense, he would have been uncertain of whether the prohibition to castrate covered this case. Hadrian did not see any substantial difference between the two methods and so decided that the penalty applied.<sup>60</sup>

Castration continued worrying emperors even in Late Antiquity, as two imperial letters preserved in Justinian's Code show. In a rescript, Constantine I reminds the military commander of Mesopotamia Aurelius Ursinus (*PLRE* I page 987, Aur. Ursinus 2) that 'making eunuchs' (*eunuchos facere*) was forbidden in the whole of the Roman empire (*Cod. Iust.* 4.42.1):

Imperator Constantinus: 'si quis post hanc sanctionem in orbe Romano eunuchos fecerit, capite puniatur: mancipio tali nec non etiam loco, ubi hoc commissum fuerit domino sciente et dissimulante, confiscando.' (Const. A. Vrsino duci Mesopotamiae. d. VI K. Mart.)

Emperor Constantine: 'If anyone after this decree made eunuchs in the whole of the Roman world, may they be punished capitally: the slave, like the place where this act was committed with the knowledge and connivance of the master, shall be confiscated.' (Constantine to Aurelius Ursinus, commander of Mesopotamia, 24 February [325–337?])

Constantine claimed that castration was to be regarded as a capital crime after 'this decree' (*hanc sanctionem*). It is not clear whether he was referring to his own decision or to a decision of one of his predecessors, but this is immaterial. What matters is that more than two centuries after Domitian introduced the ban, boys were still being castrated.

About a century and a half later, Emperor Leo I forbade the sale of men of Roman stock who had been castrated either in foreign lands or on Roman soil (*Cod. Iust.* 4.42.2):

Imperator Leo: 'Romanae gentis homines siue in barbaro siue in Romano solo eunuchos factos nullatenus quolibet modo ad dominium cuiusdam transferri iubemus: poena grauissima statuenda aduersus eos, qui hoc perpetrare ausi fuerint, tabellione uidelicet, qui huiusmodi emptionis siue cuiuslibet alterius alienationis instrumenta conscripserit, et eo, qui octauam uel aliquod uectigalis

<sup>58</sup> While the verb *constituere* usually refers to imperial decisions or decrees, it is sometimes found in connection with decisions of the Senate: Cic. *Mil.* 13.2; Livy 37.56.2; Plin. *Ep.* 2.1.9; Tac. *Ann.* 13.5.

<sup>59</sup> *Dig.* 50.16.128 (Ulpian); *Epanagoge Aucta* 44.29.3; Paul. Aeg. *Epitome Med.* 6.68. *thlibias*, -ae, m. [Gk. θλίβιας, from θλίβω, to press or squeeze] 'one castrated by squeezing of the testicles' (*OLD*).

<sup>60</sup> Other rescripts show that to Hadrian intentions trumped the actual result of a deed or the methods used to accomplish it: e.g. *Dig.* 48.8.1.3 (Marcianus).

causa pro his susceperit, eidem poenae subiciendo. barbarae autem gentis eunuchos extra loca nostro imperio subiecta factos cunctis negotiatoribus uel quibuscumque aliis emendi in commerciis et uendendi ubi uoluerint tribuimus facultatem.' (Leo A. Viuiano P. P. [459–460])

Emperor Leo: 'We order that the ownership of men of the Roman stock, who have been made eunuchs either in a barbarous country or on Roman soil, can, under no circumstances, be transferred to anyone; and that the severest penalty shall be inflicted upon those who have dared to commit such an offence, including the notary who drew up the instrument of sale or of any other kind of alienation; and he who received the *octaua*, or anything else by way of tax, shall be subjected to the same penalty. We, however, grant authority to all traders to buy or sell, wherever they please, eunuchs of barbarous nations who have been made such outside the boundaries of our empire.' (Leo to A. Vivianus, Praetorian Prefect [459–460])

Unlike the concerns of his predecessors, Leo's main concern was the sale of Romans who had been castrated rather than the act of castration itself. The penalty for participating in such transaction had to be the harshest (*grauissima*)—namely, capital punishment (see above). The measure seems to have been aimed at discouraging the monetary allure of castrating a slave boy to render him more profitable. The import of non-Roman eunuchs from outwith the Roman empire, however, was authorized. In this respect, Leo distanced himself from his predecessors, perhaps acknowledging a practice that brought fiscal profits to the empire (see n. 56 above).

Several scholars have seen these imperial rescripts as proof of the Roman state's lack of will and ability to protect slaves from physical abuse. Buckland, for example, claimed that the interventions of the emperors 'shew that this legislation was ineffective'.<sup>61</sup> Following into his footsteps, Finley curtly described Domitian's prohibition as 'ineffectual'.<sup>62</sup> Watson saw the severity with which castration was punished as proof that 'the practice [was] not easily eradicated'.<sup>63</sup> For Guyot, the numerous occasions in which castration was mentioned in imperial rescripts was a sign that 'no great emphasis was placed on compliance with the law'.<sup>64</sup> Bradley dismissed any real concern on the part of Domitian and his successors, and he claimed that the repeated need to enforce the prohibition against castration proves that 'earlier legislation [...] had simply become a dead letter'.<sup>65</sup> In his textbook on Roman law, du Plessis claims that the survival of castration after Domitian's prohibition made 'the imposition of strong sanctions' a necessity, implying not only that the ban was ineffective but also that later emperors such as Hadrian had to make it harsher.<sup>66</sup> Rotman has been less pessimistic, but he concluded that the legislation 'did not manage to prevent totally the practice'.<sup>67</sup> In other words, the alleged ineffectiveness of Domitian's emasculation ban, embodied by the Roman state's inability to eradicate the practice, has become established orthodoxy.

This consensus, however, is predicated upon debatable premises. To begin with, banning a practice does not necessarily make it disappear. The relationship between the severity of punishment and its power of deterrence is never straightforward, and criminal conducts are very seldom totally discouraged by new penalties and prohibitions.<sup>68</sup> What the enactment of a prohibition shows is not so much that an action or conduct now

<sup>61</sup> Buckland (n. 6), 37.

<sup>62</sup> M.I. Finley, *Ancient Slavery and Modern Ideology* (Princeton, 1988), 75.

<sup>63</sup> Watson (n. 6), 123.

<sup>64</sup> Guyot (n. 6), 49.

<sup>65</sup> Bradley (n. 6 [1987]), 129.

<sup>66</sup> du Plessis (n. 6), 95.

<sup>67</sup> Rotman (n. 19), 132.

<sup>68</sup> A.N. Doob and C.M. Webster, 'Sentence severity and crime: accepting the null hypothesis',

deemed criminal has ceased to exist, as how the constituted authorities aim to respond in case such action is carried out—in other words, in what manner enacted laws are to be enforced.

More crucially, we should understand what role provincial governors—or some late antique officials and commanders like the *duces*—played in the administration of justice. As a derivation of their *imperium*, governors would hear and decide on criminal cases in the jurisdiction they administered. When they were not sure about whether a law applied in a case they were presented with, or how the law had to be enforced, they could consult the emperor or transfer the case to Rome.<sup>69</sup> The emperor would consult lawyers and jurists about customs and legislation on the matter and would reply to the governors establishing what course of action had to be taken.<sup>70</sup> As the content and scope of criminal laws was not always clear, consultations with the emperor were common. From Hadrian's time onwards at least, imperial rescripts which shed light on how to settle complex cases and disputes established precedent and had general effect unless they were 'restricted to a particular case or class or cases'.<sup>71</sup> Those rescripts became part of the jurisprudence studied in law schools and collected in legal handbooks such as the *Pauli Sententiae* and the imperial codes of Late Antiquity. The four rescripts quoted above are examples of this. They are all instances of enforcement of Domitian's prohibition (or its later incarnation as a *senatus consultum*) which show the Roman law machinery working exactly as it was supposed to work. Moreover, the geographic reach and the temporal scope of these rescripts show that the expected response was applied effectively in the whole of the Roman empire, from the Iberian Peninsula to Mesopotamia, and almost four centuries after the prohibition was enacted. Besides, these rescripts were preserved as test cases. It is likely that many other governors had to decide on these matters, but no record of their decisions has survived. According to a late fourth-century author, castrations were still performed but only in secret (*occulte*) as a result of the terror prompted by the harshness of the punishment (Ps.-Augustinian, *Quest. vet. et nov. test.* 115.17). It is impossible to know whether he was describing a common practice or merely drawing upon impressionistic and unreliable anecdotal evidence. But even if it failed to eradicate the practice altogether, the ban did act as a deterrent to some extent and, more importantly, the penalty envisaged by it was often exacted upon those who broke the law. In other words, Domitian's ban was anything but dead letter.<sup>72</sup>

## CONCLUSION

My reappraisal of Domitian's emasculation ban has led to a reinterpretation of its purpose and effectiveness which differs from the established consensus. The traditional

*Crime and Justice* 30 (2003), 143–95; J.J. Donohue and J. Wolfers, 'Estimating the impact of the death penalty on murder', *American Law and Economics Review* 11 (2009), 249–309.

<sup>69</sup> J. Harries, *Law and Crime in the Roman World* (Cambridge, 2007), 28–30.

<sup>70</sup> Honoré (n. 53), 32–70; F. Millar, *The Emperor in the Roman World* (London, 1977), 240–52.

<sup>71</sup> Honoré (n. 53), 12; K. Tuori, *The Emperor of Law: The Emergence of Roman Imperial Adjudication* (Oxford, 2016), 207–23.

<sup>72</sup> The emasculation ban was upheld for centuries. In 558, Justinian alluded to the prohibition introduced by 'the [emperors] who reigned before us' (παρὰ τῶν πρὸ ἡμῶν βασιλευσκότων / *ab imperatoribus qui ante nos fuerunt*) and established how the penalty had to be applied in each case in which the law was broken (*Nov.* 142).

view which sees it as part of a general trend directed at protecting slaves from bodily abuse stems from a modern repulse of ancient practices and a need to find redeeming features in the Roman reliance on slavery. But it has little explicative power. Roman hostility towards eunuchs makes them unlikely candidates for the compassion of Roman rulers. Moreover, as castration appreciated the monetary value of slaves and increased their chances to gain positions of power, it is hard to see banning it as a protective policy, especially when one considers the absence of similar checks on masters' powers to mutilate the bodies of their slaves.

Rather than as a humanitarian gesture, the emasculation ban is better understood as another measure against the sexual misconduct and the sumptuary practices of the elite which gradually became one of the tokens of the censorial powers wielded by Roman emperors. Introduced as a censorial decree with strong moralistic undertones, the ban gave Domitian the opportunity to present himself as a guardian of Roman sexual morality and an upholder of the most honourable traditions of the Republic he was technically the head of, at the same time as he destroyed any vestige of Republican freedom.

It also makes little sense to see the constant enforcement of the emasculation ban by Domitian's successors as an indication of either its ineffectiveness or the Roman state's lack of will to enforce its policies. If anything, it shows that the legal mechanisms of the Roman state worked precisely as they were intended to in the whole of the Roman oecumene: they may not have made castration disappear, but they punished it harshly whenever a case was brought before a Roman official. When we consider the institutional set-up within which emperors wielded their powers, it is easier to explain why a tyrannical emperor with little regard for slaves suddenly felt the need to introduce the oddest of 'protections'. Banning emasculation was an effective tool of social control.

This interpretation of Domitian's prohibition could have several implications for our understanding of what is usually viewed as a change of attitudes towards slaves during the Early Principate which resulted in a series of minor ameliorations of the slave condition. If we found that other allegedly protective measures introduced in the Early Principate were prompted by similar concerns and did little or nothing to improve the condition of Roman slaves, we would need to question whether the Roman state ever intended to check abuses and punish violence against slaves even when it was more than capable of doing it.

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