

## In Varium: the Verdict

Leonardo de Arrizabalaga y Prado

### Introduction: foregoing context and present procedure.

In the foregoing article in this series of *Quaestiones Varianae*,<sup>1</sup> I set out allegations against Varius<sup>2</sup> made by ancient historiographers.<sup>3</sup> I propose that their texts, in particular the earliest and most important of those both relevant and extant, Dio's,<sup>4</sup> read like an indictment. I argue that this is so, not only by virtue of the legal implications of the actions, passions, and omissions there imputed to Varius, but also because of how they are presented. For Dio's text on Varius, which provides a source, and to some extent a model, for the rest, is largely framed and expressed according to rhetorical canons proper to the style of a legal prosecution.

Accordingly, my exegesis of Dio's and his followers' accusations against Varius is organised in terms of categories of crimes, sacrilege, and misdemeanours, thus defined by Roman law,<sup>5</sup> whether civil, sacred, or moral, during Varius' reign and the Severan dynasty.<sup>6</sup> I also consider those charges in the light of characterisation and evaluation, within Graeco-Roman society and culture, during Varius' lifetime,<sup>7</sup> of certain forms of allegedly immoral behaviour, not then legally defined as crimes or misdemeanours, but just as strongly censured, nevertheless, by his ancient historiographers. Discussing the terms of that censure, I point out the rhetorical devices employed to gain an audience's or readership's assent to the terms of the indictment, and hence to ensure its members' approval of Varius' murder at the hands of the Praetorians.

---

1 *Quaestiones Varianae* (henceforth *QV*) 5: *In Varium, the indictment*, *Tsukuba Area Studies (TAS)*, 25, 2005, p.71-123.

2 The Roman emperor more commonly, but wrongly, known as Elagabalus or Heliogabalus. For a thorough discussion of his nomenclature, see *QV* 2: *Nomen Varianum*, *TAS*, 23, 2004, p. 15-47.

3 Mainly Cassius Dio Cocceianus (henceforth *Dio*), Herodian (*Herodian*), and the author of the *Historia Augusta (HA)*.

4 *Cassii Dionis Cocceiani Historiarum Romanarum Quae Supersunt*, books 79-80, Ed. Boissevain, Weidmann, 1901. Dio's contemporary Marius Maximus is also said to have written an account of Varius, but its text does not survive.

5 crime: *crimen*; sacrilege: *sacrilegium*; misdemeanour: *vitiun, flagitium*; civil law: *ius*; sacred law: *fas*; moral law: *mos*.

6 His reign: Ab urbe condita 971-975 = Anno Domini 218-222; the Severan dynasty: 946-988=193-235.

7 His lifetime: ?957-975 = ?204-222.

On this basis, I argue that the posthumous indictment proposed by Dio, and echoed by later ancient historiographers, aims to portray Varius' murder as the just execution of a cruel, wanton, and impious tyrant, and so to justify his succession by Severus Alexander. It is doubtful, however, whether that indictment aids in enforcing the *damnatio memoriae*, arguably decreed against Varius by the senate under Alexander. For rather than relegate Varius to oblivion, it preserves for posterity an image, whether accurate or not, of a monster of bloodshed, sacrilege, and lust. Thus, far from dousing, it kindles interest in Varius. In particular, it quickens one's curiosity to know whether he did or underwent or omitted any or all of what is charged to him.

Such curiosity, leading to a quest to discover, so far as can be known, what actually happened —“*wie es eigentlich gewesen*”—<sup>8</sup> was once taken for granted as the historian's central motivation. That assumption has recently been questioned by a school of thought proposing that such knowledge is impossible, and opining that even if possible, it is uninteresting, compared to the study of discourse about unverifiable events. The best example of this school of thought is an extremely illuminating, indeed magisterial study, by Catharine Edwards, of moralisation in Roman history from the time of Cicero to that of Tacitus.<sup>9</sup> She focuses on five principal areas: adultery, effeminacy, spectacle, building, and sensuality. She proposes that “the relationship between moralising and ‘social reality’ is by no means so straightforward as many of those who have studied Roman moralising texts have supposed.” She also points out that “texts generally classified as ‘history’ are equally problematic,” noting “the suspicious frequency with which similar anecdotes are told about different subjects.” She goes on to state that “whether these incidents actually happened or not is impossible to ascertain and considerably less important (for the present discussion) than the fact that people told the stories and their reasons for doing so.”

This is perhaps the clearest statement of the school of thought which prefers to study discourse rather than determine fact. While, as shall be seen, it is sometimes the case that accusations against Varius are impossible to verify, it is not always so. And for the present discussion, which seeks to verify those accusations, the question of “whether these incidents actually happened or not” is far from unimportant. For the present set of studies, it is especially important to determine what, regarding Varius, can be confirmed as true, what may be admitted as likely, what entertained as possible, and what can be shelved as improbable or discarded as impossible. That is because these studies set out to explode the Varian misconception, which confuses Varius with the mythical or legendary protagonist of his rich and varied afterlife.<sup>10</sup> Therefore, though I find the study of discourse valuable, and helpful to my purpose, as subsequent citation here of the work just mentioned demonstrates, I beg to dissent from the notion that it should supplant the study of fact. Leaving theoretical refutation for elsewhere, I propose in the

8 Ranke, Leopold von, *Geschichten der roemischen und germanischen Voelker*, 1874, Preface to 1st edition, p. vii.

9 Edwards, Catharine, *The Politics of Immorality in Ancient Rome*, 1993.

10 Arrizabalaga y Prado, L. de, *The Importance of Being Varius, or Exploding the Varian Misconception, an Introduction to Studia Variana*, *Tsukuba Studies in Literature and Linguistics*, 48, 2005.

present article to take the enquiry begun in its predecessor to its next logical step: to seek to verify the accusations made against Varius. This will help us to determine what can and cannot be known about him. The reader will judge whether the result is interesting or not.

Determining how, and with what criteria, to investigate charges against Varius, the foregoing article considers the potential relevance to this enquiry not only of Roman legal categories, but also of the corresponding procedure. The investigation there begun, and here continued, is likened to an *inquisitio* under the cognitive procedure, developed during the principate; the modern historian of antiquity's role to that of a magistrate under the principate, investigating charges against Varius. This enquiry thus continues, as it began, with metaphorical reference to *cognitio extraordinaria*. That metaphor provides a model, germane to the subject, and proper to the period, for conducting this investigation. It invites one to consider the accusation, frame the relevant questions, find and examine the material evidence,<sup>11</sup> if any, hear or construct a defence, cross examine testimony in the light of evidence, and deliver a verdict.

There is nothing to be lost by following the virtual procedure of such a metaphorical legal inquisition, in concert with the direct, untrammelled pursuit of an historical investigation. For both may be presumed to share the same goal: to discover what Varius did or did not do, undergo, or neglect. If one imitates the cognitive procedure (which is in any case quite flexible, regarding the order of steps leading to the verdict) and considers one's investigation in terms of its conceptual framework (without, however, renouncing any insights proper to the modern historian of antiquity) one will, as would one's virtual magistrate, necessarily address the question which arouses one's curiosity; the very same which constitutes that magistrate's remit: to discover whether Varius did or underwent or neglected any or all of what is charged to him. There is, moreover, something to be gained by adopting this metaphor. In considering how an ancient magistrate might approach exegesis, verification, and judgement, one will necessarily compare one's own approach to these questions with his, considering his purposes in doing so, the nature and standard of proof he might require to reach a decision, his sources of evidence and allegation, and whether and how he might distinguish these.<sup>12</sup> For even if such a magistrate shares with one the goal of obtaining factual knowledge, he will do so in ways, to an extent, and with methods and assumptions different from one's own. Grasping these differences deepens our understanding of antiquity in general, and helps us to define the specific terms, and achieve the particular goals, of the present enquiry. On the one hand, by comparing such a magistrate's putative goals and methods of enquiry with one's own, one may come to see the question of Varius' civil, sacred, moral, and indeed political responsibility from the magistrate's perspective, and so gain a deeper understanding of the concepts and values of the Roman world. On the other hand, one will, by critically defining the differences between ancient approaches and one's own to the pursuit of facts and truth about Varius, perhaps thereby ensure

11 Tacitus, in *Annales*, 2.74 and 13.43, gives instances of magistrates taking an active role in *inquisitio*, or judicial enquiry, and of specific time limits allotted for this purpose.

12 An enlightening discussion of differences between modern and Roman law is Carr Ferguson, M., *A Day in Court in Justinian's Rome: Some Problems of Evidence, Proof, and Justice in Roman Law*, *ILR*, 46, 1960-1961, p. 732-772.

that one avoids the pitfalls of much post-antique Varian study, which has often suffered from assuming, uncritically, the truth of his ancient historiographers' allegations about him.<sup>13</sup>

One might, however, having grasped the value of such a comparative enquiry, ask whether it would not be better, given that one is an historian, not a jurist, to compare one's enquiry to that of an ancient historian of Varius. Such an historian, moreover, unlike one's magistrate, need not be imaginary, for several real ones are available. To do so, however, would not shed new light on Varius. For we have already heard, in the foregoing article on their indictment of Varius, what his ancient historiographers say, and presumably think, or wish to be thought to think about him. We also know, thereby, that they would not share our goal at this present stage of our enquiry into their allegations: that of subjecting them to factual verification. For ancient historiographers of Varius do not, in general, share the goal of discovering, so far as possible, what actually happened; or, should that prove impossible, for want of evidence, that at least of determining what evidence might, in a given case, be, and thus of understanding the limits of one's knowledge. Rather, their goal seems to be to present as history what is, sometimes by their own admission, mere hearsay: an undocumented, highly slanted account of alleged events, designed to serve their own political or personal agenda. This makes them ideal subjects for the student of discourse, but rather less helpful to the historian interested in facts.

Accordingly, insofar as ancient legal and modern historical goals may coincide, I have thus far followed the model of a trial under the cognitive procedure, and devoted the previous article to exposition and exegesis of the ancient historiographers' indictment against Varius. I have thereby formed an impression, just described, of those historiographers' motives, purposes, assumptions, and methods. This process of cognition, inevitably influenced by modern historical and legal criteria, leads me now to exercise a prerogative of Roman magistrates under the cognitive procedure: that of expanding this enquiry in the light of evidence unearthed during inquisition.<sup>14</sup> Accordingly, I shall frame my virtual magistrate's remit rather more broadly than he might have expected. For it is, in my view, not only Varius who is here under investigation, but his murderers, those who instigated them, and his posthumous accusers, who seek to justify that murder. This has consequences for the nature of this enquiry. For it is not the same thing to conduct the virtual trial of a single individual, as to conduct an investigation into complex circumstances and events, of which that individual's murder, and the usurpation of his office by another, constitute the culmination. While the question of that individual's innocence or guilt, as charged, still remains central, the roles of others concerned must also be considered. In procedural terms, however, the original questions about that individual must still be addressed before the rest, for one's understanding and evaluation of the roles of others concerned will, to some extent, depend on one's estimation of the truth or falsehood of their charges against him.

---

13 For documentation of these pitfalls see my article: *The Importance of Being Varius: Exploding the Varian Misconception; an Introduction to Studia Variana*, TSL 48, 2005.

14 Carr Ferguson, M., *op. cit.*, p. 735, text & n. 20.

The present article, therefore, leaving these broader questions for another, is devoted to verifying charges against Varius. It will do so on two fronts at once. On the one hand, on the basis of epistemological assumptions adopted by the group of studies to which it belongs, it will follow methods of historical investigation outlined in the first of them.<sup>15</sup> These will be reviewed later in the present text. On the other, it will refer to categories and procedures of Roman law, comparing their treatment of the matters in hand to that of the modern methodology and epistemology informing this enquiry. Reference to Roman legal procedure determines the order of enquiry. First I must further define its nature and scope, in view of developments so far. Then I must state the questions determining the issues of the case; for the answers to those questions will lead to a verdict. In consequence of this, I must consider how to go about answering those questions. After that, I must examine the evidence, hear the defence of the accused, and cross-examine all concerned in the light of the evidence. Finally, I must either deliver a verdict myself, or refer the matter to a jury, one perhaps consisting of the readers of this article.

#### **Nature and scope of the enquiry: questions of law and questions of fact**

The nature and scope of this enquiry have already been discussed, up to a point. The main result of that discussion — the adoption of a metaphorical comparison between modern historical and Roman legal approaches to the issues at stake — has just been summarised. Now, as a consequence of having adopted that comparison, some further issues relating to the nature and scope of this enquiry must be addressed. Since, in the interests of that comparison, this enquiry takes a two-pronged approach to verification, it asks two questions at once: ‘What is the status of those charges in the light of the epistemology and methodology of history adopted in these studies?’ and: ‘How and with what result might their verification have been attempted in antiquity?’ The logical procedure, then or now, for addressing any legal charge, is first to consider questions of law, then questions of fact, and afterward to see how they relate to one another. In order to follow this procedure, one must be able to quote sources for the relevant law, establishing its relevance, and to cite the evidential basis on which the relevant facts are established. Both these exigencies present particular problems in the present context.

Most extant sources for answering questions of Roman law are indirect. The Justinianic corpora, compiled more than three centuries after Varius’ reign, obliquely cite earlier statutes, edicts, rescripts and opinions. Many opinions derive from celebrated jurists active during the Severan period. The Justinianic corpora are, however, selective, and potentially subject to alteration or interpolation. Their contents may be anachronistic, with regard to Varius’ reign. This is particularly so with regard to sacred or religious matters, since they were compiled after the imposition of Christianity, while many accusations against Varius concern alleged transgressions of pagan sacred law, of which very little evidence survives. The only Roman legal text surviving more or less intact is Gaius’ Institutes, dating from nearly a century before Varius. The other main sources are commentaries and orations by celebrated

---

15 *QV 1: The boy on the coin, TAS, 22, 2004, p. 57-87.*

rhetoricians and advocates, such as Quintilian or Cicero, most which date from long before Varius' period. As a result of this, it is often difficult to know how to define the crime or misdemeanour of which Varius is accused by his ancient historiographers. Extant sources for questions of fact relating to Varius present other problems. One is that no historiographical account of him may be taken at face value, nor enjoys any presumption of veracity. Moreover, by virtue of constituting the accusation, all are logically excluded from playing any evidential role in its verification. Another is that his imperial artefacts, mainly coins and inscriptions, are also suspect, at least with respect to the fundamental question of his identity. Can they be trusted regarding other questions? How to use such artefacts for verification is addressed later in the course of this enquiry.

Also relevant to its nature and scope are two prior questions of law concerning jurisdiction. The first concerns the accused; the second, what he is accused of:

- Is Varius, as emperor, subject to the law, or above it?
- Of the actions, passions, and omissions imputed to Varius, which are civil crimes, which sacrilege, and which misdemeanours?

Regarding the first of these prior questions, the extant sources record contradictory opinions. On the one hand, according to Varius' contemporary Ulpian, *princeps legibus solutus est*: "the emperor is above the law."<sup>16</sup> On the other, according to a constitution of Theodosius and Valentinian, nearly two centuries later, *digna vox maiestate regnantis legibus alligatum se principem profiteri*: "it is worthy of the emperor's majesty to profess himself bound by the law."<sup>17</sup> Both these statements, moreover, are subject to further qualification and interpretation. While the original context of the former dictum may be more restricted than at first appears,<sup>18</sup> the thrust of the latter injunction may be more political than legal. In any case, at least in terms of reference to the authority of extant legal texts, the first of these questions is left unresolved.

It is, however, clear that Dio's accusations against Varius hold him legally accountable, though not precisely how. Varius' "conduct in the matter of Elagabalus," as Dio refers to his hieratic policy, involving the promotion of the Syrian sun god whom he served as high priest, is cited as one among several offences, τῶν δὲ δὴ παρανομημάτων,<sup>19</sup> against an unspecified body of law. By virtue of his marriage to a vestal virgin, Varius stands in flagrant violation, ἐκφανεστάτα παρανομήσας,<sup>20</sup> again of an unidentified law. His imputed actions, passions, and omissions in the civil and moral spheres are characterised, before Dio

---

16 *Digesta*, 1.3.31.

17 *Codex*, 1.14.4.

18 Johnston, D., *The General Influence of Roman Institutions of State and Public Law*, in D.L. Carey Miller and R. Zimmermann, ed., *The Civilian Tradition and Scots Law. Aberdeen Quincentenary Essays [Schriften zur Europäischen Rechts- und Verfassungsgeschichte, Bd. 20]*, Berlin: Duncker & Humblot, 1997, pp 87-101, esp. p. 91.

19 *Dio*, 80.11.1.

20 *Dio*, 80.9.3

discusses them in detail, as πάντα καὶ ἀισχροεργότατα καὶ παρανομώτατα καὶ μαιφονώτατα: “the most shameful, lawless, and cruel practices.”<sup>21</sup> Which of these practices answers to which of these adjectives constitutes our second prior question. Before addressing it, however, let us finish considering the first. Dio clearly holds Varius to a legal standard. Would an ancient magistrate? Should we?

Obviously, no ancient magistrate would ever find himself, in practice, conducting this particular enquiry in this specific way. There is no record of any reigning Roman emperor undergoing trial in a court of law. As in Varius’ case, whenever an emperor is found, by those with the power to act in consequence, to violate the law, in whatever form its self-appointed enforcers may at that moment choose to define it, attempted or actual execution of the sentence, invariably death, precedes and precludes any trial. Thus the question of whether an ancient magistrate would have found Varius, as emperor, subject to the law, would never have arisen in practice. This does not mean, however, that it could not have arisen in theory. The present discussion of this case in terms of Roman law is based on the notion that it might. Dio clearly seeks to make it arise, if only theoretically, and, as regards the putative defendant, posthumously, in the mind of his audience or readership. So if that audience or readership included, as well it might, an ancient magistrate or jurist, in what form might such a question arise in his mind?

The form in which it may arise, both for one’s imaginary magistrate, and for oneself, is as a political, rather than a legal question. This does not mean that it ceases to be legal, for the political dimension includes and supersedes the legal, both in theory, and in practice, as shall presently be seen. It is in this sense that the Theodosian and Valentinianic injunction “it is worthy of the emperor’s majesty to profess himself bound by the law,” may best be understood. According to that injunction, even if, as Ulpian is reported to say, “the emperor is above the law,” it behoves him to behave as if he were bound by it, in order to avoid the direst of political consequences. These, in practice, are identical with those to which an individual is liable, under Roman law, during the principate, for any serious political crime: forfeiture of life and estate. In the case of an emperor, his estate includes the principate, with all its goods and powers. In such a case, an emperor’s overthrow and murder, whether simultaneous or consecutive, extinguishes an existing political reality, opening the way for his successor. The successor’s appointment by the senate to imperial offices (or, more likely, the senate’s ratification of his autonomous seizure thereof) constitutes a new political dispensation, abrogating the previous legality, and instituting a new one in its place.<sup>22</sup> This sequence of events is legitimised, in retrospect, through damnation of the predecessor’s memory by the senate. *Damnatio memoriae* implies that the previous emperor is not above the law, but subject, albeit posthumously, to that of his successor. He, in turn, may or may not be above the law, during his tenure of the principate, but only till he, in turn, is overthrown. Then he becomes subject, again posthumously, to that of his successor.

---

<sup>21</sup> Dio, 80.3.3.

<sup>22</sup> Mommsen, Th, *Strafrecht*, p. 492: “The criminal charges which under one government were permitted and often encouraged, were counted under the next as maliciously set on foot, and as constituting a crime.” Cf. Suetonius, *Titus*, 8, and Pliny, *Panegyricus*, 34, on Titus’ and Trajan’s treatment of informers from previous reigns.

This procedure describes, with some variations in detail,<sup>23</sup> Caracalla's succession by Macrinus, Macrinus' by Varius, and Varius' by Severus Alexander, all taking place during Ulpian's lifetime. It is, moreover, entirely consistent with Ulpian's dictum. It does, however, lend that dictum a descriptive, as opposed to normative interpretation; one perhaps unintended by Ulpian, though possibly not unforeseen by him: whoever holds the power makes the law, so might makes right, and law is redefined by each successive emperor. This interpretation, it may also be noted, is not in contradiction with the Theodosian and Valentinianic injunction. Rather, it reinforces it: if you hold the power to make the law, pray, for the sake of your imperial dignity's survival, do so in such a way as to forestall giving another an excuse to seize it. Even, however, for an emperor to act in the spirit, *avant la lettre*, of the Theodosian and Valentinianic injunction is not, in practice, as Ulpian must know, enough to guarantee immunity from violent overthrow. The case of Pertinax, also falling during Ulpian's lifetime, shows that even (or especially) such an apparent paragon of probity may fall prey to the greed, ambition, envy, resentment, or rebellion of elements within the body politic all too eager for a new dispensation, one in which they, or their nominees, can make or break the laws.<sup>24</sup>

In the light of these examples from the Severan period, or just before, it emerges that the question of whether the emperor is above the law, or subject to it, is not only legal and political, but also historical. It undergoes testing and development during that time frame. And, in the light of this understanding, it becomes apparent that one must simultaneously consider Varius above the law and subject thereto. For only if one entertains both these alternatives, and the possibility that they may not be contradictory, but complementary, or successive, will one grasp the broader problematic surrounding this question, of which Varius' case is but one example. That problematic concerns the nature not only of the Roman principate and of its relationship to law, but also that of the relationship of any political dispensation whatever to law, and, should one follow these considerations through to their logical conclusion, to justice. The question of whether Varius is above the law, or subject thereto, is thus not only legal, political, and historical, but also, ultimately, philosophical.

Leaving for elsewhere consideration of this question's further implications, and accepting, as a working hypothesis here, an answer which involves an apparent contradiction, let us turn to the second of the prior questions here in hand: that of the law's jurisdiction over actions, passions, and omissions imputed to Varius. This provides an opportunity, welcome at this stage of the enquiry, to list those charges categorically. This is best done with a table. In the table, the charges are extrapolated from the

23 There was, apparently, no *damnatio memoriae* of Caracalla, perhaps because Macrinus, fearing the soldiers, with whom Caracalla had been popular, wished to pretend that he had no part in his murder. The senate's and people's hatred of Caracalla, however, reportedly sufficed to legitimate Macrinus in their eyes, at least to begin with. (*Dio*, 79.9.2)

24 The probity of Pertinax may have had its limits, according to Anthony Birley: *The Coups d'État of the Year 193, BJ*, 169, 1969, p. 247-252. This proposes that Pertinax may, contrary to Dio's and others' accounts, have been involved in the plot to murder Commodus, of which Pertinax was the immediate beneficiary. Even so, none, apart from his murderers, condemn his conduct while in office, during the three months of his reign.



texts of the accusers, Dio (D), Herodian (H), and “Lampridius” (L), the pseudonym of the author of the *Vita Antonini Heliogabali* in the *HA*. The designation of a dynamic as action, passion, or omission indicates whether Varius is reported as acting, acted upon, or neither, with respect to the charge in question.

charge	dynamic	law	realm	specification	judge	accuser
treason ( <i>perduellio</i> )	action	<i>ius</i>	civil	crime	magistrate	D
treason ( <i>maiestas</i> )	action	<i>ius</i>	civil	crime	magistrate	D
fraud (impersonation)	action	<i>ius</i>	civil	crime	magistrate	D L
violations of precedent & privilege	action	<i>ius</i>	civil	crime	magistrate	D L
judicial murders of prominent men	action	<i>ius</i>	civil	crime	magistrate	D H L
murder of Gannys	action	<i>ius</i>	civil	crime	magistrate	D
inappropriate appointments	action	<i>ius</i>	civil	crime	magistrate	D H L
misappropriation of property	action	<i>ius</i>	civil	crime	magistrate	D H L
pacifism: failure to wage war	omission	<i>ius</i>	civil	crime	magistrate	D L
promoting worship of Elagabal	action	<i>ius/fas</i>	sacred	crime	magistrate	D H L
seeking overthrow of Jupiter etc.	action	<i>ius/fas</i>	sacred	impiety	pontifex	L
performance of Elagabal's ritual	action	<i>ius/fas</i>	sacred	sacrilege	pontifex	D H L
Varius' marriage to a vestal virgin	action	<i>fas</i>	sacred	sacrilege	pontifex	D H L
Elagabal's marriages to goddesses	action	<i>fas</i>	sacred	sacrilege	pontifex	D H
removing sacred objects	action	<i>fas</i>	sacred	sacrilege	pontifex	D H L
undergoing circumcision	passion	<i>fas</i>	sacred	sacrilege	pontifex	D L
taking passive role in sex with men	passion	<i>mos</i>	moral	misdeemeanour	censor	D L
self prostitution	passion	<i>mos</i>	moral	misdeemeanour	censor	D
chariot racing	action	<i>mos</i>	moral	misdeemeanour	censor	D H
dancing	action	<i>mos</i>	moral	misdeemeanour	censor	D H
sumptuary irregularities	action	<i>mos</i>	moral	misdeemeanour	censor	D H L
curatory eccentricities	action	<i>mos</i>	moral	misdeemeanour	censor	D L
convivial extravagance	action	<i>mos</i>	moral	misdeemeanour	censor	D H L
architectural excess	action	<i>mos</i>	moral	misdeemeanour	censor	H L

The three forms of Roman law and custom, *ius*, *fas*, and *mos*, correspond to the civil, sacred, and moral realms, and to the three types of official charged with their enforcement, trial and judgement: magistrate, pontifex and censor. It should be clarified that the criminal and civil law both belong to the same realm, that of *ius*. The distinction between them is not so sharply drawn by Roman law as it is by modern.<sup>25</sup> The main distinction within the realm of *ius* lies between delicts, prosecuted by the injured party, and crimes, prosecuted by an official of the state.<sup>26</sup> Some offences may be both. Only crimes concern us here. Still within *ius*, there are diverse types of officials at different times in Roman history, charged with investigation, indictment, formulation, prosecution, and judgement.<sup>27</sup> Here, reflecting the cognitive procedure under the principate, only magistrates are named. In the case of *fas* and *mos*, judiciary functions were exercised, in the republic, by pontifices and censors. Under the principate, the emperor himself was held to embody supreme authority in each of these realms, by virtue of his role as

25 *OCD*, p. 831b, *law and procedure*, Roman (3) *Criminal law and procedure*.

26 Borkowski, A., *Textbook on Roman Law*, 1997, Ch.2, *Delicts*, p. 325-362.

27 See Jolowicz, H.F. & Nicholas, Barry, *Historical Introduction to the Study of Roman Law*, 1972, Ch.

judge of last appeal, as pontifex maximus, and sometimes as censor. The designation of a given charge as crime, sacrilege, or misdemeanour corresponds to the realm proper to each, rather than to relative degrees of gravity. Moreover, many of the charges listed here straddle more than one category, whether of dynamic, law or realm.

From this table, it is possible to see that even offences not specified as crimes during Varius' reign, listed here within the moral realm, as misdemeanours, have a legal dimension, insofar as they fall under the jurisdiction of the censor, which is over *mos*, further qualified as *mos maiorum*, or tradition. More specifically, offences against *mos*, even if incurring no other penalty, often lead to *infamia*, with the legal consequence of inhabilitation from the tenure of representative or public office.<sup>28</sup> Likewise, offences against *fas*, insofar as they may render the offender *pollutus*, impure, would seem to bar him from hieratic office, such as that of pontifex. And of course offences against *ius*, many of which incur exile, if not the death penalty, often also bar the culprit from tenure of any public office, including, presumably the principate. Thus, it could be argued, if an emperor commits a crime, sacrilege, or misdemeanour, he may by that token be considered unfit for the offices of pontifex maximus, censor, consul, tribune, or any of the others making up the principate. If so, he may legitimately be removed therefrom. Since there is no procedure other than murder in place for the removal of an emperor from office, murder may, by this argument, in such a case be justified. So, in framing his account of Varius as an indictment, and charging him with offences in each of the three realms of Roman law, Dio is arguing, not only implicitly, but quite explicitly, that Varius' murder at the hands of the praetorians is ἀξιώτατον τῆς μισθίας τῆς ἑαυτοῦ μισθόν: "a well-deserved reward for his debauchery;"<sup>29</sup> in other words, a legally justified act of execution.<sup>30</sup>

#### The formula: questions of fact and the problem of evidence.

The questions relating to this case, whose answer may lead to a verdict, would have been stated, in early Roman law, by the formula. This defines which particular questions, how exactly worded, must be answered, in order to arrive at a verdict. As such, it is conceptually useful not only to later Roman law (where it was sometimes still employed)<sup>31</sup> but to modern history of antiquity, since the precise formulation of a question, in either pursuit, forces one to clarify exactly what issues are at stake. In the earlier, formulary period of Roman law, when the functions of the *praetor*, responsible for framing the formula, are separate from those of the *iudex*, or judge responsible for trying the case, the formula is stated as a sentence with conditional *dosis* and imperative *apodosis*, instructing the judge to convict or

28 Jones, A.H.M., *The Criminal Courts of the Roman Republic and Principate*, 1972, p. 18. "Any act of a magistrate ... contrary to *mores maiorum* might be made the basis of an accusation. The tribunes could judge *vel legibus vel moribus*."

29 *Dio*, 80.17.1.

30 Cf. Cicero, *De Officiis* 3.6.32: *Nulla est enim societas nobis cum tyrannis et potius summa distractio est, neque est contra naturam spoliare eum, si possis, quem est honestum necare, atque hoc omne genus pestiferum atque impium ex hominum communitate exterminandum est.*

31 Jolowicz, H.F. & Nicholas, Barry, *op.cit.*, p. 398, B.

absolve, depending on the answer to a given question or set of questions of fact. In the present enquiry, which follows the pattern of the later, cognitive procedure, where both these functions are performed by a single person, who presumably does not have to issue formal instructions to himself, all that need concern us are the terms of those questions of fact. These may be summarised in one:

- Did Varius perform, undergo, or allow any or all of the actions, passions, and omissions imputed to him?

Given the variety of charges, this question must, when it comes to be answered, be restated according to each. In formulating it (whether one approaches the task of answering it from the perspective of an ancient magistrate, or from that of a modern historian of antiquity, or even from that of a modern jurist) one must first consider whether it is sufficient: that is, whether it exhausts the subject. Then one must decide how to go about answering it. From the point of view of Roman law, it may well be sufficient. In Roman law, once its jurisdiction, over a given person, and over the charges in a given indictment, is established, the answer to the formulaic question is sufficient and decisive: if he did so, convict; if not, absolve. According to some authorities, Roman law is interested exclusively in material facts and their material consequences. By such accounts, Roman law does not concern itself with prior motivations and intentions, nor with intangible psychological or moral consequences.<sup>32</sup> Whether or not this view of Roman law is wholly accurate may, as shall be seen, be open to discussion.

However that may be, history, like some forms of modern law, is interested not only in material facts and their consequences, but also in their causes, in prior motivations and intentions, and even in the psychological, moral or cultural implications of actions, passions, and omissions. This, moreover, is not the only vital difference between history and law, whether Roman or modern, relevant to this enquiry. An even more fundamental difference, relevant to our two pronged approach to this investigation, is that between the purposes of history and law, of whatever period and place, and hence between the way each goes about its business. For though we may presume that the modern historian of antiquity and the Roman magistrate share the goal of discovering what actually happened, how they define that goal, how they strive for it, and what they do with that knowledge, or without it, may be quite different.

The purpose of law is pragmatic. It decides whether a given person is to live or die, to be imprisoned or set free, to pay a fine or not. In so deciding, it may, in certain legal systems, such as the Roman, British, European, or American, seek to be guided by reference to fact: Did the accused commit the crime in question or not? Did the defendant cause the claimed damage or not? But if the relevant facts cannot with certainty be known, law will sometimes rest content with likelihood "beyond a reasonable doubt;" or with the lesser likelihood of plausibility; or even with precaution against possibility. It may execute or

---

32 "The basis for Roman law was the idea that the exact form, not the intention, of words or of actions produced legal consequences. To ignore intention may not seem fair from a modern perspective, but the Romans recognized that there are witnesses to actions and words, but not to intentions." <http://www.crystalinks.com/romelaw.html>

imprison to forestall the chance of guilt going unpunished, or to prevent an allegedly dangerous individual from remaining in society. It may impose a fine in order to ruin a political rival, or grant damages to set an example.

The purpose of history, however, is not pragmatic, unless it is improperly marshalled for ends other than its own (such as those of ancient historiography concerning Varius). Rather, in my view, the historian's goal is knowledge itself, for its own sake. Just as in the case of law, knowledge may, in some or many cases, be unavailable. But the historian, unlike a judge or a jury, is under no compulsion to reach a decision. Unlike counsel for the prosecution or defence, the historian can afford to be impartial. The historian's decision, or indecision, has no practical consequences. In a free state, at least, the historian enjoys the privilege of being able to say, with no loss of income, position, or prestige: "This cannot be known, on the basis of the evidence available." Given that this is a privilege, it is a wonder that it is not invoked more often, particularly in the field of Varian studies. I for one do not intend to stint myself in its regard. That being as it may, a consequence of enjoying this privilege is that the historian's standard of knowledge is higher than the jurist's of proof. For the historian, only that which is certainly known on the basis of evidence merits the name of knowledge. All the rest is entertainment of likelihood or possibility.

Another vital aspect of the difference between history and law involves the definition of evidence. This relates directly to the standard of knowledge required for their diverse purposes. Fundamental here is the distinction between allegation or witness and material or real evidence. Law, because it must reach a verdict, admits allegation as evidence, under the name of witness. Even in modern law, witness, rather than material evidence, may decide the outcome of a case. In Roman law, reliance on witness is far more common than on documents or artefacts.<sup>33</sup> The modern historian of the ancient world, however, and, in particular, any such who chooses Varius as an object of enquiry, does well to refrain from admitting as evidence any statement whatsoever, concerning Varius, made by any of his ancient historians. For none so much as claims direct witness of Varius, and each has his own agenda, rendering his testimony suspect.<sup>34</sup>

This basic difference between history and law relates to their respective sources of information. Given his practical goal, to convict or absolve, and his readiness to admit allegation — under the name of witness or testimony — as evidence, the Roman magistrate investigating charges against a member of the upper orders has at his disposal a source of information denied to the modern historian of antiquity: interrogation under torture of that individual's slaves, and even, in some cases, such as that of treason, of that individual's associates, family, and self. The magistrate may also be privy to a much greater array of relevant materials. He potentially has access to the crime scene, however defined, and to the dwelling of the accused, perhaps with his furnishings, treasure chests, and manuscripts intact. In the case of Varius,

---

33 Carr Ferguson, M., *op.cit.*, p. 745-752, *Testimony of Witnesses*.

34 QV 1&2.

however, as a result of *damnatio memoriae*, his private records, if any, were presumably destroyed. The modern historian of Varius thus has access only to imperial or private inscriptions, to coins, and, where relevant, to papyri, many of which survived that *damnatio*. But Varius' imperial artefacts must also be regarded with scepticism, given that they most probably lie, or deliberately mislead, with respect, at least, to such a fundamental question as that of his identity.<sup>35</sup>

What, then, constitutes evidence in the present case? On what basis may one know whether Varius did or did not do, undergo, or neglect any or all of what is imputed to him? We shall presently address this question from the historian's point of view, but first let us consider it from that of our virtual Roman magistrate. What, for him, would be the criteria whereby a given artefact might count as evidence? On this, the Roman legal literature gives no clear guidance. When ancient texts address the question of evidence, they refer to testimony, rather than material objects. They may distinguish oral from written testimony, but both are forms of allegation. What they almost never do is discuss materials, such as coins and inscriptions, as real evidence. Valerius Maximus, in contrast with the silence of most ancient writers on this matter, cites material artefacts as evidence, but in historical, rather than judicial contexts.<sup>36</sup> In some of these, moreover, the nature of the fact thus supposedly established is divine, rather than secular.<sup>37</sup> True, there are cases of the use of real evidence in Roman legal history, such as the public exposition of Clodius' corpse; but these are used to excite emotion, rather than to prove a point of fact.<sup>38</sup>

Our magistrate's view of this question would thus most probably relate to allegation, rather than to evidence, as here defined. His precise view would depend on his chronology. A preference for present testimony, and for oral sources over written ones, is widespread early in classical antiquity, going back at least as far as Plato.<sup>39</sup> Cicero questions the value of archives, which, he contends, are subject to falsification, as compared to oral testimony, given by honourable persons, under oath, which, he argues, is superior.<sup>40</sup> Actions, including oral testimony under oath, or performance of any civil or sacred rite, seem to speak louder than the written word. Cicero, having argued against the admissibility and reliability of witness extracted under torture, appeals to his audience's prior observation of a defendant's conduct, implying a favourable view of his character, and so asks them so to find him innocent.<sup>41</sup> Pliny, discussing the possible pardon of Christians if they recant, regards the public performance of an act of sacrifice to Roman gods as sufficient proof of recantation.<sup>42</sup> This view, however, undergoes development. Despite the original preference for oral testimony over documents, the record shows a gradual shift in Roman legal opinion.<sup>43</sup> Quintilian considers the relative value of written and oral testimony,<sup>44</sup> as well as the distinction

---

35 *QV* 1&2.

36 Valerius Maximus, *FDM*, 7.2(b).16.

37 Valerius Maximus, *FDM*, 1.6.12; 1.8.6.

38 Carr Ferguson, M., *op.cit.*, p. 756-757 & note 192, *Real Evidence*.

39 Plato, *Phaedrus* 275 C, 60.

40 Cicero, *Pro Archia*, 4.

41 Cicero, *Pro Milone*, 22-23.

42 Pliny, *Epistulae ad Traianum* 10.97.1.

43 Jolowicz & Barry, *op. cit.*, p. 414-420: *Increased use of writing*.

between artificial and inartificial proofs.<sup>45</sup> Gaius, in the context of contract law, notes that written evidence of contract is not required, if one can furnish other proof of same, but does not specify what such proof might be.<sup>46</sup> By Justinian's time a shift in opinion has occurred, and the situation is reversed: *contra scriptum testimonium non scriptum testimonium non fertur*: "unwritten witness does not prevail over written witness."<sup>47</sup>

Turning finally to the historian's use of artefacts as evidence, methodological criteria for this are discussed in detail in the first of these studies.<sup>48</sup> The fundamental premise of the method of enquiry there adopted is that such materials acquire the status of evidence only in response to questions, and that their response takes the form of propositions, which those materials either contain or imply. One's judgement of the truth or likelihood of propositions contained or implied by such materials involves a calculus in which the following are crucial questions:

- Is the proposition in question inherently verifiable or not?
- Could it be verified, in public, by a random contemporary observer?
- What might the consequences be, for whom, of its negative public verification?
- What might the incentives be to advance a false proposition?
- What collusion, from whom, would be required to do so?

Asking and answering these questions allows one to detect and define a categorical difference between propositions such as those asserting or implying Varius' identity, in terms of his biological descent, and those reporting his actions, passions, and omissions as emperor. The former, at the time of Varius' accession to the throne, are inherently unverifiable.<sup>49</sup> The latter, however, are potentially verifiable, in public, by a random contemporary observer. In the case of the former, the incentive to lie is very great: no less than the principate itself. Moreover, the legionary soldiers, for reasons of their own, are prepared to believe, or to pretend to believe, a claim that, while it cannot be proven, can by the same token not be disproven. In the case of the latter, given Varius' presumable concern to preserve the soldiers' support for his ongoing tenure of the principate, it would be unduly risky for him to claim, say, in inscriptions, a fictitious victory,<sup>50</sup> or to issue a coin pretending to belong to a donative left undistributed. Such a proposition could easily be challenged by a soldier, leading to mutiny and overthrow. Thus, while the former sort of proposition should not be taken at face value, the latter may. Out of these, and similar

---

44 Quintilian, *Institutio Oratoria* 5.4-7.

45 Carr Ferguson, M., *op.cit.*, p. 740-742, *Classical Roman Concepts of Evidence*.

46 Gaius, in *Digesta* 22.1.4

47 *Codex*, 4.20.1.

48 *QV* 1.

49 His mother's husband, Sextus Varius Marcellus, is dead, and hence incapable of contradicting the story of Varius' Caracallan paternity, alleged by Varius' mother and grandmother. And of course, there is no DNA testing available.

50 As did Macrinus, with a coin claiming VICTORIA PARTHICA, thus turning his defeat by the Parthians into a fictitious victory (e.g. *RIC* 4, 96-98). His fate makes the point.

considerations, one may arrive at a calculus for evaluating propositions stated or implied in ancient artefacts and texts. Its terms range from certainty, through diverse degrees of likelihood and possibility, to improbability and impossibility. It will be applied and further developed in the course of this article, specifically in addressing the body of materials potentially relevant as evidence in answering questions of fact. That same body of materials is also the basis on which one may constitute Varius' *res gestae*.

## Res Gestae

The term *res gestae* is familiar to modern historians of antiquity as designating the emperor Augustus' own account of his achievements, set out in an inscription at Rome (not surviving) of which parts of three copies have been found in Asia Minor.<sup>51</sup> To British and American jurists, however, the term *res gestae* denotes a special class of information, relating to a case under trial. It is a form of hearsay, but admissible nevertheless. The following quotations from modern legal texts give a notion of its meaning in this context: "The Latin term 'Res gestae' means, in a UK legal context: 'the thing done.'" <sup>52</sup> "The *res gestae* rule is that where a remark is made spontaneously and concurrently with an affray, collision or the like, it carries with it inherently a degree of credibility and will be admissible because of its spontaneous nature."<sup>53</sup> "Evidence may be admitted when it is necessary to tell the whole story of the events in issue at trial even though the evidence tends to show the commission of other crimes or a criminal character. Such 'res gestae' evidence is one example of the non-application of the general propensity rule ..."<sup>54</sup> A fuller treatment of the subject is to be found in the chapter devoted to *Res Gestae* in *Prince on Fact*, a modern legal text directly addressing the question of what constitutes evidence.<sup>55</sup> Among other things, Prince observes that: "The essence of a *res gestae* statement is not contemporaneity, but spontaneity."<sup>56</sup>

In the context of the present enquiry, both the historical and legal senses of the term are relevant. For Varius' *res gestae*, in the sense of a coherent documentary account of his reign, would, if they existed, propose an answer, presumably coming from Varius himself, to the historian's question: "What did Varius do?" It would then be up to the historian, in the light of the calculus outlined above, to consider whether that answer were truthful, likely, possible, unlikely, or impossible. Since, however, Varius' *res gestae* do not exist as a single coherent document, they must be reconstructed, by the modern historian of antiquity, out of surviving artefacts and texts. Which artefacts, which texts? This now becomes the critical question.

51 Ehrenberg, V., & Jones, A.H.M., *Documents Illustrating the Reigns of Augustus and Tiberius*, 1955 (1949), p. 1-31.

52 *Black's Law Dictionary*, 6th Ed.

53 <http://www.clickdocs.co.uk/glossary/res-gestae.htm>

54 <http://www.law.harvard.edu/publications/evidenceiii/problems/42.htm>

55 Prince, R.G., *Prince on Fact: The Law of Fact: A Comprehensive and Coherent Theory of Evidence*, World Law Centre, 1990.

56 Prince, op. cit. p. 355.

*Res gestae*, in the legal sense, might, in theory, be relevant to reconstructing *res gestae* in the historical sense. For in considering the case of Varius, where the credibility of propositions is at issue, any proposition that “carries with it inherently a degree of credibility” is welcome. Given, also, that *res gestae* in the legal sense include, indeed may principally consist of testimony otherwise considered as hearsay, they might at first be thought, in an historical sense, to include allegations such as those made by ancient historiographers concerning Varius, none of which is based on direct witness, and all of which are based on hearsay. Our virtual Roman magistrate would probably consider them included. Indeed, in Roman law, “hearsay in its most repugnant forms was commonly admitted throughout the Classical period.”<sup>57</sup>

Inclusion of ancient historiography concerning Varius as *res gestae* in the historical sense would, however, be wrong, for three distinct reasons, two legal, one logical. First is the purposeful and partisan nature of the texts in question, devoted as the bulk of most of them is to proposing or repeating accusations against Varius. They therefore lack the spontaneity, and independence of the case in hand, which constitutes the essence of *res gestae* in the modern legal sense. Second is that those allegations constitute the very set of propositions here to be proven. For “What is on trial in a criminal matter is not the defendant but the prosecution’s case against him.”<sup>58</sup> This is also true in Roman law, where the burden of proof is on the accusation: *Ei incumbet probatio, qui dicit, non qui negat*: “The burden of proof is on him who affirms, not on him who denies.”<sup>59</sup> They cannot, therefore, whether in modern or in Roman law, simultaneously be a set of propositions to be proven, and a set of propositions inherently enjoying a degree of credibility. Third, it is clearly logically inadmissible, in seeking to prove a given proposition, to adduce that same proposition as evidence in its own support.

For the modern historian of antiquity therefore, the only remaining potential source of evidence for propositions about Varius lies in material artefacts, as opposed to historiographical texts. While, as mentioned above, Varius’ imperial artefacts are suspect, with regard to propositions concerning his identity, the aforementioned calculus allows us to admit as evidence other sorts of propositions, stated or implied by those same artefacts, subject to the pertinent tests. Since, moreover, all these artefacts were generated spontaneously, without regard to the potential requirements of a defence — which was by Varius quite unforeseen — any admissible propositions they may contain or imply may be considered as constituting *res gestae* in the legal sense, and may thus contribute to their reconstruction in the historical sense.

### Interrogation of the artefacts

The relevant artefacts consist mainly of coins and inscriptions. The former include Varius’ Roman imperial coinage — that issued under him by imperial mints at Rome and elsewhere — together with

---

57 Carr Ferguson, M., *op. cit.*, p. 759-760, *Hearsay*.

58 Prince, *op. cit.* p. 414.

59 *Digesta*, 22.3.2.



“Greek” or “Roman provincial” coins, issued, during his reign, by certain authorised cities in the East. The latter include official inscriptions — dedicated by agents or tributaries of the state, including the emperor himself, priestly colleges, military units, and political or administrative corporations — together with certain private inscriptions. There has been a debate, as to whether one may infer imperial policy and practice from such sources.<sup>60</sup> It is largely resolved, by current opinion, in favour of the proposition that one can. But that is not what we are doing here. We are not constructing theories, but asking and answering questions.

The fundamental principle underlying the method of enquiry here adopted is that materials only constitute evidence in response to questions. In accordance with that principle, and in my virtual role as an investigative magistrate, I must now interrogate the relevant artefacts. In order to do so, the original formula, or question of fact — “Did Varius perform, undergo, or allow any or all of the actions, passions, and omissions imputed to him?” — must now be subdivided into each of its relevant parts, in accordance with the charge sheet set out above in tabular form. The order in which those charges are set out there is roughly that in which they are treated in the previous article, dedicated to their exegesis, though certain adjustments have been made to that order, for the sake of coherence. The first group of charges relates to alleged offences against *ius*, the second against *fas*, the third against *mos*. In certain cases, the offences in question may overlap these categories, as well as those of action, passion, or omission.

In interrogating the relevant artefacts, I shall first, in each case, define the nature of the charge, if possible with reference to ancient legal or literary texts, in order to determine whether the accusation conforms to that definition. This continues formulation of the question, begun above, in which it was already noted that the question of fact must, given the number of charges, be pluralised. It is most practical, for purposes of presentation, to perform that task separately for each charge, immediately before interrogation of the artefacts, if any, relevant to each. I shall also, in discussing the question in hand, feel free to compare one accuser’s account of a given subject with another — a form of cross-examination — and to consider the accusers’ motives. This is well within the latitude granted to a Roman magistrate under the cognitive procedure.

### Varius’ alleged violations of *ius*.

With all these considerations in mind, let our interrogation of the artefacts for evidence begin with reference to Varius’ alleged transgressions against the civil law, or *ius*. These are presented more or less in the order in which they appear in Dio’s indictment. That order seems to follow a certain logic. It begins with Varius’ assumption of the principate, constituting in itself one sort of treason, followed by his conduct of his reign as a whole, constituting another. The fraudulent means, and autonomous manner of his accession involve specific violations of law and precedent, as does the bloodshed perpetrated in the

60 Pro: Sutherland, C.H.V., *Coinage in Roman Imperial Policy*, 1951; contra: Jones, A.H.M., *Numismatics and History, Essays in Roman Coinage presented to Harold Mattingly*, 1956.

course of seizing and keeping power. Active abuses of power in the form of inappropriate appointments, and misappropriation of property, are followed by inaction in the proper exercise of power, through failure to wage war.

- Did Varius commit treason, in the form of *perduellio*, against Macrinus by overthrowing and succeeding him?

The most distinguished living scholar of Roman law and life, Professor J.A.Crook, calls this a silly question.<sup>61</sup> By this, I think he means that it is wilfully perverse, in that it begs its own terms of definition, and that it could never arise in practice. If so, I cannot disagree with him. I trust, however, that the foregoing discussion of how a likewise silly question, that of how one might conceive the trial of an emperor, might arise in theory, and its implications for our understanding of the theory and practice of violent succession to the principate, in the legal, political, historical and philosophical spheres, may have shown that it is sometimes worth one's while to ask a silly question. That understood, let us address this one, to see what may thereby be learned.

The relevant texts are those of diverse jurists' commentaries on the *lex Iulia de maiestate*, as recorded in the *Digest. Maiestas*, which we shall presently consider in its own right, with respect to Varius, is another term for treason during the late republic and the principate. *Perduellio* was originally a general term for activity hostile to the state, but gradually came to be defined as treason against the emperor. According to Ulpian: *perduellionis reus est, [qui] hostili animo adversus rem publicam vel principem animatus*: "he is guilty of high treason ... [who] is animated by hostile intent against the State or the Emperor."<sup>62</sup>

Dio's initial presentation of Macrinus' overthrow implicitly, but unequivocally, accuses the soldiers who perform it of treason by this definition.<sup>63</sup> His account of the coup presents Varius, to begin with, as passive, led at night from Emesa to the legionary fort at Raphanea, by Eutygianus, who is likewise implicitly accused of treason.<sup>64</sup> Varius remains passive up to a point, while he is paraded, clad in Caracalla's childhood clothing, on the ramparts. But beyond that point, when Varius, claiming to be the son of Caracalla, harangues the opposing troops grouped outside the fort, he takes an active part in the uprising.<sup>65</sup> His participation culminates in a charge on horseback, during the decisive battle between his

61 Marginal comment on a list of questions I submitted to him in Summer, 2005.

62 *Digesta*. 48.4.11, Ulpianus 8 disp. *Is, qui in reatu decedit, integri status decedit: extinguitur enim crimen mortalitate. nisi forte quis maiestatis reus fuit: nam hoc crimine nisi a successoribus purgetur, hereditas fisco vindicatur. plane non quisque legis iuliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rem publicam vel principem animatus: ceterum si quis ex alia causa legis iuliae maiestatis reus sit, morte crimine liberatur.*

63 *Dio*, 79.29.2.

64 *Dio*, 79.31.2.

65 *Dio*, 79.31.4 - 32.4.

troops and those of Macrinus. This turns the tide, leading to Varius' victory.<sup>66</sup> Thus, if Dio's account were proven true, Varius could be said to have been moved by hostile intent against his emperor, and therefore to have committed treason, in the form of *perduellio*, as defined by Ulpian. Leaving for elsewhere consideration of the question of the theoretical status of treason, which, like that of an emperor's trial, is more political, historical, and philosophical than legal, suffice it for now to recall the dictum: "Treason doth never prosper: what's the reason? Why, if it prosper, none dare call it treason."<sup>67</sup> In contrast with this dictum, the question here addressed is merely practical: Is there any evidence to support Dio's allegation that Varius took up arms against his emperor?

An article belonging to this series examines Varius' succession to Macrinus.<sup>68</sup> There I show that while it is undoubted that this succession took place, we have no evidence, as opposed to allegation, of how it did so. In particular, we have no material evidence that Varius overthrew Macrinus in a *coup d'état*, let alone of his active personal participation in any such uprising. True, there are coins from Varius' first semester in power, with the reverse legend VICTOR(IA) ANTONINI AVG, and with a depiction of the eponymous goddess,<sup>69</sup> which some take to refer to Varius' victory over Macrinus.<sup>70</sup> But there are also VICTORIA issues later in the reign, continuing almost till its end.<sup>71</sup> The lack of any direct reference to Macrinus, and the broad chronological distribution of this type, makes one wonder whether its frame of reference may not be more general. The possibility that its later emergence refers to other military victories is controverted by the absence of evidence for any wars waged during Varius' reign, a fact which is relevant to another of the charges brought against him, presently to be examined.<sup>72</sup> So in accordance with the methodology of this enquiry, we must conclude that there is no material evidence to support the proposition that Varius overthrew Macrinus by force, even though we may consider this the only likely explanation for that succession. We do, however, have epigraphic evidence of Macrinus' *damnatio memoriae*, which allows us to affirm that the succession was not based on continuity, but involved a rupture and reconstitution of legality.

• Did Varius commit treason, in the form of *maiestas*, against the state, defined as the *res publica*, in any way?

Here, the relevant texts include, together with the aforementioned Justinianic collection of

66 *Dio*, 79.38.4.

67 Sir John Harrington (1561-1612), *Epigrams*, Book iv. Ep. 5.

68 *QV* 3.

69 *Thirion* § 55-65, 66, 86-89.

70 *Thirion* p. 10.

71 *Thirion* § 139, 315-319.

72 Dr. T.V. Buttrey observes: "Already for 2 centuries the figure of Victoria on the coins with legend VICTORIA AVG had been a cliché. It's one of the all-purpose reverse types, with Victory in various postures, that occurs everywhere. To make it pointed one had to announce V. GERMANICA or the like. For Varius we have no way of knowing whether the plain VICTORIA refers specifically to anything, and even the unusual VICTORIA ANTONINI AVG may not carry any extra punch: it may just be a way of specifying him rather than specifying a victory, since he also has the Salus type with SALVS ANTONINI AVG." (E-mail to me of October 13, 2005.)

commentaries on the *lex Iulia de maiestate*, which itself dates to Julius Caesar, the earlier *leges Appuleia and Cornelia* of treason, plus a subsequent history of cases where the charge was brought against individuals. A measure of this crime's status is given by Ulpian's notion that it is *proximum sacrilegio*: "next to sacrilege."<sup>73</sup> The most directly relevant text, in the light of Dio's accusations, and of those of the *HA*, is the earliest, that of the *lex Appuleia*, whence the charge derives its name, where it is defined in the phrase *maiestas minuta populi Romani*: "the Roman people's majesty diminished." The term is explained by Cicero as follows: "*Maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare*:"<sup>74</sup> To diminish majesty is "to derogate from the dignity, splendour or power of the people or those to whom the people has given power." According to one modern authority, "the vagueness of the phrase made this a portmanteau charge which could be deployed against any form of treason, revolt, or failure in public duty."<sup>75</sup> According to another, "Augustus extended *maiestas* to cover libel ... the extension from deeds to words, which shocked Tacitus, seems reasonable within the terms of the law."<sup>76</sup>

The question of revolt has already been addressed. Dio's indictment against Varius, echoed and amplified in the *HA*, certainly states and implies that Varius, perhaps more through his alleged offences against *mos*, incurring *infamia*, than by those against *ius*, diminished the majesty of the principate, hence of the *res publica*. In addition, Varius' reported violations of precedent, and his alleged failure to wage war, definable as failure in public duty, or as desertion, might be classed as *maiestas*. Since each of these charges will be addressed in its own right, the question of whether they constitute *maiestas* is left till after such consideration.

- **Did Varius commit fraud, in pretending to be the son of Caracalla?**

A relevant statute is the *lex Cornelia de falsis ... quae etiam testamentaria vocatur, poenam irrogat ei qui testamentum vel aliud instrumentum falsum scripserit, signaverit, recitaverit, subiecerit, quive signum adulterinum fecerit, sculpsit, expresserit sciens dolo malo*.<sup>77</sup> "The Cornelian law of fraud, also known as law of wills, ordains a penalty for him who should write, stamp, read out, or supply a false will or other document, or should make, sculpt, or strike a fake seal, knowingly by wrongful deceit." The original context, that of inheritance fraud, is theoretically relevant here, though not quite in a way that may have been foreseen. By Dio's account, Varius overthrows Macrinus and succeeds him in the principate by passing himself off as the bastard son of Caracalla. He therefore takes possession of Macrinus' estate by

<sup>73</sup> *Digesta* 48.4.1, pr. Ulpianus 7 de off. procons. *Proximum sacrilegio crimen est, quod maiestatis dicitur.*

<sup>74</sup> Cicero, M.T., *De Inventione*, 2.53. cited in Jones, A.H.M. *CCRRP*, p. 106.

<sup>75</sup>  *OCD, maiestas*, p. 913b-914a.

<sup>76</sup> Jones, A.H.M. *CCRRP*, p. 107, citing Tac. *Ann.* I, 73-4; III, 49, 70 etc.

<sup>77</sup> *Institutiones* 4.18. De Publicis Iudiciis. *Item lex Cornelia de falsis, quae etiam testamentaria vocatur, poenam irrogat ei qui testamentum vel aliud instrumentum falsum scripserit, signaverit, recitaverit, subiecerit, quive signum adulterinum fecerit, sculpsit, expresserit sciens dolo malo. eiusque legis poena in servos ultimum supplicium est, quod et in lege de sicariis et veneficis servatur, in liberos vero deportatio.*

fraud. The fraud, in this case, does not involve forging a will, because the manner of Varius' succession to Macrinus' estate, the principate itself, is not testamentary, but rather seeks to counterfeit the rightful seizure of property, supposedly Varius' own, by virtue of his alleged descent from Caracalla, from whom Macrinus had usurped it. But if the basis of Varius' claim of title to the property is false, even if that claim only takes the form of a spoken assertion, rather than that of a forged document, the spirit of the *lex Cornelia*, and that of Roman legal practice in general, would specify that claim as fraudulent.<sup>78</sup>

Indeed, apart from this statutory definition, the number of references to fraud in Roman legal literature is huge, and goes well beyond forged wills. This may reflect its prevalence in Roman life, or the fact that *falsum*, *fraus* or *dolus*, falsehood, fraud, or deceit, are considered as integral components of many other crimes. In particular, the frequently recurring phrase *sciens dolo malo*, "knowingly by wrongful deceit," found in the text quoted here, specifically identifies and isolates an element of fraud in many crimes, whose main characteristic, for purposes of specification and identification, is something other. Even in the quoted text, to go no further, where the crime under discussion is indeed fraud itself, the falsehood of the instrument or testament used is considered distinct from its use, or its production, and both are distinguished from the deceit perpetrated by the person who knowingly uses a false means to gain an illicit end.

To understand this, it suffices to analyse the syntax of the sentence. *Sciens dolo malo* is, in the quoted example, a composite adverbial clause, consisting of two distinct elements, a present participle, *sciens*, and an ablative noun clause, *dolo malo*. Both depend on the nominative pronoun *qui*, the subject of a subordinate clause consisting of a series of future perfect subjunctive verbs (*scripserit*, etc.) governing a composite direct object, *testamentum vel aliud instrumentum*, qualified by an adjective, *falsum*, which typifies the nature of the nouns constituting that object. The subordinate clause hinges on *ei*, the indirect object of *poenam irrogat*, 'ordains a penalty', an action whose agent is *lex Cornelia*, the subject of the sentence. The subordinate clause *qui ... falsum scripserit*, etc., therefore designates commission of the act that constitutes the main characteristic of the crime. *Sciens*, 'knowing', modifying the subject, *qui*, 'who', of that subordinate clause, may thus be taken to act on the whole of that clause, both on its verb, and on all objects governed by that verb, as well, at least, as on the other element, *dolo malo*, constituting the adverbial clause (of which *sciens* is itself a part) which modifies that verb. Thus *sciens dolo malo* may here mean not only that the defendant knows that the testament or instrument in question is false, and, knowing this, speaks or writes or otherwise deploys it fraudulently, but also that he knows that his use thereof is wrong, and that it is deceitful, but does so anyway. This renders him triply culpable. Conversely, the noun clause *dolo malo*, an instrumental ablative, "by means of wrongful deceit," may likewise be taken to act on the whole of the subordinate clause, including the adjectival participle *sciens*. Thus the wrongfulness of the deceit consists not only in using a false document, which is one kind of fact,

78 *Digesta* 48.10.9.3 Ulpianus 8 de off. procons. *Poena legis corneliae irrogatur ei, qui quid aliud quam in testamento sciens dolo malo falsum signaverit signarive curaverit, item qui falsas testationes faciendas testimoniave falsa invicem dicenda dolo malo coierint.*

if proven, but in doing so knowingly, which is a different kind of fact: an act of knowing, an intention.

An interesting feature of this phrase is that it thus seems, contrary to certain accounts of Roman law, asserting its exclusive interest in material facts, to assign an important role to intention, discernment, and knowledge, on the part of the defendant. Another is that by virtue of its use of the adjective *malo*, it could conceivably be thought logically to imply the possibility of acting *dolo bono*, “in rightful deceit.” One may imagine such a characterisation emerging in time of war, where deceit is deemed a legitimate tactic.<sup>79</sup> However that may be, good and evil in such matters, by definition, depend on which side one is on. This, in the context of Varius’ allegedly deceitful tactic for seizing power, leads us back to the question of good or bad for whom, and thus to the philosophical implications, left for consideration elsewhere, of the question of legality in successive political dispensations, where succession involves a rupture of legality.

Applying these considerations to Dio’s account of Varius’ seizure of the principate, it may be held, from a point of view sympathetic to Macrinus, or, like Dio’s, unsympathetic to Macrinus, but even more hostile to Varius, to constitute a crime, *perduellio*, a part of whose specification is that Varius did so *sciens dolo malo*. In this case, the phrase could mean: ‘knowing that it was wrong to seek to overthrow the reigning emperor, and having, by virtue of that wrongfulness, no honest, open, truthful, legal way of doing so, Varius used deceit, in the form of impersonation, to gain his illicit purpose.’ Alternatively, one may prefer to focus on the particular deceit involved. In this case, *sciens dolo malo* would mean: ‘knowing that he was not the son of Caracalla, Varius nevertheless falsely claimed to be so, doing this, moreover, which he knew to be wrongful in itself, for a wrongful purpose, whose wrongfulness he also knew.’

A previous article in this series, considering Varius’ identity and his nomenclature,<sup>80</sup> concludes that it is highly unlikely that Varius was, as he claimed, the bastard son of Caracalla. The absence of documentary evidence for any such relationship, or even of any allegation or rumour thereof, dating from the reign of Caracalla, subtracts from that claim’s plausibility. Conversely, a chain of reasoning there developed, involving Varius’ recognition of Soaemias as his mother, the presence of inscriptions recording her as married to Sextus Varius Marcellus shortly before the likely date of Varius’ birth,<sup>81</sup> as well as an inscription from shortly before Varius’ succession to the throne, dedicated by Soaemias, together with her children, to the memory of Sextus Varius Marcellus, her husband, their father,<sup>82</sup> adds to the likelihood that Varius was the son of his mother’s husband. The presence of a powerful motive to lie in this respect, and the inherent unverifiability, at the time of proposing the claim, of the proposition in question, further

---

79 Professor J.A. Crook objects: “I don’t think the existence of ‘dolo malo’ implies the possibility of ‘dolos bonus,’ any more than ‘bonus paterfamilias’ implies the possibility of ‘malus paterfamilias’: it’s just an archaic phrase, best thought of as one word, ‘dolos-malus’.” (Letter to me dated 9.8.05)

80 *QV* 2.

81 Pighi, J.B., *De Ludis Saecularibus*, 1965, p. 158, 254, *re CIL*, VI, 32326-32335, esp. 32329, frag. V.

82 *CIL*, X, 6569.

contribute to the likelihood that Varius' claim to Caracallan paternity, and thereby to the principate, was fraudulent.

There is ample evidence that Varius claims this throughout his reign.<sup>83</sup> He does so both implicitly, by adopting Caracalla's official nomenclature, Marcus Aurelius Antoninus, used in whole or in part by his coins and inscriptions, and explicitly, by incorporating the genealogy *Divi Antonini filius, Divi Severi nepos*, son of Caracalla, grandson of Severus, into his official nomenclature. So if the claim is false, and if 'making a false claim' is a sufficient formulation of the crime of fraud, then the evidence would clearly seem to indicate that Varius committed it. The onus on the prosecution is, then, merely to prove the falsehood of the claim.

This, however, lies beyond the reach of extant evidence. Likelihood is the most that can be had. While the aforementioned chain of reasoning, based both on the absence and presence of certain inscriptions, in combination with the testimony of contemporaries such as Dio, might suffice for our imaginary magistrate, or even for a jury, ancient or modern, to judge the claim false, it is not enough for this historian of Varius to say that he *knows* the claim is false; only that he thinks it likely. Let us, nevertheless, for the sake of argument, assume the lesser standard of proof, and grant that the claim be false. But let us also suppose that 'making a false claim' is not in itself a sufficient formulation of the crime of fraud; that its full specification requires, as an element of definition, that a false claim be made *sciens dolo malo*. Then, in the light of the discussion just sustained, the question becomes: Did Varius know that his claim was false?

This, of course, begs the question of what is meant by 'know'. In the epistemology adopted by these studies, which is in conformity with standard English usage, one can only, strictly speaking, know something true. If one 'knows' something that turns out to be false, one must revise one's characterisation of one's former 'knowledge' and call it mistaken belief. Thus, while one may believe or disbelieve truth or falsehood, one can only properly know truth. This formulation is, moreover, not limited to English, but derives from and applies to standard usage of the equivalent verbs in Greek (*εἰδέναι, ἐπίστασθαι, γινώσκειν, ἰστορεῖν*) and Latin (*scire, cognoscere*) in the texts of classical and mediaeval philosophers and other writers. Formulations seeking to deny the correspondence of knowledge and truth, or to assert the impossibility of the former, and the non-existence of the latter, would therefore not be relevant to Roman legal usage.

In Varius' case, the truth that he would have to know, in order to act *sciens dolo malo*, would be that his claim to Caracallan paternity was false. This begs the question of how he could possibly know this. It would seem, given the state of knowledge of such matters in his period, and the nature of his sources of information on this subject — his mother's and grandmother's assertions — that the question of

---

<sup>83</sup> The entire corpus of his coinage, and that of his inscriptions, bear out this assertion. Exhaustive citation is unnecessary.

Varius' biological paternity was, for him, as it is for us, unverifiable, and therefore unknowable. Could Varius nevertheless be held to act *dolo malo*, or at least *mala fide*, in bad faith, if, believing, as opposed to knowing, the proposition of his Caracallan paternity to be false, or merely doubting its veracity, he nonetheless claimed it to be true, and acted in consequence? Perhaps so, but this is also unknowable. That Varius claimed he was the son of Caracalla is established. Whether he himself believed that claim is unknown, and, on present evidence, unknowable. It is not, however, beyond the scope of historical investigation, at the level of hypothetical speculation, and will constitute the subject of a theory to be formulated later in these studies, concerning Varius' conduct of his reign.

• **Is there any evidence for Varius' alleged violations of precedent?**

According to Dio, Varius' violations of precedent include assumption of imperial titles before they were voted by the senate,<sup>84</sup> improper tenure of the consulate during the first six months of his reign, improper enumeration of subsequent tenures,<sup>85</sup> and failure to wear triumphal dress on the Day of Vows.<sup>86</sup> Dio says that these were "of simple character and did us no great harm." This may be a rhetorical ploy, to make other charges, which matter more to 'us', seem worse by comparison. Speaking as a senator — possibly the 'us' he means — Dio is especially indignant at Varius' alleged failure to honour a promise, reportedly made at the beginning of his reign, to respect senatorial privilege.<sup>87</sup> This may also be considered a violation of precedent, insofar as the broken promise, in Dio's account, involves Varius' undertaking to follow, in this respect, the example of Augustus and of (the original) Marcus Aurelius Antoninus. Its violation is linked to charges of coercion of the senate,<sup>88</sup> and of judicial murders of prominent men.<sup>89</sup> Dio also lists as a violation of precedent the repeated appointment of Comazon to high office beyond his station.<sup>90</sup> Both judicial murder of prominent men, and improper appointments, are treated in their own right in the present enquiry. To Dio's list, the *HA* adds the reported introduction of women into the senate chamber — an event also mentioned by Dio, but not described by him as a violation — and the alleged institution of a women's senate.<sup>91</sup>

These charges seem to include violations of *mos* as much as if not more than of *ius*, and even perhaps, in the case of breaking a solemn promise, of *fas*. The aspect which most concerns us here is that of violations of political, administrative, or ceremonial precedent, potentially classifiable as crimes or misdemeanours. While it is easy to find Roman legal and literary texts implicitly and explicitly demonstrating and enjoining respect for precedent, often referred to as *mos*, custom, or *mos maiorum*,

84 *Dio*, 80.2.2; 80.8.2. In making this charge, Dio neglects the precedent of doing so set by Vespasian.

85 *Dio*, 80.8.1-2.

86 *Dio*, 80.8.1-3.

87 *Dio*, 80.1.3.

88 *Dio*, 80.1.4-5.

89 *Dio*, 80.3.4-80.7.3.

90 *Dio*, 80.4.1-2.

91 *HA/AH*, 4.1-4; 28.3.



the custom of [our] elders, it is difficult to find any text which explicitly and specifically defines violations of precedent as crimes or misdemeanours. Cicero, in a dialogue concerning an ideal set of laws for an ideal republic, has one of his characters observe that the best set of laws from the best republic, that of Rome itself, is that deriving from the *mos maiorum*, which once had the force of law.<sup>92</sup> In a more practical vein, with reference to the civil law, Ulpian observes: *Semper in stipulationibus et in ceteris contractibus id sequimur, quod actum est: aut, si non pareat quid actum est, erit consequens, ut id sequamur, quod in regione in qua actum est frequentatur*: "In all stipulations and other contracts, we follow the intention of the parties; and if it is not apparent what their intention was, we observe the custom of the place where the transaction was concluded."<sup>93</sup> *Mos*, therefore, forms the basis of *ius*, providing the examples out of which *ius* is formulated. *Ius* may be defined as the formal codification of *mos*. Likewise, *fas* is an integral underlying component both of *mos* and *ius*.

All that being as it may, the question before us here and now is whether there is any evidence for Varius' violations of precedent, whatever their precise typification and degree of seriousness. Leaving for later, as we have said, murders of prominent men, and improper appointments to office, is there evidence of Varius' improper assumption of imperial titles; of improper tenure, and enumeration, of the consulate; of sumptuary irregularities in his performance of imperial ceremonies; or of coercion of the senate, introduction of women into its chamber, or provision to that sex of one of their own?

It stands to reason that, if Varius indeed participated in a *coup d'état* against Macrinus, he must have assumed some imperial names or titles immediately upon his proclamation, which, Dio tells us, took place in the legionary fort near Emesa, on the 16<sup>th</sup> of May of 971=218.<sup>94</sup> On the basis of the news of this uprising, sent to the senate by Macrinus, the senate reportedly condemned Varius as a public enemy.<sup>95</sup> As previously mentioned, however, there is no artefactual evidence of Varius' participation in any such *coup*. Neither is there any evidence, beyond Dio's allegation, of his reported condemnation by the senate, which, presumably, if factual, must have taken place between arrival in Rome of the news of Varius' proclamation, and that of the news of his victory over Macrinus, in the battle allegedly fought on the 8<sup>th</sup> of June of that same year. The first material evidence we have of Varius as emperor, indeed his first appearance on the stage of history in any role whatever, is an issue of coins, arguably minted in Antioch, with the obverse legend IMP CAES M AVR ANTONINVS P F AVG, thus using the titles Imperator, Caesar, Pius, Felix, and Augustus.<sup>96</sup> These coins are said to date from July of that same year.<sup>97</sup> If this dating is correct, we have part of the information we need to answer the first of these questions on the basis of evidence. The other part would be the date of the senate's ratification of Varius' accession

---

92 Cicero, *De Legibus*, 2.8-10.

93 *Digesta* 50.17.34 Ulpianus 45 ad sab.

94 *Dio*, 79.31.4.

95 *Dio*, 79.38.1.

96 *Thirion*, §357-358; 363-365.

97 *Thirion*, p. 14.

to the principate. This we do not have. Dio's narrative of that session of the senate, from which he, by his own account, was absent, does not mention any date. Even if he did, of course, that would not suffice as evidence. In this case, only an inscription, recording the proceedings, or a least a papyrus, reporting them, would do.

If we cannot, then, for lack of evidence, substantiate the charge of Varius' improper assumption of titles before they are voted by the senate, can we substantiate that of improper tenure, and enumeration of his tenure, of the consulate? Here, Dio refers to Varius' tenure of the consulate in the second half of 971=218, and to his enumeration of it as his first. Dio maintains that Varius "entered his name in the list as consul in place of Macrinus, though he had not been elected to the office and had not entered upon it at all, as the term had already expired ... again, he undertook to be consul for the second time without having held any office previously or even the title of any office." There is ample numismatic evidence of Varius' claim to hold the consulate during the first semester of his reign, and also that he numbers that tenure as his first, in the form of coins minted at Rome with the reverse legend PM TR P COS P P: Pontifex Maximus, Tribunicia Potestate, Consul, Pater Patriae.<sup>98</sup> The absence of any number after TR P and COS indicates a first tenure of each of these offices. The question here, therefore, is not whether there is evidence of Varius claiming the consulate in 971=218, and numbering it as his first, but whether this constitutes a violation of precedent. Would coins be minted at Rome, where Varius had not yet arrived, ascribing to him an office upon which he had never entered? On this question, Dr. T. V. Buttrey's opinion is: "Once he was accepted at Rome his titles would be what he determined they would be."<sup>99</sup> This seems plausible to me.

On the question of sumptuary irregularities in the performance of imperial ceremonies, we have no evidence for the particular charge brought by Dio, referring to Varius' alleged failure to wear triumphal dress on the Day of Vows, January 1<sup>st</sup>, 972=219, while acting as consul in Nicomedia. Coins issued that year at Nicomedia, with the reverse legend TR P II P P COS II, show him, in their obverse image, with laurel crown, cuirass, draped, facing right: a standard obverse depiction of an emperor.<sup>100</sup> This, of course, says nothing as to what he wore or did not wear on the particular day mentioned by Dio, but at least it indicates a general propensity, at that time, to follow established custom in his obverse numismatic depiction, rather than not. This is perhaps significant, in view of Varius' later depiction in reverses, performing a sacrifice, dressed not in standard Roman sacrificial garb, but in the belted tunic of a Syrian priest, and in obverses, crowned with a so-called horn.<sup>101</sup> This, of course, relates to his hieratic policy, a subject we shall come to presently, under the heading of *fas*, as well as to his alleged sumptuary irregularities outside a ceremonial context, which we shall discuss under the heading of *mos*.

---

98 *Thirion*, § 7-14

99 E-mail to me of October 13, 2005.

100 *Thirion*, § 334

101 E.g.: *Thirion*, § 252-263 (tunic on reverse), § 179-186 ('horn' on obverse). This list is not exhaustive.

Regarding coercion of the senate, there is, again, no direct artefactual evidence relating to the particular instance cited by Dio, when a certain Claudius Pollio allegedly intimidates the senators and causes them to act against their will and better judgement.<sup>102</sup> If true, this would contravene *the Lex Iulia de vi publica*: ... [ea lege] tenetur... qui dolo malo fecerit, quo minus iudicia tuto exerceantur aut iudices ut oportet iudicent vel is, qui potestatem imperiumve habebit, quam ei ius erit, decernat imperet faciat... item qui cum telo dolo malo in contione fuerit aut ubi iudicium publice exercebitur: "He who fraudulently prevents the free administration of justice, or prevents the judges from deciding as they should do; or he who, being invested with power or authority, acts in any other way than the law decrees and requires that he should... and also anyone who, with malicious intent, appears armed in an assembly, or in a place where justice is publicly administered ... will be liable under this law."<sup>103</sup> The context of this charge, which occurs in a section of Dio's text plagued by lacunae, seems to be that of persuading or compelling the senate to ratify Varius' succession and damn Macrinus' memory. To the extent that the senate in fact does so, and presumably does so only in the face of *faits accomplis*, the overthrow of Macrinus and the *de facto* seizure of power by Varius, it may be argued that they do so under compulsion. By that token, evidence of the consequences of that ratification, were it to exist, would also be evidence of the fruits of that compulsion. But only by that token. The presumption does not prove that compulsion as such. Nor does any extant artefact.

Finally, under the heading of violations of precedent, we come to Varius' alleged affront to *mos maiorum*: allowing women into the senate chamber, and giving them one of their own. As mentioned above, Dio cites the former event, but does not seem particularly exercised about it.<sup>104</sup> For the author of the *HA*, however, "*cautumque ante omnia post Antoninum Heliogabalum ne umquam mulier senatum ingrederetur, utique inferis eius caput dicaretur devovereturque per quem id esset factum*: "The first measure enacted after the death of Antoninus Elagabalus provided that no woman should ever enter the senate, and that whoever should cause a woman to enter, his life should be declared doomed and forfeited to the kingdom of the dead."<sup>105</sup> There is, again, no material evidence of this particular event, or of any like it.

As for the *senaculum mulierum*, there is serious doubt as to whether any such building ever existed; whether, if it did, it corresponded to an institution with legislative powers, describable as a women's senate; and whether, if it did, this was indeed a violation of precedent. These questions are discussed in detail by Maria Elefante, in 1982.<sup>106</sup> She refers to diverse modern academic texts sustaining, on the one hand, that Varius indeed commissioned such a building, and that it did amount to something like a senate chamber for women; on the other, that the *HA's* report is an invention. She argues for the latter interpretation. In any case, what concerns us here is the question of material evidence that Varius built

102 *Dio*, 80.2.4-6.

103 *Digesta*, 48.6.10 pr. Ulpianus 68 ad ed.

104 *Dio*, 80.17.2.

105 *HA/AH* 18.3.

106 Elefante, M., *A proposito del senaculum mulierum*, *RAAN*, NS, 57, 1982, p. 91-107.

any such edifice. The state of this question till the 20<sup>th</sup> century was described by Rodolfo Lanciani in 1892: "It is a remarkable fact that, at the beginning of archaeological research in the Renaissance, there was great enthusiasm over a few strange monuments of little or no interest, the existence of which would have been altogether unknown but for an occasional mention in classical texts. As a rule, the cinquecento topographers give a prominent place in their books to the columna Maenia, the columna Lactaria, the senaculum mulierum, the pila Tiburtina, the pila Horatia and other equally unimportant works which, for reasons unknown to us, had forcibly struck their fancy. The fashion died out in course of time, but never entirely. Some of these more or less fanciful structures still live in our books, and in the imagination of the people."<sup>107</sup> The claim, made by A. Pasqui, in 1914, to have identified a site on the Quirinal corresponding to the *senaculum mulierum*, on the basis of the presence of two headless, armless statues of draped females, with open-toed sandals, may be based, according to Elefante, on a misconstruction of the relevant passage in the *HA*. It is in any case insufficiently documented to convince, and seems to be argued on the basis of the correspondence of the find in question to textual sources of dubious reliability.<sup>108</sup> Platner & Ashby's *Topographical Dictionary* of 1929 takes note of Pasqui's thesis, but does not support it.<sup>109</sup> Pasqui's hope that his article would set off a series of new studies, taking his conclusions as a basis, does not appear to have been realised. The question of whether any such edifice existed must, therefore, still be regarded as open.

- Did Varius commit judicial murder?

While murder is specified as a crime by the earliest of recorded Roman laws, the Twelve Tables, of a.u.c. 305=449 B.C., a law of Lucius Cornelius Sulla, dated a.u.c. 673=81 B.C., is the text most often invoked in this context: *Lege cornelia de sicariis et veneficis tenetur, qui hominem occiderit*: "He who kills a man is bound by the Cornelian law of murder and poisoning."<sup>110</sup> The numerous commentaries and opinions recorded in the literature make clear that this law covers both actual physical murder, and its instigation or intellectual authorship. It also covers judicial murder, whether in the form of false accusation leading to a victim's execution, or in that of the abuse of office, to order someone killed unlawfully.<sup>111</sup>

In the case of the killings imputed to Varius by Dio, all save one, that of Gannys, seem to fall under

---

107 Lanciani, R., *Pagan and Christian Rome*, 1892, Ch. 2.

108 Pasqui, A., *Antico edificio riconosciuto per la sede del Senaculum mulierum*, *Linc NSA*, 311.5.11, 1914, p. 141-146.

109 Platner, S.B., & Ashby, T., *A Topographical Dictionary of Ancient Rome*, 1929.

110 *Digesta*, 48.8.1, pr. Marcius 14 inst. *Lege cornelia de sicariis et veneficis tenetur, qui hominem occiderit: cuiusve dolo malo incendium factum erit: quive hominis occidendi furtive faciendi causa cum telo ambulaverit: quive, cum magistratus esset publicove iudicio praesesset, operam dedisset, quo quis falsum iudicium profiteretur, ut quis innocens conveniretur condemnaretur.*

111 *Digesta* 48.8.4, pr. Ulpianus 7 de off. procons. *Lege cornelia de sicariis tenetur, qui, cum in magistratu est esset, eorum quid fecerit contra hominis necem, quod legibus permissum non sit; Digesta* 48.8.15 Ulpianus 8 ad l. iul. et pap. *Nihil interest, occidat quis an causam mortis praebet.*

the rubric of judicial murder. The case of Gannys, where the charge is murder *tout court*, will be dealt with separately. Of the remainder, some are imputed to Varius directly, while others are said to have been ordered by the senate, as the result of Varius' accusations of the victims in question. The question of Varius' real responsibility for instigating these murders, in view of his age, and his subjection, during the first several months of his reign, when most of them are said to have occurred, to the guidance or even to the will of his grandmother, Maesa, and her advisers, Gannys and Comazon, while relevant to the present enquiry, belongs more properly to that part of it to be devoted to interpretation, than to that dedicated to verification.

In seeking material evidence of any of these murders, we are limited to those of Varius' alleged victims of whose existence there is numismatic or epigraphic evidence. This narrows the field down considerably. Fabius Agrippinus, Macrinus' alleged appointee as governor of Syria, may correspond to an individual cited in the records of the Arvales, but this is not certain.<sup>112</sup> Neither is the identification certain of Pica Caerianus, reportedly "in charge" of Arabia under Macrinus, with the subject of an inscription from Cisalpine Gaul.<sup>113</sup> Claudius Attalus, Macrinus' governor of Cyprus, is cited as issuer on two different Roman Provincial (Greek) coins, one from Pautalia, another from Nicopolis ad Istrum.<sup>114</sup> Triccianus seems to be the subject of an inscription from Pannonia, which, though subject to erasure, is still legible, and possibly of several others, where the attribution is more doubtful.<sup>115</sup> Castinus is the best documented of all, with several inscriptions, from diverse locations.<sup>116</sup> Sulla, the governor of Cappadocia under Macrinus, seems fairly certain to be the *cos. ord.* 968=215, Sulla Cerialis, and the legate of Noricum M. Munatius Sulla Cerialis.<sup>117</sup> Seius Carus may be cited on a Roman fistula.<sup>118</sup> Silius Messala may be cited on a Roman inscription.<sup>119</sup> Gellius Maximus is not cited as such, but it is thought that his father might be.<sup>120</sup>

In none of these cases is there any clear material evidence that the individual in question was murdered, let alone that any such murder was ordered or indirectly brought about by Varius. In that of Triccianus, his name's erasure probably reflects *damnatio memoriae*, but the date of the erasure cannot be established, so it cannot with certainty be ascribed to Varius' reign.

112 *CIL*, VI, 2103; *RE*, 6/12, 1909, c.1749, § 36, *Fabius Agrippinus*.

113 *CIL*, V, 3936; *PIR*<sup>1</sup>, pars 3, 1898, p. 39, § 304: *Pica Caerianus*.

114 *PIR*<sup>2</sup>, 2, 1933, p. 172, § C 795, *Claudius Attalus*; *RE*, 3/6, 1899, c. 2676, §65, *Claudius Attalus*.

115 *CIL*, III, 10644; *PIR*<sup>2</sup>, 1, 1933, p. 45, § A 271: *Aelius Triccianus*; *RE*, 4/8, 1901, c. 2286, § 21, *Aelius Decius Triccianus*.

116 *CIL*, III, 3480, 10471-2-3; *CIL*, IIIS, 10360, 7638; *CIL*, IX, 6083/77; *PIR*<sup>2</sup>, 4.1, 1952, p.275-276, § I 566, C. *Idius Septimius Castinus*.

117 *AE* 1960. 36; Dio 79.4.5; Leunissen, *Konsul & Konsulare...(180-235 n.Chr.)*, 234 & *PIR*<sup>2</sup> M 735.

118 *BCAR* 1888 p. 397 = *CIL*, XV, 7523  $\delta$  ; *PIR*<sup>1</sup>, pars 3, 1898, p. 191, § 242: *Seius Carus*.

119 *CIL*, VI 308; *RE*<sup>2</sup>, 3A, 1927, c. 91, § 18, *Silius Messala*.

120 *PIR*<sup>2</sup>, 4.1, 1952, p.27, § G 130, *Gellius Maximus*.

- **Did Varius murder Gannys?**

In this case, although the same Lex Cornelia would apply as to his alleged judicial murders, so might *lex sacra*, the sacred law, or *fas*. This is because, according to Dio, Gannys was Varius' tutor, hence *in loco parentis*. Perhaps this is what Dio means by saying that this murder showed Varius to be *ἀνοσιώτατος ἀνδρῶν*: "the most impious of men." It is the only one of his imputed murders that Dio attributes to Varius' own hand. Since we have no material evidence, as opposed to Dio's allegation, of Gannys' existence, we likewise have none of his demise, nor of its cause or manner.

- **Did Varius appoint inappropriate men to office, contrary to law?**

There is, of course, no statute limiting the emperor's freedom of choice in appointments, just as there is no explicit legal constraint on any of his other actions. Assuming, however, his duty to behave as if bound by law, there were, for magistracies proper, some regulatory laws (basically Republican) but they were sometimes overridden. For certain of the highest offices there is textual reference to precedent limiting them to the senatorial or equestrian order. But there is also textual reference to the regular appointment by the emperor of freedmen and even slaves to important offices in the administration.

Dio's indictment cites several instances of Varius' transgression of such precedent, including his alleged: appointment of Gannys and Comazon as his associates in government;<sup>121</sup> elevation of Comazon to the praetorian and the urban prefectures, as well as to the consulate;<sup>122</sup> enrollment of the centurion Pollio among the ex-consuls;<sup>123</sup> appointment of his lover Hierocles to unspecified positions of great power, together with numbering Hierocles' mother, while still a slave, among the wives of ex-consuls;<sup>124</sup> similar preferments to many nameless others who had "joined in his uprising" or "committed adultery with him."<sup>125</sup> Herodian echoes these charges generically, but without mentioning a single name. The *HA*, charging that Varius "took money for honours and distinctions and positions of power, selling them in person or through his slaves and those who served his lusts," does name names in this connexion, including: the charioteers Protogenes, Cordius (or Gordius), and Hierocles (whom Dio alleges to have previously been Gordius' *παιδικά*);<sup>126</sup> Zoticus (whom Dio alleges to have been sent away after failing to secure an erection on his first night with Varius, thus saving his life);<sup>127</sup> a barber named Claudius;<sup>128</sup> a certain Mirissmus;<sup>129</sup> together with several others designated only by their previous professions,

---

121 *Dio*, 79.39.4; 80.2.1.

122 *Dio*, 80.4.1-2.

123 *Dio*, 80.2.4.

124 *Dio*, 80.15.2.

125 *Dio*, 80.15.3.

126 *HA/AH*, 6.3-5; cf. *Dio*, 80.15.1.

127 *HA/AH*, 10.2-4; cf. *Dio*, 80.16.1-7.

128 *HA/AH*, 12.1.

129 *HA/AH*, 15.2.

including a dancer (possibly Comazon), a mule-driver, a courier, a cook, and a locksmith.<sup>130</sup>

Of these, we can only consider here, just as in the case of Varius' alleged murder victims, those whose existence can be proven. While there is a graffito in Rome consisting only of the name Gordius, neither its date, nor its reference to this particular chariot driver, can be established.<sup>131</sup> This limits us to Comazon, since none of the rest are mentioned anywhere else. Comazon is named in several inscriptions as consul, together with Varius, for the year 973=220.<sup>132</sup> We have no proof of his tenure of any of the other offices mentioned by Dio.

The question thus before us is: Does Comazon's tenure of the consulate constitute proof, to us, or would it to a Roman magistrate of Varius' time, of an improper appointment? To answer this question, we would have to know more about Comazon's origins, and also take into account the precedents established by earlier emperors. What may to Dio, from his hostile, senatorial perspective, seem improper, may not necessarily seem so to us, from an historical perspective, or even to a Roman magistrate not sharing Dio's hostility. While Dio alleges that Comazon's cognomen derived "from mimes and buffonery," which would imply a low social origin, there is no material evidence of any particular background, high or low, in Comazon's case; and Dio's characterisation of his cognomen as tantamount to a *Schimpfname* is open to question.<sup>133</sup> If it were, one may wonder whether it would be likely to appear, as it does, on his inscriptions. Moreover, even if Dio's characterisation of Comazon's origins were accurate, he would certainly not be the first person of low extraction to attain the consulate, or indeed the principate. The case of Pertinax, again, springs to mind; as do numerous examples of emperors elevating individuals, for whatever reasons, from low to high status, including that of god. So Varius does not seem unusual in this respect. It must, however, be acknowledged that emperors were regularly criticised by historians for such elevations. So both the transgression and its denunciation seem to follow precedent.

- Did Varius illegally appropriate the goods of others?

The relevant statute, if it is so, is the *Lex Acilia (or Sempronia) repetundarum*, of a.u.c. 631=123 B.C., which addresses peculation, and redress to persons or corporations whose property has been improperly seized by Roman officials. Among those officials covered by this law are *imperator* and *tribunus populi*, both of which names or titles pass into the holding of the princeps. Against this law's relevance argues the princeps' general exemption from legal constraint, as well as the precedent established, from Augustus onward, of individuals and corporations making 'gifts' to the emperor, whose voluntary nature is, to say the least, subject to discussion. Such discussion must include, for the sake of

---

130 *HA/AH*, 12.2.

131 Correra, L., *Graffiti di Roma*, *BCAR*, 1893, p. 257, §152,160,161.

132 *CIL III*, 10486, 11042, 12672, 12734, 14561; *VI*, 866, 2003, 3068, 32320; *XIII*, 6688, 6726; *XIV*, 2809.

133 Hanslik, R., *P. Valerius Comazon*, *RE* 7/14, 1948, col. 2412-2413.

thoroughness, reference to the equally established precedent of imperial largesse and gifts to individuals and corporations.<sup>134</sup> Varius alleged indulgence in the latter practice forms the subject of accusations of extravagance, which are treated separately. Also under peculation may be included the *HA's* charge that Varius or his agents took money in exchange for appointments and preferments.<sup>135</sup>

Dio's accusation with respect to the former practice focuses on Varius' alleged exactions of gifts, on the occasions of his several weddings, as well as on those of his god, Elagabal.<sup>136</sup> It is echoed by Herodian, without further details.<sup>137</sup> Dio states that these gifts were reclaimed after Varius' death, presumably in accordance either with the cited statute, or with some other similar law. In order to establish the illegality of Varius' exaction of these 'gifts' it would, therefore, suffice to furnish proof of their restitution, since this would imply the impropriety or illegality of their exaction. As it happens, we have no material record of either.

- Did Varius renounce the title of *imperator*, and by failing to wage war, desert his military duty?

Dio reports an alleged remark of Varius': 'Ὅτι ποτὲ ὁ αὐτὸς τοῦτο εἶπεν· "οὐδὲν δέομαι ὀνομάτων ἐκ πολέμου καὶ αἱμάτων· ἀρκεῖ γάρ μοι καὶ εὐσεβῆ καὶ εὐτυχῆ παρ' ὑμῶν καλεῖσθαι": "One day the emperor made this statement: 'I do not want titles derived from war and bloodshed. It is enough for me that you call me Pius and Felix.'"<sup>138</sup> If authentic, this statement could be construed to constitute repudiation of the title or praenomen *imperator*, and thus provide, in Dio's rhetoric, a valid reason for depriving Varius of the corresponding function, by the only means possible: murder. For it stands to reason, by Dio's lights, that an emperor may not choose among his duties, but must fulfil them all, or none. This could be a very strong element in the prosecution's case against Varius. In the absence of any documentary proof of this quotation's authenticity, a prosecutor might argue in its favour by showing that Varius failed to wage war. Such an argument may best be understood in the light of the *HA's* account of Varius' reign: *Sed ubi primum ingressus est urbem, omissis quae in provincia gerebantur, Heliogabulum in Palatino monte iuxta aedes imperatorias consecravit eique templum fecit, studens et Matris tyrum et Vestae ignem et Palladium et ancilia et omnia Romanis veneranda in illud transferre templum et id agens, ne quis Romae deus nisi Heliogabulus coleretur*: "As soon as he entered the city, however, neglecting all the affairs of the provinces, he established Elagabalus as a god on the Palatine Hill close to the imperial palace; and he built him a temple, to which he desired to transfer the emblem of the Great Mother, the fire of Vesta, the Palladium, the shields of the Salii, and all that the Romans held sacred, proposing that no god might be worshipped

134 For a discussion of this question see Millar, F., *The Emperor in the Roman World*, 1992, esp. Chapter IV, *The Imperial Wealth, Gifts, and Exactions*.

135 *HA/AH* 6.1.

136 *Dio*, 80.12.1-2.

137 *Herodian*, 5.6.5.

138 *Dio*, 80.18.4.



at Rome save only Elagabalus."<sup>139</sup>

To understand the relationship of these two passages, let us first examine what is meant by the latter. Much depends on the meaning of *provincia*. It may be territorial, or functional, or both. Against a purely territorial reading stands the singular, and the fact that the emperor's involvement was not required for the ordinary administration of the provinces. Nor does the text cite any particular extraordinary event or occasion outside Rome, where it might have been required or desired. For a functional reading stands the fact that the emperor's *provincia* is defined in terms of his *imperium*, and this, in turn, in terms of his judicial and military functions. An ambiguous reading would note that it was usually in order to wage war that emperors, including Caracalla (but excluding Nero and Hadrian) ever ventured outside Rome or Italy. The *HA's* immediate juxtaposition, moreover, of what Varius does instead — devote himself entirely to pursuit of his hieratic policy — suggests that his alleged neglect of affairs in the *provincia* is to be seen in contrast thereto. In the *HA's* presentation, therefore, Varius chooses one function, that of high priest of Elagabal, over another, that of a military emperor like Caracalla.

Dio's citation of Varius' alleged renunciation of military titles has come down to us out of context, in a section of Dio's text reconstructed from epitomes. In the light of comparison with this passage in the *HA*, one may surmise the possible rhetorical context of Dio's. What Varius did and underwent (respectively worship and sex, which occupy most of Dio's immediately preceding narrative) is to be contrasted with what he failed to do: perform the proper functions of an emperor, including that of waging war. War is an activity proper to the *imperator*, an integral element of the principate in Varius' period.<sup>140</sup> *Imperium*, the concept whence *imperator* derives, is "the supreme power, involving command in war and the interpretation and execution of law (including the infliction of the death penalty)."<sup>141</sup> In its archaic origins, the grant of the title or praenomen *imperator* involved acclamation by soldiers under a victorious general's command. This seems to lend it a specifically military character.

Failure to wage war is an omission, rather than an action or a passion. Another sort of omission, usable by the defence against the arguments just offered, is the absence of any extant legal or literary text specifying war as one of the emperor's duties. Varius' alleged failure or refusal to wage war may, therefore, have to be considered, from the prosecution's point of view, more generally, as a 'failure in public duty'. This at least would make it liable for a charge of *maiestas*, under the *Lex Appuleia*. It could also be regarded as tantamount to desertion, and hence bound by the *Lex Cornelia de maiestate*. The absence of material records of any campaign led by Varius (including that to place him on the throne) or indeed of any military activity, excepting minor border skirmishes, during his reign, might be held to argue for his dereliction of duty in omitting to wage war. While there is disputed evidence of an attack on a Roman outpost on the Rhine during Varius' reign,<sup>142</sup> there is none of any consequent punitive

139 *HA/AH* 3.4. English translation by David Magie, in the Loeb Classical Library edition.

140 *OCD*, p. 750a, *imperator*.

141 *OCD*, p. 751b, *imperium*.

expedition led or ordered by Varius, nor even any indication that Varius was aware of the attack.<sup>143</sup> The question thus arises whether there was any perceived need for war during Varius' reign. Yet neither Dio's contention that Varius deliberately disdained a military role, nor the *HA's* assertion, in a later passage, that Varius intended to resume the war against the Marcomanni,<sup>144</sup> which would seem to rebut Dio's contention, and its own earlier account of Varius, finds any support in material evidence. But if the charge of *maiestas* can be construed as 'failure in performing public duty', by failing to wage war, and therefore as an omission, rather than as an action or a passion, the case against Varius then rests precisely on the absence of material evidence to the contrary. Whether an absence of evidence to the contrary of a given charge, which is itself an omission, may be construed as evidence supporting that charge is a question of interpretation, not of fact.

### Varius' alleged violations of *fas*.

We turn now to Varius' alleged transgressions of sacred law, or *fas*. The first problem we face in doing so is that we have relatively little direct textual evidence of *fas* as such. This may be because the Justinianic corpora were compiled, and other legal texts transmitted, under a Christian jurisprudence and manuscript tradition which do not cite pagan sacred or religious law, or comment on its interpretation. Or it may be because there was relatively little written *fas* to begin with.<sup>145</sup> We are told, by a late antique legal text on sacrilege, that where earlier laws refer to temples, churches may be understood.<sup>146</sup> But this means civil or criminal laws, *iura*, not *fas*. For despite Tiberius' much quoted rescript assigning *deorum iniurias diis curae*,<sup>147</sup> Roman criminal law provides for human intervention in punishing certain offences against them: when against persons or property dedicated or belonging to the gods; or when affecting public order. Some accusations against Varius report violation of sacred objects, places, and persons. Others allege that his hieratic policy, supposedly promoting the cult of Elagabal, is unlawful as such.

- Does Varius' worship of Elagabal amount to promotion of that god's cult? If so, does this constitute a hieratic policy? If so, does it violate Roman *fas*?

There is no shortage of evidence for Varius' worship of Elagabal. We know from coins that Varius styled himself Priest of the Sun God Elagabal, and also issued types in honour of that god.<sup>148</sup> On

142 Bechert, T., *Ein Alamanneneinfall am obergermanischen Limes unter Elagabal*, *ES*, 8, 1969, p. 53ff.; contra: Baatz, D., *Zum archäologischen Nachweis eines Alamanneneinfalls am obergermanischen Limes unter Elagabal*, *BJ*, 171, 1971, p.377-385.

143 Despite a suggestion by Bechert, op. cit. p.61, n.61, that *HA/AH* 9.1 may reflect Varius' response to this 'incursion'.

144 *HA/AH* 9.1.

145 Mommsen, Th., *Der Religionsfrevel nach römischen Recht, Juristische Schriften*, 1907, Bd.3 Cap.35, p. 391: ...für das geschichtliche Rom gibt es kein allgemeines Sacraldelict und keinen allgemeinen Sacralprozess.

146 *Pauli Sententiarum Interpretatio, De sacrilegis*. Int.5.21.1: *Ista, quae de templo dicta sunt, de ecclesia loqui intelligenda sunt, de reliquo interpretatione non eget.*

147 Tacitus, *Annales*, 1.73. "Wrongs done to the gods [are] for the gods to deal with."

inscriptions we find the high priestly title: *Sacerdos amplissimus dei invicti solis Elagabali*.<sup>149</sup> The question, therefore, is not one of fact. Varius says that he worships Elagabal, and there is no reason, in our calculus of certainty and likelihood, to doubt this proposition. There is, however, a legitimate question of interpretation: whether, in so doing, he promoted the worship of Elagabal; and, if he did so, a further question: whether such promotion constitutes conducting a hieratic policy. The scholar who has so far most seriously addressed these questions, Martin Frey, holds that he did, and that it does.<sup>150</sup> While I prefer to use the word 'hieratic' rather than 'religious' in this context (*religio* referring originally to but one aspect, that concerned with death and burial, of what we now call religion) I agree with him, insofar as Varius cannot be judged by criteria proper to a private person. As emperor, everything he does is in some sense public, and his every preference, intention, or desire, to the extent that it is honoured, fulfilled, or gratified, using official media, including coins and inscriptions, involves or becomes a policy. The question, then, that next concerns us here, is whether Varius' hieratic policy, thus construed and established, constitutes a crime, or an act of impiety or sacrilege.

First let us consider whether it is a crime under *ius*, rather than *fas*. Paulus classes the propagation of new cults as a capital crime: "*Qui novas sectas vel ratione incognitas religiones inducunt, ex quibus animi hominum moveantur, honestiores deportantur, humiliores capite puniuntur.*"<sup>151</sup> "For the introduction of new sects or unregistered religions, which may stir men up, members of the upper classes are deported; of the lower executed." This is clear enough. Characteristically, it is more concerned with the transgression of bureaucratic norms, and with implications for public order, than with the sacred or religious nature of the offence. However that may be, it does not apply to Varius' case. For the cult of Elagabal is present in Rome well before Varius' reign. A temple in Trastevere, devoted to diverse Syrian deities, including Elagabal, functions during the reigns of Severus and Caracalla. Its priest, Julius Balbillus, enjoys excellent relations with the Vestals, and with the imperial household.<sup>152</sup> Thus, in promoting the worship of Elagabal, Varius was not introducing "new sects or unregistered religions."

If, as it seems, Varius' hieratic policy as such does not contravene *ius*, we are left to consider it in terms of the sacred law, or *fas*. Our evidence of *fas* consists mainly of occurrences of words such as 'sacrilege' and 'impiety' in legal and literary texts. Since, rather than defining *fas*, these tend to refer to it obliquely, we must extrapolate its tenets therefrom. The main distinction is between *sacrilegium* and *impietas*. *Sacrilegium* is commonly referred to in our sources, whether legal<sup>153</sup> or literary,<sup>154</sup> as wrongs against sacred persons or their property: the profanation of a shrine or temple, the theft of objects or money dedicated to the gods, or the desecration of a sacred object or person. It is perhaps significant that it is treated, in the *Digest*, under the same heading as peculation.<sup>155</sup> The focus is clearly on

---

150 Frey, M., *Untersuchungen zur Religion und zur Religionspolitik des Kaisers Elagabal*, *Historia, Einzelschrift*, 1989.

151 Paulus, *Sententiae*, 5.21.2.

152 Chausson, François, *Vel Iovi vel Soli: Quatre études autour de la Vigna Barberini*, *MEFRA*, 107, 1995-2, p.661-765.

material objects. Thoughts or words, intentions or actions, which might offend the gods, but which are unaccompanied by wrongs against their property or dedicated persons, are not normally referred to as sacrilege. This latter class of offences is called *impietas*, both in legal,<sup>156</sup> and in literary sources.<sup>157</sup>

Leaving for later Varius' alleged acts of sacrilege, the broader charge against his hieratic policy as such would seem to focus more on its generically impious intention, though in practice its execution might also involve specific acts of sacrilege. He is accused of seeking to overthrow Jupiter's supremacy, or even of threatening the Roman pantheon as a whole with extinction. This is the theological equivalent of *maiestas* or *perduellio*, or of *maleficium*, the laying of curses, and, by that analogy, words or intention alone suffice to constitute a crime.<sup>158</sup>

Dio explicitly states that Varius' "offence consisted, not in his introduction of a foreign god to Rome or in his exalting him in very strange ways, but in his placing him even before Jupiter himself and causing himself to be voted his priest, also in his circumcising himself and abstaining from swine's flesh, on the ground that his devotion would thereby be purer."<sup>159</sup> Despite his initial disclaimer, it is clear from the conclusion of this sentence that the very foreignness of Elagabal's cult, as Dio describes it, is itself a source of Dio's outrage. This is borne out by Dio's subsequent charges: Varius' chanting, together with his grandmother and mother, barbaric chants to Elagabal; keeping a lion, a monkey, and a snake in the temple of his god; human sacrifice; human castration, its harvest offered as sacrifice; and wearing amulets.<sup>160</sup>

153 *Digesta*, 48.13.1, Ulpianus 44 ad sab.: *Lege iulia peculatus cavetur, ne quis ex pecunia sacra religiosa publicave auferat neve interceptat neve in rem suam vertat neve faciat, quo quis auferat interceptat vel in rem suam vertat, nisi cui utique lege licebit*; 48.13.4 pr. Marcianus 14 inst. *Lege iulia peculatus tenetur, qui pecuniam sacram religiosam abstulerit interceperit*; 48.13.11.1 Paulus I.S. de iudic. publ. *Sunt autem sacrilegi, qui publica sacra compilaverunt. at qui privata sacra vel aediculas incustoditas temptaverunt, amplius quam fures, minus quam sacrilegi merentur: quare quod sacrum quodve admissum in sacrilegii crimen cadat, diligenter considerandum est*; 48.19.16.4 Saturn. I.S. de poen. paganorum: *Locus facit, ut idem vel furtum vel sacrilegium sit et capite luendum vel minore supplicio*.

154 E. g.: Suetonius, *Divus Julius*, 54; Valerius Maximus, *FDM*, 1.1, Ex. Int.18; Ex.Ext.3.

155 *Digesta*, 48.13.0. Ad legem iuliam peculatus et de sacrilegis et de residuis.

156 *Senatus Consultus De Bacchanalibus* (October 7, 186 B.C.) [Titus Livius, 39.16]: ... *adhuc priuatis noxiis, quia nondum ad rem publicam opprimendam satis uirium est, coniuratio sese impia tenet*; Cicero, *De Republica*, 2.17. 31: *(Tullus) constituit ius, quo bella indicerentur, quod — sanxit fetiali religione, ut omne bellum, quod denuntiatum indictumque non esset, id iniustum esse atque impium iudicaretur*; *Edictum Vespasiani De Privilegiis Medicorum Et Magistrorum* (A.D.74): ... *Si quis [uero illis uim intulerit], obnoxius esto populo Romano [impietatis in] domum Augustorum*; *Senatus Consultus Tertullianum* (A.D. 117-138) [*Institutiones Iustiniani*, III, 3 ( Krueger, Berlin, 1954 )]: ...*ideoque impium esse credidimus, casum fortuitum in eius admitti detrimentum*; *Iulii Pauli Sententiae*, 5.23 (Baviera, *FIRA*, II, Florentiae, 1940): *Qui sacra impia nocturnave, ut quem obcantarent defigerent obligarent, fecerint faciendave curauerint, aut cruci suffiguntur aut bestiis obiciuntur*.

157 E. g.: Cicero, *De Officiis*, 2.8.27, 2.14.51, 3.1.1, 3.6.28, 3.6.32, 3.8.37, 3.28.102; *De Legibus* 1.14.40, 2.7.15; *Velleius Paterculus*, 2.131; Valerius Maximus, *FDM*, 2.6, Ex.6; 3.2, Ex. Ext. 8; 4, 2, Ex.7; 5.1, Ex.3; 5.3, Ex. 3; 5.5 Ex. 4; 5.7, Ex. Ext.1; 7.6, Ex.2, Ex Ext. 3; 7.7, Ex. 5; 8.1, Abs. Ex. 1, Dam. Ex. 4; 8.10, Ex.1; 9.9, Ex.1; Suetonius, *Divus Augustus*, 52, *Divus Tiberius*, 75, Nero, 34, *Domitianus*, 9, 10.

158 *Digesta* 48.8.14 Callistratus 6 de cogn. *Divus Hadrianus in haec uerba rescripsit: "in maleficiis uoluntas spectatur, non exitus"*.

159 Dio, 80.11.1. (*Vaticanus Graecus* 1288)

For Herodian, Varius' introduction of a foreign god to Rome does not, in itself, seem to constitute an issue, let alone impiety or sacrilege. (Perhaps Herodian knew, as Dio presumably must also, that there could be no question of introduction, since the cult of Elagabal was already established in Rome.) Nor does Herodian claim that Varius' promotion of the worship of Elagabal works to the detriment of Jupiter. Concurring with Dio regarding the report of Varius' abstinence from pork,<sup>161</sup> Herodian fails to be outraged by it, or indeed by Varius' performance of the rituals of Elagabal, which he describes in much greater detail than does Dio, without however mentioning human sacrifice, circumcision, or castration.<sup>162</sup> These, in any case, are charges we shall deal with separately, as we shall with other more specific charges of sacrilege imputed to Varius, such as his reported sexual relations with a Vestal virgin, and his alleged removal of sacred objects from their temples or shrines.

The *HA* agrees with Dio regarding human sacrifice. It accuses Varius of commissioning magicians to practice daily infanticide, as well as of performing it himself, carefully selecting the victims.<sup>163</sup> It also agrees with both Dio and Herodian on Varius' violation of a Vestal virgin,<sup>164</sup> as well as on his removal of sacred objects from their temples.<sup>165</sup> Moreover, it seems to concur with Dio's animadversion against Varius' alleged hieratic policy as such. But for 'Lampridius', the main source of outrage is not the foreignness of Elagabal, nor even the grisly rituals imputed to Varius' practice of his cult. Rather it is Varius' alleged pretension that Elagabal should not only be placed before Jupiter, but that he should replace Jupiter altogether, together with the rest of the Roman pantheon.<sup>166</sup> The *HA* in effect charges Varius with seeking to impose monotheism. (This, of course, at a time when monotheism — that of Christianity — had already been imposed, though it was obviously not unopposed.) The origins of this charge would seem to stem from the circumstances of the *HA's* composition: it was arguably written by a pagan attacking the Christian emperors of his period.<sup>167</sup>

This brings us back to the question of the letter of the law, whether *fas* or *ius*. From our sources, cited above, and from modern studies of the Roman reception of foreign cults,<sup>168</sup> it is clear that foreignness is not in itself necessarily a problem. Indeed, it was the task of one of the colleges of Roman

---

160 Dio, 80.11. (*Xiphilinus* 348,21 – 349, 31 R.St.)

161 Herodian, 5.6.9.

162 Herodian, 5.5.8-10.

163 HA/AH 8.1-2.

164 HA/AH 6.6.

165 HA/AH 3.3-5; 6.7-9.

166 HA/AH, 3.4.

167 Turcan, R., *Héliogabale précurseur de Constantin?* BAGB, 1, 1988, p. 38-52.

168 Cumont, Franz, *Les Religions Orientales dans le Paganisme Romain*, *Conférences faites au Collège de France*, 1905, 5, 1929, p. 95-124; Hoey, Allan S., *Official Policy towards Oriental Cults in the Roman Army*, TAPA, 70, 1939, p. 456-481; Bartoli, Alfonso, *Tracce di Culti Orientali sul Palatino Imperiale*, *Pont RPARA*, 3.29.1-4, 1956-1957, 1958, p.13-49; Turcan, R., *L'Oronte déversé dans le Tibre*, *Les Cultes Orientaux dans le Monde Romain*, 1989; Leoni, Laura, *Il Culto del Sol Invictus Elagabal a Roma (218-222): Le ragioni di un fallimento*, 1999.

priests to oversee the importation and naturalisation of foreign deities, in particular the Greek ones.<sup>169</sup> These were incorporated into Roman state worship, while the worship in Rome of other foreign deities was tolerated in diverse degrees. The importation of the baetyl of Phrygian Cybele is an early example of the acceptance of a more exotic godhead, followed by the cults of Egyptian Isis and Serapis, and of Persian Mithra.<sup>170</sup> And, as noted above, the cult of Elagabal was already present in Rome before the reign of Varius, and enjoyed a recognised status. There are, of course, also instances of rejection and banning of certain foreign cults, including Judaism or certain acts thereof, and Christianity, though enforcement was inconsistent. The most notorious is the case of the Bacchanalia, banned, apparently, because of the potential threat to public order from the existence of an uncontrolled secret society. We have the *Senatus consultum* banning it,<sup>171</sup> but this text provides few clues to the underlying principles of Roman sacred law, if any, informing its provisions, which are practical, concerning repression, rather than conceptual, defining transgression. Unlike the native Bacchic cult of Thrace, widespread throughout Greece, whence it came to Rome, the Italian version allowed the membership of men as well as women. This was probably a source of alarm to the Roman senate in more ways than one. Not only did it render the cult's status as a secret society more threatening, but it offended Roman notions of proper masculine behaviour, in which ecstasy achieved through wine and other drugs, combined with orgiastic dancing, did not play a part.

This observation brings us into view of yet another aspect of Varius' alleged impiety or sacrilege, reportedly committed in the course of his performance of the ritual of Elagabal: orgiastic dancing, and going into an ecstatic trance. Dancing, in Dio's account, is closely linked to Varius' alleged effeminacy, the subject of another charge.<sup>172</sup> Herodian speaks of trances.<sup>173</sup> While not unfamiliar to Romans, they were associated with sorcery, which was believed to exist, and was punishable by law.<sup>174</sup> Leaving these charges for later, let us finally determine, on the basis of evidence, whether Varius' hieratic policy, as such, can be construed as an attack on the Roman pantheon as a whole, or on Jupiter in particular.

The record of Varius' coinage argues decisively against such a charge. True, it contains a number of issues whose reverse types are dedicated by the legend to Elagabal,<sup>175</sup> others which depict that god's principal cult object, the sacred stone of Emesa,<sup>176</sup> and yet others which depict Varius in his role as high priest of Elagabal.<sup>177</sup> But it contains just as many, indeed far more in aggregate, dedicated to other gods and goddesses in the Roman pantheon, including Jupiter,<sup>178</sup> Juno,<sup>179</sup> Mars,<sup>180</sup> and Venus,<sup>181</sup> from the top

169 *OCD*, *quindecimviri sacris faciundis*, p. 1289b.

170 Vermaseren, M.J., *Corpus Inscriptionum et Monumentorum Religionis Mithriacae*, 1956-1960; Malaise, M., *Les Conditions de Pénétration et de Diffusion des Cultes Égyptiens en Italie*, *EPRO*, 22, 1972.

171 *CIL I*, p. 43, n. 196, *I*, 22, p. 437, n. 581, *X*, p. 13, n. 104: A bronze tablet discovered in Tiriolo, Italy, in 1640 (Vienna, Kunsthistorisches Museum) dated to a.u.c. 568=186 BC.

172 *Dio*, 80.14.3.

173 *Herodian*, 5.7.6.

174 Apuleius, *Apologia*.

175 *Thirion* §359-365, *SANCT DEO SOLI ELAGABAL*; §358a, *SANCT DEO SOLI. ELAGABA*.

176 *Thirion* §242-244, *CONSERVATOR AVG*; §245, *CONSERVATOR AVGUSTI*; §336, *COS III PP*.



CONSERVATOR AVG  
The baetyl of Elagabal  
Thirion 242-244 BNF 1219



IOVI CONSERVATORI  
Jupiter  
Thirion 105-110 BNF 7222



SANCT DEO SOLI ELAGABAL  
The baetyl of Elagabal  
Thirion 359-365 BNF 1227



PONTIF MAX TRP II COS II PP  
Roma  
Thirion 19-27, 69-71 FZW



MARS VICTOR  
Mars  
Thirion 39-46, 77-81 BNF 1966-512-3



VICTOR ANTONINI AVG  
Victoria  
Thirion 55-65, 86-89 BNF 145



IVNO REGINA  
Juno  
Thirion 376-377 BNF 146



PM TRP III COS III PP  
Sol



VENVS CAELESTIS  
Venus  
Thirion 380-393 BNF 1230



PROVID DEORVM  
Providentia of the Gods  
Thirion 127-131 BNF 1196



VENVS GENETRIX  
Venus  
Thirion 467-468, 473 BNF 7358



FORTVNAE REDVCI  
Fortuna  
Thirion 399 BNF 7215

GODS AND GODDESSES ON VARIUS' COINS

rank of Roman deities, their handmaiden Victoria,<sup>182</sup> and lesser deities such as Fortuna.<sup>183</sup> There are also, significantly, issues to the Providence of the Gods, in the plural.<sup>184</sup> What is more, Varius more often refers, in reverse legends, to himself in his traditional, Roman, role as Pontifex Maximus,<sup>185</sup> high priest of the official Roman cults, than in his role as high priest of Elagabal. This is not the record of a monotheist, nor of one who seeks to overthrow Jupiter, nor yet of a single minded fanatic, derelict in his duty to the Roman gods, while exclusively devoted to his own.

- Does Varius' performance of the ritual of Elagabal, or any of the cultic practices associated with it, violate Roman law?

Modestinus refers to a resolution of the senate, hence a law belonging to *ius*, rather than *fas*, concerning sacrifice: *Ex senatus consulto eius legis damnari iubetur, qui mala sacrificia fecerit habuerit*.<sup>186</sup> "He who performs or commissions evil sacrifices is to be condemned under that law promulgated by the senate." Since this opinion is quoted in the *Digest* in a series of commentaries on the *lex Cornelia de sicariis et veneficis*, concerning murder, it is assumed that *mala sacrificia* means human sacrifice.<sup>187</sup> This law would therefore apply to the charge brought by Dio against Varius,<sup>188</sup> and enlarged upon by 'Lampridius',<sup>189</sup> that he offered human sacrifices to Elagabal. But it could also, on the basis of the wording of Modestinus' text, be taken to condemn "evil sacrifices" in general, thus begging the question of exactly what such might be. In this sense, it could, by one so inclined (and Dio clearly is so), be taken to apply to the performance of the ritual of Elagabal, whether because Elagabal himself is seen as evil, or because his ritual itself, not only because it allegedly involves human sacrifice, is seen as such.

The question, however, of whether Varius' performance of that ritual, as described by Dio, Herodian,

177 *Thirion* §252-263, INVICTVS SACERDOS AVG; §300-308, SACERD DEI SOLIS ELAGAB; §311-314, SVMMVS SACERDOS AVG.

178 *Thirion* §105-110, IOVI CONSERVATORI.

179 *Thirion* §394 (Julia Soaemias), §400-402 §433-435 (Julia Maesa), IVNO; §403,436 (Julia Maesa), §465 (Julia Paula), IVNO CONSERVATRIX; §437,440 (Julia Maesa), IVNO REG; §438 (Julia Maesa) IVNO REGI; §376-377 (Julia Soaemias), §439 (Julia Maesa), IVNO REGINA.

180 *Thirion* 39-46, 77-81, MARS VICTOR.

181 *Thirion* §489 (Aquila Severa) VENERI FELICI; §380-393 (Julia Soaemias) VENVS CAELESTIS; §467-468, 473 (Julia Paula), VENVS GENETRIX; §443 (Julia Maesa), VENVS VICTRIX.

182 *Thirion* §55-65, 86-89, VICTOR ANTONINI AVG; §66, VICTORIA ANTONINI AVG; §139, 315-319, VICTORIA AVG.

183 *Thirion* §247,349, FORTVNAE AVG; §248-251, §399 (Julia Maesa), FORTVNAE REDUCI; §350-351, FORTVNAE REDUX.

184 *Thirion* §127-131, PROVID DEORVM.

185 *Thirion* §7-14, P M TR P COS P P; §15-18, 67-68, 90-98, 140, 328-330, P M TR P II COS II P P; §99, 146-169, 337-338, P M TR P III COS III P P; §170-223, P M TR P III COS III P P; §224-233, P M TR P V COS III P P; §1-6, PONTIF MAX TR P; §19-27, 69-71, PONTIF MAX TR P II COS II PP; §331, PONT MAX TR P II COS II.

186 *Digesta*, 48.4.13; Modestinus 12 pand.

187 E.g. Robinson, O.F., *The Role of the Senate in Roman Criminal Law during the Principate*, *JLH*, 17, 2, 1996/8, p. 130-143, esp. p. 137.

188 *Dio*, 80.11.

189 *HA/AH* 8.1-2.



or ‘Lampridius’ violates the law cited by Modestinus cannot be resolved by the historian. For there is no material evidence of Varius’ reported performance, in Rome, of that ritual, as described by these authors, involving the slaughter of hecatombs of cattle, libations with expensive wines, burning incense, dancing with women to the music of flutes and drums, singing “barbaric” chants, and going into trances. Nor is there evidence of cultic practices they report: circumcision, castration, human sacrifice, and abstinence from pork. The depictions on coins of Varius as high priest of Elagabal all show him sacrificing in the normal Roman way, standing, not dancing, before an altar, holding a patera and a branch or other ritual objects. All that differentiates him from any other emperor thus depicted is his dress, which is sometimes, but not always, the belted tunic of a Syrian priest.<sup>190</sup> In one case he is arguably wearing amulets.<sup>191</sup> But in another, he appears in traditional Roman sacrificial garb: his toga draped over his head.<sup>192</sup>

Apart from these sumptuary details, none of these authors’ descriptions of the ritual of Elagabal, as allegedly performed in Rome, can be substantiated. Not that we know what performance of that ritual in Syria may have involved, even in general terms, let alone with reference to specific practices, performed on particular occasions. Despite the thorough and valuable efforts of Martin Frey to examine the likelihood of claims made by Dio and others about the worship of Elagabal, with reference to practices recorded for other, presumably related, Near Eastern and North African cults, we have no direct descriptions of the worship of Elagabal himself, other than those found in the indictment against Varius. Thus, with respect to that cult, there is nothing that would qualify, in the modern legal sense defined above, as *res gestae*.

There is, however, one important piece of artefactual evidence, relating to that cult: a column capital with sculptural relief, depicting a scene of sacrifice and epiphany, in which the aniconic cult object of Elagabal, the baetyl of Emesa, is the protagonist. This capital is the subject of a monograph forming part of the broader group of studies to which the present article belongs.<sup>193</sup> Its relief sculpture tells us much of interest about the cosmology and theology of that cult. But even though it depicts a scene of sacrifice to Elagabal, it does not tell us much about the way in which Varius may have conducted his worship of that god. This is because the anthropomorphic characters depicted on the capital are all themselves divine. Victoria, observed by Tellus with an infant Cupid, sacrifices a bull to Elagabal, flanked by Venus and Minerva. Since there are no humans present, we do not know what role they may have played. None

190 *Thirion* §146 P M TR P III COS III P P (SC), §170-183 P M TR P III COS III P P (SC), §184 P M TR P III COS III P P (SC), §185 P M TR P III COS III P P (SC), §224-226 P M TR P V COS III P P (SC), §227-229 P M TR P V COS III P P (SC), §252 INVICTVS SACERDOS AVG (SC), §253 INVICTVS SACERDOS AVG (SC), §254-263 INVICTVS SACERDOS AVG (SC), §300 SACERD DEI SOLIS ELAGAB (SC), §301-305 SACERD DEI SOLIS ELAGAB (SC), §306-308 SACERD DEI SOLIS ELAGAB (SC), §311-313 SVMMVS SACERDOS AVG (SC), §314 SVMMVS SACERDOS AVG (SC).

191 *Thirion* §311-313 SVMMVS SACERDOS AVG (SC).

192 *Thirion* §370-375, VOTA PVBLICA.

193 *Anaglyptica Variana*, *TSLL* 44, 46 & 47, 2003-4.

of the deities in question is depicted as dancing, nor is there any evidence of wine or incense forming part of the sacrificial offerings. The only anthropomorphic male present is the infant Cupid. He does not appear to be circumcised, let alone castrated, but it is difficult to tell with one so small. And while Tellus, lounging on the ground, may be in ecstasy, she may simply be reclining in her habitual iconographic position. So there is no artefactual evidence, directly relating to the cult of Elagabal, on which to draw inferences regarding the charges made by Dio and 'Lampridius', or to corroborate Herodian's awestruck account, regarding the performance of its ritual by Varius.

• **Is Varius' marriage to a Vestal virgin a sacrilege?**

There is no doubt of Varius' marriage to a certain Aquilia Severa. She features in Roman imperial coins, issued during Varius' reign, in which she is titled Augusta. Some of these are cited, above, in relation to Varius' hieratic policy.<sup>194</sup> Detailed study of these coins, and their comparison with Alexandrian coins, show that she held the position of Augusta twice, with an interruption, during which it was held by Annia Faustina.<sup>195</sup> Since she is not recorded as Varius' mother or his grandmother, the only other way in which she could have become Augusta, during his reign, would be through marriage, so we must assume that she, together with Julia Paula and Annia Faustina, similarly documented, stand in an uxorial relationship to Varius. While Dio, and after him all the modern secondary authorities, claim that Aquilia Severa was a Vestal virgin, there is no proof of this particular in any extant artefact. Her entry in *PIR*<sup>2</sup> cites the existence of a reverse of one of her coins with the legend *Vesta*,<sup>196</sup> but also cites reverses with *Venus Caelestis*, *Venus Felix*, *Laetitia* and *Concordia*. Conversely, Julia Domna, who was certainly not a Vestal virgin, includes *Vesta* among the reverses of her coins. So while it is possible that Aquilia Severa was a Vestal, it is not certain. So we cannot know whether her marriage to Varius was sacrilegious or not. That said, if she was indeed a Vestal, her marriage to Varius, assuming it was consummated, would constitute a violation of her vow of chastity. She would in principle incur the death penalty, possibly by entombment, as a result.<sup>197</sup> Dio suggests the appropriateness of a similar penalty for Varius.<sup>198</sup>

• **Were the marriages of Elagabal to Pallas and to Venus Caelestis impious or sacrilegious?**

Closely related to the matter of Varius' 'marriage to the Vestal' is that of the marriages he is alleged to have instituted between Elagabal and Pallas, on the one hand, and between Elagabal and Venus Caelestis, on the other. Dio mentions only that to Caelestis, while Herodian perpetrates a

<sup>194</sup> The whole is catalogued as *Thirion* 474-489.

<sup>195</sup> *RE*, 10/19, 1917, p. 915, § 557, *Iulia Aquilia Severa Augusta*; Lederer, Ph., *A New Coin of Aquilia Severa of Alexandria*, *NC/JRNS*, 6,3, 1943, 92 ff.

<sup>196</sup> *PIR*<sup>2</sup>, 4.1, 1952, p.306, § I 648, *Iulia Aquilia Severa Augusta*. This *VESTA* reverse is not recorded in *Thirion*. Dr. T.V. Buttrey informs me that Cohen claims to know of an example in Vienna. I have not yet been able to trace it, but shall seek to do so for *Numismatica Variana*. (E-mail to me of October 13, 2005.)

<sup>197</sup> *OCD*, *Vesta*, *Vestals*, p. 1591.

<sup>198</sup> *Dio*, 80.9.4.

misunderstanding, based on a story that Elagabal first divorces Pallas, finding her too warlike, then marries Caelestis. Frey, in his landmark study of Varius' 'religion and religious policy', with reference to the relief sculpture on the column capital cited above, clears up Herodian's misunderstanding of these marriages: they are not serial, but overlapping.<sup>199</sup> Elagabal is married simultaneously to both these goddesses, in constitution of a triad, an established theological configuration in Near Eastern cults. The institution of *ιερός γάμος*, divine connubium, including the celebration of wedding ceremonies, is a regular feature of such cults.

But while we do, in the form of this relief sculpture, have artefactual confirmation of the existence of a triad, involving Elagabal and his two *paredroi*, we have no evidence of Varius' celebration of the sacred weddings described by Dio and Herodian. These, according to both these authors, provide the occasion or excuse for the misappropriation and misplacement of sacred objects related to the cults of the respective goddesses. This is a separate charge, which will be dealt with presently. The question at this point is whether such celebrations, and the establishment of such an institution as *ιερός γάμος*, in Rome, involving Elagabal and the two goddesses named, constitutes an "extreme absurdity" as Dio claims, or "a mockery" as Herodian says. If it were either, it could be deemed a form of sacrilege or of impiety in and of itself.

It is clear that from the point of view of intention, hence of impiety, this is not so. If indeed Varius did perform such ceremonies, and promulgate such an institution, he will have done so in the context and service of hieratic practices completely normal and meaningful to himself and his culture. The notion that he means to mock or make a laughing stock of any of the deities concerned is the product of misunderstanding which, at least in Dio's case, may well be deliberate. That leaves open the question of whether such a marriage is sacrilegious, not in terms of Varius' intention, but of an alternative reality, that of the Romans, in whose presence the ceremonies were allegedly performed, or indeed that of the Romans and Carthaginians whose goddesses were thus espoused. Since the Carthaginian cult of Venus Caelestis is Phoenician in origin, it is doubtful that its devotees would find anything impious or sacrilegious in such a marriage. That leaves the Romans. We do not have any record of any negotiations that may have taken place between Varius, as high priest of Elagabal, and the Chief Vestal, as keeper of the ancient idol of Pallas, in brokering the marriage between these deities. But if the story that Varius' own wife, Aquilia Severa, was a Vestal, is true, we can assume that Varius' relations with the college were such that a parallel divine connubium between his obsidian baetyl and their wooden idol was neither more nor less permitted, or promoted, than its human counterpart. Indeed it is likely that they both resulted, if either actually took place, from a complex negotiation, covering both simultaneously.

---

199 Frey, *op. cit.*, p. 52, text & n. 4; p. 53, text & n. 1.

- Did Varius' removal of sacred objects from their proper places constitute sacrilege?

The clearest definition that we have of sacrilege in Roman law concerns offences against property. The *lex Julia peculatus et de sacrilegiis*, of Augustus, *eos punit qui pecuniam vel rem publicam vel sacram vel religiosam furati fuerint*: "punishes those who have stolen money or property belonging to the State, or which is sacred or religious."<sup>200</sup>

With reference to Varius, this, at least, is a charge on which the ancient historiographers broadly agree, though their accounts differ significantly in details. Dio mentions only that Caelestis (by which we must presume he means her statue) was sent from Carthage to Rome, together with two golden lions, which he says were melted down.<sup>201</sup> Herodian says that Varius, "in an effort to find a wife for the god he served ... transferred the statue of Pallas to his own quarters."<sup>202</sup> He goes on to describe her alleged repudiation, on grounds of excessive bellicosity, and the transfer in her stead to Rome of Caelestis' statue, together with all the gold from her temple.<sup>203</sup> The *HA's* account of these matters is the most elaborate. In one locus, already cited above in another context, it claims that Varius intended to transfer to his Palatine Temple of Elagabal "the emblem of the Great Mother" (presumably the baetyl of Cybele), "the fire of Vesta, the Palladium, the shields of the Salii, and all that the Romans held sacred, purposing that no god might be worshipped at Rome save only Elagabalus. He declared, furthermore, that the religions of the Jews and the Samaritans and the rites of the Christians must also be transferred to this place, in order that the priesthood of Elagabalus might include the mysteries of every form of worship."<sup>204</sup> In another locus it claims that Varius "broke into the sanctuary of Vesta ... and attempted to carry away the sacred shrine," but that his perfidy is defeated by the sagacity of the Senior Vestal, who palms him off with a copy of the Palladium, which he duly washes over with gold and places in the temple of his god.<sup>205</sup>

---

200 *Institutiones*, 4.18.9.

201 *Dio* 80.12.2

202 Dr. Samuel Zinsli, of Zürich University, has kindly sent me an interesting commentary on this point: „Von der Entfernung des Palladiums aus dem Vesta- und seiner Überführung in den Heliogabaltempel berichtet auch Herodian V 6,3. Gelegentlich (so zuletzt auch bei R.L. Müller, *Herodian*, Stuttgart 1996, S.215f) wird behauptet, der griechische Historiker berichte, Heliogabal habe das Palladium nicht in seinen Tempel, sondern in sein eigenes Schlafzimmer bringen lassen; diese Übersetzung von *καὶ τῆς τε Παλλάδος τὸ ἄγαλμα, ὃ κρυπτόν καὶ ἄρατον σέβουσι Ῥωμαῖοι, ἐς τὸν ἑαυτοῦ θάλαμον μετήγαγε* lässt aber außer Acht, dass *θάλαμος* sehr wohl auch einen sakralen Raum, eine Kapelle, ein Allerheiligstes namentlich orientalischer Gottheiten meinen kann, cf. *Ael. NA* 11,10 (dort allenfalls aber nur Marginalglosse, cf. Lightfoot, *Lucian: On the Syrian Goddess*, S.433); *Plin. n.h.* VIII 185 (sogar als griechisches Lehnwort im Latein!) *inventus <Apis> deducitur Memphin a sacerdotibus C. delubra ei gemina, quae vocant thalamos, auguria populorum*; und v.a. *Luc. Syr.D.* 31: "Ἐνδοθεν δὲ ὁ νηὸς οὐκ ἀπλὸς ἐστίν, ἀλλὰ ἐν αὐτῷ θάλαμος ἕλλος πεποιήται. (cf. auch Lightfoot, *Lucian: On the Syrian Goddess*, Oxford 2003, S.428). Das scheint selbst einem Spezialisten für orientalische Religionen wie Turcan entgangen zu sein, cf. *Commentaire* S.170 (zu *v.Hel.* 6,9). Das Bild vom Kaiser als einem grundsätzlich sexualtriebgesteuerten Menschen hat offenbar den Gedanken, dass Herodian mit *Thalamos* nicht das Schlafzimmer gemeint haben könnte, schon gar nicht erst aufkommen lassen.“

203 *Herodian* 5.6.3-5.

204 *HA/AH* 3.4-5.

205 *HA/AH* 6.7-9.

Some have argued in favour of this story from the existence of a nomenclatorial tradition, recorded in certain of the late antique regionaries, purportedly alluding to the presence on the Palatine of a Palladium.<sup>206</sup> The Palladium was, however, the subject of numerous stories, several involving the theft of misleading copies. There is also a tradition that it (or its copy) was transferred from the temple of Vesta to the Palatine, presumably for safekeeping, by Augustus.<sup>207</sup> Doubtless, if Varius broke into the inner sanctum in order to remove it by force, such an act — the break-in — would constitute a sacrilege. But were he foiled in doing so by the clever Vestal, she would also spare him from sacrilege, in that regard at least, if only the fact, and not the intention, were deemed to matter. It will not, however, at this stage, surprise the reader to learn that there is no material evidence whatever of this, or indeed of any other of these alleged removals of sacred objects. If those associated with the divine connubia of Elagabal did indeed take place, one may ask whether they should any more be deemed to constitute a sacrilege, than the original transfer to Rome from Troy of the Palladium itself, or from Pessinunta of the baetyl of Cybele. Much would depend on one's point of view.

- **Did Varius' circumcision or infibulation render him unfit to be Pontifex Maximus?**

Dio says that Varius circumcised himself.<sup>208</sup> The *HA* cites infibulation.<sup>209</sup> If Varius was not a Jew, and caused himself to be circumcised, he would have violated a law against castration.<sup>210</sup> Moreover, the notion of perfect wholeness in body is often associated with aptitude for participation in ritual. It is more usually explicitly applied as a criterion to the victim of sacrifice, than to the officiant, but could, in theory, apply to both. It may be that Dio's accusation implies that Varius, on that account, was unfit to act as Pontifex Maximus. We lack specific reference to any text of Roman sacred law to establish this inhabilitation. We also lack proof of Varius' alleged circumcision or infibulation.

#### Varius' alleged violations of *mos*.

Varius' alleged violations of *mos* may be classified in different ways. From the point of view of the specific actions, passions, or omissions involved they fall into seven realms: sexual, ludic, comportmental, sumptuary, curatory, convivial and architectural. Within the sexual realm, there are two main charges: his alleged assumption of the passive role in sex with men,<sup>211</sup> and, presuming his assumption of that role, his reported practice of self-prostitution.<sup>212</sup> Within the ludic realm, there is the charge that he indulged in chariot racing.<sup>213</sup> His reported dancing in a cultic context has already been discussed under the heading

206 Valentini, R. & Zucchetti, G. (ed.), *Fonti per la Storia d'Italia pubblicate dal R. Istituto Storico Italiano per il Medio Evo, Scrittori Secoli IV-XII, I Cataloghi e la recensione del Secolo XV*, p. 337, n. 2.

207 *OCD, Palladium*, p. 1100b-1101a.

208 *Dio*, 80.11.

209 *HA/AH* 7.2.

210 *Digesta* 48.8.11, pr. Modestinus 6 reg. *Circumcidere iudaeis filios suos tantum rescripto divi pii permittitur: in non eiusdem religionis qui hoc fecerit, castrantis poena irrogatur.*

211 *Dio*, 80.13.2; *HA/AH* 5, 8.6-7, 10.5.

212 *Dio*, 80.13.3-4. *HA/AH* 26.5 reduces the charge to dressing up as prostitutes, both female and male.

of his alleged violations of *fas*, but Dio and Herodian also charge that he danced outside that context.<sup>214</sup> Such secular dancing we shall classify as comportmental. Within the sumptuary realm, there are, again, charges related to his wearing Syrian priestly costume, discussed in the context of his alleged hieratic behaviour. But it is also claimed that he failed to wear proper Roman dress, and wore exotic clothing, or indeed none at all, in contexts other than those pertaining to his reported performance of the rituals of the cult of Elagabal.<sup>215</sup> To the sumptuary realm must also belong the charge that he wore a wig and a hair net.<sup>216</sup> Wearing make-up is cited by Dio in a sumptuary context,<sup>217</sup> as is undergoing depilation.<sup>218</sup> Both, however, may more appropriately be classed together as curatory. Varius' alleged offences in the convivial realm mainly relate to extravagant expenditure and waste. In both Dio's and Herodian's accounts this allegedly forms part of Varius' and his god's respective weddings or other sacred festivals.<sup>219</sup> In that of the *HA*, Varius' alleged convivial excess is secular. It is also so ubiquitous as to overwhelm detailed reference, occupying as it does, together with sumptuary and curatory matters, most of the latter half of his *vita*.<sup>220</sup> Finally, Varius' alleged excesses in the architectural realm, involving the construction not only of magnificent temples to his god, as claimed by Herodian<sup>221</sup> (though interestingly not by Dio), but also of buildings designed entirely for pleasure, as reported by the *HA*,<sup>222</sup> complete the picture of a profligate wastrel. That is precisely the picture that they are designed to produce, according to Catharine Edwards, foremost among the students of discourse.<sup>223</sup>

From another point of view, which we may call politico-legal, all Varius' alleged offences against *mos* belong to a single category: that of sources of *infamia*. *Infamia*, loss of *fama*, or public esteem, is also called *ignominia*, or loss of one's [good] name. Its importance in this context is that it carries legal inhabilitation, specifically for all forms of representative or public office. In an attempt to demonstrate that Varius is unworthy of the principate, proof of a charge carrying *infamia* could be decisive in the accusation's favour.

Yet another category, cultural in nature, to which all these charges also belong is to that of things repudiated as contrary to *romanitas*, Romanness. The theory behind this is that everything virtuous and upright is Roman, and everything base and reprehensible is foreign. If something base and reprehensible is present in Roman life, it is so as the result of foreign contamination. Thus Varius' reported sexual, comportmental, sumptuary, curatory, convivial and architectural behaviour is such as to emphasise

---

213 *Dio*, 80.14.2; *Herodian*, 5.6.10.

214 *Dio*, 80.14.3; *Herodian*, 5.6.10, 5.8.1.

215 *Dio*, 80.8.3, 80.11.2, 80.13.3; *Herodian*, 5.5.3, 5.8.1; *HA/AH* 23.3-5; 26.1-2; 29.2.

216 *Dio*, 80.13.2, 80.14.4.

217 *Dio*, 80.14.4; *Herodian*, 5.8.1

218 *Dio*, 80.14.4; *HA/AH* 31.7.

219 *Dio*, 80.9.2; *Herodian*, 5.6.5-10.

220 *HA/AH* Chapters 19-33.

221 *Herodian*, 5.5.8, 5.6.6.

222 *HA/AH* 8.6; 17.9; 21.5; 23.7; 24.6-730.7

223 Edwards, C., *The Politics of Immorality in Ancient Rome*, 1993.

his foreignness. The only activity of which he is accused which does not fall under this rubric is that of chariot racing.<sup>224</sup>

A final category, to which all the above cited behaviour, except chariot racing, may also be said to belong, is that of *mollitia*: effeminacy. In Roman eyes, this term covers not only sexual behaviour, and forms of comportment, such as dancing, judged effeminate, but all forms of luxury and self-indulgence, including convivial extravagance and waste, and architectural excess. The theory here is that austerity is manly; its opposite the reverse.

Almost by definition, we lack a corpus of texts positively, in the form of exhortations, or negatively, in the form of prohibitions, laying down specific provisions of *mos*. Custom, as opposed to law, is usually, at least in its origins, transmitted in an oral, rather than in textual or legislative form. An important exception to this, in the case of Rome, is the set of laws repressing adultery and promoting marriage among the upper classes promulgated under Augustus: *lex Iulia de adulteriis*, *lex Iulia de maritandis ordinibus*, and *lex Papia Poppaea*. It can be (and has been) argued that when custom is thus codified as law it has already ceased to be custom, and that promulgation of the law represents an attempt to set the clock back to the standards of an earlier, presumably more virtuous age.<sup>225</sup> Dio accuses Varius of adultery with men, committed in order to earn himself a beating from his husband, Hierocles.<sup>226</sup> This, however, would probably not be covered by the *lex Iulia*. Nor could Varius comply with the provisions of the *lex Papia Poppaea* which required male members of the senatorial class to marry and stay married between the ages of twenty-five and sixty, since, despite marrying several times, he never reached the minimum relevant age. So these legal texts do not apply to Varius' case.

We do, however, have textual references to custom, sometimes direct, more often indirect, sometimes explicit, more often implicit, sometimes descriptive, more often normative, in literature, including historiography. Treatises on education, and to some extent on rhetoric, which was an important element of education, are also relevant in this respect. In the case of *mos*, the expression of attitudes, sometimes of praise for its observance, more usually of censure for its breach, is often our principal source of information concerning the custom in question. There is therefore a sense in which the texts of Dio, Herodian, and 'Lampridius', insofar as they may reflect attitudes presumably current in Roman society, or at least in some sectors thereof, at the time of their composition, are as valid as sources for the nature and content of those attitudes, then, as any other more or less contemporary text, and should not be disqualified from consideration, here, as evidence in this precise and limited respect. They may constitute evidence for the existence and nature of the attitudes in question, at the time of their own composition, but not for Varius' performance of, submission to, or neglect of the actions, passions, or omissions imputed by them to him.

---

224 Griffin, Jasper, *Augustan Poetry and the Life of Luxury*, *JRS*, 66, 1976.

225 Edwards, C, op. cit. Ch. 1: *A moral revolution: the law against adultery*.

226 *Dio*, 80.15.3.

Obviously, if one can find other texts contemporary with Varius, rather than those of Dio and Herodian, to inform us concerning a particular custom or its breach, so much the better. (That of the *HA* is in this respect largely irrelevant, because anachronistic, as well as arguably otherwise directed.) Yet for the particular customs and breaches that most concern us in discussing Varius' alleged violations of *mos*, much of the richest literary evidence is not contemporary with his reign, but considerably earlier. (Possibly for this very reason, most of the best secondary sources discussing such matters focus on earlier periods.) This is also the case for his alleged violations of *fas*.

To judge proper standards of sexual, ludic, comportmental, sumptuary, curatory and convivial behaviour according to the views of an elder Cato, a younger Scipio, a Lucretius, a Cicero, a Horace, a Vergil, a Catullus, an Ovid, an Apicius, a Petronius, a Seneca (elder or younger), a Pliny (ditto), a Suetonius, a Martial, a Juvenal, a Plutarch, a Quintilian, a Tacitus, a Galen, a Strato, a Hadrian, a Lucian, a Gellius, or a Marcus Aurelius Antoninus, to name but a few whose views on such matters might be considered relevant, may produce rather different results in each case. Much will depend on whether those views, as expressed, are so in defence of a client or a friend, or as part of an attack on an opponent or an enemy. For, especially with respect to *mos*, the speaker's or writer's attitude may change quite radically, depending on which side of a debate, concerning a given individual, he is on.

- Does Varius' alleged assumption of the passive role in sex with men constitute an offence against *mos*?

Perhaps one thing on which all of the above mentioned authorities and authors could agree would be that assumption of the passive role in homoerotic relations is inappropriate for a reigning emperor. The notion of all sexual relations as embodying a power relationship, involving a zero-sum transaction, from which only the active, penetrating, partner derives satisfaction, hence honour, and in which the passive, penetrated partner, irrespective of gender, is implicitly dishonoured, seems to have been very deeply ingrained in Graeco-Roman ideology, at least as it has come down to us in textual form.<sup>227</sup> (The iconographic record, however, perhaps because it reflects views other than those of the political elite, suggests a broader range of sympathies.<sup>228</sup>) The implication of this literary notion in a political context is that a member of the political elite who voluntarily submits to being the passive partner in homoerotic relations is voluntarily dishonoured, thereby incurring *infamia*, and is therefore unfit for public office. (Even one forced to submit against his will would be objectively dishonoured, and therefore also deemed unfit.) For this reason, accusations of assumption of the passive role in homoerotic relations are standard fare in political invective, both in the republic and the principate.<sup>229</sup> Their presence in an indictment,

227 MacMullen, R., *Roman Attitudes to Greek Love*, *Historia*, 31, 1982, p. 484-502; Lilja, S., *Homosexuality in Republican and Augustan Rome*, *CHL*, 74, 1983; Hallet, J. P., & Skinner, M.B. (Eds.), *Roman sexualities*, 1998.

228 Clark, J.R., *Looking at Lovemaking: constructions of sexuality in Roman art, 100 B.C. - A.D. 250*, 1998.

229 Edwards, C., op.cit., Ch. 2 *Mollitia*.



such as Dio's, designed to justify the murder of Varius on the grounds that he was unfit to occupy the principate, is thus hardly surprising. As to whether they are true or not, the extant evidence offers no clues.

- **What is the significance of the charge of self-prostitution levelled against Varius?**

Given that no artefactual evidence exists of Varius' sexual behaviour, one must content oneself, together with the students of discourse, to frame the question regarding the related charge of self-prostitution focusing on its significance, rather than on whether Varius actually indulged in it. Its significance resides in the benefit to the accuser's credibility afforded by the presumption of wider public knowledge of the passion involved, and in the infaming nature of the profession it invokes. For the charge that Varius submitted, voluntarily, to penetration by a man, in a private context, would of its nature be difficult to prove.<sup>230</sup> To claim that he did so in the more public context of self-prostitution is likelier to gain belief, at least from an audience incurious of the rules of evidence, merely because it seems to appeal to a broader source of common knowledge. Besides this, the *infamia* attached to the exercise of this profession is such as to inabilitate its subject from the tenure of public office.

- **Did Varius infame himself by virtue of active participation in chariot racing?**

At least in the case of chariot racing, there is some material evidence arguably linking it to Varius, though its interpretation may be fraught with difficulties. The ruins of a circus built expressly for chariot racing are to be observed in a Roman suburban property, arguably linked, under the traditional name of *Horti Variani* (which coexists alongside that of *Horti Spei Veteris*), to the family of Sextus Varius Marcellus, husband of Soaemias, and likely father of Varius.

*Infamia* is again the operative concept in this charge, on the basis of the theory that active participation, as opposed to spectatorship or clienthood, in certain professions, including chariot racing, was incompatible with honour, and hence with the tenure of public office. Among other professions in this category are prostitution, and acting on the stage. A part of the definition of infaming professions seems to have been that they involve receiving payment in money for one's exertions. This element of definition may even have been decisive, in the case of something like chariot racing, which could — and arguably was, in the case of Varius — indulged in as a private sport. Perhaps for this reason, Dio takes care to state explicitly that Varius was to be observed "playing charioteer and begging gold coins, like any ordinary contestant and saluting the presidents of the games and the members of his faction."<sup>231</sup> No artefactual evidence of these reported actions and gestures exists.

---

<sup>230</sup> Dr. T.V. Buttrey asks: "Does Roman (or any) male prostitution require that the prostitute is the penetrated rather than the penetrator? A very apt question to which I have no certain answer, but this seems to be the presumption of ancient texts referring to male prostitution.

<sup>231</sup> *Dio*, 80.14.2.

- Was Varius' dancing outside a cultic context an offence against *mos*?

Nor is there any artefactual evidence of Varius' dancing, either within or without a cultic context. That said, the charge of dancing as such, irrespective of context, is linked to that of *mollitia*, effeminacy, which informs most of the charges of offences against *mos* levelled at Varius. It is also linked to that of foreignness. The theory behind these linkages seems to be that dancing is, of its nature, both effeminate and un-Roman. This must be understood in a context where, apart from ritual dances (of which the Romans had relatively few, compared to the Greeks)<sup>232</sup> most dance was linked to the stage, hence to infaming professions.<sup>233</sup>

- Did Varius' sumptuary idiosyncrasies constitute an offence against Roman *mos*?

There were quite definite sumptuary laws governing the Roman upper classes. In particular, for males of the senatorial order, which the princeps was presumed to come from and associate with, a toga with a broad purple stripe, draped in a certain way, was required, as was a tunic, properly belted. For the emperor himself, the toga was entirely purple. In military contexts, helmet, cuirass, and greaves were worn. In hieratic contexts, a fold of the toga was draped over the head as a veil.

Dio's claim,<sup>234</sup> echoed by Herodian,<sup>235</sup> that Varius was often to be seen in public wearing the dress of a Syrian priest, is further echoed by the *HA*.<sup>236</sup> To search for evidence of this claim, one must go to the only authoritative source of depictions of Varius: his image on his coins. (While there are several statue busts assigned to Varius by diverse scholars, there is no unanimous agreement as to the attribution of any one of them.) On the obverse of his coins, Varius is depicted in conventional imperial garb, though with some variations of detail, one important. Sometimes he wears a cuirass, sometimes a toga, sometimes both. On his head, sometimes he wears a laurel wreath, sometimes a radiate crown, and sometimes an object that has, by numismatists, usually been called a horn.<sup>237</sup> Recently, however, it has been identified as the desiccated penis of a bull, a cultic object, related to the sun god.<sup>238</sup> Whatever it is, it is decidedly unconventional. Varius is the only emperor so depicted. On the reverse of his coins, Varius is once shown nude.<sup>239</sup> He also appears in military dress, standing with soldiers,<sup>240</sup> or astride a horse.<sup>241</sup> He wears a toga when presiding, or getting married.<sup>242</sup> He is even depicted in a toga, head veiled, sacrificing Roman

---

232 *OCD* p. 428-9, *dancing*.

233 Jory, E.J., *The Drama of the Dance: Prologomena to an Iconography of Imperial Pantomime*, in Slater, W.J., (ed.), *Roman Theatre and Society; Edward Togo Salmon Papers*, I, 1996, esp. p. 9-11.

234 *Dio*, 80.11.2.

235 *Herodian*, 5.5.3-6.

236 *HA/AH* 23.3-4; 26.1-2; 32.1.

237 Saulcy, F. de, *Renseignements numismatiques sur l'expression cornu, employée dans l'écriture sainte pour désigner métaphoriquement la puissance: The Horn as a Symbol of Power*, *NC/JRNS*, ns 12, 1872, p. 65ff./221ff.

238 Kregel, E., *Das Sogennante Horn des Elagabal: Die Spitze eines Stierpenis, eine Umdeutung als Ergebnis fachübergreifender Forschung*, *JNGG*, 47, 1997, p. 53-72.



IMP ANTONINVS PIVS AVG  
obverse laurel crown FZW



VOTA PVBLICA  
Thirion 373-375



IMP ANTONINVS PIVS AVG  
obverse "horned" FZW



RECTOR ORBIS  
Thirion 327 BNF 1226



FIDES MILITVM  
Thirion 37-38 BNF 144



PM TRP III COS III PP  
Thirion 147-153 BNF 1222



SACERD DEI SOLIS ELAGAB  
Thirion 301-305 BNF 7302



PM TRP III COS III PP  
Thirion 170-183 BNF 7286



INVICTVS SACERDOS AVG  
Thirion 252 BNF 7217



CONSVL II PP  
Thirion 327 BNF 1220



SVMMVS SACERDOS AVG  
Thirion 311-313 FZW



ADVENTVS AVGVSTI  
Thirion 237 BNF 1218

VARIUS' SELF-PRESENTATION ON COINS

style to an unidentified god.<sup>243</sup> But on many issues, some unlinked by the legend to his role as high priest of Elagabal,<sup>244</sup> while others are so,<sup>245</sup> he is depicted sacrificing in the belted costume of a Syrian priest, sometimes with a tiara on the ground, ornamented with what earlier numismatists call a horn.

It seems, therefore, that Varius is more often depicted in conventional than unconventional dress. Further study is needed to determine in detail how these coins may be compared to those of previous reigns, but, in the words of Dr. T.V. Buttrey: "Insofar as the types are already familiar they're good evidence, I would say, for the coins as presenting a conservative public image, as against the fancies of the ancient historians."<sup>246</sup>

We are told, by Herodian, that Varius took pains, during his winter in Nicomedia, the first year of his reign, to prepare the Roman people for the sight of his Oriental costume, sending ahead of his arrival a

---

239 *Thirion* §357-358, RECTOR ORBIS, The emperor, nude, standing left, holding a globe and an upturned lance.

240 *Thirion* §37-38, FIDES MILITVM, The emperor, standing towards right, holding a lance, flanked by a soldier holding a standard and by another holding a standard and a shield.

241 *Thirion* §237-240, ADVENTVS AVGVSTI (SC), The emperor, riding a horse leftwards, raising his right hand and holding a lance; §339-340, ADVENTVS AVG, The emperor, riding a horse to the right, raising his right hand.

242 *Thirion* §24-27, PONTIF MAX TR P II COS II PP (SC), The emperor, standing, holding branch & sceptre, in a quadriga moving left, crowned by Victory; §141-142, LIB AVG II P M TR P II COS I P P; §143-145 LIBERAL AVG II P M TR P II COS I P P; The emperor, sitting left, on a platform, accompanied by Liberalitas. A citizen climbs the steps of the dais; §147-153, P M TR P III COS III P P (SC), The emperor, sitting left on a curule chair, holding a globe and sceptre; §154-159 P M TR P III COS III P P (SC), The emperor, standing in a slow quadriga moving left, holding a branch and a sceptre; §194, P M TR P III COS III P P (SC), The emperor, standing in a slow quadriga moving right, holding a branch and a sceptre; §230-232, P M TR P V COS III P P (SC), The emperor, standing in a slow quadriga moving left, holding a branch and a sceptre; §233, P M TR P V COS III P P (SC), The emperor, standing in a slow quadriga moving left, holding a branch and a sceptre, being crowned by Victoria, behind him; §327, CONSVL II P P; The emperor, in a slow quadriga moving left, holding a branch and a sceptre ending in an eagle; §332, TR POT II COS II P P; The emperor, in a slow quadriga moving left, holding a branch and a sceptre surmounted by an eagle; §333, TRIB P I I COS II P P; The emperor, in a slow quadriga moving left, holding a branch and a sceptre surmounted by an eagle; §334, TRIB P II P P COS II, The emperor, in a slow quadriga moving left, holding a branch and a sceptre surmounted by an eagle; §338, P M TR P III COS III P P; The emperor, being crowned by Victoria, behind him, in a slow quadriga moving left, holding a sceptre surmounted by an eagle; §444-445, CONCORDIA, The emperor, with laurel crown and in a toga, standing right, extending a hand to Julia Paula, standing left; §446-450, CONCORDIA AETERNA (SC), The emperor, with laurel crown and in a toga, standing right, extending a hand to Julia Paula, standing left. Between them, Concordia standing face on; §469, CONCORDIA, The emperor, with laurel crown and in a toga, standing right, extending a hand to Julia Paula, standing left; §474-475, CONCORDIA, the emperor, with laurel crown and in a toga, standing left, holding a short sceptre, extending a hand to Aquilia Severa, standing right; §490-491, CONCORDIA (SC), The emperor, with laurel crown and in a toga, standing right, extending a hand to Annia Faustina, standing left.

243 *Thirion* §370-375, VOTA PVBLICA, The emperor, veiled in a toga, sacrificing over a tripod or an altar.

244 *Thirion* §146 P M TR P III COS III P P (SC), The emperor, standing left sacrificing with a patera over an altar, holding a cypress branch; §170-183 P M TR P III COS III P P (SC), The emperor, standing left holding a patera over an altar and a cypress branch pointing upward; §184 P M TR P III COS III P P (SC), The emperor, standing left holding a patera over an altar and a cypress branch pointing upward, a lance on the left and a standard on the right; §185 P M TR P III COS III P P (SC), The emperor, standing left holding a patera over an altar and a cypress branch pointing upward, a standard on the left and an ornate lance on the right; §224-226 P M TR P V COS III P P (SC), The emperor, standing left, holding a patera over an altar, and a cypress branch pointing upwards; §227-229 P M TR P V COS III P P (SC), The emperor, standing left, holding a patera over an altar, and a cypress branch pointing upwards, a bull reclining behind the altar.

portrait of himself sacrificing to his god, to be hung in the entrance to the senate, where it could be seen by all.<sup>247</sup> A very rare coin, recently studied by Hans Baldus, may corroborate this story.<sup>248</sup> A new study, as yet unpublished, by Elke Krenzel, illuminates the nature and context of Varius' priestly garb.<sup>249</sup> All that being as it may, what is clear in the context of the present enquiry is that whether he apologised for it or not, Varius was depicted on his coins wearing something other than standard Roman dress, and most likely did so in a public, even an official hieratic context. If so, this could be argued to constitute a violation of *mos*, and might also have implications for *fas*. But such an argument would be debatable.

- Are Varius' curatory eccentricities offences against *mos*?

Dio accuses Varius of wearing make-up, and of plucking his beard, in order to remain smooth cheeked.<sup>250</sup> Herodian also speaks of make-up, and laments it spoiling Varius' natural good looks.<sup>251</sup> The *HA* gives a more graphic description of his toilet with the women in the baths, and of his personally shaving his minions' groins.<sup>252</sup> While these charges are in keeping with the accusations of effeminacy which they are designed to illustrate,<sup>253</sup> it is debatable whether an aversion to hirsuteness constituted, for Roman emperors of Varius' period, an offence against *mos*. While, in both his coinage and his portrait sculpture, Severus is regularly shown full bearded, and Caracalla often has several days' or even weeks' growth, Severus Alexander, held up by his ancient historiographers as a salutary contrast to Varius, is often depicted clean shaven.<sup>254</sup> What is more, Varius himself, in coins pertaining to the last two years or so of his life, is shown with the incipient beard of an adolescent.<sup>255</sup> None of the images we have of Varius allow us to corroborate the charge of wearing make-up.

245 *Thirion* §252 INVICTVS SACERDOS AVG (SC), The emperor, standing left, sacrificing with a patera over a narrow altar, holding a branch pointing downwards. To the right, on the ground, an object resembling a tiara, ornamented with a horn; §253 INVICTVS SACERDOS AVG (SC), The emperor, with laurel crown and horn, standing left, sacrificing with a patera over a narrow altar, holding a cypress branch pointing upwards. To the right, on the ground, an object resembling a tiara, ornamented with a horn; §254-263 INVICTVS SACERDOS AVG (SC), The emperor, standing left, sacrificing with a patera over a narrow altar, holding a cypress branch pointing upwards. To the right, on the ground, an object resembling a tiara, ornamented with a horn. Behind the altar, a reclining bull; §300 SACERD DEI SOLIS ELAGAB (SC), The emperor, standing right, holding a club to which a horn is attached, and a patera over an altar with a flame; §301-305 SACERD DEI SOLIS ELAGAB (SC), The emperor, standing right, holding a cypress branch pointing upwards, and a patera over an altar with a flame; §306-308 SACERD DEI SOLIS ELAGAB (SC), The emperor, standing left, holding a cypress branch pointing upwards, and a patera over an altar with a flame; §311-313 SVMMVS SACERDOS AVG (SC), The emperor, standing left, holding a patera over a tripod, and a branch pointing downwards; §314 SVMMVS SACERDOS AVG (SC), The emperor, standing right, holding a patera over a tripod, and a branch pointing upwards.

246 E-mail to me of October 13, 2005.

247 *Herodian*, 5.5.6-7.

248 Baldus, H.R., *Das „Vorstellungsgemälde“ des Heliogabal, Ein bislang unerkanntes numismatisches Zeugnis*, *Chiron*, 19, 1989, p. 467-476.

249 Krenzel, Elke, *Das Priestergewand des Varius*, presentation to the Varian Symposium, Trinity College, Cambridge, 29-31 July, 2005.

250 *Dio*, 80.14.4.

251 *Herodian*, 5.6.10, 5.8.1.

252 *HA/AH* 31.7.

253 Edwards, C., op.cit., Ch. 2, *Mollitia: Reading the Body*.

- What is the status, with regard to *mos*, and to fact, of Varius' alleged convivial extravagance?

The charges of convivial extravagance brought against Varius by Dio and Herodian are related to his weddings and to public entertainments in connection with his hieratic policy.<sup>256</sup> Those of the *HA*, which constitute the bulk of its second half,<sup>257</sup> are secular in nature, and accord with the stereotypes of convivial extravagance common in Roman invective.<sup>258</sup> While a certain level of magnificence was naturally associated with the principate, and generosity towards the populace, as well as towards the soldiers, was expected, being realised in the form of public entertainments, food distributions, and donatives, extravagance in the pursuit of private pleasure, or that of the emperor's favourites, was regarded as contrary to the austere and public-spirited version of *romanitas* promoted by moralists.

There is evidence of Varius' having issued coins to be given in donatives, and it must be presumed that they were distributed, since they are worn.<sup>259</sup> *Annona*, the personification of grain distributions to the populace, is also honoured on some coins.<sup>260</sup> There is, however, no evidence whatever, in any of the artefacts surviving from his reign, of Varius' alleged indulgence in private extravagance such as he is charged with.

- Is there any evidence of Varius' alleged architectural excess?

Architectural excess is yet another stereotype of Roman invective.<sup>261</sup> While Dio mentions *en passant* a temple of Elagabal, used by Varius in gory rites,<sup>262</sup> he does not complain about its size or expense. Herodian, rather more awestruck than complaining, claims Varius' construction of two magnificent temples, one urban, the other suburban, to Elagabal, as well as of some towers, from which he reportedly threw down presents, including live animals, to the populace.<sup>263</sup> It is the *HA* which provides the most imaginative accusations of architectural excess, particularly of constructions devoted to private pleasure, as well as of buildings dedicated to worship and public entertainment.<sup>264</sup> Among these are: the Palatine

254 L'Orange, H.P., *Studien zur Geschichte des spätantiken Porträts*, 1933, Abb. 240; Giuliano, *Due Ritratti di Alessandro Severo nel Museo Lateranense*, *Archeologia Classica*, 3, 1951, Tavole XLV-XLVIII; Calza, Raissa, *Scavi di Ostia IX, I ritratti II*, 1979, ill. 80,81.

255 The large number of coins designated by Thirion as Bustes 3, 4, 5 & 6, all corresponding to 220-222. *Thirion*, p. 21.

256 *Dio*, 80.9.2; *Herodian*, 5.6.5-10.

257 *HA/AH* Chapters 19-33, *passim*.

258 Edwards, C., *op. cit.*, Ch. 5, *Prodigal Pleasures*.

259 *Thirion* §141-142, LIB AVG II P M TR P II COS II P P; §143-145, LIBERAL AVG II P M TR P II COS II P P; § 115-118, 264-266, 355, LIBERALITAS AVG II; §267-268, LIBERALITAS AVG III; §269, LIBERALITAS AVG III; §119-120, LIBERALITAS AVGUSTI II.

260 *Thirion* §100, ANNONA AVGUSTI.

261 Edwards, C., *op. cit.*, Ch. 4, *Structures of Immorality: Rhetoric, building and social hierarchy*.

262 *Dio*, 80.11.

263 *Herodian*, 5.5.8; 5.6.6; 5.6.9.

Temple of Elagabal; the *Senaculum Mulierum*; a bath built in the palace to attract men with large sexual organs; other baths now known as the *Thermae Antoninianae*, or baths of Caracalla; a banquet room with a reversible ceiling to produce a flood of flowers in which to inundate his guests, killing several of them; swimming pools filled with sea water, built far from the sea; a mosaic pavement on the Palatine known as the *Plateae Antoninianae*; a column to be built of Egyptian stone, which was never finished; baths constructed in outlying places, used once, and immediately demolished; and a tower from which to jump to his death.

Of all these, only the baths of Caracalla and the suburban temple of Elagabal can be certainly located. Varius' contribution to the former was, according to the *HA*, merely to continue their construction, which was completed under his successor, Severus Alexander. There is no evidence, at the site of a temple at Via Dandolo in Trastevere where several Syrian gods, including Elagabal, were worshipped before Varius' reign, of any construction dating to Varius. His Palatine Temple of Elagabal is generally thought to correspond to the topmost, Severan, level of ruins in what is now called the *Vigna Barberini*. Another article in the group of studies to which this belongs investigates that attribution. It not only finds it highly likely, but adds new arguments to the case therefor, while also bringing to light new astronomical data relevant to understanding that site's orientation.<sup>265</sup>

If the Varian Temple of Elagabal in Rome truly corresponds to the Severan ruins in the *Vigna Barberini*, then the charge of architectural excess is not exaggerated, at least as regards scale. For it is one of the largest temples in Rome, with a huge surrounding courtyard, paved and gardened with pots in the Syrian style, with extensive outbuildings, forming a porticoed enclosure. But the question of who built it still remains. On this there are many theories, none conclusive. These are discussed in yet another study belonging to this group.<sup>266</sup>

#### **Preliminary conclusions arising from interrogation of the artefacts.**

With regard to Varius' alleged violations against *ius*, *fas*, and *mos*, interrogation of the artefacts yields the following results:

There is conclusive evidence regarding only three of the charges: affirmative for that of sumptuary irregularities; affirmative for that of promoting the worship of Elagabal, (which is not a crime); negative for that of intention to overthrow Jupiter and abolish the Roman pantheon. A result of no evidence means

---

264 *HA/AH* 3.4 (Palatine temple of Elagabal); 4.3 (*Senaculum mulierum*); 8.6 (bath in palace to attract men with large organs); 17.9 (baths of Caracalla); 21.5 (banquet room with reversible ceiling for flower flood); 23.7 (swimming pools with sea water far from the sea); 24.6-7 (*Plateae Antoninianae*, unachieved column); 30.7 (baths constructed, used once & immediately demolished); 33.6 (suicide tower).

265 Arrizabalaga y Prado, Leonardo de, & Fuente Marcos, Raúl de la, *The Site of the Varian Temple of Elagabal in Rome: a Topographical and Astronomical Approach to the Question*, *TSSL*, 47, 2005.

266 *The Varian Temple of Elagabal in Rome*, in *Documenta Variana*, yet to be published.

that none exists for Varius' commission of, subjection to, or neglect of the action, passion, or omission in question. The debatable charges are as follows:

In the case of treason as *perduellio*, defined as overthrowing Macrinus, the debate is ultimately philosophical. In the case of treason as *maiestas*, defined as diminution of the majesty of Rome by virtue of *infamia*, proof depends on whether other charges are proven.

In the case of fraud with respect to Varius' claim of Caracallan paternity, the charge is not proven, but fraud seems likely. If, however, Varius' knowledge that the claim is fraudulent, *sciens dolo malo*, is part of the definition of the crime, then his guilt becomes more debatable. In any case, initial responsibility for the claim is Maesa's and Soaemias'.

charge	dynamic	law	realm	specification	judge	accusers	result
treason ( <i>perduellio</i> )	action	ius	civil	crime	magistrate	D	NE
treason ( <i>maiestas</i> )	action	ius	civil	crime	magistrate	D	DE
fraud (impersonation)	action	ius	civil	crime	magistrate	D L	DE
violations of precedent & privilege	action	ius	civil	crime	magistrate	D L	DE
Judicial murders of prominent men	action	ius	civil	crime	magistrate	D H L	NE
extrajudicial murder of Gannys	action	ius	civil	crime	magistrate	D	NE
inappropriate appointments	action	ius	civil	crime	magistrate	D H L	DE
misappropriation of property	action	ius	civil	crime	magistrate	D H L	NE
failure to wage war	omission	ius	civil	crime	magistrate	D	DE
promoting worship of Elagabal	action	ius/ fas	sacred	crime	magistrate	D H L	CE
seeking overthrow of Jupiter and pantheon	action	ius/ fas	sacred	impiety	pontifex	D L	CE
performance of Elagabal's ritual	action	fas	sacred	sacrilege	pontifex	D H L	DE
Varius' marriage to a vestal virgin	action	fas	sacred	sacrilege	pontifex	D H L	NE
Elagabal's marriages to goddesses	action	fas	sacred	impiety/ sacrilege	pontifex	D H	NE
removing sacred objects from shrines	action	fas	sacred	sacrilege	pontifex	D H L	NE
undergoing circumcision	passion	fas	sacred	sacrilege	pontifex	D L	NE
assuming passive role in sex with men	passion	mos	moral	misdeemeanour	censor	D L	NE
self prostitution	passion	mos	moral	misdeemeanour	censor	D	NE
chariot racing	action	mos	moral	misdeemeanour	censor	D H	NE
dancing	action	mos	moral	misdeemeanour	censor	D H	NE
sumptuary irregularities	action	mos	moral	misdeemeanour	censor	D H L	CE
curatory eccentricities	action	mos	moral	misdeemeanour	censor	D L	NE
convivial extravagance	action	mos	moral	misdeemeanour	censor	D H L	NE
architectural excess	action	mos	moral	misdeemeanour	censor	H L	DE

(NE = no evidence; DE = debatable evidence; CE = conclusive evidence. The sum is: NE = 14; DE = 7; CE = 3)

In the case of violations of precedent and privilege, there is evidence of one fact: Varius' irregular tenure of the consulate during the first semester of his reign, and numbering his subsequent tenures in consequence. But it seems likely that this is done with the senate's ratification, albeit after the fact.



In the case of inappropriate appointments, there is evidence that Valerius Comazon Eutygianus held the consulship together with Varius. But the inappropriateness of this appointment (which must in any case have been approved by the senate) is debatable.

In the case of failure to wage war, there are two debatable points: whether it is legitimate to use an absence of evidence to prove an alleged omission; and whether waging war is an obligation of the princeps, or merely his prerogative.

In the case of sacrilege, there is no evidence of any of the specific acts (misappropriation of sacred artefacts, violation of sacred space or persons) imputed to Varius in this context. As for the cult of Elagabal, Varius is not responsible for its introduction, and its practice cannot have been deemed impious in itself, since it was authorised under Severus and Caracalla. There is, moreover, no evidence of any attempt to impose it as a sole or even as a supreme cult. It is clear from the numismatic record that there was no policy to overthrow Jupiter and abolish the Roman pantheon. There was, however, a policy promoting the worship of Elagabal, and the emperor's role as his high priest. This, however, does not seem to be a crime.

In the case of sumptuary irregularities, there is little doubt that Varius sometimes wore the costume of a Syrian priest. Whether this constitutes an offence against *mos* is, however, debatable, and linked to equally debatable hieratic questions.

In the case of architectural excess, if construction of the Palatine Temple of Elagabal could certainly be attributed to Varius, it might prove the charge, but it cannot be so attributed.

### Varius' defence

There is no extant document, constituting a defence, equivalent thereto, or usable therefor, deriving from Varius himself. This may reflect his *damnatio memoriae*, resulting in destruction of his monuments and records. But it may also be that he did not foresee the need for a defence, with regard to charges to be brought against him after his death, and therefore did not address it. While, therefore, this virtual trial is based, as I maintain, on a real indictment, that of ancient historiographical texts concerning Varius, it must rest content with a virtual defence.

In order to provide that virtual defence, I must, before assuming the role of judge, temporarily vacate that of investigating magistrate, and take that of counsel or advocate for the accused. How shall I best serve my client? Much will depend on the nature of the court he is facing. Were he still alive, and still emperor, he would not be facing any court, but possibly presiding over one. Since he is dead, he can only face the court of history.

Any approach to his defence must decide how to treat remarks, attributed to Varius by Dio, which may be taken to state or imply the rationale behind some aspects of his alleged intentions, supposed policies, and reported behaviour.<sup>267</sup> These could, theoretically, be used in a defence. But in view of the inconclusive state of most of the material evidence, which, as it stands, favours Varius, I would be inclined not to use these remarks, because they risk admitting, by implication, the reality of some of the actions, passions, or omissions to which they refer, which are otherwise uncorroborated. I would prefer to leave the onus of proof on the prosecution.

Apart from this, in my approach to Varius' defence, much would depend on when the court of history were in session. If it were in session in antiquity, much, again, would depend on my knowledge of his life and reign, hence of the strength or weakness of my case; but most of all, on the distance in time from his reign. If the session were held during the reign of his successor, Severus Alexander, I would request a recess till after a.u.c. 988 = 235, to allow time for Alexander, in turn, to be overthrown. This is because any defence of Varius would, from Alexander's point of view, constitute treason, thus seriously endangering an advocate's life. In a succeeding reign, but still within living memory of that of Varius, I would defend him on the matter of sumptuary irregularity, the only point on which the extant evidence tends to convict him, by citing his conciliatory intentions, as witnessed by his sending ahead the picture of himself thus dressed to Rome. On other matters, I might have to deal with self-proclaimed witnesses seeking to fill in the gaps in the material evidence. If so, I would have to attack them, as well as his accusers, Dio and Herodian, and possibly Marius Maximus, on personal grounds, discovering, or inventing, unsavoury incidents in their life histories, likely to sway an audience against them, in favour of Varius. Somewhat later in antiquity, the threat from such witnesses would fade, so I could defend Varius' hieratic policy, at least, as a precursor of that more successfully espoused by Aurelian (not, let it be noted, that of Constantine). Yet later, to counter the attack on the character presented as Varius in the *HA*, I would have to expose its author's fraudulence, with regard to his own identity, and also to demonstrate his propensity to error, misconstruction, and downright invention, as well as to anachronism.

If, however, I were Varius' advocate in modern times, and arguing his case under the rules of evidence espoused by the present set of studies, I would offer no defence, and continue to leave the onus of proof on the prosecution. I would be confident that, in the present state of evidence, no honest historian would venture to say that he or she knows, for certain, that Varius, apart from indulging in sumptuary irregularities, and promoting the worship of Elagabal, committed, suffered, or allowed any of the other actions, passions, or omissions attributed to him.

---

267 His alleged intention to share the consulate "next year" with his own son (*Dio* 80.19.1<sup>a</sup>); the pacifist policy deducible from his supposed repudiation of military titles (*Dio* 80.18.4); his reported self-designation as a 'lady' (*Dio* 80.16.4).

## Cross examination

Resuming now, for a moment, my role of investigating magistrate, before assuming that of judge, I would call attention not so much to contradictions, which are few, but rather to suspicious coincidences between or among the accusers. Textual analysis demonstrates that much in Herodian's and the *HA's* accounts derives from Dio.<sup>268</sup> This would tend, in my view, whether as a magistrate, or as an historian, to diminish the value as testimony of the derivative texts. That said, a few of the contradictions or incoherences among the accusers are worth mentioning: Unlike Herodian and 'Lampridius', Dio does not seem to register any architectural excess on Varius' part. Unlike Dio and 'Lampridius', Herodian does not specify Varius' alleged sexual proclivities. Neither Dio nor Herodian allege Varius' indulgence in convivial extravagance for private pleasure, as opposed to public policy. The murder of Gannys, and Varius' pacifism, are reported only by Dio.

## Res Gestae

Examination of Varius' coins and inscriptions, allows one to constitute *res gestae*, in the legal sense. On their basis, one may reconstruct Varius' *res gestae* in the historical sense. While detailed exposition is left for elsewhere, we may summarise their principal points:

At some stage in his boyhood, young Varius assumes the role of high priest of Elagabal. In 971 = 218, he is about 14. His mother's husband is dead. Under the claim that he is the son of Caracalla, his mother's recently murdered maternal first cousin, Varius assumes the role of Roman emperor, replacing Caracalla's immediate successor, Macrinus.

Varius' elevation to the principate takes place in Syria. He travels overland from Syria to Rome, possibly together with the principal cult object of Elagabal, a large black meteorite, known as a baetyl. He reaches Rome late in 972 = 219.

During his reign, he endeavours to perform both his priestly and imperial duties simultaneously. He worships Elagabal, but also honours other Roman gods and goddesses. He holds court as judge of last appeal, issuing rescripts. He grants diplomas to retiring veterans. He distributes money to soldiers and food to the people of Rome.

He grants his mother and grandmother the title of Augustae. In quick succession, he marries and

---

<sup>268</sup> Hönn, Karl, *Quellenuntersuchungen zu den Viten des Heliogabalus u.d. Severus Alexander*, 1911; Kolb, F., *Literarische Beziehungen zwischen Cassius Dio, Herodian und der „Historia Augusta“*, *BHAF*, 4.9, *BHAC*, 1972; Barnes, Timothy D., *The sources of the Historia Augusta*, *CL*, 155, 1978, 54 ss; Scheithauer, A., *Die Regierungszeit des Kaisers Elagabal in der Darstellung von Cassius Dio und Herodian*, *Hermes*, 118-3, 1990.

divorces a series of three women, returning finally to the second. In 974 = 221 he adopts his maternal first cousin, renaming him Alexander, as his son and heir apparent.

Early in 975 = 222, probably before his eighteenth birthday, his reign, and most likely his life, come to an end. He is succeeded by his cousin, under the regnal name of Severus Alexander.

This, in outline, is all that can be known for certain about Varius. All else is conjecture.

### The Verdict: Not Proven

*Deinde homines sapientes et ex vetere illa disciplina iudiciorum, qui neque absolvere hominem nocentissimum possent, neque eum de quo esset orta suspicio pecunia oppugnatum, re illa incognita, primo condemnare vellent, non liquere dixerunt.*<sup>269</sup> “Then some of the judges, wise men, trained in the old-fashioned principles of the ancient tribunals, as they could not acquit a most guilty man, and yet, as they did not like at once to condemn a man, in whose case there appeared reason to suspect that bribery had been employed against him, before they were able to ascertain the truth of this suspicion, gave as their decision, ‘Not proven’.”

Of the crimes and misdemeanours attributed to Varius by his ancient historians, none, save one, that of sometimes wearing non-Roman dress, is corroborated by the evidence of artefacts. We cannot even prove the existence of several of the men he is alleged to have murdered. For those whose existence is established, we cannot prove that they were murdered, let alone by his command. While there is ample evidence that he worshipped Elagabal, there is none whatever that he sought to make him overthrow Jupiter, nor that he committed any of the acts of sacrilege imputed to him. We know that he married Aquilia Severa, twice, but we cannot demonstrate that she was a Vestal. No evidence exists of Varius' alleged sexual versatility, of his averred convivial extravagance, of his famed aurigal or saltatory prowess, or of his reportedly wicked sense of humour.

This does not mean that these events did not occur, nor these characteristics exist in Varius; merely that we cannot *know* that they did so. This is a crucial distinction, for on it hangs the historian's claim to intellectual honesty. Accordingly, in my capacity as judge, I recommend to the members of the jury, consisting of the readers of this article, that if you concur with its findings of fact, you may render a verdict of ‘not proven’.

### Acknowledgements:

For help in discussion leading to the preparation of this paper I wish to thank Drs T.V. Buttrey,

---

<sup>269</sup> Cicero, *Pro Cluentio* 28.76. English translation: ed. C. D. Yonge.

J.A. Crook, L. Croxford, J.M. Reynolds, A.J. Weir, and C.R. Whittaker, of Cambridge University, and Dr. A.R. Birley, Chairman of Trustees of the Vindolanda Trust. I also wish to thank M. Michel Amandry, Directeur du Cabinet des Médailles de la Bibliothèque Nationale de France, and Dr. Mark Blackburn, Keeper of the Coins in the Fitzwilliam Museum, Cambridge, for permission to scan and reproduce coins from their respective collections.

### Abbreviations:

*BAGB* = *Bulletin de l'Association Guillaume Budé*

*BCAR* = *Bullettino della Commissione Archeologica Comunale di Roma*

*BHAC* = *Bonner Historia Augusta Colloquium*

*BHAF* = *Bonner Historia Augusta Forschungen*

*BJ* = *Bonner Jahrbücher des Rheinischen Landesmuseums in Bonn (im Landschaftsverband Rheinland) und des Vereins von Altertumsfreunden im Rheinlande*

*CCRRP* = Jones, A.H.M., *The Criminal Courts of the Roman Republic and Principate*, 1972

*Chiron* = *Chiron, Mitteilungen der Kommission für Alte Geschichte und Epigraphik des Deutschen Archäologischen Instituts*,

*CHL* = *Commentationes Humanarum Litterarum*

*CIL* = *Corpus Inscriptionum Latinarum*

*CL* = *Collection Latomus*

*Dio* = *Cassii Dionis Cocceiani Historiarum Romanarum Quae Supersunt*, ed. Boissevain, Weidmann, 1901; ed. & English translation by Cary, Loeb, 1969

*EPRO* = *Études Préliminaires aux Religions Orientales dans l'Empire Romain*

*ES* = *Epigraphische Studien*

*HA* = *Scriptores Historiae Augustae*, ed. Hohl, Samberger & Seyfarth, 1971; ed. & English translation by Magie, Loeb, 1980

*HA/AH* = *Historiae Augustae Vita Antonini Heliogabali*

*Hermes* = *Hermes, Zeitschrift für Classische Philologie*

*Herodian* = *Herodiani Historiarum Ab Excessu Divi Marci Libri Octo*, ed. Stavenhagen, Teubner, 1922; ed. & English translation by Whittaker, Loeb, 1970

*Historia* = *Historia, Zeitschrift für Alte Geschichte*

*ILR* = *Iowa Law Review*

*Linc NSA* = *Atti della (Reale) Accademia Nazionale dei Lincei, Notizie degli scavi di Antichità*

*JLH* = *Journal of Legal History*

*JNGG* = *Jahrbuch für Numismatik und Geldgeschichte*

*JRS* = *Journal of Roman Studies*

*MEFRA* = *Mélanges d'Archéologie et d'Histoire de l'École Française de Rome*

*NCJRS* = *The Numismatic Chronicle and Journal of the Royal Numismatic Society*

*OCD* = *Oxford Classical Dictionary*

*PIR1* = *Prosopographia Imperii Romani, first edition*

*PIR2* = *Prosopographia Imperii Romani, second edition*

*Pont RPARA* = *Atti della Pontificia Accademia Romana di Archeologia, Rendiconti*

*QV1* = *Quaestiones Varianae, 1* = Arrizabalaga y Prado, L. de, *Existence, Identity, Nomenclature: a basis for Studia Variana, I: The Boy on the Coin*, *Tsukuba Area Studies* 22, 2004

*QV2* = *Quaestiones Varianae, 2* = Arrizabalaga y Prado, L. de, *Existence, Identity, Nomenclature: a basis for Studia Variana, II: Nomen Variarum*, *Tsukuba Area Studies* 23, 2004

*QV3* = *Quaestiones Varianae, 3* = Arrizabalaga y Prado, L. de, *In Varium Heliogabatum imperium conlatum est (HA/AH 1.4): the Roman imperial succession of a.u.c. 971 = A.D. 218*, *Tsukuba Area Studies* 24, 2005

*QV4* = *Quaestiones Varianae, 4* = Arrizabalaga y Prado, L. de, *Iter Principis: Elagabal's journey from Syria to Rome?*, *Tsukuba Area Studies* 21, 2003

*QV5* = *Quaestiones Varianae, 5* = Arrizabalaga y Prado, L. de, *In Varium, The Indictment*, *Tsukuba Area Studies* 25, 2005

*RAAN* = *Rendiconti dell'Accademia di Archeologia, Lettere e Belle Arti di Napoli*

*RE* = *Real Encyclopädie der Classischen Altertumswissenschaft*

*RIC = Roman Imperial Coinage*

*TAPA = Transactions and Proceedings of the American Philological Association*

*TAS = Tsukuba Area Studies*

*Thirion = Thirion, Marcel, Le Monnayage d'Élagabal, (218-222), 1968*

*TSLL = Tsukuba Studies in Literature and Language*

*Valerius Maximus FDM = Valerii Maximi Factorum et dictorum memorabilium libri novem, C. Kempf, 2nd ed., Leipzig, 1888*