

Law, Religion, and Constitution of the Vestal Virgins

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Abstract. The aim of this paper is to put the Vestals at the center of legal, religious, and political life in the Roman republic as was done by lawyers, historians, and poets. With their virgin bodies they represented the separation of the legal, religious, and political spheres of Roman life, the domestication of raw power through division. As sovereign figures, the Vestals would wander freely among the religious world of the aedes Vestae, in which they were subject to the sacral jurisdiction of the pontifex maximus, the legal world, where they acted as personae sui iuris, and the political Rome, in which magistrates would honor them as symbols of the state, lowering their fasces before the Vestals' "public virginity." As a "living constitution" or "totem" of the republic, the Vestals stood as guardians at the border of civilization and chaos.

Keywords: Vestal virgin, virginity, gender, priesthood, unchastity, sovereignty, sacral law, constitutional law, civil law

I. THE INSTITUTIONALIZED VIRGINITY¹ OF THE VESTALS: AN INTRODUCTION

At the outset stands the mythical virginity of the Roman goddess Vesta,² the daughter of Cronus and Rhea, who did not become involved in the conflicts between the Olympians and the old gods but asked her brother Jupiter to grant her the privilege of remaining a virgin after his victory over the Titans and requested him to guard her virginity.³ Ovid's *Fasti* contains an episode where the ithyphallic god Priapus thinks the sleeping Vesta is a nymph and carnally approaches her; woken by the braying of an ass, Vesta is protected by Jupiter and remains unharmed⁴—*virgo incorrupta et intacta*. No man⁵ was permitted to approach her shrine.⁶ In Greek and Roman tradition, Vesta was

Law & Literature, Vol. 22, Issue 3, pp. 418–439. ISSN 1535-685X, electronic ISSN 1541-2601. © 2010 by The Cardozo School of Law of Yeshiva University. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Rights and Permissions website, at <http://www.ucpressjournals.com/reprintinfo.asp>. DOI: 10.1525/lal.2010.22.3.418

the original divine virgin, “the virgin goddess par excellence.”⁷ In her worship, her virginity was expressed by the fact that she was the only goddess who was not portrayed but illustrated by a flame that burnt in her unadorned and empty house.⁸ Her virginity was equated with her invisibility; her constant presence, on the other hand, was symbolized by the nonphysical flame⁹: “She is a presence, not a vision.”¹⁰ Those who approached her would not have been able to find her, because her presence could not be perceived with one’s senses. Any type of depiction, whether physical or mental, would have been an act of profanation. The perpetual virgin was a manifestation of holiness and the essence of the sacred. From the point of view of cultural anthropology, virginity is associated with a state of physical intactness, moral integrity, purity, unity, and not least, great power.¹¹ In the case of Vesta, the Roman state participated in her solitary and sovereign position as the guardian of the flame, the (state) hearth, and the *res publica*, which she personified.¹²

The priestesses of Vesta were members of an ancient cult, the origins of which, according to Roman mythical tradition, dated back to the Roman Kingdom, thus starting at the same time as Roman history itself.¹³ As a matter of fact, even the founding legends of Rome include a Vestal Virgin as the mother of the twins Romulus and Remus.¹⁴ Like the goddess whom they worshipped in her house, her successors were also virgins and were usually addressed by their contemporaries as *virgo* or *virgines*.¹⁵ Inscriptions in the Atrium Vestae reminded them of the *purissima* and the *sanctissima*.¹⁶ As in the goddess, whom they served, virginity was also their characteristic and fundamentally important feature.¹⁷ However, in contrast to their goddess, they had bodies, were tangible and visible, and moved about outside the sacred precinct. As travelers between the spiritual and secular worlds, it was even more obvious in their case than with their goddess, how precarious the state of virginity was and how easily it could be lost by its bearer. According to the myth, Vesta’s own virginity was not particularly combative, but was constantly threatened, quite contrary to that of the militant Minerva or the huntress Diana. It is a delicate state, which calls for the assistance of the most powerful god Jupiter to act as its guardian.

Therefore, one of the functions of law was, in fact, to protect the virginity of the *virgo Vestalis*—not least from its voluntary surrender by herself. The fact that the Roman state considered this one of its duties was based on the public function of the Vestals as symbols of the *res publica* (see section IV, below). Besides this extraordinary constitutional position, the law specially

prepared the virgin priestesses of Vesta for life in the religious world and gave them legal privileges that, strictly speaking, only applied in the context of sacral law (*see* section III, below). After all, the Vestals also had their own social and legal lives in the secular world, participation in which was possible in a very special way because of their position as virgins (*see* section II).

II. THE SOCIAL AND CIVIL STATUS OF A *VIRGO VESTALIS*

A. An Active Social and Political Life

Outside of the shrine of Vesta, a *virgo* was a public person. As a symbol of the Roman state she was expected to appear in public and was meant to be seen. On no account did she lead an exclusively contemplative life in monasterial seclusion.¹⁸ During her appearances outside the shrine, which occurred rather often, a Vestal was actually constantly in the public eye. These appearances were virtually orchestrated, for instance by the fact that lictors would accompany her outside the sacred precinct,¹⁹ that consuls and praetors made way for her and lowered their *fascēs* before her,²⁰ that she was the only person in the city allowed to use a two-wheeled vehicle (*carpentum*),²¹ and that she had her own seat of honor in the theater.²² Together with the magistrates and the senate, Vestals actively participated in many rural and municipal festivals and in a large number of nonrecurring ceremonies, and they regularly attended religious events for the imperial family during the Principate.²³

Their intensive participation in public political life and their proximity to those that held power at the time was symbolized not least by the fact that the shrine of Vesta was located directly beside the forum, which was the center of political life in Rome.²⁴ By the end of the Roman Republic their link with the *princeps* was institutionalized insofar as he also held the office of *pontifex maximus*. The *virgines*, however, also maintained close personal relationships with the imperial household. On one hand this originated from the fact that the Vestals were recruited from families of a higher social standing, both during the Republic and under changed societal circumstances during the Principate.²⁵ On the other hand, prominent women from the imperial family were granted the same rights as those reserved for Vestals.²⁶ In Roman day-to-day life, their strong public presence probably greatly influenced public perception

in favor of the priestesses and the *res publica* they symbolized. Theirs was a “public virginity” with a highly representative political function, which cannot be adequately explained by societal privileges²⁷ or the concept of granting privileges on religious grounds.²⁸

This is further confirmed by the fact that, in times of crisis, the political circles made sure to have the support of the Vestals. They were deployed on delicate diplomatic missions, often with the continued existence of the Roman state at risk.²⁹ However, on these missions they did not have any influence or powers as regards the contents of the talks, but conveyed messages and put forward petitions. Consequently, they were not politicians as such, although their appearance as a state symbol was highly political. An episode taken from the *historia augusta* illustrates just how big the symbolic potential of the *virgines Vestales* was. In AD 193, the senate contemplated sending Vestals to Septimius Severus to convince him to release the fleet he was holding. However, fearing that the “barbarian” troops consisting of legions from the Rhine and Danube led by Severus, who would later become emperor, may not understand the importance of the priestesses, the senate abandoned the idea.³⁰ In missions such as this, the symbolic power of the *virgines Vestales* would have been consciously utilized.

Two further spheres of activity of the Vestal Virgins were part of both the political and legal worlds and characterized them as a group of personalities who were very important to the Roman community and greatly trusted. For example, they acted as state notaries and maintained an archive of important documents of public law and state policy, including contracts signed by the civil war parties of the Roman Republic³¹ as well as the last wills and testaments of Caesar,³² Antonius,³³ and Augustus.³⁴

In addition, the Vestal Virgins were the only women in Rome permitted to appear in court and give testimony in person.³⁵ By contrast, the pleas submitted by women who did not belong to the cult of Vesta were read in court, probably to enable legal guardians to monitor the testimony of their wards³⁶; the women themselves did not appear, neither did they speak in court. “The Vestals alone of all Roman women actually spoke in open court.”³⁷ The Vestals appear to have availed themselves of their right mainly in court proceedings with political content,³⁸ but they could not be forced to do so. Tacitus tells the story of a *virgo Vestalis* called Urgulania who was invited to submit her testimony to the senate and refused to appear. She was subsequently questioned by a praetor at home, although it was an old custom to hear Vestal

Virgins on the forum and in court when their testimony was required (*cum virgines Vestales in foro et iudicio audiri, quotiens testimonium dicerent, vetus mos fuerit*).³⁹ The reason given was that Urgulania's power was too great for the state (*ceterum Urgulaniae potentia adeo nimia civitati erat*). Therefore, the Vestals, like their male priest colleagues, could not be put under oath by the praetor.⁴⁰ The very fact that they personified the state meant that they were not subject to its means of coercion but were as sacrosanct or "sovereign" as the state itself. This is an aspect of public virginity that will, in the context of an emerging nation in the early modern period, be differentiated further in the state body of the virgin Queen Elisabeth I of England.⁴¹

B. A "Sovereign" Status in Civilian Law

In his *Noctes Atticae*, the Roman writer Aulus Gellius⁴² quoted from the commentary on the Twelve Tables by the jurist Labeo and his treatise on the position of the *virgines Vestales* according to civil law⁴³:

Furthermore, in the Commentaries on the Twelve Tables compiled by Labeo we find this passage: "A Vestal virgin is not heir to any intestate person, nor is anyone her heir, should she die without making a will, but her property, they say, reverts to the public treasury. The legal principle involved is an unsettled question."⁴⁴

He could not understand the fact that once a Vestal Virgin had become a priestess—that is, once she had been ritually captured (*captio*) by the *pontifex maximus*⁴⁵—she could neither become an intestate heiress nor bequeath anything without drawing up a will. He could not identify the particular law that would have been the basis for this. It was hardly a case of Labeo not being aware of the civil law concerning Vestals. The hypothesis outlined here is that, if he was indeed at his wits' end, it was because he had encountered the very gap that characterised the beginning and the end of the legal existence of a Vestal.

The following quote contains the background to what Labeo must have known about the legal status of the *virgines Vestales* according to civil law: "Now, as soon as the Vestal virgin is chosen, escorted to the House of Vesta and delivered to the pontiffs, she immediately passes from the control of her father without the ceremony of emancipation or loss of civil rights, and acquires the right to make a will."⁴⁶ From the moment that a Vestal Virgin was captured by the *pontifex maximus*, who uttered a particular phrase,⁴⁷ then led

her into the Atrium Vestae and passed her into the care of the priestesses—that is, from the moment that the six- to ten-year-old girl⁴⁸ became a *virgo Vestalis*, she immediately and without any formal emancipation rite and without any limitation to her rights,⁴⁹ left paternal control⁵⁰ and became able to leave a will. This meant that the Vestal was taken out of the legal connection with her family. The violent aspect of this process is expressed by the term *captio*. The girl was wrested from her father's control, a ritual representation of the conflict between the state and the authority of the *pater familias* over the girl.⁵¹ With the termination of a father's authority over his daughter,⁵² she became a legal entity *sui iuris*, and it must be added, she did not come under the so-called guardianship of women (*tutela mulierum*). Whereas other Roman women, from the point of view of civil law, only existed in connection with a man,⁵³ either as a wife subject to her husband's control, as a daughter of a household, or as a legal entity *sui iuris* with a guardian, this did not apply to a Vestal. When it came to drawing up her will, she was not subject to the restrictions otherwise imposed on testatrices by the Lex Voconia passed in 169 BC⁵⁴ (which stipulated that, after leaving the family union, a woman was excluded only from active and passive intestacy), nor was she prohibited from dispensing her own funds among living persons. As far as one can tell, the *virgines Vestales* did indeed avail of these rights and actively participated in legal transactions.⁵⁵ The income they gained from such private legal transactions did not flow into the coffers of the college of priests of Vesta (*arca*).⁵⁶

This unusually liberated legal status of the Vestals has to date been interpreted mainly as representing deliverance from male control over the female body, which is “deeply rooted in the cultural foundations” of patriarchal societies.⁵⁷ It was even seen by some as a kind of legal masculinization of the Vestals⁵⁸ or even as an expression of their “hermaphrodite nature.”⁵⁹ However, both theories fail to take into account the fact that the virginity of the Vestals was not a concept that would have even been suitable for the description of the legal status of a man or a male priest. Vestals were not only female with regard to their sex, but their gender role was also constructed according to the terms of their task of guarding the state hearth.⁶⁰ Other authors have seen the unlimited legal competence of a *virgo Vestalis* as merely a “side effect of the act of freeing her from all masculine ownership.”⁶¹

This view, however, does not give sufficient credit to the specifically constitutional functions of the Vestals. As a status symbol, a Vestal stood for the freedom of the *res publica*, particularly during the time of the (early) Republic.

Therefore, it would not have been an option to restrict the civil rights of a public person like a Vestal: on one hand because as a virgin she did not share the legal *infirmetas sexus* of a Roman matron, and on the other hand because as the personification of the Roman state, she could claim sovereignty and uniqueness of position. However, if she died while still in office and she had not otherwise willed her estate, it passed to the state.

Labeo would definitely have been aware of that, when in the text passage of the *Noctes Atticae*, where Gellius dealt with the *captio*,⁶² he wondered about the (inheritance) legal position of the *virgines Vestales*: “The legal principle involved is an unsettled question.”⁶³ He must also have known that the *fiscus* did not yet have the right to inherit ownerless estates (*bona vacantia*) at the time of the Twelve Tables.⁶⁴ However, he was also aware of the fact that the circumstances of a Vestal were not regulated by the principles of civil law at the beginning or at the end of her existence as a *virgo*. Contrary to the historians Dionysius, Livius, and Plutarch, or to the poet Ovid, Labeo as a jurist was not in a position to provide a record or a narrative interpretation of the uniqueness of the Vestals⁶⁵; he could only deduce it from the law itself. His legal arguments ended where law ended—or began. Crucially, this applied in the case of the Vestals.

Captio, the act that established her status as a virgin priestess, stood outside of the law and resembled a warlike act: as taken prisoner in war (*veluti bello capta*), as Gellius writes about the capture of a new *virgo Vestalis*.⁶⁶ This not only referred to the violent extraction of the candidate from the family union. The inauguration of each Vestal, in fact, symbolically reenacted the founding of the Roman Republic. It signified the transition from a state of tyranny before the law was introduced, to a new order that was regulated by the law. In other words, law began with the founding of the Roman Republic. The act itself, however, could not be grasped with legal instruments; it lay within the sacred sphere. The situation was similar at the end of her existence as a symbol of the state. As such, she was identical with the *res publica*. Therefore, in the case of her (intestate) death, strictly speaking, no legal succession by way of inheritance took place. The state did not merely fill a vacuum caused by the legal extraction of a *virgo Vestalis* from her family.⁶⁷ It was, rather, a case of creating a legal identity. Labeo captured the process very clearly: “One says that her estate is drawn back to the state” (*sed bona eius in publicum redigi aiunt*). This construction was by no means a legal one, which explains why the jurist was unable to explain it.

III. THE STATUS OF THE VESTALS IN SACRAL LAW

With the creation of the Republic, the mythical narrative tradition of the Roman historians not only saw the beginnings of a new law, the *ius civile*, it also introduced a division that would be crucial to Roman society: the division of law, religion, and politics.⁶⁸ This separation meant that power could be tamed.⁶⁹ This was nowhere as clearly visible as in the *persona* of the *virgo Vestalis*, where the three areas converged. On one hand it symbolized unity in the division. As a sovereign entity crossing the boundaries between the different areas of society, she epitomized wholeness, the Roman *res publica*. On the other hand, the division and differentiation between politics, law, and religion personified by the Vestal was illustrated by the fact that various sets of rules applied to her, depending on which sphere she happened to be moving in. In the political sphere, she acted as a public person and as a state symbol; in matters of civil law, she was a person with full capacity to act; and in the area of religion, she was integrated in the sacred order of the temple and in the organizational structure of the Roman colleges of priests.

The six acting Vestal priestesses constituted the only female college and were in charge of the state cult.⁷⁰ In a sense, they were the all-rounders among the sacerdotes. After all, unlike the *flamines*, they were not responsible for the cult of any deity, nor did they maintain the special leadership knowledge of the pontifices.⁷¹ Within the shrine a *virgo Vestalis* had her duties as a priestess, which included most importantly guarding the fire⁷² and the *sacra* in the temple, cleaning the *aedes Vestae* according to specific religious rules, making religious agents (*mola salsa*,⁷³ *suffimenta*) and performing religious acts at periodically staged festivals.⁷⁴ Not a lot is known about the practical organization of these responsibilities. It seems plausible, however, that the Vestals had staff who helped them perform these tasks according to the instructions of the *Maiores* and the high priestess (*virgo Vestalis maxima*).⁷⁵ Disciplinary powers and the right to punish, on the other hand, were in the hands of the *pontifex maximus*. It was his task to punish Vestals by whipping (*castigatio*) if their duties were neglected, for instance, in the event of the fire being extinguished⁷⁶ or if anything happened that would violate the shrine of the goddess.⁷⁷

The sacral jurisdiction retained by the *pontifex maximus* over a neglectful Vestal was likened by Theodor Mommsen to the function of the *pater familias* as the domestic judge over his daughter,⁷⁸ and described the relationship between a Vestal and the state as having been identical with the guardianship

of a husband over a wife in a *manus*-free marriage.⁷⁹ This view, however, not only negates her status as a virgin—which according to civil law was not, in fact, subject to the *tutela*⁸⁰—but also incorrectly mixes the spheres of civil and sacral law of the Vestals. Certain authors have more recently made similar statements, for instance: “On the other hand, Vestals were subject to the jurisdiction of the *pontifex maximus*. This relationship of power, unique in Roman sacral law, broke the much-praised [civil-law] privileges.”⁸¹ This, however, is incorrect. After all, the sovereign status of a Vestal Virgin in private legal relations was a consequence of her constitutional and political function, and thus actually independent of her sacral religious links. The outside world did not encroach on the *aedes Vestae*. The fact that hierarchies existed within the sacred realm and that there were legal penalties for breaches of the sacral duties did not diminish a Vestal’s sovereign position in the secular world.

The only trait that had an impact in law, politics, and religion and that allowed a Vestal to move freely among those spheres, again, was her virginity. An example may serve to illustrate this: Plutarch recounts an incident where a man who had been condemned to death was pardoned because he coincidentally encountered a Vestal Virgin on the way to his place of execution.⁸² This is an example of the powerful magical religious aura of a *virgo Vestalis* impacting the secular legal sphere. However, the pardon itself was not an act of jurisdiction but a phenomenon that occurred outside the law. The fact that she could suspend the law is best explained by the “unexploited life-giving powers”⁸³ of a *virgo*. Her virginity created structural linkages among the religious, political, and legal spheres. This brings us back to the central issue: the untouched body of a Vestal represented the Roman *res publica* in its entirety.

IV. THE STATUS OF THE VESTALS IN CONSTITUTIONAL LAW

A. The *Virgo Vestalis* as the Embodiment of the *Res Publica*

The Vestals represented the living Roman Republic. Their inauguration into the cult of Vesta, the *captio*, was a mythical and ritual process, both violent and sovereign, allowing the *res publica* to experience an immaculate new beginning. In reality, this was a reinterpretation of a cult that was much older than the Republic.⁸⁴ In fact, the *Lex Papia*, a law dating from the third century BC,

originally decreed that a new *virgo Vestalis* had to be chosen by lot at an informal people's assembly (*contio*) from a group of twenty virgins who had to be healthy and have come from families of high social standing.⁸⁵ Because of a latent lack of candidates—it meant the loss of a daughter that may otherwise have been useful in the political marriage market⁸⁶—it was later deemed sufficient to have only one suitable candidate.⁸⁷ The *captio* executed by the *pontifex maximus* always followed the draw described⁸⁸ and symbolized on a ritual level the break in the continuity of the institution. It was a creative act dividing time into a before and after, which repeated itself with each new capture of a Vestal and, with this ritual perpetuation, contributed to the promotion of identity and collective self-assurance of the Roman *civitas*.⁸⁹

By means of this *Mythomotorik* (which may be translated as “the dynamics of myth”)⁹⁰, a Vestal was turned in the cultural minds of the Romans into the embodiment of the *res publica*. She was already bound to this symbolic function by the words uttered by the *pontifex maximus* during the *captio*: “I take thee, Amata, as one who has fulfilled all the legal requirements, to be priestess of Vesta, to perform the rites which it is lawful for a Vestal to perform for the Roman people, the Quirites.”⁹¹ According to this, she had to perform the sacred acts (*sacra*) following the regulations (*ius*) as stipulated in the so-called *optima lex*, which outlined her duties. Following her *captio*, which had occurred outside the law, the state religious tasks of a *virgo Vestalis* were regulated by (constitutional) law. Therefore, her duties were not confined exclusively to the religious sphere (*fas*). At the same time, the use of the term *optima lex*, which also appeared in the election phrases of the republican magistrates,⁹² referred to the exceptional legal status of a Vestal. She had dual status because she acted in the boundary between constitutional and religious law.⁹³ In her sacral acts, she also always represented the entire Roman people. She thus became something akin to a totem of Rome.⁹⁴

From the point of view of symbolism, Vestal Virgins dialectically corresponded with another female totem of Ancient Rome. I am referring to Lucretia, who was raped by Sextus Tarquinius, one of the sons of the last Roman king, and subsequently committed suicide, thereby clearing the way for a political and legal new beginning in the form of the Roman Republic. The historians Dionysius of Halicarnassus and Livius told the story of Lucretia as well as that of the origins of the Roman Republic. Fögen was the most recent scholar to interpret the sacrifice of Lucretia as a sovereign act by a legally innocent fallen woman who, with her act of atonement, eliminated her own

defilement. At the same time, however, her violated body also stood for the tyranny of the kings.⁹⁵ Lucretia, of course, was not a virgin. She was the wife of Collatinus. The chastity of a Roman matron was somewhat different from virginal purity. As a matron Lucretia's body was "owned" by her husband, as was the Roman *regnum* by its king. But the emerging republic was constructed as something new, pure and independent, and therefore could not be possessed by anybody. It had to be symbolized by a virgin.

On one hand we encounter a dead matron representing the expired barbarianism of the Roman *regnum*. On the other hand we see six *virgines Vestales*, each of whom individually embodies the unity of the living Roman Republic as an institution⁹⁶ and who, like the Republic, are called upon to stand for law and civilization *per se*. The fates of Lucretia and the Vestal virgins overlap in the death of the former and the *captio* of the latter, which is similar to her rebirth as a priestess. The suicide of one and the violent capture and installation of the other were sovereign acts outside the law that facilitated the break, the transition from one form of government to another in the cultural memory of the Romans. At the same time, both female figures, Lucretia and the Vestals, guaranteed continuity in their existence as matron and virgin.

B. *Incestus* of the Vestals Disrupting the State and Religious Order

1. The Elements of the Offense of *Incestus* Like the monarchy, it was also possible for the Republic to fall by a Vestal, who represented the Republic, losing her virginity. The crucial factor was neither the physical process of defloration⁹⁷ nor the offense of an involuntary loss as in the rape of Lucretia.⁹⁸ The offense of *incestus*, rather, was simply based on the concept of unchastity (*incastus*), that is, the voluntary surrender of her position as a *virgo* by becoming sexually active.⁹⁹ It did not refer to familial sexual activity. *Incestus* was a religious capital offense (*crimen incesti*), which involved ritual impurity as a breach of *ius sacrum*.¹⁰⁰ By committing the offense, a Vestal lost her religious qualification because she was considered to have desecrated the cult and disrupted the sacred order, the *pax deorum*, which according to tradition Vesta herself had once called upon her brother Jupiter, the most powerful god, to keep. That could only mean one thing: *La vestale incesta n'était plus tout à fait une vestale*, "The Vestal Virgin who became unchaste was by no means a Vestal Virgin anymore."¹⁰¹

It was a similar situation from the point of view of constitutional law. An unchaste Vestal not only ceased to be a symbol of the Roman Republic, her impure state actually placed the Republic in great danger. A Vestal's virginity was a kind of insurance guaranteeing the welfare of the state.¹⁰² The opposite conclusion could also be drawn: if the *res publica* was prospering, which in Rome mainly meant military success, it was a sure sign that the Vestals were chaste and were performing their religious tasks correctly. This link also remained valid during the Principate. It is illustrated by a famous incident described in the letters of Pliny the Younger, where the Vestal Cornelia, found guilty of *incestus in absentia* and without a hearing by the Emperor and *pontifex maximus* Domitian, protested against her arrest: "How can Caesar think me guilty of incest [unchastity], when he has conquered and triumphed after my hands have performed the sacred rites?"¹⁰³ Her defense, which referred to the military successes of the emperor, did not work for her. As Pliny recounted immediately thereafter, she was subjected to the procedure intended for unchaste Vestals: she was buried alive.¹⁰⁴

The function of this procedure is briefly outlined here¹⁰⁵: One must take into account the unsettling disorder of the constitutional order, which had to be reinstated thus. Equal to the profound disruption of religious life, the unchastity of a Vestal also plunged the constitutional sphere into chaos. This meant nothing less than a backward slide into the barbarianism of the Roman Kings and the complete loss of civilized order, where law, religion, and politics were no longer separated from each other like they had been when the Vestal's virginity had still been intact. It was this separation, after all, that a Vestal and her virgin body stood for.¹⁰⁶ Therefore, her unchastity touched upon a taboo.¹⁰⁷ The loss of virginity violated the very *incestus* ban, which was seen as literally constituting the transition from the natural state to the civilized state.¹⁰⁸ The fact that the Vestal voluntarily gave up her status as a *virgo* on a constitutional level fulfilled the concept of treason against Rome. This fact alone constitutes the criminal content of her *incestus*.¹⁰⁹ The idea voiced in the past by various scholars¹¹⁰ that the unchastity of a Vestal simultaneously constituted the offense of secular *incestus* is not convincing because the *incestus* of a Vestal was tried by the College of Pontiffs¹¹¹ and not by the *comitia*, which would usually have been in charge of such offenses.¹¹²

2. Proceedings Against an Unchaste Vestal The *incestus* of a *virgo Vestalis* did not come under the jurisdiction of the Roman *res publica*,¹¹³ first

because it was a “religious offence of endangerment” and second because the state could hardly sit in judgement of its own symbol.¹¹⁴ In other words: “She transcended the status of a *civis* as long as she was a Vestal.”¹¹⁵ The College of Pontiffs was in charge, presided over by the *pontifex maximus* acting as a “judge and arbiter of things divine and human” (*iudex atque arbiter rerum divinarum humanarumque*).¹¹⁶ He was not bound by the same restrictions that applied when a Vestal was dealt with by a panel of judges of the *res publica*.¹¹⁷ However, the proceedings were not merely religiously motivated; in other words, it was not an examination of portents (*procuratio prodigiorum*).¹¹⁸ It is quite likely that the unchastity of a Vestal was seen by her contemporaries as a perverted or even monstrous phenomenon.¹¹⁹ However, the *crimen incesti* itself was not a true *prodigium* but rather a calamity that was announced by bad omens.¹²⁰ Moreover, *prodigia* were examined by the *decemviri* and the *haruspices*,¹²¹ whereas the *incestus* of a Vestal Virgin was always dealt with solely by the College of Pontiffs. After all, *prodigia* were disposed of outside the city limits or by sewing them into a sack that was thrown into the sea.¹²² Unlike an unchaste Vestal, they were never buried within the boundaries of Rome.¹²³

The proceedings before the College of Pontiffs was as ambivalent from a legal point of view as its subject, the *incestus* of a *virgo Vestalis*. On one hand it had the features of a *procédure de droit public*¹²⁴ such as the fact that the priests ordered the cessation of the duties of the Vestal concerned during the course of the trial (*sacris abstinere*),¹²⁵ that the trial was held in the presence of the Vestal, and that she was usually granted the right to be heard.¹²⁶ The sources also mention lawyers acting for the accused.¹²⁷ Finally, the pontifices appear to have tried the cases as a truly collegial panel of judges.¹²⁸ Their decisions were supported by all the priests involved and announced in the name of the entire panel.¹²⁹

On the other hand, the proceedings were also accredited with magical religious elements. Historians recount incidents reminiscent of the concept of trial by ordeal: for instance, in the case of Aemilia, a Vestal accused of *incestus*, who was said to have reignited the flame in the *aedes Vestae* by saying a prayer to the goddess and then simply placing her veil on the altar¹³⁰; or when the accused Tuccia was exonerated by submerging a sieve in the River Tiber and bringing it back to the shrine of the goddess without having lost any of the water¹³¹; or when the *virgo* Claudia was exculpated by freeing a ship that had run aground on a sandbank by saying a prayer and then using only her belt to

haul the ship back to open water.¹³² It is quite obvious that these events did not actually take place as they were conveyed. They are, however, indicative of the latent presence of the supernatural in the proceedings. The Vestals were believed to have the power, based on their own magical religious aura,¹³³ to exonerate themselves from the accusation of having committed *incestus*. The exculpation was achieved by the very powers ascribed to a virgin.

The *incestus* proceedings took place not only *à la frontière du ius publicum et du ius sacrum* (on the edge of public law and sacral law),¹³⁴ but also on the bigger stage of the *res publica*.¹³⁵ Their political dimension has been quite extensively researched.¹³⁶ The breaches committed by Vestals were tried at times of crisis both from without¹³⁷ and from within.¹³⁸ Basic societal issues were raised and power struggles among the ruling families were decided during these trials.¹³⁹ In cases where a settlement could be reached on another level, a Vestal could sometimes be “acquitted.”¹⁴⁰ If no agreement was reached, the *incestus* proceedings turned into societal and political points of culmination that ended with the conviction of a Vestal, providing a release for the community.¹⁴¹ The *virgo incesta* was symbolically charged with breaching the religious and constitutional order, so that it could be restored by her “sacrifice.”¹⁴² Finally, in a patriarchal society such as the Roman state, gender components also played a part in such events: “As is demonstrated by the example of the worship of Vesta, the male collective acts out its own cohesion, its ideas of integrity and purity on the female body.”¹⁴³

3. The Sanctions Imposed on the Unchaste Vestal The conciliatory act, by which civilization could be restored and the *res publica* could have a new beginning in accord with the gods, was to bury the *incesta* alive.¹⁴⁴ Once again, a ritual *captio* took place: the fallen virgin was once again captured and handed back to the earth, which symbolized her chthonic deity.¹⁴⁵ The point of the procedure was not primarily punishment (*poena*). The idea was, rather, to atone for the collective misconduct of the *res publica*. The unchaste Vestal was physically removed from the face of the earth by handing her back to the earth, which had been desecrated by her behavior, as Ovid wrote: “So the unchaste die, being entombed in what they / Have violated: since divine Earth and Vesta are one.”¹⁴⁶ At the same time she was erased from the collective memory of the Romans by ordering her *damnatio memoriae*.¹⁴⁷

The entombment did not actually correspond with the carrying out of a death sentence.¹⁴⁸ The transition from life to death of the unchaste Vestal was

not actively brought about. She was passed to the mercy of her goddess and to the earth of her *patria*. This took into account her sovereign status, which continued even after her death. In other words, she was an example of an impure entity, whose killing would go unpunished but who could not be sacrificed in a religious sense (*homo sacer*).¹⁴⁹ Therefore, it is unlikely that a *virgo incesta* was thrown from the Tarpeian Rock, which was the usual punishment for convicted traitors, although some scholars believe this to have been the case.¹⁵⁰ This would, after all, have required someone laying a hand on her.¹⁵¹ From the point of view of historical development, being buried alive, on the other hand, is more closely related to the sanction imposed on another breach of taboo, parricide (*parricidium*). The punishment of the *culleus* clearly had the same function as being buried alive, “to remove all trace of an unholy and polluting object.”¹⁵²

Both life and death of a *virgo Vestalis* represented the precarious state of the *res publica*, even of Roman civilization as a whole. The separation of law, religion, and politics guaranteed the lasting success of the Roman political system. However, inherent components were also the constant threat of collapse of the constitutional order and the backward slide into the tyrannical past. Vestal Virgins stood at the boundary between chaos and order. Or, in the words of Mary Beard: “The Vestals ask us to ask what it is to be Roman, what Rome is.”¹⁵³

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1. Ines Stahlmann, *Der gefesselte Sexus: Weibliche Keuschheit im Westen des Römischen Reiches* (Berlin: Akademie, 1997), 117.
 2. Jean-Joseph Goux, “Vesta, or the Place of Being,” 1 *Representations* 91 (1983): “The basic identity of the Greek Hestia with the Roman Vesta is generally recognized.” See also Carl Koch, “Vesta,” in *Paulys Realencyclopädie der classischen Altertumswissenschaft*, 2nd series, 16th semivolume: *P. Vergilius Maro-Vindeleia*, Konrat Ziegler & Walther John eds. (Stuttgart: Druckenmüller, 1958), cols. 1718, 1719.
 3. Hesiod, *Theogonie*, 4th ed., Albert von Schirnding ed. & trans. (Mannheim: Artemis & Winkler, 2007).
 4. Ovid, *Fasti*, 6, 319–48; after Publius Ovidius Naso, *Fasti, Festkalender*, 3rd ed., ed. Niklas Holzberg (Mannheim: Artemis & Winkler, 2006).
 5. Unless he was a priest or even the *pontifex maximus* personally; see Goux, *supra* note 2, at 106 n.8.
 6. Ovid, *supra* note 4, at 6, 254: “Te, dea, nec fueras aspicienda viro.” See also Henri Jordan, *Der Tempel der Vesta und das Haus der Vestalinnen* (Hildesheim: Weidmannsche Verlagsbuchhandlung, 1886), 70.

7. Goux, *supra* note 2, at 94.
8. The shrine of Vesta was not a temple but a simple dwelling for the goddess and her priestesses (*aedes Vestae*). There was no inauguration (*inauguratio*) by augurs: Gellius 14, 7, 7. On this, see Angelo Brelich, *Vesta* (Zürich: Rhein, 1949), 42. The round architecture of the building was reminiscent of the construction of tombs. K. R. Prowse, "The Vestal Circle," 14 *Greece & Rome* 174ff. (1967), calls it a Vestal Circle. On the state of the excavations, see Russell T. Scott, *Eius Virtutis Studiosi: Classical and Postclassical Studies in Memory of Frank Edward Brown (1908–1988)*, Russell T. & Ann Reynolds Scott eds. (Washington: National Gallery of Art, 1992), 161ff.
9. Ovid, *supra* note 4, at 6, 291–98.
10. Goux, *supra* note 2, at 93.
11. On the Vestals, see Robin Lorsch Wildfang, *Rome's Vestal Virgins: A Study of Rome's Vestal Priestesses in the Late Republic and Early Empire* (London: Routledge, 2006), 51ff.; in general, see Anke Bernau, *Virgins: A Cultural History* (London: Granta, 2007); for an ethnological point of view, see Jane Schneider, "Of vigilance and virgins: Honor, shame and access to resources in Mediterranean Societies," 10/1 *Ethnology* 1–24 (1971).
12. On the Vestals, see Holt N. Parker, "Why were there Vestals Virgins? Or, the chastity of women and the safety of the Roman state," 125 *American Journal of Philology* 563–601 (2004); and more generally, Sherry B. Ortner, "The Virgin and the State," 4 *Feminist Studies* 3:19–35 (1978).
13. Namely during the reign of the second King of Rome, Numa, according to the historians Dionysius of Halicarnassus, ant. 2, 64, 5, 2, 69; and following him Plutarch, "Numa" 9, 9–11, 3; Livy 1, 20, 3. It is not quite clear whether it is justified to view Numa as the founder of the cult of Vesta (Plutarch, *id.* at 9ff.), or whether he merely reformed it (Livy at 1, 20, 3; Dionysius of Halicarnassus ant. 2, 65ff.), in which case it would be even older; see Stahlmann, *supra* note 1, at 138. The earliest historical accounts of Vestals and their historical practices, however, date from the mid-first century BC. See Hildegard Cancik-Lindemaier, *Frauenwelten in der Antike. Geschlechterordnung und weibliche Lebenspraxis*, Thomas Späth & Beate Wagner-Hasel eds. (Stuttgart Weimar: Metzler, 2000), 111, 112.
14. Dionysius of Halicarnassus ant. 2, 25, 6. See Albrecht Koschorke, Susanne Lüdemann, Thomas Frank, & Ethel Matala de Mazza, *Der fiktive Staat: Konstruktionen des politischen Körpers in der Geschichte Europas* (Frankfurt: Fischer, 2007), 36; Melissa M. Matthes, *The Rape of Lucretia and the Founding of Republics* (University Park: Pennsylvania State University Press, 2000), 25ff.; Gerhard Radke, *Zur Entwicklung der Gottesvorstellung und der Gottesverehrung in Rom* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1987), 263ff.
15. The official title of the office was *sacerdos Vestalis* or *sacerdos Vestae*. It was, however, rarely used: Nina Mekacher, *Die vestalischen Jungfrauen in der römischen Kaiserzeit* (Wiesbaden: Reichert, 2006), 20ff.
16. In the third century AD, the virgo Vestalis maxima Flavia Publicia, the high priestess of Vesta, had, among others, the title *sanctissima et piissima ac super omnes retro religiosissima purissima castissimaque*: Regula Frei-Stolba, "Flavia Publicia, virgo Vestalis maxima. Zu den Inschriften des Atrium Vestae," in *Imperium Romanum: Studien zur Geschichte und Rezeption. Festschrift für Karl Christ zum 75.*, Peter Kneissl & Volker Losemann eds. (Stuttgart: Steiner, 1998), 233, 241. Stahlmann, *supra* note 1, at 140; Numa Denis Fustel de Coulanges, *Der Antike Staat* (Stuttgart: Klett-Cotta, 1981), 196 and n.68 with further references from Roman literature.
17. Wildfang, *supra* note 11, at 51: "Virginity was at the very centre of the Vestals' religious cult. Whatever else these priestesses were and whatever else they did, they were virgins, and their cult had as one of its central aspects the preservation of this virginity."
18. Previous views to the contrary (for instance Münzer, *infra* note 139, at 47–67) cannot be confirmed by the ancient sources and instead suggest their origins in Christian conceptions of religious life; the same is true of the statement that the Vestals lacked spirituality compared to medieval mystics: Hildegard Cancik-Lindemaier, *Von Atheismus bis Zensur: Römische Lektüren in kulturwissenschaftlicher Absicht*, Henriette Harich-Schwarzbauer & Barbara von Reibnitz eds. (Würzburg: Königshausen &

- Neumann, 2006), 245, 274. Refuting this concept, see Mary Beard, "Re-reading (vestal) virginity," in *Women in Antiquity: New Assessments*, Richard Hawley & Barbara Levick eds. (London: Routledge, 1995), 175 n.2: "flirts with the image of the nun."
19. Seneca Contr. 1, 2, 3; Plutarch Num. 10, 3.
20. Seneca Contr. 6, 8.
21. CIL I 593 = ILS 6085Z. 62 (Lex Iulia Municipalis); Prudentius C. Symm. 2, 1086.
22. Sueton Aug. 44; Tacitus Ann. 4, 16; Cicero Mur. 73.
23. An instructive overview of the many public engagements of the Vestals is given by Mekacher, *supra* note 15, at 62ff., 69ff., 77ff.; "Weg vom Herd? Zur Integration der Vestalinnen in die Kaiserfeste des frühen Prinzipats," in *Les femmes antiques entre sphère privée et sphère publique*, Regula Frei-Stolba, Anne Bielman, & Olivier Bianchi eds. (Bern: Lang 2003), 153–71. See also John Scheid, "La flamme de Jupiter, les Vestales et le général triomphant. Variations romaines sur le thème de la figuration des dieux," 7 *Le temps de la réflexion* 213, 224 (1986); and Marleen B. Flory, "The integration of women into the Roman Triumph," 47 *Historia*, 489, 490 (1998), on the participation of Vestals in triumphal marches.
24. Mekacher, *supra* note 15, at 197.
25. On the social backgrounds of the Vestals, see Marie-Thérèse Raepsaet-Charlier, "L'origine sociale des vestales sous le Haut Empire," in *Mneme Georges. A. Petropoulos (1897–1964)*, vol. 2, eds. Arnaldo Biscardi, Joseph Modrzejewski, Hans Julius Wolff, & Panagiotis Dimakis (Athens: Ed. Sakkoulas, 1984), 251–70; following her, Mekacher, *supra* note 15, at 103. Augustus' making priesthood accessible to the daughters of freedmen was probably prompted not only by a lack of suitable candidates, but also by the fact that the social structures of the families close to the ruling classes had changed during the transition from the Republic to the Principate. The emperor also adapted other areas of the legislation governing the Vestals to suit the requirements of the Principate. According to Cassius Dio 56, 10, 2, he granted the *ius liberorum* to the Vestals to protect them from the legal disadvantages they would have as unmarried and childless women if his own matrimonial law was applied. On this subject, see Ariadne Staples, *From Good Goddess to Vestal Virgins: Sex and Category in Roman Religion* (London: Routledge, 1998), 145.
26. Richard Bauman, *Women and Politics in Ancient Rome* (London: Routledge, 1992), 125, with regard to Augustus' widow Livia, who after his death was granted the privilege of being accompanied by a lictor as well as a theater seat among the Vestals. See also Sarah B. Pomeroy, *Frauenleben im klassischen Altertum* (Stuttgart: Kröner, 1985), 334. Livia was depicted on coins wearing Vestal dress. Akin to a virgin, a widow also represented femininity free of domination. On the historical anthropological development of this parallel and on the differences, see Michel Verdon, "Virgins and Widows: European kinship and early Christianity," 23 *Man New Series* 488 (1988).
27. Stahlmann, *supra* note 1, at 140.
28. Cancik-Lindemaier, *supra* note 18, at 245; Cancik-Lindemaier, "Kultische Privilegierung und gesellschaftliche Realität: Ein Beitrag zur Sozialgeschichte der virgines Vestae," 41 *Saeculum* 1 (1990).
29. Tacitus Hist. 3, 81; Cassius Dio 65, 18, 3. See also Cancik-Lindemaier, "Privilegierung," *supra* note 28, at 1, 7ff., on the "politics with Vestals according to Cicero."
30. SHA Did. 6, 5.
31. Appian Civ. 5, 72f.; Cassius Dio 48, 12; 48, 37; 46, 2.
32. Sueton Iul. 83, 1.
33. Plutarch Ant. 58, 47.
34. Tacitus Ann. 1, 8; Suet. Aug. 101, 1; Cassius Dio 56, 32, 1. See also other sources cited by Thomas C. Worsfold, *The History of the Vestal Virgins of Rome* (London: Rider, 1934) 46ff.
35. Gellius 7, 7, 2.
36. Wildfang, *supra* note 11, at 69.
37. *Id.*

38. Cicero Cael. 34; Sueton Tib. 2, 4. On this subject, see Stahlmann, *supra* note 1, at 140.
39. Tacitus Ann. 2, 34.
40. Gellius 10, 15, 31 quoted from the praetorian edict: "Sacerdotem Vestalem et flaminem Dialem in omni mea iurisdictione iurare non cogam." However, see Georg Wissowa, *Religion und Kultus der Römer*, 2nd ed. (München: Beck, 1912, repr. 1971) 507 and n.3 with further references.
41. Robert Valerius, *Weibliche Herrschaft im 16. Jahrhundert: Die Regentschaft Elisabeths I. zwischen Realpolitik, Querelle des femmes und Kult der Virgin Queen* (Herbolzheim: Centaurus, 2002) 239ff.; Linda Woolbridge, "Palisading the Elisabethan Body Politic," 33 *Texas Studies in Literature and Language* 327 (1991); John King, "Elisabeth I: Representations of the Virgin Queen," 43 *Renaissance Quarterly* 30 (1990); more generally Koschorke, *supra* note 14, at 103ff. The Christian cult of the Virgin Mary, on the other hand, is rooted in the contemplative sacred side of virginity: Chris Maunder ed., *Cult of the Virgin Mary* (London: Burns & Oats, 2008); Stephen Benko, *The Virgin Goddess: Studies in the Pagan and Christian Roots of Mariology* (Leiden: Brill, 1993). On other forms of reception, see Christiane Schalles, *Die Vestalin als ideale Frauengestalt: Priesterinnen der Göttin Vesta in der bildenden Kunst von der Renaissance bis zum Klassizismus* (Göttingen: Cuvillier, 2003).
42. Gellius 1, 12, 1–14, and 18 f.
43. The jurist Gaius Ateius Capito, a contemporary of Labeo is also quoted in Gellius 1, 12, 8.
44. Gellius 1, 12, 18ff.: "Praeterea in Commentariis Labeonis, quae ad Duodecim Tabulas composuit, ita scriptum est: 'Virgo Vestalis neque heres est cuiquam intestate, neque intestatae quisquam, sed bona eius in publicum redigi aiunt. Id quod iure fiat, quaeritur.'" John C. Rolfe, trans., *The Attic Nights of Aulus Gellius, With an English Translation* (London: Loeb, 1927).
45. Gellius 1, 12, 9: "Virgo autem Vestalis, simul est capta atque in atrium Vestae deducta et pontificibus tradita est, eo statim tempore sine emancipatione ac sine capitis minutione e patris potestate exit et ius testamenti faciendi adipiscitur." Rolfe, *id.*
46. Gellius 1, 12, 9.
47. Gellius 1, 12, 13.
48. Gellius 1, 12, 1.
49. Max Kaser, *Römisches Privatrecht, Erster Abschnitt: Das altrömische, das vorklassische und klassische Recht*, 2nd ed. (München: Beck, 1971), 271ff.
50. Gaius Inst. 1, 130: "Praeterea exeunt liberi virilis sexus de parentis potestate, si flamines Diales inaugurentur, et femini sexus, si virgines Vestales capiantur."
51. It seems clear that the *virgines Vestales* were not true captives. For doubts on this matter, see Jane F. Gardner, *Frauen im antiken Rom: Familie, Alltag, Recht* (München: Beck, 1995), 34ff.
52. Naturally, the bond of affection continued. This is shown by Cicero Pro Font. 48. On this subject, see Staples, *supra* note 25, at 144ff.
53. Parker, *supra* note 12, at 573.
54. Cicero de rep. 3, 10, 17.
55. Rudolf Düll, "Privatrechtsprobleme im Bereich der virgo Vestalis," 70 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 380, 383 (1953) with further references.
56. On the function of the college, see Mekacher, *supra* note 15, at 42 with further references.
57. Aleida Assmann, *Einführung in die Kulturwissenschaften: Grundbegriffe, Themen, Fragestellungen*, 2nd ed. (Berlin: Schmidt, 2008) 109.
58. Mary Beard, "The sexual status of Vestal virgins," 70 *Journal of Roman Studies* 12, 17 (1980); and more differentiated Beard, *supra* note 18, at 166ff.; similarly earlier Georges Dumézil, *La religion romaine archaïque avec un appendice sur la religion des Etrusques*, vol. 2 (Paris: Payot, 1970), 587.
59. Veit Rosenberger, *Gezähmte Götter: Das Prodigienwesen der römischen Republik* (Stuttgart: Steiner, 1998) 174.
60. See also Gardner, *supra* note 51, at 34: "(A Vestal) did not cease to be a woman." On the feminine connotation in her role as the guardian of the hearth, see Wissowa, *supra* note 40, at 157.

61. Parker, *supra* note 12, at 574.
62. Gellius 1, 12, 13–17 deal with *captio*, as does Gellius 1, 12, 19.
63. Gellius 1, 12, 18: “Id quo iure fiat, quaeritur.” Rolfe, *supra* note 44.
64. Francesco Giuzzi, *Aspetti giuridici del sacerdozio Romano: Il sacerdozio di Vesta* (Napoli: Jovene, 1968), 166ff.; following him Gardner, *supra* note 51, at 32ff.
65. Michael Stolleis, *Rechtsgeschichte schreiben: Rekonstruktion, Erzählung, Fiktion?* (Basel: Schwabe, 2008), 33: “Historians and story-tellers are mental siblings.”
66. Gellius 1, 12, 12.
67. As claimed, however, by Wildfang, *supra* note 11, at 66ff.
68. Marie Theres Fögen, *Römische Rechtsgeschichten: Über Ursprung und Evolution eines sozialen Systems* (Göttingen: Vandenhoeck & Ruprecht, 2002), 32ff.
69. Koschorke et al., *supra* note 14, at 32.
70. Cancik-Lindemaier, 41 *Saeculum* 1, 10 (1990).
71. Cancik-Lindemaier, *supra* note 13, at 114.
72. On the renewal of the fire on March 1, see Jörg Rüpke, *Kalender und Öffentlichkeit: Die Geschichte der Repräsentation und religiösen Qualifikation von Zeit in Rom* (Berlin: De Gruyter, 1995), 193. An overview of the religious festivals that Vestals participated in throughout the years is given by Sarolta A. Takács, *Vestal Virgins, Sibyls and Matrons* (Austin: University of Texas Press, 2008), 25ff.; José Carlos Saquete, *Las vírgenes vestales: Un sacerdocio femenino en la religión pública Romana* (Madrid: Consejo Superior de Investigaciones Científicas, 2000), 48ff.; Emma del Basso, “Virgines Vestales,” 85 *Atti dell’Accademia di Scienze Morali e Politiche* 161–249 (1974); Giulio Gianelli, *Il sacerdozio delle Vestali Romane* (Florenz: Galletti & Cocci, 1913), 70ff.
73. On the process of making *mola salsa*, see Eckhard Christmann, *Ovid, Werk und Wirkung*, vol. 2, Werner Schubert ed. (Frankfurt am Main: Lang, 1999), 613, 622–27.
74. An overview is given by Cancik-Lindemaier, “Vestalin,” in *Der neue Pauly Enzyklopädie der Antike*, vol. 12/2: *Ven-Z Nachträge*, Hubert Cancik & Helmuth Schneider eds. (Stuttgart: Metzler, 2002), cols. 132–33. On depictions of religious acts performed by the Vestals on reliefs and coins of the Principate, see Erika Zwielerlein-Diehl, “Simpuvium Numae,” in *Tainia*, vol. 1, eds. Herbert A. Cahn & Erika Simon (Mainz: von Zabern, 1980), 405, 418–20.
75. Mekacher, *supra* note 15, at 59ff.
76. Dionysius of Halicarnassus Ant. 2, 68. On this subject, see Mekacher, *supra* note 15, at 56.
77. Seneca Controv. 1, 2, 10: Purchase of a female brothel slave by a *virgo Vestalis*.
78. Theodor Mommsen, *Römisches Staatsrecht*, vol. 2 (Leipzig: Hirzel, 1887), 54ff.
79. *Id.* at 54. Already cautiously critical is Münzer, *infra* note 139, at 47, 51. The course of the academic discussion is outlined by Radke, *supra* note 14, at 277 with further references.
80. See section II.B above and her Gardner, *supra* note 51, at 32.
81. Cancik-Lindemaier, *supra* note 18, at 267. Similarly Lorsch Wildfang, *supra* note 11, at 66ff.: “The state . . . fulfilled the function of familia for the Vestals.”
82. Plutarch Num. 10, 3.
83. Stahlmann, *supra* note 1, at 140.
84. During the Principate, the cult of Vesta was again redesigned. The *Priniceps* “managed to turn the ancient state religion around the worship of Vesta, with which he was closely linked as the pontifex maximus, into a private religion around the worship of the imperial family.” Wissowa, *supra* note 40, at 76. Since the emperor and the *pontifex maximus* now personally embodied the state, the Vestals were shifted from the center to the periphery.
85. Gellius 1, 12, 11. This made her a *diis electa*, as can be seen in inscriptions in the house of Vesta. On the special meaning of this phrase during the Principate, see Arthur D. Nock, “A diis electa: A Chapter in the religious history of the third century,” in *Essays on Religion and the Ancient World* (Cambridge: Oxford Univ. Press, 1972), 252–70.

86. Rules of dispensation already included in the *Lex Papia* (Gellius 1, 12, 6–7?) and the manipulations that sometimes occurred during the draws show that it was not easy to recruit young priestesses. For an instructive overview, see Mekacher, *supra* note 15, at 25ff.
87. Gellius 1, 12, 12.
88. On the course of the *captio*, see Mekacher, *supra* note 15, at 26ff.
89. Jan Assmann, *Das kulturelle Gedächtnis: Schrift, Erinnerung und politische Identität in frühen Hochkulturen*, 4th ed. (München: Beck, 2002), 141. Fundamentally, Robert Segal, *Ritual and Myth* (New York: Garland, 1996), 1ff.
90. On the term *Mythomotorik*, see Jan Assmann, *supra* note 89, at 78ff.; Jan & Aleida Assmann, “Mythos,” in *Handbuch religionswissenschaftlicher Grundbegriffe*, vol. 4, *Kultbild-Rolle*, Hubert Cancik ed. (Stuttgart: Kohlhammer, 1998), 179ff.; Jan Assmann, *Revolution und Mythos*, Jan Assmann & Dietrich Harth eds. (Frankfurt am Main: Fischer, 1992), 39ff.
91. Gellius 1, 12, 14: “Sacerdotem Vestalem, quae sacra faciat quae ius iuxta sacerdotem Vestalem facere pro populo Romano Quiritibus, uti quae optima lege fuit, ite, Amata, capio.” (According to tradition, Amata was the name of the first ever Vestal Virgin to be captured.) Rolfe, *supra* note 44.
92. Festus, p. 204 L: “ut qui optima lege fuerint adici solet cum quidam magistratus creantur. . . .”
93. Cicero, *Harusp. resp.* 7, 14, alluded to this dual status of the *optima lex* when he wrote: “optima lege, publico vero omni praecipuo et humano et humano et divino iure munitam.” On the term, see also Claire Lovisi, “Vestale, incestus et jurisdiction pontificale sous la République Romaine,” 110/2 *Mélanges de l'école française de Rome* 699, 709 (1998) with further references; Martin Jehne, “Die Dictatur optima lege,” 106 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 557, 561 (1989).
94. Verbatim, Parker, *supra* note 12, at 574 with further references in n.47.
95. Fögen, *supra* note 68, at 34ff.; Matthes, *supra* note 14, at 30.
96. Therefore, it was quite common to refer to the college of the six Vestals in the singular form of *virgo Vestalis*, as highlighted by Franz Hampl, “Zum Ritus des Lebendigbegrabens von Vestalinnen,” in *Festschrift für Robert Muth*, Paul Händel & Wolfgang Meid eds. (Innsbruck: Univ. Innsbruck, 1983), 165, 168.
97. Staples, *supra* note 25, at 138: “ideological virginity.”
98. Parker, *supra* note 12, at 581ff. Nor did pregnancy play a role: “There is no case recorded of a Vestal Virgin suspected or convicted because she was pregnant nor any case where a Vestal was charged with unchastity because she had been raped.”
99. Lovisi, *supra* note 93, at 702: “L’adjectif *castus* désignait . . . l’état d’abstinence sexuelle.”
100. Werner Eisenhut, “Incestus,” in *Der kleine Pauly*, vol. 2, *Dicta Catonis-Iuno*, Konrat Ziegler & Walther Sontheimer eds. (Stuttgart: Druckenmüller, 1979), col. 1386.
101. Lovisi, *supra* note 93, at 702.
102. Staples, *supra* note 25, at 137.
103. Pliny Ep. 4, 11, 7: “Me Caesarem, incestam putat, qua sacra faciente vicit, triumphavit?”
104. Pliny Ep. 4, 11, 9.
105. See section IV.B.3 below.
106. See section III above.
107. Lovisi, *supra* note 93, at 703.
108. Fundamentally, Sigmund Freud, *Gesammelte Werke*, vol. 9: *Totem und Tabu*, 8th ed. (Frankfurt am Main: Fischer, 1913, repr. 1986). On the same subject, see René Girard, *Das Heilige und die Gewalt* (Zürich: Benziger, 1987), 281ff., with references. See also Roger Caillos, *Der Mensch und das Heilige* (München: Hanser, 1988), 103ff.
109. Parker, *supra* note 12, at 581.
110. Koch, *supra* note 2, at col. 1747; Antonio Guarino, “Studi sul ‘incestum,’” 63 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 175, 186 (1943). Lovisi, *supra* note 93, at 702ff., rightly disagrees.

111. Cicero de leg. 2, 9, 22: "Incestum pontifices supremo supplicio sanciunt."
112. Lovisi, *supra* note 93, at 703 with further references.
113. As stated by Carl Koch, "Drei Skizzen zur Vesta-Religion," in *Religio: Studien zu Kult und Glauben der Römer*, Otto Seel ed. (Nürnberg: Carl, 1960), 1, 4.
114. See section II.A. above.
115. Staples, *supra* note 25, at 152.
116. Festus, p. 200 L.
117. Lovisi, *supra* note 93, at 709.
118. As stated by Georg Wissowa, "Vestallinnenfrevel," 22 *Archiv für Religionswissenschaft* 201–14 (1923/24).
119. Livy 22, 57, 2–5. On this subject, see Lovisi, *supra* note 93, at 704ff. with further references in n.43.
120. Rosenberger, *supra* note 59, at 173; Tim Cornell, "Some observations on the 'Crimen Incesti,'" in *Le délit religieux dans la cité antique*, École française de Rome ed. (Rome: École Française de Rome, 1981), 27 with further references; conversely Parker, *supra* note 12, at 584.
121. Bruce MacBain, *Prodigy and Expiation: A Study in Religion and Politics in Republican Rome* (Bruxelles: Latomus, 1982), 43; following him Staples, *supra* note 25, at 133.
122. Staples, *supra* note 25, at 134, 181 n.7.
123. Stahlmann, *supra* note 1, at 135; Staples, *supra* note 25, at 134.
124. Lovisi, *supra* note 93, at 716.
125. Livy 8, 15, 8.
126. In the reference quoted above in paragraph (a), Pliny (ep. 4, 11, 6) criticized the fact that the rights of the Vestal *Cornelia* were disregarded ("nec minore scelere quod ulcisi videbatur, absentem inauditamque damnavit incesti").
127. Cicero Brut. 43, 160.
128. Françoise van Haepere, *Le collège pontifical (3ième s. a. V.-4ième s. p. C.). Contribution à l'étude de la religion publique romaine* (Brussels: Latomus, 2002), 102ff.
129. Cicero Cat. 3, 9; Liv. 4, 44, 11–12; Dionysius of Halicarnassus 2, 67, 3.
130. Dionysius of Halicarnassus 2, 68; Valerius Maximus 1, 1, 7.
131. Dionysius of Halicarnassus, 2, 69; Valerius Maximus 8, 1, 5.
132. Propertius 4, 11, 51ff.; Sueton Tib. 2.
133. See section III above.
134. Lovisi, *supra* note 93, at 705.
135. On the characteristics of political trials, see Hans-Jürgen Becker, "Politische Prozesse," in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 3: *List-Protonotar*, Adalbert Erler & Ekkehard Kaufmann eds. (Berlin: Erich Schmidt, 1984), cols. 1795, 1796.
136. References given by Haepere, *supra* note 128, at 102 n.129.
137. For instance, the proceedings against Opimia and Floronia took place in 216 BC after the defeat at Cannae: Livy 22, 57; Plutarch Fab. 18, 4; and trials against Aemilia, Licinia, and Marcia were held in 114 BC after the army led by C. Porcius Cato was annihilated at Scordisci: Livy Epit. 63; Cassius Dio. 26, 88.
138. Proceedings against Fabia, a half-sister of Cicero's first wife, Terentia, among other proceedings, were held in the aftermath of Catiline's conspiracy in 73 BC: Cicero Cat. 3, 9. On this subject, see R. G. Lewis, "Catiline and the Vestal," 51.1 *The Classical Quarterly* 141–49 (2001).
139. Fundamentally, Friedrich Münzer, "Die römischen Vestalinnen bis zur Kaiserzeit," 92 *Philologus* 47–67, 199–222 (1937).
140. A list of convictions and acquittals is given by Mekacher, *supra* note 15, at 259.
141. An impressive example is Livius' account of the conviction of the Vestal Oppia in 483 BC, Livy 2, 42, 9–11. The events took on their own almost inevitable dynamics. See Parker, *supra* note 12, at 579ff.
142. Fundamentally, René Girard, *Der Sündenbock* (Zürich: Benziger, 1988).

143. Koschorke et al., *supra* note 14, at 37.
144. On the procedure, see Theodor Mommsen, *Römisches Strafrecht* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1899, repr. 1961), 928ff.
145. Ovid, *supra* note 4, at 6, 267ff.: “Vesta eadem est terra: subest vigil ignis utrique: significant sedem terra focusque suam.” On the subject of Vesta as a chthonic deity, see Stahlmann, *supra* note 1, at 134 n.96.
146. Ovid, *supra* note 4, at 6, 459ff.: “Sic incesta perit, quia quam violavit, in illam conditur, et Tellus Vestaque numen idem.”
147. Münzer, *supra* note 139, at 199, 218.
148. Lovisi, *supra* note 93, at 727: “pas exactement une peine de mort.”
149. Koschorke et al., *supra* note 14, at 27; Giorgio Agamben, *Homo sacer: Die souveräne Macht und das nackte Leben* (Frankfurt am Main: Suhrkamp, 2002), 92ff.
150. Radke, *supra* note 14, at 272ff.; Hampl, *supra* note 96, at 171ff. On Seneca Contr. 1, 3 and Quintilian 7, 8, 3; 5, 6. Mommsen, *supra* note 144, at 928 n.4, stated, “A Vestal’s fall from a rock is a figure of speech.”
151. Radke, *supra* note 14, at 272, disagrees.
152. Cornell, *supra* note 120, at 36.
153. Beard, *supra* note 18, at 174.