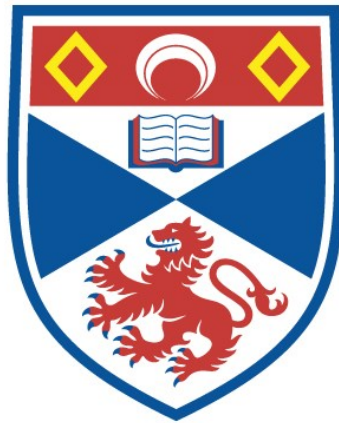


SUNT SUPERIS SUA IURA.
OVID, THE LAW, AND THE AUGUSTAN DISCOURSE

Sara Eusebi

A Thesis Submitted for the Degree of PhD
at the
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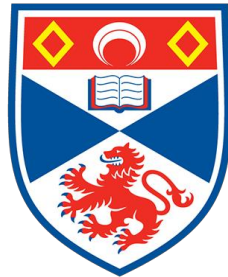
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Sunt superis sua iura.
Ovid, the Law, and the Augustan Discourse

Sara Eusebi



University of
St Andrews

This thesis is submitted in partial fulfilment for the degree of
Doctor of Philosophy (PhD)
at the University of St Andrews

March 2023

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Abstract

My thesis investigates how Ovid's treatment of juridical language and content fits into the socio-cultural landscape of Augustan Rome. Moving beyond the legacy of his early career in the *forum*, Ovid resorts to the legal to express a wider engagement with divine and political justice – an aspect of consistency and evolution throughout the poet's *corpus*. In the *Amores*, the *Ars Amatoria* and the *Heroides*, Ovid revisits the elegiac code to formulate an extended *recusatio* that plays with the 'micro-semantics' of the legal to bring to the fore the gaps in the narrative of Augustus' legislation. Through a selection of legally-inflected case studies, I demonstrate that the *Metamorphoses* shares the same approach to *ius* as his elegiac poetry, though developed through a more in-depth exploration of power dynamics, as arbitrary divine jurisdiction in the mythological universe of the poem mirrors the 'state of exception' of the Princeps *iudex*. In the *Fasti*, Augustus' appropriation of legal calendar time highlights the convergence of the Princeps' and the poet's fictional procedures: myth and traditional legacies are deceptively 'recodified' through Ovid's 'mythologising' *ius* in a similar fashion to Augustus' reimagining Rome's constitutional system through *fictio iuris*, as both the poet and the Princeps adapt the notion of justice to their respective agendas.

In his elegy Ovid engages with the tension created by Augustus' new role as lawgiver, an approach that evolves when taking the *Metamorphoses'* history of the universe into account, to then show a further change through the prism of the *Fasti*, as the same power dynamics are matched with the Princeps' narrative of control. The 'micro-semantics' of *ius* are thus reconciled with the macro-semantics of Ovid's reflections on the nature of justice, becoming the playing field for the poet's deceptive narrative devices to mirror the fictional nature of Augustus' regime.

Introduction	1
The Centrality of Law	1
The Interaction with the Past and the Case Study of the Twelve Tables	6
The Augustan Renovation	10
Content and Approach	12
1. Love on Trial	15
The <i>Amores</i>	16
Ovid's <i>Recusatio</i>	16
The 'Micro-Semantics' of Legal Language and the Augustan Background.....	27
Juridical Order and Exception	38
The <i>Ars Amatoria</i>	40
Ovid as Defective Legislator	41
Organic References	45
The <i>Heroides</i>	52
Acontius and Cydippe.....	57
2. The <i>Changed Shapes of Law</i>.....	69
Familiar Strategies.....	71
The Introduction of Law	71
The Naturalisation of Law: Romanising Myth or Mythologising Law?	79
Enacting Justice	85
Beyond <i>Prozessuale Situationen</i>	104
Tiresias	107
Myscelus.....	116
Cipus' <i>Recusatio Imperii</i>	123
3. Rethinking Augustus' Rule of Time.....	133
<i>Willkürliche Rechtssprechung</i>	137
The Issue of Free Speech.....	142
<i>Crimen Maiestatis</i>	148
<i>Leges Novae?</i>	165
Public Law and Rituals.....	175
Conclusions	181
<i>Le Premier Homme</i>	181
The Part About Ovid.....	191
Bibliography	195

Introduction

This thesis analyses Ovid's corpus through the lens of the history of Roman legal science and specific contributions on the intersection between law and literature. Taking account of but not being led by the predominant scholarly approach to Ovid over the last three decades – that is to say, an 'intertextual' or 'influence-based' approach – the key question that my work addresses is where and how Ovid's treatment of juridical language and material fits into the socio-cultural landscape of Augustan Rome. The central purpose of the thesis will be to show that the legal discourse in Ovid is programmatic, and in my analysis I will argue that in Ovid's poetry – consistently from love poetry to exile elegies – it is an awareness of the *fictional* nature of the Princeps' adherence to Republican institutions that is central to the poet's reflections on the nature of justice throughout his works. I will argue that Ovid's engagement with *ius* forms a common thread for a comprehensive reading of his corpus, and the recurrence of certain juridical motifs (in terms of both vocabulary and content) contributes to the formulation of a new reading for the problematic dialectic between Ovid's poetry and what Barchiesi defines as "the Augustan discourse".¹ In the introduction that follows, I establish the intellectual foundations of the study; offer a sample of my approach via the case study of the Twelve Tables; and outline a brief sketch of the changing socio-juridical realities under the reign of Augustus. I conclude with a synopsis of my chapter-by-chapter analysis.

The Centrality of Law

Central to my work is Schiavone's identification of Juridical Science as "Rome's great and solitary intellectual vocation", "the real Roman *logos*",² as in Roman culture the archaic and proto-Republican sapiential tradition organically gave way to the elaboration of legal patterns which were suited to an increasingly complex social reality.³ In what has been a seminal work for my analysis, Schiavone traced back a formalised figure of the 'legal', as constructed for the first time by the Romans.⁴ Its application to poetry proves

¹ Barchiesi 1994, 240.

² Schiavone 2012, 81-98 (all quotations from Schiavone's, Bretone's and Gernet's contributions in this introduction are my translation).

³ Rome's early legal history is centred on jurists, whose work was marked by an almost sacral component (Schiavone 2005, 29ff.).

⁴ *Ibid.*, 36.

particularly challenging in relation to Ovid's 'open-ended' exegesis. In this research field, the focus has traditionally been on prose, and on the influence that the style and content of Roman juridical 'knowledge' (to be intended with a similar meaning to the Greek *techne* and the Latin *ars*) had on it.⁵ However, it has been demonstrated that, for the Roman elite, disciplines such as law and literature were not as separate and mutually exclusive as maintained by certain ideological appraisals like Scaevola's.⁶ The jurist (159-88 BC) reassessed the significance of poetic and philosophical outputs against the tradition related to the *principes civitatis*.⁷ Scaevola used this expression to designate, in light of the aristocratic turn taken by the city of Rome, the third category in the traditional tripartition poets-philosophers-legislators, almost certainly of Stoic derivation. He depreciated poetry as a *genus nugatorium* – an assessment which was consistent with the Roman aristocratic mentality at least until the beginning of the 1st century BC, and which took a new turn within the dialectic between Roman poets and Augustus as a novel *princeps civitatis*. The Romans' "relentless ideology of action"⁸ expressed its contempt for poetry on a mere ideological basis, identifying it as part of the degeneration of customs moralistically imputed to the growth of the empire.⁹ This view was contrasted, at least for the entire 2nd century BC, by more nuanced positions, which were open not only to poetic activity, but also to a possible general redefinition of the relationship between civic engagement and 'contemplative' life.¹⁰

The Justinian tradition and subsequently the medieval and modern ones have asserted the pre-eminence, in Rome's juridical culture, of the role of jurists, whose job was centred on what are usually designated as 'private law' and 'civil procedure'. Alongside jurisprudential practice, laws themselves also show a consistent relevance from the archaic Twelve Tables, through the measures of the people's assemblies, to the ambiguous procedures of imperial constitutions, in addition to *senatus consulta* and, even more importantly, the praetor's edict. Whilst the profile of Roman jurists was not limited

⁵ Meillet 1976, 288 and Gabba 1991 on Seneca.

⁶ Ziogas 2021a, 254, quoting Harries.

⁷ Aug. *Civ.* 4.27. St. Augustine arguably relies on an intermediate source, which is likely to have been one of Varro's antiquarian works.

⁸ Schiavone 2005, 201, referring to Val. Max. 7.2.1 (on Appius Claudius) and Plin. *Nat.* 7.43 (on Quintus Caecilius Metellus). On Mucius' rejection of poetry see also Schiavone 1987, 84-9.

⁹ Gell. 11.2.5 supports this view in light of the precepts formulated in Cato's *Carmen de moribus*.

¹⁰ The Conflict of the Orders in the early Republic had shown that already in the 3rd century Roman society was only seemingly organic.

to a sapiential role, but also entailed generating and producing law,¹¹ the Justinian tradition somewhat obscured their activity by reading the *Digest* as a code of prescriptions – whereas in fact it can be considered as an ‘anthology’ for us to piece together a certain political, philosophical, theoretico-juridical and rhetorical background.

A second point that will inform my discussion is that the degree of pervasiveness of law-related concepts or elements is perceived more clearly, the more distant (on a formal level) from the juridical field their occurrences are.¹² Despite mixed results in terms of the adherence of those literary allusions to actual legal procedures, law and literature cooperated in the Roman system to create “social meaning”.¹³ The Augustan Principate provides some key instances of this socio-cultural mechanism: Rome’s so-called “cultural revolution”¹⁴ emerges as a turning point in both the political and social development of the law/literature dialectic, which I will demonstrate is a central one in Ovid’s works.

The ‘invention’ and implementation of a new form of government entailed the introduction of new legal provisions. Law can therefore be read as a means of *representation*, and the negotiation and re-creation of legal principles represent a juridical practice, though based on its own “constitutive rhetoric”.¹⁵ Within Augustus’ constitutional model, the so-called *Republican fiction* of the Principate clearly emerges as a derivation of *fictio iuris*, i.e. fictional conformity to law, which postulated the Republican legitimacy of imperial powers.¹⁶ This aspect introduces a further focal point of the present discussion: the Augustan Republican *fictio* operated first and foremost on a legal ground rather than in a merely political sphere, and will be treated in my analysis as a double of Ovid’s fictional narrative schemes. The latter offer a literary mirror to Augustus’ political agenda: Ovid ‘inserts’ his legal approach into new contexts, according

¹¹ Their responses had the same legal value as written laws and were kept by tradition as authoritative sources. Schiavone 2005, 30 summarises their job as “living law of custom”, borrowing this phrase from Carl Schmitt.

¹² See the examples in Romano 2012, 206ff.

¹³ Milnor 2007, 23.

¹⁴ The expression is borrowed from Wallace-Hadrill 1989 (further developed in Id. 2008).

¹⁵ Milnor 2007, 7, following White: “the law is a language that, like any other language, is the site of interpretive struggle, appropriation and change”. This is even truer for the Roman judicial system, characterised by the prevalence of a rhetorical profile over a technical-juridical one (Mantovani 1999, 528).

¹⁶ The idea is drawn from Thomas 2011, 133-86 (= Thomas 1995), and the remarks in Marotta 2009, 17-30.

to a similar pattern to Augustus' exploring new juridical routes through the recontextualisation of Republican practice.

Therefore, in reviewing the poet's work, I will factor in the crucial role of *ius* in Roman society, the socio-cultural significance of legal references in non-technical contexts, and the key part played by *fictio iuris* in the Augustan discourse. The relevance of these three aspects in relation to Ovid's verses needs to be assessed within the context of the so-called "permanent state of exception" of the Augustan Principate.¹⁷ If literature can elucidate a more detailed understanding of the cultural and societal impact of the changes in the juridical procedures that occurred in Augustus' time, Ovid offers a privileged point of view as to how those changes were perceived by contemporary authors. From a chronological point of view his works approximately coincide with the institution of the Principate.¹⁸ Balsley suggests that the very act of *performing justice* can imply both the use and abuse of a judicial system, alternatively reflected in literary works through the enacting or play-acting of justice.¹⁹ Whilst Balsley's analysis is centred around the trial scenes in the *Metamorphoses*, in this work the idea of *fictio* will tentatively be extended to the description of further compositional strategies adopted by Ovid throughout his *œuvre*.

The Law and Literature movement has been one of the best-known approaches to the study of the interactions between juridical content and poetry. The development of this critical movement started with the publication of *The Legal Imagination* by James Boyd White (1973), whose theories led to the application of both literary analysis to legal texts and juridical analysis to literary texts. These interdisciplinary readings focus on the forms assumed by both discourses in different socio-political contexts, their overlaps and their respective definitions against each other.²⁰ White's contribution can be credited with first highlighting a variety of possible links between the everyday practice of law and literary invention. Based on the assumption that any interpretations of Ovid's poetry cannot ignore the contemporary construction of Augustus' new government and the consequences it bore in the legal sphere, a 'semantic' analysis of technical legal language

¹⁷ Lowrie 2005, 43ff. develops the theory formulated by Agamben in *Homo Sacer*: when the *form* of law only operates under the shadow of the sovereign, the very concept of *outlaw* is paradoxically nullified, which matches the juridical mechanisms underlying the newborn Principate.

¹⁸ Born in 43 BC, the poet fully belongs to the 'intermediate' generation mentioned by Tacitus in *Ann.* 1.3.

¹⁹ Balsley 2010a, 1.

²⁰ White 1985, 108; Weisberg and Barricelli 1982, 150; Lowrie 2016, 71f.

in Ovid's works proves a mere starting point. There has been a scholarly tendency (even continued by recent contributions such as Schiesaro 2007) to downplay Ovid's use of legal terminology, with the important exceptions of Balsley 2010a and Ziogas 2021a in particular, whose general approach I agree with, and will discuss *passim* while developing a different angle.

The mechanisms of Augustan propaganda make it difficult to draw a neat distinction between what being 'pro-Augustan' and 'anti-Augustan' meant,²¹ and adopting open-ended critical stances is largely accepted in Ovid's exegesis. However, the label of 'disengagement' has proven inadequate even for the poet's earlier works: his *œuvre* is fully integrated in the Augustan discourse. As Barchiesi points out, Augustus' institutional and political innovations were not necessarily at the forefront of people's mind. Art, rituals and coins, due to the elementary figurative language they adopted, were therefore used as popular means of propaganda. Their meaning, as well as that of poetry, was exposed to direct reception and that must have determined grey areas in people's perception.²² These observations, formulated by Barchiesi in relation to the *Fasti*, can be extended, as will be shown, to Ovid's entire corpus. The importance of a 'reader-response' approach will become evident in my case studies.²³ As a general argument, we should note that, when Ovid touched on certain issues, his audience will have naturally spotted his mirroring contemporary affairs, without those inputs having necessarily to be labelled as 'subversive'. The poet, I argue, was aware of the consequences of the Augustan 'revolution' well before its biographical materialisation in Ovid's relegation – although any assessment of the occurrence of certain themes in his poems must take into account that those works might have been edited by the author following the outburst of the Princes' wrath.²⁴

In a different context, Pellecchi mentions, in relation to Plautus' works, "an ultimate juridical morality", whose relevance I am here extending to the whole of Roman society, including Ovid's audience.²⁵ Pellecchi defines the substance of law as it emerges from Plautus' plays as "a non-disposable good" in relation to the very essence of comic

²¹ Barchiesi 1994, 240.

²² *Ibid.*

²³ For a reader-response analysis applied to the *Metamorphoses*, see Wheeler 1999.

²⁴ See Martelli 2013.

²⁵ Pellecchi 2013, 162.

diction.²⁶ Not even comic authors were in fact allowed, despite their ‘poetics of reversal’, to fully mock this central aspect of Roman society and mentality. This work will demonstrate that this centrality can be applied to Ovid’s poetry precisely as a product of the political and cultural scene in the age of Augustus.

The Interaction with the Past and the Case Study of the Twelve Tables

Having established the guiding principles of my study, I now exemplify my approach through the case study of the Twelve Tables. My discussion will unavoidably take into account the dialectic between present and past. This interplay was also relevant to Horace who – in his epistle to the Princeps – distanced himself from the widespread archaism of Roman culture, also mentioning the juridical tradition of the Decemviral laws, the treaties of the Kings and the Pontifical books.²⁷ From the perspective of a law historian, Bretone formulates a crucial question as to what, outside of a legendary representation, those documents of the ancient past offered to the Romans of the Augustan age, or of the late Republic, for the reconstruction of their history.²⁸ I will extend this question to Ovid’s works, to assess the impact Roman juridical culture had on poetical outputs within the context of the advent of the Principate in the person of Augustus.

In answering Bretone’s question, essential though not exclusive points of reference are to be found in the reconstruction of *événementiel* history, the documents referring to cultural history – too often confused with antiquarianism in its pejorative meaning –, and the additional element of the audience’s reception. My discussion will give a sense of the degree of acquaintance of Ovid’s audience with legal matters as a key feature in both *événementiel* history and cultural history. This analysis will therefore assess the cultural-historical relevance of the perception of *ius* as it had been operating in Roman society for generations, before assuming a new form with the rise of Augustus. I accept the view that poetic texts can convey both a poet’s individual message and their audience’s perception of law,²⁹ and that the sphere of competence of law historians and cultural historians can overlap. The necessity to “break, in an extremely delicate field, the

²⁶ *Ibid.*

²⁷ Hor. *Epist.* 2.1.18-27.

²⁸ Bretone 2006, 3.

²⁹ For a methodological discussion of this assumption, see Orestano 1951. In Ovid’s time, the discussion should consider both the ‘pro-Augustan’ aspects and the aristocratic-Republican stance.

apparent obviousness of language” has been considered one of the premises of the critical discussion of Roman law,³⁰ a task that will be consistently extended to Ovid’s diction in the present work.

The case study of the Twelve Tables is exemplary in this framework, as the expression of an underlying political power which was not neatly distinct from social bonds, and a gentilial structure which still prevailed over the idea of State. At that time, *lex* was considered superior to consuetudinary *ius* only in those instances in which it granted juridical efficacy to certain patrimonial agreements. Dispositive and imperative norms, in fact, had not been formulated yet, and juristic formalism compensated for them. This trend was still effective, with a few exceptions, after the introduction of the Decemviral norms, at least up to the Augustan Principate, when public legislation on private matters attempted to introduce a shared social orientation.³¹ I chiefly allude to the *lex Iulia de adulteriis coercendis* (18 BC), the *lex Iulia de maritandis ordinibus* (17 BC), and the *lex Papia Poppaea nuptialis* (AD 9), whose socio-cultural relevance will be extensively discussed in relation to Ovid’s works. Within Rome’s legal history, *leges publicae* largely kept their otherwise subsidiary – though formally preeminent – function over private autonomy.

The Twelve Tables did not properly form a code, as they did not turn the entire city statute, or a particular segment of it, into written norms. Although in the late Republic and in the Augustan age they assumed a symbolic function in relation to the definition of crimes and misconduct and the pre-determination of penalties, nonetheless, they did not cause substantial innovations to civil procedure.³² The laws of the Twelve Tables preserved the sense of consuetudes, of *mores* (a key concept in Roman juridical practice to which law itself generally seemed to be subordinated), and transmitted their value to posterity. Through the Twelve Tables, for the first time in the history of Rome, a *juridical function* acquired its own textual autonomy. Subsequent generations must have realised that the particular value of this archaic expression lay in the fact that it followed a

³⁰ Bretone 2006, 9.

³¹ For an overview of Augustus’ marriage legislation, see Spagnuolo Vigorita 2010, 38ff. (specifically on Ovid), Arangio-Ruiz 1977, 247-81, and Mette-Dittman 1991. General discussions on the marriage laws are also in Galinsky 1981, Treggiari 1991, 277-98 and 454-7, and McGinn 1998, 216-47. On the *lex de adulteriis* in particular, see Biondi 1965, 47-80, Rizzitelli 1997, and Santalucia 1998, 201ff. On the *lex Iulia de maritandis ordinibus*, which aimed at the promotion of aristocratic family values through marriage and reproduction, see Treggiari 1991, 60.

³² On the revived interest in archaic juridical content during the Augustan age, see *infra* on Labeo’s work.

preliminary phase of verbal and gestural diffusion of laws, which was at the basis of the later ‘performative’ use of formulaic language. The Twelve Tables held, to borrow Gernet’s words, “not only a *social* function in nearly outward terms, but a *psychological* function, a system of representations, of mental habits and beliefs established around the specific notion of *law*”.³³ Juridical formalism stood the test of time, whereas the legislative text suggested a new social reality.

Mommsen’s legacy highlighted that the genetic link between past and present applies to both public and private law, and that there is a biunique relationship between Juridical Science and Philology. Gernet also affirmed: “simply speaking, within a society *tout se tient*: law is never (...) ‘aside’; in recent times this has been recognised also with regard to Roman law”.³⁴ It is therefore relevant to focus on those instances in which, following failed attempts at finding rule-compliant solutions within the existing juridical system, other ‘values’ and stances were drawn from as criteria of legitimation – which was the case in the Augustan Principate, in particular to enact certain forms of social control.

According to Weber, all other civilisations lacked the “strict patterns” of Roman law and the constitutive “rigorously juridical mental patterns” of the Roman people.³⁵ It is not surprising that in Polybius the Decemvirate coincides with the starting point of the cyclical development of the Roman constitution.³⁶ A significantly different view was held by the Augustan jurist Ateius Capito, who would associate *lex* to the definition *generale iussum populi aut plebis rogante magistratu*.³⁷ Laws *par excellence* remained for a long time those formulated by the preceptive intent of the archaic codification.³⁸ Meanwhile normative changes, albeit certainly registered by the Romans, did not affect the paradigmatic and practical potential of the most ancient laws.

Nevertheless, Livy’s work tried to harmonize the exaltation of the archaic legislation and the new regime propaganda;³⁹ the same attempt was made by Augustan jurists, as far as we know, to no avail. The historiographer can be considered Ovid’s

³³ Gernet 1968, 177, quoted in Bretone 2006, 88 (my emphasis).

³⁴ Gernet 1938, 289.

³⁵ The work here referred to is Weber 1920.

³⁶ Polyb. 6.11.1f.

³⁷ Quoted in Gell. 10.20.2.

³⁸ Bretone 2006, 51f.

³⁹ Liv. 3.34.6.

prosaic double, as he also provided his view on the subtle dialectic between tradition and innovation, thus endorsing, according to Syme,⁴⁰ one of the strategic goals of Augustan politics.⁴¹ Livy expressed, in historiographical terms, the same ideas that Labeo developed in the juridical field through a new commentary to the Twelve Tables. The commentary – of which only three indirect fragments survive –⁴² arguably treated, in addition to the practical implications of the legislative text, various historical and linguistic aspects, which confirms the existence of a shared cultural lexicon and framework that the Romans borrowed from that ancient legislation. Since they benefited from uninterrupted consideration, the Twelve Tables became the object of politico-ideological exaltation and rhetorical amplification.

Investigating whether Ovid’s attitude towards ancient legislation is characterised more in terms of actualisation or detachment is particularly relevant within the context of the Augustan redefinition of Rome’s historical legacy, in which antiquarianism played a central role.⁴³ The ‘static’ representation antiquarians provided of juridical antiquities, however, differs from a cultural-historical reconstruction in both object and method. Cultural history implies an analysis of juridical institutes viewed in their long-term development. The antiquarian method still in fashion in Augustus’ time was centred on the discussion of individual issues and mostly aimed at celebrating contemporary Rome.⁴⁴ Ovid demonstrates a certain affinity with the antiquarian method as he often gives multiple explanations for the issues involved in each story he tells, leaving several questions open. However, he deliberately shows a certain detachment from the content he relates. The underlying ambiguity of Ovid’s authorial stance distances him from his

⁴⁰ Syme 1939, 317f.

⁴¹ See Augustus’ claim in *R. Gest. Div. Aug.* 8.5 (*legibus novis m[e auctore]atis [multa] exempla maiorum exolescentia iam ex nostro [saecul]o red[uxi et ip]se multarum rerum exempla imitanda post[eris tradidi]*), as well as passages like Suet. *Aug.* 89.2 or Liv. *Perioch.* 59.

⁴² Gell. 1.12.18; 6.15.1; 20.1.13. In discussing the *edictum de adtemptata pudicitia*, Ulpian also mentioned Labeo (D. 47.10.15.16-17). Despite his legal-political clashes with Augustus, Labeo commented on and probably supported the Princeps’ moral legislation. He was presumably drafting a commentary to the *edictum* at a time when Ovid was composing the *Ars*, a poem which ‘undermined’ the spirit and the letter of the disposition. I argue that the *Ars* is the more relevant to the reconstruction of the impact of Augustan legislation on contemporary social reality, the more distant a poetic text can be considered from any purely ‘technical’ purpose. On Labeo’s stance towards Augustus’ policies – as opposed to the ‘school’ led by Capito – see Bauman 1989, 27ff.

⁴³ On antiquarianism in the *Fasti*, see Newlands 2002, 205ff. (with further bibliography).

⁴⁴ See, for instance, what has been transmitted about Verrius Flaccus’ *œuvre*: on his references to the Twelve Tables, see Strzelecki 1966.

prosaic and technical counterparts, and ultimately makes it irrelevant to try and frame his approach to the legal within the parameters of a ‘pro-‘ or ‘anti-Augustan’ discourse.

The Augustan Renovation

To further frame my approach, it is important to offer a preliminary overview of the crucial socio-juridical shifts introduced by Augustus. The Princeps adopted a politico-propagandistic stance which found in the law one of its key means of innovation, an aspect which must have fuelled Ovid’s invention. The new form of government determined several technical changes in terms of *ius*: jurists kept a central role as the gatekeepers of technical knowledge, although they were no longer officially in charge of the creation and imperative enforcement of norms. They acted on the basis of their skills and authority, but their sapiential aristocracy was gradually replaced by a new category of executives and counsellors of the Princeps, who had to cater for a new dominion which was remarkably wider than the city and the Italic area.⁴⁵ As for professional practice, Augustus, in accordance with the Republican model, favoured the senatorial elite. The senators who had survived the civil wars and the proscription lists were treated with deference to secure their compliance, fostered by Augustus’ programmatic guarantees of order and appeasement.⁴⁶ This ‘compromise’ with the upper class was confirmed by Augustus’ project not entailing the undertaking of any significant (autocratic) codification initiative.⁴⁷ The liaison between the new *auctoritas* of the Princeps and the traditional role of the jurists was granted through the bestowing of the *respondendi ius*, to issue responses which represented one of the formal normative tools in the Roman community and bound law courts in their decisions.⁴⁸ The advisory function of the jurists, though paid formal respect, was thus actually kept under the emperor’s control through a subtly devised initiative: jurists were not formally prevented from expressing opinions or

⁴⁵ It included the entire civilised oecumene: see, for instance, the five edicts issued by Augustus to the people of Cyrene between 7/6 and 4 BC (De Visscher 1965).

⁴⁶ This approach did not grant the total eradication of the spectre of *libertas*, which was still irreducibly raised by some jurists. The most striking example was Labeo himself, whose opposition to the government was extinguished by the subtle diplomacy of the Princeps (Bretone 1982, 129-46 and Schiavone 1987, 153ff.; cf. also Ziogas 2021a, 254-7).

⁴⁷ By contrast, see the codification project ascribed to Caesar in Suet. *Iul.* 44.2 and the attempted schematisation of Roman law history in Isid. *Orig.* 5.1.

⁴⁸ See Pomponius in D. 1.2.2.49 (*primus divus Augustus, ut maior iuris <consultorum> auctoritas haberetur, constituit, ut ex auctoritate eius responderent*) and Gaius *Inst.* 1.7; cf. *infra*, 51, 113.

drafting juridical papers; only ‘authorised’ responses, however, could concretely affect juridical controversies.

With regard to legislative activity, the creative action of the Princeps acquired a preeminent role, whereas the praetor’s normative action ceased after the end of the Republic. Augustus himself, in his political testament, alluded to his innovations in the fields of marriage and family, private and public trials, slave manumission, freedom of association and treason, inheritance and sumptuary issues, ballot corruption.⁴⁹ The Princeps regulated the complex structure of the new legal system also by setting the rules for the interaction among different juridical and political institutes. The Senate, an emblem of the Republic, agonized but did not die (until at least the 3rd century AD). In accordance with the growing relevance acquired by his own normative power, Augustus deliberately eluded the edictal practice, whilst introducing the standard procedure of soliciting the advice of a board of experts. The mutual adaptation of imperial normativity and jurisprudential activity caused the Roman social system to become increasingly distant from what Nörr has defined “certainty of law”, as for the Romans in the Augustan age trials turned into “uncertain games with outcomes which (often) threatened people’s existence”.⁵⁰ In terms of criminal procedure, Augustus distinguished himself for the definitive (after Sulla’s and until the Severi) rearrangement of *quaestiones perpetuae*, which worked in parallel with the extraordinary legislation of the Princeps and his officers (especially prefects). This “deputed jurisdiction”, as a matter of fact, evened out the restrictions imposed by the formal compliance to Republican laws.⁵¹ With regard to civil trials, the *cognitiones extra ordinem*, whose extraordinary function was real in name only, in fact imposed a new procedure.

The two Augustan dispositions in 18/17 BC had established a new *quaestio perpetua* for crimes of *adulterium*, *stuprum* and *lenocinium*. The debate underlying those laws was focused on the classification of sexual relations as ‘moral’ and ‘immoral’, with particular regard to the *status* of the female counterpart. The Augustan ‘revolution’ had in fact also promoted the eradication of the ‘ethical’ management of sexual behaviours

⁴⁹ Cf. again *R. Gest. Div. Aug.* 8.5 (*supra*, fn. 41).

⁵⁰ See Nörr’s quotations in Bretone 2006, 231 and *id.* 1982, 120-6, for a discussion about common people’s awareness of legal issues.

⁵¹ This definition is borrowed from Bretone 2006, 232.

from its traditional domestic context,⁵² where it had been regulated based on concepts such as reputation and shame. The purpose of those measures had been to equate relationships among individuals to freely undertaken acts among legal persons, liable to judicial examination and disciplined within the public sphere. In other words, it had been a case of judicial system shift, as the domestic and often unregulated justice administered by the *pater familias* had given way to public justice, centred on legal analysis and on the use of formulae. The creation of a *quaestio perpetua* had granted marriage legislation prominence and impact on public opinion comparable to those of treason law.

If we accept Mommsen's lesson that political functions are not limited to the exercise of power *stricto sensu*,⁵³ the ambiguous relationship between ruling faculties and constitutional system, as well as between institutions and their ideological momentum, certainly contributed to the definition of the Principate, and elicited responses from Augustus' contemporaries, including poetic expressions like Ovid's. Suetonius described Augustus' decisions in terms of *lenitas* and *diligentia*,⁵⁴ whereas the so-called 'discretionary clause' in the *lex de imperio*, for instance, must have evoked an autocratic stance.⁵⁵ The Princeps' *agere facere* capacity also included the promulgation of *constitutiones*, in relation to which he was not bound to respect the law. Since its inception, the Principate's rhetoric made use of a Republican *fictio iuris* which must not be confused with real practice, and glimpses of this dichotomy will be captured throughout Ovid's works.

Content and Approach

Having acquainted the reader with the central concepts and methodological approach of the thesis, I now briefly outline the structure of my analysis. This work will be articulated in three parts. In the first chapter I will interrogate and challenge Kenney's seminal work on law in Ovid to demonstrate that the poet's attitude to legal content cannot be reduced to the mere influence of his early juridical training in the *forum*. My discussion of the *Amores*, the *Ars Amatoria* and the *Heroides* will insist in particular on the underlying

⁵² Habinek 1997, 29ff.

⁵³ Bretone 2006, 212.

⁵⁴ Suet. *Aug.* 33.1.

⁵⁵ Bretone 2006, 212.

dialectic with Augustus' moral legislation and with the recurring motif of the clash between human and divine law. Going beyond Ovid's immediate drawing from the 'micro-semantics' of the legal, I will show that the relevance of those two motifs in the amatory works represents a programmatic *trait d'union* with the poet's later production. This aspect will emerge especially in relation to what I will argue is the poet's 'extended' *recusatio* of the tenets of the Augustan discourse, which he formulates by drawing from legal content and lexicon.

Similar authorial strategies will be appreciated in the second chapter, focusing on the *Metamorphoses*. While those structural, lexical and thematical similarities certainly vouch for the programmatic nature of Ovid's engagement with *ius* throughout his corpus, I will examine his consistent engagement with the theme of the nature of justice in various mythical contexts that often prefigure contemporary realities. My analysis of motifs such as the cosmogonic inception of law, the clashes between artists and divine power, and trial-type settings will again reveal how reductive the pro-/anti- Augustan dialectic proves when facing the complexity of Ovid's interactions with the Princeps' arbitrary justice.

An open-ended perspective will also be adopted in the third chapter, focusing on the most explicitly 'Roman' of Ovid's works, the *Fasti*. The poem will be analysed through the lens of the Roman calendar as a legal document, which Ovid draws from to formulate his reflections on the Augustan 'revolution' from a political and juridical point of view, while reviewing Roman institutions, religion and history, with particular regard to Augustus' exploitation of archaic and Republican traditions. In a time of institutional change, Roman identity emerges as profoundly affected by the transformation of juridical practice under the Princeps. Augustus' takeover of the Republican institutions materialises in his appropriation of calendar time as emerging in the *Fasti*, whilst the parallelism between the Princeps-judge acting as an autocrat and superior instances of divine authority confirms the 'state of exception' underlying Augustus' *factio iuris*.

I will not produce a broad review of occurrences of legal references in Ovid's literary predecessors and contemporaries, on the one hand to avoid repetition,⁵⁶ and on the other hand because such an 'inclusive' survey falls beyond the scope of my work. Given what I have outlined above, the thesis approaches Ovid with the premise that the category of 'intertextual' cannot encompass the semantic complexity of the lexicon of

⁵⁶ That wider context has already been reviewed in Gebhardt 2009.

law. While most recent scholarship on Ovid is viewed through the intertextual lens, my research assumes a dynamic lexicon that fits into (and reacts to) the socio-cultural landscape of Augustan Rome. The key question that my work tackles is where and how Ovid's treatment of juridical language and material fits into that specific landscape. As shown by Hardie, Ovid is as much influenced by the legacy of previous and contemporary authors as he anticipates subsequent trends of (early) imperial literature.⁵⁷ In Ovid – “master of the art of deceptive transitions” – as much as e.g. in Lucan, this style proves an apt vehicle for what Hardie calls “an epic of the World Upside Down”,⁵⁸ whose private iteration Ovid would have experienced through his exile. In my analysis I will show that the familiar world of Rome had however been subjected to a radical metamorphosis well before that, as the poet witnessed the coming of the Principate and the instauration of its ‘state of exception’. Ovid's awareness of the fictional nature of the Princeps' adherence to Republican institutions is central to the poet's reflections on the nature of justice throughout his works. His fictional mechanisms converge with Augustus' in at least three different contexts. In his amatory poetry, his early seeding of legal ‘micro-semantics’ acquires social significance in bringing to light the loopholes of Augustan legislation; in the *Metamorphoses*, the mythologisation of law assumes the form of power imbalances that suggestively match the extra-legal nature of the Augustan Principate; in the *Fasti*, the notion of justice is further adapted to Ovid's literary purposes and simultaneously to the evolution of the Princeps' juridical discourse, as the poet registers the control exercised over legal time through the lens of the Roman calendar. The programmatic nature of Ovid's engagement with *ius*, which forms a common thread for a comprehensive reading of his corpus, consistently emerges from his love poetry through to his exile elegies.

⁵⁷ Hardie 2002a, 43.

⁵⁸ *Ibid.*, 44f.

1. Love on Trial

In this chapter I reflect on Ovid's use of legal language and content in his amatory poetry through the lens of two main thematic focuses: the author's allusions to Augustus' moral legislation and the contrast between human and divine law. Those two aspects are often intertwined in Ovid, not only in his love poems but especially in the *Metamorphoses*, where, I will argue in chapter 2, they assume further significance in the programmatic framework of the poem's 'new' mythological and epic setting against the backdrop of the Augustan "cultural revolution". Before approaching Ovid's amatory poetry, however, I set my own approach to law in Ovid in dialogue with previous scholarship, with particular attention to Kenney's seminal work and the most recent and comprehensive treatment of the subject, Ziogas' 2021 monograph. The preliminary discussion of Kenney's article will lead me to formulate the argument that Ovid's engagement with the legal (and with the biographical legacies of his public career) can be read as an 'extended' *recusatio* that crosses over subsequent Ovidian works. Furthermore, my close reading of Ovid's 'autobiography' (*Tristia* 4.10) will aim to show that the recurrent use of legal language is no mere 'residue' of an early public career (as Kenney has it), while further occurrences of the 'micro' legalisms in the *Amores* should be seen, I will argue, as semantically meaningful expressions of his ambivalent attitude not just to 'elegiac values' but also to the contemporary legal climate of the Augustan Principate. In sum, this chapter – via attention to Ovid's 'autobiography', his *Amores*, *Ars Amatoria* and *Heroides* – will argue that the language of law represents a preferential way for the poet to 'lean into' the contemporary significance of Roman juridical culture in Augustus' time.

Ovid's programmatic seeding of *ius* in his love poetry builds a semantic world that is plugged into the socio-cultural context. This socially rich semantics and related case studies urge to resist any overdetermination in reading Ovid, and consider instead his legal imagination as it plays with the fictions and loopholes of Augustus' juridical set-up, with the gaps in the Princeps' narrative. Ovid offers an 'open-ended' interpretation that shifts responsibility onto the audience, and emerges as a reflection of his exploiting the ambiguities of the law rather than expressing a political distaste for its Augustan manifestations.

The *Amores*

Ovid's *Recusatio*

Kenney was one of the first scholars to study Ovid's early legal practice¹ and take into account the information found in his poetry concerning his public career. In his 'autobiography', Ovid claims to have served as *tresvir*, perhaps referring to the more prestigious *tresviri capitales* than to the *monetales*² (*cepimus et tenerae primos aetatis honores,/ eque viris quondam pars tribus una fui, Trist. 4.10.33f.*). As the office in question was part of the Vigintivirate, it granted its holders access to the *quaestura* and the Senate; the actual judicial duties of the corps, however, are still a matter of debate: Mommsen, in his *Staatsrecht*, limited them to police duties.³

Two further Ovidian references allude to the *decemviri stlitibus iudicandis* and to the Centumviral Court.⁴ The two offices might have been connected to each other, should the poet have joined the court of Decemviri before an Augustan reform⁵ limited their role to the mere presidency of *in iure* procedures before the Centumviral Court. It is worth highlighting the use of a periphrasis (*bis quinos... viros, Fast. 4.384*) to designate the Decemviri; while also serving metrical purposes, this linguistic virtuosity may suggest that Ovid is here echoing the solemn and analytic language of juridical norms. This use recurs in the third autobiographical reference, where the periphrasis *decem deciens... viris* (*Trist. 2.94*) is employed for the Centumviri. In the apologetic context of *Tristia 2*, this

¹ Kenney 1969 develops van Iddekinge's thesis (*Dissertatio Philologico-juridica de insigni in poeta Ovidio Romani juris peritia*, Amsterdam, 1811, on which see also Düll 1965, 77-80). Kenney's article has to be considered pioneering because of its comprehensive approach to the subject, although previous specific contributions had already been published (see Stella Maranca 1927 and Daube 1966); Kenney rejects van Iddekinge's idea of the poet as *iuris scientia consultissimus* and points out some peculiarities in Ovid's attitude towards juridical content, which are still worth of consideration.

² They were both *magistratus minores*. Due to the equestrian status of Ovid's family and the lack of evidence for coinage issued by the poet, it is more likely that he was a member of the *capitales*; see *contra* Salmon 1958 in support of Ovid's membership of the *monetales*.

³ Mommsen 1887, 298f., 596, and the discussion in Cascione 1999, 157ff.

⁴ *Fast.* 4.383f. and *Trist.* 2.93-96 respectively. The interpretation of the former (which Fantham 1998 *ad loc.* and Rawson 1987, 107 refer to the *lex Iulia theatralis*) has not been unanimous: the issue is relevant only if we assume accuracy on Ovid's part in mentioning his former offices (cf. Kenney 1969, 245). He declares again his membership of the court at *Pont.* 3.5.23f., which does not provide additional information. Having held two offices in the Vigintivirate represented an impediment to the *cursus honorum*; Ovid's motives for doing so are unknown, and possibly linked to the so-called *s.c. de vigintiviris*, although its dating is uncertain (CD 54.26.5-7). Syme 1978, 182 accepts the hypothesis of a double office based on a comparison with *ILS 914*; *contra* Rawson 1987, 104, fn. 122. On Ovid's magistratical career see also Cascione 1999, 217f.

⁵ Suet. *Aug.* 36: the reform is known as *s.c. de vigintiviris* (see previous fn.).

passage aims at stressing the author's reliability and his respectability in performing this function. The mention of judicial activity related to private matters in the following couplet (95f.) is likely to be connected with the duties of *iudices selecti*, a rank which Ovid could legitimately access as *eques equo publico*.⁶ This function was not separate from the office of *arbiter*, and it can be assumed that his experience with arbitration procedures left several traces in his poetry.⁷

At *Trist.* 4.10.15-26, Ovid provides further information regarding his own experience of a public career: namely, that he has been introduced *ad arma fori* (18) together with his brother – unlike the poet, the elder Naso had a natural talent for rhetoric (17f.) – through the education received by the best teachers in the Urbs (16). His short juridical (and political) training is recorded as an unappreciated chapter of his life:⁸ he has unwillingly acquired those skills, due to his father's wish to remove him from poetry and direct him to *negotium*. Kenney notes that Ovid's practical and professional experience has left in his poems a more distinctive trace than his education at prestigious schools of rhetoric.⁹ The source on this topic is Seneca the Elder,¹⁰ who reports young Ovid's predilection for the *suasoriae* and for the so-called 'ethical' type of *controversiae*, rather than for those with a strictly legal frame, requiring *argumentationes*. Although modern criticism about the reliability of these school products – even on a legal ground – should not be emphasized, it is also true that the seemingly technical use Ovid makes of juridical language, as we will see, was likely borrowed from courts rather than from

⁶ Cf. Bablitz 2008, 35 who claims that Ovid is the only Roman known to have served as both Centumvir and *unus iudex*, and the only identifiable *unus iudex* of the Julio-Claudian age (as well as the only Centumvir associated to a name in 'historical' records).

⁷ See my discussion in relation to "trial-type situations" (the definition is borrowed from Balsley 2010a), 104ff. below. Kenney 1969, 249 incidentally observes that the terms *arbiter* and *arbitrium* occur quite frequently in Ovid, unlike in the rest of Augustan poetry.

⁸ On this poem, see also Hassan 2009, 510, who assumes that the common cultural grounds shared by well-educated Romans in the late Republic implied the same degree of acquaintance with juridical heritage in general, and with *leges regiae* and the Twelve Tables in particular. However, I am not persuaded by Hassan's ascribing to Vergil only the aim of giving an ideological connotation to the reuse of juridical knowledge. This thesis, by contrast, will focus precisely on the ideological underlay of Ovid's diction, even though his agenda regarding the Augustan 'restoration' is far less linear than Vergil's.

⁹ Kenney 1969, 250.

¹⁰ *Sen. Contr.* 2.2.12. Milnor 2007, 9 considers Ovid's declamations in front of his teacher Fuscus as exemplary of the cultural concerns and constraints that the Roman legal system shared with literature, claiming "we may be sure that the vast majority of our literary authors were familiar not just with rhetoric, but with the forms of rhetoric as applied to legal cases"; cf. also Ward 2022, 14. Seneca also stresses the influence conversely borne by Ovid on *declamatores*: see *Sen. Contr.* 2.2.8-12, 9.5.17, 10.4.25; *Contr. exc.* 3.7; *Suas.* 3.7.

schools.¹¹ This jargon, however, was almost ‘instinctive’ for Ovid to draw from, as it was part of the common skillset of Romans belonging to his rank and cultural milieu. Those technical terms – I argue – must have been an ‘educational’ residue of the Roman “juridical morality”¹² which can be traced in Augustan poetry.

In the course of my analysis I will challenge Kenney’s view by showing that the “traumatic quality”¹³ of the author’s inspiration – firmly denied by Kenney in relation to Ovid’s first experience of legal affairs – is likely traced in the different ways in which the poet approaches the transition from the Republic to the new (even legalistic) languages of the rising Principate. Given the author’s and audience’s acquaintance with those institutional and propagandistic expressions, Ovid’s operation must have largely proven ‘un-mediated’.¹⁴ Peculiar historical circumstances, however, are likely to have induced the poet to a more complex invention than mere parody, and I aim to show that it was the attempt to find a reliable interpretative key for the juridical redefinition operated by Augustus which induced Ovid to draw from skills he had perhaps put aside after his abandonment of a public career. It is not certain, on the other hand, whether his knowledge of *legis actiones* and other juridical technicalities was the result of the expertise he had built while holding those offices.

These ‘autobiographical’ passages have been re-evaluated in subsequent scholarship. In his most recent monograph, Ziogas duly places Ovid’s statements in *Tristia* 4.10 within the context of an elegiac *recusatio* which transcends the mere literary level by clearly expressing a tension between the poet’s nominal rejection of a forensic career and his recurring employment of the diction and content of courtroom rhetoric.

¹¹ Pascucci 1968, 22ff. in particular, outlined the recurring features of Roman juridical language, mentioning Ovid to exemplify the use of pronominal adverbs in lieu of corresponding pronouns, as in *Fast.* 4.171 and 6.132, and that of the copulative-conditional-adversative particle *ast* (*Fast.* 4.637). He noted a further correspondence in relation to language in *Fast.* 4.83 (*ergo ego tam longe – sed subprime, Musa, querellas!*), where the poet employs a rhetorical feature typically used to express the presumption of having suffered injustice (cf. Fantham 1998 *ad loc.*). The same stylistic feature can be found in *Am.* 1.4.3, 1.7.11, 3.11.9, as well as in Medea’s words in *Met.* 7.51.

¹² Introduction, 5.

¹³ Kenney 1969, 263.

¹⁴ On Ovid’s audience, see Wheeler 1999 and Holzberg 2006, focusing on the *Metamorphoses* and on the *Ars* and the *Remedia* respectively; for a narratological approach, see Sharrock 1994. On the ‘political’ role of Ovid’s audience, as opposed or complementary to the Augustan propaganda, see Barchiesi 1994, 35 and 240. Cic. *Leg.* 2.59 and 2.9 confirms that learning ancient laws by heart was standard practice in upper-class education, which would not have changed significantly during the transition to the Augustan Principate (cf. Diliberto 2006 and D’Ippolito 2000, 75).

Ziogas rightly underscores two main points in relation to this elegy. Firstly, Ovid not only claims he refused to undertake a career in the *forum*, but any efforts in making good use of legalistic language automatically turned into poetry (25) – while rejecting legal diction, the poet makes use of it in an allusive way, as further emphasized by the double (poetic and legal) meaning of the word *carmen*.¹⁵ Elegiac *recusatio* implied a rejection of epic poetry and of an active involvement in the martial deeds and political issues it celebrated, and the poet’s self-justification for the choice of a minor genre. However, the elegiac discourse reworked military stances through the motif of *militia amoris*, whereas basic concepts of Roman law were implied by the use of metaphors like that of *servitium amoris*. In this passage Ziogas reads an association between the verbosity of the *forum* and the *fortia arma* (18) of epic language, but also a pointed opposition between Ovid’s boyhood and the *gravitas* of epic:¹⁶ *at mihi iam puero caelestia sacra placebant,/ inque suum furtim Musa trahebat opus* (19f.). The Muse’s furtive seduction has a greater effect on the poet than the litigations in the *forum*. This overt denial, which is at the same time a disguised reassertion, of the legal connotation of Ovid’s poetry, recalls the aspects of continuity in the transformations enacted in the *Metamorphoses*.¹⁷

Furthermore, Ziogas notes how Ovid’s elegy can be read as a deliberate counterpart to the structure and content of Augustus’ memoirs (as transmitted by the *Res Gestae* and Suetonius’ *Augustus*), whilst also representing, as much as *Tristia 2*, a written *apologia* which implicitly reclaims the legal space denied by Augustus’ decision to exile the poet without a proper trial.¹⁸ I fully agree with Ziogas that Ovid’s rejection of any social identification within the men of law should be considered as a point of departure rather than a conclusion in any meaningful analysis of the relationship between Ovid’s poetry and the law. However, rather than reflecting on the poet’s role as creator of legal meanings that act in opposition to Augustus’ laws, I would like to focus my discussion on the fact that the poet builds an uninterrupted dialectic with the Augustan discourse which could have not in any way ignored the legal element, precisely because Ovid operates as a poet at a time in which Augustus is laying the foundations of his own ‘state of exception’ on grounds which are primarily of a legal nature. In building his extended

¹⁵ Ziogas 2021a, 43f. On the legal significance of *carmen*, see Lowrie 2009, 327 and Id. 2016, 72f.

¹⁶ Ziogas 2021a, 42ff. For an overview of *militia amoris* see Drinkwater 2013.

¹⁷ Ziogas 2021a, 44.

¹⁸ *Ibid.*, 27-48 (building on his 2016 article).

recusatio throughout his love poetry, Ovid lays the foundations for his consistent (and evolving) engagement with the juridical aspects of Augustus' narrative in later works.

As well as tracing Ovid's antecedents for his *recusatio* back to Propertius and Catullus, Ziogas also inserts Ovid into a literary lineage including Hesiod, Theognis and Solon to sketch the portrait of a poet acting as judge as well as legislator in order to contrast Augustus' arbitrary decision to relegate him to Tomis. Ziogas rightly identifies *Tr.* 2.93ff. as a speech that purportedly follows the rhetorical conventions of an advocate's defence in order to allude to the lack of a trial in the author's biographical events, while also pointing to elegy as an alternative space for confrontation (free as it is of litigation).¹⁹ Ovid's references to the official posts he held do occur in 'autobiographical' contexts. However, *where* those allusions occur is not the only aspect to be considered. What is more significant in my view is to reflect firstly on *how* they are formulated, namely according to the same stylistic features and patterns that will be discussed as occurring in the rest of Ovid's *œuvre*, thus disproving Kenney's claim that time proximity to Ovid's early experience caused the more frequent occurrence of juridical terms (used in their technical connotation) in his first poems.²⁰ The present work will rather show that Roman juridical culture permeated Ovid's entire poetic production. Secondly, my discussion also aims to reflect on the *purpose* of those allusions which, I argue, are crucial in establishing a dialectic with the Augustan legal discourse which will prove key throughout Ovid's work. I will focus in particular on how the underlying allusions to Augustus' moral legislation play against the background of the contrast between poetic justice and the judgement of rulers which is often rewritten in terms of opposition between human and divine law. This dialectic is systematically exploited by Ovid in ways that ultimately showcase the convergence of the poet's and the Princes' fictional mechanisms at a literary and juridical level respectively.

It is therefore crucial to evaluate the impact of juridical culture in Ovid beyond the four explicit mentions of his public offices in his works. As for his elegiac poems, it is useful to keep in mind that some metaphors such as those of *servitium amoris* and *foedus* had already been widely exploited in comedy and elegy before Ovid, up to the

¹⁹ Ziogas 2021a, 226-44.

²⁰ Kenney 1969, 250.

creation of what Kenney defines “quasi juridical fantasy”.²¹ It is, however, important to observe, along with the scholar, that the use of these legal concepts and terms “by way of illustration and metaphor”²² is a peculiarly Roman phenomenon which lacks any significant parallel in Greek literature. This further confirms the existence of a Roman “juridical morality”, which allowed the poet to rely on a highly receptive audience every time he resorted to these kinds of metaphor.

Kenney furthermore hints at the potential of a quantitative analysis of the incidence of legal vocabulary and ideas in Ovid’s poetry, compared with the works of other major Roman authors, from Lucretius to Tibullus.²³ However, the number of Ovid’s lines we can read should also be taken into account, as the poet’s tradition has been particularly generous, both in quantity and variety of genres. An investigation into the occurrences of five terms related to the procedure of *vindicatio*²⁴ induces Kenney to identify Ovid’s non-invasive linguistic innovation (as he transfers those terms from the legal and prosaic sphere into verse) as a distinctive mark of the author.²⁵ My point is that this innovation (which is not merely a linguistic one) is to be considered “non-invasive” precisely because the author could leverage the Roman “juridical morality” and his audience’s acquaintance with legal issues. Therefore I cannot agree with Kenney’s conclusion that this approach implies a peculiar practice on the poet’s part, completely distinct from the previous use of legal terminology in Latin love poetry, as I will show in the following sections.²⁶

The “stately legal minuet”²⁷ of *legis actiones* was fitting to the poet’s inspiration, as will be further demonstrated below – to quote Kenney, “the dramatic possibilities of the ritual impressed themselves strongly upon him”.²⁸ It is clear that the literary (and therefore socio-cultural) interest of Ovid’s composition scheme lies in the fact that –

²¹ *Ibid.* On *servitium amoris* see Fulkerson 2013. On Ovid’s approach to the rules of love elegy, see Thorsen 2013. A similar component of “legal or pseudo-legal fantasy” is associated by Kenney to the *Heroides*, on which see *infra*, 52ff.

²² Kenney 1969, 250.

²³ *Ibid.*, 251.

²⁴ The terms are: *vindex*, *vindico*, *vindicta*, *asserer*, *assertor*; see Kenney 1969, 254. For a complete review of figures and quantitative data describing the use of this semantic sphere in Ovid, see the useful appendix in Gebhardt 2009, 369-79.

²⁵ Kenney 1969, 254.

²⁶ *Ibid.*, 255-63. Before Ovid, the phrase *inicare manus* does get employed metaphorically in its non-legal meaning: see Catull. 35.10 (to describe a hug) and Hor. *Carm.* 1.17.26 (an attack).

²⁷ Kenney 1969, 256.

²⁸ *Ibid.* and cf. Gaius *Inst.* 4.16. The *legis actiones* had a markedly archaic flavour.

though sometimes imprecise – the reuse of law-related concepts and language is a peculiar feature, as a truly technical terminology is employed to serve aesthetic or rhetorical purposes. It is also essential, however, to be careful when attributing to Ovid a parodic procedure or stress.²⁹ A comprehensive assessment of the poet's approach to law cannot be limited, for example, to the irreverent tone of the bold statement in *Ars* 1.79f., where he dares to mention the heart of Roman public life among the relevant stop-overs for love 'hunting'.³⁰

Kenney's approach shows two major limitations. According to the scholar, the Augustan background only emerges from those passages in which the poet more or less overtly 'mocks' the Princes' moral legislation.³¹ Moreover, Kenney limits his discussion to the author's attitude to law and to his biographical experience, thus failing to consider the complementary point of view of the Roman audience and the importance of a reader-response perspective. It would be short-sighted to limit Ovid's "stroke of invention"³² to the mere contrast created by the juxtaposition of an extremely 'modern' poetical diction and an old-fashioned technical phraseology. My arguments will instead focus on the fact that Ovid's extended *recusatio* of a public career (and its implications in relation to Augustan politics) takes the form of a consistent engagement with legal elements that, while assuming varied forms throughout his *corpus*, ultimately establishes a dialectic with the juridico-political discourse of the rising Principate that, despite also involving autobiographical elements, never goes as far as to be overtly 'anti-Augustan', and rather serves the purpose of indirectly revealing the ambiguous (legal) nature of Augustus' regime.

Ovid's stance towards juridical matters and his subsequent pose in his amatory poetry can be better understood against the backdrop of the elegiac set of values, to which the author formally adheres, but which is often affected by various forms of adaptation in his verses. Let us now consider the form Ovid's *recusatio* takes in the *Amores*, both in relation to what we know about the poet's public career and to his adherence to the elegiac

²⁹ Even Kenney's review of the texts in which Ovid seems to enact a parody of *legis actiones* (*Epist.* 8.7f., 16; 20.149-51; *Am.* 3.11.3) proves unconvincing.

³⁰ In this case, another target of Ovid's irony, in addition to legal practice, has to be recognised in the Augustan 'nationalistic' redefinition of the *Forum Romanum*. On the Forum of Augustus, see Davis 2006, 39-48.

³¹ See Kenney's analysis of *Epistulae* 20 and 21, *infra* 58ff.

³² Kenney 1969, 259.

code.³³ As the examples to follow will demonstrate, the underlying assumption is always that the consequences of Augustus' political design in his transitioning from the *Res publica* to a new form of government were certainly perceived by Ovid's contemporaries, and affected the poet's choices throughout all his works, starting from the poet-lover's stance in the *Amores*.

Following Davis' discussion,³⁴ let us begin with *Amores* 1.12 in which the author, after his beloved refuses to see him, claims it would have been wiser to entrust *vadimonia garrula* to the tablets he has used to send his request: *aptius hae capiant vadimonia garrula cerae,/ quas aliquis duro cognitor ore legat* (23f.). He intentionally mentions the tedious legal procedure to highlight the contrast with his personal condition as a lover: the *vadatus*³⁵ is required to appear on a certain date,³⁶ whereas the poet is prevented from showing up at his mistress' place. It is also relevant to stress the use of the noun *cognitor* (24), the representative of each of the two parties in a civil trial, which occurs elsewhere in classical poetry only in Manilius.³⁷ Ovid seems to emphasize the destitution of the value system of law, which ultimately lacks clarity: since *vadimonia* are *garrula* and the *cognitor* reads them *duro ore*, love implicitly emerges in opposition to law as the only reality which is liable to be interpreted without any mediation. The use of the adjective *garrula* can be matched to *verbosas leges* in *Amores* 1.15, a poem which, with its *priamel* pattern, achieves a programmatic closure of the first book of the *Amores*,³⁸ and brings us back to Ovid's life experience.³⁹

³³ The underlying assumption here is that Ovid's "life choices" do not merely encompass poetic resolutions, but also positions which were likely affected by the Augustan (legal) climate in those days.

³⁴ Davis 1993, 68.

³⁵ This semantic field also occurs in *Rem.* 665ff.

³⁶ On the widely accepted thesis of the extrajudicial setting of *vadimonium*, see Camodeca 2000, 182, with further bibliography.

³⁷ Manil. 5.321. In the section of Book 5 dealing with *paranatellonta*, Manilius introduces Haedus, a constellation which is not part of the Greek Sphaera. Like zodiacal signs, *paranatellonta* exert their influence on human beings, thus determining similarities between people and constellations. The mysterious and controversial Haedus is here associated with public offices, which included the *cognitor urbis*. See Volk 2009, 106.

³⁸ The elegy opens with the interrogative *quid mihi... obicis* that Ovid, according to Seneca the Elder (*Contr.* 1.1.1), must have borrowed from his master Latro. On the similarities with *priamel*, see McKeown 1989, 389.

³⁹ Videau 2004 compares *Amores* 1.15 to *Am.* 2.17.1f.: *siquis erit qui turpe putet seruire puellae,/ illo conuincar iudice turpis ego*, where the figures of prosecutor and judge overlap. This passage and the apostrophe to *Livor* in *Am.* 1.15 are contrasted with the *recusationes* in Tibullus (1.1.3, 5) and Propertius (2.24.7, 16 *et al.*), both lacking any juridical elements. Let us consider also *Am.* 2.17.3f.: *sim licet infamis, dum me moderatius urat/ quae Paphon et fluctu pulsa Cythera tenet*. The label of *infamis*, as observed by

Ovid addresses *Livor edax* (1.15.1), a personification to be linked to the poet's abandonment of a public career, as its expressions of disapproval urge the poet to defend his life choices.⁴⁰ The use of the adjective *iners* in the following line (*ingeniique vocas carmen inertis opus*, 2) can be interpreted in the same sense, if one accepts the hypothesis that Ovid also alludes to the etymological meaning of "lacking *ars*":⁴¹ the only real *artes* to be granted social consideration were in fact the military and juridical sciences. According to McKeown, at ll. 5f. (*nec me verbosas leges ediscere nec me/ ingrato vocem prostituisse foro?*) the spondaic rhythm and the unusual pause of sense at the end of the fifth foot convey the tedium of a juridical career: in the first line of the distich the poet hints at his juridical training and then shifts, in the pentameter, to a general judgement of the legal profession.⁴² The training in the *forum*, an unavoidable component of upper-class education, is defined as *verbosus* by way of metonymy, since the *leges* he had to learn thoroughly (not his legal training) are actually qualified as *verbosas*. Ovid will employ the same adjective in order to qualify the *forum* itself in *Trist.* 3.12.18 and 4.10.18, and this stress on verbosity is perhaps meant to highlight an implicit opposition with the *λεπτότης* of poetry. The *locus deputatus* of juridical activities is here referred to as *ingratus* (*Am.* 1.15.6), an adjective that recalls the technical word *gratia*, also used to indicate the reward a lawyer could expect from a client.

The open compensation of this professional service was illegal: the use of the verb *prostituere* (6), with its peculiar expressive charge, finds significant parallels in Cicero (*Quinct.* 95), Martial (7.64.9) and Juvenal (8.185). The same topic is hinted at elsewhere in Ovid: this recurrence was probably not accidental, as in Augustus' time the judicial system was undergoing a process of renovation.⁴³ In *Am.* 1.10.37-46, in fact, by adopting the philosophical paradigm of τὸ αἰσχρόν, frequently used in *suasoriae*, the poet criticises

Davis 2006, 84, is a legal one, used for prostitutes, procurers, adulterers, actors and other disreputable figures whom Roman citizens were forbidden to marry. Despite his status of knight, Ovid rejects Roman values; Propertius, by contrast, feared *infamia* (*Prop.* 2.24a.7-10). Ovid's adherence to the elegiac discourse proves once again *sui generis*.

⁴⁰ For a political, though not juridical reading of this *recusatio*, see Davis 2006, 77.

⁴¹ McKeown 1989, 390.

⁴² *Ibid.*, 391ff.; it is difficult to establish a relative chronology between this passage from *Am.* 1.15 and the *locus parallelus* of *Prop.* 4.1.133ff., where Horos addresses the poet with regard to his life choices. Propertius' lines, however, seem to conform more closely to the typology of *recusatio*, whereas Ovid puts more emphasis on the negative connotations of a juridical career.

⁴³ Schiavone 2005, 318-37 and *supra*, 10ff. It is perhaps worth noting, even just incidentally, that in the *Amores* Ovid never mentions the Princeps through the title 'Augustus'.

again the remuneration of judicial services,⁴⁴ as well as recalling the *condictio ob turpem rem*, stating that money given for dishonourable purpose could not be reclaimed by law.⁴⁵ Here we find an explicit reference to *selecti iudices* (38), chosen among senators, *equites* and, at least initially,⁴⁶ *tribuni aerarii*. Ovid insists on the prohibition, for lawyers, to accept compensations (*Turpe reos empta miseros defendere lingua;/ quod faciat magni, turpe tribunal, opes*, 39f.), perhaps alluding to the Augustan renewal (around 17 BC) of the *lex Cincia de donis et muneribus*,⁴⁷ which dated back to 204 BC. The word *tribunal* (40), originally referring to the platform from which the magistrate executed judicial and normative functions, is probably meant to extend the disapproval of corruption to legislative practice. These few lines contain several other technical terms, such as *periuria* (37), *testes* (37) and *census paternus* (41). Moreover, at ll. 45f. (*Omnia conductor solvit; mercede solute/ non manet officio debitor ille tuo*), Ovid goes one step further and echoes a legal principle formulated by Gaius in *Inst.* 3.168 with the following words: *tollitur autem obligatio praecipue solutione eius quod debeatur*.⁴⁸ The noun *conductor* is also a recurrent one in legal texts, while in poetry it only occurs in Plautus.⁴⁹ With regard to the use of the verb *manere*, a close parallel can be found, in addition to the above passage by the Antoninian jurist,⁵⁰ also in D. 16.1.15 (*cum maneam debito obligatus*), where the noun *debitum* also matches the use of the term *debitor* in Ovid's passage above.⁵¹

Similarities in tone and in the use of legal jargon also emerge if the survey is extended to *Amores* 1.13, where Ovid employs the archaic collocation of *mittere* with the

⁴⁴ For a discussion of Ovid equating the practice of law with prostitution, see Miller 2004, 176.

⁴⁵ Ziogas 2021a, 272-5.

⁴⁶ According to the *lex Aurelia iudiciaria* (70 BC), which, however, was no longer in force in Augustus' time: it had been followed by the *lex Iulia iudiciaria* (46 BC), a disposition by Caesar which suppressed the *decuria* of *tribuni aerarii* (see Suet. *Iul.* 41.4, CD 43.25.1) and substantially confirmed the earlier *lex Pompeia* (55 BC: see Cic. *Phil.* 1.20). Augustus himself reorganised the *decuriae iudicum* (Suet. *Aug.* 32.3). On this subject, see Santalucia 1998, 162-4 and 191ff.

⁴⁷ These legal provisions, mentioned by CD 44.18.2, would have also affected the husband of Ovid's stepdaughter, twice sentenced to exile (in AD 24 and 58) and addressed by the poet in *Pont.* 4.8.

⁴⁸ Note that in this elegy, as will be further observed in *Am.* 1.4, the poet invites the *puella* to read their relationship in juridical terms: by adopting this strategy, Ovid probably aims at persuading her to grant him her love without any compensation.

⁴⁹ See *Asin.* prol. 3; *Trin.* 856, 866. The first meaning is, according to the *OLD*, "one who employs a person for wages, hirer".

⁵⁰ Later in *Inst.* 3.168, he uses the disjunctive interrogative *an ipso iure maneat obligatus*.

⁵¹ *Debitor*, like *conductor*, typically occurs in prose, but it appears elsewhere in Ovid at *Trist.* 1.5.10 and *Pont.* 4.1.2, 4.8.6.

supine *sponsum*. This peculiar formula is inserted in the frame of an apostrophe to Aurora (19-22):

Atque eadem sponsum cultos ante Atria mittis,
unius ut verbi grandia damna ferant.
Nec tu consulto, nec tu iucunda diserto;
cogitur ad lites surgere uterque novas.

Following Moore-Blunt,⁵² McKeown accepts the reading *cultos* (reported by P) and therefore the meaning of “sending well-dressed men to act as bailsmen at the praetor’s court, opposite the temple of Vesta”.⁵³ The expression *unius... verbi* (through which Ovid is here referring to the formula of *sponsio*) suggests a contrast to the well-known verbosity of legal oaths. It is also interesting to highlight that this passage implies a neat distinction between *ius/iure consultus* and *disertus*, i.e. the legal expert and the *forum* orator respectively:⁵⁴ the spondaic rhythm of the verse contributes to the association of the latter with a feeling of boredom and verbosity.⁵⁵ These examples confirm that Ovid’s reuse of legal language in his love poems goes beyond mere residues of his early public career. The poet rejects the prospect of a public career while simultaneously and consistently drawing from the *lingua franca* of law to express his ambivalent attitude to the elegiac set of values and to the contemporary legal climate of the Augustan Principate.

In his most recent monograph, Ziogas includes a discussion of *Amores* 1.15 and 1.10 as part of the broader argument that the elegiac *recusatio* provides useful elements to demonstrate the juridical nature of the lover’s discourse. Following Agamben, Ziogas argues in particular that in *Amores* 1.15 Ovid himself, not unlike the Princeps, proclaims a sovereign exception aimed at building up a tension between his own rejection of the legal discourse and his simultaneous employment of its formal diction. In 1.15, as we have seen, the poet assumes the tone of a defendant countering the accusations of a plaintiff. Through an operation that simultaneously implies denial and appropriation of the patterns of Roman law, the poet, as well as betraying his being more than familiar

⁵² Moore-Blunt 1976, 121ff.

⁵³ McKeown 1989, 349. *Cultos* is supported by Moore-Blunt *loc. cit.* in light of a comparison with Suet. *Aug.* 40.5, *Mart.* 3.46.1, 10.19.4, and *Iuv.* 3.171f.: these passages testify that the norm imposing to wear the uncomfortable toga on that formal occasion was extremely unpopular. McKeown rejects other conjectures: *sponso captos* (Hall), in particular, is inconsistent, as it is impossible to state which part of the *sponsio* procedure the poet is here referring to.

⁵⁴ The verb *surgere* ironically associates the act of getting up from bed and, for the orator, the act of standing up in order to deliver a speech.

⁵⁵ McKeown 1989, 350.

with *ius*, implicitly draws a parallel between the patron-client and the lover-mistress relationships, whereby the clientelary exchange of favours is paralleled by cashless love transactions. The constant dialectic between the denial and reproduction of the sociological structures of the *forum* that the poet formally rejects thus perfectly dovetails with Ovid's elegiac insistence on the *recusatio* of a public career and on the analogies between the lover's and the advocate's struggles.⁵⁶ In this context, an interesting element to the purpose of my analysis is that Amor's dictation of love poetry (*Am.* 2.1.38) emerges as the prescriptive legislation of a some divine power that progressively takes on the semblances of Augustus throughout the poet's *œuvre*. This aspect will be further illustrated in the following section, in order to show that the paralegal implications of his elegiac *recusatio* are often used by Ovid to convey more complex allusions to Augustus' legal innovations.

The 'Micro-Semantics' of Legal Language and the Augustan Background

In the framework of the (arguably) calculated internal structure of the *Amores*,⁵⁷ juridical allusions (contained both in vocabulary and content) are integrated in order to second and support three main themes: a *recusatio* that goes beyond the conventions of elegiac poetry; an overlap between the elegiac theme of adultery and Augustus' moral legislation; and a clash with divine will which not only bears an influence on the poet's elegiac inspiration, but significantly takes on juridical connotations. For reasons of space, I will limit my exemplification of these themes to two elegies from *Amores* 1.

The programmatic nature of Ovid's reuse of juridical language and content is especially evident when legal allusions occur in those elegies which hold 'marked' positions (notably the first and the final poems of each book), which I exemplify in the following paragraphs in relation to Ovid's approach to the elegiac motif of *recusatio* in *Amores* 1.1, which also shows the emergence of another theme which will be crucial in the analysis of the poet's later works, namely the ambiguous dialectics between human and divine law. Via discussion of *Amores* 1.4 and 2.5, I will showcase how Ovid makes

⁵⁶ Ziogas 2021a, 27-41.

⁵⁷ For a discussion on the arrangement of the poems, see McKeown 1987, 90-102, with further bibliography. The standard structural components of an elegiac book can be identified in 'programmatic' opening and closing poems (e.g. Prop. 2.1 and 2.34) and an internal sequence of compositions which functions as an off-centre 'poem in the middle' (2.10-13).

use of the ‘micro-semantics’ of the legal to engage with Augustus’ moral legislation and its narrative gaps.

The first elegy of the collection is a parodic variation on the elegiac *recusatio*. The responsibility is here charged to Cupid, less authoritative a god than Apollo, the protector of poetry. Ovid’s interest in love matters is imputed to an irreverent act by Cupid, and is therefore qualified as accidental; it loses, at least with regard to the poet’s initial intentions, the features of an allegedly totalising experience, which had been peculiar to the former elegiac phenomenology.

The poet asks the god, who has taken one metrical foot away from the second line, thus turning the hexameter into a pentameter, *quis tibi, saeve puer, dedit hoc in carmina iuris?* (5). This is the first Ovidian occurrence of *ius* with reference to divine jurisdiction;⁵⁸ a similar use appears with the noun *lex* (10), used to indicate Minerva’s power.⁵⁹ From the beginning of the work, poetic activity is thus assigned a special pre-eminence over love experience itself; this superiority appears as a direct derivation of divine rights and rule. Ovid thus disentangles his *recusatio* from its political significance (the refusal of the epic genre which would have lent itself to the agenda of the Augustan propaganda) to address divine powers and acknowledge the inevitability of their influence over his poetic choices.

With regard to this elegy, Videau reflects on the double meaning of the term *querela*, to be interpreted as “complaint, grievance” but also used, in the classical period, to indicate an official juridical prosecution against someone. While Horace referred to the former meaning as a distinctive element of the elegiac genre,⁶⁰ Ovid, according to Videau, implicitly hints at the latter by typically shaping the love relationship as a *furtum*. The scholar observes that the lover and his beloved alternately play the role of prosecutor and defendant, and the poet may be charged for his illicit loves as well as for his poetic choices. Here, however, as noted by Videau, it is Cupid who accomplishes a *furtum* to the detriment of the verse during the writing process. Ovid supports his attack on Cupid with several examples of unreal thefts between gods, whose hypothetical consequences would be unacceptable (7-12). The poet eventually formulates a question which draws

⁵⁸ The only parallel in the *Amores* occurs in 1.2.20, again referring to Cupid; in the *Epistulae*, see 4.12.

⁵⁹ For a similar lexical choice, see Tib. 3.9.19f.

⁶⁰ Hor. *Ars* 75f.

from property law: *An, quod ubique, tuum est? Tua sunt Heliconia tempe?/ Vix etiam Phoebos iam lyra tuta sua est?* (15f.). The effect is reinforced by the polyptoton *tuum... tua* and the paronomasia with *tuta*. These rhetorical questions, however, reveal the nature of Cupid's possession as a nearly violent domination on Ovid's poetry which ultimately suspends any juridical discussion.⁶¹

Whilst 1.1 opens the collection by acknowledging the pre-eminence of the divine stance, *Amores* 1.4 can be taken as a chief example of how Ovid's *recusatio* assumes the form of a clever handling of the themes of the Augustan legislation through the motif of adultery, an aspect which has earned the poem considerable scholarly interest. Ovid instructs his mistress on how to behave in front of the poet/lover and the *vir*. The latter is introduced with emphasis, and his double occurrence in the first and in the final position frames the first distich: *vir tuus est epulas nobis aditurus easdem –/ ultima cena tuo sit, precor, illa viro!* (1f.). Commentators do not agree on the legal role to be assigned to this figure, either that of husband,⁶² or the girl's official protector or regular sexual partner.⁶³

Rather than consider the following discussion a monotonous 'list', it is important to insist that the high density of legal 'micro-semantics' in 1.4 shows that Ovid's revisiting the elegiac code is deeply rooted in legal elements precisely because of the contemporary relevance of the Augustan legislation. Ziogas argues that the promulgation of the *lex Iulia* and the institution of the *quaestio perpetua de adulteriis* should be read against the emergence of a private sphere in philosophy (Stoic and Epicurean in particular) and poetry. Following Roman, he further maintains that Ovid's elegy is more accurately described in terms of *autonomy* rather than subversion or resistance to the contemporary legislation.⁶⁴ Whilst I fundamentally agree that the creation of such a private space in Ovid's elegy is by no means to be interpreted as the aspiration to a frivolous and apolitical utopia, I am hesitant to acknowledge that Ovid's courts of law actively contribute to giving birth to Roman law. The courts set in the private, self-ruling space of the bedroom, by bringing about a constant dialectic between inclusion and

⁶¹ Videau 2004 concludes that Ovid makes use of the common juridical knowledge of the educated Romans of his rank in order to effect *incongruité burlesque*, as part of an attempt to provide social legitimacy to an illicit love through the opposition between the language of law and the poet's passions. This point, although convincing, is not the only interpretation key to the poet's inspiration in this work, also in light of the general arrangement of the poems (*supra*, fn. 57).

⁶² Among others, Daube 1966, 222ff. and Davis 2006, 91.

⁶³ See e.g. Kenney 1969, 257.

⁶⁴ Ziogas 2021a, 69-75.

exclusion from the official framework of Roman law, do introduce a new, autonomous form of amatory justice. However, I argue that the sovereign exception that emerges as a result does not necessarily stand in opposition to the Princeps' norms.

The first occurrence of legal language in 1.4 is found in line 38: *oscula praecipue nulla dedisse velis*. Here the perfect infinitive is employed in its aoristic value, with reference to the formula *ne quis fecisse velit* where the infinitive is used in its relative value, as it refers to prospective negative consequences, should the prohibition be neglected.⁶⁵ This expression is borrowed from injunctions calling magistrates to handle public order and decency.⁶⁶ The juridical resonance occurs at the top of a list of behaviours the poet exhorts the woman to avoid and, due to its old-fashioned and technical connotation, it assumes much more weight than the numerous imperatives and ordinary subjunctives which precede and follow it. However, Davis argues that one of the distinctive features of the poem is the sequence of three future imperatives (*iubeto*, 29; *sinito*, 35; *dato*, 65), which were typical of Roman legislative language and were used to confer to an order the tone of a long-term injunction.⁶⁷ The use of this kind of imperative had not been common in earlier elegiac poets.⁶⁸ Based on our preliminary considerations, however, the language Ovid employs in warning his beloved three times not to infringe the laws he himself has 'promulgated' must have been familiar to educated Romans. The third injunction (the one related to the woman's conduct at home with the *vir*, 61-6) is the most significant according to Davis:⁶⁹ the poet suggests at first a pun with *vir* and *iure*, as he fails to specify whether the *vir* is the husband and the right is granted by law (i.e. by marriage). Furthermore, a comparison with *lex Iulia de adulteriis* as transmitted by the

⁶⁵ Daube 1966, 223. The echo of this formula allows us to sustain the reading *velis* instead of *velim*, accepted by Heinsius. Bentley also approved the reading *velim*, given by P5; codices PYS, in addition to the *recentiores*, give the variant *velis*.

⁶⁶ Daube 1966, 224f. lists numerous examples. This formula was not very common, but it is strictly associated to the more frequent *melius erit fecisse*.

⁶⁷ Davis 1993, 65f.

⁶⁸ *Ibid.* reckons six future imperatives in Tibullus' *œuvre* and five in Propertius'. Propertius will strike the reader as a partial exception to this assessment (see *infra*, 44 in relation to the *Ars Amatoria*), as for his general attitude to legal themes. His stance, however, is a purely moral one, which never equals the juridical *color* of poems like *Amores* 1.15 or 2.17 (Videau 2004). This is even more true for Tibullus, whose *recusatio* does not even entail an explicit value judgement. On Propertius, law and Augustan authority see Kenney 1969, 254; Lowrie 2009, 349-59; Keith 2013, 101f. Harrison 2013, 149 concludes that "moral legislation and an increasingly authoritarian monarchy" were directly related to the passing of the elegiac genre, which fails to acknowledge that those same elements contributed to the revitalisation of its conventions achieved by the original outcomes of Ovid's elegiac texts.

⁶⁹ Davis 1993, 66.

*Corpus Iuris Civilis*⁷⁰ shows that in the legal text the three terms *maritus*, *uxor* and *nupta* are consistently used, while Ovid in this elegy avoids them in a clear and perhaps challenging way.⁷¹

Whichever the *vir*'s role, if his care towards the woman exceeds acceptable limits, the poet will seek a legal remedy in order to claim his pre-emptive right to his beloved, as he states in the following distich: *Oscula si dederis, fiam manifestus amator/ et dicam "mea sunt!" iniciamque manum* (39f.). The formula adopted for this hypothetical statement is a reference to a legal procedure the exact identification of which is still debated. In this distich the legal *color* goes beyond the mere reuse of legal lexicon and signals a more subtle engagement with the Augustan legal discourse on the author's part. The poet threatens to exercise rights he claims to have acquired, and therefore to gain his mistress' kisses through a procedure which can be identified as *manus iniectio*.⁷² Similarly technical phraseology is employed in *Amores* 2.5, where *manus* is used in the plural (*iniciam dominas in mea iura manus*, 30). This poem, like *Amores* 1.4, is set during a banquet: the girl believes the poet to be asleep and exchanges glances, speech and eventually a kiss with another man.

The main juridical fiction of *Amores* 2.5 is again a private legal function dealing with the public exposure of legal affairs.⁷³ This elegy, in which the poet becomes the cuckolded *vir*, has been recognised by Ziogas as forming a diptych with 1.4, thus reinforcing the impression of a narrative architecture in Ovid's collection. The mistress' public display of misbehaviour at a dinner party causes the lover to act as a plaintiff or prosecutor, while in fact he would rather be the girl's defence lawyer. Ziogas rightly observes that, by criminalising illicit sex, the poet-lover taps into the contemporary removal of all layers of privacy from trial procedures. It is important to stress, following

⁷⁰ See D. 48.5.13 (*ne quis posthac stuprum adulterium facito dolo malo*), where we must consider the use of future imperative and the explicit mention of *dolus*.

⁷¹ It is difficult to imagine any other *vir* in the position of *includere* his woman *iure*. It can be presumed that the exclusion of terms related to marriage bonds is instrumental in implicitly confirming the poet himself in his role of rightful lover (since *Amor* leads him, as emphasized in elegies 1.2 and 1.3); avoiding any mention of the *maritus* ultimately means denying the existence of legitimate marriage. For a discussion of Latin love elegy applying the vocabulary of Roman marriage to extramarital affairs, see James 2012.

⁷² As underlined by McKeown *ad loc.*, *meus* is to be considered, in this case, in its meaning of "possession by rights". On the procedure of *manus iniectio*, see Buckland 1963, 618-23.

⁷³ Ziogas 2021a, 105-14, stressing the Catullan intertext and mythological and legal precedents of Helen in the Trojan Epic Cycle and Hyperides' defence of Phryne.

Ziogas, that the reference to *vindicatio* alludes to a dispute over property in relation to mutual pleasures rather than to the girl herself. Without going as far as to reading this correlation between desire and ownership as proof that “property law is already a version of the laws of love”,⁷⁴ it is evident that the application of law to love elegy is once again far from playful, and that elegy and law share a crucial preoccupation with the criminalisation and legal responsibility related to sexual relationships.

It has even been argued that *Am.* 1.4.39f. can be considered as proof of the existence of a *manus iniectio vocati* different from the *manus iniectio iudicati*.⁷⁵ The practice of *manus iniectio iudicati* was applied in case a debt was not fulfilled within thirty days after a judicial inspection had taken place,⁷⁶ whereas *manus iniectio vocati* took place when an informal summons to court was resisted: it would not therefore be addressed to the girl, but to the *vir*, charged with ‘stealing’ the girl’s care, which fictitiously belongs to the poet. Despite the allusion, however, *Amores* 1.4 seems too far from juridical technicalities to support this specific legal distinction.⁷⁷ This is confirmed by the fact that there are no textual details, in the phrasing or rhythm, showing that Ovid suddenly stops addressing his mistress to threaten the *vir* instead.⁷⁸ This interpretation is supported by the comparison with an excerpt from *Epistulae* 12 (*vix me continui quin sic laniata capillos/ clamarem “meus est” iniceremque manus*, 157f.), where once again it is the unfaithful lover (Jason) who is the unequivocal object of claims on the part of the cheated mistress (Medea), who sees him take part in a procession, without any mention of her rival (Creusa). The hypothesis of a *manus iniectio vocati* in *Amores* 1.4 would further require the presumption of a previous legal convocation, which cannot be naturally inferred from the text in question.⁷⁹

⁷⁴ *Ibid.*, 109. Ziogas further maintains that, by claiming his rights over his beloved’s body, the lover mirrors the birth of the juridical order from the creation of property law, i.e. from the distinction drawn between pleasure of the master and pain of the slave.

⁷⁵ Daube 1966, 226f. Gaius (*Inst.* 4.21ff.), in fact, lists only three types of *manus iniectio*: *iudicati*, *pro iudicato* and *pura*. These formal procedures implied, under different circumstances, the ‘seizure’ of a debtor by his creditor. It is interesting to note that the *lex Vallia de manus iniectio*, dating back to about 200 BC, had turned nearly all *manus iniectio* into *manus iniectio pura*: Ovid would therefore be referring to procedures which were no longer in place according to their original formulation.

⁷⁶ See XII TAB. 3.1f. Ricc.

⁷⁷ Daube 1966, 226f. The hypothesis, originally formulated by Perrin, is defined “absurd” by Gebhardt 2009, 173 (in relation to *Amores* 2.5).

⁷⁸ The mistress is even more clearly the object of *iniectio* in *Amores* 2.5, as shown by Daube 1966, 229f. primarily on the basis of syntactical analysis.

⁷⁹ *Ibid.*, 227f.

Daube has instead interpreted *Am.* 1.4.39f. (and in parallel *Amores* 2.5 and *Epistulae* 12) as a reference to the ritual taking place in front of the praetor in the *vindicatio*:⁸⁰ this ritual would aim at re-establishing the poet's status and at removing the rival from the illicit possession. If compared to the description given by Gaius, it is unmistakable that the two *legis actiones* possibly evoked by Ovid, the procedure of *vindicatio* and that of *manus iniectio*,⁸¹ were actually neatly distinct in Roman practice.⁸² Furthermore, the choice to bring *manus iniectio* into play confirms Ovid's disregard of technicalities, as this procedure was already considered obsolete by the poet's time.⁸³ Ovid was perhaps interested in the archaic flavour of *legis actiones* and connected rituals, often more ancient than the Twelve Tables.⁸⁴ Examples such as *Am.* 1.4.38-40 confirm that the traditional heritage of well-educated Romans – which included law and legal procedures – features in Ovid's poems due to its culturally-shared significance rather than and before its technical value. Although it is not certain which procedure Ovid is referring to, these examples also clearly show that the poet goes beyond generic elegiac metaphors.⁸⁵

The parallel between the poetic text and both the injunctions addressed to magistrates and the *lege agere* among private citizens, however, is intentionally broken, as the conditions for the application of the legal principles they imply are not fulfilled. Coleman goes beyond the 'micro-semantics' of legal jargon and observes that the

⁸⁰ *Ibid.* It may seem superfluous, in light of the context, to note that *vindicatio* could not be effected in case of co-ownership, a condition which could be 'applied' to the poet-mistress couple in this poem. On the semantic field related to *vindicatio* in Ovid, see *supra*, 21.

⁸¹ See *Inst.* 4.16 and 4.21 respectively.

⁸² The same juxtaposition, however, is also to be found in Quint. *Decl.* 359. The lack of precision on a terminological level is symptomatic of a peculiar literary (and therefore also socio-cultural) attitude, if one recalls the importance of accuracy in the use of formulae in Roman procedure. In this respect the phrase *formula cadere* would be employed in case of a trial defeat due to the use of an incorrect *formula* (see Quint. *Inst.* 3.6.69).

⁸³ Apparently, it was completely abolished within the frame of *leges Iuliae*. It is perhaps worth stressing that Ovid is here (intentionally?) evoking a procedure which Augustus' juridical reforms systematically obliterated. The same 'archaic' connotation as that associated with *manus iniectio* is most likely to be read in the rare decree formula mentioned *supra*, 30 and fn. 66.

⁸⁴ For *manus iniectio* in the Twelve Tables see *supra*, fn. 76.

⁸⁵ Davis 1993, 66 reads the recalling of the Twelve Tables and the subsequent re-interpretation of *manus iniectio* at 37-40 as a mere parody of a system which was centred on the edict of the praetor. Ovid himself, acting as a praetor, would extend the legislation on property to the sphere of kisses between lovers. This scholarly resorting to the label of *parody*, however, fails to consider the elements that lead us to the definition of Roman "juridical morality" (see Introduction, 5).

dialectic between context and content, frequently discussed in scholarship,⁸⁶ is here centred on the discrepancy between the character of the passionate lover and his stubborn legal negotiation.⁸⁷ The inconsistency lies in the fact that the formulaic set of expressions usually employed to call for a re-establishment of order and decency is here exploited to promote an illicit love. By subverting the purposes of the legal principle he advocates, the lover appeals to property law in order to lay an unjustified claim against the legitimate holder of the same right. Whereas Coleman argues that this narrative set-up does not necessarily imply a deep legal significance, but rather aims at the mere evocation of an atmosphere,⁸⁸ my point here is that this kind of hint certainly assumed a particular meaning in the Augustan age, since the new regime considered moral restoration as one of its ideological cornerstones. Ovid is in fact promoting, and not trying to limit, illicit behaviour, thus impairing the rights of the legitimate holder of the ‘goods’, as reaffirmed by the use of *ius* (64);⁸⁹ the threat is in any case superfluous, since Ovid is not able to lay any legitimate claim to the girl. This particular aspect is further emphasized through the expression *manifestus amator* (39), which recalls *fur manifestus*, i.e. the thief caught *in flagrante*.⁹⁰ The poet insists on the same semantic field with the adverb *furtim* (64),⁹¹ and even earlier with the adjective *furtivas* (18).⁹² Daube notes that the claim to the mistress’ kisses can also be interpreted as an allusion to *manus iniectio* against a *fur manifestus*:⁹³ this interpretation, however, would imply an overlap between the act of re-appropriation of the good and the thief’s *addictio*. Both the poet and his mistress should, however, be charged with theft since, as *manifestus amator*, the poet could be liable to executive *manus iniectio*.

⁸⁶ See, among others, the contributions of Kennedy 1992 (further discussed *infra*) and Sharrock 1994.

⁸⁷ Coleman 1990, 572f.

⁸⁸ *Ibid.*

⁸⁹ The woman will be obliged to spend the night with her *vir*. The poet is aware that this separation will mark his exclusion and envisages what will happen between the couple behind their closed door: *quod mihi das, iure coacta dabis*.

⁹⁰ See the *moechus* in Plautinian plays, e.g. *Poen.* 862 and *Bacch.* 918. The very fact that *manus iniectio* could also be enacted against a “manifest thief” makes the identification of legal allusions in this text even more dubious.

⁹¹ In this case the allusion is amplified by the proximity of the word *ius*, with reference to the legitimacy of the rival’s claims (*supra*, fn. 89). Videau 2004 refers to the sanction of *furtum* in XII TAB. 8.12, 14; 12.2a Ricc. as a thievery act raising an accusation, a *crimen*.

⁹² Ovid exploits quite frequently the elegiac *topos* of *furtivus amor*: see e.g. *Am.* 1.11.3; 2.2.15; 2.8.3, 8; 2.19.39; 3.4.25.

⁹³ Daube 1966, 228.

This juridical ‘confusion’, I argue, is intentional on the part of the poet, who wants to emphasize the legal implausibility of the whole situation through a pointedly paradoxical presentation of the issue. The metaphorical assimilation between lover and thief was commonplace in love elegy.⁹⁴ Ovid involves here two thieves, which makes the legal incident less real but the overall effect and atmosphere more vivid. It is therefore not surprising that the same motif can be found in *Am.* 2.5.5-14, where the *in flagrante* status of the girl is highlighted:⁹⁵

Non male deletae nudant tua facta tabellae,
 nec data furtive munera crimen habent.
 O utinam arguerem sic, ut non vincere possem!
 Me miserum! Quare tam bona causa mea est?
 Felix, qui quod amat defendere fortiter audet,
 cui sua “non feci!” dicere amica potest.
 Ferreus est nimiumque suo favet ille dolori,
 cui petitur victa palma cruenta rea.
 Ipse miser vidi, cum me dormire putares,
 sobrius adposito crimina vestra mero.

In court, *tabellae* were considered a more reliable physical support for a *testatio* than letters or testimonies on papyri.⁹⁶ The legal tone is more evident at l. 6, conveyed by the adverb *furtive* – drawing again from the semantic field of *furtivus amor* – and by the expression *crimen habent*.⁹⁷ At ll. 7f., the sequence of two exclamations and one interrogative brings us to the atmosphere of a courtroom,⁹⁸ reinforced by the wish metaphorically expressed by the poet at l. 7 and by the use of the verb *defendere* (9). Another legal phrase is the exclamation “non feci” (10), meaning “I am not guilty”, also occurring at 3.14.48. The poet also refers to another more specific legal act, *bonorum distractio*, performed upon an insolvent or fugitive debtor, to sell as many of the debtor’s

⁹⁴ See e.g. the use of the adjective *furtivus* in Catull. 7.8 (*furtivos amores*), Tib. 1.5.7 (*furtivi foedera lecti*), Prop. 3.13.33 (*furtiva oscula*).

⁹⁵ Videau 2004 draws an overly blunt distinction between stand-alone legal references and more complex metaphors, presenting *Amores* 2.5 and 2.7 as examples of the latter use. *Amores* 2.7 and 2.8 have been read more convincingly by Ziogas 2021a, 115-23 as a diptych in which the poet finds himself in the position his mistress was in 2.5, namely that of *reus* and defendant in a court of love, with this shift ultimately representing his wish to have his desire regulated within the existing juridical order by force of his own legal and amatory manipulation.

⁹⁶ See Ziogas 2016, 228, who follows Meyer 2004, 225-7. *Tabellae* are mentioned by Ovid also in *Am.* 1.11.7, 15, 24, 25; 1.12.1, 7; 2.15.15; 2.19.41; 3.14.31; *Ars* 1.383, 2.395, 543; *Met.* 9.523, 571, 575.

⁹⁷ Before Ovid, who uses it frequently (see the list of occurrences in McKeown 1998, 87), it can be found only at Tib. 1.6.41 and Prop. 2.32.2.

⁹⁸ McKeown 1998, 88 suggests [Quint.] *Decl.* 5.5 as a parallel.

goods as possible so that the claim could be satisfied.⁹⁹ This reference is supported by the interrogative *in bona cur quisquam tertius ista venit?* (2.5.32), which might have to do with the admission of an outsider into a partnership without the partner's consent.¹⁰⁰

In accordance with the chronology proposed by McKeown,¹⁰¹ it can be supposed that the promulgation of the Augustan marriage laws in 18/17 BC took place in conjunction with Ovid's abandonment of a public career and his definitive pursuit of a poetic one. Davis supports this hypothesis and further argues that, whereas in the first edition of the work the allusion to those new and unpopular measures may have been instrumental in catching the audience's attention, the author's stance towards Augustus' legislation and his own *recusatio* were actually confirmed with the inclusion of the elegy in the second edition.¹⁰² However neat Davis' parallel reading might be, it is legitimate to wonder whether it would have been possible – even within a statutorily disengaged genre like love elegy – for Ovid to actually omit any form of allusion to the Augustan legislation. Given the strong social impact of those norms, the implausibility of such an omission ties in well with Ziogas' argument that the poet and the Princeps emerge from Ovid's love poetry as complementary if not competitive legislator figures.¹⁰³

Within such a framework, it can be presumed that, in trying to convince a woman to cheat on her *vir*, and doing so in legalese, Ovid is employing proper juridical language in order to engage with contemporary moral reforms. Davis lists several passages in order to exemplify the poet's 'aversion' for law,¹⁰⁴ although the simplistic assumption that an author's attitude to a certain component of his own culture can be described in terms of 'likes' and 'dislikes' should be rejected. The frequency and pervasiveness of 'de-contextualised' legal occurrences in Ovid proves my point that those occurrences are in fact perfectly in keeping with the overarching dialectic between the Ovidian and the Augustan discourse that informs the poet's *œuvre*. Legal 'confusion' grows if the analysis of *Amores* 1.4 is extended to the final line (70): here Corinna is arguably urged to show

⁹⁹ Daube 1966, 230. *Bonorum distractio* was an alternative to *bonorum venditio*, on the basis of which the debtor's whole estate had to be sold. According to Ford 1966, 650 this elegy shows certain features and connections which would overturn the situation displayed in 1.4: "Ovid wanted the last laugh to be on himself".

¹⁰⁰ See D. 17.2.19f.; 50.17.47.1.

¹⁰¹ McKeown 1987, 74-89, with further bibliography. See also Davis 2006, 80f.

¹⁰² *Ibid.*

¹⁰³ *Supra*, 29f.

¹⁰⁴ Davis 1993, 68, fn. 8 in particular.

up in front of Ovid acting as a judge, although it is unclear whether the girl will be acting as *testis* or *rea*.¹⁰⁵ The lover asks her to deny her act of infidelity *constanti voce*: the girl is encouraged to claim, to the advantage of the poet's conscious credulity, the same *sine crimine mores* whose practice is professed by Ovid in 1.3.13 (*et nulli cessura fides, sine crimine mores*).

In relation to *Amores* 1.4, Ziogas correctly stresses that the status of the elegiac mistress, so crucial in adultery prosecutions, becomes almost irrelevant in Ovid, as he shifts the focus to the fact that extramarital or adulterous relationships are under the elegiac jurisdiction of the autonomous discourse of sexuality.¹⁰⁶ The unclear legal status of the *vir* is rightly identified as more complex an element than Ovid's way of teasing into arguing whether he is advocating for or against adultery. The *vir* represents coercion against elegiac freedom of choice, the heteronomy of Augustan laws as opposed to the autonomy of the bedroom courtroom. The force of law in this elegy is expressed, according to Ziogas, by the *nulla dedisse velis* injunction (38), which not only clarifies the rules of amatory conduct, but also threatens punishment if the decree is not respected. Whether the *vir* is to be identified with the husband (thus breaking Augustus' adultery laws) or with a lover (thus making the triangle extra-legal rather than illegal) is not ultimately significant, since the only form of coercion comes from the lover, whose motives end up coinciding with contemporary legislative attempts to regulate the will of individuals. The legal references scattered throughout the elegy are therefore instrumental in legitimising individual desires as the only source of justice. I fundamentally agree with Ziogas that the legal discourse is not meant by Ovid as a playful add-on, but rather a means of normalising elegiac love. I further agree with the scholar's claim that, *pace* Daube and Davis, there is more to the lover's legal discourse than fun. The nature of the interaction between Ovidian elegy and Augustan legislation is confirmed as a dialogic one. Whilst Ovid's transgression lies in blurring the distinction between marital and extramarital relationships, the very fact that the poet embeds the legal discourse in his elegiac one proves the relevance and vitality of the marriage legislation, and the role both

¹⁰⁵ Even though the juridical allusion is not explicit in this passage, the line is, however, relevant to outline a 'role-play' which acquired a particular meaning in the elegiac universe. In his survey of Ovid's role-playing, Davis 1989, 45-56 does not focus specifically on the poet acting as judge, but rather on the burlesque effects determined by the *persona* Ovid uses to mock Augustus' marriage laws.

¹⁰⁶ Ziogas 2021a, 93-104.

discourses play against the backdrop of the major shift in the definition of a private space within the framework of the regulation of personal relationships.¹⁰⁷

It is instructive in this sense that the last word of the poem, the procedural *nega*, implies once again a court of love which is not dissimilar to the setting of other Ovidian elegies,¹⁰⁸ and foreshadows an element of continuity in Ovid's approach to the legal discourse that will inform a key part of my analysis of the *Metamorphoses* and the *Fasti*, as fictional trials become the framework for the poet's reflection on the nature of Augustan justice. Ovid's tackling the elegiac theme of infidelity in the *Amores* by means of juridical references is a key premise to fully appreciate the structural significance of legal themes in Ovid's later poems, where allusions to the marriage legislation are complemented – on a thematic level – by the recurring opposition between human and divine law. This dialectic, I argue, simultaneously mirrors and confirms the prominence of *ius* in Ovid's literary approach to the Augustan discourse.

Juridical Order and Exception

Ziogas cleverly links Freudenburg's view that the Augustan poets' *recusationes* reflect Augustus' artful refusal of exceptional powers through the *recusatio imperii*¹⁰⁹ with Agamben's reflections on the concepts of *homo sacer* and 'sovereign exception'.¹¹⁰ The elegiac *recusatio* is in fact predicated upon an opposition between legal formalism and amatory justice, with the latter being articulated in subjective and situational laws of love, which, however, paradoxically assume a juridical format. The elegiac poet thus casts himself as a *homo sacer*: according to Verrius Flaccus' definition, the lover is therefore reduced to bare life and deprived of any legal identity.¹¹¹ His figure ultimately coincides with that of the sovereign as they are both included in the legal order by way of exclusion, i.e. by exception. The elegiac lover is a *homo sacer* as he is subject to Love's sovereign lawlessness, while simultaneously assuming the role of legislator, judge or censor, and therefore constantly shifting between impotence and omnipotence, sovereign power and bare life. The parallel with Augustus' state of exception is quite striking, especially in

¹⁰⁷ *Ibid.*, 100.

¹⁰⁸ *Ibid.*, 101: see e.g. *Amores* 3.14.

¹⁰⁹ Freudenburg 2014.

¹¹⁰ Agamben 2018. Ziogas' argument is developed in Ziogas 2021a, 41-68.

¹¹¹ Cf. Festus, *De verborum significatione* 318 (quoted in Ziogas 2021a, 49).

light of the exercise of supreme authority that eventually relegated the poet to the status of 'bare life' in Tomis. The poet, however, as a lover wishing to be included in the juridical order, had already been cast as an exile from law, while in fact being enslaved by (the liberating force of) elegiac love.

The Princeps' allusion to the *lex sacrata* – which originally determined a *homo sacer* while simultaneously defining sovereign power – in *R. Gest. div. Aug.* 1.10 clearly shows that Augustus' assumption of the *tribunicia potestas* was the act that evidently marked the transition from the Republic to the Princeps' absolute power. Augustus' *tribunicia potestas*, whilst setting him and whoever offended him outside the juridical order, gave him the power to introduce the very reforms that controlled his subjects' sexuality. However, Ziogas is correct in noting that it is precisely the non-adulterous extramarital affairs' irrelevance to the rule of 'official' law which provides elegiac love with sovereign exception. This consideration leads the scholar to conclude that Latin love elegy *anticipated* the juridico-political milieu of the Principate.¹¹² The parallel or tension between the poet's and the Princeps' sacrosanctity echoes a recurring opposition between divine poetic justice (*fas*) and the rule of law in the early imperial Rome (*ius*), which, as stressed by Ziogas, will find its fullest expression in Ovid's exile works, when poetry becomes the key that gives the author access to a state of exception.¹¹³

Ovid's mirroring of Augustus' sovereign exception in his elegiac production seems to me to be more relevant to the present discussion than its anticipation, since the poet's agenda ultimately appears in opposition to the Augustan legislation and shows how the same (extra-)juridical constructs are applied to achieve different outcomes. The extended *recusatio* formulated throughout the *Amores* is pinpointed by the recurrence of juridical elements that range from the 'micro-semantics' of legal jargon as applied to the dictate of elegy, to more subtle reflections on the nature of justice, be it Augustan or divine. The elegiac lover's alleged self-casting as a *homo sacer* thus emerges, in my opinion, as a consequence of a *recusatio* that, while explicitly rejecting elevated genres, also shows the limitations of elegy by overcoming its codes and conventions (chiefly in relation to the theme of adultery and its renewed juridical significance in the Augustan age). In this framework, Ovid resorts to the legal as a tool to express a wider engagement

¹¹² Ziogas 2021a, 55.

¹¹³ *Ibid.*, 60f.

with divine and political justice – an aspect that will be confirmed by the rest of the poet's *corpus* through authorial choices that partially overlap with and partially move forward from the devices adopted in the *Amores*.

The *Ars Amatoria*

In this section I am going to show that in the *Ars Amatoria* Ovid's reliance on juridical matters insists on similar themes and compositional structures to those employed in the *Amores*, as he presents the Art of Love as the art of simulation and dissimulation in a way that again exploits legal elements to echo Augustan juridical practice.

In the *Ars*, Ovid's extended *recusatio* is integrated in an erotodidactic frame which is not completely extraneous to issues related to the public sphere (consider, for example, the crucial issue of the Princeps' dynastic succession in *Ars* 1.171-228), and must be read against the background of the *lex Iulia de adulteriis*. Therefore my analysis cannot prescind from some widely debated issues, especially the author's disclaimers about the social categories the poem is addressed to, as it has been maintained that Ovid's warning to *matronae* to stay away from his poem (*Ars* 1.31-4) might in fact be just a pose or at least a carefully calculated content strategy.¹¹⁴ Part of the scholarship maintains that the *Ars* confirms the neat incompatibility and lack of intersections between two human and social categories, the *matronae* on the one hand and the *libertinae* and *meretrices* on the other.¹¹⁵ By contrast, it has rightly been pointed out that this polarisation, which the Augustan legislation revolved around, did not necessarily reflect the *de facto* reality in Roman society, and it is precisely this mismatch that must have caught Ovid's attention and led him to formulate an alternative code of conduct.¹¹⁶

I will also analyse Ziogas' claim that in the *Ars* the poet assumes the role of a (politically engaged) legislator.¹¹⁷ Previous scholarship will provide a starting point to

¹¹⁴ Volk 2006, 237f., Gibson 2003, 26, and Hexter 2006, 301. Ziogas 2021a, 294 identifies the disclaimer as an instance of the poet's using traditional motifs while giving them some unexpected twist.

¹¹⁵ See e.g. Fusco 2010.

¹¹⁶ Following Gibson, Ziogas 2021a, 290 notes that Ovid is in fact exploiting the legal ambiguities generated by the phrasing of the law itself, as already seen earlier in this chapter in relation to *Amores* 1.4.

¹¹⁷ Fusco 2010 has outlined the *Ars*' sustained engagement with the criteria of the praetor's *edictum de adtemptata pudicitia* providing an excellent picture of the social context. My interest will rather focus on Ovid's legalese and juridical allusions.

develop my own idea that the *Ars* – not differently from the *Amores* in this regard – is the product of a cohesive plan, which is also reflected in the compositional strategies Ovid adopts in his approach to juridical matters.

Ovid as Defective Legislator

By way of introduction to the legal themes of the *Ars*, it can be helpful to take into account that the poem cannot be separated from a certain urban atmosphere, which also entails allusions to legal issues. Let us consider as an example *Ars* 3.449-52. Here some elements of the urban topography bring us back to the context of *lites* (52) taking place in the *forum* (50), where – according to Ovid’s description – girls deceived by thief-lovers tried to restore their legitimate property. The *Appiades* nymphs, in particular, are mentioned as a metonymy for legal contests (52, and the same use is recorded in *Rem.* 660), whilst also introducing a divine element as is often the case in accordance with Ovid’s underlying dialectic between human and divine norms.¹¹⁸ Unlike *Ars* 1.79-88, where the Forum is explicitly subject to the jurisdiction of Venus and Cupid, here Venus seems to discourage the discussion of private affairs in the *forum* promoted through the promulgation of the *leges Iuliae*.¹¹⁹ The topography and social practices of the Urbs are therefore adapted to serve a representation of love courtship which offers at the same time a lively portrait of Augustan society, according to a pattern that, as I will show, recurs throughout the three books.

The overall terminological adaptation of legal vocabulary to the poetic context of the *Ars* proves comparable to the strategies already outlined with regard to Ovid’s *Amores*, although legal references represent just one of several macro-themes which form Ovid’s complex approach to erotodidaxis; as such, they appear naturally attuned to the ‘frivolous’ context and are consistently interwoven within the poem’s structure. In my discussion of the *Ars* I will go as far as to claim that Ovid’s use of law-related material in this work can be read as a prelude to the more sophisticated use of *ius* in the *Metamorphoses*. I will engage with Ziogas’ reading that the premises for Ovid’s claim of

¹¹⁸ The fountain decorated with the statues of the nymphs was situated in front of the temple of Venus in the *Forum Iulium*, as confirmed in *Ars* 1.81f. (Plin. *Nat.* 36.33 records that Asinius Pollio had also decorated one of his estates with a group of *Appiades*).

¹¹⁹ Ziogas 2021a, 267-9.

a “quasi-legal status”¹²⁰ for his love poems lie in the stress the poet puts on the compliance to law of his love lessons,¹²¹ which leads the scholar to link the *Ars* and its background (namely the *lex Iulia de adulteriis*) to the poet’s relegation.¹²² Following on from Ziogas, I will suggest an alternative interpretation of the *praeceptor Amoris* as a ‘defective’ legislator.

Ziogas’ main argument is that the ‘political act’ accomplished by Ovid is to be found not in the obscene content of his lines, but in the poet’s self-representation as a legislator who sets rules on legal matters which happened to be absolutely crucial in the Augustan era.¹²³ The scholar presents the incipit of the *Ars* (*Siquis in hoc artem populo non novit amandi,/ hoc legat et lecto carmine doctus amet*, 1.1f.) as a typical rhetorical device, and uses the couplet as evidence for the competition taking place between Augustus and Ovid “for control over the highly disputed and controversial area of extra-marital sex”.¹²⁴ Boundaries between legal practice and the art of speaking were certainly vague, but attributing to the poet “a Ciceronian pose” does not seem to exhaust the analysis of Ovid’s approach to law. Whilst it can be fruitful to surface Ciceronian echoes in Ovid’s exordium, in my opinion this approach should not shadow the poet’s direct engagement with the Augustan legal background.¹²⁵

More interestingly, Ziogas observes that Ovid uses the word *carmen* “both to disavow and highlight the legal nature of his poetry”.¹²⁶ In the incipit of the poem the scholar highlights a sentence structure which was common in legal *tabulae* and *carmina*: Ovid employs *si quis* in the protasis and a jussive subjunctive in the apodosis.¹²⁷ According to Ziogas, the performative aspect underlying Ovid’s *carmen* therefore provides the author’s stance with legal power.¹²⁸ The scholar claims that the combined presence of *legere* and *carmen* (2) allows us to sustain that the poet is here hinting at “the oral reification of a law”. This process would take place along the same lines as senatorial

¹²⁰ Ziogas 2016, 216. Ziogas’ discussion of law in the *Ars* is further developed in Id. 2021a, 245-300.

¹²¹ See *supra*, 40 on *Ars* 1.31-4.

¹²² Ziogas 2016, 216.

¹²³ *Ibid.*, 216f.

¹²⁴ *Ibid.*, 217.

¹²⁵ *Ibid.*; cf. Ziogas 2021a, 247f. on the *Pro Caelio* and the *Ars Amatoria*.

¹²⁶ Ziogas 2016, 215 and Id. 2021a, 249. For a linguistic commentary on *cano* and *carmen*, see Lowrie 2009, 14-6, 328f.; Putnam 2000, 132.

¹²⁷ See e.g. Liv. 1.24.8; *ILC* 4907; *CIL* VI.930 (*lex de imperio Vespasiani*): *si quis... fecerit... esto*.

¹²⁸ Ziogas 2016, 218.

ratification procedures, which entailed an *auctor*, a *carmen* and the speech act of reading.¹²⁹ Ziogas further suggests that Ovid shows margins of imprecision and intentionally indulges in double entendre. I will take this remark as a starting point to sustain that the poet is thus disclosing, along with the systematic patterns of his complex approach to erotodidaxis, a particular awareness of certain themes which would be further developed in his later works (incest and the opposition to the laws of nature, adultery and married life). Moving forward from Ziogas' arguments, I will therefore tentatively define the poet/preceptor of love as a 'defective legislator' showing a multifarious stance which will be exemplified in the following section.

The erotodidactic purpose of the poem, I argue, remains a crucial point, regardless of the specific issues one decides to address. The layout of Ovid's didactics is clearly summarised at 2.501, where Apollo warns the poet that *qui sibi notus erit, solus sapienter amabit*. The god, suddenly appearing to the *praeceptor Amoris* (497), exhorts him to teach his disciples the Delphic motto *γνῶθι σεαυτόν*. Through the god's apostrophe, the poet defines with playful solemnity his role as master of libertine love.¹³⁰ Although at 1.25 Ovid had rejected any inspiration coming from Apollo, in this passage he complies with a conventional form of poetical declaration dating back to Callimachus.¹³¹ The idea of *sapienter amare* is certainly set in opposition to the elegiac code: the Delphic principle of self-knowledge is here meant to dignify on an ethical ground the ideological core of the *Ars*. Apollo, as Juvenal reckons,¹³² was "learned in the law": this was due not only to the presence of his statue in the *Forum Augustum* (dedicated in 2 BC), but also to his identification as the god giving *responsa*, the custodian of Augustus' library, and the presiding deity at court hearings. Moreover, Apollo was adopted by the Princeps as his special deity from at least as early as 36 BC:¹³³ Augustus' own reforms had therefore to

¹²⁹ The etymological association between *legere* and *lex* advocates for this assessment (*ibid.*, 219). Ziogas also notes further parallels with legal acts and magical language in Plautus' dramas.

¹³⁰ See Pianezzola 1991 *ad loc.* The use of the Delphic precept in love strategy recurs at *Ars* 2.511f., closing the section in a sort of syllogism, and again at 3.771ff., in a strictly erotic context.

¹³¹ See Call. *Aet. fr.* 1.22-4 Pfeiffer and Apollo's intervention in Vergil's *Ecl.* 6, which Ovid here skilfully alludes to.

¹³² *Iuv.* 1.127f. According to the scholia, the distich refers either to the temple of Apollo where the lawyers had their headquarters or to the library of Law and liberal studies which Augustus inaugurated in the temple of Palatine Apollo. The qualification, however, could also allude to the statue of the god in the *Forum Augustum*, where both criminal and civil trials were held.

¹³³ In that year he vowed a temple to the god. The Palatine temple was erected in 28 BC, and in 18 the Sybilline Books, after being revised by the Quindecemviri, were transferred to the new seat.

be considered as issued under the aegis of this god. As a consequence, it can be assumed that through this programmatic scene Ovid's teachings are intentionally linked to a divine element as well as to the contemporary legal issues of the Principate, as it is the case for several instances in the poem.

The contrast between legal and amatory licence, Ziogas argues, is introduced by the poet since the beginning of the poem's *inventio*:¹³⁴ *Dum licet, et loris passim potes ire solutis,/ elige cui dicas "tu mihi sola places"* (*Ars.* 1.41f.). As highlighted by Pianezzola,¹³⁵ this couplet might refer to the opposition between youth and the (legal) obligations of adult life.¹³⁶ Since young men's affairs with prostitutes were not sanctioned by adultery laws, it seems plausible to sustain that the poet is here hinting at the incumbent constraints imposed by the Augustan legislation. It is certainly significant that the sentence *tu mihi sola places* (42) echoes the final couplet of Propertius 2.7, an elegy which celebrated the superiority of elegiac love over marriage legislation.¹³⁷ Rather than simply assuming a common elegiac stance, Ovid might here be suggesting an alternative 'reading' to the one unambiguously imposed by the Augustan legal provisions. This allusion on the poet's part, however, is not necessarily to be considered a subversive act. In this instance, I believe that this attitude might have been adopted simply in accordance with a closer adherence to the poet's role as *praeceptor Amoris*. The laws of elegiac passion are not necessarily set in opposition to Roman (i.e. Augustan) law, although they clearly provide every possible allusion to contemporary legislation with an additional dose of ambiguity.

The two distinct sets of rules, I argue, are not as irreconcilable as Ziogas claims them to be, although it is certainly true that, at least at the time of his early works, the poet's position is a "noncommittal" one, which leaves to the reader the 'embarrassment'

¹³⁴ Ziogas 2016, 232.

¹³⁵ Pianezzola 1991 *ad loc.*

¹³⁶ This motif recurs in Roman comedy (see e.g. Ter. *Ad.* 101-10) and represents one of the main arguments in Cicero's defence of Caelius (Cic. *Cael.* 48). Ziogas 2016, 234 and *Id.* 2021a, 277ff. neatly contextualise the couplet (and the additional occurrence of *dum licet* at *Rem.* 79f.) in the framework of Roman love elegy, but Ovid's disclaimer seems more likely to address specific issues of his age. Though not completely abandoned, the traditional elegiac setting had been the object of a deep recodification already in the *Amores* and was 'revised' even more extensively in the erotodidactic poem.

¹³⁷ Prop. 2.7.19f.: *tu mihi sola places: placeam tibi, Cynthia, solus:/ hic erit et patrio nomine pluris amor,* on which see Cairns 1979 and Ziogas 2021a, 280f., who also recalls the legislative formula *senatui/principi placuit*.

of making a political decision.¹³⁸ An ‘open’ interpretation seems preferable, and more convincing, than an ultimately ‘anti-Augustan’ reading of Ovid’s love poetry. The law of Rome, even within the peculiar context of love poetry, proves a versatile tool in the poet’s hand, as the following section will further demonstrate.

Organic References

Since a deeper investigation of language through the lens of the legal has been identified as an essential element of our analysis, the question is whether the reflection of contemporary legal policies and social practice in Ovid’s erotodidactic poetry allows for the attribution of a serious note to those ‘frivolous’ verses – and, if so, how challenging (or rather resigned and ‘outlying’) the tone of the ‘defective legislator’ is. In addition to recurring references to the Augustan legislation, the *Ars* does not lack ‘isolated’ hints of peculiar private law institutes. Besides the allusions to the content of contemporary legislation, the reuse of technical terms represents, not differently from the *Amores*, a widespread ‘micro-semantic’ practice in the didactic poem. Ovid, the ‘defective legislator’, makes use of these technicalities primarily because of their imaginative power. Such references testify to Ovid’s exploitation of otherwise unexplored semantic fields,¹³⁹ while also providing further examples of the way technical terms are introduced within his poems. In relation to this double significance, the semantic gap between the English adjectives *legal* and *legalistic*,¹⁴⁰ which lacks vital parallels in Latin, should be borne in mind for the purpose of our analysis.

The main focus of the ‘defective legislator’ remains on stories and on devising the most effective ways to tell them. At *Ars* 1.282-8, for instance, the *magister* intends to demonstrate that men’s *libido* is more moderate than women’s, a theme he will significantly touch upon again in relation to Tiresias’ episode in *Metamorphoses* 3. The poet’s aim is to inspire *fiducia* (269) in his readers, with regard to women’s disposition to being conquered. To support his point, following a couple of examples drawn from the animal world (279f.), the poet resorts to a catalogue of mythical *exempla*: the first two episodes mentioned here are those of Byblis (283f.) and Myrrha (285-8), whose stories

¹³⁸ Ziogas 2016, 236 and Id. 2021a, 299.

¹³⁹ As far as we know, they were not exploited in *controversiae* either. Cf. Kenney 1969, 251-9 in particular.

¹⁴⁰ The former denotes pertinence to law, whereas the latter is related to “a strict adherence to the letter rather than the spirit of law” (see *OED*, s.vv.).

will be treated more extensively in *Metamorphoses* 9 and 10 respectively. The two heroines' faults lie in their incestuous passions, but in the *Ars* Ovid mainly focuses on the moral rather than on the legal aspects of the issue, as the use of the term *nefas* (284) suggests. Although ultimately lacking any explicit legal content, the mention of those episodes acts as a prelude to the further development of those *exempla* in the *Metamorphoses*, whose brief mention in the next chapter will highlight the evolution of Ovid's approach to legal matters in his major poem. In the *Ars*, the scheme adopted for the whole passage – composed of a *propositio* (*Ars* 1.281f.), followed by the review of *exempla* (283-340) and the final *conclusio* (341f.) – is patently rhetorical, but the setting is still fully elegiac.¹⁴¹

This internal 'evolution' in the poet's diction and attitude can be appreciated also in relation to the episode of Daedalus in *Ars* 2. The story is developed at length, but the point I would like to stress here is that Ovid introduces the archetypal *artifex* in the act of *novare* – and therefore subverting – the *iura* of his own nature: *sunt mihi naturae* – he claims – *iura novanda meae* (42). Straightforwardly enough, the motif of opposition to the laws of nature will acquire a central meaning in the *Metamorphoses*, a poem centred on transformation, particularly in relation to the episodes of Byblis and Myrrha in Books 9 and 10, whilst the idea of *iura novare* suggestively echoes the legal innovations introduced by the Princeps' *fictio iuris*. This isolated hint can therefore at least be included among the passages which support my hypothesis of an intentional development of legal themes across Ovid's works, which matches the 'calculated' recurrence of certain topics. In the course of this work, I will resort to this kind of cross-referencing of legal motifs or terminology in Ovid's poems as a further proof of the programmatic nature of his use of the legal.

A further example of Ovid's focus on storytelling rather than on setting his own (anti-Augustan) 'laws' can also be drawn from *Ars* 2. The mythical *exemplum* of the adultery of Helen and Paris is frequently exploited by Ovid for love matters, not necessarily in a nugatory sense.¹⁴² At ll. 359-72, the event is discussed adopting the *controversiae* style, marked by the sequence of *propositio* (359f.), *relatio* (361-6),

¹⁴¹ Ovid's model here is in fact Prop. 3.19 (see Pianezzola 1991 *ad loc.*) – as well as Vergil's sixth Eclogue, according to Hollis 1989 *ad loc.*

¹⁴² See e.g. *Epistulae* 16 and 17 (*infra*, 55f.); *Rem.* 773f.

remotio (367-70) and the final *sententia* (371f.). The iteration of the crime designation (*adulter*, 365, and *adulterium*, 367) brings us back to the unpopular adultery law of 18 BC. In the *relatio*, Ovid maintains the legitimacy of the defendant's behaviour, although the asserted innocence is contradicted by the negative term *adulter*. In the *remotio criminis* the event is in fact presented as illicit, but the charge eventually falls on Menelaus. The final sentence of the *iudicatio* (*Viderit Atrides: Helenen ego crimine solvo;/ usa est humani commoditate viri*, 371f.) circumlocutorily challenges the *lex Iulia de adulteriis* and reaffirms that adultery is a private matter, not an act which can be pursued by law. Ten lines later, another 'conjugal' cheating, this time on Medea, is described in purely legal terms: *coniugis admissum violataque iura marita est* (381).¹⁴³ After warning his readers against cheated-upon women's wrath, however, Ovid switches his tone again, in order to humorously play the role of *censor* and, at the same time, to distance himself from the censorship of the Augustan moral legislation: *Crimina sunt cautis ista timenda viris./ Nec mea vos uni damnat censura puellae* (387f.). In expressing his wish not to limit the lover's relationships to a single woman, Ovid obliquely acknowledges his failure to conform to the only current model in legislative practice, namely the one offered by Augustus' censorship – another theme I will have the opportunity to develop in the third chapter in relation to the *Fasti*. Once again, the author's alleged role as 'legislator' is (indirectly) introduced in an equivocal way.

After reflecting on examples in the *Ars* in which the elegiac poet casts himself as a judge or legal expert in order to justify transgression, Ziogas frames Ovid's references to the legal system in his elegies within the didactic and elegiac tradition of the poet as a judge and lawgiver in competition with powerful rulers. Ovid's exceptionality lies in the fact that in his elegy it is Augustus' sovereign authority, not Amor's, that claims supremacy over the laws governing marital and extramarital affairs.¹⁴⁴ Ovid's acquittal of Helen in *Ars* 2.371f. is exceptional on account of the lack of reported acquittals in historical cases of adultery trials.¹⁴⁵ Ovid's Romanisation of the Greek myth and of the subsequent rhetorical *agones* in Euripides and Gorgias anachronistically engages with the *lex Iulia* to address Menelaus the way an advocate would be referring to the plaintiff.

¹⁴³ In *Carm. Saec.* 20, Horace employs a similar phrase (*lege marita*), although with a different tone and purpose.

¹⁴⁴ Ziogas 2021a, 232-9.

¹⁴⁵ *Ibid.*, 239.

Menelaus' *lenocinium* is paradoxically used as a justification for the defendants' actions, while the poet simultaneously justifies the adulterers based on the laws of nature. The *remotio criminis* is centred around the claim that Menelaus should be put on trial instead of Helen and Paris due to his *lenocinium*, even though in this instance the husband does not profit from nor fails to prosecute his wife's adultery (Ovid's adherence to legal technicalities and clauses, as I have argued, is often imperfect). While Ovid's persona shifts from lawyer to juror, he simultaneously resorts to and challenges the moral legislation. Menelaus *viderit*, but it is the poet-juror who is tasked with *solvere crimine* for Helen (371).¹⁴⁶

Along the same lines, at *Ars* 2.153-8 the poet offers a picture of married life characterised by frequent *lites*,¹⁴⁷ which by contrast must not affect the man's relationship with the *amica*.¹⁴⁸ The rejection of the married couple 'ecosystem' is marked by a typically forensic expression (*res... agi*, 154), which configures the institution of marriage as a merely juridical relationship. The 'legal acme' of this passage is reached in the distich 157f. (*non legis iussu lectum venistis in unum:/ fungitur in vobis munere legis Amor*), which, framed by the iteration of *legis*, incisively sanctions the opposition between *Amor* and *lex*. This apparent reassertion of the elegiac set of values, however, is probably just instrumental in highlighting the contrast with the mere formality of contemporary family legislation for 'didactic' purposes, and any possible 'subversive' aim proves weak and merely incidental.¹⁴⁹

Later in the same book, Ovid explicitly introduces the figure of the complaisant husband (*Ars* 2.545), who represented a conventional character, especially in satire (*Ars* 2.545-7; 555f.).¹⁵⁰ Tolerance in love affairs was an extraneous value to the elegiac universe, and the poet might be resorting to it in order to intentionally prescribe behaviours in contrast with the contemporary Augustan measures in the field of morality. Whilst I ascribe Ovid's creation of his own legal persona to his need to make sense of the contemporary juridico-political reality by drawing from the *lingua franca* of Roman

¹⁴⁶ *Ibid.* 240f.

¹⁴⁷ The term designates judicial debates also in Hor. *Epist.* 1.16.42 and, as seen *supra*, in Ov. *Ars* 3.452.

¹⁴⁸ Ziogas 2021a, 214-7 discusses Ovid's Romanisation and adaptation to the Augustan context of what is essentially a Hesiodic theme.

¹⁴⁹ At *Ars* 2.427f. the teacher addresses the *discipulus* with a *variatio* played on the juxtaposition of *crimina* and *furta*; the noun *crimen* occurs with the same meaning at ll. 446 and 449, and *furta* at l. 555.

¹⁵⁰ E.g. Lucil. 1223 Marx and Hor. *Sat.* 2.5.75ff. In *Ars* 2.575f., Ovid exhorts even the Sun to act as *leno* in relation to Venus and Mars' affair.

“juridical morality”, I fundamentally agree with Ziogas’ outlining a competitive attitude in Ovid’s ‘amatory laws’. The fictional, extra-legal settlements taking place in his elegies are set as alternatives to the judgements of contemporary *quaestiones perpetuae*, and provide the elegiac poet himself with a state of exception that casts him as an alter ego of the monarchic ruler and his legislative powers.¹⁵¹ The author, however, proves again a ‘defective legislator’, since the discrepancy between elegiac experience and didactic principles is counteracted by the poet’s ‘autobiographic’ experience – exposed to his disciples at ll. 547f. (*Hac ego, confiteor, non sum perfectus in arte./ Quid faciam? Monitis sum minor ipse meis*) – which is in fact part of a standard repertoire. The poet’s final assessment on this issue, which leaves the question open, is expressed at l. 555, where ignorance is preferred over compliance: Ovid significantly employs the formulaic expression *melius nescisse fuit*, which has the same legal flavour as the similar formula employed in *Amores* 1.4.¹⁵² The recurrence of semantic fields, motifs and authorial stances frequently noted in the *Amores* contributes to the shaping of the *praeceptor*-narrator more in terms of elegiac mastery (through a revised and somehow deceptive one in relation to the original elegiac code) than legislative authority.

Book 3 deserves some further consideration, as in this section of the poem the allusions to the Augustan legislation appear more closely intertwined with the issue of Ovid’s banishment.¹⁵³ The poet did not undergo a proper trial and this circumstance might be explained in light of the fact that the *Ars* provided material evidence of Ovid’s guilt.¹⁵⁴ After the publication of the third book, addressed to women, we can suppose that the poet’s ideological contravention of *leges Iuliae* could no longer be ignored. The focus shift in Book 3 could therefore account for the ‘delay’ of Ovid’s exile until AD 8, if that sanction was actually related to this poem. Moreover, if we follow Murgia’s dating of the second edition of the *Ars* including Book 3, its supposed publication and the relegation

¹⁵¹ Ziogas 2021a, 242f.

¹⁵² See *supra*, 30.

¹⁵³ Bauman 1989, 52. Unfortunately, unlike the first two books, the last one cannot be dated based on internal references.

¹⁵⁴ See *Tr.* 2.131f. (*nec mea decreto damnasti facta senatus,/ nec mea selecto iudice iussa fuga est*) and 2.315 (*nil nisi peccatum manifestaue culpa fatenda est*).

must have happened just before the promulgation of the *lex Papia Poppaea nuptialis* in AD 9.¹⁵⁵

Given these premises, it is worth noting that at some point in the book the poet's memory (and diction) seems to go back to his early experience in the *forum*, thus indirectly confirming the formulation of an 'extended' *recusatio* throughout his love poetry (*Ars* 3.531-5; 541f.). In reckoning that each social category has their own duties (*Ars* 3.531f.), Ovid indicates the jurist's function through the technical verb *adesse* (*ius qui profitebitur, adsit*, 531), which also occurs at *Rem.* 663 (and less explicitly at *Ars* 2.223) in its meaning of "being present to help in a lawsuit".¹⁵⁶ Conversely, in his description of the poet that follows (*Nec nos ambitio, nec amor nos tangit habendi:/ contempto colitur lectus et umbra foro*, 3.541f.), *amor... habendi* is a topical *iunctura*,¹⁵⁷ while *lectus et umbra* denotes the *otium* of poetic activity, and of the elegiac experience in particular.¹⁵⁸ The 'defective (or *deceptive*) legislator' extends his *recusatio* by ambiguously distancing himself from forensic practice, and reasserting his 'affiliation' to his reinvented love poetry microcosm.¹⁵⁹

Towards the end of Book 3, the author's alleged stance as legislator and the contemporary setting seem to reconcile. Ovid stresses once more the contrast between the freedom of action reserved to the girls he is addressing and the necessary invigilation imposed upon married women (613-6). The iteration of the demonstrative *hoc* in asyndeton (*hoc decet, hoc leges iusque pudorque iubent*, 614) separates the value of *decorum* from the strictly normative aspect. Most manuscripts give the variant *duxque* instead of *iusque*, recorded by A:¹⁶⁰ *dux* is usually understood as referring to Augustus and to his marriage legislation programme. The *Ars*, however, generally lacks such explicit references to the Princeps; in addition, this line perfectly matches (apart from the *ordo verborum*) the statement formulated earlier at 3.58. The women whom the *Ars* is

¹⁵⁵ Murgia's arguments are discussed in Gibson 2003, 39ff. *Contra*, see also Thorsen's dating *infra*. In particular, the *lex Papia Poppaea* excluded unmarried men aged between 25 and 60 from legal succession according to a will.

¹⁵⁶ *OLD*, s.v. 12.

¹⁵⁷ Occurring in Verg. *Aen.* 8.327; Hor. *Epist.* 1.7.85; Ov. *Fast.* 1.195 and *Met.* 1.131.

¹⁵⁸ See Ov. *Am.* 1.9.41f.

¹⁵⁹ Cf. Ziogas 2021a, 276, who sees in this passage a parallel between the elegiac poet/lover and the lawyer, both of whom offer their services expecting something in return.

¹⁶⁰ This *lectio* was defended by Goold 1965, 93f. On the nexus *lex-ius*, derived from ancient formulas, see Pianezzola, Baldo and Cristante 1989, 170f.

addressed to, by contrast, are here connoted through the word *vindicta* (615), the stick employed to perform the *manumissio* procedure in favour of slaves.

More assertively than in the *Amores*, Ovid evokes legal procedures and language while immersing his audience in a lively representation of the problematic social context of the age of Augustus and its controversial aspects.¹⁶¹ This attitude clearly emerges in the ‘micro-semantic’ reuse of legal technicalities outlined in this section, as well as in the poet’s touching upon the recurring and unresolved relationship with forms of divine authority that manifest themselves in legal terms. The emphasis put by Ziogas on Ovid’s indulgence in double entendre is attenuated by my assessment that the poet’s malicious tone is instrumental in making his storytelling practice more artful, rather than in turning the poet into a proper ‘elegiac legislator’. It remains true, on the other hand, that, by giving love *responsa* based on Amor’s authority, the poet takes on a stance that is not dissimilar from Labeo’s – an ambiguous attitude that is particularly significant at a time when law had been professionalised by, among other factors, Augustus’ own granting of the *ius respondendi*, and when private affairs had become the object of public legal interest.¹⁶²

However, Ovid’s spotlight on characters and their stories is so evident, that the recurrence of certain themes within the course of his *œuvre* will allow me to show how these narratives are paralleled by the supposedly intentional and conscious development of several juridical motifs (and *vice versa*). The largely straightforward connection between the *Ars* and the Augustan legislation is indeed an underlying theme, but there are no unequivocal elements leading us to believe that Ovid is systematically pursuing an ‘anti-Augustan’ agenda at this stage. The author’s position in the *Ars* is ultimately a noncommittal one, and any allusions pointing to a different reading should probably be reconsidered in light of the erotodidactic context and the elegiac legacy, or of Ovid’s biographical experience up until his later clash with the Princeps’ authority.

In extending his *recusatio* according to these parameters, in the *Ars* the poet proves again to be making an eclectic use of the elegiac tradition, and anticipates some of the standpoints he will subsequently assume in his approach to different genres. In his later works the ‘defective legislator’, ultimately discarding his didactic pose also due to

¹⁶¹ In Book 2 of the *Tristia*, on the other hand, Ovid would have argued for his self-defence by inviting Augustus to operate a distinction between different audiences, and therefore interpretations, of the *Ars* (cf. *Trist.* 2.77-80 and 2.213-42).

¹⁶² Ziogas 2021, 263.

his autobiographic misfortunes, I argue, will adapt the shape of his legal knowledge to new forms of expression.

The *Heroides*

The elegiac expressive code, already adapted by Ovid to suit the tone of his own love poetry in the *Amores* and the erotodidactic discourse in the *Ars*, undergoes further adaptations in the *Heroides*. Although significantly different in the outcomes, the three works share a fundamental affinity of genre. If we accept the tripartition of the author's career into a phase of rise, a peak and a subsequent decline,¹⁶³ the three major love poems evidently belong together in the ascendant moment of Ovid's parabola.¹⁶⁴ Before analysing the treatment of legal matters in the *Heroides*, I will therefore touch on the chronological issues related to the composition of the poem, since they can contribute to support my theory of an internal evolution of Ovid's approach to legal content throughout his works.

A 'canonical' starting point is the chronology conjectured by Syme,¹⁶⁵ who assumes that the *Heroides* appeared first in the form of fifteen epistles written by women of ancient myth to their male lovers; only at a second stage, whose dating is difficult to ascertain, three pairs of double letters were added, including the lovers' replies.¹⁶⁶ On the grounds of internal references included in several Ovidian passages, Syme suggests that the second, 'complete' edition of the *Heroides*, with the addition of Epistles 16-21, might have followed the second edition of Books 1 and 2 of the *Ars* and the revised edition of *Amores* 1-3. After the *Heroides*, the love poetry section of Ovid's literary career would have been complete with the third book of the *Ars* and the *Remedia Amoris*.¹⁶⁷ More recently, Fulkerson states that the general consensus dates the composition of the single *Heroides* roughly between 20 and 13 BC, namely between the first and second edition of

¹⁶³ Thorsen 2014, 1 suggests a tripartite structure based on the three dominant themes of love, myth and exile, although in fact they simultaneously occur throughout the three stages of Ovid's poetic career. I agree with Thorsen that such working tripartition should not imply any sort of qualitative assessment.

¹⁶⁴ The culmination is to be identified with the *Metamorphoses* and the *Fasti*, whereas the decline coincides, at least inspiration-wise, with the exile poetry.

¹⁶⁵ Syme 1978, 3-20.

¹⁶⁶ *Ibid.*, 3, 7 and 13.

¹⁶⁷ *Ibid.*, 20.

the *Amores*. The double letters, however, due to their stylistic and metric features, should be dated to about the time of Ovid's exile (AD 8).¹⁶⁸

The question is strictly related to the date of composition of *Amores* 2.18, where Ovid himself mentions some of the epistles (*Am.* 2.18.19-26). If we agree with most scholars that this poem appeared for the first time in the second edition of the *Amores* and if the work described in ll. 19f. is the *Ars* (specifically Books 1 and 2), the composition of the *Heroides* should be dated back to between 10 and 1 BC.¹⁶⁹ Conversely, if we reject both assumptions, the epistles are to be considered an early work, contemporary to the original five-book version of the *Amores*. The latter chronology would further advocate for the separation of the paired letters from the rest of the collection with regard to both date and conception.¹⁷⁰

According to Thorsen, by AD 2 Ovid had composed most of his amatory elegies, namely, the single *Heroides*, the three books of the *Amores*, the whole of the *Ars* and the *Remedia*.¹⁷¹ As for the chronological order of these works, also leveraging *Amores* 2.18, she suggests that the single epistles antedate the extant version of the *Amores*. She further sustains that coincidences and overlaps in their possible order of appearance might confirm the hypothesis that the poet worked (either at a composition stage or for subsequent edits) on all his (broadly speaking) love elegies more or less simultaneously.¹⁷² If we follow most scholarship in sustaining that the double epistles, although they belong with Ovid's love elegies, were a product of the exilic period, this would extend the poet's engagement with love elegy from the beginning to the very end of his poetic career.¹⁷³ This seamless continuity, I argue, would attractively match the poet's engagement with legal themes, as the markedly 'juridical' elements in the last two epistles of the collection seem to confirm. As fitting as this reconstruction would be for

¹⁶⁸ Fulkerson 2009, 79, who also briefly addresses the question of the authenticity of many of the letters (on which cf. Knox 2002, 117f. and 120-2, with further bibliography). For practical reasons I will not discuss the issue and consider the corpus as entirely composed by Ovid.

¹⁶⁹ Knox 2002, 119 (with further bibliography and *contra* arguments).

¹⁷⁰ *Ibid.*, 120. The scholar recalls the widespread conjecture of a later composition for Epistles 16-21, which might have been written shortly before the poet's exile or not long after, primarily based on inconsistencies with Ovid's diction in his amatory poetry.

¹⁷¹ Thorsen 2013, 115.

¹⁷² *Ibid.*, 116. The scholar goes as far as to advance the hypothesis that around AD 2 the author might have published all those works in a joint edition, as supported by Syme 1978, 20 and, more recently, Harrison 2002, 84. See also Thorsen 2014, 2f. and 9-38.

¹⁷³ Thorsen 2013, 117.

my critical purposes, the question is still open, and the unresolved character of the chronological issue has to be borne in mind while analysing those texts more closely.

It is part of the creed that the single epistles are modelled on the rhetorical patterns of *suasoriae*, while the last six letters combine those patterns with the schemes of *controversiae*, and that the work as a whole associates the elegiac atmosphere of the *Amores* with the mythical characters of the *Metamorphoses*.¹⁷⁴ Letters 1-15 match the elegiac discourse presented in the *Amores* also with regard to the use the poet makes of legal terminology – an assumption whose likelihood would increase, were the two works actually to be considered roughly contemporary. The paired epistles, on the other hand, seem to require a different approach, as will emerge from a closer inspection of the last two epistles of the collection in the following section.

The *Heroides* as a whole can be effectively connoted through the words *crimen*, *culpa* and *poena*. Each letter features at least one of these terms (*Epistulae* 5, 7, 12 and 20 have all three), which contributes to a general characterisation of the compositions in terms of guilt and punishment. At *Epist.* 17.48, in Helen's words, the noun *crimen* is paired with *error*, a term which reminds us of the famous Ovidian disclaimer regarding his own faults.¹⁷⁵ It has already been shown that the *Heroides* provide parallels to the references to certain legal procedures which can be traced in the *Amores* and the *Ars*, namely *manus iniectio*, *vindicatio*, and *mandatum*.¹⁷⁶ Alongside these allusions, *crimen*, *culpa* and *poena* are introduced throughout the collection by means of underlying 'Augustan' themes such as the opposition between adultery and legitimate marriage, the recurrence of the subject of incest in a primarily elegiac context, as well as more purely elegiac themes such as the *topos* of *furtivus amor* or the different aspects and implications of *licentia*. The recurrence of these motifs will help me account for the traditional bipartition of the collection into two distinct sets of epistles, while focusing on the author's approach to law-related content and language throughout.

Adultery is a recurrent topic, be it real or merely feared;¹⁷⁷ this subject is linked to the insistence on the idea of *fides* as opposed to the violation of existing oaths (on a

¹⁷⁴ Thorsen 2014, 2.

¹⁷⁵ The reference is to *Tr.* 2.207: *perdiderint cum me duo crimina, carmen et error*.

¹⁷⁶ These procedures are echoed in *Epist.* 8.15f., 12.157f. (*manus iniectio*), 8.7f. (*vindicatio*) and 16.303-16 (*mandatum*); see *supra* 22 (fn. 29), 32.

¹⁷⁷ The exact term *adulter* is employed at 1.6 and 17.18; *adultera* at 5.125, 6.133 and 17.217.

legal or merely emotional ground).¹⁷⁸ Another aspect worthy of attention is the almost obsessive frequency of terms indicating kinship, which emerges throughout the work but reaches its peak in the words of Briseis (*Epistulae* 3), alongside the semantic fields of affective bonds and marriage.¹⁷⁹ The social patterns of legitimate marriage are even applied to a myth whose tradition had never entailed such an option before Ovid: this is the case of the relationship between Hypsipyle and Jason in *Epistulae* 6, showcased by the heroine in opposition to the liaison between Jason and Medea.¹⁸⁰ In revisiting myth, Ovid manages to make it ‘typical’ by assimilating it to the core value of respectability associated with legitimate marriage, the recurring underlying model in the *Heroides*.¹⁸¹ This motif is therefore confirmed to be an underlying feature of the poet’s whole amatory production, which will further contribute to the outlining of a certain continuity in Ovid’s engagement with contemporary legal issues even beyond his love poetry.

Adultery recurs as a central theme also in the double epistles. In *Epistulae* 16, Paris argues that the very act of reading his letter has to be considered a form of connivance on Helen’s part.¹⁸² The elegiac theme of *furtivi amores* is developed, both in his letter and in Helen’s reply, in relation to Leda’s myth.¹⁸³ Further to these elegiac motifs, the praise of Trojan *cultus* as opposed to Spartan severity recalls the wealth and pleasures of refined Augustan society.¹⁸⁴ Paris formulates an apology of adultery and libertine love,¹⁸⁵ whereas Helen replies that her extraneity to matronal severity should not

¹⁷⁸ Penelope reaffirms her conjugal loyalty at 1.81-116, whereas the semantic field of *fides* and *perfidia* is crucial in the letters of Phyllis (*Epistulae* 2), Dido (*Epistulae* 7), Ariadne (*Epistulae* 10) and Medea (*Epistulae* 12). For a legal reading of Medea’s epistle, see Alekou 2018.

¹⁷⁹ See ll. 51f. (*tot tamen amissis te compensavimus unum;/ tu dominus, tu vir, tu mihi frater eras*), 71ff. and 93ff. in particular.

¹⁸⁰ The canonical source for the episode is *AR* 1.609-913.

¹⁸¹ See *Epist.* 6.17f., 41ff. (where the woman mentions *coniubialia iura*). The recurrence of this motif might demonstrate that the influence of Vergil’s Dido was not limited to the seventh epistle (Dido to Aeneas), but might have been extended to the presentation of several Ovidian heroines. Cf. *Verg. Aen.* 4.172: *coniugium vocat, hoc praetexit nomine culpam*.

¹⁸² *Epist.* 16.13-6. Very similar, as for content, to the layout of the *Ars*, the letters of Paris and Helen have been appropriately defined “contemporary poems” (Kenney 1970, 390), as they provide a disguised picture of intrigues in contemporary Rome. The absence of a diachronic perspective turns the mythical setting into a medium to convey current matters (which also bore a legislative connotation in Augustus’ time). Paris is also mentioned at *Epist.* 20.49, where Acontius claims that he does not blame the hero for his adulterous deeds.

¹⁸³ *Epist.* 16.291ff. According to Helen, Leda’s adultery is justified by the woman’s *nescire* (17.47) with regard to Jupiter’s fraud.

¹⁸⁴ *Epist.* 16.31ff., 173ff.

¹⁸⁵ The elegiac background is particularly evident at *Epist.* 16.129ff. and 217-62, where the poet clearly ‘quotes’ his previous poems, *Amores* 1.4 and 2.5. See Kenney 1996 and Michalopoulos 2006 *ad loc.*

be misleading with regard to the steadfastness of her conduct. Significantly, her hesitation plays around the elegiacally-flavoured dilemma of matronal *rusticitas* as opposed to libertine *licentia*.¹⁸⁶ The legacy of love poetry is equally evident in the letters of Hero and Leander, whose story shows the typical features of elegiac *furtivus amor*.¹⁸⁷ A storm forbids Leander to reach Hero and compels him to the formulation of a sort of *paraklausithyron* (the door being replaced by the sea). Furthermore, *Epistulae* 18 opens with a patently elegiac apostrophe to the letter itself. Hero's reply, on the other hand, is marked by the anxious suspicion of being cheated by her lover. The recurrence of these motifs throughout the letters, not unlike the rest of Ovid's love poetry, supports my reading of the author's approach as consistently, though subtly, engaging with the themes of Augustan legal propaganda as brought forward by the Princeps' marriage legislation.

The organic development of those legal themes is further confirmed in *Epistulae* 4 (Phaedra to Hippolytus) and 11 (Canace to Macareus), where *crimen*, *culpa* and *poena* take the form of incest, which was already alluded to, as we have seen, through the mentions of Byblis and Myrrha in the *Ars*,¹⁸⁸ and which will be further developed through the same two female characters in the *Metamorphoses*.¹⁸⁹ The case of Phaedra is particularly interesting, as it further contributes to the understanding of the general setting of the letters as markedly elegiac. The fourth letter is in fact a declaration of love through which the heroine enacts precise seduction strategies. Phaedra's character is here reinterpreted as a typical lady of gallant society, who exhorts Hippolytus to an affable and approachable behaviour. She warns her stepson to avoid strict life choices and inflexible attitudes, thus matching the ideological stance at the basis of the *Ars*. Phaedra exalts a modern and tolerant ethics, which suits the widespread hedonism of a truly civilised society. She shows a relativistic point of view and reclaims a theory on the legitimacy of incest developed in the sophistic and cynic-stoic milieu.¹⁹⁰ Though not

¹⁸⁶ In *Am.* 3.4.37, Ovid attributes *rusticitas* to a husband who does not act leniently with regard to his wife's faults. For a survey of the occurrences of the term *rusticitas* in legal texts and its meaning in juridical contexts, see Mayer-Maly 1982, reviewing the legal texts in which *rusticitas* is mentioned as a reason for *ignorantia iuris* and *error iuris*.

¹⁸⁷ See *Epist.* 18.54: *mente agito furti tempora prima mei*.

¹⁸⁸ *Supra*, 45f.

¹⁸⁹ *Infra*, 98ff.

¹⁹⁰ Ovid transfers to his Phaedra the arguments and functions which in Euripides belonged to the nurse (see *Epist.* 4.17f., 129ff.). It is suggestive that Ovid intentionally confers further centrality to contemporary juridico-moral preoccupations by giving them voice through a more central character.

altogether evident with regard to diction, a certain continuity throughout Ovid's poems can be observed at least on thematic grounds, which further supports the hypothesis of a seamless transition to different treatments of the same law-related motifs within the course of Ovid's poetic career.¹⁹¹

Based on this brief review, the recurrence of those themes and of the semantic fields of *crimen*, *culpa* and *poena* confirms that the framework of the epistles appears homogenous and rather repetitive in terms of legal references. Given the epistolary set-up, the use of technical language is extremely 'controlled' and overall lacks the experimental features of the previous works. A unique, and therefore even more significant, exception is offered by *Epistulae* 20 and 21, where a more sophisticated approach emerges with regard to law-related features, which further singles out the compositional strategy behind the double epistles as opposed to the more repetitive nature of the single letters. Ovid's intentionally increasing and ever evolving engagement with legal themes can therefore be appreciated not only by analysing the recurring of certain motifs throughout his *œuvre*, but also in relation to the more sophisticated integration of legal content within the same collection.

Acontius and Cydippe

Not unlike the *Amores* and the *Ars*, *Epistulae* 20 and 21 can be analysed against a double tension between human law and divine will, as well as between elegiac and 'civil' laws. This tension, already underlying Callimachus' version of the myth in the *Aetia*,¹⁹² is brought to the fore by Ovid through the insertion of distinctive elements of the Roman legal discourse. The episode narrated in the two epistles goes as follows: Acontius, a young man from Ceos, falls in love with a beautiful girl from Naxos named Cydippe while attending a festival in Delos. In order to exact a betrothal from her, he cunningly has an apple roll to her feet. Her nurse takes it and asks the girl to read the message inscribed on it, namely an oath to marry Acontius, stated in Diana's name. Back home, the girl is due to get married to another man chosen by her father. She is, however,

¹⁹¹ Fulkerson 2009, 80 stresses that, according to most of the scholarship, monotony would be precisely the point of the corpus, as it encourages readers to pay particular attention to the variations on the "sameness" of its basic themes and patterns. "Careful reading is amply rewarded", I shall argue, also with regard to variations on legal motifs.

¹⁹² Call. *Aet.* fr. 67-75 Pfeiffer.

affected by the typical symptoms of lovesickness, which causes the postponement of the marriage several times. An oracle from Apollo eventually reveals that the girl will be healed only once the betrothal to Acontius has been fulfilled. As for chronology, Acontius' epistle is situated between the trip to Delos and the oracle's response, whereas Cydippe's letter is interrupted by the news of the oracle, leading her to finally surrender to the fulfilment of her oath (231ff.). The whole episode is centred upon the heroine's speech act which, according to the conventions of Roman law, is strictly dependent on a *carmen* that simultaneously bears legal, magical (in its causing the girl's physical symptoms of lovesickness), and amatory consequences. The effectiveness of Acontius' *carmen*, however, closely relies on some divine intervention which bears significant correspondences with the modes and timing of Augustus' legal innovations, as the *carmen* itself clearly determines a 'state of exception' within the framework of Latin love elegy conventions.¹⁹³

The centrality of the opposition between secular and divine norms in *Epistulae* 20 and 21 had already emerged in Kenney's contribution on love and legalism in the two epistles.¹⁹⁴ The article, despite the merit of having once again paved the way to subsequent contributions on Ovid's use of the legal discourse in the *Heroides*, ultimately labelled the two letters in particular (and Ovid's double epistles in general) as unsuccessful experiments that confirm the comparative inferiority of the elegiac conventions compared to the superior heights of Ovid's *Metamorphoses*, although Kenney still flagged them as standing in opposition to the monotony of *Epistulae* 1-15. In Kenney's view, the recurrence of legal technicalities in Ovid overall proves to be "an occasional device to lend added piquancy to a situation"¹⁹⁵ rather than a dominating preoccupation of the author's.

In the opening of *Epistulae* 20, Acontius identifies the oath exacted from Cydippe as a *pactum* (*iurabis*, 1; *pactamque fidem*, 7; *spondere*, 11; *pacti*, 151, 155) despite having induced her *fraude et dolo* (21f., 31f.) – according to traditional Roman norms,¹⁹⁶ the promisor was bound to a contract of strict law (*stricto iure*) even if the contract was the

¹⁹³ Ziogas 2021a, 155.

¹⁹⁴ Kenney 1970.

¹⁹⁵ *Ibid.*, 392.

¹⁹⁶ I.e. until around 80 BC, when praetors intervened on the subject (see Watson 1995, 22). Before the end of the Republic, an *actio de sponsu* could be engaged in to receive an indemnity in the case of either party eluding the contract.

result of fraud or extortion. Acontius' written message acquires the features of a *sponsio* (an oral betrothal) or a *stipulatio* (an oral contract): both contractual formulae typically employed the verb *spondeo*.¹⁹⁷ More specifically, the ritual of *sponsalia* entailed verbal contracts between the two *patres familias* or between the girl's father and her fiancé, as highlighted by Acontius at 157-60 (in his imaginary confrontation with Cydippe's fiancé), as he sets an opposition between the *sponsio* agreed between his rival and Cydippe's father, and the girl's oath. This aspect matches a provision in the *lex Iulia* which prevented a father from objecting to his daughter's marriage without legitimate reasons: Ovid thus clearly brings about an opposition between ancient and new law, evoking the changes undergone by *ius* at the time of his writing.¹⁹⁸ As for *dolus* (31f.), the notion of *dolus malus* was susceptible to the instruction of an *actio de dolo*, as opposed to *dolus bonus* which was in fact acceptable even on juridical grounds.¹⁹⁹ The centrality of the notion of *dolus* is matched within the episode by the recurrence of the verb *capi*²⁰⁰ and the insistence on the idea of (*bona*) *fides*.²⁰¹

Acontius identifies himself as a *coniunx* and the union he seeks as a *coniugium*. When declaring that he is seeking lawful marriage, the lover stresses the contrast between the illicit relationships promoted in love elegy and the marital bonds supported by the *leges Iuliae*. The loyalty of a husband is set in opposition to the reprehensible behaviour of an adulterer. However, the very fact that the beloved girl is already engaged to another man makes the whole context a typical elegiac situation. Despite Acontius' warning his rival about adultery (*postmodo si facies istud, adulter eris*, 20.148), we are aware that his proposed contract is in fact a disguised *crimen*.²⁰² At 145ff., as the lover extends the juridical altercation to Cydippe's fiancé and engages in an imaginary trial-type dispute

¹⁹⁷ In its meaning of "to give a pledge", and in particular "to contract (by word) to give or take in marriage" (see *OLD*, s.v. 1). Cf. Ziogas 2016, 223.

¹⁹⁸ D. 23.2.19. Cf. Videau 2004, non-paginated.

¹⁹⁹ See Cic. *Off.* 3.14.60. According to archaic law, in certain circumstances cheating was considered *bonus dolus* on a legal ground, for instance in order to obtain a better price for an object. The notion is alluded to also at *Epist.* 20.21f.: *decepta dicas nostra te fraude licebit, / dum fraudis nostrae causa feratur amor.*

²⁰⁰ Cf. 20.43f., 65f.; 21.104, 128, 132. The verb *capi* in the sense of "being tricked" (*OLD*, s.v. 20a) recurs also at *Ars* 1.83.

²⁰¹ Cf. 20.7, 40, 112, 182, 186, 212; 21.136, 223, 234.

²⁰² The word *crimen*, as seen above, is a marked term in the Ovidian letters. In Epistle 20 see lines 7 (Acontius' illegitimate claim on the girl, allegedly corresponding to the parameters of legitimate marriage), 38 (where he affirms his discreet letter cannot be considered a *crimen*), 68 (where he states he will endure reproach for his *crimen*, as long as he can enjoy the reward deriving from it, i.e. the girl's possession) and 225 (where he affirms his *mores* are *sine crimine*).

with his rival, he reclaims his rights on the girl in terms of juridical property. At 145f., Ovid draws from Rome's archaic agrarian universe, which was codified in the Twelve Tables.²⁰³ The references to *manus* (147-9) and *vindicatio* (151) cast Cydippe as a *res* (150) to be judicially reclaimed by two parties in front of the praetor (152), according to patterns already observed in *Amores* 1.4 and 2.5.²⁰⁴ The lines show a high density of references to *vindicatio*, with the succession of terms *vacuis*, *vindicet*, *dominum*, *res... ista*, *recitetur formula pacti*; the poet had already insisted on the same semantic field by expressing his wish for an unreserved fruition of the girl: *irata liceat dum mihi posse frui* (72).²⁰⁵ Since he employs the term *res* in the legal meaning of "chattel", which was used to designate slaves, Acontius adds further legal nuances to the motif of *servitium amoris*. In these lines the poet insists on non-metaphorical possession, stressing the denial of the rival's property claim through the iteration of possessive elements around the caesura (145), which matches Videau's idea of "une poetique de la grammaire du droit".²⁰⁶ The use of possessives was a typical element of technical designations of authority. In addition, in this passage the reference also likely alludes to the institution of *matrimonium cum manu*, according to which the woman entered the groom's family and was completely subordinated to his authority.²⁰⁷

Whereas Acontius' legal conflict with his beloved is centred on the legal definition of *dolus*, his challenge to the rival focuses on two main issues. On the one hand, Cydippe's fiancé is the ultimate addressee of Acontius' property claim on the girl. On the other hand, the notion of *sponsio* emerging from 20.159ff. stresses the tension between the ancient and the new law. The new Augustan legislation, which denied the bride's father the right to reject an otherwise legitimate marriage, is contrasted with the archaic legacy of family law, which ascribed to the *pater familias* any form of marriage-related decision-making. The paradoxical device of presenting illegitimate love affairs as law-compliant relationships, already occurring in the *Amores*, is disseminated in this pair of

²⁰³ XII TAB. 7.9, reported by Plin. *Nat.* 18.3.12: *frugem quidem aratro quaesitam noctu pavisse ac secuisse puberi XII tabulis capital erat.*

²⁰⁴ See *supra*, 29ff.

²⁰⁵ The notion of possession is further stressed in the second half of the diptych, when Cydippe describes her fiancé's approaches (*timido me vocat ore suam*, *Epist.* 21.196). A similar 'right of use' is reclaimed by Orpheus in front of Pluto and Proserpina, with regard to his wife Eurydice, in *Met.* 10.37 (*pro munere poscimus usum*): see *infra*, 94.

²⁰⁶ Videau 2004, paraphrasing Jakobson.

²⁰⁷ Berger 1953, s.vv. *manus* and *conventio in manum*; Buckland 1963, 412, 419; Thomas 1976, 118ff.

letters by means of several allusions to the same parameters of lawful marriage reaffirmed by the Augustan legislation.²⁰⁸

Towards the end of letter 20, Acontius pictures a votive golden apple to be offered to Diana to acknowledge the validity of the message on the original fruit (237-40). The verb *reor* is here used in the sense of “to grant fulfilment” (240), while the legalistic diction is enforced by the phrase *testatur Acontius* (239). *Testatio*, in juridical terms, was the written declaration of a witness which was commonly taken into account in court.²⁰⁹ The procedure is essentially the same as the one outlined in the clause *in eo scripta fuisse rata* (240), with the neatly prosaic legal transaction *in eo* and the confirmation of the legal validity of the original message on the real apple. As stressed by the verb *testatur*, the lover certifies the authenticity of the message uttered by Cydippe. Both apples ultimately serve as legal documents, and the imitative process implied by the votive apple validates the whole fictional operation narrated by the poet,²¹⁰ which once again produces legal effects according to mechanisms that mirror Augustus’ *fictio iuris*. Witnesses’ statements, however, were validated by being read aloud. Not only does Cydippe play the role of a validating reader since the opening episode, but Acontius also invites his rival to have the girl read the words of the contract (20.151f.): the lover turns himself into an advocate in court, requiring the production of documents.²¹¹

Divine intervention is first introduced in Acontius’ letter as he recalls the professional consultation received from Amor (28f.).²¹² Amor’s traditional role as the inspiring god and *praeceptor* of love poetry here goes beyond his traditional dictation of the rules of erotic persuasion and as far as briefing the details of a nuptial contract (27-

²⁰⁸ Cf. *Epist.* 20.7f., the reference to adultery at 20.148, the reference to *coniunx* and to Diana as protector of *partus* at 20.191-4. In *Epistulae* 21, the marked term *coniunx* returns (111), and is matched by the use of *sponsa* (228).

²⁰⁹ The oral or written testimony of a witness was also called *contestatio*. The presence of witnesses was necessary to grant the validity of some acts or transactions (e.g. testaments and *mancipationes*). *Contestatio* was specifically meant as a declaration made before witnesses; the invitation to be witnesses to a fact or oral statement was extended through the phrase *testes estote*.

²¹⁰ Here I closely follow Ziogas’ reading of this passage: see Ziogas 2016, 227f. and Id. 2021a, 175ff.

²¹¹ Kenney 1996 *ad loc.*; Ziogas 2016, 229.

²¹² While Diana acts as Cydippe’s juriconsult (*Epist.* 20.32, 113). The superiority of the goddess’ stance with regard to the girl’s oath is also asserted at ll. 95f. (where Acontius exhorts his beloved), 160 (where he stresses the difference between the girl’s and her fiancé’s *testatio*), and 195f. (when he predicts the consequences of the violation of the oath). Diana’s role within the episode is mentioned again when Acontius states that the goddess acted as *testis* (212) and later on as legal counsellor (220). Diana is invoked as witness also at 20.18 and 21.134.

33). The *sponsalia* uttered by Cydippe are ultimately dictated by Amor's *verba*: the elegiac discourse conveyed by the traditional figure of the god thus acquires the strength of a speech act, and literally determines the enactment of a contract.²¹³ The phrase *adstringere verbis* (28) is akin to *iuro*; the term *sponsalia* (29) occurs only here within elevated poetry.²¹⁴ The whole phrase *ab eo feci sponsalia* is markedly prosaic and legalistic, and provides the passage with a formal tone. The claim, however, is provocative, as two parties were necessary for a betrothal. Moreover, *adstringo* refers to the language of binding oaths, also with reference to law.²¹⁵ At l. 30, *iuris* can be ambiguously referred to both Acontius (*iuris... vafer*) and Amor (*consulto... iuris*),²¹⁶ whilst the verb *dictare* (29) had a slight legalistic-bureaucratic *color* as well. Amor's role (30) is all the more interesting if we take into account that in the *Ars* Ovid had distanced himself from the conventional didactic role of the god and had preferred Apollo's 'legal' advice instead.²¹⁷ The poet therefore withdraws from the didactic stance of the *Ars* and links his inspiration back to the elegiac role of the god in the *Amores*.

In her response, Cydippe counteracts Acontius' deceit by resorting to forensic rhetoric to stress the absence of intentionality in her oath, which therefore cannot have any binding power (*Epist.* 21.133-52). Ovid's audience – supposedly acquainted with rhetoric – is thus reminded of the doctrine of *status*, as Cydippe draws a distinction between the letter and the spirit of the law (*status ex scripto et ex sententia*). This device was common in schools of rhetoric; unlike other school devices, however, it also held a somewhat practical relevance in judicial courts.²¹⁸ Within the space of those twenty lines, the heroine offers variations on the theme of intentionality of crime, which was traditional in Roman juridical thought. The term *vincula* (138) is fitting for a juridical context, and so is the phrase *exige... debita iura* (140), while the verb *valere* (146) is also used in its

²¹³ Gebhardt 2009, 137-44 on erotic persuasion and elegiac contracts. Amor's *de iure* authority was already sketched in *Amores* 1.2.20 (see *supra*, 28, fn. 58).

²¹⁴ The only later occurrence is in *Iuv.* 6.25.

²¹⁵ *OLD*, s.v. 8.

²¹⁶ Kenney 1996 *ad loc.*

²¹⁷ See *supra*, 43.

²¹⁸ As confirmed by Quint. *Inst.* 7.6.1 and Cicero, who, in his rhetorical works, mentions this device in relation to the famous *causa Curiana* (*Brut.* 144f., 194-8; *De orat.* 1.180, 1.243f., 2.140f.; *Inv.* 2.122). Such a vast popularity was probably fostered by the possibility this *status* offered to extend the argument from law *stricto sensu* to a more general notion of *aequitas*. Kenney 1996, 233 associates *Epist.* 21.136-8 with "sound moral and legal doctrine".

legalistic meaning of “being legally valid”.²¹⁹ Furthermore, the argument in dilemmatic form at ll. 139-42 is a typical rhetorical feature. From l. 146, the girl refutes Acontius’ arguments on the value to be assigned to her betrothal through a bright *reductio ad absurdum*, which adds to the rhetorical connotation of the letter.²²⁰

Besides the letter’s evident rhetorical characterisation, Cydippe’s final plea to Diana (183ff.), by shifting the focus back to the divine element, confirms Kenney’s idea that the conflict at stake here is not one between differing interpretations of the law but rather between human law and divine will.²²¹ The point I am making, however, is that the two elements are strictly intertwined within the two epistles (and beyond). The religious dimension of the Callimachean antecedent is reformulated by Ovid as a diptych in which both lovers champion their own cause in the form of a *controversia*, as the two epistles develop two main juridical questions. Firstly, Acontius is involved in a double debate with both his beloved (by whom he is accused remotely in relation to his *dolus*, to be judged as *bonus* or *malus*) and his rival (over the validity of his *potestas* claim, i.e. over the clash between ancient marital laws and the new Augustan legislation). Secondly, Cydippe is characterised both as the object of Acontius’ claim (to be ascribed to Amor’s intervention) and the subject of a verbal engagement (*sponsio*) that her lover wants to be recognised as legitimate, having had Diana as *testis* (20.20).²²²

The judicial confrontation between the two lovers entails fluid and interchangeable roles. The girl plays the role of a plaintiff when Acontius complains of being accused *in absentia* (*Epist.* 20.79-92), claiming for himself the necessity of an *in ius vocatio* that, belying an erotic double entendre, will also provide an opportunity for him to see his beloved. Ovid puts us again in front of an (imaginary) trial-type setting.²²³ As the *in iure* phase could not take place without the defendant, it was necessary for the plaintiff to force the litigant (Acontius in this instance) to appear in front of the magistrate by means of *in ius vocatio*. A defendant who, when found at his domicile, did not obey the injunction *in ius te voco* could be seized in front of witnesses and forcibly brought to court. In the *apud iudicem* phase, on the other hand, if either party did not show up before

²¹⁹ Berger 1953, s.v. and *OLD*, s.v. 9.

²²⁰ Kenney 1970, 401.

²²¹ *Ibid.*, 406.

²²² Videau 2004, non-paginated. The girl describes herself as the object of a dispute at 21.37-54.

²²³ Trial-type settings have already been mentioned in relation to the *Amores* and further instances included in the *Metamorphoses* will be discussed in the following chapter.

midday and did not adduce valid justification, the magistrate had to judge in favour of the party who had turned up.²²⁴ Cydippe’s self-defence, by contrast, is developed in terms of a *disputatio in utramque partem* (*Epist.* 21.151-4): after defending herself from the claim of her engagement, she eventually admits her commitment in front of Diana. Ziogas is certainly right in observing that both lovers undergo an internal evolution in the course of either letter. Acontius’ evolution is the direct consequence of having Amor himself as an advisor. Cydippe’s attempt at defending her own *causa* through the tools of forensic rhetoric, on the other hand, proves futile, and Apollo’s oracle, already present in Callimachus, is here recodified as legal evidence since the god is ultimately called to testify about the heroine’s broken *fides* (*Epist.* 21.231-6). Her letter ends on the note of some form of *servitium amoris* to be recast in terms of legitimate marriage *cum manu* (240), thus transitioning “from erotic emotions to legal motions”, while also putting forward “a procedure to legitimize amorous passion”.²²⁵

It has been sustained that Acontius’ resorting to Amor and Diana to support his case suggestively matches Ovid’s casting of his relegation in the *Tristia* as the sanction emitted by a divine personality, a “Jupiter sur terre”, namely the Princeps *iudex*.²²⁶ The parallel is further developed by highlighting that Acontius’ message-turned-*sponsio* is never transcribed in either epistle, which would recall Ovid’s unspecified *error* in *Tristia* 2.²²⁷ Moreover, the poet incidentally defends Acontius’ *mores* through the same phrase he employs in self-defence in the *Amores*.²²⁸ A more straightforward framing of the two underlying themes (the opposition between human law and divine will, and the relevance of contemporary Augustan laws and politics) has been formulated by Ziogas within the context of elegiac *recusatio*. Ovid’s elegiac refusal of a political career and of elevated epic poetry results in a shape-shifting *carmen* in which the author simultaneously denies and stresses the function of *ius* in his poetry.²²⁹ Ziogas rightly notes that the two epistles

²²⁴ XII TAB. 1.8 Ricc.

²²⁵ Ziogas 2021a, 187-95.

²²⁶ Videau 2004, non-paginated.

²²⁷ *Ne tamen ignoret, scripti sententia quae sit,/ lecta tibi quondam nunc quoque verba refer* (*Epist.* 20.213f.). The word *carmen* is literally used in Cydippe’s account of the episode on Delos (*mittitur ante pedes malum cum carmine tali*, *Epist.* 21.107; *nil ego peccavi, nisi quod periuria legi/ inque parum fausto carmine docta fui*, 181f.).

²²⁸ *Sunt et opes nobis, sunt et sine crimine mores* (*Epist.* 20.225); cf. *Am.* 1.3.13: *et nulli cessura fides, sine crimine mores*.

²²⁹ Ziogas 2016, 215.

reveal “several levels of correspondence”.²³⁰ The correspondence between Acontius and Cydippe is paired with the imaginary dispute between the lover and his rival; the two parallel oppositions, love elegy vs. Roman law and divine law vs. human will, are also interconnected, as Acontius, in seeking a lawful marriage according to the dictates of contemporary legislation, casts Amor as an authoritative source of legal advice. Elegiac passion ultimately coincides with the law: in this sense, Amor is to be identified with elegiac passion and with the laws of its microcosm rather than with the macrocosm of divine norms.²³¹

As mentioned above, the validity of Cydippe’s father’s *sponsio* is impaired by Acontius’ message, which ultimately binds Cydippe to marry him due to the overarching divine element, represented both by Diana’s role as witness and by Apollo’s oracle. Ziogas draws from Goodrich’s discussion of the confluence of love letters and legal correspondence to stress that Ovid is not simply *borrowing* from legal diction, but rather showing that the textual materiality and oral delivery of Acontius’ message concur to *create* an alternative legal space defined by Love’s dictates and therefore cast as an erotic discourse simultaneously operating under divine jurisdiction. Drawing as it does from intertextual precedents (Callimachus above all) and redefining elegiac motifs in legalistic terms, Ovid’s Romanisation of the myth has therefore been reinterpreted by Ziogas as a device apt to conjure up an alternative legal discourse in which amatory and legal fiction tend to converge.²³² Cydippe’s response is exemplary in this sense, as the heroine’s evolution from her initial rational resistance to her ultimate elegiac surrender showcases how the binding force of the laws of Love operates by blurring any distinction between coercion and free will, legalism and legality, as well as between letter and spirit of the law.²³³ While Ziogas notes that his point is not to highlight the introduction of legalisms

²³⁰ *Ibid.*, 225.

²³¹ *Ibid.*, 225ff.

²³² Ziogas 2021a, 142-51. Goodrich 1997 presents an interesting distinction between a so-called “law of the first Venus” – which would be here represented by Acontius and his natural desire – and a “law of the second Venus”, i.e. positive law, which in the two epistles coincides with the secular possession ascribed by law to Cydippe’s fiancé (Goodrich 1997, 252 and 259, quoting Selden). The former is bound to deceive the formal rules of the latter. Even more interesting is another opposition outlined by Goodrich, namely, the one between the *ratio scripta* of official laws and the image of law offered by *fictio iuris*, both dealing with the mapping of relationships (Goodrich 1997, 264). The domain of love in this episode is subject to the correspondence dictated by two deities, an aspect which ultimately coincides with the basic principles of elegiac compositions.

²³³ Ziogas 2021a, 183.

into elegy, but rather the overlap between legal and elegiac discourse,²³⁴ I argue that the introduction of legalisms into Ovid's poetry can still be instrumental in proving the existence of a connection between Augustus' and Ovid's legal discourses.

This aspect has been matched by Ziogas with the crucial role played by the epistolary means in relation to the production (and communication) of laws as an expression of the emperor's legislative sovereign jurisdiction. In the *Heroides*, the love letter aims at solving legal issues by resorting to Amor's sovereign power as much as *Tristia* 2 would have invoked *the Princeps*' own sovereign jurisdiction.²³⁵ Even though it is true that Roman emperors continued the Hellenistic practice of using correspondence for wide administrative use, I would stress that the limited evidence from the Augustan period²³⁶ does not allow for the analogy to be pushed too far. I am, however, keen to acknowledge that, as stressed by Ziogas, "by drawing and blurring distinctions between justice and legalism as well as private and public", letters in general – and these two epistles in particular – can be considered an objective correlative of *sovereign exception*.²³⁷ This notion is key as it seems to me that Ovid sensed the exceptionality of this sovereign exception as he saw it reflected in the legal exceptionality of the emerging Principate, and therefore knowingly alluded to it in his works. Rather than stressing the parallelism between elegiac epistles and legal epistolography in the imperial age, I would therefore like to highlight the link between the new legal setting of the Augustan Principate and Amor's exceptionality in this elegiac framework as a divine, literary and juridical element. Whilst I agree with Ziogas that amatory correspondence sets the parameters for poetic justice to legitimise erotic passion,²³⁸ I would also specify that love letters can be equated to legal actions because they cast not only love but also Love as a sovereign exception, in much the same way as Augustus was shifting the paradigms of legality in matters both of love (through the *leges Iuliae*) and power (in relation to his newly devised rule as Princeps).

In his effort to demonstrate the superiority of his own *causa*, Acontius, as we have seen, evokes his own *affectio maritalis* and the validity of Cydippe's oath as means to

²³⁴ *Ibid.*, 186.

²³⁵ *Ibid.*, 197, referencing Corcoran 2014.

²³⁶ Corcoran 2014, 181.

²³⁷ Ziogas 2021a, 197.

²³⁸ *Ibid.*, 199.

oppose, in the name of Augustus' new legislation, the old laws setting the binding power of her father's contract with her fiancé: human agreements must ultimately surrender to divine law (here enacted by Diana, Amor and Apollo). The neat distinction emerging in the two epistles between justice (divine, universal, amatory) and law (human, conventional, unemotional) represents the key element of Ziogas' analysis for the purposes of my research.²³⁹ Such a distinction will continue to inform my discussion of Ovid's approach to legal matters in the *Metamorphoses*. Through the lens of the hexametric poem, in the next chapter I will also question the idea of the "conventional" and "unemotional" nature of Augustus' use of law. As a preliminary example of the full convergence of amatory and legal fiction, the epistles of Acontius and Cydippe anticipate Ovid's allusions to the Augustan legal discourse in his subsequent works. The distinction between just and legal will be central to the recurring reflections on the theme of the nature of justice developed by the poet throughout his work, which proves that the treatment of the legal in Ovid's amatory poetry lays the ground for the programmatic development of the use of *ius* in the *Metamorphoses* and the *Fasti* as a way of engaging with the Princeps' legal discourse.

In this chapter I have shown that Ovid's formulation of an 'extended' *recusatio* throughout his love poetry marks the poet's overcoming the elegiac code by bringing to light an underlying opposition between the laws of Rome and those regulating the elegiac microcosm. This opposition emerges chiefly in relation to Ovid's treatment of the motif of adultery and to his evoking Augustus' new laws as implicitly opposed to the old norms regulating the private sphere. Within this framework, the micro-semantics of legal terminology, as well as the recurrence of certain themes (such as incest) and typologies of settings (such as trial-type set-ups) emerge as tools used by the poet to draw a parallel between poetic fiction and the mechanisms of Augustus' *fictio iuris*, as the Art of Love blends in with the art of legal simulation and dissimulation of the newborn Principate. Those stylistic tools will be proven to be consistently recurring in the poet's works, whilst the parallelism of poetic/judicial fiction is further developed through another underlying opposition, namely that between human laws and divine will. Ovid's elegiac gods are no longer represented as the mere source of poetic inspiration; their intervention emerges as

²³⁹ *Ibid.*, 174.

a prefiguration of the role of the Princeps-judge in Ovid's later production up until his exile works, as the following chapters will further demonstrate. While all elegiac poets, in fact, programmatically rejected commonly shared values and 'elevated' poetry, Ovid's distinctiveness lies in the fact that he included those allusions even in later works like the *Metamorphoses* and the *Fasti* which, for both themes and genres, might otherwise have been 'suitable' to the Augustan ideology. The pervasiveness of legal themes in Ovid therefore supports my argument that the poet develops an 'extended' elegiac *recusatio* that crosses over the rest of his works, and employs Roman juridical culture as a tool to develop a poetic response to the Augustan discourse in relation to the Princeps' use of law.

2. The *Changed Shapes of Law*

In the *Metamorphoses*, mythic tradition and mythological episodes provide the author with articulated narrative contexts which prove suitable – through specific composition strategies – for the reception of terms and content related to the juridical sphere. In this chapter I discuss some examples of these Ovidian elaborations. To avoid over-interpretation, it is important to stress that in the poem Ovid draws from remotely-rooted myths,¹ and not every hint of illicit love in his poetic output ought to be read as an allusion to the moral legislation. An analysis of narrative structures and composition schemes, however, shows that some mythic episodes presented in the poem ultimately apply judicial settings which were already typical of love elegy, but are here more strongly marked by the recurrence of technical terms and noticeably juridical notions. The insistence on this kind of association at an advanced stage of the poet's production allows us to maintain with relative confidence that Ovid might here be mirroring well-known procedural frameworks of contemporary Rome, influenced (to an extent which we cannot determine with any degree of certainty) by the suspicious and repressive climate instated by the Julian legislation.² The purpose of these chapter, however, will be not only to examine those allusive mechanisms and passages, but also – with the aim of being illustrative rather than exhaustive – to provide Ovid's exploration of the notion of justice within the poem with a consistent and programmatic 'political' reading in its overlapping with the Augustan discourse.

The episodes will be grouped and analysed according to four broad thematic areas. The first section will focus on general uses of juridical content and notions, which roughly correspond to the 'micro-semantic' approach already highlighted with regard to love poetry. The second section will review a selection of episodes of poetic contests and instances of artists' clashes with superior authorities, which acquire biographical significance in relation to Ovid himself. The third section will deal with two trial-type scenes which quite obviously show juridical resonances. The analysis of the

¹ The oldest hypotexts to the story of Cephalus and Procris, for example, are likely to date back to the poems of the Epic Cycle (cf. *Epigoni*, fr. 5 Bernabé) and Pherecydes (*FrGrHist* 3.34), as recorded by the scholiast *ad Od.* 11.321.

² We learn from Suet. *Aug.* 34.2 that the Princes directly witnessed expressions of malcontent about his marriage legislation while chairing public shows: see Wallace-Hadrill 1982b, 38. From D. 23.2.30 it is clear that *nuptiae simulatae* were current practice to elude the consequences of those dispositions.

characterisation of the figures emerging from those trial episodes will act as a prelude to the fourth and final section, focusing on Ovid's treatment of the story of Cipus, an episode marked by strong elements of legal and political 'Romanisation'.

In the sections to follow I will discuss how Ovid's epic poem can provide an insight into the naturalisation of juridical language and issues within Roman culture in the Augustan age. The mythological episodes re-codified by the poet through the features of Roman court trials, as well as the stories of poetic *certamina* and instances of artists' clashes with overwhelming authorities, will play a central role in my analysis. Divine power and secular justice ultimately prove irreconcilable, whilst Jupiter's exceptional jurisdiction emerges from the epic narrative as a mirror of the (juridical) state of exception that afforded Augustus the role of Princeps-judge. I will take my start from the reading formulated by Kathryn Balsley, based on the theoretical approach of the Law and Literature movement,³ subsequently departing from it to argue for a more 'open-ended' attitude to understanding Ovid's 'experimental' embedding of the legal in the *Metamorphoses*.

The first sections will provide some sense of continuity with the previous amatory works, whereas the later sections will go beyond what we might expect to see in Ovid's hexametric poem, obliterating the amatory motifs and offering sophisticated instances of Romanisation in law-related themes such as war, international relations, contemporary social issues and national identity. My examination will shed light on the poet's attitude towards the recurring theme of the nature of justice, while also analysing its implication in the peculiar legal climate of the Augustan Principate. In the *Metamorphoses*, Ovid's concerns with the legal are elevated to a whole new level. My selection of case studies will highlight their structural significance not only in the context of the epic poem, but also as an evolution of ideas already expressed in love poetry. These episodes are also characterised by a tension between juridical practice as represented in these stories and power dynamics which will become crucial in chapter 3. As Ovid's engagement with *ius* evolves in the *Metamorphoses*, its transformation does not only match the pattern of 'evolution with difference' which is central to the poem, but also the chronological development of Roman law and the poet's engagement with the Augustan discourse.

³ See Introduction, 4.

Familiar Strategies

In this section I will show that Ovid is ‘importing’ the legal flavour of his love poetry into the mythological world of the *Metamorphoses*. This will allow me to demonstrate that the ‘micro-semantics’ of legal terminology already highlighted in Ovid’s elegiac production return in his hexametric poem. Sometimes, the mere occurrence of specific terminology provides modern readers with clues about this underlying cultural approach, based on the punctual and systematic adaptation of Roman juridical phraseology to mythic epic poetry. In this section I will give a taster of the devices Ovid adopts to translate his own legalistic-erotic language and discourse into the world of the *Metamorphoses* to exemplify the poet’s ‘re-grounding’ of contemporary Rome, especially in the early books of the poem, as he transposes to the *Metamorphoses* the legal jargon already borrowed by the elegiac narrator in his love poetry. My reading will give a sense of the way the *Metamorphoses* does not only incorporate the language of the law, but also recasts Greek elegy and epic with a distinctly Roman socio-legal interest, thus mirroring the fictional devices of contemporary Augustan jurisprudence. Ovid seems to follow similar patterns to those adopted in his love poetry, insofar as he consistently matches the reuse of specific legal terminology to broader thematic allusions to the juridical climate instated by Augustus and his moral norms.

The Introduction of Law

The juridical is embedded in the *Metamorphoses* from the outset. Ovid programmatically sets up this engagement with the law in Book 1, as this section will demonstrate, while showing that the narrator’s voice also hints at an underlying ‘human power’ perspective.

At ll. 18-23, the unspecified demiurgic figure introduced as *deus* is immortalised while, in the act of separating elements, he is called to settle a cosmic *lis*. Although the philosophical aspect constitutes the dominant element here, the *deus*’ intervention is still comparable to an act of political appeasement, and the active mode represented by the principle of *Discordia/Ἐπις* in some Pre-Socratics is missing in this context.⁴ The term *lis* is not used – as the context would suggest – in the same way as in *Fasti* 1.107 (*ut semel haec rerum secessit lite suarum*), namely to indicate the (Empedoclean) dynamic

⁴ Cf. Heraclitus, fr. 53 D-K.

principle of creation, but rather it is found in an unusual nexus with the verb *dirimere*.⁵ The latter occurs in a nearly formulaic fashion in the works of historians to designate the abrupt interruption of a war action or civil gathering for reasons of *force majeure*.⁶ A synonymic use of *dirimere* occurs in *Fast.* 6.98, *res est arbitrio non dirimenda meo*, where Juno and Hebe/Iuventas contend with each other for the attribution of the name of the sixth month of the year.⁷ Concordia, called to settle the dispute to avoid that the two goddesses *in litem studio certaminis issent* (89), argues for a third etymology linked to the verb *iungere*.⁸ The narrator, on the other hand, calls himself out by resorting to the negative *exemplum* of the famous dispute which took place prior to the destruction of Troy (*perierunt iudice formae/ Pergama*, 99f.).

Ovid's *cosmos* appears to be ruled by a universal and appeasing power then, and, in this respect, it is comparable to the Roman Empire. The planning and uniting action performed by the divine entity is emphasized by stressing cosmic order and the mechanisms adopted for conflict resolution. It is perhaps not too bold a suggestion that, through this hint, Ovid might have wanted to compensate for the absence of Augustus from the *proemium*, as he is not mentioned until line 204. Even though the legalistic connotations of the passage are in fact limited to a single phrase, its opening position can be considered as a prelude to the pervasiveness of juridical elements in the rest of the poem. Law appears as an embedded fabric in the unfolding of a cosmological structure marked by the reduction of the original chaos to some sort of legal *concordia*. There are many available approaches to cosmology in the *Metamorphoses*:⁹ here I suggest a programmatic function too, foreshadowing legal elements to come seamlessly

⁵ The same *iunctura* is also attested in Columella 3.13.11. For *litem dirimere* as a technical formula, see D. 5.1.2.2. The verb is also used, within a different nexus with *certamina*, in *Met.* 5.314, in relation to the adjudication of the nymphs.

⁶ *OLD*, s.v. *dirimere*; see e.g. Liv. 27.13.5 (*pugna*), Sall. *Iug.* 60 (*proelium*), and Tac. *Hist.* 1.18 (*comitia*).

⁷ The verb used by Hercules' wife at l. 76, *sollicitor*, is in turn a technical term.

⁸ It might not be coincidental that Concordia used to be presented as the tutelary *numen* and informative principle of the Princeps' activity. This is confirmed by the monumental interventions in favour of the temple dedicated to *Concordia Augusta*, on which see the Prenestine Calendar (fr. 9 Fraschetti) and Pl. *Nat.* 34.73ff.; 35.66, 131, 144ff. On Ovid's etymological *doctrina*, see Ziogas 2021a, 255, Id. 2021b, and Michalopoulos 2001.

⁹ See e.g. Myers 1994, 40ff., arguing that the "anthropomorphised" or "anthropogonic" depiction of the creation of the natural world in Book 1 shows a scientific colour essentially foreign to the narrative mode of mythical poetry. Ovid's cosmogony at *Met.* 1.5-75, in particular, comprises an eclectic combination of various philosophical theories, which lends itself to the unravelling of a cosmology which is originally a theogony. For a different perspective on Ovid's cosmology see Tissol 1997, 3, whose assumption is that "in the *Metamorphoses* all elements of style and subject are ultimately inseparable".

incorporated in Ovid's narrative as part of the pattern of 'repetition with difference' that the poet constantly reproduces in his work. He takes his narration back to chaos in an attempt to find order within it, and subsequently undoes the process over and over again to follow the succession of legal/legalistic transformations presented throughout the poem.¹⁰

Whilst the agent of the physical separation and arrangement of primal chaos is referred to as *deus*, usually taken to reflect Stoic thought, further resonances in Book 1 draw from the myth of the Four Ages, as the divinely ordered universe of the opening cosmogony has permanently broken down and processes of destruction and creation are doomed to be repeated.¹¹ In addition to elemental theory, Stoicism, and the myth of the Four Ages, a number of aetiological metamorphoses throughout the poem acquire a pseudo-scientific colouring through echoes and adumbrations of Lucretius' natural philosophical speculation in the *De Rerum Natura*.¹² Therefore, in order to consider how Ovid responds in the first book of the *Metamorphoses*, we must first understand earlier accounts of the introduction of law, particularly the influential explanation of Lucretius and Vergil, who had already depicted the primitive confrontation between mankind and the superior entity of law at the dawn of civilisation.

In his history of civilisation in Book 5, Lucretius describes the absence of *leges* and *mores* as a peculiar trait of the prehistoric phase in which men lived primitively in close contact with nature. At the end of a period of disorder and violence, however, progress did bring about the spontaneous submission of human beings to law, in order to contrast the brutality of a form of justice exclusively pursued through personal means (Lucr. 5.958f. and 5.1143-51). The lack of juridical norms therefore connoted – at least partially – a negative sense, as it happened to coincide with a widespread state of violence caused by a general atmosphere of anarchy.¹³

¹⁰ Cf. Brown 1987, 216. Myers 1994, 44ff. further notes that Ovid's pseudo-scientific posture creates a humorous incongruity between his authoritative voice and the fictional content of his narrative, while challenging the cosmological claims of his epic predecessors, Lucretius above all. *Mutatis mutandis*, I argue that the same dichotomy applies to (though does not fully account for) Ovid's use of juridical material in the poem. On the beginning of the poem see also Wheeler 1995.

¹¹ Gladhill 2013, 297f. reminds us that for Roman poetry the cosmogony itself is 'political'.

¹² Myers 1994, 47ff.

¹³ The creation of magistracies and legal norms, however, introduced – according to Lucretius – a further negative element, namely the obsessive fear of punishment (5.1151).

Two recent discussions of the role of causality and law in the *De Rerum Natura* (Schiesaro 2007 and Webb 2017) highlight that for Lucretius laws as *foedera naturae* are distinct from (and precede) ‘progress’ and positive law.¹⁴ Schiesaro anticipates Webb in arguing for the subsistence of an “absolute power of the law” in the Epicurean universe described by Lucretius, despite the strict indeterminacy and contingency marking its mechanistic system.¹⁵ The immediacy of *foedera naturae* is closely matched by the basic social *foedus* consisting of *nec laedere nec violare* (5.1020) developed by primitive men well before the historical laws set by lawgivers as a consequence of challenging social circumstances. Lucretius’ poem, after all, was aimed at tracing what can be defined as a ‘historical cosmology’¹⁶, according to which “causality precedes laws, which, as regularities, emerge locally and evolve along with the phenomena they determine”.¹⁷ In Lucretius, it is the ‘laws of nature’ which ultimately posit “the construction of a legal model for the universe”.¹⁸ For Schiesaro, Lucretius attempts to describe and explain the overall organisation of the universe based on rules and principles drawn from specifically Roman practices, and effected through the ‘non-material use’ of certain words, which are intentionally employed in their full legal meaning.¹⁹

Lucretius’ description reveals an underlying tension between natural phenomena and the general law due to explain those phenomena. Having acquired full knowledge of this relationship, readers will be able to account for every natural event through a comprehensive system of causalities. This deconstruction of a certain idea of ‘itemised’ knowledge curiously matches the contemporary evolution of Roman jurisprudence in the first half of the 2nd century BC, when the process of ‘laicisation’ of the archaic *ius pontificale* was definitively completed and the status of legal professionals lost its traditional sacral nature. That period was marked by the so-called ‘scientific revolution’ of *ius Romanum*, namely the transition from the oral *responsa* of jurists to a generalising form of juridical knowledge apt for the formulation of abstractions and the explanation of disparate phenomena. Schiesaro traces parallelisms between certain patterns followed

¹⁴ The application of this notion to the Roman State is, however, controversial: see Levy 1948, 7. As Cicero underscores in *Leg.* 2.61f., the Twelve Tables represented to a certain extent an instance of conformity between positive and natural law (Romano 2010, 14f.).

¹⁵ Schiesaro 2007, 85.

¹⁶ Webb 2017, 264.

¹⁷ *Ibid.*, 254.

¹⁸ Schiesaro 2007, 81.

¹⁹ *Ibid.*, 82ff.

by Lucretius in formulating his arguments and what we know about the legal outputs of the leading ‘revolutionary’ jurists Quintus Mucius Scaevola, ‘the Pontifex’, and Servius Sulpicius Rufus.²⁰ The very emergence of these aspects of contemporary Roman culture suggests that Lucretius’ attempt at adapting Epicurean philosophy for his Roman audience inevitably shows a tendency towards the Romanisation of certain notions and situations (including law-related ones) which also characterises Ovid’s work. To a certain extent, Lucretius and Ovid both relied on *ius* as the truly Roman *logos*,²¹ not merely replicating its formulas and style, but also making use of its structural and argumentative features. Such a repertoire of juridical argumentation would have struck Roman readers as familiar because of its recurrence in the practices of the *forum*, and – in the case of the *De Rerum Natura* – despite the extraneity of Roman culture to the abstractions of Greek philosophy.

Vergil’s approach to the aetiology of law, on the other hand, is less linear than Lucretius’.²² The Lucretian notion of *foedera naturae* is echoed in the *Georgics*, where the existence of natural *leges* and *foedera* is noted immediately after the proem to Book 1 (60f.). Vergil’s emphasis on the order and regularity of the natural world, central to Lucretius’ work, is, however, undermined by its mythological connection with Deucalion’s recreation of humankind after the Flood (61-3). In the *Georgics*, Lucretian rationalism is thus ultimately denied by means of a constant equivocation between the effects of the laws of nature and the consequences of divine imposition, since the gods apparently have the power to transcend natural law.²³ A completely different attitude is shown in Book 7 of the *Aeneid*, where Vergil describes Saturn’s Golden Age and associates the absence of laws with the spontaneous adherence of justice proper to that idealised and constraint-free world.²⁴

Building a legal model for the world had therefore been part of the poetic discourse since Lucretius and Vergil. In the *Metamorphoses*, Ovid, unlike both his predecessors, makes the question of the inception of law part of his earliest account of

²⁰ *Ibid.*, 71ff.

²¹ See Introduction, 1. On the accuracy of the term “laicisation” in this context, see Schiavone 2005, 91-133 and *Id.* 2012, 91.

²² After the pioneering work on law in Vergil by Stella Maranca (Stella Maranca 1930), see most importantly Zetzel 1996, Shelfer 2011 and Weber 2014, as well as the overview in the *Enciclopedia Virgiliana*, s.v. *lex*.

²³ See Gale 2000, 201ff.

²⁴ Verg. *Aen.* 7.203f.

the history of the universe, told through the prism of transformation. His rendition of the inception of law can be read as a prelude to further and more definite instances of ‘Romanisation’ which emerge throughout the poem as a recurring pattern. Ovid does not share Lucretius’ reading of ‘progress’ as a general pattern in world history, and, in *Metamorphoses* 1, within the frame of the myth of the Four Ages, he describes the Golden one adopting a similar tone to Vergil’s (*Met.* 1.89-93). The substantial difference to the *Aeneid* is the (unsurprising) absence, in Ovid, of any hints to the ‘eschatological’ vision which associated the rule of Augustus to a revival of the Golden Age and made Vergil’s standpoint even more complex.²⁵ It is worth noting in the first place the use of the ambiguous term *vindex* (89), which (intentionally) leaves the question open as to whether it is to be interpreted in its meaning of “protector” or “avenger”. Through the phrase *sponte sua* (90), recalling the traditional motif of the *αὐτόματον*, Ovid further distances himself from the position expressed in another Vergilian passage, *Aen.* 8.321-5. There the author – bringing about an irredeemable internal contradiction to the stance assumed in Book 7 –²⁶ ascribed to the enlightened monarch Saturn a process of civilisation substantiated by laws and social bonds, which was not limited to the positive example set by the sovereign (who would have induced men to a process of spontaneous emulation). By contrast, at this stage Ovid more closely matches Vergil’s viewpoint in *Aeneid* 7, and suggests an “anarchic and spontaneist” reading of this myth.²⁷

This definition, formulated by Barchiesi in his commentary, extreme as it might be, is confirmed, even in the brief passage examined here, by the strong connotation of further lexical choices. In addition to the reference to the social value of *fides* (90), the phrase *fixo aere* (91f.), drawn from the language of official public communication, recalls the practice of affixing bronze or stone inscribed tablets in public places.²⁸ Furthermore, the bronze element would have especially reminded readers of the legislation of the

²⁵ On the figure of Saturn as a propagandistic Augustan emblem, see Wallace-Hadrill 1982a, focusing on Vergil. As for Ovid, cf. Galinsky 1983.

²⁶ The contradiction had been anticipated by the mention of the kings’ *fasces*, the symbol of the enforcement of law, in *Aen.* 7.173. A review of Vergil’s approach to juridical matters should also take into account the position expressed in *Aen.* 6 (cf. Williams 2003 and Hassan 2009).

²⁷ Barchiesi 2005, 169.

²⁸ Cf. *CIL* I² 581.27; Tac. *Hist.* 4.40.1. In the context of the myth of Ages, however, the absence of bronze also implicitly alludes to the opposition between the Golden Age and those symbolised by the worst metals. To the Romans, the hierarchy of Ages must have had a precise parallel in imperial coinage, which was reorganised by Augustus in 19 BC and was canonically mentioned in the full magisterial title of *tresviri monetales aere argento auro flando feriundo*.

Twelve Tables, originally impressed on the same material.²⁹ The reading *ligabantur* (92) apparently suggests an alternative etymology for *lex* from *ligare*, which is not attested elsewhere,³⁰ and is set in opposition to the traditional one proposed by Varro, who traces the noun back to *legere*.³¹

Overall, Ovid seems to formulate an implicit comparison between the primitive condition of mankind and a new different world, ruled through a corrupted and politicised legal system, in which judges have become an object of fear and people are often in need of a “defender” or “avenger” against the fraudulent behaviour of the manipulators of law. It is not incidental that this opposition will be expressed more explicitly in the final stretch of the poem (15.858-60), where the world seems to be back to the age of Jupiter.³² In other words, while tracing his history of the universe, the poet is also sketching his contemporary world, not necessarily with a negative bias. Ovid seems to further implicitly suggest that violence coated with lawfulness might in the long run lead to radical change, or rather to revolution. It is perhaps not accidental that the role of *vindex* was successively claimed by both Caesarean and Augustan political propaganda. While other important precursors like Lucretius and Vergil offer models for his approach to the law, Ovid does something new in encoding a ‘contemporary’ Roman flavour to his explanation of the formation of the universe and the subsequent inception and naturalisation of law, and indeed a potentially rather troublingly ‘close-to-home’ development, as *ius* and justice become the expression of power dynamics.

The world projected in the Golden Age is therefore safe, despite the absence of laws, punishments and judges to administer them. Later in the poem, however, within the narrative context of what Perutelli defines as a proper hymn, the poet ascribes to the Muse Calliope an encomium of the goddess Ceres³³ in which the introduction of law is attributed a positive function, as part of the general process of civilisation of mankind, whose initiator is to be identified with the goddess (*Met.* 5.341-3). In the Muse’s words,

²⁹ Cf. Liv. 3.57.10.

³⁰ At least in the Classical Age: for a Late Antique instance, cf. Cyprian, *Epist.* 57.1.1.

³¹ Varro, *Ling.* 6.66: (...) *etiam leges, quae lectae et ad populum latae quas observet*. On this etymology, see also Romano 2010, 31, focusing on a comparison between the Greek and the Roman term (and between respective derivations) proposed by Cic. *Leg.* 1.19.

³² Galasso 2000 *ad loc.*

³³ Perutelli 1975.

the aretology of the divinity insists on the nexus *fruges-leges*,³⁴ which mirrors the parallel between the two initial hemistichs (342f.) and acquires a certain sense of necessity, especially in light of Demeter's traditional epithet *θεσμοφόρος* ("lawgiver").³⁵ In *Metamorphoses* 5 Venus is attributed, alongside Cupid, full responsibility for the rape of Ceres' daughter Proserpina. This representation has led Barchiesi to reflect upon the issue of authority vs. responsibility in the *Metamorphoses*, particularly in relation to the literary model of the Homeric Hymns, and the extent to which hymnic poetry has influenced the poem and helped Ovid build a certain stance towards the underlying divine design that emerges across different episodes and leads to Augustus' final political takeover.³⁶ The figure of Venus as emerging in *Metamorphoses* 5 is analysed by Barchiesi against the background of Roman political discourse and the legacy of Vergil's 'imperial' Venus, and he further focuses on how the disastrous ending of the Hymn to Aphrodite is adapted later in the *Metamorphoses*' narrative to the beginning of a story of universal power, as a new dynasty destined to rule the world springs from Anchises. The constant overlap and occasional contrast between poetic and political authority ultimately showcase a divine masterplot that is eventually actualised in Book 15 with the rise to power of Aeneas' (Venus') progeny.

Far from constituting a contradiction, the passages mentioned so far show that there is a certain natural Roman-juridical 'saturation' in the depiction of relationships, social interactions and power dynamics in the *Metamorphoses*, even before the 'age of man'. Ovid's stance in *Metamorphoses* 1 is clearly programmatic in setting a new agenda for the role of law in the history of the universe traced in the poem. Ovid's initial take on the nature of justice and the law informs the rest of his epic and acquires particular importance when read against the background of Lucretius' and Vergil's Golden Age and theodicy. Both Lucretius and Vergil, in their search for a meaningful causality to be applied to the inception of law, met the *doctrina* of the jurists merely on the common ground of abstraction, as per Servius Sulpicius Rufus' most explicit methodological

³⁴ This binomial is associated to the goddess also by Diod. Sic. 5.2-3, which Rosati 2009, 194 reads as a parallel to the presentation of Ceres in *Metamorphoses* 5. Cf. also Servius *Ad Aen.* 4.58, where the goddess is qualified as *legifera*. For Ceres viewed as benefactress in light of her introducing agriculture, see Verg. *Georg.* 1.147f.

³⁵ Cf. Hdt. 6.91.2. Ceres, however, is not the only divine character to be associated with the inception of law: in *Fasti* 2 and 4, parallels will be found in the narrations involving Romulus/Quirinus and Venus respectively: see *infra*, 148, 169f.

³⁶ Barchiesi 1999.

principle *ius in causa esse positum*.³⁷ Ovid departs from this rather straightforward correspondence, I argue, by deliberately devising an evolutionary tale for law as represented in the *Metamorphoses* and beyond. As we will see, law emerges as a permanent, if unstable, element in an ever-changing universe, an element that persists and thrives, despite the transformations undergone under Augustus. For Ovid, law is also a poetic antidote to the ever-changing nature of both divine and human (political) justice, often presented in the poem as each other's counterparts.

The Naturalisation of Law: Romanising Myth or Mythologising Law?³⁸

Having found several crucial interventions of 'naturalisation' where Ovid rewrites myth within the context of Roman law, in this section I further reflect on how incidental or programmatic these passages are, thus also getting some sense of why, beyond 'societal interest', this juridical Romanisation is so crucial in Ovid's poetic discourse. The centrality of the legal element, I argue, emerges as 'deliberately incidental'. On a basic level, Ovid handles every 'love affair' like the ones he described in his love poetry. There is, however, a more serious underpinning of the legal element that goes beyond perfunctory 'Romanising' semantics, as I bring out with my analysis of the Perseus/Phineus episode and its significance within the scope of the *Metamorphoses*.

In *Metamorphoses* 5, it is the character of Perseus who undergoes a process of 'Romanisation'.³⁹ He finds himself strenuously opposing Phineus, Andromeda's uncle and suitor, in the fight occasioned by the latter during Andromeda and Perseus' wedding banquet. Phineus, backed by his supporters, attacks the groom, Perseus, in order to reclaim Andromeda whom he considers his rightful bride, as his brother Cepheus had initially chosen him as her prospective husband. The stranger's arrival to the king's court, however, had nullified this scenario; hence the desperate fight, which the hero is able to end only by resorting to the weapon of Medusa's head.

The Perseid is Ovid's first 'epic' cycle, source-wise drawing on archaic epic and rivalling, and possibly parodying, big epic set pieces from Homer and Vergil in particular in a structurally relevant and again programmatic fashion. Scholarship has traditionally

³⁷ D. 9.2.52.2.

³⁸ I borrow the phrasing "mythologizing Roman Law" from Ziogas 2021a, 383.

³⁹ Rosati 2008, 449.

focused on its epic qualities,⁴⁰ but underlying my reading is the sense that Ovid responds to originary narratives of warfare prompted by the theft of women (as found e.g. in Herodotus and the *Iliad*) by writing a new origin-story that contextualises these rape narratives as ‘Roman’ and potentially undercuts the solemn grounds of Roman international warfare – something that adds to the ‘epic’ nature of the episode in a new way.

The fight between Perseus and Phineus is the first battle of the poem, and therefore in the history of the world which the work aims to follow and tell.⁴¹ This might be the reason why the author presents the episode – as cleverly demonstrated by Rosati 2008 – as an *aition* of wars against foreign enemies. Perseus, besides being an epic hero, is deliberately presented as a specifically Roman hero. At 138, he is qualified as *ultor* of the rights violated by his grandfather Acrisius.⁴² In line with such a profile, the character recalls the centrality acquired by the *ultor-Programmatik* within Augustan ideology.⁴³ The celebrative masterpiece of the temple of Mars Ultor in the *Forum Augusti*, which Octavian had vowed to build during the battle of Philippi (*Fast.* 5.569-96), had also become the repository of the Parthian military *signa*, thus acquiring further significance in terms of warfare and relationships with the barbarian enemy. In this episode, the victory over a mixed enemy formation, which embraces the whole Afro-Asian world in its ethno-geographic make-up (47ff.), gives the impression of an imperialistic triumph of the

⁴⁰ Cf. Rosati’s commentary in Barchiesi and Rosati 2007, 322-4 and Hardie 2002b, 178-86.

⁴¹ It can be considered as an epic fight since it takes place during a banquet, like the battle between Odysseus and the suitors in the *Odyssey* (Book 22), and is marked by the typical features of the epic genre. It also shows some similarities with the Centauromachy as narrated by Ovid in *Metamorphoses* 12. Ovid’s Perseid is modelled on the narrative scheme of the *Aeneid*: the main characters have corresponding functions and both narratives end with a fight between the hero and his rival; moreover, parallels are evident in the use of vocabulary and phraseology and in the sequence of the fights (see Otis 1970, 159-65 and Baldo 1995, 203-51).

⁴² Rosati 2008, 449. This characterisation is enhanced by the use of the epic attribute *Abantiades* (138), which binds the hero to the respect of *pietas* and family ties, symbolically summarised in the patronymic. The label *vindex ultorque parentis* recurs at 237.

⁴³ See in particular Rich 1998, Rose 2005 and Siebler 1987, 140ff. Siebler notes that Medusa also featured on the shield of Mars Ultor (51). Whereas other versions of the myth of Medusa mention her generic power to turn her victims into stone, it is Ovid who introduces the idea of the transformation into marble statues (5.183, 206, 214 and 234): to Ovid’s audience, marble had become the symbolic material of Augustus’ monumental architecture (*Suet. Aug.* 28.3; on the temple of Mars Ultor, see Zanker 1989, 111-3), as well as of the statues that had populated the city to commemorate and celebrate not only the Princes and his family, but also foreign enemies defeated on the battlefield.

Western world over the East. This might have further recalled the battle of Actium, in accordance with the representation transmitted on the Vergilian shield of Aeneas.⁴⁴

When, at the beginning of the fight, the wedding banquet is interrupted by the advent of the rioters, Phineus also introduces himself as *ultor* (10) of the wrong he has suffered. Having his bride stolen from him has put Phineus in the condition of *res repetere*, a phrase originally employed to reclaim the restitution of stolen livestock.⁴⁵ Cepheus, on the other hand, declines any responsibility for the aggression against Perseus. He summons as witnesses the gods of hospitality and other personified moral entities, including *ius* and *fides* (*Met.* 5.43-5). In other words, Cepheus refuses to admit the (chiefly moral) violation of the *foedus* agreed with the stranger. He equally rejects any obligation to support, as a king, an “unfair war” against someone who has proven to be a benefactor to his community (*ea se prohibente moveri*, 45).⁴⁶ The vocabulary employed here by Ovid is specific to law of war, as demonstrated by Rosati through a comparison with Cic. *Leg.* 2.34,⁴⁷ which outlines the spheres of influence of the Fetials, introduced as the judges and heralds of any legally valid decision to initiate war. In Latin culture, the law of war was indissolubly linked back to the ancient norms of *ius fetiale*. The Ciceronian passage is marked by the occurrence of *ius* and *fides* in close proximity, which evidently matches Ovid’s *ius fidemque* (*Met.* 5.44).

A significant procedural moment in establishing the legitimacy of a war initiative was the search for and discussion of *iustae causae*.⁴⁸ Phineus, despite acknowledging his rival’s victory, still defends his own cause (*Met.* 5.210-22), as is particularly evident at 218-20. He claims to have acted “in the bride’s interest”,⁴⁹ and argues that the ‘pre-emption right’ on her should have been granted to him, if not by his merits, then by the anteriority of his deal with the king. The comparison drawn between his *causa* and the

⁴⁴ Rosati 2008, 449. See the famous passage of Verg. *Aen.* 8.608-731.

⁴⁵ Rosati 2008, 450.

⁴⁶ *Ibid.*, 451. Contrasting Perseus’ Romanisation, the deal between Cepheus and Phineus recalls the juridical institute of *epiklerate*, typical of Greek marriage. Greek Women, unlike Roman, were not allowed to receive any inheritance. If their father had no male descendants, daughters were obliged to marry their closest relative (as in *ἐπικληρος*), typically an uncle, in order to preserve the estate and pass it on to a prospective son. Cepheus’ support to Perseus would therefore mark the shift from endogamy to exogamy.

⁴⁷ *Ibid.* Further on this aspect, see the technical-juridical bibliography in Baldo 1995, 211f. and Dyck 2004 *ad loc.*

⁴⁸ Rosati 2008, 452 and, on the scholarly debate on this theme, see the discussion in Loreto 2001.

⁴⁹ Rosati 2008, 452. Not differently from Turnus, who maliciously mentions *coniuge praerepta* (*Aen.* 9.138); cf. Servius *ad loc.*: *invidiose sponsam coniugem vocat.*

rival's is the last resort to justify on juridical grounds a 'war' which the narrator has clearly defined as *iniustum* (210). Defending his fault as venial, Phineus explains his aggression as a tactical error (*non cessisse piget*, 221): his attempt to build a self-justifying juridical *fictio* no longer insists on the claim to be an *ultor*, but rather on the claim that his initiative is not censurable on legal grounds, and is allegedly more legitimate than his rival's.

Forced to implore clemency from Perseus in order to have his life spared, Phineus must eventually give up the *res* which he intended to *repetere*. In the concession *tua cetera sunt* (222) the solemn future imperative echoes the language of law and diplomacy. His vile behaviour is instrumental in making Perseus' heroism stand out, and in the narration of the consequences of his recklessness Ovid's readers might have spotted a *monimentum*, a negative paradigm offered by the distortion of the idea of "lawful war" and of the ethical and juridical principles it was based on.⁵⁰ This notion acquired a peculiar connotation for the Romans, in light of archaic traditions which had never been completely obliterated, and which the text here seems to mirror in several ways. A precious source of information on fetial law is a passage by Livy (1.32.1-14), where the historian accounts for the institution of a sacred ceremony by Ancus Marcius.⁵¹ The king, upon ascending to the throne, established a rite to be performed before any declarations of war: this ceremony was officiated by the ancient sacerdotal college of Fetials. According to Livy's detailed records, during this ritual the most authoritative member of the college – the *pater patratus* – made his way to the border of the enemy territory. After invoking the gods as witnesses, he declared aloud the offence inflicted to the Roman people, aiming at *res repetere* from the enemy community. If no reparation occurred within a fixed period of 33 days, war operations were undertaken.

The procedure to embark on war was also ritualised: after once again invoking the gods to acknowledge that the offence had not been repaired, a Senatorial resolution was approved by the people's assembly, and the priest received a mandate to get satisfaction *puro pioque duello* (Liv. 1.32.12). In the proximity of the enemy border, the *pater patratus*, with at least three adult male witnesses, grasped a spear and, after uttering a

⁵⁰ Baldo 1995, 147 and Rosati 2008, 453.

⁵¹ Liv. 1.32.5. Cicero (*Rep.* 2.31), however, ascribes the formalisation of declarations of war based on *ius fetiale* to his predecessor Tullus Hostilius: cf. Rosati 2008, 447.

solemn formula, declared war in the name of the Roman people by throwing the weapon into the enemy land.⁵² It is probably not a coincidence then that the *cuspis* of the spear which Phineus grasps and throws is explicitly qualified as *aerata* (*Met.* 5.9): the Fetials' ritual prescribed that the weapon of the *pater patratus* would preferably be a spear with a metal point (*hastam ferratam aut sanguineam praeustam*, Liv. 1.32.12).⁵³ The anti-hero Phineus, on the other hand, replaces the *testatio deorum* with an arrogant hint to Jupiter, whose paternity Perseus could boast (*Met.* 5.12). By contrast, it is the old king's appeal to the gods as witnesses (44f.) which recalls the Fetials' ritual invocation, taking place when the reparation period had passed in vain and the necessity was felt to claim the subsistence of a legitimate cause of war.

The *ius fetiale* bears a stronger ideological significance in relation to the narrator's acknowledgement that the *bellum* undertaken has to be considered *iniustum*. This definition is to be understood beyond its generic sense and the limits set by 'common sense' in Roman juridical morality. A more accurate contextualisation of the phrase – which lacks any analogous antecedent in previous epic poetry – reveals significant links to the politico-juridical notion of 'fair war', relevant in interstate law within the ancient world in general, and in the Roman State in particular.⁵⁴ Isidore's citation of a lost passage from Cicero's *De Re Publica*⁵⁵ allows us to outline the conditions of 'fairness' as applied to war, according to Roman juridical thought.⁵⁶ Cicero mentions the formalised declaration of war established by the antecedents set in the tradition of *ius fetiale*: *illa iniusta bella sunt, quae sunt sine causa suscepta. Nam extra quam ulciscendi aut propulsandorum hostium causa bellum geri iustum nullum potest. (...) Nullum bellum iustum habetur nisi denuntiatum, nisi indictum, nisi de repetitis rebus.*⁵⁷ This fragment

⁵² On this fetial rite, see Marks 2004, 110, fn. 7 (with further bibliography).

⁵³ It might be objected that the importance of this detail should not be emphasized. The very rarity of such detailed remarks, however, might in fact vouch for its relevance. An equivalent level of detail in relation to a weapon can be observed e.g. at *Met.* 3.53, 65-7, whilst *aerata cuspis* occurs elsewhere only at 8.408 to describe the shaft which Theseus throws against the Calydonian boar.

⁵⁴ See Galasso 2000, 967.

⁵⁵ Isid. *Orig.* 18.1.2f. (= Cic. *Rep.* 3.35), where a war is defined as "unfair" when *de furore, non de legitima ratione initur*.

⁵⁶ Rosati 2008, 446.

⁵⁷ Cf. *Off.* 1.36, where Cicero claims *nullum bellum esse iustum, nisi quod aut rebus repetitis geratur aut denuntiatum ante sit et indictum*, and Dyck 1996 *ad loc.*

matches Saint Augustine's statement that Book 3 of the *De Re Publica* discussed the idea that *optimae civitates* only engaged in wars *aut pro fide aut pro salute*.⁵⁸

Even though the ancient juridico-religious ritual of *indictio belli* still shows, in its archaism, pre-political features, it evidently represented an attempt at formalising and legitimising war initiatives within the framework of international relations. The primary function of the Fetials, which faded as a consequence of the so-called process of 'laicisation' of law,⁵⁹ was to lawfully administer international relations through procedures which were appropriate for the promotion of *bella iusta* as well as for the stipulation of peace treaties.⁶⁰ Servius, in his commentary *Ad Aen.* 9.52, dates the shift of the Fetials' ceremony to a symbolic simulation in a fictitious space within the city⁶¹ to the first half of the 3rd century BC, the time of the wars against Pyrrhus, since Rome's political and military expansion had made direct 'physical' contact with the enemy territory difficult (cf. Ovid, *Fast.* 6.205-8). This ceremonial fiction had been appreciated by Augustus, who revived the ritual for his declaration of war against Cleopatra prior to the battle of Actium, despite its having fallen into disuse for quite a long time.⁶² On that occasion the temple of Bellona was chosen as setting, and the symbolic value of *Romanitas* was exploited by means of the revival of an archaic tradition, as was characteristic of the Augustan Age. The implication in this case was that Octavian was about to bring war to a foreign queen, rather than to pursue a civil war against Antony. Augustus thus made explicit an intentional connection with some archaic cornerstone of law, which became a more or less explicit constant for the whole of his Principate.

In this section I have observed how the law-related content strategies employed by Ovid in his previous works are also displayed in his hexametric poem. Such patterns convincingly suit the integration of legal phraseology and content in relation to the two macro-themes of the introduction of law in the history of mankind and its naturalisation

⁵⁸ Aug. *Civ.* 22.6.75.

⁵⁹ See above, 74f.

⁶⁰ Cf. Varro *Ling.* 5.86, who goes as far as to establish an etymological link between *Fetiales* and *fides*. The college was composed of sacred operators associated to Jupiter Feretrius, the recipient of *spolia opima*.

⁶¹ That space consisted of a square with a tiny column in the middle (*columella bellica*), situated between the temple of Bellona and the Circus (cf. Paul.-Fest. p. 30 L.). Bömer 1958 *ad loc.* notes that, in order to make the simulation more effective, the space was symbolically let to a prisoner (as reported by Fest. p. 133 L.).

⁶² Littlewood 2006, 67. The source is Cassius Dio 50.4.4f.; cf. also *R. Gest. div. Aug.* 26: *nulli genti bello per iniuriam inlato*.

within the mythological episodes narrated throughout the poem, up to the assimilation of specific Roman elements. In the previous chapter we have observed the same situation of love triangle, dispute over status and power dynamics, for instance in *Amores* 1.4 and *Heroides* 20 and 21. Here we have returned to this programmatic set-up in epic, and the legal framing has evolved in turn, now set against the law of warfare rather than private marriage – yet another way for Ovid to showcase the correspondence between his devising ‘new’ literary contexts for the legal (and for the power dynamics of justice) and Augustus’ fictional use of *ius*. The transition from the ‘Augustan’ war epic of the *Perseid* to the second half of Book 5 is marked by the figure of Minerva, which brings the divine element back into play after an otherwise ‘lay’ epic episode. The goddess, by bridging the word of warfare with that of the arts dominating the rest of Book 5, re-emerges at 5.250 almost as a reminder of the existence of a double focal point in the universe of the book, characterised by the constant overlap or clash between divine, universal justice and human, conventional law – the latter having been represented in the *Perseid* by the unemotional features of the archaic norms regulating warfare.

Enacting Justice⁶³

This second section will apply the ‘micro-semantics’ of the legal to the analysis of two episodes of poetic contests and instances of artists’ clashes with superior divine authorities. These episodes are part of a macro-sequence which starts with the poetic contest between the Emathides/Pierides and the Muses (*Met.* 5.294-678). The episode shows a sophisticated *mise en abyme*, which causes a multiplication of narrating voices and, as a consequence, a diffraction of truth, as it gets filtered and manipulated by each voice. This provokes questions around the authoritativeness of words, which relate to the issue of the control of truth exercised by holders of power, divine or human.⁶⁴ This theme is developed by Ovid well beyond Book 5, and in my analysis it will be further associated with Arachne’s episode in Book 6 and Orpheus’ in Book 10, which represents the evident climax of my review and arguments. For reasons of space, I must omit the contest between Pierides and Muses as well as Midas’ story in Book 11, also ideally part of the

⁶³ The phrase is juxtaposed to “play-acting justice” by Balsley 2010a, *passim*.

⁶⁴ Johnson 2008, 27-9 and 64ff.; Id. 1996, 131ff.

same macro-sequence. Showing the evident intersections of these episodes with Augustan legal policies and the poet's own reflections on the nature of justice, with particular regard to the contrast between human and divine laws, I reframe these artistic clashes with power within what has now become clear is a repeated pattern of legalistic framing of the notion of divine and political justice.

The Pierides versus Muses contest and the artistic fight between Apollo and Pan witnessed by Midas (11.146-93) are the only two instances in the macro-sequence featuring an external judge (the nymphs and Tmolus respectively). Johnson, who omits book 11 from her consideration of episodes dedicated to artists clashing with power, maintains that Ovid reflects on the challenges and even dangers of artistic production, which he experienced first-hand. She concludes that the main difference between the Orpheus' songs in Book 10 and the two episodes in *Metamorphoses* 5 and 6 is that Orpheus, despite his despair, never goes as far as to challenge the authority and power of the gods.⁶⁵ My analysis will return to that latter episode, along with that of Arachne in Book 6, to focus on the role played by the divine element in the outline of power dynamics, arguing for a broader 'social meaning' in Ovid's evocation of contemporary legal developments in the age of Augustus and their fictional aspects.

Book 5 ends with the contest between the Pierides and the Muses; the following book opens with Minerva's involvement in a different *certamen* with Arachne. The two episodes are often discussed together, as the *mise en abyme* introduced in the former continues with Minerva having just heard about the previous contest and about to punish Arachne for her *ὕβρις* in deeming herself the goddess' superior in the *ars* of weaving.⁶⁶ Not unlike the contest in Book 5, the passage dedicated to Arachne's story is not marked by strong juridical references in terms of vocabulary;⁶⁷ nonetheless, it offers some

⁶⁵ Johnson 2008, 96ff.

⁶⁶ The parallel is strengthened by Arachne's 'material' retelling of Proserpina's myth at 114, since her impious point of view is in open contrast with Calliope's account in Book 5. A further suggestive allusion to the blasphemous connotation of Arachne's work might be hidden behind her father's identification as *Colophonius* (8). The Lydian city of Colophon was also the hometown of the philosopher Xenophanes, inventor of satirical verses collected in his *Silloi* and especially known for his desecrating rationalistic approach to theological topics and his derision of traditional religion.

⁶⁷ Pace Alekou 2022, 228. A partial exception is represented by the recurrence of the word *poena* at ll. 4 (which recalls the theme of 5.668), 137 (where Minerva's intent is elevated to *lex*), and 150 (marking the transition to the subsequent episode dedicated to Niobe). Another suggestive hint is the mention of the *scopulum Mavortis* (70), a linguistic calque of the Greek Areopagus which Ovid might be employing to stress the righteousness of the outcome in the *lis* over the naming of Athens (see Rosati 2009, 259).

interesting allusions with regard to Ovid's approach to the theme of the nature of poetic, divine, and consequently political justice. I use the word *certamen*⁶⁸ since the episode is not characterised by Ovid in terms of a trial-type situation.⁶⁹ In fact, the punishment perpetrated by Minerva against the Maeonian girl is marked by the poet almost as an illegal action, given the absence of any judges and the complicit silence of the people witnessing the scene. The goddess' ultimate motive is *Livor* (129), which assumes similar motivations to the envy of *Am.* 1.15.1 and *Rem.* 389, where the personified sentiment is attributed to the detractors of Ovid's licentious inspiration in his love poetry. The evocation of *Livor* also provides a mythological antecedent to Ovid's stance in his exilic poetry.⁷⁰

The myth of Arachne lacks any literary references prior to the Augustan age, although its cursory occurrence in Vergil vouches for its diffusion in the first century BC, probably by Hellenistic derivation.⁷¹ This is particularly interesting in the framework of Book 6, in which Ovid will subsequently represent a series of myths (Niobe, Latona and the Lycian farmers, Marsyas) which were certainly familiar to the artistic and figurative panorama of Augustan Rome, with their implicitly political resonance. It is a truism of scholarship that Arachne's character is emblematic of a blasphemous and anti-theological stance which operates as a metaphor of Ovid's anti-political attitude, as Minerva's and Arachne's tapestries respectively represent (through an extensive catalogue of *exempla*) the gods' theodicy and their resort to a pretence of justice which in the poet's own experience is symbolically embodied – at least in hindsight – by Augustus as Princeps-judge. The punishment inflicted on Arachne foreshadows Apollo's revenge against Marsyas later in Book 6, which in turn offers a parallel to the exile enforced on Ovid by the Apollonian Augustus.⁷²

Arachne's skill is emphasised from l. 8 through the term *ars*, but the episode is furthermore marked by a whole repertoire of images that equate the *ars poetica* to the thorough and refined craft of weaving (tapestry as well as – after Arachne's

⁶⁸ The term and its broader semantic field recur at ll. 25, 42, 52, 85, 91.

⁶⁹ Although, interestingly enough, the adjective *clara* (86), besides denoting the clear definition of colours, might also allude to the rhetorical meaning of *color* in the sense of "intention".

⁷⁰ *Trist.* 4.10.123 and *Pont.* 4.16. Cf. Alekou 2022, 237.

⁷¹ Verg. *Georg.* 4.246f.

⁷² For Arachne as a prototype of the exiled poet, see Harries 1990, 65; Salzman-Mitchell 2005, 117-49; Johnson 2008, 74-95, 118f.; Pavlock 2009, 3-6.

transformation – webs).⁷³ Those images, which show various degrees of explicitness, range from more denotative external details – such as the *flores hederis* (128),⁷⁴ Minerva hitting Arachne’s *frons* (133),⁷⁵ and the girl’s *exiles digiti* (143)⁷⁶ – to more obscure (and possibly unintentional) allusions. Among the latter I count the convincing association of Arachne’s attempted suicide (134f.) to the most famous artistic/political suicide of the Augustan era, namely that of Cornelius Gallus.⁷⁷ Another suggestive political point lurks behind Minerva’s act of shrinking Arachne through her transformation (*totoque corpore parva est*, 142) and the possible etymology of the name Minerva as the goddess who *minuit*:⁷⁸ a pointed opposition to the traditional (though controversial) connection between the title of Augustus and the verb *augeo*.

The absence of a judge reinforces the idea, clearly emerging since the beginning of the episode, that the two characters occupy different hierarchical levels. Moreover, the lack of an actual defeat (the outcome of the contest is marked by the term *successu*, 130) shows that the *certamen* has been turned into a trial of strength. Minerva’s stance is characterised in terms of righteousness from the outset (*iustam... iram*, 2), and her representations assume Apollonian (and therefore Augustan) traits throughout the episode: the orderly composition of her tapestry (70-128) opens with a meta-trial, with the twelve Olympian gods judging the contest over the naming of Athens (*bis sex... sedenti*, 72f.). The *augusta gravitas* (73) which marks their description is symbolic of the stability of the Olympian power as opposed to the elusive and devious transformability which connotes the gods in Arachne’s work. The *nexus* strengthens the Augustan underlayer that I have identified in this passage: the use of *augusta* (as opposed to any other word qualifying *gravitas*) evokes Augustus himself, the Jupiter on earth. Minerva’s work is also quite obviously ‘Augustan’ because she portrays the gods, with Jupiter in

⁷³ The omnipresent shadow cast on Ovid’s poetry by Augustus’ moral legislation is vaguely alluded to in the phrase *lanificae... artis* (6), used to describe Arachne’s *teche*. *Lanificium*, Minerva’s province, was a symbolic activity in Roman culture and defined the ethical model of a good *matrona*.

⁷⁴ For *hedera* as a professional attribute for a poet, see Hor. *Carm.* 1.1.29.

⁷⁵ This anatomical element is here employed as symbolic of Arachne’s own intellectual awareness and the pride she takes in it, as well as alluding to the body part where poets would wear their laurel wreath (see previous fn.).

⁷⁶ Arachne’s fingers, the instruments of her *ars*, are here marked by an attribute that stresses their *tenuitas*, which alludes to the refined and Callimachean character of her technique. Colophon was also the birthplace of illustrious elegiac poets such as Mimnermus and Antimachus.

⁷⁷ See Rosati 2009 *ad loc.* (with further bibliography) and Alekou 2022, 242.

⁷⁸ Cic. *Nat. deor.* 3.62

their midst, sitting in judgement (after all the topic of her tapestry is yet another contest) “with the authority of Augustus”.⁷⁹ It seems suggestive that in a book marked by *mise en abyme* we find a trial within a trial, and that the juridical flavour of this episode might also be programmatic.

The description of Arachne’s tapestry offers in counterpoint to Olympian justice a catalogue of deceitful and immoral divine behaviour, e.g. *simulat* (80), *videtur* (100), *imagine* (103, 110, 122), *verum... putares* (104), *videbatur* (105), *visus* (116), *fallis* (117), *luserit* (124), *falsa* and *deceperit* (125). The overall erotic theme of Arachne’s tapestry (103-28) is particularly offensive to Minerva, proverbially chaste and averse to sex, especially within the framework of the Augustan moral policies.⁸⁰ And strikingly the underlying tension between human power and divine will is again expressed within a legal context. Alekou has convincingly stressed the traits of Arachne’s characterisation that make her emerge in turn as a prosecutor who, through her tapestry, displays shocking evidence in a courtroom;⁸¹ a wronged individual who resorts to *flagitatio*, as well as a *delator*, an *index* who also somehow takes on a demiurgic aspect in her exposing an idea of justice that is to be identified with, and therefore reduced and downgraded to, the will of a god or a legislator.⁸² Whilst her exposing sexual *crimina* to public scrutiny is in line with Augustus’ moral legislation, she is also simultaneously exposing the hypocritical façade of the regime, whose Princeps, not unlike the gods in her tapestry and Minerva punishing her, in fact occupies an extra-judicial position.⁸³

Whilst the idea that Arachne and Ovid suffer the same fate is interesting,⁸⁴ what I have stressed here is how once again within the *Metamorphoses* significant and programmatic sites of ‘poetics’ are also fundamentally legal. Rather than focusing on the individual correspondence between Arachne and Ovid (ironic but problematic given the timeline of composition), my interest is rather in showing how, as I demonstrated in

⁷⁹ The epithet is used in only a few striking places in the poem; at 9.270 (in the same *nexus*, with reference to Hercules) and 15.145 (within the ideologically marked context of Pythagoras’ speech). It must have triggered an immediate association with the Princeps, antonomastic holder of the qualification and defined as such at 15.860 and 869 as well as at 1.204, where he is likened to Jupiter, whose *gravitas* is in turn mentioned at l. 207.

⁸⁰ Ziogas 2021a, 364 notes that Arachne’s depiction of the gods’ sexual transgressions (103-28) must have evoked Augustus’ debaucheries as rumoured in Suet. *Aug.* 68-70.

⁸¹ Alekou 2022, 238.

⁸² *Ibid.*, 236f., 241, 243.

⁸³ *Ibid.*, 244.

⁸⁴ *Ibid.*, 241.

Ovid's elegy, the juridical offers a playing field of semantic relevance in negotiating a new social reality. The question of the nature of justice once again emerges as a central one in Ovid's lines. As well as joining the story of Arachne and that of Orpheus together, I argue for the existence of a deeper nexus that links those two episodes back to the programmatic moments of Book 1. Both passages go beyond the 'general' juridical atmosphere reminiscent of Ovid's amatory poetry to ground the programmatic legal premises of Book 1 in Ovid's modelling of the universe, at crucial moments of both divine and human history. *Metamorphoses* 1 frames the inception of justice as a contest which brings about new power dynamics, thus seeding the juridico-political question within the creation of the universe, as the initial cosmogony and the myth of the Four Ages programmatically lay the foundations for the evolution of the role of law in human history. *Metamorphoses* 6 refracts that juridical set-up through the specific lens of the human/divine will opposition, which in turn mirrors the citizen/Princeps dialectic, once again following the poem's pattern of 'repetition with difference'.

Ovid's programmatic reflections on the nature of justice as power dynamic reach a climax in Book 10, which opens with the tale of Orpheus and Eurydice. A variation introduced by Ovid on the well-known myth is its legalistic *color*, particularly evident in the speech given by the poet to persuade Hades to let Orpheus' wife return to Earth from the Underworld. Even though his mission ultimately fails, Orpheus' argumentation in front of Hades and Persephone, an example of court rendition within the poem, is a successful one, and occupies about thirty lines (11-39). Ovid distances himself from the characteristic 'geographical' description of Vergil's Tartarus, and introduces Orpheus while he is addressing the sovereigns of the Underworld and its inhabitants in a location which is similar to a *forum* (12-6): the speech is not addressed to a private audience, but rather to a public assembly. Persephone and Hades' response is straightforward, and is marked by the official sounding stipulation of a pact which will prove fatal to the mortal couple's destiny (50-2). Those three lines not only anticipate the conclusion of the episode but also inscribe the story within a context where the gods' will is equated to a binding *lex* the consequences of which nullify Orpheus' rhetorical effort.

This reframing of the episode within the context of Ovid's view on divine justice is the main point around which I depart from the in-depth reading of the episode already provided by VerSteege and Barclay. Orpheus' speech, the scholarly reception of which

has been almost unanimously negative,⁸⁵ sounds paradoxically weak, ascribed as it is to a character whose rhetorical mastery was considered unmatched.⁸⁶ VerSteeg and Barclay maintain this particular choice might have been dictated by at least two reasons: Ovid's intent to offer a parody of law and legalistic arguments, as well as his targeting the standard approaches to rhetoric in use in Rome at the time of his writing.⁸⁷ The poet – they argue – deliberately emphasizes those rhetorical aspects by resorting to juridical content as a tool contributing to a successful outcome.⁸⁸ As I have argued, however, the very concept of “power of law” can be identified, in Ovid's contemporary Rome, as a seminal cultural element, in light of which the poet's “social commentary” proves certainly more nuanced than strictly subversive.⁸⁹ Once again I am inclined to avoid the label of ‘parody’, in favour of the suggestion that Ovid is rather reproducing a ‘court’ environment according to a Romanised representation that he was familiar with and his audience would understand.

VerSteeg and Barclay have produced hyper-technical interpretations of legal content within the passage – mainly based on legislation on marriage, theft and property –, whose text anchorage I find in most passages rather weak. Following a preliminary distinction between his case and those of his ‘predecessors’ in descending to the Underworld, alluding to the deeds of Theseus and Hercules,⁹⁰ Orpheus recalls marriage legislation, and frames the dispute by drawing a further distinction between his own property claim on his consort and the simple possession reserved to Hades going forward. The two scholars infer that Ovid intended to allude to marriage *cum manu*, traditionally associated, since the Twelve Tables,⁹¹ with the aristocratic ceremony of *confarreatio*.⁹² The *sine manu* typology of ceremony, however, had become the most common one in Ovid's time, so once again he seems to be evoking an atmosphere rather than referencing

⁸⁵ For a digest of the main critical positions, see Johnson 2008, 101 and Galasso 2000, 1273.

⁸⁶ See e.g. the praise of his persuasion skills as an orator by tragedy characters such as Admetus in Eur. *Alc.* 357-62.

⁸⁷ VerSteeg and Barclay 2003, 401ff. It is also worth remembering Seneca the Elder's observation on Ovid's oratory (*Contr.* 2.2.8), which can be applied, *e contrario*, to the strong rhetorical features of some of his poetic passages: *oratio eius iam tum nihil aliud poterat videri quam solutum carmen*.

⁸⁸ VerSteeg and Barclay 2003, 414f.

⁸⁹ *Ibid.*

⁹⁰ As noted by Heath 1996, 359, Orpheus' trip may have preceded Hercules'.

⁹¹ VerSteeg 2002, 324.

⁹² See Thomas 1976, 412-20.

specific juridical institutions. VerSteeg and Barclay's label of *anachronism*⁹³ seems inappropriate based on my argument that Roman "juridical morality" in its day-to-day instances was embedded by Ovid into mythic storytelling to show changing (contemporary) law 'in action'.

Since the traditional chthonic associations of the snake account for Hades' 'ownership' of the animal that bit Eurydice,⁹⁴ even though its attack did not take place in the Underworld, VerSteeg and Barclay have also attempted to read Orpheus' case by identifying the snake as the defendant in a theft charge.⁹⁵ The animal, as explicitly stated at 24, *crescentes abstulit annos*. Orpheus is therefore claiming the restitution of a property – although the 'stolen years' are to be considered immaterial goods –⁹⁶ in favour of Eurydice, as a person subjected to his own *manus*.⁹⁷ VerSteeg and Barclay suggest that the alleged legalistic frame centred on theft was drawn from Ovid's own background as a *tresvir capitalis*, thus reasserting a scholarly opinion that I have already challenged in the first chapter.⁹⁸

In demanding the restitution of the years that a member of the household of the king of the Underworld (i.e. the snake) has subtracted from Eurydice, Orpheus uses the adjective *iustos* that, etymologically linked to *ius*, technically denotes the period of time legitimately due to Eurydice, but also, generally speaking, everything "such as one may reasonably expect to encounter, normal, ordinary".⁹⁹ In juridical terms, this is the only substantial claim formulated by Orpheus. VerSteeg and Barclay conclude that the adjective *iustos* (36) implies that Orpheus implicitly considers his spouse as a purchased property that has failed to fulfil its duration warranty.¹⁰⁰ Therefore the case would ultimately be an instance of *actio in rem* aiming at the acknowledgement of a property.

⁹³ VerSteeg and Barclay 2003, 403.

⁹⁴ Think for instance of the myth of Erichthonius, the Erinyes having snakes for hair, and Cerberus' own *villosa colubris... guttura* (*Met.* 10.21f.).

⁹⁵ The legislation quoted by VerSteeg and Barclay is explained in Crook 1967, 161, Thomas 1976, 383 and Nicholas 1962, 224.

⁹⁶ On the equability in value of material and immaterial goods, see Ulpian in D. 47.2.27pr.

⁹⁷ See Ulpian and Paulus in D. 47.2.10 and D. 47.2.11 respectively. Cf. also Thomas 1976, 414, quoting D. 43.30 and Gaius *Inst.* 8.8 in relation to the legitimate claims of a *pater familias*, which were virtually identical to those of a husband towards his wife in an instance of marriage *cum manu*.

⁹⁸ VerSteeg and Barclay 2003, 404.

⁹⁹ *OLD*, s.v. *iustus* 9. As Ulpian specifies in D. 47.2.19pr., in the event of a theft allegation it was sufficient to provide a description of the stolen object that allowed its identification; it was not necessary to provide details, for example in terms of number or size.

¹⁰⁰ On the explicit and implicit sale warranties contemplated in Roman legislation, see Nicholas 1062, 181f.

Orpheus, however, never goes as far as to explicitly identify a defendant, nor to specify if those years should be returned by the snake, by the Fates, or by the king of the Underworld himself, and thus avoids any direct confrontation with Hades.

The two scholars further observe that, at ll. 32-7, to reinforce his argument, Orpheus resorts to detailed distinctions concerning property regulations, first by acknowledging that Hades, in the long term, is bound to enter into the possession of all human beings.¹⁰¹ Based on Roman legislation, such a point would imply a neat distinction between *dominium* and mere *detentio*, which can be identified with the notions of ‘property’ and temporary ‘possession’ respectively. The argument would be developed according to a syllogism introduced by an implicit though obvious premise: Eurydice is human, as much as all those who, as properties of the god of the Underworld, eventually go back to him in his realm.¹⁰² The opposition between *dominium* and *detentio*, however, does not stand based on *ius*: possession qualifies itself as a *de facto* status, which *might* have – but does not *necessarily* produce – juridical effects.

Any demand for accuracy in relation to Ovid’s reuse of legal material overlooks the very nature and context of the poet’s approach to the subject, which can be further illuminated by reviewing the structural aspects highlighted by VerSteege and Barclay. Their general impression is that the author has borrowed specific rhetorical devices and stylistic features. The strictly argumentative section is rather brief and comparable, at least based on its artificial construction, to a school *suasoria*.¹⁰³ Orpheus’ judicial arguments ultimately outnumber both the deliberative and the epideictic oratory features:¹⁰⁴ in exposing his case, the poet resorts, beside reasoning and emotions, also to legal elements, and appeals to the ‘court’ to demand a ‘concrete’ settlement. After the blarney and reassurance addressed to the audience in order to secure their goodwill from the offset,¹⁰⁵ the statement *causa viae est coniunx* (23), which plays around the procedural meaning of the term *causa*, reaffirms the centrality of the court setting.

¹⁰¹ VerSteege and Barclay 2003, 407.

¹⁰² Moreover, estate law deemed a landowner to be the owner of anything underneath and above his soil, which would bind every mortal creature to enter into Hades’ possession.

¹⁰³ See Otis 1970, 184.

¹⁰⁴ On the three traditional speech typologies of classical rhetoric, see Cic. *Inv.* 1.7, 2.37 and *Rhet. Her.* 1.2.

¹⁰⁵ Cic. *Inv.* 1.20.

After an uncertain and hesitating *partitio* and a *confirmatio* in the form of an enthymeme, ll. 33-7 represent some sort of *reprehensio*, which is, however, unnecessary in the absence of an opponent's speech. Orpheus is in fact confuting a counterargument which is just hypothetical: it is true that, like all mortals, Eurydice must necessarily descend to the Underworld at some point; the point argued here is the fact that the woman has had to set off prematurely. Failing to follow Cicero's tripartition, Orpheus subsequently lays out the conclusion through a direct reparation claim (*pro munere poscimus usum*, 37), to then immediately shift to some sort of *conquestio*: where one would have logically expected, after the reparation claim, an argument summary and subsequently a conclusion, the hero threatens to stay in the Underworld himself if his request is not fulfilled (38f.). The author might be implicitly alluding to the institute of *flagitatio*, a curious Italic custom, considerably archaic and stereotyped in its forms. It consisted in a primitive form of extra-legal satisfaction through which a damaged subject had the option, as an alternative to initiating legal action, to gather his friends, surround his offender in a public place and provide a public account of his *crimen*.¹⁰⁶ The threat is introduced through the phrase *certum est* (38), which in turn echoes the obligation, within the framework of classical legislation concerning contracts, to establish a fixed (*certum*) price.¹⁰⁷ Whether Ovid is here alluding to *flagitatio* or not, Orpheus' appeal to pity confirms the poet's adherence to the principles found in rhetoric handbooks.¹⁰⁸

The prescriptions of Cicero's *De inventione* seem to be mirrored in Orpheus' speech in light of the absence – except for the conclusion – of any substantial form of *ἦθος* and *πάθος*, two elements of Greek rhetoric that Cicero – as noted by commentators – had omitted to adapt and pass on to Roman culture.¹⁰⁹ Orpheus' oration is therefore shaped as a *reductio ad absurdum* of rhetorical models, adapted to the needs of a sublime orator in emergency circumstances. Once again, Ovid's operation comes across as a deceptive one, played as it is upon a structure which recalls Cicero's dictates to provide

¹⁰⁶ Williams 1968, 197.

¹⁰⁷ Nicholas 1962, 174.

¹⁰⁸ Cf. *Rhet. Her.* 2.21: *si quae nobis futura sint nisi causa obtinuerimus enumerabimus et ostendemus*. Further rhetorical features are listed by VerSteeg and Barclay at 409-11, including the 'homophony' between Eurydice's name and the *constitutio iuridicalis*. The latter association, despite lacking an adequate textual confirmation, is fascinating if we consider the etymology of Eurydice's name from the Greek *εὐρύς*, "wide" and *δίκη*, "justice".

¹⁰⁹ See e.g. Kennedy 1994, 121.

a model argumentation whose goal, in my opinion, is to ultimately stress the poet's take on justice as experienced by Orpheus in this specific episode.

It is important to stress that Orpheus' first speech is delivered in front of two monarchs. The sovereigns of the Underworld are also a married couple, and the poet touches on their union about halfway through the speech (26-9), which eventually proves to be an appeal to the court's clemency. Although indirectly, it reveals Ovid's opinion with regard to the elements which make a poetic composition addressed to powerful entities effective and safe, therefore ultimately his opinion on the relationship between poetry and juridico-political power.¹¹⁰ Orpheus produces legally-nuanced arguments to legitimise his demand. At lines 29-31, he introduces his remedy request by means of an oath formulated on three entities: *haec loca plena timoris, chaos hoc ingens* and *vastique silentia regni*. Oaths were a typical element of judicial oratory, used to emphasize the truthfulness of a piece of evidence, according to a use similar to that of contracts.¹¹¹ Here the oath insists on the element of divine justice, connoted by the verb *retexite* (31) which refers to the divine couple but implicitly also to the Fates,¹¹² and recalls the legal procedures in which it assumed the meaning of "cancelling a contract" or "retracting a statement", particularly when occurring in association with the noun *fata* as in "statements, orders".¹¹³ The use of an imperative verb is unsurprising: even though subjunctives were generally preferred in courts, Cicero would frequently use imperatives in judicial oratory contexts in which some sort of reparation and/or compensation was the object of a legal claim.¹¹⁴

The element of divine justice proves once again instrumental in Ovid's formulation of his social commentary on the power of law. The legal element is embedded in this episode as a function of the broader power dynamics between gods and mortals, which – not unlike Arachne's episode – trigger deeper reflections on the connection/clash between artistic voices and (judicial) power. Johnson has defined Orpheus "the last strictly mythological episode of Ovid's *Metamorphoses*"¹¹⁵ – serving as some sort of

¹¹⁰ The representation of Orpheus' audience as a people alongside their sovereigns is based, according to Johnson 2008, 108f., on the example offered by Horace's ode 2.13.

¹¹¹ Cf. VerSteeg 2002, 298 and 350.

¹¹² According to the myth, the Parcae could reweave (i.e. stitch back together) the thread of people's fate. The verb is used to indicate the "undoing" of Penelope's *tela* e.g. in Cic. *Acad.* 2.95 and Ov. *Am.* 3.9.30.

¹¹³ *OLD*, s.v. *retexo* 2.

¹¹⁴ Cf. e.g. Cic. *Mur.* 41.

¹¹⁵ Johnson 2008, 96.

hinge between the ‘mythical’ and the ‘historical’ sections of the poem. The scholar’s argument is that Orpheus’ speech is not based on ethical or aesthetic premises, as it would have been expected from the legendary *vates* of both Greek and Roman mythological traditions, but rather on a canny and cautious evaluation of the power at stake, as well as of the tastes and expectations of his audience. In other words, it is based on a *political* strategy.¹¹⁶ I have shown that those ‘tastes and expectations’ could commonly draw from concepts and phrases belonging to the juridical sphere, somehow ‘internalised’ by the Romans in their everyday experience of *ius*. Orpheus’ lyrical song in the Underworld is not limited and inhibited, but rather modulated by the unbalanced power relationship existing between the mythical poet and his addressees, as only the clear identification of his audience and their preferences can determine his success.

If we shift our focus from the rhetorical setup to a political reading of the episode, the author seems to have intentionally distanced his character from the religious and historical tradition, introducing a ‘rationalised’ and literary version of the mythical poet. Johnson has tried to establish a direct association between Orpheus and Ovid himself, based on the latter’s representation as an archetypal poet – well-versed in all genres, from epic to bucolic to didactic poetry – who finds himself challenged by his ‘social’ context.¹¹⁷ In particular, the distance taken from the Vergilian model (the account of Orpheus’ myth provided by Proteus in *Georg.* 4.453-527) has sometimes been read in terms of humour and contemptuous parody.¹¹⁸ By contrast, Johnson suggests that we read Ovid’s treatment against the meaningful absence from his verses of the literary conformism and conservativeness which had characterised previous authors.¹¹⁹ The detachment from Vergil’s model might have been motivated by the intention to deal with social issues relevant to the specific (and late) time in the Augustan era that Ovid found himself living in, and by the belief that previous models had proven inadequate to tackle those questions. This political aspect, I argue, can only be addressed within the framework of the larger power dynamics set out in this section, organic as they are to the ‘naturalisation’ of (or repeated ‘turn’ to) the law that we have seen in the *Metamorphoses*.

¹¹⁶ *Ibid.*, 98.

¹¹⁷ *Ibid.*, 104ff.

¹¹⁸ See e.g. Makowski 1996, Neumeister 1986, Segal 1972, 483 in particular and *Id.* 1989, 93f., as well as Spencer 1997. For a focus on Ovid’s reception of Vergil, see Thomas 2009.

¹¹⁹ Johnson 2008, 102.

As I have shown following Schiesaro, building a legal model for the universe had been part of the Latin literary discourse at least since Lucretius and Vergil.¹²⁰ In the *Metamorphoses*, the foundation of the legal system viewed as a transition from violence to justice brings about an opposition between the idea of law originated from a natural or divine source and its subsequent inevitable overlap with human conventions. Ovid's representation of Orpheus raises further issues around the nature of (Augustan) justice that I will outline in the following paragraphs.

Ziogas has stressed the contrast between Ovid's portrayal of the artist as emerging from Orpheus' second speech/song in Book 10 and the passage of the *Ars Poetica* in which Horace explicitly mentions Orpheus' *exemplum* in relation to the politicisation of human life and the foundation of human society on the ultimate separation between public and private, sacred and profane, sex and marriage (Hor. *Ars* 391-401). Horace claims that the poets who should be ranked as virtuous are those who condemned promiscuity and reinforced marital regulations (*concupito prohibere vago, dare iura maritis*, 398), who had founded communities and made them stable through laws. Orpheus and Amphion therefore emerge in Horace as civically minded artists, divinely inspired bards that operate as intermediate figures between the human and the divine. Orpheus' music would serve his community and, as testified by *Ode* 1.12 (indirectly intended as an encomium of Augustus), his patron or ruler as well. Horace's Orpheus, first introduced as *sacer interpresque deorum* (*Ars* 391), is characterised as a civiliser and legislator. Ovid's portrayal, by contrast, is more nuanced, as we are left with the impression that the character is introduced in the *Metamorphoses* to remind us of the contemporary category confusion brought about by Augustan laws, in a poem that gives prominence to the principle of transformation over linear progress and genealogy.¹²¹

In this sense, Orpheus emerges as a figure of both Ovid and Augustus since all three are involved in the production of normative discourse, albeit of different natures. At 10.83f., Orpheus is presented as an *auctor* in the act of performing the legal transaction of *transfere* legitimacy to pederastic love which will dominate the second part of the episode, as exemplified by his subsequent divine *exempla* (Ganymede and Jupiter,

¹²⁰ *Supra*, 73ff.

¹²¹ Ziogas 2021a, 346-83 has been crucial in informing my own understanding of Orpheus' figure in the *Metamorphoses*.

Hyacinthus and Apollo, Venus and Adonis, Atalanta and Hippomenes, Cerastes, Propoetides, Myrrha, and Pygmalion). He is therefore also an *auctor legis* who, in sharp contrast with Augustus in *R. Gest. div. Aug.* 8.5, is setting a somehow disruptive homoerotic agenda. The opening of Orpheus' second speech, starting from ll. 149-54, follows the pattern of a classic Augustan *recusatio* whose homoerotic focus stands in opposition to the heterosexual didactic stance of the *praeceptor Amoris* in the *Ars*.

I find Ziogas' analysis particularly convincing in its going beyond the traditional interpretation that has seen Orpheus as a figure of poetic self-referentiality in favour of reading the *vates*' engagement with the legitimacy of implicit or explicit incest as a further way for Ovid to reflect on the regulation of desire in the Age of Augustus.¹²² The stories in Orpheus' second speech are in fact all centred around the relationship between a parent figure and a child, with gods falling in love with boys and girls getting punished for their forbidden passions. Significantly enough, the only story dealing with a marital bond presents Atalanta and Hippomenes in the act of performing transgressive marital sex in Cybele's temple, thus patently breaking divine norms. Orpheus' relevance to the realities of Ovid's Rome therefore lies in the fact that, in an Augustan world under the aegis of Juno Lucina, his song not only questions the value of procreative unions and marriage, but also actively promotes non-procreative love. Orpheus' supporting pederastic love again appears in contrast with the suppression of any erotic impulses in the same character in the *Georgics*. In outlining Orpheus' 'negative' characterisation, Ovid refers to a Hellenistic tradition dating back to Phanocles,¹²³ but – more importantly – his *recusatio* concurs with the recreation of a fully Augustan setting.

Up until his final silencing, Ovid's Orpheus contributes to issues linked to the Augustan legislation and also raises important questions in relation to the nature of justice in the legal system developed by human society since its origin,¹²⁴ as a brief digression on the episode of Myrrha in particular can help me demonstrate. The divine element is first introduced in Myrrha's treatment through Orpheus' ritual warning that kept the uninitiated away from mystery cults (10.300-3), which recalls Ovid's initial disclaimer in *Ars* 1.31-4.¹²⁵ Orpheus' narration brings about an implicit contrast between his open

¹²² *Ibid.*, 356ff.

¹²³ See Makowski 1996, 27.

¹²⁴ Ziogas 2021a, 364.

¹²⁵ Cf. Pseudo-Orpheus fr. 1.3; 377.1 Bernabé.

disapproval of the girl's passion and the Orphic tradition linked to the divine incest between Jupiter and Proserpina,¹²⁶ which must have reminded the audience that human laws do not apply to the divine sphere, and further reaffirms an overall 'lay' characterisation of the bard in this episode. Orpheus' *procul este* (300) is the only explicit allusion to the Orphic tradition in Ovid's text, which is especially noteworthy given the renewed popularity, in the Augustan age, of allegedly Orphic poems, even though most of them had been revealed as fake already in Ovid's time.

Orpheus' preamble, while evoking a ritual initiation, is also instrumental in introducing some further *mise en abyme* through a mock trial scene in which his audience of birds and animals (143f.) play the role of judges, as Myrrha's story is strongly connoted in terms of crime and punishment. The mock trial setting is reinforced by Cupid who, appearing in court (311-4), denies any involvement in the incest through a *remotio criminis* expressed by *negat* (311) and *a crimine vindicat* (312). This 'court' set-up introduces us to the rhetorical characterisation of Myrrha's soliloquy, designed to convey the heroine's desire to include her transgressive love in the judicial order. Myrrha's passion is doubly disruptive as it goes against both the Augustan legislation and the incest taboo, which the girl defies by rejecting paternal authority (*iura parentum*, 321). Ziogas has rightly observed that in Ovid the myth gets 'defamiliarised' through its characterisation in terms of a Roman *controversia*, which contributes to making it more relevant to the content of Augustan legislation.¹²⁷ The tools of Roman rhetoric allow Myrrha to act as a defendant and a prosecutor in exposing conflicting arguments, once again bringing the theme of the nature of justice to the fore. It is interesting to note that, whereas the narrator defines Myrrha's fault a *crimen*, lacking any extenuating circumstances,¹²⁸ the heroine employs in her monologue a distinct term, *delictum* (325). The latter, unlike the former, concerns the sphere of civil rather than criminal law.¹²⁹ The girl's speech is further interspersed with phrases indicating fluctuation and compromises, as stressed by the recurrence of adverbs such as *si tamen*, *sed enim*, and *tamen*. In his commentary to Book 10, Reed points out that "in Ovid this kind of discourse typically explores the similarities between the judicial and the psychological dimensions. One of

¹²⁶ Ziogas 2021a, 365, following Bömer 1976b *ad Met.* 6.114.

¹²⁷ Ziogas 2021a, 368.

¹²⁸ Cf. the phrase *concepta crimina* (470).

¹²⁹ See Berger 1953, s.vv. and Santalucia 1998, 67.

the implications of this is that the heroine, through her monologue, makes an attempt to persuade herself as one might do in addressing a judge, an internal, Platonic or nearly Freudian judge".¹³⁰

At ll. 321-5, she touches in succession on *ius naturale*, *ius gentium* and *ius civile*.¹³¹ In addition to the Sophistic, Epicurean and Stoic arguments on natural law already evoked by Byblis in the previous book (9.450-665), Myrrha's argument will have also reminded Ovid's audience of the jurists' discussions on *ius naturale* as opposed to *ius gentium*.¹³² The latter had assumed political connotations in Rome since the marriage between Ptolemy XIII and Cleopatra¹³³ and, up until the Punic Wars, the Romans apparently used to sanction incestuous unions up to the sixth degree of kinship. It should not be overlooked that, in Greek literature, consanguineous unions were apt to represent the distinctive mark of peoples considered *other* than Greek, especially if belonging to the Eastern world.¹³⁴ A further peculiarity of both Myrrha's and Byblis' episodes lies in the fact that incest is charged in both cases to non-Roman girls, Middle-Eastern (and not strictly Greek) in this case.¹³⁵ Myrrha's threefold distinction among different strands of *ius* fits in well within the context of Orpheus' song, whose mythical *exempla* ultimately show that it is up to the agenda of each (divine) legislator to allow or sanction transgressive behaviour.¹³⁶ Moreover, Myrrha's agenda is consistent with the Saturnalian spirit of Roman *declamationes*, which took place in a state of suspension of legal action that operated as a fictional state of exception.¹³⁷

A further layer of Romanisation is obtained through the recodification of the episode in terms of property and family law, which is articulated in three moments. Firstly, through Myrrha's challenging of *patria potestas* in her monologue (339f.);

¹³⁰ Reed 2013, 238 (my translation).

¹³¹ The whole passage is punctuated with legally charged terms like *scelus*, *damnare*, *negare*, *pietas* and *delictum*, on which see the analysis in Ziogas 2021, 371-3.

¹³² Ulp. in D. 1.1.1.3-4. Cf. Gebhardt 2009, 309ff., who maintains both heroines' monologues allude to contemporary discussions on the concept of natural law. On the relevance of these distinctions in the schools of rhetoric, see *Rhet. Her.* 2.13-9.

¹³³ In the Hellenistic age there is some debate about unions between siblings, as testified at least in a passage by Theocritus (17.127ff., with reference to the marriage between Ptolemy II Philadelphus and Arsinoe II). Cf. also Plutarch's statement about the Persians in *Artax.* 23.

¹³⁴ In those cases, however, it often assumed the form of a regular marriage: see Hall 1989, 89f.

¹³⁵ For further discussion on this aspect, see Knox 1986, 57 and Fletcher 2005, 138-41.

¹³⁶ Ziogas 2021a, 372.

¹³⁷ *Ibid.*, 370 notes that Myrrha finally succeeds in consummating her incestuous passion during the festival of Ceres (431), which removes her mother from the plot.

secondly, through her nurse's words (428-30); and lastly, through the representation of the incestuous union according to the legal features of a marriage *cum manu* (455-7, 462-4).¹³⁸ More explicitly than in Orpheus' first speech, Ovid is here drawing on Roman legal diction to further develop his dialogue with the content of contemporary Augustan legislation. The latter, by insisting on the centrality of women's consent, had reduced the legal power of the *pater familias* and reinforced the prominence of *ius civile*. Ovid seems to remind his audience that civil law has ultimately outlawed both *ius naturale* and *ius gentium* in the history of the universe that his poem is retracing, consistently outlining the struggles of humankind in facing the real nature of justice in its divine and subsequently political expressions. Myrrha is ultimately suggesting a return to a pre-political stage still dominated by *natural law*; however, the heroine's own end and the other tales in Orpheus' song prove that the (arbitrary) power of divine and Augustan law has made such a return unviable.

The phrase *iura confundere* (346) alerts the audience to a twofold confusion in this passage: mistaking laws means providing incorrect interpretations, but names indicating family ties are here misinterpreted too, as expressed in the two subsequent lines.¹³⁹ The central argument in Myrrha's reasoning is therefore an issue of *status finitionis*, as it had already emerged in the *crimen/delictum* opposition (325-5).¹⁴⁰ This cluttering of *nomina* in the girl's argument has gone as far as to produce an overlap of family and property relationships, as highlighted at l. 339, where the confusion seems totalising. Ovid adds a legal component to the motif of name confusion, which had been paradigmatically introduced by Sophocles in relation to the story of Oedipus¹⁴¹ and was adopted several times in Latin poetry.¹⁴² This is all the more significant in relation to the Ovidian episode, since the narration of Myrrha's incestuous inclinations must have drawn

¹³⁸ For a detailed analysis of those three passages, see Ziogas 2021a, 375-82.

¹³⁹ Cf. Anderson 1963, 20f. As a possible Latin hypotext, see Cic. *Cluent.* 199: *atque etiam nomina necessitudinum, non solum naturae nomen et iura mutavit, uxor generi, noverca filii, filiae paelex.*

¹⁴⁰ Cf. *Met.* 5.524-7 (where Jupiter addresses Ceres, who demands his intervention in favour of her reunion with Proserpina): *sed si modo nomina rebus/ addere vera placet, non hoc iniuria factum,/ verum amor est; neque erit nobis gener ille pudori,/ tu modo, diva, velis.*

¹⁴¹ Cf. Soph. *OT* 457-60; 1207-13; 1403-8; 1480-5 (where, however, it is stressed that Oedipus did not act out of confusion, but *οὔθ' ὀρῶν οὔθ' ἰστορῶν*); 1497-9 and *OC* 527-37; 978-87 (where Oedipus' ignorance and unwitting attitude is further underscored).

¹⁴² Before Ovid, see Catull. 111.4: *matrem fratres ex patruo parere.* After Ovid, in Statius the *Oedipodae confusa domus* (*Theb.* 1.17) is a central element. The motif is also recalled by Ovid, this time without any juridical hint, in relation to the conception of Adonis, i.e. to the outcome of Myrrha's incest (cf. *Met.* 10.520f.).

from Cinna's *Smyrna* for the popular representation of the suffering heroine, but its known antecedents seem to lack any specific legal hint or phraseology.¹⁴³ The idea of *iura confundere* matches Ziogas' notion of 'category confusion'¹⁴⁴ as applied to the *praeceptor's* stance in the *Ars*, as well the juridical category of *error nonimis* emerging from the tale of Cephalus and Procris (*Met.* 7.857f.).¹⁴⁵ Myrrha's and Byblis' episodes have traditionally been read as some sort of diptych centred around the 'pathos of love' in a way that more closely matches Ovid's elegiac discourse in the *Ars* than the complex design behind the *Metamorphoses*. The way the cursory mention of the two heroines in the erotodidactic poem¹⁴⁶ gets reshaped by Ovid in his hexametric poem is a good exemplification of the pay-off afforded by the addition of the legal element to traditional Greek myths. The power imbalance implicit in *ius naturale* being overcome by civil and divine 'justice' marks an evolution in the poet's treatment of incest. Myrrha's story foreshadows the emergence of the juridical powers of the Princeps-judge as the contemporary embodiment of supreme justice, and the heroine's confusion of *iura* suggestively matches the recodification of Republican institutes enacted by Augustus' *fictio iuris*.

Due to his rejection of heterosexual relationships and marriage, Orpheus eventually falls victim to Thracian women in a fit of (pseudo-)Bacchic frenzy.¹⁴⁷ It is fascinating to note that the final version of Orpheus presented by Ovid is a (semi-)silent one, detailed in two different scenes. First, in Book 11, his head is described as floating on the river Hebrus and murmuring a few indistinct words, aimlessly echoed by the nearby *ripae*, while his musical instrument, which symbolically stands for his art, autonomously emits a feeble lament, marked by the threefold iteration of *flebile* (11.52f.). Ovid has just chronicled the poet's death, with the Thracian women calling him out for being their *contemptor* (7): the clamour of their frenzy progressively surpassed (*obstrepuere*, 18) the sound of his cithara, until the stones he was hit by were covered in the blood of the *non exauditus... vates* (19). While breathing his last – the author observes

¹⁴³ The story is reported in Apollodorus 3.14.4, which largely matches Ovid's narrative. For further narrative instances, see Reed 2013, 231f.

¹⁴⁴ Ziogas 2021a, 298.

¹⁴⁵ Cephalus' defence against the informer's allegation that he has cheated on his wife draws from the juridical notion as applied to private law in Ulpian in D. 18.1.9.1. Cephalus is also attributed with *vocibus ambiguus* at 7.821.

¹⁴⁶ *Supra*, 45f.

¹⁴⁷ Ziogas 2021a, 353.

– the poet is caught *inrita dicentem* (40), his voice having lost any efficacy.¹⁴⁸ In the same book, he is subsequently pictured in the *arva piorum*, reunited with this wife and free of any restrictions, but again metaphorically reduced to silence and symbolically deprived of any sound dimension in his very last appearance (11.61-6). There is no mention of his singing, and his art has been replaced by the sense of sight: Orpheus *viderat* (61), *recognoscit* (62), *respicit* (66).¹⁴⁹ The mythical poet has apparently lost his power to speak and sing, thus symbolically experiencing a condition which is shared to some extent by other artistic figures (including Arachne) whose stories are narrated as part of the macro-sequence including Books 5, 6, 10 and 11.

I argue that this succession of episodes, as well as possibly acting as a collective literary antecedent to Ovid’s own biographic clash with the Princeps-judge, reveals Ovid’s programmatic and systematic engagement with the nature of justice as power dynamic in this poem. Each *exemplum* of transgression seems to advance some exegetical ambiguity, even when confronted with the technical, though not objective, paradigm of law. It is sufficiently accurate, as a ‘reader-response’ argument, to note that it would be natural for Ovid’s audience to read refractions of contemporary political affairs and social policies in the poet’s approaching certain themes, without then having to frame that dynamic as ‘pro-’ or ‘anti-Augustan’, which, as I have shown, is redundant as a way of thinking about Ovid’s work. As well summarised by Ziogas, “just as Greek myth is often a window on Roman reality in Ovid, so the fictive world of declamation offers insights on Roman law”.¹⁵⁰ In the episodes analysed in this section, this process evolves into “mythologizing Roman law”,¹⁵¹ as the paradigm of *ius* has proven more effective than traditional readings of the same episodes based on deliberative rhetoric, when the goal is to account for such a nuanced theme as the evolution of the notion of justice in the history of mankind. The reason why Ovid goes after this particular legal scenario is precisely to show how the legal element, as applied to both the divine world and human society, goes beyond and somehow obliterates its alleged technical nature, and amplifies the ‘arbitrary’

¹⁴⁸ Apollo’s intervention proves resolute (58). In *Trist.* 3.2.3f. Ovid sees himself in the same circumstances as Orpheus: *nec vos, Pierides, nec stirps Letoia, vestro/ docta sacerdoti turba tulistis opem.*

¹⁴⁹ In Vergil, the poet is only left with his lyre in his ultramundane existence (*Aen.* 6.645f.). *Respicit* is particularly poignant as it links back to Orpheus’ earlier mistake (*flexit amans oculos*, 10.57; cf. *victusque amore respexit* in Verg. *Georg.* 4.491).

¹⁵⁰ Ziogas 2021a, 368.

¹⁵¹ *Ibid.*, 383 in relation to Myrrha.

nature of justice from the inception of civilisation to the Augustan age. In the next section I will show how the same mechanism of ‘mythologisation’ of the law is further applied by Ovid to some examples of trial-type situations in the *Metamorphoses*.

Beyond *Prozessuale Situationen*¹⁵²

In this section I will discuss some further instances where the court setting gives a distinctive Roman character, and their significance in relation to the mechanisms underlying the Augustan discourse. Some aspects have already emerged from the ‘mock trial’ set-ups mentioned in previous discussions (particularly in love elegy and Orpheus’ episode), but they will acquire further relevance and centrality when framed within the epic narrative in the two passages analysed in this section. Up to this point I have shown that mythical contexts can become instrumental in sketching the complex patterns of poetical interaction with a ‘pre-history’ in which the inception of law is perceived as an essential step, also in light of its historical development within Rome’s constitutional system. Ovid’s ‘mythologising’ of Roman law is a way for him to explore his interest in the ever-evolving dynamic between use and abuse of the law. Since its ‘transition’ to civilisation, Roman society appears to have naturalised (and internalised) the schemes adopted by legislative *langue* in its becoming *parole* in judicial practice. Following the narrative progression in the *Metamorphoses*, the extent of such naturalisation can be appreciated if we analyse two ‘mythological’ episodes tellingly marked by the features of a Roman court trial. Epic trials emerge in Ovid as settings in which superior divine or political juridical powers further blur the difference between ‘law’ and ‘justice’. For reasons of space I have limited my selection to two case studies that are particularly suited to the illustration of this power dynamic, while the treatment of Lycaon’s episode and the *concilium deorum* in *Metamorphoses* 1, which the reader might expect to see discussed within this cluster, will be delayed to the next chapter for thematic reasons.

My analysis offers a different narrative on Ovid’s approach to juridical issues than the traditional scholarly one. In particular, I fundamentally disagree with Schiesaro, who rejects any “structural relationship between a poetic work and the conceptual world of the

¹⁵² I borrow this expression from Gebhardt 2009, 144ff. and 310ff.

law”.¹⁵³ He mentions Ovid’s case as paradigmatic of how straightforwardly the poets’ mere training in eloquence translated into the clear pervasiveness of legal terminology in their works. Through the examples below, I am sustaining a more sophisticated reading which goes beyond a merely ‘semantic’ interpretation of the widespread occurrences of legal jargon. My discussion brings to light a consistent underlying approach to legal matters which, alongside other recurring themes, should certainly be given further centrality in the interpretation of the *Metamorphoses*, a poem which has traditionally resisted any definitive association to a specific macro-theme. The trial-type episodes in this section will further exemplify the return to a particular deployment of the ‘legal’ that makes use of the law/justice dialectic as a way to provide an indirect poetic exploration of the problematic aspects of Augustus’ contemporary use of *ius*.

My reading will also depart from Balsley, who has rightly traced back the theatrical features of the representation of the Roman juridical system in imperial Latin literature to an *actor/auctor* dialectic which adopts mock and sham trials as narrative devices to evoke contemporary lapses in the judicial system. Balsley’s view is that the emperors’ *clementia* is depicted in ways that ultimately serve the purpose of stressing its intrinsic fictionality. Imperial authors put forward the *mise-en-scène* of trials which simultaneously convey the author’s own judgement and call his audience to act as judge and jury¹⁵⁴ – and, in so doing, it is the whole contemporary judicial system that they are placing on trial. In my opinion this is certainly true, but primarily applies to the modern audience (which Balsley calls “external audience”). Since they offer a *subjective* point of view on the legal system, trial scenes can only be considered a tool to decipher Roman society’s perception of its judicial system so long as we do not read Ovid’s lines as some sort of assessment of the health status of his contemporary system of justice. We should not forget that Ovid cannot even be fully considered an ‘imperial’ author: what he is witnessing (and evoking in his poem) is a juridical system made up of procedures which have not yet technically ‘lapsed’, as they are still in evolution. However, they are being created according to a code of conduct which naturally lent itself to being itemised in parallel with the fictional elements of the mythic trials narrated in the *Metamorphoses*,

¹⁵³ Schiesaro 2007, 82, whose reading of Ovid’s place within this scenario seems to be backed exclusively by Kenney 1969: for further analysis of the limitations of this approach see *supra*, 16ff.

¹⁵⁴ Balsley 2010a, 1ff.

which implicitly signals a (negative) development of Republican *ius*. Ovid's drawing from the dramatic features of Roman court trials adds a further layer to his engagement with the discourse of justice in the Augustan age as the latest 'political' evolution of the notion since its inception at the dawn of civilisation.

A further point on which I disagree with Balsley is her reduction of trial-type situations to some sort of literary *topos* somehow independent of any specific legal procedures.¹⁵⁵ By contrast, I believe that 'official' procedures constituted the very foundation of such a *topos*, and that we should not expect to see them slavishly reproduced alongside the narration of mythic episodes, but rather occasionally and meaningfully diverging from their traditional versions in order to serve the author's purposes. It is certainly true, as Balsley maintains, that the inherent theatricality of Roman judicial process fits well with the performative setting of literary trials,¹⁵⁶ but I stress that this intrinsic theatricality relied on the artificiality of Roman law practice – as opposed to the 'realistic' interpretation sustained by some scholars.¹⁵⁷ The connection between divine and imperial actions suggested by the decisive divine interventions which settle several disputes in the poem establishes a parallel with a contemporary legal context in which the newly introduced juridical acts of the emperor-judge ultimately overshadowed the traditional ritualism of Roman *ius*. Augustus' legal innovations broadened the very definition of 'trial', so that it should not be surprising (nor, I argue, was it so to Ovid's audience) to find in a poem, alongside traditional processual settings, trials enacted within councils of the gods and court hearings in the Underworld, for the same thing was happening in Rome, where legal decisions made at private dinner parties or at the emperor's residence had been equated to court verdicts. Behind this parallelism, in my opinion, lies the "gap between the kind of justice that should occur and the kind of justice that does occur",¹⁵⁸ both on a literary and a historical level. The perception of this gap, of this disconnect, is the only element that we can ascribe with relative certainty to the Ovidian audience, to whom the allusions to contemporary legal issues and innovations hidden within the mock trials in the *Metamorphoses* must have been more straightforward than they may appear to us today.

¹⁵⁵ *Ibid.*, 5.

¹⁵⁶ *Ibid.*, 6.

¹⁵⁷ See e.g. La Pira 1972.

¹⁵⁸ Balsley 2010a, 9.

Tiresias

Tiresias, who endures three consecutive transformations, offers a prime showcase of the trial-type scene in Book 3. He is invited to resolve a controversy that has arisen between Jupiter and Juno regarding the intensity of intimate pleasure in either sex. Having been turned into a woman for seven years after hitting two snakes with a stick during their mating, he has in fact had the chance to experience both conditions. As he agrees with Jupiter in sustaining the higher intensity of female pleasure, Tiresias is, however, made blind by an infuriated Juno. For his part, the father of the gods mitigates Tiresias' condition by granting him the gift of foresight (3.316-88). Once again we shall see that Ovid, not dissimilarly from his stance in relation to the inception of law in *Metamorphoses* 1, is not just 'playing' with an evolving legal system, but also evoking a new system of power and justice that finds an exact match in divine power as represented in the myth. With the Theban cycle of Book 3 Ovid offers a different angle on this issue, presenting a set of characters who are punished because they trespass against the sacred.¹⁵⁹ In terms of overlaps between literary and juridico-political agendas, Tiresias' episode, whilst echoing Augustus' moral legislation, suggestively evokes the professionalisation of *ius* towards the end of the Republic.¹⁶⁰

The unfolding of this episode offers a compendium of the features which have already been noted in previous analyses: the use of *formulae*, the devices of narrative *fictio*, as well as the reflection of significant contemporary modifications to court proceedings. The 'micro-semantics' of law are central to a first – and rather linear – analysis of *Met.* 3.316-23 and 3.332-8,¹⁶¹ which I will sketch before moving on to a more concept-based reading. On a lexical level, the qualifier *doctus* (322) was typically associated with a knowledgeable and experienced jurisconsult.¹⁶² Moreover, through the use of a term like *sententia* (322) the poet employs a rather ordinary substantive in a noticeably specific sense, in order to reproduce a certain atmosphere. In its juridical sense, it indicated the vote cast by a single member or the collective sentence pronounced by a jury, but it was also applied to the verdict formulated independently by an individual

¹⁵⁹ Anderson 1997, 338-409.

¹⁶⁰ Balsley 2010a, 76ff.

¹⁶¹ Coleman 1990, 573.

¹⁶² Cf. e.g. Pomponius in D. 1.2.2.45f.

judge.¹⁶³ Of fairly technical derivation is, on the other hand, the phrase *arbitrum sumere* (332), typically employed in the *Digest* to indicate the appointment of a judge.¹⁶⁴ The choice of the simple verb *firmare* (333) in lieu of the compound *adfirmare* might well be intentional in order to provide an archaising and legalistic tone. The use of a concrete term instead of the corresponding abstract one in the phrase *pro lumine adempto* (337) follows the same stylistic line and recalls a prosaic characteristic which was likely to have been featured already in the Twelve Tables.¹⁶⁵

The formulaic locution *poenam levare* (338) indicated a mitigation of punishment – which, however, in this context ironically exceeds the expected level of formality, given the circumstances in which the judgement takes place. Further to this, in the oxymoron *lite iocosa* (332) the use of the technicism *lis* comes across as an attempt at dignifying a fight in which Jupiter’s facetious tone clashes with his spouse’s excessive reaction. A further echo of legal language is represented by the typical formula for annulment acts, *inritum facere* (336f.).¹⁶⁶ *Neque... licet... cuiquam* (336) is moreover a legal locution classified as ‘inclusive’, and generally used for prohibitions. The figure of *adnominatio* in *facta... fecisse* and the polyptoton *dei... deo* (337) are meant to evoke the (clumsy) attempts made by jurists to avoid any ambiguities; both expedients date back to the Twelve Tables.¹⁶⁷

The legal ‘density’ emerging so far, arid and opaque as it might sound, is clear proof of the pervasiveness of juridical themes in this episode. It is, however, essential not to lose sight of Tiresias’ characterisation within the context of the episode’s narrative structure.¹⁶⁸ The lexical aspects signal the uniqueness of the character, who stands out since the beginning of the passage due to the peculiar, ‘in-between’ place he occupies with regard to the juxtaposition of notions linked to human legal conventions and divine ‘justice’. The terminological oscillation in his qualification – shifting from *arbiter* to *iudex* in the space of four lines (332-5) – takes on a specific connotation and is further

¹⁶³ Cf. *OLD*, s.v. *sententia*.

¹⁶⁴ Cf. D. 4.8.21.1; 4.8.33; 4.8.50; 10.2.47; 10.2.52.2.

¹⁶⁵ According to Gell. 17.2.10, which records the phrase *sol occasus suprema tempestas esto* (= XII TAB. 1.9 Ricc.).

¹⁶⁶ Cf. e.g. Ulpian in D. 28.3.6.7.

¹⁶⁷ See the tabulae 12.2a (*si seruus furtum faxit noxiamue no(x)it*) and 1.4 Ricc. (*adsiduo vindex adsiduus esto*) respectively. In *Ad ed.* 34 (= D. 50.16.189) the jurist Paulus incidentally shows that, while avoiding the use of synonyms, law experts resorted to the inflection of the same term to gain definitory precision.

¹⁶⁸ Coleman 1990, 573 and Balsley 2010b, 14f.

enhanced by his preliminary designation as *doctus* (322). In *Mur.* 27, Cicero recalls the disputes on such distinctions, markedly difficult to grasp for the non-experts, as emblematic of the jurists' pedantry.¹⁶⁹ This semantic distinction acquires some specific relevance in relation to the internal development of the episode and of Tiresias' character. Ovid's intent, once again, is not limited to a sterile parody of the solemn, 'arrayed' and repetitive register adopted by jurists. The author treats a mythological episode in a modernising fashion within the procedural domain of contemporary Rome. In the short passage centred on Tiresias, the contemporary patina is based both on linguistic allusions and on the contradiction implicit in reading a divine dispute in terms of a human fight. Relying on an *urbanus* audience, Ovid's "linguistic humour"¹⁷⁰ goes beyond a strategy of mere reversal, and takes on an incongruously pompous tone. The central characteristic of the episode is a "collapse of boundaries", exemplified through the allusions to certain institutes of the contemporary legal system.¹⁷¹ In their reciprocal confusion, the boundaries between masculine and feminine, mortal and divine, private and public suggest to modern readers that Ovid's content benchmark might have consisted in work-in-progress innovations, such as the professionalisation of law practice towards the end of the Republic and the promulgation of the Augustan moral laws.

The former pupil of Arellius Fuscus and Porcius Latro¹⁷² deploys a surprising level of specificity in this passage, which follows some sort of internal progression, thus revealing the structural significance of legal themes and language. According to Balsley,¹⁷³ Ovid differs from his predecessors Tibullus, Propertius, and Horace in deliberately drawing from law-related semantic areas which had not been explored in previous poetic outputs.¹⁷⁴ Of course *doctus*, *sententia* and *arbiter* were commonly used on a 'popular' basis: the vocabulary in question was a living one, both on a colloquial and on a technical level. As the narration progresses, however, the introduction of terms like *iudex*, *damnare*, and *inritus* increases the technicality of the passage. Ovid's innovation

¹⁶⁹ Cf. *OLD*, s.v. *arbiter* (1) 2 ("a person appointed or chosen to settle a dispute, having wider discretionary power than a *IUDEX*").

¹⁷⁰ Coleman 1990, 576.

¹⁷¹ Balsley 2010b, 14ff., whose assumption reaffirms Hollis' belief that "this playing with legal concepts and terminology is characteristic of Ovid above all other Roman poets" (Hollis 1994, 548).

¹⁷² According to the education outlined, as noted *supra*, 17, in *Sen. Contr.* 2.2.8-12.

¹⁷³ Balsley 2010a, 46.

¹⁷⁴ For a complete overview of the use of *sermo iuris* in those three poets, see Gebhardt 2009.

therefore lies in the shift from the ‘common’ poetical use to the ‘specific’ formal deployment of legal terms and phrases.

The adjective *doctus* could simply denote an educated and wise man and not necessarily a juriconsult. The term *sententia* would also generically indicate an opinion, besides, more specifically, a jury’s formal vote or an authoritative decree, often formulated by the Senate.¹⁷⁵ The discrepancy arises as the poet simultaneously utilises both meanings, the ‘popular’ and the ‘specific’ one. The pseudo-legal terminology displayed in the first part of this passage frames the *mise-en-scène* of the simulated trial. Since the semantic nuance assumed by those potentially technical terms depends both on the expressive medium and on the context, in this instance their inclusion in a patently pseudo-judicial situation entails a simultaneous adherence to the two registers which we have designated as ‘popular’ and ‘specific’. Jupiter enacts a legal performance without clearly executing any real procedure: the *lis* remains decidedly *iocosa*.¹⁷⁶

In issuing his sentence, however, Tiresias determines the collapse of the simulation underlying the whole episode. Juno’s reaction seems to refer to a legally binding verdict, and the language becomes more formal. Tiresias turns himself (or is he rather turned?) into a *iudex*;¹⁷⁷ the punishment inflicted by Juno, on the other hand, is indicated by the verb *damnare* which, in its primary meaning, assumes a strictly legal connotation – the same observation being also valid for the first meaning of the adjective *inritus*. The peak in language specificity is reached, according to Balsley, through the use of the formula *poenam levavit* at the end of the passage.¹⁷⁸ The *factio* which dominates the narrative frame, namely the parodic trial enacted by Jupiter, is deconstructed by the very use of language, and the enactment of judicial practice turns itself into the perpetration of some form of injustice (i.e. Tiresias’ damnation to blindness), while the simulated procedural adherence fails to grant any form of equity. However, the punishment of a judge having demonstrated partiality in a case was contemplated by

¹⁷⁵ This association with *senatus consulta* is made even more evident by the term’s proximity to the verb *placuit*.

¹⁷⁶ Balsley 2010a, 69f. and Coleman 1990, 573f.

¹⁷⁷ This term, also used in the passage on the Golden Age discussed *supra* (*nec supplex turba timebant/ iudicis ora sui*, *Met.* 1.92f.), assumes in both cases a negative connotation to the subject under trial. This aspect will become particularly evident in relation to Ovid’s exile poetry, where the judge in question will be Augustus, despite Ovid’s relegation having historically lacked an actual trial.

¹⁷⁸ Balsley 2010a, 72.

Roman law,¹⁷⁹ and therefore Juno's point of view finds justification on a theoretical ground.

Ovid's *fictio* acquires a novel shade: in his attempt at conforming to the Roman judicial system, the father of the gods determines its falling apart. In the passage in question, the deployment of a legislative code that can be successively classified as *fatale* (*fatali lege*, 316), Roman (through the insertion of technical jargon), and divine (*Saturnia... damnavit*, 333; *pater omnipotens*, 336) represents an evident *climax*, which is matched by the growing terminological complexity. The elaborated allusions to *lex Romana* break down at the very moment in which they are put into practice. Jupiter's and Juno's actions, seemingly human only on a theoretical level, are in fact remarkably supernatural – a point which fits into the larger themes already highlighted in *Metamorphoses* 1 and in relation to divine justice.

Furthermore, the choice of this specific version of the myth compared to its Greek antecedents must have been meaningful to Ovid's audience. The account which most drastically differs from the *Metamorphoses*, and which was most likely to be known to both the poet and his audience, is the one reported by Callimachus in his fifth hymn.¹⁸⁰ From the latter, however, Ovid must at least have taken the cue for the introduction of a juridical connotation. In the Greek antecedent, after condemning Tiresias to blindness because he had accidentally seen her bathing, Athena has to address the grievance of Tiresias's mother. The statement *Κρόνιοι δ' ὄδε λέγοντι νόμοι* (Call. *Lav. Pall.* 100) comes across as emblematic of a system of justice which is as superincumbent as the one found in the first line of the Ovidian excerpt, which reads *dumque ea per terras fatali lege geruntur* (316). This line evidently refers to the previous episode (the myth of Semele), and the conjunction *dum* suggests that a different kind of law will rule in Tiresias' story.¹⁸¹ In the episode of Semele, the consequences of Juno's jealousy go as far as to disavow the principles of Augustus' legislation,¹⁸² whereas in this instance Jupiter resorts to the *lex Romana* which, however, collapses when confronting the *lex divina* or, to be precise, the

¹⁷⁹ A provision encompassing death penalty for a judge taking bribes dated back to the Twelve Tables (see Tab. 9.3 Ricc.). For a review of the range of judge misbehaviours and a discussion of the meaning associated with the phrase *iudex qui litem suam facit*, see Kelly 1966, 102ff.

¹⁸⁰ Call. *Lav. Pall.* 57ff. and Balsley 2010a, 73f. See also Barchiesi and Rosati 2007, 171f. and, for Ovid and Callimachus, Id. 1994, 30-4.

¹⁸¹ Balsley 2010a, 74.

¹⁸² Barchiesi and Rosati 2007 *ad Met.* 3.253-315.

goddess' *ira*. This cross-reference suggests a 'movement' from Semele to Tiresias within the development of Ovid's narrative, which is essentially a movement from an arbitrary divine jurisdiction that obliterates human law to an equally arbitrary divine jurisdiction that ultimately coincides with Augustus' juridical innovations. Whilst in Callimachus the appeal to divine law is instrumental in providing comfort to the mortals, Ovid goes as far as to employ three systems of justice, although the very course of the narrative proves their coexistence impossible. Rather than a mere *pastiche* drawing from Rome's social reality then,¹⁸³ Ovid's narrative shows the extreme irreconcilability between divine power and the juridical practice established in the secular world. This idea can be extended more widely to the characterisation of Jupiter in the *Metamorphoses* as an *alter Augustus*, the state of exception of whose jurisdiction in the mythological universe of the poem matches the extra-legal features of the Augustan Principate in the making, and the powers of the Princeps *iudex*.

Similarly to our discussion of *Epistulae* 20 and 21,¹⁸⁴ in Tiresias' episode Ovid takes the embryonic pseudo-legal hint found in the Hellenistic narrative and makes it a central issue. Jupiter's use of technical jargon gives Tiresias' *sententia* excessive weight and importance; Juno's anger, on the other hand, sharpens the juridical connotation. Ovid's variations, however, do not only embed the sphere of Roman law, but also completely different systems of justice. This complex manipulation of the legalistic potential in the myth of Tiresias might well be considered as a sign of the climate within which the author found himself, even on a jurisprudential level. The shift from the parodic trial adjudicated by Tiresias to the one (much more serious in its consequences) chaired by Juno is marked by the very evolution of Tiresias' character, as he successively shifts from *doctus* (322) to *arbiter* (332) to *iudex* (335). The first term was unsurprisingly adopted by the jurisconsults who in the same period were promoting the professionalisation of Roman jurisprudential practice.¹⁸⁵ The three different legal roles mentioned in the short space of fifteen lines betray an uncertainty in vocabulary through which Ovid might have intentionally alluded to the professional instability of the same roles, which were undergoing a process of (re)definition under the Augustan Principate.

¹⁸³ Barchiesi and Rosati 2007, 173.

¹⁸⁴ *Supra*, 57ff.

¹⁸⁵ Balsley 2010b, 21; Schiavone 2005, 171-97 in particular; Id. 2012, 89ff.

Tiresias' expertise proves void in the face of divine power: it is plausible that Ovid is in fact alluding to Augustus – another Jupiter who, despite the professionalisation of jurisprudence and the granting of *ius respondendi*, was *de facto* in control of the administration of justice.

The 'professionalisation' of *ius* came as professional figures, who could be classified as rhetorically savvy orators, gave way to aptly trained specialists whose *responsa* were subsequently equated to *leges* under Hadrian. Those figures replaced the function of a *iudex* selected from a list of eligible men, who might in turn resort to a *consilium* to seek further advice. Augustus' decision to personally exercise control over this profession laid the foundations of his legislative capacity, and put it at the same level as his political power, which is seen by Wallace-Hadrill as one of the constitutive elements of what has been defined "Roman cultural revolution".¹⁸⁶ The *doctus* Tiresias undergoes a three-step evolution from jurist to mediator to judge, whereas the divine couple are initially the disputants. These roles, seemingly integrated within the system of Roman jurisprudence, are, however, overthrown by divine initiative, as Juno eventually reaffirms her *imperium*. Though aware of the traditional role of the father of the gods as judge,¹⁸⁷ Ovid delights in playing with that function to cause jurisprudential roles to collapse. Tiresias' response thus becomes paradigmatic in relation to the sources of *auctoritas* in Roman law, since the tension emerging in the episode ultimately creates an opposition between judicial authority derived from a 'socially' pre-eminent role and that acquired by means of practice and personal experience.¹⁸⁸

Jupiter, whose supreme position within divine hierarchy qualifies the god as an omnipotent legislator, willingly gives up the exercise of law (to which he is in fact superior) to Tiresias, whose competency is the result of his knowledge as *doctus*, his personal story and the credit given by Jupiter. A jurist had to undergo training to acquire specialised knowledge; an *arbiter* was selected, and therefore legitimised, by the two contending parties; a judge was supported by the *auctoritas* entailed by the formulae and proceedings he validated and applied. Ovid therefore challenges the subtle distinctions that jurists themselves operated among those terms. Whereas Balsley focuses on the

¹⁸⁶ Wallace-Hadrill 1997, 14ff.

¹⁸⁷ As evident in the episode of Lycaon (*Met.* 1.163-248), discussed in the following chapter.

¹⁸⁸ Balsley 2010a, 74f.

mocking intent towards juriconsults engaged in the subtle and pedantic terminological discussions mentioned by Cicero and on the echoes of declamatory *controversiae*,¹⁸⁹ my suggestion is that Ovid is here specifically alluding to the fictitious nature of Augustus' alleged granting of the *ius respondendi*.

The Augustan 'revolution' had also caused a judicial system shift as certain 'domestic' law crossed into the sphere of imperial law. The private and often unregulated justice administered by the *pater familias* gave way to public justice. Against such a background, this episode must have acquired an additional meaning for the Roman audience, and it is tempting to read the use of *quaerere* (323) as an allusion to the *quaestio* that regulated sexual relations in Augustan law, which is also a way for Ovid to set the tone for the whole *lis*. At the time of the poet's writing, similar judicial debates to that enacted in this poem, though laughable in nature due to the licentious stories behind the crimes in question, would take place in the Urbs and have real impact not only on citizens, but also on the very nature of Roman law. Juno's excessive reaction should therefore be assessed not only in relation to the content of Tiresias' verdict, but also to his qualification to emit a *sententia* on a matter that in the Republican age would have been an item of 'domestic' law.¹⁹⁰

Another significant shift is registered at Juno's expense, as had already been the case in the previous episode, dedicated to Semele.¹⁹¹ The goddess is initially indicated as *Iuno*, but subsequently designed as *Saturnia* (333). Connoted as *gravius iusto*, Juno/Saturnia reclaims her divine *status* and the role deriving from it, also in relation to the administration of justice. Based on female classifications brought forward by the Augustan legislation, the lack of children and the natural inclination to a more intense *voluptas* than her husband's, however, qualify the goddess as an unfulfilled *mater familias*, therefore comparable, according to the Augustan mentality, to those Roman women who failed to make a contribution to the preservation of noble families and Roman morality. On the other hand, the punishment inflicted on Tiresias makes it impossible for him to actively fulfil the application of the Augustan legislation, since that would have required the involvement of a witness (*arbiter*), a role which at that point was no longer

¹⁸⁹ *Ibid.*, 79, and *supra*, 109.

¹⁹⁰ Balsley 2010a, 80f.

¹⁹¹ *Ov. Met.* 3.253-315. For the title *Saturnia*, see ll. 271 and 293.

possible for the character to perform. In the absence of a third-party confirmation, private matters are bound to stay private, and a similar reversal of the standard procedure for moral prosecutions is reproduced in several other episodes of Book 3.¹⁹²

It is evident, then, that the poet, by insisting on the mutability of legal language, jurisprudential authority and judicial procedures, goes well beyond a mere *reductio ad absurdum* of contemporary legislation. Balsley observes that “Ovid’s intervention in the poetic realm with his legal terminology mirrors Augustus’ intervention in the private realm with this moral legislation”.¹⁹³ Even after Tiresias’ metamorphosis has taken place, the use of a phrase like *responsa inreprehensa* (340), as applied to the prophetic expressions of the newly transformed *vates*, establishes a connection between Tiresias’ new role as a prophet and his previous one as a judge. This link is further reinforced by the recurring use of the verb *sumere* (332, 341). We therefore notice a further semantic extension, which – after the crescendo in specificity in the passage detailing Tiresias’ judgement – evidently points to the re-adherence to a ‘popular’ sense.

Even the introduction of the *vates* figure, in the closing lines of the episode, draws the reader’s attention to the double meaning of the term, which in Augustan poetry, as we have seen, was also used to denote a city founder who dictated the norms for human society, established morality and public religion, and first “inscribed laws into wood”.¹⁹⁴ The poet, the prophet and the justice administrator share the task of disseminating specialised knowledge, which often draws from the same terms though adopting different meanings, strictly connected to the context of reference. The relevance of contextual framework to the use of language, the polyvalence of the terminology in use and the role of authoritative sources are essential pillars for those three professional roles.¹⁹⁵ From Tiresias’ standpoint, as well as from Ovid’s, those elements tend to converge when the above mentioned “collapse of boundaries” takes place. As for Ovid, the necessity to exploit those nuances was probably urged by an intent to disclose the peculiar mechanisms triggered in the juridical system by the new Augustan administration. In discussing these (somewhat obscure) mechanisms, we find that not only has Ovid

¹⁹² Balsley 2010a, 82.

¹⁹³ *Ibid.*

¹⁹⁴ Cf. Hor. *Ars* 396-401 and *supra*, 97.

¹⁹⁵ Balsley 2010a, 86.

engaged with the “common parlance of educated Romans”,¹⁹⁶ he has also exploited the legal sense associated to everyday vocabulary and employed it alongside specific juridical technicalities to evoke a different narrative. In the destabilisation of Tiresias’ character in a context in which all the operating systems of justice seem to eventually collapse, Ovid’s contemporary audience will have recognised the multifaceted recodification of juridical practice pursued as part of the newly established Augustan regime.

Ziogas has subsumed Balsley’s analysis in his wider argument that in Ovid “sexual experience becomes indistinguishable from legal expertise”.¹⁹⁷ It is rather telling that Tiresias’ shifting roles within the episode mirror the shift from prosecutor to defendant observed in some of Ovid’s elegiac compositions, which vouches for some sort of consistency in Ovid’s approach to the legal matter throughout his *œuvre*. The apparent light-heartedness of Ovid’s tone once again betrays a deeper engagement with issues of authority (the gods’ but also Augustus’), knowledge (the *doctus* Tiresias’ but also the narrator’s in his mythologising law),¹⁹⁸ and linguistic power.¹⁹⁹ This last aspect is the most relevant to my analysis as it allows me to reconcile the aspect of ‘micro-semantics’ evident in the manipulation of legal jargon in this episode with Ovid’s broader attempt to engage with the notion of justice in the poem from its mythic inception to the contemporary developments of the Augustan Principate, as the following section will further demonstrate.

Myscelus

I now turn to the *κτίσις* of Croton, another example of a pointed Ovidian creation of a pseudo-procedural framework. This second example of a trial scene additionally proves how the way Ovid handled legal material was affected by contemporary changes to the judicial procedure in Augustan Rome. The trial scene *topos* is revived in the story of Myscelus at the beginning of Book 15 (28-48). The episode supports a critical assessment of procedural law as a system of roles,²⁰⁰ and offers the author’s disguised point of view on the role played by the Princeps within such a system. This evidently reinforces

¹⁹⁶ *Ibid.*, 46.

¹⁹⁷ Ziogas 2021a, 251.

¹⁹⁸ On Ziogas’ association of Tiresias’ characterisation with etymological *doctrina*, see Ziogas 2021b, 190.

¹⁹⁹ Liveley 2003, 150.

²⁰⁰ Frier 1985, xiv and Balsley 2010a, 44. The role primarily referred to here is that of Augustus as Princeps *iudex*.

Milnor's view that not only does Latin literature manifest the transformations undergone by Rome's legal system, but its analysis can help to better understand the socio-cultural impact of those changes within the framework of Roman judicial procedure.²⁰¹ Whilst apparently enacting Roman justice, in Myscelus' episode, not unlike Tiresias', a deity enacts in fact his own power, although he does so behind the façade of procedural law.

This mirroring of contemporary juridical innovations is a rather specific trait – alongside more general similarities in the development of the trial-type *topos* – that the episode of Myscelus shares with two stories previously narrated in the poem. One is the episode of Tiresias in Book 3, which, as we have seen, seems to echo the process of professionalisation of jurisprudential practice at the end of the Republic, as it simultaneously alludes to the Augustan moral legislation. The other is the trial of Lycaon in Book 1 (*Met.* 1.163-245), which offers a dramatic representation of the Senate's new role as a juridical body under the Principate and of the changes undergone by the *maiestas* law under Augustus, and which I will consider more fully in the next chapter.²⁰²

In his narration of the foundation of Croton, Ovid distances himself from the traditional version reported by Diodorus Siculus (8.17) and, in stressing the *certa fama* of the story (58), implicitly alludes to the unreliability of the tradition related to this episode, introduced by *fertur* (14). The clash between two opposing demands upon Myscelus' *pietas* is loaded with Trojan and Roman resonances. The digression on Croton's *κτίσις* is even more significant as the poem lacks any detailed account of the foundation of Rome, and since the episode anticipates some of the key themes of Book 15: urban foundation, migration and exile, *fama*, tradition and revolution.²⁰³ The trial of Myscelus is moreover the only instance of a formal trial in the *Metamorphoses*. Although the episode is set in Greece, the Roman aspects of this trial, as Balsley has illustrated, fit well within the context of the rise of *cognitiones extra ordinem*, which had granted Augustus an exceptional judicial authority and dispensed him from the observance of procedure and court precedents. Once again, the agent of disruption in juridical practice is a god, Hercules. On the surface, the story is set up as a standard colonisation myth, narrated to Numa by an old man from Croton. Ovid thus brings into play Numa, the

²⁰¹ On Milnor's perspective, see *supra*, 3, 17.

²⁰² Balsley 2010a, 44ff. and 86ff. for the discussion to follow.

²⁰³ Hardie 2015, 480.

mythical pioneer of law in archaic Rome, as the internal audience of a story marked not only by a god's nullification of standard judicial procedure, but also by an underlying allusion to its contemporary reshaping operated by the Princeps *iudex*. Hercules had received hospitality in Italy from a man named Croton, and had promised him that his descendants would establish a city. The god therefore appears to Myscelus, a "worthy" mortal (*illius dis acceptissimus aevi*, 20), in a dream, and orders him to found a new town. His fellow Argive citizens, however, view Myscelus' departure to establish a new city as a crime, an instance of treason (*prohibent discedere leges*, 28). The mortal therefore has to face the difficult decision of either conforming to human law or complying with divine command. Following a second threatening visit from the god (33), Myscelus plans his departure but the Argives put him on trial and condemn him *sine teste* (37). Hercules, however, does not fail to grant his assistance and turns the voting pebbles cast against the man from black into white, thus causing his acquittal.

The divinity in question ultimately disrupts the legal procedure of treason law – Myscelus is made to choose between *numen* and *leges*, and his acquittal is the final reward for making the right decision. The 'moral' lesson that those whom the gods favour will be protected is framed within a legal setting. Myscelus' trial, unlike other examples in the poem, is set in its *locus deputatus* and initially follows the standard procedure.²⁰⁴ It is conducted in Argos and deploys a Greek method of voting, although the terminology Ovid employs is exquisitely Roman and markedly legal. Alongside technical terms, the poet employs culturally-marked terms such as *patria* (28), as opposed to more neutral ones suitable for a Greek context (e.g. *urbs* or *colonia*). The voting pebble system was, however, anachronistic even within the Greek setting, since the foundation of Croton has been dated to the early 8th century BC, when trial verdicts are not documented to have followed any fixed procedures.²⁰⁵ The reference to *niveis... lapillis* (41), drawn from Horace,²⁰⁶ might rely on a fake tradition, although Pliny the Younger figuratively refers

²⁰⁴ A specular device is used by Ovid in his narrating Cephalus' story (*Met.* 7.661-865), where the author ignores a different version of the episode recorded in Apollodorus 3.15.1 and mentioning Cephalus' trial at the Areopagus and a sentence of permanent exile as the legal consequences of the unintentional homicide of his wife. Ovid omits this markedly Greek aftermath in order to embed in his own narration legal elements which carry a definite Roman connotation.

²⁰⁵ The voting urns were a practice exclusively linked to 5th-century Athens: cf. Gagarin 2005, 93f.

²⁰⁶ Hor. *Serm.* 1.2.80.

to a white *calculus* used as a favourable vote.²⁰⁷ Equally, there is no record attesting the existence of treason crime in archaic Greek law, and evidence is very scarce even for classical Athens. The trial, however, shows no specific Argive features and, given the central role assigned to Hercules, is rather reminiscent of Aeschylus' *Eumenides*.²⁰⁸

Legal terminology is inserted from line 27, after the introduction of the *topos* of dreams as traditional components of colonisation myths.²⁰⁹ In this instance, however, the oneiric frame is also instrumental in giving Hercules a threatening connotation, as stressed by *super incumbens* (21) and *minatur* (24), and further intensified by *graviora minari* (33). Myscelus' inner debate, significantly denoted by the word *sententia* used in its 'non-technical' meaning (27), eventually leads to a judicial verification and to a count of *sententiae* (43, 47).²¹⁰ The term, here used to describe the vote taken against Myscelus, occurs through all the examples of procedural justice in the poem. *Patriam mutare* (29) echoes the *mutatas... formas* of the poem's incipit, and the phrase is certainly intensified by the fact that the poem revolves around metamorphoses. *Patriam mutare*, alongside the 'neutral' meaning employed by Ovid in *Fast.* 6.665 in relation to exile, would also occasionally evoke a political mutation.²¹¹

Most legal references are to be found from line 36 onwards: *agitur... reus* had already been used by Ovid in *Am.* 1.7.22,²¹² whilst the phrase *causa prior* (37) strikes us

²⁰⁷ Plin. *Epist.* 1.2.5. There is, however, evidence of the Thracian use of indicating favourable and unfavourable days through white and black pebbles respectively (Catull. 68.148; Pers. 2.1; Plin. *Nat.* 7.121; cf. *OLD*, s.v. *calculus* 5).

²⁰⁸ It is interesting to note that even Cassius Dio referenced the play in describing Augustus' legal power in the aftermath of his Alexandrine victory (51.19.7). Ovid's narration, however, shows closer links to the story of Euthycles in the third book of Callimachus' *Aetia* (fr. 85 Pfeiffer), from which he might also have borrowed the detail of the voting pebbles (the similarity between the two episodes on a terminological level was already acknowledged by Pfeiffer in his edition of Callimachus). Cf. Balsley 2010a, 91f. and *infra* my textual analysis.

²⁰⁹ See e.g. Hector appearing in a dream to Aeneas to exhort him to flee from his country in Verg. *Aen.* 2.287-95.

²¹⁰ The phrase *pugnat (...) sententia secum* is remindful of Hor. *Epist.* 1.1.97.

²¹¹ *OLD*, s.v. *mutatio* 5b: "a political or constitutional change". The latest 'official' initiator of a political mutation had been Caesar, although further attempts at *patriam mutare* had more recently been made by Augustus. Interestingly enough, the expression is followed by a couple of lines composed in a marked Ennian style (both lines end with monosyllables), and alluding to former poetic representations of crucial moments leading to the foundation of Rome: cf. Enn. *Ann.* 84f. Skutsch (the night preceding Romulus and Remus' *auspicia*) and Verg. *Aen.* 2.250 (within the episode of the Trojan horse).

²¹² See *OLD*, s.v. *agere* 42c, 44b. McKeown 1989 *ad Am.* 1.7.22 lists all the Ovidian *loci* deploying this phrase and traces its antecedent in Prop. 2.30.32. The expression is to be considered equivalent to *reum aliquem facere* and is possibly influenced by the Greek use of *διώκειν* in the sense of "prosecuting". McKeown, however, ascribes the introduction of this forensic imagery in Ovid to the influence of declamation.

as obscure within this context; it seems unlikely that Ovid is alluding to the Attic system of granting the right to speak twice in the Areopagus in any circumstances; furthermore, there is no hint to a second round of speeches here, so the phrase cannot be interpreted as though the first side, i.e. the prosecution, had stated its case.²¹³ Equally obscure is the specification *sine teste* (36), which, however, sets the premises for the outcome of the trial to be obliterated by divine justice. Lines 37-40 are framed by the polysemic polyptoton *crimenque... criminis*,²¹⁴ while *squalidus* (38) brings us back to Republican courtrooms, a context within which this word and its cognates would be used in a virtually technical fashion to designate the practice of altering a defendant's appearance in a pathetic way to excite pity.²¹⁵ At line 39, Muretus' suggestion *cui ius caeli* recalls the apotheosis of Hercules in Book 9 (237-72) as an anticipation of the Roman apotheoses later in Book 15.²¹⁶

Ovid also seems to be evoking Ennius' *Annales*, as *mos erat antiquus* (41) echoes the well-known Ennian line *moribus antiquis res stat Romana virisque* (*Ann.* 156 Skutsch), which, interestingly enough, was used by the archaic poet to justify the *triste exemplum* offered by Manlius, who had had his son executed for having gone against his father and the State.²¹⁷ A further technical term is the adjective *tristis* (43), referring to "an adverse verdict (...) in a tribunal",²¹⁸ while the following line has been compared to the vote against Euthycles in Locri Epizephyrii as reported by Callimachus in his *Aetia*.²¹⁹

It is definitely the legal flavour – as well as the possible allusions to contemporary legal history – that renders problematic an episode which would otherwise just be limited to a foundation myth. During the Republican period, in a civil case, a judge was chosen either by a magistrate or by the parties involved from a roster of names. This *iudex* was not a professional judge, but rather a local citizen whose name was put on a roster of other

²¹³ Hill 2000, 202.

²¹⁴ For the resonance of legal jargon in *crimen probatum* (37), see *OLD*, s.v. *probare* 1c.

²¹⁵ A few examples of this conventional practice to appear in distress or mourning are Cic. *Pro Cael.* 2.4, Tac. *Hist.* 2.60 and Quint. *Inst.* 6.1.30. Cf. also Cic. *De orat.* 2.124 and Quint. *Inst.* 6.1.21.

²¹⁶ A similar use of *ius* occurs in *Fast.* 6.23 (Juno addressing Ovid): *ius tibi fecisti numen caeleste videnda*. The use of a periphrasis for the ametric "twelve", employed by Ennius in the scene in which Romulus takes his *auspicia* (already evoked at *Il.* 30f.) might be a further, though not so immediate, reference to the archaic poet (*Ann.* 88 Skutsch).

²¹⁷ Ovid alludes to the same line by Ennius in *Am.* 2.14.9, and probably also in *Fast.* 2.301f.

²¹⁸ *OLD*, s.v. *tristis* 5c; *candida* (47) follows the same use (*OLD*, s.v. 7a).

²¹⁹ Call. *Aitia* fr. 85.8 Pfeiffer: πάντες ὑπὸ ψηφίδα κακὴν βάλον; cf. Hardie 2015, 484. The Locrians condemn Euthycles based on the false allegation that he has accepted cattle in exchange for the betrayal of his town.

judges (*album iudicum*) and who could be picked at any point to act in that capacity. In a criminal case, the parties involved appeared before the appropriate *quaestio perpetua*. Those standing jury courts, created largely under Sulla, were specific to certain crimes. The procedure introduced by Augustus, that we now group under the designation *cognitiones extra ordinem* although it did not have an official name at the time, allowed the emperor and any magistrate to whom he would grant such authority the capacity to hear and try cases outside the standard procedure of civil and criminal trials in Rome, not dissimilarly from the provincial practice during the Republican period, as local magistrates enjoyed greater autonomy than their urban counterparts in the administration of justice. Moreover, a litigant dissatisfied with the outcome of his ‘traditional’ trial had the chance to appeal to the emperor or *praetor* in the hope of securing state intervention in his case.²²⁰

This new system allowed the emperor to act as the final judicial authority, administering justice according to his own discretion and presumably ‘righting the wrongs’ of traditional legal procedure. As a consequence, open debate began to disappear, alongside the definite establishment of what Agamben has appropriately defined “state of exception”, where the exception is primarily ‘codified’ in legal practice,²²¹ and whose consequences Ovid would have experienced on a personal level on the occasion of his exile. The trial of Myscelus resembles the defining features of *cognitiones extra ordinem* if we follow Balsley in reading Hercules as an analogue for Augustus,²²² since the hero has been traditionally (from Ennius to Livy) associated with Roman leaders.²²³ However, I would not go as far as to state that Myscelus is here ‘appealing’ to Hercules.²²⁴ The similarity between Hercules’ disruptive intervention and Augustus’ newly established procedural practice is (intentionally) put forward by Ovid through a general allusion, and it is important to stress that Hercules does not even appear before the Argive citizens, but rather acts as a superior authority whose prodigious and unmistakably effective interposition can be compared to the one underlying the very exceptional (*extra ordinem*) introduction of the Augustan *cognitiones*. Hercules’ power undermines the Argives’

²²⁰ Balsley 2010a, 95ff.

²²¹ Agamben 2003, 103ff. in particular.

²²² Balsley 2010a, 97.

²²³ On his specific association with Augustus, see Barchiesi 1994, 86f. and Galinsky 1999, 286.

²²⁴ Balsley 2010a, 97.

authority in much the same way as Augustus' innovation practically obliterated Republican procedures. The parallelism has been well summarised by Hardie: "Augustus' way was to pretend that in *his* revolution nothing had really changed. This is also the solution of Hercules in the case of Myscelos. (...) Augustus certainly cared how he appeared to his subjects, and he also was a master at making black appear white".²²⁵

It is certainly tempting – and convincing, in light of the recurring elements traced in trial-type situations – to credit the hypothesis that there might be an intentional link between the divine presence and the failure of procedural justice as presented in Myscelus' and Tiresias' episodes, especially as it is connoted by its being embedded in 'correct' Roman procedure. The picture that Ovid offers of language, space, and actors is part of an "elaborate legal façade" which Balsley labels as "play-acting of justice",²²⁶ and that Roman law historians call "legal *fictio*". By creating such a fictional legal framework, and by reiterating it across several episodes, Ovid conveys the idea that procedural law *can* exist at a 'superficial' level. Moreover, what the Ovidian context suggests is that the emperor and the divinity (Hercules in this case) share an agenda which brings to light the correspondences between Augustus' approach to the (legal) administration of Rome and Ovid's revisiting pre-existing myths as a way to stress the resonances of contemporary events to convey his own take on the nature of law, justice and power. In this sense, the recurring pattern of trials comes to a head with Myscelus by further reiterating the overlap between superior instances of divine justice in the myth and contemporary developments of Augustus' arbitrary justice. In the last part of this chapter, however, I will focus on what happens when, still within a mythological context, Ovid's exploration of the notion of justice lets go of the divine element to directly confront a human character who assumes political traits in his becoming a figure of the Princeps' establishing an acceptable legal framework for the newborn Principate.

It seems to me that Ovid is once again exploring the elusive ambiguities of power in a legal setting, which matches his revisiting myth throughout the *Metamorphoses* to show the ways in which Augustan performative law and juridical *fictio* can be reflected upon through poetical imagery. Rather than acting as a tool of resistance, I argue, Ovid's

²²⁵ Hardie 1997, 197. Turning black into white was proverbial to indicate sleight of hand: cf. Autolycus, *furtum ingeniosus ad omne*, in *Met.* 11.313ff. and *Iuv.* 3.30.

²²⁶ Balsley 2010a, 99.

poetic imagination – not unlike the artists’ stances in their clashes with power analysed above – employs the legal as a way to simultaneously reassess its nature and its political significance. Hercules’ acting as an agent of destabilisation ultimately presents him as a figure of Augustus. Here Ovid is not only showing the gulf between divine and human justice as in previously analysed episodes, but also introducing a different playing field which will help with the analysis of Cippus’ story to follow. Far from introducing a shift or an abrupt change of perspectives in Ovid’s epos, the author’s representation of ambiguous figures of the Princeps confirms his consistent interrogating the notion of justice. In the next section, I will illustrate how, in outlining Cippus as an Augustus-like character through the prism of *ius*, the poet goes beyond the human/divine justice dichotomy explored so far to engage more directly with Augustus’ legal *fictio* and his sovereign exception, as he revisits and rewrites set-pieces of the mythological and literary tradition.

Cippus’ *Recusatio Imperii*

The review of the passages discussed so far has outlined and confirmed two different levels of analysis. The law and its expressive code occur in Ovid’s poetry via two main channels. Some terminology largely used also on a day-to-day basis, and therefore seamlessly employable even on a metaphorical level, is adapted by Ovid mainly to legal aspects of marriage and adultery. And we also find the poet’s reflections on the nature of justice through its mythologisation, which conveys his own rendering – often oblique and symbolic – of a new power in the making, moving beyond current legislation and constitutions. When the adopted measures were deemed exceptional or particularly invasive, as in the exemplary case of the legislation on marriage, echoes of discontent were easier to spot, though, for obvious reasons, never explicit. In the episode of Cippus I argue that the ‘micro’ and ‘macro-’semantics of the legal in the *Metamorphoses* simultaneously collide and coincide in the character’s judgement call on the issue of sovereign exception. Cippus becomes another human figure of Augustus to provide one final illustration of the extra-legal nature of his rule and administration of justice.

Cippus’ story is presented – perhaps not incidentally – in the last book of the poem. The passage can help identify some issues related to a constitutional debate that, though

not as lively as in modern scholarship, must have been open at the time of Ovid's writing. Although it is difficult to establish its real impact on the mood of the so-called 'public opinion', the (even legal) definition of an innovative power that had already permeated all aspects of public (and private) life in Rome must have been perceived as a relatively urgent matter.

Although the poem is likely to have been composed between 1 BC and AD 8,²²⁷ in this passage of Book 15 commentators have recognised an allusion to an event that can be traced back to the twenties BC. It is unsurprising that this topic finds space in the last part of the poem, after Greek mythology has slowly given way to the *lato sensu* 'historical' episodes. Following the introduction of the figure and adventures of Aeneas in Book 13, it is only with Picus, turned into a woodpecker (14.308ff.), that the narration starts to venture into the territory of Latium. Almost all the legends that follow have direct or indirect connections with episodes traditionally linked to Rome's prehistory or primitive history. In *seeming* conformity with official ideology, the last two books develop a sequence which includes, by way of metamorphosis, Aeneas' apotheosis (14.581-608), the divinisation of Romulus-Quirinus as well as of his spouse Hersilia/Hora (14.771-852), and Caesar's *katasterismós* as a prelude to his 'son' Augustus' divinisation (15.745ff.). I have used the term 'seeming' because, as scholarship has widely demonstrated, Ovid's adherence to what has been effectively defined as "catéchisme du régime"²²⁸ appears to be, also in this instance, a rather nuanced question.

Cipus' episode, occupying ll. 564-621, breaks the homogeneity of this framework and represents the sole transformation situated by Ovid in the Republican period, except for Aesculapius' arrival to Rome in the guise of a snake (*Met.* 15.622ff.). The author excludes from his narration popular accounts which were part of the 'vivid' image of the Republican age conveyed by annalistic accounts, which do not fail to reference legends such as the Dioscuri's appearance following the battle of Lake Regillus. Cipus' episode opens with the character – an otherwise unknown magistrate whom we are unable to precisely locate chronologically – realising, upon his return from a victorious campaign, that horns have grown on his head. When he interrogates a haruspex about the omen, the

²²⁷ On the problematic chronology of the poem, Syme 1978, 21-36 in particular, is still a scholarly landmark. See also Fantham 1985, 254ff. in particular.

²²⁸ I borrow this phrase from Martin 2009, 268.

response he receives is that he will become king if he enters Rome. Therefore, this model Republican citizen – out of his extraordinary *pietas* towards his homeland – voluntarily opts for self-exile.

The legend in question follows, in ‘chronological’ order, the accounts of the Etruscan poet Tages’ miraculous birth and the transformation of Romulus’ spear (553ff.) – preceded by the transformation into a spring of the nymph Egeria, Numa’s inconsolable widow (479ff.). The poet creates a seamless transition from Romulus’ *stupor* at the sight of his spear being covered in leaves (560f.) to Cipus’ similar reaction as he spots horns coming out of his head (565). The episode is only recorded elsewhere in Latin literature in Pliny (*Nat.* 11.123) and Valerius Maximus. The latter is more interesting, as the author includes Cipus in a review of the homeland’s meritorious characters (Val. Max. 5.6.3). However, there is no apparent direct link between the Ovidian version and the prose text. The antiquarian note according to which a head fitted with horns would have been carved on the *Porta Rauduscula* (from *raudus*, “bronze”), echoed at *Met.* 15.620f.,²²⁹ would lead us to trace the origin of this narration back to an antiquarian text, perhaps Varro.²³⁰ Valerius Maximus cites the gentilitial Genucius, which is omitted by Ovid although it emerges several times in the traditional chronicles of the Conflict of the Orders.²³¹ Whilst Valerius qualifies him as a praetor, the protagonist of the episode remains a legendary character, although he might actually have some connections to the Plebeian side in the Conflict of the Orders.²³² Ovid’s version implicitly qualifies him as a high-ranking magistrate, since only superior posts hold the right to summon the people and the Senate. Further elements in the poet’s account stress politico-ideological aspects, which in the

²²⁹ It was one of the gates by the Servian wall that gave access to the Aventine area. Ovid talks of *aggeribus factis a milite forti* (592): Cipus chooses to deliver his speech from the wall’s heights in order to avoid entering the city and consequently actualising the prophecy.

²³⁰ Two pieces of evidence vouch for an ascendancy from Varro: the mention of the *Porta Rauduscula* in *Ling.* 5.163, which includes an explanation of the name, as well as the fact that the antiquarian also recalls the previous prodigy of Romulus’ spear in fr. 221 Cardauns of his *Antiquitates rerum divinarum* (as recorded by Arnob. *Nat.* 4.3).

²³¹ Cf. Billows 1989, 114ff.

²³² On the links between Ovid and the Plebeian tradition, cf. Massa-Pairault 1990, 287ff., whose attempt at providing a historical contextualisation for the episode is, however, dismissed as ‘largely hypothetical’ by Galasso 2019, 64. The name Genucius is first attested in relation to a *praetor* at the time of the Second Punic War. Even the *cognomen*, which is a *hapax*, poses interpretative issues. Part of the scholarship, based on the spelling recorded by some manuscripts, connects it to the term *cippus*, in relation to the reward received by the character for his public spirit. Others associate it to the gentilitial name Cippius, attested elsewhere (cf. *ThLL Onom.*, s.v. *Cippius*).

prose excerpt are limited to the affirmation of the exceptional moral stature of the character compared to the seven kings of Rome as they appeared in the archaic tradition. Moreover, Ovid further specifies that the interpreter of the prodigy was an Etruscan *haruspex*.²³³ This detail links the narrative to the preceding episode centred on Tages, while the fact that the story revolves around the announcement of a regal destiny establishes a connection with the passage on Romulus' spear, which, according to Servius, can be related to the rite of *auguratio*.²³⁴ *Magna... rerum molimina* (*Met.* 15.578) is an expression found exclusively in Ovid, paraphrased in 809f. and, significantly enough, used with reference to Augustus in *Pont.* 1.2.73 (*magna tenant illud numen molimina rerum*).

Another relevant Ovidian detail is the mention of the laurel which Cipus wreathes around his temples to hide his horns (*Met.* 15.591f.), and in which we can easily recognise the formulation of an implicit aetiology for the triumphal crown. Ancient sources trace the origin of triumph as a rite back to an Etruscan practice introduced in Rome by the Tarquini, although some of them identify Romulus as the triumph's 'inventor'.²³⁵ The fact that the episode is framed by the prodigy of Romulus' spear and by his divinisation does not appear accidental.²³⁶ The context is clearly monarchic, and the fact that the protagonist opts for exile tends to characterise such institution in negative terms. The figure of Cipus comes across as a positive double to a negatively connoted Romulus, and might have originated from a sub-tradition connected to the *gens* Genucia in the context of the Conflict of the Orders in the 5th and 4th centuries, as a response to the contemporary exaltation of Romulus by the Patricians.²³⁷

Ovid's account, however, at least based on two details, appears as a patchwork of historical-mythological *topoi*, to the extent that we can legitimately suspect that the poet

²³³ The association is unsurprising, as the occasion and the content of the prodigy perfectly matches the tradition of *disciplina etrusca*, which typically dealt with sovereignty-related omens, though maintaining the non-binding nature of its forebodings (which could therefore be dispelled). Cf. Martin 2009, 272, with further bibliography.

²³⁴ See the commentary in Serv. *Ad Aen.* 3.46: *nam Romulus, captato augurio, hastam de Aventino monte in Palatinum iecit: quae fixa fronduit et arborem fecit.*

²³⁵ On the Roman triumph, cf. e.g. Cic. *Rep.* 2.36; Liv. 1.35.7-9; Plut. *Rom.* 16.8. As a source for its Romulean inception, see Dion. Hal. 2.34.1, 54.2, 55.5. The fact that Cipus does not enter the city and stays outside the *pomerium* further recalls the symbolic ritual of the triumph. Cf. Martin 2009, 273, fnn. 26f.

²³⁶ On the connection between Romulus and Numa in Book 15 of the *Metamorphoses*, cf. Marks 2004, 107ff., who presents the issue of monarchic legacy in terms of a historical rather than a moral dilemma.

²³⁷ This is the hypothesis formulated by Martin 2009, 273, on which see already Id. 1982, 329ff.

wanted to add some ‘arbitrary’ motifs to the legend. One motif is the hero’s opening invocation wishing the omen to be favourable to the homeland if positive and harmful to himself alone if negative (571-3). The historical-literary hypotext is in this instance a rather banal one, and finds ‘Republican’ parallels in the story of the praetor Aelius (Val. Max. 5.6.4), the request addressed to the gods by Camillus following the capture of Veii (Liv. 5.21.14f.), and Aemilius Paulus’ reaction on losing his children (Liv. 45.41).

The other motif is more articulated. Horatius Cocles is known to have received the same reward as Cippus (*Met.* 15.617ff.) after saving Rome from Porsena, at the dawn of the Roman Republic.²³⁸ It is indicative that Ovid chooses to bestow it to a man who, in turn, had prevented Rome from falling back into the hideous regime of *regnum*. The parallel with high-ranking Republican figures therefore contributes to the characterisation of Ovid’s discourse not only as antimonarchic, but also as overtly Republican. Alongside the seven kings of Rome and their epigones, from Camillus to Octavian, by way of Marius and Sulla, both Ovid’s and Valerius Maximus’ versions inscribe themselves within the antimonarchic tradition of *conditores libertatis*, spanning from one Brutus to the other.²³⁹ The ‘Republican’ legend told by Ovid thus appears to be in sharp contrast to the other episodes presented towards the end of the work, which narrate in seeming complacency the deification of Romulus, Caesar and, prospectively, of Augustus – while simultaneously exalting the founder’s figure, around whom the Princeps, following suit from Caesar, had centred the ideological structure of his power.²⁴⁰

For those reasons, the story of Cippus has been interpreted as a (negative) allusion to the solemn *restitutio rei publicae* of 27 BC.²⁴¹ Upon closer inspection, however, some of the similarities with that crucial act of the regime appear rather superficial, as the result of over-interpretation.²⁴² The link between Etruscan haruspicy and announcements of regality, for instance, is almost a traditional given – which does not support a neat association of the episode with the biographical omens linked to the Princeps’ own regal destiny, such as the one preceding the birth of the future Augustus or the one which took

²³⁸ Cf. Liv. 2.10.12 and Dion. Hal. 5.25.1f. Pl. *Nat.* 18.9 maintains that to have been the usual reward *imperatorum ac fortium civium*.

²³⁹ The phrase is taken from Liv. 8.34.3.

²⁴⁰ See Martin 1994, 290-4 and 405-11.

²⁴¹ Some critics rather read it as a reference to the crisis of 23 BC, the primary sources on which are *R. Gest. div. Aug.* 34.1, Vell. 2.89 and Liv. *Perioch.* 134.

²⁴² Martin 2009, 275.

place in Apollonia in 43 BC.²⁴³ Furthermore, the ‘permanent’ nature of Cibus’ horns does not vouch for a connection with the fire appendices which, according to Vergil’s account, crowned Octavian’s head at Actium.²⁴⁴ The reference to Ammon’s horns and therefore to the *imitatio Alexandri* also seems inappropriate in this phase of Augustus’ power.²⁴⁵

We can therefore outline a fundamental ambiguity. If, in telling Cibus’ story, Ovid undoubtedly had Augustus in mind, and so did his audience, such association must have worked more by contrast than by analogy. Cibus is in fact a man who, set up like the Princeps to a monarchic destiny, neatly rejects it by choosing exile over the subjugation of his fellow citizens. The praetor’s speech draws on quintessential Republican ideology, which had elevated *odium regni* to one of its cornerstones. The character’s attitude and speech, as well as the people’s reaction (612ff.),²⁴⁶ contribute to the characterisation of the hero as the opposite of an *adfectator regni*, and therefore of the constitutional hypocrisy of the Augustan regime. Hardly any of the narrative details, by contrast, would allow an interpretation of the episode as favourable to Augustus. Reversals and oppositions put in place in these verses, though only sketched in some instances, appear too numerous to be accidental. Cibus, for example, gets rid of the laurel wreath (610) that, after Caesar – shaped in a fashion that more closely resembled the attribute of Etruscan kings – became one of the symbols of the Julian power, and was adopted by Augustus as well.²⁴⁷ Moreover, the praetor agrees to leave Rome and never come back (600ff.), whereas the Princeps had installed his *domus* in the centre of Rome, and on the Palatine hill no less.

What is even more relevant is the fact that the character denounces himself as future king and presents his fellow citizens with the possibility of his own execution, in case he assumed the behaviour of a *fatalis tyrannus* (602). Augustus had by contrast pretended, through the *restitutio* in 27 BC, to have restored the State to its foundations,

²⁴³ Cf. Suet. *Aug.* 94 and 95 respectively.

²⁴⁴ Verg. *Aen.* 8.680ff.: that tradition recalls instead the prodigy of the flames surrounding Servius Tullius’ head (see the accounts in Liv. 1.39 and Dion. Hal. 4.2).

²⁴⁵ On Augustus’ distancing himself from the model of Alexander see, besides Martin 1994, 220-3, also Cresci Marrone 1993, 38ff.

²⁴⁶ Their reaction can (perhaps not accidentally) be compared to the crowd’s reaction when Antony offered Caesar a crown during the Lupercalia (Cic. *Phil.* 2.85-7; Liv. *Perioch.* 116; Suet. *Iul.* 79.3; CD 44.11.2f.). Martínez Astorino 2017 in fact reads the Cibus episode as a mythologisation of Julius Caesar ahead of his apotheosis, whilst ascribing to the Aesculapius episode a mythologisation of Augustus.

²⁴⁷ The historiographical source is Dion. Hal. 2.34.3, 3.62.1.

after having repeatedly advertised the restitution of political liberty since the beginning of his career.²⁴⁸ Such a hint provides some indication of the contemporary reception of that Augustan strategy: the apparent ingenuity of Latin sources would have only redeemed itself a century later in the pages of Florus,²⁴⁹ before whom we cannot find either in prose or in verse any texts daring to confute the official affirmation of *res publica restituta*.

The ritualistic and ‘public’ character of the whole scene recalls the traits of the Augustan Republican *fictio* which had found a legal expression in the same kind of *famularia iura* as those that Cippus wishes to spare the Roman people (597).²⁵⁰ It has been noted that “[in his exile poetry] Ovid insists very often on the sane instinct of the people and on the rightfulness of their judgements”;²⁵¹ this view can be extended beyond his exilic production, and the awareness he shows about the inherent constitutional force of the popular system might in fact represent a prefiguration of his insistent appeals from Tomis. Such a perspective is evident in at least three details in the passage under scrutiny:²⁵² firstly, Cippus is presented as a Republican and patriotic figure (*patriae laetum populoque Quirini*, 552). Furthermore, at l. 590 (*populumque gravemque senatum convocat*), the introduction of the *populus* component even precedes the Senate. Lastly, the citizens’ positive instinct and good inclinations are stressed through the ablative absolute *populo prohibente* (610) at the moment in which Cippus is about to get rid of his wreath.

This point of view, centred on the pre-eminence – not only on a constitutional level – of a *populus* meant in Republican terms as the most wholesome part of Rome’s constitutional systems, appears to be in overt contrast with the institutional developments initiated by the Augustan Principate. The fall of what Martin calls “masque républicain” coincided for Ovid with the abrupt shift from the happiness granted by living in a time of

²⁴⁸ The text of *R. Gest. div. Aug.* also opens on such a note: *rem publica (...) in libertatem vindicavi* (1.1).

²⁴⁹ Flor. *Epit.* 2.14, where it is stated that the only means of salvation available to the Roman people consisted in falling into servitude. By contrast, see the expressions of disbelief found in Greek sources, e.g. in Strab. 17.3.25 and CD 52.1.

²⁵⁰ The simile used to describe the murmuring assembly is modelled on *Il.* 2.144-9, 209f. and 394-7, as well as Ap. Rhod. 3.1370f. and Verg. *Aen.* 1.148-53. The last example provides an evident parallel to the first simile in the *Metamorphoses* (1.200-5), used to describe the gods’ reaction to Jupiter’s statement on Lycaon, compared to the people’s response to a plot against Augustus.

²⁵¹ Von Albrecht 2005, 178.

²⁵² *Ibid.*, 182.

peace to the awareness of the ill fortune of living in a time in which the monarchic character of the regime, particularly following its ‘dynastic turn’, could no longer be brought into question: “il fallait faire semblant de croire encore à la *res publica restituta*”.²⁵³ Keeping faith with the ‘antisocial’ spirit of the elegiac inspiration which had informed his earlier works, Ovid might have formulated, through Cipus, his refusal to this profession of faith in a political dogma. By presenting an ‘upturned’ image of Augustus, he exposes, one generation after the alleged restoration of the Republic, the false appearance of a regime whose real vocation had by that time been made clear. Ovid dares to insinuate doubt around the fact that Augustus was in fact but a king, despite the juridical technicalities behind which he had shielded himself. To impose the new Augustan dogma, it had been necessary to resort to expressive codes already assimilated by the Roman people: the juridical sphere represents in this sense a privileged instrument. Legal technicalities are employed by the Princeps to enact his redefinition of power, as well as by Ovid in his more or less explicit allusions to it. The poet ‘replies’ to the Princeps’ *fictio iuris* by indirectly insisting on the same expressive mechanisms.

The scholarly reception of the episode has been divisive probably due to this ultimate ambiguity: whereas patently anti-Augustan interpretations have seen in Cipus a paradigm of Republican probity,²⁵⁴ more nuanced readings have identified the rationale of the story in a representation of unresolved political issues affecting the Roman people throughout their history.²⁵⁵ Ovid masterly turns the great political and legal issues of his age into poetical and mythological symbols, and does so as part of a protracted reflection on the nature of justice and power carried out throughout the poem. Towards the end of the *Metamorphoses*, the problem of political and poetic succession manifests itself in all its urgency. This is evident in the sequence of proto-historical legends and in the rich intertextual links with his literary predecessors (chiefly Callimachus, Ennius and Lucretius) respectively.²⁵⁶ In this framework, the conclusive value of Cipus’ episode lies precisely in its negative association with Augustus’ *recusatio imperii* which, although not

²⁵³ Martin 2009, 277.

²⁵⁴ See e.g. Lundström 1980, 67-79.

²⁵⁵ See Marks 2004, Galasso 2019, and Barchiesi 1994, 307, who maintains that in this episode Ovid is evoking a way of representing power rather than a specific event.

²⁵⁶ On Book 15 as a *summa* of Ovid’s intertextual relationships with his literary predecessors, see Galasso 2019, 61 (with further bibliography).

explicitly mentioned, must have been the *renuntiatio* of reference to the Roman audience at the time of Ovid's writing.

As noted above, the episode is introduced through the semantic field of *stupor* (565-9). Cipus' transformation, presented as real in Valerius Maximus, is only a partial one – the closer he gets to actual history, the more concerned Ovid seems with rendering his metamorphoses more 'realistic'. Cipus logically becomes an emblem of the history of the Roman Republic, in light of his sacrifice in favour of the State which poses him on a diametrically different level from the Princeps, highlighting the artificiality of the Republican constitutional *fictio* embodied by Augustus. Cipus' public statement of intent is significantly missing in Valerius Maximus' account, which confirms the hypothesis that Ovid is here intentionally alluding to a well-known recent programmatic statement of opposite value made by Augustus to legitimise his power. As we have seen, Cipus is granted the same reward traditionally attributed to Republican heroes but – indicatively enough – Ovid's formulation is the same as that later used to describe universal monarchy as the space within which Augustus' power operates (*vel quia nil ingens ad finem solis ab ortu/ illo, cui paret, mitius orbis habet, Trist. 5.8.25f.*). Contemporary Augustan *Realpolitik* implied uncertainty and ambiguities in power relations – Ovid seems to be aware that Cipus' episode was a Republican story that had already reoccurred in the poet's lifetime and would possibly occur again in the future in relation to the Princeps' succession.

As Alison Keith has shown in her study of Ovid's narrative technique in *Metamorphoses* 2, Ovid pursued unity by linking seemingly disparate episodes in the poem through an underlying theme which invites a variety of readings.²⁵⁷ In this chapter I have shown how *iuris* operates this way in the *Metamorphoses*, reconciling the 'micro-semantics' of the legal in the *Metamorphoses* with the macro-semantics of Ovid's reflections on the nature of justice. The latter become the playing field for the poet's deceptive narrative devices to mirror the fictional nature of Augustus' new regime. Ovid's Romanisation of myth, which simultaneously entails a programmatic mythologisation of Roman law, brings to the fore essential and consistent legal components which permeate the evolution of Ovid's epic universe from primigenial chaos to the age of Augustus.

²⁵⁷ Keith 1992, 150.

In Book 9 Byblis protests: *Sunt superis sua iura! Quid ad caelestia ritus/ exigere humanos diversaque foedera tempto?* (500f.). The girl's admission that divine laws are actually distinct from human customs aptly summarises Ovid's view of the power dynamics within the context of divine justice as emerging in mythological episodes. As the poem transitions from primigenial myth to contemporary Rome, those dynamics increasingly, though often disguisedly, become a figure of the emergence of Augustus' arbitrary justice in the framework of the new Principate. Whether or not we embrace an 'anti-Augustan' reading, Ovid's *Metamorphoses* ruthlessly addresses the pressure on standard ideas of *ius* and judicial processes when the new power of Augustus comes upon the scene. While previous scholarship has focused on individual episodes or types of legal incident in the *Metamorphoses*, my contribution has been to show that Ovid's engagement with the legal shares the same approach as his elegiac poetry but is developed at much more structural depth in his epic. In the case studies presented in this chapter we have seen the poet playing out a similar underlying dynamic of power in every legally-inflected episode, which fits with the idea of the poem itself as embracing 'repetition with difference'. In the chapter to follow, focusing on the *Fasti*, I will illustrate how the poet reflects on the Princeps having put in place a systematic exploitation of the prototypical authority of Republican institutions. Through the lens of Ovid's representation of the Princeps himself, I will further stress that the poet's narrative game with genres and poetic conventions represents a variation on other authors' accounts of the changes and tensions in Roman society in the latter years of Augustus' Principate.

3. Rethinking Augustus' Rule of Time

In this final chapter I extend my analysis to the *Fasti*, to further support my argument that Ovid uses the legal to represent and comment on Augustus' contemporary redefinition of political and juridical power. The *Fasti* is the most extensively 'Roman' of Ovid's works, and it offers a sophisticated point of view on the process by which Republican myths and institutions were appropriated to serve a new form of government, while also giving us hints about social anxieties in a period of ideological negotiation. It is an important product of the late Augustan period as we acknowledge Ovid's undeniable engagement with his cultural and political context,¹ as well as, more importantly, that the poem is neither an unfinished panegyric nor a veiled critique of the Augustan system. Ovid's urbanity is skilfully engaged in a constant interplay with nationalistic themes linked to Roman religion and history, although it does not ultimately offer any resolute reading of the different perspectives presented in the poem. Throughout this open-ended work, Ovid creatively engages with his audience, while the poem itself is as much involved with the evolving present as it is with the past. We should not forget that the calendar was first and foremost a legal document for the Roman people.² While wittily playing with time and (literary) history, Ovid explores the Roman (juridical) identity at a time of institutional transition and adjustment. Far from offering mere antiquarian commentary, the *Fasti* provides a meaningful interpretation of *Romanitas* in the age of Augustus, which also took into account its juridical aspects.

Once again, in the *Fasti* Ovidian poetry seems to clash with what has convincingly been defined as the "protean character" of the Principate.³ In no context can Augustus' position be considered as a given, and even less so in the field of law. The collapse of any meaningful 'devolution' in the handling of the State was evident in the new and complex dialectic established in relation to two important indicators of power – the binomial formed by the militaristic image and pacifist concerns on the one hand, and the

¹ Cf. Wallace-Hadrill 1987, Feeney 1992 and Newlands 1995.

² On Ovid's exploitation of the ideological potential underlying the epigraphic *fasti*, see Pasco-Pranger 2006, 21-72.

³ I borrow the phrase from Phillips 1983, 782. Ovid himself insists on Proteus' peculiar nature in the passage of Book 1 cited below, within Aristeus' episode: *ille sua faciem transformis adulterat arte* (374). In light of the Princeps' Republican *fictio*, the temptation to read this line as an allusion to Augustus is very strong.

public/private opposition on the other. To the margin of those internal inconsistencies, in his tackling the subject matter of the *Fasti* Ovid must have been aware that the Augustan redefinitions of institutions and traditions had penetrated every aspect of life in Rome – “a challenge to Roman powers of definition”⁴ that had invaded untapped political fields. It is apparent how this ‘anti-definitory’ intent with regards to the new rule could thrive in the Roman juridical system, which had lacked any significant codification for centuries. As the constitutional definition of power was matter-of-factly reduced to a (fully operating though unexpressed) dogma, expressions of dissent and discussions inevitably impacted on the values upon which the Roman man would base his own understanding of the world. One of the main areas of dissent was represented by a sphere of action which most of the Ovidian production sits in, namely the one relating to morality, marriage and adultery. Brunt has demonstrated that resistance in this field was tenacious, widespread and sometimes even effective.⁵ The Princeps found himself involved in a complex dispute with important sectors of public opinion. The chronological frame of reference spans between 18 BC, year of the promulgation of the *leges Iuliae*, and AD 9, when the demonstrations of the *equites* induced Augustus to amend the previous legislation and promote a new diluted version in the *lex Papia Poppaea*.⁶

A further question relates to the very definition of ‘public opinion’. Its formulation assumes a further layer of complexity when we try and assess the composition of the Ovidian audience, which might have not included those *equites* who had expressed their dissent on the Augustan legislation. The point is destined in many ways to remain unresolved. A varied audience would dictate different levels of receptivity. Indeed, Ovid wrote for at least two groups of readers: Augustus and his entourage, on the one hand; and a more generic Roman public to whom the Princeps might not necessarily represent the only political alternative, on the other. For our purposes, it is natural to wonder which reality Ovid’s poetry would describe and mirror. A tentative answer to such a question must necessarily contemplate the option that the poet somehow managed to reflect them both. The consequences of contemporary political developments evidently fell on the poet as an individual when, as observed by Feeney, the special circumstances produced in AD

⁴ Feeney 1992, 2.

⁵ Brunt 1971, 558-66.

⁶ Suet. *Aug.* 34; cf. *supra*, 69, fn. 2.

8 proved that Augustus did in fact represent the only relevant audience.⁷ Aside from the autobiographical question, the *Fasti*, more than any other Ovidian work, highlights the mechanisms through which, by means of their calendar, the Romans themselves would build their own sense of identity, nevertheless producing diverging images of *Romanitas*. Those representations could not possibly have eluded the common grammar of *ius*.⁸ The *Fasti* can therefore be the object of a tentative analysis based on a reflection on the ongoing changes and their effects on Roman identity. I will demonstrate that the very faltering of the extended notion of “non-disposable good”⁹ as applied to a social code of reference like *ius* – in all its public and private incarnations – must have caused some form of disruption within the ‘audience’.

Rather than follow Gebhardt in offering a linear account of the poem’s intersections with law,¹⁰ my approach will privilege a historical-cultural perspective over the poet’s authorial – or rather personal – viewpoint. According to Gebhardt, the *Fasti* presents a series of polemic and debated *causae*, each of which is connected with a *causa* in the sense of ‘origin’ of a name or ritual which the aetiological poem proposes to explain. Assuming the role of judge himself, the poet, however, shows increasing reluctance, as the narration goes on, to pronounce a judgement, especially on the etymologies of individual months. Furthermore, according to Gebhardt, those processual debates become increasingly heated from month to month, culminating in the prologue to Book 6, where the *iudex* firmly refuses to make an adjudication in relation to the three goddesses, each of whom claims June to be her own eponymic month.¹¹ *Res est arbitrio non dirimenda meo* (6.98) can indeed be considered, in some respects, Ovid’s ‘last word’ in this work. His admission, however, fails to provide any kind of definitive conclusion. As I will show, the collapse of decisional capacities in matters of aetiological judgement, in turn linked to the question of the unfinished state of the poem,¹² is not the only important part of Ovid’s ever-evolving juridical/legal approach. It is true that the author ultimately gives up the exercise of his *arbitrium*. My impression, however, is that a

⁷ Feeney 1992, 4.

⁸ On this aspect, see Beard 1987, 7 in particular.

⁹ See Introduction, 5.

¹⁰ Gebhardt 2009, 183-203.

¹¹ See *supra*, 71f.

¹² It is difficult to predict what the continuation of the series of debated etymologies would have looked like, especially with the two immediately following months having been unambiguously renamed *Iulius* and *Augustus*.

certain continuity prevails when it comes to the expression of Roman juridical culture in its historical development, retraced through the overview offered by Ovid's calendar.

This is confirmed by the treatment of rituals which offered the poet the chance to speak *about* or *through* law in a non-abstract way. As observed by Schiavone, we can claim that *ius* was nothing but tradition (*mos*) in its most strictly preceptive aspect. It is hard to describe how social practice and religious imagination were manipulated into prescriptions in ancient Rome, as the modalities of this manipulation were the result of a long sedimentation of memories which we cannot quite grasp now – in this respect, Ovid's poem can, however, offer a vantage point. The perception of a time dimension marked by calendar repetition certainly played a key role in such a process. *Mos* features as the symbolic transfiguration of this experience, which in turns becomes ritual, rule, *ius* (*mos est ritus*), as it allows the 'normalisation' of the present by means of the very continuity which reduces it to something archetypal as much as repeatable. Schiavone summarises this process as the origin of what is conventionally called Roman 'conservatism', namely the use of repetition and duration as some sort of reassurance against the multiformity of chaos, the weight of tradition against the volatile lightness and the risk of unprecedented choices and behaviours¹³ – an aspect which seems to perfectly match the dynamics instituted by the Augustan Principate and by the archaic monarchs before him.

The transition from pontifical practice to the introduction of a technical background and, parallel to that, of magistracies and the procedure based on *concepta verba*, had, however, caused, as noted by Schiavone,¹⁴ the introduction of a subversive innovation, a technical device to manage a largely discretionary power. Augustus subsequently proved a master in keeping opposite practices together (while harmonising them and somehow having them coexist). This grey area laid the foundations of the operative notion which we have called 'juridical morality', periodically reset in accordance with different historical and cultural circumstances. Through the poem's lens, I will apply this notion to his presentation of the figure of the Princeps as the emblem of a transformation of the contents and forms of Roman juridical practice. By means of his

¹³ Schiavone 2005, 65ff. Those observations were formulated in relation to pontifical law, whose impact on the *Fasti* was the object of the already mentioned (and outdated) study by Stella Maranca (Stella Maranca 1927).

¹⁴ Schiavone 2005, 119-21.

narrative experiments, Ovid explores the Roman past and Augustan identity to reveal the ambiguity and the transitory nature of the ideologies that Augustus strove to make permanent, thus revealing the state of affairs of Roman identity in a period of negotiation and compromise. In my discussion of the *Fasti*, my aim is to show an evolution in Ovid's engagement with the legal compared to previous works, as the poet continues to negotiate his narrative around the fictional devices of the Princeps' strategies.

Willkürliche Rechtssprechung

Ovid's use of legal elements in the *Fasti* is instrumental to the creation of an allusive literary discourse that is ultimately addressed to the Princeps himself. In this context, the contemporary "juridical decadence" of Roman *ius* transpires in Ovid's evoking the Princeps' "arbitrary jurisdiction" through his depiction of the arbitrariness of divine figures, periodically emerging and figuratively foreshadowing the poet's own destiny of relegation.¹⁵

"In the *Fasti*, there is a narrow shadow zone, made up of narratives where the Augustan instance is only indirect, but which are all the same committed to the ideology of 'Romanness'".¹⁶ So does Barchiesi summarise a point of view that will be key to my reading of the *Fasti*. Upon closer analysis, certain authorial choices in the elegiac calendar allow us to draw a direct comparison with the *Metamorphoses*, which will help shed further light on the recurrent theme of the nature of justice. This motif is particularly evident in a central section of Book 1 (*Fast.* 1.317-456), in a passage that implicitly criticises the legal system of the late Augustan period, addressing in particular, by way of metaphor, the increasing arbitrariness of the emperor's judgements.

The *excursus* aims to explain the origin of animal sacrifices carried out to honour different deities. At first glance, the theme is extraneous to the sphere of law. The discussion of the practices of *ius divinum*, however, is overshadowed by subtle irony, which sometimes goes as far as to express overt and irreverent hoax, as though the poet meant to side with the sacrificed victims. The occasion is offered by the 'agonal rites' that took place on the 9th January. The wording AGON has not found any satisfactory

¹⁵ The ideas of "arbitrary jurisdiction" (*Willkürliche Rechtssprechung*) and "juridical decadence" are borrowed from Pieper 2012 (my translation).

¹⁶ Barchiesi 1994, 190.

explanation either among ancient or modern interpreters.¹⁷ It is, however, interesting that the verb *agere* (322), whose technical value we have already appreciated in other Ovidian occurrences, is to be found at the beginning of the section in question (319-22). Associated with another technical term (*rogare*), *agere* here recalls the ritual permission request formulated by priests before offering a sacrifice.¹⁸ This explicit reference to consensus-seeking, as well as the mention of the *rex sacrorum* figure in close proximity (333), might suggest a link between this residual figure of an absolutistic conception of power, still surviving in the religious sphere, and a much better known charismatic figure of the present day: though extraneous to regality, Augustus had turned consensus-seeking, even on a formal level, into a constitutive element of his power. Such a link could perhaps be reinforced by the ‘etymological’ derivations subsequently suggested for the terms *victima* (335) and *hostia* (336), respectively traced back to the *victrix manus* and the *hostis domitus*.

The sow sacrifice is introduced by will of Ceres, since the animal is guilty of irreversibly damaging the wheat stalks (349-54). These lines are also marked by technical vocabulary, as clearly emerging from *nocentia* (350) and the phrase *poenas dare* (353). It is worth noting the emphasis put on the pre-emptive value that the sow’s punishment should have exerted on the goat’s behaviour, motivating its abstinence from the shoots (354). The atoning practice is solicited, in this latter instance, by Bacchus. His words are matched by a *fides* which materialises itself in the punishment designed by the word *nox*a (359).¹⁹ Furthermore, the motivation behind both sacrifices matches the one adduced by Pythagoras in *Met.* 15.111-5. The comparison is even more interesting due to the latter text’s occurring in a hermeneutically complex passage of the poem, which prefigures the Augustan conclusion.²⁰ The Greek philosopher is here reconstructing the path that has regrettably led men to eating animal meat. According to his explanation, the end of the

¹⁷ The same term appears both in the so-called *Fasti Maffeiani*, used by Varro, and in the *Fasti Praenestini* (Degrassi 72, 112), not only in relation to the 9th January, but also the 17th March, 21st May and 11th December. Wissowa 1912, 29 considered *agonium* equivalent to *sacrificium*, based on a note by Festus, s.v. *Agonia*, p. 9 L. The information, provided by Lactantius Placidus, that the religious officer involved in this rite was technically named *ago* is likely to have been reconstructed *a posteriori*.

¹⁸ Cf. Varro, *Ling.* 6.12.

¹⁹ *Verba fides sequitur: noxae tibi deditus hostis/ spargitur affuso cornua, Bacche, mero* (*Fast.* 1.359f.).

²⁰ I here follow Myers 1994, 133 in particular (with further bibliography), in her classification of the text half-way between philosophical justification and scientific confutation of the mythical metamorphoses. On the ‘Augustan’ connotation of the speech, see also Tissol 2002.

Golden Age is determined precisely by the introduction of the animal component into the diet, and the pig is the first to deserve to be slaughtered having dug up the seeds which represented the hope for a new harvest.²¹ In light of such a legalistic perspective, the sacrifice of an innocent and benevolent animal like the ox appears inexplicable (*Fast.* 1.361f.),²² and the aetiology of bovine sacrifices is traced back to Aristaeus' *fabula* (363ff.). A parallel can be drawn, also in this instance, with Pythagoras' speech. Lacking consideration for the fruits of the earth, men 'reward' animal labour with death: the passage in question is *Met.* 15.116-21, where the two technical terms *fraus* and *dolus* (120) stand out.

The occurrence of the motif of the introduction of animal sacrifices in *Metamorphoses* 15 and *Fasti* 1, in both cases within the context of a wider reflection on the arbitrary nature of justice, confirms the programmatic nature of the latter theme in Ovid's works. In both passages it is possible to pinpoint some expressions of veiled criticism which allow us to reconstruct signs of the *juristische Dekadenz* that Pieper has summarised with the phrase "arbitrary jurisdiction".²³ The decision about the inception of sanguinary sacrifices at the expense of allegedly 'guilty' victims is ultimately ascribed to the arbitrariness of divine figures.²⁴ The counterpart to expressions like *ulcisci*, *merita caedes* (*Fast.* 1.350), *poena* (353), *nox*a (359) and *culpa* (361) is represented, in Pythagoras' speech, by a *scelus* performed by men though ultimately ascribable to the gods.²⁵ In both occurrences the introduction of animal sacrifices by will of capricious deities follows Ovid's recollection of the passage from cosmos to chaos and the subsequent myth of Ages. This motif, first introduced – as we have seen – in *Metamorphoses* 1 with the *lis cosmica* (*Met.* 1.5-31) and subsequently included in Pythagoras' speech (15.111ff.) to programmatically frame the whole poem, is also

²¹ Note the occurrence of terms like *ultor*, *nocere* and *culpa* (115), and particularly *nefas* (111), alluding to the earlier observation that it was legitimate to have started killing animals in self-defence because of the damages they caused, though not to have gone as far as to eat them.

²² As for sheep, there is in fact a minor inconsistency, since at l. 381 this type of sacrifice is also classified as punitive, and related to the theme of guilt. We lack any other records of this *aition*, which might have been an Ovidian invention.

²³ Pieper 2012, 296ff. in particular. A hint to the juridical decadence triggered by the Augustan rule can also be found in Stella Maranca 1927, 25ff.

²⁴ Roman private law contemplated that owners were liable to indemnify anyone who had suffered damage by their animals: see Ulpian in Book 18 *Ad edictum* (D. 9.1) and Gladigow 1971, 9f.

²⁵ Cf. *Met.* 15.106 and 127-9. Furthermore, if we accept the reading *deorum* (104), the phrasing evidently recalls the *deus* of *Met.* 1.32 (on which see *supra*, 71f.). Despite this *lectio* being recorded by all manuscripts, Tarrant argues for a corruption based specifically on the influx of 1.32.

touched upon by Janus at *Fast.* 1.105ff. This recurrence in structurally charged positions across the two poems matches the subtle though insistent overlap between the superior stance of powerful divine figures and the increasing centrality of the Princeps-judge's will in Roman society.

If an overall 'decline' in juridical practice as implied in these lines had not coincided with a parallel decline in juridical thought, it would be difficult to explain a phenomenon like the 'renaissance' of the second century AD, credited by law historians in order to outline some sort of organic development. That renaissance certainly did not have a merely 'antiquarian' value, as even the glorious season of Republican jurisprudence had flourished under the shadow of a rule which was not fully representative of Roman citizenship (at least not in modern terms). Juridical thought continued to thrive even during the Augustan Principate; it is, however, important to dismiss the application to the juridical system of the traditional distinction between theory and practice,²⁶ and consider instead that even the negation and re-creation of legislative languages can indeed give way to actively operating conventions. The "constitutive rhetoric" specific to the expressive code of law²⁷ thus emerges again from this passage of the *Fasti*.

Since, however, not dissimilarly to the 'creation' of a historical narrative, the elaboration of a legal text in turn codifies a biased representation of social reality, legal norms can be interpreted as means of representation. It is therefore crucial to reflect on the modalities according to which law can become a conveyor of meaning within the very same social dimension that both law historians and literary critics investigate to try and sketch the cultural frame of reference within which a certain text was born. Even though it is impossible to establish with any degree of certainty the boundaries of the Augustan "juridical decadence", it is nevertheless appropriate to raise the issue and to note that the *perception* of a break and of the increasing urgency of the juridical discourse would have accompanied elite Romans even two generations later. One may think of the solicitous considerations on the rhetoric schools so widespread among the men of letters or the digression that Tacitus dedicates, in the third book of *Annales*, to the degeneration of the

²⁶ Milnor 2007, 7.

²⁷ See *supra*, 3.

Roman legislation – significantly enough, the start and end of such *excursus* are made to coincide with the promulgation of the marriage laws.²⁸

The passage on animal sacrifices includes further hints to the contemporary legislative climate. In order to explain the origin of the sacrifice of the doe, Ovid goes back to the Euripidean myth of *Iphigenia in Aulis* which serves him a *pointe* often noted by commentators. Line 388 reads *nunc quoque pro nulla virgine cerva cadit*; this incidental observation is subsequently echoed, a few lines later, in one of the most irreverent sex-themed comic interludes of the whole poem. To explain the inception of the sacrifice of the ass, which was, however, extraneous to the Roman tradition, Ovid reports the episode of Priapus and the *asellus*. The *causa* which involves the propitiatory god of fertility is defined *pudenda quidem, sed tamen apta deo* (392), while it is furthermore significant that a deity imported from Greece is defined *decus et tutela* of the plots.²⁹ For some fifty lines (391-440), the tale temporarily assumes elegiac connotations,³⁰ and the episode subsequently closes with the juridical note of *poenas dare*, used with reference to the ass, which brings us back to the juridical framework of Augustus' marriage legislation. It is the last case, however, which pushes exemplarity to its limits. With regard to birds, which had stayed unharmed for a long time, the poet recalls *linguae crimen habetis/ dique putant mentes vos aperire suas* (445f.).³¹ It is worth noting the use of the term *index* (450), used in this passage with a similar meaning to *proditor*, whose legal connotation I have already mentioned in relation to the episode of Arachne.³² The ending notes of the *excursus* therefore simultaneously allude to the marriage legislation and to the contemporary restrictions to freedom of speech that the Principate had brought about, as we will see in the next section. By way of allusion to two 'hot topics' in Roman courts and society, towards the end of the passage the

²⁸ Tac. *Ann.* 3.25-8, on which see Mantovani 2012, who notes that the starting point of the digression is the debate on the law *de moderanda Papia Poppaea* of AD 9. The *excursus* contributes to supporting the point that the restriction of deviant customs and their consequences cannot rely merely on law. Milnor 2007, 13 stresses that Tacitus' interpretation is just one of several conceivable points of view in the post-Augustan era.

²⁹ The term *tutela* (on whose legal meaning see *OLD*, s.v. 3 and 4b) is significantly associated with the *Augusti* in *Fast.* 1.529-31 within the context of Carmentis' prophecy, discussed *infra*, 177.

³⁰ Note the term *nequitia* (414) and the adverb *furtim* (425), as well as the description of the dynamics between the protagonists (417-20), which finds a parallel e.g. in *Am.* 1.4.17f. (discussed above, 29ff.).

³¹ *Met.* 15.99 states that, during the Golden Age, *aves tutae movere per aera pennas*. The phrase *crimen habere* recurs rather frequently in love elegy: cf. *Prop.* 2.32.2, *Tib.* 1.6.41 and especially *Ov. Am.* 2.5.6 and *Ars* 1.586.

³² *Supra*, 89.

arbitrariness of divine figures thus implicitly gives way to the increasing centrality of Augustus' contemporary reformation of justice within Rome's political agenda.

The Issue of Free Speech

Let us now trace the signs of what has been aptly called “metamorphosis of Roman norms”,³³ and which represents one of the ways in which Ovid's narrative deals with Augustus' appropriation of the legal set-up of calendar time. One of the key changes, based on what we can infer from the poem and from contemporary sources, is represented by the yoke imposed by Augustus onto the exercise of *libertas*, which took on different forms. The issue has obvious legal implications. The historiographical tradition provides us with a somehow ‘parabolic’ frame of reference, entailing a transition from a dreaded climate at the time of the triumvirate³⁴ to some generalised tolerance testified by various ancient sources.³⁵ The latter trend continued up to the intransigent behaviours that, towards the end of the Augustan Principate, drove the social climate back to its merciless past. This recrudescence was notoriously marked by the extension of the *maiestas* crime also to verbal expressions. The perfunctory nature of the *libertas* granted by the Princeps to the upper classes is evident in passages like Sen. *De ira* 3.23.7f., where it emerges that Augustus himself was the one setting the boundaries in each specific instance.³⁶ This element of unpredictability and arbitrariness in the handling of justice should not, however, be pushed to its extremes. Some later sources care to stress that the Princeps as such did not have the faculty to fully dispose of law as he pleased. In this regard, Suetonius' account of the trial of Augustus' friend Asprenas Nonius, sued by Cassius Severus, is rather exemplary: the Princeps had to consult the Senate on the most appropriate behaviour to follow during the trial.³⁷ However biased ancient

³³ Feeney 1992, 6.

³⁴ The sad statement pronounced by Asinius Pollio according to Macr. *Sat.* 2.4.21 is indicative of this atmosphere: *at ego taceo. Non est enim facile in eum scribere qui potest proscribere.*

³⁵ Mainly Suet. *Aug.* 51, as well as the review in Macr. *Sat.* 2.4.19-31; cf. Syme 1939, 478ff. Wallace-Hadrill 1982b, 38 reflects on the reoccurrence of the practice to advertise, at the beginning of a new rule, the reinstatement of freedom of expression.

³⁶ The protagonist of this passage is Asinius Pollio. Late Augustan episodes famously include the burning of Titus Labienus' history and the banishment of Cassius Severus. Cf. Syme 1978, 212-4, to whom we owe the suggestion to date the burning of Labienus' works back to AD 8, the year of Ovid's exile. See also Citroni 2015, 610 and 652ff.

³⁷ Suet. *Aug.* 56.3. Seneca presents a partially different perspective, as he acknowledges the ultimately paradoxical lack of a total *libertas* of juridical intervention for the holder of the highest power (*Clem.*

historiographical sources might have been, the contemporary audience would follow different parameters from the modern ones. Due to the gaps in the legal and historical documentations, any reconstructions of Augustus' juridical self-representation will necessarily lack the organic development outlined by modern scholarship for his artistic one.³⁸ Literary scholarship has normally focused on explicit statements such as Horace's who, in presenting Augustus with his revised and amended version of the history of Latin Literature, took his cue from the necessity of restraining *licentia* through legislation (*Epist.* 2.1.152-5).³⁹ However, I have already stressed that the poets belonging to Horace's generation had to face different conditions than Ovid and his contemporaries did.

When it comes to the *Fasti*, its very structure entails that allusions to contemporary restrictions to free speech are scattered throughout the poet's review of Rome's traditions and history. This framework makes the analysis even more interesting, in light of the relative insignificance of Ovid's later biographical events to the content and structure of the *Fasti*, except obviously for any subsequent adjustments.⁴⁰ I therefore second Feeney in maintaining that it is thanks to those sparse allusions that the *Fasti*, in its incompleteness and despite the subsequent rearrangement of individual sections, can be read as the "obverse of the self-assertive exile poetry", and fulfil in practice a tacit criticism of the restrictions imposed on the poet's discourse.⁴¹ Once again avoiding the sterile 'Augustan'/'anti-Augustan' dichotomy, I will show that – beyond those allusions to the lack of freedom of speech – the poem also leaves us with a sense of Augustus' omnipresent appropriation of the calendar, which mirrors his appropriation of public space in Rome. In creating a poem apt to convey such a climate, I argue, Ovid somehow obliterates his autobiographical remonstrations in favour of a nuanced representation of Augustus' new rule of time.

1.8.1). The *exempla* he provides from Augustus' career (*Clem.* 1.9ff.), however, take for granted the Princeps' virtually unlimited juridical decision-making, and were perhaps selected for his own argument's sake (see also Citroni 2015, 287).

³⁸ I am referring to the fundamental Zanker 1987. Cf. Feeney 1992, 1.

³⁹ On juridical culture in the *epistula*, see Romano 2005, 474ff. and Id. 2010, 11, fn. 32.

⁴⁰ *Contra* McGowan 2009, 124: "That Ovid chose the Roman calendar as a subject for a poem *just prior to his exile* is perhaps significant in this regard and may very well involve more than merely pursuing indigenous Roman aetiologies on the Alexandrian poetic model" (my emphasis).

⁴¹ Feeney 1992, 19.

Feeney suggests that the issue emerges right from the title of the poem,⁴² in relation to Varro's definition of *fasti* days as *dies quibus fari licet*.⁴³ The verb *fari* is here to be intended in its technical meaning, since the layout of the Roman calendar was founded on legal grounds. This fundamental structure is outlined in Book 1 (45-54). Already in the phrase *iura dierum* (45), with its use of an 'objective' genitive, we can read a reference to the civic law that regulated every single day. Lines 47f. also stand out, as the distich is marked by a simple structure which is, however, emphasized by an accentuated anaphora, suggesting a neat distinction between days in which *negotium* is permitted and those in which it is not. The same didactic strategy is carried on (and perfected) in the following distich. *Dies nefasti*, marked in the calendar with an N,⁴⁴ were dates in which citizens were not allowed to pursue juridical affairs nor perform legal tasks.⁴⁵ The specific meaning of the adjective *fastus* is unclear, as it was exclusively used to describe this type of day in the calendar.⁴⁶ The vagueness of the 'etymology' generally suggested by ancient sources makes us question its connection with the verb *fari*, as Varro and Macrobius claim a direct derivation of *nefastus* from the impossibility to say a word.⁴⁷ At ll. 49-52, Ovid describes a specific type of day on which it would have been illegal to deal with legal matters until a sacrifice had taken place, and would therefore become *dies fastus* only in the afternoon.⁴⁸ It is probably not incidental that this additional specification is not offered in relation to the more common *dies intercesi*, but rather to an unusual typology that serves Ovid's purpose to stress, through their 'negative' connotation, the mutability of calendar rules.

The poet subsequently mentions the *dies comitiales*, the most numerous group in the Roman calendar,⁴⁹ and, finally, line 54 refers to *nundinae*, markets that occurred every

⁴² *Ibid.*, 9.

⁴³ Varro, *Ling.* 6.29.

⁴⁴ Cf. *Fest.* p. 163 L.

⁴⁵ On the phrase *lege agere* in its meaning of "undertaking judicial procedure", see Cic. *Caecin.* 97, Liv. 9.46.5 and the *Fasti Praenestini* on the 2nd January (Degrassi 111), as well as an earlier metrical example in Ter. *Ph.* 984.

⁴⁶ Cf. *ThLL*, s.v. *fastus*.

⁴⁷ See respectively *Ling.* 6.30 and *Sat.* 1.16.14. Amidst ancient sources, see also the *Fasti Praenestini* on the 2nd January (Degrassi 111), as well as Suetonius *ap. Priscianum* (GL 2.387 K.). Cf. Porte 1985, 303-7.

⁴⁸ Those special days were marked by the acronym Q.R.C.F. and occurred only twice a year (24th March and 24th May), as recorded by Varr. *Ling.* 6.31, the *Fasti Praenestini* (24th March: Degrassi 123) and *Fest.* P. 311 L.

⁴⁹ Those days were marked by the letter C. The ancient sources who record them are Varro *Ling.* 6.29, the *Fasti Praenestini* on the 3rd January (Degrassi 111), *Fest.* p. 34 L., and Macr. *Sat.* 1.16.14.

nine days according to the Roman inclusive count. They were originally instituted to the advantage of the members of the rural communities who, on such occasions, could travel to the city to sell their products and at the same time run any other errands, including official and bureaucratic ones.⁵⁰ Feeney has stressed that those lines are emblematic in describing the modalities through which the Romans would regulate the praetor's right to exercise his jurisdiction through the three formular verbs *do, dico, addico*.⁵¹ Be it a *contio* or a senatorial debate, the public discourse in all its forms entailed State intervention, at least for time and place to be set:⁵² my analysis will focus on whether the *Fasti* can give us clues as to how this kind of State intervention underwent changes with Augustus' accession.

The celebration of the first of January (71-88), for instance, was marked by Augustus with a specific juridical connotation. Janus' epiphany is in fact a prelude to the description of the different phases of the *Feriae* ceremonials, culminating in the consuls' investiture and characterised by a ban on *lites* and *iurgia*.⁵³ Furthermore, at ll. 643ff., the Licinia-Sextiae laws, rather than the anniversary of Augustus' intitulation, are the reason behind the focus on the 16th January.⁵⁴ The day was in fact consecrated to Concordia, to whom Marcus Furius Camillus, at least according to Ovid and Plutarch,⁵⁵ had dedicated a temple to seal the reconciliation between aristocrats and plebs on the occasion of the promulgation of those laws (367 BC). Ovid seems to disapprove of the civil dissention that had inspired the construction of the primitive temple: the poet's version of the episode at the origin of the kings' expulsion sits within this framework. Brutus reports the king's

⁵⁰ Cf. Varro *Rust.* 2 praef. 1f., Col. 1 praef. 18, Macr. *Sat.* 1.16.30-5.

⁵¹ Feeney 1992, 10. The praetor's activity consisted in appointing judges (*iudices dare*), presenting law (*ius dicere*), and assigning contended goods to their legitimate owner (*addicere*).

⁵² *Ibid.* Even derogations to such norms were ruled by law on those institutionalised occasions on which people were granted licence to express themselves with jokes and obscenities: Ovid focuses on the festival in honour of Anna Perenna (*Fast.* 3.675-96), the *Floralia* (4.946; 5.331f.), and the festival of Quinquatrus Minores (6.691f.). On the control exercised at a public level on the sphere of official discourse, see Daube 1951.

⁵³ Legal disputes are associated in particular with the adjective *insana*, according to a *topos* also recurring in Prop. 4.1.133f. (on the technical use of *iurgium*, see instead Papinianus in D. 10.2.57). On those days, however, in order to formulate favourable omens for the whole year, some fake or rather negligible *negotium* was also performed (see *Fast.* 1.167-70 and Green 2004 *ad loc.*).

⁵⁴ From 1.590 it can be inferred that the poet dates the granting of the title to the 13th January, the same day as Octavian's speech to the Senate, in contrast to what is recorded, for example, in the *Fasti Praenestini* and the *Feriale Cumanum* (Degrassi 115 and 279 respectively). On this Ovidian choice, see Green 2004 *ad locum*.

⁵⁵ Plut. *Cam.* 42.

nefanda, and this act causes the consul to take on the *annua iura* (2.849-52).⁵⁶ Ovid seems to suggest that, already in the transition from monarchy to republic, the ‘qualitative’ aspect of freedom of speech had first and foremost changed considerably, and foreshadows a further contemporary shift with the Augustan Principate.

One last aspect is worth mentioning. As noted by Feeney, “speaking out of turn (...) is normally fatal in the world of the *Fasti*”.⁵⁷ Further to the already mentioned *linguae crimen* of birds in Book 1,⁵⁸ we should mention the rape attempt perpetrated by Priapus against Vesta in Book 6, which represents an exact parallel to the assault on Lotis narrated in Book 1. Silenus’ donkey, guilty of sabotaging the attempts with its braying, undergoes, in both cases, the same death sentence.⁵⁹ A third example is represented by the tragic story of the goddess Tacita, warned to no avail by her mother to control her loquacity. After tearing her tongue out because she had revealed his plans to Juturna and Juno, Jupiter entrusts her to Mercury to hand her over to the Manes, but Mercury rapes her on the way (2.601ff.). An interesting aspect is the fact that the ensuing twin birth is functional to the introduction of the *Lares Compitales*, one of the focal points of the cult of Augustus in the city of Rome, as he associated one of his Genius with that cult – so much so that the *Lares Compitales* were identified with the *Lares Augusti*. In linking those minor deities to the *fabulae* on speech excesses, Ovid turns mutism and violence into a warning on the dangers inherent in a reckless use of one’s tongue. This connection represents an Ovidian innovation,⁶⁰ and anticipates by seventy lines the more extended

⁵⁶ Brutus is represented as a master of dissimulation. In the context of the snake omen before Gabi’s fall, he is presented as a character who, despite his wisdom, pretended to be a fool to defend himself against Tarquinius’ tricks (7171f.). In correctly interpreting the omen, Brutus prefigures the *exploit* of the end of the episode, when he takes charge of the situation and promises revenge against the Tarquini. The moment is marked by the self-awareness affirmation *iam satis est virtus dissimulata diu* (844). Through the character’s decisive action, simulation and dissimulation are presented as ‘seminal elements’ of the Roman State, and are given a clearly positive connotation, which is tempting to contrast with other contemporary sources of political *fictio*.

⁵⁷ Feeney 1992, 11.

⁵⁸ On *Fast.* 1.445f., see *supra*, 141.

⁵⁹ *Fast.* 6.341-6. Compared to the passage from the first book, however, the language of those lines completely lacks legalistic flavour, the only shared element being the elegiac atmosphere (with the adverb *furtim* recurring at l. 337). For an analysis of the *proemium* of Book 6 in relation to the representation of authority and consensus, see Pasco-Pranger 2006, 241ff. This *proemium*, alongside that of Book 5, somehow prefigures the problematic months of July and August, whose drafting, according to the scholar, was intentionally avoided by the author.

⁶⁰ Specifically on Ovid’s innovation to make Lara/Tacita the Lares’ mother, see Porte 1985, 448-51; *contra* Littlewood 2002, 188ff., who, despite denying the possibility of a direct allegory behind the episodes of Lara/Tacita and Lucretia, acknowledges that their being prevented from expressing themselves makes

narration on brutality and silence dedicated to Lucretia. In a context marked by numerous and not accidental internal cross-references, it is also interesting that in 7 BC the Princeps reintroduced the fictitious magistrate of *vicomagister* to oversee this threefold cult instituted by Augustus himself and visually marked by a group of three statues to be found in each *vicus*. The *vicomagistri* were officials who, besides facilitating control over the population, granted to the central rule the consent of those who, *liberti* for the most part, were keen to spend significant amounts of money to be appointed to a honorific post.⁶¹

Further to those ‘Augustan’ allusions, at least three references ‘mutilated’ by the poem’s lack of completion point to two particularly significant months, namely August itself and December (which is relevant as it is the last one of the year).⁶² In Book 3, in particular, the statement *non... taceam* will be contradicted by the premature interruption of the poem.⁶³ The *Larentalia* festival, however, is likely announced to prefigure its feature as an ideal ending. Through the last festivity of the year, Ovid could tell again, though from a different point of view, the story of Romulus and Remus. Moreover, the overlap with the last day of the *Saturnalia*, which took place from the 17th to the 23rd December, would have allowed the author to end the poem on a high note with the festival in which the Romans reached the peak of institutionalised *licentia*. Two days ahead of the *Larentalia*, they also celebrated the festival of Diva Angerona, represented in statues with a bandaged mouth and a finger on her lips.⁶⁴ This scenario of enforced silence is confirmed by the choices made by the poet at the end of Book 6, where he claims *tempora labuntur, tacitisque senescimus annis* (771).⁶⁵

Rather than trying to reconstruct the reasons and timing of Ovid’s decision to end the poem with Book 6, or reflecting on how the theme of freedom of expression finds space in his exile poetry, it is more effective to try and identify the ways in which the

their condition even more dramatic, as they are denied the chance of defending their own position. On the Augustan reform of the *Compitalia* ritual, see Citroni 2015, 640.

⁶¹ Feeney 1992, 12. Its original creation is traditionally ascribed to Servius Tullius. On the Augustan renovation of this minor magistracy, promoted following his reform of the administrative system, see Zanker 1989, 140f. (with further bibliography).

⁶² The references in question are those to the *Consualia* (taking place both in August and in December) at 3.199f., the *Lares Compitales*, to be treated again in the month of August (5.145-8), and the finding of Romulus and Remus by Faustulus and his wife Larentia (3.55-8).

⁶³ Cf. *Fast.* 3.55-8: *non ego te, tantae nutrix Larentia gentis,/ nec taceam vestras, Faustule pauper, opes,/ vester honos veniet, cum Larentalia dicam:/ acceptus geniis illa December habet.*

⁶⁴ On the interpretative possibilities opened up by the association between Angerona and Larentia, see Feeney 1992, 25, fn. 73, elaborating on Coarelli 1983.

⁶⁵ Feeney 1992, 17f.

poem reflects on its own premature interruption after the ‘imposition’ of silence. Feeney’s idea is that significant sections were written in Tomis, which makes the *Fasti* look like a work in which any *licentia* has been suppressed, a poem which is not allowed to keep expressing itself and has become in turn *nefas*.⁶⁶ A relevant proof is the dedication to Germanicus – indeed added to the poem during the relegation –⁶⁷ which introduces the question of the work’s completion: *si licet et fas est, vates rege vatis habenas/ auspice te felix totus ut annus eat* (*Fast.* 1.25f.). This passage can be explained by comparison with the conversation between the poet and Venus in Book 4, when Ovid, once again likely to be writing from the Black Sea,⁶⁸ defends his *sine crimine* love poetry to the goddess.⁶⁹ When Venus invites him to complete the undertaken job, the poet responds with the following distich:⁷⁰ *sensimus, et causae subito patuere dierum:/ dum licet et spirant flamina, navis eat* (4.17f.). Here the conditional expression *dum licet* matches the language of *si licet et fas est* in the exordium,⁷¹ but Venus’ appearance here is, in my view, particularly significant. Ziogas has stressed that the goddess is introduced in Book 4 first and foremost as a lawgiver (93) in a passage where the elegiac lover is introduced as the archetypal lawyer.⁷² Venus is therefore also a source of elegiac inspiration for Ovid’s poetry, as well as being the progenitrix of the *gens Iulia*. Once again, Ovid puts forward a Chinese box narrative where the divine elements play a central role both in relation to the introduction of justice and to his underlying engagement with the institution of the Augustan Principate.

Crimen Maiestatis

The issues related to free speech in the Augustan age tie in well with the emergence in Ovid’s *Fasti* of a Princeps whose superiority to law is ultimately a consequence of a charismatic appropriation of *ius*. Ovid’s treatment of the notion of *maiestas* is exemplary

⁶⁶ *Ibid.*, 15ff.

⁶⁷ According to the widely accepted reconstruction by Fantham 1985, 243-56 in particular.

⁶⁸ As also maintained by Bömer 1958 *ad loc.*

⁶⁹ *Fast.* 4.9.

⁷⁰ The poet’s hesitation is the more significant since, as illustrated by Feeney 1992, 16ff., the *Amores* as well as the *Remedia* had started with the involvement of the divine element and had ended with neat statements on the conclusion of the *opus coeptum*.

⁷¹ Feeney 1992, 16.

⁷² Ziogas 2021a, 5f.

of the novel dialectic emerging among people, Senate and Augustus, which dangerously mirrors the periodically occurring dichotomy human law/divine will, an opposition that the poet never misses a chance to explore. The fact that human law is irremediably bound to give in seems to further support a parallel between Augustus' increasing omnipotence in the juridical realms and the unlimited power of the gods as it emerges from the fictitious 'trials' in Ovid's verses.

The question of free speech is connected to that of *crimen maiestatis* (*scil. imminutae, laesae, violatae*), which could also be committed by non-Roman citizens and in a foreign territory. It included offences such as high treason, rioting and sedition, criminal attack against a magistrate, desertion, and hostage killing, and was initially understood to be aimed against the *populus Romanus*.⁷³ *Maiestas* was subsequently associated with the emperor in particular, probably (though the process is not entirely clear) in relation to Augustus' tribunicial *sacrosanctitas*, the *coniuratio* in his favour and the official grant of the *pater patriae* title in 2 BC.⁷⁴ The *lex Iulia maiestatis* (D. 48.4.1.1) was most likely issued in 8 BC,⁷⁵ and the crime was extended, at least indirectly and in practice, albeit not formally, to indicate any wrongdoing compromising the Princeps' and his family's security.⁷⁶ Furthermore, in the early empire it provided for instances of lese-majesty not limited to political intrigue against the emperor as incarnation of the State, but also covering insult and abuse against him through words and acts.⁷⁷

⁷³ Its extension to magistrates might have been motivated by the fact that, as highlighted by Pasco-Pranger 2006, 235, *dignitas* and *maiestas* are often used interchangeably. That is confirmed by the concise definition of this legal accusation in Cic. *Inv.* 2.53 (*maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare*), as well as by Caesar's narration in *Civ.* 1.8f. (on which see Pasco-Pranger 2006, 235f.).

⁷⁴ For a detailed discussion of the *crimen maiestatis* in the Augustan Principate, see Bauman 1967, 198-245 in particular. Among the relevant Republican steps, in 81 BC Sulla had instituted, through the *lex Cornelia de maiestate*, a permanent court which punished with exile anyone who summoned military forces or initiated hostilities against a foreign country without the Senate's or the people's approval. Already in 90 BC, the *lex Varia* had maintained that anyone who, *ope et consilio*, induced an ally country to take up arms against Rome should be prosecuted for treason.

⁷⁵ The law is traditionally dated to 8 BC; Bauman 1967, 275-87, however, dates it back to 27 BC.

⁷⁶ Santalucia 1998, 94 and 118 rules out the hypothesis of an explicit mention of the emperor in the *lex Iulia*. The option of an immediate sanction against an offender was down to the emperor's exercise of his *tribunicia potestas* (cf. CD 53.17, on which see also Bauman 1967, 216f.). The term *maiestas* subsequently covered also the sphere of *perduellio*, up to the point that it became in fact difficult to keep the two crimes distinct.

⁷⁷ It is Tacitus, in *Ann.* 1.72.3f. and 3.24.2f., who ascribes the inception of that practice to the Augustan Principate. Bauman 1967, 210-45 argues that, at the time, offences against the emperor's personal *maiestas*, such as that of Julia the Elder (*laesarum religionum ac violatae maiestatis*, according to Tac.

The fifth book of the *Fasti* opens with a threefold debate on the origin of the name of the month of May. Speaking first, Polyhymnia, the Muse of pantomime, in about forty lines tells the story of the ‘birth’ of Maiestas, to whom she links the name *Maius* (*Fast.* 5.11-52). The Muse revisits the theme of theogony, within which the goddess Maiestas takes up an innovative space, as she proves essential for the final settlement of cosmic powers. She obviously stands for the personification of an abstract concept, included among the core values of the Roman moral system. Her birth seems to facilitate the settlement of a hierarchical balance that puts an end to the egalitarian anarchy that had characterised the period following primigenial chaos (18-22). Born from the union of Honor and Reverentia, archetypal figures of the affirmation of officially acknowledged authority (reinforced by the subsequent image of Maiestas sitting between Pudor and Metus), she marks the beginning of the Golden Age (28ff.). Her relationship of mutual protection with Jupiter, Saturn’s heir,⁷⁸ is bound to resist the Giants’ subversive attacks, and is perpetuated by its secularisation – as outlined at l. 47 – thanks to the intervention of ‘sub-guarantors’ (Romulus and Numa in the first place), up until the time of the Augustan Principate. The mention of the symbols of the Roman magistrates’ *maiestas* culminates in the triumphal image of the chariot drawn by laurel-crowned horses (51f.).⁷⁹

Firstly, we must note the semantic shift in the use of *honos*. At l. 18 (*par erat omnis honos*) it is used to specify that, at the beginning of the Age of Saturn, there were neither rank nor status distinctions either among natural elements or among gods. The latter started to regard *honores* highly following Maiestas’ arrival (31).⁸⁰ She subsequently descended to Earth, where she regards parents with due respect (*honore pio*, 49). It appears somewhat disorientating that Ovid puts a discourse centred on the notion of moral and political authority in the mouth of the Muse in charge of pantomime.⁸¹

Ann. 3.24.3), were prosecuted separately from the *crimina maiestatis* of political nature. The two notions were gradually equated by Augustus’ successors (see also Bauman 1974, 2-10).

⁷⁸ Line 34 presents the handover as a ‘fatal’ event (*fatidis*) and almost ‘natural’ if not totally painless (43ff.).

⁷⁹ In relation to those symbols, magisterial *dignitas* and regality tend to overlap. Ancient authors already associated gold and purple with regal figures, and those attributes were also given to Etruscan and Roman kings, especially in relation to triumphant generals. The purple robe is associated with Romulus by Dion. Hal. 2.34.2, Pl. *Nat.* 9.63, and Plut. *Rom.* 26. Livy (27.4.8, 30.15.11, 31.11.12) and App. *Pun.* 32 report on the Roman practice of sending golden wreaths to foreign sovereigns. On the Etruscan origin of regal/triumphal insignia, see Dion. Hal. 3.61f. (cf. also *supra*, 126, fn. 235).

⁸⁰ Pasco-Pranger 2006, 237 notes that the act of *vultum componere* attributed to the gods is regularly employed to denote a conscious effort to disguise one’s own feelings, not unlike the passage in which Tacitus describes the aristocrats’ reaction to Tiberius’ accession (*Ann.* 1.7). Cf. *OLD*, s.v. *compono* 11.

⁸¹ Cf. *Ciris* 55, Hor. *Carm.* 1.1.33, Auson. *Idyll.* 20.7.

Polyhymnia's tone, however, is ultimately aligned with the accepted notion of *maiestas*, as she describes the gods' anarchical behaviour preceding the birth of *Maiestas*, and their sudden 'conversion' to solemnity and decency as soon as they see her, resplendent in gold and purple, sitting on her seat, in relation to which Ovid's uses the technical verb *consido*.

The theme of the inception of justice is in this instance explored by Ovid *sub specie maiestatis*, and the conventional theogony is presented in a concise form. This narrative choice serves the purpose of avoiding disrupting – through Saturn's deposition by Jupiter – the linearity of *Maiestas*' story.⁸² The latter is broken down by Ovid into three stages, which is tempting to read as a parallel to Augustus' own parabolic '*cursus honorum*': birth, enforcement of order, and, lastly, her supreme rule, safe from threats.⁸³ The model of Hesiod's *Theogony* appears more relevant than Callimachus' *Aitia* in relation to this section of the poem. Polyhymnia's story echoes not only the structure of the theogonic 'succession myth', but in particular the divine genealogies that substantiate it, which, by contrast, are significantly missing from the extended version of the theogony put forward in *Metamorphoses* 1. Unlike the outcomes of the promiscuous sexual relationships of Hesiod's gods, *Maiestas* is born of a legitimate union (*legitimis oris*, 24). If we accept the *lectio hos est dea censa parentes* (25), she even appears to have been properly registered as offspring by her parents.⁸⁴

It is, however, worth noting that some aspects of the narration lack any literary antecedent. Let us first consider the statuary pose with which the goddess is introduced at ll. 27-9, and furthermore the very fact that she is presented as a deity, who, besides this passage, only occurs on an inscription from the age of Diocletian.⁸⁵ Out of the five personifications mentioned at ll. 23-9, only Honor had been granted a temple in Rome, although *Pudor* and *Metus* occasionally appear in Greek literature under the names of *Αἰδώς* and *Λέος*. Even more relevant is the fact that *Maius*' 'etymological' derivation

⁸² Mackie 1992, 84. In addition to *Metamorphoses* 1 Ovid refers to the theogony at *Fast.* 1.105ff. (mentioned above), 1.235ff. and 4.195ff.

⁸³ Pasco-Pranger 2006, 227-40 adopts a different perspective, claiming that Ovid's representation of *Maiestas* in the first part of her story (27-32) matches Caesar's *maiestas* in the last period of his dictatorship. On the relationship between Caesar and the notion of *maiestas* from his first consulate to his death, see Bauman 1967, 93-139 in particular.

⁸⁴ Mackie 1992, 85f.

⁸⁵ *CIL* III.449. Especially since the beginning of the 3rd century AD, the specific application of the notion of *maiestas* to the person of the emperor would instead inspire frequent dedications to his *numen* and *maiestas*.

from *Maiestas* is highly implausible.⁸⁶ It is therefore fair to wonder why Ovid has chosen to introduce, in a prominent position at the beginning of the book, a goddess lacking a proper identity as such, who furthermore gives her name to the fifth month according to a derivation which is not at all straightforward to sustain, and this is the question I will tentatively answer in this section.

The notion of *maiestas* as presented by Polyhymnia does not perfectly coincide with the one traditionally associated with the *populus Romanus*, and subsequently with the imperial *domus*. Besides the legal content, linked to the crime of treason, Ovid gives space to a notion which goes beyond the strictly juridical relevance,⁸⁷ and reflects the original double connotation of the name.⁸⁸ On the one hand, it implied a size comparison;⁸⁹ on the other hand, *maiestas* also represented a distinct feature which explains and expresses one individual's superiority to another. The 'passive' connotation of both nuances also explains the curiously inert role that *Maiestas* plays in the passage under scrutiny. In the phrase *maiestas populi Romani*, it is above all the first notion that emerges; that characteristic was merely 'lent' to magistrates and jury members, who, however, only possessed it by extension, and in late Republican sources it is never associated with the Senate alone.⁹⁰ The attribute therefore becomes an indicator, in the late Republic, of the superiority of the popular assembly compared to other powers within the State, according to a notion comparable to that of 'popular sovereignty',⁹¹ therefore digressing from the nature of 'relation' to precisely that of 'sovereignty'.

The political and legal operativeness of *maiestas* therefore represented a formalisation and a specification, based on particular political guidelines, of an informal concept. In its 'ordinary' use, in fact, it belonged first and foremost to gods and kings.⁹² At least since the 1st century BC, the term could also be applied to intellectual achievements.⁹³ Accius and Afranius mention the *maiestas* of a *pater familias* and a

⁸⁶ Mackie 1992, 87. Both Macrobius (1.12.18) and Festus (p. 120 Lindsay) mention the derivations from *maiores* and from Maia, Mercury's mother. Only Macrobius reports the version according to which Maia's real name was actually *Maiestas*.

⁸⁷ Mackie 1992, 88ff.

⁸⁸ *ThLL*, s.v. *maiestas*. On the Roman variations on this concept, see Bauman 1967, 1-15.

⁸⁹ Hence Ovid's pun in representing *Maiestas* as *magna* already at birth (26).

⁹⁰ In Cic. *Sest.* 5, however, we find the phrase *maiestas senatus populi Romani*.

⁹¹ Cf. the tribune Gaius Memmius' words on the Aventine secessions in Sall. *Jug.* 31.17.

⁹² For an example related to divinities, see Livius Andronicus, *Aegisthus*, fr. 8 Ribbeck; in relation to regality, cf. Caes. *Civ.* 3.106.4 and Lucr. 5.1137.

⁹³ Cf. again Lucr. 5.7 (referring to Epicurus), as well as Plin. *Epist.* 9.27.1 (in relation to *historia*).

matrona,⁹⁴ not dissimilarly from Ovid's use at l. 49. In those examples it is evident that it is the qualitative aspect that prevails, and that, in order to define *maiestas*, it is not necessary to identify a further group as inferior. It is, however, a peculiar attribute, inasmuch it does not derive from personal skills or merit, but rather from someone's belonging to a certain category or social group. One can possess *maiestas* as a king, a deity or a parent.⁹⁵

In outlining the portrait of the *civilis princeps*, Wallace-Hadrill includes *maiestas* among the attributes that, despite the undeniable differences between Hellenistic kings and Roman emperors, allow us to draw some similarities between the two ruling styles: *gravitas*, *auctoritas*, *dignitas* and precisely *maiestas*.⁹⁶ The scholar observes that the *libertas* granted to subjects was drastically reduced in the imperial age, in light of the neat superiority of the emperor's will over the laws which, during the Republican age, granted citizens certain rights and licences, albeit within limits. Freedom of expression was given considerable attention, as the emperor could silence disrespectful manifestations by resorting precisely to the *lex maiestatis*. A peculiar aspect was, however, represented by the lack of non-ambiguous application criteria for the *lex maiestatis*, as well as by the periodic imperial declaration of its abolition.⁹⁷

In Ovid's time, both the formal and informal idea of *maiestas* was in the process of being redefined. On an official level, the associations of this concept shifted from the *populus* to the Senate.⁹⁸ At the same time, the Romans began to consider this quality as deriving from a person's individual nature.⁹⁹ From a legal standpoint, the notion was altered after the fall of Julia the Elder in 2 BC; the formalisation of this crime, however, was meant to protect the *clari* and *illustres* in general, not just Augustus and his *domus*.

⁹⁴ Cf. Accius, *Tereus*, fr. 8 Ribbeck and Afranius, *Suspecta*, fr. 9 Ribbeck respectively.

⁹⁵ With regard to divine *maiestas*, in *Pont.* 4.8.55-64 Ovid reflects on the relationship between poetry and certain shared notions regarding the sphere of divinity. The catalogue culminates in a mention of Germanicus as nephew of the deified Augustus. At ll. 55ff., he claims *di quoque carminibus, si fas est dicere, fiunt, / tantaque maiestas ore canentis eget*, and *maiestas* in this instance is precisely a divine attribute. Following Rosati, McGowan 2009, 25ff. maintains that the mechanism here enacted by the author is meant to prove that a poetic act is able to counterweight the burden of 'political' persecution affecting his exile production.

⁹⁶ Wallace-Hadrill 1982b, 35 (the concept of *civilis princeps* will be discussed *infra*).

⁹⁷ Only as far as verbal attacks were concerned, whereas the emperor's right to repress overt betrayal remained undisputed. Evidence of the recurring abolition of the *maiestas* charge has been collected by Bauman 1974, 191ff.

⁹⁸ See e.g. Liv. 8.34.

⁹⁹ Cf. Liv. 5.41.8.

This aspect is confirmed by the crime Cassius Severus was charged with when, probably in AD 8, the *lex Iulia* had been extended to verbal offences.¹⁰⁰ At least in the last years of the Augustan regime, its application must therefore have extended well beyond adultery within the *domus Augusta*. The application of the *maiestas* crime to certain sexual behaviours ascribable to members of the imperial family operated especially in the second half of the Augustan Principate: although, in such circumstances, the principle could be resorted to in court, it was not in fact appealed to, unless strictly necessary.¹⁰¹

Augustus' victory had also been the victory of a certain social class. The Senate's prestige and *status* had increased to such an extent that the Senators came to accept the very existence of a (unique) Princeps. Mackie maintains that the evolution of the concept of *maiestas* in the Augustan age mirrors the change undergone by the contemporary power structure, which was detrimental to the people but advantageous to the Senate.¹⁰² In this respect, the changes in the informal use of the notion matched the variations in the legal definition of the term. The proposed pattern entails that the *populus Romanus* lost their own *maiestas* in favour of the Senate, which, however, in turn had to promote the Princeps' *maiestas*. Since, however, this concept was not understood either as constitutional power or as necessary expression of a stable hierarchy, but rather as a characteristic intrinsic to individuals belonging to a superior group, political instruments such as the *lex maiestatis* ended up being used in order to grant the *status* of the senatorial class itself. This observation confirms that the Augustan 'revolution' can be considered as operating, besides a political level, also on a socio-juridical and moral one.¹⁰³

The analysis of Polyhymnia's tale should therefore take into account both the formal and the informal concept of *maiestas*. Lines 45ff. give a brief summary of

¹⁰⁰ Tac. *Ann.* 1.72.

¹⁰¹ Bauman 1967, 234f. Appuleia Varilla, Augustus' grand-niece, was charged in AD 17 with making offensive statements against the *divus* Augustus, Tiberius and Livia, and with committing adultery as *Caesari conexa*. Tac. *Ann.* 2.50 records that, on that occasion, Tiberius requested that, instead of condemning her to the sentence prescribed by law, a ban be put on her by her family's domestic court – thus indirectly acknowledging that adultery charges on a member of the imperial *domus* could not be classified as *maiestas* (on this point, see Treggiari 1991, 267). The cases which Augustus' successor showed more strictness towards had instead clear political implications: see, for example, the trials against Lepida (Tac. *Ann.* 3.22f.) and Claudia Pulchra (4.52.1, 4).

¹⁰² Mackie 1992, 91.

¹⁰³ Further confirmation comes from examples such as the legislation on adulteries and marriage, the general weakening of the influence of the laws, and the introduction of the legislation by edict, as well as new courts and new crimes. In this sense Augustan *maiestas* appears in keeping with the concept that had been preserved in the ordinary use of the notion.

Maiestas' remits: she maintains gods' and kings' power, ensures respect for *patresfamilias* and *matronae*, confirms the magisterial duties traditionally bestowed to the sovereignty of the Roman people, and is connected to triumphs and victory in general. The description is conducted in purely Republican terms, as shown by the interest in the promotion of sexual morality (born from a legitimate marriage, Maiestas oversees the youth's purity). Respectful of social hierarchies, she also ensures that those who deserve honours are treated with due respect: at ll. 29-32, the two personifications of Pudor and Metus represent the two alternative attitudes before someone who is hierarchically superior. Since she ensures that Jupiter can rule without resorting to force, Maiestas furthermore represents the ideological aspect of power, apt to exercise forms of control by acting on people's thoughts and feelings.¹⁰⁴

If we accept that the poem, except for any late additions, had already been completed before Ovid's exile, if not by AD 4,¹⁰⁵ the section under scrutiny here must be dated after the *crimen maiestatis* was invoked for Julia the Elder and Iullus Antonius' adultery, but before being applied to the prosecution of defamation against *illustres* extraneous to the *domus* (in practice, in AD 8). Significantly enough, Ovid does not seem to be suggesting alternative principles here, and none of the uses he makes of the concept ultimately deviates from its accepted meanings.¹⁰⁶ However, I disagree with Mackie's conclusion that, despite it not lacking political connotations, the passage in question "is not concerned with political and legal technicalities".¹⁰⁷ The Augustan interpretation of the notion was certainly not limited to its technical aspects; the very fact that those technical aspects underwent a shift under Augustus, however, proves that they functioned to frame the concept also on a political and social level, and Ovid once again leverages the Augustan socio-juridical shift to put forward his own reflections on the nature of justice. Indeed, it is my view that the emphasis on the theogonic aspect might well be pointing our attention to the 'novelty' of the concept, thus going beyond a mere association with the constitutional transition underlying the parallelism Saturn-Caesar, Gigantomachy-civil wars, Jupiter-Augustus, although we cannot ignore that "this pattern (...) does almost beg for association with the history of the civil wars and the

¹⁰⁴ Mackie 1992, 92f.

¹⁰⁵ Cf. Syme 1978, 28-36.

¹⁰⁶ Cf. e.g. *Fast.* 1.224 and, with reference to ancient times, *Ars* 3.407.

¹⁰⁷ Mackie 1992, 93.

establishment of the Augustan Principate”.¹⁰⁸ Mackie’s reading has first and foremost focused on the definition of a socio-political value which finds its *aition* in *Maiestas*’ birth. As a value that pervades human society, simultaneously promoting morality and political authority, *Maiestas* thus represents “a timeless allegory of power in all its forms”, though also potentially affected by historical events, as with the scandal of AD 2.¹⁰⁹ *Maiestas*, I argue, is ultimately another Ovidian representation of power and, therefore, of justice itself.

This allegorical representation calls for a comparison with another key passage drawing from the same ‘metaphorical’ field of *maiestas*-power-justice, set in programmatic position in the *Metamorphoses*. In Book 1 Jupiter summons a council of the gods to report Lycaon’s punishment (163-248), and Ovid’s audience cannot fail to notice that, within this ‘Romanised’ Greek myth, Lycaon is in fact denied a proper trial. Jupiter has visited the Earth in mortal disguise to investigate the *infamia* of the current generation. After revealing his true identity, he is tested by Lycaon, who tries to challenge the credibility of the alleged god by feeding him the flesh of a sacrificed hostage and planning to make an attempt on his life. Jupiter angrily destroys the man’s dwelling and Lycaon is turned into a wolf, although the god’s agency is far from clear in the transformation.¹¹⁰ Lycaon’s story presents the first human metamorphosis of the whole work, as well as the climax of the myth of Ages, within a cosmologic frame which is not distant from that of *Maiestas*’ episode. Once Jupiter’s tale is over, the gods sitting in judgement demand revenge: Lycaon’s behaviour exemplifies the degeneration of humankind and justifies its destruction through the Great Flood.

Lycaon’s myth is outlined as a criminal variation on the traditional model of the *θεοζενία*.¹¹¹ The killing of the Molossian hostage (226ff.) is furthermore a parallel and additional sacrilege to the violation of the right of hospitality against Jupiter. Lycaon has violated human norms by killing a hostage, and moreover tried to usurp a prerogative of the father of the gods by putting the deity through a test. Balsley has suggested an association between this episode and *maiestas* trials in the Roman Senate, as well as highlighting allusions to contemporary developments in the field of judicial

¹⁰⁸ Pasco-Pranger 2006, 228.

¹⁰⁹ Mackie 1992, 94.

¹¹⁰ Anderson 1963, 5-7 and *infra*, 159.

¹¹¹ This typology is well represented in Ovid: cf. e.g. the story of Philemon and Baucis in Book 8.

procedures.¹¹² Exactly as already noted in Tiresias' episode, however, those elaborate allusions disintegrate when we try to 'put them into practice'. In both stories, the adherence to Roman law and procedure ultimately proves unsustainable, and both episodes end with a deity who resorts to *lex divina* to the detriment of human law.

Feeney has focused on the peculiar features of this Roman variation on the *concilium deorum*.¹¹³ Ovid seems to carry to extremes a device already found sporadically in the Homeric poems, where the world of the gods is presented to public imagination as a proper Greek *polis*, characterised – for instance – by its own assembly places.¹¹⁴ As for Ovid, the analogy is operated in relation to a specific city, the Urbs. After this passage, allusions to Rome are reduced, in the rest of the poem, to implicit references – at least up until the last two books. Even the epithet *Tonans* (170) refers to contemporary reality, given the centrality acquired by the cult of *Iuppiter Tonans* within the context of Augustus' religious policies since 26 BC. Another sign of Romanisation is the term *atria* (172), although the apex is indeed represented by the use of *Palatia* in its meaning of "imperial dwelling" (176) – at the beginning of an epic poem with a universal scope, Ovid audaciously inserts a hint to the monarchic nature of Rome's new rule. Jupiter's power over the other gods is significantly expressed through the phrase *vos habeoque rogoque* (197), which lacks any rhetorical attenuations and is exclusively ascribable to the political terms of an absolute monarchy. The analogy is also topographic: between the Forum and the new centre of power, namely the Palatine hill, a concentration of elite dwellings was crowned by the new Augustan residence. In similar fashion, Jupiter's palace in celestial Rome is located at the end of a slope flanked by illustrious *atria* of major divinities and the narrator knowingly comments *haud timeam magni dixisse Palatia caeli* (177).¹¹⁵

In paralleling the iniquity of Lycaon with the violence of the Giant Centimani, Ovid applies the unusual phrase *iniciere... bracchia* (184), whose legal terminological aspect has already been recalled in several instances.¹¹⁶ And with *cuncta prius temptata: sed inmedicabile corpus/ ense recidendum est, ne pars sincera trahatur* (190f.), Jupiter

¹¹² Balsley 2010a, 47ff.

¹¹³ Feeney 1991, 199ff.

¹¹⁴ *Il.* 8.2f.

¹¹⁵ It is noteworthy that Ovid mentions marble (177), a peculiar element of Apollo's temple on the Palatine (cf. *Ars* 3.119) and, more generally, of the Augustan renovation of the Urbs, as well as a traditional attribute of the gods' dwellings and their earthly temples.

¹¹⁶ Cf. *supra*, 31ff., 54.

employs the common political metaphor of ‘amputation’.¹¹⁷ At ll. 192f., moreover, while declaring an ambiguous concern for the half-gods, Ovid adapts, with “originale impudenza”,¹¹⁸ a typical module of Roman foreign policy, according to which an armed initiative is motivated, if not by an enemy’s direct threat against Rome, at least by the danger and damage that the enemy has threatened to inflict on Rome’s *socii*. Ironically enough, however, in this instance Jupiter’s punitive intervention through the flood seems bound not to leave any survivors on Earth. A lexical clue of a further political reference can be found in the use of *feritas* with reference to Lycaon (198): as the opposite of humanity, the term was proper to the political language of the Principate. It is employed in the same sense also in the *Senatus consultum de Pisone patre*, where it expresses the Senate’s justification for the imperial sanctions against Piso.¹¹⁹

Subsequently, after preparing the shift with numerous analogies and implicit allusions, the poet addresses Augustus directly (200-5), an isolated case until the close of Book 15. The explicit time shift from myth to contemporary history has a precise model in *Aen.* 1.148-53, from where Ovid draws the parallel between divine order and political charisma. However, whereas Vergil offered his audience a short, cryptic account of the transition from the crisis of the Republic to the new order, Ovid seems to be implying that, further down the line, conspiracy and repression have become the most typical expressions of power, projected by the analogy, already in Vergil, between Jupiter and Rome’s Princeps. The ambiguity is fuelled by the uncertainty on the concrete referent for the adjective *Caesareus* (201), which can in turn be traced back to Vergilian antecedents.¹²⁰ However, documents show that, before the poets, Augustus himself, with his strategic appropriation of the name *Caesar*, can ultimately be considered responsible for this ambiguity.¹²¹

¹¹⁷ See esp. Cic. *Off.* 3.32, which touches on the necessity to impose justice even by drastic means, fighting against *feritas*; cf. also *Sest.* 135 and *Phil.* 8.15. The use of the term *feritas* in the phrase *feritatis imago* (*Met.* 1.239) is in overt contrast with the Vergilian formula *pietatis imago* (*Aen.* 6.405, 9.294, 10.824).

¹¹⁸ Barchiesi 2005, 185.

¹¹⁹ Cf. *CIL* II² 5.900 as well as Eck, Caballos and Fernández 1996, 38-51.

¹²⁰ Cf. Verg. *Aen.* 1.286, where the uncertainty makes it impossible to determine the precise historical referent of Jupiter’s prophecy. The adjective *Caesareus* appears here for the first time; Ovid, however, had already exploited a similar ambiguity through the use of the term *caesaries* (180) in a passage that would suggest, thanks to this homophony, an allusion to the authority of a Caesar (at least according to Ahl 1985, 76).

¹²¹ *Romanum extinguerre nomen* (201) was an expression of semi-official language, used for example to denote Catiline’s revolutionary plans (Cic. *Catil.* 4.7) or a threat by an enemy people (Liv. 6.2.2).

In Lycaon's episode the metamorphosis emerges as an "abrupt and unexpected conflict resolution",¹²² in line with a typology which is not isolated within the poem. Previous versions of the same myth, however, did not share such a negative connotation. Jupiter thus provides a version serving his own 'political' interests, while his opponent is prevented from presenting his side of the story.¹²³ The god's dominant role as arbiter of human destiny shows neat correspondences with the extended speeches which open the *Odyssey* and the *Aeneid* respectively. In this new *epos*, however, the father of the gods holds total control over the human world, and the use he makes of his absolute powers cannot but alarm both the omniscient narrator and his audience as for the way divine justice operates. Lycaon undergoes a transformation – presented, however, as 'natural' and spontaneous, with Jupiter never claiming any responsibility for it – which expresses his own innate bestiality: the beast which had somehow joined mankind is reassigned to the category it rightfully belongs to. In this metamorphosis the natural world becomes the token of an appropriate redistribution of authority between men and gods, and – in view of the analogies Jupiter-Augustus and gods' assembly-Senate – the re-setting of order deriving from the transformation also serves the purpose of recalling the specifically Roman order that, instituted by the Princeps, had gone on to embrace the whole cosmos.

It is perhaps not incidental that Lycaon's metamorphosis also concerns the ability to express words, a motif that recalls the silenced artists encountered in Chapter 2, as well as the question of free speech in Augustan Rome analysed in the previous section.¹²⁴ It is also plausible to maintain, with Feldherr,¹²⁵ that Lycaon's offence against Jupiter derives first and foremost from the scrupulous faith the protagonist has in the sphere of appearances and from his efforts to make use of those appearances to establish some differentiation within the order of things. The plot against Jupiter demonstrates that the man has taken his disguise very seriously – far from meaning to dishonour the gods, Lycaon simply takes it for granted that the figure in front of him is a mortal impostor. I would argue that this element of simulation and dissimulation reinforces the

¹²² Barchiesi 2005, 177.

¹²³ For non-hostile sources on this myth see Pherecydes, *FrGrHist* 3 F 156 and Dion. Hal. 1.11. In the late Hellenistic age, as we can see in Nicolaus of Damascus, *FrGrHist* 90 F 38 and Apollodorus 3.8.1, there was also a tendency to acquit Lycaon and blame others, for example his sons. Greek versions generally present a subtly ambivalent figure, whose outrageous behaviour towards divinities is offset by his role as a civilising hero and founder of religious practices (the cult of Zeus Lycaeus in particular).

¹²⁴ *Supra*, 85ff. and 142ff. respectively.

¹²⁵ Feldherr 2002, 171f.

Jupiter/Augustus parallel with an allusion to the Princeps' juridical *fictio* and its relevance to his power structures. This aspect ties in well with Balsley's idea of *performing law*. If we accept that justice courts were the setting of but a small part of the *performances* that would constantly regulate the life of Roman citizens from a social standpoint, it clearly emerges that the idea that performing procedural law entailed impersonating different roles¹²⁶ applies equally well to the scene in question as does it to Augustus' playing with his own administration of justice (and to Ovid's tongue-in-cheek representation of justice dynamics).

I do not completely share Kennedy's observation – in relation to Ovid's text and context – that “stability of meaning, the feeling that words have a fixed and assured meaning, is a hidden function of the stability of power”,¹²⁷ as I struggle to recognise in the poet's use of language an attempt at questioning the stability suggested by ‘fixed’ legal expressions. What is rather to be expected – if it is true that, as Agamben points out, “terminology is the properly poetical moment of thought” –¹²⁸ is that Ovid's poetic intervention, with his insertion of juridical settings and jargon, reflects the intromission enacted in the same sphere, though on a much bigger scale, by the brand-new figure of the Princeps *iudex*. In its mirroring Augustus' own use of the legal, I argue, Ovid's allusions to contemporary juridical culture and to Augustus' arbitrary justice represent his most original contribution to the scene of the *concilium deorum*, which had already been adapted to the representation of the destiny assigned to ‘wolflike’ characters by Ennius and subsequently by Lucilius, perhaps based on Ennius' precedent.¹²⁹

Ovid's representation of procedural law through the divine assembly has been contextualised more precisely by Balsley within the framework of the Augustan procedural changes in general, and of the handling of trials related to the *crimen maiestatis* in particular.¹³⁰ Firstly, the use of *recessus* (167), according to Balsley, evokes the library included in the complex of Apollo's temple on the Palatine, where the Senate occasionally convened. Furthermore, the specification that Jupiter sits *celsior ipse loco*

¹²⁶ Again Frier 1985, xiv. On the overall argument, cf. Balsley 2010a, 48.

¹²⁷ Kennedy 1992, 35.

¹²⁸ Agamben 2003, 13.

¹²⁹ The famous *loci* of reference are Enn. *Ann.* ll. 105ff. Sk. (Romulus' divinisation) and the first book of Lucilius' satires (on the cases of Lentulus Lupus: cf. e.g. l. 4 Marx). For a later example of a *concilium deorum* scene modelled on the type of the legal trial, see Sen. *Apocol.* 8f. and cf. the divine council in Apuleius' *Metamorphoses* (6.23f.) with Harrison 2006.

¹³⁰ Balsley 2010a, 51-3.

(178) matches Tacitus' statement about the presence of a *suggestum*, some sort of high platform, precisely in the same library.¹³¹ Following Thompson, Balsley claims that, although the Curia Julia continued to be the official setting for Senate sessions, these took place *in palatio* whenever the emperor wished to obtain special effects.¹³² The library therefore assumes a connotative meaning about Augustus' role, insofar as his very presence is what makes the place in question an appropriate space to host those assemblies. This action matches the practice of "ubiquity fiction" of imperial jurisprudence,¹³³ and brings about a further Ovidian reflection on the nature of justice in its revealing an "inward turn",¹³⁴ both on a literal and a metaphorical level, compared to Republican practice. During the Republic, meetings largely took place before the Roman people where, as a matter of fact, law and justice gained legitimation based on their being made visible.¹³⁵ The Senate reunions behind closed doors in the library of Apollo's temple were thus removed, both physically and symbolically, from the usual spaces of justice in Rome.

As for the analogy *concilium deorum*-Senate, it is important to highlight that precisely during the Augustan Principate the Senate acquired a new judicial role as the regular court for the two main 'aristocratic' crimes, namely that of *maiestas* and that of *repetundae*, i.e. extortion by provincial magistrates. Ovid's reassessment of a topical scene of longstanding tradition should be analysed in light of that new role, and – going beyond the mere parallelism *concilium deorum*-Senate which must have been implicit in any literary instance of the council of the gods –¹³⁶ we should again turn to Ovid's practice of 'mythologising law'. The Princeps' direct intervention took place most frequently when, as it has been noted, *maiestas* offences seemed to jeopardise his personal

¹³¹ Tac. *Ann.* 13.5 describes Agrippina intent on eavesdropping during a Senate session in the same location. See also Feeney 1991, 199.

¹³² Balsley 2010a, 50 and Thompson 1981, 339. This eventuality must have occurred more often than the scarce records in our sources (e.g. Suet. *Aug.* 29.3) allow.

¹³³ The principle of Rome's so called "ubiquity fiction" entails that, to the purposes of its *ius*, the city moves following the emperor: cf. D. 48.22.18pr. (dubiously attributed to Callistratus), Herod. 1.6.5 (with reference to Commodus), D. 3.2.24 (Ulp. 6 *Ad ed.*). See Marotta 2009, 91ff., referencing Thomas 1996, 9-23 in particular.

¹³⁴ I borrow this phrase from Rimell 2015, though applying it to a different sphere and extending its scope beyond the scholar's literary analysis.

¹³⁵ An outstanding example is offered by the public show of the Twelve Tables. Cicero, in *Flacc.* 57, reproaches those who pronounce seditious speeches in the Forum, where the *curia* emerges as *vindex temeritatis et moderatrix officii*.

¹³⁶ Osgood 2006, 430, fn. 47.

sovereignty.¹³⁷ Threatening the life of the emperor or another magistrate was tantamount to threatening the State itself and, given the correspondence between Jupiter and Augustus, this charge can be applied to Lycaon as well.¹³⁸ Killing a hostage without the emperor's order was furthermore considered a form of damage against State property.¹³⁹ Lastly, even the issued punishment is appropriate to a *maiestas* crime, which entailed exile (Lycaon is thrown out of his house) and the confiscation of any possessions (his dwelling is destroyed). The possibility of a death sentence was also contemplated, which can be associated here with the character's metamorphosis.¹⁴⁰

In Jupiter's speech, *maiestas* emerges as an exclusive possession of the gods, constantly threatened by humankind, to whom Lycaon's story must take on an exemplary value (240-3). The generalised plot denounced by Jupiter¹⁴¹ prefigures a shift in the sphere of this notion in relation to the whole citizenry, the more so given that mankind had been born of the blood of the rebel Giants. Already at the time of Actium, the Gigantomachy represented a term of comparison for the fight between Octavian and Antony.¹⁴² The connection with the violation of *maiestas* is therefore also mythological, since Lycaon attacks the god's integrity just as, in Book 5 of the *Fasti*, this threat is seen coming precisely from the Giants. Moreover, whereas *Maiestas* is presented as the element that grants Jupiter's rule without resort to force, in this instance the risks to which it is exposed immediately trigger the father of the gods' violent reaction.¹⁴³

Despite the correspondences between *Fasti* 5 and the Lycaon episode, in *Metamorphoses* 1 we are confronted with the blatant absence of a real trial, which is

¹³⁷ See Talbert 1984, 477. On the new judicial duties taken on by the Senate under Augustus, *ibid.*, 462.

¹³⁸ The allusion to *crimen maiestatis* is anticipated by the comparison between Lycaon's crime and Caesar's assassination (200f.). Jupiter also mentions the *infamia* he has heard of (211): defamation fell within the scope of *crimen maiestatis*, although the dating of the regulation of this subcategory of offences is still debated. Bauman 1967, 246ff. maintains the existence of a *senatus consultum* of AD 6. Tacitus ascribes to Augustus the initiative to 'treat' the laws on defamation with an 'appearance' of law: *primus Augustus cognitionem de famosis libellis specie legis eius tractavit* (*Ann.* 1.72.4).

¹³⁹ Cf. Ulpian in D. 48.4.1.1.

¹⁴⁰ The punishment was furthermore indicated by the formula *aquae et ignis interdictio* and strikingly the 'sacrifice' of the Molossian hostage is performed by Lycaon by means of *aqua* and *ignis* (228f.). On Lycaon as an exile, note the pun on *exululat* (233 and Ahl 1985, 72).

¹⁴¹ The god claims *in facinus iurasse putes* (241).

¹⁴² On this motif in literature and art, see Habinek 2002. On Ovid's approach to this subject, see Hinds 1992b, 139f.

¹⁴³ Bauman 1967, 212f. observes that *maiestas* was precisely the attribute that made kings Jupiter's equivalent on earth and, in the transition to the Republic, it was passed on to magistrates with a significant shift: its source was no longer identified with Jupiter but with the *populus Romanus*, thus having public *ius* obscure the divine origin of Republican power.

replaced by an account of crime and punishment. Balsley aptly defines “Jupiter’s rhetorically savvy speech” as “a performance of justice in place of a practice of justice”.¹⁴⁴ The presence of a juridical frame therefore serves exclusively to stress its uselessness, and Jupiter’s speech ultimately shows the lack of procedural justice. This culminates in his statement *sic stat sententia* (243), which recalls the decisional proceedings of the Roman Senate, although it is evident that Jupiter is free from the necessity of an organic ‘institutional’ support. Precisely when he should be asking the other gods to express their opinions, the god depreciates – almost incidentally, and unsurprisingly so – the very deliberative power of the council, which stands for a metaphorical subversion of the Senate’s Republican procedures and traditions.¹⁴⁵ The very term *sententia*, not distant here from its use in Tiresias’ episode, implies the three main roles of the father of the gods: he simultaneously expresses a formal decree as judge, a rhetorical technique as prosecutor, and finally a personal opinion, especially if we accept Schiesaro’s framing of the concept as an expression of authority.¹⁴⁶

The episode’s conclusion, however, does not clarify whether Lycaon’s punishment is deemed rightful by Ovid or whether the parallel between Jupiter and Augustus is considered in positive or negative terms. Lycaon’s approach to the pursuit of truth is almost scientific: the use he makes of the verb *experiri* (222) and of the corresponding noun soon after that (225) is not conceptually far from the meaning of *experientia* as used by Ovid in the episode of Cephalus and Procris (7.737), namely as evidence acceptable in court. The character therefore intends to make use of a *discrimen* characterised as *apertum* (222), perhaps as implicitly opposed to the *recessus* where the council chaired by the father of the gods takes place, as well as to his temporary disguise. This attitude of Lycaon’s vaguely matches the abstractive and generalising procedure which can be recognised at the basis of juridical thought, and virtually makes the character immune to any legal consequences of his actions.¹⁴⁷ I suggest that the introduction of the Augustus-Jupiter parallelism early in the poem, however, sets the tone

¹⁴⁴ Balsley 2010a, 57.

¹⁴⁵ *Ibid.*, 58. The closing of the episode is also marked by political tones, since the absence of sacrifices as a consequence of the punishment inflicted by Jupiter confirms the exercise of the gods’ dominion over mankind. This recalls the imperialistic practice of defeating enemies to then turn them into tax-paying subjects, and establishes an analogy between offerings to the gods and the tribute imposed by the Roman State.

¹⁴⁶ Schiesaro 2002, 73 and again *OLD*, s.v. (cf. *supra*, 107f.).

¹⁴⁷ Balsley 2010a, 61f.

for all subsequent occurrences of the arbitrariness of divine law within both the *Metamorphoses* and the *Fasti*, and the very recurrence of the motif vouches for its centrality in Ovid's literary agenda. As Perseus' episode and the other case studies, especially the trial-type scenes, have demonstrated, the legal turning of those examples vouches for a consistent inflection of the human/divine power struggle.

Ovid's audience will have recognised the dynamics of the Augustan constitutional shift behind the narrative devices of Lycaon's episode. Ovid, I argue, indirectly gives us a glimpse of his audience as part of a society within which trust and its opposite act as a response to the mechanisms of juridical *fictio*, granting (or withdrawing) legitimation to Augustus' authority and its 'propagandistic' expressions.¹⁴⁸ This authorial stance, however, does not take on satirical tones. The dichotomy in the internal audience's reaction, highlighted by the correlation *pars... partes* (244f.), stresses the absence of any real debate, as well as the fact that confrontation is reduced to the mere identification of different degrees of acquiescence. Balsley has therefore argued that Ovid engages the Roman audience in his attempt at providing Lycaon, on a narrative level, with the trial he has been denied by Jupiter's conduct, even though – or perhaps especially because – judicial procedures under Augustus had been removed from the sphere of competence of common citizens. Whilst acknowledging that the transition from Republic to Empire drew its legitimation from Republican institutions and traditions, however, she ascribes to Ovid a light-heartedness that I cannot recognise behind these lines.¹⁴⁹

I argue that the interpretative key to this passage is rather to be found in the convergence of the two fictional procedures: just as Augustus had maintained or restored certain procedures and institutions after the civil wars, so too does Ovid retain and re-adapt traditional episodes of Greek mythology for the Augustan audience, while simultaneously 'mythologising' Roman *ius* as his audience knew it. Both myth as an existing and somewhat saturated narrative and traditional notions such as *maiestas* are therefore deceptively 'recodified' in much the same way as Augustus was operating within the constitutional system. The Princeps did not re-interpret Republican practice, but rather inserted it into a new context, emphasizing the aspects which were relevant to

¹⁴⁸ *Ibid.*, 64. This reading becomes even more plausible at this point in the narrative, since Jupiter turns out to have newly taken on his role of 'sovereign' of the gods (cf. *Met.* 1.113-5).

¹⁴⁹ Balsley 2010a, 67.

his rule. Both ‘agendas’ match the identification of *ius* and literature, according to the Law and Literature movement, as “self-justifying, self-explaining and self-authenticating”¹⁵⁰ discourses. It is precisely in light of this interplay that Ovid introduces passages like that of *Maiestas*, showcasing – through his literary treatment of a traditional notion – that the mechanisms of divine justice within myth draw from the same fictional practices as Augustus’ contemporary jurisprudence, as both the poet and the Princeps constantly adapt the notion of justice to their respective literary and political aims.

Leges Novae?

The recurrence of law among the motifs of mythical and cosmological *Kulturentstehung* in Ovid ties in with Augustus’ ideological engagement with the past and previous monarchical archetypes. This aspect will be analysed in this section as a playing field for an appropriation of legal time that also entailed the introduction of new laws and juridical institutes. The most explicit statement of the juridical aspects of the Augustan discourse was formulated by the Princeps himself in *R. Gest. div. Aug. 8.5* (*legibus novis m[er]ito auctore l[at]atis [multa] exempla maiorum exolescentia iam ex nostro [saecul]o red[uxi] et ip[s]e multarum rerum exempla imitanda post[er]is tradidi*),¹⁵¹ from which it clearly emerges that the Princeps intended to articulate the adopted measures as a reinstating of virtues and values of the past to the present day. The new laws were modelled on ancient values, examples, and categories. The ‘historicisation’ of Augustus’ legislation can therefore be framed within the context of his general attempt at disguising the macroscopic innovation of the new imperial order through references to the *exempla maiorum*.¹⁵²

The issue of calendar reforms allows us to take a closer look at Augustus’ interaction with the *leges* ‘non-*novae*’, starting off with the Twelve Tables. The binomial law-past immediately brings them to mind as the foundational document of Roman jurisprudence, which unsurprisingly is also found in poetic contexts.¹⁵³ The sole mention in Ovid’s corpus is in a passage where the poet ascribes to the Decemvirs a reform of the

¹⁵⁰ White 1985, 108; cf. Balsley 2010a, 100.

¹⁵¹ Cf. *supra*, 9, fn. 41.

¹⁵² Cf. Milnor 2007, 10.

¹⁵³ For a complete review, see Romano 2005. See also *Id.* 2010, 12f. on the centrality of the Decemviral norms.

calendar (*Fast.* 2.47-54).¹⁵⁴ Ovid shows notable antiquarian knowledge, presenting “un caso esemplare di poesia etiologica”,¹⁵⁵ for which a parallel in prose can be found in the attribution to the Decemvirs, by the second annalist generation, of the debated introduction of the *mensis intercalaris* (“leap month”).¹⁵⁶ The Decemvirs are designated through the phrase *bis quini viri* (54). Here Ovid, like Horace,¹⁵⁷ echoes the linguistic virtuosity of normative language and epigraphs,¹⁵⁸ as he does when alluding to his own public posts.¹⁵⁹ The overall terminology matches the discussion on the calendar at the beginning of Book 1,¹⁶⁰ thus confirming the programmatic relevance of the political appropriation of calendar (read: legal) time within Ovid’s development of the theme of justice throughout his corpus.

In light of the centrality of the theme in the *Fasti*, Feeney has read the individual presentations of the three key characters related to the institution and the reforms of the calendar system, namely Romulus, Numa and Julius Caesar, as well as Augustus as Caesar’s political ‘appendix’, not in terms of contrast among different ‘styles’ and models of power, but rather in relation to essential milestones in the development of official forms of control on calendar time, which characterised Rome since its origins.¹⁶¹ The Decemviral reform (2.53f.) and that of 153 BC (3.147f.) are interposed in this three-step path. The *Fasti* emerges from this framework as an ambiguous representation of Augustus’ own appropriation of legal time, which is presented by Ovid as the natural, yet

¹⁵⁴ On Ovid’s problematic claim that Janus’ month was originally the first of the year and February the last, and that the Decemvirs subsequently reunited them by removing the ten-month gap that separated them (a bizarre account neither supported nor recorded by ancient authors), see Hinds 1992b, 123, fn. 8, Frazer *ad locum*, and D’Ippolito 1998, 166 ff., who focuses in particular on the supposed attribution to the Decemvirs of the publication of a *feriale*. More recent contributions in Pasco-Pranger 2006, 112-5 and Robinson 2011, 85-91, with further bibliography.

¹⁵⁵ Romano 2005, 468.

¹⁵⁶ The source is Macr. *Sat.* 1.13.21 (= XII TAB. 11.2. Ricc.), which refers in particular to Lucius Cassius Hemina and Sempronius Tudidanus. The exact implications of the reform are unclear, although it can be assumed that, in a time of considerable political instability, significant innovations were introduced in the calendar: cf. Robinson 2011 *ad locum*, with further bibliography.

¹⁵⁷ In *Epist.* 2.1.21, Horace uses the phrase *bis quinque viri*. Robinson 2011, 91 explains Ovid’s elliptical expression exclusively on the grounds of metrical convenience.

¹⁵⁸ See a late-antique instance in *ILS* III², 8987, where the Decemviral norms are defined as *bis sex scripta*, as well as contemporary literary occurrences in Ausonius (*Griphus* 15.61 Green), Prudentius (*C. Symm.* 2.463 f.) and Sidonius Apollinaris (*Carm.* 23.447).

¹⁵⁹ *Supra*, 16.

¹⁶⁰ *Supra*, 144f.

¹⁶¹ Feeney 1992, 10ff. On Caesar’s reform, see *Fast.* 1.85f. and 2.683f. The evolution path is particularly evident in Book 2, where Ovid successively records Romulus’ (11f.), Numa’s and eventually Caesar’s (155ff.) interventions.

different, continuation of Caesar's renovation of the calendar, whilst the traditions linked to the calendar as well as the references to Rome's political and religious spaces offer virtually unlimited combinations to Ovid's allusive discourse. Going beyond Feeney's analysis, I will show that the cultural and programmatic agenda of the *Fasti* – inasmuch as the poem was conceived in a cultural climate affected, among other factors, by the introduction of *leges novae* – distances itself from the “narrowness of Romulus' Rome” (as applied specifically to the administration of justice in *Fast.* 1.207f.), and looks up instead to Numa's model.¹⁶² The latter, however, proves problematic on several levels, especially in relation to the systematic re-emergence of divine ‘justice’ throughout the poem.

Within the framework of this dialectic with past rulers revolving around their managing public time, in 3.277-84 Numa, whose relevance in Ovid's work I have already flagged in relation to the *Metamorphoses*,¹⁶³ is presented as a civiliser and reformer of the bellicose Roman society of the archaic era, counselled by his spouse Egeria. His contribution consists in the introduction of laws and religious cults. The description of Numa's reign follows, albeit not immediately, that of Romulean Rome (179-96),¹⁶⁴ thus conveying the idea of a diachronic development that acts as a parallel to the synchronic set-up of the calendar scheme. According to a familiar motif,¹⁶⁵ Ovid absorbs the law within the typical motifs of *Kulturentstehung*, once again ‘interrogating’ the mythical past on the nature of justice. Lines 277f. expose the founding principle of the reforms introduced by the king: Romulus' successor deemed it appropriate to ‘civilise’ the excessively bellicose people he inherited from his predecessor by introducing the respect of law and fear of gods.¹⁶⁶ Numa, however, is merely the logical subject of *placuit* (278),

¹⁶² I borrow (translating and paraphrasing) the quoted expression from Labate 2003, 96.

¹⁶³ *Supra*, 117f. and 126, fn. 236.

¹⁶⁴ That section was in turn preceded by Romulus and Remus' birth (11-58), and by the events related to the foundation of Rome (59-70).

¹⁶⁵ In the same book, see ll. 727-44 (about Liber). On the recurrence of this motif within the poem, see Labate 2003, 91f.

¹⁶⁶ The idea is recorded elsewhere, in particular in Liv. 1.19-21, Dion. Hal. 2.62.4f., Plut. *Num.* 820, as well as Verg. *Aen.* 6.810ff. and Cic. *Rep.* 2.26, 5.3. Those authors, however, do not mention the overcoming of the ‘law of the strongest’ (*ne firmior omnia posset*, 279), or at least the idea is not formulated as explicitly in those passages.

perhaps implicitly backed by his wife's presence, and the *ordo verborum* of *iure deumque metu* in the same line furthermore shows a *hysteron proteron*.¹⁶⁷

The following distich (279f.) focuses on the instauration of law and that of religious cults, with the phrase *leges dare* already used in the *Metamorphoses* in Calliope's words about Ceres and in Myrrha's monologue.¹⁶⁸ After briefly outlining Numa's objectives and the enacting of his project, Ovid equally briefly describes its practical benefits (*Fast.* 3.281f.), which insist on the theme of law – whereas, mirroring the parallelism established previously, the following distich focuses on worship practices. The juridical and religious reforms inspired by Egeria dictate the premise for a metamorphosis of society, whose civilisation ensues as a spontaneous effect. In particular, as noted by Barchiesi, the nexus *cum cive* alludes to the civil wars.¹⁶⁹ Line 281 is dominated by the term *aequum*, which occurs in other Ovidian *loci* in a similar conceptual opposition to the one presented here in relation to *armis*.¹⁷⁰ As for line 282, the appearance of the feeling of shame represents a fundamental step in the process of civilisation,¹⁷¹ here expressed through the use of the verb *pudet*, an indefinite mode which confirms the intentionally impersonal set-up of the passage.¹⁷²

It is relevant to note that part of the tradition ascribes to this sovereign the introduction of *ius divinum* only.¹⁷³ In the *Fasti*, however, Numa's inclination to a 'creative' and active relationship with the sphere of divinity lacks any connotations of

¹⁶⁷ The opposite sequence can be found in Livy and Plutarch, as quoted in the previous footnote. Cf. Dion. Hal. 2.62.5.

¹⁶⁸ Cf. *Met.* 5.343 and 10.329f. respectively. See also parallels in *Trist.* 2.488, *Verg. Aen.* 1.507, 4.213, 8.322, *Prop.* 4.11.47, and *Liv.* 31.19.6. In the passage under scrutiny, the close succession of the terms *ius* and *lex* underscores their correlation, confirmed by statements like *ius generale est, sed lex iuris est species* in *Serv. Ad Aen.* 1.507. *Leges Numae* are explicitly mentioned e.g. in *Cic. Leg.* 2.23, *Fest.* p. 190 L., *Serv. Ad Aen.* 7.763, and *Serv. auct. Ad ecl.* 4.43.

¹⁶⁹ Barchiesi 1994, 164. On the 'paradox' of a war among fellow citizens, cf. also *Fast.* 5.467f. (where Remus is the object of *perdidit*): *manus hunc temeraria civis/ perdidit*. In 3.282 the phrase *cum cive* occupies a prominent position, in hyperbaton with *conseruisse*.

¹⁷⁰ Cf. *Met.* 6.678 (*iustitia dubium validisne potentior armis*) and *Trist.* 5.7.47f. (*non metuunt leges, sed cedit viribus aequum,/ victaque pugnaci iura sub ense iacent*).

¹⁷¹ As proven e.g. by a comparison with 1.251: *proque metu populum sine vi pudor ipse regebat*. Besides Ovid, cf. *Hor. Carm.* 1.35.33-8.

¹⁷² At *Il.* 283f., the subject, however present, is meaningfully expressed by the indefinite *aliquis*.

¹⁷³ Cf. Quadri 1964, 288f., who claims that in *Fasti* 3 laws emerge as mitigating elements to the absolutism of divine law; Monella 2008, 90. Relevant ancient sources are *Enn. Ann.* ll. 114f. *Sk.* and *Liv.* 1.19.1, 1.42.4 (cf. also Kroll in *RE*, s.v. *Numa*). An allusion to sacral law can be found also in *Cic. Rep.* 5.3 where, as flagged by Romano 2010, 22, fn. 60, Numa's name is not merely linked to the introduction of *ius* and *leges*, but also to their being put into writing, probably with reference to the collections of *leges regiae* circulating in Rome in the late Republic.

deception and falsification.¹⁷⁴ We should bear in mind that throughout Rome's archaic era the sphere of law and that of religion remained strictly linked. It was precisely Numa who was traditionally credited with the institution of the sacerdotal college of Pontiffs, who for a long time were the exclusive holders of *ius*.¹⁷⁵ Numa's *exemplum* reaffirms the centrality of the divine element in the discourse on justice, which I have shown is a programmatic one in Ovid's corpus. The political figures linked to the reforms of the calendar and to the inception of law are all introduced after the recollection of the passage from primigenial chaos to civil society. Both in *Metamorphoses* 1 (within the review of the age of iron) and in *Fasti* 1 (as part of Janus' contribution), those sequences end with the flight of Justice (personified as the *Virgo Astraea/Iustitia*) from Earth.¹⁷⁶ Divine authority is described by the poet in legal terms since its inception, and the human one appears to be not only diachronically, but also hierarchically, subordinate to it. It is therefore unsurprising that Ovid does not confine Numa's action to *ius divinum* only, nor that divine authority is described by the poet in legal terms.

The proto-historical dimension in Numa's episode in *Fasti* 3 is not substantially dissimilar to Ovid's account of the inception of law in the *Metamorphoses* and further contributes to the theme of the 'nature of justice'.¹⁷⁷ The introduction of laws puts an end to the 'law of the strongest', thus bringing about a contradiction that can be compared to the one posed by the comparison between Romulus and Augustus in *Fasti* 2 (*vis tibi grata fuit, florent sub Caesare leges*, 141), as from l. 133 the poet draws a parallel between the two rulers, to the detriment of the former. Having praised the bestowing of the title of *pater patriae*, Ovid essentially formulates an encomium of the Princeps, first comparing him to Jupiter and subsequently to the founder-hero. Despite sharing the same titles, the two rulers are not compared elsewhere in contemporary literature, whereas Ovid fully

¹⁷⁴ Several sources insinuated that Numa had totally invented Egeria's figure and the miraculous events that legitimised his role as sovereign and legislator. See Liv. 1.19.5 and Dion. Hal. 2.60f, as well as the point of view expressed in Plut. *Num.* 4.12 and Servius *Ad Aen.* 7.763, who maintain that those falsifications were instrumental to the king's gaining people's support to the reforms he intended to introduce throughout his reign.

¹⁷⁵ On the institution of the college, cf. Cic. *Rep.* 2.14.26 and Liv. 1.20.1-7. On the 'sapiential' phase of Rome's juridical culture, cf. Schiavone 2005, 57-64, as well as Bretone 2006, 107-17. On the argument that the Decemviral legislation was brought forward to counteract sacerdotal elitism, see D'Ippolito 1998, 166ff.

¹⁷⁶ *Met.* 1.149f. and *Fast.* 1.249f. respectively. On the figure of Janus in relation to the criticism towards Augustus' handling of the political and legal sphere within the general context of *Fasti* 1, see Cogitore 2003.

¹⁷⁷ Cf. again *supra*, 71ff.

exploits the ambiguity of the traditional assessment of the figure of Romulus to contrast it with the Augustan motifs centred on *virtus*, *clementia* and *pietas*.¹⁷⁸ The inherent duplicity plays upon a ‘genuine’ exaltation of the Princeps compared to a problematic point of reference on the one hand,¹⁷⁹ and a surreptitious assimilation between two ‘negative’ sovereigns on the other hand, whereas the poet is evidently not implying a parallelism between two brilliant statesmen articulated exclusively in positive terms. The legalistic connotations can be appreciated in particular at 139-43, a passage which opens with a comparison between the rape of the Sabine women and Augustus’ social legislation. The former is voided of any moral complexity and therefore of any mitigating circumstances, brushed off as it is with just two words.¹⁸⁰ The opposing allusion to the marriage laws, with its impersonal infinitive clause to phrase the coercion implied by the verb *iubere*, betrays the ‘Romulean’ contradiction offered by Augustus having married a pregnant Livia.¹⁸¹ The following line (140) references the place reserved by Romulus to the reception of fugitives and criminals to increase the city population,¹⁸² whereas Augustus’ suppression of *nefas* might imply, in addition to the marriage laws, a reference to his fight against banditry.¹⁸³ Line 141 is crucial in bringing about the contrast between *vis* and *leges*, according to a traditional opposition in Roman political discourse between tyranny and *libertas*. Surprisingly enough, *libertas* is frequently associated with *leges*:¹⁸⁴ Ovid therefore tends to ignore the tradition that attributed to Romulus the introduction of

¹⁷⁸ See Herbert-Brown 1994, 51f.

¹⁷⁹ Suet. *Aug.* 7; an adverse tradition saw in the founder a fratricide and a tyrant, not divinised but murdered by the members of the Senate (cf. Hinds 1992b). Robinson 2011, 150 stresses that the Princeps’ very choice of the title of Augustus over that of novel Romulus had shown that direct comparisons might have been dangerous, although veiled hints and parallelisms were well accepted. Citroni 2015, 618 unconvincingly labels the reference to Augustan *leges* in the *σύγκρισις* as ‘impersonal’.

¹⁸⁰ In *Ars* 1.101-34, the episode is introduced as the archetype of ‘woman hunting’ taking place at the theatre, since then a dangerous place for attractive women (134), as Ovid mocks the primitive character of archaic Rome and enthusiastically praises Romulus’ act. By transferring the episode from the traditional setting of chariot races, the poet suggests that the moral censorship applied to theatre goes against Rome’s history of the origins. Thanks to the founder’s initiative, and despite the sex segregation (with a seat arrangement that recalls the one regulated by Augustus), the archaic ethics differs from the Augustan one, as it does not show any reverence towards tradition. Still the Sabine women become *genialis praeda* (125), with the option of a legitimate marriage also highlighted by Liv. 1.9.14. The episode is further recalled at *Fast.* 3.195-202, and framed by Mars as the result of the indications provided to his son to pursue a marriage policy based on the force of arms.

¹⁸¹ The ambiguity is reinforced by the fact that, as a member of the *gens Claudia*, Livia could be considered a ‘Sabine’ woman (Suet. *Tib.* 1).

¹⁸² Liv. 1.8.5f. and again Ovid in *Fast.* 3.429-34.

¹⁸³ *R. Gest. div. Aug.* 25, as well as Suet. *Aug.* 32.

¹⁸⁴ Cf. Cic. *Off.* 3.83, 2.24; Sen. *Cons. Marc.* 17.5.

good norms.¹⁸⁵ The king will be acquitted from the fratricide charge (143) later in the poem,¹⁸⁶ although the impression remains that the first portrait, the ‘criminal’ one, is the more befitting. The role of legislator (and keeper of peace) is rather associated with Numa, and the key ambiguity lies in the fact that it is unclear whether Augustus is following in Numa’s steps or rather, *e contrario*, Romulus’, and whether the Princeps is the champion of new laws he himself claims to be in the *Res Gestae*, or rather inextricably linked to the *vis* that had marked his accession and the erosion of *libertas* consummated during his rule and brought to the fore by the limitations to free speech.

Numa’s reign therefore emerges from *Fast.* 3.277-84 as a (possibly problematic) model of *Einzelherrschaft*, alternative to Romulus’, for the Augustan Principate. Hinds has included the sequence on Numa in the *Fasti* in his argument that several *loci* in the poem contribute to outlining an image of Romulus and Romulean Rome significantly conflicting with Augustan rhetoric.¹⁸⁷ The scholar argues that any revival of such association by an Augustan poet, be it encomiastic or ironic, represents an obtrusion into a discourse which was absolutely central to contemporary politics. By turning the first king into a negative paradigm, the poet questions the very concept of old-style *Romanitas* that the Princeps had carefully reclaimed for himself. By opposing Numa’s ideological prototype, Ovid might be implying that the ‘antiquarian monopoly’ appropriated by Augustan propaganda could be questioned in light of the fact that Rome’s proto-history had to offer more than one model of real civism.¹⁸⁸ The issue is sharpened by the poet’s exposing the ultimate irreconcilability of the two ruling styles of Romulus’ and Numa’s, which implicitly denies the inclusive intent which the Augustan restoration had tried to

¹⁸⁵ Dion. Hal. 2.18.1; 2.26.1.

¹⁸⁶ Romulus’ problematic rehabilitation is to be found at *Fast.* 4.835-56 and 5.457-74 (cf. Hinds 1992b, 142-8). At 2.143 we can observe the use of the technical *incusare* (“to lodge a formal complaint against, accuse”, *OLD*, s.v. 2b) and *venia* (“entitlement to indulgence, justification; a mitigating circumstance”, *OLD*, s.v. 2b-c), also used in everyday vocabulary. *Dare veniam (culpae)* also occurs at *Fast.* 4.755 in the treatment of the Parilia festivals, in particular in the text of the prayer to be addressed to the goddess Pales during the sacrifice in her honour, at the beginning of the passage culminating in the tale of the foundation and the death of Remus (807ff.).

¹⁸⁷ Hinds 1992b, 118ff. in particular, as well as Monella 2008. On Caesar’s and subsequently Augustus’ exploitation of Romulean imagery, see Hinds 1992b, 127, fn. 15, with further bibliography.

¹⁸⁸ *Ibid.*, 129. Hinds completely overlooks the implications of Numa’s introduction of the law, only mentioning his inclination to peace, religious *doctrina* and astronomy. He insists on the legislative aspect only in relation to the *σύγκρισις* between Augustus and Romulus.

promote through the extension of pacifying and civilising traits to the Romulean model.¹⁸⁹ Augustus was keen to be associated to Romulus as a champion of religion, a builder and restorer of temples, and an innovator of the calendar,¹⁹⁰ which confirms that Ovid's choice to give emphasis to Numa's introduction of law is certainly programmatic.¹⁹¹

The parallelism Augustus/Numa takes on further nuances in Book 6 (257-60), where the king, in welcoming Vesta's flame to her temple, is described as *rex placidus* (259). The same adjective had already been associated with Augustus at *Fast.* 6.92, with reference to *concordia* as a virtue of the true *placidus dux*.¹⁹² The phrase occurs a third time within the book to characterise Servius Tullius (582), whose death is presented as the outcome of a conflict between *gener* and *socer* which has been the object of scholarly interest.

Servius' daughter Tullia, after killing her husband and her sister, induces the future Tarquinius Superbus, her brother-in-law and new partner, to usurp her father's throne. Surprisingly enough, she does so by claiming *regia res scelus est* (595).¹⁹³ After wishing to stain her own hands with her father's blood, she personally directs her chariot's wheels towards the face of her murdered parent. Her ruthlessness certainly comes across as excessive when compared to the dynamics of the Julio-Claudian power struggles, although it is tempting to read the distich in which Servius' statue asks to be veiled so he does not have to see Tullia's face again (615f.) as an allusion to Augustus' relegation of his own daughter Julia. The parallelism with the dynastic tensions within the *domus Augusta* becomes even more plausible if we note that Ovid, in making Servius Tullius' daughter the instigator of the plot, significantly diverges from Livy's version (Liv. 1.48). Unlike the evocation of the quiet harmony of Numa's Rome – where the wise king rules

¹⁸⁹ For a 'conciliatory' portrait of Romulus, see Horace's epistle to Augustus (Hor. *Epist.* 2.1.5ff.) and especially Dion. Hal. 2.18, where the four virtues of a statesman ascribed to Romulus prefigure those formally attributed to Augustus through the shield dedicated by the Senate and the people in 27 BC.

¹⁹⁰ Cf. *R. Gest. div. Aug.* 10f., 19-22, 24. Those dictates are formally adhered to by Ovid, for instance through the coexistence of the component of the warrior force shown by the Princeps in defeating his step-father's assassins (3.710, although on the issues underlying this line see Hinds 1992b, 141) and the mention of the dedication of the Ara Pacis (1.709-22).

¹⁹¹ By contrast, Hinds' judgement is ultimately suspended (Hinds 1992b, 149), which clashes with the convincing analysis of each critical issue implicit in Augustus' adherence to the archaic ruling models embodied by Romulus and Numa.

¹⁹² *Placidus* also occurs at *Fast.* 1.17 (Germanicus) and 2.17 (Augustus again), as well as *Pont.* 1.2.103 and 2.2.115.

¹⁹³ The statement is moreover preceded by her exhortation to her brother-in-law to demand, through the usurpation of her father's throne, her *dotis opes*.

his people with solid integrity – the archaic cameo centred on Servius is therefore perturbed by allusions to contemporary reality.¹⁹⁴ The introduction of a further negative paradigm drawn from the archaic past in a passage with ‘Augustan’ undertones confirms the centrality to Ovid’s work of the question of Augustus’ self-casting as a promoter of *leges novae*.

The episode of the *ancile* (*Fast.* 3.285-392), however, further complicates the parallelism Numa/Augustus. In determining a focus shift from human rulers to divine power, it implicitly sheds light on how the Princeps’ *leges novae* in fact brought with them restrictions to freedom of speech.¹⁹⁵ Numa has to face a supernatural disaster in the form of incessant rain and thunderbolts, however he is reassured by Egeria who reveals the existence of an atonement ritual (289f.), which would result in the fatal *ancile* falling from heaven. The king then consults the rural *numina* Faunus and Picus. After getting them drunk, Numa ties up the two divinities who have fallen asleep, although he does so (surprisingly enough) while imploring forgiveness for his audacity (309f.).

Littlewood argues that, in the second part of the episode, Ovid introduces the issue of the restrictions imposed on freedom of expression, which, as already shown, is well-represented in the *Fasti*. The poet here ambiguously alters his hypotext to the point that he associates with Jupiter, and no longer with Numa, the characteristics and power of Augustus.¹⁹⁶ The king should perform the resolute atonement ritual, however it is not *fas* for the two rural gods to describe it. Only the father of the gods can do so, since the faculties of the two prophetic deities are limited to their own spheres of influence. As for their subsequent actions, *scire nefas homini*, as explicitly stated at l. 325, where a first-

¹⁹⁴ Barchiesi 1994, 216ff. notes that the veil that separates Servius Tullius by his mistress Fortuna makes him an “esempio di trasgressione” (6.571ff.), although it turns him into a “giudice della moralità” when it shields him from his daughter. Herbert-Brown 1994, 145-56 focuses instead on the contrast between Tullia, sower of family discord, and the virtuous Livia, whose temple to Concordia is celebrated in the following passage, whereas the figure of Julia the Elder dangerously overlaps with Servius’ daughter. The similarities between this episode and the political significance of the scandals in Augustus’ family are also discussed in Newlands 1995, 227f.

¹⁹⁵ Littlewood 2002, 178 stresses that, in portraying Numa in his canonical role as founder of law and religion in Rome, Ovid closely follows Vergil and Livy, who present an analogous “iconographic portrait” of the character; *contra* Barchiesi 1994, 163-5, who opposes Ovid’s rendition of Numa to the conciliation between the two ruling models arguably attempted by Vergil. Littlewood 2002, 182ff. maintains an association between the *ancile* fallen down from heaven to Numa as *pignus imperii* and Aeneas’ shield in Vergil, as well as, implicitly, the Princeps’ *clipeus virtutis*. The poet would thus insert Numa into the same ideal line that linked Aeneas to Augustus.

¹⁹⁶ Littlewood 2002, 190.

person statement by the poet specifies that Ovid will also tell as much of the story as he is allowed to. Showing scarce helpfulness, Jupiter tries to confuse his message by means of conundrums (*ambage remota*, 337). Numa, however, manages to identify the request of a human sacrifice through a masterful manipulation of the dialogue, which eventually makes the god smile (343). The *tarda... difficilisque fides* (350) attributed to the Romans who await, alongside their king, the appearance of Jupiter's token, might furthermore allude to the tradition recording Numa as the founder of a temple to *Dius Fidius*, an ancient divinity who apparently safeguarded the keeping of oaths.¹⁹⁷

Across the *Fasti*, law and justice conceived in absolute terms manifest themselves first and foremost as the province of the gods, the holders of *posse nocere*, such as Janus who states *ius vertendi cardinis omne meum est* (1.120), or Robigo who is implored to spare the harvests and at most to make war weapons go rusty (4.922).¹⁹⁸ The 'natural' consequences of an act of violence are sporadically mitigated by a subsequent legal adjustment, as in the episode of Flora, who is first raped by and consequently married to Zephyrus (5.202-6). In a similar vein, the god Portunus holds *ius omne* on harbours (Carmentis predicts *in portus nato ius erit omne tuo*, 6.546), and Pluto sees his *iura* made *minora* by Aesculapius (6.758). In the macrocosm of the *Fasti*, *ius* has never completely obliterated the religious character assumed since its mythic origins, when it used to coincide with the gods' 'social' might, an aspect that had already fully emerged from both Ovid's elegiac production and from the *Metamorphoses*. In the *ancile* episode, Justice once again proves to be the province of a divine will which also exercises control over what is *fas*, holding a superior stance which resembles Augustus' in his introducing *leges novae*. The legal grounds of his new rule are not so much based on the paradigms of the past, as they are on the superior model of divine authority. As well as adding a further layer of complexity to the Princeps' association with Numa, the passage reiterates an

¹⁹⁷ As recorded by Liv. 1.21.4, Dion. Hal. 2.75.3, Plut. *Num.* 16.1, and Flor. *Epit.* 1.2.3. Cf. Littlewood 2002, 192.

¹⁹⁸ On the ideological implications of this episode in relation to the *pax Augusta*, see Palmer 2018. The *flamen Quirinalis*' plea that Robigo harm weapons instead of crops in fact exposes the *pax*'s fragility, since the *Robigalia* stand out as a "blight" in a month full of imperial anniversaries as recorded in the *Fasti Praenestini*. The *flamen*, whose involvement in the *Robigalia* is attested only in Ovid, was the perfect figure to give voice to such an unsettling message, since Quirinus' identity is complicated by his assimilation not only to Mars but also to Romulus, which supports Hinds' arguing for a subversive reading of Ovid's comparison of Romulus and Augustus in the *Fasti* (see *supra*, 169f.). Furthermore, the *flamen Quirinalis* was under the authority of the *Pontifex Maximus*, a role that Augustus had claimed for himself.

aspect of Augustus' characterisation that has been proven as a central one to Ovid's corpus.

Public Law and Rituals

The Roman calendar also gives Ovid the chance to reflect on Augustus' holding of public posts and honours against the background of his many legal and political dissimulations, while also capturing Roman juridical morality in its historical evolution. The figure of the Princeps appears again to be linked to the sphere of public law in Book 6, in a passage which contains an implicit hint to the fact that Augustus, despite having associated his name with the well-known legislation on moral standards, never formally held the post of *censor*.¹⁹⁹ The apostrophe to the future generations of Romans (639) sets the moralistic tone of the distichs to follow, which focus on Augustus' refusal to benefit from the corrupt bequest of Publius Vedius Pollio. A member of the *equites*, he had bequeathed his immense house on the Esquiline to his old-time friend Augustus; his lifestyle, however, had proven incompatible with a regime which promoted the value of frugality.²⁰⁰ Pollio must have expressed his wish to have a public monument built in his name, and the *porticus Liviae* seems to have fulfilled this desire.²⁰¹ Ovid specifies that the huge house which used to occupy the space subsequently taken up by the *porticus Liviae* was demolished not because of a charge of *crimen regni*, but as a monument to an eccentric lifestyle. Augustus himself funded the works of demolition and reconstruction.

The implicit contrast between the public *porticus* and the private *domus* is stressed by the word order at l. 640 (*porticus, immensae tecta fuere domus*), followed by a focus on the *luxuria* and hubristic dimensions of the house, which the poet goes as far as to call *urbis opus* (641). The reference to *crimen regni* (643) recalls the previous example of Marcus Manlius Capitolinus, whose house on the Palatine was destroyed after he had been sentenced to death in 384 BC for instigating the *plebs* to rebellion.²⁰² Vedius Pollio's crime is rather to be identified in the *luxuria* manifested precisely in the opulence of his

¹⁹⁹ As recorded by Suet. *Aug.* 27.11.

²⁰⁰ Due to Pollio's flamboyant extravagance and notorious cruelty (CD 54.23.1-4), the friendship must have caused embarrassment to Augustus even before Pollio's death (15 BC).

²⁰¹ CD 54.23.6. It was in keeping with Augustan policies that the *porticus* was dedicated by a representative of the imperial *domus*.

²⁰² Cf. *Fast.* 6.187 and *Liv.* 6.11.7.

house. Ovid therefore seems to be emphasising the *ὑβρις* that destroyed in similar fashion both the reputation of the Republican hero and the monument to the wealth of the *eques*.

The focus is fully on Augustus and on the use he made of the inheritance. The legacy of an estate in such a prominent location in fact gave the Princeps the opportunity to build another dynastic monument, which ‘generously’ offered the people of Rome the chance to enjoy a new public amenity of some symbolic value.²⁰³ Augustus displayed the virtues of a model censor since, through the same project, he cancelled the emblem of Pollio’s sumptuousness as well as providing a building destined to public fruition. The Princeps therefore ideally linked himself back to the deeds of the first ‘founder’ of temples, Servius, mentioned right before in the text.²⁰⁴ Even though this kind of *censura* has little to do with Servius’ *census*, namely the military restructuring aimed at endowing the Roman State with a model army, the association with archaic monarchical models, as we have seen, is always a programmatic one. Furthermore, Augustus’ censorial activity anticipates the Quinquatrus Minores of the 13th June, a festival which, as Ovid recalls, commemorates the protest set up by the Urbs’ flautists and resulting in their voluntary exile in Tibur. According to Livy’s version, that was in fact their way of expressing their opposition to the dispositions of a strict censor, Appius Claudius Caecus.²⁰⁵

Ovid’s commentary on the Princeps’ behaviour (*Fast.* 6.647f.) is as on point as it is emblematic. Real ‘censorship’ is exercised when the holder of such power is the first to be subject to his own decrees. The choice of reading *iudex* (648), a *lectio* reported by codex U and accepted by Bömer, is convincing as Ovid here focuses on the conduct of a *de facto*, and rather exceptional, *censor* like Augustus.²⁰⁶ Despite not officially holding the office, on this occasion he had been called to *judge* an eccentricity, as it must have happened rather frequently in the new order of the Principate. Ovid’s treatment of the Princeps’ stint in the office of *censura* reinforces my argument that the poet’s overall insistence on Augustus’ political and juridical dissimulations often goes hand in hand

²⁰³ The project matches the later appropriation by the Flavians of the area of the *Domus Aurea* to build *thermae* and an amphitheatre. They thus juxtaposed their renewed spirit of service to the unwholesome *luxuria* of the last representative of the Julio-Claudians.

²⁰⁴ Cf. *Fast.* 6.479f. (temple of Mater Matuta) and 6.569-636 (temple of Fortuna), as well as Dion. Hal. 4.27.7.

²⁰⁵ *Fast.* 6.649-92.

²⁰⁶ The reading *vindex*, reported by several less authoritative manuscripts, refers to the sense of correcting some sort of social injustice (cf. *OLD*, s.v. 3) and is preferred by Alton-Wormell-Courtney as it would allude to the demolition disposed by Augustus in order to build the *porticus* to the people’s benefit.

with his clever exploitation of “the dramatic possibilities of ritual”.²⁰⁷ Not unlike the *Metamorphoses*, the content of the *Fasti*, while following the succession of festivities and recurrences, allows the poet to go well beyond the use of stylistic elements and formalisations which were proper to the *legis actiones*, even though that method is also well attested in the *Fasti*.²⁰⁸

Another significant passage in terms of Augustus’ role as guarantor of the laws is Carmentis’ prophecy in *Fasti* 1. Further to his exploring existing traditions, in order to make sense of the contemporary political climate Ovid also resorts to the tool of prophecies, in a constant dialectic between the force of past tradition and the looming Augustan future. The key prophetic statement is entrusted to the following words in Carmentis’ mouth: *fallor, an hi fient ingentia moenia colles/ iuraque ab hac terra cetera terra petet?* (515f.). Carmentis was not wrong: her prophecy would have proven to be correct,²⁰⁹ and the *Augusti* are significantly ascribed the *patriae tutela* (531). Carmentis is a fully ‘Augustan’ figure in her being a prophetic (and therefore Apollonian) deity, as well as one who oversees childbirths. Moreover, she accompanies her son Evander in an exile which is not due to a crime of his, but to an offended deity (*offenso deo*, 482), in circumstances that seem to match Ovid’s. This characterisation paves the way for the direct introduction of Augustus when, in relation to the Ides (587ff.), the bestowing of the title of Augustus (590) acknowledges his sharing a name with Jupiter (609).²¹⁰ Just as Augustus’ *patriae tutela* has been acknowledged, however, the figure of Carmentis once again gives Ovid the chance to blur the distinctions between right and wrong, Augustan and ‘anti-Augustan’: in the subsequent passage on the *Carmentalia* (621ff.), he describes how the Roman matrons reacted to the removal of their rights of carriage through the *lex Oppia* (215 BC) by refusing to give birth and resorting to abortion, until the reinstatement

²⁰⁷ Kenney 1969, 256; cf. *supra*, 21.

²⁰⁸ See e.g. 4.89f. (and Bömer 1958 *ad loc.*): *Aprilem (...)/ quem Venus iniecta vindicat alma manu*. The use of singular *manus* is common in legal texts (*ThLL* VII I.1613.67-9), whereas in Ovid it seems only in part determined by metric convenience.

²⁰⁹ On the idea of Rome dispensing laws to the whole world, cf. *Verg. Aen.* 4.231, 6.851; *Hor. Carm.* 3.3.43ff.; *Prop.* 4.4.11; *Man.* 3.24f. In passages like *Trist.* 5.10.43f. (*adde quod iniustum rigido ius dicitur ense,/ dantur et in medio uulnera saepe foro*), Ovid evidently opposes the Roman people’s perpetual dispensing of laws and the insisted state of ἀνομία in his descriptions of Tomis, according to an “ubiquity fiction” operating *e contrario*: it is the physical absence of the Princeps which determines the lack of his legal control over the Black Sea population (McGowan 2009, 135).

²¹⁰ This ‘Augustan’ section is further expanded in the subsequent lines with the ideologically charged temple of Concordia (637f.), an invocation to Tellus and Ceres which recalls the atmosphere of the myth of Ages (671ff.), and finally the inauguration of the Ara Pacis (709ff.).

of those rights in 195 BC. Putting forward a version of the story that largely and implausibly diverges from Livy's,²¹¹ Ovid takes on his own problematic censorial stance in reprimanding the *matronae* for their actions (623f.), while also implicitly criticising the violent consequences of the legal impositions of the ruling classes (*eripitur*, 621; *corripuisse*, 625).

The poet, not unlike the Prince, puts forward his censorial point of view, although he does so once again to ambiguously suggest a different version of the truth. The fatidic flavour of the first book of the *Fasti* programmatically matches the prophetic atmosphere of *Metamorphoses* 15 through Helenus' prophecy on the divinisation of Caesar (15.439-49), Venus' trying to oppose the Parcae's *ferrea decreta* (781) regarding Caesar's assassination (760ff.), and Jupiter's response in the form of a prophecy (15.807ff.) including the foretelling of Augustus' catasterism following Caesar's. Augustus, Jupiter claims, *ad civilia vertet/ iura suum legesque ferret iustissimus auctor* (832f.), although Ovid's audience will have read in the mention of Tiberius as the son born from Augustus' wife (836) an allusion to the Princeps' failure to comply with his own childbirth policies. After making the Augustus-Jupiter analogy explicit (858-60), the poem ends on the note of *Iovis ira* (871) and Ovid's antidote granted by the certainty of poetic fame. In light of both prophecies, in the end it is clearly the instance of Augustus-Jupiter to prevail, at least on a political and juridical level, over the contrasting censorial representations of a Princeps who ostensibly refuses official legal posts, and a poet who consistently – though ambiguously and indirectly – questions the legitimacy of Augustus' legal claims. Already in the *Metamorphoses* and the *Fasti*, Ovid anticipates an image of the Princeps that mirrors the conflicting representation emerging from his exile poetry.

Ovid's approach to the legal shows both an evolution and a change when taking the *Fasti* into account. In the first chapter we have seen Ovid highlighting and 'playing' with the tensions created by Augustus' new laws and the loopholes of his new role as lawgiver. When mapped onto the world of the epic, the exploration of the theme of justice becomes more serious and structurally significant. In the *Fasti*, Ovid's deconstruction of the mechanisms of power reveals the narrator as an acute observer (and parallel enactor at

²¹¹ Liv. 34.1-8. On Ovid's approach to the theme of abortion and its meaning in the Augustan age, see Green 2004, 284f.

the poetic level) of the power dynamics played out in law, but now implicated in a new nexus of a narrative of control.

In this chapter I have shown that Ovid's *Fasti* offers further material for us to assess the poet's interplay with Augustus' negotiation of authority. Echoes of the contemporary "juridical decadence" have been traced in Ovid's veiled allusion to the Princeps' "arbitrary jurisdiction", as the motif of the arbitrariness of divine figures periodically emerges from the poet's lines almost as a prefiguration of his own personal circumstances following the turning point of AD 8. While reviewing Roman traditions and history in the *Fasti*, Ovid creates his own peculiar allusive discourse, addressed to the only relevant audience, the Princeps himself. In populating his *œuvre* with allusions to contemporary restrictions to free speech, the poet plays with Augustus' *maiestas* and with the emperor's superiority to his own laws. As *populus* and Senate lose ground to the *primus inter pares*, Ovid engages in telling *mises-en-scène* of the divine world in Roman terms, only to disprove the very possibility for human law to actually compete with *lex divina*. The lack of procedural justice in divine courts and the gods' absolute *posse nocere* ultimately mirror the omnipresence of the Princeps *iudex* in the renewed procedures of Roman juridical practice. His audience's response (as we picture it) was as polarised as that of the poet who – as a novel Lycaon – has been denied his own trial.

Ovid's insistence on the significance of law among the recurring motifs of *Kulturentstehung* (both in the *Metamorphoses* and the *Fasti*) belies his programmatic intent to challenge Augustus on the actual relevance of his power archetypes and models (Romulus, Numa, and Servius in particular) whilst also reflecting on the nature of Augustan justice, all against the backdrop of the Princeps' own controversial *leges novae*. Moreover, throughout the *Fasti* the poetical treatment of rituals gives the poet a cue to represent Augustus' political and juridical dissimulation in his holding of public posts and honours, while the Roman calendar provides a framework within which the author can seamlessly evoke the historical development of Roman juridical morality.

Conclusions

Having analysed relevant case studies from Ovid's works, I now reflect again on the fundamentals behind my research. Firstly, I will outline some further reflections on the broader frame of Ovid's representation of Augustus; I will then provide a précis of my thesis and summarise how my findings fit into the Ovid/Augustus dialectic and previous scholarship.

*Le Premier Homme*¹

Augustus' accession is the victory of one man only and of the rule he has introduced, which is that of a Princeps, of a *first man* to be intended not in a diachronic but in a hierarchical sense. Augustus' power lies in the legal control he subtly exercises over every aspect of social life by taking over Republican spaces and institutions: this realisation dominates Ovid's exile poetry, where the parallelism Jupiter's thunderbolts/imperial displeasure, foreshadowed in earlier works, becomes apparent.² Whereas Tomis emerges in the exile poems as a wasteland where the only manifestation of law is the poet's exclusion from the legal chronotope of the Urbs, the instances of 'direct' representation of the Princeps all revolve around the exceptionality of the *premier homme*, his state of exception within the physical and chronological frame of legality, which manifests itself as a *de facto* and simultaneous legitimation of both the Princeps-magistrate and the Princeps-autocrat. Ovid's awareness of this dichotomy – I argue – informs his poetic corpus up to the point of becoming programmatic.

By resorting to the operative notion of *fictio* meant as "permanent state of exception",³ we can formulate some observations on the renewed configuration of power on the grounds of the multiple narrative 'fictions' occurring throughout Ovid's *œuvre*. As stressed by Thomas, jurists and law historians have first and foremost found in the

¹ I borrow this title from Albert Camus' unfinished novel, published posthumously by Gallimard in 1994.

² Barchiesi 1994, 16, Littlewood 2002, 190, and Bretzigheimer 1991, 43ff.; more recent contributions in Gold 2004 and Rosati 2020. The poet equates his relegation by Augustus to being blasted by Jupiter's thunderbolts in *Trist.* 1.172, 1.9.21f., 2.179f., 3.5.7f., 4.3.69, 4.5.6, 4.8.45, 5.2.53f., 5.3.31; *Pont.* 1.3.7, 1.7.50f., 3.2.9.

³ Agamben 2003, 103ff. in particular, and *supra*, 4.

technique of *fictio iuris* an economic means of transforming law.⁴ Through an intentional and arbitrary exasperation, the notion of ‘economic character’ seems to ideally fit the methods through which Ovid approaches juridical matters: the poet draws from easily decoded juridical metaphors and semantic fields, whilst a certain ‘expressive convenience’ emerges in the recurring treatment of the theme of the nature of justice as a way to indirectly ‘unpack’ the fictional mechanisms behind the new Augustan rule.

An important ideological premise for Augustus’ monopolising Republican power is the Princeps’ intentional self-inclusion in the sphere of *civilis*. The *civilis* attitude embodies that of a citizen who, though holding superior powers, strives to operate as an ‘equal among equals’. The category of *civilis*, as illustrated by Wallace-Hadrill, finds a specular legal notion in the very juridical fiction which manifests itself as long as the prerogatives and dignity of the Senate and other magistracies of the Republican order are intact.⁵ The Principate was founded on an act of refusal, a *recusatio*.⁶ This collective self-deceit has been cleverly exploited by Ovid both in relation to the amatory poetry’s own conventions (through his own reformulation of the elegiac *recusatio*) and for more immediate reflections on the political implications of justice (e.g. through the figure of Cypus as an anti-allegory for Augustus).⁷

In terms of social structure, the passage from Republic to Principate had reinforced the traditional hierarchy of Republican statuses.⁸ The emperor’s preferential method of granting benefits consisted in bestowing social and *legal* privileges of Republican origin.⁹ As stated by Thomas, however, in legal terms it is not possible to

⁴ Thomas 2011, 135: the changes introduced through fictional devices are economic insofar as they keep existing juridical categories in place without questioning them. *Fictio iuris* thus becomes a substantially conservative process which operates by adapting the old to the new, as the new takes on the misleading appearances of the old.

⁵ Wallace-Hadrill 1982b, 34, acknowledging the relevance of Hellenistic precedents, as well as differences and ambiguities which made the Principate a ‘revolutionary’ experience.

⁶ *Ibid.*, 37. On the posts and honours turned down by Augustus, including the office of *dictator* and that of consul, cf. *R. Gest. div. Aug.* 5f. The more modest *tribunicia potestas* represented an exception and was likely to have been taken on as more apt, given its very nature, to veil and attenuate the reality of facts.

⁷ *Supra*, 16ff. and 123ff. respectively.

⁸ Wallace-Hadrill 1982b, 46f. The emperor himself controlled access to different levels of the Republican hierarchy, as proven by the *lex Saenia* – which already in 29 BC had granted Octavian the faculty to nominate patricians – as well as the temporary granting of censorial powers and the obscure faculties that assigned to the emperor the bestowing of the Senatorial rank, of certain magistracies and indeed of the consulate.

⁹ See Brunt 1984 on Augustus’ habit to consult the Senate in any circumstances and to present it as the source of initiatives.

imagine an implicit, not formulated convention, a silent fiction.¹⁰ It can therefore be sustained that the Republican legality of imperial powers represented a *fictio* in the rigorously juridical sense of the term and not, as it has been all too often maintained, in a merely ideological sense. The notion of *fictio* can therefore be specified as follows: an institution derives its essence precisely from the separation non *de facto* but by law between *ius* and fact, based on Thomas' reconstruction, and as a consequence of the same separation the fiction acquires its revelatory role of the artificiality of the institution itself.¹¹

The respect still formally paid to the Senate and the people concealed the reality that the prominence of the two bodies had been reduced to providing a ceremonial demonstration of the emperor's superiority.¹² His power somehow placed him above the law, although he dissimulated such primacy by acting as a private citizen, and went as far as to appear as a witness in certain trials, a significant gesture for a *de facto* autocrat.¹³ Some degree of freedom and the status of individuals were still granted by law and not, on a formal level, by a monarch's caprice.¹⁴

Two examples of contemporary characterisation of Augustus as *civilis* can be found in *Trist.* 3.8.41 and 4.4.13f. respectively. In the former (*At, quoniam semel est odio civiliter usus, / mutato levior sit fuga nostra loco*), since the Princeps has already expressed his resentment with moderation in the past once, the poet suggests that his exile might be mitigated by a change of destination. The mention of Augustus' *civilitas* curiously follows that of *Caesaris ira* (39) and the appeal to his supernatural powers as *numen* (13) and *deus* (14). Although in *Tristia* 4.4 the poet avoids any direct association between the adjective and the person of the sovereign, the most evident aspect of the Princeps' *civilitas* is identified in his allowing his own name to frequently appear in the poet's lines: *ipse pater patriae – quid enim est civilius illo? – / sustinet in nostro carmine saepe legi* (13f.). In this elegy Augustus is again characterised as *deus* (20, insisting on

¹⁰ Thomas 2011, 149, 174.

¹¹ *Ibid.*, 153f.

¹² Wallace-Hadrill 1982b, 37-9. The people lost its function of elective assembly in AD 14. The *comitia*, however, were maintained due to their ceremonial function. *Ibid.*, 38 (following Veyne) notes that games and circus became the preferred venues for public opinion to express itself and for emperors to sense the mood of the masses, which attractively matches the function of those venues within the context of love hunting in the *Ars Amatoria*.

¹³ Suet. *Aug.* 56.

¹⁴ Wallace-Hadrill 1982b, 42.

the recurrent parallelism with Jupiter, and 45), and his *ira* is recalled at l. 48. The Princeps is mentioned at the end of the poet's self-defence (35ff.), culminating in the technical remark that his life and possessions have been spared as a consequence of the relegation (45f.).¹⁵ Although the poet often resorts to the terms *exul* and *exilium* to *lato sensu* describe his circumstances, he never fails to specify the actual terms of his charge when self-advocating a reduction of his sentence or rebuking hostile remarks. Both *Trist.* 3.8 and 4.4 present the Princeps as embodying a superior stance of divine authority, in fact the only authority who, after setting his criminal charge in the first place, would be able to overturn the poet's destiny.

Let us focus on the title of *pater patriae* (*Trist.* 4.4.13), which became official for Augustus in 2 BC.¹⁶ Cassius Dio (55.18.3) states that the title does not assign any specific power, although he assimilates the relationship between Princeps and citizens with the one 'naturally' developed between a *pater* and his *familia*: the Urbs is therefore equated to the emperor's *domus*.¹⁷ In the *Digesta* – though a *unicum* in juridical sources – the notion seems to assume a technical meaning, likely connected with the fact that the Princeps is on a higher order compared to Rome itself as *communis patria*.¹⁸ In terms of 'precedents', in addition to the mythical figure of Romulus, the title was traditionally attributed to Marcus Furius Camillus¹⁹ and Cicero.²⁰ Those two Republican examples, in particular, seem to attenuate the 'anti-Republican' meaning potentially associated with

¹⁵ Cf. *Trist.* 2.135ff.; 5.2.55ff.; 5.11.15f. The unnamed addressee of *Trist.* 4.4 has been identified as M. Valerius Messalla Messalinus (cf. next fn.).

¹⁶ On the 5th February, Augustus was hailed as *pater patriae* in the *curia* by the Senate with the consensus of the whole people (*R. Gest. div. Aug.* 35.1; Suet. *Aug.* 58; CD 55.10.10). The date is recorded in the *Fasti Praenestini* (Degrassi, p. 407), although, even before Augustus' formal acceptance, the appellative had already been in use in inscriptions. The Senate chose Messalla Corvinus to promote the bestowing, as a living symbol of harmony and agreement: a member of one the most 'Republican' families in Rome, he had eventually joined the Augustan cause. Ovid was linked to his (not totally apolitical) 'circle'. The dating of Ovid's detachment from it is uncertain; Messalla's son Messalinus, however, despite being at the height of his political career, did not lobby for the poet's return from exile (Zecchini 1987, 78).

¹⁷ On the links among the title, the notion of *maiestas* and a paternalistic conception of power, see Bauman 1967, 235ff. On the paternalistic character of Augustan legislation, see Ziogas 2021a, 285.

¹⁸ Call. (?) D. 48.22.18pr., already mentioned in relation to the "ubiquity fiction" (*supra*, 161, fn. 133). On the title not holding juridical implications, see De Martino 1974, 227ff.; Mommsen 1887, 789, despite acknowledging its merely honorific value, cited *contra* D. 48.22.18.

¹⁹ On Marcus Furius Camillus, see Livy 5.49.7. On Romulus, Enn. *Ann.* 107f. Sk. On the question of a hint to Romulus being implicit in the bestowing of this title to Augustus, see Hinds 1992b, 128, with further bibliography.

²⁰ Cic. *Sest.* 121; *Pis.* 6; *Att.* 9.10.3. See also Pl. *Nat.* 7.117, App. *Bell. Civ.* 2.1.7, Plut. *Cic.* 23.6. Appian and Plutarch credit the initiative to the people assembly, flagging Cato as sponsor.

the title since Caesar had held it.²¹ Cicero explicitly refers to the Senate, although it is unclear whether he alludes to an official bestowing or merely to the initiative of some senators.

Further occurrences of the title in Ovid's 'pre-exilic' works can be found in the *Ars* and the *Fasti*.²² In *Ars* 1.196f., the phrase *genitor patriae* occurs as Ovid is addressing the young Gaius, Augustus' nephew and 'designated successor'. While insisting on the analogy with the Parthian events,²³ the poet exhorts him to defend the rights of the *pater patriae* around the choice of his own line of succession. In the first of the two occurrences in *Fasti* 2, on the other hand, Ovid invokes Augustus as he is about to treat the recurrence of the *Nonae* of February, the anniversary of the assumption of the title, and recalls the bestowing of the title by the three social components of *plebs*, Senate and *equites* (127ff.). In the prelude to the *σύνκρισις*, Ovid offers an immediate parallel to the text of the *Res Gestae*.²⁴ The recurring comparison between Augustus and Jupiter (here at 131f.), whilst recalling the original notion of *maiestas* as a divine attribute, confirms the shift from its association with the Roman people to that with the emperor.²⁵ This aspect matches the shift from the *de facto* holding of the role of *pater patriae* to the *de iure* bestowing of the same title (129ff.): Ovid clarifies that the appointment had retrospectively ratified a reality already operative in practice, which had gone as far as to make the Princeps *pater orbis* (130). In honouring the Princeps, Ovid chooses to count himself in the anonymous ranks of the *equites*, mentioned alongside the other *ordines*. Although it is true that the Senate and the people appear to be subordinate to the ruling figure of the Princeps, this authorial choice does not necessarily imply an intentional distancing from the references to the Senate's *decreta*, *consulta*, *iussa* and *auctoritas* spread across Augustus' political testament, which constantly reiterates his (fictional) conforming to those institutions. The inclusion of this nuanced title in a passage that equates Augustus' handling of justice with

²¹ See La Penna 1963, 87. Cf. Flor. *Epit.* 4.12.66, as well as CD 44.4.4; Suet. *Iul.* 85; App. *Bell. Civ.* 2.16.106, 20.144. This appellative would entail a rethinking of Caesar's legacy if it is true that, as reported by Lactantius (*Div. Inst.* 1.15.29), Caesar had been defined *patriae parricida* by the Optimates.

²² Whereas the simple *pater* and *parens* occur in *Met.* 15.860 and *Trist.* 2.157 respectively.

²³ The *fratres... laesos* (195) are, as stated by Hollis 1989 *ad loc.*, the four sons of Phraates IV (the *pater* whose *iura* have to be defended), guests-hostages in Rome. The interpretation of the passage, however, is controversial: cf. Pani 1972, 45 and Bowersock 1984.

²⁴ *R. Gest. div. Aug.* 35. The reference to the *ordo equester* is missing from both the *Fasti Praenestini* and Suetonius (see *supra*, fn. 16). Cf. also Hinds 1992a, 83-5 and *Id.* 1992b, 132-4.

²⁵ Bauman 1967, 235.

the superior stance of the father of the gods adds a further element of ambiguity to Ovid's suspended judgement on the nature of the Princeps' arbitrary jurisdiction and power.

Bretone observed that the Augustan title of *pater patriae* marks the reappearance in ancient culture of an enhanced version of the key image of patriarchal monarchy and Homeric regality.²⁶ The association between the unpopular concept of monarchy and the attenuation underlying the adjective *patriarchal* aptly summarises the representation of the new order. Such reading is reinforced by the two further occurrences of this title in exilic elegies: *Trist.* 2.181 (*parce, pater patriae*) and *Pont.* 1.1.36 (*at patriae pater hic, ipsius ille fuit*, where Anchises cannot stand comparison with Augustus). Those two *loci*, alongside *Trist.* 4.4.13, represent as many attempts to recall the sovereign to the exercise of his paternal clemency towards the exiled poet. The poet's sentence emerges as the arbitrary disposition of an autocrat who thus reaffirmed his omnipotence (2.131-4). In following an extraordinary procedure, Augustus most likely intended to spare Ovid serious consequences. Had Ovid appeared before the public courts or the Senate on a charge of *maiestas*, his fate would have entailed at best an *aquae et ignis interdictio*, i.e. a formal exile accompanied by the confiscation of assets, as opposed to *relegatio* which, even *in perpetuum*, granted retention of Roman citizenship and properties. *Relegatio in locum* could be decided by the Princeps privately (*intra cubiculum*) without a formal trial or senatorial pronouncement, as it appears to have been the case for the poet (131), without it necessarily entailing a neatly positive or negative bias from the poet's part towards the Princeps' arbitrary jurisdiction. It is significant, however, that Ovid's alternative destiny would have led to a charge of *maiestas*, if we considered the treatment the concept receives in *Fasti* 5 with regard to the recent developments of Augustan jurisprudence.

We should bear in mind that the Princeps was not subject to *provocatio*: any act of his could therefore be reduced to the exercise of his coercive powers. De Martino went as far as to use those lines as a source to confirm his historico-juridical reconstruction,²⁷ reading Ovid's relegation as a consequence of a "policing measure" of mere administrative nature: the poet's and other similar sanctions were issued by the Princeps as a form of *coercitio* based on his *tribunicia potestas*, which by itself was not sufficient

²⁶ Bretone 2006, 213.

²⁷ De Martino 1974, 201, 207 and 568, fn. 62.

to impose a proper exile (unlike censorship powers). Enforced in practice by the *tresviri capitales*, and as the result of a tribunicial edict by Augustus, those policing measures disprove the existence of a more or less formal proxy granting jurisdictional powers to the Senate. The hypothesis, fascinating as it is, lacks any specific documentation.

In reading those lines, however, the impression remains that, *pace* Citroni, Ovid is not necessarily expressing his gratitude to Augustus.²⁸ The phrase that qualifies his course of action, *principe dignum* (133), is just as likely to allude to the exercise of coercive powers. The fact that the Princeps' decision must have been followed by some sort of *edictum* emerges from ll. 135ff., as ambiguous as the previous ones. Through the use of the terms *nomine* (136) and *verba* (138), Ovid underscores the contrast between *form* and *substance* of the edict text, as the distinction between *exul* and *relegatus* (137) does not ultimately affect the poet's real circumstances. Even the choice of the archaic and technical adjective *priva* (138) implies that Ovid – besides echoing the solemn and official tone of edicts – is here remarking that, regardless of the specific phrasing, the relegation hides a much harsher reality for him to endure.²⁹ The fact that the Princeps did not get the Senate or any judges involved in a proper trial does not necessarily imply that the Principate can be defined as an order under the emperor's exclusive control, as confirmed by the periodical recurrence of the issue of investiture. The beginning of any new Principate implied a break, a caesura, which could be more or less radical on a political level, albeit always being rather neat in institutional terms – also considering that the investiture represented the only politico-institutional province left to the people assemblies. Such persistence leads us to rule out the hypothesis of a total juridical dissolution of the *populus* at this stage. Orestano has built a whole argument around the Ovidian line *res est publica Caesar* (*Trist.* 4.4.5).³⁰ However, this – albeit incisive – phrasing cannot be loaded with the exorbitant documentary task of confirming that during the Principate the *populus* was definitively deprived of any residual sovereignty, then matter-of-factly transferred to Augustus and his successors.³¹

²⁸ Citroni 2015, 647 denies any 'anti-Augustan' bias in Ovid's texts. *Contra* Lowrie 2016, 74.

²⁹ Cf. Ciccarelli 2003, 122-7 and McGowan 2009, 37ff. (with further bibliography on the controversy around the actual procedure put in place by Augustus for Ovid's *relegatio*).

³⁰ Orestano 1968, 217ff. and *contra* Mancuso 1995, 88ff. For a reference to this line in relation to Augustus' anticipating certain aspects of the *lex de imperio Vespasiani*, see Brunt 1977, 114.

³¹ On the political decline of popular assemblies already in the early Principate, see De Martino 1974, 604ff. Comparatively numerous, however, are also the sources recording a certain continuity in the *populus'* exercise of its political prerogatives: cf. e.g. Herod. 8.7.5.

Citroni maintains that in contemporary literary sources Augustus is not assigned any titles proper to Republican magistracies, whilst rare references to the Senate and the people would never imply their qualification as effective holders of power (or even as organs apt to limit the Princeps' sovereignty).³² Whilst this appears in overt contrast with Augustus' systematic attention to the juridical legitimation and impact of his new political system, clearly emerging in the *Res Gestae* but also in epigraphic and numismatic documents,³³ the exact configuration of Augustus' official posts is largely unclear. Only the consulship can rightly be listed among his legitimate magistracies. However, from a certain point onwards, taking on that office proved superfluous for the Princeps, if not under certain circumstances and with a specific goal.³⁴ To such reticence around regular posts Citroni opposes the recurrence of "extra-constitutional" qualifications³⁵ like *pater patriae* to prove his argument that the representation of the Princeps as autocrat neatly prevails over his presentation as 'constitutionally defined' magistrate. Within the framework of the 'non-rigid' Roman constitution, it is hard to establish what exactly qualifies as a 'non-constitutional' magistracy: those titles were fully inscribed within constitutional practice, also on the grounds of their having been institutionally granted by the people or the Senate.

A key feature of the Augustan 'revolution' consisted precisely in the formal obliteration, indeed of fictional nature, of the opposition Princeps autocrat/Princeps magistrate in terms of law. Ovid's immediate understanding of the profound impact of such operation, and his subsequent alluding to it in his poems, became a specific trait of the author's production. The extension in scope of legal prosecution for the *crimen maiestatis* had certainly increased the authors', and indeed their audiences', awareness of the restrictions to freedom of expression introduced by the new power. However, the attribution to Augustan poets of mere flattering intents toward the Princeps needs to be

³² Citroni 2015, 618.

³³ A review can be found in Eder 2005. Cf. Citroni 2015, 615 and, along the same lines, Little 1982, 263 and 285f., as well as Galinsky 1996, 64f., who maintains that the public perception of the institutional shift was blurred by the historical memory of the temporary concentration of exceptional powers in a single person under particularly critical circumstances. See also Millar 1973, 65ff., claiming that contemporary literary sources prove that the new 'monarchy' had already been accepted as a matter of fact, even in a pacific fashion. *Contra* Brunt 1982, 240f. and Eder 2005, 14, identifying the most authoritative disproof of this alleged positive reception in the efforts made by Augustus to divulgate his own version.

³⁴ As seen above, Augustus was more concerned with showing which offices he decided not to hold, such as the dictatorship offered to him twice (Wallace-Hadrill 1982b, 37).

³⁵ Citroni 2015, 619.

attenuated. To different extents, they formulated certain representations of Augustus which, though not in contrast with the image promoted by the emperor himself, gave voice to themes and values at the forefront of public attention, and to points of view (potentially) shared by contemporary public opinion. Conversely, ancient sources attribute to subsequent Julio-Claudians emperors a tyrannical turn, which confirms the unique nature of the Augustan precedent, despite the uncomfortable paradox inherent to its ‘fictional’ set-up.³⁶ Whilst in the previous chapter I discussed examples of direct representation of the Princeps through the three prophecies of *Fasti* 1, *Metamorphoses* 1 and *Metamorphoses* 15, my earlier analysis of Ovid’s love poetry and the *Metamorphoses* has also shown that similar questions seem to emerge in those instances where the representation of Augustus is only indirect, and achieved instead through a recurrent *mise en abyme* often focusing on law-related elements.

As we have seen, the prophecy that closes the *Metamorphoses* includes a statement about Augustus focusing his personal endeavours on *civilia iura* after the conclusion of a glorious war season (15.832-4): the Princeps’ *animus* will focus on the promotion of laws to discipline and regulate the citizens’ behaviour based on his own. When drafting his letter to Augustus from Pontus, Ovid expresses the same concepts, somehow also echoing Horace’s *Epist.* 2.1: *urbs quoque te et legum lassat tutela tuarum/ et morum, similes quos cupis esse tuis* (*Trist.* 2.233f.).³⁷ Here the laws are point-blank identified as *tuae*, and Augustus’ *mores* are again associated with the customs reformed to the community’s benefit, whilst their *tutela* is entrusted to the Princeps’ personal commitment. The same connection between *leges* and *mores* also emerges, in more generic terms, in *Ars* 3.614f. and recalls Augustus’ refusing to assume the *cura legum et morum*.³⁸ There is, however, no hint to a particular office held by Augustus, who

³⁶ *Ibid.*, 614. In the *Annales*, Tacitus states that Augustus *cuncta discordiis civilibus fessa nomine principis sub imperium accepit* (*Ann.* 1.1). The historian also claims *domi res tranquillae, eadem magistratuum vocabula* (1.3), although he does not fail to acknowledge that the Princeps had subverted the structure of the State (*verso civitatis statu*, 1.4) and even – in line with the typical point of view of ‘senatorial historiography’ – that nothing had been left of the ancient and pure Republican spirit (*nihil usquam prisci et integri moris*). Tacitus’ comment on the denomination of magistracies implies that the correspondence between the new regime and its antecedent was true in name only.

³⁷ For a comparative analysis of Horace’s and Ovid’s respective ‘letters’ to the Princeps, see Barchiesi 1993.

³⁸ The binomial occurs in its formulaic nature also in Hor. *Carm.* 3.24.35f. See Suet. *Aug.* 27.5 as well as *R. Gest. div. Aug.* 6, where Augustus records having received the offer and his subsequent refusals of the office of *curator legum et morum summa potestate solus* in 19, 18 and 11 BC. Suetonius claims that Augustus assumed and held the office for life, whereas Cassius Dio (54.10.5) maintains that the role of

exercised this form of control on the grounds of some sort of *censura*, alongside his perpetual *tribunicia potestas*.

Despite the uncertain nature of Augustus' official posts, the mention of *tutela* implies that the emperor embodies that function, as confirmed in Carmentis' prophecy at *Fast.* 1.531 (*et penes Augustos patriae tutela manebit*),³⁹ which supports the idea of public 'intrusion' into the private sphere. In private law, *tutela* indicated the protection granted over a minor or other subject deemed incapable, on a juridical level, to attend to their own affairs.⁴⁰ The Princeps' wish to assimilate citizens' customs to his own (*Trist.* 2.233f.) clashes with Suetonius' reference to Augustus' alleged conjugal cheating, as well as with Cassius Dio's view on his moral hypocrisy.⁴¹ In the following two distichs, however, Ovid implies that the care put into legislative renovation and military commitments had necessarily deprived Augustus of any spare time to read the poet's frivolous works. Based on the keyword *tutela*, Alekou established a parallelism between Augustus' legal programme and Arachne's refusal of Minerva's tutelage in *Metamorphoses* 6, which dovetails with my reading of Ovid's retelling of artists' clashes with superior powers in his epic poem as programmatic, and confirms that the same ambiguous stance seems to permeate both direct and indirect representations of the Princeps.⁴²

My brief review of the direct allusions to the Princeps in Ovid's exile works has touched on the recurrence of certain motifs: the acknowledgement of Augustus' right to unconditionally exercise his personal *ira*, his equating Jupiter in the exercise of arbitrary justice, Ovid's concurrent invocation of the Princeps' moderation, the praise of his mildness. In those problematic references Citroni reads the confirmation of a further accentuation of Augustus' divine image, expressed through the exaltation of his omnipotence, whereas I argue that those motifs might equally betray the loosening, towards the end of the Augustan Principate, of the ideological grip of the Princeps' Republican *fictio*. The need to maintain it in operation must have been perceived as less urgent both by the sovereign, at last rather confident of his position despite the unresolved

ἐπιμελητής τῶν τρόπων was granted to him by the people in 19 BC for five years, and subsequently renewed for five more in 12 BC (54.30.1). The two historians must have confused the function of regulating laws and customs which did actually fall within the Princeps' remit, and a formal office which in fact he never held. For a summary of the issue see Scheid 2007, 36f.

³⁹ Cf. *supra*, 141, fn. 29.

⁴⁰ Cf. *OLD*, s.v. 3 and D. 26.1.1pr.

⁴¹ See Suet. *Aug.* 69-71 and CD 54.16.5 respectively.

⁴² Alekou 2022, 235 and *supra*, 85ff.

issue of his succession, and by Augustan poets, especially Ovid in his reflections on the evolving nature of justice. The ambiguous Princeps-poet dialectic that permeates Ovid's entire production ultimately makes any 'pro-' or 'anti-' Augustan reading unsustainable, as the virtual absence of *ius* in Tomis emerges as the polar opposite of Augustus' legal control over the Urbs. Ovid's narrative 'fictions' are pushed to the extremes in an effort to provide a multifaceted depiction of Augustus' 'state of exception', which allowed the autocrat and the magistrate to coexist. The poet's perception of this juridical discrepancy, I argue, became a constitutive feature of Ovid's works, consistently (and evolvingly) reflected throughout.

The Part About Ovid⁴³

My work has adopted three overlapping layers of analysis: the 'micro-semantics' of the legal as a tool for Ovid to draw from the langue of "juridical morality"; the recodification of myth in 'juridically meaningful' ways, which coincides with the 'mythologisation' of Roman law as a device to explore the theme of the nature of justice; and finally the forms the latter assumes in relation to Augustus' juridical innovations and the legal foundations of his rule – in other terms, to the 'nature' of *the Princeps*' justice.

There are several further instances of Ovidian borrowings from the sphere of the legal that I did not have the chance to discuss for reasons of space: whilst this confirms the pervasiveness of the juridical question in Ovid, it also proves that there is scope for further original research on the subject. Since reconstructing the law from Ovid's poetry has been demonstrated to be an unreliable method, such prospective research will necessarily continue to be integrated and supplemented with the records of law historians and historiographers.⁴⁴

Through my analysis of Ovid's amatory poetry I have shown that his verses voice certain collective anxieties about the juridical interplay between private and public life in the age of Augustus, which reaffirms to what extent Rome's legal history is an integral

⁴³ I borrow this section title from Roberto Bolaño's posthumous novel *2666*, released in 2004.

⁴⁴ For example, Ziogas 2021a, 296f. notes that D. 47.10.15.15 and Tac. *Ann.* 2.85 report evidence that Roman women tried to work around the social prostitute/*matrona* discrimen central to the *lex Iulia*, a stance which has been shown to be consistently echoed in Ovid's love poetry.

part of its cultural history.⁴⁵ In the *Metamorphoses* and the *Fasti*, the poet goes back to the roots of the question, and chronicles Rome's primigenial transition from a lawless to a lawful state up until its latest fictional constitutional shift under Augustus.⁴⁶ In all those instances in which his narratives resort to arbitrary divine interventions to guarantee justice, Ovid is prefiguring the 'resolutive' intervention of Augustan *ius*. Justice is ultimately granted by Augustus' settling the question of sovereignty in a way that fictitiously left pre-existing institutions intact, by exception becoming the norm.⁴⁷ The cosmogonic, mythical and historical framework offered in the *Metamorphoses* foreshadows the assurance inherent to the Roman calendar, presented in the *Fasti* as the legal materialisation of Augustus' embodying the fatal greatness of Roman laws, a shift which Ovid ultimately suspends his judgement on.

As Augustus' new sovereignty blurred the distinction between legal and political, the passages in the *Metamorphoses* where Ovid draws from forensic and deliberative oratory go beyond the standard training purposes of those disciplines to show that, in the absence of a rigid constitution, Roman juridical morality and its system of norms were tasked with negotiating the gap between social relations and power structures. Lowrie illustrated that the transition from Republic to Empire caused the normative function of oratory to disappear, and led to the aesthetical separation of epideictic oratory and literature on the one hand, and 'practical' law on the other.⁴⁸ Ovid's (both direct and indirect) representation of the 'first man' of the moment, Augustus, mirrors this discrepancy in a non-abstract yet ambiguous way.

In laying the foundations of a new rule, Augustus kept the Republican institutions in place relying on the juridical ground of what law historians have described as the device of *fictio iuris*. Ovid, for his part, in drawing from the multifarious source of juridical language and settings throughout his corpus, mirrored the juridical foundations of Augustus' operation through narrative fictions that programmatically and

⁴⁵ Without necessarily having to read those poems as attempts to limit the intrusion of public law into the private sphere (*pace* Ward 2022, 25).

⁴⁶ The shift from lawless to lawful state is central to Ward 2002's reading of the *Metamorphoses* as a "casebook" in Roman law inviting us to formulate deeper questions on the very nature of law and justice. His discussion revolves around the three "hard cases" of Tiresias (Book 3), Philomela (Book 6) and Myrrha (Book 10).

⁴⁷ Ward 2022, 14 (following Agamben 2018) identifies the sovereign as whoever has the power to reduce a designated *homo sacer* to his bare existence.

⁴⁸ Lowrie 2016, 78f.

systematically take the form of a legal Romanisation of myth which is simultaneously a poetical ‘mythologisation’ of Roman *ius* and juridical morality. Despite having formulated his own extended *recusatio*, and having done so by borrowing legal formulas and content, Ovid’s operation should not be labelled in biographical terms with the redundant labels of ‘pro-’ or ‘anti-Augustan’. His open-ended authorial stance, whilst reaffirming the centrality of *ius* in Roman culture, proves the only viable approach for the poet to formulate his own response to the Augustan discourse.

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