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Ovid's Casebook: The Literary Jurisprudence of the *Metamorphoses*

IAN WARD

Abstract: Roman literature has, thus far, assumed a relatively modest place in the canon of literary jurisprudence. Yet it presents a rich resource for scholars interested, not just in Roman law, but in law today. This article will revisit Ovid's *Metamorphoses*, a text which has continued to fascinate literary scholars since the Renaissance. It will suggest that *Metamorphoses* can be read as a 'casebook' in Roman law, and more especially the law relating to marriage and sexuality. At the same time, it will be argued that Ovid had a rather greater argument to make in regard to the broader sweep of Roman law. One of the key changes which he described in *Metamorphoses* is that which transformed Rome from a lawless to a lawful state. This article will trace this 'metamorphosis' by re-reading three of 'cases' discovered in Ovid's epic; those of Tiresias, Philomela and Myrrha.

Keywords: Ovid; literary jurisprudence; Roman law; power; rape; incest

A literary jurist harbours two aspirations. The first is to hope that, in reading a literary text, they discover something about the law in the past, the second is to discern resonances in the present. It is not a question of looking for some sort of legal truth, of course. It is, rather, to recognise the impressionistic nature of law and its history. To read between the lines and catch some inferences. In his *Defence of History*, Richard Evans likens it to peering in the 'verges' of history.¹ The purpose of this article is to reread Ovid's *Metamorphoses* in this spirit. Of all the poets of classical Rome, Ovid displays the greatest interest in making a play of the law in his writing, deploying legal imagery and casting legal aspersions.² An alternative kind of literary jurist, it might be surmised, fashioning his tales precisely to encourage jurisprudential curiosity. The conceit of this article supposes that his *Metamorphoses* can, accordingly, be read as a casebook; of the kind which every self-respecting law student is supposed to carry with them. A text full of cases, variously conceived and then resolved, within which the secret of the law's efficacy is to be discerned.³

A further aspiration, commonly shared by the literary jurist, is what Richard Weisberg terms the 'poethical'. Here, the interest lies in the possibility that the literary text can reinvest the ethical dimension of law: 'Stories about the "other" induce us to see the other, and once we do so, we endeavour consistently to understand the world from within the other's optic'.⁴ An echo can be discerned in Martha Nussbaum's recommendation of 'poetic justice' recovering the voices of those 'silenced' by 'opprobrium'. The 'mission of imagination, inclusion, sympathy, and voice', as she puts it.⁵ Patricia Williams talks of 'listening across boundaries'.⁶ The poethical jurist shares this hope, that the literary text might recover these voices, or at least make plainer the consequence of their silencing. It is for this reason that they are similarly interested in who gets to determine the 'other'. The

¹ Evans 2000, 244.

² Even if the lexicon commonly feels 'starkly incongruous', as Coleman 1990 puts it, at 572. For further commentary on Ovid's use of legal language, see Kenney 1969, Davis, 1993, VerSteeg and Barclay 2003, 395-6, and also Ziogas 2021, at ix, confirming that Ovid's poetry is 'deeply steeped in the language and rituals of law'.

³ A not uncontroversial didactic 'tradition', of course. See Jacobson 2010, wondering the limitations of 'casebook' learning, and supposing the need for poetic supplement.

⁴ Weisberg 1992, 46.

⁵ Nussbaum 1995, 119.

⁶ Williams 1995, 200.

question of sovereignty, which occupied Roman public philosophers and poets every bit as it continues to occupy us. The question, put in its rawest terms, of who determines *homo sacer*; the ‘sacred’ or ‘accursed’ man cast out with the law, existing in his barest state.⁷ Whoever decides that is sovereign.

It is in this ‘strategic’ context that we are going to revisit Ovid’s casebook. More particularly we are going to take a closer look at three cases in *Metamorphoses*, chosen precisely because they might be considered, in the Dworkinian lexicon, to be ‘hard cases’.⁸ Not all cases in a casebook will be ‘hard’, some are simply selected for reason of reverence or precedent. But the more interesting are usually those which are less easy to resolve. We might compare them, indeed, to the *controversiae* which were deployed to train prospective Roman orators and jurists. Essentially fanciful cases devised as much to test the ingenuity, as the legal knowledge, of young Roman gentlemen, and commonly moving around imagined infractions of sexual *mores*.⁹ Ovid was trained in precisely this way, as he later acknowledged in his *Tristia* (4.10.15-16, 33-4).¹⁰ We might note, in passing, that the distinction of legal from literary education is a relatively recent affectation. Ovid was entitled to expect his prospective audience to know enough about both the law and the literature of Rome to appreciate the juridical inferences which he wrote into his casebook.

We will start with *Tiresias’s Case*, which, if we stretch our imagination, can be conceived as a matter of public law. It is, as we will see, about the instantiation of law itself. The other two cases appear, at first glance, to be matters of criminal jurisdiction. A brutal rape in *Philomela’s Case*; a troubling *incestum* in *Myrrha’s Case*. What however makes sense to us, did not make the same sense to the Romans. In the absence of a clearly defined criminal jurisdiction, both rape and incest trod the margin of the public and the private. In revisiting these three cases, therefore, the modern lawyer is not simply challenged in a prosaic sense, by the way in which, to use ‘critical’ parlance, the Romans got the ‘law-job’ done.¹¹ Rather, a dip into Ovid’s casebook invites us to think about more fundamental questions of law, about its reason, its cultural presence and its consequences.¹² In this light, we might venture a pre-emptive conclusion; that not only was Ovid one of the greatest of Rome’s poets, but so too was he one of its most challenging jurists.¹³

Tiresias’s Case

We will start then with *Tiresias’s Case*, told in the third book of *Metamorphoses*. It is not the first ‘case’ Ovid recounts, a privilege that might be accorded to *Lycaon’s Case* revisited in book one. But it is the first in which Ovid appears to question the charm of living in a world ‘without a law’ (*Met.* 1.89-90). As critics have long noted, Ovid rarely evinces much nostalgia for the past he revisits.¹⁴ Divine justice executed in summary fashion on Lycaon, for having slaughtered his own son, and questioned the omnipotence of the gods. Just

⁷ See here Ziogas 2021, 11, 68. For a renowned modern discussion of *homo sacer*, as the epitomic ‘other’ of Roman Law, see Agamben 1998.

⁸ The classic exposition of ‘hard-case’ jurisprudence is Dworkin 1986. Hard cases are those which are not easily resolved, most commonly as a consequence of conflicting ‘rights’, or because the demands of justice appear to contradict the ‘reason’ of the law.

⁹ See here Harries 2007, 101-3, Langlands 2006, 247-53, emphasising the frequency with which *controversiae* moved around matters of sexual morality, and more recently still Ziogas 2021, 33, suggesting that Ovid’s love-elegies more particularly might be read in the ‘voice of the trainee lawyer’, and also 190-9.

¹⁰ Studying under Arellius Fuscus and Porcius Latro. In his letters he confirms that he served, as a younger man, on the board of the *tresviri capitales*, a body which might deal with various matters from property to probate to theft.

¹¹ The idea of the ‘law-job’ is commonly adopted by ‘critical’ lawyers. See Tushnet 1991.

¹² For a similar statement, made in the closer context of incest cases, see Ziogas 2021, 365.

¹³ A conclusion that chimes rather neatly with the supposition that the Augustan age witnessed the emergence of the jurist. See Ziogas 2021, 263-4.

¹⁴ See here Labate 2007, 198-200.

desserts, it might be said.¹⁵ *Tiresias's Case* is not so simple, in part because the justice seems rougher, but also because it invites closer consideration of deeper questions about law and governance. On these terms, a Kelsenian jurist might term it an ur-case; an authority which not merely sets a precedent, but founds an entire jurisprudence.¹⁶

We will start, as any lawyer would, by recounting the facts of the case. Briefly told, in no more than fifteen lines. Jupiter is teasing Juno, with the trivial allegation that females get more pleasure from intercourse than males. Jupiter calls on 'wise' Tiresias to resolve the squabble, who obligingly rules in his favour. We might call this *Tiresias 1*. Followed by *Tiresias 2*, in which angry Juno brings Tiresias to summary account, and sentences him to be blinded. Jupiter cannot undo Juno's sentence, but he can mitigate it, and so, by way of compensation, grants Tiresias clairvoyant powers. He becomes a *vates*, a prophet, in the bardic tradition a diviner of law.¹⁷ Thereafter, everything depends on the interpretation of the reader. For the literary jurist it is, as ever, a matter of aligning the poetic and the jurisprudential. There is Tiresias's dilemma to contemplate, and there is the nature of Jupiter's judgement.

Tiresias is not a trained lawyer, any more than the vast majority of Ovid's contemporaries who were appointed as presiding magistrates in particular cases could be said to be trained lawyers.¹⁸ Tiresias is a sage invited, by Jupiter, and by Ovid, to assume judicial authority in a high-profile test-case. It is, as might be expected in *Metamorphoses*, a mutable authority. Tiresias changes his guise, and so does the court to which he is summoned. In the space of a dozen lines, he moves from *doctus* to *arbiter* to *iudex*; in effect from jurist, to counsel, to judge.¹⁹ He is a particular kind of *doctus*, a term which can describe a sage who gives counsel, *sententia*, as well as a jurist who might venture an opinion. Tiresias's peculiar sagacity, however, is discovered in the fact that he 'knew both sides of love', something which makes him an ideal *arbiter* in this dispute, in this court (*Met.* 3.323-6). An *arbiter* might provide witness evidence or be invited to arbitrate between parties in a civil dispute. The shape of the court becomes, at this point, critical. For here again, this is no ordinary court. It might be characterised as a 'court of love', of the kind to which Ovid would allude in his love-elegies.²⁰ At this point it is possible to read an insinuation into Ovid's report of the case which is as simple, as it was undoubtedly tendentious. Cases such as this, which deal with matters of *amor*, are best left to this kind of court.

What gives the insinuation an edge is the fact that, a few years earlier, the Emperor Augustus had approved two new *leges iuliae*, *de maritandis ordinibus* and *de adulteriis coercendis*. Both were purposed to tighten public regulation of private sexual conduct. The former encouraged marriage and procreation, albeit within strictly determined social castes. The second reinforced the customary proscription of adultery, more specifically the adultery of married women, a matter which would now be resolved in a standing court, or *quaestio perpetua*. It is difficult to read *Tiresias's Case* as anything other than a satirical comment on the silliness of trying to regulate sexuality by means of

¹⁵ For an insightful discussion of Lycaon's 'case', see Anderson 1989.

¹⁶ In the stricter sense of a science of law, and legal thinking. For a discussion of Kelsen's jurisprudence, and the place of the ur-norm, see Raz 1979 ch.7, and also Cerano 2000. For the parallel inference, that *Metamorphoses* might be a poetic 'uber' text, see Brown 2005, 15.

¹⁷ A connotation evident in the old-English word for an Irish bard; ovate.

¹⁸ The idea of a 'trained lawyer' itself being somewhat contentious in classical Rome. It is commonly supposed that there were two kinds of legal professional in classical Rome, the orator and the jurist, to which might be added a third category of legal-functionaries, to include *pragmatici* or men of affairs and *causidici* or pleaders. For a discussion here, see Riggsby 2010, 47-55.

¹⁹ For commentaries on Tiresias's shifting legal identities, see Coleman 1990, 573-5, Balsley 2010, 15-23 and Ziogas 2021, 250-2 venturing the thought that Tiresias might be characterised as a sort of 'sexpert'.

²⁰ An 'amatory court', as Ziogas 2021 puts it, at 5-6.

laws such as those enacted in 18 BC. Judging who gets more out of sex might seem a little dafter than working out which women might be permitted to have sex with which men; but not much.²¹

The insinuation is compounded by what happens next. Tiresias ventures to judgement.²² At this point, *Tiresias 1* gives way to *Tiresias 2*, and the jurisdiction shifts, along with the language. The teasing pleasantries of an amatory council give way to a jurisprudence of savage vengeance in the prerogative court of the king's consort. Echoes of *Lycaon's Case* perhaps (*Met.* 1.177-98).²³ But there is much more to *Tiresias's Case*. It becomes a 'hard-case', designed to test the 'integrity' of an entire jurisprudence.²⁴ The role of the judge is uncertain, because it is unprecedented, and the substantive matter is controversial. Judgement is demanded, the contention is how it should be reached, and by whom.²⁵

Something else any legal order needs is a *locus* of sovereignty. Here we can discern the template for a conversation which would occupy public philosophers for centuries, from Seneca to the Renaissance, and on. An original statement is found in the *Digest*, at 14.2.9: 'I am indeed the Lord of the World'. The principle of the *dominus mundi*, derived, according to Ulpian, from the 'rule' of the 'divine Augustus'. And a fiction cherished by successive Roman and Holy Roman emperors, and just as much by myriad Renaissance princes of varyingly absolutist pretensions.²⁶ In his *Triplici Nodo*, King James I of England cited Tertullian's affirmation that Emperors sit 'the next unto God, and obtaining from God whatsoever hee hath, and onely inferior unto God'.²⁷ It was the jurisprudential consequence that James cherished most, as he made plain in his *Trew Law of Free Monarchies*. A king who ruled by 'divine right' did so above the civil law. The essence confirmed again by Ulpian, *Quod principi placuit, legis habet vigorem*; 'what pleases the prince has the force of law' (*Dig.* 1.4.1). And more famously still, *princeps legibus solutus est*; 'the Emperor is not bound by law' (*Dig.* 1.3.31).

At the heart of Augustan public philosophy, as Seneca noted in his *De clementia*, was the prerogative of mercy.²⁸ The presence of the prerogative, 'always in readiness', was definitive of *imperium* (*Es.* 188-9).²⁹ A recurring sentiment: 'But of all men mercy becomes none so well as a king or an emperor', and again, 'No one will be able to conceive a quality more becoming in a ruler than that of mercy, no matter how or by what right he has been set above all others' (*Es.* 191, 206). Not mere whim, as Seneca was careful to emphasise, but a prerogative which a *princeps*, by virtue of his 'divinity' is obligated to secure (*Es.* 195, 215-17). Looking back through recent history, Seneca alighted on Augustus as the prime *exemplum* of a *princeps* who appreciated his responsibilities. Given the paucity of competition, an unsurprising choice. Rule like Augustus, Seneca advised the young Nero, and you will win the lasting 'affection and favour of the Roman people' (*Es.* 198-9). Counsel that went spectacularly unheeded. Not just Seneca either. Plenty more historians

²¹ See Habinek 1998, 30, and Balsley 2010, 24-7.

²² Balsley 2010, 15-17, and Coleman 1990, 573-4.

²³ For a discussion of Lycaon's 'case', see Balsley 2011, especially 53-8, noting the Augustan allusions in the constitution, and place, of the divine council, and supposing that the description of the *recessus* might have been intended to resonate with the *maiestas* jurisdiction of the Roman Senate.

²⁴ On the 'integrity' test in 'hard-case' jurisprudence, see Dworkin 1986, 255-8, 265-6.

²⁵ See here Balsley 2011, 58-9.

²⁶ See Monateri 2018, 87-8, and also Tuori 2016, 56-7, tracing the longer history of the idea, back to the dictatorship of Julius Caesar, and the inspiration of Alexander the Great, and also 282-7. For an overview of the reception of the *dominium* in the late medieval and Renaissance state, see Lee 2016, ch.3

²⁷ Sommerville 1994, 94-5. It is fair to say that James was a little obsessed with Augustus, having coins minted in his image, even modelling his own coronation on an Augustan 'triumph',

²⁸ An essay which had an especially profound influence on Jean Bodin, the champion of Renaissance absolutism. See Stacey 2011, 15-17, supposing that it is in *De clementia* that the origins of the modern theory of 'sovereignty' can be discovered.

²⁹ For a commentary, see Stacey 2011, 29-31.

appraised Augustus in like terms. Even Suetonius seemed impressed by a judge of ‘great diligence’ and ‘mercy’ (*Aug.* 61).³⁰ Along with the fact, emphasised by Dio, that Augustus knew what it meant to be ‘set free from the laws’ (*Hist.* 142).

We can only surmise the extent to which Ovid was deliberately venturing an opinion on the nature of sovereignty in his Rome. The reworking of source material intimates that he might have been. In Callimachus’s *Hymn 5*, the young Tiresias is blinded for having seen Athena bathing; a sentence which is then mitigated by the granting of prophetic powers.³¹ What Ovid does, in a manner of speaking, is remove the scene of the action from the riverbank to the courtroom. More compelling still is the evidence discovered in the closing passages of the final book of *Metamorphoses*. Ovid’s paean to the ‘divine’ Augustus himself, the son and heir of the ‘great’ Julius Caesar: ‘whatsoever habitable land the earth contains shall be his, and the sea shall also come beneath his sway!’ (*Met.* 15.830-31). A prescient sub-clause. It was command of the seas which, as Ulpian emphasised, defined the *dominus mundi*. Continuing in prophetic tones (*Met.* 15.832-4):

Pace data terris animum ad civilia vertet
iura suum legesque ferret iustissimus auctor
exemploque suo mores reget³²

When peace has been bestowed upon all lands, he shall turn his mind to the rights of citizens, and as a most righteous jurist promote the laws. By his own good example shall he direct the ways of men.

After which he will pass on his wisdom, and settled state, to his ‘son born of his chaste wife’ (*Met.* 15.836).³³ A politic aside, it might be noted, assuming that the ‘hallowed’ Livia may not have been quite so enamoured of the insinuation drawn in *Tiresias’s Case*; Juno the embittered and humourless consort, squabbling with her husband over sexual trivia.

At this point, we might return to the substance of Tiresias’s opinion, that women did indeed get more out of sex than men. Hardly a surprising resolution. Every Roman gentleman knew that women were more lustful; certainly every gentleman who chanced across moralising texts such as Valerius’s slightly later *Facta et Dicta*. And thus more likely to break their marriages oaths, and their families. It was, after all, why Augustus had enacted his *lex* against adultery in 18 BC. Men did stray of course. Jupiter’s indiscretions are scattered all over *Metamorphoses*, whilst those of the youthful Octavian were well-enough known. A young man who ‘underwent the infamy of various disgraces’, as Suetonius put it (*Aug.* 68.1). But still, the root problem, as Roman law intimated, was the lust of women.

The final passages of the fifteenth book can be read as an appeal, to both parts of *Tiresias’s Case*, confirming what the reader has sensed all along, that the new Rome brings to realisation the transformation of a lawless state into a lawful. Starting with the Tiresian ‘settlement’, the moment when Tiresias assumes the role of a *vates*, and finishing with the embodiment of natural and civil law in the person of the ‘divine’ Augustus, ‘sire and ruler’ (*Met.* 15.860). The *pater patriae*, as he would be hailed in 2 BC.³⁴ Ovid would make the

³⁰ Needless to say, Suetonius inserts a few more cautionary accounts, of the younger Augustus more particularly, prone to moments of murderous paranoia.

³¹ For a closer commentary on the differences between Ovid’s version, and that discovered in Callimachus, see Balsley 2010, 14, 18-20.

³² For a commentary on the ‘uncanny resemblance’ between Ovid’s paean and Augustus’s testimonial, see Ziogas 2021, 313-14.

³³ That son being, of course, the future Emperor Tiberius.

³⁴ A title which, according to Suetonius, was first given to Julius Caesar (*Jul.* 85). Dio suggests that Cicero earned an unofficial variant, following his role in the suppression of the Catiline conspiracy. Augustus records his assumption of the title in his *Res gestae*, at 35.

same supplication in the second book of *Fasti*, to the man under whom ‘laws flourish’ (2.141). The nature of Ovid’s personal relationship with Augustus has long intrigued, later events, most obviously his *relegatio* in 8, suggesting that it was increasingly fraught. Very possibly a consequence of the critical insinuations against the *leges Iuliae* which can be further read into the *Amores* and *Ars*.³⁵ At the same time, though, there is nothing in book fifteen which supposes that Ovid doubted the defining premise of Augustan governance; that the law of Rome was bounded by the sovereignty of the *princeps*. It was, ultimately, his law. The ‘law animate’, in the person of the *deorum vice*, the divinely-appointed emperor.³⁶

In affirming the ‘absolute’ sovereignty of the *princeps*, the final passages of *Metamorphoses* revalidate the Tiresian ‘settlement’. The appreciation that secular justice cannot be resolved on a purely case-by-case basis, at the whim of variously disinterested gods. There needs to be ‘hierarchy’ of norms, as the Kelsenian jurist might again infer, lending coherence to civilian law, whilst also identifying a credible sovereign authority vested with discretionary powers of *clementia*; of the kind which might permit a king to mitigate a sentence such as that suffered by the young Tiresias. Though not, it might be noted, to vacate it. The purpose of equity, in Roman and civil, as in ‘common’ law, was always remedial; concerned to soften the rigour of the law, not to erase it.

It is, of course, the benefit of hindsight which permits such a reading, along with a fair degree of poetic license. An obvious parallel might be made with Whig historians who, in praising the great Reform Acts of the nineteenth-century, liked to take their readers back to the days of the Anglo-Saxon Witan, in order to discern the beginnings of a process proved inevitable by history. *Tiresias’s Case* serves the same purpose in Ovid’s casebook. It heralds the ‘assurance’ of Augustus, the greatness of Rome, and the greatness of its laws.³⁷ There could be no fifteenth book without the resolution of *Tiresias’s Case*; the ur-case of *Metamorphoses*.

Philomela’s Case

Something else which assured the greatness of Rome is rape. Or so generations of young Romans were taught. The rape of the Sabine women, the rape of Lucrece, the rape of the vestal Rhea, the result of which was the birth of Romulus and Remus. Without rape there would have been no Rome, as readers of Livy’s *History* would have likewise discovered, and Valerius’s *Facta et Dicta*, and so many other cultural and moral ‘histories’ of early Rome.³⁸ Good for a laugh too, the Rome of Romulus was also the Rome of Priapus.³⁹ And for decoration, sculptures scattered about villa gardens, daubed on the walls of the local bath-house and brothel. Rape was everywhere, hard-wired into Roman culture. *Metamorphoses* is testament to this fact.⁴⁰ Indeed, if it was subject-specific, it would be a casebook on rape.

Even though the Romans had no word which defined precisely what rape was supposed to be, and no law either.⁴¹ *Raptus*, which bears greatest similarity to the English term for penetrative sexual assault, referred more closely to abduction, which might even be consensual. Roman customary law treated rape as a species of *stuprum*, or unlawful

³⁵ For the possible reasons for the *relegatio*, see Norwood 1963.

³⁶ See Tuori (2016), 7-8, confirming the ‘defining feature’ of Roman public law during the *principate*.

³⁷ See here, reaching a similar conclusion, Gladhill 2012, 1-7.

³⁸ For an overview here, see Nguyen 2006, 81-3.

³⁹ For a commentary on Ovid’s comedic account of Priapus’s rapes in the *Fasti*, noting its pornographic parallel, see Frazel 2003.

⁴⁰ Encompassing around fifty rapes, upon half of which it dwells in some depth, starting with the rape of Daphne in the first book. See here Richlin 1992, 158.

⁴¹ Something further confused by the fact that the idea of ‘criminal’ law in Rome was never clearly determined. See here Riggsby 2010, 195-204, and 2016, and also Nguyen, 2006, 76.

sex. In time a more precise determination would emerge reflecting the peculiar violence, *stuprum per vim*. Like any other customary *stuprum*, prosecution was the responsibility of the *paterfamilias*.⁴² A considerable amount of cultural capital was invested in *pudicitia*, the honour of the family described in the virtue of its women.⁴³ The ‘most lovely kind of beauty’, according to Seneca, ‘the greatest glory’ (*Dial.* 12.16.4). The consequence of its neglect was spelt out by Valerius; ‘there destruction rules, *infamia* flourishes, violence dwells, and wars are waged’ (*Val.Max.* 4.3.p, 6.1.p).⁴⁴ All of which meant that, whilst prosecutions might be ‘private’, incidents of *stuprum per vi* were very much of ‘public’ concern. Rape had built Rome, but so too might it break Rome.⁴⁵

Customary law created a series of anomalies. Most obviously, only those invested with *pudicitia* could be said to have lost it. Something which excluded various categories of women, including actors, prostitutes and slaves.⁴⁶ Neither could wives be raped by their husbands; as much his property as were his slaves. Customary law also admitted a variety of possible remedies for the offended *paterfamilias* to consider, ranging from financial settlement, under the old *lex Aquilia* and more recent *lex Cornelia de iniuriis*, to casual beatings, castration, and even death.⁴⁷

By the time that Ovid was drafting his *Metamorphoses*, the law had begun to change. The *lex Lutatia*, enacted around 70 BC, identified ‘forcible violation’ as a crime, whilst the *lex iulia de vi*, promulgated quarter of a century later, confirmed that rape was an offence which attracted a capital charge.⁴⁸ The Augustan *Leges* of 18 BC further confirmed the ‘public’ status of various sexual ‘offences’ or *crimen*.⁴⁹ Most importantly, a reinvested *lex iulia de vi* confirmed *stuprum per vim* as a capital offence, whilst further identifying the violator as a ‘public’ criminal (*Dig.* 48.5.14.7). The jurists would later term it the *lex iulia de vi publica* as a consequence. The *lex* also confirmed that prosecutions could be brought by the victim, as well as the *paterfamilias* or, in his absence, her husband (*Dig.* 48.5.30.9). Finally, it removed the stigma of *stuprum* from the victim, thus facilitating the possibility of marriage.⁵⁰

Having sketched the Roman law of rape, such as it was, we can turn our attention to the case in question. An egregious example of *raptus* and *stuprum per vim*, the facts of *Philomela’s Case* can again be briefly told.⁵¹ Philomela, a princess of Athens,

⁴² Nguyen 2006, 90, 93, and Harries 2007, 88-9.

⁴³ The jurist Gaius would later note a *praetorian* edict which stretched infringements of *pudicitia* to include casual street harassment, albeit not if it was mere jesting, or if the harassment had ‘honourable’ purpose (*Inst.* 3.220).

⁴⁴ The existence of shrines to *pudicitia* is attested in Valerius’s *Facta et Dicta* (8.15.12), as it is in Livy’s *History* (10.23.1-10), Propertius (2.6) and Juvenal’s sixth *Satire*.

⁴⁵ See here Langlands 2006, 141-2, 364-5.

⁴⁶ The parlous position of prostitutes was confirmed in *Dig.* 25.7.1.1. As for actors, Cicero accepted that a gang-rape of mime-artists in Atina was a matter of local custom. As for slaves, the only risk the rapist incurred was the possibility of an action brought about the owner for *iniuria*. Of course, the same owner was quite at liberty to put his slave to work as a prostitute. See McGinn 1998, 314-15, 326. There seems, further, to have been a partial defence for prospective rapists who could prove that their victim looked like an actor, a prostitute or a slave. See Nguyen, (2006), 92-3.

⁴⁷ The *lex Aquilia*, passed around 286 BC, providing compensatory remedies for private *iniuria*, the *lex Cornelia*, enacted two centuries later, during the dictatorship of Sulla, adding the criminal remedies.

⁴⁸ Which could be remitted to *relegatio* or diminution of status in particular circumstances. Paulus would later suppose that *relegatio* was commonly reserved for *honestiores*, privileged citizens (*Sent.* 5.22.5).

⁴⁹ Bryen 2016, 328-31.

⁵⁰ This latter provision would be reversed by a latter edict of Constantine in 326, which supposed that the victim should take responsibility for making herself open to assault, even if it was simply walking the streets unaccompanied, ‘since they too could have kept themselves at home until their marriage day’. The ‘fault of frivolity and the fickleness of her sex and judgement are no excuse’. For a broad discussion of these ‘reforms’, see Nguyen 2006, 100-11. It seems likely that Constantine was reacting to a perceived increase in incidents of *raptus*.

⁵¹ The most likely source-material being Sophocles’s lost play *Tereus*.

is the sister of Procne, wife of Tereus, King of Thrace. Whilst escorting Philomela to visit her sister, Tereus is overcome by 'his passionate nature' and rapes her (*Met.* 6.458-9). When she threatens to report what has happened, Tereus tears out her tongue, and decides to keep her in a cabin in the forest, to which he will return periodically to commit further rapes. In defiance, Philomela weaves an account of her violation on a tapestry and has it smuggled it to Procne.⁵² Incensed by what has occurred, Procne rescues Philomela; a second *raptus* the sharper Roman lawyer might have noted, *rapti raptaeque*. They then decide to wreak revenge by killing Procne's son Itys and serving him up to his father in a meal. Presented with the evidence, in the shape of Itys's head, Tereus vows revenge and chases after the sisters. Almost caught, they pray for the intervention of the gods, and are turned into birds. Ovid does not say which birds, but most Roman poets assumed that Philomela became a nightingale, and Procne a swallow.⁵³

Narrowly conceived, *Philomela's Case* is about rape. But more broadly, it is another case which interrogates the very idea of law, its presence and its absence. Barbarian Thrace is barbarian for a reason. Philomela was raped because she found herself adrift in a 'state of nature'. In this context, her case assumes a pivotal place in the casebook, confirming that a 'world of human geopolitics' cannot function simply by means of divine writ.⁵⁴ A civilized society needs a civil law. Otherwise its people will do as Hobbes intimated, and as Philomela does; they will take the 'law' into their own hands. Readers of Valerius's *Facta et Dicta* would have noted similar instances, such as the wife of the Galatian king Orgiago, who took the first opportunity to decapitate the Roman centurion who had raped her. They would also have noted that none of Valerius's Roman victims do similar.

There is though an ambiguity, for whilst Ovid might seem sympathetic to Philomela's fate, he cannot condone the resort to savagery. Many of Ovid's rapes assume an almost whimsical tone, disconcerting for a different reason, but that of Philomela is painted in the language of a blood-soaked Jacobean revenge-tragedy. A 'figuring' of 'hell on earth', it has been supposed.⁵⁵ Even the wedding of Tereus and Procne is attended by the Furies, holding 'torches stolen from a funeral' (*Met.* 6.430). Fiery metaphors are pervasive. When Tereus first sees Philomela, he is 'inflamed with love, quick as if one should set fire to ripe grain' (*Met.* 6.455-6)

There are though two especially hellish moments. The first is the mutilation of Philomela, something over which Ovid lingers notably longer than the rape itself. Of the latter, all the reader knows is that whilst she was being 'ravished', Philomela called for help of her father, her sister, and the gods, and none were listening. Left as a 'dove, with its own blood all smeared over its plumage', a virginal inference, whilst berating her violator and threatening vengeance (*Met.* 6.529-30). The mutilation is a consequence of the latter (*Met.* 6.544-8):

Ipsa pudore
proiecto tua facta loquar: si copia detur.
in populos veniam: si silvis clausa tenebor,
inplebo silvis et conscia saxa movebo;
audiet haec aether et si deus in illo est!

I will cast my shame aside and proclaim what you have done. If I should have the chance, I would go where people throng and tell it; if I am kept

⁵² The reader is left to infer whether the account is in script or image, though the more common translation supposes that she worked 'words'.

⁵³ Greek poets adopted the converse. Tereus, meanwhile, becomes a hoopoe, a bird with a mixed reputation across ancient cultures. 'Every inch a fighter still', according to Ovid, sacred in ancient Egypt and Minoan Crete, amongst the 'detestable' in *Leviticus* 11:13-19.

⁵⁴ Gildenhard and Zissos 2007, 3.

⁵⁵ Gildenhard and Zissos 2007, 4.

shut up in these woods, I will fill the woods with my story, and move the very rocks to pity. The air of heaven shall hear it, and, if there is any god in heaven, he shall hear it too!

A panicked Tereus then ‘seized her tongue with pincers’ and cut it out with his ‘merciless sword’ (*Met.* 6.556). So that the (*Met.* 6.557-8)

radix micat ultima linguae
ipsa iacet terraeque tremens inmurmurat atrae.

mangled root quivers, whilst the severed tongue lies palpitating on the dark earth, faintly murmuring

The tongue assuming a life, and then a death, of its own. The reason why Ovid lingers here might be attributed simply to poetic effect, to emphasize the violence of the moment. The mutation of Philomela, from chaste princess to mutilated rape victim to blood-splattered bird also fits the generic theme of the casebook, in which pretty much all rape victims are transformed into something or other; a tree or an animal, or a wife. There is though something more to Philomela’s particular mutation. It is the graphic nature of the silencing which makes *Philomela’s Case* the ur-case of Ovidian rapes.⁵⁶

The second peculiarly ‘hellish’ moment comes with the slaughter of Itys. Momentarily unable to find ‘words strong enough to match her outraged feelings’ (*Met.* 6.584-5), Procne recovers her voice on seeing her son, and, ‘as a tigress drags a suckling fawn’, she ‘smote him with a knife between breast and side – and with no change of face’ (*Met.* 6.637). And then Philomela (*Met.* 6.643-6):

iugulum ferro Philomela resolvit,
vivaque adhuc animaeque aliquid retinentia membra
dilaniant. pars inde cavis exsultat aenes.
pars veribus strident; manant penitralia tabo.

cut the throat also, and they cut up the body still warm and quivering with life. Part bubbles in the brazen kettles, part sputters on spits; while the whole room drips with gore.

As we have already noted, Roman customary law did facilitate ‘private’ revenge in particular circumstances. But there are no recorded instances of a rapist’s child being popped in a pot-roast. And whilst a *paterfamilias* retained a right to expose an unwanted child, there is no evidence of any who dined-in on the tragedy. This is a savage act of vengeance devised by two women, in the conspicuous absence of a *paterfamilias*. Philomela’s father might have had a claim in Roman law for *injuria* made even more egregious by the fact that he had extracted a personal assurance of safety from Tereus. He might even, as we have noted, have exacted his own revenge, if he had caught Tereus *in flagrante*. But the writ of Roman law does not run in *Philomela’s Case*, and there is nothing Roman about what happens to Itys.⁵⁷

Procne briefly conjures the possibility of exacting vengeance according to the *lex talionis*, but the ‘sacraments’ of the ‘Bacchus festival’ better suit the moment. The murder

⁵⁶ Shakespeare certainly makes this inference in his *Rape of Lucrece*. See Bate 1993, 75-6.

⁵⁷ See here, noting the very different responses of Philomela and Lucrece to their respective violations, Newman 1994, especially 304-7.

of Itys is a barbarian rite, committed by two women whom circumstance has made barbaric.⁵⁸ As she tosses Itys's 'gory' head on to the dinner table, Philomela had 'never longer more to be able to speak, and to express her joy in fitting words (*Met.* 6.658-60) Tereus calls on the Furies, but they are already stood in front of him. It is hardly surprising that Ovid denies the possibility of redemption, for anyone. There can be no happy ending on this occasion. The gods save the sisters from Tereus, but only when it is far too late.⁵⁹ *Philomela's Case* confirms what *Teresias's Case* intimated; that the whimsies of belated divine intervention cannot assure justice.

The gods need an earthly representative, just as Rome needs a civil law, and a *pater patriae* to secure it. There is, though, an evident ambiguity to be reconciled. There is no surprise in the fact that a savage rape-case caught Ovid's eye. But it does make things tricky, for the reasons we have already encountered. Roman history celebrated rape, whilst its law only tangentially addressed the violation. Being raped in a Roman bedroom would have felt much the same as being raped in a Thracian hut. The moment does not affect the experience.⁶⁰ It would be fanciful to suppose Ovid an early-day feminist legal scholar. But it is not fanciful to suppose that his report of *Philomela's Case* has lost little of its resonance two millennia on.⁶¹ It certainly serves the purpose of reminding the putative law student that rape is an experience rather than a mere event, that it is a violation which leaves emotional as well as physical scars, and that the need to retrieve the voice of the victim is a pre-requisite in any process that pretends to justice.⁶²

It is a critical commonplace to suppose that, of all the classical poets, Ovid speaks most immediately to the 'modern'.⁶³ It can certainly be argued that none of the cases which he wrote up in *Metamorphoses* has retained a greater presence in modern literature than Philomela's. Chaucer and Shakespeare testify to the Renaissance fascination, TS Eliot to the continuing role of the poet in vocalizing the violated: 'yet there the nightingale/ Filled all the desert with inviolable voice'.⁶⁴ Likewise contemporary female dramatists such as Timberlake Wertenbaker and Sarah Kane.⁶⁵ It is a critical commonplace in modern feminist criticism to suppose that the literary text might be a site of 'resistance', a place to raise voices; the same aspiration which centers the 'poethical strategy' which we noted earlier.⁶⁶ But it is difficult to validate this aspiration if the only voices are male. A conclusion that resonates, and not just in the particular context of Ovidian poetry. The inscription of Latin literature is itself resolutely male; much like the inscription of Roman law.⁶⁷ In *Philomela's Case*, the paradox screams; the concentrated articulation of female silence, by a male poet.⁶⁸

Myrrha's Case

There may not be quite as much incest in *Metamorphoses*, but there is plenty. Indeed,

⁵⁸ A likely inspiration to be found in Euripides's *Medea*.

⁵⁹ Ted Hughes makes this intimation in his account of the 'case' in his acclaimed *Tales from Ovid*.

⁶⁰ See here Andrea Dworkin 1989, at 23, suggesting that the 'celebration of rape in story, song and science' is 'the paradigmatic articulation of male sexual power as a cultural absolute'.

⁶¹ For this inference, see Richlin 1992, 163-4, 176, and also Barker 2018, catching the 'Me Too' resonance.

⁶² Themes common to much critical legal feminist writing on the 'experience' of rape. See, for example, Estrich 1986 and Smart 1990.

⁶³ The definitive statement, albeit engaging more directly the Renaissance Ovid, is Bate 1993. For a more recent affirmation, see Brown 2005, 144, concluding that Ovid is a 'peculiarly modern poet'.

⁶⁴ *Waste Land*, ll.100-101. For an interesting commentary on Eliot's Philomela, see Booth 2015, 95-9.

⁶⁵ Most obviously Wertenbaker's *The Love of the Nightingale* and Kane's *Cleansed*. 'A not insignificant amount of carnage on the Western stage harks back to the bloodshed of the house of Tereus', according to Gildenhart and Zissos 2007, at 3. For an overview of the later reworkings of *Philomela's Case*, see Brown 2015, 92-104.

⁶⁶ Surridge 2005, 9-10.

⁶⁷ There are indeed few better examples of what Rebecca Solnit terms 'men's devouring voices' than that proved in the writing of law. See Solnit 2017, at 22.

⁶⁸ See here Richlin 1992, 160-2, 173, and also James 2021, 153-5 on the paradox of Ovid writing female resistance.

an insinuation might be read in *Philomela's Case*.⁶⁹ Fleeting reference in the sixth book to *Canace's Case* too, already reported in the *Heroides*, and various insinuations of divine incest, starting with Arachne's depiction of Jupiter's relationship with his daughter Proserpina. There are though two cases which Ovid reports in rather greater detail. The first is that of Byblis, in book nine. Like Canace, Byblis conceives a passion for her brother, which she makes the mistake of conveying in a letter.⁷⁰ The passion is not consummated, but the testament is enough to condemn the author, ultimately to madness (*Met.* 9.626-8):

Denique iam nequeo nil commisisse nefanum.
et scripsi et petii; reserata est nosta voluntas:
ut nihil adiciam. non possum innoxia dici.

I cannot now undo the wrong that I have done. I have both written and have wooed him; my desires are revealed. Though I do nothing more.

It is, as Ovid prefaces, a 'warning that girls should not love unlawfully' (*Met.* 9.454). Not divine law, for the gods are 'a law unto themselves', but the laws of 'men' (*Met.* 9.500). A resolution entirely in line with the Tiresian 'settlement'. Sinners need laws; otherwise they end up like Byblis, 'shrieking through the broad fields' (*Met.* 9.643).

A shocking case, indeed, but not as shocking as that of princess Myrrha, which follows shortly after.⁷¹ It is a truly 'horrible' tale (*Met.* 10.298-300). Before we see what makes *Myrrha's Case* quite so terrible, we might again familiarise ourselves with the legal and cultural context. *Incestum* carried two different meanings in Roman law. The first was sex with a Vestal Virgin, an offence which polluted the community, and imported the threat of divine punishment.⁷² The second was sex between people so closely related that they were denied *ius conubii*, the right to marry and procreate. Both were treated by the jurists as offences against 'natural law and modesty' (*Dig.* 23.2.14.2, 40.18.5).

In his commentary in the *Digest*, Paulus confirmed that 'If anyone marries a person from the types of relations whom we are forbidden by custom to marry, he is said to have committed incest' (*Dig.* 23.2.39). There is some debate as to when precisely the customary law of *incestum* became subject to criminal charges.⁷³ There is no evident mention of *incestum* in the Augustan marriage laws, and it may well be that the customary law of *stuprum* was deemed a sufficient deterrent. Along with some suitably severe penalties. Such as that meted out to the fabulously wealthy Sextus Marius, thrown from the Tarpeian Rock during the reign of Tiberius, for having sex with his daughter; an event recorded by a skeptical Tacitus, who rather suspected that it was the fabulous wealth that did for Sextus (*Ann.* 6.19.1).⁷⁴ A fair number of imperial transgressions also made it into Tacitus's *Annals*, including the marriage of the Emperor Claudius to his niece Agrippina (*Ann.* 12.6-70).⁷⁵

The root of the offence lay, of course, in the threat which it presented to the *patria potestas*, and the particular responsibility, incumbent on all *patres familias*, to

⁶⁹ Tereus having had sexual relations with both sisters. See Newman 1994, 321, and Brown 2015, 87-91.

⁷⁰ For a commentary on the implications of testament in Byblis's 'case', see Raval 2001.

⁷¹ Sourced most likely from Cinna's lost poem *Smyrna*. See Resinski 2014, 276, taking the inference from Catullus 95.

⁷² The punishment for a Vestal discovered to have lost her virginity was notorious. To be taken to *Campus Sceleratus*, the field of wickedness, and buried alive. Pliny recorded, in disapproving terms, the execution of the Vestal Cornelia during the reign of Domitian (*Let.* 4.11). In Pliny's opinion, a scapegoat.

⁷³ See Harries 2007, 93-4.

⁷⁴ Sextus was the 'richest man' in Spain, whose gold and silver mines were swiftly confiscated to the imperial exchequer.

⁷⁵ The latter's reputation was already somewhat compromised by Caligula's suggestion that she was herself the product of an incestuous liaison, between Augustus and his daughter Julia. See Ziogas 2012, 36.

preserve the honor of the family. Nothing, the jurist Gaius affirmed, mattered more to the good order of Roman society than the integrity of *patria potestas*.⁷⁶ The *pudor* of the family, and the more particular *pudicitia* of his wife and daughters.⁷⁷ A matter of *mores* as much as it was of law, and above all a matter of display. The responsibility of the same women to an extent, but of the *pater familias* more so. In his *Facta et Dicta*, Valerius recommends moderation as a defining virtue of the good father, be careful not to act rashly. But also, when necessary, act firmly, with *severitas*. The determinant of necessity being the broader threat to the family and the community.⁷⁸ All of which brings us to the facts, and the critical twist, in *Myrrha's Case*.

Reported in the tenth book of *Metamorphoses*, and told in the voice of Orpheus, poet, 'lawgiver and pederast'.⁷⁹ A tale so 'horrible' that it might be expected to have derived from Thrace, the land of child-eating savages. A poignant insinuation. But is, in fact, discovered in the rather more civilized environs of Cyprus, at the court King Cinyras. Myrrha is his daughter, and the grand-daughter of Paphos, the product of Pygmalion's rather strange relationship with his ivory statue. The hint of a depravity, genetic and poetic; a great-grand-dad so obsessed with his creation that he ends up marrying it.⁸⁰ Which brings us to the twist in *Myrrha's Case*. For the object of Myrrha's passion is Cinyras. A passion kindled, Orpheus alleges, by the Furies. Which she tries to fight, and then rationalise away. A *scelus*, perhaps, but if so an unjust one. A 'crime/ If it is a crime' (*Met.* 10.322-3). One of the 'spiteful laws' that 'human civilization' makes (*Met.* 10.329-30). When Cinyras asks who she might like to marry, Myrrha replies 'One like you' (*Met.* 10.364).

Despairing, Myrrha decides to hang herself, but is stopped by her nurse. Reluctantly the nurse agrees to help Myrrha devise a means to sleep with her father, persuading Cinyras that there is a girl, of his daughter's age, who wishes to share his bed. Their relationship is consummated, to the chorus of various ill-starred omens, and then repeated on following nights.⁸¹ Until Myrrha finally reveals herself to the horrified Cinyras. And then flees. Her fate is predictably hideous. Pleading her guilt, and the interventions of the gods, she is transformed into a tree, her pregnant belly encased in wood. In due course she gives birth to Adonis, whose story immediately follows, and over which she continues to exercise a vengeful restraint.⁸² In the meantime, she is left to her fate, another mutilated young woman who had dared to challenge the laws of the *patria potestas*.⁸³

In a sense it is a simple-enough case of *incestum*, the facts of which are uncontested. Still, a daring subject for a poet, not least because of the complications Ovid prefers.⁸⁴ For a start, parental incest was viewed as being especially egregious. It was also something which assumed paternal instigation. Cinyras is certainly culpable, the fact that he is so easily persuaded to have sex with a girl who could, quite literally, be his daughter. They even call one another 'father' and 'daughter' during the sexual act; 'names to seal the crime' (*Met.* 10.467-8). We might call him a child-abuser or a pervert, Ovid barely

⁷⁶ The 'special characteristic of Roman citizens; for virtually no other men have over their sons a power such as we have' (*Inst.* 1.55). For a commentary, see Saller 1986, especially 7-8.

⁷⁷ See Langlands 2006, 37-9 and 49-61, discussing its place in the 'foundational myths' of Rome.

⁷⁸ The killing of Verginia, at the hands of her father, in order to forestall her violation, being the revered example drawn from the foundational mythology of Rome.

⁷⁹ As Ziogas 2021, puts it, at 346. For the idea that Orpheus might be seen as an advocate, speaking in the 'Forum of the Underworld', see VerSteeg and Barclay 2003, 400 and also 409-14.

⁸⁰ See here Resinski 2014, 277-8, inferring the parallel genesis, and also Hardie 2004, 9-11.

⁸¹ Myrrha stumbles three times, and three times an owl hoots a warning cry of doom.

⁸² Compromising Adonis's capacity to love Venus. See Newman 1984, discussing this possibility in the closer context of Shakespeare's *Venus and Adonis*.

⁸³ See here Resinski 2014, 280, dismissing the thought that Myrrha's punishment is anything other than hideous.

⁸⁴ See here McCabe 1993, 141.

calls him anything, preferring to focus his attention on Myrrha. There is no surprise here. Tiresias would probably have done the same, along with any number of Roman moralists. But there are subtleties in Ovid's report, of the kind which a poetic jurist might be more tempted to inscribe.

The first breaches the aligned matters of responsibility and compassion. It is commonly noted that Ovid evinces a measure of sympathy in his depiction of *Canace's Case* in the *Heroides*.⁸⁵ Byblis too.⁸⁶ Less easy in *Myrrha's Case*, though, the species of incest so peculiarly egregious and so threatening to the *patria potestas*, and a daughter so cunning and knowing.⁸⁷ But there are intimations, not least in Myrrha's 'declamation' against 'spiteful' laws, presaged by a list of divine transgressions. Myrrha moves through the same jurisprudential gears that Roman law students would have been expected to engage, if they were arguing her case. Ulpian in verse, it has been supposed.⁸⁸ As the narrative develops, so the sympathetic possibilities begin to emerge.⁸⁹ Not least a gnawing sense that Myrrha might be as much a victim as a perpetrator; the not-unfamiliar kind who is persuaded to blame herself for the sins of others.⁹⁰ The fact that the object of her passion is her father fashions a further ambiguity; rendering it both more and less forgivable.⁹¹ Ultimately, though, it is the afflicting anguish and the acknowledgement of guilt: 'I do not refuse the dire punishment I have deserved' (*Mec.* 10.484-5).

A second subtlety follows. There are circumstances where poets are better placed to deal with cases of supposed sexual transgression, and *incestum* might be one of them. This is, in essence, a jurisdictional matter, and not unfamiliar. The *Amores* and the *Ars* might be read as concerted appeals to limit the reach of civil law into matters of private morality, the jurisdiction of the *praeceptor amoris* better suited than that of the *pater patriae*. An appeal, moreover, which could only be read as an implicit criticism of Augustan marriage law. The supposition that Ovid might have written up *Myrrha's Case* to the same purpose is tempting.⁹² Both father and daughter commit an offence proscribed under the terms of the *lex iulia de adulteriis coercendis*.⁹³ Whilst there is no evidence of incest in the relation of Augustus with his own daughter, there is plenty of filial tension.⁹⁴ And no little poignancy if it was Ovid's relationship with either of the Julias which further precipitated his own *relegatio*.⁹⁵

This argument distinguishes *Myrrha's Case* from those of Tiresias and Philomela, of course, both of which we have read as supporting the reinvestment of civil law. But it is not contradictory. For a start, the reader is left in very little doubt that a reliance on divine law alone is hardly more likely to bring justice, or order. Equally, to suppose that Rome needs the *deorum vice*, and his law, is not to preclude the possibility that there are limits, places where the law does indeed become 'spiteful'. Neither does the hazy nature of the margin between public and private in Roman law preclude the fact that such exists in any juridical order. Ovid drew his line at the bedroom door, and it is for this reason

⁸⁵ See Williams 1992.

⁸⁶ Nagle 1983, 301, 305-7, and also Spentzou 2019, 425.

⁸⁷ See here Ziogas 2021, 375-7.

⁸⁸ See Ziogas 2021, 372.

⁸⁹ It has been argued that Ovid deploys Orpheus precisely so that he can venture sympathy, not just at a remove, but more cautiously. See Nagle 1983, 301.

⁹⁰ See Resinski 2014, 277-8.

⁹¹ For this thought, see Hardie 2004, 13.

⁹² See Ziogas 2021, 346, suggesting that it is a case that 'belongs' precisely to the 'age of Augustus', and also 364-8.

⁹³ Under the terms of which a marriage-able girl could still commit adultery.

⁹⁴ Suetonius recorded Augustus as referring to them as boils and ulcers, and wishing he had 'died without offspring' (*Aug.* 65.4).

⁹⁵ Whether Ovid engaged in any sexual activity with either remains a tantalizing unknown. For an early reflection on the broader possibilities, and the relative credence, of different rumors regarding his *relegatio*, see Norwood 1963.

that his report of *Myrrha's Case* might have read rather differently. Not so much on its facts, which Myrrha does not dispute, but in the tone of censure. Ovid makes it possible to wonder the justice of her fate and in doing so, we might suppose, laying down the grounds of her appeal.⁹⁶

In Closing

It seems appropriate, as we conclude our brief foray into Ovid's casebook, to revisit our preliminary conclusions and venture some closing arguments. We noted at the start the particular aspiration of the literary jurist, the supposition that the literary text can present alternative perspectives, for how law was, and for how it is. On an individual basis we can read *Philomela's Case*, for example, as a reflection on the law of rape in Ovid's Rome. The same can be said of *Myrrha's Case* and the law of incest. In this sense, a text such as *Metamorphoses* can be read as a legal as well as cultural history; at once both describing and constituting that same history.⁹⁷ A different kind of history, of course, in the same way that Ovid is a different kind of jurist to Gaius or Ulpian. Poets tend towards irony, jurists tend against it.⁹⁸

The same distinction intimates something else about Ovid the jurist. He dreamt big. *Metamorphoses* is crammed with cases, as we noted earlier, of which we have revisited only three. And they can each be read in isolation, for the reasons we have just intimated; for what they might tell us about contemporary attitudes towards rape or incest in Augustan Rome. But they also gesture towards something considerably greater. *Metamorphoses* tells a greater story, of the transformation of Rome from a lawless to a lawful state. Our three cases frame this story. The Tiresian 'settlement' advances a template for Roman law, *Philomela's Case* confirms the need, *Myrrha's Case* intimates the jurisdictional tensions which necessarily follow; as they do any legal order. It is here that we can discern the argumentative Ovid, restating his case for an alternative dispute-resolution mechanism, in which the *praeceptor amoris* holds court.

We also noted, at the outset, the more particular aspiration of the poetical jurist; the thought that a literary text might help to refine our ethical sensitivities. Here again it is a question of discerning resonances, not just in the way the law-job is 'done', but in regard to its human consequence. The silencing of the rape-victim, and the incest survivor, the myriad prejudices that continue to inscribe legal responses to female sexuality. Much has changed over the intervening two centuries since Ovid composed his casebook; and much has not. Something else which a poetical 'strategy' hopes to nurture, as we again noted earlier, is a greater facility for compassion. To feel sorry for Philomela, even as she cooks her nephew, and Myrrha, as she plots her way into her father's bed. Compassion matters most in the harder cases; those which stretch our moral, as well as legal, 'integrity' the furthest.

It is, as the likes of Sidney and Shelley would later confirm, the responsibility of the 'sovereign' poet to speak truth to power, and to suffer the consequences.⁹⁹ We might read the closing lines of *Metamorphoses* in this spirit (*Met.* 15.871-2):

Iamque opus exegi, quod nec Iovis ira nec ignis
nec poterit ferrum nec edax abolere vetustas.

And now my works is done, which neither the wrath of Jove, nor fire,
nor sword, nor the gnawing tooth of time shall ever be able to undo.

⁹⁶ See here Redinksi 2014, 273-4, supposing that sympathy for Myrrha's plight has increased from one retelling to the next.

⁹⁷ For a similar inference see Ziogas 2021, 19-20.

⁹⁸ See here Rorty 1989, xiv-v, 73-4.

⁹⁹ Ziogas 2021, 34.

The extent to which the *Metamorphoses* was complete by the time that Ovid was despatched to the desiccated shores of the Black Sea remains a matter of conjecture. To end his days in Thrace, surrounded by the kinds of barbarian who rape their sisters-in-law and eat their children; a passing irony which might be more than mere coincidence. A sentiment that can again be discerned in the closing books of *Tristia* and the *Epistulae*. Moments of resilience, in which the poet stakes out again, for one last time, not just his 'immortality', but his jurisdiction (*Met.*15.877-9):

Quaque patet domitis Romana potentia terris.
ore legar populi, perque omnia saecula fama,
siquid habent very vatam praesagia, vivam.¹⁰⁰

Wherever Rome's power extends over the conquered world, I shall have mention on men's lips, and, if the prophesies of bards have any truth, through all the ages shall I live in fame.

The final aspiration, to leave a testament to future generations. Elsewhere in his exile writing Ovid would intimate his deeper fear, of being forgotten: 'true poet or fashion's pander?' (*Tris.* 4.9.131). In this, at least, he had less to fear. No Roman poet captured the Renaissance imagination as much as Ovid, and none has done so since. We noted earlier the enduring influence of *Philomela's Case*. The appeal of *Myrrha's Case* has likewise resounded.¹⁰¹ Precedents both for centuries of literary jurisprudence. We can only conjecture why Ovid wrote his *Metamorphoses*, and for whom. We pondered earlier the likelihood that it was written for the kind of Roman who might aspire to a career in public life, in court even. It is for this reason that we can conjure a closing conceit. The modern lawyer, and indeed legal historian, might think it odd to read *Metamorphoses* as a jurisprudential text. But it would not have seemed odd to Ovid.

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¹⁰⁰ See Brown 2005, at 143, suggesting that it is a 'bold prophesy... triumphantly fulfilled'.

¹⁰¹ From Dante and Shakespeare to the modernist takes of Mary Zimmerman and Frank Bidart. See here Resinski 2014, 273-4, and 282-3, discussing Zimmerman's eponymous play, and Bidart's *Desire*, and also Spentzou 2019.

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