AUGUSTUS, HISTORY, AND THE LANDSCAPE OF THE LAW

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In the introduction to her comprehensive book, *Women in Roman Law and Society*, Jane F. Gardner urges caution in drawing too many conclusions about the realities of Roman life from the letter of Roman law. After all, as she says, "law . . . is about what people may or may not do, not what they actually do" (Gardner 1986.3). Such a distinction is a traditional one in legal studies, which for many years depended on a vision of the law solely as a set of rules and regulations created by a society in order to control the behavior of individuals. People choose to obey the law or not, but that choice is the product of rationality, free will, and whether or not the individual is ready to accept the consequences of his or her illegal action.

Recently, however, under the influence of contemporary critical theory, it has been argued that the distinction between "what people may or may not do" and what "they actually do" is a false one: the law *is* something that people actually do, a living institution that is continuously being tested, negotiated, created, and recreated within a given society. Thus one scholar calls the law "a constitutive rhetoric" that simultaneously reflects and produces what it means to live correctly; the law is a language that, like any other language, is the site of interpretive struggle, appropriation, and change (White 1985.28–48). It is certainly true that the relationship between law and social norm is hardly easy or unproblematic. Historians of the future, for instance, would be mistaken if they were to think that recent legislation in the United States "defending marriage" against homosexuality

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either reflected an actual threat or resulted in actual safety.[1] But while the Defense of Marriage Act and other similar laws may not directly correspond to the problems they purport to solve, they are nevertheless inseparable from the biases, goals, and anxieties of the cultures that bring them into being. My point is that, apart from any particular material effects resulting from particular laws, the act of legislating, and perhaps particularly the act of legislating private life, is meaningful in and of itself; not unlike the creation of a historical narrative, the creation of a legal text encodes a highly interested representation of social life.

Law, therefore, is a medium of representation, a fact that has certainly not gone unnoticed by scholars of ancient legal systems. Much important and useful work has been done by critics attempting to understand the relationship between law and social history who are by no means guilty of confusing the one with the other (including, but certainly not limited to, McGinn 1998, Johnston 1999, and the essays in Aubert and Sirks 2002). On the other hand, these critics are, as a rule, concerned with *what* the law means—with disentangling the true facts to which the Roman legal system corresponded—rather than with *how* the law means—the process by which facts are organized, processed, and laid out as comprehensible within the system of Roman legal discourse.

This trend is understandable but unfortunate, at least partially because, I would argue, it is in the latter question that we may find an important intersection between the work of legal historians and that of literary critics, as both attempt to understand the cultural frame that gave meaning to particular texts. And particularly because so much of our information about Roman law is based not on the texts of the laws themselves but on their appearance in literary works, it seems to me that it behooves each side to take seriously the meaning of the legal system both as and within a literary context. It cannot be forgotten that the Romans themselves thought a great deal of and about their own system of legislation, the network of *leges* that stretched back to the Twelve Tables and the very beginnings of the republic. Forensic oratory, moreover, was one of the most important parts of an elite male's education from the late republic through the high

1 Ratified by the US Congress in 1996, the Defense of Marriage Act (H.R. 3396) defines marriage for the purposes of Federal law as the union between a man and a woman. It also gives individual states the liberty not to recognize same-sex unions performed in other states (such as Vermont or Massachusetts). Subsequently, forty-two states have passed legislation prohibiting such unions from being recognized within their borders.

empire. Thus 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: Seneca the Elder, for instance, claims to have heard Ovid declaim before his master Fuscus, although it is true that he praises the poet's skill in language much more highly than his ability to construct a legal argument (*Controversiae* 2.2.9–12). Nevertheless, instead of imagining the Roman legal system as something entirely external to Roman literature, we should see the two as arising from many of the same cultural concerns and constraints, and try to understand how changes in one may reflect and be reflected in changes in the other.

The Augustan social legislation, the subject of this paper, offers a special opportunity to "read" the law as something more than a simple historical response to a simple historical problem. Passed in 18–17 B.C.E., the *lex Julia de maritandis ordinibus* and the *lex Julia de adulteriis* together formed one of the cornerstones of Augustus's attempt to reform the *mores* of the Roman people. The former law set up a system of rewards and penalties for marriage within and between classes, so that, for instance, members of the senatorial class were forbidden to marry freedpeople or actors, while all freeborn people were forbidden to marry anyone involved in prostitution. This law also established social, political, and economic rewards for men and women who produced a certain number of children. The *lex Julia de adulteriis* formally outlawed adultery for the first time in Roman history and not only established penalties for those caught in the act, but also set up rules for how those who discovered them should proceed. Thus the two laws each made real legislative incursions into the sphere of family life, and the *lex Julia de maritandis ordinibus*, at any rate, seems to have met with a significant level of resistance. Even before the end of Augustus's rule, the laws were revised to soften their terms in response to popular pressure: the *lex Papia-Poppaea* of 9 C.E. seems to have been passed in reaction to increasing protests, particularly from the *equites* (Cassius Dio 56.1). Nevertheless, despite the unpopularity, and possible ineffectiveness, of the laws, the *princeps* clearly remained committed to them—testimony to their importance as a part of his vision of the newly constituted imperial state.

The full and fundamental implications of the social legislation for Augustan ideology have been the subject of a considerable amount of scholarly debate, at least partially because we have so few contemporary sources that discuss them directly. It used to be thought widely that the laws were simply a practical measure on the part of the new government to encourage legitimate childbearing and thus reverse the deleterious effects of civil war

on the population. We certainly have some evidence that, correctly or not, some Romans were deeply concerned with the (perceived) falling birthrate (e.g., Cicero, who urged Caesar to find a way to increase the population: *propaganda suboles* [*Marc*. 23]; cf. *Leg*. 3.7). On the other hand, it is clear that the laws were primarily directed at the upper classes, since the marriage legislation focuses on maintaining the distinction between social ranks and categories, and the rewards instituted for marriage and childrearing seem calculated to appeal mostly to the social elite (Wallace-Hadrill 1981). The combination, moreover, of the marriage legislation with that outlawing adultery points toward a more subtle underlying message, one that emphasizes not just marriage per se but marriage established and maintained in a morally upright manner. Hence the social legislation has been seen as an important aspect of the Augustan "moral revolution" (Edwards 1993.34)—the idea that the principate represented a return to, and renewal of, the ancient values on which the Roman state had been built. The coincidence of the social legislation and the Secular games, performed the year after the passage of the legislation, underscores how the laws, like the games, were meant to inaugurate a new era of Roman prosperity, peace, and hope.

The extent to which the laws were understood, from the outset, as being intertwined with representations of time is clear. Augustus himself, when describing the measures in the *Res Gestae*, articulates them explicitly as an attempt to reestablish in the present the virtues and values of the past: "Legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi" ("By new laws proposed by me, I restored many of the good practices of our ancestors that were dying out in our time, and I myself have passed on to posterity examples of many things worthy of imitation," 8.5). What connects the new laws to old values are the *exempla*, ideals and images simultaneously part of an imagined Roman past and an imagined Roman future. The idea that the social legislation was intimately connected with an Augustan and imperial sense of time is also expressed in the close connection between the *leges Juliae* and the subsequent Secular games. The games were held under the republic every 100 years (or thereabouts) to mark the advent of a new era; like the social legislation, therefore, the games served as a point of connection between what was and what would be. Horace's *Carmen Saeculare*, performed at the opening of the games, makes the connection explicit between the games, the laws, and the cycle of ages (13–24):

rite maturos aperire partus
lenis, Ilithyia, tuere matres,
sive tu Lucina probas vocari
seu Genitalis.
diva, producas subolem patrumque
prosperes decreta super iugandis
feminis prolisque novae feraci
lege marita,
certus undenos decies per annos
orbis ut cantus referatque ludos
ter die claro totiensque grata
nocte frequentes.

You who fittingly are kind to reveal offspring at the
right time,
Ilithyia, guard our mothers,
whether you prefer to be called Lucina
or Genitalis.
Goddess, bring forth our young and
prosper the decrees of the fathers concerning marriage
with women and the nuptial law productive
of new life,
so that the certain cycle through ten times eleven years
will bring back songs and games
crowded in for three clear days and as many times
in welcome night.[2]

Both festival and legislation serve as a binding link between the past and the future. Moreover, although the poem calls upon Ilithyia to care for Roman mothers in line 14, it seems to gloss over them deliberately in 17–20, where it is the laws themselves that are represented as bearing the new generation ("prolisque novae feraci lege marita," 19–20). The designation of the senators as *patres*, as has been seen, collapses their roles as biological and social "parents" to the future (Fraenkel 1957.374, White 1993.124–27), but the *matres* of line 14 have become mere *iugandis feminis* by line 18. The state itself is mother to the children that the senators will father. By erasing

2 All translations are my own unless otherwise indicated.

the real bodies of real women from the process, the poem elevates reproduction to the level of a national responsibility, one that guarantees a continuous and unchanging return to the virtues expressed in Roman history.

In this sense, the historicization of the legislation—the attempt to deflect notice from its innovations by reference to the *exempla maiorum*—is part of the general attempt to disguise the innovations of the imperial state by reference to the Roman past. But if the laws were framed within particular ideologies of time, they also were understood through a sense of place. Scholars have long seen in the social legislation a challenge to the traditional boundary between domestic and civic life in Roman society, as the marriage and adultery legislation each take up, on behalf of the state, responsibilities that had hitherto lain with the head of an individual household (e.g., Raditsa 1980, Dettenhofer 2000.133–43, Severy 2003.52–56 and 232–51). The image is, perhaps, most famously laid out in Book 3 of Tacitus's *Annals*, where the historian presents a digression on the degeneration of Roman law, beginning and ending with the Augustan marriage legislation. Tacitus begins his critique by noting: "nec ideo coniugia et educationes liberum frequentabantur, praevalida orbitate; ceterum multitudo periclitantium gliscebat, cum omnis domus delatorum interpretationibus subverteretur" ("People did not rush to marriage or the rearing of children because of the law—solitary living was still prevalent—but there arose a great crowd of people at risk [of prosecution], since every home was being undermined by the examinations of informers," 3.25). The image employed in "omnis domus delatorum interpretationibus suberteretur" is typically, and beautifully, Tacitean: the house (*domus*) is literally being "overturned" (*subverteretur*) by informers, who are imagined as "reading" (*interpretationibus*) from outside what goes on within (Woodman and Martin 1996.235–36). The point is reiterated when the historian returns to the marriage legislation at the end of his digression (3.28):

> sexto demum consulatu Caesar Augustus, potentiae securus, quae triumviratu iusserat abolevit deditque iura quis pace et principe uteremur. acriora ex eo vincla, inditi custodes et lege Papia Poppaea praemiis inducti ut, si a privilegiis parentum cessaretur, velut parens omnium populus vacantia teneret.
>
> Finally, in his sixth consulate, Caesar Augustus, secure in his power, rescinded what had been ordered by the

> triumvirate and gave us laws to use in peace and under a prince. From this, the chains became more bitter, guards were established and encouraged by rewards under the *lex Papia-Poppaea*, so that if a person should be resistant to the rewards of parenthood, the populace, as though it were the parent of everyone, should step in to occupy the empty places.

The social legislation—here represented by the *lex Papia-Poppaea* that revised the earlier *lex Julia de maritandis ordinibus*—is imagined to create a situation in which the populace as a whole moves in to take over the "vacancies" (*vacantia*) left by childlessness. The space of the state has expanded beyond its normal and natural limits, invading the places that before had lain beyond its reach.

For Tacitus, then, the extent to which the social legislation subsumes individual choice to the common good is about the demise of boundaries between public and private life, between civic spaces and those of the household. Tacitus thus represents one vision of how the social legislation might be construed not just as a historical phenomenon but as a spatial one: an event that redrew the landscape of Roman social life. As I noted above, modern scholars too embrace this interpretation of Augustus's laws concerning marriage and adultery, seeing them as part of the new imperial state's attempt to reform Roman governance around the *princeps* and his household: the laws served, on a real historical level, both to undermine the power of the traditional aristocracy and, in a more metaphorical sense, to insist that the state and the family were indistinguishable from one another.

The fact that Tacitus's interpretation of the laws has been widely accepted as a true account of their real historical significance makes him either one of the greatest historians of antiquity or a very, very convincing critic of early imperial governance—or both at once, which would be my sense of the matter. But my point here is that Tacitus's interpretation is simply an interpretation, and one that cannot be separated from the larger picture that he is trying to paint of imperial rule in *Annals* 3. As I and others have noted, this book of the *Annals* is the one most taken up with the demise of the boundary between public and private life, especially as this is represented by the emergence of women into the civic sphere under the early Julio-Claudians (Woodman and Martin 1996.11–17, Milnor 2005.143–45, 179–85). The fact, then, that the digression on legislation—introduced and concluded by the description of the Augustan laws—appears at the center

of this book is not accidental. The historian's "map" of the transgression that the Augustan legislation represents neatly encapsulates the larger transgression that he sees in the rise of the imperial house as Rome's primary political institution.

In other words, Tacitus may have a real historical point to make about the social laws, but the representational frame in which he places them—the landscape that he sees them as expressing—cannot be separated from the larger thematic goals of *Annals* 3. This does not mean that I doubt his insight into the ideological mechanics of the early empire, although I do think that he has a particular obsession with the demise of the public/private dichotomy. At the same time, though, the spatial model that Tacitus uses to read the social legislation is not the only one through which it might be understood, nor was it the only one that was in circulation during the time that the laws were in force. We might, for instance, take notice of the laws' appearance in Horace's *Odes*, which include, due to the publication gap between Books 1–3 and 4, both pleas to Octavian/Augustus to pass the legislation and praise for it after he had done so. Thus Ode 3.6 famously imagines a crumbling empire, overrun by foreign forces from every direction on land and on sea (7–16). Lines 17–20 tell why this has come about: "fecunda culpae saecula nuptias / primum inquinavere et genus et domos; / hoc fonte derivata clades / in patriam populumque fluxit" ("Ages teeming with sin first stained marriage, family, and homestead; from this source, sprang the slaughter that floods into our nation and its people"). Immorality at home has resulted in instability abroad, a theme by no means unique to Horace but here providing a particularly imperial motivation for the Augustan laws. The idea becomes more explicit in the poems published after the laws were passed, most notably 4.15, in which the list of Augustus's accomplishments culminates (9–16):

> et ordinem
> rectum evaganti frena licentiae
> iniecit emovitque culpas
> et veteres revocavit artis,
> per quas Latinum nomen et Italae
> crevere vires famaque et imperi
> porrecta maiestas ad ortus
> solis ab Hesperio cubili.

> And he put a check on
> liberty as it strayed from the straight
> course, and he removed vices
> and called back those ancient arts
> through which the Latin name and Italian
> strength grew, and the renown and power
> of the empire stretched out from the rising place
> of the sun to his western bed.

The language that the poet uses is clearly spatial: note especially the image of liberty "wandering away" (*evaganti*) from the straight and narrow. Moreover, Horace here again places the social legislation within an emphatically imperial landscape: it represents a return to the moral principles that helped earlier Romans to move out from their small city-state and achieve the world domination represented at risk in 3.6.

Horace's vision of the Augustan laws as a tool by which the Romans might recapture an earlier age of glory closely parallels the few words that Augustus devotes to the subject in the *Res Gestae* and has certainly been used by modern scholars to interpret the ideological message of the legislation (e.g., Wallace-Hadrill 1981 and 1982). Needless to say, it is a very different view from the one represented in Tacitus. This is not to suggest that one of them is right and the other one wrong, since I think it a mistake to privilege the viewpoint of any single author, even the *princeps* himself, on what Augustan ideology was "really trying to say." Instead, I would simply like to underscore the fact that, despite their different perspectives on imperial governance and how the social legislation supports it, the two authors do agree on some fundamental principles for understanding the Augustan laws: both see them as an intervention not just in time but in space—not just as an attempt to rewrite history, but as an effort to reclaim parts of the landscape that had escaped or eluded the grasp of imperial rule. Thus although they are separated by time, genre, and ideological perspective, I would argue that Tacitus and Horace each reflect what I would call an "Augustan" sense of the social legislation that understands it as intimately connected with both place and time: it both maps social concerns onto the material world and defends that map by reference to the grand sweep of Roman history.

It is a great pity that, beyond Horace, we have almost no other direct contemporary responses to the social legislation; although there are some oblique references in Propertius and Ovid, it is difficult to weave them together into a consistent perspective. Perhaps most disappointingly, those

books of Livy's *ab Urbe Condita* that covered the Augustan period are now lost. True, some scholars have seen a reference to a failed early attempt to pass the social laws in Livy's preface, where the historian remarks that the Roman state has declined morally to such a level that "we are not able to bear either our sins or their cure" ("quibus nec vitia nostra nec remedia pati possumus," praef. 9). Opinions are divided as to whether this attempt at legislation actually took place, although Propertius 2.7.1–3 indicates that the idea was at least in the air (see Dessau 1903, which argues for the attempt, and Badian 1985, which argues against it). But Livy's silence on the laws that were actually passed in 18–17 B.C.E. is particularly frustrating because his general interests in writing the *AUC* dovetail neatly with the themes that we saw expressed in Horace's and Tacitus's descriptions of the Augustan legislation. As scholars have noted, the interrelation of space and time in Augustan ideology had profound effects on the ways in which history came to be written under the principate; Christina Kraus remarks in the introduction to her edition of Livy Book 6 that it is necessary "to consider the *AUC* as the gradual, often experimental construction of a written Rome . . . As such, of course, the historian's project parallels/rivals Augustus' own building of a new Rome via (re)construction of its past" (Kraus 1994b.8).

There has been, however, little attention paid specifically to the "place" that Livy gives to the law. This is unfortunate because, I would argue, it is in his depiction of the birth and development of such institutions that we may see his attempt to understand the nature of their rebirth and redevelopment under Augustus. I would like, therefore, to look here at one particular moment in Livy's history, when time, space, and the law all come together, and which suggests, I think, some of the ways in which he saw the history and landscape of legislation as both affecting and effecting Roman society.

In the opening chapters of the fourth book in his *ab Urbe Condita*, Livy depicts a debate that occurred in 445 B.C.E. between the year's consuls and a tribune named Canuleius. The issue at hand is a measure included in the twelfth of the recently ratified Twelve Tables. This first codification of Roman law prohibited intermarriage (*conubium*) between patricians and plebeians—an expression in private law of the primary political struggle of the early republic, namely, the so-called "Conflict of the Orders" between the aristocratic elite and the populace. The speech delivered by the tribune Canuleius in Livy 4.3–5 is a rhetorical tour de force that apparently enjoyed a certain fame: it appears, at any rate, that the Emperor Claudius later used it as the model for a speech of his own (see *CIL* 13.1668). It is

widely accepted as Livy's own composition, although based on a scene that he found in Licinius Macer (Ogilvie 1965.533).

Perhaps the most striking aspect of Canuleius's speech is the extent to which it draws on landscape as a metaphor to express the division of the Roman people into haves and have-nots. The first sentence introduces the image to which the tribune will return repeatedly throughout: "Quanto opere vos, Quirites, contemnerent patres, quam indignos ducerent qui una secum urbe intra eadem moenia viveretis . . . quid aliud quam admonemus cives nos eorum esse et, si non easdem opes habere, eandem tamen patriam incolere?" ("How greatly do the patricians despise you, Quirites, how they think you unworthy, you who live together with them in a single city, inside the same walls . . . What are we arguing but that we are their fellow citizens and that, although we do not have the same resources, we inhabit the same nation?" 4.3.1).

He goes on to note that intermarriage is a right long guaranteed to various allies of Rome, so that the plebeians, with whom the patricians share a community, are here being treated as lesser in status than those who live outside the city's walls; he later makes the image even more explicit by calling the intermarriage ban *exilium intra eadem moenia,* "exile within the very same walls" (4.4.6). He concludes this section of the speech by remarking (4.4.10–11):

> Quod privatorum consiliorum ubique semper fuit, ut in quam cuique feminae convenisset domum nuberet, ex qua pactus esset vir domo, in matrimonium duceret, id vos sub legis superbissimae vincula conicitis, qua dirimatis societatem civilem duasque ex una civitate faciatis. Cur non sancitis ne vicinus patricio sit plebeius nec eodem itinere eat, ne idem convivium ineat, ne in foro eodem consistat?
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> That which always and everywhere has been a matter of private judgment—that a woman might marry into whatever house it had been agreed, and that a man might take a wife from whatever house he had arranged—this you have put under the shackles of the most arrogant of laws, by which you would divide our community and make into two our unified state. Why don't you pass a law that a plebeian cannot live next door to a patrician or walk

> on the same street, that he cannot go to the same dinner party, or visit the same Forum?

In other words, for Canuleius, the law might as well be expressed in the material fabric of the city; it might as well be considered a map that designates certain people legitimate and others illegitimate inhabitants of Roman space.

It is not, perhaps, surprising that Livy should have Canuleius use the metaphor of landscape to talk about the intermarriage ban. On the one hand, recent scholarship amply illustrates the extent to which Livy uses Rome's urban environment to give form and meaning to his historical narrative.[3] This is particularly true of the *ab Urbe Condita*'s first books, which trace the physical foundation of Rome's many monuments and buildings as much as they attempt to describe the birth of Roman institutions. Thus Livy relies heavily in telling his story on the intersections of social and material structures, from temples and their attendant cults, to governmental bodies and the places they meet, to social bonds like *conubium* and the way they bind houses—both metaphorical and actual—together. More specifically, the threat that clearly lurks behind Canuleius's speech is the secession of the plebs, in which the populace would express their displeasure at senatorial policies by physically withdrawing from the city center, living in their own separate community until they could be won back by aristocratic concessions. This tactic was tried many times with some success during the first decades of the republic, and it is clear that Canuleius's invocation of two distinct Romes is an attempt to remind the senate that the plebeians were both willing and able to open a real, material gulf between the social groups divided by the ban on intermarriage. Secession, in the tribune's model, is merely an expression in the landscape of the divisiveness inaugurated by the law.

But more critical for my purposes here is the fact that, as Thomas McGinn has recently noted, the intermarriage ban included in the Twelve Tables is certainly the most prominent, if not the only, precursor in Roman law to the Augustan marriage legislation (McGinn 2002.82). Like Augustus, the decemvirs in the Twelve Tables sought to create a caste system in Rome in which certain categories of citizens were denied the right to marry

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3 On Livy's use of landscape, see Kraus 1994a; Edwards 1996, esp. 31–43, 82–88; Jaeger 1997; Feldherr 1998.

others. Like the Augustan laws, moreover, the ban on intermarriage between patricians and plebeians was not popular. Cicero in the *de Re Publica* calls the fifth-century measure "unjust" and "inhumane" and notes the extent to which the ugliness of the law reflected the tyranny of those who wrote it: "Ergo horum ex iniustitia subito exorta est maxima perturbatio et totius commutatio rei publicae; qui duabus tabulis iniquarum legum additis, quibus etiam quae diiunctis populis tribui solent conubia, haec illi ut ne plebei cum patribus essent, inhumanissima lege sanxerunt" ("Therefore, because of the injustice of these men [sc. the decemvirs], there was a great upheaval and a shift in the whole government; they added two tables of unjust laws, among which they ordained by the most inhumane law that there should be no intermarriage between patricians and plebeians, even though this right was customarily granted among peoples unrelated to one another," *de Rep*. 2.63.1). Thus although Livy's fourth book was certainly published before the final passage of the Augustan social legislation in 18–17 B.C.E., it is tempting to see in his presentation of Canuleius's fiery attack on the Twelve Tables a condemnation of the contemporary move toward similar measures that may very well have already been in the air.

Indeed, the kind of "social mapping" deplored by Canuleius seems to have been an important part of Augustan ideology, especially as it manifested itself in legislation. This may be seen, for instance, in the terms of the *lex Julia theatralis*, probably passed at the beginning of the second decade B.C.E. along with the other, more famous, pieces of social legislation (Rawson 1987, Kolendo 1981). The law primarily concerned seating arrangements in theaters and amphitheaters: senators were seated in front; equites gathered in a special section called the XIV; soldiers, young boys, and married men all had their own sections; women were seated at the back, except for the Vestals, who were given an area to themselves. Although theater seating had already been socially divided under the republic, the principate seems to have brought the complexity of the system to a new level, including in it categories like the *mariti* that only came into existence with the Augustan social legislation. Moreover, Augustus extended the seating system to the amphitheater, both acknowledging the growing importance of the games socially and politically, and extending the number and quality of the occasions on which the *discrimina ordinum* would be displayed. The point, as J. C. Edmondson argues, was to create a public map of the Roman social hierarchy so that civic roles would be displayed and experienced schematically as a part of daily life (Edmondson 1996).

The law also emphasized the importance of visuality—being seen

as what you were—a point that is made clear by the exclusion of foreign envoys from the orchestra on the grounds that sometimes freedmen were appointed to this post. Though their title might have made them equal in political importance to Roman senators, their actual social position might be much lower, and they were therefore not qualified for the front rows. Moreover, the law contained a provision excluding men in cloaks from the middle sections of the *cavea* (Suetonius *Div. Aug*. 44.2), which at first seems something of an oddity. But another passage in Suetonius makes it clear that Augustus's interest in clothing, and his specific dislike of the dark *pullati* that hid a man's toga, had everything to do with the display of Roman identity. Augustus had earlier become incensed at witnessing a crowd of men in cloaks at the assembly and, quoting Virgil, had insisted that no one was to appear in the Forum unless clad solely in a toga (*Div. Aug*. 40.5). Thus the purpose of the ban on *pullati* in the better seats of the theater was to insure that the mass of Roman citizens would be visible *as* Roman citizens, each clad in his toga. A similar interest in creating a strict correspondence between the external, visible, manifestations of civic identity and the "true" nature of the individual is evident in the clothing stipulations of the *lex Julia de adulteriis*. One of the penalties for adultery under the law was that the guilty woman was made to don the toga, the traditional dress of prostitutes, in the place of her matronly *stola*, thus making it clear even to those of her fellow citizens who did not know of her disgrace exactly what kind of woman she was (see Sebesta 1998).

The ways in which Canuleius talks about the intermarriage ban and the urban environment, therefore, have significant resonances with the kinds of legal landscapes that were in the process of being created under Augustus when Livy wrote his text. It is worth noting, however, that demagogues like Canuleius rarely appear in the first books of the *AUC* as unproblematic heroes. His second proposal, that the plebeians should be allowed to stand for the consulship, is clearly of more immediate political importance, yet he spends less time on it, and his proposed reform falls flat. Indeed, the opening of the consulship goes on to be the subject of a much more bitterly fought and historically significant battle in *AUC* 6, when the Sextio-Licinian rogations finally begin to break down the barriers to full plebeian participation in Roman government.

In some senses, then, the vaunted repeal of the "inhumane" ban on intermarriage in *AUC* 4 appears as a bit of a red herring: a measure whose emotional appeal outweighs its actual practical significance. Thus although the Twelve Tables may offer a historical antecedent to the Augustan social

legislation, Canuleius's speech, in true demagogic fashion, may be seen as focusing the energy of the plebs on the molehill rather than the mountain—on an issue close to the hearts of everyday citizens but of minimal importance to the grand march of Roman politics. Yet it is this very ordinariness, I would argue, that is both evoked and reinforced by Canuleius's landscape metaphor in his speech before the people. The extent to which the intermarriage ban does not "locate" itself within the organs of government but casts its net over the lives of the populace generally is expressed in the tribune's reference to the supposedly common spaces of the city: "Why don't you pass a law that a plebeian cannot live next door to a patrician or walk on the same street, that he cannot go to the same dinner party, or visit the same Forum?" By bringing status divisions to bear on that which is normally a matter of "individual judgment" (*privatorum consiliorum*), the Twelve Tables have notionally invaded every part of Rome. If the law is to replicate in private life the political dissension that has so troubled the early years of the republic, the Romans might as well give up completely the project of living together in a single city.

Canuleius's vision of the power of the law either to create or dissolve the very fabric of the community is, in point of fact, perfectly in keeping with the function that the law generally has performed in Livy's narrative up to this point in the first pentad. Thus, for instance, one of Romulus's first acts after the creation of religious ceremonies is the passage of a legal code; Livy notes that the random group of his and Remus's followers who comprised the city's first inhabitants "could not in any way have been brought together into a single citizen body except by means of laws" ("coalescere in populi unius corpus nulla re praeterquam legibus poterat," 1.8.1). That the historian does not concern himself to say what the Romulan laws actually covered—theft? murder? property exchange?—underscores the point that it was the *fact* of law rather than any particular legal stipulation that was supposed to bind the fledgling community together. The institution of the legal code, therefore, was not significant for the individual acts that it supported or prevented but rather as a means of defining what Rome meant.

In a similar vein in Book 2, after the expulsion of the kings, Livy offers insight into the discontent of young nobles uncomfortable with the structure of the new republican form of government. The historian imagines them complaining that, in contrast with a king who might be begged for mercy: "Laws are a deaf thing, and unyielding, safer and better for the poor than the powerful; they offer no leniency or pardon if one happened to overstep the bounds" ("leges rem surdam, inexorabilem esse, salubriorem

melioremque inopi quam potenti; nihil laxamenti nec veniae habere si modum excesseris," 2.3.4). Again, it is not any particular law about which the young men are concerned but rather the general conditions of living under a legal code rather than at the whim of a king—the difference being, apparently, that the law is not imagined to recognize or respect differences in social status. Finally, and on the largest historical and narrative scale, the central action of the pentad is the institution of the decemvirate in Book 3, which comes into being specifically for the purpose of codifying Rome's laws at the request of the tribunes and the populace: in this way, the tribune Terentillus notes, "the consul will use what authority the people give to him over themselves, rather than holding his own desire and laxity in place of the law" ("quod populus in se ius dederit, eo consulem usurum, non ipsos libidinem ac licentiam suam pro lege habituros," 3.9.5).

It is, ironically, one part of the resulting codification, namely, the Twelve Tables, that is under attack by Canuleius at the beginning of *AUC* Book 4. But the point is that the intermarriage ban is anomalous in Livy's representation of legislation in the early books of the *AUC*: where the ban creates divisions between citizens, building metaphorical walls within the Roman polity, the law generally is imagined as a unifying force in the early republic, a way of bringing the city together and diminishing the social distinctions that separate one citizen from another. In other words, for Livy, legislation not only reflects certain social realities, it has the capacity to create them as well; its effects, as emphasized by Canuleius's landscape metaphor, are as real and material as the act of building or tearing down a wall. Apart, therefore, from whatever specific parallel might be drawn between the intermarriage ban in the Twelve Tables and the later social legislation, we may, I think, see in Livy's speech for Canuleius the expression of an important "Augustan" concept: transformations in the law may have the same powerful effects as transformations in the landscape in the process of constructing—or reconstructing—a society. Whereas Tacitus's vision of the spaces encoded in such "social" law focuses on the demise of boundaries, Livy's sees it as building them up, frequently to the benefit of Rome and Roman society. And whereas Horace understands social legislation as strengthening morality, and stronger morality as supporting Roman imperialism, Livy's Canuleius would argue that creating divisions of "acceptable" and "unacceptable" marriage partners within the citizen body can only weaken the Roman state. At the same time, however, it is possible to see the ways in which Livy partially agrees with the perspectives of both other authors: with Tacitus, in imagining the law as a poten-

tial threat to individual freedom, and with Horace, in seeing the ways that it can positively affect the citizen body's sense of itself.

When the henpecked Mr. Bumble famously proclaimed the law "a ass—a idiot," he also remarked that the law must be a bachelor, if it really imagined that a husband was in control of his wife's behavior. "The worst I wish the law," he adds, "is that his eye may be opened by experience—by experience." Dickens' humor here is thus not simply expressed in calling an abstract institution insulting names, but in imagining that an institution can, like an individual, grow, learn, and change her opinion. Clearly this is nonsense, but neither is the law simply a stable set of commonsense rules through which society regulates the behavior of its members. Everyone knows that new times require new laws to govern them, a principle that also works in reverse, as Augustus showed when he created new laws to bring about new times. But as I hope I have shown here, Roman authors also had a fairly nuanced grasp of the complications of this process: the fact that a law, like a wall, may serve either to unify or divide, and that sometimes the accomplishment of one goal may entail accepting the other. It is this idea that may be seen expressed in the spatial metaphors that Tacitus, Horace, and Livy all choose for talking about social legislation—whether it be Augustan or that originally found in the Twelve Tables. And it is also this idea that elevates the metaphor to something more: a way of construing the abstract workings of a social institution as real-world phenomena, a way of emphasizing the material effects, good and bad, of what may seem to be small ideological interventions at a very high level. Their sense, then, that the law actually *has* a landscape, even independent of what they might think that landscape is, unifies these three authors and underscores the ways in which Roman literature and Roman law worked hand-in-hand to create social meaning.

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