

the expense of binding obligations, evinced here in Lesbia's consummate breach of faith, reflects the cheapening of all social values and at last confronts us with a horrifying vision of moral anarchy. Unfortunately, the poem provides no reassuring solution to the ethical dilemma it has implicitly posed. Rather, it allows Catullus' final, tenacious proclamation of his virtue (26 *o di, reddite mi hoc pro pietate mea*) to fade into silence. Only the gods—the last, usually vain, recourse of the doomed suppliant—remain as remote enigmatic guarantors of erotic and social justice.

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WAR, PEACE, AND THE *IUS FETIALE* IN LIVY I

Although almost all ancient authorities agree that the *ius fetiale* and its guarantors, the fetial priests, originated during the monarchy,¹ they put forth various views on which king was responsible for the institution. Both Dionysius of Halicarnassus and Plutarch ascribe the fetial priesthood to Numa Pompilius as one of that king's many religious foundations (Dion. Hal. 2. 72; Plut. *Numa* 12, *Cam.* 18). According to Dionysius, Numa established the priesthood when he was on the point of making war with Fidenae; through the *fetiales* he averted the war, thus keeping his reign entirely free of foreign conflict (cf. Dion. Hal. 2. 76. 3). Cicero makes the third Roman king, the martial Tullus Hostilius, the originator of the *ius fetiale* (*Rep.* 2. 17 [31]). But my concern here is with Livy's position.

Livy's position is unclear. In his account of the combat of the Horatii and the Curiatii (1. 24), which occurred during the reign of Tullus, both the fetial priesthood and the procedure for making a *foedus* appear as established facts of Roman life. (The *foedus* that figures in this Livian passage is the agreement between Rome and Alba Longa that the outcome of the combat of the Roman Horatii and the Alban Curiatii would determine which people would hold sway over the other.) But Livy does not reveal whether he believes that Tullus himself, or Numa, or, for that matter, Romulus was responsible for the establishment of fetial priests or the procedure for making a *foedus*.² Livy first mentions the fetials in 1. 24. He mentions Roman *foedera* as early as the reign of Romulus (1. 13. 4, 14. 3, 19. 4, 23. 7), but without comment on the procedure by which they were made.³

1. Servius on Verg. *Aen.* 7. 695 alludes to a tradition that the *iura fetialia* were introduced in Rome during the decemvirate; cf. E. Pais, *Storia critica di Roma durante i primi cinque secoli*, vol. I (Rome, 1913), pp. 679–80.

2. Pace, e.g., B. O. Foster in his Loeb Livy, vol. I (Cambridge, Mass., 1919), p. 114 (on 1. 32. 5), and J. Heurgon, *T. Livii: "Ab urbe condita," Liber primus*² (Paris, 1970), p. 114 (on the same passage), both of whom understand Livy to ascribe the priesthood or the *ius* to Tullus.

3. "It has been noted that 24. 4 *nec ullius vetustior foederis memoria est* contradicts 23. 7," where an earlier *foedus* is mentioned (R. M. Ogilvie, *A Commentary on Livy, Books 1–5* [Oxford, 1965], p. 106). But one could respond by quoting H. J. Müller, ed., *T. Livii "Ab urbe condita" libri, erklärt von W. Weissenborn*⁸, vol. 1.1 (Berlin, 1885), p. 154 (on 1. 24. 4): Livy is here remarking "das erste *foedus*, dessen feierliche Abschliessung man kennt" (my emphasis).

This is not the only complication in Livy. In his account of Ancus Marcius, he makes that king introduce to Rome the *ius fetiale*—specifically, the procedure for demanding redress and declaring war—at a time when the Latins were threatening the city: “ut tamen, quoniam Numa in pace religiones instituisset, a se bellicae caerimoniae proderentur, nec gererentur solum sed etiam indicerentur bella aliquo ritu, ius ab antiqua gente Aequicolis quod nunc fetiales habent descripsit, quo res repetuntur” (1. 32. 5; cf. Serv. on Verg. *Aen.* 10. 14; [Aur. Vict.] *De vir. ill.* 5). If Livy is understood, as he has been despite 1. 24, to ascribe the institution of the fetial priesthood to Ancus,⁴ or if the fetials are thought of as necessarily having been responsible both for *foedera* and for demanding redress and declaring war from the outset, then there is a discrepancy between Livy 1. 24 and 1. 32. Livy 1. 22 is also problematic. Here Livy discusses a *rerum repetitio* that occurred in the reign of Tullus before the incident involving the Horatii and Curiatii and the fetial *foedus*. The king is represented as desiring to declare war *pie*, and there is an allusion to a thirty-day waiting period following the *rerum repetitio*, an interval prescribed in the fetial procedure (cf. Diod. Sic. 8. 25). This passage does seem to presuppose, as Ogilvie has observed, “that the fetial procedure for declaring war has been instituted.”⁵ The discrepancy between 1. 24 and 1. 32 could be obviated by assuming that Livy and his source (or sources) imagined that the fetials and the procedure for making a *foedus* had been established before Ancus’ reign, but that Ancus added to the fetials’ repertoire the procedure for demanding redress and declaring war.⁶ But the discrepancy between 1. 22 and 1. 32, presumably resulting from Livy’s use of discordant sources, seems irremovable—even if we assume that 1. 22 refers to a nonfetial *rerum repetitio*.

Despite the uncertain interpretation of and questions raised by Livy’s allusions to the earliest examples of fetial procedures, one observes that Ancus is the only king whom the Latin historian expressly singles out in connection with the *ius fetiale*—for significant contribution to its development, if not for the actual establishment of the priestly college. Furthermore, putting aside the passing reference to *rerum repetitio* in 1. 22 and focusing on the explicit assertions in 1. 32, one observes that the Livian Ancus contributed to the *ius fetiale* at Rome nothing less than the procedure for declaring war *iuste pieque*. Livy saw this contribution, I contend, as a symbol of Ancus’ general character. We must look at Livy’s representation of Ancus’ predecessors before that symbolism can be fully appreciated.

It is apparent even to the most casual reader of Livy’s first book that Romulus is a warrior king, whereas Numa is devoted to peace and to the *pacis artes*:

4. See, e.g., L. Lange, *Römische Alterthümer*, vol. 1³ (Berlin, 1876; repr. Hildesheim, 1974), p. 327; [E.] Samter, “Fetiales,” *RE* 6 (1909): 2259; G. Wissowa, *Religion und Kultus der Römer*² (Munich, 1912), p. 550, n. 1; Foster in his Loeb Livy, 1:114 (on 1. 32. 5).

5. *Commentary on Livy*, p. 107 (on 1. 22. 4). *Legati* in 1. 22 surely means fetials; cf. Livy 1. 32. 6. For the number of fetials sent on a given mission, see Samter, “Fetiales,” col. 2260; Wissowa, *Religion und Kultus*², p. 551. For the waiting period, see Ogilvie, *Commentary on Livy*, p. 131 (on 1. 32. 9 *tribus et triginta*). The passage in Dionysius (3. 3. 3) that corresponds to Livy 1. 22 explicitly mentions fetials—but, as has already been mentioned, Dionysius believed and clearly stated that Numa instituted the fetial college.

6. Cf. Müller and Weissenborn, *T. Livii “Ab urbe condita”*⁸, 1.1:180 (on 1. 32. 5 *ius*).

religion, law, and the civilizing virtues. Romulus founded the city *ui et armis*, and Numa refounded it *iure, legibus, and moribus* (1. 19. 1). “Ita duo deinceps reges, alius alia uia, ille bello, hic pace, ciuitatem auxerunt” (1. 21. 6). This contrast between the first two kings is hardly peculiar to Livy, but it is sharply drawn by him. It is true that Livy acknowledges Romulus’ achievements *domi militiaeque* and his strengthening of the city *bello ac pace* (1. 15. 6). But he gives short shrift to the first Roman king’s nonmilitary deeds. From the founding of Rome and Romulus’ acquisition of sole power after Remus’ death to the end of Romulus’ earthly life (1. 7. 3–15. 8), Livy’s account is predominantly a narrative of wars—with the Caeninenses, the Antemnates, the Crustumini, the Sabines, the Fidenates, and the Veientes.⁷ In contrast, while Dionysius amply highlights Romulus’ martial achievements, he also gives considerable and separate attention to the king’s cultivation of the *pacis artes* (2. 7–29).⁸ He discusses Romulus’ admirable political and social institutions, his important religious foundations, and his excellent laws at length. Romulus’ advocacy of virtue is noted; he wished to make the state temperate and just as well as successful in war (2. 18, 2. 28). He also wished to make the state pious: Dionysius insists that though subsequent kings did establish significant religious institutions, it was Romulus who was responsible for their “seeds and foundations” (τὰ σπέρματα καὶ τὰς ἀρχάς), having already instituted the most important features (τὰ κυριώτατα) of Roman religion (2. 23. 6; cf. 2. 63. 2, 2. 65. 1–2, and Plut. *Rom.* 22. 1–2). In Livy’s account, the “Numan” features of Romulus are minimized, when they are present at all. The Latin historian wants a Romulan thesis to be answered sharply by a Numan antithesis. When Livy writes that at the end of Numa’s reign “cum ualida tum temperata et belli et pacis artibus erat ciuitas” (1. 21. 6), he is thinking of the differing contributions of two kings rather than of versatility on the part of either one of them.

With Tullus and his wars with Alba Longa, Fidenae, Veii, and the Sabines, we swing back to a martial king. The hallmark of his reign was *ferocia*.⁹ Tullus believed, writes Livy, that Rome was losing her vitality because of her long abstention from war (1. 22. 2 *senescere . . . ciuitatem otio*). He was inspired by the memory of his martial grandfather, Hostius Hostilius, who fought under the martial Romulus (1. 12. 2, 22. 1–2). This characterization of Tullus is not unlike what we find elsewhere (Cic. *Rep.* 2. 17 [31]; Verg. *Aen.* 6. 812–15; Dion. Hal. 3. 2. 1, 11. 6; Plut. *Numa* 22. 11). But Livy depicts Tullus’ bellicosity in very

7. Romulus’ establishment of an asylum is part of the story of Rome’s early growth. The newcomers brought in through the asylum gave Romulus his *primum roboris* and *uires* and made Rome *cuilibet finitimarum ciuitatum bello par* (1. 8. 6–9. 1). The story of the rape of the Sabine women is the necessary prelude to Livy’s account of Romulus’ first wars.

It is not surprising that the words of Romulus to Proculus Julius reported by Livy (1. 16. 7) consist only of an imperialistic and martial charge to the Roman people; other versions of Romulus’ words on this occasion suggest that Livy may have deliberately suppressed the king’s (nonmartial) comments on his apotheosis. See Cic. *Rep.* 2. 10 [20], *Leg.* 1. 1. 3; Dion. Hal. 2. 63. 4; Ov. *Fasti* 2. 505–8; Plut. *Rom.* 28. 2–3; K.-W. Weeber, “Abi nuntia Romanis . . . : Ein Document augusteischer Geschichtsauffassung in Livius I 16?” *RhM* 127 (1984): 338–43.

8. For Dionysius’ Romulus, see J. P. V. D. Balsdon, “Dionysius on Romulus: A Political Pamphlet?” *JRS* 61 (1971): 18–27.

9. Livy 1. 22. 2, 23. 4 and 10, 27. 10, 31. 6. See also J. B. Solodow, “Livy and the Story of Horatius, 1. 24–26,” *TAPA* 109 (1979): 253, n. 4.

emphatic terms: he was even *ferocior* than Romulus and everywhere sought out occasions for war (1. 22. 2 *materiam excitandi belli*). Dionysius' Tullus, in contrast, is made to recognize the importance of good counsel as well as of military might and is said not to have entered war precipitately (3. 11. 9, 35. 1). According to Dionysius, the Alban leader Cluilius was responsible for the war between Rome and Alba Longa in Tullus' reign (3. 2. 1, 3. 4. 3). Livy does not lay the blame on Cluilius; and though he acknowledges that both Albans and Romans committed offenses against one another that led to war, he suggests that Tullus was the one who actively sought out the war (1. 22. 2–3). Dionysius' Tullus is less one-sided than Livy's: he is shown performing an act of domestic *φιλανθρωπία* (3. 1. 5; cf. 3. 31. 3) and demanding religious expiation after Horatius was acquitted of the murder of his sister (3. 22. 6; contrast Livy 1. 26. 12).

Toward the end of his life, Tullus experienced a change of heart. A pestilence fell upon Rome. Tullus resisted the ensuing reluctance of the citizenry to bear arms; but when he himself contracted the disease, he began to turn to *sacra*. Everyone hoped that a Numan *pax ueniaque ab dis* would end the pestilence. The king carried out some religious rites in honor of Jupiter that he had discovered in Numa's *commentarii*. But he performed them *non rite, praua religione*, and was consequently struck down by the god's thunderbolt and consumed in the ensuing fire (Livy 1. 31). Livy was not the only ancient writer to tell this story,¹⁰ but I believe that he came to see a special significance in it. We shall return to it below.

The Livian Ancus (1. 32) inaugurated his reign in the spirit of his grandfather Numa. Mindful of Tullus' neglect of the gods, Ancus saw to it that the official religious rites were carried out as Numa had ordained. It was also expected that Ancus would keep the peace, which the war-weary citizens of Rome now much desired. But the Latins took advantage of Ancus' Numan propensities and invaded the *ager Romanus*. The Roman king responded militarily after the Latins refused to make restitution. He did not unrealistically expect the *otium sine iniuria* that Numa had enjoyed. He believed, according to Livy, that "peace had been more necessary to his grandfather's reign, when the people were both young and aggressive" (*cum in nouo tum feroci populo*). In other words, a fusion of the Romulan and the Numan ethos was now feasible; Roman history no longer needed to be characterized by extreme shifts of war and the *pacis artes*.

The notion that the Romans saw Tullus and Ancus as repeating the contrast between a militarist Romulus and a peace-loving and religious Numa does not serve Livy very well.¹¹ The Livian Ancus has a *medium . . . ingenium, et Numae et Romuli memor* (1. 32. 4). Dionysius, like Livy, describes Ancus as restoring the Numan ethos and compelled to go to war because of Latin aggression, but he does not represent him as a mean between Romulus and Numa (3. 36–37). For Livy, the Romulan thesis and the Numan antithesis lead to an Ancan

10. Cf. the annalist Calpurnius Piso in Pliny *HN* 28. 4 [14]; Dion. Hal. 3. 35; Plut. *Numa* 22. 12. According to Dionysius, most ancient writers claimed that Ancus murdered Tullus in the king's house, set the house on fire, and then spread the story that the fire was caused by a thunderbolt.

11. Pace T. J. Luce, *Livy: The Composition of His History* (Princeton, 1977), p. 235; cf. K. Glaser, "Tullus Hostilius," *RE* 7A (1948): 1342.

synthesis. Ancus is thus “cuilibet superiorum regum belli pacisque et artibus et gloria par” (1. 35. 1). We may now surmise the significance that the story of Tullus’ end took on for Livy: after he was attacked by the pestilence, Tullus tried to balance regard for the gods with devotion to war, but this effort was undertaken too late and in the wrong spirit. It took time for the proper blend of military competence and the *pacis artes* to develop.¹² Livy does not, of course, intend to imply that all Roman statesmen after Ancus will display an Ancan balance, or that none thereafter will be markedly “Romulan” or “Numan.”¹³ He is only underscoring the primeval or archetypal balance of military competence and the *pacis artes* that emerged for the first time in Roman history under the first four kings.

We may now return to Livy’s ascription of the *ius fetiale* to Ancus. It is precisely in connection with his description of Ancus as a mean between Romulus and Numa, as a lover of peace who nonetheless had to respond to Latin provocations, that Livy remarks on the king’s introduction—or, to be precise, his adoption from the Aequicoli—of the *ius fetiale*. Ancus’ intention, Livy explains, was to institute *bellicae caerimoniae*. In its Livian context this phrase has an oxymoronic ring: the characters of the first three kings suggested that one chose either *bella* or *caerimoniae* (note especially Livy 1. 20. 3, 7). But Ancus’ mixed character took the oxymoron out of the phrase. The *ius fetiale* was a martial ritual—or at least one that would lead to war if restitution was not forthcoming—but it was a martial ritual that acknowledged the claims of religion and right, areas of concern that belonged to the Numan *pacis artes*. Livy had come to see the *ius fetiale* as deriving from and symbolic of Ancus’ *medium ingenium*. Whether he was the first to make that connection, we cannot say. But once the connection was made, there was a literary and ideological reason for underscoring Ancus’ role in the development of the *ius fetiale*; as one perceptive critic put it, this Roman institution struck Livy as “ideelles Moment” rather than as “historisch-staatrechtliches Detail.”¹⁴

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12. For Livy’s appreciation of historical development in general, see Luce, *Livy*, pp. xx–xxi, 237–49.

13. He compares Servius Tullius to Numa; but though Servius may have established the *comitia centuriata* in a Numan spirit, he had also proved himself in war, and the *comitia* served the needs of both war and peace (1. 42, 45. 1).

14. H. Haffter, “Rom und römische Ideologie bei Livius,” *Gymnasium* 71 (1964): 243–45. I discovered Haffter’s paper only after writing this note, which turns out to be an elaboration of his observations, though with its own distinctive approaches and emphases. I am grateful to Joseph B. Solodow for his comments on an earlier draft.

AN IDENTIFICATION IN THE *LATIN ANTHOLOGY*

Anthologia Latina 120 (Riese) = 109 (Shackleton Bailey) *De balneis* runs thus:

Fausta novum domini condens Fortuna lavacrum
Invitat fessos huc properare viae.
Laude operis fundi capiet sua gaudia praesul