

demonstrates so admirably, by using an elaborate structure informed by clear organizing principles. Here, as often in Demosthenes, the medium reflects the message.¹³ Form clearly reflects content: The situation is complex but what is most important can be easily understood. The form of the sentence also contributes to the ethical appeal of the orator. Although political affairs are complicated, Demosthenes is the kind of man who can sort them out and present them clearly.¹⁴

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13. For other examples of sentences in Demosthenes where form clearly reflects content see C. W. Wooten, "A Few Observations on Form and Content in Demosthenes," *Phoenix* 31 (1977): 258–61 and the appendix to Wooten, "On Types of Style," 134–36.

14. I would like to thank the two anonymous readers and Professor Galen Rowe for their very helpful comments on this note.

PROPERTIUS 2.23 AND ITS FINAL COUPLET (23–24)

The final couplet of Propertius 2.23 has lived adventurously, having been accused of tautology, repunctuated to make line 23 part of the previous sentence, deleted, transposed both internally and externally, stigmatized as a "Schlussinterpolation," and emended in various ways,¹ with consequences, major or minor, for the elegy as a whole. In O the couplet reads (23–24):

libertas quoniam nulli iam restat amanti
 nullus liber erit si quis amare volet

Only two defenses of the unrepunctuated paradoxos have been attempted: one of them, Thörnell (1932), 355–57, usefully refers to part of *Paradoxa Stoicorum* 36, where Cicero makes the same ironic transition as Propertius from *servitium amoris*² to real *servitium* in a passage that clarifies the contemporary philosophico-cultural background to Propertius' couplet.³ But Thörnell's explanations-cum-justifications of O's text—*libertas* (23) as "in universum est 'liberum arbitrium'" and *liber* (24) as "quasi ex iure Quiritium dicitur pro ingenuo"—are linguistically incorrect: *libertas* here is simply (abstract) "freedom," and *liber* "free," as opposed to "enslaved."

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1. For details of most of these interventions, cf. Enk 1962, ad loc.; Smyth 1970, 62; Shackleton Bailey 1956, 109; Scheidweiler 1960, 78–79; Hanslik 1979, 76; Hendry 1996; Günther 1997, p. 120, n. 251, p. 155. Heubner 1965, 348 turns the couplet into a question.

2. Of the two more recent treatments of *servitium amoris*, Lyne 1979 is poorly documented on the Greek side and argues for the erroneous conclusion that "the inventor of the Elegiac 'servitium amoris' is probably Propertius himself" (129). For a fuller and more judicious account of the topic, cf. Murgatroyd 1981.

3. Also noted by Enk 1962, ad loc.; Lyne 1979, p. 123, n. 4; and Hendry 1996, p. 443, n. 14. Its importance justifies quotation: "an ille mihi liber, cui mulier imperat, cui leges imponit, praescribit iubet vetat quod videtur, qui nihil imperanti negare potest, nihil recusare audent? poscit, dandum est; vocat, veniendum est; eicit, abeundum; minatur, extimescendum, ego vero istum non modo servum sed nequissimum servum, etiamsi in amplissima familia natus sit, appellandum puto."

Shackleton Bailey (1956), 109 offers a different defense based on two declamations of Pseudo-Quintilian (340, 342), which “turn on the point that *aliud est in libertate esse, aliud liberum esse*.” There is undoubtedly a legal flavor in the language of 2.23.23–24: it shows clearly in something Shackleton Bailey did not highlight, namely *volet* (24), a reflection of the constant emphasis in Roman legal thought on “volition” as an element of legally valid actions.⁴ Shackleton Bailey also correctly identified the subject of the couplet as *libertas* in a quasi-legal sense; and such quasi-legal emphasis had already appeared in lines 3–4 of the elegy (“*ingenuus quisquam alterius dat munera servo, / ut promissa suae verba ferat dominae?*”), where the ambivalent *suae* (4) implies that the *ingenuus* has become the fellow-slave of the *domina*’s *servus*. On the other hand, the two Pseudo-Quintilian declamations do not really justify O’s text since they and the elegy move in diametrically opposite directions. The declamations are concerned with whether slaves who have been living as free individuals with their masters’ consent should be returned to a servile condition, whereas the drift of Propertius 2.23 from its third line on is that (even) a free-born person (*ingenuus*) who becomes a lover will also become ipso facto a slave.⁵

A better explanation and justification of the paradox of Propertius 2.23–24, also in legal terms, is to hand; it is offered here in the hope that (unlike its predecessors) it may deter proposals to tinker with the couplet.⁶ In Roman law an *ingenuus* who became a slave suffered *capitis diminutio maxima*. The definitions by the legal writer Gaius⁷ of the three types of *capitis diminutio* provide a first insight into the couplet’s language and meaning (*Inst.* 1.160–62):

Maxima est capitis diminutio, cum aliquis simul et civitatem et libertatem amittit . . .
 Minor sive media est capitis diminutio, cum civitas amittitur, libertas retinetur . . .
 Minima est capitis diminutio, cum et civitas et libertas retinetur, sed status hominis commutatur . . .

Here, where general legal concepts are under discussion, Gaius uses the abstract *libertas* (cf. *civitas*); and, where the lesser forms of *capitis diminutio* are involved, he writes of “liberty” being “retained”: *libertas retinetur*. In treating the *capitis diminutio maxima* suffered by the *ingenuus* turned lover, Propertius uses the words *libertas nulli . . . iam restat*, where *libertas restat* is evidently a poetic equivalent of Gaius’ *libertas retinetur*.⁸ *iam* (23), which could seem redundant,⁹ marks the beginning of a new and striking dispensation (cf., e.g., Lucian 2.280–81: *toto iam liber in orbe / solus Caesar erit*).

The notion generated by thus relating *capitis diminutio maxima* to Propertius 2.23.23–24, namely, that a free-born person would risk enslavement by becoming an *amans*, may seem merely a flight of poetic fancy, but is in fact not totally absurd. In 52 C.E. the *senatus consultum Claudianum* prescribed *capitis diminutio maxima*—the

4. Cf. Daube 1956, 37–49, 1961, 1966; Olfors 1967, 36–59.

5. Günther 1997, p. 155, n. 97’s criticism of Shackleton Bailey’s argument as “over-subtle” is therefore beside the point, as are the earlier objections of Scheidweiler 1960, 78–79 and Heubner 1965, 348.

6. That these are still in vogue is shown by Hendry 1996 and Günther 1997, 155.

7. The *Institutiones* of Gaius (second century C.E., himself not a jurist) is the earliest surviving textbook of Roman law. In later centuries Gaius’ work became a standard; but he is cited here simply as representative of earlier Roman legal opinion: cf. Buckland 1963, 28.

8. Cf. also *Dig.* 4.5.11 pr.

9. Postgate 1881, lxxi also perceived that *iam* might appear otiose: he interpreted it as “since we now see.” Scheidweiler 1960, 79 wished to replace *iam* with *clam*, an adverb otherwise absent from Propertius.

loss of both citizenship and liberty¹⁰—for a free-born woman who consorted sexually with a slave against the slave-owner's wishes and after due warning; the woman then became the slave of her partner's master.

Unlike Gaius, however, Propertius is not writing a legal textbook, or even a pastiche of a legal textbook. His final couplet resembles rather a *responsum*—the formal reply of a jurisconsult to a legal enquiry,¹¹ the “enquiry” implied being something like: “if an *ingenuus* becomes an *amans*, will he remain free?” Support for this view comes from the same Gaius, who this time is patently (although he does not make this explicit)¹² reporting a juristic *responsum* on the *lex Fufia Caninia* (*Inst.* 1.46):¹³

Nam et si testamento scriptis in orbem servis libertas data sit, quia nullus ordo manumissionis invenitur, nulli liberi erunt.

The almost exact match of *nulli liberi erunt* (G.) and *nullus liber erit* (P.) not only shows that all proposed emendations of *nullus* are otiose,¹⁴ but is virtually sufficient in itself to clinch the point that Propertius is parodying the language of Roman law in this couplet (cf. also *Dig.* 40.4.31 pr.: *nullus liber est*). The further linguistic equivalence(s) between *nullus ordo* (G.) and *nulli . . . amanti* (P.), and between *invenitur* (G.) and *restat* (P.) may or may not be significant, although the former is perhaps more impressive given the additional parallel structures *nullus . . .*, *nulli* (G.) and *nulli . . .*, / *nullus* (P.). These correspondences are further strengthened by the fact that the sentences match clause for clause: *si testamento . . .* (G.) = *si quis . . .* (P.); *quia . . .* (G.) = *libertas quoniam . . .* (P.); *nulli liberi erunt* (G.) = *nullus liber erit* (P.); and as in Propertius, abstract *libertas* is followed in Gaius by concrete *liber*. The order of clauses is indeed different in the two writers; but it would be unreasonable to expect a poet writing elegiac couplets to conform with the technical treatises in all respects,¹⁵ and the order apodosis-protasis is an attested favorite of Propertius.¹⁶

Sentences of this type consisting of, or incorporating, a main clause, a conditional clause introduced by *si*, and a causal clause introduced by *quia* (or less frequently, as in Propertius, by *quoniam*)¹⁷ are omnipresent in Roman legal writers; and they often encapsulate a juristic *responsum*.¹⁸ One of them, again preserved by Gaius, from Servius Sulpicius, the famous jurisconsult of the late republic whose pupils were

10. Cf. Gai. *Inst.* 1.160.

11. On this topic, cf. Watson 1974, chaps. 9–12, with discussion of the importance of *responsa* in the Augustan period and of the principles underlying them.

12. When Gaius names individual jurists, this is often where they disagree: cf., e.g., *Inst.* 1.188 (Q. Mucius, Servius Sulpicius, and Labeo), 2.244 (Servius, Sabinus, Cassius), 3.149 (Servius, Q. Mucius), 3.156 (Servius and, by implication, Sabinus).

13. The *lex Fufia Caninia* of 2 B.C.E. limited manumissions by will. The fraud attempted here involved writing the slaves' names in a circle so that no priority could be detected. Similar language appears at Gai. *Inst. epit.* 1.2.2: “quod si non nominatim servi vel ancillae in testamento manumittantur, sed confuse omnes servos suos vel ancillas is, qui testamentum facit, liberos facere voluerit, nulli penitus firma esse iubetur hoc ordine data libertas; sed omnes in servili condicione . . . permanebunt.”

14. These include Pfister and Richmond's *nullas*, read too by Hanslik 1979, and the most recent, Hendry's (1996) *numquam*.

15. This is as true of technical terminology as it is of order of clauses: on the former, cf. Kenney 1969, 252, remarking on Ovid's practice.

16. Cf. Hendry 1996, pp. 442–43, n. 9.

17. Occasionally (e.g., *Dig.* 19.1.17.6, 27.7.4 pr., 46.3.35 pr.) *enim* or *nam* append another main clause giving the ground for the *responsum*.

18. In general, juristic *responsa* (most conveniently to be found in Lenel [1889] 1996, *passim*) take two forms: in one (the older?) a conditional clause limits the scope of the jurist's pronouncement and a main clause contains the pronouncement; in the other (the more developed?) an additional causal clause gives the ground or legal argument for the pronouncement.

outstanding jurists of the age of Augustus, is worth quoting as a sample (*Inst.* 3.179):¹⁹

Servius tamen Sulpicius . . . consequenter et illud **respondit**, si quis id quod sibi L. Titius deberet, a servo fuerit stipulatus, novationem fieri et rem perire, quia cum servo agi non potest.

It must be incorrect, then, to speak of tautology in Propertius 2.2.23–24. In fact the poet is writing like a jurist, first setting down in the *quoniam* clause of the hexameter the general legal principle involved.²⁰ In Gaius' *quia cum servo agi non potest* (above) the principle is that a slave has no status in legal matters; similarly in Propertius the principle is that (the abstract quality of) *libertas* "is not retained by a lover," that is, *amare* automatically entails *capitis diminutio maxima*. Then, in the pentameter, Propertius gets down to specifics: if an individual (*si quis*) opts with full volition (*volet*) to be a lover, then no such person will thereafter be a free man.

Everything proposed above can be paralleled in Propertius:²¹ his reminiscence of general legal language;²² his reference to the law of slavery;²³ and his ending an elegy with a legalistic couplet.²⁴ Moreover, this interpretation of the "final sententious distich" (as Allen [1962], 124 called it) of 2.23 fits unproblematically into the elegy's conceptual framework. The accepted analysis of its content, that of Allen (1962), 121–24, esp. 124,²⁵ sees lines 1–2 and 21–22 as enclosing the elegy "in a frame of personal statement," and lines 23–24 as "stating the conclusion drawn." Within the "frame" Allen perceives two ten-line sections (3–12 and 13–22) made up of balancing couplets, viz.: 3–4 = 13–14, 5–6 = 15–16, 7–8 = 17–18, 9–10 = 19–20, after which "The first section closes with a rejection of a mistress (11–12), the second with a welcome to the prostitute (21–22)." This scheme makes 21–22 do double duty; and in addition 3–4 do not in fact correspond clearly with 13–14.

However, one unchallengeable part of Allen's analysis is his equation of 5–10 with 15–20: these lines do genuinely handle from opposite viewpoints the same aspects of the same subject in the same sequence. Similarly Allen's descriptions of 1–2

19. On Servius Sulpicius and his "pupils," cf. Watson 1974, chap. 12; Frier 1985, 153–55, 170–71. Frier notes the importance of legal definitions in the work of Q. Mucius (160–63) and remarks that in the "hypothetical cases" discussed by jurists "a legal principle or rule (usually a new one) is always involved in their solution" (167). A few further examples of *responsa* of similar tripartite form given by late republican and early imperial jurists are: Q. Mucius: 8.2.7 pr.; Servius: 28.5.46 pr., 39.2.24.5, 43.24.13.4; Alfenus: 6.1.58 pr.*, 35.1.27 pr.*, 47.2.58 pr.; Trebatius and Labeo: 35.1.8 pr. (all references are to the *Digest*; an asterisk indicates use of *quoniam*).

20. With, e.g., Scheidweiler 1960, 79 and Heubner 1965, 348.

21. Propertius may have been trained in law, although the only (possible) evidence is 4.1.131–34. These ambivalent lines could, however, refer rather to oratory/politics and, with their Callimachean echoes, they are highly conventional anyhow. Propertius' concern with the law was at all events less than that of Ovid, who had fulfilled judicial roles in the XXvirate (cf. Kenney 1969). On the other hand, all Romans of Propertius' class needed at least some legal knowledge.

22. For parallels, cf. Fedeli 1965, 309–11 (Indice dei nomi e delle cose notevoli, s.v. "influssi—del linguaggio giuridico"); 1980, 518–22 (Indici: Stile e tecnica a compositiva, s.v. "linguaggio—giuridico"); 1985, 773–81 (Indici: Lingua, stile, tecnica compositiva, s.v. "linguaggio—giuridico"); Cairns 1971, 1974, and, for a particularly wide-ranging legal reminiscence, Cairns forthcoming.

23. Apart from his obsession with the theme of *servitium amoris*, cf. Cairns 1971 for an analysis of an "allegory," replete with legal terminology, in which the poet plays the role of runaway slave (*fugitivus*) and is recaptured by Cupids acting as professional slave-catchers (*fugitivarii*).

24. Cf. Cairns 1974.

25. Cf. also Jäger 1967, 170–71. The possibility that 2.23 constitutes a pair with 2.24A, commented on by Allen 1962, 121, 126–29, and discussed in greater detail by Jäger 1967, 65–73, does not affect the matter in hand.

and 21–22 as “personal statement” and of 23–24 as “conclusion” seem unexceptionable. The two problems noted above can perhaps be resolved most easily by taking lines 11–14 too as “personal statement.” This approach produces a scheme in which “ring-composition” and “parallel-composition” are elegantly combined; in it the centerpiece repeats the outermost element and the first two elements of the ring are reversed on their second combined appearance:²⁶

A1	1–2	Rejection of a mistress in favor of prostitutes
B1	3–4	The lover becomes a (fellow) slave (of his mistress’ slave)
C1	5–10	The miseries of love for a mistress
	c1	5–6: location
	c2	7–8: greed
	c3	9–10: humiliation and danger
D=A	11–14	Rejection of a mistress (11–12) in favor of prostitutes (13–14)
C2	15–20	The non-miseries of using a prostitute:
	c1	15–16: location
	c2	17–18: (non)-greed
	c3	19–20: no humiliation and danger
A2	21–22	Rejection of a mistress in favor of prostitutes
B2	23–24	The lover becomes a slave

This analysis is offered as a minor rectification of Allen’s scheme. But his characterization of the final couplet as “conclusion” stands in either case; and, as “conclusion”, 2.23.23–24 gains weight and authority from its juristic background.

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26. On such ring-composition in elegy and elsewhere and on the two sophistications mentioned, cf. Cairns 1979, chap. 8 and, more recently, on Tibullus Book 2, Murgatroyd 1994, 283–91.

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THE WIFE OF MAXIMINUS

On 1 May 305, in Nicomedia and Milan respectively, the emperors Diocletian and Maximian abdicated and appointed two new Caesars to the imperial college, with the two existing Caesars automatically replacing them as Augusti.¹ The new Caesars were not the two princes who seemed destined for the imperial purple by traditional dynastic considerations. The western Caesar, Constantius, had three sons: Constantine, who was probably over thirty years of age, and two who were much younger, perhaps still mere infants, Dalmatius and Constantius, who became consuls in 333 and 335, when presumably not much beyond their thirtieth years; the western Augustus, Maximian, had an adult son, Maxentius, and a daughter, Fausta, who seems to have been much younger than her brother and was not yet of marriageable age; the eastern Augustus, Diocletian, had one child, a daughter, Valeria, who was married to the eastern Caesar, Galerius; Galerius had only one legitimate child, a daughter, Valeria Maximilla, who was married to Maxentius. Before the abdication, therefore, it seemed obvious that the next Caesars to be appointed to the imperial college must be Constantine and Maxentius, since they were the only two sons of the ruling emperors who were old enough to discharge the imperial duties.² In the event, however, the new Caesars were Maximinus, who was Galerius' nephew, and Severus, whose antecedents are totally unknown.

1. For documentation of undisputed facts, dates, and relationships, see T. D. Barnes, *The New Empire of Diocletian and Constantine* (Cambridge, 1982), esp. 4–5, 30–39.

2. See T. D. Barnes, "Christentum und dynastische Politik (300–325)," in *Usurpationen in der Spätantike*, ed. F. Paschoud and J. Szidat, *Historia Einzelschriften* 111 (Stuttgart, 1997), 99–109.