

THE EMPEROR'S DISPLEASURE AND OVID

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In studying the Emperor's Displeasure several years ago,¹ we overlooked one of the most interesting and important instances. For the case of Ovid may properly and reasonably, it seems, be interpreted as an example of Augustus' *amicitiam renuntiare*, if, to be sure, the most extreme, most severe, most aggravated case of which we know, and in some part exception from the norm.

The poet is himself the only source of information in any degree trustworthy. The only other sources are scholiasts, commentators, copyists, from four to fourteen centuries later; and what they offer is quite evidently inferences and deductions from Ovid's own text, all embroidered by the wildest imagination. Ovid, on the other hand, of deliberate intent and with great success, obfuscates the matter. Yet even so, there does emanate out of the cloud of mystery something useful for interpretation and understanding.²

Ovid himself explicitly states that he had not been tried in the Senatorial Court nor in a *quaestio* or public court. For he writes (*Tr.* 2.131-32):

nec mea decreto damnasti facta senatus,
nec mea selecto iudice iussa fugas est.

The commentators have therefore customarily concluded, he must have been tried *in camera* in the Emperor's own private court. But Bleicken has lately shown that there was no such court under Augustus and Tiberius, but not until Claudius;³ Augustus proceeded mostly in

¹ "The Emperor's Displeasure—*amicitiam renuntiare*," *TAPA* 90 (1959) 224-37.

² John C. Thibault, *The Mystery of Ovid's Exile* (Berkeley 1964), brings together conveniently all the evidence, and analyzes the numerous and various hypotheses that have been put forward.

³ Jochen Bleicken, *Senatsgericht und Kaisergericht, Eine Studie zur Entwicklung des Prozessgerichtes im frühen Prinzipat* (Göttingen 1962) 78 ff.

the Senatorial Court. Now, if Ovid was not tried by Senate nor by *quaestio*, and there was no imperial court *in camera* at that time, we are driven to conclude that Ovid was not tried. We should have arrived earlier at that conclusion by a different route.

For Ovid has also said that he was not guilty of any action which was prohibited by law (*Tr.* 3.1.52):

non facinus causam, sed suus error habet.

And likewise (*P.* 2.9.71):

nec quicquam, quod lege vetor committere, feci.

More specifically, he had not committed treason (*Tr.* 2.51-52):

nec contraria dicor
arma nec hostiles esse secutus opes.

Similar expressions are "non contraria fovi arma" and "saeva deos contra non tamen arma tuli."⁴ Nor had he done murder, poisoning, forgery (*P.* 2.9.67-70):

non ego caede nocens in Ponti litora veni,
mixtae sunt nostra dira venena manu:
nec mea subiecta convicta est gemma tabella
mendacem linis imposuisse notam.

In fact, there had been no *act* at all, but only an "error." He had seen something; that was all of his offense.⁵ We should have recognized that, if the offense did not consist of illegal action, even an *act* at all, then there was nothing indictable; and if no indictment, then of course no trial; for only by an indictment can trial proceeding be initiated.⁶ And thus we would have been led to conclude that Ovid was not tried.

This conclusion leaves, as explanation of Ovid's banishment, either magisterial *coercitio*, which could invoke even *relegatio* as the penalty it might perfectly legally impose,⁷ or the "Emperor's Displeasure."⁸

⁴ *Tr.* 1.5.41-42, *P.* 1.1.26; cf. *Tr.* 3.5.45-46.

⁵ *Tr.* 3.5.49-50; 2.103-4.

⁶ *Dig.* 48.2.3.pr., 1 (Paulus). And cf. *TAPA* 96 (1965) 357.

⁷ J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford 1912) 1.109.

⁸ Cf. above, note 1.

Ovid writes again (*Tr.* 2.133-34):

tristibus invectus verbis—ita principe dignum—
ultus es offensas, ut decet, ipse tuas.

This has sometimes been interpreted to mean that there was a personal meeting between Augustus and Ovid, at which the Emperor gave him a tongue-lashing. Allusion is rather to the language of the edict, which is mentioned in the next following lines (see below).

And over and over again Ovid says it was "Caesaris ira" that banished him.⁹

Now these words and phrases remind one very strongly of what Tacitus (*Ann.* 3.12.2) puts in Tiberius' mouth regarding Piso at the latter's trial in A.D. 20: "si legatus officii terminos . . . exuit . . . odero seponamque a domo mea et privatas inimicitias non vi principis ulciscar." And "odero" was the word which, according to Suetonius (*Tib.* 28), Tiberius used in proclaiming his policy toward criticism: he would answer it with reasoned refutation and defense; if critic still persisted, "in vicem eum odero." And Nero acted "proprio odio" in exiling Silia in A.D. 66; this seems to have been an example of *amicitiam renuntiare*; for her offense, though intolerable, was not indictable. Nero saw her as the certain source of disclosures about his immoralities.¹⁰

The last quoted lines of Ovid, above, are continued (*Tr.* 2.135-40) by:

adde quod edictum, quamvis immite minaxque,
attamen in poenae nomine lene fuit:
quippe relegatus, non exul, dicor in illo,
privaque fortunae sunt ibi verba meae.
nulla quidem sano gravior mentisque potenti
poena est, quam tanto displicuisse viro.

One notes with special interest the word *displicuisse*.

We do not hear, in the other cases known to us of the Emperor's Displeasure, specifically of an edict, though *epistulae* are recorded as used by Germanicus to Gnaeus Piso, and the letter of the Emperor

⁹ E.g. *Tr.* 1.3.85, 3.11.17-18, 3.13.11, 4.10.97-98; *P.* 1.2.98, 3.7.39.

¹⁰ Tac. *Ann.* 16.20.1. This case also was overlooked in "The Emperor's Displeasure" (above, note 1).

Julian to Nilus Dionysius is preserved.¹¹ The verb most commonly found in the context of *amicitiam renuntiare* is *interdicere*, which assuredly is appropriate to edict. It may very well be, therefore, that edict was the instrument in other cases where the manner of communication is not mentioned in our sources.

Closely contemporaneous, even conceivably associated with Ovid's case (at least, no *more* probable setting for his *error* than the conspiracy of the younger Julia has ever been conjectured) was that of Decimus Junius Silanus, paramour of Julia, with whom Augustus severed friendly relations.¹² Silanus understood, says Tacitus, that this meant exile, and departed the city. Not until A.D. 20, two years or more after Ovid's death, did Silanus "dare" (*ausus est*, Tacitus) return, to petition Senate and Tiberius, relying then on the power of his brother Marcus, who held very high place in that Emperor's regard. Senate was quite complaisant, and Marcus expressed his thanks to the House. Tiberius, however, told Marcus he was happy that his brother had returned from his extensive travels, as of course he could, since neither *senatusconsultum* nor law had driven him forth (note the exact parallel with Ovid); but he himself retained Augustus' feelings undiminished. Silanus remained in Rome, but had no career. Perhaps Ovid might at least have died in Rome instead of among the Getae; but he never made the venture that Silanus did.

The prescription of Tomis as Ovid's place of residence in banishment has no parallel in the other known cases of the Emperor's Displeasure. Nero invited Rubellius Plautus, in the interests of the capital's tranquillity, to retire to his family estates in Asia, which Plautus did.¹³ And Augustus had forbidden Cornelius Gallus not only the Palace but all the imperial provinces.¹⁴ Neither of these, however, is very good analogy. Rather let us take good note that the penalty against Ovid was extremely severe.

This writer has no intention of adding to the accumulation of conjecture and speculation on *what* Ovid had seen, considering that to be exercise in sheer futility. Ovid was disposed not to reveal the

¹¹ Tac. *Ann.* 2.70.3; Julian, *Ep.* 50 Loeb.

¹² Tac. *Ann.* 3.24.3.

¹³ Tac. *Ann.* 14.22.3. This incident failed of mention in "The Emperor's Displeasure" (above, note 1).

¹⁴ Suet. *Aug.* 66.2.

slightest hint; only he and Augustus, apparently, knew, and neither of them was saying. Rather let it be marked that evidently it was really very serious matter, as the following facts attest. Augustus uses the same means and instrument as he had employed in the cases of Cornelius Gallus' palpable high treason in Egypt and of Silanus' violation of his house; banishment to Tomis was more severe than the penalty visited on either of the others; Ovid himself admits (*P.* 3.3.75-76) that his usual word, *error*, is a euphemism and says plainly that his punishment was no heavier than he deserved. The last might be discounted as expression of flattery, but we do not believe it must be.

Ovid's poetry was irrelevant, incompetent, and immaterial to the case—until he began to write his apologia; then it assumed important place.

Some commentators assert that the *Ars* was the real offense, and the *error* merely the occasion of the punishment. This is unacceptable, as directly contradicted by Ovid himself twice.

est tamen his gravior noxa fatenda mihi.
neve roges quae sit, stultam conscripsimus Artem:
innocuas nobis haec vetat esse manus.
ecquid praeterea peccarim, quaerere noli
ut lateat sola culpa sub Arte mea (*P.* 2.9.72-76).

And, put into the mouth of Cupid:

nil nisi concessum nos te didicisse magistro,
Artibus et nullum crimen inesse tuis.
utque hoc, sic utinam defendere cetera possem!
scis aliud, quod te laeserit, esse magis (*P.* 3.3.69-72).

Not only unacceptable, it is also absurd. For it makes Augustus wait ten years for a lesser offense to provide him occasion before he punishes the greater offense—which is ridiculous.

Other writers say that the poem was obviously part of the charges because Ovid talks about it so much, even if more often about his "error." Or they put the same proposition interrogatively: why does Ovid have so much to say about the poem unless it was part of the charges? The answer is perfectly simple. The "error" was indefensible, as the poet says in the just quoted statement from the lips

of Cupid, "utinam defendere cetera possem," whereas the poem could be defended, at a length that ends in boredom.

Ovid asked (*Tr.* 2.465-66), "Why, if it was all right for Propertius to do it, is it not all right for me, too?" Again the answer is quite simple: it was all right for Ovid, too. Witness the ten years after publication of the *Ars* in which nothing befell its author.

Let us now raise a question, to which we do not, cannot, have the answer. Was this defense of his literary production which should distract attention from his real offense, the *fons et origo* from which the authors of the anti-imperial tradition derived their similar device? Tacitus, pre-eminently, but also Seneca, Pliny, Dio, make great to-do of justifying and defending the writings of one and another defendant.¹⁵ This serves not only to mask and cloak the defendant's actual crime, which was treason, but also to counterattack the Emperor by charging against him the tyrannical suppression of literature and free speech. To be sure, any one of those authors was quite resourceful enough to invent this device for himself; but there *was* in Ovid a precedent which they might adopt and follow.

Finally, it should be said that the case may be interpreted as an instance of the exercise of magisterial *coercitio*.¹⁶ We have chosen rather to regard it as an example of Augustus' vehement expression of his Displeasure. The reasons for that choice are: (1) the words and phrases which Ovid uses—"ultus es offensas . . . ipse tuas" and "Caesaris ira" and "displicuisse"; and their similarity to phrasing quoted from Tiberius on the subject of his Displeasure; (2) that Augustus had been content with this same measure as punishment of Cornelius Gallus' treason; and (3) the coincidence in time, if not also in circumstances, of the case of Silanus with that of Ovid. But if anyone had ever felt compelled, or been so presumptuous, as to question the legality and constitutionality of Augustus' imposing the penalties of his Displeasure, could not Augustus have replied, "What is this but magisterial *coercitio*, which I am most assuredly entitled to exercise?"

¹⁵ Cf. "The Case of Cremutius Cordus," *TAPA* 96 (1965) 351-59; "A Group of Domitianic Treason-Trials," *CP* 55 (1960) 19-23.

¹⁶ As A. H. M. Jones does, *Studies in Roman Government and Law* (New York 1960) 14 (= *JRS* 41 [1951] 112-19).