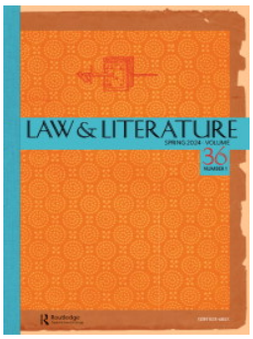

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The Emperor Augustus and Narratives of Legal Origin

Rebecca Shaw

Abstract, Any legislation, whether ancient or modern, is contextualised by constitutional tradition, of which narratives of legal origins are a key part. These stories are an important source of the law's authority and, as such, warrant particular attention. This paper re-examines the significance of the Emperor Augustus' decision as legislator to overlook one of Rome's key legal-aetiological narratives, the Twelve Tables, when introducing his radical package of social legislation, the *leges Iuliae*. As an expert statesman and an expert in legal storytelling, Augustus was acutely aware of the potency of stories. Yet stories of Rome's first ever law code are conspicuous in their absence from narratives surrounding the *leges Iuliae*. Using Augustus and this controversial package of legislation as a case study, this article will evaluate the importance of origin narratives as a framework for legislation, and the significance of the stories legislators turn to in order to legitimise their laws.

Keywords, Roman Law, narrative, origin stories, Augustus, legislators

INTRODUCTION

Any legislation, whether ancient or modern, is contextualised by constitutional tradition, of which narratives of legal origins are a key part. With stories and myths about the origins of a legal system, the relationship between law and narrative goes far beyond a single piece of legislation, and relates to the construction and development of the entire legal order itself. Particular attention should be paid to these stories: they are an important source of the law's authority; provide important historical context; and enable us to understand how the law should operate.[1] Parallels can be drawn with social contract narratives, which likewise take the reader "back to a time and place before the establishment of legal structures"

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[…] and help to define law and its essential qualities and goals, as much as any other legal narratives.[2] Just as social contract narratives hold meaning in that they tell the story of the origin and development of the law from a "state of nature," narratives of legal origins can likewise enlighten our understanding of a legal system prior to its legislation or to the courtroom. The significance, then, of these legal origin narratives is axiomatic. However, with often multiple origin stories to choose from on a spectrum of constitutional tradition, legislators themselves have a choice as to how to frame the laws they are introducing and which story to invoke. This article seeks to evaluate the importance of origin narratives as a framework for legislation, and the significance of the stories legislators turn to in order to frame, mandate and legitimise their legislation.

The application of narrative theory to the law and legal systems is not new. Constitutions, laws and statutes are dependent for their authority upon the cultural "narrative" – made up of values and attitudes – in which they are received.[3] Narratives locate and give meaning to legal institutions and as a result, law and narrative are "inseparably related."[4] On the one hand, law is elevated and rendered comprehensible by narrative; on the other, law is embedded in a framework of cultural narratives.[5] Much legal-narratological enquiry into this relationship between law and cultural narratives relate to legal systems broadly, or to specific examples such as social contract theories or the study of the Mishnah.[6] Cover, for instance, discusses how the legal tradition includes not only a *corpus juris* but also a language and a mythos, with these myths establishing paradigms for behaviour.[7] For Simon-Shoshan, so-called "framing stories" in the Mishnah, namely the introductory narratives which establish the origins and history of Jewish laws, place the law and the community that practices it within a historical continuum: they tell a "narrative that intertwines the origins of the law, the community, and its authority structure."[8] Likewise, Olson maintains that "foundational legal narratives legitimate a given legal system's normative status by establishing resemblances between themselves and other master plots."[9] This article, however, seeks to counter the shortcomings in current literature by applying this narratological analysis to ancient Roman legislation in order to consider the work that narratives, specifically origin narratives, do in the context of ancient law-making.

Using the Emperor Augustus, his *leges Iuliae* and Roman stories of legal origin as a case study, this article sets out to examine the narratological significance of stories of Roman constitutional tradition to the Augustan Marriage Legislation. Dating to 18BC, this was one of the legislative cornerstones of Augustus' Principate.[10] Two laws formed part of this package of legislation: the *lex Iulia de maritandis ordinibus* and the *lex Iulia de adulteriis coercendis*. The former, concerned with marriage and procreation, lay down a system of rewards and punishments for marriage between all classes, and the latter formally criminalised adultery for the first time as it aimed to rein in a "wide range of extramarital

liaisons."[11] Given the formative nature of these laws, particularly with the radical social changes they attempted to wrought, the *leges Iuliae* have accordingly come to be regarded as synonymous with the Augustan regime and the moral values (*mores*) Augustus espoused.[12] As an expert statesman, and an expert in legal storytelling, the Emperor was acutely aware of the power of traditional, customary narratives – and indeed the Roman penchant for such stories – as his appeals to precedent in order to legitimise his controversial new laws demonstrate. Indeed, it is well attested that Augustus overtly manipulated and use those stories which conveyed examples of the *mos maiorum* – ancestral custom - in order to establish his, and his legislation's, legal authority. However, stories of the Twelve Tables (the first ever Roman Law Code) are conspicuous in their absence from narratives surrounding the *leges Iuliae*: Augustus takes great pains to align his *leges Iuliae* with the prevailing narrative of the *mos maiorum*, yet fails to align his legislation with one of Rome's key legal-aetiological narratives.

This article, therefore, will explore the narratological significance and relevance of the Twelve Tables for the enactment of the *leges Iuliae* using a range of intersecting literary material including writings from Augustus and contemporary historians, notably Livy and Dionysius of Halicarnassus. It begins by exploring the roles of the *mos maiorum* and the Twelve Tables in Roman constitutional tradition, and then contextualising these stories within the Augustan Principate and the enactment of the *leges Iuliae*. By recognising the narrative characteristics of the stories of the Twelve Tables, this article analyses the ways in which this legal origin story serves as a relevant and important legal masterplot, and links these characteristics with the story of the Augustan legislation itself. It shifts emphasis away from examining the specific terms of the legislation itself, and instead lays out unacknowledged narrative and legal contexts that give a richer sense of what Augustus was doing with this seminal package of legislation. In doing so, it advances a reason for Augustus' decision as legislator to omit this particular legal-narrative, framing and attempting to legitimise his legislation with the stories of the *mos maiorum* instead. By reframing the Augustan legislation in these narratological terms, this article reinforces the concept that the "law is full of stories" and demonstrates the relevance of its application to ancient, as well as modern, law-making.[13]

ROMAN CONSTITUTIONAL TRADITION: THE ROLES OF THE *MOS MAIORUM* AND THE TWELVE TABLES

"The Romans had no constitution."[14] A bold observation, but one that nonetheless is repeated by nearly every study of Roman law.[15] Indeed, one of the curiosities of the Roman legal tradition was their unwillingness to formally codify their *public* laws: they were willing to write constitutions for others, but simply chose not

to impose one on themselves.[16] That said, while there was no written codification of *public* law in Rome, the constitution wasn't entirely unwritten when it came to *private* law.[17] With Rome's history traditionally divided into three main periods (the Monarchy, 8th century BC – 510BC; the Republic 509 – 27BC; and the Empire, 27BC – AD565), the dominant constitutional structure in Roman society simply evolved to suit the individual needs of each of these eras.[18] However, by the time Latin legal literature was first developing (c.200BC), "the political system was even in its essentials too vast to take in as a whole."[19] As a mutable and ever-changing concept, then, the Roman constitution simply adapted and developed according to the political developments of the time. After centuries of growth and evolution, the result was instead a broad *spectrum* of constitutional tradition in ancient Rome: it ranged from some written laws to *mos*, what may be termed as custom or the way things were done.[20]

Mos or *mores maiorum* (the ways of our ancestors) were exemplary stories of customary norms that formed part of the fabric of the entire legal system since the earliest period of Roman history.[21] This "preponderantly ancient tradition," often idealised by conservatives, was used to counterpoise new developments or, in the case of Augustus, to make those new developments more palatable.[22] At the other end of the spectrum lay the Twelve Tables: the first ever Roman law code (451-450BC), and indeed the only codification of *private* law ever produced in classical Rome.[23] The Twelve Tables were the work of a commission of ten men to codify the body of law, which until then had been largely unwritten, and subsequently provided a basis for Roman legal life.[24] Embodied in stories, both the Twelve Tables and the *mos maiorum* demonstrate that the Roman constitution consisted of far more than statutes.[25] Lowrie (pace Lintott) has suggested that "the stories transmitting ancestral custom were as important as statute for the Roman Republican constitution"; advancing this theory further, we can likewise include stories transmitting the origins of the Twelve Tables.[26] Indeed, as the only formal codification of private law in classical Rome, the Twelve Tables represent a key moment of delineation for the legal landscape and subsequently provided a set of parameters by which new laws could achieve their legitimacy and normative status. Stories of both the *mos maiorum* and the Twelve Tables have decisively shaped the constitution, the institution of legal precedent, and, therefore, the wider legal system.

Viewing these texts as narratives, however, might seem paradoxical. Readers and listeners might not instinctively deem sources such as law codes to be narratives. However, even sources which may be regarded as ostensibly non-narrative can feature prototypical narrative elements that allow them to be configured, and subsequently analysed as, narrative statements in their own right. For example, a distinction can be made between the casuistic and non-casuistic, or apodictic, formulations of these texts.[27] Casuistic texts, or statements, "are 'if … then …'

statements that establish the law in a given situation. By definition they consist of two parts, the description of the case and the ruling [and] these two parts almost always constitute two interconnected events and are therefore narratives."[28] Non-casuistic, or "apodictic formulations state the law in an absolute manner, such as: 'It is prohibited to do X' or 'Y must be done'. They generally contain only a single verb and hence are generally not narratives."[29] Using this framework, different legal writings are decidedly casuistic in nature, others are not of a casuistic character and some have a mixture of casuistic or narrative elements.[30] This dynamic view of Roman legal literature is therefore useful for analysing the significance of Roman legal texts and the *leges Iuliae* in a new, narratological way.

THE *LEGES IULIAE* AND THE AUGUSTAN PRINCIPATE

Given the seminal nature of the *leges Iuliae*, modern historians have forwarded various competing theories to explain the *telos* (purpose) of the legislation and Augustus' motivations as the prime mover behind this legislative programme:

> Some present the legislation as part of a wider "morality tale," with Augustus the hero of the story, on a quest to save Rome's morally bankrupt aristocracy from itself; others suggest demographic, financial, and/or social engineering as the most plausible motivating factors behind Augustus' introduction of the controversial new laws – although it is impossible to securely account for the actual *mens rea* motivating Augustus in this case.[31]

However, this article aims to advance a new approach to the *leges Iuliae*, shifting away from this emphasis on reconstructing the aims and purpose of the legislation towards one based on narrative theory. As a shrewd statesman, Augustus also demonstrated a self-conscious awareness of his role as storyteller through his manipulation of law *qua* narrative and narratives *qua* laws. Particularly with his overt desire to connect his legislation to the origin narrative of the *mos maiorum*. Laws may have been needed, but *mores* were viewed as even more important.[32] As the poet Horace succinctly summarises: "Laws are useless without virtue, what do they achieve? ," *quid leges sine moribus, vanae proficiunt?* (Hor. *Carm.* 3.24.35-36).[33] Thus, in order to legitimise his legislation, Augustus turned to and invoked the exemplary stories of the *mos maiorum*. The restoration of *mores* and recovery of the lost traditions of the *maiores* was the basis of Augustus' authority, and therefore, as Wallace-Hadrill argues, the "attribution to the imperial court of the role of moral exemplar is a definition of [Augustus']

power."[34] Indeed, Augustus directs our attention explicitly to this connection between his new laws, *legibus novis*, and exemplary moral behaviour, *exempla maiorum*, in his record of achievements, the *Res Gestae Divi Augusti* (8.5):

> By means of new laws brought in under my sponsorship, I revived many exemplary ancestral practices which were by then dying out in our generation, and I myself handed down to later generations exemplary practices for them to imitate.
>
> Legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi.[35]

In this passage, the Emperor frames his new legislation (which included, amongst others, the marriage laws) as a revival of the *exempla maiorum*, the exemplary moral behaviour of the ancestors, which he claims was dying out by his rule. With such a focus on restoring the morals of Roman society as part of the so-called "Augustan Programme," the *mos maiorum* offered Augustus a ready route to legitimisation through this traditional narrative.[36] What better origin narrative to invoke – one which conveyed examples of the very moral behaviour the Emperor was trying to restore – when introducing these new and controversial laws. By explicitly appealing to the tradition of the *mos maiorum*, Augustus revealed himself not only as an expert statesman, but also an expert in (the power of) legal storytelling too.

That stories of Roman legal custom were of central importance to Augustus, then, is clear. Indeed, by attempting to draw attention to this familiar origin narrative, and connecting his legislation with the *mos maiorum*, Augustus astutely elided the distinction between custom and law. However, while the spirit of the legislation might have drawn on customs from Rome's past – with punishments inflicted on exemplary individuals for their immoral behaviour – the very fact that these punishments were now codified in law is what made Augustus' actions so novel. As a result, hostility to the legislation remained.[37] Given the Emperor's awareness of the potency of custom and narratives of legal origin, what significance then does the story of the Twelve Tables have, if any, for the *leges Iuliae*? And how can a narratological analysis assist in understanding Augustus' choice, as legislator, for omitting this key legal origin narrative from his enactment of the Twelve Tables?

THE TWELVE TABLES

Reconstructing, and understanding the role of, the story of the Twelve Tables for the *leges Iuliae* is a complex business. Generally accepted as the foundation of

Roman Law, there is no complete account of the Twelve Tables and this first systematic treatment of the law.[38] While it would be misleading to view the Twelve Tables as a code in the modern sense of a complete statement of legal rules – for as Ibbetson points out, it was "far too piecemeal" to allow for any such conclusion – its importance should not be minimalised either.[39] Rather, its significance lies in the fact that the Twelve Tables created, for the first time, a substantive record of legal rules in fixed form and, even many centuries later, would remain the "only attempt by the Romans to comprehensively record their laws."[40] Indeed, its status as a key foundational text of Roman law is neatly summarised by the ancient historian Livy, who describes the Twelve Tables as the "fount of all law, public and private," *fons omnis publici privatique est iuris* (Liv, 3.34).[41]

Crucially, no text of the Twelve Tables survives to this day. The original tablets were said to have been destroyed when the Gauls sacked Rome in c.386BC, so our knowledge is based on the stories told by later writers: both Livy (born in either 64 or 59BC, died in AD17) and Dionysius of Halicarnassus (born between 60 and 55BC, date of death unknown) provide rich and detailed accounts of this part of Rome's history, which survive to this day.[42] However, despite these accounts and the reputation of the Twelve Tables, this aetiological story is as much myth as a truly, factual historical account.[43] While it is true that the accounts we have of this iconic constitutional moment contain, in all likelihood, more fiction than history, for the Romans they were nonetheless an important, and very real, part of their constitutional and legal history.[44] What is clear, however, is that this (hi)story of Rome's legal origins establishes a foundational narrative for the Roman legal system. Furthermore, as contemporaries to the Augustan regime and attendant marriage legislation, the accounts of both Livy and Dionysius would have been well-known narratives on the origin of the legal system and a significant narrative of legal precedent for the *leges Iuliae*.

Livy and Dionysius each provide exceedingly detailed and necessarily fictionalised accounts of the origins of the Twelve Tables in each of their respective works, the *Ab Urbe Condita* and *The Roman Antiquities of Dionysius of Halicarnassus*.[45] In brief, the narrative of the Twelve Tables in the works of Livy and Dionysius unfolds as follows. Both writers tell the story of Terentius Harsa, a tribune of the plebeians, who in 462BC proposed that customary law should be recorded and made available to all, so as to stop the unlimited power of the patrician magistrates, who alone were acquainted with the laws.[46] After 8 years of conflict, the patricians conceded and three delegates were sent to Athens to study and record the famous laws of Athenian lawgiver Solon.[47] Upon their return, a board of decemvirs was appointed and formed a government in 451BC, with the additional task of setting down a written code of laws.[48] In 450BC, the decemvirate produced a copy of the ten laws, which were engraved on bronze pillars and

set up in the Forum.[49] The following year, a second decemvirate is said to have added two further tablets to supplement the existing ten.[50]

Thus, the origins of the Twelve Tables, as narrated, represent an important moment in Roman constitutional history. Together, Livy and Dionysus present two different narratives of the genesis and development of the "code" itself. These stories about the origin of Roman law take the reader back to a time and place before the establishment of this important legal structure, and ask the reader to imagine a moment when the "socio-legal institutions, codes and norms of justice are not yet entrenched or even written down, when everything is still up for debate."[51] However, despite its significance to Roman constitutional tradition, the story of the Twelve Tables is conspicuous in its absence from Augustan narratives on the marriage legislation and its attendant discourse. That is, Augustus does not make the same overt and strategic use of this particular legal origin narrative, in contrast to his consistent and insistent reiteration that the *leges Iuliae* relate to the *mos maiorum*, exemplified notably in his *Res Gestae divi Augusti* (8.5). Yet while Augustus may not have explicitly connected his legislation to the Twelve Tables, preferring instead to related to the established narrative repertoire of exempla and the *mos maiorum*, nonetheless the Twelve Tables can be said to offer a crucial legal archetype for the *leges Iuliae*. For the Twelve Tables determined the spirit of Roman law and, as Watson argues, "the major characteristics that shaped Roman law forever flowed from these circumstances."[52]

THE TWELVE TABLES: A LEGAL ARCHETYPE FOR THE *LEGES IULIAE*?

At the time when Augustus was summarising his achievements in the *Res Gestae* and claiming that his new laws marked a return to the old *mos maiorum*, Livy particularly had only recently retold his own version of the creation of the *tabulae* – so bringing this archetypal story to the forefront of Roman legal and juridical thought. Livy's account, which appears in the first pentad of his *Ab Urbe Condita*, is believed to have been completed by 27BC, crucially before the passage of the *leges Iuliae* in 18BC.[53] His Twelve Tables stories thus provide a narrative background to Augustus' law making. The contemporary prominence, therefore, of the Twelve Tables, particularly within the work of Livy, reminds us that "the Romans thought a great deal of and about their system of legislation, [and] the network of *leges* that stretched back to the Twelve Tables and the very beginnings of the republic."[54] By adding to this network of *leges* with the introduction, *inter alia*, of the marriage legislation, Augustus is harnessing the legal form established by the Twelve Tables, although he never invokes this narrative directly.

We can further evaluate the *legal* importance of the Twelve Tables narrative to the *leges Iuliae* with an exploration of the contrast between *potestas* (power) and *auctoritas* (authority). In his *Res Gestae Divi Augusti*, Augustus draws attention in the penultimate chapter to these two powers, distinguishing between them as follows (34.3):

> After this time, I excelled everyone in influence, but I had no more power than the others who were my colleagues in each magistracy.
>
> Post id tempus auctoritate omnibus praestiti, potestatis autem nihilo amplius habui quam ceteri qui mihi quoque in magistratu conlegae fuerunt.[55]

In this claim, Augustus differentiates between the two levels of power, contrasting his formal magisterial powers (*potestas*) with his extra-constitutional power of influence or authority (*auctoritas*).[56] And in distinguishing between the two, Augustus makes it clear that he is not just a magistrate but that he was instilled with a higher, moral power and leadership.[57] Typical of Augustan culture, *auctoritas* as a quality, with its strong moral connections, was inherent in and emanated from individuals.[58] In contrast, *potestas* resided in fixed form as power deriving from an elected office.[59] As Heinze explains:

> Every magistracy is a preestablished form, which the individual enters into and which constitutes the source of his power; *auctoritas*, on the other hand, springs from the person, as something that is constituted through him, lives only in him, and disappears with him.[60]

The magic of the Augustan principate and its approach to law-making, then, was that it was so much more than just a magistracy. While Augustus received all the magistracies from the people and the Senate, his *potestas*, it was his *auctoritas,* bound to his person, which allowed him to legitimate and guarantee Roman political life.[61] Yet, although these two powers operated independently, their relationship was much more intertwined and complementary than Heinze suggests. For while *potestas* supplemented *auctoritas*, as the formality added to real power in order to make it official, conversely *auctoritas* also permeated *potestas*, with holding official positions actually increasing a man's authority.[62] The legislative power of the Augustan regime, therefore, was based on the interconnection and juxtaposition of these two powers; rather than the priority of one over the other.[63]

This dichotomy of powers, and the interconnection between them, can be applied to the narrative of legal origin of Roman law and specifically the *leges*

Iuliae. On the one hand, we have the Twelve Tables, a narrative which focuses on the codification of legislation and its formal legal framework, resembling the nature of the *potestas*. In much the same way that *potestas* is a formal channel of power, the narrative of the Twelve Tables can likewise be aligned with "the fixity of writing and codified law."[64] The codification of the Twelves Tables, and its formality, stands in contrast to the fluid, suggestive power of the *mos maiorum*. However, the *mos maiorum* was never formally codified or fixed in writing. Rather, its moral message, which we see Augustus repeatedly appealing to, was communicated narratively from generation to generation through exemplary stories. Much like the malleable power of *auctoritas*, the *mos maiorum* was an elastic concept, and therefore suited Augustus' political, and indeed moral, purposes perfectly.[65] Indeed, *auctoritas* itself is even part of the *mos maiorum*: Augustus derives his influence and authority, and institutionalises his political practice, from those established customs of the ancestors.[66]

Clear parallels, therefore, can be drawn between *potestas* and the Twelve Tables on the one hand, and *auctoritas* and ancestral custom on the other. And by comparing the legal origin narratives to *potestas* and *auctoritas* in this way, we see that actually the Twelve Tables cannot be severed from the narrative of the *mos maiorum*, and by extension, from the legislation. Although they are two different narratives, which at first glance appear to be working independently, the Twelve Tables and *mos maiorum* reflect the complementary power structure which Augustus refers to in his *Res Gestae*, and which his regime relies upon. The codification of the Twelve Tables, and its formality, ostensibly stands in relation to, yet works in consort with, the more fluid concept of ancestral custom. Thus, the *potestas* of the Twelve Tables was still of crucial importance to Augustus: for the Emperor required the constitutional framework, and the formality of codified law, which the Twelve Tables provided, to work alongside and in partnership with his *auctoritas*.

Indeed, the Augustan marriage legislation can even be characterised as an extension of the Twelve Table narrative, an extension of the narrative of formal, written law. As the first instance of formal codification, the Twelve Tables served as a precursor to Augustus' legislative programme. Now as the authoritative transmitter, interpreter and creator of law, Augustus has taken on the very same role that was previously carried out by the creators of the Twelve Tables.[67] And in taking on that role, the *princeps* is living out an extension of this legal origin narrative, bound by the authority originally established in that story.[68] Thus, the Augustan legislative programme is not entirely external and disconnected from the stories of the Twelve Tables: we should instead see the former as an extension and revision of the latter, arising from many of the same cultural and legal concerns.[69] If we frame the Augustan laws as an extension of the Twelve Tables narrative, we can see that there is simultaneously a denial and an

appropriation of this narrative by Augustus. Indeed, there are striking similarities between the provisions of the *leges Iuliae* and the tablets of the Twelve Tables. For the tablets, *inter alia*, introduced a total ban on intermarriage and plebeians.[70] As Cicero tells us in his *De Republica* (2.63)*:*

> The ten men added two tables of unjust laws, enacting that there could be no intermarriage between plebeians and patricians – a most inhumane measure, since that privilege is normally allowed even between citizens of different states. (The prohibition was later rescinded by Canuleius' plebeian decree).
>
> 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, quae postea plebiscito Canuleio abrogata est.[71]

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 others."[72] And similar to Augustus' legislation, this ban on intermarriage was met with fierce opposition until its repeal soon afterwards in 445BC by the *lex Canuleia*.[73] Livy, in the opening chapters of book 4 in the *Ab Urbe Condita*, recounts the speech made by the tribune Canuleius in support of rescinding this prohibition: "by one bill we seek the right of intermarriage, which has customarily been granted to neighbours and foreigners," *altera conubium petimus, quod finitimis externisque dari solet* (Liv, 4.3). Not only did the Twelve Tables serve as an important precedent for future codification of laws and legislative programmes more generally, it also served as a specific precedent for the Augustan Marriage Legislation – which marked a return to the *leges* and *mores* of Rome's past.[74]

Furthermore, the format and dissemination of the *Res Gestae Divi Augusti* functions as a macro Twelve Tables. If the Twelve Tables focuses purely on the formal, written codification of laws, Augustus has notionally taken this idea and "Augustan-ised" it. For in his *Res Gestae* he not only provides a formal (albeit brief) codification of his legislative programme, but arguably a narrative codification of all his achievements. This funerary inscription of the Emperor unveiled after his death in AD14 presents a self-portrait of the *princeps*' main achievements, what he wished to be remembered for, how important his actions had been for Rome, the expenses he had incurred for the state and for the people of Rome, and his philosophy of government and political ideology, crucially all in the words of Augustus himself. Moreover, the *Res Gestae* was even inscribed and displayed on bronze in front of his Mausoleum on the *Campus Martius*, in much the same way the Twelve Tables were said to have been engraved on bronze pillars and set up in the Forum.[75] The use of bronze, therefore, set the *Res Gestae*

on a "par with Roman legal and other important documents."[76] The relation and resemblance with the Twelve Tables is set: by choosing bronze, Augustus is able to evoke the narrative and legal authority of this key moment in Roman history for himself. Yet, simultaneously, Augustus is able to elevate his account to more than just a written codification of legislation as outlined in the Twelve Tables; rather, he provides a formal, written codification of *all* his achievements accomplished throughout his career. The narrative of the Twelve Tables is not only extended by the *Res Gestae,* but instead surpassed by Augustus, his *leges* and his transformation of Rome's political scene.

CONCLUSION

At first glance, then, it seems puzzling that Augustus would not engage with and exploit the Twelve Tables as an origin story to frame his legislation. Certainly, the story of the Twelve Tables is important and relevant as a legal masterplot for Augustus to invoke. Indeed, the Twelve Tables is a significant archetype for the *leges Iuliae*, with the Augustan legislation having such a strong resemblance and connection to this story. Yet, despite the importance of this narrative as establishing a key moment in the origin and history of the Roman legal system, only stories of the *mos maiorum* were invoked and deployed by the Emperor. That is, Augustus does not at any point appeal to this particular legal-aetiological narrative to support his controversial legislation – in contrast to his consistent and insistent reiteration that the *leges Iuliae* relate to the *mos maiorum*. Returning to the narrative arc of the Twelve Tables story can reveal why, for this origin story itself was not without its controversies and problems.

As the narratives by Livy and Dionysius unfold, there is this back and forth motif between chaos and order, with the passage of the tribunes' proposed legislative package not without difficulty, opposition and delay. For this key legal and political change was not straightforward, as Augustus' own journey with the *leges Iuliae* also reveals (first attempted passage in 28BC, a reworking of the failed statute leading to the legislation of 18BC, which proved highly unpopular leading to a further revision in AD9). Thus, this tumultuous story arguably offers a potentially awkward precedent for the Emperor to frame his own legislation, as a salient representation and reminder of that pattern of chaos and order which has also unfolded throughout the lifetime of the laws under Augustus. Notwithstanding this narrative blueprint and the *potestas* it offers as an origin story, there is no hiding from the fact that this is a problematic narrative for Augustus and hence not a key moment in Roman legal history he wanted to exploit. As a shrewd statesman and legal storyteller himself, Augustus undoubtedly understood that the story of the Twelve Tables would not help further his already difficult task of legislating on the behaviours and morals of the Roman people. Already arguably a

"doomed endeavour," the Emperor instead chose to draw on custom, and frame his legislation as a return to, and an extension of, the customary norms of the *mos maiorum* even as it stages its reform. A tactic (he presumably hoped) would ensure the success of this radical package of legislation.

Augustus' self-conscious awareness of the power of origin stories, then, as a source of the law's authority suggests an application of the principle of *stare decisis* that looks beyond its conventional legal status and recognises its narrative potency too. Even if the Emperor had invoked the legal precedent and potency of the Twelve Tables, he recognised that it would not serve to strengthen his legislation or obscure the fact that his legislation aimed to change Roman norms and behaviour. For these purposes, the *mos maiorum* was tactically a better choice, providing Augustus with a familiar and positive context for his legislation. With multiple origin stories available on a spectrum of constitutional tradition, the relationship between legislator and origin narrative, then, is one of crucial importance. For not all available stories offer the ideal framework against which a legislator can plot his legislative programme appearing principled. And, as the case study of Augustus reveals, even a familiar and customary masterplot such as the *mos maiorum* is not always enough to ensure that radical change and innovation through legislation is successful.

This article, thus, began by outlining how the application of narrative theory can assist in evaluating the significance of the stories legislators turn to in order to frame and mandate their laws. However, such a narratological approach has not yet been applied in this way to the context of ancient law-making. With a view to countering this gap in the literature, it went on to utilise the Emperor Augustus and his controversial *leges Iuliae* as a case study not only to demonstrate the significance of legal origin stories to legislators but also to develop and extend current narratological studies to ancient Roman law. Roman law is peculiarly full of stories and Augustus himself had an acute awareness of the mutually constitutive relationship between narrative and law. Given that Roman law is full of stories, and indeed Roman stories are often full of the law, using a legal-narratological methodology for analysing any package of Roman legislation is both appropriate and axiomatic. This article, therefore, advocates for narrative theory to broaden its temporal horizons, to engage with Roman legislation and to explore the unacknowledged narrative and legal contexts of ancient law in order to gain a richer sense of the work that stories do in the context of ancient law-making, and for ancient legislators, including the Emperor Augustus.

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1. See A. Tait and L. Norris, "Narrative and the Origins of Law," *Law and Humanities* 5, no. 1 (2011): 11
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6. See Tait and Norris, "Narrative' and M. Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012).
7. Cover, "Nomos and Narrative," 9
8. Simon-Shoshan, *Stories of the Law,* 84.
9. Olson, "Narration and Narrative," 379.
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28. Simon-Shoshan, *Stories of the Law,* 24.
29. Ibid., 23–4.
30. Babusiaux, "Legal Writing," 178–80 and Simon-Shoshan, *Stories of the Law,* 80–3.
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43. See Robinson, *Sources of Roman Law,* 55, who observes that the Twelve Tables are as much a construct from literary as from legal writings. On the reliability of these stories, see Olga Tellegen-Couperus, *A Short History of Roman Law* (London: Routledge, 1993), 20, and also Mousourakis, *Legal History,* 24.
44. S. R. Joshel, "The Body Female and the Body Politic: Livy's Lucretia and Verginia," in *Livy: Oxford Readings in Classical Studies,* ed. J. D. Chaplin and C. S. Kraus (Oxford: Oxford University Press, 2009), 385. Modern distinctions between truth and fiction largely do not trouble Roman historians in the same way as such distinctions do for historians today.
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46. Livy, *Ab Urbe Condita*, 3:9ff; Dionysius of Halicarnassus, *The Roman Antiquities of Dionysius of Halicarnassus*, 10:1ff.
47. Liv. 3.31.
48. Liv. 3.34; Dion. Hal. *Ant Rom* 10.57.
49. Dion. Hal. *Ant Rom* 10.60. C.f. with the *Res Gestae* which were inscribed and displayed on bronze pillars in front of Augustus' mausoleum.
50. Liv. 3.34; Dion. Hal. *Ant Rom* 10.1.
51. Tait and Norris, "Narrative," 11.
52. A. Watson, *The Spirit of Roman Law* (Athens: The University of Georgia Press, 1995), 37.
53. Luce, "Livy's First Decade," 46. For a full analysis of the dating of Livy's first decade, see Luce, "Livy's First Decade," 17–48.
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55. Cooley, *Res Gestae*.
56. M. Lowrie, *Writing, Performance, and Authority in Augustan Rome* (Oxford: Oxford University Press, 2009), 283.
57. Galinsky, *Augustan Culture,* 12.
58. Ibid.
59. Lowrie, *Writing,* 284. For a summary of the distinction between *potestas* and *auctoritas*, see G. Agamben, *State of Exception* (Chicago, IL: The University of Chicago Press, 2005), 74–88.
60. R. Heinze, "Auctoritas," *Hermes* 60 (1925): 348–66.
61. Agamben, *State of Exception*, 82.
62. Lowrie, *Writing,* 285.
63. As Lowrie, *Writing*, 285 explains, attempting to prioritise *potestas* over *auctoritas*, or vice versa, is a 'chicken and egg problem'. See also Heinze, "Auctoritas," 348; J. Hellegouarc'h, *Le Vocabulaire latin des relations et des partis politiques sous la République,* 2nd ed. (Paris: Les Belles Lettres, 1972), 310; P. Veyne, *Le Pain et Le Cirque* (Paris: Seuil, 1976), 577; Galinsky, *Augustan Culture*; D. Kienast, *Römische Kaisertabelle: Grundzüge einer römischen Kaiserchronologie* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1999), 84–5; C. Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* (Berkeley: University of California Press, 2000); and Agamben, *State of Exception,* 74–88.
64. Lowrie, *Writing*, 284.
65. See Galinsky, *Augustan Culture,* 10–41 for his analysis of *auctoritas* as a principal concept, and particularly at p. 16 where he explores the range of applications and elasticity of this concept.
66. Lowrie, *Writing*, 284.
67. Simon-Shoshan, *Stories of the Law,* 224. Note the difference here between the two lawmakers: the tribunes (an elected official) who created the Twelve Tables and the *princeps* (a distinctly unelected official) who created the *leges Iuliae*. Here, however, we see Augustus appropriating for/to himself the law-making power of the original ten elected tribunes who drew up the Twelve Tables.
68. Simon-Shoshan, *Stories of the Law,* 84.
69. Milnor, "Augustus," 9.
70. Tabula XI. C.f. A. Lintott, *The Romans in the Age of Augustus* (Malden, MA: Wiley-Blackwell, 2010), 18 and Milnor, "Augustus," 16.
71. Translation by N. Rudd, *Cicero: The Republic and the Laws* (Oxford: Oxford University Press, 2008).
72. Milnor, "Augustus," 18–19.
73. McGinn, *Prostitution,* 82. The extent of the opposition to this particular *tabula* is captured by Cicero in the *De Republica* (2.63.1), as quoted above, where he calls the fifth-century measure 'unjust," *iniquarum*, and "inhumane," *inhumanissima*.
74. Although as McGinn, *Prostitution,* 82 comments, this singular statutory precedent was both 'of brief duration and highly notorious'. For more on Livy and this intermarriage ban, see Milnor, "Augustus," 16–23.
75. Cooley, *Res Gestae*, 3. See Dion. Hal. *Ant Rom* 10.60 for reference to the inscription of the Twelve Tables on bronze pillars.
76. Cooley, *Res Gestae*, 3.

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