

CHARACTERS, CRIMINALISATION AND THE AUGUSTAN MARRIAGE LEGISLATION

Rebecca Shaw
University of Leeds

Abstract

This paper sets out to provide an original study of the multichromatic characters which emerge from the myriad sources of the Augustan Marriage Legislation (18BC), applying a modern narratological approach to the study of this ancient package of legislation for the first time. Never before in Roman law had a legislator attempted to artificially create a set of character roles for the Roman people and their behaviour. Through the analysis of the characters in narratives of the legislation, this paper will explore how these ‘invented’ and artificial roles ultimately led to the impossible idealisation of women, and cast all but a minority of (faithful and fertile) women – those who failed to uphold a paragon of ideal behaviour – as criminals.

Keywords: Augustus; Roman Law; Narrative Theory; Characterisation

Introduction

Once upon a time, Rome had an Emperor, Caesar Augustus, who set out to introduce a radical package of legislation, the likes of which had never been seen before in Rome. A set of laws passed in 18BC that took the ostensibly private acts of marriage and adultery, and brought them into the public jurisdiction and under state regulation for the first time.¹ A set of laws through which Augustus attempted to create a ‘new’ hegemonic legal model, one which invented a set of profoundly unpopular character roles that all women (and indeed men too) were expected to fill. Using modern narrative theory, this paper sets out to distil these various characters that emerge from

¹ Dio. Cass. 54.16.1 provides the conventional dating of the legislation to 18BC. While the original legislation dates to 18BC, Augustus appears to have started his attempts to legislate in this area as early as 28BC. Although the exact chronology and provisions of this early legislative package are ambiguous, what is clear is that this was an abortive attempt: this law was later withdrawn in the face of ‘protest and opposition’ – see Ronald Syme, *The Roman Revolution* (Oxford University Press, 1939) p.443, along with Propertius 2.7.1-4 and Livy, *Praef.* 9.

Corresponding author:

Rebecca Shaw, University of Leeds, Leeds, LS2 9JT.
Email: R.A.Shaw@leeds.ac.uk

the myriad sources of the Augustan Marriage Legislation (the *leges Iuliae*). It will examine how a number of key characters, *dramatis personae*, can be identified from the narratives of the legislation, establishing a clear typology of multichromatic characters: the Ideal Woman, the Anti-Exemplum, the Paramour, the False Ideal, the Saboteur, and the Informer. The provisions of the laws went beyond setting out the types of women with whom one could and could not have sexual relations, but decreed a set of legalised expectations about the role that women (and also men) should perform. Never before in Roman law had a legislator attempted to artificially create a set of categories for the Roman people and their behaviour; one which, as this paper argues, ultimately led to the impossible idealisation of women and the criminalisation of all other characters within the *leges Iuliae*.

With the legislation's focus on regulating marriage and procreation, and criminalising adultery for the first time, the *leges Iuliae* intentionally had far reaching consequences, particularly for women. Comprised of two laws (the *lex Iulia de maritandis ordinibus* and the *lex Iulia de adulteriis coercendis*), these laws marked a clear shift towards greater public scrutiny, including the close regulation of sexual behaviours by the state, with financial rewards for marriage and childbirth, and severe penalties threatened for those who were caught committing or aiding and abetting adultery. According to the *lex Iulia de maritandis ordinibus*, unmarried men and women were penalized financially and unable to inherit under a will unless they satisfied certain stringent conditions.² Likewise, spouses with no children could only receive half of any legacy from relatives within six degrees and could only inherit one-tenth of each other's estate.³

The accompanying *lex Iulia de adulteriis coercendis* aimed to rule over a similarly broad range of hitherto personal matters, with a specific concern for extra-marital affairs. Adultery was formally criminalised and the law 'not only established penalties for those caught in the act, but also set up rules for how those who discovered them should proceed'.⁴ 'Sexual relations between a *married* woman and a man other than her husband' were now punishable by 'relegation to an island and confiscation of property'.⁵ If a wife's adultery was discovered by her husband, the husband was expressly forbidden from killing her, 'even if were to catch her in the act'.⁶ Rather, he was obligated under the law to act immediately (or, at least, within the statutory time period of sixty days) to divorce his adulterous wife, before witnesses and then to seek her public prosecution for adultery.⁷ He was not permitted to make a private settlement with the adulterer (in lieu of violence) or simply to dissolve his

² Dio Cass. 54.16.1-10. Genevieve Liveley and Rebecca Shaw, 'Marriage Plots: A New Narratological Approach to the Augustan Marriage Laws', *Law and Humanities* 14(2) (2020) pp. 244-266, p. 247. See also Thomas A J McGinn, *Prostitution, Sexuality and the Law in Ancient Rome* (Oxford University Press, 1998) p.73.

³ Susan Treggiari, *Roman Marriage*, (Clarendon Press, 1991) pp.37-80; and Judith Evans Grubbs, *Women and the Law in the Roman Empire: a sourcebook on marriage, divorce and widowhood* (Routledge, 2002) p.84. C.f. Tit. Ulp.15.1-3.

⁴ Kristina Milnor, *Gender, Domesticity and the Age of Augustus: Inventing Private Life* (Oxford University Press, 2005) p.141.

⁵ Paul, *Sent.* 2.26.14. Grubbs, 'Women and the Law', p.84. Emphasis added.

⁶ Paul, *Sent.* 2.26.4. Milnor 'Gender', p.151.

⁷ Paul, *Sent.* 2.26.6.

marriage and privately divorce: to do so might have brought upon himself criminal charges of *lenocinium*, whose severe penalties matched those for adultery.⁸

Given the legislation's level of moral intrusion, modern scholars have put forward various competing theories to explain Augustus' reasoning behind this controversial package of legislation.⁹ Some suggest that Augustus' primary aim was to re-establish public and private morality; some present demographic and financial reasoning as the most plausible explanation behind the legislation; others claim that the laws were designed to make the ruling classes a morally superior people to ensure the strength and security of Augustus' expanding imperial programme.¹⁰ Although it is impossible to securely account for Augustus' reasoning behind the laws, what is clear is that it was a significant milestone in the development of a woman's legal position, according to them a 'kind of legal subjectivity which they had not enjoyed before'.¹¹ This was the first time that legislation set forth, either 'expressly or by implication, certain categories of women with whom sexual relations might be enjoyed without fear of prosecution'.¹² Likewise, the legislation made 'a distinction between people whose sexual integrity is being protected and avenged (women and children, sections of the free population who were also subject to the legal protection and control of a guardian), and those whose role it was to ensure the protection and vengeance (the adult male, the *paterfamilias*, whether as husband or father)'.¹³ Indeed, Augustus' legislation remained largely intact until the reign of the Emperor Constantine in the 4th Century AD, and while Constantine did rescind the penalties on the unmarried and childless, punishments for adultery remained in place harsher than ever.¹⁴ Adultery by a wife became a capital offence, with the Jurists revealing that a

⁸ Ulpian, *Digest*. 48.5.12[11].3.

⁹ Liveley and Shaw, 'Marriage Plots', p.246. C.f. Karl Galinsky, *Augustan Culture: An Interpretive Introduction* (Princeton University Press, 1996) p.128.

¹⁰ See Syme, 'Roman Revolution'; Richard I. Frank, 'Augustus' Legislation on Marriage and Children', *California Studies in Classical Antiquity*, 8 (1975) 41-52; Karl Galinsky, 'Augustus' Legislation on Morals and Marriage', *Philologus* 125 (1981) pp. 126-144; Galinsky, 'Augustan Culture'; Dieter Nörr, 'The Matrimonial Legislation of Augustus: An Early Instance of Social Engineering', *Irish Jurist* 16(2) (1981) pp. 350-364; Andrew Wallace-Hadrill, 'Family and Inheritance in the Augustan Marriage Laws', *Proceedings of the Cambridge Philological Society* 27 (1981) pp. 58-80; Andrew Wallace-Hadrill, *Augustan* (Croom Helm, 1986); Jane F Gardner, *Family and Familia in Roman Law and Life* (Clarendon Press, 1998); Richard A Bauman, *Women and Politics in Ancient Rome* (Routledge, 1992); Catharine Edwards, *The Politics of Immorality in Ancient Rome* (Cambridge University Press, 1993); David Cohen, 'The Social Context of Adultery at Athens' in David I Kertzer and Richard P Saller (eds.) *The Family in Italy from Antiquity to the Present* (Yale University Press, 1991) pp.109-126; Treggiari, 'Roman Marriage'; Suzanne Dixon, *The Roman Family* (The John Hopkins University Press, 1992); Suzanne Dixon, *Reading Roman Women: Sources, Genres and Real Life* (Duckworth, 2001); Mireille Corbier, 'Male Power and Legitimacy through Women: the Domus Augusta under the Julio-Claudians' in Richard Hawley and Barbara Levick (eds.) *Women in Antiquity: New Assessments* (Routledge, 1995) pp.178-193; Phyllis Culham, 'Did Roman Women have an Empire?' in Mark Golden and Peter Toohey (eds.) *Inventing Ancient Culture: Historicism, Periodization, and the Ancient World* (Routledge, 1997) pp.192-204; McGinn 'Prostitution'; and Milnor 'Gender'.

¹¹ Milnor, 'Gender', p.151 and p.151, n.19. C.f. Culham, 'Did Roman Women have an Empire?' p.196 and p.203.

¹² McGinn, 'Prostitution', p.144.

¹³ Rebecca Langlands, *Sexual Morality in Ancient Rome* (Cambridge University Press, 2006) pp.20-21.

¹⁴ Grubbs, 'Women and the Law', pp.102-103; Mary R Lefkowitz and Maureen B Fant, *Women's Life in Greece and Rome: A Source Book in Translation*, 3rd Edition (The John Hopkins University Press, 2005) pp.117-118.

woman convicted of having sexual intercourse with her slave would be sentenced to death and the slave burnt alive.¹⁵

However, as this paper argues, the consequences of the legislation extended much further than what existing scholarship has suggested. Rather, the legislation actually created for the first-time specific character roles that women, and also men, were expected to fill and adhere to. Augustus had profoundly ‘invented’ legalised behavioural roles: not just according legal subjectivity to women, nor simply outlining the women with whom one could or could not have sexual relations, but, in an unprecedented manner, crystallising through legislative means the ‘character’ roles Augustus wanted and expected the Roman people to fill. Indeed, the importance of character evocation, or *ethos*, was of particular importance in Roman society, law and rhetoric. This typologising of characters can be seen in the ancient legal process and trials of Republican Rome, in particular with the presence and use of a familiar cast of stereotypical characters as exploited by Cicero in his case, the *Pro Caelio*.¹⁶ Augustus’ deployment of specific character roles in the *leges Iuliae*, then, is not surprising. The Emperor had a self-conscious awareness of the relationship between law and narrative, in particular the importance of character in stereotyped form. As ever the shrewd statesman and a consummate storyteller, Augustus understood how manipulation of these characters was crucial in achieving one’s political and legal goals. However, despite deploying this ancient concept of *ethos*, the result of these various ‘invented’ and artificial roles was the criminalisation of any character who failed to uphold Augustus’ perceived standard of behaviour.

This paper will begin by outlining the narratological theory underpinning this process of characterisation as constructed by the *leges Iuliae*, informed by the work of Vladimir Propp.¹⁷ Certainly, the recognition of this relationship between law and narrative is not in itself new. As Peter Brooks argues, one might say that the law needs a narratology.¹⁸ Drawing upon this understanding that law and narrative are inextricably intertwined, then, pioneering narratological work conducted over the last few years has further demonstrated how narratological theories such as story form, dynamics and characterisation operate in a range of modern legal contexts and discourses.¹⁹ However, while there is extensive scholarship on narrative and its relationship with contemporary legal theory and law, this paper will apply a legal-narratological approach, specifically focused on characterisation, to the study of this

¹⁵ Justinian, Codex, 9.11.1 pr.L, see Lefkowitz and Fant, ‘Women’s Life’, p.118.

¹⁶ In the *Pro Caelio*, Cicero draws on a number of stereotypical characters of Roman New Comedy, including the hapless young male and the scheming prostitute. See Matthew Leigh, ‘The Pro Caelio and Comedy’, *Classical Philology* 99(4) (2004) pp.300-335, p.302; K A Geffcken, *Comedy in the “Pro Caelio” with an appendix on the In Clodium et Curionem* (Brill, 1973); A C Scafuro, *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy*, (Cambridge University Press, 1997); and S M Braund, ‘Marriage, adultery and divorce in Roman comic drama’ in Warren S Smith (ed.) *Satiric Advice on Women and Marriage: from Plautus to Chaucer* (University of Michigan Press, 2005) pp.39-70.

¹⁷ Vladimir Propp, *Morphology of the Folktale*, edited with an introduction by Svatava Pirkova-Jakobson, translated by Laurence Scott (Martino Publishing, [1958] 2015).

¹⁸ Peter Brooks, ‘Narrative in and out of the Law’, in James Phelan and Peter J Rabinowitz (eds.), *A Companion to Narrative Theory* (Blackwell, 2005) pp. 415-426, p.424.

¹⁹ Liveley and Shaw, ‘Marriage Plots’, pp. 255-256, n.45.

ancient package of Roman legislation. Adapting the work of Propp, this paper then proposes six key and recurring *dramatis personae* (characters roles), which have subsequently emerged from the narratives of, and about, the legislation. Character roles which expected women to live up to a particular standard of behaviour and criminalised those who did not. For it is in these new, narratological terms that the unpopularity of, and opposition towards, the *leges Iuliae* can be re-examined and understood.

Character and Narrative Theory

Recognised as one of the influential figures in the development of modern narratology, Propp's seminal work, the *Morphology of the Folktale*, has shaped the field of modern narrative theory, directly influencing the works of later scholars such as Levi-Straus, Greimas, and Barthes.²⁰ Dedicated to the study of Russian folktales, Propp's work sought to compare these tales according to their component parts. Of the 100 tales he analysed, Propp looked below the surface level of the text and examined its deep narrative structure. There, he drew a contrast between the mutable *dramatis personae* and the constant plot functions performed by them.²¹

Propp extracted thirty-one such functions, defined as 'stable, constant elements [...] independent of who performs them, and how they are fulfilled by the *dramatis personae*. They constitute the components of a folktale'.²² Propp distributed these functions among seven types of *dramatis personae*, each of whom were defined by the sphere of action they performed: for instance, the Villain, the Donor, the Helper, the Princess and her Father (Sought-for-Person), the Dispatcher, the Hero, and the False Hero.²³ In any given narrative, one person can be involved in several spheres of action, for example being the donor and the helper in the same tale, or one single sphere of action can be apportioned among several people.²⁴ What remains constant are these seven types of *dramatis personae* and the spheres of actions they perform. This paper takes this idea of distilling a narrative to its component parts – centred around the invariant actions of core *dramatis personae* – and uses it as a model for exploring the character roles of the Augustan Marriage Legislation.

Propp's morphological schema, considered a key moment in the development of narrative theory, furnished 'the basis for structuralist theories of characters as "actants", or general roles fulfilled by specific characters', which found their fullest

²⁰ Robert Scholes, James Phelan and Robert L Kellogg, *The Nature of Narrative: Revised and Expanded* (Oxford University Press, 2006), p.287. See also David Herman, *Story Logic: Problems and Possibilities of Narrative* (University of Nebraska Press, 2002) p.122.

²¹ Propp, 'Morphology', pp.18-19.

²² *Ibid.* p.20.

²³ *Ibid.* pp. 72-73.

²⁴ Propp, 'Morphology', pp.73-75. See also Thomas A Schmitz, *Modern Literary Theory and Ancient Texts: An Introduction* (Blackwell, [2002] 2007) p.45; and Shlomith Rimmon-Kenan, *Narrative Fiction: Contemporary Poetics* (Routledge, [1983] 2002), p.34.

expression in the work of Greimas.²⁵ Despite criticisms of his work for its ‘limited nature’, Propp’s methodology remains a valid one.²⁶ As Kafalenos maintains, Propp ‘offers a vocabulary to talk about how we read narratives’, and more specifically in this case, a vocabulary to talk about how we read, understand and typologise narrative characters.²⁷ In particular, Propp’s typology reminds us of the heuristic value of reducing a narrative to its component parts in order to reveal the different statuses of the characters, and their core actions, as created by and for the legislation. Thus, his methodology allows for the identification of six key *dramatis personae* within the narratives of the Augustan Marriage Legislation: the Ideal Woman, the Anti-Exemplum, the Paramour, the False Ideal, the Saboteur and the Informer.

This research, therefore, began by identifying all ancient sources which discussed the legislation in order to interrogate the stereotypical characters which emerged. These sources ranged from works written contemporaneously to the legislation, such as the poets Propertius and Ovid, to the later writers including Tacitus, Suetonius and Cassius Dio. Additionally, the legislative provisions were also re-examined as narrative texts, although it is worth noting that no extant record of the precise formulation of the *leges Iuliae* survives. As a result, we are largely dependent upon the writings of the later Roman jurists for the actual provisions of these laws.

²⁵ David Herman, ‘Introduction’ in David Herman (ed.) *The Cambridge Companion to Narrative* (Cambridge University Press, 2007) pp.3-21, p.13. See specifically A J Greimas, *Structural Semantics: An Attempt at a Method* (University of Nebraska Press, [1966] 1983). A J Greimas extrapolated from Propp’s ‘sphere of action’ and his seven *dramatis personae*, and created a typology of actantial roles which ‘account for the organisation of a microuniverse’ (p.202). Greimas drew on the work of Propp, with his seven basic character roles, and identified six actants forming three pairs: Subject vs. Object; Sender vs. Receiver; and Helper vs. Opponent (pp.202-206). In any given narrative, all the particularised actors could be reduced to one of these six categories, meaning that a character’s or actor’s status was therefore determined by his or her function within the story. Actants, therefore, are general categories underlying all types of narratives. Similar to Propp’s model, each of the actantial roles can be exhibited in different characters in different ways, allowing for a myriad of relationships to unfold. An actant, thus, is able to manifest in a story as several characters (who all oppose, help, or are sought by the subject for instance), and likewise, the same character can also represent more than one actant. See also David Herman, ‘Actants’, in David Herman, Manfred Jahn, and Marie-Laure Ryan (eds.) *Routledge Encyclopaedia of Narrative Theory* (Routledge, [2005] 2008) pp.1-2; Ruth Page, ‘Gender’ in David Herman (ed.) *The Cambridge Companion to Narrative* (Cambridge University Press, 2007) pp.189-202; Rimmon-Kenan, ‘Narrative Fiction’, pp.34-35; Peter Brooks, *Reading for the Plot: Design and Intention in Narrative* (Harvard University Press, [1984] 2002) p.16; and Annette Lavers, *Roland Barthes: Structuralism and After* (Methuen & Co. Ltd, 1982) p.183.

²⁶ Kent Puckett, *Narrative Theory: A Critical Introduction* (Cambridge University Press, 2016) p.182. See also Brooks, ‘Reading for the Plot’, p.16 who describes Propp’s analysis as ‘clearly limited by the relatively simple and formulaic nature of the narratives he discusses’. Likewise, Claude Bremond and Jean Verrier Afanasiev and Propp’, translated and with an introduction by Thomas G Pavel and Marilyn Randall, *Style*, 18(2) ([1982] 1984) pp.177-195, pp.192-193 who have also analysed in detail eight examples from Propp’s corpus of folk tales, concluding that his theory does not satisfactorily account for four of the eight texts, which ‘cannot be reduced to the Proppian sequence without severe mutilations which destroy essential aspects of the plot’. It is worth noting that Propp himself understood the limits of his project and its scope. Indeed as Schmitz, ‘Modern Literary Theory’, p.46 argues, Propp was careful to counter the dangers of being too abstract by restricting his studies to a relatively small corpus of short and simple texts. Puckett, ‘Narrative Theory’, p.46 likewise reminds us Propp is clear in the *Morphology* about its limits: ‘he maintains throughout that his observations about narrative structure are in fact limited to the fairy tale and only to the fairy tale’.

²⁷ Emma Kafalenos, ‘Functions after Propp: Words to Talk About How We Read Narrative’, *Poetics Today*, 18(4) (1997) pp.469-494, p.470. On the heuristic value of Propp’s work and his influence on structuralist narratology, see Herman, ‘Story Logic’, p.122; Scholes et al, ‘The Nature of Narrative’, pp.287-288; Puckett ‘Narrative Theory’, p.184; and Genevieve Liveley, *Narratology* (Oxford University Press, 2019) p.190.

Having identified all the relevant sources, each were analysed through a classical narratological lens, which views characters as ‘agents’ and ‘performers’ of the action.²⁸ This theoretical perspective is grounded in Aristotle’s theory of the subordination of character to plot (*Poet.* 2.1448a 1) and subsequently influenced the work of Propp.²⁹

What became clear during the analysis of these sources was that the key *dramatis personae* of the *leges Iuliae* did not entirely resemble Propp’s list from Russian Folktales. It was thus necessary to re-name and re-characterise the ancient Roman *dramatis personae* so as to reflect *their* functions and *their* spheres of action as articulated by the narratives on the legislation. As we shall see, the main *dramatis persona* in the storyworld of the *leges Iuliae* is the ‘Ideal Woman’. She is not a ‘hero’ in the same manner, nor does she reflect the same qualities, as the ‘heroes’ in Russian Folktales; rather she is a woman who upholds and reflects the key ideals of the legislation regarding marriage and motherhood. In contrast, the so-called ‘villain’ in the narratives of the *leges Iuliae* is a woman who fails to embody this exemplary behaviour advanced by the legislation: the ‘Anti-Exemplum’. The ‘False Hero’ emerges in Propp’s morphology as someone who claims to be the true hero of the tale. Similarly, in the legislation’s storyworld, there emerges a ‘False Ideal’: a woman who claims to hold the position of the ‘Ideal Woman’ but whose claims turn out to be misleading. And just like the ‘False Hero’ in folktales, the ‘False Ideal’ is punished for her false claims and her failure to meet the standards expected of the ‘Ideal Woman’. The remaining three *dramatis personae* – the Paramour, the Saboteur and the Informer – are supporting characters, although each perform a crucial role in the storyworld of the legislation.

The Ideal Woman

The first, and arguably most important, *dramatis persona* identifiable within the narratives of the *leges Iuliae* is the ‘Ideal Woman’; an impossibly idealised character to which all women were expected to aspire.³⁰ Within the package of laws, the *lex Iulia de maritandis ordinibus* in particular focused on marriage and legitimate procreation, establishing a system of rewards and punishments. This led to the creation of our first character role: the ‘Ideal Woman’ who is wholesome, married, faithful, good and, crucially, maternal too. For this woman, her sphere of action is marriage *and* procreation: upholding and reflecting the very essence of this legislative package. According to the provisions of the legislation, it became compulsory for all male citizens between the ages of twenty-five and sixty, and all female citizens between twenty and fifty to marry.³¹ Indeed, social, economic and political incentives

²⁸ Rimmon-Kenan, ‘Narrative Fiction’, p.34. On Aristotle’s subordination of character to plot, see Liveley, ‘Narratology’, pp.42-46 and pp.71-73.

²⁹ Liveley, ‘Narratology’, p.190.

³⁰ See also Lavers, ‘Roland Barthes’, p.183; Greimas, ‘Structural Semantics’; Brooks, ‘Reading for the Plot’, p.16; Herman, ‘Story Logic’, p.122; Rimmon-Kenan, ‘Narrative Fiction’, pp.34-35; Scholes et al. ‘The Nature of Narrative’, pp.287-288; Herman, ‘Introduction’ pp.3-21; Page, ‘Gender’, p.194; Herman, ‘Actants’, pp.1-2; Puckett, ‘Narrative Theory’, p.184; and Liveley, ‘Narratology’, p.190.

³¹ See McGinn, ‘Prostitution’, p.75, n45.

accompanied this ‘order to marry’, as Cassius Dio tells us: ‘he imposed heavier penalties upon unmarried men and women, and on the other hand offered rewards for marriage and the procreation of children’ (Dio. Cass. 54.16.1-10).³² Elaborating on the legislation further, Dio tells us that since the free-born population contained more males than females, Augustus ‘allowed all those who desired – with the exception of senators – to marry freedwomen, and directed that their offspring should be regarded as legitimate’ too (Dio. Cass. 54.16.1-10).

What is also clear from the available sources is that under the *lex Iulia de maritandis ordinibus*, divorce or bereavement was not viewed as a barrier or an excuse to avoid marriage. In the first iteration of the legislation, before its revision in AD9, ‘widows were expected to remarry within a year of their husband’s death, and divorcees were expected to remarry within six months of their divorce’.³³ Although as Suetonius informs us, these particularly strict conditions were very unpopular and Augustus was (*Aug.* 34):

Hanc cum aliquanto severius quam ceteras emendasset, prae tumultu recusantium perferre non potuit nisi adempta demum lenitave parte poenarum et vacatione trienni data auctisque praemiis.

[Obliged to withdraw or amend certain penalties exacted for a failure to marry, to increase the rewards he offered for large families, and to allow a widow or widower three years’ grace before having to marry again.]³⁴

However, for women, it was not just about marriage: procreation was equally as important under the legislation, and so it was only women who married *and* had children who could be assigned and classified as the ‘Ideal Woman’. The legislation and attendant narratives consistently and insistently tie together marriage and procreation (an interesting return to the ancient etymological and aetiological root of *matrimonium*, namely the making of mothers), with a women only able to acquire her full ‘ideal’ status if she achieved both and behaved in such a way as was now expected from her for the first time by legislative means.³⁵ And the more children a woman had, the greater the prestige and monetary benefits. In particular, those couples who had three or more surviving children – known as *ius liberorum*, the ‘right of three children’

³² Translation by Ian Scott-Kilvert. trans. *Cassius Dio: The Roman History, The Reign of Augustus* (Penguin Books, 1987). All translations of Cassius Dio in this paper are taken from Scott-Kilvert. Text translated is based on E Cary and H B Foster’s text, with parallel English translation, in the Loeb Classical Library. For further details, see Scott-Kilvert, ‘Cassius Dio’, pp.30-31.

³³ Liveley and Shaw, ‘Marriage Plots’, p.247; and Grubbs, ‘Women and the Law’, p.84. This was amended with the *lex Papia Poppaea* in AD9: widows were to re-marry instead within two years of their husband’s death, and likewise the period was extended for divorcees, who now had to remarry within eighteen months. C.f. Suet. *Aug.* 34.2.

³⁴ Translation by Robert Graves. trans. *Suetonius: The Twelve Caesars* (Penguin Books, 2007). All translations of Suetonius’ *Augustus* and *Claudius* throughout this paper are taken from Graves. Text translated is based on the edition by Basore in the Loeb Classical Library 310.

³⁵ For more on Roman marriage specifically, and the ‘making of mothers’, see Treggiari, *Roman Marriage*.

– could truly reap the rewards: men were given priority in receiving government appointments, and the mothers were given freedom from guardianship.³⁶

This 'Ideal Woman', one who successfully exemplified marriage and legitimate procreation, is also attested to by poets from the Augustan age, notably Horace and Propertius. To begin with, the importance of marriage and procreation is highlighted in the *Carmen Saeculare*, or Centennial Hymn, which was written by the poet Horace and performed by a chorus of boys and girls at Augustus' Saecular Games in 17BC.³⁷ In this poem, Horace accorded the legislation a key role (17-20):

diva, producas subolem, patrumque
prosperes decreta super iugandis
feminis prolisque novae feraci
lege marita.

[O Goddess, bring the young to light, and prosper
the decrees of the Fathers which govern
the joining of man and woman, and ordain a law of marriage
rich in offspring.]³⁸

This passage is the second in a set of three stanzas where Horace turns from addressing the god Apollo to his twin sister Diana, with the resultant theme of birth, offspring and fertility reflecting this aspect of her divine role. In the preceding lines (13-16), Horace places the stress on mothers and motherhood, strengthening the link of Diana (the virgin goddess) with maternity.³⁹ After supplicating to the goddess Diana once again in line 17, Horace subsequently ties together the mothers of the previous stanza with the *patrumque ... decreta*, the decrees of the senate and the 'fathers' of Rome, to create a union and marriage that is worthy of producing the fruitful new offspring of Rome, *prolisque novae feraci*.⁴⁰ The passage ends with specific reference to the marriage laws, binding together the 'virgin goddess and laws sustaining marriage, [which] furthers the association of women with Diana'.⁴¹ Throughout these lines, Horace has crucially focused on the sphere of action of the 'Ideal Woman' which encompasses marriage, fertility and childbirth: the bountiful women are yoked together with fathers in union; the marriage laws are intended in such a way for the 'Ideal Woman' to create fruitful new offspring; and Diana, arguably the ultimate Augustan 'Ideal Woman' is charged with overseeing all of this. She is beseeched by

³⁶ Gaius 1.145.

³⁷ Ellen Oliensis, 'Erotics and Gender', in Stephen Harrison (ed.) *The Cambridge Companion to Horace* (Cambridge University Press, 2007) pp.221-234, p.227.

³⁸ Translation by David West. trans. *Horace: The Complete Odes and Epodes* (Oxford University Press, 1997). All translations of Horace's *Carmen Saeculare* in this paper are taken from West. Text translated is based on the 1912 Oxford Classical Text edited by E C Wickham.

³⁹ Michael Putnam, *Horace's Carmen Saeculare: Ritual Magic and the Poet's Art* (Yale University Press, 2000) p.62.

⁴⁰ *Ibid*, pp.62-63.

⁴¹ *Ibid*, p.62.

Horace to bring forth the offspring of Rome and grant success to the 'Ideal Women' as invented and typologised in the legislation.⁴²

A further example of this 'Ideal Woman' which Horace provides can be found in book 4 of his Odes, a collection of four books of Latin poetry, the first three of which were written in 23BC with the fourth, and final, book written in 13BC.⁴³ In Ode 5 of Book 4, Horace once again ties together the importance of marriage and procreation, emphasising the legislation's focus on these two aspects (4.5.21-24):

nullis polluitur casta domus stupris,
mos et lex maculosum edomuit nefas,
laudantur simili prole puerperae,
culpam poena premit comes.

[The chaste home is unsullied by debauchery.
Law written and unwritten has subdued wickedness.
Mothers are praised for bearing true sons of their fathers.
The presence of punishment prevents sin.]⁴⁴

Horace provides a narrative that not only ties together marriage and procreation, but one which glorifies the *purity* of the Ideal Woman, her family and her home. In these lines, the poet draws on elements of the sphere of action of the Ideal Woman which we are already familiar with (marriage and procreation), but while the *Carmen Saeculare* focused on the marriage law, the emphasis in *Ode 4.5* is on the *lex Iulia de adulteriis* instead.⁴⁵ It was not only marriage and procreation which were fundamental to the Ideal Woman's sphere of action, but fidelity and chastity too. As Du Quesnay notes, 'there was a widespread view in antiquity that marriage and family provided the essential foundations of the state ... [with] the stability of the family and the production of children guarantee[ing] the prosperity of the state and ... secure[ing] its future.'⁴⁶ Thus, if the Ideal Woman was to truly discharge her duties and uphold the essence of the legislative package, then she would bear legitimate children not only to protect the sanctity of her home but also to protect the essential foundations of the state.

Another Augustan poet who reiterates this character of the 'Ideal Woman', harnessing together marriage, procreation and motherhood, is Propertius. A fierce critic of this package of legislation writing elsewhere in his poetic career, Propertius in poem 4.11 somewhat surprisingly discusses this key *dramatis persona* of the legislation: a faithfully married woman who bore three children and achieved this

⁴² It is worth noting here the stories about Augustus's private banquet where his guests came dressed up as gods, and the Emperor himself came in the guise of Apollo, c.f. Suet. *Aug.* 70.

⁴³ West, 'Horace', pp. viii, xiv.

⁴⁴ Translation by West, 'Horace'. All translations of Horace's *Odes* in this paper are taken from West.

⁴⁵ I M Le M Du Quesnay, 'Horace *Odes* 4.5: *Pro Reditu Imperatoris Caesaris Divi Filii Augusti*', in Michèle Lowry (ed.) *Oxford Readings in Classical Studies, Horace: Odes and Epodes* (Oxford University Press, 2009) pp.271-336, p.317.

⁴⁶ Du Quesnay, 'Horace *Odes* 4.5', p.317.

distinction as a wife and mother.⁴⁷ Describing the dead wife and mother Cornelia, Propertius tells us how she exchanged her girl's *toga praetexta* for the married woman's *stola*: 'on this stone, it says I was married to one man', *in lapide hoc uni nupta fuisse legar* (Prop. 4.11.36).⁴⁸ Once again, a faithful marriage is not sufficient to earn the honorific, heroic status, as the dead Cornelia emphasises: 'and yet, I earned the honors of the dress of fruitfulness, and no pillage was done on the charge I had a sterile house', *et tamen emerui generosos uestis honores, nec mea de sterili facta rapina domo* (Prop. 4.11.61-62).⁴⁹

This brings us to the expectations that Augustus famously had for the women in his family. In particular, his daughter Julia the Elder and granddaughter Julia the Younger, who were expected to take on the attributes of the 'Ideal Woman' as virtuous wives and daughters. As Suetonius tells us, Augustus set his daughter and granddaughter to weave and spin wool (*lanificio assuefaceret*) in the exemplary mode of Lucretia and 'he forbade them to say or do anything which was not out in the open (*propalam*) and which could not be reported/repeated in the daily papers/journals', *vetaretque loqui aut agere quidquam nisi propalam et quod in diurnos commentarios referretur* (Aug.64.2). Yet, as we shall see, this strategy of using the Julias as exemplars of the ideal behaviour of the 'Ideal Woman', to publicly defend and promote the legislation, would backfire dramatically for the Emperor.

What the extant sources have revealed, therefore, is that the 'Ideal Woman' is a character that has become the primary vehicle to express the ideas, behaviour and attributes which Augustus wanted women to uphold, what Phelan describes as the thematic dimension of a character.⁵⁰ Indeed, the 'Ideal Woman' has become *the* representative entity for Augustus, for his legislation and for all Roman women, and as such it is a character who is foregrounded in all the surviving narratives. An artificially constructed character which impossibly idealised women as matronly,

⁴⁷ It is worth noting the later date of Propertius' work in book 4, which was written and published in or shortly after 16BC.

⁴⁸ Translation by Vincent Katz. trans. *The Complete Elegies of Sextus Propertius* (Princeton University Press, 2004). All translations of Propertius' work in this paper are taken from Katz. Text translated is based on the Oxford University Press edition of *Sexti Properti Carmina* of 1960, edited by E A Barber, and the editions of the *Elegies* published in the 1960s by Cambridge University Press, edited by W A Camps.

⁴⁹ For more on this poem, and particularly on the debate that it is actually a criticism of the legislation and the narrow character role that Cornelia was allowed to play in life, see W R Johnson, 'Final Exit: Propertius 4.11' in D H Roberts, F M Dunn, and D Fowler (eds.) *Classical Closure: Reading the End in Greek and Latin Literature* (Princeton University Press, 1997); Micaela Janan, *The Politics of Desire: Propertius IV* (University of California Press, 2001); P A Miller, *Subjecting Verses: Latin Love Elegy and the Emergence of the Real* (Princeton University Press, 2004); and Michèle Lowrie 'Cornelia's Exemplum: Form and Ideology in Propertius 4.11' in Genevieve Liveley and Patricia Salzman-Mitchell (eds.) *Latin Elegy and Narratology: Fragments of Story* (Ohio State University Press, 2008) and Michèle Lowrie, *Writing Performance, and Authority in Augustan Rome* (Oxford University Press, 2009).

⁵⁰ Based on the formulation of James Phelan, *Reading People, Reading Plots* (The University of Chicago Press, 1989) p.12. Phelan adjudicates that characters can be considered as possible persons (mimetic), vehicles for carrying ideas (thematic), and artificial constructs (synthetic). A character may consist of any of these three attributes, or perhaps all three of them, but they will do so with varying degrees within the narrative. Phelan's model challenges readers to consider these attributes – the mimetic, thematic and synthetic – as what makes up the fundamental unit of a character. For more on this analysis of character, see James Phelan, 'Character, Progression, and the Mimetic-Didactic Distinction' *Modern Philology* 84(3) (1987) pp.282-299, pp.282-284 and Phelan, 'Reading Plots', pp.3-14.

maternal and chaste, ultimately leading to the criminalisation of any other participant who failed to uphold or promote this behaviour, much to the chagrin and hostility of the upper echelons of Roman society.

The Anti-Exemplum

In direct antithesis to the 'Ideal Woman', there is another key *dramatis persona* constructed by the legislative provisions: the 'Anti-Exemplum'. This character initially develops in the legislative provisions themselves, specifically within the *lex Iulia de adulteriis coercendis*, which closely regulated sexual (mis)behaviour. Here, in this part of the legislative package, the 'Anti-Exemplum' is revealed as a married woman caught engaging in sexual relations with a man other than her husband.

Under the provisions of the *lex Iulia de adulteriis*, we see the legislative invention and formalisation for the first time of a role that women, this time, were expected to avoid. Although it was the status of the woman – whether or not she was married – which amounted to *adulterium* under the provisions of the legislation, her lover was likewise punished, with exile to an island and confiscation of property for both of these participants cast as 'Anti-Exempla'.⁵¹ The legislation did grant the adulterous wife some mercy: under the provisions of the statute, a husband was expressly forbidden from killing his wife, even if he were to catch her *in flagrante*.⁵² However, no such mercy was granted to her lover. The husband was permitted to kill the lover, but only if certain conditions were met: the husband had to discover the pair in the act of sexual intercourse, in the husband's house and only then could he kill the lover if he were prepared to do so with his own hands.⁵³ Some of the jurists go further still and interpret the law as allowing husbands to kill only when the adulterous lover was of a specified status such as pimp, actor, or condemned in criminal proceedings.⁵⁴

It is significant that the 'Anti-Exempla' of these narratives, the adulterous wife and her lover, could expect the same treatment at the hands of her father as well. The new laws specified that the father could kill his adulterous daughter's lover (though not his daughter), but again only if certain highly specific conditions were met: the father could only do so if—and only if—the pair were discovered *in flagrante*; and in his own current residence or in that of his son-in-law (not merely in a house that either happened to own); and if his daughter were still in his *potestas*; and if he were *sui iuris* (i.e. his own father no longer living); and if he also killed his daughter along with her lover; and if he committed the double killing with his own hand (i.e. did not delegate the task to a son, slave, or other aide).⁵⁵

Regardless of whether the husband and/or the father of the adulterous woman were able to meet these conditions, both men were obligated to act under the law

⁵¹ Paul, *Sent.* 2.26.14.

⁵² Paul, *Sent.* 2.26.4.

⁵³ Paul, *Sent.* 2.26.7.

⁵⁴ Macer. *Digest.* 48.5.25[24].

⁵⁵ Ulpian. *Digest.* 48.5.24.

immediately, otherwise they too could be charged as an accessory after the fact. Indeed, if no divorce proceedings or criminal prosecutions were brought by either the husband or the woman's father within the statutory sixty-day period, any member of the public could initiate legal action of their own – not only against the wife and her lover, but against the husband and the woman's father too.⁵⁶ As Liveley and Shaw illustrate, the potential for this aspect of the law to be abused by third parties and *delatores* (denouncers or informers, who stood to gain financially from their part in a successful prosecution, and another of the key *dramatis personae* within the storyworld of the legislation) was 'one of the most controversial and unpopular aspects of the law'.⁵⁷

Thus, the behaviour of the 'Anti-Exempla', the adulterous woman and her lover, could actually result in criminalising the woman's husband and her father too, if they did not behave appropriately and take the right actions at the right time. In setting up women so that they might easily fail in demonstrating the attributes of the 'Ideal Woman', the legislation criminalised other participants too. Despite the great pains Augustus took to elevate the exemplary character role of the 'Ideal Woman', his high standards merely served to construct an impossible ideal of behaviour for everyone, leading to resistance from the wider populace and a clear antipathy towards the legislation.⁵⁸ Crucially, however, it was always and only the wife's adultery which was classified by the new laws as the ultimate 'anti-exemplary' act. A woman had no right to bring criminal accusations of adultery against her husband, or any other man for that matter.⁵⁹ Indeed, as Justinian tells us, this 'privilege' (to report crimes of adultery) was granted by the law only to men and not to women. This can be seen in a reply from the year AD197 to a petition brought by a woman, Cassia, to the emperors Severus and Caracalla.⁶⁰

Two of the most infamous 'Anti-Exempla' in the storyworld of the legislation, who allegedly ignored and flouted the legislation brought in by Augustus, were (quite scandalously) the Emperor's own daughter and granddaughter, the two Julias.⁶¹ Little is known about the details surrounding the indictment and banishment of the younger Julia, Augustus' granddaughter. The ancient sources tell us only that her crime (like that of her mother, Julia the Elder) was adultery, in this case with D. Junius Silanus. She was subsequently banished, apparently without public trial, to the island of Trimerus, where the child she bore was ordered by Augustus to be exposed.⁶² As further punishment, Julia the Younger had her villa destroyed by Augustus (Suet. *Aug.* 72.3); and her own daughter's betrothal to Augustus' heir Claudius was also annulled in punishment as her parents had 'offended Augustus', *quod parentes eius Augustum offenderant* (Suet. *Claud.* 26.1). Julia the Younger was, henceforth, written out of the family narrative.

⁵⁶ Ulpian. *Digest.* 48.5.2.2, Scaevola. *Digest.* 48.5.15.2.

⁵⁷ Liveley and Shaw, 'Marriage Plots', p.249. See Tacitus. *Ann.* 3.25.1; 3.28.

⁵⁸ See Ovid, *Amores*, 3.4.37-40; Propertius 2.7; Suet. *Aug.* 34; and Dio Cass. 56.1.

⁵⁹ Justinian. *Codex.* 9.9.1, 8, 11, 17 pr.-1. L.

⁶⁰ Justinian. *Codex.* 9.9.1, 8, 11, 17 pr.-1. L. C.f. Lefkowitz and Fant, 'Women's Life', p.105.

⁶¹ See Suet. *Aug.* 65.

⁶² See Suet. *Aug.* 65 and Tac. *Ann.* 4.71.4.

The story of the elder Julia's indictment and banishment – and the revelation of her anti-exemplary attributes – is narrated more fully in the ancient sources. In particular, a number of sources including Velleius Paterculus (a contemporary 'eye-witness' to the scandal and its aftermath), Seneca the Younger and Pliny (both reporting after the event), each refer to specific information that appears to draw upon the text of a letter that was submitted to the senate by Augustus in 2BC, to be read in his absence by the quaestor.⁶³ Seneca, presumably repeating the narrative set out in the original letter by Augustus, reveals the egregious behaviour of Julia the Elder which earned her apportionment as this *dramatis persona* (*Ben.* 6.32):

admissos gregatim adulteros, pererratam nocturnis comissionibus civitatem, forum ipsum ac rostra, ex quibus pater legem de adulteriis tulerat, filiae in supra placuisse, cotidianum ad Marsyam concursum, cum ex adultera in quaestuariam versa ius omnis licentiae sub ignoto adultero peteret.

[It was reported that Julia had welcomed hordes of adulterers, had partied through the backstreets of the city at night, that the forum and the rostrum from which her father had introduced the law against adultery had been the favourite places for her debaucheries, that she went daily to the statue of Marsyas, where she turned from adultery to prostitution, and insisted on her legal rights to every kind of lascivious behaviour with unknown adulterers.]⁶⁴

Seneca elaborates further and relates how, in discovering his daughter's outrageous behaviour, Augustus decreed that such extreme promiscuity put Julia 'beyond the reach of any formal indictment', *ultra impudicitiae male dictum* (*Sen. Ben.* 6.32.1).⁶⁵ As such, she was denied the right to defend herself in a public criminal trial – a right granted by the legislative provisions themselves. Julia was banished to the island of Pandateria, disinherited from the will and forbidden from internment in the family mausoleum.⁶⁶ Indeed, so unjust was Augustus' treatment of Julia that it led to public pressure to recall her from exile, and after five years, Julia was eventually allowed to return to the Italian mainland.⁶⁷

In doing so, Augustus re-cast Julia as the anti-exemplum of this tale. Julia's reported role in this story is no less extravagantly symbolic as the locations allegedly favoured for her repeated adulterous excesses: the forum, the rostrum (the very spots from which her father had originally handed down the *leges Iuliae*), and the statue of Marsyas (the satyr flayed alive for his hubris in daring to challenge the god Apollo – and whose myth, therefore, markedly resembles Julia's with Augustus himself cast as

⁶³ Liveley and Shaw, 'Marriage Plots', 263. See also Suet. *Aug.* 65 and Pliny *N.H.* 21.9. Seneca *Ben.* 6 indicates that the letter was subsequently published as a formal edict.

⁶⁴ Translation by Liveley, in Liveley and Shaw, 'Marriage Plots'. All translations of Seneca in this paper are taken from Liveley and Shaw. Text translated is based on the edition by Basore in the Loeb Classical Library 310.

⁶⁵ C.f. Liveley and Shaw, 'Marriage Plots', p.263.

⁶⁶ For details, see Suet. *Aug.* 65 and *Tib.* 50.

⁶⁷ See Dio. Cass. 55.13.1 for details.

the god Apollo).⁶⁸ What makes Julia's alleged behaviour even more extreme is that it had been committed in public rather than private, with these specific locations representing the emblematic 'home' of her father's legislation, of her father's authority and of her father as both 'pater' and 'pater patriae'. Figuratively, according to the reported narrative of his letter to the senate, Augustus was able to claim to have caught his daughter *in flagrante* and in his own home. His rights under the law, therefore, allowed him to punish her for failing to live up to her role as an 'Ideal Woman' and instead for falling prey to the adulterous behaviour of the 'Anti-Exemplum'.

It is worth noting that no woman would be punished quite as harshly without trial as Julia the Elder, who suffered an exceptional punishment due to her exceptional position as Augustus' daughter. Although the *quaestio de adulteriis* was established to deal with cases of adultery arising from the legislation, Julia was crucially denied the opportunity to defend herself in it. Julia's case, nonetheless, established an important legal precedent for the *lex Iulia de adulteriis coercendis* – not least of all for the subsequent indictment and punishment of her own daughter, for Julia the Younger, and for all future 'Julias'.⁶⁹

Thus, instead of virtue, chastity, fidelity and procreation, this character covers attributes in direct opposition to those of the 'Ideal Woman': promiscuity, adultery and prostitution. The character of the 'Anti-Exemplum' represented the very behaviour Augustus did *not* want his populace to uphold: another artificial construct by the legislation, but one which reveals the potential for criminalisation under the legislation.

The Paramour

In addition to establishing a typology of those women suitable for marriage and motherhood, and as a result those with whom sexual relations were forbidden, the *leges Iuliae* also instituted another category of women, those suitable for casual sexual encounters: the 'Paramour'. Under the provisions of the legislation, a distinction was made between *adulterium* and *stuprum*, apparently using both terms

⁶⁸ On the statute of Marsyas, see Horace *Sat.* 1.6.120 and Seneca *Ben.* 6.32. On the symbolism of the statute, including Augustus' identification with Apollo and the satyr's sexual incontinency, see McGinn, 'Prostitution', p.169. It is worth noting here Augustus' own self-characterisation as the God Apollo, most notably in the stories about the Emperor's private banquets where guests came dressed up as gods, and Augustus himself came dressed as Apollo, c.f. Suet. *Aug.* 70. This is alongside another self-consciously adopted role, Augustus as *pater patriae* of Rome, a characterisation that Augustus makes in his *Res Gestae*, c.f. 35.1.

⁶⁹ See S T Cohen, 'Augustus, Julia and the Development of Exile Ad Insulam', *Classical Quarterly*, 58(1) (2008) pp.206-217 for the theory that Julia's exile to an island was a new type of penalty 'invented' by Augustus, and that Julia's *deportatio ad insulam* (a sentence that would become widespread under imperial rule) represents 'the first-time exile to a specific place was used as a punishment in Roman law.' Following this precedent, Tacitus in his *Annals* records a number of high-profile cases who were similarly exiled to islands: Julia the Younger, banished to Trimerus (4.71); Vistillia, banished to Seriphos (2.85); Lepida, exiled to an unspecified location (3.23); Aquila, also exiled to an unspecified location (4.42); and Octavia, exiled to Pandateria before being executed (14.63–4). According to Dio. Cass., Julia Livilla and Agrippina were also banished to the Pontian Islands (9.22.8); and Julia (daughter of Drusus the Younger) exiled, then executed (60.8.5).

interchangeably, much to the chagrin of the jurists.⁷⁰ That is, the law covered and prohibited both sexual offenses committed with a married woman (*adulterium*) and with an unmarried – but potentially marriageable – woman (*stuprum*). This created, technically, a category of women who were ‘exempt’, with whom sexual relations were permissible under the statute – a category of female participants, defined by their involvement in this sphere of action, and thus assigned the *dramatis persona* of the ‘Paramour’. Such women with whom extra-marital sex was permissible included prostitutes, procuresses, slaves, actresses, publicly convicted criminals or adulteresses, and non-citizens, provided they were not already married to Roman citizens.⁷¹ Thus, it was the status of the female partner and her *dramatis persona* designation, rather than the status of the man, which was significant to the definition of a permissible or forbidden sexual act: a man might be slave or free, married or unmarried, citizen or not.⁷² A crime was, therefore, only committed when a man had illicit sexual relations with any non-exempt woman, as defined by the law. Sexual relations with a ‘Paramour’, however, provided some balance to the harsh and unpopular prohibitions on adultery: behaviour which was now subject to substantial public scrutiny and state involvement, and which was covered by legislative provisions that appeared to default to a position of assuming guilt rather than innocence.

As well as the legislative provisions which attest to this particular *dramatis persona*, the Augustan elegist Propertius also reveals some of the traits of this character. Speaking in the didactic *dramatis persona* of the *lena* or bawd/procuress, Propertius suggests that prostitutes should ‘smash the obligations of damned propriety’, *frange et damnosae iura pudicitiae*, and pretend to be married in order to raise the price they could charge their adulterous lovers (4.5.27-9).⁷³ This, presumably, was for the ‘extra frisson of illegality’ thereby created under Augustus’ new laws.⁷⁴ Even though sexual relations were permitted with a ‘Paramour’, these *dramatis personae* soon found a way to manipulate and exploit this ‘sexual loophole’ within the laws. Having illicit relations with not just a ‘Paramour’, but one imitating an ‘Ideal Woman’, could clearly result in greater financial gain.⁷⁵

⁷⁰ Pap. D. 48.5.61, c.f. McGinn, ‘Prostitution’, p.144.

⁷¹ See McGinn, ‘Prostitution’, p.144, and specifically pp.194-202 for his discussion on exemptions under the adultery law.

⁷² See McGinn, ‘Prostitution’, p.144.

⁷³ On Propertius’ testimony in the case of the *leges Iuliae*, see Syme, ‘Roman Revolution’, p.443 and Susan Treggiari, ‘Women in the Time of Augustus’, in Karl Galinsky (ed.) *The Cambridge Companion to the Age of Augustus* (Cambridge University Press, 2005) pp.130-147, p.146.

⁷⁴ Liveley and Shaw, ‘Marriage Plots’, p.262.

⁷⁵ For more on this particular ‘character role’ within popular Roman literature, see Geffcken, ‘Comedy’; Judith P Hallett, ‘The Role of Women in Roman Elegy: Counter-Cultural Feminism’, *Arethusa* 6 (1973) pp.103-124; Judith P Hallett, *Fathers and Daughters in Roman Society: Women and the Elite Family* (Princeton University Press, 1974); Susan Fischler, ‘Social Stereotypes and Historical Analysis: The Case of the Imperial Women at Rome’ in Leonie J Archer, Susan Fischler and Maria Wyke (eds.) *Women in Ancient Societies: An Illusion of the Night* (Macmillan Press Ltd, 1978); Maria Wyke, ‘Mistress and Metaphor in Augustan Elegy’ in Laura K McClure (ed.) *Sexuality and Gender in the Classical World: Readings and Sources* (Blackwell, 2002), pp.193-223; Maria Wyke, *The Roman Mistress: Ancient and Modern Representations* (Oxford University Press, 2002); Leigh, ‘The Pro Caelio and Comedy’, pp.300-335; and Michèle Lowrie, ‘Roman Law and Latin Literature’, in Paul J Du Plessis, Clifford Ando, and Kaius Tuori (eds.) *The Oxford Handbook of Roman Law and Society* (Oxford University Press, 2016), pp.70-82.

Thus, what is clear from the sources is that the legislation created a very specific and narrow group of women with whom sexual relations are permissible. Indeed, the representative quality of the 'Paramour's' traits and qualities is explicitly revealed in the narrative discourse, and this, argues Phelan, is because the artificiality or the synthetic nature of the character is more overt.⁷⁶ As with all the key *dramatis personae* examined thus far, the synthetic component of the character, due to its origins as an artificial construct of the *leges Iuliae*, is ineradicable. Indeed, all of these narratives have exploited the artificiality of this character material. By doing so, each of the authors respectively have been able to focus the reader's attention in such a way that we are left to regard these characters as symbolic of the legislation, rather than as natural beings.⁷⁷

The False Ideal

Another symbolic *dramatis persona* of the legislation, and an obvious artificial construct of the legislation, is the 'False Ideal. This is a sphere of action that is attributed to female participants only, in this case, married women who were unable to bear children. As previously discussed, the legislation sought to reward those women who had offspring, especially those couples who had three or more surviving children.⁷⁸ In contrast, 'punishments involving the law of succession were created for those couples who were married but remained childless'.⁷⁹ Spouses with no children could receive only half of any legacy from relatives within six degrees and could only inherit one-tenth of each other's estate.⁸⁰

Thus, a female character in our narratives who remained faithfully married might at first glance appear to fall within the sphere of action of the 'Ideal Woman'; her success in marriage duping the reader into believing her uncomplicated status. However, without any children, this faithful wife has failed to live up to the appropriate behaviour and impossible idealisation of women promulgated by the legislation, and is designated a 'False Ideal' instead. Once again, the creation of this character illustrates the way in which the legislation casts all but a minority of (faithful and fertile) women as criminals. Even women who were successful in marriage were not categorized as 'Ideal Women' by the provisions of the legislation, a category and character role one must remember that was enacted by legislative means for the first time with the *leges Iuliae*. With the inflexibility and restriction applied to the 'Ideal Woman' character, and the multitude of ways in which other characters could fail to live up to the expectations of the legislation and subsequently be cast as criminals due to their behaviour, it is almost inevitable that Augustus' legislative efforts in this field would garner such opposition and antipathy from the Roman people.

⁷⁶ Phelan, 'Reading Plots', p.13.

⁷⁷ *Ibid.*, p.14.

⁷⁸ Gaius 1.145.

⁷⁹ Liveley and Shaw, 'Marriage Plots', p.247.

⁸⁰ See Treggiari, 'Roman Marriage', pp.37-80; McGinn, 'Prostitution', pp.70-104; and Grubbs, 'Women and the Law', p.84. C.f. Tit. Ulp.15.1-3.

The Saboteur

As with any good narrative, the storyworld of the *leges Iuliae* would not be complete without some interfering, rogue rascals: in this case, the Saboteur and the Informer. The Saboteur, this role is apportioned among several (typically male) characters who refused to adhere to the provisions, and subsequently sought to undermine the aims, of the legislation.

To begin with, there are the men of the upper echelons of society who refused to adhere to the legislation, sought to evade its provisions and in some case even openly revolted against its clauses. Suetonius, in particular, when recounting Augustus' overly staged performance of himself as 'Exemplum' in the Senate, reveals the obstinate, meddling behaviour of the equestrian order: 'once when the *equites* were stubbornly demanding the abolition of his [marriage] law at a public spectacle', *sic quoque abolitionem eius publico spectaculo pertinaciter postulante equite* (Suet. Aug. 34). In fact, Suetonius goes on to reveal more ways in which the equestrian order sought to undermine, evade or ignore the legislation, as Augustus discovered that these 'bachelors were getting betrothed to little girls, which meant postponing the responsibilities of fatherhood, and [that] married men were frequently changing their wives', *cumque etiam in maturitate sponsarum et matrimoniorum crebra mutatione vim legis eludi sentiret* (Suet. Aug. 34). Likewise, Cassius Dio mentions on a number of occasions this unseemly behaviour of the young men and their unwillingness to accept the marriage bond (54.16). When providing his own narrative of one of Augustus' staged performances as 'exemplum', Dio reveals that Augustus assembled in one part of the Forum those of the equestrian order who were unmarried, and in another those who were married, including those who also had children, with few numbers in the latter than the former (56.1). In spite of the *leges Iuliae*, the later historians reveal how the equestrian order in particular brazenly ignored and evaded the laws' provisions, and sought to meddle with and undermine Augustus' social, political and legal agenda.

A further participant in the narratives who is also involved in this sphere of action is Ovid, one of the key elegist poets from the Augustan era who was particularly vocal about his disdain and dislike of the *leges Iuliae*. As a key witness to the legislation, Ovid in his *Amores* mocks the laws directly (3.4.37-40):

Rusticus est nimium, quem laedit adultera coniunx,
 et notos mores non satis urbis habet
 in qua Martigenae non sunt sine crimine nati
 Romulus Iliades Iliadesque Remus.

[A man's a country-bumpkin if he's hurt by
 Adultery. He doesn't know the form
 At Rome where Mars' twins, Romulus and Remus,
 Were bastards – Iliad set the naughty norm.]⁸¹

⁸¹ Translation by A D Melville. trans. *Ovid: The Love Poems* (Oxford University Press, 1990). All translations of Ovid's *Amores* in this paper are taken from Melville. Text translated is based on the 1961 Oxford Classical

Here, as well as revealing his dislike of the Augustan Marriage Laws, Ovid also relies on the familiarity of the *rusticus* character, the country bumpkin, to his audience: a character reminiscent of those stock types of lowly origin that appear in Roman Comedy and one which serves to reinforce Ovid's mockery of the legislation.⁸² Cicero in his *Pro Caelio* speech used those stock character types we encounter in the narratives of Roman comedy as part of his defense strategy, drawing in particular on the youth and the prostitute and their characteristic modes of interaction which were known to all.⁸³ However, Roman love elegy, likewise, depended upon New Comedy for its regular cast of characters and behaviour.⁸⁴ Indeed, as James argues, comedy offers a multiplicity of literary character examples for Roman elegy to use, although with a few refinements.⁸⁵ For example, the lover-poet takes on the position of the madly devoted *adulescens*; the *puella* reflects the independent courtesan of comedy; and while elegy removes the comic family as a constraint to the elegiac lover, it nonetheless retains other blocking characters, including the advisory *lena*, the wealthy lower-class rival, and as in the lines above, the country bumpkin.⁸⁶ Indeed, each of these character types are based around the behaviours of proto-Proppian stereotypes: stereotypes that reflect the degree to which elegy, much like Cicero in the *Pro Caelio*, depends upon comedy, in particular for its regular cast of stock characters. It is interesting to note how Augustus' citizens were content to enjoy these unfavourable characters whilst they were safely contained within the fictional storyworlds of Roman comedy and elegy. Yet, when it came to the legislative storyworld of Augustus' reform package, having the Emperor cast citizens personally into such roles, led to uproar and indignation. With so few roles available as the 'Ideal Woman', and the majority of Roman citizens subsequently cast in the remaining unfavourable and unpopular roles of the Anti-Exemplum, the Paramour, the False Ideal, the Saboteur and the Informer, it is arguably inevitable that the people of Roman would prefer for these characters to stay safely ensconced in fiction.

Furthermore, much like the equestrian men above, Ovid not only mocked the legislation through his poetry, but even playfully (in the character of his own literary persona the '*praeceptor amoris*' – or professor of love) 'lead by example' as he sought to evade the legislation and continue his affairs. While Ovid turned private life into public discourse through his love elegy, he also claimed that lovemaking should be

Text edited by E J Kenney, along with text and commentary by McKeown and Bertini (in Italian, with translation).

⁸² On Roman comedy, see Anthony Corbeill, *Controlling Laughter: Political Humour in the Late Roman Republic*, (Princeton University Press, 1996); Scafuro, 'The Forensic Stage'; Sharon L James, 'Introduction: Constructions of Gender and Genre in Roman Comedy and Elegy', *Helios* 25(1) (1998) pp.3-16; Matthew Leigh, *Comedy and the Rise of Rome* (Oxford University Press, 2004); Maria Plaza, *The Function of Humour in Roman Verse Satire: Laughing and Lying* (Oxford University Press, 2006); Dorata Dutsch, *Feminine Discourse in Roman Comedy: On Echoes and Voices* (Oxford University Press, 2008); and Alison Sharrock, *Reading Roman Comedy: Poetics and Playfulness in Plautus and Terrence*, (Cambridge University Press, 2009).

⁸³ See Geffcken 'Comedy'; Fischler, 'Social Stereotypes'; Leigh, 'The Pro Caelio and Comedy'; Lowrie, 'Roman Law', p.77; and Liveley and Shaw, 'Marriage Plots', p.259, n59.

⁸⁴ Sharon L James, 'Elegy and New Comedy', in Barbara K Gold (ed.) *A Companion to Roman Love Elegy* (Wiley-Blackwell, 2012) pp.253-268, p.265.

⁸⁵ See James, 'Constructions of Gender and Genre' and 'Elegy and New Comedy'.

⁸⁶ See James, 'Elegy and New Comedy', pp.260-265.

protected from the prying eyes of Roman law.⁸⁷ In a later poem from book 3, Ovid – *in propria persona* – encourages his unfaithful lover to still lie with him, but if he catches her with another man, she must deny everything to him, in the same way she should claim ‘not guilty’ and lie to a judge if ever brought before a court of law, *sit modo 'non feci!' dicere lingua memor/cum tibi contingat verbis superarae duobus/ etsi non causa, iudice vince tuo* (*Amores* 3.14.48-50).⁸⁸ It was not enough for Ovid to simply undermine the legislation himself, by continuing his affairs; he encouraged others too, through his didactic poetry, to audaciously ignore the laws and even to lie to a judge in a court of law if necessary. It is this flagrant disregard particularly for the *lex Iulia de adulteriis coercendis*, which affords the poet his role as Saboteur within the storyworld of the Augustan Marriage Legislation.

The Informer

The final *dramatis persona* recurring throughout the narratives of the *leges Iuliae* is the Informer. As discussed above, the legislation – particularly the *lex Iulia de adulteriis coercendis* – brought in strict guidelines as to how the husband and his father-in-law must act if they were to discover the wife committing adultery, ostensibly criminalising their perceived failure to act in a certain way according to the legislation. If no divorce proceedings or criminal prosecutions were brought within the statutory sixty-day period, any member of the public could initiate legal action of their own – not only against the wife and her lover, but against the husband and the woman’s father too.⁸⁹ This in turn opened up an opportunity for participants to act as ‘Informers’ – *delatores* or spies who could prosper financially if they blew the whistle by bringing charges on those families who sought to keep the adultery private and did not abide by the legislation.

Once again, the Augustan elegist Ovid provides evidence of these *delatores*: despite insisting that his own affairs are not a crime, he nonetheless complains about the vexatious informers bringing charges against him (*Amores* 2.2.57-66). Furthermore, Tacitus, one of the later historians, likewise discusses the trouble-making ‘Informers’; particularly how families were increasingly liable to prosecution due to the conduct of these ‘Informers’. When discussing the Papian-Poppaeian Law (the revision of AD9 which had amended and supplemented the laws of 18BC), Tacitus tells us (*Ann.* 3.25):

Ceterum multitudo periclitantium gliscebat, cum omnis domus delatorum interpretationibus subverteretur, utque antehac flagitiis, ita tunc legibus laborabatur.

⁸⁷ Ioannis Ziogas, *Law and Love in Ovid: Courting Justice in the Age of Augustus*, (Oxford University Press, 2021) p.69.

⁸⁸ C.f. Liveley and Shaw, ‘Marriage Plots’, p.263, n74. For more on *Amores* 3.14 as a case study for examining the ways in which legal discourse simultaneously defines and blurs the boundaries of public and private spaces, see Ziogas, ‘Law and Love’, pp.75-92.

⁸⁹ Ulpian. *Digest.* 48.5.2.2, Scaevola. *Digest.* 48.5.15.2.

[On the other hand, there was an ever-increasing multitude of persons liable to prosecution, since every household was threatened with subversion by the arts of the informers; and where the country once suffered from its vices, it was now in peril from its laws.]⁹⁰

In a later passage, during Tacitus' account about the origins of the law, the historian returns once again to the behaviour of the *delatores* and references how 'they pressed their activities too far: the capital, Italy, every corner of the Roman world, had suffered from their attacks, and the positions of man had been wholly ruined', *sed altius penetrabant urbemque et Italiam et quod usquam civium corripuerant, multorumque excisi status et terror omnibus intentabatur* (Ann. 3.28).

Although Tacitus' account reveals the character role played by individual informers during the Augustan era, one can subvert this reading and instead consider how historians (both ancient – so including Tacitus – and modern) can be cast as so-called 'Informers' themselves. Both ancient and modern historians tend to inform and 'blow the whistle' on participants, casting them in particular character roles and reminding the reader of said character's – often criminal - behaviour. Historians, thus, use the character types as established by the *leges* when they write about the historical characters of this legal storyworld, such as Augustus and his family. Thus, we can simultaneously have multiple 'Informers': spies in the Augustan era, in the actual world of the legislation, who betray those who have failed to live up to the provisions of the legislation to the courts; and historians (both ancient and modern), who similarly betray those who have failed to live up to the provisions of the legislation, but this time to their readers instead. Either way, the criminal behaviour of the characters of the *leges Iuliae* was always scrutinised and never overlooked.

Conclusion

Once upon a time, Rome had an Emperor, Caesar Augustus, who set out to introduce a radical package of legislation, the likes of which had never been seen before in Rome. A set of laws that came to define and dominate Augustus' rule: from his first attempts to legislate in 28BC, to their initial passage in 18BC, and their later revisions in AD9. A set of laws that created a number of profoundly artificial and unpopular character roles, symbolic of Augustus' legislation: the Ideal Woman; the Anti-Exemplum; the Paramour; the False Hero; the Saboteur; and the Informer. This paper has set out to examine each of these character roles in turn, demonstrating how through this characterisation, Augustus and his laws cast all Roman people except a minority of (faithful and fertile) women as criminals. The legislation created for the first

⁹⁰ Translation by C H Moore and John Jackson. trans. *Tacitus. Histories: Books 4-5. Annals: Books 1-3* (Harvard University Press, 1931). All translations from Tacitus' *Annals* Book 3 in this paper are taken from Moore and Jackson. Text translated is from the Loeb Classical Library 249.

time a set of character roles that were profoundly unpopular, fundamentally impossible to fill and demanded exacting standards of behaviour of both women and men. With women's behaviour subsequently impossibly idealised as the Ideal Women, all other characters were ultimately criminalised if they failed to uphold and preserve this paragon of idolised female behaviour. Most infamously, of course, it was both Julia the Elder and Julia the Younger – Augustus' own daughter and granddaughter respectively – who failed to live up to this behaviour and were duly expelled from Roman society. As artificial constructs by Augustus, then, these characters came to be symbolic of his legislation and his attempts to formalise the very behaviour he wanted and expected of the Roman people. Even later historians, whether ancient or modern, have been bound by these character roles as created by Augustus, casting themselves, with an inevitable inexorableness, as informers and reminding us of the criminal behaviour of all other characters within the storyworld of the legislation.

What this means, therefore, is that later historians and modern scholars have reinforced what Augustus invented for the first time with his *leges Iuliae*: the artificial creation of unpopular character roles that cast almost all Romans as criminals and helped serve as the catalyst for the legislation's own demise. Indeed, elements of Augustus' *dramatis personae* and his gender expectations continue to linger and be reinforced today. We continue to see the pervasive presence of stereotypical character roles weaponised in the criminal justice system and often activated by cultural ideologies and assumptions. The construction of the 'ideal female victim' is particularly prevalent in cases concerning domestic abuse, sexual assault and rape cases. Judges and juries can be seen to favour, and engender, the normative stereotypical characterisation of a female victim. A victim who is 'worthy' rather than one who is characterised as provocative and sexually active; a victim who doesn't exhibit the attributes of the 'anti-exemplum' and engage in sex work. If not criminalised, women's sexual behaviours continue to be regulated in the criminal justice system through patriarchal norms and gender stereotyping. Structures and expectations that arguably can be traced back to Augustus' legislation in 18BC.

Considering this narratological process of characterisation in the context of Augustus' Marriage Laws is demonstrably a productive exercise. It has helped reformulate our understanding of Augustus' Marriage Laws and the 'new' hegemonic legal model he attempted to create with these stock character roles for Roman society to fill. It is under these terms we can reach a renewed understanding of how Augustus engendered the very narrative conditions that led to the unpopularity and antipathy shown towards his legislation. For if the law *qua* narrative creates character roles for people that are fundamentally unprincipled, idealistic and impossible to fill, then such a package of legislation will always prove to be an unpopular endeavour.