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**The Storyworld of the Augustan Marriage Legislation:  
A Narratological Study of the *leges Iuliae***

**Rebecca Anne Shaw**

**A dissertation submitted to the University of Bristol in accordance  
with the requirements for award of the degree of Doctor of  
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## Abstract

This thesis sets out to provide an original study of the Augustan Marriage Legislation through the lens of modern legal-narratological theory, focusing on the narrative operations, features and phenomena of this two-thousand-year-old body of legislation, its attendant stories and the wider legal system framing it. It aims to interrogate the story of the *leges Iuliae* and ask how, in spite of a strong legal and narratological framework available to the legislation, its narrative dynamics ultimately resulted in a deep antipathy among the people it was intended to govern. Specifically, the thesis will address a set of interrelated questions: to what extent is Roman law, and particularly the *leges Iuliae*, 'full of stories'?<sup>1</sup> How can modern narrative theory help uncover and investigate these myriad stories, and how they interact and intersect with one another? To what extent, and in what manner, have cultural narratives on the origins of the Roman legal system helped shape the landscape and provided a framework for the Julian Marriage Laws? And why, despite the narratological and legal *potestas* and *auctoritas* offered by these cultural narratives, is the legislation met with such resistance? In what ways can examining the cast of characters invented and perpetuated by the legislation, and their existence within the possible domains of the 'storyworld' of the legislation, reveal the profoundly unpopular nature of these legislative provisions? Through this innovative examination of the narrative features of the *leges Iuliae*, this thesis will argue that, despite a framework that should ostensibly have served to establish and strengthen the legal authority of the laws, Augustus and his legislation actually engendered the very narrative conditions which led to its downfall. It is therefore by turning to narratological tools, as this thesis will demonstrate, that the unpopularity and futility of the *leges Iuliae* can be re-examined and understood.

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<sup>1</sup> Tait and Norris 2011: 11.

## **Dedication**

To Amelia, Dean and Peanut.

## **Acknowledgments**

My grateful thanks are owed to my supervisors, Professors Genevieve Liveley and Rebecca Probert, for your support, patience and kindness throughout my PhD. Without you being so delightful as supervisors, always steering me in the right direction, and your generous readings of drafts, I would not have been able to complete this thesis. I am also grateful to the South West and Wales Doctoral Training Partnership for funding not only my PhD thesis, but also the numerous conferences, summer schools and projects in which I have participated during the tenure of my studentship. And of course, to my family – Dean, Amelia and Peanut – for everything.

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's *Regulations and Code of Practice for Research Degree Programmes* and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED: .....R. Shaw..... DATE: .....01/09/2022.....

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## Chapter 1

### 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 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. A set of laws that, in theory, should have been configured for public acceptance. For Augustus, with his immeasurable political power, set up the *leges Iuliae* as authorised by, and grounded in, the traditions of the *mos maiorum*: as both radically new, and traditionally ancient at the same time.<sup>2</sup> Why, then, was this unprecedented package of legislation met with such opposition and resistance? By adopting a legal-narratological methodology, this thesis sets out to interrogate the story of the Augustan Marriage Legislation and investigate how, in spite of a strong legal and narratological framework available to the legislation, its narrative dynamics ultimately resulted in a deep antipathy to the legislation. For the law is ‘full of stories’ – stories about the civilisation to which it belongs, its organisation, its politics, its culture and its people.<sup>3</sup> And this two-thousand-year-old piece of legislation is no exception: it has its own tale to tell. This approach, therefore, will re-examine the legislation, and its stories, through a narratological lens, exploring the narrative dynamics of the *leges Iuliae*: a framework that should have served to establish and strengthen the legal authority of the laws, but which instead reveals a tale of their ultimate demise.

In particular, I propose that a narratologically orientated study can help unmask the Augustan Marriage Legislation as a narrative ‘storyworld’; one created by Augustus when he set down his system of rewards and punishments – *praemia et poenia* – for marriage and adultery in 18BC. A ‘storyworld’ that is made up of various sources, accounts and reports that are likewise engaging with this narrative exercise, something which, I contend, most modern historians have failed to appreciate fully in their analyses of the legislation. And within this ‘storyworld’, I further submit that key origin stories about the evolution of the Roman legal system, and their narrative potency, provide both a narratological *and* legal archetype for Augustus’ legislation. By examining the origin story of the Twelve Tables in this way, I submit this will offer fresh insights into its role within the ‘storyworld’ of the *leges Iuliae*. Through the manipulation of law *qua* narrative, and indeed of narratives *qua* laws, this origin story offers a constitutional framework and formality – a *potestas* paired with the *auctoritas* of the *mos maiorum* – which should have imbued the lawmaker with the legal authority and power he requires when making such radical social and

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<sup>2</sup> Liveley and Shaw 2020: 250.

<sup>3</sup> Tait and Norris 2011: 11.

moral changes. However, Augustus' decision not to appeal directly to the *potestas* of the Twelve Tables is significant: not only demonstrating the ambiguity of origin narratives as a framework for legislation but revealing that legislators have a choice as to how to frame the laws they are introducing and which origin story to invoke in order to frame, mandate and legitimise their legislation. Yet despite his insistent and consistent reiteration that the *leges Iuliae* relate to the *mos maiorum*, as opposed to the narratological and legal framework offered by the Twelve Tables, this was not enough to overcome the flawed narrative conditions that shaped the Roman public's antipathy towards the legislation.

Furthermore, I argue that this animosity towards the legislation can be understood in terms of a key core narratological process, that of characterisation, and most notably through the legislative creation of profoundly unpopular character roles. For with the *leges Iuliae*, Augustus invented and legislated his own cast of desired and prescribed characters, leaving 'storyworld' participants bound by these prescribed roles set out by the legislation in the 'actual, fact domain'. Although 'storyworld' participants – figures in the 'actual world' of the Augustan Era, such as Julia the Elder and Julia the Younger – could move fluidly between the different sub-domains of the 'storyworld' of the *leges Iuliae*, later ancient historians and modern scholars cannot create or assign new or different character roles. The fixity of these character roles, as set out by the 'storyworld' and its various sub-domains, served to reinforce what Augustus invented for the first time with his *leges Iuliae*: a set of impossible, artificial and profoundly unpopular character roles. Thus, even though the narrative dynamics of the legislation suggest that Augustus' legislative package should have been configured for acceptance by the Roman elite, instead the laws' failure to invoke the *potestas* of the Twelve Tables in partnership with the *mos maiorum*; its artificial formation of a set of characters, including the impossible idealisation of women and the criminalisation of all the other participants; and the fixity of these character roles for participants within the 'storyworld' of the legislation and all its sub-domains, engendered the very narrative conditions which led to the unpopularity of the legislation itself.

### **The Legislative Provisions of the *leges Iuliae***

The Augustan Marriage Legislation, or *leges Iuliae*, dating to 18BC was one of the legislative cornerstones of Augustus' Principate.<sup>4</sup> Comprised of two laws, with a later revision in AD9, this

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<sup>4</sup> This section on the legislative provisions of the *leges Iuliae* is based on the co-authored paper Liveley and Shaw 2020: 245-250, and draws from material on which I was the leading author and for which my contribution was 95%. See also Galinsky 1996: 128, who describes the legislation as 'central' to Augustus' reign. Dio Cass. 54.16.1 provides the conventional dating of the legislation to 18BC. While the original

body of legislation sought to encourage marriage and procreation with a system of rewards and punishments on the one hand, and on the other, formally criminalise adultery for the first time. So unpopular was the legislation that the later revision of AD9, the *lex Papia Poppaea*, was drafted in response to protests from the elite classes, and subsequently withdrew and recast certain provisions, amending penalties and increasing the rewards.<sup>5</sup> It is now not possible to determine which provisions were specified in the original *leges Iuliae* of 18BC and which in the revised provisions – although the later statute appears to have focused on Augustus' marriage reforms rather than his adultery law. As a result, the later legal jurists – who, since no extant record of the legislation survives, provide vital details in their commentaries – and modern commentators often refer to the legislation generally as a package: the *lex Iulia et Papia-Poppaea*.<sup>6</sup>

Under the first phase of the legislation in 18BC, the *lex Iulia de maritandis ordinibus*, the so-called law on marriage, lay down a system of rewards and punishments for marriage between citizens of all classes, while the concomitant *lex Iulia de adulteriis coercendis* aimed to rein in a 'wide range of extramarital liaisons'.<sup>7</sup> The law on marriage made it compulsory for 'all male citizens between the ages of twenty-five and sixty and all female citizens between twenty and fifty' to marry.<sup>8</sup> Furthermore, 'widows were expected to re-marry within a year of their husband's death, and divorcees expected to remarry within six months of their divorce'.<sup>9</sup> 'Social, economic and political incentives accompanied the legislative provisions, with unmarried men and women penalized financially and unable to inherit under a will unless they unless they satisfied certain stringent conditions'.<sup>10</sup>

Likewise, punishments involving the law of succession were created for those couples who were married and remained childless. Spouses with no children could receive only half of any legacy

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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 Syme 1939: 443, along with Propertius 2.7.1-4 and Livy, *Praef.* 9. On the reliability of these sources' reconstruction of the legislation, see Richlin 1981: 381. For further bibliography on the Augustan Marriage Legislation, see the following with literature there cited: Syme 1939; Csillag 1976; Galinsky 1981 and 1996; Wallace-Hadrill 1981; Des Bouvrie 1984; Treggiari 1991 and 2005; Bauman 1992; Dixon 1992; Edwards 1993; Culham 1997; McGinn 1998 and 2002; Milnor 2005; Reid 2016; and Liveley and Shaw 2020.

<sup>5</sup> Suetonius, *Aug.* 34.

<sup>6</sup> See Grubbs 2002: 84.

<sup>7</sup> Galinsky 1996: 130.

<sup>8</sup> Grubbs 2002: 84.

<sup>9</sup> Liveley and Shaw 2020:247. See also McGinn 1998: 75, n45. These strict conditions proved to be hugely unpopular so the penalties and rewards were amended in the revisions of AD9, extending to two years for widows and 18 months for divorcees, see Liveley and Shaw 2020: 247 and Grubbs 2002: 84. On these revisions to the earlier legislation, see Suetonius, *Aug* 34.1-2 and Dio Cass. 56.1-10.

<sup>10</sup> Dio Cass. 54.16.1-10. Liveley and Shaw 2020: 247. See also McGinn 1998: 73.

from relatives within six degrees and could only inherit one-tenth of each other's estate.<sup>11</sup> Those who married and had children could reap the rewards, in particular those couples who had three or more surviving children. Known as *ius liberorum*, the 'right of (three) children', this gave married men priority in receiving government appointments, and gave married women freedom from guardianship.<sup>12</sup> This was particularly desirable for a freedwoman, although it is worth noting that the law required her to produce four surviving children, rather than the three expected of a free woman.<sup>13</sup>

The law also established a number of marriage prohibitions, most notably that members of the senatorial order, which included senators, their children and their son's children, were forbidden to marry those whose social status was deemed inferior: that is, 'freedmen, freedwomen, actors, actresses, along with anyone whose father or mother was an actor or actress'.<sup>14</sup> Further to this, the law also prohibited any freeborn person, including senators, from marrying those whose status was deemed *infamia*: namely, 'prostitutes, pimps, procuresses, and persons condemned for adultery or caught in the act'.<sup>15</sup> According to the jurist Paul (*Digest* 23.2.44):

The *lex Julia* provides that: 'A senator, his son, or his grandson, or great-grandson by his son shall not knowingly or fraudulently become betrothed to or marry a freedwoman, or a woman who is or has been an actress or whose father or mother are or have been actors. Nor shall the daughter of a senator, his granddaughter by his son, or great-granddaughter by his grandson become betrothed to or marry, knowingly or fraudulently, a freedman, or a man who is or has been an actor or whose father or mother is or has been an actor. Nor shall any of these people knowingly or fraudulently become betrothed to or marry such a woman.'

lege Iulia ita cavetur: qui senator est quive filius neposve ex filio proneposve ex filio nato cuius eorum est erit, ne quis eorum sponsam uxoremve sciens dolo malo habeto libertinam aut eam, quae ipsa cuiusve pater materve artem ludicram facit fecerit. neve senatoris filia neptisve ex filio proneptisve ex nepote filio nato nata libertino eive qui

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<sup>11</sup> See Treggiari 1991: 37-80; McGinn 1998: 70-104; and Grubbs 2002: 84. C.f. Tit. Ulp.15.1-3.

<sup>12</sup> Gaius 1.145. See Grubbs 2002: 84.

<sup>13</sup> Gaius 3.44. C.f. Treggiari 2005: 144.

<sup>14</sup> Paul, *Digest*, 23.2.44. McGinn 1998: 72 and Liveley and Shaw 2020: 248.

<sup>15</sup> Ulpian, *Digest*, 23.2.43. McGinn 1998: 72.

ipse cuiusve pater materve artem ludicram facit fecerit, sponsa nuptave sciens dolo malo esto neve quis eorum dolo malo sciens sponsam uxoremve eam habeto.<sup>16</sup>

Introduced alongside the *lex Iulia de maritandis ordinibus*, the accompanying law on adultery – *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. For the first time, matters of adultery and infidelity, which had previously been dealt with as a private matter between citizens, were now open to public scrutiny and state involvement.<sup>17</sup> Adultery was, thus, 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’.<sup>18</sup> ‘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’.<sup>19</sup> 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’.<sup>20</sup> He was, however, permitted to kill her lover but only under strict conditions: if he discovered the pair actively engaged in the act of sexual intercourse, in his own house and only if he were prepared to carry out the killing of the lover with his own hands.<sup>21</sup> Some of the jurists (most notably Macer) who provide detailed commentaries on the *leges Iuliae* go further still and interpret the law as allowing husbands to kill only when the adulterous lover held a specific status.<sup>22</sup> How the injured party in such a situation was supposed to ascertain or gain proof that the adulterous lover in question was ever ‘previously an actor’ or whether he had been ‘condemned in public proceedings but is not yet restored to his former status’ is not clear.<sup>23</sup> Indeed, the permission provided by the statute is so carefully curtailed with legal conditions as to be no permission at all. The emphasis upon the who, the where, and the when in this statute highlights the fact that it was always illegal for a husband to kill an adulterous wife and mostly illegal to harm her lover – and seems particularly

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<sup>16</sup> Translations for all primary sources quoted throughout this thesis are given in Appendix 3.

<sup>17</sup> It is impossible to identify the actual processes for the private prosecution of such offences (*inuria*), but traditional accounts (such as those provided by Dion. Hal. *Ant. Rom.* 2.25.5-6) suggest that the *pater familias* would have been responsible for seeking redress and resolution for any such injuries or insults to those in his domestic jurisdiction (including married daughters).

<sup>18</sup> Milnor 2005: 141.

<sup>19</sup> Paul, *Sent.* 2.26.14. Grubbs 2002: 84. Emphasis added.

<sup>20</sup> Paul, *Sent.* 2.26.4. Milnor 2005: 151.

<sup>21</sup> Paul, *Sent.* 2.26.7. C.f. Milnor 2005: 151.

<sup>22</sup> Macer, *Digest* 48.5.25[24]. It is worth noting that the status of the woman was also crucial to liability under the *lex Iulia de adulteriis coercendis*, with the law legislating against both *adulterium* and *stuprum* (apparently using both terms interchangeably). The law covered sexual offences committed with married women (*adulterium*) and with unmarried – but potentially marriageable – women (*stuprum*). For further analysis on this distinction, see chapter 6 and also McGinn 1998: 144-5 and Milnor 2005: 150.

<sup>23</sup> Macer, *Digest* 48.5.25[24]. Similar restrictions were placed upon the types of people who could bring charges under the legislation: excluded characters included *delatores* who had been found to have brought similar actions either maliciously or for money; those ‘who had been sent to the arena to fight with the beasts’; actors; and pimps (Ulpian, *Digest* 48.2.4).

designed to legislate against a husband acting rashly, in anger, and causing injury to his fellow citizens.

Whether or not a husband was able to satisfy the impossible/implausible conditions listed and so avail himself of the punitive options offered by the statute, 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.<sup>24</sup> Otherwise, the husband would be accused of *lenocinium* (pimping or pandering) himself. He was not permitted to make a private settlement with the adulterer (in lieu of violence) or simply to dissolve his marriage and privately divorce: to do so might have brought upon himself criminal charges of *lenocinium*, whose severe penalties matched those for adultery.<sup>25</sup> In fact, if no divorce or prosecution proceedings were initiated by the husband (or the woman's father) within the sixty day period following the alleged adulterous act, any member of the public could initiate legal action of their own—not only against the wife and her lover, but against her husband too.<sup>26</sup> 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) was one of the most controversial aspects of the adultery law.<sup>27</sup>

Crucially, the husband was not the only character upon whom the statute charged such rights and responsibilities in cases of adultery. The father could also act and bring indictments. Like the husband, the woman's father was permitted by the new law to kill his adulterous daughter's lover, but again certain highly specific conditions had to be 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 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).<sup>28</sup> Once again, the permission provided by the statute is so carefully curtailed with legal conditions as to be no permission at all. Once again, the part of the statute dealing with fathers seems particularly designed to legislate against a parent acting rashly, in anger, and thereby causing injury either to his family or to his fellow citizens. For all its repeated references to permitted killing, the *lex Iulia de adulteriis coercendis* effectively rendered it *illegal* for a father to kill either his daughter or her lover – or for a husband to kill his

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<sup>24</sup> Paul, *Sent.* 2.26.6.

<sup>25</sup> Ulpian, *Digest.* 48.5.12[11].3.

<sup>26</sup> Ulpian, *Digest.* 48.5.2.2; Scaevola, *Digest* 48.5.15.2.

<sup>27</sup> See Tacitus, *Ann.* 3.25.1; C.f. also 3.28.

<sup>28</sup> Ulpian, *Digest*, 48.5.24. See also Milnor 2005: 151. Emphasis added.

wife or her lover – in any likely scenario.<sup>29</sup> Yet, although many of the provisions of the legislation removed the enactment of the harshest treatments, the necessity of a divorce, if a wife's adultery was discovered, and the strictures against not marrying and not procreating nonetheless comprised unprecedented legislative interference in Roman family life.

### **The *leges Iuliae* and Modern Historians**

Given the seminal nature of this package of legislation, the *leges Iuliae* have accordingly come to be regarded as synonymous with the Augustan regime and the family values Augustus espoused.<sup>30</sup> Indeed, historians, both ancient and modern, have put forward various competing theories to explain the *telos* of the legislation and Augustus' motivations as the prime mover behind this legislative programme.<sup>31</sup> Tacitus, the ancient historian writing in the late first century AD, is clear on the aim behind the laws in his *Annals*: 'This law [the marriage laws] had been passed by Augustus [...] in order to sharpen the penalties of celibacy and to increase the resources of the exchequer', *Augustus [...] incitandis caelibum poenis et augendo aerario sanxerat* (Tac. *Ann.* 3.25).<sup>32</sup> Modern historians, however, have been less certain on the matter. As Liveley argues:

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.<sup>33</sup>

The notion of a 'morality tale', where ancient ideals and morality have been corrupted and need to be restored by the 'hero' Augustus is certainly the kind of moralising narrative that the Emperor himself would offer as the '*telos*' of his legislation.<sup>34</sup> Indeed, Syme's analysis ironically focalizes around this narrative, as he channels Augustus in considering how the ancient ideals of

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<sup>29</sup> There is no evidence to suggest that this state-sanctioned 'licence to kill' (*ius occidendi*) was widely, if at all, taken up by Rome's citizens in the wake of the *leges Iuliae*.

<sup>30</sup> Milnor 2005: 140.

<sup>31</sup> Liveley and Shaw 2020: 246. C.f. Galinsky 1996: 128.

<sup>32</sup> See also Suetonius *Aug.* 34 and Dio Cass. 56.1-10 for views of two other ancient historians.

<sup>33</sup> Liveley in Liveley and Shaw 2020:246-247. See Syme 1939; Frank 1975; Galinsky 1981 and 1996; Nörr 1981; Wallace Hadrill 1981 and 1993; Gardner 1986 and 1998; Bauman 1992; Edwards 1993; Cohen 1991; Treggiari 1991; Dixon 1992 and 2001; Corbier 1995; Culham 1997; McGinn 1998; and Milnor 2005. For the alternative view that Augustus' laws were successful, see Reid 2016.

<sup>34</sup> This moralising narrative about the corruption of ancient ideals is one which Livy presents in his *Preface* to the *Ab Urbe Condita*.

duty, piety, chastity and frugality could be restored.<sup>35</sup> The *leges Iuliae* were, thus, the ‘principal laws’ designed to restore this public and private morality, with ‘regeneration [...] now vigorously at work upon the Roman People’.<sup>36</sup> Despite his wry assessment of the legislation, Syme does acknowledge the novelty of Augustus’ legislation concerning the family, maintaining that the aim of this new code was ‘to bring the family under the protection of the State’ (although such a measure would be redundant if the Roman people actually remained true to their ancient selves).<sup>37</sup> In this way, however, Augustus could claim to both ‘revive the past and to set standards for the future’.<sup>38</sup>

The view that the legislation was a real response to real social problems is one which Csillag explores.<sup>39</sup> For Csillag, moral reform was the *princeps*’ leading objective: he sees Augustus’ legislation as an attempt to reform a society that had become ‘enervated and imbued with voluptuousness’ as manifested in a social crisis of the disintegration of the Roman family unit.<sup>40</sup> By encouraging marriage and procreation among all citizens, the Augustan legislation would therefore provide a recourse to restoring the traditional order of the family. Csillag also considers another reason behind the legislation: the decline in the population. He argues that it was in the interest of the wealthy man to avoid having too many children: by numerically limiting his offspring, the elite Roman citizen could preserve his wealth, along with a relatively high standard of life, and keep the family estate together.<sup>41</sup> However, as Galinsky points out, Augustus’ marriage legislation targeted Rome’s aristocratic elite, so that the wider demographic impact of the legislation would have been negligible.<sup>42</sup> For Galinsky, rather, the laws were ‘the most pronounced attempt at moral and even moralistic leadership’, introduced primarily as a means to producing good *mores* amongst Augustus’ subjects.<sup>43</sup> Specifically, good *mores* amongst the ruling classes, for it was this echelon of society who would most obviously assist (or, conversely,

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<sup>35</sup> Syme 1939: 442.

<sup>36</sup> Syme 1939: 444.

<sup>37</sup> Syme 1939: 444.

<sup>38</sup> Syme 1939: 444.

<sup>39</sup> Csillag 1976.

<sup>40</sup> Csillag 1976: 55.

<sup>41</sup> Csillag 1976: 44. Csillag does acknowledge that the *leges Iuliae* concentrated on Rome’s senatorial elite and would have had little impact upon the wider population, therefore achieving little, if any increase in overall population figures.

<sup>42</sup> Galinsky 1981: 129-30. Dixon 1992: 119-121 still considers childlessness in marriage, and the subsequent impact on the population, a subject worth investigating in the context of the *leges Iuliae*. While she acknowledges that the purpose of the legislation is far from clear, she still finds it useful to explore the stimulation of the birth rate as one possibility. Deliberate childlessness in marriage was a pressing social issue, one which Augustus sought to address in the legislation of both 18BC and AD9. However, in a similar vein to the view adopted by Csillag, Dixon too offers the caveat that the legislation would have necessarily had minimal impact upon the national birth-rate, as the mass of rewards and penalties ‘were not directed at the people at large so much as at the upper classes’ (121).

<sup>43</sup> Galinsky 1996: 129.

hinder) Augustus with his imperialistic ambitions.<sup>44</sup> If Augustus 'wanted to engage in further expansion of Rome's rule he had to be solicitous of the morals of the Romans who would exert that rule. That meant those of senatorial and equestrian rank'.<sup>45</sup> Therefore, according to Galinsky, the *telos* of the legislative programme was to ensure that the ruling classes of Augustus' growing empire became a 'morally superior people', and thereby help to ensure the strength and security of his expanding imperial programme.<sup>46</sup>

Des Bouvrie similarly sees strategic statesmanship as the impetus for Augustus' attempts at moral reform through legislation. For, she argues:

In a society where economic, political, military, legal, religious and social privileges and disabilities are ascribed to its members by birth mainly, it is of overall importance to keep the sorting system, marriage, intact [...] The emperor tried to preserve ancient civil morals, in a time when the internalised control system, respect for the censors, had begun to fail. His efforts were not primarily ideological or demographic or concerned with private morality, but a manifestation of shrewd statesmanship.<sup>47</sup>

That the legislation was more than just a 'straightforward, common-sense solution to a troublesome social problem' is plain.<sup>48</sup> Indeed, as Edwards argues, taking such a view would be problematic as it ignores the 'symbolic charge' of the legislation.<sup>49</sup> For Edwards, however, the legislation was not simply about restoring the moral fibre of the upper classes generally, the decline of which (supposedly) led to the civil wars, but more specifically was about restoring the moral fibre of women.<sup>50</sup> That the Romans typically perceived adultery to cause disruption and to threaten the social order is in no doubt. However, according to Edwards, it was explicitly female sexuality, rather than male sexuality, which was deemed 'a potent danger for Roman moralists because it might disrupt status distinctions. Sexual relationships between high status women and low status men were an affront not only to the individual husband but to the social order'.<sup>51</sup> Indeed, men were often held accountable, in politics and in society, for their wives' infidelity, and the apparent implication of the Augustan legislation was that Roman men were often not 'men' enough to control their wives: 'it is impossible to disentangle suggestions that a man's wife was

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<sup>44</sup> Galinsky 1996: 132-135.

<sup>45</sup> Galinsky 1996: 134.

<sup>46</sup> Galinsky 1996: 133.

<sup>47</sup> Des Bouvrie 1984: 107.

<sup>48</sup> Edwards 1993: 36.

<sup>49</sup> Edwards 1993: 36.

<sup>50</sup> Edwards 1993: 42-47.

<sup>51</sup> Edwards 1993: 53.

unfaithful from attempts to suggest that he was politically or socially weak'.<sup>52</sup> Thus, for Edwards, it is the sexual behaviour, or rather misbehaviour, of women that has the greatest symbolic significance when it comes to the *telos* of the legislation. Adultery took on a new meaning in the age of Augustus, with the legislation making it positively dangerous: in fact, Edwards concludes, adultery itself now took on a much more 'intimate association with political subversion'.<sup>53</sup> Women's sexual behaviour, therefore, took on a new significance too. The law paraded a moral obligation for husbands to control their wives, and any errant behaviour by women that infringed the legislation would be punished. Sexual misbehaviour of women could lead to great social and political problems, as history had already shown, and controlling the *mores* of women became a matter of great importance to the state and to Augustus.

Looking beyond the oft-discussed moral aspects of the legislation, there can be no doubt that ideology of gender, and the role of women, is also particularly significant when examining the Augustan legislation. The ideological and socio-legal positions of respectable women versus that of adulteresses, prostitutes, slaves and peregrines are played out in the legislation and are of crucial importance to its operation – and wider narrative.<sup>54</sup> Indeed, as McGinn points out, the law sets out 'certain categories of women with whom sexual relations might be enjoyed without fear of prosecution', with the question of liability under the law resting resolutely on the status of the female partner rather than the man.<sup>55</sup>

Other recent writers have put forward a number of cogent arguments which attempt to explain the *telos* of the legislation and the impact of the laws, most notably on women. For Culham, Augustus' political programme, including the legislation, had 'cumulative consequences' for women, as the legislation rewarded or penalised men by enhancing or hindering their political career based on the marital and reproductive choices they made.<sup>56</sup> Augustus could not have created his special elite and demanded respect for it without including and using women as partners for his chosen male actors. As a result, Augustus' political programme gave women 'new weapons to use in claiming status and constructing a public role' for themselves.<sup>57</sup> In seeking out a new political rank structure – a superior elite, with a restored moral and social fibre, that would assist the *princeps* in achieving his political and imperialistic aims – Augustus inadvertently

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<sup>52</sup> Edwards 1993: 57.

<sup>53</sup> Edwards 1993: 61.

<sup>54</sup> The characterisation of, and roles assigned to, women by the legislation is explored in further detail in chapter 6.

<sup>55</sup> McGinn 1998: 144.

<sup>56</sup> Culham 1997: 195.

<sup>57</sup> Culham 1997: 196.

opened up social and economic opportunities for women, in Culham's reading.<sup>58</sup> Treggiari, similarly, sees the importance of women to the marriage legislation, describing their role as 'indispensable'.<sup>59</sup>

The importance of ideologies of gender and the role of women in the context of the legislation has also been examined by Milnor, whose work offers an analysis of the 'paradox evident in the ideals and ideologies of gender which prevailed in the early Roman empire during the reign of Augustus'.<sup>60</sup> She points out that a key aspect of the Augustan marriage laws was 'their dependence upon, and attempted reinforcement of, ideologies of femininity'.<sup>61</sup> Prior to the *leges Iuliae*, the oversight of women's (sexual) behaviour and their moral health was the responsibility of the head of the household; however, under the legislation, now for the first time women were 'answerable to the state for their actions in the bedroom'.<sup>62</sup> And as a result, for the first time, women were a part of a narrative which highlighted their role (along with that of the state) in enforcing morality, with the Augustan marriage legislation according them 'a kind of legal subjectivity which they had not before enjoyed'.<sup>63</sup> Drawing on examples of how the law functioned in practice, such as the restrictions placed on what might, and must be, done about an adulterous woman, Milnor reasons that the Augustan legislation produced not only 'a new form of symbolic attack against women', but 'it also produced a new form of symbolic honour'.<sup>64</sup> And so, Milnor brings the reader to the paradox she believes is inherent in the legislation and defines the Augustan era: 'the attempt to construct private morality through the imposition of legislation'.<sup>65</sup> The so-called 'traditional' family values and feminine virtues that the laws promulgate make 'a statement about the relationship between domestic and civic life', with certain actions and family matters transcending the boundary between them.<sup>66</sup> For, Milnor argues:

The innovation of the legislation is deflected by the sense of the principate as a turning point in history; though the laws themselves may be new, what they represent are values which are enshrined in the Roman past and which look forward to the Roman future. If

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<sup>58</sup> Culham 1997: 203.

<sup>59</sup> Treggiari 2005: 144.

<sup>60</sup> Milnor 2005: 1.

<sup>61</sup> Milnor 2005: 148.

<sup>62</sup> Milnor 2005: 150.

<sup>63</sup> Milnor 2005: 151.

<sup>64</sup> Milnor 2005: 152-153.

<sup>65</sup> Milnor 2005: 153.

<sup>66</sup> Milnor 2005: 154.

the laws overstep the boundary between public and private life, they do so only on the understanding that history requires it.<sup>67</sup>

The passage of the legislation, according to Milnor, should therefore be considered a historiographical event: 'an imperial act which changed the way that authors read and represented law and the history of law in the early Roman Empire'.<sup>68</sup> The legislation, therefore, is a part of a wider story, one that encompasses not just Augustus' principate but Rome's past and future as well. It is a story, which 'maps the concerns of the civic onto the domestic, and defends that map by reference to the grand sweep of Roman history'.<sup>69</sup> And by placing the legislation within 'history' itself, the social legislation is, as Milnor concludes, 'Augustan to its core'.<sup>70</sup>

What this brief precis of the current scholarship demonstrates is the breadth of competing theories which focus not only on the *telos*, the purpose, of the legislation, but which also examine the ideology of gender and the effect on the socio-legal role of women. In highlighting these various arguments, it also reveals the difficulties we face as historians in trying to reconstruct the purpose of the legislation, its place within Augustus' political programme and within the Roman legal system as a whole. Thus, instead of attempting to contribute to this (arguably saturated) dimension of the discussion on the *leges Iuliae*, this thesis aims to take a fresh look at the legislation using modern legal-narratological methods and in doing so, examine why, despite its apparent narrative configuration for acceptance, this package of legislation was, in fact, narratively doomed to be unpopular. By examining the narrative operations, features and phenomena of the legislation, its attendant stories and indeed the wider legal system framing it, I argue that we can realise the opportunity to help further contextualise and enhance our understanding of the marriage legislation. I propose that by using narratological tools to analyse the Augustan marriage laws, we identify a package of legislation that can be re-evaluated and re-examined in a holistic manner as a dynamic narrative 'storyworld'. Within this storyworld we will see key origin stories providing both legal and narratological precedents which work to authorise Augustus' legislation. And yet, as I will demonstrate, we can also identify the key narrative elements which worked to undermine, and caused the opposition to, the Augustan marriage laws.

## **Law and/as Narrative**

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<sup>67</sup> Milnor 2005: 154.

<sup>68</sup> Milnor 2005: 142.

<sup>69</sup> Milnor 2005: 154.

<sup>70</sup> Milnor 2005: 154.

The recognition that laws and legal systems are narratively configured is not in itself new. Friedman, in 1969, argued that a working legal system is indivisible from legal culture: it depends on 'values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole'.<sup>71</sup> Constitutions, laws and statutes, therefore, are dependent for their authority upon the cultural 'narrative' – made up of values and attitudes – in which they are received.<sup>72</sup> Likewise, Cover, in his foundational essay '*Nomos and Narrative*' from 1983, maintained that:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution, there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed but a world in which we live. In this normative world, law and narrative are inseparably related.<sup>73</sup>

The relationship between law and narrative, therefore, is mutually dependent. 'On the one hand, law is rendered comprehensible through narrative. On the other, law is embedded in the cultural narratives that frame it'.<sup>74</sup> Indeed, as Brooks argues, one might say that the law needs a narratology.<sup>75</sup> Drawing upon this understanding that law and narrative are inextricably intertwined, then, pioneering narratological work conducted over the last few years has further helped to demonstrate how story form, phenomena, and dynamics operate in a range of legal contexts and discourses.<sup>76</sup> As a result of such narratologically oriented studies into law, there is extensive scholarship, with modern reception studies on narrative and its relationship with contemporary legal theory and law comprising of a number of themes. Below I explore three of these key themes, which pertain to, and will underpin, my thesis. Further areas of study also include analyses of the narrative qualities of legal discourse and interpretation, and examinations of law in narrative literature or as rhetoric.

The first of these themes relates to this notion, as discussed, that 'legal discourse is not autonomous but inextricably bound to its historical context'.<sup>77</sup> Olson continues, stating that the law and all the legal prescriptions it entails 'cannot be separated from the narratives that situate,

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<sup>71</sup> Friedman 1969: 34. See also Olson 2014: 378.

<sup>72</sup> See Liveley and Shaw 2020: 260-261.

<sup>73</sup> Cover 1983: 4-5.

<sup>74</sup> Olson 2014: 378.

<sup>75</sup> Brooks 2005: 424.

<sup>76</sup> Liveley and Shaw 2020: 255-256. See Brooks 1996, 2002, 2005 and 2006; Sternberg 2008; and Fludernik 2009, 2010 and 2014.

<sup>77</sup> Olson 2014: 378. See also Friedman 1969: 33-38 and Cover 1983: 4-5.

explain and legitimise their prerogative'.<sup>78</sup> Indeed, this indivisible relationship between law and narrative can be traced back throughout the entire legal tradition. As Cover argues:

A legal tradition is hence part and parcel of a complex normative world. The tradition includes not only a *corpus juris*, but also a language and a mythos – narratives in which the *corpus juris* located by those whose wills act upon it. These myths establish the paradigms for behaviour.<sup>79</sup>

If myths, or stories, are just as much a part of the legal tradition as its *corpus juris*, then the relationship between narrative and law goes far beyond the courtroom (as discussed below) and on to the construction and development of the entire legal order. Indeed, those foundational legal narratives not only enable us to understand how a legal system came to be, but also, crucially, its identity since they 'legitimate a given legal system's normative status'.<sup>80</sup> On this premise, Tait and Norris explore the set of narratives and plots that pre-exist those that developed in and around the courtroom. It is these stories, those which focus on the foundation, creation and construction of law, which Tait and Norris similarly maintain help to define the law as much as any other legal narratives: 'they lay the groundwork for subsequent understandings of how law should operate'.<sup>81</sup> Using the social contract narrative as a case-study, Tait and Norris examine the similar 'plot-points' and narrative techniques employed: from the creation of a space that is the site for the social contract, to the transformation of this space from 'chaos to order' and finally the 'sense of an ending'.<sup>82</sup> Despite this focus on the narratives of social contract theorists, Tait and Norris conclude that it is also possible to find the shared tools among constitutional narratives of legal origin: that one can use 'narratology to make sense of historically situated constitutional narratives'.<sup>83</sup> As a result, in this thesis, I propose to adopt this methodology as put forward by Tait and Norris, and apply it to Roman constitutional narratives, most notably the story of the Twelve Tables, in order to (re)examine the narrative potency of these stories in the context of the Augustan Marriage Legislation.

The second theme, which has emerged from research on law and narrative, focuses on legal narration as a contest of narratives, with scholars using narrative theory to investigate courtroom discourse.<sup>84</sup> For narratives are, indeed, an essential part of any legal process (ancient or modern,

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<sup>78</sup> Olson 2014: 378.

<sup>79</sup> Cover 1983: 9

<sup>80</sup> Olson 2014: 379.

<sup>81</sup> Tait and Norris 2011: 11.

<sup>82</sup> Tait and Norris 2011: 11-22.

<sup>83</sup> Tait and Norris 2011: 22.

<sup>84</sup> See Olson 2014: 372-374.

adversarial or inquisitorial), with a range of different stories and different levels of narrative and narration often at issue or competing with one another: from the making, debating and passing or repealing of laws according to the perceived best interests of society; to the larger (often unwritten) cultural stories that disseminate and frame ethical and other normative expectations; to the stories entailed in particular legal cases concerning the charges against and confessions of perceived law-breakers; through to the repetition of those narratives at prosecution, trial, verdict and appeal – each of which involves the narrative testimonies of alibi witnesses, eye witnesses, character witnesses, expert witnesses, and multiple varying, even conflicting, accounts of the same event.<sup>85</sup> A leading proponent of this narrative approach to law is Brooks, who has examined narrative and the role it plays in adversarial trials, focusing on the adjudicative process, the opening and closing statements of the prosecution and defence, witness statements, confessions, judicial opinions and victim statements.<sup>86</sup> At each point within the adjudicative process, a case is told, re-told and evaluated by numerous listeners, from the police, to juries and to judges, allowing each listener to construct their own narrative – which can and does take on different results that *can* conflict with one another. As Brooks maintains:

The differing outcomes in the retellings [of the *Rusk* case] offer a dramatic instance of how narratives take on design, intention and meaning. Narratives do not simply recount happenings; they give them shape, give them a point, argue their import, proclaim their results.<sup>87</sup>

When we give attention to the role of narrative in the law and the legal process, we can see that it is ubiquitous. Certainly, the act of storytelling pervades the process of adversarial trials, as victims and suspects each tell their story in the police station, which is then submitted, in turn, as evidence to be analysed, re-told and re-shaped into a narrative by prosecuting and defending trial lawyers at court. Indeed, Brooks reminds us that legal advocates have known of the importance of narrative and the need to tell stories for millennia, since ‘the discipline of rhetoric, including argumentation through narrative, was in antiquity primarily training for making one’s case in a court of law.’<sup>88</sup> However, this storytelling that happens in a legal case, where part of the task of the advocates is to reconstruct competing accounts of what happened on a particular occasion and recount this to a jury, is not of the same order as the cultural narratives that frame and provide authority to that working legal system. For these cultural narratives, which disseminate

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<sup>85</sup> Liveley and Shaw 2020: 256 and literature there cited.

<sup>86</sup> See Brooks 1996; 2002; 2005 and 2006.

<sup>87</sup> Brooks 2006: 13

<sup>88</sup> Brooks 2005: 416. See also Liveley and Shaw 2020: 256.

the normative expectations of society, belong to a different aspect of the law, involving different agents with different story-telling capacities. This distinction between different levels of narrative within the 'law' is especially pertinent to this thesis, as it relates to the unmasking of the 'storyworld' of the Augustan Marriage Legislation: a narratological concept that I will fully explain in chapter four of this thesis. A 'storyworld' which, I submit, allows for a more nuanced exploration of the myriad levels of narrative which unfold from the multifarious stories of the *leges Iuliae* and shape our understanding of not only the laws but also the Roman legal system, its cultural narratives and the place of Augustus' marriage legislation within it.

The juxtaposition of marginalised individuals with dominant legal narratives, and how this can be used to critique law's hegemonic practices, forms the basis of the third theme within the wider study of law and narrative. Through examination of legal stories, this can reveal the different characters, voices and perspectives telling these stories and how these may or may not cohere to the hegemonic legal model. Here, critical legal studies have argued that narrative qualities of law can be used to challenge the received wisdom of legal reasoning and rule, and 'to force legal practitioners to acknowledge the experiences of the underrepresented'.<sup>89</sup>

A key proponent of this school of thought which explores the relationship between legal narrative and the minoritarian experience is Delgado, with his 1989 article 'Storytelling for Oppositions and Others: A Plea for Narrative'.<sup>90</sup> When examining legal stories, Delgado maintains that 'many, but by no means all, who have been telling legal stories are members of what could be loosely described as outgroups, groups whose marginality defines the boundaries of the mainstream, whose voice and perspective – whose consciousness – has been suppressed, devalued and abnormalised'.<sup>91</sup> Such stories 'create their own bonds, represent cohesion, shared understandings, and meanings'.<sup>92</sup> However, it is not just the outgroups who create their own stories, so too do the dominant groups as well:

The stories or narratives told by the ingroup remind it of its identity in relation to outgroups, and provide it with a form of shared reality in which its own superior position is seen as natural.<sup>93</sup>

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<sup>89</sup> Olson 2014: 376.

<sup>90</sup> Delgado 1989. The following analysis is based on Delgado 1989: 2411-2416.

<sup>91</sup> Delgado 1989: 2412.

<sup>92</sup> Delgado 1989: 2412.

<sup>93</sup> Delgado 1989: 2412.

Through the creation of stories, or counterstories as Delgado calls them, by outgroups, the prevailing mind-set of the majority ingroup can be destroyed and subverted, as stories have the curative power to ‘shatter complacency and challenge the status quo’.<sup>94</sup> In his 1989 article, Delgado examines the use of stories and counterstories in the struggle for different kinds of social reform, interrogating ‘how we construct social reality by devising and passing on stories’, and how competing counterstories ‘can be used to challenge a stock story and prepare the way for a new one’.<sup>95</sup> Stories, therefore, become ‘useful tools for the underdog because they invite the listener to suspend judgment, listen for the story’s point, and test it against his or her own version of reality’.<sup>96</sup>

When it comes to the *leges Iuliae*, however, any desire to reconstruct or rediscover the stories of the marginalised – particularly the experiences of women, and the gender roles and dynamics that subsequently emerge from the legislation – is complicated by the lack of stories from this particular ‘outgroup’. Modern legal stories easily give scholars access to the voices of ingroups and outgroups, and the dynamic between the two. When it comes to ancient stories, legal or otherwise, the situation is more complex. Scholars do not have the luxury of the same model in ancient sources and must piece together stories from the limited evidence available. Indeed, what historians and scholars are often left with are only those ‘stock-stories’ which reveal the prevailing mind-set and social reality of the ‘ingroup’. Understanding, then, the ‘minoritarian’ experience through this lens is, inevitably, problematic. Nonetheless, what this theme, and the work of Delgado, does remind us of is the importance of examining the different characters that can emerge from a particular set of narratives. Through the passage of the Julian legislation, Augustus set out to create a ‘new’ hegemonic legal model: one which invented and perpetuated a set of legalised behavioural roles that the *princeps* wanted and expected all groups to fill, and one which created a set of stock characters that reflected Augustus’ prevailing discourse. And, as I submit in this thesis, it was the creation of these profoundly unpopular stock characters, which arguably reflected the prevailing mind-set and reality of the so-called ‘ingroup’, that led to the Roman elite’s negative reaction to the legislation .

What this thesis aims to do is draw on elements of these different legal-narratological studies in order to create a holistic, narrative-centric approach to studying the Augustan Marriage Legislation. By adopting such an original approach, I argue that this will offer new and innovative insights into this two-thousand-year-old body of legislation. The chapters in this thesis, therefore,

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<sup>94</sup> Delgado 1989: 2414.

<sup>95</sup> Delgado 1989: 2415-2416.

<sup>96</sup> Delgado 1989: 2440.

set out to address a set of interrelated questions: to what extent is Roman law, and particularly the *leges Iuliae*, ‘full of stories’? How can modern narrative theory help uncover and investigate these myriad stories, and how they interact and intersect with one another? To what extent, and in what manner, have cultural narratives on the origins of the Roman legal system helped shape the landscape and provided a framework for the Julian Marriage Laws? And why, despite the narratological and legal *potestas* and *auctoritas* offered by these cultural narratives, is the legislation met with such resistance? In what ways can examining Augustus’ ‘new’ hegemonic legal model, one which invented and perpetuated a set of stock character roles for Roman society to fill, reveal the profoundly unpopular and futile nature of these legislative provisions?

Indeed, the unpopularity of the legislation, and its negative reception among the Roman elite, is well documented in our extant sources. Augustan poets Propertius and Ovid, writing contemporaneously to the legislation, both demonstrate their disdain towards the new laws. Ovid, in his *Amores*, mocks the laws outright (3.4.37-40) and Propertius reveals his antipathy towards the legislation in poem 2.7.<sup>97</sup> Later writers likewise reveal stories of the negative reception to the legislation. Suetonius, in his biography of the Emperor Augustus, tells us that the Emperor was unable to make the laws effective, with a revolt from the Roman elite leading to the revisions in AD9 (*Aug.* 34). Furthermore, Cassius Dio describes how Augustus was strongly encouraged to repeal the laws (Dio Cass. 56.1). The negative reception and the antipathy shown towards Augustus’ legislation, thus, is clear. What this thesis aims to do is to examine this unpopularity within the context of the narrative features of the legislation, and explore how these features can reveal *why* Augustus’ legislation was, inevitably, met with such antagonism and opposition.

The thesis opens with a prologue that sets out to demonstrate how law, and peculiarly Roman law, is full of stories. Furthermore, it examines how Augustus, given his overt manipulation of stories of ancestral custom in order to establish his own authority, had an acute awareness of the mutually constitutive relationship between law and narrative. Using exemplary stories of the *mos maiorum* as a case study, examined through the lens of script theory from modern narrative theory, this chapter sets out to examine *how* these stories of ancestral custom and customary law were passed down through the generations – a question logically anterior to *why* they gained such significance and one which I argue has been overlooked until now. For our story of the *leges Iuliae* must start with an examination, and appreciation, of the narrative potency of these

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<sup>97</sup> Although Propertius is referring here to Augustus’ earlier abortive attempt to pass the legislation in 28BC, it is nonetheless indicative of the general attitude to such invasive laws and reflective of the hostility shown towards the later iterations of this invasive package of laws.

traditional customary and legal rules, as Augustus explicitly set out to represent his marriage legislation not only as a revival of this narrative, but an extension too. A narrative which conveyed legal custom and rules that were coessential to, and embedded within, the Roman community, and that *should* have served to set the *leges Iuliae* up for public acceptance. Thus, in order to examine the tragic story of the *leges Iuliae*, one must first understand the context within which the legislation emerged. It is for this reason that a narratological methodology offers such an innovative approach: it allows for a re-examination of how stories of the *mos maiorum* gained such significance as a set of customary laws and rules, and the legislation's place within this normative framework. For it is only by establishing the narrative dynamics from which the Augustan Marriage Legislation emerged that we might then begin to question and understand in narratological terms why this package of laws was so unpopular.

Having established this relationship between Roman law and narrative, and between the *mos maiorum* and the *leges Iuliae*, the third chapter moves onto examine the narrative credentials of the key sources I will be using throughout this thesis. Using modern theories on narrative, I analyse a series of ostensibly non-narrative sources in order to determine the degree to which they feature prototypical narrative elements and can actually be recognised as narratives in their own right. In particular, I examine the narrativity of the following as a series of micro-case studies: Augustus' *Res Gestae*, Horace's *Carmen Saeculare*, the work of Ovid and Propertius, the provisions of the legislation as outlined by the jurists, and historians such as Livy, Dionysius of Halicarnassus, Tacitus, Suetonius and Cassius Dio. And, by configuring these classic sources in this way, my analysis serves as a vehicle to demonstrate the value of using innovative narratological tools, such as those which underpin this thesis, in order to study the *leges Iuliae*. Indeed, I argue that since each of these sources can be positioned as narratively configured – as narrative statements in their own right – it also serves to reinforce my proposition that the law is full of stories. For each of these sources communicates not only a meaningful narrative on the legislation but also contributes significantly to that overarching tale of the *leges Iuliae*. And given the veritable narrative status of each of these sources, no analysis of this radical package of legislation would be complete without an understanding of the narrative role each of these sources played in shaping the story of the Augustan Marriage Legislation.

The fourth chapter offers an explication of the core principles of narrative theory, including the distinction between story and plot, the concept of *diegesis* and levels of narrative, the term 'storyworld', and why, specifically, such a term should be used to configure the myriad narratives that emerge from and inform Augustus' marriage legislation. Here, I argue that, as a narratological concept, 'storyworld' allows for a more nuanced understanding of the myriad levels of narrative

concerning, and written in response, to the Julian Marriage Laws. Unlike the one-dimensional transformative process of story into plot, of *fabula* into *sjuzet*, a narrative ‘storyworld’ reflects how these multiple levels of narrative interact and intersect in a more holistic and nuanced fashion. In order to explore the idea of a narrative world more fully, I use the modern criminal legal system as a starting point and preliminary comparative model. It is true that it is not possible to map the ancient legal system onto the modern equivalent, and any attempt to do so would be futile and misguided. Unlike the modern system, where there is an immeasurable number of sources documenting the various narratives which emerge from such proceedings, the same cannot be said for the Roman, or indeed, Augustan legal system. Yet, on this understanding that the modern system is a vastly different legal institution to what we know and understand of Roman law, I argue that nonetheless parallels and connections can be drawn between the levels of narrative operating in the modern-day criminal justice system and this ancient body of legislation. Specifically, the modern system offers a useful model for understanding and explaining how multiplicitous levels of narrative can operate, and how ultimately these levels of *diegesis* intersect in a much more intertwined and nuanced manner within the ‘storyworld’ of the *leges Iuliae*. The modern system, therefore, is a helpful starting point, but crucially only a starting point, with the ‘storyworld’ of the Augustan Marriage Legislation transcending the one-dimensional and linear nature of narratives which emerge and inform a modern criminal justice system.<sup>98</sup>

In the chapter titled ‘The Narrative of Legal Origins’, I examine one of the legal origin narratives that has helped form the Roman constitution and frame its legal system: the Twelve Tables. Specifically, I examine the relevance of this paradigmatic legal origin story for the Augustan Marriage Legislation, adapting the model used by Tait and Norris in their examination of social contract narratives.<sup>99</sup> For, despite its importance as a key origin narrative and therefore a crucial level of *diegesis* within the ‘storyworld’ of the legislation, Augustus does not engage with this narrative or appeal to the Twelve Tables for legal precedent in the same way as he does with the *mos maiorum*. However, through a comparative analysis of the narrative dynamics and characteristics of these stories, using Tait and Norris’ model, I propose that the Twelve Tables nonetheless provides the marriage legislation with a meaningful narratological *and* legal archetype.

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<sup>98</sup> See Appendices 1 and 2 for a diagrammatic explanation and comparison of the levels of narrative which operate within these two ‘storyworlds’.

<sup>99</sup> Tait and Norris 2011.

In the final chapter of this thesis, I examine in further detail the tragic end to the legislation, and how the narratological process of characterisation can also explain the resistance to the *leges Iuliae*. I set out to distil the various types of characters which emerge from the myriad sources and levels of narrative of the legislation, examining how Augustus through his legislation 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. Drawing on the work of Propp and Phelan, I identify a number of key characters, or *dramatis personae*, that emerge from the narratives of the legislation: the Ideal Woman, the Anti-Exemplum, the Paramour, the False Ideal, the Saboteur, and the Informer. Never before in Roman law had a legislator artificially created such a set of legalised, behavioural roles. Yet, as I argue, it is these narrative character roles that ultimately contributed to the widespread unpopularity of the legislation. This chapter, and indeed my thesis, culminates with an examination of one final narratological concept, that of 'possible-worlds'. Specifically, I explore how this theory can be used to interrogate the overlap between the 'real' storyworld participants and the character roles they come to imitate, and the subsequent impact this has on the treatment of these 'storyworld' participants by both ancient and modern historians. And thus, the tragic story of the *leges Iuliae* draws to a close: for it is in these fresh and original terms that the unpopularity of, and opposition towards, the *leges Iuliae* can be understood.

## Chapter 2

### The Law is Full of Stories and Stories are Full of the Law

The story of the *leges Iuliae* actually begins long before the reign of Augustus with the *mos maiorum*, ancestral Roman custom, and the deep-rooted and traditional relationship between legal discourse, custom and storytelling. Acutely aware of the potency of these traditional, customary narratives – and indeed the Roman penchant for such stories – Augustus overtly manipulated and used those stories which conveyed examples of the *mores maiorum* in order to establish his, and his legislation's, legal authority. Indeed, as outlined in Augustus' own *Res Gestae Divi Augusti* (8.5), the marriage laws (as part of a wider package of legislation) were presented not only as a revival of this narrative of ancestral custom, but as an extension too, a new chapter in a much older and profound legal narrative.<sup>100</sup> And by explicitly appealing to this tradition of the *mos maiorum*, Augustus revealed himself not only as an expert statesman, but also as an expert in (the power of) legal storytelling too.

A set of rules and models of ancestral behaviour and custom, coessential to the organisation of the community and reworked over the centuries, the *mores maiorum* were told through the medium of stories and myths. Indeed, this customary behaviour formed part of the fabric of the Roman legal system and the spectrum of constitutional power.<sup>101</sup> So entrenched in stories were the *mores maiorum* that not only was Roman law full of stories, but Roman stories were likewise full of law. For, as Bryen reminds us, such narratives were significant in providing the 'explanatory framework for who gets to make rules, why they get to make them, and what constitutes the boundaries of legitimacy [...] Narratives are not just an ingredient in our legal histories that helps frame or background their developments; they are an inextricable element of the system itself'.<sup>102</sup>

Given this interconnected relationship between the law, the *mos maiorum* and narrative, two key points arise. First is that it serves to demonstrate the axiomatic value of a narratological approach

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<sup>100</sup> See Liveley and Shaw 2020: 245 for the characterisation of ancestral custom as a 'macro-narrative' – a level of narrative which represents an important legal and constitutional precedent, and to which new laws and judgments must be related in order to give them meaning. C.f. also Cover 1983: 4-5; Brooks 2006: 61; and Olson 2014: 379.

<sup>101</sup> See Mousourakis 2007: 19.

<sup>102</sup> Bryen 2014: 352.

to the *leges Iuliae*. Narrative and the law, and peculiarly Roman law, go hand in hand with one another, and as this chapter sets out to demonstrate using the *mos maiorum* as a case study, a narratological approach to this package of legislation can, and indeed should, play an important part in any analysis of the Augustan Marriage Legislation. Second, having established the significance of this methodology, the stories of the *mores maiorum*, which were so overtly used by Augustus, provide an important starting point for exploring and understanding the narrative dynamics and context of the legislation. Scholars to date have focused on the *mos maiorum*, and more broadly Roman *exempla*, in the context of, *inter alia*, their role within rhetoric, historiography and as ethical stories.<sup>103</sup> This chapter's approach to *exempla*, the character tales which tell of the *mos maiorum* and provide positive and negative models of behaviour, is from a different angle. Instead, I will examine *exempla* and the *mos maiorum* through the lens of modern narrative theory, particularly script theory, asking *how* these stories of ancestral custom and customary law *could* be passed down through the generations and gain such significance by the reign of Augustus. I argue this question has been overlooked by current scholarship when examining the role of *exempla* and the stories of the *mores maiorum*, particularly within the context of the Augustan Marriage Legislation. For it is only through such a meta-examination of the *narrative* potency of these exemplary stories of the *mos maiorum* – reviewing not their significance but how in narratological terms that significance came to be – that we can begin to understand the context within which the legislation emerged. In particular, therefore, this chapter will consider how this customary narrative endured through generations and became available for Augustus to use in order to establish his authority and with which to align his legislative programme (including, but not limited to, the *leges Iuliae*); and secondly examine how the *princeps* attempted to manipulate this customary narrative, eliding the distinction between custom and law, in order to create a normative framework that *should* have helped establish a convincing case for his reforms. Yet ultimately, as this broader thesis argues, this normative framework, and Augustus' attempts to elide the distinction between custom and law, did not help him overcome the challenges of legislating private (sexual and moral) behaviour.

### **The (Hi)story of *Exempla* and the *Mos Maiorum***

The importance of the *mos maiorum* as part of the Roman legal system, and wider Roman culture, has long been observed. By the time of the late Republic, *mos* had developed into such an important source of constitutional law that it often competed with other sources such as new

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<sup>103</sup> C.f. Chaplin 2000; Kraus 2005; Roller 2004, 2015 and 2018; Ando 2015; and Langlands 2015 and 2018.

statutes, a point highlighted by the late Republican historian Cicero.<sup>104</sup> In 56BC, Publius Sestius, who had been tribune designate the year before, was prosecuted for *vis*, political violence, and was defended by a number of high-profile Republican figures, including Cicero (Cic. *Pro Sest*).<sup>105</sup> In his defence speech *Pro Sestio*, Cicero details what appears to be an enumeration of the possible sources of constitutional law: *ius*, the laws (*leges*) and *mos maiorum*, or ancestral custom (Cic. *Pro Sest*. 73).<sup>106</sup> Indeed, here Cicero himself is self-consciously following the *exemplum maiorum* – the example of his ancestors. His characterization of Rome’s constitution as being rooted in tradition appeals to the 2<sup>nd</sup> century BC Roman writer, Ennius, who had similarly claimed (almost two centuries earlier) that ‘Roman affairs of state rest upon ancient customs and men’ – *moribus antiquis res stat Romana virisque* (*Ann.* 156).<sup>107</sup> Modern-day scholars have likewise evinced the significance of *exempla* and the *mos maiorum*. Indeed, as Lowrie (*pace* Lintott) reminds us, ‘stories transmitting ancestral custom were as important as statute for the Roman Republican constitution’.<sup>108</sup> And, according to Roller, these exemplary stories also held an important position within Roman culture more broadly: ‘one might say that *exempla* are everywhere in Roman culture [and that] Roman exemplarity is, I suggest, a cultural phenomenon encompassing a particular set of social practices, beliefs, values and symbols’.<sup>109</sup>

The *mos maiorum*, however, as customary law was never formally codified or constituted, unlike other sources of law such as statutes. Rather, its message was communicated narratively from generation to generation, through exemplary stories. Roman *exempla*, and its stories of the *mos maiorum*, constituted a ‘national storytelling tradition’ and for the Romans, hearing these stories of their ancestral heroes was ‘an intimate and potent experience’.<sup>110</sup> In this context, therefore, stories featuring ethical and legal *exempla* offer a crucial link between any present generation of Romans and their ancestors – and therefore offer Augustus a powerful vehicle to help drive his new legislation through the senate. Narrative provided the conduit through which this set of customary rules and laws were transmitted, emphasising once again this inextricable relationship between, and the intersecting media of, narrative and law, and the value of adopting a narratological methodology for studying Augustus’ marriage legislation. Crucially, however, the concept of the *mos maiorum* within Roman law and culture was never immutable but rather

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<sup>104</sup> Straumann 2016: 48.

<sup>105</sup> The following section on the hi(story) of *exempla* and the *mos maiorum* formed the basis of a part of the co-authored paper Liveley and Shaw 2020: 250-255, and draws from material on which I was the leading author and for which my contribution was 95%.

<sup>106</sup> Straumann 2016: 48.

<sup>107</sup> See also Cicero *Rep.* 5.1 where he appeals directly to Ennius on this point.

<sup>108</sup> Lowrie 2016: 76. C.f. Lintott 1999: 26.

<sup>109</sup> Roller 2018: 3-4. See also Wallace-Hadrill 1997 and 2008 for his analysis of the *mos maiorum* within the context of Rome’s cultural revolution.

<sup>110</sup> Langlands 2018: 1.

dynamic: 'it was constantly reinterpreted to make space for new ideas and practices, according to the needs of the moment. [For] the *mos maiorum* defined the essence of what it meant to be Roman and was valuable to the Romans as a symbol of stability and continuity'.<sup>111</sup> Indeed, as Joshel argues, the past provided 'the standards by which to judge the present: the deeds of great ancestors offered models for imitation'.<sup>112</sup>

As a mutable and malleable concept, therefore, exemplary stories could also offer models of negative behaviour, as well as norms to be emulated. Indeed, so extensive was the range of *exempla* and *mos maiorum* that one could pick and choose the deeds of the great ancestors to suit one's own narrative. As Livy demonstrates nicely in the Preface to his *Ab Urbe Condita*:

The special and salutary benefit of the study of history is to behold evidence of every sort of behaviour set forth as on a splendid memorial; **from it you may select for yourself and for your country what to emulate, from it what to avoid, whether basely begun or basely concluded.**

Hoc illud est praecipue in cognitione rerum salubre ac frugiferum, omnis te exempli documenta in inlustri posita monumento intueri; **inde tibi tuaeque rei publicae quod imitere capias, inde foedum inceptu foedum exitu quod vites** (*Pr.*).<sup>113</sup>

It was these stories from history, featuring narrative *exempla*, that served to establish and preserve ancestral custom and its traditional moral codes as such.<sup>114</sup> Exemplary stories, therefore, provided a crucial link between the past and present: connecting the present generation of Romans with their ancestors and the custom of the *mos maiorum*, and the subsequent political and legal use (or abuse) of these established precedents.<sup>115</sup> For, as Lobur reminds us, this continuity between past and present was of notable importance to the Romans, and particularly for Augustus' rule: 'cultural attitudes would not tolerate a system that lacked continuity [...] and his [Augustus] regime could garner considerable *auctoritas* by committing itself to preserving that continuity'.<sup>116</sup> Thus, this 'preponderantly ancient tradition' of custom was

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<sup>111</sup> Pina Polo 2016: 85.

<sup>112</sup> Joshel 2009: 384.

<sup>113</sup> Emphasis added.

<sup>114</sup> Liveley and Shaw 220: 250-255.

<sup>115</sup> Van der Blom 2010: 15. See also Roller 2004: 7 who argues that exemplary discourse described 'an actual Roman way of confronting the past, of giving it value and purpose'.

<sup>116</sup> Lobur 2008: 171.

often used to counterpoise new developments or, in the case of Augustus, to make those new developments more palatable.<sup>117</sup>

Through the apparatus of narrative, then, traditional exemplary stories would convey the values, morals and behaviour of the *mos maiorum* from one generation to the next. This fundamental narrative structure subsequently underpinned both Roman culture and moral education.<sup>118</sup> Too often when we think of Roman moral education and *mores* in the Augustan era, we think solely of the marriage and adultery laws.<sup>119</sup> However, as Wallace-Hadrill highlights, distilling and restricting morality to the private sphere in this way is a ‘modern, not Roman, thought’.<sup>120</sup> For the Romans, *mores* encompassed public life too: politics was not conceived as an autonomous sphere, and Augustus’ so-called ‘political’ reforms were aimed at restoring *mores* too.<sup>121</sup> The *leges Iuliae*, remember, was just one small piece of a wider legislative and political programme – a programme which modern-day scholars have argued was aimed at restoring the *mores* (both public and private) of the Romans and returning to society those ancestral customs which had slipped away and been forgotten. And, as we shall see, as well as restoring those ancestral *exempla* and customs, Augustus was also in the business of supplementing them with a few of his own.<sup>122</sup>

This sense of the past, as encapsulated in *exempla* and the *mores maiorum*, pressurised the present and ‘dominated virtually every aspect of behaviour and procedure in the public and private realm: the practice of politics, religion, education, etc.’.<sup>123</sup> The use of *exempla* and stories of the *mores maiorum*, therefore, was extensive. In narrative form, an *exemplum* could refer to a wide variety of forms and content: ‘the formal use of a historical tale, in speech or writing, according to [...] rhetorical handbooks; [...] to the events narrated in the story, the account itself, or the ideal character who performs the deeds at the heart of the story’.<sup>124</sup> For Cicero, writing in his *De Inventione Rhetorica*, a handbook for orators, *exemplum* could be defined thus (1.49):

An *example* supports or weakens a case by appeal to precedence or experience, citing some person or historical event.

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<sup>117</sup> Lintott 1999: 7.

<sup>118</sup> See Langlands 2006: 27-29 for an introduction to the exemplary narrative as a source of moral guidance and education in Rome, and 78-80 for exemplary tales in ancient Rome. See also Roller 2004 and 2018.

<sup>119</sup> Wallace-Hadrill 1997: 9. See also Wallace-Hadrill 2005 and 2008.

<sup>120</sup> Wallace-Hadrill 1997: 9. See also Wallace-Hadrill 2005 and 2008.

<sup>121</sup> Wallace-Hadrill 1997: 9. See also Wallace-Hadrill 2005 and 2008.

<sup>122</sup> Wallace-Hadrill 1997: 10. See also Wallace-Hadrill 2008 on Rome’s cultural revolution, and the different ways in which the Romans used their *maiores*, the customs of their ancestors.

<sup>123</sup> Lobur 2008: 170-171.

<sup>124</sup> Langlands 2006: 79.

Exemplum est, quod rem auctoritate aut casu alicuius hominis aut negotii confirmat aut infirmat.

Most often, however, *exempla* took the form of a hero performing a particular deed which illustrated certain morals and virtues, and could be used as a rhetorical device in speeches to elucidate a line of argument or thinking.<sup>125</sup> Crucially, these stories played an important role in Roman moral and rhetorical education, and drew ‘their authority and relevance from the fact that they came from Roman history’.<sup>126</sup> As Kraus explains, *exempla* were deployed throughout Roman historiography ‘as a means of understanding, negotiating, and representing past and present alike’.<sup>127</sup> *Exempla* can therefore be understood as any story from the past that serves as ‘a guide to conduct’.<sup>128</sup> Such stories provided the tools that allowed the Romans not only to understand the past but to process and make sense of the new. These stories were a source of imitation and emulation, and young men were taught, in traditional oratory training, to have a firm grasp of exemplary stories in order to deploy them successfully in speeches.<sup>129</sup>

As Cicero demonstrates in his *De Oratore*, students ‘must know the whole past with its storehouse of examples and precedents, nor should one fail to master statutes and the civil law’, *tenenda praeterea est omnis antiquitas exemplorumque vis, neque legum ac iuris civilis scientia negligenda est* (1.18). Indeed, Cicero’s speeches from the late Republic are a rich source of references to *exempla*, with the orator frequently demonstrating how these stories could be utilised as a rhetorical device by the speaker.<sup>130</sup> And in the *De Republica*, Cicero reminds us why he continues to use exemplary stories of the ancestors and their traditions: ‘You see I do have a reason for warbling on to you about these old out-dated things. In those famous figures and times, I am noting examples of men and events for use as reference-points in the remainder of my talk’, *neque ego haec nunc sine causa tam vetera vobis et tam obsoleta decanto, sed inlustribus in personis temporibusque exempla hominum rerumque definitio, ad quae reliqua oratio dirigatur mea* (2.55). Certainly, it seems, ‘this explicit expression of the usage of ancestral *exempla* suggests that Cicero

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<sup>125</sup> Langlands 2006: 79. She goes on to argue that, although the contexts in which such stories might be retold are wide-ranging, many are doubtless lost as ‘the oral tradition must have played an important role in keeping them alive for the members of the Roman community’.

<sup>126</sup> Langlands 2006: 27. On the rhetorical, moral, and historiographical operations of Roman exemplarity, see Roller 2018.

<sup>127</sup> Kraus 2005: 186.

<sup>128</sup> Chaplin 2000: 3.

<sup>129</sup> See Chaplin 2000: 11-13 on *exempla* at Rome. C.f. also Van der Blom 2010: 12-17 for further analysis of historical *exempla* and their place within Roman culture and society.

<sup>130</sup> See Van der Blom 2010: 18 n1 for a selection of passages from Cicero’s speeches containing references to the *maiores*.

thought these exempla useful, if not as a guiding principle in life then at least as a rhetorical point, confident in the audience's trust in the utility of historical exempla'.<sup>131</sup>

Likewise, the historian Livy was also well trained in rhetoric, with Cicero in particular having influenced the later historian's historiographical techniques.<sup>132</sup> Throughout the *Ab Urbe Condita*, Livy holds up various (often older) men as voices of tradition and experience, each providing a positive example to be emulated. For example, in book 39, Livy writes effusively about Marcus Porcius Cato, a plebeian who stood for censorship in 184BC and, in Livy's mind, was the best amongst all the candidates (both patrician and plebeian). For Livy, in this man, there was such 'strength of intellect and character', *uis animi ingenique*, that it was 'obvious that he would have achieved success for himself no matter what the station to which he had been born', *huic uersatile ingenium sic pariter ad omnia fuit, ut natum ad id unum diceres, quodcumque ageret* (39.40). Such older men were often contrasted by Livy with younger men who wished to overturn said tradition, or those Romans who couldn't recognise their misuse of *exempla*, and thus turned out to be a negative models of behaviour, associated with the failure of exemplary knowledge.<sup>133</sup>

Spurius Maelius, for example in book 4.13, is characterised by Livy as a negative *exemplum*: a member of the equestrian order, Maelius had incredible wealth, and gained vast popularity and influence when he started to give free hand-outs of grain from stores he had bought with his own money. However, although Maelius attempted to do something useful, according to Livy, the means he used set 'an extremely bad precedent', *pessimo exemplo* (4.13). Indeed, Livy's story teaches the evils of this particular precedent set by Maelius, of private influence gained through grain distribution and the negative consequences it can lead to.<sup>134</sup> For Maelius was not satisfied, and aimed at something greater, something illicit, *ad altiora et non concessa tendere*, and his unscrupulous activities were uncovered by Lucius Minucius, prefect of the grain supply (4.13):

Weapons, [Minucius said], had been smuggled into Maelius' home and regular meetings had been held there, all of which pointed unequivocally to an attempt to usurp supreme power. The time had not yet been fixed, although everything else had been planned: the

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<sup>131</sup> Van der Blom 2010: 19, pace Bücher 2006: 162.

<sup>132</sup> Chaplin 2000: 13-14 acknowledges that while this influence has received 'if anything too much attention', nonetheless both Livy and Cicero's speeches provide an excellent source of comparison for ways in which speakers could use *exempla*. Chaplin also notes that from Cicero's speeches in particular, it is possible to determine just how deeply *exempla* were embedded in the education of Romans in the late Republic.

<sup>133</sup> Chaplin 2000: 78.

<sup>134</sup> Chaplin 2000: 83.

tribunes had been bribed to subvert the country's freedom, while the leaders of the mob had been assigned the parts they were to play.

tela in domum Maeli conferri, eumque contiones domi habere, ac non dubia regni consilia esse. Tempus agenda rei nondum stare: cetera iam convenisse: et tribunos mercede emptos ad prodendam libertatem et partita ducibus multitudinis ministeria esse.

Despite his attempts to evade arrest, Maelius is killed by Servilius Ahala (4.14), and Livy then 'spells out the lesson Maelius should have learned, namely that Rome does not tolerate kings'.<sup>135</sup> The historian then cites further negative *exempla* (the very negative behaviour that Maelius should not have emulated) - mentioning the Tarquins, Collatinus, Spurius Cassius, and the decemvirs - with Maelius' plot to be considered not a crime so much as a monstrosity, *non pro scelere id magis quam pro monstro habendum* (4.15). Thus, the negative *exemplum* is complete, and the audience is left with the understanding that Maelius should have known better.<sup>136</sup>

Through the various narrative *exempla* that made up his (hi)story, Livy was thus able to deposit an array of illustrative behaviours, both good and bad, and their results, to 'inform a way of life in an imperial Rome ripe for refounding'.<sup>137</sup> Indeed, both Livy and Cicero's stories lend substance to the ancestral custom of the *mos maiorum*.<sup>138</sup> And the importance of *exempla* and ancestral custom are firmly recognised by this Roman historian and orator respectively. What is clear, therefore, is that *exempla* had a place and function not only within the sphere of moral education, but they also dwelled in the spheres of Rome's historiography and the art of rhetoric. Intertwined in such a way with history, morality and narrative, exemplary stories of the *mores maiorum* characterised and reflected the Roman conceptualisation of the interrelation, and indeed conflation of, 'great men, great deeds, a great past, great moral qualities, a great moral tradition, and a great literary and rhetorical tradition'.<sup>139</sup> However, this included not only the great deeds of great men, but also the converse: negative behaviour of wicked men which was condemned and dismissed.

What this analysis of the *mos maiorum* demonstrates, therefore, is the clear nexus between narrative, exemplary stories of the *mores maiorum*, and their importance in Roman law and culture. Indeed, so intimately entwined is narrative with this important cultural and legal

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<sup>135</sup> Chaplin 2000: 83.

<sup>136</sup> For more on the story of Maelius, see Chaplin 2000: 82-84.

<sup>137</sup> Joshel 2009: 385.

<sup>138</sup> Lowrie 2016: 76. On the role of narrative in law and politics, and the relationship between stories in Latin literature and Roman law, see Lowrie 2016: 70-82.

<sup>139</sup> Langlands 2006: 79.

framework – a framework we must remember that shaped and provided context to the *leges Iuliae* – that it underlines my assertion of the apodictic value and usefulness of adopting a narratological methodology. In starting from the idea that *exempla* and the *mos maiorum* are communicated first and foremost through the mechanism of *narratives*, and should therefore be studied as narrative entities, this chapter offers a new and original approach to the very stories that contextualised Augustus’ new laws and should have enabled them to succeed. For *how* these stories of ancestral custom and customary law *could* gain significance and *could* be passed down through the generations, I argue, can be understood in terms of script theory. How was it that *exempla* and stories of the *mores maiorum* came to have such an important place within Roman culture, so much so that Augustus could attempt to manipulate them to serve his own legal and political goals? While current scholars have focused on other aspects of *exempla* and the *mos maiorum*, such as their ethical status or their role within rhetoric and historiography, this study serves to illuminate an alternative lexicon for the *mos maiorum*, reinforcing the idea that how these rules gained their significance through the means of stories within Roman culture is of central importance. And by reviewing the *mos maiorum* in this way – not merely as significant instruments of ancient historiography, rhetoric and culture, but how in narratological terms their significance came to be – we can thus re-examine Augustus’ insistence about the resemblance that existed between those stories and the *leges Iuliae*, and how the *princeps* attempted to leverage that resemblance to strengthen his own political and legislative agenda.

### **The Narrative Dynamics of the *Mos Maiorum*: Script Theory**

That the *mos maiorum* were of central importance to Roman culture, then, is clear. No less significantly, however, is the way in which the *mos maiorum* and exemplary stories gained this potency and eminence; a proposition which I argue can be understood in terms of script theory. Through the application of this modern narratological theory, I propose an alternative characterisation of these exemplary stories, allowing for the consideration of how they *could* gain such significance. In particular, I submit that *exempla* and tales of the *mores maiorum* served a function akin to Schank and Abelson’s theory of scripts.<sup>140</sup> Script theory suggests that one of the ways in which we make sense of the new, both in the real world and in stories, is ‘by regarding new data and experiences as essentially repeating and resembling old data and experiences already stored in stereotype form in our memories and in our cultural histories’.<sup>141</sup> Thus, just as we have stored scripts that enable us to comprehend new situations and stories, so too, Roman society had ‘stored’ *exempla* from the past concerning their moral values and behaviours.

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<sup>140</sup> Schank and Abelson 1977.

<sup>141</sup> Liveley and Shaw 2020: 258. See also Herman 1997 and 2002, and Sanford and Emmott 2012.

Accordingly, by adopting this approach, I seek to offer a fresh and innovative look at the narrative dynamics of the *mores maiorum* and how they came to earn their place within Roman law and culture.

Script theory's basic assertion is that 'all new experiences are understood by means of comparison to a stereotypical model, based on similar experiences and held in memory'.<sup>142</sup> In this model, new experiences and stories can be understood by drawing on and recognising old data and knowledge already stored in stereotype form, in 'scripts', in the memory. New experiences, therefore, are evaluated in terms of their conformity to, or rather deviation from, that stereotype form or 'script'.<sup>143</sup> This theory, and its main concepts of scripts, frames and schemata, has been chiefly developed by Artificial Intelligence (AI) research and workers in cognitive science.<sup>144</sup> In particular, the influential investigation of Schank and Abelson has significantly contributed to, and enriched, this narratological theory.<sup>145</sup> In their study, Schank and Abelson differentiate between 'two classes of knowledge that people bring to bear during the understanding process: general knowledge and specific knowledge'.<sup>146</sup> The former 'enables a person to understand and interpret another person's actions simply because the other person is a human being'.<sup>147</sup> The latter, specific knowledge, is used 'to interpret and participate in events we have been through many times. Specific detailed knowledge about a situation allows us to do less processing and wondering about frequently experienced events'.<sup>148</sup>

Schank and Abelson maintain that such specific knowledge exists in detail for everyone with respect to every standard situation. However, the question arose as to what form this knowledge would take and how it would be deployed. Their solution was knowledge 'scripts':

When someone decides to tell a story that references a script [a standard event sequence], he recognises that he need not (and because he would otherwise be considered rather boring, should not) mention every detail of his story. He can safely assume that his listener is familiar with the referenced script and will understand the story as long as certain crucial items are mentioned.<sup>149</sup>

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<sup>142</sup> Gavins [2005] 2008: 521.

<sup>143</sup> Gavins [2005] 2008: 521.

<sup>144</sup> Herman 2002: 85.

<sup>145</sup> Schank and Abelson 1977. See also Mandler 1984; Minsky 1975 and 1988; Schank 1990.

<sup>146</sup> Schank and Abelson 1977: 37. The following analysis draws on the work of Schank and Abelson 1977: 37-46.

<sup>147</sup> Schank and Abelson 1977: 37.

<sup>148</sup> Schank and Abelson 1977: 37.

<sup>149</sup> Schank and Abelson 1977: 38.

The classic example used by Schank and Abelson is the 'restaurant script'. Consider the following simple 'story':

John went to a restaurant. He asked the waitress for coq au vin. He paid the bill and left.

Despite the simplicity of this 'story', it is still understandable as it refers to a frequently occurring script, the so-called 'restaurant script', and the reader is able to fill in the parts of the story that were left out by implicitly or explicitly referring to this referenced script. For example, the reader can fill in what kind of restaurant John went to; assume that he looked at the menu and ordered something to drink; and gather that he ate the coq au vin before asking for the bill. All this information is brought up by the restaurant script. In fact, this information is brought up by a particular part, or 'track', of the restaurant script, namely the type of restaurant where one orders coq au vin. Given the huge variety and types of restaurants available, along with the endless options of what can actually happen in a restaurant, the restaurant script has to include a vast amount of information:

There must also be a 'fast food restaurant' track, a cafeteria track, etc. in the restaurant script, that includes the entering, ordering and paying scenes but has a different set of possibilities than the fancy restaurant.<sup>150</sup>

While it is possible to comprehend a story without using them, scripts are actually a crucial part of story understanding. In a similar vein, Augustus in his *Res Gestae divi Augusti* does not mention every detail of the story surrounding the introduction of his new laws, *legibus novis*, and the exemplary practices he claimed to restore and introduce (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.

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<sup>150</sup> Schank and Abelson 1977: 40.

Indeed, he recognises that (along with having limited space) it would be unnecessary to further expand this story: he can safely assume that his audience is familiar with his 'new laws' and his 'exemplary practices', and will understand this story as long as crucial items are mentioned. As Schank and Abelson demonstrate with the restaurant example, here in the context of the *Res Gestae*, the audience is able to fill in the parts of the story that were left out. Comprehension of the story is possible due to the referenced 'new laws' and '*exempla*' script.

It is worth considering, at this juncture, the purpose of the *Res Gestae* and its intended audience who were expected to 'read' and 'comprehend' this script.<sup>151</sup> That the *Res Gestae* was a political document is clear, and, as Cooley deftly states, 'it is not the place to look for an objective account of Augustus' career'.<sup>152</sup> Likewise, the inscription, as a concise exposition of his achievements, is also not 'the place to look for disappointments in Augustus' lifetime'.<sup>153</sup> It was created so that the *princeps*' main achievements (and expenses incurred) for Rome could be immortalised for all (at least all those who were literate) to read. Yet, despite this purpose to disseminate Augustus' achievements, the inscription itself is rather short: 'no text of so few words (some two and a half thousand) is so dense in meaning or so carefully constructed'.<sup>154</sup> Indeed, given the lack of space and the subsequent and inevitable need for brevity, Augustus' reliance on scripts familiar to his audience is judicious. The *princeps* is able to convey his message and its meaning in as few words as possible, as exemplified with the restaurant script above. Augustus' readers are then able to fill in the gaps that were left out by following cues supplied by explicit references to the script of the Emperor's 'new laws' and '*exempla*'.

Furthermore, as the *Res Gestae* was set up on bronze pillars outside Augustus' Mausoleum, we may assume that the primary audience for this brief narrative was intended to be the people of Rome.<sup>155</sup> Or, more specifically, that is, the people of Rome who could read. This would have included, above all, Rome's senators and the equestrian order: the very people who were directly impacted by Augustus' legislation and who, according to later sources, displayed such hostility and antipathy towards that legislation. It seems, however, that Augustus himself took a different view. The very inclusion of his 'new laws', including the *leges Iuliae*, in an inscription that was

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<sup>151</sup> For further details on the *Res Gestae* and its contents, see chapter 3. There is an immeasurable amount of scholarship on the *Res Gestae*, as it has attracted considerable attention from scholars. Titles include, but are not limited to, Brunt and Moore 1967; Gordon 1968; Ramage 1987 and 1988; Zanker 1988; Bowersock 1990; Damon 1995; Bowman et al. 1996; Elsner 1996; Davis 1999; Davies 2000; Ridley 2003; Beacham 2005; Eder 2005; Eck 2007; Cooley 2009; and Levick 2010.

<sup>152</sup> Cooley 2009: 22.

<sup>153</sup> Cooley 2009: 22.

<sup>154</sup> Ridley 2003: ix.

<sup>155</sup> Cooley 2009: 39.

created to memorialise Augustus' achievements would indicate that the Emperor certainly viewed his laws positively. It seems that Augustus is (at the very least) steadfastly ignoring, the elite classes' discontent with his legislation. In his own narrative, the laws are worthy of inclusion in this important document of his life and political career.

For Schank and Abelson, therefore, a script is a 'predetermined, stereotype sequence of actions that defines a well-known situation'.<sup>156</sup> Similarly, for AI specialist Mercadal 'a script is a description of how a sequence of events is expected to unfold'.<sup>157</sup> Mercadal elucidates the concept of 'script' further, maintaining that it is similar to 'a frame in that it [a script] represents a set of expectations [...] Frames differ from scripts in that frames are used to represent a point in time. Scripts represent a sequence of events that take place in a time sequence'.<sup>158</sup> Thus, the mind can draw upon an extensive amount of knowledge, or 'experiential repertoire', of both static (frame-like) and dynamic (script-like) types in order to understand new experiences and data: 'stored in the memory, previous experiences form structured repertoires of expectations about current and emergent experiences'.<sup>159</sup> As Herman explains, static repertoires allow someone to distinguish inanimate objects, such as a chair from a table, or a cat from a breadbox; dynamic repertoires, on the other hand, enable someone 'to know how events unfold during common occasions such as birthday parties and to avoid mistaking birthday parties for barroom brawls or visits to the barber'.<sup>160</sup>

A person, therefore, is able to understand a given situation as they have been in that situation before.<sup>161</sup> Schank and Abelson describe understanding as a knowledge-based process, where people 'match what they see and hear to pre-stored groupings of actions that they have already experienced. New information is understood in terms of old information'.<sup>162</sup> The same can be said for comprehension of a narrative. It is through access to scripts that readers are able to understand a text or a story: 'in the absence of stereotypes stored as scripts, readers could not draw textual inferences of the most basic sort'.<sup>163</sup> Narratives, therefore, essentially repeat and resemble old stories, but with variation. As Tait and Norris explain:

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<sup>156</sup> Schank and Abelson 1977: 41.

<sup>157</sup> Mercadal 1990: 255.

<sup>158</sup> Mercadal 1990: 255.

<sup>159</sup> Herman 2002: 89.

<sup>160</sup> Herman 2002: 89.

<sup>161</sup> Schank and Abelson 1977: 67.

<sup>162</sup> Schank and Abelson 1977: 67.

<sup>163</sup> Herman 2002: 90.

Readers understand one narrative because they have read other narratives that share analogous storylines, character development, and plot creation. Readers recognise, process, and ultimately understand narratives as they align with and fit into the grooves created by other, similar narratives, and as they reflect common narrative elements that are not just formal but also substantive.<sup>164</sup>

Nowhere is this better illustrated than in Livy's *Ab Urbe Condita*, where throughout his narrative, the historian recounts well-known and oft-cited old exemplary stories of the *mores maiorum*, but in his own style and to suit his own literary aims. His readers, nonetheless, are able to recognise and comprehend these stories, despite the variations and differences in Livy's work, due to the common narrative elements, or script. In book 1, we encounter the story of Lucretia, a renowned female exemplary protagonist in Roman tradition. This foundational story was profoundly embedded in Roman consciousness, with the figure of Lucretia providing a paradigm of exemplary behaviour and values.<sup>165</sup> Indeed, while there are countless references to the tale throughout Roman literature, Livy's account of what happened to her is 'the most detailed, the most expansive, the most vivid and dramatic'.<sup>166</sup> Set in 509BC, the story unfolds during the reign of Sextus Tarquinius, when, as a guest in the house of Collatinus, the king stole into Lucretia's room at night (1.58.1-4):

When the household was safely asleep, in the heat of passion he came to the sleeping Lucretia sword in hand and, pressing his left hand on her breast, whispered, 'Say no word Lucretia. I am Sextus Tarquin. There is a sword in my hand. You die if you make a sound.' She woke in fright [...] When he saw she was resolute and would not yield even out of fear for her life, he threatened to disgrace her even in death by placing the naked body of a murdered slave next to her corpse, evidence that she had been killed in the act of committing adultery of the basest sort.

postquam satis tuta circa sopitique omnes videbantur, stricto gladio ad dormientem Lucretiam venit sinistraque manu mulieris pectore oppresso "Tace, Lucretia" inquit; "Sex. Tarquinius sum; ferrum in manu est; moriere, si emiseris vocem." Cum pavida ex somno [...] Ubi obstinatum videbat et ne mortis quidem metu inclinari, addit ad metum dedecus:

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<sup>164</sup> Tait and Norris 2011: 20.

<sup>165</sup> For a summary of the significance of the story of Lucretia, see Langlands 2006: 80-84. For further scholarship, see Small 1970; Donaldson 1982; Phillipides 1983; Jed 1989; Joplin 1990; Calhoon 1997; Chaplin 2000; and Joshel 2009.

<sup>166</sup> Langlands 2006: 84.

cum mortua iugulatum servum nudum positurum ait, ut in sordido adulterio necata dicatur.

With this threat hanging over her, Lucretia submits to Tarquin's will: the king rapes her and 'vanquished her resolute chastity', *vicisset obstinatam pudicitiam* (1.58.4). Humiliated and stricken by these events, Lucretia pleads with her husband and father that Tarquin would not go unpunished (1.58.7). Yet, despite their pledges, and in a striking anticipation of the *leges Iuliae* where both parties were to be punished for the crime of adultery, Lucretia takes a knife and commits suicide (1.58.10-11).

A second exemplary story, which Livy repeats with variation, is the story of Verginia.<sup>167</sup> With a conspicuous resemblance to the story of Lucretia in book 1, in his third book Livy provides an account of the overthrow of the *decemviri* which took place shortly after the codification of the Twelve Tables in 450/449BC (3.44):

A second outrage took place in the city, originating in sexual passion and ending as ignobly as that which drove the Tarquins from the city and their throne, when Lucretia was raped and died: the same fate befell the decemvirs as the kings and the same cause precipitated their fall from power.

Sequitur aliud in urbe nefas, ab libidine ortum, haud minus foedo eventu quam quod per stuprum caedemque Lucretiae urbe regnoque Tarquinius expulerat, ut non finis solum idem decemviris qui regibus sed causa etiam eadem imperii amittendi esset.

Significantly, Livy underscores the exemplary quality of his version of this story by imbuing not only Verginia, but her family too with virtue. Her father, Lucius Verginius, a high-ranking army officer, was a 'man of exemplary character at home and in the field', *vir exempli recti domi militiaeque* (3.44). These virtues, Livy claims, also extended to his wife (*uxor*) – that is, Verginia's mother – who was educating their children (*liberi*) to hold the same high principles (3.44).

The villain of this story is Appius Claudius, a chief *decemvir*, who lusted for and desired a plebeian girl named Verginia, and although Verginia was betrothed to another man, Lucius Icilius, a former tribune, this did not deter Appius Claudius. At first, his gestures were benign, consisting of presents and promises, but when her virtue couldn't be overcome, he resorted to increasingly

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<sup>167</sup> For further scholarship on the story of Verginia, see Miles 1995; Feldherr 1998; Chaplin 2000; Joshel 2009 and literature there cited.

cruel and overbearing tactics (3.44). As the story unfolds, Verginia's free status is called into question when a minister to Appius Claudius (at the bidding of Appius) claims she was a slave born from one of his slave women, but had been stolen and taken off to Verginius' house (3.44). In Verginius' absence, and until he could be recalled from his military duty, Appius determined that the girl should remain with her master (3.45). After Verginius had secured his leave, and returned to the city, tensions mount between his supporters and Appius Claudius (3.47). A tribunal is held to determine Verginia's status, with the young girl, left standing there 'alone, a defenceless victim of this outrage', *desertaque praeda iniuriae puella stabat* (3.48). Her fate is sealed in the following lines when Verginius decides to kill his daughter rather than allow her chastity be destroyed (3.48):

When permission was granted, he took the girl and her nurse aside next to the shops near the temple of Venus Cloacina, now known as the New Shops, and, snatching a knife from a butcher's stall and saying, 'I am asserting your freedom in the only way I know how, my daughter', stabbed her to the heart. As he did so, he looked back at the tribunal and cried, 'With this blood, Appius, I curse you and your life'.

Data venia seducit filiam ac nutricem prope Cloacinae ad tabernas, quibus nunc Novis est nomen, atque ibi ab lanio cultro arrepto, 'hoc te uno quo possum' ait, 'modo, filia, in libertatem vindico.' Pectus deinde puellae transfigit, respectansque ad tribunal 'te' inquit, 'Appi, tuumque caput sanguine hoc consecro.'

Anticipating the reader's knowledge of both of these exemplary stories, Livy signals his use of the *exempla* 'script' through the mention of key words: *sordido adulterio* (1.58.4); *pudicitiam* (1.58.4); *exemplo* (1.58.10); *stuprum* (3.44); *vir exempli* (3.44); *pudicitiae* (3.48). Indeed, Livy's references to this script appear to represent his mark as an expert in storytelling. For Livy is aware of the narrative potency of this familiar script, and his narrative draws on, and assumes, this specific knowledge of the reader. It is through repeating and resembling these old stories – using familiar storylines, characters and plots – with his own variation that Livy's readers are able to recognise and understand his account of the History of Rome.

These scripts subsequently cue our expectations about how different characters are likely to behave in different situations, about what actions and events are probable and improbable, about what behaviours conform to normative patterns, about which plots are accordingly plausible or

otherwise.<sup>168</sup> However, 'it is not that stories are recognisable only if and insofar as they tell me what I already know; rather, stories stand in a certain relation to what I know, focusing attention on the unusual and the remarkable against a backdrop made up of highly structured patterns of belief and expectation'.<sup>169</sup> Telling remarkable, or indeed contentious, stories against this backdrop of belief and expectation, stored as scripts, allows the reader to reconcile, and even accept, this new information much more easily.

Thus, Roman *exempla* achieved their reputation, I argue, as they provided the 'experiential repertoires' – or as described by Barthes the 'patrimonial hoard of human experiences' – that allowed the Romans to understand and make sense of the new.<sup>170</sup> For these exemplary stories of the *mores maiorum*, which drew on a script familiar to all Romans, gave shape to 'both abstract moral values and qualities themselves, and also moral issues concerning them'.<sup>171</sup> It is this reason why these stories were passed from generation to generation, and gained such significance for Augustus, his legislation and for Roman society as a whole. Through the repetition of these familiar and meaningful stories and scripts stored in culture, and which were a part of Roman history and a conscious agenda to shape society, *exempla* and the *mos maiorum* laid the groundwork for understanding any innovation or ostensibly 'new' behaviours in society. Script theory, therefore, offers a new way of viewing how this set of rules, coessential to the operation and organisation of the community, were transmitted throughout Roman history. Given the narrative potency of these myths and stories, and the significance they held in and for Roman law and culture, Augustus' insistent and consistent appeals to *exempla* and the *mos maiorum* were arguably inevitable. What better legal and ethical tradition, embedded in narrative, for Augustus to reference in order to strengthen his, and his legislation's, authority. Using this context of *exempla* and the *mos maiorum*, Augustus thus attempted to deploy this familiar script in a wide variety of situations in order to serve his agenda. For in appealing to, and repeating, the exemplary stories of the *mores maiorum*, Augustus demonstrated his skill not only as an expert in storytelling, but also his awareness of the political and (particularly for our purposes) legal power which could be leveraged from these narratives.

### **Augustus: the *leges Iuliae* and the *Mos Maiorum***

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<sup>168</sup> Liveley and Shaw 2020: 258.

<sup>169</sup> Herman 2002: 90.

<sup>170</sup> For the formulation 'experiential repertoire', see Herman 1997: 1047 and 2002: 89. C.f. Barthes 1974: 204.

<sup>171</sup> Langlands 2006: 27.

In this respect, script theory presents a different and original lexicon for analysing the narrative dynamics of the *mores maiorum*, and for reviewing not just their significance but how in narratological terms that significance came to be. For it is clear that these narratives came to have such an important place in Roman law, politics, culture and society. Building upon this analysis, I now propose to examine the means by which Augustus attempted to manipulate this customary narrative, submitting that he did so in order to create a master narrative that would configure his legislation for approval, or at the very least acceptance, by the Roman elite. Augustus' references and appeals to the legal and ethical tradition of the *mos maiorum*, as told through stories and myths, are numerous and extensive. Indeed, by self-consciously attempting to draw attention to this familiar script, and connecting his legislation with the normative narrative of the *mos maiorum*, Augustus astutely elided the distinction between custom and law. The most pronounced example of this appears in the *Res Gestae*, where Augustus repeatedly and assuredly reinforces the link between his laws and ancestral custom (8.5).

Here, as Kraus encapsulates, Augustus consciously configures himself as 'a convergence of exemplary times, a conduit of Republican *exempla* and the creator of new ones for the imperial future'.<sup>172</sup> Modern scholars have proposed different explanations for why Augustus insistently and consistently represented his legislation and his political power as relating to the customs of the ancestors. For Chaplin, the politician drew on these precedents 'to solidify his constitutional innovations'.<sup>173</sup> According to Lobur, 'Augustus culled *exempla* from history to use as a tool of policy and persuasion'.<sup>174</sup> Indeed, Lobur finds evidence in Suetonius (*Aug* 89.2) to support the idea that Augustus sought explicitly to align his own behaviour and that of his household with that of famous role-models from Rome's history: for, as Lobur puts it, 'the *auctoritas* of the *princeps* [...] not only required a command of the *exempla* of Roman history; it also required making an *exemplum* of himself and the imperial *domus*'.<sup>175</sup> Levick also draws on the interconnection between *exempla* and Augustus' authority. She argues that Augustus was setting a new standard for the future, winning authority for his activities, and manipulating Roman conventions old and new so that 'his view of history and his own achievements was to be accepted as a model for generations of Romans to come'.<sup>176</sup> Similarly, Wallace-Hadrill argues that Augustus' restoration of *mores* was the basis of his restructuring of authority in society, and the 'attribution to the imperial court of the role of moral exemplar is a definition of its power'.<sup>177</sup>

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<sup>172</sup> Kraus 2005: 194-195.

<sup>173</sup> Chaplin 2000: 202.

<sup>174</sup> Lobur 2008: 173.

<sup>175</sup> Lobur 2008: 173.

<sup>176</sup> Levick 2010: 219.

<sup>177</sup> Wallace-Hadrill 1997: 12.

Wallace-Hadrill elaborates his argument in a later work (based on his 1997 article), making the connection between Augustus' authority and the ancestral traditions of the *maiores*:

He [Augustus] is recovering the lost traditions of the *maiores* which others had let slip, and allowing the Romans to be themselves again after their traumatic moment of identity crisis. In demolishing and substituting the authority of the *nobiles*, he can draw on the authority of the dominant voices of a century of debate about what the Roman way should be. He draws his own authority from Cicero and Cato, and feeds it back into the system by giving his own authority to their successors. It is the perfect revolution, which in changing everything changes also the perception of what is normal and traditional, and so erases its own revolutionary status.<sup>178</sup>

As we have already seen in the *Res Gestae*, Augustus directs our attention explicitly to the connection between his new laws, *legibus novis*, and ancestral practices, *exempla maiorum* (8.5). In this passage, Augustus frames his new legislation (which included, amongst others, the marriage laws) as reviving ancestral practices which were dying out. Certainly, the reader is encouraged to interpret Augustus' new laws as if they are drawn from the old ways of custom.<sup>179</sup> Indeed, Augustus' representation of the laws as aligned with, and a return to, the traditional *mos maiorum* is nicely captured by this passage in the *Res Gestae* (8.5). 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 makes Augustus' actions so novel. Furthermore, it is through these unconventional legislative means that Augustus is able to claim that he has created new exemplary practices, which were to be handed down to later generations for them to imitate (8.5). No longer confident in the efficacy of custom, Augustus instead turns to legislative means in order to achieve his goals. However, self-conscious in his role as both legislator and story-teller, Augustus understands the value of encouraging the reader to see Augustus himself and his laws as restoring the old, as well as creating something new. Augustus is modifying, recasting and indeed adding to the familiar script of the *exempla maiorum*, ultimately eliding that distinct between ancient custom and his new laws. The *princeps* is responding to the cultural zeitgeist of the *mos maiorum*, and by using this existing framework as provided by the script of ancestral custom, Augustus can attempt to plot his legislative programme not only as principled but as 'providing continuity through change'.<sup>180</sup> The new laws, therefore, can be characterised as the

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<sup>178</sup> Wallace-Hadrill 2008: 258.

<sup>179</sup> Liveley and Shaw 2020: 252.

<sup>180</sup> Liveley and Shaw 2020: 260.

next chapter in an already familiar story (rather than a brand new story on their own) with Augustus using the recognisable script of the traditional *mos maiorum* in order to try to legitimise the narrative of his controversial *leges Iuliae* and persuade the Roman people of their validity.

In fact, Augustus' self-conscious awareness of his role as storyteller in creating the next chapter, and his manipulation of exemplary behaviour to serve that purpose, is well attested in the work of Suetonius.<sup>181</sup> Two stories are of particular note. In the first, Suetonius demonstrates the importance of the *exempla maiorum* to the *princeps*, and introduces his audience to the fact that Augustus used these moral tales to serve both his private and public purposes. For, when describing Augustus' education, Suetonius recalls how his chief interest in both Greek and Latin literature was the discovery of 'moral precepts, with suitable anecdotes attached, capable of public or private application', *quam praecepta et exempla publice vel privatim salubria, eaque ad verbum excerpta* (Suet. *Aug.* 89). Indeed, as Suetonius continues, Augustus even read whole volumes to the Senate, including the work of Quintus Metellus' *On the Need for Large Families* (*Aug.* 89). In this way, Augustus could seek to persuade them he was not the first to consider such recommendations, and that 'these matters were not first noticed by him, but had already been of concern to their ancestors', *rem non a se primo animadversam, sed antiquis iam tunc curae fuisse* (*Aug.* 89). This passage from Suetonius nicely demonstrates Augustus' use of the ancestors and their exemplary ideas and behaviour to persuade the senate that his legislation was a continuation of old ideas: the next chapter in an already established and familiar script inherited from the ancestors.

In the second story, Suetonius highlights once again the importance of exemplary behaviour to Augustus, its significance for his reinforcing his legislative programme, and also the challenges that legislators face when dealing with morals and private behaviour. In this anecdote, we learn of the strong public opposition against the *leges Iuliae* introduced in 18BC, with the equestrian order demanding its total abolition. In trying to persuade the equestrian order to accept his laws, Augustus models the very behaviours he wants his citizens to copy and which are the focus of his marriage laws. As Suetonius tells us (*Aug.* 34):

The existing laws that Augustus revised and the ones that he enacted dealt, among other matters, with extravagance, adultery and unchastity, bribery, and the encouragement of marriage in the senatorial and equestrian orders. His marriage law being more rigorously framed than the others, he found himself unable to make it effective because of an open

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<sup>181</sup> Suet. *Aug.*

revolt against several of its clauses. He was therefore 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. Even this did not satisfy the equites, who demonstrated against the law at a public entertainment, demanding its repeal; whereupon Augustus sent for the children of Germanicus and publicly displayed them, some sitting on his own knee, the rest on their father's – and made it quite clear by his affectionate looks and gestures that it would not be at all a bad thing if the *eques* **imitated that young man's example** or suffer serious consequences.

Leges retractavit et quasdam ex integro sanxit, ut sumptuariam et de adulteriis et de pudicitia, de ambitu, de maritandis ordinibus. 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. Sic quoque abolitionem eius publico spectaculo pertinaciter postulante equite, accitos Germanici liberos receptosque partim ad se partim in patris gremium ostentavit, manu vultuque significans ne gravarentur **imitari iuvenis exemplum**.<sup>182</sup>

What is remarkable about this tale is the staged performance of exemplarity, with Augustus exploiting his family in order to publicly defend and promote his *leges Iuliae*. For Suetonius' story, once again, signals Augustus' self-conscious awareness of his role as storyteller: adding to a pre-existing script which extols the virtue of exemplary behaviour. And once again, in this story, we see the resemblance that Augustus insists exists between his legislation and the *mos maiorum*, and how he attempts to deploy this narrative this in order to mitigate and quell opposition to his laws. Stories and myths of the *mores maiorum*, therefore, became inexorably intertwined with the Julian laws, reminding us once again of that mutually constitutive relationship between law and narrative. This relationship sets the tone and provides context for the *leges Iuliae*, and it is a relationship that Augustus attempted to leverage in order to create a master narrative that would strengthen his legislation's power and establish a convincing case for his reforms.<sup>183</sup>

In taking narrative as my basic principle to apply to the *leges Iuliae* and, subsequently, examining the narrative dynamics, context and normative framework supplied by the *mos maiorum*, it underscores my point that Roman law was full of stories and that Roman stories were likewise full of law, and that a narratological approach to these specific marriage laws is both pertinent

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<sup>182</sup> Emphasis added.

<sup>183</sup> See Appendix 2.

and arguably overdue. It allows us to re-frame Augustus' insistent and consistent appeals to *exempla* and ancestral custom, and his subsequent elision of the distinction between ancient custom and his new laws in narratological terms: understanding them as attempts to add to and shape a master narrative that should have advanced, and allowed for, the acceptance of his legislation. Yet, despite this, hostility to the legislation remained and ultimately, as this thesis will illustrate, this master narrative of the Julian marriage laws as a continuation of the script of the *mos maiorum* did not help the *princeps* to overcome the challenges of legislating private matters such as marriage and adultery.

### **Chapter 3**

#### **The Narrative Credentials of the Ancient Sources**

If the law is full of stories, and Roman law peculiarly so, then it is crucial to examine the source(s) of all these various stories and establish their narrative credentials. For the narrativity of the ancient sources on the Augustan Marriage Legislation is an important preliminary consideration for any narratological analysis of this package of legislation. Thus, in this chapter, I will provide a methodological introduction to some of the key sources I will be using throughout this thesis, including Augustus' *Res Gestae*, Horace's *Carmen Saeculare*, the work of Ovid and Propertius, the provisions of the legislation as outlined by the jurists, and historians such as Livy, Dionysius of Halicarnassus, Tacitus, Suetonius and Cassius Dio. In particular, I will consider these as micro-case studies, examining the degree to which they feature prototypical narrative elements and can be recognised as narratives in their own right.

The purpose of analysing these sources in this way is two-fold: first, it will highlight the value and relevance of using such an innovative methodology, one involving narratological tools, to study the *leges Iuliae*. Even sources which may be regarded as ostensibly non-narrative nonetheless feature prototypical narrative elements that allow them to be configured, and subsequently analysed as, narrative statements in their own right. Second, by treating these sources as narratively configured, and positioning them as such in my thesis, it also serves to reinforce my proposition that the law is full of stories. Each of these sources not only communicate a meaningful narrative on the legislation, but also contribute to the wider, overarching narrative of the Augustan Marriage Legislation. By examining their narrativity, therefore, and positioning these sources as *narratively* configured, we might them be able to better understand them as 'witnesses' contributing to the wider story of the legislation. For no narratological analysis of this package of legislation would be complete without first understanding the narrative role each of the key sources played in shaping the story of the *leges Iuliae*.

The concept of 'narrative', along with many narratological theories, has its roots in classical antiquity, especially in the works of Plato and Aristotle.<sup>184</sup> Indeed, both Plato and Aristotle provide major discussions on narrative, setting the tone for later writers and subsequent

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<sup>184</sup> For an overview of ancient theories on narrative, see De Jong [2005] 2008: 19-22.

reflections on the ‘functions of storytelling’, narrative and narrativity.<sup>185</sup> It is reasonable to consider that there would have been an awareness on the part of the ‘witnesses’ to the legislation, both in the Augustan period and beyond, of these ancient definitions of narrative and narrativity as proffered by Plato and Aristotle.<sup>186</sup> For Plato, a ‘proto-narratological pioneer’ according to Liveley, his discussion on narrative and storytelling comes largely from book 3 of the *Republic* (3.392c-398b).<sup>187</sup> Here, the character Socrates observes that storytellers employ: ‘either simple narration (*haplēi diēgēsei*), or narration through imitation (*dia mimēseōs*), or a mix of the two (*di’ amphoterōn*)’.<sup>188</sup>

Plato conceives *diegesis*, the telling of a story, as not a ‘type or mode of narration’, but rather as narrative discourse more broadly.<sup>189</sup> The tripartite division thus distinguishes between plain or simple forms of narrative; mimetic or ‘through imitation’; and a third, hybrid form which blends the two.<sup>190</sup> This ancient concept of *diegesis* and *mimesis*, as conveyed by Plato, has been used in modern observations and readings on narrative, and these diegetic levels will play a crucial role in my subsequent analysis of ‘storyworlds’ in chapter four. As Abbott outlines in *The Cambridge Introduction to Narrative*: ‘according to Plato, *mimesis* is one of the two major ways to convey a narrative, the other being *diegesis* or the representation of an action by telling’.<sup>191</sup> Crucially however, as Liveley reminds us, while book 3 of the *Republic*, written c.375BC (and likewise Plato’s earlier work, the *Ion*, written c.390BC), demonstrates ‘proto-narratological concerns’, Plato provides no systematic theory of narrative *per se* nor is there such a thing as a ‘Platonic’ theory of narrative.<sup>192</sup> Rather,

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<sup>185</sup> De Jong [2005] 2008: 19.

<sup>186</sup> Liveley 2019: 97 reminds us, however, to be cautious about making direct connections between the narrative theories of Aristotle and later theorists in antiquity. She goes on to argue that we should especially resist the assumption that ancient narrative theory after Aristotle necessarily responds to his *Poetics*. On Aristotle’s influence and reception in antiquity and beyond, see especially Halliwell [1986] 1998: 286-323; Richardson 1980; Brink 1963: 79-119; and Poulheria 1995 and 1997.

<sup>187</sup> Liveley 2019: 24.

<sup>188</sup> *Republic* 3.392d. C.f. Liveley 2019: 24.

<sup>189</sup> Liveley 2019: 30.

<sup>190</sup> Liveley 2019: 31.

<sup>191</sup> Abbott [2002] 2008: 237. See Liveley 2019:25 who argues that this is a fairly representative (mis)reading of Socrates’ observation and there are in fact numerous similar readings where the *Republic*’s ideas about *mimesis* and *diegesis* are mapped on to modern narratological models of ‘showing’ and ‘telling’. C.f. Chatman 1978: 312; Fludernik 2009: 64; Genette 1980: 164 and 1988: 17-18; and Kirby 1991: 118. However, this neat diametric distinction between the two narrative modes does not sit well with Liveley 2019, who argues that they are nowhere to be found in Plato’s writings. C.f. Liveley 2019: 25 and De Jong [2005] 2008: 19, ‘it has become customary in narratological scholarship to equate Lubbock’s famous opposition of ‘showing vs. telling’ with Plato’s *mimesis* vs. *diegesis*. This is incorrect on two counts: showing can encompass more than the use of speech whereas *diegesis* need not be a form of telling’.

<sup>192</sup> Liveley 2019: 26.

We should be wary [...] of assigning any theory of narrative voiced in the dramatic dialogue that is the *Republic* directly to Plato himself. We will not find a 'Platonic' theory of narrative either in Plato's *Ion* or *Republic*. We will not find an uncomplicated 'Platonic' relationship between *diegesis* and *mimesis* there either. Taken as an embryonic phase in the history of narrative theory, Plato's 'Socratic dialogues' offer something of a false start – an evolutionary prequel, perhaps, rather than an introduction proper to narratology's story.<sup>193</sup>

Another key participant in this 'embryonic phase' of the history of narrative theory is Aristotle, and his discussion of narrative found in the *Poetics*. Indeed, Aristotle is often seen as one of the founding fathers of modern narratology, with his *Poetics* 'one of the first and still most influential works of systematic literary theory'.<sup>194</sup> Although the *Poetics* covers a wide range of issues, 'it is most centrally concerned with the nature and structure of tragic plots'.<sup>195</sup> Aristotle's recognition of the primacy of plot as the organising principle that configures the stuff of story – a recognition which later generations of narratologists would identify as *fabula* and *sjuzet*, *discours* and *histoire*, story and plot – is the 'key that opens up a text for narratological analysis'.<sup>196</sup> As Meister elucidates, Aristotle's *Poetics* presented a:

... criterion that has remained fundamental for the understanding of narrative: the distinction between the totality of events taking place in a depicted world and the *de facto* narrated plot or *muthos*. He pointed out that the latter is always a construct presenting a subset of events, chosen and arranged according to aesthetic considerations.<sup>197</sup>

It would be fair to say, therefore, that both Plato and Aristotle, in each of their own respective ways, have played an influential role in subsequent critical theories of narrative. Even today, contemporary western narrative theory is still responding to their suppositions, first formulated

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<sup>193</sup> Liveley 2019: 40.

<sup>194</sup> Puckett 2016: 24. See also Liveley 2019: 43.

<sup>195</sup> Puckett 2016: 24. Chatman 1978:111; Herman 2002: 122 and 2007: 13; Jannidis 2014: 35-36; and Rimmon-Kenan [1983] 2002: 34 all see Propp's model of folktale character functions and Greimas' actants resembling Aristotle's theory of character. For further analysis of character, narrative theory and the *leges Iuliae*, see chapter 6.

<sup>196</sup> Liveley 2019: 44. See also Brooks [1984] 1992: 4-5, and Chatman 1978: 18-21 who similarly sees Aristotle as setting a 'precedent' for later narratologists to follow. For further analysis on the distinction between story and plot, and its role as a key narratological principle, along with the configuration of the *leges Iuliae* as a 'storyworld', see chapter 4.

<sup>197</sup> Meister 2014: 627. See also Lowe 2000 on Aristotle's contribution to 'the invention of western narrative'.

over two and a half millennia ago.<sup>198</sup> Indeed, this distinction between story and plot, *fabula and sjuzet, discours and histoire* – one of the central ideas in modern narrative theory – is one to which I will return in the next chapter. For now, in order to examine the narrative credentials of the ‘witnesses’ to the Augustan Marriage Legislation, and the extent to which these texts can be viewed as narratively configured statements, I will analyse the contemporary understanding of ‘narrative’ and ‘narrativity’ – two concepts which are very much interconnected – not in terms of their static component parts but instead focusing on the more kinetic dimensions and scalar properties.

To begin with, there is a multiplicity of definitions regarding both ‘narrative’ and ‘narrativity’, with a degree of debate regarding their definitions.<sup>199</sup> For ‘narrative’, the key starting point in any definition is the representation of one or more real or fictive events in a time sequence, meaningfully connected, with chronological and causal arrangement.<sup>200</sup> Thus, an object is a narrative if it consists of the representation of ‘at least two asynchronous events that do not presuppose or imply each other’.<sup>201</sup> This particular definition, as outlined by Prince, allows for a distinction ‘between narratives and non-narratives, (and, more specifically, between narratives and the mere representation of an event or activity, the mere description of a process or state of affairs)’.<sup>202</sup> Discussions on ‘narrativity’, as Abbott highlights, can quickly become a ‘tangled web’.<sup>203</sup> However, most would accept the following two propositions about the premise of this term: that it is the set of qualities marking narrative and that it is a matter of degree.<sup>204</sup> Thus, ‘narrativity’ pertains instead to a quality rather than an entity, designating a set of traits, with a text subsequently:

(Qualifiable as) narrative if it exhibits (some of) the traits associated with narratives [...]  
Some objects are narratives; some are quasi-narratives; and some are not narratives.

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<sup>198</sup> For further discussion of ancient theories of narrative, including both Plato and Aristotle, see Liveley 2019.

<sup>199</sup> As Ryan 2007:23 observes, ‘at first sight, nothing seems easier to define than narrative’.

<sup>200</sup> For further analysis on the definitions of narrative, see Genette 1982; Prince 1982 and 2008; Rimmon-Kenan [1983] 2002; Bal [1985] 2009; Onega and Landa 1996; Morley 1999; Abbott [2002] 2008; Jannidis 2003; and Puckett 2016.

<sup>201</sup> Prince 2008: 19.

<sup>202</sup> Prince 2008: 19.

<sup>203</sup> Abbott [2002] 2008: 25.

<sup>204</sup> Abbott [2002] 2008: 25, and also 238 where he defines the term as ‘the degree to which a text generates the impression that it is a narrative’. C.f. Keen 2003: 121; Prince [1987] 2003: 65, and [2005] 2008: 387. For an overview of the debates on narrative, see Abbott 2014. For further scholarship on the concept of ‘degree of narrativity’, considering it in terms of ‘stronger’ or ‘weaker’ narrativity, see Sternberg 1992 and 2001.

Some narratives are more narrative than others; some non-narratives are more narrative than others; and some are even more narrative than narratives.<sup>205</sup>

In a similar vein, Simon-Shoshan argues that ‘all texts exist along a continuum of greater or lesser narrativity depending on the number and prominence of the narrative attributes they contain’, and when we refer to a text as a ‘narrative’, we mean that it contains a ‘certain critical mass of narrativity’.<sup>206</sup> This premise of ‘narrativity’, which takes into consideration a set of qualities or attributes as a matter of degree, allows for a more dynamic and scalar definition of what makes a narrative. Rather than understanding ‘narrativity’ as a binary concept or as a complete list of particular attributes which all narratives must realise, it permits different degrees of narrativity instead. For a definition that presupposes narrativity as a ‘strictly binary feature’, namely a property that a text either has or does not have, is both unhelpful and limiting.<sup>207</sup> This has led certain scholars, most notably Ryan, to define a narrative and its narrativity according to a ‘fuzzy set’ of conditions instead: ‘why couldn’t narrativity be a scalar property rather than a strictly binary one, and narrative a fuzzy set allowing different degrees of membership but centred around prototypical cases that everybody recognises as narrative?’<sup>208</sup> For, as we shall see, when it comes to the narrativity of ancient texts, there is not a neat or strict list of binary features and attributes which apply to each of the texts. Their ‘narrativity’, and subsequent configuration as narrative statements within the wider narrative of the Augustan Marriage Legislation, is much more fluid. As a result, a more flexible and malleable definition of narrative and narrativity, one which centres around prototypical features that everybody recognises as narrative, is substantially more useful for the treatment of these sources and establishing their narrative credentials. For this, therefore, Ryan’s ‘fuzzy-set’ definition is an excellent place to start.<sup>209</sup>

Using a scalar conception of narrative, Ryan organises the conditions of narrativity into a series of dimensions: spatial, temporal, mental, formal and pragmatic. A narrative does not have to contain conditions from all of the dimensions, but rather, this conception offers a ‘toolkit’ for scholars to devise an adaptable definition. The dimensions are as follows:

Spatial Dimension:

- (1) Narrative must be about a world populated by individuated existents.

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<sup>205</sup> Prince 2008: 20, 22.

<sup>206</sup> Simon-Shoshan 2012: 16.

<sup>207</sup> Ryan 2007: 28.

<sup>208</sup> Ryan 2006b: 193. See also Ryan 2005, 2006a and 2007. See also Jannidis 2003.

<sup>209</sup> Ryan 2007: 28-31. The following analysis draws on this work by Ryan.

Temporal Dimension:

- (2) This world must be situated in time and undergo significant transformations.
- (3) The transformations must be caused by non-habitual physical events.

Mental Dimension:

- (4) Some of the participants in the events must be intelligent agents who have a mental life and react emotionally to the states of the world.
- (5) Some of the events must be purposeful actions by these agents.

Formal and Pragmatic Dimension:

- (6) The sequence of events must form a unified causal chain and lead to closure.
- (7) The occurrence of at least some of the events must be asserted as fact for the storyworld.
- (8) The story must communicate something meaningful to the audience.

For Ryan, each of these conditions prevents a certain type of representation becoming the focus of a story. It eliminates a whole series of events, which individually could appear in a narrative, but all by themselves could not support the narrativity of the text. Thus, a narrative *can* include a number of the following representations, but not all of them and certainly not all by themselves without any of the eight conditions listed above.

- (1) Eliminates representations of abstract entities and entire classes of concrete objects, scenarios involving 'the human race', 'reason', 'the State', 'atoms', 'the brain', etc.
- (2) Eliminates static descriptions.
- (3) Eliminates enumerations of repetitive events and changes caused by natural evolution.
- (4) Eliminates one-of-a-kind scenarios involving only natural forces and non-intelligent participants (weather reports, accounts of cosmic events).
- (5) (Together with 3) eliminates representations consisting exclusively of mental events (interior monologue fiction).
- (6) Eliminates lists of causally unconnected events, such as chronicles and diaries, as well as reports of problem-solving actions that stop before an outcome is reached.
- (7) Eliminates recipes, as well as texts entirely made of advice, hypotheses, counterfactuals, and instructions.
- (8) Eliminates bad stories, which Ryan concedes is a controversial condition.

Ryan's list, therefore, serves as a 'pick-and-mix' of narratological dynamics, and their combination such that defining a 'narrative' – or rather, defining a text's 'narrativity' – will depend on who the enquirer is. As Ryan contends:

Some people will be satisfied with conditions 1 through 3 and will classify a text about evolution or the Big Bang as a story, while others will insist that narrative must be about human experience, and will consider 4 and 5 obligatory. Some people will regard a chronicle listing a series of independent events with the same participant as a narrative while others will insist on 6.<sup>210</sup>

Some narratives will satisfy all of the conditions, while others may satisfy only a few. And arguably, the more conditions that a text does satisfy, the higher the degree of its narrativity.<sup>211</sup> Ryan's 'fuzzy-set' definition, therefore, speaks to a more fluid characterisation of 'narrativity'.

In the sections that follow, therefore, I will analyse as micro-case studies the narrativity and narrative credentials of the key sources on the Augustan Marriage Legislation using Ryan's 'fuzzy-set' definition. For in order to analyse and better understand these sources as contributing to a wider story of the *leges Iuliae* throughout this thesis, we must first explore their narrativity and position them as narratively configured texts in their own right. Yet, given the multifarious nature of these sources, which includes the *Res Gestae*, *Carmen Saeculare*, the works of Ovid and Propertius, commentary and legislative provisions as (re)told by the jurists, and the work of historians ranging from Livy to Suetonius, any treatment predicated in a binary system – either it is a narrative or it isn't – would not lend itself to these texts being readily processed as narratives. Ryan's scalar schema, on the other hand, where a text can be more or less prototypically 'story-like', provides a useful framework for such diverse texts; texts that readers and listeners might not instinctively deem to be narratives but which, I contend, nevertheless make a significant contribution to the wider 'narrative' of the Augustan marriage legislation.<sup>212</sup>

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<sup>210</sup> Ryan 2007: 30.

<sup>211</sup> As Ryan 2007:30 notes, 'if people differ in opinion as to where to draw the line, they basically agree about what requirements are relevant to narrativity and about their importance relative to each other'. Narrativity, as a scalar property, can thus be stronger or weaker depending on the number of conditions it satisfies. For further analysis of the different degrees of narrativity, and the subsequent strengths and weaknesses of a narrative, see Sternberg 1981, 1992 and 2001; Herman 2002: 90-91; Phelan 2007: 215; and Prince 2008.

<sup>212</sup> C.f. Herman 2002: 90-91 for the distinction between narrativehood, a binary predicate, and narrativity, a scalar predicate. For more on narrativehood, see Prince 2008 who coined the term. See also Prince [2005] 2008: 387 who likewise notes the distinction between narrativehood and narrativity: that narrativehood is considered a matter of kind (texts are narratives or they are not), and this can be viewed in contrast to narrativity, which is a matter of degree, with some narratives more narrative than others. Abbott [2002] 2008: 238, too, reminds us that there are no degrees of narrativehood.

By analysing these texts through this lens, it ultimately demonstrates how the law is full of stories and, as a result, the relevance and value of using such an innovative, narratological methodology to study them.

### **The *Res Gestae Divi Augusti***

The *Res Gestae Divi Augusti* is the funerary inscription of the Emperor Augustus, inscribed and displayed on bronze pillars in front of his mausoleum after his death in AD14. Written in the first-person, the *Res Gestae* 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. As a funerary inscription, the *Res Gestae* certainly 'lacks literary elegance'.<sup>213</sup> Designed to fit on bronze pillars, there is no eloquent exposition of events and deeds; rather, it is simple and concise in sharing a history of the period through the eyes of Augustus. Undoubtedly, this text should be approached with caution when examining its historical accuracy: many events have received an 'Augustan spin', placed in a false or misleading light so as to glorify Augustus. It is not an objective text, but instead it offers the 'very personal viewpoint of the author'.<sup>214</sup>

Beginning with the hero-narrator's early achievements at the age of 19, the text starts by detailing how Augustus liberated the Roman state from civil war, with an army raised at his own personal decision and own personal expense, *privata consilio et privata impensa* (RG 1.1). From this starting point, the first chapters go on to outline the *princeps*' military glory and his political career. It records how Augustus defeated twice in battle those who killed his father (RG 2); how he held the office of triumvir for ten consecutive years (RG 7.1); and how the gates of Janus Quirinus, shut only during times of peace, were closed three times during Augustus' reign by decree of the senate, *ter me principe senatus claudendum esse censuit* (RG 13). The next section of the text, from chapters fifteen to twenty-four, outlines Augustus' financial donations of money, land and grain to the Roman people, notably all from the *princeps*' own funds, *mea pecunia* (RG 17). This section also covers the public building works, restorations and the gladiatorial games commissioned by Augustus (RG 22). Chapters twenty-five to thirty-three expand further on Augustus' military deeds, including details of the nations he brought under his command and control (RG 26), and the recovery of stolen military standards from the Dalmatians and the Parthians, *spolia et signa reddere* (RG 29.1). In the last two paragraphs, the *princeps* explains how

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<sup>213</sup> Cooley 2009: 22.

<sup>214</sup> Eck 2007: 171. For further bibliography on the *Res Gestae*, see n151.

he was named 'Augustus' by senatorial decree, after putting an end to the civil wars, *quo pro merito meo senatus consulto Augustus appellatus sum* (RG 34.1); and how he was bestowed the title of *pater patriae*, Father of the Fatherland, by the senate, the equestrian order and the people of Rome, providing a final justification of his power to (and over) all (RG 35.1).

While the text covers a wide variety of themes, from political and military achievements, financial expenses incurred, to the honours received, all of these matters relate to one person: Augustus. Indeed, the *Res Gestae* conveys the 'unambiguous message' that Augustus is central to the text and to the state; a fact which is reinforced by the repetitive use of the first person and *meus*.<sup>215</sup> What is striking, however, is that Augustus appears to have created an independent and unique work with no real clear or obvious model for its form. The *Res Gestae* has been described as an 'epitaph, a political testament, a rendering of accounts for the reign, a description of his new political system, and a bid for deification'.<sup>216</sup> Rather, what can be agreed upon is, by using a 'unique literary form', Augustus has provided a composition that offers direct 'autobiographical' insights into his philosophy of government, and his theories of law-making and social governance.<sup>217</sup> The *Res Gestae*, subsequently, serves as a crucial 'witness' to the Augustan government, through the lens of the *princeps* himself, and cannot be overlooked as a text that contributes to the wider story of the legislation. Certainly all the 'statements' made in the text, as exaggerated and inflated by Augustus, lend an additional air of fictive storytelling here. Specifically, however, to what extent does the *Res Gestae* exhibit any prototypical features which allow it to be recognised as a narrative in its own right? Indeed, what degree of narrativity can we attribute to this 'unique literary form'?

Using Ryan's 'fuzzy-set' definition, many of the conditions of narrativity are indeed satisfied.<sup>218</sup> Conditions one through three, focusing on the spatial and temporal dimensions, are present: the *Res Gestae* is about a world populated by individual existents, namely the Roman people; this world is situated in time and undergoes a significant transformation under the *princeps*, one from war to peace; and these transformations were caused by non-habitual physical events, such as the subduing of enemies both on land and sea, the creation and restoration of public buildings for a peaceful city, and financial donations to the Roman plebs. Likewise, the mental dimension conditions, numbers four and five, appear in the text: arguably, all of the events in the *Res Gestae*

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<sup>215</sup> Cooley 2009: 24. See also Eck 2007: 171.

<sup>216</sup> Cooley 2009: 30. Eck 2007: 2 who maintains that the *Res Gestae* was a 'portrayal of the *princeps* as an outstanding member of the *populus Romanus*'. C.f. Ramage 1987: 15 and Eck 2007: 171.

<sup>217</sup> Ramage 1987: 113. C.f. Cooley 2009: 34 who agrees that Augustus created a composition that was *sui generis*, which offered 'insights into how he perceived his role in politics and society'.

<sup>218</sup> Ryan 2007: 28-31. The following analysis draws on the 'fuzzy-set' model conceived by Ryan.

are purposeful actions by the *princeps* as an intelligent agent. Conditions six and seven of the formal and pragmatic dimension are also satisfied: the chain constituting Augustus' career and ending with his seventy-sixth year, and ultimately his death. The final condition in Ryan's definition states that the story must communicate something meaningful to the audience. Certainly, the text has satisfied enough of the criteria to be determined a narrative, with even a high degree of narrativity given that seven of the eight conditions are present. Yet, the final condition is the one which Ryan admits is the most controversial, stating that it needs to be complemented by a theory of the 'different ways in which narrative can achieve significance'.<sup>219</sup> For our purposes, the significance of the *Res Gestae* lies in the fact that it is arguably the 'first and foremost' statement which contributes to the wider narrative of the Augustan Marriage Legislation. Written by the legislator himself (and despite the issues inherently problematic with that), the *Res Gestae* nonetheless communicates a meaningful testimony of the legislation to its audience. No analysis of the legislation, narratological or otherwise, would be complete without first examining this seminal text written by Augustus. It is for this reason why I argue that this particular text can be said to satisfy this final condition of Ryan's fuzzy set. Positioned as a text with a high degree of narrativity, the *Res Gestae* provides a meaningful 'witness statement' of the legislation, and, as I shall demonstrate throughout this thesis, significantly contributes to the tale of the *leges Iuliae*.

### **The *Carmen Saeculare***

As a poet writing contemporaneously to, and indeed about, the *leges Iuliae*, Horace and his *Carmen Saeculare*, in a similar vein to Augustus' *Res Gestae*, is a significant text for any study of the Marriage Legislation. The *Carmen Saeculare*, or Centennial Hymn, was written by the poet Horace 'for performance by a chorus of boys and girls [...] at Augustus' Secular Games in 17BC'.<sup>220</sup> The Games were designed to announce 'the new age inaugurated by the implementation of Augustus' programme of moral reform', a programme which included the passage of the *leges Iuliae* the previous year, in 18BC.<sup>221</sup> The festivities culminated in the performance of the *Carmen Saeculare*, whose 'imagery, themes, and the evocation of particular gods and goddesses closely followed that of the festival itself'.<sup>222</sup> Although the poem celebrated the Augustan peace, the *princeps* is not actually referred to by name; crucially though, Horace noticeably and specifically

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<sup>219</sup> Ryan 2007: 30.

<sup>220</sup> Oliensis 2007: 227. For further reading and scholarship on Horace and the *Carmen Saeculare*, see Harrison 1995; Feeney 1998; Putnam 2000 and 2010; Schnegg-Köhler 2002; Barchiesi 2002 and 2007; Lowrie 2007b; and Günther 2013.

<sup>221</sup> Oliensis 2007: 227.

<sup>222</sup> Beacham 2005: 162.

refers to the Marriage Legislation in lines 17-20 of the poem.<sup>223</sup> The *Carmen Saeculare*, therefore, is another text, or ‘witness’ that offers an insight into the *leges Iuliae*.

The *Carmen Saeculare* is a remarkable poem in that, firstly, we know so much about its production as part of the Secular Games, and secondly, though it is an ode in lyric metre, it is ‘unique in the Horatian corpus, standing separate from the four collections of lyrics’.<sup>224</sup> The poem begins by addressing the twin gods Phoebus (Apollo) and Diana, patrons of the Secular Games, who are to be celebrated in this poem. These particular gods serve to frame both the beginning and the end of the poem, with their names repeated in the poem’s penultimate line. Such is their importance as patron divinities of both the poem and the larger celebration of the games, iterations of their name also provide a structure to the poem as a whole.<sup>225</sup> In the second stanza, the performance aspect of the poem becomes clear, as chaste and chosen maidens and boys, *virgines lectas puerosque castos*, (6) are selected to sing the hymn. Returning to the patron gods, Horace beseeches Apollo, the *Sol*, to see nothing greater than Rome itself: *possis nihil urbe Roma visere maius* (11-12). The poet then returns to Diana, this time cast in her role as the goddess of childbirth, as she is asked to ‘protect all mothers’, *tuere matres* (14). Diana’s purview is extended further in the lines that follow, with crucial reference to the marriage legislation (17-20):

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.

diva, producas subolem patrumque  
prosperes decreta super iugandis  
feminis prolisque novae feraci  
**lege marita.**<sup>226</sup>

Thus, Diana is called upon to foster the wider Roman ‘legal and ethical setting’ that will in turn ‘promote the continuity of the very ceremonial being performed and witnessed’.<sup>227</sup> As the poem continues, the song proclaims the presence of Mother Earth, who is asked to gift Ceres, the goddess of Agriculture, with a ‘wheat-ear crown’, *spicea donet Cererem corona* (30). Jupiter, too,

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<sup>223</sup> See Lowrie 2007b: 86.

<sup>224</sup> Putnam 2010: 231.

<sup>225</sup> See Putnam 2000: 51.

<sup>226</sup> Emphasis added.

<sup>227</sup> Putnam 2010: 235.

is invoked in his role as the god of the elements to nourish the harvest, as Horace continues with this bucolic theme (31-32). We then see the chorus apostrophizing the patron gods once more (33-36), before the song moves away from themes of birth, fertility, and agriculture, and Horace turns his attention to the (hi)story of Rome. Lines 37-44 focus on the transition from Troy to the Roman Empire, the central figure of which is chaste Aeneas, survivor of the fatherland, who carved the road to freedom, *castus Aeneas patriae superstes liberum munivit iter* (42-43). It is here, in the aftermath of Aeneas' heroism, that the chorus alludes (finally, and only this once) to Augustus himself, as the illustrious descendant of Anchises and Venus, *clarus Anchisae Venerisque sanguis* (50). Unlike in Horace's other poems, here the poet does not name the *princeps* directly. Rather, he is depicted as an extension of Rome's mythical beginnings and of Aeneas. As Putnam deftly concludes: 'as a figure in the *Carmen* he [Augustus] is part of the continuum of Roman history just as the Song itself, and the *Ludi Saeculares* that included it'.<sup>228</sup>

The poem then moves into the world of contemporary Rome, with references to the Medes, the Scythians and the Indians (53-56), before Horace moves onto the abstract concepts of Trust, Peace, Honour, Chastity, Virtue and Abundance (57-60). In the final stanzas, the chorus reverts back first to Phoebus (61-68) and then to Diana (69-72), providing a satisfactory cycle as the song ends as it began.

Unlike the *Res Gestae*, with its autobiographical nature and high degree of narrativity, the narrative credentials of the *Carmen Saeculare* are more problematic. Ostensibly, the poem falls into the category of lyric discourse, with narrative traditionally belonging to other genres.<sup>229</sup>

However, while the two categories may at first appear antithetical, the operation of one does not necessarily preclude the other.<sup>230</sup> At its very core, lyric poetry is an utterance: the poem speaks out to someone, communicating something to that audience. While we do not see the lyric *ego* in the *Carmen Saeculare*, the song nonetheless speaks out to, and arguably for, the *princeps* and the

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<sup>228</sup> Putnam 2000: 5.

<sup>229</sup> Lowrie 1997: 1. Lyric poetry traditionally expresses personal emotions and feelings, with the poet speaking as a 'lyric *ego*'. C.f. Aristot. *Poet.* 1.1447b, where Aristotle excludes from his mimetic canon the works of ancient lyric, elegiac and didactic poets who narrate their own personal experiences and emotions. As Liveley 2019:47 reminds us, for Aristotle, '*mimesis* is the umbrella category, the genus to which all the poetic arts belong, and of which epic and tragedy are the principal species'.

<sup>230</sup> See Phelan 2005 and 2007 who is interested in different hybrids of narrative and lyric, and the various intersections between narrativity and lyricity. For Phelan 2005: 162, texts that contain one or more of three significant features that we typically associate with lyric poetry can be seen as lyric narratives. Similarly, for McHale 2009:13, 'lyric' is not identical with poetry and can be cast in prose form. Hühn 2004 and 2005 looks at the narrative dimensions of lyric poetry and focuses on narrative's interaction with lyric. C.f. also Hühn and Kiefer 2005 and Kokko 2013: 200 who discusses lyric narrative, examining the underlying value structure of the lyric narrative and aims to read stories as such.

people of Rome. Therefore, its primary mode is the enactment of speech, rather than the telling of a story as associated with a traditional definition of 'narrative'. Yet, the final condition for narrativity as set out in Ryan's 'fuzzy-set' definition of narrativity draws on this very fundamental element of lyric poetry – its status as an utterance. One of the prototypical features relevant to a text's narrativity is its ability to communicate something meaningful to its audience.<sup>231</sup> Indeed, as we have already seen with the *Res Gestae*, a text with a high degree of narrativity, Augustus speaks out to his audience, harnessing this arguably 'lyric' element of 'utterance'. The advantage of 'narrativity' broadly construed is that it facilitates consideration of a degree of narrativity in alternative media such as lyric poetry.<sup>232</sup>

Thus, through discourse of texts, categories which at first glance appear to be antithetical begin to look more inclusive.<sup>233</sup> Discourse, in this context, serves as an all-encompassing term for 'the expression plane of narrative', focusing on 'the "how" of a narrative as opposed to its "what"; the narrating as opposed to the narrated; the narration as opposed to the fiction'.<sup>234</sup> It is this element which Ryan draws out in the final condition of her definition of narrativity, and subsequently which allows for recognising 'narrativity' in an ostensibly different medium. With lyric and narrative stories thus employing this component of 'narrativity', the distinction between these two modes begins to narrow. Indeed, as Lowrie points out, narrative has been an important component of lyric, and narrative genres, too, have employed lyricising techniques.<sup>235</sup> Furthermore, for lyric to make sense, it must be narrated in the here and now, namely 'put into the framework of that to which it is conventionally opposed'.<sup>236</sup> The very fact that the lyric *Carmen Saeculare* is enacted allows it to partake in, and engage with, elements of narrativity. Thus, if we accept this overlap between lyric and narrative grounded in their shared discourse – in their shared expression and utterance, a prototypical feature of 'narrativity' – an inevitable tension arises, with the two classifications simultaneously irreconcilable yet inextricable from one another.<sup>237</sup>

In order to determine the exact degree to which the *Carmen Saeculare* exhibits those prototypical features of narrativity, I will return to the 'fuzzy-set' definition submitted by Ryan.<sup>238</sup> The fluidity

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<sup>231</sup> Ryan 2007:29.

<sup>232</sup> See Abbott 2014: 588.

<sup>233</sup> Lowrie 1997: 2.

<sup>234</sup> Prince [1987] 2003: 41.

<sup>235</sup> Lowrie 1997: 13.

<sup>236</sup> Lowrie 1997: 25.

<sup>237</sup> Lowrie 1997: 13-14. On different theories of lyric poetry and narrative theory, see Smith 1978; Johnson 1982; Hošek and Parker 1985; Feeney 1993; De Jong and Sullivan 1994; Culler 1997; Phelan 1990, 2005 and 2007; Hühn 2004 and 2005; Hühn and Kiefer 2005; McHale 2009; and Kokko 2013.

<sup>238</sup> Ryan 2007: 28-31. The following analysis once again draws on this work by Ryan.

of this definition, with eight different conditions, lends itself to examining the potential narrativity of a lyric poem such as the *Carmen Saeculare*. The poem itself serves as a literary celebration of Rome, including its creation up to and during the reign of Augustus. Speaking to the audience at the Secular Games, the chorus sings about this 'world' of the seven hills of Rome, *septum ... colles* (7). This spatial dimension is further extended, with the world of Rome populated with mothers, fathers and youth, whom Diana is asked to preside over and protect (13-20), and later with the Parthians, Scythians and Indians as outsiders to the Roman state (53-56). For Ryan, transformation is the central element in the temporal dimension, with the world undergoing significant transformations caused by non-habitual physical events. Indeed, no greater transformation takes place than the metamorphosis of Troy to Rome, with Aeneas cast as the central figure who built this road to freedom (37-44). This overt connection to Virgil's *Aeneid* would not go unnoticed by those contemporary to Horace, as the poet draws on the narrative of this epic, condensing and altering the epic version to suit his lyric verse.<sup>239</sup> This reconciliation of epic narrative with lyric verse further heightens the tension between the two categories, as the former is incorporated into the later.

So far, the conditions of the spatial dimension and the temporal dimension from Ryan's model have been satisfied, establishing some degree of narrativity and narrative elements within the poem. Conditions four and five fall under the mental dimension: some of the participants in the events must be intelligent agents, whether divine or mortal, and some of the events must be purposeful actions by these agents. Throughout the poem, Horace apostrophizes Apollo and Diana, who are the recipients of the hymn and who are beseeched to fulfil their roles and promises outlined in the poem. While the structure of the poem is framed around these divine beings, the *Carmen Saeculare* as a whole is about human experience: not only the experience of the Roman people as they undergo the transformation conveyed in the poem itself, but also the experience of those enacting the poem and those in the original audience receiving this song.

The final three conditions in the formal and pragmatic dimension focus on causally connected events, the assertion that some of these events are fact for the storyworld, and finally the story must communicate something meaningful to the audience. Indeed, as the poem progresses, there is a clear chain of events: it is a prayer for the city, for continued protection from her patron deities and for the success of the *princeps*' own entreaties, with Augustus as a 'continuum of the Roman history' outlined in the song.<sup>240</sup> This progression of events is framed with Horace apostrophizing the gods Apollo and Diana, at the beginning and end of the poem. Crucially, the

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<sup>239</sup> C.f. Putnam 2010: 238.

<sup>240</sup> Putnam 2000: 5.

dynamic nature of the song also affords Horace the opportunity to manipulate the temporal order of the 'narrative' of the poem, projecting Rome's past into its future whilst simultaneously assuring the present.<sup>241</sup> Furthermore, one can also view the poem as part of the wider narrative of the *Ludi Saeculares*. As the climax of the games, the poem reflects the narrative woven by the whole programme of festivities. As Beacham acknowledges:

The Great Secular Games [...] of 17BC gave the religious and patriotic themes of the principate their most visible and memorable expression. They were carefully coordinated as an act of myth-making designed to provide a visually impressive and emotionally engaging manifestation of the achievements and ideology of the Augustan regime, and its role in ushering in a new epoch of peace, prosperity and happiness.<sup>242</sup>

The 'narrative' potency of the *Carmen Saeculare*, therefore, cannot be denied. Although it was designed as a lyric poem to be enacted, it nonetheless tells a rich narrative of (and for) Augustan Rome, and by extension Augustus, all the while reinforcing the very narrative of the games in which its audience had just partaken. The *Carmen Saeculare* can ostensibly be reframed as a narrative, or as a text with a degree of narrativity, despite its traditional designation as a lyric poem. This is significant for my narratological analysis of the legislation in this thesis: configuring the poem as a narrative text paves the way for studying its role within the grander narrative of the *leges Iuliae* and how it communicated something meaningful on the marriage legislation, and by extension Augustus, to its audience.

### **The Elegists: Propertius and Ovid**

Two further sources contemporary to the Augustan regime – and therefore salient to my examination of the *leges Iuliae* – are the works of Propertius and Ovid, both drawn from the genre of love elegy. Despite their range and differences, Propertius' *Elegies* and Ovid's corpus of poetry share common characteristics: 'they are all from 'playful' genres, employing humour, satire and subversion in order to challenge conventions, whether literary and generic or social and moral'.<sup>243</sup>

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<sup>241</sup> See Putnam 2000: 5.

<sup>242</sup> Beacham 2005: 162.

<sup>243</sup> Langlands 2006: 192.

As elegiac poets writing in the Augustan era, both Propertius and Ovid are markedly relevant for any survey of the *leges Iuliae*.<sup>244</sup> There are key passages from the works of both poets that pertain specifically to the legislation, and as such these elegiac poets have become significant contributors to the grander narrative of the legislation.<sup>245</sup> Indeed, as Ziogas argues, it is not a coincidence that Latin love elegy reached its climax at the same time Augustus introduced his legislation: ‘the production of laws that revolve around the regulation of sexuality and the publication of love poetry that has the force of law are the two sides of the same coin’.<sup>246</sup> For Latin love elegy revolves around the tensions involved in ‘striking a balance between public and private domains’; the same tension that lies at the heart of Augustus’ moral reforms.<sup>247</sup> And while the Augustan laws attempted to make private affairs the business of the state, Latin love elegy, on the other hand, sought to exclude Roman law from the privacy of the bedroom.<sup>248</sup> Given this interconnection between Latin love elegy and the Augustan laws, it is salient to examine these elegiac poets for this survey: considering their narrative configuration and narrativity, in order to comprehend their contribution to the ‘storyworld’ of the *leges Iuliae*, and how, accordingly, the law is full of stories.

Certainly, the elegiac genre appears to invite and authorise ‘the conventional view of its “anti-narrative” status, and to an even greater degree than its generic “neighbours”, lyric and epigram,

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<sup>244</sup> Sextus Propertius grew up in the years dominated by the civil war between Antony and Octavian, although he offers very little autobiographical information in his poetry and as such we can only conjecture that the poet was born around 55BC. He wrote four books of elegies, the first of which written in 29 or 28BC. With his poetry making no reference to events after 16BC, and since textual evidence for his life includes no further mention of him as active after that date, his death is placed around c.15BC. For background information on Propertius, see Luck 2019. For further scholarship, see Sullivan 1976; Lyne 1980; Warden 1980; Butrica 1996; Galinsky 1996; Fantham 1997; Slavitt 2002; Debroun 2003; Lowrie 2008 and 2009; Johnson 2012; and Keith 2008 and 2013. See also the following, along with attendant literature, for the social context of Propertius within Augustan Literature: Gold 1987; White 1993; Fantham 1996; and Galinsky 1996. For discussion on “Cynthia”, see Greene 1998: 37-66 with literature there cited and Janan: 2001. C.f. also a series of seminal articles by Wyke, collected in Wyke 2002b.

<sup>245</sup> Born in 43BC, Ovid’s corpus of work begins with the *Amores*, love poems in the tradition of Gallus, Propertius and Tibullus, although the chronology of his corpus is not secure. We only have tentative dates for the series of his early works which included, alongside the *Amores*, the *Heroides*, the *Ars Amatoria* and the *Remedia Amoris*. Later works, written from about AD1 onwards, include the *Metamorphoses* (Transformations) and the *Fasti* (Calendar). Eventually, Ovid got on the wrong side of the Augustan regime and was sentenced to exile in Tomis, on the Black Sea, in AD8. Regardless of the circumstances and reasons for Ovid’s exile, which remain unclear, he continued to produce work in exile including the *Tristia* (Sorrows) and the *Epistulae ex Ponto* (Letters from Pontus). Despite continued pleading to appease Augustus, and then Tiberius who succeeded in AD14, Ovid spent the rest of his life in exile at Tomis, dying there in AD17. For further scholarship on Ovid, see Galinsky 1996; Barchiesi 1997 and 2001; Liveley 2005; Habinek 2006; Hardie 2006; Knox 2006 and 2009; Citroni 2009; Levick 2010; Slavitt 2011; Sharrock 2012; Thorsen 2013; Oliensis 2019; and Ziogas 2021. For a historical sketch of Ovid’s life and career, see Melville 1990: viii-x.

<sup>246</sup> Ziogas 2021: 2.

<sup>247</sup> Ziogas 2021: 72.

<sup>248</sup> Ziogas 2021: 140. For more on this tension between public and private, and the relationship between law and love elegy in this context, see Ziogas 2021: 69-141.

elegy seems particularly antithetical to narrativity'.<sup>249</sup> As Liveley and Salzman-Mitchell explain in the introduction to their seminal volume *Latin Elegy and Narratology*:

Where readers of elegy look for consistency of viewpoint or voice, for unity of time, place or action, for plot and progress, for time passing and movement towards a final *telos*, we find instead inconsistency and disunity, inconsistency and incongruity, fragments of self and work and love and story. But this does not tell us the 'whole' story about elegy's narrativity.<sup>250</sup>

Their volume, therefore, sets out to explore how theories of narrative can promote a 'further understanding and innovative readings' of texts, such as the corpus of Latin elegy, that are not traditionally seen as narrative: for although this body of literature does not tell a continuous story, 'many stories do surface in the web of the poems at different narrative levels'.<sup>251</sup> Indeed, as Johnson reminds us, although there may be no overriding narrative sequence or thread that ties together the poems in the Propertian corpus, if read outside the wider narrative context provided by their position within the collection as a whole, individual elegies and books lose something of their 'resonance and bite'.<sup>252</sup> Butrica takes the narrative configuration of Propertius' elegies even further, arguing that:

Propertius' elegies are not discrete entities but are meant to be read together in a linear progression for cumulative meaning; each elegy, each book in fact, is only one element of the tribiblos and achieves its full significance only when read in sequence together with all the other elements. Of course, such a linear reading is virtually demanded by the format of the ancient bookroll, which offered little scope for browsing back and forth [...] There is no narrative thread as such, and no 'message' or 'meaning' is spelled out explicitly; rather the reader is left to extract the cumulative meaning from the multiple resonances created by sequence, juxtaposition, echoing, or cross-reference within the whole.<sup>253</sup>

Furthermore, in his study on Ovid and his work, Holzberg has argued that 'Ovid tells vividly realistic stories about people in love', and explores the extent to which his elegiac corpus can be read like novels, referring especially to the *Amores* as an 'erotic novel', a 'romance', and a 'novel

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<sup>249</sup> Liveley and Salzman-Mitchell 2008: 4.

<sup>250</sup> Liveley and Salzman-Mitchell 2008: 4.

<sup>251</sup> Liveley and Salzman-Mitchell 2008: 2.

<sup>252</sup> Johnson 1997: 197ff. C.f. also Liveley and Salzman-Mitchell 2008: 4.

<sup>253</sup> Butrica 1996: 98ff.

in poems', arranged to tell an 'ongoing story'.<sup>254</sup> Liveley and Salzman-Mitchell summarise thus: as both Johnson and Butrica claimed for the Propertian corpus, likewise Holzberg emphasises that 'stories are told *across* poems in the *Amores*', and that while an individual elegy may lay claim to its own status as narrative, 'it is primarily through its relation to other poems and other parts of a wider narrative scheme that it is able to tell a story'.<sup>255</sup> Thus, a relationship between narrative and Latin elegy has been set: indeed, the works of Propertius and Ovid alike each provide a framework of a wider narrative scheme that tells a story across a series of poems or the entire corpus. The narrative status of an individual poem can subsequently be understood in relation to the other poems in the narrative sequence. But what about configuring the narrative status of a specific, individual poem in its own right, without the wider context as provided by a continuum of poems? Or, as Liveley and Salzman-Mitchell express, 'what differences are entailed in reading the narrative of a single poem and in reading that poem as part of a narrative sequence of continuum *across* poems – which may or may not have been arranged by the author?'<sup>256</sup> It is here, as I have set out to demonstrate in this chapter, that the reader's role in configuring a text's narrativity and processing it as a narrative artefact is brought to the fore, in order to establish those narrative credentials, rather than relying on the configuration of a text's particular author (in this case, the elegiac poet-lover). True, in elegy's complex relationship with narrative, 'the roles of reader and elegiac poet-lover are intimately intertwined'.<sup>257</sup> This does not, however, preclude the reader's potential to process and configure an individual text's narrativity in their own right, using various narrative theories and concepts to articulate 'what they understand [...] when reading or otherwise "processing" a narrative artefact'.<sup>258</sup> For narrative theory, specifically – as I have argued throughout this chapter – Ryan's 'fuzzy-set' definition offers readers 'an instrument with which they can describe narrative texts ... [and] formulate a textual description'.<sup>259</sup> Thus, I will now, as reader, return to the role of configuring the degree of narrativity in these sources, using Ryan's 'fuzzy-set' to explore the narrative credentials of a particular poem within the Propertian corpus, poem 4.11.<sup>260</sup>

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<sup>254</sup> Holzberg 2002: x, and 2 where he argues that 'He [Ovid] manages to present even the oldest Greek myths in such a way as to make us feel that we are reading about the everyday experience of characters in a modern novel'. C.f. Liveley and Salzman-Mitchell 2008: 5 and Kennedy in the same volume (2008:23), who reminds us that a key feature of the *ego* in Roman love elegy is that 'he is not only a lover but a storyteller and doubly so: in the first person about himself and, mainly, through the *exempla* that he adduces, in the third person, about others'.

<sup>255</sup> Liveley and Salzman-Mitchell 2008: 5. Emphasis in original. See also Barchiesi 2001: 32ff who claims that 'there is no doubt that a single elegy can project its own narrative context, by laying down the tracks for a temporal development, by taking its place in a plot already known in part'. For further discussion on narrative and narratology in Ovid, specifically in the *Metamorphoses*, see Barchiesi 2006.

<sup>256</sup> Liveley and Salzman-Mitchell 2008: 6. Emphasis in original.

<sup>257</sup> Liveley and Salzman-Mitchell 2008: 6.

<sup>258</sup> Bal [1985] 2009: 4.

<sup>259</sup> Bal [1985] 2009: 3-4.

<sup>260</sup> Ryan 2007:28-31. The following analysis uses Ryan's 'fuzzy-set' definition as a model.

With such a vast canon of work created by both Propertius and Ovid, the textual options for examining the narrativity of their work is, needless to say, similarly immense. I have selected poem 4.11, the final poem by Propertius, as a case study, simply for the relevance this particular poem has for the *leges Iuliae*, notably when examining the various and recurrent participants and characters within the narratives of the legislation. For the Cornelia in Propertius' poem exemplifies the ideology underlying the marriage legislation, and, as I shall demonstrate in this thesis, the 'testimony' from this poem points particularly towards the characterisation of women by the *leges Iuliae* as 'ideal'.<sup>261</sup> Also known as the 'Cornelia Elegy', poem 4.11 is a funeral elegy composed by Propertius for Augustus' stepdaughter, Cornelia. In this particular poem, Propertius has woven a narrative about a world in which Cornelia no longer exists, and which is populated by those individuated existents she has left behind after her death: Paullus (her husband); her three sons; her mother Scribonia (Augustus' second wife); and Caesar himself. Indeed, the poet oscillates between this 'new' world, where Cornelia has died, and the world she used to inhabit. Propertius, through the dead Cornelia, simultaneously acts as the 'storyteller' of her life, reminding the reader of all that she achieved in life (33-48, 61-72), all the while attempting to provide comfort and solace to those left behind (1-8, 73-98). Indeed, this transformation – from life to death, from Cornelia's former life to the 'new' life as her family continue without her (73-98) – is a central element of the elegy, lending itself to Ryan's second condition from the temporal dimension. Certainly, there is a dynamic quality to this world created by Propertius in the poem, particularly as the poet moves from narrating Cornelia's life in the past (33-72) to how those left behind, specifically her husband Paullus, might move forward with his life, looking after the children and perhaps remarrying in the future (73-98). However, this transformative dimension of the poem from life to death – a characteristic that allows it to satisfy the second condition of Ryan's 'fuzzy-set' – may be its downfall for the third condition in this definition. For Ryan states that any transformation with a narrative must be caused by non-habitual physical events, which prevents and eliminates 'changes caused by natural evolution, such as ageing'.<sup>262</sup> And arguably, Cornelia's death is the representation of such a change, a habitual physical event, which has a profound influence on the formation and identity of this particular world that the text is narrating. Yet, as Ryan reminds us, the presence of this type of representation does not preclude the categorisation of a text as a narrative artefact: certainly, this condition alone cannot support narrativity, but if other conditions are satisfied, it does not mean that such a representation

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<sup>261</sup> Lowrie 2009: 356. See chapter 6 for my analysis of 'character' in the Augustan Marriage Legislation. For further scholarship on this particular Propertian poem, see Johnson 1997; Janan 2001; and Lowrie 2008 and 2009.

<sup>262</sup> Ryan 2007: 29.

cannot appear in a narrative text. In this scalar conception of narrative, then, poem 4.11 has a number of prototypical spatial and temporal features that allow its narrativity to be recognised.

Conditions four and five, which fall under the mental dimension, relate to the human experience of a narrative, and it is here, I argue, that poem 4.11 reveals its strengths as a narrative. For throughout the poem, Propertius represents the mental life and emotional reactions of intelligent participants: of Cornelia and her family members as they come to terms with her life and premature death. The whole premise of this particular poem, and the world it creates, is to convey the emotion surrounding death and how its intelligent agents subsequently react to it. With such a focus on the crossover between life and death, as a social and emotional construct, arguably, therefore, the entire poem can be said to feature human experience. In the formal and pragmatic dimension, condition six relates to the sequence of events, which must form a unified causal chain, leading to closure and avoid simply lists of causally unconnected events, such as chronicles and diaries. Within the poem, Propertius, speaking as 'Cornelia' takes the reader on a journey – a sequence of events – through her husband's grief and the life she has just lost, ending with a long exhortation to her husband to look after himself and her children now she is gone. And indeed, closure of the poem could not be made more final with Cornelia's words: 'my speech is concluded', *causa peroratast* (99), as she dismisses her witnesses and awaits to see if her merits will be worthy of honour and sufficient for heaven to accept her spirit (100-102). Condition seven of the 'fuzzy-set' relates to whether the events are asserted as fact for the storyworld, and is designed, according to Ryan, to 'eliminate recipes, as well as texts entirely made of advice, hypotheses, counterfactuals, and instructions'.<sup>263</sup> Given the poem is recounting a real-life event, with the death of Augustus' stepdaughter, the occurrence of this event, and the subsequent grief of the relatives, can certainly be asserted as fact for the storyworld Propertius has created.

Condition eight, however, as with the application of this model to the *Res Gestae* and Horace's *Carmen Saeculare* is the most controversial and reveals the difficulties in determining whether, and to what extent, a narrative can achieve significance. Even if we were to draw the line above condition eight, Propertius' poem clearly has a relatively high degree of narrativity, satisfying conditions one, two, and four through to seven. Yet, given the relevance of the poem, particularly to the *leges Iuliae* and the extent to which Cornelia exemplifies and conveys the ideology purported by the legislation, the narrative Propertius weaves certainly communicates something meaningful to a modern audience. But what is the significance and attraction of this poem for Propertius, and indeed his contemporary ancient audience? For the poet, it provides an

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<sup>263</sup> Ryan 2007:30.

opportunity to create his own *feminine* version of the master narrative that Augustus is continuously attempting to push.<sup>264</sup> Throughout his rule, and as evidenced repeatedly in the *Res Gestae*, Augustus sets himself up as the fulcrum between past *exempla* and the future, providing a model for imitation.<sup>265</sup> However, with this poem, Propertius turns the tables and instead sets Cornelia up as the *exemplum*, her actions being ‘imitable and hence exemplary’, locating her at the ‘fulcrum of past and future’ instead of Augustus.<sup>266</sup> The significance, then, of the poem lies in Propertius’ manipulation of *exemplum* as a form of representation, using it neither to forward nor resist Augustan ideology, but instead to suit his own needs as storyteller and allow him to construct his own narrative statement on his own terms.<sup>267</sup> And this narrative statement contributes to and shapes the wider story of Augustus’ Marriage Legislation.

## The Jurists

Given that no extant record of the precise legal formulation of the *leges Iuliae* survives, as a result we are largely depending upon the writings of the later Roman jurists for the actual provisions of the laws.<sup>268</sup> These legal specialists produced an enormous body of legal literature and jurisprudence, and for the purposes of the *leges Iuliae*, offer a record and interpretation of the legislative provisions.<sup>269</sup> This material includes excerpts from the *Institutes of Gaius* (c. AD170); the *Rules of Ulpian* (c. AD160-223); the *Opinions of Paul* (2<sup>nd</sup> and 3<sup>rd</sup> centuries AD); and the *Body of Civil Law*, a compilation of Roman law, including the *Digest*, ordered by the Emperor Justinian after his accession at Constantinople in AD527.<sup>270</sup> Although these sources clearly date to periods after the Augustan era, they are our best, and only, source of the substantive legislative provisions, and thus provide noteworthy, foundational evidence of the laws, contributing significantly to the story of the Augustan Marriage Legislation. What is more, as reconstructions of legal ‘events’ in their own right, the ways in which the jurists have figuratively reconstructed and developed the ‘story’ of Roman law, including the *leges Iuliae*, (and have helped modern

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<sup>264</sup> Lowrie 2009: 358. Emphasis added.

<sup>265</sup> Lowrie 2009: 357.

<sup>266</sup> Lowrie 2009: 357.

<sup>267</sup> C.f. Lowrie 2009: 356-359 on *exempla* and representation, and also 349-356 for further discussion of Propertius 4.11. See also Lowrie 2008. On Cornelia and *exempla*, see Stahl 1985; Janan 2001; Roller 2004; Kraus 2005; and additionally, two essays, ‘The Elegiac Woman at Rome’ and ‘Written Women: Propertius’ *Scripta Puella*’ written by Wyke and collected in Wyke 2002b.

<sup>268</sup> Liveley and Shaw 2020: 245-246; Lefkowitz and Fant 2005: 103.

<sup>269</sup> See Lefkowitz and Fant 2005: 97-98 for an overview of the Roman jurists and their importance as a source of Roman law. The bibliography on Roman law and the jurists is extensive: a selection of titles includes Schulz 1946; Nicholas 1962; Watson 1967, 1974 and 1995; Kunkel 1973; Schiller 1978; Frier 1985; Johnston 1989 and 1999; Tellegen-Couperus 1993; Robinson 1997; Harries 2006; Cairns and Du Plessis 2007; Anderson 2009; Du Plessis 2013; Howley 2013; Du Plessis and Borkowski 2015; and Domingo 2018.

<sup>270</sup> Lefkowitz and Fant 2005: 98.

scholars do the same), invites a narratologically inflected analysis of these sources. It reminds us, once again, that the law is full of stories, and that stories are full of the law, and that analysing these sources in this new and original way is both pertinent and significant to the *leges Iuliae*.

Helpfully, the work of legal writer Gaius, who lived from around AD110 to AD180, has come down to us in its original state.<sup>271</sup> His work, the *Institutes of Gaius*, is particularly important as it formed the basis of the later *Institutes* written by the Emperor Justinian as part of his compilation of Roman law.<sup>272</sup> Indeed, Gaius' *Institutes*, a teaching course of four books for law students, was also innovative for its division of Roman law into persons, things, and actions, establishing 'the basis of civil law systems and international law until the nineteenth century and was instrumental for the development of common law systems'.<sup>273</sup> Domitius Ulpianus, a leading lawyer, writer and imperial office-holder of the Severan Dynasty, produced a series of clear, well-documented and comprehensive works, which, similar to the *Institutes of Gaius*, were used by the Emperor Justinian, this time as the basis for his *Digest*.<sup>274</sup> Ulpian's juridical textbook is also likewise divided in the same way as Gaius' *Institutes*.<sup>275</sup> The final jurist from the late classical period of jurisprudence who provides evidence of the *leges Iuliae* is Julius Paulus, also known as Paul, who was a lawyer, popular legal teacher and prolific writer.<sup>276</sup> There are over eighty-five works in more than three hundred books which may be credited to him, with the most famous *Opinions of Paul* published at the end of the third century.<sup>277</sup> Indeed, so prolific was Paul that over two thousand fragments of his work survive in Justinian's *Digest*, amounting to seventeen percent of the whole *Digest*.<sup>278</sup>

Almost all the knowledge we have of classical Roman law, including salient evidence of the *leges Iuliae*, comes to us through the *Body of Civil Law*, which was a compilation of Roman law compiled by the Emperor Justinian in the 6<sup>th</sup> century AD.<sup>279</sup> It consists of the *Institutes*, an elementary work for first-year law students; the *Digest*, an edited collection of juristic writings; the *Code*, an edited collection of imperial enactments; and, although never officially collected, Justinian's subsequent legislation known as his *Novels*.<sup>280</sup> Indeed, for a number of reasons, Justinian's 'work has been of

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<sup>271</sup> Anderson 2009: 13.

<sup>272</sup> Anderson 2009: 13 and Domingo 2018: 71.

<sup>273</sup> Domingo 2018: 72. For further studies on Gaius, see Honoré 1962 and 2012.

<sup>274</sup> Domingo 2018: 72.

<sup>275</sup> Tellegen-Couperus 1993: 100. For a brief overview of Ulpian, see Domingo 2018: 72 and for further bibliography, see Honoré 2002 and 2009a.

<sup>276</sup> Domingo 2018: 73.

<sup>277</sup> Domingo 2018: 73.

<sup>278</sup> Domingo 2018: 84. See also Honoré 2009b.

<sup>279</sup> Anderson 2009: 18. On the Emperor Justinian and his *Corpus Iuris Civilis*, see Johnston 1989; Maas 2005; Evans 2005; Honoré 2010; and Kaiser 2015.

<sup>280</sup> Robinson 1997: 20. See also Johnston 1999: 14ff and Domingo 2018: 78-86.

enormous importance, because it has shaped the whole development of European law and of law wherever Western Europeans founded colonies', and it is also significant for our understanding and interpretation of Roman law itself.<sup>281</sup> For our purposes, the *Digest* provides the most crucial information on the *leges Iuliae*. This work took three years to compile, from AD530 to AD533, and drew on the massive collections of writings from the jurists from the late classical period as discussed above.<sup>282</sup> Indeed, the compilers of the *Digest* were actually ordered to leave at the head of each extract the name of its author and provenance.<sup>283</sup>

Whilst the seminal influence of these jurists on the development of Roman law is undeniable, one aspect that has had minimal research is a narrative analysis of these writings and the degree to which these texts can be said to have 'narrativity'. Babusiaux has provided one such narrative reading of the extant legal literature, focusing on 'the cases ("stories") the jurists are telling, the verbal presentation of these cases and the "discourse" by which the messages are conveyed to the reader'.<sup>284</sup> In a similar vein to earlier discussions on narrativity, Babusiaux begins by focusing on the different degrees of narrative concentration, and the distinction 'between casuistic and non-casuistic or systematic texts'.<sup>285</sup> 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'.<sup>286</sup> 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'.<sup>287</sup> Using these frameworks, Babusiaux looks accordingly at the characterisations of the different juristic legal writings, determining that some are casuistic in nature, others are not of casuistic character and some have a mixture of casuistic or narrative elements.<sup>288</sup> Likewise, Simon-Shoshan also discusses the casuistic and non-casuistic/apodictic nature of Roman law (though it should be noted that this discussion is part of a wider work on the narrativity and construction of authority in the Mishnah).<sup>289</sup> For Simon-Shoshan, the *Institutes of Gaius* and Justinian's *Digest* are both composed of a mixture of casuistic and apodictic formulations.<sup>290</sup> Thus, even within the body of Roman legal literature, one can start

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<sup>281</sup> Robinson 1997: 20.

<sup>282</sup> Anderson 2009: 19.

<sup>283</sup> Robinson 1997: 21. C.f. also Tellegen-Couperus 1993: 98-99.

<sup>284</sup> Babusiaux 2016: 177.

<sup>285</sup> Babusiaux 2016: 178.

<sup>286</sup> Simon-Shoshan 2012: 24.

<sup>287</sup> Simon-Shoshan 2012: 23-24.

<sup>288</sup> Babusiaux 2016: 178-180.

<sup>289</sup> Simon-Shoshan 2012: 80-83.

<sup>290</sup> Simon-Shoshan 2012: 80.

to distinguish different degrees of narrative concentration and different levels of narrativity using the distinction of casuistic and non-casuistic formulations.

Using this as a foundation for considering these texts as ‘narratives’ allows us to now return to Ryan’s ‘fuzzy-set’ definition to determine their degree of narrativity and to what extent they can be regarded as narratively configured.<sup>291</sup> As a case study for the work of the jurists, I will use the *Opinions of Paul* (2.26.1-8, 10-12, 14-17) on the consequences of adultery according to the *lex Iulia de adulteriis coercendis* – a set of casuistic statements which establish the law in a given situation, namely what should happen if a wife is caught committing adultery.<sup>292</sup> The spatial dimension of this text is well-established throughout, as it is a world populated by a set number of existents: the woman, her lover, her husband and her father too.<sup>293</sup> These characters are, according to Ryan’s first condition, the main individuated existents that need to exist in order for a text to be a narrative. However, the first condition of the temporal dimension – the world must be situated in time and undergo a significant transformation – is designed to eliminate static descriptions and is arguably more problematic for this text. Taken individually, each of Paul’s ‘statements’ on the consequences of adultery could be viewed as simple, static statements of the law, without any particularly transformative moment. Yet, within each statement, there is undoubtedly two interconnected events: the former usually the adultery committed by the woman, and the latter the actions that can be taken by either her husband, her father or both, should the adultery occur. This implies an element of change and evolution within the world of the existents, with the adulterous act serving as the catalyst for that change. As per Ryan’s third condition, this change has been caused by a non-habitual physical event. Each time, this event – the adultery – occurs in slightly different circumstances, resulting in slightly different actions and consequences for the husband and father. For example, there are numerous legal conditions dictating when a husband or father can or cannot kill an adulterous lover, although both men are expressly forbidden from killing the woman whether or not she was caught in the act (2.26.1-8). For all its melodramatic and repeated references to adultery and permitted killing, the text is not simply an enumeration of the same event with the same consequences. Each occurrence of

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<sup>291</sup> For Ryan’s ‘fuzzy-set’ definition and the basis of this analysis, see Ryan 2007: 28-31.

<sup>292</sup> See Lefkowitz and Fant 2005: 104 for a full list of the consequences of adultery as recorded by Paul.

<sup>293</sup> It is worth noting that this text presents the rules as they relate to abstract entities of men and women, rather than presenting specific, named individuals within a particular story. While not apodictic in their nature – apodictic formulations state the law in an absolute manner and therefore possess minimal narrativity – neither are these statements legal stories such as accounts of specific cases or judgments. Legal texts that explain the rules through such stories, often with specific, named characters, have a higher degree of narrativity and are naturally more narratively inflected than others. However, the lack of named characters within these casuistic statements does not presuppose their own lack of narrativity. For, as this chapter argues, there are degrees to narrativity and a scalar conception of narrative is accordingly more helpful. See Simon-Shoshan 2012 (particularly 23-25, and 220-226) who discusses the levels of narrativity in legal texts, specifically within the context of the Mishnah.

adultery as listed by the statute is accompanied by a subtle but significant change in the actions that can be undertaken in response.

Ryan's next pair of conditions, organised into the 'mental dimension', concern the participants: they must be intelligent agents, who have a mental life and react emotionally to the states of the world, and some of the events must be purpose actions by those intelligent agents. All of the different adulterous events as listed by the statute concern purposeful actions by the woman and her lover as intelligent agents. And likewise, any interconnected event concerns the actions of the husband and father, and (often curtailing) their emotional reactions to this change of the state of the world. Condition six, however, which asks that the sequence of events must form a unified causal chain and lead to closure is not satisfied. The events presented in the text are not unified or causally connected: the reader is able to view each statement individually and independently of one another, and still have it make sense. Instead, the text simply lists a series of independent events with the same participants: there is no 'closure' or defined end to the statute in the same way that traditionally a story has a set ending. Some might insist on the presence of condition six in order to regard a text as a narrative. However, with the prototypical features of conditions one through five clearly present to some degree, the absence of any other conditions does not preclude a level of narrativity for the text. Condition seven is satisfied: the occurrence of the adulterous event(s) is certainly asserted as fact for the storyworld. The final condition that the story must communicate something meaningful to the audience, designed to eliminate bad stories, is once again problematic. Certainly, the statute, as a series of statements regarding adultery, can be regarded as a boring account or utterance. For laws are often constructed in a way that is deliberately abstract, ostensibly rejecting a narrative approach, and as a result viewed as a 'bad story'. Yet, this text from Paul's *Opinions*, although not presented in the form of a traditional narrative or story, does nonetheless satisfy a number of those prototypical narrative conditions which presupposes a degree of narrativity. Furthermore, I contend that even a statute or piece of legislation, despite its abstract nature, can still communicate something meaningful to its audience. Given the jurists' reconstruction of legal 'events' and the 'story' of Roman law, their accounts are evidently going to communicate something meaningful to the wider tale of the *leges Iuliae*, and to the readers of that tale. Their inclusion, therefore, within this analysis as narratively configured sources is unequivocal.

### **The Ancient Historians**

The final group of texts I wish to examine in this chapter, and which have had a seminal impact on our modern-day understanding of the *leges Iuliae*, are the ancient historians and biographers:

a collection of works by Livy, Dionysius of Halicarnassus, Tacitus, Suetonius, and Cassius Dio. These ancient texts – ranging from the work of Livy and Dionysius which were written during the Augustan era to the later annalistic and biographical works of Tacitus, Suetonius, and Dio – offer a collection of key statements on the *leges Iuliae*, and, in particular, the later historians provide detailed (and necessarily fictionalised) accounts of the reception and reaction to Augustus' marriage legislation. Here I will offer a brief précis of each writer, before examining in a holistic fashion the relationship between history and narrative, the degree of narrativity in these texts and how they might then be positioned as narratively configured statements within the story of the *leges Iuliae*.

Born in either 64 or 59BC, Livy is believed to have come to Rome in the 30sBC, just as the young Octavian was consolidating his power and establishing himself as *princeps*.<sup>294</sup> Livy's history, the *Ab Urbe Condita*, ran to 142 books, covering a span of 744 years, beginning with Rome's founding in 753BC and ending with the death of Drusus in 9BC.<sup>295</sup> Dionysius of Halicarnassus, a contemporary of Livy, was a Greek who had moved to Italy late in 30 or 29BC, and whose historical writing, *The Roman Antiquities of Dionysius of Halicarnassus*, covered the history of Rome in twenty books, from the earliest of legendary times down to the beginning of the First Punic War.<sup>296</sup> While Livy and Dionysius were both writing contemporaneously to the Augustan regime – part of a generation of writers whose formative experience included the fall of the Republic and the establishment of *pax Romana* under Augustus – Suetonius, Cassius Dio and Tacitus belong to a later generation of writers, thus providing a different perspective on Augustus and his attendant legislation. One of the most prolific and well-known historical writers emerging from the first century AD is Tacitus, born in AD 56 or 57, and who is believed to have lived and worked into the reign of Hadrian, dying c.120AD.<sup>297</sup> Of his numerous works, one of the principal texts, and his 'greatest creation', was the *Annals*, the greatest part of which has come down to us today, and which provides a historical account of the Julio-Claudian emperors from just before the death of Augustus (AD14) to the death of Nero.<sup>298</sup> Another writer from the late first century

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<sup>294</sup> Luce 2008: ix-x.

<sup>295</sup> Luce 2008: xi. There is an extensive amount of scholarship on all of the ancient historians. I have, therefore, provided a selection for further reading and analysis, with literature there cited. On Livy, see Luce 1977; Badian 1993; Levene 1993; Miles 1995; Kraus 1997; Feldherr 1998 and 2009; Forsythe 1999; Mellor 1999 and 2012; Chaplin 2000; Northwood 2000; Vasaly 2002a; Chaplin and Kraus 2009; Luce 2009; and Joshel 2009.

<sup>296</sup> Cary 2015: 3. For further analysis of Dionysius of Halicarnassus, see the following: Balsdon 1971; Usher 1974 and 1985; Schultze 1986 and 1995; Gabba 1991; Fox 1993 and 2011; Wiater 2011; and Hunter and de Jonge 2018.

<sup>297</sup> Grant 1996: 7.

<sup>298</sup> Grant 1996: 8-9. For a selection of the immeasurable scholarship on this infamous Roman historian, see the following: Grant 1970; Syme 1970; Luce and Woodman 1993; Woodman 1998 and 2009a; Mellor

and early second century AD is Gaius Suetonius Tranquillus. Although we do not know the year of Suetonius' birth, the writer tells us that he was a young man in the year AD88, leading to the belief that he was born around AD70.<sup>299</sup> His longest, and best surviving work, *The Twelve Caesars* is a carefully and extensively researched account of the early Emperors, beginning with Julius Caesar through to Domitian.<sup>300</sup> The final historian for consideration is the Greek writer Cassius Dio, born in c.AD163 and whose major literary achievement was his *Roman History*, which covered the foundation of Rome by Romulus up to Dio's own times.<sup>301</sup> Of it, substantial portions covering the years 68BC to AD46 survive, with the Augustan Books in particular surviving almost completely.<sup>302</sup>

Unlike other genres, the configuration of history, or historical accounts, as narratives is not quite as controversial. Indeed, in 1966, Barthes wholeheartedly stated that narratology and narrative theory could be applied to historiographical texts: 'there are countless forms of narrative in the world [...] Narrative is present in myth, legend, fables, tales, short stories, epics, **history**, tragedy, comedy, pantomime, paintings, stained-glass windows, local news, conversation'.<sup>303</sup> The idea that historical writing could, and should, be viewed as a form of historical discourse which uses the same literary techniques as novels has been taken up by Hayden White in a number of publications, most recently in 2002, where he argues that 'histories gain part of their explanatory effect by their success in making stories out of mere chronicles'.<sup>304</sup> In making his case for the interconnection, and interrelationship, between narrative and history, White focuses on 'emplotment'. For while no given set of causally recorded historical events can in itself constitute a story, what it does is offer the historian story elements, which may then be made into a story or 'emplotted'.<sup>305</sup> These historical events are made into a story by the 'suppression or subordination

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1999 and 2012; Haynes 2003; Santoro L'Hoir 2006; Sailor 2008; Feldherr 2009; Ash 2012; Pagán 2012; and Shannon-Henderson 2019.

<sup>299</sup> Graves 2007: xviii.

<sup>300</sup> Graves 2007: xviii. See also Tibbetts and Winterbottom 1983; Wallace-Hadrill 1983 and 2004; Edwards and Swain 1997; Mellor 1999; Feldherr 2009; Konstan 2009; Osgood 2013; Power and Gibson 2014; and Pausch 2021. Although Suetonius' work undoubtedly included gossip and scandal, as Graves 2007: xxv points out, it is not a formal history in the true sense of the genre. Nonetheless, as a scholarly biography, Suetonius' work still contains a certain amount of historical information (omitting the detail we might expect in history proper), instead focusing on key personal and domestic details (Graves 2007: xxv-xxvi). In particular, given Suetonius' key statements on the *leges Iuliae* and their reception, which supplements and reinforces the 'true' historical accounts as provided by Tacitus and Cassius Dio, I argue that it still warrants inclusion in this section in order to fully understand why these sources should be positioned as narratively configured and how we might then understand them as contributing statements to the grander narrative of the Augustan Marriage Legislation itself.

<sup>301</sup> Scott-Kilvert 1987: 1.

<sup>302</sup> Scott-Kilvert 1987:1. On Cassius Dio and his work, see Millar 1964; Grant 1980; Barnes 1984; Reinhold 2002; Hidber 2004; Swan 2004; Hose 2007; Mellor 2012; and Kemezis 2014.

<sup>303</sup> Barthes 1966: 1. C.f. De Jong 2014: 167 and Doležel 1999: 248. Emphasis added.

<sup>304</sup> White 2002: 193. C.f. also De Jong 2014:167-168.

<sup>305</sup> White 2002: 194.

of certain of them and the highlighting of others [...] in short, all the techniques that we would normally expect to find in the emplotment of a novel or a play'.<sup>306</sup> For White, what this analysis of the relationship between history and narrative points to is:

The necessity of revising the distinction conventionally drawn between poetic and prose discourse in discussion of such narrative forms as historiography and recognising that the distinction, as old as Aristotle, between history and poetry obscures as much as it illuminates about both. If there is an element of the historical in all poetry, there is an element of poetry in every historical account of the world.<sup>307</sup>

Likewise, narratologist Genette has also explored this relationship between history and narratives. Reviewing a number of narratological categories, such as analepses and prolepses, rhythm, focalization and the status of the narrative, Genette concluded that most of these narrative devices can be and indeed are used by historians too.<sup>308</sup> And the same can be said for the ancient historians discussed above. They, too, are conscious of their contribution to literary tradition, and make use of the same narrative devices. Indeed, as Woodman deftly argues, 'what we ought to be doing is approaching ancient historians as the writers of literature which they are [...] Our primary response to the text of the ancient historians should be literary rather than historical since the nature of the texts themselves is literary'.<sup>309</sup> Accordingly, there is no need to develop a 'separate historiographic narratology, and narratology can help to detect how historians adapt traditional narrative devices or invent new ones to convey their view of the past'.<sup>310</sup> Narrative configuration, therefore, is a fundamental element to history and the writing of it.<sup>311</sup> For 'where there is no narrative, there is no distinctively historical discourse'.<sup>312</sup>

Given this context for the relationship between history and narrative, considering the degree of narrativity of our ancient historians and positioning these texts as narratively configured statements is simply a logical continuation of this analysis. Indeed, the genre of history is arguably a category where a neat or strict list of binary features and attributes *does* apply to the text.

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<sup>306</sup> White 2002: 194. De Jong 2014: 198 summarises 'emplotment' in this historical context as follows: 'historians usually present their facts in narrative form, and for this they need to decide what the beginning and end of their narrative is and above all whether it is a story of decline or progress, a moralistic or a tragic tale, and so on'.

<sup>307</sup> White 2002: 208. See also Doležel 1999: 248-251 for a summary, referencing both Barthes and White.

<sup>308</sup> Genette 1991: 65-93, as cited by De Jong 2014: 168.

<sup>309</sup> Woodman 1998: 18.

<sup>310</sup> De Jong 2014: 171-172.

<sup>311</sup> Fulda 2014: 227. For further scholarship on the discipline of historiographic narratology, see especially Marincola 1997 and Cohn 1999. For useful summaries on the subject, see Elias [2005] 2008: 216-217 and Ankersmit [2005] 2008: 217-221, along with literature there cited.

<sup>312</sup> White 1999: 3.

Prototypical narrative features – such as analepses, prolepses, emplotment, narration, focalization – are regularly used throughout the works of the ancient historians, from Livy to Cassius Dio. Certainly, as Woodman argues, Tacitus was very much involved in this ‘literary procedure rather than one we would categorise as “historical”’. Such involvement is endemic in the tradition of Latin historical writing’.<sup>313</sup> Tacitus was, thus, acutely aware of the literary tradition preceding him and ‘his hoped-for place in it’.<sup>314</sup>

Therefore, using Ryan’s scalar conception, or ‘fuzzy-set’ definition, simply serves to reinforce what we already know about these texts: that any attempts to separate narrative and history are redundant.<sup>315</sup> Each writer, whether that’s Livy in his *Ab Urbe Condita* or Suetonius in *The Twelve Caesars*, creates a world that is populated by individuated existents; is situated in time; and undergoes a transformation as each writer narrates the very events and changes that make the past noteworthy (conditions one to three). Indeed, history can be understood as portraying past events, along with the multifarious transformations that a society undergoes, and it does so by ‘naming adversaries, establishing or imputing intentions, and identifying obstacles and factors in overcoming them’.<sup>316</sup> In short, it does this by establishing the participants in the events as intelligent agents, who have a mental life, react emotionally to the states of their world, and whose purposeful actions have also caused some of these non-habitual physical events (thus satisfying Ryan’s conditions of narrativity in the mental dimension).

Condition six of Ryan’s definition is designed to eliminate lists of causally unconnected events, such as chronicles. The simplest variant of historical writing, chronicles consist of the mere enumeration of important events on a yearly basis.<sup>317</sup> However, each of the ancient texts referenced in this section (and the wider thesis) are instead at the next stage of historical writing, where the temporal order of the chronicle is retained but the historian aims at an explanation of the events recounted.<sup>318</sup> As a result, condition six is appropriately satisfied, as is condition seven, where at least some of the events must be asserted as fact for the storyworld. Taken together, conditions one through seven are satisfied, assuredly supporting (and reinforcing) a high degree of narrativity of these ancient historical texts. What remains is condition eight: the story must communicate something meaningful to its audience. Certainly, through their integration of past,

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<sup>313</sup> Woodman 2009b: 3.

<sup>314</sup> Woodman 2009c: 42. For further discussion on the narrative and literary context of ancient historians, including Tacitus, see Luce and Woodman 1993; Kraus and Woodman 1997; Woodman 1998 and 2009a. See also White 1987.

<sup>315</sup> For Ryan’s ‘fuzzy-set’ definition, which forms the basis of this analysis, see Ryan 2007: 28-31.

<sup>316</sup> Fulda 2014: 227.

<sup>317</sup> Ankersmit [2005] 2008: 217.

<sup>318</sup> Ankersmit [2005] 2008: 217.

present and future, historical writings can claim to achieve significance with their rich and detailed accounts. Indeed, our understanding of Rome's history is arguably framed through the lens of these historians. However, as this thesis will demonstrate, these narratively configured statements also frame our understanding of Augustus, the *leges Iuliae* and notably the ancient reception to this package of laws. And as a result, each historian therefore contributes to, and advances our understanding of, the wider narrative of the *leges Iuliae*.

What this analysis has set out to do, therefore, is to reorient our understanding and our conception of these ancient sources on the Augustan Marriage Legislation in the light of modern narrative theory. This underlines why such an original, narratologically-focused study of the *leges Iuliae* is both useful and relevant. By using a fluid and malleable concept of narrativity, grounded in Ryan's 'fuzzy-set' definition, the key sources on the *leges Iuliae* can be re-considered and re-configured as narrative statements, each individually featuring sufficient prototypical narrative elements that subsequently allow their readers and receivers to view them as narratives in their own right. Having established their narrative credentials, it thus demonstrates that narratological tools can, and arguably should, be used to study the *leges Iuliae*. What is more, this chapter has also served to reinforce my proposition that there is an inexorable and inextricable relationship between law and narrative: that the law is full of stories *and* that stories are full of law. Treating and positioning these sources as narrative statements which form part of, and contribute to, the story of the *leges Iuliae*, therefore, is a crucial starting point to my narratological analysis of this package of legislation. In the next chapter, this narratological analysis will go on to explore and interrogate the myriad levels of narrative that both inform and emerge from the legislation, leading to the creation of the 'storyworld' of the Augustan Marriage Legislation.

## Chapter 4

### The 'Storyworld' of the *leges Iuliae*

It is clear that we are faced with a myriad of sources, or narratives on the legislation: from Augustus' own *Res Gestae*; to the contemporaneous account in Horace's *Carmen Saeculare*; to the poets of Propertius and Ovid; to the accounts of writers such as Tacitus, Suetonius and Cassius Dio from the first and second centuries AD; and to the legislative provisions as re-told by the jurists. In order to make sense of these narratives, how they interact and intersect with one another, and the story they combine to tell us about the Augustan Marriage Legislation, I argue that scholars need to go beyond simply reconstructing 'a sequence of events, or a set of existents', with a more nuanced approach required.<sup>319</sup> As interpreters of this legislation, we need to relocate to this 'world of stories' to comprehend these complex and, at times, competing narratives.<sup>320</sup> Thus, we need to ask how modern narrative theory can be used to analyse the narratives that both inform and emerge from this Roman legislative package, and how can it help unpack and offer an original explanation for how these narratives interact with one another. For modern narrative theory and, as I propose in this chapter, specifically the narrative concept of 'storyworld', can offer scholars the opportunity to understand not just what happened but attempt to reconstruct 'the surrounding context and environment' of these laws.<sup>321</sup>

In this chapter, therefore, I set out to examine some of the core principles of narrative theory, including the distinction between story and plot, the idea of *diegesis* and levels of narrative, and the concept of 'storyworld'. I aim to test their relevancy and sufficiency when it comes to their application to the *leges Iuliae*, ultimately determining that it is the holistic concept of 'storyworld' that allows for an appreciation of the multiple competing stories of the legislation. I submit that, by configuring and contextualising the narratives of the Augustan Marriage Legislation in this way – as a comprehensive and integrated 'storyworld', rather than using the one-dimensional transformative process of story into plot – more accurately reflects the nuances of how these multiplicitous sources of the legislation operate and interact with one another.

#### **Story vs. Plot**

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<sup>319</sup> Herman [2005] 2008b: 570.

<sup>320</sup> See Herman 2002: 9 for an initial definition of 'storyworlds', which he classifies as 'mental models of who did what to, and with whom, when, where, why, and in what fashion in the world to which recipients relocate as they work to comprehend a narrative'.

<sup>321</sup> Herman [2005] 2008b: 570.

The story vs. plot distinction is one of the foundational concepts in narrative theory. As Fludernik states, it 'perhaps constitutes the most basic of all narratological axioms'.<sup>322</sup> Indeed, the relationship between story and plot, and the distinction between these two terms, is 'central to our thinking about narrative'.<sup>323</sup> The juxtaposition of these key terms, and the way their relationship operates, is the cornerstone to comprehending how narratives are rendered.

The concept of plot, and its relationship with story, has captivated narrative theorists and been 'foundational to the narratological project since the Russian Formalists' distinction between *fabula* (story) and *sjuzet* (plot)'.<sup>324</sup> This has resulted in a multitude of definitions and interpretations of the term. Indeed, the term 'plot' has been used to refer to a variety of different phenomena, explored in terms of its relation to the concept of story, as an act of gender construction, and as a force which affects the reader as a narrative unfolds.<sup>325</sup> Faced with such an elusive and abstract term, it can be helpful to consider an elementary definition. Prince, in the *Dictionary of Narratology*, provides four alternative definitions of the term plot:

1. The main incidents of a narrative; the outline of situations and events.
2. The arrangements of incidents; the situations and events as presented to the receiver. The Russian Formalists made an influential distinction between *sjuzet* and *fabula* (or basic story material)
3. The global dynamic organisation of narrative constituents which is responsible for the thematic interest of a narrative and for its emotional effect.
4. A narrative of events with an emphasis on causality, as opposed to story, which is a narrative of events with an emphasis on chronology.<sup>326</sup>

With such a varying semantic range of the word 'plot', it is useful to this analysis to consider what narratologists want and need from the term itself. Hence, plot can be helpfully defined as an 'embracing concept for the design and intention of narrative'.<sup>327</sup> It is a fundamental component of narrative texts; one which provides the telling and understanding of the narrative's story.<sup>328</sup> From this, a distinction can be made between the narrative's story, viewed as the basic chronology of events, out of which the 'more complex plot is constructed' and emplots those

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<sup>322</sup> Fludernik 1996: 333.

<sup>323</sup> Brooks [1984] 1992: 13.

<sup>324</sup> Fludernik 1996: 333.

<sup>325</sup> For a detailed summary of 'plot', see Dannenberg [2005] 2008a: 435-439.

<sup>326</sup> Prince [1987] 2003: 73.

<sup>327</sup> Brooks [1984] 1992: 12.

<sup>328</sup> See Dannenberg [2005] 2008a: 436.

events.<sup>329</sup> It is the combination of story and plot which forms the basis of the overarching category of 'narrative'. As Abbott summarises:

**Narrative** is the presentation of events, consisting of *story* and *narrative discourse*; **story** is an *event* or sequence of events (the *action*); and **narrative discourse** is those events as represented.<sup>330</sup>

This leads to a distinction between two levels of narrative, between story and plot (or as Abbott labels it, narrative discourse). The 'story' consists of the narrated events (actions and happenings) and existents (characters and setting).<sup>331</sup> Plot, or narrative discourse, on the other hand, is the 'rearrangement or treatment' of those events and existents at the level of presentation.<sup>332</sup> Plot, therefore, is the combination of actions and events, synthesised into a coherent narrative with an agenda: 'it is what makes a story a story, and not just the raw material'.<sup>333</sup> It is worth remembering that Aristotle, one of the founding fathers of modern narratology, is lauded for recognising this distinction: the primacy of plot as the organising principle that serves to configure the stuff of story into a narrative.<sup>334</sup>

Note that the term plot is broadly interchangeable with narrative discourse. For English speakers, the boundaries between the terms story, plot, narrative and discourse can blur. In casual conversation, a 'story' can mean what scholars refer to as the 'narrative'; likewise, 'plot' is used in common English usage not as the order of events in the narrative, but rather refers to its 'story'.<sup>335</sup> Yet, the distinction between the terms 'plot' and 'story' is vital. Accordingly, some scholars prefer to use the terms advanced by the Russian Formalists: *fabula* and *sjuzet*.<sup>336</sup>

Modern narratologists trace the origins of the distinction between story and plot to Victor Shklovsky's theory of plot, first outlined in 1921.<sup>337</sup> For Shklovsky:

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<sup>329</sup> Dannenberg [2005] 2008a: 435. See also Schmitz [2002] 2007: 43.

<sup>330</sup> Abbott [2002] 2008: 19. Emphasis in original.

<sup>331</sup> See Shen [2005] 2008a: 566-567 for a precis of the story-discourse distinction.

<sup>332</sup> Shen [2005] 2008a: 566. See also Prince [1987] 2003: 73, 93 who defines 'plot' as the set of narrated situations and events in the order of their presentation to the receiver, as opposed to story, the basic material rearranged into plot.

<sup>333</sup> Abbott 2007: 43.

<sup>334</sup> Liveley 2019: 44. For further discussion on the legacy of Aristotle, see chapter 3 and Liveley 2019.

<sup>335</sup> See Abbott [2002] 2008: 18. In the discussion that follows, the term 'plot' will be used instead of 'narrative discourse', allowing for clarity and ease of mapping onto the Russian Formalists' term *sjuzet*.

<sup>336</sup> According to familiar convention, *fabula* maps onto the English 'story', and *sjuzet* maps onto 'plot'.

<sup>337</sup> Shklovsky [1921] 1965. Liveley's 2019 survey provides an excellent introduction and overview of Shklovsky, and Russian Formalists more broadly.

The idea of *sjuzet* is too often confused with the description of events – with what I propose provisionally to call the *fabula*. The *fabula* is, in fact, only material for *sjuzet* formulation.<sup>338</sup>

Thus, it is plot (*sjuzet*) which transforms the story (*fabula*) into a narrative through a process of ‘re-arranging, re-presenting and explicitly distorting familiar patterns’.<sup>339</sup> Shklovsky’s proposal for two levels of narrative leads to a number of parallels which can be drawn with Aristotle’s concept of *mythos*.<sup>340</sup> For Aristotle, there is a distinction between *logos*, the invented or pre-existing story stuff, and the *mythos*, something artificially constructed which organises this story stuff (*Poet.* 1.1447a 8-9).<sup>341</sup> Plot, according to Aristotle, is the conversion of the story stuff into a well-constructed, structured unit with a beginning, middle and an end (*Poet.* 7.1450b 25-34).<sup>342</sup> Accordingly, there is a degree of resemblance between Shklovsky’s definition of *sjuzet* and Aristotle’s concept of *mythos*, as Liveley argues:

Both Shklovsky and Aristotle identify plot as the organising principle that configures the stuff of story into narrative discourse through its ‘arrangement of incidents’ (c.f. *Poet.* 6.145a 2-4); both assume a hierarchical relationship between plot and story; both consider that a writer or poet principally demonstrates his artistry through his construction of plots (c.f. *Poet.* 9.1451b 27-30); and both see the plot as the primary vehicle through which a writer or poet reaches the goal of narrative and impacts emotionally upon an audience.<sup>343</sup>

This dichotomy between story and plot, or *fabula* and *sjuzet*, and the hierarchical relationship between these two levels of narrative, uncovers another relationship, one between the narrative as a whole and its temporal order, or time. For Genette, any study of the temporal order of a narrative requires a comparison of ‘the order in which events or temporal sections are arranged in the narrative discourse [plot] with the order of succession these same events or temporal segments have in the story’.<sup>344</sup> Thus, the binary opposition of story versus plot reflects two different temporal orders, which are fundamentally enshrined in these two levels of narrative. At

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<sup>338</sup> Shklovsky [1921] 1965: 57.

<sup>339</sup> Liveley 2019: 168.

<sup>340</sup> See Prince [1987] 2003: 56: ‘The distinction between *mythos* and *logos* is suggestive of that between [...] *sjuzet* and *fabula*’.

<sup>341</sup> See Liveley 2019: 56.

<sup>342</sup> See Dannenberg [2005] 2008a: 436 and Abbott 2007: 43. Abbott also argues that Aristotle’s concept of *mythos*, often translated as plot, is the fashioned story, shaped with a beginning, middle and end.

<sup>343</sup> Liveley 2019: 170.

<sup>344</sup> Genette 1980: 35, parentheses added.

the 'story', or *fabula*, level of a narrative, there is a linear sequence of events arranged in chronological order, which is then reshuffled and rearranged at the plot, or *sjuzet*, level.<sup>345</sup> The reshuffling of the chronology disrupts the temporal order at the story level, and results in what Genette has termed narrative anachronies: 'various types of discordance between the two orderings' of story and plot.<sup>346</sup> This disruption of the temporal order in the transformation of story into plot subsequently allows for the employment of various narrative techniques, such as *analepses* (narrative flashbacks to an earlier point on the story timeline) or *prolepses* (narrative flashforwards to a later point in the story).<sup>347</sup> Plot, therefore, not only transforms the story level of the narrative, but it also structures the temporal sequence of the narrative too; a sequence that subverts the traditional chronological pattern of the story. An alternative way of viewing this relationship is to consider the *fabula* as the chronological prequel to the main *sjuzet*: the material of the *fabula* is already pre-formed and prepared in a logical fashion ready to be rearranged to fit the *sjuzet's* agenda. Indeed, the significance attached to the process enacted by the *sjuzet* is clear: in reconstructing and transmuting both the events and the temporality at the *fabula* level, it is a 'dynamic shaping force' of the narrative as a whole.<sup>348</sup>

This process, of *fabula* into *sjuzet*, clearly operates along a horizontal linear line. In its simplest form, it is always the former that is transformed and reconstructed into the latter. This, I argue, is problematic. When it comes to the myriad narratives of the *leges Iuliae*, their relationship does not develop in this straightforward fashion: this linear progression of *fabula* into *sjuzet* can only take us so far. Just as Fludernik queried the general validity of the story vs. discourse distinction, and its status as an 'absolute of narratology', I too argue that it offers a restricted scope and needs to be rethought as one of the central tenets in the analysis of narratives.<sup>349</sup> I maintain that this dichotomy does not function as a fitting model to appreciate the subtle modulations of, and the relationship between, the different narratives on the Augustan Marriage Legislation.

A brief narratological analysis of two different sets of narratives on the *leges Iuliae* can demonstrate how this temporally linear process is somewhat lacking when considering the surrounding context and environment in which our narratives are embedded. Take the later writers, such as Tacitus, Suetonius and Cassius Dio, who all provide key, (mostly) chronological accounts on how and when Augustus introduced his legislation. Additionally, we have Augustus'

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<sup>345</sup> See Fludernik [2005] 2008: 609 and De Jong 2014: 77.

<sup>346</sup> Genette 1980: 35-36.

<sup>347</sup> For a helpful glossary of narrative terms, see Liveley 2019: 373-378, and for a useful summary of time in narrative, see Fludernik [2005] 2008: 608-612.

<sup>348</sup> Brooks [1984] 1992: 13.

<sup>349</sup> Fludernik 1996: 333.

own *Res Gestae*, an autobiographical account, in which Augustus has emplotted his own master *sjuzet* on the laws, aligning them with the *mos maiorum*, and framed through an acutely Augustan lens. If we were to directly map the *fabula/sjuzet* model onto these two sets of narratives, theoretically we might suppose that Augustus – writing chronologically earlier – would provide the *fabula* from which the later writers could create their own reordered plot with an agenda, their *sjuzet*. However, this linear transformation of *fabula* into *sjuzet*, akin to the model that Shklovsky first observed, fails to appreciate the formation and configuration of a more tangled web of narratives and their surrounding environment. Here, the material traditionally classified as the *fabula* by Shklovsky – the description of events and existents – is outlined and described by the later writers (Tacitus et al), all of whom wrote many years after the passage of the legislation. It is these historians who, retrospectively and with hindsight, recreated the chronological series of actions and description of events based on the master plot, or *sjuzet*, first created by Augustus to serve his own legal and political ends. As recipients of these narratives, it is not possible to simply map such a process onto these two sets of narratives and ‘piece together bits of action into a linear timeline’; rather, we should ‘try to measure the significance of the timeline that emerges against other possible courses of development in the world in which narrated occurrences take place’.<sup>350</sup> Shklovsky’s formulation, thus, has its limitations.

Instead, in order to appreciate more fully the narrative dynamics at play between the *Res Gestae* and the later historians, I argue that it is worth considering a more complex relationship between *fabula* and *sjuzet*, one which accounts for the *fabula* as something already reconstructed and already reordered. De Jong proposes such a model, arguing that ‘the reconstructed *fabula* consists of the events in their full form in chronological order’.<sup>351</sup> The *fabula* thus already exists as a reconstruction, indeed even a product of the reader unpicking the *sjuzet*, and subsequently a more helpful model to marshal in this example. If we treat the *fabula* in this way, then the work of Tacitus, Suetonius and Cassius Dio can be viewed as products of Augustus’ *sjuzet* – each historian has unpicked the *princeps*’ master plot in order to recreate and reconstruct their own description of events, their *fabula*, on the marriage legislation.

In line with this re-thinking of the relationship between *fabula* and *sjuzet*, it is also worth considering the impact of genre, and the respective goals of each of the writers, on the status of their narrative. On the one hand, writers such as Tacitus, Suetonius and Cassius Dio are writing Annals of history and biographies of Emperors, which pushes them to be concerned with a

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<sup>350</sup> Herman 2002: 14. See also Ryan 1991: 109-174.

<sup>351</sup> De Jong 2014: 77. See also Tynyanov 1921 and Prince 1982.

different agenda than Augustus.<sup>352</sup> Their agendas, instead, focus primarily on the reconstruction of events and existents, namely the *fabula*. Augustus, on the other hand, writing his autobiographical *Res Gestae*, had a different agenda entirely.<sup>353</sup> Instead, the *princeps* was focused on creating a master plot, a *sjuzet*, that sets out to align the legislation with the cultural narrative of the *mos maiorum* and configure the laws in such a way that they should succeed. Unlike the historians, Augustus' agenda, therefore, is concerned with creating a plot, a *sjuzet*, one which justifies his legislation and attempts to make it more acceptable to the Roman people. And it is this premise which underpins the core question of my thesis: why, in spite of this master plot or *sjuzet* of Augustus and in spite of the law's strong legal and narratological position as aligned with the *mos maiorum*, does the story of the *leges Iuliae* come to a tragic end with the legislation's negative reception?

A strictly chronolinear thinking of the relationship between *fabula* and *sjuzet*, then, does not sufficiently allow for the complex narrative dynamics that emerge from the sources on the *leges Iuliae*. Instead, I propose a more holistic approach, based on narrative storyworlds, which developed from Genette's analysis of the different diegetic levels in any given narrative.

### **Narrative Storyworlds**

The concept of *diegesis* has a number of different senses in modern narrative theory: its origins trace back to Plato, who distinguished between *mimesis* (showing) and *diegesis* (telling); for Aristotle, and for modern narratologists similarly, this concept is used to describe when the narrator's mediating role is overt.<sup>354</sup> Frequently, however, the term *diegesis* is used to refer to the 'storyworld', which Abbott describes as 'the world created by the narration'.<sup>355</sup> This use of the term can be ascribed to the work of Genette, who, in his 1980 work *Narrative Discourse*, drew on the word *diegesis* (*diégèse*) to introduce a distinction between, and offer a classification of, the different levels within a narrative text.<sup>356</sup> According to Genette, 'any event a narrative recounts is at a diegetic level immediately higher than the level at which the narrating act producing this

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<sup>352</sup> For further scholarship on the ancient historians, see Grant 1970; Mellor 1999 and 2012; Feldherr 2009.

<sup>353</sup> For further scholarship on Augustus and the *Res Gestae*, see Brunt and Moore 1967; Gordon 1968; Ramage 1987 and 1988; Zanker 1988; Bowersock 1990; Damon 1995; Bowman et al. 1996; Elsner 1996; Davis 1999; Davies 2000; Beacham 2005; Eder 2005; Cooley 2009; and Levick 2010.

<sup>354</sup> See Abbott [2002] 2008: 231 and Liveley 2019: 373-374 who each provide a helpful glossary of narratological terms, including *diegesis*. See also Shen [2005] 2008b: 107-108 for a more detailed summary about *diegesis*.

<sup>355</sup> Abbott [2002] 2008: 231.

<sup>356</sup> Genette 1980.

narrative is placed'.<sup>357</sup> Thus, *extradiegetic* refers to a narrative level outside of the 'storyworld', for example a third-person, heterodiegetic narrator who is not a character in the story; *intradiegetic* refers to something that occurs within the story world, for example a homodiegetic or first-person narrator who is a character in the story; and, thirdly, the events told by this homodiegetic narrator are considered to be *metadiegetic*, namely part of a narrative in the second degree.<sup>358</sup>

Although Genette's use of the term *diegesis* was initially analogous to the term 'story', after initial criticism and misunderstanding, Genette offered further clarification in his later work, *Narrative Discourse Revisited*:

My use of the word *diégèse* [diegesis], partly proposed as an equivalent for *histoire* [story], was not exempt from a misunderstanding that I have since tried to correct. Souriau proposed the term *diégèse* in 1948, contrasting the diegetic universe (the place of the signified) with the *screen*-universe (place of the film-signifier). Used in that sense, *diégèse* is indeed a *universe* rather than a train of events (a story); the *diégèse* is therefore not the story but the universe in which the story takes place [...] We must not, therefore (as is too often done today), substitute *diégèse* for *histoire*.<sup>359</sup>

With roots in the work of theoreticians of cinematographic narrative, including Souriau and Metz, many works of narrative theory have adopted this sense of *diégèse* as a story universe or 'storyworld'.<sup>360</sup> Herman, in his 2002 book *Story Logic*, turned to the cognitive sciences and particularly artificial intelligence research for fresh insights into what defines a narrative and how to unravel, and expand, the complex interactions between *fabula* and *sjuzet*, story and plot.<sup>361</sup> Drawing on the rich research traditions that have already grown up around story and plot, *fabula* and *sjuzet*, including the work of Chatman, Prince and the classical structuralist tradition, Herman first adds his own comment on the distinction between story and plot. He compares the term 'storyworld' first with 'story', what he describes as a term of art used by narratologists to designate what happened as opposed to the way in which what happened is recounted; and then also plot, or discourse, which is reserved for the manner rather than the matter of narrative

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<sup>357</sup> Genette 1980: 228.

<sup>358</sup> Genette 1980: 228. For further clarification of these terms, see Abbott [2002] 2008: 75, 231-235, Liveley 2019: 374-376, and Rimmon-Kenan [1983] 2002: 92-97.

<sup>359</sup> Genette 1988: 17-18. Emphasis in original.

<sup>360</sup> C.f. Gavins 2007.

<sup>361</sup> Herman 2002. In this landmark study, Herman further develops his ideas on narratives and narrativity which he originally presented in his 1997 essay: 'Scripts, Sequences and Stories: Elements of a Postclassical Narratology'.

presentation.<sup>362</sup> Acknowledging that this distinction between story and plot has proven to be an ‘important and much-used resource’, Herman argues that aspects of narrative temporality require a ‘rethinking of classical approaches to the problem of order, that is, the ordering of events in the discourse vis-à-vis the order in which those events can be inferred to have occurred in the story’.<sup>363</sup> It is here that using the term ‘storyworld’ instead of story and/or plot can be more advantageous. And given our need to re-think the temporality of the narratives on the *leges Iuliae*, and how they unfold within their wider context and environment, this particular configuration has its advantages.

In his study, Herman defines ‘storyworld’ as ‘mental models of who did what to, and with whom, when, where, why, and in what fashion in the world to which recipients relocate as they work to comprehend a narrative’.<sup>364</sup> Elaborating this concept further, Herman argues that:

The term *storyworld* better captures what might be called the ecology of narrative interpretation. In trying to make sense of a narrative, interpreters attempt to reconstruct not just what happened [...] but also the surrounding context or environment [...] More generally, *storyworld* points to the way interpreters of narrative reconstruct a sequence of states, events and actions not just additively or incrementally but integratively or ‘ecologically’.<sup>365</sup>

For Herman, narrative understanding requires more: how do the actions and events recounted relate to what might have happened in the past?; what could be happening (alternatively) in the present?; and what may yet happen as a result of what already has come about?<sup>366</sup> It is the importance of such questions in narrative contexts, Herman argues, that motivated his shift from story to ‘storyworld’.<sup>367</sup>

The concept of ‘storyworld’, therefore, provides an alternative way for interpreters to make sense of narratives, rather than simply classifying levels of narratives as either story or plot. It allows for the reconstruction of events, actions and characters, not purely in a linear or additive fashion, but rather in a more complete and ‘ecological’ manner – as a universe. A story, or *fabula*, is not simply a sequence of events reconstructed by the teller - the so-called ‘content plane’ of the

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<sup>362</sup> Herman 2002: 13.

<sup>363</sup> Herman 2002: 13. Herman elucidates further on this matter in chapter six.

<sup>364</sup> Herman 2002: 9.

<sup>365</sup> Herman 2002: 14. Emphasis in original.

<sup>366</sup> Herman 2002: 14.

<sup>367</sup> Herman 2002: 14.

narrative, the existents and events – which is subsequently transformed by said teller into a plot. Instead, stories and tellers are seen to design architectural blueprints for the building of an immersive world, and they guide the reader towards this world through the outlining of key parameters: ‘*when* (time), *where* (space), *who* (character), *what* (states, events and actions), *how* (scripts and sequences), and *why* (rationale, relations and causality)’.<sup>368</sup> Thus, the concept of ‘storyworld’ allows for an appreciation not only of the temporal structure within the narrative, but also the spatiotemporal structure of the wider environment and universe which the narrative inhabits and takes place. This is crucial for our purposes when re-examining the narratives of the *leges Iuliae*: for it is the surrounding context and environment of these texts, the spatiotemporal structure – not just the existents, events and temporal structure within a specific text – that define how our sources interact and intersect with one another, and configure our understanding of this process. It is only by examining the whole picture – the ‘universe’ of the narratives of the *leges Iuliae* – that we can release a new reading of this controversial legislative package. Furthermore, the concept of ‘storyworld’ also suggests a deeper relationship between the teller and the reader/recipient. For tellers and readers likewise inhabit this wider spatiotemporal world of the narrative. More than just reconstructed timelines or inventories of events and existents, storyworlds are thus ‘mentally and emotionally projected environments’; synthesised by the co-ponesis between both the teller of the narrative and its reader.<sup>369</sup> Narratives, and their tellers, work on the readers to shape their cognitive understanding of the ‘storyworld’ but readers, too, also participate in this world-creating power, co-creating the storyworld as they are called upon to inhabit and live in this mentally and emotionally projected environment.

This notion of the immersive nature of ‘storyworlds’, and the relocation of readers and interpreters to this world, is one which Ryan has explored in her work on artificial intelligence and narrative theory.<sup>370</sup> In this work, Ryan explores the theory of possible-worlds in the context of fictional narratives and proposes that narrativity resides in:

[...] a text’s ability to bring a world to life, to populate it with individuals through singular existential statements, to place this world in history through statements of effect affecting its members, and to convey the feeling of its actuality.<sup>371</sup>

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<sup>368</sup> Liveley 2019: 360. Emphasis in original.

<sup>369</sup> Herman 2002: 16-17.

<sup>370</sup> Ryan 1991.

<sup>371</sup> Ryan 1991:112.

Thus, in order to demonstrate high levels of narrativity, ‘a text must not only project an actual world but must also place this world in history’, namely within its context.<sup>372</sup> Here, Ryan points to the manifold and multi-dimensional nature of a narrative. A narrative does not exist unassumingly as a one-way progression of *fabula* into *sjuzet*: like a true choreographer, it weaves and creates multiple levels and elements within itself and own world, while simultaneously engaging with its wider context, the wider world. Moreover, the narrative crucially expects, and demands, that the reader play an active part in this process too: in order to interpret narratives, the reader must relocate and fully immerse in this alternative possible world, leading to a co-creation in the storymaking.<sup>373</sup> As Herman summarises, all narratives have a world-creating power (whether fictional or nonfictional): this power to create worlds goes a long way towards explaining the immersiveness of narrative, and ‘its ability to transport interpreters into places and times they must occupy for the purposes of narrative comprehension’.<sup>374</sup>

Instead of focusing on the tradition of story and plot, of *fabula* and *sjuzet*, therefore, the concept of *diégèse* or ‘storyworld’ allows for the interaction of different levels of narrative and an understanding of their past, present and future; for consideration of the whole spatiotemporal context and universe of the narrative texts; and for the co-poiesis that occurs between teller and reader in creating this immersive, multi-dimensional world. I submit that such a comprehensive and integrated way of viewing ‘narrative’ more accurately reflects the nuances of the multifarious sources on the Augustan Marriage Legislation, and releases a new reading of those texts traditionally associated with the marriage legislation. For although the creation of the ‘universe’ of the *leges Iuliae* began with Augustus in 18BC, with the introduction of this package of legislation, there are many different, and at times, competing levels of narratives, which come from the past, present and future, and make up the entire *diégèse* of the legislation. An appreciation of these narratives, therefore, can only come from shifting our understanding of them as individual texts and instead processing them as different, yet interconnected, parts of a whole entity.

While the ‘storyworld’ of the legislation was brought to life initially by Augustus himself, with what he hoped would be the master-narrative of the legislation drawing on the cultural and legal discourse of the *mores maiorum* in order to justify his laws, various readers since then have each

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<sup>372</sup> Ryan 1991: 259.

<sup>373</sup> See Ryan 1991: 31-47 for an exploration of the possible-worlds and the concept of accessibility relations between the fictional world and the actual world. Likewise, Herman 2002: 14-17 introduces the immersive nature of narratives and how ‘interpreters are called upon to live out complex blends of cognitive and imaginative response’ (2002:16).

<sup>374</sup> Herman 2002: 16. C.f. also Young 1987; Gerrig 1993; and Ryan 2000.

added to and shaped this 'universe'. Contemporary poets, including Horace, Propertius and Ovid, and likewise later writers such as Tacitus, Suetonius and Cassius Dio, have not only acted as recipients of Augustus' master-narrative, but have likewise served as co-creators and contributors, each bringing to bear their own, different evaluation of the legislation within a 'world' that they have been called upon to engage with and inhabit. Indeed, one of the most remarkable aspects of this 'storyworld' is its immersive power in projecting a 'universe' that includes, and is shaped by, the past, present and future. This is crucial for the *leges Iuliae*, as they themselves are not only shaped by the past – by the stories of the *mores maiorum* – but these laws also call upon the past in order to shape the present and future social behaviours of all Roman citizens. Any linear narrative interpretation, therefore, does not sufficiently justify the rich processes at play here. For the 'storyworld' of the *leges Iuliae* relies upon the complex interaction of its mutually constitutive levels of *diegesis*, each interconnected with one another *and* their wider spatiotemporal context, as well as the co-poiesis of teller and reader as they come together to create and synthesise this narrative 'storyworld'.

### **Narrative Levels in the Modern Criminal Legal Context**

The recognition of different levels of narrative within the modern legal context, specifically within the context of a criminal trial, is one which has already been acknowledged by Jackson in his 1996 paper, where he explores semiotic and psychological versions of narrative theory in the criminal trial.<sup>375</sup> Applying Wagenaar's model of 'anchored narratives' Jackson discusses how the story of the indictment, which is the prosecution's narrative and details the crime(s) with which the defendant is charged, must incorporate various 'sub-stories' and 'sub-sub-stories' in support of it.<sup>376</sup> These 'sub-stories' and 'sub-sub-stories' are the evidence and inferences advanced in support of the prosecution's case and which allows the prosecution to prove the *actus reus* and *mens rea* as laid out in the story of the indictment.<sup>377</sup> Thus, in a criminal trial there is a hierarchy of nested stories: the narrative in the indictment at the story level, which is put to the jury by the prosecution, and the deeper we probe into this 'story', we uncover more and different 'sub-stories' in evidence.<sup>378</sup> Indeed, as Wagenaar states, 'evidence is nothing else but another narrative'.<sup>379</sup> For within the courtroom, it is the main job of the trial lawyers to contextualise the

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<sup>375</sup> Jackson 1996.

<sup>376</sup> Jackson 1996: 24. See also Wagenaar *et al.* 1993.

<sup>377</sup> Jackson 1996: 24.

<sup>378</sup> Jackson 1996: 24.

<sup>379</sup> Wagenaar 1995: 267.

evidence and accounts from these various ‘sub-stories’ and ‘sub-sub-stories’, and make them part of the broader narrative that is in line with their specific strategy.<sup>380</sup> As Brooks puts it:

[L]aw is, in a very important sense, all about competing stories, from those presented at the trial court – elicited from witnesses, reweven into different plausibilities by prosecution and defence, submitted to the critical judgment of the jury – to their retelling at the appellate level [...] Trial lawyers know that they need to tell stories, that the evidence they present in court must be bound together and unfolded in narrative form.<sup>381</sup>

Indeed, Brooks discussed earlier in his work, ‘The Law as Narrative and Rhetoric’, how ‘a courtroom lawyer’s task would seem to be to take an often fragmentary and confusing *fabula* and turn it into a seamless, convincing *sjuzet*’.<sup>382</sup> Brooks goes on to hint that this is not a ‘simple process of addition [...] there are contradictions and incoherencies to be dealt with, alibis and excuses to be found, gaps to be filled’.<sup>383</sup> While I agree with Brooks that this is not a simple, additive progression of story into plot, I contend that his mapping of the narrative levels of *fabula* and *sjuzet* does not account for the ‘raw pre-story stuff’, or the material, which makes up and precedes the story. This level, which I will term the ‘micro-narrative’, or ‘pre-*fabula*’, consists of all the material of the story, including the contradictions, excuses, alibis, incoherencies, (competing) witness statements, DNA evidence, and (competing) incidences (similar to the ‘sub-stories’ and ‘sub-sub-stories’ above).<sup>384</sup>

Thus, a ‘story’ in narratological terms consists of a linear sequence of events arranged in a basic chronological order, implying that a level of organisation and order has already taken place. Indeed, we have already seen that a cognitive re-construction and re-organisation of the ‘story’ takes place when considering the relationship between *fabula* (story) and *sjuzet* (plot), as De Jong proposes.<sup>385</sup> The fundamental essence of the *fabula*, then, or the story, requires a level of input from the teller in order to transform the fragmentary ‘pre-*fabula* stuff’ into a structured chronological order of narrated events (actions and happenings) and existents (character and setting). Therefore, in the context of the criminal trial, Brooks’ use of *fabula* does not fit: if the *fabula* has already been pre-formed and prepared, then it cannot be regarded as identical to the fragmentary and confusing ‘raw material’ evidence which precedes it chronologically and out of

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<sup>380</sup> See Grunewald 2013: 370.

<sup>381</sup> Brooks 2005: 416.

<sup>382</sup> Brooks 1996: 17.

<sup>383</sup> Brooks 1996: 17.

<sup>384</sup> See Appendix 1.

<sup>385</sup> De Jong 2014: 77.

which the *fabula* is shaped. Instead, I argue that it is the courtroom lawyer's task to take the fragmentary and confusing material at the 'micro' or 'pre-*fabula*' level, and structure it into a chronological sequence and order of events, a story, to present to the jury.<sup>386</sup> For the law, and by extension the lawyers, convict by making the supposition that this reconstructed 'story' maps neatly onto the chronology of the actual events of the crime. Naturally, real life is more complex and intricate than a straightforward chronology will often allow. Nonetheless, the advocates in a trial are still in charge of telling the 'story' of the crime: of contextualising evidence and accounts, and taking the basic pre-story stuff and attempting to transform it into a coherent 'story' with a clear narrative strategy.<sup>387</sup> Most notably in the English Criminal Justice System, this burden of presenting a persuasive and complete 'story' of the crime is on the prosecutor – how convincing this 'story' is, and how successful their narrative strategy is in proving beyond a reasonable doubt is ultimately left for the jury to decide.<sup>388</sup> The evidence used by the advocates in a trial, therefore, is nothing else but another *level* of the narrative, the basic pre-story stuff within the wider 'storyworld' of the criminal trial.

Then, there are additional levels of narrative which emerge and can intersect with the overarching narrative of a criminal trial.<sup>389</sup> After each trial lawyer has 'told' their version of the story of the indictment, the jury must decide which story they choose to believe. The side that can offer a *fabula* of the indictment that the 'juror accepts as the best explanation of the evidence presented [...] will win the juror's vote in the end.<sup>390</sup> At the end, a jury (or judge if the criminal justice system is inquisitorial) forms a 'master-narrative' or *sjuzet*.<sup>391</sup> A complex and coherent representation of the events of the story, it is this 'master-narrative' which will provide the verdict and be used when recounting the case in the future.<sup>392</sup> Furthermore, there is also the narrative of legal precedent – '*stare decisis* – let the decision stand' – where previous legal cases provide rules and/or principles that must be followed by a court when adjudicating a case. It is these past decisions which imbue the 'master-narrative' of a case with authority, and influence the decision of the jury or judge (a decision which may itself then become part of the narrative of legal precedent). Crucially, however, it occupies a different temporal space to the narratives occurring within the trial. Finally, underpinning this entire narrative of a criminal trial, and

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<sup>386</sup> See Appendix 1.

<sup>387</sup> Grunewald 2013: 370.

<sup>388</sup> Grunewald 2013: 372.

<sup>389</sup> See Appendix 1.

<sup>390</sup> Grunewald 2013: 376.

<sup>391</sup> Grunewald 2013: 376.

<sup>392</sup> For more on the roles of jury and judge, and in particular the idea of judges in an inquisitorial system creating the 'master-narrative' as opposed to the jury in an adversarial system, see Grunewald 2013.

indeed the wider criminal justice system, is the trial's blueprint.<sup>393</sup> This consists of the rules of evidence, which are crucial to the working of both the adversarial and inquisitorial criminal trial processes. These rules formalise the way in which evidence can be presented in court and regulate how the story of the indictment can be told. As Brooks puts it:

Against what may often appear as the fragmented, contradictory, murky unfolding of narrative in the trial courtroom stand formulae by which the law attempts to impose form and rule on stories.<sup>394</sup>

Thus, the 'storyworld' of the criminal justice system is just as immersive and multi-dimensional as the 'storyworlds' elucidated by Genette, Herman, Ryan et al. Once again, the one-dimensional process of *fabula* into *sjuzet* can only take us so far in the context of the modern criminal justice system, whose narrativity is far more nuanced and complicated than this 'simple process of addition' allows.<sup>395</sup>

Utilising this concept of 'storyworld' and the different levels of narrative, and applying it to the modern-day criminal trial, is achievable due to a plentiful supply of sources. There is a vast array of documentation, which is admitted into evidence in a trial, and which is subsequently recorded in trial transcripts, not to mention any media reports which accompany particularly high-profile court proceedings. With opening and closing statements of the prosecution and defence, witness statements, confessions, DNA evidence, CCTV evidence, judicial opinions and victim statements, scholars are not left wanting for sources of the various narratives which emerge from such proceedings. The same cannot be said for the justice system, and the narratives which emerge from a trial, in the Augustan era. There are some examples of law making and due process which survive from this time period: we have evidence of a prosecution of sorts with the case of Julia's adultery and subsequent exile, and likewise, a defence of sorts is provided by Ovid as he writes about his own crime offending Augustan sensibilities and exile.<sup>396</sup> However, despite these case studies, there are limitations in applying this concept to the Roman justice system, and due to the

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<sup>393</sup> See Grunewald 2013: 371 for the concept of 'narrative blueprint', and also c.f. Goodpaster 1987: 120.

<sup>394</sup> Brooks 2002: 6.

<sup>395</sup> Brooks 1996: 17.

<sup>396</sup> For further scholarship on Julia and her exile, see Cohen 2008 and Fantham 2006. There is extensive scholarship on Ovid, his life and work, and his exile from Rome. A selection of titles includes Barchiesi 1997; Liveley 2005; Habinek 2006; Knox 2006 and 2009; Levick 2010; Slavitt 2011; Sharrock 2012; Thorsen 2013; Oliensis 2019; and Ziogas 2021.

lack of evidence, we will never be able to compare and contrast a Roman criminal trial with the modern system in its entirety.<sup>397</sup>

Thus, on the understanding that the modern system is a vastly different legal institution to what we know and understand of Roman law, it nonetheless provides a starting point and preliminary comparative model for demonstrating the possible application of a narrative ‘storyworld’. Indeed, this particular narratological model has yet to be used as a toolkit for examining legislation, whether modern or ancient. While scholars are unable to trace the ‘storyworld’ of the Augustan justice system, I argue that this narratological tool can be marshalled to offer a new and original interpretation of the provisions of the *leges Iuliae*, and all its attendant sources and narratives. Furthermore, as I explore the various narrative levels within the ‘storyworld’ of the Augustan Marriage Legislation – as created by Augustus when he introduced the package of laws in 18BC – parallels and connections can be drawn between the levels of narrative operation in the modern-day criminal justice system and in this ancient body of legislation too.<sup>398</sup>

For example, in the same way that there is a narratological blueprint, the rules of evidence, which underpins any modern criminal trial, a similar blueprint exists for the ancient Roman sources of evidence. Each genre of evidence, whether that is poetry, epic, historiography or autobiography, has their own set of rules and guidelines which must be followed. Then, there is the ‘micro’ level of the narrative, which in a criminal trial consists of all the raw material of the story, that can be compared with the material which emerges from the Augustan period itself: key witnesses to the legislation who provide the *materia*, or basic pre-story stuff, with which later historians can create a story. These witnesses include not only contemporary poets from the period such as Horace, Ovid and Propertius, they also include Augustus himself, having created the legislation and written about it in his *Res Gestae*. Although this autobiographical text was first revealed as a funerary inscription after the *princeps*’ death in AD14 (some thirty-two years after the passage of the legislation), it nonetheless remains a crucial piece of ‘raw material’ or pre-story stuff that makes up and influences the creation of the *fabula* by later historians. Another key witness at the micro-level of narrative would have been the original provisions of the legislation, both the laws passed in 18BC and the later revisions of AD9. If the original legislation had survived, that text would have been (arguably) *the* key narrative witness at the micro-level. Instead, our reconfiguration of the details of the legislation relies on later sources, specifically the Roman

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<sup>397</sup> For further scholarship in this area, see Jones 1972; Robinson 1995; Bauman 1996; McGinn 1998; Harries 2007; Cascione 2012; and Riggsby 2016.

<sup>398</sup> See Appendix 2 as an aid for the following analysis on the levels of narrative within the ‘storyworld’ of the legislation.

jurists who provide their own *fabula*, or reconstruction of the laws, using and in place of the original legal formulations from 18BC and AD9.

Likewise, while prosecutors and defenders each create their own chronoliner story of the indictment in modern trials, historians such as Tacitus, Suetonius and Cassius Dio – in a similar vein to the Roman jurists – have created their own story (*fabula*) of the legislation from the material that emerges from the micro-level in, and around, 18BC. These chronoliner accounts of the passage of the laws, which reflect the interpretations of the legislation by the later historians and jurists, are another level of *diegesis*, or narrative, in the ‘storyworld’ of the legislation. Furthermore, as well as drawing on the basic *materia* from the micro-level, the work of the later historians and jurists is also influenced by the *sjuzet* or master narrative as formed by Augustus. For Augustus is not only one of the key witnesses from the micro-level of the narrative, providing evidence of the legislation itself, he also sets out in his *Res Gestae* to create his own *sjuzet*, his own ‘master-narrative’, which draws on the legal and cultural precedent of the *mos maiorum* to provide authority. In the same way a judge creates a *sjuzet* which is a complex representation of the events framed with a certain agenda, Augustus too created a *sjuzet* of the marriage legislation which was acutely framed through an Augustan lens. His *sjuzet* set out to align the legislation with the cultural and legal narrative of the *mos maiorum*: a narratological tactic that should have configured the laws in such a way as to assure the Roman elite’s compliance. Indeed, the way in which Augustus attempts to manipulate this customary narrative in order to make the most convincing case for his reforms is highlighted in the *fabula* as created by later historians, notably in the work of Suetonius. Another level of *diegesis*, then, these customary narratives on legal precedent and origin thus form part of the ‘storyworld’ of the legislation, interacting with each of the other levels of narrative that emerge from this ‘world’.

However, while the ‘storyworld’ model of the criminal justice system offers an excellent starting point, it has its limitations as a comparative model for the ‘storyworld’ of the Augustan Marriage Legislation. In particular, where the ‘storyworld’ of the *leges Iuliae* diverges from that of the modern criminal justice system is in how these different levels develop from, and engage with, one another. While the progression from one level to another is relatively linear in the case of the modern criminal trial, the various narratives of the Augustan Marriage Legislation intersect in a more intertwined and nuanced manner.<sup>399</sup> For example, the later historians including Tacitus, Suetonius and Cassius Dio, along with the Roman jurists who have created a *fabula* or story of the legislation, have done so retrospectively, so are able to be, and indeed have been, influenced by

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<sup>399</sup> See Appendix 2.

the *sjuzet* or ‘master-narrative’ emplotted by Augustus himself. Although in narratological terms, the plot unfolds after the story, here we have the Augustan ‘master-narrative’ or plot emerging chronologically prior to the stories told by later historians. More than just inverting the chronological timeline, however, this interaction between the levels of *diegesis* reminds us of the power of both the teller and reader in co-creating and shaping this narrative universe. There is subsequently a deeper relationship between Augustus and the later historians/jurists – more than that of just teller and reader – but one that has led to a co-poiesis between them in creating and synthesising this narrative universe of the legislation. For it is this joint process of creation, and the interaction between the levels of *diegesis* represented by Augustus, the contemporary poets, the later historians and jurists, and customary narratives, that has shaped and formed our cognitive understanding of the ‘storyworld’ of the legislation.

Despite the limitations of the modern criminal legal system as a preliminary comparative model, what the narratological concept of ‘storyworld’ does offer, I argue, is a new means by which we can configure and contextualise the myriad sources and narratives on the *leges Iuliae*. As this chapter has discussed, the legislation and its attendant narrative sources do not operate in a one-dimensional fashion: their relationship and interaction with one another is much complicated, thus requiring a more comprehensive narrative model than that of the traditional ‘story to plot’. Instead a ‘storyworld’, as Herman reminds us, offers an integrative and ecological paradigm, one which is more suited to the nuances of this legislative package and its sources.<sup>400</sup> And even though the ‘storyworld’ of the criminal justice system has its limitations as a comparison, I argue that the fundamental premise of a ‘narrative universe’ is still applicable, and a justifiable archetype to deploy, in the context of the Augustan Marriage Legislation. For a ‘narrative universe’ allows for the complex, and at times non-linear, interaction of all the levels of *diegesis* that inform and emerge from this legislation, including its wider spatiotemporal environment and context, and for an appreciation of how the narrators and the narratees, the tellers and the readers, work together to configure, shape and co-create the parameters of the ‘storyworld’ of the *leges Iuliae*.

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<sup>400</sup> Herman 2002: 14.

## Chapter 5

### The Narrative of Legal Origins: The XII Tables

With the law and criminal legal system understood as narratively configured and constituted, a narratological approach that focuses primarily on the discourses that emerge from and around the introduction and application of individual laws is insufficient when examining the full *diegesis* of a body of legislation. Rather, in order to comprehend the nuances of such a complex collection of narratives, any analysis needs to be recast in light of the legislation's wider constitution, its history and, indeed, the development of its legal order. Thus, it is necessary, at this stage of my thesis, to travel to a different temporal space, one that is separate yet crucially intersects with the legislation: the narrative of legal origins. How can key Roman legal origin narratives be understood in terms of their relationship to, and framing of, the 'storyworld' of the *leges Iuliae*? Specifically, to what extent does the story of the Twelve Tables serve as a narrative paradigm for the Augustan Marriage Legislation? And how does the *potestas* of this story interact with the *auctoritas* of the *mos maiorum* in order to configure both the narratological and legal landscape of the *leges Iuliae*?

Any legislation, whether ancient or modern, does not operate in a vacuum. It is framed and contextualised by constitutional tradition, of which narratives of legal origins are a key part. Looking beyond specific legal cases that establish a rule or principle, stories that look back at the origins of that legal system, and the source of the law's authority, are part of any legislation's *diegesis* and wider spatiotemporal context. So too legal origin stories from ancient Rome form a key part of the wider narrative that intersects with, and shapes, the *leges Iuliae*. With stories and myths about the origins of a legal system just as much a part of legal tradition as the legislative provisions themselves, the relationship between narrative and law therefore goes far beyond a singular piece of legislation, and relates both forwards and backwards to the construction and development of the entire legal order itself. Thus, although origin stories occupy a different temporal space, or level, to those which emerge at the creation and introduction of specific pieces of legislation, particular attention should be paid to these stories as they describe the law's essential properties and values, and provide historical context for the 'storyworld' of legislation.<sup>401</sup> As a foundational cultural and legal narrative, therefore, these wider origin stories serve 'to define the law, and its essential qualities and goals, [...] and [to] lay groundwork for subsequent understandings of how law should operate'.<sup>402</sup>

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<sup>401</sup> For levels of narrative, their relation to one another and how they accumulate in an inclusionary and multi-layered (as opposed to vertical) manner in order to configure the *diégèse*, see Genette 1988: 84-91.

<sup>402</sup> Tait and Norris 2011: 11.

According to Tait and Norris, stories about the origins of law, or what they term social contract narratives, take the reader ‘back to a time and place before the establishment of legal structures [...] and help to define law and its essential qualities and goals, as much as any other legal narratives’.<sup>403</sup> Scholarly discussion in recent decades about the relationship between law and narrative has appropriately focused on the role and importance of these narratives. For Simon-Shoshan, so-called ‘framing stories’, namely introductory narratives which establish the origins and history of the 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’.<sup>404</sup> Likewise, for Olson, ‘foundational legal narratives legitimate a given legal system’s normative status by establishing resemblances between themselves and other master plots’.<sup>405</sup> Made up of legal precedent, history, cultural tradition and mythic origins, such narratives call upon interpreters to transport themselves into a legal system’s past; a time and place they must occupy for a consciously holistic comprehension of a narrative world.<sup>406</sup>

In this chapter, I will consider one of the key ‘origin’ stories that helped form the Roman constitution and frame its legal system – and which therefore played a key role in shaping the legal landscape of the Augustan *leges Iuliae* – the Twelve Tables. As a mutable, ever-changing concept, the Roman constitution adapted and developed according to the political developments of the time. With Rome’s history traditionally divided into three main periods (the Monarchy, 8<sup>th</sup> century BC – 510BC; the Republic 509 – 27BC; and the Empire, 27BC – AD565), the dominant constitutional structure in Roman society evolved to suit the individual needs of each of these eras.<sup>407</sup> Its dynamic and flexible nature was furthered by the fact that ‘it was not a written constitution, nor was it entirely unwritten’.<sup>408</sup> Indeed, as Lowrie comments, the lack of a formal constitution meant that it was ‘less a system of rules than a consensus of values’.<sup>409</sup>

Thus, after centuries of growth and evolution, the result was that constitutional tradition in ancient Rome had an enormous spectrum: it ranged from basic unwritten laws to *mos*, what may

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<sup>403</sup> Tait and Norris 2011: 11.

<sup>404</sup> Simon-Shoshan 2012: 84.

<sup>405</sup> Olson 2014: 379.

<sup>406</sup> For the application of the storyworld and the immersive power of non-fictional narratives, see Herman 2002.

<sup>407</sup> Du Plessis and Borkowski 2015: 1-24 for a historical sketch of Rome.

<sup>408</sup> Lintott 1999: 2.

<sup>409</sup> Lowrie 2016: 76.

be termed as custom or the way things were done.<sup>410</sup> As discussed in chapter two, *mos* or *mores maiorum* (the ways of our ancestors) were customary norms that formed part of the fabric of the entire legal system since the earliest period of Roman history.<sup>411</sup> 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 law ever produced in classical Rome.<sup>412</sup> 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.<sup>413</sup>

Embodied in stories, both the Twelve Tables and the *mos maiorum* demonstrate that the constitution consisted of far more than statutes.<sup>414</sup> 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.<sup>415</sup> For, as Lintott observes, the nature of the constitution in fact emerges from a multitude of ‘colourful stories’.<sup>416</sup> Stories of the Twelve Tables have decisively shaped the constitution, the institution of legal precedent, and, therefore, the wider legal system. Indeed, as the only formal codification of 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.

Yet, despite the importance of these narratives as establishing the origins and history of the Roman legal system, they are conspicuous in their absence from Augustan narratives on the Augustan marriage legislation and its attendant discourses. That is, Augustus does not at any point appeal to this particular legal-narrative aetiology to support his controversial *leges Iuliae* – in contrast to his consistent and insistent reiteration that the *leges Iuliae* relate to the *mos maiorum*. What relevance if any, then, does the Twelve Tables and this paradigmatic legal origin story have for the ‘storyworld’ of the Augustan Marriage Legislation? I submit that by recognising the narrative characteristics, patterns and dynamics of those stories of the Twelve Tables, we can enhance our understanding of their role within the *leges Iuliae* ‘storyworld’ – in particular, examine to what extent they provide both a narratological *and* legal framework and wider

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<sup>410</sup> Lintott 1999: 4. For more on the immeasurable topic of the Roman constitution and sources of Roman law, see Thomas 1986; Du Plessis and Borkowski 2015; Ibbetson 2015; Pina Polo 2016; and literature there cited.

<sup>411</sup> Mousourakis 2007: 19.

<sup>412</sup> Lintott 1999: 34.

<sup>413</sup> Kunkel 1973: 23-25. C.f. Liv, 3.34: they [the Twelve Tables] are the fount of all law, public and private, *fons omnis publici privatique est iuris*.

<sup>414</sup> Lintott 1999: 26.

<sup>415</sup> Lowrie 2016: 76. C.f. Lintott 1999: 26.

<sup>416</sup> Lintott 1999: 26.

spatiotemporal context for the Augustan Marriage Legislation. For, as I will demonstrate using the model tendered by Tait and Norris, the narrative arc of this key moment in Roman legal history provides an archetype for the *leges Iuliae*, with the latter resembling and echoing the story of the Twelve Tables and its representation of chaos and order. With the legislation having such a strong resemblance and connection to the Twelve Tables, the importance and position of this legal origin story as a level of narrative within the ‘storyworld’ is clear. And, even despite its absence from the Augustan narratives on the legislation, I maintain that the position of the Twelve Tables as a *legal* framework is likewise significant, providing meaning and authority to the marriage laws, the wider legislative programme and indeed the entire Augustan regime.

### The Twelve Tables

Reconstructing, and understanding the role of, the narrative of the Twelve Tables within the ‘storyworld’ of 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.<sup>417</sup> 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.<sup>418</sup> 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’.<sup>419</sup> Indeed, its status as a key foundational text of Roman law is neatly summarised by Livy, who describes the Twelve Tables as the ‘fount of all law, public and private’, *fons omnis publici privatique est iuris* (Liv, 3.34).

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 of the Twelve Tables is based on references 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.<sup>420</sup> However, despite

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<sup>417</sup> Robinson 1997: 2. See also Kunkel 1973: 23, and Mousourakis 2007: 25.

<sup>418</sup> Ibbetson 2015: 26.

<sup>419</sup> Mousourakis 2007: 26. See also Ibbetson 2015: 27.

<sup>420</sup> Du Plessis and Borkowski 2015: 30. Cicero (born in 106BC, died in 43BC) also provides a brief summary of the key events from the story of the Twelve Tables in his *De Republica*. Written in the late 50sBC, Cicero tells us in the *De Republica* how an idea was adopted by the consuls and the tribunes of the plebs to resign from office, and instead, a board of ten men should be appointed. In addition to their supreme authority, this board had the task of drafting a code of Ten Tables. Two further tables of unjust laws were later added by a second decemvirate. A selection of titles, plus literature there cited, from the

these accounts and the reputation of the Twelve Tables, this aetiological story is as much myth as a truly, factual historical account.<sup>421</sup> 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.<sup>422</sup> What is clear, therefore, is that this (hi)story of Rome's legal origins establishes a foundational narrative for the Roman legal system: the *tabulae* of the Twelve Tables have become a fragmented and disjointed *fabula*, one which later historians such as Livy and Dionysius have attempted to reconstruct into an authoritative and convincing *sjuzet*. Furthermore, both Livy and Dionysius produced their accounts contemporaneously to the Augustan regime and attendant marriage legislation. Their accounts would therefore have been a well-known narrative on the origin of the legal system and a significant narrative of legal precedent for the *leges Iuliae*.<sup>423</sup>

Livy and Dionysius each provide exceedingly detailed and necessarily fictionalised accounts of the origins of the Twelve Tables in each of their respective works.<sup>424</sup> 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.<sup>425</sup> After eight years of conflict, the patricians conceded and three delegates were sent to Athens to study and record the famous laws of Athenian lawgiver Solon.<sup>426</sup> 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.<sup>427</sup> In 450BC, the decemvirate produced a copy of the ten laws, which were engraved on bronze pillars

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vast scholarship on Cicero include: Wood 1988; Habicht 1990; May 2002a; Asmis 2004 and 2005; Dominik and Hall 2007; Van der Blom 2010; and Steel 2013.

<sup>421</sup> See Robinson 1997: 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 Tellegen-Couperus 1993: 20, and also Mousourakis 2007:24.

<sup>422</sup> Joshel 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.

<sup>423</sup> It is worth noting, here, that the narratives provided by Livy and Dionysius actually intersect multiple levels of the 'storyworld' of the *leges Iuliae*. In this chapter, I am focusing on their content as it pertains to legal precedent and the origins of the Roman legal system. However, as these writers are contemporaneous to the passage of the legislation, both Livy and Dionysius are key witnesses from the micro-level as well. See Appendix 2 for a diagrammatic explanation of the various levels of the 'storyworld', and their interaction with one another.

<sup>424</sup> For full biographical details on Livy and Dionysius, along with scholarship on each author respectively, see chapter 3.

<sup>425</sup> Livy, *Ab Urbe Condita*, 3:9ff; Dionysius of Halicarnassus, *The Roman Antiquities of Dionysius of Halicarnassus*, 10:1ff.

<sup>426</sup> Liv. 3.31.

<sup>427</sup> Liv. 3.34; Dion. Hal. *Ant Rom* 10.57.

and set up in the Forum.<sup>428</sup> The following year, a second decemvirate is said to have added two further tablets to supplement the existing ten.<sup>429</sup>

Thus, the origins of the Twelve Tables, as narrated, represent an important moment in Roman constitutional history. Together, Livy and Dionysius present two different narratives of the genesis and development of the 'code' itself: 'these stories about the origin of law take the reader back to a time and place before the establishment of legal structures and ask the reader to imagine [...] moments 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'.<sup>430</sup>

In order to examine the narrative characteristics and dynamics of these stories as told by Livy and Dionysius, and their relevance as a legal origin narrative within the 'storyworld' of the *leges Iuliae*, I will draw on the narratological analysis by Tait and Norris, 'Narrative and the Origins of Law'.<sup>431</sup> In this study, the authors use narrative theory to examine social contract narratives, which they term as narratives that pre-exist those developed in and around the courtroom, and are instead about 'the genesis and development of [the] law itself'.<sup>432</sup> Although Tait and Norris have focused on the narratives of social contract theorists, they acknowledge that it is possible to find the same shared elements in constitutional narratives of origin: using narratologically oriented studies 'to make sense of historically situated constitutional narratives [...] and gain insight into the ways in which these narratives create meaning'.<sup>433</sup> Accordingly, I will use these elements identified as common to both social contract theory and constitutional narratives of origin, and explore their application in the context of the narratives provided by Livy and Dionysius. How do these common elements tendered by Tait and Norris provide a means of understanding the narratives of the Twelve Tables?

Tait and Norris focus specifically on the social contract narratives of two particular theorists, John Rawls and Jean-Jacques Rousseau, each of whom attempt 'to tell the story of transitions from an unjust to a just distribution system'.<sup>434</sup> Despite the differences in the work of each of these theorists (for they are separated by an ocean and two centuries), Tait and Norris maintain that these social contract narratives have fundamental elements that connect them, and that

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<sup>428</sup> 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.

<sup>429</sup> Liv. 3.34; Dion. Hal. *Ant Rom* 10.1.

<sup>430</sup> Tait and Norris 2011: 11.

<sup>431</sup> Tait and Norris 2011.

<sup>432</sup> Tait and Norris 2011: 11.

<sup>433</sup> Tait and Norris 2011: 22.

<sup>434</sup> Tait and Norris 2011: 14.

'narratology can therefore help to determine not only what elements of a story repeat in each instance, reconfirming significance through the act of repetition, but also what purpose the repetition serves, whether it be to increase understanding or imply legitimacy'.<sup>435</sup> Although there are differences in the work of Rawls and Rousseau with historical setting and stylistic presentation, both of their social contract narratives use similar 'plot-points' and narrative techniques, from the creation of a space that is the site for the social contract, to the transformation of this space, and finally the 'sense of an ending'.<sup>436</sup> Tait and Norris summarise the narrative of social contracts as follows:

In each instance, the social contract narrative begins in a pre-contract space, one that each social contract theorist artfully tailors to his own end and populates with individuals [...] Once the landscape and populace are established, each contract narrative seeks to justify and explain the transition from this original world to one of legal order and self-government by creating a very unique moment of contracting. Finally, once the contract is made and inhabitants become citizens, each of these contract narratives close with a very definite 'sense of an ending' that places the entire story in a linear context. The narrative thus produces the contract of an evolutionary path toward widespread justice and the rule of law.<sup>437</sup>

Despite differences between social contract theory and constitutional history, with the latter full of exigency and contingency, Tait and Norris maintain that both narratives have similar 'masterplots', which demarcate and make sense of political and legal time.<sup>438</sup> This narrative model, with its emphasis on similar plot-points and narrative techniques within social contract plots, provides a compelling starting point for an examination of this key story about the origins and evolution of the Roman legal system. This model, therefore, will become part of my broader narratological toolkit; as I test to what extent it allows for an exploration of these mythical stories of the origins of Roman law and whether it is sufficient when it comes to its application to the Twelve Tables. Is it possible to find the same shared elements and the same narrative plotline in the stories told by Livy and Dionysius? By applying this model to these sources on the Twelve Tables, I will argue that the narrative arc of this key moment in Roman legal history ultimately provides a narratological paradigm for the passage of the *leges Iuliae*, and, therefore, this legal

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<sup>435</sup> Tait and Norris 2011: 12.

<sup>436</sup> Tait and Norris 2011: 14-20.

<sup>437</sup> Tait and Norris 2011: 11-12.

<sup>438</sup> Tait and Norris 2011: 22. For the formulation of 'masterplot', see Olson 2014: 379, and Tait and Norris 2011:11.

origin story can, and should, be understood as a significant level of narrative within the wider 'storyworld' of the marriage legislation.

### **The Elements of the Narrative of Origins**

In their work, Tait and Norris break down each of the social contract narratives into fundamentally three different stages: the creation of a space, the contract leading to the space transformed, and a narratively inflected 'sense of an ending'.<sup>439</sup> Within the two social contract narratives they examine (one by Rawls and the other by Rousseau), Tait and Norris are able to demarcate these different stages and recognise that each social contract operates on a linear 'chaos to order' plotline that varies very little.<sup>440</sup> Each narrative is clearly delineated into these plot points, which, if we look closely enough, also feature in the narratives of the Twelve Tables.

It is worth noting, at this juncture, that a distinction must be made between the social contract narrative that the Tait and Norris model examines, which take place in imaginary universes, and the (hi)stories presented by Livy and Dionysius. Whilst similarities can be drawn between the ancient narratives and those of the social contract theorists, the ancient authors are telling a different kind of story. Livy and Dionysius are not setting out to tell the story of a social contract. Indeed, social contract as a theory or model emerged much later, in the Age of Enlightenment, and it cannot be assumed that social relations were conceptualised in that way in the earlier Roman period. Thus, it also cannot be assumed that these authors viewed the creation of the Twelve Tables as the creation of a 'contract'. The concept of social contract theory is not informing their work, and thus these ancient narratives reflect a different type of origin story, with a different emphasis. Despite this point, there is a resemblance between these two types of narratives, with the narratives of the social contract theorists of the 18<sup>th</sup> (and later 20<sup>th</sup>) century offering a heuristic lens through which to view these ancient Roman stories. The narrative arc of the social contract establishes a groundwork from which to analyse the ancient sources and the so-called 'social contract' that determines the foundation of the Twelve Tables, and subsequently, of Roman law. It is through such an examination of the Twelve Tables that we can understand the legal and narrative landscape it delineates, and how this serves as a paradigm for the 'storyworld' of the Augustan marriage legislation.

Livy's narrative on the Twelve Tables begins in book 3 with a reference to Gaius Terentilius Harsa, who was a tribune in 462BC. According to Livy, Harsa believes that the 'absence of the consuls

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<sup>439</sup> Tait and Norris 2011.

<sup>440</sup> Tait and Norris 2011: 17.

from the city had created an opportunity for the tribunes to take action', *is consulibus absentibus ratus locum tribunicii actionibus datum* (Liv, 3:9). Much like the social contract narratives, there is a clear creation of a space here: a 'once-upon-a-time' Rome without consuls, which allows a distinct population of persons, namely, the tribunes, to come together to deliberate on a so-called 'contract'. Similarly, Dionysius' narrative again introduces a 'once-upon-a-time' Rome when the populace was 'being stirred up again by the tribunes and instructed that the best of political institutions for free men is an equality of rights' (Dion. Hal. *Ant Rom*, 10:1). Dionysius goes on to provide more detail of this pre-contract space (10:2):

For at that time, there did not exist as yet among the Romans an equality either of laws or of rights, nor were all their principles of justice committed to writing; but at first their kings had dispensed justice to those who sought it, and whatever they decreed was law. After they had ceased to be governed by kings, along with the other functions of royalty that of determining what justice is devolved upon the annual consuls, and it was they who decided what was just between litigants in any matter whatsoever. These decisions as a rule conformed to the good character of the magistrates, who were appointed to office on the basis of good birth. A very few of them, however, were kept in sacred books and had the force of laws; but the patricians alone were acquainted with these, because they spent their time in the capital, while the masse, who were either merchants or husbandmen and came down to the capital only for the markets at intervals of many days, were as yet unfamiliar with them.

οὕτω γὰρ τότε ἦν οὐτ' ἰσονομία παρὰ Ῥωμαίοις οὐτ' ἰσηγορία, οὐδ' ἐν γραφαῖς ἅπαντα τὰ δίκαια τεταγμένα· ἀλλὰ τὸ μὲν ἀρχαῖον οἱ βασιλεῖς αὐτῶν ἔταττον τοῖς δεομένοις τὰς δίκαι, καὶ τὸ δικαιοθὲν ὑπ' ἐκείνων τοῦτο νόμος ἦν. ὡς δ' ἐπαύσαντο μοναρχούμενοι, τοῖς κατ' ἐνιαυτὸν ὑπατεύουσιν ἀνέκειτο τὰ τε ἄλλα τῶν βασιλέων ἔργα καὶ ἡ τοῦ δικαίου διάγνωσις, καὶ τοῖς ἀμφισβητοῦσι πρὸς ἀλλήλους ὑπὲρ ὄτουδήτινος ἐκεῖνοι τὰ δίκαια οἱ διαιροῦντες ἦσαν. τούτων δὲ τὰ μὲν πολλὰ τοῖς τρόποις τῶν ἀρχόντων ἀριστίνδην ἀποδεικνυμένων ἐπὶ τὰς ἀρχὰς ἀκόλουθα ἦν· κομιδῇ δ' ὀλίγα τινὰ ἐν ἱεραῖς ἦν βύβλοις ἀποκείμενα, ἃ νόμων εἶχε δύναμιν, ὧν οἱ πατρίκιοι τὴν γνῶσιν εἶχον μόνοι διὰ τὰς ἐν ἄστυ διατριβάς, οἱ δὲ πολλοὶ ἐμπορευόμενοί τε καὶ γεωργοῦντες διὰ πολλῶν ἡμερῶν εἰς ἄστυ καταβαίνοντες ἐπὶ τὰς ἀγορὰς ἄπειροι ἔτι ἦσαν.

In each of Livy and Dionysius' pre-contract spaces, there is a repetition of the generic, antagonistic behaviour of the tribunes anticipating change, which cues the readers' expectations about how

the narrative is likely to unfold: 'about what actions and events are probable and improbable, about what behaviours conform to normative patterns or otherwise'.<sup>441</sup>

Already, parallels can be drawn between this landscape crafted by Livy and Dionysius, and the political landscape of the mid-first century BC. The 'once-upon-a-time' epoch of the Roman Republic was coming to an end, with the balance of power spectacularly imploding, as Octavian enters the political stage at the age of 19. Indeed, in his *Res Gestae Divi Augusti*, Augustus makes the point that it was on his private initiative and at his private expense that he raised an army, so that he could restore the *res publica*, which hitherto had been oppressed by a despotic faction, *dominatione factionis* (*Res Gestae* 1.1). Like the tribunes who took the opportunity for action, the young Octavian, too, masterfully exploits the weaknesses in the political landscape of the late Republic in order to seize power and ostensibly come to the aid of the Roman state and guarantee its continuing welfare.<sup>442</sup> It was this shift in power from the grip of the Republic which would begin the process of establishing Octavian as *princeps* and furnishing him with the political and legal power to carry out his legislative changes, including the *leges Iuliae*. In this respect, the plotline of the passage of the *leges Iuliae* similarly begins with the 'creation of a space', as the young Octavian carves out his political position and establishes himself as *princeps*. No less significantly, however, this can be viewed in contrast to the first plot point of the social contract theory: for in the 'storyworld' of the marriage legislation, only *one* distinct person comes forward and they do so in order to establish and enhance their *own* personal and political power, rather than for the creation of a collective unit. But, much like the tribunes, the narrative arc of Octavian's own journey to achieve acceptance with the passage of this legislative package was not without difficulty, opposition and delay.

The second plot-point according to Tait and Norris' model is 'the contract: the space transformed'. Here, from the pre-contract space, the persons come together to establish:

a contract that will inaugurate the turn from personal power, and its maladies, to collective union under the law. The social contract narratives all operate on a linear 'chaos to order' plotline that varies very little.<sup>443</sup>

This transformation from chaos to order is one which we can see in both of our narratives. In Livy's work, the transformation process begins with the tribune Gaius Terentilius Harsa

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<sup>441</sup> Liveley and Shaw 2020: 258.

<sup>442</sup> Galinsky 1996: 42.

<sup>443</sup> Tait and Norris 2011: 17.

proposing a law that ‘five men be elected to prepare legislation concerning the consuls’ power’, *quinque viri creentur legibus de imperio consulari scribendis* (Liv, 3:9). This proposal sparks a twenty-five-chapter long journey, spanning eleven years, before the Twelve Tables were eventually passed as law. Broadly speaking, the overall transformation Livy narrates is one of ‘chaos to order’, as the plebeians struggled to persuade the patricians to record the laws. However, Livy’s plotline is not simply linear, with minimal variation. The transformation he narrates is animated by much more than the Tait and Norris model allows: the plotline is much more dynamic, with a continuing oscillation between chaos and order. The act of consensus begins after Gaius Terentilius Harsa proposed the law during a time when the consuls were away from Rome, which led to panic and fear among the senators, and their subsequent condemnation of the proposal (3.9). Terentilius was persuaded to postpone the legislation until the consuls returned, and thus, in the following year the new consuls were confronted with the threat of the ‘Terentilian law’, *lex Terentilia* (3.10). So terrible was the threat of this law that Livy tells of a number of warnings which appeared (3.10):

In this year, the sky was seen to glow with fire, and a great earthquake occurred. That a cow spoke was given credence, something that in the previous year had not been admitted as a prodigy. Among other portents there was a rain of flesh, which as it showered down a great number of birds are said to have caught in mid-air; the part that reached the ground lay for some days without decay [...] Among other items there was a warning to abstain from political strife. The tribunes charged that the prediction was designed to block the law, and a great struggle loomed.

Eo anno caelum ardere visum, terra ingenti concussa motu est. Bovem locutam, cui rei priore anno fides non fuerat, creditum. Inter alia prodigia et carne pluit, quem imbrem ingens numerus avium intervolutando rapuisse fertur; quod intercidit, sparsum ita iacuisse per aliquot dies ut nihil odor mutaret [...] inter cetera monitum ut seditionibus abstineretur. Id factum ad impediendam legem tribuni criminabantur, ingensque aderat certamen.

Repetition of not one, but multiple, portents creates an impression on the reader of the chaos which will animate Livy’s plot. Livy deploys these scenes of chaos throughout his narrative, using its repetition to hamper the linear progression from chaos to order in this story. Each time chaos arises, the reader hopes for order. Each time the reader is denied the satisfaction of an ending, as Livy’s narrative reveals twists and turns in the plot. Through repetition of chaos, and a fluctuation between this turmoil and possible lawfulness, Livy’s story is not linear but cyclical. In this way,

Livy provides a more cogent narrative, one which reflects the contingency of history as opposed to the more predictable state of social contract theory. Political and legal change is never straightforward, as Augustus' own journey with the *leges Iuliae* 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 revision in AD9). It is worth considering further for a moment the political context in which Augustus is legislating, and in which Livy in particular is writing, for this too forms part of the 'storyworld' of the *leges Iuliae*. The epoch of the Republic is now a distant memory following the recent chaos of civil war: Rome has lurched from a Republic to a Principate under the auspices of Octavian, who has appropriated the powers from the senate and the people in order to become '*princeps*'.<sup>444</sup> This ostensible move from chaos to order is one that marks out the Augustan Principate, and indeed the passage of the *leges Iuliae* too. However, as in the story of the Twelve Tables, this transformation from chaos to order, from the licentious behaviour of the Republic to the principled and moral elite aspired for under the legislation, is not as straightforward as Augustus and the *Res Gestae Divi Augusti* would have us believe. Significantly, therefore, the passage of the *leges Iuliae* and how it resembles and reflects the story of the Twelve Tables cannot be divorced from the political context in which the 'storyworld' of the legislation unfolds. Thus, as the story of the Twelve Tables unfolds, it serves as a narrative archetype, or blueprint, not only for the legislation but also for its wider political context. We can begin, therefore, to view and understand the story of the marriage legislation, and its political framework, in terms of its resemblance and relation to this particular level of narrative within the 'storyworld' of the *leges Iuliae*.

Livy continues this narrative arc as Caeso Quinctius, who drove the tribunes from the forum and beat those who opposed him, is indicted on a capital charge, tried and exiled (3.11-13). The tribunes considered themselves the winners and believed the law to be as good as passed, yet when it came up for passage again, the younger senators organised a great army and staged an attack, with the result that 'the plebs complained that they were now facing a thousand Caesos in place of one', *mille pro uno Caesones exstitisse plebes quereretur*. (3.14). No sooner had this menace been pacified, another appeared. A foreign attack sparked renewed conflict between the tribunes and the plebs on one side, and the consuls and the senators on the other, with peace (temporarily) restored by Publius Valerius who promised to allow a discussion of the law in the senate (3.16ff). Yet once again, just when the readers' hopes for order, and an ending, have been restored, the tribunes are denied their law with the consul refusing to allow any discussion (3.19).

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<sup>444</sup> For the transformation of Rome from republic to principate, see Habinek 1997, 1998 and 2006.

Eventually, there is a shift: the repetition of the fluctuation between chaos and potential order ends, signalling a new phase in this ‘transformation’ narrative as the plot finally reaches its climax. The law that Terentilius had proposed long ago was abandoned and instead, Livy tells us (3.31):

Spurius Postumius Albus, Aulus Manlius, and Publius Sulpicius Camerinus were sent on an embassy to Athens with instructions to record the famous laws of Solon and to acquaint themselves with the institutions, customs and laws of other Greek states.

missi legati Athenas Sp. Postumius Albus A. Manlius P. Sulpicius Camerinus iussique inclitas leges Solonis describere et aliarum Graeciae civitatum instituta mores iuraque noscere.<sup>445</sup>

Dionysius’ narrative shares the same starting point for the transformation of the pre-consensus space as Livy. It begins, once again, with an attempt by the tribune Gaius Terentius to introduce a measure establishing the equality of rights, but he was forced to leave the business unfinished (Dion. Hal. *Ant Rom* 10.1).<sup>446</sup> After the initial proposal of the law by the tribune Gaius, Dionysius also tells a particularly dramatic narrative of ‘terrible portents sent by the gods’: flashes shooting through the sky; a storm that rained down pieces of flesh which were seized by a number of birds; a consultation of the Sibylline books with the prediction that the city would be involved in a great struggle (10.2). The reader then embarks on a similar journey in Dionysius’ narrative, one which oscillates between chaos and order, with the notion of an ending always just beyond the readers’ grasp. Conflict between the tribunes and the senate resumes after these portents, and Dionysius continues the standard sequence of this legal narrative with the story of Caeso Quintius’ trial (10.5-8). There followed civil dissension inside the walls of Rome (10.9-13), and ‘while the city

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<sup>445</sup> The association here of the Twelve Tables with Athens, and the famous lawmaker Solon, reflects the suggestive parallels which can be drawn between the law on adultery in Athens and the *leges Iuliae*. As we know, the *lex Iulia de adulteriis coercendis* formally criminalised adultery for the first time and, significantly, introduced severe penalties for those caught in the act, including the right of the husband and/or the woman’s father to kill the adulterer (albeit only if strict conditions were met). In Athens, the law defined *moicheia* (adultery) as a ‘sexual violation of the marital relation’ and permitted the husband ‘to subject the adulterer taken in the act to certain summary procedures’ (Cohen 1990:147). Thus, in Athenian law, the *moichos* (adulterer) was classified as a *kakourgos*, a category of offenders subject to the procedure of *‘apagogē* or summary arrest and, possibly, [even] summary execution’ (Cohen 1990: 147). Furthermore, in Athenian law, not every breach of the marriage bond constituted adultery: ‘sexual activity by the husband was [...] legally unrestricted, provided he did not thereby offend against the wife of another citizen’ (Todd 1993: 277). The Athenian tenor of the *lex Iulia de adulteriis coercendis* is certainly striking, and further parallels can be drawn, however detailed engagement with this topic lies beyond the scope of this thesis. For more on Athenian law, see MacDowell 1978; Garner 1987; Cohen 1990; Todd 1993; and Hunter and Edmondson 2000.

<sup>446</sup> Some spellings in Dionysius’ account differ from the account given by Livy.

was in such a turmoil', a foreign threat, led by Appius Herdonius, 'attempted to overthrow the supremacy of the Romans' (10.14). The civil strife is, thus, temporarily halted by a promise from the consul Valerius (10.15):

If the people would assist in this war with alacrity and conditions in the city should become settled, he would permit the tribunes to lay before the populace for decision the law which they were trying to introduce concerning an equality of laws and would use his utmost endeavours that their vote should be carried into effect during his consulship.

ἐπειδὴ δὲ τοῖς πλείοσι τῶν ἐν τῷ συνεδρίῳ τὰ κράτιστα ἐδόκει λέγειν, προσελθὼν εἰς τὴν ἐκκλησίαν καὶ λόγον εὐπρεπῆ διεξελθὼν τελευτῶν τῆς δημηγορίας ὤμοσεν, ἂν ὁ δῆμος συνάρηται μετὰ προθυμίας τοῦ πολέμου καὶ καταστῆ τὰ πράγματα τῆς πόλεως, συγχωρήσειν τοῖς δημάρχοις προθεῖναι τῷ πλήθει τὴν περὶ τοῦ νόμου διάγνωσιν ὃν εἰσέφερον ὑπὲρ τῆς ἰσονομίας, καὶ σπουδάσειν ὅπως ἐπὶ τῆς ἑαυτοῦ ἀρχῆς ἐπὶ τέλος ἀχθῆ τὰ δόξαντα τῷ δήμῳ.

This promise is not upheld as Valerius dies in the resulting battle and his opposite number, Gaius Claudius, procrastinates over fulfilling the promise made and ultimately the tribunes are forced to desist (10.17-18). As the story of the Twelve Tables moves forward, Dionysius tells of the election of the father of Caeso Quintius as consul and his threats against the tribunes (10:17; see Liv. 3:19); the election of Quintus Fabius and Lucius Cornelius the following year and their turbulent consulship with the war at Tusculum (10:20-21; see Liv. 3:22-23); how amongst all the foreign conflicts, the struggle of the plebeians for 'the rights of citizens continue to irk the consuls' (10:22; see Liv. 3:25). And while Dionysius' narrative is more detailed than Livy's, his 'transformation' narrative ultimately progresses in the same way as Livy's. Ambassadors return home from Athens and the Greek Cities in Italy, bringing with them the laws, and at last the tribunes overcome the consuls 'by holding out to them great hopes of honour and power if they would espouse the cause of the populace' (10.54).

Throughout the 'transformation of the space', Dionysius evidently continues his narrative in a similar manner to Livy, with both fluctuating between chaos and order, so that the plot of the Twelve Tables unfolds in a cyclical, rather than linear manner. In fact, the repetitions in this story, and the patterns which Livy and Dionysius capture in their narratives, are a significant archetype for the *leges Iuliae*: for this back and forth motif between chaos and order is likewise reflected in the journey towards passage of the marriage legislation. Thus, as the paradigmatic narrative arc of the story of the Twelve Tables unfolds, an analogous narrative emerges within the 'storyworld'

of the *leges Iuliae* too. For as Augustus attempted to pass his legislation, he was met with continued opposition and, indeed, his first law in this area had to be repealed. While the exact date and provisions of this first attempt are unclear (it is believed to have been introduced sometime around 28BC), what is evident is that this first law was withdrawn in the face of 'protest and opposition'.<sup>447</sup> The poet Propertius aptly captures the unpopular nature of the law when he celebrates its repeal in a collection of work published around 26BC.<sup>448</sup>

In 18BC, Augustus tried again, finally succeeding in passing the *leges Iuliae*. Once more, however, the new laws were widely disapproved of, and indeed deliberately ignored. The historian Suetonius documents the equestrian order's opposition to the legislation, their refusal to obey it and their demands for its total abolition (*Aug* 34). Propertius once again demonstrates his disdain for the laws, as he 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 can charge their would-be adulterous lovers (4.5.27-9).<sup>449</sup> And the Augustan poet Ovid, in his *Amores* (2.2.57-66) insists that his own adulterous affairs are no real crime (*scelus*), and complains about the risk of trouble-making informers or *delatores* bringing charges against him.<sup>450</sup> Ovid also encourages his unfaithful lover to lie to him, and advises that she should similarly avoid telling the truth to a judge if ever brought before a law court (*Amores* 3.14.48-50).<sup>451</sup> Not only was there strong public opposition to this new interference in private affairs, but infamously the laws were flagrantly ignored by members of the imperial family. Even Augustus' own daughter, Julia, was indicted and banished for breaking her father's law, reportedly having had sexual relations with strangers on the rostrum from which her father had introduced his law against adultery.<sup>452</sup>

In his endeavour to impose order and law on what had become an embarrassing and chaotic situation, Augustus denied Julia the opportunity to defend herself in a public criminal trial in the senate – and thus tell her side of the story – and immediately banished her to the island of Pandateria, disinherited her in his will, and forbade her future internment in the family

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<sup>447</sup> Liveley and Shaw 2020: 260. C.f. Syme 1939: 443 and also Badian 1985.

<sup>448</sup> Propertius 2.7.1-4: 'Cynthia delights, certainly, that the law has been lifted / those edicts we once cried so much over, / afraid they'd separate us' – *gauisa est certe sublatam Cynthia legem, / qua quondam edicta flemus uterque diu, / ni nos diuideret*. See also Liveley and Shaw 2020: 260, n63.

<sup>449</sup> C.f. Liveley and Shaw 2020: 262, who argue that presumably the extra charge was for the additional frisson of illegality thereby created under Augustus' new laws. On Propertius' testimony in the case of the *leges Iuliae*, see Syme 1939: 443 and Treggiari 2005:146.

<sup>450</sup> Liveley and Shaw 2020: 262.

<sup>451</sup> On Ovid's testimony in the case of the *leges Iuliae*, see Liveley and Shaw 2020: 262-263. See also Csillag 1976:50, who regards Ovid as taking 'a firm stand against the Augustan policy to raise morals' and as writing 'in derision of the Augustan laws'. C.f. Ovid *Ars.* 1.31-4; *Fast.* 2.139-140; *Met.* 10.329-31; *Trist.* 2.211-2; 251-2; 303-4 for further allusions to the Augustan marriage laws.

<sup>452</sup> *Sen. Ben.* 6.32. See also Dio Cass. 55.10.

mausoleum.<sup>453</sup> Thus, with widespread opposition and resistance to the marriage laws, Augustus was eventually forced to capitulate, withdrawing and recasting certain provisions, amending penalties and increasing rewards in the *lex Papia et Poppaea*, which dates to AD9. After many twists and turns, fluctuating between opposition and possible lawfulness, the narrative of the legislation finally reaches a ‘sense of an ending’, a resolution in AD9.

Tait and Norris’ third and final element of the social contract narrative is the ‘sense of an ending’.<sup>454</sup> This ‘final narrative move [...] gives meaning to the preceding narrative’, with this

Arc, from exposition to climax to resolution, allows [the reader] to see an ending to a particular struggle or set of struggles. When a reader lays down the text, she is left with this sense of change, the sense of normative and moral reconceptualization, the ‘sense of an ending’.<sup>455</sup>

This ‘sense of an ending’ is one that can be found in both of our Twelve Table narratives. In Livy’s work, the board of decemvirs began setting down the laws, making them applicable to high and low equally (Liv, 3.34). Once the people of Rome had assembled and read the laws, amendments were made and, thus (3.34):

The Laws of the Ten Tables were passed in the Centuriate assembly; even now, despite the plethora of legislation that has followed, they stand as the **fount of all law, public and private.**

centuriatis comitiis decem tabularum leges perlatae sunt, qui nunc quoque, in hoc immenso aliarum super alias acervatarum legum cumulo, **fons omnis publici privatique est iuris.**<sup>456</sup>

After eleven long years, and twenty-five chapters, the reader has followed the plebeians and tribunes through their struggle, from the initial proposal of the law, through the oscillation between chaos and potential order, ultimately climaxing in the resolution and creation of the laws. With the narrative paused at this moment, these laws have erased the maladies of the past whereby the patricians oppressed the plebs, and portend a new future, one where each person

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<sup>453</sup> C.f. Liveley and Shaw 2020: 263, n77.

<sup>454</sup> Tait and Norris 2011: 18.

<sup>455</sup> Tait and Norris 2011: 18-19.

<sup>456</sup> Emphasis added.

has had their input into the laws.<sup>457</sup> Yet, press play on the narrative, and in the next line, Livy starts the cycle all over again. For, no sooner were the Laws of the Ten Tables passed, ‘the people began to say that if two more tables were added, the body, so to speak of the whole of Roman law would be complete’, *volgatur deinde rumor duas deesse tabulas quibus adiectis absolvi posse velut corpus omnis Romani iuris* (3.34). The code of laws proposed was viewed as incomplete, and as the day for re-election of the decemvirs neared, the political climate became heated and so the chaos returned (3.34-35). The sense of an ending is merely fleeting: it signals not a new future but rather a return to the normative chaos the reader has come to expect, leaving the narrative endeavour distinctly unfinished.<sup>458</sup>

The resemblance between Dionysius’ narrative and Livy’s continues through to the ‘sense of an ending’ as (10.57):

These decemvirs, having formed a body of laws both from those of the Greeks and from their own unwritten usages, set them forth on ten tables to be examined by any who wished, welcoming every amendment suggested by private persons and endeavouring to correct them in such a manner as to give general satisfaction. [...] And when the people too had ratified the laws, they caused them to be engraved on bronze pillars and set them up in order in the Forum, choosing the most conspicuous place.

Οὗτοι οἱ δέκα ἄνδρες συγγράψαντες νόμους ἕκ τε τῶν Ἑλληνικῶν νόμων καὶ τῶν παρὰ σφίσιν αὐτοῖς ἀγράφων ἔθισμῶν προὔθηκαν ἐν δέκα δέλτοις τῷ βουλομένῳ σκοπεῖν, δεχόμενοι πᾶσαν ἐπανόρθωσιν ἰδιωτῶν καὶ πρὸς τὴν κοινὴν εὐαρέστησιν ἀπευθύνοντες τὰ γραφέντα [...] ἐπικυρώσαντος δὲ καὶ τοῦ δήμου τοὺς νόμους, στήλαις χαλκαῖς ἐγχαράξαντες αὐτοὺς ἐφεξῆς ἔθεσαν ἐν ἀγορᾷ τὸν ἐπιφανέστατον ἐκλεξάμενοι τόπον.

Once again, the intended, and indeed hoped for, end of the narrative endeavour is not as simple as the Tait and Norris model suggests. A decemvirate was chosen again to be the supreme power in the state, as their code of laws was manifestly incomplete, with the remaining laws ultimately

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<sup>457</sup> Tait and Norris 2011: 20. This concept of transformation and erasure of the ‘maladies of the past’ reflects, too, the political situation in which Livy is writing, and in which Augustus is legislating. For Augustus, as *princeps*, has likewise erased the ‘maladies of the past’, namely the chaos of civil war and the immoral behaviour of the late Republic with his creation of the principate and the adoption of the *leges Iuliae*. As noted above and throughout this chapter, within the ‘storyworld’ of the *leges Iuliae*, the passage of the marriage legislation and its resemblance to the story of the Twelve Tables cannot be severed from the political context in which it is operating.

<sup>458</sup> On the connection between fiction, time and apocalyptic modes of thought, and the relation of fiction with conceptions of chaos and crisis, see Kermode 2000.

inscribed on two tables and added to the previous ten (10:58-60). And once again, the distinction between the social contract narratives and the (hi)stories presented by Livy and Dionysius can be observed. In the former, the narrative leaves a normative vision of the future, a just society.<sup>459</sup> In Livy and Dionysius' (hi)stories, the reader is left with no imagined future, but instead the reality of a plot which returns to the chaos and ultimately starts again. For while the plotline of social contract theory can, and indeed does, have a distinct sense of an ending, the reality of (hi)story is that it is not afforded such a privilege.

Once more, this fleeting sense of an ending with the Twelve Tables is reflected in the story of the *leges Iuliae*. After the reform of the original laws in AD9, and its rebranding as the *lex Papia et Poppaea*, the provisions of the statute remained unchanged throughout the rest of Augustus' life. One could view this as a sense of an ending, after the years of opposition, chaos and delay while Augustus attempted to bring his controversial legislation to life. Yet, following his death not five years later in AD14, and the succession of Tiberius, the legislation is subsequently revised once again. As Suetonius tells us, Tiberius amended the Augustan statute by declaring a law that saw the return to the custom of settlement of private matters within the family (Suet. *Tib.* 35.1).<sup>460</sup> Thus, this sense of an ending (finally) in AD9 is merely fleeting. Augustus' legislation is redrafted and the normative vision of a morally superior Rome is amended by his heir, Tiberius. While the reader can demarcate a pseudo 'ending' in the narratives of Livy and Dionysius, and likewise in the story of the marriage legislation, they are deceptive. Social contracts have the luxury of a definitive end, but with history, the story always continues. For in reality, this is not the ending but rather another beginning, the start of the sequel.

The narratological model of social contract theory, then, has afforded a more nuanced understanding of the Twelve Tables and its relationship to the 'storyworld' of the *leges Iuliae*. As the narratives by Livy and Dionysius unfold, similar plot points can be determined not only with the social contract theories, but also looking forward to the story of the marriage legislation. For this paradigmatic legal origin story provides a key narrative archetype for Augustus' marriage laws, and allows for an understanding of the wider landscape and context that frames the story of the passage of the legislation. Indeed, the Twelve Tables are a salient representation of that pattern of chaos and order which also unfolds throughout the lifetime of these laws under Augustus. We see the narrative arc of the *leges Iuliae* mirroring that of the Twelve Tables, with the latter providing a fundamental paradigm for the former. It is through this narrative blueprint

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<sup>459</sup> Tait and Norris 2011: 20.

<sup>460</sup> See Liveley and Shaw 2020: 264 for Tiberius' appeal to the authority of the *mos maiorum*, an authority which his predecessor once relied on as well.

– and the manner in which the *leges Iuliae* resemble and echo the Twelve Tables – that the Augustan Marriage Legislation is connected to this key moment in Roman legal history. By establishing the resemblances between the Julian laws and the Twelve Tables, this legal origin narrative legitimates the normative status of the marriage legislation and can – and indeed should – therefore be understood in terms of its importance and position as a level of narrative within the ‘storyworld’ of the *leges Iuliae*.

### **The Twelve Tables: A Legal Archetype for the *leges Iuliae*?**

If we (re)view the stories of the Twelve Tables as narrated by Livy and Dionysius through the narratological lens provided by the Tait and Norris model, we can observe their narrative dynamics and how they provide a narratological archetype with which the *leges Iuliae* can be connected. However, despite the narratological importance of these stories to the legislation and how it unfolds, it is perhaps surprising that the use of this paradigmatic origin narrative as a *legal* (as opposed to narrative) precedent is not particularly apparent. For 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). To what extent, therefore, can the story of the Twelve Tables be said to provide a *legal* representation and framework for the ‘storyworld’ of the Augustan Marriage Legislation?

It is a well-established trope that *mores*, as opposed to *leges*, were the central aspect to the Augustan principate and the so-called ‘Augustan ideology’, and subsequently morals had a clear pre-eminence over legislation.<sup>461</sup> This can be seen with Augustus’ overt desire to connect his legislation to the *mos maiorum*. Laws may have been needed, but *mores* were viewed as even more important.<sup>462</sup> Indeed, 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). However, I argue: what good are laws if we have no legal narrative or backstory in which to situate and contextualise them – and, crucially, to provide legal authority for them? Augustus may not have explicitly connected his legislation to the Twelve Tables (preferring instead to relate to the established narrative repertoire of *exempla* and the *mos maiorum*), yet as I have argued, the Twelve Tables are a crucial narratological archetype for the *leges Iuliae*. It is only through recognising their narrative cogency that we may now begin to examine the extent to which the

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<sup>461</sup> Galinsky 1996: 51.

<sup>462</sup> Galinsky 1996: 102.

Twelve Tables provided a *legal* framework and precedent for the Augustan marriage legislation. 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’.<sup>463</sup>

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 *mores 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.<sup>464</sup> 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’.<sup>465</sup> By adding to this network of *leges* with the introduction, *inter alia*, of the marriage legislation, Augustus is harnessing the legal power of this meaningful origin narrative for his own legislative ends.

Thus, as well as its role as a narratological blueprint for the passage of the Julian laws, I argue that the narrative of the Twelve Tables also provides Augustus with a legal framework that gives meaning and authority to his marriage laws, his wider legislative programme and his entire regime. Indeed, Augustus is bound by this authority established at the creation of the Twelve Tables, and therefore we, as interpreters of the ‘storyworld’ of the marriage legislation, cannot separate the laws from this fundamental backstory, and the legal as well as narratological framework it provides.

We can further evaluate the *legal* importance of the Twelve Tables narrative within the ‘storyworld’ of the *leges Iuliae* with an exploration of the contrast between *potestas* and *auctoritas*. 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.

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<sup>463</sup> Watson 1995: 37.

<sup>464</sup> Luce 2009: 46. For a full analysis of the dating of Livy’s first decade, see Luce 2009: 17-48.

<sup>465</sup> Milnor 2007: 8.

Post id tempus auctoritate omnibus praestiti, potestatis autem nihilo amplius habui quam ceteri qui mihi quoque in magistratu conlegae fuerunt.

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*).<sup>466</sup> 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.<sup>467</sup> Typical of Augustan culture, *auctoritas* as a quality, with its strong moral connections, was inherent in and emanated from individuals.<sup>468</sup> In contrast, *potestas* resided in fixed form as power deriving from an elected office.<sup>469</sup> 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.<sup>470</sup>

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.<sup>471</sup> 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.<sup>472</sup> 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.<sup>473</sup>

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<sup>466</sup> Lowrie 2009: 283.

<sup>467</sup> Galinsky 1996: 12.

<sup>468</sup> Galinsky 1996: 12.

<sup>469</sup> Lowrie 2009: 284. For a summary of the distinction between *potestas* and *auctoritas*, see Agamben 2005: 74-88.

<sup>470</sup> Heinze 1925: 356.

<sup>471</sup> Agamben 2005: 82.

<sup>472</sup> Lowrie 2009: 285.

<sup>473</sup> As Lowrie 2009: 285 explains, attempting to prioritise *potestas* over *auctoritas*, or vice versa, is a 'chicken and egg problem'. See also Heinze 1925; Hellegouarc'h 1972: 310; Veyne 1976: 577; Galinsky 1996; Kienast 1999: 84-5; Ando 2000; and Agamben 2005: 74-88.

This dichotomy of powers, and the interconnection between them, can be applied to the narrative of legal origin within the ‘storyworld’ of 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’.<sup>474</sup> The codification of the Twelve 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.<sup>475</sup> 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.<sup>476</sup>

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 entire ‘storyworld’ of 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. True, Augustus publicly and strategically made more of the legislation’s connection to the *mos maiorum*, to *auctoritas*, presumably because of the potentially awkward precedent offered by the tumultuous story of the Twelve Tables. But the *potestas* of the Twelve Tables was still of crucial importance: Augustus still required the constitutional framework, and the formality of codified law, which the Twelve Tables provided, to work alongside and in partnership with his *auctoritas*. For it is the collective power of *both* of these legal origin narratives that furnished Augustus and his *leges* with the power and authority he needed to attempt to institute such radical social and moral reforms during his principate. Thus, it is the narrative potency of the Twelve Tables, as revealed through the application of the Tait and Norris model, which allows it to fulfil its role as a legal-historical precedent and thus a

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<sup>474</sup> Lowrie 2009: 284.

<sup>475</sup> See Galinsky 1996: 10-41 for his analysis of *auctoritas* as a principal concept, and particularly at 16 where he explores the range of applications and elasticity of this concept.

<sup>476</sup> Lowrie 2009: 284.

framework for Augustus and his legislative programme. Despite the fact the *princeps* chose not to invoke this crucial moment from Rome's legal past in order to legitimise his legislation, it nonetheless still serves as an established legal representation in the 'storyworld' of the *leges Iuliae*.

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.<sup>477</sup> 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.<sup>478</sup> Thus, the Augustan legal 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.<sup>479</sup> 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. A pertinent example of this extension of the Twelve Tables narrative lies in the fact that 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.<sup>480</sup> 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.

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<sup>477</sup> Simon-Shoshan 2012: 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.

<sup>478</sup> Simon-Shoshan 2012: 84.

<sup>479</sup> Milnor 2007: 9.

<sup>480</sup> Tabula XI. C.f. Lintott 2010: 18 and Milnor 2007: 16.

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’.<sup>481</sup> 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*.<sup>482</sup> 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.<sup>483</sup>

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. Moreover, the *Res Gestae* was even ‘inscribed and displayed on bronze in front of his Mausoleum on the Field of Mars (*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.<sup>484</sup> The use of bronze, therefore, set the *Res Gestae* on a ‘par with Roman legal and other important documents’.<sup>485</sup> 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.

The importance of the Twelve Tables for the ‘storyworld’ of the *leges Iuliae*, then, is two-fold: by recognising the ways in which the Julian laws resemble the Twelve Tables, this principal origin

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<sup>481</sup> Milnor 2007: 18-19.

<sup>482</sup> McGinn 2002: 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*.

<sup>483</sup> Although as McGinn comments (2002:82), this singular statutory precedent was both ‘of brief duration and highly notorious’. For more on Livy and this intermarriage ban, see Milnor 2007: 16-23.

<sup>484</sup> Cooley 2009: 3. See Dion. Hal. *Ant Rom* 10.60 for reference to the inscription of the Twelve Tables on bronze pillars.

<sup>485</sup> Cooley 2009: 3.

story subsequently endows the 'storyworld' with a meaningful narratological *and* legal archetype. Through a comparative narratological analysis with social contract theory, formulated by Tait and Norris, the *leges Iuliae* can be seen to echo the same narrative arc, one of chaos and order, that is similarly in the stories of the Twelve Tables. It is in this way that these origin narratives have created a narrative archetype for the Julian marriage laws.

It seems puzzling then, having provided a narrative paradigm for the *leges Iuliae*, that the Twelve Tables are not engaged with or exploited by Augustus to frame his legislation or for their legal authority. 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 narratological and legal archetype of 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* are 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. 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 unfolded throughout the lifecycle 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 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. 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 *mores maiorum* even as it stages their reform.

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 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 behaviours. For these purposes, the *mos maiorum* was tactically a better choice, providing Augustus with a familiar and positive context for his legislation. Although, even a familiar and customary masterplot such as the *mos maiorum* would prove insufficient to ensure that radical change and innovation through legislation was acceptable to the people.

## Chapter 6

### The Characters of the Augustan Marriage Legislation

While Aristotle signals the primacy of plot in the opening lines of his *Poetics*, he also identifies as part of his criterion ‘character’ as providing the colour to the black and white sketch of plot (Aristot. *Poet.* 6.1450a-1450b).<sup>486</sup> Thus, making further sense of any narrative requires situating the characters, or participants, within it, and understanding their particular roles and functions.<sup>487</sup> For as Aristotle said, any representation of action also represents people (Aristot. *Poet.* 6.1450b 1); and, so, we find ourselves turning to the characters of the *leges Iuliae*, and the narratives which construct them, as part of the process to better re-evaluate the dynamics of the storyworld those narratives collectively produce and how the public reaction against this legislation can be further understood in terms of this core narratological process.

In this chapter, therefore, I propose to distil the various types of characters, or *dramatis personae*, which emerge from the myriad sources of the *leges Iuliae*, and examine how reviewing these texts through the lens of modern narrative theory can provide a means for characterising and typologising the participants in these narratives. In particular, I examine how the Augustan Marriage Legislation not only ostensibly brought private behaviour into the public domain and state control for the first time, but how it also invented categories for women and their behaviour for the first time too. Indeed, the provisions of the laws went beyond decreeing simply the types of women with whom an elite male citizen could and could not have sexual relations, but also decreed a set of legalised expectations about the role(s) that women should and should not perform. I will, thus, explore how the negative reception and hostility to the *leges Iuliae* can be re-examined in terms of its creation of these unpopular artificial characters - character roles which expected women to live up to a particular standard of behaviour and criminalised those who did not. In particular, I will interrogate how the concept of ‘possible-worlds’ in modern narrative theory can help examine the overlap between the ‘real’ participants of the storyworld – including Augustus, his daughter and granddaughter – and their relationship with the character roles available to them, which they come to imitate. For while Augustus has legislated a fixed cast of characters, their ability to move between the different sub-worlds of the *leges Iuliae* ‘storyworld’ is much more fluid. Crucially, I will close with what this means for the treatment of ‘storyworld’ participants by later historians and modern scholars, and how this in fact served to reinforce the profoundly unpopular character roles that contributed to the downfall of the legislation.

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<sup>486</sup> For further discussion on Aristotle, and the roots of classical narratology, see chapter 3.

<sup>487</sup> See Liveley 2019: 72; and Herman 2001: 20, 30.

Adapting the work of Propp as a starting point for my narratological analysis, I will propose that there are a number of significant and recurring *dramatis personae* within the narratives of the legislation, each defined by their own sphere of action: the Ideal Woman; the Anti-Exemplum; the Paramour; the False Ideal; the Saboteur; and the Informer. This will serve to establish a clear typology of character that will then help us better understand how the dynamics of such multichromatic characterisation, as refined and contextualised by the work of Phelan, operates in the multi-layered 'storyworld' of the *leges Juliae*. In addition, I also propose to examine, using possible-worlds theory, to what extent 'real' storyworld participants – namely Augustus, his daughter Julia the Elder, and his granddaughter Julia the Younger – are seen to (poorly) imitate the character roles made available to them through the legislation, and to assess the impact of this role-playing upon their treatment by both ancient and modern historians.

### **Characters and/as Stereotype in Modern and Ancient Law**

Recognising the narrative dynamics of modern law, in all its multiple aspects and at different levels, by extension leads to the recognition of the importance of character in modern legal-narratological theory, and how character, and the malleability of this concept, is an essential part of the modern legal process too. Indeed, the conception of character and its significance for narrative, and accordingly the law as well, is neatly explained by Amsterdam and Bruner:

Narrative, in a word, models a culture's conception of human character and its plight. Given any degree of imagination, it also explores the culture's counter-conceptions: its rogues and mountebanks and monks, its idiots and innocents, its renegades and regicides. And it puts them on the same stage together.<sup>488</sup>

The same can be said about the modern legal process too. Whether adversarial or inquisitorial, whether in the passing of legislation or in those narratives associated with a criminal trial, archetypal characters emerge and are ascribed in all these myriad narratives of the law, often reflecting and modelling that culture's prevalent stereotypical conceptions. In this light, the narratives from a criminal trial are a particularly rich source for examining the multiplicity of character roles which emerge. From interviews at the police station, to jury selection, to narrative testimonies of witnesses, character statements, expert witnesses, and even judicial opinions and statements on cases, there is a whole cast of recurring legal 'characters'. Often these characters are typologised at trial in a certain way, reinforcing their culturally ascribed stereotypical role,

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<sup>488</sup> Amsterdam and Bruner 2002: 132.

with a character consciously or subconsciously ‘playing up to type’, perhaps by dressing and acting in a certain way at trial to appeal to that conventional archetype. Indeed, this typologising of different participants remains an important layer of the storytelling process that takes place within a criminal trial. In order for a trial lawyer to create a narrative with ‘conviction’ – for as Brooks maintains, a criminal trial can be delineated as a ‘social practice which adjudicates narratives of reality, and sends people to prison, even to execution, because of the well-formedness and force of the winning story’ – s/he must know how to bind together the evidence and unfold it narrative form, and by extension, know what kinds of characters that narrative must and should include.<sup>489</sup>

Yet, in much the same way that the law itself ‘rarely recognises overtly how much it is intricately with narrative’, it arguably also fails to recognise how it limits certain participants in the legal process by its repeated stereotypical characterisations.<sup>490</sup> Thus, we continue to see the pervasive presence of stereotypical character roles, particularly in the criminal justice system and often activated by cultural ideologies and assumptions. This is particularly prevalent in cases regarding sexual assault and victims of rape, as Brooks illustrates with one particular case from Baltimore, Maryland in the United States (though the stereotyping of rape victims is certainly not limited to this case).<sup>491</sup> What appears to be at issue, in this particular case, is the judge’s sense of ‘how a woman supposed to behave in certain circumstances’, and how that woman is or is not characterised in the criminal proceedings.<sup>492</sup> In *Rusk v. State*, in the Court of Special Appeals of Maryland, the court consistently and insistently refers to the woman in the case, the victim, as a ‘prosecutrix’, as ‘bar-hopping’, and characterises her as a ‘normal intelligent, twenty-one year old vigorous female’.<sup>493</sup> Brooks concludes that, presumably, the use of ‘vigorous’ indicates that this woman should have fought off the predatory male in her attack.<sup>494</sup> Here, the judge has favoured, and engendered, that normative, stereotypical characterisation of a female victim in rape cases: one where the victim herself is characterised as provocative and sexually stimulating, a characterisation often activated by cultural views of sex, of women and of rape. Indeed, the characterisation of women, reinforced by cultural conceptions and ideologies, can also be found in other areas of modern law, for example in the English and Welsh Law of Incest, found in the provisions initially of the Sexual Offences Act 1956 (ss. 10 and 11) and now in the Sexual Offences Act 2003 (ss. 64 and 65). Here, we find a dichotomy in the characterisation of women: on the one

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<sup>489</sup> Brooks 2005: 416.

<sup>490</sup> See Brooks 2005: 417.

<sup>491</sup> *State v. Rusk (Rusk II)*, 424 A.2d 720 (Md. 1981), *rev’g* 406 A.2d 624 (Md. Ct. Spec. App. 1979). Brooks 2002: 3-4.

<sup>492</sup> Brooks 2002: 4.

<sup>493</sup> *Rusk v. State (Rusk I)*, 406 A.2d 624, at 625-627 (Md. Ct. Spec. App. 1979). C.f. Brooks 2002: 4.

<sup>494</sup> Brooks 2002: 4.

hand, there is the poor, passive female who 'permits' a man to have sexual intercourse with her, and on the other hand, there is the calculating deceptive seductress who uses her sexuality to entrap men.<sup>495</sup> The legislation homogenises a characterisation of women which polarises their behaviour, either typologising them as passive or as the wily temptress who leads man astray, although the language of the legislation is much less expressive.

However, the stereotypical casting of legal characters is also prevalent with defendants themselves; in this case, often reinforcing the cultural assumption that a suspect taken to trial must be guilty. As Grunewald argues, once the 'presumption of guilt' is established (often early on in the process, at the police station), the 'innocence story becomes an atypical and unlikely story'.<sup>496</sup> The defendant is often portrayed by the prosecution as a specific 'type' of person, a stereotypical character, one who typically commits crimes and, as such, their story as the guilty suspect is unremarkably archetypal.<sup>497</sup> In fact, this characterisation of the defendant in a certain role continues even into prisons. Here, the rules are re-written as prisoners reposition themselves within the prison hierarchy to counter 'the ascribed stigma of immorality'.<sup>498</sup> In prison, a distinction is made between the rational (and defensible) crimes of proper criminals, who cast themselves in the role of morally conscious criminals, and the 'immoral horrors' perpetrated by the rapists and sex offenders.<sup>499</sup> This stereotypical characterisation of rapists and sex offenders is crucial to the workings of a prison hierarchy: with such characters perpetually at the bottom, identified and characterised in such a manner that they may be eschewed from prisoner society, like the society outside.<sup>500</sup>

As these examples demonstrate, the concept of character and the (often stereotypical) characterisation of participants is an important part of the modern legal process, particularly with regards to a criminal trial. In fact, we can also see how this typologising of characters came to bear on the ancient legal process and trials in 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*. Dating to 56BC, the *Pro Caelio* is a speech written by Cicero in defence of M. Caelius Rufus, a young man who was accused of violating the *lex Lutatia de vi*, which outlawed violence of a political nature, such as taking arms against the Senate, attacking magistrates, and attempting to

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<sup>495</sup> Lacey 1998: 100.

<sup>496</sup> Grunewald 2013: 375. It is interesting to note Grunewald's phrasing here, of the 'presumption of guilt', given that the presumption is in favour of innocence.

<sup>497</sup> Grunewald 2013: 375, 380.

<sup>498</sup> Ugelvik 2015: 23.

<sup>499</sup> Ugelvik 2015: 23-24.

<sup>500</sup> Ugelvik 2015: 29.

undermine the government.<sup>501</sup> In the *Pro Caelio*, which was delivered by Cicero on 4 April 56BC, the orator presents a dramatic and complex legal argument, making its defence of Caelius, ‘not by dealing directly with the substance of the accusations, but by re-directing the entire focus of the case’.<sup>502</sup> Taking advantage of the timing of the trial on what should have been a public holiday, in his ‘interrogation’ of Clodia Metelli, Cicero appeals ‘directly to generic expectations regarding the behaviours and morals exhibited by the stereotypical characters of Roman New Comedy’.<sup>503</sup> In particular, Cicero draws on the hapless young male *adulescens*, who he aligns with his client Caelius, and the scheming *meretrix*, who he compares to his client’s former lover, Clodia Metelli.<sup>504</sup> Calling Clodia a *meretrix* allowed Cicero to cast doubt on ‘her testimony by placing her in a category of individual banned from appearing as witnesses in court’.<sup>505</sup>

Drawing on the character types from Roman Comedy, a dramatic form ‘where things habitually turn out to be less than they seem’, is an astute move on the part of Cicero: with his defence focused on a ‘strategy of trivialisation’, this characterisation of the main witnesses as stock types from the comic stage reinforces Cicero’s ‘bid to make the jury believe that what is at issue is rather less than his opponents have made out’.<sup>506</sup> This designation, of making key witnesses conform to a specific comic role, thus became essential to Cicero’s narration of the background of the case, as Leigh argues, a narration that ‘effectively transforms the central relationship into a familiar scenario from the Roman comic stage’.<sup>507</sup> Indeed, so important are these stereotypical characters to the ancient trial and to Cicero’s legal argument that, as Liveley and Shaw argue, Cicero’s case in the *Pro Caelio* is actually won:

On the strength of his ability to persuade the jury of the ‘relative similarity’ of the various *dramatis personae* in his narrative to their familiar equivalent stereotypes in Roman (especially Plautine) comedy [...] Just like a modern jury, Cicero’s jury is required to reconstruct and recombine the central events of the case [...] and thereby configure a coherent interpretation and judgment [...] Cicero [...] makes this easy for them: he provides his jury with a familiar plot pattern and a familiar cast of stereotyped characters on which to build that interpretation and its narrative.<sup>508</sup>

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<sup>501</sup> Buller 1994: 121.

<sup>502</sup> Buller 1995: 121.

<sup>503</sup> Liveley and Shaw 2020: 259.

<sup>504</sup> Liveley and Shaw 2020: 259. C.f. Leigh 2004a: 302 who also reminds us that the ‘youth (*adulescens*) and the prostitute (*meretrix*) are both stock types familiar from the comic stage, and their characteristic modes of interaction were known to all’. See also Geffcken 1973, Scafuro 1997, and Braund 2005.

<sup>505</sup> Leigh 2004a: 315.

<sup>506</sup> Leigh 2004a: 302.

<sup>507</sup> Leigh 2004a: 315-316.

<sup>508</sup> Liveley and Shaw 2020: 259.

Certainly the art of character evocation, or *ethos* is an ‘abiding and essential element in the art of [ancient] verbal persuasion’.<sup>509</sup> Along with *pathos* (the playing upon the feelings of the audience) and *logos* (the subject of the speech itself), these were the key sources or *pisteis* of persuasion in oratorical practice as articulated by Aristotle in his *Rhetoric*.<sup>510</sup> Thus, the emphasis in rhetorical argument was the integration of these three elements, all of which may influence the audience. However, while it can be sensibly assumed that the Roman orator was familiar with these Aristotelian concepts, Cicero’s concepts of *ethos* and *pathos* particularly are different from those of Aristotle.<sup>511</sup> As Wisse explains:

In Aristotle, *ethos* is restricted to those character traits that will suggest to the audience that the speaker is trustworthy; it is not an emotional matter, because the audience can rationally decide whether they think that the speaker is reliable, and whether they can thus rely on what he says. *Pathos* includes the evocation of all the emotions of the audience, whether mild or violent. In Cicero, *ethos* is broader, and is concerned with (painting an image of) all the orator’s (positive) character traits and with securing goodwill of the audience on that basis. Accordingly, his concept of *pathos* is narrower and includes only the arousal of strong emotions in the audience.<sup>512</sup>

What is clear, however, is that for Cicero, his success very much depended on his creative application of these rhetorical elements, and particularly his creative manipulation of stock rhetorical characters.<sup>513</sup> For character was a very important element in the ‘social and political milieu’ of Republican Rome, and subsequently exerted a ‘considerable amount of influence on native Roman oratory’.<sup>514</sup> One only needs to look at the narratives of *exempla* and the *mos maiorum* to see how an individual’s (good or bad) character became embedded in Roman culture and history.<sup>515</sup> For this was a people who had ‘built their history on the deeds of great forebears, and a people for whom traditional virtues and the *mos maiorum* had become almost a kind of religion’.<sup>516</sup> Cicero discusses this in some detail in his *De Oratore* (2.182):

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<sup>509</sup> May 1988: 1.

<sup>510</sup> May 1988: 3 and Wisse 1989: 5.

<sup>511</sup> May and Wise 2016: 34, and n42.

<sup>512</sup> Wisse 2002: 386.

<sup>513</sup> Vasaly 2002b: 74.

<sup>514</sup> May 2002b: 60.

<sup>515</sup> See chapter 2.

<sup>516</sup> May 2002b: 60.

Well then, the character, the customs, the deeds, and the life, both of those who do the pleading and of those on whose behalf they plead, make a very important contribution to winning a case. These should be approved of, and the corresponding elements in the opponents should meet with disapproval, and the minds of the audience should, as much as possible, be won over to feel goodwill toward the orator as well as toward his client. Now people's minds are won over by a man's prestige, his accomplishments, and the reputation he has acquired by his way of life.

Valet igitur multum ad vincendum probari mores et instituta et facta et vitam et eorum, qui agent causas, et eorum pro quibus, et item improbari adversariorum, animosque eorum apud quos agetur, conciliari quam maxime ad benevolentiam cum erga oratorem tum erga illum, pro quo dicet orator. Conciliantur autem animi dignitate hominis, rebus gestis, existimatione vitae.

In this passage, Cicero emphasises not only the importance of the client's character, but the character of the orator as well. For unlike in Athenian courts, Cicero composed speeches which he would deliver on the defendant's behalf, rather than speeches to be performed by the defendant.<sup>517</sup> Yet, what is striking in this passage from *De Oratore*, is the list of qualities that Cicero espouses as 'quite useful', including 'flexibility, generosity, mildness, dutifulness, gratitude and not being desirous or greedy', *facilitatis, liberalitatis, mansuetudinis, pietatis, grati animi, non appetentis, non avidi*. Character types which are 'decent and unassuming, not severe, not obstinate, not litigious, not harsh', *proborum, demissorum, non acrium, non pertinacium, non litigiosorum, non acerborum*, are similarly commended as useful in the law court. These are the qualities that can win you goodwill, and highlighting the lack of these qualities in your opponent can alienate them from the audience. Anticipating the insights of twenty-first century narratology and the narrative dynamics of character in modern law, Cicero too understood the importance of character in stereotyped form and how manipulation of this was crucial in ancient trial narratives.

Given the importance of character or ethos in Roman society and law, then, Augustus' deployment of specific character roles in the *leges Iuliae* is not surprising. As ever the shrewd statesman and consummate storyteller, Augustus' legislation appears to echo Cicero's understanding of character too, with the *princeps* likewise understanding the importance of creating and manipulating characters to serve your own goals. Throughout this chapter and the discussion on *dramatis personae*, we will see how Augustus draws on certain stock qualities for his characters, whether that is to win goodwill towards some (the Ideal Woman), or to alienate others (the Anti-

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<sup>517</sup> Fantham 2004: 173. See also May 2002b: 61.

Exemplum and the False Ideal). Cicero's use of stereotyped characters, not only in the *Pro Caelio* but also throughout his canon of work, serves as an excellent legal-narratological 'precedent' for this concept of stereotyped character, as activated by Roman cultural ideologies and expectations. And, as we shall see, this has wider significance for analysing the role of character in the *leges Iuliae* and the Roman legal system.<sup>518</sup>

### Character in Modern Narrative Theory

Character thus 'form[s] a part of the signifying structures which motivate and determine the [legal] narrative communication', with these characters often playing a role in the 'thematic, symbolic or other constellations of the text and of the storyworld'.<sup>519</sup> Yet unsurprisingly, perhaps, the term 'character', as it has evolved in the study of modern narrative theory, has multiple definitions and approaches for study. On the one hand, in the widest sense, 'character' can be defined as a 'storyworld participant': a human or human-like individual or entity, who plays a role, no matter how minor, in a work of narrative.<sup>520</sup> This can include the narrator, either an agent with an impersonal, narrating voice, or a personalised narrator who is telling or transmitting the existents, states and events of a story as a particular character in this narrated world, and the narratee, the addressee to whom this narrator addresses the tale.<sup>521</sup> Each of these participants is part of the fiction but may or may not necessarily be part of the fictional world where the characters are, being instead one level above it.<sup>522</sup> In a narrower sense, however, the definition of 'character' can be 'restricted to the participants in [a fictional world or] the *narrated domain*, the narrative agents'.<sup>523</sup> Characters, in this regard, are constructs of, and exist in, the fictional world of a story, and 'are introduced in the text by means of three kinds of referring expressions: proper names (including letters and numbers), such as *Don Quixote*; definite descriptions, such as *the knight of mournful countenance*; and personal pronouns (*I, she*)'.<sup>524</sup>

Thus, a storyworld, as Margolin demonstrates, is subsequently divided into spheres of 'narration and of the narrated, the telling and what is told'.<sup>525</sup> In the case of the 'storyworld' of the *leges Iuliae*, the distinction can be made thus: on the one hand, between participants such as Augustus

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<sup>518</sup> For further examples of Cicero's use of *ethos* and character evocation in his speeches, see Vasaly 2002b.

<sup>519</sup> Jannidis 2014: 31.

<sup>520</sup> Margolin 2007: 66. See also Margolin [2005] 2008: 52-57.

<sup>521</sup> For more on the term narrator and its key concepts, see Phelan and Booth [2005] 2008: 388-392. See Diengott [2005] 2008: 338 for an exploration of the term narratee.

<sup>522</sup> Diengott [2005] 2008: 338. See also Rimmon-Kenan [1983] 2002: 91-94.

<sup>523</sup> Margolin 2007: 66. Emphasis added. See also Margolin [2005] 2008: 52-57.

<sup>524</sup> Margolin 2007: 66. Emphasis in original.

<sup>525</sup> Margolin 2007: 66.

as legislator, storyteller and author, the various authors and storytellers of the works of narratives including Horace, Ovid, Propertius, Tacitus, Suetonius, and Cassius Dio, and the audience or recipients of this 'storyworld', which includes modern day historians and scholars; and, on the other hand, the characters, as narrated agents, which includes Augustus as *princeps*, his family, specifically his daughter and granddaughter, and those individuals affected by the provisions of the legislation, who are ascribed particular traits and characterised by the narratives of the laws and attendant sources.

Indeed, this variance within the term 'character', between those in the narration domain and others in the narrated domain, is crucial to the 'storyworld' of the *leges Iuliae*; particularly when considering the extent to which these 'real' participants imitate the character roles available to them and how this has then impacted the tendency of historians, both ancient and modern, to subsequently cast particular participants in their prescribed roles. This leads to the question of how has this role-playing – this overlap between participants and character, between the spheres of narration and narrated, between Augustus as author/storyteller and Augustus as the character *princeps* – impacted upon the treatment of these participants in the narratives which emerge from the storyworld, but also, by extension, the treatment of the *leges Iuliae* themselves.

As well as the multiplicity of definitions, the concept of 'character' has been studied and analysed from a number of different theoretical perspectives. To begin with, there is a classical or structuralist approach, whose 'first principle is that meaning-making is a rule governed activity', and which asks the fundamental question 'what are the underlying rules of a narrative's textual system?'.<sup>526</sup> In this approach, character is subordinated to plot, evoking and sharing Aristotle's belief that characters are necessary only as 'agents' or 'performers' of the action.<sup>527</sup> A second theory of 'character' views character as a 'non-actual, but well-specified individual, presumed to exist in some hypothetical, fictional domain – in other words, character as an individual within a possible world'.<sup>528</sup> Drawing on possible-world semantic theories – the study of alternative worlds – 'individuals may exist in the textual-actual world, that is, in the fact domain of this world, but also in any of its sub-worlds such as the hypothetical or counterfactual'.<sup>529</sup> A third approach uses cognitive theory to construct a mental image of character in the reader's mind. As Scholes, Phelan and Kellogg tell us: 'cognitive narratology takes classical narratology's fundamental question,

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<sup>526</sup> Scholes, Phelan and Kellogg 2006: 287, 290.

<sup>527</sup> Rimmon-Kenan [1983] 2002: 34. On Aristotle's subordination of character to plot, see Liveley 2019: 42-46, 71-73.

<sup>528</sup> Margolin 2007: 66.

<sup>529</sup> Margolin [2005] 2008: 53. See also Margolin 2007: 70-76 for a summary of this approach to character. For an overview of possible-worlds theory, see Ryan [2005] 2008c: 446-450.

what are the underlying rules of a narrative's textual system?, and revises it to ask, what are the mental tools, processes and activities that make possible our ability to construct and understand narrative?'<sup>530</sup> With this approach, therefore, character is seen as a mental model, constructed by the reader incrementally in the course of reading, and constructed on the basis of 'constant interplay between specific textual data and general knowledge structures stored in the reader's long-term memory'.<sup>531</sup> Finally, a fourth theoretical paradigm available for the mimetic study of character is communicative theories, which focuses on the process of narrative mediation.<sup>532</sup> For any communicatively oriented model of character, a number of key questions are asked to ascertain information about the properties (physical, mental, or social) of different characters: where does information about the individual occupying any of position – narrative agent, focaliser, narrator, narratee – come from? What is its nature and scope? What is its truth-functional status or reliability?<sup>533</sup> As well as these three theoretical perspectives, character studies have also been informed by non-mimetic theories. However Phelan has challenged the concept that mimetic and non-mimetic views are mutually exclusive.<sup>534</sup> Rather, Phelan proposes that character is multichromatic: a literary element composed of three components, the mimetic (character as individuals), thematic (character as representative entities/vehicles to express ideas) and synthetic (character as artificial construct).<sup>535</sup>

I, however, will initially approach my study of the characters within the Augustan Marriage Legislation from the classical, or structuralist, perspective, which is grounded in Aristotle's theory of the subordination of character to plot. For Aristotle, *dramatis personae* were merely the products of plots and, as a result, their narrative status is essentially functional (*Poet.* 2.1448a 1).<sup>536</sup> Given the influence Aristotle's theories particularly had on classical narratology, in particular on the ground-breaking work of Propp, an examination and analysis of character through the lens of this theoretical perspective is an excellent starting point.<sup>537</sup> This will then serve to establish a clear typology of character that will help us better understand how the dynamics of such multichromatic characterisation operates in the multi-layered 'storyworld' of the *leges Iuliae*.

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<sup>530</sup> Scholes, Phelan and Kellogg 2006: 290.

<sup>531</sup> Margolin [2005] 2008: 54; see also Margolin 2007: 76-79. For further studies on cognitive approaches to character, see Culpeper 2001 and Schneider 2001.

<sup>532</sup> Margolin [2005] 2008: 53.

<sup>533</sup> Margolin [2005] 2008: 55. See 55-56 for an overview of communicative theories of character.

<sup>534</sup> Phelan 1989. See Margolin [2005] 2008: 56-57 for a summary of non-mimetic theories of character.

<sup>535</sup> Phelan 1989: 3, 10-14.

<sup>536</sup> Liveley 2019: 190.

<sup>537</sup> Propp [1958] 2015. Propp first set out his method in *Morfologiya skazki* in 1928, with translations from the Russian into English following in 1958 and 1968.

## Vladimir Propp and James Phelan

Recognised as an 'influential precursor of structuralist narrative theory', 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-Strauss, Greimas, and Barthes.<sup>538</sup> Dedicated to the study of Russian folktales, Propp's work seeks to compare these tales according to their component parts, and examine the relationship of these component parts to each other, and to the whole.<sup>539</sup> Of the 100 tales he analysed, Propp distinguished between their variable and invariant components, diving below the surface level of the text and examining its deep narrative structure.<sup>540</sup> There, he draws a contrast between the mutable *dramatis personae* and the constant plot functions performed by them:

The names of the *dramatis personae* change (as well as the attributes accorded to each), but neither actions nor functions change. From this we can draw the inference that a folktale often attributes identical actions to varied *dramatis personae*. This makes possible the study of folktale according to the functions of its *dramatis personae*. We shall have to determine to what extent these functions are really recurrent, constant values of the folktales. The formulation of all other questions must, of necessity, depend upon the solution of this primary question: how many functions are there present in folktales?<sup>541</sup>

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'.<sup>542</sup> 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.<sup>543</sup> As Brooks explains:

The names that an individual tale will assign to these agents – and the way it may combine or divide them – are relatively unimportant, as are their attributes and motivations. What counts is their role as vehicles of the action, their placement and appearance.<sup>544</sup>

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<sup>538</sup> Scholes, Phelan and Kellogg 2006: 287. See also Herman 2002: 122.

<sup>539</sup> Propp [1958] 2015: 18.

<sup>540</sup> See Schmitz [2002] 2007: 44, and Liveley 2019: 189.

<sup>541</sup> Propp [1958] 2015: 18-19.

<sup>542</sup> Propp [1958] 2015: 20.

<sup>543</sup> Propp [1958] 2015: 72-73.

<sup>544</sup> Brooks [1984] 1992: 15.

In any given narrative, one character 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 characters.<sup>545</sup> What remains constant, therefore, are these seven types of *dramatis personae* and the spheres of actions they perform: the names of the characters assigned to these *dramatis personae* may change; the number of characters who take on each of the roles may change; but the seven core actions which define the types of *dramatis personae* do not. It is this idea, of distilling a narrative to its component parts centred around the invariant actions of core *dramatis personae*, which I take from Propp and will use as a preliminary model for the characters of the Augustan Marriage Legislation. Propp's seven core *dramatis personae* will serve as a starting point, as I seek to identify the key *dramatis personae* and their core actions which appear in the narratives of the *leges Iuliae*.

What is clear from my analysis is that the key *dramatis personae* who emerge from the narratives of the *leges Iuliae* do not entirely resemble Propp's list from Russian Folktales. As a result, it is necessary to give new names to my list of six key *dramatis personae*; names which reflect *their* functions and *their* sphere of actions. For the spheres of action assigned to my *dramatis personae* differ from Propp's, reflecting instead the invariant story elements of the Augustan Marriage Legislation. For example, 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. Thus, Propp's work has provided an important lexicon for how we talk about character, and has offered a means by which we can more clearly categorise and typologise the types of characters that emerge from the narratives of the Marriage Legislation and thereby better re-evaluate the dynamics of the 'storyworld' those narratives collectively produce.

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<sup>545</sup> Propp [1958] 2015: 73-75. See also Schmitz [2002] 2007: 45 and Rimmon-Kenan [1983] 2002: 34.

In addition to the identification of seven *dramatis personae* and thirty-one functions, as stable constant elements of a folktale, Propp also observed the following rules: the number of functions known in the folk tale is limited; the sequence of functions is always identical; and while not every function has to occur in every tale, the absence of one or several functions does not change the order of the rest.<sup>546</sup> Further, the appearance of some particular functions will require the appearance of others; as Puckett summarises: ‘in cases like these, one function necessarily closes off and resolves what had been opened by another’.<sup>547</sup>

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 expression in the work of Greimas.<sup>548</sup> However, his assertion that folk tales can be reduced to a set of thirty-one functions, performed by only seven *dramatis personae*, has garnered criticism for its ‘limited nature’.<sup>549</sup> Brooks describes Propp’s analysis as ‘clearly limited by the relatively simple and formulaic nature of the narratives he discusses’.<sup>550</sup> Bremond and Verrier 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’.<sup>551</sup>

However, I maintain that despite these criticisms, Propp’s methodology remains a valid one.<sup>552</sup> His concept of functions centred around the spheres of action of a core list of *dramatis personae*, and analysing a narrative according to these component parts, is a constructive starting point for

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<sup>546</sup> Propp [1958] 2015: 20-21.

<sup>547</sup> Puckett 2016: 183.

<sup>548</sup> Herman 2007: 13. Greimas [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’ (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 (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 Herman [2005] 2008a: 1-2; Brooks [1984] 1992: 16; Page 2007: 194; Laviers 1982: 183; and Rimmon-Kenan [1983] 2002: 34-35.

<sup>549</sup> Puckett 2016: 182.

<sup>550</sup> Brooks [1984] 1992: 16.

<sup>551</sup> Bremond and Verrier [1982] 1984: 192-193.

<sup>552</sup> It is worth noting that Propp himself understood the limits of his project and its scope. Indeed, as Schmitz [2002] 2007: 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 2016, too, reminds us that 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’ (46).

typologising the characters which emerge from the narratives of the *leges Iuliae*. 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.<sup>553</sup> 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. Yet, as my analysis unfolds, the multiplicity of the character types appearing in the narratives which emerge from and around the legislation can be aligned much more closely with the integrative model of character as suggested by Phelan.<sup>554</sup>

Rather than conceiving characters as vehicles of action, subordinate to the plot, or rather than debating whether characters should be thought of as persons or thematic issues, Phelan adjudicates that characters can simultaneously be considered possible persons, vehicles for carrying ideas and also artificial constructs.<sup>555</sup> Thus, in Phelan’s model, character is multichromatic: a literary element composed of three integrative components, the mimetic, thematic and synthetic.<sup>556</sup> Phelan subsequently offers a different analytical distinction between the dimensions of a character and its functions:

A dimension is any attribute a character may be said to possess when that character is considered in isolation from the work in which he or she appears. A function is a particular application of that attribute made by the text through its developing structure. In other words, dimensions are converted into functions by the progression of the work. Thus, every function depends upon a dimension but not every dimension will necessarily correspond to a function.<sup>557</sup>

What this distinction between dimensions and functions allows Phelan to stipulate is that the fundamental unit of character is actually the *attribute*, something that participates in the mimetic, thematic and synthetic spheres of meaning. Phelan defines these spheres as follows: ‘the mimetic dimensions [...] are a character’s attributes considered as traits, e.g., the Duke’s maleness, his position of power, his imperiousness, his boldness, and so on’; ‘thematic dimensions [...] are

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<sup>553</sup> Kafalenos 1997: 470. On the heuristic value of Propp’s work and his influence on structuralist narratology, see Herman 2002: 122, Scholes, Phelan and Kellogg 2006: 287-288, Puckett 2016: 184, and Liveley 2019: 190.

<sup>554</sup> Phelan 1987 and 1989.

<sup>555</sup> Phelan 1987: 282-284.

<sup>556</sup> Phelan 1989: 3. The following analysis draws on this work of Phelan, as outlined in *Reading People, Reading Plots*.

<sup>557</sup> Phelan 1989: 9.

attributes, taken individually or collectively, and viewed as vehicles to express ideas or as representative of a larger class than the individual character', with 'the distinction between the mimetic and thematic components of character [...] a distinction between characters as individuals and characters as representative entities'; and the synthetic component, where characters are an artificial construct, with the creator using them 'to show us something about the segment of the population to which the created character belongs'.<sup>558</sup> A character, therefore, 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.

From these attributes, the reader is able to recognise the dimension of the character and then throughout the progression of the narrative, as the application of that attribute is made by the text, convert the dimension into functions. Crucially however, as Phelan reminds us, as we read, we actually do not experience the progression of these principles in this way: 'characters do not come to us first as attributes which we recognize as dimensions which then become transformed into functions [...] but they come to us already in the process of being shaped into functions, or [...] as already functioning'.<sup>559</sup> If we return to Propp's analysis of Russian folk-tales, therefore, here we are encountering and typologising characters who are already performing mimetic functions, namely characters in action who are treated as human or human-like entities. Phelan, on the other hand, inverts this analytical distinction, allowing us to start at the beginning of character construction rather than the end, and understand the principles upon which a particular character is constructed rather than 'claiming to offer a blow-by-blow description of what happens when we read'.<sup>560</sup> Thus, Phelan's model challenges us to consider these 'attributes' – the mimetic sphere, thematic spheres and synthetic sphere – as what makes up the fundamental unit of character, rather than their particular function or sphere of action.

Propp's morphological schema, therefore, offers one method by which characters operating in a given narrative can be analysed: by typologising them and studying them according to the spheres of action around which they are patterned. This methodology allowed for my initial identification of various key types of *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. However, as my study progresses, it will become necessary to diverge from this analytical approach to character and instead consider these key *dramatis personae* in the light of Phelan's work, considering instead how they may be classified according to their

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<sup>558</sup> Phelan 1989: 11, 12, 13, and 14 respectively.

<sup>559</sup> Phelan 1989: 10

<sup>560</sup> Phelan 1989: 10.

attributes and their subsequent participation in his three basic components: mimetic (the character's traits as a person), thematic (character as a representative idea or class of people), and synthetic (the material out of which the character is made).

### **The Ideal Woman**

The first key *dramatis persona*, which I have identified within the 'storyworld' of the *leges Iuliae* is the 'Ideal Woman'; for in this package of legislation, women undoubtedly have a key role to play. In addition to drawing legal distinctions between the social classes, i.e. with whom a senator was or was not allowed to marry, the laws also established a new designation that classified women and their behaviour into different roles and categories in a way that no previous Roman legislation had enacted before.<sup>561</sup>

Certainly, as has been noted in the current scholarship, the *leges Iuliae* had far reaching consequences for women, delineated as a significant milestone in the development of a female's legal position, according them a 'kind of legal subjectivity which they had not before enjoyed.'<sup>562</sup> Indeed, scholars have also noted that this was 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'.<sup>563</sup> It is clear, likewise, that 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'.<sup>564</sup> What my narratological analysis reveals, however, is that the consequences of the legislation extended much further; actually creating for the first time specific character roles for the Roman people, but most importantly for women. Establishing this typology, from which I have identified the 'Ideal Woman' as a key *dramatis persona*, reveals that, with this legislation, Augustus had profoundly 'invented' for the first time legalised behavioural roles for all women. Thus, Augustus has not only accorded legal subjectivity to women, or simply outlined the women with whom an elite male could or could not have sexual relations, but, in an unprecedented manner, he has crystallised through legislative means the 'character' roles he wanted and expected women to fill. And through my analysis of the characters

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<sup>561</sup> As Langlands 2006: 20 notes, it is not precisely clear from the extant sources what the legal situation for the punishment of sexual transgression was under the Republic, although it is fairly clear that this behaviour was viewed as unacceptable, particularly with regards to the adulteration of freeborn citizens and other men's wives. See also Fantham 1991.

<sup>562</sup> Milnor 2005: 151 and 151, n.19. C.f. Culham 1997: 196, 203.

<sup>563</sup> McGinn 1998: 144.

<sup>564</sup> Langlands 2006: 20-21.

in the diverse narratives of the legislation, I will explain these various ‘invented’ roles in order to demonstrate how the *leges Iuliae*, and by extension Augustus, decreed a set of legalised expectations about women’s behaviour and how such an artificial creation of these characters can offer an alternative, original explanation for the unpopularity of this package of legislation.

As we have seen, the *leges Iuliae* comprised two discrete laws (the *lex Iulia de maritandis ordinibus* and the *lex Iulia de adulteriis coercendis*) and sought to promote marriage, procreation and to criminalise adultery.<sup>565</sup> The *lex Iulia de maritandis ordinibus*, in particular, was focused on establishing a system of rewards and punishments for marriage and legitimate procreation within that marriage. Thus, we have the creation of our first *dramatis persona*, the Ideal Woman: 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 part of the 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.<sup>566</sup> Indeed, ‘social, economic and political incentives 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).<sup>567</sup> 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 re-marry within a year of their husband’s death, and divorcees expected to remarry within six months of their divorce’.<sup>568</sup> Although as Suetonius informs us, these particularly strict conditions were very unpopular (*Aug. 34*):

Having made somewhat more severe amendments in one of these [laws] than in the others, an open rebellion against its provisions meant he was unable to enact it until he had removed or mitigated a part of the penalties, as well as increasing the rewards and

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<sup>565</sup> Liveley and Shaw 2020: 246.

<sup>566</sup> Grubbs 2002: 84. See also McGinn 1998: 75, n45.

<sup>567</sup> Liveley and Shaw 2020: 247.

<sup>568</sup> Liveley and Shaw 2020: 247. 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. See Grubbs 2002: 84. C.f. Suet. *Aug. 34.2*.

allowing a three years' exemption [from the obligation to marry after the death of a husband or wife].

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.

Moreover, in the revisions of AD9, Augustus also had to deal with further evasions to his law 'by shortening the permissible period between betrothal and marriage, and by limiting the number of lawful divorces' (Suet. *Aug.* 34). However, for women, it wasn't just about marriage: procreation was equally as important under the legislation, and so it was only women who married *and* had children who I argue could be assigned and classified as the 'Ideal Woman' *dramatis persona*. For the legislation and attendant narratives consistently and insistently yoke 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.<sup>569</sup> 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' – could truly reap the rewards: men were given priority in receiving government appointments, and the mothers were given freedom from guardianship.<sup>570</sup>

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, two sources who were key witnesses to the passage of the legislation. To begin with, the importance of marriage and procreation is highlighted in Horace's *Carmen Saeculare*.<sup>571</sup> In this poem, Horace accorded the legislation a key role, discussing it directly in lines 17-20:

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.

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<sup>569</sup> For more on Roman marriage specifically, and the 'making of mothers', see Treggiari 1991.

<sup>570</sup> Gaius 1.145. See Grubbs 2002: 84.

<sup>571</sup> Oliensis 2007: 227.

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

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.<sup>572</sup> After supplicating to the Goddess Diana once again in line 17, Horace subsequently yokes 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*.<sup>573</sup> 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'.<sup>574</sup> 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, beseeched by Horace to bring forth the offspring of Rome and grant success to the 'Ideal Women' as invented and typologised in the legislation.<sup>575</sup>

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.<sup>576</sup> 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):

The chaste home is unsullied by debauchery.  
Law written and unwritten has subdued wickedness.  
Mothers are praised for bearing true sons of their fathers.

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<sup>572</sup> Putnam 2000: 62.

<sup>573</sup> Putnam 2000: 62-63.

<sup>574</sup> Putnam 2000: 62.

<sup>575</sup> It is worth noting here the stories about Augustus's private banquet where his guests came dressed up as gods, and the *princeps* himself came in the guise of Apollo, c.f. Suet. *Aug.* 70.

<sup>576</sup> West 1997: viii, xiv.

The presence of punishment prevents sin.

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

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 with which we are already familiar (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.<sup>577</sup> 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.'<sup>578</sup> 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 offers 'eye-witness' testimony to the legislation, and reiterates this idea of the 'Ideal Woman', harnessing together marriage, procreation and motherhood, is the poet 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 distinction as a wife and mother.<sup>579</sup> 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). Once again, a faithful marriage is not sufficient to earn the honorific, ideal 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

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<sup>577</sup> Du Quesnay 2009: 317.

<sup>578</sup> Du Quesnay 2009: 317.

<sup>579</sup> It is worth noting the later date of Propertius' work in book 4, which was written and published in or shortly after 16BC.

a sterile house', *et tamen emerui generosos uestis honores/, nec mea de sterili facta rapina domo* (Prop. 4.11.61-62).<sup>580</sup>

Augustus, himself, also famously expected the women in his family to take on the role and attributes of the 'Ideal Woman' – virtuous wives and daughters – particularly his daughter Julia the Elder and granddaughter Julia the Younger. As Suetonius tells us, Augustus set his daughter and grand-daughter 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 exempla of the ideal behaviour of the 'Ideal Woman', as conceived for the first time by the *leges Iuliae*, to publicly defend and promote the legislation would backfire dramatically for the *princeps*.

Having utilised Propp's morphological scheme as a starting point to identify this *dramatis persona*, it is at this point that turning to Phelan's integrative model of character can help refine and enrich our understanding of the qualities and dynamics of this character. Instead of examining the character as a function that is already shaped and formed, we can now dissect the fundamental units of the character, its so-called attributes, and whether it is 'represented people, or themes with legs, or obvious artificial constructs [...] or all three of them to varying degrees'.<sup>581</sup> With the 'Ideal Woman', what the extant sources have illuminated is that this character has come to represent all three of these components, with mimetic, thematic and synthetic attributes participating in some form, and in particular with the mimetic dimension reflecting those qualities and attributes of the thematic dimension of the character. As we have seen, thematic dimensions are 'viewed as vehicles to express ideas', with the character a 'representative of a larger class'.<sup>582</sup> What the legislative provisions, Horace, Suetonius and Cassius Dio all reveal through their innumerable narratives is the thematic quality of the 'Ideal Woman'. This is a character that has become the primary vehicle to express the ideas, behaviour and attributes which Augustus wanted women to uphold. And, crucially, a character with thematic attributes that was invented and crystallised through *legislative* means for the first time with the *leges Iuliae*. The 'Ideal Woman', therefore, has become *the* representative entity for Augustus, for his legislation and for all Roman women. It makes sense, therefore, given the importance of this

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<sup>580</sup> 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 Johnson 1997; Janan 2001; Miller 2004; and Lowrie 2008 and 2009.

<sup>581</sup> Phelan 1989: 9.

<sup>582</sup> Phelan 1989: 12.

character to the legislation that its thematic qualities and attributes are foregrounded in the surviving narratives.

However, while Augustus legislated on this thematic concept of the 'Roman mother' for the first time, this model did not spring fully formed with the legislative passage of the *leges Iuliae*. In Roman society, 'motherhood had always established or enhanced a woman's status. Fertility was associated with the general good'.<sup>583</sup> Examples of this 'Ideal Woman' appear throughout Roman history, although, as Dixon notes, our picture of motherhood (both good and bad) is 'disproportionately weighted towards the aristocratic Roman ideal'.<sup>584</sup> Mothers held up for admiration by our sources include Volumnia (mother of Coriolanus), Cornelia (mother of the Gracchi), and Aurelia (mother of Julius Caesar).<sup>585</sup> Specifically, Cornelia bore her husband eleven children (although only three survived to adulthood).<sup>586</sup> Indeed, Dixon argues that this transition to active official and legislative encouragement of parenthood under the Augustan Legislation can be marked by 'Augustus' restoration of the statute to Cornelia *mater Gracchorum* erected at public expense in the second century BC and encapsulating the traditional regard for mothers'.<sup>587</sup> Augustus' legislative creation of this thematic character, and particularly his emphasis on her role as a mother, reflects and contributes to this already familiar narrative of the 'Ideal Mother' that emerges throughout Roman history.<sup>588</sup>

That is not to say that the character of 'Ideal Woman' does not participate in either the mimetic or synthetic spheres. Certainly, through the representation of Julia the Elder and Julia the Younger in Suetonius' narrative, along with Propertius' Cornelia, the mimetic dimensions of the character, namely the character's attributes considered as traits, are revealed and appear to reflect those attributes of the thematic dimension. For we are told about their virtuousness, their position as chaste, wool-working Lucretias, their fidelity, and in the case of Cornelia, their fertility too, echoing the very ideas represented by the thematic components of this character. Furthermore, given the creation of the character fundamentally by legislative means, there is inevitably a synthetic component too. For the 'Ideal Woman' is essentially an artificial construct, used by its legislative creator to show us something about the segment of the population – namely Roman

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<sup>583</sup> Dixon 1988: 71.

<sup>584</sup> Dixon 1988: 8.

<sup>585</sup> Dixon 1988: 31, 39 (n.44). Specifically, see Plut. *Cor.* 33-6; Plut. *Tib. Gr.* 1; *C. Gr.* 19; and Tac. *Dial.* 28 for details on each of these mothers respectively.

<sup>586</sup> Dixon 1988: 30, 39 (n.40). See Plut. *Tib. Gr.* 1.

<sup>587</sup> Dixon 1988: 71.

<sup>588</sup> For further examples of the partnership of marriage and motherhood throughout Roman history, see Dixon 1988: 71.

women – to which the created character belongs.<sup>589</sup> Thus, the thematic functions of the character imply a synthetic function too: an artificial construct which impossibly idealised women as matronly, maternal and chaste, ultimately to the chagrin and hostility of the upper echelons of Roman society. And yet, despite the exemplarity of the ‘Ideal Woman’, with all the attributes and qualities that she stood for, an antithetical *dramatis persona* also appears in the narratives from and surrounding the legislation: the ‘Anti-Exemplum’.

### **The Anti-Exemplum**

In direct antithesis to the ‘Ideal Woman’, we find another *dramatis persona* constructed by the legislative provisions: the ‘Anti-Exemplum’. As with the ‘Ideal Woman’, the thematic, mimetic and synthetic attributes are all revealed through the various narratives emerging from and around the Marriage Legislation. To begin with, let’s examine this character as it initially develops in the legislative provisions themselves, specifically from the *lex Iulia de adulteriis coercendis*, which was concerned with extra-marital liaisons. 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 *lex Iulia de adulteriis*, adultery was made a criminal offence, with the law establishing ‘penalties for those caught in the act’ and setting up ‘rules for how those who discovered them should proceed’.<sup>590</sup> Thus, once again, there was the legislative invention and formalisation for the first time of a role that women 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.<sup>591</sup> 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*.<sup>592</sup> However, no such mercy was granted to her lover: the husband was permitted to kill the lover, but only if certain conditions were met.<sup>593</sup> 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 (Macer, *Digest.* 48.5.25[24]):

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<sup>589</sup> Based on the formulation of Phelan 1989: 14.

<sup>590</sup> Milnor 2005: 141.

<sup>591</sup> Paul, *Sent.* 2.26.14. See also Liveley and Shaw 2020:248, and Grubbs 2002: 84.

<sup>592</sup> Paul, *Sent.* 2.26.4. See also Milnor 2005: 151 and Liveley and Shaw 2020: 248.

<sup>593</sup> See chapter 1 for full details of the provisions of the *lex Iulia de adulteriis*, and the specific conditions where a husband could kill his wife’s lover.

A husband also is permitted to kill his wife's adulterer, but not, as the father is, whoever it may be; for it is provided by this statute that a husband is permitted to kill a man whom he catches in adultery with his wife in his own house (not also [in that] of his father-in-law) if the [paramour] is a pimp or if he was previously an actor or performed on the stage as a dancer or singer or if he has been condemned in criminal proceedings and is not yet restored to his former status, or if he is a freedman of the husband or wife or of the father, mother, son, or daughter of either of them [...] or if he is a slave.

nam hac lege cavetur, ut liceat viro deprehensum domi suae (non etiam soceri) in adulterio uxoris occidere eum, qui leno fuerit quive artem ludicram ante fecerit in scaenam saltandi cantandive causa prodierit iudiciove publico damnatus neque in integrum restitutus erit, quive libertus eius mariti uxorisve, patris matris, filii filiae utrius eorum fuerit ... quive servus erit.

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.<sup>594</sup> According to the jurist Ulpian (*Digest*, 48.5.24):

The words of the statute "shall have caught the adulterer in his daughter" do not appear to be otiose; for the intention was that this power should be available to the father if and only if he should catch his daughter actually engaged in the crime of adultery.

quod ait lex 'in filia adulterum deprehenderit', non otiosum videtur: voluit enim ita demum hanc potestatem patri competere, si in ipsa turpitudine filiam de adulterio deprehendat.

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 immediately, otherwise they too could be charged as an accessory after the fact.<sup>595</sup> Most notably, there was a sixty-day statutory time frame during which the husband or the woman's father were expected to bring divorce proceedings and seek the woman's public prosecution for adultery. Failure to do so would lead

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<sup>594</sup> Ulpian. *Digest*. 48.5.24 See chapter 1 for full details of the provisions of the *lex Iulia de adulteriis*, and the specific conditions where a father could kill the lover. See also Milnor 2005: 151 and Liveley and Shaw 2020: 249

<sup>595</sup> Paul, *Sent.* 2.26.6. See also Liveley and Shaw 2020: 248, and chapter 1 for full details of the rules on how those who discovered adultery should proceed.

to criminal charges of *lenocinium*, with penalties just as severe as those for crimes of adultery.<sup>596</sup> Once the sixty-day time period had elapsed, any member of the public could bring a public prosecution against all complicit participants (the adulterous wife, her lover, the woman's father and her husband).<sup>597</sup> As such, there emerged *delatores* – denouncers or informers – who stood to gain financially from their part in a successful prosecution, and who will be discussed below as another of the key *dramatis personae* within the 'storyworld' of the legislation.<sup>598</sup>

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 also punished other participants in this 'storyworld'. Thus, 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. 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.<sup>599</sup> Indeed, as Justinian tells us, this 'privilege' (to report crimes of adultery) was granted by the law only to men and not to women, as evidenced in a reply from the year AD197 to a petition brought by a woman, Cassia, to the emperors Severus and Caracalla.<sup>600</sup>

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 *princeps'* own daughter and granddaughter, the two Julias.<sup>601</sup> 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 – and that she was banished, apparently without public trial, to the island of Trimerus, where the child she bore was ordered by Augustus to be exposed.<sup>602</sup> As Tacitus tells us (Tac. *Ann.* 4.71.4):

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<sup>596</sup> Ulpian. *Digest.* 48.5.12[11].3. See also Liveley and Shaw 2020: 249..

<sup>597</sup> Ulpian. *Digest.* 48.5.2.2, Scaevola. *Digest.* 48.5.15.2. C.f. Liveley and Shaw 2020: 249.

<sup>598</sup> Liveley and Shaw 2020: 249. See Tacitus. *Ann.* 3.25.1; 3.28.

<sup>599</sup> Justinian. *Codex.* 9.9.1, 8, 11, 17 pr.-1. L. C.f. Lefkowitz and Fant 2005: 105.

<sup>600</sup> Justinian. *Codex.* 9.9.1, 8, 11, 17 pr.-1. L. C.f. Lefkowitz and Fant 2005: 105.

<sup>601</sup> See Suet. *Aug.* 65.

<sup>602</sup> See Suet. *Aug.* 65.

Convicted of adultery, she had been sentenced by her grandfather Augustus, and summarily deported to the island of Trimerus, a little way from the Apulian coast. There she supported her exile for twenty years [...]

quam neptem Augustus convictam adulterii damnaverat, proieceratque in insulam Trimerum, haud procul Apulis litoribus. Illic viginti annis exilium toleravit [...]

Meanwhile, 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', *Augustum offenderant* (Suet. *Claud.* 26.1). Julia the Younger was, henceforth, written out of the family narrative.

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. Indeed, Suetonius recounts the significant impact of these revelations on the Emperor: he refused to see visitors and made this matter known to the Senate in a letter, which he sent a quaestor to read on his behalf (*Aug.* 65). Other sources include Velleius Paterculus (a contemporary 'eye-witness' to the scandal and its aftermath), Pliny and Seneca the Younger (both reporting after the event).<sup>603</sup> Specifically, Seneca reveals in detail the egregious behaviour of Julia the Elder which earned her allocation as this *dramatis persona* (*Ben.* 6.32):

[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.

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.

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<sup>603</sup> Liveley and Shaw 2020:263. See also Suet. *Aug.* 65 and Pliny *N.H.* 21.9. Seneca *Ben.* 6 indicates that the letter, referred to by Suetonius, was subsequently published as a formal edict.

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).<sup>604</sup> 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.<sup>605</sup>

In doing so, Augustus re-cast Julia as the anti-exemplum of this tale. For Julia's reported *dramatis persona* 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 the god Apollo).<sup>606</sup> 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 'Ideal Woman' and instead for falling prey to the adulterous behaviour of the 'Anti-Exemplum'. And, as we have seen, Julia's case 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'.<sup>607</sup> Though, 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. For although the *quaestio de adulteriis* was established to deal with cases

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<sup>604</sup> C.f. Liveley and Shaw 2020: 263.

<sup>605</sup> For details, see Suet. *Aug.* 65 and *Tib.* 50.

<sup>606</sup> On the statue 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 1998: 169. It is worth noting here Augustus' own self-characterisation as the God Apollo, most notably in the stories about the *princeps*' 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.

<sup>607</sup> See Cohen 2008 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) was exiled, then executed (60.8.5).

of adultery arising from the legislation, Julia was denied the opportunity to defend herself in it. Tacitus observes that Augustus apparently, instead, returned to the tradition of the *mos maiorum* and 'took the very actions that his own adultery laws had attempted to legislate against: he punished his adulterous daughters and her lovers, privately, in anger, and with unsanctioned severity'.<sup>608</sup> It seems that, when it came to dealing with his own daughter and her adulterous behaviour, 'Augustus had a great deal of latitude for unofficial action'.<sup>609</sup> Indeed, this exceptional punishment, harsher than that prescribed by Augustus' own legislation, was met with public protests and pressure to recall her from exile. Although Julia was eventually allowed to return to the mainland after five years, Augustus was never persuaded to recall her fully from exile.<sup>610</sup>

If we look again at Phelan's model, we can analyze the same fundamental units and see that this character, likewise, has come to represent all three components, participating in the mimetic, thematic and synthetic spheres of meaning simultaneously.<sup>611</sup> Once again, the narratives describing Julia the Younger and more specifically Julia the Elder reveal the mimetic dimension of the 'Anti-Exemplum', and the individual character's traits and attributes. Instead of virtue, chastity, fidelity and procreation, this time the mimetic dimension of the character covers promiscuity, adultery and prostitution – all attributes in direct opposition to those of the 'Ideal Woman'. Once again, these mimetic attributes can be viewed in correlation with the thematic dimension, as developed by the legislative provisions, with the former echoing the latter, resulting in a fusion of the two components. For along with the 'Ideal Woman', the character of the 'Anti-Exemplum' has a thematic dimension that likewise serves to express the ideas of the legislation; this time constituting the representative entity of the very behaviour Augustus *did* not want his populace to uphold. And once more, both of these dimensions, which distinguish between characters as individuals and characters as representative entities, give way to and imply a synthetic function: an artificial construct by the legislation and Augustus, which reveals to us the darker side and the darker material out of which this character is made. In this way, the 'Anti-Exemplum' can be, and indeed should be, viewed in conjunction with *and* in contrast to the 'Ideal Woman'.

## The Paramour

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<sup>608</sup> Tacitus. *Ann.* 3.24.2. Liveley and Shaw 2020: 265-264.

<sup>609</sup> Cohen 2008: 213.

<sup>610</sup> Suet. *Aug.* 65 and Dio. Cass. 55.13.1.

<sup>611</sup> Based on the formulation by Phelan 1989: 9.

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, which I term, the 'Paramour'. Under the provisions of the legislation, a distinction was made between *adulterium* and *stuprum*, apparently using both terms interchangeably, much to the chagrin of the jurists.<sup>612</sup> 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 within the 'storyworld', 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.<sup>613</sup> 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.<sup>614</sup> 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, as we know, was now subject to substantial public scrutiny and state involvement, and which was covered by legislative provisions which appeared to default to a position of assuming guilt and criminalising most participants in the 'storyworld'.

As well as the legislative provisions which attest to this particular *dramatis persona*, the Augustan elegist Propertius, who provides a contemporary reaction to the legislation, 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).<sup>615</sup> This, presumably, was for the 'extra frisson of illegality' thereby created under Augustus' new laws.<sup>616</sup> Despite the sexual relations permitted with a 'Paramour' as granted by the legislation, these *dramatis personae* soon found a way to manipulate and exploit this 'sexual loophole' within the laws. Having illicit relations with

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<sup>612</sup> Pap. D. 48.5.61, c.f. McGinn 1998: 144.

<sup>613</sup> See McGinn 1998: 144, and specifically 194-202 for his discussion on exemptions under the adultery law.

<sup>614</sup> See McGinn 1998: 144.

<sup>615</sup> On Propertius' testimony in the case of the *leges Iuliae*, see Syme 1939: 443 and Treggiari 2005: 146.

<sup>616</sup> Liveley and Shaw 2020: 262.

not just a 'Paramour', but one imitating a 'Ideal Woman', could clearly result in greater financial gain.<sup>617</sup>

Thus, what is clear from the sources, from the legislative provisions and from Propertius, is that the character of the 'Paramour' represents a 'theme with legs'.<sup>618</sup> The legislation has created a very specific and narrow group of women with whom sexual relations are permissible, and the 'Paramour', thus, is representative of this particular class of women, rather than a specific individual. 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.<sup>619</sup> 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, and by doing so, each of the authors respectively have been able to focus the reader's attention, and remind us, in such a way that we are left to regard these characters as symbolic of the legislation, rather than as natural beings.<sup>620</sup>

### **The False Ideal**

Another symbolic *dramatis persona* of the legislation, which can be regarded as both representing 'themes with legs' and an obvious artificial construct of the legislation, is the 'False Ideal'. As with the other key characters examined thus far, this is a sphere of action or function that is attributed to female participants only, in this case, married women who are 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.<sup>621</sup> In contrast, 'punishments involving the law of succession were created for those couples who were married but remained childless'.<sup>622</sup> 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.<sup>623</sup>

Thus, a female participant within the 'storyworld' who remained faithfully married might at first glance appear to fall within the sphere of action of the 'Ideal Woman'; her success in marriage

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<sup>617</sup> For more on this particular 'character role' within popular Roman literature, see Geffcken 1973; Hallett 1973 and 1974; Fischler 1978; Wyke 2002a and 2002b; Leigh 2004a; and Lowrie 2016.

<sup>618</sup> Based on the formulation by Phelan 1989: 9.

<sup>619</sup> Phelan 1989: 13.

<sup>620</sup> Phelan 1989: 14.

<sup>621</sup> Gaius 1.145.

<sup>622</sup> Liveley and Shaw 2020: 247.

<sup>623</sup> See Treggiari 1991: 37-80; McGinn 1998: 70-104; and Grubbs 2002: 84. C.f. Tit. Ulp.15.1-3.

duping the reader into believing her uncomplicated status. However, without any children, this faithful wife has failed to live up to the appropriate behaviour expected 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 ultimately fail as a consequence.

### **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, *dramatis personae* I am categorizing as the 'Saboteur' and the 'Informer'. For the 'Saboteur', this sphere of action is apportioned among several (typically male) characters who refused to adhere to the provisions, and subsequently sought to undermine the aims, of the legislation. Indeed, both the mimetic and thematic attributes of this character role are revealed by the sources: the *equites* are representative of a larger class than the individual character, and thus function thematically to express the ideas of the 'Saboteur', whereas Ovid, as an individual character, represents instead the attributes and traits associated with the 'Saboteur' and functions mimetically within the 'storyworld' of the *leges Iuliae*.

To begin with, we have 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 version 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 thus 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 our 'storyworld' 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):

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 – Ilia set the naughty norm.

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.

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.<sup>624</sup> As we have already seen, 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.<sup>625</sup> However, Roman love elegy, likewise, depended upon New Comedy for its regular cast of characters and behaviour.<sup>626</sup> Indeed, as James argues, comedy offers a multiplicity of literary character examples for Roman elegy to

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<sup>624</sup> On Roman comedy, see Corbeill 1996; Scafuro 1997; James 1998; Leigh 2004b; Plaza 2006; Dutsch 2008; and Sharrock 2009.

<sup>625</sup> See Geffcken 1973; Fischler 1978; Leigh 2004a; Lowrie 2016: 77; and Liveley and Shaw 2020: 259, n59.

<sup>626</sup> James 2012: 265.

use, although with a few refinements.<sup>627</sup> 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.<sup>628</sup> 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 *princeps* 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. For while Ovid turned private life into public discourse through his love elegy, he also claimed that lovemaking should be protected from the prying eyes of Roman law.<sup>629</sup> 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 superararum duobus/ etsi non causa, iudice vince tuo* (*Amores* 3.14.48-50).<sup>630</sup> It wasn't 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.

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<sup>627</sup> See James 2003 and 2012.

<sup>628</sup> See James 2012: 260-265.

<sup>629</sup> Ziogas 2021: 69.

<sup>630</sup> C.f. Liveley and Shaw 2020: 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 2021: 75-92.

## The Informer

The final *dramatis persona* recurring throughout the ‘storyworld’ 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, criminalising their perceived failure to act in a certain way according to the legislation.<sup>631</sup> 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 didn’t 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):

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.

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

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).

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<sup>631</sup> See chapter 1 for full details of the provisions of the *lex Iulia de adulteriis*, and specifically the rules on how the husband and the father should proceed if they discovered the woman committing adultery. See Ulpian. *Digest.* 48.5.2.2, Scaevola. *Digest.* 48.5.15.2. C.f. Liveley and Shaw 2020: 249.

Although Tacitus' account reveals the mimetic attributes of 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. For both ancient and modern historians tend to inform and 'blow the whistle' on participants within the 'storyworld', casting them in particular character roles and reminding the reader of said character's often vexatious behaviour. Historians, thus, use the character types as established by the *leges* when they write about the historical characters of the 'storyworld', such as Augustus and his family. This introduces the hypothesis that, within the 'storyworld' of the *leges Iuliae*, there are actually multiple domains or sub-worlds, where different participants can exist and perform different character roles. 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) existing in their own, other sub-world, who similarly betray those who have failed to live up to the provisions of the legislation, but this time to their readers instead. This concept of multiple possible-worlds, existing within the universe or 'storyworld' of the legislation, is one to which I will return and study in further detail below.

Through the application of Propp's rudimentary morphological schema, a number of key and recurring character roles, as configured by the marriage legislation, have subsequently emerged: the Ideal Woman; the Anti-Exemplum; the Paramour; the False Ideal; the Saboteur; and the Informer. However, what the multiplicity of these roles has revealed is that Propp's model serves only as a starting point in establishing a clear typology of character and in their identification as formed functions. What it fails to consider is the multichromatic dynamics of each of these characters: how the fundamental units of each character can be distilled and examined in a more integrative manner. Thus, I have refined and contextualised Propp's approach to character in the light of Phelan's focus on the three basic components of character: the mimetic, thematic and synthetic. For while as we read, characters come to us transformed into functions or in the process of being shaped into functions, what Phelan's model reminds us is that there is more to the very characters we are reading: their fundamental units or attributes. And as such, characters in any given work may be composed of mimetic attributes (represented people and their traits), thematic attributes (themes with legs, viewed as vehicles to express ideas), or synthetic attributes (obvious artificial constructs), or a combination of all three.<sup>632</sup> Subsequently, what we find with the *dramatis personae* of the marriage legislation is often a combination of all three to varying degrees. With the 'Ideal Woman', 'Anti-Exemplum', and the 'Saboteur' the thematic attributes, representative of an entity, are fused with the traits of individual characters, their mimetic

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<sup>632</sup> For more on this model of character, see Phelan 1987 and 1989.

attributes. With others, such as the 'Paramour' or the 'False Ideal', the component that is explicitly revealed in the narrative discourse is the thematic dimension, producing characters that are 'themes with legs'.

However, one notion which all of the *dramatis personae* have in common is the eradicability of their synthetic component. Whether there is a fusion of mimetic and thematic, or whether the thematic attributes are foregrounded, the artificiality of each character still cannot be eliminated. For it is the characters' origins within the artificial construct of the *leges Iuliae* that reinforces this synthetic component and leaves the reader regarding them as symbolic of the legislation, rather than conceived of as persons or the meeting points of thematic issues.<sup>633</sup> Indeed, what the pervasiveness of the synthetic component further serves to reinforce, and remind us of, is the fact that these characters, with their artificial attributes, were actually created through legislative means for the first time in Roman law. In an unprecedented manner, Augustus used the legislation to formalise and crystallise the very character roles he wanted and expected the Roman people to fill, but that were fundamentally unpopular and unfavourable to the Roman people. The negative reception of the *leges Iuliae* can thus be understood in these terms: with the artificial formation of these fundamentally impossible and unpopular characters – types of characters that Augustus' citizens were really only content to enjoy whilst installed safely within fictional 'storyworlds' – there was an overwhelming inevitability to the resulting opposition to, and futility of, these legislative creations.

### **Possible-Worlds within the 'Storyworld' of the *leges Iuliae***

As my analysis has revealed thus far, there are a number of key and recurring *dramatis personae* who exist and can be identified within the 'storyworld' of the *leges Iuliae*. However, what about the 'real' storyworld participants who take on these roles? We have already seen how both Julia the Elder and Julia the Younger reflected the mimetic dimension of certain characters, particularly the 'Ideal Woman' and the 'Anti-Exemplum'. On the one hand, these two women in Augustus' family were expected to take on the particular attributes and traits associated with the 'Ideal Woman', including wool-working, modesty, chastity, fidelity and fertility. Yet, both Julia the Elder and Julia the Younger failed to live up to this impossible idealisation as artificially constructed by the legislation, thus resulting in their re-casting as the 'Anti-Exemplum' in key narratives. Instead of reflecting the true exemplary behaviour of women, both women chose to imitate this other character role available to them through the legislation. Instead of those traits

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<sup>633</sup> Based on Phelan 1987: 282.

and attributes associated with the mimetic dimension of the 'Ideal Woman', the two women revealed individual character traits including promiscuity, adultery and prostitution – all attributes and behaviour that earned them exile from Rome.

Indeed, this crossover between the 'real storyworld participant' and the character roles s/he comes to imitate can also be seen with Augustus himself. As legislator, teller and author, Augustus as a 'real' storyworld participant inhabits the narration domain, yet he too, as *princeps*, consistently and insistently attempts to role-play the various character roles made available to him by his own legislation. An overlap, or crossover, thus emerges between Augustus as storyworld participant, as author, legislator and storyteller, and Augustus as the character *princeps*, attempting to imitate the exemplary behaviour outlined in the legislation. Certainly, Augustus' interest in taking on an exemplary character role, akin to the 'Ideal Woman', is well attested in the sources. In the *Res Gestae*, Augustus' funerary inscription inscribed and displayed on bronze pillars in front of his mausoleum after his death in AD14, the *princeps* discusses his legislation in chapter 8; a chapter devoted to some of his wider political activities, including revising membership of the senate and conducting numerous censuses of the Roman population (RG 8.1-4). It is within this context that the *leges Iuliae* are reviewed, along with Augustus' own character role as an exemplum (RG 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.

In this passage, the *princeps* describes how his new laws, the *legibus novis*, which included his marriage legislation, marked a return to the *exempla maiorum*, the traditional practices that he claims were dying out by his rule. Crucially, Augustus also recounts his own role as an exemplum, handing down exemplary practices to future generations, implying that his own behaviour and actions are worthy of imitation.<sup>634</sup>

In another example from the work of the late first early second century AD historian Suetonius, we once again see a crossover between Augustus as 'storyworld' participant and Augustus

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<sup>634</sup> See Lowrie 2007a: 105. For my own analysis on *exempla*, see chapter 2.

playing a 'character role', with the former recognising and understanding the importance of the latter. For example, according to Suetonius, Augustus pre-scripted his own speeches, both public and private, creating a script for his character to repeat as required (*Aug.* 84.2):

All important statements made to individuals, even to his wife Livia, were first committed to notebooks and then repeated aloud, so that he would avoid saying either too much or too little in speaking offhand.

sermones quoque cum singulis atque etiam cum Livia sua graviores non nisi scriptos et e libello habebat, ne plus minusve loqueretur ex tempore.

Furthermore, at the end of his life, Suetonius recounts how Augustus reportedly asked of his friends whether he had appeared 'to have played his part in the farce of life creditably enough', *ecquid iis videretur mimum vitae commode transegisse* (*Suet. Aug.* 99.1). Indeed, Augustus' emulation and role-playing of this exemplary character role is demonstrated in another example from Suetonius. The historian narrates an anecdote where Augustus attempted to demonstrate his worthy behaviour as an exemplum, while demanding that his citizens should follow his example too (*Aug.* 34). As Suetonius tells us, these events unfolded in response to the *eques* revolt against Augustus' controversial marriage legislation, despite the amendment and reforms of the *lex Papia Poppaea* of AD9. Notably, by this time, both Augustus' daughter and granddaughter had been tried, found guilty and exiled on charges of adultery: the elder Julia in 2BC, and the younger Julia (repeating her mother's example) in 8AD. Indeed, Suetonius himself describes them as banished for 'indulging in every sort of vice', *omnibus probris contaminates relegavit* (*Aug.* 65.1). However, despite Augustus' repeated attempts to cast himself within the character role of exemplum, there is evidence from the ancient sources that the *princeps*, in an ironic echo of the behaviour of his daughter and granddaughter, failed to live up to this characterisation as an exemplum. Indeed, the ancient sources, notably the later historians, provide lascivious accounts of Augustus' own adultery.

In recounting details of the opposition to the legislation, Cassius Dio reports that when urged to correct this, the senators hinted mockingly at Augustus' own relations with a large number of women (*Dio Cass.* 54.16.3). Suetonius, likewise, refers to Augustus' own adulterous behaviour: 'not even his friends could deny that he often committed adultery, though of course they said in justification that he did so for reasons of state, not simple passion', *adulteria quidem exercuisse ne amici quidem negant, excusantes sane non libidine, sed ratione commissa* (*Aug.* 69.1). Despite these references to Augustus' own infidelity, the *princeps* was always able to evade or even to justify

the allegations. Unlike his daughter and granddaughter, therefore, Augustus was never overtly cast in the character role of the 'Anti-Exemplum'. Indeed, despite reflecting the mimetic traits and attributes of the 'Anti-Exemplum', and engaging in the very behaviour which the legislation sought to rule over and criminalise, Augustus as a 'real' storyworld participant was able to resist involvement in, and association with, this particular character role.

It is clear, therefore, from the ancient sources that there is an interconnection, or crossover, between 'real' storyworld participants, those existing in the narration domain, and the character roles they chose to imitate within the narrated domain. From modern narrative theory, we know that the concept of character can be delineated in this way, with 'character' defined as either a storyworld participant or as the participants in the narrated domain or the fictional world. This introduces the hypothesis that there are actually multiple domains or sub-worlds within a particular storyworld, a concept explored in the narrative theory of 'possible-worlds'.<sup>635</sup> How, then, can possible-worlds theory help explore this overlap between the 'real' storyworld participants and the character roles they come to imitate? And what is the subsequent impact on the treatment of these 'storyworld' participants by both ancient and modern historians?

The basis of possible-worlds theory, a modern adaptation of a Leibnizian concept, 'is the set-theoretical idea that reality – the sum of the imaginable – is a universe composed of a plurality of distinct elements'.<sup>636</sup> The universe is hierarchically structured, resulting in a 'modal system', with the central element commonly interpreted as 'the actual world', and the satellites as possible-worlds.<sup>637</sup> For individuals or participants as characters within storyworlds, they may exist in the textual 'actual world', what is termed as the 'fact-domain' of this world, but also in any of its sub-worlds as well.<sup>638</sup> As well as this 'fact domain', or actual world, there are different subdomains within the storyworld: different sub-worlds which might represent the beliefs, wishes, intentions or imaginations of one or more of the participants.<sup>639</sup> The total population of the narrative universe, of the 'storyworld', consists of all of the above: of the basic fact domain, and the satellite subdomains too.<sup>640</sup>

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<sup>635</sup> For further scholarship on 'possible-worlds' theory, see Maître 1983; Eco 1984; Pavel 1986; Ryan 1991 and [2005] 2008c; Ronen 1994; Martin 2016; and Bruner 2020.

<sup>636</sup> Ryan [2005] 2008c: 446.

<sup>637</sup> Ryan [2005] 2008c: 446.

<sup>638</sup> Margolin [2005] 2008: 53.

<sup>639</sup> Margolin 2007:71.

<sup>640</sup> Margolin 2007: 71.

Thus, once a storyworld is established, as is the case with the *leges Iuliae*, one can set out the inhabitants and examine in which domain or sub-domain they exist.<sup>641</sup> For Augustus and the two Julias, these key participants are located in the ‘actual world’, of which there is only one and which is the centre of the system of reality.<sup>642</sup> The discourse surrounding Augustus in the extant work of Suetonius reminds us that the *princeps*, and reasonably his daughter and granddaughter too, had an acute self-awareness of this relationship between their actual selves and their character roles in another domain. The actual world – not only for Augustus and his family, but for Ovid, Propertius, the Senate, the Equestrian order, the Roman citizens listening to Horace’s *Carmen Saeculare* at the Secular Game – is their present-day in the Augustan era, the world where the legislation and its narrative initially unfold.

Yet, it is clear we have sub-domains attached to this world, most notably a sub-domain of the wishes, intentions and hopes of Augustus. Ryan calls this the ‘wish-world’, or W-World: here moral laws and the law of desire define goodness and badness relative to the community and to the individual respectively.<sup>643</sup> The constitute propositions of a W-world are in the following form: x (in this case Augustus as participant in the actual world) considers that a state or action (here, the behaviour as set out by the provisions of the legislation) is good for x (for not only Augustus, as *princeps*, but Augustus, as *pater patriae*, another self-consciously adopted character role which is emblematic of the Roman State).<sup>644</sup> Thus, the wish world sets out the exemplary behaviour with which Augustus (and the legislation) is so preoccupied, and is the sub-world he wishes his *dramatis persona*, and likewise the *dramatis personae* roles of his daughter, granddaughter, and Roman citizens more broadly, to exist within.

However, as later writers remind us, both Julia the Elder and Julia the Younger, as participants in the ‘actual world’ only *appear* to engage with this wish world of Augustus: rather, their character counterparts reject the exemplary behaviour of this wish world, and refuse to exist (only) within that particular narrative sub-domain.<sup>645</sup> Instead, both these women take on the mimetic attributes and behaviour of an entirely different character, one which exists in another sub-world and which reflects, perhaps, their true desires and intents. For as Ryan explains, ‘a character’s domain thus includes both authentic and inauthentic constructs – beliefs and mock beliefs, desires and mock desires, true and faked obligations, as well as genuine and pretend intents’, and

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<sup>641</sup> Margolin 2007: 71.

<sup>642</sup> Ryan 1991: vii.

<sup>643</sup> Ryan 1991: 117.

<sup>644</sup> Based on the formulation of Ryan 1991: 117.

<sup>645</sup> For details of the behaviour of the two Julias, see Tacitus *Ann.* 4.71.4, Suet. *Aug.* 65, Suet. *Aug.* 72.3, Suet. *Claud.* 26.1, Pliny *N.H.* 21.9 and Seneca *Ben.* 6.32.1.

arguably this characterization applies to the two Julias.<sup>646</sup> The wish world of Augustus is one part of their character domain, a part which includes all their inauthentic constructs and a part which they ultimately reject, all the while creating a different sub-domain for their characters which reflects their 'true' and authentic beliefs, desires and intentions. Whether these two women had any 'real' interest in participating within the wish world of Augustus, or what event(s) drove them to create their different sub-domain, is something to which our extant sources do not attest. What we are left with, I propose, is the actual or fact domain of the legislation, which has multiple satellite worlds to reflect the multiplicity of the characters invented by the *leges Iuliae*, including the W-world of Augustus and the authentic world(s) of his daughter and granddaughter. And the relations among these worlds, and the movement of characters between the different sub-domains – as we have seen – is crucially not static.<sup>647</sup>

What impact, therefore, does the existence of these different domains within the 'storyworld' of the *leges Iuliae* have on the treatment of its participants by both ancient and modern historians? By the time later historians and biographers were writing, whether the Roman writers such as Suetonius, Tacitus or Cassius Dio, or scholars writing in modern times, the 'storyworld' of the *leges Iuliae* has been set. The marriage laws have already been enacted in the actual, fact domain, with the cast of characters invented and established by the legislation. Augustus has created his W-world of behaviour, a world with which his family appear reluctant to engage, leading to the creation of another sub-domain more akin to the mimetic traits of the 'Anti-Exemplum' character. Historians, whether ancient or modern, are therefore bound by the different worlds and domains already created and established. And while characters are able to move fluidly between these different sub-worlds, the actual cast of roles, or *dramatis personae* which I have identified, is fixed. Augustus, as legislator in the fact domain, has already invented and legislated on his cast of desired and prescribed roles, leaving later historians unable to ascribe their own character roles to the participants within the 'storyworld'. The result: an inevitability with historians and scholars casting the participants of the *leges Iuliae* in these prescribed character roles, i.e. as characters that fit within the parameters of the sub-domains as already delineated.

This, however, does not preclude historians inserting themselves into the 'storyworld' as particular characters themselves, and creating their own sub-domain. As we have already seen with the 'Informer' character role, historians (both ancient and modern) cast *themselves* as informers too in their own sub-domain of the 'storyworld', betraying those participants who had failed to live up to the provisions of the legislation and the character roles ascribed to them. Yet,

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<sup>646</sup> Ryan 1991:118.

<sup>647</sup> Ryan 1991: 119.

even the historians cast as informers are still bound by the characters and the role-playing as created by Augustus. And what all of this – the lack of opportunity for historians and scholars to create new character roles due to the parameters already set out by the storyworld and its various domains; and the subsequent inexorableness of these historians in casting Augustus, Julia the Elder, Julia the Younger and all the other participants in the prescribed character roles – serves to reinforce is what Augustus invented for the first time with his *leges Iuliae*: a set of impossible and profoundly unpopular character roles that would lead to the inevitable and well-documented negative reception towards the Augustan Marriage Legislation.

## Chapter 7

### 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 story about a set of laws that started out with such promise and hope for approval but was continually frustrated leading to a tragic end. For why, despite the political, legal and, as I argue, the narrative authority of the *princeps*, which should have underpinned the acceptance and approval of these laws, was this legislation met with such resistance and opposition? This thesis has set out to address this question, using a legal-narratological methodology for the first time to interrogate the story of this infamous legislative package. Adopting such a new and original approach has enabled me to re-frame the *leges Iuliae* through the lens of modern narrative theory: firstly in order to (re)examine and (re)appreciate the dynamics of the laws, their narrative connection to the *mos maiorum*, and how this should have configured them for acceptance by the Roman elite; secondly to unmask the legislation's (along with all its multifarious stories) status as a narrative storyworld, which allows for a fresh appreciation of the different levels of narrative that all come together to interact and intersect with one another and make up the tale of the Augustan Marriage Laws; thirdly to examine how legal origin stories – a narrative crucial to Roman culture, law and its legal system – have served to shape the legal *and* narratological landscape of the *leges Iuliae*; and finally how the negative reception to the legislation can be understood in new, narratological terms, in terms of the creation of profoundly artificial and unpopular character roles, both of which served to create the very narrative conditions that would lead to the legislation's unpopularity.

The narratives of the *leges Iuliae* – all the myriad stories of the legislation and their respective tellers – have undoubtedly served to create a powerful tale which has shaped our cognitive understanding of this controversial package of legislation. They have guided scholars, as readers and interpreters, in their attempts at (re)constructing the *telos* of the laws and understanding what the legislation meant for, and as a part of, the so-called 'Augustan Programme'.<sup>648</sup> Indeed, this fascination with reconstructing the purpose of the legislation has arguably led to scholars' over-entanglement with issues such as demographics, the moral aspects of the laws and gender

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<sup>648</sup> For more on the so-called 'Augustan Programme', see Galinsky 1996: 132-135.

roles and dynamics.<sup>649</sup> Current scholarship has revealed that trying to reconstruct the purpose of the legislation, and its place within Augustus' political programme, is fundamentally a difficult and futile task. Thus, I have re-orientated this study away from an examination of the legislation's *telos*, its purpose, and instead focused on the narrative operations, features and phenomena of the legislation, its attendant stories and the wider legal system framing it. And by focusing on the legislation in this way, using modern narrative theory to analyse it, I argue that this has offered an original and more nuanced understanding, one which was missing from scholarship to date. What such an approach offers, therefore, is a discourse that looks beyond the conventional arguments behind the introduction of the Augustan Marriage Legislation, and looks instead at the narrative dynamics and reasoning for its negative reception.

Given that the law is 'full of stories', and indeed stories are often full of the law, I submit that using a legal-narratological methodology is both appropriate and axiomatic for the purposes of analysing the *leges Iuliae*.<sup>650</sup> Indeed, Roman law is peculiarly full of stories and Augustus himself had an acute awareness of the mutually constitutive relationship between narrative and law. This is clear from his repeated endeavours to align his legislation with the exemplary stories of the *mores maiorum*, a cultural narrative that conveyed legal custom and rules, and underpinned Roman society. I argue this normative framework provided an important context for the legislation; the narrative dynamics of which are crucial for any examination of the *leges Iuliae*. However, instead of examining the *mos maiorum*, and more broadly Roman *exempla*, in the context of their role within rhetoric, historiography and/or as ethical stories, I considered instead *how* these stories of ancestral custom and customary law were passed down through the generations, and *how*, as a result, these stories came to be used and manipulated by Augustus as tools of policy and persuasion. Drawing upon some of the latest narratological research developed by Artificial Intelligence research and workers in cognitive science, the narrative dynamics of the *mores maiorum* can be understood in terms of script theory. Indeed, Augustus' efforts to align his legislation with the *mos maiorum* demonstrate a respect for this narrative process of 'scripts', as he cognitively and actively set out his marriage laws not only as a revival of this customary script but an extension of it too.

What is original and useful about analysing the *mos maiorum* and *exempla* in this way is that it offers a new way to (re)describe and explain the narrative potency of these stories, and how

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<sup>649</sup> See Syme 1939; Frank 1975; Galinsky 1981 and 1996; Nörr 1981; Wallace Hadrill 1981 and 1993; Gardner 1986 and 1998; Bauman 1992; Edwards 1993; Cohen 1991; Treggiari 1991; Dixon 1992 and 2001; Corbier 1995; Culham 1997; McGinn 1998; Milnor 2005; and Liveley and Shaw 2020.

<sup>650</sup> Tait and Norris 2011: 11.

Augustus was able to align his controversial legislation against such a familiar story. With his self-conscious awareness of the mutually constitutive frames and scripts shared between law and narrative, Augustus was subsequently able to use the *mos maiorum* to provide both a legal and narrative framework for his legislation, reminding us of the deep-rooted and traditional relationship between law, legal discourse and storytelling. Indeed, this framework should have advanced, and allowed for, the approval and acceptance of the legislation by the Roman elite. Yet, despite Augustus' attempts to elide this distinction between ancient custom and his new laws, characterising his legislation as a continuation of, and new chapter in, the script of the *mos maiorum*, it did not help the *princeps* to overcome the challenges of legislating on private matters such as marriage and adultery.

Analysing the narrativity of the key sources on the legislation and the degree to which they feature prototypical narrative elements was the next important consideration, with no analysis of this radical package of legislation complete without an understanding of the narrative role each of these sources played in shaping the story of the *leges Iuliae*. Indeed, such an analysis served to illustrate and reinforce my two key propositions regarding this package of legislation. First, it highlighted the significance and value of using such an innovative, narratological methodology for examining the legislation. For even ostensibly non-narrative sources – Augustus' *Res Gestae*, the work of poets such as Horace, Propertius and Ovid, or the provisions of the laws as detailed by the jurists – featured sufficient narrative elements that they could be defined as 'narratives' in their own right.

With a multiplicity of modern definitions of 'narrative' and 'narrativity', any definition that might be applied to these ancient texts required an appreciation of 'narrativity' as a set of qualities or attributes, allowing for a more dynamic and scalar definition. Thus, rather than understanding narrativity as a binary concept or as a complete list of particular attributes which all narratives must realise, such a flexible definition permitted a text to have different degrees of narrativity instead. And given the multifarious nature of the ancient sources that underpin this thesis, such a fluid definition, one which centres around prototypical features recognisable as narratives, was immeasurably more useful when establishing their narrative credentials. Here, I subsequently applied Ryan's 'fuzzy-set' conditions to each of the sources: a scalar conception of narrativity that would offer a useful framework for such a diverse range of texts.<sup>651</sup> Indeed, these texts are ones that readers might not instinctively deem to be narratives and which have not been considered in this way to date. And by applying Ryan's 'fuzzy-set' definition to each source in turn, it

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<sup>651</sup> Ryan 2007: 28-31.

demonstrated the innate narrative credentials of these sources and further underscored my argument that narratological tools can, and indeed should, be used to study Augustus' Marriage Legislation.

Second, this analysis on narrativity once again reminds us of that inexorable relationship between law and narrative, how the law is full of stories and stories are full of law. Re-orientating and re-positioning the key sources on the legislation – Augustus' *Res Gestae*, the work of contemporary poets such as Horace, Propertius and Ovid, the provisions of the legislation as outlined by the jurists, and the works of historians such as Livy, Dionysius of Halicarnassus, Tacitus, Suetonius and Cassius Dio – as narratively configured statements in their own right allows us to look again at how these sources can be understood as 'witnesses' contributing to this wider story of the legislation. For each of these classic sources offers not only a meaningful tale about the legislation, but also contributes to that wider, overarching master narrative of the *leges Iuliae* that scholars have come to know. Treating these sources as narratively configured, therefore, is the crucial first step before exploring subsequently how they operate within, and as a part of, a wider narrative universe and to understand the story they combine to tell us about the *leges Iuliae*.

In order to fully understand how the myriad sources on the legislation have come together to create this tragic story of the *leges Iuliae*, a new and original approach based on modern narrative theory was required. For all of these narrative statements do not operate individually within a vacuum; each interact and intersect with one another in such a manner as requiring a more nuanced and integrative narrative model than the traditional dynamic of 'story to plot'. If we want to appreciate the narrative dynamics of the legislation, and how its tragic story unfolded, then a more holistic approach is required. Here the concept of 'storyworld', as based on Genette's concept of *diégèse* and narrative universes, offered such an approach. Instead of treating those narrative statements, the 'witnesses' to the legislation, in a chronoliner or additive fashion, a narrative 'storyworld' provided for a different proposal: one which allowed for the complex interaction of all the levels of *diegesis* that informed and emerged from the legislation; one which allowed for an appreciation of the wider spatiotemporal environment and context of that 'storyworld'; and one which acknowledged that the creation of this narrative universe was a dynamic process between the teller and the reader, between narrator and narratee, all of whom worked together to build and shape such an immersive narrative world. For, although Augustus as legislator initially created this narrative world, offering a complex representation of the laws through his own particular lens, the 'storyworld' of the laws was underpinned and informed by customary narratives of legal origin, supplemented also by the narratives of other key witnesses to the legislation, and further shaped and framed by the *fabula* of the legislation as (re)created by

ancient historians too.<sup>652</sup> Thus, rather than viewing the myriad ancient sources – all those narrative statements – chronologically, or simply as individual extant sources, unmasking their place within a narrative ‘storyworld’ provided a fresh way of viewing the relationship between all these different levels of narrative. The tragic story of the legislation, and how it evolved, is therefore not a simple tale; there is no simple *sjuzet* constructed from the narrated events and existents of the *fabula*. Instead, it is a chaotic and complex combination of narratives, each with their own agenda, often competing with one another; *but* which nonetheless come together and coalesce within a narrative universe to recount and enthrall us with the tale of the *leges Iuliae*.

One of the key levels of narrative within the ‘storyworld’ of the *leges Iuliae*, which I argue has played a crucial role in shaping the landscape of Roman law, the Roman legal system and subsequently the Augustan Marriage Legislation, is the cultural narrative of legal origins and custom. Indeed, there has been much focus on the cultural narrative of the *mos maiorum*: how Augustus utilised and manipulated this normative narrative – stored in the ‘patrimonial hoard’ of cultural memory and experience – to serve his own political and legislative agenda. This agenda focused on aligning the legislation with the exemplary stories of the *mores maiorum*, and eliding that distinction between ancient custom and the new laws, so that the legislation would be a continuation of that normative narrative and as a result be configured for acceptance. My interest, however, was in another cultural narrative of legal origin, one which I argued had been overlooked in the context of the marriage legislation but which nevertheless provided both a narratological *and* legal framework for the laws: the story of the Twelve Tables. For at no point does Augustus appeal to this particular legal-narrative aetiology to support his controversial *leges Iuliae*, preferring instead to relate his laws to the *mos maiorum*. However, by recognising the narrative characteristics, patterns and dynamics of the stories of the Twelve Tables, we can see that they offer a narrative archetype for the marriage laws. For the story of the Twelve Tables, as re-told by Livy and Dionysius of Halicarnassus, contain similar plot points not only with each other but that look forward to the story of the marriage legislation. They are a salient representation of a pattern of chaos and order, one which unfolds throughout the lifetime of the marriage legislation under Augustus. The narrative arc of the *leges Iuliae* mirrors that of the Twelve Tables, with the latter subsequently providing a fundamental narrative blueprint for the former. And it is through this narrative paradigm that, I argue, the Augustan Marriage Legislation is connected to this key cultural moment in Roman legal history.

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<sup>652</sup> See Appendix 2 for a diagrammatic explanation of the ‘storyworld’ of the *leges Iuliae*.

However, as well as the narratological importance of the Twelve Tables to the story of the marriage legislation, and how it unfolds, this representative legal origin narrative also crucially provided a *legal* framework and *legal* authority for the legislation. This is in spite of its conspicuous absence from Augustus' narratives on the legislation, in contrast to his unrelenting reiteration that the *leges Iuliae* were an extension of the *mos maiorum*. For while the narratives of the *mos maiorum*, and the exemplary stories of ancestral custom, provided *auctoritas* – a malleable, suggestive power well-suited to Augustus' political, legislative and narrative purposes – the Twelve Tables, on the other hand, offered a different yet equally as crucial legal power, *potestas*, a more formal channel of power, which focused on the fixity of writing and codification of law. By comparing the narratives of legal origin to *potestas* and *auctoritas* in this way, we see that actually the Twelve Tables, with its constitutional framework and formality of codified law, cannot be severed from the narrative of the *mos maiorum*, and, by extension, from the entire 'storyworld' of the legislation. Working in consort with the *mos maiorum*, the cultural stories of the Twelve Tables served to configure both the narratological *and* legal landscape of the *leges Iuliae*. However, despite its importance as a framework for the legislation, it is significant that Augustus omitted to invoke this story in order to frame, mandate and legitimise his legislation. For the Emperor, acutely aware of the power of such narratives and the Roman penchant for stories, realised that the origin story of the Twelve Tables was not without its problems. Indeed, aligning and framing his own legislation with this tumultuous story would only have served to highlight the pattern of chaos which had unfolded throughout the lifecycle of his own laws. With multiple origin stories available to Augustus on a spectrum of constitutional tradition, the relationship between legislator and origin narrative is one of crucial importance. Not all available stories offer the ideal framework against which a legislator can plot his legislative programme as appearing principled. Yet, even though the *mos maiorum* was tactically a better story with which to frame the *leges Iuliae*, this was not enough to overcome the flawed narrative conditions of the legislation which led to its resounding unpopularity.

As the story of the Augustan Marriage Legislation draws to a close, there remains one final plot twist to unravel before its tragic end. For as Augustus set out to legislate on marriage and adultery, bringing ostensibly private behaviour into the public domain and state control, he also created a 'new' hegemonic legal model, one which invented and perpetuated a set of stock character roles for Roman society to fill, and one which would lead to the *leges Iuliae's* ultimate demise. Just as modern narrative theory has been instrumental in re-examining this controversial package of legislation, so too can it provide a new, innovative answer to the question set out at the beginning of this thesis: why, despite the political, legal and narrative authority of the *princeps* which should have enabled the approval and acceptance of these laws by the Roman elite, was

the Augustan Marriage Legislation met with such opposition leading to its ultimate demise? Flashing back to the very beginning, in a classic narrative analepsis, we can see that it was the creation of profoundly artificial and unpopular character roles within the provisions of the legislation that also set the scene for its futility and unpopularity.

Using a model to begin with based on the work of Propp, and refined by Phelan's Integrative Character Model, I indexed a number of significant and recurring *dramatis personae* within the narratives of the legislation: the Ideal Woman, the Anti-Exemplum, the Paramour, the False Ideal, the Saboteur, and the Informer. For this was the first time that a piece of legislation had invented categories for women (and indeed men) and their behaviour – roles that the Roman people were expected to fill and adhere to. This included the creation of the Ideal Woman, a character role which represented unrealistic and idealised expectations about female behaviour, and the subsequent criminalisation of almost all other characters who failed to uphold or honour this paragon of behaviour. Applying Phelan's Integrative Character Model, then, served to highlight the different dimensions within each *dramatis persona* – their mimetic, thematic and synthetic components – and revealed that it was the eradicability of the synthetic component that served to reinforce, and remind us, that each of these characters was an artificial, symbolic construct of Augustus' legislation. Indeed, the prevalence of the synthetic component of each *dramatis persona* leaves us, the interpreters of the legislation, in no doubt about the novelty of Augustus' actions in using the law to invent a set of legalised, character roles for the Roman people.

Yet, what this resulted in was the creation by Augustus and his legislation of a set of character roles that were profoundly unpopular and fundamentally impossible to fill. These character roles demanded that women meet exacting standards of behaviour and, if they failed, they were subsequently cast, along with almost all other participants in the 'storyworld', as criminals for their failure to live up to this behaviour. Most infamously, it was both Julia the Elder and Julia the Younger – Augustus' daughter and granddaughter respectively – who failed to live up this behaviour. As key participants within the 'storyworld' of the legislation, both women, along with Augustus, were subsequently cast in the available character roles within the narrative universe. I subsequently examined this overlap between the 'real' storyworld participants, and the character roles they came to imitate, using the concept of 'possible-worlds' in modern narrative theory. As the culmination of this chapter, I argued that the 'storyworld' of the legislation contained multiple sub-worlds and domains. At the centre, there is the actual or factual domain of the legislation, which has multiple satellite worlds such as the W-world of Augustus and the authentic world(s) of the two Julias, which reflect the multiplicity of the characters invented by the legislation. And while participants could move between these different sub-worlds, the actual

cast of roles that they could take on had been fixed and prescribed by Augustus and his legislation. Accordingly, later historians and modern scholars have not been afforded the opportunity to create new character roles for participants, instead relying on the cast of characters that fit within the parameters of the 'storyworld' and its various domains. 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 helped serve as the catalyst for the legislation's own demise. It is under these terms, using modern narrative theory including analyses of cultural narratives, *potestas* and *auctoritas*, characterisation and possible-worlds, that we can reformulate our understanding of Augustus' Marriage Laws, their futility and the Roman elite's antipathy towards the laws.

Because of the character and scope of the study included in this thesis, there are necessarily certain limitations to this research and its approach: in particular, a number of the primary sources consulted for the various case studies are not contemporary to the Augustan era and the *leges Iuliae*. As second-hand 'witnesses' to the legislation, the statements of Tacitus, Suetonius and Cassius Dio arguably are less reliable than the statements of an 'eyewitness', someone who actually experienced the passage of the legislation. These writers lack the first-hand knowledge and experience of the legislation, resulting in a 'fabula' that is influenced and shaped by other accounts. That being said, sources such as Ovid, Horace and Augustus himself similarly have their own drawbacks as 'eyewitnesses', often demonstrating a bias towards or against the legislation due to their own opinions or agendas. Just as eyewitness testimony in a modern criminal trial can often be very unreliable, due to the fallible nature of human memory, so too these contemporaneous sources have created stories based on their own experiences. Stories which may be true, may be fictionalised or, as is most likely, are a combination of truth and fiction. Thus, any study of these sources, and the stories they tell, does so acknowledging these limitations. My intention with this thesis, then, is not to focus on the issues with, and flaws of, these various sources, but rather to demonstrate to the reader how these stories interact, intersect and coalesce in order to create the 'storyworld' of the *leges Iuliae*.

The applications of modern narrative theory in a classical context, particularly with its roots in the work of ancient philosophers such as Plato and Aristotle, are innumerable. In this thesis, I have demonstrated how various aspects of narratology are a powerful instrument in sharpening and enriching our interpretation of ancient legislation, though there are without doubt further interpretative benefits that can be reaped by 'putting on a pair of narratological glasses'.<sup>653</sup> De

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<sup>653</sup> De Jong 2014: v.

Jong has already demonstrated how a narratological methodology and its concepts can be used on a number of specific ancient texts including the *Homeric Hymn to Aphrodite*, Herodotus' *Histories* and Euripides *Bacchae*.<sup>654</sup> However, rather than focusing on ancient texts or laws, I would instead consider how modern narrative theory can be used to explore the role and characterisation of women in the modern English Criminal Justice System. How can modern narrative theory be used to examine and understand the development of the hegemonic and dominant narrative regarding the representation of women and their place within the justice system? Specifically, what legal and cultural narratives have informed and underpinned this portrayal of women, both as victims and perpetrators of crime? To what extent is there a tension between the law's often rigid and abstract portrayal of women, and the more malleable, suggestive power of cultural and societal narratives? And can uncovering the dynamics between these incongruous narratives assist in bringing any changes to the hegemonic perceptions and portrayal of women in the Criminal Justice System?

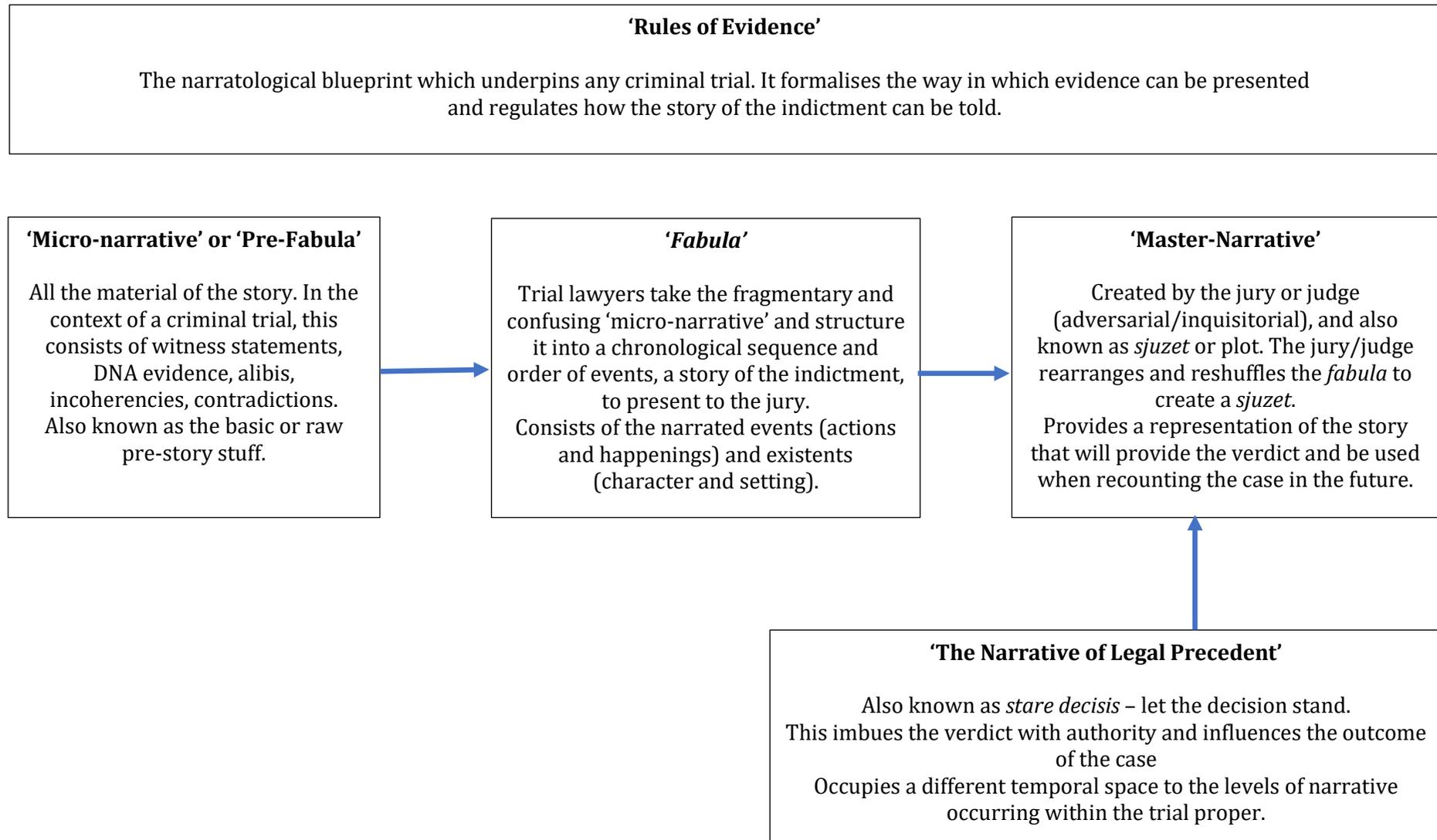
What this thesis has set out to do, however, is draw on numerous elements on modern narrative theory to create a comprehensive narratological toolkit for extensively (re)examining and (re)analysing the Augustan Marriage Legislation in a new light. It asks for the first time how narrative theory can help scholars understand why this controversial package of legislation failed to endure the test of time. Indeed, it is only when we apply such a comprehensive narratological framework that interpreters of the legislation can fully understand the complex and nuanced narrative dynamics of this two-thousand-year-old piece of legislation, and the extent to which both the legislation and Roman law more broadly are full of stories. These stories intersect, coalesce and combine with one another in a complex and non-linear fashion to make up the 'storyworld' of the legislation. Furthermore, this 'storyworld' also includes stories from the cultural history of Roman mankind, specifically narratives of legal origin that have served to shape both the narratological and legal landscape of the *leges Iuliae*, providing a complementary legal power structure and framework that should have enabled the legislation to succeed. Yet in the end, this was a piece of legislation that created a set of impossible artificial character roles, as a part of Augustus' 'new' hegemonic legal model, that were profoundly unpopular. For if the law *qua* narrative creates character roles for people that are fundamentally unprincipled, idealistic and impossible to fill, and fails to relate to the values of those people, then such a package of legislation will always prove to be a futile endeavour. Thus, despite Augustus' attempts to align his legislation with the *mos maiorum*, eliding that distinction between ancient custom and new laws, he nonetheless failed to recognise the fundamentally unprincipled nature of his legislation,

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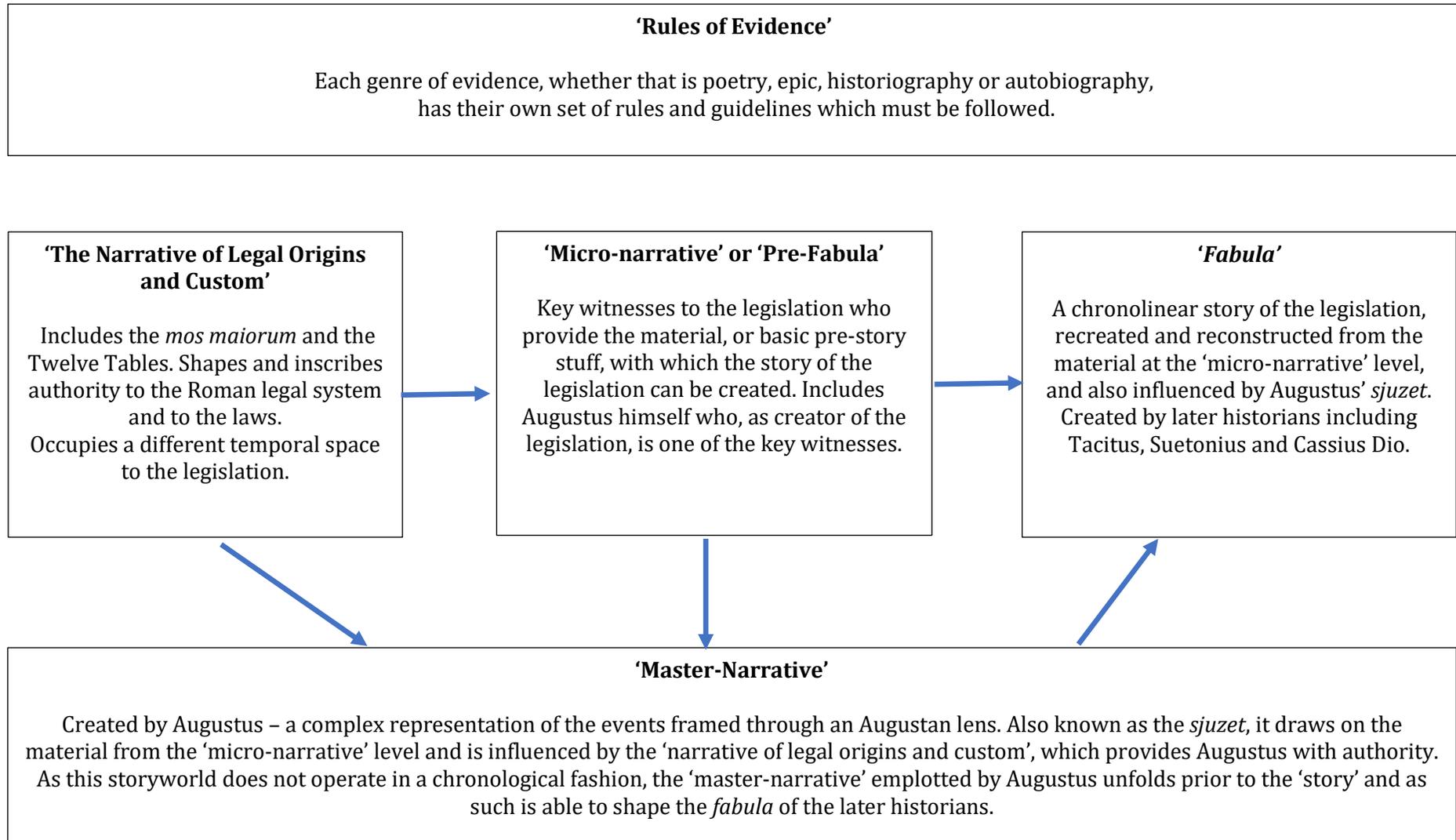
<sup>654</sup> De Jong 2014.

whose essential properties, values and expectations conflicted with those of the Roman people. And as a result, it was Augustus himself, through his 'new' hegemonic legal model, who engendered the very narrative conditions for the negative reception and antipathy shown towards the *leges Iuliae*.

**Appendix 1**  
**The 'Storyworld' of the Modern Criminal Trial**



**Appendix 2**  
**The 'Storyworld' of the Augustan Marriage Legislation**



### **Appendix 3** **Source Translations**

Cic. *De. Or.* Translation by May and Wisse 2016. Text translated is based on the standard edition in the Teubner series, by Kumaniecki, 1969. For departures from this text, see May and Wisse 2016: 307-319.

Cic. *Inv. Rhet.* Translation by Hubbell 1949. Text translated is from the Loeb Classical Library 386.

Cic. *Rep.* Translation by Rudd 2008. Text translated is based on an incomplete Vatican manuscript (Vat. Lat. 5757), a number of fragments preserved as quotations in later writers and an independent manuscript tradition (Paris, nouv. Acq. Lat. 454) dating from the ninth century. For further details, see Rudd 2008: xxxii.

Dio Cass. Translation by Scott-Kilvert 1987. 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 1987: 30-31.

Dion. Hal, *Ant Rom.* Translation by Cary 2015. Text translated is based on the edition of Edward Spelman, 1758, with parallel English translation by Cary, in the Loeb Classical Library.

Ennius *Ann.* Translation by Liveley, in Liveley and Shaw 2020. Text translated is based on the edition edited by Goldberg and Manuwald, 2018, in the Loeb Classical Library 294.

Hor. *Carm.* Translation by West 1997. Text translated is based on the 1912 Oxford Classical Text edited by E. C. Wickham.

Hor. *Carm. saec.* Translation by West 1997. Text translated is based on the 1912 Oxford Classical Text edited by E. C. Wickham.

Livy *Pr. and Ab Urbe Condita*, 1-5. Translation by Luce 2008. Text translated is based on the 1974 Oxford Classical Text edited by R. M. Ogilvie.

Livy *Ab Urbe Condita*, 39. Translation by Yardley 2018. Text translated is based on the edition edited, with parallel English translation, by Yardley in the Loeb Classical Library 313.

Macer *Digest.* Translation by Watson 2009b. Text translated is based on the 1985 text by Theodor Mommsen and Paul Kreuger.

Paul *Digest.* Translation by Watson 2009a. Text translated is based on the 1985 text by Theodor Mommsen and Paul Kreuger.

Propertius Translation by Katz 2004. 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 *Elegies* published in the 1960s by Cambridge University Press, edited by W. A. Camps.

Ovid *Amores.* Translation by Melville 1990. Text translated is based on the 1961 Oxford Classical Text edited by E. J. Kenney, along with text and commentary by McKeown and Bertini (in Italian, with translation).

*Res Gestae Divi Augusti*. Translation by Cooley 2009. Text translated is a composite text of both Latin and Greek versions, as derived from the inscriptions surviving from Ancyra, Pisidian Antioch and Apollonia. For further details, see Cooley 2009: 6-18, 57.

Suet. *Aug, Claud*. Translation by Graves 2007. Text translated is based on the standard modern edition of *De vita Caesarum* by Maximilian Ihm.

Sen. *Ben*. Translation by Liveley, in Liveley and Shaw 2020. Text translated is based on the edition by Basore in the Loeb Classical Library 310.

Tac. *Ann*. Book 3. Translation by Moore and Jackson 1931. Text translated is from the Loeb Classical Library 249.

Tac. *Ann*. Book 4. Translation by Jackson 1931. Text translated is from the Loeb Classical Library 312.

Ulpian *Digest*. Translation by Watson 2009b. Text translated is based on the 1985 text by Theodor Mommsen and Paul Krueger.

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