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Etymological Law*

The origins of law coincide with the origins of language, as both Plato and Horace highlight. Thus, a systematic attempt to discover the etymological roots of words simultaneously reveals the source of legality. The article examines the etymological doctrina *('learning') of poets vis-à-vis the etymological reasoning of learned jurists. The Twelve Tables, Catullus, and Labeo engage in similar etymological pursuits. Ovid's Byblis responds to Labeo's etymologies. The jurist Ulpian echoes the poetics of Latin love elegy. Lawyers and poets meet on the common ground of etymology in their attempts to lay down the law.*

Le origini del diritto coincidono con quelle del linguaggio, come evidenziano sia Platone sia Orazio: ne consegue che scoprire le radici delle parole rivela simultaneamente le origini del diritto. Proprio su questa base comune l'articolo mette a confronto la dottrina dei poeti e la riflessione dei giuristi eruditi, mostrando che attività etimologiche affini si riscontrano nelle Dodici Tavole, in Catullo e in Labeone; alle etimologie di ques'ultimo risponde il Byblis di Ovidio; il giurista Ulpiano, a sua volta, riecheggia la poetica dell'elegia d'amore latina. Avvocati e poeti, nel loro tentativo di stabilire la legge, si incontrano sul terreno comune dell'etimologia.

The study and practice of etymologizing (ancient and modern) inevitably produces a set of rules that need to be followed in order to uncover the origins and true meaning of words. Every linguist needs a *lex etymologica*, an etymological law. The word *lex* ('law') has a technical and non-technical meaning: *lex* can refer to 'statutes' or 'the laws of the state' (technical meaning), but it can also refer to a 'rule', which is not technically the law in a strictly legal sense. Varro, for instance, in *De lingua Latina* VII 18 refers to 'poetic law' *lege poetica*, which, in this passage, is more about poetic licence. Poets, Varro says, are allowed to describe the whole (Aetolia) by referring to one part (Calydon) (Varro here describes what we call *pars pro toto*). Language, and poetic language in particular, follows specific rules or laws. More to the point, Varro explicitly compares the linguistic with the legal system in *De lingua Latina* IX 20 (*an non saepe ueteres leges abrogatae nouis cedunt?* 'Aren't old laws often repealed and replaced by old laws?')[1]. Varro is here discussing a variety of linguistic changes, including vocabulary and morphology, to illustrate historical change. A new word is legitimate and should be accepted, if it has been introduced according to a *ratio* ('reasoning' *LL* IX 20), a key term for both jurists and linguists in their aims to provide principles that govern linguistic or legal phenomena.

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[1] On this passage, see Duso 2017, 163-164; De Melo 2019, 1117. Translations are from the Loeb editions, often modified.

The interplay between the technical and non-technical meaning of *lex* can be a source of poetic inspiration. Horace's *Satire* II 1 revolves around this ambiguity. In this poem, Horace consults the famous jurist Trebatius Testa about the legal issue of writing satire, a genre in which freedom of speech is an indispensable requirement. While Horace uses the word *lex* to discuss the rules of the satiric genre, Trebatius is concerned about poetry which may break the law. As Michèle Lowrie puts it, the law in question has nothing to do with the legal sphere, but is the law of the genre. Roman law and the conventions of Latin poetry here intersect[2].

There is a similar interplay in the practice of etymologizing, an interplay between the linguistic rules of discovering the true meaning of words and the reasoning of Roman jurists. Etymologizing and legal reasoning may have more in common than it appears at first sight. The law is a discourse and thus language is its prerequisite. The birth of the legal system coincides with the origins of language, as in Horace's brief history of the beginnings of human civilization (Horace, *Satire* I 3,99-106):

> Cum prorepserunt primis animalia terris
> mutum et turpe pecus, glandem atque cubilia propter
> unguibus et pugnis, dein fustibus, atque ita porro
> pugnabant armis, quae post fabricauerat usus,
> **donec uerba, quibus uoces sensusque notarent,**
> **nominaque inuenere; dehinc** absistere bello,
> oppida **coeperunt** munire et **ponere leges,**
> ne quis fur esset, neu latro, neu quis adulter.

> When living creatures crawled forth upon primeval earth,
> dumb, shapeless beasts, they fought for their acorns and lairs
> with nails and fists, then with clubs, and so on step by step with
> the weapons which need had later forged, until **they found**
> **words and names wherewith to give meaning to their cries**
> **and feelings. Thenceforth, they began** to cease from war, to
> build towns, and **to lay down laws** that none should be a thief
> or bandit or adulterer.

Language makes possible the transition from violence to justice or from animal brutality to human civilization. Once men have words to describe a 'thief' or an 'adulterer', they have the power to define a crime and punish the culprits. The 'invention of names' (*inuenere nomina*) results in the creation of a legal code. Thus, to discover the origins of words is to discover the foundations of the rule of law.

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[2] See Lowrie 2005, 407.

In Plato's *Cratylus*, the lawgiver is essentially a namegiver, as in the following passage (Plato, *Cratylus* 389a):

ΣΩΚΡΑΤΗΣ. Οὐκ ἄρα παντὸς ἀνδρός, ὦ Ἑρμόγενες, **ὄνομα θέσθαι**, ἀλλά τινος ὀνοματουργοῦ· οὗτος δ᾽ ἐστίν, ὡς ἔοικεν, **ὁ νομοθέτης**, ὃς δὴ τῶν δημιουργῶν σπανιώτατος ἐν ἀνθρώποις γίγνεται.
ΕΡΜΟΓΕΝΗΣ. Ἔοικεν.
ΣΩ. Ἴθι δή, ἐπίσκεψαι ποῖ βλέπων **ὁ νομοθέτης τὰ ὀνόματα τίθεται.**

Socrates: Then it is not for every man, Hermogenes, **to give names**, but for him who may be called the name-maker; and he, it appears, is **the lawgiver**, who is of all the artisans among men the rarest.
Hermogenes: So it appears.
Socrates: See now what **the lawgiver has in view in giving names**.

In order to find out the etymology of words, Socrates and Hermogenes will be trying to discover the intention of the lawgiver throughout Plato's dialogue. In a masterful touch, Socrates here subtly etymologizes the word νομοθέτης from ὄνομα θέσθαι. The semantic relation between **ὄνομ**α and **ὁ νομ**οθέτης is one of the dialogue's recurring motifs (cf. 431e **ὁ νομ**οθέτης ἦν **ὄνομα**; 427c **ὄνομα** ποιῶν **ὁ νομ**οθέτης). To give a name (ὄνομα) is to create the law (ὁ νόμος). Socrates' etymological link lies behind Horace's transition from finding names (*nominaque inuenere*) to laying down the law (*ponere leges*).

Given the close links between the invention of names and laws, the Roman jurists' obsession with etymologies and the true meanings of words is not surprising[3]. Naming is a normative speech act and that is why it has the force of law. And that is why the art of etymologizing was not a tangential interest or a hobby horse of the Roman jurists, but an integral part of juristic reasoning and the education of a lawyer. The practice of coming up with the rules of etymologizing developed in parallel and in dialogue with etymologizing as a way of laying down the law. To discover the original meaning of words was to discover the intentions of the first lawgiver.

Etymologizing in the Roman world is often discussed in the context of ancient grammarians, antiquarians, and philosophers[4]. But it is rarely examined in the context of Roman jurisprudence, despite its prominence in legal reasoning and education. Why is this the case? One reason may be that literary scholars interested in ancient etymologies are more familiar with and more interested in ancient linguistic theories than with the world of Roman law. This may be one, but not the only rea-

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[3] Ceci 1892 is a book length study of the etymologies of the Roman jurists.
[4] See, for instance, Blank 2008; De Melo 2019.

son– I think there are at least two more. From a modern perspective, the school of linguistics and the law school belong to different parts of the campus and have very little, if anything, to do with each other. When we think about etymologies, we may be forgiven not to think about the curriculum of law schools in the Roman world.

Another reason is the older view that the independence of Roman jurisprudence meant that the world of Roman law was culturally isolated[5]. Scholars recently argued against the traditional approach that divorces Roman jurists from their socio-historical context[6]. The jurists were in constant dialogue both with intellectual traditions and with changing social values and pressures. Grammar, myth, and poetry played a vital role in their legal reasoning. As Jill Harries puts it, «Lawyers, philosophers, grammarians, historians and men of general culture could meet on the common ground of etymology»[7].

The Augustan jurist M. Antistius Labeo is a good case study. Labeo founded a renowned school of law that emphasized the study of liberal arts. Semantics, dialectics, literary criticism, and etymological analyses were keys to interpreting the law in Labeo's school[8]. Aulus Gellius introduces Antistius Labeo by referring to his expertise in dialectic, literature, and the derivations of words (XIII 10):

> Quid 'sororis' ἔτυμον esse dixerit Labeo Antistius, et quid 'fratris' P. Nigidius. Labeo Antistius iuris quidem ciuilis disciplinam principali studio exercuit et consulentibus de iure publice responsitauit; ceterarum quoque bonarum artium non expers fuit et in grammaticam sese atque dialecticam litterasque antiquiores **altioresque penetrauerat Latinarumque uocum origines rationesque percalluerat, eaque praecipue scientia ad enodandos plerosque iuris laqueos utebatur.** Sunt adeo libri post mortem eius editi, qui *Posteriores* inscribuntur, quorum librorum tres continui, tricesimus octauus et tricesimus nonus et quadragesimus, pleni sunt id genus rerum **ad enarrandam et inlustrandam linguam Latinam conducentium.** Praeterea in libris

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[5] Interestingly, the view that law is an independent discourse virtually divorced from its sociopolitical context, parallels Saussurian linguistics. The absolute autonomy of the juridical form is similar to grammatical rules of morphology that are internally regulated and evolve independently. The pure theory of law, which constructs a body of doctrines and rules totally independent of social constraints and pressures, resembles Saussure's pure theory of language, which excludes historical and social conditions from governing the functioning of language and its transformations. See Bourdieu 1987, 814.

[6] As Harries 2006, 12 puts it, the present separation of legal discourse from the rest is not reflected in the intellectual approach taken by the Roman elite. See also Howley 2013; Wibier (forthcoming).

[7] See Harries 2017, 105.

[8] See Bauman 1989, 47-48.

quos *Ad Praetoris Edictum* scripsit multa posuit, partim lepide atque argute reperta. Sicuti hoc est quod in quarto *Ad Edictum libro* scriptum legimus: **«'Soror'» inquit «appellata est, quod quasi seorsum nascitur separaturque ab ea domo in qua nata est et in aliam familiam transgreditur».** 'Fratris' autem vocabulum P. Nigidius, homo inpense doctus, non minus arguto subtilique ἐτύμῳ interpretatur: «'Frater'» inquit «est dictus quasi 'fere alter'».

The derivation of *soror*, according to Antistius Labeo, and that of *frater*, according to Publius Nigidius.
Antistius Labeo cultivated the study of civil law with special interest, and gave advice publicly to those who consulted him on legal questions; he was also not unacquainted with the other liberal arts, and he had delved deep into grammar and dialectics, as well as into the earlier and more recondite literature. **He had also become versed in the origin and formation of Latin words, and applied that knowledge in particular to solving many knotty points of law.** In fact, after his death works of his were published, which are entitled *Posteriores*, of which three successive books, the thirty-eighth, thirty-ninth and fortieth, are full of information of that kind, **tending to explain and illustrate the Latin language.** Moreover, in the books which he wrote *On the Praetor's Edict* he has included many observations, some of which are graceful and clever. Of such a kind is this, which we find written in the fourth book *On the Edict*: **«A *soror*, or 'sister'» he says «is so called because she is, as it were, born *seorsum*, or 'outside,' and is separated from that home in which she was born, and transferred to another family».** Moreover, Publius Nigidius, **a man of prodigious learning**, explains the word *frater*, or 'brother', by a no less clever and ingenious derivation: «A *frater*» he says «is so called because he is, as it were, *fere alter*, that is, 'almost another self'».

Labeo's etymology of *soror* gives Gellius the opportunity to introduce the work of the renowned Augustan jurist. The jurist Labeo and Nigidius Figulus[9], a scholar as learned as Varro, as Gellius puts it (*NA* IV 9,1), appear in the same context and address similar issues, namely the origins of commonly used words. In Gellius, there seems to be no firewall separating the linguist from the jurist. In fact, Gellius (*NA* XVII 7) says that Nigidius Figulus discussed the ambiguities of the *lex Atinia* in his *Grammatical Notes*[10]. The legal issue of whether the law that forbids usucapion of stolen property is prospective or retrospective hinges upon the grammatical interpretation of *subruptum erit* (does it indicate both past and future?). Figulus' linguistic expertise is thus indispensable to the interpretation of the law.

Similarly, Labeo's foray into etymological derivations is not distinguished from

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[9] On Nigidius Figulus, see Volk 2016, 45-49; Garcea 2019.
[10] See Garcea 2019, 94.

his legal expertise. The deep knowledge of etymologies is applied to solving the knotty points of law. Note how in the passage quoted above *origines* and *rationes* appear as a pair. While *origo* can mean etymology, *ratio* is the term that describes the reasoning of a jurist. Only in this context etymological and juristic analysis are united. In other words, etymological research is not the leisurely activity of a learned antiquarian, but is directly related to the origins of legality. The origins of words reveal the true nature of the law. Etymological and legal interpretation overlap.

Labeo's etymology of *soror* is a comment on an edict. While the details of this edict are unclear, it is likely that the etymology appears in the context of discussing family or marriage law. A sister, for Labeo, is someone who is separated from her home, because she marries into another family. It is possible that Labeo brings up this etymology, in order to point out that the very origin of the word *soror* encapsulates the incest taboo. A sister has to marry outside the family. This is what the word actually means. We may not know how close or far from the context this interpretation is, but we can be fairly certain that Labeo's etymology is a jurist's interpretation of the law.

Jurists were interested in the origins of words because etymologizing is often a way of discussing the link between the signifier and the signified[11]. Are names arbitrary conventions that have little, if anything, to do with entities they refer to or do signifiers reveal the truth about the nature of the entities they name? Is there a link between language and nature or not? It is not hard to see why these linguistic issues are relevant to legal theory and practice. What is law's relationship to nature? Is it a human convention or does it spring from a divine or natural source? The lawgiver (νομοθέτης) and the namegiver (ὀνοματοθέτης) are the origins of the debate about the relationship between the signifier (name or law) and the natural order. To give a name is to lay down the law. This law may be a custom or a convention, but it may be more than that; it may be the reflection of the rule of nature in the medium of human language.

In the passage from Gellius quoted above, the antiquarian Nigidius Figulus appears in the same context as the jurist Labeo. Figulus saw the meaning of the words not as human conventions, but as natural[12]. Etymology thus unlocks the truth of the universe[13]. It is not a big step to see why this approach would be appealing

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[11] On the intricate relationship between the signifier and the signified in ancient etymologizing, see now Vergados 2020.

[12] On Figulus' naturalism, see Garcea 2019. On language and nature in the Roman world, see Pezzini and Taylor 2019.

[13] Lucretius' *De rerum natura* equates the nature of the universe with nature's general law (see Garani 2014, 130). Schiesaro 2007 argues that it was part of juristic discourse to construct a legal model for the universe. The first attested example of this practice is Lucretius.

to jurists. The law's authority is significantly boosted, if it does not appear as an arbitrary convention but as a projection of the universal laws of nature. From that perspective, Labeo's etymology of *soror* would not be a purely linguistic suggestion, but would contribute to an argument according to which incest is unnatural.

The legality of incest is hotly debated in Ovid's *Metamorphoses*. Byblis, who falls in love with her brother Caunus, and Myrrha, who falls in love with her father Cinyras, employ forensic rhetoric and allude to philosophical views (mainly Stoic) that justify incestuous liaisons[14]. Both heroines attempt to erase the family names (brother and sister, father and daughter) that signify the prohibition of incest. The name is the embodiment of the incest taboo. Ovid tells us that Byblis called Caunus master; she hated the name of brother and preferred to be called Byblis rather than sister (*Metamorphoses* IX 465-466 *iam dominum appellat, iam **nomina sanguinis** odit / Byblida iam mauult quam se uocet ille **sororem***).

The name is the law (ὄνομα νόμος) that prohibits Byblis and Caunus to be joined in love. At the beginning of her letter, Byblis first writes and then erases *soror* (*Met.* IX 528) in an attempt to eradicate the incest taboo. She confesses that she is ashamed to spell out her name (531 *pudet edere nomen*) and wishes she could plead her cause without a name (532-533 *sine nomine uellem / posset agi mea causa meo*). The diction (*agi mea causa*) describes a legal procedure. Byblis imagines that she is pleading her case in a court of love. In this forensic setting, the very name of sister would imply that she is breaking the law. In this case, the repeated use of *nomen* brings up the close relationship between the name and the norm. What is more, *nomen* is an etymological marker in Latin poetry[15]. Just as she first writes and then erases the name of *soror*, Byblis first refers to and then rejects its etymology in the juristic tradition (*Metamorphoses* IX 487):

> si liceat mutato nomine iungi

> If only I could change my name and be joined to you

The change of name would mean that Byblis will be free from the etymological association of *soror* with separation from her family. For Labeo, a sister is someone who is separated from the home she was born in. But if the name changes, then Byblis will be able to be united with her brother. The infinitive *iungi* right after the change of the name alludes to this etymological connection.

Byblis' forensic rhetoric becomes gradually more aggressive. In her letter to

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[14] On Myrrha's and Byblis' legal arguments, see Gebhardt 2009, 321-334. On Myrrha and laws against incest, see also Ziogas 2021, 346-383.

[15] See Maltby 1993, 257, 260; Cairns 1996, 29-31.

Caunus, she argues that both the desires of the young and the practice of the gods do not prohibit incest (*Metamorphoses* IX 548-555):

> non hoc **inimica** precatur,
> sed quae, cum tibi sit **iunctissima, iunctior** esse
> expetit et **uinclo** tecum propiore **ligari**.
> **iura senes norint, et quid liceatque nefasque**
> **fasque sit, inquirant, legumque examina seruent.**
> con**ueniens Venus** est annis temeraria nostris.
> quid liceat, nescimus adhuc, et cuncta licere
> credimus, et sequimur **magnorum exempla deorum**

> It is **no enemy** who prays to you, but one who, though most **closely joined to you, seeks to be more fully joined** and **to be bound** by a still closer tie. **Let old men know the laws and talk of what is fitting, what is right and wrong, and preserve the nice discrimination of the laws**. But **love is compliant** and heedless for those of our age. What is allowed we have not yet discovered, and we believe all things allowed; and in this we do but follow **the example of the great gods**.

The main issue here is what is permitted and what is forbidden in love. The legality of a sister's passion for her brother is what Byblis is arguing for. She avoids the use of the word *soror* and points out that she is not *inimica*. The opposite of *inimica* is *amica* ('girlfriend, mistress') and this is precisely what Byblis would like to be in relation to Caunus[16]. Having already replaced *frater* with *dominus*, Byblis imagines her affair with her brother in elegiac terms. The code of the genre of Latin love elegy has the power to overrule the incest taboo.

Once the name *soror* has been subtly replaced by *amica*, Byblis creates a cluster of words that refer to bonding (*iunctissima, iunctior, uincla, ligari*). The besotted heroine argues that a sister is tightly joined to her brother and thus rejects Labeo's etymology. Note that Byblis specifically dismisses those who are learned in the law and examine what is right and wrong. She is clearly referring to the *iurisperiti*, learned jurists like Labeo, whose etymology of *soror* supports the prohibition of incest. Etymologies thus become a vital part in forensic rhetoric and juristic reasoning. What is permitted and what is forbidden is defined by means of etymologizing.

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[16] Cicero employs the *inimica-amica* wordplay in his attack on Clodia; see *Pro Caelio* 32 *nec enim muliebris umquam **inimicitias** mihi gerendas putaui, praesertim cum ea quam omnes semper **amicam** omnium potius quam cuiusquam **inimicam** putauerunt,* «For indeed I never thought that I should have to engage in quarrels with women, still less with a woman whom everyone has always thought to be everyone's (girl)friend rather than anyone's enemy».

While rejecting Labeo's etymology, Byblis draws attention to alternative etymological links. The language of bondage refers to the etymology of Venus from *uincire* ('to bind')[17]. This etymology features prominently in Latin love elegy[18] and in Ovid's *Metamorphoses*[19]. Byblis appeals to the generic code of Latin love elegy in order to replace the legalism of old jurists[20]. In fact, Propertius suggests the etymology of Venus from *uincire* in a passage that conflates the bonds of elegiac love with contractual bonds and marriage legislation (III 20,15-25)[21].

Binding is a distinctive characteristic of both law and love in Latin elegy[22]. The law has the power to bind its subjects in knots. In the passage from Gellius quoted above, Labeo is said to have used his knowledge of the origins of words «to solve many knotty points of law» (*ad enodandos plerosque iuris laqueos utebatur*)[23]. Now Byblis argues that erotic bonds have the force of law and thus can legitimize incest. Her reference to the *Venus-uinclum-uincire* etymological nexus suggests the power of erotic desire to break old legal bonds and create new ones. This adds another dimension to the well-established etymological link between *Venus* and *uincire*. The bonds of Venus have the force of legal bonds. Byblis' aim is to restore what Peter Goodrich calls the 'law of first Venus'[24] and her etymological references should be interpreted in the context of her revisionist legal arguments.

Besides the *Venus-uincire* semantic link, Byblis alludes to the etymology of Venus from *uenire*[25]. Ovid is fond of this etymology[26] and Byblis' *conueniens Venus* is a particularly suitable etymological allusion in this context. Unrestrained love

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[17] This etymology is already implied in Plautus, *Trin.* 658 *ita ui Veneris uinctus* («thus bound by Venus' force»). See also Varro, *LL* V 61-62 *et mas ignis, quod ibi semen, aqua femina, quod fetus ab eius humore, et horum* <u>uinctionis</u> *uis* <u>Venus</u>*. Hinc comicus:* "*huic* <u>uictrix</u> *Venus, uidesne haec?*" *Non quod* <u>uincere</u> *uelit* <u>Venus</u>*, sed* <u>uincire</u> («and fire is male, which the semen is in the other case, and water is female, because the embryo develops from her moisture, and the force that brings their "binding" is Venus. Hence the comic poet says, "huic Venus victrix …" – not because Venus wishes [or signifies] 'to conquer', but 'to bind'» (transl. Hinds 2006). On this etymological connection, see Hinds 2006.

[18] See Propertius III 24,13-14 and 20,19-23 with Hinds 2006.

[19] See *Met.* IV 182-184 with Michalopoulos 2001, 169.

[20] The *recusatio* of legalism for the sake of the novel laws of love is a distinctive characteristic of Latin love elegy; see Ziogas 2021, 27-68.

[21] See Keith 2008, 41-42; Gebhardt 2009, 139-141.

[22] See Ziogas 2021, 155-162.

[23] Cicero describes etymologizing in similar terms in *De natura deorum* III 62 *in enondanis autem nominibus.*

[24] See Goodrich 2006, 6-16.

[25] On this etymology, see Maltby 1991, 635; Michalopoulos 2001, 169-170; Hinds 2006.

[26] See Michalopoulos 2001, 169-170.

befits the young to whom everything is permitted. Byblis here uses Venus both as a metonymy for sex and as the name of the anthropomorphic goddess. Venus was married to her brother Vulcan, had an adulterous affair with her brother Mars, and a child with her brother Mercury[27]. Like a good jurist, Byblis here refers to divine precedent (the *exempla* of gods' incestuous marital and extramarital affairs) to justify and legalize her love for her brother. Her etymological wordplay is part and parcel of her forensic rhetoric and legal reasoning, and is thus employed to solve a particularly knotty point of law.

Redefining the meaning of words is how Ovid's heroines attempt to justify their incestuous desires. Byblis, Myrrha, and Phaedra attempt to cast *pietas* ('family duty') as synonymous to *amor* ('erotic desire'). Semantic shifts re-evaluate what is forbidden and what is permitted. Not unlike Byblis, Phaedra, in her love letter to her stepson Hippolytus, distinguishes old from new customs and refers to Jupiter as the divine precedent that legitimates incest (*Heroides* 4,131-134):

> ista uetus **pietas,** aeuo moritura futuro,
> rustica Saturno regna tenente fuit.
> **Iuppiter** esse **pium statuit**, quodcumque **iuuaret**,
> et fas omne facit fratre marita soror.

> Such old-fashioned piety, about to die in the age to come, was rustic even in Saturn's reign. Jupiter decreed that whatever brought pleasure was pious, and a sister married to a brother makes everything lawful.

Jupiter, the father god of justice, redefines *pietas* by marrying his sister. *Iuppiter statuit* implies that Jupiter lays down the law by means of giving *pietas* a new meaning. The verb *statuere* has a legal meaning; it describes the authoritative ruling of a jurist or a judge[28]. Once more, there is an etymological allusion in the context of legitimizing incest. *Iuppiter… iuuaret* frames the hexameter and points to the etymological connection of these words[29]. The etymology is at least as old as Ennius (see Varro, *LL* V 65) and features in Cicero's *De natura deorum* II 64 (*Iuppiter – id est iuuans pater quem conuersis casibus appellamus a iuuando Iouem* «Jupiter – the name means 'the helping father,' whom with a change of inflexion

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[27] In Hesiod's *Theogony*, Aphrodite is born from the foam/semen of Ouranos' severed genitals, but in Homer's *Iliad* she is the daughter of Zeus. Ovid follows both the Hesiodic (e.g., *Met.* IV 536-538) and the Homeric traditions (e.g., *Met.* XV 807-808).

[28] Cf. Gebhardt 2009, 52.

[29] For the framing of a line as an etymological marker, see O'Hara 2017, 82-86.

we style Jove, from *iuuare* 'to help'»)[30]. Ovid is fully aware of this etymological link. In the *Amores*, for instance, Ovid's girlfriend shuts him out and the poet realizes that Jupiter's epic thunderbolt cannot help him to unbolt Corinna's door (*Amores* II 1,19-20):

> **Iuppiter**, ignoscas: nil me tua tela **iuuabant**:
> clausa tuo maius ianua fulmen habet.

> Jupiter, forgive me: your weapons could not help me: the closed door has a bolt greater than yours.

Latin love elegy is not only a disavowal of epic, but also a rejection of Jupiter's etymological connection with *iuuare*[31]. The supreme god and the symbol of epic *grauitas* cannot help the elegiac lover in his time of need.

While the *Iuppiter-iuuare* etymological link is well established, in *Heroides* 4,133 it involves a striking semantic shift. In the etymological explanations of Jupiter's name, *iuuare* means to 'help, to assist' (see Ovid, *Her.* 11,17-18; *Pont.* II 1,13 and 9,24-25), but in Phaedra's version of this etymology, it means 'to give pleasure, delight'. Phaedra both refers to a traditional etymology and gives a surprising twist to it. Once an etymological connection between two words is established, the game of coming up with various explanations begins. Phaedra combines her radical re-definition of *pietas* with her new interpretation of Jupiter's traditional etymology from *iuuare.* Semantic shifts change the nature of the law. The origins of words take us back to the birth of the law. Phaedra's etymologizing is a case in point. As the father of gods and men, Jupiter is the divine symbol of sovereignty. The name of the father stands for the prohibition of incest in Lacanian psychoanalysis[32], but Phaedra resorts to etymological wordplay in order to argue exactly the opposite, namely that Jupiter's name means that the father allows whatever is pleasing and sanctions incest by marrying his sister. Phaedra's redefinition of *pietas* and *Iuppiter* may strike us as perverse, but she may actually have something important to say about the origins of sovereignty. As Micaela Janan argues in her perceptive reading of Propertius IV 11, juridical reasoning comes to rest in the logical opacity of desire: something is made into law, because «it is the will of [the gods, Nature,

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[30] See McKeown 1987, 49; Maltby 1991, 319; Michalopoulos 2001, 102-103.

[31] Cf. *Met.* I 274-275 with Michalopoulos 2001, 102. Here *iuuare* is transferred from Jupiter to Neptune.

[32] Lacan famously puns on *nom* ('name') and *non* ('no') in *le nom du père.* The name of the father signifies the prohibition of incest.

emperor, people, senate]»[33]. The desire of the sovereign legislator is the ultimate source of legality. The Romans were fully aware that the law is grounded on whatever pleases the sovereign legislative body. The legislative formula *senatui/principi placuit* ('it pleased the senate/prince') is in line with Phaedra's argument. Whatever pleases the sovereign legislator has the force of law. By interpreting the origins of Jupiter's name, Phaedra argues that the sovereign's desire is the source of legality.

Etymologizing in Latin poetry is commonly discussed in the context of the poet's *doctrina* ('learning'). James McKeown's compelling and influential discussion of etymology in Ovid's *Amores*, for instance, is part of his section on *doctrina*[34]. This *doctrina* is often related to the Alexandrian poetics of Latin poetry[35]. But note that *doctus* commonly describes a learned jurist. As Kathleen Coleman points out, *doctus* is the *uox propria* of a 'learned jurisconsult'[36]. Coleman makes this point in discussing Ovid's Tiresias in *Metamorphoses* III 322-323. Building on Coleman, Kathryn Balsley argues that Ovid brings together prophetic, poetic, and juristic discourse in an era that signals the emergence of the science of law[37]. The *doctrina* of the *uates* ('seer, poet') reflects the learning of the *iurisperitus*[38]. Etymological learning in Latin poetry should be examined in this context. Etymological *doctrina* is related to the poet's legal studies and to an educational tradition in which a learned lawyer needs to know about the origins of words. In other words, etymologizing is a means of establishing poetic and legal authority.

As we have already seen, the jurist Labeo is an eminent representative of a legal tradition from which many poetic etymologies derive[39]. For instance, the jurist etymologized *furtum* from *furuus*, a rare word that means 'swarthy' (*Digest* XLVII 2,1):

> furtum a furuo, id est nigro dictum Labeo ait, quod clam et obscuro fiat et plerumque nocte

> 'theft' derives from 'swarthy', which Labeo says means 'black', because it occurs secretly and in darkness and mostly at night.

Labeo etymologizes a term that concerns the law: 'theft.' The obscure word *furuus* reflects the darkness of theft. This is not only a subtle and self-reflexive comment

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[33] See Janan 2001, 146-163.
[34] See McKeown 1987, 45-62.
[35] See O'Hara 2017.
[36] See Coleman 1990.
[37] See Balsley 2010.
[38] See Ziogas 2021, 245-300.
[39] See Cairns 1991, 444; cf. Howley 2013, 14-16.

worthy of a poet, but also highlights the interplay between signifier and signified. In fact, the semantic relation between *nox* and *furtum* is already attested in the Twelve Tables (8,12 *si **nox furtum** factum sit, si im occidit, iure caesus esto*, «if theft has been committed at night, if owner kills him, thief shall be held lawfully killed»). Macrobius (*Saturnalia* I 4,19) cites this passage from the Twelve Tables in order to comment on the unusual use of *nox* for *noctu*, but what looks like the nominative case of *nox* may draw attention to the semantic relation between *nox* and *furtum*: theft has become (*factum est*) synonymous to night. The emphatic *nox* further suggests an etymological link with *noxa* ('wrongdoing') and *nocere* ('to harm')[40]. Nightly theft is a crime (*noxa*) that will harm (*nocet*) the thief, if he is caught in the act.

The semantic relation between *furtum* and *nox* is not restricted to legal texts, but features prominently in Latin love poetry. We can find traces of this derivation in Catullus (68, 145-146):

> sed **furtiua** dedit muta **munuscula** <u>nocte,</u>
>   ipsius ex ipso dempta uiri gremio.

> but she gave me in the silent night stolen gifts, taken from the
> very bosom of her husband himself.

The stolen gifts here occur at night, an allusion to the etymology of *furtum* from *furuus.* Note also the legal background of this wordplay. The learned etymological allusion appears in a context that describes adultery in terms of property theft. This legal context may point to the origins of this etymology in legal discourse.

The extramarital love affair is a theft and that is why it takes place at night. By pointing out that *furta* take place in the darkness of the night, Catullus alludes to an etymology that Labeo spells out (7,7-8):

> aut quam sidera multa, cum tacet **nox**,
> **furtiuos** hominum uident **amores**

> or as many as are the stars, when night is silent, that see the
> stolen loves of men

The stars here are the eyewitnesses of thefts committed by lovers at night. Ovid alludes to this etymology several times; in *Amores* I 11, the expert (2 *docta*) hairdresser Nape is known for her secret services (3-4):

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[40] On these etymological links, see Varro, *De lingua Latina* VI 6 *quod nocet nox* with Maltby 1991, s.v *nox, noxa.*

> inque ministeriis **furtiuae** congita **noctis**
> utilis et dandis ingeniosa **notis**

> [Nape], known for useful ministry in the stealthy night and
> skilled in the giving of the signal

Note also the wordplay *noctis/notis* highlighted by the position of the words in the end of two consecutive lines. Here *nota* functions as an etymological marker (cf. *Fasti* IV 61 *notatum*, discussed below); the secret signals that Nape communicates draw attention to the semantic link between *furtiuus* and *nox*. The darkness of the night supports the communication of secret signs[41]. The obscure semantics of the learned etymology reflect the secret communication of signals. There is an interplay between the literal darkness of the night and the figurative obscurity of the etymological derivation of *furtum* from *furuus*. From *doctus Catullus*[42] to *doctus* Labeo and from the learned jurisconsult to the elegiac Ovid, the etymology of *furtum* features prominently in poetic and juristic discourse.

Poets at times refer explicitly to an etymology (see, e.g., the etymology of Aprilis from Aphrodite at *Fasti* IV 61-62 discussed below), but more often than not their etymologizing is a learned allusion that the reader is invited to decipher. This is more than just a witty (or even nerdy) game of poets obsessed with recondite derivations of words. As we saw in the examples above, etymologizing can have a powerful rhetorical effect. Discovering the origins of words boosts the poet's authority[43]. Etymological wordplay can be simultaneously traditional and revisionist, as in the case of Phaedra's interpretation of Jupiter's etymology from *iuuare*. The practice of etymologizing in the juristic tradition is similarly a legitimizing force. And not unlike the poets, the jurists' etymologies can be explicit or implicit.

The reasonings (*rationes*) of jurists are often radical and unexpectedly progressive. Like Ovid's Phaedra, they employ etymology to drive a revolutionary point home. Ulpian's argument that affection legitimates gifts given to both friends and prostitutes is a case in point (*Digest.* XXXIX 5,5):

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[41] Ovid alludes to the semantic relation between theft and darkness at *Her.* 19,55-56 *Sic ubi deceptae pars est mihi maxima **noctis** / acta, subit **furtim lumina** fessa sopor*, «When the greatest part of the night has gone by for me in such delusions, sleep steals upon my wearied eyes»; *Met.* XI 762 *Aesacon **umbrosa furtim** peperisse sub Ida* «she secretly gave birth to Aesacus under shady Ida».

[42] Catullus was known as *doctus* in Latin literature; see [Tibullus] III 6,4; Ovid, *Am.* III 9,62; Martial I 61,1.

[43] On wordplay and powerplay in Latin poetry, see Mitsis and Ziogas 2016.

> Affectionis gratia neque honestae neque inhonestae donationes sunt prohibitae, honestae erga bene **merentes amicos** uel necessarios, inhonestae circa **meretrices**.

> When they are made out of affection, neither honourable nor dishonourable gifts are prohibited. Honourable gifts are those made to deserving friends and relations; dishonourable ones are those made to prostitutes.

It is extraordinary that honourable and dishonourable affairs fall under the same category, provided that affection motivates giving[44]. It is even more revolutionary that *affectio*, a concept closely related to *affectio maritalis*, here appears in the context of gifts given to prostitutes[45]. The jurist applies a term which is key to marriage legislation to extramarital affairs, resembling the poetics of Catullus or Ovid. The radically different groups of *merentes amicos* and *meretrices* come together by means of the etymological link between *merentes* and *meretrices*. The difference between the reciprocal exchanges of *amicitia* and commodity transactions with prostitutes collapses; *merentes amici* and *meretrices/amicae* belong to the same category. The jurist relies on the semantic range of *merere*, in order to blur the distinction between worthy friends and mercenary courtesans, between value and price; the verb means «to earn money (by prostitution)» (see *OLD mereo* 1b) and «to have a merit, to deserve» (see *OLD mereo* 4). By bringing together deserving friends and prostitutes, Ulpian subtly implies a radical redefinition of the etymological link between *meretrix* and *merere.* Latin love elegy and juristic discourse may have more in common than we think. The etymologies they imply are often uncontroversial, but their innovative interpretations may radically change concepts of legality.

In Latin poetry, the origins of words are often discussed in legal contexts. A good example is Ovid's *Fasti*, a work in which the poet's interview of divine figures often resembles a client's consultation of a jurist. The pursuit of etymological derivations is embedded in a trial setting. Book V of the *Fasti*, for instance, features three speeches of the Muses, who dispute the etymology of May. Polyhymnia etymologizes *Maius* from *Maiestas*, Urania from *maiores* ('ancestors'), and Calliope from *Maia*. Ovid plays the role of a judge in this etymological dispute but is unable to give a verdict. There is a similar dispute about the etymology of June at the beginning of Book VI. In the *Fasti*, a work whose very title is a reference to legal action, the poet repeatedly casts his search for true causes and etymologies as legal

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[44] For a discussion of this passage and its similarities with the poetics of Latin love elegy, see Ziogas 2021, 273-275.

[45] McGinn 1998, 336 is right to argue that *affectio* falls under the regime of gifts made between spouses.

disputes. Ulrich Gebhardt argues convincingly that in the *Fasti*, the search for true aetiologies is cast as a legal procedure[46].

Building on Gebhardt, I argue that there is a link between etymological search and legal procedure or consultation. The quasi-legal disputes of the etymologies of May and June at the beginnings of *Fasti* V and VI are the most prominent examples, but the legalistic dimension of etymologizing is both pervasive and underexplored. The etymology of April in *Fasti* IV is a case in point. While Ovid is noncommittal when it comes to pronouncing a judgment about the etymology of May and June, he makes clear right from the beginning which etymology of April he thinks is correct (61-62):

> sed Veneris mensem Graio sermone notatum
>   auguror: a spumis est dea dicta maris.

> But I surmise that the month of Venus took its name from the
> Greek language: the goddess was called after the foam of the sea.

Ovid here says that Aprilis is from Aphrodite, whose name was etymologized from ἀφρός. The oldest and most authoritative source of this etymology is Hesiod and Ovid's grandiloquent *Graio sermone* alludes to the archaic Greek poet[47]. It is remarkable that Ovid presents his etymological explanation here as a performance of augury. The name (Aprilis in this case) is a sign (cf. *notatum*) laden with hidden meaning. The poet decodes its semantics by etymologizing it. He dissects its constituents and reads its true message. The phrase *nomen omen*[48] suggests that discovering the true meanings of words is an act of augury. It is not a coincidence that the augurs, the official interpreters of auspices, were tirelessly exploring antiquarian sources and etymologies. This is precisely Ovid's persona in the *Fasti* in general and in the couplet quoted above in particular. But the augurs were also authoritative interpreters of the law[49]. Quintus Mucius Scaevola Augur (c. 169-88 BCE), for instance, was a prominent Roman jurist. The name and the law are symbols decoded by a learned augur.

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[46] See Gebhardt 2009, 283-303.

[47] For the etymology of Aphrodite from ἀφρός, see Hesiod, *Theogony* 190-200 (especially 190-191 ἀμφὶ δὲ λευκὸς / **ἀφρὸς** ἀπ᾽ ἀθανάτου χροὸς ὤρνυτο, «a white foam rose up around them from the immortal flesh»). See also Cicero, *ND* III 59. For the ancient etymology of Aprilis, see Maltby 1991, 44.

[48] The earliest attestation of this wordplay seems to be Plautus, *Persa* 625 **nomen atque omen** *quantiuis iam est preti*, «The name and omen are already worth any price». Toxilus here etymologizes Lucris from *lucrum* ('profit').

[49] See, e.g., Linderski 1986.

After justifying his etymological preference, Ovid mentions an alternative etymology, which he ostensibly rejects (*Fasti* IV 85-94):

> Quo non Liuor abit? sunt qui tibi mensis honorem
>   <u>eripuisse uelint</u> inuideantque, Venus.
> nam, **quia uer aperit** tunc omnia densaque cedit
>   frigoris asperitas fetaque terra patet,
> **Aprilem** memorant **ab aperto** tempore dictum
>   quem <u>Venus iniecta uindicat alma manu</u>.
> illa quidem totum dignissima temperat orbem,
>   illa tenet nullo regna minora deo,
> <u>iuraque dat</u> caelo, terrae, natalibus undis,
>   perque suos initus continet omne genus

> To what extremes does Envy not stray? There are those who grudge you the honour of the month, and would snatch it from you, Venus. For they say that April was named from the open (*apertum*) season, because spring then opens (*aperit*) all things, and the sharp frost-bound cold departs, and earth unlocks her teeming soil, though kindly Venus claims the month and lays her hand on it. She indeed sways, and well deserves to sway, the world entire; she owns a kingdom second to that of no god; she gives laws to heaven and earth and to her native sea, and by her inspiration she keeps every species in being.

The presence of Livor in Ovid is often associated with litigation. The most prominent example is *Amores* I 15,1-8, where Livor prosecutes Ovid for being sluggish and indifferent to a military or legal career. The mention of Livor in *Fasti* IV anticipates the legalistic setting. The periphrastic combination of *uelle* with the perfect infinitive (*eripuisse*) echoes the language of ancient laws. Ovid is fond of this legal idiom as Daube 1966 shows in his discussion of *Amores* I 4. Ovid's *Am.* I 4,38 *oscula praecipue nulla dedisse uelis* «above all, you had better not wish to have given him any kisses» is the rather rare form of decree *ne quis fecisse uelit*. In other words, Ovid uses legal diction to describe Livor's attempt to rob Venus of the etymological association of Aprilis with her name.

But Venus reclaims the etymology of April in a way that refers to reclaiming stolen property. There is a clear reference to the *manus iniectio* in line 90. The *manus iniectio* occurs before the praetor in the *uindicatio*[50]. According to this legal ritual, a person who claimed that another was withholding their rightful property would

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[50] On this legal procedure in Propertius, see Cairns 2000; in Ovid, see Daube 1966, 227; Gebhardt 2009, 299.

seize the property and make a formal declaration that the *res* ('chattel') was his (see Gaius, *Inst.* 4.16; cf. Ulpian *Digest.* XI 7,14). This is what Venus does in order to seize the month of April from those who snatched it from her. It is remarkable that what Venus claims here is not a *res*, but a *nomen.* Ovid's legal procedure bridges the gap between the signifier and the signified. Note also that the legal drama of April's etymology is followed by Ovid's hymnic praise of Venus. In this hymn, the goddess is hailed as a universal legislator (*Fasti* IV 93-94). After she reclaims ownership of April in an act of *uindicatio* and trumps Livor's attempt to dispossess her of her rightful property, she features as the sovereign legislator. Etymological debate is thus subjected to legal procedure.

In other sources, the two etymological versions of Aprilis (from Aphrodite or from *aperire*) are sometimes quoted without the author making a judgment. Verrius Flaccus, for instance, in his monumental *Fasti Praenestini*, mentions both (Degrassi, *Inscr. It.* XII 2,126-127):

> **[Aprilis a] V[e]n[ere],** quod ea [cum Anchisa iuxta mater fuit Aene]ae, regis [Latinor]um, a quo p(opulus) R(omanus) ortus e[st. **Alii ab Ape]ri[li]** q[uod]am i[n m]ense, quia fruges flores animaliaque ac maria ac terrae **aperiuntur**

> Aprilis from Venus, because she mated with Anchises and became the mother of Aeneas, king of the Latins, from whom the Roman people originates. Others from Aperilis, because crops, flowers, and creatures, in the sea and on the earth alike, 'spring' (*aperiuntur*) in this month.

Macrobius (*Saturnalia* I 12-13) attests that Cingius objected to the etymology of Venus from Aphrodite and calls those who offer this etymology ill-informed (*inperite quosdam opinari*). He argues that the Roman ancestors established not a single holy day nor any significant sacrifice to Venus in the course of this month. Macrobius adds that Varro agrees with Cingius[51]. In *De lingua Latina*, Varro first gives the etymology of Aprilis from Aphrodite (*LL* VI 33 *secundus mensis, ut Fuluius scribit et Iunius, a Venere, quod ea sit Aphrodite*, «the second month, as Fulvius and Iunius write, from Venus, because she is Aphrodite»)[52]. But then he promptly rejects it for the alternative derivation from *aperire* (*cuius nomen ego antiquis litteris quod nusquam inueni, magis puto dictum, quod uer omnia aperit, Aprilem*, «but I have nowhere found her name in the old writings about the month, and so think that it

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[51] See Fantham 1998, 101-102.

[52] The old Roman calendar started with March, that is why April appears as the second month here.

was called April rather because spring *aperit* 'opens' everything»)[53]. Interestingly, Ovid attacks Varro, putting him in the camp of Envy for his etymological reasoning.

The sources that mention and discuss the etymologies of April often show a preference for one over the other. At times, there is a clear controversy (when Cingius, for instance, dismissed the proponents of the Greek etymology as ignorant). Verrius Flaccus does not take sides – at least not clearly. He first gives the etymology of Aprilis from Aphrodite, but note how he supresses any reference to the Greek name and emphasizes the role of Venus as the ancestress of all Romans. Verrius Flaccus, a scholar in Augustus' inner circle, foregrounds an etymology that would draw attention to the prince's claim that his family descend from Venus. Etymology in the monumental work of the *Fasti Praenestini* is subtly, but clearly political. The Roman etymology of Aprilis from *aperire* is vaguely attributed to 'others' and given second place. Interestingly, Ovid gives a similar genealogical explanation to justify the Romanness of his Greek etymology (see *Fasti* IV 63-81). The poet then quotes the second etymology from *aperire* and rejects it. In this section of the *Fasti*, Ovid seems to be magnifying the structure and message of the *Fasti Praenestini.*

But what is missing in Varro, Verrius Flaccus or Macrobius is the legal dimension of this etymological dispute that features prominently in Ovid. How can we explain this? There are two ways. One way is to say that Ovid dramatizes etymological debate by turning it into legal action. Legalese and legal procedure are not unpoetic in Ovid. Quite the contrary, they add some courtroom drama to dry antiquarian pursuits. Livor first snatched April from Venus. Venus then reclaimed the month in a legal procedure and is subsequently hailed as a sovereign legislator in a hymn. We may interpret all this as an Ovidian innovation related to his fondness of adding legal colour to pursuits and situations that have ostensibly nothing to do with the law. But I think we can do better than this. In my view, the legal dimension of Ovidian etymologizing is not another glib witticism of an endlessly playful poet. Ovid points out that searching for the origins of words is something that concerns the law. He thus engages with the tradition of etymologizing in the schools of law, in legal procedure, and in the juristic interpretations of statutes in the age of Augustus.

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[53] See De Melo 2019, 840. On Varro's etymological procedure, see Taylor 1975; Blank 2008; De Melo 2019, 36-45.

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