

# Law and Love: Legal Terminology in Roman Elegy

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## Abstract

*This paper analyses the use of legal terminology in Roman love elegy of the 1st century BCE. Catullus, Tibullus, and Ovid all employ this seemingly strange vocabulary in their love poetry for different ends, while also sharing some specific similarities. This legal vocabulary does not make these love poems stilted, dry, nor unemotional, but is used deftly and rather indicates an interesting layer of Roman concern and preoccupation.*

Love poetry has many vocabularies, but writing of love through legal terminology is not a common choice. The wild concept of love bound with a vocabulary of contract, obligation, and legal suits would seem to make this poetry stilted, unemotional, and removed, but instead these Roman elegists employ this language to a powerful effect. Catullus, Tibullus, and Ovid use legal terminology in their elegy for different ends. Catullus appropriates this contractual vocabulary because the social world of Rome as an obligatory system already has an extensive vocabulary that prizes concepts like *fides*,\* which Catullus prizes *fides* in the sphere of love. Catullus uses legal terminology self-righteously to depict himself as the one wronged in his relationships partly because he believes that the gods are concerned with this contractual system of love. Conversely, Tibullus believes that the gods do not sanction this view of love as legally contractual and encourages lovers to perjure

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\* Trustworthiness, honour, integrity. (All translations are my own.)

frequently and freely. He uses legal terminology in order to separate the religious sphere from the contractual sphere and to undermine the contractual sphere's gravity in its relations with the love sphere. In Ovid's time, the first Roman Emperor Augustus does something surprisingly Catullan: he conflates the legal and love spheres. With his *lex Iulia*\* Augustus imposed law on personal love relationships. Ovid uses his legal terminology in a subversive way to undermine Augustus' legislation. Although Catullus, Tibullus, and Ovid all use legal terminology for their own unique purposes, a surprising number of similarities exist between them. Ovid is against Catullan and Augustan conflation of the legal and love spheres, yet both poets use this legal terminology in instances where they are wronged. Catullus has a selective sense of obligation as he is an adulterer, just as Ovid is. Tibullus and Catullus both speak of the impermanence and unreliability of oaths. These three poets, with their differences and similarities, all produce elegy through a legal vocabulary, none of which is stilted, unemotional, or removed.

Catullus describes human relationships in the vocabulary of "honest dealing and the proper repayment of obligations[,]... almost obsessively" dwelling on the themes of *fides* and *foedus*.†<sup>1</sup> Lyne posits that because "lovers had not yet worked out a language of mutual

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\* Julian Law, "Iulius" is the Roman family name of Caesar.

† Treaty, league, or agreement.

commitment,” Catullus used the “highly developed code, and therefore language, of social commitment” – *amicitia*.<sup>\*2</sup> Thus in 76, Catullus makes it clear that he has not violated any “*fidem*”<sup>†</sup> in his “*foedere*”<sup>‡</sup> with Lesbia.<sup>3</sup> Miller notes that *foedus* is a term “used for formal agreements between aristocratic men” which would have resulted in “the formal declaration of *amicitia*.”<sup>4</sup> Catullus imposes a *foedus*, which traditionally “means a bond, a treaty, a political pact made by two equally powerful – in other words, male-parties...demand[ing] unswerving loyalty,” onto his male-female romantic relationship with Lesbia.<sup>5</sup> Catullus does not make this choice of vocabulary simply because lovers lacked their own appropriate terminology, but because he prizes the virtues of loyalty and reciprocal obligation in the contractual social world of *amicitia* as much as in the sphere of love. The strength of the term *foedus* mirrors how strongly Catullus believes in the contractual obligation inherent in romantic relationships. In the epyllion 64, Catullus describes the marriage of Peleus and Thetis as a “*felici foedere*”<sup>§</sup> and earlier simply as a “*foedere*.”<sup>6</sup> The obligation required in a marriage, such as that of Peleus and Thetis, or in a romantic relationship, such as that of Catullus and Lesbia, is comparable to the responsibility expected in a treaty or league.

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\* Friendship or alliance.

† Refer to fides note.

‡ Refer to foedus note.

§ A favourable treaty.

When using contractual and legal vocabulary in his poems, Catullus ensures to portray himself as the member of the contract who has been wronged, “the honest partner callously defrauded.”<sup>7</sup> In 76 “*quaecumque homines bene cuiquam aut dicere possunt / aut facere, haec a te[, Catulle,] dictaque factaque sunt.*”<sup>8</sup> Catullus has done and said every conceivable good and moral thing to Lesbia and all of them have been lost on Lesbia’s “*ingratae...menti.*”<sup>9</sup> Catullus goes on to assert in 87 that “*nulla fides ullo fuit umquam foedere tanta, / quanta in amore tuo ex parte reperta mea est.*”<sup>10</sup> Not only is Catullus vigilant in upholding his contractual obligations in romantic relationships, he sets the record for the most *fides* found in any *foedus*. Catullus also demonizes his male partners in relationships to show that he has the moral high ground. In 81, Juventius does not know “*quod facinus facias*”<sup>§</sup> when he dallies with another man from Pisaurus and dares to put him in front of Catullus.<sup>11</sup> Similarly, Catullus uses legal language to villainize Gellius, a rival for Lesbia’s affections, by claiming “*quantum suscipiat sceleris,*”<sup>\*\*</sup> that “*nihil est quicquam sceleris, quo prodeat ultra*”<sup>††</sup> and that Gellius

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\* Whatever men are able to either speak or do well for someone, these by you, Catullus, were said or done.

† Ungrateful mind.

‡ No trust so great was ever with any agreement/treaty, so great as from my part was found in my love of you.

§ What crime you have done.

\*\* How great a wicked act he undertakes.

†† There is no other crime, to which he can proceed farther.

loves all “*culpa*”<sup>\*</sup> and all “*sceleris*.”<sup>†12</sup> A reason Catullus is so sanctimonious and emphatic is his belief that there is a divine element in these situations, that the gods truly care about contractual obligation in romantic relationships and that they will side with the person in the moral right.

Wiseman states that in 76 “we are to think of a *foedus* sanctioned by the gods – that is, an agreement or contract bound by oath – which [Catullus] has dutifully kept, and [Lesbia] has broken”.<sup>13</sup> Catullus adds this religious element to the *foedus* when he proclaims he has not “*divum...numine abusum*”<sup>‡</sup> with any “*foedere...ad fallendos...homines*.”<sup>§14</sup> These lines imply the gods’ interest in and upholding of human relationship contracts. Catullus continues with these religious overtones by describing *fides* as *sanctam*.<sup>\*\*15</sup> Henry notes this as well when he states that in Catullus’ view a man is permitted “moral satisfaction” only “if he never profanes holy fides, that is, if he observes the dictates of his conscience in legal and contractual affairs.”<sup>16</sup> This blending of religion and legality, the gods and contracts is startling. Henry argues that Jupiter is a “*deus fidius*, a divine power who enforced the obligation of fides and punished its neglect.”<sup>17</sup> It is no wonder that Catullus is

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\* Wrongdoing.

† Crime.

‡ Abused the power of the gods.

§ Treaty for deceiving men.

\*\* Sacred.

so concerned with upholding *fides* and showing that he has not defaulted in his contractual relationships.

Catullus believes to such an extent that the gods are concerned with the contractual justice of love that his Ariadne “*iustam a divis exposcam prodita multam*”<sup>\*</sup> for Theseus who has not upheld his obligation in their romantic contract.<sup>18</sup> Catullan gods are so concerned with the breaking of relationship contracts that as an offender, as in the lyric 30, even “*si tu oblitus es, at di meminerunt, meminit Fides, / quae te ut paeniteat postmodo facti faciet tui.*”<sup>†19</sup> Catullus’ view of religion and legal contract harkens back to the Regal period, long before his time.

In the Regal Period “a violation of Fides, the sacred bond formed between the parties to an agreement, was an act of impiety which laid a burden on the conscience of the delinquent and may even have entailed religious disabilities.”<sup>20</sup> The word for oath, *iusiurandum*, “is derived by some from *louisurandum*”<sup>‡</sup> illustrating a connection between the gods and contracts.<sup>21</sup> But this perspective is from a period over half a millennium before Catullus writes. Tibullus, an author who wrote three decades after Catullus, does not at all hold the belief of combining religion and contract.

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\* Having been betrayed demands from the gods a just penalty.

† If you forget, at least the gods remember, Faith remembers, who will make it so that you regret your deeds afterwards.

‡ “louis” being the genitive of “Iuppiter” meaning the god Jupiter.

Tibullus seems to flout the gravity of the religious and contractual elements in romantic relationships. Tibullus' *praeceptor amoris*\* Priapus advises “*nec iurare time: ueneris periuria uenti / inrita per terras et freta summa ferunt.*”<sup>†22</sup> Priapus is encouraging perjury in abundance, something Catullus would never condone. Tibullus states that “*uetuit Pater ipse ualere, / iurasset cupide quidquid ineptus amor,*”<sup>‡</sup> that Jupiter himself forbade the oaths of love to have any power so that a lover can swear whatever he wants.<sup>23</sup> This Jupiter is a far cry from the one Henry posits upheld fides and punished those who did not. Buckler states that in the Regal Period “to make an oath was to call upon some god to witness the integrity of the swearer, and to punish him if he swerved from it.”<sup>24</sup> Unlike Catullus, Tibullus departs from this line of thought as Priapus tells lovers that “*perque suas impune sinit Dictynna sagittas / adfirmes, crines perque Minerua suos,*”<sup>§</sup> lovers surely not wanting Diana and Minerva to come after them and punish them for their perjuries.<sup>25</sup> Miller notes that it is odd that Priapus would advise swearing by “perpetual virgins... in an erotic context” and that Diana and Minerva “would aid and abet perjury in the service of desire.”<sup>26</sup> It is not odd if

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\* Teacher of love.

† Do not fear swearing: winds bear away the false oaths of love through lands and the furthest seas.

‡ Father himself forbade oaths to have power, whatever foolish love eagerly had sworn.

§ Diana with impunity allows that you swear by her arrows, and Minerva by her hair.

Tibullus' goal here is to separate the religious, legal, and love spheres, satirizing the weighty interactions between them. Tibullus' aim is just diametrically opposed to Catullus'.

Ovid's *Amores*\* 2.5 is set up as a legal love case and therefore is full of legal terminology. Corinna's "*crimen*"† is not found out by conventional means such as "*deceptae...tabellae*"‡ or "*data...munera*,"§ but in the way she has learned to kiss.<sup>27</sup> Ovid wishes he could "*arguerem*"\*\* so that he would not be able "*uincere*."<sup>††28</sup> Unwilling to accuse Corinna, Ovid asks miserably why his case, "*causa*," is so good.<sup>29</sup> Ovid uses the following terminology in 2.5: "*defendere*," to defend; "*non feci*," I plead not guilty; "*rea*," defendant; "*crimina*," crimes; "*criiniciam...manus*," a legal phrase meaning to take back possession of stole property; "*iura*," laws; "*in...uenit*," legal term meaning to be entitled to; "*bona*," property; "*communia*," common property; "*ista*," which can mean defendant; and "liquet in the impersonal [in line 24, which] is frequent in legal terminology."<sup>30</sup> Miller posits that in Ovid's *Amores* 1.4, the companion piece to 2.5, he may be "deliberately flouting Augustus' moral reform."<sup>31</sup> Furthermore, "the language used in the poem is deliberately deceptive and...through it Ovid is at least

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\* Loves.

† Crime.

‡ Intercepted tablets.

§ Gifts having been given.

\*\* Plead his case.

†† To win his suits.

suggesting the possibility of violating the *lex Iulia*'s ban on adultery."<sup>32</sup> In 18 B.C.E. Augustus enacted two new laws: "the *lex Julia de maritandis ordinibus* (Julian law on the regulating of the marriages of the social orders)" and "the *lex Julia de adulteriis* (Julian law on adultery)."<sup>33</sup> The conflation of the legal and love spheres, "the first time sexual offenses had been punished as public crimes," was of great concern to Ovid.<sup>34</sup> In 2.5's legal love case, Ovid is subverting Augustan legislation by trying an adultery suit as an adulterer and twisting the concept of a legal case to fit with elegiac behaviour. For example, the evidence for Corinna's guilt is *tota labellis / lingua tua est nostris, nostra recepta tuis*;<sup>\*</sup> it is in her kiss.<sup>35</sup> Ovid satirizes the *lex Iulia* by trying a case in its fashion while being a transgressor of the laws himself. Ovid "inverts normal Roman values, portraying transgression as freedom and the law as the site of coercion and implicit violence."<sup>36</sup>

Though Ovid is against the conflation of the legal and love spheres that the *lex Iulia* promoted and that Catullus seems to endorse, both authors use legal vocabulary in their poetry when they are wronged. Catullus is wronged in relationships and thus gains the moral high ground by proving that he has upheld his obligation in their contracts and, similarly, Ovid uses legal jargon when Corinna has been unfaithful to him.

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\* Your whole tongue is with my lips, my tongue having been taken back with your lips.

Another similarity between Catullus and Ovid lies in the fact that they were both adulterers, though Ovid seems less hypocritical. Catullus seems to have a very selective sense of obligation as he champions loyalty in relationships yet is fine with philandering with Lesbia despite her “*praesente viro.*”<sup>\*37</sup> Catullus “demanded the quasi-contractual loyalty of Roman friendship and played with the idea of fidelity in a relationship which was clearly extra-marital and, at least for a time, adulterous.”<sup>38</sup> Tibullus, unlike Catullus, endeavours to separate the religious, legal, and love spheres, but both poets have a similar motif of natural elements carrying away oaths. Catullus reminds us that “*mulier cupido quod dicit amanti, / in vento et rapida scribere oportet aqua*”<sup>†</sup> just as Tibullus through Priapus advises lovers to swear love oaths frequently as “*ueneris periuria uenti / inrita per terras et freta summa ferunt.*”<sup>‡39</sup>

The phenomenon of Roman elegists using legal vocabulary for different ends yet still sharing similarities in some aspects of their usage attests to the complexity of this rarely examined device. There is more to describing a romantic relationship as a *foedus*, advising lovers to perjure freely, and staging a court case about romantic infidelity in an adulterous relationship than just

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\* Present husband.

† What a woman says to a desirous lover, ought to be written on the wind and rapid water.

‡‡‡ Winds bear away the false oaths of love through lands and the furthest seas.

using another vocabulary to write poetically about love. The issue of legal terminology in elegy with its religious, social, and historical implications is an important one with much more left to study.

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- <sup>1</sup> T. P. Wiseman, *Catullus and His World: A Reappraisal* (London: Cambridge University Press, 1985), 105.
- <sup>2</sup> R.O.A.M. Lyne, *The Latin Love Poets From Catullus to Horace* (Oxford: Clarendon Press, 1980), 25; 24.
- <sup>3</sup> Daniel H. Garrison, ed., *The Student's Catullus*, 3<sup>rd</sup> ed. (Norman: University of Oklahoma Press, 2004), 76.3.
- <sup>4</sup> Paul Allen Miller, ed., *Latin Erotic Elegy: An Anthology and Reader* (London: Routledge, 2002), 117.
- <sup>5</sup> Judith P. Hallett, "The Role of Women in Roman Elegy: Counter-Cultural Feminism," *Arethusa* 6.1 (Spring 1973): 103-124., 109-110.
- <sup>6</sup> Garrison, *Latin Erotic Elegy*, 64.373; 64.335.
- <sup>7</sup> Wiseman, *Catullus and His World*, 105.
- <sup>8</sup> Garrison, *The Student's Catullus*, 76.7-8
- <sup>9</sup> *Ibid.*, 76.9.
- <sup>10</sup> *Ibid.*, 87.3-4.
- <sup>11</sup> *Ibid.*, 81.6.
- <sup>12</sup> *Ibid.*, 88.4; 88.7; 91.10; 91.10.
- <sup>13</sup> Wiseman, *Catullus and His World*, 167.
- <sup>14</sup> Garrison, *The Student's Catullus*, 76.3-4.
- <sup>15</sup> *Ibid.*, 76.3.
- <sup>16</sup> R. M. Henry, "Pietas and Fides in Catullus," *Hermathena* 75 (May 1950): 63-68 and 76 (Nov 1950): 48-57., 65.
- <sup>17</sup> *Ibid.*, 49.
- <sup>18</sup> Garrison, *The Student's Catullus*, 64.190.
- <sup>19</sup> *Ibid.*, 30.11-12.
- <sup>20</sup> W. H. Buckler, *The Origin and History of Contract in Roman Law Down to the End of the Republican Period, 1895* (Littleton: Fred B. Rothman & Co., 1983), 4.
- <sup>21</sup> *Ibid.*, 9.
- <sup>22</sup> Miller, *Latin Erotic Elegy*, 1.4.21-22.
- <sup>23</sup> *Ibid.*, 1.4.23-24.
- <sup>24</sup> Buckler, *The Origin and History of Contract*, 9.
- <sup>25</sup> Miller, *Latin Erotic Elegy*, 1.4.25-26.
- <sup>26</sup> *Ibid.*, 139.
- <sup>27</sup> *Ibid.*, 2.5.6; 2.5.5; 2.5.6.
- <sup>28</sup> *Ibid.*, 2.5.7.
- <sup>29</sup> *Ibid.*, 2.5.8.
- <sup>30</sup> *Ibid.*, 2.5.9-12,14,30-32; *Ibid.*, 256.
- <sup>31</sup> *Ibid.*, 249.
- <sup>32</sup> *Ibid.*, 249.

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- <sup>33</sup> Judith Evans Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (London: Routledge, 2002), 84.
- <sup>34</sup> *Ibid.*, 84.
- <sup>35</sup> Miller, *Latin Erotic Elegy*, 2.5.57-58.
- <sup>36</sup> *Ibid.*, 253.
- <sup>37</sup> Garrison, *The Student's Catullus*, 83.1.
- <sup>38</sup> Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the time of Ulpian* (Oxford: Clarendon Press, 1991), 303.
- <sup>39</sup> Garrison, *The Student's Catullus*, 70.3-4; Miller, *Latin Erotic Elegy*, 1.4.21-22.