

AUGUSTUS, LEGISLATIVE POWER, AND THE POWER OF APPEARANCES

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1. Introduction

The study of the impact of the Augustan revolution in the history of Roman law is one of the enduring issues troubling Romanists.¹ Augustus fundamentally changed the history of Roman law by creating the powers of the emperor in the field of law as judge and legislator.² While his predecessors like Sulla and Caesar have been easy to classify as champions of one segment of Roman society against others, in the historical memory of Augustus no such clarity exists. Part of the issue is undoubtedly the result of his own conscious policy to appeal to the senators with one message, to the *equites* with another and to the plebs and provincials with different nuanced tones. As a public relations campaign, this worked. For later historians, this made Augustus into an enigmatic figure whose actions, powers and positions remain a mystery.³ The relationship between messages, images, and reality is fraught with complexity, but complexity is the key to any proper scientific inquiry. Since I first met Laurens Winkel at a SIHDA conference a decade ago (after I had sent my first proper article to the *Tijdschrift*), this has been one of his most enduring messages in our many conversations in Rotterdam, Rome, Helsinki, and elsewhere.

- 1 See, for example, Spagnuolo Vigorita *Le nuove leggi Un seminario sugli inizi dell'attività normativa imperiale* (1992); Crook "Augustus: Power, Authority, Achievement" 1996 *CAH* (2nd ed.) vol. 10 at 113-123; Serrao "Il modello di costituzione. Forme giuridiche, caratteri politici, aspetti economico-sociali" in Schiavone et al. (eds.) *Storia di Roma, vol 2.2 I principi e il mondo* (1991) 29-71. I shall cite only a few examples of the vast literature that has emerged on Augustus' impact. For an illustration of the growth of that literature, see Hurler's bibliography of studies written between the years 1996-2006 on Augustus and the imperial regime, published in *Anabases* 6 (2007) 187-218.
- 2 Millar *The Emperor in the Roman World* (1977) 517; Crook (n. 1) 123: "The emergence of the ruler as supreme judge and head of the legal order is the principal formal difference between the Republic and Empire."
- 3 See, for example, the essays in Rivière (ed.) *Des reformes augustéennes* (2012).

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The purpose of this essay is to explore the transformation of the legislative tradition during the Augustan era through the narrative tradition that we find in historical sources. How were the legislative powers of Augustus understood during his time and by later Roman historians? For this article, I shall analyse the transformation of the understanding of his legislative powers through two narrative traditions, that we dub respectively the Republican and the sovereign narratives. The first narrative tradition, which appealed to Republican traditionalism, depicted Augustus as merely a Roman magistrate who proposed laws that were then approved by the people, while the second viewed Augustus as a quasi-divine monarch with sovereign powers over the law. Thus what we are looking for are the different historical views of Augustus' legislative powers.

2. The evidence

The division between republican traditionalism and monarchical single rule was nowhere more evident than in the field of legislation. The traditional republican custom was that after magistrates had proposed laws, these were passed by one of the different popular assemblies. Even though reformers of the late Republican era such as Sulla introduced comprehensive programmes of administrative and legal change, they were nominally implemented as popular laws. In the case of Augustus, two narrative traditions are known, namely the Republican one originating from Augustus himself, and the other relying mainly on later Roman historians who depicted him as a sovereign. According to Augustus, he proposed laws that were then accepted, whereas later tradition considered the emperor to have had legislative power as from the time of Augustus. The authoritarian narrative is also reflected in parts of the tradition of the time, in which Augustus was seen to be the author of laws. For example, Ovid, in the *Metamorphoses* (15.832-834), called Augustus a bringer of peace and the most just legislator. Whether Ovid was referring to Augustus as the proposer of legislation or as a legislator remains uncertain, because that distinction was not necessarily relevant in his perspective.

The historical record of Augustus' legislative powers derives from two opposing statements. The first is one by Augustus himself, who in the *Res Gestae* says that he repeatedly rejected extraordinary powers proposed to him, for example that he be the supervisor of laws and morals, without a colleague and with supreme power.⁴ Augustus insisted that he obeyed the republican *mos maiorum* and rejected all powers that would have been inconsistent with it, operating instead through his superior *auctoritas*. In

4 *Res Gestae* (RG) 6: “[W]hen the Senate and the Roman people unanimously agreed that I should be elected overseer of laws and morals, without a colleague and with the fullest power, I refused to accept any power offered me which was contrary to the traditions of our ancestors” (tr. Shipley). The most recent texts are Cooley *Res Gestae Divi Augusti* (2009); Scheid *Res Gestae Divi Augusti* (2007). See, also, Brunt and Moore *Res Gestae Divi Augusti* (1967); Belloni *Le “Res Gestae Divi Augusti”* (1987); Gagé, *Res Gestae Divi Augusti* (1935); and Mommsen's *editio princeps* of 1883. New fragments of the *Res Gestae* were found recently: Thonemann “A Copy of Augustus' *Res Gestae* at Sardis” 2012 *Historia* 61 282-288. For a historiography and commentary on the text, see, also, Ridley *The Emperor's Retrospect Augustus' Res Gestae in Epigraphy, Historiography and Commentary* (2003).

addition, he used his tribunician power to take steps requested by the Senate.⁵ Augustus also noted that new laws passed at his suggestion (*me auctore*) reintroduced many practices that had been disappearing. He himself initiated practices for posterity to imitate.⁶

On the other hand, the image of the emperor as a legislating sovereign derives mainly from later sources such as the *lex de imperio Vespasiani*, Suetonius, Gaius and Dio. They stress the emperor's superiority with regard to law, in that he is both above the law and his command is the law. This power came to be seen as originating with Augustus and the main issue has been whether or not it was some official step that conferred total power on him.⁷

Suetonius and Dio both describe extraordinary legislative powers given to Augustus. According to Suetonius, Augustus received the power to supervise morals and the laws in perpetuity (*morum legumque regimen aequae perpetuum*); and he revised existing laws and passed some new ones, especially regarding extravagance, adultery, chastity, bribery and the encouragement of marriage.⁸

Dio says that in 24 BC the Senate made an extraordinary decision. Augustus had promised to give the Roman people four hundred sesterces each, but forbade the publication of the relevant edict before the Senate had approved the measure. The Senate then resolved to free Augustus from all subjection to the law so that he could be really independent and sovereign.⁹ Brunt claims, with reference to the *lex de imperio Vespasiani*, that Dio misconstrued the resolution as a general one, probably because in his day the emperor was *legibus solutus*.¹⁰ When, in response to the natural disasters of 22 BC, the populace demanded that Augustus take the title of dictator, Dio (54.3.1) claims that through his actions "he showed himself, in form as well as in name, both law-giver and arbitrary ruler" (tr. Cary).

If Suetonius and Dio are thought to have based their depiction of Augustus' powers on the model of the later emperors, what legislative powers did Augustus really have? Scholars are in broad agreement that Augustus' permanent powers after 23 BC included *imperium maius* both in the provinces and inside the *pomerium*, the right to convene the Senate and an *auctoritas* superior to all magistrates.¹¹ Honoré, with reference to the case of Lucius Lentulus and the introduction of codicils, discussed in Justinian's Institutes, argues that Augustus did not believe that he had the authority to change the law by a

5 *RG* 6.2: "Those things which at that time the senate wished me to administer I carried out by virtue of my tribunician power. And even in this office I five times received from the senate a colleague at my own request" (tr. Shipley). Tribunician power in this case would mean a plebiscite.

6 *RG* 8.12: "By the passage of new laws I restored many traditions of our ancestors which were then falling into disuse, and I myself set precedents in many things for posterity to imitate" (tr. Shipley).

7 Crook (n. 1) 118-119.

8 Suetonius *Aug.* 27.5.

9 Dio 53.28.2.

10 Brunt "Lex de imperio Vespasiani" 1977 *Journal of Roman Studies* 67 at 109.

11 Serrao (n. 1) 40. Ehrenberg "Imperium maius in the Roman Republic" 1953 *American Journal of Philology* 74 at 113-136.

command. Instead, he sought the advice of experts and preferred to use his considerable influence to push through reforms.¹²

There is little evidence that Augustus would have utilised his extraordinary powers to make his word law, especially since he mentions in the *Res Gestae* that this power was repeatedly offered to him. Instead, he proposed legislation to the assemblies and motions to the Senate, where the decisions would be valid through their own authority. Augustus knew that he needed to heed public perceptions and the numerous different interpretations given to his acts and words.¹³ Meanings and messages were sought in each of his acts, whether public or private, by observers such as the Senate and the people relying on the semantic registers of the Roman political tradition. It was not only his appearance at public spectacles such as the circus or giving a *contio*, but also his voting as a citizen in the assembly that strengthened the continuity of the republican narrative.¹⁴

We know of only a few administrative edicts issued by Augustus. They may be seen as continuing the republican tradition of magistrates such as consuls, praetors and aediles publishing edicts regularly. They include the edict banishing Ovid, as well as epigraphically attested texts such as the edict on the aqueduct at Venafro and the more recently discovered Hispanian edict.¹⁵ Some claim that as from the time of Augustus the power to give imperial constitutions derived not from the *imperium*, but from the *auctoritas principis*.¹⁶

The sources seem to indicate that when enacting laws, Augustus copied Caesar's example in following republican procedures but in reality, as the holder of true power, shaping the legislation himself. Caesar's legislative measures were all approved by the assemblies, but whether these had any real say in the matter is difficult to assess. When it came to elections, it has been suggested that Caesar simply sent the tribes a note containing the name of the candidate he recommended. Caesar influenced matters through indirect guidance, not direct control. Because of his control over the assemblies, it was clear that progress in a political career depended on him.¹⁷

3. Legislation on marriage

The best-known example of Augustus' legislative power is his famous legislation on morals and marriage.¹⁸ Augustus was the prime mover of this legislative programme,

12 Honoré *Emperors and Lawyers* (1994) 7-8 discussing, though not referring to, Inst. 2.25pr.

13 Crook (n. 1) 121-122. The first legislative measure taken by the Senate was the *Senatusconsultum Silanianum* of AD 10. Schiller "Senatus consulta in the Principate" 1958/9 *Tulane Law Review* 33 at 499.

14 Flaig *Ritualisierte Politik Zeichen, Gesten und Herrschaft im Alten Rom* (2003) 117.

15 Johnson, Coleman-Norton and Bourne *Ancient Roman Statutes* (1961) 114-115 n. 136; Alföldi "Das Neue Edict des Augustus aus El Bierzo in Hispanien" 2000 *ZPE* 131 at 177-205. Regarding Augustus' edicts, see, also, Suetonius *Aug.* 53.1.

16 Magdelain *Auctoritas Principis* (1947) 77-79.

17 Sumi *Ceremony and Power Performing Politics in Rome between Republic and Empire* (2005) 54-57.

18 There is a vast literature on the subject, beginning with the still important Jörs *Die Ehegesetze des Augustus* (1894).

which was the most famous part of his legacy.¹⁹ However, the fact that legislation on morals was thought necessary was in itself an admission of failure of the Roman state to attain a golden age of its own accord.²⁰

The marriage laws passed in 17 BC comprised the *Lex Julia de maritandis ordinibus* and the *Lex Julia de adulteriis coercendis*. The first law made marriage mandatory, obliged widows to remarry, and prohibited the childless and unmarried from inheriting except from blood relatives, or bequeathing anything except to blood relatives. It also introduced the *ius trium liberorum*, which gave heads of family priority in obtaining magistracies, as well as tax incentives. The second criminalised extramarital affairs by removing them from the jurisdiction of the *paterfamilias* and providing that they had to be tried in a *quaestio perpetua*. Galinsky remarks that these laws, like so much else in the Augustan programme, were experiments that were subject to modification when problems arose. A correctional move was made in the *Lex Papia Poppeia* in AD 9, which reduced the penalties imposed in the earlier legislation and increased the benefits conferred on women by the *ius trium liberorum*.²¹

Augustus' marriage laws have often been regarded as social engineering, attempts to change society through legislation. However, they are not as unprecedented as the Romans and others have claimed. According to Crook, it is often forgotten how much the state interfered in the behaviour of citizens during the Republic and how morality and family issues were debated at that time. Having said this, Crook admits that Augustus' commitment to improving morals and increasing the birth rate of the upper classes was real and consistent.²² Apart from moral and demographic improvements, another possible aim of Augustus' legislation on marriage was perhaps to elevate the status of women of the upper classes.²³ However, it is more plausible that there was an element of social control in it, with a view to both preserving differences in status and publicising the imperial commitment to the preservation of the existing order.²⁴

The legislation on morals and marriage evoked much discussion even at that time. Tacitus speaks of the failure of the Augustan marriage legislation to popularise marriage

19 Some examples of the literature: Nörr "The matrimonial legislation of Augustus. An early instance of social engineering" 1981 *Irish Jurist* 16 350-364; Badian "A phantom marriage law" 1985 *Philologus* 129 82-98; Rawson "Discrimina ordinum. The lex Julia theatralis" 1987 *Papers of the British School at Rome* 55 83-114; Cloud "Lex Iulia de ui, I" 1988 *Athenaeum* 66 579-595; Davis "Thou shalt not cuddle: Amores 1, 4 and the law" 1993 *SyllClass* 4 65-69; Jonker "A few reflections on the background of Augustus' laws to increase the birth-rate" in David et al. (eds.) *Symbolae ad ius et historiam antiquitatis pertinentes I. C. van Oven dedicatae* (1946) 285-296.

20 Galinsky *Augustan Culture An Interpretive Introduction* (1996) 128-129. Similarly, Nörr (n. 19) 350-351.

21 Galinsky (n. 20) 130-131; McGinn "The Augustan marriage legislation and social practice: Elite endogamy vs. male 'marrying down'" in Aubert and Sirks (eds.) *Speculum Iuris Roman Law as a Reflection of Social and Economic Life* (2002) 46ff.

22 Crook (n. 1) 131-132.

23 Kienast *Augustus Prinzeps und Monarch* (1982) 98.

24 McGinn "Something Old, Something New ... Augustan Legislation and the Challenge of Social Control" 2008 *Ancient History Bulletin* 22 at 1-32, emphasises the element of improvisation in the policies of Augustus.

and the family.²⁵ In fact, no other piece of legislation elicited such discussion by Roman authors, with contemporaries and historians alike commenting on it and its effects. The provisions of the laws are known to us because they were still being discussed during the time of Ulpian.²⁶ Even Suetonius noted the resistance that there was to the marriage legislation.²⁷ It is possible that it was this same legislative programme that created the image of a legislative sovereign, although even Augustus' predecessors like Sulla had introduced similar programmes.

4. Other incursions into the field of law

The contradictory narratives about Augustus, some speaking of Republican continuity and others of a quasi-divine autocrat, are also to be found in fields other than legislation. This duality may be discerned, for example, in issues like the relationship of Augustus towards the legal profession, the physical presence of the emperor in the *fora* where the trials took place, and the honours accorded to Augustus.

In the Roman legal tradition, it is well known that there was a sharp distinction between legislation initiating social change and the core of civil law. Legislation was traditionally the means of introducing reforms, whereas civil-law doctrine, based on the interplay between the praetor's edict and the opinions of jurists, developed organically. Augustus was preoccupied with the first, whereas it has not been shown that he had more than a passing interest in the second. Nevertheless, legal historians have taken a tremendous interest in his cultivation of certain lawyers, who were promoted to important positions in the administration. It has often been suggested that Labeo and Capito, the two major jurists of the time, were involved in the Augustan programme, but this is controversial. However, it should be noted that the relevant sources are from a later date.²⁸ Similarly, the controversial belief that the imperial authority conferred the privilege of *ius publice respondendi* on certain lawyers is based solely on later and contradictory sources.²⁹ On the whole, the relationship between Augustus and the jurists is a subject of ongoing controversy between those claiming that he made significant reforms to the law, and those who believe that it remained essentially unchanged. The supporters of the reform theory have argued that Augustus had a policy of promoting jurists and for that reason founded a law library in the Palatine and supported the law

25 Tacitus *Ann.* 3.25.

26 Suetonius *Aug.* 34; Ridley (n. 4) at 172.

27 Suetonius *Aug.* 34.1.

28 Dig. 1.2.2.47; Gellius 13.12.1-2; Helssig "Die römische Rechtswissenschaft im Zeitalter des Augustus" in Gardthausen (ed.) *Augustus und seine Zeit*, vol. 1.3 (1891) 901; Nörr "Innovare" (1994) *Index* 22 75: "Labeo war als Jurist und Innovator der perfekte Vollstrecker dieses augusteischen Programms"; De Giovanni "Giuristi e principe. Aspetti e problemi" in Mantovani (ed.) *Per la storia del pensiero giuridico Romano da Augusto agli Antonini* (1996) 204; Amarelli "Giuristi e principe. Conflitti compromessi collaborazioni" in Mantovani (*supra*) 183; Crook *Consilium Principis Imperial Councils and Counsellors from Augustus to Diocletian* (1955); Amarelli *Consilia Principum* (1983).

29 Dig. 1.2.2.48-49; Tuori "The *ius respondendi* and the freedom of Roman jurisprudence" 2004 *RIDA* 51 at 295-337.

schools; and they link this development to the granting of the *ius respondendi* privilege.³⁰ The supporters of legal traditionalism have maintained that the system of private law changed only slightly under Augustus, essentially continuing to develop in the way it had before. They argue that despite the Augustan legislation in some fields such as family law, the main vehicle for legal change remained the urban praetor.³¹ According to this theory, Augustus buried Caesar's ambitious plans to reform Roman law in order to retain the impression of republican legality.³²

The importance of impressions and the contradictory images of innovation and traditionalism are evident even in the archaeological remains of the Augustan period. For example, the Forum of Augustus shows how much he wanted to be seen as a part of the republican tradition. This display would have been senseless if the identity of the Romans had been completely detached from the republican tradition and the monarchical system had been accepted.³³ It has been claimed that the Forum of Augustus presented him as the new Alexander, an improved version of the Hellenistic monarch who, besides conquering, was adept at governing; and that the imagery and symbolism of the Forum of Caesar and the Forum of Augustus complement each other, which is understandable because both were completed by Augustus.³⁴ However, this is contradicted by the fact that the Forum of Augustus contained the *summi viri*, the pantheon of heroes of early Rome. The emperor's power over the law courts also increased when new seats of justice were built. The Augustan reforms of the law courts changed the topography of Rome considerably. The construction of the forum of Augustus was expedited because new space was needed for court sessions.³⁵ According to Suetonius, Augustus built the temple of Apollo next to his house in the Palatine and with colonnades linking it with Latin and Greek libraries. He often held the meetings of the Senate, as well as the revisions of the lists of jurors, in the temple.³⁶

A final contradiction within the Augustan system was the contrast between the official staunch adherence to republican procedures and the increasing number of divine honours accorded to Augustus and references to his divinity, such as that of Ovid (*Pont.* 2.2.109). Though Augustus was deified immediately after his death, which was to set a precedent for the routine deification of emperors, he was not worshipped by the state in his lifetime. He was closely involved in sacrifices made to the traditional gods and the worship of Augustan gods, but despite some indications that this was planned, no direct link was ever formed. In literature and iconography, Augustus was of course frequently depicted

30 Bauman *Lawyers and Politics in the Early Roman Empire* (1989) 40-43.

31 Serrao (n. 1) 66.

32 Honoré (n. 12) 3.

33 Eder "Augustus and the power of tradition" in Raaflaub and Toher *Between Republic and Empire Interpretations of Augustus and His Principate* (1990) 86.

34 Galinsky (n. 20) 208.

35 Suetonius *Aug.* 29.1-2; Carnabuci *I luoghi dell'amministrazione della giustizia nel foro di Augusto* (1996); Neudecker "The Forum of Augustus in Rome: Law and order in sacred spaces", in De Angelis *Spaces of Justice in the Roman World* (2010).

36 Suetonius *Aug.* 29.3.

as god-like, but he always refused direct deification by the state. However, in neither municipal nor provincial cults nor in private worship was there any such prohibition.³⁷

The success of Augustus' self-promotion may be seen in the way he is discussed by later authors. His near contemporary Seneca calls Augustus a good prince, who never avenged insults with cruelty and deserves the name of father.³⁸ He contrasts Augustus *princeps* with Augustus triumvir, saying that he was a gentle prince (*mitis princeps*); but that when he was triumvir at an early age he had wielded both the sword and the dagger, killed friends and taken part in proscriptions.³⁹ Suetonius, on the other hand, mentions that Augustus always avoided the title of *dominus* as insulting and shameful. After the audience at a play started applauding him when the words "*O dominum aequum et bonum!*" were said in a comical context, he expressed his disapproval both in gesture and, the next day, in an edict.⁴⁰

Abstract

Imperial control over legislation is one of the crucial changes between Republic and Principate. The aim of this essay is to analyse this historical change through the narrative tradition concerning the development of Augustus' legislative powers. Accounts by Augustus himself as well as later Roman historical authors such as Suetonius and Dio describe Augustus as legislator, which seems to indicate that there were two contradictory narratives, one Republican and the other an imperial sovereign one. These narratives were possibly aimed at different constituencies and served different purposes. Because of later developments in the powers of the Roman emperor, the imperial sovereign narrative became the dominant one in later historiography.

37 Gradel *Emperor Worship and Roman Religion* (2002) 63-64, 110, 132, 138-139. See, also, Fishwick *The Imperial Cult in the Latin West*, vol. 1 (1987) 83-84 et passim.

38 Seneca *Clem.* 1,10,3.

39 Seneca *Clem.* 1.9.

40 Suetonius *Aug.* 53.1.