

multa, I think, is not what Horace wrote; the *TLL* knows this word in verse only in a legally technical passage from the *Fasti*.¹

My solution is to read *palma* in the, admittedly uncommon, sense of 'reward', taking *superbiae* as genitive. If correct, *palma* is, of course, ironic. We may compare Claudian, *Gildonisne salus tanti sit palma furoris* (*B. Gild.* 238) where it is similarly used, and where Platnauer, in his Loeb edition, rendered, 'Can Gildo's salvation be fit guerdon for this mad rivalry?'.² Read *insperata tuae cum veniet palma superbiae*, the 'unexpected reward for pride' being the changes in his appearance which will make Ligurinus less attractive. In short, *palma* has here the sense which Housman required, namely *poena*.³ As the first line makes clear, in the lists of Love, Ligurinus takes no prisoners; *palma*, then, is perfectly suited. *Insperata*, most often used of unpleasant things, only adds to the irony of *palma*, and, indeed, of the whole line.

It is interesting that Tibullus, in another poem addressed to a boy, predicts, not the boy's aging, but his being replaced in the poet's affections:

tunc flebis cum me vinctum puer alter habebit
et geret in regno regna *superba* tuo.
at tua tum me *poena* iuvet, Venerique merenti
fixa notet casus aurea *palma* meos;

1.9.79–82

here, of course, the spurned lover will eventually, so he forecasts, come out the winner and get his *palma*. Horace is less direct, and, in giving the 'palm' to Ligurinus, all the more melancholy.

Finally, it is notable that the exact reverse of this corruption was suspected by Lindsay. Nonius cites Varro, *quibus † alme lino quid faciunt aut palma* (483, 38); Lindsay in his Teubner apparatus notes, '38 fort. aut pluma'.⁴

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¹ rem populus recipit, multam subiere nocentes:
vindicibus laudi publica cura fuit.
multa data ex parte mihi... (*Fasti* 5. 289–91).

² Livy uses the word in a more common sense but with a similar tinge of irony, *egregiam istam palmam belli Punici patrati petis?* (28.41.8).

³ As *CQ*'s anonymous referee points out, *veniet* is really more suited to *poena* than to *palma*. However, given the import of *palma* here, we may, perhaps, compare Prop. 3.25.12, *et veniat formae ruga sinistra tuae*; Ovid, *A.A.* 2.117–18, *et tibi iam venient cani, formose, capilli, / iam venient rugae*, and *Med. Fac.* 48, *et veniet rugis altera cura dolor*.

⁴ I owe this reference to the *TLL* entry s.v. *palma*. I thank my colleague Joseph Cotter for helpful discussion.

RIGHTS OF WAY IN OVID (*HEROIDES* 20.146) AND PLAUTUS (*CURCULIO* 36)

quis tibi permisit nostras praecerpere messes?
ad spes alterius quis tibi fecit iter? (Ovid, *Heroides* 20.145–6)¹

Acontius rhetorically addresses the young man to whom Cydippe's parents have betrothed her, whom he imagines as showing excessive familiarity while visiting the girl's sickbed. In line 146, 'spes' may be considered the vulgarate reading; the noun can be used concretely, of the object of one's hopes (*OLD* 4), a person in whom hopes are centred (*OLD* 5), or sometimes as an endearment (*OLD* 5c). For application to a girl

¹ I follow both the text and the numeration of H. Dörrie (Berlin and New York, 1971).

with suitors, cf. Ovid, *Met.* 4.795 'multorumque fuit spes invidiosa procorum'.² Or one could take 'spes' in *Her.* 20.146 generally, = id quod spero. But, in any case, 'spes' is somewhat disappointing. After the strong imagery of 145 (cutting crops), we expect something no less definite in the pentameter, and, in particular, a word which will cohere with, and reinforce, the notion of providing access ('quis tibi fecit iter?'). In this respect 'spes' fails to contribute anything. Nor does the manuscript evidence point unambiguously to 'spes'. Some manuscripts have the unmetrical 'spem', while Heinsius found in a Medicean manuscript the reading 'sepem', which was taken up by Burman, and by a number of other editors.³ To this, however, A. Palmer⁴ made an objection which seems not merely pedantic: 'I should rather have expected *per sepem*; for a man has a right to go up to, as far as, another man's boundary.'

'Sepem' may be on the right lines, but we need a word which clearly denotes the area within the boundary hedges,⁵ and this can be provided if, instead of 'sepem', we read 'septum' or 'saepum'.⁶ According to Moya del Bāno (Ovidio, *Heroidas*, p. 175), cod. Matritensis Bibl. Nat. Res. 206 (saec. XV) reads 'septem', very close to what I am suggesting. 'Saepum' ('septum') is frequently used as a noun, both in singular and plural,⁷ by the agricultural writers Varro and Columella. So the pentameter would become

ad saepum alterius quis tibi fecit iter?

'Who granted you access to another man's enclosure?', with 'saepum' powerfully reinforcing 'fecit iter'. This image of sexual encroachment in terms of trespassing upon enclosed private land finds a striking parallel in Plautus, *Curculio* 35–8,⁸ where the slave Palinurus says to the young man Phaedromus

nemo ire quemquam publica prohibet via;
dum ne *per fundum saepum facias semitam*,
dum ted apstineas nupta, vidua, virgine,
iuventute et pueris liberis, ama quidlubet.

² Note that in *Her.* 20.146 the plural would be used, which is not normal in this sense.

³ Including G. P. Goold in his 1977 revision of Showerman, and F. Moya del Bāno, Ovidio, *Heroidas* (Madrid, 1986), p. 175. 'Sepem' was also favoured by P. A. M. Thompson in his 1989 Oxford D.Phil. thesis (pp. 130–1), from which some textual notes appeared in *CQ* N.S. 43 (1993), 258–65.

⁴ In his Oxford, 1898, edition of the *Heroides*, p. 491.

⁵ Professor Nisbet wondered whether 'sepem' might in fact do this job, but felt, very reasonably, that the plural would be more appropriate, as in Virgil, *Ecl.* 8.37 'saepibus in nostris' (where not only the plural, but also 'in', makes the difference). Professor Kenney (who most kindly showed me a draft of his forthcoming commentary on the double letters) is inclined to print 'ad sepem', taking *ad* to mean 'up to and into'. That makes no problem for phrases such as 'ad urbes', 'ad aures'. But with e.g. 'ad fluvium', would one naturally understand (without further elucidation) that the river was actually crossed? The more so with 'ad sepem': since the noun denotes an obstacle deliberately created to prevent further progress, it seems hard to take *ad* to imply not merely 'into' but even 'through and out the other side'.

⁶ Words connected with 'saepio' are often written 'sep-' rather than 'saep-' in manuscripts. Indeed several editors of Columella have been content to print sometimes one form, sometimes the other; see G. G. Betts and W. D. Ashworth, *Index to the Uppsala Edition of Columella* (Uppsala, 1971), p. 511. The spelling with *ae* is in Virgil's capital MSS, as Professor Kenney points out.

⁷ Professor Kenney suggested to me that here in Ovid 'saepa' might be slightly preferable to 'saepum', adding that he would then be tempted to rewrite à la Heinsius 'saepa per alterius' – this would make the legal point slightly different, 'passage through' (as in *Curculio* 36) rather than 'access to'.

⁸ I looked for this passage and this image in Elaine Fantham, *Comparative Studies in Republican Latin Imagery* (Toronto, 1972), but the entry 'trespass' in her Index IV refers only to the invasion of other literary genres.

Although in *Curculio* 36 'saepum' is used adjectivally, it seems entirely possible that Ovid had these lines of Plautus in mind; Cydippe, as a 'virgo', would of course fall into one of the prohibited categories. The noun 'saepum' is defined by *OLD* 1 as 'an enclosed space, especially one for confining animals'. Since the special reference to animals applies in the great majority of cases, this may be thought an objection to 'saepum' in *Her.* 20.146: the legal aspects of lines 145 and 146 are intimately connected (as we shall see), and one would like their imagery to cohere. But basically *saepum* is just an area enclosed by hedges or fences (*saepes*); hence *OLD* 2 ('saepa' of the voting enclosures in the Campus Martius). So Acontius' cornfield could not unreasonably be called a 'saepum', as could the very similar metaphorical cornfield in *A.A.* 3.562 'cingenda est altis saepibus ista seges' (women readers are warned to guard against female competition for the young man whom they have just caught).

These passages of Plautus and Ovid both have the flavour of Roman Law. To deal with *Curculio* first: for the insistence upon everyone's right to travel along the public roads (35), we could compare *Digest* 43.8.2.45 (vol. IV, p. 576 Mommsen and Krueger [edd.], Alan Watson [ed. trans.], Philadelphia, 1985), 'Praetor ait: "Quo minus illi via publica itinere publico ire agere liceat, vim fieri veto"' ('I forbid the use of force to prevent anyone walking or driving along a public road'). Crossing private land was a different matter; before the praetor would utter the corresponding words about a private right of way (*Digest* 43.19.1.1, vol. IV, p. 591), the claimant had to declare that he had used the right of way within the past year, 'nec vi nec clam nec precario'. He might be able to make this declaration if he held the rustic 'servitude' (*servitus* in the sense *OLD* 3) of *iter* (strictly, the right to walk or ride on horseback) or *actus* (the right to drive animals) through the other person's land. It is clear, however, that 'facias semitam' in *Curculio* 36 refers to an illegal pathway, created and used surreptitiously.

The legal situation which lies behind *Heroides* 20.146, though sharing with *Curculio* 36 the notion of a right of way ('quis tibi fecit iter?'),⁹ is more complicated. I suspect that the pentameter is to be taken very closely with the preceding hexameter; the couplet raises two legal issues which were in practice inseparable. On the face of it 'quis tibi permisit nostras praecerpere messes?' (145) is an odd question. Cutting another man's corn was theft – and a particularly damaging kind of theft in an agricultural community. The Twelve Tables had prescribed death for an adult who did this secretly by night (Table VIII.9, from Pliny, *N.H.* 18.12 'frugem...aratro quaesitam noctu...seculisse puberi XII tabulis capital erat'). How could anyone (except the landowner himself) give permission ('permisit', 145) to another to cut crops on land belonging to a third party?

Roman Law, however, recognized a situation in which one person owned a farm, but another had the right to gather and enjoy its produce. This was called usufruct, defined by the jurists as 'ius alienis rebus utendi fruendi salva rerum substantia' (*Digest* 7.1.1, vol. I, p. 216, 'the right to use and enjoy the things of another without impairing their substance').¹⁰ The right to enjoy fruits of the earth from a farm belonging to another was perhaps the most basic kind of usufruct, and often figures in the jurists' discussions. The verb 'praecerpere', however, which Acontius uses to describe the cutting of the corn, is a 'loaded' term, conveying his own, quite different, view of the situation (unjustified enjoyment of the produce in advance of the properly

⁹ Although the phrase 'iter facere' (*OLD* 'iter' 4) need not have legal connotations, in a context like this it will inevitably shade into the technical legal use of 'iter' = right of way (*OLD* 4c).

¹⁰ See further Alan Watson, *The Law of Property in the Later Republic* (Oxford, 1968), ch. 9 'Ususfructus and Similar Rights'.

entitled owner).¹¹ Likewise 'nostras...messes' could be challenged: in a situation of usufruct, who actually owned the crops?¹² The right of usufruct was normally given by legacy (e.g. from a husband, for the support of his widow). But Ovid's word 'permisit' has a legal ring,¹³ as we can see from *Vocabularium Iurisprudentiae Romanae* s.v. *permitto*,¹⁴ and suggests the action of an official (e.g. a praetor or iudex). Sometimes (e.g. when dividing common property) a magistrate might assign ownership to one person, usufruct to another, as in *Digest* 7.1.6 (vol. I, p. 216) 'si iudex alii proprietatem adiudicaverit, alii usum fructum'; many passages in the *Digest* show that official intervention would also be necessary to settle disputes arising from the exercise of usufruct.

We come now to the intimate connexion between Ovid's hexameter and pentameter. There was no profit in being given usufruct of crops from another person's land unless you also had access to that land in order to collect the produce. Thus 'recte Neratius scribit, si medii loci usus fructus legetur, iter quoque sequi...quatenus est ad fruendum necessarium' (*Digest* 8.5.2, vol. I, p. 267). In order to illustrate this further, it will suffice to quote the translation of *Digest* 7.6.1.1–2 (vol. I, p. 241), from the section on Actions for Claiming Usufruct:

If a usufruct is left as a legacy, it is essential that a right of access go with it too; this is so to the extent that if a man leaves the usufruct of a particular tract of land as a legacy on the terms that his heir is not to be compellable to furnish a *via*, this additional proviso will be held to be inoperative. Similarly, if a usufruct is left as a legacy and an *iter* is withheld, the withholding of this right is inoperative, as a right of access always goes with a usufruct. However, if there is a legacy of the usufruct of a site to which there is no right of access across land belonging to the inheritance, the usufructuary can undoubtedly bring an action on the will to have the usufruct given to him coupled with a means of access to the site.¹⁵

So Acontius, in his brash way, is claiming ownership of Cydippe, and denying that his rival is entitled to usufruct with access; if he wished to establish his position at law, he could, in Roman terms, bring an *actio negatoria*. This playing with legal concepts and terminology is characteristic of Ovid above all other Roman poets.¹⁶ But, as Professor Kenney repeatedly warns us in 'Ovid and the Law',¹⁷ we should not press the details too closely – e.g. 'though the idea behind Cydippe's plea is genuinely legal, the situation to which it is applied and the manner of its application are purely Gilbertian'.¹⁸ The questions in 145–6 'Who gave you permission... who granted you access?' rather suggest that the answer (in Roman terms) would be, if anyone, a

¹¹ Cf. Cicero, *Verr.* 2.4.80 'non praecerpo fructum officii tui, non alienam mihi laudem adpeto'. For this reason 'praecerpere' is nicer than the variant 'decerptere'.

¹² It might be held that they belonged to the owner of the land as long as they were growing in the soil, but to the usufructuary as soon as he had cut them (*Digest* 7.4.13, vol. I, p. 237, discussing the position 'si fructuarius messem fecit et decessit').

¹³ Though sometimes 'quis permisit...?' may introduce a rhetorical question without legal resonances (e.g. Cicero, *De Oratore* 2.366 'quis Antonio permisit... ut... partis faceret...?').

¹⁴ The verb is commonly applied to the Emperor, a praetor (or other magistrate), the Law (or a particular law), etc.

¹⁵ Jurists might still argue about the precise nature of the access granted (*Digest* 7.6.1.3, vol. I, p. 241, 'Pomponius in his fifth book is undecided whether, when a usufruct has been left as a legacy, the usufructuary is entitled to a right of access [*aditus*] only, and thus to an *iter*, or whether he can in fact claim a *via* too').

¹⁶ This point is worth stressing, since some have denied the Ovidian authorship of the Acontius and Cydippe letters.

¹⁷ YCS 21 (1969), 243–63, at 252, 256–7, 257–8, 259 and 262; the last two references deal with the Acontius and Cydippe letters, which were also the subject of Kenney's earlier article, 'Liebe als juristisches Problem', *Philologus* 111 (1967), 212–32 (though he does not discuss 20.145–6).

¹⁸ YCS 21 (1969), 262, on *Her.* 21.135–50 (Dörrie's numeration).

magistrate. But this corresponds to nothing in the Greek situation: if we asked Cydippe's fiancé who gave him the right to visit her sickbed and to express his timid endearments (21.197–8), he would reply 'Cydippe's father, who betrothed her to me'.

Finally, it may not be too fanciful to suggest¹⁹ that Ovid would have had practical experience as a magistrate of dealing with disputes over such matters as usufruct and access. He was a member of the Centumviral Court (*Tristia* 2.93–4) and also acted as a single *iudex* to settle private cases (*ibid.* 95–6). Cicero (*De Oratore* 1.173) gives an ironical list of the issues which came before the centumviri. Although this does not contain rights of way or usufruct, many similar, and no less irksome, matters are included:

...causis centumviralibus, in quibus usucapionum, tutelarum, gentilitatum, agnationum, adluvionum, circumluvionum, nexorum, mancipiorum, parietum, luminum, stillicidiorum, testamentorum ruptorum aut ratorum, ceterarumque rerum innumerabilium iura versentur.²⁰

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¹⁹ In the spirit of Kenney, *YCS* 21 (1969), 243, 248, 256.

²⁰ I am grateful to Professor E. J. Kenney and Professor R. G. M. Nisbet for comments on earlier drafts of this article; also to Dr Paul Thompson (see n. 3 above).

FROM *HARENA* TO *CENA*: TRIMALCHIO'S *CAPIS* (*SAT.* 52.1–3)

'habeo scyphos urnales plus minus...quemadmodum Cassandra occidit filios suos, et pueri mortui iacent sic ut vivere putes. habeo capidem quam reliquit patrono <meo> rex Minos, ubi Daedalus Niobam in equum Troianum includit. nam Hermerotis pugnas et Petraitis in poculis habeo, omnia ponderosa; meum enim intellegere nulla pecunia vendo.'

Trimalchio is such an established figure of fun in the *Satyricon* that commentators have been content to note the myths that he jumbles together in his description of his tableware here, without going much further. Clearly his *scyphoi* portray Medea and her dead children, not Cassandra, and we assume that he can recognize gladiatorial fights when he sees them.¹ Heretofore lacking is any discussion of what scene was actually represented on the *capis* he acquired from his patron and whether the reader of the *Satyricon* is meant to be able to decode the scene which Trimalchio so flagrantly misinterprets.

In a recent discussion of this passage I raised but did not adopt the suggestion that the scene portrayed might be Daedalus enclosing Pasiphae in the wooden cow, prior to her encounter with the bull.² I would like here to advocate that notion more forcefully and argue that this image was fresh in the reader's mind. In doing so I take it as established that the *Satyricon* was written by Petronius Arbiter under the emperor Nero.³ This visual allusion may also establish more precisely a terminus post quem for the composition of this passage of the *Cena*.

¹ Commentators' interests in the cups have centred on whether the gladiator Petraitis constitutes a reference datable to the reign of Nero: e.g. H. T. Rowell, 'The Gladiator Petraitis and the Date of the *Satyricon*', *TAPA* 89 (1958), 14–24 and *contra* Martin Smith, *Petroni Arbitri Cena Trimalchionis* (Oxford, 1975), ad 52.3.

² N. W. Slater, *Reading Petronius* (Baltimore, 1990), 217 n. 7. I now suspect that we are meant to imagine the workmanship of the *capis* as crude enough to make Trimalchio's mistaking a cow for a horse at least plausible. The reference to King Minos may then do double duty: to remind us by association of the Minotaur story and to suggest that the decoration is archaic and therefore not so naturalistic in execution.

³ K. F. C. Rose, *The Date and Author of the Satyricon* (Leiden, 1971).