

SACRILEGE AS AN ARCHETYPAL CRIME: BETWEEN LAW AND RELIGION IN HORACE'S SATIRE 1.3*

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Hor. *sat.* 1.3.115-117:
*nec vincet ratio hoc, tantundem ut peccet idemque
qui teneros caules alieni fregerit horti
et qui nocturnus sacra divum legerit.*

The passage forms part of an exquisitely philosophical piece of argumentation. Horace discusses the theme of whether the law should be applied in a rigid, undifferentiated way – irrespective of the scale, motive and context of the offence – or whether culpability should be evaluated case by case, considering the real gravity of the deed, on the basis of reason, good sense and of social utility itself (vv. 76-98).

More specifically, the poet, after a long disquisition on the *vitia* of others and the need to pardon them (vv. 20-75)¹ – according to the principle that *nemo sine vitiis nascitur* (v. 68) –, arrives at the conclusion that distinctions must be made between human wrongdoings.² This is at odds with the line taken by the Stoics, who, by contrast, admitted no differentiation between misdeeds, applying the same identical severity to them all.³ In the lines being considered, Horace – with an example that leaves no room for ambiguity – makes it clear that reason will never prove that the sin is one and the same to cut young cabbages in a neighbour's garden and to steal by night the sacred emblems of the gods: the difference between the two acts is glaring, and is specifically intended, in Horace's argument, to underline that not all deplorable actions should be punished to the same degree.

1. *Qui teneros caules alieni fregerit horti*

* The present article is an expanded and updated version of a lecture delivered in the Department of Classics at Tel Aviv University (17.06.2013), subsequently incorporated into my book *La Poesia e il Diritto in Orazio. Tra autore e pubblico* (Naples 2014), to which the reader is referred for the context of Horace's work (see also note 4 below).

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¹ The poet observes that people's defects – especially in matters of friendship and love, that is, bonds distinguished by reciprocal esteem and trust, and thus founded on *fides* – should be judged with indulgence. He shows, however, that men behave quite differently, emphasizing the faults of others.

² P. Fedeli, *Orazio, Tutte le Opere*, Turin 2009, 821, observes that Horace's thinking on the question was influenced by an underlying Epicureanism.

³ As is known, the Stoics, besides placing all sins on the same level, believed that the *animus peccantis* and not the *rei quantitas* should be considered.

The misdeeds indicated by Horace, although they seem merely to be cited as examples, do however refer to quite precise legal offences.⁴

Following the order in which they are mentioned by the poet, let's first of all consider the case of someone who *teneros caules alieni fregerit horti*.

It is worth noting that the passage in question had not received the attention of Roman legal scholarship until a recent analysis by Diliberto. An attempt will therefore be made here to highlight the most significant points he makes.⁵

Above all, Diliberto stresses that Trebatius Testa (who, as we know, was a friend of Horace)⁶ took an interest *ex professo* in this juridical theme;⁷ Trebatius took part, in fact, in the animated jurisprudential discussion concerning which *actio* could be used in the event of someone tearing up plants from another person's land – the decemviral *actio* or the one *ex lege Aquilia*. The reference to the jurist regarding actions for such an offence is rendered explicit in D. 47.7.1 (Paul., 9 *ad Sab*). According to Diliberto, the singularity of Horace's mention of the cutting of young cabbages in another person's garden suggests some further considerations.⁸ In the first place, the scholar notes that the *actio* utilizable in the case of the cutting down of someone else's trees was certainly of decemviral origin. Indeed, Gaius himself (4.11), in a celebrated passage in the Institutions, in order to demonstrate the rigidity of the ancient *legis actiones* and of the obligation to pronounce *certa verba*, did so through the offence *de arboribus succisis*.⁹ Secondly,

⁴ As I pointed out in my book Hassan, *La poesia e il diritto in Orazio* cit. 63ff., in Horace's poetry there is a surprisingly recurrent use of legal terms and imagery, with many references to law, including various norms of the Twelve Tables, *lex Aquilia* (*sat.* 1.3.115-117), the treasure trove (*sat.* 2.6.1-13), latent defects (*sat.* 1.2.83-92, 2.3.281-286, *epist.* 2.2.1-20). Often amusing, sophisticated and technically precise, they are aimed at readers with different levels of education: from the most elementary to that of jurists in the strict sense of the term. Horace's literary texts can therefore be understood variously, according to readers' cultural background, *amicitiae* and interests. The use of legal references is particularly evident in the *Satires*, where they have an ironic and/or parodic function designed to make readers laugh. Knowledge of law in the Rome of the first century BC seems not to have been the exclusive preserve of specialists, but to have necessarily extended to include educated intellectual circles. The juridical tradition, and in some cases, the law in force, appear to have been a characteristic part of the Romans' heritage, a literary – but also cultural, in a broad, social sense – whole, and acquired a role as a tool for poetic ends: law served poetry and, at the same time, was an essential part of a narrative of the Roman society of that time.

⁵ See O. Diliberto, *La satira e il diritto: una nuova lettura di Horat., sat. 1.3.115-117*, in *AUPA* 55 (2012) 395ff.

⁶ On the friendship between Horace and Trebatius Testa see Hassan, *La poesia e il diritto in Orazio* cit., 25-32 and bibliographic references cited therein. See, finally, G. Lariccia, *Caio Trabazio Testa – Profilo di un giurista dell'età di 'mezzo' tra Repubblica e Principato* in *Iura & Legal Systems* 2 (2015) 51.

⁷ In all probability, Trebatius Testa also dealt with the theme of sacrilege: see D. 10.3.6.6 (Ulp., 19 *ad ed.*); Arnob. *adv. nat.* 7.31; Gell. *noct. Att.* 7.12.5; Macr. *sat.* 1.16.28; 3.3.2-5; 3.5.1; 3.7.5-8; Serv. *Aen* 11.316. For more on this, see Diliberto, *La satira e il diritto* cit., 396.

⁸ Diliberto, *La satira e il diritto* cit., 396ff.

⁹ Gai. 4.11: *Unde eum, qui de vitibus succisis ita egisset, ut in actione vites nominaret, responsum est rem perdidisse, cum debuisset arbores nominare eo, quod lex XII tabularum, ex qua de vitibus succisis actio competeret, generaliter de arboribus succisis loqueretur*, on which, most recently, see Diliberto, *La satira e il diritto* cit., 397f., who examines, in this regard, D. 47.7.2 (Gai., 1 *ad leg. XII tab.*) and D. 47.7.4 (Gai., 1 *ad leg. XII tab.*). Diliberto then goes on to consider D. 47.7.3 pr.-8 (Ulp., 42 *ad Sab.*), where Ulpian on the one hand holds forth in great detail about which plants can be associated with the notion of *arbor*, specifically mentioning the *plerique veterum* who sustained that vines were definitely encompassed by the notion of *arbor*, and on the other, recalls that other

Diliberto points out that Labeo and Trebatius (who debated the notion of *arbor* in order to understand whether the cutting down of bushes came under the cited *actio* or not) also discussed the relationship between the decemviral action and the *ex lege Aquilia* one, as can be read in

D. 47.7.1 (Paul., 9 *ad Sab*):

*Si furtim arbores caesae sint, ex lege Aquilia et ex duodecim tabularum dandam actionem Labeo ait: sed Trebatius ita utramque dandam, ut iudex in posteriore deducat id quod ex prima consecutus sit reliquo condemnet.*¹⁰

The direct involvement of Trebatius in the debate places the jurisprudential controversy precisely to the time of Horace.

Finally, Diliberto also argues that “the expression used in the passage is singularly, [...] surprisingly, symmetrical to what can be found in the celebrated third *caput* of the *lex Aquilia*”.¹¹

D. 9.2.27.5 (Ulp., 18 *ad ed.*):

Tertio autem capite ait eadem lex Aquilia: «Ceterarum rerum praeter nomine et pecudem occisos si quis alteri damnum faxit, quod usserit fregerit ruperit iniuria, quanti ea res erit in diebus triginta proximis, tantum aes domino dare damnas esto»

Here the expression used to indicate one of the different crimes for which provision is made in the *lex* regarding wrongful damage (*quis ... fregerit*) virtually coincides with what can be read in Horace (*qui ... fregerit*). Diliberto observes that Horace seems to propose in a parodic key, and with technical legal precision, the solution to an old problem. The poet appears to wish to show that cutting cabbages could not be regarded as the cutting of *arbores* in the narrow sense, but rather that it was just *actio ex lege Aquilia*, precisely because the young cabbages did not come under the notion of *arbor*.

The reference in *sat.* 1.3.116 thus evokes a specific legal offence, consciously chosen by Horace for its peculiarity and the associated jurisprudential diatribe, in order to compare it with another legal offence, the punishment for which was much more serious: *sacrilegium*. The purpose was to show that crimes could not all be placed on the same plane,¹² as stated at the beginning.

But this literary game could only have been understood by a restricted circle of readers conscious of the juridical implications of the text, and therefore able to grasp its irony¹³.

participants in the debate were Pomponius (in the nineteenth book *ad Sabinum*) and Labeo, who concluded that the *radix* did not fall within the category of *arbores*.

¹⁰ Diliberto, *La satira e il diritto* cit., 399 and note 42.

¹¹ Diliberto, *La satira e il diritto* cit., 400.

¹² As previously stated, it is a criticism of the Stoics, for the purposes of which Horace uses clearly delineated legal figures in order to achieve greater concreteness.

¹³ See O. Vartzioti, *Horace's indigestible sense of humor (S. 1.3.63-8 & Epod. 3)*, in *Academia.edu* (= in *Proceedings of the 9th Latin Symposium: rideamus igitur, Athens 19-22/5/2011*, Athens 2014, 100ff.). On the language of Horace's satire see, finally, J.L. Ferriss-Hill, *Roman Satire and the Old Comic Tradition*, Cambridge 2015, *passim*.

2. *Qui nocturnus sacra divum legerit*

Let's now move on to the second hypothesized offence mentioned by Horace: *qui nocturnus sacra divum legerit*.

The poet considers he who – by night¹⁴ – steals (*legerit*) sacred emblems (*sacra*) from the gods:¹⁵ he is referring exactly to *sacrilegium*,¹⁶ as has already been pointed out by Gnoli,¹⁷ who also notes that Nonius Marcellus should have considered this passage as well in relation to the term *sacrilegium*.¹⁸ However, Gnoli imply limited himself to specifying that Hor. *sat.* 1.3.117 should be mentioned in relation to *sacrilegium*, saying nothing further about the significance of the verses themselves.

The goal of this article is to highlight how, on close inspection, Horace's text (which dates to a period preceding the *lex Iulia peculatus et de sacrilegis*¹⁹) seems to conjure up significant connotations regarding *crimen sacrilegii*, also in the light of other literary sources that will be discussed shortly.²⁰

3. Sacrilege before the Augustan age. The state of learning and the sources

¹⁴ More will be said about the nocturnal aspect of the sacrilege mentioned by Horace, which is extremely interesting and worthy of attention – in § 7 below. Here I will focus exclusively on the “generic” stealing of *sacra*.

¹⁵ For more about the etymology and linguistic ramifications of *sacrilegium*, understood as the “theft of sacred objects”, resulting, according to Latin lexicographers and antiquarians (see the definition of *legere* in Nonius Marcellus, 523. 33 L., where passages from earlier authors are also reported), from the union of *sacrum* and *legere*, and as a synonym of the corresponding Greek term (cf. *sacrilegium*, *sacrilego*, *sacrilegus*, in *Corpus glossarium Latinorum*, ed. Loewe-Goets, Leipzig 1901), see F. Gnoli, “*Rem privatam de sacro surripere*”. Contributo allo studio della repressione del sacrilegium in diritto romano”, *SDHI* 40 (1974) 163ff.; Id., s.v. *Sacrilegio*, in *EdD* 41 (1989) 213.

¹⁶ See Hor. *carm.* 2.13.2: *sacrilega manus* (by extension ‘wicked’: *epod.* 3.1).

¹⁷ Fedeli, *Q. Orazio Flacco. Le opere*, II.2 cit., 377, has also observed that in the passage in question Horace is referring to sacrilege.

¹⁸ See Gnoli, ‘*Rem privatam de sacro surripere*’ cit., 164, who affirms that Nonius Marcellus seems to have neglected precisely the citations more directly pertinent to the term *sacrilegium*: Hor. *sat.* 1.3.115-117, but also *Rhet. ad Her.* 2.30: *maius esse maleficium stuprare ingenuam quam sacrum legere*.

¹⁹ The Horatian source dates in fact to around 35 B.C. On the dating of Book I of the *Satires*, see Fedeli, *Q. Orazio Flacco. Le Opere*, II.2, cit., XI. On the *lex Iulia de peculatu*, see B. Santalucia, *Diritto e processo penale nell'antica Roma*², Milano 1998, 200f. and note 43.

²⁰ These connotations, as will be seen, would perhaps imply a “reconsideration” of sacrilege *before* the Augustan legislation.

Above all, let's examine the state of learning with respect to the configuration of sacrilege²¹ before the Augustan legislation.

Roman legal doctrine stressed the purely religious nature of the crime in antiquity, the prevailing notion being that it was an offence against the gods. Stealing sacred objects was thus regarded as a wicked act²² that could not be tolerated by society.²³

It is no coincidence that one can find sources from the republican age that ascribe the punishment of death to those guilty of sacrilege, responsible for having provoked the *ira deorum* against the collective interest:²⁴ the sources in question are Cic. *leg.* 2.9.22²⁵ and Val. Max. 1.1.13.

Above all, Cicero – in the imaginary description of an ideal order – points out, in the cited passage, that a person who has stolen a sacred object or one housed in a sacred place should be considered on a par with a parricide: in fact, he declares *sacrum sacrove commendatum clepsit rapsitve, paricidas esto*,²⁶ where the expression *paricidas esto* refers to capital punishment, linked, as is well known, to the *lex regia* concerning deliberate homicide.

Valerius Maximus (1.1.13) explains in fact that the *poena cullei* was inflicted by law on parricides, placing the offence against parents on the same level as that towards the gods: *idque*

²¹ For literature on sacrilege, see E. Cuq, s.v. *Sacrilegium*, in *DS* 4/2 (1918) 980ff.; I. Pfaff, s.v. *Sacrilegium*, in *RE* 1 A/2 (1920) 1678ff.; E. Benveniste, *Sacrilegus*, in *Hommages Niedermann*, Brussels 1956, 49ff.; L. Bove, 'Subreptio di res privata depositata in aede sacra', in *Labeo* 3 (1957) 357ff.; C. Gioffredi, s.v. *Sacrilegium*, in *NNDI* 16 (1969), 311; F. Gnoli, *Sulla paternità e sulla datazione della lex Iulia peculatus*, in *SDHI* 38 (1972) 328ff.; Id., *Sulla repressione della ritenzione di pecunia residua nella lex Iulia peculatus*, in *RIL* 107 (1973) 437ff.; O. Robinson, *Blasphemy and sacrilege in Roman law*, in *The Irish Jurist* 8 (1973) 356ff.; Gnoli, s.v. *Sacrilegio* cit., 212ff.; Id., *Rem privatam de sacro surripere* cit., 163ff.; Id., *Sen. Benef. 7.7.1-4: prospettiva filosofica e prospettiva giuridica del sacrilegium*, in *SDHI* 40 (1974) 401ff.; Id., *Ricerche sul crimen peculatus*, Milan 1979, 2ff.; N. Zeddies, *Religio e sacrilegium: Studien zur Inkriminierung von Magie, Häresie und Heidentum (4.-7. Jahrhundert)*, Frankfurt 2003, 20ff.; F. Santangelo, *Whose Sacrilege? A Note on Sal. 5.14*, in *Classical World* 104 (2011) 333ff.

²² P. Voci, *Diritto sacro romano in età arcaica*, in *SDHI* 19 (1953) 58f., includes sacrilege among those cases that are unexpiable, together with a: 1) *verberatio parentis*, 2) violation of boundaries, 3) the theft of *fruges aratro quaesitae*, 4) excesses in the exercising of marital authority, 5) misdeeds of married or single women, 6) *fraus* of the client by the patron, 7) the guilt of the vestal, 8) perjury, 9) offences envisaged by *leges sacratae*, 10) *perduellio* and *parricidium*, 11) offences impossible to reconstruct (if not through their punishment).

²³ Society dealt with these instances by expelling or killing those responsible in order to win back divine benevolence towards the Roman people. Cf. Gnoli, s.v. *Sacrilegio* cit., 212; M. Torelli (et al.), *Le dèlit religieux dans la cité antique*, Rome 1981, *passim*.

²⁴ Evidence that this was the punishment can, as Gnoli, s.v. *Sacrilegio* cit., 212 and note 6, shows, be found in ancient Greek law.

²⁵ *Sacrum sacrove commendatum qui clepsit rapsitve, paricida esto*.

²⁶ See G. Franciosi (ed.), *Leges regiae*, Naples 2003, 113, who includes Cic. *leg.* 2.9.22 amongst the laws ascribed to Numa Pompilius in the sphere of criminal law. On the passage, see in particular S. Tondo, *Leges regiae e paricidas*, Florence 1973, 140ff., who stresses how in Cic. *leg.* 2.9.22 the term *paricidas* retains a clear and unambiguous reference to *poena cullei*, and explains the *lex* cited by Cicero on the basis of the treatment of sacrilege in the Greek world – evidencing the independence of the law in question with respect to Platonic models, drawn on by Cicero only as a model, such as *genus orationis* (142) – and in analogous precedents in the Roman world; for the passage under consideration, see, finally, L. Garofalo, *Studi sulla sacerità*, Padua 2005, 118, note 169.

supplicii (referring to *poena cullei*) *genus multo post parricidis lege inrogatum est, iustissime quidem, quia pari vindicta parentum ac deorum violatio expianda est.*²⁷

Both Cicero and Valerius Maximus thus employ the formula of *paricidas esto* in reference to the offending of the divinity, which seems to me not only to testify to the extreme seriousness of sacriligious behaviour but also that it intrinsically dated back over time.

4. Analysis of passages evoking sacrilege

As the term itself makes clear, *sacrilegium* involved the theft of sacred things. Legal learning simply affirmed in general terms that the protected object, even before the Augustan legislation, consisted of *res divini iuris*.

In particular, it does not seem to me that any clarity has been achieved about the issue – of some importance, in my view –, of whether sacrilege prior to the *lex Iulia peculatus et de sacrilegis*²⁸ also concerned *res sanctae*,²⁹ in addition to *res sacrae* and *religiosae*, and whether the offence was restricted just to the theft thereof or if it extended to their violation.³⁰

In other words, the content of *crimen sacrilegii* in the age prior to the *lex Iulia* does not seem to have been explored. In view of this, it is worth considering some sources – which do not appear to have been previously examined with regard to sacrilege – that can, in some way, help to clarify and render more precise the issue in question.

a) Let's look, above all, at:

²⁷ See Franciosi, *Leges regiae* cit., 204.

²⁸ For more about the *lex Iulia peculatus et sacrilegis*, of uncertain date (and, for some, of dubious attribution as well – cf. Gnoli, *Sulla paternità e sulla datazione della Lex Iulia peculatus* cit., *passim*), see, most recently, B. Santalucia, in Talamanca (ed.), *Lineamenti di storia del Diritto Romano*², Milan 1989, 454; Id., *Diritto e processo penale* cit., 200 and cited literature. The law established new norms against the stealing and misappropriation of money and public goods (embezzlement in the narrow sense), as well as against the theft of sacred and religious things (*sacrilegium*).

²⁹ For E. Volterra, *Istituzioni di diritto privato romano*, Roma 1974, 277, the answer is affirmative. In truth, the author expressly sustains that the violation of *res sanctae* was considered *sacrilegium* and the culprit received the death penalty. What's more, he points out that the act of climbing over the walls instead of going through the doors was *hostile et abominandum* (cf. D. 1.8.11, of Pomponius, who cites the killing of Remus by Romulus as an example of punishment for having climbed the walls). As regards the category of *res sanctae*, see, most recently, O. Licandro, *In ius vocatio e violazione del domicilio*, in *SDHI* 57 (1991) 208ff.; E. Tassi Scandone, *Quodammodo divini iuris. Per una storia giuridica delle res sacrae*, Naples 2013, 15ff.

³⁰ See Gnoli, *Rem privatam de sacro surripere* cit., 172, who, explaining how, in the system of the *quaestiones perpetuae*, sacrilege was understood to be no longer “just theft of a *res sacra* or of a *res religiosa*”, leaves one to suppose that, before the system mentioned, the offence in question did not also include the stealing of *res sanctae*. Rather, the scholar examined the question of whether the appropriation of *res private* kept in a sacred place also constituted sacrilege. In the same vein, see also Bove, ‘*Subretio di res privata*’ cit., 357ff.; cf., in any case, Volterra, *Istituzioni* cit., 559, who, in his treatment of theft, explicitly affirms that the theft of *res divini iuris* was not possible, as in such a case it would be *crimen sacrilegii*.

Prop. *el.* 3.13. 49-52:

*Auro pulsa fides, auro venalia iura,
aurum lex sequitur, mox sine lege pudor.
Torrída sacrilegum testantur limina Brennum,
dum petit intonsi Pythia regna dei.*

The passage must be situated in the context of the elegy,³¹ which offers a harsh criticism of *avaritia*, a theme dear to the poet (as it was to Horace) and also treated in elegies 5, 7 and 12. In order to emphasize the indulgence displayed in the observance of contemporary customs, Propertius employs the conventional opposition between the corrupt society of his own age and the uncontaminated nature of the archaic world. In the passage in question, the poet, in narrating that the greed for wealth destroys faith, corrupts the law and undermines decency, observes that Brenno, in his craving for money, committed sacrilege by burning the *limina* and coveting the riches of the gods.

Propertius' reference, explains Fedeli,³² is to C. Brenno, who committed sacrilege in 278 BC when he seized the wealth of the sanctuary of Apollo at Delphi.

The crime committed by Brenno, and described by Propertius, is two-fold. Not only did he seize the wealth of the sanctuary at Delphi, but he also set fire to the *limina*. This attests, on the one hand, to his having stolen *res sacrae*, clearly an instance of *sacrilegium*, and on the other to his having violated *res sanctae* (the *limina*).

Now the fact that the poet speaks of sacrilege also in relation to the profanation of the *limina* and not just with regard to *res sacrae* – obviously falling under *sacrilegium*, as the very etymology of the term suggests – seems to me to be of some interest, especially if one considers that he talks of it in relation to an event that took place in the third century BC, that is, in an age fairly remote in time.

In the light of Propertius' source, it appears in fact that the violation of *res sanctae* was viewed as sacrilege even then, just like the theft of *res sacrae*.³³

But this is not all. A further aspect relating to the 'boundaries' of sacrilege should be stressed. In the light of the above passage, it seems to me that the punishable behaviour did not just concern the removal, and thus theft, of *res divini iuris*, but also their profanation. In other words, the term *sacrilegium* is not just limited to the notion evoked by the verb *legere*. It would appear to have a wider connotation, extending to include the more generic act of violating those very

³¹ Book Three of the Elegies probably dates to 25-22 BC. On this point, see, most recently, M. Maniaci, *Cronologia e bibliografia della letteratura latina*, in Cavallo – Fedeli - Giardina, *Lo spazio letterario di Roma antica*, V, Rome 1991, 73, who ascribes the work to 22 BC.

³² P. Fedeli (ed.), *Propertio. Il libro terzo delle Elegie*, Bari 1985; Id. (ed.), *Poesia d'amore latina*, Milano 2007, 54.

³³ The date of the *lex Iulia* is not certain. It might date to around 25 BC, that is, to around the time of the publication of Book Three of the Elegies. One might therefore object that Propertius speaks of sacrilege in relation to *res sanctae*, as the *lex Iulia* probably (this too is not certain) contemplated a similar violation: *perforare muros*, as can be read in D. 48.13.13 (11), Ulp., 68 *ad ed.* However, it seems to me that Propertius' reference is to be attributed to an earlier age, because the poet is referring to Brenno; so, in the description of a circumscribed episode dating to the third century BC, Propertius employs the word *sacrilegum*, offering confirmation, it seems to me, that the violation of *res sanctae*, just like the theft of *res sacrae*, constituted *crimen sacrilegii* in an earlier age.

same *res*. Confirmation for this comes from at least two other literary sources, also (as far as I know) unexamined by Roman legal scholarship on sacrilege, and which in my view are of considerable interest. The sources are Tib. 2.4.21-26 and Ov. *met.* 738-880.

b) Let's begin with

Tib. *el.* 2.4.21-26:

*At mihi per caedem et facinus sunt dona paranda,
ne iaceam clausam flebilis ante domum;
aut rapiam suspensa sacris insignia fanis;
sed Venus ante alios est violanda mihi:
Illa malum facinus suadet dominamque rapacem
Dat mihi; sacrilegas sentiat illa manus.*

The context of the passage is as follows:³⁴ bound in chains by the god Cupid and by the greedy *puella*, Tibullus confesses the state of *triste servitium* into which he has fallen. The renegeing of the Muses (v. 15-20) is the first sign of an inexorable metamorphosis that transforms the peaceable poet (of the other elegies) into a man prepared to profane sanctuaries and carry out any kind of wickedness in order to satisfy the avidity of the dominant *rapax* will. Indeed, he appropriates the votive tablets hanging in the sanctuaries (*suspensa sacris insignia*) and profanes the temple of Venus. Tibullus consequently declares himself to be sacriligious, using the expression *manus sacrilegas* (v. 26) in relation to the violations of the *res sacrae*. Now it is true that the expression *manus sacrilega* recurs on various occasions in literary sources,³⁵ in the most varied situations, in order to generally denote 'wicked hands': the expression refers, then, to a generic situation of irreverence or cruelty towards the gods or men – which would seem to suggest that Tibullus' use of *sacrilegium* (*manus...sacrilegas*) is likewise of a generic nature. But it is equally true that the situation described by the poet and depicted as a violation of *res sacrae* (the votive tablets and the temple of Venus) is such as to technically 'justify' the use of an allusive expression of this kind with regard to the crime of sacrilege. In Tibullus' passage, bearing out what was observed earlier about the punishable act of *crimen sacrilegii*, reference is made both to the stealing of *res sacrae* (the votive tablets hanging in the sanctuaries) and to their violation (the profanation of the temple of Venus). This would seem to argue in favour of the thesis that sacrilege does not just concern the theft but also the profanation of *res divini iuris*.³⁶

But there is, as already mentioned, another source, from some years later, which further bears out what has been said.

³⁴ Book One of the Elegies was probably published in 28 BC. On this point, see Maniaci, *Cronologia* cit., 71.

³⁵ Hor. *carm.* 2.13.2 (*sacrilega manu*).

³⁶ Here too it is likely that sacrilege is being talked about before the *lex Iulia peculatus et de sacrilegis*, considering that the elegy was composed around 28 BC. But even if it was written at a later date – as others claim (cf. Fedeli, *Poesia d'amore latina* cit., 57, who ascribes the publication of Book One of the Elegies to 26 BC) – it seems to me more reasonable to argue that Tibullus was inspired – if we accept the suggestion that he really is evoking sacrilege in the passage in question – by legislation (and customs) preceding the *lex Iulia* (which, for some, as we have seen, is in any case ascribable to 25 BC).

c) *Ov. met.* 8.738-880

The text narrates the episode involving the wicked and violent Erysichthon, who violated a sacred wood in Ceres, for which he was harshly punished by the gods: let's look at just a few verses.

vv. 741-742:

*ille (referring to Erysichthon) etiam Cereale nemus violasse securi
dicitur et lucos ferro temerasse vetustos.*

vv. 751-766:

*non tamen idcirco ferrum Triopeius illa
abstinuit famulosque iubet succidere sacrum
robur et, ut iussos cunctari vidit, ab uno
edidit haec rapta sceleratus verba securi:
«Non dilecta deae solum, sed et ipsa licebit
sit dea, iam tanget frondente cacumine terram.»
dixit et, obliquos dum telum librat in ictus,
contremuit gemitumque dedit Deoia quercus,
et pariter frondes, pariter pallescere glandes
coepere ac longi pallorem ducere rami.
cuius ut in trunco fecit manus in pia vulnus,
haud aliter fluxit discusso cortice sanguis,
quam solet, ante aras ingens ubi victima taurus
concidit, abrupta cruor e cervice profundi.
obstipuerunt omnes, aliquisque ex omnibus audet
detererere nefas saevamque inhibere bipennem.*

vv. 814-820:

*Dicta Fames Cereris, quamvis contraria semper
illius est operi, peragit per que aëra vento
ad iussam delata domum est et protinus intrat
sacrilegi thalamos altoque sopore solutum
(noctis enim tempus) geminis amplectitur ulnis
seque viro inspirat faucesque et pectus et ora
adflat et in vacuis peragit ieiunia venis.*

vv. 875-880:

*vis tamen illa mali postquam consumpserat omnem
materiam dederatque gravi nova pabula morbo,
ipse suos artus lacero divellere morsu
coepit et infelix minuendo corpus alebat.*

*Quid moror externis? etiam mihi saepe novandi est
corporis, o iuvenis, numero finita potestas.*

The context is long and complex, but for the purposes of the present work just a few points relating to the verses cited here can be emphasized.

In Ovid's suggestive and detailed narrative, Erysichthon violates a sacred grove at Ceres (vv. 741-742), where he cuts down a holy tree (v. 752-753). To punish him for this sacrilege (v. 817: *sacrilegi* – but see also v. 792, where Ovid speaks of *sacrilegi scelerata*), the goddess makes him suffer the pangs of an insatiable hunger (vv. 814-820), quickly leading him to consume all his wealth and resources. He even goes so far as to repeatedly sell his daughter Mestra as a slave, but as even this expedient proves insufficient, Erysichthon ends up devouring himself (vv. 879-880).

In this context, one important aspect should be stressed. In the light of Ovid's text,³⁷ it appears that sacrilege was deemed to have been committed even where an oak tree sacred to the gods was cut down – an act severely punished by the goddess.

From the text, then, an aspect of some importance emerges in relation to the content of the *crimen* in question, which confirms, as said, the literary sources that have already been considered.

It appears, in fact, that sacrilege did not just involve the theft of *res sacrae* but also, more generally, their violation.³⁸ This offers further confirmation that *crimen sacrilegii* comprised any violation or profanation of *res divini iuris*.

Following this (necessarily brief) digression on the sources from Tibullus and Ovid – which, seem significant regarding the content of sacrilege – let's return to Propertius' text, in the light of which *crimen sacrilegii* would appear also to comprise the act of profaning the *res sanctae*; let's return, then, specifically to the object of the sacrilege.

At this point consideration must be given to a very well-known and interesting text.

d) Dion Hal. 2.74.3

Dion. Hal. 2.74.3:

εἰ δέ τις ἀφανίσειεν ἢ μεταθείη τοὺς ὄρους, ἱερὸν ἐνομοθέτησεν εἶναι τοῦ θεοῦ τὸν τούτων τι διαπραξάμενον, ἵνα τῷ βουλομένῳ κτείνειν αὐτὸν ὡς ἱερόσυλον ἢ τε ἀσφάλεια καὶ τὸ καθαρῶ μιάσματος εἶναι προσῆ.

³⁷ Note that the *Metamorphoses* date to around AD 8, and in any case were certainly composed after the issuing of the *lex Iulia*. But it is worth highlighting the passage under examination for its congruity with the previously considered passages dealing with sacrilege.

³⁸ The passage will also be examined later on, in relation to *bidental*.

Dionysius of Halicarnassus attributes to Numa the celebrated norm whereby any person who removed or shifted boundary stones was consecrated to the god.³⁹ The text then goes on to state the following prescription: anyone who wished to kill the sacrilegious person could do so with impunity, and would be considered unstained despite the killing.⁴⁰

Roman legal scholarship does not appear to have considered the passage in question in relation to the study of sacrilege, but it deserves to be read closely.

The text reported by Dionysius of Halicarnassus, which preserves a trace of the law ascribed to Numa, acquires great importance in relation both to the object of the *crimen* itself, and – as we will see – to the punishment. But for now let's look at the first point, that is, the object of the sacrilege in the light of Dion. Hal. 2.74.3.

It seems to me that the violation committed by a person shifting or removing other people's boundary stones is explicitly defined as sacrilege (ιερόσυλον): so, on the basis of the *lex regia* under consideration, it would appear that the crime – violation of the boundary stones – *could* fall within the broader category of sacrilege.

But for now the following point can be emphasized: it seems to me that Dion. Hal. 2.74.3 can be regarded as one of the texts able to confirm that, from the remotest age of Rome onwards, the object of sacrilege could *also* be *res sanctae* and not just *res sacrae* (and *religiosae*), as the term *sacrilegium* would on the other hand seem to imply.⁴¹

This enables us to observe, in conclusion, that sacrilege probably comprised the various acts of those who did not just steal but, more in general, violated *res divini iuris*.

5. The punishment envisaged for *crimen sacrilegii*

Let's move on now to the punishment envisaged for *crimen sacrilegii*.

³⁹ See also Fest. (s.v. *Terminus*, L. 368), *FIRA* I, 11: *Termino sacra faciebant, quod in eius tutela fines agrorum esse putabant. Denique Numa Pompilius statuit, eum qui terminum exarasset et ipsum et boves sacros esse*, about which, see, most recently, Tassi Scandone, *Quodammodo divini iuris* cit., 142 note 72, and the bibliographic references cited therein.

⁴⁰ Franciosi, *Leges regiae* cit., 113. On Dionysius' text, now see M. Vinci, *Fines regere. Il regolamento dei confini dall'età arcaica a Giustiniano*, 185 and 230 (with earlier literature) and, more recently, Tassi Scandone, *Quodammodo divini iuris* cit., 142f. and note 72.

⁴¹ This makes sense, considering that the Romans themselves, in a more distant age, probably did not distinguish clearly between *res sacrae*, *sanctae* and *religiosae* and that the object damaged in *crimen sacrilegii* might therefore belong indistinctly to the different categories of *res*. But the issue of the distinction of *res divini iuris* is an old and complex one, and is not part of the aims of this essay. See, however, Volterra, *Istituzioni* cit., 277, who, in his treatment of *res sanctae*, observes that in the age of Gaius, Ulpian and Marcianus the original foundation of the juridical classification of *res* themselves was not clear: it was only from the II-III century AD that they came to denote the walls and gates of the city (and the boundaries), the violation of which was considered *sacrilegium* and punishable by death.

Legal scholarship⁴² has shown how, in the republican age,⁴³ death was the punishment reserved for those who committed sacrilege. This conclusion is based in particular on two sources, which have already been considered: Cic. *leg.* 2.9.22 and Val Max. 1.1.13.⁴⁴

However, in relation to the punishment laid down for sacrilege, it would seem to me to be appropriate to *also* consider the celebrated law on the violation of boundaries reported by Dionysius of Halicarnassus and attributed to Numa.⁴⁵

In truth, the law expressly affirms the following: anyone taking away or moving boundary stones was to be consecrated to the god, insofar as such a person was sacrilegious (ἱερόσυλον): the transposition in Greek is technical. As Gnoli has already pointed out,⁴⁶ the lemmas *sacrilegus* and *sacrilegium* correspond to the respective Greek terms, consisting analogously of the lemmas ἱερό (sacred things) and συλ (to sack).

Considering, then, that the law refers precisely to sacrilege in the Latin sense of the term, it seems to me that it clearly equates the violation of boundaries to the theft of *res sacrae*, thus envisaging, in both cases, consecration to the gods.

In conclusion, Dionysius seems to want to say that Numa did not just establish a norm to punish anyone who took away or moved the boundary stones, but likewise ruled that such a violation was to be punished by consecration to the gods. Read in these terms, then, the norm would, in my view, appear to hold crucial implications with regard to the punishment envisaged for *crimen sacrilegii*, as one might hypothesize the same *crimen* as the offence provided for in the *lex regia* in question, punished by being made *sacer* or at any rate with the violator being put to death and the person carrying out the killing being granted impunity.⁴⁷

6. The performance of sacrilege at night

Finally, let's examine the nocturnal dimension of Hor. *sat.* 1.3.117 The poet talks – it is worth repeating – of sacrilege taking place at night (*nocturnus*).

⁴² See Voci, *Diritto sacro romano* cit., 59 note 72; Gioffredi, s.v. *Sacrilegium* cit., 311; Gnoli, s.v. *Sacrilegio* cit., 212 note 5.

⁴³ For the most ancient period, learning talks in general terms of repression of a sacred nature, involving religious expiation: see Liv. 29.19 ff. and 42.3. Cf. Gioffredi, s.v. *Sacrilegium* cit., 311.

⁴⁴ To these sources Gnoli (s.v. *Sacrilegio* cit., 212 note 5) also adds Sen. *benef.* 7.7.2: *quisquis id, quod deorum est, sustulit et consumpsit atque in usum suum vertit, sacrilegus est*. On this passage, see Id., *Sen. Benef.* 7.7.1-4 cit., 401ff.

⁴⁵ See above, § 4.d.

⁴⁶ See Gnoli, s.v. *Sacrilegio* cit., 213; ID., *Rem privatam* cit., 164, where – as has been said – the scholar limits himself to mentioning the Horatian source regarding the theft of *res sacrae* by night (*sat.* 1.3.115-117), without making any further observations.

⁴⁷ It seems to me, then, that permitting anyone to perform the killing postulates that the punishment for sacrilege was to render the responsible party *sacer*: but this is obviously not the place to tackle such a theme. For more about *sacertas*, see L. Peppe, *Note minime di metodo intorno alla nozione di homo sacer* in *SDHI* 73 (2007) 429ff.

On the basis of *P.S. 5.19 (De sacrilegis)*⁴⁸ and Ulp., D. 48.13.7 (6),⁴⁹ it has been judged by scholarship that, as regards *crimen sacrilegii*, the aggravating circumstance of the moment in which the crime is carried out was only introduced in the imperial age.⁵⁰

Now it might just be an appealing idea, but it seems to me that what emerges in the passage in Horace is that the aggravated offence of *sacrilegium*, namely the theft of *res sacrae* or *religiosae* during the night, was already contemplated in the period in which the poet wrote the first book of Satires, around 35 BC – and therefore before the *lex Iulia* (which incorporated *sacrilegium* into *crimen peculatus*) and the subsequent imperial age (which, furthermore, greatly extended the boundaries of *crimen* itself). As already said, this is at odds with the view held in Roman legal studies that it dates to the imperial age.

Basically, as is known, the different nature of an offence committed at night is attested from as early as the Twelve Tables, in relation to what is clearly a less serious crime than sacrilege: *furtum*.

Horace might therefore also have wished to stress the more serious of the crimes, including the aggravating circumstance of it being carried out during the night, to further emphasize the difference from a person who, quite simply, took cabbages from someone else's field.

7. *Sat.* 1.3.115-117: conclusions

Some concluding remarks can now be made.

In *sat.* 1.3.117 Horace evokes a specific criminal offence, *crimen sacrilegii*, which, in the light of what has already emerged, seems to hold interesting legal implications that have not been considered to date in Roman legal studies and which, by contrast, I have tried to stress here. Sacrilege does not appear to me to simply constitute the theft of *res sacrae* but the violation, more in general, of *res divini iuris*, punished, in the most ancient age, by being made *sacer* and perhaps already envisaged also in the aggravating circumstance of sacrilege committed by night.

The use of such an offence seems to me to play a functional role in the poetic discourse. In *sat.* 1.3.115-117 the poet examines two specific and completely different legal offences, comparing them in order to stress the paradoxical nature of the argument that the offences should be considered on the same plane. Horace clearly takes an entirely different view, and in this context, the circumstance that the second offence – sacrilege – is mentioned in its most aggravated form seems to me to be significant.

⁴⁸ *Qui noctu manu facta praedandi ac depopulandi gratia templum inrumpunt, bestiis obiciuntur: si vero per diem leve aliquid de templo abstulerint, vel deportantur honestiores vel humiliores in metallum damnantur.*

⁴⁹ *Sacrilegii poenam debebit proconsul pro qualitate personae proque rei condicione et temporis et aetatis et sexus vel severius vel clementius statuere. Et scio multos et ad bestias damnasse sacrilegos, nonnullos etiam vivos exussisse, alios vero in furca suspendisse. Sed moderanda poena est usque ad bestiarum damnationem eorum, qui manu facta templum effregerunt et dona dei in noctu tulerunt. Ceterum si qui interdium modicum aliquid de templo tulit, poena metalli coercendus est, aut, si honestiore loco natus sit, deportandus in insulam est.*

⁵⁰ See Gnoli, s.v. *Sacrilegio* cit., 215.

8. The context of *ars* 470-472

Now let's consider:

ars 470-472:

*Nec satis apparet, cur versus factitet: utrum
minxerit in patrios cineres, an triste bidental
moverit incestus.*

The context of the passage is as follows: Horace says he is unable to understand why a delirious poet (*vesanum* v. 455), wishing for a spectacular death (v. 479), continues to write verse. He suggests two possible reasons: the poet might have urinated on his father's ashes (violating his father's tomb) or moved a *bidental* (violating a sacred place). Certainly, Horace explains, he goes mad: just as a bear that breaks the bars of its cage sends onlookers running, so too the poet causes a general stampede by reading out his verses (v. 472-474).

The poet cites two offences that evidently are highly deplorable in Roman society – offending one's father and offending the gods – with the god punishing both by making the perpetrator mad. It is no accident, as will be seen, that madness was regarded as an appropriate divine punishment for serious misdeeds.

Around the passage under consideration, which touches, as we have seen, respectively on the father-son relationship and the one between deities and human beings, it is interesting to note a number of strands at play in the sphere between *ius sacrum* and *ius civile*.

9. The profanation of the father's ashes

As regards the violation of the father's ashes (*minxerit in patrios cineres*),⁵¹ it is worth focusing in general terms on the sacredness of ashes.

In the ancient world ashes (of the father and/or mother) – an object of cult and a symbol of the ancestral tomb – were for the most part evoked when swearing oaths and for glorifications. But ashes could likewise be understood as being associated with *res religiosae*, that is, with things dedicated to the Manes (Gai. 2.4: *...religiosae, quae diis Manibus relictæ sunt*).

Volterra, in fact, in his treatment of *res religiosae*, clearly shows how a piece of land could become religious, and therefore *extra commercium*, without the need for any formality, but

⁵¹ C. O. Brink, *Horace on poetry. The Ars Poetica*, Cambridge 1971, 429, talks of the violation of graves and sustains that the sense of the passage accommodates an occasional lowering of verbal propriety, and likewise Pers. 1.113-114 *pueri, sacer est locus, extra / miite* and Iuv. 1.131 *cuius ad effigiem non tantum meiere fas est*. Fedeli, *Q. Orazio Flacco. Le opere*, II.4 cit., 1611, in relation to vv. 470-471, speaks of "crimes that are horrendous because they have sacrilege in common". In particular, he notes that the expression *minxerit in patrios cineres* refers to the crime of profaning one's father's tomb.

simply if the rightful owner buried a human body *or the ashes* (obviously following the burning⁵² of the corpse)⁵³ on the land: in antiquity it can thus be supposed that the burial of a body (or the ashes thereof) made the place religious, and hence separate from the world of the living.⁵⁴

Ancestral ashes are referred to, amongst others, by Propertius, Horace and Seneca the Elder, in different contexts.⁵⁵

And so we have:

Prop. 2.20.15-16:

*Ossa tibi iuro per matris et ossa parentis
(si fallo, cinis heu sit mihi uterque gravis!)
me tibi ad extremas mansurum, vita, tenebras.*

Here the poet vows eternal love towards Cinzia, swearing on the bones of his mother, his father and their ashes.

Hor. *carm.* 2.8.9-10:

*Expedit matris cineres opertos
fallere.*⁵⁶

⁵² Cf. *tab.* 10.1 = *FIRA I*, 66; M.H. Crawford, *Roman Statutes* (BICS. Supplement) II, London 1996, 704.

⁵³ VOLTERRA, *Istituzioni* cit., 275.

⁵⁴ See Ps. Quint. *Decl. maiores* 5. 6: *Hinc et ille venit affectus, quod ignotis cadaveribus humum <in>gerimus, et insepultum quodlibet corpus nulla festinatio tam rapida transcurrit, ut non quantum locumque veneretur aggestu;* Hor. *carm.* 1. 28.23-25: *At tu, nauta, vagae ne parce malignus harenae / ossibus et capiti inhumato / particulam dare;* Petr. *sat.* 114.11: *si nihil aliud, certe divitius» inquit «iunctos nos mare feret, vel si voluerit misericors ad idem litus expellere, aut praeteriens aliquis tralaticia humanitate lapidabit, aut quod ultimum est iratis etiam fluctibus, imprudens harena componet.* Cf. also Plaut. *most.* 500-504: *Deceptus sum: hospes hic me necavit, isque me / Defodit insepultum clam [ibidem] in hisce aedibus, / Scelestus, auri causa. / Nunc tu hinc emigra: / Scelestae hae sunt aedes, impiast habitatio.* Interment seems to have been completed by a series of liturgical rites regulated by the pontiffs (Cic. *leg.* 2.55: *Iam tanta religio est sepulchrum, ut extra sacra et gentem inferri fas negent esse*). With time the particular features of places that could not become religious despite interment were delineated. The regulation of the funeral rites by pontifical law was meticulous in so far as *deorum Manium iura sancta sunt* (Cic. *leg.* 2.22), and it was precisely such law that had to preserve the sanctity of burials.

⁵⁵ As regards the father's ashes, see also Verg. *Aen.* 4.427: *nec patris Anchisae cinerem Manesve revelli*, where Dido says she has not violated the ashes and the Manes of Aeneas' father Anchises. The passage can be linked in some way (as least with respect to the repetition of the terms) to v. 34 of the same book, where Anna, after having told her sister not to feel guilty about having fallen in love with another person (v. 19, where Dido talks of sin: *culpa* for the betrayal of *fides maritalis*), asks her (rhetorically, it seems to me): *id cinerem aut Manis credis curare sepultos?*

⁵⁶ Cf. Nisbet - Hubbard (eds.), *A Commentary on Horace: Odes, Book II* cit., 128, who, in reference to Horace's oath on the mother's ashes, state that "a man would have sworn by his father's ashes (Propertius – 2.20.15 – is eccentric to mention both parents); a courtesan naturally concentrates on her mother, who may be the only parent she knows". E. Romano, *Q. Orazio Flacco, Le opere: Le odi, Il Carme secolare, Gli Epodi*, I.2, 664, highlights that *fallere* is a sacral-juridical technicality (cf. the formula *si sciens fallo*) indicating the violation of an oath, and refers to Liv. 2.45.13 and Verg. *Aen.* 6.324.

Referring to Barine,⁵⁷ the poet observes that it is even worth it for her to mock the buried bones of her mother.

Finally, in

Sen. Rhet. *contr.* 7 *praef.* 7:

«*Placet*», *inquit*, «*tibi rem iureiurando transigi? Iura, sed ego ius iurandum mandabo: iura per patris cineres, qui inconditi sunt, iura per patris memoriam*»

Here the author, in a hearing before the centumviral court, has Albuzio ask to solemnly swear – to Arruntius – on the ashes of his father (which he has left unburied), that is, on the memory of him.

In the passages considered it is clear that ashes are viewed as an object and symbol worthy of deference and respect; as we have seen, in Propertius they represent the most significant way of swearing love for one's beloved; ashes are evoked in Horace in order to emphasize the offensive attitude of Barine; finally, in Seneca, they are even brought up in the context of legal proceedings, as the object of an oath.

Now let's look at some places where ashes are glorified. Consider:

Verg. *Aen.* 5.77-81:

*Hic duo rite mero libans carchesia Baccho
fundit humi, duo lacte novo, duo sanguine sacro,
purpureosque iacit flores ac talia fatur:
«Salve, sancte parens; iterum salvete, recepti
nequiquam cineres animaeque umbraeque paternae!*

The passage refers to a solemn ceremony in which the ashes, shadow and soul of Anchises are evoked.

The context of the passage is of some interest. Aeneas reaches Sicily, where his father is buried, on the anniversary of his death. Before his assembled men, he announces a sacrifice in honour of Anchises and exclaims “hail, holy father, once again; hail ashes, rescued though in vain, and you soul and shade of my sire!”⁵⁸ (v. 80-81). A *prodigium* then occurs:⁵⁹ during Aeneas' commemorative speech, a snake slithers under the altar (v. 85-87): this is a sign of the presence of Anchises. At this point the funerary honours were renewed with increased vigour (v. 94): Aeneas killed, according to ritual, two sheep (*caedit binas de more bidentis* v. 96). The rites concluded.

⁵⁷ ROMANO (*Q. Orazio Flacco, Le opere*, I.2 cit., 663) stresses that the ode centres entirely on Barine and her perjury. Note, moreover, that legal terms are also evoked here: cf. vv. 5-6 *obligasti...votis caput*.

⁵⁸ Virgil, *Eclogues, Georgics, Aeneid*, translated by H. R. Fairclough, Loeb Classical Library, volumes 63 and 64, Cambridge (MA), 1916.

⁵⁹ This should be noted above all for the subsequent discussion of the *bidental*.

The verses confirm, on the one hand, that the ashes of Aeneas' father were honoured with solemn ceremonial rites, and, furthermore, that an attitude of devotion and respect was due to them.

Clearly such an attitude is far removed from the one demonstrated in the episode narrated in *ars* 471 by Horace, who has the *vesanus* urinate on his father's ashes: the situation is paradoxical. The poet describes a scene in which not only is the figure of the father offended – and this, as has been seen on numerous occasions, constituted a very serious violation and was one of the most frequently recurrent *topoi* in literary and rhetorical circles – but use is also made of ashes, on which a wicked action is carried out, to indicate the profanation of something that can be associated with burial. In *ars* 471, then, there appears to be a dual violation: of the father and of the gods, granted that *res religiosae* were, as we know, those dedicated to chthonic deities.

Horace, without specifying the offence committed by the person who became *vesanus* (unlike in *sat.* 117, specific reference is made to sacrilege – *sacra divum legerit*), leaves it up to the reader to interpret the passage in question. It does not seem possible in this instance to identify a specific individual offence, but I believe it could cover the different possibilities outlined above.

10. The violation of the *bidental*

Let's move on now to the case of someone who *triste bidental / moverit* (*ars* 471-472), that is, a person who moved – thereby violating – a *bidental* (*ars* 471-472).

Above all, it seems opportune to try to establish the exact legal-religious nature of *bidental*, understood as the place in which someone has been struck or killed by lightning.⁶⁰ It is worth observing that a lightning strike was regarded as the omen of iniquitous events. In such cases, a council of ten priests, known as *bidentales*, gathered together what had been burnt, together with the grass torn up by the strike,⁶¹ and oversaw the enclosing of the affected point and the burial of a stone as a symbolic representation of the lightning strike itself. This was followed by the sacrifice of a sheep *qui duos habet dentes* (*bidens*),⁶² *hostia*, which gave the name to the place,

⁶⁰ Fest. s.v. *Fulgurium*, 82 L.: *Fulgurium, id quod est fulmine ictum, qui locus statim fieri putabatur religiosus, quod eum deus sibi dicasse videretur*; Varr. l. Lat. 5.10.13: *fulgurium quod fulmine ictum*.

⁶¹Cf. Lucan. *bell.* 1.605-608: *dumque illi effusam longis anfractibus urbem / circumeunt Arruns dispersos fulminis ignis / colligit et terrae maesto cum murmure condit / datque locus numen; sacris tunc admovet aris / electa cervice marem*.

⁶² Cf. A. Forcellini, *Lexicon Totius Latinitatis*, s.v. *Bidens* (I, 447), understood here as *qui duos habet dentes*; Fest. s.v. *Bidental* 30 L.: *bidental dicebant quoddam templum, quod in eo bidentibus hostiis sacrificaretur. Bidentes autem sunt oves duos dentes longiores ceteris habentes*: in this passage it is clear that the *bidental* was the place in which the *oves bidentes* were sacrificed (the same sense can be seen in Pers. *sat.* 2.26-27: *An quia non fibris ovium Ergennaque iubente / Triste iaces lucis evitandumque bidental*).

the sacrifices and the priests. The area was enclosed within a circular wall,⁶³ and it was forbidden to enter, touch or look at it.⁶⁴

Now the point to stress here is that the *bidental* – as Albanese shows⁶⁵ – was considered a *res religiosa*,⁶⁶ that is, something offered to the Manes, and therefore in some way assimilated to ashes, in turn associated – as has been said – precisely to *res religiosas*. Such a likeness is of considerable interest: Horace would seem to have brought together two similar offences, in order to emphasize that both in the case of a profanation of the father's ashes, and in that of the violation of a *bidental (triste)*⁶⁷ – both considered offensive to the gods – a very serious form of divine punishment was envisaged: madness.

But before moving on to the conclusions, a final point needs to be made about *ars* 470ff., which supports the description of the *bidental* (or of both offences) as a *res religiosa*.

11. On the use of *incestus*

Let's once again examine

ars 471-472:

*minxerit in patrios cineres an triste bidental
moverit incestus.*

⁶³ Cf. Varr. *l. Lat.* 5.32.10: *Cornelius et Lutatius scribunt eum locum esse fulguritum et ex S. C. septum esse: id quod factum esset a Curtio consule, cui M. Genucius fuit collega, Curtium appellatum.*

⁶⁴ Pers. *sat.* 2.26-28: *An quia non fibris ovium Ergennaque iubente / Triste iaces lucis evitandumque bidental, / Idcirco stolidam praebet tibi vellere barbam / Iuppiter?; Ammian. rer. gest.* 23.5.12-13: *12 Secuto itidem die, qui erat septimum idus Aprilis, sole vergente iam in occasum ex parva nubecula subito aere crassato usus adimitur lucis, et post minacem tonitruum crebritatem et fulgorum Iovianus nomine miles de caelo tactus cum duobus equis concidit, quos potu satiatos a flumine reducebat. 13 Eoque viso harum rerum interpretes arcessiti interrogatique etiam id vetare procinctum fidentius adfirmabant fulmen consiliarium esse monstrantes: ita enim appellantur quae dissuadent aliquid fieri vel suadent ideoque hoc nimis cavendum, quod militem celsi nominis cum bellatoris iumentis extinxit, et hoc modo contacta loca nec intueri nec calcari debere fulgurales pronuntiant libri.*

⁶⁵ B. Albanese, "Bidental, Mundus, Ostium, Orci" nella categoria delle *res religiosas*, in *Ius* 20(1969) 226.

⁶⁶ As has been seen, the sources state that a place struck by lightning was considered *religiosus* (Fest. s.v. *Fulguritum*, 82 L.: *Fulguritum, id quod est fulmine ictum, qui locus statim fieri putabatur religiosus, quod eum deus sibi dicasse videretur*), a term with various meanings (Gell. *noct. Att.* 4, 9; Fest. s.v. *Religiosus*, 348-350 L.); given the prohibitions associated with the *bidental*, here *religiosus* points to a human action against divine will (Fest. s.v. *Religiosus*, 350 L.: *Idem religiosum quoque esse, +qui non iam+ sit aliquid, quod ibi homini facere non liceat; quod si faciat, adversus deorum voluntatem videatur facere*), expressed by sending a lightning strike onto the earth.

⁶⁷ With regards to *triste bidental* see also Pers. *sat.* 2.26-27, which has already been discussed, where it emerges that the *bidental* was viewed as an inauspicious place, to be avoided. Note, as Fedeli observes (at *ars* 471 in *Q. Orazio Flacco. Le Opere*, II.4 cit., 1612), that the *bidental* was called *triste* either because the lightning expressed the wrath of the gods, or because the place instilled terror. On the correspondence between the passage in Persius and the one by Horace under consideration, see ALBANESE, "Bidental, Mundus, Ostium" cit., 226.

Incestus is the term used by Horace in relation to the profanation of the *bidental*. But by way of symmetry it could *also* refer to the first offence described by the poet, namely the profanation of the father's ashes.

Let's look briefly at the lemma in question. The principal meaning of *incestus* is that which does not conform to the rules or rites relating to *religio*; furthermore, it denotes that which is incestuous, culpable and criminal.⁶⁸

Horace's use of the term with regard to the offence in question (or to both of the offences mentioned) seems to further underline the religious nature of the *bidental* (and of the ashes understood as burial). If this were so, it would once again lend weight to the hypothesis that Horace placed the two crimes (the profanation of the father's ashes and the violation of a *bidental*) on the same plane: extremely serious, offensive to the gods and therefore associable to a certain extent with sacrilege – understood (in the most ancient times), as has been seen, as the general violation of *res divini iuris* – and, in any case, with offences lying between *ius sacrum* and *ius civile*.

12. *Ars* 470-472: a final observation

A final observation may be made before concluding.

In *ars* 450ff. Horace emphasizes that profanation of the father's ashes, and likewise the violation of a *bidental*, represent the possible causes of the madness of the poet described in the verses in question.

He thus draws on a *topos* present in the ancient tradition, in addition to the literature of the time: that madness could be seen as a kind of divine punishment inflicted on the culpable party for having committed the violations described.⁶⁹ In truth, it was held that not only did the *Furiae* not leave serious misdeeds unpunished (above all towards one's parents), but that they could also take possession of people in order to induce them to commit a crime.

It is no accident that in vv. 475ff. of Horace's text the mad poet is likened to a wild beast: having captured his prey, he holds it tight, preventing it from escaping, until the prey dies from reading his verse (*occidit...legendo*), thereby himself committing a *crimen*.

As Diliberto explains – albeit in an entirely different context – the possession by the *Furiae* of someone culpable of wicked deeds could, on the one hand, be the consequence of a crime, and on the other, could even be the cause.⁷⁰

In these terms, the condition of someone committing iniquitous acts was thus assimilated to that of the *furiosus*: a pairing that was certainly already traditional in the Roman culture of the first century BC.

⁶⁸ See A. Ernout - A. Meillet, *Dictionnaire étymologique de la langue latine. Histoire des mots*³, Paris 1979, 104.

⁶⁹ O. Diliberto, *Il testamento del matricida*, in *Studi economico-giuridici dell'Univ. di Cagliari* 52 (1988) 189.

⁷⁰ Diliberto, *Il testamento del matricida* cit., 188. Diliberto also points out (185ff.) what the response of the Furies was to the murder of a parent, analysing in particular Cic. *Rosc. Amer.* 24.66-68 and Cic. *Tusc.* 3.5.11. Finally, he shows how the literary-mythical image of Orestes pursued by the *Furiae* (see Serv. *Aen.* 4.473) was already widespread in Rome at the end of the third century BC.

Horace, therefore, seems to have exploited the rhetorical and literary *topos*, which – as has been said – was designed to associate the figure of someone who carries out wicked acts with that of the *furiosus*, as a consequence (or cause) of his actions, in order to emphasize the seriousness of the two deeds described. The violation of the father's ashes and the profanation of the *bidental* are presented, then, as acts against *religio*. Triggering the wrath of the gods, they were punished by the infliction of madness (above all on those who committed an outrage on their parents – parricide, for instance) on the person responsible for them. This argues in favour of considering such behaviours as juridical offences, lying between *ius sacrum* and *ius civile*, and ascribable, it seems to me, to the sphere of sacrilege.

Abstract. - In *sat.* 1.3. Horace discusses the theme of whether the law should be applied in a rigid, undifferentiated way – irrespective of the scale, motive and context of the offence – or whether culpability should be evaluated case by case, considering the real gravity of the deed, on the basis of reason, good sense and social utility. He concludes that distinctions must be made between human wrongdoings, a view at odds with the line taken by the Stoics, who admitted no differentiation between misdeeds, applying the same identical severity to them all. Using a quite unambiguous example, Horace makes it clear that reason will never prove that the sin is one and the same to cut young cabbages in a neighbour's garden and to steal by night the sacred emblems of the gods: the difference between the two acts is glaring, and is specifically intended, in Horace's argument, to underline that not all deplorable actions should be punished to the same degree. The article explores how Horace in *sat.* 1.3115-117 (which dates to a period preceding the *lex Iulia peculatus et de sacrilegis*) seems to conjure up significant connotations regarding *crimen sacrilegii*, also in the light of other literary sources that are likewise considered. The research draws out certain legal implications of *crimen sacrilegii* that have not been considered to date in Roman legal studies, showing that sacrilege does not appear to simply constitute the theft of *res sacrae* but the violation, more in general, of *res divini iuris*, punished, in the most ancient age, by being made *sacer*.

Elsewhere in Horace (*ars* 470-472), violation of the father's ashes and the profanation of the *bidental* are presented as acts against *religio*. Triggering the wrath of the gods, they were punished by the infliction of madness on the person responsible for them. As the article shows, this argues in favour of considering such behaviours as juridical offences, lying between *ius sacrum* and *ius civile*, and ascribable to the sphere of sacrilege.

In *sat.* 1.3 Orazio discute del tema se la legge debba essere applicata in modo rigido e indifferenziato – indipendentemente dall'entità, dal movente e dal contesto dell'illecito compiuto – oppure se la colpa debba essere valutata caso per caso, considerando la reale gravità della trasgressione commessa, sulla base della ragione, del buon senso e della stessa utilità sociale. Egli conclude che le colpe commesse dagli uomini devono essere distinte fra loro, in contrapposizione con quanto ritenuto dagli Stoici, i quali non ammettevano alcuna differenziazione tra esse, applicando a tutte identica severità. Utilizzando una esemplificazione che non lascia adito ad equivoci, Orazio chiarisce quindi come nessun ragionamento possa

equiparare i reati di chi nell'orto altrui abbia fatto a pezzi cavoli ancora teneri e chi nottetempo abbia saccheggiato oggetti sacri degli dei: la differenza tra le due azioni è clamorosa ed è finalizzata, nell'ambito dell'argomentazione oraziana, proprio a sottolineare che non tutte le azioni riprovevoli sono da punire nella medesima misura. L'articolo spiega come il testo di Orazio *sat.* 1.3.115-117 (che risale a un periodo precedente la *lex Iulia peculatus et de sacrilegis*), sembri evocare significative suggestioni in tema di *crimen sacrilegii*, anche sulla scorta di ulteriori fonti letterarie esaminate. La ricerca evidenzia altresì come Orazio rievochi una precisa fattispecie giuridica, rappresentata dal sacrilegio, che mostra interessanti profili sinora non presi in considerazione dalla romanistica, rilevando che tale *crimen* non sembra costituire semplicemente la sottrazione di *res sacrae* ma, più in generale, la violazione di *res divini iuris*, punita, nella età più antica, con la sacertà.

Altrove, in Orazio (*ars* 470-472), la violazione delle ceneri paterne e la profanazione del *bidental* vengono presentate come atti contrari alla *religio*, scatenanti l'ira degli dei e puniti con la pazzia nei confronti del responsabile. Come evidenzia questo contributo, ciò induce ad includere detti comportamenti nell'ambito del sacrilegio, *crimen* a cavallo fra *ius sacrum* e *ius civile*.