CHAPTER TWO

CRIMES AND PUNISHMENTS:
THE LEGITIMACY OF OVID’S BANISHMENT

$maxima poena mihi est ipsum offendisse$

“The greatest punishment for me is to have offended him.”

$Tr. 5.11.11$

In his poems from exile Ovid shows an intense interest in the legitimacy of his own actions vis-à-vis those of the Roman princeps. He often defines the nature of his crime over against the severe and public punishment it received. In doing so, he uses specific terms of the law for offenses which by accepted standards of interpretation of the Roman legal code would not seem to merit exile. By inference he shows that his predicament is peculiar, if not unique, $Tr. 2.131–138$:

nec mea decreto damnasti facta senatus,
nece mea selecto iudice iussa fuga est:
tristibus inuectus uerbis—ita principe dignum—
ultus es offensas, ut decet, ipse tuas.
adde quod edictum, quamuis immite minaxque,
attamen in poenae nomine lene fuit:
quippe relegatus, non exul, dicor in illo,
primaque fortunae sunt ibi uerba meae.

You did not condemn my deeds by senatorial decree, nor was my exile ordered after a judge was chosen: with stern words—as is worthy of a prince—you inveighed and, as is fitting, by yourself avenged offenses against you. Add that, though harsh and threatening, the edict that came was still mild on the matter of the punishment’s name: indeed, in it I’m said to be “relegated,” not “exiled,” and the words there are particular to what has befallen me.

On the basis of this passage scholars have deduced either that there was a trial before the senate$^1$ or that Ovid met with Augustus privately in

$^1$ Jones 1960, 88, calls this a senatorial trial on the grounds that no judge was selected (132) and therefore $a$ $iudicium$ $publicum$ (public trial) could not have taken place. Suet. Aug. 33.1–3; 51.2 and Dio 56.26.1 show Augustus involved in trials as judge, but
camera. But the poet never mentions a trial, and though it appears—to this reader at least—highly unlikely that there was one, it is impossible to know for sure. Nevertheless, the evidence from the poems strongly suggests that the princeps did not follow republican juridical procedure but acted himself as iudex in deciding on the poet’s punishment. Indeed, it is very likely that Ovid’s contemporaries at Rome recognized that the poet’s representation of the legal proceedings revealed a significant breach in established practice. Of course, implicit herein is that this same representation contained the basis of a veiled attack on the princeps for what amounted to an unprecedented usurpation of the powers of the Roman courts.

Again, as far as we can determine from the poems themselves, the poet and the princeps never appeared in those courts together and there was no public trial (surely Ovid would not have missed the opportunity to show himself and Augustus engaged in debate!). It looks rather as if the sentence was pronounced from the Palatine and delivered in an edict to Ovid, as he tells us later in the Epistulae ex Ponto, while he was on the island of Elba visiting perhaps his closest friend, Cotta Maximus. Regarding the edict itself, the poet relates that the formal charges against him were two in number, Tr. 2.207: duo crimina, carmen et error “charges for two crimes, a poem and a mistake.” He tells us that the carmen was the Ars Amatoria, which was banned because it was deemed obscene, not criminal (Tr. 2.211–212, 240). Though Ovid intimates that the princeps was involved in or at least affected by the error, he declines evidence for the private trial in the palace or villa of the princeps only exists for his successors, e.g. Tiberius (Tac. Ann. 3.10), Claudius (Tac. Ann. 11.2), Trajan (Plin. Ep. 6.31). Mommsen 1955, 260–266, posits that all criminal proceedings conducted by the emperor as revealed by later sources were established by Augustus, a view accepted by Millar 1977, 523–524, but challenged by Kelly 1957, 37–46, and Bleicken 1962, 66–78.

2 So Goold 1983, 99; see Owen 1924, 42: “This process required no formal act of accusation, and could be instituted in virtue of information which the emperor himself possessed, or which was supplied to him by an informer . . . being without publicity and without appeal these trials became one of the chief engines of imperial tyranny.”

3 Cf. Grasmück 1978, 136, who posits that there was no trial and that Augustus committed “einen Akt uneingeschränkter koerzitiver Gewalt,” invested in him by the power of imperium proconsulare maius (greater proconsular power), cf. ib. 128 with n. 463.

4 Tr. 1.2.64: culpa mea est ipso iudice [sc. Caesare] morte minor “My fault is unworthy of death in the eyes of Caesar himself, who acted as judge.”

5 Pont. 2.3.84, and see Helzle 2003, 157; Syme 1978, 117–118, 125–130.

6 As often throughout his poems from exile, Ovid is playing here upon the two most prominent meanings of crimen—charge and crime—which this translation attempts to capture.