

Law on Love's Stage: Étienne Forcadel's (1519-1578) *Cupido Jurisperitus*

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The Imaginative Power of a Renaissance Jurist

When I was about to start writing on both law and love, there was reason to fear, I believe, that I had blindly engaged myself into a job twice as hard as usual, which, on top of it, was going to give the impression that I confessed something about my own way of life.¹

The opening sentence of the preface to the treatise on *Cupid the Jurist* (*Cupido Jurisperitus*), published in 1553, leaves no doubt about the self-conscious audacity of its author, the French humanist Étienne Forcadel (ca. 1519-1578) from Béziers.² Given the controversial subject of his latest undertaking, Forcadel had obvious reasons, indeed, to suspect that the common opinion would take offence at it. Moreover, his project to put law on the stage of love could not be considered a sin of his youth anymore. By the time his *Cupid the Jurist* appeared, Forcadel had reached the age of 34 and churned out a series of books in which he had continuously explored the boundaries between magic, satire and legal argument.

In his *Oracle of a Jurist or Dialogues on Occult Jurisprudence* (*Necyomantia iurisperiti sive de occulta jurisprudentia dialogi*) of 1544, for example, Forcadel had staged a fictitious encounter between classical Roman jurists, famous representatives of the Medieval *ius commune*, and lawyers of his own time.

* The author wishes to thank Drs. Ken Andries and the participants to the Fifteenth European Forum of Young Legal Historians for their comments on this paper during and after the session.

¹ Forcadel, Étienne (Latinized form: Forcatulus, Stephanus), *Cupido iurisperitus*, Lyon, apud Ioannem Tornaesium, 1553, preface: "Scripturo me de iure et amoribus, verendum, opinor, fuit ne vel onus duplex temere suscipere, vel de moribus meis quicquam viderer confiteri."

² Scant bio-bibliographical details on Forcadel are contained in Géraldine Cazals's contribution in: Arabeyre, Patrick - Halpérin, Jean-Louis - Krynen, Jacques (eds.), *Dictionnaire historique des juristes français, XIIe-XXe siècle*. Paris: Presses Universitaires de France, 2007, pp. 337-338.

They discussed perennial legal issues against a magical background highly reminiscent of the fantastic setting of the witty dialogues written in Greek by the satirist Lucian of Samosata (ca. 125-180). Five years later, in 1549, he had produced another series of surrealistic dialogues describing the history of law in magical terms, the *Legal Globe* (*Sphaera legalis*), putting on stage different mythological figures and planets representing different stages in the development of Roman law. For example, whereas the harsh Law of the Twelve Tables was connected with the grim planet of Saturn, Jupiter was considered as the astrological proxy to the more mitigated law under the praetorians. The birth of Mars was seen as the origin of an epoch of endless disputes, which was not restored into peace until Justinian's *Digest* came into being as a child of the Sun. In the meantime, Forcadel had also published a collection of poems in the vernacular, *Le Chant des Seraines* (1548). They often alluded to juridical themes, and were, allegedly, well-appreciated by Pierre de Ronsard (1524-1585).³ An updated version of his poetic experiments appeared in 1551 under the title *Poésie*.

Perhaps no one who had witnessed the early stages of Forcadel's scholarly career would have expected these provocative eruptions of literary genius to occur one day, although his excellency in both classical and legal studies was clear from the beginning. Initially, Forcadel seemed to follow quite faithfully into the footsteps of the grave father of French humanism, Guillaume Budé (1468-1540). Although a man of letters himself, Budé was not really known for his taste of extravagant magical satire. Budé had foremostly promoted the study of law in its historical context by investigating the monetary and financial context of Roman case law in his *De Asse*.⁴ In the same vein, Forcadel's first publication was a safely historical treatise, the *Penus juris civilis* (1542). It explored an important aspect of the material context in which Roman law had emerged. Taking title *De penu legata* (Dig. 33, 9) as a starting point, Forcadel discussed the food supply and the alimentation in Roman Antiquity on the basis of quotes from classical authors.

³ Cf. Joukovsky, Françoise (ed.), Étienne Forcadel: Œuvres poétiques, opuscles, chants divers, encomies et élégies, Genève: Librairie Droz, 1977, p. 7.

⁴ On the connection between Renaissance humanism and the historical study of law, see the classical article by Kelley, Donald R.: The Rise of Legal History in the Renaissance. In: *History and Theory* (1970) 9.2, pp. 174-194.

A turning point in Forcadel's life was 1557, when he became a professor of law at the then absolutely top university of Toulouse, leaving behind Jacques Cujas in the concours.⁵ The famous French historian of political thought, Pierre Mesnard, thinks that it is this happy and at the same time unhappy coincidence which might have contributed to the fact that Forcadel has largely fallen into oblivion. Although there are no traces of some kind of poisonous feud between Forcadel and Cujas themselves, the latter's biographer, Jean Papire Masson (1544-1611) was particularly scathing over Forcadel's intellectual capacities to the greater glory of the genius of his demi-god.⁶ So, eventually, Forcadel paid a high price for having eclipsed the star of French humanism in this interminable concours which had started in 1554. History would now eclipse him in its turn.

Once he had landed his job in academia, Forcadel became more circumspect in choosing the themes of his writing. Although he may have continued to write virtuoso prose and poetry, prudence undoubtedly summoned him to find an outlet for his literary genius in secret notes. After all, the folly of love poetry would have been difficult for the public to square with their image of a distinguished member of the Toulouse law faculty. Hence, Forcadel increasingly dedicated himself to the more ordinary albeit no less demanding business of writing purely historical or legal treatises, some of which were published by his son posthumously: a historical account of the institutions of Poland and France (*Polonia foelix*, 1574; *De Gallorum imperio et philosophia*, 1579), studies on feudal law (*De feudis*, 1579), and on servitudes (*De servitutibus*, 1579). By the end of his life, he had even grasped the meaning of networking, at least if his eulogy of Henri de Montmorency-Damville (*Montmorency gaulois*, 1571) is anything to go by.

As he grew older, Forcadel obviously departed from the turbulent times in which he used to fuse the dizzy worlds of jurisprudence and literary magic into a foolish game of satire and play. Still, even if he ended up being a dim shadow of his literary self, he will undoubtedly

⁵ The exciting intellectual climate at Toulouse throughout the 16th century is highlighted in several contributions assembled in Dauvois, Nathalie (ed.), *L'humanisme à Toulouse (1480-1596)*, *Actes du colloque international de Toulouse, mai 2004*, Colloques, congrès et conférences sur la Renaissance européenne 54, Paris: Honoré Champion Éditeur, 2006.

⁶ See Mesnard, Pierre: Jean Bodin à Toulouse. In: *Bibliothèque d'humanisme et renaissance* (1950) 12, pp. 44-51; Mesnard, Pierre: Un rival heureux de Cujas et de Jean Bodin: Étienne Forcadel. In: *ZRG Rom. Abt.* (1950) 67, pp. 440-441.

remain one of the most eminent prototypes of the Renaissance man. In a letter added as a “postface” to his *Cupid the Jurist*, Forcadel defended the idea of the *giurista universale* against specialist lawyers with a lack of culture and general interests:⁷

It is entirely wrong to think that it is sufficient for a man with a truly human spirit to focus on just one trade. The Muses would consider that to be absolutely ridiculous. While playing the lyre with their fingers, their mind is performing arithmetic, their voices are singing and their feet dancing softly in the rhythm.

Discordant Concordance

As pointed out above, Forcadel’s *Cupid the Jurist* (*Cupido Jurisperitus*) was the summit in the form of a novel of a couple of satirical dialogues in which he had already dealt with some of the most persistent problems of law since ancient times against a magical and mythological background. This time, his Lucian-like way of staging reality led him to embark upon an initiatic journey through the secret realm of the young boy of love, Cupid (also known as Amor), and his mother Venus. As regards the form of his novel, Forcadel seems to have drawn inspiration not only from Lucian of Samosata, but also from the highly influential, yet anonymous *Hypnerotomachia Poliphili* (1499), an allegoric love story in which the hero, Poliphilus, dreams about a quest for his beloved Polia. This adventure leads him along secret forests, beautiful valleys, fairylike gardens, curious inscriptions, architectural masterpieces and fantastic landscapes, much as is the case with the hero in Forcadel’s *Cupid the Jurist*.⁸

Forcadel’s alleged aim in *Cupid the Jurist* is to demonstrate to Hephaestion, a friend of his, that looking at law from the perspective of

⁷ Forcadel (as in 1), p. 131: “Ne quis imposterum arbitretur hominis ingenui animum uni negotio obeundo duntaxat sufficere: quod quidem materiam ridendi praeberet musicis, qui dum testudinem digitis pulsan, mente numeros concipiunt, canunt interim, ac leniter terram pede certa lege quatiant.”

⁸ The hero of *Cupid the Jurist* is said to be a certain Callidemus; cf. Dauvois, Nathalie, *Jura sanctissima fabulis et carminibus miscere. La concorde de la poésie et du droit dans quelques traités d’Étienne Forcadel: Necyomantia* (1544), *Sphaera legalis* (1549), *Cupido jurisperitus* (1553). In Dauvois (ed.) (as in 5), p. 101. The identification of the addressee with Hephaestos seems to be rather unlikely (cf. below).

love and considering love from the perspective of law is a mutually beneficial experience. In the preface to *Cupid the Jurist*, Forcadel insists that love and law form a harmonious couple, since both of them promote concord and peace:⁹

Until I will have revealed the essence of my advice, there is hope that love and law will be seen to be contained within the same frontiers, to the extent that both love and law lead mankind to concord.

This central message is also driven home through a somewhat surprising, yet remarkable formal procedure. In order to illustrate or to underscore interpretations of legal matters, Forcadel quotes poets and philosophers, while references to Roman and Canon law abound as testimonies to the events which occur in the love story. Through the very texture of his novel, then, Forcadel makes a wonderful attempt at illustrating the alleged compatibility of the logic of love and the logic of jurisprudence.

Yet the ultimate message Forcadel keeps in store for his reader turns out to be quite different. The end-effect of the hybrid texture of quotes taken from both literary and legal sources is to perplex and to amuse the reader.¹⁰ For example, it is rather uncommon in a novel to find a 4-page systematic list of references to all the passages taken from the Roman and the Canon law which are going to be interpreted in the course of the adventure story. The juxtaposition of a grave reference, say to Justinian's Digest, in the middle of a narrative description of, say, desperate lovers, leaves the reader surprised and smiling.

Actually, instead of reading the initial statement about "concord" (*concordia*) as a uniform tribute to the exalted neo-Platonic philosophy of harmony and concord - as it is usually understood - it seems equally probable to think of Forcadel's *Cupid the Jurist* as an incredibly intelligent *satire* on the *disharmonious* co-existence of love and law.

Should not the very fact that he provocatively conceives of Hephaestion as the addressee of his adventure story lead us to suspect

⁹ Forcadel (as in 1), preface: "Donec ego consilii mei rationem detexero, spes est visum iri, amorem et ius, quo perducuntur homines ad concordiam, iisdem finibus contineri."

¹⁰ In order to convey a minimal sense of this technique, we have maintained the references to legal text from the Roman and the Canon law in their original form in this paper (cf. below).

right from the outset that the Realm of love is governed by a child-God who loves upsetting the good morals and legal foundations of society?¹¹ As is well-known, Hephaestion was the lover-boy of perhaps one of the most powerful homosexuals and adventurers the world has ever seen, Alexander the Great (356-323 B.C.). Along this line of interpretation, we might even wonder if the implied hero who narrates his journey through the realm of love in the first person singular could not be Alexander the Great, one of the greatest adventurers of all times?¹²

As it turns out, what Forcadel really shows in the course of *Cupid the Jurist*, is that the state of chaos usually associated with love is actually the common state of the law, while love turns out to be much more regular and rule-bound than the life of the law itself. A wonderful connection between love and law exists, then, precisely because the chaos of love is only apparent, whereas the apparent order of law rests on the contradiction and chaos usually associated with love.

Lovely Playboy, Sweet Despot

The story of Forcadel's adventure in the land of Cupid and Venus opens with an idyllic scene that reveals a paradise of harmony and concord. As he enters the gardens of the Realm of Love, Forcadel is enchanted by the variety of fine colored flowers, mellow fruit trees, and sweet-smelling perfumes that arouse his senses as the breeze blown by Favonius, God of winds, plays with his hair. But as a land of plenty similar to the mythical land of the Cyclopes rises in front of our hero, his blissful tranquillity is disturbed by a deadly serious reflection. Here comes the first paradox which crosses and troubles our jurist's mind: For this prosperity in the mythic land of the Cyclopes to exist, what apparently mattered was to keep councils, assemblies, and lawmakers at bay – the very institutional mechanisms which humans employ all the time in an effort to attain precisely the state of plenty the Cyclopes

¹¹ See the apostrophe directed to Hephaestion in the opening sentence; cf. Forcadel (as in 1), chapter 1, nr. 1, p. 9.

¹² To leave this interpretation open (since the ambiguous identity of the hero of his novel is undoubtedly part of the intellectual game Forcadel is typically playing with his reader), in what follows we will identify the first person recounting his journey through the realm of love with Forcadel. This is the safer option, since it can be deduced from “mihi iuris civilis studioso” in *Cupido iurisperitus*, chapter 1, nr. 1, p. 10 that the narrator is a legal scholar. We also learn that the narrator's (fictitious) mistress is Clytia; see chapter 14, p. 74.

possessed. Mankind is on the wrong track. It is the absence of those institutions which is a sign of prosperity.¹³

Forcadel wonders, therefore, why he still finds that there are laws in the prosperous Realm of Love in the first place. In fact, it is precisely in the Realm of Love where you can find people most truly obedient to laws and rules – even if, at first sight, there seems to be no trace of a single law in the usual sense of the word, that is a law issued by a legislative assembly and which needs to be enforced through power. With a sense of irony, Forcadel quips that normally there should be no need of laws in a country with so harmless citizens, and, since the land is so rich, it must even be very fruitful for him as a legal scholar.

As Forcadel subsequently learns, the spontaneous observance of the law in the Realm of Love is actually a by-product of the tyrannical rule from which it suffers. Its terrific ruler is none other than Cupid himself, Amor, that mighty God of Heaven, Sea, and Underworld, that mighty conqueror of the entire pantheon and mankind, who from high in the sky rules the crowd of lovers and with a voice as clear as a bell orders those madmen each year on the last day of April to renew their loyalty to him on pain of grave punishment.¹⁴

Cupid's despotically ruled empire, Forcadel muses, is simply unlimited in time and space. He quotes evidence from Hesiod (the first Greek epic poet), Parmenides (the philosopher who believed that nothing really changes), and, last but not least, the Roman law (the ultimate source of wisdom for lawyers). Even the famous Paragraph *Ius naturale* of Title *De iustitia et iure* (= Dig. 1, 1, 1)¹⁵ is adduced by Forcadel, indeed, to argue

¹³ Forcadel (as in 1), chapter 1, num. 1, p. 10: "Nam ora ipsa coelo soloque iuxta felix Cyclopus agros mihi referebat, in quibus fructus, fruges etiam, sponte naturae ac sine cultura uberrime proveniunt. Unum illud interest, quod his ut Homerus ait, out' agorai boulèphoroi oute themises, id est, neque conciones consiliariae sunt, neque leges. Atqui leges ipsae et legum disceptationes nusquam libentius audiuntur quam in hac regione, quae cum incolis admodum fructuosa sit, mihi quoque iuris civilis studioso non parum fructus et emolumenti attulit. Caeterum fuit quod mirarer leges ibi constitutas inveniri, ubi minimùm mali homines, legum severitate non egeant."

¹⁴ Forcadel, (as in 1), chapter 1, num. 1, p. 10: "Iubet Cupido, aethereus, marinus, plutonicus, deum atque hominum victor et triumphator semper Augustus, turbare populoque amantium uti adsint pridie Calendas Maias, et sacramento se quotquot sunt denuo adigant, foedusque recens feriant dominum salutari, ni male multari quisque maluerit."

¹⁵ As mentioned before, we have put the references to Roman and Canon legal texts in the main text so that the reader has the opportunity to experience the surprising and witty

that from times eternal, from the very beginnings of mankind, people have known how to make love and how to make sure that the species survives as a matter of natural law.¹⁶ In conclusion, the most absolute power in the world belongs to Cupid, as is further attested by Paragraph *Illud*, Title *Quibus modis naturales filii efficiuntur legitimi* (= Coll. 6, 1, 4 = Nov. 74, 4).¹⁷

Another illustration of Cupid's extraordinarily extensive powers concerns his reign over the deceased. Contrary to ordinary rulers and governments, whose power is limited to living human beings, Cupid extends his jurisdiction far beyond death. Forcadel demonstrates this by quoting the following passages from Justinian's Code and *Novellae*. The soul of a dead husband is said to be painfully afflicted and depressed by the second marriage of his wife in Paragraph *Quae vero*, Title *De nuptiis* (= Coll. 4, 1, 43 = Nov. 22, 43). Moreover, when a husband makes a legacy to his spouse on condition that the spouse does not enter into a new marriage, this condition is to be observed by the spouse on pain of nullity of the legacy, as is attested in Title *De indicta viduitate* (= C. 6, 40, 2).

From the canon law, however, Forcadel infers that this clause is to be deemed invalid in legacies and last wills made to virgins. Stipulating such a harsh condition at the expense of a young lady who is not yet your lawful wife would be a great testimony to your angst and selfishness. It would also be highly disadvantageous to that girl, as Forcadel playfully suggests with an ironical reference to ecclesiastical authority, namely

effect brought about by the mere formal structure of Forcadel's narrative. In addition, we give the modern version of these references, for which the following citations are used:

Dig. 1, 1, 1, 1: *Digesta Justiniani*, Book 1, Title 1, Law 1, Paragraph 1

C. 1, 1, 1: *Codex Justiniani*, Book 1, Title 1, Law 1

Inst. 1, 1, 1: *Institutiones Justiniani*, Book 1, Title 1, Law 1

Coll. 1, 2, 3: *Novellae Justiniani*, Collection 1, Title 1, Fragment 1 (I have added the modern equivalent to these Medieval citations from the *Novellae*)

C. 1, q. 1, c. 1: *Decretum Gratiani*, Causa 1, Quaestio 1, Canon 1

X. 1, 1, 1: *Decretales Gregorii IX*, Book 1, Title 1, Canon 1.

¹⁶ Forcadel (as in 1), chapter 1, num. 2, pp. 10-11: "Amoris igitur imperium ubique latissimum est, et perantiquum: nam Hesiodus in Theogonia ex Chao simul cum terra genitum tradit, nec dissentit Parmenides. | Proinde ab initio ubi creati fuere homines, amare noverunt, et liberorum procreationi operam dare, l. 1, par. ius naturale, ff. de iustit. Et iure."

¹⁷ Forcadel (as in 1), chapter 1, num. 4, p. 11: "In summa, nihil est amore ipso vehementius."

Canon *Viduas*, Paragraph *Si virgines* (= C. 27, q. 1, c. 8), since virgins esteem even higher those pleasures which they have not yet had the chance to experience [...].¹⁸ According to Forcadel, the Gods therefore prefer virgins to widows, as is explained in Paragraph *Optimum*, Title *De non eligendo secundo* (Coll. 1, 2, 3 = Nov. 2, 3).

Forcadel also illustrates the eternal jurisdiction of Cupid over mankind, even over its heroes, by reference to Vergil's story of Dido, Sichaeus and Aeneas. Sichaeus, Dido's late husband, still welcomed her very heartily in the underworld after she had committed suicide for love of Aeneas. Again, one of the most sacred texts of law gives us a clue as to how late husbands get informed about the ongoing love stories of their former spouses. In Forcadel's view, Canon *Fatendum* (= C. 13, q. 2, c. 29) indicates that the dead are informed about second marriages by the Angels and by those who die. Every time a new dead person enters the Underworld, he makes happy the *anciens*, who continuously suffer from never-ending boredom, with breaking news about the exciting world of the living. How, then, Forcadel wonders at the end of the first chapter of his *Cupid the Jurist*, could it be that the most frequent wish expressed amongst the subjects to Cupid's jurisdiction is the desire to die for love: "Oh darling, I would die for you"? This is a pointless wish, since love cannot possibly be extinguished by death:¹⁹

So to come back on what I said earlier, since love cannot even cease to live when lovers die, why, then, I beg you, is it that in love there is no more frequent wish than to die?

The universal order of passion and love transcends everything, and it is small wonder that Forcadel is dying of curiosity to find out more about the secrets of this fascinating Realm of Love. In the twenty-one chapters that follow, he seeks to share with us some of the most secret

¹⁸ Forcadel (as in 1), chapter 1, num. 7, pp. 12-13: "At si testator nonnihil virgini reliquerit, ita ne nubat, voluntate nimium anxia et improba | nititur, de re nondum ad suam vel alterius iustam affectionem pertinente sollicitus. Praeterea in virgine durior est huiusmodi conditio, quae pluris eam voluptatem facit, quam nescit, can. Viduas, par. si virgines, 27, q. 1. Proinde diis habetur virgo gratior quam quae vidua permanet, par. optimum de non elig. secund., col. 1."

¹⁹ Forcadel (as in 1), chapter 1, num. 8, p. 13: "Cum ergo (ut ad superiora regrediar) ne morte quidem ipsa, amor vivere desinat, cur, quaeso, fit ut in amore nullum votum morte sit frequentius?"

answers to some of the most profound questions that rattle the nerves of mankind and of jurists, in particular, since the origins of time: What are the signs and proofs of love? Are children the highest good and source of happiness for their parents? Why are the members of the female sex so much earlier mature than men? What is the normal duration for a pregnancy? Can partners who break up bring an action for deceit against their former lovers? Is it possible for lovers to survive if they have no money? Is marriage the best type of relationship? What is the power of music in the seduction of women? Are good looks decisive for attraction? In what follows a short impression is given of the manner in which Forcadel treats of this kind of themes through the example of his story about the relationship between contracts and love.

Passionate about Contracts

From his trip to the gardens of Love in the first chapter, Forcadel moves on to the midst of a dark and sacred forest in the second chapter. There he hears lovers crying and moaning with pain and pleasure at the same time: “ô eia, eia mala ô”. This, he says, is the fate of lovers, some praising the sublime beauty of their sweetheart, some decrying her inconstancy and unfaithfulness.²⁰ As Roman law has it, indeed, more precisely in Law *Inter*, Title *De usu fructu* (= C. 3, 33, 15) the life of man is exposed to thousands of shocks and vicissitudes. Yet lovers suffer from the most precarious condition, since the female sex is notably prone to change and inconstancy, as is attested by Canon *Forus de verborum significatione* (= X. 5, 40, 10).

Forcadel is puzzled at the pitiful sight of these broken relationships. As a committed jurist and Christian he can not believe his eyes. For did not God reveal himself as the God of Love in the Bible? Does not the law of the Church, notably in Canon *Iuramenti* (= C. 22, q. 5, c. 12), affirm that God esteems a naked promise as highly as an oath? Did not pagan philosophers in Antiquity hold that trust and fidelity are the cornerstones of society, as Roman law confirms in Title *De pactis* (= Dig. 2, 14, 1).²¹ Why, then, do lovers break up and make up all the time?

²⁰ Forcadel (as in 1), chapter 2, num. 1, pp. 13-14: “Haec erat sors amantibus aptissima, quorum alii puellae praeclaram faciem, alii insignem perfidiam per tumultum decantabant et inconstantiam subinde arguentes | vociferabantur.”

²¹ Forcadel (as in 1), chapter 2, num. 1, p. 14: “Debuerunt saltem hae conversiones rerum

Shall not love affairs be considered as contracts, in which mutual consent is sufficient to produce a real, continuous and enforceable obligation? Is not this expressed in Law *Sufficit*, Title *De sponsalibus* (= Dig. 23, 1, 4) and Law *Mulierem*, Title *De ritu nuptiarum* (= Dig. 23, 2, 5)? Alluding to an age-old debate about the possibility of concluding contracts at a distance, Forcadel states that love can be concluded from a distance, as long as the declaration of will is transmitted to the other party or lover by means of a messenger or a letter. Apparently, the Roman poet Propertius had deplored the loss of his writing tablets – a topic among the poets in Antiquity – precisely because they were capable of transmitting messages to his mistress as persuasively as the lover himself: “from now on these tablets are able to placate girls without me; and without me some speak very eloquently”.²² Could this have meant, perhaps, that, tragically, some young ladies eventually even preferred the love letters to the lover himself?

What we get in the second chapter of Forcadel’s *Cupid the jurist*, then, is a witty parody on one of the most crucial developments in the history of contract law, namely the development from the traditionally Roman, closed system of contracts, involving many formalities, towards a general, open category of contracts based on mutual consent.²³ As a rule, stipulations and real contracts could not be concluded unless the contracting parties were in the same place at the same time. This was a crucial evolution, already reflected in 14th century Castilian law, which was further developed on the basis in canon and natural law. It became mainstream contract theory in the scholastic tradition, but it still formed the subject of fierce debates amongst the humanist jurists of 16th century

in amore propter perfidiam quiescere, cum Amor Deus sit, et Dii nudam promissionem tanti faciant quanti iusiurandum (...) Deinde cum amor a iure naturae omnibus insitus sit, ut paulo ante dixi, humanae fidei nihil magis congruit quam pacta servare (...) Amor enim ut pactum in duorum consensu versatur, eumque tantum desiderat (...).”

²² Propertius, *Elegiae*, 23, 3, v. 5-6 “Illae iam sine me norant placare puellas, et quaedam sine me verba diserta loqui”.

²³ See, for instance, Barton, John (ed.): *Towards a general law of contract*, Comparative studies in continental and Anglo-American legal history, 8. Berlin: Duncker & Humblot, 1990; Birocchi, Italo: *Causa e categoria generale del contratto. Un problema dogmatico nella cultura privatistica dell’età moderna. I. Il cinquecento*, Il Diritto nella Storia, 5. Torino: Giappichelli, 1997. Duve, Thomas, “Kanonisches Recht und die Ausbildung allgemeiner Vertragslehren in der Spanischen Spätscholastik.” In: Condorelli, Orazio – Roumy, Franck – Schmoeckel, Mathias (eds.): *Der Einfluss der Kanonistik auf die Europäische Rechtskultur*, Band 1: *Zivil- und Zivilprozessrecht*, Norm und Struktur, 37, 1. Köln-Weimar-Wien: Böhlau, 2009, pp. 389-408.

France, precisely because a general law of contract did not correspond to the original Roman law of contract (which the humanists sought to recover).

With an amusing sense of humor, Forcadel puts these serious and complex juridical debates on contract law into perspective by putting them against the background of his adventure story in the Realm of Love – the ultimate reality, and a reality which Forcadel does not seem to consider as wholly harmonious and peaceful. After all, the basis of life, Love, is chaos, disruption and war.

Hence we find Forcadel wondering whether the Latin word for contract or agreement (*pactum*) is etymologically derived from the Latin word for peace (*pax*), or conversely. In other words, he wonders whether agreement is a consequence of peace or rather a condition for the establishment of peace? In the canon law tradition, particularly Canon *Pactum*, Title *De verborum significatione* (= X. 5, 40, 11) a text of Isidor of Seville (ca. 560-636) was cited, to the effect that peace (*pax*) precedes agreement (*pactum*, *pactio*), since peace is a condition for agreement.²⁴ Forcadel points out that on this account it is perfectly possible to explain why love affairs fall apart so quickly.

Lovers break up as soon as the peace on which their “love agreement” was built is disturbed, but then they make up again as soon as peace is restored, only for their relationship to break up again. Quite cynically, Forcadel thinks Isidor’s is a sound etymology, precisely because it helps to explain the reality of the continuous making and breaking of love affairs.²⁵ As the Latin poet Publilius Syrus (1st century B.C.) noted: “concord is appreciated all the more after a period of discord”.²⁶ So there is nothing strange about the big number of shattered love affairs.

However, against this line of thought, identified with the canon legal tradition, Forcadel puts the contrary interpretation which is ascribed to Ulpian. The Roman jurist Ulpian indicated that agreement (*pactum*, *pactio*) is derived from peace (*pax*) in Dig. 2, 14, 1. Agreement (*pactum*) is precisely the instrument through which the transition from war to peace

²⁴ Isidor of Seville, *Etymologiae* (ed. Lindsay), book 5, chapter 24, num. 18: “Pactum dicitur inter partes ex pace conveniens scriptura, legibus ac moribus conprobata.”

²⁵ Forcadel (as in 1), chapter 2, num. 7, p. 16: “Pactum a pace deduxit Isidorius (...) ne mirum sit pacta amantium non servari, cum pax eorum parvo duret tempore, vigent bella, et quaedam induciae, mox utcunque redeunt in gratiam (...).”

²⁶ Publilius Syrus, *Sententiae* (ed. Friedrich), p. 38: “Discordia fit carior concordia.”

(*pax*) is brought about.²⁷ So the word “agreement” (*pactum*) must logically precede the word for peace (*pax*). This realistic approach is reiterated in *Law Conventionum*, in Title *De pactis* (= Dig. 2, 14, 5). What Forcadel is doing here, of course, is poking fun at the usual, pretty much Stoic procedure jurists of his time used to try and find the right interpretation of words, while at the same time raising the fundamental question of whether law, and contracts and treaties in particular, are a precondition for order and peace, or conversely? Of course, arguments can be raised in favor of both opinions. This is simply a chicken-and-egg problem.

Forcadel brings his ironic discussion of love as a contract to a head when he integrates the whole Roman discussion about nominate versus innominate contracts into his analysis of love. In Roman law, nominate contracts were recognized as having their own name, and therefore being enforceable through actions specific to that contract, whereas innominate contracts were thought to be merely “naked” pacts and hence unenforceable in court.

By the time Forcadel wrote his treatise, this Roman distinction had been superseded by the idea, derived from canon law, that every promise is binding (X. 1, 35, 1: *pacta quantumcumque nuda sunt servanda*) and that the fidelity to the given word is the highest good. Forcadel actually cites Roman texts in order to argue that this was also the original view of the Romans (Dig. 50, 17, 84 and C. 4, 18, 1). This was a procedure often employed by the scholars of Roman law in order to save the face of Roman law in light of the dominant norms and values of an almost uniformly Christian society.²⁸

As Forcadel wisely points out, the Romans soon found out that shame was not sufficiently present in most human beings in order to prevent them from becoming unfaithful to their promises.²⁹ That explains why,

²⁷ Forcadel (as in 1), chapter 2, num. 7, p. 16: “Sane Ulpianus maluit a pactione pacem deducere (...) Pactum, inquit, a pactione dicitur, unde et pacis nomen appellatum est. Nisi sic intelligas, pactum esse appellatum nomen pacis, id est, nomen ad pacem faciens, sive pacificum, quia pacto et foedere saepissime a bello disceditur.”

²⁸ Cf. Dolezalek, Gero, “The Moral Theologian’s Doctrine of Restitution and its Juridification in the Sixteenth and Seventeenth Centuries”. In: Bennett et al. (ed.), *Acta Juridica. Essays in Honour of Wouter de Vos*. Cape Town-Wetton-Johannesburg: Juta, 1992, pp. 104-107.

²⁹ Forcadel (as in 1), chapter 3, num. 1, p. 19: “Sed perfidi pudor tantummodo onerabatur, quae vero remedia promissum servare cogerent, nondum ipsi legumlatores induxerant, qui tandem indignati ob multorum singularem impudentiam et perfidiam, actiones composuere, per quas promissor stare pacto adigeretur (...) quia nemini sibi ius dicere licuit, aut in iudicium venire sine actione (...).”

eventually, the Roman law became different from the principles expressed in the canon law and prescribed by the law of nations. In granting actions to the victims of breach of contract, the Romans wanted to prevent people from taking the law into their own hands, Forcadel argues. This might sound a little bit anachronistic. Even if, obviously, there is evidence that the Romans disliked self-justice (Dig. 4, 2, 13; Dig. 3, 5, 5, 2), the increasing monopolization of dispute resolution by the State is a phenomenon pretty much typical of Forcadel's own time and the modern period in general.

In Forcadel's view, the Romans finally decided to attach procedural actions only to the most frequent contracts, say sale-purchase. But to this list of enforceable contracts, the French humanist from Béziers now adds... love:³⁰

There is a grave and useful debate going on about whether a love affair (*amor*) must be classified among the nominate contracts or not. I certainly call it a contract, since a mutual obligation exists from the moment of its inception. It is also allowed for scholars to call it a nominate contract, since it has the most elegant name one could desire to have, as is clear from Law *Iurisgentium*, Title *De pactis* (= Dig. 2, 14, 7). Would not all people wish to distinguish love from the general concepts "agreement" or "contract"? What is more, love should with reason be considered as the most excellent of agreements. It should be given its own action for enforcement and its own name.

A love affair, then, is a nominate contract which can be enforced in court. Typical of Forcadel, however, is that he ridicules the deadly serious discussion about nominate versus innominate contracts by asking the following questions: How do we need to classify contracts for paid love? Are love affairs involving payment, namely prostitution, also worthy of a name? Is paid love enforceable before the courts? Apparently, there was a most learned dispute going on about this

³⁰ Forcadel (as in 1), chapter 3, num. 1, p. 19: "Gravis et utilis est illa contentio, cum dubitatur, utrum amoris contractus nomen suum habentibus inseri debeat an non. Contractum appello, quia ultro citroque obligat, cum vere initus est. Et doctoribus nominatum dicere licebit, cum tam elegans nomen habeat, quam quod maxime desiderari potest, l. iurisgentium, ff. de pact. Nam quotusquisque amorem a generali conventionis vel contractus nomine non separaverit? Quinetiam conventionum excellentissima merito haberi debet, et actione sua non minus quam nomine donari."

question. Yet, as decent French manners demand, Forcadel rejects the objectionable idea that paid love could ever be worthy of a name.³¹ Paid love is simply an innominate contract. It is a contract of the type “I do something for you so that you give me something in return” (*facio ut des*) or “I give you something so that you do something for me in return” (*do ut facias*) in particular. A contract for paid love has no specific actions named after it, although the *actio praescriptis verbis* and the *actio de dolo* can be used to enforce or dissolve it.

Wickedly in love

From a discussion of the law of contract we move to a discussion of criminal law in chapter four of *Cupid the Jurist*. Finding himself in the midst of a vast forest, Forcadel suddenly notices Sylvanus, the mythic guardian of sacred woods. As it turns out, he has been employed by Cupid as Chief of Police in the forests of the Realm of Love. Forcadel listens as Sylvanus prays to the Goddess of Witchcraft, Hecate. Apparently, the Chief of Police is asking her to bewitch a young girl and make her fall in love with him. Sylvanus’ love-sickness leads Forcadel into a reflection on the devastatingly poisonous nature of Cupid’s power:³²

Is there anything capable of escaping from under love’s coercive spell? Love orders you to break the law. Particularly, love urges you to break those laws, prescribed already in ancient times, which forbid you to use love potions, lest sorcery and black magic increase the libido of chaste souls, thereby leading them astray.

Forcadel adduces the usual amount of citations from the Roman law (e.g. C. 9, 18, 4; Dig. 48, 8, 3; Dig. 48, 19, 38, 5) to substantiate his point about the criminal nature of love potion abuse. Referring to Paragraph

³¹ Forcadel (as in 1), chapter 3, num. 5, p. 21: “Non ero nimius in recensendis aut refellendis duarum factionum opinionibus (...) Nam altera interpretum pars multum ineptiarum, altera parum iudicii coniecit et habuit. Itaque perpetuum hoc esse volo in omnibus innominatis contractibus, ut tam praescriptis verbis actio quam de dolo dari possit, si dolus aliquis arguatur, modo de dolo agere malim (...).”

³² Forcadel (as in 1), chapter 4, num. 1, p. 24: “Quid non cogit amor? Leges certe violari iubet, quae vetant ne pudici animi philtris vel incantationibus ad libidinem deflectantur (...).”

Novimus, Title *Quibus modis naturales filii efficiuntur legitimi* (= Coll. 6, 1, 4 = Nov. 74, 4) he concludes that, in fact, love is pure madness (*amor furor merus*).³³ This explains, according to Forcadel, why in Title *De successionibus sublati* (= Inst. 3, 12) the term “bacchari” is used to denote the behavior of a women who has fallen in love with a slave. Women in love behave as insanely as the Maenads, the drunken, female followers of Bacchus, the ancient God of wine and ecstasy. Moreover, Paragraph *Apud* of Title *De aedilitio edicto* (= Dig. 21, 1, 1, 9) indicates that “bacchari” is to be derived of your senses and is to suffer from a vice as pernicious to the soul as fever is to the body.

In short, Forcadel admits:³⁴

I could no longer control myself. I could no longer restrain myself from taking the audacious step to take Cupid to court, since he lies at the basis of a big number of grave crimes. It is a case which does not require long-drawn-out testimonies. The story of Myrrha is telling enough. Under Cupid’s influence, Myrrha (called Smyrna by Hyginus³⁵) desired to sleep with her father Cinyras, the king of the Assyrians. Against all good morals and laws, as is obvious from Law *Nuptiae* and Law *Quinetiam* in Title *De ritu nuptiarum* (= Dig. 23, 2, 53 and 55) she finally had intercourse with him in an act of utter turpitude while he was drunk and ignorant.

³³ Cf. Nov. 74, 4 (ed. Schoell-Kroll): “Novimus etenim et castitatis sumus amatores et haec nostris sancimus subiectis: sed nihil est furore amatoris vehementius, quem retinere philosophiae est perfectae, monentis et insilientem atque inhaerentem concupiscentiam refrenantis.”

³⁴ Forcadel (as in 1), chapter 4, num. 5, p. 25: “Non potui tunc mihi temperare, quin Amorem audacter accusarem, velut causam multorum magnorumque scelerum. Res non eget prolixis testimoniis praesertim cum illo suadente Myrrha (quam Smyrnam vocat Hyginus) Cinyrae Assyriorum regis filia patris concubitus appetierit, et eo tandem temulento ac ignorante contra fas et leges turpissima potita sit (...).”

³⁵ Caius Julius Hygin(i)us (ca. 64 B.C. - 17 A.D.) wrote a book on fables (*Fabularum liber*) containing a summary of the most important myths used in Greek and Latin poetry. It was successful among Renaissance humanists as a key to reading the classical authors. Hyginus recounts how Smyrna was punished by Venus on account of the irreverential feelings of her mother Cenchreis. She had dared to say that her daughter was more beautiful than Venus; cf. *Fabularum liber*, Basle, apud Ioannem Hervagium, 1549, Fabula 58, p. 15. To show off his erudition and antiquarian curiosities typical of most Renaissance humanists, certainly in 16th century France, Forcadel elaborates on the origins of this confusion of the names Smyrna and Myrrha in the text that follows the quote which we have translated above.

There is absolute proof that Cupid is the cause of thousands of crimes, so he must be punished, according to Forcadel. If people burning cities are sentenced to death by burning, as is evident in Law *Capitalium*, Paragraph *Incendiarii*, Title *De poenis* (= Dig. 48, 19, 28, 12); if Phaëthon died because he mistakenly set the sky on fire when he wished to take over the reins of the Sun from his father Helios; then why does Cupid go free? He sets on fire heaven, earth and seas all the time. Worse still, he is a most unfair judge, since he strikes lovers with absolute blindness, which is contrary to the procedure prescribed in Law *Sancimus* (C. 9, 47, 22)?³⁶ What is more, as Forcadel points out in chapter 17, should we not question the legitimacy of Cupid as a jurist and judge in the first place?³⁷ Can it be allowed for an ever-juvenile playboy to become a judge? Did he take a law degree? Does he have legal capacity, in the first place, given his juvenile age?

Forcadel's fictitious accusation of Cupid is a witty illustration of the impotency and powerlessness of the human legal system in the face of that eternal God of potency. Ironically, Cupid does not even fulfill any of the conditions required in civilized societies for occupying a powerful position within the legal system. Cupid reigns as an absolute despot. Through an entirely unwholesome joint venture with his mother Venus, he rules everything. What beats the limit is that Cupid does not even need coercion in order to enforce his power. There is a law of love which imposes itself on human beings automatically, without the slightest need for coercion. Cupid detains a power politicians and judges in the real world can only dream of. In fact, he rules over all secular rulers, and is therefore to be called the second Lord of the World.³⁸ His jurisdiction is parallel to that of secular empires. Worse still, Cupid constantly intrudes into those jurisdictions and upsets their patterns.

Tragically, Forcadel's journey to the Realm of Love seems to suggest that the collective potency of judges, legislators and the whole fabric of our legal hierarchy do not come close to half of Cupid's power, even if it got a collective boost of Viagra. During a conversation with Cupid's

³⁶ Forcadel (as in 1), chapter 4, num. 6, p. 26: "Quid obest quominus Amor puniatur, qui coelum terras et maria pergit accendere? Potissimum cum ipse iudex adeo iniquus sit, ut oculis delinquentibus cor affligat, adversus l. sancimus, C. de poen."

³⁷ Forcadel (as in 1), chapter 17, num. 6, pp. 92-93.

³⁸ Forcadel (as in 1), chapter 9, num. 2, p. 48: "Quod si Cupidinem ad reliquos principes referas, quos omnes ad unum superavit, mundi secundus dominus iure optimo dicendus est. Nam si potior mundi principibus est, mundum ut sibi asserat necesse est."

mother Venus, she confesses to Forcadel, not without a certain self-esteem, that even the divine power of our Holy Father, the Pope, is largely inferior to that of her playboy son.³⁹ Whether she was thinking of the number of love affairs in which she had seen certain Popes indulge, or rather of the sex scandals that infected the clergy every now and then, is unsure. Yet Cupid's omnipresent hold over society, and divine as well as secular jurisdictions, in particular, seems to be beyond any doubt. That is way Cupid deserves severe punishment. He is a false jurist. He is a ruthless judge. He is nothing but a silly playboy. In the name of law, Forcadel vindicates the rights of the true jurists. Yet he keeps on smiling regardless.

A Human(ist) Comedy?

Put on the stage of love, law reveals its weakness, frailty and fragility. In Forcadel's view, the legal order of society is under constant pressure of a God of Love who seems to proceed in more regular patterns than law itself. Contrary to his initial statement, which was aimed at reassuring his readership, the relationship between law and love as it is described in his novel turns out to be anything but harmonious. The dynamic of this odd couple appears to correspond to Heraclitus' restless unity of the opposites instead of Plato's blissful idea of concord.⁴⁰

The final verses of Forcadel's *Cupid the Jurist* are telling in this respect. Incidentally, they are composed in the form of an elegiac distich, which as a matter of course recalls the priceless Latin love poetry of Catullus, Propertius and Ovid. At the same time, the elegiac distich transmits these very Roman poets' sense for novelty, provocation, and controversy. In poetic terms, Forcadel mocks even at his own, prosaic enterprise.

³⁹ Forcadel (as in 1), chapter 9, num. 2, pp. 49-50: "Quid si committantur ille et hic, singulari certamine? An neuter vincet alterum? Vereor ne Cupido sit superior. Nam quo suam potestatem summam esse prae caeteris ostendat Pontifex, omnes reges Lunae confert, se unum Soli, cap. Solitae de maior. et obedi. Atqui Solem ab Amore victum, cum multis eventibus, tum a Daphne fugitiva probari et argui potest."

⁴⁰ Interestingly, one of Forcadel's poems (*Le pleur d'Héraclite et le ris de Démocrite, philosophes*) expresses both the melancholy with which Heraclitus was struck on account of his impious philosophy, and the excessive mockery displayed by Democritus for the same reason; this *opusculum* is contained in Joukovsky's edition (as in 4), pp. 127-137.

Tongue in cheek, he finishes his novel by putting his literary effort into a laughable perspective:⁴¹

When He saw that laws were being mixed with the tenderness of love,
He burst out laughing,
Cupid, that playboy Who is bound by no law.

Forcadel, then, seems to have been capable of smiling at the insight that his fate was no less subject to the vicissitudes of Cupid's frivolous laws than the legally ordered society. Self-conscious and humble at the same time, Forcadel indulged in the sight of both his and society's pointless struggle under the sun. True, to the extent that love and law both further concord, they seem to be partners in the same country. But, as is obvious from *Cupid the Jurist*, their interplay produces rather discordant sounds.

Contrary to what posterity and Forcadel's contemporaries believed they needed to infer from this provocative book on love and law, the French humanist teaching at Toulouse strongly denied that he had stepped out of his role as an established legal authority. For one thing, Forcadel tried to defend his cause by implicitly recognizing a right to provoke (*ius provocationis*) to all men of virtue and experience.⁴² More important, however, is the apologetic letter addressed to his calumniators (*Epistola ad calumniatores*) and added to his *Cupid the Jurist*. In this letter, Forcadel found it as hard to hide his self-esteem and to denounce the envy (*invidia*) of his colleagues as in the preface to his book. This was not entirely uncommon among the humanists, who frequently displayed an innate tendency to loathe conformist academic thought.

In the preface, Forcadel had compared his fate with that of God the Creator: by his very act of Creation, God had also allowed his enemies, the atheists such as Epicurus, to come into existence.⁴³ By the same token, Forcadel faced the prospect of feeding his very enemies and envious hairsplitters with his publications. In the apology, Forcadel

⁴¹ Forcadel (as in 1), p. 124, in fine: "Legibus ut teneros misceri vidit amores / risit, qui nulla lege tenetur Amor."

⁴² Forcadel (as in 1), preface: "Verum si ad peritos et bonos viros ius provocandi fuerit, si iudicium suum tantisper sustineant, donec ego consilii mei rationem detexero, spes est visum iri, amorem et ius, quo perducuntur homines ad concordiam, iisdem finibus contineri."

⁴³ Forcadel (as in 1), preface.

raised himself to the same status as the honest and honourable lawyers, leaders and philosophers, ranging from Solon to Ulpian and Cicero, who had served the law and worshipped the Muses simultaneously. They, too, according to Forcadel, had faced the unjust accusation that combining the cult of the law with the cult of fiction and poetry is almost tantamount to violating the legally established order.⁴⁴

A brilliant jurist, Forcadel must have perceived better than anyone else that every attempt at ordering society suffers from its own passions, its own frailties, and its own “non-dits”. He found no better place to reveal them than on Cupid’s stage. He was also aware of the costs in terms of success among posterity of expressing such sceptic convictions aloud. His narcissitic fears became real through Papire Masson’s hagiography of Jacques Cujas. It included a truculent criticism of Cujas’ rival from Béziers. Consequently, Forcadel had been banned almost definitively from legal historical memory.

At least with regard to its vain hope for glory, Forcadel’s genius posthumously got a firm reason to believe in the tragic Greek proverb which, tellingly, preceded *Cupid the Jurist*: “hope without hope” (*elpis aneu elpidos*). Still, the most sane conclusion to be drawn from this proverb as well as from his enthralling novel, is that there is no hope that love and law will ever be seen to coexist peacefully. This is Forcadel’s ultimate advice.⁴⁵

⁴⁴ Forcadel (as in 1), p. 129: “Ac, ut ipsi loquuntur, iura sanctissima fabulis et carminibus permiscere, quasi violare. Et hoc est vetus accusationis caput, adversus quam aequitate atque innocentia pro disertissimo patrocínio munimur.”

⁴⁵ See footnote 9.