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ROMAN LAW IN TV SERIES ‘ROME’

DAS RÖMISCHE RECHT IN DER FERNSEHSERIE ‘ROM’

‘Gibt es also ein anderes Recht?’ – so bezieht sich *Gaius Iulius Caesar* (gespielt von *Ciaran Hinds*) in einer Fernsehserie ‘Rom’ auf das römische Recht. ‘Rom’ (2005–2007) ist ein Kostümfilm, der in der Zeit vom Untergang der Römischen Republik spielt. Das ist eine der interessantesten Serien über das antike Rom und das römische Recht zugleich. In einer Folge wird zwar ein Strafprozess dargestellt, aber der Zuschauer wird selten direkt über das Recht informiert, überwiegend wird das Recht durch das Verhalten der Helden dargestellt. In der Serie kann man viele rechtliche Elemente finden, z.B.: Strafprozess, Strafvollstreckung (*damnatio ad gladium ludi*), die Befreiung eines Sklaven (*manumissio*), Gestaltung der Trauerfeier, körperliche Züchtigung für die Soldaten (*castigatio*). Manche rechtliche Aspekte wurden korrekt gezeigt, andere beinhalten viele Ungenauigkeiten, trotzdem ist diese Serie eine sehr interessante Visualisierung des Staates und des römischen Rechts. ‘Rom’ kann auch einen pädagogischen Wert haben. Zurzeit suchen die Lehrer nach immer attraktivsten Formen des Unterrichts. Diese Fernsehserie kann dazu ein interessantes Mittel sein.

Schlüsselwörter: römisches Recht, Befreiung der Sklaven, Strafprozess, Militärrecht, Juristen

Introduction

‘Rome’ is a British-American-Italian historical drama television series broadcast between 2005 and 2007 (2 seasons, 22 episodes). The show is set in the last years of the Roman Republic – it starts during Gallic Wars (52 B.C.) and ends with the battle of Actium (31 B.C.). The series depicts fictional adventures of Lucius Vorenus¹ and Titus Pullo². Those two characters are briefly mentioned in 44th chapter of the 5th book of Julius Caesar’s *Commentaries on the Gallic War* (*Commentarii de bello Gallico*). In Caesar’s description the men were rivalling centurions of the 11th Legion (*Legio XI Claudia*). In the TV show Vorenus is a centurion and Pullo is a legionary, they both serve in the 13th Legion (*Legio*

¹ Played by Kevin McKidd.

² Played by Ray Stevenson.

XIII Gemina). The episodes are mixture of real life characters and events as well as imaginary ones. Most viewers won't ask themselves whether it really happened, because the story is coherent, entertaining and believable. But from a scholar point of view it is interesting to differentiate between facts and fiction in the series.

1. Military law

In the first episode 'The Stolen Eagle' (season 1, episode 1) we are acquainted with the main characters and with Roman law. During the republic penalty for soldier's insubordination (*contumacia*) was death. Soldier guilty of such crime was flogged (*castigatio*) and beheaded. Capital punishment during the principate was also applied for hitting a centurion (Kołodko 2007: 62–63). In the episode we see some battle scenes – Romans fight with Gauls. During the combat Pullo breaks out of the formation, ignores centurion's orders to return, and strikes Vorenus in the face. Later in the camp Pullo is flogged while Vorenus explains the punishment and numbers penalties for military crimes. When Pullo awaits execution in jail we learn he is to be killed in the arena. There is no execution due to further events. Pullo's behaviour was an offence, he was drunk, disobeyed orders, and attacked commanding officer. As far as flogging is correctly presented as part of the punishment for insubordination, 'death in the arena' is not. After *castigatio* Pullo's head would have been cut off with an axe.

2. Slavery

One of the most distinctive features of the Roman state was slavery. It is quite widely presented in the series. Some interesting legal aspects of slavery are shown in the scenes presenting main characters not only as soldiers but also as slave owners. Titus Pullo is the owner of Eirene³. Lucius Vorenus is the owner of Oedipus⁴. In the episode 'Triumph' (season 1, episode 10) Oedipus says that he and Eirene are already married 'in their hearts', but they want to be 'legally married' when they are freed and that they have been saving money to free themselves. Slaves' marriage-like union was called *contubernium*. The savings mentioned here are *peculium*. Neither is named directly, but the on-screen presentation of both is correct. *Contubernium* was valid according to natural law but without civil effects, the slaves could cohabit and form a permanent relation, but it was not

³ Played by Chiara Mastalli.

⁴ Played by Abhin Galeya.

treated as a legal marriage by Romans (D.16.3.27 (Paulus) – s.f. Berger 1953: s.v. *contubernium*; Dajczak, Giaro, Longchamps de Berier 2014: 219). The *peculium* was a small property administered by the slave and could have been used to gain freedom. It is mentioned in the Twelve Tables, its definition placed in the Digest (D.15.1.5.4) was created by Tubero, repeated by Celsus and Ulpianus (Buckland: 187; Žeber 1981: *passim*; Litewski 1995: 127; Wołodkiewicz Zabłocka 1996: p. 71 and n., Kolańczyk 1997: 186; A. Zaborowska 2005: 45–58; A. Zaborowska 2010: 148–161).

In the same episode Eirene is freed by Titus Pullo. Pullo says he cannot marry Eirene as long as she is a slave, which is correct, as a relationship between a citizen and a slave fell into the category of a *contubernium*. In order to free Eirene Pullo asks Vorenus to go with him to the slave's register and devot his name. They go to the forum, Vorenus tests for Pullo's ownership of listed property in front of some clerk; Pullo signs a paper [a list?] and is given a document confirming Eirene's freedom.

This is very peculiar form of manumission. Manumission in as act emanating a person from the holder of ownership removing him/her from that class, it is a release from being owned (Buckland 1908: 437–438). There were 3 forms of *manumissio* during the late republic: *manumissio testamento*, *manumissio vindicta* and *manumissio censu*⁵. According to W.W. Buckland (Buckland 1908: 440) *manumissio censu* took place during the census and involved 3 steps: first the slave presented himself and claimed to be a citizen, then the master approved it (*iussum* or *consensus*) and finally the censor inscribed the name of the slave on the list of *cives*. *Manumissio vindicta* was a form of *cessio in iure*, an *adsertor libertatis* claimed a slave before the magistrate as a free person and praetor formally conducted addition giving freedom (Buckland 1908: 442; Dajczak, Giaro, Longchamps de Berier 2014: 191–192). In both cases slave's presence was necessary, yet in the series Eirene wasn't there. Pullo asks Vorenus to sort of vouch for him, which may suggest that the creators thought of *adsertor in libertatem*, but he was not supposed to be there for an owner, it was a third person who vindicated a slave, he acted as a plaintiff by submitting *vindication in libertatem* (Litewski 1995: 129). It seems more likely that it was supposed to be *manumissio censu* as the characters in the series talk about 'an office', 'a register' and 'a list of property'. Taking under consideration that the census was held in the Campus Martius, in Villa Publica, and that it provided a register of citizens and their property (Tarwacka 2012: 171–238), we may assume that the clerk in the forum was supposed to be a censor (or a censor's assistant e.g. an *iurator*⁶). It is also not certain whether a woman could have been freed in this way, since

⁵ *Tituli ex corpore Ulpiani* 1,6–1,9.

⁶ *Iuratores* were responsible for receiving citizens' declarations (Tarwacka 2012: 103–104).

census was applied to men only⁷. The abovementioned episode takes place ca. 46 B.C. There was no census at the end of the republic⁸, and it wouldn't take just a few moments to free someone from slavery. It took more than a year to create a new list – censors were elected once in 5 years and were in office for 18 months (Berger 1953: *s.v. censores*). W.W. Buckland says it is not clear whether the slave was free from the moment of enrolment to the list, or from the completion of the new list (Buckland 1908: 441), but the latter seems more likely. Of course for the sake of the continuity of the show one can assume that the census took place around that time, and the censor's office was swift with decisions, but even if we omit time discrepancies, then it is simply impossible to release from slavery in the presented fashion. Census was a form of a register of citizens and their property, including slaves, but there was no separate list of slaves, and there was no special office for that matter, there was no 'registry of slaves'. Besides, an owner did not need a witness when freeing a slave by enrollment in the list of citizens, as the *paterfamilias* took an oath before making a declaration of his property. It is also highly unlikely there were any written confirmation of the release from slavery given by the censor's office. This is very modern interpretation of an ancient institution, it looks like it is modelled on some sort of unregistering a car today – you go to the office, sign the papers and get a written confirmation. I assume that creators of the show thought of *manumissio censu* (hence the list and the censor's office) but mixed it with *manumissio vindicta* (Vorenus devoting for Pullo) and added modern legal elements (written forms of legal acts) creating non-existing form of release from slavery.

Issue of slaves' testimony is mentioned in the episode 'Testudo et Lepus (The Tortoise and the Hare)' (season 2, episode 4). Servilia⁹ orders his slave Duro¹⁰ to murder Atia¹¹. He is hired at Atia's villa and unsuccessfully attempts to poison Atia. Angry woman tortures him to discover his principal and she justifies it saying 'Because it isn't a legal confession unless there's torture'. It's not exactly true. During the republic slaves could not be witnesses (*testes*) although they could testify during the court proceeding under the condition the testimony was conducted with torture (Litewski 2003:48). But it was at discretion of authorities, not citizens, to conduct slaves' torture and testimony. The fact that Atia orders Duro to be killed after the tortures makes it even more probable that reference to law was used as an excuse, not a rule to be followed. The presentation of connection between torture and slaves' testimony is misleading, it's not exact and the viewers could draw wrong conclusions.

⁷ According to W. Suder (2003: 145, 157, 168, 169) women and children were additionally enrolled to the list of men.

⁸ According to W. Suder (2003: 40) no census was maintained between 70 B.C. and 28 B.C.

⁹ Played by Lindsay Duncan.

¹⁰ Played by Rafi Gavron.

¹¹ Played by Polly Walker.

3. Criminal law

In 'The Spoils' (season 1, episode 11) we see a murder trial. Pullo works for Erastes Fulmen¹², a criminal pretending to be a businessman, who orders him to kill a politician, Caesar's opponent – Aufidius Dento. Pullo is reckless in committing the murder, gets caught and awaits trial. Gaius Octavian¹³ sends Timon¹⁴ to hire a lawyer to defend Pullo. The case is so obviously hopeless that only one unexperienced lawyer agrees to take the job. The trial takes place in the public place, in front of the audience. The court *lictor* indicates the trial, an *accusator* Maius Nigidius speaks on behalf of Aufidius Dento's body, and since the defence lawyer does not deny Pullo's guilt the presiding magistrate declares the accused guilty of murder and condemns him to 'death in the arena'. The fight takes place right after the trial. After killing couple of gladiators and facing the rest of them Pullo appears to be defeated, but Vorenus enters the arena and saves him.

It seems that the crime shown in the series is connected with *Lex Cornelia de sicariis et veneficis* – Cornelius Sulla's Law against dagger-men and poisoners. It was the law against violating safety and public order. It punished a crime called *crimen inter sicarios* – a murder committed by an assassin, a bandit, a secret killer. The act had to be committed with perpetrator's evil intention (*dolo malo*) and the intent to kill. The trial took place before *questio de sicariis (questio perpetua)*. If found guilty the murderer was sentenced to death (Amielańczyk 2011: 29, 34, 39–76, 161–170, 206). The law was aimed against bandits with weapons being danger to the citizens and was used to suppress organized crime in Rome. Pullo became a member of the organized crime and killed a man with a dagger, he was tried in a public trial, the procedure was contradictory, both sides had attorneys presenting *orationes*, and a matter of guilt (*confessio*) was crucial for the condemnation, which may suggest the presented trial was *crimen inter sicarios*, although a crime committed by *sicarius* should have been tried by the tribunal (*questio inter sicarios*), not the magistrate alone (Litewski 2003: 40–49). Presiding magistrate describes the penalty as 'death in the arena'. It is probably a reference to *damnatio ad gladium ludi*. A person sentenced to death in the arena became *servus poena*, was supposed to be killed by other executioners, or by a professional gladiator, and waited for the gladiatorial games to be executed (Kubiak 2010: 103,105–106). In the series the fight in the arena took place right away, otherwise Pullo would wait in jail throughout the half of the episodes. The penalty for *crimen inter sicarios* was described in the statue, but preserved legal sources do not specify the form of death penalty in *Lex Cornelia de sicariis et veneficis*, so it is hard to definitely deny possibility of 'death in the arena'. It is quite probable that the creators chose this form of death

¹² Played by Lorcan Cranitch.

¹³ Played by Max Pirkis.

¹⁴ Played by Lee Boardman.

penalty for the bloody, yet entertaining aspect of it, to be able to reunite both main characters, and move the action forward.

In the last episode of the first series, ‘Kalends of February’ (season 1, episode 12), Vorenus finds out that Lucius is a son of Niobe (his wife), not Vorena (his daughter), as he had thought. This means that his wife had committed adultery (*adulterium*) while he was away in the military service. *Lex Iulia de adulteris coercendis* in 18 B.C. made adultery a public crime if committed by a married woman. Time frame of the series suggests that adultery was not a crime yet when Vorenus found out his wife had cheated on him. However, it seems that under customary law the husband might punish his adulterous wife if he caught her on the act or afterwards through *iudicium domesticum* (Berger, *s.v. adulterium*; Suetonius, *De Vita Caesarum, Tiberius* 35). We do not see any of the legal consequences as Niobe jumps off the balcony and dies.

In the first four episodes of the second season we see Vorenus’ children and sister-in-law being kidnapped by Erastes Fulmen and sold as slaves into a brothel. Under *Lex Fabia de plagiariis*¹⁵ kidnapping, treating free people as slaves, and selling a free person constituted an offence – *plagium*. Making a free person the subject of transaction did not cause legal enslavement, only actual one. As an *ingenuus* cannot become a slave by being wrongly treated as a slave (Buckland: 438). Erastes is not charged with crime since he does not survive Vorenus’ revenge.

4. Funerals

Crimes seem to dominate the show, nevertheless, there are also legal aspects of everyday life, such as funerals. Under The Twelve Tables the dead were not to be buried or cremated in the City¹⁶. In the episode ‘Passover’ (season 2, episode 1) Vorenus buried his wife Niobe outside the City, while the funeral of Iulius Caesar took place in the Forum¹⁷. The first is fictional, but in accordance with law, the latter is against the law, but in compliance with facts.

5. Law and lawyers

Lawyers are also portrayed in the series although the difference between jurists (theoretical lawyers) and advocates (*oratores*, trial lawyers) was not explained (Mousourakis 2003: 188–194; Litewski 2000: *passim*). There is also no additional

¹⁵ D.48.15; C. 9.20; I.4.18; Coll. 14.2–3; Paul.Sent.5.6.14.

¹⁶ Lex Duodecim Tabularum, 10.1 [...] *hominem mortuum in urbe ne sepelito neve urito* [...].

¹⁷ Suetonius, *De Vita Caesarum, Divus Julius* 84–85; Appianus Alexandrinus, *Bella Civilia* 2.143–147.

information on the participants of the trial, e.g. that an *accusator* or a magistrate didn't have to be lawyers. Pullo's case has the features of the USA type of trial, especially when it comes to the speeches of *oratores* – Maius Nigidius¹⁸ and Priscus Maevius¹⁹. We see both fictional lawyers (above-mentioned) as well as a historical one – Marcus Tullius Cicero²⁰, although he is presented here only as a politician, not an *orator*²¹.

There are many indirect references to Roman law, but there are also direct ones. E.g. in the episode 'The Stolen Eagle' (season 1, episode 1) Vorenus, referring to Pullo's insubordination, says: 'He has committed a terrible sacrilege, and he will pay for it with his life! As will any man here who breaks the law.' Military law was strict, death penalty imposed in cases connected with order and cowardness. Also, in the episode 'Caesarion' (season 1, episode 8) Gaius Iulius Caesar discusses payment of loans in the conversation with Pothinus – the regent for Pharaoh Ptolemy XIII:

Posca (Caesars's slave)²²: [...] It's law.

Pothinus²³: Roman law.

Caesar²⁴: Is there some other form of law, you wretched woman?

Caesar's response stresses importance and value of Roman regulations and its superiority over Egyptian law.

6. Conclusions

It is interesting to see how pop culture depicts history and law. There are both direct and indirect references to Roman Law throughout the series. In the first episode the audience is presented with some elements of military law. Next chapters provide *inter alia*: *contubernium*, *peculium*, *manumissio*, couple of crimes, a penal trial, and funeral arrangements. The show seems to be striving for authenticity and not necessarily accuracy. It is believable but quite often elements of the legal Roman world turned out to be really simplified. The mistakes in the show vary from inaccuracy, such as penalty for *contumacia* (it was *castigatio* and beheading, not 'death in the arena'), to fictional provisions e.g.: Pullo releases Eirene from slavery in non-existent form of *manumissio*. The form of manumission presented in the show is not only incorrect, it is also highly influenced by the modern thinking

¹⁸ Played by Peter Eyre.

¹⁹ Played by Bruce MacKinnon.

²⁰ Played by David Bamber.

²¹ On the court activity of Cicero s.f.: Kumaniecki 1989, *passim*.

²² Played by Nicholas Woodeson.

²³ Played by Tony Guilfoyle.

²⁴ Played by Ciarán Hinds.

of law where every action must be made in a written form and paper documents are essential. The amount of violence in the show allows the audience to be acquainted with variety of crimes, e.g.: *crimen inter sicarios* or *plagium*. In most cases Latin terminology is not used and presentation of the offences and consequences are limited to actual, not legal, ones. Nevertheless there are many elements of the legal reality of ancient Romans. Some of the presented issues are correct (e.g. *contubernium* and *peculium* are explained shortly but correctly), others are only partly exact (e.g. slave's testimony), and there are also totally fictional rules or acts (*manumissio*). As misleading as the discrepancies are, the series still seem to be quite interesting and educational from the legal point of view.

Bibliography

- Amielańczyk, K. (2011). *Lex Cornelia de sicariis et veneficis. Ustawa Korneliusza Sulli przeciwko nożownikom i trucicielom (81 r.p.n.e.)*. Lublin: Wydawnictwo UMCS.
- Berger, A. (1953). *Encyclopedic Dictionary of Roman Law*. Philadelphia: American Philosophical Society.
- Buckland, W.W. (1908). *Roman Law of Slavery*. Cambridge: University Press.
- Dajczak, W. Giaro, T., Longchamps de Berier F. (2014). *Prawo rzymskie. U podstaw prawa prywatnego*. Warszawa Wydawnictwo Naukowe PWN.
- Kolańczyk, K. (1997). *Prawo rzymskie*. Warszawa Wydawnictwo Naukowe PWN.
- Kołodko, P. (2007). 'Chłosta jako kara w rzymskim wojskowym prawie karnym.'. *Studia Prawno-ustrojowe*, v. 7, 61–76.
- Kubiak, P. (2010). 'Skazanie na śmierć na arenie – wymiar sprawiedliwości czy operacja finansowa?'. *Studia Prawnoustrojowe* 12/2010, 95–107.
- Kumaniecki, K. (1989). *Cycon i jego współcześni*. Warszawa Wydawnictwo Naukowe PWN.
- Litewski, W. (2000). *Jurisprudencja rzymska*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.
- Litewski, W. (2003). *Rzymski proces karny*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.
- Litewski, W. (1995). *Rzymskie prawo prywatne*. Warszawa Wydawnictwo Prawnicze PWN.
- Mousourakis, G. (2003). *The Historical and Institutional Context of Roman Law*. Hampshire, England: Ashgate.
- Suder, W. (2003). *Census populi. Demografia starożytnego Rzymu*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.
- Tarwacka, A. (2012). *Prawne aspekty urzędu cenzora w starożytnym Rzymie*. Warszawa: Wydawnictwo UKSW.
- Wołodkiewicz, W., Zabłocka, M. (1996). *Prawo rzymskie. Instytucje*. Warszawa: C.H.Beck.
- Zaborowska, A. (2010). 'Powstanie *peculium* (*permissus domini, constituere peculium, concessio peculii*) w rzymskim prawie klasycznym'. *Studia Iuridica Toruniensia*, v. VII, 148–161.
- Zaborowska, A. (2005). *Skutki prawne zarządu *peculium* przez *servus peculiaris**. In *Toruńskie Studia Polsko-Włoskie IV, Studi Polacco-Italiani di Toruń IV*, Witkowski Z., Bronowski C. (eds.), Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika w Toruniu, 45–58.
- Žeber, I. (1981). *A study of the *peculium* of a slave in pre-classical and classical Roman Law*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.