

Sweet Taste of Revenge! Marginal Notes to the Paweł Madejski's Dissertation 'Pomiędzy *robur animi a ritus barbarus*: zemsta w życiu społecznym republikańskiego Rzymu', Publishing house of the Maria Curie-Skłodowska University, Lublin 2018, pp. 299

BOOK

In the past, I expressed my doubts more or less ostentatiously about whether a historian can say anything new on a topic referred to by the greatest romanists, law historians and law dogmatists. Until recently I thought that the last valuable comments on the ancient vengeance were expressed by Juliusz Makarewicz in the monograph *Einführung in die Philosophie des Strafrechts auf entwicklungsgeschichtlicher Grundlage* (German edition: 1906; first Polish translation: 2009)¹.

I was wrong. Apparently, the study by Paweł Madejski phenomenally fills in the gaps left by Makarewicz. What is more, it constitutes an excellent supplement to findings of Edward Gintowt (archaic law)² as well as Mieczysław Popławski³ and Izabela Leraczyk⁴ (ancient international relations). I referred to vengeance and *pax deorum* in my own doctorate⁵ and in my habilitation dissertation⁶. Izabela Leraczyk, Ph.D. of the Department of Roman Law at the Catholic University of Lublin, devoted a lot of attention to *ius fetiale*, and I feel partially responsible for that study. But neither of us was able of indicating certain problems, which were effortlessly presented by P. Madejski in his monograph. What was missing? 'Feeling with words' (Marc Bloch; see below). Sometimes when I become aware of that I am being

¹ J. Makarewicz, *Einführung in die Philosophie des Strafrechts auf entwicklungsgeschichtlicher Grundlage*, Stuttgart 1906; idem, *Wstęp do filozofii prawa karnego*, Lublin 2009.

² E. Gintowt, *Rzymskie prawo prywatne w epoce postępowania legisakcyjnego*, Warszawa 2005.

³ S. Popławski, *Bellum Romanum: sakralność wojny i prawa rzymskiego*, Lublin 1923 (2nd issue: Lublin 2011).

⁴ I. Leraczyk, *Ius belli et pacis w republikańskim Rzymie*, Lublin 2018.

⁵ M. Jońca, *Parricidium w prawie rzymskim*, Lublin 2008.

⁶ Idem, *Przestępstwo znieważenia grobu w prawie rzymskim*, Lublin 2013.

reminded of George Orwell's words: 'it takes constant effort to see what even the blind could see'⁷. And it is not pleasant.

By reading the dissertation of P. Madejski, we can understand that there is no monopoly in research. All doubts regarding the validity of conducting research on issues constitution alleged 'intellectual property' of other disciplines is violently dispelled by Tony Judt: 'legal or even ethical criteria do not exhaust the categories available for historical explanation'⁸. Paweł Madejski knows that and calmly reminds that the notion of vengeance is a cultural phenomenon first, and therefore it is not enough to use legal knowledge with elements of psychology and sociology when studying it. It is not even enough to use historian's 'handy' instrumentarium. The author also notes that vengeance is part of emotional culture of individuals and nations. Knowledge about it cannot be simply obtained with the use of standard tools.

In order to learn about how Romans perceived vengeance in the republican period, it is necessary to refer to the extended source database. True, historical references are important but equally important (even more important, perhaps?) role play the images, myths and symbols. Can we enquire, however, whether it is possible to discuss law when we are often left only with myths or description of rituals? We can, but not everyone is capable of achieving that. Long time ago Georges Dumézil made an interesting notion: 'I started from the idea that religion – just as all creations of spirit – is a unity; apart from pathologic cases, mythology, code, strategy have to be more or less consistent'⁹. The above is well supplemented by Jean Hebrard's remark: 'times when one could consider the sources as "a reflection" of a past reality are over. Today we know that we need to read them first and try to understand the logic which created them'¹⁰.

Key importance in understanding what revenge meant to the Romans, as states the author, lies in the language they used. By studying its substance, P. Madejski attempts to challenge a difficult task of analysing the emotions of the inhabitants of ancient Rome (cf. p. 41). The method he uses is called by him 'philological and historical analysis'. Inadvertently, he refers through this to the idea of so called 'nomological knowledge' on which 'the meaning and normative tone of words is based'¹¹.

⁷ G. Orwell, *I ślepy by dostrzegł. Wybór esejów i felietonów*, Kraków 1990, p. 231.

⁸ T. Judt, T. Snyder, *Rozważania o wieku XX*, Poznań 2013, p. 52.

⁹ See: *Na tropie Indoeuropejczyków. Mity i epopeje. Z Georges'em Dumézilem rozmawia Didier Eribon*, Warszawa 1996, p. 81.

¹⁰ P. Rodak, *Pismo, książka, lektura. Rozmowy: Le Goff, Chartier, Hébrard, Fabre, Lejeune*, Warszawa 2009, p. 166.

¹¹ Cf. Ch. Meier, *Od Aten do Auschwitz. Rozważania nad kondycją historii*, Poznań 2013, pp. 41–42, note 56.

RESOURCE

While reading, I was guilty of envy time and time again. The author independently controls ancient sources, sometimes he even tames them and forces them to obey him. The amount of compiled material is incredible. The sources are not just a supporting ornament placed in a footnote. It is material which, during his investigation, is submitted to REAL analysis and interpretation.

If I wanted to 'disguise' envy with anger, I would probably write that P. Madejski shows off his philological education or puts too much faith in linguistic analysis of the examined texts. However, I would be like the fox from a parable, who could not reach the grapes, saying while leaving: 'they are sour for sure'¹².

The considerations of P. Madejski are the effect of meticulous research conducted for many years. They are mature, reliable and his approach to the studied sources is astounding. It is therefore not surprising that he was able to achieve such unexpected results. A fascinating finding is that 'Latin did not have a word to express what we put into vengefulness' (p. 65), and that 'it conceptualised revenge differently than we do' (p. 66). I was even more electrified by the accurate statement (which is also fundamental in research on Roman *iniuria* and *in ius vocatio*!) that 'Romans, as it is currently believed, did not create the culture of touch' (p. 67).

The author keeps proving that he understands that (each and every one!) text emanates not just the content held in individual words. Ancient texts, both Greek and Roman, are no exception in that regard. For Romans, words often constituted a pretext, a more or less accommodating 'packaging' for what they truly wished to express. P. Madejski tries to reach the actual, not just rhetorical value of the analysed fragments. There are no words or phrases he would regard unimportant or unambiguous. Therefore we see before our very eyes the amazing process of 'decoding' ancient messages with the use of completely new tools. When it is necessary, Madejski makes comparisons. More often, however, he takes a 'scalpel' and performs a philological 'surgery' of the antique resource. These 'autopsies', as it seems, provide him with plenty of satisfaction and astonish an unaccustomed reader.

Naturally, the approach of the author does not allow him to escape partial reliance on intuition. His efforts are true, however, and untainted by absurdity, tautology, triviality or ineptitude. Quite the contrary. Everyone

¹² Cf. A. Popliński, *Wybór prozy i poezji polskiej: dla klas niższych gimnazjalnych i wyższych szkół miejskich*, Poznań 1844, p. 11.

who understood chapter I ('Vengeance: the introduction', pp. 13–50), can see that the narration presented in the book does not resemble groping in the dark, nor is it only improvisation. It is a consistent implementation of a precisely constructed strategy. During the planning stage, the author deliberately rejected methods which would not allow him to achieve the goal or slow down his progress.

LANGUAGE

Marc Bloch notes: 'I cannot imagine the biggest praise to a writer than one stating that he can speak in the same language to the scholars and the students'¹³. Paweł Madejski uses elegant and approachable Polish language but his monograph is not easy to grasp. Even the author himself complains in the introduction: 'in the literature on the subject an intuitive approach is dominant, referring to the self-knowledge of the reader' (p. 21), and then he does whatever he can to make it easier for the reader to follow his thought.

His efforts are successful only to a certain extent because the author assumes *a priori* that the degree of familiarity with Latin and Greek among researchers of ancient times did not change since the 19th century. However, it did change and no magic spells, like those recently casted by Wilfried Stroh¹⁴, can reverse the state of things. Oxford professor Robin G. Collingwood states bitterly: 'each new examination commission for *litterae humaniores* complain that the standards of research on Greek philosophy is getting worse. When I sat among them in the mid-1920s I noticed how few candidates display the source knowledge of the authors they wrote about'¹⁵. I would like to express freely how the matters are among law historians. However, I am not able to be completely frank about that just yet.

Assuming that everyone understands his philosophical algorithms, P. Madejski explicitly praises the environment, which does not translate to comfortable lecture of his work. My personal shortcomings made me exhausted several times while reading the book whenever I tried to endure the pace imposed by the author and keep up with him.

¹³ M. Bloch, *Pochwała historii*, Kęty 2009, p. 32.

¹⁴ Cf. W. Stroh, *Łacina umarła, niech żyje łacina! Mała historia wielkiego języka*, Poznań 2013, pp. 292–293.

¹⁵ R.G. Collingwood, *Autobiografia. Z dziejów mojego myślenia*, Kraków 2013, p. 63.

HUMILITY

Paweł Madejski displays humility when he wishes to make the reader believe that the translations presented in the dissertation are made in an automatic, somewhat careless way, which he then 'uploaded' to his research as if he were uploading photos to social media. Also somewhat deceitful is how consistently he persuades the readers that they would be able to do that themselves just as well.

They would not, and everyone who had to deal with the difficult art of translation knows that – quoting Michał Rusinek – 'this is craftsmanship that takes one a long time to learn, in solitude'¹⁶. Nothing here was achieved without effort. The polished phrases sparkle with the highest translation artistry. I am convinced that many of them are the effect of many months' worth of fighting the resistance of the matter and the result of exhausting internal deliberations.

I shall present samples of this talent which I found particularly impressive. The way of presenting the text with the advice to Cicero that he should not take insults 'personally' is truly delightful (*non sunt dolenda*; p. 44). I am very fond of the description of Bellona as Pretty (p. 170). Translation *initium insaniae* as 'source of insanity' (p. 76) or *homo inimicissimus* as 'archenemy' (p. 194) is phenomenal!

Paweł Madejski did not use 'canonical' translation of ancient sources but took the praiseworthy effort of taming the ancient resource himself. Therefore, his victory over it is total and ultimate. He managed to find what he was looking for and what he needed, not just what was found and 'marinated' by others before him. By ignoring intermediates (the statement that they should never be trusted is in the context of our considerations a banal truism), he accessed fresh matter all by himself and shaped it independently but always in accordance with the rules of the artistry. One could say, referring to popular culinary phraseology, that he 'rejected processed products as he cooked his own stew'.

I decided to highlight this notion because the times when nobody was surprised by researcher's knowledge of Latin and Greek when it was a norm are long gone. P. Madejski does not just know these languages. He is superb at sensing them (which I shall describe below) and that is truly unheard of today.

¹⁶ Cf. A. Napiórska, *Jak oni pracują*, Warszawa 2017, p. 29.

COMMENTS

My critical remarks is more akin to doubts, questions which sometimes invite further discussion. I was not aware that 'differentiating between damage and harm' was made on the basis of 'findings of psychologists' (cf. p. 43). I always thought that it is a division used in law. Somewhat confusing is the lack of references to the literature from the field of psychology, whereas the works of lawyers gained recognition of the author.

On page 50 we can read: 'the semantic field of each word has its history which can be helpful in interpretation of historical accounts. In contemporary research on Roman criminal law, an important part was played also by etymology'. It is a pleasant observation, but in Polish romanistic studies the considerations of etymologic nature had and still have the characteristic of a necessary evil, therefore they are considered not in hopes of discovering something new but to avoid accusations of formal nature.

In considerations dedicated to the term *vindex* and the role of the guarantor (because that is the translation of the term in English romanistic literature) played in ancient trial definitely helpful would be works of Edward Gintowt (*Prawo rzymskie wobec postępowania legisakcyjnego*)¹⁷ and Max Kaser (*Das altrömische Ius*)¹⁸. Similarly, more detailed conclusion on nouns such as *piaculum* (cf. p. 133) and *scelus* (cf. p. 241) would no doubt be brought by the confrontation with Michał Stachura's monograph (*Wrogowie porządku rzymskiego. Studium zjawiska agresji językowej w Kodeksie Teodozjusza, Nowelach Postteodozjańskich i Konstytucjach Sirmondiańskich*)¹⁹.

I am not so fond of the title of chapter VI: 'From *parricidium* to *clementia*'. This part, in my opinion, is not 'symmetric' enough. Opening considerations dedicated to *parricidium* in ancient law transform into a description of political fighting (this could be somewhat justified, taking into account the broader meaning of *parricidium* as a political insult), just to corner itself in disproportionately short comments on *clementia*.

I think that the following statements are somewhat generalising: 'trials were the best form of revenge' (p. 210). In my opinion, the mentioned act was its natural successor and equivalent. 'Without complaint, in the Republican

¹⁷ E. Gintowt, *op. cit.*, pp. 9–25.

¹⁸ M. Kaser, *Das altrömische ius: Studien zur Rechtsvorstellung und Rechtsgeschichte der Römer*, Göttingen 1949.

¹⁹ M. Stachura, *Wrogowie porządku rzymskiego. Studium zjawiska agresji językowej w Kodeksie Teodozjusza, Nowelach Postteodozjańskich i Konstytucjach Sirmondiańskich*, Kraków 2010.

period, no court could do anything' (p. 210). As a rule – yes. However, there were also 'investigative commissions' (*questiones extraordinariae*) with broad prerogatives which were able to act *ex officio*. 'The burden of proof was entirely taken up by the accuser' (p. 211). As a rule – yes. However, our 1st year students are expected to know by heart a certain valuable opinion (both in law and life) of jurist Paulus: *Ei incumbit probatio, qui dicit, non qui negat*²⁰. In spite of interesting historic events, when writing about criminal proceedings, it is safer to put the accuser against the accused, not the defendant (cf. p. 212). It is also difficult to understand why the author writes about the 'so-called extradition' (p. 258).

Among minor stylistic slips, I would also include expressions such as 'occurrence of action (dzianie się)' (p. 18). Needs are meant to be satisfied, not provided (cf. p. 31). We write 'relating to (odnośnie do czegoś)', not just 'relating (odnośnie czegoś)' (pp. 77, 197). Noun *actio* (I am certain it is a typo!) is feminine, therefore it is 'she was granted (przysługiwała)', not 'it was granted (przysługiwało)' (p. 126). A similar note can be brought up in relation to *deditio noxae* (cf. p. 258). On page 149 we can read: 'in practice it was believed, however (w praktyce jednak uważano)' Can we considered something as 'in practice'? Also stylistically overengineered was 'condition *sine quo non*' (p. 164). I would also prefer 'necessary condition' or *conditio sine qua non*.

I also do not understand why the female speaker in an anonymous funeral eulogy called *Laudatio Turiae* (due to personal reasons mentioning the source only briefly leaves me dissatisfied; the notion of vengeance in that source was called by name and on display²¹!), is called Thuria and not Turia (p. 222).

I see no sense in 'decorating' Polish versions of personal data of ancient heroes with their Latin equivalents (cf. p. 13 i.a.). Studies by Marciniak (p. 80) and Skwara (p. 83) are missing in the bibliography.

WORK OF A LUTHIER

In 'Pochwała historii' Marc Bloch included an interesting piece of advice: 'where a close calculation is impossible, it is necessary to make suggestion. The difference between reproducing reality of the physical world and

²⁰ *Digesta*, 22.3.2. Cf. p.v. *onus probandi*, in: *Leksykon tradycji rzymskiego prawa prywatnego*, eds. A. Dębiński, M. Jońca, Warszawa 2016, p. 263.

²¹ Cf. M. Jońca, *Laudatio Turiae – funebris oratio uxori dedicata. Pochwała Turii – mowa pogrzebowa ku czci żony*, Poznań 2011, pp. 99–106.

expressing the reality of the human mind there is the same as between the work of a miller and luthier. Both work with precise measurements but while the miller uses precise mechanical instruments, the luthier mostly depends on the sensitivity of his ear and fingers. It would not be adequate if the miller resorted to the experience of the luthier nor if the luthier imitated the miller. PROBABLY NO ONE CAN DENY THAT JUST AS THERE IS FEELING WITH ONE'S HANDS THERE IS FEELING WITH WORDS (my emphasis – M.J.)²². This philological hearing and 'feeling with words', which is something I envy P. Madejski for, resulted in the unique form and content of the discussed work. I see Bloch's citation as particularly relevant because while reading the dissertation I was under the impression that the author does not so much examines the sources as he plays his song on them. I enjoyed that very much.

Capitalising on skills gained with hard work in the form of announcing a 'habilitation' monograph so unusual in form is something I see as an act of courage. P. Madejski must have been aware that by nonchalantly departing from the canons of academic 'creativity' he would bring plenty of attention of the environment on himself. And yet he did not decide to 'imitate the miller', even though he could afford that. In my belief, he could, in short amount of time, write not one, not two, not three, not five but a dozen 'dissertations in exchange for the title' which would fit into the corset of 'scholar's routine'. At this moment I cannot point to another person who could be capable of creating a valuable monograph by assuming his *modus operandi*.

'Vision reaching far beyond, hatred of banality, seeking what was not trivialised, what was not yet included in a general conceptual scheme, constitutes the last chance of the thought' notes Theodor Adorno²³. The messenger of research carried out in this spirit is P. Madejski who created his own unique style. Dissertations similar in form and content to 'Pomiędzy *robur animi a ritus barbarus*: zemsta w życiu społecznym republikańskiego Rzymu', written and announced in Poland by a Pole are unheard of. I do not think that a similar study was created in any foreign universities. I also believe that the author would not see competition in the area he created and 'conquered' any time soon.

²² M. Bloch, *op. cit.*, p. 50.

²³ T. Adorno, *Minima moralia*, Kraków 1999, p. 80.

READING BENEFITS

Nothing comes as easy as guiding others towards the road of perfection while sitting comfortably in a chair. P. Madejski constructs his arguments by moving along several planes. He gracefully hops from one discipline to another. In an amiable way he somewhat resembles Voltaire who liked to present himself as a renaissance man. Chamfort mocked the French philosopher, immortalising him in an anecdote: 'D'Alambert was staying at Voltaire's with a certain famous professor of Law from Geneva. In admiration of Voltaire's versatility he said: "only in public law he seems somewhat weak". "And to me", replied d'Alambert, "he appears to be weak only in mathematics"'²⁴.

As a law historian, being safe and satisfied myself, I could similarly 'punish' P. Madejski for his scholarly bravery. I believe that instead of pharisaically lecturing P. Madejski, I should rather comment on his considerations through the observation of Max Frisch which refers to valuable publications: 'sometimes the most interesting are the books which tempt me to oppose them or at least remark something – I can think of a hundred things not even mentioned by the author though they are just asking for it, therefore the appeal of reading lies in the fact that the reader discovers mostly the wealth of one's own thoughts'²⁵.

There is plenty to discuss! The fact of facing the ancient emotions by the author (cf. pp. 23–26), which he wanted instil through his non-standard research of ancient texts clears the path for law historians. After reading his book I am absolutely convinced that Roman law built on casuistry did not exist without emotions and its 19th-century image created and popularised by the Germans, though impressive in order and precision and excellent for use in didactics, is far from being accurate to the ancient reality. Considerations of Madejski allowed me to finally understand, among other things, why, since the beginning, I have understood so poorly the handbook considerations about the institution of 'self-assistance', which were a copy of German *Selbsthilfe* (cf. p. 30, p. 57). That is because Romans did not know any such *Selbsthilfe*. They did use terms such as *vindicta* and *acati*. Their very distant cousins, only because the Germans invented them as such, are contemporary: offensive self-assistance and defensive self-assistance. In P. Madejski's work we see simple and fundamental statements, which cannot be found among luminaries

²⁴ R.S.N. Chamfort, *Charaktery i anegdoty. Małe dialogi filozoficzne. Maksymy i myśli*, Warszawa 2010, p. 34.

²⁵ M. Frisch, *Dziennik 1946–1949; 1966–1971*, Warszawa 2015, p. 95.

such as Theodor Mommsen²⁶, Bernardo Santalucia²⁷ or Olivia Robinson²⁸, such as: 'Roman material fully "confirmed" the validity of 19th century's penologic assumptions' (p. 32). Bringing attention to the close relationship between verbs *agere* and *patior* (and, as a consequence, also nouns: *actio* and *passio*; cf. p. 43) forms an interesting starting point for research about Roman servitude. The vision of the state, in turn, reveals an interesting perspective while attempting to grasp the ways in which Romans tried to conceptualise nonphysical entities having legal personality (cf. pp. 46–47). The 'cacophony', which the author mentions while describing the means with which it would be possible to exert pressure (pp. 167–168), is no doubt related to *in ius acatio* procedure. A lawyer would also know what to do with nonchalantly uttered notes on *ius naturale* and *utilitas* (p. 100). Therefore, in no way does it bother me that the discussed monograph is weak in terms of structure and content in comparison with works created in our environment. In fact, I see it as one of its greatest advantages! That way I can feel like a reader who is certain he knows all that is 'missing' from Madejski's book that he could mention himself but in reality: 'it is a pleasant illusion to the heart. Why is it then that these one hundred things that the author did not think about only come to my mind after reading?'²⁹.

CONCLUSION

If the work of Paweł Madejski was exactly like conventional theses, it could result in a something as described in over-represented Frisch in footnotes: 'a book which consistently seems more to-the-point than the reader, brings little joy and does not convince, does not enrich, even if it outrivals us with its wealth a hundred times. Even if flawless, it is disagreeable. It does not have a gift of giving. It does not need us. Books which give us back our own thoughts, might be more pleasant and most effective in their form. They lead us to a forest where paths become lost in bushes and berries, and we, seeing pockets full of berries, believe that we picked those berries ourselves. Is it not?'³⁰.

'Pomiędzy *robur animi a ritus barbarus*: zemsta w życiu społecznym republikańskiego Rzymu' is a fresh, stimulating and inspiring work. I see the countless threads compiled in it as an invaluable treasure, excellent for further

²⁶ Th. Mommsen, *Römisches Strafrecht*, Leipzig 1889.

²⁷ B. Santalucia, *Diritto e processo penale nell'antica Roma*, Milano 1989.

²⁸ O. Robinson, *The Criminal Law of Ancient Rome*, London 1995.

²⁹ M. Frisch, *op. cit.*, p. 95.

³⁰ *Ibidem*, p. 96.

development. Other ones will be a phenomenal platform for discussion and polemics. Year 2019 marks the end of the project 'Rzymskie prawo karne. Instytucje (Roman criminal law. Institutions)'. I am happy that the study of Paweł Madejski was released on Polish market before that. His considerations allowed us to radically change our view on a series of phenomena.

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