

## BOOK REVIEW

GÁBOR HAMZA

### *Nótári Tamás: Marcus Tullis Cicero összes perbeszédei*

(Marcus Tullius Cicero's complete pleadings).

*Translated, notes and introduction by Tamás Nótári.*

Szeged, Lectum Kiadó, 2010, 1276 p.

It is the first time that Marcus Tullius Cicero's complete pleadings have been published in Hungarian. These *orationes* are not just masterpieces of elocution but documents that provide insight behind the scenes of historical events of the 1st century B.C. At the same time, one cannot underestimate that the legal history source value of Cicero's life-work as a *corpus* that constitutes an integral part of Roman legal science (*iurisprudentia*) is a uniquely rich treasury of our knowledge of the public law, the state and legal theory thinking of the last century of the age of the Republic. The prime virtue of this volume lies just in this complexity: the analysis of the facts of the case providing the basis of lawsuits with philological precision through a lawyer's eyes in the course of translating and commenting upon the texts characterises both the introduction and explanations written with scientific demand and the translation polished with great care.

Although this work presents pleadings, the volume contains pleadings translated into Hungarian with an introductory study and notes, it is absolutely expedient to say a few words about the thoughts of the great son of Arpinum—especially about the timeliness of these thoughts. Cicero's life-work is extremely timely: *anno Domini* 2011 it is still worth concentrating on one scope of issues, specifically on the point that in Cicero's life-work, where pleadings constitute an organic part, the state and law, what is more, we should add, morals are conceived in a sense in a form as categories that presume a certain organised system, so to say institution system. Thus, the state, law organically linked to the state, and *mos, mores*, that is, morals inseparable from law cannot be examined without the institutions. This, however, does not mean that it is institutions only that make the state a state; instead, it is law inseparable from morals. In harmony with that one can quote Horatius's thought: "*leges sine moribus vanae proficiunt*" (carm. 3, 24, 35), that is, in free translation, laws without morals are categories without any value.

This thought of *Horatius* undoubtedly goes back to Cicero's "morals–state–law" idea. Actually, the concept of constitution, constitutional state can be traced back to Cicero too. Essential thoughts such as *consensus*, thus, *accord*, social accord—which will be further developed in the 18th century by French political thinkers and lawyers, among others Montesquieu—*consensus omnium (bonorum)* are expounded primarily in Cicero's *De re publica*, although these ideas play a role in the pleadings already (for example, in *Pro Sestio* and *Pro Milone*). Cicero did not restrict the concept of *consensus omnium bonorum* to certain privileged layers of society: he meant this category to include craftsmen, artisans as well as slaves loyal to the social order; in other words, actually even in terms of social thinking he can be considered a forerunner of modern thoughts. In addition to *consensus*

*omnium bonorum*, the other highly significant thought in Cicero's works is *utilitas publica*, that is, the idea of utility, public good that every citizen, each *civis Romanus* is lawfully entitled to. *Consensus* and *utilitas publica* are the principles that legitimise the State and law—and not primarily institutions.

A few words about Cicero's reception in Hungary. Cicero's thoughts assumed special role in Hungarian legal and legal philosophy literature, in Werbőczy's *Tripartitum*, in János Újfalussy Nepomuk's works, in the oeuvre of the famous legal philosophers Tivadar Pauler, Rudolf Werner, the noted criminal law expert Ferenc Finkey as well as Gyula Moór and one of the most outstanding figures of Hungarian legal philosophy, Barna Horváth. On the international scene, the effects of Cicero's highly rich and far-reaching thoughts can be demonstrated in Dante, Christian Wolff, Kant in specific forms.

Back to the Antiquity: in the age of *Iustinianus*'s codification, in the 6th century A.D., in the *Institutiones*, which had *vigor legis*, legal force, the words *lex* and *mos* are mentioned twice, at emphatic points, both in book 1 and book 4, although there is no reference to Cicero's name. The thought of "*omnes populi, qui legibus et moribus reguntur*" (1, 1), that is, "*every people that is governed by laws and morals*" goes back to Cicero. And what has similar significance with regard to the pleadings: in *caput* 17 of book 4 the following can be read concerning judges' obligations (*De officio iudicis*): "*...in primis illud observare debet iudex, ne aliter iudicet, quam legibus atque constitutionibus aut moribus proditum est*", that is, "*in passing judgment judges must primarily take into account what is contained, manifested in laws, imperial decrees as well as customs and morals*". Consequently, in the fourth book of *Iustinianus*'s *Institutiones* the instruction on judges' duties (*officia*), office clearly reflects the effect of Cicero's thoughts—approximately six hundred years after Cicero's death.

Finally, I should like to refer to the last great Humanist, the Swiss Jacob Burckhardt, whose thoughts on *Richteramt* undoubtedly reflect Cicero's ideas. And in this respect the pleadings are again to be taken into account, that is, not the dialogues or Cicero's other works but specifically the pleadings published for the first time in Hungarian in Tamás Nótári's translation: from them we can build a bridge between law, unwritten law, statutes, the State, morals and Cicero. In Cicero's pleadings all this can be demonstrated in specific forms at several points: all the thoughts that are set out by him regarding the State, morals and law in his philosophical and political works are used by him in specific forms in his pleadings—among others especially with regard to judges' office. In this sense this is the particular connection, this is the bridge between judges' activity, one of the branches of power, and Cicero's thoughts; at the same time, it is another topical issue regarding Cicero's thoughts. It is, among others, for this reason that the rich material that is available in Cicero's pleadings—now also in Hungarian translation—is significant for the present time.