

BOOK REVIEW

Tamás Nótári: Studia Iuridico-philologica I.

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The joint volume of studies of Tamás Nótári, Associate Professor of Károli Gáspár University (Budapest) was published in 2007. The selection gathers twelve works published earlier, so it allows to study these papers together written in ten years and not easily available individually, and to become familiar with the works of the author in a subtler form. The volume presents the studies in chronological order: most of them, as a matter of fact, cover subjects of Roman law and classical philology, the other thematic unit of the volume comprises four studies on medieval subjects.

1) *The Scales as the Symbol of Justice in the Iliad*.¹ The idiom of the scales of justice is well-known, its use is widely spread, Iustitia can be frequently seen with scales in her hand in different representations. The scales as the symbol of justice and administration of justice appear in various places in Greek literature. In the *Iliad* one can encounter a scene presented in context, thus suitable for being more amply analysed, in which Zeus is pronouncing justice over the heroes by using a pair of scales. This paper will first clarify the concept of law and justice as it appears in the Homeric epic; then, by the structural and comparative analysis of some lines of the weighing scene, decisive in the combat of Achilles and Hector, a few remarks are made on the origin and meaning of the concept of the scales of justice.²

2) *Hesiod und die Anfänge der Rechtsphilosophie*.³ The paper entitled *Hesiod and the beginning of the philosophy of law* highlights a few concepts instructive for legal history and philosophical analysis from excerpts of the main works of Hesiod, who lived at the turn of the 8th and 7th B.C., *Theogonia* and *Erga kai hemerai*. The most valuable part of the study is the examination

¹ Nótári: *op. cit.* 9–20.

² Cf. Nótári, T.: *The Scales as the Symbol of Justice in the Iliad. Acta Juridica Hungarica*, 47 (2006) 249 sqq.

³ Nótári: *op. cit.* 21–44.

of the occurrence and role of *dike*, one of the most diverse concepts of antique legal history in Homeric epics and Hesiod's *Erga*.⁴

3) *Numen and Numinosity—On Some Aspects of the Roman Concept of Authority*.⁵ The paper will examine various aspects of *numen*, one of the most important phenomena of Roman religion, its etymology, the institution of *triumphus*, a phenomenon that seems to be relevant from this point of view, and the function of *flamen Dialis*, one of the most numinous phenomena of Roman religion, then the concept of *numen Augusti*, which incorporates these elements of the religious sphere into the legitimation of power. Nótári's study analyses the religious, political and public law aspects of the Roman concept of authority with exemplary thoroughness, magnificently separating the concepts fundamental regarding the subject but often causing difficulties in interpretation: *auctoritas*, *numen*, *genius* and *imperium*.⁶

4) *Summum ius summa iniuria—The Historical Background of a Legal Maxim*.⁷ Cicero quotes this *proverbium*, widely spread as early as in the age of the Republic, which remained in use in his formulation until today: "*summum ius summa iniuria*";⁸ i.e., the utmost enforcement of the law leads to the greatest injustice. From the maxims of legal logic as means of legal interpretation, in the present work Nótári made the proverb "*summum ius summa iniuria*" the object of our scrutiny, enumerating its occurrences in antique literary sources, namely in Terence, Columella and then in Cicero. In this last formulation the meaning of the proverb became the most clearly crystallized. It signifies the excessive, malevolent legal practice in the course of *interpretatio iuris*, which plays off the letter of the law against its spirit. The Celsian *sententia* "*ius est ars boni et aequi*" formulates one of the most general, all-encompassing basic principles of *interpretatio* meant to offer protection against the too strictly interpreted and applied *summum ius*. Although jurists never clearly defined the concept of *aequitas*, it became a very important means of legal development as a thought emerging from the interaction of jurisprudence and eloquence. By

⁴ Cf. Nótári, T.: Bürgergemeinschaft und Rechtsgedanke bei Hesiod. In: Németh, G.–Forisek, P. (ed.): *Politai et Cives*. Debrecen, 2006. 7 sqq.; Hesiod und die Anfänge der Rechtsphilosophie. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae, Sectio Iuridica*, 47 (2006) 341 sqq.

⁵ Nótári: *op. cit.* 45–74.

⁶ Nótári, T.: The Function of the Flamen Dialis in the Marriage Ceremony. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae, Sectio Iuridica*, 45 (2004) 157 sqq. On Some Aspects of the Roman Concept of Authority. *Acta Juridica Hungarica*, 46 (2005) 95 sqq.

⁷ Nótári: *op. cit.* 75–96.

⁸ Cicero : *De officiis* 1, 33.

presenting the relevant loci from Erasmus of Rotterdam's *Adagia* as a typical example of the persistence of the *paroemia* "*summum ius summa iniuria*", the paper shows the way a proverb turning into *regula iuris*—apart from its direct legal application—became an integral part of today's legal common knowledge.⁹

5) *Die Lanze als Macht- und Eigentumssymbol im antiken Rom*.¹⁰ The present paper deals with the role of the *hasta* in the ceremony of the *legis actio sacramento in rem*. In ancient Rome the *hasta* was the weapon with which in the course of the fights they could win loot, recognition, and hence power, it is no wonder that shortly it became the symbol of power. This is also shown by Verrius Festus's definition: "*hasta summa armorum et imperii est*",¹¹ and the reference to *imperium*, especially in connection with the spear, reminds one of its religious character, belonging to the sacred sphere. It is not by chance that the expression *subhastatio* means— the selling of loot, especially the selling of captives, obtained from the enemy through armed fight, and later meant any kind of auction in general.¹²

6) *Remarks on the Origin of the legis actio sacramento in rem*.¹³ *Legis actio sacramento in rem* has belonged to the most debated issues of specialised literature on Roman Law up to the present day. Nótári's study highlights the following aspects of this ceremony. The sacred character of *legis actio* procedure is proved by the almost neurotic adherence to the words to be recited, the same phenomenon is also exemplified by Pliny's account of the *dedicatio* of Ops Opifera's temple. Traces of private fight and arbitrary action are shown by the origins of the term *vindicatio* as well as by the rod used in the procedure instead of a spear. All the more so, as Gaius also explains this with the fact that what the Romans considered truly their own was the goods taken from the

⁹ Cf. Nótári, T.: *De summo iure summaque iniuria apud Ciceronem*. *Vox Latina* 43 (2007) 346 sqq.; *Summum Ius Summa Iniuria*—Comments on the Historical Background of a Legal Maxim of Interpretation. *Acta Juridica Hungarica*, 44 (2004) 301 sqq.; *Comments on the Legal Maxim „Summum ius summa iniuria”*. Novi Sad, Serbia, 2006. 107 sqq.; *Summum ius summa iniuria*. *Magyar Jog*, 51 (2004) 385 sqq.

¹⁰ Nótári: *op. cit.* 97–128.

¹¹ Fest. 55, 3.

¹² Nótári T.: *Festuca autem utebantur quasi hastae loco*. *Acta Facultatis Politico-Iuridicae Universitatis Budapestiensis de Rolando Eotvos nominatae*, 45 (2004) 133 sqq.; *The Spear as the Symbol of Property and Power in Ancient Rome*. *Acta Juridica Hungarica*, 48 (2007) 231 sqq.; *Die Lanzensymbolik der legis actio sacramento in rem*. *Studia Iuris Caroliensia*, 2 (2007) 135 sqq.; *Die Lanze als Eigentums- und Machtsymbol in der legis actio sacramento in rem*. In: *Loi et droit dans le gouvernement des sociétés antiques. Résumé des communications*. Catania, 2007. 68 sq.

¹³ Nótári: *op. cit.* 129–152.

enemy; i.e., obtained by fight. The structure of *ius fetiale*, which regulated the law of war and of peace in the archaic age, a typical example of the intertwining of peaceful and martial elements, and *rerum repetitio* as well as *clarigatio* show remarkable parallel with *legis sacramento in rem*.¹⁴

7) *Remarques sur le ius vitae necisque et le ius exponendi*.¹⁵ *Ius vitae ac necis*, the penal authority of the *pater familias* over his (adult) children in potestate, was valid up to the 4th century A.D. It gave the father the right to kill even his own child, but the exercise of this right was restricted and kept within bounds. So the *pater familias* had to conduct proceedings—*iudicium domesticum*—when the *consilium necessariorum* examined the case and gave the defendant any opportunity to answer the charge (*cognita et audita causa*). If the crime seemed to deserve capital punishment (*iusta causa*), the *consilium* decided about the guiltiness of the defendant by majority. The verdict was binding for the *pater familias*. *Ius exponendi*, the power of the *pater familias* to expose a child, was valid until 374 A.D. There were two reasons why a newborn baby could be exposed. One of these reasons has a religious motivation—the *procuratio prodigii*—and it could not be strictly distinguished from killing a new-born child. In the other case the *pater familias* exposed the child, because he did not want to bring it up, but he did not intend to kill it. He counted on somebody to find the child, and adopt it. If the latter case came true, there was a legal question about the *status libertatis* of the child. The regulation of the status was quite different during the centuries, till emperor Iustinian guaranteed almost every exposed and adopted child the freedom.¹⁶

8) *Comments on Bishop Virgil's Activity in Bavaria*.¹⁷ Virgil, the bishop of Salzburg of Irish origin (749–784) opened a new chapter in the history of his episcopate: he compiled the earliest works of the historiography of Salzburg: the *Gesta sancti Hrodberti confessoris*, the *Libellus Virgilii* and the *Liber confraternitatum*; he had the Rupert Cathedral constructed, which was consecrated in 774; he extended the rights of the episcopate and that of the Saint Peter Monastery and he organised the mission among the Carantanians. This

¹⁴ Cf. Nótári, T.: *Jog, vallás és retorika (Law, Religion and Rhetoric)*. Szeged, 2006. 50 sqq.; *Duellum sacrum—gondolatok a legis actio sacramento in rem eredete kapcsán*. (Thoughts on the Origin of the legis actio sacramento in rem). *Állam- és Jogtudomány*, 47 (2006) 87 sqq.; *Comments on the Origin of the legis actio sacramento in rem*. *Acta Juridica Hungarica*, 47 (2006) 133 sqq.

¹⁵ Nótári: *op. cit.* 153–178.

¹⁶ Cf. Nótári, T.: *De iure vitae necisque et exponendi*. *Jogtudományi Közlöny*, 53 (1998) 421 sqq.; *Remarques sur le ius vitae necisque et le ius exponendi*. *Studia Iuris Caroliensia I.* 2006. 151 sqq.

¹⁷ Nótári: *op. cit.* 192–202.

paper deals with three aspects of the activity of Virgil, the abbot and bishop of Salzburg: the conflict between Bonifacius and Virgil; the determination of the date of Virgil's ordaining; and the debates for the goods and rights of the Saint Peter Monastery and the episcopate of Salzburg, which were noted down by Virgil in the *Libellus Virgilii*.¹⁸

9) *Tasilo III's Dethronement—Remarks on an Early-Medieval Show Trial*.¹⁹ The creation of a unified empire by Charlemagne required quite a number of victims; one of them was Tasilo III, the last duke of the Agilolfing dynasty reigning in Bavaria for two centuries. The Frank monarch dethroned him not by means of a bloody military defeat but by a legal trial (now called show trial) in 788. The main charges brought against Tasilo was *infidelitas*, i.e., unfaithfulness to the liege lord besides *harisliz*, i.e., leaving the (royal) army without permission—though the latter was carried out a quarter of a century before the legal trial. The given work aims to enlighten the legal background of this rather opaque case by contouring the historical context. Nótári first considers Tasilo's reign and the historical background of the trial, then he investigates the Frank–Bavarian conflict and the *sacramenta fidelitatis* of Tasilo. In the end, after highlighting the question of *infidelitas* and of *harisliz* the author analyses the show trial itself.²⁰

10) *The Trial of Methodius in the Mirror of the Conversio Bagoariorum et Carantanorum*.²¹ This paper deals with the background of the activity of Methodius known as the Apostle of the Slavs and of his conflict with the Archbishopric of Salzburg and its diocesan bishops. At the Council of Regensburg held in the presence of Louis the German in 870, Adalwin, archbishop of Salzburg and his bishops passed a judgment on Methodius, a missionary from Byzantium, then papal legate and archbishop of Sirmium, since they deemed that by his missionary activity pursued in Pannonia Methodius infringed the jurisdiction of Salzburg exercised over this territory for seventy-five years, and after that they held him in captivity for two and a half years. It was this lawsuit regarding which the *Conversio Bagoariorum et Carantanorum* was drafted

¹⁸ Cf. Nótári, T.: *A salzburgi historiográfia kezdetei (Beginnings of the Historiography of Salzburg)*. Szeged, 2007; *Források Salzburg kora középkori történetéből (Sources from the early-medieval history of Salzburg)*. Szeged, 2005; *Gesta Hrodberti*. In: Havas, L.–Tegyey, E. (eds): *Classica–Mediaevalia–Neolatina*. Debrecen, 2006. 131 sqq. On Bishop Virgil's Litigations in Bavaria. *Acta Juridica Hungarica*, 48 (2007) 49 sqq.

¹⁹ Nótári: *op. cit.* 203–232.

²⁰ Cf. Nótári, T.: Tassilo III's dethronement—contributions to an early-middle-age show trial. *Publicationes Universitatis Miskolciensis. Sectio Iuridica et Politica*, 23 (2005) 65 sqq.

²¹ Nótári: *op. cit.* 233–282.

either as a bill of indictment or to legitimate the lawsuit subsequently, it cannot be clarified. The author first highlights the historical background of the conflict between Methodius and the bishops of Bavaria: he outlines the process of Christianization of Carantania, Avaria and Bulgaria. Then, the paper investigates the activity of Methodius in Pannonia and Moravia, and the reasons for the trial held in Regensburg which led to the most shameful captivity of Methodius.²²

11) *Die Geschichte des Ingo bei Enea Silvio Piccolomini.*²³ The study describes the background of the history of Ingo in Enea Silvio Piccolomini's work *De Europa*. Piccolomini, the later Pope Pius II (1458–1464) misinterpreted—like Iohannes Victoriensis—the description of the Carantanian mission in the *Conversio Bagoariorum et Carantanorum*. Nótári analyses the process that led to the „creation” of the Carantanian duke, Ingo.²⁴

12) *Portrait zweier ungarischer Mediävisten, Gyula Kristó und Samu Szádeczky Kardoss.*²⁵ The last work in the volume, a study that raises a monument to the memory of the internationally renowned scholars Samu Szádeczky-Kardoss and Gyula Kristó is a worthy memorial by the former student Tamás Nótári to his masters not only with this obituary but perhaps with the whole volume.²⁶

Tamás Fedeles

²² Cf. Nótári, T.: *Conversio Bagoariorum et Carantanorum*. *Aetas* 15 (2000) 93 sqq.; *De Consultis Bulgarorum*. *Collega*, 6 (2002) 47 sqq.; *Conversio Bagoariorum et Carantanorum—Document of an Early Medieval Show Trial*. *Publicationes Universitatis Miskolciensis. Sectio Iuridica et Politica*, 25 (2007) 95 sqq.

²³ Nótári: *op. cit.* 283–304.

²⁴ Cf. Nótári, T.: *Die Geschichte des Grafen Ingo bei Enea Silvio Piccolomini*. In: *Varietas Gentium—Communis Latinitas*. XIII International Congress for Neo-Latin Studies. Budapest 2006. 96.

²⁵ Nótári: *op. cit.* 305–313.

²⁶ Cf. Nótári, T.: *In memoriam Samuelis Szádeczky-Kardoss piissimam*. *Vox Latina*, 41 (2005) 142 sq.; *En memoire de Professeur Samuel Szádeczky-Kardoss*. *Acta Antiqua*, 46 (2006) 209 sqq.; *Szádeczky-Kardoss Samu (1918–2004)*. *Aetas*, 20 (2005) 182 sqq.; *In memoriam Kristó Gyula*. *Jogtörténeti Szemle*, 19 (2004) 63 sq.