STUDIA NORWIDIANA 36:2018
ENGLISH VERSION

DOI: http://dx.doi.org/10.18290/sn.2018.36-2en

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THE TRIAL OF QUIDAM IN THE LIGHT OF ROMAN LAW

I would like to focus on an important epic image in *Quidam*, one of the two large group scenes that we encounter in this work, the action of which takes place in ancient Rome during the reign of Emperor Hadrian, 100 years after the death of Christ. I am referring here to the scene with three Christians on trial, which takes place on the Capitoline Hill, in front of the Temple of Jupiter. This monumental fresco, composed of many smaller sequences, clearly distinguishes itself from the smaller scenes dominating in the text, narrowed down to small spaces, small groups of people. The court scene and the scene of the death of the main protagonist, son of Alexander of Epirus, refer to the great Romantic theatrical visions, drawn vigorously under the influence of the dynamics of the drama and the crowd. In short, these two images can be reduced to two concepts fundamental for the world presented in the poem: law and death. Undoubtedly, they are signs of the external imperial power of Rome, although Norwid effectively shifts accents: after all, the Christian world, barely visible in this work, stands in contradiction to this power. The concept of law or the reality of death, which affects almost all the main characters, changes its axiological status here – it gains a deep existential and, at the same time, eschatological sense, becoming part of the sacred history, the history of salvation.

FORUM COMPETENS

Wandering through the streets of Rome, the son of Alexander of Epirus – the main protagonist of the poem – becomes an involuntary witness to the trial of Christians. Almost carried away by the angry crowd following the praetorians, he stands in the most important place of the empire at that time, on the Capitoline

Hill, where, in front of the entrance to the Temple of Jupiter Best and Greatest, an interesting scene takes place. The perspective imposed on him by the narrator – from the centre of the situation (we stand next to the man from Epirus as receivers) – undoubtedly does not allow us to capture the phenomena in their entirety, does not allow us to broaden the cognitive perspective, but it does shorten the distance, which intensifies the experience and the dynamics of the whole action. In this way, we have been deprived of any preliminary information related to the course of the trial. First of all, the determination of jurisdiction (*forum competens*) in its three dimensions: matter, place and function. The first refers to the subject-matter competence, to the qualification and determination of a case; the second relates to the place where a case is to be examined (due to the committed offence and the court of origin/residence of the offender(s)]; and finally, the third refers to the body that is to examine a case, i.e. it determines the court competent to conduct specific legal actions[1]. Therefore,

Gdy Pretor z konia zsiadł, już przedtem nieco
Po obu stronach perystylu stały
Gwardie w lamparcich skórach i co świecą
Łuskami; od tych wprost na polot strzały
Szeroko widzisz schody, gdzie trybuna
I złoty posąg cezarski, świecący,
Jak w mroku rannym pożarowa łuna.

Tam – poczet pieszy, po stopniach rosnący,
Wkraczał, trzech wiodąc oskarżonych ludzi
O zbrodnię, która lud do buntu budzi.
(DW III, 154)

[When the Praetor dismounted his horse, a bit earlier
On both sides of the peristyle there stood
Guards in leopard leather and shining
Scales; straight from this direction
You can see the wide stairs with the grandstand
And the golden imperial statue, shining
Like a fire glow in the darkness at dawn.

There – a party on foot, with growing steps,
Was entering the scene, bringing three people accused
Of a crime that incited the people to rebellion.]

[1] See P. Święcicka-Wystrychowska, *Proces Jezusa w świetle prawa rzymskiego. Studium z zakresu rzymskiego procesu karnego w prowincjach wschodnich w okresie wczesnego pryncypatu*, Kraków 2005, pp. 75-82.

All the elements of judicial jurisdiction, together with the main principle of the proper determination of the authority which is to examine and settle the case were met. It should be remembered that any defect that violated this procedure could result in the invalidity of the proceedings.

Song IX is a poetic account of the trial, the basic elements of which outline the compositional frame of this part of the work: the formulation of the charge, taking of evidence and the verdict, interrupted or supplemented by the narrator with other events accompanying them, such as liturgical gestures of the priest (adding myrrh into the thurible). As far as the charge is concerned, it is the official who reads it out on behalf of the Roman authorities (i.e. the emperor and the senate), while the evidentiary proceedings – as well as the entire trial – conducted by the praetor were presented by Norwid in two fundamental elements: testimony of witnesses (*testimonia*) and the interrogation of the accused Gwidon and his two companions. The order of the elements introduced in the poem is significant, in accordance with the principle that the burden of proof (*onus probandi*) rests with the one who wanted to produce legal effects in a certain situation (in this case – the veneration of the emperor by lightening a candle), i.e. it rested on the administrative office of the state, the praetorian office. In accusatorial proceedings, which is the case here, evidence was first examined by the prosecutor, followed by evidence taken from the accused.

When, after the hearing of the testimony of the prosecution witnesses, the praetor says coldly and with determination:

„*Gwido!* – [...] – wstręt ofiarowania
Bóstwu tym więcej winę twą odsłania –
Mów!"
(DW III, 159)

[*"Gwido!* - [...] – the revulsion of sacrificing
To the deity reveals your guilt even more –
Speak!]

he did not only summarise the content of the witnesses' testimony, but also exercises one of the most important achievements of Roman law – *audiatur et altera pars* (also known as *audi alteram partem*). It was the responsibility of the adjudicator to ensure that this standard could be implemented. The fact that it was universal at that time is confirmed in the declaration made by Cicero in the famous accusatory speech against Verres: "the other party shall have the same freedom of question, evidence, speech"[2]. In the Acts of the Apostles, they are stressed by the

[2] Cicero, *Mowy Marka Tulliusza Cycerona*, vol. I, transl. by E. Rykaczewski, Paris 1870, p. 159.

prosecutor Festus, who conducts the proceedings in the case of St Paul (Acts 25, 16). Finally, Tertullian speaks about it in the second Apology (II, 6-11), although its context there is negative – the failure to apply this principle to Christians gives rise to the criticism of the Roman judiciary system.

This also is very extraordinary in your proceedings against us that you rack others to confess, but torment Christians to deny: whereas, was Christianity a wicked thing, we, no doubt, should imitate the wicked in the arts of concealment, and force you to apply your engines of confession. Nor can you conclude it needless to torture a Christian into a confession of particulars, because you resolve that the very name must include all that is evil. For when a murderer has confessed, and you are satisfied as to the fact, yet you constrain him to lay before you the order and circumstances of the whole action. And what makes the thing look worse yet is, that notwithstanding you presume upon our wickedness, merely from our owning the name, yet at the same time you use violence to make us retract that confession, that by retracting the bare name only, we might be acquitted of the crimes fathered upon it.[3]

The Tertullian example is of particular importance, as its commentators point out looking for Norwid's inspiration and source of information on the persecution and trials against Christians in the 1st and 2nd centuries AD.[4] In this sense, we could treat Gwidon's trial as a positive response to Tertullian's accusations – either as a significant element of a departure from the common practice of that time, or as Norwid's independent polemics, or, finally, as historical justice to Hadrian's time, who was considered a great codifier and adamant guardian of Roman law at that time.[5]

[3] Q.S.F. Tertulian, *Apologetyk*, translation from Latin into Polish, introduction and explanations by J. Sajdak, Poznań 1947, pp. 11-12, series: Writings by Church Fathers in Polish translation, ed. J. Sajdak. In *Metamorphoses* by Apuleius of Madauros, who, as we remember, was accused of witchcraft, we encounter such a fragment: "justice must be administered in accordance with the rules and in accordance with the customs of the ancestors, i.e. only after hearing the arguments of both sides can a verdict be delivered; one cannot be convicted without hearing him, as wild barbarians or the tyrannical fervour do it. We should not give such a disgraceful example in the age of great peace and civilization" (Appulius, *Metamorfozy albo Złoty Osioł*, transl. by E. Jędrkiewicz, Warszawa 1999, p. 191). [English version of the quote based on *The Apology of Tertullian*, translated and annotated by W.M. Reeve, London, Sydney 1989, p. 8]

[4] See J.W. Gomulicki, *Objaśnienia*, [in:] C. Norwid, *Pisma wybrane*, vol. II: *Poematy*, selection and explanation by J.W. Gomulicki, 3rd ed. amended, Warszawa 1983, p. 421; DW III, 503.

[5] Unlike Emperor Tiberius, often referred to as a brute, to whom Tertullian indirectly refers in his *Apologeticus*, Hadrian was considered a just ruler. Furthermore, law historians unanimously consider the reign of this emperor to be extremely important for the development of law. An important event was the publication by Hadrian, around the year 130, of an edict of the city praetor and curial edicts in the form of a consolidated and ordered text. It was the so-

Suffice it to say that Roman officials (judges) did not like to adjudicate when defendants did not defend themselves (a point in case here may be the peculiar reaction of Pontius Pilate to Jesus's silence[6]), although the refusal to testify or make explanations was an inalienable right.[7] The Roman criminal tribunals were simply not accustomed to defendants who renounced active defence. This problem, so strongly emphasised in apostolic tradition, does not appear in Norwid's poem, and Gwidon clearly follows the path of early Christian apologists who encouraged (as Tertullian mentioned above) defendants to actively take part in trials. The motivation was almost always complex – it was not only about defending the value of life, but also about the possibility to publicly present arguments, both in the legal, cultural, social and, above all, evangelical sense – the public trial was a perfect space for proclaiming the gospel (the first Christians drew directly from the experience of St Paul).

Albeit in a fragmentary way, Norwid's text brings the details of Gwidon's trial, highlights its essential elements and exposes the role of the main actors.

called Perpetual Edict (*edictum perpetuum*), also known as the Hadrian's Edict or the Salvinian Edict (*edictum Salvianum)*, because it was the work of a lawyer Salvius Iulianus, although it was written down by emperor's order. Salvianus collected and ordered all the edicts, creating one version, approved by a relevant resolution of the Senate. What was revolutionary at that time was that its content could no longer be changed by civil servants, but only by the emperor. "Hadrian's intention was to deprive the Roman praetor of his legal drafting capacity and gain a monopoly of new regulations" (K. Amieleńczyk, *Rzymskie prawo karne w reskryptach cesarza Hadriana*, Lublin 2006, p. 24ff.; see also the list of literature on this subject, pp. 278-289). Significant in this context may be the utterance made by the praetor in Norwid's poem at the end of Song IX ("zawołał z krzesła wstając […] / I dwakroć spluwszy rzekł: «Ja tam nie retor»" [he cried out rising from the chair [...] / And having spat out two times, he said: «I am not an orator»]), emphasising not so much his unsubtle style of behaviour, but a lack of freedom and independence in the field of law, of which he is an involuntary executioner, and not its creative interpreter and maker, which was the case in the praetorian practice before Hadrian. Cf. A. Schiavone, *Prawnik*, [in:] *Człowiek Rzymu*, ed. A. Giardina, translation form Italian by P. Bravo, Warszawa 2000, pp. 118-120, series: W kręgu codzienności [In the circle of everyday life].

[6] Pilate's reaction gives away astonishment and surprise. Hence Pilate reminds Jesus several times: "Don't you have anything to say? Don't you hear what crimes they say you have done?" (Mk 15, 4), see also Mt 27, 12. Later, a new practice appeared, which was aimed at protecting the rights of the defendants, enabling them to change their testimony before a final verdict was returned. It was also a common practice to ask the defendants several times about the charges against them before the verdict was delivered. For instance, see Pliny the Younger, *Epistulae*, London 1958 (Ep. X, 96).

[7] The defendant exercised his right to defend himself in person or through an attorney; e.g. St. Paul defended himself (see Acts 25, 8-11), similarly to Apuleius (see idem, *Apologia, czyli w obronie własnej księgii o magii*, transl. by J. Sękowski, Warszawa 1999; see also J. Parandowski, *Rzecz o Apulejuszu*, http://www.wiw.pl/kulturaantyczna/eseje/apulejusz_01_08.asp).

It is worth noting not only the course or scheme of conduct presented in the text of Song IX. The situational outline of the scene, its internal dynamics, contextual and spatial surroundings (clearly corresponding with the religious accusation), the utterances made by the characters and their behaviour, which, after all, create a peculiar cognitive ritual, implement three procedural principles fundamental to Roman law: openness, orality and directness.[8] While the first two principles had prevailed already during the time of the Republic and in the early Principate, the need for eyewitnesses' testimony, which were a direct source and means of evidence, clearly exposed in Norwid's text, was formulated in law by Emperor Hadrian.[9] Among the examined traces of procedural

[8] See W. LITEWSKI, *Rzymski proces karny*, Kraków 2003, pp. 19, 111; Z. PAPIERKOWSKI, *Proces karny w starożytności greckiej i rzymskiej*, "Roczniki Humanistyczne" 6 (1957), vol. 2, p. 173.

[9] For the principle of directness in Roman criminal law, see W. LITEWSKI, *Rzymski proces karny*, p. 22 and S. WALTOŚ, *Proces karny. Zarys systemu*, Warszawa 2001, p. 259. For instance, a book on Hadrian's legal reforms reads: "Hadrian realised that giving judges-officials the power of absolute discretion in their exercise of jurisprudence would result in numerous errors committed by them. These errors must have resulted not only from an incorrect interpretation of the applicable law, but also, by their very nature, from the assessment of the evidence in a given case. It was easier for the emperor to eliminate errors of the first type [....] and errors associated with incorrect assessment of evidence were more difficult to eliminate. After all, when answering questions posed by judges, the emperor did not interfere in factual findings [...]. Guidelines for judges, known from several of emperor's acts, were supposed to provide the foundations of the ability to properly and professionally assess evidence in criminal cases. Three of them are rescripts which pointed to the need to apply the presumption of innocence in criminal cases as long as the defendant is not proven guilty. In the fourth rescript, the emperor ordered far-reaching caution in the admission of written testimony in cases, he postulated seeking directness in taking of evidence" (K. AMIELEŃCZYK, *Rzymskie prawo*, p. 201). The literature of the subjects often mentions that in his reforms and detailed guidelines provided to lawyers in the form of rescripts, Hadrian "favoured" the difficult and uncomfortable trial position of the defendant. Moreover, it is often stressed that this was closely related to the development of Christianity. A clear example is Hadrian's reply to a question asked by the Asian proconsul Licinius Silvianus Granianus (which reached already his successor, Minicius Fundanus), related to attacks on Christians. The emperor's text was most probably known to Norwid from the Greek writings of Eusebius of Caesarea (book 4, 9), referring to the Latin manuscript of the *Apology* of St Justin; see IDEM, *Historia Ecclesiastica*, transl. by A. Lisiecki, Poznań 1924. If we take a closer look at Hadrian's reply, we will notice not only his care "about the uniformity of the procedure, but also, and perhaps above all, the need for the judges to abandon the harmful prejudices about the defendant's guilt, which may have arisen as a result of slanderous denunciation of the followers of the new religion. In general, we can see here Hadrian's concern for guaranteeing the rights of every accused person, denouncement of slanderous accusations and support for the right of the wrongly slandered [...]. After all, the judgment should be based on the judge's conviction that the defendant is guilty or not guilty, a conviction that the judge can establish only after the defendant has been proven guilty by the prosecutor. Since the confession of the Christian religion

and historical awareness of the creator of *Promethidion* one should mention, apart from the already indicated place, also the legal and procedural documentation – unfortunately, we can only talk here about indirect premises, assigning the role of a documentalist to the writer reading the accusation. And the time. This important element of the presented world, with all the consequences of secondary modelling and figurative meanings plays its juridical role also here. While it is not easy to recognise when the trial on the Capitoline Hill begins, the bright sunlight reflected from the imperial monument may indicate it was midday or just before noon. We learn more about the time of the trial's closing. When Barchob and Alexander's son discuss the event they have just witnessed, the narrator is very precise in pointing out the place of the conversation (Forum Romanum, between the Capitoline Hill and Arch of Titus, with the Colosseum in the distance) and its time:

> [...] Czas był ku-zachodni,
> Jasny, że czytać mógłbyś najwygodniej;
> Lecz czerwieniały już w słońca promieniu
> Rzeczy, które są ostro zarysowane:
> Amfiteatru szerokie profile.
> (DW III, 166)

> [[....] The time was approaching the sunset,
> It was still bright, you could read most conveniently;
> But in the sun rays the things that have sharp outlines
> Already started reddening:
> The wide profiles of the amphitheatre.]

itself was not a crime, it was therefore a question of an effective proof that the accused Christians had committed real criminal acts. [....] Compared to the attitude towards Christians adopted by Trajan, in Hadrian's rescript one should note not only the continuation of the imperial programme of moderate tolerance towards the new religion, but also the enrichment of the empire through the tightening of its position on persecutors and informers. The accused Christians were subject to the same procedure as other citizens, and Hadrian instructed to severely punish the slanderers for false accusations" (K. Amieleńczyk, *Irenarchae. Reforma sądowej policji śledczej za panowania Hadriana i Antonina Piusa*, [in:] *Salus rei publice suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, eds. A. Dębiński, H. Kowalski, M. Kuryłowicz, Lublin 2007, pp. 15-16). Admittedly, contemporary research takes a cautious approach to Eusebius's text, recognising that the content of Hadrian's rescript could have been distorted by the apologetic approach (cf. A.R. Birley, *Hadrian. Czas niestrudzony*, transl. by R. Wiśniewski, Warszawa 2002, pp. 194 and 480, footnote no. 8; H. Nesselhauf, *Hadrians Rescript an Minucius Fundanus*, "Hermes" 1976, vol. 10, pp. 348-361), but in Norwid's time the document was considered to be fully credible and reliable.

In this way, the timeframe of the Capitoline scene, especially its *terminus ad quem*, become not only an important element of the journey of the two heroes, but also a part of the trial of the Christians. Already the Law of the Twelve Tables introduced a rule[10] – very rigorously observed also during the imperial period – which stated that it was forbidden to judge at night. The beginning of the Roman trial was never as precisely determined[11] as was its end – never after the sunset.

CRIMEN LAESAE MAIESTATIS

Finally, we have to ask about the subject matter of the dispute – about the accusation against Gwidon and the Christians. As we remember, he mentions the unlit lamps. This custom was the duty of the Romans (both citizens and non-citizens) on the anniversary of the emperor's birthday or ascension to the throne. This is also the explanation given in the latest edition of *Dzieła wszystkie* [*The Complete Works*] by Norwid. The commentator adds that this custom and the lamps are mentioned by Juvenal in *Satires* (XII, 92) and, above all, Tertullian in *Apologeticus*[12] - by the way, a small corrections pertinent here: not in Chapter XXV, as given by the editor of *Quidam*[13], but in Chapter XXXV. However, the context referred to here does not explain the seriousness and essence of the formulated accusation. Tertullian considers the issue that was utterly important in the 2nd and 3rd centuries from the point of view of the relations between the first Christians and the state and its ruler.

Therefore [...] Christians are considered open enemies of the state, because they do not bow poorly or deviously or thoughtlessly before the emperors, because being truly pious people they also celebrate imperial ceremonies more in their hearts than by shouting and indulging in debauchery. It is of course a great and solemn tribute to bring to the public view kitchen utensils and beds, feast on the streets, change the appearance and smell of the whole city to resemble tavern, pour wine so that the street is covered in mud, run in

[10] See M. Zabłocka and J. Zabłocki, *Ustawa XII tablic. Tekst – tłumaczenie – objaśnienia*, Warszawa 2003, p. 19.

[11] According to, inter alia, Marcialis's texts, the Roman tribunals operated from dawn until 4 pm (see J. Carcopino, *Życie codzienne w Rzymie w okresie cesarstwa*, transl. by M. Pąkcińska, Warszawa 1960, p. 215). In practice, trials were sometimes prolonged, although there was an absolute ban on trials after the sunset (i.e. at night); no official duties or deliberations were carried out at that time either. Therefore, any deviation from this rule is treated in various source texts as unusual and exceptional; for instance, see Pliny the Younger, *Epistulae II*, 11 and *IV*, 9.

[12] DW III, 503.

[13] Ibid.

groups to assault others, say shameless things and search for love affairs! Thus should the joy of the nation be manifested by a blatant disgrace? Are such performances that are not suitable for other days suitable for festive days to commemorate the princes? And thus, those who keep order because of the emperor are now violating it in honour of the emperor, and the lasciviousness of bad customs is to be a tribute to him, just as the excess of luxury is to be considered a religious act![14]

The principle of the separation between imperial and divine things is sanctioned in Tertullian's apology. It was also cited in Norwid's text for good reason as a formula confirming the accusation against Gwidon:

> [...] gdy wieczorem
> Wieńce i lampy, naznaczonym wzorem,
> W każdym się oknie rzymskim kołysały,
> Nie tylko w tejże nie uszczknął radości,
> Lecz wyznał głośno, iż gorszyć to może
> Chrześcijan słabszych, co w niewiadomości
> Są, jak Cezarskie rozdzielić i Boże?
> (DW III, 156)

> [[...] when in the evening
> Wreaths and lamps, marked with a pattern,
> Swayed in every Roman window,
> Not only in this, he did not diminish the joy,
> But he confessed loudly that it may corrupt
> The weaker Christians, who do not know
> How to separate Caesar's things from God's?]

The whole thing is thus not about the joy of celebration, about social participation in celebrations dedicated to the ruler, but about the evangelical phrase about the division, which, being the main motivation for the protagonist's actions, becomes the main source of accusation against him. At this point, I omit a very interesting and significant theme related to the manipulation and lies, commented on and axiologically emphasised by the storyteller. However, it is worth realising, contrary to narrative suggestions (which indicates – and there are more such places in the poem – that the storyteller does not always identify himself with the author), as Gwidon's defensive speech may prove, that witnesses do not bear false testimony, do not change or distort the facts. The gardener does not distort the basis of the whole incident: he does not undermine the material evidence of the accusers-witnesses. He does not comment on the truth or falsehood of the

[14] Q.S.F. Tertulian, *Apologetyk*, pp. 144-145.

testimony. That is not his intention. But there remains a fact that is difficult to undermine, since based on accounts of witnesses and Gwidon's answers an unambiguous conclusion can be drawn: The gardener did not light the lamps, this is indisputable and obvious. Hence his defensive speech does not refer to the essence of the event, but rather to the motivation, drawing up an apologetic point of view. It is even a copy of Tertullian's gesture of an attorney-rhetor:

> We should be punished, and rightly so! Why do we celebrate the day of weddings and joy in honour of emperors with modesty, sobriety and honesty? Why don't we shade the door with laurel branches and disrupt the daylight with lamps on this joyful day? When a public celebration demands it, it is worthwhile to give your home the appearance of a newly opened lupanar...[15]

– he throws provocatively in *Apologeticus*. And in another place he speaks directly:

> […] I will call the emperor master, but in an ordinary sense, not when they force me to call him master or God. Anyway, I am free in relation to him. For my master is only one, God Almighty and eternal, the same who is his master. Who is the "father of the homeland", how can he be the master? And a name coming from the son's worship is more pleasant than the one coming from power; even in families there is a greater liking for fathers, then for masters. We are far from calling the emperor God – we can't give it faith – because it would be not only the most distasteful but also a disastrous flattery. [...] And thus hold God in reverence if you want God to be gracious to the emperor! Stop considering anyone else to be God, and thus call someone God who needs God! If such a flatterer, calling a man God, does not blush from lie, let him at least tremble at adverse future. It is an insult to call the emperor god before his apotheosis[16].

Gwidon seems to refer directly to this fragment, raising the need for proper respect for the ruler and at the same time directly breaking off with idolatry:

> Jakoż czci Boskiej nie dam posągowi,
> Przez który kłamstwo wasze się stanowi,
> I strząsam szaty, nie iżbym Cesarza
> Klął albo zniżał, jak indziej się zdarza,
> Lecz że go *cenię*. Wy, co wart, nie wiecie;
> Wy uwielbiacie, cenić nie umiecie.

[15] Ibid., p. 145. It is worth noting here the explanation of the Polish editor of Tertullian's text in order to fully understand the ironic tone of the creator of *Apologeticus* and the motif of lamps referred to by Norwid (probably in a similar context): "I.e. dressed in wreaths and lanterns. *Lupanar* – a public house of debauchery, brothel, named after the word *lupa* (wolf), the name given to a harlot – *meretrix*" (ibid.).

[16] Q.S.F. Tertulian, *Apologetyk*, pp. 142-143.

A że sprzed serca Boga wam zakryto,
Zowiecie Bogiem wszelkie *incognito*.
(DW III, 160)

[I will not give divine veneration to a statue,
On which your lie is based,
And I shake off my robes, not that I curse or insult
The Emperor, as it happens elsewhere,
But I *value* him. You don't know what he is worth;
You adore, but don't know how to appreciate.
And since God is hidden from your heart,
You name „God" all that is incognito.]

The Christian attitude of the Gardener in confrontation with the binding law inevitably provokes a tort. It was a violation of or a lese-majesty. Why was it so important in ancient Rome? Did such insult affect the dignity and value of a person, in this case the ruler and his function? The Latin term *maiestas* derives directly from *maior*, which is the comparative of the adjective *magnus* (great, powerful, significant, important). However, the very term *maior* acquires meaning and semantic properties only in comparison with the lower value. Therefore, *maiestas* defines a quality only if it exists in conjunction with another, smaller, less significant one. Moreover, the Romans perceived *maiestas* as a quality of the relation between gods (*maiores*) and people (*minores*). *Maiestas* was thus a divine attribute, and the relationship between the divine and human world is characterised by a two-way commitment – the latter hold the former in reverence (*veneratio*), while the former bestows benefits (*beneficentia*) upon the latter. As stressed by one of the scholars dealing with the history of Roman influence:

> The same principle applies to the relationship between the Roman people as *maior* and other nations. The Romans repeatedly emphasised the divine origin of their *maiestas*, which their Latin ancestors possessed thanks to Jupiter (*Iuppiter Latiaris*), and which manifested itself not as much in their military superiority as in their language and customs [....]. This relationship could be violated [....], which resulted in a violation of the majesty of the Roman people [...], thus the majesty had to be constantly preserved (*servari, conservari*)[17].

[17] M. Dyjakowska, *Crimen laesae maiestatis. Studium nad wpływami prawa rzymskiego w dawnej Polsce*, Lublin 2010, p. 18; cf. eadem, *Postępowanie w sprawach o crimen maiestatis w okresie republiki rzymskiej*, "Zeszyty Prawnicze UKSW" 6(2006), vol. 1, 27-46; eadem, *Procesy chrześcijan w świetle korespondencji Pliniusza Młodszego*, [in:] *Cuius regio eius religio? Zjazd historyków państwa i prawa, Lublin 20-23 IX 2006 r.*, eds. G. Górski, L. Ćwikła, M. Lipska, Lublin 2006, pp. 25-40; H. Drexler, *Maiestas*, "Aevum" 1956, vol. 30, pp. 195-212; F.S. Lear, *Crimen*

Over time, *maiestas* was passed onto officials and Roman rulers. During the Republic period, the majesty of the nation took precedence over the majesty of the officials who were *maiores* in relation to each of the citizens. The Principate period completely reversed this principle. From the time of Octavius Augustus the imperial power in Rome became more and more extensive and more closely identified with the state, which was reflected in the titles of the ruler. In a short period of time, his person began to be surrounded by religious worship and special legal protection. The cult of the living emperor, which was fully formed during the reign of Domitian, i.e. in the second half of the 1st century was also a function of citizens' relation to the state. The term "divine" or "holy", referring to the emperor, was not only a personal attribute, but was a real attribute of power. By contrast, acts against the ruler (including disrespect, disregard for his will) became serious crimes during the Principate period – on the one hand, of a sacral nature, and on the other hand, of a state character, called *irreligiositas* or *impietas*. *Crimen maiestatis*, which at the time of Augustus was only a crime against the state authority, a hundred years later turned into a crime against the emperor who personified Rome.[18] Hence Gwidon's refusal to participate in the worship of

Laesae Maiestatis in the Lex Romana Visigothorum, [in:] IDEM, *Treason in Roman and Germanic Law. Collected Papers*, Austin 1965, pp. 108-122; IDEM, *The Crime of Majesty in Roman Public Law*, [in:] IDEM, *Treason in Roman and Germanic Law. Collected Papers*, Austin 1965, pp. 3-48; W. OSTROŻYŃSKI, *Perduellio i crimen maiestatis. Przyczynek do dziejów rzymskiego prawa karnego*, Warszawa 1886*;* A. PESCH, *De perduellione, crimine maiestatis et memoria damnata*, Aachen 1995; R. SAJKOWSKI, *Divus Augustus pater. Kult boskiego Augusta za rządów dynastii julijsko-klaudyjskiej*, Olsztyn 2001; IDEM, *Julia Augusta a prawo o obrazie majestatu*, [in:] *Religia i prawo karne w starożytnym Rzymie. Materiały z konferencji zorganizowanej 16-17 maja 1997 r. w Lublinie*, eds. A. Dębiński, M. Kuryłowicz, Lublin 1998, pp. 127-138; IDEM, *Klasyfikacja przestępstw w obrazę majestatu za rządów Tyberiusza na podstawie katalogu Swetoniusza (Tib. 58)*, "Echa Przeszłości" 2000, pp. 17-28; IDEM, *Sprawa Falaniusza i Rubriusza. Początek procesów o obrazę majestatu za rządów Tyberiusza*, "Zeszyty Naukowe Wyższej Szkoły Pedagogicznej w Olsztynie" Prace Historyczne II, 13(1998), pp. 11-21.

[18] The offence against the Roman religion and the offence against the authorities, which should include any violation of honour and dignity, including lese-majesty, constituted the legal basis for the persecution of Christians. Christianity was considered a superstition in ancient Rome, which the Romans believed to be more dangerous than atheism. Although Rome also considered Judaism a superstition, it was emphasised that in this case, a more lenient treatment by law and custom resulted from the fact that the Jews inherited their religion from their ancestors. This made it possible for the Jews to obtain state dispensation from participating in official state cults. For the Romans and people of the ancient world, a sense of heritage was extremely important, and it was precisely the breaking with and replacing one's own heritage, including religious heritage, with something new that was considered the greatest crime. Christians were at risk not only because of their refusal to participate in various forms of official (i.e. state) worship, but also because of their refusal to make offerings to gods. For every Roman, they were those who, by evading this duty, were able to

the ruler and to make a sacrificial gesture (lighting the lamps at the entrance to his house) in honour of his deity (*genius*) became nothing but a *crimen laesae Romanae religionis*, and thus a crime against the Roman religion and, at the same time, against the emperor – it was a direct insult to the majesty (*crimen laesae maiestatis*). Tertullian is even inclined to equate this crime, which was most often charged to Christians, with *sacrilegium*, which literally means the appropriation and theft of sacred things, in order to emphasise the iconoclastic dimension of the issue and the accusations made:

Itaque sacrilegii et maiestatis rei convenimur, (Apologeticus X, 1)

Velim tamen in hac quoque religione secundae maiestatis, de qua in secundum sacrilegium convenimur Christiani non celebrando vobiscum solemnia Caesarum quo more celebrari nec modestia nec verecundia nec pudicitia permittunt, sed occasio voluptatis magis quam digna ratio persuasit, fidem et veritatem vestram demonstrare, ne forte et isthic deteriores Christianis deprehendantur qui nos nolunt Romanos haberi, sed ut hostes principum Romanorum. (Apologeticus, XXXV, 5)[19]

The basic sanction for *crimen maiestatis* was the death penalty, but it could also be the exclusion from the community, the forfeiture of property, infamy affecting the family of the convicted person and condemnation of the memory of the convicted person after his or her death.

The course of the trial on the Capitoline Hill, recorded on the pages of *Quidam*, is compelling not only because of the historical and thematic connotations, but also – as it has already been signalled – because of the specific attitude of both the narrator and the author. These two should not necessarily and not always be identified here with each other. The attitude of the first is characterised by directly expressed axiology: it forces him to describe the witnesses testifying against Gwidon as spies and to consider the whole situation in terms of lies and manipulation. In a sense, such a sharp and unambiguous judgment of the narrator should be associated with his presence in the presented world. The story is an account of an eyewitness – the account of someone who directly participates in the events taking

bring various disasters on the society, which meant an attitude hostile to the state. Various acts and negligence were regarded as an insult to the majesty: from failure to make offerings to the infringement of rights by officials.

[19] Retrieved from http://www.tertullian.org/latin/apologeticus.htm

Quoting the two above excerpts from *Apologeticus*, one commentator points out that Tertullian distinguished "two types of sacrilegium: the sacrilege as an insult to the Roman religion (crimen laesae Romanae religionis) and the sacrilege as a crime of lese-majesty (crimen laesae maiestatis)" (A. Dębiński, *Sacrilegium w prawie rzymskim*, Lublin 1995, p. 116).

place, comments on them vividly and with full commitment, and does it – again – from another, contemporary perspective that is closer to the author. The attitude of the author is difficult to reconstruct in its entirety when we assume a lack of the personal bond with the narrator, available primarily in the layer of meta-textual structures of the first footnotes, title, subtitle, introduction, etc. In contrast to the narrator, he clearly reveals the distance, also in terms of its contextual closeness to patristic literature. Particular attention is drawn to the extensive footnote, directly related to the content of the accusation, especially to the explicit allusion to Christ's famous words concerning the separation of the divine from the imperial. They were the main point of dispute and simultaneously an impassable boundary for early Christian writers. It is characteristic that Norwid avoids apologetic logic; indeed, he even distances himself clearly from it, although he was clearly inspired by Tertullian's text himself:

> Co do właściwego znaczenia odpowiedzi Zbawiciela: „*Oddajcie co Cezara Cezarowi, a co Boskiego Bogu*" – ta przez Ojców Kościoła objaśnianą jest w apologiach, acz wystarczy nam dodać tylko: że pytanie, które ją wywołało, należy do tych, *które nigdy nie powinny były mieć miejsca*; powiedziane jest albowiem, iż *faryzeusz, kusząc Chrystusa Pana, zapytywał*.
>
> (DW III, 157)

> [As to the proper meaning of the Saviour's answer: *"Render to Caesar the things that are Caesar's, and to God the things that are God's*" – this is explained by the Church Fathers in apologias, but we need only add that the question which prompted it belongs to those *which should never have been asked*; for it is said that *the Pharisee, tempting Christ the Lord, was asking questions*.]

This exegesis has at least two points of reference. The first concerns the evangelical world and raises the referential dimension of the biblical message. The second, more important for us, which indirectly derives from the former, refers to the presented world and is connected with the process itself. When we compare the commentary with the course of events, evaluations, but also with the characteristic conclusion (adjournment of the trial), we will quickly notice that the poet's position diverges from the early Christian sensitivity and that it takes into account, to a large extent, the juristic point of view. Here, standing on the side of his protagonist, Norwid does not violate the order of things, trying to keep his axiological drive within the framework of historical accuracy. After all, as he was constantly stressing, nineteen centuries of Christianity constitute a commitment.

A FEW WORDS ABOUT THE (QUITE PROBABLE) SOURCES

The previous reflections were devoid of the sensitivity to historical impact. The question must be asked here about Norwid's awareness of the history of Roman law, especially regarding the Hadrian's era. What was then the state of knowledge about the discussed issues in the mid-19th century? What could the poet use when he started to write and when he was about to publish the poem? Undoubtedly, a breakthrough in the research on Roman law appeared in the second half of the 19th century, and especially at the turn of the 19th and 20th centuries. However, as early as in the 1840s and 1850s, historians of law made considerable scientific discoveries and findings. There was no shortage of information about Emperor Hadrian himself and his activities, not only in the field of great politics, but also in other areas, including law. Among the more general works, it is worth noting the monograph *Geschichte des römischen Kaisers Hadrian und seiner Zeit* (Königsberg), first published in 1851 by Ferdinand Gregoriovius, a well-known German historian, expert on the history of ancient Rome, traveller, but also theologian and philosopher. This publication, although lacking historical criticism of sources, still remains, thanks to the author's solid intellectual work, an important contribution to the research on Hadrian's times[20].

Due to the subject of the investigations presented in the article, due attention should be paid to the works written at that time which concerned the history of Roman law. One of the most influential authorities in this field was the creator of German cheque and bill of exchange law, the leading representative of the so-called historical school of law[21], Friedrich Carl von Savigny, who in 1815-1831

[20] Of course, Norwid drew information on Emperor Hadrian and Rome under his rule from ancient works, which had already been discussed in the literature of the subject at that time, although, for instance, the most important ancient biography of Hadrian, written as part of *Augustan History* by Aelius Spartianus (some attribute to him the authorship of the whole work, others believe him to be the co-author). As far as Norwid's contemporary publications are concerned, it should be stressed that the source for *Quidam* may have been less obvious texts than the indicated work by Gregoriovius. One example could be the book by Friedrich Münter, which was less known, but had a popularising function: *Der jüdische Krieg unter den Kaisern Trajan und Hadrian* (Leipzig 1821). This concerns not only the Jewish uprisings, which are strongly present in the text of Norwid's poem, but also about more detailed and minor elements, which testify to the high probability of this trial. For instance, I am thinking of Münter's book, where on p. 32 he mentions the meeting of Emperor Hadrian with Rabbi Jozua.

[21] The representatives of this current of German philosophy of legal science (e.g. Friedrich Carl von Savigny, Georg Friedrich Puchta, Gustav von Hugo) were opposed to the Enlightenment ideas of law and were critical of legal positivism and different legal theories. They based the no-

published *Geschichte des römischen Rechts im Mittelalter* (later translated and published in France) which comprised six volumes, and in the years 1840-1849 even more extensive work comprising eight volumes – *System des heutigen römischen Rechts* [*The System of Modern Roman Law*]. In both seminal works he tried to show the validity of the specific regulations and legal solutions of ancient Rome, which were considered dead, but have survived in rituals, local customs, church doctrine and teaching. Another German lawyer and law historian (and Savigny's student), member of the Prussian Royal Academy of Sciences, Adolf August Friedrich Rudorff published no less important works; at least two of them are worth mentioning: *Grundriß zu Vorlesungen über die Geschichte des Römischen Rechts bis Justianus* (Berlin 1841) and *Römische Rechtsgeschichte zum akademischen Gebrauch* (vols. I-II, Leipzig 1857-1859).

Following the example of German researchers, historical-comparative methodology was applied by the French lawyer Louis-Firmin Julien-Laferrière, Rector of the Toulouse Academy and a member of the political department of Académie des Sciences Morales et Politiques (which is part of the famous Institut de France). In his two-volume work *Histoire du droit français* (Paris 1836-1838), he drew attention to the links between French law, already after Napoleon's codification, and Roman law, and developed this idea more fully in the work *Histoire du droit civil de Rome et du droit français, ouvrage dans lequel se trouve complètement refondue la partie ancienne de l'Histoire du droit an aisis, par le même auteur* (vols. I-VI, Paris 1846-1858). At that time it was also possible to get acquainted with source texts, rescripts and decrees published by Roman rulers (until the rule of Justinian) – this was published in Latin (Leipzig 1856) by Gustav Friedrich Hänel in the work *Corpus legum ab imperatoribus romanis ante justinianum latarum, quae extra constitutionum codices supersunt. Accedunt res ab imperatoribus gestie, qui bus romani juris historia et Imperii status illustrator*.[22] At that time, it was an invaluable source of direct knowledge related to the history of the formation of Roman law.

Here I confine myself to examples of rich and multidimensional literature on the history of Roman law, including the time of the reign of Emperor Hadrian, which was of particular interest to Norwid's *Quidam*. Of course, the poet's indices do not mention either the names or the titles of the works, but in this way we

tion of law on historicism, hence the history of Roman law became a point of reference for them. According to this concept, law was supposed to be an expression of a nation's development and, therefore, could not be presented in isolation from this development. That is why different nations have different legal systems, corresponding to their historical specificity – similarly to how the development of language and culture was conceived of at that time.

[22] Documentation of Hadrian's times can be found on pp. 85-101.

can determine the potential range of possibilities that existed for the creator of *Promethidion*. As we remember, Norwid persistently built his historical vision of Rome from eighteen centuries before based on the rich collection of the Library at Rue Richelieu.

*

It is time to draw conclusions. The first, as it could be predicted, refers to literary history or history *sensu stricto* and, in a sense, is quite obvious. It considers Norwid's legal awareness – while constructing one of the basic scenes of his work, Norwid drew on the knowledge and literature of the subject of the mid-19th century on the status and meaning of Roman law. The poet must have come across historical information about the course of a trial in Roman law, among others in the readings devoted to the history and culture of ancient Rome, which he studied during numerous visits to the Imperial Library at Rue Richelieu. It can also be assumed that he did not limit himself only to the accounts and reflections of early Christian apologists, but also referred to Roman literature and contemporary commentaries. The second conclusion, which has already been implicitly indicated above, has an axiological and simultaneously semantic dimension, and concerns the presented world. *Quidam*'s researchers generally assume that the vision of the world portrayed in the poem has a strongly polarized character – it identifies the author's attitude (which is not surprising) with the world of nascent Christianity, and at the same time depreciates the value of Rome, emphasising its definitely imperial character. The trial scene, along with other clues related to the vision of the presented world, stands in clear opposition to these statements and assessments. Furthermore, inspired by early Christian texts, Norwid tries to avoid judgments entangled in a strictly historical context.

BIBLIOGRAPHY

AMIELEŃCZYK K., *Rzymskie prawo karne w reskryptach cesarza Hadriana*, Lublin 2006.

BIRLEY A.R., *Hadrian. Czas niestrudzony*, transl. by R. Wiśniewski, Warszawa 2002.

CARCOPINO J., *Życie codzienne w Rzymie w okresie cesarstwa*, transl. by M. Pąkcińska, Warszawa 1960.

DĘBIŃSKI A., *Sacrilegium w prawie rzymskim*, Lublin 1995.

DYJAKOWSKA M., *Crimen laesae maiestatis. Studium nad wpływami prawa rzymskiego w dawnej Polsce*, Lublin 2010.

LITEWSKI W., *Rzymski proces karny*, Kraków 2003.

PAPIERKOWSKI Z., *Proces karny w starożytności greckiej i rzymskiej*, "Roczniki Humanistyczne" 6(1957), vol. 2, pp. 159-176.

SAJKOWSKI R., *Sprawa Falaniusza i Rubriusza. Początek procesów o obrazę majestatu za rządów Tyberiusza*, "Zeszyty Naukowe Wyższej Szkoły Pedagogicznej w Olsztynie" Prace Historyczne II 13(1998), pp. 11-21.

SAJKOWSKI R., *Klasyfikacja przestępstw w obrazę majestatu za rządów Tyberiusza na podstawie katalogu Swetoniusza (Tib. 58)*, "Echa Przeszłości" 2000, pp. 17-28.

SAJKOWSKI R., *Divus Augustus pater. Kult boskiego Augusta za rządów dynastii julijsko-klaudyjskiej*, Olsztyn 2001.

ŚWIĘCICKA-WYSTRYCHOWSKA P., *Proces Jezusa w świetle prawa rzymskiego. Studium z zakresu rzymskiego procesu karnego w prowincjach wschodnich w okresie wczesnego pryncypatu*, Kraków 2005.

ZABŁOCKA M. and ZABŁOCKI J., *Ustawa XII tablic. Tekst – tłumaczenie – objaśnienia*, Warszawa 2003.

PROCES QUIDAMA W ŚWIETLE RZYMSKIEGO PRAWA

S t r e s z c z e n i e

Artykuł stanowi próbę analitycznego przybliżenia sceny sądu nad trzema chrześcijanami, rozgrywającą się na Kapitolu, przed Jowiszowym templum w Norwidowym poemacie *Quidam*. Ten monumentalny fresk, rozpisany na wiele mniejszych sekwencji, wyraźnie odróżnia się swoim charakterem od dominujących w tekście ujęć kameralnych, zawężonych do niewielkich przestrzeni, niewielkich grup osób. Analiza skupia się tu przede wszystkim na rekonstrukcji przebiegu procesu z punktu widzenia rzymskiego prawa. Ostatecznie prowadzi do rozpoznania historycznej świadomości prawnej Norwida, który, konstruując jedną z zasadniczych wizji swojego utworu, sięgał po wiedzę i literaturę przedmiotu połowy XIX wieku, dotyczącą stanu i znaczenia prawa rzymskiego.

Słowa kluczowe: Norwid; Quidam; prawo; cesarz; Tertulian; sędzia; urzędnik.

THE TRIAL OF QUIDAM IN THE LIGHT OF ROMAN LAW

S u m m a r y

The article is an attempt to analytically portray the scene of the trial of three Christians, taking place on the Capitol Hill, in front of the temple of Jupiter in Norwid's poem *Quidam*. This monumental fresco, divided into many smaller sequences, clearly distinguishes itself from intimate shots prevalent in the text, narrowed to small spaces, small groups of people. The analysis focuses here primarily on the reconstruction of the trial from the perspective of Roman law. Ultimately, this leads to the recognition of historical legal awareness of Norwid, who, upon

constructing one of the fundamental visions of his work, drew on the knowledge and literature of the mid-19th-century concerning the role and significance of Roman law.

Key words: Norwid; Quidam; law; emperor; Tertullian; judge; official.

Translated by Rafał Augustyn

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