

# THE INFLUENCE OF RELIGION ON THE ROMAN LEGAL SYSTEM

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## Abstract

*The origins of the science of Roman law are closely related to traditional religious practices. In the old era, it was reduced to knowing forms, kept secret by pontiffs, like religious rites. It is in fact the consequence of the confusion existent between ius, honestum and fas. Therefore, both the juridical consultations, and the religious ones were strictly provided individually and confidentially, considering the secret contents thereof, with a view to maintain the influence of a closed caste over population. All this period, when it was perpetuated a tradition taken over from prestate period, lasted until the year 301 before Christ, under the name of sacred or religious jurisprudence.*

**Keywords:** law, religion, pontiffs, legal science, sacral law.

## Introduction

The origins of the science of Roman law are closely related to traditional religious practices. In the old era, it was reduced to knowing forms, kept secret by pontiffs, like religious rites. It is in fact the consequence of the confusion existent between *ius*, *honestum* and *fas*. Therefore, both the juridical consultations, and the religious ones were strictly provided individually and confidentially, considering the secret contents thereof, with a view to maintain the influence of a closed caste over population. All this period, when it was perpetuated a tradition taken over from prestate period, lasted until the year 301 before Christ, under the name of sacred or religious jurisprudence.<sup>1</sup>

The justification of punishment and mainly of capital execution is encountered, at least initially, in religion, in providing the victim to the God offended by fact and whose revenge could fall thus over the entire community.<sup>2</sup> Even the notion of *sanctio*, by which the punishment was determined for the breach of a law is obviously related to *sanctus*, *sacer* and *sacratio*.<sup>3</sup>

## Law and religion

For several centuries, the pontiffs have known the pomp days<sup>4</sup> and the solemn formulas that the

parties in dispute were compelled to pronounce. The pomp days and formulas were revealed and displayed in forum by Gnaeus Flavius, the freedman of Appius Claudius Caecus in 301 before Christ.<sup>5</sup> The pontiffs held the monopole of law, being the sole who knew and could provide explanations related to the trial. The first priest of the state was the king, until the foundation of republic.<sup>6</sup> The Romans didn't know later either the distinction existent today between state and church, aspects of religion, of sacred, rites and practices appearing in all aspects of Roman life, including in law and criminal law.

As for religion, Roma did not adopt an expansionist model, but there was rather an absorption of religious elements specific to other Mediterranean civilisations, however we must outline the importance of the cult financed by public resources – *sacra publica*.<sup>7</sup> The religious practices could be encountered in every aspect of daily life. The banquets, the meetings of senate, the parades and the wars were usually preceded by sacrifices. Many of such practices survived as well the period after the adoption of Christianity, as state religion. The sacrifices were forbidden starting with 1 January 439, when it was enforced *Codex Theodosianus*.<sup>8</sup> The religions was present in all aspects of social life, it was not limited to temples and feasts.<sup>9</sup> There was however a clear difference between *res sacrae* and *res publicae*. In this respect, it was asserted in recent studies, that both religious practices of Romans, and the juridical ones, wouldn't be so different as

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<sup>1</sup> E. Molcuț, D. Oancea, *Roman Law*, Șansa Publishing House, Bucharest, 1993, p.60.

<sup>2</sup> J. L. Strachan-Davidson, *Problems of the Roman criminal law*, Oxford Clarendon Press Publishing House, 1912, p.1.

<sup>3</sup> J. L. Strachan-Davidson, *quoted work*, p.3.

<sup>4</sup> Days when trials were judged.

<sup>5</sup> Vl. Hanga, *Borough of seven cholines*, Bucharest, 1951, p.185.

<sup>6</sup> Fr. Girard, *Histoire de l'organisation judiciaire des Romains*, Arthur Rousseau Publishing House, Paris, 1901, p.13.

<sup>7</sup> See Jörg Rüpke, (coord.), *A companion to Roman religion*, Blackwell Publishing Publishing House, 2007, p.7.

<sup>8</sup> *Codex Theodosianus*, 16,10,4 decreed: in all places and all towns, the temples must be closed, and pursuant to a general warning, the possibility to sin to belong to bad ones; termination of sacrifices (if someone commits such an act to be victim of revenge); the property of the one executed to be claimed by the town; the governors from province to be punished in the same manner if they neglect the punishment of such acts.

<sup>9</sup> See Jörg Rüpke (coord.), *quoted work*, p.5.

previously thought, but much more dynamic, evidence of Roman specific conservatism. Therefore, the feasts with religious character were still organised in the town of Alba Longa, although it hadn't been for long time an important urban centre.<sup>10</sup>

For the lack of faith, it seems that there weren't juridical consequences, according to the former laws. There is however the possibility the state expressly demands a manifestation of faith, on certain occasions. In this respect, after the death of Cesar, when he was turned into a God (endowed with divine power), it was ordered to every citizen, under the death punishment, to celebrate the anniversary of birth of the dictator.<sup>11</sup> There was, mainly during the period of Republic, a religious freedom, but this does not mean that there is no strict supervision of cults.

In order to understand Roman religious one shouldn't ignore the two legends: of foundation of Rome and of first kings. The dam sent by Marte to nurse the two twins prefigure the warrior vocation of Romans. Pursuant to the defeat of Albans, Romulus and Remus decided to found a town on such places, where encountered and raised.<sup>12</sup> Wanting to find out the desire of law in this respect, Romulus selected Palatine and Remus the choline of Aventin. The fatidic signs appeared firstly to Remus, in the form of six eagles. Romulus was shown twice more eagles.<sup>13</sup> However, both Remus and Romulus were acclaimed as kings by its own camp, *this being the reason of much trouble, turning into a bloody fight, in tumble, seriously injured by his brother, Remus fell breathless.*

The second legend, presented by Titus Livius, recounts us the fact that Remus jumped over the new walls built up by Romulus, but without any bad intention. However, Romulus, taking the gesture in serious, killed him saying: *all those who dare to jump over the walls built by me to die like this.*<sup>14</sup>

The nature of these myths is symbolic for subsequent development of Roman spirituality and moral. Pursuant to such bloody sacrifice, the first offered to divinity of Rome, the people will always keep in mind a memory not rather pleasant. More than 700 de years, pursuant to the foundation of Rome (753), Horațiu will still consider it an originary sin, the consequences thereof being able to cause the perdition of Borough, determining its sons to murder each other.<sup>15</sup> Similarly, *during every*

*critical moment of its history, Rome will be disquieted, thinking that it feels the pressure of a blast. As on its birth, it didn't taste peace neither with men nor with Gods. This religious anxiety will put a pressure on his destiny. It is easy, too easy to oppose it to an apparent good consciousness of Greek boroughs. However, Athena had known crimes as well: on the origin of the power of Tezeu is the suicide of Egeu.*<sup>16</sup>

It was said that the legends of founding Rome would have on origin indo-European myths, mythological inheritance which, camouflaged in the oldest history of borough, represents by itself a religious creation susceptible to reveal us the structure specific to Roman religion.<sup>17</sup>

Initially, there was in Rome, as in other states of antic world, a confusion between law (*ius*) and religion (*fas*). Consequently, the priests were considered the maintainers and interpreters of divine will. The early legal practice was intensely maintained by pontiffs, from this college being elected as well the superior magistrates. The formula relied on a ritual practice involving accurate reproduction of some words deemed correct. The formulas were reserved to pontiffs, an elitist group of initiated people holding monopole over this knowledge. *Pontifices* were the only one able to draft testaments, contracts and who could provide evidence in trials. Under the direction of *pontifex maximus, comittia curiata* determines the sacred law and pontifical college, controlled state religion and ritual training. Starting with 3<sup>rd</sup> century before Christ, the place of pontiffs is taken by a class of legal advisors providing legal consultations in private law, including, both the field of contract, and that of crime.

In a society where guarding sacred goods of borough is deemed public duty and the recognition of sacrificers was an obligation, but which extended as well the application of domestic discipline over free citizen, when state religion was interested in doing this, the accomplishment of religious obligations was primitively rigourously imposed, as well as sanctioned by criminal law. The one who, without being authorised in this respect, reveals the contents of the book of secret oracles, which may be consulted only based on a state order, risks capital punishment.<sup>18</sup> The guard of public sanctuaries was generally incumbent upon magistrates. When, exceptionally, other individuals

<sup>10</sup> See Plinius, *Naturalis Historia*, 3,69-70.

<sup>11</sup> See Dion, 47,18.

<sup>12</sup> See Titus Livius, *Ab urbe condita*, Minerva Publishing House, Bucharest, 1976, p.14.

<sup>13</sup> See Titus Livius, quoted work, vol.I, p.14 and Plutarh, *Romulus*, III-XI.

<sup>14</sup> The foundation of a borough entailed very struct rites: in order to be able to see the will of gods a good omen space is delimited on the sky; the space of borough, on its turn, was delimited by the ground plot ploughed, symbolicaly, to become inviolable, sacred.

<sup>15</sup> See Pierre Grimal, *Roman civilisation*, Minerva Publishing House, Bucharest, 1973, p.16

<sup>16</sup> See Pierre Grimal, *quoted work*, p.16.

<sup>17</sup> See Mircea Eliade, *History of faith and religious ideas*, Scientific Publishing House, Bucharest, 1992, p.106.

<sup>18</sup> See Val. Max., 1,1,13.

were appointed as well, who neglected their duties, a capital crime was committed.<sup>19</sup> There is no technical term to describe the sacrileges committed against Roman religion. The expression of Tertullian, *crimen laesae romanae religionis* is accurate, but it is not used frequently. At the same time, the notion of *sacrilegium* although frequently used, is not accurate, as it designates, at least on origin, the theft from a temple.

Although, the cult of other Gods, than those of Rome or those adopted by state is not deemed a delict, certain forms of foreign religion were morally and politically disapproved. Thus, during the Republic and Empire frequently were taken measures against the Egyptian cult, perceived as being too shocking for occidentals.<sup>20</sup> The repression consists in police measures, such as: it was forbidden public exercise of such practices; the altars and chapels were removed; the foreigners were applied measures of coercion etc.<sup>21</sup> According to Septimiu Sever, the king had, besides the duty to honour the gods of old rite that of disapproving and punishing any alienation from the old rite.<sup>22</sup> Consequently, the legal works consider capital crime the introduction of new divinities and related ritual practices.<sup>23</sup>

The notion of *iniuria* (injustice) of private law was applied more for the state, than for gods. The profanation of a temple or the trouble of development of a religious act has as consequence a criminal action ended with a condemnation. It is ignored the possibility of the existence of particular legal disposals in this respect. Anyway, if such disposals existed, they targeted exclusively the offence of state. Roman criminal law did not include any disposals for the offence committed against a divinity by words or writs.

On Romans, as the ideal was represented by the regularity of annual cycle in the ordered development of seasons, any anomaly represented a crisis situation in the relation with gods.<sup>24</sup> Therefore, the accurate signification of miracles must be deciphered by priests. The magic power of divining the future belonged only to magistrates and military heads; it consisted in the interpretation of forecasts.

The domestic cult, remained unchanged for 12 centuries of Roman history, during the entire period of paganism was led by *pater familias*.<sup>25</sup> On its turn, the public cult was under the control of state. During the royalty period, the king held the first rank in sacerdotal hierarchy, being considered *rex sacrorum* (king of sacred).<sup>26</sup> It is known the fact that in the home of King three categories of writs were practiced, dedicated to Jupiter, Iunonei, Ianus, Marte and Ops Consina (goddess of agrarian abundance).

It was rightfully asserted<sup>27</sup>, that rituals predominate not only in religious life of Romans, but also in politico-institutional life, marking deeply the entire mental of Roman people.

The cult of Dionis<sup>28</sup> was known in the entire Mediterranean world, including in Rome. Pursuant to the extension of Roman domination in Greece, the esoteric (secret) associations were spread in the entire peninsula, mainly in Campania.<sup>29</sup>

Consequently, in 186 before Christ was adopted a *Senatusconsult of Bacchanalibus* which had as scope the suppression of the cult of Dionis.<sup>30</sup> In this respect, it was foreseen that noone, in the company of more than four individuals, men or women (two men and three women), will participate to sacred rites, but with the approval of praetor and Senate. The manner of investigating the case and of punishment are presented to us by Titus Livius. However, the recounting must be performed under the reserve that, despite its erudition, similar to its ancestors, he does not consider history a science, therefore, he does not feel forced to always consider the historical truth. *Ab urbe condita* contains in fact three kinds of texts (of analysis, rhetoric and literary). The accuracy of text depends however on the source of inspiration; similarly for the transmission of details.<sup>31</sup> The certification of this law<sup>32</sup> is due to the discovery of an inscription in 1640 at Tiriolo. The Consul Spirus Postumius Albinus performed an investigation (*quaestio*) related to conspiracy (*coniuratio*) appeared related to practicing the cult of Dionis.

The supporters of the cult (around 7000) were accused of several crimes, among which: practicing ritual orgies, organisation of crimes for own

<sup>19</sup> See Cicero, *Pro Rabirio*, 2,7.

<sup>20</sup> See Cicero, *De legibus*, 2,8,19.

<sup>21</sup> See Titus Livius, 4,30; 25,1,7,5.

<sup>22</sup> See Dion, 25,36.

<sup>23</sup> See *Digeste*, 48,19,30.

<sup>24</sup> See Mircea Eliade, *quoted work*, vol.II, p.107.

<sup>25</sup> See Mircea Eliade, *quoted work*, vol.II, p.109.

<sup>26</sup> See Mircea Eliade, *quoted work*, vol.II, p.111.

<sup>27</sup> See Eugen Cizec, *History of Rome*, Paideia Publishing House, Bucharest, 2002, p.18.

<sup>28</sup> Dionis was in Greek mythology the god of vegetation, of pomiculture, of wine, of ecstasy and of fertility, called on Romans both Bacchus or Liber. In Rome Dionis appeared in the theatre shows and it was called in sacrifices.

<sup>29</sup> See Mircea Eliade, *quoted work*, vol.II, p.226.

<sup>30</sup> Mircea Eliade in *quoted work*, vol.II, p.126, uses the phrase of *nocturne orgy mysteries*.

<sup>31</sup> See P.G. Walsh, *Livy: His Historical Aims and Methods*, Cambridge University Press Publishing House, 1967, pp.150 and 235.

<sup>32</sup> See Victoria Emma Pagan, *Conspiracy Narratives in Roman History*, University of Texas Press Publishing House, 2004, pp.51-53.

enriching, forgery of documents etc. The text was analysed by several researchers, who emphasized the similarities with the persecution of Christians later on. There are some debates related to the nature of text and on the reasoning for which the practitioners of cult were punished. Thus, on the one hand, it is stated that, considering that religion was a state monopole, the particulars couldn't be allowed to organise such a cult and also, that it is manifested an opposition towards the influence of Greek culture, and on the other hand, it was asked the question whether in 186 before Christ existed indeed a criminal organisation using a bacchic cult to hide the activity. This cult was frequently associated<sup>33</sup> with orgy, crime and robbery or falsification.

When a conspiracy was discovered, the procedure consists in delegating a magistrate that leads an investigation, followed by the execution of leaders. It provides as well the neutrality of the group, as well as the rewarding of informers. The conspirators were judged by extraordinary courts. The foreigners were judges as well, since conspiracy was considered a crime against state. Although there were some doubts related to the accuracy of data provided, it is clear that Aebutius and Hispala were the informers of consul Postumius.<sup>34</sup> The consul took them in custody to protect them and presented the case to Senate. Although some of the supporters of the cult committed suicide, the majority were caught, judged and executed or enchained;<sup>35</sup> the same for the leaders of the cult. On their turn, the altars were destroyed.

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<sup>33</sup> According to Titus Livius there were bacchic rites not forbidden by state. However, the word *bacchic* represented mostly an insult, referring to immorality or sexual deviation.

<sup>34</sup> See Titus Livius, *quoted work*, 39,19,5.

<sup>35</sup> Titus Livius does not recount what happened further on with those enchained, however it is easy to understand. To be mentioned that Rome had no prison in the sense that we provide to the notion.

### Conclusions

We believe that the asperity of punishments and the manner how this case was settled, must not be related to excessive intolerance of Romans opposite to religious cults, but rather to the prevention of a conspiracy. The severity and amplexness of investigation, carried out within five years prove the political nature of trial. The danger was determined by the existence of a potential complot against state and not by practicing a cult, since, as Ovidiu asserts, *Rome was the most dignified place of meeting of all gods*. The foreign cults were accepted and acknowledged at Rome by formal integration in official cults. Therefore, we must consider the social, political and military context after the second Punic war, when the security of state should be protected against any form of conspiracy.

Taking advantage of this situation, the senate used the legislation to control foreign influence, mainly that of Greek culture, control manifested several times, just to suppress the religious influences. In this respect, in 173 before Christ two epicurean philosophers were exiled; and in 155 before Christ the philosopher Carneades was exiled as well, on initiative of Cato cel Bătrân.

Despite all these, some bacchic practices survived in Rome, being tolerated by state to a certain extent.

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