

REVISTA INTERNACIONAL DE DERECHO ROMANO

**Maciej Jońca, *Laudatio Turiae – funebris oratio uxori dedicata. Pochwała Turii – mowa pogrzebowa ku czci żony* (Wydawnictwo Naukowe UAM, Poznań 2011)
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Last summer, a new book by Polish Romanist Maciej Jońca was published by the University of Adam Mickiewicz Press¹. This contribution focused on the

¹* I would like to express my thanks to Paul du Plessis (Edinburgh) for his comments on the linguistic side of the review.

² See also my review of Jońca's previous book: Ł.J. Korporowicz, 'Maciej Jońca, 'Głośne rzymskie procesy karne (Zakład Narodowy im. Ossolińskich – Wydawnictwo, Wrocław (2009), Pp. 320', 4 RIDROM (2009), p. 193.

intriguing problem of the legal aspects of a funeral laudation of Turiae. The book forms part of wider research project currently undertaken by Jońca on Roman funeral law. His studies are very important for Polish Romanists, as this subject was for a long time neglected and not many works were published on it².

² Interest of Polish scholars in Roman funeral law has been observable only for last ten years. Works that were devoted to that subject include: P. Niczypuruk, *Żałoba i powtórne małżeństwa wdowy w prawie rzymskim (Grief and Second Marriage of a Widow in Roman Law)*, Białystok 2002, M. Kuryłowicz, 'D. 48,24: *De cadaveribus punitorum*. Prawo rzymskie o zwłokach osób skazanych za przestępstwo przeciwko państwu' ('D. 48,24 *De cadaveribus punitorum*. Roman Law about Corpse of People Sentenced for Crimes against State') [in:] A. Dębiński, H. Kowalski, M. Kuryłowicz (eds.), *Salus rei publicae suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Lublin 2007, pp. 115-125, idem, 'Publiczne porządki i nieporządki pogrzebowe w okresie wczesnego cesarstwa rzymskiego' ('Public Funeral Orders and Disorders in the Times of Early Roman Empire') [in:] K. Amielańczyk, A. Dębiński, D. Słapek (eds.), *Ochrona bezpieczeństwa i porządku publicznego w prawie rzymskim*, Lublin 2010, pp. 161-171, M. Jońca, 'Zmartwychwstanie Chrystusa, edykt nazareński i znieważenie grobu w prawie rzymskim' ('The Resurrection of Christ, *Nazareth Edict* and Sacrilege of Tomb in Roman Law') [in:] K. Amielańczyk, A. Dębiński, D. Słapek (eds.), *Ochrona bezpieczeństwa...*, pp. 89-101. Additionally J. Pudliszewski translated selected fragments of Digest related to funeral practices, J. Pudliszewski, *De religiosis et sumptibus funerum et un funus ducere liceat. De mortuo inferendo et sepulchro aedificando. De sepulchro violato. O*

This is why Jońca's new translation in his latest book is so significant.

The reviewed book is not a monograph, but a bilingual edition of the text of *Laudatio Turiae* equipped with the full scholarly commentary. It is divided into three separate parts. First, *Introduction* (pp. 11-39), consists of four chapters: (1) 'Roman funeral and *laudatio funebris*', (2) '*Laudatio Turiae* – history and the condition of the inscription', (3) 'State of the Research on *Laudatio Turiae*' and (4) 'Date of delivery, author of the speech and its addressee'. The second part consists of original text equipped with Jońca's translation (pp. 40-55). The last part, *Commentary* (pp. 56-138), is divided into three large chapters: (1) 'Language of the inscription', (2) 'Policy and propaganda in the inscription's text' and (3) 'Legal issues related to the inscription'.

The book's content links different perspectives on ancient world – philological, social, political, as well as legal. For a legal historian, careful reading of the book reveals a number of important issues that shall be especially emphasized in a present review. First, the choice of the translated source. The science of Roman law is well accustomed with the idea of using legal sources like *Corpus Iuris Civilis* or Gaius's *Institutes* as a

rzeczach poświęconych (zmarłym) i kosztach pochówku oraz jak należy zorganizować pogrzeb. O grzebaniu zmarłych i budowie grobowca. O zbezczeszczonym grobie, Poznań 2009.

first and usually only authority. If something cannot be found in the Digest it does not exist. Certainly such attitude is an exaggeration, but it shows a kind of common thinking. There are, of course, non-legal sources, but their usage in legal research need to be treated with great caution – they were written not by lawyers but by historians or antiquarians who did not necessarily know much about law. By using these sources without due caution, there is a danger that we may recreate Roman law as is never was, by basing our research on such non-legal sources. In reality, however, we may do exactly the same by setting our research only on Justinian's or Theodosius's codifications. Our knowledge of classical Roman law is far from complete, all what we know is how the lawyers from the 5th or 6th centuries thought about their juridical antecedents' works. Most of the content amassed in the Digest is rather theoretical. Even when the passage attributed to classical jurist is devoted to the case that really took place, all further considerations may be described as "what would happen if...". What we really need to do is to accustom ourselves with the practice of ancient law. It is surely the most demanding task for the Roman law scholars. The number of accessible sources of practice is rather limited, but some exceptions (e.g. Egyptian papyri, Pompeian and Vindolanda tablets) are known. Nonetheless, every year, archaeological seasons brings new findings. Among them there are many valuable

legal materials, like wooden tablets with the contracts or deeds of sale, wills, different registers, courts' decisions and many others. Into that list it is possible to add also such texts as *Laudatio Turiae*. It is characteristic that at a first glimpse funeral laudation may not be treated as a valuable legal source, but a close investigation of its content reveals fascinating legal world. Jońca's investigation proves that. This relatively short laudation allowed him to include five different legal problems in the third chapter of the third part of his book – (1) vengeance as a form of retribution for a crime, (2) the relation of the family and inheritance law, (3) proprietary relations in Rome (4) pardon for a proscribed citizen and (5) legal aspects of the maternity.

Another thing that has to be mentioned is Jońca's statement referring to interpolations. It seems that everything was already said about the "interpolation hunt" (*Interpolationjagd*)³. But according to Jońca it also seems that contemporary Roman law science has reached opposite edge of the problem. While in late 19th and early 20th century Romanists all around the world were trying to uncover Tribonian's and his fellows "embezzlements" with works of classical jurists, nowadays scholars believe in every single word written

³ For a brief historical account of that movement see A.A. Schiller, *Roman Law. Mechanisms of Development*, The Hague – Paris – New York 1978, pp. 63-67.

in the *Corpus Iuris Civilis* and treat those words as fully trustworthy. In his own words Jońca says: “[I]n recent years, rather for a peace and quite than for an academic honesty, it is more often accepted that the majority of the texts inserted into Digest (...) resisted from the interferences of the Justinian’s compilers” (p. 63). This statement shows clearly how many problems still confront Roman law. It contradicts simultaneously all announcements of those who believe that the classical Roman law science ended up in the outer rims of the legal scholarship. Nothing like that happened. Roman law simply needs a change or even more precisely expansion of the scope of the used sources. A good idea would be also to join more closely legal studies with the achievements of the social historians. Elizabeth A. Mayer referred to that problem recently in an introduction to her book *Legitimacy and Law in the Roman World*. She wrote: “[A]n underlying aim of the book is to throw another rope bridge over the chasm between the study of Roman history and the study of Roman law, a crevasse that has been growing broader and more forbidding for nearly a century. (...) The Roman empire of the Romanists is still much the same orderly commonwealth that Mommsen imagined, a recognizably modern state grounded in the rule of law. But the Roman Empire many contemporary Roman historians now imagine has evolved into something

weaker, less rational, and more *ad hoc*⁴". Not only was the Roman world "weaker, less rational, and more *ad hoc*", but also Roman law could be described like that. We may even think that the idea of a system of Roman law is rather an achievement of Tribonian and medieval lawyers than pre-classical and classical Roman jurists. This again shows the need for more in-depth studies into the Roman legal world. And epigraphic sources may tell us more about that world. A good and valuable example for Roman law scholars maybe is the achievements of those legal historians who research the Near East ancient laws. Their work is predominantly based on the examination of the documents of legal practice.

Although a funeral laudation can hardly be called an evidence of practice of law, the example of *Laudatio Turiae* shows that it may be a good evidence of legal language used by the Romans and their followers. Jońca mentioned that in his book as well. In his opinion this specific laudation may be treated as the only surviving example of an everyday legal language used at the end of the Republic and early Principate. In his opinion Cicero's *De legibus* (the only proper legal text from that period) do not shows us real legal language. His work, which is called by Jońca as "lengthy treatise", was designed to convince readers to the idea of ideal

⁴ E.A. Meyer, *Legitimacy and Law in the Roman World. Tabulae in Roman Belief and Practice*, Cambridge 2004, p. 3.

republic. Cicero used quasi-legal words, very carefully chosen, just to reach his planned result (p. 66 n. 58). From that perspective Turia's laudation is an exceptional testimony of legal language, used quite probably also by the Republican *veteres*.

It is interesting also to look at some remarks that Jońca made about the laudation's legal problems described in the last chapter of the third part of his book. Those remarks demonstrate the meaning of author's earlier thoughts. In paragraph 'Roman family and the jigsaws of inheritance law', for example, Jońca raised the problem of stereotypical treatment of some legal institutes. The evidence from *Laudatio Turiae* overthrows some popular statements of many Romanists. According to most of the scholars *tutela mulierum* lost much of its earlier significance in the late Republic. On a contrary, distant relatives of the Turia wanted to use that institute against her, and as we may assume, it was quite serious threat for her and her husband. Those distant relatives were probably *gentes* and according to popular academic idea *gentes* lost all their importance in the late Republic. Another good example is a decline of *cum manu* marriage in the late Republic. In laudation, however, this issue is mentioned twice – firstly in relation to Turia's parents and secondly in relation to Turia's sister marriage (see generally pp. 116-118).

The above reflections represent only a few selected thoughts after the reading of Jońca's book. They cannot be treated as a proper review with an in-depth analyse of every single chapter. But in reality it is not how a review should be. The above reflections are an approving answer to the important problems stated by Jońca. Modern Roman law studies are very often treated as a niche discipline which is becoming less and less important for lawyers and if something is not important for practically directed law students and lawyers it should be excluded from the legal curricula. In reality, however, the most significant message that we may decrypt from Jońca's work is the need of further studies on Roman law which still hides many secrets.