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Selected Elements of Roman Law as an Inspiration for a Modern Psychological and Legal Interpretation Regarding Human Responsibility for a Committed Act

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Abstract: Roman law is one of the main building blocks of modern European culture. The principles introduced by Roman lawyers many centuries ago are very often present in contemporary criminal and civil law experts. It was in ancient Rome that it was noted that a judge cannot issue a verdict in his own case. We have also known for centuries that an act committed when it was not prohibited by law is not a crime. Roman law also created rules regarding inheritance by, for example, a nasciturus. This refers to a fetus, which can be taken into account for inheritance if it is born alive. The examples indicated here are a small element of the enormous legacy of legal principles that Roman lawyers left behind.

The principles discussed here may also directly refer to the current discussion on responsibility for a committed act. In criminological research, there has been a discussion for a long time on the possibility of punishing a given person for an action he has taken or a lack of action. In this discussion, the topic of awareness of the committed act and premeditated action returns. We also have discussions related to the real possibility of preventing disturbing events. There are also tragic - independent of us - accidental situations in which we take part. In this way, we come across three elements: dolus, culpa and casus. We are talking here about specific degrees of responsibility for a given act.

The following article aims to remind us what the above-mentioned elements are. On this basis, contemporary reflections of a criminological nature will be presented.

Keywords: Roman law, responsibility, premeditated action, criminology, crime



Introductory remarks

Is this person guilty? A similar question is often heard in the courtroom. Before the case goes before a judge, it must be analyzed by the appropriate services. Many questions usually arise during the collection of evidence. The people conducting the investigation must check all possible circumstances. The following are analyzed: the behavior of the perpetrator, the circumstances in which the situation occurred, the behavior of, for example, the injured persons. When we investigating a crime, we know that we can encounter actions in which the perpetrator acted with premeditation. A given person wanted to commit a crime. In this action, they saw some benefits for themselves. However, there are also events in which we can notice some omission. For example, we see a person who is responsible for a specific action. Lack of due diligence can lead to tragedy. The tragedy mentioned here can also occur at times beyond our control. There are random situations that can cause dramatic and tragic consequences. Very often it will be difficult to locate the person responsible for a given situation, which results from the action of, for example, nature. However, it is worth remembering that the circumstances mentioned above can be mixed. There may be a situation where the tragic consequences of a natural disaster become greater due to the lack of action by the person responsible for, for example, safety. The disasters mentioned here are also circumstances that are used by people who want to, for example, quickly get rich. The scenarios discussed here were described in detail by the lawyers of ancient Rome. In this context, we come across three terms: *dolus*, *culpa* and *casus*. As it turns out, when familiarizing ourselves with the literature on the subject, we can come across a still current discussion regarding these terms. Among others, the American researcher, Prof. David Daube, in the introduction to his work entitled: *Roman law, linguistic, social, and philosophical aspects* (Daube, 1960), draws attention to the special significance of the indicated triad: *dolus*, *culpa* and *casus*. In forming his thoughts, this researcher refers to specific examples. And so *dolus* presents Daube as bad intention. *Culpa* is considered negligence, and *casus* as an act of accident. The author of this work refers to the ramming of a friend's car as *dolus*. *Culpa* refers to a situation in which, in his opinion, a road traffic collision occurs due to a lack of "proper care" for a car. In turn, a *casus* should be considered a situation in which a tornado causes a collision of cars, e.g. two friends. From the very first sentences we notice that Prof. Daube, a very lively and graphic presentation of the principles of responsibility.

Referring to the contemporary view of the Roman triad mentioned above and proposed by Prof. Daube, it is worth dwelling longer on the considerations indicated here concerning the concepts of *dolus*, *culpa* and *casus*. These considerations will refer to contemporary contexts that may be significant for the reflection undertaken by criminologists in their works.

A special triad

A researcher of Roman law, Przemysław Kubiak, referring to the relationship between the concepts indicated here, points out that from the perspective of liability (both criminal and civil) for Roman law, reference to the specificity of intent was of key importance. The way in which a given act



is described from the perspective of its legal qualification is also important. As the researcher indicated here points out, "dolus-culpa-casus, (constitutes) to this day the foundation of almost every civil law system. It is worth adding that it also forms the core of solutions used in contemporary criminal law systems. It is uncontroversial to state that guilt is the main premise of the perpetrator's liability, and the basic means of ensuring the justice of the sentences passed is the presumption of the accused's innocence. As a rule, most democratic laws also provide for the punishment of acts committed unintentionally." The author notes in another place that: "In every Roman law textbook one can find basic information on intentional guilt (dolus) and unintentional guilt (culpa), along with its further divisions." Kubiak first defines the word casus as a case, but adds that it refers to an unfortunate event caused unintentionally.(Kubiak, 2016)

David Daube presents the triad indicated here in an interesting way. Culpa - considered negligence - is placed between dolus (intentional harm) and casus (harm caused by accident). In Daube's work, the case of intoxication and the responsibility of a given person for an act under the influence of alcohol are included. As the American researcher Pittacus, the tyrant of Mytilene, mentioned here, increases the ordinary penalty for a crime committed while intoxicated at the beginning of the 6th century BC. This is an interesting issue because the act itself, e.g. a collision while intoxicated, can be committed unintentionally. We are therefore talking about a situation that can be described as culpa. At the same time, however, it should be remembered that reaching for alcohol, which causes certain psychophysical effects, is in the vast majority of cases conscious: A person should foresee the consequences of their action. Hence, it is appropriate to attribute a collision while intoxicated to the concept of dolus, i.e. intentional guilt. Maciej Jońca, rightly emphasized that the triad discussed here from the perspective of responsibility de facto shows degrees of guilt. The Polish Romanist indicated here states that: "Dolus here means bad intention (premeditated action). Culpa refers to various forms of failure to exercise due diligence, resulting in damage. Casus, on the other hand, is a random event causing damage, for which someone is nevertheless responsible." (Jońca, 2014)

It is worth pausing below to consider the meaning of the individual concepts of the indicated triad.

Dolus

The concept indicated here refers to an action with the highest degree of harmfulness. It is the activity that was consciously intended to cause harm. Dolus is often referred to as a deception, which, for example, in property law meant deliberately misleading the injured party. The purpose of this action was to cause harm. Magdalena Kowalewska, undertaking a legal and psychological analysis of the meaning of a prohibited act, reminds us that considerations on the meaning of the concept of dolus are possible at the moment when we define a specific, prohibited area. Violation of this area must lead to the occurrence of harm. Dolus, as the indicated researcher reminds us, referred in Roman law to the intention to commit a specific, prohibited act. The author, in her doctoral thesis, draws attention to an interesting issue: "It should be emphasized that the specificity of the ancient Roman justice system consisted in the fact that it was the injured party, exercising the



right of complaint, who determined the scope of the act and guilt, and thus decided on the attribution of dolus." Dolus, as Kowalewska adds, referred to the concept of bad will and bad intention (dolus malus), as well as improper conduct committed deliberately. Luigi Garofalo, based on the results of psychological analyses, points out that the concept of dolus must be characterized based on the analysis of the individual's conduct. As the scientist cited here reminds: "Dolus consists in fraud aimed at misleading others when entering into legal transactions and causing property damage as a result." Garofalo adds, however, that intentional guilt may be the result of two important individual approaches: "intention understood as a prior disposition that results in an act of will implying awareness of the act being committed, and deceit, which constitutes a tort of the same name..." (Garofalo, 2003)

At the end of this part, it is worth stopping at an important remark made by Prof. Daube. In his opinion, dolus is a state that allows for the adoption of a position according to which it is legitimate to expect a claim. In other words, if someone performs a given task free of charge, it is considered that justice requires that the person who causes the loss - consciously or unintentionally - repair the damage. However, this situation does not occur when an event occurred beyond the control of the person accused of causing the damage: e.g. a book that a person borrowed dies in a fire (here we are talking more about the case, which is discussed in more detail below).

Culpa

Kolejny element omawianej triady dotyczącej odpowiedzialności odnosi się do - wydaje się również kojarzonego w czasach dzisiejszych - pojęcia culpa. Krakowski romanista, Wiesław Litewski w swojej książce pt. „Podstawowe wartości prawa rzymskiego” dłużej zatrzymuje się właśnie na pojęciu culpa. Jak zaznacza przywołany tutaj, zmarł przed laty badacz oraz sędzia zwrot culpa kojarzyć się może z pojęciem winy, w sensie szerszym. Termin culpa z perspektywy prawa rzymskiego odnosi się do winy nieumyślnej w postaci niedbalstwa (culpa w sensie węższym). Wracając do przywołanych już powyżej pojęć Litewski zaznacza, że „Przez dolus rozumiano wolę i moralnie naganny czyn polegający na umyślnym działaniu lub zaniechaniu w celu wyrządzenia szkody innej osobie. Wyróżniano różne rodzaje niedbalstwa. Rażące, grube niedbalstwo (culpa lata) polegało na niedołożeniu staranności występującej powszechnie.” Autor ten zwraca uwagę też na inne rozróżnienia. Another element of the discussed triad concerning responsibility refers to the concept of culpa, which is also known today. In his book entitled "Podstawowe wartości prawa rzymskiego", the Cracow Romanist, Wiesław Litewski, spends more time on the concept of culpa. As the cited researcher and judge point out, the term culpa may be associated with the concept of guilt, in a broader sense. From the perspective of Roman law, the term culpa refers to unintentional guilt in the form of negligence (culpa in the narrower sense). Returning to the concepts already mentioned above, Litewski reminds us that "Dolus was understood as the will and morally reprehensible act consisting in an intentional action or omission in order to cause harm to another person. Various types of negligence were distinguished. Gross, gross negligence (culpa lata) consisted in a lack of due diligence, which is common." This author also draws attention to other distinctions. Namely: Namely: "*culpa in abstracto and *culpa in concreto. The first one involved the failure to exercise a



higher degree of diligence than culpa lata, namely (the conduct of) a diligent father of a family (diligens pater familias). This can be described as the diligence of a prudent man. Its lack is precisely *culpa in abstracto. On the other hand, *culpa in concreto constituted a failure to exercise the diligence that one usually exercises in one's own affairs (diligentia quam suis rebus adhibere solet). Culpa also included a lack of professionalism (imperitia), e.g. in the person performing the work. The idea of *culpa in eligendo was also known, i.e. fault in the selection of, e.g., inappropriate assistants by the debtor." (Litewski, 2003) Marian Myrcha – referring to the provisions of canon law based in many places on Roman law – draws attention to the necessity of making another distinction. As emphasized by this Author: "Similarly to sanity (imputabilitas) and guilt (culpabilitas), responsibility (responsabilitas) can be exclusively moral (simpliciter talis seu mere moralis), or moral-legal. The first concerns evil actions exclusively from the moral point of view. The second concerns actions that are not only evil from the point of view of the moral order, but at the same time unlawful actions that violate the legal order established on the basis of justice. The first is often referred to as moral (moralis), the second is entitled to the term statutory or legal (legalis). It is clear that legal responsibility presupposes moral responsibility, just as legal responsibility (imputabilitas iuridica) cannot be thought of without moral reckoning." (Myrcha, 1972) In the areas indicated here, we speak of culpa lata and non-culpa. Here, we are dealing with culpa lata: culpa caused by negligence or intentional action. Culpa levis, on the other hand, means non-culpa, and therefore lesser negligence. The finding of the existence of the state of culpa was the basis for the debtor's liability. Prof. Daube, stopping at the term culpa, indicates several times that it is an intermediate "state" between dolus and casus. In his opinion, it can be interpreted not only as negligence leading to negative consequences, but also as a reprehensible act leading to an unfortunate result. The Author indicated here draws attention in this context to an example concerning priestly law. Referring to the concept of culpa, David Daube stops, for example, at a situation in which the rules related to the ritual were violated by, for example, a person eating a consecrated ox or entering the temple area in a state of impurity. Culpable guilt would occur in this situation if the person in question had taken a similar action consciously. It would not be a state of dolus if the violation of similar regulations had occurred in a specific state of a kind of higher necessity. It is possible to have a state where it was necessary to provide children with food (and there was no other than that which had been blessed earlier) or to enter the temple in a state of impurity was dictated by the need to save the life of the priest. Culpability occurs here because the person in question knew about the norms of temple law. If they did not have such awareness, then we can assume that we are dealing with non-culpable guilt. Similarly, as in a situation where the eating of blessed meat by a person who learned about its earlier ritual preparation after the fact.

Casus

The term discussed here refers, as already noted, to a random event for which someone is responsible. Anna Golonka, stopping at the topic of interest to us, the triad discussed here, related to human responsibility, points out that each of these elements should be related more to the area of civil law, not criminal law. (Golonka, 2019) In turn, Przemysław Kubiak, already cited above, emphasizes that the concept of casus has also left a strong mark on the grounds of criminal law. It is



on the grounds of the matter indicated here that situations arise when a given person commits a specific act and at the same time is not responsible for committing it. We are talking here about an event that can be described as a coincidence, and therefore a *casus*. It is therefore "an unfortunate event, the occurrence of which occurred without fault and independently of human actions." (Kubiak, 2016) It is worth adding that we are talking here about a situation other than an event called *force majeure* (*s maior*), understood as an unforeseen force that could not be resisted. (Liszewski, 2001) Przemysław Kubiak, in an interesting way, points out that in practice there is a need to combine the areas of *dolus* and *casus*. The lack of a clear boundary between unintentional guilt and chance was noticed. The researcher of Roman law cited here emphasizes that: "In this way, *casus* was the complement of intentional acts, encompassing both purely random events as well as cases of recklessness and negligence." As this Author rightly sees, however, random events caused the same legal effects on the side of the person participating in them as actions culpable in an unintentional manner. David Daube very clearly draws attention to the impossibility of predicting the situation that appears in connection with the occurrence of the state of *casus*. The aforementioned example of a tornado, the action of which leads to a road coalition, is of great importance here. A vehicle driver may contribute to the death of another person as a result of a severe collision. However, he had no influence on the action of the force of nature. This tornado was both the trigger and, to a large extent, the executor of the undesirable event. For example, it was a strong wind that directed the car into the opposite lane on the road and its force that prevented the driver from performing a manoeuvre that would have prevented the collision from occurring.

Summary

Prof. David Daube, presenting the triad: *dolus*, *culpa*, *casus*, referred in his work primarily to the specific findings of Roman jurists, the legal traditions of both ancient Greeks and Christians, and interesting examples that are also important for the modern reader. Referring especially to the last element, it is worth noting that the three entries indicated here and their mutual connection with each other may be of significant importance for both the criminal and civil law discussion on human responsibility. From a criminal and civil perspective, one may wonder what "bad intention" is (premeditated action). Was a given person aware of their own action, could they direct it, or were they able to recognize the negative consequences? The concept of *culpa*, referring to various forms of failure to exercise due diligence, may once again interest both civil and criminal law experts. Each situation in which an individual participates requires an analysis that will allow for the indication of objective criteria for such due diligence. We also cannot escape the concept of *casus*, a random event causing damage. In criminal law and criminological research, for example, we can encounter incidents in which a parent was accused of leaving a sleeping child in a car during very hot days. (Material, online) On the one hand, it may be a case of *culpa*, i.e. guilt, especially unintentional. However, the element of *casus* also appears here. The father's haste combined with high temperatures, for example, could have led to a completely unintentional random event. A specific person, as a result of external factors (perhaps due to a lack of due diligence), could have forgotten about the child left in the car. In civil law, a situation may arise in which, for example, a tree from my



property, as a result of a lightning strike, falls on the neighbors' roof. In such a situation, damage (including property damage) will certainly occur. The injured party will expect specific compensation from me, which I will be obliged to provide in a specific form, although being aware that it was not me who knocked down the tree. As you can see, the relevance of similar theoretical proposals is clearly noticeable. This topicality also applies to the criminological reflection mentioned in the title. In times of rapid media releases, society very quickly makes a kind of "criminological diagnostician" stating that a given person is guilty of a specific act. However, a thorough examination of the individual elements of the event allows us to objectively learn the truth.

References

- Duabe, D. (1969). *Roman law: Linguistic, social, and philosophical aspects*. Edinburgh: University Press.
- Kubiak, P. (2016). From case to case – or about *casus* in the context of Roman criminal law and Cicero's rhetorical writings. *Opolskie Studia Administracyjno-Prawne*, 2(2), 57-78. http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-doi-10_25167_osap_1556/c/1556-1173.pdf
- Jońca, M. (2014). On the "legal" meanings of the term *culpa* in the Theodosius Code. *Vox Patrum*, 34, 169-184. <https://repozytorium.kul.pl/server/api/core/bitstreams/4eb5c9a6-641a-4882-98cf-0e894d760efc/content>
- Garofalo, L. (2003). Concepts and vitality of Roman criminal law. *Zeszyty Prawnicze UKSW*, 3(1), 7-35. https://bazhum.muzhp.pl/media/files/Zeszyty_Prawnicze/Zeszyty_Prawnicze-r2003-t3-n1/Zeszyty_Prawnicze-r2003-t3-n1-s7-41/Zeszyty_Prawnicze-r2003-t3-n1-s7-41.pdf
- Litewski, W. (2001). *Basic values of Roman law*. Kraków: Jagiellonian University. <https://ruj.uj.edu.pl/server/api/core/bitstreams/5f55b7b3-b4da-47b4-919e-779b5c9389e5/content>
- Myrcha, M. (1972). The problem of guilt in canon law. *Prawo Kanoniczne: Quarterly Legal and Historical*, 1-2, 73-118. <https://czasopisma.uksw.edu.pl/index.php/pk/article/download/5345/4879/8552>
- Golonka, A. (2018). Evolution of legal solutions concerning selected institutions of substantive criminal law (Roman roots of selected institutions of criminal law). *Scientific Papers of the University of Rzeszów*, 22, 42-58. <https://journals.ur.edu.pl/zeszyty-sp/article/view/703/673>
- Material: 3-year-old dies because father left her in car. In heat. He forgot. (n.d.). *tvn24*. <https://tvn24.pl/polska/nie-zyje-3-latka-bo-ojciec-zostawil-ja-w-samochodzie-w-upale-zapomnial-ra437990-ls3364507>