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MUNICIPAL SCAEVOLAS AND ULPAINS? – THE PRESUPPOSED LEGAL KNOWLEDGE IN THE ROMAN MUNICIPAL CHARTERS¹

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Abstract: Modern scholars usually examine what the municipal charters tell *us* about the local administration, the legal processes etc. They are annoyed whenever the texts – using only references or ambiguous terminology – do not explain something that is not known to us. It is much rarer for them to examine whether the average inhabitant of a city was able to understand the legal topics which are obscure even for modern jurists. In this paper I try to map the knowledge necessary to understand and apply the municipal charters.

Keywords: municipal administration, Roman law, *lex municipii Tarentini*, *tabula Heracleensis*, *lex Ursonensis*, *lex Imitana*, *lex municipii Troesmensium*.

In my recent book² I have examined the explicit references³ of the Flavian municipal charters to the Roman legal practice in connection with the assumption that the main purpose of the Flavian municipal law⁴ was to fill out the deficiencies left by Vespasian's superficial edict – which granted Latin right to Spain – in the municipal administration. This edict could not have handled all the problems arisen from the new legal status of the cities in question, therefore, the law was urgent, and Vespasian himself issued it, not Domitian.⁵ However, the explicit references to the Roman legal practice concerning very important topics – e.g. elections, trials – without real information in the text itself are too frequent,

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² Illés 2016.

³ E.g. *De ea re de qua, si Romae ageretur, quantacumque esset, recipiatores dari oporteret, tot recipiatores da<n>to, quod dar[i] oporteret {tot recipiatores dato quod dari oporteret} si [de] ea re Romae ageretur.* (IrnXA16-25) This passage does not determine the exact number of the *recipiatores*, the detailed knowledge of the Roman law was necessary for this.

⁴ The legal nature of this text is questionable, I use the term 'law' without making a firm stand for it.

⁵ Andreu Pintado 2004, 227-234.

especially in comparison with the parallel places of other municipal charters, thus, in my opinion the main purpose of the Flavian law would not have been the one supposed by Andreu Pintado, therefore Vespasian's authorship cannot be proven.⁶

In the present paper I will examine the implicit references to the Roman law, that is, the words that have significant and special legal meaning. The main purpose of this article is to examine whether the legal vocabulary of the charters have caused similar difficulties as the explicit ones. Is there a difference among the charters in this field? How necessary was the legal knowledge, and could it be replaced by common sense?

The distinction between the significant legal terms and the insignificant ones is arbitrary to a degree,⁷ and the exact legal knowledge of an average citizen is not known,⁸ but it seems doubtless that the drafters created these charters with the elite in mind:⁹ the habitants of the major cities (first of all, Rome) with wealth and some legal knowledge, that was necessary for merchants in their business, for the aristocracy in their offices etc. Therefore, the problems caused by the lack of legal information could chiefly emerge in remote, pauper, small cities, but even these cities were able to gain the necessary information from the governor, their wealthy *patronus* or a neighbouring considerable town. In addition, while the examination of the explicit references can be based on parallel passages, in the case of the implicit references we do not have so convenient parallels. Because of these considerations I would like to emphasize here that this paper will show tendencies, rather than strict rules, and these tendencies were especially valid in smaller cities of a less developed area.

⁶ The main problem is that if the citizens of a town in question were able to understand the charter even with these explicit references, the edict would have been sufficient, if they were not able to understand it, the charter would have been insufficient. Of course, we can count with outside help e.g. the governor, developed cities, patrons, but even in this case the charter was insufficient on its own. Additionally, these explicit references could have been avoided as the parallel places of other municipal charters show.

⁷ I regard the terms 'legal', and thus implicit references, if their exact meaning in the text was hard to understand based on their everyday meaning. Of course, we must assume that the citizens in question could read and understand Latin etc., but this is another question.

⁸ For the evaluation of the Roman legal knowledge among the Romans cf. e.g. Crawford 1988, Richardson 1996.

⁹ Peachin 2001.

The following municipal charters will be used during the examination: *lex municipii Tarentini*;¹⁰ *Tabula Heracleensis*;¹¹ *lex Ursonensis*;¹² the Flavian municipal charters¹³ and *lex municipii Troesmensium*.¹⁴ The first and the last one are very short, and all of them are fragmentary.

Even at first glance, the remarkable feature of these charters shows up, that is, the structure and the phraseology of the texts seem to become more and more sophisticated and subtle: the *lex municipii Tarentini* and the *Tabula Heracleensis* do not have chapter numbers and titles, the *lex Ursonensis* has chapter numbers, while the Flavian municipal charters and the *lex municipii Troesmensium* have numbers and titles, too. The Flavian charters have the most lucid structure – the arrangement of the chapters follows a strict thematic composition,¹⁵ the structure of the *lex municipii Troesmensium* cannot be reconstructed.

The development of the phraseology is obvious if we examine some synonymous phrases.¹⁶ The most frequent one occurring in all the charters is the phrase which permits the citizens to bring an action in certain cases:¹⁷ *eiusque pecuniae magistratus, queiquomque in municipio erit, petitio exactioque esto*,¹⁸ *eiusque pecuniae qui volet petitio esto*,¹⁹ *eiusque pecuniae qui volet petitio persecutioque ex hac lege esto*;²⁰ *eiusque pecuniae qui volet petitio persecutio*

¹⁰ For the text, English translation and commentary see Crawford 1996, 301-312, the numbers will designate the lines of this charter. The text dates back to the beginning of the first century BC.

¹¹ For the text, English translation and commentary see Crawford 1996, 355-391, the numbers will designate the lines of this charter. The text is of Caesarian date, but contains older, tralatian elements, too.

¹² For the text, English translation and commentary see Crawford 1996, 393-460, the numbers will designate the chapters of this charter. The original text dates to the time right after Caesar's death, but the extant text was modified later – cf. e.g. Baetica – in the Flavian age, or between 20 BC and 24 AD according to Caballos Rufino 2006, 402-411. For the new fragments see Caballos Rufino 2006.

¹³ For the text, English translation and commentary see González 1986, revised edition of the Latin text is in González 2008, 11-124, the numbers will designate the chapters of this charter. The most important fragments are the Iritana, the Malacitana, and the Salpensana. The model-text dates back to the beginning of Domitian's reign.

¹⁴ This recently discovered text dates to 177-180 AD, see Eck 2013 and Eck 2014.

¹⁵ Cf. Giménez-Candela 1981, 40-42, Galsterer, 1987, 186, Galsterer, 1988, 82, Lebek, 1993, 170-172, Lamberti, 1993, 12-15

¹⁶ Of course, these are not real synonyms, each word has its own, different legal meaning.

¹⁷ For this phrase, cf. Crawford 1996, 20-22.

¹⁸ *Lex municipii Tarentini* 5-6.

¹⁹ *Tabula Heracleensis* 19, 107, 125, 140-141.

²⁰ *Lex Ursonensis* 74, 75, 81, 92, 93 (in the last two the *ex hac lege* is missing), 97 (here the *persecutio* is missing).

*exactioque esto;*²¹ *eiusque pecuniae qui ... volet ... actio petitio persecutio ex hac lege esto;*²² *eiusque pecuniae deque ea pecunia ... cui volet cuique per hanc legem licebit actio, petitio persecutio esto.*²³

Examining the phrase *actio, petitio, persecutio* the pattern seems to be clear: the later the charter is,²⁴ the more complex the phrase. But the same phrase shows that the development is not a simple linear one, because in the *lex Ursonensis* there are two types²⁵ due to the fact that the Romans used earlier laws to create new ones.²⁶ Additionally, sometimes the earlier charters show more complex phrases: in connection with the elections the *tabula Heracleensis* uses the phrase *legito, sublegito, cooptato* (86, 106) while the *Ursonensis* uses *lectus, cooptatus* and *sublegito, cooptato* (67). For the beginning of a magistracy, chapter 64 of the *lex Ursonensis* uses the *magistratum gerere coeperint*, while the *tabula Heracleensis* 95 uses e.g. *magistratum ... capito ... gerito ... habeto*. And the synonymous phrases are frequent in the earlier charters, too: e.g. *aedificium detegito, neve demolito, neve disturbato; vias, fossas, clovacas ... facere, immittere, commutare, aedificare, munire* (*lex municipii Tarentini* 32-33; 39-40); *pecuniam erogare, dare, attribuere; locus datus, atsignatus, relictus* (Urs. 65, 125, 126) etc.

Therefore, even if the tendency²⁷ that there are more complex, synonymous phrases in the Flavian charters, seems to be true, it does not mean that the regulations of the Flavian charters were harder to understand, than the rules of other charters, because they have many synonymous phrases, too. Additionally, it is not necessarily true that the phraseology of the older charters is simpler in general, because we do not have enough text to prove this, but we have some examples proving the opposite. The method that the drafters used some parts of earlier laws makes it possible, that the Flavian charters seem to be more developed, because they could be slightly altered versions of an Augustan law concerning the cities of Italy,²⁸ that is, one of the most Romanized area. Of course, it is probable, too, that the text of the municipal laws became more and more sophisticated during the time, during the process of Romanization and spread-

²¹ *Lex Ursonensis* 73, the ‘*exactioque*’ must be wrong, perhaps it is a mistake for the *exactio*, cf. Crawford 1996, 438.

²² *Lex Ursonensis* 125, 126, 128, 129, 130, 131, 132.

²³ *Irn.* 26, G, I, J, Mal. 58, *Irn.* 62, 65 (*agere, petere, persequi*) 67, 72, 74, 75, 84 (*agere, petere, persequi*), 90, 96, *lex municipii Troesmensium* B16-18.

²⁴ In the *lex municipii Tarentini* the *exactio* occurs because here only the magistrates are concerned.

²⁵ Cf. Crawford 1996, 398.

²⁶ Cf. e.g. Frederiksen 1965.

²⁷ I would like to emphasize that this seems to be only a tendency, and not a strict rule.

²⁸ Cf. e.g. D’Ors 1983.

ing of the Roman (legal) culture. In all likelihood, we have to take both possibilities into account: the phraseology could be determined by the age of a charter, and the place of its destination. This latter one concerns the type of the town in question, some part of the differences between the *tabula Heracleensis* and the *lex Ursonensis* can be explained by the fact, that the former one was valid for different communities of Italy, and the latter one for the colony of Urso only. In summary, we cannot say *a priori* that the Flavian charters are harder to understand, because they are younger, and thus their phraseology is more complex, however, in some certain cases it seems true. In addition, the exact interpretation of the individual words of these synonymous phrases can be difficult, in practical point of view the general meaning can be much easier to understand due to the different words.

We have to emphasize, too, that the possible differences between the Flavian municipal charters and the other charters cannot be explained by the suggestion that the topics are of a more legal nature in the former, than the latter ones. This is valid only in one section of the *lex Irnitana* about the ‘*Prozessrecht*’, but the other parts contain similar topics of similar legal nature as the other laws, e.g. elections etc.²⁹

Starting to examine the implicit references, we can group them into five types.

1. First of all, many terms of the municipal administration can be found in our charters, their meaning sometimes is clear from the text itself, e.g. in case of the three major municipal magistrates in chapter 18 (fragmentary only), 19 and 20. Besides these there are the different town types (*municipium colonia, forum, conciliabulum* etc.), names of magistrates, priests and *apparitores (tibicen, scriba)* etc. We can assume that the majority of these terms was familiar in the towns in question, that is, it is possible that a habitant of a colony did not know the exact legal meaning of a *conciliabulum*, but the habitants of a *conciliabulum* must have knew it. Therefore, these terms did not cause serious problems during the apprehension of the charters. However, e.g. the status of a *municeps* or an *incola* – in connection with the *domicilium* –³⁰ deserved detailed examination and treatment from the jurists, especially in later times when the habitants

²⁹ For the similar topics between e.g. the Flavian charters and the *lex Ursonensis*, cf. Crawford 1996, 398-399.

³⁰ *Domicilium* and *incola* e.g. in *Tabula Heracleensis* 157, and *lex Ursonensis* 91, for the legal definition of *domicilium, incola, municeps* and the problems arisen with these see e.g. *Dig.* 50.1. Of course, it cannot be excluded that the definition of similar terms is lost for us because of the fragmentary charters, e.g. it is supposed that the definition of the citizens and *incolae* was in the first lost section of the *lex Irnitana* (González 1986, 200, Galsterer 1988, 80-81)

attempted to avoid the burdens of their city arguing that they are not *municipes* or *incolae* etc., and under these circumstances the exact legal definition became more and more important. But these terms occur in all the charters, therefore we cannot differentiate them in this field.

2. Some legal terms have their definition in the charters themselves. E.g. the first extant section of the *Tabula Heracleensis* (1-19) deals with some kind of *professiones*. Unfortunately, we do not know the exact meaning of these *professiones*, and there are more hypotheses trying to explain it,³¹ but it is very probable that the definition must have been in the previous, lost part of the charter.³²

We meet the *res prolatae* in chapters 31 and 92 of the *lex Irnitana*. The everyday meaning of this term is too vague to understand without any legal knowledge, but chapter 'K' defines the rules '*De rebus proferendis*' and clarifies the meaning, therefore it must have been clear for the citizens.

3. In some cases the charter itself does not contain explanations of legal terms, but ensures the availability of the necessary information. The main topic of the lines 142-158 of the *Tabula Heracleensis* covers the local *census*, that should be performed *ex formula census, quae Romae ... proposita erit* ('according to the schedule of the census, which shall have been published at Rome').³³ That is, the local magistrates had to acquire this schedule.

Chapter 84 of the *lex Irnitana* determines the matters and sum of the local jurisdiction using some legal terms of deep content, e.g. *sponsio*, *interdictum* etc.³⁴ The majority of these legal terms must have needed an explanation for a common citizen, the charter itself does not provide detailed information about these, but chapter 85 prescribes that the magistrates in charge of the local jurisdiction had to display and publish all the *edicta, formulae, sponsiones, stipulationes, satis acceptiones, exceptiones, praescriptiones* and *interdicta* of the governor's edict. This regulation serves to ensure correct administration of the local jurisdiction, but this method could facilitate the interpretation of the charter, too.

The legal terms examined so far did not cause significant problems during the municipal administration, but following the words and the spirit of the law was more or less difficult in the cases below.

³¹ E.g. Crawford 1996, 359-360, the *professiones* can concern the citizenship, the grain supply etc.

³² Crawford 1996, 378.

³³ Trans. Crawford 1996.

³⁴ For a commentary see González 1986, 227-230

4. Sometimes the everyday meaning of the different expressions is clear, the legal meaning is very close, but there are differences, too. Even in a very simple expression as the *maior pars diei* ('greater part of a day').³⁵ Its legal definition says: *cuiusque diei maior pars est horarum septem primarum diei, non supremarum* ('The greater part of the day includes the first, not the last, seven hours', Scott transl.) Paul. *Dig.* 50.16.2.1. The simple phrase *rei publicae causa abesse* ('be absent on public business')³⁶ could cause troubles as attested by some passages of the *Dig.* 50.5.4; 50.7.15(1).

Chapter 28 of the *Irnitana* concerning the manumissions says that ... *dum {i}is, qui minor XX annorum / erit ita manumittat, si causam manumittendi iustam esse is / numerus decurionum, per quem decreta h(ac) l(ege) facta rata sunt, censu/erit*. In this case the *causa manumittendi iusta* ('the proper ground of the manumission') is not an *ad hoc* decision of the councillors according to their own moral or legal opinions, but a technical term of serious and regularized legal content. According to Gai. 1.39 and *Iust. Inst.* 1.6.4-5 this question was contained by the *lex Aelia Sentia* of 4 AD, and the ground is proper if somebody manumits his child, parent, teacher, etc. or his slave to be his *procurator*, or to be his wife. However, in the latter cases there are additional conditions: the slave designed to be procurator must be older than 17, the marriage must be taken in 6 months, etc. It means that without proper legal knowledge the citizens were not able to decide the question in the Roman way, of course, they did decide such questions – not on the basis of the Roman law, but of their own opinions. The similar statement is true in case of the passages of chapters 21 and B of the *lex Irnitana* in connection with the *legitimae nuptiae* and *potestas parentium* or with the different types of trials in lines 111sq. of the *Tabula Heracleensis* and chapter 84 of the *lex Irnitana*. The everyday meaning of these terms could give a clue for understanding the charters, but the exact meaning must have remained blurred without proper legal knowledge.

5. At last, there are some legal terms that are completely inapprehensible based on their everyday meaning without legal education, such as the *in integrum restitutio*;³⁷ *manus iniectio*,³⁸ *bonorum possessio*³⁹ and *intertium*,⁴⁰ but the terms of such a deep legal meaning are very rare in our texts.

³⁵ In different forms in *Tabula Heracleensis* 16; *lex Ursonensis* 70, *Irn.* 85, 86, 90.

³⁶ *Tabula Heracleensis* 116, *Irn.* 86.

³⁷ *Tabula Heracleensis* 118, cf. Kaser 1966, 330-333 and passim.

³⁸ *Lex Ursonensis* 61, cf. Kaser 1966, 104-106 and passim.

³⁹ *Irn.* 72.

⁴⁰ *Irn.* 90 sqq., its exact meaning remains undeciphered for us, too.

In summary we can say that not only the explicit references, but the implicit ones could encumber the exact understanding of the municipal charters. However, there are some clear differences. First of all, we cannot contrast the Flavian charters with the other municipal charters in connection with the implicit references partially due to the fragmentary nature and the different length and content of these charters.⁴¹ Each charter has many implicit references, which can stiffen the interpretation, and while the explicit references could be avoided,⁴² the majority of the implicit ones could not. However, the implicit references would not have caused serious problems that prevent the proper application of whole sections of charters, they generated minor misunderstandings only. Be that as it may, we cannot omit to emphasize that the system as a whole seems to have worked very well during the first centuries of the Empire, even if the local citizens were not able to follow the exact rules of the Roman law due to the lack of knowledge.

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⁴¹ As we have seen almost every charter contain almost every type of the implicit references, and the proportion of these references to the whole charter cannot be used, because of their fragmentary nature.

⁴² Cf. Illés 2016.

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