

Das Buch hinterlässt seinen Leser ratlos: Was ist der Zweck einer wissenschaftlichen Qualifikationsschrift? Diese Frage sollte sich, von Überlegungen der Nützlichkeit für den akademischen Karriereweg abgesehen, jeder Autor stellen, der sich anschiekt, die eigene Zeit und die seines Lesers zu beanspruchen. Einfaches Referieren des bereits vorhandenen Wissens darf jedenfalls nicht ihre Aufgabe sein, eine zu verifizierende oder falsifizierende These sollte ihr Ausgangspunkt, ein Erkenntnisgewinn ihr Ziel sein. Welchen Gewinn verspricht eine erneute Untersuchung über die römische Vertragsstrafe im Gefolge der drei „großen“ Schriften von Voci²⁾, Knütel³⁾ und Talamanca⁴⁾ und auch der Arbeit von Sicari⁵⁾, die alle nach dem methodischen Paradigmenwechsel der 60er Jahre des letzten Jahrhunderts publiziert wurden? Diese Frage hat sich Scognamiglio offenbar nicht gestellt – mit dem Ergebnis, dass sie ein weitgehend nutz-, weil ideenloses Buch geschrieben hat⁶⁾. Einzig zu loben ist die klare, auf das Wesentliche konzentrierte Sprache, die man heute so häufig vermisst.

Tübingen

Thomas Finkenauer*)

Luciano Minieri, Sulla repressione dell'abigeato in diritto Romano. Edizioni Scientifiche Italiane, Napoli 2018. 162 S., ISBN 978-88-495-3598-3

Most existing legal systems do not treat the theft of farm animals as a separate crime. This tendency, however, constitutes a certain novelty from a perspective of legal history. The possession of animals such as horses, cows, sheep, etc. had been a symbol of a man's financial status for many centuries. This was not different in ancient Rome. It is well known that in Latin the word *pecunia* (money) originates from the word *pecus* (cattle, livestock), and among the Semitic people, cattle was used as currency to purchase women from their families. In an important study, Juliusz Makarewicz¹⁾ correctly observed that a change occurs when the concept of ownership gains a significant, commonly accepted value, when it determines the social stance of the owner or when a certain type of cattle – as the subject of ownership – is especially valued by the people and willingly raised by them as especially

(2009) 305–357; dens., Forma, causa ed exceptio nella stipulatio, Index 44 (2016) 186–196.

²⁾ P. Voci, La responsabilità del debitore da 'stipulatio poenae', in: Studi Volterra III, Milano 1971, 319–358.

³⁾ R. Knütel, Stipulatio poenae. Studien zur römischen Vertragsstrafe, 1976.

⁴⁾ M. Talamanca, Art. Pena privata (diritto romano), in: Enciclopedia del diritto, vol. 32, Milano 1982, 712–734.

⁵⁾ A. Sicari, Pena convenzionale e responsabilità, Bari 2001.

⁶⁾ Ihren eigenen langen Aufsatz 'Stipulatio poenae': concorso di azioni e poteri del giudice, in: L. Capogrossi Colognesi/G. Finazzi (Hgg.), Ricordo di M. Talamanca II, Napoli 2012, 735–784, zitiert M. Scognamiglio vorsichtigerweise nur in einer einzigen, lediglich bibliographischen Fußnote; offenbar wollte sie in ihrem anstehenden Habilitationsverfahren die über weite Strecken bestehenden Übereinstimmungen mit der eigenen Vorarbeit nicht allzu offenbar werden lassen.

*) thomas.finkenauer@jura.uni-tuebingen.de, Juristische Fakultät, 72074 Tübingen, Germany

¹⁾ J. Makarewicz, Einführung in die Philosophie des Strafrechts auf entwicklungsgeschichtlicher Grundlage, 1. Aufl. Stuttgart 1906, 151.

useful. The theft of cattle leads to material ruin and the loss of material possession of the victim of theft. It could induce changes in the social hierarchy, and therefore it had to be perceived as antisocial and dangerous by society or at least by that part of the group which had a decisive say in the matter, mainly the wealthy cattle owners, says Makarewicz.

Abigeatus is theft of cattle. In this monographic study, Luciano Minieri describes how this act became a crime with sanctions in ancient Rome. The present monograph is devoted to this problem in four chapters: “De abigeis et de abactoribus” (7–20), “I titoli” (21–74), “La maturazione di fattispecie” (75–129), “L’abigeato tra il IV e VI secolo” (pp. 131–152). Minieri’s argumentation leads us to understand that the increasing interest in the theft of domestic animals by emperors and jurists goes in line with the economic crisis in the Roman Empire growing more and more intense.

The author accurately analyses Emperor Hadrian’s rescript issued to the *consilium* of the province of Baetica²⁾ where the ruler mentions this issue. His *epistula* is reminiscent of military orders, it is general in nature and forces the governor of the province and its local authorities to demonstrate the initiative in maintaining their own territories. Since *abigeatus* was considered a serious crime in Baetica it should be punished with death as a *crimen extraordinarium*. Less severe measures were applied in other places. A consistent exegesis of additional sources, conducted by Luciano Minieri, allows a hypothesis about the problem growing over time. He shows that already in the Severan era, one can notice a series of attempts to analyse cattle theft in dogmatic terms. This is when jurists began to analyse questions such as who exactly the *abactores* were, how they differed from common thieves (*fures*), how a crime of *abigeatus* should be judged, how many individual animals (and of what kind) must be stolen in order to classify the crime as *abigeatus*, etc. Furthermore, much literature has been devoted to the subject in post-classical compilations which were created when the Roman Empire underwent especially difficult times. Minieri examines these compilations using extensive comparative material (including Jewish sources, where the thief must return a multiple of what he stole³⁾). The study makes obvious that the decline of the economy and a decrease in the purchasing power of money led to an increasingly significant role of the possession of livestock. The importance of livestock was two-folded: First, livestock could be moved from place to place if necessary and second, it diminished the threat of hunger for those on the move. Hence, cattle and horse theft undermined the very social order and disturbed the tax balance. It seems that sources of that time mention the *atroces abactores* (brutal cattle thieves), as well as those acting in armed gangs, not with-

²⁾ D. 47,14,1: *De abigeis puniendis ita divis Hadrianus consilio Baeticae rescripsit: abigei cum durissime puniuntur, ad gladium damnari solent. Puniuntur autem durissime non ubique, sed ubi frequentius est id genus maleficii: alioquin et in opus et nonnumquam temporarium dantur.*

³⁾ Cfr. Liber Exodus 21.37: *Si quis furatus fuerit bovem aut ovem et occiderit vel vendiderit, quinque boves pro uno bove restituet et quattuor oves pro una ove; ibidem 22.1–3: Si effringens fur domum sive suffodiens fuerit inventus et, accepto vulnere, mortuus fuerit, percussor non erit reus sanguinis. Quod si orto sole hoc fecerit, erit reus sanguinis. Fur plene restituet. Si non habuerit, quod reddat, venumdabitur pro furto. Si inventum fuerit apud eum, quod furatus est, vivens sive bos sive asinus sive ovis, duplum restitute.*

out reason. Luciano Minieri discusses this topic in a separate section of his work (123–129). From the IVth century onwards, the situation must have been worse than ever. Subsequently, *abigeatus* found its place in the *leges Romanae barbarorum* and Justinian's codification⁴).

The author of the present monograph accurately recognises the presence of these regulations as a natural consequence of previous occurrences. Minieri's work helps to understand why *abigeatus* remained a capital crime even after the fall of the barbaric kingdoms in the West and the death of Justinian in the East. Knowing the origin and the legal development of this deed, it is not difficult to answer why cattle theft was persecuted with equal intensity both in the Middle Ages and in the Modern Era. It is especially significant that this crime earned a particular place in the writings of Joos de Damhouder who devoted an entire section to it in his influential *Praxis rerum criminalium*, caput CXV: *de abigeatu*⁵).

This is undoubtedly a captivating and significant work. An asset of the present study is that the author approaches and handles his sources carefully and that he skilfully refers to the literature on the subject. The reading flow would be improved if it included a translation of the discussed ancient sources.

It is worth mentioning that the topic of *crimen abigeati* has so far only been dealt with in a few articles. Minieri is the first to write a complex monographic study in which he outlines the etymology of the terms, analyses the composition of the sources and presents various social phenomena which left their mark on the shape of the Roman provisions devoted to *abigeatus*. Moreover, the author refers to mythology and social history as well as to collective emotions. Nobody has ever undertaken such an endeavour. Thus, the present monograph is a valuable contribution to research on Roman criminal law.

Lublin

Maciej Jońca*

Dario Annunziata, *Opulentia ecclesiae. Alle origini della proprietà ecclesiastica*. Editoriale Scientifica, Napoli 2017. VIII, 191 S., ISBN 978-88-9391-195-5

1. In dem Buch geht es um verschiedene Aspekte der Etablierung kirchlichen Eigentums, von den Ansätzen gemeinschaftlichen Eigentums in der Urkirche bis zu den kaiserlichen Konstitutionen des 5. und 6. Jahrhunderts, die Verwaltung und Verwendung kirchlichen Vermögens regeln. Bis auf das vierte waren alle Kapitel (insgesamt fünf) bereits Gegenstand einzelner Vorträge und Publikationen, wie Dario Annunziata (im Weiteren: Verf.) in der „nota dell'autore“ erläutert. Tatsächlich wirkt das Buch dadurch ein wenig wie ein Patchwork: Es hat zum Gegenstand zwar das Vermögen der Kirche, doch beleuchtet jedes Kapitel für sich einen bestimmten Aspekt dieses Themas. Mögliche Zusammenhänge zwischen diesen einzelnen Aspekten bleiben dabei unklar.

⁴) ■■ wird nachgetragen.

⁵) J. de Damhouder, *Praxis rerum criminalium*, Antverpiae 1601, S. 443.

^{*}) jonca@kul.lublin.pl, Department of Roman Law, John Paul II Catholic University of Lublin, PL-20-950 Lublin, Poland