

Інфамія та її місце у публічному та приватному римському праві

Повний репринт оригінального твору відомого англійського вченого, дослідника римського приватного та публічного права – Абеля Хенді Джонса Грініджа: “Інфамія та її місце у публічному та приватному римському праві” (Oxford, 1894).

Як відомо, ІНФАМІЯ являє собою забутий та втрачений сучасним правом спосіб обмеження цивільної дієздатності фізичної особи. Тому, здається, юридичній спільноті буде цікаво ознайомитися в оригіналі цієї праці із інститутом INFAMIA.

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INFAMIA



CHAPTER I.

ON THE MEANING OF 'EXISTIMATIO.'

THE object of the present treatise is an attempt to investigate the history of a conception of Roman Law, which, for want of a better English equivalent, may be termed that of 'civil honour.' The difficulty of nomenclature, however, is unfortunately not confined to the search of English equivalents for conceptions alien to English law. Such a difficulty might conceivably be met by the employment of a new terminology, or might more easily be dispensed with by the use of the technical Roman terms themselves, without any attempt at translation. The difficulty lies deeper than this, and arises from the fact that, though the conception of civil honour was brought home to the Romans by some of their most important political institutions, and underlay many—if not most—of the events of the citizen's daily life, yet there is a striking absence of any strictly technical terminology to express the condition itself, or, what is more important, the mode in which this condition might be destroyed. In the forensic speeches of a Republican lawyer, in the *responsa* of Roman emperors,

and in the writings of the classical jurists, we meet only the vague expressions, never accurately defined, which were current in the ordinary Latin language and literature. The two terms by which the conception was most usually expressed were those of *existimatio* and *dignitas*. Both of these convey the notion of the outward respect in which a man is held, which is based upon his deserts and measured by his position in society. As a rule, the only authority which can thus take the measure of a man and assign him his fit and proper place is society itself, and the conception is merely one of 'positive morality.' When, however, the State steps in, not in a penal capacity, but simply with the desire of regulating the position of the individual with reference to what it conceives to be State-functions, whether in public or in private law, in accordance with what it believes to be that individual's deserts, then the conception becomes juristic, and social respect develops into civil honour. Although this is, perhaps, the nearest approach that can be made to a general description of what the Roman jurist meant by *dignitas* or *existimatio*, yet it would be misleading to suppose that, by the 'regulation' of the individual's position by the State, it is meant that the State actually 'assigned' that position. On the contrary, the point of view of the Roman law is that that position is one already existing, that the State interferes to diminish it (*minuere*), sometimes in exceptional cases to restore it (*restituere*), but never, so far as the conception is a universal one, applicable to all Roman citizens without distinction of rank, does it interfere to increase it. Leaving out of sight all the distinctions of privileged and unprivileged classes in Rome, of *dominus* and *servus*, *ingenuus* and *libertinus*, *patronus* and *cliens*, with which we have here no concern, and fixing our attention on the *civis romanus*, we shall find that civil honour at Rome is known to us

entirely under its negative aspect. This at once accounts for the absence, noticed above, of a positive definition of the conception; a procedure which is purely negative can hardly give rise to a positive terminology: and further that terminology can be neither definite nor accurate when that procedure is concerned with diminishing the varying degrees of *existimatio* belonging to different classes of individuals and with reference to very distinct needs of the State. The complexity will be greatly increased if we find that the procedure itself was not simple. In this particular case we shall find that it was extremely complex. The authorities who wielded at Rome the power of lessening the civil honour of the individual were many in number, and they exercised this power for very different purposes. These considerations render it no matter for surprise that this subject is the most unsettled in the whole province of Roman law, and one on which, with reference to certain points, any historian, on the evidence which we at present possess, must be content with merely probable conclusions¹. The historian is fortunate who is able to show that these points are of comparatively minor importance: and that a juristic conception which appears before us in the laws of the Twelve Tables, grew with the growth of the Republic, assumed a somewhat different but hardly less important form under the Roman Empire, and gathered fresh strength with the new disabilities which necessarily accompanied the recognition of Christianity as the State-religion, can be restored in something of its old continuity. What appears to be the most signal proof of incompleteness of knowledge—but one that is by no means so serious as it looks—is that modern historians are not agreed as to what was the

¹ As two of the most important links in the chain of evidence are epigraphic—the *Lex Julia Municipalis* and the *Lex Acilia Repetundarum*—there is yet hope that this evidence may be added to.

general name given by the Romans to this derogation of *dignitas*, or whether it had such a general name at all. It will be provisionally spoken of here as the Roman *infamia*; although the right to use this word in this extended sense is one that will have to be proved during the course of the work¹.

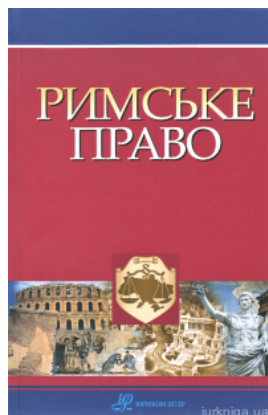
It will now be necessary to point out, with such degree of accuracy as is attainable, the limits of the present subject—a task especially necessary in this case, since the treatment of *infamia* here will be somewhat wider than that which has been allotted to it by most writers on the subject. It has been observed above that the Roman State and the Roman jurist always looked on *existimatio* as a condition of which the citizen was already in enjoyment.

¹ *Infamia* and its variants:—*Infamia*; Liv. xxvii. 11 (of the *ensoria notatio*), 'erant perpauci, quos ea infamia adtingeret:' cf. Cic. pro Rosc. Amer. 39, 113; pro Quinctio, 14, 46. In the legal books *infamia* is the usual term, with such variants as 'infamiae detrimentum' (Cod. ii. 11 (12) 1), 'damnum infamiae' (ib. 5), 'famae damnum' (ib. 8), 'infamiae macula' (ib. 20), 'detrimentum fama' (Cod. i. 40, 8). *Ignominia*: Cic. pro Quinctio, 15, 49, and often; *probrum*: ib. 2, 9, and often; these two words are generally applied to the *ensoria notatio*. The expression used for the pronouncement of *infamia* is in the Edict (Dig. iii. 2) 'infamia notare'; this is the most usual expression. *Notare* is often used alone, and generally of persons; but we also find 'factum notare' (Dig. ii. 3, 13). But the modes of expressing the fact of *infamia* are very numerous, especially in the imperial rescripts. Amongst them may be cited 'infamiam irrogare' (Just. Inst. iv. 18, 2), 'ignominia irrogari' (Dig. ii. 3, 20), 'damnare ignominia' (Tertull. de Spect. 22), 'ignominia notare' (Cod. ii. 11 (12), 15): 'ignominiae maculam inrogare' (ib. 13), 'labem pudoris contrahere' (Cod. ii. 11 (12), 15): 'existimationis macula' (ib. 17), 'existimationem laedere' (Dig. ii. 3, 2), 'jactura existimationis' (Cod. x. 32 (31), 31); 'opinionis imminutio' (Cod. ii. 6, 6). Besides the usual *infames* of persons (or more rarely the fuller 'infames personae,' Cod. x. 59 (57)), we find 'famosus,' 'inter infames haberi' (Cod. ii. 11 (12) *passim*): 'famosum facere' (Dig. ii. 3), 'quos infamia ab honestorum coetu segregat' (Cod. xii. 1, 2), 'notabilis esse' (Cod. ix. 8, 5). In Gellius (xiv. 7, 8) we find the expression 'facere existimatos': and in Capitolinus (Vit. M. Anton. 12) we find 'famae detestandae' used of the *infamia* incurred by a man who had fought as a gladiator.

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Адміністративне право
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