

## VADIMONIUM FACTUM

### *Reflections on Norbert Pozsonyi's latest monograph*

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#### 1. Introduction

Researching Roman law scientifically involves mainly gathering and examining primary legal sources. While crucial for understanding republican and imperial Roman law, these legal documents are not the only ones to consult for a thorough exploration of *ius privatum*. Inscriptions, papyri, and literary sources are significant in uncovering Roman law.

The volume<sup>1</sup> presented in this review is a unique undertaking to analyse and present extrajudicial *vadimonium* in Roman law. The author's analysis puts literary and epigraphical sources at the centre of his analysis. This is all the more important because extrajudicial *vadimonium* has consistently been overlooked in the study of Roman law.<sup>2</sup> Generally, most handbooks and encyclopaedias refer to the texts of the Sulpicius archive in this regard. In this sense, the author expands the scope of his investigation by including other texts beyond the *sedes materiae*.

#### 2. The structure and the content of the book

The author explores and presents the meaning and use of the terms *vas*, *vadari* and *vadimonium*. To this end, he analyses the works of Plautus, discusses Cicero's speech *Pro Quinto*, and thoroughly analyses the manuscripts of the Sulpicius

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<sup>1</sup> Norbert POZSONYI: *Ex eo tempore res esse in vadimonium coepit. A (peren kívüli) vadimonium megjelenése az irodalmi és az epigráfiai forrásokban*. Fundamenta Fontium Iuris 17. Szeged, Iurisperitus Kiadó, 2023.

<sup>2</sup> Cf. Tommaso BEGGIO: Epigraphy. In: Paul J. DU PLESSIS – Clifford ANDO – Kaius TUORI (ed.): *The Oxford Handbook of Roman Law and Society*. Oxford, Oxford University Press, 2016. 52., with literature.

archive. This commitment is fulfilled in five chapters, with a synopsis at the end of each chapter. An appendix at the conclusion of the volume includes the most considerable *vadimonium* documents of the Sulpicius archive. The volume ends with a comprehensive bibliography.

Though the author summarises his research at the end of the chapters, the volume still lacks a conclusive synopsis. This induces the hypothetical question of whether the lack of such a summary might impede the comprehension of the overall message and research results. The author's conclusions can be predicted to be logical and clear despite adding section summaries to each chapter. As a result of his meticulous research, a new and complete overview of *vadimonium* is presented. This book is a worthy successor to Wolf's famous work.

At the beginning of the work, the author defines *vadimonium*. Its concept entails a double *stipulatio*, in which the *promissor* on pain of paying a fine (*poena*) undertakes to perform some future act. At first glance, the reader may as well associate this legal act with a bill of exchange in our current legal practice.

Within the range of types of *vadimonium*, a clear distinction is drawn between litigious and extra-litigious *vadimonium*. The former group also comes into two separate cases: the first focuses on deferral, and the second on transferral. Litigious and extra-litigious *vadimonia* are also distinguished based on the rules governing the two types of institutions. A litigious *vadimonium* was subject to the praetorian edict, while an extra-litigious *vadimonium* was entirely dominated by the private autonomy of the parties.

The backbone of the work is the analysis of primary texts: Plautian comedies, Ciceronian speeches and contemporary deeds all provide a reasonable basis for examining the topic. First, the author analyses five texts from the comedies by Plautus. First, the author concludes that because theatrical works aimed to entertain ordinary people, Plautian comedies doubtlessly reflect the institutions and practices of Roman law.<sup>3</sup> Following a detailed analysis of the chosen texts, he plausibly reconstructs the procedural acts indicated by the verb *vadari*. As a result of his exegetic approach, he also concludes that self-enforcement was presumably not excluded within the framework of these procedural acts. As a further practical contribution to the analysis of the Plautus texts, he delimited what was common practice in *vadari* in the 3rd-IIth centuries BC.

The *vadari* could be a unilateral or bilateral act. A bilateral act concludes a contract between the prospective plaintiff and the *vas*. As a unilateral act, it is the plaintiff's invitation to the defendant to claim the *vas*. A *vas* had to be provided whom the opposing party would accept, and the *vas* "would not be excluded" from assuming the obligation. If the surety was unsuccessful, the plaintiff had the legitimate power to take the opposing party into private custody to secure his appearance.<sup>4</sup> A passage

<sup>3</sup> Cf. POZSONYI op. cit. 16.

<sup>4</sup> On this, see also Ernest METZGER: Republican Civil Procedure. Sanctioning Reluctant Defendants. In: Paul J. DU PLESSIS – Clifford ANDO – Kaius TUORI (ed.): *The Oxford Handbook of Roman Law and Society*. Oxford, Oxford University Press, 2016. 253.

from “The Pot of Gold” shows that the extrajudicial savage was already known at the time of Plautus. The iron had the right to use its power to bring a person who refused to appear before it. He identifies the function of the iron as that of a ‘subpoena enforcer’.

In his analysis of the Pro Quinto, he first reviews the history of the trial and then outlines the facts of the case, one by one, that can be found in the text.

In his conclusions, he first presents the four-stage dispute resolution dynamics based on the gradualism principle. The first step is the conciliation of the parties in person or through a mediator. If this is unsuccessful, the next stage is the extraligious *vadimonium*, with room for agreement. If the positions do not converge, we move to the pre-litigation stage, where we aim to prepare the *in iure* proceedings. The case enters the litigation phase with the *in ius vocatio*, from where the fourth step is the *apud iudicem* stage.

In the extrajudicial phase, settling the legal fate of the former *vadimonium* was important. In the case of the *stipulatio* form, the relations could be concluded either by performance or, in the absence of performance, by *acceptilatio*. Based on the text, the author suggests that the defendant was also required to disclose his most crucial evidence before the *litis contestatio* and could not rely on further evidence afterwards. In itself, *ipso facto*, the omission of *vadimonium* cannot be a legal consequence of *missio in bona*.

In his exegesis of the texts of the Sulpicius archives, the author clearly shows the importance of documentary sources. Before the discovery of the wax tablets, there were no direct primary sources on the extrajudicial *vadimonium* available to researchers. With the discovery of the Sulpicius archives, this changed radically, opening up new avenues for research into the litigation process.

One of the conclusions from this analysis concerns the role of extrajudicial *vadimonium*. In his view, in the context of litigation, the *vadimonium* provided a legal framework for the cooperation of the parties, under the auspices of which the form of the action to be brought could be agreed. Based on the sources, he reconstructs the formula of the *vadimonium-stipulatio* between Roman citizens: *Spondesne te sisti [in certum diem] in certo loco, et si non steteris, quinquaginta aureos dari?*

Earlier, he stated that the *vadimonium* could be secured by *poena*. The amount of the *poena* was equal to the amount of the primary claim. In the event of a delay in the institution of proceedings, the *stipulatio poenae* took effect. In this context, however, it was sufficient to prove the absence.

In the last two chapters of the volume, the author reconstructs the formula of the *actio certae creditae pecuniae* based on a document from the archives and describes in detail the pre-trial phase.

### 3. Evaluation

This book is a valuable contribution to the existing reservoir of secondary works on Roman procedural law. The author reviews and studies the sources pertaining to *vadimonium*, presenting new insights and findings regarding this intricate institution.

His conclusions are consistently rational, grounded in and consistent with historical data, and relevant to the social context of that particular time.

The volume's significant worth lies in its heavy focus on literary and epigraphic works. The author examines and analyses the texts and demonstrates a deep understanding of these sources throughout the entire volume. He is knowledgeable about the social and economic context of the age he is studying. His meticulous and focused approach reflects the author's evident passion, resulting in a pleasant outcome. If any slight criticism were to be expressed about this excellent work, it would pertain to the lack of a foreign language synopsis in the volume. After showcasing this impressive work in Hungarian, submitting these findings to foreign journals is now appropriate.