

Shorter Articles

A Note on *Collatio* 12.6.1 and Paulus

Collatio 12.6.1.¹ Paulus libro singulari de poenis paganorum sub titulo de abigeis dicit:

Incendiarii qui in oppido praedae causa id admiserint, capite puniantur. Qui casu insulam aut villam, non ex inimicitiiis incenderint, levius. Fortuita enim incendia ad forum remit-tenda sunt, ut damnum vicinis sarciatur.

This citation and text, appearing in the section of the work devoted to arsonists (Title 12: *De Incendiariis*), is typical of the kind of quotation that appears in the late fourth-century *Collatio Legum Mosaicarum et Romanarum* (or *Lex Dei*), which consists of a collection of Biblical and juristic statements regarding sixteen legal topics.² Closer examination of the text, which I offer as an

¹ The standard edition of the *Collatio* is still that of Theodor Mommsen, ed., *Fragmenta Vaticana. Mosaicarum et Romanarum Legum Collatio* [Paul Krüger, Theodor Mommsen, and Wilhelm Studemund, eds., *Collectio Librorum Iuris Anteiustiniani*, 3] (Berlin 1890). For the pertinent passages for this note, see 176–77. The English translation of M. Hyamson, *Mosaicarum et Romanarum Legum Collatio* (Oxford 1913), 117, reads:

Paulus in his Single Book “Concerning the Punishment of Peasants,” under the Title “Of Cattle-raiders,” says:

Persons who have committed arson in a town for the sake of plunder suffer capital punishment. But those who have set fire to a tenement-house or country seat accidentally, and not out of malice, are dealt with more leniently. Cases of accidental conflagration are to be sent to the Civil Court, so that damage caused to the neighbours should be made good.

² On the dating of the *Collatio* to the last decade of the fourth century, see D. Liebs, *Die Jurisprudenz im spätantiken Italien (260-640 n. Chr.)* (Berlin 1987), 165–70 and, more recently, R. M. Frakes, “Item Theo-

obiter dictum from a long-term study on the *Collatio*, suggests a scribal error in the ascription to the *liber singularis de poenis paganorum* of the great Roman jurist Paulus. The text may instead represent an additional fragment of his so-called Sentences.³

Although Berger accepted the ascription,⁴ Hyamson already noticed that the quoted title of Paulus' work (*sub titulo de abigeis*) must be a mistake, since it is the preceding Title 11 of the *Collatio*, not Title 12, that deals with cattle rustlers (Title 11: *De Abactoribus*, of which the *abigeis* in *Coll.* 12.6.1 is the ablative plural of a variant form).⁵ Since this reading of the title of Paulus' work in *Coll.* 12.6.1 appears in all our manuscripts (B, V, and W), the error must have been made at least in a (as the missing archetype from which our extant manuscripts descend is called).⁶ However, Hyamson proposed that it was a mistake for a citation that should have read *Paulus libro singulari de poenis paganorum sub titulo de incendiariis* ("Paulus in his Single Book 'Concerning the Punishment of Peasants,' under the Title 'Of Arsonists'").

The problem may be even more complicated. The first sentence of *Coll.* 12.6.1, following the citation, is similar to a quotation from a different work attributed to Paulus slightly earlier in the *Collatio*, at 12.4.1 (*Idem Paulus libro et titulo qui supra: Incendiarii qui quid in oppido praedandi causa faciunt, facile capite puniantur*),⁷ which is one of a string of quotations from the early

dosianus? (Observations on *Coll.* V. 3. 1)," *Quaderni Urbinati di Cultura Classica* (n.s.), 71 (2002), 163–68.

³ On Paulus, A. Berger, "Iulius Paulus," *RE*, 10 (Stuttgart 1917), cols. 690–752, is still of interest. See also, more recently, D. Liebs, in K. Sallmann, ed., *Die Literatur des Umbruchs: von der römischen zur christlichen Literatur: 117 bis 284 n. Chr.* [*Handbuch der lateinischen Literatur der Antike*, 4] (Munich 1997), 150–52.

⁴ Berger (note 3), col. 721. On the *liber singularis de poenis paganorum* and its connection to Paulus, see more recently, D. Liebs, in R. Herzog, ed., *Restauration und Erneuerung. Die lateinische Literatur von 284 bis 374 n. Chr.* [*Handbuch der lateinischen Literatur der Antike*, 5] (Munich 1989), 71.

⁵ Hyamson (note 1), 116.

⁶ For the manuscript tradition, see F. Schulz, "The Manuscripts of the *Collatio Legum Mosaicarum et Romanarum*," in M. David, B. A. van Groningen, and E. M. Meijers, eds., *Symbolae van Oven* (Leiden 1946), 313–32.

⁷ Hyamson (note 1), 116, renders: "The same Paulus in the same Book and Title as above: Those who commit arson in a town for the purpose of plunder are, without hesitation, sentenced to death." I read *puniantur* here from the B manuscript, a reading which Hyamson, 36,

fourth-century compendium of Paulus' work known as the *Libri Quinque Sententiarum* (or "Sentences") of Paulus. This work, originally thought by scholars to be authentic, is now held to be a late classical (c. 300) overworking of earlier works of Paulus (and perhaps even of other jurists).⁸ The string of quotations from the *Sentences* of interest here include *Coll.* 12.2.1 (*Paulus libro sententiarum [quinto] sub titulo de incendiariis*), 12.3.1 (*Idem Paulus eodem libro et titulo*), and, as we have seen, 12.4.1 (*Idem Paulus libro et titulo qui supra*).⁹

Rather than follow Hyamson's view that the passage at *Coll.* 12.6.1 came from an hitherto unknown title of the *liber singularis de poenis paganorum*, it seems more likely that the Collator was originally borrowing a series of several quotations from the *Sentences* for Title 12 of the *Collatio*. However, *Coll.* 12.5.1 has a quotation from Ulpian, thus breaking the handy string of truncated citations from the *Sentences*. The Collator would then likely give a fuller citation again. Therefore, the citation at the beginning of *Coll.* 12.6.1 should probably then read either *Paulus libro sententiarum sub titulo de incendiariis*, *Idem Paulus eodem libro et titulo*, or *Idem Paulus libro et titulo qui supra*, rather than the existing text.

There are two possible explanations for this error. The Collator made explicit use of several works attributed to Paulus, but of these he used the *Sentences* twenty-four times and others for a total of perhaps six at the most.¹⁰ It could be that when the Collator was searching here for citations from great Roman jurists to match up with laws from the Hebrew Bible, he shifted from Paulus' *Sentences*, which he had been using for *Coll.* 12.2–4, to Ulpian for *Coll.* 12.5, and then back to the *Sentences* for *Coll.* 12.6. However, when the Collator sought the citation for this

mistakenly recorded as *puniuntur* in his transcript of B, leading to a slight change in the translation by casting it in the hortatory subjunctive (i.e., "Let those who commit arson . . . be punished by means of death").

⁸ On the *Sentences*, see D. Liebs, *Römische Jurisprudenz in Africa* (Berlin 1993), which includes an attempted new palinogenesis of the work (revised in D. Liebs, "Die pseudopaulinischen Sentenzen II," *ZSS* (RA), 113 (1996), 132–242). Readers may wish to consult the new 2005 edition of *Jurisprudenz in Africa*, which was not available to me at the time of writing. See also the clear overview of the *Sentences* of "Pseudo-Paulus" in O. F. Robinson, *The Sources of Roman Law* (New York and London 1997), 63–64.

⁹ For the Collator's style of citations, see Hyamson (note 1), xxxii; Frakes (note 2), 163–68.

¹⁰ See Hyamson (note 1), 278–79.

quotation he accidentally flipped back in Book 5 of the Sentences to a quotation from the *liber singularis de poenis paganorum* (which Krüger suggested may have stood at Sentences 5.18, as opposed to the section on arsonists at Sentences 5.20¹¹). The problem with this explanation is that no manuscript of the Sentences has citations of the earlier works from which the Sentences were drawn, and so there would be no source for the citation of this title within the Sentences.

An alternative explanation pushes the error further along the manuscript tradition. The scribe of α , or an earlier manuscript in the tradition, could have referred back to a reference to Paulus in Title 11 of the *Collatio* instead of to that at *Coll.* 12.2.1. And, indeed, at *Coll.* 11.6.1 we read *Paulus libro singulari de poenis paganorum sub titulo de abigeis*, which is what the scribe also wrote for *Coll.* 12.6.1. Such a mistake is possible in that, in our existing manuscripts, the amount of space between *Coll.* 11.6.1 and 12.6.1 ranges from two pages (W), to three pages (B), to four pages (V) in the text. It could be that the scribe turned back two or three pages from *Coll.* 12.6.1 instead of one by accident and wrote the first full title of a work of Paulus that he saw, unfortunately missing that given at *Coll.* 12.2.1.

As this is the simpler explanation in more ways than one, it would seem to be the more likely. The quotation from Paulus given at *Coll.* 12.6.1 thus does not actually come from the *liber singularis de poenis paganorum*, nor is there any other evidence for part of that work being entitled “sub titulo de incendiariis” as Hyamson suggested. Instead, the quotation at *Coll.* 12.6.1 probably derives from Book 5 of the Sentences, together with other fragments to which it not surprisingly bears a resemblance both of style and vocabulary.¹² Thus, our view of the part of Book 5 of Paulus’ Sentences devoted to arsonists should now be revised to include *Coll.* 12.6.1. So, Krüger’s listing of the sources of this section of Book 5 of Paulus’ Sentences should be revised to read according to the following plan: *Collatio* 12.4, 12.6, 12.2, 12.3.¹³ The revised text would then read:¹⁴

¹¹ See Paul Krüger, *Liber Singularis Regularum. Pauli Libri Quinque Sententiarum* [Paul Krüger, ed., *Collectio Librorum Iuris Anteiustini*, 2] (Berlin 1878), 126–27. Interestingly, Krüger does not list *Coll.* 11.6 as a source for 5.18, although he does cite the quotations of Paulus at *Coll.* 11.2, 3, 4, and 5.

¹² See Krüger (note 11), 127, and below.

¹³ Krüger (note 11), 127.

¹⁴ On *puniantur* see note 7.

[XX DE INCENDIARIIS]

Incendiarii, qui quid in oppido praedandi causa faciunt, capite puniantur. QUI CASU INSULAM AUT VILLAM, NON EX INIMICITIIS INCENDERINT, LEVIUS. FORTUITA ENIM INCENDIA AD FORUM REMITTENDA SUNT, UT DAMNUM VICINIS SARCIATUR. Qui casam aut villam inimicitarum gratia incenderunt, humiliores in metallum aut in opus publicum damnantur, honestiores in insulam relegantur. Fortuita incendia, quae casu venti ferente vel incuria ignem supponentis ad usque vicini agros evadunt, si ex eo seges vel vinea vel olivae vel fructiferae arbores concrementur, datum damnum aestimatione sarcitur. Commissum vero servorum, si domino videatur, noxae deditio sarcitur. Messium sane per dolum incensores, vinearum olivarumve aut in metallum humiliores damnantur, aut honestiores in insulam relegantur. Qui noctu frugiferas arbores manu facta ceciderint, ad tempus plerumque in opus publicum damnantur aut honestiores damnum sarcire coguntur vel curia submoventur vel relegantur.

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The Buyer Who Wants to Pay More

A valid sale required a price that was agreed and certain.¹ Some modern works nevertheless consider whether the law ignored a certain species of error in price: the seller is willing to accept less money than the buyer wishes to give, and a valid sale is formed on the lesser price. A single text of Pomponius suggests this might

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¹ J.3.23.1; D.19.1.9 pr. (Ulpian 28 *Sab.*).