

MACIEJ JOŃCA
(JOHN PAUL II CATHOLIC UNIVERSITY OF LUBLIN)

**PROVISIONS FOR THE PROCONSUL
SOME REMARKS ON D. 1.16.6.3
IN THE KÓRNIK MANUSCRIPT OF DIGESTUM VETUS¹**

KEYWORDS: Digestum Vetus, Roman law, proconsul, xenia

SUMMARY: The paper discusses Medieval interpretation of Roman legal prescription, concerning the acceptance of gifts and presents by state officials. The discussed text is the Kórnik manuscript of *Digestum Vetus* and the comments that it contains, both in form of text and illustrations, that pertain to the main issue debated.

INTRODUCTORY REMARKS

A medieval manuscript of *Digestum vetus*, kept at the National Library at Kórnik, is undisputedly of a unique character². Not only has the book been prepared with utmost care, but it is also equipped with exceptional illustrations. According to the practice of the period, at the beginning of each book one can find an initial (24 in all), 21 of which have figurative character. These illustrations, however, are not the main reason

¹ I am very grateful to Dr. Joanna Frońska of British Library in London for her explanatory remarks.

² Medieval publishing practice was to edit *Digesta* in three parts, due to educational need. They were called *Vetus* (books I-XXIV.2), *Infortiatum* (books XXIV.3-XXXVIII) and *Novum* (XXXIX-L). See: P. Stein, *Roman Law in European History*, Cambridge 1999, p. 43.

for the work's importance; rather, it is due to the fact that the text is adorned with a rich collection of marginal illustrations, the purpose of which is not only to attract the reader's attention, but also to explain to them the problems debated in the main text and in the gloss. In the text there are 238 such illustrations!

This fascinating book has equally fascinating history. Dr Joanna Frońska, who is considered the leading authority on this manuscript, claims that its beginnings should be traced to the 13th century Italy, more precisely – to the end of the 13th century. There, the contents of *Digesta* has been copied from an older manuscript. Later, circa 1230-1240, the book would have been moved to France, where the gloss and the marginal illustrator material have been added to the old Roman legal rules³. It is believed that three highly skilled artists worked on the manuscript. Since they have not signed their work, they are described as Master A, Master B and Master C⁴.

The number of illustrations and their artistic value have no equivalent in any of the extant medieval legal treatises. The present paper will analyze, in legal and stylistic terms, one of its marginal illustrations.

MARGINALIUM

One of the most impressive visual representations of a legal problem in the Kórnik manuscript is a scene presenting a proconsul deciding about gifts that were brought to him by two different people, one standing at his right and one at his left⁵.

The illuminators working on the Kórnik manuscript of *Digestum vetus* were given detailed instructions concerning the choice of textual passages that were to be illustrated⁶. The illustrations, as well as the

³ J. Frońska, 'Supplément ou commentaire? Les enjeux de l'illustration textuelle dans le *Digestum vetus* de Justinien (Bibliothèque de Kórnik, mp. 824)', *Biuletyn Historii Sztuki* 2008, 70, 1-2, p. 63-64.

⁴ M. Libicki, 'Uwagi o genezie dekoracji rękopisu BK 824', *Pamiętnik Biblioteki Kórnickiej* 1993, 23, p. 47-59; J. Frońska, 'Między tekstem a obrazem. Dyrektywy dla iluminatorów w "Digestach" Justyniana', *Ikonothea* 2004, 17, p. 6.

⁵ BK 824, fol. 13 r.

⁶ See J. Frońska, 'Między tekstem a obrazem...', p. 5-27.



gloss, were supposed to make understanding of the ancient Roman legal solutions easier and to support their successful application in the legal practice of the Middle Ages. Thus, in the representations from the Kórník manuscript, the ancient regulations have been completed with illustrations presenting scenes from the medieval daily life. As Frońska explains, the illustration supplements the normative text and facilitates its reception. Beautiful miniatures effectively compete with the text for the reader's attention. Of special importance is, according to Frońska, the choice of commented passages, as they direct the reader towards the issues that are fundamental as well as paradigmatic and exemplary in the legal exegesis, such as cases, examples and definitions⁷. The choice of representations was certainly not based on the any artistic reasons. The stress was rather put on those legal regulations that were of special importance for the current legal practice.

Among the illustrations one can find a scene showing a proconsul making a decision about the gifts that were brought to him. The Roman magistrate was presented as a Medieval nobleman, dressed in a robe styled after ancient model and sitting on a backless chair. There is a gold band on his head. He is approached, from both sides, by two male figures, dressed in tunics. One of those figures has a jug in his hand, the other holds a purse full of money. The magistrate makes a gesture of acceptance towards the man carrying a jug, while simultaneously rejecting the gift of money. All according to the text of *Digesta* and the gloss.

⁷ Eadem, 'Supplément ou commentaire?...', p. 88.

D. 1.16.6.3

The contents of the Roman regulation illustrated thus is as follows:

A proconsul is not absolutely obliged to decline gifts, but he should aim for a mean, neither sulkily holding completely back nor greedily going beyond a reasonable level of gifts. On this subject, the Deified Severus and the present Emperor Antoninus have most delicately given guidelines in a letter whose words are as follows: “So far as concern presents, attend to what we say: there is an old proverb «neither everything nor every time nor from every person». For certainly, it is unmannerly to accept from no one, but to take from everyone is utterly contemptible and to take everything offered is sheer greed”. The provision contained in warrants of appointment that a proconsul or someone in another such office himself neither accept any gift or commission nor purchase anything save provisions as needed day by day, refers not to token presents, but to such things as go beyond the norm of hospitality. But neither may little presents be piled up to achieve the quality of substantial payments.

The text is taken from Domitius Ulpian’s work *De officio proconsulis libri X*. Ulpian was a famous lawyer, a prefect of the praetorians and a close cooperator of Severan dynasty⁸. The fragment in question deals with a complicated problem: the proper behavior of the provincial governors concerning the gestures of loyalty and appreciation, presented by the local populace in the form of material gratification. Such behavior did not necessarily have to have the undertone of corrupting the magistrate, although it is a well-known fact that there were cases in Roman provincial life when various kinds of bribes were regularly paid both to the magistrates and to their staff⁹. Prosecuting former provincial governors because of extortion during their tenure (*de repetundis*) has a long tradition in Roman history¹⁰.

⁸ On the biography of Ulpian see: T. Honoré, *Ulpian: Pioneer of Human Rights*, Oxford 2005, p. 1-36.

⁹ Cf. G. Boulvert, *Domestique et fonctionnaire sous le haut-empire romain: la condition de l'affranchi et de l'esclave du prince*, Paris 1974, p. 115, n. 30.

¹⁰ D. 48.11.9: “Qui munus publice mandatam accepta pecunia ruperunt, crimine repetundarum postulantur”. Further remarks on this topic: P. Brunt, ‘Charges of Provincial Maladministration under the Early Principate’, *Historia* 1961, 10, 2, p. 189-227.

One cannot, however, forget that erecting monuments, carving honorific inscriptions in stone and handing financial gratifications to the governors in provinces, especially the Eastern ones, was believed to be a sign of loyalty, proving the eagerness to keep the best possible relationship with the central government¹¹. The rejection of the gift offered by loyal subjects could have been viewed as a sign of arrogance and ingratitude¹².

The gratitude of the provincial populace towards Roman magistrates could present itself in various ways: from small gifts to colossal bribes. Even in Ulpian's times the definitions of those were so unclear that even such a good specialist in legal matters had trouble categorizing them. This is why he omitted the problem by citing the rescript of his ruler¹³ quoting a Greek proverb¹⁴. The case remained problematic even in later times: the regulations of Severus' successors on the throne did not clarify the matter¹⁵.

In Ulpian's discussion one can already observe first small differences in understanding gifts received by Roman governors. It seems that the Severian lawyer used in his argumentation such terms as *xenia*, *dona* and *munera* not just for stylistic reasons¹⁶. One could attempt at clarifying the precise meaning of those terms, *xenia* (or *xeniola*) would mean small gifts, *dona* as more valuable presents and *munera* as tributes that should be understood as obligatory and not motivated by

¹¹ E. Meyer-Zwiffelhofer, *Politikōs archein. Zum Regierungsstil der senatorischen Statthalter in den kaiserzeitlichen griechischen Provinzen*, Stuttgart 2002, p. 254.

¹² A.W. Zumpt, *Das Criminalrecht der Römischen Republik*, BD. 2, Teil 2, Berlin 1868, p. 304. Cf. K. Kreuzsaller, J. Urbanik, 'Humanity and Inhumanity of Law. The Case of Dionysia', *The Journal of Juristic Papyrology* 2008, 38, p. 150-151.

¹³ The name of Caracalla, son of Septimius Severus, was probably added for procedural reasons. In 196 Caracalla has become a co-ruler of the empire. See: T. Kotula, *Septymiusz Sewerus. Cesarz z Lepcis Magna*, Wrocław 1987, p. 57.

¹⁴ R. Saller, *Personal Patronage under the Early Empire*, Cambridge 2002, p. 165. The jurist stresses a great prudence and appropriateness of the solution to the problem offered by the rulers. Cf. H. Aldinger, *Zur Bedeutung des Begriffs eleganter in den römisch-rechtlichen Quellen*, Heidelberg 1976, p. 11.

¹⁵ Cf. N. Duyvendak, 'Restraining Regulations for Roman Officials in the Roman Provinces', [in:] M. David, B.A. Groningen, E.M. Meijers (ed.), *Symbolae ad Jus et Historiam Antiquitatis Pertinentes Julio Christiano Van Oven Dedicatae*, Leiden 1946, p. 336-337.

¹⁶ Cf. E. Meyer-Zwiffelhofer, *op. cit.*, p. 254, n. 6.

spontaneous outbursts of gratitude. Such a precise separation of those terms, however, was made only in the Middle Ages. Ulpian himself started his remarks with the statement: “non vero in totum xenii abstinere debet proconsul, ut neque morose in totum absteat neque avarae modum xeniorum excedat”. Thus the term *xenia* means here all kinds of gifts presented to the proconsul¹⁷.

In the non-legal literature the term *xenia* had broad and diverse shades of meaning. It was often connected with food and eating¹⁸. Vitruvius claims that rich and refined Greeks had a custom of providing his guests with special banqueting and sleeping rooms; on the first day the guests were invited to dinner, and later they were given chicken, eggs, herbs, fruits and other agricultural produce. That was the reason why the painters gave the name *xenia* to the paintings that present gifts to guests¹⁹. The name *xenia* was also attached to the gifts traditionally handed by farmers to local patrons²⁰.

The diminutive of *xenia* is *xeniola*, but the meaning of those two terms was similar. In *The Golden Ass* Apuleius of Madaura states that

¹⁷ The definition is similar in the contemporary Roman law lexicons. See: e.g. Heumann-Seckel, ‘Xenium’, [in:] *Handlexikon zu den Quellen des römischen Rechts*, Jena 1907, p. 634; A. Berger, ‘Xenia’, [in:] *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, p. 772.

¹⁸ In the Christian period the term *xenia* could also mean gifts, not necessary food, sent to the newly elected pope on the occasion of his election, as well as the gifts for the bishops. In one of the letters of Gregory the Great we can find a following passage: Greg. Mag. *ep.* XXIII: “Xenia autem vestrae sanctitatis suscipere omnino nolueram, quia valde esset incongruum ut a praedatis atque afflietis fratribus munera percepisse videmur”. a lengthy account on the meaning of *xenia*, especially in late antiquity, can be found in B. Cabouret, ‘Xenia ou cadeaux alimentaires dans l’Antiquité tardive’, [in:] P. Crogiez Pétrequin (ed.), *Dieu(x) et Hommes, Histoire et iconographie des sociétés païennes et chrétiennes de l’Antiquité à nos jours, Mélanges en l’honneur de Françoise Thélamon*, Rouen 2005, p. 369-389.

¹⁹ Vit. *de arch.* 6.7.4: “nam cum fuerunt Graeci delicatiores et fortuna opulentiores, hospitibus advenientibus instruebant triclinia cubicula cum penu cellas primoque die ad cenam invitabant, postero mittebant pullos ova holera poma reliquasque res agrestes. ideo pictores ea quae mittebantur hospitibus picturis imitantes xenia appellaverunt”. See also: Mart. *epigr.* 13.3.1; 13.3.5. On Greek and Roman hospitality see: G. Herman, ‘Le parrainage, “l’hospitalité” et l’expansion du christianisme’, *Annales. Histoire, Sciences Sociales* 1997, 52, 6, p. 1305-1338.

²⁰ Cf. L. Dossey, *Peasant and Empire in Christian North Africa*, Berkeley–Los Angeles, p. 246.

Birrena sent the narrator, as a gift (*xeniola*) a fat piglet, five chickens and a jug of old wine²¹. Nevertheless, in Ulpian's text, *xeniola* refers only to food articles with short expiry date.

PROCONSUL – PRAECONSUL – PROTHCONSUL

One may ask what the relationship of the Roman proconsul with the medieval world is? Why was he honored with a miniature in the Kórník *Digesta* manuscript? It is a well-known fact that in Byzantium, where the *Digesta* originated, the use of the term *consul* was completely abandoned, due to the extent of Hellenization of the public and legal sphere. The term *proconsul* was only incidentally used in Greek sources. Instead the Greek term ἀνθύπατος was common²². Thus, in Byzantine *Basilica*, one can find the following paraphrase of the regulation concerning the acceptance of gifts by magistrates: “Proconsul is allowed to accept gifts of average value. It is not permissible for a proconsul or any other official to receive or purchase gifts, apart from daily nourishment”.

In the Latin West the term *proconsul* was still in use, but changed its meaning. In France where the illustration was created, the title of proconsul could have been used by the viscounts (*vicomtes*)²³. In England it was used by the magistrates with judicial power, called *sheriffs*²⁴.

From the 13th century on the term *proconsul* was also used for the mayors of the cities. Interestingly enough, unlike in Rome, in the Middle Ages the title of *proconsul* was higher than that of a *consul*, since the latter was commonly used for the aldermen, members of the cities’

²¹ Apul. *met.* 2.11: ‘mittit mihi Byrrhena xeniola porcum opimum et quinque gallinulas et vini cadum in aetate pretiosi’.

²² M. Bibikov, ‘Glanz und Elend der byzantinischen Kaiser: Struktur und Semiotik der Macht in Byzanz’, [in:] O.G. Oexle, M.A. Bojcov (ed.), *Bilder der Macht im Mittelalter and Neuzeit*, Göttingen 2007, p. 25.

²³ In medieval France in the families of viscounts with the right of primogeniture the title of the mount belonged to the family senior, while his eldest son was a viscount. They could also both use such titles as *judex* or *princeps*. See: H. Debaux, *Vicomtes et vicomtés dans l’Occident médiéval*, Toulouse 2008, p. 30, 329.

²⁴ B. Smith, *Rural crime control*, New York 1974, p. 40.

councils²⁵. The heading of a letter, written in the 13th century and addressed to the city elite of Strasbourg, states as follows: “to the mayor G., other aldermen and magistrates and the whole society of the city of Strasbourg”²⁶. The gradation used here is not accidental. The municipal institutions were a model, on which the guild institutions were based. In Florence in 1212, for example, a common guild of judges and notaries was formed, headed by a *proconsul*, who had nine *consuls* to assist²⁷.

Thus a phenomenon described by linguists as semantic shift has occurred. In Medieval Latin the prefix *pro-* has changed its previous meaning: instead of *in place of*, *in the name of* it started to be understood as *standing ahead*, *leading*, *standing in front*. Such a tendency is also confirmed by the use of the form *praeconsul*, appearing in the documents from the period²⁸. Later, on the territories belonging to the German empire, the term *prothconsul* was also in use.

XENIA IN THE MIDDLE AGES

The importance of Roman law for the development of Medieval legal practice is undisputable. One must, however, remember, that often the ancient regulations were changed, to make them more appropriate for the new – Christian morality. Already in the Old Testament one can find rather strict observances concerning the topic²⁹. Of special importance must have been the comment in *Eccles.* 20, 31: “Xenia et dona excaecant oculos iudicum”. Similar opinions were also expressed by Early Christian writers³⁰.

²⁵ P. Stolz, ‘Proconsul’, [in:] *Handbuch zur lateinischen Sprache des Mittelalters*, Bd. 2: *Bedeutungswandel und Wortbildung*, München 2000, p. 47. See also: H. Bagola, *Zur Bildung Romanischer Berufszeichnungen im Mittelalter*, Hamburg 1988, p. 259.

²⁶ Cf. *Chart. Argent.* 2.38: “G. proconsuli ceterisque consulibus et magistratibus ac universitati civitatis Argentinensis”.

²⁷ Ch. Kleinhenz, *Medieval Italy: an Encyclopedia*, vol. 2, London 2004, p. 782.

²⁸ P. Stolz, *op. cit.*, p. 47.

²⁹ For the comparison of quotations see: F. Mercanti, *Compendio di diritto canonico con illustrazioni Istorico-Dogmatiche*, t. 3, Prato 1832, p. 85, n. 2.

³⁰ Cf. e.g. Arnob. *adv. gent.* 3. See also: A. Souter, ‘Xenium’, [in:] *a Glossary of Later Latin to 600 A.D.*, Oxford 1964, s. 452.

Nevertheless, as far as limitations to accepting gifts by judges and magistrates were concerned, medieval law followed the Roman models. Moreover the terminology became more precise. In the Middle Ages the term *xenia* (or *exenia*) meant almost exclusively small gifts in form of food articles³¹. Among those were chicken, eggs, ducks, lard, honey milk and others³². A letter, written by bishop Roger of Salisbury and informing English aristocrats about the privileges acquired by Reading Abbey, contains a list of possible services from which the abbacy shall be henceforth freed. *Xenia* are listed as the last item³³.

The gloss of Accursius stresses the inconsequence in Ulpian's use of *xenia*. The gloss states that the term *xenia* does not mean gifts or tributes by interpretation, nevertheless it pertains to them by the meaning of the word³⁴. Of special importance is the fact that all the actions

³¹ For the Merovingian and Carolingian period see: e.g. K. Zeumer, *Formulae Merovingici et Karolini Aevi: Accedunt Ordines Iudiciorum Dei*, Hannoverae 1963, p. 782. Sometimes as *xenia* were described gifts of greater value. Nevertheless it was a mere conveyance. Cf. J.F. Niermeyer, 'Xenium', [in:] *Mediae Latinitatis Lexikon*, Leiden–New York 1993, p. 1136-1137: a) present offered to a king, pope, duke, or other high placed person; b) present made to the parent of the bride; c) periodical tribute paid to the king by the churches; d) tribute exacted from the inhabitants or priests of villages; e) obligatory present exacted by a bishop from the priests and abbots; f) present made by a priest to the lay lord of a parish church in order to obtain the office of priest in this church; g) tribute due to manorial holdings.

³² Cf. Ch. Wickham, *Farming the Early Middle Ages: Europe and the Mediterranean. 400-800*, Oxford 2004, p. 278.

³³ "Sciatis quia rex et dominus noster H. hanc libertatem abbati Redingensi dedit et decreto firmavit ut nulla persona parva uel magna per debitum seu per consuetudinem aut per violentiam aliquid ab hominibus et terris et possessione Redingensis monasterii exigat. Non equitationem sive expeditionem non pontium vel castrorum edificationem non uehicula non summagia non vectigalia non navigia non opera non tributa non xenia". Quotation from: D.M. Stenton, 'Roger of Salisbury, Regni Angliae Procurator', *The English Historical Review* 1924, 39, 153, p. 79. *Xenia* were also an important part of the tributes offered to the medieval monasteries. See: A.-J. Bijsterveld, 'Patrons and Gifts in Eleventh- and Twelfth-Century Chronicles from the Diocese of Liège', [in:] E. Kooper (ed.), *The Medieval Chronicle: Proceedings of the 1st International Conference on the Medieval Chronicle, Driebergen-Utrecht, 13-16 July 1996*, Amsterdam–Atlanta 1999, p. 72.

³⁴ Accursius, *glossa ad* "non pertinet" D. 1.16.6.3.

concerning the acceptance of gifts should be moderate³⁵, according to the theological rule stating that *medium tenendum est*³⁶.

In France, where the illustrations to the Kórník manuscript originated, similar limitations are mentioned in the collections of customary law, such as *Livres de Jostice et de Plet*. It forbids judges to accept any gifts different than food articles that can be eaten during one day. There is an importance notice there: *not all things, not every time and not from everyone*³⁷. Roman provenience of such a sentence seems obvious³⁸.

Of even greater importance for judging the extent, to which Medieval lawyers valued traditional Roman regulations, is a fragment of John of Salisbury's *Policraticus*:

What is said about governors and others justices ought, of course, to hold also among proconsuls, who are commonly called itinerant justices³⁹ by our fellow countrymen. Although a misnomer, since it does not suit the office, it still suits the personnel, who stray from the path of equity, chasing after their own desires in the pursuit of avarice and the plundering of the people. All duties should be freely performed so that nothing is either demanded or received beyond the fixed amount. But perhaps you ask what the fixed amount is. It is contained in the people's ordinance that none who governs is to accept a present or gift, except of food or drink, and this also is to be used in the days immediately following. This applies also to proconsuls and other magistrates created by the prince's command. Yet they ought not to refuse gifts entirely but to exercise mod-

³⁵ Accursius, *glossa ad "avarissimum"* D. 1.16.6.3.

³⁶ In the Kórník manuscript the image of proconsul is placed between two characters symbolizing two opposite extreme positions. His place corresponds with the prescription of the gloss: *sic medium tenendum est*. The gloss in the Kórník manuscript is interlinear. Further remarks: J. Frońska, 'Supplément ou commentaire?...', p. 82.

³⁷ *Livres de Jostice et de Plet* 1.1.21 § 2: "Et li proverbes dit issit: Ne totes choses ne toz tens ne passé".

³⁸ Cf. E. Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France*, Leiden 1992, p. 33.

³⁹ In the Latin original the term is *errantes*. The Latin verb *erro* can mean both *to wander*, *to travel* and *to be mistaken*. Cf. e.g. J. Sondel, 'Erro', [in:] idem, *Słownik łacińsko-polski dla prawników i historyków*, Kraków 1997, p. 336. The term was used e.g. for the sheriffs, judicial magistrates in medieval England. That fact was very aptly used by French poet and diplomat Petrus Blenensis in his letter to the English king Henry II: *ep. 95 ad Henricum II*: "Ipsos enim iustitiaros quos vulgariter errantes vel itinerantes dicimus, dum errata hominum diligenter explorant, frequenter errare contingit".

eration. That they are neither to refrain from gifts totally nor to exceed the mean greedily – these principles are stated in a letter by the deified Severus and the Emperor Antoninus. The word of the letter are these: Hear what we judge as it pertains to the quantity of gifts. There is an old proverb: Not all things, not at all times, not from all persons. For it requires an inhuman strength to accept from no one; but to accept indiscriminately is most vile; and for all things, most avaricious. It is contained in our commands that the proconsul and those in other offices will accept no donation or present, or purchase anything, except by reason of daily nourishment, which does not pertain to perishable gifts but to those which exceed useful edibles. But these gifts are not to take on the character of remuneration. Although an advocate can justly sell his ability to plead and counsel his sound knowledge of legal right, it is never permitted to sell judgment to anyone⁴⁰.

One should, looking into the text quoted above, talk not as much about Medieval law being inspired by the Roman regulations, as about the identical regulations in both cases. After all, a fragment of *Digesta* has been copied and incorporated by the bishop of Chartres into his

⁴⁰ Joh. Sal. *Policr.* 5.15: “Quae vero de praesidibus aliisque iudicibus dicta sunt, debent et apud proconsuls, quos nostrates vulgariter dicunt iustitias esse errantes, optinere. Et nomen quidem erroris, etsi non officio, personis tamen eorum convenit, qui euntes post concupiscentias suas in sectatu avaritiae et depraedatione popularium a tramite aequitatis aberrant. Debent autem officia omnium esse gratuita, ut nihil ultra statutum exigatur sed nec recipiatur. Sed forte quid statutum sit quaerip. Plebiscito continetur ne quis praesidum munus donumue caperet, nisi esculentum poculentumue, et id quidem intra dies proximos prodigatur. Quod et ad proconsuls aliosque magistratus ex mandato principis transit. Non vero in totum debent exeniis abstinere, sed modum adhibere. Ut uero nec in totum abstineant nec auare modum exeniorum excedant, diuus Severus et imperator Antoninus elegantissime sunt epistola moderati. Cuius epistolae verba sunt haec: Quantum ad exenia a pertinet, audi quod sentimup. Vetus proverbium est: Nec omnia, nec semper, nec ab omnibup. Nam valde inhumanum est a nemine accipere; sed passim, vilissimum; et per omnia, avarissimum. Quod autem mandatis continetur, ne donum vel munus ipse proconsul vel qui in alio officio erit accipiat ematve quid nisi victus cotidiani causa, quod ad exenia iam non pertinet sed ad ea quae edulium excedant usum. Sed nec exenia producenda sunt ad munerum qualitatem. Licet enim patrociniuum iustum possit vendere advocatus et peritus iuris sanum consilium, iudicium vendere omnino non licet?”. Translation taken from: John of Salisbury, *Policraticus*, ed. and transl. C.J. Nederman, Cambridge 2000, p. 96-97.

own work, which by itself, one may add, was of significant importance for the development of medieval lawyers⁴¹.

CONCLUSIONS

In medieval Europe problems concerning accepting gifts by public officials were no less important as they had been in ancient Rome. Thus it is not surprising that apart from the gloss, the Kórník manuscript devotes an additional miniature to that very problem, especially that the reception of the disputed Roman regulation was already wide and about to become even wider.

The current practice dictates that the legislator should be as precise as possible, which rarely seems to work. In the Polish criminal code there is a penalty prescribed for the active and passive bribery⁴². The doctrine states that the term ‘profit’, qualified as a bribe, does not apply to small gifts presented at special occasions (like, for example, a visit). There is, however, no consensus about what exactly small gifts are, although flowers, confectionery and sometimes alcohol have been cited as examples.

Actions that are meant to make the regulations applicable to every possible life occasions and the excessively dogmatic view of the law and its institutions turned out to be only meagerly successful in preventing corruption. Polish legislators seems unable to understand that personal integrity and good life conditions are often a better way to achieve such a result than an increasing number of regulations. It was well known to Septimius Severus, when he wrote, in his rescript, *not everything, not every time and not from everyone*. Such a truth was justly and fully appreciated by the illuminators who worked on the Kórník manuscript of *Digestum vetus*.

⁴¹ Cf. e.g. W. Ullmann, ‘The Influence of John of Salisbury on Medieval Italian Jurists’, *English Historical Review* 1944, 59, p. 384-393.

⁴² Art. 228-230a KK. See A. Marek, *Prawo karne*, Warszawa 2006, p. 617, for critical comments on this typology. See also: T. Chrustowski, *Prawne, kryminologiczne i kryminalistyczne aspekty łapówkarstwa*, Warszawa 1985.

BIBLIOGRAPHY:

- Aldinger H., (1976), *Zur Bedeutung des Begriffs eleganter in den römisch-rechtlichen Quellen*, Heidelberg.
- Bagola H., (1988), *Zur Bildung Romanischer Berufszeichnungen im Mittelalter*, Hamburg.
- Bibikov M., (2007), 'Glanz und Elend der byzantinischen Kaiser: Struktur und Semiotik der Macht in Byzanz', [in:] O.G. Oexle, M. Bojcov (hrsg.), *Bilder der Macht im Mittelalter und Neuzeit*, Göttingen.
- Bijsterveld A.-J., (1999), 'Patrons and Gifts in Eleventh- and Twelfth-Century Chronicles from the Diocese of Liège', [in:] E. Kooper (ed.), *The Medieval Chronicle: Proceedings of the 1st International Conference on the Medieval Chronicle, Driebergen-Utrecht 13-16 July 1996*, Amsterdam–Atlanta, p. 72.
- Boulvert G., (1974), *Domestique et fonctionnaire sous le haut-empire romain: la condition de l'affranchi et de l'esclave du prince*, Paris.
- Brunt P., (1961), 'Charges of Provincial Maladministration under the early Early Principate', *Historia* 10, 2, p. 189-227.
- Cabouret B., (2005), 'Xenia ou cadeaux alimentaires dans l'Antiquité tardive' [in:] S. Crogiez Pétrequin S. (edsous la dir.), *Dieu(x) et Hommes, Histoire et iconographie des sociétés païennes et chrétiennes de l'Antiquité à nos jours, Mélanges en l'honneur de Françoise Thélamon*, Rouen, p. 369-389.
- Chrustowski T., (1985), *Prawne, kryminologiczne i kryminalistyczne aspekty łapówkarstwa*, Warszawa.
- Cohen E., (1992), *The Crossroads of Justice: Law and Culture in Late Medieval France*, Leiden, p. 33.
- Debaux H., (2008), *Vicomtes et vicomtés dans l'Occident médiéval*, Toulouse.
- Dossey L., (2010), *Peasant and Empire in Christian North Africa*, Berkeley–Los Angeles.
- Duyvendak N., (1946), 'Restraining regulations for Roman officials in the Roman provinces', [in:] M. David, B.A. Groningen, E.M. Meijers (eds.), *Symbolae ad jus et Historiam Antiquitatis pertinentes Julio Van Oven Dedicatae*, Leiden.
- Frońska J., (2002), 'Texte et image dans le Digeste de Justinien. Le manuscrit 824 de la Bibliothèque de Kórnik', [in:] *Mémoire de DEA*, t. 1, Poitiers, p. 23-33.
- Frońska J., (2004), 'Między tekstem a obrazem. Dyrektywy dla iluminatorów w *Digestach* Justyniana', *Ikonotheke* 17, p. 5-27.

- Frońska J., (2008), 'Supplément ou commentaire? Les enjeux de l'illustration textuelle dans le Digestarum vetus de Justinien (Bibliothèque de Kórnik, ms. 824)', (2008), *Biuletyn Historii Sztuki* 70, 1-2, p. 63-64.
- Herman G., (1997), 'Le parrainage, 'l'hospitalité' et l'expansion du christianisme', *Annales. Histoire, Sciences Sociales* 52, 6, p. 1305-1338.
- Honoré T., (2005), *Ulpian: Pioneer of Human Rights*, Oxford.
- Kleinhenz Ch., (2004), *Medieval Italy: an Encyclopedia*, t. 2, London, p. 782.
- Kotula T., (1987), *Septymiusz Sewerus*, Wrocław.
- Kreutzsaller K., Urbanik J., (2008), 'Humanity and Inhumanity of Law. The Case of Dionysia', *The Journal of Juristic Papyrology* 38.
- Libicki M., (1993), 'Uwagi o genezie dekoracji rękopisu BK 824', *Pamiętnik Biblioteki Kórnickiej* 23, p. 47-59.
- Marek A., (2006), *Prawo karne*, Warszawa.
- Meyer-Zwiffelhofer E., (2002), *Politicōs archein: zum Regirungsstil der senatorischen Stathalter in den kaiserzeitlichen griechischen Provinzen*, Stuttgart.
- Saller R., (2002), *Personal Patronage under the Early Empire*, Cambridge.
- Smith R., (1974), *Rural crime Crime Control*, New York.
- Sondel J., (1997), *Słownik łacińsko-polski dla prawników*, Kraków.
- Stein P., (1999), *Roman Law in European History*, Cambridge.
- Stenton D.M., (1924), 'Roger of Salisbury, Regni Angliar Procurator', *The English Historical Review* 39, 153, p. 79.
- Stolz P., (2000), s.v., *Proconsul*, *Handbuch zur lateinischen Sprache des Mittelalters*, t. 2, "Bedeutungswandel und Wortbildung, Munchen, p. 47.
- Ullmann W., (1944), 'The Influence of John Salisbury on Medieval Italian Jurists', *English Historical Review* 59, sp. 384-393.
- Wickham Ch., (2004), *Farming the Early Middle Ages: Europe and the Mediterranean. 400-800*, Oxford, p. 278.
- Zeumer K., (1963), *Formulae Merovingici et Karolini Aevi: Accedunt Ordines Iudiciorum Dei*, Hannover, p. 1963.
- Zumt A.W., (1868), *Das Criminalrecht der Römischen Republik*, t. 2, Berlin.