

DOWNLOAD PDF INFAMIA ITS PLACE IN ROMAN PUBLIC AND PRIVATE LAW

Chapter 1 : Infamia Its Place in Roman Public and Private Law : A H J Greenidge :

Infamia: Its Place in Roman Public and Private Law Abel Hendy Jones Greenidge Snippet view - *Infamia: Its Place in Roman Public and Private Law* Infamia: Its.

I want to express my gratitude to the colleagues and staff I had the chance to meet there. I am especially grateful to Caroline Bynum and Bill Caferro who helped me by discussing some aspects of my work. Rodimer, *The canonical effects of infamy of fact. A historical synopsis and a commentary* Washington: Cornell University Press, Stanford University Press, See Giacomo Todeschini, *Visibilmente crudeli*. The word *infames iuris* designated in Roman law a well defined range of dishonored social conditions derived on the whole from the sentence of a judge the Roman "praetor" 3. Subsequently the textual stratification producing the Canon law beginning with the *Decretum Gratiani*, will reconsider the notion of "infamy" and shape a new definition of exclusion: Canon law represented this new type of public dishonor as the openly visible shame testified by the common opinion, the *vox publica*, and daily embodied by a multifarious range of criminals, heretics, infidels, or subjects of ill repute, whose common evil and aggressive nature was, on the whole, recapitulated through the expression "they, who fight against the fathers. Wayne State University Press, , At the same time, it is necessary, to gain a deep understanding of the link connecting infamy, usury, Judas and Judaism, to keep in mind the growing interplay between Roman and canon law from the ninth to the twelfth century⁷. In the words of Ambrose of Milan, a close but unclear relationship had existed between Judas, the Jews, and the usurers. Actually Ambrose, through intentionally obscure rhetoric, states that some usurers had lent the money acquired by the infidel apostle. Mouton, ; *Idem, Juifs et Chretiens*. *Patristique et Moyen Age* London: Routledge, ; Stephen R. *Jews and Christian Imagination* Westminster: University of California Press, ; Eva Frojmovic, ed. Brill, ; Christopher Cluse, ed. University of Pennsylvania Press, *Linguaggi a confronto* sec. Behind the past and present usurers, however, it is possible to recognize the black shadow of the usurer par excellence: And he also who receives money, like the betrayer Judas, hangs himself also with a halter. He [king David as author of the Psalms] considered that Judas himself also should be condemned with this curse, that the usurer should search his substance [Ps. Thus he catches with gain, he entices with gold, thus he involves us in crime, thus he demands our life in exchange for treasure. John the Evangelist tells that Judas Iscariot had estimated that anointment at three hundred denarii and declared that the anointment could be sold for three hundred denarii and the money given to the poor Joan. So he declared that the emblem of the cross were three hundred coins. That was told to us by each Apostle. *Et iste quoque qui pecuniam acceperit ut proditor Iudas laqueo se et ipse suspendit. Ipsum quoque Iudam hoc maledicto putavit esse damnandum, ut scrutaretur faenerator eius substantiam* [Ps. *Doctiores autem ipsum faeneratori putant diabolum comparatum, qui res animae et pretiosae mentis patrimonium faenore quodam usurariae iniquitatis euertit. Sic sumptu capit, sic auro inlicit, sic reatu inuoluit, sic caput pro thensauo reposcit*. Christ wants to be valued at a low price, so that everybody could buy him, so that no poor would be frightened. The name of Judas Iscariot " Isidore says " derived from the village where he was born, or from the tribe named Issachar. That was a sort of prophecy regarding his future condemnation. Monastic culture emphasized the affinity between greedy and imperfect monks and Judas. A good example of this linguistic procedure is given by John Cassian who in condemning the greedy habit of some monks says that: *Potuit enim venumdari trecentis denariis, et dari pauperibus Joan. Trecentorum autem aera crucis insigne declarat: Id tamen de caeterorum apostolorum vocibus intelligimus: Judas autem condemnatur avaritiae, qui pecuniam Dominicae praetulit sepulturae, qui etiamsi de passione sensit, erravit tam cara auctione: Gratis, inquit, accepistis, gratis date* Matth. *Pecuniam non quaerit divitiarum altitudo, sed gratiam. Ipse nos pretioso sanguine redemit, non vendidit. De quo plenius dicemus, nisi a nobis ipsis tractatum alibi recordaremur* [Lib. III de Spiritu sancto, cap. Wallace Martin Lindsay, Oxford: Oxford University Press, ; ed. Diaz y Diaz, Madrid: *Issachar enim interpretatur merces, ut significaretur pretium proditoris, quo vendidit Dominum, sicut scriptum est: Et*

acceperunt mercedem meam, triginta argenteos, pretium quo appetiatus sum ab eis Matth. Through the name of the infidel Apostle the patristic and canonical sources hinted at many different social groups whose common characteristic was to be imperfectly Christianized and therefore contemptible even though their specific identity was very blurred. Judas and the Jews as extra-temporal community could symbolize the ignorant, rude, and hostile or notorious people. But if the salt should lose its taste, how can it be made salty again? Judas Iscariot "Chromatius says " was part of [literally: And so the Lord could add: Cerf , VII: Here, it will be enough to remember that since the eighth century to the standardization of the Glossa Ordinaria, and beyond, this metaphor had a very long life. Indeed, it was in the story of Judas that this image of devaluation first assumed its linguistic power. In the words of a comment on Luke attributed to Bede: Like salt which has become tasteless vain and then useless to dress the food and to desiccate the meat turns out to be totally worthless " so each one who comes back after he had been aware of the truth, neither will be apt to produce something good, nor will be useful to others. And so he should be cast away, namely excluded from the Church". Brepols, , Et ideo addidit Dominus dicens: Ad nihilum valet, nisi ut projiciatur foras, et conculcetur ab hominibus [Mt 27,]: Unde et Judas de domestico fidei, inimicus factus est veritatis. Proiecti itaque hujusmodi extra Ecclesiam, necesse est ut diversis vitiis carnis et variis voluptatibus saeculi conculcentur ; et hoc est quod ait: Ad nihilum valet, nisi ut projiciatur foras, et conculcetur ab hominibus. Si autem sal quoque evanuerit, in quo condietur? Ad superiora respicit, ubi turrem virtutum non solum inchoandam, sed etiam praeceperat esse consummandam. Bonum quippe est Dei verbum audire, frequentius sale sapientiae spiritualis cordis arcana condire, imo ipsum cum apostolis sal terrae fieri, id est, eorum quoque qui adhuc terrena sapiunt imbuendis mentibus sufficere. At si quis semel condimento veritatis illuminatus ad apostasiam redierit, quo alio doctore corrigitur, qui eam quam ipse gustavit sapientiae dulcedinem, vel adversis saeculi perterritus, vel illecebris allectus abjecit? Juxta hoc quod quidam sapiens ait: Quis medebitur incantatori a serpente percusso Eccli. Qua sententia Judae Iscariot socios ipsumque designari non immerito credatur qui philargyria victus et gradum apostolatus proderet et Dominum tradere non dubitavit. Neque in terram, neque in sterquilinum utile est, sed foras mittetur. Sicut sal infatuatum cum ad condiendos cibos carnesque siccandas valere desierit, nullo jam usui aptum erit neque enim in terram utile est, cujus injectu germinare prohibetur, neque in sterquilinum agriculturae profuturum, quod vivacibus licet glebis immistum non fetare semina frugum, sed extinguere solet , sic omnis qui post 7 This conceptualization was then reorganized and transmitted by Carolingian authors like Walafridus Strabo¹⁶, and finally since the ninth to the twelfth century codified by the Glossa ordinaria and interlinearis, which could conclude that the individual, losing his spiritual power like the salt its taste, is sterile and useless, and can therefore be expelled from the community and despised: The paradoxical comparison between the apparent infamy of the good thief on the cross and the temporary apostolic role of Judas was used also to represent, from Patristic times to the late Middle Ages, the possibility of being recognized as a good Christian despite a dishonored appearance, and to emphasize the ease of falling from an honored situation to the notorious condition so typical of heretics, agnitionem veritatis retro redit, neque ipse fructum boni operis ferre, neque alios excolere valet, sed foras mittendus, hoc est ab Ecclesiae unitate secernendus, ut, juxta praemissam parabolam, irridentes eum inimici, dicant quia hic homo coepit aedificare, et non potuit consummare. Id est, si vos, per quos alii condiendi sunt, adversis vel prosperis cesseritis: Sic qui retro vadit, nec ipse fructum fert, nec alios valet excolere, sed ab Ecclesia ejicitur, et in haec verba ridetur: Hic homo coepit aedificare, et non potuit consummare. Si sal evanuerit Luc. Id est, si timore vel cupidine doctor saporem sapientiae omiserit, per quem fatuitas ejus emendabitur? Hoc solis apostolis convenit: Quod sequitur, omnibus magistris: Ad nihilum valet ultra, etc. In fine de omnibus concludit sic: Nisi abundaverit justitia, etc. Id est si apostoli per quos alii condiendi sunt prosperis vel adversis cesserint per quos eis error auferetur, cum eos deus elegit tollere aliis, neque in terra neque in sterquilinio, quia qui retro vadit neque ipsum fructum ferre, neque excolere valet, sed ejicitur. Circumcision, Technology, History Philadelphia: University of Pennsylvania Press, , In other words, the economic infamy of Judas was constantly connected to his identity as an economically specialized

individual. It is very important to keep in mind that it was not by chance that the economic role of the *oeconomus*, the ecclesiastic or lay administrator of the institutional goods of a church or monastery, could be represented as a particularly ambiguous economic role mostly after the Gregorian reform. The traditional presence of the *Lupus de Olmeto d. Prologus* in *Patrologia Latina* see: Jerome for the Observants of the Order of St. Judas *vero de apostolatus fastigio in perditionis tartarum labitur, et nec familiaritate convivii, nec intinctione bucellae, nec osculi gratia frangitur, ne quasi hominem tradat, quem Filium Dei noverat*. The representation of Judas as a thief in the Gospel of John, and, then, as a hanged thief in a wide range of medieval texts and images, is a historiographical and anthropological problem not yet investigated.

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Infamia Its Place in Roman Public and Private Law by A. H. J. Greenidge *The Lost Language of Symbolism An Inquiry Into the Origin of Certain Letters, Words, Names, Fairy-Tales, Folklore, and Mythologies* by Harold Bayley.

Text[edit] The amendment as proposed by Congress in reads as follows: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. The hand-written copy of the proposed Bill of Rights, , cropped to just show the text that would later be ratified as the Fifth Amendment Background before adoption[edit] Painting of James Madison by Charles Wilson Peale , done in On June 8, , Congressman James Madison introduced several proposed constitutional amendments during a speech to the House of Representatives. This draft was edited by Congress; all the material before the first ellipsis was placed at the end, and some of the wording was modified. After approval by Congress, the amendment was ratified by the states on December 15, as part of the Bill of Rights. Grand juries in the United States The grand jury is a pre-constitutional common law institution, and a constitutional fixture in its own right exclusively embracing common law. Most states have an alternative civil process. Grand juries , which return indictments in many criminal cases, are composed of a jury of peers and operate in closed deliberation proceedings; they are given specific instructions regarding the law by the judge. Many constitutional restrictions that apply in court or in other situations do not apply during grand jury proceedings. For example, the exclusionary rule does not apply to certain evidence presented to a grand jury; the exclusionary rule states that evidence obtained in violation of the Fourth , Fifth or Sixth amendments cannot be introduced in court. An individual would have such a right during questioning by the police while in custody, but an individual testifying before a grand jury is free to leave the grand jury room to consult with his attorney outside the room before returning to answer a question. The Bill of Rights in the National Archives. Currently, federal law permits the trial of misdemeanors without indictments. Grand jury indictments may be amended by the prosecution only in limited circumstances. In *Ex Parte Bain* , U. Thus, lesser included charges may be dropped, but new charges may not be added. The Grand Jury Clause of the Fifth Amendment does not protect those serving in the armed forces, whether during wartime or peacetime. Members of the state militia called up to serve with federal forces are not protected under the clause either. *Parker* , U. That decision was overturned in , when the Court held that members of the militia in actual service may be tried for any offense without indictments. While many states do employ grand juries, no defendant has a Fifth Amendment right to a grand jury for criminal charges in state court. States are free to abolish grand juries, and many though not all have replaced them with preliminary hearing. Infamous crime[edit] Whether a crime is "infamous", for purposes of the Grand Jury Clause, is determined by the nature of the punishment that may be imposed, not the punishment that is actually imposed; [8] however, crimes punishable by death must be tried upon indictments. The historical origin of "infamous crime" comes from the *infamia* , a punishment under Roman law by which a citizen was deprived his citizenship. *Moreland* , U. United States , U. United States U. Therefore, an infamous crime is one that is punished by imprisonment for over one year. United States , the Supreme Court announced the following test: *Corbin* , the Court held that a double jeopardy violation could lie even where the *Blockburger* test was not satisfied, [33] but *Grady* was overruled in *United States v.* If the defendant moves for a mistrial, there is no bar to retrial, unless the prosecutor acted in "bad faith", i. Prosecution in different States[edit] In *Heath v. Alabama* , the Supreme Court held, that the Fifth Amendment rule against double jeopardy does not prohibit two different states from separately prosecuting and convicting the same individual for the same illegal act. Self-incrimination[edit] "Plead the

Fifth" redirects here. For the album by the band Taproot, see Plead the Fifth album. The Fifth Amendment protects individuals from being forced to incriminate themselves. Incriminating oneself is defined as exposing oneself or another person to "an accusation or charge of crime," or as involving oneself or another person "in a criminal prosecution or the danger thereof. Coercion and torture were commonly used to compel "cooperation. In the most famous case John Lilburne refused to take the oath in His case and his call for "freeborn rights" were rallying points for reforms against forced oaths, forced self-incrimination, and other kinds of coercion. The Levellers presented The Humble Petition of Many Thousands to Parliament in with 13 demands, the third of which was the right against self-incrimination in criminal cases. These protections were brought to America by Puritans, and were later incorporated into the United States Constitution through the Bill of Rights. Protection against compelled self-incrimination is implicit in the Miranda rights statement, which protects the "right to remain silent. In other Commonwealth of Nations countries like Australia and New Zealand , the right to silence of the accused both during questioning and at trial is regarded as an important right inherited from common law, and is protected in the New Zealand Bill of Rights Act and in Australia through various federal and state acts and codes governing the criminal justice system. In South African law the right to silence originating from English common law has been entrenched in Section 35 of the Constitution of the Republic of South Africa, The Supreme Court has held that "a witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances. Texas, [44] significantly weakened the privilege, saying "our choice to use the Fifth Amendment privilege can be used against you at trial depending exactly how and where you do it. Long-standing judicial precedent has held that any witness who desires protection against self-incrimination must explicitly claim that protection. Under the Red Scare hysteria at the time of McCarthyism , witnesses who refused to answer the questions were accused as "fifth amendment communists". They lost jobs or positions in unions and other political organizations, and suffered other repercussions after "taking the Fifth. Admitting to a previous Communist Party membership was not sufficient. Witnesses were also required to "name names," to implicate others they knew to be Communists or who had been Communists in the past. He also "named names," which incurred enmity of many in Hollywood. Other entertainers such as Zero Mostel found themselves on a Hollywood blacklist after taking the Fifth, and were unable to find work for a while in show business. Pleading the Fifth in response to such questions was held inapplicable,[citation needed] since being a Communist itself was not a crime. The amendment has also been used by defendants and witnesses in criminal cases involving the American Mafia. An SRO itself is not a court of law, and cannot send a person to jail. See United States v. They rely heavily on requiring testimony from individuals by wielding the threat of loss of membership or a bar from the industry permanent, if decided by the NASD when the individual asserts his Fifth Amendment privilege against compelled self-incrimination. If a person chooses to provide statements in testimony to the SRO, the SRO may provide information about those statements to law enforcement agencies, who may then use the statements in a prosecution of the individual. Custodial interrogation[edit] The Fifth Amendment limits the use of evidence obtained illegally by law enforcement officers. Originally, at common law , even a confession obtained by torture was admissible. However, by the eighteenth century, common law in England provided that coerced confessions were inadmissible. The common law rule was incorporated into American law by the courts. The Supreme Court has repeatedly overruled convictions based on such confessions, in cases such as Brown v. Mississippi , U. Law enforcement responded by switching to more subtle techniques, but the courts held that such techniques, even if they do not involve physical torture, may render a confession involuntary and inadmissible. Florida the Court held a confession obtained after five days of prolonged questioning, during which time the defendant was held incommunicado, to be coerced. Tennessee , the suspect had been interrogated continuously for thirty-six hours under electric lights. Washington, [53] the Court held that an "unfair and inherently coercive context" including a prolonged interrogation rendered a confession inadmissible. Arizona was a landmark case involving confessions. Ernesto Miranda had signed a statement confessing to the crime, but the Supreme Court held that the confession was

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inadmissible because the defendant had not been advised of his rights. The Court held "the prosecution may not use statements Custodial interrogation is initiated by law enforcement after a person has been taken into custody or otherwise deprived of his freedom of movement before being questioned as to the specifics of the crime. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Before any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. Miranda has been clarified by several further Supreme Court rulings. For the warning to be necessary, the questioning must be conducted under "custodial" circumstances. A person detained in jail or under arrest is, of course, deemed to be in police custody. Alternatively, a person who is under the reasonable belief that he may not freely leave from the restraint of law enforcement is also deemed to be in "custody. A mere presence at a police station may not be sufficient, but neither is such a presence required. Traffic stops are not deemed custodial. The Court has ruled that age can be an objective factor. The Court affirmed that age could be a relevant and objective factor in J. For example, two police officers engaging in a conversation designed to elicit an incriminating statement from a suspect would constitute questioning. A person may choose to waive his Miranda rights, but the prosecution has the burden of showing that such a waiver was actually made. A confession not preceded by a Miranda warning where one was necessary cannot be admitted as evidence against the confessing party in a judicial proceeding. The Supreme Court, however, has held that if a defendant voluntarily testifies at the trial that he did not commit the crime, his confession may be introduced to challenge his credibility, to "impeach" the witness, even if it had been obtained without the warning. Thompkins that a criminal suspect must now invoke the right to remain silent unambiguously. The mere act of remaining silent is, on its own, insufficient to imply the suspect has invoked those rights. Furthermore, a voluntary reply, even after lengthy silence, can be construed as implying a waiver. The new rule will defer to police in cases where the suspect fails to assert the right to remain silent. This standard was extended in *Salinas v. The Court* stated that there was no "ritualistic formula" necessary to assert this right, but that a person could not do so "by simply standing mute. United States , [59] the U. Supreme Court stated that "It is equivalent to a compulsory production of papers to make the nonproduction of them a confession of the allegations which it is pretended they will prove". By corporations[edit] Corporations may also be compelled to maintain and turn over records; the Supreme Court has held that the Fifth Amendment protections against self-incrimination extend only to "natural persons.

Chapter 3 : Infamia Its Place in Roman Public and Private Law

Excerpt from Infamia Its Place in Roman Public and Private Law But the first duty of a historian is to restore to their due proportions the different parts of a subject or the various epochs of a period.

Chapter 4 : Full text of "Infamia: its place in Roman public and private law"

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Chapter 5 : Fifth Amendment to the United States Constitution - Wikipedia

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