

DISCUSSION

LEGAL PANEGYRIC AND THE FORMATION OF LEGAL RHETORIC
IN THE LANDS OF THE BOHEMIAN CROWN

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Abstract: *In the first part the article describes the role of ceremonial speeches in the society, especially in connection with the Faculty of Law of the Charles-Ferdinand University. The focus of the author is on the life and personality of St. Ivo, who is a patron of lawyers. The article then describes the content of these speeches that were held in praise of the patron and gives examples from historical sources from the beginning of the 18th century.*

Keywords: *ceremonial speeches, St. Ivo, patron of lawyers*

Panegyric had been a recognized literary genre with a firm position in social and public life already in classical antiquity. It had been delivered on certain important occasions, such as birthdays, various anniversaries or funeral ceremonies. The requirements for a panegyric corresponded to the social status of the celebrated person, as the primary object of a panegyric was glorification. Often, the delivery of panegyrics was one of the means of attracting the attention of the public, or of the ruler, to the rhetorician who could thus achieve social prestige or recognition.

In ancient **Athens** such speeches had been delivered with the aim of glorifying significant **ancestors**. The *Olympiacus* by **Gorgias** or the *Olympiacus* by **Lysias** can be mentioned as examples preserved from those times. Twelve speeches of this type, summarily called *Panegyrici latini*,¹ were preserved from later times. The oldest is the panegyric delivered by the younger **Pliny** on the occasion of his assumption of the **consulship**, and dedicated to Emperor Trajan; it contained a **eulogy** of military achievements, the life and talents of that ruler. The other eleven speeches come from the end of the 3rd and the 4th centuries and they represent an interesting source of knowledge. **Cassiodorus**, the **magister officiorum** of **Theodoric the Great** and his successors, compiled a book called the *Laudes*.

In the middle ages, all human activities in towns and in the country, as well as individual guilds, had their patron, or even more patrons. This general statement applies to lawyers, too. The legal profession acquired its institutional character, and later also its patron, in connection with the reinvention of Roman law. In order to understand this highly developed law, which, however, was relatively strange for less advanced legal systems of the then “barbarian” Europe, it was necessary to create ideological procedures and principles

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¹ NIXON, C. E. V., RODGERS, B. S. *In Praise of Later Roman Emperors. The Panegyrici Latini. Introduction, Translation, and Historical Commentary with the Latin Text of R. A. B. Mynors.* The Transformation of the Classical Heritage, 21. Berkeley: University of California Press, 1995; REES, R. *Layers of Loyalty in Latin Panegyric: AD 289–307.* New York: Oxford University Press, 2002.

of resolution of newly emerging social processes. The society needed for its development persons with the knowledge of law, capable to apply their knowledge to practical life, which resulted in the formation of the so-called “learned law”. Consequently, an independent legal profession was established, which needed its patron. This process continued along with the growing importance and fame of Ivo of Kermartin and his subsequent canonisation in 1347.

First “fellowships” professing the legacy of Ivo were created in France, Belgium and Italy. Besides the university where Ivo read law (for example Orleans), the cult of St. Ivo and his celebrations emerged at a number of law schools all over Europe. The first one most probably in Paris.²

The Faculty of Law was one of the four establishing faculties of Prague University founded by Emperor Charles IV in 1348. Over time, St. Ivo of Kermartin or Yves Hélor, became one of the patrons of the University, as well as of legal professions generally. In conformity with traditions of classical antiquity, ceremonial speeches, or panegyrics, had been delivered at the faculty in Prague to honour him and to develop the art of rhetoric in students of law.

In Bohemia, the first celebration of this patron was recorded at Charles University in Prague in 1398, as well as at the university in Vienna (established before 1365) and in Erfurt (established in 1379)³.

The custom of delivering panegyrics, that is speeches in praise of patrons, was revived in the Baroque period, although some panegyrics (for example, by Comenius) were preserved from earlier times. At universities, more emphasis was put on rhetoric qualities and allocutions mainly in the course of the 17th and the 18th centuries. As a result, “elocutionary exercises” in the form of celebrations of university (or faculty) patrons were introduced. Each discipline of study at the university had its own patron addressed by the academic community. It was St. Ivo for lawyers, St. Catherine for philosophers, St. John for theologians, St. Cosmas and St. Damian for physicians.

Let us mention some important data connected with the life of St. Ivo. Since he was a real person, all the data of his life are known to us as authentically as those of any other modern personage.

In 1247 Ivo was born at Kermartin, a manor near **Tréguier in Brittany**, Ivo was the son of Hélori, lord of Kermartin, and Azo du Kenquis.

In 1261 Ivo was sent to the **University of Paris**, for his university studies.

In 1261–6 he studied at the Artistic Faculty in Paris.

In 1267–71 studied Canon law in Paris (meets Thomas of Aquinas, who gives lectures at the Sorbonne).

In 1271–73 Ivo moves from Paris to Orleans to complete his studies in Roman law, for that subject was not taught in Paris at that time.

² RIECK, A. *Der Heilige Ivo von Hélor (1247–1303). Advocatus pauperum und Patron der Juristen*. Rechtshistorische Reihe 178. Frankfurt a. Main, Berlin, Bern, New York, Paris, Wien: Peter Lang, 1997, p. 135; STRECK, M., RIECK, A. *St. Ivo 1247–1303 Schutzpatron der Richter und Anwälte*. Köln: Verlag Otto Schmidt, 2007; WIGMORE, J. H. *St. Ives, Patron Saint of Lawyers*. *Fordham L. Rev.* 401, 1936, p. 401 ff; ADAMOŤ, K., LOJEK, A. *Svatý Ivo a svatá Aja ve světle českého výtvarného umění*. In: KNOLL, V. (ed.). *Pocta Stanislavu Balíkovi k 80. narozeninám*. Plzeň: Aleš Čeněk, 2008, p. 14 ff.

³ This University was thus the oldest in the Holy Roman Empire and from here the cult of this patron spread further to Basel, Trier, Tübingen etc.

In 1280 he was appointed assistant judge on the staff of the archdeacon, who held court at Rennes, the capital of Brittany.

In about 1284 he took orders as a priest, returned to Tréguier, became curé of a suburban parish, and was made deputy-judge to the bishop of Tréguier. The bishop himself seldom sat in court, and Ivo became the sole arbiter of clerical justice for that region.

In approx. 1292–1303 Ivo became the parish priest in Louannec.

In 1298 his judicial activities came to an end.

In 19. 5. 1303 Ivo died at Kermartin.

In the same year, 1303 John, duke of Brittany, supported by Philip, king of France and his wife, Queen Anne, and many other nobles, initiated a movement to declare Ivo a saint of the Church. In 1330 a commission was appointed by Pope John XXII to perform the required testimony.

In 1347 (May 19th) Ivo was canonised by Pope Clement VI in Avignon and his name was placed in the calendar of saints.

At present, the panegyrics delivered with the aim to worship the main patron of lawyers, St. Ivo (the other is St. Nicholas), are interesting for us as they illustrate the quality and the extent of knowledge of the then readers of law. They are available to us because they were issued in print and in certain cases the faculty of law even paid the costs of printing to students as a motivation for the improvement of quality of such speeches. The number of panegyrics preserved is relatively high; originally there were several hundred of them.

The ceremony at the faculty was usually begun by the Dean, who invited the academic community. In Vienna, for example, the invitation was handwritten and it was attached to the church door by turpentine wax. Later, it was issued in print in one hundred copies. The celebration often began on the eve of St. Ivo's day, when there was a church service to commemorate him. St. Ivo's day was *dies non legibilis* (the day when no lectures are given), so everyone could participate in morning service in the university chapel followed by a procession, which was later moved to the church (in Prague it was the Church of Our Lady before Týn at the Old Town Square). Obviously, the participants wore ceremonial attire for the occasion. Gospel was read, then followed by the ceremonial speech – panegyric – delivered occasionally by professors, but most often by students of law (wearing a toga and a beret in Vienna). Students received financial remuneration for their speeches. At some universities apart from Prague, such as in Vienna, panegyrics were seen rather as disputations in which students established their legal erudition and the skill of reasoning. Usually, the Dean was elected and university statutes were read on St. Ivo's day. Then the Dean invited the colleagues, doctors, students and the Chancellor to a formal meal. The ceremony was usually held on the 19th or the 23rd of May, the day of death of St. Ivo, and a requiem mass was held at the end of the day. Special hymns worshiping the legal patron have been preserved.⁴

I would like to concentrate on the law faculty in Prague in the period from the end of the 17th century to the mid 18th century.⁵ Firstly, let me mention some common and spe-

⁴ RIECK, A. *Der Heilige Ivo von Hélor (1247–1303). Advocatus pauperum und Patron der Juristen*. Rechtshistorische Reihe 178. Frankfurt a. Main, Berlin, Bern, New York, Paris, Wien: Peter Lang, 1997, p. 271 ff.

⁵ The original texts of these speeches are in the Archives of the Charles University in Prague.

cific features of these speeches, and then I will focus on a panegyric written by the law student Jan Antonín Tschamerhell⁶.

It is possible to find several common traits in the speeches preserved from the Prague law faculty. Perhaps the most significant is the figurative style of the speeches, the effort to worship the patron exorbitantly and thus to emphasize his importance for the legal profession.

The speaker introduced the patron at the beginning of his speech, calling St. Ivo “the greatest canon lawyer in the world”; some panegyrics took over quotations from the Bible as mottos. The “Divine Ivo” is also addressed as “St. Justinian”, or they claim that emperor Justinian had created the foundation of law, but only Ivo brought it to its prime. It is said that it was Justinian who gave *Corpus Iuris Civilis* to the world, but Ivo gave it its soul. When justice was personified, emperor Justinian was provided with a sword and Ivo with a palm frond.⁷ On another occasion (speech by A. Fischer in Prague in 1699) Ivo was compared to “the flower called heliotrope, which was the protective flower of laws”. In another panegyric (1704)⁸ is Ivo called the prince of lawyers, dressed in purple, in another (1708)⁹ is Ivo introduced as the symbol of power and rule over law, armed with an olive branch, and as the one who celebrates the triumph and performs miracles.

The panegyric usually describes the life of St. Ivo: his youth, studies, professions in law and church, changes in his life, his austere way of life, miracles he worked, his death. If there is no such description in a panegyric, the orator refers to his biographies. It was assumed that not all students (particularly the fresh ones) were familiar with the life and acts of St. Ivo in detail.

St. Ivo is often commended for his help to the poor, to widows and orphans, and the miracles he performed are emphasized. He is likened to Christ in the sense that both Christ and Ivo were divine men. For example, a panegyric written by Ch. Wawra (1731) reads: “...Christ, as the advocate of human matters, by means of his crucifixion, paved the road for justice to get back to the earth...”.

The speeches occasionally refer to the bad reputation of legal professions within society. We can find Luther’s description of lawyers used in the middle ages “Juristen böse Christen”,¹⁰ that means “lawyers are mean or bad Christians”. The legal profession defends itself against such label, or challenges it, by saying that there are good and bad Christians, as well as good and bad lawyers. This fact is illustrated by the parable of the altar and the court, where the priest is also a judge. We can find references to a joke, not a very complimentary one, that St. Ivo was the only just lawyer, because when he had ascended to heavens, he drew up the lawyers’ ladder so that none of the members of the legal profession can get there. This parable is sometimes understood conversely in the sense that by means of the ladder St. Ivo descended to the earth¹¹ (Wawra, 1731).

⁶ TRÍŠKA, J. Jeden právníký panegyrik. *Archivní zprávy* 2. 1977, p. 106 ff.; BURGMEISTER, K. H. Der Heilige Ivo und seine Verehrung an der deutschen Rechtsfakultäten. *ZRH G. A.* 92.1975, pp. 60–88.

⁷ RIECK, A. supra note 4, p. 206, speech by W. J. Hödl from 1705.

⁸ RIECK, A. supra note 4, p. 205, speech by J. G. I. Schrott.

⁹ RIECK, A. supra note 4, p. 206, speech by C. W. Parzizek.

¹⁰ SCHMIDT-WIEGAND, R. *Deutsche Rechtsregeln und Rechtssprichwörter*. München: C. H. Beck, 2002, p.184; KÖBLER, G. *Lexikon der europäischen Rechtsgeschichte*. München: C. H. Beck, 1997, p. 272.

¹¹ RIECK, A. supra note 4, p. 210, speech by Ch. Wawra, 1731.

Panegyrics offer several typical qualities of an ideal judge:

- 1) A judge without any bias
- 2) A judge that cannot be bribed
- 3) Speedy trial
- 4) Settlement of the dispute before the judgment is rendered
- 5) A judge having compassion and mercy

The role of advocates in the society is mentioned, too, with a stress on their changing prestige within the society. References to the necessity of a correct defence and a just judge can be found, for example, in *Sachsenspiegel*¹². Advocates are often assessed with much prejudice, depending on the result of trial and their fees for such trial. Poor financial remuneration caused the fact that it was acceptable for one advocate to provide advice to both parties to the dispute for a relatively long period in the middle ages (prevarication). As a result access to justice was denied to the poor, and consequently it was necessary to provide advocates for those who had no means to pay for their defence; that was the beginning of the ideal impersonation of an advocate – “advocates pauperum” – such as was St. Ivo.

It is remarkable how frequent are the references to classical antiquity and Roman lawyers. Beside the above mentioned there were many other remarks on the role and position of emperor Justinian. For example, stories from Ovid’s *Metamorphoses* appear in the panegyric by Jos. Azzo (1732), and, Ch. Wawra quotes the well known part from the very beginning of Justinian’s *Digest*, taken from his 1st book *Institutiones*: “Of that art we (jurists) are deservedly called the priests. For we cultivate the virtue of justice and claim awareness of what is good and fair, discriminating between fair and unfair, distinguishing lawful from unlawful, aiming to make men good not only through fear of penalties but also indeed under allurements of rewards, and affecting a philosophy which, if I am not deceived, is genuine, not a sham.” (Ulp. Dig. 1.1.1.)¹³ in his panegyric of 1734.

Both these panegyrics were delivered in Prague.

The speech delivered by Tschamerhell in Prague in 1716 is quite typical in this respect. He refers not only to personalities of ancient Greece, such as Pericles and Xenophon, but we can encounter a number of pagan Gods, such as Venus, Iuno, Hercules, Mercurius, Muses and Charites. He also mentions the Greek pagan Goddess of justice, Themis. A similar motive appears in van Boor’s panegyric (1727) featuring *Astraea* as a personification of justice, which returns back to people as a star falling down to the Earth, it shines brightly and would clear all mist. Tschamerhell refers not only to pagan (meaning Roman) lawyers, but also to the role and virtues of Egyptian priests.

Since a big part of his speech is devoted to the importance of rhetoric, it comes as no surprise that he mentions Cicero several times, such as when he reminds us that a rhetor is not only eloquent, but also a just and good man. He refers to Romans in general and to their statement that excellent rhetors are close to Gods.

¹² LÜCK, H. *Über den Sachsenspiegel: Entstehung, Inhalt und Wirkung des Rechtsbuches*. Düsseldorf (Saalkreis): Stetkovics, 2005.

¹³ WATSON, A. (ed.). *The Digest of Justinian*. Philadelphia: University of Pennsylvania Press, 1998.

He mentions outstanding personalities of Roman law twice. Firstly, it is Justinian, who is described as the epitome of Roman law, and yet St. Ivo is put above Justinian, unsurprisingly, in the context of a panegyric upon St. Ivo. His glorifying remark on Labeo is much more interesting. Labeo is, according to the panegyric's author, recommended by Gellius. It remains unclear why mention Aulus Gellius and his eclectic "Attic Nights" – an incoherent mix of comments on study materials on various topics. Perhaps it was the author's random knowledge and his wish to "show off". We would rather expect references to Digest from a law student.

Now, as an illustration, I would like to present the structure of a print of panegyric delivered by Jan Antonín Tschamerhell¹⁴ from Ostrov near Karlovy Vary:

First of all there is

a) the address of the patron of the law faculty, St. Ivo, and specification of time when it was delivered (in this case in the period when the Rector was Father P. Francis Fragstein, of the Jesuit order, the doctor of theology of the Charles – Ferdinand University, the Dean was Jan Adam Besnecker, the professor of cannons of the same university and the assessor of Prague archbishop consistory, in the month of May 1716, in the city of Old Prague, printed by Jan Vaclav Helm);

Dedication to the Prince Luis George Simpert, Margrave of Baden-Baden and Hochberg, Landsgraf of Sausenberg etc. with the hope that he will be satisfied with the speech;

b) "The speech" itself;

Glorification of the art of law and rhetoric;

Glorification of abilities, character traits, merits and good deeds of the patron;

c) a wish that the realm of Emperor Leopold II thrive and flourish, and under his protection also the university and the law faculty;

Dixi (I have said).

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¹⁴ TŘÍŠKA, J. *Jeden právnický panegyrik. Archivní zprávy* 2. 1977, p. 106 ff.

¹⁵ Praha KNM 40 A 14, UK 46 A, 75 aj.

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The importance attributed to its patron by the faculty is evidenced by the fact that the faculty commissioned a sculpture of St. Ivo from Mathias Bernard Braun in 1711, which it subsequently donated, and it paid for it probably a large sum of 1.200 guildens. The statue, standing on the Charles Bridge, portrays an old man and a widow with a child, who are looking up to the saint for help. The saint is depicted as a religious judge protecting the poor against injustice of the powerful. On his right, there is an allegoric blindfolded Justice with a scale and sword. The relief on the pedestal shows a mass served for a reconciled dispute between a mother and her son. The statue of St. Ivo is the first one on the left side of the bridge looking from the Old Town Bridge Tower.

On the occasion of the 700th anniversary of the birth of St. Ivo, Pope John Paul II said (13 May 2003): "For all who exercise a legal profession, whose patron saint he is, he remains the voice of justice, which is ordained to reconciliation and peace in order to create new relations among individuals and communities and build a more impartial society....The values proposed by St. Ivo retain an astonishing timeliness. His concern to promote impartial justice and to defend the rights of the poorest persons invites the builders of Europe today to make every effort to ensure that the rights of all, especially the weakest, are recognized and defended."¹⁶

Thus the above mentioned panegyric, as well as other panegyrics from that period, document the high level of rhetorical skills of the students of law. They also show the moral values and ideas of the society of that period. They form an interesting evidence of the relatively high legal and political culture of the Law Faculty of the Charles-Ferdinand University before the onset of the enlightened absolutism.

¹⁶ *Of John Paul II. to Bishop Lucien Fruchard of Saint-Brieuc and Tréguier for the 700th anniversary of the birth of St. Ivo Hélor of Brittany*, Libreria Editrice Vaticana, 13th May, 2003.