



ANTONIO VILLANUEVA MARTÍNEZ

 <https://orcid.org/0000-0001-5081-6292>

Universidade de Vigo, Spain

The Meaning of Monstra in the Roman Law Tradition

Introduction. An Etymological Approach

Roman law knew the phenomenon of the *monstra*. But what were *monstra* according to Roman law? To answer this question, I studied the legal texts in which the word *monstra* or its derivatives were mentioned. However, I did not start with legal analysis, since the need for an etymological approach was already clear to me beforehand. So, as an introduction, I will expose the conclusions of my etymological study of *monstra*.

The etymological meaning of *monstra* is part of the analysis of its legal meaning, since it is the point of reference to clarify the meaning of the word in the legal field. Therefore, I will confine myself not only to presenting the conclusions, but also the texts on which they are based and, as far as possible, the reasoning that led me to these conclusions.

The meaning of *monstra* is defined in relation to words that are part of the same semantic field, up to assimilation as in the case of *prodigia*.

Festo, s.v., *Promonstra prodigia*.¹

¹ Festus, *De verborum significatu quae supersunt com Pauli epitome* (Leipzig: Teubner, 1913), 250.

Unlike *prodigia*,² however, *monstra* lost the prefix *prod-*, meaning anticipation.³ In fact, prodigy means prophetic word (*prod-*, *aio*).⁴ These words imply a warning from the gods based on an act *contra naturam*. According to the following source, *monstra* are the materialization of a prodigy.

Festo, s.v., **Monstra** dicuntur naturae modum egredientia, ut serpens cum pedibus, avis cum quattuor alis, homo cum duobus capitibus, iecur cum distabit in coquendo.⁵

Monsters deviated from natural forms. The melting liver from the last expression was considered an anomaly since there was no bulge present, contrary to what the priests observed when analyzing other livers.⁶

In this second text, *monstra*, having lost the sense of anticipation of *promonstra*, is the realization of the prodigy, which is the event foretold by the gods. This meaning of *monstra* confirms its etymology: *monestrum*, derived from *moneo* (to warn), and the verb *monstrare* (to show, to exhibit).⁷ At this point, however, I cannot infer the meaning of *monstra* without considering the definitions of *monstrum*, which should theoretically confirm the meaning of *monstra*.

Festo, s.v., **Monstrum**, ut Aelius Stilo interpretatur, a monendo dictum est, velut monestrum. Item Sianius Capito, quod monstret futurum, et moneat volunio tatem deorum; quod etiam prodigium, velut praedictum et quasi praedictum, quod praedicat eadem, et portentum, quod portendat et significet. Inde dici apparet id quartum, quod mihi visum est adiciendum, praesertim cum ex eadem significatione pendeat, et in promptu sit omnibus, id est ostentum; quod item ab ostendendo dictum est apud auctores.⁸

² Emilie Benveniste, *Vocabulario de las instituciones indoeuropeas* (Madrid: Taurus, 1983), 391–396.

³ Alfred Ernout and Antoine Meillet, *Dictionnaire Etymologique de la Langue Latine* (Paris: Klincksieck, 1959), s.v., *pro*, *prod*, 536–537; Benveniste, *Vocabulario*, 391–396. However, Santiago Segura Munguía, *Nuevo diccionario etimológico latin-español y de las voces derivadas* (Bilbao: Universidad de Deusto, 2013) s.v., *prodigo*, 602, thinks that *prodigia* is made up of *prod-*, and *ago*, which means pushing, throwing or throwing before it.

⁴ Festus, *De verborum significatu*, 147.

⁵ Jose Manue Aldea Celada, “Religión, política y sociedad: los prodigia en la Roma republicana,” *El Futuro del Pasado*, no.1 (2010): 283.

⁶ Festus, *De verborum significatu*, 122.

⁷ Dominika Lewandowska, “Prodigium, portentum, ostentum, monstrum: In Search of Meaning Between Practice and Definition,” *U schyłku starożytności – Studia źródłoznawcze*, no. 19 (2020): 26.

⁸ Although the meaning of the prodigies is not addressed from an etymological point of view, it is interesting to cite the work of Susanne William Rasmussen, *Public Portents in Republican Rome* (Rome: L’Erma di Bretschneider, 2003), 35: “I define as a *prodigium* any unusual event reported to the Senate and approved by that body as a *prodigium publicum*, an unfavorable portent that is usually relevant to society as a whole and requires ritual expiation. Thus,

[According to *Aelius Stilo*, *monstrum* comes from *monendo* ('warning'), we also say **monestrum*. Sennius Capito further specifies, that (we say *monstrum*), because (it) shows the future and gives the premonition of the will of the gods. Therefore, we also say *prodigium* as well as *praedictum* ('something said in advance', 'a forewarning') and quasi *praedictum*, because it predicts these same things, and portentum, because it foreshadows and gives signs. As for the fourth word, which it seemed to me good to add here, because it is linked above all to this meaning, and that everyone knows it, this word is *ostentum*; it was formed by the authors from *ostendendo* ('manifesting').]⁹

In these source, both *monstrum* and *ostenta*, *portenta* and *prodigia* are not defined autonomously, but as participles of a verb: *ostendo* (to appear), *monstro* (to warn), *portendo* (to portend), *prodigo* (to predict). The definitions are thus circular, since the concept of the object of definition occurs in the same definition.

Ernout et Meillet understand that there are no differences between *portendum*, *ostentum* and *monstrum*,¹⁰ an opinion shared by Lewandowska, who clarifies that this synonymy lies in their connotation.¹¹ Bloch also finds that the terms *ostentum*, *portentum*, *monstrum* and *miraculum* are used almost interchangeably.¹²

Considering the differences between the definitions of *monstra* and *monstrum*, I have to conclude that *monstra* refers to manifestations outside the normality of things, while the word *monstrum* has no meaning autonomous from the verb from which it is derived. *Monstrum* thus functions as a verbal participle of *moneo* (Festus's text) and of *monstrare* (Cicero's text).

When the meaning of *monstra* became independent of the verb *moneo* and the word *monstrum* actually replaced *monstra* as the verbal adjective of *moneo*, *monstra* referred to things which deviated from natural forms while *monstrum*

a prodigy is a peculiar event described in the sources as a sign that the *pax deorum* has been disturbed, and this type of portent calls for expiation to be performed in public."

⁹ Orsolya Marta Péter, "Olim in prodigiis nunc in deliciis. Lo status giuridico dei 'monstra' nel diritto romano," in *Iura antiqua, iura moderna. Festschrift für Ferenc Benedek*. (Pécs: Dialóg Campus Kiadó, 2001), 210–212. The translation was made by Lewandowska, "Prodigium, portentum," 26.

¹⁰ Bruce MacBain, *Prodigy and Expiation: a Study in Religion and Politics in Republican Rome* (Bruxelles: Latomus 1982), 34–42.

¹¹ Lucia Monaco, "Percezione sociale e riflessi giuridici della deformità," in *I diritti degli altri in Grecia e a Roma*, ed. Alberto Maffi and Lorenzo Gagliardi (Sankt Augustin: Akademia Verlag, 2011), 412–413 expressly agrees with the opinion of Riccardo Astolfi, *Lex Iulia et Papia*, Padova (Padova: Cedam, 1970), 175, according to which the Ulpianus's criterion is more favorable for the mother than the Paulus's criterion, since Ulpianus takes into account the sole calculation effect of the number of children at the moment of birth.

¹² Luis Díez-Picazo and Antonio Gullón, *Sistema de Derecho Civil* (Madrid: Tecnos, 2005), vol. I, 216.

began to be adopted as the *moneo* participle. Thus *monstrum* is a warning from the gods, “the one warned by the gods,” and appears in the texts synonymously with *portentum* and *ostentum*, whose semantic value is also based on the verb.

The legal meaning of *monstra*, which we shall see below, confirms that the synonym of the participle *monstrum* extends to *monstra* with other terms such as *ostentum*, *portendum* and *prodigium* and is used interchangeably to refer to phenomena that escape normality.

Legal Meaning of Monstra

As I stated before, the terms *ostentum*, *prodigium* and *monstra* are used interchangeably in legal texts, but they all refer to phenomena *contra naturam*. Among these phenomena, there were the abnormal births that the Romans considered to alter the *pax deorum* and were, therefore, ritually sacrificed to restore peace between men and gods.¹³ To this end, the *supplicatio* rite was performed.¹⁴

However, it seems that Ulpian does distinguish two kinds of ostentatious at the source D. 50.16.38.

(Ulpianus libro 25 ad edictum): “Ostentum” Labeo definit omne contra naturam cuiusque rei genitum factumque. Duo genera autem sunt ostentorum: unum, quotiens quid contra naturam nascitur, tribus manibus forte aut pedibus aut qua alia parte corporis, quae naturae contraria est: alterum, cum quid prodigiosum videtur, quae Graeci fantasmata vocant.

Quoting Labeone, Ulpian understands that there are two types of *ostentum*: the first, in the case where a birth takes place with three hands or three feet or some part of the body that is contrary to nature; the second, when something prodigious is seen, which are the things the Greeks call “ghost.”

This distinction finds no confirmation in other sources, even attributed to Ulpiano, as in D. 50.16

(Ulpianus libro quarto ad legem Iuliam et Papiam): Quaeret aliquis si portentosum vel monstrosum vel debilem mulier ediderit vel qualem visu vel vagitu novum, non humanae figurae, sed alterius, magis animalis quam hominis,

¹³ Enrique Gómez Arboleya, “Sobre la noción de persona.” *Revista de estudios políticos*, no. 49 (1950): 114.

¹⁴ Final provision 3 de la Ley 20/2011, de 21 de julio. The new wording is thus expressed: *La personalidad se adquiere en el momento del nacimiento con vida, una vez producido el entero desprendimiento del seno materno.*

partum, an, quia enixa est, prodesse ei debeat? Et magis est, ut haec quoque parentibus prosint: nec enim est quod eis imputetur, quae qualiter potuerunt, statutis obtemperaverunt, neque id quod fataliter accessit, matri damnum iniungere debet.

[Someone ask if a woman gave birth to someone unnatural, monstrous, or weak, or something unparalleled in appearance or voice, not of human appearance, but of an offspring of an animal other than a man, whether they benefit, since she gave birth. And it is better that a case like this should also benefit the parents; for there is no reason to punish them for keeping such regulations as they could, nor should any loss be forced on the mother because it turned out badly.]

This text is a commentary by Ulpianus on the book *Lex Iulia et Papia*. According to Impallomeni, the monster lacked legal personality and the only recognized legal effects concern the rights of the parents, which follow precisely from the *Lex Iulia et Papia Poppaea*¹⁵ and the *senatus consultum Tertulianum*.¹⁶ Against Ulpianus's criterion that the birth of a child with a non-human groan or face (which he calls portent or monster) must not harm its mother's rights, Paul puts forward the opposite criterion, because *monstra* or *prodigia* can hardly be considered children.

Paul. *Sent.* 4.9.3: *Mulier si monstruosum aliquid aut prodigiosum enixa sit, nihil proficit: non sunt enim liberi, qui contra formam humani generis converso more procreantur.*

In this source, the general principle is enshrined that born monsters or prodigies cannot be recognized as children. This general rule is excepted in the following paragraph, which allows the recognition of the rights of the *Lex Iulia et Papia Poppae*.

Paul. *Sent.* 4.9.4: *Partum, qui membrorum humanorum officia duplicavit, quia hoc ratione aliquatenus videtur effectum, matri prodesse placuit.*

If the child grows up with functional limbs, its birth takes advantage of the mother. This assumption is actually confirmed if, for example, the number of

¹⁵ Artículo 745. *Son incapaces de suceder: 1.º Las criaturas abortivas, entendiéndose tales las que no reúnan las circunstancias expresadas en el artículo 30. 2.º Las asociaciones o corporaciones no permitidas por la ley.*

¹⁶ Plato's definition of hermaphrodite is famous in *Symposium*, trans. A. Nehamas and P. Woodruff (Indianapolis, IND: Hackett Publishing Company, Inc., 1989), 25: "There were three kinds of human beings, that's my first point – not two as there are now, male and female. In addition to these, there was a third, a combination of those two; its name survives, though the kind itself has vanished. At that time, you see, the word androgynous really meant something: a form made up of male and female elements."

fingers exceeds the usual.¹⁷ Paul holds a restrictive assumption as several fingers are above normal, thus implying the existence of a human form in any case.

From these fragments I can deduce not only that Ulpian's initial distinction has no legal content, but that Paul used the words *monstrum* and *prodigium* as synonyms, but not the term *ostentum*.

Paul himself repeats this synonym in addition to the same general rule and exception in D. 1.5.14.

(Paulus libro quarto sententiarum): Non sunt liberi, qui contra formam humani generis converso more procreantur: veluti si mulier monstrosus aliquid aut prodigiosus enixa sit. Partus autem, qui membrorum humanorum officia ampliavit, aliquatenus videtur effectus et ideo inter liberos connumerabitur.

Not included in the class of children are those who are abnormally conceived in a form entirely different from the human form, for example when a woman gives birth to some sort of a monster or a prodigy. But all offspring that have more than the natural number of limbs can in some sense be said to be fully formed and are, therefore, counted among the children.¹⁸

This criterion of the human form appears in the law of XII Tables IV.1¹⁹: (Cic., *De leg.*, 3.9.19): [...] *cito necatus tanquam ex XII tabulis insignis ad deformitatem*,²⁰ even if the word “monster” does not appear. These offspring were destined for an immediate death because they alarmed the entire society.²¹

The same terminology of monsters, as well as the principle that they have no legal personality, is enshrined in the legal tradition, even if it can be taken into account for the privileges or exemptions granted to parents, taking into account the number of children, as Paul said. As Domat wrote in the late seventeenth century:

Monsters that do not have human form are not considered to be persons, nor are they counted as the children of those who give birth to them. But those that have the essentials of human form and just have something extra or something missing count like other children. Although monsters that do not have human form are not considered to be persons nor to be children, they count as such

¹⁷ Lorenzo Franchini, “Lo status dell’ermafrodita ed il problema della determinazione del sesso prevalente.” *Teoria e storia del diritto privato. Rivista Internazionale on line*, no. 9 (2016): 6–22, provides a brief history of hermaphroditism in the sources.

¹⁸ Danilo Dalla, ‘Status e rilevanza dell’ostentum,’ in *Sodalitas. Scritti in onore di Antonio Guarino*, ed. Vincenzo Giuffrè (Napoli: Editore Jovene, 1984), vol. 2, 522.

¹⁹ Monaco, “Percezione sociale,” 414.

²⁰ Benveniste, *Vocabulario*, 392; Munguía, *Nuevo diccionario*, 472; Michiel De Vann, *Etymological Dictionary of Latin and the other Italic Languages* (Leiden-Boston: Brill, 2008), s.v. *moneo*, 387; John J. Cohen, *Of Giants. Sex, Monsters, and the Middle Ages* (Minneapolis-London: University of Minnesota Press, 1999), 187.

²¹ Ernout and Meillet, *Dictionnaire Etymologique de la Langue*, 470, 524.

with respect to their parents, and they are counted among their children for the purposes of any privileges or exemptions granted to fathers or mothers according to the number of children.²²

The *ratio essendi* of the recognition of legal personality in Paul and Domat is based on the same principle of not prejudicing the rights of parents arising from the number of children and, therefore, counting among them the so-called monster.

Another area in which Roman law, and later ones, dealt with monsters was the right of succession.

CI 6.29.3 (*Imperator Justinianus*): *Quod certatum est apud veteres, nos decidimus. Cum igitur is qui in ventre portabatur praeteritus fuerat, qui, si ad lucem fuisset redactus, suus heres patri existeret, si non alius eum antecederet et nascendo ruptum testamentum faciebat, si postumus in hunc quidem orbem devolutus est, voce autem non emissa ab hac luce subtractus est, dubitabatur, si is postumus ruptum facere testamentum potest. Veteres animi turbati sunt, quid de paterno elogio statuendum sit. Cumque sabiniani existimabant, si vivus natus est, etsi vocem non emisit, ruptum testamentum, apparet, quod, etsi mutus fuerat, hoc ipsum faciebat, eorum etiam nos laudamus sententiam et sancimus, si vivus perfecte natus est, licet ilico postquam in terram cecidit vel in manibus obstetricis decessit, nihilo minus testamentum corrumpi, hoc tantummodo requirendo, si vivus ad orbem totus processit ad nullum declinans monstrum vel prodigium.*

In this text a very controversial issue is raised by the doctrine, such as the preterition of *nasciturus* in the father's will. In this case, it is disputed whether the child who was born mute would also annul the will. The Sabinian view was that the silent *nasciturus* had to be the father's heir and thus annulled the will. Through this constitution, Emperor Justinian declares to follow the Sabinian position and provides that a child born alive but voiceless invalidates the will even if it dies immediately afterwards. What interests me most is that this fragment concludes by stating that a child born alive cannot be considered either a monster or a prodigy.

Applying the same principle of not prejudicing the rights of third parties, the English legislation of the eighteenth century²³ and Blackstone's commentary are pronounced in this regard:

A MONSTER, which has not the shape of mankind, but in any part evidently bears the resemblance of the brute creation, has no inheritable blood, and

²² Lewandowska, "Prodigium, portentum," 43–47.

²³ Raymond Bloch, *Prodigi e divinazione nel mondo antico* (Roma: Newton Compton, 1977), 77, takes the same position with some nuances that are not very interesting for this paper.

cannot be heir to any land, albeit it be brought forth in marriage: but, although it has deformity in any part of its body, yet if it has human shape, it may be heir. This is a very ancient rule in the law of England; and its reason is too obvious, and too shocking, to bear a minute discussion. The Roman law agrees with our own in excluding such births from successions: yet accounts them, however, children in some respects, where the parents, or at least the father, could reap any advantage thereby; (as the *jus trium liberorum* [the right of three children], and the like) esteeming them the misfortune, rather than the fault, of that parent. But our law will not admit a birth of this kind to be such an issue, as shall entitle the husband to be tenant by the curtesy; because it is not capable of inheriting. And therefore, if there appears no other heir than such a prodigious, birth, the land shall escheat to the lord.²⁴

In fact, the Spanish Civil Code refers to this legal tradition, according to which birth must have a “*figura humana*” (human form) to be considered a person, adding that it must live independently for at least twenty-four hours. Both requirements are intended to prevent the succession from being changed if the child is unable to survive. Article 30 of the Spanish Civil Code (approved by the Real Decreto of July 24, 1889) was very clear in its wording:

Para los efectos civiles, sólo se reputará nacido el feto que tuviere figura humana y viviere veinticuatro horas enteramente desprendido del seno materno.
[At legal effects, only a fetus with a human shape shall be deemed to have been born and to live for twenty-four hours completely detached from the mother’s womb. (Translation mine.)]

Although, according to Díez-Picazo and Gullón, the requirement to have a human shape refers to being viable and able to survive,²⁵ Gómez Arboleya reflects on the notion of person and refers to the thought of San Juan Damasceno about hypostasis, which has two meanings: 1. what exists purely and simply; 2. the individual and the person distinct or separated from others.²⁶ Therefore, having a “human shape” refers to the appearance, whereas the requirement of living independently is a requirement of one’s own person, of one’s own existence as such and, therefore, the possibility of surviving autonomously.

The article 30 of the Spanish Civil Code was amended in 2011,²⁷ recognizing the personality at the time of birth when the complete detachment of the

²⁴ Giambattista Impallomeni, “In tema di vitalità e forma umana come requisiti essenziali alla personalità,” *Iura*, no. 22 (1971): 115–118.

²⁵ *Basilicorum*. 46.1.11. *Paulus. Non sunt liberi, qui contra naturam nascuntur monstrosi. Quibus autem membra abundant, liberi sunt.*

²⁶ Dalla, “Status e rilevanza dell’ostentum,” 523.

²⁷ On this source, see Bernardo Albanese, “Appunti su XII-TAB-4.1 (Uccisioni dei neonati malformati),” in *Scritti Giuridici*, IV, ed. Giuseppe Falcone (Torino: G. Giappichelli Editore, 2006), 3 et seq.

maternal womb occurs, that is, once it is no longer inside the uterus and after the umbilical cord has been cut. Despite the reform, article 745 of the Civil Code still considers incapable of succeeding the abortive children who do not meet the requirements of article 30.²⁸

It is true that the Spanish Civil Code does not use the word “monster,” but the expression “abortive children” condenses the same idea of a born *contra naturam* in the old wording of article 30 of the Civil Code, which was valid until very recently.

However, monstrosity was not an excluding personality requirement in Roman law and thus not a technical term, although it has this meaning in its legal tradition. The following text contains a vulgar use of the term monster, blurring its technical meaning with its original religious sense.

I. 1.11.4: *Minorem natu non posse maiorem adoptare placet: adoptio enim naturam imitatur et pro monstro est ut maior sit filius quam pater. debet itaque is qui sibi per adrogationem vel adoptionem filium facit, plena pubertate, id est decem et octo annis praecedere.*

This passage indicates that it is appropriate that a minor cannot adopt an elder since adoption imitates nature and it is a monstrosity for the son to be older than the father. Therefore, the one who has a child by adoption or assignment must take advantage of it in the middle of puberty, that is, at the age of eighteen.

Thus, it is obvious that the word *monstra* was used vulgarly, not technically or religiously in Roman Law.

Intersexuality

In addition to not prejudicing the rights of the *Lex Iulia et Papia* acquired by the parents, in Roman law there is a specific treatment of intersexuality, which the Romans called “hermaphroditism”²⁹ which also belonged to the category of

²⁸ *Textos de Derecho Romano*, ed. Rafael Domingo (Navarra: Aranzadi, 2002), 24, in addition to the text, includes its translation into Spanish: “[...] matado nada más nacer el niño espantosamente monstruoso, según disponen las XII Tablas.”

²⁹ Fulvio Maroi, “L’interpretazione dei monstra nella legislazione decemvirale secondo G. B. Vico.” *Rivista internazionale di filosofia del diritto*, no. 5 (1925): 457–458.

monsters until the imperial age. The legal and social treatment of hermaphrodites depended on the historical epoch.³⁰

Although hermaphrodites could be sacrificed in monarchy to maintain social peace,³¹ it was not until the Roman Republic that hermaphrodites were not only prodigies whose drowning was needed to cleanse society itself, but they were also the most terrible of prodigies.³² The water in which they drowned had a cathartic value and a purifying character. The haruspices were responsible for the rite of *procuratio prodigiorum* to expiate the city from danger.³³

The situation of the hermaphrodites improved with the Principate because they were no longer sacrificed, although as adults they were less appreciated and ridiculed.³⁴ Their legal status changed significantly during the imperial period³⁵. Ulpianus and Paul once again dealt with the legal status of the hermaphrodites, which was based on the prevailing sexual characteristics: they were no longer considered monstrosities if they had a human figure, so their sexual constitution lost its social relevance.³⁶ As can be seen from the source D. 1.5.10.:

(Ulpianus libro primo ad Sabinum): Quaeritur: hermaphroditum cui comparamus? Et magis puto eius sexus aestimandum, qui in eo praevalet.

[The question is: with whom do we compare the hermaphrodite? It must be estimated as of the sex that prevails in it.]³⁷

Despite this rule which might seem so clear, both jurists (Ulpianus and Paul) refer again to the manifest sex in the hermaphrodites either to recognize them the ability to be witnesses in a will, or to institute themselves as heirs.

³⁰ Jean Domat, *Les lois civiles dans leur ordre naturelle*, 11–13, quoted by Eric H. Reiter, “Rethinking Civil-Law Taxonomy: Persons, Things, and the Problem of Domat’s Monster,” *Journal of Civil Law Studies*, vol.1, no. 1 (2008): 192–193.

³¹ William Blackstone, *Commentaries on the Laws of England* (1765–1769), book 2, chapter 15, <https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-215/>.

³² O. M. Péter, “Olim in prodigiis nunc in deliciis,” 208.

³³ Eva Cantarella, “L’hermaphrodite et la bisexualité à l’épreuve du droit dans l’antiquité,” *Diogène*, vol. 4, no. 208 (2004): 6.

³⁴ Aldea Celada, “Religión, política y sociedad,” 280–286. There he emphasizes that public prodigies can be traced back to Augustus, that is, up to the Principate, and that the College of the Haruspices is responsible for uncovering cases of hermaphroditism.

³⁵ Annie Allély, “Les enfants malformés et handicapés à Rome sous le Principat,” *Revue des études anciennes*, vol. 106, no.1 (2004): 86–87.

³⁶ Franchini, “Lo status dell’ermafrodita,” 19–23; Péter, “Olim in prodigiis nunc in deliciis,” 207; Giuliano Crifò, “‘Prodigium’ e diritto: il caso dell’ermafrodita,” *INDEX-International Survey of Roman Law*, vol. 271 (1999): 115; Sandrine Vallar, “Les hermaphrodites: l’approche de la Rome antique,” *Revue Internationale des droits de l’Antiquité* no. 60 (2013): 201–217.

³⁷ Santiago Castán Pérez-Gómez, *Discapacidad y Derecho Romano* (Madrid: Editorial Reus, 2019), 104.

D. 22.5.15.1 (*Paulus libro tertio sententiarum*): *Hermaphroditus an ad testamentum adhiberi possit, qualitas sexus incalescentis ostendit.*

The quality, “the way of being,” of sex shows (*ostendit*) if the hermaphrodite can act as a witness in a will, an answer that, according to Monaco, agrees with common sense and is very practical.³⁸

If the male organs predominate in the hermaphrodite, he can appoint a posthumous heir. Although it can be taken as an identical criterion, Franchini shows that Ulpiano, unlike Paulo, does not require masculine sexuality but masculine appearance in order to institute his posthumous heir.³⁹

The lack of concreteness made it impossible to reset intersex people to be male or female from birth and, of course, prevented procreation. I am not surprised by this rigid binarism, nor that the case of hermaphroditism was more frightening than congenital malformations, whose occurrence, while regrettable, does not conflict with the legal or social order. On the contrary, the human form of intersex people did not allow their sacrifice to be considered legitimate, forcing Roman law itself to respond to the legal position of intersex beyond the victim.

Conclusions

I must maintain that the term *monstra* in Roman law lacked a technical meaning and was interchangeable with the term prodigy. As for its etymology, both terms had in their beginnings the prefix *pro-*, which denotes anticipation, although the term *promonstra* lost predicament in favor of *monstra*, precisely because of the loss of religious reference.

Thus, *monstra* became a phenomenon that materialized a warning from the gods (*prodigia*) and showed or prescribed the path that people should take. This path involved the ritual sacrifice of the monster as a means of restoring the *pax deorum*.

On the contrary, the legal meaning of *monstra* has been concretized in that of a being or behavior *contra naturam*, contrary to the laws of nature and consequently also to the law: it can be understood, however, that this is contrary to any natural phenomenon that does not please the gods. In any case, it is a vulgarization of a term that had a more precise religious and legal sense.

³⁸ In this way Franchini, “Lo status dell’ermafrodita,” 30–32. This position finds no doctrinal support Vallar, “Les hermaphrodites,” 216; Monaco, “Percezione sociale,” 414; Crifò, “‘Prodigium’ e diritto,” 116.

³⁹ Bloch, *Prodigi e divinazione*, 102.

Consequently, “monster” refers to a disruptive event both of its own nature and of the existing legal order that has been viewed as connected with the divine⁴⁰ and natural order of human relationships. Only from this perspective can I explain the different meanings of the term “monster” and its use in contexts far removed from the religious sphere where it was born.

This broad and generic meaning, as it is a phenomenon against *naturam*, made the word *monstra* have an unequivocal success over time and in different languages: even if the reality of has changed radically since antiquity, the prescriptions of normality continue and, with them, also the phenomena that question it.

Bibliography

- Albanese, Bernardo. “Appunti su XII-TAB-4.1 (Uccisioni dei neonati malformati).” In *Scritti Giuridici*, IV, edited by Giuseppe Falcone, 663–671. Torino: G. Giappichelli Editore, 2006.
- Aldea Celada, Manuel, Jose. “Religión, política y sociedad: los prodigia en la Roma republicana.” *El Futuro del Pasado*, no.1 (2010): 279–293.
- Allély, Annie. “Les enfants malformés et handicapés à Rome sous le Principat.” *Revue des études anciennes*, vol. 106, no.1 (2004): 73–102.
- Astolfi, Riccardo. *Lex Iulia et Papia*. Padova: Cedam, 1970.
- Benveniste, Emile. *Vocabulario de las instituciones indoeuropeas*. Madrid: Taurus, 1983.
- Blackstone, William. *Commentaries on the Laws of England* (1765–1769). <https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-215/>.

⁴⁰ I must make a small mention of monstrosity in medieval times. In the Middle Ages, monsters marked and limited humanity. Since not all disabled births were destined for an early death and not sentenced to death, their coming was interpreted by a religious court. At the same time that they were performing this religious and symbolic function, the monsters needed to eat and sleep, so they simultaneously performed these two functions, the daily and the symbolic. In general, from a moral point of view, monsters were seen as a warning and punishment for sin. In any case, beyond its theological importance, it stands out among those who have lived little time. Lisa Verner, “Medieval Monsters, in Theory and Practice,” *Journal of History of Medicine*, vol. 26, no. 1 (2014): 58, said that “for the Middle Ages, I believe, we can substitute ‘monstrosity’ for ‘disability.’” Cf. John Block Friedman, *The Monstrous Races in Medieval Art and Thought* (Cambridge, Massachusetts: Harvard University Press, 1981), 28–37; Derek Newman-Stille, “Morality and Monstrous Disability in Topographia Hibernica,” in *The Treatment of Disabled Persons in Medieval Europe*, ed. Wendy Jo Turner and Tory Vandeventer Pearman (New York: Edwin Mellen Press, 2010), 231–57; John J. Coughlin, *Law, Person, and Personality. Philosophical, Theological, and Comparative Perspectives on Canon Law* (New York: Oxford University Press, 2011), 13–45.

- Bloch, Raymond. *Prodigi e divinazione nel mondo antico*. Roma: Newton Compton, 1977.
- Cantarella, Eva. "L'hermaphrodite et la bisexualité à l'épreuve du droit dans l'antiquité." *Diogenes*, vol. 4, no. 208 (2004): 3–15.
- Castán Pérez-Gómez, Santiago. *Discapacidad y Derecho Romano*. Madrid: Editorial Reus, 2019.
- Cohen, Jeffrey Jerome. *Of Giants. Sex, Monsters, and the Middle Ages*. Minneapolis–London: University Of Minnesota Press, 1999.
- Coughlin, J. John. *Law, Person, and Personality. Philosophical, Theological, and Comparative Perspectives on Canon Law*. New York: Oxford University Press, 2011.
- Dalla, Danilo. "Status e rilevanza dell'ostentum." In *Sodalitas. Scritti in onore di Antonio Guarino*, edited by Vincenzo Giuffrè, vol. 2, 519–532. Napoli: Editore Jovene, 1984.
- Vann, Michiel de. *Etymological Dictionary of Latin and the Other Italic Languages*. Leiden–Boston: Brill, 2008.
- Díez-Picazo, Luis, and Antonio Gullón. *Sistema de Derecho Civil*. Vol. I. Madrid: Tecnos, 2005.
- Domingo, Rafael, ed. *Textos de Derecho Romano*. Navarra: Aranzadi, 2002.
- Ernout, Alfred, and Antoine Meillet. *Dictionnaire Etymologique de la Langue Latine*, Paris: Klincksieck, 1959.
- Festus. *De verborum significatu quae supersunt com Pauli epitome*, edited by Wallece M. Lindsay. Leipzig: Teubner, 1913.
- Franchini, Lorenzo. "Lo status dell'ermafrodita ed il problema della determinazione del sesso prevalente." *Teoria e storia del diritto privato. Rivista Internazionale on line*, no. 9 (2016): 1–35.
- Friedman, John Block. *The Monstrous Races in Medieval Art and Thought*. Cambridge, MA: Harvard University Press, 1981.
- Gómez Arboleya, Enrique. "Sobre la noción de persona." *Revista de estudios políticos*, no. 49 (1950): 104–116.
- Impallomeni, Giambattista. "In tema di vitalità e forma umana come requisiti essenziali alla personalità." *Iura*, no. 22 (1971): 99–120.
- Crifò, Giuliano. "'Prodigium' e diritto: il caso dell'ermafrodita." *INDEX-International Survey of Roman Law*, vol. 271 (1999): 115–116.
- Lewandowska, Dominika. "Prodigium, portentum, ostentum, monstrum: In Search of Meaning Between Practice and Definition." *U schyłku starożytności – Studia źródłoznawcze*, no. 19 (2020): 3–60.
- Maroi, Fulvio. "L'interpretazione dei monstra nella legislazione decemvirale secondo G. B. Vico." *Rivista internazionale di filosofia del diritto*, no. 5 (1925): 1–15.
- MacBain, Bruce. *Prodigy and Expiation: A Study in Religion and Politics in Republican Rome*, Bruxelles: Latomus 1982.
- Monaco, Lucia. "Percezione sociale e riflessi giuridici della deformità." In *I diritti degli altri in Grecia e a Roma*, edited by Alberto Maffi and Lorenzo Gagliardi, 413–414. Sankt Augustin: Akademia Verlag, 2011.
- Newman-Stille, Derek. "Morality and Monstrous Disability in Topographia Hibernica." In *The Treatment of Disabled Persons in Medieval Europe*, edited by Wendy Jo

- Turner and Tory Vandeventer Pearman, 231–257. New York: Edwin Mellen Press, 2010.
- Péter, Orsolya Marta. “Olim in prodigiis nunc in deliciis.’ Lo status giuridico dei ‘monstra’ nel diritto romano.” In *Iura antiqua, iura moderna. Festschrift für Ferenc Benedek*. Pécs: Dialóg Campus Kiadó, 2001.
- Rasmussen, Susanne William. *Public Portents in Republican Rome*. Rome: L’Erma di Bretschneider, 2003.
- Reiter, Eric H. “Rethinking Civil-Law Taxonomy: Persons, Things, and the Problem of Domat’s Monster.” *Journal of Civil Law Studies*, vol. 1, no. 1 (2008): 189–213.
- Segura Munguía, Santiago. *Nuevo diccionario etimológico latín-español y de las voces derivadas*. Bilbao: Universidad de Deusto, 2013.
- Vallar, Sandrine. “Les hermaphrodites: l’approche de la Rome antique.” *Revue Internationale des droits de l’Antiquité*, no. 60 (2013): 201–217.
- Verner, Lisa. “Medieval Monsters, in Theory and Practice.” *Journal of History of Medicine*, vol. 26, no. 1 (2014): 43–68.

Antonio Villanueva Martínez

Die Bedeutung von *monstra* in der römischen Rechtstradition

Schlüsselwörter: *monstra*, *pax deorum*, preson, Rechtspersönlichkeit, Römisches Recht, Spanisches Zivilgesetzbuch

Zusammenfassung: Der Ausgangspunkt für das Verständnis des Begriffs *monstra* im römischen Recht ist eine etymologische Analyse von Begriffen wie *prodigia*, *promonstra*. Die Entwicklung des letztgenannten Begriffs führte zum Verschwinden der Vorsilbe *prod-*, die die Erwartung bezeichnete. *Monstra* wurden so zur Verwirklichung eines Wunders, d. h. eines von den Göttern vorhergesagten Ereignisses, das auch eine Warnung und die Notwendigkeit darstellte, eine Monstrosität rituell zu opfern, um die *pax deorum* wiederherzustellen. Im römischen Recht hingegen bezeichnete der Begriff *monstra* jedes Wesen oder Verhalten, das gegen das Naturrecht und damit gegen das Zivilrecht verstieß. Dies erweiterte die Wahrnehmung des Begriffs, der ursprünglich sowohl eine präzisere religiöse als auch eine juristische Bedeutung hatte.

Antonio Villanueva Martínez

The Meaning of *Monstra* in the Roman Law Tradition

Keywords: *monstra*, *pax deorum*, person, legal personality, Roman law, Spanish Civil Code

Summary: The starting point for understanding the concept of *monstra* in Roman law is an etymological analysis of concepts such as *prodigia*, *promonstra*. The evolution of the latter term led to the disappearance of the prefix *prod-*, meaning anticipation. *Monstra* thus became the realisation of a miracle, that is, an event foretold by the gods, which also represented a warning and the necessity to ritually sacrifice a monstrosity in order to restore the *pax deorum*. In Roman law, on the other hand, the term *monstra* meant any being or behaviour that was contrary to the

law of nature and, consequently, to civil law. This broadened the perception of the term, which originally had a more precise religious as well as legal meaning.

Antonio Villanueva Martínez

Znaczenie pojęcia *monstra* w rzymskiej tradycji prawnej

Słowa kluczowe: *monstra*, *pax deorum*, osoba, osobowość prawna, prawo rzymskie, hiszpański kodeks cywilny

Streszczenie: Punktem wyjścia dla zrozumienia pojęcia *monstra* w prawie rzymskim jest analiza etymologiczna takich pojęć jak *prodigia*, *promonstra*. Ewolucja drugiego z tych pojęć doprowadziła do zaniku przedrostka *prod-*, oznaczającego oczekiwanie. *Monstra* stały się zatem urzeczywistnieniem cudu, czyli wydarzenia przepowiedzianego przez bogów, który stanowił również ostrzeżenie i konieczność rytualnego poświęcenie potworka w celu przywrócenia *pax deorum*. Z kolei w prawie rzymskim pojęcie *monstra* oznaczało każdą istotę lub zachowanie, które były sprzeczne z prawem natury, a w konsekwencji także z prawem cywilnym. Rozszerzono tym samym postrzeganie terminu, który pierwotnie miał bardziej precyzyjne znaczenie religijne oraz prawne.