Homo Sacer: Tabooed Exile or Archaic Human Sacrifice?

Homo sacer was a very old Roman legal designation, the earliest evidence of which occurs in the XII Tables: *patronus si clienti fraudem fecerit, sacer esto* (8.21). The most concrete ancient definition of *homo sacer* comes from a 2nd Century CE lexicographical work by Sextus Pompeius Festus, *De Verborum Significatu*, which seems to give us two characteristics of the *homo sacer*: *At homo sacer is est, quem populus iudicauit ob maleficium, neque fas est eum immolari, sed, qui occidit, parricidi non damnatur* (ed. Lindsay, p. 424). He cannot be sacrificed, and his killer is not a murderer. This was puzzling even to the ancients, as neither of these qualities are easily reconcilable with the name *sacer*, which would seem to designate the *homo sacer* as a person given over to or protected by the gods. This issue was discussed among classicists in the 19th and early 20th century, and a consensus emerged from the application of social scientific methods and Freudian thought on the taboo: the word *sacer*, here, is an archaic use which can also mean "accursed," and the *homo sacer* was an exile who was removed from the protection of the law (Fowler 1911). Since then, little work has been done on *homo sacer* in the disciplines of classics or ancient history.

This paper aims to show that the above consensus has not been sufficiently argued for and has unduly overshadowed another account of *homo sacer*. The accursed exile explanation has a strong foundation in social scientific theories but fails to take into consideration the historical context in which this legal sentence appears to have emerged. Another explanation found in the scholarship is firmly rooted in said context: that the term *homo sacer* and the corresponding condemnation, *sacer esto*, are holdovers from a time in which the death penalty took the form of a sacrifice to the gods (Bennett 1930). Festus' definition and the tribunician law

he quotes are explained by situating the issue in the context of the struggle of the orders. The law allows for the man condemned by the plebs to be killed, if need be, outside of the patrician-controlled sphere of religious ritual. The relationship of *homo sacer* to the struggle of the orders is suggested also by the fact that Festus' description of the figure occurs not as its own entry, but as a digression in the middle of his entry on *sacer mons*, that hill to which the plebs seceded to formulate their laws.

The purpose of this paper is to bolster this latter explanation by examining the reality of human sacrifice in archaic Rome, interrogating the precise meaning of Festus' Latin, and exploring further the connection to the struggle of the orders and the historical development of Roman law.

Works Cited

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