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## THE POWERS AND SIGNIFICANCE OF THE PREFECT OF THE 'VIGILES' ('PRAEFECTUS VIGILUM') IN ANCIENT ROME\*

The overwhelming majority of the buildings in ancient Rome were wooden. The city's chaotic architectural policy and its narrow streets helped to spread the fires which were constantly breaking out. Thus organising a fire prevention service was a natural measure to take<sup>1</sup>.

Paulus gave an account of the historical evolution of the city's fire prevention units:

D. 1,15,1 (*Paulus libro singulari de officio praefecti vigilum*):  
*Apud vetustiores incendiis arcendis triumviri praeerant, qui ab eo, quod excubias agebant nocturni dicti sunt: interveniebant nonnumquam et aediles et tribuni plebis. Erant autem familia publica circa portam et muros disposita, unde si opus esset evocabatur: fuerant et privatae familiae, quae incendia vel mercede vel gratia extinguerent, deinde divus Augustus maluit per se huic rei consuli.*

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<sup>1</sup> See C. KUNDERWICZ, *Studia z rzymskiego prawa administracyjnego*, Łódź 1991, p. 92 ff. Cf. O.F. ROBINSON, *Fire prevention at Rome*, «RIDA» 24/1977, p. 381 ff.

The beginnings of the fire service were associated with the office of the triumvirs (*triumviri*)<sup>2</sup>, who were elected by the tribal assembly (*comitia tributa*). The triumvirate was independent of the *cursus honorum* (course of offices)<sup>3</sup>. Paulus wrote that the triumvirs performed their duties at night, hence they were called the *triumviri nocturni*. However, the office was not distinct from that of the *tresviri capitales*<sup>4</sup>,

<sup>2</sup> For a detailed account of the origins of the fire service see R. SABLAYROLLES, 'Libertinus miles'. *Les cohortes de vigiles*, Roma 1996, p. 5-26.

<sup>3</sup> Cf. A. DEBIŃSKI, J. MISZTAŁ-KONECKA, M. WÓJCIK, *Prawo rzymskie publiczne*, Warszawa 2010, p. 26, 29; J. ZABŁOCKI, A. TARWACKA, *Rzymskie prawo publiczne*, Warszawa 2011, p. 85. Cf. B. SITEK, *Criminal Liability 'incendiarii' in Ancient Rome*, «Diritto e Storia» 6/2007, <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012; IDEM, 'Apud vetustiores incendiis arcendis triumviri praeferat' – organy orzekające w sprawach incendium podpaleń w starożytnym Rzymie, «Journal of Modern Science. Zeszyty Naukowo-Dydaktyczne», Administracja i Bezpieczeństwo, 1/2008, p. 55-56.

<sup>4</sup> The earliest information on this office comes in Livy, Liv., *per. 11: Triumviri capitales tunc primum creati sunt*. Livy writes on the powers of this office in a passage on the Bacchanalia (Liv., 39, 14, 9-10). The tasks entrusted to the triumvirs, such as the deployment of the guard in the city, preventing nocturnal meetings and fire risks were no doubt part of the triumvirs' general duty to attend to public order and safety. – M. KURYŁOWICZ, 'Tresviri capitales' oraz edylowie rzymscy jako magistratury policyjne, «Annales UMCS», Sectio G, 40/1993, p. 73. It is generally accepted in Romanistic scholarship that this office was founded in the early 3rd c. BC (after 290 BC). See. P. WILEMS, *Le droit public romain*, Louvain 1874, p. 284; R. CAGNAT, s.v. *vigiles*, «DS» 5, p. 867; P. FREZZA, *Corso di storia del diritto romano*<sup>2</sup>, Roma 1968, p. 148; W. KUNDEL, R. WITTMANN, *Staatsordnung und Staatspraxis der römischen Republik, II: Die Magistratur*, München 1995, p. 533; W. NIPPEL, *Public Order in Ancient Rome*, Cambridge 1995, p. 22; R. SABLAYROLLES, *op. cit.*, p. 24-26; C. CASCIONE, 'Tresviri capitales'. *Storia di una magistratura minore*, Napoli 1999, p. 1 ff.; B. SITEK, 'Apud vetustiores' ..., p. 55; K. AMIELAŃCZYK, 'Lex Cornelia de sicariis et veneficis'. *Ustawa Korneliusza Sulli przeciwko nożownikom i trucicielom 81 r. p.n.e.*, Lublin 2011, p. 104-105. Cf. the recent work of C. J. FUHRMANN, *Policing the Roman Empire: Soldiers, Administration, and Public Order*, Oxford 2011, p. 93 ff.; also A. GUARINO, *Storia del diritto romano*<sup>8</sup>, Napoli 1990, p. 226; A.M. RAMIERI, *I Vigil del Fuoco nella Roma Antica*, Roma 1990, p. 7; P. GRABOWSKI, *Strażacy z Wiecznego Miasta*, «Przeegląd Pożarniczy» 12/2005, p. 29; IDEM, *Prawne regulacje ochrony przeciwpożarowej i ustroju straży pożarnych w starożytnym Rzymie*, «Myśl Ekonomiczna i Prawna» 4/2007, p. 71.

three men with powers in matters liable to the death penalty; the adjective *nocturnus* was associated with their fire-fighting powers<sup>5</sup>.

Paulus indicated that fire prevention was not only the duty of the triumvirs. The aediles (*aediles*) and tribunes (*tribuni plebis*) were likewise responsible for fire prevention. The *tresviri nocturni*, whom Paulus mentioned in the first place, did not hold a monopoly for fire-fighting. Their task was to act as a supplementary force to the powers of the *aediles*<sup>6</sup>, and most probably of the tribunes as well.

The actual job of fire-fighting was performed by groups of slaves, owned by the city (*familia publica*) and privately owned (*familia privata*), stationed around the gates and walls (*circa portam et muros*). The private slaves could be paid for putting out fires, or they rendered their services free of charge (*privatae familiae, quae incendia vel mercede vel gratia extinguerent*). However, the fire prevention services organised in this way appear to have been unsatisfactory<sup>7</sup>, since Paulus noted that Augustus decided to deal with the matter personally.

In ancient Rome fires were an everyday occurrence<sup>8</sup>. But a distinction was made between those which were accidental and those which were sparked deliberately – a distinction which was also reflected in the nature of the perpetrator's legal liability<sup>9</sup>. The punishment for start-

<sup>5</sup> Cf. G. FORSYTHE, *A Critical History of Early Rome: from Prehistory to the First Punic War*, Berkeley 2005, p. 361. Cf. O.F. ROBINSON, *Ancient Rome. City Planning and Administration*, London and New York 1992, p. 90; B. SITEK, 'Apud vetustiores'..., p. 55.

<sup>6</sup> B. SITEK, 'Apud vetustiores'..., p. 56; IDEM, *Criminal Liability...*, <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012.

<sup>7</sup> P.K. BAILLIE REYNOLDS, *The 'Vigiles' of Imperial Rome*, London 1926, p. 19.

<sup>8</sup> Cf. S. CAPPONI, B. MENGGOZZI, *I 'vigiles' dei Cesari. L'organizzazione antincendio nell'antica Roma*, Roma 1993, p. 7 ff.; A.M. RAMIERI, *op. cit.*, p. 29. Cf. P. GRABOWSKI, *Strażacy...*, p. 28; IDEM, *Prawne regulacje...*, p. 67-68.

<sup>9</sup> For more on this subject see B. SITEK, 'Incendium fecerint'... Przyczynek do studiów nad przestępstwem podpalenia w prawie rzymskim, Part I [in] 'Salus rei publicae suprema lex'. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu, (eds.) A. DĘBIŃSKI, H. KOWALSKI, M. KURYŁOWICZ, Lublin 2007, p. 273-288; IDEM, 'Qui aedes acervumve frumenti iuxta domum positum combusserit'. Podstawy prawne

ing a fire deliberately was more severe, since the arsonist (*incendarius*) acted intentionally on a mean incentive, for instance to get rid of evidence after a burglary. Unintentional fires were usually the outcome of carelessness or negligence<sup>10</sup>, and the liability for them came under the provisions of private law. Nonetheless both types put security and public order at risk.

Augustus' measures to organise a unified fire prevention service are to be associated with Ulpian's extremely laconic formulation:

D. 1,15,2 (*Ulpianus libro singulari de officio praefecti vigilum*): *Pluribus uno die incendiis exortis*:

The Justinianic compilers incorporated this excerpt from Ulpian in the Digests probably to show why Augustus decided to settle the matter of fire prevention. Otherwise it would be hard to explain why the observation that many fires broke out in Rome was important enough to be recorded in the Digests. In Augustus' reign there were several fires, the largest of which erupted in 6 AD<sup>11</sup>, and Ulpian's note probably refers to it<sup>12</sup>.

In the following passage, which is treated as a source, Paulus described the organisation of fire prevention service appointed by Augustus:

D. 1,15,3 pr. (*Paulus libro singulari de officio praefecti vigilum*): *Nam salutem rei publicae tueri nulli magis*

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*ścigania oraz znamiona przestępstwa podpalenia w starożytnym Rzymie*, «Studia Prawnoustrojowe» 8/2008, p. 47-51; IDEM, *Criminal Liability...*, <http://www.diritto-estoria.it/6/Rassegne/Sitek-Incendiarri-ancient-Roman-Law.htm> accessed 25 May 2012; IDEM, 'Qui aedes ... combusserit, vincetus verberatus igni necari (XII Tabulas) iubetur'. Sankcje za podpalenie w starożytnym Rzymie. Przyczynek do studiów nad przestępstwem podpalenia w prawie rzymskim, «Journal of Modern Science. Zeszyty Naukowo-Dydaktyczne», Administracja, Pedagogika, Bezpieczeństwo, Zarządzanie 1/6/2009, p. 15-33; K. AMIELAŃCZYK, *op. cit.*, p. 109-114.

<sup>10</sup> E.g. D. 48,19,28,12.

<sup>11</sup> Cf. CASS. DIO, 55,26,4; C. KUNDEREWICZ, *op. cit.*, p. 97; J. RAMÓN ROBLES, *Magistrads, Jueces y Arbitros en Roma. Competencia civil y evolución*, Madrid 2009, p. 98. Cf. O.F. ROBINSON, *Ancient Rome...*, p. 108.

<sup>12</sup> Cf. P.K. GRABOWSKI, *Prawne regulacje ...*, p. 67.

*credidit convenire nec alium sufficere ei rei, quam Caesarem. Itaque septem cohortes oportunis locis constituit, ut binas regiones urbis unaquaeque cohors tueatur, praepositis eis tribunis et super omnes spectabili viro qui praefectus vigilum appellatur.*

Paulus observed that Augustus established a regular fire service out of concern for public security (*salus rei publicae*)<sup>13</sup>, to which he was the most committed. This argument should be interpreted in the context of the numerous reforms accomplished by Augustus, showing his concern not only for matters involving private and matrimonial law (e.g. *lex Fufia Canina*, *lex Aelia Sentia*, not forgetting Augustus' laws relating to marriage), but also for the city's fire safety.

In 6 AD seven cohorts, each of 1,000 freedmen, were appointed each to guard two districts of the city<sup>14</sup>. They were under the command of the tribune, and the prefect of the *vigiles* (*praefectus vigilum*; commander of the municipal guard), who came from the equestrian estate and was responsible for the organisation of the project<sup>15</sup>. Originally Augustus'

<sup>13</sup> Before he established the prefecture of the *vigiles* Augustus had already embarked on earlier attempts to reorganise the fire service. In 22 BC he had put a fire-fighting unit of 600 slaves under the authority of the curule *aediles*. Cass. Dio, 54,2,4. Cf. P.K. BAILLIE REYNOLDS, *op. cit.*, p. 20; O.F. ROBINSON, *Fire Prevention...*, p. 378-379; EADEM, *Ancient Rome...*, p. 106; R. SABLAYROLLES, *op. cit.*, p. 26 ff.; B. SITEK, '*Apud vetustiores*'..., p. 57.

<sup>14</sup> O.F. ROBINSON (*Ancient Rome...*, p. 106) writes that originally there were 500 freedmen in the cohort. This number was later doubled to bring it up to the size of the other cohorts in the city.

<sup>15</sup> Cf. STRABO 5, 3, 7; SUET., *August.* 25; Cass. Dio 55, 26, 4. Cf. P. WILEMS, *op. cit.*, p. 323; R. CAGNAT, s.v. *vigiles*..., p. 867; P.K. BAILLIE REYNOLDS, *op. cit.*, p. 22; W. ENSSLIN, s.v. *praefectus vigilum*, «RE» 22.2/1954, col. 1340 ff.; G. GROSSO, *Storia del diritto romano*<sup>3</sup>, Torino 1955, p. 366; F. GIUZZI, s.v. *praefectus*, «NNDI» 13/1966, p. 539; A. BURDESE, *Manuale di diritto pubblico romano*, Torino 1966, p. 192; P. FREZZA, *op. cit.*, p. 252; A.M. RAMIERI, *op. cit.*, p. 8; O.F. ROBINSON, *Ancient Rome...*, p. 106; S. CAPPONI, B. MENGOZZI, *op. cit.*, p. 50; R. SABLAYROLLES, *op. cit.*, s. 67-94; W. ECK, s.v. [16] p. *vigilum*, «DNP» 10/2001, col. 246; P. GRABOWSKI, *Strażacy*..., p. 29; IDEM, *Prawne regulacje*..., p. 73; C. VARELA GIL, *El estatut jurídico del empleado público en derecho romano*, Madrid 2007, p. 123; B. SITEK, *Criminal Liability*..., <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012; IDEM, '*Apud vetustiores*'..., p. 57; J. RAMÓN ROBLES, *op. cit.*, p. 98.

reform was intended only as a temporary adjustment to the organisation of the fire service<sup>16</sup>. Presumably the new unit turned out to be successful enough to make Augustus decide to keep it permanently. The *vigiles* were paid from the state treasury<sup>17</sup>; moreover, on the grounds of the *lex Visellia* of 24 AD they could become Roman citizens after serving for six years. Later the required period of service was reduced to three years by a resolution passed in the Senate<sup>18</sup>.

The prefect of the *vigiles* was not treated as a magistrate. He was appointed on grounds of necessity (*extra ordinem utilitatis causa*)<sup>19</sup>. There is no information extant on the first prefect of the *vigiles*, but this is not surprising considering the nature of his service and the scope of his powers. The fact that an individual performed the undoubtedly crucial duty of fire prevention did not qualify him for the entry of his name in the historical registers<sup>20</sup>. Perhaps that is why Paulus did not record the first fire prefect's name in his fairly extensive account of the re-organisation of the fire service.

Paulus drew up a precise account of the scope of the powers the prefect of the *vigiles*:

D. 1,15,3,1 (*Paulus libro singulari de officio praefecti vigilum*): *Cognoscit praefectus vigilum de incendiariis*

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<sup>16</sup> Cf. Cass. Dio 55,8,6-7. P.K. BAILLIE REYNOLDS, *op. cit.*, p. 22; O.F. ROBINSON, *Ancient Rome...*, p. 106.

<sup>17</sup> Cf. Cass. Dio 55,31, 4. Cf. O.F. ROBINSON, *Ancient Rome...*, p. 106.

<sup>18</sup> G. 1, 32b; ULP. 3, 5: *Militia ius Quiritium accipit Latinus, si inter vigiles Romae sex annis militaverit, ex lege Visellia. Postea ex senatus consulto concessum est ei, ut, si triennio inter vigiles militaverit, ius Quiritium consequatur*. Cf. R. CAGNAT, *s.v. vigiles...*, p. 867; P.K. BAILLIE REYNOLDS, *op. cit.*, p. 66; B. KÜBLER, *Geschichte des römischen Rechts*, Aalen 1979 (Neudruck), p. 219; O.F. ROBINSON, *Ancient Rome...*, p. 107; S. CAPPONI, B. MENGOZZI, *op. cit.*, p. 59. Recently the subject of the *lex Visellia* has been addressed by H. MOURITSEN, *The Freedman in the Roman World*, Cambridge 2011, p. 73 ff.

<sup>19</sup> D. 1,2,2,33 (*Pomponius libro singulari enchiridii*): *Nam praefectus annonae et vigilum non sunt magistratus, sed extra ordinem utilitatis causa constituti sunt*. Cf. Cass. Dio 52, 24, 4-6. P.K. BAILLIE REYNOLDS, *op. cit.*, p. 30.

<sup>20</sup> P.K. BAILLIE REYNOLDS, *op. cit.*, p. 30.

*effractoribus furibus raptoribus receptatoribus, nisi si qua tam atrox tamque famosa persona sit, ut praefecto urbi remittatur. Et quia plerumque incendia culpa fiunt inhabitantium, aut fustibus castigat eos qui negligentius ignem habuerunt, aut severa interlocutione comminatus fustium castigationem remittit.*

Paulus observed that the prefect of the *vigiles* was responsible for the cognizance<sup>21</sup> of acts perpetrated by arsonists (*incendiarii*), housebreakers and burglars (*effractores*), thieves (*fures*), robbers (*raptores*), and persons acting as accessories by offering sanctuary to criminals (*receptatores*)<sup>22</sup>. He also noted the exception to this rule. If the apprehended were *personae atroces* (offensive persons) or *personae famosae* (notorious persons) they were to be turned in to the

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<sup>21</sup> The prefect of the *vigiles* also exercised jurisdiction in private law cases, especially those concerning contracts of hire (*locatio-conductio*) for places where hired goods were kept. See D. 19, 2, 56 (*Paulus libro singulari de officio praefecti vigiliae*): *Cum domini horreorum insularumque desiderant diu non apparentibus nec eius temporis pensiones exsolventibus conductoribus aperire et ea quae ibi sunt describere, a publicis personis quorum interest audiendi sunt. Tempus autem in huiusmodi re biennii debet observari.* The Justinianic compilers put Paulus' commentary on the office of the prefect of the *vigiles* in Title 2 of Book 19 on location and conduction contracts of hire. This was due to the fact that the basic issue Paulus addressed in it was the hire of *insulae* and *horrei*, viz. repository sites where the hirer (*conductor*) kept the hired object. He also observed that any disputes arising from such contracts were to be heard by the prefect of the *vigiles* (*publicis personis quorum interest audiendi sunt*). Although the prefect of the *vigiles* is not named directly, the expression *persona publica* undoubtedly refers to him. Not surprisingly, the compilers inserted information on the burglaries and thefts occurring in such *insulae* and *horrei*, and the powers of the prefect of the vigils to deal with such cases, in Title 15 of Book 1 (*de officio praefectum vigilum*). See D. 1, 15, 3, 2.; also R. SABLAYROLLES, *op. cit.*, p. 112-113.

<sup>22</sup> Cf. P. WILEMS, *op. cit.*, p. 323-324; P.K. BAILLIE REYNOLDS, *op. cit.*, 36-42; G. GROSSO, *op. cit.*, p. 405; L. AMIRANTE, *Una storia giuridica di Roma*, Napoli 1991, p. 426; R. SABLAYROLLES, *op. cit.*, p. 105 ff.; W. LITEWSKI, *Rzymski proces karny*, Kraków 2003, p. 52; C. VARELA GIL, *op. cit.*, p. 123; P.K. GRABOWSKI, *Prawne regulacje ...*, p. 74; S. CAPPONI, B. MENGOZZI, *op. cit.*, p. 76; B. SITEK, *'Apud vetustiores'* ..., p. 57; J. RAMÓN ROBLES, *op. cit.*, p. 99; J. ZABŁOCKI, A. TARWACKA, *op. cit.*, p. 164.

prefect of the city (*praefectus urbi*)<sup>23</sup>. These two categories of offenders comprised individuals on record for particularly reprehensible acts. Anyone who was offensive, verbally or physically, or even damaged another person's apparel, could be classed as a *persona atrox*<sup>24</sup>. *Personae famosae* were individuals who had been convicted for an offence for which infamy, a slur on their good reputation (*infamia*), was prescribed alongside a regular penalty. Clearly offenders classified in either of these groups were treated as recidivists, since they had already been convicted for a previous offence, yet subsequently committed another offence<sup>25</sup>. Presumably this notion of recidivism applied to all the types of offences subject to cognizance by the prefect of the *vigiles*, and any offender confirmed as belonging to either of these recidivous groups was automatically sent to the prefect of the city for a more severe penalty<sup>26</sup>.

Thereafter Paulus explained how the prefect of the *vigiles* was to deal with inadvertent perpetrators of fires. They were to be scourged (*fustibus castigare*)<sup>27</sup>; alternatively the flagellation could be waived after a severe reprimand and a warning that next time they would not

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<sup>23</sup> An extensive study on the prefect of the city has been published recently by S. RUCIŃSKI, 'Vigilesque suo pro Caesare curae, dulce opus'. *Prefekt miasta strażnikami bezpieczeństwa cesarza w I wieku po Chr.*, [in:] 'Salus rei publicae suprema lex'. *Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, (eds.) A. DĘBIŃSKI, H. KOWALSKI, M. KURYLOWICZ, Lublin 2007, p. 249-259; IDEM, 'Praefectus Urbi'. *Strażnik porządku publicznego w Rzymie w okresie Cesarstwa*, Poznań 2008; IDEM, 'Praefectus Urbi'. *Le Gardien de l'ordre public à Rome sous le Haut-Empire Romain*, Poznań 2009.

<sup>24</sup> D. 47, 10, 9pr. (*Ulpianus libro 57 ad edictum*): *Sed est quaestionis, quod dicimus re iniuriam atrocem fieri, utrum, si corpori inferatur, atrox sit, an et si non corpori, ut puta vestimentis scissis, comite abducto vel convicio dicto. Et ait Pomponius etiam sine pulsatione posse dici atrocem iniuriam, persona atrocitatem faciente*. Cf. B. SITEK, 'Apud vetustiores'..., p. 57.

<sup>25</sup> Cf. B. SITEK, 'Apud vetustiores'..., p. 58; IDEM, *Criminal Liability...*, <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012.

<sup>26</sup> Ibidem.

<sup>27</sup> On the subject of flagellation, see for example P. KOŁODKO, *Rzymska terminologia stosowana na określenie narzędzi używanych podczas chłosty*, «Zeszyty Prawnicze» 6.1/2006, p. 121-144.



escape a flogging. It is hard to determine the reasons which made the prefect of the *vigiles* administer a flogging, and what restrained him. Perhaps if it was a case of negligence leading to a fire breaking out, he had no option but to have the culprit whipped. But if the potential careless offender had not actually caused a fire yet, perhaps it was enough for the prefect of the *vigiles* to issue a severe reprimand.

However, such a choice was open to the prefect of the *vigiles* only in the case of fires caused unintentionally. But we can hardly assume that all the perpetrators subject to the prefect’s cognizance had caused fires accidentally. The very nature of their actions – arson, robbery, theft etc. – indicates that their incentives were despicable, and the fires they started in the process of carrying out their mischief could not exactly be exonerated as “accidental.” Does that mean that the prefect of the *vigiles* only dealt with cases of fires caused unintentionally? An attempt to answer this question may be provided by the following passage from Ulpian:

- D. 1,15,4 (*Ulpianus libro singulari de officio praefecti Urbi*): *Imperatores Severus et Antoninus Iunio Rufino praefecto vigilum ita rescripserunt: “insularios et eos, qui neglegenter ignes apud se habuerint, potes fustibus vel flagellis caedi iubere: eos autem, qui dolo fecisse incendium convincentur, ad Fabium Cilonem praefectum urbi amicum nostrum remittes: fugitivos conquirere eosque dominis reddere debes.”*

Ulpian referred to an imperial rescript issued by Septimius Severus and Caracalla of the house of the Severi, at the beginning of which the emperors confirmed the power of the prefect of the *vigiles* to administer flagellation as a punishment (*fustibus vel flagellis caedere*)<sup>28</sup> on those

<sup>28</sup> It seems we should not see this passage as carrying a modification of the powers of the prefect of the *vigiles*. See B. SITEK, ‘*Apud vetustiores*’..., p. 59-60; IDEM, *Criminal Liability...*, <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012. In D. 1,15,3,1 Paulus wrote about the possible administration of flogging for the inadvertent raising of a fire. The only difference in the administration of this punishment was the choice of instrument. Paulus

who were careless with fire and on the administrators of *insularii* (houses of rented accommodation). But the subsequent part of the rescript is more important: Ulpian wrote that those who started a fire deliberately (*dolo fecisse*) were to be sent to the prefect of the city (identified as Fabius Cilo). Thus the prefect of the city appears to have been charged with the cognizance of arsonists, while the prefect of the *vigiles* was the appropriate official to deal with the perpetrators of accidental fires. On the other hand the prefect of the city had the power to take cognizance of those arsonists, robbers, burglars etc. who were on record as a *persona atrox* or a *persona famosa*, as evidenced by the passage D. 1, 15, 3, 1 which I have already quoted. All other incendiaries were to be referred to the prefect of the *vigiles*. We cannot rule out the possibility that some of the latter had also acted wilfully. But they were still subject to cognizance by the prefect of the *vigiles*, not the prefect of the city, whose jurisdiction applied to the graver, recidivous offences, committed by perpetrators already on record in the *persona atrox* or *persona famosa* group. All other, less serious cases, viz. unintentionally starting a fire and intentional but minor fire-raising, lay within the jurisdictional power of the prefect of the *vigiles*<sup>29</sup>.

If we accept this explanation, we shall have to answer the question why Junius Rufinus, the prefect of the *vigiles*, petitioned the emperors, who issued a rescript. It seems that the petitioner had some misgivings about the scope of his powers and asked the emperors for elucidation. Their reply was that the appropriate official for the cognizance of arson (willful fire-raising) was the prefect of the city. Remarkably though, there is no direct mention in the rescript of offenders classified as

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only mentioned a stick (*fustis*), which was used to chastise the *humiliores*. However, Ulpian added a whip (*flagellum*), which was the instrument proper for the punishment of slaves. However, we can hardly assume that slaves were not recognised as potential fire-raisers until this rescript was issued, and the enumerated instruments of corporal punishment should be treated as a recommendation addressed to the document's recipient to apply the proper instrument.

<sup>29</sup> Cf. K. AMIELAŃCZYK, *op. cit.*, p. 106, note 17. Some scholars are of the opinion that D. 1,15,4 concerns a differentiation between the duties of the two prefects. See J. RAMÓN ROBLES, *op. cit.*, 100.

*personae atroces* or *personae famosae*. Perhaps this meant that by the early 3<sup>rd</sup> century AD the prefect of the *vigiles* had lost the power to prosecute arsonists. This is another hint suggesting that the hypothesis of the less serious deliberate cases of arson, alongside those where a fire was set unintentionally, had originally been subject to the jurisdiction of the prefect of the *vigiles*.

The two passages quoted above from the sources clearly show that in cases of unintentional fire-raising the prefect of the *vigiles* administered flagellation as a punishment, which lay within his powers<sup>30</sup>. There is not much controversy over the assumption that the imposition of flagellation as a punishment lay within his *coërcitio* – administrative and penal powers<sup>31</sup>. The scope of these powers was broader than what is available to modern police forces in their duties to maintain security and public order<sup>32</sup>. The prefect of the *vigiles* himself ruled on the penalty, its magnitude, and the manner in which it was to be administered, all within the scope of his powers to punish<sup>33</sup>.

There was another, apparently unrelated category of individuals subject to cognizance by the prefect of the *vigiles*: the attendants of the baths (*capsarii*) or<sup>34</sup>:

D. 1,15,3,5 (*Paulus libro singulari de officio praeffecti vigilum*):  
*Adversus capsarios quoque, qui mercede servanda in*

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<sup>30</sup> See B. KÜBLER, *op. cit.*, p. 219.

<sup>31</sup> For more on the institution of *coërcitio* see W. KUNKEL, R. WITTMANN, *op. cit.*, p. 149-161.

<sup>32</sup> Cf. B. SITEK, '*Apud vetustiores*'..., p. 58; IDEM, *Criminal Liability*..., <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012. See also J. GEBHARDT, *Prügelstrafe und Züchtigungsrecht im antiken Rom und in der Gegenwart*, Köln-Weimar-Wien 1994, p. 33.

<sup>33</sup> See B. SITEK, '*Apud vetustiores*'..., p. 58. IDEM, *Criminal Liability*..., <http://www.dirittoestoria.it/6/Rassegne/Sitek-Incendiarii-ancient-Roman-Law.htm> accessed 25 May 2012.

<sup>34</sup> Another category of offenders subject to this prefect's cognizance were the *fullones*, although it is difficult to locate their position in Paulus' catalogue. D. 1., 15, 3, 1. Cf. P.K. BAILLIE REYNOLDS, *op. cit.*, p. 39. Cf. S. CAPPONI, B. MENGOSI, *op. cit.*, p. 78; R. SABLAYROLLES, *op. cit.*, p. 113-120.

*balineis vestimenta suscipiunt, iudex est constitutus, ut, si quid in servandis vestimentis fraudulenter admiserint, ipse cognoscat.*

Paulus did not give even a hint as to why this group was subject to cognizance by the prefect of the *vigiles*. Perhaps some bath attendants were involved in the thefts practised on a wide scale in the baths by *balnearii*, criminals specialising in bath-house robberies<sup>35</sup>. Appointed to look after the garments deposited by customers, they could be “negligent” of their cloakroom duties, making things easier for thieves<sup>36</sup>. The bad reputation of bath attendants and their involvement in the criminal business of the *balnearii* must have prompted the extension of the prefect of the *vigiles*’ powers of cognizance to cover this group as well<sup>37</sup>.

Paulus put direct emphasis on the duties of judge (*iudex est constitutus*) the prefect of the *vigiles* was to perform with respect to bath-house attendants. In conjunction with passages D. 1,15,3,1 and D. 1.15,4 quoted above, this information confirms the fire prefect’s penal jurisdiction. Not only is there a list of the categories of offences subject to his cognizance, but we also learn that he was appointed to judge in cases of negligence by bath-house attendants.

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<sup>35</sup> Cf. J. RAMÓN ROBLES, *op. cit.*, p. 99. There is an entire title in the *Digesta Iustiniani* on these offenders (47,17 *De furibus balneariis*). An examination of the extant passages shows that *balnearii* were subject to penalties as severe as those imposed on night robbers (*furones nocturni*), viz. compulsory public works (*opus publicum*). Criminal liability increased for an offending *balnearius* to a penalty of *in metallum* (if he was a *humilior*) or relegation (if an *honestior*) if he used a dangerous instrument to defend himself. Soldiers found bath-house theft hard to resist, too, as Paulus writes that the punishment for military offenders was ignominious dismissal from the army (*missio ignominia*). D. 47,17,3 (*Paulus libro singulari de poenis militum*): *Miles, qui in furto balneario adprehensus est, ignominia mitti debet*. Thus we may assume that *balnearii* referred to a broad group of thieves, irrespectively of their social background.

<sup>36</sup> Cf. Plaut., *Rud.* 382-385; Petron., *Sat.* 30, 7-11. See also Apul., *Met.* 4, 8; *APUL.*, *Met.* 9, 21.

<sup>37</sup> Cf. G.G. FAGAN, *Bathing in Public in the Roman World*, Michigan 2002, p. 36-38.

The powers of the prefect of the *vigiles* described above show that he had sufficient means of repression at his disposal to carry out his duties efficiently. But his preventive powers were equally important as regards fire-fighting<sup>38</sup>, as Paulus said directly in the following passage:

D. 1,15,3,3 (*Paulus libro singulari de officio praefecti vigilum*): *Sciendum est autem praefectum vigilum per totam noctem vigilare debere et coerrare calciatum cum hamis et dolabris, ut curam adhibeant omnes inquilinos admonere, ne neglegentia aliqua incendii casus oriatur.*

Paulus distinctly said that the prefect of the *vigiles* should be on duty the whole night long, patrolling the streets armed with hooks and battle-axes; moreover he should admonish the inhabitants to be careful with fire, to prevent the outbreak of fire. His use of the term “*neglegentia*” confirms the hypothesis that the prefect of the vigils was responsible for cognizance for fires accidentally spread by negligence. After all, a jurist as distinguished as Paulus could hardly be suspected of failing to point out the difference between arson and carelessness in the context of negligence.

The fundamental issue in connection with this passage is the question of the prefect of the *vigiles* “patrolling the streets of Rome.” We can hardly be expected to understand this as the prefect himself on the beat at night on his own<sup>39</sup>. Rome was divided up into fourteen districts, patrolled by one out of the seven cohorts of *vigiles*<sup>40</sup>. Even if we assume that the structure of the fire-fighting service established in Augustus’ times grew gradually until it reached its final number of

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<sup>38</sup> The view presented by P.K. BAILLIE REYNOLDS (*op. cit.*, 36-39) can easily be contested. He claims that originally the duty of the prefect of the *vigiles* was fire prevention; only later, in the times of Trajan, when his duties increased, did they expand to include repressive powers (according to Baillie Reynolds). Incidentally, it was in the reign of Trajan that a sub-prefect was first appointed to assist the prefect of the vigils, which also shows that his duties had expanded considerably.

<sup>39</sup> This is what O.F. ROBINSON claims (*Fire Prevention...*, p. 381).

<sup>40</sup> P.K. BAILLIE REYNOLDS, *op. cit.*, p. 24-25; O.F. ROBINSON, *Ancient Rome...*, p. 107.

cohorts<sup>41</sup>, it would still be hard to believe that the prefect did night duty patrolling the streets. And it would be extremely hard to show how he would have selected the men for duty with him on a particular night from his cohorts of *vigiles*, though it is evident he could not have attended more than one cohort on duty at any particular time. We might speculate that perhaps for a short while he was with one cohort of *vigiles* on duty, which had been selected by lot, after which time he joined another cohort. But there are no clues whatsoever in the source materials for or against such a hypothesis.

It would be more cogent to observe that the passage was corrupted by the Justinianic compilers. Clear evidence of this is the use of a verb in the plural, *adhibeant*, although it is obvious from the syntax that the clause refers to a single individual, the *praefectus vigilum* himself<sup>42</sup>. Moreover, we should bear in mind that the prefect had enough to keep him busy during the day, and there would have been little point to occupy him with additional work during the night, hence the original text must have referred to the *vigiles* themselves, not their chief<sup>43</sup>. The same applies to the remark that the inhabitants should keep a stock of water in their dining rooms to extinguish fires<sup>44</sup>. This was one of the *vigiles*' duties, not their boss'. Since Paulus' original text must have referred to the *vigiles* patrolling the streets, then the duty of reminding inhabitants to keep water at hand must have been another of their duties.

An examination of this passage from Paulus in Justinian's Digests leads to the conclusion that the preventive duties of the prefect of the *vigiles* was performed by the *vigiles*, and all that the prefect did

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<sup>41</sup> P.K. BAILLIE REYNOLDS, *op. cit.*, p. 25.

<sup>42</sup> A. GUARINO ('*Iperbole*' o '*ipotiiposi*'?), «Labeo» 29/1983, p. 155) gives yet another variant of this verb, a passive plural (*adhibeantur*). See the attempt to explain this discrepancy in Paulus' passage, by J. GEBHARDT (*op. cit.*, p. 32). See also B. SITEK, '*Apud vetustiores*' ..., p. 59.

<sup>43</sup> Cf. A. GUARINO, *Le notti del 'praefectus vigilum'*, «Labeo» 8/1962, p. 49; IDEM, '*Iperbole*' ..., p. 156; O.F. ROBINSON, *Ancient Rome*..., 110; P. GRABOWSKI, *Strážacy*..., p. 29; IDEM, *Prawne regulacje*..., p. 73.

<sup>44</sup> D. 1,15,3,4 (*Paulus libro singulari de officio praefecti vigilum*): *Praeterea ut aquam unusquisque inquilinus in cenaculo habeat, iubetur admonere.*

was to supervise them. Otherwise it would have been strange for an official who had a lot of jurisdiction to get through during the day to be expected to accompany his *vigiles* patrolling the streets of Rome at night. We cannot rule out that he did go on the night patrol in the early stages of the service, but as his jurisdictional obligations grew his activities must have primarily followed that course of development.

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The evolution of an organised fire-fighting service led to the situation where, by the early 1<sup>st</sup> century AD, the position of a specialised official who was not a public magistrate had become firmly established and endowed with authority to deal with fire prevention. The above analysis of the relevant passages in the legal sources has shown that the fundamental duty of the prefect of the *vigiles* was cognizance in cases concerning minor arson and unintentional fires, house-breaking and burglary, theft, and persons acting as accessories. The right to settle private law disputes involving location and conduction (hire) was also within the scope of his powers. But his duties in the field of prevention were just as important, although they were implemented by the *vigiles*, and only supervised by the prefect.

The office of prefect of the *vigiles* distinctly rose in status in the Empire's peak period of growth, and the appointment of eminent jurists<sup>45</sup> to it enhanced its prestige and distinction.

#### KOMPETENCJE I ZNACZENIE PREFEKTA STRAŻY MIEJSKIEJ ('PRAEFECTUS VIGILUM') W STAROŻYTNYM RZYMIE

##### Streszczenie

Początki organizacji służby przeciwpożarowej były związane z urzędem triumwirów (*triumviri nocturni*) – por. D.1,15,1. Oprócz

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<sup>45</sup> In the reign of Alexander Severus the office was held by the jurist Modestinus. Cf. P. K. BAILLIE REYNOLDS, *op. cit.*, p. 39, 125.

nich ochronę przeciwpożarową, przed ustanowieniem prefekta straży miejskiej (*praefectus vigilum*), realizowali także edylowie oraz trybunowie plebejscy.

W 6 r. n.e. doszło, z inicjatywy Augusta, do powołania siedmiu kohort (każda składająca się z 1000 wyzwolenców), strzegących dwóch dzielnic miasta, którą dowodził trybun (*tribunus*), zaś całą organizacją wywodzący się *ordo equester* prefekt straży miejskiej. *Praefectus vigilum* nie był traktowany jako urzędnik (*magistratus*), a jego powołanie wynikało z konieczności (*extra ordinem utilitatis causa*) – D.1,2,2,33. Zakres jego kompetencji został precyzyjnie wskazany przez Paulusa w D.1,15,3,1 i sprowadzał się do kognicji nad podpalaczami (*incendiarium*), włamywaczami (*effractores*), złodziejami (*fures*), rabusiami (*raptors*) oraz osobami udzielających schronienia przestępcy (*receptatores*). Odnośnie do podpalaczy, kognicja *praefectus vigilum* była ograniczona do podpań nieumyślnych i lżejszych podpań umyślnych, podczas gdy pozostałe podpalenia umyślne, były w gestii prefekta miasta.

Prefekt straży miejskiej dysponował także kompetencją o charakterze prewencyjnym, która polegała na nadzorowaniu podległych mu *vigiles* w zakresie nocnych patroli miasta, napominania mieszkańców o ostrożne obchodzenie się z ogniem czy napominania o obowiązku posiadania wody, w celu gaszenia ewentualnego pożaru – por. D.1,15,3,3, por. D.1,15,3,4.