GREEK AND ROMAN LAW IN THE TRINUMMUS OF PLAUTUS

BY WILLIAM M. GREEN

It is generally understood that the plays of Plautus, based on Greek models and avowedly translations of Greek comedies, have been so adapted for presentation to a Roman audience that they present a mixture of Greek and Roman elements. But the extent to which materials of each kind are used has been the subject of considerable discussion and rather wide disagreement. Especially is this true as to the legal questions involved in the situations presented.

Plautus is cited with equal confidence as an authority on both Greek and Roman law. For example, under dos in the Daremburg-Saglio Dictionnaire, E. Caillemer, speaking of the Greek dowry, says, “If the dowry is not essential to the validity of the marriage, it is almost indispensable for its proof, and it is almost solely by the bringing of a dowry that a legitimate union is distinguished from an illicit union.” The only reference given is to Trinummus 689–91, where Lesbonicus refuses to give his sister to Lysiteles without a dowry, lest the common report seize upon this as proof that she was given as a mere concubine. Just below, under the same title in the Dictionnaire, F. Baudry says of the dowry at Rome, “A woman who married without a dowry was regarded more as a concubine than as a wife”—the sole support of this statement being the same passage from Plautus.

This free and uncritical use of Plautus to illustrate both Greek and Roman customs is very common. His twenty extant plays seem to offer a rich source for illustrations of ancient life, but before this material can be used with confidence it is evidently necessary to distinguish between the Greek and the Roman elements.

Discussion as to the law in Plautus has gone on for nearly a century, receiving a special impetus from the appearance in 1890 of Costa’s comprehensive treatise, Il diritto privato Romano nelle Comedie

1 In preparing this paper the writer has had the benefit of valuable suggestions from Professor Max Radin. If any error appears, it should be ascribed to the writer, not to Professor Radin.

[CLASSICAL PHILOLOGY, XXIV, April, 1929] 183
di Plauto. Costa's belief that Plautus portrays only genuine Roman law, though vigorously assailed, was supported in 1900 by Pernard, *Le droit Romain et le droit Grec dans le Théâtre de Plaute et de Terence*. It was left for Fredershausen, *De iure Plautino et Terentiano*, to insist that nothing be classified as distinctively Greek or Roman until it can be shown to be in accord with one system of law and in conflict with the other.¹

It is often impossible to make clear distinctions between Greek and Roman elements, and perhaps for this reason, perhaps because of the wide disagreement among the special students of law in Plautus, the editors of his plays seldom touch upon such difficulties.

The *Trinummmus* presents an interesting series of these problems. The play is avowedly a translation of the Θησαυρός of Philemon (see vss. 18–19), the scene is in Athens (1103), and the characters are all Greek, as in all the *fabulae palliatae*. Charmides has gone abroad, leaving his property, his daughter, and his spendthrift son in charge of his friend Callicles. In the house is a treasure, whose existence Callicles has pledged to keep secret. When the son, Lesbonicus, in his dissipation of all the wealth at his disposal, advertised the place for sale, Callicles bought it in to save the treasure. At this point Lysiteles, a friend of Lesbonicus, decides that he wishes to marry the daughter, even without a dowry, and protests when Lesbonicus offers to give with his sister a field which is the sole remnant of the estate. In this crisis Callicles feels it his duty to provide a proper dowry from the treasure now in his possession, to accomplish which, without exciting suspicion, he hires a sycophant to impersonate a messenger from foreign parts, bearing money from Charmides. The latter, however,

¹ The three principal authorities referred to in this paragraph are: E. Costa, *Il diritto privato Romano nelle Comedie di Plauto* (Torino: Fratelli Bocca, 1890); L. Pernard, *Le droit Romain et le droit Grec dans le Théâtre de Plaute et de Terence* (Lyon: A. Rey, 1900); O. Fredershausen, *De iure Plautino et Terentiano* (Göttingen: Goldschmidt & Hubert, 1906); continued as "Weitere Studien über das Recht bei Plautus und Terenz," *Hermes*, XLVII (1912), 199–249. Pernard gives a Bibliography of seventy-three titles, which was supplemented with fifteen more by P. Huvelin in his review of Pernard's work in *Now. rev. hist.*, XXIV (1900), 579–86. Of later works on the subject only that of J. Partsch, "Römisches und griechisches Recht in Plautus Persa," *Hermes*, XLV (1910), 595–614, ☀ M. Radin, "Greek Law in Roman Comedy," *Class. Phil.*, V (1910), 365–7, are known to the reader. For general discussions of the work of Plautus and his indebtedness to Greek originals, cf. F. Leo, *Plautinische Forschungen*² (Berlin: Weidmann, 1912), pp. 87–187. Professor Radin’s title is the only one in English I have discovered on this subject.
arrives in time to spoil the plan, and, upon learning the true situation, provides a dowry, and marries off his spendthrift son as well to the daughter of Callicles.

It might be presumed that in a translation, at least the essentials of the plot would be drawn from the original, and hence that the principal legal problems should be explained by Greek law, rather than by Roman law. That this is the case in the Trinummus will appear in the course of this study. Obvious questions of law arise in connection (i) with the mandate by which the estate and the young people were intrusted to Callicles, (ii) with the son’s disposition of the estate, and (iii) with the various marriage arrangements.

I. THE MANDATE TO CALLICLES

The mandate to Callicles evidently gave him no legal rights whatsoever. Not only was he unable to regulate the conduct of Lesbonicus, or prevent the sale of the estate, but after it was sold to himself he felt compelled at all costs to guard the secret of the treasure lest the son demand it by law as part of his paternal estate (1146).

If we are to take according to their meaning in Roman law Plautus’ use of the words mandare and mandatum (117, 128, 136–38, 158, 956), Callicles was procurator omnium bonorum, and he should have exercised all the powers of the paterfamilias, in so far as he was instructed to do so. It follows, then, that we are not dealing with a mandate in Roman law, any more than we are dealing with a case of guardianship when we find the same commission referred to as a tutela (139).1

We are still at loss when we attempt to find any Greek law to apply to the case; for while Beauchet cites instances of mandate in Athens, their legal status is admittedly obscure; and Lipsius declares that “of legal provisions regarding mandate the silence of our sources makes it impossible to speak.”2

Evidently this “mandate” was an extra-legal matter. Callicles was instructed to look after affairs, but found himself without any


legal powers to act as agent or administrator, though his presence might carry some moral weight (166-72), and the young man might, on occasion, seek Callicles' advice (583-84). It may be that this situation conforms better to the absence of recognized powers of agency in Attic law than to the Roman conditions in which mandate was clearly defined, long before Cicero's time, at least.  

II. LESBONICUS' SALE OF THE ESTATE

The unusual, if not inexplicable, questions of law involved in the son's high-handed squandering of his father's estate have long ago been pointed out. It is fifty years since Bechmann declared that a prize might well be offered to the one who succeeds in explaining the subject matter of the Trinummmus according to Roman law. And Friedershausen, the latest to comment on the point, adds that the sale of the estate "agrees as little with Attic as with Roman law." For Friedershausen, however, the situation is anomalous principally because the son's transactions conflict with the mandate given to Callicles, which, as we have seen, is no mandate at all.  

A similar situation exists in the Mostellaria, where a son squanders an estate in the absence of his father. Both cases have been cited to show that in early Rome the son was the regular agent of the father, with full power in case of his absence. But aside from the plays of Plautus, there seems to be no support for this conclusion. The other passages cited are cases where a son (or slave) acts on instruction from the paterfamilias, and hence had the ordinary power of a mandatory. Of course a son, like any other negotiorum gestor, might without instructions carry out any business necessary to the interests of an absent owner, subject to his later ratification. That he had any wider powers seems unproved.  

As to negotiorum gestio in Attic law, we know even less than of mandate. The development of Greek law as to the son's relation to the paternal estate is in many respects similar to the Roman. In  

1 Cic. Pro Rosc. Am. 111, in which the legal recognition of mandate is referred to the maiores.  


both the land was originally a matter of family ownership, inalienable, and, on the death of the father, sons took over the estate as his co-
proprietors rather than successors. Survivals of this co-proprietorship
exist, in Athens in the informal entry of sons on the estate, and in
Rome in the designation of sons as *sui heredes*, heirs of what was their
own. But in neither country is there any evidence that a son, in the
absence of his father, could dispose of the estate at will.¹

If we could suppose that Lesbonicus had entered on his father’s
estate as heir, his conduct in the play would be fully explained. So
Pernard, from the standpoint of Roman law, would explain the situ-
ation—"There has been no news of Charmides for a long time, one has
the right to consider him as dead." But in the play all seem to regard
his return as still possible, if not probable (106, 137, 156, 180, 423, 588,
617 f., 744, 773), and in Roman law it would have been impossible for
the heir to enter on his estate until it was known that the father was
dead. This was certainly the rule of the later law applying to those
captured by the enemy, and, in general, those whose fate was unknown
—a rule quite in accord with the spirit of the earlier law, which was
strict in protecting the legal interests of those absent for necessary
or reasonable causes.²

Again we are unable to say what were the pertinent provisions
of Attic law. Although the entry of sons and their male descendants
was exempted from the formalities required of other heirs, inheritance
was, of course, conditioned on the death of the father; and we know of
no provisions in case of his disappearance. But Greek custom seems to
protect the father less than does the Roman. The ἐκη παραγωίας gave
sons a wide opportunity to remove their fathers from the management
of their estates, on the ground of decrepitude as well as insanity. The
Roman curatorship of *furiosi* and *prodigi*, while apparently cited by
Cicero as parallel (perhaps the nearest parallel), was strictly limited
to the insane (of any age), and those squandering the estate which they
had themselves inherited. This might suggest that Athenian law

¹ Beauchet, op. cit., IV, 377–79; III, 58–65, 423; Lipsius, op. cit., pp. 540, 570;
Gaius Inst. ii. 157; Inst. Just. ii. 19. 2; Karlowa, op. cit., II, 880; Buckland, op. cit.,
pp. 303, 363–64. The community of interests between father and son is well expressed
in Trinummus 328: "quod tuomst meumst, omne meumst autem tuom."

² Pernard, op. cit., p. 104; Cod. Just. viii. 51. 4; Dig. iv. 6. 1; vii. 1. 56; cf. Darem-
berg-Saglio and Pauly-Wissowa under absens.
would be less careful than the Roman to protect the interests of an absent father.\textsuperscript{1}

If Lesbonicus had the right to sell the estate, Callicles' notion was well grounded that he might also claim the treasure \textit{lege populi} in case he learned of its existence (1145 f.; cf. 748–55). For its appropriation by Callicles would obviously be fraudulent, a \textit{furtum} in Roman law. There is nothing to show that the situation would have been different at Athens. But in case the property had been sold to an outsider, Callicles seems to think that the latter would have acquired the treasure also, or that its ownership would at least have been a matter of question (178). In Roman law the owner could have reclaimed it by \textit{condictio indebiti}. Callicles' question may be taken either to show the absence of such an action in Greek law, or to show ignorance or uncertainty as to what the law really was. Few laymen today would know the provisions of their own law as to the case.\textsuperscript{2}

It is difficult to see how the play could in any sense be a translation or adaptation of a Greek original, unless the central theme of the son's dissipation of the absent father's estate were taken from that original. The same is also true of the \textit{Mostellaria}. In so far as any law is here illustrated, it is likely to be Greek.

It may well be, however, that the audience of an ancient comedy would find a new source of amusement if they could see us today taking Lesbonicus' conduct seriously as illustrating either Greek or Roman law. That spendthrift was well on his uninterrupted career of squandering the patrimony before his father left (108–9). During the latter's absence he simply continues in his career, quite untroubled as to the legality of his acts. It is entirely in accord with the spirit of comedy that Callicles does not think of the legal means to prevent the sale of the house, nor Charmides, on his return, of steps toward its recovery (1080–92). The awkward inconsistency between the expected return of Charmides and his son's assumption of all his rights is part of the comedy, about which a tolerant audience should not trouble itself too much.

\textsuperscript{1} Beaucet, \textit{op. cit.}, III, 437; II, 382–98; Lipsius, \textit{op. cit.}, pp. 355–56; Cic. \textit{De Sen. 22}; cf. Daremberg-Saglio under \textit{furtiosus} and \textit{prodigus} as to the restricted use of those terms.

III. THE MARRIAGE ARRANGEMENTS

It is perhaps in the matter of marriage arrangements that Plautus has most frequently been uncritically cited as illustrating either Greek or Roman customs. Of such arrangements the *Trinummus* presents us a number of interesting phases.

*a) THE BROTHER’S BETROTHAL OF HIS SISTER*

We may first notice that in Greek law the brother’s betrothal of his sister and arrangement of her dowry are quite in accord with his (assumed) succession to the rights of his father. On the death of a father, or, perhaps in his absence, a son becomes κύριος of his sister, and as such carries through a betrothal and all marriage arrangements. But the case does not conform so well to Roman law, for only after the father had been absent for three years could the children marry without his consent. If the father were assumed to be dead, and the brother had become agnatic tutor he could neither make nor break a betrothal nisi forte omnia ista ex voluntate puellae facta sint, whereas in the *Trinummus* it is clear that Lesbonicus never consults his sister’s wishes.1

*b) ABSENCE OF BRIDE’S CONSENT*

This leads to the observation that all marriage arrangements, for the daughters both of Charmides and of Callicles, are made without the consent or consultation of the bride. This conforms exactly to Greek law and custom, in which it was her κύριος who concluded the agreement with the future husband. Since the girl had been carefully isolated and had no acquaintance with possible suitors, she would have no preferences to consult.2

Conditions were not the same in Rome. The consent of the bride was necessary, both for betrothal and for marriage; though in the former case her silence was taken as consent, and she could refuse only in case the chosen fiancé was of unworthy character. Most mar-

1 Meier, Schömann, Lipsius, *Der attische Process* (Berlin: S. Calvary, 1883), p. 505; Beauchet, *op. cit.*, II, 335–37; A. H. G. P. van den Es, *De iura familiarum apud Athenienses* (Leyden: E. J. Brill, 1864), pp. 6–7; *Dig.* xxiii. 1. 6. The principal function of the tutor seems to have been to constitute the dowry (Ulp. xl. 20–22); Lesbonicus sends announcement and congratulations only after arrangements are made (577–79).

riages, especially where the bride was young, were doubtless pretty well arranged for her by her parents. Yet the requirement, frequently referred to, that she must consent to the marriage, must mean some recognition of her rights, a recognition which the general status of women in Rome would lead us to expect. Girls, instead of being isolated, went to school with the boys. Legend would have it that in the time of the earliest republic one Virgins, already betrothed and of marriageable age, was attending a school near the Forum when she attracted the attention of Appius Claudius. The respect paid to the Roman *materfamilias* would suggest that a woman's consent be required before she was given in marriage. That political marriages of which we are informed often appear to disregard the woman's rights no more proves the normal practice in Rome than do similar marriages among royal families in modern times. But in the Oriental subjection of the Attic woman, her consent to marriage arrangements was never required, and it is this we see pictured in the plays of Plautus.¹

c) ARRANGEMENT OF MARRIAGES FOR THE SONS

As to the marriages of the young men, Lysiteles and Lesbonicus, both fathers and sons seem concerned. Lysiteles makes his own decision, then asks his father's approval. When this is granted (reluctantly, since he is proposing to take a dowerless bride), he asks as a further favor that the father make the arrangements (373-91). But the arrangements made by Philto seem still to require his son's confirmation (581), and when the difficulty arises on the subject of the dowry, Lysiteles takes the whole matter in hand, and Philto does not appear on the stage again. Lesbonicus' match, however, seems arranged for him quite arbitrarily, somewhat as a corrective for his dissolute habits. The promptness of his compliance is a fitting close for the comedy (1183-84).

At first blush all this seems in better accord with Roman than with Greek practice. In Rome the son *in potestate* must have the father's consent, then, by agreement, the *sponsalia* might be arranged by either of them, or by intermediaries. Whereas in Greece, all our law texts assure us, it was the future husband himself that reached the

¹ *Dig.* xxii. 1. 7. 1 and 11-12; xxiii. 2. 2; L. Friedlander, *Roman Life and Manners* (trans. L. A. Magnus; London: George Routledge & Sons, 1909), I, 230; Dionys. Hal. xi. 28. 3; Livy iii. 44. 6.
agreement of the ἕγγυησις with the κύριος of the bride. Since the son must be of age before marriage, he was legally independent.¹

But other sources show us that the picture of a father marrying off a son may be Greek as well as Roman. Among the newly discovered fragments of Menander, at the end of the Perikeiromene (905–7) is a scene very similar to the closing scene of the Trinummus. After the main thread of the plot is closed by the father’s arrangement for his daughter’s marriage and dowry, he suddenly announces his arrangement of another marriage, that of his son to the daughter of Philinus, hitherto unmentioned. The son is quite startled. So in the Georgos (7–10) and the Samia (122–23) sons are informed of arrangements for their own weddings, in regard to which they have not been consulted. None of these passages precludes the participation of the son in an ἕγγυησις, nor is it precluded in the Trinummus, but is rather to be inferred from verse 581. But in representing a father as arranging the marriage for a son, we must conclude that Plautus’ scene is a typical reproduction of the Greek comedy.²

d) IMPORTANCE OF THE DOWRY

It is in accordance with both Greek and Roman custom that a dowry be given with the bride, a step quite necessary to protect the wife in case of her divorce. In the Trinummus neither the father nor the brother of the girl will consent to her marriage without a dowry. So essential did the dowry seem in the ancient world that writers are willing to apply both to Greece and to Rome the statement of Lesbonicus quoted above (p. 183), which implies that a marriage without a dowry would popularly be considered mere concubinage. But it seems easier to find Greek than Roman parallels to this notion. In two of the orations of Isaeus, the absence of a dowry in one case, its presence in the other, is cited as an important proof as to the legitimacy of a marriage. So in Dio Chrysostom a free Athenian defends his status by declaring that his mother was a citizen, born of citizens, bringing to her marriage a considerable dowry. So important was the dowry

¹ Dig. xxiii. 1. 18; Beauchet, op. cit., I, 136; E. Hruza, Beiträge zur Geschichte des griechischen und römischen Familienrechts (Erlangen und Leipzig: A. Deichert, 1892), I, 50. Beauchet and Hruza object specifically to any suggestion that the Greek father had a part in the betrothal of his son.
² See Fredershausen in Hermes, XLVII (1912), 229.
that the state would provide it at public expense for the daughters of needy but deserving citizens. Similar allusions to the Roman dowry do not appear to be forthcoming.\footnote{Isaeus Estate of Pyrrhus 8 et saepe; Of Ciron 8–9; Dio Chr. xv. 4; Plutarch Aristides 27. 1; Nepos Arist. 3. 3; but cf. Buckland, \textit{op. cit.}, p. 107.}

It is, of course, admitted that there are in Plautus many references to things Roman which are inconsistent with the Athenian setting. As observed by Costa, the officials are Roman. A \textit{dictator} (695), \textit{iusurator} (872), \textit{aediles} (990), and \textit{portitores} (794, 809, 1107) are mentioned in the \textit{Trinummus}, although Fredershausen has pointed out that either of the latter two may be translations from the Greek. The forms used in the \textit{sponsalia} (497–502, 571–73, 1157–62) are quite Roman. It is Roman clients who are with their patron at a public banquet (470). It was the duty of a Roman rather than a Greek youth to aid his friends in the Forum (651). So also public offices generally were attained in Rome by a canvass before election (1033); not so in Athens.\footnote{Costa, \textit{op. cit.}, pp. 23–29; Fredershausen, \textit{De iure Plaut.}, pp. 43, 52, 57, 62–63, 67. Other plays doubtless yield passages of more significance in Roman law than does the \textit{Trinummus}. Cf. the judgment of Plautus by P. F. Girard, \textit{Manuel élémentaire de droit Romain} (Paris: Arthur Rousseau, 1906), p. 46, n. 3, and his later references to Plautus in that work.}

But all of these references which we can classify as Roman are incidental remarks of the various speakers, not imbedded as an integral part of the story. The principal situations of the plot are everywhere in accord with Greek law, or to be explained by the license allowed a writer of comedy, while they frequently conflict with Roman law. While Fredershausen, even at the close of his careful and comprehensive study, avoids generalizations, insisting that each passage or situation is a separate problem, still his work clearly points in the same direction as does this study of the \textit{Trinummus}.