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The Procedure before and after 1570: Stylus Antiquus and Modernus

Antonia Fiori

As mentioned above, in the long history of the cameral obligation, there is one date that marks the end of a way the formula was used and the passage to a new way: 1570, when Pius V's constitution *Inter illa* introduced the disposition of the Council of Trent relating to excommunication. In civil cases, excommunication could only be imposed *in iuris subsidium*—that is, when it is not possible to proceed to an execution against property or a personal execution.[57]

The procedure of the execution of the cameral obligation in use until circa 1570 was called the *stylus antiquus*. The passage to the *stylus modernus* occurred formally with the constitution *Inter illa*, but in reality the transition was not abrupt because the innovations had been preceded by a debate among jurists regarding certain questions, and some of them had already been effectuated in practice.[58] The new form of the cameral obligation was secured by the constitution *Universi agri dominici* (1612), in which Paul V recommended that the *stylus hodiernus* be observed in the execution of the cameral obligations. It differed from the outdated *forma antiqua* in several ways, which were indicated by the pope: (1) the possibility of a single summons; (2) the obligation regarding the heirs; (3) the failed appearance of the procurators; (4) the lack of the *susceptio censurarum*.[59]

It is worth emphasizing that, after 1570, the two styles never coexisted; the most recent style supplanted the old one. In the second half of the 17th century, De Luca could therefore write that the old formula was "in totalem oblivionem habita" (lives in total oblivion). According to De Luca, the modern formula of the cameral obligation, characterized by a greater range of clauses ("maiorem clausularum amplitudinem"), had resolved all the interpretive doubts that the old formula had left open, and it avoided the possibility of new doubts arising.[60] Above all, it simplified the procedure because it abolished superfluous formalities which served only to support dilatory strategies and were therefore a hindrance to commerce.

The many cameral obligations that we find in the notarial documents relating to the Accademia di San Luca, conserved in the Archivio di Stato di Roma, belong to the period after 1570: they therefore follow the *stylus modernus*. They are recognizable as such because for the most part the acts concern obligations *in ampliori forma Camerae*, an expression indicating the use of the modern style. Furthermore, they refer to the responsibility of the heirs. For greater clarity, we shall therefore describe the executive procedure connected with the obligation *in forma Camerae*, explaining the particular characteristics of the *stylus modernus*, occasionally referring to what the procedure had been before the reform.

a. The Instrument: *Repetitio, Recognitio* and *Extensio Formulae* before and after the Reform

The obligation *in forma Camerae* could be found in a public as well as a private instrument. The public form was not necessary for the contract to be valid, but it permitted a swifter execution.

Naturally, the greatest degree of certainty, and therefore of trustworthiness, was provided by the public instrument rogated by an actuary notary.[61] It was also customary for the

notarial offices of the A.C. to append the clauses of cameral obligation in most contracts involving a monetary obligation, to the point that in the Papal States, the cameral formula was presumed to have been affixed, even when not expressly indicated. There were few exceptions: for example, in Bologna, where it was not customary to oblige *in forma Camerae*.

Furthermore, if the contract had been rogated by an actuary notary, it was presumed that the clause was not only affixed, but also correctly drawn up. Therefore, it was not required to verify the act, and the debtor could be summoned immediately.

According to the *stylus antiquus*, however, if the instrument had been rogated by a different notary, it would have to be produced before an actuary notary, who could limit himself to carrying out a *repetitio* before moving on to the summons. Or, if the first notary had in some way abbreviated the clauses, which happened often, or if it was a private instrument, the actuary notary would have to have proceeded to the so-called *extensio* of the formula in order to make the instrument conform in every way to the cameral obligation in use. For this purpose, the notary had to carry out a *recognitio*, also by way of the sworn testimony of witnesses.

The *extensio* consisted in the insertion of all the general clauses considered essential in the contract *in forma Camerae* (with the exception of the oath), and the Roman Rota regarded it necessary under pain of nullity.[62] It was followed by the A.C.'s *decretum de extendendo*.

The extension was much discussed. It was the source of dispute regarding procedures for enacting it and the occasion for dilatory strategies on the part of the debtor. De Luca considered it an example of those "useless formalities of which antiquity was so fond."[63]

In fact, the *stylus modernus*, which called for a swifter procedure, had in part abandoned it: whoever had obliged themselves *in ampliori forma Camerae* (that is, according to the *modern stylus*) with a public instrument—even if not rogated by notaries of the A.C.—would not need to be summoned by the extensio of the formula. It sufficed for him to have agreed to the executive mandate *unica vel sine citatione* (with a single summons or without), and in this case he was summoned only once, directly *ad solvendum* (for the fulfillment). The possibility of avoiding the extension did not regard contracts in private form, and it was excluded if there was a change in the subjects of the obligation (*personae mutatae*).

b. The Summonses

Once the instrument was verified, the debtor was summoned. Normally the summons of a debtor who resided in Rome was delivered personally (*personaliter*) or through posting (*per affixionem cedulae*) on the housedoor. In the first case, the summons could be for the same day (*hodie per totam*, that is at the time of the hearing), in the second, it was for the following day (*ad primam*).

If the debtor did not reside in Rome and turned out to be *absens*, then the creditor, after a brief search, swore in the city to the absence of the debtor, and the oath in itself constituted proof of the absence. However, in order to proceed *in absentia*, the credit had to be liquid—that, is the total amount had to be established. If not, it would have to have been established by witnesses prior to the taking of the oath.

In this case, the summons could take place *per audientiam contradictarum*, if it happened to be the period of hearings, or *per affixionem* on the door of the Curia of the auditor or in some other usual place, if it happened to be the period of *vacatio*. The *audientia contradictarum* was a type of summons used with regard to all contumacious absent from Urbe ("omnes contumaces ab Urbe absentes.")[64] The summonses were read by the *notarius contradictarum* in a public place during the *dies iuridici* (i.e., the period of hearings); during the *tempus vacationum*, the *contradictae* were instead posted.

Under the *stylus antiquus*, the debtor received several summonses. If the obligation was inserted in an act that required the extension of the formula, the debtor was summoned *ad dicendum contra iura*. In the actual executive phase, the summons of the debtor occurred firstly in the ways just described; a second time with excommunication and the issuance of the *litterae declaratoriae*; a third time for aggravation, re-aggravation, and invocation of the secular arm; and a fourth time for the initiation of forced execution.

The procedure was carried out at an extremely fast pace, so that—if the debtor resided in Rome and was *praesens* (present), and deferment had not been granted—it took 15 days at the most to arrive at the stage of enforced expropriation. The actions that were carried out during the course of this brief period were numerous, even relentless, for the debtor. All in all, the debtor's presence was requested for two specific purposes: to discharge, confess, or see the debt confessed and to be excommunicated.

If the debtor obliged himself according to the *stylus modernus*, consenting to the executive mandate *unica vel sine citatione*, he was summoned only one time, directly *ad solvendum*. Once the debtor appeared in court, he received the notice to comply. Provided there were no relevant exceptions, the executive mandate was released at the same time. If instead the debtor had agreed to a *bina citatio* (double summons), the mandate would have been released in the second and final hearing.

c. Confession of Debt and Excommunication

Confession of debt and excommunication characterized the *stylus antiquus*. Once the time limit imposed by the first summons had elapsed, the confession of the debt was carried out at the request of the creditor by one of the procurators

indicated in the instrument for the amount stated in the same instrument.

After the confession of debt had been carried out at the request of the creditor, the judge declared that if the debtor had not complied within three days (*nisi infra tres dies*), he would be sentenced to excommunication. However, within that three-day time limit, he had the possibility of raising relevant objections from among the few conceded in the obligation *in forma Camerae*.

Assuming that the three days passed without fulfillment (although the deadline could be delayed for up to 30 days), the judge, in the presence of the creditor or his procurator, declared the debtor excommunicated if he had failed to comply by the end of that same day. If the day passed without any steps being taken, the so-called *litterae declaratoriae* were issued. The *declaratoriae* were not needed for the commination of excommunication (which had already been declared with the formula *nisi infra tres dies satisfecerit*), but rather for its publication and the social consequences it entailed. As is known, whoever was excommunicated was forsaken by the faithful.

It is worth underlining that the *tres dies* indicated by the judge were equivalent to the triple admonition (*trina monitio*) requested by canon law before imposing the excommunication. In this way, the two juridical bases of excommunication—contumacy and *monitiones*—were formally preserved.

The *declaratoriae* were written by an actuary notary, delivered to the plaintiff, and posted by a cursor (process server) of the tribunal in Campo de' Fiori to make it publicly known that the debtor was excommunicated. If ten days passed without fulfillment, the debtor was summoned another time for *aggravatio, reaggravatio*, and *auxilium brachii saecularis*. Essentially, at the hearing, the judge increased the censures, invoking the aid of the secular arm, and issued the "aggravatory letters." These letters contained both the order to obtain goods from the debtor's patrimony to the value of the debt with the intention of selling them at auction and to incarcerate the debtor until the entire debt was fulfilled.

Pursuant to these letters, notices written in capital letters were posted around the city. Images deformed and unseemly ("deformes atque indecorae") were drawn in various colors at the tops of the notices, vilifying the debtors.[65]

The *stylus hodiernus* no longer required the constitution of the procurators for the confession of the debt (*ad confitendum debitum*). It was a significant transformation of the procedure because up to that moment the confession in court of the debt (*confessio in iure*), a very old element of the cameral obligation, had been decisive for its validity. The constitution *Inter illa* had established instead that the procurator could be appointed for the confession of the debt only if he had been nominated by the defendant also for his defense and had not accepted the request. The disposition had been confirmed by the bull *Universi agri dominici* in 1612. In the same year, Sigismondo Scaccia attested that the constitution of the procurator had by then disappeared from judicial practice. Furthermore, the judicial confession of debt had disappeared. Scaccia maintained that if, after the reform, there was still trace of it in instruments provided with the cameral obligation, it would most likely have been fictitious.[66]

d. Execution against Property and Personal Execution

After excommunication (according to the *stylus antiquus*), or before or in its absence (according to the *stylus modernus*), it was possible to proceed against the debtor with an execution against property and/or personal execution, jointly or severally, depending on the creditor's preference. The debtor had the power to avoid or halt the executive procedure at any time by consigning the amount owed, in cash, to the executors.[67]

The personal execution led to incarceration and in theory could apply to any debtor. In fact, it affected the most defenseless social classes because judges customarily spared prelates, barons, illustrious men, and "honest women" from being arrested.[68] Imprisonment ceased only after paying the debt (*soluto debito*), or after the deposit of appropriate bail.

The execution against movable property occurred by seizing the property from the house of the debtor (or from another place) and its deposit. Following the institution by Urban VIII in 1625, the seized property was deposited at the Depositaria urbana dei pubblici pegni.

In the case of immovable property, seizure was carried out by way of *accessio ad domum* and potentially *ad vineam* (entrance into the house or vineyard) of the debtor, in the presence of witnesses, the executor, and the actuary notary of the lawsuit, who wrote the minutes.

Once seizure of the movable and immovable property was completed at the request of the creditor, the debtor was summoned to receive the order to consign the money in partial or total fulfillment of the credit, by decree *nisi ad primam diem*, that is within one day. If the brief time limit elapsed without response, the executors received the mandate to consign the properties to the cursors for sale at auction.

Having received the goods, the cursors described them in a voucher and then arranged for the auction. After the goods were sold to the highest bidder, if the creditor considered the proceeds insufficient, it was customary for the Curia to move ahead to a further execution—either against property or personal execution—pursuant to the first mandate, until the credit was fully repaid.

e. The Exceptions and *Vulneratio*

The formula of the cameral obligation called for the invocation of exceptions and appeals to be renounced. All the same, it

was generally accepted that three exceptions—*falsitas, solutio*, and *quietatio*—could serve to oppose the cameral obligations. These were not peremptory, however. Others were allowed on the basis of their relevance, but above all on the condition that they did not obstruct or delay execution.

Certain exceptions could not, in fact, be evaded: the ones based on the *incompetentia iudicis*, on the *inhabilitas* of the plaintiff (for example, because he was a minor, exiled, or excommunicated) or on his nonfulfillment (*res non tradita, pretium non solutum*), and on the nullity of the instrument.

In general, according to doctrine and jurisprudence, a few exceptions could simply be rejected; others delayed the prosecution of the process because their admissibility was immediately evident from the reading of the instrument, by known fact, or by the nature of the thing (for example, *res non tradita, res non libere tradita*, etc.). Exceptions that were not immediately ascertainable but required further research, for example for witnesses, could be rejected in order not to delay the execution.

This general criterion left space for a casuistry of admissible exceptions. The execution however always had to be interrupted in case of *vulneratio*, that is to say when a debtor's sentence or an arbitration ruling of acquittal intervened. The *vulnerata* obligation lost the *executio parata* and always became open to appeal. The appeal, however, constituted the only recourse for the creditor, who then had to wait for the three consistent judgments.

It was with some hostility that not only writers of treatises but also the law regarded the hypothesis that a certain event—even a fact as important as the acquittal of the debtor—could obstruct or interrupt the executive procedure. De Luca did not disguise the fact that he considered the acquittal a "serious injury" to the creditor and warned the judges "not to be uncertain and easy to absolve."[69]

f. The Obligation with Regard to the Heirs

At the time of the *stylus antiquus*, it was debated if the cameral obligation would be transferred to the heirs.[70] It was uncontested that the obligation would be transferred in its entirety to the heirs of the creditor. However, there were many doubts regarding the heirs of the debtor, above all because the cameral obligation consisted of a sworn obligation and the heirs would have perjured themselves for an oath that they had not personally sworn, or would even have incurred excommunication. But the question that seemed central and a hindrance to the transmission of the obligation to the heirs was that of the mandate to the procurators.

The cameral formula, according to the *stylus antiquus*, in fact included the constitution of procurators, with the mandate to confess the debt in the name and on behalf of the debtor for the amount indicated in the contract, and it was deemed that the mandate must be considered revoked upon death of the debtor. Nonetheless, in the mid-16th century, the Segnatura di Giustizia had reached the conclusion, which was then adopted as standard practice, to consider the properties of the deceased debtor executable since the mandate, being inserted in the cameral contract *ad alterius commodum* (i.e., for the benefit of the other party), could not be tacitly revoked upon death of the debtor.[71]

In the following years, after the reform of the cameral obligation of 1570, the solution indicated by the Segnatura di Giustizia was reinforced by the failure of the constitution of the procurators. Therefore, the transmissibility to the heirs, on which the doctrine had hesitated since 1555, proceeded to become a typical feature of the *stylus modernus*. It was indicated as such in the constitution *Universi agri dominici* (1612).