

TAMÁS NÓTÁRI\*

## Verba Carminis – On a Cardinal Point of Archaic Roman Law

**Abstract.** Beginning with the well-known fact that one lost a lawsuit if he made even a single verbal mistake in his speech during the process of the legis actio (Gai. inst. 4, 11. 30), we have to examine through some examples the power of verbality in ius sacrum. (I.) We study the development of the concept of fatum (II.), a narration of Plinius maior concerning the dedicatio of the templum of Ops Opifera (III.), another narration based on a source of Plinius related to a special interpretation of prodigium (IV.), as well as parallels that can be discovered between “fruges excantare” and the ceremony of the evocatio (V.). From these one could gain a picture of connection between Roman religion and jurisprudence of the Archaic Age and the spoken word.

**Keywords:** legis actio sacramento, ius sacrum, dedicatio, evocatio, procuraio prodigii

I. The description of the ritual of legis actio sacramento in rem is provided by Gaius.<sup>1</sup> This is the locus that should be brought into harmony with the explanation of the meaning of manum conserere given by Gellius, and with the

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<sup>1</sup> Gaius, Institutiones 4, 16. Si in rem agebatur, mobilia quidem et moventia, quae modo in ius afferri adducive possent, in iure vindicabantur ad hunc modum: qui vindicabat, festucam tenebat; deinde ipsam rem apprehendebat, velut hominem, et ita dicebat: HUNC EGO HOMINEM EX IURE QUIRITIIUM MEUM ESSE AIO SECUNDUM SUAM CAUSAM; SICUT DIXI, ECCE TIBI, VINDICTAM IMPOSUI, et simul homini festucam imponebat, adversarius eadem similiter dicebat: MITTITE AMBO HOMINEM. Illi mittebant. qui prior vindicaverat sic dicebat: POSTULO, ANNE DICAS, QUA EX CAUSA VINDICAVERIS? ille respondebat: IUS FECI, SICUT VINDICTAM IMPOSUI. Deinde qui prior vindicaverat, dicebat: QUANDO TU INIURIA VINDICAVISTI D AERIS SACRAMENTO TE PROVOCO; adversarius quoque dicebat similiter: ET EGO TE; aut si res infra mille asses erat, scilicet L asses sacramentum nominabant. deinde eadem sequebantur, quae cum in personam ageretur. Postea praetor secundum alterum eorum vindicias dicebat, id est interim aliquem possessorem constituebat, eumque iubebat praedes adversario dare litis et vindiciarum, id est rei et fructuum; alios autem praedes ipse praetor

above presented text. Aulus Gellius in *Noctes Atticae*<sup>2</sup> wants to get an explanation for the origin and meaning of “ex iure manum consortum”, an expression coming from the old *legis actio* claims, from a renowned grammaticus, who first refuses to answer the question since he deals with grammatica, Vergilius, Plautus and Ennius. In reply, Gellius remarks that it was exactly chapter eight of Ennius’s *Annales* where he found the phrase; in turn the grammaticus asserts that Ennius drew this expression not from legal but poetic language. The actual explanation follows after that.<sup>3</sup> Consequently, according to Gellius, *manum conserere* means grasping the object of dispute manually (*manu prendere*), which corresponds to Gaius’s phrase *rem apprehendere*; however, in view of its purpose it has definitely separated from that in the course of time.<sup>4</sup> According to Gaius’s locus, the assertion of “property” or “stronger right to possess”<sup>5</sup> by both parties through uttering the sentence “HUNC EGO HOMINEM EX IURE QUIRITIUM MEUM ESSE AIO” refers to things present in iure and grasped manually. Thus, initially *vindicatio*—just as *mancipatio*<sup>6</sup>—was created for transactions involving chattels of greater value (i.e., slaves and draught animals) since the thought that rule over a single land can be exercised merely by placing a rod or hands on it would suppose considerable abstraction of generally accepted formalism, hardly reconciled with the way of thinking of

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ab utroque accipiebat sacramenti causa, quod id in publicum cedebat. Festuca autem utebantur quasi hastae loco, signo quodam iusti domini, quando iusto dominio ea maxime sua esse credebant, quae ex hostibus cepissent; unde in centumviralibus iudiciis hasta proponitur.

<sup>2</sup> Gellius, *Noctes Atticae* 20, 10, 1–10.

<sup>3</sup> Gellius, *Noctes Atticae* 20, 10, 7. sqq. “Manum conserere.” Nam de qua re disceptatur in iure in re praesenti sive ager sive quid aliud est, cum adversario simul manu prendere et in ea re sollemnibus verbis vindicare, id est vindicia. Correptio manus in re atque in loco praesenti apud praetorem ex duodecim tabulis fiebat, in quibus ita scriptum est: ‘si qui in iure manum conserunt.’ Sed postquam praetores propagatis Italiae finibus datis iurisdictionibus negotiis occupati proficisci vindiciarum dicendarum causa ad longinquas res gravabantur, institutum est contra duodecim tabulas tacito consensu, ut litigantes non in iure apud praetorem manum consererent, sed ‘ex iure manum consortum’ vocarent, id est alter alterum ex iure ad conserendam manum in rem, de qua ageretur, vocaret atque profecti simul in agrum, de quo litigabatur, terrae aliquid ex eo, uti unam glebam, in ius in urbem ad praetorem deferrent et in ea gleba tamquam in toto agro vindicarent.

<sup>4</sup> Kaser, M.: Zur “legis actio sacramento in rem”. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 104 (1987) 57.

<sup>5</sup> Kaser, M.: *Eigentum und Besitz im älteren römischen Recht*. Weimar, 1956. 16.

<sup>6</sup> Gaius, *Institutiones* 1, 119.

the archaic age.<sup>7</sup> Therefore, the obligation that the object of dispute should be present before the magistratus applied to any and all things; and regarding the things that could be brought there without any difficulty this requirement continued to be in force without any changes.<sup>8</sup> In the event of lands and things, or totality of things that could not be taken to comitium—according to Gellius, in order for the proceedings to comply with the provisions of the Twelve Table Law,<sup>9</sup> which stipulated that the act of *manum conserere* had to be implemented in iure, i.e., before the law—both the magistratus and the parties to the dispute went to the land in order to implement *vindicatio* there by which the given land became ius, i.e., venue of jurisdiction. As the power of Rome was extended, the burden on the magistratus increased, and so it was no longer possible to apply the above procedure; therefore, a new solution was looked for.

Contrary to the provision of the Twelve Table Law, through tacitus consensus the act of *manum conserere* was no longer implemented *in iure*; instead, to this end the parties called each other from before the law.<sup>10</sup> The party claiming the thing (the latter plaintiff) called the owner of the thing (the later defendant) from the *comitium* to the place where the object of dispute lay; the parties went there together, and took a piece of the thing, then brought it to Rome before the *magistratus* where *vindicatio* described by Gaius was carried out as if the entire land had stood before the law. (Gaius is silent about the procedure of *manum conserere* since the narration of *legis actio* lawsuits provides a historical outlook for those who study *iurisprudentia*, and not an antiquarian who carries out research like Gellius.)<sup>11</sup> So the ritual of *manum conserere* was applied only in the case of certain objects of dispute as it were to prepare *vindicatio*. The reference made to *praetor* in Gellius's text with respect to the time of the Twelve Table Law is, of course, anachronism.<sup>12</sup> The territory of the State of Rome, the *ager Romanus antiquus* did not go beyond a five-six mile strip of land surrounding the *pomerium* on the left bank of the Tiberis;<sup>13</sup> this strip was extended to ten miles only through the occupation of

<sup>7</sup> Thür, G.: *Vindicatio und deductio im frühromischen Grundstückstreit. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 94 (1977) 296.

<sup>8</sup> Kaser: *op. cit.* 1987. 57.

<sup>9</sup> *Leges XII tabularum* 6, 5/a SI (QUI) IN IURE MANUM CONSERUNT.

<sup>10</sup> Cf. Cicero, M. T.: *De oratore*. Cambridge, 1959–1968. 1, 10, 4; *Epistulae ad familiares* 7, 13, 2; *Epistulae ad Atticum* 15, 7.

<sup>11</sup> Kaser: *op. cit.* 1987. 59.

<sup>12</sup> Wieacker, F: *Die XII Tafeln in ihrem Jahrhundert. Les origines de la république Romaine. Entretiens sur l'antiquité classique*, 13 (1968) 303. sqq.

<sup>13</sup> Thür: *op. cit.* 1977. 298.

Fidenae in 426;<sup>14</sup> it is probable that merely this increase in territory made it necessary to create the procedure of *ex iure manum consertum vocare* instead of *in iure manum conserere*.<sup>15</sup>

The development described by Gellius perfectly corresponds to the changes in the procedure described in *Pro Murena*, implemented *in iure*; likewise they can be brought into harmony with the ritual of *vindicatio* presented by Gaius, if the sentences bequeathed by Cicero are interpreted as the preparatory procedure of the actual *vindicatio*.<sup>16</sup> Accordingly, for picking up a lump of earth, that is, to implement *manum conserere* the assistance of the *magistratus* was no longer required since he could set out from the assumption that the witnesses present when the act was carried out<sup>17</sup> would report during the proceedings any irregularity that might have occurred. By that the land no longer represented *ius*, venue of jurisdiction.<sup>18</sup> Now *manum conserere* was used in the meaning of *vindicias sumere*; in the sense of *vindicatio*,<sup>19</sup> i.e., grasping the object of dispute by the parties in the form of *manum conserere* and bringing it before the law. Just as the *magistratus* made his job easier, the parties did the same provided that an agreement was reached between them regarding the issue; if they wanted to bring an action regarding a definite land, they brought a lump of earth from the land needed later for *vindicatio*, and at the instruction of the *magistratus* they only pretended to leave from before the law.<sup>20</sup>

II. The overt insistence on text of *legis actio sacramento* is widely known since—as Gaius himself stressed it—one who misquoted a single word of the text lost the lawsuit.<sup>21</sup> In Roman thinking faith in the impact of spoken words

<sup>14</sup> Alföldi, A.: Hasta – Summa Imperii. The Spear as Embodiment of Sovereignty in Rome. *American Journal of Archeology*, 63 (1959) 304.

<sup>15</sup> Thür: *op. cit.* 1977. 298.

<sup>16</sup> Kaser: *op. cit.* 1987. 63.

<sup>17</sup> Festus, De verborum significatione 394. Superstites testes praesentes significat. Cuius rei testimonium est, quod superstilibus praesentibus i, inter quos controversia est, vindicias sumere iubentur.

<sup>18</sup> Kaser: *op. cit.* 1987. 64.

<sup>19</sup> Festus, De verborum significatione 516. Vindiciae appellantur res eae, de quibus controversia est. De quo verbo Cincius sic ait: 'Vindiciae olim dicebantur illae, quae ex fundo emptae in ius adlatae erant.' At Ser. Sulpicius vindiciam esse ait qua de re controversia est, ab eo quod vindicatur. ... XII: 'Si vindiciam falsam tulit, si velit is ... tor arbitros tris dato, eorum arbitrio fructus duplione damnum decidito.'

<sup>20</sup> Thür: *op. cit.* 1977. 298.

<sup>21</sup> Gaius, Institutiones 4, 11. Actiones ... ideo quia ipsarum legum verbis accomodatae erant et ideo inmutabiles proinde atque leges obseervabantur; unde eum qui de vitibus succisi ita egisset, ut in actione vites nominaret, responsum est rem perdidisse, cum debuisset

constituting reality bore high significance.<sup>22</sup> “The reason for that was the Romans’ unshakeable faith in the numinous force of uttered words; it is our firm belief that all things considered existence is identical with the existence uttered, complete reality is no other than reality cast into words.”<sup>23</sup>

Regarding the origin of the word *fatum* several Roman authors can be quoted. Varro believes the term *fatum* comes from the fact that the Parcae determine the lifespan of infants by stating their decision;<sup>24</sup> which is confirmed by Fronto who asserts that destiny is called *fatum* after the spoken word. This recognition of Antique people that *fatum* derives from the verb *for, fari, fatus sum* has been confirmed by modern linguistics.<sup>25</sup> The commentary written by Servius on Vergilius’s Aeneis helps to go into deeper analysis by asserting that *fatum* is participium, and denotes what the gods have said;<sup>26</sup> consequently, the term itself means *divine word, divine decision (Götterspruch)*.<sup>27</sup> On the other hand, there is a goddess called Fata: on the territory of Lavinium three altar inscriptions from the 4<sup>th</sup>–3<sup>rd</sup> c. B.C. were found which prove the cult of the Goddess Fata;<sup>28</sup> her name is Neuna (Nona), which is known from several literary sources. Here, Gellius quotes Varro and Caesellius Vindex, who describes the name of the Parcae, and, on the grounds of Livius Andronicus’s quotation from the *Odyseia*, the coming of a day foretold by Morta.<sup>29</sup> The Parca Morta/Maurtia named by Caesellius Vindex is also known from the inscription from Lavinium;<sup>30</sup>

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arbores nominare eo quod lex XII tabularum ... generaliter de arboribus succisis loqueretur; 30. Sed istae omnes legis actiones paulatim in odium venerunt, namque ex nimia subtilitate veterum qui tunc iura condiderunt eo res perducta est, ut vel qui minimum errasset litem perderet.

<sup>22</sup> Kaser, M.: *Das altrömische ius*. Göttingen, 1949. 309. sqq.

<sup>23</sup> Köves-Zulauf, Th.: *Reden und Schweigen. Römische Religion bei Plinius maior*. München, 1972. 312; Köves-Zulauf, Th.: *Bevezetés a római vallás és monda történetébe* (Introduction to the History of Roman Religion and Myth). Budapest, 1995. 207.

<sup>24</sup> Varro, *De lingua Latina* 6.52. Ab hoc ... fari, tempora quod tum pueris constituent Parcae fando, dictum fatum et res fatales.

<sup>25</sup> Walde, A.–Hofmann, J. B.: *Lateinisches Etymologisches Wörterbuch*. Heidelberg, 1954. I. 463. sqq.

<sup>26</sup> Servius, *Commentarius in Verg. Aen.* 2, 54. Modo participium est, hoc est, quae dii loquuntur.

<sup>27</sup> Pötscher, W.: *Das römische Fatum – Begriff und Verwendung*. In: Pötscher, W.: *Hellas und Rom*. Hildesheim, 1988. 490.

<sup>28</sup> Vetter 1953. I. 322. 1. Neuna. Fata; 2. Neuna. Dono; 3. Parca Martia/Dono.

<sup>29</sup> Gellius, *Noctes Atticae* 3, 16, 10. Parca ... Nona et Decima a partus tempestivi tempore; 11. Tria nomina Parcarum sunt Nona, Decuma, Morta et versum hinc Livii ponit ex *Odyseia*: quando dies adveniet, quem profata est Morta?

<sup>30</sup> Latte, K.: *Römische Religionsgeschichte*. München, 1967. 53.

the question arises if the goddess Fata can be called Parca; more specifically: if we are talking about the same goddess when referring Fata and Parca?<sup>31</sup> Nona is named Fata on the inscriptions, and Parca by literary sources; Morta is referred to as Parca both on inscriptions and in literary sources. On the other hand, the fragment from Livius Andronicus talks about Maurtia with Fata being as it were her interpreter; that is, her scope of activity is *fari*. Through Gellius it is known from Varro that the name of Parca comes from the word “*partus*” by changing one sound thereof,<sup>32</sup> so her name was originally Parica; that is, she was adored as the goddess of delivery, birth. Parca, however, can be also Morta/Murtia; consequently, she is in close relation with death, which is highly stressed for a goddess of delivery and birth when a child is born dead; but the sources reveal that Morta/Murtia can stand beside goddess Fata as an interpreter, which is not much surprising when considering Fata’s relation to *fatum*, whose meanings include: *death, destruction, perishing*.

In Greek faith the Moirai measured out mortals’ *moira*, portion of life; and since they followed up human life, they were active at birth too. Roman thinking split this function into two; goddesses carried out tasks related to birth as Parcae, they made decisions over human fate as Fatae; while the Greek Moirai united both aspects in themselves, Roman religion—using the methodology known from the creation of the image of *Sondergötter*<sup>33</sup>—expressed these two functions through two goddesses (Parca and Fata); the difference between them is based only on shift of emphasis since, as the comparison of the three inscriptions and the literary sources has revealed, the Parca is at the same time Fata, and the Fata is at the same time Parca,<sup>34</sup> depending on which *numen* of which aspect comes to the front.<sup>35</sup>

It is a fact that both the word *fatum*, the *divine word* and *Fata*, the *goddess who has spoken* come from the verb *fari*; their form with their suffix is participium perfectum. In classic Latin this form usually denotes passive voice, except for *deponens* verbs; on the other hand, for certain verbs with form and denotation in the active voice grammar books define participium perfectum

<sup>31</sup> Pötscher: *op. cit.* 1988. 487.

<sup>32</sup> Gellius, *Noctes Atticae* 3, 16, 10. Nam Parca, inquit, inmutata una littera a partu nominata.

<sup>33</sup> Usener, H.: *Götternamen. Versuch einer Lehre von der religiösen Begriffsbildung*. Bonn, 1896. 75.

<sup>34</sup> Pötscher, W.: Person-Bereichdenken und Personifikation. *Literaturwissenschaftliche Jahrbücher*, 19 (1978) 481. Dh. dass die Parca auch Fata und die Fata auch Parca ist (oder sein kann).

<sup>35</sup> Cf. Pötscher, W.: *Vergil und die göttlichen Mächte – Aspekte seiner Weltanschauung*. Hildesheim–New York, 1977. 33. sqq.

as denoting active voice (although this form, as shown above, is primarily passive). Even without exploring the roots of the problem in the history of language it is unambiguously clear that participium perfectum in ancient Indo-German language was exempt from diathesis,<sup>36</sup> it could be used either in active, or passive voice, or in intransitive meaning. For deponens verbs, which include *fari*, active is the primary meaning but passive is also allowed.<sup>37</sup> The relation between *fatum* and *Fata* does not seem to be an accident; what is more, it is quite probable that what they manifest is the active and passive aspects of the same uniform experience;<sup>38</sup> *fatum* is the divine word, *Fata* is the result of the activity of the goddess who utters this word. The act of *fari* is possessed by each god who utters a given divine decision;<sup>39</sup> in line with this interpretation, Isidorus Hispalensis also calls everything that the gods tell and Iuppiter says *fatum*.<sup>40</sup> Therefore, *fatum* is the giving of the divine decision uttered; *fari* was not limited to *Fataere*, or to *Parcaere*; *fatum* can be given, for example, by Iuppiter,<sup>41</sup> Iuno,<sup>42</sup> Apollo<sup>43</sup> and gods in general.<sup>44</sup>

It was not by accident that the concepts of the Romans formed of destiny, fate were so strongly attached to the uttered divine word's force to create reality; they identified human existence with the formulation of existence, casting existence into words; this fundamental experience may bring closer to understanding the Roman thinking *ex asse*.

III. In his account Plinius maior describes that Ops Opifera's Temple was consecrated by *pontifex maximus* Metellus, but due to his difficulties in speaking fluently he was compelled to suffer for months until he was able to utter the words of the *dedicatio*.<sup>45</sup> Sometime between 123 B.C. and 104 B.C. another, the fourth temple was raised for goddess Ops in Rome—it cannot be

<sup>36</sup> Brugmann, K.: *Griechische Grammatik*. München, 1913. 535.

<sup>37</sup> Vö. Priscianus, *Institutiones grammaticae* 2, 379, 11.

<sup>38</sup> Pötscher: *op. cit.* 1978. 490.

<sup>39</sup> Cicero, *De fato* 30. si ita fatum erit; Livius, *Ab Urbe condita* 25, 12, 6. mihi ita Iuppiter fatus est; Vergilius, *Aeneis* 10, 621. cui rex aetherii breviter sic fatur Olympi.

<sup>40</sup> Isidorus, *Etymologiae* 8, 11, 90. Fatum dicunt esse, quidquid dii fantur, quidquid Iuppiter fatur.

<sup>41</sup> Vergilius, *Aeneis* 4, 612. si ... necesse est, et sic fata Iovis poscunt.

<sup>42</sup> Vergilius, *Aeneis* 7, 294. fata Iunonis iniquae.

<sup>43</sup> Accius, *Tragoediae* 481. veter fatorum terminus sic iusserat.

<sup>44</sup> Vergilius, *Aeneis* 2, 54. et si fata deum si mens non laeva fuisset.

<sup>45</sup> Plinius, *Naturalis historia* 11, 174. Metellum pontificem adeo inexplanatae (sc. linguae) fuisse accipimus, ut multis mensibus tortus credatur, dum mediatur in dedicanda aede Opi Opiferae dicere.

excluded but seems not much probable that her temple on the Capitolium was restored—and it was *pontifex maximus* L. Caecilius Metellus Delmaticus who had to consecrate this temple, of whose career no more is known for sure than that he fulfilled the office of the high priest in 114 B.C.<sup>46</sup> Plinius's text gives an account of Metellus's difficulties in using language, which does not seem to have any historical significance, but in terms of religion it turns the attention to a cardinal point of Roman *religio*; specifically, the requirement of "*the pre-determined, accurate form, exact order of the utterance of the words to be spoken*".<sup>47</sup> Complete physical health was in Rome—as in several other religions—a prerequisite for fulfilling priestly functions,<sup>48</sup> which seems all the less surprising since this requirement held both with respect to sacrificial animals,<sup>49</sup> and the official participants of sacrifices.<sup>50</sup>

The question may arise how come that Metellus acted as *pontifex maximus*; all the more, as he was the only *pontifex* who had some physical disability from birth as sources reveal. (Albeit, tradition maintains the memory of another *pontifex maximus* L. Caecilius Metellus, who fulfilled this office between 243 B.C. and 221 B.C., and who got blind after having been elected, as he saved the Palladium guaranteeing the existence of Rome from Vesta's temple during a fire, which was not allowed to be seen by anybody, including the *pontifex maximus*.<sup>51</sup> After he had got blind, being scrupulously precise in complying with religious requirements, and elected *dictator* seventeen years after he had been alleged to got blind, this high priest<sup>52</sup> did not resign; because—as rhetoric *controversiae* reveal<sup>53</sup>—a man with physical handicaps *was not permitted to become pontifex*, but in case of accidents that occurred when he had already fulfilled the office he was not obliged to resign.<sup>54</sup> It is, however, highly probable that the narrative on *pontifex maximus* L. Caecilius Metellus's blindness is nothing else but rendering the myth of Caeculus, the ancestor of the *gens*

<sup>46</sup> Wissowa, G.: *Religion und Kultus der Römer*. München, 1912. 203; Latte: *op. cit.* 73.

<sup>47</sup> Köves-Zulauf: *op. cit.* 1995. 71.

<sup>48</sup> Wissowa: *op. cit.* 491.

<sup>49</sup> Seneca, *Controversiae* 4, 2. Sacerdos non integri corporis quasi mali ominis res vitanda est. Hoc etiam in victimis notatur, quanto magis in sacerdotibus?

<sup>50</sup> Plinius, *Naturalis historia* 7, 105. (Sc. M. Sergius Silus) in praetura sacris arceretur a collegis ut debilis.

<sup>51</sup> Plinius, *Naturalis historia* 7, 139.

<sup>52</sup> Valerius Maximus 8, 13, 2. Metellus ... pontifex maximus tutelam caeremoniarum per duo et XX annos neque ore in votis nuncupandis haesitante neque in sacrificiis faciendis tremula manu gessit.

<sup>53</sup> Seneca, *Controversiae* 4, 2.

<sup>54</sup> Köves-Zulauf: *op. cit.* 1995. 72.



*Caecilia*, coming from Vulcanus and found next to the public hearth dedicated to Vesta as a historical fact.<sup>55</sup>) L. Caecilius Metellus Delmaticus becoming *pontifex maximus* might have been made possible partly by the growing rationality of the age, on the one hand; as a result of this rationality certain religious requirements were no longer seriously observed, or they tried to evade them in some form or other;<sup>56</sup> and by the fact that most of the texts to be spoken by Roman priests were pre-determined, and so could be learned by heart even by the *pontifex* afflicted with inherent speech difficulty through lengthy and tiring exercise;<sup>57</sup> as a matter of fact, this would not have been possible in a religion based on spontaneous sacred speech, free preaching and prophetic prayer.<sup>58</sup>

The text of the *dedicatio* most probably contained the name of goddess Ops Opifera, which must have posed a double challenge to *pontifex maximus* with his difficulties in speaking fluently (*inexplanata lingua*): to utter an alliterating name was certainly not an easy task for a man with speech difficulties and perhaps stuttering; furthermore, it was exactly during the *dedicatio* that the accurate naming of the goddess was highly important since Ops Opifera belonged to the deities of sowing.<sup>59</sup> The significance of the goddess Ops was never doubtful to the Romans for—as her name shows<sup>60</sup>—it was attached to richness; more exactly, to the richness of the produce; in other words, Ops incorporated the rich yield of the arable land, manifested the helping aspect of the mother earth;<sup>61</sup> as a matter of fact, in line with the inclination to go into details inherent in Roman religion various forms of manifestation of the soil were distinguished, so the soil was adored in general as Tellus, in its aspect enhancing life as Ceres, and in its capacity to produce crop as Ops.<sup>62</sup>

Roman religion, however, divided the aspects of Ops into further parts, as it was customary for it to assign so-called *Sondergottheiten* to the chronologically succeeding elements of various events and actions.<sup>63</sup> On 25 August, they held the festivity of Ops Consiva, i.e., of the goddess who “*has carried out gathering of the crop*”; and two days earlier, on 23 August, the festivity of Ops

<sup>55</sup> Köves-Zulauf: *op. cit.* 1995. 74.

<sup>56</sup> See Latte: *op. cit.* 276.

<sup>57</sup> Latte: *op. cit.* 198. 392; Wissowa: *op. cit.* 397; Dumézil, G.: *La religion romaine archaïque*. Paris, 1973. 53. sqq.

<sup>58</sup> Köves-Zulauf: *op. cit.* 1972. 77.

<sup>59</sup> Köves-Zulauf: *op. cit.* 1972. 78.

<sup>60</sup> Walde-Hofmann: *op. cit.* II. 205. sq.

<sup>61</sup> Radke, G.: *Die Götter Altitaliens*. Münster, 1965. 238. sqq.

<sup>62</sup> Köves-Zulauf: *op. cit.* 1995. 76.

<sup>63</sup> Latte: *op. cit.* 51. sqq.; Radke: *op. cit.* 23. sqq.

Opifera was celebrated,<sup>64</sup> from which it can be unambiguously deduced that the name Ops Opifera—its second part is connected with the verb “*ferre*”—should be interpreted as the goddess<sup>65</sup> “*bringing abundance of heavy crop*”.<sup>66</sup> On that same day, 23 August, they celebrated Volcanalia, and its logical connection with the festivity of Ops Opifera becomes clear when considering that it is wheat not collected yet in pitfalls that is the most exposed to fire, and is in need of Ops Opifera’s resolute protection against Vulcanus.<sup>67</sup> Today it is no longer possible to explore in every detail why the Romans thought it was especially dangerous to call the deities of sowing by their names; however, it indicates the importance of the goddess Ops that in the course of searching for the secret guardian deity of Rome—this name was not known by the public just to prevent *evocatio* by the enemy—Ops has also arisen as a deity who might have fulfilled this function.<sup>68</sup>

The findings summed here clearly show that the validity of *dedicatio* as an integral institution of *ius sacrum* was inseparably attached to the exact utterance and proper order of the words to be spoken; as a parallel this phenomenon makes it more definite that *legis actio sacramento in rem* was strongly focused on the text.

IV. A peculiar interpretation of *prodigium* provides an interesting parallel with the reality creating function of the spoken word. First, a brief examination of the significance of *prodigium* will be given. The Romans called the accustomed order, peaceful state of the world *pax de(or)um*, which meant the gods’ peaceful relation to humans; and if this order was upset, it was always deducible to the gods’ stepping out of this peaceful state.<sup>69</sup> The breakdown of the cosmic order, that is, any extraordinary, new event was considered *prodigium*.<sup>70</sup> The etymology of the word is dubious—in Walde–Hofmann’s interpretation *prodigium* derives from the compound “*prod-aio*”; consequently, *prodigium* means foretelling, or pointing ahead. This interpretation does not seem satisfying because *prodigium* was a term that always had to be inter-

<sup>64</sup> Radke: *op. cit.* 239.

<sup>65</sup> Köves-Zulauf: *op. cit.* 1995. 77.

<sup>66</sup> Köves-Zulauf: *op. cit.* 1972. 79.

<sup>67</sup> Latte: *op. cit.* 73. 129; Köves-Zulauf: *op. cit.* 1972. 79.

<sup>68</sup> Macrobius, Saturnalia 3, 9, 3–4. Deum in cuius tutela urbs Roma est ... ignotum alii Iovem crediderunt, alii Lunam, sunt qui Ageronam, ... alii autem quorum fides mihi videtur firmior Opem Consivam esse dixerunt.

<sup>69</sup> Köves-Zulauf: *op. cit.* 1995. 61.

<sup>70</sup> Zintzen, C.: Prodigium. In: Ziegler, K. et. al (ed.): *Der Kleine Pauly*. München, 1979. IV. 1151.

preted, and that is why in Rome they always used the help of *pontifices*, *libri Sibyllini* or *haruspices* to carry out this task, since *prodigium* itself does not state anything; apparently another interpretation is more proper that asserts that the word derives from the compound “*prod-agere*”, so *prodigium* means the process of moving ahead; accordingly, *prodigium* is nothing else than the act when “*breaking through this shell, transcendental forces hiding behind the surface come forth and become manifest*”.<sup>71</sup>

Among the forms of interpretation of *prodigium* Plinius maior discusses the following case at a highlighted point: when laying the foundations of the Capitolium the Romans found a human head on the Tarpeius Hill; they sent delegates to the most famous oracle of Etruria, Olenus Calenus, who tried to transpose the *prodigium* with fortunate significance to his own people. In front of his feet he drew the image of the temple with his cane and said: “*So you say so, Romans? This is where Iuppiter Optimus Maximus’s temple will be, we found the head here?*” The oracle’s son warned the delegates about his father’s trick—if they had given improper answer, the prediction would have passed on Etruria: “*We do not say that the head was found exactly here but in Rome*”, replied the delegates.<sup>72</sup> In his account Plinius refers to the concordant evidence in the *Annales*, and research has established that he took the description from Valerius Antias, who used Piso and Fabius Pictor as sources;<sup>73</sup> accordingly, this legend had existed as early as the 3rd c. B.C.<sup>74</sup> The author does not intend to analyse the symbolism of the head in detail, just notes that the durability of buildings (the Capitolium was the symbol of the city of Rome and so the empire itself) was meant to be ensured by people living in Europe since the Neolithic age through the ritual of walling up live persons. As certain versions of the text report not only on a human head but a healthy human body, it can be made probable that the story intended to refer to such a ritual.<sup>75</sup> The oracle wanted to rob *fatum* from Rome, and pointed at the outlined layout, and tried to convince

<sup>71</sup> Köves-Zulauf: *op. cit.* 1995. 62.

<sup>72</sup> Plinius, *Naturalis historia* 28, 15. Cum in Tarpeio fodientes delubro fundamenta caput humanum invenissent, missis ob id ad se legatis Etruriae celeberrimus vates Olenus Calenus, praeclarum id fortunatumque cernens, interrogatione in suam gentem transferre temptavit, scipione determinata prius templi imagine in solo ante se: ‘Hoc ergo dicitis, Romani? hic templum Iovis optimi maximi futurum est, hic caput invenimus?’ Constantissima Annalium adfirmatione, transitorium fuisse fatum in Etruriam, ni praemoniti a filio vatis legati respondissent: ‘Non plane hic, sed Romane inventum caput dicimus.’

<sup>73</sup> Münzer, F.: *Beiträge zur Quellenkritik der Naturgeschichte des Plinius*. Berlin, 1897. 149.

<sup>74</sup> Cf. Livius, *Ab Urbe condita* 1, 55, 5–6.

<sup>75</sup> Köves-Zulauf: *op. cit.* 1995. 205. sqq.

the Romans to say that the head had been found at the oracle's feet, on the land of Etruria. If the Romans had made such a statement, the impacts of the *prodigium* would have been produced on the Etruscans; the head would have stayed in Rome but not the *fatum* related to it.

So human word in Roman thinking had magical impact creating and changing reality; in this respect it is enough to think of the statements made on *fatum*.<sup>76</sup> In our present way of thinking, we would of course interpret the oracle's words interpreting the *prodigium* in terms of sense and not word for word; the people of the age of the legend, however, did not do so. "*The reason for that was the Romans' unshakeable faith in the numinous force of uttered words; it is our firm belief that all things considered existence is identical with the existence uttered, complete reality is no other than reality cast into words.*"<sup>77</sup>

V. Among the norms of table eight of the Twelve Table Law containing criminal law rules several original provisions can be found that are in close connection with verballity: "*QUI MALUM CARMEN INCANTASSIT...*",<sup>78</sup> and related to it there is a norm that imposes capital punishment on those who conjure up *carmen* reviling others.<sup>79</sup> The law also provides for those who enchant and allure others' crop to come to them: "*QUI FRUGES EXCANTASSIT*",<sup>80</sup> "*NEVE ALIENAM SEGETEM PELLEXERIS*"<sup>81</sup> With this latter source it is possible to connect the remark of Servius's commentary on Vergilius,<sup>82</sup> and with the loci 1/a. and 8/a. Plinius maior's thought.<sup>83</sup> It was not by accident that the author of this paper quoted the relevant paragraph in *Naturalis historia*, because Plinius compares the relevant provisions of the

<sup>76</sup> Köves-Zulauf: *op. cit.* 1972. 308. sqq.

<sup>77</sup> Köves-Zulauf: *op. cit.* 1972. 312; 1995. 207.

<sup>78</sup> Leges XII tabularum 8, 1/a.

<sup>79</sup> Leges XII tabularum 8, 1/b (Cicero, De re publica 4, 10, 12.) Nostrae XII tabulae, cum perpaucae res capite sanxissent, in his hanc quoque sancendam putaverunt: si quis occentavisset sive carmen condidisset, quod infamiam faceret flagitiumve alteri.

<sup>80</sup> Leges XII tabularum 8, 8/a.

<sup>81</sup> Leges XII tabularum 8, 8/b.

<sup>82</sup> Servius, Commentarius in Verg. Aen. 8, 99. Atque satas alio vidi traducere messes. Magicis quibusdam artibus hoc fiebat, unde est in XII tabulis: neve – pellexeris.

<sup>83</sup> Plinius, Naturalis historia 28, 18. Quid? Non et legum ipsarum in XII tabulis verba sunt: Qui fruges excantassit, et alibi: Qui malum carmen incantassit? Verrius Flaccus auctores ponit, quibus credat in oppugnationibus ante omnia solitum a Romanis sacerdotibus evocari deum cuius in tutela id oppidum esset, promittique illi eundem aut ampliorem apud Romanos cultum. Et durat in pontificum disciplina id sacrum, constatque ideo occultatum in cuius dei tutela Roma esset, ne qui hostium simili modo agerent.

Twelve Table Law with the ritual regarding which his source, Verrius Flaccus names several authors: in the siege of a town the Roman priests first of all “evoked” the god (this is the so-called *evocatio*) under whose patronage the given town stood, since in Rome they promised the same or greater cult to the god; furthermore, this ceremony had survived in the *pontifices*’ science, and that is why they kept the name of the god in secret under whose patronage Rome stood to avoid that the enemy should act the same way.<sup>84</sup> To have better understanding of these provisions of the Twelve Table Law, it is worth making some remarks concerning the locus regarding *evocatio*.

With respect to *evocatio* the text contains two unambiguous statements: on the one hand, the ceremony of *evocatio*; on the other hand, its practice that had existed—in theory—until his own age, i.e., the 1st c. This latter statement on the survival of the custom might be the author’s own thought and does not go back to the *auctores* referred to above by him;<sup>85</sup> at the same time, it cannot be excluded that Plinius simply took over Verrius’s statement without any critical note or comment.<sup>86</sup> Even if presuming that the comment on the survival of the ritual was indeed Plinius’s own assertion, it does not necessarily mean that he himself were allowed to inspect pontifical writings, much rather he might have supposed—relying on what he read in Verrius—that it had not changed until his age.<sup>87</sup> Plinius did not disclose the text of the ceremony, but it can be found in Macrobius, who described *in concreto carmen evocationis* applied to Carthago.<sup>88</sup> Concerning *evocatio* Plinius speaks about *oppidum*—the ceremony of *evocatio* could be used against a town, i.e., *urbs*, founded by complying with sacred rituals similarly to Rome,<sup>89</sup> but as sources reveal it could be used against *oppida* too; the term “*solitum*” seems to imply that *evocatio* occurred much more often in the course of Roman history than the specific cases supported by documentary evidence imply.<sup>90</sup> Furthermore, the author clearly states that the ceremony of *evocatio* was performed by *sacerdotes*, contrary to the ritual of *devotio urbis* which fell in the competence of the *dictator*, or the *imperator*.<sup>91</sup>

<sup>84</sup> About *ius fetiale* see Fusinato, G.: *Dei feziali e del diritto feziale*. Macerata, 1884; Heuss, A.: *Die völkerrechtlichen Grundlagen der römischen Aussenpolitik in republikanischer Zeit*. Leipzig, 1927.

<sup>85</sup> Rohde, G.: *Die Kultursatzungen der römischen Pontifices*. Berlin, 1936. 26.

<sup>86</sup> Münzer: *op. cit.* 1897. 38. 47. 60. 121.

<sup>87</sup> Köves-Zulauf: *op. cit.* 1972. 86.

<sup>88</sup> Macrobius, *Saturnalia* 3, 9, 7–8.

<sup>89</sup> Basanoff, V.: *Evocatio*. Paris, 1947. 21.

<sup>90</sup> Latte: *op. cit.* 1967. 125.

<sup>91</sup> Macrobius, *Saturnalia* 3, 9, 9.

While in Roman beliefs *evocatio*—being *carmen* addressed to a deity having a specifically determined personality—prepared the destruction of the enemy’s town as a religious act, *devotio urbis* did that as *consecratio* addressed to magical, that is, impersonal forces of the underworld;<sup>92</sup> most frequently aimed against the town already deprived of its guardian deities.<sup>93</sup> The *carmen* of *devotio urbis* is also known from Macrobius.<sup>94</sup> At the same time, it is not possible to set up unambiguously a *nulla devotio sine evocatione*<sup>95</sup> thesis since *devotio* was frequently applied without *evocatio*—as the latter could be carried out only regarding *urbes*—here Macrobius intended to set a logical sequence only, rather than determine a *cogens* norm of *ius sacrum*. The source cited also states that to avoid *evocatio* carried out by the enemy they kept the identity of the deity who protected Rome in secret. It is in line with Plinius’s statements, which can be read in Macrobius<sup>96</sup> and Servius,<sup>97</sup> albeit, regarding the issue if their content corresponds to the facts contradictory views are entertained in the literature because the name of the guardian deity is unknown; some experts brand the ideas about it pure fiction or relatively late borrowing from the East;<sup>98</sup> however, others dismissing this standpoint of supercriticism suppose that it was not to support the ritual of *evocatio* that the sources created a secret deity for Rome but it was the thinking of people of the age—which accepted the notion that enemies’ towns could be destructed though *evocatio*—that deemed it necessary to keep Rome’s guardian deity’s name in secret in order to protect it against possible *evocatio* carried out by enemies.<sup>99</sup>

Rome’s other (secret) name—*nomen alterum*—is referred to by Plinius maior also at other points;<sup>100</sup> the “*nisi*” inserted by Mommsen, held quite uncertain in

<sup>92</sup> Wagenvoort 1956. 31. sqq.; cf. Cicero, De domo sua 128. ...ut imperator agros de hostibus captos consecraret.

<sup>93</sup> Macrobius, Saturnalia 3, 9, 6. 9.

<sup>94</sup> Macrobius, Saturnalia 3, 9, 10–11.

<sup>95</sup> Basanoff: *op. cit.* 5.

<sup>96</sup> Macrobius, Saturnalia 3, 9, 3. propterea ... ignotum esse voluerunt.

<sup>97</sup> Servius, Commentarius in Verg. Aen. 2, 351. inde est, quod ... celatum esse voluerunt.

<sup>98</sup> Latte: *op. cit.* 125.

<sup>99</sup> Brelich, A.: *Die geheime Schutzgottheit von Rom*. Zürich, 1949. 9. sqq; Wissowa: *op. cit.* 1912. 179. 203. 338; Köves-Zulauf: *op. cit.* 1972. 95.

<sup>100</sup> Plinius, Naturalis historia 3, 65. Roma ipsa, cuius nomen alterum dicere nisi in arcanis caeremoniaerum nefas habetur optimaque et salutari fide abolitum enuntiavit Valerius Soranus luitque mox poenas. Non alienum videtur inserere hoc loco exemplum religionis antique ob hoc maxime silentium institutae. Namque diva Angerona, cui sacrificatur a.d. XII kal. Ian., ore obligato obsignatoque simulacrum habet.

inherited texts, affects the core of the content of the source,<sup>101</sup> which might make it probable that the secret name of the city of Rome was permitted to be uttered solely in secret ceremonies. This assumption, i.e., Mommsen's addition, is basically in conflict with and made unnecessary by the image of the goddess since she was portrayed both with covered eyes and sealed mouth to indicate complete silence that referred to her name, and with/by the sources that confirm that this secret name was not permitted to be uttered even in religious ceremonies.<sup>102</sup> On the grounds of the above it seems logical to ignore the insertion "*nisi*" when reviewing the text. The source contains three data: first, the existence of the secret name of the city of Rome; secondly, that it was betrayed by Valerius Soranus and the betrayer was punished—Plinius traces this information back to Varro—thirdly, the cult of goddess Angerona; the latter is taken by the author from Verrius; the second and third fact will be touched on only to the extent that they are related to the controversial issue of *nomen alterum*.<sup>103</sup> The existence of the secret name of the city of Rome can be supported from several points of view: dismissing the standpoint of hypercriticism, as in the case of *evocatio*, until the contrary has been proved, the ritual of *devotio urbis* can be accepted as an element actually used and constituting an integral part of Roman religion. Regarding secret names, research has explored several parallels between the names of persons, tribes and towns, whose secrecy in each case was rooted in the belief in the possibility of abusing the name through magical means, and it was meant to protect the bearer of the name against such abuse.<sup>104</sup>

(The phrase "*dicere arcanis caeremoniarum nefas habetur*" raises the question which nominativus the expression *arcanis caeremoniarum* can be deduced to: to the peculiar genitivus partitivus *arcae caeremoniarum*, or to *arcana caeremoniarum*, where the genitivus allows interpretation either as explicativus, or possessivus or partitivus. That is, does Plinius mean totally secret ceremonies by it, or only rituals that had parts including secret elements but their entirety was performed in public. Whichever interpretation is accepted, it seems certain that the ceremony, or ceremonies mentioned by Plinius was/were somehow connected with the secret name of Rome and the prohibition to utter it.) Although Plinius does not specify here what ceremony he meant, there is

<sup>101</sup> Corpus Inscriptionum Latinarum I. 409.

<sup>102</sup> Servius, Commentarius in Verg. Aen. 1, 277. Urbis ... verum nomen nemo vel in sacris enuntiat. Georg. 1, 498. Verum nomen eius numinis ... sacrorum lege prohibetur.

<sup>103</sup> About *nomen alterum* see Plinius, Naturalis historia 2, 15; 2, 37; 3, 2; 4, 28; 5, 115; 16, 48; 21, 52; 23, 35.

<sup>104</sup> Wissowa: *op. cit.* 69.

only one ritual known considered indeed strictly secret that was so closely related to the secret name of the city as *evocatio* to the secret guardian deities of the city, and that is *devotio urbis*. In a similar spirit Macrobius comments upon the issue.<sup>105</sup> Just as Macrobius somewhat mingles the ceremonies of *evocatio* and *devotio urbis*, Plinius does not clearly separate the two rituals from one another either; it must have been the essential secrecy of both cases that made the author to draw parallel with the portrayal of goddess Angerona, which is involved in the text definitely as the symbol of silent secrecy without making it possible to determine clearly whose secret the goddess preserves.

Returning to the quoted loci of the Twelve Table Law, it does not seem unnecessary to recall what meanings the term *carmen* carries when occurring in the sources. The term *carmen* can have very different meanings: work song,<sup>106</sup> children' song, game rhyme,<sup>107</sup> love song,<sup>108</sup> satirical poem, funny song,<sup>109</sup> legend, sentence,<sup>110</sup> magical rhyme, healing song,<sup>111</sup> cultic song, prayer,<sup>112</sup> prophecy,<sup>113</sup> song on the deceased, ancestors,<sup>114</sup> ancient law,<sup>115</sup> entering into an alliance, declaration of war and military oath.<sup>116</sup> On the grounds of this ranking it is possible to accept the interpretation that the relevant provision of the Twelve Table<sup>117</sup> imposed capital punishment on those using abusive songs;<sup>118</sup> in other of the case "*fruges excantassit*" and "*segetem pellegerit*" are properly

<sup>105</sup> Macrobius, Saturnalia 3, 9, 5–6. 9. Ipsius vero urbis nomen etiam doctissimis ignoratum est, caventibus Romanis, ne quod saepe adversus urbes hostium fecisse se noverant, idem ipsi quoque hostili evocatione paterentur, si tutelae suae nomen divulgaretur. Sed videndum, ne, quod non nulli male aestimaverunt, nos quoque confundat opinantes uno carmine et evocari ex aliqua urbe deos, et ipsam devotam fieri civitatem. ... Urbes vero ... sic devoventur iam numinibus evocatis.

<sup>106</sup> Tibullus 2, 6, 21–26; Vergilius, Georgica 1, 287–294.

<sup>107</sup> Porphyrio, Commentarius in Hor. Epist. 1, 1, 62; in Hor. ars 417.

<sup>108</sup> Horatius, Satirae 1, 5, 14–21.

<sup>109</sup> Suetonius, Divus Iulius 49. 51; Horatius, Epistulae 2, 1, 139–155; Augustinus, De civitate Dei 2, 9.

<sup>110</sup> Gellius, Noctes Atticae 4, 9, 1–2; Isidorus, Etymologiae 6, 8, 12.

<sup>111</sup> Varro, De lingua Latina 6, 21; Plinius, Naturalis historia 28, 2, 29; 28, 2, 10. 17–18.

<sup>112</sup> Quintilianus, Institutio oratoria 1, 6, 40; Varro, De lingua Latina 7, 27; Cato, De agricultura 141, 1–3; Macrobius, Saturnalia 3, 9, 6.

<sup>113</sup> Festus, De significatione verborum 325; Livius, Ab Urbe condita 25, 12, 2–14.

<sup>114</sup> Cicero, Brutus 19. 75.

<sup>115</sup> Gellius, Noctes Atticae 20, 1, 42–49.

<sup>116</sup> Livius, Ab Urbe condita 1, 24, 4–9; 1, 32, 5–14.

<sup>117</sup> Leges XII tabularum 8, 1/b

<sup>118</sup> Cicero, De re publica 4, 10, 12; Cf. Porphyrio, Commentarius in Hor. Sat. 2, 1, 82. Lege XII tabulis cautum erat, ne quis in quemquam maledicum carmen scriberet.



cases<sup>119</sup> the law uses the term *carmen* in the sense of magical rhyme. The facts highlighted by another locus in Plinius;<sup>120</sup> this source adduces to the three goddesses of harvesting grain without naming two of them (Seia, Segesta), and refers to the third one asserting that it is prohibited to utter her name in a house, or in any roofed place (*sub tecto*). It is known from other parallel loci that the third goddess bore the name Tutilina.<sup>121</sup> Most probably what we have here is a permanent triad of goddesses. The function of the first two goddesses is quite clear: Seia protects the seed sown and resting in the soil, and Segesta protects grain ripening, still standing, which seems to be confirmed by the etymology of the two names.<sup>122</sup> In the examination of Tutilina's name and role it is most fortunate to set out from the analytical approach quite typical of Roman religion by which it splits certain processes of life into the minutest units, and assigns each phase of these actions or events to the powers of a particular *Sondergott*<sup>123</sup> by naming a Usener, individual deity specially allocated to them.<sup>124</sup>

This triad undoubtedly belongs to the phases of the ripening of grain, and it logically comes from that that having knowledge of the roles of the first and second *Sondergöttin* the role of the third one can be determined; specifically, it is the task of harvesting grain, and bringing it to the barn, and guarding it there. This is in harmony with Augustinus's statement taken over from Varro,<sup>125</sup> which asserts that naming Tutilina in a closed space—just as naming the other two goddess presumably elsewhere, on the meadow which ripens grain—could be connected with the fact that uttering the name was identical with evoking the given *numen*. Naming the deity—which was in a certain aspect identical with the material reality represented by it according to the peculiarly Greek-Roman *Person-Bereichdenken*<sup>126</sup>—might make it possible to commit abuse with

<sup>119</sup> Leges XII tabularum 8, 1/a; 8/a; 8/b

<sup>120</sup> Plinius, *Naturalis historia* 18, 8. Hos enim deos tum maxime noverant, Seiamque a serendo, Segestam a segetibus appellabant, quarum simulacra in circo videmus ... tertiam ex his nominare sub tecto religio est.

<sup>121</sup> Varro, *De lingua Latina* 5, 163; Macrobis, *Saturnalia* 1, 16, 8; Augustinus, *De civitate Dei* 4, 8; Tertullianus, *De spectaculis* 8, 3.

<sup>122</sup> Latte: *op. cit.* 51. Der etymologische Zusammenhang mit semen, bzw. seges, dürfte für die ersten sicher sein.

<sup>123</sup> Usener, H.: *Götternamen. Versuch einer Lehre von der religiösen Begriffsbildung*. Bonn, 1896. 75.

<sup>124</sup> Köves-Zulauf: *op. cit.* 1972. 81; Latte: *op. cit.* 50.

<sup>125</sup> Augustinus, *De civitate Dei* 4, 8. Frumentis vero collectis atque reconditis ... deam Tutilinam praeposuerunt.

<sup>126</sup> Pötscher: *op. cit.* 1978. 229.

the grain protected by it; so, for example, enchanting sowing to come to someone else's land, or charming the already harvested grain to come to someone else's building. The independent existence of deities assigned to each phase of the life cycle of the grain shows that their names were not absolutely taboo, instead they were tabooed only under certain circumstances and at certain places since only then and there did they produce their impact. As a matter of fact, it is not possible to separate strictly and systematically the religious and the magical approaches regarding these phenomenon of Antique beliefs for naming the deity implies religious, and the *excantatio* performed by it magical motifs, presumably the co-existence of the two approaches should be reckoned with here too just as in the case of *evocatio* and *devotio urbis*.

**Conclusion.** What consequences can be drawn with regard to the subject of the investigation of this paper? The words of the *vindicatio* of *legis actio sacramento in rem* developed for real estate properties were called *carmen* also by Cicero.<sup>127</sup> Setting out from the numerous meanings of the word *carmen* the words of *legis actio sacramento in rem* were qualified as a text with legal content of sacred–magical, numinous–nature.<sup>128</sup> The relation of the Romans to sacred texts, or spoken words is determined by Köves-Zulauf as follows: “Roman religion is the religion of ... discipline, anxiety, suppression, and not of relieved relaxation as the Greek. ... That is where, one might say, the neurotic insistence on speech of the Roman religion comes from.”<sup>129</sup>

<sup>127</sup> Cicero, Pro Murena 26.

<sup>128</sup> See also the distinction in Greek religion between hierēys and arētér: arētér – precatōr, sacerdos, qui pro populo precatur deos ... Homerus, Ilias 1, 11. 94. 5, 78; hierēys – sacerdos unius e diis, qui certo fungitur munere ... Homerus, Ilias 1, 23. (Eberling, H.: *Lexicon Homericum I–II*. Hildesheim, 1963. I. 172. 585.) See also Muth, R.: *Einführung in die griechische und römische Religion*. Darmstadt, 1988. 70.

<sup>129</sup> Köves-Zulauf: *op. cit.* 1995. 249.