

TAMÁS NÓTÁRI*

The Spear as the Symbol of Property and Power in Ancient Rome

Abstract. In his well-known description of *legis actio sacramento in rem*, Gaius remarks that the rod was used in the procedure instead of the spear as the sign of lawful property since what the Romans considered truly their own was the goods taken from the enemy: "*Festuca autem utebantur quasi hastae loco, signo quodam iusti dominii; quod maxime sua esse credebant quae ex hostibus cepissent.*" In harmony with Gaius's view Verrius Festus states that the spear is the symbol, incarnation of supreme power: "*Hasta summa armorum et imperii est.*" Setting out from these two *testimonia*, in the present study we intend to examine the content of the *hasta* and the *festuca* as symbols of power to support the interpretation of the ritual of *legis actio sacramento in rem* as *duellum sacrum*. First, we shall give a brief account of the occurrences of the spear as the symbol of *imperium*, of *subhastatio* related thereto and the function of the supreme commander's spear; also, we shall touch on the stick of *augures* and certain Greek prefigurations and parallels of the symbolic nature of the spear and the rod. (I.) After that, we shall make some statements concerning the spear of the god Mars and the Mars cult, and the relation of Quirinus and Quirites to the symbolism of the spear. (II.) The *fascēs* carried by *lictōres* proceeding in front of the *magistratus*, the *flamen Dialis* and the *virgo Vestalis* are also insignia of power and, as we try to highlight this point, incarnate the highly sacralised, numinous nature of power. (III.) Finally, from the ceremony of declaring war and from the special character and use of the spear in the ceremony we intend to show certain parallels between *ius fetiale* and *legis actio sacramento in rem*. (IV.)

Keywords: legal symbols, spear, hasta, festuca, legis actio in rem

I. It can be rightly assumed that in the beginning—and probably later on as well—the spear as weapon was nothing else than a long, sharp rod made of hard wood, and hardened in fire.¹ If the *hasta* was the weapon with which in the course of the fights they could win loot, recognition, and hence power, it is no

* Associate Professor, Reformed University "Károli Gáspár", Faculty of Legal and Political Sciences, Department of Roman Law, H-1042 Budapest, Viola u. 2–4.
E-mail: tamasnotari@yahoo.de

¹ Cicero: *In Verrem* 4, 125; Plinius maior, *Naturalis historia* 16, 65; Herodotus 7, 71; Tacitus: *Annales* 2, 14; Propertius 4, 1, 28; Ammianus Marcellinus 31, 7, 12.

wonder that shortly it became the symbol of power.² This is also shown by Verrius Festus's definition: "*hasta summa armorum et imperii est*",³ and the reference to *imperium*, especially in connection with the spear, reminds one of its magico-religious character, belonging to the sacred sphere.⁴ *Imperium* denotes the actual power of the commander in the first place; however, it is also related to the sphere of religion; in *auspicium* the sacred element predominates; at the same time, it implies the entitlement to implement it.⁵ Wagenvoort observes that in Roman thinking certain persons possessed exceptional *mana* of their own; so, for example, the *imperator*, when we examine the origin of the word, had creating, fertilising force,⁶ and when as a commander he gave his soldiers an order to occupy the enemy's camp, then with his magic word he conjured up in them the force necessary for executing the order; this implies that *imperium* is nothing else but a form of transmitting mystical force.⁷ The military and religious leader (initially both duties were fulfilled by the *rex* among the Romans)⁸ possessed *mana*, that is what made him able, e.g., to increase the fertility of the earth as ethnological examples show. Accordingly, in Wagenvoort's interpretation *imperare* originally meant nothing else but *to conjure up, to fertilize* since the commander, who gave order to his soldiers to attack a foreign camp (*imperabat*), with his magical word created, conjured up the force necessary for executing the order; that is, the author draws the conclusion, *imperium* is actually the ability to transmit, create mystical force.⁹ Köves-Zulauf points out as a specificity of this that: "*the particular*

² Waele, F. J. M. de: *The Magic Staff or Rod in Graeco-Italian Antiquity*. Gent, 1927. 172.

³ Festus 55, 3.

⁴ See Pötscher, W.: 'Numen' und 'numen Augusti'. In: Pötscher, W.: *Hellas und Rom*. Hildesheim, 1988. 462; Wagenvoort, H.: *Wesenszüge altrömischer Religion*. In: *Aufstieg und Niedergang der römischen Welt*. Berlin–New York, 1972. I. 2. 371 sq.; Nótári, T.: On Some Aspects of the Roman Concept of Authority. *Acta Juridica Hungarica* 46. 2005. 95 sqq.

⁵ Pötscher, W.: 'Numen' und 'numen Augusti'. In: *Hellas und Rom*. Hildesheim, 1988. 462.

⁶ Walde, A.–Hofmann, J. B.: *Lateinisches etymologisches Wörterbuch I–II*. Heidelberg, 1938. I. 683.

⁷ Wagenvoort: *Wesenszüge... op. cit.* 371.

⁸ Hamza G.–Földi A.: *A római jog története és intézményei* (History and Institutes of Roman Law). Budapest, 2006¹¹. 18.

⁹ Wagenvoort: *Wesenszüge... op. cit.* 371 sq. *Sehen wir richtig, so bedeutete das Zeitwort imperare ('befehlen', 'herrschen') ursprünglich 'zum Leben erwecken', 'befruchten'; der Feldherr, der seinen Soldaten befahl (imperabat), ein feindliches Lager zu berennen,*

interest of the issue ... is that parere (to give birth) is a typically feminine word, whereas imperium was exclusively possessed by men".¹⁰

It is not by chance that the loot taken from the enemy, as Gaius, not at all accidentally, also refers to it,¹¹ especially selling prisoners of war,¹² and later auctions in general¹³ are denoted by the term *subhastatio*.¹⁴ The Romans themselves were aware of the origin of this custom;¹⁵ it often appears within the context of the terms *praeda*¹⁶ and *spolia*; the *hasta* became the symbol of selling,¹⁷ the compound *ius hastae* developed from it,¹⁸ and in state sales sometimes the phrase *hastam ponere* was used,¹⁹ on several occasions the *hasta* as a symbol substituted the entire legal transaction.²⁰ In this function the spear is called *hasta publica* by Cornelius Nepos,²¹ *domina hasta* by Juvenalis,²² the place of the *hasta* is called *hastarium* by Tertullianus,²³ and the custom of displaying the *hasta* survived²⁴ during the entire period of the Roman empire.²⁵

When presenting the institution of *decemvri stlitibus iudicandis*, Pomponius uses the term *hasta praesesse*²⁶ which could not mean anything else but the leading of *iudicium centumvirale*. However, *iudicium centumvirale* came into

erzeugte in ihnen durch sein magisches Wort die Kraft zur Erfüllung seines Auftrages. Imperium ist also eine Form der Übertragung geheimnisvoller Kraft.

¹⁰ Köves-Zulauf, Th.: *Bevezetés a római vallás és monda történetébe* (Introduction into the History of Roman Religion and Myth). Budapest, 1995. 31.

¹¹ Gaius, *Institutiones* 4, 16. *quod maxime sua esse credebant quae ex hostibus cepissent.*

¹² Festus 55, 9; 90, 19.

¹³ Codex Iustinianus 10, 3, 1 sqq.

¹⁴ Livius 2, 14, 1–4; Dionysius Halicarnassensis 5, 34, 4; Valerius Maximus 3, 2, 2; Cicero: *De officiis* 2, 27, 83; *Philippicae* 2, 64, 103; Varro, *De re rustica* 2, 10, 4; Codex Iustinianus 4, 44, 16. Cf. Alföldi, A.: *Hasta – Summa Imperii, The Spear as Embodiment of Sovereignty in Rome. American Journal of Archeology* 63. 1959. 3. 8; Kovács P.: *Adatok a hasta mint hatalmi jelvény használatához. Antik Tanulmányok* 47. 2003. 261 sqq.; 268; de Waele: *op. cit.* 172.

¹⁵ Livius 2, 14, 1 sqq.; Dionysius Halicarnassensis 5, 34, 4.

¹⁶ Cicero: *De officiis* 2, 27, 8; Livius 4, 29, 4; Suetonius, *Divus Iulius* 50, 2.

¹⁷ Cicero: *Philippicae* 2, 103.

¹⁸ Tacitus: *Annales* 13, 28; Codex Iustinianus 10, 3.

¹⁹ Cicero: *De officiis* 2, 29, 83; *Philippicae* 2, 64; *De lege agraria* 2, 53.

²⁰ Codex Iustinianus 10, 3, 1. Cf. Kovács: *op. cit.* 269.

²¹ Cornelius Nepos, *Atticus* 6, 3.

²² Juvenalis 3, 33.

²³ Tertullianus: *Apologeticum* 13; *Ad nationes* 1, 10.

²⁴ Codex Theodosianus 10, 17; Codex Iustinianus 10, 3.

²⁵ Kovács: *op. cit.* 269.

²⁶ Pomponius, *Digesta* 1, 2, 2, 29.

being only one hundred years after the date assumed by Pomponius (242–227 BC.),²⁷ thus the historical credibility of Pomponius's report becomes doubtful, it can be safely stated that only a *magistratus cum imperio* was entitled to decide the question of *legitimum dominium*.²⁸ The insignia of *iudicium centumvirale*,²⁹ founded in the 2nd century BC. was the so-called *hasta centumviralis*. By the end of the republic the presidency of this court of law was fulfilled by a *praetor* as supervisor at the head of the *iudicium centumvirale*.³⁰ Novellius Torquatus Atticus was the first *praetor hastarius* or *praetor ad hastam* known by name. With this disposition, Augustus probably did not introduce a new *proquestor*, due to the engagement of *praetors*.³¹ Augustus appointed again a rule but revived an older one.³² If the court was sitting in different parts, the man, chosen by the *praetor hastarius* from among the *decemvirii* to preside the court *ad hoc*, was using his own spear in the *iudicium*,³³ which fact is corroborated by Quintilian's report of *duae hastae* in the case when the *iudicium centumvirale* was functioning divided into two parts.³⁴ The *iudicium centumvirale*, judging cases of inheritance under the supervision of the *praetor hastarius* was usually sitting in four sections in the *basilica Iulia*.³⁵

The *hasta pura*, *pura* because it was made of metal, and *donatica* (*dory katharon*) were regarded as military decorations³⁶ as Servius's comments on the *Aeneis* reveals,³⁷ and the spear awarded for military courage must have been an *imperator's* spear or a copy thereof to express that the person the decoration was awarded to would deserve to fulfil a military leader's office.³⁸ In addition to the eagle and some other sacred animals, the most widespread badge in the Roman army was the spear itself, whose tip was in many cases decorated with various *dona militaria*, which can be seen in works of fine art.³⁹ The *hasta* indicated commander's power, and its practical significance cannot be undervalued either since it was used to give the army the necessary signals

²⁷ Mommsen, Th. *Römisches Staatsrecht I–III*. Berlin, 1887–1888. I. 275.

²⁸ Alföldi: *op. cit.* 9.

²⁹ Cf. Mommsen: *Römisches Staatsrecht. op. cit.* II. 225.

³⁰ Mommsen: *Römisches Staatsrecht. op. cit.* II. 225; Alföldi: *op. cit.* 9.

³¹ Suetonius, *Augustus* 36, 1; Statius 4, 4, 41.

³² *Corpus Inscriptionum Latinarum*, 6, 1365, 13; 8, 22721, 5; ILS 950; *Mon. Ancy.* 8, 5.

³³ Alföldi: *op. cit.* 10.

³⁴ Quintilianus, *Institutio oratoria* 5, 2, 1; 11, 1, 78.

³⁵ Plinius minor, *epistulae* 5, 9, 1–2. 5; 6, 33, 2–5; Quintilianus, *Institutio oratoria* 12, 5, 6.

³⁶ Kovács: *op. cit.* 268 sqq.; 273 sqq.

³⁷ Servius in *Verg. Aen.* 6, 760.

³⁸ de Waele: *op. cit.* 173.

³⁹ Alföldi: *op. cit.* 12.

for moving troops; and the *vexillum* was actually a piece of textile fixed under the tip of the spear.⁴⁰ Also *vexillum* was carried by his Guards directly in front of the *imperator* as it can be seen on the column of Traianus and Marcus Aurelius,⁴¹ it was used to call the soldiers to get ready for fight,⁴² to give signal to begin a clash⁴³ both in land and sea battles.⁴⁴ (The commander-in-chief's *vexillum* was purple, and the act of Augustus awarding *caeruleum vexillum* to Agrippa⁴⁵ seems to be the first step in development of the hierarchy of colours that reached the stage of completeness later in Byzantium.⁴⁶) Furthermore, the spear was the badge of the *manipulus*, which expression is explained by Ovidius as a bundle of hay attached to a long pole;⁴⁷ later its use can be justified with sacred reasons rather than practical ones, and these bunches of grass must have been related to the *sagmenta* of the Capitolium.⁴⁸ This argumentation seems to be supported by the fact that apart from the eagle (or the horse, the human-headed bull, the wild boar and the wolf before the times of Marius),⁴⁹ other badges were honoured with cultic ceremony,⁵⁰ and quite often the oath was taken on them.⁵¹

In representations a stick with a slightly bent tip on the top, the *lituus* can be seen in the hand of the *augur*;⁵² the origin of the word *lituus* is somewhat dubious. Walde–Hofmann connects it to the curved shape of the stick,⁵³ Latte believes Etruscan origin cannot be excluded since it was brought to Rome through the *disciplina Etrusca*.⁵⁴ With the *lituus* the *augur* designated the sacred space selected by the gods, cut out from the profane space, i.e., the *templum*⁵⁵ as well as the cardinal point, or the part of the firmament from where

⁴⁰ Cf. Domaszewski, A. v.: *Die Fahnen im römischen Heere*. Wien, 1885.

⁴¹ Alföldi: *op. cit.* 13.

⁴² Caesar, *De bello Gallico* 2, 20, 1; Plutarchus, *Brutus* 40, 5.

⁴³ Caesar, *De bello civili* 3, 89, 5.

⁴⁴ Dio Cassius 49, 9, 1.

⁴⁵ Suetonius, *Augustus* 25, 3; Dio Cassius 51, 21, 3.

⁴⁶ Alföldi: *op. cit.* 13.

⁴⁷ Ovidius, *Fasti* 3, 117; Plutarchus, *Romulus* 8, 7; Servius, in *Verg. Aen.* 11, 463.

⁴⁸ Vö. Livius 1, 24, 4 sqq.; Renel, L.: *Cultes militaires de Rome: les enseignes*. Paris, 1903. 238, 248 sqq.

⁴⁹ Tacitus, *Annales* 1, 39, 6.

⁵⁰ Tertullianus, *Apologeticum* 16, 8; *Ad nationes* 1, 12, 14.

⁵¹ Servius, in *Verg. Aen.* 8, 1.

⁵² Servius, in *Verg. Aen.* 7, 190; Livius 1, 18, 7; Cicero: *De divinatione* 1, 30.

⁵³ Walde–Hofmann: *op. cit.* I. 815.

⁵⁴ Latte, K.: *Römische Religionsgeschichte*. München, 1967. 157 sq.

⁵⁵ Varro, *De lingua Latina* 7, 7.

he expected to receive the divine signs to be interpreted by him.⁵⁶ (Tradition has it that Romulus and Remus, who attached the right of establishing a town to the result of augury, had already fulfilled *augur*'s duties;⁵⁷ another tradition maintains that the establishment of the *collegium* of the *augures* is linked to Numa Pompilius;⁵⁸ the Regia was believed to be built around the *lituus Romuli*.⁵⁹) However, we should take into consideration that initially the *augur*'s function was determined primarily not by the task of interpreting divine signs, quite the contrary, as the origin of the word deducible from the *verbum augere* shows,⁶⁰ he was given this function just because of the ability of magical augmentation, exceptional *mana* surplus.⁶¹ Again this seems to support the point that the *lituus* must have been the tool of numinous force, the transmission of *mana*.⁶² (The term *numen*, especially when investigating earlier sources of Roman literature, is referred to in connection with the gods, the *senatus*, the people of Rome, and in a figurative, philosophical sense with the human mind as a force albeit superhuman in itself yet mostly related to a person; it is entirely in line with these meanings how Rose formulates the definition of this concept: "*Numen signifies a superhuman force, impersonal in itself but regularly belonging to a person (a god of some kind) or occasionally to an exceptionally important body of human beings, as the Roman senate or people.*"⁶³ So *numen*, especially according to the dynamistic trend hallmarked by the name of Wagenvoort, denoted a kind of, to use this Polynesian expression, *mana*, mystical force hidden in a thing, or a person.⁶⁴)

Trogus Pompeius reveals, as it is communicated by Iustinus, that in early Roman times kings did not wear a head-dress but carried a spear, this spear corresponded to the Greek *skēptron*,⁶⁵ the relevant loci of *De magistratibus* by Ioannes Lydus is in harmony with this source.⁶⁶ Giving a brief survey of Greek

⁵⁶ de Waele: *op. cit.* 169.

⁵⁷ Cicero: *De divinatione* 1, 48. 107; *De re publica* 2, 16; Dionysius Halicarnassensis 2, 22, 3.

⁵⁸ Livius 1, 18, 6.

⁵⁹ Cicero: *De divinatione* 1, 30; Plutarchus, *Romulus* 22; *Camillus* 32.

⁶⁰ Walde–Hofmann: *op. cit.* I. 83.

⁶¹ Wagenvoort: *Wesenszüge...* *op. cit.* 367.

⁶² de Waele: *op. cit.* 171.

⁶³ Rose, H. J.: Numen and mana. *Harvard Theological Review* 44 (1951) 109.

⁶⁴ Köves-Zulauf: *Bevezetés.* *op. cit.* 29.

⁶⁵ Iustinus 43, 3. *Per ea adhuc tempora reges hastas pro diademate habebant, quas Graeci sceptrum dixere: nam ab origine rerum pro diis immortalibus veteres hastas ... coluere ob cuius religionis memoriam adhuc deorum simulacris hastae adduntur.*

⁶⁶ Ioannes Lydus, *De magistratibus* 1, 8, 37. Cf. Kovács: *op. cit.* 267.

prefigurations, Homer speaks about Agamemnon's *skēptron* first, which was originally made by Hephaistos for Zeus, then it was presented by Zeus to Hermes, by Hermes to Pelops, and by Pelops to Atreus, finally it was bequeathed by Atreus to Thyestes, and by him to Agamemnon.⁶⁷ Although several authors have been inclined to see the *skēptron* of the Cretan-Mycenaean age as a kind of remnant of the Egyptian ruler's sceptre, due to the fact that we have no direct evidence of direct impact it cannot be ruled out that in the Greek and pre-Hellenistic culture the sceptre and the rod as symbols of power evolved without any borrowings.⁶⁸ The king is the owner of the *skēptron*, he is a *skēptoukhos* par excellence, the *skēptron* is the key symbol of his power,⁶⁹ when the king does not use the *skēptron*, he passes it over to his messenger to safeguard it. However, the king can commission the messenger to act in some important matter instead of him, and in this case the messenger may carry the royal *skēptron* to indicate that he proceeds in the king's matter on his behalf; it is only because of the *skēptron* brought along with them that the furious Achilles greets Agamemnon's delegates respectfully,⁷⁰ and the messengers of the Trojans and the Achaeans holding their kings' *skēptron* in their hands as the representatives of the ruler's power follow the encounter between Hector and Achilles with attention.⁷¹ (The *skēptron* carried by messengers sent on an errand by their king should not be mixed up with the *rhabdos*, the messengers' customary rod, whose archetype can be seen in Hermes's hands in several descriptions⁷² and representations.⁷³) As the *hasta* appears as the symbol of supreme power in procedures implemented *sub hasta* for the Romans, likewise the term *hypo skēptrō* one can read in the *Iliad* denotes the reign⁷⁴ of Zeus⁷⁵ and of the king.⁷⁶

The question arises how the *skēptron*, which in its initial form was probably just a stick, could have become a ruler's symbol, what is more the symbol of the ruler's power. The stick was used by elderly people, who were initially the leaders of the tribe by nature, as a common accessory of their everyday life, and we can assume that this article for personal use of the exercisers of power

⁶⁷ *Ilias* 2, 100 sqq.

⁶⁸ de Waele: *op. cit.* 109.

⁶⁹ *Ilias* 1, 267; 2, 86; *Odyseia* 2, 231; 3, 411; 4, 64; 5, 9; 8, 41 sqq.

⁷⁰ *Ilias* 1, 334.

⁷¹ *Ilias* 7, 277 sqq.

⁷² *Il.* 24, 343 sqq.; 24, 445; *Odyseia* 5, 47. sqq; 5, 87.

⁷³ Alföldi: *op. cit.* 16.

⁷⁴ *Ilias* 6, 159.

⁷⁵ *Ilias* 9, 154 sqq.

⁷⁶ Cf. Alföldi: *op. cit.* 17 sqq.

slowly became the symbol, incarnation of the exercise of power.⁷⁷ In the judgement scene represented on Achilles's shield the old (the judges pronouncing *dikai*) pass the *skēptron* from hand to hand while making the decision;⁷⁸ adjudicating rulers often appear in various descriptions, for example, in the *Iliad*,⁷⁹ with *skēptron* in their hands; and the motif of the judge's cane can be found in several classical texts, and in terms of the further development of the symbol it is worth considering that the Byzantine rulers' sceptre was called *dikanikē*.⁸⁰ Furthermore, it is expedient to cast a glance at the representation of the three judges of the underworld:⁸¹ Minos, Rhadamanthys and Aiakos. In Homer we have already read about Minos and Rhadamanthys, however, they are not described as the judges of the dead. For Homer the duty of Minos,⁸² is simply to calm and stop discord between the shadows; being a just king Minos holds *skēptron khryseon*, a golden sceptre in his hand,⁸³ the other two judges, and the underworld supervisor have only a rod, *rhabdos* in their hands according to the Athenian tradition conveyed by Plato.⁸⁴ Achilles takes an oath on his *skēptron* in the *Iliad*, and then having finished the oath throws it to the ground with all his might.⁸⁵ However, we do not know that this latter gesture is merely the result of the fairly heated situation, or a part of taking the oath; the second alternative is supported by Vergilius's adaptation of the scene,⁸⁶ in which the motion of striking to the ground is meant to symbolise fate afflicting the oath-breaker,⁸⁷ and by the scene of entering into an alliance described by Livy where the juror asks for Iuppiter's punishment in the form of self malediction to be imposed on the person breaking the oath, if it applies, on himself.⁸⁸

II. In Servius's commentary on Vergil's *Aeneid* the description of the following ceremony can be found: "*Is qui belli susceperat curam, sacrarium Martis ingressus primo ancilia commovebat, post hastam simulacri ipsius, dicens:*

⁷⁷ de Waele: *op. cit.* 118.

⁷⁸ *Ilias* 18, 497 sqq.

⁷⁹ *Ilias* 9, 99, 156.

⁸⁰ de Waele: *op. cit.* 122.

⁸¹ Plato, *Gorgias* 524a

⁸² *Odyseia* 11, 568.

⁸³ *Odyseia* 11, 568 sqq.; Plato, *Gorgias* 526c

⁸⁴ de Waele: *op. cit.* 123.

⁸⁵ *Ilias* 1, 233 sqq.

⁸⁶ Vergilius: *Aeneis* 12, 206.

⁸⁷ Alföldi: *op. cit.* 24.

⁸⁸ Livius, 1, 24, 8 sq.

‘*Mars vigila!*’”⁸⁹ The picture of the deity could not be too old, because the Romans did not represent the image of their gods in the beginning,⁹⁰ and Servius’s explanation goes back to Varro, just as Plutarch’s similar remark:⁹¹ “*en de tē Rhēgia dory kathidrymenon Area prosagoreyein.*”⁹² Seemingly, Varro gets into contradiction with the tradition, which has knowledge of several spears in Mars’s *sacrarium*. These must have been the spears of the *salii*, which were kept in the *sacrarium Martis*, together with the shields.⁹³ The plural of shields is not surprising because—as it becomes evident from the Aitolgian myth explaining the institution of the *salii*—Numa Pompilius ordered the manufacturing of another eleven copies of the *ancile* descending from the sky, in order to prevent the stealing of the original one. During their processions the *salii* were carrying the *ancile* in their left and were beating it with a spear-like rod.⁹⁴ The form of these spears was not identical with the form of those that were generally known and actually used for fighting in the Classical Age but they preserved—just like the shields of the *salii*—their archaic shape: They were so-called *hastaepurae*, made exclusively of wood without any iron, and their *prodigium* was shown by their movement without any human agency in the *sacrarium*.⁹⁵

Nevertheless, the spears of the *salii* must be distinguished from Mars’s spear, which was—as they were venerating Mars’s presence in it⁹⁶—surrounded by a cult that was due to a deity,⁹⁷ as the veneration of gods (e.g., Iuppiter, Terminus) in some material form was usual for the Romans, which can be explained by the concept of the unity of person-authority.⁹⁸ (The *Person-Bereichdenken*, the *person-authority* way of thinking was a special way of experiencing the world for the man of antiquity, in the course of which he experienced physical reality, objects, processes, or states as such, and, at the same time, he experienced them as divinity as well. The thing and the divinity

⁸⁹ Servius, in *Verg. Aen.* 8, 3.

⁹⁰ Augustinus, *De civitate Dei* 4, 31; Plutarchus, *Numa* 8; Latte: *op. cit.* 150; Herter, H.: *Zum bildlosen Kultus der Alten. Rheinisches Museum* 74 (1925) 164 sqq.

⁹¹ Norden, E.: *Aus altrömischen Priesterbüchern*. Leipzig, 1939. 173 sqq.

⁹² Plutarchus, *Romulus* 29, 1.

⁹³ Gellius 4, 6, 1–2; Wissowa: *op. cit.* 556.

⁹⁴ Plut. *Numa* 13, 7; Dionysius Halicarnassensis 2, 70.

⁹⁵ Servius in *Verg. Aen.* 6, 760; Livius 40, 19, 2.

⁹⁶ Dumézil, G.: *L’héritage indo-européen à Rome*. Paris, 1949. 60.

⁹⁷ Arnobius 6, 11. (coluisse) *pro Marte Romanos hastam, Varronis ut indicant Musae.*

⁹⁸ Wissowa: *op. cit.* 1912. 144; Latte: *op. cit.* 114 sqq.; Scholz, U. W.: *Studien zum altitalischen und altrömischen Marskult und Marsmythos*. Heidelberg, 1970. 29; Pötscher: ‘*Numen*’. *op. cit.* 457 sq.

is often designated with the same word, and sometimes it is considerably difficult to decide whether in a particular case *themis* or *Themis*, *fortuna* or *Fortuna*, *terminus* or *Terminus* should be written. Naturally, either solution is chosen, the other component is tacitly part of the concept and should be taken into account as well.⁹⁹ Designation with the same word seems to suggest juxtaposition but in fact it means the unity of the person and his/her function, the sphere of authority represented by him/her, in which alternatively one or the other aspect comes to the fore.¹⁰⁰ Iustinius in his *Epitoma Historiarum Pompei Trogi* mentions that, in the beginning, the spear was surrounded by a divine cult.¹⁰¹ Servius, based on Varro, reports that at the beginning of war, after the moving of the ancilia, the celebrating priest also moved the hasta, as the image of the deity (*simulacrum ipsius*) and in the course of this he awoke Mars with the appeal “*Mars vigila!*” and by this, if we conceive Mars as a *unity of person-authority*, he awoke War itself.¹⁰² There is no need of any further explication to see the manaistic, numinous aspect recognized by Wagenvoort in this religious act.¹⁰³ The derivation of Quirinus’s name, meaning “*spear*” from the word of Sabin origin *quiris-curis* can be found in several *auctores*,¹⁰⁴ and Iuno’s name, Quiritis is also explained this way.¹⁰⁵ It is not by chance that Thormann appositely translates the name “*Quirites*” of the Roman citizens with the expression “*Speermänner*”.¹⁰⁶

The importance of the ancient triad of *Iuppiter–Mars–Quirinus* was recognised by the founder of the Indo-European school of the history of religion, Dumézil. While researching the Indo-European image of society, Dumézil realised that society is divided into three vertically structured zones which correspond to three functions: reign, force and fertility, and these are related to three social groups (kings, warriors, producers), and three relevant specific

⁹⁹ Cf. Pötscher, W.: Ares. *Gymnasium* 66 (1959) 4 sqq.

¹⁰⁰ Pötscher, W.: Das Person-Bereichdenken in der frühgriechischen Periode. *Wiener Studien* 72 (1959) 24.

¹⁰¹ Iustinus 43, 3, 3. *Nam ab origine rerum pro diis immortalibus veteres hastas coluere.*

¹⁰² Servius in *Verg. Aen.* 8, 3. *Est autem sacrorum: nam is qui belli suscepit curam, sacrarium Martis ingressus primo ancilia commovebat, post hastam simulacri ipsius, dicens “Mars vigila”.*

¹⁰³ Wagenvoort: *Wesenszüge... op. cit.* 352 sqq.

¹⁰⁴ Ovidius, *Fasti* 2, 475 sqq.; Marcobius, *Saturnalia* 1, 9, 16; Dionysius Halicarnassensis 2, 48, 2–4; Plutarchus, *Romulus* 29, 1.

¹⁰⁵ Festus 43, 5; 55, 6.

¹⁰⁶ Thormann, K. F.: *Der doppelte Ursprung der mancipatio, ein Beitrag zur Erforschung des frühromischen Rechtes unter Mitberücksichtigung des Nexum.* München, 1943. 32, 80 sqq.

deities¹⁰⁷ (e.g., in Rome to Iuppiter, Mars and Quirinus). India worked out this threefold pattern cosmologically, and the Romans historicised the myth as it can be discerned from Book One of Livy's *Ab urbe condita*: Romulus and Numa can be considered the two sides of royal power mutually supplementing each other, the bellicose principle is represented by Tullus Hostilius, while producing and trading fertility boosting every day life by Ancus Martius. (This threefold pattern was replaced during the rule of Etruscan kings, especially the Tarquiniuses by the triad of *Iuppiter–Iuno–Minerva* of the Capitolium,¹⁰⁸ and in this process the temple of Iuppiter Optimus Maximus was placed in the centre of the Capitolium.¹⁰⁹ On the other hand, there is no doubt that initially not only Iuppiter Feretrius had a temple on the Capitolium but as we know it from Varro several other deities, including Mars too.¹¹⁰)

The cult of the spear related to Mars is associated with a legend told by Plutarch: to try his strength Romulus threw his cornel spear down from the Aventinus, and the spear penetrated the ground so deep that nobody was able to pull it out; then, it took root and grew into a large tree; the Romans surrounded the tree honoured as a sacred being with a wall, which perished only when its roots were hurt while building the *scalae Caci* during the reign of Caligula.¹¹¹ This story sheds light on the fact that Romulus's spear was nothing else but the *hasta Martis*, which was venerated with cultic ceremonies because the welfare of the state was believed to depend on its condition and soundness.¹¹² Analogous with the spear thrown by Romulus is the ritual act of the *pater patratus* throwing the spear to the enemy's territory when declaring war; on the other hand, there is a crucial difference between the two events.¹¹³ (Latte asserts¹¹⁴ that the act of *fetialis* represents not only the magical commencement of war and attack but the act of taking the enemy's territory into possession too.¹¹⁵)

¹⁰⁷ G. Dumézil: *Jupiter, Mars Quirinus: essai sur la conception indo-européenne de la société et sur les origines de Rome*. Paris, 1941; *La Religion romaine archaïque*. Paris, 1966.

¹⁰⁸ Cf. Koch, C.: *Der römische Juppiter*. Frankfurt a. M., 1937. 90 sqq.

¹⁰⁹ Livius 1, 55, 1 sq.

¹¹⁰ Augustinus, *De civitate Dei* 4, 23 sqq.

¹¹¹ Plutarchus, *Romulus* 20, 5 sqq.

¹¹² Scholz: *op. cit.* 31.

¹¹³ Scholz: *op. cit.* 31; A. Carandini: *Die Geburt Roms*. Düsseldorf–Zürich, 2002. 508; Kovács: *op. cit.* 265.

¹¹⁴ Latte: *op. cit.* 122. *Der Akt scheint nicht allein eine magische Eröffnung des Angriffs, sondern eine Form der Besitzergreifung zu sein.*

¹¹⁵ Cf. Servius, in *Verg. Aen.* 3, 46; 11, 52.

The following rite constituting a part of the celebrations of marriage can be also associated with *hasta Martis*: before the wedding night the fiancée was not allowed to use her own comb, she had to arrange her hair with what was called *hasta caelibaris* taken out of the body of a killed gladiator.¹¹⁶ The *hasta caelibaris* was meant to enhance the new wife's fertility, on the one hand; this meaning, however, did not look back on a long past as in Rome gladiator fights were held only from 264 BC.,¹¹⁷ and it symbolised the wife's subjection, on the other.¹¹⁸ The explanation concerning Iuno Curitis does not seem convincing either since Iuno specifically as Curitis¹¹⁹ was the protector of the *urbs* rather than of the female gender.¹²⁰ Fertility is, however, enhanced not by being touched with iron but by the contact, unification with the phallic deity of the spear before the conclusion of the marriage; that is, the *hieros gamos* taking place before the wedding, which makes the actual marriage fertile; and the deity of the spear is nobody else than Mars.¹²¹

The ceremony of using *hasta caelibaris* is intertwined in the tradition with the foundation of the town of Cures. Varro's description reveals that in Enyalios's temple¹²² a noble virgin got pregnant, and gave birth to a boy called Modius Fabidius, who having grown up gathered his followers around him and founded a town; he called his followers, either after his spear (*curis*), or his father Quirinus, Cures.¹²³ Several elements of Roman-Italian beliefs are merged in this myth. The question of Modius Fabidius's double name can be solved as follows: Fabidius is the forefather of the *gens Fabia* of Sabine origin, commissioned to offer several sacrifices in the Quirinalis,¹²⁴ Modius's name is connected with the Latin word *muto*, this is how the birth of the hero is linked through the spear

¹¹⁶ Paulus Festus 55. *Caelibari hasta caput nubentis comebatur, quae in corpore gladiatoris stetisset abiecti occisique, ut, quemadmodum illa coniuncta fuerit cum corpore gladiatoris, sic ipsa cum viro sit; vel quia matronae Iunonis Curitis in tutela sint, quae ita appellabatur a ferenda hasta, quae lingua Sabinorum curis dicitur; vel quod fortes viros genituras ominetur; vel quod nuptiali iure imperio viri subicitur nubens, quia hasta summa armorum et imperii est.* Cf. Plinius maior, *Naturalis historia* 28, 33, 34.

¹¹⁷ F. Böhmer: Ahnenkult und Ahnenglaube im alten Rom. *Archiv für Religionswissenschaft Beiheft* 1. 1943. 111 sqq.

¹¹⁸ Kovács: *op. cit.* 266.

¹¹⁹ Servius, in *Verg. Aen.* 1, 8.

¹²⁰ Latte: *op. cit.* 100, 167 sq.

¹²¹ Scholz: *op. cit.* 162. Cf. Samter, E.: *Geburt, Hochzeit und Tod.* Leipzig–Berlin, 1911; Köves-Zulauf, Th.: *Römische Geburtsriten.* München, 1990.

¹²² Ebeling, E.: *Lexicon Homericum I–II.* Hildesheim, 1963. I. 425 sq.

¹²³ Dionysius Halicarnassensis 2, 48.

¹²⁴ Livius 5, 46, 2.

god Quirinus (cf. the Antique *curis*>*Quirinus* etymology) to phallic symbolism.¹²⁵ Although Quirinus was the deity of the hillock of Quirinalis, the Sabine tradition—and of course the Fabiuses and Varro—claimed it belonged to them, and this gives rise to the question whether the word Cures comes from the word spear (*curis*) or from Quirinus's name. In this case what we have here is unambiguously an *interpretatio Sabina*, which tried to oust the (phallic) spear god, Mars; the Mars cult is recalled by the spear, the *hasta caelibaris* here called *curis*, the connotation of Modius's name and the pattern of the myth of the foundation, which is identical with the Romulus cycle and the rite of the *equus Octobris* as far as its basic features are concerned.¹²⁶

Hence it becomes clear that Roman thinking connected somehow the concept of the force inherent in the spear, the *numen* both with Mars and with Quirinus, but the exact definition of this connection is encumbered by the fact that the existing sources expound on this numinous force only in the case of *hasta Martis*.¹²⁷ The question arises why they were using a rod, the *festuca* instead of the spear meaning *iustum dominium*, in the course of the symbolic fight of *legis actio sacramento in rem*. According to Herman van der Brink the *festuca* and the *hasta* are parts of two completely different symbolic systems.¹²⁸ He considers the spear to be an Indo-European symbol of power,¹²⁹ whereas he regards the rod as part of the Mediterranean culture.¹³⁰ At the same time, he disregards the point that at the time when these symbols were formed, the differences between the spear and the rod most probably had not occurred yet, as both were made of wood; the only minor differences could be the size or that the rod used as a weapon was hardened in fire.¹³¹ The fact that in the ceremony of the *vindicatio* the *festuca* stood for; i.e., represented the *hasta* can be explained by the disposition which from the beginning attempted to restrict the use of the spear within the *pomerium* and to confine it to the sphere of the most necessary rites.¹³²

¹²⁵ Marbach, E.: *Modius Fabius*. RE 15. 1932. 2328 sqq.

¹²⁶ Scholz: *op. cit.* 163.

¹²⁷ Alföldi: *op. cit.* 19.

¹²⁸ Brink, H. van den: Staff laying. In: *The Charm of Legal History*. Amsterdam, 1974. 68.

¹²⁹ Cf. Neufeld, E.: *The Hittite Laws*. London, 1951.

¹³⁰ Brink: *op. cit.* 70 sqq., 77.

¹³¹ Waele: *op. cit.* 172.

¹³² Alföldi: *op. cit.* 4.

III. The relation between the *magistratus* and the *lictores* following him was formulated quite to the point by Gladigow, namely that the duty of the *lictores* was to manifest the *magistratus*, and this applies both to the external appearance of the *magistratura* and the functional cooperation between the *magistratus* and the *lictores*.¹³³ As far as the external manifestation is concerned this means that the *magistratus* and the *lictor* wear the same clothes, *toga* in Rome, scarlet *paludamentum* outside Rome and during the *triumphus*,¹³⁴ and mourning *toga* in mourning.¹³⁵ In accordance with the Roman representation principle in place between the *magistratus* and the *lictores* the person bearing the given dignity is stressed not by the pomp and adornment of his entourage but by increasing the number of the entourage wearing the same clothes as he wears.¹³⁶ Yet the similarity of the appearance is not the only sign of this close belonging together, the *magistratus* and the *lictores* go together everywhere¹³⁷—accordingly, the *magistratus* must go even to the brothel with an official entourage, albeit by doing so he impairs his official dignity¹³⁸—and the *magistratus* may appear without his *lictores* solely when he wants to show his intention to resign from the office of the *magistratura*.¹³⁹ (Only at his home was the *magistratus* not directly accompanied by the *lictores*, who waited in the *vestibulum* of his house.¹⁴⁰) Being the carrier of *imperium* and by that of *mana*, each appearance of the Roman *magistratus* was an official, consequently, a sacred event. Through the *lictores* showing an image externally identical with him the *mana* carried by him appeared in a multiplied form.¹⁴¹ The *lictores* walked before the *magistratus* in a single file,¹⁴² between the last *lictor*, the *lictor proximus*¹⁴³ and the *magistratus* nobody was allowed to enter except for the *magistratus*'s

¹³³ Gladigow, B.: Die sakralen Funktionen der Likatoren. Zum Problem von institutioneller Macht und sakraler Präsentation. In: *Aufstieg und Niedergang der römischen Welt* I. 2. 1972. 295.

¹³⁴ Varro, *De lingua Latina* 7, 37; Livius, 41, 10, 5; Cicero: *In Pisonem* 55; Silius Italicus 9, 419.

¹³⁵ Horatius, *Epistulae* 1, 7, 5.

¹³⁶ Gladigow: *op.cit.* 296.

¹³⁷ Livius, 17, 1; 23, 23, 1; 17, 17, 8; Cicero: *Pro Cluentio* 147; *De bello Alexandrino* 52, 3; Silius Italicus 9, 419; Plinius maior, *Naturalis historia* 7, 30, 112; Iuvenalis 3, 128; Valerius Maximus 1, 1, 9.

¹³⁸ Seneca maior, *Controversiae* 9, 2, 17.

¹³⁹ Livius 23, 23, 1 sqq.

¹⁴⁰ Livius 39, 12, 2.

¹⁴¹ Gladigow: *op. cit.* 297.

¹⁴² Livius 24, 44, 9 sqq.

¹⁴³ Cicero: *De divinatione* 1, 59; *In Verrem* 5, 142; Valerius Maximus 2, 2, 4; *De bello Alexandrino* 52, 3; Sallustius, *De bello Iugurthino* 12, 3; Tacitus, *Historiae* 3, 80, 11.

underage sons.¹⁴⁴ These provisions cannot be explained by security reasons since the *lictors* did not constitute the guards of the *magistratus*, all the more as the *lictors* proceeding in front of the *magistratus* provided no protection against possible attacks threatening him from the side or from behind his back; the reason for the prohibition must be looked for in the sphere of the sacred because the existence of a person entering between the *lictor proximus* and the *magistratus* would have disturbed the sphere of the *mana* present around the *magistratus* and of the *imperium* carried by him.¹⁴⁵

It makes it much easier to understand the function of the *lictors* that not only the *magistratus* but also the *flamines* and the *virgines Vestales*¹⁴⁶ were entitled to be followed by *lictors*. Directly in front of the *flamen Dialis* a *lictor* was walking,¹⁴⁷ from a somewhat greater distance he was followed by the *praeciae*,¹⁴⁸ who warned people to stop working when the *flamen Dialis* was nearing since the *flamen Dialis* was not supposed to see any activity belonging to the world of everyday life as being Iuppiter's earthly representative¹⁴⁹ he had to live each day of his life as a consecrated holiday.¹⁵⁰ (This purpose was served by the *commoetaculum* held in the *flamen's* hand with which the Iuppiter priest pushed away things and persons considered impure from himself.¹⁵¹ It is rather disputed whether one or two *lictors* proceeded in front of the *flamen Dialis*.¹⁵²) The Vestal virgin leaving the *aedes Vestae* was preceded by a *lictor* too,¹⁵³ and the *lictors* of the *magistratus* meeting the *virgo Vestalis* let down the *fascēs* before the *lictors* of the *virgo Vestalis* as it were to show the respect for the priestess she was expected to receive.¹⁵⁴ It cannot be considered a matter of accident that just the two players of Roman religious life heavily surrounded with taboos in their conduct of life, the *virgines Vestales* and the *flamen Dialis*, whom the life and welfare of the people and the state of Rome depended on in

¹⁴⁴ Valerius Maximus 2, 2, 4.

¹⁴⁵ Gladigow: *op. cit.* 298.

¹⁴⁶ Cf. Latte: *op. cit.* 109 sqq.; Wissowa: *op. cit.* 253 sqq.; Hommel, H.: *Vesta und die frühromische Religion*. In: *Aufstieg und Niedergang der römischen Welt* I. 2. 1972. 397 sqq.; Brelich, A.: *Vesta*. Zürich–Stuttgart, 1949.

¹⁴⁷ Plutarchus, *Quaestiones Romanae* 291b; Festus 82.

¹⁴⁸ Festus 293.

¹⁴⁹ Pötscher, W.: *Flamen Dialis*. In: *Hellas und Rom*. Hildesheim, 1988. 431.

¹⁵⁰ Kerényi, K.: *Die Religion der Griechen und Römer*. Darmstadt, 1963. 198.

¹⁵¹ Festus 56. *Commoetacula virgae quas flamines portant pergentes ad sacrificium, ut a se homines amoveant.*

¹⁵² Cf. Mommsen: *Römisches Staatsrecht. op. cit.* I. 373 sq.

¹⁵³ Plutarchus, *Numa* 10; Dio Cassius 47, 19, 4.

¹⁵⁴ Seneca maior, *Controversiae* 1, 2, 3.

terms of the sacred, were granted with *lictore*s' entourage; furthermore, from this fact certain conclusions regarding the sacred and legal status of the *magistratus* vested with *imperium* can be drawn. In the archaic age neither political power could do without the sacred component, nor the religious functions could be left untouched by political aspects; the elements of sacred kingdom of Etruscan origin, including the *fasces*, the *lictore*s, constituting components organically tied to each other, cannot be separated in the event of the *triumphus*.¹⁵⁵

While fulfilling his duties the *lictor*¹⁵⁶ was obliged to carry the *fasces*, he was not allowed to act in his official capacity without them, just as the *magistratus* was not supposed to appear without the *lictore*s,¹⁵⁷ and this unambiguously shows the special significance of the *fasces* even in themselves. In the interim period after the right of the *auspicium* and the *imperium* had reverted to the *senatus*, and before the *interrex* was elected, the *fasces* were safeguarded at Libitina's temple. The loss of the *fasces* in fights with the enemy was deemed rather humiliating.¹⁵⁸ For the *magistratus*, or the cases of the *magistratus* possessing *imperium* not subject to the force of *provocatio ad populum*, the bundle of *fasces* consisting of birch-wood or elm-wood¹⁵⁹ embraced a hatchet,¹⁶⁰ which was also considered a symbol with sacred meaning.¹⁶¹ The *lictore*s held the *fasces* in their left hand and carried them on their left shoulder, the gesture of *attollere* was customary on the occasion of taking over the *imperium*, and the *summittere* indicated the act of showing respect for the *magistratus*, the *flamen Dialis* and the *virgines Vestales*; mourning was symbolised by *fasces* turned downwards.¹⁶² The fall or rise of the *magistratus* was indicated by the *fasces*, when he was removed from office the *fasces* were broken,¹⁶³ and when

¹⁵⁵ Gladigow: *op. cit.* 301.

¹⁵⁶ Cf. Latte: *op. cit.* 408 sqq.

¹⁵⁷ Vogel, K.-H.: Imperium und Fasces. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 67 (1950) 96.

¹⁵⁸ Gladigow: *op. cit.* 306; Kübler: *Lictor*. RE XIII. 1. 1926. 511.

¹⁵⁹ About the *provocatio* see Bleicken, J.: Ursprung und Bedeutung der Provocation. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 76 (1959) 324 sqq.; Martin, J.: Die Provocation in der klassischen und späten Republik. *Hermes* 98 (1970) 72 sqq.; Lintott, A. W.: Provocatio. From the Struggle of the Orders to the Principate. In: *Aufstieg und Niedergang der römischen Welt* I. 2. 226 sqq.

¹⁶⁰ Iohannes Lydus, *De magistratibus* 1, 32.

¹⁶¹ Nielsson, M. P.: *Geschichte der griechischen Religion I–II*. München, 1968. 275 sqq.

¹⁶² Tacitus, *Annales* 3, 2; Vergilius: *Aeneis* 11, 93.

¹⁶³ Kübler: *op. cit.* 511.

the *magistratus* was elected *imperator* they were decorated with laurel.¹⁶⁴ Pursuant to ancient penal law the hatchet was used as the tool of *securi percussio*, beheading with an axe. The execution was performed in the presence of the *magistratus* by the *lictores* themselves.¹⁶⁵ The details of the implementation of *securi percussio* are mostly identical with the rite of killing a sacrificial animal, and from this fact Mommsen drew the conclusion that in archaic times this form of execution represented an act of sacrificing the perpetrator for the higher powers injured by the crime and to be appeased by the sacrifice.¹⁶⁶ However, in view of the fact that later on the *carnifexes* replacing the *lictores* in Roman executions suffered certain disadvantages arising from their very activity—since they were seen besmeared with blood, which was considered taboo; for example, they were not allowed to have a ritual burial, to live within the city of Rome¹⁶⁷—the execution carried out by the *lictores* must have been adjudged basically differently because the *lictores*, albeit they shed blood, did not become taboo-breakers, outcasts of the community. So if we consider the death sentence performed by the *lictores* a sacrifice, then they had to carry it out on a place covered with sacred protection which defended them against harms arising from the blood shed according to Roman beliefs; furthermore, it cannot be ruled out—since the Twelve Table Law prescribed *expiatio* also in the case of involuntary homicide¹⁶⁸—that there might have been a kind of purifying sacrifice, which washed the besmearing blood off their body in a figurative sense.¹⁶⁹

In *fasces* the *virgae* were used most often as the tools of *coercitio* during *verberatio*, which was limited in the *leges Porciae*; the *verberatio* applied as *coercitio* must be separated from the corporeal punishment that preceded the implementation of the death *sentence*, and which was forced to an increasingly narrow field through *provocatio*.¹⁷⁰ In the times when death sentences were

¹⁶⁴ Cf. Hilberg, I.: Die fasces laureati der antretenden Konsuln. *Wiener Studien* 25 (1903) 329 sqq.

¹⁶⁵ Mommsen, Th.: *Römisches Strafrecht*. Leipzig, 1899. 911; Földi–Hamza: *op. cit.* 575.

¹⁶⁶ Mommsen: *Römisches Strafrecht*. *op. cit.* 901, 916.

¹⁶⁷ Plautus, *Pseudolus* 331; Cicero: *Pro Rabirio perduellionis* 5, 15; Festus 56; Servius, in *Verg. Aen.* 12, 603.

¹⁶⁸ *Leges XII tabularum* 8, 24a; Festus 470; Servius, in *Verg. ecl.* 4, 43; *georg.* 3, 387. Cf. Kunkel, W.: *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*. München, 1962. 38 sqq.

¹⁶⁹ Gladigow: *op. cit.* 309.

¹⁷⁰ Bleicken: *op. cit.* 324 sqq.

implemented by the *lictores*,¹⁷¹ it was also them who flogged the convict before the execution.¹⁷² Upon the instruction of the *magistratus* the *lictor* unfastened the *fascēs*, deprived the convict of his clothes and tied his hands on his back or tied them to a pole. After that on the "*age lege*" order of the *magistratus* the *verberatio* was carried out, then *securi percussio*, beheading with an axe, was performed.¹⁷³

The person ravishing the *virgo Vestalis* was flogged to death by the *pontifex maximus* himself on the *comitium*. We should not ignore the fact that albeit the *magistratus* was present in common executions, he did not actively take part in it.¹⁷⁴ Considering that the *pontifex maximus* (initially the *rex sacrorum*) exercised a kind of *patria potestas* over the *virgo Vestalis*,¹⁷⁵ this act—and the fact that the *pontifex maximus* himself was allowed to execute the death sentence, being *procuratio prodigii* too, on the guilty Vestal priestess¹⁷⁶—is deemed as a punishment imposed and executed within the range of *iudicium domesticum*¹⁷⁷ since the *pater familias* catching his daughter in the act of adultery were allowed to kill both his daughter and the man committing adultery.¹⁷⁸ On the other hand, *verberatio* in this case was not merely a punishment—since it was not allowed to be executed by the *pontifex maximus* himself—but an expiatory sacrifice, a ritual act too, just like the execution of the Vestal priestess.¹⁷⁹

Thrashing, flogging, whipping became the most typical form of *castigatio* among the Romans, which unambiguously shows that the ritualistic character is present in this form of punishment in the sacred act of the *pontifex maximus* offering sacrifice by whipping the raper of the *virgo Vestalis* since *castigare*—

¹⁷¹ Cf. Cicero: *In Verrem* 3, 156; 5, 118, 142; Livius 1, 26; 8, 7, 20; 8, 32, 10; 26, 15, 16; 28, 29, 10; 36, 28, 6; Polybius 11, 30, 2; Mommsen: *Römisches Strafrecht. op. cit.* 915 sqq.

¹⁷² Gaius, *Institutiones* 3, 189; Livius 2, 5, 8; 8, 20, 7; 9, 16, 10; 10, 1, 3; 24, 20, 6. 26, 15, 8.

¹⁷³ Livius 28, 29, 11; 26, 13, 15; 26, 15, 9; 26, 16, 3. Gladigow: *op. cit.* 310.

¹⁷⁴ Mommsen: *Römisches Strafrecht. op. cit.* 919.

¹⁷⁵ Wissowa: *op. cit.* 260; Latte: *op. cit.* 110.

¹⁷⁶ Hommel: *op. cit.* 405.

¹⁷⁷ About the *iudicium domesticum* see Földi–Hamza: *op. cit.* 239; Kaser, M.: Der Inhalt der *patria potestas*. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 83 (1971) 62 sqq.; Kunkel, W.: Das Konsilium im Hausgericht. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 83 (1966) 243 sqq.; Nótári T.: De iure vitae necisque et exponendi. *Jogtudományi Közlöny* 11 (1998) 421 sqq.

¹⁷⁸ Ulpianus, *Digesta* 48, 5, 24, 4. Cf. Cantarella, E.: Adulterio, omicidio legittimo e causa d'onore in diritto romano. In: *Studi in onore di G. Scherillo*. Milano, 1972. 244 sqq.

¹⁷⁹ Hommel: *op. cit.* 405.

or the synonyms *corrigerere* and *emendare* often read in texts—comprises the gesture of removing filth and sin, restoring the state of *castum* and ritual conciliation,¹⁸⁰ which is confirmed by Paulus using the *verbum castigare* instead of *verberare* when writing about sanctions.¹⁸¹ (The blood shed in *verberatio* most probably also served the purpose of *expiatio per sanguinem*.¹⁸²) So the *verberatio* carried out by the *lictiores* represented a second punishment, although not to make the punishment more severe, since it was part of every execution implemented by the *lictiores*, but to constitute an unalienable ritual cleansing element, that is, a sacred second punishment of the death sentence, which was actually the act of sacrificing the offender.¹⁸³ The wood of the *virgae* (birch-¹⁸⁴ or elm-wood¹⁸⁵) also carry a religious connotation since both the birch-wood and the elm-wood were used also by the Greeks (the latter with stronger chthonic implication) in cleansing, in the original sense of the word, cathartic ceremonies;¹⁸⁶ similarly, the act of depriving the convict of his clothes was not only meant to make the punishment more humiliating but to meet the requirement of ritual nakedness often customary in the antiquity. (The emphatically sacred character of the *lictiores*' office is supported by two sources describing that *lictiores* wore a belt on their clothes,¹⁸⁷ Plutarch asserts that it was used for tying the convict, and Gellius connects it with the *limus* of the *popae*,¹⁸⁸ the assistants of the sacrifice. In none of the representations is there any kind of belt on *lictiores*' every day clothes, but the *toga* could be tied with the hanging *lacinia*. This was the so-called *cinctus Gabinus*, which was applied most often in offering sacrifice.¹⁸⁹ Looking into the background of this detail it is justified to assume that *lictiores* initially acted on several occasions as assistants of sacrifice, and it is highly probable that in executions considered an act of sacrificing the perpetrator they carried out their task also in a *toga* held together with the belt like *cinctus Gabinus*, which allowed freer movement than the usual form of wearing a *toga*.¹⁹⁰)

¹⁸⁰ Gladigow: *op. cit.* 311.

¹⁸¹ Paulus, *Digesta* 47, 18, 2.

¹⁸² Wagenvoort, H.: *Roman Dynamism, Studies in Roman Literature, Culture and Religion*. Leiden. 1956. 147; Gellius 10, 8.

¹⁸³ Gladigow: *op. cit.* 311 sq.

¹⁸⁴ Plinius maior, *Naturalis historia* 16, 75.

¹⁸⁵ Plautus, *Asinaria* 575.

¹⁸⁶ Cf. Wagler: *Birke*. RE 3. 1. 1899. 491; Schuster: *Ulme*. RE 9 A 1. 1961. 548.

¹⁸⁷ Plutarchus, *Romulus* 26; Gellius 12, 3, 3.

¹⁸⁸ Latte: *op. cit.* 384.

¹⁸⁹ Mau: *Cinctus Gabinus*. RE 3. 2. 1899. 2558 sq.

¹⁹⁰ Gladigow: *op. cit.* 312 sq.

IV. Comparing *ius fetiale* and *ius privatum* several valuable parallels can be drawn with regard to the structure of *clarigatio*, *rerum repetitio*, and *legis actio sacramento*.¹⁹¹ The norms with a powerfully religious character of *ius fetiale* show close connection with several other Roman legal institutions; all the more so because for the man of the age it is difficult to imagine a bond with more binding power than the oath, including self malediction as well.¹⁹² (According to Dahlheim, due to its strong superstitious-religious determination *ius fetiale* lacks any kind of moral background.¹⁹³ However, his view can be contested because legal formalism and legal ethics are not mutually exclusive components.¹⁹⁴) In the archaic age, the interstate relationships of Rome were governed by a body of twenty priests, called the *fetiales*.¹⁹⁵ Their tasks included the contracting of alliances, the *foedus*, the establishment of the conditions of armistices, and the declaration of war, given the fact that the war could only qualify as *bellum pium ac iustum* if it was declared and started in accordance with the rules of *ius fetiale*.¹⁹⁶ (It is interesting that for the Romans the basic principle of the invulnerability of the envoys was indisputable. Whereas in the case of the Greeks the division of the institution of the *kēryx*, enjoying sacred protection and the *presbeis*, invulnerable as a result of a political agreement took place very early, in Rome the *fetialis* and later the other envoys—even if they did not belong to the *fetiales*¹⁹⁷—enjoyed sacred protection, even in time of war.¹⁹⁸)

¹⁹¹ Donatuti, G.: La “clarigatio” o “rerum repetitio” e l’istituto parallelo dell’ antica procedura civile romana. *Iura* 6. 1955. 31 sqq.; Volterra, E.: L’istituto della “clarigatio” e l’antica procedura delle “legis actiones”. *Scritti Carnelutti*. Padova, 1950. 251 sqq.

¹⁹² Ziegler, K.-H.: Das Völkerrecht der römischen Republik. In: *ANRW* I. 2. 78; Pólay, E.: *Differenzierung der Gesellschaftsnormen im antiken Rom*. Budapest, 1964. 100 sqq.

¹⁹³ Dahlheim, W.: *Struktur und Entwicklung des römischen Völkerrechts im dritten und zweiten Jahrhundert v. Chr.* München, 1968. 173.

¹⁹⁴ Ziegler: *op. cit.* 79.

¹⁹⁵ Földi–Hamza: *op. cit.* 65; 167 sqq.; Zlinszky J.: *Állam és jog az ősi Rómában* (State and Law in Ancient Rome). Budapest, 1996. 146 sqq.; Samter: *Fetiales*. *RE* VII. 2. 2260 sqq.; Wissowa: *op. cit.* 551; Latte: *op. cit.* 121 sqq.; Nótári, T.: Comments on the Origin of the *legis actio sacramento in rem*. *Acta Juridica Hungarica* 47 (2006) 133 sqq.

¹⁹⁶ Cicero: *De legibus* 2, 21; *De officiis* 1, 36; *De re publica* 2, 31; 3, 35; Varro, *De lingua Latina* 5, 86. Cf. Ziegler: *op. cit.* 100 sqq.

¹⁹⁷ Cf. Marcianus, *Digesta* 1, 8, 8, 1. *Sanctum autem dictum est a sagminibus: sunt autem sagmina quaedam herba, quas legati populi Romani ferre solent, ne quis eos violaret, sicut legati Graecorum ferunt ea quae vocantur cerycia.*

¹⁹⁸ Livius 38, 42, 7; Pomponius, *Digesta* 50, 7, 18.

The *foedus*—etymologically related to the expression *fides*¹⁹⁹—, the Roman state contract implemented by observing the required formalities,²⁰⁰ as opposed to the *hospitium*,²⁰¹ the *amicitia*,²⁰² the *societas*²⁰³ and the *pax*, does not signify the content of the contract but its form, and its most important element is the ceremonial oath made by the representative of the *populus Romanus*.²⁰⁴ The ceremony of the *foedus* is presented by Livy. According to him the priest, chosen from among the *fetiales*, who is consecrated *pater patratus* by reciting the texts selected for the occasion and being touched with a bunch of sacred grass (*sagmina*), takes the oath after reading out the text of the contract.²⁰⁵ In the oath he calls Iuppiter, the *pater patratus* of the people making contract with him, and the people themselves to witness that the contract that has been read does not contain any falsity, and that the Roman people will not deviate from the former, and if they did—and here follows the self malediction—then he asks Iuppiter to come down on the Roman people the way he is just knocking down the sacrificial pig. Moreover, he should strike even more severely, as he is more powerful than the priest. Then he stabbed the sacrificial animal.²⁰⁶ Festus recounts a somewhat different formula, according to which the *pater patratus*, after knocking down the pig with a stone, asks Iuppiter to throw him out of his wealth as he is throwing away the stone if he proceeded falsely, but he entreats the god to spare his city.²⁰⁷ Polybios calls Rome's first contract with Carthago an agreement *per Iovem lapidem*,²⁰⁸ Cicero ranks the *per Iovem lapidem* oath formula among *ius civile*.²⁰⁹

¹⁹⁹ Walde–Hofmann: *op. cit.* I. 494; Latte: *op. cit.* 126 sqq.

²⁰⁰ Mommsen: *Römisches Staatsrecht. op. cit.* I. 246 sqq.; Neumann, K.: *Foedus*. RE VI. 2. 2818 sqq.; Heuss, A.: Abschluß und Beurkundung des griechischen und römischen Staatsvertrages. *Klio* 27 (1934) 166 sqq.; Frezza, P.: Le forme federative e la struttura dei rapporti internazionali nell'antico diritto romano. *Studia et documenta historiae et iuris* 4 (1938) 363 sqq.

²⁰¹ About *hospitium* see Leonhard, P.: *Hospitium*. RE VIII. 2. 2493 sqq.; Frezza: *op. cit.* 397 sqq.

²⁰² About *amicitia* see Heuss, A.: Die völkerrechtlichen Grundlagen der römischen Außenpolitik in republikanischer Zeit. *Klio Beiheft* 31. Leipzig, 1933. 12 sqq.

²⁰³ Cf. Dahlheim: *op. cit.* 163 sqq.; Kienast, D.: Entstehung und Aufbau des römischen Reiches. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 85 (1968) 334 sqq.

²⁰⁴ Ziegler: *op. cit.* 90.

²⁰⁵ Livius 1, 24, 4–7.

²⁰⁶ Livius 1, 24, 7–9.

²⁰⁷ Festus 239.

²⁰⁸ Polybios 3, 25, 6 sqq.

²⁰⁹ Cicero: *Ad familiares* 7, 12, 2. Cf. Latte: *op. cit.* 122 sq.

When discussing *ius fetiale* it should be pointed out that the Romans were the first to interpret war as a legal fact and they created the concept of *bellum iustum*, influential up to the present day.²¹⁰ Not all armed conflicts counted as war, *bellum* could only take place between peoples (*populi*), only the enemy possessing an organized state counted as *hostis*. In accordance with this, Cicero can state that only the oath given to the enemy obliges, the one given to robbers does not.²¹¹ We can depart from Livy's description in the case of the declaration of war as well. On the border of that people's land from which he demands satisfaction (*rerum repetitio*, or *clarigatio*)²¹² the *pater patratus* declares that he presents his demands as an envoy of the Roman people, observing the divine law, and he calls Iuppiter, the borders (*fines*) and the divine law (*fas*) to witness that if he demanded the delivery of the mentioned people or things unrightfully, then Jupiter should not allow him to return to his country. He recites this at the crossing of the border, and with slight alterations to the first person he encounters, and again, when he enters the town, and finally on the main square.²¹³ If they do not deliver the things asked by him within thirty-three days—Dionysius Halicarnassensis mentions an interval of thirty days²¹⁴—, after calling Iuppiter, Ianus Quirinius, and all the gods witness, he declares that he did not receive what he demanded, and that on returning to Rome, he wishes to deliberate about how they could take revenge. This means that he declares the possibility of war (*testatio*, or *denuntiatio belli*).²¹⁵ Arriving in Rome, the envoy presented the case to the Fathers and if the majority decided for *purum piumque duellum*, the *pater patratus* took an iron tipped or fire-hardened spear (*hastam ferratam aut praeustam sanguineam*) to the enemy's border, and there, making reference to the unrightfulness of the refusal of his demand, he declared war and threw the spear onto the enemy's territory.²¹⁶ (Thus the direct *causa* of the war was the enemy people's unlawful behaviour,

²¹⁰ Cf. Cicero: *De legibus* 3, 9; Livius 1, 32, 12; Lammert, F.: *Kriegsrecht*. RE Suppl. VI. 1351 sqq.; Ziegler: *op. cit.* 101.

²¹¹ Cicero: *Philippicae* 4, 14; *De officiis* 3, 107 sq.; Ulpianus, *Digesta* 49, 15, 24.

²¹² Plinius maior, *Naturalis historia* 22, 3, 5; Servius, in *Verg. Aen.* 9, 52; 10, 14; Quintilianus, *Institutio oratoria* 7, 3, 13.

²¹³ Livius 1, 32, 6–8.

²¹⁴ Dionysius Halicarnassensis 2, 72, 8.

²¹⁵ Livius 1, 32, 9–10. Cf. Ogilvie, R. M.: *A Commentary on Livy*. Oxford, 1965. 131; Bernhöft, F.: *Staat und Recht in der römischen Königszeit im Verhältnis zu verwandten Rechten*. Amsterdam, 1968. 221 sq.; Kaser, M.: *Das altrömische ius*. Göttingen, 1949. 22; Haffter, H.: *Geistige Grundlagen römischer Kriegführung und Außenpolitik*. In: *Römische Politik und Römische Politiker*. Heidelberg, 1967. 23.

²¹⁶ Livius 1, 32, 11–14.

the fact that they did not deliver the things or people demanded by the Romans.²¹⁷) As a matter of fact, there was no need of such declaration of war if the enemy invaded Roman territory; in this case they could immediately and unconditionally begin the counter attack, so the declaration of war implemented by the *fetiales* had any significance only in the case of offensive warfare, initiated by the Romans. The archaic age certainly knew the institution of personal revenge, but the official declaration of war was only employed if the war was waged by the entire community, the *populus*, against another people, which was clearly distinguished from armed conflict between different groups of the aristocracy.²¹⁸ In the course of its expansion Rome did not always have the opportunity to keep this ritual; therefore, the characteristically Roman formal conservatism chose the following fiction: The *pater patratus* threw the spear onto a plot of land declared enemy territory near Bellona's temple and the entire ceremony was performed with respect to that plot of land, but the demands towards the enemy were presented by the *legati* of the *senatus*, and they were the ones to declare war.²¹⁹ (Sometimes they sent the spear to the people on whom they wanted to declare war.²²⁰) However, the *fetiales*'s ritual of the declaration of war considerably contributed to the observation of the requirement that the war had to possess some kind of *iusta causa*, and it is not by chance that Cicero, formulating the theory of just war under the influence of Stoic philosophy, connects *aequitas belli* with *ius fetiale*.²²¹

The *hasta ferrata aut praeusta sanguinea*, meaning iron tipped or fire hardened spear, mentioned by Livy,²²² also deserves attention. At the same time, it is not known when the iron-tipped spear was substituted for, or when it accompanied the wooden spear hardened in fire, as The Iron Age goes back to the turn of the 8th and 9th century BC. in Italy. It can be assumed though, that in ritual usage the iron-tipped spear could only take the place of the wooden one when it came to be exclusively used in everyday life.²²³ The expression

²¹⁷ Albert, S.: De vetere iure Romano, de lege duodecim tabularum atque de iure fetiali. *Vox Latina* 34 (1998) 218.

²¹⁸ Ziegler: *op. cit.* 103.

²¹⁹ Francusci, P. de: Appunti e considerazioni intorno alla "columna bellica". *Atti della Pontificia academia romana di archeologia*. Ser. III. Rendiconti 27. 1951–1954. 1899 sqq.; Dahlheim: *op. cit.* 175 sqq.

²²⁰ Cf. Festus 90.

²²¹ Cicero: *De officiis* 1, 36; Hausmaninger, H.: "Bellum iustum" und "iusta causa belli" im älteren römischen Recht. *Österreichische Zeitschrift für öffentliches Recht*, 11 (1961) 341 sqq.

²²² Livius 1, 32, 12.

²²³ Waele: *op. cit.* 173 sq.

sanguinea is particularly problematic: The word itself can be translated as *consecrated in blood* or *coloured with blood*. However, if it is taken for the denomination of the wooden material, it can mean the branch of the cornel tree, the *sanguineae virgae*, which, being hard wood, constituted a perfectly suitable raw material for the spear.²²⁴ Ammianus Marcellinus mentions in connection with the *fetiales*'s spear that besmearing it with blood played an important role in the course of its manufacturing.²²⁵ The spear of *ius sacrum* made of cornel wood counted as *arbor felix*,²²⁶ but the spear used for the declaration of war was *hasta impura*; i.e., *arbor infelix*, dedicated to the forces of the underworld. Thus, whether the *fetiales*'s spear was coloured with real blood, or made of blood coloured cornel wood, the original *hasta praeusta sanguinea* was later changed for *hasta ferrata sanguine infecta*.²²⁷ The *fetialis* ritually predicts the outcome of war at its very beginning because by symbolically taking the enemy territory into possession with the *hasta impura*, dedicated to the gods of the underworld, he delivers the enemy, the *hostis impius*, bereft of the reason for its existence, to the forces of destruction.²²⁸ (In the light of this, the role of *evocatio*, performed by the Romans before the attack, by which they intended to lure to Rome the gods of the enemy doomed to destruction becomes perfectly clear.²²⁹)

The strongly text-centered nature of *ius fetiale* and *legis actio sacramento* is sufficiently well-known; we know that whoever missed even one word of the text, lost the case.²³⁰ Although in the case of *ius fetiale* we have no *expressis verbis* knowledge of such consequences, it can be rightly assumed that the Romans did not tolerate even the slightest deviation from the text because this would have destroyed the effect of *carmen*, hence it would have endangered the result of the *bellum iustum*, fought with divine help.²³¹ The oath is an indispensable part of *ius fetiale*. On the one hand, the self malediction of the *pater patratus* on the occasion that he presented unrightful demands in the name of the Roman people; on the other hand, the calling of the gods to witness the lawful procedure of the Romans and the unlawful procedure of

²²⁴ Macrobius, *Saturnalia* 3, 20, 3; Plinius maior, *Naturalis historia* 16, 176; 19, 180; 24, 73. Cf. Waele: *op. cit.* 174.

²²⁵ Ammianus Marcellinus 19, 2, 6.

²²⁶ Macrobius, *Saturnalia* 3, 20, 2.

²²⁷ Scholz: *op. cit.* 32.

²²⁸ Latte: *op. cit.* 122; Scholz: *op. cit.* 32.

²²⁹ Latte: *op. cit.* 125. About this ritual act see Basanoff, V.: *Evocatio*. Paris, 1947.

²³⁰ Gaius, *Institutiones* 4, 11, 30.

²³¹ Albert: *op. cit.* 220.

the enemy. In the case of *legis actio, sacramentum* corresponds to this oath.²³² The oath-like character of *sacramentum* is clearly shown by the original meaning of the word itself.²³³ At the same time, it also incorporates the circumstance that the statement of the party taking the oath—e.g., the plaintiff—is true, and accordingly, the statement of his opponent is false. However, if in the end it were proved that the claim of the plaintiff does not stand, then it becomes evident that he committed perjury; i.e., he performed his own *devotio*.²³⁴ (Kaser also suspects that in the beginning the *sacramentum* was related to the divine judgement, but in his view this cannot be sufficiently documented for the period from which written sources exist.²³⁵ It is still a fact that the character of divine judgement can be traced—by analogy—also in this part of *legis actio sacramento*. References to the role played by the oath in the trial can be found not only in literary sources, but in traces, in later legal documents as well.²³⁶) It seems a further parallel that both *rerum repetitio* and *legis actio sacramento* are originally aimed at regaining the things unlawfully possessed by the opposing party in a peaceful manner, placing arbitrariness and fight under the control of the state, thus limiting their scope and intensity.²³⁷ At the same time, it is a clear difference that whereas in the case of *legis actio sacramento* the parties accept the control and decision of a judge recognized by both of them, in the case of *ius fetiale*, this institution is absent. This is demonstrated by the fact that in the so-called international affairs they could not agree on the competence of legal court—this might be the cause of the absence of the *apud iudicem* stage of *ius fetiale* procedure—it can be rightly assumed though that the Romans found the umpire entitled to decide in the conflict of two nations exactly in the higher powers, who were so often called to witness.²³⁸

Ius fetiale is a clearly religious system of norms and procedures, as this is shown by references made constantly to the persons and gods acting in it. Nevertheless, *legis actio sacramento*, considered to be an institution of *ius privatum* shows close connection with *ius sacrum*: In the beginning *legis actio* was performed in front of the *rex*, who was present, both in his person and his legitimacy, as a representative of the sphere of the sacred. Then the *in iure*

²³² Kaser: *op. cit.* 21.

²³³ Walde–Hofmann: *op. cit.* II. 459 sqq.; Kaser: *op. cit.* 18.

²³⁴ Albert: *op. cit.* 220.

²³⁵ Kaser, M. *Das römische Zivilprozeßrecht*. München, 1966. 62.

²³⁶ Vergilius: *Aeneis* 8, 262 sqq.; Ulpianus, *Digesta* 4, 3, 21; 47, 52, 27.

²³⁷ Kaser: *op. cit.* 22.

²³⁸ Albert: *op. cit.* 222.

stage of the trial took place in front of the *magistratus*; then, *in concreto*, it took place in front of the *praetor*, who was in terms of his jurisdictional responsibilities an inheritor of the *rex*.²³⁹ The oath, strictly observing the words of the text, was also addressed to the gods, which substantiates the assumption that *legis actio* was closely related to *ius sacrum*.²⁴⁰ (Certain parallels can be detected between *ius fetiale* and the Twelve Table Law;²⁴¹ for example the debtor had thirty days to satisfy the demand of the creditor if he admitted his indebtedness, or if the case was settled by legal decision; similarly, the *pater patratus* had to wait with the *denuntiatio belli* for thirty days after he had announced his demands, according to Dionysius Halicarnassesensis.²⁴² The reason of both decrees was to help to find a peaceful solution of the conflict within this interval. In line with the relevant loci of the Twelve Table Law order on giving the person who causes damage into *nox*,²⁴³ *ius fetiale* stipulates the extradition of the person who commits a deed injurious to Rome.²⁴⁴) The same intention, meant to restrict the uncontrollable arbitrary enforcement of private demands between the citizens of a state, or between different nations and states, which tried to prevent the state of *bellum omnium contra omnes* by placing the act of solving the conflict under some kind of commonly accepted higher instance, might have stood at the origins of both *ius fetiale* and *legis actio sacramento*.²⁴⁵

From the above it can be unambiguously established that the spear and the rod fulfilled the function of generally used symbols of power in the Greek-Roman culture both in the ceremony of *legis actio sacramento in rem* belonging to the field of *ius privatum* and in several proceedings and institutions that can be ranked among the tools of *ius publicum* and *ius sacrum*. In archaic thought, however, a symbol was not considered an image that needs to be interpreted but reality embodying the concept, fact denoted; so this applied to the *hasta* and the *festuca*, which were on the boundary of law and the sphere of the

²³⁹ Földi–Hamza: *op. cit.* 18; Meyer, E.: *Römischer Staat und Staatsgedanke*. Zürich–Stuttgart, 1964. 38, 117; Bleicken, J.: *Die Verfassung der römischen Republik*. Paderborn, 1975. 76 sq.

²⁴⁰ Cf. Noailles, P.: *Du Droit sacré au Droit civil*. Paris, 1949. 18 sqq.

²⁴¹ Donatuti: *op. cit.* 31 sqq.; Hausmaninger: *op. cit.* 338; Bernhöft: *op. cit.* 1968. 221 sqq.; Albert: *op. cit.* 224.

²⁴² *Leges XII tabularum* 3, 1; Dionysius Halicarnassesensis 2, 72, 8.

²⁴³ *Leges XII tabularum* 8, 6. (Ulpianus, *Digesta* 9, 1, 1 pr.); 12, 2b (Gaius, *Institutiones* 4, 75–76.)

²⁴⁴ Kaser: *op. cit.* 185. Cf. Livius 8, 39, 14; 9, 8, 6; 9, 10, 2 sqq.; Cicero: *Pro Caecina* 98; *De oratore* 1, 181; 2, 137; *De officiis* 3, 108.

²⁴⁵ Kaser: *op. cit.* 19, 15.

sacred and served to express *iustum dominium* and *imperium*. This overview might have somewhat highlighted certain important aspects inherent in the rite of *vindicatio* as a kind of *ordalium* deciding the battle—as it was meant to be demonstrated with the phrase *sacrum duellum* used in the introductory passage of this study—which can be explored and interpreted solely through applying the findings of law and the history of religion in synthesis.