

Sacratio capitis, devotio, and blood in the Roman law and religion

ATTILIO MASTROCINQUE*

Department of Cultures and Civilizations, University of Verona, Italy

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ABSTRACT

Some Roman rituals with political value were provided with the power of a curse whose mechanics was similar to that of Greek *defixiones*. Those who injured a plebeian tribune were consecrated to the gods or to the gods of the dead. The *consecratio* of a man was sometimes enacted when the blood of a citizen or the tears of a parent were poured. Blood was particularly efficacious in unleashing a curse on the person responsible for something wrong and offensive to the gods and the Roman people.

KEYWORDS

Roman curses, *homo sacer*, blood, tears

PARALLELS BETWEEN ROMAN VOTIVE RELIGION AND GREEK *DEFIXIONES*

Sometimes Roman religion has been compared to magic¹ because what we suppose to be “magic” mostly corresponds to ritual enactments,² and Roman religion was based on rituals

* Corresponding author. E-mail: attilio.mastrocinque@univr.it

¹See ROSE, H. J.: *Ancient Roman Religion*. London 1949.

²On this problem, see THOMASSEN, E.: Is Magic a Subclass of Ritual? In JORDAN, D. R. – MONTGOMERY, H. – THOMASSEN, E. (eds): *The World of ancient Magic: Papers from the first International Samson Eitrem Seminar at the Norwegian Institute at Athens, 4-8 May 1997*. Bergen 1999, 55–66.

more than on theology and mythology. If we try, however, to see a relationship between magic and Roman religion, we obtain an unexpected result: magical rituals which were private, concealed, forbidden in other cultures were publicly performed in Rome and constituted a part of the Roman public religion and law. Until the end of the Republic, Rome did not use the category of magic but, in spite of this, we label some Roman rituals “magic” because we are used to doing so in similar cases.

The *sacratio capitis* and *devotio* were Roman rituals whose features were similar to those of Greek *defixiones*, i.e. cursing spells which were supposed to hand somebody over to the realm of the dead. So far, the early Greek *defixiones* are those from Selinus, in Sicily, dating to the end of the 6th century onwards, discovered in the temple of the goddess Malophoros, a local form of Persephone. These texts consecrate some persons and specific parts of their body to the gods of the dead. For example, one among them says: “the tongues of Eukles, of Aristophanes, of Angeilis. . .”³ The most simple curses consisted of writing the names of some people and putting these names into a tomb or a temple of infernal gods; at a slightly later time, specific verbs were added such as *grapho*, *katagrapho*, *enkatagrapho* (I write, I write down, I write down inside). *Καταγράφω* was, in a certain way, the contrary of *ἀναγράφω*, i.e. “I inscribe a person in a public register”, as if someone would have been inscribed either in the public register of a city (*anagrapho*) or in the register of the city of Hades and Persephone (*katagrapho*). Other verbs, as well, were used to convey the idea of handing someone over to the realm of the dead, namely *kathierō*, *katatithemi*, *paradidomi* (I consecrate, I consecrate down, I hand over).

Before dealing with the *sacratio capitis* in the political activity of the Roman plebs, we will consider a customary ritual among the Latins, that of breaking the head of terracotta statuettes and dedicating them to a deity in a temple. Statuettes with broken head are numerous and many of them have a solid neck, thanks to the clothe covering the back of the neck, and therefore the lack of the head did not depend on the neck’s fragility but on the intention of offering a severed head to the gods.⁴

Numerous Roman myths account for the origin of festivals which included the offering of either statuettes or human heads. The alleged reform of Compitalia, in honor of the Lares and the Mater Larum, was ordered by Apollo, who urged Tarquinius “to supplicate with heads for the heads” (*pro capitibus capitibus supplicaretur*), and he thought the order was that of cutting human head, whereas Brutus was able to understand that it sufficed to offer garlic bulbs and poppyheads to satisfy the direction given by the oracle.⁵ According to Plutarch, Jupiter ordered Numa to sacrifice human living heads, but the king substituted for them onions’ heads and live fishes.

Dionysius of Halicarnassus⁶ and Macrobius⁷ report an oracle by Zeus Dodoneus, who said that the Pelasgian ancestors of Rome should offer tithes to Apollo, heads to Hades, and men to the son of Kronos. Hercules understood the meaning of the oracular text as alluding to “candles” and “statuettes”, because *phota* signified “lights”, and not necessarily “a man”, and that, with the genitive *photōs* (“of a man”), a terracotta statuette of a man was meant.

³DUBOIS, L.: *Inscriptions grecques dialectales de Sicile*. Rome 1989, n. 31.

⁴MASTROCINQUE, A.: Lex sacra e teste votive. In *Depositi votivi e culti dell’Italia antica dall’età arcaica a quella tardo-repubblicana*. Atti del Convegno Perugia 1-4 giugno 2000. A cura di A. COMELLA e S. MELE. Bari Edipuglia 2006, 25–30.

⁵Macrobius. I 7. 34–35.

⁶Dion. Hal. I 18. 19.

⁷Macrobius. I 7. 28: *coepisse Saturno cereos potius accendere et in sacellum Ditis arae Saturni cohaerens oscilla quaedam pro suis capitibus ferre*.



All these legends were based not only on etymologies but also on the real fact that statuettes and heads were dedicated in many temples and they were supposed to be substitutes for real men or real heads, which were safe thanks to the substitution.

PARALLELS BETWEEN ROMAN LAWS AND *DEFIXIONES*

The mechanics of *defixiones* recurred in the political life of Rome in a rather aggressive and harmful way. The first *lex sacrata* was passed and sworn in 494 BC by the plebeians in order to protect the plebeian tribunes. Dionysius of Halicarnassus reports as follows:

This was approved of by all, and a law was drawn up by him and his colleagues, as follows: “Let no one compel a tribune of the people, as if he were an ordinary person, to do anything against his will; let no one whip him or order another to whip him; and let no one kill him or order another to kill him. If anybody shall do any one of these things that are forbidden, let him be accursed and let his goods be consecrated to Ceres; and if anybody shall kill one who has done any of these things, let him be guiltless of murder.”⁸

Here the Greek ἐξάγιστος ἔστω corresponds to the Latin *sacer esto*. In fact, this law was reintroduced in 449, after the Decemvirate, and Livy speaks of *caput Iovi sacrum* (“head consecrated to Jupiter”) and reports it with the following words:

aliam deinde consularem legem de provocatione, unicum praesidium libertatis, decemvirali potestate eversam, non restituunt modo, sed etiam in posterum muniunt sanciendo novam legem, ne quis ullum magistratum sine provocatione crearet; qui creasset, eum ius fasque esset occidi, neve ea caedes capitalis noxae haberetur. Et cum plebem hinc provocatione, hinc tribunicio auxilio satis firmassent, ipsis quoque tribunis, ut sacrosancti viderentur, cuius rei prope iam memoria aboleverat, relatis quibusdam ex magno intervallo caerimoniis renovarunt, et cum religione inviolatos eos, tum lege etiam fecerunt, sanciendo ut qui tribunis plebis aedilibus iudicibus decemviris nocuisset, eius caput Iovi sacrum esset, familia ad aedem Cereris Liberi Liberaeque venum iret.

“When they had sufficiently strengthened the plebs by the right of appeal on the one hand and the protection afforded by the tribunes on the other, they proceeded to secure the personal inviolability of the tribunes themselves. The memory of this had almost perished, so they renewed it with certain sacred rites revived from a distant past, and in addition to securing their inviolability by the sanctions of religion, they enacted a law that, whoever offered violence to the magistrates of the plebs, whether tribunes, aediles, or decemviral judges, his head should be consecrated to Jupiter, his possessions sold and the proceeds assigned to the temples of Ceres, Liber, and Libera.”⁹

⁸Dion. Hal. VI 89. 3, transl. E. Cary. Livy is less explicit: Liv. II 33. 3: *sunt qui duos tantum in Sacro monte creatos tribunos esse dicant, ibique sacratam legem latam.*

⁹Liv. III 55. 4–7. Jupiter is unexpected in this function. C. KOCH (*Der römische Juppiter*. Frankfurt a. M. 1937, 70–91) maintained that the Roman Juppiter had a heavenly character and no chthonic features. But this Jupiter, who should receive the souls of the *homines sacri*, was the God of the dead and was entrusted with the same function as that of Zeus Meilichios, a God who was worshipped along with the Malophoros, the queen of the dead, at Selinunte. On this God, see CUSUMANO, N.: Zeus Meilichios. *Mythos* 3 (1991) 19–47; CUSUMANO, N.: Polivalenze funzionali e figurative. Osservazioni su Zeus Meilichios. *Metis* n. s. 4 (2006) 165–195; GROTTA, C.: *Zeus Meilichios a Selinunte*. Rome 2010; VERSNEL, H. S.: *Coping with the Gods*. Wayward Readings in Greek Theology. Leiden–Boston 2011 [RGRW 173], 62–63, 143, 519. But such a problem cannot receive a univocal solution because the sole fact of giving a person to one God was sufficient to remove him from the human community.



Cicero¹⁰ knew that this one was not the sole law including the *capitis consecratio* as the possible punishment, which was not capital punishment, but the handing over of a person to the gods of the dead. Such a condemnation recurs in different texts, starting from the 6th century inscription from the Comitium,¹¹ where we read: *sakros esed* (“should be sacred”). In the Law of the XII Tables, he who stole the harvest of someone was sacred to Ceres,¹² and the *patronus* who cheated on his *cliens* was *sacer*.¹³ The alleged laws of Romulus included being *sacratio* to the gods of parents of the daughter-in-law who made her father or mother-in-law weep, and the same was provided for by a law of Servius Tullius against a son who whipped his parent and made the latter weep.¹⁴ A law of Numa laid down the *sacratio* of a plowman and his oxen if they dislocated a stone marking boundaries.¹⁵ A similar punishment was provided for the omission of the funeral by the heir of a deceased person, and in this case the expression is *suo capite luat*.¹⁶

It is evident that such legal and public provisions resorted to the same mechanics as that of *defixiones*.

SACRATIO CAPITIS, DEVOTIO, BLOOD AND TEARS

An episode of archaic Roman history is particularly interesting, that of Verginius and the cursed Decemvir Appius Claudius. In 450 BC, the most cruel among the Decemviri, Appius Claudius, was desirous of a young plebeian girl, Verginia, and one among his freedmen, Marcus Claudius, was instructed to pretend that she was his slave, allegedly kidnapped by Verginius. When her father came back to Rome, a trial was set up in the Forum, where Verginia was about to be given to Claudius, but L. Verginius, the father,

ab lanio cultro arrepto, “hoc te uno quo possum” ait, “modo, filia, in libertatem vindico.” pectus deinde puellae transfigit, respectansque ad tribunal “te” inquit, “Appi, tuumque caput sanguine hoc consecro.”

Snatching up a butcher’s knife, he plunged it into her breast, saying, “In this the only way in which I can, I vindicate, my child, thy freedom.” Then, looking towards the tribunal, “By this blood, Appius, I consecrate your head.”

The focus of this action is on the blood, as if the blood was necessary to involve Appius Claudius in the consecration to the infernal gods. It pulled the cursed Decemvir towards Hell.

¹⁰Cic. *Pro Balb.* 14. 33: *sanctiones sacrandae sunt aut genere ipso aut obtestatione et consecratione legis aut poenae, cum caput eius qui contra fecerit consecratur.* (“For first of all, nothing can be ratified in such a manner except what the burgesses or the common people have so ratified. In the second place, such ratifications are to be accounted sacred, either because of the form of ratification itself, or because the invocation of the Gods and dedication of the law, or else, because of some punishment to which the life of that man is devoted who acts in contravention of it.” Transl. C. D. Yonge).

¹¹*CIL* I² 1.

¹²Plin. *Nat. hist.* XVIII 12.

¹³Serv. *Aen.* VI 609.

¹⁴Fest., s.v. *plorare*: *In regis Romuli et Tatii legibus: “si nurus . . . , <nurus> sacra divis parentum estod.” in Servi Tulli haec est: “si parentem puer verberit, ast olle plorassit paren<s>, puer divis parentum sacer esto”,* p. 260 L.

¹⁵Fest. (Paul.), s.v. *termino*: *eum, qui terminum exarasset, et ipsum et boves sacros esse,* p. 505 L.

¹⁶Fest. (Paul.), s.v. *everriator*, p. 68 L.



Now we recall the above mentioned consecration of a daughter-in-law and of the son who made their father/mother in law or, respectively, his father weep. Without tears the curse was not enacted, and therefore this liquid, like Verginia's blood, made the sinner cursed and entrusted him to the netherworld.

Such a ritual enactment seems to be similar to that of the *devotus*. *Devotus* was a Roman general who promised to the gods his life and asked, in exchange, for his enemies' lives to be dragged to the underworld along with his own life.

Luigi Garofalo¹⁷ has recently underlined the similarity between the *devotus* and the *homo sacer*. The only difference was in the order of events, for the *homo sacer* becomes immediately *sacer* by a performative ritual such as the enactment of the *lex sacrata* and other similar laws, whereas the *devotus* is expected to become *sacer* to the gods of the netherworld when he launches himself against the enemies and is killed. A *defixio* from Raetia¹⁸ begins with the following words:

devoti defixi sint qui mi fidem fefellerunt

Be vowed/ accursed and stabbed – those who cheated me.

May those be avowed (accursed) and stabbed who cheated me.

Therefore *devotus* could also be he who had been cursed with a *defixio*. The most famous *devotiones* were those of the two Publii Decii Mures, the father and the son, both consuls who commanded a Roman army, respectively, at the battle of the Vesperis river, against the Latins, and at the battle of Sentinum, against Gauls, Etruscans, Samnites, and Umbrians.¹⁹ The consul uttered a prayer and a vow, which is reported by Livy with these words:

Iane Iuppiter Mars pater Quirine Bellona Lares Divi Novensiles Di Indigetes Divi quorum est potestas nostrorum hostiumque Dique Manes, vos precor veneror veniam peto oroque (feroque) uti populo Romano Quiritium vim victoriam prosperetis, hostesque populi Romani Quiritium terrore formidine morteque adficiatis. Sicut verbis nuncupavi, ita pro re publica populi Romani Quiritium, exercitu legionibus auxiliis populi Romani Quiritium, legiones auxiliaque hostium mecum Deis Manibus Tellurique devoveo.

Janus, Jupiter, Father Mars, Quirinus, Bellona, Lares, ye Novensiles and Indigetes, deities to whom belongs the power over us and over our foes, and ye, too, Divine Manes, I pray to you. . . devote the legions and auxiliaries of the enemy, together with myself to the Divine Manes and to Earth.²⁰

¹⁷GAROFALO, L.: *Studi sulla sacerità*. Padua 2005. On the relationship between *devotio* and *defixio*: AUDOLLENT, A.: *Devotio ou Defixio?* In *Mélanges Boissier. Recueil de mémoires concernant la littérature et les antiquités romaines dédié à Gaston Boissier à l'occasion de son 80. anniversaire*. Paris 1903, 37–43; CANO, S.: *Defixio y devotio. Estudios de Filologia Latina* 2 (1982) 3–12; SACCO, L.: *Devotio. Aspetti storico-religiosi di un rito militare romano*. Rome 2011.

¹⁸From Eining (near Neustadt), in Bavaria: STEIDL, B.: *Fluchtäpfeln, Verfluchung und Schadenzauber*. In GEBHARD, R. (ed.): *Archäologische Staatssammlung München. Glanzstücke des Museums*, Berlin–München 2010, 256; MARCO SIMÓN, F.: *Devoti. . . sint, qui mi. . . in fraude fecerunt*: la execración de las actividades fraudulentas en el Occidente latino. In MARCO, F. – PINA POLO, F. – REMESAL RODRIGUEZ, J. (eds): *Fraude, mentira y engaño en el Mundo Antiguo. VII Coloquio Internacional de Historia Antigua Universidad de Zaragoza*. Barcelona 2014, 97–104.

¹⁹Liv. 8. 9. 4–8 (*devotio* of 340 BC); Liv. 10. 28–29 (*devotio* of 295 BC).

²⁰Liv. 8. 9. 6–8, transl. Canon Roberts.



When the enemies stabbed him with their darts, they were *sacri* and caught by the gods and the Manes, and the Romans killed them all. In this case, as in those of the tears and of Verginia's blood, the ritual death of the *devotus* involved the enemies' death. It was a matter of rights and obligations. The Roman consul could not consecrate directly the bodies of his enemies, because he had no right over them; on the other hand, Verginius had the right of killing his daughter because this was a right of every *pater familias* over his sons and daughters. A pledge obligated the gods to seize the promised persons if the preconditions were rightfully fulfilled. If the gods of the dead accepted the soul of Decius Mus, they were engaged to take the lives of the enemies, as well.

The *devotus* could not be anybody among the Romans, but only their supreme leader and the representative of the whole people or one soldier, who had been appointed by his general with this task.²¹

A ritual vow or a law, especially a *lex sacrata*, were the legal and religious bases which made the subsequent enactment (i.e., the doom of the guilty or the consecrated persons) mandatory.

Another case of a curse unleashed by poured blood was that of the consul L. Cornelius Merula, who was also the *flamen Dialis* and was constrained to commit suicide when Caius Marius was coming back from exile in 87 BC. He poured his blood onto the altars which he was used to sacrificing over, and the temple and even Jupiter's face were sprinkled with his blood,²² and this dramatic enactment was supposed to have unleashed a terrible curse.²³ The Civil War was indeed the cause of death for numerous partisans of Marius. After Merula's suicide, the priesthood of the *flamen Dialis* was not filled again until under Augustus, 75 years later.²⁴

According to the Virgilian epic, Dido, by committing suicide, poured her blood and cursed Aeneas:

*hanc vocem extremam cum sanguine fundo.*²⁵

This last utterance I pour out with my blood.

Plutarch writes that Cicero, after his proscription:

*παρελθεῖν εἰς τὴν Καίσαρος οἰκίαν διενόηθη κρύφα καὶ σφάξας
ἑαυτὸν ἐπὶ τῆς ἐστίας ἀλάστορα προσβαλεῖν.*

Made up his mind to enter Caesar's house by stealth, to slay himself upon the hearth, and so to fasten upon Caesar an avenging daemon.²⁶

²¹Liv. 8. 10. 13.

²²App. BC 1. 8. 70, 74; Val. Max. 9. 12. 5; Flor. 2. 9. 16; Cass. Dio 31. 103. 11a; Aug. *De Civ. Dei*. 3. 27; see STERN, G.: "Suicide in the Cathedral in 87 BC (really, the Temple of Jupiter . . . sorry T. S. Eliot)". CAMWS, April 18, 2013, Iowa City (available in <https://www.academia.edu/s/0f966ce5a4/camws-2013-87-bc-suicide-in-cathedraldoc>).

²³Vell. Pat. II 22: "Merula . . . cut his veins and, as his blood drenched the altars, he implored the Gods to whom, as priest of Jupiter, he had formerly prayed for safety of the republic, to curse Cinna and his party."

²⁴Tac. *Ann.* 3. 58: "For 75 years after Cornelius Merula's violent death nobody had been appointed in his place"; Cass. Dio 54. 36: "the priest of Jupiter was appointed for the first time since Merula".

²⁵Verg. *Aen.* 4. 621, transl. H. R. Fairclough. See the article by L. Quartarone in this volume.

²⁶Plut. *Cic.* 47, transl. B. Perrin.



The enactment of a curse by means of pouring human blood is also clarified by an episode which occurred during the consulate of Julius Caesar in 59 BC. His colleague M. Calpurnius Bibulus managed in vain to prevent Caesar from proposing some laws, and was even threatened and injured by violent supporters of the triumvirs. At a certain point Bibulus entered the Forum, and some people broke the fasces of his lictors and blessed the tribunes who were with him. He did not retreat but bared his neck and invited his enemies to strike by saying: "If I cannot persuade Caesar to act according to justice, I will throw upon him the guilt and stigma of my death".²⁷ He was not slain, but only because his friends took him away from the crowd. We may add that Caesar and his party did not incur, on this occasion, the alleged unpleasant consequences of Bibulus' curse.

We may conclude by saying that we have ascertained that some dramatic and painful gush of human fluid substances, such as blood and tears, in a certain situation and according to a law or a traditional custom, unleashed the fury of gods who took the culprits, removed them from the human society, and transformed them into members of the society of the dead.

²⁷ App. B.c. 2. 11: τό γε ἄγος αὐτῶ καὶ μύσος οὕτως ἀποθανῶν ἐπιβαλῶ.

