THE ROLE OF RITUALS AND SYMBOLS IN ROMAN LAW

Michal Skřejpek*

Abstract: *The performance of various rituals and the use of symbols have accompanied humanity since time immemorial. They hold particular significance in law, where their correct execution or use is associated with intended legal effects. Rituals and symbols played a role in ancient Roman law not only during the archaic period but were also used in later times, during the Republic and the Empire. We encounter them in all areas of law, in private law, including legal procedures, criminal law, and in the operations of Roman state authorities.*

Keywords: *Roman law, symbols, rituals*

INTRODUCTION

This text was prepared as part of the grant project "Rituals and Symbols in Roman Law".[1] Its aim is to raise issues related to this topic and to suggest, through specific examples, possible ways to find answers to the role that rituals and the use of symbols played in the context of Roman law, what their relationship was, their origins, what purposes they served, and when and for what reasons they "disappeared" from Roman law. Research into these questions encounters many obstacles. Not only has relatively little attention been paid to them in scholarly literature, but there is also a lack of sources pertaining to the period of archaic law, the time when various rituals became part of Roman law. This is accompanied by difficulties arising from the ambiguous wording of such sources, which complicates their interpretation, as will be demonstrated further using the example of mancipation.

Various rituals and the use of symbols are also inherent in today's society and have accompanied humanity since ancient times. Initially, these were undoubtedly magical rituals, primarily aimed at ensuring an abundance of food or, for example, warding off diseases or other misfortunes. Among them, hunting rituals, which invoked plentiful game, played a significant role, as evidenced by prehistoric cave paintings.[2] Some of the oldest rituals include initiation and transitional rituals. The former were aimed at integrating individuals into a particular community or life position.[3] Transitional rituals[4] served to elevate individuals into a higher social status.

The word "ritual" originates from the Latin *ritualis*, meaning ceremonial, or related to religious rites, and is derived from the noun *ritus*, which is used not only in the sense of a religious establishment, sacred order, or rite but also custom, tradition, or customary

* Professor JUDr. Michal Skřejpek, DrSc., Faculty of Law, Charles University, Prague, Czech Republic. ORCID 0000-0002-3840-0523.

[1] The work on this paper was supported by the Czech Science Foundation grant GAČR 23-07791S.

[2] For example, in Altamira or the Algerian Tassili.

[3] To initiation rituals ELIADE, M. *Rites and Symbols of Initiation. The Mysteries of Birth and Rebirth.* New York, Hagerstown, San Francisco, London: Harper & Row, 1958 or BRADFIELD, R. M. *A Natural History of Associations. A Study in the Meaningof Community.* London: Duckworth, 1973.

[4] For this, see for example: VAN GENNEP, A. *Přechodové rituály: systematické studium rituálů* [*Transitional Rituals: Systematic Study of Rituals*]. Praha: Portál, 2018.

practice. Rituals are sometimes referred to as ceremonies or rites.[5] While there is nothing inherently wrong with using these terms in everyday language or non-legal contexts, in a legal context, especially when dealing with Roman law, these terms would be overly general and potentially misleading. In any case, a ritual can be characterized as a form of behavior based on traditional and proven (customary) or even imposed rules, primarily reinforcing a particular action's validity.[6] It is an activity with a precisely defined procedure or sequence of actions.[7] Likewise, rituals can be described as a form of stereotype based on procedural formalities that combine words and gestures. Rituals were, of course, not only used in law but also fulfilled religious or social functions. Such actions communicated to a broad audience the significance of certain moments in the life of a community. In these contexts, we must also consider the different forms of information acceptance corresponding to the level of societal development.

If we were to attempt to systematize rituals, we could generally speak of individual and group rituals. Another classification is offered by J.G. Frazer,[8] who divides them into sympathetic rituals, which involve the influence of like upon like, and contact rituals, based on the transmission by touch or even over a distance. Looking at legal rituals, one might get the impression that they are tied to legal history. However, even today's legal life is not devoid of rituals, and we regularly participate in them. Recalling situations such as marriage ceremonies, matriculation, court proceedings, graduations, or state exams is sufficient.

Many symbols have been and still are associated with law, and they have been and still are used in legal acts. The term has its origin in Greek (σύμβολον) and is identical in Latin (*symbolum*). It is derived from the verb συμ-βάλλειν, meaning to gather or put together. Symbols, or rather signs, their meanings, and their classifications are studied by the scientific field known as semiotics. The basic classification was created by the founder of modern semiotics, Charles Sanders Pierce, who divided signs into three groups. The first he called „index", which refers to a part of a whole that represents it. In the context of Roman law, such an index is, for example, a stone from a plot of land used during mancipation, *in iure cessio*, or vindication, representing the object of the transfer of ownership or legal action.[9]

The second type, "icon", is based on an external similarity to something else. Roman law also recognized this type of sign. In the case of the aforementioned mancipation, we encounter the symbol in the sense of an icon several times. It is not only the piece of copper that must be struck against bronze scales, reminiscent of originally weighed pieces of copper, but also the rod (*festuca*), which was used to point to the transferred item. Its use symbolized and, by its shape, resembled a spear–a symbol of power over something.[10] In

[5] See PRAŽÁK, J. M., NOVOTNÝ, F., SEDLÁČEK, J. *Latinsko-český slovník [Latin-Czech dictionary]*. Praha: Česká grafická unie, 1929, p. 1085.
[6] "ritual" In: *Sociologická encyklopedie* [online]. [2023-09-25]. Available at: <https://encyklopedie.soc.cas.cz/w/Ritu%C3%A1l>.
[7] For this generally, see for example RAPPAPORT, R. A. *Ritual and Religion in the Making of Humanity*. Cambridge: Cambridge University Press, 1999.
[8] FRAZER J. G. *Zlatá ratolest* [The Golden Branch]. Plzeň: A. Čeněk, 2007, p. 671.
[9] Gai 4, 17.
[10] Gai 4, 16.

this context, it is worth noting that the spear was also used in public Roman law, where captured enemies were forced to pass through a "gate" made of spears, symbolizing their submission to the victors.

The last of Peirce's signs is the "symbol", where the relationship between the sign and what it represents is based purely on tradition, and its meaning must be learned. In the context of Roman law, this could be, for example, the *toga praetexta* or *tesserae* (tokens) enabling access to, for instance, grain distributions. On a more general level, scales are used as a symbol of justice, the *fasces* (a symbol of capital jurisdiction), or the statue of justice itself. In later times, a similar function to that of *Iustitia* is fulfilled by the statue of Roland.[11]

As can be seen, in the realm of law, specifically Roman law, all types of signs in the semiotic sense–index, icon, and symbol–are included under the concept of symbols. The designation of symbols, or their types with somewhat different meanings, depends on the terminology developed by a specific field, as well as the emphasis placed on a particular type of symbol. In this regard, the extensive "Knaurs Lexikon der Symbole"[12] mentions legal symbols only exceptionally. In the entries "Auge" (eye), "Blindheit" (blindness), and "Wagen" (chariot), it is always in connection with the depiction of justice,[13] and "Fasces"[14] has its own separate entry. Generally speaking, we can conclude that symbols are used in the realm of law as general designations, and in legal acts, they almost always have a representative function.

The existence of rituals, as well as the use of symbols in law, is not, of course, exclusive to Roman law; we encounter them in all ancient societies. Their occurrence can also be noted today, not only in connection with certain formal legal acts but also in societies that still live under primitive conditions.[15]

One of the fundamental questions is why rituals appear in law–what led people to "bother" with performing often very complex ceremonies, where there was always the danger that they would not be perfectly executed and therefore rendered invalid. The origins of the use of rituals in law must undoubtedly be associated with magical practices, which inherently involve performing certain rituals and ceremonies. In general, we can state that magic not only preceded the development of religious beliefs but is also based on the belief in controlling supernatural forces.[16] It is not only the conviction that performing specific movements and reciting associated words or phrases will bring the desired effect, but also the use of certain objects that sometimes merely represented others, i.e., symbols. This belief stemmed from the Romans' faith in *numina*–supernatural

[11] See for example SKŘEJPKOVÁ, P. Roland jako kamenný symbol moci a práva [Roland as a Stone Symbol of Power and Law]. In *Umenie a právo*. 2016, pp. 200–205.

[12] BIEDERMAN, H. *Knaurs Lexikon der. Symbole*, Köln: Area, 2004.

[13] We can find them in the mentioned book on pages 43, 65, and 466–467.

[14] Page 135. They are also mentioned briefly on pages 45 and 465.

[15] Regarding this issue for example POSPÍŠIL, L. *Etnologie práva: Teze ke studiu práva z mezikulturní perspektivy [Ethnology of Law: A Thesis to Study Law from an Intercultural Perspective]. Praha: Setout, 1997.*

[16] Different concepts of magic see TYLOR, E. B., *Primitive Culture. Recherches into the Developement of Mythology, Philosophy, Religion, Art, and Custom*. London: J. Murray, 1871; *EDMONDS, R. G. Drawing Down the Moon: Magic in the Ancient Greco-Roman World. Princeton: Princeton University Press, 2019; LÉVY-BRUHL, L. Les fonctions mentales dans les sociétés inférieures. Paris:* Les Presses universitaires de France, *1910.*

forces that reside in every object or being and are even present in every movement or spoken word. From this perspective, we can say that the performance of rituals and the use of symbols were inseparably connected in the earliest times.

Magical practices then became the precursor to religious ceremonies. Essentially, they were the imitation of "proven" procedures intended to ensure the successful performance of a religious act, such as a sacrifice. These actions were soon formalized, and if carried out as custom dictated, they were considered valid. However, if any mistake was made, they had to be repeated. Because religious beliefs had a significant influence on archaic law,[17] such procedures also became part of certain important legal acts. This is, of course, associated with formalism, which is characteristic not only of performing religious rites but also of archaic legal systems.

Just as rituals are typical of law–especially, though not exclusively, archaic law–we also encounter the use of various symbols in law. The question that naturally arises is, which of the two phenomena appeared first in Roman law? As already mentioned, legal rituals and the associated use of various symbols are closely tied together. Although, indeed, the use of representative objects symbolizing other things often served to carry out, facilitate, or simplify the performance of ceremonial legal atcions.

Let us now try to answer a few essential questions that are closely related. How closely are legal rituals and the symbols used in them connected? In other words, is it always necessary to use a symbol to perform a ritualized legal act, or are they an integral part of it? Although this question had to be raised, the answer is quite clear. In Roman law, there were many ritualized or formal legal acts in which symbols were not used and were not required. A typical example can be found in the well-known verbal contract called *stipulatio*, which involved only a formalized dialogue consisting of the pronouncement of prescribed words. The same applies to the ancient *legis actio sacramenti in personam* and, in fact, all *legis actio* except for *legis actio sacramenti in rem*. In public law, we also see the original method of voting in comitia, where Roman citizens expressed their will by physically separating themselves.

This brings us to the second issue: are symbols always tied to ritualized legal acts, or can they be completely autonomous? In Roman law, we commonly encounter symbols that exist independently and do not accompany legal acts. These symbols are particularly found in public law. For example, Dionysius of Halicarnassus, in his *Roman Antiquities*, lists the insignia of royal power (a golden crown, an ivory chair, a scepter adorned with an eagle at the top, a purple tunic decorated with gold, and a toga dyed purple) that the Etruscan envoys brought to the Roman King Tarquinius Priscus.[18] Another example is the *anulus aureus*, a golden ring that symbolized the senatorial rank. Many more examples of independent symbols can be found in the *toga*, the typical Roman garment. The *toga praetexta*, trimmed in purple, indicated that its wearer was not yet an adult, the *toga virilis* was worn by adult men, the red *toga purpura* was worn by senators, and the whitened *toga candida* was reserved for candidates for magistracies.

[17] On the relationship between Roman religion and law see SKŘEJPEK, M. *Ius et religio. Právo a náboženství ve starověkém Římě* [*Ius et religio. Law and Religion in Ancient Rome*]. Pelhřimov: 1999.
[18] Dionysios 3, pp. 61–62.

The desired outcome of the ritual–and thus the validity or binding nature of the act it accompanies–depends on the flawless execution of the ritual. If there is any, even the slightest deviation from the prescribed form, the ritual must be repeated if the desired outcome is truly necessary or even essential. The same effect occurs if the ritual is interrupted. This is commonly encountered in private law, where *mancipatio* serves as an example, and we will discuss it in more detail later.

It is no surprise that this issue also existed in Roman religion. A striking example can be found in a story from 491 BCE, when it was not just a single act that had to be repeated, but the entire *ludi magni* (Great Games). That year, the games were disrupted by a man who, in a fit of rage, chased his whipped slave through the middle of the racetrack. After a dream revelation from Jupiter to Attius Tullius, expressing divine displeasure, the Senate had to hold the games all over again.[19]

A necessary condition for successfully completing a legal ritual is knowledge of its proceedings. Since rituals in law rarely involve only one person, all participants must be familiar with how the ritual is conducted. This includes, of course, those actively involved, but also passive participants. Their role is to monitor the proceedings so that they can later testify, in case of a dispute, whether everything was properly conducted. Just as knowing the sequence of actions and verbal formulas is important, selecting the correct symbol is equally necessary if it is part of the ritual. If the symbols are integral to the ritual, the issue of their correct use arises, as faulty execution affects the effectiveness of the ritual.

As in other cases, these points can be illustrated by the highly formal process of transferring ownership through *mancipatio*. A detailed description of its course is provided in a famous passage from the Gaius's Institutes:

Est autem mancipatio, ut supra quoque diximus, imaginaria quaedam venditio. Quod et ipsum ius proprium civium Romanorum est; eaque res ita agitur. Adhibitis non minus quam quinque testibus civibus Romanis puberibus et praeterea alio eiusdem condicionis, qui libram aeneam teneat, qui appellatur libripens, is, qui mancipio accipit, rem tenens ita dicit: HUNC EGO HOMINEM EX IURE QUIRITIUM MEUM ESSE AIO ISQUE MIHI EMPTUS ESTO HOC AERE AENEAQUE LIBRA; deinde aere percutit libram idque aes dat ei, a quo mancipio accipit, quasi pretii loco.[20]

(Mancipation, as we have mentioned above, is a sort of imaginary sale. This right is peculiar to Roman citizens, and the transaction proceeds as follows. In the presence of not fewer than five witnesses, all Roman citizens of full age, and another of the same status, who holds a bronze scale and is called a weigher, the person acquiring by mancipation, holding the object, says: 'I declare that this man is mine by Quiritarian right, and let him be purchased by me with this bronze and these scales.' Then, he strikes the scales with the bronze and hands over the bronze to the seller as if it were the price.)

This is a detailed description of the ritual, not only describing its procedure but also providing information on the number of witnesses, their qualifications, and the symbols used. However, it is inaccurate to the point of being misleading, as Gaius refers to the

[19] Liv. 2, 36.
[20] Gai 1, 119. All translations from Latin are done by the author.

striking of bronze on bronze scales. In the following text, he explains why bronze was used:

Ideo autem aes et libra adhibetur, quia olim aereis tantum nummis utebantur…[21]

(Bronze and scales were used because in ancient times only bronze coins were in use...).

There is a fundamental ambiguity regarding the identification of this symbol–a piece of metal. While it may seem like a minor detail, using the wrong symbol, as mentioned earlier, could invalidate the entire procedure. It is commonly stated in literature that the metal used, which was struck on the bronze scales to symbolize the weighing of original ingots or their fragments, was copper.[22] However, some authors suggest that *aes* may also be translated as bronze.[23] The key problem is that *aes* has a dual meaning: it can refer to both copper and bronze.[24] Seemingly, this issue is clarified by Festus's *De verborum significatione*, where we read the following:

Aurichalcum *vel orichalcum quidam putant compositum ex aere et auro, sive quod colorem habeat aureum.*[25]

(Some believe that **aurichalcum** or orichalcum is a compound of copper and gold; or it is called that because it has a golden color.)

As is known, brass (*aurichalcum*) is an alloy of copper and zinc. However, the fact is that in the pre-coinage era, the Romans used so-called *aes rude*, or raw copper/bronze, also known as *aes infectum* (unworked copper/bronze). The difference between the two lies in the fact that copper pieces were amorphous and contained a low amount of iron, whereas bronze pieces were shaped.[26] Thus, even though we may have a detailed description of the ritual, this information cannot be accepted without further investigation. The piece of metal could have been either copper or bronze, but not another type of metal.
In the following text, Gaius provides an interesting note on another use of symbols in mancipation:

In eo solo praediorum mancipatio a ceterorum mancipatione differt, quod personae serviles et liberae, item animalia, quae mancipi sunt, nisi in praesentia sint, mancipari non possunt; adeo quidem, ut eum, qui mancipio accipit, adprehendere id ipsum, quod ei mancipio datur, necesse sit; unde etiam mancipatio dicitur, quia manu res capitur. Praedia vero absentia solent mancipari.[27]

(The mancipation of land differs from other mancipation only in this: that slaves and free persons, as well as animals that are mancipi, cannot be mancipated unless they are present. In fact, it is necessary for the acquirer by mancipation to seize the very thing be-

[21] Gai 1, 122.
[22] For example HEYROVSKÝ, L. *Dějiny a systém soukromého práva římského [The History and System of Private Roman Law.]. 4th ed.* Praha: J. Otto, 1910, p. 341; BARTOŠEK, M. *Encyklopedie římského práva [Encyclopedia of Roman Law]*. Praha: Panorama, 1981, p. 233.
[23] For example VOLTERRA, E. *Istituzioni di diritto privato romano*. Roma: La Sapienza, 1985, p. 328.
[24] See PRAŽÁK, J. M., NOVOTNÝ, F., SEDLÁČEK, J. *Latinsko-český slovník [Latin-Czech dictionary]*, pp. 42–43.
[25] *Festus*, *aurichalcum* (L. 8).
[26] KURZ, K. *Mince starověkého Řecka a Říma. Antická numismatika [Coins of Ancient Greece and Rome. Ancient Numismatics]*. Praha: Libri and Česká numismatická společnost, 2006, p. 173. In contrast DOSI, A., SCHNELL, F. *I soldi nella antica Roma*. Milano: Gruppo Ugo Mursia Editore, 1993, pp. 13–14 are leaning towards bronze.
[27] Gai 1, 121.

ing mancipated with his hand. Hence, it is called mancipatio, because the thing is taken by hand. However, land is customarily mancipated even in absence.)

When transferring ownership of land, for practical reasons, a part of the land was used, such as a clod of earth or a stone, which symbolized the whole property.

The above discussion is inseparably linked to the resolution of cases where mistakes occurred during legal rituals, or where someone at least alleged such errors. In other words, this raises the issue of subsequent verification of the flawless execution of a ritual, whether associated with and required during legal transactions or in dispute resolution. The critical issue in this context is identifying the subject responsible for verifying the ritual. At first glance, the obvious choice would be the magistrate with jurisdiction, who, within the scope of *ius dicere*, determines what is according to the law. If the ritual is part of the law, the magistrate should have the final word on this matter. However, the situation is not as simple as it might first appear. For a long time, until the mid-3rd century BC,[28] the interpretation of various ceremonial procedures, including legal rituals, was monopolized by the *collegium pontificum*. A report on this comes from the imperial-era jurist Sextus Pomponius in his work *Liber singularis Enchyridii*, a brief account of the development of Roman state institutions and legal science, preserved thanks to its inclusion in Justinian's Digest:

Et ita eodem paene tempore tria haec iura nata sunt: lege duodecim tabularum ex his fluere coepit ius civile, ex isdem legis actiones compositae sunt. Omnium tamen harum et interpretandi scientia et actiones apud collegium pontificum erant, ex quibus constituebatur quis quoque anno praeesset privatis.[29]

(And so, almost simultaneously, these three areas of law were born: the law of the Twelve Tables, from which civil law began to flow, and from which *legis actiones* were derived. All these matters, as well as the knowledge of interpretation and actions, belonged to the *collegium pontificum*, from which one was appointed each year to preside over private individuals.)

The phrase *praeesset privatis* cannot be interpreted as indicating that the appointed pontiff adjudicated disputes between private individuals, acting as a judge. His task was to determine conclusively whether the law had been violated, or more precisely, whether the prescribed words had been correctly pronounced and the required actions properly performed. The term *privatus* is commonly used to mean "private individual," but it is derived from the adjective *privus*–meaning "individual" or "single"–and in this context, it is more appropriate to adopt this meaning. This reflects the fact that pontiffs were approached not only by private individuals in the strictest sense but also by Roman officials when they were uncertain about their decisions. Additionally, the adjective *privus* has another meaning, "one by one", reflecting the fact that the pontiffs' opinions were given privately to the petitioner rather than publicly.

[28] The year 253 BC is cited as key date, when the first plebeian, Ti. Coruncanius, became the *pontifex maximus*, who was also the first to publicly answer legal questions.

[29] D. 1, 2, 2, 6 (Pomp. lib. sing. ench.).

I. TYPES OF RITUALS

Rituals used in law vary in nature and can thus be categorized into several groups. We can speak about private law and public law rituals, short and long rituals, formal or informal, positive and negative, regular or occasional–these are just some of the primary ways they can be classified. A few examples of Roman legal rituals can demonstrate that these classifications can readily be applied to Roman law as well.

One of the first examples is the legislative process during the Republic. This, of course, falls under public law, and it also took place over a relatively long period, not only because of the need to observe the *trinundium* (a period of three market days) between the posting of a proposed law and the assembly of the people, but also because, until the passage of the *lex Publilia de patrum auctoritate*, it was also necessary to secure the subsequent approval of the Senate, for which no binding time limit was set. This example also demonstrates another point: rituals, although it may seem strange, could change, and in this case, political reasons determined the changes. Based on other criteria, we could also classify the process of passing laws as a positive ritual, one that occurred relatively often but not regularly, so it would fall under the category of occasional rituals. From another perspective, it was a fundamentally formal procedure, as it was strictly defined, for example, who participated and what the mandatory steps were.

In the realm of private law, a clear example is the method of concluding a contract known as stipulatio, which is undoubtedly a short ritual. Regularly occurring rituals include the symbolic nailing of a spike into the cell of Jupiter's temple on the Capitol. Among informal rituals, we could mention certain methods of freeing slaves recognized by praetorian law, such as *manumissio per convivio* or *manumissio per mensam*. A negative ritual would be the use of magical practices. In the latter case, of course, we are not dealing with a legal ritual, but rather an illegal one.

II. DETERMINATION OF RITUALS BY LEGAL ACTS OR LAW

A key issue associated with rituals in Roman law is their connection to formal legal acts. It is a well-known fact that formal legal acts were typical of archaic law. However, even in this earliest layer of ancient Roman law, certain ritualized legal acts appeared that did not have a fixed form, such as the advisory body's actions within a Roman family (*consilium domesticum*), whose convening was required when punishing a family member. The role of rituals in Roman law gradually weakened, and the emphasis placed on them "faded". This reflects the well-known conflict between old law and praetorian law, epitomized in the tension between *verbum* and *voluntas* (word and will). Nevertheless, rituals remained in Roman law for a very long time. For example, previously common methods for transferring ownership of *res mancipi*, such as *mancipatio* and *in iure cessio*, continued to appear in imperial legislation as late as 355 and 395 AD but were definitively abolished by emperor Justinian in the 6th century AD.[30] A similar fate befell the term *ius Quiritium*, which will be further discussed.

[30] For example HEYROVSKÝ, L. *Dějiny a systém soukromého práva římského [The History and System of Private Roman law]. 4th ed.*, p. 344 or VOLTERRA, E. *Istituzioni di diritto privato romano,* p. 331.

Another intriguing phenomenon related to rituals, as well as the use of symbols, is their alteration due to changes in the conditions under which they were conducted, as well as their transformation–using established procedures for different purposes. This phenomenon can be observed in the manner of carrying out the death penalty known as the punishment of the sack (*poena cullei*).[31] This was an ancient punishment full of symbolism, originally reserved for traitors and parricides, and later for the intentional killing of a close relative. It was also sometimes used for punishing public enemies, such as the friends of Ti. Gracchus in 133 BC.[32]

The condemned, wearing wooden shoes and a wolf's skin as a hood, was flogged with red-colored rods. The description of the execution is preserved in the work of Herennius Modestinus *Pandectae*:

Poena parricidii more maiorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur. hoc ita, si mare proximum sit: alioquin bestiis obicitur secundum divi Hadriani constitutionem.[33]

(The punishment for parricide, according to the customs of the ancestors, is that the parricide, having been flogged with blood-stained rods, is then sewn into a sack with a dog, a rooster,[34] a viper, and a monkey. Then the sack is thrown into the deep sea, or, if the sea is not nearby, the condemned is thrown to wild beasts according to the divine Hadrian's decree.)

Another relevant report comes from a constitution of emperor Constantine the Great in 318 AD:

Imp. Constantinus A. ad Verinum vic(arium) Afric(ae). Si quis in parentis aut filii aut omnino affectionis eius, quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, neque gladio neque ignibus neque ulla alia sollemni poena subiugetur, sed insutus culleo et inter eius ferales angustias conprehensus serpentum contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiciatur, ut omni elementorum usu vivus carere incipiat, ut ei caelum superstiti, terra mortuo auferatur. Dat. XVI Kal. Decemb. Licinio V et Crispo Caes. conss.; acc. prid. Id. Mart. Karthagine Constantino A. V. et Licinio C. conss.[35]

(Emperor Constantine Augustus to Verinus, Vicar of Africa. Whoever hastens the death of a parent, child, or other relative encompassed by the term parricide, whether secretly or openly, shall not be subjected to the sword, fire, or any other solemn punishment, but rather sewn into a sack and confined in its grim space, mixed with the company of snakes, and, depending on the region's nature, thrown into a nearby sea or river, so that the condemned is deprived of the use of all natural elements while still alive, with the sky taken from him in life and the earth in death. Given on the 16th day before the December Kalends during the fifth consulship of Licinius and the consulship of Crispus Caesar; re-

[31] See for example CANTARELLA, E. *I supplizi capitali. Origine e funzione delle pene di morte in Grecia e a Roma.* Milano: BUR, 2005, pp. 215–246.
[32] Plut. Tiberius Gracchus 20, 2.
[33] D. 48, 9, 9pr. (Modest. 12 pand.).
[34] In the sense of "domestic."
[35] C.Th. 9, 15, 1.

ceived in Carthage on the day before the March Ides during the fifth consulship of Constantine Augustus and the consulship of Licinius Caesar.)

By comparing both texts, it is clear that there is a significant change in the animals that were sewn into the sack with the condemned. Initially, it included a rooster, a monkey, a viper, and a dog, each carrying a profound symbolic meaning. By the beginning of the 4th century AD, only snakes were used to intensify the punishment. However, there is agreement that the sack was to be thrown either into the sea or into running water (which would eventually reach the sea). The reason for using wooden shoes and the disposal in water was to ensure that the perpetrator of such a heinous crime would not defile the land of the Roman state with their touch, land that was not only walked upon by Roman citizens but was also under the protection of Roman gods.

Later, a similar method was used to execute adulterers.[36] Not only was this method of execution extended to another offense, but as in Constantine's time, there was a change regarding the animals accompanying the condemned. In this case, there was no agreement with the original provisions, as fish from the Mugilidae family, known for their aggressive biting, were used.

Another such super-ritual was associated with the most serious offense committed by the priestesses of the goddess Vesta, who had to remain virgins during their service to the goddess. Behind the Collina Gate lay the *campus sceleratus*, where the guilty Vestals were entombed in an underground vault with only a lamp, drink, and minimal food.[37] Again, we encounter a designated place where this ritual had to take place.

When discussing symbols, we must ask what can be considered a symbol in the context of legal acts. This question is particularly significant in cases where a ritual's validity depends on being performed in a specific location. Such cases are found in both public and private law. A typical example in the Roman calendar is the abbreviation *QRCF* (*Quando rex comitiavit fas*), which indicated that it was only possible to commence a comitia on March 24 and May 24 after the *rex sacrorum* announced the successful completion of a sacrifice. In private law, a similar example is the determination of the time of marriage through the entry of the wife into her husband's house. Neither of these cases involves real estate acting as a symbol, but rather as an essential part of the ritual, after all, the *comitium* could not be replaced by another location in Rome, and when introducing the wife into the house, it logically had to be the husband's house, which could not be substituted by another building. For the sake of completeness, it is worth mentioning that we also encounter this role of a place for performing legal rituals in the Middle Ages, when, for example, the circumambulation of fields during their transfer had a similar character.

The connection between ritualized legal acts and symbols appears to be almost absolute. However, symbols do not appear exclusively within legal rituals but also independently of them. A typical example is *traditio symbolica*, also known as *traditio ficta*, which simplified and accelerated business transactions:

Item si quis merces in horreo depositas vendiderit, simul atque claves horrei tradiderit emptori, transfert proprietatem mercium ad emptorem.[38]

[36] C.Th. 11, 36, 4 (339 AD).
[37] In detail for example SKŘEJPEK, M. Svatý oheň [Holy Fire]. *Revue církevního práva*. 2023, Vol. 29, No. 1, pp. 9–27.
[38] Inst. 2, 1, 45.

(Similarly, if someone sells goods stored in a warehouse, as soon as they hand over the keys to the warehouse to the buyer, ownership of the goods is transferred to the buyer.)

Legal rituals, including their performance, originate from customary law. However, their connection to unwritten law is not as strong as it may seem. Throughout the Republic, two very sensitive areas of law were primarily based on custom: constitutional and criminal law. The laws adopted by the people's assemblies, which related to both areas, merely supplemented customary law. These were essentially 'technical' norms that, for example, increased the number of individual officials, or, as in the case of the praetor, introduced new measures or modified the voting procedures in the people's assemblies concerning constitutional law. In the area of criminal law, it involved, for instance, expanding the right of provocation (the right of Roman citizens to appeal to the *comitia centuriata* in cases of severe punishment). However, for almost five centuries, the foundation in both areas was based on custom. Paradoxically, relatively few true rituals appear in these areas, or they are soon replaced by less ritualized procedures. This was the case, for example, with the method of convening the people's assemblies, as described by Varro:

In Commentariis Consularibus scriptum sic inveni:
Qui exercitum imperaturus erit, accenso dicito: "C. Calpurni, voca inlicium omnes Quirites huc ad me." Accensus dicit sic: "Omnes Quirites, inlicium vos ite huc ad iudices." "C. Calpurni," cos. dicit, "voca ad conventionem omnes Quirites huc ad me." Accensus dicit sic: "Omnes Quirites, ite ad conventionem huc ad iudices." Dein consul eloquitur ad exercitum: "Impero qua convenit ad comitia centuriata.[39]
(In the consular records, I found the following written:
He who is to command the army shall say this to his assistant: "Calpurnius, call and invite all Quirites here to me." The assistant shall say: "All Quirites, come by invitation here before the magistrate." The consul says: "Gaius Calpurnius, summon all Quirites here to me for the assembly." The assistant shall say: "All Quirites, come to the assembly here before the magistrate." Then the consul addresses the army: "I order you to assemble for the centurial assembly.")

Regarding the contradictory figure, at least from the perspective of Republican Romans, of the king of sacrifices (*rex sacrorum*), who on the one hand was a remnant of the hated monarchy, yet whose existence was necessary for the performance of certain religious rites originally belonging only to the king, the following text is interesting:

Dies qui vocatur sic "Quando rex comitiavit fas," is dictus ab eo quod eo die rex sacrificio ius dicat ad Comitium, ad quod tempus est nefas, ab eo fas: itaque post id tempus lege actum saepe.[40]

(The day that is called "When the king has addressed the assembly, it is permitted" is named so because on that day the rex sacrificio declares at the *comitium* the time until which it is not permitted (to act at the combitia) and from when it is permitted; and so, after that time, legal matters are often dealt with.)

[39] Varro, de l. l. VI 9, 88.
[40] Varro, de l. l. VI 4, 32.

In this case, it concerns a religious-technical norm determining when it is possible to initiate the proceedings of a combitia on specific days. It can be interpreted that only after the *rex sacrorum* (or *rex sacrificulus*) appeared after performing the sacrifice at the *comitium* and announced this fact could the assembly's proceedings commence. In the Roman calendar, we find two such days marked with the abbreviation QRCF, namely March 24th and May 24th. These are the so-called *dies fissi* (literally "split days"), which also included June 15th, marked with the abbreviation QSDF, meaning *Quando stercum delatum fas*. On this day, the Senate's proceedings could only commence after the ceremonial cleaning of the temple of the goddess Vesta.

In criminal law, rituals are used even more rarely. Besides the already mentioned *poena cullei* (punishment by drowning in a sack) or the punishment of the Vestal Virgins, another example is the punishment of traitors.[41]

The most ritualized area, however, is private law, whether it pertains to family law, property rights, inheritance, or private litigation. Procedural law, particularly the archaic *legis actiones* process, represents a quintessentially ritualized branch of Roman law. This includes not only the initiation of legal proceedings through ancient *legis actio sacramento* or *legis actio per iudicis arbitrive postulationem*, but in 204 BC, *lege Silia* introduced the *legis actio per condictionem*, which was expanded a few years later by *lege Calpurnia*.[42] Essentially, the first phase of the classical Roman civil procedure, called *in iure*, was not only the determination of what is legally valid but also a binding ritual that concluded with the agreement on the litigation – *litiskontestation*. This process was one that the magistrate with judicial authority could force the defendant to undergo.

III. DIRECT ESTABLISHMENT OF RITUALS

It has been mentioned several times that rituals originate from custom. However, we also encounter cases where they were directly introduced into Roman law, especially through laws passed by the combitia. Aside from the Law of the Twelve Tables, which was merely a recording of customary law, reinforcing an already existing obligatory procedure, most of these laws concern procedural law, assuming we accept that the obligatory procedures commonly used in this context can be considered rituals.

In this case, we can point to several examples, particularly the establishment of permanent criminal juries and their proceedings, as was regulated by laws like *lege Acilia repetundarum* (123 BC), *lege Cornelia iudiciaria* (81 BC), or *lege Aurelia iudiciaria* (70 BC), which regulated the representation of the equestrian and senatorial classes. A somewhat disputed case is the *in iure* phase of the formulary process, in which the praetor's instructions to the judge played a crucial role. Here, we encounter legislative regulations such as the *lex Aebutia*,[43] which introduced this method of handling private disputes as an optional form of trial, as well as Augustus' *lex Iulia iudiciorum privatorum* from 17 BC,

[41] Liv. 1, 26, 5–6.

[42] Fot that SKŘEJPEK, M. Mistero della condictio. In: Kamila Stloukalová – Jan. Šejdl (eds.). *La terminologia giuridica nel diritto processuale romano e moderno: La decisione giudiziaria e sua esecuzione. Atti del VII seminario internaziole in onore di Hans Ankum.* Praha: HBT, 2013, pp. 106 –112.

[43] ROTONDI, G. *Leges publicae populi romani*. Milano: Società editrice libraria, 1912, p. 304.

which even made it the exclusive form.[44] The establishment of the *per formulas* procedure deviates from the general ways rituals arise, as this case stems from the practical needs introduced by the *praetor peregrinus* (the foreign praetor), thus being constituted by legal practice.

Rituals in Roman law originated mostly in archaic law, and even though the Romans were highly tradition-bound, resulting in the long preservation of such practices, the gradual "de-ritualization" of law occurred over time. Various factors contributed to this, but it was never due to a conscious abandonment of tradition. More often, it was due to necessity when ancient legal practices became too complex for the changed social and economic conditions. Sometimes political reasons, like with the *lex Clodia de iure et tempore legum rogandarum* from 58 BC. The plebiscite replaced the older *lex Aelia et Fufia de modo legum ferendarum,*[45] which led to the elimination of old religious rituals that accompanied the initiation of each combitia. This law, proposed by the well-known politician and people's tribune P. Clodius Pulcher, abolished the ancient custom of *serrare coelo* (consulting the gods' favor by observing the flight of birds) and also removed *obnuntiatio* (the announcement of an unfavorable omen) and *intercessio* (the prohibition by a magistrate to continue assembly proceedings).[46]

Various rituals, as well as the use of symbols, surprisingly persisted for a long time in otherwise rational Roman law. This is particularly striking because these procedures often grew out of pagan religious beliefs. Even in the 6th century, some traditional patrician families practiced the ancient *confarreatio* during marriage, originally meant to place the wife under the power of her husband and integrate her into his agnatic family, as Boëthius' commentary on Cicero indicates:

Uxoris species sunt duae, una matrumfamilias, altera usu; sed communi generis nomine uxores vocantur. … Tribus enim modis uxor habebatur, usu, farreatione, coemptione; sed confarreatio solis pontificibus conveniebat. Quae autem in manum per coemptionem convenerant, hae matresfamilias vocabantur. Quae vero usu vel farreatione, minime. Coemptio vero certis solemnitatibus peragebatur, et sese in coemendo invicem interrogabant, vir ita, an mulier sibi materfamilias esse vellet.[47]

(There are two types of wives: one the matron of the household, the other by use; but they are called wives by the general name of the category. A wife could be had in three ways: by use, confarreation, and coemption. But confarreation was appropriate only for the pontiffs. Those who entered into the husband's power by coemption were called matrons of the household. Those who did so by use or confarreation were not.)

The reasons for this phenomenon must be sought in the Romans' hypertrophied respect for tradition, which is so typical of them. This significant factor can be demonstrated by two examples found in the law codes of emperor Justinian. The first is the famous statement by Domitius Ulpian, who declared that the foundation of legal science also includes "divine matters" that is, pagan *ius divinum*:

[44] Ibid., p. 448.
[45] Originally, it was probably about two laws passed sometime around 159 BC.
[46] Sources see ROTONDI, G. *Leges publicae populi romani*, p. 397.
[47] In Topica Ciceronis commentarius 2, 3, 14.

Iurisprudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.[48]

(Legal science is the knowledge of divine and human matters, the science of what is just and unjust.)

The second, even more striking example, is when a Christian ruler reminds us of the pagan origin of the name for Roman national law, derived from the name under which the first Roman king was worshipped:

… populus Romanus utitur, ius civile Romanorum appellamus: vel ius Quiritium, quo Quirites utuntur. Romani enim a Quirino Quirites appellantur.[49]

(… the Roman people use it, which we call Roman civil law, or Quirites' law, which the Quirites use. For the Romans are called Quirites after Quirinus.)

The use of rituals in legal actions was gradually abandoned in some cases, diluted or dissipated, such as with stipulation. Originally a highly formal ritual, from which no deviation was allowed under penalty of invalidity, as Gaius informs us about it:

92. Verbis obligatio fit ex interrogatione et responsione, velut DARI SPONDES? SPONDEO, DABIS? DABO, PROMITTIS? PROMITTO, FIDEPROMITTIS? FIDEPROMITTO, FIDEIVBES? FIDEIVBEO, FACIES? FACIAM. 93. Sed haec quidem verborum obligatio DARI SPONDES? SPONDEO propria civium Romanorum est; …[50]

(92. A verbal obligation arises from a question and answer, such as: 'DO YOU PROMISE?' 'I PROMISE,' 'WILL YOU GIVE?' 'I WILL GIVE,' 'DO YOU PLEDGE?' 'I PLEDGE,' 'DO YOU SOLEMNLY PLEDGE?' 'I SOLEMNLY PLEDGE,' 'DO YOU SOLEMNLY ORDER?' 'I SOLEMNLY ORDER,' 'WILL YOU DO IT?' 'I WILL DO IT.' 93. However, such a verbal obligation, 'DO YOU PROMISE TO GIVE?' 'I PROMISE,' is specific to Roman citizens; …)

Over time, under the pressure of practical demands, the strict form became more relaxed:

Eadem an alia lingua respondeatur, nihil interest. proinde si quis latine interrogaverit, respondeatur ei graece, dummodo congruenter respondeatur, obligatio constituta est: idem per contrarium. sed utrum hoc usque ad graecum sermonem tantum protrahimus an vero et ad alium, poenum forte vel assyrium vel cuius alterius linguae, dubitari potest. Et scriptura Sabini, sed et verum patitur, ut omnis sermo contineat verborum obligationem, ita tamen, ut uterque alterius linguam intellegat sive per se sive per verum interpretem.[51]

(It is not important whether the response is given in the same or a different language. Therefore, if someone asks in Latin and is answered in Greek, the obligation is valid as long as the answer corresponds (with the question). The same applies in reverse. However, we might question whether this applies only to conversation in Greek or also to other languages, such as Phoenician or Assyrian, or any other languages. Sabinus writes that it is necessary to observe that every dialogue contains a verbal obligation, provided that both parties understand each other's language, either personally or through a good interpreter.)

[48] D. 1, 1, 10, 2 (Ulp. 1 inst.) = Inst. 1, 1, 1.
[49] Inst. 1, 2, 2.
[50] Gai 3, 92–93.
[51] D. 45, 1, 1, 6 (Ulp. 48 ad sab.).

Finally, in 472 AD, emperor Leo decreed:

Omnes stipulationes, etiamsi non sollemnibus vel directis, sed quibuscumque verbis pro consensu contrahentium compositae sint, legibus cognitae suam habeant firmitatem.[52]

(All stipulations, even if composed in non-solemn or direct terms, but in any words agreed upon by the contracting parties, have their validity recognized by law.)

Thus, regardless of the form of the stipulation, whether different languages were used or without formal words, it was binding. In other words, any agreement could be litigated under *actio ex stipulatu*. Ironically, one of the oldest legal rituals laid the foundation for the universal enforceability of contracts.

At other times, the abandonment of a ritual is even related to the decreasing role that religious concepts and the use of magical practices played in Roman society. A particularly typical example of this trend is the abandonment of the ancient ritual known as *obvagulatio*,[53] the performance of which was supposed to ensure the presence of a witness at a trial. In the Law of the Twelve Tables, it is written:

CUI TESTIMONIUM DEFUERIT, IS TERTIIS DIEBUS OB PORTUM OBVAGULATUM ITO.[54]

(WHOEVER LACKS TESTIMONY, LET HIM WAIL BEFORE THE DOORS EVERY THIRD DAY.)

This ritual was, of course, performed by the plaintiff, but Robert Fiori's opinion, which extends the group of eligible individuals to his relatives and friends, is not unlikely either.[55] However, from the later development of Roman civil procedure, we have no further reports of this method of "summoning" a witness to court through the recitation of a magical formula, or perhaps a chant.

Sometimes, a quick solution was needed, and thus we know when it happened, as was the case with the already mentioned Clodius's law.

It should be noted that legal rituals, like symbols, were not only used but also abused. This is an issue that deserves a separate study, but in this text, we will at least mention a few examples. Besides the general misuse of legal rituals to commit fraud, for instance, we have already mentioned *obnuntiatio*. To terminate the proceedings of a popular assembly, it originally sufficed–though later it had to be a magistrate–for someone to declare, verified by the authority of an augur, that they had seen a rodent, symbolizing the displeasure of the Roman gods. As a result, *comitia*–the assembly that was supposed to decide on the election of officials or a law proposal–was postponed, or even an already completed vote was annulled. Cicero's testimony about this phenomenon in Roman constitutional history hardly needs any comment:

---

[52] C. 8. 37, 10.

[53] On this issue, for example ARIAS BONET, J. A. Prueba testificial y obvagulatio en el antiquo derecho romano. In: *Studi in onore di Pietro De Francisci, 1*. Milano: Giuffrè, 1956, pp. 285–301.

[54] Lex XII tab. 2, 3.

[55] FIORI, R. La gerarchia come criterio di verità: "boni" e "mali" nel processo romano arcaico. In: Carla Masi Doria (eds.). *Quid est veritas?* Napoli: Satura editrice, 2013, p. 224.

Quid enim maius est, si de iure quaerimus, quam posse a summis imperiis et summis potestatibus comitiatus et concilia vel instituta dimittere vel habita rescindere? Quid gravius quam rem susceptam dirimi, si unus augur "alio die" dixerit? Quid magnificentius quam posse decernere, ut magistratu se obdicent consules? Quid religiosius quam cum populo, cum plebe agendi ius aut dare aut non dare? Quid? Legem, si non iure rogata est, tollere? Ut Titiam decreto collegii, ut Livias, consilio Philippi consulis et auguris: nihil domi, nihil etiam militiae per magistratus gestum sine eorum auctoritate posse cuiquam probari?[56]

(What, then, is more important, if we are talking about law, than the ability to dissolve or annul the decisions of popular assemblies and councils, even if they are convened by the highest authorities? Tell me, what is more significant than ordering the annulment of a proceeding if a single augur says "on another day"? What is grander than the power to decide that the consuls should resign from office? What is more sacred than the right to allow or disallow dealings with the people or the plebeians? And what next? To annul a law if it was not lawfully proposed? As in the case of Titius by the decree of the college, or in the case of Livius by the decision of consul and augur Philippus: nothing done by magistrates, either in the city or outside the city, can be approved without their authority.)

Another example could be the unauthorized use of a symbol reserved for a specific group of Roman citizens. For instance, the *toga praetexta*, which was reserved not only for Roman priests but also for magistrates *cum iurisdictione*, could, in later times, constitute a special crime known as *crimen falsi*.

CONCLUSION

Let us try, in conclusion, to find answers to two closely related fundamental questions. Why do rituals and symbols appear in law in the first place, that is, what purpose do they serve, and at the same time, what was their origin? There is no definitive answer to either of these questions, and there cannot be. Some, like *obvagulatio*, had their origins in religious-magical concepts, while others, like *mancipatio*, were remnants of earlier secular practices. Both variants, however, stemmed from custom. But not all rituals and the use of symbols can be attributed to custom, as some were introduced directly by law, or they even owed their origin to official practice. Yet, they all fundamentally shared one thing: their performance affected the validity of legal actions. From the previous text, one might get the impression that legal rituals and the use of symbols are unique to ancient societies. However, adherence to prescribed forms and procedures is encountered throughout the development of law, and various formal legal acts are characteristic even of today's times.

Among the many different rituals and symbols that have accompanied humanity since its very inception, legal ones hold a special place. Although their origin is often associated with irrational magical practices or religious beliefs, their correct performance or use had a real impact on the lives of people at the time.

In essence, we can state that no area of Roman law was not "affected" by rituals.

[56] Cic. de leg. 2, 12, 31.