

Festuca, quasi hastae loco¹

Some time ago I delivered a lecture to the organization directly preceding your debating club, the society of students of Roman law, under my esteemed teacher, Professor Hoetink. The subject of my talk was the widely studied passage on the *legis actio sacramento in rem* in the *Institutiones* by Gaius, the jurist². The author gives a description of the ancient *actio* of the owner for the restitution of his property which is wrongfully being detained by someone else. While enunciating solemn formulas, in which he claims his right of ownership, the claimant places a *festuca* on the object in dispute. Next the other party speaks and acts in an identical manner. I will not dwell on the subsequent procedure of the trial. One wonders what is meant by this *festuca*³. What was its function? According to Gaius, the parties used the *festuca, quasi hastae loco*, or in lieu of a spear. Here the spear serves as a token of lawful ownership, *signum iusti domini*.

This morning I would like to discuss with you the *festuca, quasi hastae loco*. In this context, my primary interest is in the method of investigation rather than in the result, i.e. the proper interpretation of the passage in Gaius's work.

I will start from the proposition that the *festuca* and *hasta* serve here as symbols and that, as such, they differ from each other. Our working hypothesis, then, consists of two elements: we are dealing with symbols, and these symbols belong to two dissimilar categories.

What does the concept of symbols mean? Symbols⁴ are signs: realities through which there is a reference to abstract concepts. The symbolic object or image

1. Lecture delivered on 3 June 1970 at the fortieth meeting of the debating society of students of the history of law, "Forum Romanum", at the University of Amsterdam.

2. "Enige vraagtekens bij Gai. Inst. 4.16" ("Some Questions Concerning Gai. Inst. 4.16") in *Ars Aequi* II (1952), pp. 6-12.

3. Recent detailed discussion in Salvatore Tondo, *Aspetti simbolici e magici nella struttura giuridica della manumissio vindicta*, (Milan, 1967), pp. 85-119; includes extensive list of early literature.

4. Discussed in detail in Johannes A. Ponsioen, *Symboliek in de samenleving, een sociologie*

represents an idea. In order to explain the nature of symbols, Horst Jürgen Helle likes them to bridges⁵. It should be borne in mind, however, that for those for whom a particular symbol is still a living cultural element, a gap between object and idea, which is to be "bridged", cannot be said to exist⁶. In other words, the symbol provides a means to use abstract entities to societies in which people are still finding it hard to think in abstract terms. This seemingly insignificant point of departure already implies the exclusion of a number of interpretations of *festuca* and *hasta*. A symbol is not, for instance, the representation of a larger object, it is not a *pars pro toto*. The stalk does not represent the litigious object⁷ which in an agrarian society is often a plot of land. The symbolic nature of the terms further implies that the *festuca* and *hasta* do not have an instrumental function in the described trial. The *festuca* (branch, twig, or stalk) does not serve to bind the litigious object⁸ or something similar, and the spear does not actually serve as a weapon. According to Gaius too, the *festuca* represents a lance which itself is a *signum*, a sign. The symbolism also means that the function of both *festuca* and *hasta* was identical in previous stages of development. The symbolic nature of the spear further implies the rejection of the theory that the trial is a ritualized form of what was originally a settlement by the use of arms, when the parties took the law into their own hands⁹. The point of departure assumed here finally, and most significantly, means that the use of the *festuca* and *hasta* as symbols does not involve any magical powers. Symbols are referents but they do not induce anything. The opposite may be the case, but in our enquiry we cannot start from the assumption that in the use of symbols magical effects are involved. This has been pointed out before,

van de symbolen en van het symboliek denken (Symbolism in Society, a Sociology of Symbols and of Symbolic Thought), diss. Tilburg (Utrecht, 1952); definition on p. 109. Monod gives the description which I adopted: "*signe visible d'une réalité invisible*". See Joachim Wach, *The Comparative Study of Religions* (1958), Ch. III, n. 20.

5. *Soziologie und Symbol* (Cologne, 1969). The same imagery is used by Ponsioen, *op. cit.* p. 103; he draws attention to yet another aspect: "The symbol is at the same time a bridge and a barrier for participating in hidden realities".

6. E. g. E. E. Evans-Pritchard, *Nuer Religion*, Clarendon Press (1956), p. 134; as quoted by Roland Robertson, ed., *Sociology of Religion* (Harmondsworth, 1969), p. 111: "... a religious symbol has always an intimate association with what it represents ... Nuer know that what they see is a crocodile, but since it represents Spirit to some of them it is for these people, when thought of in that way, also what it stands for".

7. Gai. Inst. 4.17: "... *et in eam partem proinde atque in totam rem praesentem fiebat vindicatio, velut ex fundo gleba sumebatur*". See also F. J. M. de Waele, *The Magic Staff or Rod in Graeco-Italian Antiquity*, dissertation Nijmegen (Gent, 1927), p. 129-130.

8. Cf. G. Beseler's view; see *op. cit.* note 2, p. 7, and note 12 down.

9. On the theory of *Selbsthilfe*, see Max Kaser, *Das römische Zivilprozessrecht* (Munich, 1966), pp. 19ff.

especially by Geoffrey MacCormack¹⁰ in two recent articles. He has argued that the assumption that phenomena which cannot be logically explained must have had some magical significance in primitive cultures, is based on obsolete theories from cultural anthropology. In our investigation, accordingly, we have to determine a function of *festuca* and *hasta* which differs from the most widely accepted ideas, since these ascribe such a significant role to their magical effects.

The second element of our working hypothesis is the proposition that in the trial the *festuca* and *hasta* function as symbols pertaining to separate symbolic categories. There are two, or more¹¹, categories that deserve attention. Firstly there is the weapon symbol: the lance. Secondly, the branch or twig, which, as Beseler¹² was early to establish, cannot be regarded as a reference to the weapon. He called this a badly concocted legend. As we shall see, the branch or twig occurs as an independent symbol, in numerous variant forms even. Consequently there is as yet no reason to consider the *festuca* and *hasta* as a single inseparable pair of symbols.

However, before we proceed to discuss both groups of symbols, I must account for my opinion that Gaius's text, which at first sight seems sufficiently clear, needs additional interpretation. The symbols referred to above arose in an early stage of the development of Roman law; this "language of things"¹³ had already become obscure to Gaius himself. His description is itself also an interpretation. By equating the role of the *festuca* and that of the *hasta*, Gaius shows to be unaware of their original symbolic values. Machteld Klein¹⁴ calls

10. Geoffrey MacCormack, *Formalism, Symbolism and Magic in Early Roman Law* in *Tijdschrift voor rechtsgeschiedenis* xxxvii (1969), pp. 456ff.; and by the same author *Haegerstroem's Magical Interpretation of Roman Law* in *The Irish Jurist*, iv (1969), p. 156 and p. 167. See also de Waele, *op. cit.* p. 205: "The symbolic value of a staff or rod cannot always be clearly distinguished from the magic. On the whole the symbolic significance is really an enfeebled form of the magic".

11. In our discussion we have not included the stick or staff as a symbolic group; for this, see Karl von Amira, "Der Stab in der germanischen Rechtssymbolik" in *Abhandlungen der königlichen Bayerischen Akademie der Wissenschaften, philosophisch-philologische und historische Klasse*, xxv (1911), pp. 1-180.

12. G. Beseler, "Zum römischen Frührecht" in *Hermes*, lxxvii (1942), pp. 80f. Also K. F. Thormann, *Der doppelte Ursprung der Mancipatio, ein Beitrag zur Erforschung des frührömischen Rechtes unter Mitberücksichtigung des Nexum* (Munich, 1943), p. 32 and note 6 ("die *festuca* . . . ein verkümmerter Speer").

13. Title of the inaugural lecture of A. A. Gerbrands (The Hague, 1966) about symbols in the Asmat culture.

14. M. O. C. Klein, *Statusonderscheidingen, wijzen waarop sociale niveauverschillen worden vastgesteld* (Status Distinctions, Ways in which differences in social levels are determined) diss. Leyden (Leyden, 1963), p. 98.

this the "fatigue of symbols": in the end symbols lose their referential power. William Brede Kristensen¹⁵ has pointed out that it was not until about the beginning of the first century A.D. that the true nature of symbols found recognition; before that time the concept of symbols had been unknown. "What we call symbols was reality to the ancients". In another passage in his studies, Kristensen calls symbols auxiliary images which *we* (my italics) need to understand the ancients, but which the ancients did not need to understand themselves. In the development of symbols, three stages can be distinguished. In the first stage, the symbol is a living sign. Next it becomes an empty sign, when the symbolic usage deteriorates into a thoughtless automatism: this is the stage of ritualization. Finally there is the stage in which the denotation of the symbol has become obscure. Gaius must be placed in the third phase – which may be termed the "academic" stage. And this, too, is the stage we find ourselves in. But we are fortunate enough to have a wider scope of retrospection than the author from antiquity.

The central question that has to be answered is what role the branch or twig fulfilled in the *legis actio sacramento in rem*. The most widely accepted answers have been excluded in our discussion. Moreover, the rejection of a possibly instrumental function of the *festuca* makes the symbol less readily intelligible. In order to reach a solution, it may be useful to search for interpretations of plant symbolism elsewhere in Roman culture. In this respect it should be borne in mind that in a homogeneous culture, symbols that refer to identical or similar objects express a common thought, even if they are used in widely different cultural contexts. That is why I spoke of categories (groups) of symbols.

Among the *festuca* group may be counted the *fascēs*, or bundle of rods, and the *virga*, or loose twig, both carried as symbols by the *lictōres*. For the explanation of the meaning of these symbols, which are like the *festuca* based on elements from the vegetable kingdom, I can refer to the central theme from the studies of the late William Brede Kristensen¹⁶, professor in the history of religion at Leyden University.* Kristensen also departed from the traditional interpretation that the branch or twig fulfilled an instrumental role, viz. as a tool for castigation. The stalks represent nature, the mysterious power of the

15. "The Meaning of Religion", lectures in the phenomenology of religion (The Hague, 1960), pp. 401ff.; by the same author: "The Meaning of Religion" in *Symbool en werkelijkheid* (Symbol and Reality), a collection of studies in the history of religion (Arnhem, 1954), pp. 7-14; formerly published in *De Gids*, July 1931.

16. William Brede Kristensen, *The Meaning of Religion*, pp. 347, 374, 223ff., and *passim*; by the same author, in *Godsdiensten in de oude wereld* (Religions in the Ancient World), (Utrecht, Antwerp, 1966), pp. 149ff. (i.e. the study about the Roman *fascēs*, written in 1932), and *passim*; by the same author, in *Symbool en werkelijkheid*, p. 11 and p. 228ff.

earth and, concomitantly, the divine basis of human existence. The plant symbols refer to the order of life and to the divine justice reflecting it. For what I have sketched here in brief, Kristensen has supplied ample and convincing evidence.

The sceptre, originally also a branch, pertains to the same group of symbols. From the abundance of written evidence, I will only quote the opening words of the oath of Achilles as described by Homer¹⁷: "But one thing I will tell you, and take my solemn oath: as truly as this staff will never grow again, never again will put forth leaves and twigs, after it has been cut from the stump in the mountain forest, and the axe has scraped off leaves and bark, but now it is held in men's hands, men of judgment who guard the statues of Zeus – hear my solemn oath to you". The same sceptre occurs in the trial scene on Achilles's shield. It is described in the eighteenth book of the Iliad. The course of this trial is reminiscent of that described by Gaius¹⁸. The lines significant for our purpose are¹⁹: "The elders sat in the Sacred Circle on the polished stones, and each took the herald's staff as they rose in turn to give judgment".

The bundle of plants or the single stalk therefore signifies that the bearer knows he is acting with justice. It is very well possible that the *festuca* had the same meaning. Under the enunciation of the allegation "*hanc ego rem meam esse aio*" the speaker holds the blade of grass in his hand as a sign that he claims to be telling the truth. The fact that Gaius relates that the *festuca* is placed on the disputed object does not contradict this interpretation. As we shall see later, there is another explanation for this action.

It should be remarked that it is not impossible that in the case of the *stipulatio* (i.e. the conclusion of an agreement by solemn declaration), a straw was used to fulfil an identical function. Although it has been disputed, there may well be a connection between *stipulatio* and *stipula* (blade of straw)²⁰. Quite apart from the large number of problems concerning the *manumissio vindicta*²¹, it must be considered very likely that here, too, a twig (*festuca* or *virgula*) played a specific role: either that of the *festuca* in the *legis actio per sacramentum*, where the speaker emphasizes his claim that the slave is a freeman by holding up a twig or sceptre; or that of the lictor's *virga*, which serves to indicate that the magistrate's decision is based on law and order and is therefore beyond challenge.

17. II. I. 233, translated by W. H. D. House.

18. G. C. J. J. van den Bergh, *Enkele vragen betreffende de legis actio sacramento*, inaugural lecture at Nijmegen (Haarlem, 1965), p. 12.

19. 503–508; same translation.

20. Max Kaser, *Römisches Privatrecht*, I (Munich, 1955), p. 152, note 24. Also H. van den Brink, *Ius fasque* (Amsterdam, 1968), pp. 180–1; cf. Max Kaser, in *Tijdschrift voor rechtsgeschiedenis*, xxxvii (1969), p. 578.

21. See Tondo's book mentioned in note 3.

The spear as a symbol, it seems to me, does not give rise to great difficulties. This has especially been so since Andrew Alföldi²² has collected and interpreted the available material in such a model fashion. The conclusion he arrived at has been expressed in the title of his study: the spear is an expression, the embodiment of the *imperium*, the sovereignty in Rome²³. The same description is also found in the work of the earlier grammarian Sextus Pompeius Festus, a slightly younger contemporary of Gaius's: a not insignificant detail.

We may now consider how the spear symbol with this meaning could play a role in the property dispute. The process of the *legisactio sacramento* is closely related to the tribunal of the *centumviri* which in turn has close connections with the *hasta*, after which it is sometimes even called²⁴. This court has the authority to hear claims to devolved inheritance, property trials concerning real estate, and disputes about the status of persons. These three categories of disputes have more in common than the absolute authority of the tribunal of the *centumviri*. The proceedings of the *hereditatis petitio*, for instance, are similar to the revindication of a plot of ground²⁵. There are, however, a number of more important aspects. In his studies of the expression *ex iure Quiritium*, Fernand de Visscher²⁶ has pointed out that these words are only used when the subject concerns rights *in rem*, especially the right of property (and I would add "of *res mancipi*"), and if it concerns the *status civitatis*, the Roman's citizenship, especially as opposed to that of the *Latini*. There is a remarkable parallel with the cases in which the "one hundred men" are competent to pass judgment. In short, it is not impossible that a relation exists between the *ius Quiritium* and the *hasta*. Nor need this be a surprise, for there have been enquiries to establish an etymological connection between *curis*, lance, and *Quiris*²⁷. The *Quirites* are the lancers, the warriors, the citizens *par excellence*. Their status is characterized by the lance. They base their right of ownership on their citizenship. Thus the approach adopted here leads to a confirmation of what I argued in my inaugural lecture in which other aspects have been set out in more detail²⁸.

After Gaius, in the passage quoted above, has stated that the lance is the *signum domini*, he goes on to explain this in the following way. The Romans

22. Andrew Alföldi, "Hasta - Summa Imperii, The Spear as Embodiment of Sovereignty in Rome" in *American Journal of Archaeology*, LXIII (1959), pp. 1-27.

23. *Op. cit.* p. 15: the spear is "the materialization of the abstract idea of power".

24. On the *centumviri*, including bibliography, see Max Kaser, *Das römische Zivilprozessrecht* (Munich, 1966), pp. 37-40.

25. Kaser, *Privatrecht*, I, p. 92.

26. In *Mélanges Lévy-Bruhl* (Paris, 1959), pp. 317-323; also included in *Études de droit romain public et privé*, III (Milan, 1966), pp. 223-232.

27. Bibliography in L. Labruna, "Quirites" in *Labeo*, VIII (1962), pp. 340-348.

28. H. van den Brink, *Ex iure Quiritium*, inaugural lecture at Rotterdam (Deventer, 1968), pp. 7-9.

regarded as their lawful property especially those objects which they had taken from the enemy²⁹. As we learn from other sources, including unwritten ones, prisoners of war were sold standing under a spear; taking this in a wider context, we find that the sale of spoils of war generally took place under the sign of the spear³⁰.

At this juncture, our conclusion is that the lance symbolizes the state of being a citizen, or of belonging to the caste of warriors, which may be the same thing. The lance is a status symbol. Machteld Klein³¹ writes: "In earlier and more primitive societies there must have been a distinct and direct relation between the state of belonging to a social stratum and the symbols that confirm the social standing. The symbols referred unambiguously to the authority or prestige of those that carried them, while the principle underlying this inequality was generally accepted". It is very well possible that the lance used to be the symbol of the Roman citizen. As we have seen, disputes about citizenship, especially if members of the related people of Latium were involved, were always dealt with under the sign of the lance. Indeed, Karl Thormann, in his book on the *mancipatio*, spoke of the nation of the *Speermänner*³².

The results of Alföldi's investigations do not contradict our own findings. The *imperium* is the authority which the lance bearer, the head of the family, the *paterfamilias*, exercises within his social group; property, too, is concentrated in his hands. When the state came into existence, this authority was partly assumed by the state. Originally, there did not exist a sharp contrast between the whole and its constituent parts. I will discuss one aspect of this development later on. However this may be, we have to take into account shifts in the meaning of symbols³³. Joachim Wach has pointed out in his book on the comparative study of religion that the meaning of symbols is by no means fixed, because symbols provide many possibilities of interpretation and reinterpretation.

29. Also in Gai. Inst. 2.69: "*Ea quoque, quae hostibus capiuntur, naturali ratione nostra fiunt*". Cf. Alan Watson, *The Law of Property in the Later Roman Republic* (Oxford, 1968), pp. 63ff.

30. Alföldi, *op. cit.*, p. 3; see also p. 8.

31. *Op. cit.*, p. 99. On p. 100 she expresses agreement with the old theory set up by H. Spencer (*Principles of Sociology*), IV, (London, 1879), according to which status symbols are primarily found in societies of a militant character. On the spear as a "*Zeichen des wehrhaften Mannes*" among the Germanic tribes: see Percy Ernst Schramm, *Herrschaftszeichen und Staatssymbolik, Beiträge zu ihrer Geschichte vom dritten bis zum sechzehnten Jahrhundert*, II (Stuttgart, 1955), *Schriften der Monumenta Germaniae Historica*, XIII, p. 493.

32. *Op. cit.*, p. 80-95, where more arguments are given; also in my *Ius fasque*, p. 340, note 4.

33. An example of this may be found in the symbols of the solar disc and the wheel; cf. R. Pettazzoni, *Essays on the History of Religions* (Leyden, 1954), supplement to *Numen*, I, pp. 95-109.

I will now proceed to discuss why I suggested that, in Gaius's description of the property dispute, two different symbols were involved. Here I have to dwell on one of my favourite subjects: the process of acculturation in the early history of the beginnings of Rome. Thus I will be able to correct previous mistakes, and to remedy certain misunderstandings. Indeed, to quote Jan Romein³⁴, "Would it not be wrong if an author appeared to attach so little value to his ideas that he ventured to state them only and once never afterwards?"

Thormann, referred to above, assumed his *Speermänner* to be Indo-Europeans. Is the origin of the *festuca* to be found in the Mediterranean substratum culture? This, too, is an axiomatic point of departure.

In his discussion of my dissertation, Max Kaser³⁵ has pointed out that our present knowledge is not sufficient to answer the question under discussion, and that the available source material is too limited. This criticism is correct. But in my inaugural lecture at Rotterdam I proceeded into a different direction, that of the comparative historical study of law. It is true, we must take care not to be too rash in explaining parallel phenomena occurring elsewhere in terms of cultural unity or cultural contact³⁶. Especially where weapons are concerned we have to be careful in our conclusions: they are obviously well suited to serve as symbols for the authority of rulers³⁷. The possibility of "spontaneous analogy"³⁸ should be kept in mind. Yet, there is sufficient reason to say that in those early days there existed a cultural unity around the eastern Mediterranean, both before and after the arrival of the Indo-Europeans. This unity should not be taken as a static factor: Ernst Kornemann^{38a} and others have drawn attention to the east-west movement of the culture within Europe's oldest cultural area, the area of the Mediterranean. This argument cannot be brushed aside by

34. In his introduction (p. 10) to *Tussen vrees en vrijheid, vijftien historische verhandelingen* (Between Fear and Freedom, Fifteen Historical Treatises), (Amsterdam, 1950).

35. In *Tijdschrift voor rechtsgeschiedenis*, xxxvii (1969), p. 582. In his review, Govaert van den Bergh also considers the question how much we actually know about the complex processes at the beginning of the history of Rome; see his article in *Rechtsgeleerd Magazijn Themis*, 1969, p. 347.

36. On symbolism as a universal phenomenon, cf. e.g. the introductory chapter in Olivier Beigbeder, *La Symbolique*, 3rd ed. (Paris, 1968).

37. T.P. van Baaren, *Doolhof der goden* (Labyrinth of the Gods) (Amsterdam, 1960), p. 91.

38. Franz Hampl in *Anzeiger für die Altertumswissenschaft*, xxii (1969), c. 60.

38a. *Weltgeschichte des Mittelmeerraumes von Philipp II von Makedonien bis Muhammed*, repr. (Munich, 1967), pp. 1ff; see also Fritz Schachermeyr, *Die minoische Kultur des alten Kreta* (Stuttgart, 1964), map on p. 17.

calling it "geopolitical speculation"³⁹ as Breebaart does. The eastern Mediterranean basin has been called a geographical unit and social community by Fritz Schachermeyr^{39a}.

In recent years, considerable attention has been paid to the study of cultural relations in this area of the Mediterranean⁴⁰. At this moment, I cannot discuss the various aspects of this subject. One factor, however, is worth further consideration for our purpose. I am referring to the double axe because it is a symbol that is closely linked with the *fasces*. Hans-Günter Buchholz⁴¹ has done research in this field. He concluded that the Cretan double axe originally came from the east and has spread from Crete over the Aegean area. As for their absolute chronology, double axes from the Anatolian area, and this is significant for the continuation of my argument, date back to the second half of the third millennium B.C. In the middle Minoan period, starting in the second millennium double axes appear in Crete, undoubtedly their centre. Returning to Roman symbols, we find that the double axe came to Rome especially through the intermediary of the Etruscans. The *fasces*, as *insigne imperii*, also stem from

39. In *Tijdschrift voor geschiedenis*, LXXXI (1968), p. 76. On the environmental factor, see the elaborate discussions by Fernand Braudel, *La Méditerranée et le monde méditerranéen à l'époque de Philippe II* (Paris, 1949), pp. 3-304. I quote from M. I. Finley, *Ancient Culture and Society, Early Greece: The Bronze and Archaic Ages* (London, 1970), p. 6: "The Greek peninsula, in short, was not an isolated unit; it was indeed not a unit at all, in any sense, until recently (and even today there is no firm agreement as to the boundaries of 'Greece'). In both its prehistory and its history Greece was part of a larger Aegean complex, embracing the Greek mainland, the islands (including Crete and Cyprus), and the western coast of Asia Minor. In broad terms this was an area which shared a similar climate, similar terrain and similar resources, and therefore a similar material way of life. Because of its location, the Aegean world also served as a bridge between Egypt and the Near East on the one side and eastern and central Europe on the other".

39a. The first chapter of his book *Aegäis und Orient* (Vienna, 1967), *Oesterreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse, Denkschriften* XCIII.

40. When G. J. D. Aalders H. Wzn. writes about "*de studie van de oude geschiedenis in de twintigste eeuw*" (the study of ancient history in the twentieth century), (*Lampas*, II, 1970, pp. 253-266), he remarks (p. 260) that we see clearer than ever before the interaction between the cultures of the countries around the Mediterranean in antiquity, and their contacts with neighbouring areas. See also my note 74. An arbitrary selection from the large amount of literature on the subject: G. Garbini, "*Elementi 'Egei' nella cultura siropalestinese*" in *Atti e memorie del 10 Congresso internazionale di Micenologia* (Rome, 1968), *Incunabula graeca* XXV, pp. 1118-1124; H. Haag, "*Der gegenwärtige Stand der Erforschung der Beziehungen zwischen Homer und dem Alten Testament*" in *Jaarbericht van het vooraziatisch-egyptisch genootschap "Ex Oriente Lux"* XIX (1967), pp. 508-518.

41. *Zur Herkunft der kretischen Doppelaxt, Geschichte und auswärtige Beziehungen eines minoischen Kultsymbols* (Munich, 1959), *Mitteilungen des deutschen archäologischen Instituts, Ergänzungsheft* V, pp. 63-64. On the non-Indo-European origin of the terms used for the axe, see Anton Scherer, "*Indogermanische Altertumskunde*" (seit 1956) in *Kratylos* X (1965), p. 16.

Etruria⁴². Another conclusion of Buchholz's enquiry was that the symbol of the double axe is closely related to the mother-goddess cult. The double axe is a typically "feminine" symbol, closely linked with fertility of the soil and fitting well into what is sometimes called the Mediterranean culture. Yet, the double axe is also a symbol of rulership⁴³. It is therefore not surprising that, because they had much in common, the axe and *fascēs* could develop into a single symbol in Rome.

But let me return to the main course of the argument. We are searching for representatives of both groups of symbols elsewhere in the eastern Mediterranean.

For the *festuca*, especially in its relation to the *fascēs*, I have based my arguments on Kristensen's findings which include examples from the entire area. For the sceptre I have quoted Greek sources. Kristensen concludes from the collected data that what he terms "the sacred bundle" used to be a common possession of most peoples living around the Mediterranean⁴⁴. When I talked about the double axe, I referred to the idea of soil fertility. This is a common aspect of the symbol of the double axe and the symbols of the *festuca* group.

To complete my discussion, I have to insert a brief consideration of the scales. Thormann contrasts his Indo-European *Speermänner* with the Mediterranean "scales people". This should not give rise to misunderstandings: the scales are not meant as a status symbol here. It is noteworthy that *libra*, the word for scales, is not of Indo-European origin, but probably comes from a language of the Mediterranean culture⁴⁵. The idea of cosmic balance, underlying the plant symbolism, the order to which the law gives expression, is enhanced by the scales, which in the ancient world occurred as a symbol of that order. I do not have in mind the scales in Egyptian culture, in which *ma-a-at*, the divine and secular order, the universal equilibrium and hence justice and law, is symbolized by the scales. The scales also fulfilled an important role in the judgment of the dead⁴⁶. What I do have in mind are the scales in the temporal trial among the Homeric Greeks. In the aforementioned trial scene on Achilles's shield, *τάλαντα*, a reminder of the scales – not understood in later times –, serve as a symbol of justice.

42. Cf. R. Bloch, *Tite Live et les premiers siècles de Rome* (Paris, 1965), pp. 102ff.; M. Pallottino, *The Etruscans* (Harmondsworth, 1955), pp. 140–3; Jacques Heurgon, *La vie quotidienne chez les Étrusques* (Paris, 1961), pp. 59ff. (sceptre, *fascēs*, and double axe). Among the Etrurians the spear was also an attribute of the ruler; see Alföldi, *op. cit.*, pp. 3, 4.

43. Fritz Schachermeyr, *op. cit.*, p. 161 and p. 237.

44. W.B. Kristensen, *Godsdiensten in de oude wereld* (Religions in the Ancient World), p. 158.

45. A. Walde and J.B. Hofmann, *Lateinisches etymologisches Wörterbuch* 1, 3rd ed., (Heidelberg, 1938).

46. W. Brede Kristensen, *The Meaning of Religion*, p. 31 and p. 73; the same author in *Symbool en Werkelijkheid*, p. 241.

In his study of the *hasta*, Alföldi has also made use of Greek sources. De Waele, too, has written about the stick or staff in Graeco-Italian antiquity. In the preceding discussion, therefore, the evidence from this area about this particular point has likewise been incorporated. In addition, I would like to draw attention to the area of Asia Minor which has served as a stepping-stone of eastern influences on Mediterranean culture. The term Schachermeyr⁴⁷ chooses to use for the early Bronze Age is that of an Anatolian-Aegean *Kulturgemeinschaft*. The same area gives rise to a striking parallel between Hittite culture and the historical process in the Graeco-Italian area, viz. the injection of Indo-European culture into that of the Mediterranean⁴⁸. For in Hittite culture, too, we encounter the spear, among other things as a symbol of sovereignty. How can this be explained?

An important source for our knowledge of Hittite jurisdiction are the Hittite laws, a collection of legal provisions, divided over two tablets, first published in translation in 1922. These laws did not form a constant unity throughout the ages; here, too, various *Textstufen* can be distinguished. Consequently, it is hard to determine the age of each of the provisions. In order to give you some indication, I may add that the "codification" may go back to the sixteenth century B.C.⁴⁹. It should furthermore be noted that before the beginning of the second millennium⁵⁰, there cannot be said to have been a Hittite culture (as a mixed culture of Indo-European elements with those of the Mediterranean substratum, the Chatti).

The second tablet of the Hittite laws (i.e. articles 101ff.) begins with an enumeration of penal sanctions on theft and other kinds of infringement upon the right of property of various objects, many of which are of an agrarian nature. Article 125 still deals with the stealing of a water-tube or -vessel and possibly also of rigging. Article 126 occupies a special position; unexpectedly mention is made of the gate of the palace. The article starts with the words: "If anyone steals a wooden *zachrai* at the gate of the palace, he has to pay six shekels of silver". We need not here elaborate on the nature of the wooden object, which has been argued to be a sacred object on or in the palace gate⁵¹. The punishment, a fine of six shekels of silver, is identical to that for stealing two or three beehives (art. 92a), two freights of wood from a pond (art. 102), or a plough (art. 121),

47. *Aegäis und Orient*, pp. 19ff. Viktor Korošec has called one of his papers "*Das hethitische Recht in seiner Stellung zwischen Osten und Westen*", in *Südost-Forschungen*, xv (1956), pp. 22-40; the underlying idea is clear but the result of the enquiry is still very slight.

48. Cf. my paper in *Tijdschrift voor rechtsgeschiedenis*, xxxvii (1969), especially pp. 474-479. On the relation between Asia Minor and Etruria, see e.g. the - controversial - theory of Vladimir I. Georgiev, *Die hethitische Herkunft der etruskischen Sprache* (Sofia, 1962), *Académie Bulgare des Sciences, Linguistique Balkanique* v-1; by the same author, see *Studi Micenei ed Egeo-anatolici* iv (Rome, 1967), *Incunabula graeca* xxiii, pp. 55-91.

49. Harmut Schmökel, *Geschichte des alten Vorderasien* (Leyden, 1957), *Handbuch der Orientalistik* II-3, p. 120.

50. Schmökel, *op. cit.*, p. 125.

51. Cf. H. A. Brongers, *Oud-oosters en bijbels recht* (Ancient Oriental and Biblical Law), (Nijkerk, 1960), p. 118.

or for burning down a fruit tree (art. 105). Six shekels of silver is the price to be paid for building a cow-shed (art. 145). The rent of a ploughing ox, a horse, a mule, or a donkey amounts to one shekel of silver a month. The price for the purchase of a sheep is also one shekel of silver. Thus the punishment is severe but not insurmountable. The text of article 126 continues: "If someone steals a bronze spear from the gate of the palace, he must die". Literally it says, "he will die"⁵². The severity of the punishment cannot be explained by the location of the crime, for in the first sentence a relatively light fine was required for stealing something also present in the gate of the palace. Capital punishment occurs very seldom in the Hittite laws. In article 166, for example, capital punishment is ordered for the violation of a taboo, an ancient sacral norm⁵³, protecting the sacral fertility of the soil. The same idea is found in Rome: someone harvesting by night is liable to capital punishment; he is to be hanged on a tree dedicated to Ceres (XII tab. 8. 9.). In the Hittite laws, capital punishment is also imposed upon those guilty of sexual intercourse with animals dedicated to god (artt. 199, 200). Hence we may conclude that the bronze spear at the palace gate is an object of special significance. It has been suggested⁵⁴ that the spear is a sacred object. Its location may mean that it symbolizes the authority of the king.

Other sources confirm this interpretation. The spear as a sacral instrument, as a symbol of power and majesty, is also present in the old-Hittite ritual for the royal couple⁵⁵; the oldest text of this dates back to the time of King Mursilis I (1550-1530 B.C.). The two royal servants mentioned in the ritual carry a bronze spear. During the ceremony, the lance is placed on the heads of the king and queen. The spear here represents the divine, i.e. royal power, the sovereignty. The king is god's son⁵⁶; kingship is a sacral institution. In Rome the king is a priest too. The positioning of the lance on the royal heads in the ceremony could mean that the person in question is the bearer of this royal majesty. That is not to say that I would exclude the possibility that a magical effect, i.e. the transmission of this power by touch (hence the capital punishment for him who steals the spears), is attached to the gesture.

The word "spear" occurs in yet another provision of the Hittite laws. In article 101, the first section of the second tablet, called "if a vine" after the initial words, mention is made of theft of certain agricultural products, punishable by a fine of one or more shekels of silver. According to the text, the thief was formerly beaten with a spear. Unfortunately we do not know on which part of the body. Usually the incompletely preserved passage is interpreted as a reference to corporal punishment. Yet, a spear is not the most suitable instrument for this action. I will suggest a different explanation further on.

52. Johannes Friedrich, *Die hethitische Gesetze* (Leyden, 1959), p. 67; Richard Haase, *Die keilschriftlichen Rechtssammlungen in deutscher Uebersetzung* (Wiesbaden, 1963), p. 85.

53. Cf. Brongers, *op. cit.*, p. 124; see also p. 131.

54. Cf. E. Neufeld, *The Hittite Laws* (London, 1951), p. 176; Friedrich, *loc. cit.*; Fiorella Imparati, *Le leggi ittite* (Rome, 1964), *Incunabula graeca* VII, pp. 280-1.

55. Heinrich Otten and Vladimir Soušek, *Ein althethitisches Ritual für das Königspaar* (Wiesbaden, 1969), *Studien zu den Bogazköy - Texten* VIII.

56. Cf. J. Zandee, *De Messias, opvattingen aangaande het koningschap in de godsdiensten van het nabije oosten* (*The Messiah, Views of Kingship in the Religions of the Ancient Near East*), inaugural lecture at Utrecht (Leyden, 1970), p. 11; Richard Haase, "Herrscher und Beherrschte in Hatti-Reich" in *Recueils Jean Bodin* XXIII (1968), *Gouvernés et gouvernants* II, p. 99.

On various points, a striking parallel may be drawn with Roman law. The bronze spear as a symbol of regal power, *imperium*, is also found in the royal palace or sanctuary at Rome. The *hastae*, representing the god Mars, were kept in the Regia, the ancient royal palace⁵⁷. These spears are also sacred objects. In general one could say that kingship in Rome also had strongly sacral features⁵⁸. Consequently, the *insignia* of kingship may be regarded as consecrated matters. Again, we will exclude the magical aspects from our discussion.

The act of placing the spear on the royal heads during the coronation ceremony could be compared to the *impositio hastae* in the property trial, and to the sale *sub hasta*. Standing under the sign of the spear may mean a subjugation to symbolized authority but also, and sometimes simultaneously, the possession of that authority. Hence the frequently suggested magical power: transmission through touch.

Finally, mention should be made of the fact that according to the Twelve Tables, a freeman who committed the crime of *furtum manifestum* was to be flogged and afterwards allocated to his victim as a slave (tab. 8.14). Corporal punishment was also mentioned in the case of theft in the obscure article 101 of the Hittite laws. Could it be that there, too, the spear indicated loss of freedom?

However this may be, it is not improbable that also among the Hittites, whose culture is likewise the product of an interaction of Mediterranean and Indo-European elements, the spear symbolized authority and played a role comparable to that of the *hasta*.

From the above considerations we may conclude that it is not impossible that *festuca* and *hasta* are two independent symbols hailing from different cultures. The *festuca* may have come from the Mediterranean culture and be of a "feminine" nature, while the *hasta* may have been a status symbol from Indo-European culture⁵⁹.

How could it be that these symbols acquired interchangeable roles in the property trial *per sacramentum*? De Josselin de Jong, cultural anthropologist at Leyden University⁶⁰, has pointed out that when one culture comes into contact with another, it accepts only those elements which in some way fit in its own cultural pattern. In the ceremony of the *Speermänner*, what may have been meant was the placing of the *hasta* to emphasize the property claims, i.e. the

57. Alföldi, *op. cit.*, pp. 3 and 15; J. Balkestein, *Onderzoek naar de oorspronkelijke zin en betekenis van de romeinse god Mars* (Enquiry into the Original Meaning of the Roman God Mars), diss. Leyden (Assen, 1963), p. 98 and pp. 122-3; Pierre Lambrechts, "*Mars et les Saliens*" in *Latomus* v (1946), p. 117 note 1.

58. Cf. Jean Gaudemet, *Institutions de l'antiquité* (Paris, 1967), pp. 266ff.

59. Possibly parallel to this are two types of sacral kingship: Adolf Allwohn, "*Der religionspsychologische Aspekt des sakralen Königtums*" in *The Sacral Kingship*, supplements to *Numen* iv (Leyden, 1959), p. 38; cf. this collection p. 370.

60. P. E. de Josselin de Jong, *Contact der continenten, bijdrage tot het begripen van niet-westerse samenlevingen* (Contact of the Continents, a Contribution to the Understanding of Non-Western Societies) (Leyden, 1969), p. 69.

reference to the state of citizenship, the rights of the citizen. In the ceremony of the substratum culture, the parties, while enunciating their solemn oaths, held the *festuca* in hand as the sceptre of the Homeric Greeks. Once their meaning had become obscure, the symbols became one unit. If, on the other hand, this process of acculturation did indeed take place at a time when *festuca* and *hasta* were still living symbols, the symbol – as de Josselin de Jong has formulated it – “which does not fit in the existing pattern, is made to fit, and interpreted in terms of the familiar culture”. This is also possible; the sceptre is among other things the symbol of sovereignty, even among the Homeric Greeks⁶¹. Moreover, the *festuca* was closely related or even identical to the *virga* or the *fascēs* of the lictors. In the symbolization of power (*pouvoir*), *festuca* and *hasta* coincide.

More examples could be quoted of this coincidence, or, if you prefer, confusion of symbols. The Salii, priests of Mars, carried out a dance, often referred to as a war dance⁶². In their right hands they hold a lance. Dionysius of Halicarnassus, however, describes the object as a λόγχη ἢ ῥάβδος ἢ τι τοιοῦθ' ἕτερον: a lance or stick or something similar. The pictorial representation of the procession of the Salii also seems to indicate that it was not a lance but a stick with a knob on one end, a “drum stick”⁶³. It would carry us too far to elaborate on this. It should be sufficient to note that Mars was not exclusively a war god but also a god of agriculture. Balkestein's study⁶⁴ has provided evidence for this.

I have suggested that *festuca* and *hasta* grew towards each other: the process of acculturation has to be seen as a gradual development. We should not wholly exclude the possibility that the evolution has been interrupted, or – to put it more carefully – that the course of the development was determined at the time of the Roman kings. Legend has it that the kings implemented many reforms⁶⁵.

Some remarks may be added to the conclusion. The method of enquiry adopted here is, according to de Groot's classification⁶⁶, interpretative and theoretical. In other words, it centres around the interpretation and theoretical evaluation of a given, closed collection of findings and data. Because of the nature of the available evidence, other methods than the one followed had to be excluded.

61. Cf. Luc de Heusch, *Pour une dialectique de la sacralité du pouvoir* in *Le pouvoir et le Sacré* (Bruxelles, 1962), *Annales du Centre d'Étude des Religions* 1, p. 39.

62. Cf. Kurt Latte, *Römische Religionsgeschichte* (Munich, 1960), p. 115.

63. Lambrechts, *op. cit.*, p. 119.

64. Mentioned in note 57.

65. Cf. Edna M. Hooker, “The Significance of Numa's Religious Reforms”, in *Numen* x (1963), pp. 87–132.

66. A.D. de Groot, *Methodologie, Grondslagen van onderzoek en denken in de gedragswetenschappen* (Methodology, Principles of Enquiry and Thought in the Behavioral Sciences), 4th ed. (The Hague, 1968), pp. 325ff.

Our method has various consequences. First of all, the results are definitely hypothetical although the wording of the discussion may have suggested otherwise. Nothing has been proved. In his "Methodology" (p. 327), de Groot rightly remarks that dissimilar interpretations of the same material, in this instance the use of *festuca* and/or *hasta* in the Roman trial as quoted from the passage in Gaius's *Institutiones*, may occur side by side. In this morning's lecture, we have discussed *festuca* and *hasta* as symbols only. It has become apparent that this approach may lead to an insight into the use of these objects in the trial. That is all. Yet the conclusion can be called "scientifically" founded, for the starting hypotheses are stated explicitly and the method of investigation is based on verifiable data⁶⁷. Alternatively, if we choose to employ a different terminology, in which scientific work is characterized by methods aiming at objectivity, we may put it this way: the main starting point has not been a personal, subjective interpretation of the basic data, but we have started from the ways others have interpreted the available material. These others did not take the same points of departure as I did, nor did they incline towards the theory of the dual origin of Roman culture. Thus we have accomplished a certain degree of objectivity. In this respect it should be noted that in the study of history true objectivity cannot be achieved⁶⁸. There are, moreover, other reasons why the descriptive phase of the investigation is the weakest link in the discussion (and the weakest link determines the strength of the chain). For the collection of material is incomplete: the archaeological evidence has been insufficiently studied; and it is one-sided: for, although the discussion was on the whole based on the work of authoritative writers, it cannot be said that they aptly reflect the state of historical investigation in respect to our subject. The result is, to quote de Groot (p. 321), "a premature determination on a theoretical model".

Secondly, the conclusion is not only hypothetical but has a limited value in other respects too. All that has been alleged is that the *festuca* and *hasta*, regarded as symbols, (could) stem from dissimilar cultural contexts, referred to as "Mediterranean" and "Indo-European" respectively. We have not claimed that the bearers of these cultures differ racially. The two above terms should not be taken to indicate anything but possible cultural relations. The adjectives "Sabine" and "Latin" which I used in my dissertation to express this duality, have given rise to misunderstandings that could and should have been avoided⁶⁹.

67. Cf. E. Tellegen in *Max Weber, Wetenschap als beroep en roeping* (Science as an Occupation and Vocation), (Alphen a.d. Rijn, 1970) p. 43.

68. A. G. Weiler, "Geschiedenis en hermeneutiek" in *Annalen van het Thijmgenootschap* LVII (1969), (History and Hermeneutics) pp. 66ff.

69. Cf. especially the discussion by Franz Wieacker in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, LXXXVI (1969), pp. 477ff.

The history of the rise of Roman culture is exceedingly complex. Acculturation processes have played a role in various phases of its development, even before the urban phase. It would be an irresponsible simplification of the real course of historical processes involved to indicate these processes by the Sabine-Latin *synoikismos*, especially if a monocausal explanation of the distinguishable polarities in law and religion is associated with them⁷⁰. I hope that the present approach to a constituent element is more in agreement with the *wirklichkeitswissenschaftliche* method, rightly given priority by Franz Wieacker.

Thirdly, and finally, I repeat that the theory should be verifiable. On this point I said in my dissertation that a convergence of the results of the present enquiry with those reached in other fields of Roman law and culture, can be shown to exist.

I stated at the beginning of my lecture that I intended to expound some points of the method of investigation of a more general application than that resulting from the examination of a detail from the quoted passage from Gaius's text-book.

"*Der grosse Traum Leopold Wengers von der Schaffung eines speziellen Gebietes, der antiken Rechtsgeschichte, hat bisher im wesentlichen den Rahmen einer Idee nicht überschritten*"⁷¹. Vojtěch Poláček, in whose essay this sentence occurs, points out the causes: primarily the isolated treatment of the separate systems of law in antiquity; the phrase "*les droits de l'antiquité*"⁷² is therefore justified. The study of the history of law in antiquity does not form a unity. As Professor Hoetink put it, "it constitutes, seen in this way, a task for the bookbinder rather than for the jurist or the historian"⁷³. The approach followed in the above discussion, however, does deal with the history of law in antiquity in its own right; it is the investigation of the common roots underlying the separate legal systems and of their mutual influence. The post-war study of mutual cultural connections has gained a central position in other fields of the *Alter-*

70. I am drawing attention to a difference in the views of Govaert van den Bergh and Franz Wieacker: in his article in *Themis* (p. 346), the former accuses me of using dissimilar suppositions concerning the process of acculturation in the discussion of different elements of law; Wieacker however writes (p. 479) about an "*instabile und zufällige Vermischung der Elemente*" as the most likely process.

71. Vojtěch Poláček, "*Randbemerkungen zur Forschung über Staat und Recht im Altertum*" in *Studi in onore di Edoardo Volterra III* (Milan, 1969), p. 215. Cf. also Franz Wieacker, *Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung*, 2nd. ed. (Göttingen, 1967), p. 421 and note 26.

72. In the name of the *Société Fernand de Visscher*.

73. A. van Praag, *Problemen der antieke rechtsgeschiedenis* (Problems of the history of law in antiquity), public lecture at Amsterdam University (Amsterdam, 1946), p. 13; cf. p. 4.

tumswissenschaft as well⁷⁴. Vojtěch Poláček allocates to the history of law in antiquity the comparative study of law, which is a much more restricted task. For a study of only the legal systems of antiquity is no longer useful because the history of law in antiquity is absorbed by the more general comparative historical study of law. My proposition is nearer to the attitude assumed by the former lecturer at Amsterdam University in the history of law in antiquity, van Praag, who claimed that the historical study of law in antiquity forms a certain unity as a subject of study because there evolved an increasingly unified culture in the world of antiquity⁷⁵. However this may be, the fact that Rome occupied in later years a unique position in the Mediterranean world does not necessarily mean that it occupied a special position in the beginning. This anachronistic point of view is dangerous especially for the study of the oldest period which we are discussing now.

In other respects, too, Roman law should not be studied in isolation, least of all in the oldest phases of its development. Society and culture still form a system of constituent elements in which each element contributes to the continuation of the system as a whole⁷⁶. In other words, the culture is still homogeneous, which, however, is not to say that processes of cultural influence and mingling have not yet taken place⁷⁷. The culture does not yet have, or hardly has, any internal contradictions. Hence we had to refer to data from other fields of civilization, Roman and others, in our attempt to interpret *festuca* and *hasta* in the property trial. We could have followed the structural-analytical method⁷⁸ in a more consistent manner. The few steps taken in that direction do provide an indication of the adequate method.

In brief, Roman law reflects a culture that was not static and did not occupy an isolated position in the known world of that era. An isolated study of only

74. Cf. John A. Wilson, "A Century of Near Eastern Archaeology and the Future" in William A. Ward (ed.), *The Role of the Phoenicians in the Interaction of Mediterranean Civilizations* (Beirut, 1967), p. 117. I would draw attention to the important theme of the arrival of Indo-Europeans in Greece, Asia Minor, Mesopotamia, and Iran; on this topic, see Machteld J. Mellink, "Postscript on Nomadic Art" in *Dark Ages and Nomads c. 1000 B.C.* (Istanbul, 1964), publications of the Netherlands Historical and Archaeological Institute at Istanbul, xviii, p. 70. Bibliography in Manfred Mayrhofer, *Die Indo-Arier im alten Vorderasien, mit einer analytischen Bibliographie* (Wiesbaden, 1966); see also Annelies Kammenhuber, *Die Arier im Vorderen Orient* (Heidelberg, 1968), *Indogermanische Bibliothek, Dritte Reihe: Untersuchungen*.

75. As an example: Reuven Yaron, "The Goring Ox in Near Eastern Laws" in *Israel Law Review* 1 (1966), pp. 396 and 406.

76. Adapted from Alasdair MacIntyre, *Herbert Marcuse* (Amsterdam, 1970), p. 27.

77. Govaert van den Bergh, in his aforementioned article in *Themis* (p. 345), fails to acknowledge this.

78. Cf. Weiler, *op. cit.*, pp. 85ff.

the legal system of Rome would deprive the facts of an indispensable dimension⁷⁹.

Yet, the multi-dimensional study of the history of law in antiquity confronts the legal historian with a number of problems. Unlike professional classicists, professional scholars in the history of law (at least in the Netherlands) have merely had training in legal studies. The former have followed lectures introducing them to various subjects: their academic curriculum includes philological, historical, and archaeological studies⁸⁰; whereas the latter are, at best, "self-made men" in these auxiliary disciplines; in using data from these disciplines they easily make mistakes. I would like to give two examples of this, both taken from the archaeology of law, i.e. the knowledge of information concerning ancient law, other than through linguistic signs. Both instances are more or less related to the theme of the investigation discussed in the present lecture.

When Salvatore Tondo⁸¹ elaborately discusses the symbolic and magical aspects of the *manumissio vindicta*, thereby especially focussing on the function of the twig, he derives a considerable amount of information from a bas-relief from the museum of Mariemont. In doing so, he fails to acknowledge the fact that a few years earlier it had been argued that the relief does not represent a liberation but a scene from a circus⁸² (cf. Pl. 1 (p. 20)).

The second example is possibly even more striking. In 1866, Wolfgang Helbig described in the *Bullettino dell'Istituto di corrispondenza archeologica* (pp. 90f.) the relief found on a sarcophagus in Corneto, the Etrurian Tarquinii. Ever since, students of the history of law have adopted this information as evidential. Long discussions have been going on about the meaning the scene had for our knowledge of Roman law and about what they – following Helbig's example – regarded as a representation of a trial scene⁸³. Thus, Paul Frédéric Girard thought it to be a *vindicatio in servitute*. The legal historians, however, failed to recognize that, after the removal of the sarcophagus to the then newly established, official central museum for Etrurian art at Florence in 1892⁸⁴. Milani published in the same year a detailed paper on the new acquisition and had a drawing of the relief printed with his article, showing that Helbig's

79. The study of the history of law is part of the integral study of history; see my contribution in *Nederlands Juristenblad*, 1969, pp. 864–868.

80. Although the curriculum of their Faculty does unjustifiably exclude (Roman) law, which, after all, is such an important cultural element from antiquity in the history of European culture.

81. *Op. cit.*, pp. 6, 14, 47 note 19, 143ff., 159ff., 171. The same mistake is found in my *Ius fasque*, p. 115 note 56.

82. G. Ville in *Latomus* xxii (1963), pp. 14–30.

83. Leopold Wenger, *Die Quellen des römischen Rechtes* (Vienna, 1953), pp. 887–8.

84. Still there as exhibit No. 75273.

description had been incorrect⁸⁵. It appeared that the four men grouped around the table are depicted bare-chested, which is of course an unfitting way of dressing for magistrates in the course of carrying out their tasks. The position of the feet of the figure depicted behind the table as well as the height of his shoulders, suggests that he is sitting down. It is indeed highly improbable that the relief represents a trial scene⁸⁶ (cf. Pl. II (p. 21)).

The findings of the archaeology of law have so far had little impact on the study of Roman antiquity. The unfortunate necessity of increasing specialization is one of its main causes. This is why I am gladly offering the present paper for publication in *Talanta*. Reactions from its readers, who are without exception greater experts on the subject than I, merely a jurist, may help to point the right way in crossing the boundaries of the discipline⁸⁷.

The decision whether the rules of scientific hermeneutics have been applied correctly, must be left to, as de Groot (p. 28) terms them, "the forum of expert scholars". That is why I appreciate that I have been enabled to develop my ideas on *festuca, quasi hastae loco* in the presence of "Forum".

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85. L.A. Milani in *Notice degli scavi di antichità*. Afterwards the sarcophagus was published by C.Q. Giglioli, *L'arte etrusca* (Milan, 1935), p. 66 and p. LXI and photograph 358-2; and in R. Herbig, *Die jungetruskische Steinsarkophage* (Berlin, 1952), p. 23 (catalogue No. 25) and Photograph 43a. I owe this latter reference to the kindness of Prof. Dr. A.N. Zadoks-Josephus Jitta.

86. The scene is very well balanced: to the right, a little away from the table, is the "magistrate", sitting on the *sella curulis*; to the extreme left, likewise away from the remaining, standing figures, we see what is possibly a fasces bearer (the position of his right arm is reminiscent of the depiction of *lictors* on other Etrurian sarcophagi. Milani was among the first to assume that this figure was an *apparitor* with a *virga* in his left hand). Since sepulchral scenes are depicted on various other sarcophagi published by Herbig, his cautious suggestion that the present scene shows a judgement of the dead deserves consideration. At least, I regard it as not unlikely that life on earth (the upright figures in toga) and that in the world of the dead (sitting bare-chested figures) are here confronted with each other.

87. There is a second reason for the publication of my paper in this periodical: as has been pointed out before, the archaeological material has been insufficiently used. The data provided by archaeology cause us to be cautious in our conclusions; for also in non-Indo-European cultures the spear is a frequently occurring weapon. Cf. Yigael Yadin, *The Art of Warfare in Biblical Lands in the Light of Archaeological Discovery* (London, 1963), p. 45. The spear also occurs in the typically "feminine" Minoan culture, carried by goddesses; see Schachermeyr, *op. cit.*, pp. 135-6, 145. I would also remind of the motives collected by Fiorenza Scalia, "*I cilindretti di tipo chiusino con figure umane*," in *Studi Etruschi* xxxvi, series II (1968), pp. 357-401.



