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The Latin Language in Roman Juridical Inscriptions

*'Iustitia' in the 'Res gestae'**

Abstract

The text analyzes *iustitia* in the Monumentum Ancyranum in the ideology of imperial power, according to a perspective that values meaning and signifier, that is content and epigraphic support in the legal history of 'royal' writing between Ancient Near East and West.

Stones. Roman stones. And among these, due to the importance they play in the history of legal epigraphy, those containing the so-called political testament of Augustus, the *Res gestae* or *Index rerum a se gestarum*.

The Roman law scholars, like me, try to interpret both the signifier and the meaning of the inscription. The material and the content, because both are power tools.

Roman law is a knowledge that gives power. The *pontifex* is called in Rome *arbiter* of all things divine and human and, according to established etymologies, his name derives from the Latin expressions *posse facere* or *pontem facere*, that is, he had the power to control forces that conversed with the divine.

Roman law, like all ancient laws, is first of all an instrument to control potentially destructive forces that the community cannot deal with using the tools it has at its disposal, essentially weapons.

* Pubblico il testo della lezione on line richiestami dal Comitato Scientifico della International Summer School. Epigraphy for the Study of the Latin Language. Centre for Classical Studies University of Lisbon, e da me tenuta il giorno 28 luglio 2022. In questa sede desidero rinnovare i miei ringraziamenti al Comitato Scientifico per l'invito a partecipare e alla Dott.ssa Silvia Tantimonaco per l'organizzazione. In molte occasioni ho potuto apprezzarne la sollecitudine e la squisita cortesia. Il testo della lezione è corredato da una breve Bibliografia, posta in calce, funzionale alla sua fruizione da parte dei partecipanti e che tiene conto, per quanto possibile, che l'inglese costituisce la lingua veicolare del Master. Poiché le pagine che seguono costituiscono la fedele trascrizione della lezione per il Master, non sono presenti note, ma solo i riferimenti alle fonti e agli autori moderni richiamati in occasione dell'esposizione.

Not even the king.

Of course, the law is also an instrument of social control, the most sophisticated instrument that human beings have 'invented' in their thousand-year history, but its religious dimension is constitutive.

The law chains or unleashes through the *carmen* - the rhythmic word - it follows styles of writing and prefers peculiar writing supports: stone and, in Rome for the time we are interested in, marble - but also bronze.

First of all it should be remembered that the stone symbolizes the power of God in many cultures.

In Rome it is enough to remember the *Keraunia*, that is the stones that produce lightning, fragments of meteorites used in the stipulation of private contracts or international treaties. In Roman law also provided for the *iurare for Iuppiter lapis*, that is, to swear in the name of Jupiter.

These juridical institutes symbolize a real epiphany of the divine through the stone.

We all know that the first weapons produced by humanity were stones.

And it is well known that in many cases the law reproduces acts of force, including those related to war.

Once again I cite an example. The *festuca*, that is the small stick used in the *mancipatio* with which whoever claimed ownership touched the thing. It symbolized the strength of the buyer that the law recognized and protected.

The myth often associates a god with stone. Think of the *omphalós*, the conical stone covered with bandages in Delphi, according to the ancient tradition given by the mother of Zeus to Cronus to save her newborn child. Cronus in fact devoured all his children, to avoid the danger of being killed by one of them. Thanks to the ruse of his mother, Zeus was able to grow up, free his brothers and reign in his father's place.

In the ancient East, the stones were sprinkled with oil and blood and offerings were made to them. They assumed the role of “house of god” (*bethel*, a Semitic word that designates the house of god).

The Betylus, particularly in the Semitic area, was the "stone god".

In the classical world, first the Greeks, then the Romans, adopted this cult.

In addition to the already mentioned story of the birth of Zeus, think of the cult of boundary stones by the Romans, and that of Jupiter *Terminus*, the god of borders, in a material or symbolic sense.

We read in the Bible: "if you make me an altar of stone, do not do it with polished stones, for you profane what you rub your blade on" (*Exodus XX.25*).

Litholatry, the veneration of stones, is present in many ancient cultures and it is associated with the power of the god also in its symbolic function of fertility, evident in the cult of the lithic phallus.

A god in the stone was in the Delphic *omphalós*, in the black stone of Cybele, the Mother of the gods, is still in the Ka'aba, the black stone of Mecca.

The obelisks can also be ascribed to the stone cult, standing towards the sky. The stones object of veneration are in fact erected upwards, as if to establish a 'bridge' between men, who inhabit the earth, and gods who dwell in the heavens.

Let me summarize briefly what I have recalled up to this moment: the stone is an emanation of the god, who dwells in it and is venerated in it.

Why did humans choose to honour stones and not another material?

We can try to answer this question.

Certainly the places where lived the communities that practiced litholatry were of significant importance.

As for the Mediterranean basin, just think of the landscape of the Ancient Near East, studded with stones.

However, other factors also contributed to the spread of the stone cult.

Among these, the relationship between stones and war - stones were the first weapons of humanity; the one between stones and food survival - with stones men made knives and scrapers to skin and eat hunted animals.

The stones were therefore a precious tool, which allowed humanity to survive and fortify itself.

The cult of fertility stones also belongs to this anthropological and historical horizon: think to ancient phalluses and fertility slides in stone - smooth stones on which women let themselves slide to procreate easily and without complications during childbirth.

Again, the so-called crack-stones, through which one passed, rubbing on the walls, to heal from diseases.

Both fertility slides and fissure stones remained in use well beyond the end of the ancient world.

There is also another very important reason at the origin of the ritual identification of the divinity with stone: the stability and durability of the stone and its monumental appearance.

All these are characteristics inherent to stone, whether it is raw or worked form the basis of the association between stone and sovereign.

By choosing the stone to make his laws public, the sovereign establishes a comparison between himself and the divinity. Like the god, he protects and enlivens the community that is subjected to him; like god he demands absolute obedience and honours for this; like the god, his will, once engraved in stone, is potentially eternal.

It is a process that occurs in quite remote times and which seems to me well exemplified by the royal stones of which I now intend to speak to you.

The first of this stones is one of the sovereign called Gudea.

Gudea ruled in the third millenium BC. in the state of Lagash, in southern Mesopotamia.

The ruler is represented in prayer. It is very interesting, in our discourse on the relationship between stones and sovereign, that the early statues are small and made of local stones, as limestone, steatite, etc.), later, when wide- ranging trade- connections had been established, the more costly exotic diorite was used.

Unlike the local stone, diorite is extremely hard, and so difficult to carve. The most large statue in diorite was well over three meters high.

In one of these statues, on the vertical columns of the dress, in cuneiform characters, the inscription is: "May the life of Gudea who built the house be long".

The statue, in the temple, would have represented the sovereign for eternity. The stone guaranteed the survival of Gudea, the pious ruler, forever. In a certain sense it protected its existence in life.

The sovereign uses the apotropaic and salvific role of the stone to ensure himself a long life.

The famous so-called Code of Hammurabi is also engraved on a diorite plate.

It is one of the most important and well-known documents of the ancient Babylonian civilization.

Dating back to the eighteenth century BC, it is engraved in cuneiform characters on a diorite plate more than two meters high, as well as on other supports. It was certainly produced in several copies, to be distributed in various places in the kingdom. That one more than two meters high was probably in the capital.

Now you know the meaning of carving the text on a stone like diorite, so I won't repeat what I have already told you.

Instead, I focus on the iconographic apparatus and the content of this document.

The king proposes himself as pious to the gods, avenger of the wicked and bearer of two fundamental values - also for the discourse that I propose to you about the *Res gestae* - that is the values of peace and that of justice.

The stele, in the upper part, reaffirms and emphasizes the relationship between sovereign and divinity.

King Hammurabi is depicted in front of the divinity of truth and justice - the Sun - who gives him the symbols of power: the scepter and the ring.

We have all read Tolkien's Lord of the Rings and therefore we know well the meaning of the gift of a ring!

The so-called Hammurabi's Code is one of the first documents of legal history in which the power of the sovereign is expressed by a legal content engraved on stone.

The choice of stone is functional to a political project that originates from the comparison between sovereign and divinity.

And justice becomes its instrument: the correct respect of justice perpetuates his memory, which the stability and durability of the stone preserve.

We will talk about all this again with Augustus.

Until now I have spoken extensively about the role of stone as a tool to symbolize the strength and the eternity of the sovereign's power.

Now, I would like to deepen the argument concerning stone as a survival tool for the community that venerates it. And to do this, I think it is important to reflect together on some characteristics of ancient writings.

I will now proceed in my story by taking into consideration some characteristics of legal writing in the civilization of ancient Rome.

Let us therefore abandon, at least for the moment, the Greek and Hellenistic cultures and those of the Near East.

The Roman legal civilization, at least according to what we know, has a characteristic that differentiates it from all those of the ancient age: a constant dialectic in the legal field between the spoken word and the written word connected to the presence of a class of legal scientists called *prudentes*, the jurists.

You all certainly know the adage *Verba volant, scripta manent* and therefore you know that it is not of Roman origin, although it is often cited as ancient.

Well, in Roman legal civilization the opposite is true: what legally binds the contracting parties is not the written word, but the spoken word, the verb and not the characters of the alphabet.

The *stipulatio*, with which the rights and duties of the parties in an obligation were established, could not be contracted by a deaf or dumb person, or even between *absentes*.

Indeed, in order for the obligatory relationship to be validly established, the response of the obliged party had to immediately follow the creditor's request, without delay or hesitation.

Only a sneeze or a cough was allowed (*momentum naturae*, i.e. an unpredictable and uncontrollable natural reaction).

The strong predilection for the 'voice' at the expense of the alphabet also emerges in words and expressions such as *in ius vocare, provocare, advocatus*.

This premise to make you understand that in Rome to write laws, to engrave them on bronze or stone had a very peculiar importance.

All the written communicative expressions elaborated by a civilization, mainly those of epigraphic character, are intimately connected to the degree of development of the community that produces them, not only in relation to the technical skills, but also and above all, to the ideal ones, that is to the relationship between civilization and culture.

It is a process that originates - also in Rome - from the magical-sacral dimension that permeates the word, spoken or written, even the word of juridical content.

The words of the law, whether spoken or written, are therefore not mere means of communication or memorization, they acquire a constitutive character.

Writing is a marginal form of juridical communication which is used for specific needs and not systematically. The *Res gestae* are fully inserted, as I will tell you, in this tradition.

But let's go back now to the archaic era and talk about royal laws.

The Roman king communicates his provisions to his subjects in two ways: orally or in writing.

We are not interested in the history of the oral tradition. We want to understand why the king writes.

I will try to explain it to you through an example: the famous archaic stone of the Roman *forum* found under the original floor, the so-called *cippus of lapis niger*.

In Rome, this document is the first attestation of a public legal content in epigraphic writing

The choice of stone is of capital importance in this perspective. The *lex* is engraved in a block of tuff in the shape of a truncated conical pyramid (once again the structure of betyl!) with five faces.

The writing is arranged vertically with a boustrophedical trend.

Reading the inscription is very difficult due to the gaps in the text and the tracing of the writing, however some key words, functional to this class, can be identified.

First of all, *sakros esed*, corresponding, as we know, to the formula *sacer esto*, with which some crimes were sanctioned such as, in the private sphere, the beatings of parents, and, in the public sphere, the offenses against the inviolability of the tribunes of the plebs.

The *homo sacer* was banished. He lost the divine protection even before that of public institutions. He could therefore be killed with impunity by anyone. Indeed, it was desirable that this should happen to prevent from spreading the religious contamination resulting from his behaviour, which endangered the very existence of the city.

The word *rex* is read on the second face of the *cippus*, so the author of the law was remembered as the protagonist of the action.

Finally, we read (*ioudik*) *iod iouestod*, that is *iusto iudicio*, an expression that identifies the exercise of an activity of administration of justice.

The archaic stone of the *forum* condenses within itself a variegated range of meanings.

It is testimony of the link between royalty and the divine sphere and of the king's will to draw from this link support for his power.

Again, it testifies the role of law as an instrument to ensure participatory justice for the community.

Finally, it is testimony of the king's will to give engraved and not only spoken words an important public and political role.

In its pregnancy of meanings, the *cippus* proves to be an effective guarantee of social well-being.

Now it is time to focus on the methods of writing, about which I intend to offer you a comparison with other activities that enliven a community, ensuring its peaceful continuation and existence.

As you know, the writing of the *cippus* proceeds according to a boustrophedical trend, albeit an irregular one.

Boustrophedón is the writing of alternate lines in opposite directions. One of them from left to right, the next from right to left and so on. *Boustrophedón* literally means "turn like oxen". In fact, the Boustropean writing does not have a fixed direction. It proceeds in one direction up to the writing margin and continues backwards in the opposite direction.

The *cippus* of the Roman forum is not the only legal document written with a boustrophedical trend.

Well known are the Laws of Gortina, engraved between the end of the sixth and the beginning of the fifth century BC, in Crete.

The plow, which proceeds according to a 'ribbon' pattern like the words engraved on the stone, prepares the earth for sowing and is an auspice for a good harvest. It affects the earth like writing and, like it, it is subject to the control of divine forces.

At the end of this first part of the class, I would like to recall with you the contents that will be useful for interpreting the use of legal language in the *Res gestae*.

The choice of using stone or bronze is neither neutral nor banal.

The royal word on stone or bronze establishes a comparison, in terms of durability and stability, between the writing support and the will of the sovereign.

The stone is also a simulacrum of the divinity and the king. In choosing it as a writing support, the ruler establishes a comparison between himself and the god who lives in it.

When the engraved word has a legal content, its function takes on a peculiar character, which is also attested by the boustrophedical trend, that is to ensure protection and prosperity to the community.

We are now ready to read Augustus' political testament.

Some introductory historical considerations do not seem to me useless.

Suetonius (*Aug.* 101) as you know, tells us that, after the funeral, the Vestals delivered to the *patres* the testament of Augustus and *tria volumina*, all of them *sigillata*.

Of these, one was the *Index rerum a se gestarum*, which, by the will of the emperor, was to be engraved in bronze plates - once again bronze! - *quae ante Mausoleum statuerentur*.

Tiberius, in fulfilling the will of his predecessor, went further: not only did he have the text posted in front of the mausoleum, but he decreed its posting in many localities of the empire, near altars or temples dedicated to the cult of the *divus Augustus* and the *dea Roma*.

The copies in stone placed in the provinces of the Near East have survived in a more or less fragmentary form.

From the point of view of the establishment of the new constitutional regime, the first part of the text recalls the offices held by Augustus and those that were offered to him, to be refused by him as in contrast with the *mores maiorum*; the second recalls the expenses for the benefit of the community, the last one the military conquests and the pacification of the empire.

Augustus, wanting to pass on the memory of his political action to posterity, chose a writing support that would guarantee its survival for a long time: bronze.

Of this material, Pliny the Elder wrote that it guaranteed the *perpetuitas monumentorum* “*iam pridem*” with respect to his times, and that *in tabulis aereis* there were incise *publicae constitutiones* (Plin. *Nat.hist.* XXIV.99).

In particular, acts of legal content in the Republican age were engraved in the bronze.

Tacitus recalls the use of this metal for the text of *senatusconsulta* and plebiscites (Tac. *Ann.* III.63.4; XI.14.3; XII.53.39).

Displaying acts of a political - or juridical - content in public places, such as at the Augustan mausoleum, emphasized their communicative potential, guaranteed by the engraved support.

A function that bronze performed very well.

We can also see in this choice by Augustus - bronze and not stone - a homage to tradition, to those *mores maiorum* he repeatedly invoked as the foundation of his political and normative activity, in the public or private sphere.

Augustus, as you know, preferred to play the role of restorer rather than of innovator.

Moreover, bronze has been used for a long time in religious rites.

Bronze adds so intrinsic sacredness to perpetuity: the "co-essentiality of the juridical and religious elements" (LEPORE 2010, 56).

I do not intend to read all or even most of the juridical words of the *Res gestae*.

I would like to focus my attention just on one of them: *iustitia*.

In the final section of the document (XXXIV; SCHEID, 24) Augustus recalls a fact, dating back to 26 BC, whose importance he judges to be constitutive for his role as guide and protector of the state. The golden clypeus placed in the *curia Giulia* whose inscription attested that it was conferred on him for his virtues: *virtus, clementia, iustitia, pietas*.

As you know, the Augustan *clipeus virtutis*, a copy of the one placed in the senate in Rome, was also found in the sanctuary of Augustus in *Arles*, and was depicted on coins and cameos, generally associated with the goddess Victory.

Any discourse on justice as a virtue of the ruler in the *Res gestae*, cannot ignore Cicero's reflection about it (Cic. *rep.* III.14.24-15.25)

At the top of the scale of political values, Cicero places sociability, which he describes as inspired, on the one hand, by *iustitia*, on the other by *beneficentia*.

Acting with justice means giving each his own, respecting other's life and property.

States were founded, according to Cicero, not to defend themselves, but to defend private property. The main duty of the ruler is to guarantee it. The *res publica* thus becomes an instrument *ut suum quisque teneat*. Private property is violated, according to Cicero, against nature.

We have to consider the years in which Cicero elaborates these theories.

At the end of the republican age, the Roman state was torn apart by violent internal conflicts and armed aggressions.

It is no coincidence that this is the time when the crime of *rapina*, that is of robbery, consisting in theft committed with violence, was introduced into the legal system.

Writing about justice, Cicero introduces the discourse on the opportunity for a *homo novus* endowed with particular virtues, to stop the internal struggles. Augustus certainly read these pages...

Nevertheless the ruling class in imperial age looks with suspicion at justice, perceived as useless to the creation of clientele.

This is an attitude that persists for a long time in Roman society as Aulus Gellius attested in his *Attic Nights* (XIV.4.4).

He cited Chrysippus' description of justice, according to which she was a virgin, deaf to indulgences, prayers, supplications and flattery.

For these characteristics she was depicted with a severe expression, with a tense and contracted forehead, with a stern gaze to inspire terror to the wicked and confidence to the good.

Gellius concluded that, having read this description of justice to some philosophers, they had told him that it was the portrait of *saevitia*, that is of cruelty, not that of justice.

In this context of widespread distrust of justice as an instrument of government, Augustus marks an *aporia*, which will also distinguish him from most of his successors, at least until the third century AD.

In the *Res gestae* the concept of justice recurs in the proud claim of the *bellum iustum piunique* against Cleopatra. The justice of the prince is also in the return to *leges* and *mores*, which Augustus restores and respects to protect private individuals.

Attesting to the importance assigned by Augustus to this political virtue, is the attitude of those intellectuals who can be defined organic to the political power.

For example, the justice of the prince is celebrated by Ovid, who recalls in the *Metamorphoses* (XV.833) how Augustus, after having pacified all the lands, had become *iustissimus auctor* of *iura* and *leges*. Ovid writes that, in 13 BC, Augustus had a temple built to the goddess *Iustitia* to appease the justice of his murdered father (*ex Pont.* II.1.33 and III.6.24).

We can affirm that Augustus' use of justice occurs in an immediate context, that is the victory against Antony and Cleopatra at Actium and in a broader context, that is the government of the empire.

In war and in peace, the prince wanted to be *iustus*.

Let's now consider where, visually, that is in the engraving, Augustus chose to place the mention of justice. In the concluding lines, as if the story he proposed culminated in the mention of this political virtue.

Justice allowed him to present himself, according to a carefully prepared and undoubtedly effective message, as the heir to a political tradition trampled by civil wars, in which justice guaranteed peace and prosperity.

The reference to justice legitimized his role in the new constitutional order according to tradition.

Propaganda ensured that the message that a new political course had begun was spread widely.

When Augustus dictated his political testament, at the age of seventy-six, his work was over. Furthermore he ordered that his political will had to be read only after his death.

Perhaps a contradiction with respect to what I have told you about the meaning of carving the word of the sovereign in stone or bronze? I do not believe.

It is true that usually the sovereign has his will engraved in life, to give his power a stability ensured by the epigraphic support. However, it is also true that bronze and stone also ensure durability, potentially eternity, to the *verbum*.

Undisputed ruler of Rome, Augustus was not interested in obtaining religious and political support from the publication of the account of his government activity.

I now come to the conclusion of this class.

I believe that the *Res gestae* re-propose the anthropological meaning of stone first, and bronze then, in the history of the laws in Indo-Iranian civilization, in which Rome also participates.

A meaning that refers both to the religious and the political spheres, therefore being considered constitutive of a civilization.

Stones and words are symbiotic.

And the material support of juridical words is full of meaning.

Only a study considering them together can recover their true significance.

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