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Sacramentum: On the Legal Meaning of the Term as Used in the Letters of Pliny the Younger*

Sacramentum. O prawnym znaczeniu terminu na kanwie listów Pliniusza Młodszego

ABSTRACT

The article is a scientific and research paper. The subject of research is letters exchanged between Pliny the Younger and Emperor Trajan, whereas the discussion addresses some aspects of the legal meaning of the term *sacramentum*. To expound the problem conclusively, the etymology of the term was explained, and next, *sacramentum* was discussed as a *terminius technicus* to denote an action by wager and a military oath. The use of the concept in the letters of Pliny the Younger and in the legislation of the Late Roman Empire was highlighted. In conclusion, the Latin term *sacramentum* was confirmed to have had both a religious and a legal connotation. In the juridical sense, *sacramentum* meant an action by wager known from the civil proceedings of *legis actio sacramento*. But it received yet another meaning for the purposes of military discipline – it was a name of a military oath. These conclusions contribute to the scientific aspect of the problem and demonstrate the originality of the research. They have an international significance as Roman law is a discipline studied across the globe.

Keywords: Pliny the Younger; Roman law; *sacramentum*; *sacramentum militaris*; ancient Rome

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INTRODUCTION

The letters of Gaius Plinius Caecilius Secundus (61 – ca 112 AD), also known as Pliny the Younger, exchanged with Emperor Trajan are a remarkable and valuable source of historical data for researchers studying the ancient world. Given the high positions of the two epistolers in the imperial administration, the reader of the letters faces a tremendous wealth of knowledge about the culture and methods of operations of the ancient Roman state at the outset of the 2nd century AD.[1] He or she can certainly learn and better understand the daily routines of the judiciary and the works of the law. The letters contain descriptions of various events, individual court cases, and debatable judiciary decisions; they also encourage reflection on the evolution of some legal institutions. One of such institutions is *sacramentum*.

In antiquity, this semantically broad term was found in various uses, e.g., in the sources of Roman law, both literary and legal, as well as in the early Christian literature, the authors of which were coining theological terminology intended for the doctrine of the new monotheistic religion. The term was also seen in the writings of Pliny the Younger. In Book X of his *Epistulae* (Letters), the word can be found in Letter 29, which addressed the question of the legal status of newly recruited soldiers, and in Letter 96, which described penal processes against Christians dwelling in Pontus and Bithynia.

The subject of this paper is certain aspects of the legal meaning of *sacramentum.* First, the etymology of the term is explained along with its use as a technical term for two legal institutions: action by wager and military oath. Next, the application of the concept by Pliny the Younger is outlined; the discussion closes with an explanation of the legal meaning of the term in the imperial legislation.

ETYMOLOGY

Already in prehistoric times, *sacramentum* had a clearly sacred and legal association. Etymologically, it was derived from the verb *sacrare*, which referred to the act of sacrificing something to a deity.[2] As a result of this sacrifice, certain

[1] The literature on the figure and letters of Pliny the Younger is vast. The newer one has been compiled, i.a., in A. Dębiński, M. Jońca, I. Leraczyk, A. Łuka, *Pliniusz Młodszy. Korespondencja z cesarzem Trajanem. Komentarz*, Lublin 2017, pp. 317–337; R.K. Gibson, *Man of High Empire: The Life of Pliny the Younger*, Oxford 2020, pp. 260–285. The Polish translation of the text of Book X of the correspondence can be found in A. Dębiński, M. Jońca, Izabela Leraczyk, A. Łuka, *Pliniusz Młodszy. Korespondencja z cesarzem Trajanem*. *Tekst i tłumaczenie*, Lublin 2017.

[2] On the etymology and meaning of the term, see A. Ernout, A. Meillet, *Dictionnaire étymologique de la langue latine. Histoire des mots*, vol. 2, Paris 1959, pp. 585–587. For more on the meaning and use of the term, see P. Hensels, *Die Bedeutung und Problematik des Wortes „sacramentum"*,

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items were leaving the sphere of human law (*ius humanum*) and were falling under the jurisdiction of divine law (*ius divinum*). Everything that was offered to deities became sacred and began to be regarded as divine. The *sacrum* so understood[3] was the opposition to the *profanum*, that is, what belonged to the secular sphere.

The verb *sacrare* and its related nominal *sacramentum* were closely related to the term *sacer* meaning-wise. In the sources of Roman law, it had a double meaning. In the period of the Roman Republic and the Principate, it was primarily used to denote sacred items dedicated and offered to the gods;[4] they were excluded from the domain of property law. However, the original meaning of the term was different. In archaic times the term *sacer* was interpreted as "cursed", "devoted to an underworld deity", "horrific". In early Roman penal law, the word *sacer* referred to a person who violated divine law (*fas*), and thus fell out of the favor of the gods (*pax deorum*). Such individuals were cursed using the legal and religious formula *Sacr esto!* ("Let them be condemned!"). Because of committing an offense against sanctity, a *homo sacer* was deprived of legal protection and permanently excluded from the civic, tribal, and family community.[5] They might be slain by anyone with impunity (*coscecratio*/*sacratio capits*), their life was to be a sacrifice and a form of expiation to the community for violating divine law. In early Roman law, when

"Archiv für Begriffsgeschichte" 2003, vol. 48, pp. 61–82. The legal interpretation of the term is, i.a., in A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, p. 688; E. Cuq, *Sacramentum*, [in:] C. Daremberg, E. Saglio, *Dictionnaire des antiquités grecques et romaines*, vol. IV-2, Paris 1873, pp. 951–955; A. Dębiński, *Sacramentum*, [in:] *Leksykon rzymskiego prawa karnego. Podstawowe pojęcia*, ed. M. Jońca, Warszawa 2022, pp. 243–244.

[3] The term *sacrum*, which is the plural of *sacra*, in the sources of Roman law referred to a ceremony involving a religious rite or the rite itself, e.g., *sacra familiaria* (religious rites of the family), *sacra gentilities* (religious rites of the gens), *sacra privata* (private religious rites), or *sacra publica* (public religious rites). For more, see A. Dębiński, *Cultus*, [in:] *Leksykon rzymskiego prawa karnego…*, pp. 86–87.

[4] The term *sacer*, one of the oldest certified words of the Latin language, was embedded in the names of many categories of things, among them *res sacrae* – items dedicated to the gods and therefore excluded from property law, such as temples, altars, burial sites, objects intended for religious worship recognized by the state. Festus used this term as the name of the road (*Sacra via*) on which Romulus and Tacius made their covenant, and the mountain (*sacer mons*) which the plebeians consecrated to Jupiter after leaving the city of Rome. During the imperial period, especially during the Late Roman Empire, *sacer* meant anything that concerned the emperor, e.g., imperial orders (*sacrae constitutiones*), the secret imperial council (*sacrum consistorium*), imperial cloakroom (*sacra vestis*), or the imperial treasure (*sacrae largitione*). Any violation of *sacrum* due to the emperor or his will was treated as a sacrilege (*sacrilegium*). See idem, *Sacrilegium w prawie rzymskim*, Lublin 1995, pp. 38–39, 113–118.

[5] *Homo sacer* as a term is studied and discussed extensively in the literatures of multiple disciplines, e.g., philology, theology, law, and philosophy. The concept was made popular in the contemporary philosophical and journalistic debate by G. Agamben (*Homo sacer. Suwerenna władza i nagie życie*, Kraków 2008); he translates the old Roman concept of *homo sacer* as "holy man" (*ibidem*, pp. 101–159).

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religious and penal laws were as one, the effects of a condemnation were legally binding, and the ritual murder was carried out by the community. The death sentence was regarded as a sacrifice to a deity. Later on, a penal process would be held in similar cases.

Various offenses were penalized using this formula. A patron who deceived his client was to be dedicated to the underground deity of Jupiter (*Jupiter Terminus*). According to a rule preserved in the Law of the Twelve Tables, a thief stealing crops at night must be executed by hanging in honour of Ceres. A son who raises his hand against his father must be sacrificed to the shadows of his ancestors. The plebeian oath of 493 BC and *lex Valeria Horatia* provided that the head of one who violated the inviolability of the tribune of the people was to be dedicated to Jupiter. Particular regulations, in which the sanction was outlawry, were known as "sanctified" or "cursed" laws (*leges sacratae*).[6]

In ancient Rome, although being of sacred origin, the term *sacramentum* had multiple legal uses. In the period of the Roman Republic and the Principate, it primarily denoted the so-called action by wager (deposit) and a military oath taken by new army conscripts.

SACRAMENTUM: ACTION BY WAGER

The first confirmed use of the term *sacramentum* in a legal sense is found in the Law of the Twelve Tables – the first consolidation of common law from the mid-5th century BC. The code uses the term *sacramentum* to mean an action by wager. It was employed in investigative proceedings, probably the oldest one in historical terms, known as *legis actio sacramento*.[7] When commenced in the first phase held before the magistrate (*in iure*), at *litis contestatio* each of the litigants deposited a wager (stake) in the temple, called *sacramentum*. Initially, in archaic times, it was not money; there is a view adopted in the literature that the items of

[6] See the list and analysis of individual texts in M. Jońca, *Parricidium w prawie rzymskim*, Lublin 2008, pp. 277–284; M.S. Popławski, *Bellum romanum. Sakralność wojny i prawa rzymskiego*, Lublin 2011, pp. 227–233.

[7] *Legis actio sacramento* was implemented in two variants: *legis actio sacramento in rem* and *legis actio sacramento in personam*. *Legis actio sacramento in rem* was an action for a thing or person. The plaintiff demanded them to be handed over to him on the grounds of his absolute right, e.g., ownership or power (*potassium*) exercised over children or slaves. On the other hand, *legis actio sacramento in personam* was used to pursue claims under obligatory relations (e.g., from perpetrators of a tort or from debtors who failed to perform under a valid contract); the aim of the process was to decide whether the defendant was liable, and whether he was a debtor. See G. 4.16–17. Cf. A. Dębiński *Rzymskie prawo prywatne. Kompendium*, Warszawa 2021, pp. 82–84; W. Litewski, *Rzymski proces cywilny*, Kraków 1988, pp. 9–19.

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sacramentum were animals (oxen and sheep).[8] They were deposited with the priests in a temple as a potential offering.[9] They were only "potential" offerings since the outcome of the process was yet unknown; the winning party was able to claim the animals back. The wager of the losing party was sacrificed to the gods as compensation for not telling the truth. Later, after the introduction of money as a means of exchange, the deposit was a certain amount of gold, which served as the early form of coins.[10] Like cattle before, the cash deposit was initially left in a temple.[11] Next, the requirement for litigants to make *sacramentum* before resolving their dispute was relaxed. The parties undertook before the magistrate that the party that loses, or its guarantors, would pay the agreed amount after the end of the process.

In the second phase of the process (*apud iudicem*), the judge, based on the evidence, decided whose *sacramentum* was fair (*iustum*) and whose was unfair (*iniustum*). A process where the dispute closed with the judge's decision on fairness or unfairness of *sacramentum* was risky for the parties. *Sacramentum* forfeited by the losing party, first to a temple and later to the state treasury, was a significant amount of money in ancient times. It depended on the value of the disputed item.

[8] Originally, the Roman state introduced subsistence economy. Until the 5th century BC, cattle (*pecus*) fulfilled the function of the means of exchange and a measure of value before money. The word *pecus* gave rise to the Latin word for money: *pecunia*. See A. Dębiński, J. Misztal-Konecka, M. Wójcik, *Prawo rzymskie publiczne*, Warszawa 2017, p. 142.

[9] Cf. E. Gintowt, *Rzymskie prawo prywatne w epoce postępowania legislacyjnego (od decemwiratu do lex Aebutia)*, Warszawa 2005, p. 12, footnote 10.

[10] In the mid-5th century BC, pieces of rough bronze (*aes rude*) were adopted as the early form of metal money of varying weight and free from any markings or images. They were inconvenient in commercial exchange because they required weighing during each transaction. The next stage in the development of the Roman currency was the use from 290 or 280 BC of *aes signatum*: large and heavy plates of cast bronze bearing different images and containing different metal content. Its introduction was linked to the establishment around 289 BC of a body composed of three officials in charge of financial affairs (*tresviri monetales aeri argento auro flando feriundo*) who supervised the mint. They produced *aes signatum*, which was a currency but not a coin: it had no number value and still had to be weighed. Later, the facility began to mint the "real" coin. In the second half of the 3rd century BC, bronze coins were round in form and had images on the obverse and reverse (*aes grave*); they were minted in several denominations from as (about 330 g) to ounce (1/12 of an as). Cf. A. Dębiński, J. Misztal-Konecka, M. Wójcik, *op. cit.*, pp. 142–144.

[11] Confirmation of this practice can be found, e.g., in Marcus Terentius Varro. In his work, *On the Latin Language*, he says: *Si est ea pecunia quae in iudicium venit in litibus, sacramentum a sacro; qui petebat et qui infitiabatur, de aliis rebus uterque quingenos aeris ad pontificem deponebant, de aliis rebus item certo alio legitimo numero actum; qui iudicio vicerat, suum sacramentum e sacro auferebat, victi ad aerarium redibat* (Varr. de ling. lat. 5.36.180; "If it is that money which comes into court in lawsuits, it is called *sacramentum* 'sacred deposit' from *sacrum* 'sacred'. The plaintiff and the defendant each deposited with the pontiff five hundred copper ases for some kinds of cases, and for other kinds, the trial was conducted likewise under a deposit of some other fixed amount specified by law. He who won the decision got back his deposit from the temple, but the loser's deposit passed into the state treasury").

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According to the Law of the Twelve Tables, as reported by Gaius, when the value of a disputed item exceeded 1,000 ases, *sacramentum* amounted to 500 ases; with the lower value of the item, it was 50 ases (the equivalent value of 5 sheep).[12]

The top limit of *sacramentum* was 1,000 ases. In disputes concerning the question of whether a person was a slave or a free person (*causae liberales*), *sacramentum* was always only 50 ases, even if the likely slave was worth more than 100 ases. According to Gaius, the point was that excessively high *sacramentum* should not discourage those who were ready to engage in a litigation in defence of someone else's freedom because the person concerned could not appear as a party in such a process.[13]

Along with the departure of the *legis actiones* system at the end of the Roman Republic, and with the parallel introduction of a new formulary procedure, the reasons for applying *sacramentum* as an action by wager were less and less legitimate. However, in the juridical sense, the term continued to be widely used, most notably in the Roman military.

SACRAMENTUM: A MILITARY OATH

Military oath (*sacramentum militare* or *militiae*) was an institution of Roman military law. It was taken by soldiers in pledging their loyalty to the commander or emperor; it contained a commitment to follow superiors' orders and not to abandon the ranks of the army.[14] It was also intended to strengthen combatants' solidarity and ensure effectiveness in combat. A special legal relationship was established between the Roman citizen taking the oath and his commander. It rendered the soldier a mere subordinate and the commander a right holder.[15]

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[12] G. 4.14: *Poena autem sacramenti aut quingenaria erat aut quinquagenaria. nam de rebus mille aeris plurisue quingentis assibus, de minoris uero quinquaginta assibus sacramento contendebatur; nam ita lege XII tabularum cautum errat*.

[13] G. 4.14*: …at si de libertate hominis controuersia erat, etiamsi pretiosissimus homo esset, tamen ut L assibus sacramento contenderetur, eadem lege cautum est fauore scilicet libertatis, ne o*n*erarentur adsertor*es. E. Gintowt (*op. cit.*, p. 12, footnote 11) does not rule out that the statement of Gaius on *favor libertatis* is "the projection of something that emerged later".

[14] Cf. G. Kuleczka, *Studia nad rzymskim wojskowym prawem karnym*, Poznań 1974, p. 49; M.S. Popławski, *op. cit.*, pp. 234–237.

[15] On the military oath as an element of a system motivating and strengthening the loyalty of the troops to the emperor and the state, see A. Holbrook, *Loyalty and the Sacramentum in the Roman Republican Army*, Ontario 2003, pp. 59–94; A. Różycki, *Soldier Loyalty in Late Antiquity and "Sacramentum Militare" in the Context of Selected Sources*, "Studia Historica Gedanensia" 2021, vol. 12, pp. 81–89. On the sacred aspect of the military oath, see more thoroughly S. Tondo, *Il "Sacramentum Militiae" nell'ambiente culturale romano-italico*, "Studia et Documenta Historiae et Iuris" 1963, vol. 29, pp. 1–123.

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In the wake of political changes in the Roman state, followed by modifications to the drafting procedure and organization of the Roman army, the manner and circumstances of swearing oaths also evolved.[16] During the Roman Republic, when all citizens were obliged to serve in the legions, *sacramentum* was tantamount to a legal act transforming a citizen (*civis*) and layperson (*paganus*) into a soldier (*miles*).[17] Consequently, the oath ceremony was about the acceptance of a citizen into the army and his submission to military discipline (*disciplina militaris*). After completing the recruitment procedure and dividing the new conscripts, *sacramentum rogare* followed, i.e., they swore the military oath. According to historical sources, the text of the oath was said by one person, and the other soldiers swore to obey it by repeating the words *idem in me!* one by one ("the same with me", "I swear the same", "let the same apply to me").[18] The act differed from the other type of oath under private law, namely *iusiurandum*.[19]

From a legal point of view, *sacramentum* was the most important moment of the conscription procedure (*dilectus*, *electio*). From then on, after saying the text of the oath, a citizen, previously subject only to the civil power of the magistrate, became a soldier falling under the powers of the magistrature before which he swore his *sacramentum*.

The personal subordination of the imperial soldier to the commander was not the only consequence of taking the oath; the swearing of the *sacramentum militare* was an act of accepting *sacratio*, which carried implications in the sphere of divine law (*fas*). In other words, any act contrary to the oath was qualified as *nefas* along with all its effects. The oath breaker became a *sacer*. As a result, he was outlawed, which meant that anyone was able to kill him with impunity. Those who did not keep their oaths earned divine wrath and lost their *caput*, i.e., legal personality but also literally their "head" (life).

[16] During the Roman Republic, the right to enter military service (*ius militiae*), which could have been exercised by every Roman citizen, was obligatory. More on the organization, reforms, and terms of recruitment to the army in particular periods of the development of the Roman state, kingdom, republic, Principate, and Dominate, see A. Dębiński, J. Misztal-Konecka, M. Wójcik, *op. cit.*, pp. 120–139 and the literature referred to therein, pp. 119–120; Liv. 22.38. About the *sacramentum militi* in the Roman Republic period, see S. Tondo, *op. cit.*, pp. 1–123.

[17] M.S. Popławski (*op. cit.*, p. 237) explains the significance of a military oath as follows: "A soldier, *miles*, there could only be one who took the oath, *sacramentum*: he who was not *sacramentum adactus* was not *miles*; he had no right to fight and kill enemies".

[18] See a compilation and analysis of relevant texts in *ibidem*, pp. 234–237.

[19] *Iusiurandum* in Roman law referred to an oath found in a variety of applications in various areas of law, primarily in a civil process. Cf. A. Berger, *op. cit.*, p. 688; M. Plezia, *Iusiurandum*, [in:] *Słownik łacińsko-polski*, vol. 3, Warszawa 2007, p. 289. It happened that the term *iusiurandum* was used interchangeably with *sacramentum* to denote an oath (cf. footnote 17). On the difference between *sacramentum* and *iusiurandum*, see also G. Kuleczka, *op. cit.*, p. 48.

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The new organization of the state by Octavian Augustus formally maintained the old republican principles concerning obligatory military service. Roman citizenship still imposed the duty and right to join the ranks of the army. In practice, however, the duty was only fulfilled in exceptional cases. The basic method of filling the ranks was the recruitment of volunteers; they were available in great numbers, especially in the provinces. As a result, from the beginning of the Principate, Rome had a standing professional army on duty, regardless of whether any imminent threat actually existed, with voluntary enlistment, regularly paid military salary, and supported veterans. Only in the event of emergencies, a forced call-up was carried out (*conscriptio*). By the power of his *imperium maius*, the emperor enjoyed the position of the commander-in-chief of the armed forces, and the soldiers swore the oath to him. During the oath, the combatants invoked the emperor's name (*in nomen principis*) and the protective spirit of the *princeps* (*Genius Imperatoris*).

To sum up, the archaic concept of Roman *sacramentum* took the form of a military oath in the Roman army. During the Roman Republic and the Early Roman Empire, it was sworn by conscripts before being assigned to a legion and beginning military service. One of the sources shedding some light on the scope of its use is the letters exchanged between Pliny the Younger and Emperor Trajan.

SACRAMENTUM IN THE LETTERS OF PLINY THE YOUNGER

In the letters of Pliny the Younger collected in Book X, the word *sacramentum* appears in the description of two different states of affairs. One of them concerns the status of recruits enlisted in the army.[20] The imperial governor, taking advantage of the opportunity to seek the emperor's advice in a doubtful matter, presented the following case:

[20] Pliny the Younger used this term relatively rarely. In his *Panegyricus*, the word *sacramentum* is not found at all. Cf. T. Janson, *A Concordance to the Latin Panegyrics: A Concordance to the XII Panegyrici Latini and to the Panegyrical Texts and Fragments of Symmachus, Ausonius, Merobaudes, Ennodius, Cassiodorus*, Hildesheim–New York 1979. He also used the term *iusiurandum* to refer to a military oath, as shown in his letter to Trajan: *Diem, domine, quo servasti imperium, dum suscipis, quanta mereris laetitia, celebravimus precati deos, ut te generi humano, cuius tutela et securitas saluti tuae innisa est, incolumem florentemque praestarent. Praeivimus et commilitonibus ius iurandum more sollemni, eadem provincialibus certatim pietate iurantibus* (Ep. X.52; "We have celebrated with appropriate rejoicing, Sir, the day of your accession whereby you preserved the Empire; and have offered prayers to the gods to keep you in health and prosperity on behalf of the human race, whose security and happiness depends on your safety. We have also administered the oath of allegiance to the troops in the usual form, and found the provincials eager to take it, too, as a proof of their loyalty"). When reporting the solemnities in honour of the emperor, the governor used the term *iusiurandum* to refer to the rather ceremonial oath renewed by soldiers periodically during the period of the Roman Empire – either on 1 January (*Kalendis Ianuariis*) or on the anniversary of the emperor's coming to the throne (*Natali Caesaris*).

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Ep. X.29: *Sempronius Caelianus, egregius iuvenis, repertos inter tirones duos servos misit ad me; quorum ego supplicium distuli, ut te conditorem disciplinae militaris firmatoremque consulerem de modo poenae. Ipse enim dubito ob. hoc maxime, quod, ut iam dixerant sacramento, ita nondum distributi in numeros erant. Quid ergo debeam sequi, rogo, domine, scribas, praesertim cum pertineat ad exemplum*.[21]

Thus, as follows from with the content of the letter sent to the emperor, one of the commanders responsible for recruitment to the army in the territories governed by Pliny identified two slaves among the newly conscripted men.[22] According to the rules of Roman law, slaves did not have any civil rights, and therefore, were not able to join the army. Ancient legal sources devote much attention to this matter. The jurist Marcianus expressed it the most succinctly: "Slaves are forbidden all military service; otherwise, they suffer capital punishment".[23] Menenius explained the problem in a similar way: "He who enters the service while not being allowed to do so commits a serious crime; the gravity of the crime, as with other crimes, depends on the status of the perpetrator and the type of service".[24] The prohibition of military service was also extended to those with an uncertain status. Ulpian puts it as follows: "Those whose condition is in dispute, although, in fact, they may be free, should not enlist during the time that their status is undetermined, and especially during the trial of the case; whether an attempt is being made to reduce them to slavery from freedom, or vice versa. Nor can those who are freeborn and who are serving in good faith as slaves, nor persons who have been ransomed from the enemy, before they have paid the amount of their ransom, enlist in the army".[25] The law imposed similar limitations on freedmen as well. "A slave who is obliged

[21] "Pliny to Emperor Trajan. Sempronius Caelianus, who is an excellent young man, has discovered two slaves among his recruits and has sent them to me. I have postponed judgment on them until I could ask your advice on what would be a suitable sentence, knowing that you are the founder and upholder of military discipline. My chief reason for hesitating is the fact that the men had already taken the oath of allegiance but had not yet been enrolled in a unit. I therefore pray you, Sir, to tell me what course to follow, especially as the decision is likely to provide a precedent".

[22] On the criteria for joining military service in Rome, including the legal status of recruits, see I.A. Łuć, *Boni et Mali Milites Romani. Relacje między żołnierzami wojsk rzymskich w okresie wczesnego cesarstwa*, Kraków 2019, pp. 37–52. The literature on the legal situation of slaves in ancient Rome is vast. The newer one has been compiled, i.a., in B. Sitek, *Servus publicus and servus privatus in Ancient Rome: Legal Status and Social Status*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), pp. 253–255.

[23] D. 49.16.11: *Ab omni militia servi prohibentur: alioquin capite puniuntur*.

[24] D. 49.16.2.1: *Dare se militem, cui non licet, grave crimen habetur: et augetur, ut in ceteris delictis, dignitate gradu specie militiae*.

[25] D. 49.16.8: *Qui status controversiam patiuntur, licet re vera liberi sunt, non debent per id tempus nomen militiae dare, maxime lite ordinata, sive ex libertate in servitutem sive contra petantur. Nec hi quidem, qui ingenui bona fide serviunt: sed nec qui ab hostibus redempti sunt, priusquam se luant*.

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to render services to his patron cannot, without injury to the latter, enlist in the army", says Ulpian.[26]

Pliny the Younger must have been aware of the consequences of identifying the two men as slaves; most probably, he was also aware of what punishment was envisaged for such a crime. After all, he was an experienced imperial official, and he was cognizant of the law and how it should be applied. Before he took the office of governor of Bithynia, he had performed a number of important and prominent state functions, both as praetor and consul. Still, in exercising his right to consult doubtful and complicated matters with the emperor himself, the procedure known as *ius referendi* in the literature, he sought the emperor's advice on what punishment should be administered in this particular case.

The governor of Pontus and Bithynia did not condemn the slaves, which was within his power.[27] Probably, he attached attention to the fact that they had sworn their military oaths. As he reported in detail to the emperor, the slaves had taken the oath (*iam dixerant sacramento*) but had not yet been assigned to specific units. It is very likely that their swearing-in could be a mitigating circumstance for Pliny the Younger. The emperor's reply was brief and unequivocal; completely ignoring the fact of *sacramentum*, he ordered that the recruits (slaves) be put to death.[28]

The word *sacramentum* is used completely differently in Pliny's Letter 96 to Emperor Trajan. It addressed measures against the followers of a new monotheistic

[26] D. 38.1.43: *Operis obligatus militiae nomen non sine iniuria patroni dabit*.

[27] As an imperial official appointed province governor, he wielded considerable powers. He was endowed with *imperium*, i.e., an entitlement that covered, next to the military command (*imperium militiae*) and a broad civil and administrative authority (including the right to issue edicts – *ius edicendi*), the administration of justice. That latter attribute of *imperium* conferred powers known as *coërcere* and *animadvertere*, i.e., a competence in penal matters. *Coërcere* was a procedure of applying coercive or repressive measures (as opposed to punishment imposed in a penal process), e.g., imprisonment. On the other hand, *animadvertere* was generally any kind of punishment, but most often capital punishment (*animadvertere capitalis*).

[28] *Traianus Plinio. Secundum mandata mea fecit Sempronius Caelianus mittendo ad te eos, de quibus cognosci oportebit, an capitale supplicium meruisse videantur. Refert autem, voluntarii se obtulerint an lecti sint vel etiam vicarii dati. Lecti si sunt, inquisitio peccavit; si vicarii dati, penes eos culpa est, qui dederunt; si ipsi, cum haberent condicionis suae conscientiam, venerunt, animadvertendum in illos erit. Neque enim multum interest, quod nondum per numeros distributi sunt. Ille enim dies, quo primum probati sunt, veritatem ab iis originis suae exegit* (Ep. X.30; "Sempronius Caelianus was carrying out my instructions in sending you the slaves. Whether they deserve capital punishment will need investigation; it is important to know if they were volunteers or conscripts, or possibly offered as substitutes. If they are conscripts, then the blame falls on the recruiting officer; if substitutes, then those who offered them as such are guilty; but if they volunteered for service, well aware of their status, then they will have to be executed. The fact that they were not yet enrolled in a legion is immaterial, for the truth about their origin should have come out on the actual day they were accepted for the army").

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religion.[29] The basis for instituting penal proceedings was accusations of a religious nature, i.e., being a member of the Christian community. The new religion, whose followers refused to participate the official imperial worship, was regarded by the Romans as *superstitio* (superstition),[30] which posed a threat to the state. The governor, in accordance with his powers, followed ordinary penal proceedings in this case (*cognito extra ordinem*).[31] He harboured certain doubts, whether real or illusory is not known. Hence, he wrote a letter to the ruler asking for guidance. The fragment of particular interest for this discussion reads as follows:

Ep. X.96: *Adfirmabant autem hanc fuisse summam vel culpae suae vel erroris, quod essent soliti stato die ante lucem convenire, carmenque Christo quasi deo dicere secum invicem seque sacramento non in scelus aliquod obstringere, sed ne furta, ne latrocinia, ne adulteria committerent, ne fidem fallerent, ne depositum adpellati abnegarent*.[32]

The governor of Pontus and Bithynia attended to the Christian case out of concern for public order in the province under his administration. From this perspective, he reported to his emperor what measures he had instituted against the "new

[29] Letter 96 containing Pliny the Younger's account and Trajan's reply in the form of a rescript (*rescriptum*) are the most important non-Christian sources of knowledge on penal processes involving the Christian community in the 2nd century AD. Both documents have been studied extensively. The fundamental works offering a thorough analysis of the subject of Christians in Pliny's correspondence include: R. Freudenberger, *Das Verhalten der romischen Behorden gegen die Christen im 2. Jahrhundert dargestellt am Brief des Plinius an Trajan und den Reskripten Trajans und Hadrians*, München 1969; A.N. Sherwin-White, *The Letters of Pliny: A Historical and Social Commentary*, Oxford 1966.

[30] In ancient Rome, much attention was paid to the separation of official and state-endorsed cults (*religio*) from new and unacknowledged religions and beliefs treated as superstitions (*superstitio*). All *superstitiones* were regarded and prosecuted as being against the state. The Roman elite was also concerned about the fact that new cults and beliefs would most often be imported from outside Rome, which earned them the name of "external superstitions" (*superstitiones externae*). In texts on Christianity, the disparaging term *superstitio* appeared frequently. Tacitus referred to Christianity as "a deadly superstition" (Tac. *ann*. 15.44: *exitiabilis superstitio*), and Suetonius as "a new and pernicious superstition" (Suet *Ner*. 16: *superstitio nova et malefica*).

[31] On the subject of penal processes against Christians in the letters of Pliny the Younger, see M.H. Dyjakowska, *Procesy chrześcijan w świetle korespondencji Pliniusza Młodszego*, [in:] *Cuius regio, eius religio?*, eds. G. Górski, L. Ćwikła, M. Lipska, Lublin 2006, pp. 25–40; M. Jońca, *In iis qui ad me tamquam christiani deferebantur, hunc sum secutus modum. Środki dowodowe zastosowane w procesie chrześcijan pontyjskich w relacji Pliniusza Młodszego (Ep. 10.96)*, "Zeszyty Prawnicze UKSW" 2005, vol. 5(2), pp. 99–115.

[32] "They also declared that the sum total of their guilt or error amounted to no more than this: they had met regularly before dawn on a fixed day to chant verses alternately amongst themselves in honour of Christ as if to a god, and also to bind themselves by oath, not for any criminal purpose, but to abstain from theft, robbery, and adultery, to commit no breach of trust and not to deny a deposit when called upon to restore it. After this ceremony, it had been their custom to disperse and reassemble later to take food of an ordinary, harmless kind".

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superstition". However, he had some knowledge of Christian habits and customs.[33] So, he wrote that the Christians of Pontus and Bithynia would gather before dawn on a certain day (*stato die*), which was most likely Sunday. As he recorded, they worshipped Christ as God (literally, they sang songs in honour of Christ as God). Moreover, they were bound by an oath referred to in the text as *sacramentum*. Importantly, however, the oath was not intended, as Pliny reported, for criminal purposes, but it was an undertaking not to steal, rob, commit adultery, breach trust, or oppose those who demanded the return of entrusted property (deposits).[34] In the next sentence, Pliny added an interesting fact concerning the behaviour of the community persecuted by the imperial authorities. He observed that, after all their rites, the Christians would disperse but soon re-assembled to consume, as he put it, an ordinary (*promiscuum*) and harmless (*innoxius*) meal.[35]

Thus, Pliny obviously did not use the term *sacramentum* to refer to an action by wager. Indeed, he employed it to refer to a military oath. The cited fragment of Letter 96 justifies a conclusion that the governor of Pontus and Bithynia also applied it, which was a novelty, to describe the behaviour of Christians who gathered to engage in the rites of their religion. In other words, the letter is one of the first sources to introduce a new meaning of the notion of *sacramentum*. Hence the question of whether the use of this noun in this sense is to be found in later legal sources.

SACRAMENTUM IN THE LAWS OF THE LATE ROMAN EMPIRE

In the period of the Late Roman Empire, the notion of *sacramentum* as a legal concept was not stripped of its religious sense. However, although related to *sacramentum* semantically, the term *sacrum* was understood differently.[36] First, it was linked to the emperor. During the Dominate period of the empire, the rulers held all power in their hands. They represented the state outside; they decided to declare war and establish peace. They exercised legislative and administrative powers, as well as supervised the judiciary. They issued constitutions called *leges* as the only

[33] R.K. Gibson (*op. cit.*, p. 216) notes that before Pliny the Younger came to Pontus, the Gospel had already been there for ten years, the Acts of the Apostles were over thirty years old, and the Epistles of Paul had been circulating for more than half a century. However, how much of this literature, if any, actually reached Pliny is unknown, as Gibson concludes.

[34] Christians were accused of various offences: ritual murder, poisoning, forgery of testaments, promiscuity, the practice of magic, and degenerate worship practices (cf. Min Fel *Oct*. 9). Tacitus justified the great persecution of Christians initiated by Nero with the supposed Christians' hatred of all mankind. The historian also writes that they were hated because of perpetrated offences (Tac. *ann*. 15.44: *per flagitia invisos*).

[35] Ep. X.67. *Quibus peractis morem sibi discedendi fuisse rursusque coeundi ad capiendum cibum, promiscuum tamen et innoxium*.

[36] Cf. footnote 4.

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sources of law.[37] The law made by the emperor applied to all his subjects in the empire, yet the ruler himself did not have to obey it, as follows from the principle, *Princeps legibus solutus est* ("The emperor is not bound by the laws").[38] Everything related to the emperor or his family was sanctified; consequently, disobedience to the ruler was, in fact, an offense against religious laws. The absolute power of the emperor was also mirrored in the court ceremonials; altars with the emperor's effigy were to be erected all over the place. After the recognition of the Christian religion by the Roman state, the successors of Constantine the Great relied on the doctrine and concepts of the new monotheistic religion to emphasize the divine origin of their power.

Since the emperor embodied divine attributes, service in his army was treated as sacred. This is seen in the text of the military oath of enlistment. The imperial constitutions referred to it as *sacramentum*.[39] Its content was modified; references to pagan deities were removed and replaced by invocations to the Holy Trinity and the emperor, regarded as God's steward on earth.[40]

Throughout that period, the application of the term *sacramentum* was made broader – it began to be used to denote religious worship.[41] An example of this new legislative practice was the early 5th-century constitution issued by Honorius and Theodosius. Its first sentence read: *Donatistarum haereticorum iudaeorum nova adque inusitata detexit audacia, quod catholicae fidei velint sacramenta turbare*.[42]

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[37] The importance of imperial laws was best illustrated in the principle laid down for the first time during the reign of Emperor Caracalla and later established by the Severan dynasty: "That which has pleased the emperor has the force of law" (*Quod principi placuit legis habet vigorem*; D. 1.4.1 [Ulpianus]).

[38] D. 1.3.31 (Ulpianus).

[39] Cf. for example the content of C. J.10.55: *De his qui non impletis stipendiis sacramento soluti sunt*.

[40] See the list and analysis of oaths from the period of the Late Roman Empire in Ł. Różycki, *Sacramentum militare w świetle wybranych źródeł późnorzymskich*, [in:] *Przysięga wojskowa – idea i praktyka. Z dziejów wojskowości polskiej i powszechnej*, ed. A. Niewiński, Oświęcim 2016, pp. 6–15.

[41] In the Christian doctrine, the Latin term *sacramentum* (mystery, sanctification, obligation), translated into Polish as *sakrament*, is one of the fundamental theological concepts. The literature on its etymology and the history of how the term was interpreted is vast. Cf. G. Barth, *Sakrament*, [in:] *Encyklopedia katolicka*, ed. E. Gigilewicz [et al.], vol. 17, Lublin 2012, col. 892–894 and the literature referred to therein.

[42] C.Th. 16.5.44. The rites of the Jewish religion were also identified with the term *sacramentum*: *Iudaei sint obstricti caerimoniis suis: nos interea in conservandis eorum privilegiis veteres imitemur, quorum sanctionibus definitum est, ut privilegia his, qui illustrium patriarcharum dicioni subiecti sunt, archisynagogis patriarchisque ac presbyteris ceterisque, qui in eius religionis sacramento versantur, nutu nostri numinis perseverent ea, quae venerandae christianae legis primis clericis sanctimonia deferuntur* (C.Th. 16.8.13).

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The cited constitution was among a large group of penal and administrative laws governing religious affairs in the Roman Empire.[43] In this piece, heretics and the followers of Judaism were described as those who "wanted to prevent the administration of the sacraments [i.e., rites] of the Catholic faith". Similar wording can be found in the anti-Donation law of Constantine and Constantius of the second half of the 4th century, which referred to Christians as those who received the sacraments.[44]

All in all, Christian rulers adopted the term *sacramentum*, without defining it as a concept, to describe the rites of the Christian religion. This approach is an example of a broader tendency to embed the terminology developed by Christianity in laws on religious matters. Moreover, the use of the term *sacramentum* to represent the rites of a new monotheistic religion and its use by Pliny the Younger in a similar sense should be considered an interesting coincidence. Based on a completely different doctrinal background, Pliny described the unknown behaviour and rites of the Christians of Bithynia with the same term.

CONCLUSIONS

The Latin term *sacramentum* lends itself to a broad semantic interpretation and carries religious and legal connotations; it derives from the verb *sacrare*, which means "to offer or sacrifice somebody or something to a deity". The noun *sacramentum* has a semantic link with the word *sacer*, which in the sources of Roman law is understood as "sanctified" but also "cursed". In the juridical sense, *sacramentum* meant an action by wager (deposit) known from the civil proceedings of *legis actio sacramento*. It received yet another meaning for the purposes of military discipline – it was a name of a military oath. Pliny the Younger used the word in the latter meaning when seeking the emperor's advice on the case of two recruits (Letter 29) who concealed the fact of being slaves. The governor of Pontus and Bithynia also employed the term *sacramentum* in his description of Christian religious practices (Letter 96). This use was confirmed and established in the Late Roman Empire when imperial laws adopted the Christian understanding of *sacramentum* to refer to the rites of the Christian religion.

[43] For more, see A. Dębiński, *Polityka ustawodawcza cesarzy chrześcijańskich w sprawach religijnych*, Lublin 2020, pp. 33–23.

[44] C.Th. 16.6.2 pr.

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ABSTRAKT

Artykuł jest tekstem o charakterze naukowo-badawczym. Temat badań dotyczy korespondencji Pliniusza Młodszego z cesarzem Trajanem, a przedmiotem wywodu są niektóre aspekty prawnego znaczenia *sacramentum*. W celu kompleksowego przedstawienia podjętego zagadnienia została wyjaśniona etymologia terminu, a następnie *sacramentum* zostało przedstawione jako *terminius technicus* na oznaczenie zakładu procesowego i przysięgi żołnierskiej. Omówiono też wykorzystanie pojęcia w korespondencji Pliniusza Młodszego i ustawodawstwie późnego cesarstwa. W konkluzji badań stwierdzono, że łaciński termin *sacramentum* ma nie tylko religijną, lecz także prawną konotację. W sensie jurydycznym termin ten bowiem oznaczał zakład procesowy, stosowany w postępowaniu cywilnym *legis actio sacramento*. Inne znaczenie otrzymał w ramach dyscypliny wojskowej – stanowił nazwę przysięgi wojskowej. Wnioski te mają wartość poznawczą dla nauki i przesądzają zarazem o oryginalności badań. Ich zasięg – ze względu na to, że prawo rzymskie jest dyscypliną eksplorowaną na płaszczyźnie globalnej – jest międzynarodowy.

Słowa kluczowe: Pliniusz Młodszy; prawo rzymskie; *sacramentum*; *sacramentum militaris*; starożytny Rzym