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«Vulgo dicitur»: vulgarisms in legal Latin

Abstract: This paper is a contribution to the theory and history of the notion of "vulgarism". Starting from a critical reflection on the concepts of *Volkssprache*, *Umgangssprache*, *Vulgärsprache*, *gesprochene Sprache,* and the analysis of the semantic values of the lexical family of *vulgus* in grammatical, rhetorical and literary sources, it focuses on the function of the expression *vulgō dicitur* in legal texts, especially Gaius' Institutes, the Theodosian Code and the Justinian corpus. This expression introduces words or sentences that belong to different social and cultural domains of Latin but all pertain to common and general use. This seems to reflect the influence of the rhetorical principles of clarity (*luciditas*) and propriety (*proprietas*) of expression on both the ideology and practice of legal language. Such principles had profoundly moulded the classical ideals of composition and in the legal context (especially in Justinian's corpus) became enriched by the crucial requirements of a successful public communication of the Empire which needed to reach the whole of the population within the Roman orbit with all its cultural and juridical diversity. The paper concludes by posing the problem of understanding the correspondence between the ideology unveiled by the expression *vulgō dicitur* and the effective use of the linguistic units of various rank it introduces. It is suggested that the meaning and function of the expression may have changed over time and that this could betray the deeper fragmentation of Latin that paved the way to the Romance *volgari*.

Keywords: administrative and bureaucratic communication of the Roman Empire; *Claritas* (of expression); common generality of usage; *Consuetudo*; *Consuetudo communis*; *gesprochene Sprache*; everyday language; grammatical and rhetorical treaties; influence on the legal language; Latin-Greek bilingualism; Latin technical languages; legal language; *Plebs* (meaning of); *Populus* (meaning of); *Proprietas* (of expression); theory of the three styles; *Umgangssprache*; *Volgus* (*vulgus*) (meaning of); *Volkssprache*; vulgarisms; *Vulgärsprache*; *Vulgo dicitur*.

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1 Preliminary remarks on the study of legal Latin

In 1911 Einar Löfstedt, perhaps the most authoritative scholar of transformations in Latin that anticipated the development of Romance languages, wrote in his *Philologischer Kommentar zur Peregrinatio Aetheriae*: "Ein ungenügend erforschtes Gebiet ist ferner meines Erachtens das Juristenlatein, insofern es nämlich gilt, nicht nur die vorhandene sprachlichen Tatsachen zu registrieren, sondern sie im Zusammenhang mit der übrigen Latinität zu beurteilen."[1] A century on, Löfstedt's views and the program of research implicit in them are by no means outdated. Above all, what is of present interest in my view is his presentation of the correspondences between legal and popular language (*volkstümliche*). Löfstedt rejected offhand any idea of the former influencing the latter and, though aware that he was limiting himself to asking a significant question without being able to deal with or answer it at the time, he outlined a few considerations on which to reflect. The first of these related to the conservative character of legal Latin which, like other legal languages, contained many archaisms though "hinter dem Archaischen steckt . . . nicht selten das Volkstümliche."[2] The second related to the possible coincidence, in different ages, of certain conceptual organizations of legal Latin and popular Latin, in relation to crucial psychological and communicative aspects: simplicity, clarity, a tendency to pleonasm. Löfstedt thought, however, that such coincidences and parallels existed while the two varieties, especially the vernacular, substantially retained their independence.[3] In his view the tendency towards simple and clear expressions is intrinsic both to *Volkssprache* and to legal language, whose fundamental aspect he considers to be the language of laws. As regards the latter, in particular, the explanation offered is that from its very beginnings it had to be as clear as possible in order to be understood by everyone. But everyday language was not influenced by legal language. The contrary might be hypothesized, in the sense that "der juristische Stil ausser durch andere wichtige Faktoren auch durch die vom Gesamtinteresse des Volks gebotene und mit der Volkssprache übereinstimmende Einfachheit und Deutlichkeit stark beeinflusst ist." Also, "die Wurzeln der Erscheinungen erweisen sich also bei näherer Betrachtung als sehr eng mit einander verflochten;

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1 Löfstedt (1911: 17).

2 Löfstedt (1911: 17).

3 Löfstedt (1911: 17). Löfstedt is even more explicit with regard to the discussion of certain phenomena occurring in both legal and vernacular Latin, such as the "correlative" structures (for example: *eo nomine . . . quonomine*), exemplified in the legal variety by Gai 4.97.

sie gehen beiderseits tief, am tiefsten aber, wenn man durchaus einen vergleich machen will, die volkstümlichen."[4]

There are two reasons why these views of Löfstedt's should be interesting. The interest lies (a) in having called attention to the need to compare the structures of legal Latin with those of the whole diachrony of Latin; (b) in his underlining of the relationship between legal Latin and *Volkssprache*. Compared with the beginning of the 20th century, however, research developments in the areas of linguistics and juridical sciences have sensibly changed the overall framework in which Löfstedt's work can be examined. Dialectology and sociolinguistic studies have totally changed ways of thinking about the fundamental topics of variation and change in languages, enriching empirical research and refining theoretical thinking. In particular, the inventory of traditional concepts (*Volkssprache*, *Umgangssprache*, *Vulgärsprache*, to mention only the best known) by which analysis and interpretation have been conducted are open to criticism. Yet another key concept, that of 'spoken language' (*gesprochene Sprache*), which has been dealt with by linguistics since the late decades of the 19th century, has taken on a substance and structure quite different from the past. Today's typology of spoken language registers is more critical and articulated and we have a greater awareness of the difficulties and limitations of their definition. We also now know that a net contrast between spoken and written registers is impossible, not only in the modern synchronic analysis of languages which have a long tradition of writing, but above all in the diachronic transformations that they have undergone. What is more, our knowledge of the regional diversifications of Latin and the methods adopted for these studies have been significantly redefined. If we should synthesize the contributions of modern linguistic research in its ramifications most relevant to Löfstedt's suggested investigation, it could be maintained that they have laid down the premises for a more intricate, complex, and problematic picture of the aspects to be explored.

Löfstedt held that Kalb's work on legal Latin had an insufficient theoretical and methodological basis due to the brevity and circularity of the criteria on which were based the conclusions he reached regarding the characteristics of the Latin used by individual jurists.[5] His criticism hit the nail on the head, but his examples of phenomena shared by legal language and *Volkssprache* (parataxis, correlative structures, parallelisms, dislocations) might not be considered pertinent. They are, in fact, structures which cannot easily be used for diagnostic

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4 Löfstedt (1911: 84).

5 See Kalb (1888 and 1890). For modern research on legal Latin, see Pascucci (1968); Nelson (1975); De Meo (1983: 67–131); Calboli (1994a, 1994b: 35–37, 1995); Poccetti (1994).

purposes in that they are panchronic phenomena relating to both written and spoken registers of many languages.

A further problem is the great variety of typologies of legal Latin: the fixity of the language of the *Lex* of the Twelve Tables is one thing, while the "everyday language" character of the texts of jurisconsults, the edicts, the rescripts of the Imperial Age is another. One other question is the language of legal practice, which in the course of many centuries, unlike most other historical texts, approaches the multiform linguistic dynamics of a developing society. A long stretch of time distances these objectifications and there are great differences in intentions and aims that inform them.[6]

2 *Volkssprache*, *Umgangssprache*, *Vulgärsprache*, *gesprochene Sprache*

The term *Volkssprache*, which was used by Löfstedt and other scholars, and the concepts that lay behind it are anything but absolute and indisputable. On the contrary, they are closely connected, also ideologically, to the history of linguistic thought and the wider realm of philosophy. It is probably safe to say that both terminology and notions are part of a constellation of concepts which in the second half of the 19th century and the first half of the twentieth were used to give form to the vast and complex area of linguistic usages which differed diatopically (in space), diastratically (in social strata) and diaphasically (in speakers' different stylistic levels). Within this constellation there are other terms and concepts which constitute a kind of rival to *Volkssprache*, that is *Umgangssprache*, *Vülgarsprache* and the more recent *gesprochene Sprache*. None of these are neutral as regards the conceptual implications they carry. What is more, each of them poses problems of a theoretical and/or historical-cultural nature.

While the term *Volkssprache* suggests the romantic concept of *Volk*, so hypostatizing it (and in fact it was part of a broad way of thinking typical of the linguistics of the Romantic Age), *Umgangssprache* implies that there are characteristics of the language used daily for social interaction which distinguish it from the more artificial language of literature (especially poetry), and therefore makes reference to both function (communicative) and stylistic register (informal as

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6 I have tried to present a more systematic examination of the notion of "vulgarism" in legal Latin in Sornicola (2013).

against formal).[7] In the linguistics of recent decades the term *Vulgärsprache* has usually been used to refer to socio-cultural differences, that is to the language of a "volgus," the language of the uneducated, while the term *gesprochene Sprache*, which in modern studies is used to denote an area of research, often refers to a simplistic contrast to the written language. Apart from the various theoretical, and even ideological, implications of a historical nature, these terms pose problems because of their conceptual vagueness, which is perhaps inevitable, and because of the extent to which they overlap. We have already seen the double sense of *Umgangssprache* with regard to communicative function and the stylistic register of informality. But does the concept of "colloquialism," as an expression used for communicative purposes, not intersect with the notion associated with two terms used in contemporary research, respectively in English and German, *Everyday language / Alltag Sprache*? And does the undifferentiated and unitary concept of "people" not end up by being too close to that of the many speakers of *Vulgärsprache*, which is more or less associated with characteristics of the level of education of its speakers?

Basically, we might say that all the terms mentioned, especially because of their vagueness and conceptual overlapping, are in contrast with the language of literature, which is consciously constructed and the outcome of reflection; as such, they are used for ordinary (everyday) communication by large social strata as compared to the more restricted literary *milieux*. It is therefore useful, given the analysis we are about to undertake, to attempt a critical distancing from the diverse interpretations. In particular, in relation to the terms "vulgarism" and "vulgar language," we must bear in mind their meaning differences at different times in the past in an attempt to understand them in the different contexts in which they have been used.

Before beginning our inquiry into the meaning of the term *volgus* (*vulgus*) and its implications for the study of vulgarism, it should be noted that there are parallels, they themselves worth detailed historiographic analysis, between the development of the concept "vulgar Latin" and "vulgar law." The two notions, of course, have been discussed over a period of many decades in the fields of historical linguistics and Roman and medieval law, but we are left with numerous points of controversy and unsolved issues. Many of these unresolved questions are of great interest, and they relate to both of the disciplines, but in the end they lead to the same overall question: the relationship between internal and external factors

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7　See for example Hofmann (1951). For a discussion of the concept of *Umgangssprache* compared with *Vulgärssprache* in German thinking of the second half of the 19th century and the early 20th century, see the introduction of Ricottilli to the Italian translation of Hofmann (1951).

in the development of vulgarisms.[8] This problem can be tackled in several differ-
ent ways. A first question to ask is whether the vulgarisms are due to independent
evolution of the system (linguistic or legal) or whether they were determined, or
perhaps favored, by contact with another system. A second question concerns
the relationship between changes of mentality and culture that were accelerated
in the Imperial Age, and especially post-Constantine, and the disintegration of
classical linguistic traditions and ways of thinking. How strong was the influence
of the trend to simplification and fossilization into clichés, which can be seen as
much in the language as in the forms of knowledge and conceptual representa-
tion of the larger social strata that came to belong to or gravitate around the vast
Roman Empire? Finally, we might also ask about the role of writing experts in the
presence of vulgarisms in the documentation we have. In a world that must have
counted a mass of illiterates, scribes, *notarii, tabelliones* and administrative offi-
cials of various orders acted as the mediators between written and oral cultures,
between systems of knowledge developed by the social and intellectual élites,
having an internal organization and transmitted through institutional channels,
and the forms of life and wisdom of the ordinary people which were less devel-
oped and less codified. The history of these professionals and the changes that
occurred in their training and recruitment (think of the reforms in the Empire's
bureaucratic machinery, the selection of administrative personnel in relation to
the differences in cultural contexts in the Roman provinces) are also part of the
linguistic and cultural changes we refer to under the label "vulgarisms."

These questions by no means exhaust the vast range of issues, neither can
they be dealt with directly in this paper. They might, however, form a useful back-
ground to our thinking while we make the observations that follow.

3 The *volgus* lexical family

In classical Latin, the lexical family of *volgus* (*vulgus*), with its derivatives (the
adjective *vulgaris*, the verb *vulgare*, and the adverbs *volgō/vulgō*, *vulgariter*) have
a range of semantic values that do not perfectly coincide with their modern equiv-
alents. Their history, which involves European languages in general as well as
Romance languages, would deserve a detailed analysis that the present paper will
not permit. However, between the Middle Ages and modern times, the lexemes
under examination show an interesting polysemy: the meanings of classical Latin

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8 A lucid presentation of these problems in the history of Roman Law is given by Levy (1951:
5–14). See Sornicola (2013) for further references.

have not altogether disappeared (the periodization is interesting in itself), but the old adjectival element *vulgaris* has acquired central importance from Latin on: in its function as a noun it came to denote the languages that descended from Latin and were used by the majority of people, and subsequently any vernacular language. Its conceptualization as developed in Italy was decisive.[9] It was Dante in fact who developed a theory of the relationship between Latin and "vulgar" languages; this has characteristics which are very specific compared with other cultural contexts of medieval Europe and which, either directly or mediated by Humanism and the Renaissance, have left a profound terminological and conceptual mark on European languages.[10]

But the modern meanings of this lexical family do not coincide with those of classical Latin. The real nucleus of the semantic values of the noun *volgus*[11] is the concept of 'whole and indefinite universe of persons' and the contiguous 'multitude, crowd', which makes it synonymous with *turba*.[12] What is more problematical is its synonymous relationship with *populus* and *plebs*, which is suggested by certain lexicographical sources.[13] These latter terms are semantically very different from the historical-cultural point of view. It is quite appropriate here to recall their strong social and juridical connotation, absent in *volgus*, which might therefore be considered an unmarked term. I shall limit myself to mentioning some sources which deal with the difference explicitly. Commenting on Scipio Africanus' statement «Est igitur . . . res publica res populi» (Cicero, *de rep*. 1.25.39) observes: «*populus* autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus». It is also to be remembered that *populus* appears in the famous expression *senatus populusque romanus* as a distinct but constituent part of state organization. On the other hand, *populus* differs from *plebs* in that the latter refers specifically to a social class (the mob) as distinct from the patricians,[14] and it has the sense

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9 For the influence on the Gallo-Romance area, see FEW 14, 642 ss., s.v. *vulgaris*; for the Spanish Corominas-Pascual 10, 846, s.v. *vulgo*.

10 For English see OED 20, s.v. *vulgar* (language), (to) *vulgate*.

11 These values are defined in dictionaries as 'die grosse Menge, die Leute, das Publikum, der gemein Mann' (Georges, s.v.), 'the great mass, the multitude, the people, public' (Lewis-Short, s.v.).

12 See LTL 4, 1043a.

13 See LTL 4, 1043a.

14 See Gai 1.3: «*Plebs* autem a populo eo distat, quod 'populi' appellatione universi cives significantur, connumeratis et patriciis, 'plebis' autem appellatione sine patriciis ceteri cives significantur; unde olim patricii dicebant plebi scitis se non teneri, qui sine auctoritate eorum facta essent; sed postea lex Hortensia lata est, qua cautum est, ut plebi scita universum populum tenerent». Gaius' idea comes back in the Justinian corpus (I 1.2.4), where we read that «*plebs*

of 'multitude' only as a later development.[15] The social connotation of *volgus*, including its negative cultural associations, is in fact accessory and secondary.[16] This meaning often occurs in contexts in which the masses are in direct opposition to those who are educated and/or of noble lineage, as in certain passages in Cicero, *de divinat.* 2.41: «fani pulchritudo et vetustas Praenestinarum etiam nunc retinet sortium nomen, atque id *in volgus*. Quis enim magistratus aut quis vir inlustrior utitur sortibus?», or more subtly in *Brutus* 53.198: «Ab utroque autem causa perorata si quaereretur, uter praestaret orator, numquam profecto sapientis iudicium a iudicio vulgi discreparet». There are places in Cicero where we find *vulgus* and *populus* used almost synonymously, as in the oration *pro Plancio* (4.9): «Non est enim consilium *in vulgo*, non ratio, non discrimen, non diligentia: semperque sapientes ea, quae *populus* fecisset, ferenda, non semper laudanda duxerunt».

The term's social connotation seems to have become clear later, perhaps in the cultural context of Christian thinking.[17] The *Codex Theodosianus* (8.1.8) makes explicit reference to a difference between *plebs* and *vulgus*: «quos, *plebe* confusa, *vulgus* abscondit», which seems to imply that the first term denotes an inferior social status to the second. The three lexemes possibly refer to a social hierarchy in which *plebs* is the lowest level and *populus* the highest of the «cives honesti … sed mediocritatem numquam egressi»,[18] but it is unclear whether *vulgus* occupies a middle position.[19] *Vulgus* does appear to be the unmarked form, its reference to the popular masses being basically neutral in relation to the social order in classical times.

The semantic nucleus "universal and indefinite totality of people" relates closely to the verb *vulgo*, -*are* 'publish, disseminate' used in classical times and

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a *populo* eo differt quo species a genere: nam appellatione populi universi cives significantur, connumeratis etiam patriciis et senatoribus: plebis autem appellatione sine patribus et senatus ceteri cives significantur».

15 The original etymological value of the word is unclear. See Ernout-Meillet 514 who think that the comparison of Latin *plebs* and Greek πληθύς 'throng, crowd (of people)' is purely speculative.
16 An emblematic example is the verse in Horatius' *Satyres* (3.1): «Odi profanum vulgus et arceo».
17 Christian writers use *pauper* to refer to *vulgus* («*vulgum pauperem* spoliaverunt») and the noun *vulgaritas* with reference to words (Blaise 863). However, also in Christian writers we still find the classical meaning associated with the lexical family we are examining: *vulgaritas* can in fact be the 'caractère de ce qui est commun' as well as 'le commun des homes, la foule'. Also interesting is the nominalized use of the adjective *vulgaris* in its plural form *vulgares* meaning 'les gens du peuple' (Blaise 863).
18 This definition is given by LTL 4, 1043c.
19 It seems therefore that we cannot agree with the opinion of the authors of the LTL 4, 1043c, that «Ita differunt *vulgus* et *populus,* ut *vulgus* sit infimi generis homines».

clearly also in juridical sources,[20] with a specialization by Christian writers in its participle form *vulgata* (*editio*), in reference to the Greek version of the Bible of the Seventy (Augustine, *civ. Dei* 16.10; Jerome, *epist.* 65.9).[21]

The semantic nucleus that we have defined is also seen in the interesting semantics of the adverb *volgō* (*vulgō*), originally the ablative form of the noun. The adverb has a set of meanings with multiple, contextually determined nuances, all gravitating around the concepts 'in, bei, vor der grossen Menge, zur Bezeichnung dessen, was bei, vor allen oder den meisten Leuten oder durch alle oder doch die meisten Leute geschieht, deutlich je nach dem bei, vor, oder durch jedermann', and also 'in, bei, vor der Publikum, bei, vor aller Welt, allgemein, allenthalben (bei oder vor dem Leuten), in gemeinen Leben, insgemein', and therefore 'gemeinlich, gewöhnlich' (Georges, s.v.). The LTL 4, 1043b definition evidences the meaning 'popularly, appertaining to all', which is rendered also with the Greek adverb κοινῇ). Certain passages in Cicero's orations show these meanings particularly clearly. In *pro Murena* 73 there is an explicit definition of the lexeme: «Num locum ad spectandum dare? Aut prandium invitare? Minime, sed *volgo*, passim. *Quid est volgo? Universos*»; the meaning 'commonly' can been seen in a passage from the oration *pro Roscio Amer.* 29.80: «Eius modi tempus erat . . . ut homines *vulgo* impune occiderentur» (here the adverb can be translated as 'habitually', 'as an ordinary occurrence')[22]. In other Cicero's contexts it seems to mean 'openly, in public', or 'commonly, habitually'.

4 The relationship between the lexical family of *volgus* and theories of classical rhetoric

In order to come to a better understanding of these meanings, we need to consider them in the light of two pervading and influential theories of rhetorical thought: the theory of the three styles and the theory of the *consuetudo*. The meaning 'common, habitual generality' which this lexical family expresses in the Latin of various periods is found in several classical philosophical and grammatical treatises, and this assists us in understanding its various articulations. When justifying opinions he has expressed regarding the relationship between *prudentia* and *iustitia*, according to which the latter is more able to inspire trust, Cicero finds

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20 See para. 5.

21 The use of *Vulgata* for the Latin translation of the Bible by Jerome was introduced at the time of the Council of Trento.

22 This is the translation given by the editor of the Loeb edition of the text.

it opportune to quote the thesis upheld by certain philosophers and himself that
the two virtues cannot be separated, and underlines that the subtility adopted for
polishing truth of a philosophical debate is one thing, but adapting the discourse
to present to public opinion is another: «alia est illa, cum veritas ipsa limatur in
disputatione, subtilitas, alia cum ad opinionem communem omnis accommoda-
tur oratio» (*de officiis* 2.10). Therefore «ut *volgus*, ita nos hoc loco loquimur, ut
alios fortes, alios viros bonos, alios prudentes esse dicamus; *popularibus* enim
verbis est agendum *et usitatis*, cum loquimur *de opinione populari*» (*ibid.*). This
passage is of great interest because of the terms used to paraphrase «ut volgus . . .
loquimur»: *popularis*, *usitatus* (with reference to words), *communis* (*opinio*). Of
particular interest is the term *usitatus*, whose frequentative/intensive sense takes
us to the semantic field of 'widespread use'. Note also that Cicero uses *popularis*
as a synonym of 'expressions of the *volgus*'. A second reason for the interest this
has is the opening to a way of speaking which is common, popular, everyday,
characteristic of the *volgus*, and correlated to a way of thinking, but which even a
wise and cultured man might use in speaking to the general public.

   This is not simply an aristocratic condescension of the highbrow lowering
the tenor of his argument and the level of his language. This passage from Cicero
might be interpreted in the light of the so-called theory of the three styles (*genera
figurae*), which continued to have importance up to the Middle Ages, and to which
the *Rhetorica ad Herennium* ascribed to Cicero and Quintilian's *Institutio oratoria*
are a direct testimony. It is worth briefly recalling the definition of the grand style
(*genus grave*), middle (*mediocre*) and simple (*extenuatum*, *adtenuatum*) of the first
treatise. While the grand style «constat ex verborum gravium levi et ornata con-
structione» (*ad Herenn.* 4.8), and the middle «constat ex humiliore neque tamen
ex infima et pervulgatissima verborum dignitate» (*ibid.*), the simple style consists
in «quae demissa est usque ad usitatissimam puri cons*uetudinem sermonis*»
(*ibid.*). It is to be noted that the range of terms includes once again lexemes
like *pervulgatissima* (*dignitas*) and *usitatissima* (*consuetudo*), which refer to the
notion of '(very) common, current, (widely) used'. It would certainly be mislead-
ing to interpret the passage in the modern sense of a diastratic (that is, social)
difference, since it is explicit and clear that the common everyday style is that of
the *sermo purus.*[23] This point seems to be of great importance. There were differ-
ences of levels of style within which the educated man could use, but the intrinsic
limits of this freedom of movement consisted of correct language without any
deviation that might be considered repulsive with respect to everyday use, what

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23 See Quintilian, *Inst.or.* 1.6.44–45.

was defined the *consuetudo communis*, although this in itself was not without fluctuations, of which Varro gives us numerous examples.[24]

The textual examples of the simple style given in the *Rhetorica ad Herennium* are of considerable linguistic interest because they offer us a whole range of phenomena that are alien to the classical facies or which appear quite sporadically. They are well known to scholars of vernacular and late Latin as they are to those of the Romance languages: the weak connectives *nam* 'now' and *deinde* 'then', the complementizers *ut* and *ubi* with temporal meaning, lexemes such as the verb *defrico* 'rub', the noun *oricula* (in its form with the initial monophthong compared as against *auricula*), the recurrence of the demonstratives *hic . . . iste . . . voce ista*, the prepositional syntagm *de traverso*, the introductory phrase *ecce tibi iste*, the locution *nihil habere quod de existimatione perderet*. This group of structures gives us a clear picture of everyday language use in everyday situations, and it is a picture that should make us reflect further on the meaning of the concept of "vulgarism" in the classical world. Apart from anything else, it was not only everyday interactions which called for the "vulgar" language in the sense we have described. In a passage from *de oratore* that is, in my opinion, of great importance, Cicero takes up the position that in oratory the greatest error is to distance oneself from everyday language:

> dicendi autem omnis ratio in medio posita, communi quodam in usu, atque in hominum more et sermone versatur: ut in ceteris id maxime excellat, quod longissime sit ab imperitorum intellegentia sensuque disiunctum, *in dicendo autem vitium vel maximum sit a vulgari genere orationis*, *atque a consuetudine communis sensus abhorrere* (*de oratore* 1.3.12)

The data we have analyzed so far might be useful in orienting research into the question of the vulgarisms in legal texts. These appear to be of considerable interest because they show the meanings of the lexical family of the term *volgus* (*vulgus*) which differ from what is found in post-classical literary works or grammatical texts of the later period.[25]

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24 Cf. the notion of regularity or analogy «ad usum loquendi», defined by Varrone as «verborum similium declinatio similis non repugnante consuetudine communi» (*de lingua lat.* 10.74). On fluctuations in everyday usage see *de lingua lat.* 5.6; 8.23; 8.32. On the problem of *consuetudo* in legal Latin see Calboli (1962: 182–190, 1994a), and more recently the various contributions in Sini and Ortu (2001).

25 Cf. with respect to this Biville (1995). This study is a well-constructed and very useful analysis of the expression *qui vulgo dicitur*. In the works studied, Biville has identified a number of cases having various groups of characteristics. Among these, apart from vulgarisms as expressions in proverbs, cases which are also sometimes to be found in legal texts (see below), Biville has detected certain vulgarisms which are examples of the deformation or alteration of a Latin

5 Use of terms of the lexical family *vulgus* in legal texts

In some contexts the noun *vulgus* may have a function similar to that of the indefinite pronoun *everyone*:

> C. 9.9.22. *Impp. Diocletianus et Maximiamus AA. Obrimo.* Si ea quae tibi stupro cognita est passim venalem formam exhibuit ac prostituta meretricio more *vulgo se praebuit*, adulterii crimen in ea cessat [a. 290].

Similarly, the adjective *vulgaris* can express the concept of 'universality' or 'generality', as in the following measure of Theodosius and Valentinianus reported in the *Codex Iustinianus*, establishing the removing from service and possibly expelling all those who opened schools falsely claiming to hold the title of *magistri*:

> C. 11.19.1. *Imp. Theodosius A. et Valentinianus C. Constantio pu.* Universos, qui usurpantes sibi nomina magistrorum in publicis magistrationibus cellulisque collectos undecumque discipulos circumferre consuerunt, ab *ostentatione vulgari* praecipimus amoveri [a. 425].

The meanings of the noun and the adjective are fully congruent with 'divulge, spread among the multitude', 'make general, common, universal' and especially 'make public, promulgate' of the verb *vulgare* (cf. C. 8.4.6 «*Imppp. Gratianus Valentinianus et Theodosius AAA. Pancratio pu.* Meminerint cuncti, sive *vulgato rescripto* mansuetudinis nostrae sive sententia cuiuslibet iudicis utantur in causis . . . [a. 382]»).

However, the adjective *vulgaris* might refer to legal customs different from those of the classical Roman jurisprudence system, characteristic of many eastern territories of the empire. An example is the following rescript of Emperor Alexander Severus in which reference is made to an obligation not recorded by formal contract, and therefore imperfect in Roman law, as often happened between the people of the *pars Orientis*: C. 4.24.4 («*Imp. Alexander A. Hermaeo et Maximillae. Pactum vulgare*, quod proposuistis, ut, si intra certum tempus pecunia soluta non fuisset, praedia pignori vel hypothecae data vendere liceret, non adimit debitori adversus creditorem pigneraticiam actionem [a. 223]».[26] This interpretation has

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structure relating to "popular" cultural or social levels. This phenomenology is found later in Aulus Gellius and centuries later in Isidorus. On the problem of expressions with *vulgo* between the end of the Republican period and the first century AD (in particular on the relationship between Cicero and Aulus Gellius), see the recent study by Codoñer (2013).

26 Cf. Heumann-Seckel 633, which doubts the definition of 'verderbt' in contexts such as this.

affinities with the meaning of the adverb *vulgō* in the characteristic legal expression *vulgo concepti*, which D. 1.5.23 (*Modestinus libro primo pandectarum*) defines as «qui patrem demonstrare non possunt, vel qui possunt quidem, sed eum habent, quem habere non licet, qui et spurii appellantur».[27] In this case too, in fact, the lexeme of the semantic field of *volgus* gives the idea of a situation which is not regulated by a legal institute (the *iustum matrimonium* between parents who had conceived a child).[28] In both contexts the terms used seem to relate to the many issues of the so-called "vulgar law."

6   The semantics of the adverb *vulgō*

The adverb *vulgō* merits special attention. An examination of various passages of the Justinian corpus and its sources shows that its meanings are not homogeneous. The meaning 'commonly, habitually, in the generality of public opinion' often appears in relation to a situation given as obvious or of manifest obviousness:

> C. 5.5.2. *Impp. Diocletianus et Maximianus AA. Sebastianae.* Neminem, qui sub dicione sit Romani nominis, binas uxores habere posse *vulgo patet* [a. 285];
>
> C. 5.18.6. *Impp. Diocletianus et Maximianus AA. Alexandriae et Neroni.* Si circumscripta matre vestra viliore pretio dotales res aestimatae sunt, quid super huiusmodi contractuum vitio statutum sit, *vulgo patet* [a. 290 or 293].

In some cases the adverb expresses the idea of a banal common, or even erroneous, opinion, in contrast to another considered to be nearer the truth, as in the following passage from Gaius which refutes the belief that women, because of their superficiality, often allow themselves to be deceived and that therefore they should be put in the care of tutors:

> Gai 1.190. Feminas vero perfectae aetatis in tutela esse fere nulla pretiosa ratio suasisse videtur. Nam *quae vulgo creditur, quia levitate animi plerumque decipiuntur et aequum erat eas tutorum auctoritate regi, magis speciosa videtur quam vera;* mulieres enim, quae perfectae aetatis sunt, ipsae sibi negotia tractant, et in quibusdam causis dicis gratia tutor interponit auctoritatem suam; saepe etiam invitus auctor fieri a praetore cogitur.

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27 Cf. also D. 34.9.16.1; CTh. 6.30.15.
28 See Guarino (2011: 282).

At times the customs might be considered unfashionable but supported by the opinion of authoritative jurisconsults, as for the mention of *per permutationem* contracts:[29]

> Gai 3.141. Item pretium in numerata pecunia consistere debet . . . *Nostri praeceptores putant* etiam in alia re posse consistere pretium; unde *illud est, quod vulgo putant per permutationem rerum emptionem et venditionem contrahi, eamque speciem emptionis venditionisque vetustissimam esse.*

In different ways, both passages recall Cicero's idea of the less subtle, more simple character of the minds of the mass of ordinary people which we mentioned in 4.

7 The use of *vulgō* / *vulgus* in the expressions *vulgō dicitur*, *vulgō nuncupantur*, etc.

Of great linguistic interest is the analysis of expressions in which the adverb is constructed with a *verbum dicendi*, which are used to characterize lexemes or longer structures in "common use." In fact, these expressions enable us to get closer to what the legal texts considered a "vulgarism." Through an examination of a sample of passages of Gaius' *Institutiones* and of the *Digesta*, we can make out a provisional typology of structures.

A) A first group consists of expressions of the bureaucracy, or social and cultural organization, which must have been widely used, such as *apostoli* and *tabularius:*[30]

> 1. *Apostoli* pl. 'a notice sent to a higher tribunal or a judge', 'libellus' (ThLL 2, 254, 18 ss. s. v. *apostolus*)
>
> D. 50.16.106. *Modestinus libro singulari de praescriptionibus*. 'Dimissoriae litterae' dicuntur *quae volgo apostoli dicuntur*[31]; cfr. *Paul. Sent.* 5.34.1: ab eo, a quo appellatum est ad eum qui

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de appellatione cognitus est, litterae dimissoriae diriguntur, *quae vulgo apostoli appellantur*; quorum postulatio et acceptio intra quintum diem ex officio facienda est (the term also occurs in the *Basilica*; cfr. ThGL 2, 1700B).

The texts quoted here are some of the few documented uses in Latin of the lexeme with the special meaning of 'a notice sent to a higher tribunal or a judge', characteristic of bureaucratic and administrative language. The expression is clearly a Hellenism related to the lexical family of ἀπόστολος, 'messenger, ambassador, envoy; commander of a naval force', also in the characteristic religious sense of 'messenger of God, Apostle', a meaning it has in the Bible of the Seventy and later in the New Testament.[32] The meaning 'missus' is found in Herodotus (ThGL 2, 1700B). Of particular interest are certain semantic uses of the Greek expression in diverse cultural contexts where we can see the semantic nucleus relating to the written communication of a message. In ancient Greek-speaking Christian communities the expression ἀπόστολος referred to 'the Epistles of the New Testament (particularly Paul's epistles), collectively considered' (the term is used by Tertullianus and by Origenes), and also 'the Epistle of the day' (Sophocles 234). In another group of meanings the expression appears in papyri of various provenance, in a relatively late period (2nd–4th century AD), and their meanings relate to nautical and mercantile contexts: 'order for dispatch, of a vessel', 'export-licence'.[33] The meaning appearing in the *Digesta* and in its sources show an adaptation of the semantic nucleus to a bureaucratic and administrative context. As for its use in the

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tolos appellant. Sensus autem litterarum talis est: appellasse puta Lucium Titium a sententia illius, quae inter illos dicta est. Sufficit autem petisse intra tempus dimissorias instanter et saepius, ut et si non accipiat, id ipsum contestetur: nam instantiam petentis dimissorias constitutiones desiderant. Aequum est igitur, si per eum steterit, qui debebat dare litteras, quo minus det, ne hoc accipienti noceat»; D. 49.14.9 «*Modestinus, libro septimo decimo responsorum*. Interea decessit rea: nihilo minus tamen *apostoli* redditi sunt. Quaero, an putes extincta rea cognitionem appellationis inducendam propter hereditatem quaesitam. Modestinus respondit morte reae crimine extincto persecutionem eorum, quae scelere adquisita probari possunt, fisco competere posse».

32 *Apostolus* 'legatus' is found in the *Vulgata* (*Iohannes* 13, 16). In CTh. 16.8.14 the terms has undergone semantic development starting from the meaning 'messenger, envoy', in the context of Hebrew religious organization: «Superstitionis indignae est, ut archisynagogi sive presbyteri Iudaeorum vel quos ipsi *apostolos* vocant, qui ad exigendum aurum adque argentum a patriarcha certo tempore diriguntur, a singulis synagogis exactam summam adque susceptam ad eundem reportent».

33 The meaning 'cargo dispatched by order' is presumably a metonymic development. Cf. also the neutral noun ἀπόστολον 'packet (= a boat travelling at regular intervals between two ports, for the conveyance of mail)', which is documented in Plato's epistles and in the late *Vita Homeri* by Pseudo-Herodotus.

religious and commercial spheres, the expression might have been widely used in Greek from which, perhaps, it passed to Latin through the important double channel of cultural and Christian communities and imperial administration traditions. It remains to be seen, however, if the semantic value of the *Digesta* usage is a development that took place in legal Latin of the 2nd and 3rd centuries (as the Justinian sources would suggest), or in an earlier period as a transformation occurring when the Greek word was borrowed, or whether it already existed in Greek. There are two reasons that suggest the credibility of the hypothesis that it was one of the numerous cases in which Greek–Latin bilingualism in the Eastern provinces of the Empire facilitated the re-use in Latin of an everyday Greek word, in the widest sense of 'written information', with the addition of secondary semantic traits. The first of these relates to the same denotation of the term, which refers to the field of the legal procedures of the Roman bureaucratic-administrative apparatus. The second is indicated in the same information that the juridical texts give us, according to which it was a term 'commonly/generally' (*vulgō*) in use. Both the religious meaning and the bureaucratic-administrative one are preserved in medieval Latin as technical terms of the ecclesiastical sphere (*apostolus* 'epistolarum apostolicarum (fere Pauli) lectio vel codex' and 'libelli appellatorii, litterae remissoriae', MLW 1, 766–767). This testifies to the vitality of this Greek-Latin expression, even if presumably through high sociolinguistic channels, not only in its cultural aspects in relation to the neo-testamentary traditions and their circulation among ancient Christian communities, but also in the procedures of the administrative apparatus that ecclesiastical organization had inherited from the Roman Empire.

> 2. *Tabularius* '(public) scribe, of servile condition'

> C. 8.17.11 *Imp. Leo A. Erythrio.* Scripturas, quae saepe adsolent a quibusdam secrete fieri, intervenientibus amicis nec ne, transigendi vel paciscendi seu fenerandi vel societatis coeundae gratia seu de aliis quibuscumque causis vel contractibus conficiuntur, quae idiochira Graece appellantur, sive tota series eorum manu contrahentium vel notarii aut alterius cuiuslibet scripta fuerit, ipsorum tamen habeant subscriptiones, *sive testibus adhibitis sive non*, *licet conditionales sint*, *quos vulgo tabularios appellant*, sive non, quasi publice scriptas, si personalis actio exerceatur, suum robur habere decernimus [a. 472].[34]

The term *tabularius* occurs frequently in various parts of the Justinianian corpus with meaning variations.[35] It is often found with others denoting employees

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34 The text poses interesting philological problems: see the notes in Kunkel's edition, which gives the Greek version of the *Basilica*.

35 See Heumann-Seckel 577.

with various functions in the state bureaucratic system. The passage from the *Codex* cites a rescript of the Emperor Leo which makes reference to the important law whereby private deeds could have public value if signed by various types of people, among which the scribes called *tabularii*. These were usually (though not always) slaves, but their position tended to evolve in the course of time.[36] The expression *ταβουλάριος* is one of the legal Latinisms that circulated in Greek, as is seen above all from epigraphic sources and papyri (it is also found in Justinian's Edict 9.4).[37]

B) A second group of cases consists of traditional and stereotyped expressions from the juridical field. Within this group a further separation can be made between expressions that appear to be aphorisms and maxims that can be used as semi-colloquial *figées* structures (subgroup Ba) and expressions with a more technical meaning (subgroup Bb).

Ba) Maxims such as *Litem anno et sex mensibus moritur* and *Sabino et Cassio placet omnia iudicia absolutoria esse* appear to be syntheses, sometimes simplifications or banalizations, of more complex concepts expressed in law, such as *Lex Iulia*, or used by renowned jurisconsults like Sabinus and Cassius, of whose line of thought Gaius was a follower.[38] As such, they seem to belong to a more widespread and popular register close to proverb. It may also be no accident that these expressions appear in Gaius' *Institutiones*, an introductory manual for use by students. Their linguistic structure, in fact, makes them appropriate for teaching purposes and the overall style of the work, which is straightforward and plain, seems to conform to the ideal of clarity and the stylistic choice of "everyday" language recommended by the passage from Cicero's *de oratore* we discussed earlier. Notice, especially, the use of the verb *morior* in Gaius 4.104, a lexical choice which, because of its metaphorical character, in the context in which it occurs seems nearer the Latin of *sermo cotidianus*. On the other hand, the verb *placere* 'be of the opinion of', in Gaius 4.114 is a lexeme with a semantic specialization typical of the juridical context.

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36 In ancient Rome, in fact, «i tabularii sono gli impiegati – in origine servi pubblici, più tardi liberti o anche liberi – che redigono e custodiscono documenti legali, con funzione di archivisti e contabili»: see Amelotti (1975: 15–16). For the history of the term and its meanings, see Sachers (1932: 1969–1984); Teitler (1985: 244 and n. 34). Later, between the 8th century and the beginning of the 10th, the *tabularius* became the equivalent of the notary (Amelotti 1975: 44).
37 See Zilliacus (1965: 210); Avotins (1992: 209–210).
38 We see that Gaius called the two jurists *nostri praeceptores* and many quotations from them can be found in Gaius' writings. Cf. Muirhead (1880: 586); Schulz (1946: 119, 338). For the quotations from Sabinus and Cassius in the *Digesta*, see Roby (2000 [1884]: cxli).

1. *Litem anno et sex mensibus moritur* 'the litigation expires after one year and six months'

Gai 4.104. eaque <e> lege Iulia iudiciaria, nisi in anno et sex mensibus iudicata fuerint, expirant. Et hoc est, *quod vulgo dicitur e lege Iulia litem anno et sex mensibus mori.*

2. *Sabino et Cassio placet omnia iudicia absolutoria esse* 'Sabinus and Cassius are of the opinion that all the judicial formulas permit acquittal'.[39]

Gai 4.114. Superest, ut dispiciamus, si ante rem iudicatam is, cum quo agitur, post acceptum iudicium satisfaciat actori, quid officio iudicis conveniat, utrum absolvere an ideo potius damnare, quia iudicii accipiendi tempore in ea causa fuerit, ut damnari debeat. Nostri praeceptores absolvere eum debere existimant; nec interest, cuius generis sit iudicium. Et hoc est, *quod volgo dicitur Sabino et Cassio placere omnia iudicia absolutoria esse.*

Bb) The following expressions seem to belong to a more technical register:

1. *Possessio potest retineri per quemlibet, qui nostro nomine sit in possessione* 'Possession can be kept through whoever is the possessor in our name'

Gai 4.153. Possidere autem videmur non solum, si ipsi possideamus, sed etiam si nostro nomine aliquis in possessione sit, licet is nostro iuri subiectus non sit, qualis est colonus et inquilinus. Per eos quoque, apud quos deposuerimus aut quibus commodaverimus aut quibus gratuitam habitationem praestiterimus, ipsi possidere videmur. Et hoc est, *quod volgo dicitur retineri possessionem posse per quemlibet, qui nostro nomine sit in possessione.*

2. *Furtivarum rerum et vi possessarum usucapio per legem XII tabularum prohibita est* 'Usucapion of stolen and unlawfully held goods is forbidden by the Lex of the Twelve Tables'

Gai 2.49. *Quod ergo vulgo dicitur furtivarum rerum et vi possessarum usucapionem per legem XII tabularum prohibitam esse*, non eo pertinet, ut ne ipse fur quique per vim possidet, usucapere possit (nam huic alia ratione usucapio non competit, quia scilicet mala fide possidet), sed nec ullus alius, quamquam ab eo bona fide emerit, usucapiendi ius habeat.

3. *Auctor secundus* 'he who *fideiussionem facit*, that is guarantees for the eventual recovery of goods sold by another' (as distinct from *auctor primus*, that is 'the seller in person')[40]

D. 21.2.4. *Ulpianus, libro trigesimo secundo ad edictum.* Illud quaeritur, an is qui mancipium vendidit debeat fideiussorem ob evictionem dare, *quem vulgo auctorem secundum vocant.*

Auctor secundus is a phrase also found in many glosses (= βεβαιοτής e προπράτωρ, ThLL 2, 1195, 26 ss.). *Auctor* in the sense of 'guarantor of a sale', more correctly 'qui evictionem praestat de priore rei possessore' is a frequently-found term in Romano-barbaric laws (MLW 1. 1170, 11ss.).

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39 I wish to thank Mario Varvaro for his suggestions regarding the translation of this passage.
40 Cf. Heumann-Seckel 43.

Some of the expressions in this subgroup show lexical innovations brought about by morphological processes of derivation:

4. *Ex praediatura possessio usurecipitur* 'a possession is acquired by usucapion with the purchase (by auction) of redeemed land'[41]

Gai 2.61. Item si rem obligatam sibi populus vendiderit eamque dominus possederit, concessa est usureceptio: sed hoc casu praedium biennio usurecipitur. *Et hoc est, quod volgo dicitur 'ex praediatura' possessionem usurecipi*; nam qui mercatur a populo, 'praediator' appellatur.

The term *praediatura* 'der Aufkauf an den Staat verpfändeter und öffentlich versteigerter Grundstücke' (Georges, s. v.) is found only in the passage by Gaius just quoted (ThLL 10, 2, 1, 541, 1 ss.). Note also the occurrence of *praediator* 'der Aufkaufer an der Staat verpfändeter und öffentlich versteigerter Grundstücke, der sie an den eigentlichen Eigentümer gegen Erlegung des Kapitals und der Zinsen wieder verkaufte, der Güterauskaufer, als Sachverständiger oft bei Entscheibung über Wert und Gerechtsame eines Grundstückes zu Rate gezogen' (Georges, s. v.)[42]. The term *praediator* also appears in Cicero. On the suffix, see LHS 1, 315 and bibliography. Other expressions show elements with innovation (specialization) of meaning:

5. *Per adluvionem adici* 'increase (landed property) by means of alluvial land'

Gai 2.70. Sed et id, quod *per alluvionem* nobis *adicitur*, eodem iure nostrum fit; per alluvionem autem id videtur adici, quod ita paulatim flumen agro nostro adicit, ut aestimare non possimus, quantum quoquo momento temporis adiciatur; hoc est, *quod volgo dicitur, 'per adluvionem'* id adici videri, quod ita paulatim adicitur, ut oculos nostros fallat.

D. 41.1.7.1. *Gaius libro secundo rerum cottidianarum sive aureorum*. Praeterea quod *per alluvionem* agro nostro flumen adicit, iure gentium nobis adquiritur. *Per alluvionem* autem id videtur adici, quod ita paulatim adicitur, ut intellegere non possimus, quantum quoquo momento temporis adiciatur.[43]

With the meaning of 'mutatio soli, imprimis incrementum latens vi aquarum factum' the lexeme *adluvio* is a technical term in the language of land surveyors (it is found in Frontinus, Hyginus, Siculus Flaccus), and is also found in epi-

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41 In his edition of Gaius' *Institutiones*, Manthe translates the expression as "ein Besitzrecht werde 'aus dem Pfandgrundstückskauf' durch Ersitzung zurückerworben." On the *praediatura* see Wesener (1974).

42 Manthe's translation is 'Pfandgrundstückskaufer'. Cf. ThLL 10, 2, 1, 540, 65 ss.

43 For other occurrences in the Justinian corpus, see Heumann-Seckel 28.

graphic texts of the Traian's age (CIL, XI, 1147, VI, 86).[44] It is frequently used in the Justinianian corpus, especially in the *Digesta* (ThLL 1, 1700, 58 ss.), and its presence in Cicero makes us think that it is an ancient technical term of juridical language.[45] On its morphological pattern see LHS 365–376.

> 6. *Cum taxatione* 'with a clause establishing the limits' (= up to), 'mit Höchstgrenze'[46]
>
> Gai 4.51. Incertae vero condemnatio pecuniae duplicem significationem habet. Est enim una cum aliqua praefinitione, *quae vulgo dicitur 'cum taxatione'*, velut si incertum aliquid petamus; nam illic ima parte formulae ita est: iudex Numerium Negidium Aulo Agerio dumtaxat sestertia x milia condemna; si non paret, absolve;
>
> D. 50.16.192 *Ulpianus libro trigensimo septimo ad edictum.* Haec adiectio 'plurisve' non infinitam pecuniam continet, sed modicam, ut *taxatio* haec '<solidos> decem plurisve' ad minutulam summam referatur;
>
> D. 31.1.41 *Iavolenus libro septimo epistularum.* Haec enim taxationis loco habenda est 'quidquid ad te pervenit';
>
> D. 33.6.5 *Iulianus libro quinto decimo digestorum.* Cum certus numerus amphorarum vini legatus esset ex eo, quod in fundo Semproniano natum esset, et minus natum esset, non amplius deberi placuit et quasi *taxationis* vicem optinere haec verba 'quod natum erit'.[47]

The accepted meaning 'näher bestimmende, beschränkende Klausel (in Testamenten, Verträgen, etc.)' (Georges, s. v.), characteristic of juridical language, is a metonymic specialization based on the more general meaning 'evaluation, appreciation, estimate (of a property)', also in the sense of 'effective calculation,

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44 Quite obviously different is the meaning 'aquarum impetus, imprimis inundatio vel exundatio, qua loca teguntur, submerguntur vel subruuntur', which is also present in the Justinianian corpus (C.11.8.2), but it recurs above all in post-classical writings (cf. ThLL 1, 1700, 58 ss.).
45 The item is found in a passage of the *de oratore* (1.37.173) in which Cicero severely criticizes the superficiality and lack of seriousness of certain lawyers: «Nam volitare in foro, haerere in iure ac praetorum tribunalibus, iudicia privata magnarum rerum obire, in quibus saepe non de facto, sed de aequitate ac iure certetur, iactare se in causis centumviralibus, in quibus usucapionum, tutelarum, gentilitatum, agnationum, *alluvionum*, circumluvionum, nexorum, mancipiorum, parietum, luminum, stillicidiorum, testamentorum ruptorum aut ratorum, ceterarumque rerum innumerabilium iura versentur, cum omnino, quid suum, quid alienum, quare denique civis aut peregrinus, servus aut liber quispiam sit, ignoret, insignis est impudentiae».
46 Cfr. LTL 4, 671b, Manthe 347.
47 For the cited passages of the *Digesta* Heumann-Seckel s.v. proposes the semantic value 'Schätzung', which is not convincing. This meaning might correspond to the occurrence of the item in C. Th. 2.19.4 and D. 36.3.6.

numerical reckoning'.[48] This semantic nucleus characterizes both the nominal form and the verb *taxo*, 'evaluate, estimate'. According to Ernout-Meillet 678 it is a relatively late borrowing from the *Greek τάσσω* 'taxer, évaluer, estimer', etymologically distinct from *taxo* 'allude to; touch strongly, attach', which is the frequentative-intensive form of the patrimonial *tango*. More problematic is the relation between the phrase *cum taxatione* and the adverb/connective *dumtaxat*, which limits the expression with the numerical value and might be considered the origin of the construction which appears in the juridical texts cited. The adverb/connective, in fact, is an old element of the Latin language and its semantic value 'jusque-là, en n'allant pas plus loin', properly 'jusqu'à ce qu'il puisse toucher', seems to show an affinity with the frequentative-intensive verbal form of *tango*.[49] Any direct relation between *taxo* 'evaluate, estimate' and *dumtaxtat* is therefore difficult to justify, just as the relation between the latter and the limitative expression *cum taxatione* remains to be clarified. The fact that *taxatio* occurs only in juridical texts makes plausible to think that the noun is a neologism coined by jurists on the basis of the possible Graecism *taxo*, and moulded on the Latin morphological pattern of the abstract deverbal nouns in *-tio, -onis*.[50] In any case, considering the particular semantic development we have described, which is absent in the verb, it cannot be excluded that the adverbial/connective form might have had an influence on the creation of the noun.[51] In fact, *taxtat* appears separately from *dum* in the *Lex of Bantia* (see CIL 1², 582), perhaps of the end of the 2nd century AD,[52] and in Festus 288.35.[53]

C) It should be noted that certain lexemes connected with the expression *vulgo dicitur* can be traced back to the grammaticographical tradition.[54] In D. 50. 16 various elements have this characteristic. We shall deal with two words, *pellex* and *telum*, which have repeatedly been analyzed in grammatical treaties of various

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48 The meaning 'evaluation, appreciation, estimate (of a property)' is found more often in literary texts (in Cicero, Seneca and in Plinius, among others): see LTL 4, 671b.

49 See Ernout-Meillet 187; ThLL 4, 671b.

50 For the morphology of the noun, see LHS 366.

51 *Taxatio* is found in Cicero, in the fragments of his oration *pro Tullio* (7), but with the meaning of 'evaluation, appreciation, estimate'.

52 For the uncertain dating, see Lepore (2010: 77).

53 This matter is further complicated by the observation of Ernout-Meillet 678, which does not exclude that the relation between *taxo* 'allude to', 'touch strongly, attach' and *tango* is an artifice of some Latin writers. In any case, the hypothesis advanced by the two scholars that the semantic nucleus 'touch' is a development from the Graecism *taxo* 'evaluate, estimate' is rather unconvincing.

54 For a more detailed discussion of this problem see Sornicola (2013).

periods, and discussed in the Justinianian text in a way which is characteristic of classical learning and which establishes a parallel with a corresponding Greek word.

> 1. *Pellex* 'a kept mistress, concubine of a married man; a kept mistress, concubine'. Cf. gr. *πάλλαξ, παλλακή* 'young girl, concubine'

> D. 50.16.144. *Paulus libro decimo ad legem Iuliam et Papiam.* Libro memorialium Massurius scribit 'pellicem' apud antiquos eam habitam, quae, cum uxor non esset, cum aliquo tamen vivebat: quam nunc vero nomine amicam, paulo honestiore concubinam appellari. Granius Flaccus in libro de iure Papiriano scribit *pellicem nunc volgo vocari*, quae cum eo, cui uxor sit, corpus misceat: quosdam eam, quae uxoris loco sine nuptiis in domo sit, quam *παλλακὴν* Graeci vocant.

The word is found above all in its variants *paelex*, *pelex*, while the form *pellex* is found in epigraphic texts as well as in the Justinian corpus. Cf. Festus 248: «Pelices nunc quidem appellantur alienis succumbentes non solum feminae, sed etiam mares. Antiqui proprie eam *pelicem* nominabant, quae uxorem habenti nubebat. Cui generi mulierum etiam poena constituta est a Numa Pompilio hac lege: '*Pelex* aram Iunonis ne tangito; si tanget, Iunoni crinibus demissis agnum feminam caedito'»; Prisciano, *Inst. gr.* 5.36.20 mentions the word to indicate its gender: «'*paelex*' quoque ad mulieres pertinens femininum est»; Isidoro, *Etym.* 10.228 has the form *pelicator*, *Etym.*10.229 «*pelex* apud Graecos proprie dicitur, a Latinis *concuba*».

The Latin word has a particular textual distribution. While rare in the jurisconsults, it is absent from the *Vulgata* and is not frequent in inscriptions. The language of law seems to have a predilection for the lexeme *concubine*, which also occurs in Christian writers and in the *Vulgata* (where it occurs as many as thirty-three times). *Paelex* is also frequently found in Plautus' comedies and in poetry, while its occurrence is limited in prose texts (in the *Lex of the Twelve Tables*, in Cicero, Livius, Seneca and more often in Curtius Rufus and Tacitus).[55]

The passage from the *Digesta* is witness to the oscillations of the word with the passing of time. Both the texts cited from Paulus, Massurius and Granius Flaccus use the word with a definition that might be relatively more recent (perhaps traceable at the end of the 1st century BC and the beginning of the 1st century AD) with the meaning 'woman who has a relationship with a married man', in contrast therefore to a legitimate *uxor*. This is a semantic value which seems different from the older one, and is apparently more generic, meaning 'a woman's cohabitation with a man, not sanctioned by marriage', which can be defined as

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55 See ThLL 12, 37, 41ss.

'concubinage'.[56] Festus' definition does not agree with the information given by the sources of the *Digesta* because it refers back in time to a meaning which the latter assume to be more recent. The passage from Paulus might make us hypothesize that the older use of the word goes back to the adoption in Rome of a Greek custom of concubinage, the παλλακεία which, at least in Ancient Greece, had no negative social connotation, differently from when, according to Festus, it was used in Rome (Festus refers to a law by Numa Pompilius).[57] The more modern usage, 'woman who has a union with a married man', might be an adaptation of the word to a changed context of customs in family and matrimonial organization in the late Republican period or the Augustan age or perhaps an even later period, because of the influence of Christian values which reduced the extent of subsistence or gave negative connotations to extra-matrimonial relationships. The development of such negative connotations is evident in the passages from Isidorus that we have cited.[58]

The relation between the Latin word and the Greek is difficult to interpret (see ThLL 12, 37, 41ss.; Ernout-Meillet 474).[59] The fact that, as far as we can judge from the texts available, the word *pellex* was not at all common either in legal or

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56 On the semantic values of this word, see ThLL 12, 37, 41 ss.

57 In Attic law concubines differed from hetaeras in that they came to the house of the man with whom they had a relationship and took care of him. Demosthenes (*Κατὰ Νέαιρας* [1386] 122) observes that from hetaeras you received pleasure, from παλλακαί a daily care of the body, while the duty of wives was to produce legitimate children and to be a loyal housekeeper. The status of the *pellex* was therefore different from that of the wife, or the woman who was joined to the man by legitimate matrimony, and this had numerous implications with regard to social rights and the legal status of the offspring. However, some have hypothesized the existence, in Greek law, of a legitimate concubinage, an institution constituted by ἐγγύησις, which was similar to marriage and whose descendants were legitimate offspring, though this did not give the concubine the right to be considered a wife (γαμετή). See Biscardi (1982: 97–105).

58 Reconstruction of the origins of concubinage in Rome is in many ways controversial. It possibly came into being as a direct effect of the *Lex Iulia de adulteriis* and of the *Lex Iulia et Papia Poppaea*. The former provided a list of persons with whom it was lawful to have sexual relations without incurring legal consequences, while the latter spelt out certain matrimonial impediments of a social nature. However, until the time of the Christian emperors, concubinage was a fact of custom, not a legal institution. With the advent of Christian society, concubinage came to be heavily stigmatized. Direct legislative intervention made it into a proper juridical institution, the concubine and her children having inferior social status, but this made it possible for an existing union to be transformed into marriage. With Justinian the institution seems to have become well defined, with precise characteristics and agreed bonds. Cf. Guarino (2011: 572–575). On Granius Flaccus and the *Lex Papiria* cf. Schulz (1946: 89); Schiller (1978: 140–142), which considers the law a "forgery."

59 Cf. παλλακεία 'concubinage', παλλακεύω 'to be a concubine, especially for ritual purposes' (in Strabo 17.1.46); the passive forms have the meaning 'to be a concubine'. Herodotus 1.135 mentions

in literary language (though it occurs in poetry) poses a problem of interpretation of some interest for the aims of this paper.

> 7. *Telum* 'a weapon used for fighting at a distance; a missile weapon, missile as a dart, spear, javelin' (*arma*, however, means 'weapons of defence or for hand-to-hand fighting')

> D. 50.16.233. *Gaius libro primo ad legem duodecim tabularum. Telum volgo quidem id appellatur*, quod ab arcu mittitur: sed non minus omne significatur, quod mittitur manu: ita sequitur, ut et lapis et lignum et ferrum hoc nomine contineatur; dictumque ab eo, quod in longinquum mittitur, Graeca voce figuratum ἀπὸ τοῦ τηλοῦ. Et hanc significationem invenire possumus et in Graeco nomine: nam *quod nos telum appellamus*, illi βέλος *appellant . . .* et *id, quod ab arcu mittitur, apud Graecos quidem proprio nomine* τόξευμα *vocatur, apud nos autem communi nomine telum appellatur.*

Cf. Festus 502.4 ss.: «*Tela* proprie dici videntur ea, quae missilia sunt ex Graeco videlicet translato eorum nomine, quoniam illi τηλόθεν missa dicunt, quae nos eminus. Sicut arma ea, quae ab humeris dependentia retinentur manibus, quoniam quidem non minus in nobis eam partem corporis armum vocari existimandum est». It is an antique word that is found in the *Lex of the Twelve Tables* and in Ennius[60] and which was commonly in use throughout a long period of time. The etymological comparisons with the Greek adverbial structures τηλόθεν, ἀπὸ τοῦ τηλοῦ, carried out respectively by Festus and the *Digesta* have no scientific foundation, of course, from the point of view of modern etymology. However, they are of interest as examples of an etymological operation that follows the criteria of classical etymological treatises. The use of this procedure in the passage from Gaius taken from the *Digesta* shows the well-known interlacing of rhetorical-grammatical culture and juridical culture, which persists not only in the works of the juriconsults of the 2nd and 3rd centuries but is also found in Justinianian texts.

The inclusion of Gaius' passage in D. 50.16 poses the problem of understanding why a lexeme such as *telum*, commonly used in all the periods of Latin's development, should receive special attention in this particular collection of word meanings. One plausible answer is that this discussion is related to the prohibition by the *Lex Cornelia de sicariis et beneficiis* of *ambulare cum telo*.

D) A final group of words is characterized by semantic developments which seem to reflect uses that must have been quite widespread in "everyday" language. This

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Persians who legitimately marry many wives (πολλὰς . . . κουριδίας γυναῖκας) and possess even more concubines ((πλεῦνας παλλακάς). See Liddell-Scott, s. v.; ThGL 6, 101, s.v.
60 See Ernout-Meillet 679.

is particularly evident with regard to the lexeme *consobrinus*, whose linguistic status is characterized by Gaius and the *Digesta* in a way which corresponds well with developments of the word in the Romance languages.

> 1. *Accidere* 'die'

> D. 50.16.162. *Pomponius libro secundo ad Sabinum*. Si quis ita in testamento scripserit 'si quid filio meo acciderit, Dama servus meus liber esto', mortuo filio Dama liber erit. Licet enim 'accidunt' et vivis, sed *vulgi sermone etiam mors significatur*.

> Cf. D. 34.4.30.2. *Scaevola libro vicesimo digestorum*. Ab heredibus petierat, ut, si in provincia decessisset, sexaginta Lucio Titio darentur, ut is corpus eius curaret in patriam reportari, et adiecerat haec verba: 'cui concedi volo, si quid ex ea pecunia supererit. Eadem die codicillos ad heredes suos ita scripserat: 'peto a vobis, ut, *sive in provincia sive in via aliquid mihi humanitus acciderit*, corpus meum curetis et in Campania et in monumentum filiorum meorum reportare'.

The meaning of *accido* 'die' can be considered a contextual extension from the meaning 'happen' because of a euphemistic communicative strategy used to avoid or tone down a more direct reference to death. The proper meanings of the verb 'tomber vers' and 'arriver par hasard' circumscribe the semantic field of the event understood in both a positive and a negative sense, a possibility that might find its justification in the unexpected character of the event implicit in the original semantic nucleus of the lexeme.[61] In fact, the general understanding of an unpleasant or negative event is associated with the verb in several grammatical treatises, in contrast with the positive meaning of *contingo* and the neutral one of *evenio*: «*accidere aliquid aduersi dicito*, contingere aliquid pulchri» (Flavius Caper 98.8), «contingunt bona, *accidunt mala*, eueniunt utraque» (Agroecius 118.22, a passage that it also found in Isidorus, *Differentiae* 1). Literary sources show both the general positive meaning and the negative one, and more rarely its euphemistic development (in Cicero and Caesar). Such development is found especially in conditional structures of the type *si quid alicui accidat / accidisset*,[62] as that in the passage from the *Digesta*. The Latin construction might be compared to the euphemistic Greek structure ἔι τι πάθοι 'if something should happen' (in the sense of death), which is often present in literary and epigraphic texts (Liddell-Scott 1347a, 2): it cannot be excluded that in Latin this is a learned syntactico-semantic calque. Romance languages retain as an erudite word

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61 See Ernout-Meillet 81, whose justification for this interpretation is that «une chose qui arrive inopinément est rarement agréable».

62 For these structures refer to ThLL 1, 290, 72 ss.

it. *accidente* 'inauspicious event, disaster' alongside an 'event, casual, accidental happening, unexpected' (DELI 48), fr. *accident* 'zufall; unfall' (FEW 24, 73).

> 2. *Consobrinus / consobrina* 'cousin (on both the mother's and the father's side)'
>
> Gai 3.10. Item patruus fratris filio et invicem is illi agnatus est. Eodem numero sunt *fratres patrueles* inter se, *id est qui ex duobus fratribus progenerati sunt*, *quos plerique etiam 'consobrinos' vocant*.
>
> D. 38.10.1.6. *Gaius libro octavo ad edictum provinciale*. Quarto gradu sunt . . . ex transverso . . . item *fratres patrueles sorores patrueles* (id est qui quaeve ex duobus fratribus progenerantur), item *consobrini consobrinaeque (id est qui quaeve ex duabus sororibus nascuntur, quasi consororini)*, item *amitini amitinae* (id est qui quaeve ex fratre et sorore propagantur). *Sed fere vulgus omnes istos communi appellatione consobrinos vocant.*

Festus 379 bis reads: «Sobrinus est, ut ait Gallus Aelius, patris mei *consobrini* filius, et matris meae *consobrinae* filius. Femina isdem de causis appellat fratrem, et fratrem patruelem, et *consobrinum*, et propius [con]sobrino et sobrina. Idem gradus in sobrina quoque sunt»; Donatus *ad Terentium*, *Hecyra* 459: «*consobrinus* noster quasi <con>sororinus».[63] The Latin lexeme remains in certain areas of Romania as a word of general use meaning 'cousin' (REW 8050, 2165; FEW 3, 1073–1075). It has supplanted the Latin lexemes *fratres / sorores patrueles* and *amitini / amitinae*, corresponding to the traditional bipartition of relationship between brothers and sisters in agnatic (*patruus* 'uncle, father's brother') and feminine line (*amita* 'aunt, father's sister') through various linguistic developments, judging from the data from the stratigraphy of legal documents of the 8th–9th century.[64] The *consobrinus* stratum seems to have been more widespread in medieval Romania than in the more modern period. Of the expressions examined, this item seems to be that which best illustrates the relation between Latin 'vulgarism', in the sense of a linguistic structure in common use by a totality of people or at least a large number of them (note the interesting specification *plerique* in Gaius) and the formation of structures of everyday Romance language.

A third interesting case, relating to the lexeme *maleficus*, is to be found in an edict of 357 of the *Codex Theodosianus*,[65] included in the provisions collected under the title *De maleficis et mathematicis et ceteris similibus*. The word appears elsewhere in the Justinian corpus with the specification that it is a word of everyday use.

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63 Cfr. Ernout-Meillet 637.

64 Cf. Aebischer (1978: 78–94); Bettini (1991: 16, 2009: ch. 1).

65 This edict is quoted in C. 9. 18. 5.

3. *Maleficus* 'magus, incantator'

C.Th. 9.16.4. Nemo haruspicem consulat aut mathematicum, nemo hariolum. Augurum et vatum prava confessio conticescat. Chaldaei ac magi et *ceteri quos maleficos* ob facinorum magnitudinem *vulgus appellat*, nec ad hanc partem aliquid moliantur. Sileat omnibus perpetuo divinandi curiositas. Etenim supplicium capitis feret gladio ultore prostratus, quicumque iussis obsequium denegaverit [a. 357];

C. 9.18.7. (a rescript of the Emperor Constantius of 358) . . . etsi homines magi, in quacumque sint parte terrarum, humani generis inimici credendi sunt, tamen quoniam in comitatu nostro sunt ipsam pulsant propemodum maiestatem, si quis magus vel magicis contaminibus adsuetus, *qui maleficus vulgi consuetudine nuncupatur*, aut haruspex aut hariolus aut certe augur vel etiam mathematicus aut narrandis somniis occultans artem aliquam divinandi aut certe aliquid horum simile exercens in comitatu meo vel Caesaris fuerit deprehensus, praesidio dignitatis cruciatus et tormenta non fugiat.

The oldest meaning of the word, to be found in Plautus, Cicero, Plinius and Quintilian and then in the *Itala* and in Christian writers is generically 'homo nefarious, sceleratus', while the meaning 'magus, incantator' is found only in post-classical times[66] and in later periods in connection with a cultural conception of strict condemnation of the magic arts, thought to be on the same level as other serious crimes.[67]

8 Conclusions

We can now attempt to draw some more general considerations from the analysis we have carried out on legal texts. Let us ask, first of all, what function the expression *volgō dicitur* might have. Why does it appear? Does it have a role which is different from that of other text types of the classical period? I myself believe that in the legal context it might have a practical role to play. The search for expressions in general use might have reflected principles of legal communication, public communication par excellence, which needed to be characterized by clarity (*luciditas*) and propriety (*proprietas*) of expression, this being an essential instrument for communication. These were principles which had profoundly

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66 See ThLL 8, 177, 6 ss.

67 Cf. the constitution of 344 of the Emperors Constantius and Constans to Hieroclen, *consularis* of Celesyria, quoted by CTh. 11.36.7: «Observare curabis, ne quis homicidarum veneficorum maleficorum adulterorum itemque raptorum argumento convictus, teste superatus, voce etiam propria vitium scelusque confessus audiatur appellans». The negative meaning of the word is also found in various Christian writings, as well as in the *Vulgata*, and in Cassiodorus' *Variae* (see the documentation collected by ThLL 8, 177, 6 ss.).

influenced classical ideals of composition, but which in the Justinianian context became enriched by special implications. *Luciditas* and *proprietas* could be functional to the objective, politically and administratively, to reach the whole of the population within the Roman orbit with all its cultural and juridical diversity, which varied considerably from age to age. We have only to think of the changes wrought in the status of *cives*, *peregrini*, *dediticii*, and the social and communicative needs brought about from time to time by geopolitical equilibrium as the power of Rome went through its various phases of expansion and experienced the events of its millenary history. The concession of citizenship to all those who lived there permanently, with the Edict of Caracalla, constituted a final realization that the Roman world had been transformed into a vaster cultural and anthropological universe. Attention to language in general use and the careful way in which common language was used belongs to the long wave of a concept held by Cicero and Quintilian, but which in the texts of classical and post-classical law and in the Justinianian corpus perhaps takes on a new importance. In the ideal of making use of a language used by everyone is, in a sense, the realization of that universality of the Empire which found in Justinian its last and extraordinary stage.

There are two more questions we cannot avoid asking ourselves. The first concerns the correspondence between the conceptual representation according to which certain expressions were used by an indefinite generality of the population and their effective use: how far could this representation correspond to the reality of language use and how far was it the fruit of a functional ideology in the strategic vision of the Roman *orbis*? It is by no means easy to find definite answers to this question, but stratigraphic research into structures and lexemes in legal texts enable us to suggest a few hypotheses. The second question concerns a definition of the period of time during which the semantic nucleus we have mentioned was valid. While the political organization of the Empire lived on, with its administrative apparatus and its educational system, up to Justinian's dream of a universal Rome which, in the eastern territories at least, was still founded on such institutions, it made sense to think of linguistic structures in everyday use such as *volgō dicitur*. But there is various evidence to suggest that the formulas with *volgō* + *verbum dicendi* gradually came to indicate different realities. It is enough to think of their field of use in the medieval Latin of various countries in Northern Europe, where expressions from Germanic languages are often introduced.[68] It is

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68 See Pijnenburg, Quak and Schoonheim (2003), with a full discussion of cases of contact between Latin and Germanic languages in various phases of the Middle Ages; Hunt (1990: 42), with interesting examples of the use of the expression *vulgo dicitur* in popular medical treatises of the 13th century, to introduce the English correspondents of Latin words.

possible that the changes in their meaning reflect the wider cultural changes that occurred between the later period of the Ancient World and the Middle Ages, and while this is a problem that deserves further analysis, it cannot be excluded that the different meaning that characterizes them can act as a diagnosis of the deeper and faster fragmentation of Latin that laid the road to the Romance *volgari*.[69]

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69 For a critical examination of Wartburg's model of fragmentation of Latin, see Varvaro (1980).

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