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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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The Oath in the Ancient and Medieval Culture An Outline of the Problem

Abstract: Since the ancient period the oath was a kind of religious act, a declaration of fixed content depending on the circumstances, intended to be delivered in public. It was a part of the agreements between states, tributes, strengthening treaties, meeting obligations, fulfilling obligations and promises. It was a means of evidence and a form of purification in court. It was sworn it public, according to a specific ritual and completed with set activities and while recalling the names of gods or God as witnesses. One of the ancient elements which survived the fall of the pagan world and was recorded in the medieval oath was undoubtedly the formula of the promise, which was divided into: a solemn declaration, a reference to a deity and a self-curse. The ancient and medieval perjurer was threatened with severe punishment – such a person could not find peace even after death. In both periods keeping oaths was the measure of one’s piety. The solemn commitment belonged to the realm of the sacred, as it was a part of a religious ritual. The basic gestures which accompanied the promise were of ancient origins – a hand raised to the sky and touching sacred objects.

Keywords: oath, antiquity, the Middle Ages

The oath (a solemn promise, commitment) is undoubtedly a part of the ancient tradition. Although the “homeland” of the oath was the ancient Near East, we know about it mainly from the Greek and Latin literature – the characters from the works of Homer, Euripides and Virgil. The Oath of Hippocrates, Oath of Horatii and Oath of Hannibal became a permanent part of the collection of European themes. The aim of this paper is to compare the ancient oath with its Christian “successor” which gained its full shape in the Middle Ages, and to an-

swer the question of which elements of the oath survived the collapse of the ancient world.

Indeed the Greeks and Romans were not the first ones who uttered the words of the oath (*horkos, iusiurandum*) in the ancient world. The researchers believe that the most ancient Greeks borrowed the model oath from the Near East peoples, and its acquisition is proved in the oldest Greek literary work – the *Iliad* of Homer.¹ The sources from the ancient Near East reveal the model formula of the oath which contained the three elements later known in Greece and Rome: the statement, the list of the divine forces acting as witnesses and guarantors, and finally, the self-curse.

In the act of a solemn commitment the peoples of Mesopotamia, Anatolia, Syria and Egypt generally referred to witnesses such as the divine cosmic elements: the Sun, the Sky, the Earth, as well as the sea and rivers. Of these, the Sun which “could see everything” played the most prominent role. A well-known example of the use of the above elements is the text of the peace treaty signed between the pharaoh of Egypt and the king of the Hittites after the Battle of Kadesh (1259 BC). The witnesses of the oath, and at the same time executors of the punishment for the perjurer, were a thousand Egyptian and a thousand Hittite gods and apart from them: Mountains, Heaven, Earth, the Great Sea, Winds and Storm Clouds.² The Israelites, though they only swore to Yahweh, that is “the name of God” and “the life of the Lord,” who also appeared as a witness and the judge,³ could strengthen the credibility by referring to Heaven and Earth as the witnesses to the purity of conscience and good intentions.⁴ The oath was also a profession of faith in God.⁵ Similarly, the Near East gods swore to each other, and God of Israel swore to himself.⁶

Also the gestures which accompanied the oath originated in the Near East: the raising of a hand or hands to the sky, touching the recipient of the oath and different objects. The most common iconographic example of a gesture is the relief on the stela with the Laws of Hammurabi, which shows the king with his right hand raised in front of the Sun god – Shamash, and a literary piece of evidence – Abraham swearing and raising his hand to God in the Book of Genesis.⁷ In the act

¹ P. Karavites: *Promise-Giving and Treaty-Making. Homer and the Near East*. Leiden 1992; L.M. West: *The East Face of Helicon: West Asiatic Elements in Greek Poetry and Myth*. Oxford 1997, pp. 19–20; W. Burkert: *Creation of the Sacred. Tracks of Biology in Early Religions*. Cambridge, Mass. 2001, pp. 171–172; J. Fletcher: *Performing Oaths in Classical Greek Drama*. Cambridge 2012, p. 3.

² *Ancient Near Eastern Texts Relating to the Old Testament*. Ed. J.B. Pritchard. Princeton 1955 (hereinafter referred to as ANET), pp. 199–201.

³ Deut 6, 13; 1 Sam 19, 6; Jer 4, 2; Gen 31, 50 and 53.

⁴ Jdt 7, 28; 1 Macc 2, 37.

⁵ Is 48, 1; Jer 12, 16.

⁶ Gen 22, 16; Ex 32, 13.

⁷ Gen 14, 22; see: Deut 32, 40; Ps 106; Dan 12, 7.

of commitment one used to touch his or the recipient's intimate areas and hold the written text of the oath and pieces of armor in the hand.

A solemn assurance that what one was saying was veracious, a promise (commitment) to do or desist something, appeared widely in the Near East codifications, beginning with the Sumerians. In the evaluation of evidence they used the oath, witnesses' statements and written testimonies.⁸ A witness who testified untruthfully under oath was subject to penalty. In the Book of Numbers and Deuteronomy there were also regulations about the number of witnesses to the promise.⁹

In the Middle East we also find the custom of slitting the throat of the sacrificed animal and dismembering its body, which was an allusion to what awaits the perjurer. For this reason, the person taking an oath used to touch their throat.¹⁰ While imposing the self-curse, which could focus on the family, clan, distant descendants, and even the whole country, the eyes of wax figures were plucked out, such figures were thrown into the fire, and bows and arrows were broken.

The formal similarities between the Near East and ancient oath (Greek and Roman), or more broadly – the eastern and western oath,¹¹ prove the existence of a pattern for the ancient oath as such. There is no evidence that the oath had evolved from the terrifying and spectacular (“savage,” “primitive”) to the sustainable (“civilized”). It was rather a permanent spectrum which, depending on the circumstances, used more or less powerful phrases and gestures. Sometimes a brief “I swear” was uttered, but other times there were even references to black magic.¹²

Of course, the Greeks and Romans were aware of the similarities between their own swearing tradition and the customs of other peoples. The differences were mainly related to the gestures which were often more explicit and blunt in the world of barbarians (*barbaroi*). From the works of Herodotus we learn about drinking blood from each other's incised arms or other body parts, cutting the hand to rub stones with blood, drinking from the hand, licking the dust raised from the ground and touching the graves.¹³ The Father of History did not think, however, that the Greeks were superior to other nations in making promises and their observance. Herodotus writes about the Persian trick which involved digging a trench in the ground on which the oath was to be taken, but on another occasion

⁸ See C. Kunderewicz: *Najstarsze prawa świata. Zbiór studiów*. Łódź 1990, p. 15.

⁹ Num 35, 30; Deut 17, 6; 19, 15–20.

¹⁰ N. Weeks: *Admonition and Curse: The Ancient Near Eastern Treaty/Covenant Form as a Problem in Inter-Cultural Relationship*. London 2004, p. 24.

¹¹ Among others: J. Bederman: *International Law in Antiquity*. Cambridge 2001, p. 67; M.L. West: *The East Face of Helicon...*, pp. 19–23.

¹² J. Fletcher: *Performing Oaths...*, p. 10; C.A. Faraone: “Curses and Social Control in the Law Courts of Classical Athens.” *Dike* 1999, vol. 2, pp. 99–121.

¹³ Hdt. 1, 74; 3, 7–8; 4, 70; 4, 172.

implies that the Greeks met on the markets in order to cheat each other and make false promises.¹⁴ Several centuries later, when describing the first alliance made by the Romans, Titus Livy stated that the oath had a permanent formula. Quoted by the Roman historian, the solemn oath of Hannibal, who at the age of nine had pledged to forever remain the enemy of Rome, had no signs of “barbaric” practice, similarly to the oath of the Quadi described in the 4th century by Ammianus Marcelinus.¹⁵

Both the Greeks and Romans commonly made solemn promises as evidenced by the source statistics: the *Iliad* and the *Odyssey* characters swear twenty-six times, in the *Histories* by Herodotus there are about forty oaths, in the *Peloponnesian War* – fifty, and counting every time an oath is mentioned – two hundred and sixty-nine.¹⁶ Every Greek city-state had its own traditional (*nomimos*) oath and its own *theoi horkioi*.¹⁷ Inside the *polis* each distinct group of citizens was bound with an oath: tribes, phratries, city councils, courts judges, epheboi, the participants of mysteries, agonists, religious fraternities, etc. It was no different in Rome, where the sacred obligations were taken by, among others: consuls and low-rank officials, soldiers, gladiators and liberated slaves. Among those who swore in the Greek and Roman courts were the prosecutor, the defendant and witnesses. Although the Greek sources show that in 478 BC as many as one hundred and fifty countries took an oath to form the Delian League, the Romans certainly outdid the Greeks in the number of people making a commitment. The *Res Gestae* reads that, in addition to the entire Italy (*tota Italia*), Gaul, Spain, Africa, Sicily and Sardinia pledged allegiance to Octavian in his fight against Cleopatra.¹⁸ In the vast Roman Empire, probably since the time of Julius Caesar, oaths were taken on the genius of Caesar and later on his health.

The ancient oath was sacred and cosmic in its character because its formula produced an effect in the divine and human world in parallel. It was vital that the gods and the people swore in the same way and under similar circumstances. Although various deities in any number, even including “all gods,” could be invoked to witness a solemn commitment, the oath remained permanently under the care of the divine father Zeus (*Zeus Horkios*) and in Rome – Jupiter. As Homer assured, Zeus “sees everything.”¹⁹ According to the sources people frequently

¹⁴ Hdt. 4, 201; 1, 153.

¹⁵ Liv. 1, 24: this oath includes all the typical elements of the Roman oath. F. Hickson-Hahn: “Performing the Sacred: Prayers and Hymns.” In: *A Companion to Roman Religion*. Ed. J. Rüpke. Oxford 2007, pp. 241–242; oath of Hannibal: Liv. 21, 1; Quadi: Amm. Marc. 17, 12, 21.

¹⁶ C. Callaway: “Perjury and the Unsworn Oath.” *TAPA* 1993, vol. 123, pp. 15–25; D. Lateiner: “Oaths: Theory and Practice in the Histories of Herodotus and Thucydides.” In: *Thucydides and Herodotus*. Eds. E. Foster, D. Lateiner. Oxford 2012, pp. 158, 171.

¹⁷ Thuc. 5, 47; A.H. Sommerstein, A.J. Bayliss: *Oath and State in Ancient Greece...*, p. 164.

¹⁸ *Res Gestae* 25, 2.

¹⁹ Hom., *Il.* 3, 277.

turned to Helios (Sun), Gaia (Earth), but also rivers, especially the Styx which the gods used to swear on. When the Macedonian king Philip II in 337 BC received an oath from the representatives of the Greek states, they swore to: Zeus, Earth, Sun, Poseidon, Athena, Ares and all the gods and goddesses.²⁰ Virgil, following the example of the *Iliad*, included Earth and Sun in the oath taken by Aeneas.²¹ The most solemn oaths were sworn on the head of the supreme god. That is how Hera, Hermes and Hestia made their commitments.²²

Of course, depending on the circumstances, one could invoke various divine “experts,” the spirits of the ancestors or the local gifts of nature. When talking about courage and his homeland, the hero of Euripides swears to Zeus “between the stars and bloody Ares.”²³ Similarly, Aeneas calls Mars when grabbing his sword.²⁴ Demosthenes swore on the shadows of the Athenians’ ancestors, the warriors who fought at Marathon, Artemision, Salamis, Plataea and all the heroes buried in public graves.²⁵ Often the local gods and heroes were invoked – in the Plataean area deities of the Plataean pantheon appeared as witnesses.²⁶ The oath of the Athenian epebes who were to defend their homeland, includes (Attican) crops, barley, vines, olive and fig trees.²⁷ The choice of the gods was based on the local tradition, for instance, the Corinthians swore to Poseidon, while the Lacedaemonians preferred Castor and Pollux.²⁸

In everyday trivial situations one could swear on anything. Pythagoras swore on the numbers, and Socrates – on “the dog” (*ma ton kuna*), or on “the dog, the god of the Egyptians.”²⁹ Aristophanes presents the Athenian philosopher who calls the Breath, the Chaos and the Expanse.³⁰

Also the sex of the person making a promise played a role. In general, though not mandatory, women referred to: Artemis, Aphrodite, Demeter, Persephone, Hera and Hecate, and men preferred Hercules and Apollo. Similarly, in Rome women swore to Venus, Juno, and also Castor, and men – Hercules (Mehercule!), Penates, Genius and Pollux (though never Castor).³¹ It was believed

²⁰ IG II 2, 236; P.J. Rhodes, R. Osborne: *Greek Historical Inscriptions 404–323 BC*. Oxford 2003, no. 76.

²¹ Verg., *Aen.* 12, 176–181; F. Hickson-Hahn: “The Oath of Aeneas: Vergil, Aeneid 12, 176–94.” In: *Prayer from Alexander to Constantine*. Ed. M. Kiley, London–New York 1997, pp. 144–148.

²² Hom., *Il.* 15, 39; *Hom. Hym.* 4, 274; *Hom. Hym.* 5, 26–27; see I. Torrance: “On Your Head Be It Sworn: Oath and Virtue in Euripides’ Helen.” *CQ* 2009, vol. 59, pp. 1–7.

²³ Eur., *Phoen.* 1006.

²⁴ Verg., *Aen.* 12, 175.

²⁵ Dem., *De cor.* 208.

²⁶ Thuc. 2, 74.

²⁷ P.J. Rhodes, R. Osborne: *Greek Historical Inscriptions...*, no. 88.

²⁸ See: W. Smith: *A Dictionary of Greek and Roman Antiquities*. Boston 1859, p. 660.

²⁹ On the numbers: Luc., *Vit. auct.* 4; on the dog e.g.: Plat., *Resp.* 592 a; Plat., *Grg.* 482 b.

³⁰ Aristoph., *Nu.* 627.

³¹ Terent., *Andr.* 495, 505; Hor., *Ep.* 1, 7, 94; Aul. Gel. 11, 6.

that women were inherently more perfidious. Sophocles believed that a woman's oath "is written on the water."³² It is known that the ancient warriors used to compare the defeated enemy to women, therefore it is possible that the soldier's oath, similarly to a Hittite oath, was threatened with turning the perjurer into a woman.³³

The ancient oath was combined with specific gestures. The Greek gods touched the head of Zeus or elements of nature and simultaneously evoke them as witnesses. Hestia, when promising to keep virginity, touched the head of the supreme god. Hera put one hand on the Earth, the other – on the Sea.³⁴ Only the gods could do so. The Greeks and Romans used to put a hand on the statue of the god to whom they swore or touch the bloody ceremonial sacrifice with a hand or a weapon, and even kept animal entrails (*splanchna*) in the hands. Traditionally, as in a prayer, hands were raised to the sky.³⁵ To imitate the gods, parts of the body of the recipient of the oath were touched (head, knees or other). Often a hand of that person was shook (Gr. *dexiosis*, Lat. *Dextrarum iunctio*).³⁶ Additionally, people swore on items such as mace, sword, and spear, which were probably ritually touched.³⁷ In Rome, the soldiers swore (*sacramentum*) on the military signs, the *signa*.³⁸ In the oath to Jupiter, nicknamed Lapis (Stone), the words of the promise were spoken with a stone in a hand, which was later dropped.³⁹

Of course, depending on whether it was a spell in an ordinary conversation, a private vow or a public oath, and whether the content was related to a murder or state affairs, its formula was expanded, especially the last part – the self-curse. Perjury (*epiorkia*, *periurium*) was punished by the gods with equal severity in the divine and human world, hence in reality the penalty reached only those who made a false statement in court (*pseudomartyrion*, *falsum testimonium*). In the Hellenistic period breaking the oath sworn to the King (*basilikos horkos*) and in Rome to Caesar (*laesa maiestas*) was also prosecuted. The rest was left to the gods (*Deorum iniuriae dis curae*). Therefore, there was no exaggeration when Cicero insisted that many alliances last due to the religious ceremonies which accompany them, and the fear of god's punishment was the best protection against crime.⁴⁰ Keeping promises was the key measure of human devotion in the ancient period.⁴¹

³² Soph. Fr. 811 Radt.

³³ KBo 6, 34; 2, 46–3,1.

³⁴ *Hom. Hym.* 5, 27; *Hom., Il.* 14, 271–273.

³⁵ *IG I 3*, 254, 10–24; *Aesch., Sept.* 42–48; *Soph., Trach.* 1183; *Verg., Aen.* 12, 201; *Liv.* 21, 1, 21, 45; *Hdt.* 6, 68; *Hom., Il.* 3, 275.

³⁶ *Aristoph., Nu.* 81; *Eur., Med.* 496–497.

³⁷ *Hom., Il.* 1, 233–246; *Aesch., Sept.* 529–532; *Eur., Phoen.* 1677; *Verg., Aen.* 12, 175.

³⁸ *Dion. Hal., Ant. Rom.* 6, 45; *Liv.* 26, 48, 12.

³⁹ *Polyb.* 3, 26; *Fest., s.v. Lapidem*.

⁴⁰ *Cic., Leg.* 2, 16.

⁴¹ J. Mikalson: *Honor Thy Gods: Popular Religion in Greek Tragedy*. Chapel Hill 1991, p. 80.

The person who took the oath remained sanctified (*sacrosanctus*) and breaking the promise was an act of impiety (*impietas*).

The least severe self-curse was the one in which the punishment could reach only the person who swore. The “criminal” was frequently threatened with exile, with the proviso that even after his death neither the land nor the sea could accept him back.⁴² In the *Iliad* the violator’s brain might flow to the ground, and his family might be captured.⁴³ In Hades, the place for perjurers was mud.⁴⁴ A perjurer god was deprived of breath for a year and forbidden to eat ambrosia and nectar. Over the next nine years had to remain on the sidelines, with no right to participate in the divine meetings and feasts.⁴⁵

A more cruel formula implied “eternal” punishment which could reach even the distant descendants and the whole family.⁴⁶ There was no hesitation to swear on the well-being of children. It is evidenced in the oath of allegiance given by the inhabitants of Paphlagonia to Augustus – they swore on their children, the entire family and the descendants with their belongings.⁴⁷ Perhaps in the Greco-Roman world the habit of touching intimate areas while taking an oath appeared locally, which strengthened the curse cast on the offspring. According to J.R. Katz, Iguvine tablets provide the evidence. The formula of the Umbrian promise contains information about holding *urfeta* in a hand, which the researcher translates as “testicles.”⁴⁸ Most probably the ritual of cutting off the genital of a sacrificial animal had similar meaning.⁴⁹

Not all of the elements listed above always occurred in the swearing ceremony. Undoubtedly, a bloody sacrifice – the act of slaughtering an animal throat – was only mandatory for public ceremonies and of the utmost importance, such as signing international treaties and games (*agon*). The ritual of killing an animal is present in the *Iliad*, where the Achaeans and Trojans sacrifice a white ram and a black sheep.⁵⁰ In *The Seven Against Thebes* a bull is killed and its blood, on which the warriors take an oath, is put into the shield. In the *Anabasis* the killed animals on the shield are: an ox, a wolf, a wild boar and a sheep.⁵¹ The bodies of such animals were buried or thrown into the sea or river.⁵² The Molossians from the Epirus region used to quarter an ox into small pieces and pray that the perjurers

⁴² Eur., *Hipp.* 1028–1029.

⁴³ Hom., *Il.* 3, 298–301.

⁴⁴ Aristoph., *Ran.* 273.

⁴⁵ Hes., *Th.* 775–806.

⁴⁶ Hdt. 6, 86; Antiph. 5, 11; Dem. 23, 67–68.

⁴⁷ OGIS II 532.

⁴⁸ II b 23; J.R. Katz: “Testimonia ritus Italici: Male Genitalia, Solemn Declarations, and a New Sound Law.” *HSCP* 1998, vol. 98, pp. 183–217.

⁴⁹ W. Burkert: *Creation of the Sacred...*, p. 174.

⁵⁰ Hom., *Il.* 3, 73–107, 292.

⁵¹ Aesch., *Sept.* 42–48; Xen. *An.* 2, 2, 10.

⁵² Hom., *Il.* 3, 310; 19, 267.

would be dismembered in the same way.⁵³ Although Pausanias, while admiring the statue of Zeus Horkios at Olympia where players used to swear, forgets to ask the locals what they did with the killed boar, he assures that aforesaid the animal was not intended for human consumption.⁵⁴ In Rome a hog was killed with a piece of flint and Jupiter was asked to strike at the perjurer with equal power.⁵⁵

In the case of an oath of state importance there were often additional elements, sometimes unique. If a decision concerned the whole country lumps of iron were thrown into the sea, and the covenant was to apply until they floated to the surface. The Phokaians did so when they decided to move to another area and never return to their homeland.⁵⁶ The same was done when the Delian League was established. In the ancient period, a unique element of the oath, however of eastern origin, was the act of throwing wax figures into the fire by the colonists who sailed from Thera to establish Cyrene.⁵⁷

The ancient documents lead to a conclusion that oaths were sometimes manipulated. Even the gods were insincere. In the *Homeric Hymn* Hermes took a false oath.⁵⁸ From the example given by Thucydides it can be concluded that international agreements could contain a clause which stated that the oath would be kept if it is allowed by the gods and heroes.

As early as in the Greek period prohibition of swearing appeared occasionally. Apparently Pythagoras forbade his followers to swear to the gods, as he claimed that a man himself must be credible.⁵⁹

The Greeks and Romans, those who “cheated each other among oaths,” were condemned by Christians, who recognized the abuse of solemn vows for the sin of idolatry. In the Gospel of Matthew swearing on heaven, earth, Jerusalem, and one’s own head are prohibited.⁶⁰ Tertullian believed that because of the mandatory oaths Christians should not serve public offices, and even the colloquial “by Hercules!” (Mehercule!) was found by him as a sign of idolatry.⁶¹ St. Augustine believed that the tendency to perjury was a sign of the degeneration of the pagan customs.⁶²

From the moral point of view, perjury has always been regarded by Christians as a grave sin.⁶³ The Bible considers perjury as a desecration of the God’s name

⁵³ Suda s.v. *Bous*; Zen. 2, 83.

⁵⁴ Paus. 5, 24, 9–10.

⁵⁵ Liv. 1, 24.

⁵⁶ Hdt. 1, 165.

⁵⁷ SEG 9, 3.

⁵⁸ *Hom. Hym.* 4, 275–277.

⁵⁹ Diog. Laert. 8, 22; Iamb., *Vit. Pyth.* 47.

⁶⁰ Matt. 5, 34–36.

⁶¹ Tert., *De idol.* 17, 20.

⁶² Aug., *De civ.* 3, 2.

⁶³ *Corpus Iuris Canonici*. Ed. A. Friedberg. Graz 1959; CIC, vol. 2: *Decretales Gregorii IX*: X. 2. 1. 13., pp. 242–244; CIC, vol. 1: *Decretum Gratiani*: C. 22. q. 5. 5., p. 883: *Ille qui hominem*

(Lev 19, 12), a result of idolatry which brings disasters (Wis 14, 25, 29, Jer 5, 2; Zechariah 5, 3–4), a sin condemned by the Ten Commandments (Exodus 20, 7), which demands the punishment from God (Sir 23, 11). The prophets warned about perjury (Ezekiel 17, 13–19). The Apostle Paul put it among the bad deeds which are subject to the law (1 Tim 1, 10). Perjury was committed by anybody who knowingly confirmed untruth with an oath or swore something which they were convinced that was not true. From the legal standpoint, it was a crime.

Until the 4th century the Church was very reserved in terms of taking oaths, however, this attitude began to change in the 5th century. The legislations of Gallic synods, from the 5th to the 7th century, introduced an oath on the Gospel, which became part of the Church's right to asylum. The bishops tried to impose church law on all actions which were directly associated with the Church. In 441, the First Council of Orange forbade slave owners to take their subjects from the Church citing *reverentia et intercessio loci*. Then, in 511, the First Council of Orleans allowed to give out killers, adulterers and thieves only if the victim swore on the Gospel that they would not kill, maim, or inflict arbitrary punishment on the offender. The bishops resigned from the form of intercession (*intercessio*) in favour of the oath (*sacramentum*), which probably resulted from the strengthening of the church law and moving away from institutions similar to secular law.⁶⁴

According to Justinian's legislation, the oath could be considered as evidence in a trial.⁶⁵ Since the early Christianity many principles of the Roman law were adopted by the Church.⁶⁶ The *Comparison of Mosaic and Roman Laws* from the late 4th century recorded that perjury was punishable by death, and making a false statement – by exile, sending on an island or exclusion from the senate or city council.⁶⁷

Pope Gregory the Great (590–604) in his letter addressed to John Defender, the papal envoy to Spain, contained instructions on the settlement of disputes.

provocat ad iuramentum, scit, eum falsum esse iuratum, vincit homicidam, quia homicidia corpus occisurus est, ille animam, immo duas animas et eius, quem iurare provocavit, et suam. Scis, verum esse quod dicis, et falsum quo ille dicit, et iurare compellis.

⁶⁴ K. Burczak: *Prawo azylu w ustawodawstwie synodów galijskich V–VII wieku*. Lublin 2005, pp. 86–87, 221.

⁶⁵ A. Dębiński: *Kościół i prawo rzymskie*. Lublin 2008, pp. 56–57; W. Litewski: *Rzymskie prawo prywatne*. Warszawa 2003, pp. 250–251, 378–379, 398, 435.

⁶⁶ A letter attributed to Pope Alexander I (around 105–115), addressed to all of the faithful, contained guidelines on the taking of evidence in criminal ecclesiastical cases. According to these recommendations, the court was not allowed to punish on the basis of a forced confession to the crime. *Epistola I Alexandri Papae I ad omnes orthodoxos*. In: J.D. Mansi: *Sacrorum conciliorum nova et amplissima collectio*. Florentiae–Paris–Leipzig 1759, vol. 1, pp. 637–638; CIC, vol.1: *Decretum Gratiani*: C. 15. q. 6. 1., p. 754.

⁶⁷ *Zbiór prawa Mojżeszowego i rzymskiego (prawo boskie, które Pan przekazał Mojżeszowi)*. Trans. A. Dębiński. Lublin 2011, p. 119.

They concerned irregularities in judicial decisions. The Pope ordered John to verify whether the testimony against one of the bishops, against whom the proceedings were already pending, was sworn under oath (*sub iureiurando*).⁶⁸ This requirement resulted from the Roman procedural law. Antoni Dębiński believes that it was a *iusiurandum calumniae*, an oath used in *cognitio extra ordinem*. First of all, it was taken by the prosecutor who swore that the trial was not *calumniae causa*, that is, contrary to his conviction about groundlessness of the proceeding. In Justinian's legislation also the process deputies and lawyers were required to take this oath. In Justinian's period the parties guaranteed the good will of the witnesses with an oath.⁶⁹ This form of oath also appeared in the later records of the medieval canon law.

Breaking an oath was threatened with criminal sanction in the form of exclusion of the perjurer from the community. An oath given to those who asked for asylum in the church was of great value – it obliged the conscience and was expressed outside, in front of God and the Church community.

Latin terms referring to the oath are also noteworthy. In 511, at the First Council of Orleans, the name *sacramentum* was used, and in 517, at the Council of Epaone – *iuramentum*. The term *sacramentum* was ambiguous. In Roman law it meant a certain amount of money, religious rites, the teaching of the truths of faith, the sacraments, a sacred dignity, the military oath and the oath in general. The term *iuramentum* was more precise as it referred to the oath, a solemn commitment, or evidence in a trial.⁷⁰ Justinian's rights applied the two terms simultaneously, even in a single act. In all cases where an oath was mandatory, the parties were required to swear either directly to the judge, or at home, or by touching the Bible, or in the temple. In the 6th century, in the Frankish kingdoms the oath was taken by placing the hands on the altar with the simultaneous uttering of the content of the oath.⁷¹

It is worth noting that in the rights of the barbarian peoples, particularly Germanic, the oath, taken on a platform and with an appropriate to its seriousness number of the co-swearing, was a piece of evidence in itself. The co-swearing

⁶⁸ *Gregorii I Papae registrum epistolarum*, vol. 2. Ed. L.M. Hartmann. In: *MGH Epistolae*, vol. 2. Berolini 1899, pp. 410–418.

⁶⁹ A. Dębiński: *Kościół i prawo...*, p. 57; The Constitution of the Emperor Constantine in 334 required the witnesses to take an oath before they could testify. In Roman law calumnia was a deliberate false accusation in the criminal or civil lawsuit. In the civil lawsuit calumnia was also a deliberate, unfounded denial of the plaintiff's complaint by the defendant. The term was also understood as an incitement to an unfounded criminal complaint and an unjust denunciation in a criminal lawsuit. Cf. W. Litewski: *Rzymski proces karny*. Kraków 2003, p. 109 ff.

⁷⁰ *Ibidem*, pp. 106–107.

⁷¹ *Gregorii Episcopi Turonensis Libri historiarum X*. Eds. B. Krusch, W. Levison; *MGH Scriptores rerum Merovingicarum*, vol. 1, pars 1. Hannoverae 1951, ks. V, c. 3, pp. 196–197; Grzegorz z Tours: *Historie. Historia Franków*. Trans. K. Liman, T. Richter. Ed. D.A. Sikorski. Tyniec–Kraków 2002, book V, part 3, pp. 207–208.

were not witnesses and did not testify, but by the sacred act of the common oath gave a kind of guarantee that the man before the court was truthful. They linked their own credibility with the credibility of the accused. This act was extremely important. The perjurer risked not only the temporal punishment, but also a terrifying supernatural punishment.⁷² In the Germanic laws, oaths were sworn on the Sun and Moon, or more generally – astronomical objects.

In the pre-Christian era the Slavs swore to various deities (Perun, Veles, the god-sun), called them as witness to their truthfulness and asked for their punishing intervention in the case of perjury. According to Helmold, they swore on trees, fountains and stones, however, as the chronicler stresses, they swore reluctantly because of the fear of perjury and divine punishment.⁷³ For the Slavs taking an oath was connected with reaching to, touching or kissing the ground. According to Aleksander Brückner the term *przysięgać* (swear) referred to the proto-Slavic *sękti, sęga*, that is “to reach,” which referred to the contact with the earth.⁷⁴ By reaching or bowing towards the earth, its mighty power was summoned to become a witness to the words, the guarantor of one’s liability. An echo of this old oath was the folk culture formula: *Let the earth swallow me*, with clear biblical connotations.⁷⁵ It was a form of self-cursing in case one was lying. In the semantic context the term “oath” can be derived from the proto-Slavic *kłęti*, that is “cursing,” which was the penalty for breaking an oath or perjury. One who “cursed” unfairly, cursed himself and experienced the same consequences as those who were the subject of the cursing. Putting oneself in the pledge was done with a gesture typical of the old touch magic, that is by touching the chest, and for women also the plait.⁷⁶

A special role was played by the oath on the Sun, the source of life and an all-seeing deity. By taking this kind of an ancient oath one called the Sun, or a solar deity, mostly with their face and fingers outstretched to the Sun or to the east. Władysław Semkowicz classified it as a relict of the ancient legal practices.⁷⁷ Certain parallels can be discerned in the Jewish ritual oath. While uttering *iuramentum* a Jew had to turn his face towards the rising Sun and stand bare feet on a stool. Such behaviour can be associated with a warning for the perjurer that his sin could be punished with deprivation of the view of the light of God.⁷⁸

⁷² K. Modzelewski: *Barbarzyńska Europa*. Warszawa 2004, pp. 155–157.

⁷³ *Helmoldi Presbyteri Bozoviensis Cronica Slavorum*. Ed. B. Schmeidler. Hannoverae 1937 (MGH SRG), p. 160, c. 84.

⁷⁴ A. Brückner: *Słownik etymologiczny języka polskiego*. Warszawa 1993, p. 490.

⁷⁵ K. Moszyński: *Kultura ludowa Słowian*, vol. 2, part 1. Warszawa 1968, p. 512.

⁷⁶ A. Engelking: *Kłątwa. Rzecz o ludowej magii słowa*. Wrocław 2000, pp. 123–130.

⁷⁷ W. Semkowicz: “Przysięga na słońce.” In: *Księga pamiątkowa ku czci Bolesława Orzechowicza*. Vol. 2. Lwów 1916, pp. 304–377.

⁷⁸ H. Zaremska: “*Iuramentum Iudeorum – żydowska przysięga w średniowiecznej Polsce*.” In: *E scientia et amicitia. Studia poświęcone Profesorowi Edwardowi Potkowskiemu w sześćdziesięciolecie urodzin i czterdziestolecie pracy naukowej*. Warszawa–Pułtusk 1999, p. 239.

The texts of the oaths-curses from the 10th century on the Slavic deities were recorded in the *Tale of Bygone Years*. The formulas were uttered when contracts were signed between Rus' and Byzantium. An important role in this ritual was played by weaponry and the symbol of Christianity – the Cross. Christians kissed the Cross and the pagan Russians swore on their swords and gods, Perun and Volos. Those who broke the agreement were subject to eternal damnation or the plight of the afterlife.⁷⁹

In the Western early- and mid-medieval tradition people often swore on the relics of saints, the Cross and less often the Books of the Gospel. A complement to the content of the uttered words, which called the help of God, was the gesture of connected fingers of the right hand. It was recorded as a sign of the oath in the 9th-century manuscript containing the work of Terence (195 BC–159 BC) *Hecyra*. The marginal note on the side of the miniature comments on the gesture of a raised right hand with an outstretched index and middle finger: a prostitute called Bacchis gave an oath to the old Laches that she had not tried to seduce Pamfila⁸⁰. This was a copy of the gesture of Christ, widespread in the medieval iconography, with his right hand raised, the first three fingers outstretched and the other two bent, symbolizing the ruler and judge of the world. It also meant a blessing by God. In the Eastern Churches the two fingers symbolized the two natures of Christ, divine and human. Touching the Crucifix, the visible symbol of the presence of the Lord, produced a kind of communion with Christ.⁸¹ In this sense, the oath was a magical gesture which was associated with an immediate spiritual effect.

In the early Middle Ages perjury was not distinguished from breaking of an oath. The first occurred while declaring an oath (*iuramentum assertorium*) if the will was not consistent with the statement. The second, combined with a promising oath (*iuramentum promissum*), took place when the person who swore did not meet the obligations. Both crimes were together determined as perjury (*periurium*).⁸²

Regino of Prüm believed that if a person had ever been guilty of perjury, they could not be a witness in any case, receive the sacraments or be a judge. If a false oath was taken by a priest, he was to be punished with excommunication *bienni temporal*. In the case of a false oath on the sacrament, the penitent could not receive the Body and Blood of Christ for a period of one year, had to

⁷⁹ P. Boroń: "Pogańskie motywy w ceremoniach społecznych dawnych Słowian." In: *Bogowie i ich ludy. Religie pogańskie a procesy tworzenia się tożsamości kulturowej, etnicznej, plemiennej i narodowej w średniowieczu*. Ed. L.P. Słupecki. Wrocław 2008, pp. 62–64.

⁸⁰ J.-C. Schmitt: *Gest w średniowiecznej Europie*. Trans. H. Zaremska. Warszawa 2006, pp. 102–103, 163–180.

⁸¹ M. Lurker: *Przesłanie symboli w mitach, kulturach i religiach*. Kraków 1994, pp. 271, 336; E. Potkowski: "Autorytet prawa w średniowieczu." In: *Kultura prawna w Europie środkowej*. Ed. A. Barciak. Katowice 2006, pp. 15–33.

⁸² L. Kolmer: *Promissorische Eide im Mittelalter*. Kallmünz 1989, pp. 319–320.

observe fasting and give alms.⁸³ The Decrees of Burchard distinguished between perjury committed as a result of greed, deliberate perjury and committed to save one's life. In each case, various forms of penance were imposed. The sinner had to fast on bread and water for forty days and seven years, as well as on all Fridays of the year, also, sell their property and give the money out to the poor. There was also a "useless" oath – made to a prostitute, an adulterer, or against the canons – which had to be broken in order to avoid the shame and sin.⁸⁴ The sanction for perjury was excommunication, similarly to adultery and murder if committed knowingly and voluntarily. A priest was also subject to degradation and infamy.

In the Decree of Gratian the oath was understood as a conscious act of will, which enforced a behaviour in accordance with one's conscience. This specific relationship with God was closely linked with the intention, a particular inner plan which should not serve to the words, but the words should serve to the plan (intention). God understands the oath in the same way as the one who takes it, because "the one who receives does not hear the words from the depths of the soul, but from what comes out on the outside."⁸⁵ The oath is primarily judged by God according to the intention of the one who takes it. The use of deception in receiving the oath was condemned. Not only did God, despiser of ambiguity, take into account the intention of the one who was taking the oath, but also of the one who was receiving it, who could manipulate and deceive with cunning words.⁸⁶ The *Liber extra* by Gregory IX allowed to exempt from an oath which was connected with the wickedness of the receiver.⁸⁷ It was pointed out that there should be no difference between an oath and the statement of the faithful before the court.⁸⁸ Perjury in an oath, and lies in a statement were not allowed as they were sins which led to eternal damnation of the soul. Anyone who speaks the truth swears that it was written "a faithful witness will not lie." Decree writer, Rufin, indicated that nothing exempts from liability for perjury, even if the sin was committed in exceptional circumstances.⁸⁹ In the decretals of Gregory IX anyone who deliberately acted against an oath permitted by the law was considered a perjurer.⁹⁰ Bishops were to be punished more severely for perjury than others.⁹¹ It was suggested that an oath resulting from fear was to be kept, however, Celestine III believed that those who

⁸³ Reginonis Prümensis Abbatis: *De ecclesiasticis disciplinis et religione christiana*. In: *Patrologia Latina*. Ed. J.P. Migne. Paris 1854, vol. 132, book II, parts 313, 320, 321, pp. 344, 346.

⁸⁴ *Księgi pokutne*. Layout and edn. A. Baron, H. Pietras. Kraków 2011, pp. 374–375.

⁸⁵ *Decretum Gratiani*: C. 22. q. 5. 11., pp. 885–886.

⁸⁶ *Decretum Gratiani*: C. 22. q. 5. 13., p. 886.

⁸⁷ *Decretales Gregorii IX*: X. 2. 24. 1., p. 359.

⁸⁸ *Decretum Gratiani*: C. 22. q. 5. 12., p. 886.

⁸⁹ H. Singer: *Die Summa decretorum des Magister Rufinus*. Paderborn 1902, p. 401.

⁹⁰ *Decretales Gregorii IX*: X.2.24.10., p. 362.

⁹¹ *Decretales Gregorii IX*: X.2.24.12., p. 363.

were forced to swear under the threat of loss of life and property can be exempt from the oath.⁹²

The idea and practice of the oath was under the influence of the developing feudal law. From the 11th century the popes received oaths from lay and secular people as a sign of respect for the rights of the Holy See and loyalty to every Vicar of St. Peter. The oath was an act which guaranteed loyalty.⁹³ The Council of Clermont in 1095 prohibited the clergy from receiving offices and Church property from lay people, and forbade bishops and priests to take the oath of fidelity with their hands folded on the king's hand or any other lay person.⁹⁴ The ban was intended to deprive laity of the possibility to dispose of ecclesiastical offices and goods. Most of the political agreements which involved taking the oath did not have additional consequences, apart from the typical obligations: to remain loyal to the Pope, preserve peace, respect the rights of the Church and pay the traditional papal tributes.⁹⁵

In this context, the formulas of bishops' oaths seem to be worth attention.⁹⁶ The old formulas included in the *Liber Diurnus* required the hierarchy to be decisive on the matters of faith and fully devoted to the Pope as the head of the Church.⁹⁷ The 11th-century oaths mainly related to bishops' administrative functions. Every bishop swore allegiance to St. Peter, the Church, the Pope and his successors, renounced acts of treason, promised to give advice while maintaining confidentiality, and swore to protect *papatus Romanus et sancti Petri regalia*. Also they promised to welcome the papal legates, arrive at synods and once a year visit *ad liminas Apostolorum*. The oldest form of the oath was a pledge made to Pope Alexander II by Archbishop of Ravenna Wibert during the consecration in 1073.⁹⁸ It became a standard formula which was used by all subordinate to the Pope and with a few minor changes was incorporated in 1234 into *Liber extra* of Gregory IX, becoming a law of the Church.⁹⁹ However, oaths of this kind could contain more promises. Pope Celestine III (1191–1198) in his letter addressed to the Archbishop of Ravenna, Wilhelm, reminded him of the oath of fidelity which obliged

⁹² *Decretales Gregorii IX*: X.2.24.15., p. 364.

⁹³ E. Magnou-Nortier: "Fidélité et féodalité méridionales d'après les serments de fidélité." *Annales du Midi* 1986, vol. 80, p. 457–484.

⁹⁴ J.D. Mansi: *Sacrorum conciliorum*. Vol. 20, c. 15, 17, p. 817.

⁹⁵ S. Reynolds: *Lenna i wasale. Reinterpretacja średniowiecznych źródeł*. Kęty 2011, pp. 452–463.

⁹⁶ T. Gottlob: *Der kirchliche Amtseid der Bischöfe*. Bonn 1936, pp. 11, 170 ff.

⁹⁷ *Liber Diurnus Romanorum pontificum, ex unico codice Vaticana*. Ed. T. Ritter von Sickel. Wien 1889, pp. 69 ff.

⁹⁸ Deusededit: *Collectio canonum*. Ed. V. Wolf von Glanvell. Paderborn 1905, vol. 1, p. 599; E.H. Kantorowicz: *Dwa ciała króla. Studium ze średniowiecznej teologii politycznej*. Warszawa 2007, pp. 278–279.

⁹⁹ *Decretales Gregorii IX*: X. 2. 24. 4., p. 360.

him not to alienate the properties of the Holy See.¹⁰⁰ Celestine's successor, Pope Innocent III, reminded the Archbishop of Milan that he was bound by the oath and was obliged not to give any fiefs without prior consultation with the Pope.¹⁰¹ Bernard of Parma, who around 1245 wrote *Glossa ordinaria* to *Liber Extra*, commented on the decretals of Celestine III: "Every bishop directly subordinate to the Pope swears to him that he would not alienate any church property or give it afresh as a fief."¹⁰²

A special form of the oath, which evolved in the medieval canon law, was the canonical purgation – *iuramentum purgatorium*. St. Augustine allowed for oaths on relics to clean oneself of charges, but did not recommend strengthening promises in this way as he was worried that a failure to keep the promise could lead to sacrilege.¹⁰³

A person taking the purgation oath swore before the judge and invoked God as a witness of their innocence. It could be taken when the accused had no other evidence to prove their guiltlessness. It was forbidden if the crime was notorious, or had been proved by credible prosecution or in any other way.¹⁰⁴ A priest taking the purgation oath before his supervisor had to promise that he was innocent of the charges, and that he had not committed any crimes since the adoption of the dignity of the Church.¹⁰⁵ Initially the purgation oath was taken only by the clergy who were required to provide a positive proof of innocence. *Iuramentum purgatorium* restored the reputation which had been violated by the suspicion. Over time, the procedure was extended on all those who could not be fully proven of committing the crime. The seriousness of the accusation could be suspended by the priest from his office and benefice until purgation.

Under the influence of Germanic law the custom of strengthening the oath with an oath sworn by the witnesses was introduced. The witnesses (*compurgatores, consacramentales, coniuratores*) acted as guarantors. Their sworn statement confirmed the credibility of the accused, rather than his innocence, therefore, they confirmed that they believed that the accused had sworn the truth – *quo sicut ipsi credunt eum verum iuravit*.¹⁰⁶ Their oath was called *iuramentum credulitatis*. The number of the co-swearing witnesses was different depending on the case and the dignity of the person being purified. In some cases there were three,

¹⁰⁰ *Decretales Gregorii IX*: X. 3. 13. 8., p. 514.

¹⁰¹ *Decretales Gregorii IX*: X. 3. 20. 2., p. 525.

¹⁰² E.H. Kantorowicz: *Dwa ciała króla...*, p. 280.

¹⁰³ M. Starnawska: *Świętych życie po życiu. Relikwie w kulturze religijnej na ziemiach polskich w średniowieczu*. Warszawa 2008, p. 405.

¹⁰⁴ *Decretales Gregorii IX*: X. 5. 34. 14.; X. 5. 34. 15., p. 875.

¹⁰⁵ *Decretales Gregorii IX*: X. 5. 34. 16., p. 877.

¹⁰⁶ *Decretum Gratiani*: C. 2. q. 5. 17., p. 460; *Decretales Gregorii IX*: X. 5. 34. 5. 9. 13., pp. 870, 872, 875.

five, seven, twelve, or even fourteen witnesses.¹⁰⁷ They had to have a good reputation and know the life of the purified.¹⁰⁸ The clergy usually looked for witnesses among the priests of the same rank, and other people called relatives, neighbours and friends. Not only could the canon purgation be applied in a formal indictment, but also in defamation. In the latter case, the bishop could ask to take the purgation oath unless the suspect referred to a senior judge.¹⁰⁹ A refusal to appear in court to prove one's innocence by canon purgation was considered to be an admission of guilt.¹¹⁰ The purification by the canonical oath was based on the belief that a person uttering the words of *iuramentum* would not dare to insult God with perjury.

Iuramentum calumniae was to prevent falsehood in the canonical trial. The decretals of Gregory IX forbade the clergy to take an oath against a false accusation, allowing the opportunity to deliver it by the representatives of those clergy in the matters of specific churches. However, it was stressed that a bishop without the consent of the Pope, and other clergy without the consent of the supervisor should not take such an oath.¹¹¹ It was also forbidden to take it in spiritual matters.¹¹² Yet it was allowed to take that oath on the soul of the person swearing (*in animam iurantis*) after a careful consideration of the subject matter and the people involved.¹¹³ Boniface VIII specified these issues in more detail, indicating that *iuramentum calumniae* could be made at any stage of judicial proceedings, and its omission would not reverse the trial.

The oath was an important means of ensuring the truth, a moral obligation, and in the canon law an essential element of judicial procedure and of almost all legal actions, as well as an independent procedural means of evidence.

Since the ancient period the oath was a kind of religious act, a declaration of fixed content depending on the circumstances, intended to be delivered in public. It was a part of the agreements between states, tributes, strengthening treaties, meeting obligations, fulfilling obligations and promises. It was a means of evidence and a form of purification in court. It was sworn it public, according to a specific ritual and completed with set activities and while recalling the names of gods or God as witnesses.

One of the ancient elements which survived the fall of the pagan world and was recorded in the medieval oath was undoubtedly the formula of the promise which was divided into: a solemn declaration, a reference to a deity and a self-

¹⁰⁷ *Decretum Gratiani*: C. 2. q. 5. 12., pp. 458–459; C. 2. q. 5. 19., p. 462; *Decretales Gregorii IX*: X. 5. 34. 10., pp. 872–874.

¹⁰⁸ *Decretum Gratiani*: C. 2. q. 5. 19., p. 462; *Decretales Gregorii IX*: X. 5. 34. 7. 9., pp. 871–872.

¹⁰⁹ *Decretales Gregorii IX*: X. 5. 34. 6., pp. 871.

¹¹⁰ *Decretum Gratiani*: C. 3. q. 9. 10., pp. 531.

¹¹¹ *Decretales Gregorii IX*: X. 2. 7. 1., pp. 265–266.

¹¹² *Decretales Gregorii IX*: X. 2. 7. 2., pp. 266.

¹¹³ *Decretales Gregorii IX*: X. 2. 7. 3., pp. 266.

course. The ancient and medieval perjurer was threatened with severe punishment – such a person could not find peace even after death. In both periods keeping oaths was the measure of one's piety. The solemn commitment belonged to the realm of the sacred, as it was a part of a religious ritual. Also, the basic gestures which accompanied the promise were of ancient origins – a hand raised to the sky and touching sacred objects.

For the ancient people the “profession of faith” was closely connected with the cult, hence an oath taken by a Greek or a Roman required richer framing. Zeus (Jupiter) did not use to look into the hearts of mortals, but rather relied on what he could see. It is no wonder then, that along with the disappearance of the ancient civilizations, the ritual animals with slit throats, their entrails held in hands, throwing stones and solids into the sea – also disappeared. Similarly, calling the Sun, the earth, rivers, and other elements of the cosmos to witness, remained only in rudimentary form of the pagan deities hidden in the shapes of nature.

To sum up, although the ancient world itself had ceased to exist, the man of the Middle Ages took the oath of an ancient origin. Since the ancient period the oath has been a language phenomenon which is based on the power of the spoken word.