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The Legal Contribution of the Parable of the Hidden Treasure in Roman Law (*Matthaeum* XIII, XLIV).

By

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Abstract

The treasure is one of the most debated legal institutions in the Roman doctrine. Before Hadrian, the sources were scarce and, to a certain extent, questioned by the majority of scholars, which explains why it is little known. Therefore, the present study aims to expose the treasure's legal regime in the first century A.D. To achieve this objective, the study considers the existing sources at the date that concerns this research and will complement them with the famous parable of the hidden treasure cited in the Christian Greek Scriptures, specifically in the Gospel according to Matthew chapter thirteen and verse forty-four. The interest of the article lies in the fact that it is a source that, although not juridical, offers light about the treasure before Hadrian.

Keywords: Roman law; Treasure; Parable; Private Law.

Resumen

El tesoro es una las instituciones jurídicas más debatidas en la doctrina romanística. Con anterioridad a Adriano, las fuentes son escasas y, hasta cierto punto cuestionadas por la erudición mayoritaria, ello explica que sea muy poco conocida. De modo que, el presente estudio tiene la finalidad de exponer el régimen jurídico del tesoro en el siglo I d. C. Para alcanzar dicho objetivo estudiaremos las fuentes existentes en la fecha que nos ocupa y las complementaremos con la célebre parábola del tesoro escondido que se encuentra registrada en las Escrituras Griegas Cristianas, concretamente en el Evangelio según Mateo capítulo trece y versículo cuarenta y cuatro. El interés del artículo estriba en que se trata de una fuente que, aunque no jurídica, ofrece luces sobre la situación del tesoro con anterioridad de Adriano.

Palabras clave: Derecho Romano; Tesoro; Parábola; Derecho Privado.

Introduction

There are various positions that, according to AGUDO RUIZ, prevent a unitary criterion of the treasure from being reached, and these divergences increase with time[1]. The lack of agreement in the doctrine is maintained in the different aspects of the treasure, among them the concept, which hinders a unitary conception valid for the different personifications of Roman Law. The extensive bibliography on the treasure agrees, in general, that the rule set by

[1] Agudo (2005). For the present study we will turn to the masterful work of Agudo Ruiz as a reference in the legal regime of the acquisition of the treasure in Roman law, in Alfonso Agudo Ruiz. *Régimen jurídico del tesoro en Derecho Romano*. Dykinson. With regard to the subject of treasure, in addition to the references in the Manuals, see also FUCHS (1871), pp.1 ff; PAMPALONTI (1888), pp. 101 ff; PEROZZI (1948), p. 198; LONGO (1891), pp. 109 ff; DELLA PORTA (1907), pp. 5 ff; SCHULZ (1914), pp. 94 ff; HUVELIN (1915), pp.273 ff; Apple- ton (1930), pp.273 ff; Apple- ton (1930), pp.273 ff. ff.; APPLE- TON (1930), pp. 3 ff.; SCIALOJA (1931), pp. 48 ff.; HILL (1936); KÚBLER (1936), pp. 7 ff.; BISCARDI (1940), pp. 276 ff.; JÓRS-KUNKEL-WENGER (1949), pp. 425 ff.VOCI (1952), pp. 21 ff; KASER (1956), pp. 359 f.; PROVERA (1964), pp. 140 ff; NÓRR (1972), pp. 11 ff; MORISSON (1981), pp. 321 ff; S'AGNUOLO VIGORITA (1984), p. 175; Mayer-maly (1983), pp. 357 ff.MAYER-MALY (1983), pp. 109 ff; PULIATTI (1992), pp. 162 ff; LUCHETTI (1996), pp. 134 ff; MARCHI (1997), pp. 365 ff; MALAVÉ (2000), pp. 449 ff;.

Hadrian innovates about the previous *ius* and, secondly, that this innovation is affirmed in the change of the ancient criterion, according to which the treasure was considered a *pars fundi.*

This is the key to facing the treasure situation in Roman Law and, therefore, the approach to the object of the present study. It is this which allows reading the text of the parable with some legal interest because that passage confirms the opinion that, before Hadrian, the treasure was a *pars fundi*. Indeed, it is here where the legal dilemma lies: whether or not the treasure in the first century A.D., as the opinion of Manilius and Brutus seems to suggest, was considered a *pars fundi*. He who found it on someone else´s land had no right to it, and the only way to"acquire" it was as a *pars fundi*, and it was, therefore, logical that he should seek to acquire the *fundo*. This is exactly what the parable explains in the key of *ius.* Therefore, there is nothing strange in the conduct of the one who has found it on another's property (because if he found it on his property, there was no legal dilemma).

On the other hand, when the autonomy of the treasure begins to be conceived - it is not *pars fundi* - but a *res* distinct from it, the criterion of Manilius and Brutus is not sustainable. This is the reason for Paulo's criticism, not because of the anachronism of Brutus and Manilius, but because it was inappropriate in Paulo's time, when already, after Hadrian, there was no doubt that the treasure was independent of the *fundo*.

I. The parable of the hidden treasure (Matthew 13:44)

According to Matthew, the Gospel narrates one of the best-known and most influential parables in constructing Christian philosophical thought. Its interpretation, far from being a momentary teaching, contains an energetic lesson that has endured throughout history, reaching the present day. Hence, it is not the religious study the authors intend to analyze in this paper, but rather, an analysis of the legal literature that prevailed at the time of citing such a famous parable.

Indeed, based on history, society and politics will focus on the study of the legal sciences in order to perceive the social reality occurring at a given time since history[2] helps to discern the legal context and vice versa[3]. Therefore, Roman law will carry out the study to examine significant Christian teaching and obtain conclusions drawn from the legal prism. Thus, the parable of the hidden treasure was narrated in Palestine, a territory under the (political-legal) dominion of the Roman Empire[4].

The Gospel of Matthew was written after the ascension of Christ, specifically in the eighth year after that event. Therefore, this fact takes us to the year 41, according to the various notes at the end of the Gospel[5,6]. Therefore, it is very likely that, at the time of citing the parable of the hidden treasure, Jesus of Nazareth was in Capernaum, a city of Galilee[7] where he was carrying out his earthly ministry of preaching the Kingdom of God, a journey that lastedabout three and a half years until his death on the 14th day of the month of Nisan in the year 33.

At the death of Herod the Great, king of Judea under the auspices of the Roman Senate, Emperor Caesar Augustus granted to Herod Antipas the tetrarchy of Galilee[8] and Perea and

[2] The authors turn to the Gospels for their veracity and accuracy in the historical aspect of the life and teachings of Jesus of Nazareth. César Izquierdo. "The conjectures about the story of Jesus," *Biblical Studies LXX (*2012):219.
[3] ROMANO (2012), p. 18.
[4] BARCLAY (2006), p. 480.
[5] MATTHEW, Insight for Understanding the Scriptures, (Watch tower bible and tract society of Pennsylvania (1991), p. 341.
[6] Watchtower, Watch Tower Bible and Tract Society of Pennsylvania, (1982), p 31.
[7] BOLES (1967), p. 62.
[8] MORTEN (2008), pp. 135,136.

his brother Archelaus, ethnarch of Judea. At the present date (from 29 A.D.) the province of Judea was already under the command of the *Praefectus Iudaeae*, Pontius Pilate[9] .

However, the district of Galilee was still in the hands of Antipas as a prince subject to the political structure of the Roman Empire[10]; for that reason, the Roman *ius privatum* prevailed in both territories.

In chapter XIII of the Gospel according to Matthew[11], in verse XLIV is the following narration:

Ὁμοία ἐστὶν ἡ βασιλεία τῶν οὐρανῶν θησαυρῷ κεκρυμμένῳ ἐν τῷ ἀγρῷ, ὃν εὑρὼν ἄνθρωπος ἔκρυψεν, καὶ ἀπὸ τῆς χαρᾶς αὐτοῦ ὑπάγει καὶ πωλεῖ πάντα ὅσα ἔχει ἔχει καὶ ἀγοράζει τὸνἀγρὸν ἐκεῖνον[12], (Greek).

"*Simile est regnum caelorum thesauro abscondito in agro: quem qui qui invenit homo, abscondit, et prae gaudio illius vadit, et vendit universa quae habet, et emi tagrum illum.*"[13], (Latin).

"*The Kingdom of the heavens is like a treasure, hidden in the field, that a man found and hid; and because of his joy, he goes and sells everything he has and buys that field*"[14], (English).

1. Local historical context

In the Palestine of the first century, where the parable was pronounced, they were

[9] DEMANDT (2000), p. 42.
[10] GONZÁLEZ (2011), p. 58.
[11] According to Professor Westcott of Cambridge University, 42% of the Gospel of Matthew is unpublished and is not contemplated in the other Gospels, among them, the parableof the hidden treasure. Westcott, (1896) p. 201."Saint Matéo, also called Levi, was a native of Galiléa. Raised to the apostolate from the office of publican, or tax collector, he was the first who wrote the Gospel, about six or eightyears after the death of the Lord. He wrote it in Jerusalem in the Hebrew language, or rather Syriac, which was a mixture of Hebrew and Chaldaic, then used by the Jews; and he did it at the request of the disciples, and by order of the Apostles, for the benefit of the Jews who wereconverting. So says St. Geronimo De Scr. eccl-= St. Iren. Lib. III, c. I. = St. Atan. In Sinopsi, etc. St. Matéo then went to Ethiopia to preach the Gospel". Torrés Amat (1823).
[12] Greek-Spanish Interlinear Bible (Reina Valera 1960), pp.1-10.13.
[13] LatinVulgate (Clementine).
[14] New World Translation of the Holy Scriptures, based on New Word Translation ofthe Holy Scriptures (revised 2019). Watch Tower Bible and Tract Society of Pennsulvania. See: "Again, the kingdom of heaven is like unto treasure hid in a field, which a man findeth, and hideth again; and for joy thereof he goeth and selleth all that he hath, and buyeth that field",Reina Valera, 1960. In medieval Spanish: "Semejante es el reyno de los cielos a un thesoro escondido en el campo, que quando lo halla un hombre, lo esconde; y por el gozo de ello va, yvende quanto tiene, y compra aquel campo". Scio de S. Miguel (1828).

juridically under the *ius privatum* (Ulp, Dig. 1,1,1,2). Likewise, the Province of Judea and Egypt were territories annexed and governed directly by the Emperor[15]. However, due to the pragmatism and the political-social reality of that time, certain territories (*urbes et provinciae*) were granted a treatment similar to the Italic ones by preserving their public institutions. This is the case of Judea, which retained its government in local content in judicial matters (without *potestas gladii*)[16] despite being governed by Rome (*Praefectus Judeae*)[17]. In parallel, Roman rule in Galilee was in the hands of the Idumean Herod Antipas[18], who guarded with great care the interests of the Empire[19]. However, there is nothing to indicate that the *ius privatorum* was any different in Palestine, unlike the *ius publicum* as it has just been seen. Nevertheless, although the words of Jesus were pronounced in the Galilean city of Capernaum, many in Judea and Jerusalem[20] also followed his teachings; hence his words had a strong influence throughout Palestine and eventually throughout the entire Roman Empire.

In the first century, the parable seems to confirm it; there is no "matter" about the acquisition of the treasure and consequently, it could not be raised as a mere question of *occupatio*[21]. This is what Manilus and Brutus were saying: he who by *usucapio* acquired a property in which there was a treasure, and it made no difference whether or not he knew that in the sculpted property, there was a hidden treasure. The parable does nothing more than follow this criterion, which he confirms was maintained in the provinces in the first century. Although Paulus indeed questions the opinion of Brutus and Manilius[22], everything seems to indicate that the treasure was part of the estate. Thus, the classic passage of Paullus on the treasure must be read with a view to the legal regime of the first century and not in the third century when it was written.

It is during the late Republic that the expression *ius gentium* is used, in general terms, to refer to the recognized right of citizens and pilgrims to designate certain - philosophical influence - phenomena that are common to all men (Herm. D. I, 1, 5), even to qualify interstatepublic law (Gaius 1, 1; Inst. 1, 2, 1 et seq. M Ulp. Inst. Dig. 1, 1, 1, 1, 4; 1, 1, 4.)23. Therefore, the *ius gentium* does not cease to be a universal law[24], and following Ferretti, "must be understood in the sense of rules applicable to man, to the community of that time, without anydistinction [...] it constitutes a kind of "law common to all" drawn from the coinciding principles among the rights of the various peoples of ancient times, including the Roma"[25].

[15] SAINZ and Gómez (2010), p. 81.
[16] MOMMSEN (1962), pp.584-585.
[17] Montoro (1999), p. 260.
[18] LUKE 3:1.
[19] DE OLIVEIRA (2006), p. 4.
[20] See: MATTHEW 4:25; MARK 3:7 and LUKE 6:17.
[21] It is considered a just possessory appropriation of a res. It is an original way of acquiring a property (not derivative), based on the iu sgentium. Civil property could be acquired "by the material appropriation of a res nullius, of the natural fruits, of a new thing (nova species) and of a material increase in real estate or movable property (accession)" BETANCOURT, F. Derecho romano clásico, op. cit, 309. It was used by the CatholicMonarchs to adjudicate the ownership of the new territories conquered in America. MARRERO-FENTE, R. Playas del Árbol: una visión trasatlántica de las literaturas hispánicas,Madrid: Huerga y Fierro, 2002, 57. For the acquisition of animals by occupatio, see: DELL'AQUILA, E. El Dharma, en derecho tradicional de la India, Salamanca: Universidad deSalamanca, 1994, 106. DE CASTRO-CAMERO, R. "Quid iuris? Las razones del jurista en elDerecho Romano, Sevilla: Universidad de Sevilla, 2007, 111. See. LOZANO, E. La expropiación forzosa, por causa de utilidad pública y en interés de bien común, en el Derecho Romano, Zaragoza: Mira, 1994.
[22] Ceterum quod Brutus et Manilius putant eum, qui fundum longa possessione cepit, etiam thensaurum cepisse, quanmvis nesciat in *fundo* ese, non est verum.
[23] KASER (1982).
[24] BERNARD (2006), p. 35.
[25] TOPASIO (1992), p.17.

2. The Roman legal system

The Roman legal system[26] contemplated the possibility of appropriating a certain *res*[27]if a series of requirements -*proprietas*- clearly established in the legislation were previously fulfilled (Gay. Dig. 2, 30, 91. Dig. 2, 8, 8, 4. Dig.7, 1, 22. 25. Dig. 9, 2, 1, 12. Dig. 39, 2, 20, 20, 22). Regarding the acquisition of property, the possibility of obtaining the *proprietas* was contemplated in various ways, one of which was precisely the *occupatio*. In this regard, and within such a figure, as BETANCOURT points out, was the finding/discovering of a *thesaurus*[28]; without forgetting the scope of other classes[29]. It is there where lies the importance of elucidating the concept and content of the *occupatio* as just possessory appropriation, to deduce the behavior of the *inventor thesauri* (I. 2, 1, 39. Dig. 41, 1, 63) from the parable of the Gospel[30] of Matthew.

In this regard, and delving into the subject, the existence of dissimilar opinions among the doctrine must not be ignored in relation to the ownership of the treasure, essentially because some considered the *inventio* (Dig.1, 8, 3) a classification of the *occupatio* (Gay. 2, 66-69. I. 2, 12-18. Dig .41, 1 C. 10, 15.) and others of the *accessio* (Gay. 2, 70, 78. Dig .41, 1. I. 2, 1, 20, s.). Nevertheless, and despite the doctrinal discrepancy[31] the romanistic considers the "treasure" a *res nullius* susceptible of occupation, unless it is discovered in another's estate[32]. Moreover, this is what happens in the parable of Matthew 13:44.

Curiously, in the parable cited, the characteristics of the object found are not specified; not even its content is broken down; it is simply qualified with the noun "treasure". However, what was found had to meet the essential requirements to proceed to its apprehension. Hence, the possibility of acquiring a treasure -inventio- differs from the *occupatio* in the distribution[33] of the property, and that is why some authors bring it closer to the concept of the *accessio,* and this is the theory that remains in this part.

II. Thesaurus concept

Legal sources are scarce, in pre-Adrian times, except for the text of Paulus (Dig. 41, 2, 3, 3), which makes it difficult - doctrinally - a secure understanding due to the absence of literary sources of the legal nature of the right of the *dominus loci*. Moreover, to find the

[26]See. BOUNAMICI (1971), p. 610. COSTA (1918), p. 176. WENGER (1938), p. 330. SCIALOJA (1954), p. 274. Alludes to the two categories of private procedure that existed in Rome - Legislations / *Per formulas*. PENDON (2014), p. 17.
[27] From the root *rei* (res) which has the meaning of thing. Some currents point out that res, rei had its origin in the East. "res o pecore, quae opeseran tanti quorum:: a rhenquos este ovis, pecus" (492 r.). SARMIENTO (1970), p. 411.
The term *res* was used by Roman jurists to refer to corporeal things *corpus,* with economic utility, and any object resulting from economic and legal transactions. Bernard. *Lessons in Roman Law (*2011), p.77.
[28] VOICE: *Thesaurus,* GUTIÉRREZ (1982), p. 668.
[29] Among them, Professor Betancourt highlights: *Res nullis* I.- wild animals (*farae bestiae*, D. 41,1,5,5; Gaius 2, 68; Inst. 2,1,15); by hunting (D. 41,1,1,1; eod, 3,2) (*venatio*); fishing (*piscatio*), and falconry (*aucupium*); II.- Res *nullis I*.- wild animals (*farae bestiae*, D. 41,1,5,5; Gaius 2, 68; Inst. 2,1,15); II. *Insula in mari nata (*D. 41, 1,7, 3 = Inst. 2, 1, 22); III.- Riverbeds abandoned by the watercourse; IV.- *Res hostium (*Gaius, 2,69;4,16; D.41,1,5,7; D.48,13,15)*;* things captured by the enemy; V.- *res nec mancipi* (*res derelictae*),; and VI.- The *thesaurus*. *Classical Roman Law*. BETANCOURT (2007) p. 323.
[30] The central theme of the gospel is the proclamation of the Kingdom of God. IZQUIERDO (2014), 451.
[31] Ferreti, argues that the finding of a treasure is an *inventio* and is not identified with *occupatio*. FERRETTI (1992), p. 46.
[32] BETANCOURT (2007), p. 323. In this regard, the Spanish Civil Code, Article 610, mentions: "Goods that are appropriable by their nature and lack an owner, such as animals that are objects of hunting and fishing, hidden treasure and abandoned movable things, are acquired by occupation", Title I, On Occupation.
[33] See Hadrian's Constitution.

difference between inventor and *dominus loci*, and the most relevant part, the distribution of the discovered treasure. In the same line, there are doubts from the prism of the tax claims, among them, the determination of the time in which it arises and the scope in the different phases of the regulation, together with the legal nature[34].

In this sense, Paulo defines treasure in the Digest as:

Thensaurus est vetus quadam depositio pecuniae, cuius non extat memoria, ut iam dominium non habeat: sic enim fit eius que invenerit, quod non alterius sit. Alioquin si quis aliquid vel lucri causa vel metus vel custodiae condiderit sub terra, non est thensaurus: cuius etiam furtum fit. Dig. 41, 1, 31, 1 (Paulus, 31 ad Edictum).

The definition leads to consider the following requirements for the conception of treasure: I) *Sub terra*. To be a hidden deposit otherwise, the general principles of occupatio would apply; II) *Vetus*. Sufficient antiquity and the ownership of an owner or the mere identification ofthe owner could not be ascertained (*si quis aliquid vel lucri causa vel metus vel custodiae condiderit sub terra, non est thensaurus*)[35]; III) *Pecuniae*. Consisting of money.

Indeed, for Paulo, the treasure is an ancient deposit of money of which the owner has no memory or existence. Thus, it is appropriated by the one who finds it since it has no owner.On the other hand, if the said good had been hidden underground to obtain protection, custodyor mere greed, then it could be stolen and would not, in any case, fit the category of treasure.

1. Pecuniae

The doctrine concerning the content of the pecunia is discussed from a limited sense (money - coins) or a broader vision referring to the inclusion of jewelry (*monilia*) or other objects of value (*mobilia*). In opinion of the authors, and being the theory of AGUDO RUIZ, the concept of pecunia used by the jurist Paulo acquires a broad meaning beyond mere money or monetary value. For in the Digest itself, in the commentaries to the Edict, and collected in the *De verborum significantione*, it is mentioned:

"Rei" apellatio latior est quam "pecuniae" quia etiam ea, quae extra computationem patrimonio nostri sunt, continet, cum pecuiae significatio ad ea referatur, quae in patrimonio sunt. Dig. 50, 16, 5 pr.

The definition broadens the scope of *res* to include goods outside the patrimony, while *pecunia* refers to that part of the patrimony. Therefore, it can conclude that Paulo's concept of *pecunia* did not imply a meaning as limited as money, but rather, everything that is part of the patrimony, that is, any object - movable thing - of great value[36]. Although Paulo indeed gives the term *pecunia* the technical-legal meaning of money[37], it is no less true that it does not imply a restrictive concept, perhaps as a consequence of the legal-fiscal evolution of the treasure.

[34] AGUDO (2005), 28.
[35] RODRÍGUEZ (2006), pp. 44-46.
[36] The aforementioned texts support the aforementioned idea: D. 50, 16, 178 pr. (Ulp. 46 ad Sab). Similarly, D. 45, 1, 50, 1 (Ulp. 50 ad Ed.) in the words of Ortega identifies the *pecunia* with any good integrated in the hereditary as, *Item stipulationen emtae hereditatis: "quanta pecunia ad te pervenerit, dolove malo tuo factum est, eritve, quominus perveniar", nemo dubitabit, quin teneatur, qui id egit, ne quid ad se perveniret*. See: ORTEGA (2002), p. 745.
[37] Analyze the following texts: D. 41, 2, 44 pr. (Papinianus, XXIII Quaestionum). D. 48, 13, 4,6 (Marcianus, XIV Institutionum). Plaut. Trinummus 177-180. For more information see: GUZMAN (1997), p. 541. MIQUEL (1992), p.194. Talamanca (2001), p. 217. MANFREDINI (2003), p. 125.

It cannot be ignored that Dig. 45, 1, 50, 1 contains a broad conception of *pecunia* with a clear limitation to the *stipulatio*, without further implications for the treasure[38]. In the same vein, Puliatti argues that the clear identification of *pecunia* with the content of treasure is the result of classical legal thought since it was identified - literary tradition - the treasure with *aurum* and *argentum*[39].

2. Vetus depositio cuius non extat memoria

Roman doctrine unanimously holds that the treasure must be hidden[40], i.e., the *depositio*[41]. The assertion is based on the Pauline expression of *Thensaurus est vetus quadam depositio pecuniae, cuius non extat memoria. In the same way as pecunia*, the term "hidden" must be understood in a broad sense, namely, all objects of value - ancient - that are found on the surface of the ground, without the visual presence of people and, there is no memory, there is no concealment (hidden) literally[42].

The action of hiding is an indispensable element of the legal concept of treasure, from a burial point of view, as is supported by legal sources. In this sense, GALGANO mentions a text by Pomponius that clarifies the idea of burial:

Thesaurus meus in tuo fundo est, nec eum pateris me offodere.... Dig. 10, 4, 15 (Pomponius, XVIII ad Sabidum).

For this reason, Paulo understands that burial is a fundamental element for the existence and category of treasure:

> *Ideoque si thensaurum in fundo meo positum sciam continuo me possidere, simul atque possidendi affectum habuero Dig. 41, 2, 3, 3* (Paulus, LIV ad Edictum).

Along the same lines, Papinianus identifies the concealment on land -sub terra- necessary for the configuration of the treasure:

> *Peregre profecturus pecuniam in terra custodiae causa condiderat [...]. Itaque nec alienus locus meam propiam aufert possessionem, cum supra terram an infra terram possideam,nihili intersit*. Dig. 41, 2, 44 pr. (Papinianus, XXXIII Quaestionum).

Authors such as PEROZZI[43] argue that Paulo's expression "depositi" is intended to qualify the idea that the treasure has been hidden (buried) by someone and not simply that it has remained hidden. Such reasoning is supported by the terminology used by Paulo since the term *hidden* does not appear in the Digest as an adjective that alludes to the condition of the object but rather uses a participle that acquires the condition of an activity provoked and intentional by a person.

The action of concealing implies more than hiding an object; rather, it is an act that seeks to prevent the location of said good beyond a legal interpretation of the term. In the sameline, BONFANTE identifies the voluntary nature of the deposit due to the analysis of the Roman

[38] Cf. MARRONE (1995).
[39] PULIATTI (1992), p. 162.
[40] Some do not consider concealment a requirement, Cfr. FERRINI (1900), p. 363.
[41] AGUDO (2005), p. 39.
[42] ORTEGA (2002), p.744.
[43] PEROZZI (1919), p. 262.

sources[44]. However, in Galgano's opinion, it is almost impossible to determine or prove the will of the deposit because regardless of the nature of the concealment (voluntary or involuntary), the reality is that it is still a treasure, and nothing changes the concept when knowing such detail[45]. In the authors' opinion, it is undeniable that the expression Paulo - *depositio* - alludes to the intentionality of hiding the good at its origin, with a clear intention of preservation and custody of it. For nothing would affect the concept of treasure if it were hidden by a person or because of the forces of nature since the initial voluntariness is irrelevant. In the same line, ESPINOZA ISACHS: "*it must be things that were hidden, of great value and when they are found it is not known who their owner was if he had i*"[46].

3. *Depositio ut iam dominium non habeat*

It is necessary, as Paulo demands that the deposit has no owner. Moreover, it is in essence, this statement is the origin of the long discussion between the Roman concepts of *res nullius* and *res derelictae* that revolve around the found treasure. On the one hand, PACCHIONI argues that treasure is far from being considered *res nullius* as it is not an abandoned good[47]but In the same order of ideas, it would not be possible to qualify it -treasure- as a *res derelictae*, since a non-existent and untraceable owner deposited it. Moreover, in the affirmative case, according to BONFANTE[48], it would not be possible to speak of the institute of treasure. For the above mentioned, under this criterion, the fact of the appearance of the original owner would not change anything about the rights of the *inventor* and *dominus loci* over the treasure. For Scarcella, the reason for the non-existence of the concealment is due to the impossibility of proving the existence of a property right over the *pecuniae*, in addition to the *vetustas of the depositatio*[49]. As a result, the non-existence of the owner leads us to the conclusion that the treasure had no owner at the time of its discovery. The Roman sources, as AGUDO RUIZ maintains, seem to support the idea that the definitive and immediate acquisition of the treasure corresponds to the *inventor* and the *dominus loci*, and not a mere temporary appropriation subordinated to the appearance of the first owner[50]. Simply supporting the argument that the acquisition is subject to revocability is the same as denying the existence ofthe acquisition of the treasure[51]. In short, as BONFANTE[52] points out, if a person were to claim the ownership with sufficient evidence, it would lead to conclude that the found *res* is not a treasure and, therefore, was not *sine dominio*.

III. Legal Regime during the Republic

The legal sources regarding the treasure in Republican times are scarce and, to a certain extent, as mentioned above, questioned by the majority doctrine. Among the best known is the *Trinummus* which states that with the purchase of the house, the treasure hidden in it[53] is also acquired, and in this way, as LAURIA[54] and SCARCELLA[55] argue, it becomes the property of the *dominus loci*.

[44] BONFANTE (1928), p. 140 f.
[45] Similarly, Ortega stresses that the term *depositio* at no time conveys the idea of voluntariness, since the hiding can be caused by human intentionality or the result of quality, for example, an earthquake that hides valuable goods. ORTEGA (199), p.163.
[46] ESPINOSA (2011) p.103.
[47] The abandonment is for a long time, hence, the difficulty of proving its ownership (Hernandez (2014)).
[48] BONFANTE (1966), p. 144. In the same idea: TALAMANCA (2001), p. 217. DELLA PORTA (1907), pp.19 ff.
[49] SCARCELLA (1991), pp. 194, 203.
[50] This last idea is supported by Pacchioni, see: PACCHIONI (1920), pp. 383 ff.
[51] Perozzi flatly denies that the acquisition is revocable. PEROZZI (1910), p. 263.
[52] BONFANTE (1918), pp. 134 ff. BONFANTE (1966), p. 145.
[53] *An ego alium alium dominum paterer fieri hisce aedibus? Qui emisset, eius essetne ea pecunia? Emi egomet potius aedis: argentum dedi Thensauri causa, ut salvom amico traderem*. Plaut. Trinummus 177-180.
[54] LAURIA (1955).
[55] SCARCELLA (1989), p. 209.

In our opinion, we agree with AGUDO RUIZ[56], that the republican legal sources are insufficient[57] to extract the concept of *thesaurus* in a technical-legal sense[58]. Certainly, the meager republican sources acquire greater relevance in the fragment of Paulus that openly criticizes the opinions of Brutus and Manilius. Both the Praetor and the Consul, in the second century B.C., considered the treasure as a *pars fundi*, in such a way that,by the usucaption of the land, everything (*sub terra*) found in it is acquired.

The interpretation (*contrario sensu*) usually mentions Horace's text that emphasizes the *inventor's* rights over the treasure found.

On the other hand, authors such as ROTONDI have questioned the relevance of the parable by understanding that the legal regime referred to a local law and, therefore, served as an interpretation of a satire by Horatio[59].

'O si urnam argenti fors quae mihi monstret, ut illi, thesauro invento qui mercennarius agrum illum ipsum mercatus aravit, dives amico Hercule! ...' (Hor., Sat, 2,6, 10-13).

In this passage, it can be seen how the poet does not specify how the land was purchased by the worker, who was not the owner of the land[60]. Along the same lines, FERRINI questions this possibility, as it cannot be deduced with certainty the procedure of the discoverer[61]. Likewise, from an exegetical study of the parable, it is improbable that Jesus of Nazareth turned, by way of example, to a military man and official patrician poet[62], to teach his disciples to put the Kingdom of God in the first place and not to be parts of this world[63].

In short, it is feasible that the deviation to satire by authors such as BONFANTE[64] or ROTARI, is the trigger for the profuse ignorance of the parable at the juridical level. In short, the existence of a right of the discoverer of the treasure during the Republican period does not seem to be proven[65]. Thus, the legal sources analyzed do not seem to establish a definitive conclusion nor constitute a distinction between the owner of the land and the discoverer. All this leads to the conclusion that by this date, the State had not made any financial claims on thetreasure since there was no specific regulation. At this point, the parable helps us understand the treasure's legal regime in the 1st century.

IV. Legal regime in classical period

In this period, a new conception of acquiring the treasure comes into play, where the discoverer acquires greater protagonism. Paulo's famous text is interested in the new concept of *scientia* conceived by Proculus and Neratius. They maintain that the owner of the estate acquires what is found in the estate - *si thensaurum in fundo meo positum sciam continuo me*

[56] AGUDO (2005), p. 65.
[57] We refer especially to the *Aulularia*: *I, refer, dimidiam tecum potitus partem dividam; Tametsi fur mihi es molestus non ero*. Plaut. Aul. 767-768. Also, the notorious story narrated by Livy of a discovery made in 181 B.C. in an estate of Lucius Petilius.
[58] DOMÍNGUEZ (2000), p. 369. BONFANTE (1966), p. 133.
[59] ROTONDI (1919), p. 345.
[60] ROTONDI (1919), p. 345.
[61] FERRINI (1908) p. 359.
[62] At the death of Virgil, the prínceps named to compose to Horace the *Camen Saeculare*, the hymn that should commemorate the *Ludi saeculare (*17.C). Navarro (2002) p.14. Cfr. DE LAS HERAS, (2001), p. 60. It is argued that the text is produced under the second triumvirate, although in reality there was only one (*tresviri reipublicae constituendae*).
[63] See: MATTHEW 6:33; JOHN 17:16.
[64] BONFANTE (1928).
[65] DE LAS HERAS (2001), pp. 59-62.

possidere, simul atque possidendi affectum habuero - because it is known, and he wishes to possess it[66]. It is precisely[67] where a concept of scientia is conceived, since the expression "in fundo meo positu" shows that the owner of the *fundo* acquires the treasure found on his land[68], according to *Nertaius* et *Proculus*.

For MASCHI, it seems that the *animus* is insufficient to acquire a treasure; for that,the *naturalis possessio* must be added. Then, the knowledge of the treasure by the owner of theland entails the possession of the treasure, as long as he has the *animus*, since it is evident thatthe land acquires possession[69]. From another angle, MASCHI, diverges with TALAMANCA[70], mentioning that both the *animus* and the *naturalis possessio* are necessary for the acquisition by the owner if he has the animus (*sumulatque possidendi affectum habuero*) accompanied by a clear knowledge since the lack of material apprehension is remedied by the ownership of the estate where it is located[71]; therefore, it would not be considered *bona vacantia*.

However, according to LAURIA[72], during the first century A.D., the treasure acquires greater prominence under the concept of autonomy and possession. Despite this, the figure of the *inventor* is uncertain, disputed, and highly questioned, as it coincides with the development of the fiscal regime for the treasure. In this sense, and following Professor PRADO, Roman law was based on a principle of patrimonial autonomy[73]. For this reason, the majority doctrine maintains[74] that the financial claims on the treasure have their origin in the regime of *bona vacantia* contemplated in the *Lex Iulia of Augustus*. On the other hand, several authors[75] argue that it does not seem likely that there will be a legal prescription on the treasure (although they do admit the relationship between the *bona vacantia* and the treasure), and therefore, the fiscal regime acquires its configuration in Claudius[76]. For DOMÍNGUEZ, the assimilation of the treasure to the *bona vacantia* is based more on logical conclusions than on legal grounds, hence the uncertainty of the attribution to the fiscal regime of Claudius[77]. Be that as it may, the identification of the fourth eclogue[78] is after the parable under study. Therefore, it is an inapplicable legal regime when the parable is cited.

Conclusions

In its origin, as has been demonstrated, the treasure was considered an increase of the

[66] AGUDO (2005), p. 72.
[67] *Neratius et Proculus et solo animo non posse non adquirere possessionem, si non antecedat naturalis possession. Ideoque si thensaurum in fundo meo positum sciam continuo me possidere, simul atque possidendi affectum habuero, quia quod desit naturali possessioni, id animus implet. Ceterum quod Brutus et Manilius putant eum, qui fumdum longa possessione cepit, etiam thensaurum cepisse, quamvis nesciat in fundo esse, non est verum: is enim qui nescit non possidet thensaurum quamvis fundum possideat. Sed et si sciat, non capiet longa possession, quia scit alienum esse. Quidam putant Sabini sententiam sententiam veriorem esse nec alias eum qui scit possidere, nisi in loco motus sit, quia non sit sub custodia nostra: quibus consentio.* D, 41, 2, 3, 3 (Paulus, LIV ad Edictum).
[68] AGUDO (2013), pp. 7-33.
[69] MASCHI (1966), p.491.
[70] The treasure in the private estate is acquired from the treasure or the fiscus. TALAMANCA (1990) p. 416.
[71] MASCHI (1966), p. 491, in AGUDO (2013), p. 9.
[72] LAURIA (1955), p. 27.
[73] PRADO (2012), p.18.
[74] BONFANTE (1918), pp.126 ff.
[75] Cf. HUBAUX-HICTER (1946), p. 426. BUSACCA (1992), p. 383. KÜBLER (1936), p.10. Volterra (1986), p. 333.
[76] The doctrine supports its theory in the eclogue of Calpurnius Siculus that attributes the treasure to the discoverer:
Iam neque damnatos metuit iacter ligones
Fossor et invento, si fors dedit, utitur auro,
Nec timet, ut nuper, dum iugera versat arator,
Ne sonet offenso contraria vomere massa.
Iamque palam presso magis et magis instat aratro.
Eccl. 4, 117,121.
[77] DOMÍNGUEZ (2000), p .371.
[78] It is considered that the fourth eclogue of Calpurnius Siculus is placed in the principality of Caro and Carinus (282 - 284 A.D.). On the other hand, Bonfante places it in the principality of Nero. Bonfante, La vera data di un testo di Calpurnio Siculo e il concetto romano de tesoro, *cit*, 123 ff. See: HAUPT (1854), p.358.

estate where it was located *(pars fundi*), based on the natural concept of Roman *fundus*, where the property had absorbing effects, and everything attached to it belonged to its owner. Thus, the plants, buildings or the treasure belonged to the property[79]. Likewise, the absolutecharacter is a particularity of the Roman property, in the sense of being ascribed[80] to a personwith an *erga omnes* protection against any claim.

From what has been commented on, the finding cited in the parable of Matthew 13:44 fulfills all the legal requirements to receive the treasure category. In the first place, the discoverer found a *hidden* treasure[81] in the field, evidencing that its discovery happened by chance and was fortuitous; essential elements for such classification. The biblical quote goes on to say that "from the joy that it gave him, he went and sold all that he had and bought that field"; with this expression, it is evident that the discoverer was not and never was the owner of the treasure, not even the person who buried it since he obtains joy (jubilation) from an unexpected and unforeseen discovery. Thus, the behavior of the discoverer of the treasure in Matthew's parable of hiding the treasure and buying the land where he found it obeys a scheme where the discoverer does not have any right over what he found, unlike the owner of the land[82].

Finally, by his reaction and manner of acting, he demonstrates his value since he textually says that he proceeded to "sell all the things he had and buy that field." A trifle of an object or doubtful value would not have provoked such drastic behavior in the *inventor* of illustration. Thus, it is demonstrated that the parable, according to Matthew 13:44, maintains the same juridical criterion of the acquisition of the treasure corresponding to the time of the 1st century. Paulus criticizes Manilus and Brutus - a situation that demonstrates the authenticity of the quotation - about the null right that the discoverer had for the treasure. Therefore, it is understandable that the discoverer would hide the treasure again to buy the estate.

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[79] BERNAD (2006), p. 246.
[80] PEREZ (2014) p. 19.
[81] It is sufficient that the treasure be hidden, it is not obligatory that it be buried. BERNAD (2006) p.260.
[82] MASI (2016), p. 1.

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