

# Philosophy and Law in Ancient Rome

## Traces of Stoic Syllogisms and Ontology of Language in Proculus's Jurisprudence

*Pedro Savaget Nascimento*

### 1 Introduction: Philosophy in the Digest of Justinian?

Figuring between the most significant compilations of legal institutions and interpretations in Western history, the *Digest of Justinian* has an incalculable value to the development of the majority of jurisdictions today. Its 9,132 texts were compiled in the years between 530-533 AD by a commission that had access to approximately 2,000 chapters,<sup>1</sup> reflecting the substance and method of what is known today as 'classical jurisprudence', a legal science developed through the work of jurists: private interpreters of the law with no necessary bonds to government administration.<sup>2</sup>

The forty jurists mentioned in the *Digest* were, according to Du Plessis and Cairns, an elite group of lawmakers sharing an intellectual culture, in a tradition of peer review and open debate in which its agents contributed as independent critical thinkers.<sup>3</sup> The fact that Greek philosophers rarely appear nominally in the *Digest* is understandable, given that its precepts were law supposed to be valid during the Empire, designed by jurists who wrote as lawgivers. Nevertheless, as Dieter Nörr diagnosed, a series of individual cases unmistakably reveal some influx of Greek philosophy into jurisprudence, but it is difficult to evaluate the weight and relevance of this influx in the absence of standards of comparison.<sup>4</sup>

Considering the recurrent problem of identifying if and how philosophical knowledge made its way into the intellectual elite of the Roman legal world and, quite importantly, by whose hands, this paper focuses on the relationship between Stoic theory of language and the legal opinions written by one of these forty *iuris auctores*, Proculus, who lived and wrote mostly during the reign of Nero, and was a contemporary of Seneca. More particularly, this article investigates how Proculus's legal opinions on ambiguous declarations of will can be better re-assessed in light of Stoic theory of language.

- 1 Tony Honoré, *Justinian's Digest: Character and Compilation* (Oxford: Oxford University Press, 2010), 1.
- 2 Alan Watson, *The Evolution of Western Private Law* (Baltimore: Johns Hopkins University Press, 1985), 5.
- 3 John W. Cairns and Paul J. du Plessis, *The Creation of the Ius Commune: From Casus to Regula* (Edinburgh: Edinburgh Scholarship Online, 2010), 77.
- 4 Dieter Nörr, *Divisio und Partitio* (Berlin: Schweitzer Verlag, 1972), 3.

Pedro Savaget Nascimento

Adding to previous research in Roman jurisprudence and syllogisms by Miquel, Honoré, Armgardt, Hülser and Winkler, the paper argues that Proculus's immersion in Stoic doctrine went beyond merely technical application of its syllogisms, inasmuch as the jurist delved into physical vocabulary by using the Stoic notion of 'existence', consisting in things that 'act' and/or 'are acted upon'. In addition, partially accepting the views of Kaser, Schulz and Wesel who denounce the overestimation of rhetorical philosophical ideas in the development of classical law,<sup>5</sup> the paper inquires how Proculus adopted a signature 'soft-intentionalistic' stance that, while continuing the *verba aut voluntas* legal debate, reflects a significant convergence of ideas with the Stoic philosophical perplexity and attempted solution to the apparent paradox disjoining thoughts, uttered speech and meanings.

The paper therefore uses Stoic theory of language as a background to obtain more insight into Roman lawyer Proculus's legal opinions on the meaning and understanding of ambiguous testaments, wills and dowries. Sections 2, 3 and 4 summarize Stoic theory of language, with a special focus on the problem of ambiguities and syllogisms. Section 5 and 6 discuss the reception of theory of language in the legal debate and situates Proculus in a Stoic legal philosophical context. The meat of the article comes in Sections 7 and 8, when the debate of the previous sections is used to re-examine his legal opinions on ambiguities in light of Stoic theory of language.

## 2 The Stoic system

Proponents of Stoicism conceived of the system as an edifice with three self-supporting and mutually dependent parts: physics, logic and ethics. One of Cicero's teachers and head of the philosophical school, Possidonius of Rhodes, explains metaphorically that the system is a living organism in which physics is the flesh and blood, logic is the bones and sinews and ethics is the soul.<sup>6</sup>

Stoic physics investigates the world and its contents, laying the basis of the materialism that defines the entire system: only what is material exists, from stars in the sky to thoughts in our minds. Apart from the things that have existence, i.e., corporeal materiality, the Stoics conceived of a category containing four immaterials that subsisted according to a rational impression, namely, time, space, void, and *lekta* (sayables or 'predicates that are attached to things').<sup>7</sup> All matter for the Stoics is permeated by *pneuma* or *spermatikos logos*,<sup>8</sup> the active principle of physical organization<sup>9</sup> that determines the totality of all events or, in other words, the

5 For a bibliographical compendium and critique of such views, see Fabian Steinhauer, 'The Boundaries between Rhetoric and the Law', *Ancilla Iuris* (2009): 53-98, at 61.

6 Aetius I, Preface 2 (SVF 2.35).

7 Peter Struck, 'A World Full of Signs', in *Seeing with Different Eyes: Essays in Astrology and Divination*, eds. Patrick Curry and Angela Voss (Cambridge: Cambridge Scholars Publishing, 2007), 7.

8 John Sellars, 'The Point of View of the Cosmos: Deleuze, Romanticism, Stoicism', *Pli* 8 (1999): 1-24, at 14.

9 Diogenes Laërtius, *Lives, Teachings and Sayings of Great Philosophers*, 7,134 (SVF 2.300).

destiny of things earthly and celestial.<sup>10</sup> The active principle gives attributes and motion to matter, i.e., gives everything its nature in different degrees of complexity, from the consistency of inanimate objects to human reason.<sup>11</sup>

Ethics is intended to enable men and women – thrown in a world of causal determinism –, in view of concrete reality, to adjust and control their actions according to the integrally rational nature of the universe.<sup>12</sup> The crucial notion capturing responsibility is what is ‘up to us,’ or *eph’emin*, which Cicero translates as *in potestate*, the capacity of wise men and women to alter their dispositions by giving assent only to truthful impressions.<sup>13</sup> A well-trained mind actively participates within the causal chain of events by coordinating outcomes towards reason. Stoic ethics therefore teaches how the wise man should use his directive reason (*hegemonikon*) to discern reality from falsehood, adjusting impulses and exhortations towards truth, whereas truth is virtue, and virtue, happiness. This is exactly why logic plays the role of sustaining the Stoic edifice: logic is the method of truth-finding necessary to incorporate and secure virtue,<sup>14</sup> being therefore a science diligently pursued by the Stoic philosophical school.<sup>15</sup>

The Stoics, Chrysippus in particular, developed their logic as means to reinforce the public and objective nature of language, allowing men to think properly and support their rational observations, amplifying their capacity of acquiring and transmitting knowledge. Logic for the Stoic is always dependant on the concrete representation of a current state of affairs, reflecting the rational truth of the universe here and now, and is not restricted to formal rules of thinking as in Platonic and Aristotelian essentialist logic.

### 3 Stoic theory of language

Stoic ontology of language stems from the reflection that linguistic signs are swayed by the fluidity of meaning, and, therefore, justified on the grounds of the fallibility of language. As attested by Gellius, ‘Chrysippus said that every word is naturally ambiguous, since from a single word two or more meanings are accepted.’<sup>16</sup> Stoic theory of language was divided in three main groups of interest: genealogy (or how language appeared and developed), material (what language is

10 Aulus Gellius, *Noctes atticae*, 7.2.1.

11 Susanne Bobzien, *Determinism and Freedom in Stoic Philosophy* (Oxford: Clarendon Press, 2004), 17.

12 Gretchen Reydam-Schils, *The Roman Stoics: Self, Responsibility, and Affection* (Chicago: The University of Chicago Press, 2005), 16.

13 Cicero, *De fato*, 43. For a lengthier discussion of the reception of concept of “eph’emin” into Latin, see: Jean-Baptiste Gourinat, ‘Adsensio in Nostra Potestate’, in *What is Up to Us? : Studies on Agency and Responsibility in Ancient Philosophy*, eds. Pierre Destrée, Ricardo Salles and Marco Zingano (Sankt Augustin: Academia Verlag, 2014).

14 Diogenes Laërtius, 7.46-48 (SVF 2.130).

15 Cicero, *Topica*, 6.

16 ‘Chrysippus ait omne verbum ambiguum natura esse, quoniam ex eodem duo vel plura accipi possunt.’ Gellius, *Noctes atticae*, 20, 1,5.

Pedro Savaget Nascimento

‘made’ or its ontology), and tools of interpretation aimed to make language clear and accessible.

In what concerns its genealogy, according to the Stoics, language started with the imposition of ‘original words’ (*protai phonai*),<sup>17</sup> when meanings were in perfect harmony with the things they represented.<sup>18</sup> In that pristine moment, utterances corresponded exactly to the external objects to which they referred. With the passage of time, however, language developed either through accidental alterations of words or by their conscious manipulation by speakers in order to obtain new variations. Meanings thus became disconnected from what they initially represented,<sup>19</sup> giving rise to the most daunting problem linguistics face: ambiguity and the disconnection between words, thoughts and meaning.

The genealogy and natural history of language offers the starting point for what was perhaps the greatest obsession of Stoics and, more particularly, Chrysippus. When looked at through a systematic perspective, the natural uncertainty of language poses a challenge to the Stoics, endangering not only the public accessibility of the doctrine but, perhaps more worryingly, the capacity of the sage to discern truth from falsehood. At the core of linguistic uncertainty lies the topic of ambiguity (*amphibolia*), to which Chrysippus wrote twenty-one treatises, giving the term its ‘final’ conventional meaning embracing both syntactical polysemy and polysemy of individual words.<sup>20</sup>

Stoic ontology of language relies on a threefold division of the elements of language:<sup>21</sup> (1) the thing referred to by the speaker, called *tugkhanon*; (2) the signifier, which can be either a sound (*phone*) or a word (*lexis*); and (3) the significant (*lekton*). Unlike the thing referred to by the speaker (*tugkhanon*) and its signifier (the utterances *lexis* and *phone*), significant (*lekta*) do not possess material corporeality,<sup>22</sup> being instead classified as one of the four immaterials along with space, time, and void. The *lekton* is the key notion for Stoic theory of language, transmitting the idea of ‘what is meant,’ or a ‘sayable.’<sup>23</sup> *Lekton* is therefore ‘neither a linguistic sign nor a thing’ and is essentially linked but not fully identified with a mental activity, since the mind grasps the *lekton* through its corporeal mecha-

17 Alejandro Guzmán Brito, *Historia de la interpretación de las normas en el derecho romano* (Santiago de Chile: Instituto de Historia del Derecho, 2000), 69.

18 Augustine, *De dialectica*, 6.10.

19 James Allen, ‘The Stoics on the Origin of Language and the Foundations of Etymology’, in *Language and Learning: Philosophy of Language in the Hellenistic Age*, eds. Dorothea Frede and Brad Inwood (Cambridge: Cambridge University Press, 2005), 15.

20 Anneli Luhtala, *Grammar and Philosophy in Late Antiquity: A Study of Priscian’s Sources* (Amsterdam/Philadelphia: John Benjamins Publishing, 2005), 19.

21 Sextus Empiricus, *Against the Logicians*, 2.11.

22 Sextus Empiricus, *Against the Ethicists*, 224-25; *Against the Logicians* 2.12; *Outlines of Pyrrhonism*, 2.81.

23 Francis Dinneen, *General Linguistics* (Georgetown: Georgetown University Press, 1995), 126.

nisms.<sup>24</sup> The *lekton* is what interlocutors of a same language communicate through a significant sound.<sup>25</sup> They are not natural signs of language, but ‘what is conveyed’ between interlocutors or the crucial connection between their minds and linguistic behaviour.<sup>26</sup>

Based on the controversy between two great logicians, Chrysippus, who affirmed that all words are ambiguous by nature (*omne verbum ambiguum natura esse*) and Diodorus Cronus, who held that no word is ambiguous (*nullum verbum est ambiguum*) – given that, in his view, a person speaks of what made sense to him/her –<sup>27</sup> the Stoics laid the cornerstone of the debate opposing the objective verifiability of ambiguities and the subjective inexistence of ambiguities.<sup>28</sup>

For the Stoics, clarity of language is a public good. Nevertheless, communication is inevitably swayed by a paradox consisting in the natural ambiguous nature of words, whereas human perception (the internal *logos*) is not submitted to doubt, given that whoever pronounces words speaks what he/she felt of the things that are signified. As such, despite the obviously anomalous and deceitful nature of language, Stoics envisaged a parallelism between the capacity of speech and the capacity of thought.<sup>29</sup> Stoics therefore developed a category of an ‘internal word’ (*logos endiathetos*), contrasted to the inherently ambiguous ‘spoken word’ (*logos prophorikos*), neither of which are *lekta*.<sup>30</sup> As explained by Brito, the *lekton* is the intermediary between thought and reality that expresses the unity of the *logos* and allows the appreciation of the message contained in speech.<sup>31</sup> Informed by its ontology of language, and armed with tools of interpretation developed by Chrysippus and perfected by his followers, the Stoic sage is unafraid of the apparent contradictions of nature, which Marcus Aurelius compared to cracks of bread, the jaws of beasts or ripe figs splitting in half: complex manifestations of the *logos*.<sup>32</sup>

#### 4 Stoic syllogisms

Stoic syllogisms were likely invented by Chrysippus, and are preserved today in the extant works of Cicero, Aulus Gellius, Sextus Empiricus, and Diogenes Laër-

24 Laurent Cesalli and Nadia Germann, ‘Signification and Truth: Epistemology at the Crossroads of Semantics and Ontology in Augustine’s Early Philosophical Writings’, *Vivarium* 16 (2008): 123–54, at 133.

25 Cicero, *De finibus*, 3.74, 4.53.

26 Catherine Atherton, *The Stoics on Ambiguity* (Cambridge: Cambridge University Press, 2008), 45, n. 17.

27 Gellius, *Noctes atticae*, 11.12.

28 Brito, *Historia*, 131, n. 12.

29 Gérard Verbeke, ‘La philosophie du signe chez les Stoïciens’, in *Les Stoïciens et leur logique* 10, ed. Jacques Brunschwig (Paris: Vrin, 2006), 263.

30 For the distinction, see Richard Cross, *The Medieval Christian Philosophers: An Introduction* (London: Tauris, 2014), 6.

31 Brito, *Historia*, 131, n. 12.

32 Marcus Aurelius, *Meditations*, 3.2.

Pedro Savaget Nascimento

tius.<sup>33</sup> While Aristotelian syllogisms were designed to create a validation between language and thought, focused on evincing the formal rules for verifying the abstract validity of arguments, Stoic syllogisms were a science of particular occurrences inseparable from the happenings of the physical world. For the Stoics, logic reflected the *logos* in its current state, instead of acting as an instrument for the verification of the abstract validity of ideas.

Stoic syllogisms were characterized by the use of a major premise composed by a complex assertible, e.g. 'if it is raining this afternoon, then I shall not go for a walk', followed by a second simple assertible, e.g. 'it is raining this afternoon'.<sup>34</sup> The argument will only hold if, in fact, it can be attested that it is raining. The conclusion is, 'therefore I shall not go for a walk'. This argument can be formalized in the following manner: 'if *p*, then *q*; *p*; therefore, *q*.' The letters *p* and *q* are, as seen, replaced by assertibles, called *axiomata*. Aristotelian syllogisms, however, did not deal with complex propositions of this sort. A typical example would be: 'all bananas are fruits; some bananas are green; therefore some green fruits are bananas'.<sup>35</sup> Stoic syllogisms are an ancient form of propositional logic, while the Aristotelian syllogistic system is a logic of names.<sup>36</sup>

The Stoics reduced their syllogisms to five undemonstrables, or ideal types to which all types of syllogism could be reduced:

if *p* then *q*; *p*; therefore *q* (*modus ponendo ponens*)

if *p* then *q*; not *q*; therefore not-*p* (*modus tollendo tollens*)

not *p* and *q*; *p*; therefore not-*q* (unnamed)

either *p* or *q*; *p*; therefore not-*q* (*modus ponendo tollens*)

either *p* or *q*; not *p*; therefore *q* (*modus tollendo ponens*)<sup>37</sup>

The distinguishing feature of Stoic syllogisms is their use of the logical connectors 'and', 'or', and 'if' to connect assertibles. The connector 'and' is used as a conjunctive between prepositions, 'or' is a disjunctive, and the structure 'if ... then' is a conditional.<sup>38</sup>

33 R.E. Jennings, *The Genealogy of Disjunction* (New York: Oxford University Press, 1994), 252.

34 John Sellars, *Stoicism* (Berkeley: University of California Press, 2006), 56.

35 Sellars, *Stoicism*, 56-59.

36 Juan Miquel, 'Stoic Logic and Roman Jurisprudence', in *The Western Idea of Law*, eds. Joseph Carman Smith and David N. Weissstub (London: Butterworths, 1983), 333.

37 Sellars, *Stoicism*, 57-59.

38 For a full appreciation of the role of logical disjunctives in Roman law, see Markus Winkler, 'Disjunctive Statements in Roman Legal Arguments,' in *Past and Present Interactions in Legal Reasoning and Logic*, eds. Matthias Armgardt, Patrice Canivez, and Sandrine Chassagnard-Pinet (Cham: Springer, 2015), 31-48.

## 5 The reception of theory of language in legal debate

It can be argued that, between the ten or more schools of Hellenistic philosophy, it were the Peripatetics and the Stoics who contributed the most to the development of Roman legal science. This is mainly, but not exclusively, due to the jurisprudential application of Hermagoras's rhetorical theory of *stases*, which consisted in a fusion version of Aristotelian rhetoric and Stoic logic<sup>39</sup> that Cicero in his youth called the combination of the most beautiful parts of different doctrines.<sup>40</sup> Hermagoras' theory of *stases* was originally developed to teach techniques for 'mapping out' courtroom cases according to a collection of recurrent stock arguments (*topoi*)<sup>41</sup> containing questions such as 'Is it just to kill a tyrant?' This questions-and-answers method became crystallized as a paradigmatic method of Roman rhetorical treatises, such as first century BC *De inventione* by Cicero, and more complete works, like first century AD *Institutio oratoria* by Quintilian.

By adding the theory of *stases* to their arsenal, problems regarding issues of equity and definition were, incidentally or as part of a rivalry between jurists and orators, taken over by juristic literature.<sup>42</sup> Richly employed by jurists such as Labeo and Proculus, conventional rhetoric, based on Hermagoras' questions-and-answers model, is a keystone of classical jurisprudence.<sup>43</sup>

Differently from orators, however, jurists did not train their minds to defend both sides of a same dispute equally well. Instead, legal science incorporated rhetoric as a means to overcome the strict binary certainty of yes/no complexes and moved jurisprudence towards the scientific method of probability, using superlatives with parsimony,<sup>44</sup> while vastly exploring formulations such as '*puto vero*' (I believe it is true) and '*probabilius*' (more probable). Not by accident, Gadamerian hermeneutics considers classical Roman legal interpreters as the earliest masters of the hermeneutical method, given their effort in preserving the canon while

39 Miklós Könczöl, 'Law, Fact and Narratives in Ancient Rhetoric: The Case of the *Causa Curiana*', *International Journal for the Semiotics of Law* 21 (2008): 21-33, at 22.

40 A boastful Cicero describes his youthful *De inventione* as the combination of the best and most beautiful parts of rhetorical doctrines which he studied. Cicero, *De inventione*, 2.1.

41 Könczöl, 'Law, Fact and Narratives in Ancient Rhetoric,' 22.

42 Antonio Carcaterra, *Le definizioni dei giuristi Romani: metodo, mezzi e fini* (Naples: Jovene, 1966), 84.

43 For a 'more complete' summary of the rhetoric/jurisprudence scholarship from 1929 to 2012, see Giovanni Cossa, 'I giuristi e la retorica,' in *Dogmengeschichte und historische Individualität der römischen Juristen (Storia dei dogmi e individualità storica dei giuristi romani)*, eds. Massimo Miglietta, Gianni Santucci and Emauele Stolfi (Trento: Università degli Studi di Trento, 2012), 299-316.

44 In order to illustrate the point, I highlight that Ulpian, author of the most quoted collection of books in the Digest, *Ad Edictum*, uses the superlative *verissimus* only six times. D.4.4.3.4, 9.2.27.3, 11.1.11.12, 12.11.pr, 19.1.11.16, 39.2.15.33.

Pedro Savaget Nascimento

keeping tradition in motion (the hermeneutic spiral)<sup>45</sup> or, in Caroline Humfress' words, contributing to the 'creative expansion of the law'.<sup>46</sup>

The assessment of how Stoic and Aristotelian philosophies contributed to the development of Roman jurisprudence is, by all means, an enormous task that deserves either an 'overview',<sup>47</sup> or a lengthy compendium that vastly exceeds the scope of this short contribution and, in any case, would risk missing the subtlety of each interpretation.<sup>48</sup> In its analysis of traces of philosophical thinking in Roman jurisprudence, this paper privileges Stoicism over Aristotelianism due to its prevalence during all periods of pre-Christian Roman literature, at least from the first century BC onwards. After the establishment of Carneades' embassy in Rome in 155 BC and due to the close relationship between the Stoic head of school Panaetius and the destroyer of Carthage, Scipio Africanus,<sup>49</sup> Stoicism became trendy in the highest circles of society and never truly lost its condition of leading philosophical set of ideas in pagan Rome.

One of the most prolific Roman writers and state-of-the art grammarian, Terentius Varro, was a keen student of Stoic tools of interpretation,<sup>50</sup> along with Cicero in his moral treatises, and the rhetorician Quintilian, who applied Stoic linguistics as a tool to overcome ambiguity in both legal and literary texts.<sup>51</sup> In the first century AD, one of the wealthiest men of the world and Nero's teacher, Seneca, gave an unprecedented Roman flavour to Stoicism and, one century later, Marcus Aurelius professed Stoicism as the first servant of the state. Ignoring the advices of his oratory teacher, Fronto, the philosopher-emperor employed Greek language and Stoic/Cynic style to follow the steps of the former slave Epictetus, his main philosophical inspiration.

Given the prominent position of Stoic philosophy during the classical period of Roman legal development, it is likely that most jurists from the mid-second century BCE onwards received at least some education in Stoicism, probably directly from philosophical sources, but also indirectly through the aforementioned Hermagorean rhetoric and/or the works of grammarians who profusely applied Stoic logic.<sup>52</sup>

45 See: Jean Grondin, 'Gadamer's Interest for Legal Hermeneutics,' in *Law's Hermeneutics. Other Investigations*, eds. Simone Glanert and Fabien Girard (Oxford: Routledge, 2017), 47-61.

46 Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2008), 67.

47 J. Giltai, 'Greek Philosophy and Roman Law: A Brief Overview,' in *Oxford Handbook of Roman Law and Society*, eds. Paul J. du Plessis et al. (Oxford: Oxford University Press, 2016), 197-99.

48 As found in the impressive monograph by Brito whose method is, however, more exegetical than historical, Brito, *Historia*.

49 Emanuele Stolfi, 'Il contesto culturale,' in *Dogmengeschichte und Historische Individualität*, ed. Miglietta, Santucci and Stolfi, 263.

50 Pierre Flobert, 'Introduction,' in Varron, *La Langue Latine*, Libre VI, trans. Pierre Flobert (Paris: Les Belles Lettres, 1985), VI.

51 Quintilianus, *Institutio oratoria*, 7.9.2, 7.9.9.

52 Jeffrey Bardzel, *Speculative Grammar and Stoic Medieval Allegorical Narrative: From Prudentius to Allan of Lille* (London: Routledge, 2008), loc. 2621. Kindle edition.



Stoicism was a widely encompassing philosophical doctrine that, despite conventionally divided into physics, ethics and logic, covered areas classifiable today as 'physics', 'cosmology', 'epistemology', 'propositional logic', 'theory of language', 'legal theory', 'theory of action', etc. For reasons of space and time, the highly polemic idea that Stoic ethical tenets of egalitarianism and cosmopolitanism transformed Roman ideas of natural law in favour of slaves and women cannot be treated in this paper.<sup>53</sup> The same is valid for the not yet fully explored idea that Stoic notions of physics and theory of predicates played a role in the development of refined notions of causation by Celsus in the interpretation of the *lex Aquilia*.<sup>54</sup>

The topic of how Roman jurists benefitted from Stoic logic is also vast in itself, and by no means new to scholarship. Peter Stein, for instance, pointed out that Labeo introduced the grammatical idea of *regulae* into legal interpretation, inheriting the Stoic-anomalist/Alexandrian-analogist debate on how language evolves and how (and if) we can reveal its regularities. One example of this method in legal practice consisted in the clarification of the polysemy conveyed by the term '*iniuria*' (injustice, insult, unlawfulness) in the homonymous delict, achieved through the abstraction of its regular meaning, i.e., *contumelia*.<sup>55</sup> Dieter Nörr added to the field by arguing how Stoic methods of *partitio* (*merismos*) were used by jurists such as Gaius and Pomponius as a means to achieve a systematic understanding of the law that did not lose sight of its concrete realization. This is because, he argues brilliantly, the Stoic method of systematization was closer to corporeal reality (*körpernäher*) than its Aristotelian counterpart, being therefore

- 53 The more polemic question of whether and how Stoic ethical ideas of natural law and freedom impacted on the development of Roman classical jurisprudence is what Vander Waerdt classifies as one 'of the most enduring legacies of the XIXth century *Quellenkritik*'. Paul A. Vander Waerdt, 'Philosophical Influence on Roman Jurisprudence? The Case of Stoicism and Natural Law', in *Philosophie, Wissenschaften, Technik. Philosophie*, ed. Wolfgang Haase (Berlin: De Gruyter, 1994), 36.7 ANRW 4851-4900. For authors affirming that Stoic ethics positively impacted on Roman law, see Julien Laferrière, *Mémoire concernant l'influence du Stoïcisme sur la doctrine des jurisconsultes romains* (first published 1860, Paris: Elibron Classic Series, 2005); Pedro Nascimento and Andityas Matos, 'A inserção do Estoicismo no direito romano clássico: os rescritos do imperador Marco Aurélio sobre direito de família e direito à liberdade,' *Phronesis: Revista do curso de direito da FEAD 2*, no. 5 (2010): 2-46; Marcia L. Colish, *The Stoic Tradition from the Antiquity to the Middle Ages 1: Stoicism in Classical Latin Literature* (Leiden: Brill, 1990), 348; René Brouwer, 'Ulpian's Appeal to Nature: Roman Law as Universal Law', *Tijdschrift voor Rechtsgeschiedenis* 84, no. 1-2 (2015): 60-79; Tony Honoré, *Ulpian: Pioneer of Human Rights* (Oxford: Oxford University Press, 2002). For opposite views, see Robert Sibley, *Northern Spirits: John Watson, George Grant, and Charles Taylor: Appropriations of Hegelian Political Thought* (Québec: McGill-Queen's University Press, 2008), 59-66.
- 54 Sirks argues for the influence of Stoic theory of causation in Celsus' interpretation of *damnum iniuria datum*, suggesting that a mortally wounded body would be equivalent of 'being dead', whereas the result of death would serve to factually prove this. A.J.B. Sirks, 'Delicts,' in *The Cambridge Companion to Roman Law*, ed. David Johnston (Cambridge: Cambridge University Press, 2015), 260.
- 55 See Peter Stein, *Regulae Iuris: From Juristic Rules to Legal Maxims* (Edinburgh: Edinburgh University Press, 1966); Peter Stein, *Roman Law and English Jurisprudence Yesterday and Today: An Inaugural Lecture by Peter Stein* (Cambridge: Cambridge University Press, 1969), 22.

Pedro Savaget Nascimento

better adapted to describe Roman law as it was in real life: an open system (*res infinita*).<sup>56</sup>

The problem of context reappears, however, in the uncertainty regarding the extent to which jurists regarded Stoic tools as novelties or, as Nörr suggests, self-evident philosophical-rhetorical schemes. I believe this aspect of reception is particularly problematic during the late-classical period,<sup>57</sup> inasmuch as such ideas and techniques might have become *loci communes*, as suggested by Winkel regarding the case of a supposed application of Aristotle's theory of contract in Roman law.<sup>58</sup>

Various excerpts in the *Digest*, especially those written during the late-classical period, demonstrate that jurists employed Stoic methods for overcoming ambiguities, such as *consuetudo loquendi*, based on the Stoic notion of *koine synetheia* (common use of the word), and etymologies.<sup>59</sup> By looking into their attitude to linguistic phenomena, nevertheless, the application of these methods lack the vibrancy innovations usually have, resembling perfunctory demonstrations of a long-established method. Hence, this study will move further into the past to examine the thoughts of a jurist who, being neither too early nor late classical, epitomizes a philosophically oriented approach to law which is classical in its best.

## 6 Proculus in a Stoic legal-philosophical context

Coinciding with the reception of Stoicism in Roman higher circles, the century reaching from 150 to 50 BC also witnessed the 'flowering of juristic law', developed by experts with no particular official position in legislation or judicature. These jurists started to assess Roman law no longer as a body of legal literature, but as existing within a rhetorical-philosophical paradigm.<sup>60</sup> In this period, it became evident to jurists that their science could not escape language,<sup>61</sup> given the similarity or identity of methods that brought philosophers, jurists and grammarians together in a cultural intellectual community.<sup>62</sup>

56 Nörr, *Divisio und Partitio*. For an assessment of the dispute between law as a closed institutional system (*divisio*) and as an open hermeneutical system (*partitio*), see Erhard Oeser, *Evolution and Constitution: The Evolutionary Selfconstruction of Law* (Dordrecht: Kluwer Academic Publishers, 2003), 137.

57 Nörr, *Division und Partitio*, 3.

58 Laurens Winkel, 'Classificazione delle obbligazioni e contratti nominati', in *Bullettino dell'Istituto di diritto romano 'Vittorio Scialoja'*, ed. Mario Talamanca (Milan: Giuffrè, 2000-2001), 57.

59 For uses of the *consuetudo loquendi* (*koine synetheia*), see D. 50.16.87; D. 50.16.147, Gaius, *Institutiones*, 3.55-56, D.50.16.239. For etymologies, see: D. 50.16.239.6-7, D. 50.16.212.

60 Stein, *Regulae Iuris*, 26ff.

61 George Bataille, 'L'Erotisme', in *Oeuvres complètes*, vol. 9 (Paris: Galimard, 1987), 1-270, at 269.

62 Michèle Ducos, 'Philosophie, littérature et droit à Rome sous le Principat', in *Philosophie, Wissenschaften, Technik. Philosophie*, ed. Wolfgang Haase (Berlin: De Gruyter, 1994) 36:7, ANRW, 5134-80, at 5150. In the same line of reasoning: Stein, *Regulae Iuris*, 62. For the jurist/grammarian dichotomy during the late-classical period, see Dieter Nörr, 'Der Jurist im Kreis der Intellektuellen: Mitspieler oder Aussenseiter? (Gellius, Noctes atticae 16.10)', in *Festschrift für Max Kaser zum 70. Geburtstag* (Munich: Beck, 1976).

Proculus was a jurist who wrote during the first half of the first century AD, and whose preserved works are structured on the method of questions and answers.<sup>63</sup> Not only an achieved free thinker who reserved himself the prerogative of disagreeing with peer jurists of the past, Proculus was probably the founder of a school of jurisprudence whose focus Stein associates with rationalism, rivalling, apart from more mundane disputes, with the traditionalistic Sabinian school.<sup>64</sup> Not much is known about the life of Proculus, apart from the fact that he was considered a great jurist by the 'legal historian' Pomponius and practiced mostly during the reign of Nero.<sup>65</sup> His intellectual context is, nevertheless, not so uncertain, being that of a man who continues at least four generations of teachers and protégées inspired by rhetorical/philosophical ideas, from Scaevola Pontifex, to Cicero, Trebatius and his teacher of law, Labeo. It is also clear that he lived in an environment in which the study of philosophy continued to be 'a privilege and a capstone' of education.<sup>66</sup> Nothing in Proculus's style, nevertheless, reveals the type of traditionalism found in less vibrant juristic writings of the late-classical period. Quite the opposite, Proculus's opinions disclose what Honoré calls a 'genuine feeling for the nuances of language,'<sup>67</sup> and a convergence with Stoic theory of language which I argue is unlikely accidental.

The next sections will look more closely into how Proculus benefitted from two areas of Stoic logic, namely, syllogisms and ontology of language, when deciphering the *voluntas* of the declarant of unilateral acts of private law. The following discussion adds to a research niche identified by Juan Miquel in *Stoische Logik und römische Jurisprudenz*,<sup>68</sup> who demonstrates that Proculus and his Stoic forerunners left a considerable imprint on the history of logic and legal logic.<sup>69</sup>

First, it will be seen how Proculus used Stoic syllogisms to explain the meaning of the conjunctions 'if' and 'or,' and also how the jurist's immersion in Stoic doctrine went beyond syllogisms to embrace notions belonging to the intersection of Stoic physics and propositional logic. Next, having in mind Proculus's competence in Stoic logic, it will be seen how his ideas were aligned with Stoicism in the controversy involving ambiguities in unilateral legal acts such as testaments, legacies and promises of dowry. Proculus consistently interpreted ambiguities in such documents through what we call here a 'soft-intentionalist' stance, resounding a

63 Karlheinz Hülser, 'Proculus on the Meaning of OR and the Types of Disjunctions', in *Past and Present Interactions in Legal Reasoning and Logic*, eds. Armgardt et al. (New York: Springer, 2015), 13.

64 Peter Stein, 'The Two Schools of Jurists in the Early Principate', *The Cambridge Law Journal* 31, no. 1 (1972): 8-31, at 9.

65 For an overview of more bibliographical approaches to Proculus, see Arthur Schiller, *Roman Law: Mechanisms of Development* (The Hague: Mouton Publishers, 1978), 323-30.

66 Gretchen Reydams-Schils, 'Philosophy and Education in Stoicism of the Roman Imperial Era,' *Oxford Review of Education* 36, no. 5 (2010): 561-74, at 561.

67 Tony Honoré, 'Proculus', *Tijdschrift voor Rechtsgeschiedenis* 30, no. 4 (1962): 472-509, at 472.

68 Juan Miquel, 'Stoische Logik und römische Jurisprudenz', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 87 no. 1 (1970): 85-122.

69 Miquel, 'Stoische Logik und römische Jurisprudenz', 7.

Pedro Savaget Nascimento

debate between Chrysippus and Diodoros Cronus on the paradoxical disjunction between the unambiguous ‘internal word’ of thoughts, and the inherently ambiguous ‘spoken’ or ‘written word’ of such legal acts.<sup>70</sup>

## 7 Stoic syllogisms in Proculus’s jurisprudence: the case of D. 50.16.124

Solid evidence pointing to the conscious application of Stoic syllogisms to law was first advanced when legal historian Juan Miquel demonstrated that Cervidius Scaevola, Proculus, and Julian used the techniques of syllogism invented by the Stoics.<sup>71</sup> Miquel’s method was direct and efficient. His conclusions were founded on the observation that the Stoics were the first to develop a propositional logic using the connectors ‘if’, ‘or’, and ‘if ...then’. Having verified that Proculus, Julian, and Cervidius Scaevola used this reasoning, he argued that there is a very low probability that all three jurists would have used this method without drawing it from previous philosophical sources. Analysing the structure of their arguments, Miquel concluded that Cervidius Scaevola, Proculus, and Julian must have had considerable education in Stoic logic.

The longest, and most revealing, excerpt shows that Proculus not only had a full knowledge of Stoic syllogism, but also demonstrated very clearly that he was explaining Stoic conjunctives and disjunctives.

“The phrasing “this one or that one” makes not only a disjunctive, but also a sub-disjunctive sentence. A disjunctive occurs when we say, for example: “it is day or night.” It means that once you accept one you must reject the other; and it also means that once you reject one, you must accept the other. The same can happen to a word, which also can be sub-disjunctive. There are two types of sub-disjunctives, however. First, when it is not possible that two proposed terms exist at the same time, but it is possible that none of them exist at the same time. For instance: “he sits or walks.” Just like no one can do both things at the same time, it is possible to do neither one nor the other, as in the case of someone who lies down. The second type of sub-disjunctive occurs when it is not possible that both terms stop existing at the same time, and both can exist simultaneously. For instance: “every animal either acts or is acted upon.” For no one can abstain from acting and be acted upon at the

70 For the distinction, see Cross, *Medieval Christian Philosophers*, 6.

71 Matthias Armgardt, ‘Zur Bedingungsdogmatik im klassischen römischen Recht und zu ihren Grundlagen ein der stoischen Logik’, *Tijdschrift voor Rechtsgeschiedenis* 76, nos. 3-4 (2008): 219-35, at 219.

same time, but it is possible to act and be acted upon simultaneously.<sup>72</sup> (All translations are my own unless otherwise noted.)

According to Miquel, it is almost certain that the quoted passage is an explication of Stoic logic for legal purposes. It contains propositional logic evinced by the use of ‘this one, that one’ representing propositions. Furthermore, the propositions ‘it is either day or night,’ and ‘he either sits or walks’ are typical examples of Stoic logic.<sup>73</sup>

Another section of the passage, unfortunately not mentioned by Miquel, regards the use of the recurrent vocabulary of Stoic physics. Therefore, it is important to raise here a point not previously noted in scholarship, that demonstrates not only Proculus’s understanding of Stoic logic, but a deeper immersion of the jurist in Stoicism.

Going beyond syllogisms, Proculus incorporated the Stoic vocabulary of physical interactions in his example: ‘every animal either acts or is acted upon.’<sup>74</sup> According to the Stoic’s logically grounded materialism, animals, as everything else in the world, are corporeals and ‘can act or be acted upon, where “or” should be understood as “and-or”.’<sup>75</sup> Therefore, a body which neither acts nor is acted upon simply cannot exist, except for immaterials which do not exist physically but subsist according to a rational impression. The fact that Proculus used a typically Stoic example, in the area of intersection of Stoic logic and physics, reinforces Miquel’s conclusion that this Roman jurist had Stoic philosophy firmly situated in his mind when he elaborated the excerpt, and it is very likely that he was not drawing from sources other than ‘pure’ philosophy. As he states correctly, ‘Proculus skilfully uses logic as an instrument of thought to achieve a more just decision’ in a case dealing with inheritance rights.<sup>76</sup> More recently, Hülser argued that Proculus’s *Epistulae* ‘formed a very scholarly work [which] instantiated the transformation of the Roman jurisprudence into a science modeled on Greek examples’.<sup>77</sup>

72 D. 50.16.124. ‘haec verba “ille aut ille” non solum disiunctiva, sed etiam subdisiunctivae orationis sunt. disiunctivum est, veluti cum dicimus “aut dies aut nox est”, quorumposito altero necesse est tolli alterum, item sublato altero poni alterum. ita simili figuratone verbum potest esse subdisiunctivum. subdisiunctivi autem genera sunt duo: unum, cum ex propositis finibus ita non potest uterque esse, ut possit neuter esse, veluti cum dicimus “aut sedet aut ambulat”: nam ut nemo potest utrumque simul facere, ita aliquis potest neutrum, veluti is qui accumbit. alterius generis est, cum ex propositis finibus ita non potest neuter esse, ut possit utrumque esse, veluti cum dicimus “omne animal aut facit aut patitur”: nullum est enim quod nec faciat nec patiatur: at potest simul et facere et pati.’

73 Miquel, ‘Stoic Logic and Roman Jurisprudence,’ 335.

74 D. 50.16.124. ‘omne animal aut facit aut patitur.’ As Michael White points out, the typical Stoic characterization of the corporeal comes in the following way: ‘that which either acts or is acted upon’. Michael J. White, ‘Stoic Natural Philosophy (Physics and Cosmology),’ in *The Cambridge Companion to the Stoics*, ed. Brad Inwood (Cambridge: Cambridge University Press, 2003), 132.

75 Katia Maria Voigt, ‘Sons of the Earth: Are the Stoics Metaphysical Brutes?’ *Phronesis* 54, no. 2 (2009): 136-54, at 138.

76 Miquel, ‘Stoic Logic and Roman Jurisprudence,’ 336-37.

77 Hülser, ‘Proculus on the Meaning of OR’, 13.

Pedro Savaget Nascimento

When viewed using this approach, Proculus emerges as a jurist who studied Stoic philosophy and consciously valued its concepts and distinctions as a means to excel in jurisprudence, including physics, as demonstrated above. At this point, legal historians can unmistakably affirm that there was an intentional and philosophically rigorous application of Stoicism as a means to disentangle a legal problem, using logic as a subsidiary tool for the attainment of a fair interpretation upon the case. The fact that Proculus furthered his application of Stoicism using examples typically drawn from Stoic physics, as shown here, helps to reinforce this idea and justifies the inquiry into the convergence of Stoic ontology of language and his other legal opinions.

## 8 Proculus's (Stoic?) attitude in the *verba aut voluntas* debate

Section 7 discussed an excerpt in which Proculus's legal reasoning was highly embedded in the doctrine of the *Stoa*. Section 8 evaluates four excerpts in which, despite the difficulty of ascribing direct and undeniable influence of Stoicism upon Proculus's reasoning, it is possible to read them in light of Stoic doctrine as to attain a deeper understanding on how the jurist conceived the apparent disjunction between words and presumable intention. These cases deal with unilateral declarations of will in which Proculus's reasoning, in my view, converges with Stoic ontology of language in a way that can hardly be called accidental, what is understandable given that Stoicism was an indelible part of the Hellenistic scientific mind.

In line with Stoic doctrine and using originally Stoic terminology, Proculus adopted a signature method that consisted in: (1) attesting the existence of ambiguity in the text, therefore rejecting linguistic relativism; (2) in case ambiguity was in fact confirmed, seeking ways of remapping the rational structure of the *sensum scriptoris* as a means to maximize the value of the legal act.

This line of reasoning is used by Proculus in variations of the *scriptum aut voluntas* (*rheton kai diainoia*) debate, consisting in the open possibility of interpreting such documents either in accordance to the literality of the scripture or deducing the intention of the writer. This debate, also known as *verba aut voluntas*, is referred to by Cicero in many of his books and speeches, and dates back at least to a celebrity case involving two of the greatest intellectuals of the late-Republican period

in a so-called *causa Curiana*.<sup>78</sup> This *cause célèbre* took place at least one and a half century before the peak of Proculus's career, probably resulting from the assimilation of a typical Hermagorean stock topic: a combination of the logic treatises by the Stoic Posidonius of Rhodes and the notion of equity (*epieikeia*) as conceived by Aristotle.<sup>79</sup> The *causa Curiana* suggests, in my view in agreement with Watson, not a shift from dogmatic strictness to dogmatic fairness, but a new paradigm in which jurists proposed more or less legalistic or equitable interpretations depending on the 'sophistication of the argument.'<sup>80</sup> Let us now look into four cases in which Proculus might have benefitted from Stoic ontology of language.

The first case consists in a controversy over a phrase in a will, in which Proculus and Nerva defended the view that a legator bequeathed part of his assets *bonorum partes*, which could be interpreted either as the 'share of the value of the estate' or 'the designated value of the estate'. Proculus and Nerva decided for the latter arguing that the testator could have conveyed the former meaning in case he wished.<sup>81</sup> This means that Proculus therefore simply rejects the existence of a relevant objective ambiguity, a fact that, for the sake of certainty, disavows searching for a hidden intention of the testator. Proculus arguably took a more literal view but this is justified on the grounds that the legatee could have easily avoided ambiguity if he intended to.

In the second case, Proculus reports and disagrees with an opinion given by Trebatius, the teacher of his teacher Labeo and Cicero's protégé. The controversy revolves around a legacy in which the legator 'bequeathed wine with vases' (*vinum cum vasis legavit*). Trebatius had given the opinion that whatever wine was inside *dolia* (large earthenware used for transportation) should not be understood as being part of the legacy. Trebatius furthermore opined that there was a lack of correspondence between the *sensum testatoris* and the *sensum verborum* or, quite literally, a disconnection between what was perceived and felt by the legator and what can be understood by words.

78 The seminal work by Johannes Stroux, that introduces the theory that the notion of *aequitas* taken from Aristotelian-inspired Greek rhetoric played a role in softening the rigidity of legal formalism. Cicero gave much attention to the *causa Curiana*, and its mentions to the event are enumerated by Könczöl, citing from Vaughn: (*De oratore*, 1.39.180, 1.57.242-45, 2.6.24, 2.32.140f., 2.54.220-23; *Brutus*, 39.144f., 52.194-53.199; *Topica*, 10.44; *Pro Caecina*, 18.52f., 67-70, *De inventione*, 2.42.122f. For the scholarship on the *causa Curiana*, traced back from Johannes Stroux' seminal contribution in his *Summum ius, summa iniuria*, see John W. Vaughn, 'Law and Rhetoric in the Causa Curiana', *Classical Antiquity* 4, no. 2 (1985): 208-22, at 222. More contemporarily, see Könczöl, 'Law, Fact and Narratives in Ancient Rhetoric,' 21-33. On translation problems regarding Cicero's texts on the *causa Curiana*, see J. Stern, '*Iuris peritorum eloquentissimus, eloquentium iuris peritissimum*: À propos de l'interprétation de quelques textes littéraires concernant le droit successoral', *Revue de philologie, de littérature et d'histoire anciennes* 71, no. 1 (1977): 133-45.

79 Könczöl, 'Law, Fact and Narratives in Ancient Rhetoric,' 24.

80 Alan Watson, 'Narrow, Rigid and Literal Interpretation in the Later Roman Republic', *Tijdschrift voor Rechtsgeschiedenis* 37, no. 3 (1969): 353.

81 Stein, 'The Two Schools of Jurists in the Early Principate', 9.

Pedro Savaget Nascimento

Proculus disagreed with Trebatius, affirming that all the wine, including inside *dolia*, are part of the legacy and proceeded to deduct the intention of the legator:

‘I, however accepting the position that *dolia* are not understood as “wine vases,” would not agree with Trebatius that the wine contained in *dolia* are not included as part of the legacy. Or, in other words, I would not agree that whatever wine that is not inside “vases” is not part of the legacy. I believe it is true that, in case wine has been bequeathed in a legacy with “vases,” the legacy includes the amphorae and barrels in which wine is kept for storage, because we pour the wine into amphorae and barrels with the intention to keep it there until proven ready for use. Additionally, it is expected that we sell wine with these amphorae and barrels. However, we put wine into *dolia* with a different intention, that is, in order to subsequently pour the wine into amphorae and barrels or, alternatively, with the intention to have this wine sold unaccompanied of these same *dolia*.’<sup>82</sup>

Proculus’s opinion revolves entirely on the disambiguation of the phrase ‘*vinum cum vasis*’ and, more specifically, on the semantic value of the preposition ‘*cum*.’ As we have seen above, Trebatius considered that *dolia* were not ‘vases’ and therefore whatever wine was inside *dolia* should not be taken as pertaining to the legacy.

Having diverged from his teacher’s teacher, and adding a more refined and less literal view on the meaning of the preposition ‘*cum*’ in the case, Proculus pondered that the legator did not intend to mean ‘accompanying’ or ‘inside’, but, instead would have given the preposition ‘*cum*’ the value of ‘and’. Proculus reaches this conclusion through a semantic analysis in which meaning attaches to functionality, pondering that the relationship between wine and *dolia* is merely transitory. The wine does not really belong there, given that this type of container is neither used for storage nor sold with the wine, such as wine casks and bottles, but simply for transportation purposes. Proculus therefore considers that the things referred to by the legator were wine in its entirety ‘and’ the wine containers falling under the denomination of ‘vases.’ At the end of the day, if a judge followed Proculus’s opinion, the legatee would get all the wine, bottles and barrels, but not *dolia*, because the wine left by the legator, tells Proculus, was not intended to be there.

Third, in a case reported by Iavolenus, Proculus is said to have analysed the particularities of the case in order to adjust his interpretation of the word ‘*filius*’ (son) in accordance to the intention of the testator (*mentem testantis*), as to encompass

82 ‘ego, etsi *dolia* in *vasis* *vinaris* non sunt, tamen non concederem Trebatio *vinum*, quod in *doliis* esset, id est, quod in *vasis* non esset. Illud verum esse puto, cui *vinum cum vasis* legatum erit, ei *amphoras*, *cados*, in quibus *vina* diffusa servamus, legatos esse; *vinum* enim in *amphoras* et *cados* hac mente diffundimus, ut in his sit, donec usus causa probetur; et scilicet id vendimus cum his *amphoris* et *cadis*; in *dolia* autem alia mente conicimus, scilicet ut ex his postea vel in *amphoras* et *cados* diffundamus, vel sine ipsis *doliis* veneat.’ Proculus, D. 33.6.15.



daughters into the testament and, therefore, transcending the image portrayed by words or its materiality (*figura verborum*):

‘Regarding the sentence “whoever is my son, or the son of my son, should be my heir,” Labeo affirms that the daughter is excluded from the inheritance. Proculus thinks just the opposite. It seems to me that Labeo follows the materiality of words, while Proculus follows the mind of the testator. I have no doubts that Labeo’s opinion is not correct.’<sup>83</sup>

Interestingly, Proculus maintains his signature ‘soft-intentionalist’ stance, diverging from the opinion of his teacher of law, Labeo, and probably tackling the problem of intestacy. Unfortunately, there are no further details of the case, but only a short report given by Iavolenus. It is likely, however, that what once was a heated debate assisted in the consolidation of an directive expressed by Ulpian: ‘something said in the masculine commonly extends to both genders.’<sup>84</sup>

Fourth, there is a lengthier excerpt in which Proculus speculated a reasonable interpretation of the intention of a man who wrote a dowry promise:

‘When someone promised a dowry in the following manner, “when I can, you will have one hundred *aurei* as a dowry,” I understand that the interpretation has to be restricted to what has been negotiated, because someone who spoke ambiguously, actually spoke of what he understood of those things that are signified. I believe, therefore, that it is more adequate to estimate that he meant to say: “as soon as debts are deducted; when I am able to.” The following meaning can also be accepted: “when I can, without prejudice to my dignity.” This last interpretation is even more acceptable in case he promised like this: “whenever is convenient to me,” that is, “whenever I can without inconvenience to me”.’<sup>85</sup>

Proculus apparently accepted, in line with the Stoics, the interpretive notion that the ‘internal *logos*’ conveys what is understood by the utterer of the things signified, therefore it would have been necessary to interpret unilateral acts in accordance to their intentional aspect. Reflecting upon the Chrysippus/Diodorus Cronos debate, Proculus noticed the problem separating the polysemy of linguistic signs, naturally fallible as attested in the excerpt above, and the unity of thought,

83 ‘(...) “quisquis mihi alius filii filiusve heres sit”: labeo non videri filiam contineri, proculus contra. mihi labeo videtur verborum figuram sequi, proculus mentem testantis. respondit: non dubito, quin labeonis sententia vera non sit.’ Iavolenus, D. 50.16.116.

84 ‘pronuntiatio sermonis in sexu masculino ad utrumque sexum plerumque porrigitur.’ Ulpian, D. 50.16.195.

85 ‘cum dotem quis ita promissit: “cum potuero, doti tibi erunt centum,” existimo ad id quod actum est interpretationem redigendam esse: nam qui ambigue loquitur, id loquitur, quod ex his quae significantur sensit. propius est tamen, ut hoc eum sensisse existimem “deducto aere alieno petero.” potes etiam illa accipi significatio “cum salva dignitate mea poter”: quae interpretativo eo magis accipienda est, si ita promissum est “cum commodum erit,” hoc et “cum sine incommodo meo poter”.’ Proculus, D. 50.16.125.

Pedro Savaget Nascimento

given that the man who wrote spoke what he felt and experienced about the words uttered. In light of the case, Proculus simply reasoned that the father who promised the dowry would not have intended to perform an act that would lead him to inconvenience, insolvency included.

Proculus summarized his approach to the *verba aut voluntas* debate through the hermeneutical notion of conducting interpretation towards '*id quod actum est*' (what has been negotiated) which, in the case of an ambiguous unilateral declaration of will, necessarily required delving into the intention of the person whose legal right had to be observed. It is argued here that Proculus's *id quod actum est* is the abstracted regularity (a *regula*) of his reasoning, used as a means to maximize the value and utility of the legal instrument, taking into consideration that freedom of testation and legacy were forms of realization of inalienable property rights.

In common, it is possible to see in these cases that Proculus recognized, similarly to the Stoics, a parallelism between the abilities of thinking and speaking,<sup>86</sup> so that it would have been unjust for him to decide otherwise when dealing with the unilateral declaration of will under evaluation. Proculus positively attested to the existence of an objectively verifiable ambiguity, and conducted interpretation towards the verification of what the utterer of the *verba scripta* or *voces* actually experienced of the words that were signified, i.e., what made sense to these Romans when transforming their mentally clear ideas into fallible, naturally ambiguous, linguistic signs. Delving into questions of the '*status verba-voluntas*,' dealt with what Tellegen-Couperus and Tellegen call a 'sense of probable intention'.<sup>87</sup>

This 'soft-intentionalism,' originally expressed by Proculus in question-and-answer complex and epistolary form, was more than a century later re-asserted as an interpretive maxim by Paulus, pointing out to a more 'stable' and less inventive state of jurisprudence:

'In a case of an ambiguous discourse, we [as speakers] do not say two things at once, but only [the one thing which was what] we intended to say. And, therefore, someone who says something without having it wished, neither says what the voice signifies, because this was not wished, nor what was actually wished, because he/she was unable to put it into words.'<sup>88</sup>

86 Verbeke, 'La philosophie du signe chez les Stoiciens', 263.

87 Olga Tellegen-Couperus and Jan Willem Tellegen, 'Reading a Dead Man's Mind: Hellenistic Philosophy, Rhetoric and Roman Law', in *Cicero's Law*, ed. Paul du Plessis (Edinburgh: Edinburgh University Press, 2016), 47.

88 'in ambiguo sermone non utrumque dicimus, sed id dumtaxat quod volumus; itaque qui aliud dicit, qual vult, neque id dicit, quod vox significat, quia non vult neque id, quod vult, quia id non loquitur.' D. 34.5.3.

In late-classical law, this view is accompanied by the statement that, ‘when there is no ambiguity, the intention of the language used is beyond question’,<sup>89</sup> not differently from what Proculus decided in the ‘first case’ of this section. Proculus’s linguistic curiosity, therefore, became solidified in late-classical Roman law and, by consequence, still impacts in modern European legal systems, which are its heirs.

## 9 Conclusion

This paper aimed to contribute to the discussion about the role of philosophy in the jurisprudence found in the *Digest of Justinian*. Adding to previous research in Roman jurisprudence and syllogisms by Miquel, Honoré, Armgardt, Hülser, Tellegen-Couperus, Tellegen and Winkler, the paper argued that (1) Proculus’s immersion in Stoic doctrine went beyond merely technical application of its syllogisms, inasmuch as the jurist delved into physical vocabulary by using the Stoic notion of ‘existence’, consisting in things that ‘act’ and/or ‘are acted upon’. And, (2) the paper further inquired how Proculus’s ‘soft-intentionalism’ continued the *verba aut voluntas* debate and reflected a deep convergence of ideas with the Stoic solution to the apparent paradox disjoining thoughts and meanings. By rejecting linguistic relativism while aiming to maximize the power and utility of testaments, legacies and dowry promises, Proculus used his linguistic arsenal as a means to use what Schulz calls a mixture of ‘*auctoritas*’ and ‘intuitive perception of the law’<sup>90</sup> to speculate *qua philosopher* into the human mind, adjusting meanings to thoughts, consistently using a method that empirically detects ambiguities and dissolves them by deducing the intention of the party or, in Stoic vocabulary, using the deduction of the ‘internal speech’ as a means to identify the ‘thing referred to by the speaker’.

It is not possible to attest with certainty whether Proculus was directly drawing from philosophical sources when dealing with the *verba aut voluntas* debate, but the hypothesis is reasonable. In addition, considering that Proculus probably considered philosophy as part of his own proper intellectual atmosphere, this paper suggests further research to assess Proculus’s application of Stoic philosophy beyond logic. Is it possible, for instance, to affirm that Proculus had the Stoic notion of ‘up to us’ in mind when insistently using the notion of *in potestate* in his interpretations of the *lex Aquilia* (chapter 9.2 of the *Digest*)? This, I will leave readers to ruminate.

89 ‘cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio.’ D. 32.25.1.

90 Fritz Schulz, *History of Roman Legal Science* (Oxford: Clarendon Press, 1946), 124.