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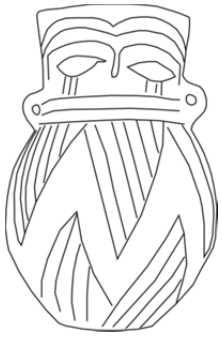

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# DEFINING THE SEPULCHRAL LOT ON ROMAN FUNERARY MONUMENTS – CONSIDERATIONS ON APPLYING ROMAN LAW IN ARCHAEOLOGY BASED ON AN ANCIENT SOURCES STUDY

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**Rezumat.** Arheologia funerară, datorită complexității situațiilor cu care se confruntă, indiferent de epoca istorică cercetată, necesită contribuția științelor conexe acesteia, pentru a facilita strângerea unui număr cât mai mare de date. Aceasta este și motivația care stă în spatele studiului de față, care are ca punct central lotul funerar și definirea acestuia în spiritul legilor antice romane, așa cum sunt ele reflectate în textile juridice antice și epigrafele monumentelor funerare.
În marea majoritate a cazurilor, monumentele funerare sunt descoperite în poziții secundare, fără a mai avea o legătură directă cu mormântul pe care acestea trebuiau să îl protejeze. De asemenea, arareori cercetările arheologice desfășurate în necropole asociază monumentele funerare mormintelor originale. Cu toate acestea, epitafurile vin în completarea informațiilor arheologice privind indivizii defuncți, oferind, atunci când ne lipsesc rămășițele umane, date privind identitatea celor trecuți în neființă.
Însă, ocazional, o altă categorie de informații ne este furnizată de epitafurile inscripționate pe monumente, și anume cele privitoare la lotul funerar. Acest tip de proprietate, cu destinație funerară, se detașează de celelalte tipuri de proprietăți în dreptul roman datorită funcției pe care o deținea, iar proprietarii aveau tendința de a-și sigura permanența lotului folosindu-se de epigrafa ce urma a fi bătută pe piatra monumentului.
O serie întreagă de măsuri au fost evidențiate în studii epigrafice, de la simpla enunțare a mărimii lotului, măsură ce avea în vedere păstrarea suprafeței originale după moartea proprietarului, până la o multitudine de instrucțiuni dedicate moștenitorilor, care vor avea în grijă proprietățile adiacente lotului funerar ce asigurau cheltuielile întreținerii mormintelor. Iar peste toate aceste măsuri guverna litera legii, reglementări constante fiind necesare să controleze și să protejeze în mod eficient lotul funerar, reglementări analizate printr-un studiu minuțios al textelor juridice aparținând epocii.

**Cuvinte cheie:** drept roman, monumente funerare, lotul funerar, epigrafie, texte juridice.

Archaeology has proven throughout time how vast its interests are, revealing evidence of the past stretching from the dawn of time to modern days, employing in its endeavours the usually combined efforts of various interdisciplinary sciences. The reason for this collaboration between sometimes very different sciences (from

biochemistry to deciphering ancient languages and scripts) is very simple, the main purpose being to gather as much information about the past as possible, motivated by the already largely known fact that archaeology is a destructive science, once you start an excavation, the evidence must be collected with the utmost attention, otherwise the information would be forever lost.

Funerary archaeology has its own uncontested importance in historical sciences, bringing forth information that is meant to reveal a snap shot of humanity in certain temporal and spatial circumstances. Nevertheless, as experience has proven until now in excavations focused on Roman funerary habits, we rarely are dealing with the tomb in association with its monument; more often we discover whole necropolises devoid of stone memorials that were raised above ground, their absence mostly being motivated by ancient or medieval reuse as building material.

As archaeology greatly contributes to defining human history, so does a thorough study of funerary monuments contribute to bringing forward the past as additional help to Roman archaeology. This is the argument that stands as motivation for our present study which focuses on the legal aspects that are easily identifiable in the epitaphs that are carved on Roman funerary monuments. It is without a doubt that the inscribed text often offers specific information about the identity of the deceased, other than what is confirmed by an anthropological examination of the remains when they are available, such as age, gender and state of health immediately before death.

Moreover, the archaeological information is not limited only to studying the physical remains, but also the funeral context can provide vital data concerning funerary rites and rituals; in other words, not only the tomb but also what is around it constitutes important information about the human past. The funerary lot can be identified archaeologically by discovering traces of different types of enclosures, from simple outlining rocks to complex architectural elements, all meant to protect and define the limits of a funerary property. The question is can we find a reflection of defining the funerary lot when we have only the funerary monument? Besides the physical evidence of the existence of simple or complex architectural elements that indicate enclosures, can the epitaph provide information on the original funerary plot? The following pages are meant to try to provide an adequate answer to these questions by analysing a series of Roman funerary monuments, through the filter of legal texts and the letter of the Roman law.

As was customary in the ancient Roman world, every aspect of life and death had a tendency to be regulated through law, in both its forms, unwritten or written. This phenomenon is most evident in those moments that mark the human existence. Such was the case of one of the life's most important thresholds, death, and all the rites and rituals that follow the departure of somebody's loved one from this world.

M. Tullius Cicero, in his treaty *De Legibus*, tells us in great detail what is the origin and purpose of the law in general:

> "*Marcus*: Let us, then, once more examine, before we come to the consideration of particular laws, what is the power and nature of the law in general […]. This, then, as it appears to me, has been the deci-

> sion of the wisest philosophers, that law was neither a thing contrived by the genius of man, nor established by any decree of the people, but a certain eternal principle, which governs the entire universe, wisely commanding what is right and prohibiting what is wrong."[1]
> "*Marcus*: […] with respect to civil laws, which are drawn up in various forms, and framed to meet the occasional requirements of the people, the name of law belongs to them not so much by right as by the favour of the people. For men prove by some such arguments as the following, that every law which deserves the name of a law, ought to be morally good and laudable. It is clear, say they, that the laws were originally made for the security of the people, for the preservation of states, for the peace and happiness of society[2]. […] For the law is the just distinction between right and wrong, made conformable to that most ancient nature of all, the original and principal regulator of all things by which the laws of men should be measured, whether they punish the guilty or protect and preserve the innocent."[3]

The Roman orator also specifies in his work that the rights and sacrifices of the Manes, deities of the Underworld, meaning all that is related to the burial and funeral ceremony, are associated with both pontifical and civil law[4], also stating that you cannot be a good pontiff if you are not familiar with the intricacies of the civil law[5]. Thus become relevant the words of Yan Thomas as he stated that "*the law simplifies, rationalizes and make autonomous the criteria defined by religion*"[6].

Very early humanity has created distinct rules regarding burials of its departed, not only referring to rites and rituals, but also regarding the places where these actions were permitted. Nevertheless, the first written Roman law concerning funerary acts was recorded in the Laws of the Twelve Tables in 5th century BC. One of these laws stated the fact that no person should be buried or cremated inside the city limits[7], due to probable risk of fire[8] or poor hygiene[9].

Nonetheless, the Greek tradition clearly has its exceptions. There are numerous examples of ancient cities that harbour within their limits the so called graves of the eponym heroes. So it does not come as a surprise when the Romans follow on this tradition in the same way as they were inspired by the Athenian ancient legal system in compiling the Law of the Twelve Tables. Cicero again expresses his thoughts concerning this topic in his treaty:

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[1] Cicero, *De Leg.*, II, 8 (Yonge, 1853, p. 430-431).
[2] Cicero, *De Leg.*, II, 11 (Yonge, 1853, p. 432).
[3] Cicero, *De Leg.*, II, 13 (Yonge, 1853, p. 433).
[4] Cicero, *De Leg*., II, 18.
[5] Cicero, *De Leg.*, II, 19.
[6] Thomas, 1999, p. 79.
[7] "*Hominem mortuum in urbe ne sepelito neve urito.*" (Table X, Law III) / "*No burial or cremation of a corpse shall take place in a city*" (Scott, 1932, I, p. 75).
[8] Cicero, *De Leg.*, II, 58.
[9] Scott, 1932, X, p. 75, note 2.

> "*Atticus:* How is it that, notwithstanding this law of the Twelve Tables, so many of our great men have been buried in the city?
> *Marcus*: I believe, my Atticus, that those who have been so buried, have been either those to whom this privilege was granted before the law was made, such as Publicola and Tubertus, on account of their virtue, and that their descendants have rightfully succeeded to it; or those who, like Caius Fabricius, have been discharged of their obligetions to this law because of their virtue. But the civil law does forbid burials in the city, and in the same spirit the pontifical college has decreed that it is unlawful to raise a sepulcher in the public places."[10]

Such was the case of burial practices in urban settlements. Nonetheless, the Law of the Twelve Table considers also the case of inhabitants from rural areas, stating that no tomb or funeral pyre should be raised within the limit of sixty feet from a neighbour's house without his approval[11], for fear of fire[12].

There is no doubt that the Roman law greatly evolved since the 5th century BC and, within a short time, a multitude of situations and problems were created, that needed further attention from the Roman state authorities in finding better solutions, from the Senatorial decrees to the imperial rescripts and interpretations gathered in legal treaties written by the most famous jurists at the time.

The most likely source of such complexities resides in the terminology employed by jurists over time referring to all that is in connection with the funerary rites and rituals, more exactly the double nature of the tomb and the opposition between *locus purus / locus religiosus* in reference with the burial site.

First of all, as the legal texts have proven so far, the duality of the tomb is both subjected to commercial and religious law. The tomb in its self, says Ulpianus, is composed of two very different concepts, the *sepulchrum*, the place where the human remains, buried or cremated, are interred[13] and the *monumentum*, which implies anything raised on the ground with the sole purpose of keeping the memory of the deceased[14]. A ground property might be considered with the intention of burial only if it does not have a purpose for the living, such as farm plots, as Plato reminded at one point[15], or public places.

On the other hand, the *monumentum*, generally speaking, had the sole purpose of protecting and keeping the memory of the deceased alive for eternity.

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[10] Cicero, *De Leg.*, II, 59 (Yonge, 1853, p. 455-456).
[11] "*No one, without the knowledge or consent of the owner, shall erect a funeral pyre, or a tomb, nearer than sixty feet to the building of another.*" (Tab. X, Law XVI; Scott, 1932, I, p. 75).
[12] Cicero, *De Leg.*, II, 61.
[13] "*Sepulchrum est, ubi corpus ossave hominis condita sunt.*" (*Dig.*, XI, 7, 2, 5) / "*A burial-place is a spot where human bodies or bones are deposited.*" (Scott, 1932, IV, p. 86-98).
[14] "*Monumentum est, quod memoriae servandae gratia existat.*" (*Dig.*, XI, 7, 2, 6) / **"***A monument is whatever is erected for the purpose of preserving the memory of the deceased.*" (Scott, 1932, IV, p. 86-98).
[15] Plato *apud* Cicero, *De leg.*, II, 67.

Florentius noted that if human remains are buried near a funeral monument, we are dealing with a *sepulchrum*, otherwise the tomb is void of remains, an empty sepulchre, thus the monument becomes a memorial, or what the Greeks called a *kenotaphion*[16].

Secondly, concerning the matter of what is considered a religious place as opposed to a *locus purus*, Ulpianus offers a concise but clear distinction between the two, by stating that a *locus purus* is an "*ordinary place*", devoid of religious servitude, which is not either sanctified, sacred nor religious[17]. Limiting our discussion further, focusing only on funerary matters, the tomb becomes a *sepulchrum* only after the remains are buried and the proper religious rites are performed, as a result the burial lot becomes *res religiosa*, consecrated ground, outside *ius comercii*. The pontifical law required a certain number of sacred rituals to be performed to consecrate a burial place, from purification to sacrificing a sow[18], while the civil law was satisfied with the presence of the body in the earth, and made no reference to sacred rites[19], judging from the words of the 2nd century AD famous jurist, Gaius[20].

Even so, Celsus, through the words of Ulpianus, mentions that not the whole lot becomes religious, but only the portion where the body is buried[21]. So, one question arises, was it possible to sell or purchase a funerary lot that was already consecrated? Again the ancient legal texts provide us with the answer. The law forbade the alienation through commerce of sacred or religious places[22], on the other

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[16] "*Monumentum generaliter res est memoriae causa in posterum prodita: in qua si corpus vel reliquiae inferantur, fiet sepulchrum, si vero nihil eorum inferatur, erit monumentum memoriae causa factum, quod graeci kenotafion appellant.*" (Florentius, *Dig.*, XI, 7, 4); "*Generally speaking, a monument is something which is handed down to posterity by way of a memorial; and in case a body or remains should be placed inside of it, it becomes a sepulchre; but if nothing of this kind is deposited therein, it becomes merely a monument erected as a memorial which is termed by the Greeks a cenotaph, that is to say an empty sepulchre*" (Scott, 1932, IV, p. 86-98).

[17] "*Purus autem locus dicitur, qui neque sacer neque sanctus est neque religiosus, sed ab omnibus huiusmodi nominibus vacare videtur.*" (*Dig.*, XI, 7, 2, 4); "*An „ordinary" place means one which is not sacred nor holy nor religious, but appears to be free from all such designations*" (Watson, 2009, I, XI, 7, 2, 4).

On the terms *purus/religiosa* versus *profane*/ *sacred* see the discussion in Thomas, 2004, p. 46, p. 69.

[18] Cicero, *De Leg.*, II, 57.

[19] Thomas, 2004, p. 45.

[20] "*Religiosum locum unusquisque sua voluntate facit, dum mortuum infert in locum suum.* (Gaius, *Inst.*, II, 6); "*We, however, render things religious by our own will, when we bury a body in our own ground, provided we have a right to conduct the funeral of the deceased.*" (Scott, 1932, I, p. 120).

[21] "*Celsus autem ait: non totus qui sepulturae destinatus est, locus religiosus fit, sed quatenus corpus humatum est.*" (Ulpianus, *Dig*., XI, 7, 2, 5); "*Celsus, however, says that a place which is destined for burial does not become religious entirely, but only that portion of it where the body is laid*" (Scott, 1932, IV, p. 86-98).

[22] Celsus apud Pomponius: "*Sed celsus filius ait hominem liberum scientem te emere non posse nec cuiuscumque rei si scias alienationem esse: ut sacra et religiosa loca aut quorum*

hand, if the funerary function was kept, sell or purchase was permitted[23], as was stipulated by Pomponius[24]:

> "It is our practice to hold that the owners of land, in which they have set apart places of sepulture, have the right of access to the sepulchres, even after they have sold the land. For it is provided by the laws relating to the sale of real property that a right of way is reserved to sepulchres situated thereon, as well as the right to approach and surround them for the purpose of conducting funeral ceremonies"[25]

This situation is also mentioned by the jurist Julius Paulus in his *Opinions*[26], stating that:

> "When land is sold, consecrated ground does not pass to the purchaser, nor does he acquire the right to inter bodies therein."[27]

In other words, religious places were not subjected to commercial law, actions against illegal purchases of *loca religiosa* under the false pretence of being "ordinary" were granted by the authorities[28]. On the other hand, if we were to deal only with the monuments, which were still *loca pura*, they could be sold or bequeathed. The same rule applied for cenotaphs, as they were not considered religious in a rescript of the Divine brothers, emperors Marcus Aurelius and Lucius Verus, as a result, they also could be sold[29]. This is to say that the funerary monument was *purus* until it was placed to protect the remains of a deceased, a sepulchre, in which case it became religious as part of the tomb itself, protected under religious law[30]. Under legal terms, a *locus religiosus* was limited to the tomb, rendering its funerary

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*commercium non sit, ut publica, quae non in pecunia populi, sed in publico usu habeatur, ut est campus martius.*" (*Dig.*, XVIII, 1, 6); "*Celsus, the son, says that you cannot purchase a man whom you know to be free, nor any other property if you know that it is not subject to alienation; as, for instance, sacred and religious places, or such as are not the object of commerce, but are public property, which, while they do not absolutely belong to the people, are used for public purposes, as, for instance, the Campus Martius*" (Scott, 1932, V, p. 3-25)

[23] See also Thomas, 2004, p. 41-42; Visscher, 1963, p. 65, p. 106; Kaser, 1978, p. 60.

[24] *Dig.*, XLVII, 12, 5.

[25] Scott, 1932, X, p. 332-335.

[26] I, 21, 7.

[27] Scott, 1932, I, p. 266. "*Vendito fundo religiosa loca ad emptorem non transeunt nec in his ius inferre mortuum habet.*" (Paulus, *Rec. Sent.*, I, 21, 7).

[28] "*Si locus religiosus pro puro venisse dicetur, praetor in factum actionem in eum dat ei ad quem ea res pertinent.*" (Ulpian, *Dig.*, XI, 8, 1); "*If a religious place is alleged to have been sold as though it was ordinary, the praetor grants the person concerned an action in factum against the seller.*" (Watson, 2009, vol. I, XI, 8, 1).

[29] "*Si adhuc monumentum purum est, poterit quis hoc et vendere et donare. si cenotaphium fit, posse hoc venire dicendum est: nec enim esse hoc religiosum divi fratres rescripserunt.*" (Ulpianus, *Dig.*, XI, 7, 6, 1); "*So long as there is only a monument, anyone can sell it, or give it away; if, however, it becomes a cenotaph, it must be stated that it can be sold; as the Divine Brothers stated in a Rescript that a structure of this kind is not religious.*" (Scott, 1932, IV, p. 86-98).

[30] Concerning this subject see Creţulescu, Mureşan, 2014.

status to inviolable, inalienable and immune to seizures[31]. Moreover, we can conclude thus far that the presence of the deceased's physical remains were the decisive factor in establishing the status of consecrated ground, a *locus religiosus*.

Such were the rules regarding the status of funerary lots and sepulchres. Nevertheless, this never hindered the original owners of these properties to try to extend the rules of inalienability of their tomb to the surrounding area. One such method was to inscribe the exact surface of the funerary plot in the final part of the inscription carved on visible monuments. A practice found popular in great Roman urban centres, it was best reflected in necropolises across Italy, where funerary monuments belonging to one family often occupied an enclosed plot, usually surrounded by walls of diminished height, enough to permit any passer-by to read the epitaphs. Plots marked by these small walls or just stone pillars placed in corners, stretched in one or two rows on both sides of main roads, sometimes for miles and miles, as were discovered in ancient Aquileia, or Via Appia in Rome, or Via dei sepolcri, which started at the Herculaeum Gate in Pompeii[32].

However, enclosing the funerary lot is not to be seen as just an aesthetic effort, but also a measure to preserve through time the original size of the funerary property. The monuments that protected the remains were not to be sold by law, nor were they inherited by descendants to do with them as they pleased[33], in as much by inscribing the exact measures of the plot on the funerary slab, it can be interpreted as an additional effort to ensure the integrity of the property after death, all for the sole purpose of protecting one's memory.

The epigraphic formula retained, in feet, the length of the property in its front side, parallel with the road (*in fronte*), and the depth, the distance perpendicular on its front (*in agro*, *retro*)[34]. Although rarely encountered on the Lower Danube, such examples we find in both Upper and Lower Moesia, which focus on exactly defining the surface destined for the tomb in itself.

At Scupi, we have the funerary monument dedicated to a centurion of the VII$^{th}$ legion, original from Carthage, by his sisters and heirs, specifying the surface assigned for his tomb[35]. Also, at Oescus, on the funerary *stela* belonging to the veteran of the I$^{st}$ Italian legion Severus, we find the exact measures of the lot where the tomb was built[36], in addition to the interdict of the monument's alienation by heirs.

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[31] Thomas, 2004, p. 45.

[32] Toynbee, 1971, p. 73-74.

[33] Thus the usage of the formula *H(oc) M(onumentum) H(eredem) N(on) S(equetur)* at the end of funerary inscriptions, see also Creţulescu, Mureşan, 2014.

[34] Toynbee, 1971, p. 75.

[35] "*---] / [---]noci(?)/[---]usto ex / [---] Carthag(iensi) / [|(centurioni) leg(ionis) VII] C(laudiae) p(iae) f(idelis) pro / [---]R(?)O I[-- so]rores / heredes [o]ptimo piis/simo amantissimo fra/tri fecerunt [p]ius vix(it) an(nos) LXV / |(centurio) mil(itavit) an(nos) XXXV h(ic) s(itus) e(st) ex his agris / monimento ex[c]epti sunt in fro(nte) / p(edes) XX introitus [p(edes)] XX et iter*." (IMS II, p. 104).

[36] "*--] / [---] C(ai) / f(ilius) Papiria Se/verus Oesc(i) / vet(eranus) leg(ionis) I Ita(licae) / et Marciae / Marcellae / coniugi f(ecit) / h(oc) m(onumentum) p(ositum) in f(ronte) p(edes)*

Not uncommon were also the attempts to extend the regulations protecting religious ground to the lands and gardens that surrounded the tombs, with the sole purpose of ensuring in perpetuity the income necessary to pay for the keeping of their memory after death (sacrifices and libations, banquets and games). This type of properties were known as funerary foundations[37], established by the deceased before death, and they amounted to gardens, *horti*, orchards, vineyards, even estates, building which served the tomb, kitchens or dining rooms, solariums, pools or water-tanks[38]. At Sucidava, in Lower Dacia, we have such an example:

"---]
[volo iubeo --- curatoribus sepulchri mei fructum]
[v]inearum iug(erum) II A(?)[--- et usum eius aedifi]
ci(i) quod iunctum sepu[lchro meo est concedere sub supra scripta]
condicione quicumq[ue hereditatem adierit ex heredibus meis]
vel ex eis per gradus v[el qui substitutus erit si quis eorum]
interciderit volo iubeo [heredes meos curatorem sepulchri mei]
in locum eiu{i}s qui obieri[t aut officium suum deseruerit]
substituere eadem co[ndicione qua curatores supra instituti sint]
qui similiter officium g[erat et ---]
sit et quicumque ex ea [condicione curator institutus aliquid neglexerit]
pertinens ad voluntat[em meam dimittatur eique alius sufficiatur ut]
sit qui ex iussu meo in [sepulchro meo quotannis sacra faciat]
ita u[t s(upra) s(criptum) e(st)]
ut eae vineae et aedifi[cium curatoribus reservata? sint ius heredibus]
meis aps[it](!) dand[i ea aut alienandi si quis voluerit vendere ea]
aut alienare q[uod adversus voluntatem testamenti mei]
fecerit venditio et [alienatio irrita sit et |(denariorum) --- m(ilia) dare damnas esto pecunia]
ea reliquo[ru]m caus[a hereditati adcrescat ---]
ita ut post [mortem meam curatores quotannis sacra faciant]
ex fructu s[upra scriptarum vinearum]"[39]

As the editor of the *IDR corpus* rightfully noted[40], this funerary inscriptions is a very detail list of instructions and interdicts to be followed by the heirs and descendants of the deceased after his death. Although the beginning of the epitaph where precise instructions regarding sacred rites to be fulfilled would have been inscribed no longer survives, there are three reminders that point to it throughout the inscription (see lines 3, 7 and 9). What remains till this day are the instructions regarding the property which is connected with the tomb, the vineyard and the living

*LXXX / in agr(o) p(edes) LXXX h(eredem) / n(on) s(equetur)*." (Conrad, 2004, p. 235-236, no. 408, pl. 122, 3).

[37] For further information see Visscher, 1963, p. 123, 239-240 and chapters II and IV from the second part of the book.

[38] Thomas, 2004, p. 42. See also Toynbee, 1971, p. 94 for epigraphic examples.

[39] IDR II, 187.

[40] IDR II, p. 102-104.

quarters which are to be used by a tomb caretaker (the vineyard – *fructus* and the building – *usus*), which will be replaced by the deceased's heirs, if he would die or leave his post. The second part of the inscriptions is an interdict addressed to the descendants not to alienate these properties, and even if they are to sell or bequeath them, the deceased's testament will be enough to pronounce this action null.

This inscription is a classic example of the efforts the owners of funerary properties were capable of doing in their endeavour to protect their memory after death. The estates that were in connection with tombs were not considered *loca religiosa* under the law[41], which stated a clear distinction between the tomb, which was forever inalienable, and its outworks, which were alienable[42]. This is why the founders had to ensure through their will that the annexes were to remain with their original purpose, to preserve the memory of the deceased in perpetuity.

Nevertheless, funerary monuments and the efforts of their owners to keep them safe from outside abuse, endeavours made under the letter of the law, either by legal documents or instructions carved in stone, were always subjected to the fickle collective memory. Memorials had their short and long term purpose, the materials from which they were made subsequently ensured long term resistance, and on short periods of time, they served the family as an immediate consolation. In fact, just as history has proven thus far, funerary monuments, in spite of the legal and financial efforts made, have a very short life beyond their initial intent. Despite carefully laid out instructions, monuments were in time forgotten by families, who, eventually, died out, and rapidly neglected and in danger of violation, even if the law was supposed to protect them. This is the very reason why owners continued to make every effort to protect them from human tendency of forgetfulness and violence, to ensure that future generations will continue to preserve their memory, because to be forgotten was what the ancient Romans considered to be actual annihilation.

[41] See imperial constitutions and rescripts regarding this situation in Visscher, 1963, p. 57-59.
[42] Thomas, 2004, p. 42-43.

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