

## The Uses of *neco* I\*)

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### I. Introduction

*Neco* has generated a large bibliography,<sup>1)</sup> partly because of the meaning 'drown' with which it passed into some Romance languages (e.g. Fr. *noyer*, Prov. *negar*).<sup>2)</sup> Its uses in the Republican and Imperial periods are remarkably disparate and difficult to classify. What, for example, is the relationship, if any, between the meaning 'execute' which is common at all periods, and the use of the word of killing a tree by ring-barking (Plin. *Nat.* 17.234)? Is the meaning 'kill' by choking really an intermediate stage in the development of the meaning 'drown'?<sup>3)</sup> I make a new attempt here to reduce these diverse uses to some sort of order. I pay particular attention to the large number of examples found in technical prose genres, from Scribonius Largus, Columella and Pliny the Elder in the earlier period, through to the late medical and veterinary writings of the

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\*) Teil I, enthaltend die Abschnitte I-IV wird hier veröffentlicht; Teil II, mit den Abschnitten V-IX, folgt in einem der nächsten Hefte [Anm. d. Herausg.].

<sup>1)</sup> M. Bonnet, *Le latin de Grégoire de Tours* (Paris, 1890), 286, E. Wölfflin, *ALL* 7 (1892), 278, O. Immisch, *RhM* 80 (1931), 98 ff., W. Schulze, *Kleine Schriften* (Göttingen, 1933), 150-59, B. Axelson, *Unpoetische Wörter* (Lund, 1945), 66, E. Löfstedt, *Late Latin* (Oslo, 1959), 191-94, J. N. Adams, *Glotta* 51 (1973), 280-90, I. Opelt, *Glotta* 58 (1980), 111 f., J. Linderski, *Glotta* 65 (1987), 137 ff., especially 142 ff.

On the etymology of *neco*, see A. Walde-J. B. Hofmann, *Lateinisches etymologisches Wörterbuch* (Heidelberg, <sup>3</sup>1938-54), II, 153 ff., A. Walde-J. Pokorny, *Vergleichendes Wörterbuch der indogermanischen Sprachen* (Berlin and Leipzig, 1927-30), II, 326, A. Ernout-A. Meillet, *Dictionnaire étymologique de la langue latine* (Paris, <sup>4</sup>1959), 440 (s. v. *nex*). The root is said by Walde-Hofmann to be \**enek-*, which is associated with various words for 'necessity' and the like (e.g. OIr. *ēcen*). Walde-Pokorny take the root to be \**nek-*, 'perish' (cf. Skt. *nāçyati* 'perish, disappear,' *nāçayāti* 'cause to perish'). The etymology of the word throws no light on its later development in Latin.

<sup>2)</sup> W. Meyer-Lübke, *Romanisches etymologisches Wörterbuch* (Heidelberg, <sup>3</sup>1935), 5869.2.

<sup>3)</sup> See Schulze *loc. cit.*, Löfstedt, 192.

fourth century and beyond. All (or almost all) examples extant down to Apuleius have been taken into account, and numerous examples from the later period as well, but it is impossible to treat later Latin exhaustively.

There is a large degree of overlap between *neco* and its compound *eneco* (*enico*), and I have therefore included many examples of the compound in these articles. Just two significant differences should be noted between the use of *eneco* and that of the simplex. First, the participle *enectus*, though it can mean 'killed,' also had a well-established weakened sense, 'starved, deprived of sustenance, weakened' (see V.4). In the material available to me the weakened meaning is largely alien to *necatus*, though it does appear at Amm.31.6.5 ('adiectis plurimis quos primo transgressu necati inedia uino exili uel panis frustis mutauere uilissimis'). The use of the word in this passage was presumably artificial, modelled by Ammianus himself on the analogy of *enectus*. Similarly in a different context Ammianus writes (29.3.3) 'ideoque *necatus ad exitium* fustibus.' Secondly, in Plautus the finite forms of *eneco* are sometimes used hyperbolically of vexation, annoyance (e.g. Plaut. *Pers.* 48a 'odio me *enicas*').<sup>4)</sup> This usage seems to be restricted to the compound, though various other verbs of killing (e.g. *occido*)<sup>5)</sup> and dying (e.g. Hor. *Epist.* 1.7.85 'immoritur studiis') possessed comparable senses; the hyperbole must have been characteristic of colloquial speech. I would distinguish between the two 'weakened' uses of *eneco* mentioned in this paragraph, and not only for the morphological reason that the one is attached to the participial *enectus*, the other (largely) to the active finite forms. There is also a semantic distinction between *enectus*, and *enicas* as seen in e.g. 'odio me *enicas*.' *Enectus* means 'deprived of sustenance and thereby weakened *physically*,' whereas *me enicas* refers to a mental state from which death could not ensue. The two usages will have had different origins, and may indeed have been of very different date (see further below, V, V.4).

An example at Plaut. *Curc.* 236 ('lien *enicat*, *renes dolent*') is also probably hyperbolic,<sup>6)</sup> though there the sufferer is troubled physically.

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<sup>4)</sup> See *TLL* V.2.563.41 ff.

<sup>5)</sup> See *TLL* IX.2.346.35 ff.

<sup>6)</sup> So *TLL* V.2.563.48.

*II. Execute*

One of the earliest and best attested meanings of *neco* is 'execute.'<sup>7)</sup> In the *Oxford English Dictionary* 'execute' is defined as 'put to death in pursuance of a sentence.' It would be more accurate to say of *neco* that it indicates 'the putting to death of someone by a person in a position of authority.' This sense is well-attested in Plautus (*Bacch.* 860, *Poen.* 1026, *Truc.* 399, all discussed below). Cf. *enico* at *Rud.* 476 'nempe optumo (me) iure in uinclis enicet / magistratus,' of a magistrate envisaged as executing someone 'in uinclis;' for this terminology, cf. e.g. Cic. *Verr.* 5.149 'in uinclis cuius Romanos necatos esse arguo' (cf. 1.7),<sup>8)</sup> and for *magistratus* as subject, see e.g. the declaimers' law, Cic. *Inu.* 2.144 'tyranno occiso quinque eius proximos cognatione magistratus necato.' *Neco* = 'execute' almost certainly occurred in the Twelve Tables. Puteanus' emendation of *legatus* (*V*) to *necatus* at Cic. *Leg.* 3.19 seems to be right: 'deinde cum esset cito necatus tamquam ex duodecim tabulis insignis ad deformitatem puer' (of the putting to death of a deformed infant, an act which could be carried out by a man in possession of *potestas patria*; *neco* occurs elsewhere in this connection: see below, II.4). There may also have been other instances of the verb in the Twelve Tables (see below). 'Execute' is the only or predominating meaning in a variety of authors (Caesar, Livy, Valerius Maximus, Curtius Rufus, Tacitus, the *Historia Augusta*).

*Neco* is used of numerous types of execution. In the following pages I run over various categories, concentrating mainly on the early evidence (particularly from Plautus and the Twelve Tables), and on classical examples of the word which refer to early types of execution, or early events. The methods by which the various types were carried out will be mentioned, because (as we shall see) these contributed to the associations which *neco* acquired.

(1) *Neco* may have been used in the Twelve Tables of the execution by crucifixion of a person who had stolen *fruges*: Plin. *Nat.* 18.12 'frugem quidem aratro quaesitam noctu puisse ac secuisse puberi XII tabulis capital erat, suspensumque Cereri necari iubebant' (*Leg. XII Tab.* 8.9 Riccobono).<sup>9)</sup> The expression *suspensum Cereri*

<sup>7)</sup> See Adams, 280–83.

<sup>8)</sup> For *uinclula* = *carcer* in the language of law, see T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 960 n. 1.

<sup>9)</sup> On this passage, see Mommsen, 903 n. 5, 918 n. 6.

underlines the religious character of early execution.<sup>10)</sup> Crucifixion was referred to as execution *more maiorum*. The criminal was stripped, his head was covered, he was attached to a *furca* and hoisted aloft, and then flogged to death or left to die of exhaustion:<sup>11)</sup> see Suet. *Nero* 49.2 ‘... quaeri, ut puniatur more maiorum, interrogauitque quale id genus esset poenae; et cum comperisset nudi hominis ceruicem inseri furcae, corpus uirgis ad necem caedi ...’ Crucifixion was an ancient form of punishment.<sup>12)</sup> It was inflicted, for example, on slaves,<sup>13)</sup> and by *pontifices* on those who had violated a Vestal Virgin.<sup>14)</sup> Sometimes the verb used of the punishment was *caedo* with *ad necem* and/or *uirgis* (Livy 22.57.3 ‘a pontifice maximo eo usque uirgis in comitio caesus erat,’ Plin. *Epist.* 4.11.10 ‘cum in comitio uirgis caederetur,’ Suet. *Dom.* 8.4 ‘stupratores uirgis in comitio ad necem caedi,’ *Epit. Caes.* 5.7 ‘ubi aduentare Nero Galbam didicit senatusque sententia constitutum, ut more maiorum collo in furcam coniecto uirgis ad necem caederetur’), sometimes *neco* (Festus p.277 ‘probrum uirginis Vestalis ut capite puniretur, uir qui eam incestauisset, uerberibus necaretur: lex fixa in atrio Libertatis cum multi(s) alis legibus incendio consumpta est, ut ait M. Cato in ea oratione, quae de auguribus inscribitur,’ Tac. *Ann.* 14.48.2 ‘censuitque Iunius Marullus consul designatus adimendam reo praeturam necandumque more maiorum,’ Nepos *ap.* Gellius 17.21.24 ‘M. Manlius ... uerberando necatus est’). A variety of other verb-phrases is also found: e.g. Livy 22.33.2 ‘in crucem acti,’ 24.14.7 ‘in eum seruili supplicio animaduersurum,’ Val. Max. 1.7.4 ‘seruum suum uerberibus mulcatum sub furca ad supplicium egisset,’ Tac. *Ann.* 2.32.3 ‘in P. Marcium ... more prisco aduertere.’ Of the examples of *neco* quoted above, the most noteworthy is that in Festus, because on the evidence of Cato as cited there the verb seems to have occurred in an old law in the *atrium Libertatis* laying down the penalty for the lover of a Vestal. This passage, along with Pliny’s citation of the Twelve Tables, suggests, though it does not prove, that *neco* was in use in the early legal language in reference to crucifixion. But the variety of expressions used of crucifixion in later

<sup>10)</sup> On this subject, see Mommsen, 901 f., 918.

<sup>11)</sup> Details in Mommsen, 919 f.

<sup>12)</sup> Mommsen, 921.

<sup>13)</sup> Mommsen, 919, 920.

<sup>14)</sup> Mommsen, 919 n. 1, 920 n. 5. On flogging to death as a punishment in the army, see e.g. A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Oxford, 1972), 24 f., 122 n. 147.

Classical Latin is such that the association of *neco* with the punishment had probably weakened.

(2) Execution by fire, perhaps described by *neco*, was a penalty laid down in the Twelve Tables for someone who had burnt another's house, or *frumentum* piled next to a house: Gaius *Dig.* 47.9.9 'qui aedes aceruumue frumenti iuxta domum positum combusserit, uinctus uerberatus igni necari iubetur, si modo sciens prudensque id commiserit' (*Leg. XII Tab.* 8.10).<sup>15</sup>) The punishment is manifestly a case of *talio*.<sup>16</sup>) *Neco* is occasionally linked with *igni* or a synonym in the Classical period. Caesar (*Gall.* 1.53.7) recounts how the Gauls drew lots to determine whether a prisoner Procillus should be put to death by fire ('is se praesente de se ter sortibus consultum dicebat utrum igni statim necaretur'). The phrase turns up again in an allusion to a Gallic form of execution (*Gall.* 7.4.10 'nam maiore commisso delicto igni atque omnibus tormentis necat'). Cf. Val. Max. 9.2. ext.5 'frequens iuuentute gymnasium armis et igni circumdedit omnesque, qui in eo erant, partim ferro, partim flamma necauit' (from the chapter on cruelty, concerning the activities of Ptolemaeus Physcon; the meaning is ambiguous, between 'execute' and 'murder'). Cf. Suet. *Iul.* 75.3 'Caesar libertis seruisque eius ferro et igni crudelem in modum *enectis* bestias quoque ... contrucidauerat' (close to the sense 'murder'); note too Apul. *Met.* 10.24.7 'titione candenti inter media femina detruso crudelissime necauit' (not strictly an execution, but the victim, a young woman, is treated like a criminal: earlier she is stripped and flogged: 'nudam flagris ultime uerberat').

A person who is killed *igni* is as likely to be suffocated by smoke as burnt to death. For this type of suffocation employed as a means of execution, see Cic. *Verr.* 1.45 'genus animaduersionis uidete: ... ignem ex lignis uiridibus atque umidis in loco angusto fieri iussit: ibi hominem ingenuum, domi nobilem, populi Romani socium atque amicum, *fumo excruciatum* semiuiuum reliquit.' *Neco* is later commonly applied to death inflicted by *fumus*. I discuss such cases separately below (V.3.ii).

(3) At Plaut. *Bacch.* 860 *neco* is applied to the execution of a woman caught in adultery along with her lover: 'nihil est lucri quod me hodie facere mauelim, / quam illum cubantem cum illa opprimere, ambo ut necem' (the speaker talks as if the woman is his legal

<sup>15</sup>) See Mommsen, 923 n.3.

<sup>16</sup>) See Mommsen, 923.

wife).<sup>17)</sup> *Neco* was well-established in reference to this form of private execution in the earlier period: cf. Cato *ap.*Gell.10.23.5 'in adulterio uxorem tuam siprehendisses, sine iudicio inpune necares,' Livy 1.58.4 'ut in sordido adulterio necata dicatur,' Juv.10.316 'necat hic ferro, secat ille cruentis / uerberibus, quosdam moechos et mugilis intrat,' Gell.10.23.4 'in qua (oratione) id quoque scriptum est in adulterio uxores deprehensas ius fuisse maritis necare' (alluding to the passage of Cato above).

After the *Lex Iulia de adulteriis* of 17 B.C. a husband could no longer inflict the death penalty on his wife for adultery, and *neco* will thereafter have been less often heard in the legal language in this connection. That may be why, when the theme of adultery and the putting to death of adulterers comes up in the unreal world of Imperial declamation, *neco* is no longer used. In the Senecan declamation *Contr.*1.4 *interficio* is used in the title, and *occido* repeatedly throughout the declamation. Cf. *Contr.*9.1, ps. Quint. *Decl. Min.*244, 284, 347 (*occido* throughout). For *occido*, see also Quint. 7.1.7 'adulterum, inquit, cum adultera occidere licet' (cf. 3.6.17, 5.10.39, 5.10.88). *Neco* is used of an adulterer put to death at Quint.3.6.27 ('hinc est adulter loris caesus uel fame necatus'), but here it is the method of killing (starvation) that is the determinant of the verb (V.4).

(4) A second example of *neco* 'execute' in Plautus refers to the practice of exposing unwanted infants: *Truc.*399 'si quod peperissem id (non) necarem ac tollerem.' Technically only the deformed could be exposed (*Leg. XII Tab.*4.1 = Cic. *Leg.*3.19, quoted above, probably containing *neco*; see also Sen. *Dial.*3.15.2 'liberos quoque, si debiles monstrosique editi sunt, mergimus,' Dion. Hal. *Ant. Rom.* 2.15.2), but in practice any unwanted child might be got rid of at birth.<sup>18)</sup> Whether the infant was deformed or not, *neco* was regularly

<sup>17)</sup> On the legal position, see Mommsen, 625, P. E. Corbett, *The Roman Law of Marriage* (Oxford, 1930), 134 ff., S. F. Bonner, *Roman Declamation in the Late Republic and Early Empire* (Liverpool, 1949), 119 f., E. Courtney, *A Commentary on Juvenal* (London, 1980), 483.

<sup>18)</sup> See Mommsen, 618 f., C. Daremberg - E. Saglio, *Dictionnaire des Antiquités Grecques et Romaines*, II, 939 (s. v. 'Expositio'), E. Weiss, *RE* XI.1.463 ff. (s. v. 'Kinderaussetzung'), E. Sachers, *RE* XXII.1.1089 ff., especially 1091 ff. (s. v. 'Potestas patria'), M. Radin, 'The exposure of infants in Roman law and practice,' *CJ* 20 (1924-25), 337 ff., Bonner, 125, E. Eyben, 'Family planning in Graeco-Roman Antiquity,' *Ancient Society* 11/12 (1980/81), 5 ff., especially 12 ff., with extensive bibliography.

used of its killing, alluding either to Roman practice, that of foreigners, or to myth: see Ovid *Fasti* 2.385 'is iubet auferri paruos et in amne necari,' *Met.* 9.679 'edita forte tuo fuerit si femina partu, / (inuitus mando: pietas, ignosce!) necetur' (if the wife of Ligdus bears a girl, it is to be put to death), Livy 39.22.5 'nuntiatum est semimarem duodecim ferme annos natum inuentum. id prodigium abominantes arceri Romano agro necarique quam primum iusserunt' (cf. Iul. Obs. 4; not strictly an infant, but a prodigy which would normally have been put to death at birth), Curt. 9.1.25 'si quos uitii insignis aut aliqua parte membrorum inutiles notauerunt, necari iubent,' Apul. *Met.* 10.23 'ut si sexus sequioris edidisset fetum, protinus quod esset editum<sup>19)</sup> necaretur' (cf. Ovid *Met.* 9.679 above for the context), *ib.* 'natam necatamque nuntiauit,' Tert. *Nat.* 1.15.3 'tamen non aliter uos quoque infanticidae, qui infan(t)es editos enecantes legibus quidem prohibemini,' *Apol.* 9.6 'qui natos sibi liberos enecent,' *Exhort. Cast.* 12.5 'puto nobis magis non licere nascentem necare quam et natum' (of putting to death the foetus (*nascentem*) as well as the newborn (*natum*): see below on *neco* used of killing the foetus), Justin 1.4.5 'gravidam ad se filiam arcessit, ut sub aui potissimum oculis partus necaretur. natus infans datur occidendus Harpago,' 1.4.7 'is ueritus ... ne illa necati infantis ultionem ... a ministro exigeret,' Lact. *Inst.* 6.20.21 'num possunt innocentes existimari qui uiscera sua in praedam canibus obiciunt et quantum in ipsis est crudelius necant quam si strangulassent,' Amm. 16.10.19 'mox natum praesepto plus, quam conuenerat, umbilico necauit' ('murder' rather than 'put to death' in virtue of *potestas patria*, since an *obstetrix* has been paid to carry out the killing: *neco* was established as the appropriate term for the killing of an infant, whatever the circumstances; the type of extension seen here is typical of the way in which *neco* widened its field of reference), Aug. *Ciu.* 4.34 'nec Lucinam mulieres illae inuocauerunt, quando earum partus, ut miris

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<sup>19)</sup> The phraseology here is notable for its similarity to that of Plautus above: the infant is referred to not by a noun, but by a relative clause with neuter relative. This is a traditional way of mentioning the newborn: cf. Plaut. *Amph.* 501 'quod erit natum tollito,' Ter. *Andr.* 464 'quod peperisset iussit tolli,' Varro *Rust.* 2.2.14 'neque natum ex his idoneum est' (not a relative clause, but the expression is again in the neuter), Cic. *Att.* 10.18.1 'quid quidem est natum perimbecillum est,' Plin. *Nat.* 8.177 'quicquid ante genitum, inutile est,' *Mul. Chir.* 756 'et cum peperint et uiderint, quod ex eis natum est, timent et fugiunt.' The idea is presumably that the newborn does not yet have human identity, and is therefore not to be granted either a name or a specific noun to characterise it.

modis multiplicarentur et gens illa incredibiliter cresceret, ab Aegyptiorum persequentium et infantes omnes necare uolentium manibus ipse liberauit, ipse seruauit,' 16.43 'in modum incredibilem illa gens creuit, etiam tantis adtrita persecutionibus, ut quodam tempore nati masculi necarentur,' Paul. *Dig.* 25.3.4 'necare uidetur non tantum is qui partum praefocat, sed et is qui abicit et qui alimonia denegat et is qui publicis locis misericordiae causa exponit, quam ipse non habet.'<sup>20</sup>) Similarly the point at Tac. *Hist.* 5.5.3 ('nam et necare quemquam ex agnatis nefas') and *Germ.* 19.2 ('numerum liberorum finire aut quemquam ex agnatis necare flagitium habetur') is that the Jews and Germans did not practice infanticide.<sup>21</sup>)

I mention finally two superficially very different examples: Col. 11.3.50 'si uero etiam in menstruis fuerit, uisu quoque suo nouellos fetus necabit' (a menstruating woman will kill young *cucumeres* or *cucurbitae* merely by looking at them); Plin. *Nat.* 18.282 'si luna qua dictum est ratione roscidum frigus aspersit, admixta amaritudo ut in lacte puerperium necat' (if the moon scatters dewy cold at the time of certain constellations, it kills off young crops, here referred to as *puerperium* because of the comparison with the effects of *amaritudo* in milk). These passages may be loosely associated with those quoted above, because it is presumably the newly formed plants, the *nouellos fetus* or *puerperium*, analogous as they are to the newborn infant, which have motivated the use of *neco*. *Neco* widens its use by a series of associations, as we shall see repeatedly in the following pages.

Relevant to the semantic development of *neco* are the methods used to dispose of unwanted infants.<sup>22</sup>) Parents no doubt shrank from the use of weapons and resorted to bloodless means. Drowning is mentioned at Sen. *Dial.* 3.15.2 quoted above, and also at Ovid *Fasti* 2.385. Note too Tert. *Apol.* 9.7 'si quid et de necis genere differt, utique crudelius *in aqua spiritum torquetis*, aut frigori aut fami aut canibus exponitis,' *Nat.* 1.15.4 'atquin hoc asperius, quod frigore et fame aut bes(tiis, si exp)onitis aut *longiore in aquis morte, si mergitis*' (cf. Livy 27.37.6, Firm. Mat. *Math.* 7.2.10, 11). Strangulation or smothering was another method used: e.g. Min. Fel. *Oct.* 30.2 'uos

<sup>20</sup>) See also *Origo Gent. Rom.* 21.1 (twice), Oros. *Pag.* 1.10.8, 1.15.3. A few other examples can be found in Adams, 282 with n. 11. The usage survived into Medieval Latin (see *Leg. Visigoth.* p.260.21, cited *loc. cit.*).

<sup>21</sup>) See Mommsen, 619 n. 4; also Adams, 282 f.

<sup>22</sup>) For a collection of material, with bibliography, see Eyben, 14 f.



enim uideo procreatos filios nunc feris et auibus exponere, nunc *adstrangulatos* misero mortis genere elidere,' Lact. *Inst.* 5.9.15 'qui natos ex se pueros aut *strangulent* aut, si nimium pii fuerint, exponant,' 6.20.18 'ergo ne illud quidem concedi aliquis existimet, ut recens natos liceat *oblidere*, quae uel maxima est impietas: ad uitam enim deus inspirat animas' (cf. *Inst.* 6.20.21, quoted above, and *Dig.* 25.3.4 above, with *praefoco*).<sup>23</sup>) But drowning and strangulation may have seemed to some to be too drastic (see Lact. *Inst.* 5.9.15 above). Many probably exposed the child to the elements, hoping that it might be taken up by someone. Sources speak of such infants dying of hunger or cold (Tert. *Apol.* 9.7 above, *Nat.* 1.15.4), or falling prey to dogs or other animals (Tert. *locc. cit.*, *Min. Fel. Oct.* 30.2, Firm. *Mat. Math.* 7.2.9, 11, 12, 20, 21). Alternatively the parents may simply have deprived the child of food, without exposing it (see Firm. *Mat. Math.* 7.2.21, 22, 24, 25).

In the preceding pages we have seen various applications of *neco* which tend to fade from view as the late Republic and Empire advance, partly because of changing circumstances, partly because of the rivalry of alternative terminology (*neco* used of the execution of an adulteress, and of crucifixion and death by beating). By contrast the use of *neco* indicating the putting to death of an unwanted infant was well-established in the literary language from Plautus through late antiquity to the medieval period. The means employed to carry out this type of execution (drowning, strangling, smothering, starvation, deprivation of warmth) seem to have become inextricably associated with the generic verb for the act, *neco*. I return to this contention at greater length later.

(5) The next category of examples with which I deal may not belong strictly under the rubric 'execution,' but they are so closely connected with those in the preceding section that they should be discussed here. I refer to the use of *neco* (*eneco*) of the putting to death of a foetus *in utero*, whether by abortifacients or mechanical means. In some contexts, as employed by moralists condemning the practice of induced abortion, the verb may shade into the sense 'murder,'<sup>24</sup>) but it is also used quite neutrally, and it would therefore be wrong to derive the usage exclusively from *neco* = 'murder' (on

<sup>23</sup>) On the use of *oblido* at *Inst.* 6.20.18, see *TLL* IX.2.85.39f.

<sup>24</sup>) On the popular belief that induced abortion was an act of slaying or homicide, see the remarks of E.Nardi, *Procurato aborto nel mondo Greco Romano* (Milan, 1971), 219, 240, 298, 318, 350 n.101, 412.

which, see below, III). Presumably *neco* first established itself as the *vox propria* for the destruction of the newborn, an act in theory carried out by someone with *potestas patria* in virtue of the *ius uitae necisque* inherent in that power.<sup>25</sup>) Little difference may be perceived between getting rid of an unwanted newborn infant, and getting rid of an unwanted foetus, especially in a society in which both acts were regarded as forms of family planning;<sup>26</sup>) hence *neco* extended its usage. The close relationship between the meaning dealt with in this section, and that in the preceding section, can be seen from Tert. *Exhort. Cast.* 12. 5, quoted above, p. 236, where a single instance of the verb expresses the killing both of a foetus and of a newborn infant. *Neco* (*eneco*) is also used neutrally of the foetus which has been 'killed' by whatever means, i. e. of a dead foetus, without any intention to kill implied on the part of the mother.

See Plaut. *Truc.* 201 'celabat metuebatque te, ne tu sibi persuaderes / ut *abortioni* operam daret puerumque ut enicaret' (neutral, of getting rid of the foetus, without any suggestion of murder), Ovid *Am.* 2. 14. 15 'Ilia si tumido geminos in uentre necasset,' *ib.* 22 'uidissem nullos matre necante dies,' *ib.* 38 'saepe, suos utero quae necat, ipsa perit,' Plin. *Nat.* 20. 143 'praecauendum est grauidis abstineant hoc cibo, necari enim partus inuenio' (not of putting to death deliberately, as in the above passages, but of a *cibus*, rue, which can 'kill' the foetus, whether taken deliberately or not; *neco* is now the established term for the killing of the foetus, intentionally or otherwise, and the way is open for the past participle to be used in the sense 'dead,' with the cause of death not necessarily specified, or even known), 20. 146 'potum feminas purgat, sed partus necat,' 26. 159 'eiusdem radix pota in tantum purgat, ut partus enectos extrahat' (= 'dead,' cf. e.g. 20. 74 'ut *emortuos* partus trahat'), 27. 139 'menses quoque ciet, sed partus necat,' 28. 251 'ungulae asininae suffitio partum maturat, ut uel abortus euocetur, nec aliter adhibetur, quoniam uiuentem partum necat,' Juv. 6. 596 'tantum medicamina possunt, / quae steriles facit atque homines in uentre necandos / conducit,'<sup>27</sup>)

<sup>25</sup>) For which see Cic. *Dom.* 77, Gell. 5. 19. 9. It is worth noting that both examples of *nex* in Plautus refer to the exposing of infants: *Cist.* 166 'dat eam puellam ei seruo exponendam ad necem,' 665 'quibu' cum tu extulisti nostram filiulam ad necem.' *Neco*, used of putting to death the newborn, would no doubt have been associated by its users with *nex*, and in particular with *nex* as it appeared in the formula *ius uitae necisque*.

<sup>26</sup>) See Eyben, *op. cit.*

<sup>27</sup>) See Nardi, 318.

Marc.14.70 'ad partus extrahendos, qui ante maturitatem fuerint enecati' (cf. Plin. *Nat.*21.145 'si *emortui* sint in utero partus'), Oros. *adu. Pag.*4.2.2 'pestilentia grauis urbem ac fines eius inuasit; quae cum omnes tum praecipue mulieres pecudesque corripens necatis in utero fetibus futura prole uacuabat' (of a pestilence which kills the unborn). Cf. Cic. *Cluent.*31 'ut una illud quod erat ex fratre conceptum<sup>28</sup> necaretur' (Oppianicus poisons Auria, who is pregnant, thereby killing the foetus as well; cf.32 'in uno corpore pluris necaret').

Abortion was sometimes induced by surgical means (see Ovid *Am.*2.14.27f. 'uestra quid effoditis subiectis uiscera *telis*, / et nondum natis dira uenena datis?'; cf. lines 3 'si sine Marte suis patiuntur uulnera *telis*,' 34 '*figere* sollicita corpora uestra manu;'; also *Fasti* 1.623 'neue daret partus, ictu temeraria caeco / uisceribus crescens excutiebat onus;'; for the methods, see especially Tert. *Anim.*25.5).<sup>29</sup>) Numerous potions were taken as abortifacients, and these are sometimes referred to as poisons, *uenena* (see Ovid *Am.*2.14.28, quoted above).<sup>30</sup>) An *odor* or fumigation might also be regarded as killing a foetus (for the latter idea, see Plin. *Nat.*28.251 quoted above).

(6) Through his *potestas patria* and its inherent *ius uitae necisque*, a *paterfamilias* could execute his sons or daughters of any age without cause.<sup>31</sup>) For *neco* used in this connection (other than of infants at birth), see Sall. *Cat.*39.5 'quem retractum ex itinere parens necari iussit,' *Cat.*52.30 'A. Manlius Torquatus ... filium suum ... necari iussit,' Livy 2.41.10 'eum cognita domi causa uerberasse ac necasse peculiumque filii Cereri consecrauisse,' Val.Max.5.8.2 '(filium) adfectati regni crimine domi damnauit uerberibusque adfectum necari iussit,' *id.*6.1.3 'non contentus sceleratum seruum adfecisse supplicio etiam ipsam puellam necauit' (a daughter guilty of a liaison with a slave is put to death by her father), Suet. *Aug.*65.2 'etiam de necanda deliberauit' (Augustus contemplates the execution of his daughter for adultery), Gell.17.21.17 'filium suum, quod contra suum dictum in hostem pugnauerat, securi necauit,' *Epit. Caes.*41.11 'Constantinus ... filium necari iubet.'

<sup>28</sup>) Cf. above n.19 for the newborn referred to in this way.

<sup>29</sup>) For this last passage, see Nardi, 330f. See in general Eyben, 10ff.

<sup>30</sup>) See Nardi, 239 with n.81; note too Plin. *Nat.*25.115, 24.143, quoted by Nardi, 275f.

<sup>31</sup>) See Sachers, *RE* XXII.1.1084ff., especially 1086f., R.Yaron, '*Vitae necisque potestas*,' *Tijdschrift voor Rechtsgeschiedenis* 30 (1962), 243f., Alan Watson, *Roman Private Law around 200 B.C.* (Edinburgh, 1971), 28.

(7) At Plaut. *Poen.* 1026 the Carthaginian Hanno, whose words are translated by Milphio, supposedly asks to be placed under a wicker cage piled with rocks, so as to be put to death: 'sub cratim ut iubeas se supponi atque eo / lapides imponi multos, ut sese neces.' This has been taken to be an allusion to a Carthaginian form of execution,<sup>32</sup> but without good reason, as Maurach has emphasised *ad loc.*<sup>33</sup>) The punishment (or at least variations on it) is attested a number of times in early Roman history. It turns up in the story of Tarquin's execution of Turnus Herdonius (Livy 1.51.9 'nouo genere leti, deiectus ad caput aquae Ferentinae crate superne iniecta saxisque congestis mergeretur'). Livy does not use *neco* here, but he does have it later when dealing with a similar type of execution (4.50.4 'ad uociferationem eorum quos necari sub crate iusserat'). Here the military tribune Postumius orders some mutinous soldiers to be put to death under a *cratis*. In an analogous story Apuleius Saturninus, according to Florus, was lynched by a mob who covered him with rocks (2.4.6 'ibi eum facta inruptione populus fustibus *saxisque opertum* in ipsa quoque morte lacerauit'). A. W. Lintott suggests that the phrase used here by Florus 'may go back to a tradition of burying criminals alive under a pile of stones.'<sup>34</sup>)

In Livy Herdonius is held beneath water by the *cratis* and rocks, whereas Plautus makes no mention of water. Maurach on *Poen.* 1025 takes the method of killing in Plautus to be drowning, but this is not necessarily the case, as the other passage of Livy and that of Florus make clear. It would have made little difference whether the victim was held under water and rocks, or simply under a pile of rocks. The use of *neco* 'execute' in accounts of these related punishments (as in two of the passages cited above) would obviously have produced early instances of the verb applied to death by smothering.

As a later date asphyxiation beneath a *cratis* was a punishment which was associated with Germanic barbarians (Tac. *Germ.* 12.1 'ignauos et imbelles et corpore infames caeno et palude, iniecta insuper crate, mergunt').<sup>35</sup>)

<sup>32</sup>) By R. M. Ogilvie, *A Commentary on Livy, books 1-5* (Oxford, 1965), 203 (on Livy 1.51.9).

<sup>33</sup>) G. Maurach, *Plauti Poenulus* (Heidelberg, 1975), 334 (on 1025): 'diese Auffassung stammt aus einer nur schwer begreiflichen Verkennung der Plautus-Stelle. Natürlich überträgt Milpio Römisches auf Hannos Worte.'

<sup>34</sup>) *Violence in Republican Rome* (Oxford, 1968), 7.

<sup>35</sup>) A genuine Germanic custom: see *Lex Burg.* 34.1 'si quis mulier maritum suum dimiserit, necetur in luto,' quoted by Schulze, 155 (also Greg. *Hist. Franc.*

(8) There remains for discussion in Plautus an example of *enico* at *Aul.*743: 'at ego deos credo uoluisse ut apud me te in neruo enicem.' A *senex* speaks of the possibility of putting an *adulescens* to death. The language, though not strictly technical, has a generally legalistic flavour. *Neruus* in Plautus refers to an instrument of confinement.<sup>36</sup>) The word appears in the Twelve Tables of some such instrument, used to confine a debtor: 3.3 'ni iudicatum facit aut quis endo eo in iure uindicit, secum ducito, uincito aut neruo aut compedibus XV pondo, ne minore, aut si uolet maiore uincito.' Similarly in Plautus *neruus* recurs in threats to confine *lenones* who owe money: *Curc.* 718 'tu autem in neruo iam iacebis, nisi mi argentum redditur,' 723 'ego te in neruom, haud ad praetorem hinc rapiam, ni argentum refers,' *Poen.* 1409 'si aurum mihi reddes meum, / leno, quando ex neruo emissu's - compingere in carcerem' (for further examples addressed to *lenones*, see *Curc.*690, *Poen.*1399, *Rud.*872, 876, 889). These passages must loosely reflect genuine practice. There are also

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10.9 'paludes, in quibus magis luto necti quam gladio trucidati sunt'). See further J.G.C.Anderson, *Cornelii Taciti de Origine et Situ Germanorum* (Oxford, 1938), 87 f., *ad loc.*

<sup>36</sup>) According to Festus, the *neruus* was made of iron: p. 160. 35 'neruum appellamus etiam ferreum uinculum, quo pedes inpediuntur. quamquam Plautus eo etiam ceruices uinciri ait: "perfidiose captus edepol neruo ceruices probat.'" It has, however, come to be accepted that it was some sort of wooden structure (see W.M.Lindsay, *The Captivi of Plautus* (London, 1900), 285, on 729, W.Stockert, *T.Maccius Plautus Aulularia* (Stuttgart, 1983) on 743). This theory derives from F.D.Allen, 'On "os columnatum" and ancient instruments of confinement,' *HSCP* 7 (1896), 37 ff., who pointed out (48) that the criminal in Plautus is always taken off (e.g. *rapi*: see *Curc.*723) to the *neruus*; the *neruus* is not brought to the criminal, as might have been expected if *neruus* indicated sinews, rope or the like. He also drew attention (50) to *Poen.*1365 'ut sis apud me *lignea in custodia*.' But perhaps this wooden structure was the frame, to which was attached the *neruus*, sinew. There are two arguments against taking *neruus* itself in the sense 'wooden instrument' (so Allen, 60). First, there is no remotely similar meaning attested for *neruus* itself: how could it have acquired such a sense? Secondly, *Curc.*689f. tells against Allen's interpretation: 'quia ego ex te hodie faciam pilum catapultarium / atque ita te neruo torquebo, itidem ut catapultae solent.' Here the *neruus* seems to be likened to the string (*neruus*) of a catapult (see *OLD* s.v. 4a; for the *neruus* of a catapult, see *Vitr.*10.10.1 and *OLD* 3a), though the exact point of the comparison is unclear. Perhaps the instrument consisted of a heavy wooden frame with sinews to restrain the criminal, making it somewhat similar to a catapult, if not in design, at least in the nature of its components; *neruus* might then have been used *pars pro toto*.

5 examples of *neruus* in the first decade of Livy in the context of debt (6.11.8, 6.15.9, 6.27.8, 6.36.12, 8.28.8).<sup>37)</sup>

The addressee at *Aul.*743 is a suspected thief. For *fures in neruo*, see Cato *Orat.* frg.224 *ap.* Gell. 11.18.18 'fures priuatorum furtorum in neruo atque in compedibus aetatem agunt.'<sup>38)</sup>

There will have been circumstances in which the threat to 'execute someone *in neruo*' had precise legal point. After 60 days an imprisoned debtor could be put to death or sold into slavery.<sup>39)</sup> If there were several creditors, the Twelve Tables even allowed them to cut the debtor into pieces (3.6 'tertiis nundinis partis secanto'). At *Aul.* 743 an exact legalistic force cannot be inflicted on *te in neruo enicem*. But the expression might have been heard in other contexts with a more proper force (if addressed to a debtor); here it has been taken beyond the narrow legal sphere and used as a general threat.

(9) *Neco* is used of the execution of Vestal Virgins guilty of *stuprum*: Livy 22.57.2 'duae Vestales eo anno ... stupri compertae et altera sub terra, uti mos est, ad portam Collinam necata fuerat,' Plin. *Epist.* 4.11.7 'missi statim pontifices qui defodiendam necandamque curarent.'

The victim descended into an underground chamber near the *porta Collina* (note Plin. *Epist.* 4.11.9 'cum in illud subterraneum demitteretur'). The opening was then shut on her, and she was thus interred alive.<sup>40)</sup> The cause of death would be deprivation of food and water,<sup>41)</sup> but an association with smothering, deprivation of air would almost inevitably have been made (note *defodiendam, sub terra*; cf. Oros. *Pag.* 2.8.13 'Popilia uirgo ob crimen stupri uiua defossa est').

(10) *Neco* occurs in the same expression in two writers, of the military punishment of decimation: Sall. *Hist.* frg. 4.22 'sorte ductos fusti necat,' Tac. *Ann.* 3.21.1 'raro ea tempestate et e uetere memoria facinore decimum quemque ignominiosae cohortis sorte ductus fusti necat.' This is probably an old formula, though it is possible

<sup>37)</sup> See Allen, 46 f.

<sup>38)</sup> Note the juxtaposition with *in compedibus*, as in the Twelve Tables and at Livy 8.28.8.

<sup>39)</sup> See Gellius 20.1.47, with F. de Zulueta, *The Institutes of Gaius* (Oxford, 1946-53), II, 244 f., Alan Watson, *Rome of the XII Tables: Persons and Property* (Princeton, N. J., 1975), 121 f.

<sup>40)</sup> For details, see Mommsen, 928 f.

<sup>41)</sup> Cf. Mommsen, 930.

that Tacitus took the expression from Sallust.<sup>42)</sup> Contrast Front. *Strat.* 4. 1. 34 'decimum quemque militem sorte ductum fusti percussit.'

(11) *Neco* turns up in juxtaposition with *ferro* in another formula, the oath taken by volunteer gladiators (*auctorati*) acknowledging the right of *lanistae* to put them to death: Hor. *Sat.* 2. 7. 58 'quid refert, uri uirgis ferroque necari / auctoratus eas,' Sen. *Epist.* 37. 1 'eadem honestissimi huius et illius turpissimi auctoramenti uerba sunt: "uri, uinciri ferroque necari,"' Petron. 117. 5 'in uerba Eumolpi [sacramentum] iurauimus: uri, uinciri uerberari ferroque necari, et quicquid aliud Eumolpus iussisset.'<sup>43)</sup>

(12) Executions were sometimes carried out in part of the public prison (the *Tullianum*, described by Sallust, *Cat.* 55. 3–4). The victims were often of high rank or prominent enemies of the state (e.g. Jugurtha, the supporters of the Gracchi and of Catiline, Vercingetorix).<sup>44)</sup> The method of killing was strangulation by the *laqueus*. Descriptions of such executions sometimes employ *strangulo*, or some other graphic phrase describing the breaking of the neck: Sall. *Cat.* 55. 5 'in eum locum postquam demissus est Lentulus, uindices rerum capitalium ... laqueo gulam fregere,' Cic. *Vat.* 26 'fregerisne in carcere ceruices ipsi illi Vettio,' Tac. *Ann.* 5. 9. 2 'a carnifice laqueum iuxta compressam; exim obliis faucibus id aetatis corpora in Gemonias abiecta' (the children of Sejanus), *Ann.* 6. 39. 1 'Paconianus in carcere ... strangulatus est,' *Ann.* 6. 40. 1 'in carcerem raptus est faucesque iam exanimis laqueo uexatae' (for *strangulo*, see Tac. *Ann.* 6. 25. 3, Suet. *Tib.* 61. 5, 75. 2).

But this was a form of execution which also attracted *neco*. An early case of the punishment (inflicted on M. Claudius in 236 B. C.)<sup>45)</sup> is described by Valerius Maximus thus: 6. 3. 3 'quem ab hostibus non acceptum in publica custodia necari iussit.' Similarly, for the death of Jugurtha, see Livy *Per.* 67 'in triumpho C. Mari ductus ante currum eius Iugurtha cum duobus filiis et in carcere necatus est.' For *neco* followed by *strangulo*, see Val. Max. 5. 4. 7 'mulierem praetor apud tribunal suum capitali crimine damnatam triumpho in carcere necandam tradidit. quo receptam is, qui custodiae praeerat, misericordia motus non protinus strangulauit.'

<sup>42)</sup> On decimation and the *fustuarium*, see Jones, *Criminal Courts*, 24, 122 n. 147.

<sup>43)</sup> See Daremberg – Saglio II, 1574 a.

<sup>44)</sup> See Mommsen, 929 f., especially 930 n. 1.

<sup>45)</sup> See Mommsen, 930 n. 1.

The juxtaposition of *neco* with *in carcere* seen in two of the above passages is commonplace; *neco* 'execute' tends to recur in various formulaic patterns (see above, nos. 10, 11). Cf. Sall. *Jug.* 31.7 'multi mortales in carcere necati sunt,' Cic. *Cat.* 4.13 'legatum a patre missum in carcere necatum esse,' Livy 29.19.5 'Pleminium legatum uinctum Romam deportari placere et ex uinculis causam dicere ac, si uera forent quae Locrenses quererentur, in carcere necari' (cf. Livy 34.44.8 'Pleminius in inferiorem demissus carcerem est necatusque'), Vell. 2.34.4 'Lentulus consularis et praetor iterum Cethegusque et alii clari nominis uiri auctore senatu, iussu consulis in carcere necati sunt,' Val. Max. 9.15.1 'iussu patrum necatus in carcere,' Jul. Val. p. 79.25 'clausum carcere necauistis,' *Vir. Ill.* 21.3 'Appius Claudius in carcere necatus est,' 36.2 'omnes ... in carcere necauit,' *Schol. Iuu.* 10.294 'Appius in carcere necatus est,' Rufin. *Hist.* 5.1.59, p. 425.24 'qui necabantur in carcere.' Cf. Livy 8.20.7 'Vitruuium in carcere adseruari iussit quoad consul redisset, tum uerberatum *necari*,' Tac. *Ann.* 6.19.2 'qui carcere attinebantur accusati ... *necari* iubet.'

*Necari iubet / iussit* etc. (in the last two passages and at Val. Max. 6.3.3 above) is another quasi-formulaic collocation (see Plin. *Nat.* 18.12 in sect. 1 above, Gaius *Dig.* 47.9.9 in sect. 2, Ovid *Fasti* 2.385, Livy 39.22.5, Curt. 9.1.25 in sect. 4, Sall. *Call.* 39.5, 52.30, Val. Max. 5.8.2 in sect. 6; cf. Val. Max. 4.6.1, Justin 12.10.8, Aur. Vict. 14.11, *Epit. Caes.* 41.11, Lact. *Mort.* 50.2, Heges. pp. 125.6, 200.6, 238.4, Rufin. *Hist.* 9.6.3, p. 815.19).

(13) Two Republican laws in which *neco* traditionally had a place were the *lex Porcia* and *lex Valeria*:<sup>46</sup> see Cic. *Rab.* 8 'an ... de ciuibus Romanis contra legem Porciam uerberatis aut necatis plura dicenda sunt,' *Rep.* 2.53 '(lex) lata est, ne quis magistratus ciuem Romanum aduersus prouocationem necaret neue uerberaret,' Livy 10.9.4 'Porcia tamen lex sola pro tergo ciuium lata uidetur, quod graui poena, si quis uerberasset necassetue ciuem Romanum, sanxit,' 10.9.5 'Valeria lex cum eum qui prouocasset uirgis caedi securique necari uetuisset' (cf. also Val. Max. 4.1.1). Here *neco* is presumably generic, embracing all possible forms of execution (but on *securi necari* in Livy, see below).

In all of these passages *neco* is juxtaposed with *uerbero*. It is not clear whether the scourging and the execution were two separate

<sup>46</sup> On these laws, see e.g. in general A.W. Lintott, 'Provocatio. From the Struggle of the Orders to the Principate,' *Aufstieg und Niedergang der römischen Welt* I.2 (Berlin - New York, 1972), 226 ff.



penalties, the death penalty not necessarily following scourging, or one and the same penalty, with scourging inflicted as a matter of course before the execution.<sup>47)</sup> Whatever the case, *uerbero* and *neco* are constantly found alongside each other, and not only in the context of the *lex Porcia* and *lex Valeria*. A beating seems usually to have preceded an execution, however the latter was inflicted,<sup>48)</sup> and this combination of events finds its reflection in the juxtaposition of *uerbero* with *neco*. See, e.g. Cic. *Verr.* 5. 170 'facinus est uincire ciuem Romanum, scelus uerberare, prope parricidium necare,' *Deiot.* 33 'multos iussu Caesaris uexatos, uerberatos, necatos,' Livy 2. 41. 10 'eum ... uerberasse ac necasse,' 8. 20. 7 'Vitruuium in carcere ... uerberatum necari,' 8. 33. 19 'quo ultra iram uiolentiamque eius excessuram fuisse quam ut uerberaret necaretque,' 8. 37. 11 'Polliae sententia fuit puberes uerberatos necari,' 24. 45. 2 'aliis pro transfuga uerberandus necandusque uideri;' cf. Val. Max. 5. 8. 2 'uerberibusque adfectum necari iussit.' See also Petron. 117. 5, above sect. 11.

These are the main applications of *neco* 'execute' in the earlier period. It has been stressed throughout that the verb is often embedded in formulaic phraseology, some of these formulae being no doubt of considerable antiquity (e.g. *magistratus necat, in uinclis neco, necari iussit, sorte ductum fusti neco, uri, uinciri ferroque necari, in carcere neco, uerbero / neco*).

The use of *neco* widens greatly under the Empire, but the meaning 'execute' continues to be attested even at a late date. In the early fourth century it is well represented in Lactantius' *Mort. Pers.* (15. 2, 22. 4, 39. 5, 40. 2, 50. 2), and later in the century there are instances in Ammianus (14. 1. 4, 14. 11. 21, 15. 5. 8, 18. 6. 18, 27. 7. 5). Examples of diverse types scattered over a long period fall into this general class. I mention here just one further case, the only example of the word in Virgil: *Aen.* 8. 488 'mortua quin etiam iungebat corpora uiuis / componens manibusque manus atque oribus ora, / tormenti genus, et sanie taboque fluentis / complexu in misero longa sic morte necabat' (of a form of execution practised by Mezentius and the Etruscans, whereby the living were bound to the dead and allowed to rot: cf. Val. Max. 9. 2 ext. 10 'ac ne Etrusci quidem parum feroces in poena excogitanda, qui uiuorum corpora cadaueribus aduersa aduersis alli-

<sup>47)</sup> The latter was the view of Mommsen, 42 n. 1.

<sup>48)</sup> See in general Mommsen, 939 f., and the individual cases of different types cited at 918 n. 2, 922 n. 4, 923 n. 3, 930 with n. 2.

gata atque constricta, ita ut singulae membrorum partes singulis essent adconmodatae, tabescere simul patiebantur').<sup>49)</sup>

There is one form of execution of which *neco* is rarely used, and that is perhaps the most ancient, beheading with an axe. From this punishment derives the generic term *poena capitis* current at all periods.<sup>50)</sup> There is an exact parallelism between punitive beheading and ritual sacrifice,<sup>51)</sup> a parallelism which underlines both the antiquity of beheading and the religious character of early execution. Beheading with the axe is regularly described by *securi ferio* / *percussi*. In Cicero's speeches *securi percussi* (only in tenses of the perfectum) occurs 23 times, and *securi ferio* (only in tenses of the infectum) 13 times. There is no instance of *securi neco* (though note *Verr.* 5. 119 'securi percussi ac necati'). Similarly in Livy there are 28 examples of *securi percussi* (again only in tenses of the perfectum), and two of *securi ferio* (in the infectum). *Securi neco* occurs just once, in a reference to the *lex Valeria* (10. 9. 5); the passage has a number of linguistically anomalous features (see below). *Securi percutio* / *ferio* is also found in a variety of other writers.<sup>52)</sup>

At 10. 9. 5 ('Valeria lex cum eum qui prouocasset uirgis caedi securique necari uetuisset') it is not clear why Livy mentioned the axe at all. As the law stands in his account it forbids the execution *by axe* of someone who has appealed. By implication Livy might be taken as meaning that the law did not forbid the execution *by other means* (e.g. the *laqueus*, crucifixion) of such a person. Elsewhere (see *Cic. Rep.* 2. 53, quoted above, p. 245) it seems to be assumed that the law forbade execution in general in the face of *prouocatio*, and common-sense suggests that that is what Livy intended to say. He presumably fell into this phraseology because he regarded execution by the axe as the standard form of execution. Another linguistic oddity in the passage is the juxtaposition of *necari* with *uirgis caedi*. It was pointed out above (p. 246) that *neco* is often used in juxtaposition with *uerbero*. *Securi ferio* / *percussi* on the other hand is constantly juxtaposed not with *uerbero* but with *uirgis caedo* (10 times in Livy: 2. 59. 11,

<sup>49)</sup> Cf. Servius on *Aen.* 8. 479; also G. Thome, *Gestalt und Funktion des Mezentius bei Vergil – mit einem Ausblick auf die Schlussszene der Aeneis* (Frankfurt/M., 1979), 26 n. 42. There is a vague similarity between this use of *neco* in Virgil, and that at *Col.* 3. 17. 4, though there the victim is not human.

<sup>50)</sup> See Mommsen, 916.

<sup>51)</sup> Mommsen, 918.

<sup>52)</sup> See e.g. *Hirt. Gall.* 8. 38. 5, *B. Hisp.* 21. 3, *Val. Max.* 2. 7. 15, *Sen. Dial.* 4. 5. 5, *Tac. Ann.* 4. 24. 2, *Suet. Claud.* 25. 3, *Front. Strat.* 4. 5. 2, *Vir. Ill.* 70. 4.

7.19.3, 8.27.7, 9.16.10, 9.24.15, 10.1.3, 26.15.8, 26.40.13, 28.29.11, 41, 11.8; cf. Val. Max. 2.7.15). There is only one example of *uerbero* in Livy used along with *securi percussi* (24.30.6), and *uirgis caedo* for its part occurs with *neco* only at 10.9.5. The phraseology of this last passage is therefore unlikely to have been that of an authentic law.

Despite this passage, the general point remains true, that *securi ferio / percussi*, not *securi neco*, was used in explicit reference to the punishment of beheading. *Neco*, in virtue of its generic character, might occur in passages where it can be taken as subsuming beheading, or indeed it might be used in the general sense 'execute' in reference to an execution known to have been effected by beheading (e.g. at Sall. *Cat.* 52.30 *neco* is used of the execution of T. Manlius Torquatus by his father, A. Manlius Torquatus, an act apparently carried out with the axe: see Cic. *Fin.* 1.23, employing *securi percussit* of it, and Livy 8.7.20–21; cf. also Cic. *Verr.* 5.119, quoted above), but it does not, at least in the classical period, turn up in explicit accounts of this form of execution (but note later Gell. 17.21.17 'filium suum, quod contra suum dictum in hostem pugnauerat, securi necauit').

Why was *securi* not as a rule used with *neco*? The juxtaposition was in theory possible, because Livy allows it once. We shall also see further examples below of *neco* used with various other nouns denoting cutting instruments. The answer must be sought in the strength of tradition. *Securi ferio / percussi* presumably had such an ancient and well-established connection with beheading by the axe, that it effectively excluded *neco* from all but the most generalized allusions to the punishment. The persistence of traditional phraseology in the description of execution in the Republican and early Imperial periods is very marked, as we have seen.

Virtually excluded from the description of beheading with an axe, *neco* would have been more closely associated with other methods of execution. The associations thus acquired seem to have stayed with the word when it was used outside the legal sphere, and to have played some part in its later semantic development. It will be useful to reiterate here the methods of killing with which *neco* 'execute' was associated in the Republican period.

When applied to the execution of unwanted infants, *neco* would often have indicated killing by the deprivation of air, whether the infant was drowned, smothered or strangled. A connection with strangulation would have been reinforced by the common use of the

word of execution *in carcere*, in which context *strangulo* itself was sometimes used, just as indeed *strangulo* was used of the putting to death of the newborn. *Neco* would also have been linked with asphyxiation if applied to the covering of criminals with piles of rocks, or to their immersion in water under a *cratis*. The idea of deprivation of air was again probably loosely present in the use of the word of the execution of Vestal Virgins. Another early use was that in reference to execution by fire (Twelve Tables?); fire kills not only by burning, but by suffocation. All of these applications must have helped establish *neco* as appropriate for describing the putting of someone to death by interfering with his ability to breathe.

Drowning and strangulation were not the only methods of killing the newborn. The infant might be left for dead, or not fed. Again the victim was deprived of things essential to the sustaining of life, in this case food, warmth, etc. Vestal Virgins too were starved to death when executed.

These do not exhaust the methods of killing to which *neco* 'execute' could refer. It was juxtaposed, for instance, with *ferro* in the gladiatorial oath seen above (II.11), and it could also be used of deaths caused by flagellation. Nevertheless the later semantic development of the word becomes explicable if one assumes that its strongest associations were with the various types of deprivation recounted above: of air, food and warmth. It is not clear why its link with cudgelling weakened.

Whatever the reason, already in Plautus when *enico* in particular is used outside the context of legalistic execution, it seems in a number of places to have precisely the associations which can often be attributed to it when it (or *neco*) means 'execute.' A revealing passage is *Most.* 219 ('in *anginam* ego nunc me uelim uorti, ut ueneficae illi / *fauces* *prehendam* *atque* *enicem* *scelestam* *stimulatricem*'), where the speaker wishes to turn into an *angina* so that he can seize the throat of the woman. An *angina* was thought to 'strangle' the sufferer: Celsus 2.10.8 'ubi *angina* *strangulatur*'; note too Fest. p. 7.20 ff. 'angor id est animi uel corporis cruciatus, proprie a Graeco †*anchedelin*†, id est *strangulatione*, dictus; unde et *faucium* dolor *angina* uocatur'. Another example of *enico* (*Amph.* 1119) refers to the strangling of snakes by the young Hercules ('puer ambo *anguis* *enicat*;<sup>53</sup>) cf. Plin. *Nat.* 35.63 'Hercules infans *dracones* II *strangulans*'). The motivation of *neco* at *Truc.* 781 was presumably the same:

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<sup>53</sup>) See Schulze, 156.

'quamquam uos colubrino ingenio ambae estis, edico prius / ne duplicis habeatis linguas, ne ego bilinguis uos necem.' The speaker Callicles addresses the women as if they were snakes. There are various places in later literature where *neco* (*eneco*) is applied to the killing of snakes (Val. Max. 4.6.1, Sen. *Herc. Oet.* 916, Plin. *Nat.* 7.122, 8.79, 8.229. 24.22 (probably by poisoning), 25.113 (again presumably by poisoning), Iul. Obs. 42; cf. Jul. Val. p. 37.21 'necem draconi moliri').

At *Amph.* 1056 an *ancilla* speaks of feeling so overcome by the sea, earth and sky, as to be crushed (*opprimo*) and killed (*enico*): 'ita mi uidentur omnia, mare, terra, caelum consequi / iam ut opprimar, ut enicer.'<sup>54</sup>) Later *neco* was to be commonly used of death caused by covering, crushing *et sim.* (V. 3. i); cf. *neco* 'execute' used of covering with rocks and a *cratis*.

At *Merc.* 115 a speaker talks hyperbolically of being 'killed off' by his laboured breathing: 'simul enicat suspiritus (uix suffero hercle anhelitum).' *Enico* does not have full literal force here, but the linking of the verb with breathing difficulties as a potential agent of death may be more than accidental.

At *Pers.* 318 ('emitte sodes, ne enices fame') *enico* is applied to killing by starvation, an application which may be related to various uses of *neco* when it means 'execute.' *Enico* was not the only verb used by Plautus of starving to death (cf. *interficio* at *Most.* 193, *iugulo* at *Stich.* 581, *occido* at *Pseud.* 350 and *extinguo* at *Truc.* 524), but *neco* was to become commonplace later in this sense.

*Poen.* 486 perhaps should be mentioned here, but it is more difficult to interpret: 'ut quisque acciderat, eum necabam ilico / per cerebrum pinna sua sibi quasi turturem' (bird-men are killed as if they were *turtures*). The allusion was explained by H. J. Rose,<sup>55</sup> who drew attention to a method of killing small birds by inserting a feather through a nostril into the brain. Was *neco* motivated here by a feeling that the breathing of a bird assaulted in this way was stifled? This possibility is not particularly compelling, given the phraseology used by Plautus in the context: it is the *cerebrum*, not the breathing, which is said to be under attack. I would prefer to see a more general determinant behind this usage. Small birds are not usually killed by a large cutting implement. It is of course a simple matter to throttle a bird by squeezing or breaking its neck. *Occido*,

<sup>54</sup>) For the force of *opprimo* here, see *TLL* IX.2.785.13.

<sup>55</sup>) *CP* 21 (1926), 257. I owe this reference to Dr. A. S. Gratwick.

having an obvious connection with cutting, would not have been particularly appropriate as applied to birds, whereas *neco*, associated as it sometimes was with strangulation, might well have established itself as the proper term for the killing of birds. If so, the method envisaged at *Poen.* 486 might not have been relevant; it may have been the nature of the victim, not the means of death, which determined the choice of verb. *Neco* (*eneco*) does indeed recur at a later date applied to the killing of birds. Sometimes the method of killing influenced the writer (perhaps Varro *Men.* 289.3 'ut auis enicat accipiter:' is the bird of prey envisaged as grasping the smaller birds by the throat?; also Plin. *Nat.* 18.208, of climate (see V.8), Marc. 27.136, of drowning (see V.2)), but on occasions the means is not specified: see Ovid *Met.* 8.688 'superi uetuerere necari' (of a goose; cf. 685 *mactare*), Val. Max. 5.6.4 'e uestigio picum † morsu suo in conspectu senatus necauit,' Col. 8.14.9 'ualidior enecat infirmum' (of stronger goslings killing the weaker), Front. *Strat.* 4.5.14 'non dubitauit necare picum.'

It is also unclear whether *Most.* 652 ('absolue hunc quaeso, uomitu ne hic nos enicet') belongs here. How might one be killed by another's *vomitus*? Perhaps Plautus intended an image of the victims being overwhelmed or poisoned, but one cannot be sure.

Finally, the remark of the *leno* Cappadox at *Curc.* 236 ('lien enicat') should perhaps be read in the light of his earlier statement, 220 'nam iam *quasi zona liene cinctus* ambulo.' His *lien* may be 'killing him off' by 'encircling him.' *Neco* (*eneco*) is later often used of death inflicted by squeezing, encircling, etc. (see V.3 (v), (vi), and particularly Plin. *Nat.* 26.121, where an illness called *zoster* is said to kill – *enecat* – if it encircles – *si cinxit* – the sufferer).

### III. Murder

*Neco* is attested almost as early in the sense 'murder' as in the sense 'execute' (Ennius and Plautus; note too Cato *ap.* Plin. *Nat.* 29.14; probably not in the Twelve Tables). An alleged law quoted by the author of the *ad Herennium* 1.23 laying down the penalty for *parricidium* has been attributed to the Twelve Tables ('qui parentem necasse iudicatus erit, ut is obuolutus et obligatus corio deuehatur in profluentem;' cf. Festus p. 174. 25 ff. 'ob quam causam legem quoque † parens tam † iubere caput eius obnubere, qui parentem necauisset,

quod est obuoluere'), but the attribution has been questioned.<sup>56</sup>) The penalty of immersion in a sack was first used as late as 102 B.C., according to Livy (*Per.* 68 'Publicius Malleolus matre occisa primus in culleo insutus in mare praecipitatus est'), and the law establishing the punishment may not have been much earlier than this event.<sup>57</sup>) Whatever the date of the law, the style of referring to parricide in two of the above passages (*parentem necare* embedded in a relative clause) was considerably older than the first instance of the punishment, because it is found in Ennius: *Scaen.* 174 'qui parentem aut hospitem / necasset.' There are two examples of the same or a similar form of expression in the *pro Roscio* of Cicero, both alluding in general terms to parricide rather than to specific cases: *Rosc.* 70 'is cum interrogaretur, cur nullum supplicium constituisset in eum, qui parentem necasset' (on Solon's failure to lay down a penalty for the crime), 71 'cui repente caelum, solem, aquam terramque ademerint, ut, qui eum necasset, unde ipse natus esset, careret iis rebus ...' (on the Roman penalty). These are the only examples of *neco* in the *Rosc.*, in which *occido* occurs 44 times. The case was one of alleged parricide. It is noticeable that when Cicero refers to the murder alleged by the prosecution he uses *patrem occido* rather than *parentem neco* (39, 61, 73). *Parentem neco* clearly had a generalising and legalistic flavour, whereas *patrem occido* was more concrete. Cf. Cic. *Inu.* 2. 48 'ut si quis hoc uelit ostendere, eum, qui parentem necarit, maximo supplicio esse dignum' (also *Att.* 9. 9. 2 'nostri principes anti-quissimam et sanctissimam *parentem*, patriam, fame *necandam* putent').

*Hospitem neco*, also found in the passage of Ennius quoted above, was another old formulaic expression containing *neco* = 'murder;' cf. Plaut. *Most.* 479 'hospes necauit hospitem' (a legalistic context: cf. 475 'capitale scelu' factumst'). This expression will have derived from the formulation of the rights of *hospitium* offered to strangers at Rome. The life of a stranger was sacrosanct, and his murder a grave crime. Cf. Cic. *Deiot.* 15 'ut enim omittam cuius tanti sceleris fuerit in conspectu deorum penatium necare hospitem' (also *Cael.* 51 'ad hospitem domini necandum').

Another early passage worth noting is Plaut. *Merc.* 612 'capital facis ... quia aequalem et sodalem, liberum ciuem, enicas.' The legalistic tone is obvious.

<sup>56</sup>) Mommsen, 643 n. 6; cf. 921 ff.

<sup>57</sup>) See Lintott, *Violence in Republican Rome*, 38.

For *neco* 'murder' in an actual law, note the *Lex Cornelia de sicariis et ueneficis* of 81 B.C.:<sup>58</sup>) 'eius, qui cum telo ambulauerit hominis necandi ... causa.' For the generalising expression *hominem neco* = 'commit murder, homicide,' see Cic. *Mil.* 9 'si tempus est ullum iure hominis necandi,' Livy 3. 13. 5 'ut, qui hominem necauerit, de eo supplicii sumendi copia populo Romano fiat,' Quint. 5. 14. 20 f. 'nam prima statim quaestio pro Milone est: "an ei fas sit lucem intueri, qui a se hominem necatum esse fateatur,"' Lact. *Inst.* 3. 18. 6 'si homicida nefarius est, quia hominis extingtor est, eidem sceleri obstrictus est qui se necat, quia hominem necat.' Note too the equally general *aliquem neco* 'murder someone' at *Her.* 4. 12: 'in iis qui uiolassent ingenuum, matremfamilias constuprassent, uulnerassent aliquem aut postremo necassent, maxima supplicia maiores consumpserunt' (again a legalistic context).

*Neco* 'murder' is too common to need further illustration here.<sup>59</sup>) I quote finally the intriguing passage Cic. *Nat.* 3. 82 'et praedones multi saepe poenas dant, nec tamen possumus dicere non pluris captiuos acerbe quam praedones necatos.' By the standards of English usage *neco* here means 'execute' with *praedones* and 'murder' with *capituos*. The argument is that the gods are indifferent about the good. Though many *praedones* are punished by execution for their wrongdoing, the number of their captives who are murdered is greater. That a single verb could be made to serve in the Latin suggests that in the eyes of Latin speakers (or at least in the eyes of early speakers at the time when the usage of *neco* was established) there was not the rigid distinction between the notions 'execute' and 'murder' which we possess in the English lexicon today. It might be suggested that the original meaning of *neco* was 'execute' and that it tended to shade into the sense 'murder' when used in a tone of indignation by someone asserting that a particular execution was unjustified.<sup>60</sup>) One thinks of Cicero's constant use of *neco* in the Verrine orations in reference to Verres' executions of Roman citizens (e.g. *a. pr.* 13, 1. 7, 5. 119, 5. 149), executions which Cicero treats as crimes. However, there is no evidence in extant Latin that 'execute' is the earlier meaning. Ennius and Plautus provide cases of *neco* and *enico* which have

<sup>58</sup>) See C. E. G. Bruns, *Fontes Iuris Romani Antiqui*, revised by O. Gradenwitz, (Tübingen, 1909), 92.

<sup>59</sup>) See e.g. Sall. *Cat.* 15. 2, Cic. *Mil.* 17, *Inu.* 1. 89, *Par. Stoic.* 24, 25, Livy 40. 37. 5, Lact. *Inst.* 3. 17. 36, Amm. 30. 6. 4.

<sup>60</sup>) See Adams, 281.



to be translated 'murder' in English, just as they provide cases which have to be translated 'execute.'

It is worth comparing the use of *occido* in Plautus with that of *neco*. *Occido*, like *neco*, could be used of the murder of individuals (e.g. *patrem Men.*944, *Most.*384, *regem Amph.*535,746, *Troilum Bacch.*960). But unlike *neco*, it is also used of the killing of large numbers of men in battle (*Mil.*45 'centum [etc.] ... uno die,' 53 'quingentos ... uno ictu,' *Poen.*473 'sexaginta milia ... uno die'). When a man slays indiscriminately in battle, his act may be unpremeditated, and the identities of the victims of no consequence. Herein lies the difference between *occido* and *neco* in Plautus. *Neco*, whether meaning 'execute' or 'murder,' refers to a premeditated act perpetrated against a specific victim. The one example extant of *occido* in the Twelve Tables contrasts with the (probable) three examples of *neco*: 8.12 'si nox furtum faxsit, si im occisit, iure caesus esto.' Here it is the slaying of a *nocturnus fur* which is envisaged. The identity of the *fur* might not have been known to the perpetrator, and the killing, carried out in the heat of the moment, will not have been premeditated. The semantic feature shared by *neco* 'execute' and *neco* 'murder' was the idea of premeditation, the act being directed at a specific individual (or individuals) for a specific reason. In the earliest period the penalty for murder will have been exacted as an act of revenge by the relatives of the victim:<sup>61</sup>) on the principle of an eye for an eye, one private killing is punished by another private killing. In the period before a formal body of written law was established, and when the state was not directly involved, no need was felt to distinguish lexically between the two acts of killing. Indeed the act of revenge was intended to resemble the initial act. This twofold (to our eyes) use of *neco* survived for centuries in the historical period.

#### IV. Killing with and without a sharp weapon

It has been pointed out above that *neco* 'execute' is rarely used of killing with an axe. Festus similarly observed that *nex* and *neco* were used of death inflicted *sine uulnere, sine ictu*: p.158.17 'neci datus proprie dicitur, qui sine uulnere interfectus est, ut ueneno aut fame,' 190.5 'occisum a necato distingui quidam, quod alterum a caedendo atque ictu fieri dicunt, alterum sine ictu.' These remarks are not

<sup>61</sup>) Mommsen, 614, Lintott, 38.

strictly accurate. There can be no doubt that in origin *neco* was a general word which could encompass killing by whatever means. For its use of killing accompanied by a blow, *ictus*, with a blunt instrument, one need look only to those cases where it is juxtaposed with *uerbero* (II.13); cf. *fusti neco* above, II.10 (cf. Amm.29.3.3 'necatus ad exitium fustibus'), also Cic. *Pis.*84 'quem necasti uerberibus,' *Rep.* 1.59 'quem necassem iam uerberibus,' Livy 34.27.9 'sub uerberibus acti necantur.' The word is also used from time to time of death inflicted with a cutting instrument. For *securi neco*, see above II.13. In the *lex Cornelia de sicariis et ueneficis* (above, III) the weapon envisaged is called a *telum*. In three places *neco* is combined with *ferro* in a gladiatorial formula (II.11). Cf. e.g. Sall. *Jug.* 42.1 'primo Tiberium, dein ... Gaium ... ferro necauerat,' Livy 7.23.10 'adeo praecipiti turba obtriti plures quam ferro necati,' 9.6.2 '*gladii* ... plerisque intentati, et uolnerati quidam necatique,' Val. Max. 9.2. ext.5 'partim *ferro*, partim flamma necauit,' 9.2. ext.6 'ne ... aut ueneno aut *ferro* aut ulla ui aut inopia alimentorum necaret,' Col. 7.7.2 'ferro necanda' (of animals), Juv.10.316 'necat hic ferro,' *SHA, Hel.* 16.5 'alios uitalibus exemptis necarent' (by implication a sharp instrument must have been used), Heges. p.187.4 'et ipse et Paulus alter cruce alter gladio necati sunt,' *id.* p.254.19 'peti coeperunt uocibus, illi lapidibus plebem caedere, telis necare.'<sup>62</sup>)

But it is not difficult to see what lay behind Festus' remarks. While the generic sense of *neco* lingered on, enabling it to appear sporadically in collocations of the type seen above, the word came to be employed increasingly of forms of killing which did not depend on a sharp implement, particularly when it was used outside legalistic contexts. These forms will be further defined in the second part of this work and the new uses related to the earlier meaning 'execute.' The beginnings of the semantic development have already been noted in Plautus. It should be stressed that at least down to the fourth century *neco* did not lose entirely its earlier meanings 'execute, murder.' But literary sources (such as historians drawing on earlier writers) no doubt give an inadequate impression of the uses of the word in the everyday language. Technical works (such as those of Columella and Pliny the Elder, in both of which *neco* / *eneco* is common) tell a different story.

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<sup>62</sup>) See further Adams, 284. Wölfflin (*ALL* 7 (1892), 278) oddly claimed that *ferro necare* (as distinct from *necare* + *igni, uerberibus, fusti, ueneno, cruciatibus, fame*) was a 'poetic licence.'