

PARRICIDIUM AND THE PENALTY OF THE SACK

JANEZ KRANJC

University of Ljubljana, Faculty of Law, Ljubljana, Slovenia.
E-mail: janez.kranjc@pf.uni-lj.si

Abstract The author examines the crime of parricide, its legal regulation, and the penalty of the sack. It belonged to the Roman tradition for a manifest perpetrator who confessed his crime. Those who were sentenced in a jury trial were exiled according to the *lex Cornelia de sicariis* and probably also under the *lex Pompeia de parricidis*. Under Constantine the penalty of the sack became a regular sanction laid down for parricide. The exact way it was carried out was not prescribed but was subject to the circumstances and possibilities.

Keywords:

parricida,
poena
cullei,
Roman
criminal
law,
Roman
family,
family
father

1 The Roman family

The rise of Rome was closely linked to the structure of its society. At its core stood the Roman (agnate) family which, from the most ancient times, was its most important pillar. The family was the point of intersection of the most important religious, political, economic, and societal factors. A farm household was the economic cell of the ancient agricultural society. Its head, the *pater familias*, was the owner of the property and the family members were subject to his paternal power.¹ Accordingly, the term *familia* referred to all persons under the paternal power of the same person and to his whole property.²

Relations inside a household were determined by the customs of the forefathers. An important part of them was the religious worship. The Romans considered themselves highly pious and devote. They regarded their rise to a world power as resulting from their piety and their ability to maintain good relations with their gods. The Roman family worshiped the deities of the household, the *di familiares*, and acted as a religious unit (see Westrup, 1944: especially pp. 59 ss). Its worship shaped its life in harmony with gods, with the spirits of their dead ancestors, the *di parentes*, as well as with its living members.

According to ancient Roman tradition every family had several guardian spirits who were protecting the household. When the Emperors Theodosius, Arcadius, and Honorius in November AD 392 prohibited the cult of ancient family spirits they mentioned three of the most important ones as follows.

'No person at all, of any class or order whatsoever of men or of dignities, whether he occupies a position of power or has completed such honors, whether he is powerful by the lot of birth or is humble in lineage, legal status and fortune, shall sacrifice an innocent victim to senseless images in any place at

¹ More on the paternal power Crook, 1967: 113 ss; Arjava, 1998: 147 ss; Amunátegui Perello, 2006; Capogrossi Colognesi et al., 2019. Westrup (1939) wrote a large comparative sociological study on the patriarchal joint family.

² Ulp. D. 50, 16, 195, 1: 1. The designation of "household" ... relates both to things and to persons. 2. ... We talk of several persons as a household under a peculiar legal status if they are naturally or legally subjected to the power of a single person as in the case of a head of a household ... ("*Familiae*" appellatio ... et in res et in personas deducitur. 2. ... *Iure proprio familiam dicimus plures personas, quae sunt sub unius potestate aut natura aut iure subiectae*). English translation of the Digest fragments in this article: The Digest of Justinian. Latin text edited by Theodor Mommsen with the aid of Paul Krueger. English translation edited by Alan Watson. University of Pennsylvania Press, Philadelphia 1985. Revised edition 1998. More on the Roman familia see Fayer, 2005, Parte terza, Concubinatio, divorzio, adulterio; Franciosi, 2004; Gardner, 1998; Bardis, 1963: 225 ss.; Saller, 1984: 336 ss; Dixon, 1992.

*all or in any city. He shall not, by more secret wickedness, venerate his lar with fire, his genius with wine, his penates with fragrant odors; he shall not burn lights to them, place incense before them, or suspend wreaths for them.*³

The imperial constitution reveals the principal house deities and the way they were worshiped and venerated. As we see the most important Roman house deities were *lares*, *penates*, and *genius*.

The *Lar familiaris* (more on this Wissowa, 1971: 166 ff) symbolized the household and was the guardian spirit of the family. He was believed to care for the welfare and prosperity of the whole household and to protect all the family, both free and slaves. A traditional Roman family had a shrine of the *Lar familiaris*, called *lararium*. The *Lar familiaris* was believed to be a *lar loci*, i. e., the protecting spirit of a place upon which the house was built. As such the *Lar familiaris* was immovable and did not accompany the family when it changed its residence and moved to another place. It is possible to assume that this belief contributed to the reluctance of ancient Romans to leave their home and to move elsewhere.

An important place also of religious significance was the hearth on which the food for the family members was prepared. It stood under the protection of the goddess Vesta, similarly to the house gate which was under the protection of god Janus. The hearth had to be kept clean and tidy.⁴ It was the domain of the *mater familias*, i. e., of the wife of the *pater familias* who stood under his marital power. She also performed the religious worship of Vesta (see Wissowa, 1971: 163).

The cult of the family hearth was closely tied to the worship of *di penates* (more on them Wissowa, 1971: 161 ff) who protected the *pater familias* and his immediate family and guarded the storeroom (*penus* – store or provision of food provisions, victuals) which was the innermost part of the house. Accordingly, the *penates* were associated with the food and the welfare of the household. They were worshipped as the divine powers that took care of the necessities of everyday life and assured the further existence of the family by providing food.

³ Theod. Arc. Hon. C. Th. 16, 10, 12: *Nullus omnino ex quolibet genere ordine hominum dignitatum vel in potestate positus vel honore perfunctus, sive potens sorte nasendi seu humilis genere condicione ortuna in nullo penitus loco, in nulla urbe sensu carentibus simulacris vel insontem victimam caedat vel secretiore piaculo larem igne, mero genium, penates odore veneratus accendat lumina, imponat tura, sarta suspendat.* The English translation Pharr, 1952.

⁴ Cato, *De agri cultura* 143: She (i. e. the overseer - *vilica*) must clean and tidy the hearth every night before she goes to bed (*focus purum circumversum cotidie, priusquam cubitum eat, habeat*).

Another divine protector of the household was the *genius* (more on this Wissowa, 1971: 175 ff) of the *pater familias*. His principal activity was to protect the marital bed (*lectus genialis*). He was symbolized by a snake, which was often seen in Roman homes.⁵

The *di Manes* were the spirits of the dead ancestors that protected the family. They were allowed to do so only when they ascended from the Underworld. According to the traditional belief of the Romans this happened when a deceased received the due honours and rites.

Apart from the shrine housing a sculptural representation of the *lar familiaris* a traditional Roman household kept images of the *genius* and of the household's *penates*. At family feasts these sacred objects were placed at the table to make the presence of the household's deities visible and to make them witness important family events such as betrothals, marriages, births, adoptions, etc. Religious objects were regarded as an essential part of the household. Virgil, who wanted to give prominence to the virtues of Aeneas, whom he presented as an archetypical Roman and an ideal example of piety,⁶ mentions how Aeneas took the statues of the household's *penates* from the burning Troy.⁷

Religious worship was attended by the family father⁸ or a person authorized by him. The *pater familias* was also responsible for the behavior of the family members. To achieve this, he had the power and the duty to punish them in case of their misbehavior. The so-called power of life and death (*ius vitae necisque*) authorized him even to impose the death penalty on a person under his paternal power (more on this see e. g. Yaron, 1962: 243 ss; Westbrook, 1999: 203 ss). Before doing so he had to consult the family council (*consilium propinquorum*). A family father who abused this right was punished by the censors (*nota censoria*) who imposed on him *infamia*. While the judicial powers of the head of the household were (especially in the earlier periods of Roman history) a substitute for the absence of a public judiciary, these powers were considerably restricted during the Principate. During the time of Constantine, these powers were regarded as non-existent.⁹

⁵ Plin. n. h. 29, 72: ... *Romam advectus est vulgoque pascitur et in domibus ...*

⁶ See e. g. Virgil, Aeneas I, 10: ... a man, noted for piety ... (... *insignem pietate virum ...*)

⁷ See e. g. Virgil, Aeneas I, 68: bringing Troy's conquered penates to Italy (*Ilium in Italiam portans victosque Penates*). See also Aeneas, II, 717 ss.

⁸ Cato, de agric. 143: ... let her (i. e. the overseer - *vilica*) remember that the master attends to the devotions for the whole household (... *Scito dominum pro tota familia rem divinam facere*).

⁹ See Const. C. 8, 46, 10 = C.Th. 4, 8, 6 pr.

The relations inside the Roman family were governed by piety (*pietas*). *Pietas* was one of the basic Roman virtues standing not only for a comportment of man towards god, of son or daughter towards his or her father or mother, of a client towards his patron, of a citizen towards the state, of a subject towards his or her emperor, but also the other way around of god towards a man, of father or mother towards his or her son or daughter, of a brother towards his brother, and of a ruler towards his co-ruler (more on *pietas*, Kranjc, 2012: 12 ff.).

Cicero defines piety as the virtue “which warns us to fulfil our duties towards our country, our parents, or others connected with us by ties of blood”.¹⁰

Initially *pietas* represented the quality of a person scrupulously fulfilling all the duties required by the *di parentes* of his or her tribe. There were two groups comprising these duties:

- those related to the cult of the *di parentes*, i.e., of the divine members of the tribe, and
- the reverence and consideration towards the living members of the family (see Pauly et al., 1894: s. v. *Pietas*: 1221 ss).

An important duty of family members, deriving from *pietas*, was to perform religious rites and offerings to house deities, and to provide them an inviolate home. The ancient Romans believed that these were the means for a family to win the favor and support of their house deities.

The reverence and consideration towards the living members of the family required (reciprocal) respect of each member of a household, especially towards parents. It is possible to assume that the rationale standing behind this double reverence was a belief that a Roman had both divine and human *parentes* (See Pauly et al., 1894: s. v. *Pietas*: 1222).

Reverence and obedience were essential parts of the relationship towards the family father. A passage from the Major declamation ascribed to Quintilian expresses this very clearly.

¹⁰ Cic. De inv. 2, 66: ... *pietatem, quae erga patriam aut parentes aut alios sanguine coniunctos officium conservare moneat.*

*I could have said more firmly: 'I have given an order as a father'. This name is greater than any law; we remove tribunes, we propose candidates; we are granted the right of life and death.*¹¹

This relationship enjoyed a special status. Accordingly, Ulpian stressed that “A freedman and a son should always consider the person of a father and patron honorable and inviolable (*honesta et sancta*)”.¹² Such an appreciative esteem can be understood both in the framework of the power the family father had over the persons under his paternal power as well as in the framework of the emotional relationship based upon the kinship.

The paternal power was a part of Roman tradition and at the same time a legal category. As such it was a part of *ius civile* and reserved for Roman citizens.¹³

Besides the reverence that persons under the paternal power owed to the head of the household, Roman tradition also required more broadly reverence and obedience to one's parents.¹⁴ The relationship between a child and his or her parents was not primarily a legal conception but a part of the natural order. This relationship had important legal consequences, too. They were in a way aimed at preventing actions violating the due reverence towards parents or affronting their standing contrary to good morals.

In ancient Rome parents and patrons were shielded by divine protection. Festus¹⁵ quotes in his dictionary-cum-encyclopaedia a provision of a statute of the king Servius Tullius that regulated the mistreatment of a parent by a child and probably also by a daughter-in-law:

¹¹ Quint. Decl. mai. 6, 14 i. f.: *'Pater iussi. hoc nomen omni lege maius est; tribunos deducimus, candidatos ferimus; ius nobis vitae necisque concessum est.* More on this Santorelli, 2019: 73 ss. See also Saller, 1994: Ch. 5 - Pietas and patria potestas: obligation and power in the Roman household pp. 102 ss. & Ch. 6. Whips and words: discipline and punishment in the Roman household.

¹² Ulp. D. 37, 15, 9: *Liberto et filio semper honesta et sancta persona patris ac patroni videri debet.* On the relationship between Roman fathers and sons see Cantarella, 2003: 281 ss.

¹³ Inst. 1, 9, 2: Our authority over our children is a right which only Roman citizen have. Nobody else has such extreme control over children. (*Ius autem potestatis, quod in liberos habemus, proprium est civium Romanorum: nulli enim alii sunt homines, qui talem in liberos habeant potestatem, qualem nos habemus.*)

¹⁴ See Pomp. D. 1, 1, 2: For example, religious duties toward God, or the duty to be obedient to one's parents and fatherland (*Veluti erga deum religio: ut parentibus et patriae pareamus*).

¹⁵ *Sextus Pompeius Festus* probably lived in the later 2nd century AD. He wrote a twenty- volume long summation of Verrius Flaccus's treatise *De verborum significatione*. Festus added etymology and meaning of many words. Only a few fragments of his work remain. At the end of the eighth century Paul the Deacon made an abridgment of the rest of Festus's work.

If a child, whether boy or girl,¹⁶ [or a daughter-in-law] strike his or her parent, so that they cry out, the child shall be consecrated to the gods of parents (sacer esto).¹⁷

The perpetrator was excluded from the community and from divine and human protection. Since a *homo sacer* was devoted to the gods for destruction, everyone could kill him without becoming a murderer.¹⁸

Apart from the special standing of the family father, the relationship between children and their parents was not regulated by their legal status. According to Labeo, even those who produced children in slavery had to be considered parents.¹⁹ The same was true for an illegitimate child of a free woman.

In Roman law it was not possible to summon a parent to court. Because of the natural relationship between parents and children requiring respect this was true also for natural parents. No one could summon them to court: “for the same respect should be observed toward all parents”.²⁰

The natural relationship between a parent and a child was permanent and was not altered by adoption. Consequently, a son could not summon to court his natural parent, even while he was in the adoptive family. Since adoption only imitated nature²¹ the Romans considered it to be temporary. Accordingly, the adoptive son could not summon to court his adoptive father as long as the adoptive son was under

¹⁶ See Paul. D. 50, 16, 163, 1: In the designation “boy” a girl is also included ... (“*pueri*” *appellatione etiam puella significatur* ...).

¹⁷ Fest. s. v. Plorare (Lindsay, p. 320): *In regis Romuli et Tatii legibus* (13): „*si nurus . . . , <nurus sacra divis parentum estod.*” in *Serri Tulli haec est* (6): „*si parentem puer verberit, ast ille plorassit parents, puer divis parentum sacer esto.*”

¹⁸ Fest. s.v. Sacer Mons (Lindsay, p. 424): *at homo sacer is est, quem populus indicavit ob maleficiū; neque fas est eum immolari, sed, qui occidit, parricidi non damnatur; nam lege tribunicia prima cavetur, 'si quis enim, qui eo plebei scito sacer sit, occiderit, parricida ne sit.* More on this Pelloso, 2013: 57 ss, cap. 2. ‘*Homo sacer*’, *animal sacrum*’, ‘*victima fugiens*’. Available at <https://www.dsg.univr.it/documenti/OccorrenzaIns/matdid/matdid641686.pdf>

¹⁹ Ulp. D. 2, 4, 4, 3: Labeo thinks that those who have produced children in slavery are also to be considered parents and that the term is not applicable, as Severus said, only in the case where the children are legitimate. But if a son has been born in promiscuity, he shall not summon his mother to court (*Parentes etiam eos accipi Labeo existimat, qui in servitute susceperunt: nec tamen, ut Severus dicebat, ad solos iustos liberos: sed et si vulgo quaesitus sit filius, matrem in ius non vocabit*).

²⁰ Paul. D. 2, 4, 6: No one can summon natural parents to court; for the same respect should be observed toward all parents. (*Parentes naturales in ius vocare nemo potest: una est enim omnibus parentibus servanda reverentia*).

²¹ Inst. 1, 11, 4: Adoption imitates nature (... *adoptio enim naturam imitatur*). See also Pap. D. 28, 2, 23 pr.

the father's power.²² If the adoptive son was emancipated the relationship ended and he could summon his former adopter to court.

The difference between a natural and adoptive parent is obvious. Adoption was introduced by law as a means for acquiring paternal power. It was temporary and could be reversed by emancipation whereas the relationship between a natural parent and his or her child was permanent. As a part of the natural order, it did not terminate by the death of a parent or a patron. As Ulpian pointed out "neither the defense of fraud nor any other defense, indeed, which affronts the standing of a patron or a parent contrary to good morals, can be available against the parents or the patrons... for respect must always be shown to him during his lifetime as well as after his death."²³

These procedural restrictions were aimed at preventing disrespectful legal actions against a parent or a patron which were contrary to good morals. But the reverence towards parents and patrons was not limited to court proceedings. It also required a child to provide material assistance to a parent in need. Papinian quotes Hadrian's rescript in which the emperor commanded certain Vivius Cerealis, who defrauded his son by preventing the realization of a *fideicommissum* in his favor, to restore the inheritance to his son "in such manner that he should have no right in that money so long as his son should live. ... But it accords with the reverence due a parent that a father who is perhaps in want should receive benefit from the increase of the inheritance by the discretion of the judge."²⁴

We see that the fraudulent behavior of the father towards his son did not diminish the duties the son owed towards his father. The emperors Diocletian and Maximian also stressed the duty to support a parent:

*By the authority of the provincial governor, your daughter is forced to show you not just respect, but also to provide the means of support.*²⁵

²² Ulp. D. 2, 4, 8 pr.: A son cannot summon to court an adoptive father as long as he is in power ... But he cannot summon his natural parent, even while he is in the adoptive family. (*Adoptivum patrem, quamdiu in potestate est, in ius vocare non potest ... sed naturalem parentem ne quidem dum est in adoptiva familia in ius vocari*).

²³ Ulp. D. 44, 4, 4, 16: *Adversus parentes patronosque neque doli exceptio neque alia quidem, quae patroni parentisve opinionem apud bonos mores suggillet, competere potest ... semper enim reverentia ei exhibenda est tam vivo quam defuncto*.

²⁴ Pap. D. 36, 1, 52: ... *Sed paternae reverentiae congruum est egenti forte patri officio iudicis ex accessionibus hereditariis emolumentum praestari*.

²⁵ Diocl./Max. C. 8, 46, 5: *Filia tua non solum reverentiam, sed et subsidium vitae ut exhibeat tibi, rectoris provinciae auctoritate compelletur*.

Roman children owed respect not only to their father but to both parents. In AD 531 Emperor Justinian issued an enactment stressing this duty:

*Among our forefathers it was doubted whether children could bring a complaint against their parents, or freedmen against their patrons, because this was unbecoming treatment of them. Some thought there was no restoration of rights against such persons, since natural parental authority and the deference due to patrons militated against such impudence except either for a significant reason or against a reprehensible person. ... In order, therefore, that the honor (due) to parents and patrons of either sex remain in all things undiminished and unimpaired, We ordain that under no circumstances shall restoration be granted either against parents of either sex or against patrons of either sex. For the respect that these persons owe excludes them from obtaining any restoration ...*²⁶

In AD 259 the emperors Valerian and Gallienus replied to certain Galla that if the lawsuits arose between her and her sons it seemed more fitting to settle them within the household. But improper behavior or even insulting conduct towards parents represented a breach of piety and was punishable:

*But if things reach the point that you are led by their insulting conduct both to resort to law and to seek punishment, the provincial governor, if approached, will indeed order the usual legal rules for monetary disputes (to be followed), but he will (also) compel sons to show the respect due to their mother, and, if he notices that their depravity has advanced to more serious outrage, he will quite seriously punish this injury to dutifulness (pietas).*²⁷

An essential part of *pietas* was mutuality. A relationship based upon *pietas* was not regarded as a one-way relationship but required reciprocity. The piety governed all the aspects of a relationship on both sides. Relations between parents and children had to be mutually respectful and affectionate.²⁸ Although the duty of respect

²⁶ Iust. C. 2, 41, 2: *Cum apud veteres dubitabatur, an liberi parentes suos vel liberti patronos in querimoniam deducere possint quasi non rite in eos versatos, et quidam existimabant nullam esse contra huiusmodi personas in integrum restitutionem, pondere naturali vel patronali reverentia huiusmodi petulantiae refragante, nisi vel ex magna causa vel adversus turpem eorum personam, ... quod, ut maneat in omnibus honor parentibus et patrono vel patronae illibatus atque intactus, sancimus nullo modo neque adversus parentes utriusque sexus neque adversus patronum vel patronam dari restitutionem. nam personarum reverentia omnem eis excludit restitutionem ...*

²⁷ Valer./Gallien. C. 8, 46, 4, 1: *Sed si ita res fuit, ut iniuriis eorum et ad ius experiendum et ad vindictam processeris, aditus praeses provinciae super disceptationibus quidem pecuniariis consuetum exerceri iubebit ordinem iuris: reverentiam autem debitam exhibere matri filios coget et, si protractam ad inclementiores iniurias improbitatem deprehenderit, laesam pietatem severius vindicabit.*

²⁸ More on the development of affection between parents and children Saller, 1994: 5 ff.

concerned primarily the obligation on the part of the children to respect their parents, the parents, too, had to treat their children justly and with respect. Piety required dutiful conduct not only towards one's parents but extended to relatives as well. The relationship as such stood under the divine protection.

A father that abused his paternal power therefore acted immorally. Although he could and had to punish crimes and other serious offences committed by persons under his paternal power, at the same time he had to act in accordance with *pietas*. Overly harsh treatment of children was regarded by Romans as disgraceful and scandalous. Seneca, for example, wrote about a Roman knight named Tricho whom angry people in the forum stabbed with their writing-styluses because he had flogged his son to death. Both fathers and sons were enraged by his abuse of paternal power.²⁹

The abuse of paternal power was a crime in itself. Emperor Hadrian deported to an island a man who killed his son because he had committed adultery with his stepmother. By assassinating his son, the father himself had abused his paternal power and acted like a brigand “for paternal power ought to depend on piety and compassion (*pietas*), not cruelty”.³⁰ Instead of consulting the family council and giving his son a fair trial, he killed him insidiously. The father’s action was in clear contradiction to concepts of piety that had to govern the relationship between him and his son.

In Rome, a patron held a status similar to the one enjoyed by a parent. Thus, the relationship between a patron and his client was comparable to the relationship between parents and their children. This relationship was reciprocal and governed by *fides*. The main feature of this relationship was the duty of a client to perform certain work for his patron, and to assist him in case of need, especially to ransom him if he fell into captivity. The economically stronger patron was obligated to provide protection for his client when required, especially in legal matters. Gellius wrote about different types of relationships creating a certain degree of dependence:

²⁹ Sen. de Clem. 1, 15: *Trichonem equitem Romanum memoria nostra, quia filium suum flagellis occiderat, populus graphiis in foro confodit ...*

³⁰ Marc. D. 48, 9, 5: ... *quod latronis magis quam patris iure eum interfecit: nam patria potestas in pietate debet, non atrocitate consistere.*

*But it was readily agreed and accepted, that in accordance with the usage of the Roman people the place next after parents should be held by wards entrusted to our honour and protection; that second to them came clients, who also had committed themselves to our honour and guardianship; that then in the third place were guests; and finally relations by blood and by marriage.*³¹

The relationship between a patron and a client was based upon mutual trust. It was therefore essential not to breach it. This was true especially for a patron who could take advantage of his better (economic and social) position.

A violation of the trust governing the relationship between a client and his patron was considered a major crime. Accordingly, the Twelve tables (8, 21) stipulated that a patron who defrauded his client should become *sacer*, i. e., consecrated to the gods and deprived of any divine or human protection.³² Gellius also wrote that Roman people “most of all and in particular cultivated integrity and regarded it as sacred, whether public or private”. They maintained that “a client taken under a man's protection should be held dearer than his relatives and protected against his own kindred, nor was any crime thought to be worse than if anyone was convicted of having defrauded a client.” (Gell. N. A. 20, 1, 40).

2 Parricidium

The overview of the moral dimension of the relationship between parents and children provided in the previous section was necessary in order to understand and appreciate why *parricidium*, i. e., killing of one's parent or close kin, had a special status among crimes in Rome. It was regarded as the most outrageous of all crimes. The Romans believed that killing someone from whom one was born constituted a crime against nature. Cicero quotes Solon, when he was asked why he had failed to punish the person who killed his father, as saying that he had not supposed that anyone would do so. The Romans, however, as Cicero concludes, understood that there was nothing so holy that audacity would not sometimes violate it (Cic. pro Rosc. Amer. 70).

³¹ Gell. N. A. 5, 13, 2: *Conveniebat autem facile constabatque, ex moribus populi Romani primum iuxta parentes locum tenere pupillos debere, fidei tutelaque nostrae creditos; secundum eos proximum locum clientes habere, qui sese itidem in fidem patrociniūque nostrum dederunt; tum in tertio loco esse hospites; postea esse cognatos adfinesque.* The English translation available at https://topostext.org/work.php?work_id=208

³² Tab. 8, 21: *Patronus si clienti fraudem fecerit sacer esto.*

Some authors think that the crime of parricide was a reaction to the excessive power Roman family fathers had over members of their family. In their view, the crime of *parricidium* is possible to understand when viewed through the prism of the »dictatorship of the father» that generated a particular tension inside families, making Roman family fathers live in perpetual fear because most Romans desired to kill their fathers. As Daube pointed out: “... the system of absolute propertylessness of a *filiius familias* developed the most unpleasant creaks. Sons wished their fathers dead, and more and more frequently the wish was father to the deed.”³³

Some authors see a possible reason for parricide in the excessive use of the father’s power of life and death. Carlà-Uhink writes that “for a *pater familias*, killing a criminal son was a means of showing to the rest of society that they had authority and control inside their family and that their gens coexisted with the Republican institutions. By demonstrating their ‘love’ for Rome and the collective as being stronger than the love for their kin, they would also avoid the collective humiliation eventually brought upon the family by the execution of one of its members” (Carlà-Uhink, 2017: 39).

However, despite the report of Cassius Dio, who says that “there were many ... private individuals as well, who slew their sons”,³⁴ a connection between *ius vitae necisque* and the crime of parricide does not seem convincing. On the one hand, it is difficult to measure the impact Roman values had in daily life, while on the other hand it is undisputed that the authority of the family father was for the most part perceived as natural and just. The *ius vitae necisque* cannot be understood solely in the framework of a family. Instead, it must be understood within the broader context of the society as a whole. It protected the family members from blood feud, and was necessary because of the absence of an organized judiciary. Thus, its decline to a great extent coincides with the development of the state judiciary:

*A father cannot kill his son without his having been heard; but he should accuse him before the Prefect or the Governor of the province.*³⁵

³³ Daube, 1969: 88; see also Thomas, 1983: 115 ss. More on this with a comprehensive presentation of the views of different authors: Carlà-Uhink, 2017: 30 ss; Cantarella, 2017: Cap. 6.

³⁴ Dio 37, 36, 4. English translation: Roman History by Cassius Dio published in Vol. III of the Loeb Classical Library edition, 1914. The text is in the public domain available at: https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Cassius_Dio/37*.html

³⁵ Ulp. D. 48, 8, 2: *Inauditum filium pater occidere non potest, sed accusare eum apud praefectum praesidem provinciae debet.*

It is noteworthy that probably many Roman family fathers exercising their power of life and death (*ius vitae necisque*) behaved, or at least tried to behave, like judges:

*Lucius Gellius, a man who had held all public offices up through that of censor, possessed near certainty that his son was guilty of very serious offenses, namely committing adultery with his stepmother and plotting the murder of his father. Still, he did not rush at once to vengeance but (instead) summoned almost the entire Senate to his consilium, set forth his suspicions, and offered the young man the chance to defend himself. And when he had very carefully examined the case, he acquitted him not only by the verdict of the consilium but also by his own. Now if, carried away by the force of anger, he had hastened to vent his cruelty, he would more have committed a wrong than avenged one.*³⁶

It is therefore difficult to imagine that killing a parent could be connected with an overly strict exercise of paternal power. Besides, the term parricide was not limited to the killing of a father. It also covered the killing of a mother and later also of some other relatives. It is also hardly possible to reduce to only one the reasons for a social phenomenon.

Probably the most “famous” parricide in Rome was committed by Macedo during the time of Vespasian. As a son under the paternal power, Macedo killed his father to inherit the estate and repay his debts. In response to this shocking crime the senate passed the *Senatus consultum Macedonianum* preventing creditors from claiming back loans given to sons-in-power even after the death of the father. The senate believed that the reasons for Macedo’s crime were as follows:

*Whereas Macedo's borrowings gave him an added incentive to commit a crime to which he was naturally predisposed and whereas those who lend money on terms which are dubious, to say the least, often provide evil men with the means of wrongdoing, it has been decided, in order to teach pernicious moneylenders that a son's debt cannot be made good by waiting for his father's death, that a person who has lent money to a son-in-power is to have no claim or action even after the death of the person in whose power he was.”*³⁷

³⁶ Val. Max. 5.9.1. English translation: Frier & McGinn, 2004: 193.

³⁷ Ulp. D. 14, 6, 1 pr.: *Verba senatus consulti Macedoniani haec sunt: "cum inter ceteras sceleris causas Macedo, quas illi natura administrabat, etiam aes alienum adhibuisset, et saepe materiam peccandi malis moribus praestaret, qui pecuniam, ne quid amplius diceretur incertis nominibus crederet: placere, ne cui, qui filio familias mutuan pecuniam dedisset, etiam post mortem parentis eius, cuius*

The reasons mentioned by the senate seem quite plausible. In Macedo's case, it is therefore difficult to imagine how his father's sternness could have contributed to the crime.

In classical Roman law the word *parricidium* stood for the assassination of a father or a close relative (see Marc. D. 48, 9, 1). Etymologically the term was probably connected with the term *paricidas* which, according to Festus, occurred in a law attributed to the second Roman king Numa Pompilius. The law contained the following provision:

*If somebody with malice aforethought delivered to death a free man, let him be paricidas.*³⁸

According to Festus, the word *parricida* denoted not only someone who killed his father, but any man not condemned.³⁹

The etymology of the word *par(r)icida* is controversial.⁴⁰ The same is true for the existence of two different categories of parricides and for the connection between them.⁴¹ It is likely that the word *parricidium*, at the time of the Twelve tables, stood for murder in general and not only for the killing of a father or of close relative (so Kunkel, 1962: 39). But it is also possible to conjecture that even initially the killing of a close relative was at the core of the term. If we believe that the etymology of the word means simply killing of a relation (Robinson, 1995: 128, fn. 66, quoting Paul Jeffreys-Powel) then it is possible to imagine that behind the *parricidium* there was the idea of punishing above all someone who killed a relative.

in potestate fuisset, actio petitioque daretur, ut scirent, qui pessimo exemplo faenerarent, nullius posse filii familias bonum nomen expectata patris morte fieri."

³⁸ Fest. s. v. Parrici<di> quaestores (Lindsay, p. 247): *Si qui hominem liberum dolo sciens morti duit, paricidas esto.* More on the criminal law at the time of kings Santalucia, 1981: 39 ss.; Falcon, 2013: 191-274.

³⁹ Fest. s. v. Parrici<di> quaestores (Lindsay, p. 247): *Parrici(di) quaestores appellabantur, qui solebant creari causa rerum capitalium quaerendarum. Nam parricida non utique is, qui parentem occidisset, dicebatur, sed qualicumque hominem indemnatum.* See Kunkel, 1962: 39: ... In ihm kann *parricidium* nur den Mord im allgemeinen bedeuten, nicht dagegen, wie späterhin, den Vater- oder Aszendentenmord.

⁴⁰ See the etymology of the word at: Walde, 1938: s. v.; Glare, 1982: s.v.; Ermout, & Meillet, 1960: s. v. An overview gives Cloud, 1971: 5 fn 5. See also Henrion, 1941: 219 ss.

⁴¹ Mommsen, 1899: 612 s, and fn. 3. On the term *paricida(s)* see e. g. Meylan, 1928; Londres da Nóbrega, 1950: 3-12; Magdelain, 1984: 549 ss, esp. 552 ss (reprinted in: Magdelain, 1990: 519 ss); Cloud, 1971: 1 ss; Thomas, 1981: 643 ss; Kunkel, 1962: 39 ss; MacCormack, 1982: 43 ss; Falcon, 2013: 191 ss, especially 224 ss. etc.

There are several arguments supporting this proposition. We already mentioned that before the introduction of public criminal courts the *pater familias* exercised jurisdiction over the persons in his paternal power. If one of them killed a member of another family, the *pater familias* had to react by punishing the murderer to prevent a feud between the two families. It is therefore possible to imagine that at that time a murder was only exceptionally an issue requiring a public reaction. As Olivia Robinson points out “it seems likely that for the Romans, as in our day, most murderers were family affairs and, until well into the Principate, that these would therefore fall within the jurisdiction of the relevant *pater familias* or owner (or patron). Of course, when the *pater familias* was the murder, someone technically outside the *familia* would need to intervene” (Robinson, 1995: 41). The same was probably true if the family father was killed. In neither case was it possible to prosecute the perpetrator within the family. It is therefore possible to imagine that a murder was a crime the broader public had to deal with only when the family father was either a perpetrator or a victim. We do not know how many murders occurred at Rome in decemviral time. But it is possible to imagine that a considerable portion of them occurred inside the same household where both the perpetrators and the victims were relatives.

There is another indication that the killing of a relative was an essential element of *parricidium* even at the time of the Twelve tables.

The decemviral Rome was small. Its population consisted of tribes. It is not entirely impossible to imagine that at the time of Roman kings free Romans perceived themselves as members of the same family, especially when confronting the foreigners. Killing a member of the same tribe was considered murder of a relative. Kinship was a hindrance to kill, even across borders (so Rüpke, 1992: 59).

Some Roman authors, especially Cicero, give some hints in this direction. In his speech against Verres, Cicero, in order to stress the abominableness of Verres’ crimes, stated that “it is a crime to bind a Roman citizen; to scourge him is wickedness; to put him to death is almost parricide”.⁴² It is possible to imagine that by using these words Cicero was alluding to the idea that all Romans living abroad should be treated as relatives belonging to the same larger family. That could justify their special treatment by the provincial authorities.

⁴² Cic. Verr. 2, 5, 170: *Facinus est vincire civem Romanum, scelus verberare, prope parricidium necare.*

The same idea might help explain the fact that the word *parricidium* could also mean treason or rebellion. Cicero spoke about someone who was “involved in the guilt of planning the parricide of his country”⁴³ or of wicked men “confessing that they had planned the parricidal destruction of their country,⁴⁴ and that they had agreed to burn the city, to massacre the citizens, to devastate Italy, to destroy the republic.” In his treatise on duties, he even used the term “the most horrible and hideous of all murders — that of fatherland”.⁴⁵ Similarly, Livy, when writing about Coriolanus, who, because he had been iniquitously condemned to exile, led troops of Rome's enemy the Volsci to besiege the city, used the term *publicum parricidium*; Coriolanus's personal piety recalled him from the public *parricidium*.⁴⁶ In this case it is again possible to imagine that by his act of treason Coriolanus was in a sense killing Roman people that constituted part of his broader family.

In his treatise on laws, Cicero used the term *parricidium* in one of his exemplary norms: “Whoever purloins or robs any temple, or steals any property deposited in a temple, shall be accounted a parricide”.⁴⁷ At first glance this seemingly has no connection with the killing of a close relative or of any person at all. Yet, if we take into consideration the Roman idea of divine members of a family or a tribe (*di parentes*), this could bring us closer to the meaning of the term *parricidium* in this case as well.

According to Suetonius, *parricidas* was also the name of the Ides of March.⁴⁸ Since the Senate awarded to Caesar the title *pater patriae* for having ended the civil wars, naming the day when he had been assassinated *parricidas* corresponded in some way to the traditional meaning of the word.

There is no clear answer regarding the connection between the term *parricidium*, denoting in king Numa's law a killing of any man not condemned, and the later narrower meaning of the word *parricidium*. Festus mentioned Numa's law in connection with the foundation of *quaestores parricidii* and at the same time explained

⁴³ Cic. Pro Sulla 6: ... *quem obstrictum esse patriae parricidio suspicere.*

⁴⁴ Cic. Phil. 2, 17: *Etenim, cum homines nefarii de patriae parricidio confiterentur ...*

⁴⁵ Cic. de Off. 3, 21, 83: ... *foeditissimum et taeterrimum parricidium patriae ...*

⁴⁶ Liv. ab U. C. 28, 29: ... *renouavit tamen a publico parricidio priuata pietas*

⁴⁷ Cic. Leg. 2, 9, 22: ... *'Sacrum sacrove commendatum qui clepsit rapsitue, parricida esto.'* English translation: Bohn's Classical Library, Cicero on the nature of the gods, Divination, Fate, the republic, laws, etc. available at <https://archive.org/stream/treatisesofcicer00ciceuoft#page/n7/mode/2up>

⁴⁸ Suet. Caes. 88: ... *placuit Idusque Martias parricidium nominari ...*

that the term did not only stand for someone who killed a close relative but was also related to someone who killed any man not condemned. This does not mean that the term initially did not stand also for killing a close relative. Rather, the meaning of the term has gradually broadened over time.⁴⁹

When we try to determine how reliable Festus' reports are, we must remember that Festus lived about eight and a half centuries after the legendary second king of Rome, Numa Pompilius (c. 753-673 BC), and that we only possess fragments of Festus' work, which in turn were edited by Paul the Deacon (c. AD 720 -799) another six centuries later. This certainly does not mean that we should completely discount Festus's account. However, we have to bear in mind that these sources do not provide a comprehensive picture.

3 The *poena cullei*

It is not clear what legal consequences the proclamation of *parricidas esto* had (more on this Cloud, 1971: 29 ss). It is likely that initially a *parricidas* was proclaimed *homo sacer*. It is also possible that the perpetrator was punished by some special religious penalty for offending the divine protectors of the City.⁵⁰ Numa's law intended to put "the legal consequences of knowingly and with wrongful intent killing a free man not belonging to the 'clan' of the killer on a par with the consequences of knowingly and with wrongful intent killing a free man who belonged to the 'clan' of the killer. In this way, the lawmaker aimed at preventing blood feuds, the perpetrator was declared *sacer*" (ter Beek, 2012: 14; he is referring to Cloud, 1971: 2-18; MacCormack, 1982: 43. See also Falcon, 2013: 224 ss). This was particularly necessary when a *pater familias* was killed by a member of another family. Without public punishment of the perpetrator a vendetta would be a normal reaction to such a crime.

⁴⁹ This was true even later when the circle of potential victims was broadened – see e.g., Marc. D. 48, 9, 1.

⁵⁰ See Kaser, 1949: 12 s: ... Vero è che proprio per il *parricidium* non ci è stata tramandata la solita formula '*sacer esto*', ma basta il fatto che esso sia stato contemplato dalle *leges regiae* e basta il rilievo della connessione tra omicidio e vendetta sacrale ad autorizzarci a supporre che esso fosse anticamente perseguito con una pena religiosa. See also Kaser, 1980: 50 ss.; Briquel, 1980: 92-1, 87 ss.

There can be no doubt that the punishment for *parricidium* was death. However, the type of capital punishment used initially is unclear (see different opinions quoted by Cloud, 1971: 26 ss). According to Cicero, the ancestors ordered the convicted parricide to be drown alive in a sack (more on this Cantarella, 2018: cap. XVII La pena del sacco).

In his defense speech delivered in 80 BC on behalf of Sextus Roscius from Ameria, accused of murdering his father, Cicero mentioned this penalty as a genuine Roman invention:

70 The state of the Athenians is said to have been the wisest while it enjoyed the supremacy. Moreover of that state they say that Solon was the wisest man, he who made the laws which they use even to this day. When he was asked why he had appointed no punishment for him who killed his father, he answered that he had not supposed that any one would do so. He is said to have done wisely in establishing nothing about a crime which had up to that time never been committed, lest he should seem not so much to forbid it as to put people in mind of it. How much more wisely did our ancestors act! For as they understood that there was nothing so holy that audacity did not sometimes violate it, they devised a singular punishment for parricides in order that they whom nature herself had not been able to retain in their duty, might be kept from crime by the enormity of the punishment. They ordered them to be sown alive in a sack, and in that condition to be thrown into the river.

71 O singular wisdom, O judges! Do they not seem to have cut this man off and separated him from nature; from whom they took away at once the heaven, the sun, water and earth, so that he who had slain him, from whom he himself was born, might be deprived of all those things from which everything is said to derive its birth. They would not throw his body to wild beasts, lest we should find the very beasts who had touched such wickedness, more savage; they would not throw them naked into the river, lest when they were carried down into the sea, they should pollute that also, by which all other things which have been polluted are believed to be purified. There is nothing in short so vile or so common that they left them any share in it.

72 Indeed what is so common as breath to the living, earth to the dead, the sea to those who float, the shore to those who are cast up by the sea? These men so live, while they are able to live at all, that they are unable to draw breath from heaven; they so die that earth does not touch their bones; they are tossed about by the waves so that they are never washed; lastly, they are cast up by the sea so, that when dead they do not even rest on the rocks.⁵¹

The reasons for the penalty of the sack were probably religious. Initially, it was presumably intended to expiate the preposterous crime by which the *parricida* took the life of his parent from whom he was born. Olivia Robinson believes that the sack as a penalty “ha[d] been primarily an expiatory rite more than a punishment” (Robinson, 1995: 47). In this process water played a certain role because it was believed that it possessed cleaning powers (Mommsen, 1899: 922). As the emperor Constantine put it, the perpetrator was deprived of the essential things which were at the origin of every life – the heaven, the sun, water and earth (*caelum, solem, aquam terramque*): »*While still alive he may begin to lose the enjoyment of all the elements, that the heavens may be taken away from him while he is living and the earth, when he is dead.*”⁵²

It is not clear when the “penalty of the sack” (*pena cullei*) was introduced as a punishment for the convicted parricide. Valerius Maximus reported that the King Tarquinius Superbus ordered the duumvir M. Atilius, who had allowed Petronius Sabinus to copy a book containing secret religious ceremonies entrusted to him, to be sewn up in a sack and dumped in the sea. According to the same report, this sort of penalty much later (*multo post*) became also the penalty for parricide by virtue of a law:

This kind of penalty became, long afterwards, the punishment inflicted by law on parricides. And this is very fair, for it is by equal punishment that attacks against parents and attacks against the gods must be expiated.⁵³

⁵¹ Cic. pro Rosc. Amer. 70-72. The English translation taken from <http://artflsrv02.uchicago.edu/cgi-bin/perseus/citequery3.pl?dbname=LatinSept18&getid=1&query=Cic.%20S.%20Rosc.%2074>

⁵² So Const. CTh 9, 15, 1 (=C. 9, 17, 1): ... *ut omni elementorum usu vivus carere incipiat, ut ei caelum superstiti, terra mortuo auferatur.*

⁵³ Val. Max. 1, 1, 13: *M. Atilium duumvirum, quod librum secreta rituum civilium sacrorum continentem, custodiae suae commissum corruptus Petronio Sabino describendum dedisset, culleo insutum in mare abici iussit, idque supplicii genus multo post parricidis lege inrogatum est, iustissime quidem, quia pari vindicta parentum ac deorum violatio expianda est.*

It is not clear when and by which law this could have happened. J. D. Cloud argues that the penalty of the sack in its association with *parricidium* dates from the late third or early second century BC (Cloud, 1971: 27; see also Carlà-Uhink, 2017; Biavaschi, 2016: 169 ss). Livy, on the other hand, wrote that “the first to be sewn into a sack and thrown into the sea” was Publicius Malleolus who had killed his mother.⁵⁴ This occurred in 101 BC. Mommsen maintained that Malleolus was the first matricide to be punished that way (Mommsen, 1899: 614, fn. 1). However, from the account of the same event provided by Livy’s epitomator Orosius, it is possible to conclude that Malleolus was the first to be punished by the penalty of *culleus*, which was much older itself.⁵⁵

Either way, the penalty of *culleus* was commonly practiced in Cicero’s time. In a letter to his younger brother Quintus, when the latter was propraetor of the Province of Asia (61-59 B.C.), Cicero wrote:

... when you say that, having sewn up in the parricide's-sack two Mysians at Smyrna, you desired to display a similar example of your severity in the upper part of your province ...⁵⁶

Cicero doesn’t seem to be surprised by his brother’s sternness. Although as a governor of a province Quintus was utterly honest and just, as a military commander he had outbursts of cruelty and probably tended towards inflicting harsh punishments.⁵⁷

⁵⁴ Liv. Per. 68, 9: *Publicius Malleollus matre occisa primus in culleo insutus in mare praecipitatus est.*

⁵⁵ Orosius 5, 16, 23: *Publicius siquidem Malleolus seruis adniventibus matrem suam interfecit; damnatus parricidii insutusque in culleum et in mare proiectus est; 24 inpleveruntque Romani et facinus et poenam, unde et Solon Atheniensis decernere non ausus fuerat, dum fieri posse non credit, et Romani, qui se ortos a Romulo scirent, etiam hoc fieri posse intellegentes supplicium singulare sanxerunt.* (Publicius Malleolus with the assistance of slaves killed his own mother. He was condemned for parricide, sewed up in a sack, and thrown into the sea. 24 Thus the Romans provided a penalty and punished a crime for which even the Athenian Solon had not ventured to prescribe a penalty because he did not imagine such an outrage possible; the Romans, however, realizing that they were descended from Romulus and knowing that even such a deed was possible, enacted a unique punishment for it. English translation at <http://www.attalus.org/translate/orosius5B.html>).

⁵⁶ Cic. ad Qu. fr. 1, 2, 2, 5: ... *quod scribis cupisse te, quoniam Smyrnae duos Mysos insuisses in culleum, simile in superiore parte provinciae edere exemplum severitatis tuae* ... English translation: https://en.wikisource.org/wiki/Letters_to_his_brother_Quintus/1.2

⁵⁷ This was probably regarded as a problem also by his brother. See e. g. Cic. ad Qu. fr. 1, 1, 37: *Unum est, quod tibi ego praecipere non desinam, neque te patiar, quantum erit in me, cum exceptione laudari: omnes enim, qui istinc veniunt, ita de tua virtute, integritate, humanitate commemorant, ut in tuis summis laudibus excipiant unam iracundiam; quod vitium cum in hac privata quotidianaque vita levis esse animi atque infirmi videtur, tum vero nihil est tam deforme, quam ad summum imperium etiam acerbitatem naturae adiungere.* (There is one thing on which I shall not cease from giving you advice, nor will I, as far as in me lies, allow your praise to be spoken of with a reservation. For all who come from your province do make one reservation in the extremely high praise which they bestow on your virtue, integrity, and kindness--it is that of sharpness of

Since the time of Cicero, the penalty of *culleus* was regularly used, especially during the time of Principate. Suetonius reported that Caesar increased the penalties for crimes and that he punished parricides by confiscating all of their goods and others by the loss of one-half.⁵⁸ Suetonius did not write about the penalty of parricide. But he mentioned that Caesar “administered justice with the utmost conscientiousness and strictness”.⁵⁹ It is therefore possible to conclude that he did nothing to prevent the application of *poena cullei*.

This seems to have been a regular punishment for manifest parricides who confessed their crime under Augustus. Augustus, whose administration of justice, according to Suetonius, was very lenient, tried to save the manifest parricide from that penalty by altering the question about his guilt:

In his administration of justice he was both highly conscientious and very lenient; for to save a man clearly guilty of parricide from being sown up in the sack, a punishment which was inflicted only on those who pleaded guilty, he is said to have put the question to him in this form: "You surely did not kill your father, did you?"⁶⁰

In the hortatory essay On Mercy that he wrote to the emperor Nero in 55-56 A.D., Seneca the Younger mentioned that the emperor Claudius “sewed up more parricides in sacks during five years, than we hear of in all previous centuries”.⁶¹ By this example Seneca wanted to demonstrate to the young emperor that savage repression increases the frequency of crimes and that “sins which are frequently punished are frequently committed (*ea saepe committi, quae saepe vindicantur*).”

temper. That is a fault which, even in our private and everyday life, seems to indicate want of solidity and strength of mind; but nothing, surely, can be more improper than to combine harshness of temper with the exercise of supreme power. – English translation https://en.wikisource.org/wiki/Letters_to_his_brother_Quintus/1.1. But see also Cic. ad Qu. fr. 1, 1, 16.

⁵⁸ Suet. Iul. 42: *Poenas facinorum auscit; et ... parricidas, ut Cicero scribit, bonis omnibus, reliquos dimidia parte multavit.*

⁵⁹ Suet. Iul. 43: *Ius laboriosissime ac severissime dixit.*

⁶⁰ Suet. Aug. 33, 1 *Ipsē ius dixit ... Dixit autem ius non diligentia modo summa sed et lenitate, siquidem manifesti parricidii reum, ne culleo insueretur, quod non nisi confessi adficiuntur hac poena, ita fertur interrogasse: "Certe patrem tuum non occidisti?"* English translation

https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/12Caesars/Augustus*.html#note40

⁶¹ Sen. de Clem. 1, 23: ... *Pater tuus plures intra quinquennium culleo insuit, quam omnibus saeculis insutos accepimus.* On Claudius' harsh administration of justice see Suet. Claud. 34, 1.

The *poena cullei* was probably less used under Hadrian, who forbade the capital punishment for decurions, “save for those who had killed their parents ... they are to be punished with the penalty of the *lex Cornelia*”.⁶² It is not entirely clear which penalty was meant by this expression. Possibly this was the ‘interdiction of fire and water’ (*aquae et ignis interdictio*), i. e. banishment with the loss of citizenship and confiscation of property (so Mommsen, 1899, Nachdruck 1955: 957; Bauman, 1996: 31). It is also possible that this was the death penalty (Levy, 1963: 33 ss; Levy, 1938: 442 ss). It is quite obvious, however, that it was not the *poena cullei*. Modestinus, quoting from Hadrian’s constitution, described the exposure to wild beasts as an alternative to the ‘penalty of the sack’.⁶³ Garnsey believes that only those of low birth or position were punished this way. Persons of high status were exiled.⁶⁴

Marcian mentions that by the *lex Pompeia de parricidiis* parricides were “liable to the same penalty as that of the *lex Cornelia* on murderers.”⁶⁵ Justinian’s Institutes, on the other hand, report that the Pompeian law on parricide provided the penalty of the sack for parricides.⁶⁶ These and some other reports seem contradictory. It is possible to reconcile these seemingly disparate forms of punishment if we assume that the Sullan law prescribed only a capital punishment but not the method by which it was to be carried out. To execute a parricide *more maiorum* was one of the options. Later enactments, like that of Hadrian, made this general provision more specific. Despite the Hadrian’s law it is possible to assume that the *poena cullei* was never abolished. Although the literature of that time only mentions *poena cullei* a few times⁶⁷ it is possible to conclude that it was also present during the time of Principate. How often it was applied depended not that much on the law but on concrete circumstances.⁶⁸ It seems that the *poena cullei* was not explicitly prescribed until 318/19 AD by Constantine’s law (Const. C. Th. 9, 15, 1 = C. 9, 17, 1).

⁶² Ven. Sat. D. 48, 19, 15: ... nisi si qui qui parentem occidissent ... poena legis Corneliae puniendos ... cautum est.

⁶³ Mod. D. 48, 9, 9 pr. The text see below.

⁶⁴ Garnsey, 1970: 130 fn. 9. See also 107: For those of high status “the correct penalty was the penalty of the Cornelian law, by which was meant deportation” and p. 118: ... the most serious form of exile ...

⁶⁵ Marc. D. 48, 9, 1: *Legge Pompeia de parricidiis cavetur, ut, si quis patrem matrem, avum aviam, fratrem sororem patrualem matrualem, patruum avunculum amitam, consobrinum consobrinam, uxorem virum generum socrum, vitricum, privignum privignam, patronum patronam occiderit cuiusve dolo malo id factum erit, ut poena ea teneatur quae est legis Corneliae de sicariis.*

⁶⁶ Inst, 4, 18, 6. The text see below.

⁶⁷ See e. g. Apul. Met. 10, 8 (... insui culleo pronuntiaret ...), Tertull. de Anima 33, 6 (... patibula et viui comburia et culleos et uncas et sopulo ...), Lact, Inst. div. 5, 9, 16 (... qui nec culleum metuunt ...).

⁶⁸ Cloud, 1971: sees the explanation for earlier cases in religious hysteria.

4 The practice

There was probably no detailed procedure for carrying out the penalty of the sack. Yet we learn from different sources how the execution proceeded. There are two nearly identical accounts from the first century BC. In his handbook for orators Cicero writes:

A certain man was convicted of murdering a parent, and because there was no chance of his avoiding the penalty, the wooden sandals (lignae soleae) were immediately put on his feet, his head was covered and tied up with a bag (folliculo) and he was then taken to prison to stay there until they could get ready the sack, into which he was to be placed before being thrown into the river.⁶⁹

A similar account is given by the unknown author of the Rhetoric for Herennius (written probably in the late 80s BC):

Malleolus was convicted of matricide. Immediately after he had received sentence, his head was wrapped in a bag of wolf's hide (folliculo lupino), the "wooden shoes" were put upon his feet, and he was led away to prison.⁷⁰

In his account, the Roman jurist Herennius Modestinus, who worked about AD 250, does not mention wooden sandals and the *folliculus* but mentions the flogging with rods and that several animals were sewn up in the sack together with the condemned:

According to the custom of our ancestors, the punishment instituted for parricide was as follows: A parricide is flogged with blood-colored rods, then sewn up in a sack with a dog, a dunghill cock, a viper, and a monkey; then the sack is thrown into the depths of the sea. This is the procedure if the sea is close at hand;

⁶⁹ Cic. de Inv. 2, 50, 149: *Quidam indicatus est parentem occidisse et statim, quod effugiendi potestas non fuit, lignae soleae in pedes inditae sunt; os autem obvolutum est folliculo et praeligatum; deinde est in carcerem deductus, ut ibi esset tantisper, dum cullens, in quem coniectus in profluentem deferretur, compararetur.* English translation: Cicero De invetione, De otpimo genere oratorum, Topica. With an English translation by Hubbell, 1949.

⁷⁰ Rhet. ad Herenn. 1, 13, 23: *Malleolus indicatus est matrem necasse. Ei damnato statim folliculo lupino os obvolutum est et soleae lignae in pedibus inductae sunt; in carcerem ductus est.* English translation: Cicero, ad C. Herennium. De ratione dicendi (Rhetorica ad Herennium) With an English translation by Caplan, 1964, available at http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Rhetorica_ad_Herennium/home.html

*otherwise, he is thrown to the beasts, according to the constitution of the deified Hadrian.*⁷¹

It is difficult to speculate the extent to which the animals mentioned above were a part of the Roman tradition. As we have seen, Cicero does not mention any of them. Given the nature of his speech, we can imagine that he likely would have referred to them if they were indeed part of the punishment *more maiorum*. This would increase the dramatic effect of his statement. Furthermore, since there were probably no indigenous apes in Rome, it can be doubted that initially a monkey was among the animals sewn up in the sack together with the perpetrator.

The animals that were sewn up in a sack together with the perpetrator that are mentioned by Modestinus are also mentioned in the Institutes of Justinian:

*A novel penalty has been devised for a most odious crime by another statute, called the lex Pompeia on parricide, which provides that any person who by secret machination or open act shall hasten the death of his parent, or child, or other relation whose murder amounts in law to parricide, or who shall be an instigator or accomplice of such a crime, although a stranger, shall suffer the penalty of parricide. This is not execution by the sword or by fire, or any ordinary form of punishment, but the criminal is sewn up in a sack with a dog, a cock, a viper, and an ape, and in this dismal prison is thrown into the sea or a river, according to the nature of the locality, in order that even before death he shall begin to be deprived of the enjoyment of the elements, the air being denied him while alive, and interment in the earth when dead. Those who kill persons related to them by kinsship or affinity, but whose murder is not parricide, will suffer the penalties of the lex Cornelia on assassins.*⁷²

⁷¹ Mod. D. 48, 9, 9 pr.: *Poena parricidii more maiorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur. hoc ita, si mare proximum sit: alioquin bestiis obicitur secundum divi Hadriani constitutionem.*

⁷² Inst, 4, 18, 6. English translation: The Institutes of Justinian. Translated into English by Moyle, 1913. Available at: https://www.gutenberg.org/files/5983/5983-h/5983-h.htm#link2H_4_0102.

Constantine's law of 318/19, which gives an account very similar to that in Justinian's Institutes, only mentions serpents:

*If anyone hastens the death of a parent, child, or any other close relative (adfectio) at all that is included in the class of "parricide", whether acting secretly or openly, he or she will be punished with the penalty given for parricide, meaning he or she shall not suffer execution by the sword, by being burned alive, or by any other formally prescribed means. Instead, he shall be sewn up in a sack and, within its dismal confines, shall enjoy the company of serpents. ...*⁷³

The reference to various kinds of animals indicates that much depended on what kinds of animals were available in the region and on the phantasy of the executioners. There is speculation, for example, that a snake was introduced by the *lex Pompeia de parricidiis*, that emperor Claudius wanted to stress the inhumane nature of the parricide by adding a monkey, and that emperor Constantine added a dog and a cock which were typical of the cults of Mithras, Cybele, and Isis.⁷⁴ Yet, it is more likely that the addition of these animals depended on multiple factors including their availability and the concrete circumstances surrounding the execution.

A parricide was presumably not very frequent (see Cloud, 1971: 38 ss; see also Carlà-Uhink, 2017: 26 ss, esp. pp. 56 ss) and it is possible to imagine that the execution of a parricide was a major public event.

In the Appendix to the *Sententiae Hadriani*, the bilingual (Greek-Latin) text of the *Hermeneumata Stephani* mentions that the execution was public. The parricide was sewn up in a sack together with a snake, a dog, a monkey, and a cock (*in culleum missus consueretur cum vipera et cane, et simia et gallo*). The text also explains that these animals were added to stress the impious nature of the parricide: *impiis animalibus, impius homo* (impious animals, an impious man):⁷⁵

⁷³ Const. C. Th. 9, 15, 1 (=C. 9, 17, 1): *Si quis in parentis aut filii aut omnino adfectionis eius quae nuncupatione parricidii continetur fata propperaverit, sive clam sive palam id fuerit enisus, poena parricidii punietur neque gladio neque ignibus neque ulla alia sollemni poena subiugetur, sed insutus culleo et inter eius ferales angustias comprehensus serpentium contuberniis misceatur ...* English translation: The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text. Based On A Translation By Justice Fred H. Blume. Bruce W. Frier, General Editor... Cambridge University Press 2016.

⁷⁴ So Cantarella, 2017: see Cap. 6. Dalla parte dei padri, Title: *Il bestiario del parricida: un cane, un gallo, una vipera e una scimmia*.

⁷⁵ See: Corpvs Glossariorvm Latinorvm Gvstavo Loewe inchoatvm avspiciis Societatis Litterarvm Regiae Saxonicae composvit recensvit edidit Georgivs Goetz, Vol. III, Lipsiae 1892: 38 and 390.

Πασιν ανθρωποις omnibus hominibus	Και εις αμαξαν etinplaustrum
Οπως οστις uti qui	Εζευγμενην iunctum
Πατροκτονιαν patricidium	Μελανον βων nigris bovis
Πεποιημι fecisset	Κατενεχθηναι deportari
Δημοσιος publice	Προσθαλασσαν admare
Εις μολσον inculleum	Καιειςβυθον etinprofundum
Πεμφθεις missus	Βληθηναι mitti
Συντραφηναι conscriberetur	Εδιξαν ostenderunt
Μετα εχιδνης cum uipera	Υποδιγμα exemplum
Και πιθηκουν etsimiam	Τιμωριας poenae
Και αλεκτορας etgallu	ιναμαλλον utmagis
Και κυνας et cane	φοβηθωσιν timeant
Ασεβις ζωις impiis animalibus	ουτως ανοσιον siccrudelem
Ασηβες ανθρωπος impius homo	εργον εποισεσην opus fecit

(All the men who commit parricide should be publicly put into a sack with a snake, and an ape, and a cock, and a dog, impious animals – impious man, put on a wagon to which black oxen are harnessed, transported to the sea and thrown into a deep sea. They should serve as an example so that those who committed such a cruel deed should be more afraid of the punishment.)

After his account of the martyrdom of Apphianus, who was tortured and executed during the prosecution of Christians under Diocletian in AD 306, Eusebius added the following account of the martyrdom of Ulpian (not to be confused with the prominent Roman jurist):

At the same time, and almost on the same day, a young man in the city of Tyre, by name Ulpianus, after he had been cruelly scourged, and endured most grievous stripes, was sewn up in the raw hide of an ox, together with a dog and a venomous serpent, and cast into the sea. Wherefore we thought it agreeable to make mention of this person at [this place wherein we have related] the Martyrdom of Apphianus.⁷⁶

⁷⁶ Eusebius, De mart. Palaestinae. 5, 1: ὑπὸ δὲ τὸν αὐτὸν καιρὸν αὐταῖς τε ἡμέραις ἐπὶ τῆς Τυρίων πόλεως νεονίας, Οὐλπιανὸς ὄνομα, μετὰ δεινὰς καὶ αὐτὸς αἰκίας μάστιγας τε χαλεπωτάτας ἅμα κύνι καὶ ἀσπίδι, τῷ ἰοβόλῳ ἐρπετῷ, ὠμοβοίνῃ περιβληθεὶς δορᾶ, θαλάττῃ παραδίδοται δι' ὃ μοι δοκεῖ ἐν τοῖς Ἀπφριανοῦ μαρτυρίοις εὐλόγως ἂν ἡμῖν μνημονεύεσθαι καὶ οὗτος. Eusebius, De Martyribus Palaestinae (Recensio Brevior), Chapter 5 Section 1 to Chapter 5 Section 2 (5.1 – 5.2), available at: <https://scaife.perseus.org/reader/urn:cts:greekLit:tlg2018.tlg003.opp-grc1:5.1-5.2/> The English translation: History of the Martyrs in Palestine, by Eusebius, Bishop of Caesarea, discovered in a

We learn from the Eusebius' account that the sack was made of a raw ox hide. Another interesting aspect of this account is that only two animals were added – a venomous serpent and a dog. It is doubtful that the explanation for this was some new rule. It is much more likely that both the animals were a result of adaptation or improvisation. This may not be true concerning the material the sack was made of. A sack made of a raw hide of an ox played an important role. Contrary to a sack made of canvas, a leather sack was not penetrable by water. This could prolong the life, and at the same time the agony, of the person bound in it. Choosing an ox hide sack can be therefore regarded as an attempt to make the penalty even harsher. The black oxen used to pull the wagon to the sea seems to be a literary figure or something that could happen but was not an obligatory part of the procedure. It is possible to assume the same for the two animals that were sewn up together with the parricide. The unavailability of appropriate animals most likely would not constitute sufficient grounds to postpone or prevent the execution.

5 *The lex Cornelia de sicariis et veneficis and the lex Pompeia de parricidiis*⁷⁷

Cicero delivered his defense speech on behalf of Sextus Roscius from Ameria in 80 BC. Presumably a year earlier the Sullan law on murderers and poisoners or magicians (*lex Cornelia de sicariis et veneficis*) was enacted. It contained provisions for trial and punishment of murderers, poisoners or magicians, abortionists, arsonists, castrators, circumcisers, malicious or careless treecutters, impious persons, armed robbers, corrupters of court trials, possessors of books on magic, etc. (Johnson, Coleman-Norton & Card Bourne, 2003: 65). Its text is not preserved. The only contemporary evidence for its text that remains are some quotations in Cicero's speech for Cluentius.⁷⁸ Cicero defended Roscius Amerinus before the *questio de sicariis*. Roscius was accused of murdering his father. From Cicero's words:

very antient Syriac manuscript. Edited and translated into English by Cureton, 1861: p. xvii. l. 30, available at http://www.tertullian.org/fathers/eusebius_martyrs.htm

⁷⁷ On the *lex Pompeia* see Thomas, 1981: I. Le père, la famille et la cité (La *lex Pompeia* et le système des poursuites publiques), *Mélanges de l'École française de Rome. Antiquité* 93, no. 2: 643–715; Fanizza, 1979: 266–289; Kupiszewski, 1971: 601–614 (now in Id., *Scritti minori* [Naples: Jovene, 2000]: 225–238).

⁷⁸ Cic. Cluent. 54, 148 and 57,157. See also Ulp. Coll. 1, 3, 1, Paul. Coll. I, 2, 1-2; PS 5, 23.

*..they offer the wretched man this alternative, whether he would prefer to expose his neck to T. Roscius (Magnus) to be assassinated by him, or, being sewn in a sack, to lose his life with the greatest infamy.*⁷⁹

it is possible to conclude that at that time a possible penalty for parricide was the *poena cullei*. It is quite unlikely that it was mentioned (or even formally enacted) by the Sullan law on murderers and poisoners. The *poena legis Corneliae* was probably exile. Cicero's defense was successful and Sextus Roscius was acquitted.

The Pompeian law on parricide was probably adopted by Pompey in 55 or 52 BC.⁸⁰ Its text is not preserved. There are conflicting reports on the penalty it introduced or prescribed. Aelius Marcianus (D. 48, 9, 1), who wrote after the death of Septimius Severus, described the penalty provided by the Pompeian law on parricides as the one laid down by the Cornelian law on homicide. The opening words on this law in the Institutes of Justinian speak about a novel penalty (*nova poena*) inflicted by the *Lex Pompeia de parricidiis* for the most horrible crime. According to the Institutes, this new penalty was the *poena cullei*. To describe it, the compilers of the Institutes used the above-mentioned text of the Constantine's rescript.

Also, the *Pauli Sententiae*, a compendium attributed to Iulius Paulus and compiled at the end of the third or at the beginning of the fourth century, connect the *poena cullei* with the Pompeian law:

*Under the lex Pompeia de parricidiis those who killed a father, a mother, a grandfather or a grandmother, a brother or a sister, a patron or his wife, were previously sewn up in a sack and thrown into the sea, but today they are burnt alive or thrown to the beasts.*⁸¹

⁷⁹ Cic. Rosc. Amer. 30: ... *hanc condicionem misero ferunt, ut optet, utrum malit cervices T. Roscio dare an insutus in culleum per summum dedecus vitam amittere.*

⁸⁰ So Bauman, 1996: 31. On the date of the law see Cloud, 1971: 47 ss; Thomas, 1981. 648: Fn 12: La seule chose certaine est que cette loi est postérieure à la *lex Cornelia de sicariis* dont elle reprend la peine (D. 48, 9, 1).

⁸¹ PS 5, 24: *Legge Pompeia de parricidiis tenentur qui patrem matrem avum aviam fratrem sororem patronum patronam occiderint, etsi antea insuti culleo in mare praecipitabantur, hodie tamen vivi exuruntur vel ad bestias dantur.* .

Although the text is substantially genuine, it is difficult to believe that the penalty of the sack would temporarily disappear during the third century.⁸² At the same time, there is no doubt that the *poena cullei* was sanctioned by the Pompey's law.

A slight hint in this direction can be seen also in Seneca's treatise *On Mercy*. He spoke about a law on parricide which set in motion killings of parents:

... *parricides, consequently, were unknown until a law was made against them, and the penalty showed them the way to the crime. Filial affection soon perished, for since that time we have seen more men punished by the sack than by the cross.*⁸³

Although the point Seneca wanted to make was that while harsh penalties served only to further encourage criminal behavior, it is possible to believe that the penalty of the sack at first was part of the tradition and only then it was sanctioned by law. The only law coming into consideration was the Pompeian law on parricides. We saw the same assertion in the passage of Valerius Maximus (1, 1, 13), mentioned above.

Accordingly, it is even more surprising that Modestinus, who wrote around AD 250, attributed the penalty of the sack to ancestral custom (D. 48, 9, 9). The accounts are contradicting and any conclusion is a conjecture. We already endeavored to speculate that the *poena cullei* was a part of ancestral custom until Constantine imposed it by his rescript.

Bauman believes that Pompey said nothing about the *poena cullei* in his law but only "concerned himself with the penalty of interdiction he adopted from Sulla's homicide law" (Bauman, 1996: 32). If there was a jury trial, the defendant who was found guilty was punished in accordance with Sulla's law and exiled. But if the guilt was manifest or confessed there was no jury trial and the parricide was punished *more maiorum*. It was necessary to wait until Constantine that the *poena cullei* was incorporated in a law.

⁸² So Cloud, 1971: 51. He believes that the text after 'hodie' is a Visigothic insertion and refers to Visigothic practice. Bauman, 1996: 31, regards the information about the content of the law as believable.

⁸³ Sen. de Clem. 23, 1: ... *itaque parricidae cum lege coeperunt, et illis facinus poena monstravit; pessimo vero loco pietas fuit, postquam saepius culleos vidimus quam cruces.*

The *poena cullei* did not disappear with the decay of the Roman empire. It survived in different parts of Europe (more on this Egmond, 1995: 159-192). Since a comprehensive survey would exceed the scope of this article we only give a few examples.

In his Divine comedy, written from 1304/7 until 1320, Dante mentions it:

*And make it known to Fano's two best men,
to Messer Guido and Angiolello, too,
that they, unless foreseeing be in vain
down here, will from their vessel be cast forth,
and drowned in sacks near La Cattolica,
through a disloyal tyrant's treachery.*⁸⁴

The penalty of the sack was widely used in Germany. In his treatise on the origin and situation of the Germans (*De origine et situ Germanorum*), Tacitus wrote that the penalty of drowning was practiced by the Germanic tribes:

*Penalties are distinguished according to the offence. Traitors and deserters are hanged on trees; the coward, the unwarlike, the man stained with abominable vices, is plunged into the mire of the morass, with a hurdle put over him.*⁸⁵

⁸⁴ ... gittati saran fuor di lor vasello e mazzerati presso a la Cattolica ... Dante, Divina comedia, Inferno XXVIII, 76 ss. The English translation: The divine comedy of Dante Alighieri. The Italian text with a translation in English blank verse and a commentary by Langdon, 1918: 321. Available at: <https://oll.libertyfund.org/titles/alighieri-the-divine-comedy-vol-1-inferno-bilingual-edition> The verb *mazzerare* stands also for killing a person or animal by throwing it into water after packing it in a sack and tying to a stone to stay on the bottom.

⁸⁵ Tac. Germ. 12: ... *Distinctio poenarum ex delicto. Proditores et transfugas arboribus suspendunt, ignavos et imbelles et corpore infames caeno ac palude, iniecta insuper crate, mergunt.* English translation: <https://www.sacred-texts.com/cla/tac/g01010.htm>

In the Middle Ages the penalty of the sack was known in different regions. It took the form of submerging in water using a leather or a canvas sack.⁸⁶ The *Glosse zum Sachsenspiegel* gives the following description:

*Parricides should first be dragged to the place of execution (on a wooden board and on the way pinched with red-hot tongs), and then sewn in a hide together with a dog and with a monkey and with an adder and a cock.*⁸⁷

Killing by submerging in water was established as a rule in the first body of German criminal law, the *Constitutio criminalis Carolina* of 1532, called also Procedure for the judgment of capital crimes (Peinliche Halsgerichtsordnung) of the emperor Charles V.⁸⁸

There are several cases reported on this penalty in the literature. A chronicle of the city of Dresden provides the following account of an execution in 1548. In that year, Hans Schumann deliberately and with malicious intent killed his pregnant mother because she took another man and kept the mill his father owned. When she entered the wheel room at night, he pushed her into the water so that she was carried under the millwheel and perished. After his sentencing Schumann was first tied in a loop and pinched with glowing tongs. Then he was brought on the bridge over the Elbe. To torment him more violently, he was not put into a sack of canvas but rather into a leather sack. Several animals were also put into the sack which was tied tightly at the top. The sack was then thrown into the Elbe. But the knot became untied and the dog and the cat were able to escape. Because the water filled the sack the parricide died of suffocation under water faster than the executioners had wanted.⁸⁹

⁸⁶ See Deutsche Rechtsalterthümer von Grimm, 1899: 278 ss. See also Neues Archiv des Criminalrechts, 1820: 376. See also Jacobi Heils, 1738: 489 s (IV. Das Säcken oder Ertränken).

⁸⁷ Glosse 2, 14 zum Sachsenspiegel: ... eltermörder soll man erst laßen schleifen u. darnach nehen in ein haut mit einem hunde u. mit einem affen u. mit einer natern u. mit einem hanen. Quoted in: Deutsche Rechtsalterthümer von Grimm, 1899: 279.

⁸⁸ E. g. Art. 131. (Infanticide) Item welches weib jre kind, das leben vnd glidmaß empfangen hett, heymlicher boßhafftüger williger weiß ertödtet, die werden gewonlich lebendig begraben vnnnd gepfelt, Aber darinnen verzweiffelung zuerhütten, mögen die selben übelthätterinn inn welchem gericht die bequemlicheyt des wassers darzu vorhanden ist, ertrenckt werden. ... See also Art. 133 or 159 (Burglary): ... der mann mit dem strang, vnnnd das weib mit dem wasser oder sunst nach gelegenheyt der personen, vnnnd ermessung des richters.

⁸⁹ Der Chur-Fürstlichen Sächsischen weitberuffenen Residentz- und Haupt-Vestung Dresden Beschreib: und Vorstellung: Auf der Churfürstlichen Herrschaft gnädigstes Belieben in Vier Abtheilungen verfaßet, mit Grund: und anderen Abrißen, auch bewehrten Documenten erläutert Durch Ihrer Churfürstlichen Durchl. zu Sachsen etc. Rath zu den Geheimen: und Reichs-Sachen bestalten Secretarium auch Archivarium Antonum Wecken. Mit Churfürstl. Sächsischen gnädigsten Privilegio. Nürnberg 1680: 482.

We know the purpose of a leather sack was to prolong the suffering. Because the leather was impermeable the victim did not die of suffocation immediately but could stay alive for hours: “let him lie in the water for half a day and if he is still not dead so leave him there longer.” (Neues Archiv des Criminalrechts, 1820: 376).

In Saxony, but probably also elsewhere, different animals were put into the sack together with the convict. The selection was not uniform and depended on the circumstances and possibilities: “The rooster had already come to be honored. The monkey was exchanged for a cat, the living snake for one painted on paper. ... After this wonderfully mixed menagerie had been inserted into the sack of coarse canvas to be tied over it so that no communion could take place between these animals and the person to be drowned; and only then this person was put into the sack, which was held in place with the help of an iron ring.” (Neues Archiv des Criminalrechts, 1820: 377 ss).

As late as 1734, according to a decision of the law faculties of Leipzig and Wittenberg confirmed by the Sovereign, an infanticide was drowned in a sack with a dog, a cat, and a snake:

*Because of that horrible crime the penalty of the sack was imposed on the second day and was carried out so that the wrongdoer was pulled in a loop to the place of execution, put in a sack with a dog, a cat and a snake, taken to the water, and drowned. This penalty was pronounced by the Law Faculties in Witenberg and in Leipzig and confirmed by the King of Poland so that it could be carried out.*⁹⁰

In Saxony, this death penalty was abolished by a rescript dated June 17, 1761. In the Prussian provinces it had been abolished a few decades earlier. At least in Europe this was the end of one of the most perverse penalties. It disappeared from the inventory of criminal law for good. This unnatural punishment perversely attempted to avenge a crime which was regarded to be against the nature. To increase the

⁹⁰ Commentatio jvridica de processv criminali tam inqvisitorio qvam accvsatorio jvste decernendo rite tractando, et prvdenier absolvendo, vna cvm ajectis observationibvs et cavtelis ad praxin maxime forensem spectantibvs. Accessit in calce nova constitvtio et taxa criminalis wvrtembergica. Cvra et stvdio Joan. Ernesti Pistorii, J.Cri. Tvbinge 1764: 4: ... *quocirca tam immani facto poena Culei d. 2. fuit opposita, sic se habens*: daß die Missethäterin auf eine Schleife zur Richtstatt ausgeführt, mit einem Hund, einer Katz und einer Schlange in einen Sack gesteckt, ans Wasser geliefert, und ersäuft worden; *quae poena a Facult. Jurid. & Witenberg. & Lips. dictata atque a Potentiss. Polon. Rege confirmata sic quoque in executionem tracta est.*

dramatic effect on the public witnessing the execution, or maybe for some cultic reason, it also caused innocent animals having no connection with the crime or its perpetrator to endure unnecessary suffering.

Although the penalty of the sack disappeared from penal codes, its basic idea did not disappear altogether. In his diary/notebook *Cursed Days* (Окаянные дни), the Nobel prize laureate for literature Ivan Bunin published a sort of a diary of the revolution he witnessed while in Moscow and Odessa in the years 1918-20. His notes, together with his story Sunstroke (Солнечный удар), served as a basis for a 2014 Russian drama movie directed by Nikita Mikhalkov. In the last scene of the movie, the officers of the White army held in a prisoner-of-war camp in the Crimea in November 1920 were put on an old barge under the pretext that they would be transported to the town of Ochakov, located on the northern coast of the Black Sea. They instead were locked inside the barge which the Reds towed to the open sea and sunk it. All officers perished. None of them were tried or convicted before a criminal court. It is possible that similar crimes were perpetrated at other times and in other places, too.

References

- Amunátegui Perello, C. F. (2006) El origen de los poderes del "Paterfamilias" I: El "Paterfamilias" y la "Patria potestas", *Revista de Estudios Histórico-Jurídicos*, Número XXVIII., pp. 37-143.
- Arjava, A. (1998) Paternal Power in Late Antiquity. *The Journal of Roman Studies*, Vol. 88, pp. 147-165.
- Bardis, P. (1963) Main Features of the Ancient Roman Family. *Social Science*, Vol. 38, No. 4, pp. 225-240.
- Bauman, R. A. (1996) *Crime and Punishment in Ancient Rome* (London New York: Routledge).
- Biavaschi, P. (2016) L'ambiguo destino della poena cullei tra sopravvivenza e innovazione, in: Codice Teodosiano e tradizioni giuridiche in Occidente. La terra, strumento di arricchimento e sopravvivenza, Collana Ravenna capitale.
- Briquel, D. (1980) Sur le mode d'exécution en cas de parricide et en cas de perduellio. *Mélanges de l'école française de Rome*, Vol. 92(1), pp. 87-107.
- Cantarella, E. (2003) Fathers and Sons in Rome. *The Classical World*, Vol 96(3), pp. 281-298.
- Cantarella, E. (2017) *Come uccidere il padre. Genitori e figli da Roma a oggi* (Milan: Feltrinelli).
- Cantarella, E. (2018) *Supplizi Capitali. Origine e funzioni delle pene di morte in Grecia e a Roma*. Prima edizione digitale (Milan: Feltrinelli).
- Capogrossi Colognesi, L., Cenerini, F., Lamberti, F., Lentano, M., Rizzelli, G. & Santorelli, B. (2019) *Anatomie della paternità. Padri e famiglia nella cultura romana*. Iuridica historica 9. Lecce: Edizioni Grifo.
- Carlà-Uhink, F. (2017) Murder Among Relatives. Intrafamilial Violence in Ancient Rome and Its Regulation. *Journal of Ancient History* 5(1), pp. 26-55.
- Cloud, J. C. (1971) Parricidium: from the Lex Numae to the Lex Pompeia de parricidiis. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung* 88, pp. 2-18.
- Crook, J. (1967) Patria Potestas. *The Classical Quarterly*, Vol. 17(1), pp. 113-122.
- Da Nóbrega, V. (1950) A nouveau «parricidas». *Latomus*, 9(1), pp. 3-12.

- Daube, D. (1969) *Roman Law. Linguistic, social and philosophical aspects*. Edinburgh: Edinburgh U. P.
- Dixon, S. (1992) *The Roman Family*. Baltimore (The Johns Hopkins University Press).
- Egmond, F. (1995) The Cock, the Dog, the Serpent, and the Monkey. Reception and Transmission of a Roman Punishment, or Historiography as History. *International Journal of the Classical Tradition*, Vol. 2, No. 2, pp. 159-192.
- Ernout, A. & Meillet, A. (1960) *Dictionnaire étymologique de la langue latine*. Histoire des mots 2, 4ième éd. rev., corr., augment. d'un index (Paris: Klincksieck).
- Falcon, M. (2013) 'Paricidas esto'. Alle origini della persecuzione dell'omicidio. In: Garofalo, L. (ed.) *Sacertà e repressione criminale in Roma arcaica* (Napoli: Jovene), pp. 191-274.
- Fanizza, L. (1979) Il parricidio nel sistema della 'lex Pompeia'. *Labeo* 25, pp. 266-289.
- Fayer, C. (2005) La familia romana, Aspetti giuridici ed antiquari, Parte prima, Roma. 1994, Parte seconda, Sponsalia, matrimonio, dote, Roma 2005, Parte terza, Concubinato, divorzio, adulterio, Roma 2005.
- Franciosi, G. (2004) *La famiglia romana, Società e diritto* (Torino: Giappichelli).
- Frier B. W. & McGinn, T. A. J. (2004) *A casebook on Roman Family Law* (Oxford: Oxford University Press).
- Gardner, J. F. (1998) *Family and Familia in Roman Law and Life* (Oxford: Oxford University Press).
- Garnsey, P. (1970) *Social Status and Legal Privilege in the Roman Empire* (Oxford: Oxford University Press).
- Glare, P. G. W. (ed.) (1982) *Oxford Latin Dictionary* (Oxford: Clarendon Press; New Year: Oxford University Press).
- Grimm, J. (1899) Vierte vermehrte Ausgabe besorgt durch Andreas Heusler und Rudolf Hübner. Band II. Leipzig, pp. 278 ss.
- Henrion, R. (1941) Paricidas, *Revue belge de philologie et d'histoire*, tome 20, fasc. 1-2, p. 219-241, <https://doi.org/10.3406/rbph.1941.1606>, retrieved from https://www.persee.fr/doc/rbph_0035-0818_1941_num_20_1_1606 (1 March 2021).
- Hubbell, H. M. (1949) *De Inventione; De Optimo Genere Oratorum; Topica* (Loeb Classical Library) (Harvard: Harvard University Press/William Heinemann Ltd.)
- Jacobi Heils, C. (1738) ...*Judex Et Defensor In Processu Inquisitionis, seu Tractatus Criminalis Theoretico-Practicus: ex juriibus imperii Carolinis et praecipue saxonis electoralibus collectus ... : cum indice*, Lipsiae: Gleditsch.
- Johnson, A. C., Coleman-Norton, P. R. & Frank Card Bourne – Pharr, C. (ed.) (2003) *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index*. The Lawbook Exchange (New Jersey: Clark).
- Kaser, M. (1949) Religione e diritto in *Roma arcaica*, *Annali dell'Università di Catania*, Vol. 3, 12 s.
- Kaser, M. (1980) *Das altrömische Jus: Studien zur Rechtsvorstellung und Rechtsgeschichte der Römer* (Göttingen: Vandenhoeck & Ruprecht).
- Kranjc, J. (2012) *Virtues in the Law: The Case of Pietas*, The Straus Institute Working Paper Series (New York: New York School of Law), retrieved from: https://www.law.nyu.edu/sites/default/files/upload_documents/WP5kranjc.pdf. (1 March 2021).
- Kunkel, W. (1962) *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit* (Munich: Bayerische Akademie der Wissenschaften).
- Kupiszewski, H. (1971) Quelques remarques sur le 'parricidium' dans le droit romain classique et post-classique. IN: *Studi in onore di Eduardo Volterra*, vol. 4. Milan: Giuffrè, pp. 601-614 (now in Id., *Scritti minori* (Naples: Jovene, 2000), pp. 225-238.
- Levy, E. (1938) *Gesetz und Richter im kaiserlichen Strafrecht. Erster Teil. Die Strafzumessung*. Gesammelte Schriften, zweiter Band (Milan: Dott. A. Giuffrè).
- Levy, E. (1963) Die römische Kapitalstrafe, IN: *Ernst Levy, Gesammelte Schriften*, zweiter Band (Köln: Bohlau Verlag).
- MacCormack, G. (1982) A Note on a Recent Interpretation of "Paricidas esto", *Labeo* 28, pp. 43-50.
- Magdelain, A. (1984) Paricidas. In: *Du châtement dans la cité. Supplices corporels et peine de mort dans le monde antique*. Publications de l'École française de Rome, 79 (Rome: École Française de Rome), pp. 549-571.

- Magdelain, A. (1990) Publications de l'auteur. In: , Jus imperium auctoritas. Études de droit romain, Publications de l'École française de Rome, 133 (Rome: École Française de Rome), pp. 7-9.
- Meylan, P. (1928) *L'étymologie du mot parricide à travers la formule "Paricidas esto" de la loi romaine.* (Lausanne: Rouge).
- Mommsen, T. (1899) *Römisches Strafrecht* (Berlin: Nachdruck 1955).
- Moyle, J. B. (translator) (1913). *Caesar Flavius Justinian: The Institutes of Justinian*, Fifth Edition, retrieved from: https://www.gutenberg.org/files/5983/5983-h/5983-h.htm#link2H_4_0102 (1 February 2021).
- Neues Archiv des Criminalrechts (1820) Herausgegeben von Gallus Aloys Kleinschrod, Hofrath u. Prof. zu Würzburg, und Ritter des Civilverdienstordens, Christian Gottlieb Konopak, Oberappellationsrath und Professor zu Jena und C. J. A. Mittermaier, ord. Professor des Rechts zu Bonn. Vierten Bandes erstes Stück. Halle.
- Pauly, A., Wissowa, G., Kroll, W., & Witte, K. (1894) *Pauly's real-encyclopädie der classischen altertumswissenschaft; Neue bearbeitung ... unter Mitwirkung zahlreicher Fachgenossen hrsg. von G. Wissowa ...* J. B. Metzler.
- Pelloso, C. (2013) Sacertà e garanzie processuali in età monarchica e proto-repubblicana. IN: L. Garrofolo (ed.) Sacertà e repressione criminale in Roma Antica (Napoli: Jovene).
- Pharr, C. (1952) *The Theodosian Code and Novels and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography* by Clyde Pharr, in Collaboration with Sherrer Davidson, T. and Brown Pharr, M., With an Introduction by C. Dickerman Williams. (Princeton: Princeton University Press).
- Robinson, O. F. (1995) *The Criminal Law of Ancient Rome*. Baltimore: The Johns Hopkins University Press.
- Rüpke, J. (1992) You Shall Not Kill. Hierarchies of Norms in Ancient Rome. *Numen*, Vol. 39(1), pp. 58-79.
- Saller, R. (1984) "Familia, Domus", and the Roman Conception of the Family. *Phoenix*, Vol. 38(4), pp. 336-355.
- Saller, R. P. (1994) *Patriarchy, property and death in the Roman family*. Cambridge: Cambridge University Press.
- Santalucia, B. (1981) Osservazioni sulla repressione criminale romana in età regia. In: Le délit religieux dans la cité antique. Actes de la table ronde de Rome (6-7 avril 1978) *Rome: École Française de Rome (Publications de l'École française de Rome, 48)*, pp. 39-49, retrieved from: https://www.persee.fr/doc/efr_0000-0000_1981_act_48_1_1358 (1 March 2021).
- Santorelli, B. (2019) Poteram quidem fortiter dicere: 'Pater iussi'. L'autorità paterna a scuola tra retorica e diritto, IN: Capogrossi Colognesi, L., Cenerini, F., Lamberti, F., Lentano, M., Rizzelli, G. & Santorelli, B., *Anatomie della paternità. Padri e famiglia nella cultura romana*, Iuridica historica 9 (Lecce: Edizioni Grifo), pp. 73-88.
- ter Beek, L. (2012) Divine Law And The Penalty Of *Sacer Esto* In Early Rome, in: Tellegen-Couperus, O. (ed.) *Law and religion in the Roman republic*, Leiden – Boston: Brill, pp. 11-29.
- Thomas, Y. (1981) 'Parricidium. I. Le père, la famille et la cité (La lex Pompeia et le système des poursuites publiques)' *MEFR* 93, no. 2, pp. 643–715.
- Thomas, Y. (1983) "Paura dei padri e violenza dei figli: immagini retoriche e norme di diritto." In: E. Pellizer & N. Zorzetti, *La paura dei padri nella società antica e medievale* (Roma– Bari: Laterza, pp. 115–140).
- Walde, A. (1938) *Lateinisches etymologisches Wörterbuch*. 3 neu bearbeitete Auflage von J. B. Hofmann (Heidelberg: Winter, s. v.)
- Westbrook, R. (1999) Vitae Necisque Potestas. *Historia* 48, H. 2, pp. 203-223.
- Westrup, C. W. (1939) *Introduction to Early Roman Law. The Patriarchal Joint Family, III, Patria potestas* (Copenhagen, London: Munksgaard. (London: Oxford University Press)).
- Westrup, C. W. (1944) *Introduction to Early Roman Law. The Patriarchal Joint Family, Vol. I, Part I, The House Community, Section I Community of Cult* (Copenhagen, London: Munksgaard. (London: Oxford University Press)).
- Wissowa, G. (1971) *Religion und Kultus der Römer. Handbuch der klassischen Altertumswissenschaft* V.4, C.H. Beck, München, 2. Aufl. 1912, reprint 1971.

Yaron, R. (1962) Vitae Necisque Potestas. *Tijdschrift voor Rechtsgeschiedenis* 30, Issue 2, pp. 243 -251.