

***Crimen maiestatis*: Symbolism and Ritual Protection of Authority in Roman Criminal Law¹**

Marie Neumann

Univerzita Karlova, Právnická fakulta

Katedra právních dějin

E-mail: mari.neumann98@gmail.com

Abstract:

This article focuses on the development of the crime of high treason throughout the era of the Roman Empire, focusing on symbolism and ritual protection of authority in Roman criminal law. Using legal sources and historical cases, it illustrates the changes of this offence, with an emphasis on the changing perceptions of authority. The article draws on legal sources, especially the Code of Justinian and Theodosius and the Digest of Justinian, but also on non-legal sources, especially the work of Titus Livy, as well as other ancient historians. Furthermore, the article works with a variety of domestic and foreign secondary sources, especially monographs and scholarly articles.

Keywords: Roman criminal law; high Treason; Roman Empire; protection of Authority

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The crime of high treason, which can be found under various designations throughout the development of the Roman Empire – first as *perduellio*, later as *crimen maiestatis* – is by contemporary legal sources placed among the most serious crimes a person could commit. Throughout the existence of the Roman civilization, it was a crime whose punishment was more than desirable and had a strongly symbolic, almost ritualistic effect. This article thus attempts to illustrate on a few pages how the protection of various forms of authority functioned in Roman criminal law.

¹ This article is based on the author's Master's thesis, defended at the Faculty of Law, Charles University on May 6, 2025. See ŠMEJKALOVÁ, M. "Proximum sacrilegio crimen est, quod maiestatis dicitur" – vývoj svatokrádeže a velezrady od doby královské po justiniánské kodifikace. Master's thesis, supervisor Skřejpek, Michal. Prague: Charles University, Faculty of Law, Department of Legal History, 2025. This article was originally written in Czech. Artificial intelligence tools (especially Google Gemini) were used for its translation.

At the very beginning, it is also appropriate to define the examined crime, using Bartošek's *Encyklopedie římského práva*. He describes high treason (in both its Latin designations) as follows: "high treason, originally a serious violation of civil liberties and especially any communication with the enemy, or even desertion, [...] later *perduellio* fell under the broader – *crimen maiestatis*"²

This article proceeds chronologically, thus progressively focusing on the archaic period, the period of the Roman Republic, and subsequently the period of the Roman Empire, while attempting, either by using contemporary cases or preserved legal sources, to identify the main characteristics of the crime of high treason in each time period, with an emphasis on the protection of authority, whether religious authority, as we may understand it in archaic times, or ruling authority, as it can be viewed in later times. The focal point of the article lies mainly in the period of the Roman Empire, to which the greatest attention is paid on the following pages, especially given the abundance of preserved legal sources.

The Archaic Period

In the times of the early Roman Empire, which can be bounded by the traditional date of the founding of the city of Rome in 753 BC (although this is indeed more of a mythical milestone)³ and on the other hand by the date of the expulsion of the last Etruscan king Tarquinius Superbus in 510 BC,⁴ the act of high treason is associated with the disruption of harmony with the gods, referred to as *pax deorum*.⁵ For early Roman society, this principle was crucial, and if it was disrupted, the guiding idea associated with punishing the perpetrator of serious crimes, which included high treason, was the reconciliation of the gods and the restoration of the aforementioned *pax deorum*. According to Michal Skřejpek, such an act affected the entire *civitas*, since "in this regard we find collective responsibility, namely in the form of responsibility for the observance of religious, moral, and legal rules".⁶

Unfortunately, essentially no legal sources have been preserved from the archaic times, and therefore knowledge about the crime of high treason and especially about the trials conducted against its perpetrators comes mainly from the works of ancient historians. The source that proved essential in the analysis of *perduellio* during the Roman Kingdom, and which therefore could not be omitted, is undoubtedly the masterful work of the historian Titus Livy – History of Rome (*Ab Urbe Condita*).⁷ He mentions two cases of *perduellio* in relation to the archaic period of Roman history.

² BARTOŠEK, M. *Encyklopedie římského práva*. 2nd revised edition. Praha: Academia, 1994, p. 208.

³ For further details, see for example ŠLOSAR, M. Některé aspekty zrodu antického Říma. In: MASLEN, M. – MASÁROVÁ, E. (ed.). 2018. *Legitímne očakávaní, transparentnosť verejnej správy a zneužívanie práv v aplikačnej praxi v právnom štáte: Zborník z medzinárodnej vedeckej konferencie „Právny štát – medzi vedou a umením“, ako súčasť medzinárodného vedeckého kongresu Trnavské právnické dni, 20. – 21. septembra 2018*. Trnava: Právnická fakulta TU v Trnave, 2018. Bratislava: Wolters Kluwer, 2018, p. 11.

⁴ BARTOŠEK, M. *Dějiny římského práva ve třech fázích jeho vývoje*. Praha: Academia, 1988, p. 20.

⁵ SKŘEJPEK, M. *Ius et religio: právo a náboženství ve starověkém Římě*. Pelhřimov: Vydavatelství 999, 1999, p. 23.

⁶ Ibid.

⁷ This article is based on the following Czech translation: LIVIUS, T. *Livius Dějiny I*. Praha: Nakladatelství Svoboda, 1979; LIVIUS, T. *Livius Dějiny II–III*. Praha: Nakladatelství Svoboda, 1972; LIVIUS, T. *Livius*

First is the case of Horatius, who murdered his own sister because of her love affair with an enemy. This case occurred immediately after the end of the war between the Horatii and the Curiatii. For his act, he was brought before King Tullus Hostilius, who, according to Livy, appointed a pair of judges whose task was to try Horatius for a “crime against the state”.⁸ These judges, of whom Livy speaks, were a pair of *ad hoc* appointed magistrates, referred to as *duumviri perduellionis*, whose role was to investigate the crime of *perduellio*.⁹

Although the opinion that the *duumviri perduellionis* were appointed exclusively for investigating high treason is generally accepted among legal Romanists, Richard Bauman is of the opinion that while this pair of magistrates existed, their competences were substantially broader and they investigated various types of crimes, not exclusively the crime of high treason.¹⁰

The case of high treason and the subsequent sentencing of two sons of the consul Iunius Brutus to death for orchestrating a *coup d'état* is the second example of high treason from archaic times that we learn about from Livy's work. The brothers Titus and Tiberius joined a “conspiratorial association”¹¹ striving for the return of the royal family. However, the attempted conspiracy was quickly uncovered, and both young men were executed upon the consuls' orders. Livy adds that the consuls “sent lictors to carry out the execution. They stripped the youths, scourged them with rods, and beheaded them with an axe”.¹²

This is a case that fulfils the elements of *perduellio* and was also the impulse for the creation of the right to appeal – *ius provocationis*, for it was in connection with it that in 509 BC the *lex Valeria de provocatione* was issued, which was “perhaps the first provocation law”.¹³

***Lex Valeria de provocatione* – 509 BC**

The law *lex Valeria de provocatione*, however, was not solely a provocation law. It was also strongly tied to the transition of the Roman Kingdom into a Republic, as it also included severe punishments for anyone who would attempt to restore the kingdom or declare themselves king. Unfortunately, information about this specific law is fragmented, and one cannot entirely rely on its truthfulness, completeness, and accuracy, as Richard Bauman also points out, describing the lack of primary sources for this law as an “insurmountable gap in the credibility”¹⁴ of the preserved information.

In the archaic period, nevertheless, one cannot yet speak of the protection of authority as it was understood in later stages of the development of Roman law and society,

Dějiny V. Praha: Nakladatelství Svoboda, 1975; LIVIUS, T. *Livius Dějiny VII.* Praha: Nakladatelství Svoboda, 1979.

⁸ *Liv. I*, 26.

⁹ KINCL, J. – SKŘEJPEK, M. – URFUS, V. *Římské právo*. Praha: C. H. Beck, 1995, Beckovy právnické učebnice, p. 324.

¹⁰ BAUMAN, R. A. *The duumviri in the Roman criminal law and in the Horatius legend*. Wiesbaden: Franz Steiner Verlag, 1969, p. 1.

¹¹ *Liv. 2*, 4.

¹² *Liv. 2*, 5.

¹³ KINCL – SKŘEJPEK – URFUS, *c. d.*, p. 418.

¹⁴ BAUMAN, R. A. The *Lex Valeria de provocatione* of 300 B.C. *Historia: Zeitschrift für Alte Geschichte*, 1973, Jhrg. 22, Nr. 1, p. 34.

especially in the imperial period. The primary authority that represented one of the pillars of archaic Roman society was religion, from which also stems the strong emphasis on protecting the harmony with the gods.

The Period of the Republic¹⁵

With the shift to the period of the Roman Republic, the research of the examined issue becomes at least seemingly more accessible, mainly due to the existence of more credible and numerous legal sources, or at least information about the content of these sources if they have not survived in full.

The pivotal source of knowledge about Roman law in this period is undoubtedly the famous Law of the Twelve Tables dating to the mid-5th century BC.¹⁶ From the perspective examined here, the relevant fragment is from the ninth table, captured by the later jurist Marcianus in his work *Institutiones*, according to which: “The Law of the XII Tables commands that whoever incites an enemy or surrenders a citizen to the enemy shall be punished by death.”¹⁷ The primary right protected by the state was therefore not authority as such, but rather the protection of the Roman Republic as a whole, as it was precisely the Republic that enjoyed the highest protection.

When analysing the examined phenomenon in the Republican period, it must be borne in mind that it was precisely in this period that Roman legislation concerning high treason reached its imaginary peak. Between the 2nd and 1st centuries BC, no fewer than five laws were adopted that dealt with high treason in detail.¹⁸

Specifically, these were the *lex Appuleia de maiestate minuta*, dated to 103 BC, in which the crime of *maiestas minuta* was first introduced, which gradually took over the role of the original *perduellio*. However, as Richard Bauman notes, only violent acts and rebellions fell under the new elements of the crime, and all other offences remained designated as *perduellio*.

Another relevant law was the *lex Varia de maiestate* from 90 BC, which *de facto* replaced the previously mentioned law from 103 BC. This law was intended to address “the investigation of those whose intentional actions enabled allies to take up arms against Rome”.¹⁹ Shortly thereafter, however, this law was repealed by the Senate.

A very important achievement of Roman legislation was undoubtedly the *lex Cornelia de maiestate*, which for the first time introduced the so-called interdiction of fire and water as a punishment for high treason, meaning, simply put, exile from Rome. The law was adopted during Sulla’s dictatorship in 81 BC, with the elements of high treason here consisting primarily of actions by officials that were contrary to the *dignitas civitatis*, in addition, however, it also penalized various attacks by citizens against magistrates.²⁰

¹⁵ This part of the article is partially based on a previously published article by the author, for more details see: ŠMEJKALOVÁ, M. *Perduellio a sacrilegium v době římské republiky. Právněhistorické studie*, 2023, Vol. 53, No. 1, pp. 165–180.

¹⁶ SKŘEJPEK, M. *Prameny římského práva: Fontes iuris romani*. 2nd ed. Praha: LexisNexis, 2004, p. 27.

¹⁷ *Ibid.*, p. 47.

¹⁸ KOŁODKO, P. *Ustawodawstwo rzymskie w sprawach karnych: Od ustawy XII Tablic do dyktatury Sulli*. Białystok: Temida 2, 2012, p. 188.

¹⁹ *Ibid.*, p. 208.

²⁰ SANTALUCIA, B. *Studi di diritto penale romano*. Roma: L’Erma di Bretschneider, 1994, p. 143.

The last two laws, the *lex Iulia de maiestate* from 46 BC and the *lex Iulia maiestatis* from 8 BC, are closely related. Although it is appropriate to note that the latter law temporally falls into the period of the Principate, both laws must be interpreted in conjunction with each other, and therefore they are presented together here. The fact that these two laws were used as the basis for the regulation of high treason in both the Theodosian and Code of Justinians should not escape attention. Their main content was a list of elements of crimes that fell under both *maiestas* and *perduellio*. The second of the named offences included, for example, launching a rebellion against Rome, unauthorized departure from a province (by its governors), or mutiny. Both offences thus still existed side by side here, and their merging occurred gradually.²¹

Although the period of the Roman Republic brought a whole series of legislative achievements in relation to the crime of high treason, the question of the protection of authority remained largely overshadowed in them compared to the archaic period and the Empire.

If we turn again to Livy, we cannot ignore that he repeatedly mentions in his work the extraordinary severity of the punishments applied for high treason during the Republic, and these death penalties can often be described as ritualistic. Those convicted of committing high treason faced being thrown from the Tarpeian Rock,²² or, in the case of deserters, being stoned to death.²³ Alternatively, the previously described interdiction of fire and water could also be imposed for high treason.

The Empire – The Principate

Crimen maiestatis during the Principate

During the Principate, apparently also due to the influence of Julius Caesar on the content of the *lex Iulia maiestatis*, which has not survived to this day, a certain change in the elements of high treason can be observed.²⁴ A debate resonates among scholars regarding this law from the early Principate as to whether this law worked more with the punishment of the interdiction of fire and water (i.e., exile) – thus adopting the punishment that was still used at the end of the Republic, as claimed for example by Richard Bauman,²⁵ or directly with the death penalty. C. W. Chilton believes that with the onset of the Principate there was a rapid deterioration in the conditions of exile as demanded by the interdict, which then *de facto* amounted to a death sentence.²⁶ Barbara Levick engages in the scholarly

²¹ CHILTON, C. W. The Roman Law of Treason under the Early Principate. *The Journal of Roman Studies*, 1955, Vol. 45, p. 74.

²² LIVIUS, T. *Livius Dějiny II–III*. Praha: Nakladatelství Svoboda, 1972, p. 487.

²³ Ibid., p. 479.

²⁴ LEVICK, B. M. Poena Legis Maiestatis. *Historia: Zeitschrift Für Alte Geschichte*, 1979, Jhrg. 28, Nr. 3, p. 361.

²⁵ BAUMAN, R. A. *Impietas in principem, a study of treason against the Roman emperor with special reference to the first century A.D.* München: C. H. Beck, 1974. Cited from MELOUNOVÁ, M. Crimen maiestatis and the poena legis during the Principate. *Acta Antiqua Academiae Scientiarum Hungaricae*, 2014, Vol. 54, No. 4, p. 411.

²⁶ CHILTON, c. d., p. 73.

debate and leans more towards the opinion that the typical punishment prescribed by this law for high treason was indeed death.²⁷

However, one cannot overlook the opinion of Robert Samuel Rogers, who concludes in his book that not only did the punishments for high treason vary, but high treason itself was divided into two partial elements of the crime: “It is quite clear from Ulpian’s passage²⁸ that all cases of *maiestas* were not of the same nature, Augustus’s law on *maiestas* included both old charges for *perduellio* and less serious charges, such as *de famosis libellis*.²⁹ This distinction must be kept in mind constantly when studying charges of *maiestas*.³⁰ If we were to comment on this opinion, it is obvious that the elements of high treason evolved over time and in this connection, there was a certain differentiation according to the severity of the offence. A similarity can be seen here with *parricidium*, in which internal differentiation according to the severity of the act (and according to the relationship of the person who was the victim to their murderer) also existed.³¹ Following Robert Samuel Rogers, C. W. Chilton also emphasizes that the punishment for *perduellio* was the strictest punishment, i.e., the death penalty, while for *maiestas* the punishment was only exile.³²

Records of actual trials from the time of the Principate are preserved to this day in much greater numbers, but due to the limited scope of this article, only two will be presented again. In order to achieve a more comprehensive coverage of the entire period of the Principate, this article presents cases from different epochs and is thus not limited, for example, only to the period of the reign of Julius Caesar, the first presented case thus falls into the period of the reign of Emperor Tiberius, as it took place in 17 AD.

The Trial of Appuleia Varria

As Tacitus writes, Appuleia Varria was the niece of Emperor Augustus’s sister, and was denounced by an unknown informant and accused partly of adultery and partly of high treason. She was accused of the fact “that by insulting speeches she held the divine Augustus and Tiberius and his mother up to ridicule, and that, despite being related to Caesar, she commits adultery”.³³ It is interesting that these two charges were judged under different laws – adultery was decided under Julian’s law, i.e., the *lex Iulia de adulteriis coercendis* from 18 BC.³⁴ Conversely, regarding high treason, Tiberius declared that he wished it to be investigated only if someone spoke disrespectfully of the divine Augustus. However, since in this case it was a personal insult to Tiberius, he determined that he did not want this crime to be investigated. At the subsequent session of the Senate, he requested on

²⁷ LEVICK, *c. d.*, p. 361.

²⁸ He refers to the 48th book, fourth title, eleventh fragment of the Digest: “[...] Indeed, not every accused under the Iulian law on high treason is in this position, but only one accused of high treason motivated by hostility against the state or the emperor. If someone is accused under the Iulian law on lese-majeste for another reason, he is freed from the crime by death.”

²⁹ For example, writing libellous or defamatory texts.

³⁰ ROGERS, R. S. *Criminal Trials and Criminal Legislation under Tiberius*. Middletown: American Philological Association, 1935, pp. 6–7.

³¹ See e.g. LEVICK, *c. d.*, p. 361.

³² CHILTON, *c. d.*, p. 73.

³³ *Tac. Ann.* 2. 50, cited from TACITUS, P. C. *Tacitovy Letopisy. Bibliotéka klasikův řeckých a římských. Tacitovy dějiny*. Praha: E. Grégr, 1872, p. 113.

³⁴ BARTOŠEK, *Encyklopedie římského práva*, p. 206.

behalf of the accused that her statements not be considered a crime. The outcome of the proceedings was therefore an acquittal of the charge of high treason, but for the charge of adultery she was to be handed over to her relatives and banished from Rome according to ancient traditions.³⁵ It is very interesting to observe in retrospect what reverence Augustus continued to enjoy, he was essentially placed on a pedestal of inviolability by Tiberius, and his very person was protected even after his death.

The Trial of Gnaeus Calpurnius Piso

We will remain with Tacitus's work when examining the second case, which concerns high treason during the Principate. As Robert Samuel Rogers writes, Tacitus devoted a significantly more extensive description to this particular case of high treason than to any other – thus we do not have to deduce as much from the historical context here, moreover, it is good to note that we are already talking about a case for which the Senate decree has also been preserved, which likewise provides a detailed insight into the situation.³⁶

In this specific case, we learn about the governor of the province of Syria, Gnaeus Calpurnius Piso, who in 20 AD was tried for his conduct partly in the administration of the province and partly for his relationship to and alleged connection with the death of Germanicus Iulius Caesar.

Germanicus himself is an extremely interesting person, therefore he will be briefly introduced in the following lines. He was the adoptive son of Emperor Tiberius and already in 7 AD, although he was still five years short of the required age, he became a quaestor, thanks to his privileged position as a member of Tiberius's family.³⁷

He subsequently fought alongside Tiberius against the Germanic tribes, and as a decorated and successful military commander, became a consul in 12 AD. It is interesting to note, however, that in this case he avoided the obligation to first be a praetor, which was usually considered a prerequisite.³⁸ In 13 AD, Germanicus becomes a member of Augustus's advisory council, and it is determined that all decisions of this body are to be perceived as decisions of the entire Senate.³⁹

Over the next few years, Germanicus continued to fight the Germanic tribes, and when he returned to Rome in 17 AD, Tiberius asked the Senate that Germanicus be appointed leader of the eastern provinces, and that he be allowed to enjoy the so-called *imperium proconsulare maius*, i.e., the highest military authority. Around 18 AD, Gnaeus Calpurnius Piso was installed by Tiberius in the position of provincial governor, and soon he stopped respecting the orders given to him by Germanicus, such as transferring part of the army from Syria to Armenia – this and other disputes led to growing tension between the two men.⁴⁰

³⁵ Tac. Ann. 2.50.

³⁶ ROGERS, Robert Samuel. A Tacitean Pattern in Narrating Treason-Trials. *Transactions and Proceedings of the American Philological Association*, 1952, Vol. 83, p. 279.

³⁷ JONES, T. Germanicus. In: PAGAN, V. E. (ed.). *The Tacitus encyclopedia. Volume I*. Chichester: Wiley Blackwell, 2023, p. 480.

³⁸ Ibid., p. 481.

³⁹ Ibid.

⁴⁰ Ibid., p. 482.

The situation escalated when Germanicus's health suddenly began to deteriorate, and he was convinced that Piso had poisoned him, his suspicions only multiplied when items traditionally associated with the practice of black magic⁴¹ were found near the camp. Germanicus subsequently died at the age of 35, and the wheels of the trial against Piso slowly but surely were set in motion.

The delator⁴² Fulcinus Trio, acting as the accuser, demanded that Piso be convicted by the consuls and thus decided not to use the classical procedure with a trial before the *quaestio*, presided over by a praetor, which was usually responsible for hearing the crime of high treason.⁴³ Wilhelm Kiendorf traces the reasons why Trio wanted to take the path of the Senate as follows: "a) not only was the accused a prominent member of the aristocracy, but the alleged murdered man was also the adoptive son of the emperor [...] b) in a senatorial trial it was permissible to join complaints that would have required several proceedings in ordinary proceedings [...]".⁴⁴ To this Alison Cooley adds that "it was a relatively new innovation"⁴⁵ and we can thus observe a shift from investigative commissions to the Senate.

It must be said that Trio's involvement in the trial aroused the opposition of the members of Germanicus's staff, for they claimed that Trio was not involved in the case in any way and subsequently obtained only the authorization to judge Piso's earlier career. Tiberius, who was an emperor at this time, was asked to hear this case himself, the emperor, nevertheless, decided to listen to his advisors and handed the case over to the senatorial court for resolution.⁴⁶

Although he shifted the jurisdiction from himself to the Senate, he personally presided over the court, investigated Piso's career, and summarized the presented charges – they were of several types: partly for the maladministration of the province of Spain, which had fallen under his administration in previous years, partly for the alleged premeditated murder of Germanicus, which he was supposed to have committed by administering poison, and partly, which is central to this article, for "undermining" the trust of the army he commanded in Syria and inciting a civil war inside and outside the province.⁴⁷

The Senate decree *Senatus Consultum de Cn. Pisone Patre* from the year 20 AD has been preserved to this day, comprehensively describing this case, however, it must be stated that this decree "does not provide information on how the case originally came before the Senate, but rather how Tiberius ordered the Senate to proceed after Piso's suicide".⁴⁸ Nevertheless, we can read in it, for example, that Piso tried to "incite civil war [...] because he abandoned the province of Syria [...] and because of this, Roman soldiers were forced into conflict with each other [...]".⁴⁹ Piso's defence, which consisted of Manius Lepidus, Lucius Piso, and Livineius Regulus, managed to overturn the murder charge, but they did

⁴¹ Ibid.

⁴² BARTOŠEK, *Encyklopedie římského práva*, p. 88.

⁴³ KIERDORF, Wilhelm. Die Einleitung Des Piso-Prozesses (Tac. Ann. 3,10). *Hermes*, 1969, Jhrg. 97, Nr. 2, p. 247.

⁴⁴ Ibid., pp. 247–248.

⁴⁵ COOLEY, A. E. *The Senatus consultum de Cn. Pisone patre: text, translation, and commentary*. Cambridge: Cambridge University Press, 2023, p. 45.

⁴⁶ ROGERS, A Tacitean Pattern in Narrating Treason-Trials, p. 280.

⁴⁷ Ibid.

⁴⁸ COOLEY, c. d., p. 45.

⁴⁹ *SC de Cn. Pisone patre* 45.

not register such success with the high treason charge. Unfortunately, however, we will not know how the trial would have ended if it could have proceeded properly all the way to the end, because Piso committed suicide after being placed under house arrest.⁵⁰

In the Senate decree, we read that Piso was condemned posthumously such that “in accordance with the customs of our ancestors, no women who should have mourned him are allowed to mourn, all his statues and portraits are to be removed [...] his name is to be removed from the base of the statue of Germanicus which was erected on the Campus Martius [...] and his property shall be declared public property, with the exception of a forest in Illyria, which is to be returned to Emperor Tiberius”.⁵¹

The Senate subsequently resolved that half of the property was left to his son of the same name, who served in the role of quaestor, because “it is to be hoped that he will be completely different from his father and will behave properly and appropriately if he changes his first name so as not to be named the same as his father”.⁵² The second half was then to be received by Piso’s second son, Marcus, without further conditions. It was also stated that Piso’s daughter, Calpurnia, was to receive one million sesterces as her dowry, and another four million as her *peculium*.⁵³

As a side note, it is interesting to state that, as Elizabeth Cooley points out, the Senate also used “extreme terms to condemn Piso’s personality, even stripping him of humanity and essentially isolating him from the rest of mankind [...]. The use of the word *feritas* ranked Piso among barbarians and wild animals, so they essentially considered him less than human.”⁵⁴

The second interesting side note is the fact that the emperor also reprimanded the accuser Trio, insisting that “he should lessen the vehemence in his speeches, *monuit ne facundiam violentia praecipitaret*”.⁵⁵

It is important here to emphasize the role the emperor played in the judicial process, because according to Steven H. Rutledge, this period can be characterized by “the rule of law [...] for the ruler only elevated himself to a level above the law during the time of Emperor Justinian”.⁵⁶ In connection with this last quotation, one can reflect on how significant a shift in the punishment of high treason occurred since the days of the Republic. It seems that the proceedings themselves were more thorough, taking place before the Senate, apparently even with the possible participation of the ruler. Although we unfortunately cannot say exactly what sanction would have been applied if he had lived during the trial, due to the suicide of the accused Piso, we can observe here as well that it was a sanction that was degrading in a certain way – i.e., the removal of portraits, statues, or the obligation for the son to change his name, but also a financial one, which consisted in the confiscation of property. Therefore, if we are again to look for an answer to the research question that

⁵⁰ ROGERS, A Tacitean Pattern in Narrating Treason-Trials, p. 280.

⁵¹ *SC de Cn. Pisone patre* 71. To this it can only be noted that according to Michal Skřejpek, this was the so-called *damnatio memoriae*, i.e., the erasure of the memory of the condemned person. See KINCL – SKŘEJPEK – URFUS, c. d., p. 336.

⁵² Ibid., p. 123.

⁵³ Ibid.

⁵⁴ Ibid., p. 165.

⁵⁵ RUTLEDGE, Steven H. Delatores and the Tradition of Violence in Roman Oratory. *The American Journal of Philology*, 1999, Vol. 120, No. 4, p. 560.

⁵⁶ Ibid., p. 282.

this article poses, namely how authority was protected in accusations of high treason, the use of certain, essentially exemplary, punishments was intended to act both as a certain corrective to behaviour, but at the same time certainly also as prevention, which was meant to deter possible future perpetrators from committing the crime of high treason.

The Empire – The Dominate

Since three major codifications of Roman law fall into the period of the late Roman Empire, which is usually designated as the Dominate, this chapter is devoted to a progressive analysis of the relevant provisions of the Theodosian Code from 438 AD,⁵⁷ the Code of Justinian from 529 AD, and also the Justinian Digest from 533 AD.⁵⁸ Due to a sufficient number of preserved codifications, the analysis of specific cases was not undertaken for this period, as was the case in the preceding periods.

Crimen maiestatis in the Theodosian Code

The Theodosian Code must not be missing in this article, as “it was the first official attempt to codify the law”.⁵⁹ Nevertheless, according to the opinion of the author collective Jaromír Kincl, Valentin Urfus, Michal Skřejpek, it was “a collection of mediocre juristic quality, it had completely extraordinary historical significance for Western Europe. It was published shortly before the definitive fall of the Western Roman Empire, but it survived the fall and as a result of the principle of the personality of law it remained in force as the ‘national law’ of the Romans and the Catholic Church until the 11th century.”⁶⁰ However, it is a codification so fundamental that this article will focus on specific provisions of the Code that deal with high treason.

C. Th. 9, 5 – On lex Iulia maiestatis and C. Th. 9, 6 – A slave must not accuse his master, nor a freedman his patron or family patron, except for the crime of high treason

When searching for the crime of high treason in the Theodosian Code, it is interesting to find that while the fifth title of the ninth book is devoted to high treason, its very name suggests that it refers to the earlier law *lex Iulia maiestatis*, which it merely supplements, as this title consists of only one fragment. The immediately following title also deals with high treason, but in the context of the obligation of a slave, respectively a freedman, to accuse his master (or patron).

“Whoever has brought an accusation of high treason against another, let him know that if he is unable to support his charge with clear evidence, he himself shall be subjected to torture, for in such a matter no one can be protected by any privilege of his position. Likewise, he who is proven to have induced or instigated the accuser to such a charge must also be tortured, so that just retribution may be exacted on all who knew of this crime,”⁶¹

⁵⁷ KINCL – SKŘEJPEK – URFUS, *c. d.*, p. 41.

⁵⁸ *Ibid.*, p. 44.

⁵⁹ *Ibid.*, p. 40.

⁶⁰ *Ibid.*, p. 41.

⁶¹ *C. Th. 9, 5, 1.*

reads the fifth title. Thus, a certain tightening of the *lex Iulia maiestatis* procedure can be observed, and perhaps a certain effort to prevent false accusations of high treason.⁶²

The sixth title then addresses the relationship between a slave and his master, or between a freedman and his patron, specifically in relation to the bringing of an accusation by a slave (freedman). First of all, one can read that: “If slaves accuse their masters, there is no need to await the outcome of a judicial proceeding, there is no need for any investigation or examination – those who bring such charges are to be immediately burned along with their denunciations, writings, and everything they have prepared for the accusation. The exception, however, is the crime of high treason, because in this case even a denunciation submitted by a slave is considered honourable, for this crime is directed directly against the emperor.”⁶³

High treason was thus a crime so serious that something otherwise unthinkable under different circumstances – i.e., a slave accusing his master – was permitted. As an aside, it is interesting to notice what harsh punishments awaited slaves if they perhaps attempted to accuse their master of any other crime. This also resonates with the following fragment, which reads: “If any member of the household or servants should bring an accusation against his master with the intent to damage his honour, life, or property, he must be executed by the sword at the very beginning of the accusation, even before the summoning of witnesses and the judicial investigation. Such a shameful accusation must be silenced before it is even heard. The only exception is the crime of high treason.”⁶⁴

Crimen maiestatis in the Code of Justinian

The Code of Justinian, to which the following subchapter will be devoted, is one of the components of the *Corpus Iuris Civilis* collection of Emperor Justinian and represents a revision of the original Code of Justinian from 529 AD. After the publication of the Digest in 533 AD, “the necessity of harmonizing the Code with the Digest and the Institutes also arose [...] under the name ‘*Codex Iustinianus repetitae praelectionis*’ (the Code of Justinian of the repeated reading) the codification came into effect on December 29, 534.”⁶⁵ The following lines are thus devoted to an analysis of the relevant provisions of the code.

C. I. 9, 8-On lex Iulia maiestatis

The title of the eighth title of the ninth book of the Code of Justinian practically matches the already described corresponding part of the Theodosian Code above, and it also deals with the older law *lex Iulia maiestatis*. Besides the fact that some fragments speak about the possibility of conducting interrogations by torture and in this context also that no one can be protected by their military rank or position if they were subjected to torture⁶⁶ based on imperial consent,⁶⁷ the fifth fragment can be considered fundamental. Regarding tor-

⁶² At this point, one can speculate whether this has some connection with the multitude of political trials, for example, during the reigns of Emperors Caracalla or Diocletian.

⁶³ *C. Th.* 9, 6, 2.

⁶⁴ *C. Th.* 9, 6, 3.

⁶⁵ KINCL – SKŘEJPEK – URFUS, *c. d.*, p. 49.

⁶⁶ *C. I.* 9, 8, 3.

⁶⁷ *C. I.* 9, 8, 4.

ture, it should also be noted that only in this era does it become permissible even for free people, not only for slaves, as was the case earlier.⁶⁸

The constitution in question offers a lot of fundamental information, which will be gradually analyzed here. First, it states that high treason is committed by: “Whoever enters into a criminal alliance with soldiers, private individuals, or even barbarians, who takes or accepts an oath that binds him to such a group, who plans the murder of illustrious men from the court or senators.”⁶⁹ The perpetrator of high treason, according to the same fragment, would be punished by execution by the sword and his property would be forfeited to the state treasury.⁷⁰

Furthermore, it stipulates that the sons of the perpetrator of high treason will not pay for their father’s crime with the same punishment but will only be excluded from the possibility of inheriting from their mother, grandparents, and other relatives, including inheriting from the testaments of strangers. It is literally stated that they are to “forever remain destitute and poor, and the *infamia*⁷¹ of their father is to follow them to the end of their lives, so that they can never attain any public role”.⁷² Moreover, although the sons were not to face a capital sentence, the life the descendants of a traitor led was to be truly desperate, the fragment directly states that “death is to be a comfort and life a punishment”.⁷³ The fragment right away, and under the threat of infamy, forbids any interference with the imperial decision and stipulates that an appeal in this matter is not possible.⁷⁴

Those who, on the contrary, suffered somewhat less from the punishment of their fathers were daughters, and this directly because they were considered the weaker sex (*infirmitas sexus*), who, unlike their brothers, would not exude such boldness. For that reason, they could inherit ¼ of their mother’s inheritance, so that they could thus secure “a modest income, rather than material advantages and an heir’s status”.⁷⁵

It is interesting that according to this fragment, investigations were initiated even after the death of the perpetrator of high treason, and this had been the case “since the time of Emperor Marcus Aurelius, who ordered the confiscation of the property of the senator Depitianus after his death for participation in the conspiracy of Avidius Cassius even after his death”.⁷⁶ The Code immediately explains the reason for investigating and condemning the perpetrator even after his death, so that “his memory may be forbidden and his property seized from his heirs”.⁷⁷ However, this is a practice that was introduced earlier, as previously illustrated in the case of Gnaeus Calpurnius Piso, where although conviction for high treason occurred only after the death of the accused, by the emperor’s involvement, the impact on the descendants of Gnaeus Calpurnius Piso was not as intense as the Code of Justinian prescribes. It can thus be speculated that the emperor could personally intervene in the severity of the punishment and breach the legal basis.

⁶⁸ KINCL – SKŘEJPEK – URFUS, *c. d.*, p. 339.

⁶⁹ *C. I. 9, 8, 5.*

⁷⁰ *Ibid.*

⁷¹ In the sense of infamy.

⁷² *C. I. 9, 8, 5, 1.*

⁷³ *Ibid.*

⁷⁴ *C. I. 9, 8, 5, 2.*

⁷⁵ *C. I. 9, 8, 5, 3.*

⁷⁶ *C. I. 9, 8, 6.*

⁷⁷ *C. I. 9, 8, 6, 2.*

Crimen maiestatis in the Digest of Justinian

For completeness in the exposition of the legislation of the Dominate period, it is necessary to devote a separate chapter precisely to this code of Emperor Justinian from 533 AD, and specifically in relation to the crime of high treason. The following chapter is therefore focused on fragments that deal with the examined offence.

D. 48, 4 – On the Iulian law relating to the crime of lese majesty

The first sentence of the first fragment of the fourth title of the forty-eighth book of the Digest states that “The crime of *lese majesty* may closely resemble that of sacrilege”.⁷⁸ It is nonetheless appropriate to devote more detail to this offence in the imperial period, therefore, this part of the article analyses in more detail all eleven fragments that are part of this title. As the name of the title already suggests, it is based on Iulian’s law on lese majesty, which has already been discussed above. It is, however, pertinent to note that this law has not been preserved to this day, and Digest of Justinian is exactly one of the main sources that still exist today regarding this law.

The fragment in question, which comes from the 7th book On the Duties of Proconsul, states that Ulpian lists the following among the elements of high treason: “The crime of *lese majesty* is committed against the Roman people, or against their safety, and he is guilty of it by whose agency measures are maliciously taken for the death of hostages, without the order of the Emperor, or when men armed with weapons or stones appear in the city, or are assembled against the State, and occupy public places or temples, or where assemblies have been called together, or men convoked for sedition, or where, by the malicious aid and advice of anyone, plans have been formed by which the magistrates of the Roman people, or other officials invested with command or authority may be killed, or where anyone bears arms against the government, or sends a messenger or letter to the enemies of the Roman people, or communicates to them any password, or commits any act with malicious intent by means of which the enemies of the Roman people may be assisted in their designs against the government, or where anyone solicits or inflames soldiers, in order that a sedition or a tumult may be excited against the State.”⁷⁹

The second fragment, which also comes from Ulpianus, but this time from the 8th book of *Disputations*, includes in the elements of the crime also the failure to leave a province after the arrival of a successor, meaning practically seemingly the usurpation of power, furthermore, desertion from the army, defection, or knowingly or falsely writing or dictating information into public documents.⁸⁰

Closely related to the second fragment is also the third fragment, this time coming from the 14th book of *Institutiones* and the jurist Marcianus, who, while speaking of the Law of the Twelve Tables, also emphasizes that even according to Iulian’s law on high treason, one should be punished who diminishes public dignity, who during a war surrenders or recklessly abandons the war chest, but even he “who engages in hostilities, without the order of the Emperor, or levies soldiers, or equips an army, or, when his successor arrives

⁷⁸ D. 48, 4, 1 (*Ulp. 7 de off. procons.*).

⁷⁹ Ibid.

⁸⁰ D. 48, 4, 2 (*Ulp. 8 disp.*).

in the province, does not deliver the army to him, or who relinquishes his command, or deserts the military service of the Roman people, or who, being a private individual, knowingly and fraudulently performs some act of authority or magistracy, or causes any of the things above mentioned to be done.”⁸¹ It is important to point out the fact that Iulian’s law apparently also punished, according to today’s terminology, the instigator, i.e., not only the one who directly committed the act.

In the fourth fragment, according to Scaevola and the 4th book of Rules, it is again possible to encounter the information that leading the Roman people into a trap and inducing “friends to become enemies of the Roman people,”⁸² fell under the elements of high treason. Beyond what was mentioned earlier, here one can find the release from prison of an accused person who has confessed to the court. At the very end of the fragment, however, is an opportunity to practically fulfil the elements of *crimen maiestatis* but not be liable for it, since “he is acquitted by the Senate of this crime who melted down the statues of a condemned emperor”.⁸³

A completely opposite approach is taken by the fifth fragment, which defines that the crime of lese majesty is not committed by “he who repairs the statues of the Emperor which have become damaged by age”⁸⁴ or “who, having thrown a stone without aiming at anything, accidentally strikes a statue of the Emperor”⁸⁵ or “sell the statues of the Emperor which had not yet been consecrated”.⁸⁶

The topic of damaging consecrated statues or depictions of emperors is also addressed in the following sixth fragment, which deduces the liability of one who would melt down such statues or depictions, or “commit any other act of this kind”.⁸⁷

The following fragment is devoted more to procedural institutes, for example, it is stated that “Persons who are infamous and have no right to bring an accusation are undoubtedly permitted to bring this one.”⁸⁸ In this context, it is interesting to observe what gravity was attached to combating high treason, given the possibility of the so-called *humiliores* to accuse in this case.⁸⁹ However, those lower in status were not the only ones who had this opportunity, the fragment also speaks of accusing slaves who would speak against their masters or freedmen speaking against their patrons.⁹⁰ An interesting part of this fragment is then the mention of the possible impunity of the reckless and insane, which however does not apply to “although rash persons ought to be punished, still, they should be excused, just as lunatics are, when the offence is not included in the strict terms of the law (author’s note – this apparently means Iulian’s law on high treason), or if it should be

⁸¹ D. 48, 4, 3 (*Marc. 14 inst.*).

⁸² D. 48, 4, 4 (*Scae. 4 reg.*).

⁸³ D. 48, 4, 4, 1 (*Scae. 4 reg.*).

⁸⁴ D. 48, 4, 5, 1 (*Marc. 5 reg.*).

⁸⁵ Ibid.

⁸⁶ D. 48, 4, 5, 2 (*Marc. 5 reg.*).

⁸⁷ D. 48, 4, 6 (*Ven. 2 de iud. pub.*).

⁸⁸ D. 48, 4, 7 (*Mod. 12 pandect.*).

⁸⁹ Those of lower standing, or *humiliores*, were citizens of lower social classes, from the 2nd century onwards, criminal sanctions for them were stricter than for the *honestiores*, for more on this see: BARTOŠEK, Encyklopedie římského práva, p. 166.

⁹⁰ D. 48, 4, 7 (*Mod. 12 pandect.*).

punished, as resembling one specified by the law.”⁹¹ It thus suggests that under Iulian’s law on high treason, it was possible to impose exemplary punishments, the aim of which could be a certain preventative function, i.e., to deter other potential perpetrators.

Another practically procedural fragment stipulates that “women are also heard in cases involving *lese majesty*”.⁹² Because here the Digest refers to a specific case – the uncovering of the conspiracy of L. Sergius Catilina from 63 BC – which was revealed to Marcus Tullius Cicero by a woman named Fulvia.⁹³

The fact that Iulian’s law on the protection of majesty was a very comprehensive law is also proven by the 9th fragment, which treats the handling of the property of those convicted of high treason. Although it might suggest that such properties fall to the state, this was not always the case. Provided the convicted person had children, the property fell to them. In the opposite case, if he was thus childless, the state treasury claimed the property.⁹⁴

The tenth fragment only mentions an additional element of the crime and stipulates that “he can be accused of *lese majesty* by whose aid, advice, or malicious contrivance a province or a city has been delivered to the enemy”.⁹⁵

The final fragment then regulates what happens to the accused in the event of death. Here it is necessary to emphasize that the procedure differed according to when the accused died. Generally, it applies that “he who dies while an accusation against him is pending retains his civil status unimpaired, for the crime is extinguished by death”,⁹⁶ but according to this fragment, this does not apply to the perpetrator of high treason. It is therefore appropriate to mention that the ninth and eleventh fragments practically contradict each other, since one talks about the fact that the traitor’s property fell to his children, while the other says the exact opposite. But as has already been illustrated in this article, the trial of perpetrators of high treason practically proceeded even after the perpetrator’s death.

To define the context, and perhaps a closer understanding of the contradictoriness of these fragments, it is thus necessary to also investigate the twentieth and twenty-fourth titles of the same book.

In the twentieth title we can read that “[...] property is confiscated either when life or citizenship is forfeited, or a servile condition is imposed”.⁹⁷ We thus read that the confiscation of the condemned person’s property did indeed occur in the case of the death penalty. Furthermore, it is necessary to also mention the third fragment, which is explicitly devoted to the confiscation of the dowry of convicted women. In this case, the dowry was confiscated if a conviction occurred under five laws, i.e., “for high treason, public violence, parricide, poisoning, and assassination”.⁹⁸ Again, we read that a conviction for high treason was the basis for the confiscation of not only property, but also the dowry.

The twenty-fourth title may seem irrelevant from the point of view of property and its confiscation, since it deals with the handling of the corpses of the condemned, it is

⁹¹ Ibid.

⁹² D. 48, 4, 8 (*Pap. 13 resp.*).

⁹³ Sall. Cat. 2, 1.

⁹⁴ D. 48, 4, 9 (*Herm. 5 iur. epit.*).

⁹⁵ D. 48, 4, 10 (*Herm. 6 iur. epit.*).

⁹⁶ D. 48, 4, 11 (*Ulp. 8 disput.*).

⁹⁷ D. 48, 20, 1 (*Call. 1 de iur. fisc. et pop.*).

⁹⁸ D. 48, 20, 3 (*Ulp. 33 ad ed.*).

interesting to note as an aside that relatives were not permitted to bury the corpses of those condemned for high treason. We can speculate whether this was again a kind of attempt to atone for a transgression as serious as high treason was, or whether it was more a certain continuation of the punishment – meaning that the condemned person did not deserve to rest in a grave and the only option the relatives had was “[...] the bodies of those who have been sentenced to be burned can be claimed, in order that their bones and ashes, after having been collected, may be buried”.⁹⁹

As an explanation, however, it is also possible to seek the fact that the ninth fragment comes from the pen of Hermogenianus, i.e., from the time of the reign of Emperor Diocletianus and roughly from the turn of the third and fourth centuries AD.¹⁰⁰ Conversely, the eleventh fragment is then attributed to Ulpianus, who lived and created almost 150 years earlier.¹⁰¹ It is therefore possible that during the time between the creation of both fragments there was a change in the perception of Julian's law on high treason, which led to the internal contradiction of the fourth title.

The Digest brings the most comprehensive information in relation to the crime of high treason, whether it was regarding the elements of the crime, the procedure, or the punishment. If we were again to provide a partial conclusion in relation to the research question of this article, it is suggested that in the period of the Dominate it was especially the emperor, as the main representative of the state and the church, who was placed in such an inviolable position that, for example, even the melting down of coins with his likeness (and thus inevitably the destruction of the given depiction) was considered high treason.

Conclusion

This article attempted to briefly present the crime of high treason, both under its archaic designation *perduellio* and under the later, more widely known designation *crimen maiestatis*. The main research aim of the article was to outline how the protection of authority was achieved precisely through the prosecution of the crime of high treason.

From the beginnings of ancient Roman civilization, the crime of high treason was perceived as an act that was not merely unlawful, but moreover deeply encroached upon the very foundations of the social, religious, and political establishment. It can be assumed that this is exactly why this offence belonged among the most serious crimes a Roman citizen could commit and why it required the strictest punishment.

In archaic times, high treason was viewed as an act by which the sacred harmony with the gods, the so-called *pax deorum*, on whose preservation the entire existence of the Roman *civitas* rested, was disrupted. Punishing the perpetrator thus had a significant ritual and symbolic overlap, since the purpose of the punishment was not simply punishing the perpetrator, but especially re-establishing the disrupted harmony with the gods.

In the period of the Republic, one can observe a shift towards the protection of political structures and state officials, but above all a significant development in legislation, for during this period a whole series of laws dealing with high treason were adopted. Even

⁹⁹ D. 48, 24, 1 (*Ulp. 9 de off. procons.*).

¹⁰⁰ *Ottův slovník naučný: ilustrovaná encyklopaedie obecných vědomostí*. V Praze: J. Otto, 1897, sv. 11, p. 192.

¹⁰¹ *Ottův slovník naučný: ilustrovaná encyklopaedie obecných vědomostí*. V Praze: J. Otto, 1907, sv. 26, p. 163.

in this period, however, one cannot ignore the persisting ritual aspect of punishments for high treason, among which belonged, for example, being thrown from the Tarpeian Rock or exile from Rome using the interdiction of water and fire.

The most significant shift in the perception of authority in connection with the setup of punishing high treason, however, is offered by the imperial period, to which this article devoted the most detailed attention. The period of the Principate is typical for its generally prevailing tendency to deify rulers, which is also connected with the fact that an attack on him began to be considered an attack on Rome as a whole. In this period, therefore, the trend of expanding the elements of crimes subsumed under the concept of high treason is distinct, specifically including some strongly symbolic expressions, among which undoubtedly belong the damaging of coins with the likeness of the emperor or the destruction of his statue (although exceptions existed even in this regard). The general trend of the Principate is a certain sacralization of the emperor's authority, the violation of which is no longer perceived just as high treason, but simultaneously as sacrilege.

Considering the above, it can be concluded that the crime of high treason in Roman criminal law played a pivotal role as a tool for protecting authority, the form of which evolved along with how Roman society and the state organization evolved. Throughout the history of ancient Rome, authority as a significant attribute could be perceived in relation to peace with the gods, to state power, and later especially in relation to the person of the emperor himself. The transformation of the content of the concept of high treason, from the disruption of the *pax deorum* and the necessity of its restoration to a very precisely codified offence against state power well illustrates that alongside the transformations of the Roman state, transformations in the perception of this offence and its punishment occurred.

A certain silver thread that can be observed in all phases of the development of Roman law and society is the emphasis on the exemplary, ritual, and symbolic function that was associated with punishing the crime of high treason. In this regard, it would undoubtedly be beneficial in further research of this issue to connect the outlined symbolic aspects of the perception of high treason in Roman society with the perception of similar offences in the period of the Middle Ages, both in the context of systems strongly influenced by Roman law, which later developed on the territory of present-day Italy as the historical core of ancient Rome, and elsewhere across Europe given the general significance of the reception of Roman law in the context of continental legal culture.