

The Scope of *exilium voluntarium* in the Roman Republic

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Exilium, perceived as the possibility of voluntary exile belongs to the most common practices found in Roman criminal law of the Republican period.¹ This rather uncomplicated way of avoiding justice benefited the Roman citizens against whom an accusation was brought.² For fear of being condemned many of them left the country prior to, or during the course of, their judicial proceedings but before pronouncement of the sentence.³ The consequences of their absence at the trial were seemingly trivial.⁴ Flight led to the declaration of *aquae et ignis interdictio* – a kind of magisterial interdict, with a strict prohibition of staying in Roman territory.⁵ In the case of return the *interdictus*

¹ Some basic information on exile – T. MOMMSEN, *Römisches Strafrecht*, Berlin 1899, 68 ss.; J.L. STRACHAN-DAVIDSON, *Problems of the Roman Criminal Law I*, Oxford 1912, 161 ss.; A.H.J. GREENIDGE, *The Legal Procedure of Cicero's Time*, New York 1971, 509 ss.; A.H.M. JONES, *The Criminal Courts of the Roman Republic and Principate*, Oxford 1972, 14; B. SANTALUCIA, *Diritto e processo penale nell'antica Roma*, Milano 1998, 88. Studies dedicated entirely to Roman exile: G. CRIFÒ, *Ricerche sull'exilium nel periodo repubblicano*, Napoli 1961; ID., *Exilica causa, quae contra exulem agitur*, in *Du châtement dans la cité. Supplices corporels et peine de mort dans le monde antique. Table ronde organisée par l'École française de Rome avec le concours du Centre national de la recherche scientifique (Rome 9-11 novembre 1982)*, Rome 1984, 453 ss.; ID., *L'esclusione dalla città, altri studi sull'esilio romano*, Perugia 1985; E.L. GRASMÜCK, *Exilium. Untersuchungen zur Verbannung in der Antike*, Paderborn 1978; G.P. KELLY, *A History of Exile in the Roman Republic*, Cambridge 2006.

² This principle refers both to capital and financial charges – MOMMSEN, *Strafrecht* cit., 70-73; R.A. BAUMAN, *Crime and Punishment in Ancient Rome*, New York 1996, 15. CRIFÒ, *Ricerche* cit., 193 ss. presumes that in the case involving pecuniary fines another type of exile came into being. Cfr. M. FUHRMANN, rec. a G. CRIFÒ, *Ricerche sull'exilium nel periodo repubblicano*, Milano 1961, in ZSS 80 (1963) 455 ss.; JONES, *Criminal Courts* cit., 14.

³ Cfr. Cic. *Caecin.* 100.

⁴ Not everybody bore exile in the same way. There must have been some fugitives like the former governor of Sardinia T. Albucius, who convicted for *crimen repetundarum* about 105 B.C. (Cic. *off.* 2.50; Suet. *Iul.* 55.2), went into exile to Athens, where with satisfaction he devoted himself to philosophical studies (Cic. *Pis.* 92; *Tusc.* 5.108). Nevertheless, most outcasts never accepted their stay outside the country. In some circles exile tended to be perceived as the equivalent of death. Cfr. J.M. CLASSEN, *Displaced Persons. The Literature of Exile from Cicero to Boethius*, London 1999; EAD., *Exile Death and Immortality: Voices from the Grave*, in *Latomus* 55 (1996) 571.

⁵ Cfr. L.M. HARTMANN, s.v. *Aquae et ignis interdictio*, in *RE* II/1 (1895) 308-310; MOMMSEN, *Strafrecht* cit., 72; STRACHAN-DAVIDSON, *Problems* cit. I, 329, 512; II, 39, 68 ss.; G. GIOFFREDI, *Ancora sull'aqua et igni interdictio*, in

would have encountered even death.⁶ To lessen the consequences of leaving the country, the exiles would accept the citizenship of their new residence and by doing so they would automatically be deprived of their citizenship of Rome.⁷

By analysing the accounts of ancient authors it is easy to deduce that such practices were commonplace. In fact after the year 384 B.C., in which Manlius being accused of treason was sentenced to death and executed, there is no evidence that would provide any information regarding capital punishment pronounced by popular assembly.⁸ Hence in the opinion of some scholars the death penalty existed in the Republican catalogue of penal sanctions only virtually.⁹ This view deserves a critical assessment on the grounds of selected examples since there are traces indicating that *exilium voluntarium* encountered limitations.

A famous passage of Polybius can provide an argument that voluntary exile was accessible, without any exception, for every Roman citizen.¹⁰ The Greek historian refers to a custom among the Romans permitting any defendant to go voluntarily into exile before a verdict was pronounced by the majority of the tribes voting at popular assembly. Caesars' speech, quoted by Sallust, delivered 'in defence' of the members of

SDHI 12 (1946) 191-193; ID., *L'aqua et igni interdictio' e il concorso privato alla repressione penale*, in *Archivio penale* 3 (1947) 426-441; GRASMÜCK, *Exilium* cit., 66 ss.; CRIFÒ, *L'esclusione* cit., 31 ss.; BAUMAN, *Crime and Punishment* cit., 15; SANTALUCIA, *Diritto* cit., 88; KELLY, *History* cit., 25 ss.; D. MANTOVANI, *Un giudizio capitale nelle Satire di Lucilio* (vv. 784-790 M = fr. XXVIII 29 Chr.), in this volume, *supra*, 49 s. (in *Athenaeum* 95 [2007] 584-585).

⁶ His position was similar to a person anathematized with a curse *sacer esto* in the archaic period. The condition of such a person in exile was not easy. Extraction from the protection of any community, caused real danger for the freedom of the refugee – in practice anyone could seize him and render him a slave. Cfr. GREENIDGE, *Legal Procedure* cit., 512; CRIFÒ, *Exilicia causa* cit., 456 ss. Further on *sacer* in the archaic Roman law: B. ALBANESE, *Sacer esto*, in *BIDR* 91 (1988) 145-179; R. FIORI, 'Homo sacer'. *Dinamica politico-costituzionale di una sanzione giuridico-religiosa*, Firenze 1996.

⁷ Cfr. KELLY, *History* cit., 45-47.

⁸ Liv. 6.20.12: «they passed a dreadful sentence, abhorrent even to the judges». Cfr. W. MCALLEN GREEN, *An Ancient Debate on Capital Punishment*, in *Classical Journal* 24 (1929) 267; A. LINTOTT, *The Constitution of the Roman Republic*, Oxford 1999, 161.

⁹ F. VON HOLTZENDORF, *Die Deportationsstrafe im römischen Altertum*, Leipzig 1859, 26; H. MAINE, *Ancient Law*, New York (fourth American edition, no date), 374; G.W. BOTSFORD, *The Roman Assemblies*, New York 1909, 250 ss.; STRACHAN-DAVIDSON, *Problems* cit. I, 160; GIOFFREDI, *Ancora sull'exilium* cit., 192; MCALLEN GREEN, *Ancient Debate* cit. 267-268; GRASMÜCK, *Exilium* cit., 96; C. BERGEMANN, *Politik und Religion im Spätrepublikanischen Rom*, Stuttgart 1992, 57; BAUMAN, *Crime and Punishment* cit., 16. See also E. LÉVY, *Die römische Kapitalstrafe*, in *Gesammelte Schriften* II, Köln-Graz 1963, 325 ss.

¹⁰ Plb. 6.14.4-8. Cfr. A. LINTOTT, *Provocatio. From the Struggle of Orders to the Principate*, in *ANRW* II/2 (1972) 257-258; O. ROBINSON, *Polybius on Exile*, in *IURA* 52 (2001) 19 ss. It is not the only place in chapter VI of *Roman History* that causes problems for contemporary researchers. Cfr. F.W. WALBANK, *Polybius on the Roman Constitution*, in *Classical Quarterly* 37 (1943) 73 ss.; C.O. BRINK - F.W. WALBANK, *The Construction of the Sixth Book of Polybius*, in *Classical Quarterly* 4 (1954) 97 ss.

Catiline's conspiracy includes a similar message. It is a reminder that in the early Rome both flogging and the death penalty were used against Roman citizens. Nevertheless, in the following verses strong emphasis is put on the fact that these practices are contradicted by Republican standards. Then comes further explanation that *lex Porcia* and other statutes gave permission for exile, thus saving citizens' lives.¹¹

Romans were quite aware of the efficiency of preventive incarceration. Magistrates had the right to arrest and imprison anybody to ensure his presence during the trial.¹² Yet, it is hard to deny, that there were numerous possibilities of avoiding arrest or annulling it. Firstly, attention must be drawn to the institution of bail (*vades, vadimonium*).¹³ Providing a surety, similar to our times, was usually sufficient prevention against incarceration. In case of absence during the trial the surety became state property.¹⁴ The pattern presented above was adopted in the case of Postumius Pyrgiensis and his assistants when accused of tax-collecting abuse.¹⁵

The arrest could have been revoked through the intervention of the tribunes of the plebs. They had the right to speak in defence of a Roman citizen whose rights were not observed (*ius auxilii*).¹⁶ In apocryphal history,¹⁷ an immediate intervention of Ti. Sempronius Gracchus prevented the arrest of L. Cornelius Scipio Africanus, who was accused of bribery during the expedition against King Antiochus III.¹⁸ In a similar way *auxilium* of the plebeian tribune L. Antistius Reginus resulted in the release of an ex-consul Q. Servillius Caepio, who instantly rushed into exile.¹⁹

¹¹ Sall. *Catil.* 51.22; 51.40. Cfr. Liv. 10.9.4; Cic. *Rab. perd.* 10, 12.

¹² GRASMÜCK, *Exilium* cit., 81-83; BAUMAN, *Crime and Punishment* cit., 15; LINTOTT, *Constitution* cit., 99; KELLY, *History* cit., 20; J.U. KRAUSE, *Gefängnisse im römischen Reich*, Stuttgart 2006, 8 ss.

¹³ MOMMSEN, *Strafrecht* cit., 27-28; STRACHAN-DAVIDSON, *Problems* cit. I, 160; JONES, *Criminal Courts* cit., 14; BAUMAN, *Crime and Punishment* cit., 15; SANTALUCIA, *Diritto* cit., 84-85; Y. RIVIÈRE, *Le cachot et les fers. Détention et coercition à Rome*, Rome 2004, 104; KELLY, *History* cit., 20. Profoundly on the institution of *vades* in the field of Roman criminal law – CRIFÒ, *Ricerche* cit., 135 ss.

¹⁴ Cfr. Liv. 3.13.

¹⁵ During the trial only the ones who did not manage to provide bail were jailed. Nevertheless, Postumius' escape from Rome resulted in the arrest of the accused who provided a surety (Liv. 25.4). The fate of the imprisoned remains unknown.

¹⁶ JONES, *Criminal Courts* cit., 14; SANTALUCIA, *Diritto* cit., 88 nt. 68. Further remarks on *ius auxilii*: J. BLEICKEN, *Das Volkstribunat der klassischen Republik*, München 1955, 78 ss.; GRASMÜCK, *Exilium* cit., 84; LINTOTT, *Constitution* cit., 124-128.

¹⁷ Cfr. BLEICKEN, *Volkstribunat* cit., 80 nt. 2-3.

¹⁸ Gell. 6.19; Liv. 38.57.4. Cfr. P. FRACCARO, *I processi degli Scipioni*, in *Studi storici per l'antichità classica* 4 (1911) 376 ss.; A.H. McDONALD, *Scipio Africanus and Roman Politics in Second Century B.C.*, in *JRS* 28 (1938) 160 ss.

¹⁹ Val. Max. 4.7.3. The reason for the accusation was the responsibility for the demolition of Roman army in the battle at Arusio in 105 B.C. (cfr. Cic. *Brut.* 135; Liv. *epit.* 67.2-3). In the background of the trial there also appeared some vague circumstances in which the gold stolen from the shrine of Tolosa disappeared (Str. 4.1.13. Cfr. Cic. *nat.*

The interdicted exiles found secure shelter outside Rome. The state did not take any action aimed at finding and punishing them.²⁰ However, the sources contain accounts, which do not fit in this pattern.

The first one refers to Pleminius – *legatus pro praetore* of P. Cornelius Scipio.²¹ In 205 B.C. he was sent to the town of Locri as a commander of a local garrison after Rome captured it from the hands of the Carthaginians.²² He made his name there due to his barbarity. The most outrageous of his excesses was plundering the temple of Proserpina.²³ In the meantime an argument between Pleminius and the military tribunes arose. Scipio, called to solve the problem, took the side of his legate. After the departure of his commander the furious Pleminius had the tribunes tortured and killed. These acts were immediately used by Scipio's political opponents in the senate. They attributed full responsibility for Pleminius' actions to him.²⁴ By decision of the senate a special commission was sent to Locri to carefully investigate the course of action of both Pleminius and Scipio.²⁵ Pleminius decided to flee. Surprisingly, his attempts to escape were prevented. He was arrested on his way to Naples in (*exilium Neapolim euntem*), delivered to Rome in chains and put to jail, but died before the trial began.²⁶

The formal basis for detention was the contamination of Proserpina's temple. Robbing a sacred treasury was classified as *sacrilegium*.²⁷ The violation of the order

deor. 3.74; D. Cass. 27 fr. 90; Oros. *hist.* 5.15.25). Two other tribunes attempted to stop the imprisonment of the accused but were forced to withdraw their motions (Cic. *de orat.* 2.197). It was Reginus who finally managed to do it. He realized the reprehensibility of his behaviour and its potential consequences. Therefore he accompanied to exile the one whom he dared to help. Cfr. F. MÜNZER, *Die Todesstrafe politischer Verbrecher in den späteren römischen Republik*, in *Hermes* 47 (1912) 170; GRASMÜCK, *Exilium* cit., 94.

²⁰ The situation of an interdicted person was far better than that of the proscribed men, who even after leaving Rome faced life hazard – KELLY, *History* cit., 3.

²¹ Cfr. E. BRUCK, *Pleminius und Scipio bei Livius* (Liv. 6-9 und 29, 16, 4-22, 12), in *Palingenesia* 4 (1969) 301 ss.

²² Liv. 29.8.6; Diod. 27.4.1; App. *Hann.* 55.

²³ Liv. 29.8.8-9; App. *Hann.* 55.

²⁴ Cfr. G. GROSSO, *Il caso di Pleminio*, in *Giornale Italiano di Filologia* 5 (1952) 119 ss.

²⁵ Liv. 29.20.4-11. It is surprising that the committee also included tribunes of the plebs who were not allowed to leave Rome while holding office – E.J. WEINRIB, *The Prosecution of Roman Magistrates*, in *Phoenix* 21 (1968) 40 nt. 2.

²⁶ Liv. 29.21.1-3; 29.22.7-9. According to a historian Clodius Licinius, Pleminius spent 10 years in prison. He lost his life for attempting to cause fire which was to enable his escape (Liv. 29.22.10; 34.44.7-8). A different version is presented by Valerius Maximus (1.1.21), according to whom Pleminius committed suicide just after his arrest and imprisonment. Cfr. MÜNZER, *Todesstrafe* cit., 162-166; GROSSO, *Il caso* cit., 119-135; 234-253; LINTOTT, *Provocatio* cit., 242; J. BRISCOE, *A Commentary on Livy. Books XXXI-XXXIII*, Oxford 1973, 78; P. PAVON, *El 'poenae exemplum' de Q. Pleminio, legado de P. Cornelio Escipion*, in *Athenaeum* 89 (2001) 208-209.

²⁷ Liv. 29.9.8; 29.18.1; 32.1. Cfr. J. SCHEID, *Le délit religieux dans Rome tardo-républicaine*, in *Le délit religieux dans la cité antique (Table ronde)*, Rome 1981, 138; A. DEBINSKI, *Sacrilegium w prawie rzymskim*, Lublin 1995, 87-90; RIVIERE, *Le cachot* cit., 103-104.

between people and gods deserved immediate reparation, which fully explains the strict reaction of the senate.²⁸ Superstitious fear of the consequences of the committed sacrifice was fuelled by a series of prodigies, the appearance of which was reported at that time. In such cases the Romans acted quickly. Failures and disasters which were the result of the Second Punic War substantially contributed to the change of Roman mentality in the religious sphere.²⁹ The defeat at Cannae even caused recourse to human sacrifice.³⁰ In this difficult period for the state everything would acquire symbolic meaning and deserve proper interpretation.³¹ Any anomaly raised unspeakable terror, recognized as an ominous prediction for the state and its citizens.³² In 205 B.C. the final outcome of the war was still unpredictable for the Romans. Under such circumstances the fate of those who exposed all of society to a conflict with supernatural forces, was sealed.

Another fugitive who was to be forced back to Rome is L. Hostilius Tubulus – a very enigmatic person. He is mentioned in Cicero's oration *Pro Scauro*, from which one can derive that he was «the most wicked and reckless man in history».³³ Paradoxically, Cicero himself hardly knew of Tubulus' life, as in one of his letters to Atticus he asks for some information about him.³⁴ Fragmentary notices allow us to presume that in 142 B.C. Tubulus was elected praetor.³⁵ During his term of office he presided over the jury court created to investigate murder cases – *quaestio inter sicarios*. His code of behaviour as a judge triggered public outrage. He did not even manage to maintain an appearance and would openly take bribes for influencing the verdict of the court. The following year, due to the action taken by a plebeian tribune P. Mucius Scaevola, a consul Cn. Servilius Caepio, acting with the senate's authorisation, proposed the motion to create a new *quaestio* for a detailed investigation of the matter. In the meantime Tubulus hastily left Rome. In his commentary for *Pro Scauro*, Asconius provides an unexpected end to this story:

²⁸ It seems symptomatic that a few years later, some unknown perpetrators robbed the same treasury. The thieves were nowhere to be found so the authorities contented themselves with performing purificatory ceremonies and offering expiatory sacrifices – Liv. 31.12.1-2.

²⁹ Liv. 25.1.6-12.

³⁰ Liv. 22.57.6. Further remarks on the human sacrifices at Rome – J.S. REID, *Human Sacrifices at Rome and Other Notes on Roman Religion*, in *JRS* 2 (1912) 34 ss.; A. FRASCHETTI, *Le sepolture rituali del Foro Boario*, in *Le delit religieux dans la Cité (Table ronde, Rome, 6-7 avril 1978)*, Rome 1981, 51 ss.

³¹ Cfr. E. RAWSON, *Religion and Politics in the Late Second Century B.C. at Rome*, in *Phoenix* 28 (1974) 193 ss.

³² Cfr. Liv. 27.37; 31.12.5; Plb. 3.112.8.

³³ Cic. *Scaur.* fr. K. Literature has a picture of Tubulus as the synonym of a wretch – Lucil. 1312 M. *ap.* Cic. *nat. deor.* 1.63; *fin.* 2.54; 4.77; 5.62; Gell. 2.7.20. Cfr. KELLY, *Exilium* cit., 48; MANTOVANI, *Un giudizio* cit., *supra*, 28 s. (in *Ath*, 564).

³⁴ Cic. *Att.* 12.5b.

³⁵ KELLY, *Exilium* cit., 48; MANTOVANI, *Un giudizio* cit., *supra*, 28 s. (in *Ath*, 564).

*L. hic Tubulus praetorius fuit aetate patrum Ciceronis, is propter multa flagitia cum de exilio accersitus esset, ne in carcere necaretur, venenum bibit.*³⁶

What other crimes might have been committed by Tubulus, apart from judicial murder, that it was decided to capture him outside Roman territory and bring him back to Rome? Neither the text nor other sources offer a reasonable solution.³⁷ Tubulus' crimes must have caused disgust among decent Romans. But is their gravity comparable with the threat to the state caused by the deeds of Cn. Fulvius, who during the Second Punic War first demoralized and then abandoned his army at the battlefield at Herdonea, which resulted in the massacre of the Romans?³⁸ Could it cause more anger than the murder of a son committed by ex-censor Q. Fabius Maximus Eburnus?³⁹ Fulvius went into exile at Tarquinii just before the day of his trial and was neither stopped nor chased by anyone;⁴⁰ so did Eburnus who chose Nuceria.⁴¹

If Tubulus really died in a Roman prison, he either did not leave the city at all or returned for unknown reasons to be arrested and incarcerated.⁴² There is still one more possibility, suggested by a political geography of the Italian Peninsula.⁴³ Italy until the Social War was a patchwork of communities of different status. It was a common occurrence that foreign territory was often intersected with *ager Romanus*. During the escape Tubulus might have slipped unintentionally back into Roman jurisdiction.⁴⁴

The sources provide enough instances to believe that *exilium* could also be efficiently hindered by the authorities. After the battle of Cannae, which turned out to be a military disaster for the Romans, a dictator, M. Iunius Pera, took drastic measures:⁴⁵

³⁶ Ascon. *Scaur.* p. 23 Cl.

³⁷ That is why different opinions on this issue presented by scholars are nothing else but more or less brilliant hypothesis. Cfr. MOMMSEN, *Strafrecht* cit., 71 nt. 1, 197 nt. 2, 633 nt. 4; MÜNZER, *Todesstrafe* cit., 167-168; STRACHAN-DAVIDSON, *Problems* cit. I, 162; CRIFÒ, *Ricerche* cit., 258-259; GRUEN, *Politics and Courts* cit., 30; GREENIDGE, *Legal Procedure* cit., 512 nt. 1; B.A. MARSCHALL, *A Historical Commentary of Asconius*, Columbia 1985, 139-140; G.P. KELLY, *The Attempted Exile of L. Hostilius Tubulus*, in *Athenaeum* 89 (2001) 229 ss.; MANTOVANI, *Un giudizio* cit., *supra*, 29 nt. 17 (in *Ath*, 565 nt. 17).

³⁸ Cfr. Liv. 25.20-21; 26.1.9; 27.1.9.

³⁹ Oros. *hist.* 5.16.8; Ps.-Quint. *decl. mai.* 3.17; Val. Max. 6.1.5. It is possible that he was a son of Q. Fabius Maximus Servilianus, the consul of 142 B.C. Cfr. S. BRASSLOFF, s.v. *Fabius*, in *RE* VI (1909) 1769.

⁴⁰ Liv. 26.3.12. Cfr. HOLTZENDORF, *Deportationsstrafe* cit., 25.

⁴¹ Cic. *Balb.* 28.

⁴² GRUEN, *Politics and Courts* cit., 30.

⁴³ I am immensely grateful to Professor Andrew Lintott for this suggestion.

⁴⁴ It is obviously a hypothesis, like all the others. One of its weak points is the difficulty in finding the answer to the question of who carried out the arrest, the fact which Professor Jean Michael David drew my attention to.

⁴⁵ Among others, he used for military purposes spoils of war sacred to gods and deposited in the temples – Val. Max. 7.6.1b.

about 6000⁴⁶ people, imprisoned for debts and condemned for capital crimes, were conscripted into legions.⁴⁷ It seems obvious that enlisted criminals had rather poor chances of avoiding punishment.⁴⁸ Salvation was suddenly brought to them only because of the unexpected war failures of Rome.

Special proceedings were adopted in situations of mass law breaking which caused threat for state stability and its social order.⁴⁹ Nobody opposed the execution of the wicked women who, according to Livy, assailed their husbands.⁵⁰ The decision to initiate proceedings was made by the senate, which might have signified a sense of threat caused by the 'murderesses'. Initially twenty Roman matrons, two of whom Cornelia and Sergia, originating from patrician families, were accused in front of a *quaestio extraordinaria*.⁵¹ All the women committed suicide during the preliminary interrogation by drinking previously prepared poison. The others were soon arrested. The total of 170 people were found guilty of poisoning and condemned to death.⁵² There is no trace of the use of *provocatio* or tribune's intervention in their case. One should not presume that any of them managed to leave Rome. The case of poisoners was perceived by the society as *prodigium* and provoked collective anxiety.⁵³ The accused women had no chance to survive.⁵⁴

As a matter of fact, the cases where women went into exile because of crimes committed must have been extremely rare. If they decided to leave the city, they usually followed their

⁴⁶ The number probably concerns the convicts scattered in prisons all over Italy, not only the city of Rome itself – RIVIÈRE, *Le cachot* cit., 100.

⁴⁷ Val. Max. 7.6.1b; Liv. 23.14.3. Cfr. CRIFO, *L'esclusione* cit., 109 ss.

⁴⁸ RIVIÈRE, *Le cachot* cit., 100. Republican law did not consider imprisonment as a separate punishment. Prison was a place meant for people waiting for a trial or expecting execution – MOMMSEN, *Strafrecht* cit., 48-49; STRACHAN-DAVIDSON, *Problems* cit. I, 164-165; GREENIDGE, *Legal Procedure* cit., 514; RIVIÈRE, *Le cachot* cit., 108. Opposite view is presented by W. EISENHUT, *Die römische Gefängnisstrafe*, in *ANRW* I/2 (1972) 268-269, 278.

⁴⁹ Cfr. SANTALUCIA, *Diritto* cit., 88 nt. 68, 99 ss.; LINTOTT, *Provocatio* cit., 244.

⁵⁰ Liv. 8.18.4-11; Val. Max. 2.5.3. Cfr. F. CAVAGGIONI, *Mulier rea. Dinamiche politico-sociali nei processi a donne nella Roma repubblicana*, Venezia 2004, 65-67, 76. Further remarks on poisoning trials in Rome: L. MONACO, 'Veneficia matronarum'. *Magi, medicina e repressione*, in *Sodalitas* IV, Milano 1984, 1013 ss.; J.-M. PAILLER, *Les matrones romaines et les empoisonnements criminels sous la République*, in *CRAI* (1987) 111 ss.

⁵¹ Cfr. CAVAGGIONI, *Mulier rea* cit., 182.

⁵² Presumably they were condemned by a praetor and subsequently executed by their relatives – ROBINSON, *Polybius on Exile* cit., 22.

⁵³ Similarly Liv. 40.37.

⁵⁴ Even if the accumulation of mysterious deaths was a result of an epidemic, not of poison. Cfr. L. RODRIGUEZ ALVAREZ, *Nueva aproximación al tema del 'veneficium'*, in *Labeo* 37 (1990) 315. A description of a similar situation can be found in *Epitome* of Livy (48.12-13) and in the work of Valerius Maximus (6.3.8). In the year 151 B.C. two Roman women of high birth Publilia and Licinia were accused before a praetor of poisoning their husbands. Providing bail prevented them from public arrest. Handed over at their kinsmen's disposal they were condemned to death and executed after all. Cfr. CAVAGGIONI, *Mulier rea* cit., 70-71.

husbands, who had problems with the machinery of justice.⁵⁵ An interesting exception is a series of accusations put forward in 213 B.C.⁵⁶ by plebeian aediles L. Villius Tappulus and M. Fundanius Fundulus against certain Roman matrons because of their immodest conduct.⁵⁷ As a result magistrates «drove into exile» these who had been convicted.⁵⁸ This is the only known case confirming women's exile. The fact that matrons were not judged by their relatives may suggest that they were *sui iuris* and so, free from domestic jurisdiction.⁵⁹

In 186 B.C. the senate established special tribunals – *quaestiones extra ordinem*, whose task was to investigate the charges that appeared in connection with Bacchanals.⁶⁰ The participants of Bacchus' cult were accused of high treason, murders, sexual laxity, perjuries and seal and will forgeries. The decision of the senate threw about 7000 women and men into panic. Many people attempted to leave Rome. Some of them lost all hope and committed suicide.⁶¹ The ones captured were put into prison. However, a substantial number of people were able to escape, which led to a special proclamation of a thirty days *iustitium* of all trials with the exception of the ones investigating the Bacchanalia cases.⁶² The leaders of the movement Marcus and Gaius Atinius, both deriving from the plebs, pleaded guilty in the presence of a consul and were executed shortly afterwards.⁶³ The pattern of further proceedings was simple. The passive members of the Bacchic community, who only took oath following the priest's words but did not commit any act considered as crime, remained in prison for some time but survived. The others, including many women, were condemned to death.⁶⁴ All female accomplices sentenced to capital punishment were handed over to their families to be executed.⁶⁵ Despite

⁵⁵ The lack of women's rights, even those from the most illustrious families, to voluntary exile, seem to correspond to their discrimination in suffrage and eligibility to stand for election. Cfr. H.W. FLANNERY, *Roman Women and the Vote*, in *Classical Journal* 16 (1920) 103 ss.; B. FENDLER, *Der Ausschluss der Frau vom römischen officium*, in *RIDA* 183 (2000) 381 ss.

⁵⁶ It is significant that the women were allowed to leave the city in the difficult times caused by the war with Hannibal – CAVAGGIONI, *Mulier rea* cit., 41.

⁵⁷ Liv. 25.2.9.

⁵⁸ The livian passage *in exilium egerunt* is not clear. It suggests rather a penalty than a free flight of the accused. Yet, exile as a statutory penalty remains unknown at least until 1st century B.C. Cfr. CAVAGGIONI, *Mulier rea* cit., 199.

⁵⁹ Cfr. CAVAGGIONI, *Mulier rea* cit., 199; KELLY, *History* cit., 161. Further considerations on the women's *stuprum* trials: CAVAGGIONI, *Mulier rea* cit., 40 ss.

⁶⁰ Cfr. J.-M. PAILLER, *Bacchanalia: la repression de 186 av. J.-C. à Rome et en Italie*, Rome 1988 with the literature cited.

⁶¹ Liv. 39.17.4-6.

⁶² Liv. 39.18.1.

⁶³ Liv. 39.17.6-7.

⁶⁴ Cfr. PAILLER, *Bacchanalia* cit., 253 ss. The fate of Minius Cerrinus seems to be an exception here. He was put to prison in Ardea. The senate had him carefully watched and prevented from committing suicide – Liv. 39.19.2. Cfr. PAILLER, *Bacchanalia* cit., 264 ss.

⁶⁵ Liv. 39.18.3-6.

strong measures adopted by the authorities in order to arrest all 'conspirators' a certain number of suspects managed to abandon their domiciles. Nevertheless, many of them were to be captured and condemned in the following years.⁶⁶

Several factors contributed to the violent reaction of the state. Serious anxiety must have been caused by the size of the movement which might have shattered public order. That is why the Senate passed a special resolution according to which participation in the Bacchanalia was regarded as an offence *sui generis*, instead of invoking the already known *perduellio*.⁶⁷ In the public eye the charges against the worshippers of Bacchus in Rome were connected with a serious threat to internal stability.⁶⁸ The consuls were given the task of carrying out investigations concerning «secret plots».⁶⁹ For this reason there were no qualms about putting to death so many Roman citizens, even those of upper classes. Similarly, as in the case of poisoners, there is no indication that the right of *provocatio ad populum* was used by the charged *cives Romani* or that *tribuni plebis* decided to intervene in their favour.⁷⁰ There is a likelihood of implied political meaning in this case. The senate, through its determined activity, emphasized its dominant role in the religious policy of the state.⁷¹

A similar threat was discerned in Catiline's conspiracy of 63 B.C.⁷² Even the list of crimes attributed to Catiline and his supporters (*i.e.* plotting, murders, poisoning, sexual dissipation, youth depravation, will forgery) is basically the same.⁷³ The attempt of a coup prepared by the plotters intended to set Rome on fire and was to be followed by the mass murder of her inhabitants.⁷⁴ The course of action that was adopted by the authorities in order to prevent tragedy appears unusual in the context of the common institutions of Roman criminal law.⁷⁵ The conspirators born of the best Roman fami-

⁶⁶ Cfr. Liv. 39.20; 39.41; 41.19. Cfr. PAILLER, *Bacchanalia* cit., 275 ss.

⁶⁷ S.c. de *Bacchanalibus* 1.25; Liv. 39.14.5-10. Cfr. PAILLER, *Bacchanalia* cit., 259; SANTALUCIA, *Diritto* cit., 99.

⁶⁸ Liv. 39.16.3; 39.18.4. Cfr. EISENHUT, *Gefängnisstrafe* cit., 273; SCHEID, *Le délit religieux* cit., 158-159; PAILLER, *Bacchanalia* cit., 257; SANTALUCIA, *Diritto* cit., 99; RIVIÈRE, *Le cachot* cit., 108.

⁶⁹ Liv. 39.8.1; 39.14.7; 39.18.2.

⁷⁰ Cfr. LINTOTT, *Provocatio* cit., 254; 263.

⁷¹ PAILLER, *Bacchanalia* cit., 254; S.A. TACACS, *Politicians and Religion in the Bacchanalian Affair of 186 B.C.*, in *Harvard Studies in Classical Philology* 100 (2000) 307 ss.

⁷² The views of researchers on the range of danger to the state caused by Catiline and his supporters are divided. Cfr. Z. YAVETZ, *The Failure of Catiline's Conspiracy*, in *Historia* 12 (1963) 485 ss.; K.H. WALTERS, *Cicero, Sallust and Catiline*, in *Historia* 19 (1970) 195 ss.

⁷³ Cfr. EISENHUT, *Gefängnisstrafe* cit., 273; RIVIÈRE, *Le cachot* cit., 108.

⁷⁴ Cic. *Catil.* 4.2; 4.6.

⁷⁵ It is not very likely that a *senatusconsultum ultimum*, giving particular powers to a consul, had been issued in this case. Nowhere does Cicero seem to imply that it was in force during his conduct against Catiline's supporters. He refers only to such cases from the past – Cic. *Att.* 12.21; *Catil.* 1.2; 3.14. Cfr. P. WILLEMS, *Le Sénat de la République romaine II*,

lies were arrested, condemned to death and executed⁷⁶ within two days.⁷⁷ The people, initially in favor of Catiline, having found out about some details of his plans, spontaneously supported these extraordinary measures.

Even P. Lentulus Sura, holding an office of praetor in 63 B.C., could not avoid condemnation and execution.⁷⁸ The only privilege he experienced after the arrest was that on the way to the Temple of Concordia, he was led by consul Cicero by the hand while others were taken away under armed escort.⁷⁹ Before delivering sentence the senate made Lentulus renounce the office.⁸⁰

Ceparius was the only conspirator from 'Cicero's list' who managed to avoid immediate punishment. He disappeared from Rome, though his escape bears no resemblance to *exilium voluntarium* as he left the city stealthily and in a hurry.

During the senate debate concerning the fate of arrested conspirators Caesar opposed their condemnation to death and execution from the very beginning.⁸¹ He emphasized that in this case «should be used means provided for by laws».⁸² In his speech he referred to the cases of leniency of the Roman nation towards defeated enemies. Then he underlined that both *lex Porcia* and other Roman statutes do not permit the taking of citizen's lives, though they give permission to exile.⁸³ However, even he supported the arrest of the plotters and then voted for the life sentence.⁸⁴

Going into voluntary exile was unacceptable in cases of crimes closely related to religion. Therefore it certainly did not embrace parricides.⁸⁵ *Parricidium* was always per-

Louvain 1878, 253; R. WELLINGTON HUSBAND, *The Prosecution of Catiline's Associates*, in *Classical Journal* 9 (1913) 14 ss.

⁷⁶ Sall. *Catil.* 55; App. *BC* 2.6; Plu. *Cic.* 22. Cfr. WELLINGTON HUSBAND, *Prosecution* cit., 8 ss. The circumstances in which Catiline's supporters were sentenced to death and executed contributed to Cicero's later exile – Plu. *Cic.* 30; Vell. 2.45; D. Cass. 38.14. Cfr. P. MORREAU, *La lex Clodia sur le bannissement du Ciceron*, in *Athenaeum* 65 (1987) 469 ss.; KELLY, *Exilium* cit., 110.

⁷⁷ The arrest took place on 3rd December, condemnation and execution on 5th December 63 B.C. Cfr. D.H. GARRISON, *The Events of December 4, 63 B.C. and Sallust Cat. 50.3-4*, in *Classical Journal* 57 (1962) 360. WELLINGTON HUSBAND, *Prosecution* cit., 8-9 states that «the whole trial was absurdly short». LINTOTT, *Provocatio* cit., 261 describes the verdict as a «quasi judicial sentence».

⁷⁸ Cfr. H.C. NUTTING, *The Conviction of Lentulus*, in *Classical Journal* 3 (1908) 186 ss.

⁷⁹ Sall. *Catil.* 46.5.

⁸⁰ Cic. *Catil.* 4.3. Cfr. WEINRIB, *Prosecution* cit., 46-47.

⁸¹ Cfr. EISENHUT, *Gefängnisstrafe* cit., 271 ss.; RIVIÈRE, *Le cachot* cit., 105-107.

⁸² Cic. *Catil.* 4.4; Sall. *Catil.* 51.8. Laws of ancestors were also evoked by Cato who demanded the death penalty for traitors – Sall. *Catil.* 52. Cfr. Plu. *Cat. Mi.* 51.

⁸³ Sall. *Catil.* 51.40. Cfr. MCALLEN GREEN, *An Ancient Debate* cit., 270 ss.

⁸⁴ Cic. *Catil.* 4.4; Sall. *Catil.* 51.43. Cfr. D. Cass. 37.36.1-2; Plu. *Caes.* 7; Suet. *Iul.* 14.1.

⁸⁵ Basic literature on *parricidium*: J.D. CLOUD, *Parricidium. From the lex Numae to the lex Pompeia de parricidiis*, in *ZSS* 88 (1971) 1 ss.; Y. THOMAS, *Parricidium*, in *MEFRA* 93 (1981) 643 ss. with literature cited.

ceived as a terrible *prodigium* violating the order between the world of gods and humans.⁸⁶ The execution of the kin-murderer was pervaded with religious elements. The strange ritual of sewing up a parricide in a sack and drowning him in the sea is not accidentally associated with another specific purificatory rite – *procuratio prodigi*.⁸⁷

Nothing is known about the fate of Lucius Hostius who, according to Plutarchus, committed *parricidium* shortly after the war with Hannibal (c.a. 200 B.C.)⁸⁸ and was registered as the first parricide in the history of Rome.⁸⁹ Yet about 101 B.C.⁹⁰ a matricide, Publicius Malleolus, experienced *poena cullei* for his dreadful crime.⁹¹ A comprehensive account of this event can be found in Cicero's tractate *De inventione*:

*Quidam iudicatus 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 culleus, in quem coniectus in profluentem deferretur, compararetur.*⁹²

The phrase *et statim, quod effugiendi potestas non fuit, lignae soleae in pedes inditae sunt* did not mean that the wooden clogs were supposed to physically hinder the escape of the convict.⁹³ Putting on a wolf's mask and wooden clogs formally meant the beginning of the execution, which excluded the possibility of going into voluntary exile.⁹⁴

In the speech held in defence of Sextus Roscius, who was accused of murdering his father, Cicero repeatedly stresses that *poena cullei* poses a serious threat to his client.⁹⁵

⁸⁶ Cfr. Cic. *S. Rosc.* 37; Sen. *clem.* 1.23; Ps.-Quint. *decl. mai.* 4.1; *decl. min.* 299.

⁸⁷ F. LUTERBACHER, *Der Prodigenglaube und Prodigienstil der Römer*, Burgdorf 1880, 20; E. BRUNNENMEISTER, *Das Tötungsverbrechen im altertümlichen Recht*, Leipzig 1887, 193, 197, 198; H.F. HITZIG, s.v. *culleus*, in *RE* IV/2 (1901) 1748; R. DÜLL, *Zur Bedeutung der poena cullei im römischen Strafrecht*, in *Atti del congresso internazionale di diritto romano* II, Roma 1935, 363 ss.; CLOUD, *Parricidium* cit., 31 ss.; E. NARDI, *Lotre dei parricidii e le bestie incluse*, Milano 1980, 119; H. DOHRMANN, *Anerkennung und Bekämpfung von Menschenopfern im römischen Strafrecht der Kaiserzeit*, Frankfurt am Main 1995, 66; B. SANTALUCIA, *Cic. pro Rosc. Am.* 3, 8 e la scelta dei giudici nelle cause di parricidio, in *IURA* 50 (1999) 146; E. CANTARELLA, *I supplizi capitali. Origine e funzioni delle pene di morte in Grecia e a Roma*, Milano 2005, 222.

⁸⁸ Cfr. STRACHAN-DAVIDSON, *Problems* cit. I, 162; CLOUD, *Parricidium* cit., 36.

⁸⁹ Plu. *Rom.* 22.4.

⁹⁰ Cfr. F. MÜNZER, s.v. *Publicius Malleolus*, in *RE* XIII (1959) 908; CLOUD, *Parricidium* cit., 30.

⁹¹ Liv. *epit.* 68.9. Cfr. A. GUARINO, *Variazioni sul tema di Malleolo*, in *Labeo* 35 (1989) 79 ss.; CANTARELLA, *I supplizi* cit., 224-226.

⁹² Cic. *inv.* 2.149. Cfr. *Rhet. Her.* 1.13.23.

⁹³ Further considerations on this odd procedure: CANTARELLA, *I supplizi* cit., 226 ss.

⁹⁴ CLOUD, *Parricidium* cit., 44; SANTALUCIA, *Cic. pro Rosc. Am.* 3, 8 cit., 147-148.

⁹⁵ Cic. *S. Rosc.* 6, 30, 71-72. Cfr. BRUNNENMEISTER, *Tötungsverbrechen* cit., 231; L. LANDUCCI, *Lex Pompeia de parricidiis*, in *Archivio Giuridico* 61 (1898) 316-318; DÜLL, *Zur Bedeutung* cit., 365; CLOUD, *Parricidium* cit., 63; GREENIDGE, *Legal Procedure* cit., 506; THOMAS, *Parricidium* cit., 708 nt. 242; R.A. BAUMAN, *Human Rights in Ancient Rome*, London - New York 2000, 43.

So in *de inventione* he convincingly proves that a person convicted for *parricidium* has no chance of avoiding proper punishment.⁹⁶ Statutorily the situation changed in 55 B.C. with the passing of *lex Pompeia de parricidiis*,⁹⁷ which provided exile for parricides.⁹⁸ Pompeian innovation, though respected by Caesar,⁹⁹ did not contribute to the withdrawal of *poena cullei* from common use.¹⁰⁰

Breaking the vows of chastity by Vestal virgins (*incestum*) had both sacred and criminal aspects.¹⁰¹ Similarly to *parricidium* and *sacrilegium*, this phenomenon was perceived as a threat to the state and its citizens.¹⁰² According to the pattern observed above, such cases were commonly accompanied by *prodigia*,¹⁰³ the most frightening of which was extinction of the sacred fire of Vesta.¹⁰⁴ The crime also resulted in the fact that officially offered religious rituals and sacrifices would not be accepted by the gods.¹⁰⁵

It was believed that the punishment for *incestum* should afflict both the woman and her seducer. They were within the jurisdiction of the *collegium* of the priests presided over by the *pontifex maximus*. Both the Vestal and her lover should have lost their lives for the sake of the public interest.¹⁰⁶ In the case of conviction there was no right to *provocatio ad populum*.¹⁰⁷

The sanction for chastity clearly refers to the ancient pontifical rites. Vestal virgins were buried alive while their lovers were publicly flogged to death.¹⁰⁸ This expiatory course of

⁹⁶ Cic. *inv.* 2.149.

⁹⁷ The date of enactment of *lex Pompeia de parricidiis* is a matter of controversy. Cfr. CLOUD, *Parricidium* cit., 47; THOMAS, *Parricidium* cit., 648.

⁹⁸ LANDUCCI, *Lex Pompeia* cit., 312 ss.; MOMMSEN, *Strafrecht* cit., 645; 923; HITZIG, s.v. *culleus* cit., 1747; DÜLL, *Zur Bedeutung* cit., 366, 368, 403, 404.

⁹⁹ Suet. *Iul.* 42.3.

¹⁰⁰ Cfr. Suet. *Aug.* 33; Sen. *clem.* 1.15.2.

¹⁰¹ Basic literature on this topic: G. WISSOWA, *Vestalinnefrevel*, in *Archiv für Religionswissenschaft* 22 (1923/1924) 201 ss.; A. GUARINO, *Studi sull'incestum*, in *ZSS* 63 (1943) 175 ss.; T. CORNELL, *Some Observations on the 'crimen incesti'*, in *Le delit religieux dans la Cité* cit., 27 ss.; A. FRASCHETTI, *La sepoltura delle Vestali e la Città, in Du châtement dans la Cité. Supplices corporales et peine de mort dans le monde antique*, Rome 1984, 97 ss.; C. LOVISI, *Vestale, incestus et jurisdiction pontificale sous la République romaine*, in *MEFRA* 110 (1998) 699 ss.; P. MOREAU, *'Incestus et prohibita nuptiae'. L'inceste à Rome*, Paris 2002; J. MISZTAL-KONECKA, *Incestum w prawie rzymskim*, Lublin 2007.

¹⁰² WISSOWA, *Vestalinnefrevel* cit., 207-209. Cfr. CORNELL, *Some Observations* cit., 31-32.

¹⁰³ Cfr. Plu. *Quaest. Rom.* 83.284a-b. Cfr. DOHRMANN, *Anerkennung* cit., 171 ss.; RAWSON, *Religion and Politics* cit., 200.

¹⁰⁴ Dion. Hal. 2.67.5; Liv. 28.11.6. Cfr. CANTARELLA, *I supplizi* cit., 111.

¹⁰⁵ Liv. 2.42.10-11; 22.57.2-3; Dion. Hal. 9.40.2-4.

¹⁰⁶ DOHRMANN, *Anerkennung* cit., 176 ss.

¹⁰⁷ Vd. LINTOTT, *Provocatio* cit., 254; D. MANTOVANI, *Il pretore giudice criminale in età repubblicana*, in *Athenaeum* 78 (1990) 23 nt. 23; LOVISI, *Vestale* cit., 714-715.

¹⁰⁸ D. Cass. 2.8; Dion. Hal. 3.67.3; 8.89.5; 9.40.4; Liv. 22.57.3; Oros. *hist.* 4.5.9; Plin. *epist.* 4.11.6-10.

action was aimed at renewing friendship with the gods.¹⁰⁹ The investigations into *incestum* cases were carried out very scrupulously and always remained under strict social control. In 113 B.C. popular assembly passed a special resolution (*rogatio Peducaea de incestu*) appointing *quaestio extraordinaria* for the investigation into three Vestal virgins: Aemilia, Licina and Marcia. This decision followed the common belief that two previous women had been unjustly acquitted by the jury of pontifices. A newly appointed 'secular' court meeting resulted in the death penalty for all the accused and their lovers.¹¹⁰

It seems unlikely that anybody charged with *incestum* could leave Rome.¹¹¹ The people against whom the proceedings were carried out were closely watched. The punishment was performed just after the sentence had been pronounced.¹¹² The only chance for the condemned to avoid such cruel execution was suicide.¹¹³

Roman society took a strong stand on sexual offenders, especially the ones whose victims were free-born and under-aged Romans. In 321 B.C. T. Veturius, due to his debts, found himself as a *nexus* of P. Plotius and refused to pander to his creditor's sexual whims. Consequently he was severely flogged like a slave.¹¹⁴ The young man complained to the consuls and Plotius, on the senate's ruling, was sent to prison.¹¹⁵ The senate did not find anything reprehensible in bothering the boy but in the fact that the victim was a free-born Roman citizen.¹¹⁶ Homosexual relationships with free-born boys were permitted and widely practiced in Greece.¹¹⁷ In Rome, at least officially, it was socially unacceptable.¹¹⁸

¹⁰⁹ WISSOWA, *Vestalinnefrevel* cit., 203; LOVISI, *Vestale* cit., 724; CANTARELLA, *I supplizi* cit., 111.

¹¹⁰ Cic. *nat. deor.* 3.74; Ascon. *Mil.* p. 46 Cl.; Liv. *epit.* 63; Macr. *Sat.* 1.10.5; D. Cass. 26.87.3-5. Only Marcus Antonius, a famous orator, was acquitted – Val. Max. 3.7.9; 6.8.1. Cfr. WEINRIB, *Prosecution* cit., 37.

¹¹¹ The proceedings carried out by Domitian in 89 A.D. are of exceptional character. The emperor sentenced for exile and confiscated wealth of a young aristocrat Valerius Licinus for his alleged sexual contacts with a Vestal virgin – Plin. *epist.* 4.11.11-13.

¹¹² D. Cass. 2.8; Dion. Hal. 3.67.3; 8.89.4-5; 9.40.2-4; Liv. 2.42.10-11; 22.57.2-3; Liv. *epit.* 14.7; 20.5; Oros. *hist.* 2.8.13; 3.9.5; 4.2.8; 4.5.9; 5.15.22.

¹¹³ Cfr. Dion. Hal. 9.40.2-4; Oros. *hist.* 4.5.9.

¹¹⁴ Cfr. Liv. 3.8.28; Dion. Hal. 16.5; Cic. *rep.* 2.59.

¹¹⁵ Val. Max. 6.1.9. Cfr. H.F. MUELLER, *Vita, Pudicitia, Libertas: Juno, Gender and Religious Politics in Valerius Maximus*, in *TAPA* 128 (1998) 226.

¹¹⁶ E. CANTARELLA, *Secondo natura. La bisessualità nel mondo antico*, Milano 2007, 239. Plutarch (*Quaest. Rom.* 101.288a) notices that maintaining love contacts with young slaves was a normal phenomenon in the Roman world. Cfr. C.A. WILLIAMS, *Greek Love at Rome*, in *Classical Quarterly* 45 (1995) 520; CANTARELLA, *Secondo natura* cit., 134-138.

¹¹⁷ Cfr. K.J. DOVER, *Greek Homosexuality*, London 1978, 60 ss. The Romans realized that Roman literature often mentions men and youth relationships *more Graecorum*. Cfr. Nep. *Alc.* 2.2; Cic. *rep.* 4.3; *Tusc.* 4.70; 5.58. Further remarks: E. CANTARELLA, *Secondo natura* cit., 129.

¹¹⁸ Cic. *Att.* 1.16.5; *Catil.* 2.8; Tac. *ann.* 14.20. Cfr. P. VEYNE, *Homosexuality in Ancient Rome*, in P. ARIES - A. BEYSSON (ed.), *Western Sexuality: Practice and Precept in Past and Present Times*, Oxford - New York 1985, 29; WILLIAMS, *Greek Love* cit., 531 ss.; CANTARELLA, *Secondo natura* cit., 7 ss.; 129 ss.

A distinguished military veteran C. Cornelius was put in chains by a *triumvir capitalis* C. Pescenius for his misconduct with a free born boy.¹¹⁹ Cornelius did not deny his act, but claimed that the boy was a male prostitute. Subsequently he turned to the tribunes of the plebs for their *auxilium* but was categorically refused and soon afterwards lost his life in prison (*mori coactus est*).

In the last century of the Republic the tribune of the people C. Scantius Capitolinus was accused of and condemned, by popular assembly, for the attempt to seduce a son of curule aedile M. Claudius Marcellus.¹²⁰ The tribunes of the people also refused to intervene in this case as the affair referred to the chastity of the victim (*pudicitiae quaestio*). Even the fact that as a tribune of the people he was protected by *sacrosancta potestas* did not help the accused.¹²¹

It is not known what kind of sentence was pronounced for C. Scantius Capitolinus. One can only presume that at least he did not avoid arrest. Other cited examples show that P. Plotius and C. Cornelius were sent to prison.¹²² The fate of Cornelius remains mysterious. He certainly died before the trial began. Unfortunately the phrase *mori coactus est* used by Valerius Maximus does not definitely imply whether the ex-soldier committed suicide, was forced to do it or 'was helped' by somebody.¹²³

While discussing the problem of obstacles preventing voluntary exile, it is worth noting that the charges of sexual relationships with free-born young Roman boys were brought against both the Bacchanalia participants¹²⁴ and the supporters of Catiline's plot.¹²⁵

It is not clear whether voluntary exile was a means also adopted by the *fili families* tried by domestic tribunals. However, it is true that the order to leave a certain area (*relegatio*) was to be found in the catalogue of criminal sanctions that could be used by *pater familias*.¹²⁶ It seems highly probable that the head of a family also had proper tools to secure the presence of his children at the domestic trial.¹²⁷

¹¹⁹ Val. Max. 6.1.10.

¹²⁰ Val. Max. 6.1.7; Plu. Marc. 2.2-4. Cfr. WEINRIB, *Prosecution* cit., 34.

¹²¹ A standard behavior pattern was waiting till the end of the term of office before a lawsuit against a magistrate was brought – D. Cass. 40.55.1; 55.10.15. Cfr. WEINRIB, *Prosecution* cit., 35.

¹²² However, the figure of a war hero is as enigmatic as Tubulus, mentioned above. Although he was thought to display outstanding courage and be praised with the honour of First Spear, surprisingly, Valerius Maximus appears to be the only ancient author to refer to him. Cfr. D.R. SHACKLETON BAILEY: Valerius Maximus, *Memorable Doings and Sayings* II, ed. and transl. D.R. SH.B., Cambridge, MA - London 2000, 9 nt. 11.

¹²³ The assumption that the penalty of Cornelius was death by hunger does not seem convincing. Cfr. CANTARELLA, *I supplizi* cit., 117; EAD., *Secondo natura* cit., 141.

¹²⁴ Liv. 39.39.8.7 in connection with 39.8.5-6; 39.13.10; 39.15.12. Cfr. C.A. WILLIAMS, *Greek Love* cit., 52.

¹²⁵ Cic. *Catil.* 2.8.

¹²⁶ Cfr. Cic. *fin.* 1.24; Liv. *epit.* 54.5; Oros. *hist.* 5.16.8; Val. Max. 5.8.3.

¹²⁷ Cfr. GRASMÜCK, *Exilium* cit., 81. Nevertheless, any means to avoid harsh consequences of punishment.

To sum up, the available sources tend to indicate the possibility of verification of the statement made by Polybius and Sallust that *exilium voluntarium* was always available and for every Roman citizen. This ideal picture painted by both ancient writers is contradicted not only by common sense but also by many other ancient sources. One can be certain that voluntary exile was not accessible for the offenders committing crimes perceived by society as *prodigum*, i.e. *parricidium*, *sacrilegium* and *incestum* of the Vestal virgin. Any silent compromise was also definitely ruled out whenever the crime caused the violation of the internal integrity of the state or threatened its social order. It is significant that special commissions (*quaestiones extraordinariae*) were appointed to investigate these matters as in the case of Pleminius, poisoners and Bacchanals.¹²⁸ They could operate efficiently, as was commonly expected, only if the presence of the accused during the proceedings was fully secured. It seems that the possibility of free departure from Rome was excluded for women who were subject to domestic jurisdiction. Apparently, the same limitations might have applied to children subordinated to the power of *pater familias*.

in most cases not necessary. The examples of paternal severity or even sadism towards their children recorded by the literary sources tend to be exaggerated and have little in common with the real face of *patria potestas*. Cf. R. SALLER, *Patria potestas and the Stereotype of the Roman Family*, in *Continuity and Change* 1 (1986) 7 ss.; B.D. SHAW, *Raising and Killing Children: Two Roman Myths*, in *Latomus* 56 (2001) 31 ss.

¹²⁸ LINTOTT, *Provocatio* cit., 257; CAVAGGIONI, *Mulier rea* cit., 182 ss.

La repressione criminale
nella Roma repubblicana
fra norma e persuasione

a cura di
Bernardo Santalucia

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