

CRIMEN LAESAE MAIESTATIS

A study of Roman law influences in old Poland

Publications of the Faculty of Law, Canon Law and Administration
of the John Paul II Catholic University of Lublin

Volume 6

EDITORIAL BOARD

Piotr Stanisław (Chair)

Artur Kuś

Sławomir Fundowicz

Delaine Swenson

Leszek Adamowicz

Magdalena Pyter



Marzena Dyjakowska

CRIMEN LAESAE MAIESTATIS

A study of Roman law influences in old Poland

Wydawnictwo KUL
Lublin 2013

English translation
Konrad Szulga

Typesetting
Patrycja Czerniak

Cover design
Agnieszka Gawryszuk

On the cover

U. Tengler, Leyenspiegel. Von rechtmässigen ordnungen
in Burgerlichen und Peinlichen Regimenten.

Mit additionen ursprünglicher rechtsprüchen.

Auch der Göldin Bulla, Königlicher Reformation, Landtfriden..., Strassburg 1530



Ten utwór jest dostępny na licencji Creative Commons Uznanie autorstwa-Na tych samych warunkach 3.0 Unported.

ISBN 978-83-7702-784-4

PUBLISHER

Wydawnictwo KUL
ul. Zbożowa 61, 20-827 Lublin
tel. 81 740-93-40, fax 81 740-93-50
e-mail: wydawnictwo@kul.lublin.pl
<http://wydawnictwo.kul.lublin.pl>

PRINTING AND BINDING

elpil
ul. Artyleryjska 11
08-110 Siedlce
e-mail: info@elpil.com.pl

CONTENTS

List of Abbreviations	9
Introduction	11
Section 1 The Subject of the Research	11
Section 2 The Sources	12
Section 3 The Research Literature	14
Section 4 The Aim of This Work and Research Problems	17
Section 5 The Structure of This Work	19

CHAPTER I

The Roman Roots of *Crimen Maiestatis*

Section 6 The Roman Notion of <i>Maiestas</i>	21
Section 7 <i>Perduellio</i> and <i>Crimen Maiestatis</i> in Roman Legal Sources	28
Section 8 Roman Legislation on <i>Perduellio</i> and <i>Crimen Maiestatis</i>	32
Section 9 Offences Classified in Roman Law as Lese-Majesty	40
Section 10 Punishability of the Stage-Dependent Forms of an Offence	52
Section 11 Sanctions for the Offence of Lese-Majesty According to the Roman Legal Sources	54
1. Capital Punishment and <i>Interdictio Aquae et Ignis</i>	54
2. Confiscation of Property	62
3. Infamy	64
4. <i>Damnatio Memoriae</i>	69
Section 12 Liability of the Wrongdoer's Family under the <i>Lex Quisquis</i>	75
Section 13 The Distinctive Features of the Roman Process in Lese-Majesty Cases	78

Section 14 Roman *Crimen Maiestatis* as a Foundation
of the European Doctrine 81

CHAPTER II

***Maiestas* and *Crimen Maiestatis* in the European Doctrine
from the 16th through the 18th Centuries**

Section 15 The Influence of Roman law on the Concept of Crimes
against the State in the Collections of Germanic Laws 83

Section 16 The Reception of Roman *Crimen Maiestatis* in Medieval Europe 89

Section 17 The Definitions of *Maiestas* and *Crimen Maiestatis* in the European
Doctrine 93

Section 18 Offences Classified by the Doctrine as *Crimen Laesae Maiestatis* 99

Section 19 The Influence of Roman Law on Western Authors' Views Regarding
the Sanctions and the Distinctive Features of the Crime of Lese-Majesty 110

Section 20 The European Background to the Adoption of *Crimen Maiestatis*
in Poland 117

CHAPTER III

**The Influence of Roman Law on the Concept of the Crime
of Lese-Majesty in the Polish Legal Sources and the Doctrine
from the 16th through the 18th Centuries**

Section 21 The Polish Legal Sources on the Crime of Lese-Majesty 119

Section 22 Polish Legal Literature from the 16th to the 18th Century 122

Section 23 Majesty and the Crime of Lese-Majesty in the Polish Doctrine
from the 16th through the 18th Centuries 130

Section 24 Acts Classified as Lese-Majesty in the Light of the Sources of Law
and Doctrine in Old Poland 133

1. Assassination Attempt on the Monarch and Other Persons under
Legal Protection 133

2. *Crimen Maiestatis* and *Perduellio* 140

3. Heresy as *Crimen Laesae Maiestatis* 147

4. Other Offences 150

Section 25 Forms of Criminal Action According to the Polish Legal Sources
and the Doctrine 153

Section 26 Phenomenal Forms and Stages of *Crimen Maiestatis* in the Output
of Polish Legal Writers 156

Section 27 Sanctions for *Crimen Laesae Maiestatis* in Poland 161

1. General	161
2. Infamy	165
3. Confiscation of Property	170
Section 28 Liability of the Wrongdoer’s Family in the Polish Doctrine	175
Section 29 Distinctive Features of Lese-Majesty Proceedings in Poland	179
Section 30 Roman Law as a Unifying Factor in the Polish Doctrine on <i>Crimen Laesae Maiestatis</i>	189

CHAPTER IV

Roman Law in *Crimen Laesae Maiestatis* Trials from 16th to 18th Century

Section 31 Selected Lese-Majesty Trials in Poland before the Turn of the 18th Century	193
Section 32 The Problem of Admissibility of the Subsidiary Application of Roman Law in Cases Involving <i>Maiestas</i>	199
Section 33 Roman Law and the Legal Classification of Certain Forms of Lese-Majesty	208
1. Defamation of the Monarch	208
2. Arguments for a Broader Legal Protection	213
Section 34 Examples of the Use of Roman Law for Evidence Evaluation	216
Section 35 The Influence of Common Law on the Assessment of the Stages of Commission and Phenomenal Forms of the Offence	219
Section 36 The Use of Roman Law in the Assessment of Circumstances Excluding Unlawfulness or Guilt	225
Section 37 A Subsidiary Role of Roman Law in Deciding the Size of Penalty	231
Section 38 The Problem of Direct Application of Roman Law in <i>Crimen Laesae Maiestatis</i> Proceedings in Poland	237
Conclusion	241
Bibliography	247
Index of sources	257

LIST OF ABBREVIATIONS

- C. – “Codex Iustinianus.” In *Corpus Iuris Civilis*. Vol. II. Krueger, P. Ed. Berolini 1963.
- Constitutio Criminalis Carolina* – „Die peinliche Gerichtsordnung Kaiser Karls V. Constitutio criminalis Carolina.“ In *Die Carolina und ihre Vorgängerinnen*. Vol. I. Kohler, V.J., Scheel, W. Eds. Halle 1900.
- C.Th. – “Codex Theodosianus.” In *Theodosiani libri XVI cum constitutionibus sirmondianis*. Mommsen, T., Krüger, P. Eds. Berolini 1905.
- D. – “Digesta.” In *Corpus Iuris Civilis*. Vol. I, Mommsen, T., Krüger, P. Eds. Berolini 1954.
- Decretum Gratiani* – “Decretum Magistri Gratiani.” In *Corpus Iuris Canonici*. Vol. I. Friedberg, E. Ed. Leipzig 1879.
- Fragmenta Vaticana* – “Iuris anteiustiniani fragmenta quae dicuntur Vaticana.” In *Fontes Iuris Romani Anteiustiniani*. Vol. II, Riccobono, S., Baviera, J., Ferrini, C., Furlani, J. & Arangio-Ruiz, V. Eds. Florentiae 1941.
- G. – *Gai Institutiones*. Seckel, E., Kübler, B. Eds. Lipsiae 1909.
- I. – “Institutiones.” In *Corpus Iuris Civilis*. Vol. II. Mommsen, T., Krüger, P. Eds. Berolini 1959.
- Liber Sextus* – “Liber Sextus Decretalium Domini Bonifacii Papae VIII.” In *Corpus Iuris Canonici*. Vol. I, Friedberg, E. Ed. Berolini 1881.
- Nov. – “Novellae.” In *Corpus Iuris Civilis*. Vol. III. Mommsen, T., Krüger, P. Eds. Berolini 1905.
- Pauli Sententiae* – “Pauli Sententiae.” In *Fontes Iuris Romani Anteiustiniani*. Vol. II. Riccobono, S., Baviera, J., Ferrini, C., Furlani, J. & Arangio – Ruiz, V. Eds. Florentiae 1941.
- RE – *Paulys Realenzyklopädie der classischen Alterumwissenschaft*. neue Bearb. von Wissowa, G., Kroll, W., Mittelhaus, K., Ziegler, K. Stuttgart 1894.

List of Abbreviations

- Regulae Ulpiani* – “Tituli XXVIII ex corpore Ulpiani qui vulgo Domitio Ulpiano adhuc tribuuntur.” In *Fontes Iuris Romani Anteiustini*. Vol. II. Riccobono, S., Baviera, J., Ferrini, C., Furlani, J. & Arangio – Ruiz, V. Eds. Florentiae 1941.

INTRODUCTION

Section 1 The Subject of the Research

Recent years have seen a mounting interest of the romanistic studies in Poland in Roman criminal law,¹ which, as a portion of the Roman legal legacy, made its way into the legal system of pre-partition Poland. In addition to numerous examples of the use of the Roman criminal law standards,² lese-majesty deserves particular attention. The concept of an offence against the reigning sovereign, referred to as lese-majesty, or a crime violating the majesty, derived from the law of Republican Rome. It was understood as an act directed against the sovereignty of the Roman people and first named *crimen maiestatis* and later *crimen imminutae maiestatis*. In the earliest days of ancient Rome, offences that later merged with the above-mentioned concepts were associated with high treason - *perduellio*, which was punished capitally. In the Late Republic, offences known as *crimen maiestatis*, in particular: betrayal of the country, collusion with the enemy, mutiny, an insult to magistrates, etc. were prosecuted under, for example, the *lex Appuleia* of 103 BC, the *lex Cornelia de maiestate* of 81 BC and the *lex Iulia maiestatis* from

¹ Summarized results of the research on Roman criminal law have been collected by, in particular: Zabłocka, M. *Romanistyka polska po II wojnie światowej*. Warszawa 2002, pp. 123-134 (the chapter on penal law); Kuryłowicz, M. „Rzymskie prawo karne w polskich badaniach romanistycznych.” *Zeszyty Naukowe Uniwersytetu Rzeszowskiego, Prawo* 1(2003), fasc. 7, p. 167f.

² Examples of the reception of Roman legal instruments or instances of their direct application are provided by Sondel, J. “Prawo rzymskie w procesie sprawców porwania Stanisława Augusta.” In *Crimina et mores. Prawo karne i obyczaje w starożytnym Rzymie*. Kuryłowicz, M., ed., Lublin 2001, p. 191.

the reign of Caesar. The offence was given prominence during the Principate when the object of protection against assault was the ruler himself. Punished was not only a direct assault on the emperor, but also any instance of disrespect for the ruler's name or image, as well as the refusal to venerate him, etc. During the Dominate, the list of instances of conduct qualified as *crimen laesae maiestatis* swelled considerably, and it was not only the perpetrators who suffered punishment but also their supporters and even family members. The basic legal regulation covering the matter was contained in Title 8, Book 9 of the Justinian Code: "Ad legem Iuliam maiestatis." This institution was accommodated to the legal systems of the Middle Ages, first by German emperors ardently acknowledging their Roman succession, and later by the Church, whose head, the pope, regarded himself - beginning with the second half of the 11th century, and especially in the 12th century - as superior to the empire; consequently, the provisions on *crimen laesae maiestatis* were embedded in the collections of canon law. Subsequently, they were received by the law systems of individual European states. This old Roman institution safeguarded the monarch's interest much better than the formerly known legal measures of infidelity (*infidelitas*) and felony; it was also more conducive to the strengthening of royal power.³ Truth be told, in the Polish political system, the royal authority was reduced, *vide* the principle of elective monarchy and their accountability; still, the person of the sovereign in Poland garnered - regardless of the actual scope of their power - considerable respect, which was influenced by the Catholic concept of royal power; despite the established elective model, the ultimate source of monarch's authority was regarded to be divine.⁴

Section 2 The Sources

The source material underlying the research can be divided into three basic sets. The first set comprises juridical and literary sources going back to

³ Uruszczak, W. „Zapomniany prawnik hiszpański Garsias Quadros z Sewilli.” *Odrodzenie i Reformacja w Polsce* R. 22(1977), p. 64. See also: Dyjakowska, M. „Crimen laesae maiestatis jako przykład wpływów prawa rzymskiego na prawo karne Polski przedrozbiorowej. Stan badań i postulaty.” In *Współczesna romanistyka prawnicza w Polsce*. Dębiński, A., Wójcik, M., eds., Lublin 2004, pp. 65-66.

⁴ Sawicki, W. *Studia nad wpływami praw obcych w dawnej Polsce*. Warszawa 1971, p. 310; Lityński, A. *Przestępstwa polityczne w polskim prawie karnym XVI-XVIII wieku*. Katowice 1976, p. 16.

ancient Rome. Among the juridical sources, of significance are the extracts from legal writings collated in title D. 48.4: "Ad Legem Iuliam Maiestatis," referring to Julian's law on *crimen maiestatis* or commenting on its provisions, as well as the imperial constitutions referring to this act and making up title C 9.5: "Ad Legem Iuliam Maiestatis." Also numerous extracts are used of other titles of the *Digesta* (hereafter also the *Digest*) and the *Codex Iustinianus* (hereafter also the Justinian Code) and, to a lesser extent, the *Institutiones* by Justinian (hereafter also the *Institutions*), and the *Novellae* (hereafter also the *Novels*). A noteworthy addition to the two key sources of the *Digesta* and the *Codex* are *Pauli Sententiae* (hereafter also the *Sentences*), in particular, Title 5 "Ad Legem Iuliam Maiestatis." The information on the legislation concerning *crimen maiestatis* and on the practice in *maiestas*-related cases is furnished by a number of literary sources. Noteworthy are especially the *Annales* by Tacitus, providing a record of lese-majesty trials during the reign of Octavian Augustus and his successors. Invaluable are also texts of other Roman historians (Livy, Suetonius), the writings by Cicero, and the works of grammarians (Festus, Charisius, Varro) and rhetors (Quintilian).

Yet another group consists of European sources of law and the legal literature from the mediaeval and modern era (from the 16th through the 18th century). The point of departure for the discussion of the concept of lese-majesty in the early Middle Ages is a collection of Germanic laws (as published in the *Monumenta Germaniae Historica*⁵). Furthermore, selected sources of canon law are used (*Decretum Gratiani, Liber Sextus*). With a view to analysing the content and scope of lese-majesty in Western Europe, numerous legal works are used, including the monographs elaborating the offence in question (e.g. H. Gigas,⁶ E. Bossi⁷), and more general works on criminal law (e.g. J. Clarus,⁸ J. Damhouder,⁹ T. Deciani,¹⁰ B. Carpzov¹¹).

The third group contains the sources originating in pre-partition Poland: manuscripts, old prints and source publications. Among them, various rules and regulations should be mentioned, in the first place parliamen-

⁵ *Monumenta Germaniae historica inde ab anno Christi quingentesimo usque ad annum millesimum et quingentesimum*. Berolini – Wimariae 1877.

⁶ "De crimine laesae maiestatis." In *Tractatus Universi Iuris*. Vol 11, Venetiis 1584.

⁷ "Tractatus de crimine laesae maiestatis." In *Tractatus varii qui omnem fere criminalem materiam ... complectuntur*. Venetiis 1570.

⁸ *Opera omnia sive Practica civilis atque criminalis*. Venetiis 1614.

⁹ *Praxis rerum criminalium*. Antverpiae 1570.

¹⁰ *Tractatus criminalis*. Vol 1, Augustae Taurinorum 1593.

¹¹ *Practica nova imperialis saxonica rerum criminalium*. Lipsiae 1739.

tary constitutions published in the *Volumina Legum*, among which particular attention should be attached to those regulating the offence of lese-majesty of: 1510, 1539 and 1588 and the legislation of the Great Sejm. The work does not also fail to include draft codifications of the Enlightenment era (*Zbiór praw* [Law Collection] by Andrzej Zamoyski and the Code of Stanisław August), and - for comparison - the statute-based law of the Grand Duchy of Lithuania, especially the Third Statute of 1588. Of crucial importance is also the Polish law literature from the period between the 16th and the 18th century, particularly monographs devoted exclusively to *crimen laesae maiestatis* (G. Quadros,¹² J. Kaszyc,¹³ S. Huwaert¹⁴ and F. Minocki¹⁵), and also more general works covering either the entire Polish law or criminal law only. Examined are also the records of judicial practice. Given the fact that almost the entire collection of the Diet Tribunal files perished during World War II, the tribunal being competent for adjudicating upon lese-majesty cases, of profound significance are old prints and source publications documenting many much-publicized processes involving the offence in question (parliamentary official records, collections of pleadings, often produced by order of the royal court, and court speeches). Finally, auxiliary literary sources (among others, chronicles by M. Bielski and S. Górski), and journalistic writings are referred to.

The search for manuscript, old print and publication sources was conducted in university libraries, in particular: John Paul II Catholic University of Lublin, Maria Curie-Skłodowska University in Lublin, Jagiellonian University, Warsaw University, and also the National Library, the Library of the Polish Academy of Sciences in Kraków and Gdańsk, and the H. Łopaciński Provincial Public Library in Lublin. Old Polish texts were translated into modern English by Konrad Szulga.

Section 3 The Research Literature

The influence of Roman law on the construction of the crime of lese-majesty in old Poland has not yet been the subject of any comprehensive study.

¹² *Tractatus de crimine laesae maiestatis* (National Library in Warsaw, cat. no. BOZ 112).

¹³ *Assertiones ex utroque iure de crimine laesae maiestatis*. Moguntiae 1605.

¹⁴ *De foemina criminis laesae maiestatis rea*. Gedani 1732.

¹⁵ *Dissertatio canonico – civilis de crimine laesae maiestatis*. Posnaniae 1775.

No more but a single chapter elaborates the crime in the aforesaid monograph work by A. Lityński¹⁶; still, the author fails to devote too much space to the actual legacy of Roman law in the relevant legislation, the views expressed in the legal literature and the legal practice. Some skin-deep references to the Roman origin of the crime are to be found in J. Makarewicz in the section on Polish penal law.¹⁷ Most studies on specific issues are centred on the secondary use of Roman law in the trial of the participants of the Confederation of Bar for their attempted assault on King Stanisław August Poniatowski; the works of J. Sondel¹⁸ and K. Bukowska-Gorgoni¹⁹ deserve special attention. Also several studies of auxiliary nature should not be overlooked, exploring the influence of Roman law on the Statutes of Lithuania.²⁰

Among the works investigating *crimen laesae maiestatis* in Roman law, there are ones by R.A. Bauman²¹ and A. Pesch.²² The individual laws governing this crime are discussed by: E.S. Gruen,²³ R. Seager,²⁴ R.A. Bauman,²⁵ E. Badian,²⁶ K. Amielńczyk,²⁷ J.E. Allison and J.D. Cloud²⁸ and a general publication on Roman legislation authored by G. Rotondi.²⁹ Another group

¹⁶ Pp. 15-54.

¹⁷ *Polskie prawo karne. Część ogólna*. Lwów 1919.

¹⁸ Besides the publication named in note 2, see also *Ze studiów nad prawem rzymskim w Polsce w okresie Oświecenia*. Kraków 1988, pp. 90-100; „Kodeks Justyniana jako podstawa prawna w postępowaniu sądowym o *crimen laesae maiestatis* w osiemnastowiecznej Polsce.” *Nowy Filomata* 4(2000), 2, pp. 143-148.

¹⁹ „Kilka uwag o mocy obowiązującej praw obcych w Polsce w świetle akt procesu o zamach na Stanisława Augusta.” *Zeszyty Naukowe Uniwersytetu Jagiellońskiego DCXXV. Prace prawnicze*. Fasc. 97; *Studia z historii praw obcych w Polsce*. Vol. 1, pp. 87-103.

²⁰ See in particular Taubenschlag, R. *Wpływy rzymsko – bizantyńskie w drugim Statucie litewskim*. Lwów 1933; K. Koranyi, „O niektórych postanowieniach karnych Statutu litewskiego z r. 1529 (Studium prawno – porównawcze).” In *Księga pamiątkowa ku uczczeniu czterechsetnej rocznicy wydania pierwszego Statutu litewskiego*. Ehrenkreutz, S., eds., Wilno 1935; Bardach, J. *Statuty litewskie a prawo rzymskie*. Warszawa 1999.

²¹ *The Crimen Maiestatis in the Roman Republic and Augustan Principate*. Johannesburg 1970.

²² *De perduellione, crimine maiestatis et memoria damnata*. Aachen 1995.

²³ “The *lex Varia*.” *Journal of Roman Studies* 55(1965), pp. 59-73.

²⁴ “*Lex Varia de maiestate*.” *Historia* 16(1967), pp. 37-43.

²⁵ “Some Problems of the *Lex Quisquis*.” *Antichthon* 1(1967), pp. 49-59.

²⁶ “*Quaestiones Variae*.” *Historia* 18(1969), pp. 447-491.

²⁷ „Ustawodawstwo Korneliusza Sulli na rzecz restauracji republiki i zaprowadzenia porządku publicznego.” *Annales UMCS, Sectio G*, 38(1991), p. 1-14; „Z historii ustawodawstwa rzymskiego w sprawach karnych. Próba periodyzacji.” In *Studia Historycznoprawne, Prawo CCCV. Tom poświęcony pamięci profesora Edwarda Szymoszk*. Konieczny, A., ed., Wrocław 2008, pp. 11-24.

²⁸ „The *Lex Iulia Maiestatis*.” *Latomus* 21(1962), pp. 711-731.

²⁹ *Leges publicae populi Romani*. Milano 1912, Nachdr. Darmstadt 1962.

of research studies focuses on punishments meted out for *crimen maiestatis* and include, among others, the contribution by D. Briquel,³⁰ E. Cantarella,³¹ B.M. Levick,³² A.H.J. Greenidge,³³ B. Sitek³⁴ and M. Dyjakowska.³⁵ Particularly frequently addressed issues are the *crimen maiestatis* trials under Octavian Augustus and Tiberius; since this work revolves around *lex Iulia maiestatis* in the light of the *Digesta* and on the law of the emperors Arcadius and Honorius of AD 397, i.e. those regulations of Roman law that had a direct impact on the concept of *crimen laesae maiestatis* in pre-partition Poland, only selected works of the abundant literature on the subject, e.g. R.S. Rogers³⁶ and R. Sajkowski,³⁷ have been used. As complementary sources, some generic studies are referred to on Roman criminal law, e.g. those by T. Mommsen,³⁸ J.L. Strachan-Davidson,³⁹ E. Costa,⁴⁰ or B. Santalucia.⁴¹

Among the works discussing the impact of Roman law on Germanic laws with regard to the crime of lese-majesty, F.S. Lear's articles make a valuable source, published as a collection in 1965.⁴² The crime in question in German law is shown through the monographs by, e.g. O. Kellner⁴³ and J.M. Ritter,⁴⁴ while the Western European doctrine is highlighted in the referenced work by M. Sbriccoli,⁴⁵ the observations made in these works on

³⁰ "Sur le mode d'exécution en cas de parricide et en cas de perduellio." *Melanges d'archeologie et d'histoire de l'École Française de Rome* 92(1980), pp. 87-107.

³¹ *I supplizi capitali. Origine e funzioni delle pene di morte in Grecia e a Roma*. Milano 2005.

³² "Poena legis maiestatis." *Historia* 38(1979), pp. 358-379.

³³ *Infamia. Its place in Roman Public and Private Law*. Oxford 1894.

³⁴ *„Kara konfiskaty majątku za crimen laesae maiestatis."* Olsztyn 2003.

³⁵ „Kara konfiskaty majątku za crimen laesae maiestatis." In *Podstawy materialne państwa. Zagadnienia prawno – historyczne*. Bogacz, D., Tkaczuk, M., eds., Szczecin 2006, pp. 601-614.

³⁶ *Criminal Trials and Criminal Legislation under Tiberius*. Middletown 1935.

³⁷ „Próba oskarżenia Lucjusza Enniusza (Tac. Ann. III 70)." In *Od starożytności do współczesności. Studia historyczne. Wydanie jubileuszowe z okazji 75. rocznicy urodzin i 55 – lecia pracy zawodowej, w tym 30 – lecia pracy naukowej Profesora Tadeusza M. Gelewskiego*. Śliwiński, J. Olsztyn 1997, pp. 73-78; „Klasyfikacja przestępstw o obrazę majestatu za rządów Tyberiusza na podstawie katalogu Swetoniusza (Tib. 58)." *Echa Przeszłości* R. 1(2000), pp. 17-28.

³⁸ *Römisches Strafrecht*. Leipzig 1899, Nachdr. Graz 1955.

³⁹ *Problems of the Roman Criminal Law*. Vol. 1-2, Oxford 1912.

⁴⁰ *Crimini e pene da Romolo a Giustiniano*. Bologna 1921.

⁴¹ *Diritto e processo penale nell'antica Roma*. Milano 1989.

⁴² *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965.

⁴³ *Das Majestätsverbrechen im deutschen Reich bis zur Mitte des 14. Jahrhunderts*. Halle 1911.

⁴⁴ *Verrat und Untreue an Volk, Reich und Staat. Politischen Dekikts in Deutschland bis zum Erlass des Reichstrafgesetzbuches*. Berlin 1942.

⁴⁵ *Crimen laesae maiestatis. Il problema del reato politico alle soglie della scienza penalistica moderna*. Milano 1974.

the impact of Roman law on *crimen laesae maiestatis* in modern times are no more but complementary.

The current state of research, given the lack of definitive studies addressing the traces and influences of Roman law in the law, lawyers' views and legal practice with regard to the crime of lese-majesty in pre-partition Poland deem the choice of this research problem appropriate and fully justified.

Section 4 The Aim of This Work and Research Problems

1. In his article published some years ago, L. Garofalo⁴⁶ drew attention to the long-underrated influence of Roman law on the science of criminal law in mediaeval and modern Europe. The author demonstrated that a number of theoretical constructs, shaped, or at least rooted in the classical jurisprudence, permeated into the criminal law of the era governed by common law. His major focus were the issues of intentional and unintentional fault, circumstances excluding fault or liability, stages of a crime, although - as pointed out by the author based on the scholarly findings - Roman law, very handy in formulating general principles of law, was also the cause of errors in specific cases also due to the misinterpretation of sources.⁴⁷ L. Garofalo closed his observations by concluding that the theoretical solutions, especially adopted through the work of the classical jurisprudence in Roman criminal law, were able to endure the test of time.⁴⁸ This appears to be an absolutely apt comment in the case of one of the institutions of Roman criminal law - the crime of lese-majesty: the ancient Rome-developed concept of *crimen maiestatis* gained a foothold in the Middle Ages in European countries, including Poland.

⁴⁶ Garofalo, L. „Pojęcia i żywotność rzymskiego prawa karnego.” *Zeszyty Prawnicze UKSW* 3(2003), 1, pp. 7-42. The article was published earlier in Italian: “Concetti e vitalità del diritto penale romano.” In *Iuris Vincula. Studi in onore di Mario Talamanca*. IV, Napoli 2001, p. 75f. The thesis of the existence in Roman legislation, in Emperor Hadrian's rescripts to be precise, of some elements or rudiments of the modern, in the contemporary sense, science of criminal law is advanced by K. Amielańczyk: *Rzymskie prawo karne w reskryptach cesarza Hadriana*. Lublin 2006, p. 20 and in particular pp. 64-90.

⁴⁷ Garofalo, L. *Op. cit.*, p. 10; cf. Falchi, G. *Diritto penale romano. I singoli reati*. Padova 1932, p. 10f.

⁴⁸ *Op. cit.*, p. 39.

2. Lese-majesty in old Poland (like in other European countries) was the gravest - alongside high treason - crime among public offences. In the opinion of modern authors, on account of the divine origin of the royal power, he who goes against the monarch makes a stand against God himself. This explains why lese-majesty is regarded as the most serious of all crimes.⁴⁹ The ruler is not only the embodiment of God on earth (*animata Dei imago*), but also the father of the nation and the guarantor of state's security;⁵⁰ hence, anyone violating the father's majesty may therefore be called a patricide and his deeds seen as sacrilegious.⁵¹ The 18th-century authors justified the need for a special legal protection of the king by referring to him as the personification of the nation which trusted him to hold sway over the country.⁵² Such a legal protection also stemmed from the esteem that the monarch enjoyed in Poland (although it did not always coincide with the ruler's actual range and position of power).⁵³

The conviction of a considerable - according to present-day terminology - degree of social harm of the crime of lese-majesty did not go hand in hand with its precise and unequivocal legal regulation. Until 1510, the crime had remained within the realm of customary law, which determined the chronological framework of this work. The research (as regards Polish law) spans three centuries - from the early 17th century to the year 1795. The 16th century in Poland saw the thriving of legal culture, as illustrated by intense codification work, modification and addenda to customary law through statutes, issued by monarchs in legislations with an increasing involvement of social class representations.⁵⁴ The results of legislative activity in the field of criminal law, strongly relying on customary law anyway, continued almost unchanged until the Third Partition of Poland;⁵⁵ this statement remains valid also for *crimen laesae maiestatis*, as corroborated by the fact that the last of the 16th century laws governing this crime (of 1588) was fundamental for the proceedings of the trial for the assassination attempt on King Stanisław August Poniatowski that took place in 1773. To recreate the customary law on this crime might be rather involved because of the scarcity of source material;

⁴⁹ Minocki, F. Op. cit., p. B v.

⁵⁰ Przyłuski, J. *Leges seu statuta ac privilegia Regni Poloniae*. Kraków 1553, p. 18.

⁵¹ Minocki, F. Op. cit., p. B v.-B1.

⁵² See more in Section 23.

⁵³ Skrzetuski, W. *Prawo polityczne narodu polskiego*. Vol. 1, Warszawa 1782, p. 98.

⁵⁴ Cf. e.g., Grodziski, S. *Z dziejów staropolskiej kultury prawnej*. Kraków 2004, pp. 161-162. On the codification movement, see e.g. Uruszczak, W. *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.* Warszawa 1979, p. 26f.

⁵⁵ Cf. Lityński, A., op. cit., p. 10.

therefore, this research focuses on the sources of statutory law (made law) emerging from the early 16th century, as well as the legal literature, which also began to burgeon in the time of the Renaissance in Poland.

3. Despite the growing number of regulations of statutory law, the crime of lese-majesty was not subject to any comprehensive regulation, which was often underlined by the representatives of the doctrine of the time and participants in lese-majesty processes. Given such circumstances, the material to fill the gaps in the legislation was borrowed from Roman law, to be precise, common law, which was understood as the ancient law compiled in the *Corpus Iuris Civilis*, complemented by the principles and case law taken from foreign laws and lawyers' opinions. This work, therefore, aims to investigate the influence of Roman law over the concept of the crime of lese-majesty in old Poland. First, the question of influence of Roman law over Polish statutory law on lese-majesty needs some elucidation. Second, the author moves on to discuss the impact of this law on the views voiced in the Polish legal literature on *crimen laesae maiestatis*. Because the lack of comprehensive legislation on the crime of lese-majesty could not be without any influence on the court practice, the subsequent aim of this work is to analyse the instances of the use of the Roman law standards in the *crimen maiestatis* processes and, in particular, supply the answer to the question whether such standards were merely an inspiration for how to resolve certain procedural matters or were actually directly applicable. The attempt to assess the significance of Roman law to the content of Polish statutory law, the doctrine and legal practice should allow the author to take a stand on the thesis that exists in the literature on the subject and concerning the subsidiary application of this law in lese-majesty proceedings.

In order to make the solutions of Roman law in *crimen maiestatis*, which evolved over centuries, more accessible to the reader, this research work relies on the terminology corresponding to the modern science of criminal law.

Section 5 The Structure of This Work

The research aims given above, as well as the variety of source material, determined the structure of this work and its division into four chapters. Chapter One discusses the Roman roots of the crime of lese-majesty. The concept of *maiestas* is clarified along with its origin in the light of the Roman legal sources and the relationship between *crimen maiestatis* and *peduellio*.

After outlining Roman legislation on the crime in question, the author lists the instances of conduct constituting *crimen maiestatis*; at the same time, remarks are made on the issue of punishability of particular stages in the commission of the crime (preparatory acts, attempt and commission (consummation)). After that, the author presents sanctions imposed for lese-majesty and explains the problem of liability of the perpetrator's family members. Discussed is also the separation of proceedings in the *maiestas* cases. Chapter Two addresses the impact of the Roman approach to the crime of lese-majesty on the law and, primarily, on the European legal doctrine from the end of the 18th century on, as an exhaustive investigation of all the laws of Europe for the occurrence of lese-majesty would by far exceed the scope of this study. After discussing the concept of crimes against the state in the collections of Germanic laws, attention is shifted to the reception of the concept of *crimen laesae maiestatis* in the doctrine of mediaeval and modern Europe. Having highlighted the European background should allow a better demonstration of Roman law influences on the crime of lese-majesty in Polish law and the doctrine of the period; this demonstration follows in Chapter Three. After having a closer look at the sources of law and legal literature pertaining to lese-majesty, the author attempts to demonstrate the impact of common law on the list of acts qualified as *crimen laesae maiestatis*, the penalization of individual stages of the commission of this crime, the views on the sanctions and the perpetrator's family's liability, and finally certain characteristics assigned to the legal actions involving the crime in question. The closing Chapter Four presents the role of Roman law in the trials for lese-majesty in Poland from the 16th to the 18th century. The author takes into consideration, among others, the impact of this law on the qualification of certain acts and their stages as *crimen laesae maiestatis*, the assessment of evidence and circumstances excluding unlawfulness or guilt. Finally, the author endeavours to answer the question whether the application of the Roman law principles in old Poland in the cases involving lese-majesty was nothing more but subsidiary.

CHAPTER I

THE ROMAN ROOTS OF *CRIMEN MAIESTATIS*

Section 6 The Roman Notion of *Maiestas*

The Latin term *maiestas* is derived from *maior* (the comparative of *magnus* – great, powerful, mighty¹). The term *maior* does not carry a value in itself, but its value is only demonstrated through the juxtaposition with another lower value; similarly, *maiestas* does not denote an attribute existing in isolation from others but the relationship between the *maior* and *minor* – the grandness or superiority. For instance, Cicero, when linking this attribute to the Roman nation, speaks of *magnitudo quaedam*² and explains that “*maiestas est in imperii atque in nominis populi Romani dignitate*”³; thus, *maiestas* consists in the the eminence of the empire and the dignity of the Roman nation’s name. Elsewhere, the same author teaches the beginners in oratorical art how to produce definitions and gives the following example: “*si maiestas est amplitudo ac dignitas civitatis, is eam minuit qui exercitum hostibus populi Romani tradidit.*”⁴ This definition can be imputed to be based – at least partly – on the description of conduct that constitutes an

¹ *Słownik łacińsko – polski*. Plezia, M., ed., vol. 3, Warszawa 1998, pp. 421-422, s.v. *magnus*; cf. also *Thesaurus linguae Latinae*. Vol. 10, Leipzig 1936, col. 152; Heumann, H., Seckel, E. *Handlexikon zu den Quellen des römischen Rechts*. Graz 1958, p. 328, s.v. *maiestas*; *Dictionnaire étymologique de la linguae latine. Histoire des mots*. Ernout, A., Meillet, A. Vol. 2, Paris 1959, p. 14; *Lateinisches etymologisches Wörterbuch von A. Walde, 3 Aufl. von J.B. Hofmann*. Vol. 2, Heidelberg 1954, p. 15.

² “*maiestas ... est magnitudo quaedam populi Romani in eius potestate ac iure retinendo*” (*Partitiones oratoriae* 30, 105).

³ *Ibidem*. Cf. Quintilianus. *Institutiones oratoriae* 7,3,35.

⁴ *De Oratore* 2,39,164. For more, see Drexler, H. “*Maiestas.*” *Aevum* 30(1956), p. 195f.

offence against *maiestas* through its downgrading (*minuere*), as in several other definitions by Cicero, “*minueritne maiestatem qui voluntate populi Romani rem gratam et aequam per vim egerit*”⁵ or “*maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare.*”⁶ As follows, Cicero does not only supply the definition but also lists the attributes of *maiestas* - the relationship between the *maior* and *minor*: *magnitudo*, *potestas*, *imperium*, *dignitas* and *amplitudo*. Violation of any of these attributes leads to the downgrading of the Roman *maiestas*, i.e. to the prejudice of the durability of the relationship in which the Roman people are the *maior*.⁷

The Romans saw *maiestas* in the first place as a feature of the relations existing between the gods - *maiores* and people - *minores*.⁸ Quintilian recognizes *maiestas* as an attribute of the gods, one which garners them people’s worship:

verum in deis generaliter primum maiestatem ipsius eorum venerabimur, deinde proprie vim cuiusque et inventa, quae utile aliquid hominibus attulerint. (*Institutiones Oratoriae* 3,7,7)⁹

For the relationship between the gods and humans is characterized by a bilateral commitment: people venerate the gods (*veneratio*), and they offer people specific benefits in return (*beneficentia*).¹⁰ The same principle hold true in the relations between the people of Rome as the *maior* and other nations. The Romans often emphasized the divine origin of their *maiestas*, which their ancestors, Latins, gained thanks to Jupiter (*Iuppiter Latiaris*),¹¹ and which manifested itself not only in a military superiority but also in the language and customs (e.g. specific dress).¹² This relationship was exposed to violation (*laedi, violari*), which eventuated in the degradation of

⁵ *Partitiones oratoriae* 30, 105.

⁶ *De inventione* 2,17,53.

⁷ Schisas, P. M. *Offences against the State in Roman Law and the Courts Which Were Competent to Take Cognisance of Them*. London 1926, p. 6f; Bauman, R.A. *The Crimen Maiestatis in the Roman Republic and Augustan Principate*. Johannesburg 1970. p. 4.

⁸ The first mention of *maiestas* in Roman literature is to be found in the work *Aegisthus* by Livy Andronicus where the divine is shown as *maiestas mea* (“*quin quod parere vos Maiestas mea procat*”) - *Tragoediae* 13. Cf. Drexler, H. Op. cit., p. 196; Dumézil, G. “*Maiestas et gravitas. De quelques différences entre les Romains et les Austronéens.*” *Revue de Philologie* 78(1952), p. 9.

⁹ Cf. Seneca. *De beneficiis* 4,19,4.

¹⁰ Cf. e.g. Cicero. *De divinatione* 1,38,8.

¹¹ Cf. e.g. Vergilius. *Aeneis* 12,819ff.

¹² Cf. e.g. Valerius Maximus. *Facta et dicta memorabilia* 2,2,2: *magistratus vero prisci quantopere suam populi que Romani maiestatem retinentes se gesserint, hinc cognosci potest, quod... illud quoque magna cum perseverantia custodiebant ne Graecis umquam nisi Latine responsa*

the majesty of the Roman people (*imminui, minui, deminui*); therefore, majesty needed to be constantly safeguarded (*servari, conservari*).¹³ In R.A. Bauman's view, the relationship incorporated by *maiestas* secured a state of equilibrium that required positive action for its durability, was not easy to maintain and always vulnerable to disturbance.¹⁴ This was reflected in the clauses contained in the treaties concluded by Rome with individual states, in which the other party was obliged to preserve the majesty of the Roman nation.¹⁵ Although the majesty protection clause was tantamount to the subjection to Rome of the state entering the agreement, it also required that Rome assume certain obligations toward the *minor*;¹⁶ still, both parties to the treaty may not be seen as equal, as highlighted by Cicero in his statement on the alliance of Rome with the city of Gades of 206 BC: "id habet hanc vim, ut sit ille in foedere inferior...deinde cum alterius populi maiestas conservari iubetur, de altero siletur: certe ille populus in superiori conditione causaque ponitur, cuius maiestas foederis sanctione defenditur."¹⁷ What follows, he who must surrender to the majesty of the Roman people is *inferior*, while the Romans are "in superiori conditione causaque."¹⁸ Despite this, according to jurist Proculus of the 1st c., the nation obliged to maintain the Roman *maiestas* can be considered free.¹⁹

darent. Livius, *Ab Urbe condita* 29,17,11: neque Romani civis (quidquam est) praeter habitum vestitumque et sonum Latinae linguae.

¹³ For more on the terminology related to the violation and compliance with *maiestas*, see: Drexler, H. Op. cit., pp. 196-198.

¹⁴ Op. cit., p. 8.

¹⁵ A frequently quoted example is the one supplied by Livy on the alliance with Aetolia of 189 BC: diu iactati Aetoli tandem ut condiciones pacis convenirent, effecerunt. fuerunt autem hae: imperium maiestatemque populi Romani gens Aetolorum conservato sine dolo malo (*Ab Urbe condita* 38,11,2; cf. Polybius. *Historiae* 21,32,3; for more, see Bauman, R.A. "Maiestatem populi Romani comiter conservato." *Acta Iuridica* 36(1976), pp. 19-29). For more on other alliances, see: Gundel, H.G. "Der Begriff Maiestas im politischen Denken der römischen Republik." *Historia* 12(1963), p. 289f; Bauman, R.A. "Maiestatem populi Romani comiter conservato." *Acta Iuridica* 1976, p. 19f.

¹⁶ "Potest esse ulla denique maiestas, si impedimur quo minus per populum Romanum beneficiorum virtutis causa tribuendorum potestatem imperatoribus nostris deferamus?" (Cicero. *Pro Balbo* 16,37). R.A. Bauman pays attention to the frequent occurrence of the noun *maiestas* along with the verb *praestare* (e.g. Cicero. *De divinatione* 1,38,82; idem *De natura deorum* 2,30,77; Ovidius. *Fasti* 5,46), which is characteristic of the law of obligations and denotes a performance of an obligation or a service (e.g. Paulus D. 44,7,3 pr.; G. 4,2). For more, see *Crimen maiestatis...*, p. 12.

¹⁷ *Pro Balbo* 35-36.

¹⁸ For more, see Gundel, H.G. Op. cit., p. 295.

¹⁹ Proculus D. 49,15,7,1.

Besides the concept of *maiestas populi Romani*, Latin authors use - though much less frequently - *maiestas civitatis* and *maiestas rei publicae*. The former can be traced in Cicero who reads, "iure tum [i.e. in the time of Scipio the Younger, after the Third Punic War] florebat populi Romani nomen, iure auctoritas huius imperii civitatisque maiestas gravis habebatur."²⁰ Also, the latter phrase is used only occasionally to disappear in the 1st c.²¹ Throughout the Republic and the Principate of Emperor Augustus, the term *maiestas imperii* was used, which the *imperium* understood figuratively as the rule of Rome.²²

Under the powers conferred by the Roman people entitled *Maiestas populi Romani* officials, which Cicero expressed in words: "maiestatem minuire est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare".²³ The majesty attributed to the Roman people was given precedence over the majesty of magistrates, for example, consuls.²⁴ It can therefore be inferred that *maiestas* was subject to certain gradation: *populus Romanus* was *minor* in relation to the gods, but *maior* in relation to public officials, who, in turn, were perceived as *maiores* by individual citizens.

In the early Principate, many powers of the Republican officials were transferred to Emperor Octavian, the first among the citizens (*princeps civitatis*) and the first in the Senate (*Senatus princeps*). From the Senate, he received *tribunicia potestas* (which granted the princeps personal inviolability, the right to submit motions, and the right of veto), the proconsular empire, under which he exercised the military authority over all provinces and held the title of the high priest that gave him authority over the matters of worship and, together with the title of *Augustus* and *Divi Filius*, sanctioned his power by referring it to the religious dimension.²⁵ What is more, some forms

²⁰ *Divinatio in Q. Caecilium* 69.

²¹ Cf. e.g. Cicero. *Oratio in Verrem* 2,5,50: "Isto igitur tuo, quem ad modum ipse praedicas, beneficio, ut res indicat, pretio atque mercede minuisti maiestatem rei publicae" ... The same author furnishes the following definition of the concept of *res publica*: "est igitur ... res publica res populi, populi autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus". (*De re publica* 1,39)

²² Cf. e.g. Cicero. *Pro Sexto Roscio Amerino oratio* 131. For more, see Gundel, H.G. *Op. cit.*, p. 306.

²³ *De inventione* 2,17,53.

²⁴ Livius. *Ab Urbe condita* 2,7,7; 2,57,3. See also: Drexler, H. *Op. cit.*, p. 197.

²⁵ For more, see Jaczynowska, M. *Historia starożytnego Rzymu*. Warszawa 1979, p. 205f; Carry, M., Scullard, H.H. *Dzieje Rzymu od czasów najdawniejszych do Konstantyna*. Vol. 2, Warszawa 1992, p. 9f.

of worship were introduced of Augustus,²⁶ which, combined with the gradual expansion of the imperial authority, made the infringement of majesty - *crimen maiestatis* - evolve from an offence against the people of Rome to the crime against the emperor and his family members. Initially, the basis for Augustus' special protection under penal law was the conferral by the Roman people - at least formally - of the authority that was formerly held by magistrates back in the times of the Republic.²⁷ However, as shown in Tacitus' account, Augustus was very severe - more than required by the provisions of the *lex Iulia de adulteriis coercendis* - in punishing the adulterers seducing the women of the imperial household (Augustus' daughter and granddaughter): "nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur."²⁸ Many authors believe that the evolution of the notion of *maiestas populi Romani* coincided with the development of the concept of *maiestas* as enjoyed by Augustus (and subsequent emperors) and his closest relatives (*domus Caesaris*). A special legal protection of the women from Octavian's family - his sister Octavia and his wife Livia - was afforded by the privilege of their personal inviolability equal to that of the plebeian tribunes.²⁹ The basis for this privilege was the lifetime *tribunicia potestas* assumed by Octavian in 36 BC, as he himself mentions in *Res Gestae Divi Augusti* 10: "Sacrosanctus in perpetuum ut essem et quoad viverem tribunicia potestas mihi esset per legem sanctum est." The term *sacrosanctus* can be interpreted as 'decreed as inviolable, sacred' and hence venerable and untouchable;³⁰ it is worth noting that the inviolability of the tribunes was originally guaranteed by an oath (decree) taken by the people (*lex sacrata*) to kill (i.e. to sacrifice to the underground deity - *sacer esse*) the assassin of any tribune. According to T. Mommsen, the conferral of *tribunicia potestas* upon Octavian was accomplished through a *lex* which was a model for *lex de imperio Vespasiano*,³¹ and this *potestas* entitled him not only to grant the aforesaid privilege to Octavia

²⁶ For more, see Hertog-Hauser, G. *Kaiserkult.* RE Suppl. Vol. 4, Stuttgart 1924, col. 806f.

²⁷ Cf. Ulpianus D. 48,4,1,1: "quo [sc. crimine maiestatis] tenetur is ... quo quis magistratus populi Romani, quive imperium potestatemve habet, occidatur" ...

²⁸ *Annales* 3,24,3.

²⁹ Cf. Livius. *Ab Urbe condita* 3,55. For more, see Sajkowski, R. „Julia Augusta a prawo o obrazie majestatu.” In *Religia i prawo karne w starożytnym Rzymie Materiały z konferencji zorganizowanej 16017 maja 1997 r. w Lublinie*. Dębiński, A., Kuryłowicz, M., eds., Lublin 1998, p. 127f and the literature listed therein.

³⁰ Cf. e.g. *Słownik łacińsko – polski*. Plezia, M., ed. Vol. 5, p. 7, s.v. *sacrosanctus*. For more, see Mommsen, T. *Römisches Staatsrecht*. Vol. 1, Basel 1952, p. 236.

³¹ *Staatsrecht*... Vol. 2, part 2, p. 872f.

and Livia, but also to impose sanctions (through *coërcitio* or an action for *maiestas* before *comitia tributa*) on anyone who would abuse the women's inviolability equal to such that would be imposed for abusing Octavian.³² Actually, the basis for *maiestas* attributed personally to Octavian were not his tribune's prerogatives but the pledge of allegiance from 32 BC that he writes about in *Res Gestae Divi Augusti* 25: "Iuravit in mea verba tota Italia sponte sua ad me belli quo vici ad Actium ducem depoposcit. Iuraverunt in eadem verba provinciae Galliae Hispaniae Africa Sicilia Sardinia." In the face of the war against Anthony (formally against Cleopatra who was named *hostis populi Romani*), Octavian took the oath of the people of Italia and western provinces not as an entity holding *imperium*, as it was the case in the military oath, but because of his personal authority; that was how the people recognized him as the leader of *dux* and themselves as his personal clients. The relationship established by the oath, referring to the institution of patronage (*patrocinium*), resembled the relationship implied by *maiestas*: Octavian acted as the *maior* in relation to the people of Italic municipalities and western provinces, and the *beneficium* that he offered was freedom (*libertas*).³³ In view of the Republican habit of inheriting the patronage relationship, the pledge of allegiance was proposed to Tiberius after Augustus' death, and, after Tiberius, the annually renewed pledge became a regular element of succession to the throne. The example of Trasea Petus, convicted in AD 66, shows that the evasion of the pledge could form the basis for the charge of *crimen maiestatis*.³⁴ This became possible only after the entrenchment of the system of Principate because formerly the pledge had merely a moral and religious significance: its violation constituted the instance of *impietas*. In the cited passage of Tacitus' *Annales* (3,24,3), such kinds of acts were defined as *laesa religio*; it is worth noting that the authors blended them with the category of *violata maiestas*. According to R. A. Bauman, *maiestas*, as referred to above, is not the *maiestas* of the Roman people, whose downgrading the author calls *maiestas populi Romani minuta* (*Annales* 1,72,3), but the *maiestas* of Augustus whose abuse was termed *violare* and covered the members of his family. *Maiestas Augusti* was embedded in the title of *pater patriae*, which was officially conferred upon Augustus on 5 February 2 BC by the Senate and the people,³⁵ although, truth be told, he had

³² For more, see Bauman, R.A. *Crimen Maiestatis*... p. 220.

³³ *Ibidem*, p. 226.

³⁴ Tacitus. *Annales* 1,8. For more, see Saumagne, Ch. "La passion de Thræsea." *Revue des Études latines publiée par la Société des Études latines* 33(1955), p. 241f; Bauman, R.A. *Impietas in Principem. A study of treason against the Roman emperor with special reference to the first century A.D.* München 1974, p. 153f

³⁵ Cf. e.g. *Res Gestae Divi Augusti* 35,1; Suetonius. *De vita Caesarum: divus Augustus* 58,1-2.

enjoyed it much earlier, especially in poetry with a view to likening the emperor to Jupiter.³⁶ Importantly, the word *pater* also denotes the patron in the patronage relationship; this - in some authors' opinions - proved the origin of the title *pater patriae* in the relationship between Octavian and the people of Italia and the provinces established by the oath of AD 32.

Lastly, the meaning of Tacitus' statement deserves particular attention that Augustus, by punishing those guilty of offences against his family (*adulterium*), bent or even surpassed his own laws. This statement seems not only to apply to administering the penalties stricter than those listed in the *lex Iulia de adulteriis coërcendis*: the guilty of adultery were sentenced to death or deported to an island;³⁷ at the same time, the law did not provide for capital punishment but exile and confiscation of half of the perpetrator's property. The surpassing of the laws could also consist in deciding cases by the imperial court which gradually - from the domestic tribunal - transformed into the *iudicium publicum*. Suetonius' words relating to Julia the Elder, "ob libidines atque adulteria damnatam" [author's emphasis], do not indicate a hearing before the domestic tribunal (*iudicium domesticum*), though - assuming that the matter involved the abuse of the princeps's majesty - it was the eligible tribunal for the patron to seek redress for the breach of obligation by those under his patronage,³⁸ in the time of the Republic this patron being *pater familias* or a husband seeking justice for his wife *in manu* for the crime of adultery. Because the case did not involve 'ordinary' adultery but *laesa religio et violata maiestas*, Augustus did not submit it to *quaestio de adulteriis*, thus it could not be heard before *quaestio maiestatis*, since that latter court dealt only with the conduct of violating the majesty of the Roman people. Consequently, the only proceedings at hand were those before *iudicium domesticum* of Augustus, yet the gravity of the sentence indicates that the investigated conduct was equated with the diminishing of the majesty of the Roman people and that - in Tacitus' view - was in defiance of the laws. Furthermore, over time, the imperial tribunal's jurisdiction was extended to cover offences concerning *maiestas populi Romani*, and in the period of the Dominate this court claimed the exclusive jurisdiction over the matter.³⁹ In point of fact, the boundary between the majesty of the emperor and that of the Roman people were irrevocably blurred.

³⁶ See in particular Ovidius. *Fasti* 2,131-133, 138; Horatius. *Carmina* 1,12,511-52.

³⁷ Suetonius. *De vita Caesarum: divus Augustus* 65.

³⁸ Mommsen, T. *Römisches Strafrecht*. Leipzig 1899, Nachdr. Graz 1955, p. 566; Robinson, O.F. *The Criminal Law of Ancient Rome*. London 1995, p. 15.

³⁹ Kübler, B. "Maiestas." *RE* 14.1, col. 543; Bleicken, J. *Senatsgericht und Kaisergericht. Eine Studie zur Entwicklung des Prozeßrechts im frühen Prinzipat*. Göttingen 1962, p. 72f.

Section 7 *Perduellio* and *Crimen Maiestatis* in Roman Legal Sources

The ever-debated issue in *crimen maiestatis* is the relationship between this offence and *perduellio*. The difference of opinion among authors is primarily due to the different criteria applied to analyse these offences. For they can be viewed either in terms of illegal acts that comprise them or in terms of the process of investigation and inflicting punishment.

The ancient authors derived the term *perduellio* from *duellum*, an old equivalent of *bellum* 'war'. Thus, *perduellis* is synonymous to *hostis* 'enemy':

...perduellis, qui pertinaciter retinet bellum (Festus. *De verborum significatu* 47);

per pro perquam, valde, ut perduellio perquam duello, et perduellis plus quam hostis (Charisius. *Artis grammaticae libri V* 273,23);

quos nos hostes appellamus eos veteres perduelles appellabant, per eam adiectionem indicantes cum quibus bellum esset (Gaius D. 50,16,234 par.);

Apud Ennium ... Perduelles dicuntur hostes, ut Perfecit sic Perduellum et duellum, id postea Bellum (Varro. *De lingua Latina libri 1,1,7,49*).⁴⁰

Many authors are of the opinion that *perduellis* denoted in particular an internal enemy, one who undermines the state.⁴¹ On the other hand, treason (*proditio*), i.e. supporting the enemy waging war against Rome and committing the most serious military offences, comprised activities directed at the state in its external relations.⁴² The acts that met the criteria of *perduellio* were not a closed list but were broadly defined as offences against the community of citizens. The earliest trials for *perduellio* go back to the royal period when the king was also both the supreme military commander and judge in cases involving the most serious crimes. He was supported by two officials (later, in the Republic, by consuls) called *duoviri perduellioni iudicandae*; their role

⁴⁰ Cf. *ibidem*, 5,3: ... multa verba aliud nunc ostendunt, aliud ante significabant, ut Hostis; nam tum eo verbo dicebant peregrinum qui suis legibus uteretur, nunc dicunt eum quem tum dicebant Perduellem. For more, see Schisas, P.M. *Op. cit.*, p. 3f.

⁴¹ Zumpt, A.W. *Das Criminalrecht der römischen Republik*. Vol. 1, part 2, Berlin 1865 (Neudruck Aalen 1993), p. 327; Mommsen, T. *Strafrecht*... p. 536; Brecht, Ch.H. *Perduellio. Eine Studie zu ihrer begrifflichen Abgrenzung im römischen Strafrecht bis zum Ausgang der Republik*. München 1938, p. 121f. Cf. by the same author "Perduellio." In *RE*. Vol. 37, Stuttgart 1937, col. 616f.

⁴² Ch.H. Brecht lists here, among others, *transfugium* (desertion to the enemy), desertion, cowardice, negligent performance of duties, insubordination and *seditio* (a whole-troop mutiny). These crimes were punished under the *imperium* attributed to military commanders (*Op. cit.*, pp. 60f.).

was to establish liability and carry out the execution of the convicted person caught in the act. When they faced an open-and-shut case, they did not initiate regular preliminary proceedings and did not pronounce the sentence as is was considered unnecessary; in other cases, in the Republican era, their judgement could have been appealed against under the *ad populum provocatio*.⁴³ The first legendary trial involving duumvirs was described by Livy as the Publius Horace case during the reign of Tullus Hostilius (*Ab Urbe condita* 1.26). This account sparks a number of contentious issues, in particular the question of legal classification of Horace's act: was his killing of his sister actually *perduellio*, or rather *parricidium*?⁴⁴ This kind of controversy shows that the scope of the offence was not strictly defined from the beginning, yet all acts regarded as *perduellio* shared one common feature: *hostilis animus*, or the intention of doing harm to the community.

In the early Republic, *affectatio regni*, that is seeking to restore the monarchy, was treated as *perduellio*.⁴⁵ The trial was held before the Century Assembly (*comitia centuriata*) with *duoviri* acting as public prosecutors. Since

⁴³ Liebenam, W. "Duoviri perduellioni iudicandae." In *RE*. Vol. 10, col. 1799–1800.

⁴⁴ A number of authors see *perduellio* in this act because in the time when the remit of civil and military duties was not clearly separated, the manslaughter of a citizen was regarded as an act of hostility in a military sense, and also as an act of appropriation that only the ruler and the highest judicial authority were entitled to; the killing by Horace of his sister violated the *ius vitae necisque* that was the domain of *paterfamilias* (Rein, W. *Das Criminalrecht der Römer von Romulus bis auf Justinianus*. Leipzig 1844, p. 467; Merrill, E.T. "Some Remarks on Cases of Treason in the Roman Commonwealth." *Classical Philology* 13(1918), p. 34; Siber, H. „Analogie, Amtsrecht und Rückwirkung im Strafrechte des römischen Freistaates." *Abhandlungen der philologisch-historischen Klasse der sächsischen Akademie der Wissenschaften* 43(1936), p. 7; Osuchowski, W. „The Origins of Prosecuting High Treason in Roman Republic." *Archivum Iuridicum Cracoviense* R. 11(1978), p. 59; idem "Zu einigen Hochverratsfällen im republikanischen Rom." *Archivum Iuridicum Cracoviense* 12(1979), p. 41; Watson, A. "La Mort d'Horatia et le Droit Pénal Archaïque à Rome." *Revue Historique* 57(1979), p. 11). Other authors defend the opinion that while Horace's act met - from a legal point of view - the criteria of *parricidium*, the offender was tried according to the procedure applied for *perduellio*. According to T. Mommsen, who approached Livy's account more like a legend, the murder committed by Horace should be considered *perduellio* only if affected a magistrate. However, since the right to appeal against judgement was only given if it had not been passed by the king, and during the reign of Tullus Hostilius there were no quaestors (*quaestores parricidii*), *duoviri* were appointed; hence, the words *perduellionem iudicare* can mean that Horace did not commit *perduellio* but he was penalized as if he had done so (*Strafrecht*... P. 582, note 1). For more, see Dyjakowska, M. „Postępowanie w sprawach o crimen maiestatis w okresie republiki rzymskiej." *Zeszyty Prawnicze UKSW* 6.1(2006), p. 31.

⁴⁵ Cf. e.g. Livius. *Ab Urbe condita* 2,41,10-12. For more, see Osuchowski, W. *The Origins of Prosecuting High Treason*... p. 58; idem "Zu einigen Hochverratsfällen " pp. 33-41; Schizas, P.M. Op. cit., p. 29.

the mid-3rd century BC, the prosecution for *perduellio* was transferred to plebeian tribunes,⁴⁶ who, from plebeian authorities, turned state officials. Later, they became public prosecutors before the *comitia centuriata*, where they brought to trial not only not the perpetrators of political crimes who were accused of overt hostility towards the state, but also magistrates abusing power, which involved negligence or incompetence rather than intentional fault. Therefore, some acts were practically regarded as *perduellio* (or after some time *maiestas*) if the plebeian tribunes wanted them be so; consequently, their accusations were oftentimes highly political.⁴⁷ It is vital to take notice of the fact that the mechanism of tribunes' activity as outlined above contributed to the rise of a new category of crimes against the state - *crimen imminutae maiestatis*, which were superior to *perduellio*. This category encompassed the acts impairing both the internal order of the state and its external relations; they were seen as damaging the dignity of the Roman people and were measured against other criteria than *hostilis animus*. Further, it happened that the same act was classified - often on procedural grounds - as *perduellio* or as *crimen maiestatis*,⁴⁸ and the matter was investigated also by the *comitia tributa*. It was this very assembly that witnessed the first trial for *maiestas*. The year 245 BC saw the case of Claudia, sister of

⁴⁶ The last trial which attempted to restore the function of duumvirs was the 63 BC case of Gaius Rabirius, member of the equestrian order (for more see Lengle, J. *Römisches Strafrecht bei Cicero und den Historikern*. Leipzig und Berlin 1934, pp. 13 - 14; Dyjakowska, M. Op. cit, p. 37). A.W. Zumpt, when isolating the crime of *perduellio* from others on the basis of the proceedings followed, claims that the term *perduellio* denoted not so much the type of acts but any proceedings initiated by tribunes before the *comitia centuriata* (Op. cit. Vol 1. Part 2, p. 331f).

⁴⁷ For more, see Strachan-Davidson, J.L. *Problems of the Roman Criminal Law*. Vol. 1, Oxford 1912, p. 105f.

⁴⁸ An excellent example of a trial, actually two trials: for *perduellio* and then for *maiestas*, which tarnished the reputation of one of the most important aristocratic families of Rome, is the case of Publius Claudius Pulcher of 248 BC. During the First Punic War, before the naval Battle of Drepana, according to Suetonius' account: "apud Siciliam non pascentibus in auspicando pullis, ac per conemtum religionis mari demersis, quasi ut biberent, quando esse nollent, proelium navale iniiit." (*De vita Caesarum: Tiberius* 2). After the lost battle, he was accused of *perduellio* before the *comitia centuriata* by plebeian tribunes Fundanius and Pullius. The trial was interrupted by the storm, and, in accordance with the rules of procedure, the judgement should be passed at one sitting (*Scholia Bobiensia ad Ciceronem* 27; cf. Valerius Maximus. *Facta et dicta memorabilia* 8, 1, 4). When these same tribunes tried to accuse him again, other tribunes voiced their opposition (*intercessio*): "ne idem homines in eodem magistratu perduellionis bis eundem accusarent." Since it was also forbidden for the same officials (or tribunes) to re-bring an action penalized by capital punishment, and due to the requirement to discontinue the trial by the *comitia centuriata*, Fundanius and Pullius accused Pulcher again before the *comitia tributa* and managed to have him pay a fine of 120 thousand aces (1000 aces for every lost warship).

the late Publius Claudius Pulcher, her case being described by Suetonius as follows: “*novo more iudicium maiestatis apud populum mulier subiit, quod conferta multitudine aegre procedente carpento, palam optaverit, ut frater suus Pulcher revivisceret, atque iterum classem amitteret, quo minor turba Romae foret*” (*De vita Caesarum: Tiberius* 2). For an unfortunate and contemptuous words - and we must bear in mind the contemporary social class antagonism - directed against the people whose court had caused the downfall of Claudia’s brother and was about to sentence her family to oblivion for the next forty years,⁴⁹ she was made to pay 25 thousand aces. Interestingly enough, Claudia’s accusers were two curule aediles, Tiberius Sempronius Gracchus and Gaius Fundanius Fundulus, the same who, as a plebeian tribune, appeared in Claudia’s brother’s trial. Although curule aediles were better known for acting in the capacity of prosecutors before the *comitia tributa* in cases involving offences related to the violation of order and security in the municipality that were were in charge of (*cura urbis*), besides taking care of food supplies, mainly corn (*cura annonae*), and investigating the cases of usury and speculation in grain, since the mid-4th century BC, aediles’ jurisdictional functions began to overlap - with the tacit support of patricians - with the jurisdictional activities of tribunes. The evidence of this, according to R.A. Bauman, is the very idea of the patrician office of curule aedile established in 366 BC as a counterbalance to plebeian tribunes, which was also visible in the similarity of jurisdictional powers, e.g. prosecution of offences against the state. What is more, it was aediles who first, in connection with Claudia’s case, used the term *maiestas minuta*, and the case itself is considered to be the first trial for *maiestas*, as emphasized by Suetonius: “*novo more iudicium maiestatis.*”⁵⁰ The case of her brother could also be classified, as pointed out by R.A. Bauman,⁵¹ as *maiestas*, but Claudia’s trial is the first unambiguously confirmed case involving this offence and leading to the dissemination of the term *maiestas minuta* as a decisive evaluation criterion in all acts of high treason.⁵²

It follows that during the Republic *perduellio* was regarded as a special kind of *crimen maiestatis*, a constituent element of which was the hostility towards the state (later also towards the emperor).⁵³ Although the term *perduel-*

⁴⁹ Bauman, R.A. *Women and Politics in Ancient Rome*. London–New York 1992, p. 20.

⁵⁰ *De vita Caesarum: Tiberius* 2. See also Osuchowski, W. “Des études sur la genèse du *crimen maiestatis* en Rome républicaine.” *Archivum Iuridicum Cracoviense* 14-15(1981-82), p. 23.

⁵¹ *Crimen Maiestatis...*, p. 258.

⁵² For more, see Dyjakowska, M. *Op. cit.*, pp. 42-43.

⁵³ The participants of e.g. internal unrest may not be charged with *animus hostilis*, which, though detrimental to the state, do not endanger its existence: “In civilibus dissensionibus, qua-

lio, later superseded by *crimen laesae maiestatis*, fell into disuse, this distinction was perpetuated until Justinian. In the *Digest*, *perduellio* means an aggravated form of *crimen maiestatis*, threatened by particularly severe penalties:

Ulpianus D. 48,4,11: Is, qui in reatu decedit, integri status decedit; extinguitur enim crimen mortalitate, nisi forte quis maiestatis reus fuit, nam hoc crimine, nisi a successoribus purgetur, hereditas fisco vindicatur. Plane non quisque legis Iuliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rempublicam vel Principem animatus; ceterum si quis ex alia causa legis Iuliae maiestatis reus sit, morte crimine liberatur.

The above passage reads that the death of the perpetrator of *perduellio* before the judgement is delivered does not cause - as in the case of those guilty of other forms of lese-majesty - the action to expire, and the sentence pronounced on the deceased and resulting in the confiscation of his property fell to his heirs.

Section 8 Roman Legislation on *Perduellio* and *Crimen Maiestatis*

The penal regulations governing the assault on the Roman people (and - initially - the king) much pre-date the formation of the criminal law concept of *crimen maiestatis*. The authors of available literary sources report first such regulations as early as during the reign of Romulus. Dionysius of Halicarnassus credits the first king of Rome with a law to punish the betrayal of the country in the same way as the breach of obligations imposed by the patronage relationship, i.e. by sacrificing the offender to Jupiter of Boundaries (Iuppiter Terminus).⁵⁴ The first law from the period of the Republic was the alleged *lex Icilia de tribunicia potestate* dated 492 BC, which banned the interference with the tribune's exercise of *ius cum plebe agendi*.⁵⁵ Also, according to Marcian, the provision of the Law of Twelve Tables

mvis saepe per eas respublica laedatur, non tamen in exitium reipublicae contenditur; qui in alterutras partes discedent, vice hostium non sunt." (Ulpianus D. 49,15,21,1)

⁵⁴ 2,10,3; cf. *ibidem* 2,74. According to the commonly shared view in the literature on the subject, this law should be regarded as merely a tool of political propaganda during the reign of Caesar and Octavian Augustus (cf. e.g. Brecht, C.H. *Op. cit.*, pp. 34-41; Bauman, R.A. *Crimen Maiestatis*... p. 34).

⁵⁵ Dionysius Halicarnassensis. *Antiquitates Romanae* 7,17,5; cf. *ibidem* 10,32,1; Cicero. *Pro Sestio* 37,79. For more, see Rotondi, G. *Leges publicae populi Romani*. Milano 1912, Nachdr. Darmstadt 1962, p. 193; Bauman, R.A. *Crimen Maiestatis*... p. 34.

prescribing death penalty to anyone “qui hostem concitaverit quive civem hosti tradiderit” referred to the offence of *perduellio* (D. 48,4,3).

Around 103 BC, the *lex Appuleia de maiestate minuta* was adopted (in the form *plebiscitum*). Its originator was the plebeian tribune, Lucius Apuleius Saturninus. The political background for the adoption of the new *lex* was the adverse consequence of the war waged by Rome against the Cimbri and the Teutons. In the year 109 BC, the army led by the consul Mark Junius Syllanus against the Cimbri was defeated and five years later the commander was unsuccessfully accused by the tribune Gnaeus Domitius Ahenobarbus before the *comitia tributa* of incompetence and sparking a war with the Cimbri tribes without the approval of the Roman people (“iniussu populi”).⁵⁶ In the year 107 BC, the consul Lucius Cassius Longinus fell in a battle with the Tigurines; his legate Gaius Popilius Lenas along with the rest of the army were set free only after accepting to pass under the yoke and leaving some captives behind. Thereafter, Popilius was tried in Rome - probably before the *comitia tributa* like Syllanus - and went into exile.⁵⁷ Among the war-related cases was also that of Quintus Servilius Caepio who after defeating Volci Tectosagi, allies of the Tigurines, sacked their shrine in Tolosa. The captured treasure, which was intended to go towards the state treasury, disappeared in rather suspicious circumstances on its way to Rome, and the suspicion of embezzlement fell on Caepio. Two years later, Caepio, by refusing to joint his troops with Gnaeus Mallius Maximus’ army, permitted the Roman army to be crushed at Arausiona; it was Rome’s heaviest defeat since the Battle of Cannae. After Caepio’s return to Rome, he was deprived of *imperium proconsulare* and the specially appointed tribunal - *quaestio auri Tolosani*⁵⁸ - initiated an investigation into the disappearance of the treasure of Tolosa. In the end, Caepio escaped punishment, but in 103 BC he was sentenced to the confiscation of property for the defeat at Arausiona;⁵⁹ the other of the commanders, Mallius, through the resolution of the Plebeian Council, was punished by exile. A noteworthy figure involved in the process was the tribune Lucius Apuleius Saturninus, who, in the same year, endorsed the adoption of the *lex Appuleia de maiestate minuta*.

⁵⁶ Bauman, R.A. *Crimen Maiestatis*... p. 38. The author notes Asconius’ words describing the charge levelled against Syllanus: “ipse quoque adversus Cimbris rem male gesserat” resemble Tacitus’ words “si quis male gesta re publica maiestatem populi Romani minuisset” (*Annales* 1,72,3). Although *maiestatem minuere* as a legal term surfaces in public law for the first time in the *lex Appuleia*, it is possible that similar terminology was used in the charge against Syllanus.

⁵⁷ Livius. *Periochae* 65; Caesar. *De bello Gallico libri* 1,7,4; *Ad Herennium* 1,15,25; 4,24,34.

⁵⁸ About *lex Norbana de auri Tolosani quaestione* cf. Rotondi, G. *Op. cit.*, p. 327.

⁵⁹ Cf. e.g. Valerius Maximus. *Facta et dicta memorabilia* 4,7,3; 6,9,13.

This law established a permanent tribunal to examine matters essentially defined as *maiestatem minuere*, that is, diminishing the majesty. The analysis of the sources demonstrates that - often contrary to the commonly held opinion - the law does not use the concept of majesty of the Roman people (*maiestas populi Romani*), but only *maiestas minuta*,⁶⁰ it needs therefore to be clarified who, under the *lex Appuleia*, was entitled to hold that attribute. The above-cited passage of *Ad Herennium* 2,17 yields a clue; its author speaks of the alleged accusation levelled at Caepio: "Maiestatem is minuit qui ea tollit ex quibus rebus civitatis amplitudo constat. quae sunt ea, Q. Caepio? suffragia populi et consilium magistratus. nempe igitur tu et populum suffragio et magistratum consilio privasti cum pontes disturbasti." Then, the author puts a statement into Caepio's mouth through which he refutes the accusation, "Maiestatem is minuit qui amplitudinem civitatis detrimento afficit..." On the other hand, Cicero attributes the following words to Publius Sulpicius Rufus, Caepio's procesutor, "maiestas est in imperii atque in nominis populi Romani dignitate, quam minuit is qui per vim multitudinem rem ad seditionem vocavit" (*Partitiones oratoriae* 30, 105). These passages suggest that it was the Roman state (*civitas*) in its abstract sense that held *maiestas*. *Maiestas* as a concept was so vague and general that it would include a much wider range of offences than those falling under *perduellio*.⁶¹ For the conduct ascribed to Caepio and Mallius could not be regarded as a manifestation of hostility towards the state, but rather as a failure to act that exposed the state to suffer some loss.

In the year 90 BC, the plebeian tribune Quintus Varius Hybrida contributed to the adoption of another *lex maiestatis*. Like in the case of the *lex Appuleia*, the new law was motivated by warfare - this time by the revolt of Roman allies demanding civil rights. The *lex Varia* established an extraordinary tribunal (*quaestio extraordinaria*) to prosecute those who incited the Roman allies to a military conflict: "ut quaeritur de iis quorum ope consiliove socii contra populum Romanum arma sumpsissent."⁶² Cicero referring

⁶⁰ Cf. e.g. Cicero. *De oratore* 2,25,107; *Ad Herennium* 1,21; 2,17.

⁶¹ Although the law in question was probably enacted before Caepio's and Mallius' trial, it is still questionable whether they were held to account before the *quaestio* or before the Plebeian Council, since the establishment of *quaestio maiestatis* did not rule out the proceedings before *comitia centuriata*. Furthermore, some authors doubt whether the tribunal created under the *lex Appuleia* was sustainable. It is known, however, that the tribunal decided in the following processes: Gaius Norbanus in 94 BC, Quintus Servilius Caepio - the son of the father of Rome's defeat at Arausio - in 95 BC, and probably Sextus Titius and Gaius Apuleius Decianus in 98 BC, which lends credibility to its *quaestio perpetua* nature.

⁶² Asconius, *Orationum Ciceronis quinque enarratio* 79; cf. *Facta et dicta memorabilia* 8,6,4.

to this law as the *lex Varia de maiestate* suggests its more generic nature; in his dispute with E.S. Gruen⁶³, R. Seager argues that even if the purpose of the law was to establish a tribunal for a particular type of offences, such offences fell within the category of *maiestas*, hence the name used by Cicero is justified.⁶⁴ The controversy also touched upon the relationship between the *lex Varia* and the *lex Appuleia*: E.S. Gruen purports that the former supplanted its predecessor.⁶⁵ This seems to have been confirmed in Cicero's statement that after the death of Saturninus the Senate overturned his laws.⁶⁶ It is known, however, that in 94 BC Gaius Norbanus⁶⁷ was tried before *quaestio perpetua* and according to the provisions of the *lex Appuleia*, which demonstrates that, as maintained by R.A. Bauman, the repealed laws were only those of Saturninus' second term as tribune (i.e. of 100 BC). Consequently, the *lex Appuleia* adopted at the first tribunate continued in force; in addition, as noted by R. Seager, it covered acts for which the *lex Varia* was drafted before (already the Law of the Twelve Tables provided for penalties for the perpetrator "qui hostem concitaverit"). It is also unlikely that the purpose of the law was to toughen the penalties for *maiestas*.⁶⁸ On the other hand, the reasons for making the *quaestio extraordinaria* was in all probability the ineffective operation of other courts in wartime⁶⁹ and the necessity to review the procedure. Finally, political considerations should not be overlooked, in particular the mounting role of *equites* in adjudication on political offences.⁷⁰

The *lex Cornelia de maiestate* of 81 BC is regarded as the first general law covering all possible cases of *crimen maiestatis*. It comprised a part of the comprehensive legislation by Sulla which affected almost all provinces of

⁶³ Gruen, E.S. "The *lex Varia*." *Journal of Roman Studies* 55(1965), p. 59f.

⁶⁴ Seager, R. "Lex *Varia de maiestate*." *Historia* 16(1967), pp. 36-37. Likewise Badian, E. "Quaestiones *Variae*." *Historia* 18(1969), p. 448.

⁶⁵ Op. cit., p. 59.

⁶⁶ Cicero. *De legibus* 2,6,14. Saturninus, outlawed under *senatusconsultum ultimum* of 100 BC and besieged by the consuls on Capitoline Hill, was murdered shortly after the surrender, before the Senate was able to decide his fate (Dio Cassius. *Roman History* 37,26f).

⁶⁷ "C. Norbanum *maiestatis crimine publicae quaestioni subiectum*" (Valerius Maximus. *Facta et dicta memorabilia* 8,5,2; cf. Cicero. *De oratore* 2,107); "ex quo verbo [sc. *maiestate minuta*] lege *Appuleia* tota illa causa pendeat" (Cicero. *De oratore* 2,107; 2,197-201 and 214).

⁶⁸ Seager, R. Op. cit., p. 41.

⁶⁹ Cicero mentions that the *quaestio Variana* was the only court operating in wartime (*Brutus* 89,304). Asconius' statement shows, however, that, over time, the initially active *quaestio* ("cum multi *Varia* lege inique damnarentur" - *Orationum Ciceronis quinque enarratio* 73-74 C) was also suspended.

⁷⁰ See also: Seager, R. Op. cit., p. 41ff.

public life. As a *dictator regibus scribendis et rei publicae constituendae*, Sulla embarked upon the creation of the first criminal justice system ever, based on laws adopted in ordinary voting and in *comitia*⁷¹ (both the *lex Appuleia* and the *lex Varia* were accepted in plebiscites). The *lex Cornelia*, besides broadening the concept of *maiestas minuta* to include conduct absent from earlier laws (in particular, offences committed against or by officials), was fundamental to the sustainable functioning of *quaestio maiestatis*. Many authors deny Sulla the credit for establishing this tribunal, which was to be created - as already mentioned - by the *lex Appuleia*;⁷² still, he was attributed some innovations in the legal proceedings and - because of the sloppiness and the diminishing power of tribunes - the transfer to *quaestio* of exclusive competence in matters involving *maiestas*.⁷³

The most long-lasting regulation on lese-majesty, effective until the demise of the Roman state, was the *lex Iulia maiestatis*. It has been long debated in the literature both in terms of authorship, the time of creation and the content, the main source of knowledge of which is Title 4, Book 48 of the *Digest*, "Ad Legem Iuliam Maiestatis," and Title 8, Book 9 of the Code of Justinian bearing the same name.

Doubts as to the authorship of the law were first raised by a 16th-century author, Hieronymus Gigas, in his work *De crimine laesae maiestatis*; he claimed that not every Julian law came from Julius Caesar, for example the *lex Iulia de adulteriis coërcendis* whose authorship by Augustus is authenticated by Suetonius and Ulpian.⁷⁴ This is further corroborated in a passage from the *1st Philippic* of Cicero in which the speaker criticizes Anthony's

⁷¹ See also: Amiałańczyk, K. „Ustawodawstwo Korneliusza Sulli na rzecz restauracji republiki i zaprowadzenia porządku publicznego." *Annales UMCS. Sectio G*, 38(1991), pp. 1-14; ibidem „Z historii ustawodawstwa rzymskiego w sprawach karnych. Próba periodyzacji." In *Studia Historycznoprawne, Prawo CCCV. Tom poświęcony pamięci profesora Edwarda Szymoszka*. Konieczny, A., ed., Wrocław 2008, p. 17.

⁷² Cf. in particular Zumpt, A.W. Op. cit., vol. 2, p. 228f, p. 377f; Bauman, R.A. *Crimen Maiestatis...* p. 69. The creation of *quaestio perpetua maiestatis* is attributed to Sulla by Mommsen, T. *Strafrecht...* p. 203; Schisas, P.M. Op. cit., p. 121; also later Pesch, A. *De perduellione, crimine maiestatis et memoria damnata*. Aachen 1995, p. 195.

⁷³ Cicero. *Divinatio in Caecilium oratio 3,7*: "Iudiciorum desiderio tribunicia potestas efflagitata est." For more, see Zumpt, A.W. Op. cit., vol. 2, pp. 500-501.

⁷⁴ *Tractatus Universi Iuris*. Vol. 11. Venetiis 1584. It is difficult to accept the author's argument attributing the drafting of the law to Caesar and its implementation to Augustus, but his undoubted contribution is to highlight the possibility that the *lex Iulia maiestatis* may have been penned by both Caesar and Augustus, even working together. In the chapter titled "Cur [lex] Iulia dicta sit", Gigas notes that neither the *Digest* nor the Code of Justinian, nor any other familiar literary source identifies the author of the law.

endorsement of the law guaranteeing *provocatio ad populum* to individuals convicted for *vis* and *maiestas*.⁷⁵ The most probable date of adoption of the *lex Iulia maiestatis* seems to be the year 47 BC, when Rome saw numerous acts of violence sparked by the financial market panic.⁷⁶ In some earlier literature, there was a commonly shared view that even if the emergence of the *lex Iulia maiestatis* can be credited to Caesar, there might have been another *lex Iulia* graced by Augustus. The followers of this view seek cogent arguments to support it juridical (the above-mentioned title in the *Digest* and *Pauli Sententiae* 5,29)⁷⁷ and literary sources.⁷⁸

⁷⁵ In *Marcum Antonium Orationum Philippicarum Libri XIV* 1,9,21-23. On the legal and actual consequences of Anthony's law anticipated by Cicero, see Bauman, R.A. *Crimen maiestatis...* p. 155f.

⁷⁶ Dio Cassius. *Historia Romana* 42,51,1-2. The date of the law's origin, 46 BC (see e.g. Roton-di, G. Op. cit., p. 422), is based on Suetonius' account where a description of Caesar's reforms (*De vita Caesarum: divus Iulius* 42) was put after his four-time triumph in that year (*ibidem*, 37). The authors point out, however, that the sequence of chapters in Suetonius' work does not always correspond to the chronological order (Bauman, R.A. *Crimen maiestatis...* P. 163 and the literature therein).

⁷⁷ For example, the origin of the law in the time of Augustus is evidenced in D. 48,4 by the occurrence of the terms: *princeps* and *imperator* which were not used during the reign of Caesar; it was only under his successor that the title of *princeps* was minted on coins and entered the official terminology. Still, until the publication of the *Lex de imperio Vespasiani*, such terms replacing the names of Vespasian's predecessors had been avoided, hence it is very unlikely for Augustus to use the term *princeps* as a general concept in the narrow context of public law and without specific reference to his own name; such a use, even in a less strict sense, would have suggested Augustus' attempt to legitimize the principate as the governing system, not only *de facto* but also *de jure* (Allison, J.E., Cloud, J.D. "The Lex Iulia Maiestatis." *Latomus* 21 (1962), p. 713ff). Considering the aforesaid, it should be assumed that the references to the princeps were absent from the original text of the law commented on in the *Digest*, regardless of whether the author was Caesar or Augustus and, by interpolation, the concept of *iniussu principis* replaced the formerly used *iniussu populi Romani* in order to adjust the extracts borrowed from jurists' works to contemporary requirements. When the principate took root in the political landscape, the phrase *populus Romanus* was gradually substituted by *princeps* and *imperator*, as the emperor was regarded as the personification of the Roman people (*Pauli Sententiae* 5,29,1).

⁷⁸ T. Mommsen (*Strafrecht...* P. 541) claims that a passage from Tacitus' *Annales* furnishes an argument for Augustus' authorship; in Tacitus, the accused of a verbal insult of Emperor Cremutius Cordus says: "Verba mea, patres conscripti, arguuntur: adeo factorum innocens sum. sed neque haec in principem aut principis parentem quos lex maiestatis amplectitur." (4,34,2-3). According to T. Mommsen, *princeps* refers to Augustus and *principis parens* to Caesar; it would indicate that Augustus, the alleged author of the law that protected him, broadened it (by *senatusconsultum*) to include his adoptive father. R.A. Bauman (*Crimen maiestatis...* Pp. 268ff) shows, however, that Cordus uses *princeps* to describe the ruling (AD 25) emperor, i.e. Tiberius; by extension, *principis parens* is his predecessor, Augustus. The words of the accused should therefore be understood as follows: by praising one of Caesar's assassins (Mark Brutus) and calling the

The content of the law in question is known primarily from the *Digest*, hence it is not always easy to tell whether the passages on *publicae leges* are quotations (or summaries) of the original laws, or rather jurists' interpretations based on imperial rescripts. In the aforesaid title of the *Digest*, passages 5-11 (except for, perhaps, 10) are more of a commentary, not quotes, so it would be premature to infer the original wording of the *lex Iulia maiestatis*⁷⁹ from the content of these titles. Also, the interference of the body working on the *Digest* in the parts of jurists' works should not be overlooked; some possible interpolations occurring in this title were studied thoroughly by J.D. Cloud.⁸⁰ The reconstruction of the original content of the extracts of the legal texts that make up D. 48.4, let alone examining to what extent they reflect the original wording of the law, and to what extent they are merely comments or even proposals of their respective authors, does not fall within the scope of this study. For in the periods to follow, this law was in fact subject to research and even adopted in some countries in the form accepted from the Justinian's *Digest*.

A parallel story is that of the constitution issued on 4 September AD 397 in Ancyra and addressed to Eutylichian, praetorian prefect in the East; it known from its first words as the *lex Quisquis*, considered by some authors as the last *lex maiestatis*.⁸¹ Its political background was a conflict between Stilicho and Eutropius that erupted in the eastern part of the empire. Stilicho, *magister militum*, was married to Emperor Theodosius the Great's niece; not only did the dying ruler give him command of the army, but also - at least in his opinion - an informal mandate to take care of his juvenile sons, Arcadius and Honorius.⁸² Stilicho's ambition was - with the help of

other 'the last Roman' (Gaius Cassius), he indeed diminished Caesar, but not Tiberius or Augustus, for whom the verbal insult may have provided grounds for charging him with *maiestas*. C.W. Chilton ("The Roman Law of Treason under the Early Principate." *Journal of Roman Studies* 45(1955), p. 75) reveals another passage from *Annales* to test the idea of Augustus' authorship of the law: "... facta arguebantur, dicta impune erant. primus Augustus cognitionem de famosis libellis specie legis eius tractavit" (1,72,3). J.E. Allison and J.D. Cloud observe that it does not follow from these words that Augustus initiated trials for written insults on the basis of his own law; had it been so, Tacitus would have used the phrase *legis suae* instead of *legis eius* (Op. cit., p. 118). The course of the trial is described by, among others, Zäch, C. *Die Majestätsprozesse unter Tiberius in der Darstellung des Tacitus*. Winterthur 1972, p. 10f; cf. Lengle, J. Op. cit., p. 68.

⁷⁹ Cf. Allison, J.E., Cloud, J.D. Op. cit., p. 115.

⁸⁰ "The Text of Digest XLVIII,4. Ad Legem Iuliam Maiestatis." *Zeitschrift der Savigny – Stiftung für Rechtsgeschichte. Romanische Abteilung* 80(1963), p. 49, including the references therein.

⁸¹ Bauman, R.A. "Some Problems of the Lex Quisquis." *Antichthon* 1(1967), p. 49, including the references therein.

⁸² The position of *magister militum* was created by Emperor Constantine the Great to deprive the praetorian prefect of the military command, which closed the process of separating the

the army - to seize power in Constantinople, or at least annex the Illyrian prefecture to the Western Roman Empire, Illyria being the contentious area between the eastern and western part of the country. His struggle against the Visigoths led by Alaric and occupying the prefecture prevented an agreement between the invaders and the praetorian prefect Rufinus, acting on behalf of Emperor Arcadius.⁸³ After Rufinus' tragic death,⁸⁴ many of its powers were taken over by Eutropius, eunuch and Syrian freedman, *praepositus sacri cubiculi*, who became - as K. Zakrzewski puts it - "a real prime minister and the head of the government...controlling an oligarchy of great dignitaries."⁸⁵ Initially, Eutropius and Stilicho had an amicable relationship; in consultation with Eutropius' government, Stilicho put up a military defence of the eastern territories. However, "the Constantinople government, apparently willing to entrust Stilicho the defence of the Illyrian provinces, did not wish to give up their rights to these provinces, which Stilicho considered to belong to *partium Occidentis*. Stilichon did not cease to aspire to assume the top office in Constantinople, which the eunuch kept for himself after Rufinus' death."⁸⁶ As a result of this conflict, in AD 397, Stilicho was stigmatized by the Senate of Constantinople as *hostis publicus*, which turned out to be conclusive in shattering the unity of the state. The political clashes and failures of Eutropius' government were accompanied by civil unrest, so strong that "the government was made to issue a separate regu-

civilian and military authority. The army was handed over to two commanders, one of which led the infantry (*magister peditum*) and the other the cavalry (*magister equitum*). Constantius II (337-361) put up the number of top commanders by introducing three additional functions: *magister militum per Orientem*, *magister militum per Gallias* and *magister militum per Illyricum*. Constantine's intention was for the two top *magistri militum* to hold an equivalent position and to ensure that every military action required that they be both coordinated by and accountable to a superior body, i.e. the emperor. The reform, therefore, meant the centralization of army command and the strengthening of the ruler's position; still, the system could only work efficiently when the emperor engaged in military campaigns as a warrior. Yet, at the end of the 4th and in the 5th century, the situation changed, mainly due to juvenile rulers coming to the throne though lacking experience in war matters. Such a ruler could easily become manipulated by an aspiring *magister militum*. It was the case with, e.g. Honorius (393-423), who ascended the throne at the age of eleven and never managed to break free from the influence of powerful *magistri militum* led by Stilicho, who actually ruled the Western Empire for over thirteen years (Pawlak, M. *Walka o władzę w Rzymie w latach 425-435*. Toruń 2004, pp. 6-9, incl. the references).

⁸³ For more, see Zakrzewski, K. „Ostatnie lata Stilichona.” *Kwartalnik Historyczny* 39(1925), pp. 455-456; idem *Rządy i opozycja za cesarza Arkadiusza*. Kraków 1927, pp. 58-59; Vogt, J. *Upadek Rzymu*. Warszawa 1993, p. 191.

⁸⁴ For more, see Zosimos. *Historia nova* 5,7-8.

⁸⁵ *Rządy i opozycja...* p. 29.

⁸⁶ *Ibidem*, pp. 60-61.

lation to counteract the conspiracies against the lives of its members. This regulation is brought in against any individuals, both civilian and military, the Romans and barbarians, entering criminal associations and engineering murderous attacks on the members of the *consistorium*.⁸⁷ The regulation approved by the emperors Arcadius and Honorius was incorporated into the Justinian Code as part of Title 8, Book 9 “Ad Legem Iuliam Maiestatis” (C 9,8,5). It is particularly noteworthy as it broadened the group of individuals, the attack on whom was prosecuted as the crime of lese-majesty; further, the regulation introduced the liability of the perpetrator’s family and drew attention to the punishability of instigation and aiding and abetting (the so-called phenomenal forms of an offence). Like the *lex Iulia maiestatis*, the *lex Quisquis* in the modern era became the source of knowledge of *crimen laesae maiestatis* and the object of profound research.

Section 9 Offences Classified in Roman Law as Lese-Majesty

To list offences punishable as *crimen maiestatis* or *perduellio* encounters difficulties due to the scarcity of source material, especially from the royal period and the onset of the Republic. Further challenges arise owing to the ambiguous legal status of individual acts discussed in the relevant sources.

According to the literary sources covering the earliest history of Rome, *perduellio* was any assault on the Roman people and their king. Committed intentionally (*hostili animo*), such an offence could impair both the external existence of the state, the state as a whole and the internal order.⁸⁸ The attempt of the first kind consisted in, for example, any support for the enemy during a war fought with Rome (for example, provoking revolt among the peoples subject to Roman rule, offering the enemy advice and information, leaving the country *proditionis animo*), desertion, surrender without a fight⁸⁹); the target of the attempt of the second kind was the king as the source of public authority, but also the Senate and the *concilium plebis*, i.e. the institutions of the Roman political system.

⁸⁷ Ibidem, p. 69.

⁸⁸ An example of how broad the approach was to offences falling under *perduellio* is the above-mentioned Horace Publius’ case during the reign of Tullus Hostilius, described by Livy (*Ab Urbe condita* 1.26).

⁸⁹ Livy writes of an event that occurred during Romulus of punishing a certain Tarpeius for his daughter’s giving up to the Sabines the castle defended by her father (*Ab Urbe condita* 1.28).

At the beginning of the republican system, *affectatio regni*, i.e. the attempt to restore the monarchy, was considered *perduellio*.⁹⁰ As a preventive measure a law was passed in 509 BC sponsored by Valerius Publicola; it imposed capital punishment on anyone attempting to claim kingship in Rome.⁹¹ In accordance with the provision of the Law of the Twelve Tables quoted by Marcian in D. 48,4,3, guilty of *perduellio* is the one who both instigates the enemy to war against Rome (“*qui hostem concitaverit*”) and hands over a captured Roman citizen to the enemy (“*quive civem hosti tradiderit*”). A.W. Zumpt points out that the notion of *hostis* does not refer so much to the enemy of the Roman state as to a foreigner in general.⁹²

The *lex Appuleia*, where the concept of *maiestas minuta* surfaces for the first time, encompassed a wider spectrum of offences going beyond the scope of *perduellio*. Failure of the law to define more precisely what action meets the criteria of *maiestatem minuere* allowed a prosecution of the perpetrators of acts that caused harm to the state but were committed involuntarily (i.e. the perpetrator could not be attributed *hostilis animus*). For example, such an act could have been - as already mentioned - inept command of the army. Two well-known trials held before the *quaestio maiestatis* concerned the use of force in bringing *intercessio* to the decision of another magistrate (Quintus Servilius Caepio the Younger, 95 BC) and the sparking of riots in Rome by the tribune (Gaius Norbanus, 94 BC).⁹³ Based on the charges made and providing for the then legislative style, R.A. Bauman proposes the following rough reconstruction of the wording of the law: “*qui homines ad seditionem*

⁹⁰ The conspiracy aimed to restore kingship was purportedly hatched in the year of expulsion of the last king of Rome (Livius. *Ab Urbe condita* 2,4). The conspiracy was exposed, and its participants were sentenced to death. The same penalty was levied on Marcus Manlius Capitolinus who was accused in 384 BC of attempting to restore the monarchy: he was made to stand trial - according to some accounts, before the *comitia centuriata* convened by the tribunes, and according to other sources, before duumvirs (Livius. *Ab Urbe condita* 6, 18ff).

⁹¹ Livius. *Ab Urbe condita* 2,8,2. “*sacrando cum bonis capite eius, qui regni occupandi consilia inisset;*” Plutarchus. *Vitae parallelae: Publicola*; see also Zumpt, A.W. Op. cit. Vol. 1, part 1, p. 172.

⁹² Op. cit. Vol. 1, part 1, 385. W. Ostrożyński, favourable to the view that the Law of the Twelve Tables extended the existing concept of *perduellio*, justifies as follows: “That Romans’ approach was based, on the one hand, on a considerable significance of citizenship and, on the other, on the noble idea that every citizen is an integral part of the whole state and he, as a microcosm, is the embodiment of the entire Rome. It naturally follows that this approach could only arise when Rome became a republic: only then, every citizen became a part of the state, and that is where the concept of the chief offence evolved already in the Law of the Twelve Tables” (*Perduellio i crimen maiestatis. Przyczynek do dziejów rzymskiego prawa karnego*. Warszawa 1886, p. 23).

⁹³ *Ad Herennium* 1,12,21; 2,12,17; Cicero. *Brutus* 44,16,2; 46,169.

vel vim concitavit concitaveritve quive tr. pl. intercedenti non paruit paruevitve quo maiestatis populi Romani minueretur.”⁹⁴ Another *lex maiestatis* - *lex Varia* - included the instigation of the Roman allies to go to war against Rome as belonging to the group of offences classified as *maiestas minuta*.

An important novelty introduced by the *lex Cornelia de maiestate* was an extensive list of offences committed by the state officials, such as consuls and praetors, in their respective provinces. The law prohibited the waging of war outside the province boundaries without the Senate’s or the people’s mandate,⁹⁵ the province governor from leaving his office,⁹⁶ or refusing to leave within thirty days after the arrival of his successor, and the discharge of official duties in a manner that undermines the dignity of the office.⁹⁷ Another offence governed by the law in question can be described as *crimen imminutae maiestatis tribuniciae*, or the diminishing of the *maiestas* of the tribunician office.⁹⁸

The comprehensive character of Sulla’s law, allowing the classification of various offences, not always intended to do harm to the state, as *crimen imminutae maiestatis*, raises the question of the possibility of a broader interpretation of the law and the likely abuse of such an interpretation, especially if motivated politically. Caesar’s *lex Iulia maiestatis* did not contribute to resolve this issue as it was largely devoted to procedures and introduced only one - as suggested by Cicero⁹⁹ - category of offences referred to as “qui

⁹⁴ *Crimen maiestatis...*, p. 55. On the use of the term *maiestas populi* in the *lex Appuleia*, see above.

⁹⁵ “Mitto exire de provincia, educere exercitum, bellum sua sponte gerere, in regnum iniussu populi Romani aut senatus accedere, quae cum plurimae leges veteres, tum lex Cornelia maiestatis, Iulia de pecuniis repetundis planissime vetat” (Cicero. *In Pisonem* 21,50). The enactment of this prohibition was motivated by the initiatives of: Manlius Aquilius in 89 BC, who, acting on his own, urged the kings of Bithynia and Cappadocia to start war with Mithridates, thus making Rome enter the war in the East while the conflict with its Italic allies remained unresolved, and Lucius Licinius Murena in 83 BC, who launched an unsuccessful armed expedition to Pont.

⁹⁶ An example of the trial for the violation of this prohibition is A. Gabinius’ case described by Dio (*Historia Romana* 39,56).

⁹⁷ Such accusations often appear in Cicero’s orations against Verres and relate primarily to the failure to exercise the official authority with respect to the residents of the province, e.g. collecting due liabilities (e.g. *In Verrem* 2,1,84).

⁹⁸ The accusation of this kind of offence could be even levelled at the tribune, as evidenced by the case of Gaius Cornelius who was charged in 66 BC for inappropriate conduct; in response to the objections made by the other tribune, Publius Servilius Globulus, he read out a draft law before the Plebeian Council in person, instead of leaving this to the herald (for more, see Asconius. *Orationum Ciceronis quinque enarratio* 58 Cff).

⁹⁹ “Quid enim turpius quam qui maiestatem populi Romani minuerit per vim, eum damnatum iudicio ad eam ipsam vim reverti, propter quam sit iure damnatus” (*In Marcum Antonium Orationum Philippicarum Libri XIV* 1,91,21).

maiestatem populi Romani minuerit per vim." Such a general approach coinciding with the lack of statutory "codification" of offences regarded as *crimen maiestatis* allowed, in the early period of the empire, the regulations of existing laws to be bent to fit emperor's will (it should be noted that in 23 BC Octavian was conferred lifelong prerogatives befit to the tribune, which granted him legal protection under the laws governing *maiestas*).¹⁰⁰ The above-mentioned bending of the laws consisted only in endless broadening of the list of offences of lese-majesty, but in delegating the relevant cases for arbitration before the imperial or Senate court, which permitted discretionary sanctions and penalties. Also different legal tricks were used for offences formerly from outside the scope of *crimen maiestatis* to be tried before *quaestio maiestatis* and according to the laws on *maiestas*. One of many examples of such a practice was the trial of Cassius Severus about AD 8, who was accused of penning libels and lampoons circulated Rome-wide. Had the libels been meted out at Augustus (as the one possessing tribunician and magistrate powers), Cassius' act would have been considered a diminution of *maiestas populi Romani*,¹⁰¹ but the author insulted "viro feminasque inlustres" (Tacitus. *Annales* 1,72,4). While the words 'viri inlustres' could also refer to magistrates, certainly insulting a woman did not constitute *crimen maiestatis*. Famine and fire in AD 6 led to a more severe treatment by the Senate of circulated libellous publications, some of which may have also concerned Augustus, as escalating social unrest.¹⁰² The same year, the Senate extended the *lex Cornelia de iniuriis* so that the distribution of satire "ad infamiam cuiuspiam" (which also included campaigning against the princeps), which threatened the offender with infamy, could be tried under the *lex maiestatis*.¹⁰³ This change allowed the investigation of defamation cases by the *iudicium publicum*: because the *quaestio de iniuriis*

¹⁰⁰ "Sacrosanctus in perpetuum ut essem et quoad viverem tribunicia potestas mihi esset per legem sanctum est" (*Res Gestae Divi Augusti* 10).

¹⁰¹ Cf. Quintilianus. *Institutiones oratoriae* 5,10,39: "Iniuriam fecisti, sed quia magistratui, maiestatis actio est."

¹⁰² A similar situation occurred during the Triumvirate, when the "debaucheries of the gods" with Augustus participating, as described by Suetonius, caused public outrage because of the dearth and famine in Rome of the time: "Auxit cenae rumorem summa tunc in civitate penuria ac fames adclamatumque est postridie, omne frumentum deos comedis et Caesarem esse plane Apollinem, sed Tortorem" (*De vita Caesarum: divus Augustus* 70).

¹⁰³ "Primus Augustus cognitionem de famosis libellis specie legis eius [sc. maiestatis] tractavit, commotus Cassii Severi libidine" (Tacitus, *Annales* 1,72,4). Cf. Suetonius. *De vita Caesarum: divus Augustus* 55: "Censuit [sc. Augustus] cognoscendum ... de iis qui libellos aut carmina ad infamiam cuiuspiam sub alieno nomine ederent." For more on *famosi libelli* tiras, see Henning, D. "T. Labienus und der erste Majestätsprozeß de famosis libellis." *Chiron* 3(1973), p. 245f.

no longer existed (*iniuria* as a tort was persecuted through *actio* - action in private law) such cases were to be addressed before the *quaestio maiestatis*. This permitted the simultaneous recourse to the catalogue of penalties for *crimen maiestatis* in cases involving *famosi libelli*. In a similar manner, further offences began to fall under the *lex maiestatis* later, as shown by the Ulpian-authorized order to punish the members of illegal associations as the accused of lese-majesty.¹⁰⁴ That is how the array of acts regarded as *crimen maiestatis* continuously broadened. For example, there are a number of offences against the emperor during the reign of Tiberius which are listed by Suetonius as underlying the charges of lese-majesty. They are listed by R. Sajkowski: damage or destruction of a statue of Augustus (cf. Tacitus. *Annales* 1,74), killing a slave near a statue of Augustus, changing clothes near a statue of Augustus, carrying or wearing Augustus' image (on a ring or coin) while in a toilet or brothel, criticising any Augustus' deed or words, accepting some honours on the anniversary of according Augustus special privileges. The author emphasizes that the reasons for being convicted under *crimen maiestatis* during the principate of Tiberius concern offences committed against the cult of the divine Augustus; yet, in some later practice, punishable were also similar acts against the ruling emperor.¹⁰⁵

¹⁰⁴ Ulpianus D. 47,22,2: "Quisquis illicitum collegium usurpaverit, ea poena tenetur, qua tenetur, qui hominibus armatis loca publica vel templa occupasse iudicati sunt." That last offence was a variant of *crimen maiestatis* (Ulpianus D. 48,4,4,1). For more, see De Robertis, F. *Studi di Diritto Penale Romano*. Bari 1944, p. 67f.

¹⁰⁵ Sajkowski, R. „Klasyfikacja przestępstw o obrazę majestatu za rządów Tyberiusza na podstawie katalogu Swetoniusza (Tib. 58).” *Echa Przeszłości* 1(2000), p. 17f. Cf. also *Divus Augustus pater. Kult boskiego Augusta za rządów dynastii julijsko – klaudyjjskiej*. Olsztyn 2001, p. 103ff. In the latter study, the author refers to the charge of insulting the deity of Augustus brought in AD 15 against the equitus Rubrius who was to have made a false oath ("violatum periurio numen Augusti"- Tacitus. *Annales* 1,73). The accusation against Rubrius was based on the conviction that after the act of deification of Augustus the failure to keep an oath sworn to his *numen* could cause the anger of *divus Augustus* and thus lead to numerous misfortunes. Still, there is a shortage of sources from the period of the Republic that would conclusively prove the existence of penal sanctions against those who failed to uphold an oath sworn to a deity. Some changes to this condition occurred under Julius Caesar and in the period immediately following the dictator's death, but the change did not affect the gods recognized long before but *divus Iulius* himself. The author also notes that the trend to deitize the person wielding power, as was the case of Julius Caesar, was exploited by his adoptive son. As with Caesar, the same with Augustus who was a master at making the best of his honours, among others, *Pater Patriae*, to attain political goals. That distinction made him on a par with Jupiter as the perfect embodiment and source of all majesty. Tiberius appealed to the authority of Jupiter - according to Tacitus' account - in a rescript to the consuls, in which he observed that Rubrius had to be treated in such a way as if he had deceived Jupiter, hence the gods should be allowed to penalize the perjurers. Since

Tiberius himself took a stance that to protect the predecessor's authority was of utmost import and he did not look into the allegations of offences against him;¹⁰⁶ therefore, the attempt to accuse the *equus* Lucius Ennius, who was imputed with having a statue of the emperor recast into silver vessels (Tacitus. *Annales* 3,70).¹⁰⁷ The above list is not complete; some more offences of this kind were, for example, asking soothsayers of the emperor's or his family members' future or life (which was presumed to be an evil intention)¹⁰⁸ and a verbal insult or assault.¹⁰⁹ The swelling catalogue of offences regarded as *crimen maiestatis* in the early Principate certainly left too much room for abuse and free interpretation of allegations as the later emperors issued regulations aimed to limit this freedom. Marcian's reference to a rescript of the emperors Septimius Severus and Antoninus Pius illustrates the point; the rescript determined cases in which the damaging of a statue of the emperor did not constitute lese-majesty:

Marcianus D. 48,4,5 pr.: Non contrahit crimen maiestatis, qui statuas Caesaris vetustate corruptas reficit. 1. Nec qui lapide iactato incerto, fortuito statuam attigerit, crimen maiestatis commisit; et ita Severus et Antoninus Iulio Cassiano rescripserunt. 2. Iidem Pontio rescripserunt, non videri contra maiestatem fieri ob imagines Caesaris nondum consecratas venditas.

In the light of the provisions above, *crimen maiestatis* should not be seen as an accidental, unintentional destruction or damaging of an emperor's statue, for example, as a result of flinging a stone, removing a damaged,

the supreme Roman god could not rely on any legal protection of his worship, also other gods, including the divine Augustus, were to be deprived of such a protection (Op. cit., pp. 106-108). For more on Rubrius' trial, see Rogers, R.S. *Criminal Trials and Criminal Legislation under Tiberius*. Middletown 1935, p. 8; Seibt, W. *Die Majestätsprozesse vor dem Senatsgericht unter Tiberius*. Wien 1969, p. 14f; Bauman, R.A. *Impietas in Principem...* p. 71; Sajkowski, R. „Sprawa Falaniusza i Rubriusza. Początek procesów o obrazę majestatu za rządów Tyberiusza.” *Zeszyty Naukowe Wyższej Szkoły Pedagogicznej w Olsztynie* 13(1998), *Prace Historyczne II*. P. 11f.

¹⁰⁶ Cf. e.g. Tacitus. *Annales* 1,74; 2,50; 3,66-69.

¹⁰⁷ For more, see Seibt, W. Op. cit., p. 85f; Sajkowski, R. “Próba oskarżenia Lucjusza Enniusza (Tac. Ann. III 70).” In *Od starożytności do współczesności. Studia historyczne. Wydanie jubileuszowe z okazji 75. rocznicy urodzin i 55 – lecia pracy zawodowej, w tym 30 – lecia pracy naukowej Profesora Tadeusza M. Gelewskiego*. Śliwiński, J., ed., Olsztyn 1997, p. 73f.

¹⁰⁸ Cf. e.g. Tacitus. *Annales* 4,52; 12,52; 16,14. For more, see MacMullen, R. *Enemies of the Roman Order. Treason, Unrest, and Alienation in the Empire*. Cambridge 1966, p. 130f; Rogers, R.S. Op. cit., p. 16f; Robinson, O.F. Op. cit., p. 77. The religious grounds for such charges are discussed in Pharr, C. “The Interdiction of Magic in Roman Law.” *Transactions of the American Philological Association* 63(1932), pp. 269-295.

¹⁰⁹ Cf. e.g. Tacitus. *Annales* 2,50,1-3; Dio Cassius. *Historia Romana* 57,19,1.

time-worn statue or selling an unconsecrated statute. In order to dispel all doubts, Venuleius Saturninus in D. 48,4,6 reminds a rule that the damage of a consecrated image is lese-majesty, "Qui statuas aut imagines Imperatoris iam consecratas conflaverint, aliudve quid simile admiserint, lege Iulia maiestatis tenentur."¹¹⁰

A specific kind of offence against the emperor's image – due to its minting on coins – was to counterfeit money. It was punished until AD 389 under Sulla's law of 81 BC, initially known as the *lex Cornelia testamentaria nummaria*, and later as the *lex Cornelia de falsis* (C. 9,22; D. 48,10). It already follows from Valentinian I's law of AD 385 that counterfeiting money issued by the state (*sacri oris imitatio*), and unlawful minting of emperor's image on coins (*divinorum vultuum impressio* – C. Th. 9,38,6) was not only detrimental economically, but also meant the abuse of the powers that the emperor and his image were vested with. By way of the law of Valentinian, Theodosius and Arcadius of AD 389, there was a shift in the penal classification of money forgery which became to be regarded as *crimen maiestatis*.¹¹¹

Some of the offences mentioned above were linked to infringement of deifying the emperor, who was considered *divus* and his *numen*, i.e. the manifestation of his will, was an object of worship.¹¹² Hence, acts carried out against him or going against his will were referred to as *irreligiositas* or *impietas*¹¹³; likewise, the refusal to take part in imperial cult and making an offering to the emperor's divinity (*genius*) was both an offence against the Roman religion (*crimen laesae Romanae religionis*) and Roman authority.¹¹⁴ This held true for all forms of official worship anyway, particularly offerings to the gods; thus, any trespasses in this respect were seen as

¹¹⁰ For more, see Nogrady, A. *Römisches Strafrecht nach Ulpian. Buch 7 bis 9 De officio proconsulis*. Berlin 2006, pp. 153-154.

¹¹¹ C. Th. 9,21,9 Imp. Valentinianus, Theodosius et Arcadius AAA. "... Falsae monetae rei, quos vulgo paracharactas vocant, maiestatis crimine tenentur obnoxii."

¹¹² For more, see Sajkowski, R. *Divus Augustus...* p. 87f, 108, including the references therein. The author points out to the connection between *numen* and *maiestas* that seems to be present, for example, in the obligation mentioned by Cicero (*Ad Quirites* 18) to show the same *pietas* towards the Roman people as towards the gods. Hence, the approximation of the *numen* of the Roman people and *maiestas populi Romani* becomes apparent. Violations of the worship of the divine Augustus must therefore be considered *crimen laesae maiestatis* as directed at the people of Rome and must be punished with immediate effect (pp. 108-109).

¹¹³ Tacitus. *Annales* 50,2.

¹¹⁴ Cf. e.g. Dębiński, A. *Sacrilegium w prawie rzymskim*. Lublin 1995, p. 115; Dyjakowska, M. „Procesy chrześcijan w świetle korespondencji Pliniusza Młodszeo.” In *Cuius regio eius religio? Zjazd historyków państwa i prawa, Lublin 20-23 IX 2006 r.* Górski, G., Ćwikła, L., Lipska, M., eds. Lublin 2006, p. 33f.

hostile to the state and therefore as *crimen laesae maiestatis*. This accusation formed a legal basis for the persecution of Christians;¹¹⁵ Christianity was considered *superstitio* - a superstition which - in the Romans' view - was even more dangerous than atheism; it was understood as a departure from the traditional world of the gods towards recognizing an abstract, rational and supreme being and, above all, manifesting itself in a refusal to participate in the official worship. The Romans also regarded the Jewish religion as superstition-driven; Although the Jews abstained from participating in the worship of the peoples among whom they lived, they adhered to their own god, different from the polytheistic gods and inherited from ancestors. This circumstance helped the Jews become released from participating in the official imperial cults, for in the mentality of the ancient peoples, the sense of legacy and heritage handed down between generations, with much attention attached to religion, was absolutely fundamental.¹¹⁶ To break the ties with this religious heritage in favour of something new was ranked among the gravest crimes; therefore, according to Suetonius, *superstitio nova et malefica* - that new and criminal superstition,¹¹⁷ as he put it - deserved the harshest condemnation. Hostility to Christians was fuelled by the conviction of - as phrased by Tacitus when describing the persecution under Nero - their hatred of the human race (*odium humani generis*).¹¹⁸ Not only did Christians fall under suspicion of occult and magical practices dangerous to humans,¹¹⁹ but also, by refusing to participate in any forms of the official worship and make offerings to the gods in the first place, they were thought of being capable - as the Romans believed - of attracting various social disasters,¹²⁰ which was seen as detrimental to the state, that is, as *crimen laesae maiestatis*.¹²¹

After the official recognition of Christianity and its later elevation to the status of the state religion by Theodosius I, the offences under public law also included heresy, i.e. the departure from the Church in order to profess

¹¹⁵ The literature on this problem has been collated by Dębiński, A. Op. cit., p. 115, note 6; see also Mommsen, T. *Strafrecht...*, p. 575ff.

¹¹⁶ Cf. e.g. Jaczynowska, M. *Religie świata rzymskiego*. Warszawa 1987, p. 14f.

¹¹⁷ *De vita Caesarum: Nero* 16.

¹¹⁸ *Annales* 15,44.

¹¹⁹ Cf. e.g. Starowieyski, M. „Pisarze pogańscy o chrześcijanach.” *Przegląd Powszechny* 1(1985), p. 21.

¹²⁰ Jaczynowska, M. Op. cit., pp. 226-227.

¹²¹ Mommsen, T. *Strafrecht...* p. 575f. A.H.M. Jones points out that Christianity was regarded as a variety of the offence of *iniuria* (*The Criminal Courts of the Roman Republic and Principate*. Oxford 1972, p. 108. Cf. Dyjakowska, M. *Procesy chrześcijan...*, pp. 28-29).

a different faith. The law introducing the offence of heresy was enacted in AD 407 by Emperor Honorius, C. Th. 16,5,40: "Idem AAA. Senatori praefecto urbi... volumus esse publicum crimen quia quod in religionem divinam committitur, in omnium fertur iniuriam."¹²²

Truth be told, imperial constitutions did not expressly define heresy as *crimen maiestatis* but as *sacrilegium*, i.e. sacrilege; still, one should not overlook the gradual evolution of the meaning of this term. While in the Republic *sacrilegium* was understood as desecrating a temple by stealing sacred paraphernalia, during the empire, the term denoted an offence both against the ruler and the state religion. Legally speaking, *crimen laesae maiestatis* was not equivalent to *sacrilegium*, still both these crimes were in a close relationship.

In the time of political disturbances and public unrest during the reign of Arcadius and Honorius, the *lex Quisquis* broadened the list of the offences of lese-majesty to include the plotting of an assassination attempt on the imperial council members and senators' lives ("the limbs of the imperial body" as phrased in the law):

C. 9,8,5: Quisquis... de nece etiam virorum illustrium, qui consiliis et consistorio nostro intersunt, senatorum etiam (nam et ipsi pars corporis nostri sunt) vel cuiuslibet postremo, qui nobis militat, cogitaverit... ipse quidem utpote maiestatis reus, gladio feriat...

As already noted elsewhere, the main source of penal regulations governing *crimen maiestatis* is the *lex Iulia maiestatis*, covered by Justinian's codification in D. 48,4 and C 9,8. With these regulations in view, two groups of offences can be identified that constitute *crimen maiestatis*: actions intended to harm the state and attempts on the ruler's life. The former group includes actions affecting the external relations of the state. These are in particular: betraying the country (*proditio*) and yielding the entire or part of the state's territory to the enemy:

Hermogenianus D. 48,4,10: Maiestatis crimine accusari potest, cuius ope, consilio, dolo malo provincia, vel civitas hostibus prodita est;

Scaevola D. 48,4,4 pr.: ...cuiusve dolo malo exercitus populi Romani in insidias deductus, hostibusve proditus erit...

The terms *ope*, *consilio*, *dolo malo* occurring in the cited extracts deserve special attention. The word *ops* means abetting or complicity in the commis-

¹²² On imperial legislation against heretics, see especially Dębiński, A. *Ustawodawstwo karne rzymskich cesarzy chrześcijańskich w sprawach religijnych*. Lublin 1990, p. 59f.

sion of an act, whereas *consilium* and *dolus (malus)* can be best expressed by the English 'incitement' or 'instigation', i.e. offering advice or moral support to the wrongdoer.¹²³

Another act of this kind is to incite war against the Roman state:

Marcianus D. 48,4,3: Lex duodecim tabularum iubet eum, qui hostem concitaverit..., capite puniri;

Ulpianus D. 48,4,1.1: ...cuius opera, consilio, dolo malo consilium initum erit... quove quis contra Rempubicam arma ferat.

Also, to provide assistance to the enemy while in warfare:

Scaevola D. 48,4,4 pr.: ...factumve dolo malo cuius dicitur, quominus hostes in potestatem populi Romani veniant, cuiusve opera dolo malo hostes populi Romani commeatu, armis, telis, equis, pecunia, aliave qua re adiuti erunt, utve ex amicis hostes populi Romani fiant ... cuiusve cuiusve opera dolo malo factum erit, quo magis obsides, pecunia, iumenta hostibus populi Romani dentur adversus Rempubicam...;

Ulpianus D. 48,4,1.1: "quive hostibus populi Romani nuntium, literasve miserit, signumve dederit, feceritve dolo malo, quo hostes populi Romani consilio iuventur adversus Rempubicam ...;

Marcianus D. 48,4,3: ... quive civem hosti tradiderit.

Crimen maiestatis also applied in the case of fleeing to the enemy, fighting war ineffectively and deserting:

Ulpianus D. 48,4,2: ...quive...privatus ad hostes perfugit;

Marcianus D. 48,4,3: ...qui in bellis cesserit aut arcem deseruerit, aut castra concesserit;"

Ulpianus D. 48,4,2: ...qui exercitum deseruit.

Finally, an act violating the majesty of the Roman state is to diminish its influence in the external policy: Scaevola D. 48,4,4 pr.: "...cuiusve dolo malo factum erit, quo rex exterae nationis populo Romano minus obtemperet..."

Act committed to the detriment of the state concern not only the external but also the domestic policy. *Crimen maiestatis* is thus being involved

¹²³ For more, see Bock, D. *Römischrechtliche Ausgangspunkte der strafrechtlichen Beteiligungsslehre*. Berlin 2006, p. 151f; Nogrady, A. Op. cit., p. 147, note 661.

in the conspiracy aimed to amend the political system, stage a rebellion or unrest:

Scaevola D. 48,4,4 pr.: ...cuiusque dolo malo iureiurando quis adactus est, quo adversus Rempublicam faciat...;

Ulpianus D. 48,4,1.1: ...quo [sc. maiestatis crimine] tenetur is, cuius opera dolo malo consilium initum erit..., quo armati homines cum telis lapidibusve in Urbe sint, convenientque adversus Rempublicam, locave occupentur, vel templa, quove coetus conventusque fiat, hominesve ad seditionem convocentur..., quive milites sollicitaverit, concitaveritve, quo seditio, tumultusve adversus Rempublicam fiat.

Another act of this kind is a violation of the sovereign powers of the state:

Marcianus D. 48,4,3: ...quive privatus pro potestate magistrature quid sciens dolo malo gesserit;

C. 9,5,1: Iubemus, nemini penitus licere...privati carceris exercere custodiam ...;¹²⁴

C. 9,24,2: Si quis nummum falsa fusione formaverit...Cuius obnoxii maiestatis crimen committunt ...;

Scaevola D. 48,4,4 pr.: ...qui confessum in iudicio reum, et propter hoc in vincula coniectum emiseric;

Ulpianus D. 48,4,2: ...quive sciens falsum conscripsit, vel recitaverit in tabulis publicis.

The second group of offences of lese-majesty are, in the light of Justinian's law, attempts on emperor's life. Since the *lex Iulia de maiestate* was written under Caesar, it did not allow for this kind of act; by analogy, the provisions of this law concerning the assault on officials were applied: Ulpianus D. 48,4,1.1: "...cuiusve opera, consilio, dolo malo consilium initum erit, quo quis magistratus populi Romani, quive imperium potestatemve habet, occidatur."

¹²⁴ That the maintenance of private prisons constituted lese-majesty results from the remainder of that provision which makes guilty of this offence any representative of the authority who fails to punish the owner of such an establishment: "... et quicumque provinciae moderator maiestatis crimen procul dubio incursum est, qui, cognito huiusmodi scelere, laesam non vindicaverit maiestatem" (author's emphasis).

Conspiracy against the ruler was covered by the *lex Quisquis*. Guilty of the offence - as mentioned above - is also the one who attempts the assassination of the imperial officials and advisers:

C. 9,8,5 pr.: Quisquis cum militibus vel privatis, barbaris etiam scelestam inierit factionem aut factionis ipsius susceperit sacramenta vel dederit, de nece etiam virorum illustrium, qui consiliis et consistorio nostro intersunt, senatorum etiam (nam et ipsi pars corporis nostri sunt) vel cuiuslibet postremo, qui nobis militat, cogitaverit..., ipse quidem, utpote maiestatis reus, gladio feriat, bonis eius omnibus fisco nostro addictis.

Other forms of *crimen maiestatis* are: acting against the prerogatives held by the the people of Rome during the Republic; by interpolation, Justinian's codification attributed these prerogatives to the emperor:

Marcianus D. 48,4,3: ...qui iniussu Principis bellum gesserit, delectumve habuerit, exercitum comparaverit, quive, cum ei in provincia successum esset, exercitum successori non tradidit;

Ulpianus D. 48,4,1.1: ...cuius opera dolo malo consilium initum erit, quo obsequia iniussu Principis interciderent...;

Ulpianus D. 48,4,2: ...quive de provincia, cum ei successum esset, non discesst...;

Nov. 95,1,1: ...si quis aut magistratum gerens militarem vel civilem aut etiam postquam deposuit eum, provinciam relinquat, is magistratus, qui eam sine iussu nostro reliquit, maiestatis reus sit, atque... laesae maiestatis ultimas poenas sustineat.

Finally, lese-majesty is an insult of the emperor, including the destruction of his image: Venuleius Saturninus D. 48,4,6: "Qui statuas aut imagines Imperatoris iam consecratas conflaverint, aliudve quid simile admiserint..."

As regards verbal insult, imperial constitutions seemed to have shown more tolerance. Although - according to *Pauli Sententiae* - *crimen maiestatis* can also be committed by *verba impia et maledicta* (5,29,1), but the emperors Theodosius, Arcadius and Honorius insisted that attention be paid primarily to whether the act was intentional, and they recommended leniency towards this type of statements, especially if uttered thoughtlessly or in justified indignation:

C. Th. 9,4,1 = C. 9,7,1: Si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacessenda, ac temulentia turbulentus obtrektor temporum fuerit, eum poenae nolumus subiugari, neque durum

aliquid nec asperum sustinere, quoniam, si ex levitate processerit, contemnendum est, si ex insania, miseratione dignissimum, si ab iniuria, remittendum...

It is noteworthy that the collection of the *crimen maiestatis* offences is not complete, as Justinian's law admitted reference-based approach and not only did it persecute the acts set out in statutes ("quod ex scriptura legis descendit"), but also cases that bore some similarity to them ("ad exemplum legis vindicandum est" - Modestinus D. 48,4,7,3).

Section 10 Punishability of the Stage-Dependent Forms of an Offence

The crime of lese-majesty lends itself to a discussion on the exceptions to the rule of criminality of an act in its stage-dependent form of commission.¹²⁵ Particularly noteworthy is the question of criminality of intent or design (*voluntas sceleris, cogitatio*), which - according to many authors - was an identifying characteristic of the crime in question, and was first mentioned in the *lex Quisquis*.¹²⁶ Under this law, the penalty for violating majesty was imposed on, for example, those who chose to make the attempt on a person subject to an extended legal protection (*virii illustres*), i.e. senators, imperial advisers and the members of the imperial council ("quisquis... de nece...cogitarit"). In the opinion of B. Kübler, the term *cogitare* denotes the pure intention of perpetrating a crime, not materialized even through preparations or an attempt.¹²⁷ According to the legislation and numerous literary sources,¹²⁸ the notions of *cogitatio* and *consilium* should be understood, however, as a participation in a conspiracy to assassinate protected persons, which can be perceived as an introductory activity.

The imposition of the same sanction for intent as for the commission - which can be inferred from the justification of such practices contained in the *lex Quisquis* ("eadem enim severitate voluntatem sceleris qua effectum puniri iura voluerunt")¹²⁹ - seems to disregard the rule proposed by Ulpi-

¹²⁵ For more, see Mommsen, T. *Strafrecht*... pp. 95-96.

¹²⁶ Kübler, B. "Maiestas." In *RE* 14.1, p. 554f.

¹²⁷ *Ibidem*, p. 555.

¹²⁸ Cf. e.g. Suetonius. *De vita Caesarum: Tiberius* 10; *divus Iulius* 75,4; *Caligula* 12,3; Tacitus. *Annales* 4,28,4.

¹²⁹ The editing of the cited sentence reveals the possibility of interpolation; it demonstrates, however, that the term *cogitare* was used to determine *voluntas sceleris*, which appears helpful in

an that no one is responsible for his thoughts (“cogitationis poenam nemo patitur” - D. 48,19,18).¹³⁰ T. Mommsen points out, however, that this rule applies to torts under private law: the penalty for the perpetrator consists primarily in repairing the damage, and the obligation to compensate arises only when the act leads to a damage. It is somewhat different in relation to offences where the punishment is not intended to repair a damage. An offence need not produce a specific effect, it can only involve certain conduct.¹³¹ The intent, i.e. the taking of a decision to carry out a crime, can therefore be regarded as a form of crime.

How to identify the moment of taking a decision is suggested by Paulus in his opinion on the effectiveness of *manumissio* performed by the accused of *crimen maiestatis*:

Paulus D. 40,9,15 pr.: Quaesitum est an is, qui maiestatis crimine reus facti sit manumittere possit. quoniam ante damnationem dominus est. et imperator Antoninus Calpurnio tribuni rescripsit, ex eo tempore quo quis propter facinorum suorum cogitationem iam de poena sua certus esse poterat, multo prius conscientia delictorum quam damnatione ius datae libertatis eum amisisse.

The defendant lost the right to perform *manumissio* as soon as, as a result of reaching a decision on committing the offence, he might have become aware of impending punishment. It is not, of course, only about having the intention, as it had to be externalised: Paulus D. 50,16,53,2: “nec consilium habuisse nocet, nisi et factum secutum fuerit.”

The criminality of *voluntas sceleris* is not only characteristic of the crimes of lese-majesty, since the law of 16 February 397 on *ambitus*, which pre-dated the *lex Quisquis*, read, “Neque aliud inter coeptum ambitum atque perfectum esse arbitretur, cum pari sorte leges scelus quam sceleris puniant voluntatem.”¹³²

The intent to commit an offence was subject to penalty in Roman law where the legal provision said so.¹³³ Many regulations that made up the laws

the interpretation of numerous texts on the criminality of the phenomenal forms of an offence. For more, see Bauman, R.A. *Some Problems...* p. 50f.

¹³⁰ Cf. Paulus D. 48,2,1,1: “Inde sola cogitatio furti faciendi non facit furem.”

¹³¹ *Strafrecht...*, pp. 96-97. Cf. e.g. Valerius Maximus. *Facta et dicta memorabilia* 6,1,8: “non factum tunc, sed animus in quaestionem deductus est, plusque voluisse peccasse nocuit quam non peccasse profuit;” Appuleius, *Florida* 4,20: “in maleficiis etiam cogitata scelera, non perfecta adhuc vindicantur..., ad poenam sufficit meditari puniendo.”

¹³² C. Th. 9,26,1. Cf. Callistratus D. 48,8,14: “Divus Hadrianus in haec verba rescripsit: in maleficiis voluntas spectatur, non exitus.”

¹³³ Cf. e.g. Bauman, R.A. *Some Problems...* p. 52.

on the violation of majesty addressed some forms of this act separately, for example, plotting the assassination of persons under special legal protection. And so Ulpian when commenting on the *lex Iulia de maiestate* draws attention to one of the forms of the crime as conspiring with a view to murdering an official or a person vested with *imperium* or *potestas*.¹³⁴ Also, the *lex Quisquis* provides for the liability for various forms of conspiracy-making. *Scelesta factio* probably means plotting against the emperor; the law also mentions the designing of a plan to murder (“de nece...cogitarit”) the members of the imperial council, the emperor’s advisers and senators.¹³⁵ It is also noteworthy that the law approaches the violation of majesty not as a completed act, but as *consilium initum* (as in the referenced extract of Ulpianus D. 48,4,1,1, to intend an attack on an official is punished and not an attack itself), which follows from the assumption that if the intent is punished, so is the effect. Furthermore, Modestine’s statement stresses the need to take account of *cogitatio* when assessing the circumstances related to the perpetrator:

D. 48,4,7,3: Hoc tamen crimen iudicibus non in occasione de principalis maiestatis venerationem habendum est, sed in veritate: nam et personam spectandam esse, an potuerit facere, et an ante quid fecerit vel an cogitaverit [author’s emphasis] et an sane mentis fuerit.

Section 11 Sanctions for the Offence of Lese-Majesty According to the Roman Legal Sources

1. Capital Punishment and *Interdictio Aquae et Ignis*

The basic punitive sanction applied for *perduellio* and *crimen maiestatis* was capital punishment. It ensued from *consecratio capitis*, i.e. surrendering the wrongdoer to the power of the gods of the underworld, which was expressed by the words *sacer esto*.¹³⁶ As regards the guilty of *perduellio* - as

¹³⁴ D. 48,4,1,1.

¹³⁵ Also when writing about the crime of violation of majesty, the authors of available literary sources often use the terms that normally designate conspiracy: *scelesta consilia*, *sclerata consilia*, *consilia nefaria* (cf. e.g. Velleius Paterculus. *Historiae Romanae* 2,76,4; 2,130,3; Livius. *Periochae omnium librorum* 127).

¹³⁶ For more, see Voci, P. “Diritto sacro romano in età arcaica.” *Studia et Documenta Historiae et Iuris* 19(1953), p. 38f; Fiori, R. *Homo sacer. Dinamica politico – costituzionale di una sanzione giuridico – religiosa*. Napoli 1996; Garofalo, L. *Studi della sacertà*. Padova 2005. The religious grounds

in the case of a patron who cheated his *cliens* - the culprit was sacrificed to Jupiter Latiaris; the words of anathema were probably uttered - as can be inferred from Livy's account of the conviction of Horatius - *duoviri perduellionis*.¹³⁷ The mentioned account also reveals how the punishment for the perpetrator of *perduellio* was administered. The moment the *duumvirs* said the formula "tibi perduellionem iudico" the offender ceased to be ranked as part of the *civitas*. D. Briquel points out that the symbol of exclusion from the community was the location of the execution - barren tree or the gallows (*arbor infelix*) located outside the *civitas*.¹³⁸ *Arbor infelix*, as corroborated in numerous Roman authors, was a tree yielding no more fruit.¹³⁹ The convict was no longer under the custody of the gods of his *civitas* and was stripped of his civil rights. His condition was called - like the offence - *perduellio*, the old term for *bellum*, *duellum*, that is, the state of hostility towards both the family and the state modelled after it.¹⁴⁰ The execution was preceded by a flogging, and the condemned man's head was covered ("caput obnubito"), as in the sacrificial offering to the gods.¹⁴¹ The death penalty restored peace between the community of worship and the gods; it also prevented the disclosure of confidential information of national importance (both sacred and secular) to hostile neighbours.¹⁴² As reported by Livy, the law did

for the death penalty is discussed in, e.g. Mommsen, T. "Die Geschichte der Todesstrafe im Römischen Staat." In idem. *Reden und Aufsätze*. Berlin 1905, pp. 437-438.

¹³⁷ Originally, saying the words of anathema was a formality, for the offender was believed to bring down the wrath of the gods the moment he performed an act against them. The term *sacer* in this context should be regarded rather as a condition of the wrongdoer (that he brought on himself) and not the punishment that had been decreed for him (Jońca, M. *Parricidium w prawie rzymskim*. Lublin 2008, p. 278 and the literature therein).

¹³⁸ „Sur le mode d'exécution en cas de parricide et en cas de perduellio." *Melanges d'archeologie et d'histoire de l'École Française de Rome* 92(1980), p. 101.

¹³⁹ Cf. e.g. Plinius. *Naturalis historia* 16,26: "Infelices autem existimantur damnataeque religione, quae neque seruntur unquam, neque fructum ferunt;" Festus. *De verborum significatu* 81,26,4L: "Felices arbores Cato dixit quae fructum ferunt, infelices quae non ferunt." For more, see Cantarella, E. *I supplizi capitali. Origine e funzioni delle pene di morte in Grecia e a Roma*. Milano 2005, p. 147f.

¹⁴⁰ Pesch, A. Op. cit., p. 75.

¹⁴¹ Cantarella, E. Op. cit., p. 151. Flogging mentioned by Livy was of a purifying nature; it preceded the death of the convict and would be carried out - as opposed to the execution - within *pomerium*. Some authors interpret the term *suspendere* as crucifixion (cf. e.g. Pankiewicz, R. "Apotropaiczno – odnawiające funkcje kary śmierci w społeczeństwie wczesnorzymskim." In *Kara śmierci w starożytnym Rzymie*. Kowalski, H., Kuryłowicz, M., eds. Lublin 1996, p. 31 and the literature given therein).

¹⁴² Mommsen, T. Op. cit., p. 547. The author underlines that the condition of the condemned, that is, remaining outside the community in a sphere dominated by hostile deities, was reflected

not provide for other penalties for *perduellio*: once sentenced, the prisoner was immediately executed.

Elsewhere, Livy describes a manner of exacting the death penalty - contrary to the Roman customs, as he puts it - by dismemberment of the convict's body by tying his limbs to the carts pulled by horses which are made to gallop away in opposite directions. Metius Fufecius was put to death in such a way; he was condemned for treason during the reign of Tullus Hostilius. The author emphasizes that the cruelty of that form of capital punishment was incompatible with the Roman sense of justice.¹⁴³

Contrary to Livy's opinion on the Roman aversion to severe retribution, the period of the Principate (especially the 2nd and 3rd century) saw the toughening of levied penalties. Under the Severan dynasty, a dual system of criminal sanctions was developed: the criminal liability of the accused came to be closely related to their social status.¹⁴⁴ In the case of the death penalty, individuals holding the status of *honestiores* were put to the sword,¹⁴⁵ and those of the lower classes, known collectively as *humiliores*, were executed in aggravated forms, previously reserved for slaves and pilgrims, such as "condemning to the beasts"¹⁴⁶ or burning alive.¹⁴⁷ The diversity of the forms of capital punishment for those convicted of *crimen maiestatis* is discussed by Paulus in his commentary to the provisions of the *lex Iulia maiestatis: Pauli Sententiae* 5,29: "his antea in perpetuum aqua et igni interdicebatur;

in the hanging on *arbor infelix*.

¹⁴³ "Exinde duabus admotis quadrigis, in currus earum distentum inligat [sc. Tullus] Metium; deinde in diversum iter equi concitati, lacerum in utroque curru corpus, qua inhaeserant vinculis membra, portantes. avertere omnes ab tanta foeditate spectaculi oculos. Primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit: in aliis gloriari licet nulli gentium mitiores placuisse poenas" (*Ab Urbe condita* 1,28). Also Seneca mentions this form of capital punishment, *Epistulae morales ad Lucilium* 14,5.

¹⁴⁴ For more, see Amiolańczyk, K. *Rzymskie prawo karne w reskryptach cesarza Hadriana*. Lublin 2006, p. 234ff. The author shares the opinion of A.H.M. Jones (*The Criminal Courts of the Roman Republic and Principate*. Oxford 1972, p. 109ff) that the foundations for a different treatment of the defendants in a penal trial because of their social position were, by all accounts, laid by Emperor Hadrian.

¹⁴⁵ *Honestiores* were the senators, *equites*, members of the municipal administration, decurions, veterans and soldiers; this group never received any legal definition.

¹⁴⁶ For more, see Mommsen, T. *Strafrecht...* p. 923; Bauman, R.A. *Crime and Punishment in Ancient Rome*. London - New York 1996, p. 67, 180; Źak, E. „Prawnicy rzymscy o sposobach wykonania kary śmierci.” In *Kara śmierci w starożytnym Rzymie*. Kowalski, H., Kuryłowicz, M., eds., Lublin 1996, p. 114; Cantarella, E. *Op. cit.*, p. 192f.

¹⁴⁷ For more, see Mommsen, T. *Strafrecht...* p. 927; Źak, E. *Op. cit.*, p. 115; Słapek, D. „Damnatio ad bestias w rozwoju venationes okresu republiki rzymskiej.” In *Kara śmierci w starożytnym Rzymie...* pp. 127-142.

nunc vero humiliores bestiis obiciuntur vel vivi exuruntur, honestiores capite puniuntur.”

The passage above does not suggest, it seems, the shift of the penalties imposed for *crimen maiestatis* from *interdictio aquae et ignis* to the death penalty.¹⁴⁸ For the main sanction for the offence in question was the death penalty, both “antea”, that is, probably during the early Principate and “nunc”, that is, in the author’s time (mid-3rd century). While the earlier penalization practice showed that the execution could have been avoided by fleeing Rome, the penalty during the author’s life was inevitable.

Interpretation issues related to the cited extract made many authors subscribe to the opinion that the primary punishment for the offence was *interdictio aquae et ignis* (interdiction of water and fire). Initially, this institution, going back to the judicial practice in the late Republic, emerged as a consequence the choice of a person accused of a crime punishable by death to be exiled before the judgement was passed or shortly afterwards, yet prior to the execution.¹⁴⁹

Taking a stance on the method of administering the penalty in question, B.M. Levick argues that the imposition of *interdictio aquae et ignis* required a plebeian tribunes’ edict; their edict was more than declarative - it declared a person, who had left Rome before hearing the punishment or facing execution, an *interdictus*. The sources also report the instances of similar edicts issued by other magistratures (especially consuls).¹⁵⁰ This view should, it seems, be regarded as legitimate.

Some authors regard *interdictio aquae et ignis* as one of the statutory penalties for the offence of lese-majesty. According to T. Mommsen and J.L. Strachan-Davidson, in Sulla’s legislation *interdictio* assumes a conditional form

¹⁴⁸ Allison, J.E., Cloud, J.D. Op. cit., p. 730.

¹⁴⁹ J.L. Strachan-Davidson compares the effects of *interdictio aquae et ignis* to the exclusion of an individual from the community through *sacratio* (op. cit., vol. 2, p. 31); cf. Kelly, G. *History of exile in the Roman Republic*. Cambridge 2006, p. 28.

According to Livy’s testimony, so ended a trial of Markus Postumius Pyrgensis tried by the Plebeian Council, initially for abuse subject to a fine. However, when, in the course of the proceedings and as a result of subsequent events, the accusation evolved to become criminal, the plebeian tribunes ordered to capture and imprison him had he failed to find the guarantors. Postumius fulfilled this requirement, but he did not appear before the court. The Plebeian Council decided that if the accused failed to appear on the designated date and did not offer any excuse, he would be deemed exiled, and his property would be confiscated, and he himself deprived of water and fire (Livius. *Ab Urbe condita* 25,4ff).

¹⁵⁰ Appianus. *Bella civilia* 1,31. For more, see Levick, B.M. “Poena legis maiestatis.” *Historia* 38(1979), p. 360.

of the death penalty,¹⁵¹ which they infer from the preserved fragments of this legislation, e.g. the *lex Cornelia de sicariis et veneficis*.¹⁵² The phrase *de eius capite quaerito* included therein should be understood as referring to the proceedings intended to conclude with the imposition of the death penalty and, since murder was so punishable, a similar solution must have been adopted for *maiestas*. A person found guilty before the *quaestio (lex Cornelia de maiestate)* established - as already mentioned - the *quaestio perpetua* (adjudicating in cases related to this offence) could escape execution by leaving Rome after the judgement had been passed (perhaps within the standard time of ten days after the judgement¹⁵³). *Interdictio* was not - as follows from

¹⁵¹ Mommsen, T. *Strafrecht*... p. 907; Strachan-Davidson, J.L. Op. cit. Vol. 2, p. 23. Cf. Roton-di, G. Op. cit., p. 360. This view seems to be endorsed in Gaius' *Institutions* (1,128) where *interdictio* and the concurrent loss of Roman citizenship are linked to the *lex Cornelia*: "Cum autem is, cui ob aliquod maleficium ex lege Cornelia aqua et igni interdicitur, civitatem Romanam amittat, sequitur, ut quia eo modo ex numero civium Romanorum tollitur, proinde ac mortuo eo desinant liberi in potestate eius esse ..."

The proponents of recognizing *interdictio* as *poena legis* highlight two examples of trials before the Senate and mentioned by Tacitus. The first one was held in AD 21 against Clutorius Priscus who was paid by Tiberius to write a poem about the death of Germanicus Caesar; hoping for extra remuneration, the poet wrote another piece during the illness of Drusus Caesar with a view to publicizing it after his death; however, Drusus recovered (*Annales* 3,49ff). Priscus was not charged with lese-majesty; his trial was an example of an *ad hoc* process concerning an act not covered by any statute. Consul Manlius Lepidus, holding his office in AD 6, speaking against the death penalty for the accused, proposed deprivation of water and fire, as if Priscus' case were subject to the law on lese-majesty: "Cedat tamen urbe et bonis amissis aqua et igni arceatur: quod perinde censeo ac si lege maiestatis teneretur." This statement suggests that this very sanction was provided for in the said law. About the process, see, for example, Seibt, W. Op. cit., p. 77ff.

In the other trial of AD 62, Antistius Sosianus was burdened with the crime of lese-majesty for the public reading of poems insulting Nero. Again, the senators opted for the death penalty, which was opposed by Thræsea Paetus who suggested deportation: "Esse poenas legibus constitutas quibus sine iudicum saevitia et temporum infamia supplicia decernerentur. Quin in insula publicatis bonis quo longius sontem vitam traxisset, eo privatim miseriorem et publicae clementiae maximum exemplum" (*Annales* 14,48). Judging by this utterance, deportation, or exile with an indication of the destination, appears as one of the statutory penalties. In B.M. Levick's opinion, both rhetoric-ridden passages do not contribute anything to the content of the *lex Iulia maiestatis*. See also Bauman, R.A. *Impietas in Principem*... p. 143f.

¹⁵² Cf. e.g. Cicero. *Pro Cluentio* 54,148: "deque eius capite quaerito qui magistratum haberit quique in senatu sententiam dixerit, qui eorum coit, coerit." Cf. Ulpianus. *Collatio legum Mosaicarum et Romanarum* 1,3,1: "ut praetor quaerat ... de capite eius, qui cum telo ambulaverit hominis necandi causa."

¹⁵³ Cf. Tacitus. *Annales* 3,51,3: "igitur factum senatus consultum, ne decreta patrum ante diem decimum ad aerarium deferrentur idque vitae spatium damnatis prorogaretur."

Cicero's words - a statutory penalty, and the term *exilium* should not, in that time, be understood as an inescapable loss of citizenship and assumption of foreign citizenship, which was not listed among the accepted penalties. The condemned person could remain a Roman citizen, and only a formal decision on *interdictio* prohibited him from returning to Italia under the threat of death, and in order to ensure his greater security in a foreign community, he was allowed to renounce Roman citizenship and take the foreign one.¹⁵⁴

As known from Suetonius' account, Caesar toughened criminal liability for offences ("poenas facinorum auxit" - *De vita Caesarum: divus Iulius* 42,3). Certainly, it affected the offences of lese-majesty. Cicero's statement in the *1st Philippic* proves that in the *lex Iulia maiestatis interdictio aquae et ignis* surfaced as a mandatory penalty, and not as a way of escaping execution, contingent upon the culprit's choice and the plebeian tribunes' decision.¹⁵⁵ As regards tribunes, Caesar obliged them to pronounce *interdictio* in order to force the condemned to leave Rome and take foreign citizenship, thus losing their status of Roman citizen. Suetonius adds that until then wealthy citizens did not shy away from committing offences, as they could leave the country while retaining the property; now, Caesar punished for *parricidium* by confiscating all the property, and the perpetrators of other offences lost half of the property.¹⁵⁶ The earlier statement of Cicero refers to the law of Antonius introducing the option of *provocatio ad populum* against judgements handed down on the basis of the Julian *de vi* and *de maiestate* laws;¹⁵⁷ the orator regards such perpetrator's action as encouraging further violence, although he had been convicted for violence; on the other hand, the appeal to the *comitia tributa* will make neither the accusers nor judges willing to become vulnerable to the reaction of the crowd.¹⁵⁸

During the Principate, already during the reign of Augustus and Tiberius, a trend was reinforced to treat *interdictio aquae et ignis* as a statutory penalty, although - according to some authors - it was not defined so in any

¹⁵⁴ For more, see Kelly, G. Op. cit., p. 45f.

¹⁵⁵ "Quid, quod obrogatur legibus Caesaris, quae iubent [author's emphasis] ei qui de vi itemque ei qui maiestatis damnatus sit aquae et ignis interdicti?" (*In Marcum Antonium Orationum Philippicarum Libri XIV* 1,9,23).

¹⁵⁶ Suetonius. *De vita Caesarum: divus Iulius* 42,2.

¹⁵⁷ Cf. *In Marcum Antonium Orationum Philippicarum Libri XIV* 1,9,21: "Altera promulgata lex est, ut de vi et maiestatis damnati ad populum provocent, si velint."

¹⁵⁸ "Quid enim turpius quam qui maiestatem populi Romani minuerit per vim, eum damnatum iudicio ad eam ipsam vim reverti, propter quam sit iure damnatus" (*In Marcum Antonium Orationum Philippicarum Libri XIV* 1,9,21-22). For more, see Bauman, R.A. *Crimen Maiestatis...* pp. 157-158.

legal act.¹⁵⁹ It was encouraged by the practice of deciding matters of major political importance not before *quaestiones* but before the Senate, which operated by following its own procedures. The proceedings were instituted by the accuser (more often referred to as a delator) by presenting the case before the consuls (*postulatio*)¹⁶⁰ while naming the accused (*nominis delatio*); in addition, the accuser was also required to point to the persons who supported the accusation (*subscriptores*).¹⁶¹ Next, the consuls convened the meeting of the Senate, and because a lawsuit often included several allegations, the senators decided whether they should be examined together or separately.¹⁶² Then, following the agenda determined for *quaestiones*, spoke the *delator* and *subscriptores*, followed by the accused - in person or by the counsel, and the examination of witnesses.¹⁶³ Finally, the senators opened up a discussion, then voted on the verdict: the oldest of the senators took the floor first, and the others either shared his opinion or submitted their own proposals.¹⁶⁴ The Senate was not - which was already a well-established practice in the second half of the 1st century - strictly bound by laws; it was empowered to "et mitigare leges et intendere."¹⁶⁵ Admittedly, the Senate's judgements (as *senatusconsultum*) maintained the impression of compliance with the statutory sanctions; that is why, M. Antistius Labeo, contemporary with Augustus, defines exile, which is the result of *interdictio aquae et ignis*, as a *poena legis* in the case of *capitis accusatio*,¹⁶⁶ however, the only statutory penalty here was the death penalty, and *interdictio* - at least in less weighty cases of *maiestas* - eventuated from the treatment of the accused as absent (as in the said case of Clutorius Priscus). On the other hand, in matters of greater political significance, attempts were made to prevent a premature

¹⁵⁹ This view is supported by B.M. Levick who, after the sources describing a series of trials that took place at the end of the Republic, concludes that it is doubtful whether *interdictio* was provided for in any law (op. cit., pp. 371-372).

¹⁶⁰ Cf. e.g. Tacitus. *Annales* 3,10. On delator's role in the *crimen maiestatis* proceedings, see, e.g. Bauman, R.A. *Impietas in Principem...* P. 53ff.

¹⁶¹ Cf. e.g. Tacitus. *Annales* 1,74.

¹⁶² Cf. e.g. Tacitus. *Annales* 4,21.

¹⁶³ Cf. e.g. Plinius. *Epistolae* 2,11,10-18; 4,9,3-15.

¹⁶⁴ Cf. e.g. Tacitus. *Annales* 3,23,49-51 and 68; Plinius. *Epistolae* 2,11,19-22; 4,9,16-19. The proceedings in the Senate is elaborated by: Jones, A.H.M. Op. cit., pp. 110-111; Masiello, T. "Osservazioni sulla cognitio senatoria in materia penale." In *Diritto e giustizia nel processo. Prospettive storiche costituzionali e comparatistiche*. Cascione, C., Masi Doria, C., eds., Napoli 2002, p. 447f. Cf. also Santalucia, B. *Diritto e processo penale nell'antica Roma*. Milano 1989, pp. 107-110.

¹⁶⁵ Plinius. *Epistolae* 4,9,17; cf. 2,11,4.

¹⁶⁶ Terentius Clemens D. 37,14,10: "Labeo existimabat capitis accusationem eam esse, cuius poena mors aut exilium esse."

departure of the accused from Rome by detaining him or even ending his life before the proceedings.¹⁶⁷

Another parallel process during the Principate was a gradual tightening of the effects of *interdictio aquae et ignis* with regard to, in particular, the location and conditions of exile. According to Dion Cassius' account (*Historia Romana* 56,27,2), in AD 12, Augustus prohibited the people condemned to exile to remain on the continent (which probably meant Greece or Asia Minor, the most popular destinations chosen by the exiled) and on the islands within five miles (except for Kos, Rhodes, Samos and Lesbos). Besides, they were banned from travelling to some selected places by sea. The exiled could not own more than one merchant vessel of a specified displacement or more than two oared vessels, and the assets of a value exceeding five hundred thousand sesterces; finally, they could not employ more than twenty slaves or freedmen. Any violation of these bans brought punishment not only on the individuals suffering from the interdict, but also anyone aiding them. The restrictions - Dion believes - stemmed from the fact that many exiles lived outside the designated places and enjoyed a very lavish lifestyle; the author's words show that even before AD 12 *exilium* caused by the interdiction of fire and water coincided with the indication of the location.¹⁶⁸

Another change, about AD 22, contributed to the emergence of the institution of deportation, besides relegation one of the varieties of *exilium*. It consisted in banishment to a designated place, which was also the case with

¹⁶⁷ An example of this may be the case of Licinius Murena and Fannius Cepion, accused in 22 BC for entanglement in a conspiracy aimed at the assassination of Augustus; Tiberius was the accuser. Both defendants failed to appear before the *quaestio* and fled. They were sentenced *in absentia* and soon after put to death (Dio Cassius. *Historia Romana* 54,3,4ff; Suetonius. *De vita Caesarum: divus Augustus* 56,4; *Tiberius* 8,1). Their killing was not a typical execution: Probably, Augustus did not intend to allow the perpetrators of such a grave political offence to save their lives and that their only disadvantage would be *interdictio* and confiscation of property. It is not clear whether both convicted men breached the judgement administering *interdictio* by returning from exile (Mommsen, T. *Strafrecht...* Pp. 334, 936), or were captured immediately after conviction, before they managed to arrive in the place of exile. A similar incident occurred three years later. According to Velleius Paterculus' account (*Historiae Romanae* 2,91,3ff), Egnatius Rufus, elected praetor immediately after holding the office of aedil, and then unsuccessfully seeking to be promoted to the office of consul, gathered a group of like-minded ("adgregatis simillimis sibi") conspirators and decided to assassinate Augustus, and then die. The conspiracy was exposed, Egnatius arrested and put to death immediately after conviction in Tullianum. The described practice spread under Tiberius. For more, see Bauman, R.A. *Crimen Maiestatis...* p. 183f; Levick, B.M. Op. cit., pp. 373-374.

¹⁶⁸ Cf. Levick, B.M. Op. cit., p. 376.

some forms of relegation; deportation, however, entailed the loss of Roman citizenship.¹⁶⁹ This penalty is mentioned in several opening books of Tacitus' *Annales* (3,38,3; 3,68,2; 4,13,2; 4,21,5; 4,30,2; 6,30,1; 6,48,6), where the verb 'deportare' is used twice. Authors of many literary sources seem to fail to distinguish between *exilium*, *relegatio* and *deportatio*, which results in these notions being assigned dissimilar meanings, both in a technical and general sense. *Relegatio* normally meant the removal a person from Rome or from Italia, sometimes with a temporary or permanent place of residence indicated, yet without any additional sanctions (in particular, without *capitis deminutio*).¹⁷⁰

A further step in the evolution of *interdictio aquae et ignis* was Tiberius' - according to Dion Cassius' account of AD 23¹⁷¹ - ban on drawing up the last will by a person suffering from the penalty. The emperor's decision furnishes yet another proof that *interdictio* was not associated with the loss of Roman citizenship (unless it resulted in a deportation), otherwise the ban in question would have been pointless. The incapacity to leave the last will and testament equalized - at least in part - the situation of persons under *interdictio* (if they owned some property), who remained Roman citizens, with the situation of persons condemned to deportation.

2. Confiscation of Property

The punishment of confiscation of property (*publicatio bonorum*) surfaces in Roman criminal law relatively early; it is first mentioned (as *consecratio bonorum*) in the sources of the royal period¹⁷² and the early Republic. The early republican sources, which - according to the Roman tradition - underpin the Republican state order, reveal the existence, besides capital punishment, of confiscation of property in favour of certain gods.¹⁷³ T. Mommsen concludes that the original form of capital punishment affected not only the convict but also his assets.¹⁷⁴ Over time, confiscation of property lost its religious char-

¹⁶⁹ Ulpianus D. 48,22,6 pr.: "Inter poenas est etiam insulae deportatio, quae poena adimit civitatem Romanam."

¹⁷⁰ Cf. e.g. Tacitus. *Annales* 3,17,8; cf. Pomponius D. 48,22,1.

¹⁷¹ *Historia Romana* 57,22,5; cf. G. 1,128; *Regulae Ulpiani* 20,14.

¹⁷² Plutarchus. *Romulus* 22,3; Dionysius Halicarnassensis. *Antiquitates Romanae* 2,74, 3.

¹⁷³ Livius. *Ab Urbe condita* 2,8,2: *lex de sacrando cum bonis capite eius, qui regni occupandi consilia inisset*; Dionysius Halicarnassensis. *Antiquitates Romanae* 6,89,3; 7,17,5; Livius. *Ab Urbe condita* 3,55,7. Cf. Fuhrmann, M. "Publicatio bonorum." In *RE* 46, col. 2386–2387.

¹⁷⁴ *Strafrecht*... p. 902. In the late Republic, *consecratio bonorum* was an "automatic" sanction imposed along with the tribunician *coërcitio*.

acter and became the punishment of a secular nature, still coinciding with the death penalty, yet meted out only for certain types of offences, especially serious crimes against the state (*perduellio*). Confiscation breached the principle of personal liability as it struck not only the offender but also his heirs; national security considerations required that both a criminal be annihilated and his progeny deprived of any economic significance, since they might have wished to follow into the wrongdoer's footsteps. Therefore, *publicatio bonorum* did not follow from an imperative of justice, but was a concession to political expediency; its application each time depended on how the state was understood, how national security was defined by those in power and, finally, what forms and methods of political struggle were put into practice.¹⁷⁵

Confiscation was one of the consequences of *interdictio aquae et ignis*. Above, *interdictio* was discussed as a mandatory sanction under the *lex Iulia maiestatis*, which prevented the guilty of the offence of lese-majesty treason to escape the effects of conviction by fleeing into exile voluntarily; among those effects, there was also the confiscation of half of the property as enacted by Caesar.¹⁷⁶ The prevalence under the Principate of the penalties of relegation or deportation in matters involving *maiestas* resulted in numerous cases of confiscation perceived as an additional penalty.¹⁷⁷ Yet, this trend does not seem to be well-substantiated in the literary sources. Dio Cassius repeatedly emphasized Tiberius' reluctance to impose this penalty; during his reign - as the author points out - no case of conviction was motivated by profit; likewise, no *publicatio bonorum* sentence was passed.¹⁷⁸ However, Dio Cassius' declaration is contradicted by the fact that in AD 16, after conviction of Libo Drusus for *crimen maiestatis*, his property was divided among his accusers.¹⁷⁹ According to R.S. Rogers, the rule confirmed by Dio and Tacitus that a suicide prior to execution of the convicted person guaranteed a decent burial and the validity of his last will and testament and, therefore, prevented confiscation should be dismissed from consideration.¹⁸⁰ Meanwhile, as pointed out by R.S. Rogers, confiscation of property constituted,

¹⁷⁵ Fuhrmann, M. Op. cit., col. 2491. See also Dyjakowska, M. „Kara konfiskaty majątku za *crimen laesae maiestatis*.” In *Podstawy materialne państwa. Zagadnienia prawnó – historyczne*. Bogacz, D., Tkaczuk, M., eds., Szczecin 2006, pp. 601-602.

¹⁷⁶ As a statutory penalty, confiscation appeared - alongside *deportatio* - already in some *Corneliae leges*. As reported by Marcianus in D. 48,8,3,5, such sanctions were provided for in the *lex Cornelia de sicariis et veneficis*.

¹⁷⁷ Brasiello, U. *La repressione penale in diritto Romano*. Napoli 1937, pp. 112-113.

¹⁷⁸ *Historia Romana* 57,10,5; 57,18,8; 58,21,6.

¹⁷⁹ Tacitus. *Annales* 2,32.

¹⁸⁰ Dio Cassius. *Historia Romana* 58,15,4; 58,16,1; Tacitus. *Annales* 6,29,2.

in accordance with Ulpian's account in D. 3,2,11,3,¹⁸¹ a statutory penalty, and *damnatio memoriae*, which was not infrequent in such cases, nullified the wrongdoer's last will and testament.¹⁸² Ulpian's account mentioned by the author is not, however, relevant to the penalty of confiscation but to the prohibition of mourning after the guilty of *perduellio*; it must also be emphasized that - as mentioned elsewhere - during the Principate, in cases decided by the Senate, the regulations were not always conformed to, hence, in practice, milder penalties might have been handed down if a person suspected of *crimen maiestatis* had taken his life.¹⁸³ Apparently, this practice was not too widespread, and confiscation of property due to the offences of *maiestas* must have been adopted as a rule, as the decree of Septimius Severus quoted by Hermogenian ordered that the property of the condemned for the offence fell to his descendants and, in their absence, could have been confiscated for the benefit of the imperial treasury:

D. 48,4,9: Eorum, qui maiestatis crimine damnati sunt, libertorum bona liberis damnatorum conservari, Divus Severus decrevit, et tunc demum fisco vindicari, si nemo damnati liberorum existat.

Confiscation of property was inevitable when *perduellio* came into play; the death of the accused did not prevent the conviction to be passed afterwards. Finally, confiscation was envisaged as a mandatory sanction for any form of *crimen maiestatis* in the *lex Quisquis* ("bonis eius omnibus fisco nostro addictis" - C. 9,8,5 pr.), and was intended - along with other repressive measures against the culprit's children - the decline of his family (see Section 7 below).

3. Infamy

Infamy consisted in the diminishing or loss of civic honour (*existimatio*), which was defined as the state of undiminished dignity approved by law

¹⁸¹ "Non solent autem lugeri, ut Neratius ait, hostes, vel perduellionis damnati, nec suspensiosi, nec qui manus sibi intulerunt non taedio vitae, sed mala conscientia ..."

¹⁸² Op. cit., p. 183.

¹⁸³ A suicide committed by a person suspected of a crime in order to avoid liability caused - by the Roman law standards - the opposite effect: its consequence was the confiscation of the person's property and hampering succession after him (for more, see Kuryłowicz, M. "Taedium vitae w rzymskim prawie karnym." In *Contra leges et bonos mores. Przestępstwa obyczajowe w starożytnej Grecji i Rzymie*. Kowalski, H., Kuryłowicz, M., eds., Lublin 2005, p. 189, including the references therein).

and customs.¹⁸⁴ The loss of reputation that a person enjoyed in society did not always bring about legal consequences, it merely had an influence over the social assessment of the individual; first and foremost, *infamia* means a penalty of temporary or permanent deprivation of a substantial part of rights, resulting in the person being denied to hold public offices or perform certain acts in civil and other proceedings.¹⁸⁵

A distinction should be made between the infamy imposed by the censor under *lustratio* and the one meted out by the praetor holding the office of a magistrate within the jurisdiction; infamy was also a penalty, both in the republican legislation and imperial constitutions, for torts and offences that fell under public law (*crimina*). Notwithstanding the fact that having been convicted in a trial already resulted in the loss of reputation (*infamia facti*),¹⁸⁶ many criminal laws envisaged infamy as an additional penalty imposed on wrongdoers. In the imperial legislation, infamy was applied as a subsidiary penalty alongside pecuniary sanctions,¹⁸⁷ the death penalty or exile;¹⁸⁸ as a matter of fact, a conviction before the *iudicia publica* already entailed infamy from the public perspective, even if it was not expressly named in the judgement.¹⁸⁹ The laws often stipulated the restriction of certain rights if the wrongdoer was convicted for offences listed in those laws; a common retribution was the exclusion from the Senate and the prohibition of acting

¹⁸⁴ Callistratus D. 50,13,5.1: "Existimatio est dignitatis inlaesae status, legibus ac moribus comprobatus, qui ex delicto nostro auctoritate legum aut minuitur aut consumitur." Kaser, M. „Infamia und ignominia in den römischen Rechtsquellen.“ *Zeitschrift der Savigny – Stiftung für Rechtsgeschichte. Romanische Abteilung* 73(1956), p. 222. B. Sitek underlines the meaning of *dignitas*: it is a dignity possessed by a free man, a Roman citizen, belonging to the upper echelons of the society and enjoying an adequate financial status. Hence, infamy signalled that the person, pursuant to a judgement or improper behaviour, was denied some of these interests - usually a high position in society - by, for example, expulsion from *ordo* or banishment (*Infamia w ustawodawstwie cesarzy rzymskich*. Olsztyn 2003, p. 267) .

¹⁸⁵ Sitek, B. Op. cit., p. 268.

¹⁸⁶ Cf. Cicero. *Pro Cluentio* 42,119: "turpi iudicio damnati, in perpetuum omni honore ac dignitate privantur."

¹⁸⁷ For example, C. 6,56,4 pr.-1.

¹⁸⁸ For example, C.Th. 9,7,3; C. 11,19,1 pr.

¹⁸⁹ Macer D. 4,48,1,7: "Infamem non ex omni crimine sententia facit, sed ex eo, quod iudicii publici causam habuit; itaque ex eo crimine quod iudicii publici non fuit, damnatum infamia non sequetur, nisi id crimen ex eo actione fuit, quae etiam in privato iudicio infamiam condemnato importat, veluti furti, vi bonorum raptorum, iniuriarum." However, Septimius Severus' constitution speaks against the recognition of infamy as a penalty inseparable or closely linked with the very fact of conviction; it suggests that if infamy is not explicitly mentioned in the judgement, it should not be combined with the primary penalty which, essentially, is severe enough (C. 2,11,4). For more, see Sitek, B. Op. cit., pp. 238-239.

in the capacity of a judge (in civil and criminal litigations);¹⁹⁰ jurists' comments prove that both these sanctions were seen as very closely related.¹⁹¹ Although the legislation of the time rarely refers to the concept of infamy as equivalent to penalty, any reduction or deprivation of individual rights, as those mentioned above, should be considered some sort of penalization.¹⁹²

Infamy entailed far-reaching consequences both in public and private law. The most important one was the exclusion from holding public offices.¹⁹³ Many criminal laws as early as in the Republic also mentioned - as pointed out elsewhere - exclusion from the Senate and the prohibition of carrying out the function of a judge. Furthermore, infamy restricted the right to give testimony in a trial (both criminal and civil) as witnesses were expected to be credible.¹⁹⁴ Indeed, individual criminal statutes did not explicitly lay down such a prohibition in relation to *infames*, but some of them deprived the convicted of the possibility to testify.¹⁹⁵ B. Sitek points out that imperial constitutions also frequently highlighted the moral fitness of witnesses, and, although none of them explicitly banned infamy-stricken

¹⁹⁰ For example, the *lex Acilia repetundarum* dated 122 BC excluded from the Senate were the persons hiring themselves out for gladiator fights or convicted in a criminal trial. Both these penalties appear in the *lex Iulia de vi privata* (Marcianus D. 48,7,1 pr.: "et cautum est, ne senator sit, ne decurio, aut ullum honorem capiat, neve in quem ordinem sedeat, neve iudex sit; et videlicet omni honore, quasi infamis, ex senatus consulto carebit"). The *lex Iulia repetundarum* mentions the exclusion from the function of a judge (Venuleius Saturninus D. 48,11,6: "Hac lege damnatus testimonium publice dicere, aut iudex esse postulareve prohibetur"). For more, see Mommsen, T. *Infamia und ignominia...* pp. 255-257.

¹⁹¹ Marcellus D. 1,9,2: "Cassius Longinus non putat ei permittendum, qui propter turpitudinem Senatu motus nec restitutus est, iudicare, vel testimonium dicere, quia lex Iulia repetundarum hoc fieri vetat." Cf. C. 12,1,12: "Iudices, qui se furtis et sceleribus fuerint maculasse convicti, ablatis codicillorum insignibus et honore exuti inter pessimos quosque et plebeias habeantur, nec sibi posthac de eo honore blandiantur, quo se ipsi indignos iudicaverunt." For more, see Greenidge, A.H.J. *Infamia. Its place in Roman Public and Private Law*. Oxford 1894, p. 155.

¹⁹² Compare Marcianus D. 48,7,1 pr. cited above; for more on the significance of the provisions of a praetorian edict for praetorian infamy see G. 4,182.

¹⁹³ An example among the many imperial constitutions is a decree of Constantine the Great of AD 314 setting out the qualities to be displayed by candidates for offices, as well as the characteristics that disqualify such candidates. Among those excluded from running for offices, besides *famosi*, that is, made infamous, there were *notati*, i.e. those branded with ignominy by a censor's decree (note) and *qui scelus aut vitae turpitudine inquinant*, i.e. committing a crime or pursuing a morally reprehensible lifestyle, and finally those punished by infamy - *quos infamia ab honestorum coetu segregat* (C. 12,1,2). For the significance of the censor's decree during the imperial period, see Sitek, B. *Op. cit.*, p. 188.

¹⁹⁴ *Pauli Sententiae* 5,15,1; Callistratus D. 22,5,3,5.

¹⁹⁵ Cf. e.g. *lex Iulia de adulteriis coërcendis* (Ulpianus D. 28,1,10,6; cf. Papinianus D. 22,4,14); *lex Iulia repetundarum* (Venuleius Saturninus D. 48,11,6).

individuals from testifying, such a limitation would result from the credibility requirement for witnesses.¹⁹⁶ That infamy-related lack of credibility also prevented the infamous individual from bringing a public action in a criminal lawsuit - "propter delictum proprium, ut infames."¹⁹⁷ The imperial constitutions of the Dominate period introduced additional sanctions in particular cases of infamy.¹⁹⁸ It is still debatable whether infamy inhibited the culprit from military service (except for cases of imposition of this penalty for military offences, which meant the expulsion from the army - *missio ignominiosa*).¹⁹⁹ A.H.J Greenidge takes the view that service in the legions was regarded more as an honour (*honus*) than as a duty (*munus*); infamy took this honour away just as the right to take up public offices. The author based this view on a conclusion drawn from the analysis of Arrius Meander D. 49,16,4,4, which attests that certain categories of people, for example, the convicted of *adulterium* or in other proceedings before the *iudicium publicum*, were denied entry into the military service, and it is otherwise known (after C. 9,8,5) that these persons had been pronounced infamous. What is more - in accordance with the *lex Quisquis* - the infamous children of persons convicted of *crimen maiestatis* were not only banned from assuming offices, but also from taking an oath, and the term *sacramentum* used in this law ("nulla prorsus perveniant Sacramenta") means in particular a clerical or military oath.²⁰⁰ In private law, infamy resulted in a limitation to act *postulare pro alio* in court (on behalf of other persons), both as a *cognitor* and *procurator*.²⁰¹ Due to the lack of credibility, infamous persons were unable to be witnesses not only in processes, but also at some legal acts, such as drawing up the last will or establishing a pledge.²⁰² As a matter of fact, incapacity to be a testamentary witness fell under the broader concept of *intestabilitas*, also meaning the inability of making and the last will, and even preventing to

¹⁹⁶ Op. cit., p. 266. The author points out that the discussed prohibition can also be found in other than Justinian sources (*Pauli Sententiae* 5,15,1).

¹⁹⁷ Macer D. 48,2,8. Persons belonging to this category are listed by Ulpian in D. 48,2,4: some of them having been made infamous *facti* because of their profession, and some because of a criminal conviction.

¹⁹⁸ For example, pursuant to the constitution of Gratian, Valentinian and Theodosius of 3 August 3 379, infamy imposed on heretics excluded them from ecclesiastical offices (C. *Th.* 16,5,5 = C.1, 5.2).

¹⁹⁹ See in particular C. 12,35 (36),3.

²⁰⁰ Op. cit., p. 157.

²⁰¹ *Pauli Sententiae* 1,2,1: "Omnes infames, qui postulare prohibentur, cognitores fieri non posse etiam volentibus adversariis;" cf. *Fragmenta Vaticana* § 322-324. The constraint on the persons punished with infamy to act as prosecutors was abolished by Justinian - I. 4,13,11 (10).

²⁰² C. 8,17 (18),11,1.

inherit under a valid will.²⁰³ Following Papinian's interpretation, the guilty of *adulterium*, and thus made infamous, may neither act as a testamentary witness nor make the last will, but also bereft of inheritance under both *ius civile* and praetorian law.²⁰⁴

Infamy arising from a conviction in a criminal trial was temporary or permanent (life). Of a permanent nature was the infamy imposed by a praetorian edict on the convicted for *crimina capitalia*; it could be repealed by *restitutio in integrum*,²⁰⁵ which during the Republic meant a legal remedy granted by the praetor, and during the empire by the emperor and the Senate.²⁰⁶ On the other hand, the annulment of the life infamy regulated by imperial constitutions as one of the penalties imposed by a conviction was not - as opposed to other sanctions - attainable by the imperial act of grace (*generalis indulgentia, generalis abolitio*),²⁰⁷ but required *restitutio in integrum* granted by the emperor or a special act of withdrawal of the accusation (*abolitio infamiae*).²⁰⁸

Some of these rules on infamy were subject to alteration when the crime of lese-majesty was brought into play. Under the *lex Quisquis*, infamy was a life sanction not only affecting the offender but also his descendants, as the punishment for this crime should be particularly deterrent. Although - as highlighted by the legislators - the culprit's children were supposed to experience the same suffering that he was enduring himself and, thus, be put to death ("paterno enim deberent perire supplicio"), but their lives were spared by the imperial clemency ("quibus vitam imperatoria specialiter lenitate concedimus"). However, since their fate should serve as a deterrent to the public, they would suffer - in addition to other sanctions - from life infamy that their parent had been stigmatized with ("infamia eos paterna semper comitetur"), also resulting in the lack of access to public offices and the military service ("ad nullos umquam honores, nulla prorsus sacramenta perveniant"²⁰⁹). These provisions prove an exception to the rule that infamy was not a hereditary punishment and expired no later than upon the perpetrator's death. As stated by the said constitution, infamy was also imposed on those who tried

²⁰³ For more, see Greenidge, A.H.J. Op. cit., pp. 168-170.

²⁰⁴ D. 22,5,14.

²⁰⁵ Ulpianus D. 3,1,1,9.

²⁰⁶ Ulpianus D. 3,1,1,10. For more, see Greenidge, A.H.J. Op. cit., pp. 180-181.

²⁰⁷ C. 9,43,3.

²⁰⁸ The judge could also avoid prescribing the penalty of infamy by imposing a more severe punishment that provided for in the statute or common law (Ulpianus D. 3,2,13,7: "poena gravior ultra legem imposita existimationem conservat").

²⁰⁹ C. 9,8,5.1.

to intercede with the emperor for the convicted for lese-majesty or for their progeny (“Denique iubemus etiam eos notabiles sine venia, qui pro talibus numquam apud nos intervenire tentaverint”).²¹⁰

4. *Damnatio Memoriae*

One of the principles of Roman criminal law said that in case of death of the accused before the judgement was passed, the action brought against him should expire. As regards the offence of lese-majesty, there were exceptions to this rule:

Ulpianus D. 48,4,11: Is, qui reatu decedit, integri status decedit: extinguitur enim crimen mortalitate. nisi forte quis maiestatis reus fuit: nam hoc crimine nisi a successoribus purgetur, hereditas fisco vindicatur. plane non quisque legis Iuliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rem publicam vel principem animatus. etenim si quis ex alia causa legis Iuliae maiestatis reus sit, morte crimine liberatur.

Macer D. 48,16,15,3: Si propter mortem rei accusator destiterit, non potest hoc senatusconsulto teneri, quia morte rei iudicium solvitur, nisi tale crimen fuit, cuius actio et adversus heredes durat, veluti maiestatis, idem in accusatione repetundarum est, quia haec quoque morte non solvitur.

The proceedings against the accused of *perduellio*, understood as an aggravated form of *crimen maiestatis*, continued also after the person’s death and, if found guilty, their property was confiscated. Even the proceedings initiated after the offender’s death could have led to the same effect, as demonstrated by Modestine:

D. 48,2,20: Ex iudiciorum publicorum admissis non alias transeunt adversus heredes poenae bonorum ademptionis, quam si lis contestata et condemnatio fuerit secuta, excepto repetundarum et maiestatis iudicio, quae etiam mortuis reis, cum quibus nihil actum est, asdhuc exerceri placuit, ut bona eorum fisco vindicentur, adeo ut Divus Severus et Antoninus rescripserunt, ex quo quis aliquod ex his causis crimen contraxit, nihil ex bonis suis alienare, aut manumittere eum posse. ex ceteris vero delictis poena incipere ab herede ita demum potest, si vivo reo accusatio mota est, licet non fuit condemnatio secuta.²¹¹

²¹⁰ C. 9,8,5,3.

²¹¹ See also: Volterra, E. “Processi penali contro i defunti in diritto romano.” *Revue Internationale des Droits de l’Antiquité* 3(1949), p. 485f.

An additional penalty for both a person deceased during the proceedings and convicted, as well as a living person sentenced to death, was a disgrace inflicted on their memory (*damnatio memoriae*). The idea of this penalty was to not suppress the memory of the offender among the public entirely, but to perpetuate the memory of him as a perpetrator of particularly heinous crimes.²¹²

This sanction, referred to in the sources as *memoria damnata*,²¹³ *memoriam accusare defuncti*,²¹⁴ *memoriam abolere*,²¹⁵ was not a regular consequence of a conviction for the crime of lese-majesty (as well as for some other offences as *repetundae* or *peculatus*),²¹⁶ nor the consequence of *interdictio aquae et ignis*, but in order to be effective required a separate decision: of the Senate or of the emperor.²¹⁷ The judicial decision-makers, instead of calling the penalty by its name *memoria damnata* or using any parallel term, more often highlighted its effects, in particular the prohibition of burial and mourning for the convict, the removal of his images from public places, cancelling his names from documents and even pulling down his house.

The cases of refusing persons found *hostis* or *perduellis* a burial ceremony to go back to the period of the Republic. During the Third Samnite War, the military garrison sitting in the town of Regium and commanded by Decius staged a mutiny and entered into an alliance with the Mamertines (mercenaries from Campania). When, after twelve years, Regium was captured by the Roman army, the rebels were treated as *hostes* and executed, and the Senate forbade their burial and mourning.²¹⁸ A similar fate befell Gaius Gracchus and his followers in 122 BC - their punishment was *senatus-consultum ultimum*.²¹⁹ Several decades later, Cicero repeatedly accounted for

²¹² For more, see Hedrick, Ch. W. *History and Silence. Purge and Rehabilitation of Memory in Late Antiquity*. Austin 2000, p. 93f.

²¹³ Cf. e.g. I. 3,1,5; Papinianus D. 31,76,9.

²¹⁴ C. 1,5,4.4.

²¹⁵ Cf. C. 1,3,23.

²¹⁶ For more, see Pesch, A. *Op. cit.*, p. 311f.

²¹⁷ Numerous examples of both Senate's and emperors' decisions on *damnatio memoriae* are to be found in Tacitus' *Annales* (e.g. 2,31; 3,17-18; 6,2; 11,38). Examples of imperial constitutions on this matter are to be found in the Theodosian Code and the Code of Justinian (e.g. the constitution of Emperor Honorius of AD 407 – C. Th. 16,5,40,4; the constitution of Emperor Marcian of AD 452 – C. 1,3,23). See also: Mommsen, T. *Strafrecht*.... p. 987.

²¹⁸ Frontinus, *Strategemata* 4,1,38: "in legionem quae Regium oppidum iniussu ducis dissipuerat animadversum est ita, ut quattuor milia tradita custodiae necerentur. praeterea senatus consulto cautum est ne quem ex iis sepelire vel lugere fas esset." See also: Valerius Maximus, *Facta et dicta memorabilia* 2,7,15.

²¹⁹ Plutarchus, *Gaius Gracchus* 38. On the other hand, the refusal to bury Tiberius Gracchus should be considered unlawful, as his was not officially held as *hostis* (Plutarchus. *Tiberius Gracchus* 20).

the complaint of Mark Antony that he had not allow the burial of emperor's stepfather, Cornelius Lentulus Sura, one of the masterminds of the Catiline conspiracy.²²⁰

The lack of consent to the burial of persons convicted of lese-majesty is mentioned by Ulpian in D. 48,24,1:

Corpora eorum, qui capite damnantur, cognatis ipsorum neganda non sunt, et id se observasse etiam Divus Augustus libro decimo de vita sua scribit. hodie autem eorum in quos animadvertitur, corpora non aliter sepeliuntur quam si fuerit petitum et permissum; et nonnumquam non permittitur, maxime maiestatis causa damnatorum.

In the cited statement, Ulpian juxtaposes the legal status consolidated during Augustus,²²¹ which allows the relatives to collect the body of an executed convict, with the practice of his time. In order to receive the body, it was required that the family file a request,²²² which could be turned down, especially if the deceased had been sentenced for lese-majesty.

The prohibition of mourning for the people found *hostes* and *perduelles* was extended - during the reign of Tiberius, as reported by Suetonius - to cover all sentenced to death;²²³ the term *capite damnati* used by the author also refers, at least from the decline of the Republic, to the persons suffering from *interdictio aquae et ignis*.

The punishment of *damnatio memoriae* eventuated in the removal of images of the people convicted of *crimen maiestatis* from public places: Modestinus D. 48,19,24: "Eorum qui relegati vel deportati sunt ex causa maiestatis, statuas detrahendas scire debemus."

At the same time, even banished individuals were allowed to be lawfully venerated at home: Pomponius D. 48,22,17: "relegatus statuis et imaginibus honorari non prohibentur."

²²⁰ Cicero, *In Marcum Antonium Orationum Philippicarum Libri XIV* 2,7,17-18; Cicero, *Pro Sestio* 14,33; Tacitus, *Annales* 3,18. For more, see Hedrick, Ch.W. Op. cit., pp. 103-106.

²²¹ *Res Gestae Divi Augusti* 10. On the restrictions regarding the burial of persons guilty of *crimen maiestatis*, see Kuryłowicz, M. D. 48,24: "De cadaveribus punitorum. Prawo rzymskie o zwłokach osób skazanych za przestępstwa przeciwko państwu." In *Salus rei publicae suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*. Dębiński, A., Kowalski, H., & Kuryłowicz, M., eds., Lublin 2007, p. 115f.

²²² This practice is confirmed by Paulus in D. 48,24,3: "corpora animadversorum quibuslibet petentibus [author's emphasis] ad sepulturam danda sunt."

²²³ Suetonius. *De vita Caesarum: Tiberius* 61: "interdictum ne capite damnatos propinqui lugerent."

The term *imago* meant a death mask of wax, stored in the atrium and bearing a written record of the achievements of the deceased. After the deaths of successive family members, *imagines* were worn by the participants of the funeral procession acting out the ancestors. A public display of the *imago* of the deceased during the obsequies of his other relatives was intended to pay homage and stress his former presence in the family. This testifies to a closed link - as argued by A. Pesch - between the ban on mourning for and burying the guilty of lese-majesty and the prohibition related to *imago*.²²⁴ This restriction did not apply, it seems, to the worship of the images of the deceased as part of the domestic homage to the ancestors, the sources only mention the use of masks of the convicted persons during funerals.²²⁵ Admittedly, Tacitus reports that when Emperor Claudius was brought to Syllius' home (Syllius was Messalina's lover) he spotted the image of Syllius' father in the vestibule - this image had been banned by the Senate some time before.²²⁶ In this case, however, it was not the *imago* that might have provoked controversy and was usually displayed in the atrium, that is, further inside the house, but the *effigies* (which can be both a portrait and a statue) exposed at the entrance and conspicuous to anyone entering.

Another consequence of "condemnation of memory" was to erase the name of the condemned from documents, sometimes combined with the prohibition of using his surname or nickname (*cognomen*) by his family

²²⁴ The author says: "Die *imago* zu verbieten, ist so eng mit Bestattung und Trauer verknüpft, daß ich es für äußerst wahrscheinlich hatte, daß ein *imago* - Verbot als solches nicht bestanden hat, es war die notwendige Folge das Verbotes einer Bestattung" (op. cit., p. 283). In support of this claim, the author alludes to Tacitus' account that after Messalina's death the Senate demanded that her name and images be erased from public and private places ("iuvitque oblivionem eius senatus censendo nomen et effigies privatis ac publicis locis demovendas" - *Annales* 11,38). Messalina's body was returned to her mother, so she was able to take her death mask and bury her; hence, the penalties associated with *imago* are a consequence of the prohibition of burial (op. cit., p. 297). See also: Rollin, J.P. *Untersuchungen zu Rechtsfragen römischer Bildnisse*. Bonn 1979, p. 151f.

²²⁵ In Book 2 of *Annales*, the trial of Scribonius Libo Drusus caused the Senate to issue several resolutions, for example, that the mask of a convicted person would not be used in the funerals of his descendants ("ne imago Libonis exsequias posterorum comitaretur" - 2,32). During the funeral of Junia, Gaius Cassius' wife and Mark Brutus' sister, the most striking - as reported by Tacitus - was not a remarkable number of masks of the most eminent representatives of twenty Roman families but the absence of *imagines* of her husband and brother - the slayers of Caesar (*Annales* 3,76). Commenting on this passage, A. Pesch supposes that Junia's funeral became a political demonstration against Tiberius, left out of her last will, although - as said by Tacitus - she made nearly all dignitaries her beneficiaries. At the funeral, *imagines* were placed at the Rostra, hence it was easy to leave empty spaces to draw attention to the missing persons (op. cit., p. 295).

²²⁶ Tacitus. *Annales* 3,76.

members.²²⁷ The name was primarily cancelled on *fasti* (especially *fasti consulares*), i.e. the lists of consuls or other magistrates.²²⁸

The consequences of *damnatio memoriae* under civil law include the invalidating of the last will and testament of the penalized person:

Ulpianus D. 28,3,6,11: “sed ne eorum quidem testamenta rata sunt, sed irrita fient quorum memoria post mortem damnata est, ut puta ex causa maiestatis vel ex alia tali causa.”

In order for a testament to be valid, *ius civile* required that the testator have a legal capacity to make it (*testamenti factio*), both when drawing up the last will and after his death.²²⁹ If only the second requirement was met, the testament was invalid, but the heir was protected under the less formal praetorian law and acquired *bonorum possessio secundum tabulas*.²³⁰ As regards *damnatio memoriae* - according to the quoted Ulpian's account - the will was initially valid (*testamentum ratum*) but was invalidated (*testamentum irritum*) with the testator having lost *testamenti factio*.²³¹ The question remains when this loss actually occurred, which is vital for the heir to be rewarded the right to a legacy.

Although *damnatio memoriae* was meted out after the death of a person guilty of lese-majesty, its effects reached back to the moment of the intent to commit the offence:

C. 9,8,6,2: Post divi Marci constitutionem hoc iure uti coepimus, ut etiam post mortem nocentium hoc crimen inchoari possit, ut convicto mortuo memoria eius damnatur et bona eius successoribus eripiantur: nam ex eo quo scelerrimus quis consilium cepit, exinde quodammodo sua mente punitus est.²³²

²²⁷ After the death of Scribonius Libo Drusus, the Senate voted that nobody of Scribonius' family be nicknamed Drusus (“ne quis Scribonius codnomen tum Drusi adsumeret” - Tacitus. *Annales* 2,32).

²²⁸ Cf. e.g. Cicero. *In Marcum Antonium Orationum Philippicarum Libri XIV* 13,11,26.

²²⁹ Voci, P. *Diritto ereditario Romano*. Vol. 2, Milano 1963, p. 372.

²³⁰ G. 2,147.

²³¹ The invalidity of the last will and testament also coincided with a conviction for certain crimes. This penalty was imposed - according to Ulpian - on the guilty of public slander (D. 28,1,18,1).

²³² On the assessment of the moment of making the decision see above. It should be noted that the loss of *testamenti factio* as a result of *damnatio memoriae* with retroactive effect was an exception to the rule that such a loss was triggered by a final conviction for *crimen capitalis*. See in particular Marcianus D. 28,1,13,2: “Si quis in capitali crimine damnatus appellaverit et medio tempore pendente appellatione fecerit testamentum et ita decesserit, valet eius testamentum;” Ulpianus D. 28,1,9: “Si quis post accusationem in custodia fuerit defunctus indemnat, testamentum eius valebit.”

The last will and testament of a person guilty of treason was therefore invalid, since at the moment of death he had no *testamenti factio*; for this reason, the heir was not rewarded the legacy under the praetorian law.

Damnatio memoriae also cancelled donations made to the spouse:

Ulpianus D. 24,1,32,7: Si maritus uxori donaverit et mortem sibi ob sceleris conscientiam consciverit vel post mortem memoria eius damnata sit, revocabitur donatio: quamvis ea quae aliis donaverit valeant, si non mortis causa donaverit.

The quoted passage mentions the donations *mortis causa*, being the only ones that would be done to the benefit of the spouse.²³³ For making such donations was contingent upon having *testamenti factio*, which - as previously stated - was denied to the convicted of *damnatio memoriae*, effective from the occurrence of intent.²³⁴ Finally, the lack of *testamenti factio* resulted in the annulment of bequests (and also *fideicommissa* - their equivalents in the classical period)²³⁵ and *manumissio ex testamento* made by the person punished by *damnatio memoriae*:

Papinianus D. 31,76,9: Repetundorum legatorum facultas ex eo testamento solutorum danda est, quod irritum esse post defuncti memoriam damnatam apparuit, modo si iam legatis solutis crimen perduellionis illatum est;

C. 7,2,2: Ex testamento defuncti libertas praestari non possunt hereditate non adita, vel si rei memoria propter crimen quod morte non intercidit damnata est.²³⁶

Among the effects of *damnatio memoriae*, not covered by any explicit regulation but used in practice, was sometimes the demolition of the perpetrator's house. In the early Republic, such a measure was taken against individuals sentenced to death for *affectatio regni*.²³⁷ Numerous cases of de-

²³³ Ulpianus D. 24,1,1; Ulpianus, D. 24,1,9,2. This exception to the prohibition of making gifts to the spouse is explained by Gaius, D. 24,1,10: "quia in hoc tempus excurrit donationis eventus, quo vir et uxor esse desinunt."

²³⁴ This dependence is to be inferred from Ulpian (D. 24,1,32,8): "Si miles uxori donaverit de castrensibus bonis et fuerit damnatus, quia permissum est ei de his testari si modo impetravit, ut testetur, cum damnaretur, donatio valebit; nam et mortis causa donare poterit, cui testari permissum est."

²³⁵ Ulpianus D. 30,1: "Per omnia exaequata sunt legata fideicommissis."

²³⁶ In the absence of *testamenti factio*, the manumission in the testament and through *fideicommissum* was invalid (cf. Paulus D. 40,4,56), as *fideicommissum* was available only to those who had the capacity to draft a lawful will and testament (*Tituli ex corpore Ulpiani* 25,4: "fideicommissum relinquere possunt, qui testamentum facere possunt, licet non fecerint").

²³⁷ See e.g. Livius. *Ab Urbe condita* 4,15,8-16,1 on tearing down Spurius Melius' house.

Section 12 Liability of the Wrongdoer's Family under the *Lex Quisquis*

molished homes of persons persecuted for political reasons are listed in, among others, Cicero in his speech *De domo sua*, 101.

Section 12 Liability of the Wrongdoer's Family under the *Lex Quisquis*

One of the governing principles of Roman law, as repeatedly emphasized by jurists, was individual criminal liability of the perpetrator. In support of this principle, there are known passages from Callistratus²³⁸ and - for municipal offices - from Ulpian and Papirius Justus.²³⁹ A source from the Late Empire, heavily emphasizing the rule of individual liability for an offence, is the constitution of Emperors Arcadius and Honorius issued in AD 399.²⁴⁰

The authors of ancient literary sources pointed to the differences between Roman law and the laws of other nations in the approach to this principle. The account of Dionysius of Halicarnassus demonstrates that the principle of personal responsibility emerged very early in Roman law and, as the author seems to underline, was observed even with the most serious crimes. For instance, when in 485 BC, after the execution of Spurius Cassius found guilty of *perduellio*, an attempt was made to put his sons to death, the senators decided that they should be left immune from both the death penalty and any other punishment. Dionysius adds that since that event a custom had been respected in Rome that sons should be absolved from the responsibility for their fathers' deeds, including lese-majesty (αδικήμα), regarded, in the author's view, as the gravest offence. He goes on to say that this principle was first violated during the civil wars, with the most striking case of penalties suffered by the sons of people proscribed during the dictatorship of Sulla. As a matter of fact, a similar fate befell the persecutors and their off-

²³⁸ Callistratus D. 48,19,26: "Crimen vel poena paterna nullam maculam filio infligere potest; namque unusquisque ex suo admisso sorti subicitur nec alieni criminis successor constituitur."

²³⁹ Ulpianus D. 50,2,2,7: "Nullum patris delictum innocenti filio poenae est: ideoque nec ordine decurionum aut ceteris honoribus propter eiusmodi causam prohibetur;" see also Papirius Iustus D. 50,2,13,2; Ulpianus D. 50, 4,3,9.

²⁴⁰ C. 9,47,22: "Sancimus ibi esse poena, ubi et noxa est. Propinquos notos familiares procul a calumnia submovemus, quos reos sceleris societas non facit; nec enim adfinitas vel amicitia nefarium crimen admittunt. Peccata igitur suos teneant auctores nec ulterius progrediatur metus, quam reperietur delictum. Hoc singulis quibusque iudicibus intimetur."

spring, still the one who was behind their downfall, and even the extinction of whole families (the author means Julius Caesar), restored the old custom, i.e. the principle of individual liability. Dionysius sets this custom against the Greek practice where the sons of persons accused of tyranny were condemned to death along with the perpetrators, or to life banishment, which was accounted for by the belief that nature invariably made children like their fathers.²⁴¹ Meanwhile, Ammianus Marcellinus pointed to the difference between Roman law and the laws of the Persian kingdom that stipulated punishments for the whole families for crimes of individuals.²⁴²

Dionysius' deliberations on the application of the principle of individual liability are not always implemented in practice, even in the event of lese-majesty. Already in the early Principate, the offender and his family members were not infrequently punished alike. Among the instances of Tiberius' cruelty, Suetonius reports cases of accusation and condemnation of many along with their families,²⁴³ and in the reign of Nero, after the exposure of two plots against the emperor (the so-called Pisonian conspiracy of AD 65 and the conspiracy of Vinicius at Beneventum), the children of the convicts were expelled from Rome and slaughtered.²⁴⁴ According to Tacitus, after sentencing Aelius Seianus to death for scheming against Tiberius, his children were also slain.²⁴⁵

The administration of the punishment of death or exile to children of persons convicted of lese-majesty was justified on the one hand by the conviction that the prospect of such a reprisal would discourage parents from committing crimes,²⁴⁶ and, on the other, by the concern that children may follow into their parents footsteps in the future. Ammianus Marcellinus provides such a justification of the order of Emperor Valens, which eventuated in the total extinction of one of Syrian tribes.²⁴⁷

²⁴¹ *Antiquitates Romanae* 8,80,1-3.

²⁴² *Rerum gestarum libri* 23,6,81.

²⁴³ *De vita Caesarum: Tiberius* 61: "accusati damnatique multi, cum liberis atque etiam uxoribus suis."

²⁴⁴ *De vita Caesarum: Nero* 36: "Damnatorum liberi urbe pulsii, enectique veneno aut fame."

²⁴⁵ *Annales* 5,9.

²⁴⁶ Cf. e.g. Cicero. *Epistolae ad Brutum* 1,12,2: "nec vero me fugit quam sit acerbum parentum scelera filiorum poenis lui; sed hoc praeclare legibus comparatum est, ut caritas liberorum amiciores parentis rei publicae reddent." The author tried to emphasize that the most devastating consequence of the parents' crimes is the awareness that the responsibility would also lie with their offspring.

²⁴⁷ "...eorumque suboles parva etiam tum, ne ad parentum exempla subcrescerent, pari sorte deleta est" (*Rerum gestarum libri* 28,2,14).

Section 12 Liability of the Wrongdoer's Family under the *Lex Quisquis*

The fear of crime-prone perpetrator's descendants is also highlighted in the *lex Quisquis*, thus one of the consequences of lese-majesty was the public degradation of his family:

C. 9,8,1: Filii vero eius, quibus vitam imperatoria specialiter lenitate concedimus (paterno enim debent perire supplicio, in quibus paterni, hoc est hereditarii criminis exempla metuuntur [author's emphasis], a materna vel avita, omnium etiam proximorum hereditate ac successione habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes, infamia eos paterna semper comitetur, ad nullos unquam honores, nulla prorsus, sacramenta perveniant, sint postremo tales, ut his, perpetua egestate sordentibus, sit et mors solatium et vita supplicium.

Lifelong infamy imposed on the wrongdoer's children deprived them of the capacity to be appointed to offices and serve in the army, and confiscation of property that affected the perpetrator was to downgrade his family publicly. For a yet fuller implementation of the intention expressed in the constitution to make the wrongdoer's sons live in want and continuous distress and the only liberation being death, an additional penalty was their exclusion from inheriting from their mother and other relatives, as well as from testate succession to unrelated persons.

Only daughters were granted the right to the Falcidian quarter of the mother's property in the constitution, both in intestate and testate succession. The legislators justify that this concession is rested on the belief that the temperamental weakness of women makes them less likely to commit crimes so they deserve more leniency:

C. 9,8,3: Ad filias sane eorum, quolibet numero fuerint, Falcidiam tantum ex bonis matris, sive testata sive intestata defecerit, volumus pervenire, ut habeant mediocrem potius filiae alimoniam, quam integrum emolumentum ac nomen heredis. Mitior enim circa eas debet esse sententia, quas pro infirmitate sexus minus ausuras esse confidimus.

The prohibition of inheriting from the mother was complemented by the provision that when the useful life of the assets given by the convicted man to his wife with the intention of handing them down to the children is over, these assets are lost to the tax authority; only daughters are entitled - as in the case of inheritance from the mother - to the Falcidian quarter of this property:

C. 9,8,5: Uxores sane praedictorum, recuperata dote, si in ea conditione fuerint, ut, quae a viris titulo donationis acceperunt, filiis debeant reservare, tempore,

quo ususfructus absumitur, omnia ea fisco nostro se relicturus esse cognoscant, quae iuxta legem filiis debebantur. Falcidia etiam ex his rebus filiabus tantum, non etiam filiis deputata.

Likewise, the AD 421 constitution of Honorius and Theodosius denied the wrongdoer's children the right to be lawful heirs:

CTh. 9,42,23: Eorum facultates, qui pro criminibus suis meruere puniri, omni penitus competitione submota fisco nostro iubemus addici, si nullos tamen liberos patrem matremve derelinquunt, quibus damnatorum bona legum servavit humanitas; scelere maiestatis excepto, cuius atrocitas nihil relinquit heredibus.

The penalty in relation to the offender's offspring was even toughened in the constitution of Emperors Theodosius and Valentinian of AD 426 - they were disinherited of the entire property of the condemned father. As regards the *lex Quisquis*, this radical measure concerned daughters who did not qualify for the Falcidian quarter.²⁴⁸

The above cited constitution of Emperors Arcadius and Honorius of 399, which reaffirmed the principle of individual liability, should not be seen as a statute repealing the provisions of the *lex Quisquis* adopted but two years earlier. For the seriousness of the crime of lese-majesty justified - in the contemporary understanding - a more severe treatment of offenders, which translated into persecuting and punishing their relatives. Clearly indicative of that are passages in numerous imperial constitutions and in the *Digesta* pertaining to criminal law where the principle in question is oftentimes concomitant with a reservation, for example: "excepta sola maiestatis quaestione,"²⁴⁹ "scelere maiestatis excepto,"²⁵⁰ or "excepto maiestatis iudicio."²⁵¹

Section 13 The Distinctive Features of the Roman Process in Lese-Majesty Cases

The option discussed above to continue and even initiate criminal proceedings *post mortem* (at least for *perduellio*) was one of many examples of

²⁴⁸ C. 9,49,10.

²⁴⁹ C. 9,49,10.

²⁵⁰ C. Th. 9,42,23.

²⁵¹ Modestinus D. 48,2,20.

departing in cases of *crimen maiestatis* from the cardinal principles of the Roman criminal procedure, which was justified by the concern with the emperor's safety.²⁵²

A charge of the offence of lese-majesty could be brought by persons excluded as accusers from other lawsuits and who, in the period of the Republic, were only allowed to report to the authorities on an informal basis: the infamous, soldiers, freedmen against their patrons, slaves against their owners:

Modestinus D. 48,4,7 pr.-2: Famosi, qui ius accusandi non habent, sine ulla dubitatione admittuntur ad hanc accusationem. 1. Sed et milites, qui causas alias defendere non possunt; nam qui pro pace excubant, magis ad hanc accusationem admittendi sunt. 2. Servi quoque deferentes audiuntur, et quidem dominos suos, et liberti patronos.²⁵³

Women were permitted to appear before the court as accusers:

Papinianus D. 48,4,8: In quaestionibus laesae maiestatis etiam mulieres audiuntur; coniurationem denique Sergii Catilinae Iulia mulier detexit, et Marcum Tullium Consulem iudicium eius instruxit.

The woman mentioned in the quote above was named Fulvia; she was the intermediary for Curius who informed Cicero on Catiline's actions; Curius betrayed other conspirators which led to the exposure of the conspiracy.²⁵⁴

According to L. Solidiro Maruotti, doubts as to the role of the women in the proceeding are raised by Papinian's words "mulieres audiuntur," which do not need to indicate a formal charge but only the supplying of information; such an interpretation is corroborated by the example of Fulvia being a mere informer.²⁵⁵ The verb "audiuntur," however, was also used in Modestine's account where, no doubt, the author refers to accusers. Moreover, among those who "deferire non prohibentur", women are explicitly mentioned in *Pauli Sententiae*, next to *milites, famosi, adulti* (i.e. persons under 25

²⁵² Cf. C. 9,41,1.

²⁵³ The possibility for slaves to accuse their owners of certain offences is discussed in the Code of Justinian referenced in the previous note. It should be concluded that in *maiestas* cases the persons involved might have been those indicated by Macer in D. 48,2,8.

²⁵⁴ Sallustius. *De coniuratione Catilinae* 23,3-4f. See more in Bauman, R.A. *Women and Politics...* pp. 68-69.

²⁵⁵ "La disciplina del crimen maiestatis tra tardo antico e medioevo." In *Diritto e giustizia nel processo...* p. 397.

years of age) and parents and children bringing accusations against each other.

Accusers and informers (delators) were often discouraged from making too hasty accusations of *crimen maiestatis* as it could put them in a very precarious position if they were not able to prove the allegations. The constitution of Emperor Constantine of AD 314 permitted torture of the accusers who failed to furnish proper evidence:

C. 9,8,3: Si quis alicui maiestatis crimen intenderit, quum in huiusmodi re convictus minime quisquam privilegio dignitatis alicuius a strictiore inquisitione defendatur, sciat, se quoque tormentis esse subdendum, si aliis manifestis iudiciis accusationem suam non potuerit comprobare. Cum eo, qui huius esse temeritatis deprehenditur, illum quoque tormentis subdi oportet, cuius consilio atque instinctu ad accusationem accessisse videbitur, ut ab omnibus commissi consciis statuta vindicta possit reportari.

The social status did not save from torture, used both against the accused and witnesses,²⁵⁶ as opposed to proceedings in other cases:²⁵⁷

C. 9,8,4: Nullus omnino, cui inconsultis ac nescientibus nobis fidicularum tormenta inferuntur, militiae vel generis aut dignitatis defensione uti prohibeantur, excepta tantum maiestatis causa, in qua sola omnibus aequa conditio est.

While for other offences to inform on the next of kin exposed the delator to negative legal consequences, it did not apply to the crimes of lese-majesty. Thus, a denouncement of a husband by his wife was not - according *Nov.* 117,8,1 - *iusta causa* for demanding a divorce by that husband.²⁵⁸

After bringing an indictment for the gravest crimes against the state, including *crimen maiestatis*, it was not possible to withdraw it, and the judge was supposed to press the accuser to continue and the accused to undertake the defence if he found the allegations ungrounded, as worded in the constitution of AD 369: C. 9,42,3,4: "...etiam sic abolitio non dabitur in illis criminibus...in quibus iudex non minus accusatorem ad docenda, quae detulit, quam reum ad purganda, quae negat, debet urgere."

While the relatives of a condemned person could intercede for him to the emperor to commute the sentence (C. 9.51), it was not permissible for

²⁵⁶ Arcadius Charisius D. 48,4,18,10: "Sed omnes omnino in maiestatis crimine, quod ad personas Principum attinet, si ad testimonium provocentur, quum res exigit, torquentur."

²⁵⁷ Cf. e.g. C. 9,41,11 pr.; Modestinus D. 49,16,3,1 and 10; Tarrutenus Paternus D. 49,16,7.

²⁵⁸ See also Nov. 117,9,1.

the convicted of *crimen maiestatis*; what is more, having done so, the relatives ran the risk of being made infamous: C. 9,8,5.2: “Denique iubemus etiam eos notabiles esse sine venia, qui pro talibus unquam apud nos intervenire tentaverint.”

Moreover, no appeal was admissible in the *crimen maiestatis* proceedings. *Ratio legis* of this approach is provided by Modestinus in D. 49,1,16: it is mandatory that the persons particularly dangerous for the state be executed immediately:

Constitutiones, quae de recipiendis, nec non, appellationibus loquuntur, ut nihil novi fiat, locum non habent in eorum persona, quos damnatos statim puniri publice interest, ut sunt insignes latrones, vel seditionum concitatores, vel duces factionum.²⁵⁹

Expedited execution was intended not only to inhibit the spread of danger to public order, which, of course, would be impeded if the *auctores seditionis* were spared, but also to serve as a general preventive measure, especially in deterring potential conspirators and making them abandon the intent to commit a crime.²⁶⁰

Section 14 Roman *Crimen Maiestatis* as a Foundation of the European Doctrine

As follows from the discussion so far, Romans should be credited with developing the concept of *crimen maiestatis*. *Maiestas* means superiority which, on the one hand, is the attribute of the gods and, on the other, of the people of Rome as viewed by other peoples; finally, Roman officials and emperors were regarded by other citizens as possessing this quality. *Crimen maiestatis* stemmed from the offence of *perduellio*, i.e. a broadly understood activity detrimental to the state and characterized by *animus hostilis*, that is, hostile intent. The term *maiestas minuta* meant the diminution of the majesty of the Roman people, interpreted in practice with some degree of discretion. The collection of acts that constituted *crimen maiestatis* and supplemented by subsequent laws and jurisprudence is known in its final shape from the Justinian codification. Likewise, the list of penalties was established envis-

²⁵⁹ See also C. 9,30,2.

²⁶⁰ For more, see Solidoro Maruotti, L. Op. cit., p. 395.

aged for the crime in question. The main penalty was death, replaced in the Republic by *interdictio aquae et ignis* followed by the condemned fleeing into voluntary exile; during the Principate, that latter sanction was gradually separated and evolved into *exilium*. Among the penalties, there were also confiscation of property and infamy. Roman law approached *crimen maiestatis* in a very special way: according to Justinian's *Digest*, if an aggravated form of the offence occurred, that is, *perduellio*, it was permissible to bring a charge also after the wrongdoer's death or continue the already initiated proceedings after his death; if found guilty, the conviction resulted in *damnatio memoriae* - condemnation of the offender's memory. Another noteworthy feature - most clearly expressed in the *lex Quisquis* - was the liability of the offender's relatives and a number of procedural peculiarities: the admissibility of making an accusation by a person denied this right in other matters, no exceptions in inflicting the penalty of torture, or no right to appeal. The Roman concept of *crimen maiestatis* that endured the collapse of the Western Roman Empire and, in its eastern part, became firmly established in Justinian's codification which filtered into the legal systems and practice of medieval Europe. The following chapter aims to uncover the paths that the new concept took to penetrate the legal culture of Europe and imprint itself on the medieval and modern doctrine.

CHAPTER II

MAIESTAS AND CRIMEN MAIESTATIS IN THE EUROPEAN DOCTRINE

Section 15 The Influence of Roman law on the Concept of Crimes against the State in the Collections of Germanic Laws

The fall of the Western Roman Empire and the coinciding burgeoning of Germanic states in the early 5th century did not cause the dwindling of the Roman law tradition, which - according to the principle of the personality of law - was binding for the Roman residents in these states.¹ For the sake of this study, it is particularly relevant to verify whether the Roman idea of *crimen laesae maiestatis* was present in the *leges Romanae barbarorum*, that is, vulgarized law collections applying to the inhabitants of the Roman Empire, and whether it influenced the Germanic concept of crimes against the state.

First reports on punishing for offences against the community among the Germanic peoples of the family and tribal period come from Julius Caesar and Tacitus. When outlining the framework of the political system of Germanic states (being free people communities rather than territorial states), both these authors attach attention to the origin and scope of the superior authority. Caesar notes that during warfare the *civitas* elects officials wielding the power of life and death, while in peacetime, the supreme power rests in the hands of district heads who lay down new laws and settle disputes.² One hundred and fifty years later, Tacitus writes about the

¹ Cf. e.g. Maciejewski, T. *Historia powszechna ustroju i prawa*. Warszawa 2000, p. 306; Kwiatkowski, S. *Średniowieczne dzieje Europy*. Warszawa 2006, p. 123f.

² *Commentarii de bello Gallico* 6,23: "Cum bellum civitas aut illatum defendit aut infert, magistratus qui ei praesint, ut vitae necisque habeant potestatem, diliguuntur. In pace nullus est

kings elected because of their noble descent, whose power, however, is not unlimited; local chiefs seem to be more influential, though rather because of their bravery and merit than actual authority³ (which was conventional in Roman relations). The elective character of commanders, the transitory nature of their competence and the understanding of power as ensuing from a contract between the leader and each of the voters⁴ underlay the characteristic Germanic concept of lese-majesty, being a failure to meet personal commitments (*Treubruch, infidelitas*).⁵ This concept was intertwined with the institution of *comitatus (das Gefolge)* in which a group of volunteers pledged loyalty to the leader and got engaged in his armed expedition. By alluding to this institution, Caesar discusses treason as a broken pledge given voluntarily to the leader: the guilty of *infidelitas* no longer deserve credibility.⁶ This information is later upheld by Tacitus who speaks of severe punishments for treason: to abandon the leader in a battlefield meant falling into lifelong disgrace, and the death penalty by hanging the traitors

communis magistratus, sed principes regionum atque pagorum inter suos ius dicunt, controversiasque praesunt.”

³ *Germania* 7: “Reges ex nobilitate, duces ex virtute sumunt, nec regibus infinita aut libera potestas, et duces exemplo potius quam imperio, si prompti, si conspicui, si ante aciem agant, admiratione praesunt.” The phenomenon of dual power involving the coexistence of the royal authority, holding no real sway in the state, and the actual authority of court officials (*majordomos*) was still seen in the Frankish monarchy during the Merovingian dynasty.

⁴ J.M. Kelly tells between two concepts of power: “descending” and “ascending.” The “descending” power means that the ruler was originally vested with power that he did not owe to any man (in Christianity, authority is attributed to man by God) and his subjects had no capacity to influence the terms and manner of exercising this power; in point of fact, they were obliged to owe absolute obedience to the leader. According to the concept of “descending” power, it comes from the people who hand it over to the ruler. The ruler does not exercise the absolute rule but is obliged to follow the ancestors’ laws and act in line with the source of his power. The “descending” concept is characteristic of the Roman legacy and the “ascending” one of the Germanic tradition. In the early Middle Ages, the latter concept was linked to the theory that albeit the royal authority is given by God, what actually underpins the ruler’s position is a bilateral agreement with the people. The king was also required to rule according to the law inherited from ancestors and was obliged to comply with it (*Historia zachodniej teorii prawa*. Translated by D. Pietrzyk-Reeves et al.; Warszawa 2006, pp. 114-118; the original edition: *A Short Story of Western Legal Theory*, Oxford 1992. The numbers of pages according the Polish edition).

⁵ For more see Lear, F.S. “The Idea of Fidelity in Germanic Customary Law.” In idem *Treason in Roman and German Law. Collected Papers*. Austin 1965, p. 73f.

⁶ *Commentarii de bello Gallico* 6,23: “Atque ubi quis ex principibus in concilio dixit se ducem fore, qui sequi velint profiteantur, consurgunt ii qui et causam et hominem probant, suumque auxilium pollicentur, atque a multitudine conlaudantur; qui ex his secuti non sunt in desertorum ac proditorum numero ducuntur omniumque his rerum postea fides derogatur.”

Section 15 The Influence of Roman law on the Concept of Crimes

and turncoats (*proditores, transfugae*) on trees, that is, in a way most visible to the community, was intended as a deterrent.⁷

Following the migration and intensified offensive military operations against the Roman Empire, the entitlements of most prominent commanders, previously regarded as extraordinary, were reiterated and reinforced, and their military authority translated into measurable political influences. Shortly after the invasion of the land of *Imperium Romanum*, the Roman concept of *maiestas* began to gain a foothold in Germanic laws; it promoted the idea that loyalty to the king is not inspired by personal commitment but by the ruler's absolute power and his positioning above the law (*princeps legibus solutus*).⁸ This concept advanced into the Germanic states with the collections of Roman law made for the people of Rome (*leges Romanae barbarorum*), of which the most important was the *Lex Romana Visigothorum* (known as the *Breviary of Alaric* or *Breviarium Alarici*) issued in AD 506 by the king of Visigoths, Alaric II; it was mainly based on the Theodosian Code and, among others, Gaius' *Institutes* and Paulus' *Sentences*. Some texts of Roman law, cited from those sources verbatim, were accompanied by commentar-

⁷ *Germania* 14: "iam vero infame in omnem vitam ac probrosum superstitem principi suo ex acie recessisse;" 12: "Licet apud concilium accusare quoque et discrimen capitis intendere, distinctio poenarum ex delicto. proditores et transfugas arboribus suspendunt ... diversitas supplicii illuc respicit, tamquam scelera ostendi oporteat, dum poniuntur, flagitia abscondi." The contrasting of these passages with Caesar's statement in the previous note may indicate that the Germans criminalized two types of treason, punishable in different ways. One type, punishable by lifelong infamy, consisted in renegeing on a personal pledge to the chief by abandoning him during a plunder expedition or private war. The other type, penalized by death, occurred due to desertion during an intertribal war when the chief represented all the people (Lear, F.S. *Idea of Fidelity...* Pp. 92-93).

⁸ "Princeps legibus solutus" (Ulpianus D. 1, 3, 31); "Quod principi placuit habet legis vigorem" (Ulpianus D. 1, 4, 1 pr.). By Roman standards, the entity equipped with *maiestas* was a sovereign entity, i.e. one which made laws - in the royal period it was the king, during the Republic it was *populus Romanus* and, finally, during the imperial era it was the emperor wielding the entire power. According to the Germans, the ruler does not make laws because the source of law goes back to the old custom; the ruler is only capable of interpreting and applying this law in judicial proceedings (Lear, F.S. *The Crime of Majesty in Roman Public Law*. In *ibidem*. *Treason...* P. 39. J.M. Kelly points out that in contrast to the late Roman emperor, defined by Justinian as the sole legislator (C. 1,14,12), a medieval German king never enjoyed an independent and arbitrary authority to lay down new legislation. In fact, the very concept of law was originally understood as the people's immemorial custom. Indeed, some circumstances demanded modifications or additions to the existing law. Nevertheless, there was no Germanic realm in which such a modification would be possible without the consent of the king's advisory body: this body was most often made up of the most prominent figures whose approval was tantamount to people's agreement (op. cit., p. 122).

ies in a form of an concise text (*interpretatio*). *Breviarium Alarici* is particularly significant as a source of knowledge of Roman law in Western Europe before the discovery of the Justinian's *Digest* in the mid-11th century.

The crime of lese-majesty, ranked among the gravest offences against the state, is defined in a passage taken from *Pauli Sententiae*;⁹ this passage - due to its inclusion in this collection - outlines the Roman concept of *maiestas* as prevailing across medieval Western Europe.¹⁰ Also a principle was adopted that a slave may accuse his owner in cases involving *crimen maiestatis*;¹¹ under the influence of Christianity and Germanic laws, that principle was extended in one of the later adaptations of *Breviarium Alarici* (c. 8th century), known as *Epitome Sancti Galli* or the *Lex Romana Raetica Curiensis*, to cover the crime of blasphemy and conversion to the pagan faith.¹² Also the maintenance of private jails was regarded as *crimen laesae maiestatis*,¹³ let alone gathering information about the ruler or country's internal affairs from soothsayers (or even the mere possession of books on magic).¹⁴ Acts that qualified as *seditio* or *perduellio* were prosecuted separately; they were: raising rebellion against the ruler, conspiring with enemies and supporting robbers. The wrongdoer's property was not to be inherited by his descendants but was subject to confiscation by the king, who reserved the right to make discretionary donations of such property.¹⁵

When in AD 654, after the publication by King Reccesvind of a collection known as the *Lex Visigothorum Reccesvindiana* (also titled differently as, for example, *Forum Iudicum* or *Liber Iudiciorum*),¹⁶ the application of Roman law in the land of the Visigoths was abolished and supplanted by a unified law, the Roman idea of *maiestas*, and the term itself alike, gave way to new concepts derived from the Germanic customary law, also influenced by the

⁹ *Lex Romana Visigothorum* P 5, 31,1-2. Cf. *Pauli Sententiae* 5,29,1-2.

¹⁰ Lear, F.S. "Crimen Laesae Maiestatis in the Lex Romana Visigothorum." In idem *Treason...* p. 114.

¹¹ *Lex Romana Visigothorum* 9,31: *Ne praeter Crimen Maiestatis Servus Dominum vel Patronum Libertus seu Familiaris Accuset*; cf. C. Th. 9,5,1; 9,6,2-3; *Pauli Sententiae* 5,13,3.

¹² Lear, F.S. *Crimen Laesae Maiestatis in the Lex Romana Visigothorum...* pp. 115-116.

¹³ *Lex Romana Visigothorum* 9,8,1 *De Privati Carceris Custodia* (cf. C. Th. 9,11,1).

¹⁴ *Lex Romana Visigothorum* P 5,23,3 *De Vaticinatoribus et Mathematicis*; 5,23,17 *Ad Legem Corneliam de Sicariis et Veneficis* (cf. *Pauli Sententiae* 5,21,3-4; 5,23,18). This passage was also included in *Lex Visigothorum* 6,2 *De Maleficis et Consulentibus Eos atque Veneficis*, which illustrates the spreading of the principles of Roman law in Germanic laws.

¹⁵ *Lex Romana Visigothorum* 10,5,4 *De Petitionibus et Ultro Datis et Delatoribus* (cf. C. Th. 10,10,15).

¹⁶ For more, see Lear, F.S. "The Public Law of the Visigothic Code." In idem *Treason...* pp. 137-139.

Christian doctrine. As purported in the collection, laws had been created by God's mandate for people's benefit. Hence, the king should not legislate for his own benefit but for the common good and happiness of his people, and this legislation should bind both the king and the people;¹⁷ the king takes a pledge to observe the law.¹⁸ Subject to the same law, the king is, therefore, one taken from among the people, though his position is specific: he is the head which governs the whole body, or the people. While - as given in a popular mediaeval comparison - the physical fitness of the whole body depends on the good condition of the head,¹⁹ the prosperity of the state hinges upon the ruler's safety.²⁰ By extension, the most severe ecclesiastical penalty, i.e. the exclusion from the Christian community, is imposed on the one who intends to seize king's power by force. This offence was not perceived as lese-majesty but rebellion;²¹ this demonstrates that the most heinous public crimes were - through the Church's influence - punishable not only before the state but also before the Church, which marks a departure from the idea of punishment as known in Roman law.²² Every free inhabitant of the state must swear allegiance to the newly enthroned ruler; because failure to do so cancelled any bilateral commitment between the king and his subject, what is more, ignoring this obligation was considered an offence that deserved penalties impairing the offender or his property, whichever the king thought fit.²³ The death penalty (only to be avoided through the king's clemency) was imposed for desertion and fleeing to the enemy with intent to cause damage to the state (as well as for any action detrimental to the state or the people - *conturbatio* or *scandalum*) and for plotting to slaughter the king; also intent and attempt were equated with the actual commission of an unlawful act. Subject to confiscation was the wrongdoer's property which thereafter was managed and disposed of by the king.²⁴

¹⁷ *Lex Visigothorum* 2,1,4. Cf. 8th Council of Toledo, Can. 10.

¹⁸ *Lex Visigothorum* 2,1,6.

¹⁹ Cf. St. Isidore. *Etymologiae* 11,1,25: "Prima pars corporis caput datumque illi hoc nomen eo, quod sensus omnes et nervi inde ininitum capiunt."

²⁰ *Lex Visigothorum* 2,1,4.

²¹ *Lex Visigothorum* 2,1,6: "Quemcumque vero aut per tumultuosas plebes aut per absconse dignitati publice macinamenta adeptum esse constiterit regni fastigia, mox idem cum omnibus tam nefarie, sibi consentientibus et anathema fiat et christianorum communionem amittat."

²² For more, see Lear, F.S. *The Public Law of the Visigothic Code...* p. 143.

²³ *Lex Visigothorum* 2,1,8 *De fidelitate novis principibus reddenda et pena huius transgressionis*.

²⁴ *Lex Visigothorum* 2,1,8 *De his, qui contra principem vel gentem aut patriam refugi sivi insultentes existunt*. Over time, the death penalty (and blinding applied through the act of clemency) was

In view of the foregoing, the violation of an oath sworn to the king and manifested, for example, in a conspiracy to take away his life or power was not classified as *crimen maiestatis* but as *infidelitas*.²⁵ Another term designating an offence against the king or the state is *scandalum* (roughly corresponding to the Roman *sedition* or even *perduellio*), that is, such conduct that jeopardizes public safety and durability of the royal power. Also descriptive forms were used, such as in the passage on ceasing to torture slaves testifying against their masters in lawsuits involving certain crimes.²⁶ Although the term *maiestas* surfaced in other contemporary sources,²⁷ yet it is absent from the *Lex Visigothorum*, which - as argued plausibly - is attributed to the decision of the compilers and their concern for the clarity and precision of used terminology²⁸ and reluctance to mention concepts foreign to Germanic traditions. Hence, although the influence of Roman law on the laws of the Visigoths was more than noteworthy,²⁹ as regards lese-majesty, priority was given to the Germanic concept, whereby the essence of the offence consists in the violation of a personal oath sworn to the ruler. Such a trend is also observable in the law collections of other Germanic peoples, yet, regrettably, any profound discussion on how each of those collections approach crimes against the state goes beyond the scope of this

replaced by lifelong exile, preceded by a hair cut (*decalvatio*) and flogging. On the significance of *decalvatio* in the Germanic peoples, see Lear, F.S. *The Public Law of the Visigothic Code*... P. 159f.

²⁵ *Lex Visigothorum* 2,519: "Ut nemo deinceps citra fidem regiam vel propria causarum negotia in deceptione regii potestatis vel cuiuslibet alterius se iuramenti vinculo alligare praesumat;" see also 6,1,7 *De servandi principibus pietate parcendi*.

²⁶ *Lex Visigothorum* 6,1,4 *Pro quibus rebus et qualiter servi vel ancillae torquendi sunt in capite dominorum*: "nisi tantum in crimine adulterii aut si contra regnum, gentem vel patriam aliquid dictum vel dispositum fuerit, seu falsam monetam quisque confixerit;" cf. *Pauli Sententiae* 1,12,4; Hermogenianus D. 5,1,53; C. 9,41,1. descriptive terms also appear in other parts of the collection, e.g. *Lex Visigothorum* 2,1,7: "in personam principis omnibus prohibemus aut commovere nequitiam cogitationis aut manus inicere ultionis."

²⁷ St. Isidore of Seville, died in AD 636, so no more than fifteen years before the promulgation of the *Lex Visigothorum*, in his work *Etymologiae* provides a concise definition of *crimen maiestatis* in the Roman sense, i.e. as the diminution of the ruler's majesty, high treason or conspiracy with the enemies: "Maiestatis reatu tenentur qui regiam maiestatem laeserunt vel violaverunt, vel qui rempublicam prodiderunt vel cum hostibus consenserunt" (5,26,25); "Reus maiestatis primum dictus qui adversus rempublicam aliquid egisset, aut quicumque hostibus consensisset ... Postea etiam et ei rei maiestatis dicti sunt qui adversus maiestatem principio egisse videretur, vel qui leges inutiles reipublicae detulerant vel utiles abrogaverant" (10,238).

²⁸ For more, see Lear, F.S. *The Public Law of the Visigothic Code*... p. 155f.

²⁹ As put by F.S. Lear, "no one can deny that the atmosphere of Roman law permeates this legislation" (*ibidem*, p. 156).

— Section 16 The Reception of Roman *Crimen Maiestatis* in Medieval Europe

study.³⁰ Both the *Lex Visigothorum*, which, compared with other *leges barbarorum*, stood out owing to its high level of legislative technique, and other law collections consolidated a specific Germanic notion of these offences, originally rooted in the violation of father's authority - *mundium*, referred to generally as betrayal (*Verrat*). Among the varieties of betrayal there was *Hochverrat* - an act against the ruler involving the violation of the obligation of loyalty (*infidelitas*), for example, an attempt on the ruler's life, but also an insult, persistent disobedience to royal orders or ignoring king's official documents. *Hochverrat* also meant - in its less explicit sense - the breaking of vassal's allegiance to the senior (being of a lower rank than a king). Another form of betrayal was *Landesverrat*, in other words, hostile actions against the state, land or city, such as importing a foreign army or sheltering enemies. Apparently, the offence of *Landesverrat* might have covered spying and arbitrary fleeing of the country without the ruler's permit (in the Franconian monarchy it was regarded as a betrayal of the king himself).³¹ In subsequent periods, the Germanic concept of contract-based model of the royal power combined with the conviction of the monarch being - on a par with his subjects - bound by customary law interfaced with the Roman concept of *maiestas* which, thanks to the later revival of this law, affected the European legal doctrine.

Section 16 The Reception of Roman *Crimen Maiestatis* in Medieval Europe

In medieval Europe, Roman law enjoyed the status of one of the two (besides canon law) prevailing legal systems in the European science of law.

³⁰ Cf. idem "Treason and Related Offences in the Anglo - Saxon Doms." In idem *Treason...* pp. 181-195; idem "The Public Law of the Ripuarian, Alamannic, and Bavarian Codes." In idem *Treason...* pp. 196-226; idem "Notes of Public Law: Ostrogothic, Burgundian, Lombard, North German." In idem *Treason...* pp. 227-251.

³¹ The terms *Hochverrat* and *Landesverrat* were used in the sources and the doctrine no earlier than from the end of the 17th century, previously, only description were available of individual acts. For more, see Kellner, O. *Das Majestätsverbrechen im deutschen Reich bis zur Mitte des 14. Jahrhunderts*. Halle 1911, pp. 7-9, 13f; His, R. *Geschichte des deutschen Strafrecht bis zur Karolina*. München - Berlin 1928, pp. 114-117; idem *Das Strafrecht des deutschen Mittelalters*. Weimar 1935, p. 30f; Ritter, J.M. *Verrat und Untreue an Volk, Reich und Staat. Politischen Dekikts in Deutschland bis zum Erlass des Reichstrafgesetzbuches*. Berlin 1942, p. 131f.

Its underpinnings had been laid down in Justinian's codification in a newly adopted approach, tailored to the contemporary practice and the feudal background. To develop such an approach was the challenge faced by the science of law, and the first scholars who contributed to the reawakening of interest in Roman law were the jurists of the University of Bologna, who convened in the so-called school of glossators. Their work consisted in supplementing Justinian's codification, especially the *Digest* discovered in the mid-11th century, with glosses (commentaries) which came to be regarded as applicable legal rules.³²

Glossators perceived Roman law as "living" and resurrected along with the revival of the Roman Empire embodied in the German Reich with the German emperors as immediate successors of the Roman rulers. Accorded privileges by the rulers of the Holy Roman Empire, glossators advanced the idea that Roman law should be effective in all the territories subdued to the rule of the German emperors; consequently, the use of Roman law determined the belonging to the Reich.³³ This theory was an important factor in the pursued policy of imperial universalism.

Italian glossators succeeded in adding Justinian's codification a new dimension. The old *Novels*, divided into nine groups, were expanded by two new groups (*decima et undecima collatio*) containing the late 11th century private collection of feudal law of Lombardy, *Libri Feudorum*, and the statutes of German emperors, Frederick I and Frederick II, who normally submitted their new laws to Bologna University. Moreover, individual paragraphs of the imperial laws were included in the text of Justinian's codification as *Authenticae Fridericianae*.³⁴ One of many examples of such laws is the constitution of Frederick II against heretics of 1220 which, accompanied by the

³² Glossators' output was collected in the first half of the 13th century by Accursius (1182-1259) in *Glossa Accursiana*, and their teaching method was referred to as *mos italicus docendi*. Koschaker, P. *Europa und das römische Recht*. München und Berlin 1966, p. 86; Wieacker, F. *Privatrechtsgeschichte der Neuzeit*. Göttingen 1967, p. 63. Accursius' collection garnered more attention than Justinian's codification; moreover, only those parts of the Code of Justinian were considered valid which were accompanied by commentaries, as put in the maxim: *quidquid non agnoscit glossa non agnoscit curia*.

³³ Cf. e.g. Koschaker, P. Op. cit., p. 70ff; Wieacker, F. Op. cit., p. 50ff. Glossators were often in a close relationship with German rulers (Henry V, later Frederick I and Henry VI). They believed that through the influence on the emperors they would manage to endorse Roman law as the "imperial" law in the legal practice in German and Italian countries. They also transplanted to the medieval emperor the Justinian concept of imperial power. By their standards, an emperor became the ruler of the world, the lord and master of Italia and the Church. The German rulers sometimes reciprocated that through privileges and patronage.

³⁴ Koschaker, P. Op. cit., p. 42f; Wieacker, F. Op. cit., p. 53.

express approval of Pope Honorius III, was incorporated into the Code of Justinian as a supplement to Title 5 of Book I “De haereticis et manicheis et samaritis.”³⁵

Glossators’ work, especially *Glossa Accursiana* used even in courts, strengthened the ties between the teaching and practice and in the 14th century stimulated the emergence of a new current, namely the school of postglossators (commentators) and its method of *mos gallicus*. Roman law in the teaching and practice of commentators was bent and harnessed to fit the current needs, and their focus on practical facets made the Roman law in their interpretation more flexible and widely applicable.³⁶

Referring to the various contemporary legal trends, such as particular customary laws, canon law and legislation of the German emperors, commentators created a science of revived Roman law which, in their interpretation, began to pass into many European particular legal systems as common law - *ius commune*, assuming the role of a unifying factor.³⁷ Justinian’s codification in the form elaborated by glossators and known under its 16th century name of the *Corpus Iuris Civilis*³⁸ underwent reception in the Holy Roman Empire of the German Nation. This gradual process³⁹ was facilitated by a far-reaching diversity and debatable usefulness of numerous local customary laws, as well as following from the idea popular already in the 12th century that the German Reich, as the extension of the Roman statehood, must cause the old law (Roman law) to claim back its authority.⁴⁰

³⁵ For more, see Koranyi, K. „Konstytucje cesarza Fryderyka II przeciw heretykom i ich recepcja w Polsce.” In *Księga pamiątkowa ku czci Władysława Abrahama*. vol. 1, Lwów 1930, p. 321. The author notes that “Perhaps, no medieval imperial laws rose so much in importance and exerted so much influence over the legislation of other countries as the constitutions of Frederick II against heretics.”

³⁶ Koschaker, P. Op. cit., p. 88f; Wieacker, F. Op. cit., p. 81f.

³⁷ Cf. e.g. Nicolini, U. “Intorno al progetto di una nuova storia del diritto romano nel medio evo.” In idem *Scritti di storia del diritto italiano*. Milano 1983, p. 38f; Koschaker, P. Op. cit., p. 89f; Wieacker, F. Op. cit., p. 82f.

³⁸ Since the publication of the entire Justinian legislation with commentaries by Dionysius Gothofred in 1583.

³⁹ The decisive moment is thought to be the establishment in 1495 of the Imperial Chamber Court (*Reichskammergericht*) adjudicating on civil cases “nach des Reiches gemein Recht”, that is, according to Roman law used in a subsidiary character to national law. Therefore, the statute establishing the Imperial Chamber Court required that half from among sixteen judges be qualified in Roman law (Wieacker, F. Op. cit., pp. 176ff; Koschaker, P. Op. cit., pp. 228ff).

⁴⁰ Among other circumstances expediting the permeation of Roman law to Germany and other European countries there were: law studies at the universities of Italy and France, the presence of trained lawyers at the royal chancelleries, the impact of canon law applied in ecclesiastical tribunals and qualified notaries, mostly members of the clergy.

The Roman regulations on lese-majesty also made their way into the collections of canon law. This reception was not a one-time occurrence as the practice of having recourse to the rules of Roman law developed over some time. As of the mid-9th century, the popes resorted to Justinian's law as to the Church's own law (*ius proprium*). An important channel for Roman law influences was opened by the collections of canon law originating in different regions, drawn up based on the texts from Justinian's law and intended for the use by the clergy. Numerous passages from Justinian's codification were borrowed into canon law compilations, yet the texts of Roman law were not isolated in uniform and separate collection but blended with the canonical matter.⁴¹ Illustrative of this is the *lex Quisquis* which exerted a material influence on the legislation on lese-majesty in the modern era. It formed a part of the *Decretum Gratiani*, the first part of the *Corpus Iuris Canonici*. The *Decretum* is the work of a Bologna canonist, Gratian, who undertook to ensure the concordance of the provisions of canon law around 1140 in a collection originally titled *Concordantia discordantium canonum*. In the second part of the collection (*Causa 6, Quaestio 1, 21*), Gratian focused - by alluding to St. Augustine - on the issue of whether a heavier sinner is one who unwittingly renounces the faith, or one who consciously refuses to overcome his weaknesses. Having cited St. Augustine, who did not take a clear position on the issue, Gratian digressed to highlight some similarities between the charge of heresy and that of lese-majesty: in both cases, the accusation can be made by a person who would not otherwise have the capacity to bring a charge (an *infamis* and a participant in the conspiracy, respectively).⁴² Then, after citing the full text of the *lex Quisquis*, he referred to a parallel regulation governing the cases of simony and contained in the AD 469 constitution of Emperor Leo; indeed, Gratian remarked that the *lex* was only helpful in deciding the manner of making an accusation - as

⁴¹ Dębiński, A. *Church and Roman Law*. Lublin 2010, pp. 82-84. On the reception of Roman law by the Church, see also idem "Ecclesia vivit lege Romana. Znaczenie prawa rzymskiego dla rozwoju prawa Kościoła łacińskiego." In *Starożytne kodyfikacje prawa. Materiały z konferencji zorganizowanej 10-11 kwietnia 1999 r. w Lublinie*. Dębiński, A., ed., Lublin 2000, p. 131f; cf. also Nicolini, U. „L'ordinamento giuridico nel comune medievale.” In idem *Scritti di storia del diritto...* p. 12.

⁴² "Verum hoc Augustini, et illud de infamiam accusatione, de his intelligendum est, quos constat esse hereticos, non de his, qui se negant in heresim lapsos. Hic autem in omnibus religiosus apparens, dum se negat hereticae communionis aliquando macula infectum, infames atque alios huiusmodi a sua accusatione ipse repellit. Haec licet ratione niti videantur, exemplo tamen laesae maiestatis vana intelliguntur, ad cuius, accusationem dum socius in itae factionis admittitur, non quaeritur, an cogitare contra animam principis sit maiestatem laedere, sed an aliquis de nece eius tractaverit."

regards the punishment, Leo's constitution provided for its own penalty. Gratian saw the application of the *lex Quisquis* primarily as useful in leveling charges, for example, the mere intention of simony was punishable.⁴³

Along with the reception of the *lex Quisquis* in the *Decretum Gratiani*, the Church recognized it as a secular law intended against lese-majesty. In modern secular law, the *lex* in question began a new life on 25 December 1356 as Chapter 24 of the second part of the Golden Bull of Emperor Charles IV aimed to protect the majesty of electors entitled to elect the emperor. The Golden Bull was never repealed and remained effective until the demise of the Holy Roman Empire of the German Nation in 1806. That chapter mentioned above is almost a literal reproduction of passages from the *Corpus Iuris Civilis* (C 9,8,5 - *lex Quisquis* and C 9,8,6 - quotes from Paulus and Marcian). That was how the provisions of Roman criminal law on lese-majesty once again became operative, this time in the German Empire.⁴⁴

Finally, Roman law left a lasting imprint of the European doctrine pertaining to the offence of violating majesty. Outlined below are the main issues addressed by the authors of legal works of the modern era who directly, or through the legacy of the glossators, reflected upon and exploited the legal standards developed by ancient Romans.

Section 17 The Definitions of *Maiestas* and *Crimen Maiestatis* in the European Doctrine

The modern legal doctrine built upon the Roman law standards and ancient legal literature to expound the concepts of *maiestas* and *crimen maiestatis*. When studying the etymology of the term *maiestas*, mediaeval authors reached for the works of literature, especially by Festus and Cicero, and after them confirmed its derivation from the adjective *maior* and its meaning to be that of 'majesty,' 'superiority,' or 'dignity':

"Majestas (inquit Festus in verbo *maiestas*) a magnitudine dicta est: unde liquet hoc verbum ex eodem fonte derivatum, ex quo haec verba *magnus*, *magis*, *maius*, *magnitudo*: ex quo...Majestas igitur nihil aliud est quam magnitudo, decus, imperium, amplitudo, potestas, dignitas, securitas, personae

⁴³ Pesch, A. Op. cit., p. 426.

⁴⁴ Ibidem, p. 427.

eminentioris aut sanctoris: quomodo fere definit Cicero de inventio. ad Heren. 2. de orator. et caeteri rethores et auctores.”⁴⁵

The authors willingly repeated after Ulpian (D. 48,4,1 pr.) that majesty befits the Roman people and the emperor;⁴⁶ only later, they argued that this statement needed updating. And thus, H. Gigas drew attention to the obsolete nature of the concept of *maiestas populi Romani* and underlined the need to extend Ulpian’s definition to include other sources, especially the Code of Justinian, so as to take account of the legal developments occurring in modern times.⁴⁷ The author proposed the following definition of the offence:

Crimen laesae maiestatis est ubicunque quis subditus contra principem rempublicamve superiorem non recognoscentem aliquid molitur, vel quod ad hostes profugit, vel hostes qualitercunque adiuvat, vel armis, vel pecunia, consilio, eisque nuncios vel literas mittit, secretave nunciat, vel subiectas provincias nititur facere rebelles, vel in civitate seditionem movet, vel efficit, quod princeps, senatores, collateralesque illius occidantur, vel quod arma sumat, vel loca occupet, contra Rempublicam vel principem, vel quod de prodicione et tractatu contra principem, vel Rempublicam scientiam habet et non revellet, vel quodcunque aliud quis dolo malo faciat, quo princeps, respUBLICAVE directe damnum patiatur.⁴⁸

⁴⁵ Contius, A. *Digestorum liber XXXVIII. Ad legem Juliam maiestatis tit. IV.* Parisiis 1616, pp. 357-358. Cf. e.g. Deciani, T. *Tractatus criminalis.* Vol. 1, Augustae Taurinorum 1593, p. 101: “Maiestas a maiore dicta, sicut honestas ab honore, ut inquit Priscianus;” Besold, Ch. *Dissertatio Politico – Juridica, de Majestate in genere, ejusque Juribus specialibus, in tres sectiones distributa ...* Argentorati 1625, p. 4: “Majestatem a magnitudine (ut Festus author est) appellitamus frequentius: aut major quod sit status, seu amplitudo et magnificentia in Republica ... Dici etiam potest, Majestatem derivari a Majore: quemadmodum ab honore honestas, notante Prisciano. Sicque a Majestate, Jovem dixere Majum. Macrob. I Saturnal.”

⁴⁶ Cf. e.g. Besold, Ch. Op. cit., p. 5: “Est autem Majestas, in Imperio atque omni dignitate populi Romani, vel alterius superiorem non habentis, Cicero *pro Corn. Balbo.* Quintil. *lib. 7 cap. 3* in qua jus totius civitatis consistit.”

⁴⁷ “Est igitur crimen laesae maiestatis secundum Vulpianum [sic!] illud quod adversus Populum Romanum, vel eius securitatem committitur, verum quia diffinitio praedicta solum comprehendit casus qui contra Populum Romanum committebantur eo tempore, et ideo secundum tempora hodierna diffinitio praedicta nimis restricta est, nec convenit crimini praedicto in omnibus, secundum nostra tempora, quia ut supra diximus, Populi Romani maiestas extincta est, et omne ius suum in principem translatum. demum supervenit ius Codicis, quo dictum crimen dilatatum fuit ... praesertim in d. l. [sc. dicta lege] quisquis” (*De crimine laesae maiestatis*, Venetiis 1557, p. 4. When referring to the popular definition by Azon, the author admitted that it did take into consideration cases of *crimen maiestatis* described in the Code of Justinian, however, it was not free from certain gaps, and, in his opinion, the correct definition should enumerate all the essential features of the defined term (“accidentia propria subiecti”).

⁴⁸ *Ibidem*, p. 4 v.

According to this definition, the crime of violation of majesty is committed by a subject against a sovereign ruler or state and can take the form of: fleeing to the enemy or supporting it in any way, inciting a rebellion of subordinate provinces, sparking an uprising in the country, taking various kinds of military action against the state or the ruler, or taking any intentional action to debilitate the ruler's or the state's power.

Such descriptive definitions, usually listing the forms of unlawful conduct, are readily produced by other authors discussing this sort of crime; in D. Orsaio's view, such a definition is comprehensible to the reader as this crime cannot be characterized better than by enumerating its various manifestations as well as specifying who and against whom may commit it:

Definiri potest hoc crimen machinatio seu conspiratio contra vitam, dignitatem vel potestatem Principis, vel Reipublicae, aut eorum quibus talis collata sit potestas. Particulare autem huius definitionis non possunt clarius explicari, quam enumerando illos, a quibus, contra quos et qualiter hoc crimen committatur.⁴⁹

In modern times, majesty befits the pope in the first place as the pontiff holds sway over the entire Christian world ("est enim papa omnium christianorum dominus"), e.g. approves the elected emperor,⁵⁰ and the cardinals who - to paraphrase the *lex Quisquis* - "sunt pars corporis papae."⁵¹ Yet, the authors devoted most attention to the majesty of secular rulers, primarily the emperor as a successor of the Roman emperors;⁵² for a ruler can be

⁴⁹ *Institutiones criminales*. Romae 1701, p. 59. By contrast, P. Farinaccius pointed out that such a structure of the definition of the crime of lese-majesty is not accurate because listing the ways of committing a crime is not the same as defining what this crime actually is: "aliud est quaerere quot modis committatur crimen laesae maiestatis, et aliud quaerere quid sit crimen laesae maiestatis" (*Praxis et theoriae criminalis libri duo*. Venetiis 1595; quoted after Sbriccoli, M. *Crimen laesae maiestatis. Il problema del reato politico alle soglie della scienza penalistica moderna*. Milano 1995, pp. 181-182.

⁵⁰ Gigas, H. *Op. cit.*, p. 5. A different view was held by, for example, H. Bocer who recognized the emperor's primacy over the world by repeating after Volusius Maecianus in D. 14,2,9: "Jure civili Imperator dicitur Dominus mundi." Then, invoking extracts from the Gospel, the author argued that if the pope is the successor of St. Peter and rules the Christian world in its spiritual dimension, the emperor acting against the pope does not commit the crime of lese-majesty: "Si ergo Papa Romanus se profitetur successorem Petri, et Clerus fit, non herus mundi; doceat Populum legem est Evangelium, non sceptro et gladio eundem regere praesumat. Hinc ergo concludendum videtur Imperatorem Romanum adversus Papam, non committere maiestatis crimen" (*Tractatus compendiosus de Crimine Maiestatis*. Tubingae 1629, p. 18).

⁵¹ Gigas, H. *Op. cit.*, p. 7 v.

⁵² H. Gigas shared the opinion of many authors cited by him that a wrongdoer going against the emperor is at the same time insulting the majesty of the pope, the emperor being his spokesman and defender ("qui est federatus papa et eius advocatus et defensor" - *op. cit.*, p. 10

likened to the head which controls the body though it does not embody it as a whole. Hence, lese-majesty manifests itself not only in acts against the ruler but also against the body of the state.⁵³ The statement from Ulpian that the offence of violation of majesty is directed against the people of Rome and the emperor was interpreted by most authors as referring to the inhabitants of the Holy Roman Empire of the German Nation and the reigning emperor. When explaining Ulpian's words, H. Bocer says:

Hinc quaeritur de exterarum nationum regibus, Ducibus, Principibus, an horum subditi si quid contra ipsorum prosperitatem moliantur, crimen maiestatis committant? Id quod affirmamus de his, qui eodem nobiscum Justiniano iure utuntur, et suum illum supremum magistratum pro Imperatore recognoscunt.⁵⁴

According to this author, to answer the question of whether the imperial subjects committing an offence against their lord are guilty of lese-majesty, it is mandatory to ascertain whether this lord is governed by Roman law and comes under the emperor's authority.

Some authors also attributed majesty to independent cities (*civitates non recognoscentes superiorem*) as having the status equal to that of Rome; it concerned - as explained by the Venetian, H. Gigas, based on glossators' works - Italian republics, especially the Republic of Venice which, in the author's opinion, was the successor to the Roman state:

...congregans gentem in civitate superiorem non recognoscentem, ut alma civitas Venetiarum contra eam eiusve loco, vel consilium et favorem ad hoc prae-

v.). See also: Bocer, H. *Disputationum de universo, quo utimur, iure, pulchra methodo conscriptarum, denuo studiosa recognitarum, materiis, et quaestionibus variis adauctarum et eleganter reformatarum, Pars prima*. Tubingae 1612, p. 779.

⁵³ "Nunquam sane censendum est, totam et universam Rempublicam per Principem praesentari. Caput est, non totum corpus. Et quemadmodum in corpore humano, etiam aliarum partium functiones sunt: ita et adhuc corporis publici, et populi, aliqua est Maiestas ... Indeque Crimen Maiestatis, tam adversum populum et Rempublicam, quam ipsum Principem committi dicitur" (Besold, Ch. Op. cit., pp. 5-6). The author alluded to the reasoning of H. Bocer who noted that, although during the Principate, the Roman people transferred their powers to the princes, they did not renounce *maiestas*: "Quamvis enim ipsa lege Regia [sc. Ulpianus D. 1,4,1 pr.] populi Romani jus in Principem collatum dicatur, populus tamen Romanus suam potestatem et jus potius cum Principe communicasse, quam a se omnino abdicasse existimandus est, uti abunde evincitur ex l. Humanum 8. C. de legib. [sc. C. 1,14,8]. Ubi Theodosius et Valent. Leges a se latas, non aliter vim habere voluerunt, quam si probarentur a patribus conscriptis, et Senatus decreto; et patet ex eo, quod etiam post legem illam Regiam populus Romanus suam maiestatem retinuit" (*Tractatus...* p. 18).

⁵⁴ *Disputationum...* p. 778.

Section 17 The Definitions of *Maiestas* and *Crimen Maiestatis*

bens crimen laesae maiestatis committit, et sic idem erit quod olim fuit in Roma ... Civitates enim quae superiorem non recognoscunt Romae equiparantur.⁵⁵

Still, many authors saw majesty as befitting all independent nations and their rulers. H. Gigas argued: "Quaero an attentans aliquid contra rempublicam, vel in eius praeiudicium incidat in crimen laesae maiestatis, loquendo de Republicis nostri temporis, quia de republica romanorum non erat dubium. Dicas quod hodie extendimus privilegium reipublicae romanae ad caeteras respublicas aliarum civitatum. Respublica enim maiestatem habere dicitur."⁵⁶ Consequently, the author conveys the opinion that majesty, once held by the Roman Empire, is now common to all states, and anyone who goes against the state perpetrates the offence of violation of majesty. J. Redin expressed the view that, although the legal sources usually speak of *Imperialis Maiestas*, this term can be regarded as fitting any monarch in his kingdom and not only the emperor: "Quae tamen omnia non ita intelligenda puto, ut Imperatoribus solum hic titulus debeat. Iuris enim esse arbitror, quemlibet Regem in suo Regno Maiestate Regia vocari."⁵⁷ The notion of *maiestas* so understood H. Bocer defined as follows, "Est autem maiestas (temporalis) suprema dignitas et amplitudo liberi alicuius populi, id est, potestati alterius populi non subiecti... Unde et populi Romani maiestas est."⁵⁸ Majesty in its worldly dimension (as opposed to the divine majesty) can thus be defined as the highest dignity of a sovereign people, i.e. people free from dependence on any authority. The structure of the statement indicates that the Roman people are merely one of numerous independent nations equipped with *maiestas*, although - as mentioned elsewhere - in yet another place, the author clearly attributes this quality to the German Empire only. Admittedly, there was a popular view among the German authors of the linkage not only between *maiestas* and *honor*, *dignitas* or *auctoritas*,

⁵⁵ Op. cit., p. 27. This view was questioned by H. Bocer who said that every city within the boundaries of the Roman Empire was subordinate to the emperor (*Tractatus...* P. 97).

⁵⁶ Op. cit., p. 48 v.

⁵⁷ "Tractatus ... de maiestate Principis." In *Tractatus Universi Iuris*. Vol. 16, Venetiis 1584, p. 154 v.-155. Also B. Carpzov (*Practica nova imperialis saxonica rerum criminalium*. Lipsiae 1739, p. 216) says that majesty is a quality of all European monarchs, as each of them enjoys sovereignty in their own country: "... scilicet, si superiorem neminem praeter Deum recognoscant, sed in Imperio et republica sua summam, perpetuam, legibusque solutam obtineant potestatem, ita ut maiestatis jura proprio nomine et jure pleno exercent. Adeoque Reges Galliae, Hispaniae, Angliae, Ungariae, Daniae, Poloniae, Sueciae in Regnis suis habere maiestatem ..." Cf. also Gigas, H. Op. cit., p. 30 (about the king of France); Deciani, T. Op. cit., p. 104.

⁵⁸ *Tractatus...* p. 32.

which befit any nation or ruler, but between *maiestas* and *summa potestas*, obviously attributed only to the German emperor: as with the Roman emperors, so with the modern emperor - his authority is supreme, and to determine its features reference was made to the famous statement of Ulpian in D. 1,3,31: "Princeps legibus solutus est." In the first half of the 17th century, B. Carpzov wrote about the imperial power:

Nihil namque dignitas, nihil personalis honor ad maiestatem imperantis facit... sed per maiestatem ius ipsum, quod in summa potestate consistit, intelligendum est: ut proinde vere ac proprie maiestas dicatur et definiatur summa et perpetua legibusque soluta potestas.⁵⁹

In the author's opinion, the attribute of *maiestas* does not influence dignity but makes the ruler stand above the law.

There was a commonly shared view in the doctrine that the persons who might suffer from the offence of lese-majesty should be provided with a wide range of legal protection, which the authors justified by the provisions of the *lex Quisquis*. Thus, according to H. Bocer, the Holy Roman Empire of the German Nation affords protection - on a par with the emperor - to the electors (lay and ecclesiastic):

Secundum modus, quo perduellionis crimen in Romanum Imperatorem committitur, hic est, cum quis alicui ex Electoribus Imperii, Ecclesiastico, vel seculari vitae periculum comparare studet, textus est in aurea Bulla Caroli IV... Ex quo loco manifeste evincitur, quod propriae perduellionis crimen hoc etiam modo committatur: tum quia Imperator diserte ibi scribit, quod Principes Electores sint pars corporis Imperatoris... tum quia omnis poena, quae ex perduellionis crimine ita proprie dicto convertitur in Reum, statuitur quoque ibidem in eum, qui de nece Principis Electoris cogitat.⁶⁰

A little further, the author explained how to interpret the phrase "pars corporis" used in C. 9,8,5 pr.: "Corpus autem Imperatoris dicto loco non significat naturale, physicum, et humanum corpus, sed collegium Consiliariorum Imperatoris ... Et Senatores Romani ideo dicuntur pars corporis

⁵⁹ Op. cit, p. 215. Further down the study, the author outlines the various characteristics of the imperial power. This power is the highest, which means that the emperor does not acknowledge any ruler above him but God; is permanent (*perpetua*), which means exercised for an unlimited time (not temporarily - *ad breve aliquod tempus*); finally, it is not governed by laws, because this would make it inferior to man-made statutes (ibidem, p. 215). Cf. Cremani, A. *De iure criminali libri tres*. Vol. 2, Ticini 1792, p. 44: "... meminisse iuvat civilem maiestatem proprie nihil aliud est, quam summam, nullique obnoxiam potestatem ..."

⁶⁰ *Tractatus*... pp. 49-50.

Imperatoris, hoc est, pars Collegii Consiliariorum Caesaris.”⁶¹ It is not - as pointed out by H. Bocer - the body in a literal sense but a gathering of imperial advisers. What follows, lese-majesty also occurs when royal counsellors have been attacked, as well as the members - as put by the author - of the Roman Senate, i.e. dukes, counts, barons⁶² and imperial officials.⁶³ Finally, among these protected persons there are - after the *Digest* - the ruler’s envoys and ambassadors.⁶⁴

Section 18 Offences Classified by the Doctrine as *Crimen Laesae Maiestatis*

As discussed above, a sovereign nation and its ruler were regarded as the subject of the offence of lese-majesty (also - according to some authors - independent city republics). After Germanic laws the doctrine acquired the idea of lese-majesty as a violation of the contract between the ruler and his subject, which was reflected in the conviction that there is no violation of majesty if the offender is not the ruler’s subject. This conviction was elucidated by A. Cremano as follows:

Necesse insuper est, ut violator sit unus ex civibus illius populi, unus ex subditis eius Principis, quem ipse laedit; aliter is potius est reipublicae hostis, inque eum omnia licita sunt, quae iure publico licere adversus hostes compertum est.⁶⁵

In consequence, among the constituent elements of the offence there is the offender’s relationship with the community of the ruler’s subjects, otherwise, he would rather be - according to the author - thought of as an

⁶¹ Ibidem, p. 60. Cf. idem *Disputationum...* p. 780.

⁶² *Tractatus...* p. 103; cf. e.g. Damhouder, J. *Praxis rerum criminalium*. Antverpiae 1570, p. 150.

⁶³ *Tractatus...* p. 107. See also H. Gigas. *Op. cit.*, p. 16-16 v.; 29-29 v. Some authors, for example, H. Gigas, expressed the view that lese-majesty does not occur if the attack on an official is motivated by personal reasons (“ex particulari odio”) and not by the intention of insulting the ruler (*op. cit.*, p. 29 v.). According to other authors, such an attack, regardless of the motives, should be qualified as *crimen laesae maiestatis* (H. Bocer. *Tractatus...* Pp. 62-64).

⁶⁴ Cf. e.g. Gigas, H. *Op. cit.*, p. 17 v. ff.

⁶⁵ *Op. cit.*, pp. 45-46. Cf. e.g. Gigas, H. *Op. cit.*, p. 6: “... non subditus crimen laesae maiestatis non committit offendendo principem cui non est subditus.” See also: Bocer, H. *Tractatus...* p. 28; Bossi, E. *Tractatus varii qui omnem fere criminalem materiam ... complectuntur*. Venetiis 1570, p. 100.

external enemy. As regards the selection of acts classified as *crimen laesae maiestatis*, it was taken from Roman law. Roman law regulations were invoked by authors who, among others, distinguished *perduellio* as an aggravated form of lese-majesty, one of its distinctive features being a wilful act perpetrated against the state or the ruler. Outlining the differences between *crimen maiestatis* and *perduellio*, H. Bocer pointed out that both terms are sometimes treated as synonymous in Roman legal sources, yet *perduellio* needs *animus hostilis* to occur and entails specific penalties:

Etsi vero aliud sit perduellionis crimen, aliud vero crimen maiestatis, ita in specie dictum, attamen haud raro perduellionis crimen generis nomine designatur, et simpliciter maiestatis crimen dicitur, ut in l. 3 et 4 C. hoc tit. [sc. C. 9,8,3-4] et l. de minore 10. § 1 ff. de quaest. [sc. Arcadius Charisius D. 48,18,10,1] et Reus perduellionis dicitur maiestatis l. maiestatis C. 6 hoc titul.⁶⁶ l. Decuriones 16. C. de quaestionibus [sc. C. 9,41,16]. Sed magni refert cognoscere, quod perduellionis, quod item maiestatis crimen sit, cum poena utriusque non ubique fit eadem.

Highlighting the differences in penalties imposed for *crimen maiestatis* and *perduellio*, H. Bocer notes that only in the case of the latter the offender suffered from *damnatio memoriae*: "...damnatio memoriae propria poena est criminis perduellionis, d. l. ult. ff. de leg. Iul. maiest. [sc. Ulpianus D. 48,4,11].⁶⁷

The lists of most important acts constituting lese-majesty are contained in its definitions, as in the one by H. Gigas cited above. Indeed, the authors usually devoted a greater part of their works to discuss the ways of committing this crime, and the vast majority of these were provided after the titles of the *Digest* and the Code of Justinian concerning the *lex Iulia maiestatis* (as well as from the glossators' and commentators' writings exploring these titles). An example of this is a catalogue created by J. Clarus who listed forty

⁶⁶ It is most probably C. 9,8,6.

⁶⁷ *Tractatus...* pp. 45-46. The author then tells apart two types of this offence: *perduellionis crimen proprie dictum* is an intentional act against the state or the emperor, and *quasi perduellionis crimen* is the same act but perpetrated against other persons specially protected by law: senators or royal counsellors, which the author justified by the provisions of the *lex Quisquis* (ibidem, pp. 46ff; idem. *Disputationum*. Pp. 780-781). One of the author's arguments that an attack on persons being *pars corporis Imperatoris* is not *perduellio* in its proper sense is the *lex Quisquis* which for this offence does not stipulate *damnatio memoriae* typical of *perduellio* (*Tractatus...* P. 53). Cf. e.g. Gigas, H. Op. cit., p. 190 v.-191; Cremani, A. Op. cit., p. 55f. The explanation of the notion of *animus hostilis* in Contius, A. Op. cit., p. 378.

five acts classified as the crimes of lese-majesty (“*Laesae Maiestatis crimen quinque quadraginta modis committitur*”):⁶⁸

1. Undertaking military action against the state by its subject: “*Primo si quis subditus Regis assumit arma, vel facit guerram, vel bellum adversus et contra Regem, l. 1 ff. ad legem Iuliam maiest. [sc. Ulpianus D. 48,4,1,1], ubi tex. Loquitur de eo, qui sumit arma adversus populum Romanum ...;*”

2. Violating the dignity of persons delegated by the people or ruler because they enjoy the same dignity as the person who delegated them: “*Secundo modo committitur crimen laesae maiestatis, si aliquis offendit aliquos qui fuerint adcurati a Populo Romano, vel a Rege; omnia enim, quae dicuntur de Populo Romano tribuenda sunt Regi, et Civitati non recognoscenti superiorem ...;*”⁶⁹

3. Forming a conspiracy against the state or the ruler: “*Tertio modo committitur si quis consilium fecit dolo malo adversus Popu. Rom. vel Regem, ut in d. l. 1;*”

4. Unlawful killing of war prisoners: “*Quarto si quis obsides sine iussu Principis interfecit d. l. 1;*”

5. Inciting riots: “*Quinto si quis conveniat homines telis, vel lapidibus in Urbe adversus Popu. Rom. vel Regem, ut occupent loca, vel templa, ut in d. l. 1;*”

6. Raising a rebellion: “*Sexto si quis convocet certum hominum conventum ire ad seditionem Civitatis, d. l. 1 et facit l. 1 C. de seditiosis*” [sc. C. 9,30,1];

7. Murder of a public official or incitement to murder, even if it is not committed: “*Septimo si quis magistratum Pop. Romani occidit, vel dolo malo consilium dedit, ut occideretur, d. l. 1 versicu. cuiusve opera etc. quod verum est, etiam si non occidit: sed processit ad actum, ut in d. l. quisquis [sc. C. 9,8,5 pr.] ...;*”

8. An armed assault on the state: “*Octavo modo committitur crimen hoc, si quis sumit arma contra Remp. d. l. 1;*”

9. Offering support the enemies of the state: “*Nono, si quis mittat litteras, vel nuncium, vel signum dedit hostibus Populi Romani dolo malo, ut hostes ipsi iuventur contra Populum Romanum, ut in d. l. ibi quive hostibus etc. ...;*”

10. Staging mutinies among the troops and among the peoples subordinate to the ruler: “*Decimo. Committitur crimen maiestatis, si quis sollicitaverit, vel concitaverit milites, ut rebellatur contra Remp. vel Regem, vel*

⁶⁸ *Opera omnia sive Practica civilis atque criminalis*. Venetiis 1614, p. 78 v. ff.

⁶⁹ The author referred to a gloss to Ulpianus D. 48,4,1.

sollicitaverit, vel concitaverit ipsos milites, ut fieret seditio, vel tumultus adversus Remp., ut in d. l. 1 ibi quive milites, etc. Et sic inferitur, quod ille, qui Civitates obedientes Principi facit et rebelles, tenetur hoc crimine, ut in l. 3 et 4 ff. ad l. Iul. maiest. [sc. Marcianus D. 48,4,3; Scaevola D. 48,4,4] ...;

11. Unlawful departure from the province of its governor before the expiry of fifty days as of the arrival of the successor: "undecimo. Committitur si miles, vel alius officialis Regis, postquam sibi successum fuerit, discesserit de provincia, quae sibi fuerat commissa, ante quinquaginta dies, qui statuuntur pro syndicato, ut in l. 2 ff. ad l. Iul. maiest. [sc. Ulpianus D. 48,4,2] et expressius patet in l. 1 C. ut omn. Iud. tam civi. quam milit. [sc. C. 1,49,1 pr.] ...;"

12. Desertion: "Duodecimo. Committitur, si aliquis sine licentia superioris exercitum deseruit, d. l. 2 ff. ad l. Iul. maiest. [sc. Ulpianus D. 48,4,2];"

13. The fleeing of a private person to the enemy: "Decimotertio. Committitur, si quis privatus ad hostes perfugerit, ut in d. l. 2;"

14. Intentional forgery of public documents: "Decimoquarto. Committitur, si aliquis scripsit aliquid falsum scienter in tabulis publicis, hoc est in libris Reipublicae, vel Principis. Et licet tale crimen de directo non fit commissum contra Rempub. vel Regem, tamen est in primo cap. legis Iul. maiest ...;"⁷⁰

15. Inciting the enemy to war: "Decimoquinto. Committitur, si quis hostes concitaverit, ut bellum sumant, vel aliquid aliud contra Remp. vel Regem faciunt in eius damno, ut in d. l. 3 [sc. Marcianus D. 48,4,3];"

16. Offering assistance to the enemy: "Decimosexto. Committitur, si quis opem hosti dederit, ut in d. l. 3;"

17. Refraining from defensive action and thus ensuring the enemy's victory: "Decimoseptimo. Committitur, si quis miles, vel armiger stans in praelio recesserit, aut aliud fecit, propter quod eius opera factum esse, quod hostes habuerint victoriam, ut patet in d. l. 3. ibi, qui imbellis cesserit, etc.;"

18. Unlawful possession of a castle or fortress within the state boundaries: "Decimooctavo. Committitur, si quis sine licentia Principis tenuerit arcem, vel fortalitia in confinibus regni, ut in d. l. 3 et patet in l. 2 C. de fund. Limitroph. et terr. lib. 11 [sc. C. 11,60,2];"

19. Surrendering a castle to the enemy by its commander, and failure to transfer the castle to another commander as ordered by the ruler: "Vigesimonono [sic!]. Committitur, si quis erat Castellanus Regis in aliquo Castro, et illud dedit hostibus, vel erat Castellanus Regis, et Rex voluit eum privare Castellina, et alium constituere Castellanium, scribendo sibi, quod castrum consignet Titio, et ipse noluit consignare, vel misit milites ad hostes sine

⁷⁰ J. Clarus based this conclusion on a gloss to the *lex Iulia maiestatis*.

licentia Principis, omnibus istis modis exponitur illud verbum positum, in d. l. 3 ibi dum dicitur, aut castra concesserit;”

20. Waging war without the ruler’s consent: “Vigesimo. Committitur, si quis sine licentia Principis gesserit bellum, ut in dicta l. 3. dicitur enim bellum illicitum, quando fit sine Principis auctoritate, ut not. Doctor. in l. ex hoc iure ff. de iust. Et iur. [sc. Hermogenianus D. 1,1,5]. Et quod tale bellum illicitum committens incidat in crimen laesae maiestatis, satis patet in l. Papinianus § rei perduellionis ff. de acquir. haeredit. [sc. Papinianus D. 29,2,85,1] facit l. 1 C. de gladiat. [sc. C. 11,44,1] lib. 12 et per contrarium, Instit. De haered. quae ab intest. [sc. I. 3,1,5] et l. fin. ff. ad leg. Iul. maiest. ubi dicitur, quod perduellionis reus est hostili animo adversus Rempublicam, vel Principem animatus, ut in l. unica [sc. Ulpianus D. 48,4,11] ;”

21. Assembling, without the consent of the ruler, a private army from among the troops serving in the state: “Vigesimoprimo. Committitur, si quis elegit sibi milites de aliis militibus sine licentia Principis, ut dicit tex. in d. l. 3 ibi, delectumve habuit; et patet in l. milites C. de re milit. lib. 12 [sc. C. 12,36,3];”

22. Unlawful conscription, i.e. without the ruler’s order: “Vigesimosecundo. Committitur, si quis exercitum comparaverit, idest praeparaverit sine iussu Principis, d. l. tertia [sc. Marcianus D. 48,4,3];”

23. Refusal to transfer the military command to the successor: “Vigesimotertio. Committitur, si Princeps ordinaverit in Provincia caput exercitus ad ipsius, vel pro eius arbitrio, et demum illi exercitui destinavit aliud caput, illud verus admovendo, quod noluit exercitum consignare illi, qui sibi successit, ut dicit expresse tex. in d. l. prima C. ut omn. iud. tam civil. quam milit. [sc. C. 1,49,1];”

24. Commander deserting the entrusted military unit without the consent of the ruler: “Vigesimoquarto. Committitur, si quis deputatus ad exercitum recesserit sine licentia Regis, vel Principis; vel si Princeps erat in praelio; et cum deseruerit, ut patet in d. l. 3 ...;”

25. Usurping the powers of officials (e.g. by forging a document), also through attempts: “Vigesimoquinto. Committitur, si quis assumpsit auctoritate propria magistratus officium cum falsis litteris, vel alio modo, dolo malo se gesserit pro magistratu, cum non esset, ut dicit tex. in d. l. 3 ibi dum dicit, quive privatus, facit l. qui nomine ff. de fals. [sc. Ulpianus D. 48,10,25] et nota, quod non solum tenetur crimine laesae maiest. qui praedicta fecerit, sed etiam, si non fecerit, sed curaverit facere, ut dicit text. in d. l. 3 in fin. [sc. Marcianus D. 48,4,3] ...;”

26. Swearing an oath in a conspiracy aimed to murder the ruler or inflict other damage to the state, even if it did not come to fruition: “Vigesi-

mosexto. Committitur, si quis solus iuravit, quod ipse Principem interficiet, vel aliquod sibi magnum malum faciet; vel iuravit, quod aliquis malum faciet contra Remp. etiam si nihil fecit, ut probat tex. in l. 4 in princ. ff ad l. Iul. maiest. [sc. Scaevola D. 48,4,4 pr.] (...);”

27. Insidious surrender of an army unit to the enemy: “Vigesimoseptimo. Committitur, si quis operam dedit, ut exercitus Pop. Rom. vel Principes proditorie incidat in manus hostium, vel insidias eorum (...) probat tex. in d. l. 4. dum dicit, exercitus Pop. Rom.;”

28. Preventing victory by disclosing military plans to the enemy: “Vigesimo octavo. Committitur, si Princeps sperabat habere hostes in manibus, vel esse eorum victorem, et aliquis malus homo advisavit hostes de praeparatione Regis, vel Ducis belli; ita quod propter eius advisum hostes non sunt in posse Regis, vel Ducis, ut dicit tex. in d. l. 4 (...);”

29. Offering the enemy free passgae: ““Vigesimonono. Committitur, si quis com meatum dederit hostibus Pop. Rom. ut d. l. 4;”

30. Supporting the enemy through a loan of money or sale of arms: “Trigesimo. Committitur, si quis iuvaverit, dando hostibus pecuniam mutuo, vel vendendo eis arma, ut sunt balistae bombardae, tela, lanciae, et alia genera armorum, vel praestiterit auxilium, de aliqua alia re, ut probatur in d. l. 4 (...);”

31. Inciting allies against the ruler (in particular, when material benefits come into play): “Trigesimoprimo. Committitur, si quis dedit operam ut amici Pop. Rom. vel Regis fiant eorum inimici, vel hostes ut in d. l. 4 et dico, quod si aliquis dedit operam ut hostes Romani praedam factam dividant inter eos, vivi sunt concremandi, ut l. fin. C. de re milit. lib. 12 [sc. C. 12,36,18];”

32. Inciting a subject to disobey the ruler: “Trigesimosecundo. Committitur, si aliquis dolo malo fecit, quominus Baro non obedierit Principi, ut probatur in d. l. 4 ibi, dum dicit, quo Rex exterae etc. nam olim Reges subditi erant Populo Romano et ideo vocabantur Reges exterae nationis (...);”

33. Insidious release of hostages to the enemy: “Trigesimotertio. Committitur, si quis operatus fuit dolo malo, ut hostibus Popu. magis dentur obsides, quam pecuniaria subventio; expedit enim magis Reipub. Rom. pecuniam dare, quam obsides, ut probat tex. in d. l. ibi, quo magis obsides;”

34. Allowing a person guilty of the crime of lese-majesty to break free from jail: “Trigesimoquarto. Committitur, si quis aliquem confessum, et condemnatum de crimine laesae maiestatis exemerit a carceribus, operando, ut a carceribus fugiat vel a manibus familiae, ut probat tex. in d. l. 4 in fin. (...);”

35. Destroying ruler's images: "Trigesimoquinto. Committitur, quando quis statuas Imperatoris aut imagines conflaverit, ut in l. qui statuas ff. ad l. Iul. maiest. [sc. Venuleius Saturninus D. 48,4,6] ...;"

36. Raising a rebellion in a subdued province or city: "Trigesimosexto. Committitur, si quis prodiderit dolo malo aliquam provincialem Civitatem, vel consuluit, quod Civitas rebelletur, ut in l. pen. ff. ad l. Iul. maiest. [sc. Hermogenianus D. 48,4,10] ...;"

37. Committing *perduellio* against the rulers or the state: "Trigesimoseptimo. Committitur, si quis crimen perduellionis contra Principem, vel Republicam commiserit, et efficitur hostis, et rebellis ipsius Principis ...;"⁷¹

38. Cardinal attempting to convene the conclave when the pope is alive: "Trigesimo octavo. Si Cardinalis, vivo Papa, procederent ad eligendum alium Papam, eo non deposito ...;"⁷²

39. Acting with a view to causing a violation of the oath of allegiance to the ruler by a subordinate city: "Trigesimonono. Committitur, si aliquis operatur, quod aliqua Civitas, vel castrum, quod erat ad fidelitatem regis, discedat ab eius fidelitate, ut not. in l. fallaciter ... C. de abolit.⁷³ Facit l. pen. ff. ad l. Iul. maiest. [sc. Hermogenianus D. 48,4,10];"

40. Withholding information about a planned assassination of the ruler or actions detrimental to the state: "Quadragesimo. Committitur, si quis incidit in simplicem scientiam alicuius mali, quod habet contingere ex facto hominis in personam regis, vel contra rempubl. et non revelavit, licet nulla operatio, vel factum ipsius intervenerit, ut probatur in l. quisquis, in fine [sc. C. 9,8,5,7] ...;"

41. Violating cardinal's inviolability (also in the form of complicity, incitement and aiding and abetting): "Quadragesimoprimum. Si quis Cardinalem sanctae Romanae Ecclesiae hostiliter fuerit insecutus, vel percusserit offendendo, non defendendo, aut caeperit, aut socius fuerit facientis, aut fieri mandaverit, vel factum ratum habuerit, aut consilium dederit, vel favorem, aut postea receptaverit, vel defendaverit scienter eundem, haec omnia continentur in cap. felix, de poen. lib. 6;"⁷⁴

42. Conspiring to murder of a royal counsellor: "Quadragesimosecundo. Modo committitur, quando quis conspiravit in necem alicuius collateralis, vel consiliarii Principis, tunc habetur, ac si in necem Principis conspirasset, ut dicit tex. In d. l. quisquis, et ratio est, quia isti consiliarii sunt pars

⁷¹ J. Clarus referred to a gloss to Ulpianus D. 48,4,11.

⁷² J. Clarus referred, for example, to the gloss to C. 6,23,15.

⁷³ J. Clarus referred to a gloss to C. 9,42,3.

⁷⁴ It is Canon 5, Title 9, Book 5 of *Liber Sextus* by Boniface VIII which reads that the assassination of a cardinal is to be regarded as lese-majesty. This canon was often invoked by the authors describing some of the penalties for *crimen maiestatis* also in secular law (see below).

corporis Principis, ut ibi dicit tex. ideo eadem offensio reputatur; et pro hoc facit, quia qui tangit unam partem corporis, totum corpus tetigisse videtur, l. vulgaris ff. de furt. [sc. Ulpianus D. 47,2,21] ...;”

43. Breach of a feudal contract: “Quadragesimotertio. Committitur, si quis contra iuramentum ligii periuraverit ...;”⁷⁵

44. Appointing oneself the king of Naples: “Quadragesimoquarto. Committitur, si quis dicat se regem esse Neapol. Quod est patrimonium B. Petri ...;”⁷⁶

45. Contributing to the dissolving of an alliance between two rulers: “Quadragesimoquinto. Modo, si facta pace inter duos Reges, cum eorum sequacibus, et unus sine iusta causa offendit alium; et sic frangitur pax ...”⁷⁷

The list of acts that constitute *crimen laesae maiestatis* given above was based, as remarked by the author, on the regulations of Roman law and essentially corresponds to a parallel collection of the instances of unlawful conduct known in ancient Rome (see Section 4 above). Consequently, the modern-era authors were focused not so much on exploring new varieties of this offence, as on commenting on these varieties that were commonplace in their time. For instance, the authors exchanged views on the phenomena covered by Ulpian in D. 48,4,1,1 - *rebellio*, *seditio* and *tumultus*, for such acts mounting in, among others, the cities of the Italian republics.

An act that was considered almost equivalent - at least in the colloquial sense - to *crimen laesae maiestatis* was rebellion against the ruler (*rebellio*).⁷⁸ T. Deciani defined this act as an overt or insidious action detrimental to the state or the ruler:

Rebellis etiam dicitur non modo si aperte contra Imperatorem vel imperium aut eius prosperitatem aliquid fecerit, quod de directo rebellionem ostendat, sed etiam si quod dolose machinatus fuerit, ut inde sequatur damnum Imperio aut Imperatori.

What follows, to rebel is to seek to achieve certain goals that may not be otherwise achieved openly: “Machinari autem est ingeniose et dolose aliquid investigare, ut quod aperte fieri non potest aut timetur, occulte et per coloratas quasdam paliationes id fiat.”⁷⁹

⁷⁵ J. Clarus referred, for example, to the gloss to C. 9,8,2.

⁷⁶ J. Clarus referred to Bartolus' gloss to D. 48,4.

⁷⁷ J. Clarus referred to Bartolus' gloss to D. 48,4.

⁷⁸ “Omnis rebellis dicitur committere crimen laesae maiestatis; non autem econtra omnis qui committit crimen laesae maiestatis dicitur rebellis: quia ista inter se differunt, licet ex communi usu loquendi confundantur” (Deciani, T. Op. cit., p. 158).

⁷⁹ Ibidem, p. 156 v.

Rebellio is therefore a particularly dangerous act as it is likely to jeopardize the state's welfare and security (*prosperitas reipublicae*).⁸⁰ Rebellion often takes the form - as signalled by the author - of covert operations, such as conspiracy or a secret plot. A. Cremani defined conspiracy as a secret agreement aimed to achieve a deleterious effect: "quaelibet societas occulta, seu arcana in exitium aliquod constata occasionem erumpendi in tempus expectans, sive etiam malorum in eandem rem consensus."⁸¹ On the other hand, provoking riots (*ad seditionem convocare* - Ulpianus D. 48,4,1,1) is a form of violation of public order, which - as opposed to conspiracy - occurs fairly spontaneously (without prior preparation), involves a large number of participants, its underlying causes being social inequalities and the primary objective to modify the law or depose those in power.⁸² Riots are not the same as unrest, regarded by Romans - as pointed out by A. Cremani - a state of commotion associated with the outbreak of war;⁸³ now it primarily refers to an angry or violent people's behaviour triggered by any

⁸⁰ Cf. Gigas, H. Op. cit., pp. 167 v.-168. On the views articulated by other authors, see especially Sbriccoli, M. Op. cit., pp. 272-273.

⁸¹ Op. cit., p. 60. Conspiracy differs from a plot in that the latter involves a contract, e.g. swearing an oath: "Si ea societas secretiore aliquo sacramento, puta iureiurando, firmetur, coniurationem, si secus, vocant factionem simpliciter, aut conspirationem ... Igitur cum factione quoddam veluti conspirantium pactum, consilium, deliberatio, iusiurandum concurrat, poculum humano sanguine refertum sociis bibendum exhibetur, aliudve huiusmodi solemne signum usurpatur" (ibidem, pp. 60-61); the author referred, among others, to Jacob Gothofred's commentary on the Theodosian Code (ad L. Cornel. de Sicar. num. 4).

⁸² "... quae [sc. seditio] vix praeparatur, sed subito erumpit, ac saevit; subito, violentoque motu vagatur, atque instar incendii conflamat, statimque ad arma vocat ...; seditio plerumque citius comprimitur ..., etiam sine ducibus intelligitur, quemadmodum apparet ex seditione, quae a militibus gregatis, ab infimae plebis hominibus, a ceteris, qui sunt fere eiusdem conditionis, concitatur ... [Seditio] dicitur indignatio multitudinis adversus leges, et Magistratus publicum ordinem, et quietem perturbans; vel dissensio populi, motusque pluitum, qui arma capiunt, templa, et alia urbis loca occupant civile imperium detrectantes; vel etiam discordia, qua popululus dividitur in duas partes, adeo ut seorsim quidam eant ad alios, et ab aliis secedant; unde seditionis nomen ortum est" (ibidem, pp. 61-62). Some of the wording describing various forms of action are taken from Ulpianus D. 48,4,1,1; the author also referred to C. 9,30.

⁸³ "Tumultus proprie a Romanis dicebatur bellum subitum, quod ob. periculi magnitudinem, hostiumque vicinitatem summam in urbem trepidationem afferebat, uti ex iis colligitur, quae habet Cic. Philip. 8. Hinc dicti milites tumultuarii, qui in tumultu vocabantur, et fiebant per conspirationem (ibidem, p. 62, note 4). "Tumultus proprie a Romanis dicebatur bellum subitum, quod ob. periculi magnitudinem, hostiumque vicinitatem summam in urbem trepidationem afferebat, uti ex iis colligitur, quae habet Cic. Philip. 8. Hinc dicti milites tumultuarii, qui in tumultu vocabantur, et fiebant per conspirationem (ibidem, p. 62, note 4).

cause.⁸⁴ These instances of disorganization of public are deemed an offence of lese-majesty only if directed against the state or the ruler.⁸⁵

When making references to the *lex Quisquis*, the authors underscored that any stage of this offence is punishable, including the intent which developed into an action. Penalization of intent is one of the characteristics that typify the offences of lese-majesty indicated by J. Clarus, "Speciale est, quod in hoc crimine punitur voluntas, quae venit ad actum sine opere perfecto."⁸⁶

This last idea was elaborated by H.Gigas⁸⁷ who explained that it only a manifest intent should be subject to a penalty:

...quaero: an voluntas, quae ad actum non venit, sine opere puniatur in crimine laesae maiestatis? Dicendum videtur, quod non: quia cogitationis poenam nemo pati debet...⁸⁸ Et voluntas in mente retenta nil operatur... Idem dicendum est de sola cogitatione committendi crimen praedictum, cum qua tamen cogitatione voluntas concurrat.

The authors maintained that the principle originating from C. 9,8,5,7 still applies that the penalty is imposed on the person who refuses to disclose the information about an engineered offence. P. Farinacius reiterated this principle: "...quod ex sola scientia in crimine laesae maiestatis, quis tenetur et punitur, et propterea sciens tractatum, conspirationem, seu rebellionem contra suum Principem, et Rempublicam, et non revelans, illius criminis reus est."⁸⁹ According to the same author, the guilty of such negli-

⁸⁴ "A seditione distinguitur tumultus, morus videlicet popularis, cui ingens animi perturbatio ex imminenti periculo sive veri, sive ficti magnitudine originem dedit ... At tumultus nascitur ex subito timore, quia nempe quis tristitia nunciaverit, aut praedixerit, unde plebs corde suo non parum trepidans esse coeperit" (ibidem).

⁸⁵ "Expositis iam, quae ad factionem, coniurationem, conspirationem, seditionem, et tumultum pertinent, illud tenendum est, haec omnia inter crimina laesae maiestatis non recenseri, nisi ad exitium reipublicae, aut Principis dirigantur. Quod si alio tendant, ea non lege Iulia Maiestatis, sed lege Iulia de vi publica apud Romanos vindicabantur" (ibidem, p. 66).

⁸⁶ Op. cit., pp. 81 v. The intent is defined as follows: "est enim voluntas deliberatio animi intelligentis et acceptantis id quod vult ... et praesumitur durare nisi mutata probetur" (ibidem, p. 45). Penalization of all stages of the offence is also discussed by B. Carpov: op. cit., pp. 213-214.

⁸⁷ Op. cit., pp. 52 v.-53.

⁸⁸ H.Gigas invoked - besides the well-known statement of Ulpian in D. 48,19,18 - also the *Decretum Gratiani* (c. 14 D.1 de poenitentia). Cf. e.g. Bocer, H. *Tractatus*... P. 115: "Id enim intelligendum de sola et mera delinquendi cogitatione, et voluntate interiori, sed l. Quisquis in princ. C. hoc tit. [sc. C. 9,8,5 pr.] et Aureae Bullae constitutio, de ea nocendi voluntate loquuntur, quae in actum ipsum prorupit, et exteriori quodam facto fuit declarata."

⁸⁹ *Praxis et Theoricae criminalis libri duo*. Venetiis 1595, p. 781. To prove his point, the author demonstrated that since servants can be regarded as accomplices in a crime if they fail to expose

gence should be - together with the perpetrator of lese-majesty taking the form of conspiracy - put to death:

Et apud me nullam habet difficultatem, quod scilicet talis sic non revelans tractatum, quem scit fieri contra suum principem, sit reus laesae maiestatis...ut si quis principalis delinquens, et conspirans contra suum principem, poena mortis puniendus est.⁹⁰

The authors repeated after the *lex Quisquis* that the participant of a fledgeling conspiracy who discloses its details would not only escape the penalty but would be rewarded; however, if he did it immediately before perpetrating the offence, he would only go unpunished.⁹¹ On the basis of the said provision and after C. 9,2,17, C. 9,46,8 and C. 10,59,1, the authors advanced a thesis that a person who is not participating in a conspiracy and only learned about the planned crime from hearsay (“fuit sibi dictum in platea”), and this knowledge is insufficient to prove it, is exculpated. For no one has an obligation to become exposed to the consequences of unjustified denunciation: incarceration or interrogation involving torture.⁹² Also - as inferred from C 4,1 - a wife, due to a close relationship, it is not obliged to denounce her husband.⁹³

a planned attempt on their master's life, by extension, this principle should apply to the subjects who will behave similarly knowing about an engineered attack on the ruler: such an attack will certainly cause incomparably greater damage to the whole of the society: “Et si verum est, quod famuli non revelantes domino suo mortem, quam sciunt ipsi inferendam, rei dicuntur eiusdem mortis: cur idem dicendum non est in subdito versus Principem? Certe hoc tanto magis procedere in Principe, in quo versatur publica utilitas, cum ex eius vita ac salute, eiusque status quiete dependeat salus, et quies populorum ...?”

⁹⁰ Ibidem; the author admitted that the above opinion has both its followers and opponents. Among the latter there is Menochius (*De arbitrariis iudicium quaestionibus et causis*. Venetiis 1575) who proposes that exile be substituted for the death penalty.

⁹¹ Cf. e.g. Gigas, H. Op. cit., pp. 180-180 v.; Bossi, E. Op. cit., p. 98; Deciani, T. Op. cit., p. 159 v.

⁹² Gigas, H. Op. cit., p. 180 v.; Bossi, E. Op. cit., p. 98; Bocer, H. *Tractatus...* p. 77; Folleri, P. *Practica criminalis*. Lugduni 1556, pp. 243-244. This problem was widely discussed by P. Farinacius who contrasted the views of individual authors (op. cit., p. 782ff).

⁹³ “Arctissima enim coniunctio, quae est inter virum et uxorem, illam a tali denuncia excusat” (Gigas, H. Op. cit., p. 157 v.). The same circumstance was highlighted by P. Farinacius: “In uxore sciente tractatum, quem facit suus vir contra Principem, et econtra: nam non tenetur coniunx coniugem tradendo, et fidem coniugalem frangendo revelare Principi talem tractatum” (op. cit., p. 783). Cf. Deciani, T. Op. cit., p. 160.

Section 19 The Influence of Roman Law on Western Authors' Views regarding the Sanctions and the Distinctive Features of the Crime of Lese-Majesty

The doctrine reveals a consistent view on the issue of penalties handed down for the discussed crime. The authors emphasized that the basic penalty provided for in Roman law was death;⁹⁴ this principle also applied in their time, yet different countries had recourse to dissimilar forms of punishing (usually aggravated). A brief overview of these forms is given in H. Bocer's work; he noted that they depend not only on the place of execution but also on the manner of committing the offence. For those guilty of *perduellio* suffer the toughest penalties under French and German law: they are torn apart by horses running in opposite directions or dismembered ("Quin etiam hanc poenam in perduelles Carolina sanctione non solum adprobatam, sed et auctam esse plane reor; quippe cum ea cautum sit, ut proditores provinciarum, Urbium, Principum, quorum jurisdictioni et imperio sibi subjecti sunt..., post vero in partes quatuor discindantur...In Gallia vero transalpina eos quatuor equis alligatos dilacerari vivos"). The execution proper is preceded by dragging the condemned person to the site or pinching him with hot tongs ("prius prostrati in terra per plateas in locum supplicii raptentur, trahantur, aut ignitis forcipibus lacerentur").⁹⁵ H. Gigas, whose work was referenced by H. Bocer, justified the practice of yet another form of death penalty - hanging - in the Republic of Venice ("Veneitiis autem Reos huius criminis suspendio necari") by its allegedly most shameful nature, since this was how Judas died after betraying Christ.⁹⁶

This overview should be supplemented by J. Damhouder's considerations in which he substantiated the maximum penalties by the gravity of a wrongful act ("ob facinoris enormitatem"). Among use penalties, the author also lists beheading and burning; the manner of execution depends on many factors, but, due to the extraordinary nature of the crime, the decision on how to exact it is at the judge's discretion.⁹⁷

⁹⁴ The authors relied primarily on the account of Marcianus in D. 48,4,3 concerning the provisions of the Law of the Twelve Tables (cf. e.g. Gigas, H. Op. cit., p. 118; Bocer, H. *Tractatus...* P. 128).

⁹⁵ *Tractatus...* pp. 129-130.

⁹⁶ Op. cit., pp. 118-118 v.

⁹⁷ "... variis tamen modis, iuxta varietate legum, edictorum, et statutorum in locis, ubi commissa fuerint nonnumquam gladio, aliquando igni, interdum dissectione in quatuor partes etc. Verum quisquis ita conspiraverit in personam sui Principis, et hinc mors secuta fuerit, is profec-

An additional consequence pointed to by the authors, besides executing the guilty of *crimen laesae maiestatis*, is the demolition of his house (sometimes also his insignia and weapons). Indeed, as noted in the doctrine, that penalty was not present in the provisions of Roman law, yet it was considered well grounded for the commission of such a serious crime. The authors acknowledge that this punishment was known to the Romans in practice; as an example, H. Gigas pointed to the case of Spurius Melius described in Pliny the Younger's *De viris illustribus* where the perpetrator's house was razed to the ground.⁹⁸ The legal basis for that penalty was sought after in canon law: *Caput 5, Title 9, Book 5 of the Liber Sextus*, recognizing the murder of a cardinal as the offence of lese-majesty, listed the imminent penalties for this act, among which there was the destruction and erasure of all the traces of perpetrator's life: the house was to be pulled down to its foundations, even if another person, who had nothing to do with the crime, claimed its ownership.⁹⁹

Based on the discussed fragment of the *Liber Sextus*, the authors deliberated a number of detailed issues, for example, the rights of the condemned man's wife and the co-owners of the house who had not become entangled in the wrongdoing. For example, J. Clarus, admitting the aptness of the principle derived from C. 9,39,2,3 that the penalty levied against the offend-

to enormiter (nempe ob facinoris enormitatem) peculiari quodam modo extraordinarie, absque ulla legum ac constitutionum observatione, puniendus est ad prudentiam, iudicium et discretionem D. Iudicum" (op. cit., pp. 149-150). When commenting on J. Damhouder's argument about the ways of exacting the death penalty, B. Carpzov shared a view that the most severe of these, dismemberment, should be used only for the perpetrators of an attack on the emperor or electors, but not for other persons afforded special legal protection. He added that *crimen laesae maiestatis* is not always punished by death; based on Roman law, he also mentioned other sanctions: "Quinimo poena criminis laesae Majestatis ita specialiter dicti non semper ultimum supplicium est, sed interdum deportatio, interdum vero relegatio cum infamia. Deportatione enim et infamia afficitur, qui hostem fugientem sciens suscepit, l. 40 junct. l. eorum 24 ff. de poen. [sc. Modestinus D. 48,19,24 and Paulus D. 48,19,40], relegationis vero et infamiae poena imponitur ei, qui hostem Populi Romani quodam occultari loco non ignorans, diu dissimulavit d.l. 40 et 24 ff. de poen." (op. cit., p. 221).

⁹⁸ H. Gigas, op. cit., p. 138 v.; to justify the grounds for the penalty, the author referred to Lucas da Penne's commentary to the *lex Quisquis*.

⁹⁹ The mentioned title of the *Liber Sextus* envisaged a number of retributions for the perpetrators of the offence - regardless of the stage of commission and its phenomenal form - of assault and battery against cardinals, among others, infamy, exile, deprivation of *testamenti factio*, confiscation of property, and demolition of the house to perpetuate the owner's criminal act. As stated by B. Carpzov, even though the law clearly imposes that punishment only on the murderers of a cardinal, customarily, ("de consuetudine") it is administered in all other cases of lese-majesty (op. cit., p. 214).

er should not affect innocent people (“malefactores ita puniri debent ut innocentes non puniatur”), expressed the view that the wife can - by referring to C. 9,12,1 - request that the house, being her lawful dowry, be left intact. Still, the author added that the practice of Italian cities departs from Roman law in this regard; when the wife was dowered with this house, it can be spared, as corroborated by Gaius and Ulpian in D. 23,5,4-6. The house was also to be demolished if it was co-owned by a person who had not committed the crime of lese-majesty; sometimes, however, as pointed out by this author, because of the entitlements of the co-owner, the penalty could have been replaced by another, based on arguments derived from C. 10,59,1.¹⁰⁰

Describing another punishment meted out for *crimen laesae maiestatis* - confiscation of property, the authors jointly pointed to its Roman origins and admitted that the principles arising from Roman law were still applicable. H. Gigas, when outlining the evolution of this punishment in Roman law, drew attention to the use by his contemporaries of the rules laid down in the *lex Quisquis*:

Divus vero severus [sic!] statuit rei criminis laesae maiestatis bona liberis damnati conservari, sed illis non existentibus fisco vindicari decrevit, ut habetur in l. eorum ff. ad leg. Iul. maiest. [sc. Hermogenianus D. 48,4,9]. Postremo vero Honorius et Archadius Imperatores statuerunt reos criminis laesae maiestatis non solum capite puniri, sed eorum bona omnia fisco addici, ut habetur in l. quisquis C. ad leg. Iul. maiest. [sc. C. 9,8,5 pr.] et hoc iure communiter utimur¹⁰¹ [author's emphasis].

Though in modern times, the stringent Roman law rules on confiscation of property were somewhat relaxed, it did not - as noted by H. Bocer - apply to the offences falling under lese-majesty where the rules of *ius vetus*, i.e. of ancient Roman law, were invariably in force:

Et licet novo jure damnatorum bona liberis relinquuntur, attamen ius vetus, quo bona Reorum perduellionis etiam successoribus auferuntur..., nisi a successoribus purgetur, hereditas fisco vindicatur, ff. De leg. Jul. maiest. l. ult. ibi [sc. Ulpianus D. 48,4,11]. Et eius bona successoribus eripiantur, C. eodem tit. [sc. C. 9,8,5 pr.] nominatim lege nova Justiniana approbatum est, Novel. 134 cap. ult. in fin. Et Auth. bona damnatorum, C. de bonis proscript. [sc. C. 9,49,10].¹⁰²

¹⁰⁰ Op. cit., pp. 139 v.-140.

¹⁰¹ Op. cit., p. 118.

¹⁰² Bocer, H. *Tractatus...* p. 131. The author alluded to *Authenticum* following the cited extract of the Code of Justinian, according to which the property of condemned persons should

The same author, sharing Menochius' view, regarded the penalty of confiscation of property as justified only if adjudicated against the perpetrators of the most serious forms of lese-majesty (especially *perduellio*). In D. 48,4,9 Hermogenianus (erroneously referred to by H. Bocer as Marcianus) referred to the constitution of Septimius Severus demanding that the property of the convicted of *crimen maiestatis* fall to his children and in their absence to the state treasury. Judging by that, H. Bocer concluded that the wrongdoer's property was not forfeit to the state for the commission of less weighty acts against the majesty.¹⁰³

Authors' considerations concerning the penalty of forfeiture of property generally coincide with the discussion on the liability of perpetrator's family: the wrongdoer's act results not only in his family being barely capable of providing for themselves, but also affects his children, especially the sons. A justification for this peculiar collective punishment was provided by H. Bocer, based on Cicero, Roman law and the relevant authors' opinions:

Ratio autem, cur ex hoc patris scelere filii quoque plectantur, duplex adferri potest; una quod etiam in filiis paterni, id est, hereditarii criminis exempla metuntur, d. l. quisquis 5 § 1 C. ad leg. Jul. maiest. [sc. C. 9,8,5,1] Altera est, ut charitas liberorum parentes ipsi Reipublic. Amiciores reddant, et liberorum haec calamitas parentes ab hoc nefando scelere imprimis deterreat. Cic. lib. 1 Epist. ad Brutum Epistol. 12 ¹⁰⁴

be taken over not by the state treasury, but by the relative descendants, forebears and collateral descendants (to the third degree). The last sentence of *Authenticum*, however, contains a reservation: "In maiestatis vero crimine condemnatis veteres leges servari iubemus."

¹⁰³ Ibidem, pp. 131-132. Also in Roman law the author sought solutions of the issue of whether the offender suffers from confiscation of property by law or as a result of a conviction. Inclining toward the latter option, H. Bocer referred to Paulus D. 40,9,15 pr: "Ubi Paulus Jurisconsultus diserte scribit, quod is, qui maiestatis crimine Reus factus est, ante damnationem Dominus sit rerum suarum" (ibidem, p. 133). Doubts arise, however, as to the interpretation of this passage by the author because, as follows from Paulus' statement, the offender is deprived of the right to perform *manumissio* already when he becomes aware of the looming punishment. Besides, H. Bocer cited the following rules: Marcianus D. 49,14,22 pr.; Hermogenianus D. 49,14,46,6; Modestinus D. 48,2,20 and C. 9,8,6. These same fragments, as well as glossators' commentaries, led H. Gigas to a different conclusion (op. cit., p. 132ff).

It is noteworthy that the authors of works on the offence of lese-majesty had recourse to the rules of Roman law - and specifically to glossators' commentaries on this law - when addressing legal issues unknown in ancient Rome. The most frequently discussed problem was the forfeiture to the state of feudal property owned by the offender. An overview of opinions on this subject is collated by H. Gigas, op. cit., p. 122ff; cf. Bocer, H. *Tractatus...* p. 144f.

¹⁰⁴ *Tractatus...* Pp. 150-151; the author invoked, e.g. a commentary by A. Contius on the *lex Quisquis*.

Consequently, on the one hand, the concern is that the offspring will follow into parents' lawless footsteps, on the other, the fact of children being encumbered with responsibility is intended to discourage potential offenders to commit such crimes. The effectiveness of such measures were not doubted by H. Gigas who, after the *Digest*, expressed conviction that the penalty imposed on sons should be seen as the toughening of the penalty affecting the offender:

Praeterea poena ista quae imponitur filiis propter delictum patris statuta est a lege in duriolem patrum vindictam ac poenam: pater enim terretur magis propter filii poenam, per tex. in l. isti quidem in fin. ff. quod met. causa [sc. Paulus D. 4,2,8,3] et § final. Instit. de noxal. [sc. I. 4,8,7].¹⁰⁵

A forceful argument for punishing the wrongdoer's children is derived from the *lex Quisquis* which implies that they display their parent's inclination towards crime, ergo the punishment is put in place to prevent them from following such a wicked path. This implication was accepted by, among others, T. Deciani:

Ratio autem huius decisionis videlicet d. l. quisquis, quod filii teneantur, est quia ratione sanguinis, quem a patre ducunt, praesumuntur imitatores vestigiorum, et criminum paternorum ut dicatur in d. § filii [sc. C. 9,8,5,1] Rationes tamen adductae in d. § filii videlicet ut in odium patris pereant filii, et ne filii imitentur paterna vestigia.¹⁰⁶

The restrictive measures described in the literature and pertaining to the offspring of the guilty of lese-majesty do not differ much from those listed in the *lex Quisquis*: sons lose their right to inherit both from the relatives and unrelated persons; they suffer from lifelong infamy and are denied the right to run for offices; daughters only qualify to the Falcidian quarter of the

¹⁰⁵ Op. cit., p. 141 v. See also Deciani, T. Op. cit., p. 176: "... et Tul. in Epistola ad Brutum inquit, non me fugit, quam sit acerbum parentum scelera filiorum poenis lui, sed tamen hoc praeclare legibus comparatum esse videtur, ut charitas liberorum amiciores parentes Reipublicae redderet. ... illa Tull. supra recitata efficacissima est, ut scilicet parentes scientes per leges filios etiam puniendos abstineant a tali delicto pietate paterna absterriti, ne filii etiam insontes ob eius delictum puniantur, pater enim terretur magis propter filii poenam."

¹⁰⁶ Op. cit., p. 176 v. The author took advantage of the quoted argument to answer the question of whether an adopted son should be exposed to the penalties provided for in the *lex Quisquis*: if he is neither of his father's blood nor inherits his personality traits, thus penalizing him is pointless if the penalty is to prevent the continuation of the parent's unlawful conduct (ibidem, p. 175).

parent's assets.¹⁰⁷ Differences of opinion only appear among the authors in minor matters, such as whether the penalties for the sons of a condemned father also affect the descendants of further degrees; or whether the regulations governing these measures apply only to legitimate children or also illegitimate ones.¹⁰⁸ Finally, based on the Roman law standards, the doctrine supplied answers to questions that arose in the contemporary practice, for example, whether the penalties were to be meted out against the son if the offence of lese-majesty had been committed by the mother. And although - as noted by T. Deciani - the probability of committing such a crime by a woman is much smaller than by a man,¹⁰⁹ still such cases do occur.¹¹⁰ The opinions on this issue revealed in the doctrine were collected by H. Gigas.¹¹¹ Some of the authors subscribe to the opinion that the son is not responsible for his mother's crime as criminal legislation should not address cases that it does not explicitly cover, which is justified by Hermogenian in D. 48,19,42. Indeed, a woman guilty of lese-majesty is punished under the *lex Quisquis* (for the first word of the statute denotes any offender, regardless of the sex) on a par with a man, this law does not, however, apply in the part concerning the penalization of sons; since - as can be inferred from Ulpian D. 50,6,1 - all privileges are accorded to the male descendants of the one who originally enjoyed them, these penalties should not be extended to affect these descendants. The proponents of the opposite view propose that - according to Iavolenus D. 45,1,108 - the *ratio legis* of restrictive measures against sons is the same as for an offence perpetrated either by the father or the mother, therefore, the same rules should be followed in either case ("quia eadem ratio est in matre quae in patre et ubi eadem est ratio, ibidem idem ius esse debet"). Contrary to the commonly shared opinion that sons bear a closer resemblance to their fathers than to their mothers ("filius patri non matri adsimilatur, iuxta illud, Saepe solet filius similis esse patri"), more than that, the son and father (not mother) are even considered one person (as inferred from C. 47,20 and C. 6,26,11), the proponents of penalization of

¹⁰⁷ Cf. e.g. Gigas, H. Op. cit., p. 141f; Damhouder, J. Op. cit., p. 150; Bocer, H. *Tractatus...* p. 190f; Laudensis, M. "Tractatus de crimine laesae maiestatis." In *Tractatus Universi Iuris*. Vol. 11, Venetiis 1584, p. 32 v.; Deciani, T. Op. cit., p. 174 v. f; Aretinus, A. *Commentaria seu Lectura super quatuor Institutionum Iustinianarum libris*. Lugduni 1545, p. 128.

¹⁰⁸ A review of the divergent authors' opinions in both of these issues (which are really only examples of contentious issues) is to be found in, for example, Deciani, T. Op. cit., p. 175 v.

¹⁰⁹ "Foeminae quoque possunt hoc crimen committere, licet minus sint audaces quam viri" (op. cit., p. 116 v.).

¹¹⁰ Gigas, H. Op. cit., pp. 155-155 v.

¹¹¹ Op. cit., pp. 155-156.

sons refer it to the analogy between the offences of lese-majesty and heresy. Since the latter act is punishable if perpetrated by the sons of a woman-heretic (C. 5,4,6), the same principle should be adhered to - according to these authors - in the case of *crimen maiestatis*.¹¹²

Little space was devoted by the authors to infamy, being regarded as a penalty imposed - under the *lex Quisquis* - on the sons of the person condemned for lese-majesty rather than on that person himself. Meanwhile, as pointed out by T. Deciani, this punishment was still applied and was comparable to the death penalty in terms of severity, therefore it was sometimes exacted as an independent penalty.¹¹³ As one of the measurable manifestations of infamy the author pointed to, after drawing a conclusion from the Roman law sources (D. 50,3 *De albo scribendo*, and C. 2,15 and C. 2,16), a shameful punishment of placing the condemned person's image in a public place, hanged upside down and bearing an appropriate inscription. The removal or destruction of the image was subject to a pecuniary penalty (Ulpian D. 2,1,7).¹¹⁴

The Roman law regulations also served to indicate the rules of procedure in lese-majesty cases that proved specific and up-to-date also in modern times. Such persons can both bring an accusation and testify who are denied this right in matters involving other offences;¹¹⁵ the accused may suffer torture, regardless of his social status and offices held;¹¹⁶ and in the case of *perduellio*, the procedure does not expire upon the death of the accused but is continued "*contra memoriam defuncti*" to affect his heirs, and can even be initiated after his death.¹¹⁷ The doctrine allotted much space to one of the consequences of posthumous conviction - *damnatio memoriae*, which H. Bocer defined as: "*Damnare autem memoriam rei perduellionis*

¹¹² H. Gigas himself challenged the idea of using the analogy of heresy and lese-majesty and rather inclined towards the former of the presented views.

¹¹³ "Et ideo multi Principes in rebelles sola poena infamiam inventi contenti fuerunt, uti quae gravior sit plerumque morte ipsa" (op. cit., p. 169). See also: Laudensis, M. Op. cit., p. 23 v.; Gigas, H. Op. cit., pp. 177-177 v.

¹¹⁴ Op. cit., p. 169. Cf. Laudensis, M. Op. cit., p. 23 v.; Gigas, H. Op. cit., p. 177 v.

¹¹⁵ Cf. e.g. Gigas, H. Op. cit. p. 78f, 95 If; Clarus, J. Op. cit., p. 81; Damhouder, J. Op. cit., p. 150; Deciani, T. Op. cit., p. 164 v.-165 v.; Bossi, E. Op. cit., p. 95 v.; Bocer, H. *Tractatus...* p. 220. The authors relied in particular on: Modestinus D. 48,4,7; C. 9,1,20; Papinianus D. 48,4,8; Marcellinus D. 11,7,35. Moreover, the authors advanced a thesis that the sources of Roman law concerning accusers also apply to witnesses.

¹¹⁶ Cf. e.g. Gigas, H. Op. cit., p. 115f; Deciani, T. Op. cit., p. 165 v.; Clarus, J. Op. cit., p. 81. The authors referred to C. C. 9,5,3-4.

¹¹⁷ Cf. e.g. Aretinus, A. Op. cit., p. 328 v.; Bocer, H. *Tractatus...* p. 189; Bossi, E. Op. cit., p. 98 v.-99.

est post illius etiam mortem bona eius a successoribus exacta per sententiam judicalem publicare, sive fisco vindicare, uti arguit l. ult. ff. De leg. Iul. maiest..."¹¹⁸ The main effect of condemnation of memory is therefore condemn confiscation of the offender's property as follows from Ulpian D. 48,4,11.¹¹⁹ The authors did not link *damnatio memoriae* to the demolition of the wrongdoer's home or the destruction of his insignia and weapons; these were - in their opinion - the consequences of convicting the offender while he was still alive.¹²⁰

Section 20 The European Background to the Adoption of *Crimen Maiestatis* in Poland

Even a cursory analysis of the Western European legal literature reveals a tremendous influence of Roman law on the author's views regarding *crimen laesae maiestatis*. What is more, it is clearly observable that the authors treated the Roman law regulations on this offence as still valid (even in countries where there was no reception of Roman law), or, in any event, as a source of inspiration for legal solutions tailored to their contemporary reality. Based on the titles from the *Digest* and the Code of Justinian (*ad legem Iuliam maiestatis*), the doctrine furnished both the very concept of the offence of lese-majesty as well as the catalogue of acts falling within the scope of this concept. Roman law also justified the penalization of stages of commission of the offence and its phenomenal forms, the principle of liability of the perpetrator's family, the distinctive features of the process in cases involving *maiestas* and at least some restrictive measures. Because if, for example, the death penalty was legitimized by the severity of the offence and it would be difficult to insist on its Roman origin, it was the *lex Quisquis* which provided the legal basis for the penalty of confiscation of property or infamy.

The influence of Roman law on the opinions prevailing in the doctrine led to their harmonization: although penned over several centuries and in different countries, the legal works reveal a striking resemblance. Differences were usually secondary and depended on the legal traditions domi-

¹¹⁸ *Tractatus*... pp. 147-148.

¹¹⁹ Gigas, H. Op. cit., p. 71 v.-72; Deciani, T. Op. cit., p. 183 v.

¹²⁰ Gigas, H. Op. cit., p. 139; Deciani, T. Op. cit., p. 184.

nating in the country; an example of this is a variety of forms of capital punishment described in the literature exacted on the perpetrators of *crimen laesae maiestatis*, while the mere fact of imposing this penalty, especially for the gravest forms of this crime, e.g. an assassination attempt on the ruler's life, did not raise any doubts. When exploring the offence of lese-majesty, the authors primarily examined the Roman law standards and referred to national laws and the local practice as complementary to the overall discussion.

The European legal doctrine creating - along with the norms of Roman law adopted in the First German Reich and canon law - the common legal order (*ius commune*) of Christian Europe¹²¹ also penetrated Poland; next chapter attempts to expose its impact on the law and doctrine of old Poland in the modern era (from the 16th to 18th century).

¹²¹ Cf. e.g. Kuryłowicz, M. „Prawo rzymskie jako fundament europejskiej kultury prawnej.” *Zeszyty Prawnicze UKSW* 1(2002), p. 9f; Wołodkiewicz, W. *Europa i prawo rzymskie. Szkice z historii europejskiej kultury prawnej*. Warszawa 2009, p. 57f, including the references.

CHAPTER III

THE INFLUENCE OF ROMAN LAW ON THE CONCEPT OF THE CRIME OF LESE-MAJESTY IN THE POLISH LEGAL SOURCES AND THE DOCTRINE

Section 21 The Polish Legal Sources on the Crime of Lese-Majesty

Until the early 16th century, the crime of lese-majesty in Poland had remained in the domain of customary law, and the very few rules of made law (positive law) only dealt with some selected issues related to it, such as the legal classification of individual acts or punishments envisaged for the crime.¹ Likewise, parliamentary legislation did not offer an exhaustive picture of both the forms of action and penalties. For instance, a constitution of 1510, contrary to what the title might imply,² only determined the object

¹ An example of an act classified - at least in the opinion of jurists - as a crime of lese-majesty was an injury caused in the presence of the king ("De eo qui coram Regia Maiestate aliquem vulneraverit, vel gladium extraxerit." In *Volumina Legum*. Vol. 1, Petersburg 1859, p. 23. For more, see Handelsman, M. *Prawo karne w Statutach Kazimierza Wielkiego*. Warszawa 1909, p. 141; Lityński, A. „Prawnokarna ochrona sądów szlacheckich w Polsce XVI – XVIII w.” *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji* 15(1981), p. 231). In addition, certain acts were seen under positive law as parallel to lese-majesty, for example, pursuant to the Edict of Wieluń of Władysław Jagiełło of 1424, the profession of Hussitism ("Vladislaus Jagello contra haereticos et fautores eium in Wieluń constituit." In *Volumina Legum*. Vol. 1, p. 38); a document issued in 1478 by Kazimierz Jagiellończyk and passed at the Diet in Piotrków equated - at least in terms of penalties - the sale or pledge of Sandomierz *starostwo* (the office of *starost*) with the violation of majesty ("Litera obligatoria in qua D. Rex Poloniae promittit terram Sandomiriae se nunquam cuipiam obligaturum." In *Volumina Legum*. Vol. 1, p. 107).

² "Poena statuta contra violatores consiliariorum et Nuntiorum, ad conventus publicos proficiscentium." In *Volumina Legum*. Vol. 1, p. 169.

of protection under criminal law (besides the king, parliamentary deputies, king's envoys, judges and royal counsellors) and the legal classification of the offence.³ According to the wording of the regulation, all forms of assault on a person subject to protection were regarded as an offence. The most important decision of another constitution of 1539 was to reduce the object of protection under criminal law to the monarch, which meant the separation of treason in a negative way.⁴ The aforesaid decisions were reiterated in the next constitution of 1588 which additionally defined the elementary forms of the crime in question and introduced some procedural changes (the most noteworthy being the exclusion of the king from the participation in the proceedings before the Diet Tribunal). Characteristically, none of the three discussed constitutions laid down any penalties, which, consequently, remained in the domain of customary law. It was only the Law on Diet Tribunal of 1791 that explicitly defined the forms of the crime and relevant restrictive measures.⁵

Lese-majesty was more fully addressed in the Lithuanian Statutes. When examining the standards of criminal law regarding lese-majesty, consideration should be given to the statutory law of the Grand Duchy of Lithuania, especially the Third Statute which entered into force in 1588 and was published in the same year in the Ruthenian language and later, in 1614, in Polish. The Polish translation of the Third Statute, reprinted and supplemented several times by the provisions of the general legislative assemblies (so-called "diets") of the Commonwealth of the Two Nations, not only regulated the legal life of the lands of Lithuania and Belarus, but was also used in the legal practice in the Ruthenian and Polish regions of the Crown of the Kingdom of Poland.⁶ The Third Statute, as pointed out by J. Makarewicz,

³ "Statuimus et decernimus, ut quicumque Praelatos, Barones, et Consiliarios Regni status cujuslibet, et item Nuntios, sive nostros, sive Terrestres ... quoquo modo invadere et violare ausus fuerit, crimine laesae majestatis reus publicabitur. Item vero de his, qui ... Commissarios, Judices, vel Officiales ... violare praesumpserit, taliter erit intelligendum, ut ejusdem criminis laesae Majestatis obnoxii judicentur."

⁴ "Crimen laesae Majestatis (incip.)." In *Volumina Legum*. Vol. 1, p. 270.

⁵ "Sądy seymowe." In *Volumina Legum*. Vol. 9, Kraków 1889, p. 246.

⁶ Bardach, J. „Statuty litewskie w Koronie Królestwa Polskiego.” *Studia z Dziejów Państwa i Prawa Polskiego* 4(1999), p. 18. The same author devoted much attention to the influence of Roman law on the Lithuanian Statutes: *O dawnej i niedawnej Litwie*. Poznań 1988, p. 34f; „Uczzone prawo w II Statucie litewskim.” In *1566 Metą Antrasis Lietuvos Statutas*. Łazutka, S., ed., Wilno 1993, p. 15f; „Geneza romanizacji II Statutu Litewskiego.” In *Dawne prawo i myśl prawnicza. Prace historyczno – prawne poświęcone pamięci Wojciecha Marii Bartla*. Malec, J., Uruszczyk, W., eds., Kraków 1995, p. 191f; „Wpływ prawa rzymskiego na Statuty litewskie oraz ich oddziaływanie na kraje sąsiednie.” *Lithuania* 8(1997), fasc. 1-2, p. 12f.

was referred to by the contemporary Polish legal literature as a source of Polish law or at least as a codification intended to fill in existing deficiencies of Polish law;⁷ from the second half of the 17th century, it enjoyed the status of subsidiary law in the Crown because, according to Teodor Ostrowski, “as a municipal law of the province of a single nation, it always proves useful and respectable in our courts if our law no longer suffices.”⁸ As regards *crimen laesae maiestatis*, which was not precisely regulated in the Crown’s law, the same author recommended the administration of the penalties provided for in the Third Statute.⁹ This recommendation seems even more legitimate considering the fact that the Lithuanian Statutes refined, more profoundly than the sources of Polish law, the basic forms of this crime and envisaged punishments; finally, in the case of deficits in law, the Statute authorized that other Christian laws could be employed (including Roman law, common to all Christianity and of highest esteem among the Christian laws).¹⁰

It is worth noting that the crime of lese-majesty was taken into account in the last codification endeavours of the Enlightenment. *Zbiór praw sądowych* [Collection of Judicial Laws] by Andrzej Zamoyski of 1776, Article XLVIII, Book II “About the Offence of Violated Majesty et Perduellionis” contained both a list of forms of the offence and different penalties (contingent upon

⁷ Makarewicz, J. *Polskie prawo karne. Część ogólna*. Lwów 1919, p. 15.

⁸ Op. cit., vol. 1, Warszawa 1787, p. 3; cf. Bardach, J. *Statuty litewskie a prawo rzymskie*. Warszawa 1999, p. 92. Already over a dozen years earlier, in the lawsuit against the perpetrators of the failed kidnapping of King Stanisław August, the prosecutor, Jan Nepomucen Słomiński invoked “national law, the constitution of 1588, and clearly the Lithuanian Statute, Chapter 1, Article 3;” similarly, another prosecutor, Antoni Rogalski, citing the Crown legislation, stated that “the Statute of the Lithuanian nation is in total agreement with the law of the Crown as regards the circumstances” (Ostrożyński, W. *Sprawa zamachu na Stanisława Augusta z 3 listopada 1771 roku przed sądem sejmowym*. Lwów 1891, pp. 91, 133–138; cf. Bardach, J. *Statuty litewskie a prawo...* pp. 93). In its judgement however, the Diet tribunal referred to the constitution of the Crown of 1588, which testifies to Lithuanian law being of subsidiary nature and employed only in the absence of an adequate regulation in the law of the Crown.

⁹ Ostrowski, T. Op. cit. Vol. 1, p. 299. Cf. Bardach, J. *Statuty litewskie a prawo...* pp. 93. The author considers J. Makarewicz’s (among others) view too provocative (op. cit., p. 18) in claiming that supposedly in the second half of the 18th century a shared conviction was held that the Statute in the Crown was not only subsidiary, but actually equal to Polish law. According to J. Bardach, the Statute of 1588 remained an auxiliary law, but its role was significant due to the missing codification of Polish land law and ambiguities and gaps in many of its areas.

¹⁰ “...Where the Statute proves deficient, then the court, in order to be closer to justice and following its conscience and the example of other Christian laws, is supposed to proceed accordingly and decide on the matter” (Chapter IV, Article 54); see Bardach, J. *Statuty litewskie a prawo...* pp. 83–84.

the degree of involvement in the crime and the degree of guilt), as well as the most important procedural rules. The outcome of another attempt, namely the Code of Stanisław August, failed to provide a comprehensive regulation of the offence in question - it was merely a compilation of brief, miscellaneous remarks from the members of the deputation (a codification committee) and persons submitting proposals. Józef Morawski's project only covers a range of persons covered by special legal protection and some examples of offences qualified as lese-majesty, yet without the accompanying penalties.¹¹ Although both attempts never gained a broader acceptance and did lay the foundations for any law, they constitute a valuable material for research on the history of Polish legal culture of the turn of the 18th century.¹²

Section 22 Polish Legal Literature from the 16th to the 18th Century

Given the scarce sources of Polish positive law addressing lese-majesty, the offence was discussed only in the doctrine which was substantially influenced by foreign literature mainly on *ius commune*. The inadequacies of made law on this matter was even observed by the representatives of the doctrine;¹³ the anonymous author of *Sprawa między Księciem Adamem Czartoryskim... a Janem Komarzewskim* [A Case between Prince Adam Czartoryski... and Jan Komarzewski] explains the deficiencies of Polish criminal law by a limited number of cases of such a serious crime on the one hand (hence, there is no need to create extensive legal standards if their application is debatable to say the least) and by the practice of having recourse, if need be, to other legal systems on the other.¹⁴

¹¹ „Myśli do prospektu Kodeksu.” In *Kodeks Stanisława Augusta. Zbiór dokumentów*. Borowski, S., ed., Warszawa 1938, pp. 60-61. Other attempts were mostly confined to the classification of offences, for example, J. Szymanowski included lese-majesty among offences against the government (similarly in the Law of Diet Tribunals of 1791).

¹² Cf. Jakubowski, I. „Prawo rzymskie w projektach kodyfikacyjnych polskiego Oświecenia.” *Acta Universitatis Lodzianensis. Folia Iuridica* 15(1984), Łódź, p. 39.

¹³ Cf. e.g. Ostrowski, T. Op. cit. Vol. 1, p. 319.

¹⁴ *Sprawa między Księciem Adamem Czartoryskim generałem Ziem Podolskich oskarżającym a Janem Komarzewskim Generałem Majorem przy boku J.K. Mci, i Franciszkiem Ryxem Starostą Piaszczyńskim Kamerdynerem Królewskim, oskarżonemi jakoby o zamysł strucia tego Księcia*. Np 1785, pp. 169-170.

Attention should be mainly drawn to the monographs on the discussed crime produced in Poland ever since the Renaissance. One of such works was authored by the Spaniard, probably of Seville, Garsias Quadros. He was an *utriusque iuris* doctor and professor of the University of Bologna. In 1505 he joined in the Polish dispute with the Teutonic Knights as an adviser; in the same year, he arrived in Poland and at the end of 1510 was appointed professor of canon law at the University of Kraków (*lector iuris pontificii ordinarius*), where he lectured until his death in 1518.¹⁵ Most probably, his first assignment was to teach the rules of law; parallel to his regular programme, he lectured on the problems of affinity and consanguinity.¹⁶ One manuscript has been preserved out of this scientific legacy, namely *Tractatus de crimine laesae maiestatis* (55 folios; National Library in Warsaw, ref. no. BOZ nr 112). A dedication inside suggests that Quadros wrote it during his stay at the court of the bishop of Płock, Erazm Ciołek, in the years 1506-1510.

The treatise was briefly synthesized by W. Uruszczak.¹⁷ It is written following the scholastic method; it is composed of seven main parts (*partes principales*) which consecutively address the following: 1) the nature of the offence of lese-majesty (*quid sit laesae maiestatis crimen*), 2) the name of the offence (*unde dicatur*), 3) the object of the offence (*contra quos committatur*), 4) the perpetrator of the offence (*a quibus perpetrari posset*), 5) the different factual circumstances classified as lese-majesty (*in quibus committatur casibus*), 6) the penalties for specific factual circumstances involving the offence (*quae sit huius criminis poena*), 7) the characteristics of the offence as opposed to other offences (*in quo praefatum crimen ab aliis distinguatur*). The author's basic sources are mainly legal texts included later in the *Corpus Iuris Civilis* (the *Digest*, the *Codex* with *Libri Tres*) and the *Corpus Iuris Canonici* (*Decretum Gratiani*, the *Decretals of Gregory IX*, the *Liber Sextus*, the *Clementines*). The author, however, rarely referred directly to the sources. More frequently, he relied on glosses and other doctrinal studies by, e.g. Oldradus (d. 1335), Bartolus (d. 1357), Baldus (d. 1400), Angelus de Aretino (d. 1469), Martinus Laudensis (d. after 1450). As highlighted by W. Uruszczak, Garsius' treatise reveals the doctrinal views on *crimen laesae maiestatis* in the form in which the offence had developed until the late Middle Ages; still, in several cases, the author adopted his own stance, set in opposition to the established claims of the 14th and 15th century jurists. He did not follow any ready-

¹⁵ Uruszczak, W. „Zapomniany prawnik hiszpański Garsias Quadros z Sewilli.” *Odrodzenie i Reformacja w Polsce* 22(1977), p. 65f.

¹⁶ G. Quadros penned the work *Lecturae arborum consanguinitatis et affinitatis collectae*. Kraków 1522.

¹⁷ Uruszczak, W. Op. cit., p. 64f.

made patterns; his treatise is basically the first such a definitive and all-embracing study on *de crimine laesae maiestatis*. For neither Bartolus' commentaries nor Martinus Laudensis' treatise *De crimine laesae maiestatis* should be looked upon as profound studies on the subject, the latter being merely a free collection of the key legal principles with respect to lese-majesty. Quadros' output is well ahead the works of the well-known 16th century jurists writing about the violation of majesty: H. Gigas, E. Bossi or J. Clarus. Many years of author's affiliation with Poland and the time of the work's production make Quadros a representative of Polish legal literature.

The year 1605 in Mainz saw the publication of a dissertation by Jan Kaszyc entitled, *Assertiones ex utroque iure de crimine laesae maiestatis*. It numbered 27 small-format pages; the author divided it into six chapters made up of short theses. Speaking of the forms of the crime, Kaszyc proposed that the distinction be made between the violation of the divine majesty and that of earthly rulers. The latter was discussed in only one and final part of his work and occurred with 20 theses (out of a total of 100). His elaboration was marked with brevity and almost completely disregarded procedural law. The author relied on Roman and canon law and failed to refer to Polish affairs. He mainly used the works by Damhouder and Menochius.¹⁸ Kaszyc's contribution is evaluated in the literature as being too vague, and its author did not even endeavour to perform an in-depth analysis of the problem;¹⁹ still, it must be borne in mind that - as can be inferred from the dedication to Adam Żółkiewski - Kaszyc wrote his booklet as a freshman law student at the University of Mainz ("Ego in iisdem nationibus [sc. in Germania]... primum nimirum in studiis Iurisprudentiae, disputationis certamen, auspicato inchoaturus"). This explains both the relatively modest level of the work containing theses intended for public defence (a popular form of examination) and the lack of references to Poland, as the theses were supposed to be dovetailed with to the legal programme, based on Roman law (received in Germany) and canon law.

Noteworthy is a dissertation *De foemina criminis laesae maiestatis rea* by Samuel Huwaert, published in Gdańsk in 1732 and rather obscure in Polish legal literature.²⁰ The front page reads that the author was a student of an academic secondary school in Gdańsk, and his work was written for the purpose of public defence as part of graduation. It contains 50 theses. The

¹⁸ Menochius, J. *De arbitrariis iudicum quaestionibus et causis*. Venetiis 1575.

¹⁹ Salmonowicz, S. „Franciszek Minocki (1731-1784) jako pisarz prawa karnego.” In *Miscellanea iuridica złożone w darze Karolowi Koranyiemu*, Warszawa 1981, pp. 141-142.

²⁰ Polish Academy of Sciences Library in Gdańsk, ref. no. E XXXIII 27.

author began with the explanation of the term *maiestas* in ancient Rome and in the works of modern authors and moved on to the elucidation of the concept of lese-majesty, focusing almost exclusively on the image of rulers' majesty (*crimen laesae maiestatis humanae*); he thought of *perduellio* as a crime of a special kind, which was consistent with its scope in antiquity. Following the considerations as to the form, the object of the crime and the perpetrator, in thesis XV the author went on to the fundamental issue of his dissertation, that is, the participation of women in the commission of lese-majesty offences. He embarked upon a discussion of whether a woman can be the perpetrator of this crime (his reflection was illustrated by numerous examples from the Scriptures up to the contemporary sources), and, after an affirmative answer, he enumerated the varieties of lese-majesty that are most frequently committed by females. In matters of procedure (for example, capacity to bring an accusation and to be a witness, the level of penalty), the author repeated the general theses derived from the European science, apparently acknowledging that gender of the accused is negligible. S. Huwaert, like his predecessors, omitted to describe the Polish legal relationships, but relied on the examples and views taken from foreign literature; he alluded to, for example: B. Carpzov, J. Clarus, J. Damhouder, S. Stryk and P. Farinacius.

Foreign literature was also lavishly cited by the Rev. Franciszek Minocki, author of *Dissertatio Canonico - civilis de crimine laesae maiestatis* (Poznań 1775); yet, unlike his predecessors, he also explored Polish regulations. It was undoubtedly influenced by the fact that the work was penned in connection with the attempt of the Bar Confederates to kidnap King Stanisław August Poniatowski, who was devoted a short text on the reverse side of the title page. The author was a graduate and professor at the University of Kraków and was conferred the title of doctor of both laws owing to the work in question. The dissertation was divided into *argumenta*, whose titles were in the form of questions, and *resolutiones*, i.e. answers to the title questions.

S. Salmonowicz attached much attention to this treatise, yet concluded that "it is anything but an outstanding work of law, neither because of an independent author's views, nor because of its progressive nature," and Minocki himself "in his mentality and education remained in the orbit of Saxon times...His works reveal a scholastic approach in the manner of lecturing, reasoning, and style. He apparently lacked contact with the new European trends." According to S. Salmonowicz, Minocki's backwardness is most conspicuous in his views on punishments for the crime of lese-majesty: Minocki approaches the types of sanctions and their purpose of gen-

eral prevention under a strong influence the proponent of severe restrictive measures, the penal theorist Benedict Carpzov; he is also not at all dubious about the purposefulness of torture, while, over some past decades, the European science of criminal law had been veering towards the humanization of penalties.²¹ Nevertheless, the author's views were shared by many of his contemporaries, both Western and domestic. Besides Carpzov's output, the author relied on the works of such representatives of the European legal literature as: T. Deciani, P. Farinaccius, H. Gigas, J. Menochius, J. Clarus (whose works are often regarded as the most remarkable development of the Italian school of criminal law), A. Fachineus, A. Tiraquellus, A. Gomez, J.B. Diaz (Lugo), F. Zabarella and others.

The crime of lese-majesty was investigated by the authors of the works of more general legal character, including private codification endeavours, arising in connection with compelling, especially in the 16th century, codification desiderata,²² in particular, the attempts discussed herein deserve a brief overview. The most important of such projects was an extensive, Roman law-driven work of Jakub Przyłuski (ca. 1512-1554), municipal writer of Przemyśl and next a land judge, *Leges seu statuta ac privilegia Regni Poloniae* (1553), which was the first printed systematic framework of Polish law. In his division of material into six books, the author relied on the Roman systematics (*personae - res - actiones*); yet, while in Roman law this systematics was applied to private law, Przyłuski employed it to the entire law, including public one. The work covered the whole of land legislation, customary land law, and few precedents in court judgements. The author did not confine himself to the collating of texts of laws (borrowed not only from printed editions but also from manuscripts), but preceded the books and constituent chapters by introductions (*praefationes*), and added commen-

²¹ Op. cit., pp. 139, 142. Closing his evaluation, S. Salmonowicz concludes: "Undoubtedly, Franciszek Minocki, raised back in the dark Saxon times, with limited exposure to new trends, did not become a scholar who represented a point of view characteristic of the Polish Enlightenment... He was one of the most outstanding Polish lawyers of the mid-18th century but belonged to the old school. He combined the work of a practitioner and theorist, teacher and Church official, which benefited his literary productions... His dissertation about the crime of lese-majesty is nothing but a comparative commentary on positive feudal law governing this matter; indeed, it is a commentary displaying top erudition and relatively high technical level, still no more but a commentary. It fails to furnish any *de lege ferenda* conclusions nor any strong reforming desires (ibidem, pp. 145-146).

²² For more on the codification movement, see Uruszczak, W. *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.* Warszawa 1979, passim; the influence of Roman law over codification attempts were discussed in Sondel, J. „Prawo rzymskie jako podstawa projektów kodyfikacyjnych w dawnej Polsce.” *Zeszyty Prawnicze UKSW* 1(2001), p. 47ff.

taries to some parts of the laws containing information on the institutions in other legal systems and his own views and deliberations. These introductions and commentaries testify to the author's familiarity with Roman law, which he quoted both directly (after the *Corpus Iuris Civilis*) and from other studies (Angelus Aretinus, Melchior Kling, Konrad Lagus). Although Przyłuski's work could - due to its encyclopaedic nature - lay the foundations for a law codification, it was merely of practical significance with its providing of a systematized picture of Polish law.²³

From the codification movement also surfaced the work of Jan Herburt (ca. 1524-1577), chamberlain of Przemyśl and later castellan of Sanok, entitled *Statuta regni Poloniae in ordinem alphabeti digesta*, first published in 1563. The readership of this compendium of Polish law determined by its layout, since laws were divided into sections according to the contents and then sorted alphabetically. Because of an easy handling of the accumulated material, *Statuta*, despite the lack of parliamentary approval, gained considerable popularity and was repeatedly republished until the mid-18th century. Herburt took advantage of J. Łaski's collection, some later editions of the constitutions, J. Przyłuski's work and also referred to the legal practice. Similarly, another Herburt's work was denied the official approval, though commissioned by the parliament, and was published privately in 1570; it was the *Statuta i przywileje koronne z łacińskiego języka na polski przełożone, nowym porządkiem zebrane i spisane* [The Statutes and Crown Privileges Translated from Latin into Polish, Compiled and Written Down in a New Manner]. In this three-book work, the author employed a systematic plan.²⁴

In connection with the correction of laws ordered by M. Firlej, the year 1660 saw the compilation and publication of the *Statuta, prawa i konstytuc-*

²³ Kutrzeba, S. *Historia źródeł dawnego prawa polskiego*. Vol. 1, Lwów 1925, pp. 252-254; Kowalska, H. „Przyłuski Jakub.” In *Polski Słownik Biograficzny*. Vol. 29, Wrocław 1986, pp. 208-209; Płaza, S. *Historia prawa w Polsce na tle porównawczym*. Vol. 1. X-XVIII w. Kraków 1997, p. 142. R. Taubenschlag, noting some awkwardness and lack of consistency in Przyłuski's using of the Roman systematics, made a reservation that such defects should be looked upon from the perspective of author's time when the system imposed by the *Institutions* was to be substituted by something superior. Although Przyłuski failed to complete this task, and his attempt to modify the systematics of the *Institutions* are juxtaposed with attempts of his contemporaries, he did not content himself with just using the systematics but filled his work with many Roman law-oriented disquisitions, guided by practical considerations: he wanted the rules of Roman law to take root in Poland, at least where national law had proven deficient and needed supplementation (“Jakób Przyłuski, polski romanista XVI w.” *Rozprawy Akademii Umiejętności. Wydział Historyczno-Filozoficzny*. Series II, 36(1918), pp. 244-245, 276).

²⁴ Kutrzeba, S. *Op. cit.*, pp. 257-258; Żelewski, R. „Herburt Jan.” In *Polski Słownik Biograficzny*. Vol. 9, Wrocław 1960-1961, pp. 441-442; Płaza, S. *Op. cit.*, p. 142.

je koronne [Statutes, Laws and Crown Constitutions] by Jan Januszowski (1550-1613), archdeacon of Nowy Sącz. In ten books, the author accumulated entire Polish law - public and private - based on Łaski, both collections by Herburt and constitutional prints. Legislative texts were given in Latin (which was among the most serious objections against this study), and at times in Polish (translated by Herburt). Also this work, rejected by the parliament in 1601, did not underpin the long-awaited codification.²⁵

Both Herburt's works and Januszowski's study (besides Łaski's statute and constitutional publications) were used by Teodor Zawacki (d. 1637) in his study entitled *Compendium to jest krótkie zebranie wszystkich praw, statutów i konstytucji koronnych aż do r. 1613 inclusive* [Compendium is a Concise Collection of All Laws, Statutes and Crown Constitutions until 1613 Inclusive] published in 1614.

The first comprehensive work on Polish law was the 1613 *Institutionum iuris Regni Poloniae libri IV* by Tomasz Drezner (1560-1615), professor of the Academy of Zamość. The study resembles a textbook as its systematics was borrowed from Justinian's *Institutions* (with slight modifications). The issues of public law, including the offence of lese-majesty, are covered in Book I.²⁶

Among the most pivotal works of a general character, *Ius Regni Poloniae* is worth mentioning, published in the years 1699-1702 and authored by Mikołaj Zalasowski (1631-1703), professor at Lubrański College in Poznań. This work is a synthetic approach to the various divisions of Polish land law (exclusive of procedural law) and foreign laws. Polish law clearly prevails when political law is addressed and the remarks on foreign legal systems are scarce; nevertheless, the work mainly revolved around foreign laws with the Roman law standards being covered most exhaustively. The author gathered the information on Polish law either directly from the legal sources (land privileges, royal statutes and parliamentary constitutions) and from other studies, that is, collections and legal literature (e.g. J. Łaski, J. Przyłuski, J. Herburt, S. Sarnicki,²⁷ J. Januszowski, T. Drezner, T. Zawacki,

²⁵ Kutrzeba, S. Op. cit., p. 260; Kawecka-Gryczowa, A. „Januszowski Jan.” In *Polski Słownik Biograficzny*. Vol. 10, Wrocław 1962, pp. 599-600.

²⁶ For more, see Bukowska, K. *Tomasz Drezner, polski romanista XVII wieku i jego znaczenie dla nauki prawa w Polsce*. Warszawa 1960, p. 83f.

²⁷ Sarnicki, S. *Statuta i metryka przywilejów koronnych*. Kraków 1594. This work, one of the codification projects of the time, was presented before the parliament in 1593 but remained only a private collection of the binding law. The first part, referred to as the *statuta*, contained a systematic framework of Polish law (public and private) while the other, the *metryka*, listed no

and A. Lipski²⁸). The author also demonstrated an impressive knowledge of the Western legal literature but refused to controvert it and limited himself to presenting the views of individual authors, which is counted among the shortcomings of his work.²⁹

Finally, an exhaustive study on the law applied in Polish law courts was a two-volume *Prawo cywilne narodu polskiego* [Civil Law of the Polish People] by the Rev. Teodor Ostrowski; it was published twice in 1784 and 1787, and again in the German translation in 1797 (volume 1) and 1802 (volume 2). The author uses the term “civil law” in opposition to political law to refer to private and criminal law, the justice system, the civil process, the criminal process and the bill of exchange process and judicial enforcement. The author does not conceal his attachment to Roman law, which can be seen in the use of the *personae - res - actiones* systematics in relation to private law and in the conviction as to the subsidiary nature of this law Poland-wide.³⁰

longer valid regulations, as well as privileges, the acts of union with Lithuania, legal formulas and examples taken from the court practice. For more, see Kutrzeba, S. Op. cit., pp. 259-260.

²⁸ Andrzej Lipski (1572-1631), Crown Grand Chancellor, bishop of Kraków, is the author of the 1602 dissertation, *Practicarum observationum ex iure civili et saxonico...centuria prima*, supplemented in 1619 by a *Centuria secunda*. The work presents the practice of assessor tribunals; the author advocated the use of Roman law in municipal courts in Poland (for more, see Czapliński, W. “Lipski Andrzej.” In *Polski Słownik Biograficzny*. Vol. 17, Wrocław 1972, p. 415). M. Zalasowski sympathized with Lipski’s views because he was a supporter of the use of Roman law in Polish courts - this is evidenced by the selection of quotations relating to the judicial practice, based at least in part on Roman law, which originate from Lipski’s publication.

²⁹ For more, see Malinowska, J. *Mikołaj Zalasowski, polski prawnik XVII stulecia na tle ówczesnej nauki prawa*. Kraków 1960, p. 47f.

³⁰ Zdrójkowski, Z. *Teodor Ostrowski (1750-1802), pisarz dawnego polskiego prawa sądowego*. Warszawa 1956, passim. In the introduction and after highlighting the advantages and common character of the systematics taken from the *Institutions*, T. Ostrowski pointed to the auxiliary application of the Lithuanian Statutes in Poland, which, in turn, recognized the subsidiary role of Roman law. Ostrowski also acknowledged the impact of this law on the emergence of domestic law (op. cit., vol. 1, pp. 3-4). Ostrowski’s views laid open to criticism which was not always legitimate, for example, Z. Zdrójkowski notes that the Lithuanian Statute is not about Roman but Christian law, which Ostrowski arbitrarily links to Roman law (op. cit, p 207, n. 69). Practically, however, it was that law that might have come into play (for more, see Sondel, *J. Ze studiów nad prawem rzymskim...* P. 80ff.

Section 23 Majesty and the Crime of Lese-Majesty in the Polish Doctrine from the 16th through the 18th Centuries

References made to Roman law and the works of Latin authors are particularly discernible in the definitions of the concept of majesty. The author saw the origin of the Latin term *maiestas* in *magnitudo*, i.e. grandness, eminence, dignity. According to T. Drezner, relying on Cicero (*De oratore* 1), *magnitudo* is the grandeur and authority of the Polish Republic (“*Maiestas est a magnitudine dicta, quae est amplitudo, ac Dignitas Reip*”).³¹ Based on *Partitiones oratoricae* by Cicero, J. Kaszyc described majesty as the grandeur of supreme power (“*Maiestas, quae est, magnitudo quaedam summi imperii*”).³² F. Minocki in exploring the etymology of the term *maiestas* concluded that it implied superiority of one entity over other (“*Maiestas item Maioritate quam quis prae ceteris habet communiter dicta est*”³³) and extensively argued for its double meaning. Majesty can be understood - using Tacitus’ words (*Annales* 2, 72) - as a respectable appearance and manner of expression, also associated with the occupied office or rank (Paulus D. 2,1,9), and as the external splendour (Cicero. *De oratore* 2; Suetonius. *De vita Caesarum: Tiberius* 30). In its proper sense, majesty means the supreme and sustainable power unlimited by laws which befits a sovereign ruler, that is, one who acknowledges no authority over himself but God’s.³⁴ The concept of power so understood (*potestas legibus soluta*) the author explained after Paulus D. 40,5,40,1 and Ulpian D. 24,1,7,8: the one who has the supreme and sovereign power is not governed by statutes because statutes would then have a greater power than his power, and he cannot impose them on himself either.³⁵ Also S. Huwaert drew attention to different definitions of *maiestas*; he maintained that a fragment 1,20 of Velleius Paterculus (*Historiae Romanae*, a characteristic of the son of Scipio the African) demonstrates that majesty is made up of greatness, authority and dignity of a person attributed the them

³¹ Drezner, T. Op. cit., p. 174.

³² Kaszyc, J. Op. cit., p. 1.

³³ Minocki, F. Op. cit., p. A2.

³⁴ “... Majestas dicatur ... summa et perpetua legibusque soluta potestas ... Primum itaque ut Potestas sit summa, ita, ut qui eam penes se habet, sive Imperator sit, sive Rex, sive Princeps, sive libera Respublica, Superiorem neminem in sua ditione agnoscat praeter Deum” (ibidem, s. A v.)

³⁵ “Eo namque ipso, quo quis Summus est, nec Superiorem alium recognoscit, legibus subiectus non est, quae alias superiores essent, aut Summus Princeps eas sibi ipsi imponeret, quod fieri nequit” (ibidem).

— Section 23 Majesty and the Crime of Lese-Majesty in the Polish Doctrine

due to outstanding achievements. *Maiestas* also denotes dignity associated held offices, especially that of the praetor (Paulus D. 2,1,9; Paulus D. 1,1,11), and then with the imperial dignity. Even in modern times - as pointed out by the author - majesty is a quality of an entity holding the supreme and sovereign authority, responsible only before God, and not bound by applicable laws.³⁶

The authors drew a dividing line between the divine and human majesty. The divine majesty involved God's veneration and worship.³⁷ God's majesty is superior to human's, hence the violation of the divine majesty is considered a more serious offence, and its forms are: blasphemy, heresy, apostasy, simony, and divination.³⁸ The human majesty befits in the first place the pope as the Vicar of Christ on earth and exalted over all secular rulers; then the emperor who is the source of justice and the donor of all dignity (C. 1,23,5, C. 9,8,5); next sovereign princes and republics, such as the Venetian Republic, as in ancient Rome before the imperial period where majesty would be the quality awarded to praetors (Paulus D. 1,1,11), the people of Rome and the entire Roman Republic (Ulpian D. 48,4,1,1; Ulpian D. 50,16,15). Ever since emperors took over the power in Rome, along with authority (*imperium*) they had also received *maiestas* (I. 4,18,3, C. 1,14,12).³⁹ Majesty also belongs to independent rulers of individual states, such as the king of Poland who is not subject to the emperor; and the manifestation of his sovereignty are the regalia (e.g. the exclusive right to mint coins, the exercise of jurisdiction over the subjects, the right to collect tribute and taxes).⁴⁰ This attribute is also owed to papal, imperial and royal counsellors and officials (as - as phrased in C. 9,8,5 pr. - the limbs in the state body).⁴¹

Because of the divine origin of royal power, anyone who acts against the ruler, goes against God himself, therefore lese-majesty is the gravest of all crimes.⁴² The ruler is not only the embodiment of God on earth (*animata Dei*

³⁶ Ibidem, pp. 1-3.

³⁷ "Maiestas in prima sua divisione alia Divina est, alia Humana. Divina ad Deum Optimum Maximum Eiusque cultum, seu Divinam Religionem refertur" (ibidem, op. cit., p. A2).

³⁸ "... quod crimen tanto est gravius, quanto maius est, aeternam quam temporalem offendere maiestatem" (Kaszyc, J. Op. cit., p. 1; cf. Minocki, F. Op. cit., p. A2).

³⁹ Kaszyc, J. Op. cit., p. 22.

⁴⁰ Minocki, F. Op. cit., p. A3-A3 v.

⁴¹ Kaszyc, J. Op. cit., p. 22.

⁴² F. Minocki puts it as follows: "... hoc crimen laesae Majestatis omnium delictorum, quae in homines committi possunt, gravissimum est ... Crimen quippe isthoc continet offensionem Dei, Cuius vicem Rex, vel Imperator tenet, Cuiusque potestas a Deo est, ideoque Proditor Principis vel Regis, dicitur Proditor Dei" (op. cit., p. B v.). Cf. Huwaert, S. Op. cit., p. 3: "... qui maiestatem laedere ausus, pessimum omnium peccatorum ... et omnium atrocissimum crimen,

imago), but also the father of the nation and the guarantor of state's security,⁴³ hence, anyone violating his majesty may therefore be called - as proposed by F. Minocki after Ulpianus D. 48,4,1 pr. - a patricide and his deeds seen as sacrilegious.⁴⁴ J. Januszowski, citing the Polish translation of the 1496 Privilege of Nieszawa of King Jan Olbracht, paid attention to the need to ensure respect for the majesty of the monarch by means of laws whose quality mirrors the maturity of the community; however - according to the author - the most desirable guarantee is the ruler's attitude to his subjects.⁴⁵ The 18th-century authors warranted the need for a special legal protection of the king by referring to him as the personification of the nation which trusted him to hold sway over the country. This idea is aptly articulated by T. Ostrowski: "...When today, the monarchical nations have transferred almost all their dignity and power to rulers, any attack attempted on them deserves such punishment as if it violated the community's foundations

a magnitudine et maiestate eius, in quo ea laeditur, laesae maiestatis dictum, committat, cuius ea indoles est, quod ad status publici turbationem faciat, ipsius DEI, cuius Princeps in his terris vicarius est, laesionem contineat"; when justifying his evaluation of the weight of the crime, the author refers to Nov. 22,15,1. Cf. also Pisarski, J.S. *Mówca polski*. Vol. 1, Kalisz 1683, p. 96: "There is a reason to give thanks to Your Majesty, the first after God..." (General Bogusław Leszczyński from Wielkopolska when kissing king's hand during the diet).

⁴³ "Honor Regi debetur quod sit animata Dei imago: timor quod gladium gestet; vectigal quod unus privati oblitus, non unam aliquam partem, sed totam Remp. curet" (Przyłuski, J. Op. cit., p. 18).

⁴⁴ "Continet quoque hoc crimen parricidium, eoque ipso gravius est, quia Rex, vel Imperator dicitur Pater Patriae, hinc moliri quid contra Eundem, est contra Jus quasi naturale, quia Imperator est omnium Pater ... estque sacrilegio proximum" (op. cit., p. B v.-B1). The meaning of the passage from the *Digest* cited by the author (Ulpian D. 48,4,1 pr.: "Proximum sacrilegio crimen est quod maiestatis dicitur") may give rise to doubts. The adjective *proximus* can be understood as "close in meaning" or as "close in time" also in terms of the adopted sequence of discussion. The authors' views on the issue are collated by A. Dębinski (*Sacrilegium...* Pp. 118-120) who concludes that the sentence which, according to the inscription, is a fragment of *De officio proconsulis* by Ulpian, written at the turn of the 2nd century AD, in point of fact comes from a much later period, i.e. from the time of Emperor Constantius II, and was incorporated into the *Digest* by interpolation. In the time of Ulpian (d. AD 228), the term *sacrilegium* meant the theft of *res sacrae*; to consider this offence together with an action against the state security would be pointless. Only in the Late Empire, *sacrilegium* was understood as a lack of proper reverence and respect for the ruler. What follows, it seems that F. Minocki, when repeating the wording of the cited passage of the *Digest*, tried to emphasise the relationship between *crimen laesae maiestatis* and *sacrilegium* in the sense of a lack of reverence for the monarch, reigning by the grace of God; to insult his majesty it therefore acting against religion. See also Nogrady, A. Op. cit., pp. 143-146.

⁴⁵ *Statuta, prawa i konstytucje koronne łacińskie, polskie ...* Kraków 1600, pp. 22-23.

or cardinal laws.”⁴⁶ The legal protection of a monarch stems not only from the concern for the security of the entire state but from the respect that the monarch enjoys in Poland (although it did not always coincide with the ruler’s actual range and position of power). This idea is foregrounded by W. Skrzetuski: “Poles respect an independently elected monarch whose powers are determined by law in the same way as foreign societies respect their hereditary rulers; Poles, and not only them, have the honour to be able to show veneration to their kings and guard the laws, and severely punish those who dare to conspire against the royal majesty because this is mandatory for the security of the throne, the state, the government and citizens’ well-being.”⁴⁷

Section 24 Acts Classified as Lese-Majesty in the Light of the Sources of Law and Doctrine in Old Poland

1. Assassination Attempt on the Monarch and Other Persons under Legal Protection

The first parliamentary constitution for lese-majesty of 1510 demonstrated a broad understanding of the object of protection under criminal law, that is, besides the king, senators, king’s envoys and land deputies (the latter were subject to the legal protection during the session of the general Diet and for four weeks before the session and after it), king’s counsellors, judges and court clerks and commissioners involved in commissioners’ tribunals. It also follows from the royal order of the same year addressed to the *starostas* (Polish for “prefect”, “royal governor;” Lat. *capitaneus*) concerning the implementation of the provisions of the aforesaid constitution.⁴⁸ Also

⁴⁶ Ostrowski, T. Op. cit., p. 316. Likewise, the author of *Sprawa między księciem Adamem Czartoryskim (...) a Janem Komarzewskim* noted that the violation of the ruler’s majesty is, by extension, an insult to the majesty of the people (p. 232).

⁴⁷ Kołłątaj, H. *Prawo polityczne narodu polskiego*. Vol. 1, Warszawa 1782, p. 98.

⁴⁸ “Mandatam ad capitaneos regni de quibusdam articulis constitutionum in conventu generali regni Piotrcoviensis anno 1510 latarum publicandis et exequendis.” In *Corpus Iuris Polonici*. Vol. 3, Cracoviae 1906, p. 118. This order showed a tendency for a broader interpretation, listing all land officials and not only judges as entities entitled to special protection (“qualem-cunque terrestrem officialem officium publicum exercentem”). Cf. Lityński, A. *Przestępstwa polityczne...* p. 20, note 26.

the widespread practice showed that judges had already been provided with protection under criminal law as for the offence of lese-majesty under customary law. In 1507, a Stanisław Rudzki was convicted for perpetrating this sort of crime: in a public road, he assaulted “*manu armata ac violenta*” (along with his complicit - “*cum decem sibi similibus et totidem inferioribus suis coadiutoribus*”) and killed a municipal judge from Radom, Jan Kochanowski; the arbitrary penalty ordered by the royal court amounted to 400 grivnas.⁴⁹ The idea of extending the concept of treason to include government officials strikes resemblance to the provisions of the *lex Quisquis*, introducing the criminalization of assault on senators and imperial counsellors and officials. This evident - as emphasized by A. Lityński - reception of the scope of lese-majesty from Roman law corresponds to the efforts of Zygmunt I, “the senatorial king” to strengthen his royal power.⁵⁰ That reception proved impermanent: at the request of the nobility (“*ita postulanti-bus Terrarum nostrarum nuntiis*”), the constitution of 1539 reduced the object of protection under criminal law only to the king, expressly excluding government officials and deputies from the group of persons whose majesty could be violated: “*Crimen laesae Maiestatis ... volumus in persona Regia locum habere: et non in alios, quantumvis publicas personas gerentes, extendi ...*” Further, the constitution stipulated that an offence committed against officials (including murder) would be punished with statutory penalties, i.e. would be regarded as an offence against a private individual.⁵¹ So much emphasis laid in the constitution on the departure from the broadened scope of lese-majesty testifies to the opposition of the nobility to refer

⁴⁹ „Obraza Majestatu przez zabicie sędziego grodzkiego w chwili jego urzędowania popełniona.” In *Starodawne Prawa Polskiego Pomniki*. Vol. 6, Kraków 1881, pp. 25-26). Perhaps this process inspired Zygmunt I, that same year, to publish the statute, *De poena eorum, qui manu armata ad judicia et Conventus Generales et particulares veniunt* (*Volumina Legum*. Vol 1, p. 165), in which the person threatening the security a general diet, dietines and tribunals was not identified as offending the king’s majesty but as “*pacis communis violator*”, i.e. violating public order; still, what should not be overlooked is a clear indication - contrary to the constitution of 1510 - of the penalty in the form of capital punishment or confiscation of property if the perpetrator has not been detained. For more about other protection guarantees for noble courts, see, e.g. Lityński, A. “Prawnokarna ochrona sądów szlacheckich w Polsce XVI – XVIII w.” *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji*. Vol. 15, 1981, pp. 215-245; also later Dyjakowska, M. „Naruszenie bezpieczeństwa obrad Trybunału Koronnego jako *crimen laesae maiestatis*.” In *Trybunał koronny w kulturze prawnej Rzeczypospolitej szlacheckiej*. Dębiński, A., Bednaruk, W., Lipska, M., eds., Lublin 2009, pp. 114-116.

⁵⁰ Lityński, A. *Przestępstwa polityczne...* p. 20.

⁵¹ *Crimen laesae Maiestatis...* p. 269.

to Roman law, which was regarded as the pillar of strong royal power,⁵² and the treatment in the 1510 constitution of the assault on king's officials on a par with an attempt on the king himself was a glaring example of the desire to entrench this power. The direct cause of the adoption of this constitution were two well-known trials: of the masterminds of the Lviv rebellion in 1537 and of Castellan Mikołaj Rusocki; both cases were seen by at least part of the nobility as an endeavour to consolidate the *absolutum dominium*. The narrowing of the scope of lese-majesty to the assault *in personam regiam* was reiterated in the constitution of 1588.⁵³ In 1764, the penalties laid down in the 1510 constitution were restored for the breach of security of the Diet and dietine (local assembly) sessions and of the participating deputies;⁵⁴ it was not, however - as noted by A. Lityński⁵⁵ - a manifestation of a conscious tendency to extend the concept of the offence but was due to the need for stricter regulations governing the constantly compromised security of noble assemblies, hence, in this case, the legislators were guided rather by political considerations than by the influences of Roman law. Special protection was also extended to "the assembled persons" in the legislation of the Great Diet (of the Four-Year Diet): the Constitution of 1791 penalized an attack against them during the session (both ordinary and extraordinary) and six weeks before and after the session.

It is worth noting that also the proceedings of the Crown Tribunal were afforded additional protection. Created at the Diet in Warsaw in 1578,

⁵² The rules contained in Justinian's codification advocating the superior position of the monarch: *Princeps legibus solutus* and *Quod principi placuit habet legis vigorem*, were seen by the Polish nobles as a manner of consolidating the prerogatives of the monarch's power, which would result in the revoking of the privileges of the nobility and reduce the role of the nobility in country's political life. This should explain the resistance of some circles of nobility against any novelties in land law and its codification (see, e.g. Vetulani, A. "Opory wobec prawa rzymskiego w dawnej Polsce." *Analecta Cracoviensia* 1(1969), pp. 384-385; Dyjakowska, M. „Ewolucja poglądów na prawo rzymskie w Polsce do końca XVIII wieku.” In *Prawo rzymskie a kultura prawna Europy*. Dębiński, A., Jońca, M., eds. Lublin 2008, p. 76.

⁵³ "De crimine laesae Majestatis Regiae, et perduellionis." In *Volumina Legum*. Vol. 2, Petersburg 1859, p. 251. Although the immediate cause of reiterating the provision of the 1539 constitution, especially the introduction of far-reaching changes in the manner of examining cases of lese-majesty, was the trial of Krzysztof and Andrzej Zborowski, already some earlier practice persuaded the deputies to retain the statutory limitation of the object of lese-majesty to the king.

⁵⁴ „Bezpieczeństwo obrad publicznych i osób w nie wchodzących." In *Volumina Legum*. Vol. 7, Petersburg 1860, p. 42. The mentioned constitution also invoked the provisions of the 1507 statute of Zygmunt I discussed above. After 1539, there were attempts to extend the legal protection on some officials, such as inspectors of royal estates in 1563 ("Rewizorowie." In *Volumina Legum*. Vol. 2, p. 25) and their auditors ("Lustracya." In *Volumina Legum*. Vol. 2, p. 388).

⁵⁵ Lityński, A. *Przestępstwa polityczne...* p. 22.

the Chief Crown Tribunal enjoyed a privileged position in the noble judiciary as the highest court of appeal. That highest judicial position in the court hierarchy was referred to in the contemporary literature as *maiestas*. A thorough analysis of *maiestas* as attributed to this tribunal comes from A. Lisiecki who compared the tribunal majesty (*maiestas Tribunalicia*) with the majesty of the monarch (*maiestas Regia*) and that of the assemblies of the nobility (*maiestas Comitialis*).⁵⁶ Each of these three majesties embodies a different interest: the royal majesty promises to preserve the security and happiness of the kingdom; the majesty of noble gatherings provides welfare and internal and external prosperity; and the majesty of the tribunal means the broad accessibility of justice (*communis Iustitiae propagatio*), and since, as proven by the author, "majesty secures peace at home and all good customs, therefore it needs to be held in great esteem and solemnity among all the ranks of the Crown's population."⁵⁷ Given the particular importance of the tribunal, it was already the constitution that established it which contained provisions on how to safeguard its proceedings.⁵⁸ As discussed above, in 1510 an assault on a judge was first named the offence of lese-majesty; yet, after 1539, when the object of protection under criminal law was narrowed to the king only, the concept of lese-majesty ceased to cover acts threatening the security of the courts. However, the originators of the constitution establishing the Chief Crown Tribunal apparently took an effort to grant it - at least to some extent - a protection equal to that of the monarch's majesty.⁵⁹ A murderer or an attacker of a nobleman during a dietine or during the tribunal's proceedings, and also for the period of three weeks before and after it was to be punished "according to statute... however, in the same way as if the crime were perpetrated at the diet with Us [i.e. the king] participating."⁶⁰ The cited provision refers, it seems, to the statute of 1507; already A. Lisiecki, noticing the ambiguity in determining the punishment, mentioned that particular source because "there was no other Statute at that time that would punish such wrongdoings before the diet...it must be

⁵⁶ "In our Crown *Maiestas est summa Regia, Maiestas Comitialis, et Maiestas Tribunalicia*, which are of this kind, that *in suis terminis* every of them has *suam absolutam Maiestatem iure descriptam*" (*Trybunał Główny Koronny siedmią splendorów oświecony*. Kraków 1638, p. 231).

⁵⁷ *Ibidem*.

⁵⁸ For more, see Dyjakowska, M. *Naruszenie bezpieczeństwa obrad Trybunału Koronnego...* pp. 120-121.

⁵⁹ Cf. Lityński, A. „Zabezpieczenie Trybunału Koronnego w polskim prawie karnym na tle prawnokarnej ochrony innych sądów prawa polskiego.” In *400-lecie utworzenia Trybunału Koronnego w Lublinie. Materiały z sesji naukowej z dnia 20.XI.1978 r.* Lublin 1982, p. 12.

⁶⁰ „Bezpieczeństwo sądów i Sejmików.” In *Volumina Legum*. Vol. 2, p. 184.

this one and not the statute *Coronationis Sigismundi Primi* governs the security of the Crown Tribunal, and this constitution on the tribunal's security refers to it;" the author, therefore, arrived at a conclusion that the penalties envisaged for such acts are: the death penalty, infamy and confiscation of property specified in the statute of Zygmunt I, "*tanquam in lege Horatia Romana*."⁶¹ Also a murder or injury of a nobleman in the presence of the king was classified - at least in doctrine and court practice - as lese-majesty.⁶² In the later constitutions addressing the issue of compromising the security of the Crown Tribunal, none of the acts constituting such a breach was, even by conjecture, identified as a violation of the monarch's majesty. It showed the actual and ultimate failure of endeavours to broaden the interpretation of the crime of lese-majesty from the 1588 constitution, which definitively reduced the object of the crime to the king.⁶³ The doctrine, however, still advanced a view that these offences were *crimen laesae maiestatis*. Among the exponents of this view, there was F. Minocki who, when listing - in connection with the 1510 constitution - persons whose assault or assassination are qualified as an offence of lese-majesty, pointed to - after M. Ch. Hartknoch⁶⁴ - a number of constitutions that guaranteed the security of the Crown Tribunal (e.g. the constitution of 1578, 1589 and 1616). This fact can be partly explained by the author's views; he rested his discussion on foreign, Roman law-oriented literature and advocated a broad understanding of the concept of lese-majesty (i.e. also as betrayal - *perduellio*, which, from 1539 on, constituted a separate offence in Polish law), consequently, opted for the broadening of the number of entities eligible for protection. Another argument comes from the type of sanction provided for some forms of endangering the security of the Crown Tribunal Court, such as murdering or injuring a nobleman in the place (i.e. town) of the tribunal's operation. These sanctions were, as noted in the 1616 constitution, banishment and confiscation of property, and, pursuant to the 1601 constitution, the death penalty and infamy; the latter legislation was not mentioned in F. Minocki's dissertation. Although the penalty for lese-majesty was not set out in any legislation until 1791, such penalties were administered in judicial prac-

⁶¹ Lisiecki, A. Op. cit., p. 238. The author meant the *lex Valeria Horatia de tribunicia potestate* from 449 BC which guaranteed the inviolability of tribunes, plebeian aediles and decemviri (*decemviri stlitibus iudicandis*). For more, see Rotondi, G. Op. cit., p. 205.

⁶² See below.

⁶³ For more, see Dyjakowska, M. *Naruszenie bezpieczeństwa obrad Trybunału Koronnego...* pp. 124-126.

⁶⁴ Hartknoch, M. Ch. *Res Publica Polonica Duobus Libris Illustrata*. Francofurti et Lipsiae 1687, p. 808.

tice; therefore, it is likely that the author treated the aforesaid constitutions as examples of normative regulation of *crimen laesae maiestatis*, as he was most probably guided by the sanctions provided therein. Harsh treatment of the violators of the security of the Crown Tribunal finds confirmation in the sources and practice which demonstrate that such acts were attributed the quality of public offences,⁶⁵ which might have induced F. Minocki to interpret the provisions of the constitutions in question as dealing with lese-majesty. The concept of regarding an attack on highest offices, the tribunal included, as an offence of the violation of majesty was resuscitated by Hugo Kołłątaj⁶⁶ who, in his *Prawo polityczne narodu polskiego* [The Political Rights of the Polish Nation], proposed: "Anyone who would dare to violate any office *ultimae instantiae*, wield a weapon in the court room or obstruct the passage to the court room, or prevent free passage of any commissioner or judge to the seat of the *ultimae instantiae* office, commits the crime of offended majesty, since he offends the exercise of nation's highest rights..."⁶⁷ A. Lityński notes, however, that Kołłątaj's objective was undoubtedly to strengthen the central authorities in the soon-to-occur state reform;⁶⁸ nevertheless, until the decline of the Republic, not a single attack on any tribunal had not been recognized as the violation of the king's majesty. Although the legislation of 1507 and 1510 was recapitulated again in 1764,⁶⁹ it was probably curtailed to the protection of nobility gatherings, and its aim was to improve the security of the Diet and dietines and not tribunals.⁷⁰ The rationale for the gradual abandoning of the protection of tribunals in early modern times, equal or at least comparable to the protection of the sovereign's majesty, should be sought in the noblemen's reluctance to accept attempts to bend the principle of the equality of the nobility,⁷¹ and the special protection granted to judges and other land officials was the last thing the gentry desired. This approach was aptly put by T. Ostrowski. Arguing for the legitimacy of narrowing the scope of lese-majesty only to acts against the monarch, the author stressed that not only does violation of majesty fails to

⁶⁵ Lityński, A. *Prawnokarna ochrona Trybunału...* p. 110.

⁶⁶ The *ultimae instantiae* offices are, according to the author, those "whose judgement and orders may not be further appealed against but demand any man to show strict obedience" ("*Prawo polityczne narodu polskiego*." In idem. *Listy Anonima i Prawo polityczne narodu polskiego*. Leśnodorski, B., Werszycka, H., eds. Warszawa 1954, p. 254).

⁶⁷ Ibidem.

⁶⁸ Lityński, A. *Zabezpieczenie Trybunału...* p. 9.

⁶⁹ *Bezpieczeństwo obrad publicznych...* p. 42.

⁷⁰ Lityński, A. *Prawnokarna ochrona sądów...* p. 228.

⁷¹ For more, see Grodziski, S. *Z dziejów staropolskiej kultury prawnej*. Kraków 2004, pp. 245f.

concern the royal family due to the elective character of kingship, but also “the king’s ministers and counsellors (like late Roman law required) must not take advantage of this privilege for the sake of equality of the nobility.”⁷² The “equality of nobility” so understood also manifested itself in the equalizing of the protection of the Crown Tribunal under criminal law with the safeguarding of other courts of Polish law.

The First Statute of Lithuania, which prescribed in Article 6 that an assault on land officials and king’s envoys be penalized as the violation of the monarch’s majesty, adopted an extended definition of the object of this crime, understood as an act against the king. For it must be emphasised that Lithuanian law, much more influenced by Roman law than the law of the Crown, covered a much wider list of offences comprising lese-majesty than those perpetrated against the monarch or state officials. In the Second and Third Statute, a similar provision no longer appeared, and lese-majesty was defined as a situation “when someone has conspired or revolted against our national welfare,”⁷³ so it referred to acts jeopardizing the king. Admittedly, it omits to highlight - unlike Crown’s law - the narrowing of the object of the crime to the monarch, still the omission of officials as persons entitled to special protection is ascribable to the impact of Polish law which - as already mentioned - abandoned the protection of officials and deputies from 1539.

In the legal literature, the opinion prevailed for a broadened scope of the concept of lese-majesty. G. Quadros proposed a broad understanding of the object of the crime, subscribing to approach adopted in the *lex Quisquis* that anyone who harms secular and ecclesiastic dignitaries sitting on the royal council commits the offence of violation of majesty of the ruler, since these dignitaries are “pars corporis principis.”⁷⁴ As with the enumerated persons, so with other state officials who, according to the author, represent the monarch, thus their injury is considered to be affecting the monarch himself.⁷⁵ Also J. Kaszyc referred to the *lex Quisquis* by attributing *maiestas* to the royal advisers.⁷⁶ He says that such special protection even includes

⁷² Ostrowski, T. Op. cit. Vol. 1, p. 320.

⁷³ Chapter 1, Article 3 of the Second Statute; cf. Chapter 1, Article 3 of the Third Statute.

⁷⁴ Quadros, G. O.p. cit., p. 23.

⁷⁵ Ibidem, p. 23 v. The author advocated the view adopted after glossators that heed should be paid to the intentions of the offender who assaults an official. For the offence of lese-majesty does not occur if the perpetrator attacks the official because of personal resentment or the official’s action, and he does not intend to inflict damage on the monarch. Although the perpetrator deserves severe punishment, he will not be found guilty of *crimen laesae maiestatis*.

⁷⁶ Kaszyc, J. Op. cit., p. 22.

those whom the ruler promised personal inviolability (“qui ab Imperatore aut Rege vel Principe impetrant sibi fidem publicam”). Noting that there are conflicting opinions on this matter, J. Kaszyc followed the middle course: if the perpetrator of an attack on a person who is given a security guarantee acts with intent to affront the ruler and not with intent to cause harm to the victim of the attack, is guilty of the crime of lese-majesty.⁷⁷ On the other hand, F. Minocki pointed out that no lese-majesty occurs if the attacker of a royal official does not do it out of hatred for the monarch, but is driven by a personal grudge against that official (“ex particulari inimicitia”), yet, the burden of proof lies on him to prove it. Regardless of motivation, the attacked of an official in the presence of the king is regarded as the perpetrator of lese-majesty (p. E).

2. *Crimen Maiestatis and Perduellio*

Until the 16th century, betrayal of the country (*perduellio* – ‘treason’) had been a form of lese-majesty, for example, bringing the enemy troops to the country, surrendering a castle in collusion with the enemy, an agreement with the enemy, or disclosure of state secrets.⁷⁸ However, in the 16th century, the law of the Crown began to regard treason as a separate offence; already in the constitution of 1539, lese-majesty was narrowed to acts directed only at the king, which ruled out *perduellio* as one of the form of this offence. A clear separation of the two offences is particularly conspicuous in the constitution of 1588, as indicated by its title: *De crimine laesae Majestatis Regiae, et perduellionis*. *Perduellio* began to cover acts “contra Rempublicam,” in particular: a rebellion against the Republic in collusion with the enemy, disclosure of state secrets to the enemy, the surrendering of a castle in collusion with the enemy, a breach of international agreements. *Perduellio* was treated differently in *Zbór praw sądowych* and in the Code of Stanisław August. According to Article XLVIII § 2-3, Book II of the first of the afore-said collections, he who perpetrates *perduellio* “is in league with the neighbouring powers, orally or in writing, without notifying the highest national authority; makes unlawful arrangements at home or abroad in the public interests; rallies disorderly troops; deploys weapons against the state au-

⁷⁷ J. Kaszyc referred to C. 11,58,2.

⁷⁸ See, e.g. Taubenschlag, R. *Prawo karne polskiego średniowiecza*. Lwów 1934, p. 87ff. The author expressed a view that initially this offence was isolated from lese-majesty and was subsumed under this concept later, which is proven by the author’s representation of the earliest systematic framework of Polish law of the 15th century.

thorities...joins the enemy during a war or provides it with the money and men; gives the enemy warnings and advice detrimental to the people."⁷⁹ The two offences were also separated by J. Szymanowski in the draft of the Code of Stanisław August proposing the division of public offences into the crimes against the nation, government and religion: "Against the people, there is rebellion, treason, driving the nation into a war or allowing the enemy home, and administrative offences. Against the government, there are offences violating the majesty of the king, the parliament and local assemblies, and all offices and officials..."⁸⁰ Such an approach was maintained in the 1776 constitution entitled *Ordynacya sądów sejmowych* [The Statute of Diet Tribunals]⁸¹ and in the legislation of the Four-Year Sejm.⁸² According to other authors of legal texts, *perduellio* conveyed still more offences. G. Czaradzki, discussing the competence of the Diet Tribunal in *Proces sądowy ziemskiego prawa karnego* [A Lawsuit under Land Criminal Law] (Warsaw 1636), among the offences prosecuted by indictment (like instigation), distinguished *crimen laesae maiestatis* on the one hand, and acts defined as "any misdemeanour perpetrated contra Rempublicam" on the other.⁸³ Both acts were also regarded as separate offences by Teodor Ostrowski

⁷⁹ *Zbiór praw sądowych przez ex – kanclerza Andrzeja Ordynata Zamoyskiego ułożony, i w roku 1778 drukiem ogłoszony, a teraz przedrukowany, z domieszczeniemi źródeł i uwag, tak prawoznawczych, jak i prawodawczych, sporządzonych przez Walentego Dutkiewicza.* Warszawa 1874, p. 555.

⁸⁰ „Myśli do prospektu prawa kryminalnego.” In *Kodeks Stanisława Augusta...* p. 193.

⁸¹ „Ordynacya sądów sejmowych.” In *Volumina Legum.* Vol. 8, Petersburg 1860, p. 542.

⁸² In determining the competence of the Diet Tribunal, the statute of May 1791 appointed this body to adjudicate upon, besides crimes "against the supreme government of the Republic", including the violation of the royal majesty, offences "against the nation, namely those which violate the nation's public safety or enfeeble the whole nation; such offences are: 1mo. public violence, 2do. public treason, 3tio. public damage." In addition to acts already known from earlier sources of law, such as surrendering a castle or fortress (also part of the country's territory) to the enemy, leading the enemy into the country, disclosure of state secrets or accepting pecuniary awards from foreign courts without informing the Polish authorities, the list was broadened to include conduct particularly detrimental to the Polish sovereignty in the contemporary political circumstances, for example, selling citizens to serve in a foreign army or enlisting them in the Republic with this end in view, corrupting high officials, forging laws and doctoring public documents, inciting the citizens to rebellion, particularly in the army, joining the army of the state waging war against the Republic (*Volumina Legum.* Vol. 9, pp. 244-245). Although some of these acts were prohibited before, only in the second half of the 18th century they were ranked among them the gravest political offences exposed to particularly severe penalties.

⁸³ The author enumerates, for example, "rebellion against the Republic in concert with her enemy, divulging entrusted information to the enemy. Surrender of a castle as a result of collusion. Disturbance of peace and federal arrangements with alien entities. Rebellion factio shown. Borderland and judicial *starostas* (Pol. "governors" tempore interregni yielding castles and towns

who noted that, although combined under Roman law, now they are divided depending on who they are aimed against: "The crime of offended majesty affects the ruler himself, and betrayal of the country aims to debilitate or overthrow the government."⁸⁴ A similar statement is to be found in a work by M. Zalasowski who described *perduellio* as an offence directed "non contra Principem directe, sed contra ipsammet Rempubicam."⁸⁵ The view shared by all the authors discussed above is therefore aligned with the regulations contained in the constitutions of 1539 and later: *crimen laesae maiestatis* should be interpreted as an attack aimed directly against the monarch, while *perduellio* undermines the state's sovereignty and security. What follows, the division criterion adopted by known legal sources and the authors cited above is not *animus hostilis* as in Roman law, but the object injured by the offence.

Lithuanian sources of law, being under a stronger influence of Roman law, and many authors looking towards and alluding, directly or indirectly through references to foreign literature, to Roman law, see *perduellio* as a form of lese-majesty. Both the Second and the Third Lithuanian Statute regarded as lese-majesty not only acts perpetrated against the monarch but also against the Republic: various forms of agreement with the enemy to the detriment of the state, surrendering a castle, allowing a hostile army into the country's territory, unlawful recruitment of troops, etc.⁸⁶ It is worth noting that the two statutes recognized illegal minting of coins as a form of lese-majesty - in Roman law it was classified as forgery or falsification and fell under the *lex Cornelia de falsis*,⁸⁷ the rationale for such recognition was that the counterfeiter was seen as attempting to usurp the royal enti-

to someone else than the independently and legally elected king" (Czaradzki, G. *Proces sądowy ziemskiego prawa karnego*. Warszawa 1636, p. 7).

⁸⁴ Ostrowski, T. *Op. cit.* Vol. 1, p. 314. For more on the content of *perduellio*, see *ibidem*, p. 317.

⁸⁵ Zalasowski, M. *Ius Regni Poloniae*. Vol. 2, Posnaniae 1702, p. 717. The author, relying on the 1588 constitution, enumerated acts falling within the scope of *perduellio*, such as causing revolts, conspiring with external enemies to harm the Republic and divulging state secrets, surrendering a castle as a result of collusion, infringing international agreements and alliances, stirring up soldiers or enlisting citizens into the army on one's own account.

⁸⁶ The Second Statute, D I, Article 3; The Third Statute, Chapter I, Article 3. A comparison of D I, Article 3 of the Third Statute with the Roman law regulations in Taubenschlag, R. *Wpływy rzymsko – bizantyńskie w drugim Statucie litewskim*. Lwów 1933, p. 10ff.; cf. Bardach, J. *Statuty litewskie a prawo...* P. 122ff.

⁸⁷ D. 48, 10. Unauthorized minting of the state coin was not treated in the Crown as a form of lese-majesty but as a fiscal offence, prohibited by, among others, the constitutions of 1598 (*Volumina Legum*. Vol. 2, p. 367) and 1601 (*Volumina Legum*. Vol. 2, p. 394).

lements. The counterfeiting of coins and precious metals was prosecuted under separate laws.⁸⁸

One of the advocates of a broader approach to the offence of lese-majesty in the the legal literature was G. Quadros who, already in his early works, stressed - after the *lex Iulia maiestatis* - that this crime is committed “contra Imperatorem vel rem publicam.” (p. 5). Consequently, guilty of lese-majesty is the one who incites enemies or offers them assistance not only with a view to harming the ruler but also to impairing the state (p. 16 v.). Based on the *lex Iulia maiestatis* and other regulations of Roman law, the author listed numerous other cases of the discussed crime that should be classified as *perduellio*: to assist the enemies in seizing the country (p. 16 v.), to enable captives to escape (p. 17 v.), to bring armed enemies to the country, to tolerate private prisons by judges and officials (p. 17),⁸⁹ to counterfeit money (p. 17),⁹⁰ to occupy the territory of another state by force (“aliquam civitatem” - p. 17),⁹¹ to raise rebellion (p. 17 v.),⁹² to disclosure state secrets, to launch and wage war (p. 18), to stage an army mutiny, for a private person to desert or go to join the enemy (p. 18 v.), to refuse to relinquish the military command when ordered by the state authorities (p. 19), to surrender troops or a castle to the enemy as a result of collusion (p. 19 v.), by the commander to submit a military unit to another commander without the consent of the authorities (p. 20), to rally troops illegally (i.e. also without the consent of the authorities) (p. v. 20),⁹³ for a private person to usurp administrative rights (p. 20 v.),⁹⁴ to treacherously lead troops into an ambush (p. 21), to offer any kind of aid (“com-
meatu armis telis equis pecunia aliave aliqua re”) to the enemy army, to treacherously cause hostile attitude of allies (“ut aliqui ex amicis fierent hostes” - p. 21), to liberate a convicted person from prison (p. 21 v.),⁹⁵ to convene the conclave while the pope is still alive, for the administrator to leave the province before the expiry of fifty days after the end of tenure

⁸⁸ D I, Article 13 of The Second Statute; Chapter I, Article 17 of the Third Statute.

⁸⁹ G. Quadros referred to C. 9,5 *De privatis carceribus inhihendis*.

⁹⁰ G. Quadros referred to C. 9,24 *De falsa moneta*.

⁹¹ G. Quadros referred to C. 1,2 *De sacrosanctis ecclesiis*.

⁹² G. Quadros referred to C. 9,30 *De seditiosis et de his, qui plebem contra rempublicam audeant colligere*.

⁹³ G. Quadros referred to C. 12,35 *De re militari* and commenting on the gloss to the above source deliberated whether the perpetrator is only the commander or also a private individual gathering a military unit on its own; the author opted for the first possibility.

⁹⁴ G. Quadros referred to the above title of the Code of Justinian.

⁹⁵ G. Quadros referred to C. 1,4 *De episcopali audientia*.

(p. 22),⁹⁶ for the administrator of a province to refuse to transfer power to the successor after the expiry of fifty days after the end of tenure (p. 18 v.), to remove a person seeking asylum in the church by force (p. 22)⁹⁷ and, finally, to organize illegal associations (p. 22 v.).⁹⁸

Most acts classified by G. Quadros as forms of *perduellio* (understood by the author as a type of lese-majesty) are military offences. The Polish legal literature on military law advanced a view that crimes committed by soldiers deserve particularly severe punishment (including the death penalty and infamy), since soldiers are relied upon to defend the Republic and ensure its security. S. Brodowski, author of *Corpus Iuris Militare Polonicum*,⁹⁹ argued that “there is no periculosiorem in the world of seditionem as militum: for those who are to shield the Commonwealth with their own body, tempore seditionis to their beloved Homeland, they assail her though she is like their mother, and these weapons which are raised to spill the enemy’s blood they wield to afflict, destruct and damage their own people.”¹⁰⁰ The reason for a mutiny may be - as suggested by the author - the demand of the soldier’s pay; such demands, even justified, may not be made in the circumstances of a looming threat to the state and take the form of a “strike” because “such...a public call has no other effect but to show disrespect for the Republic, to insult the commanders, and use it as an excuse to shirk duties...”¹⁰¹ A mutiny may also manifest itself in challenging orders and undermining the commanders’ authority, and “such action...not only offends peace but is tantamount to the sin of violating human majesty ex primo capite legis Iuliae.”¹⁰² The classification indicated by S. Brodowski does not follow from Article 3 of *Artykuły wojenne* [Articles of War] of 1609; this regulation only stipulates that the guilty of mutiny or conspiracy is to be punished by death or, if managed to flee, by infamy.¹⁰³ As a matter of fact, the

⁹⁶ G. Quadros referred to C. 1,49 *Ut omnes iudices, tam civiles quam militares, post administrationem depositam L. dies in civitatibus vel certis locis permaneant.*

⁹⁷ G. Quadros referred to C. 1,12 *De his, qui ad ellesiam confugiunt vel ibi exclamant, et ne quis ab ecclesia extrahatur.*

⁹⁸ G. Quadros referred to D. 47,22 *De collegiis et corporibus.*

⁹⁹ The full title: *Corpus Iuris Militare Polonicum, w którym się znajdują Artykuły wojenne hetmańskie, Auctoritate Seymu walnego koronnego R. 1609, za Króla Jmci Zygmunta III w Warszawie aprobowane...* Elbląg 1753.

¹⁰⁰ *Ibidem*, p. 58.

¹⁰¹ *Ibidem*, p. 62.

¹⁰² *Ibidem*, p. 64.

¹⁰³ „Artykuły wojenne hetmańskie.” In *Volumina Legum*. Vol. 2, 478: “Who would cause troops to convene, both during a rest and while marching, inside or outside the camp, without hetman’s permit or knowledge, or sparked mutinies, seditions or organized *consilia*, let alone

author rested the expressed view on Ulpian D. 48,4,1,1 and the literature referring to Roman law where the offences in question constituted a form of the broadly defined crime of lese-majesty; the author inclined towards such a classification due to the gravity of the act that called for special condemnation.

S. Brodowski also considered treason to be lese-majesty; in his opinion, treason occurs:

...when someone conspires with the enemy by post, orally, secretly or publicly, in a camp, in a fortress, in a garrison, or in any place, and, in order to facilitate the enemy's attack: reveals the content of secret meetings, ideas, or intentions; discloses blueprints or layouts of fortresses and their weak points; communicates all the details of the described place; when expecting payment and favouring the enemy, treacherously sets fire in a storehouse; liberates enemy prisoners for a prize; refuses to fight the enemy.¹⁰⁴

When commenting on Article 30 of *Artykuły wojenne hetmańskie* [Hetman's Articles of War] stipulating the death penalty for the perpetrator who "entered negotiations with the enemy,"¹⁰⁵ the author referred to Roman law both for the qualification of the offence (Ulpian D. 48,4,1,1) and for the penalties (Ulpian D. 48,19,6).

A more inclusive approach to lese-majesty was also advocated by T. Drezner who devoted to *perduellio* a separate section of his work, immediately following the chapter entitled, *De crimine laesae maiestatis*. Yet, his deliberations demonstrate that he understood *perduellio* - as opposed to other authors - as a concept superior to *crimen maiestatis*: *perduellio* refers to the state as a whole, while *maiestas* only to the monarch. The author elucidated the difference between these two offences as follows, "Differunt vero Maiestatis et perduellionis crimina: nam illud [sc. crimen Maiestatis] sub eo [sc. crimine perduellionis] tanquam species sub genere comprehenditur."¹⁰⁶ Discussing both offences against the backdrop of criminal law, T. Dreyner invoked the constitution of 1588; hence, the distinction drawn between the two offences is consistent with the existing legislation which separated acts constituting a form of *perduellio* from *crimen maiestatis*. But while this constitution approach these offences in isolation, the author pointed to *crimen*

confederations, must be put to death without mercy, and if he fled, he must be made infamous *ipso facto*."

¹⁰⁴ Op. cit., p. 400.

¹⁰⁵ *Volumina Legum*. Vol. 2, p. 481; it is Article 30 of the chapter entitled, *Artykuły należące do obozu ciągnięcia przeciw nieprzyjacielowi, i zwiedzenia bitwy*.

¹⁰⁶ Op. cit., p. 177.

maiestatis as a type of *perduellio*, guided by their scope regulated in the constitution: if *perduellio* is a set of actions aimed against the welfare of the state as a whole, it is fundamental (*genus*) to the crime of lese-majesty (*species*).¹⁰⁷ In addition to acts traditionally recognized as *perduellio*, such as inciting a rebellion, conspiring with an external enemy, disclosing entrusted state secrets to the enemy, surrendering a castle in collusion with the enemy, or breaching international covenants, T. Drezner also mentioned the transfer of borderland strongholds to a person other than the elect during *interregnum*.¹⁰⁸

According to F. Minocki, who relied on Bartolus' views expounded in the commentary to the *lex Quisquis*, a crime of lese-majesty is committed not only as *proditio in personam Regis* but also *in damnum Reipublicae*; what follows, the author numbered the acts aimed to debilitate the state (i.e. *perduellio*) among the forms of lese-majesty. Other forms of acting to the detriment of the state proposed by the author are: desertion combined with fleeing to the enemy, any aid extended to the enemy (e.g. disclosing the plans of one's own monarch, convincing own troops to defect to the enemy, financial support, giving advice, leading own troops in an ambush), correspondence with the enemy to the detriment of the state, entering a conspiracy with the enemies participating, occupying castles, towns or parts of the country, failure to transfer one's office or military detachment to the successor, falsification of public documents to the detriment of the state, claiming administrative capacity or jurisdiction, and many other acts that meet the criteria of treason. The author discerned the difference between *perduellio* and *crimen maiestatis*, still - in contrast to T. Drezner - perceived *perduellio* as a subordinate concept.¹⁰⁹ S. Salmonowicz points out that although Minocki in his work omits to expressly demonstrate that division, judging by his description it can be inferred that in point of fact he uses the division into *crimen laesae maiestatis sensu largo*, i.e. covering factual circumstances classified as *perduellio*, and the crime of lese-majesty *sensu stricto*, i.e. actions aimed against the ruler, his dignity, etc., and further in his deliberations he goes on to discuss lese-majesty only in its narrower sense.¹¹⁰

A joint approach to *crimen laesae maiestatis* and *perduellio* also surfaces in J. Kaszyc's dissertation; when examining the two offences, he employed the criterion used by the two authors referred to above, that is, the object

¹⁰⁷ Noting that *crimen laesae maiestatis* is only limited to the king, T. Drezner did not forget about the 1539 constitution laying down this limitation (op. cit., p. 175).

¹⁰⁸ Cf. Bukowska, K. Op. cit., p. 152.

¹⁰⁹ P. C2 v.

¹¹⁰ Op. cit., p. 132.

against whom the crime is committed: *perduellio* affects the state as a whole, while *crimen laesae maiestatis* consists in an attack against the monarch or the violation of his authority.¹¹¹

3. Heresy as *Crimen Laesae Maiestatis*

Heresy was an act regarded as equal to the crime of lese-majesty and Poland, as Western Europe, classified it among public offences. The problem of heresy was imported to Poland on a broader scale in the early 15th century when the advancement of Hussitism in Bohemia and its permeation into Poland compelled the Polish authorities to lay down special regulations to endorse anti-heresy laws implemented by the Polish clergy.¹¹² Having acquiesced to the verdict of the Council of Constance on Jan Hus and having expressed his readiness to implement the anti-Hussite conciliar decrees, King Władysław Jagiełło endeavoured to prove the legitimacy of his baptism before European courts; hence, he decided to manifest his hostile attitude to Hussites very ostentatiously and declared to stalk its followers in Poland and Bohemia. Jagiełło's policy on religion was also an element of diplomatic manoeuvres of the the Polish court in a political gamble with Emperor Zygmunt of Luxembourg. When in 1421 Jagiełło refused to the Bohemian crown, the Czechs' proposal was welcomed by Grand Duke of Lithuania Witold, and the activity of Jagiełło's emissary to Bohemia, Prince Zygmunt Korybut, led to accusations of the king of supporting the Hussite heresy.¹¹³ This eventuated in Jagiełło-sponsored Edict of Wieluń of 9 April 1424 intended against heretics arriving in Poland from Bohemia and those residing in Poland.¹¹⁴ Pursuant to the edict, every heretic (as well as anyone suspected of heresy or adhering to heretical beliefs) was made equal to the offender against the royal majesty and punished accordingly ("veluti Regi-

¹¹¹ "Quod salus pro sui atrocitate, modo perduellio vocatur, modo generis sui appellatorem retinet. Et perduellionis quidem nomine tunc censetur, cum seditio in Repub. concitatur, vel ea hostibus proditur, aut quid simile, ad statum Reip. evertendum patrat. Generis nomen retinet, cum quis in personam Principis potius, quam statum Reip. impingit." All in all, the concept of lese-majesty accommodates acts unanimously named by many other authors too, such as joining the enemy, offering the enemy assistance by, for example, supplying weapons or means of subsistence, divulging state secrets (op. cit., pp. 22-23).

¹¹² For more about anti-Hussite ecclesiastical legislation in Poland, see Kras, P. *Husyci w piętnastowiecznej Polsce*. Lublin 1998, p. 209f.

¹¹³ Ibidem, pp. 231-231.

¹¹⁴ *Volumina Legum*. Vol. 1, p. 38.

ae Maiestatis offensor capiatur, et iuxta exigentiam excessus sui puniatur”). Moreover, the edict stipulated that, in order to avoid being regarded as heretics and exposing oneself to severe secular penalties (infamy, banishment, confiscation of property, loss of dignity and privileges), Poles living in Bohemia are advised to return to the country within a specified deadline (before Ascension Day, i.e. 5 May 1424) and report to interrogation by inquisitorial bodies appointed by the bishops.

Particularly noteworthy is the recognition of heresy as a crime of lese-majesty, and therefore as a threat not only to the Church but also the state, and social and moral order.¹¹⁵ The phrase “capiatur velut Regiae Maiestatis offensor” suggests that the edict was modelled after the anti-heretical legislation of Frederick II. The article about confiscation of property was borrowed from the constitution of 1220 and the provision concerning the deprivation of heretics’ children the right to inheritance and holding offices from the constitution of 1232;¹¹⁶ that latter provision was modified upon its adoption into the edict to affect only those children who failed to return to the country in the designated period (so they were presumed to profess heretical faith). Although the edict did not expressly declare its anti-Hussite bias, its provisions hindering travel to Bohemia and demanding Polish citizens to return from that country leave no doubt about it. Still, according to many later law researchers, Jagiełło’s legislation laying down the aforesaid penalties did not apply to Hussites only but to any heretics. Describing the penalties for heresy, J. Przymusiński to the Edict of Wieluń as an act intended against heretics at large: “Placuit, ut haeretici laesae quoque Maiestatis rei sint ac propterea honoris, ac corporis poena, tum bonorum publicatione plectantur, ut in mandato Jagellonis scriptum extat.”¹¹⁷ Likewise, A. Lipski cited the text of the edict as one of several acts issued by Polish rulers against heretics with Hussites, it seems, among them;¹¹⁸ by contrast, B. Groicki pointed to the Edict of Wieluń as a source of law merely prescribing penalties for lese-majesty:

The punishment of heretics...is covered in a severe Crown statute of King Władysław Jagiełło, done in 1424, which clearly says that heretic should be put to the sword because they deserve the toughest penalty as they are equal to those acting against the the majesty of the king; moreover, it is not only their head

¹¹⁵ Kras, P. Op. cit., p. 235.

¹¹⁶ For more, see Koranyi, K. *Konstytucje cesarza Fryderyka II...* p. 326f.

¹¹⁷ Op. cit., p. 165.

¹¹⁸ *Decas quaestionum publicarum Regni in quibus ecclesiastica jura et immunitates ecclesiastici status elucidantur*. Cracoviae 1616, p. 114.

but also their property that should be claimed and incorporated into the royal treasury after the heretic has been executed. What is more, that heretic's children should be held in eternal disgrace and denied all dignities and offices.¹¹⁹

The Edict of Wieluń was a fundamental document which formally engaged the state apparatus in to struggle with heresy, and which, in cooperation with Church authorities, was planned to harness the instruments of secular law ("humana severitate") to eradicate heretics as guilty of lese-majesty. The fact that in 1532 the provisions of the edict were incorporated verbatim into the so-called Taszycki's corrections, i.e. a project of a comprehensive codification of nationwide law, testifies to their validity and topicality also during the reign of Zygmunt I, that is, at the dawn of the Reformation in Poland.¹²⁰ This is evidenced in King Zygmunt I's policy towards infidels and the edict against the Lutherans done at Toruń in 1520¹²¹ which prohibited the import of Lutheran books to the country on penalty of confiscation of property and banishment; similarly, edicts issued in Kraków in 1523 and 1525¹²² laid down that the import, reading and distribution of Luther's and other Reformation writers' works, as well as professing their beliefs, were punishable by death and confiscation of property. As a matter of fact, both edicts do not offer explicit classification of the conversion into or promotion of the Reformed denominations as lese-majesty, however, the treatment of heresy as a public crime, prosecuted ex officio by the secular authorities, and the penalties resembling those of the Edict of Wieluń: the death penalty, banishment, or confiscation of property, supports the opinion that the law of the time approached heretics as perpetrators violating the royal majesty; also, the above-cited lawyers' opinions seem to corroborate that - each of them invoked the Edict of Wieluń as the primary legal instrument against heretics, whom it identified as "velut Regiae Maiestatis offensores."

¹¹⁹ *Porządek sądów i spraw miejskich prawa majdeburskiego w koronie polskiej*. Warszawa 1953, p. 199.

¹²⁰ W. Zakrzewski points out that in the 16th century Catholics always relied upon the Edict of Wieluń as the basic instrument for derivative regulations against heresy (*Powstanie i wzrost reformacji w Polsce 1520-1572*. Lipsk 1870, s. 16).

¹²¹ "Prohibitio severa Sigismundi, Regis, ne in ejus Regnum et Dominia inferantur nec fiant in usu opera Martini Lutheri, Augustiniani, novi heresiarchae." In *Acta Tomiciana*. Vol. 5, Posnaniae 1855, p. 284.

¹²² "Edictum contra Lutheranos." In *Acta Tomiciana*. Vol. 6, Posnaniae 1857, p. 289.

4. Other Offences

There are a number of acts that are dubious in terms of their classification of the violation of the royal majesty; to draw a weapon in the presence of the king was among them. The Statutes of Kazimierz the Great that regulated this offence prescribed that the one who draws a weapon in the presence of the king and inflicts an injury on him should be punished without mercy; even drawing a sword without injuring anyone left the offender at king's mercy,¹²³ which should be understood as allowing the king to decide on punishment (or refraining from punishment). The Statutes did not refer to this act as an instance of lese-majesty unequivocally, yet such a classification was assumed by legal writers who tended to cite the passages from this law relating to this crime. The Polish translation of this statute is to be found in the work by J. Herburt, *Statuty i przywileje koronne* [Statutes and Privileges in the Crown], immediately following the text of the constitution of 1539 entitled by the author, *Obrażenie Majestatu królewskiego tylko w osobie królewskiej bywa dopuszczono* [The Violation of the King's Majesty is only Possible in the Person of the King], which evinces J. Herburt's conviction that to draw a weapon in the presence of the king was a form of lese-majesty. A similar stance on this act was taken by J. Przyłuski¹²⁴ in his quoting of the Latin text of the mentioned statute after the text of the constitution of 1539 narrowing the object of attack to the king, so in the same context as J. Herburt. Also, the practice of the time shows clearly - as highlighted by A. Lityński - that the act in question was treated as *crimen laesae maiestatis*, which is evidenced conclusively by the conviction of Samuel Zborowski for lese-majesty committed through murdering a person in the place of a king's stay.¹²⁵

The Third Lithuanian Statute did not label this type of act as lese-majesty, but rather as an aggravated form of a breach of peace, aggravated because perpetrated "at our Lord's court." Article 9 of Chapter I read:

Whoever draws a sword, sabre or any other weapon before Us the Lord, he shall lose his head. And if the Lord dies of the wound or is killed immediately, the assassin shall lose his head and dignity, and relevant high penalties shall be paid from his property with immediate effect. And he who attacks someone

¹²³ "De eo qui coram Regia Maiestate..." In *Volumina Legum*. Vol. 1, p. 23. For more, see Handelsman, M. *Prawo karne w Statutach...* p. 141.

¹²⁴ *Op. cit.*, p. 18.

¹²⁵ Cf. Lityński, A. *Prawnokarna ochrona sądów...* p. 231. A description of the incident in, e.g. Bielski, M. *Kronika polska*. Vol. 3, Sanok 1856, p. 1337ff.

and draws a weapon before Us the Lord but does not kill or wound anyone, he shall lose his hand.

Later in the same article, more penalties are provided for killing, wounding, or even for starting a fight with weapons drawn “in the castle, palace, or manor where Us the Lord resided.”

Distinctive of Roman law, as already discussed, the offences of lese-majesty covered acts that did not necessarily involve a direct assault on the ruler (or other individuals who enjoyed a special legal protection) but were broadly understood as violating his authority. In Polish law, such acts included the lease or putting in pledge the office of *starosta* of the Sandomierz region. The nature of this offence is best illustrated, it seems, by the words of T. Zawacki who qualified it to the acts “*quae criminibus laesae Maiestatis sint iure adaequata, ut Terrae Sandomiriensis donationis, vel super eam inscriptionis suspectio.*”¹²⁶ This wording suggests that the offence should be seen as equal, at least in terms of penalties, to the crime of lese-majesty and not as a type of this offence. The basis for such a classification is a document issued by King Kazimierz Jagiellończyk in 1478; its promulgation at the Diet in Piotrków is reported by Marcin Bielski: “There a law was laid down that no one dares to propose the king to bid for the Sandomierz *starostwo*. And it all began when the late Dzierżek Rytwiński, having an amount of money bequeathed for Sandomierz by Władysław III, gave it to the king in his last will, and therefore, his brother Jan Rytwiński was forced to waive it and return Sandomierz to the king...”¹²⁷ Although the document refers directly to the donation or pledge of Sandomierz (or any part of it),¹²⁸ lawyers who advert to it clearly indicate that the object prohibited from sale or pledge was the office of *starosta*. J. Herburt,¹²⁹ and T. Zawacki likewise,¹³⁰ conclude the contents of the document as follows: “*Dans pecuniam super Capitaneatum Sandomiriensem crimen laesae Maiestatis incurrit.*” The classification of the analysed offence is unequivocal: anyone infringing the prohibition contained in the document, and even acting with the consent of the issuer or its successors, will be regarded as offending the majesty of the king and of the Republic.¹³¹

¹²⁶ Op. cit., p. 212.

¹²⁷ Bielski, M. Op. cit., pp. 870-871.

¹²⁸ “*Litera obligatoria in qua D. Rex Poloniae promittit terram Sandomiriae se nunquam cuipiam obligaturum.*” In *Volumina Legum*. Vol. 1, pp. 106-107.

¹²⁹ *Statuta Regni Poloniae*. P. 25.

¹³⁰ Op. cit., p. 211.

¹³¹ “*Sed et persona cuiuscunque status, et conditionis existeret, quae inscriptionem et infeudationem supra dicta Terra Sandomirien. ... a Nobis vel Successoribus nostris susciperet, laesae*

The agreement between Dzierśław of Rytwiany and Władysław Warneńczyk, alluded in the mentioned document of 1478, was one of several loan agreements entered into by the king and the nobles when the sums expended for the foreign policy exceeded the allocated budget, and a loan to the king was secured against not only royal villages, but entire *starostwo*, county and land. Kazimierz Jagiellończyk's failed expedition to Bohemia in 1438, Władysław's to Hungary in 1440 and wars with the Turks requires immense financial outlays; depleted treasury income did not offer enough funds to cover them, so the king borrowed money from private persons offering royal assets in return.¹³² Among the persons financing king's plans there was Dzierśław of Rytwiany, heir to considerable wealth left by his grandfather's brother, Archbishop of Gniezno Wojciech Jastrzębiec.¹³³ Already in August 1439, he received a document issued in Szczebrzeszyn with a pledge of 2495 grivnas and 760 florins secured against the Chełm land, and two months later received from the king another pledge for this land amounting to 210 grivnas. The capture of Lutsk by Świdrygiełło in July 1441 resulted in a shift in the Chełm *starostwo*; in consequence, Dzierśław of Rytwiany agreed to accept the Sandomierz *starostwo* as a replacement. On 26 April 1442, the king confirmed the transfer of the pledge of 2700 grivnas and 3360 florins¹³⁴ from the Chełm estate to Sandomierz. The amount expressed in grivnas was secured against the Sandomierz *starost-*

Majestatis laesaeque Reipublicae ream esse decernimus, nostrumque ac Regni nostri Poloniae publicum hostem et fraudatorem declaramus ..." (*Litera obligatoria...* p. 107).

¹³² Gawęda, S. *Możliwość rozwoju małopolskiej w XIV i w pierwszej połowie XV wieku. Studium z dziejów rozwoju wielkiej własności ziemskiej*. Kraków 1966, pp. 85-86.

¹³³ Cf. Długosz, J. „Dziejów Polskich ksiąg dwanaście.” In *Jana Długosza Kanonika Krakowskiego Dzieła Wszystkie*. Vol. 6, Kraków 1870, p. 259f.

¹³⁴ Fałkowski, W. „Rytwiański Dzierśław.” In *Polski Słownik Biograficzny*. Vol. 33, Wrocław 1992, pp. 584-585.

The Sandomierz land was the most important portion of the Duchy of Sandomierz, transformed from the Province of Sandomierz after 1138, which, after the unification of the Polish Kingdom in the early 14th century, ceased to be a district and became a new administrative region, since the 15th century known as *województwo* (Polish for province, department). Its area was reduced in 1471 when a new Lublin *województwo* was separated from it; the new province comprised (with few exceptions) the entire territory east of the Vistula river. The Sandomierz land as a separate territory (province) emerged in the sources in the 12th century. Gallus Anonymus' chronicle reports that, besides Kraków and Wrocław, Sandomierz belonged to *sedes regni principales*, i.e. the main municipalities of the Piast dynasty of the turn of the 11th century. The Sandomierz land, for the first time clearly separated from Kraków, was reported as a distinct territory with its capital in Sandomierz during the reign of Henry of Sandomierz (c. 1130-1166), although it was not a political entity equal to other districts. This strip of land originally extended from Kielce and Wąchock in the west as far as the Ruthenian border in the east; with time

wo which comprised the town and Sandomierz castle, the town of Osiek and Połaniec with their adjacent villages.¹³⁵ In the following years, the total pledge exceeded 10 thousand grivnas. Having agreed on that with his brother Jan, Dzierśław of Rytwiany in his last will renounced all pledges held for Sandomierz in favour of the Kingdom and the king. Jan of Rytwiany, *wojewoda* of Kraków (provincial governor; palatine; head of *województwo*), executing his late (d. in January 1478) brother's will, returned the land to the king at the next Diet in Piotrków, thus cancelling the secured sums. In response to that, King Kazimierz Jagiellończyk agreed that henceforth neither he nor his successor would put this land in pledge; this commitment also concerned the Sandomierz *starostwo*.¹³⁶ For the contemporary chroniclers and legal writers, of significance among the king's decisions was not the withdrawal from the future pledging of the Sandomierz land (in whole or in part) but of the Sandomierz *starostwo*.

Section 25 Forms of Criminal Action According to the Polish Legal Sources and the Doctrine

The early constitutions addressing the problem of lese-majesty were very terse in discussing the forms of such a criminal action. The constitution of 1510 regarded any kind of assault and violence against persons designated as the object of the offence as lese-majesty ("quicumque...quoquo modo invadere et violare ausus fuerit"). Such a broad approach allowed for a rather arbitrary inclusion of various activities under the concept of lese-majesty, de-

the area was considerably truncated (cf. e.g. Arnold, S. "Podziały administracyjne województwa sandomierskiego do końca w. XVIII." In *Pamiętnik świętokrzyski*. Kielce 1931, p. 60).

¹³⁵ The king only reserved the right to reside in these locations over specified number of days (Gawęda, S. Op. cit., p. 85). S. Kutrzeba notes that the Małopolska *starostas* not only had a much narrower authority than in other districts, but they also suffered from more disadvantaged by the rules governing their emoluments ("Starostowie, ich początek i rozwój do końca XIV w." *Rozprawy Wydziału Historyczno – Filozoficznego Akademii Umiejętności w Krakowie* 45(1903), pp. 109, 115). Despite these restrictions, the Sandomierz *starostwo* was among the wealthiest in the Małopolska region and enjoyed the status - as a municipality - of a centre for the judiciary (for more, see Rutkowski, H. "Z dziejów Sandomierza w okresie Odrodzenia." In *Studia sandomierskie. Materiały do dziejów miasta Sandomierza i regionu sandomierskiego*. Wąsowicz, T., Pazdur, J., eds. Sandomierz 1967, pp. 287-344). Not surprisingly, the Sandomierz land, and especially the office of *starosta*, was a valuable item of pledge.

¹³⁶ Fałkowski, W. Op. cit., p. 587; Gawęda, S. Op. cit., pp. 94-95.

pending on the situation. A more constructive approach to the phenomenal forms of this action surfaced in the constitution of 1588, according to which this offence "...only *in personam Regiam...machinatione, conspiratione, violento conatu et...facto ipso, in vitam committitur...*"¹³⁷ Consequently, the offence occurred not only when the unlawful action was completed (*factum*), but also on account of the preparations, especially organizing a conspiracy (*conspiratione*), attempt (*conatus*), and even the very intention to perform the attack (*machinatio*). A more detailed, almost casuistic list of forms of criminalized action appeared in the Law on Diet Tribunals of 1791. As a basic form of this offence, Article IX therein pointed to the assassination attempt on the king, followed by a violent attempt against the monarch and assault with weapons, yet - it seems - with no intent to slaughter the king. Another form of the crime was intruding on the royal house "with an armed gang" combined with the performance of an act of violence in this house and "a violent detention, abduction or imprisonment of the king" (and therefore involving force) and rebellion in order to "dethrone the reigning king."¹³⁸ A similar list of forms of action is collated in the *Zbiór praw sądowych* by Andrzej Zamoyski who additionally enumerated: an assassination attempt on the king, alone or with "an armed gang," a conspiracy "against the rule of the enthroned king," provoking a rebellion or organizing an ambush for the king.¹³⁹ Still more forms were anticipated in J. Morawski's proposal to the Code of Stanisław August, including the falsification of royal seals or signature, and publishing writings and libels defaming the king or his family members.¹⁴⁰

Before the Partitions, made law did not regulate the matter of criminalization of libel or slander affecting the king. *Zbiór praw sądowych* put it straightforwardly that "if someone threatens orally or speaks carelessly against the majesty," he will be subject to "penalties proportional to the offence", but he will not be held liable for lese-majesty. Verbal insult was treated similarly in the Third Lithuanian Statute; although the placement of the relevant provisions in Article 4 of Chapter I¹⁴¹ demonstrates that this act was regarded as a form of lese-majesty, the penalty is surprisingly mild: detention of six weeks in the tower "and may even be fewer depending on Our the Lord's clemency." Moreover, the sanction was applied only for

¹³⁷ *Volumina Legum*. Vol. 2, p. 252.

¹³⁸ *Volumina Legum*. Vol. 9, p. 246.

¹³⁹ Article XLVIII § 1.

¹⁴⁰ „Myśli do prospektu..." In *Kodeks Stanisława Augusta...* P. 61.

¹⁴¹ The article is entitled: "The violation of Our the Lord's majesty, so that every accused knows how to behave, and about those who should issue a warning and where such accused shall be judged. Also, about speaking or writing about the Lord. "

an intentional insult, if inadvertent, the act was not punishable.¹⁴² Only J. Morawski opted for the recognition of written insults or traducement (“writings and lampoons tarnishing the king’s and his family’s honour”) as a form *lese-majesty* in his proposals to the Code of Stanisław August.¹⁴³

J. Kaszyc, relying on a provision from the Code of Justinian (C. 9,7),¹⁴⁴ advocated a mild approach to verbal insult of the monarch if the offender did not act in bad faith. A similar view was expressed F. Minocki; although - as maintained by some authors - the individual insulting the royal majesty with a disgraceful word deserves the full penalty, which can be inferred from Modestinus D. 48,4,7,4 (a passage on destroying emperor’s images) and from C. 9,7 by J. Kaszyc; still it should be ascertained whether the offender does so out of recklessness, foolishness or suffered injustice - if so, he is rather worthy of compassion and forgiveness than punishment. According to F. Minocki, when assessing the facts, the individual traits of the accused need to be examined (“*considerata qualitate personae*”). On the other hand, written insult may be considered an offence of *lese-majesty*; the author, however, shares Menochius’ view that, in such a case, the offender should not be subject to ordinary legal proceedings, but the ultimate verdict should be passed by the ruler who takes into account both the offender’s characteristic features and the weight of his act.¹⁴⁵

The destruction of ruler’s images, interpreted as a form of insult, was considered *lese-majesty* by G. Quadros; he follows a commentary to the *lex Iulia maiestatis* which explains that for the offence to occur such images or statues should be consecrated (“*statuas vel imagines principis iam consecratas*” - Venuleius Saturninus D. 48 , 4,6).¹⁴⁶

S. Huwaert proposed that verbal insult of the king or the destruction of his image be regarded as a separate - apart from *crimen laesae maiestatis* in the strict sense and *perduellio*¹⁴⁷ - form of *lese-majesty*, namely *crimen laesae venerationis*, if no hostile intent came into play but rather a lack of prudence.¹⁴⁸

¹⁴² “And if anyone did it driven by foolishness or madness, We the Lord shall not prosecute it.”

¹⁴³ „Myśli do prospektu...” In *Kodeks Stanisława Augusta...* p. 61.

¹⁴⁴ Op. cit., p. 23.

¹⁴⁵ Op. cit., p. C4 v. – D.

¹⁴⁶ Op. cit., p. D v.

¹⁴⁷ In the opinion of many authors, *perduellio* - as mentioned elsewhere - was not a separate offence but a specific form of *lese-majesty* involving *hostili animo* action (cf. Ulpianus D. 48,4,11). Cf. e.g. Drezner, T. Op. cit., p. 177; Huwaert, S. Op. cit., pp. 4-5.

¹⁴⁸ “... quando dicto factove impudenti, absque animo tamen hostili, veneratio Principis debita violatur” (op. cit., p. 5).

Section 26 Phenomenal Forms and Stages of *Crimen Maiestatis* in the Output of Polish Legal Writers

A particularly straightforward example of the impact of Roman law on the concept of *crimen maiestatis* in Poland is the recognition of criminal intent as a form of the offence. Among the forms of criminal action, the constitution of 1588 lists, among others, *machinatio (in personam Regiam)*. In accordance with Article XLVIII § 7, Book II of *Zbiór praw sądowych* by A. Zamoyski, the penalty provided for the perpetration was to be imposed on “the convinced one who had schemed to commit any of the crimes in §§ 1,2,3, or to violate the majesty or the Motherland, but failed to accomplish it.”¹⁴⁹ Another form of the offence was to conspire against the king, defined as *conspiratio* in the 1588 constitution. The equalizing of participation in a conspiracy with the perpetration was highlighted in *Zbiór praw sądowych*: under Article XLVIII § 1, Book II, “he commits the crime of lese-majesty against the ruling king whose plotting of covert or open conspiracy is proven by prosecutors, along with a rebellion or ambush laid to this end;” § 8 of this Article shows that, in terms of the penalty, a conspiracy and an attempt should be punished alike, and the most severe penal measure, i.e. the aggravated death penalty, was administered for the perpetration in the form of murder or injury of the king. Both a conspiracy and an attempt were threatened by the ordinary death penalty. A similar wording is to be found in Article XI of the Law on Diet Tribunals of 1791 concerning “concocted, yet unfulfilled conspiracy;” Article IX defines conspiracy as “a plot made by signature or an oath to commit a misdeed prohibited by law and detrimental to the nation” - a broader interpretation was explicitly forbidden.¹⁵⁰ Both the conspiracy leader (director) and accomplices and accessories were exposed to varied sanctions, “according to the circumstances and the gravity of the crime.”¹⁵¹ Also, the Second Statute of Lithuania in its Article III provided for the most severe penalties for the offender who “conspired or revolted against Our the Lord’s, even if, owing to God, the conspiracy was not put into practice.” The recognition of a conspiracy against the monarch as a distinct form of lese-majesty required that also the pre-crime preparatory activities be made punishable.

¹⁴⁹ *Zbiór praw sądowych*... p. 556.

¹⁵⁰ *Sądy Seymowe*... p. 245.

¹⁵¹ *Ibidem*, p. 246.

The conviction of the need to approach particular stages of the commission of the offence of lese-majesty on a par with the perpetration proper also prevailed in the literature. Thus, G. Quadros subscribed to the opinion that lese-majesty occurs already upon swearing an oath to enter a conspiracy that aimed not only to assassinate the monarch but to inflict any harm on him ("aliquid in damnum principis" - p. 21). The issue of criminalization of intent was elaborated in the work by F. Minocki; the author explained that the manifestation of intent, that is, an attempt, is enough to hold the wrongdoer criminally liable. For intent, understood as a purely internal act, does not entail a penalty under man-made laws.¹⁵²

Another stage of commission of a lese-majesty crime, regarded as a separate offence, was an attempt. The constitution of 1588 explicitly mentioned *conatus* as one of the components of this crime (in addition to intent, conspiracy and perpetration). *Zbiór praw sądowych* in Article XLVIII § 1, Book II emphasized that the perpetrator "commits the offence of violation of majesty even if his deed has not materialized against the person and life of the monarch."¹⁵³

An interesting characteristic of the 18th century criminal regulations on lese-majesty was a tendency for individualized penalties contingent upon the phenomenal forms of the offence ascribable to individual offenders; it is especially evident in conspiracy which naturally involves joint action and agreement of two or more people. The constitution of 1588 did not differentiate sanctions against accomplices for their participation in the crime: it provides that anyone entangled in the commission in any way - also by joining a conspiracy - is, as the *reus criminis*, equally liable as the leading offender (director).¹⁵⁴ The differentiation of penalties is provided as late as in *Zbiór praw sądowych*; its Article XLIX § 8 provides that the director of the offence ('the leader of the crime') of lese-majesty resulting in king's death or fatal wound should be punished by the aggravated death penalty (beheading preceded by torture) and, if the commission ended with an attempt, by the ordinary death penalty by beheading. Furthermore, pursuant to § 9-10, other participants in the conspiracy acting in the capacity of "civil or military officers" should be put to death, while those participating but

¹⁵² "... quod tamen intelligendum, quatenus videlicet nuda voluntas in actum exivit exteriorem ita, ut conatus aliquis advertentur ..., actusque mere interni nullatenus cadere videntur sub legem humanam" (op. cit., p. E3 v.). The author alluded to the Roman principle of *cogitationis poenam nemo patitur*.

¹⁵³ *Zbiór praw sądowych*... p. 554.

¹⁵⁴ "... whoever was *complex criminis aut machinationis in personam Regiam*... and as the principal were *convictus, reus esse criminis condemnabitur*" (*De crimine laesae Maiestatis Regiae*... p. 252).

having no function in the conspiracy but “joined the plot by persuasion or threat and remained there” were exposed to milder measures depending on their age and social status: the nobility were punished by imprisonment in the tower for the period of maximum one year and partial deprivation of civil rights (“no admission to diets and dietines”), while non-nobles were flogged publicly and incarcerated in a correction facility for one year.¹⁵⁵ Tougher penalties for the director of the offence were also stipulated by the Law on Diet Tribunals of 1791: the death penalty was handed down for sparking a rebellion against the king or gathering an armed force aimed to dethrone the king; as regards “others less guilty accomplices,” they were to suffer from less severe penalties “depending on the circumstances and gravity of the crime.” Also, the leader of a “concocted, yet failed conspiracy” was subject to more severe sanctions (including the death penalty) than his accomplices and accessories, who were tried “in a manner commensurate with their degree of involvement in the crime,” yet excluding the death penalty.¹⁵⁶

As far as the doctrine is concerned, it advocated an equal treatment of the different forms of involvement in the perpetration. In the opinion of G. Quadros, *crimen laesae maiestatis* is committed not only through the perpetration as such, but also through various forms of aiding and abetting, as well as instigating by ordering the commission of the offence or its approval; the author meant - it seems - the case where a crime is commissioned by a third person and that person gives their assent to the offender’s action (p. 25). According to S. Brodowski, harsher penalties should be administered against the originator of a rebellion (“the sedition-makers”) than other participants (“those who adhere to them and raise the number rebels;” to substantiate this claim, the author referred to C. 9,47,22.

It is worth noting that it was repeatedly emphasized in the legal sources that neither the social background of the wrongdoer nor his granted privileges had any impact on the penalty. The statute of Zygmunt I of 1507 concerning the security of assemblies, recapitulated in the constitution of 1764, read that it pertained to the people of all classes, regardless of held offices (“ad personas cujuslibet status, conditionis et praeeminentiae”); what is more, increased penalties for criminal offences listed in the statute applied to *starostas*, who, more than others, were expected to ensure public safety.¹⁵⁷ Severe penalties for a breach of security of the Diet and dietines “with

¹⁵⁵ *Zbiór praw sądowych...* p. 556.

¹⁵⁶ *Sądy Seymowe...* p. 246.

¹⁵⁷ *De poena eorum, qui manu armata...* p. 165.

no distinction made as to the person and dignity, but considering only the wrongdoing" were also prescribed in the constitution of 1764, which re-established the punishability of such acts as the offences of lese-majesty.¹⁵⁸ Also, *Zbiór praw sądowych* ordered in Article XLIX § 7, Book II to approach the offender with full severity, "with no regard for his status and dignity."¹⁵⁹ A similar provision was contained in D. 1, Article 4 of the Second Statute of Lithuania:

Whenever someone, regardless of his social class, was held suspect of violating Our the Lord's majesty, he shall not be helped by any privilege or dignity: he shall not use it as an excuse for his conduct, nor shall he be able to use it to defend himself to avoid penalty if legally convicted.¹⁶⁰

Identical wording in the Third Statute was given to Article 4 of Chapter I. The doctrine remained in conformity with the law: F. Minocki underlined that no consideration given to privileges was due to the gravity of the deed. Therefore, during the proceedings, the accused, regardless of his rank, titles and privileges, may be tortured¹⁶¹ and will not escape lawful punishment if convicted.¹⁶²

In the literature, and to a lesser extent in the sources of law, an obligation was discussed of denouncing the perpetrator once becoming aware of the intended crime; failure to do so was even qualified as a form of complicity. Such a qualification was present in Article XLVIII § 4 of *Zbiór praw sądowych* which read that "he who has knowledge of plotting...a crime and fails to notify the nearest magistrates' or district court, or the commander of the nearest military unit, but joins the rebels voluntarily and without violent and life-threatening coercion, he shall be held an accomplice to the wrongdoing of violated majesty."¹⁶³ The cited provision refers to the failure to notify relevant authorities about a conspiracy and not to the exposure of

¹⁵⁸ „Bezpieczeństwo obrad publicznych i osób w nie wchodzących." In *Volumina Legum*. Vol. 7, Petersburg 1860, p. 43.

¹⁵⁹ *Zbiór praw sądowych*... p. 555.

¹⁶⁰ Cf. C. 9,8,3.

¹⁶¹ "... Reos huius criminis nulla Dignitas a tortura eximit" (op. cit., p. E; the author referred to C. 9,5,3-4).

¹⁶² "Ex atrocitate quoque huius criminis evenit, ut licet plures Personae de Jure a paenis exemptae inveniantur, publicisque nequeant affici suppliciiis, in hoc nihilominus deprehensae crimine, quanquam specialissimis insignitae privilegiis, illustres titulis, cumulatae favoribus, et indultis, singulare damnantur, et praescriptas de jure non effugiunt paenas" (ibidem, p. B2 v.; the author referred to Callistratus D. 48,18,15).

¹⁶³ *Zbiór praw sądowych*... p. 555.

the perpetrators after the crime; it needs to be noted, however, that already conspiring against the king (the preparations) was seen as a form of treason, and the aim of denunciation was to prevent the offence. The quoted article does not therefore apply to the harbouring of the perpetrator, i.e. being an accomplice after the fact. On the other hand, "joining the rebels" without any coercion was indicated as a condition for the liability for complicity to occur. The question arises whether, considering such a wording, a person is subject to punishment if he fails to inform about the orchestrated crime despite having such knowledge and, still, being excluded from the preparations, or guilty is the one who fails to denounce the conspirators and gets involved in the conspiracy in any way whatsoever. The latter interpretation is more likely since "joining the rebels" must be voluntary and not caused by the threat to life, which suggests a wilful assistance to the conspirators. According to § 5 and 6 of this article, criminal liability encumbers the authorities (the commander or magistrates' or municipal court judge) which, having been informed, omit to initiate an investigation or fail to prevent the commission by, in particular, capturing the leader of the conspiracy or neutralizing its members ("quelling the entire gang"): inaction of these bodies was treated as complicity.¹⁶⁴

Chapter I, Article 4 of the Third Statute of Lithuania puts pressure not so much on punishment for failure to report on the intended crime, but on special treatment of the informant: "And who, in due time and out of love of God, his Lord and the Republic, gives a warning or exposes such endeavours, he shall have Our the Lord's grace and shall be worthy of greater honours." This provision evidently makes reference to the passage of the *lex Quisquis* (C 9,8,5,7) which promises imperial favour and even an award if the accomplice demonstrates active repentance.

The criminalization of the person who fails to inform of the offence (i.e. the preparations) on a par with the perpetrator was advocated - based on the *lex Quisquis* - by J. Kaszyc. What is more, in Kaszyc's opinion, the informant deserves release from liability and pardon; meanwhile, J. Kaszyc pointed to the issue debated by many authors of whether the offence of lese-majesty is committed by a person who admittedly has information about the plot but keeps it for himself due to the lack of sufficient evidence and fearing interrogation by torture. By opting - as he would often do - for the middle course, the author recommended that authorities be notified about the crime despite the absence of verified information, yet not by bringing an

¹⁶⁴ Ibidem.

accusation but by denunciation.¹⁶⁵ Likewise, S. Brodowski noted that in the case of military offences classified by him as lese-majesty persons having knowledge of the intended crime deserve the same punishment as the perpetrators.¹⁶⁶ This view is shared F. Minocki who paid attention to the advisability of penalizing a person who refuses to disclose information about a crime in the same way as the perpetrator (p. E4).

Section 27 Sanctions for *Crimen Laesae Maiestatis* in Poland

1. General

The impact of Roman law on the structure of the offence of lese-majesty in Poland surfaced primarily in the views advanced in the doctrine and concerning the penalties administered for this wrongdoing. The reason for authors having frequent recourse to Roman law on this issue was the deficiencies in Crown's legislation.

Until 1791, *crimen laesae maiestatis* had not been linked to any specific sanction in Polish positive law, consequently the sanction was absolutely indeterminate.¹⁶⁷ The constitution of 1510, contrary to what its title may suggest, only determined the object of protection under criminal law and the legal classification of the offence, less the proposed penalty. The subject of punishment for *crimen laesae maiestatis* was not addressed in the next constitution of 1539 either. Little guidance as to the penalty was contained in the constitution of 1588, which only stipulated that the accomplice of an assault on the king or a conspiracy against him ("whoever was complex criminis aut machinationis in personam regiam") should be punished like the director ("and as the principal were convictus, reus esse criminis condemnabitur"), yet without specifying what penalty should actually apply.¹⁶⁸ It was as late as in the Law of Diet Tribunals of 1791 when the penalties were defined; their definition coincided with their differentiation according to the Enlightenment demands for penalties commensurate with the social harmfulness of the deed and the degree of culpability of the of-

¹⁶⁵ "non per modum accusationis, sed per modum denunciationis" – op. cit., p. 24.

¹⁶⁶ Op. cit., p. 64.

¹⁶⁷ Cf. Lityński, A. *Przestępstwa polityczne...* p. 24.

¹⁶⁸ *De crimine laesae Maiestatis Regiae...* p. 252.

fender. Furthermore, certain penalties or the manner of their implementing came under criticism, which should be seen as the reason why the law departed from some sanctions applied in the former practice for the crime of lese-majesty; these sanctions were confiscation of property and aggravated forms of capital punishment. Consequently, the basic penalty for the crime in question was the death penalty combined with or administered without infamy; it was imposed for an assassination attempt on the king or breach of his inviolability (also by means of weapons), for kidnapping or imprisonment of the king, as well as invading the royal house with "an armed gang." Death also awaited those who instigated a revolt against the king and led an anti-royal plot; other co-perpetrators were incarcerated or banished from the country, alternatively other penalties came into play "depending on the circumstances and gravity of the crime." The constitution also criminalized an attempt: the director of "a concocted, yet unfulfilled conspiracy to commit any of the five above-listed crimes against the royal majesty" was to be made infamous and might have also suffered from additional punishments: the death penalty, imprisonment, banishment, confiscation of property or loss of offices. The above punishments identified as additional also applied to "less guilty accomplices and accessories;" in their case, the constitution expressly excluded the death penalty.¹⁶⁹

A similar list of sanctions for the crime of lese-majesty was contained in *Zbiór praw sądowych* and revealed - as in the later constitution of the Diet Tribunals - a comparative diversity depending on the gravity of individual offences falling within the scope of the crime and the degree of culpability. The primary penalty was death - ordinary or aggravated - coinciding with confiscation of property and infamy. The forms of the death penalty, in accordance with § 8 and 9, Article XLVIII, were to be contingent upon the stage of commission and the degree of participation of individual culprits:

The type of death should be decided by the court and reflect the seriousness of the crime: for an assault on the king or even deliberately laying an ambush or raising a rebellion, or scheming against the Homeland, the director of the crime shall be beheaded and his heart taken out, and his body burnt at the stake. And if he seriously wounds or kills the king, he shall be deemed betraying his Homeland; his chest shall be ripped with red-hot tongs, his right hand and then his head cut off and thrown with the whole body at the stake... And those who take part in such a crime and join the director at his prompting, but neither harm the king, nor *directe* enter a conspiracy of treason with the enemy against

¹⁶⁹ *Sądy Sejmowe...* p. 246.

the country, nor spark unrest or a rebellion, but exercise a civil or military function in such a conspiracy, those shall be punished by decapitation.¹⁷⁰

Those less guilty, especially forced to participate in the crime ("those without any authority who join a conspiracy at someone's advise, persuasion or threat" - § 10), were to be punished by imprisonment (incarceration in the tower) for one year and deprivation of certain civil rights ("no admission to diets and dietines"), or - in the case of non-nobles - by flogging and one-year detention in a correction facility.¹⁷¹ In 1793, the absolute indeterminate sanction was restored.¹⁷²

As follows from the above discussion, the law of the Crown laid down the punitive measures for *crimen laesae maiestatis* relatively late, i.e. in 1791. That legislative gap was filled with customary law; the sentence was left - as purported by contemporary authors - to judges, yet they were also bound by customary law which prescribed that lese-majesty be punishable by death, infamy and confiscation of property (applied together in the most acute cases). The lack of clear guidance as to penalties in Polish legislation was noted by M. Zalasowski who confirmed that they largely depended on the judge's discretion, but usually came down to banishment, infamy and confiscation (the author did not mention the death penalty).¹⁷³ Even in the late 18th century, T. Ostrowski emphasized the large degree of discretion in sentencing: "The size and regulations governing such penalties are mostly determined by the will of the insulted Majesty, that is, by more or less clemency and benevolence of the ruler."¹⁷⁴ A similar observation as made by F. Minocki in his monograph where he says that the punishment was tailored to the gravity of the wrongdoing.¹⁷⁵ Judges' arbitrariness in

¹⁷⁰ *Zbiór praw sądowych...* p. 556.

¹⁷¹ *Ibidem*. The following sections provided for such penalties for officers who negligently failed to prevent the crime or failed to notify the designated authorities, and for false accusers.

¹⁷² "Sądy Sejmowe." In *Volumina Legum*. Vol. 10, Kraków 1889, p. 151.

¹⁷³ "De Jure Regni Nostri, in dicta Const. 1588, nulla poena contra Laicum committentem crimen laesae Maiestatis exprimitur, sed arbitrio Iudicii reservatur, ut pro qualitate excessus puniatur, regulariter tamen, ex Regno proscribitur, infamis pronuntiat, et bona eius omnia confiscantur" (Zalasowski, M. *Op. cit.*, vol. 2, Posnaniae 1702, p. 716).

¹⁷⁴ Ostrowski, T. *Op. cit.* Vol. 1, p. 316.

¹⁷⁵ "Quod vero attinet poenas Reo criminis laesae Maiestatis de Jure Regni praescriptas reservantur omnes arbitrio Iudicii adeo, ut Reus Ejusdem criminis pro qualitate excessus puniatur" (*op. cit.*, p. J3). The same author in his monograph proposes an exhaustive elucidation of the severity of penalties imposed for *crimen laesae maiestatis*, which was also aimed to curtail the excessive discretion in applying such measures (the punishment might have been too light): punishment should be harsh, for its purpose is to deter potential offenders, and the ultimate

matching the type of capital punishment to individual acts was, however, limited by customary law, which is aptly reflected in the observation of T. Ostrowski: "The laws of the Two Nations never teach what course the judge and executioner should take. In such cases, our magistratures follow the custom..."¹⁷⁶ It therefore seems pertinent to conclude that the arbitrariness of judges was understood only as the opportunity to modify, to a limited extent, the penalties provided for by customary law, and not as a right to impose discretionary sanctions.

Some authors seek guidance as to the penalties for *crimen laesae maiestatis* not only in customary law, but also in positive law, though not in the constitutions addressing this crime. In their opinion, the penalty for the crime in question was set out in the Edict of Wieluń sponsored by Władysław Jagiełło. As mentioned elsewhere, heresy was punished according to the seriousness of the offence, and the punishment was - as clearly follows from the edict - confiscation of all wrongdoer's assets and infamy (also affecting the perpetrator's descendants), and, in certain cases, banishment.¹⁷⁷ Discussing the rules governing lese-majesty, J. Przyłuski refers to the content of the constitution of 1539 and goes on to explore the Edict of Wieluń for the penalties imposed for the offence: "Crimen laesae maiestatis, quam multiplici poena poena plectatur infra ... de haeticis Vladisla. Iagello descripsit."¹⁷⁸ Such a structure of this statement suggests that the author regarded the edict as a direct source of penalties for *crimen laesae maiestatis*, supplementing the 1539 constitution which - as demonstrated earlier - failed to supply relevant punitive measures. Also T. Drezner, enumerating the lese-majesty penalties, made reference to the Wieluń-made law.¹⁷⁹

The royal courts having recourse to the provisions of the Edict of Wieluń was registered by J. Makarewicz;¹⁸⁰ he noted that this elongation - as he put it - of the edict to include cases of *crimen laesae maiestatis* can be warranted by the fact that Jagiełło's document adopted the same approach to heresy

purpose of punishment is, after all, the general welfare (*salus publica*). This rule applies especially for the most serious crimes, lese-majesty being among them (pp. J3-J3 v.).

¹⁷⁶ Ostrowski, T. Op. cit. Vol. 1, p. 384.

¹⁷⁷ The edict provided for banishment if the heretic refuses to return from Bohemia to Poland within a given time-limit.

¹⁷⁸ Przyłuski, J. Op. cit., p. 18.

¹⁷⁹ "Poena autem huius criminis est, quam Statuti [sc. Vladisl. Iagel. in Convent. Wielun. An. 1424 - note G] verba expressa habent" (Drezner, T. Op. cit., p. 75-76).

¹⁸⁰ Makarewicz, J. *Polskie prawo...* p. 74; the author attaches special attention to one aspect of the punishment, namely extending criminal liability to the culprit's offspring. Cf. Lityński, A. *Przestępstwa polityczne...* p. 44.

as to lese-majesty, therefore, it is not about the application of heresy-related procedures by analogy, but on a straightforward basis.

By contrast, the Lithuanian Statutes left next to no room for doubt in their guidance on penalties for lese-majesty (also including betrayal). Article 3, Chapter I of the Third Statute prescribed the death penalty, infamy and confiscation of property; the same in the First (Chapter I, Article 3) and Second Statute (D 1, Article 3).

Considering the absence of penalties in the existing legislation, the doctrine recommended that Roman law or the Lithuanian Statutes be consulted, if need be; admittedly, the use of the Statutes meant reaching for Roman law but in a more roundabout manner. T. Ostrowski notes:

Still, the law of the Crown lacks relevant penalties for such crimes: but this deficiency is remedied by the Lithuanian Statute...as follows: If someone conspired or convened, or rebelled against Our the Lord's life, and God saves the Lord from the conspiracy being put into action, the perpetrator shall, if lawfully testified and as described in Article 5 of this Chapter, lose his life and property...¹⁸¹

Roman law influences over particular types of penalties will be discussed below.

2. Infamy

The concept of infamy evolved in Polish law over the centuries; in the Middle Ages, it referred to outlawry, or exclusion from the community (often called *proscriptio*) and was imposed for serious felonies: the condemned was deprived of his legal benefits and legal capacity, his marriage was dissolved and the property handed down to his relatives.¹⁸² Although infa-

¹⁸¹ Op. cit. Vol. 1, p. 321.

¹⁸² J. Makarewicz draws attention to the similarity of infamy to the Roman *interdictio aquae et ignis*, while pointing to the differences: the latter of the two institutions meant expulsion from a part of the country (i.e. Italia) under pain of the death penalty and was linked to the prohibition of assisting the returning offender, yet without outlawing him (*Polskie prawo...* p. 225). The influence of Roman law on the institution of infamy in Poland was also observed by B. Łoziński: "The main effect of infamy, that is, the deprivation of the capacity to aspire to any dignities, is defined in the Statutes of Kazimierz Wielki by means of the words of Roman law" (*Infamia. Studium prawno – społeczne*. Lwów 1897, p. 94). For more about the interpretation of the concept of infamy in the early Middle Ages, see Handelsman, M. *Kara w najdawniejszym prawie polskim*. Warszawa 1907, pp. 37, 122; Rafacz, J. *Dawne polskie prawo karne. Część ogólna*. Warszawa 1932, pp. 102-103.

my did not mean banishment from the country, the convicted person was forced to flee it because anyone could kill him and go unpunished.¹⁸³ In the case of a nobleman, infamy meant the deprivation of his noble honour, the loss of civil rights, a denial of running for and holding offices and performing functions of public trust as well as accepting donations from the king.¹⁸⁴

The penalty in question could have been imposed either in the presence of the convicted person or *in absentia*;¹⁸⁵ after the judgement, the penalty was announced publicly (*declare, pronuntiare*), which was referred to as 'the call'. Oftentimes, infamy was an extra measure besides death, especially in the case of *in absentia* judgements: if putting the condemned to death was impossible due to his absence, to ensure the inevitability of the sanction, he was outlawed so that anyone could kill him.¹⁸⁶ In the second half of the 18th century, infamy did not always accompany a death sentence, as evidenced by the case of the condemned in the trial for the assassination attempt on King Stanisław August (see Chapter IV below).

The penalty of infamy coincided with further measures: the loss of noble honour (*privatio honoris*)¹⁸⁷ and the loss of nobility. In this case, 'honour' meant a set of powers going with the nobleman's social position.¹⁸⁸ Its loss meant the simultaneous deprivation of all the noble prerogatives, such as

¹⁸³ The 17th century parliamentary constitutions even promised awards to the killer: in 1623, it was decided that a banished person who kills an outlaw "shall be liberated from his banishment" (*O zabiezeniu Konfederacji żołnierskiej, i wszelkiej nawalnej domowej swywoli*. In *Volumina Legum*. Vol. 3, Petersburg 1859, p. 217), while under another provision of 1669, a nobleman putting an infamous person to death was to be awarded an office or royal land, and a plebeian was to be raised to the nobility (*O marszałku Związkowym*. In *Volumina Legum*. Vol. 6, Petersburg 1860, p. 34).

¹⁸⁴ Płaza, S. Op. cit., p. 405.

¹⁸⁵ Infamy in terms of punitive measure under substantive criminal law (usually called *proscriptio*) administered by the court should be distinguished from the infamy understood as an automatic consequence of perpetrating certain offences (*ipso facto*), as well as from the infamy resulting from hiding from justice (*bannitio perpetua*). For more, see Makarewicz, J. *Polskie prawo...* p. 225.

¹⁸⁶ The literature argues that the combination of infamy and capital punishment in the Diet constitutions was unnecessary because infamy was a surrogate for the death penalty (p. 228).

¹⁸⁷ *Infamis* is the term found in the sources and meaning a person deprived of his noble honour, however, it is not equivalent to an outlaw but refers to a person of bad reputation (*mala fama*).

¹⁸⁸ Makarewicz, J. *Polskie prawo...* p. 289. The author accentuates the similarity of the loss of "noble honour" to measures taken by the Roman censors against wrongdoers who turned out to be unworthy of their social position through committing certain illicit deeds. These measures entailed the removal of the perpetrator of the Senate (*senatu movere*) or transfer to an inferior class of citizens (*inter aëranos referre*).

active and passive voting rights and the right to attend public gatherings, especially the general Diet and local dietines (also referred to as *privatio activitatis*), and the inviolability when in a trial guaranteed by the Jedlnia and Kraków privilege of 1430-1433. *Privatio honoris* did not, however, limit private rights, e.g. the possession of land. While this penalty did not demote the nobleman but only irreversibly deprived him of the public rights arising from it, the other resulted in permanent exclusion from the nobility, also affecting the wrongdoer's offspring; on top of that, it stripped the condemned of the right to own land.

Among the sources of Polish made law, the punishment of infamy connected with the loss of the nobility was prescribed by the Edict of Wieluń for both a heretic, that is, the culpable of lese-majesty, and his offspring. The penalties threatening the perpetrators were generally associated with those used against heretics ("quae haereticis infligi consueverunt"), and if the person was reluctant to return from Bohemia to Poland, the legislation recommended, among others, confiscation of property; still, judging by the wording of the passage on the offender's descendants, it follows that they were to be affected by infamy and loss of the nobility "cum patribus et progenitoribus suis," which leads to the conclusion that these penalties were determined by custom.

Infamy - besides the death penalty - was recommended for the leader of conspiracy in the Law on Diet Tribunals of 1791.¹⁸⁹ The same punishment but known as "the loss of honour" was set out in Lithuanian law (Third Statute, Chapter I, Article 3).

Zbiór praw sądowych omits to rank infamy among the penalties for lese-majesty; nevertheless, it is substituted by the so-called civil death, that is, depriving the condemned of legal capacity and ability to perform acts in law.¹⁹⁰ As regards lese-majesty, it was to be penalized by the loss of the nobility by both the perpetrator and his family: "Every nobleman loses his nobility if he insults majesty... Also the children of the father who has committed the crime of lese-majesty shall lose their nobility..."¹⁹¹

Infamy was yet to be found in the list of punitive measures contained in the Code of Stanisław August. J. Szymanowski, convinced to high efficiency of this measure,¹⁹² advocated its use for the most despicable crimes "that

¹⁸⁹ *Sądy seymowe...* pp. 244-245.

¹⁹⁰ Płaza, S. Op. cit., p. 406. The penalty of civil death resulted from, among others, avoiding justice by a murderer.

¹⁹¹ Part I, Article 16, § 12-13.

¹⁹² "The fear of losing the right to respect and public opinion, of ruining reputation that man often treasures more than life, flattering himself that it shall not die away with his demise,

the public is the most disgusted with," in conjunction with other penalties affecting the wrongdoer's honour:

Displaying or placing the offender's name together with the name of his deed in a public place, stripping his image by the hangman, expelling him publicly from the town, and many similar rituals may toughen the penalty depending on the gravity of his deed. And even that punishment should always be coupled with the deprivation of all citizen's privileges.¹⁹³

The legal literature abounds in descriptions of infamy linked by the authors to the analysis of the effects of the Roman *damnatio memoriae*. Pondering upon the consequences of this sanction, S. Huwaert pointed out that the condemned person's name is removed from among *viri honesti*, his attributes of dignity are taken away (*insignia honoris*), his images are erased and the house razed to the ground (the author erroneously referred to C. 8,5 pr., where these measures had not been provided); finally, he may neither be mourned for (Ulpian D. 3,2,11,3) nor his corpse buried (Ulpian D. 48,24,1).¹⁹⁴ There is a marked similarity between the effects of infamy prescribed by Roman law and given by S. Huwaert and the proposal of J. Szymanowski to warn the public against misdeeds deserving special condemnation, on the one hand, and perpetuate negative memories of their perpetrators, on the other.

The sources of Roman law and its offshoot foreign literature underlie the discussion on the punishment of infamy in F. Minocki's work, who - in contrast to S. Huwaert - devoted some space to outlining the application of this punishment in Poland. The position of the perpetrator of lese-majesty, although well-described based on the work glossators and later authors, resembles the condition of being outlawed in Poland: the condemned loses the rights resulting from citizenship ("iura propria civitatis"), all held privileges (also due under the feudal law), the capacity to effect acts in law,¹⁹⁵ including the right to bring an action, as well as public rights (among others, active and passive suffrage).¹⁹⁶ Polish law provides, however, that such far-reach-

is a powerful deterrent crime that the legislator has at his disposal." (Szymanowski, J. Op. cit., p. 195). The author pointed out that the mere inclusion of infamy in the legislation would not ensure its effectiveness to such an extent as its imposition by the court in connection with a real condemnation of the offender in public.

¹⁹³ Ibidem.

¹⁹⁴ Huwaert, S. Op. cit., pp. 26-27.

¹⁹⁵ Minocki, F. Op. cit., pp. H2-H2 v. Besides the glosses and latest literature, the author pointed to Ulpian D. 28,5,1; C. 9,8,5,4; C. 9,8,6.

¹⁹⁶ Ibidem, p. H2.

ing punitive measures, even for serious crimes as lese-majesty, may be imposed only by an effective court's judgement, and not arbitrarily;¹⁹⁷ Minocki invoked the privileges: of Czerwińsk (1422), Jedlnia and Kraków (1433) and Nieszawa (1454), as well as the Polish legal literature (J. Herburt, P. Szczerbic). By pointing to the legal protection cherished by the Polish nobility, Minocki went too far in finding that an official who captured an outlaw was not authorized to impose the death penalty without notifying the king, as proven by the well-known trial and the ensuing execution of Samuel Zborowski.¹⁹⁸ For this principle applied to convicted of *bannitio perpetua*, which, from the second half of the 16th century, was the penalty for going into hiding from justice.¹⁹⁹ The penalty affecting the defendant's honour was, if he failed to appear before the court, hanging his portrait on the gallows, bearing an appropriate inscription; unlawful removal of the portrait was punishable, which the author justified by referring to Ulpian D. 2,1,7 pr.

Also T. Ostrowski referred to Roman law when comparing, e.g. the Roman *damnatio memoriae* with modern penalties against honour: "Finally, his statues were torn down: and now they demolish even houses, allegedly to erase the memory but rather to deter others from seeking to commit similar deeds."²⁰⁰

Infamy could be revoked only through a parliamentary constitution as *restitutio honoris*. This institution, whose name alluded to the Roman *restitutio in integrum*, consisted in waiving not only the punishment affecting the wrongdoer's honour, which was a supplementary measure anyway, but also the major associated punishment, i.e. the death penalty.²⁰¹ When char-

¹⁹⁷ Ibidem, p. F2.

¹⁹⁸ Ibidem, pp. F2-F2 v. Cf. Makarewicz, J. *Polskie prawo...* p. 232.

¹⁹⁹ Initially, the penalty for failing to appear before the royal court was infamy. Later, infamy came to be associated with either a measure applied in parallel to particularly serious crimes or banishment as part of an action before the court resulting from the defendant's failure to appear. The accused evading justice was banished in the first place, which did not entail the loss of honour but only the loss of civil rights (e.g. the capacity to bring an action, to perform acts in law and political rights, such as the right to participate in local dietines). After a certain period of time: eight months in the Crown ("Dekret na sądy nowe przeszłe." In *Volumina Legum*. Vol. 2, p. 33), a year and six months in Lithuania (*Third Statute*. Chapter 11, Article 4), ordinary banishment transformed into a perpetual one (*bannitio criminalis et perpetua*), equivalent in effect to being outlawed. While anyone could kill an eternal outlaw with impunity, when captured by a *starosta*, he was locked in the tower (upper) and awaited king's decision on his fate. For more, see Rafacz, J. *Op. cit.*, pp. 105-106; Makarewicz, J. *Polskie prawo...* p. 234f; Płaza, S. *Op. cit.*, p. 406.

²⁰⁰ Ostrowski, T. *Op. cit.* Vol. 1, p. 318.

²⁰¹ Makarewicz, J. *Polskie prawo...* p. 176. The author notes that restitution did not erase the effects of a conviction but only waived the penalty.

acterizing restitution, M. Zalasowski paid attention to the procedure of its application and its effects,²⁰² and his quoted text of the constitution of 1591 pertaining to Krzysztof Zborowski demonstrated that the restoration of honour could have been granted conditionally.²⁰³

3. Confiscation of Property

Imposed for the most serious crimes, the punishment of confiscation of property was intended to - as it was the case in Roman law - make the offender (and his family) suffer material deprivations; in Polish law, it was originally connected with other harshest punishments, such as the death penalty or outlawry (later infamy).²⁰⁴ Over time, it became to be imposed independently: in the 13th century it was isolated from personal punishments without changing its effect, which was to deprive the offender of any rights in rem to the whole property, both movable and immovable.²⁰⁵ Confiscation of property was envisaged for major crimes, especially crimes against the state in a broad sense, also including lese-majesty.²⁰⁶

As a statutory penalty for *crimen laesae maiestatis*, confiscation of property appeared for the first time in the Edict of Wieluń; it threatened Polish

²⁰² "Notandum secundo, quod pro crimine laesae Maiestatis aut perduellionis, infames pronuntiati, proscripti ex Regno, possunt de communi consensu totius Reipublicae, in Comitibus Generalibus Regni, primaevio honori restitui" (Zalasowski, M. Op. cit., p. 720).

²⁰³ The mentioned constitution restored Krzysztof Zborowski's honour subject to the condition that he would spend twenty years outside Poland and demonstrated impeccable conduct; if he had failed to do so, the penalties handed down would have been enforced ("Restytucja Urodzonego Krzysztofa Zborowskiego." In *Volumina Legum*. Vol. 2, p. 333).

²⁰⁴ See also: Makarewicz, J. *Polskie prawo...* p. 269.

²⁰⁵ See also: Handelsman, M. *Kara w najdawniejszym prawie...* p. 80ff. I. Rzeplińska points out that in the early Middle Ages there was a known penalty of plunder, consisting in the right to pillage the offender's premises and burn his house. The destruction of the wrongdoer's house meant removing him from this world and was tantamount to eradicating a place that had become impure: it had been inhabited by the criminal who had become the enemy of God. A demolished house also meant that the condemned had nowhere to return to. The effects of this measure in the early feudal period were very acute: the loss of property entailed the reduction of the offender and his relatives to an inferior social and political rank and, because of that, the penalty was numbered among the toughest. From the standpoint of the court, confiscation of property had clear advantages: it was always enforceable (a convict might have broken free before the capital punishment has been exacted but could not escape confiscation), was beneficial for royal bureaucrats who were allowed to repossess the wrongdoer's movable property (*Konfiskata mienia. Studium z historii polityki kryminalnej*. Warszawa 1997, pp. 11-13 and the literature therein).

²⁰⁶ *Ibidem*, p. 91.

residents who failed to return to the country from heresy-ridden Bohemia within the designated period. The edict read that as alleged heretics they would be bereft of all assets, both movable and immovable, which would entail the inability to inherit by the offspring. The repossessed property was lost to the royal treasury.²⁰⁷ The regulations on confiscation of heretics' property are modelled on the constitution of Frederick II, incorporated in the Code of Justinian and ordering "ut bona talium confiscentur, nec ad eos ulterius revertantur, ita quod filli ad successionem eorum pervenire non possint."²⁰⁸

Pointing to the unlawfulness of the Edict of Wieluń, W. Zakrzewski drew attention to its contradiction with the Privilege of Czerwińsk of 1422 which prohibited any confiscation of property without a trial.²⁰⁹ However, the edict in question does not explicitly provide that the confiscation of heretic's property be carried out without the prior trial and legal conviction. It should be remembered that the edict only supplemented the Church legislation against heretics, for example, the synodal Statutes of Wieluń and Kalisz of 1420, which offered guidance on the procedures of ecclesiastical courts hearing the cases of heresy.²¹⁰ For the Edict of Wieluń obliged secular officials (mayors, castellans, burgraves and municipal authorities) to ex officio prosecute persons designated by ecclesiastical authorities as suspected of heresy and to apply civil laws against people recognized by ecclesiastical courts as heretics; judicature in heresy process was left to Church tribunals.²¹¹ It should also be noted that as early as from the 13th century the punishment of confiscation of property could not be meted out by the ruler arbitrarily but had to be preceded by a legal court verdict.²¹² Therefore, it is

²⁰⁷ "Et nihilominus omnia bona ipsorum mobilia et immobilia in quibuscunque rebus consistentia publicentur thesauro nostro confiscanda, prolesque eorum tam masculina, quam faeminea omni careat successione perpetuo et honore ..." (*Vladislaus Jagello contra haereticos...* p. 38).

²⁰⁸ C. 1,5,19.

²⁰⁹ *Vladislaus Jagello contra haereticos...* p. 37. Cf. Zakrzewski, W. Op. cit., p. 15.

²¹⁰ For more, see Kras, P. Op. cit., p. 212.

²¹¹ *Ibidem*, p. 235 and the literature listed in note 160.

²¹² Handelsman, M. *Kara w najdawniejszym prawie...* p. 162. Based on the sources of law and the 12th and 13th century records of legal practice, the author finds: "The imposition of confiscation is no longer an act of princely rule but must adhere to the existing and applicable laws ("tam secundum canones, quam secundum leges"), especially the Church canons *iuxta sacrorum earum sanctiones*. Therefore, the judgements in this case are passed according to strict standards. The prince decides the punishment in the most stately manner, "una cum baronibus nostris solemniter et publice," and announces it to the public ("sententiando pronuntiamus"). Similarly, the ecclesiastical authorities obey the strictest rules. Not to mention the general provisions governing the formalities of ecclesiastical tribunals, the archbishop court emphasizes the special

difficult to accept that such a severe punishment that affected not only the offender but his heirs was, according to the Edict of Wieluń, imposed by the state authorities under the *bracchium saeculare* without any proceedings - ecclesiastic or secular - leading to a conviction.²¹³

Forfeiture of assets was again brought up as a punishment for violating the majesty in the Law of Diet Tribunals of 1791, though it was not the primary penalty for the offender. It threatened the leaders of a planned but unfulfilled conspiracy, and it was interchangeable with other penalties instead of being imposed along with them:

Such a leader and chief shall be punished by death: while others less guilty accomplices shall be banished or incarcerated or shall suffer from similar penalties, depending on the circumstances and the seriousness of crime. The leasers of a plotted but not executed conspiracy are to be always punished by...infamy, and depending on the circumstances and gravity of the crime, by death, or imprisonment, or exile, or loss of property, or offices; his less guilty associates and partners shall not be put to death but shall suffer from other listed penalties, depending on the degree of involvement.²¹⁴

Later, the Four-Year Diet abolished the liability of the family and third-parties,²¹⁵ which meant further reduction of this punitive measure. The reason for that was, first, the Enlightenment-driven demands for penalties commensurate with the social harmfulness and the degree of the perpetrator's fault, as reflected in the diversity of penalties and, second, the criticism of the penalty of forfeiture of property as incompatible with the principles of justice (because affecting the family).²¹⁶ It was provided (together with the death penalty and a type of infamy) for the crime of lese-majesty (also attempted) already in *Zbiór praw sądowych*, which was

legitimacy of the proceedings... No wonder the public required such extraordinary diligence of the proceedings. Their main economic strength was property, immovable rather than movable. Land at the turn of 13th century was becoming more and more economically attractive: the society of knights and farmers was compelled to defend the inviolability of the firmest foundation of its well-being" (pp. 162-163).

²¹³ The penalty in question appeared again - linked to the death penalty or exile - in Zygmunt I's edicts against heretics. In accordance with the edict of 1520, this penalty was handed down for bringing and disseminating Luther's writings in Poland; the edicts of 1523 and 1525 also prescribed this punishment for the profession and promotion of Lutheranism and other Reformed denominations.

²¹⁴ *Sądy Szymowe...* p. 246.

²¹⁵ *Ibidem*, p. 244.

²¹⁶ Dyjakowska, M. *Kara konfiskaty majątku...* p. 606.

heavily criticized.²¹⁷ Finally, confiscation of property was removed from the catalogue of punitive measures in the draft Code of Stanisław August; in *Myśli do projektu prawa kryminalnego* [Deliberation on the Project of Criminal Law], J. Szymanowski justify the departure from this sanctions:

We do not want to have forfeiture of property among the penalties under criminal law because it does not only impinge on the offender but reaches his innocent offspring, therefore it may not agree with the principles of justice. Therefore, criminal penalties, stipulated in law against felonies, may not be other than only personal.²¹⁸

The penalty of confiscation for lese-majesty is provided in all three Lithuanian statutes. Addressing the offence of violating majesty, the First Statute only points to betrayal of the state (Chapter I, Article 2), committed by fleeing to an enemy country. According to the Statute, the traitor loses his honour and his property must be repossessed by the ruler, both his native assets as well as purchased and gifted. Sons living in communion with the father were deprived of anything from the repossessed property. Sons' liability for their father's misdeeds was, in the case of *crimen laesae maiestatis*, no doubt the influence of Roman law, although the Statute adopted individual responsibility as the guiding principle (Chapter I, Article 7). At the same time, the principle of saving minors from penalty if collective responsibility came into play was compromised: as regards the crime of lese-majesty, children were to bear the consequences of father's guilt, even if they "did not come of age."²¹⁹ On the other hand, however, compared with the Roman *lex Quisquis*, the principle of punishing sons was somewhat alleviated. Sons who had no share in their father's wealth did not suffer from the loss of honour or property if they swore that they had no knowledge of their father's intention.²²⁰ Still, they could not claim any portion of their father's confiscated property.

In connection with the penalty of confiscation, the Statute dealt with the situation when the offender disposed of his property to the benefit of an

²¹⁷ Lityński, A. *Przestępstwa polityczne...* p. 46; idem „Prawo karne w projekcie Kodeksu Stanisława Augusta.” *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji* 5(1974), p. 183f.

²¹⁸ Szymanowski, J. *Op. cit.*, p. 194.

²¹⁹ Koranyi, K. „O niektórych postanowieniach karnych Statutu litewskiego z r. 1529 (Studium prawno – porównawcze).” In *Księga pamiątkowa ku uczczeniu czterechsetnej rocznicy wydania pierwszego Statutu litewskiego*. Ehrenkreutz, S., ed., Wilno 1935, p. 142.

²²⁰ Dąbkowski, P. *Prawo prywatne polskie*. Vol. 1, Lwów 1910, p. 457; Vol. 2, Lwów 1911, p. 158.

other party before fleeing to an enemy country. The Statute recognized such a transaction as valid, provided that the buyer would swear that he was unaware of the nefarious intentions of the seller. When the buyer refused to swear, he lost the acquired property along with his own.²²¹

The exceptions to the general rule of individual liability were also to be found in the Second (D I, Article 3) and Third Statute (Chapter I, Article 2). The former provided for confiscation of property to the benefit of the ruler without respecting the sons' and other relatives' rights; they should share the punishment of infamy with their father and lose the right to their father's native and acquired wealth, regardless of the manner of acquisition. The Third Statute added that such a penalty was also affecting sons who were under age, and sons of age who were not familiar with father's plans (the children aware of their father's criminal intentions were to be punished by death and loss of honour). Both Statutes also granted wives the right to keep the property inherited from their parents and their dower obtained before the husband committed the crime if they swore that they had had no knowledge of their husbands' unlawful intentions. Daughters of the offender, although losing no honour, were able to inherit only a quarter of their native wealth.

Despite the brevity of the Polish law standards, the authors of legal writings were unanimous in their opinion that confiscation of property was one of the sanctions (besides the death penalty and infamy) for lese-majesty. Some authors explained the use of this penalty by Roman law influences, either direct or reaching for the sources, or else by borrowings from Western European legal literature. Interestingly enough, T. Ostrowski, having discerned the existing legislative gap regarding the penalties for the crime in question, proposed to fill it - as mentioned earlier - by borrowing from Lithuanian law, especially the Third Lithuanian Statute.

The punishment of forfeiture of property stems - as purported by M. Zalasowski - from *ius civile*, i.e. from Roman law (when referring to this law, the author pointed to the work of Farinaccius).²²² Indeed, this penalty is prescribed both in made and customary law against men, especially landowners; however, in the opinion of S. Huwaert, it does not spare women if they perpetrate an offence of lese-majesty; what is more, women should not be treated more leniently than men, quite the contrary: by committing such a heinous crime, they reveal an inclination totally contradicting their feminine nature. In the author's view, applicable legal regulations leave no

²²¹ Chapter I, Article 3. Cf. Koranyi, K. Op. cit., pp. 142-143.

²²² Zalasowski, M. Op. cit., p. 713.

doubt about that, especially the *lex Quisquis* whose title indicates that anyone can be the perpetrator, including women.²²³ Consequently, all wealth owned by the female-perpetrator, both currently owned and future, such as dowry and trousseau, is lost to the state treasury.

F. Minocki and S. Huwaert pinpointed the moment in which the offender becomes subject to punishment. F. Minocki mentioned the opinion of some authors that the punishment is earned by the offender by law itself, that is, the moment the crime is committed, and from that time his property is lost to the state; yet, he subscribed to a different view and argued that it was only a lawful conviction that determines the culpability of the accused.²²⁴ The same view was shared by S. Huwaert with the reservation that for notorious, i.e. commonly known, crimes, when the collected evidence speaks irrefutably against the offender, his property is considered confiscated already at the time of the offence and not upon a valid judgement.²²⁵

Following the rule derived from the *lex Quisquis*, all authors agree that the penalty of confiscation of property also affects family members, and its effects as well as other sanctions deserve a separate discussion in the following section.

Section 28 Liability of the Wrongdoer's Family

The issue of forfeiture of property invariably leads to a discussion about its effects on the family of the condemned person. There was a major exception to the principle that the offender bears a sole liability for his crime;²²⁶ in the case of lese-majesty, also wrongdoer's relatives faced punishment. Among

²²³ Op. cit., p. 36. For more, see Dyjakowska, M. „Kobieta a przestępstwo obrazy majestatu.” In *Contra leges et bonos mores. Przestępstwa obyczajowe w starożytnej Grecji i Rzymie*. Kowalski, H., Kuryłowicz, M., eds., Lublin 2005, p. 70f.

²²⁴ Minocki, F. Op. cit., p. G3-G4 v.

²²⁵ Huwaert, S. Op. cit., p. 26.

²²⁶ See, for example, the Statutes of Kazimierz the Great invoking the Holy Scriptures: “Cum dicit Scriptura, quod filius non portabit iniquitatem patris, nec e converso, ideo statuumus quod pater pro nequam filio et e converso minime coerceatur, vel puniatur ...” (“De eo quod pater non teneatur ferre iniquitatem filii et e converso.” In *Volumina Legum*. Vol. 1, p. 24). Also, the Third Statute in Article 18, Chapter I reads that, “no one is to be punished and convicted for someone else's deed but only for his own if he is found guilty; God's law and Christian justice teaches so and we wish to obey that: neither the father for his son nor the son for his father shall be punished....but only for his own crime everyone shall suffer and accept the penalty.”

the sources of Polish statutory law, only the Edict of Wieluń clearly stated this exception: heretics' descendants are to lose the right to inherit from their parents and be left without honour (which entails the loss of the right to hold offices and the loss of privileges that befit the nobility). Even tougher sanctions were provided in the Third Lithuanian Statute: adopting the principle of individual liability at large, Article 18, Chapter I pointed, however, to the significance of "the circle around the violation of Our Majesty and betrayal of the Republic;" furthermore, Article 3 prohibited the perpetrator's children of both genders from inheriting (which actually was a consequence of the penalty of confiscation of property) and made his sons infamous; it also provided for the death penalty for grown-up sons who "are proven to have been aware of the father's betrayal;" only sons under age and adults having no knowledge of the unlawful deed of their father were released from charges.

It is worth noting that the principle of individual liability of the perpetrator culpable of lese-majesty was also neglected under Article 20 of the Armenian Statute of 1519:²²⁷

If the father or son were found guilty of some fatal or otherwise criminal vices, then the father shall not suffer for his son's misdeeds, and, likewise, the son shall not be punished for his father, instead each of them shall suffer according to their respective fault; so justice shall be done when each person gets exactly what their deserve. The said principle shall not apply to the offence of lese-majesty.²²⁸

The Armenian Statute imposed only material sanctions on the sons (and brothers) in that they were not able to inherit father's property subject to repossession by the state (Article 11); no extra punishment was envisaged, such as the absolute incapacity to inherit. Sons who were proven accomplices to the crime were to be punished individually, "according to the deed," and were able to avoid liability only by informing on their parent.²²⁹

Zbiór praw sądowych by A. Zamoyski recommends that the perpetrator of lese-majesty should lose his nobility, strictly speaking, his name and coat of arms: "...the name of his family and coat of arms shall be lost and he may adopt another but only at the legislator's discretion."²³⁰

²²⁷ The Armenian Statute, approved by King Zygmunt I, was binding for the Armenians dwelling in Lwów. For more, see Kutrzeba, S. Op. cit., Vol. 2, Lwów 1926, p. 290f.

²²⁸ "Statuta Juris Armenici." In *Corpus Iuris Polonici*. Vol. 3, Kraków 1906, p. 480.

²²⁹ "Sons are to disclose, according to law and considering the seriousness of the crime, their parents' trespasses against the Majesty of the King and the Republic; if they do so, the Armenian sons shall not be prosecuted under this law" (Article 22; *ibidem*, p. 481).

²³⁰ Article XLVIII § 7; *Zbiór praw sądowych*... p. 556.

Despite the severe approach of the Third Lithuanian Statute, which T. Ostrowski saw as a supplementary source to fill the gaps of Crown's law in terms of penalties for lese-majesty, the doctrine was dominated by the view, borrowed from Roman law and present in Lithuanian law, that the wrongdoer's relatives should suffer from infamy and a punitive measure affecting the property. This measure stemmed from the penalty of confiscation of offender's property and was intended to be particularly painful to sons: not only did they lose their right to parental property, which was forfeited to the state, but were also stripped of the right to fall heirs to other relatives and any unrelated persons.²³¹ This rule also applied to illegitimate offspring, and even to children born after the offence of lese-majesty had been committed by the parent.²³² The most popular argument for punishing children was that they are inclined to inherit parents' criminal traits. Although this statement was usually held true in relation to sons, S. Huwaert argued that the same could be said of the similarities between mothers and daughters.²³³ Moreover, this author voices doubts concerning severe punishments for sons when the mother was found culpable for the violation of majesty; many writers that he quoted were advancing a thesis that the son is considered "a continuation of the father" and the alleged co-perpetrator of his crimes, whilst so tight a relationship is not established between the son and his mother.²³⁴ S. Huwaert was sceptical, however, about this idea arguing that if the son comes as much from his father as from his mother, he should be exposed to the same penalty, regardless of which parent is guilty of a crime.²³⁵ Such an opinion was voiced two centuries earlier by G. Quadros, yet without any broader argument.²³⁶

There is one more issue left to be settled, namely whether confiscation of property should affect the sons of the perpetrators of any form of lese-majesty. G. Quadros addressed this problem and took a stance on the

²³¹ Quadros, G. Op. cit., p. 26f; Kaszyc, J. Op. cit., p. 25; Huwaert, S. Op. cit., p. 30f; Minocki, F. Op. cit., p. H3 v.

²³² Quadros, G. Op. cit., p. 31 v. Huwaert, S. Op. cit., p. 42; Minocki, F. Op. cit., p. H4.

²³³ "Nec liberi minus labis ex sanguine materno contrahere creduntur, ac ex sanguine paterno, aequè enim, quod de natis patris dici solet:

Saepe solet similis filius esse patri.

de matris liberis dici potest:

Qualis erat mater, filia talis erit" (op. cit., p. 38).

²³⁴ "... filius cum matre non una persona esse censetur, ac quidem cum patre, hinc quoque esse, quod in crimine laesae maiestatis filius ... criminis patris heres esse dicatur, et alibi portio corporis paterni" (ibidem, p. 39).

²³⁵ Ibidem, pp. 39-40.

²³⁶ Ibidem, p. 32.

opinion prevailing in the European doctrine that in case of lese-majesty against a non-sovereign ruler (*princeps recognoscens superiorem*) sons should absolutely go unpunished. Still, the author proposed that such sons be facing the penalties provided in the *lex Quisquis* and, thus, suffer from the consequences of confiscation of their parents' property in the case of crimes against a ruler subordinate to the emperor or pope.²³⁷

According to G. Quadros and F. Minocki, who rested their opinion on the European approach, the penalty in question also impinges on subsequent descendants of the offender. While G. Quadros only generally spoke about grandchildren (*nepotes* - p. 31 v.), F. Minocki was more precise to point out that the effects of forfeiture of property go down to the perpetrator's sons' grandchildren, i.e. to the second degree (or to the perpetrator's great-grandchildren), and his daughters' grandchildren but only in the first degree. According to Huwaert, the penalty affecting the perpetrator does not reach to the grandchildren after his deceased children because, when identifying persons subject to punishment, criminal law only uses the term *fili* and leaves no room for broader interpretation.²³⁸

Much more merciful - following the example of the *lex Quisquis* - was the Polish doctrine for the wrongdoer's daughters, which M. Zalasowski explained by the need to make allowances for female weaknesses in saying that "quia ob fragilitatem sexus minus audere praesumuntur."²³⁹ Although daughters had no right to succeed to their father who had been deprived of property, they could retain the Falcidian quarter after the mother, irrespective of whether she died leaving the last will or passed away intestate.²⁴⁰ The exception to this rule occurred when the culprit was a woman: her daughters - for the obvious reason of forfeiture of property - did not inherit from their mother, but they were entitled to the legitime (*legitima pars*) after their father.²⁴¹ T. Drezned dissented from this opinion and - invoking the Edict of Wieluń - denied both sons and daughters the right to inherit from the perpetrator, yet he made no mention of any daughters' rights to succession.²⁴²

The law of the Crown was reticent about the material liability of other relatives. By contrast, the First Lithuanian Statute ruled that for perpetrat-

²³⁷ Quadros, G. Op. cit., p. 27 v.; cf. Uruszczak, W. *Zapomniany prawnik...* p. 57.

²³⁸ Huwaert, S. Op. cit., p. 42.

²³⁹ Zalasowski, M. Op. cit., p. 714.

²⁴⁰ Quadros, G. Op. cit., p. 26; Kaszyc, J. Op. cit., p. 25; Huwaert, S. Op. cit., p. 39; Minocki, F. Op. cit., p. H4f.

²⁴¹ Huwaert, S. Op. cit., p. 39.

²⁴² Op. cit., p. 175.

Section 29 Distinctive Features of Lese-Majesty Proceedings in Poland

ing lese-majesty consisting in fleeing to the enemy the perpetrator's brothers (or distant collateral relatives) owning joint property forfeited the right to a part of that property which was confiscated; the same principle applied to the father and collateral relatives in the case of a crime committed by the son (Chapter I, Article 4). This principle was also incorporated into the Second Statute, yet with a reservation that the wrongdoer's relatives' private assets are not forfeited (D I, Article 11); these provisions were reiterated in the Third Statute (Chapter I, Article 7).

Little attention was attached in positive law to the entitlements of the condemned husband's wife. Only Lithuanian law guaranteed wives who swear that they had no knowledge of their husbands' criminal intentions to save their property (after the father and mother) and dower given by the husband before his involvement in the offence.²⁴³ A debate on this issue was rekindled in the doctrine. Analysing the effects of forfeiture in Polish jurisprudence, M. Zalasowski drew attention to the general principle of respecting wife's and creditors' entitlements.²⁴⁴ According to F. Minocki, after confiscation of husband's property, the wife keeps her dowry and the right use of the dower, even after re-marriage; still, after her death, the dowry and the dower are forfeited to the state treasury.²⁴⁵ If the crime of lese-majesty was committed by a woman, her husband lost the right to her dowry and trousseau, for the aim of these assets was to assist the husband in bearing the financial burdens of marriage, which expires upon his wife's execution. Further, the husband is not entitled to manage the assets that make up the trousseau: they are forfeited to the state.²⁴⁶

Section 29 Distinctive Features of Lese-Majesty Proceedings in Poland

The competent court in cases of *crimen laesae maiestatis* was originally the royal court and later - since the turn of the 15th century - the Diet Tribunal operating during the parliamentary session and chaired by the king. While the composition of the royal court was decided by the king who was empowered to appoint assessors from among selected government offi-

²⁴³ The Second Statute, D I, Article 3; the Third Statute, Chapter I, Article 3.

²⁴⁴ Drezner, T. Op. cit., p. 716.

²⁴⁵ Minocki, F. Op. cit., p. G4 v.

²⁴⁶ Huwaert, S. Op. cit., p. 36.

cials, the Diet Tribunal gathered all the Senate; initially, land deputies were not involved in decision-making, but they could have an indirect impact on the course of affairs.²⁴⁷

The establishment of the Crown Tribunal not only resulted in disputes about the competence of *ultima instantiae* courts²⁴⁸ but also about the extension of the composition of the Diet Tribunal. Changes were introduced by the 1588 constitution discussed elsewhere: in cases of lese-majesty and treason, the composition of the bench was extended to include eight deputies of the lower chamber whose votes were of the same weight as those of the senators. Another important change was that the king was banned from deciding in the said matters; the bench was presided by the Marshal of the Crown who read out the judgement in the presence of the king.²⁴⁹ The ban was then renewed in the constitution of 1669: "that if such tribunals gather, they should proceed according to the constitution of 1588 and the king must not participate."²⁵⁰

Although the rule was to initiate proceedings following a private action, in lese-majesty cases, as in some other public matters falling under criminal law, it was initiated ex officio. In this case, the procedure started from bringing an action by "the instigator," or the official prosecutor representing state authority, appointed and paid by the king;²⁵¹ before the Diet Tribunal appeared Polish and Lithuanian instigators (Lord Prosecutor of the Crown and Lord Prosecutor of the Grand Duchy of Lithuania, respectively). Pursuant to the Law of 1588 on the Offences of Lese-Majesty and Treason, proceedings were instituted after a delator's charge and the subsequent filing of an action by the instigator.²⁵² Delator could be any person ("the delator must accompany the instigator for certainty, and he can be of plebeian background"), which meant that his charge was a form of protecting public interest (*actio popularis*).²⁵³ The resolution of the Election Diet of

²⁴⁷ For more, see Szcząska, Z. „Sąd sejmowy w Polsce od końca XVI do końca XVIII wieku.” *Czasopismo Prawno – Historyczne* 20(1968), fasc. 1, p. 94.

²⁴⁸ On the desires to transfer the cases of lese-majesty and treason of the Crown Tribunal, see *ibidem*, p. 97.

²⁴⁹ *Ibidem*, p. 100.

²⁵⁰ „Deklaracja dekretu jaśnie wielmożnego Lubomirskiego, Marszałka Wielkiego Koronnego i Hetmana Polnego Koronnego, od stanów Rzplitej Obojga Narodów.” In *Volumina Legum*. Vol. 5, p. 9.

²⁵¹ See more in e.g. Makarewicz, J. „Instygator w dawnym prawie polskim.” *Archiwum Towarzystwa Naukowego we Lwowie*. Sec. 2, vol. 1, fasc. 4, Lwów 1922, *passim*.

²⁵² *De crimine laesae Majestatis Regiae...* p. 252.

²⁵³ Delator's descent determined his responsibility in case the accusers failed to prove the guilt of the accused. A nobleman delator should be punished as provided in the constitution of

Section 29 Distinctive Features of Lese-Majesty Proceedings in Poland

1669, in order to weaken the monarch's role in the Diet Tribunal, introduced an additional requirement of the Senate's approval of instituting proceedings.²⁵⁴

The proceedings were also open to the parties' attorneys (procurators); if necessary, the constitution of 1588 ordered that they be court-appointed.²⁵⁵

Because the Diet Tribunal was required to complete the handling of cases before the closure of the parliament session, a number of rules were laid down for the taking of evidence, aimed to expedite the entire proceedings. According to J. Łączyński, author of the first systematic study of the Polish court proceedings (dated 1594), "The evidence in the royal courts may be threefold: a letter, an oath, or given by the parties or witnesses. When the evidence is a letter, this is an excellent proof, yet only formally because it cannot be verified by any testimony, it does not determine either party's arguments and is common *in civilibus*. If such evidence is not enough or cannot be accepted, the accused swear an oath...which they find more convenient. And the one is closer to *in criminalibus* who performs a better *scrutinium*."²⁵⁶ *Scrutinium*, or the investigation conducted *ex officio* by the instigator, was mandatory in criminal cases tried by the Diet Tribunal; however, in keeping with the constitution in 1578, it was conducted before a land court or magistrates' court having jurisdiction over the place of the offence, "and this is because when the parties appear before the Diet Tribunal they should be ready *cum scrutiniis* for more effective proceedings."²⁵⁷ For the purposes of the *scrutinium*, both parties were allowed to name no more than twelve witnesses: a greater number might have caused an excessive burden the court performing the examination. Regarded as the most valuable were the testimonies of eyewitnesses ("eyewitnesses should be examined first"), and those

1565, i.e. to pay two hundred grivnas and spend twelve weeks in the tower (O rzeczach, które się poczciwości dotyczą. In *Volumina Legum*. Vol. 2, pp. 52-53, amended by the constitution of 1588 of the same title; *Volumina Legum*. Vol. 2, pp. 256-257), while a plebeian delator should be put to death. However, if the accused - in the absence of other evidence - cleared his name by swearing an oath ("by his oath, he avoided accusation"), the delator was not held liable.

²⁵⁴ "And the monarch in *causis crimine laesae Maiestatis et perduellionis*, only *ex Senatus consulto* shall be issued and chancelleries at the Diet shall be following them" (*Deklaracja dekretu jaśnie wielmożnego Lubomirskiego*... p. 9).

²⁵⁵ *De crimine laesae Maiestatis Regiae*... p. 252.

²⁵⁶ *Kompendium sądów Króla Jegomości, prawem koronnym na dwie części rozdzielone* (based on the manuscript, published in Kolankowski, Z. *Zapomniany prawnik XVI wieku Jan Łączyński i jego Kompendium sądów Króla Jegomości. Studium z dziejów polskiej literatury prawniczej*. Toruń 1960, p. 101).

²⁵⁷ „*Scrutinium i oznaczenie dni ad causas criminales*.” In *Volumina Legum*. Vol. 2, p. 184.

supplying hearsay evidence were permitted to testify when it was likely to provide some essential elements to the case (“so that what they *specialiter ad investigandam rei veritatem* said”). All witnesses were required to swear to tell the truth; also the parties to the lawsuit had to swear that their witnesses were not hired or bribed. To ensure the credibility of testimony, the court was obliged to prevent witnesses from contacting one another.²⁵⁸

The constitution of the Warsaw Diet of 1655, concerning a case of surrender of Smoleńsk (and then classified as *perduellio*), gave rise to a principle of performing a *scrutinium* before the Diet Tribunal and ordered that the defendants present incriminating evidence “before the representatives appointed from the Senate and from the lower chamber.”²⁵⁹ Despite the tendency to accelerate the proceedings (due to the limited time of the Diet session), the constitution of 1669, to prevent excessive meticulousness in investigation, ordered “for the court to recognize *scrutinia* at the other diet to expedite the proceedings so that *celeritate* did not affect *innocentia*.”²⁶⁰ The principle of not carrying out *scrutinium* in land or magistrates’ courts but before the Diet Tribunal, already well-established in the said constitution, was also adopted as one of the procedural rules contained in the Law of 1775 Establishing Diet Tribunals, and later in the Law on Diet Tribunals of 1791. Despite the changes in the organization of the parliamentary court, especially as regards its composition²⁶¹ and jurisdiction, it remain, under the law of 1775, a competent body in state matters, including lese-majesty (and treason).²⁶² As for these two types of cases - according to the constitution of 1775 - *scrutinium* was delegated to the judges of the Diet Tribunal elected

²⁵⁸ „O mężobójcach, i skrutyniach, i wieży.” In *Volumina Legum*. Vol. 2, p. 256.

²⁵⁹ „Sprawa Smoleńska.” In *Volumina Legum*. Vol. 4, p. 221.

²⁶⁰ „Deklaracja dekretu wielmożnego Lubomirskiego...” In *Volumina Legum*. Vol. 5, p. 9.

²⁶¹ According to the constitution of 1775, the Diet Tribunal was composed of the king, all senators and ministers (with the exception of those sitting on the Permanent Council) and fifty four deputies, elected by the joint chambers by secret ballot; the bench was to consist of at least thirty six people. The Statute of Diet Tribunals of 1776 reduced the number of deputies to thirty, ten of each province, elected by a majority of votes at dietines (*Volumina Legum*. Vol. 8, p 541). The bench was intended to gather at least twenty four people. According to the 1791 constitution, the Diet Tribunal would consist of twelve senators, who did not sit on other commissions, and twenty four deputies. They were chosen by lot: four senators and eight deputies from each province. The bench consisted of at least fifteen judges (*Sądy Seymowe...* p. 243).

²⁶² The legislation of the Four-Year Diet pointed to the Diet Tribunal as competent in matters of public vices, which were divided into crimes against the people and crimes against the supreme government of the Republic. The latter group included: rape and betrayal of the king, attempt on the life of the king (meeting the criteria of lese-majesty) and misdeeds against the Diet (*Sądy Seymowe...* p. 246).

Section 29 Distinctive Features of Lese-Majesty Proceedings in Poland

by secret ballot, two from each province;²⁶³ on the other hand, the Law of Diet Tribunals of 1791 imposed this obligation either on the whole bench or on six drawn judges. Also a delator had the right to participate; if he was a landless nobleman or plebeian, he was detained for the duration of the process, and if he had not managed to prove his charge, he suffered from a counter punishment (rule of reciprocity or talion).²⁶⁴ Although the constitution did not explicitly prescribe a penalty for a nobleman delator, it can be inferred, by comparison with a similar constitution of the Grodno Diet, he was also punished following the principle of the *lex talionis*.²⁶⁵ Delator's social background only determined whether he was required to remain in custody as a guarantee or, as provided by the Grodno Diet legislation, pay a deposit.

The accused was granted the right to defence. The constitution of 1775 mentioned the so-called sworn patrons who submitted their evidence to the court in writing (to the judicial clerk), together with legal arguments, or text of the legal standards that were intended as exculpatory. Article 21 of the Law on Diet Tribunals of 1791 asserted that:

...the Diet Tribunal, in whatever is not clearly against the law, shall not refuse the defendant, both as regards the case as such and anything associated with it, the right to be free and the opportunity, time and even assistance to defend and justify himself.²⁶⁶

The accused who had no defence counsel on his own would be assisted - in line with Article 14 - by two court-appointed counsels. The accused was able to use the counsel to take a stance on the results of *scrutinium* on his behalf when before the court.

Despite the modern principles embedded in the Law on Diet Tribunals ("nullum crimen, nulla poena sine lege,"²⁶⁷ "in dubio pro reo,"²⁶⁸ presump-

²⁶³ *Ustanowienie sądów seymowych...* p. 82. In other cases, *scrutinium* was performed by two persons from the land or magistrates' court (*Ordynacya sądów seymowych...* p. 542).

²⁶⁴ *Ibidem*.

²⁶⁵ "The one who failed to prove the charge shall be subject to *poenae talionis*, along with the landed nobleman" - *Sądy Sejmowe...* p. 151.

²⁶⁶ *Sądy Sejmowe...* p. 247.

²⁶⁷ "The Diet Tribunal is not authorized to find anyone guilty and impose a penalty by presumption only, but 1-mo. Only he shall be found guilty whose deed is criminalized by law, 2-do. The wrongdoer proven guilty shall be sentenced to such a penalty which is adequate and prescribed by law" (Article 25, *ibidem*, p. 249).

²⁶⁸ "In any case where there is doubt, both as regards the law and the committed crime, as well as the type and size of the penalty, the Diet Tribunal shall not decide against the accused but shall seek a resolution in his favour" (Article 26, *ibidem*)

tion of innocence, formal and substantive right of defence), the legislator retained some outdated solutions, among them the formal theory of evidence. In order for the accused to be held culpable, the law required the testimony of two witnesses under oath, an authentic declaration of the accused or his admission of guilt; other circumstances may have been considered if the said evidence existed.²⁶⁹

In lese-majesty cases, Lithuanian law required the accuser (delator) to furnish evidence based on the testimony of seven witnesses representing the nobility and of good repute; both the witnesses and the accuser were made to act under oath. Speaking of evidence, it was necessary to demonstrate “open and sure effects of that deed,” what follows, witnesses’ accounts were not considered sufficient proof. The accuser who was not able to prove the allegation should be put to death and made infamous (*Third Statute*. Chapter I, Article 5).

The constitutional provisions, especially those of 1588, were brought up by the authors of legal works;²⁷⁰ however, many of them rested their findings on the proceedings in cases of lese-majesty on the provisions of Roman law and the Western literature that exploited it. These reflections usually emerge in individual works highlighting some distinctive features that typify *crimen laesae maiestatis* and juxtaposing it with other offences; most spotted differences seem to have concerned specific procedural matters.

One of such differences indicated by the authors was a simplified nature of the process: it was cumulative (simplified), with no interrogation of the parties and court-specific formalities, which was referred by the terms *de plano, sine strepitu et figura iudicii*, borrowed from foreign literature.²⁷¹ The authors emphasized, however - again based on Roman law - that, despite the efforts to accelerate the proceedings, the judge was obligated to maintain utmost care in ascertaining the facts, taking account of the circumstances of the crime and the traits of interrogated persons, primarily of the accused;²⁷² for the *Digest* required examining whether the accused was

²⁶⁹ Ibidem.

²⁷⁰ Cf. in particular Drezner, T. Op. cit., p. 175; Zalasowski, M. Op. cit., pp. 712-713; Minocki, F. Op. cit., p. 12 v.

²⁷¹ For example, F. Minocki relied on M. Laudensis and P. Farinacius (op. cit., p. E v.); cf. Quadros, G. Op. cit., p. 50; Huwaert, S. Op. cit., p. 24.

²⁷² Minocki, F. Op. cit., p. E v.; cf. Huwaert, S. Op. cit., p. 24; Kaszyc, J. Op. cit., p. 24. F. Minocki shared T. Deciani’s view that the term *de plano* does not mean excessive haste and disregard for procedural rules, since any investigation should seek to uncover the actual state of affairs and serve justice.

capable of perpetrating a crime and had some criminal record (Modestinus D. 48,4,7,3). Consequently, the accused had the right to defence.²⁷³

Referring to Roman law, the authors noted that, although the accusing party in a criminal trial could not be, e.g. persons made infamous (*infames*), the relatives of the accused (*familiares*), slaves against their owners, freedmen against their patrons, soldiers, women and other categories of persons listed in Macer D. 48,2,8, still, this rule did not apply for lese-majesty cases (Modestinus D. 48,4,7; C. 9,1,20). What follows, women were permitted to accuse in lese-majesty cases; the authors readily quoted - after Papinian D. 48,4,8 - the case of Julia (Fulvia) who had helped expose the Catiline conspiracy.²⁷⁴ Furthermore, the role of accusers was not denied to those who showed active repentance (C 9,8,5,7) and even - as observed by S. Huwaert after Marcellinus D. 11,7,35 - to sons against their fathers (and vice versa) without running the risk of disinheritance.²⁷⁵ Only the enemy of the accused could not act as a delator because his accusations were unlikely to be seen as credible.²⁷⁶ On the other hand, staying in office did not shield, unlike in other crimes, from accusation (Venuleius Saturninus D. 48,2,12).²⁷⁷ Another peculiarity related to the initial stage of a lese-majesty process is that the accusation may not be waived or reversed, and the judge is obliged to force the accuser to continue (C. 9,42,3,4).²⁷⁸

Moreover, evidence-taking in lese-majesty stands out as characteristic. As far as witnesses are concerned, individuals who are prohibited from bearing testimony in other trials are allowed here (*testes inhabiles*); some of them also enjoy the capacity to accuse.²⁷⁹ The unquestioning use of the testimony of people whose reputation and credibility may raise objections was advised against by the author of *Sprawa między Księciem Adamem Czartoryskim...a Janem Komarzewskim* [A Case between Prince Adam Czartoryski...

²⁷³ Huwaert, S. Op. cit., p. 24. Cf. Minocki, F. Op. cit., p. E v.; elsewhere, the same author ventured - after M. de Afflictis and P. Farinacius - the opinion that in lese-majesty cases the accused (and even his heirs if they are the defendants in a trial) was not permitted to seek counsel's assistance without the ruler's consent (p. E3).

²⁷⁴ Quadros, G. Op. cit., pp. 47-48 v.; Kaszyc, J. Op. cit., p. 24. Cf. Ostrowski, T. Op. cit., p. 317: "women, minors, but even those deprived of honour: What is more, sons should denounce their parents to the court and parents their sons if no improvement was seen after a private warning had been issued."

²⁷⁵ Huwaert, S. Op. cit., p. 22.

²⁷⁶ Quadros, G. Op. cit., p. 48; cf. Huwaert, S. Op. cit., p. 22.

²⁷⁷ Quadros, G. Op. cit., p. 28 v.

²⁷⁸ Quadros, G. Op. cit., p. 50 v.; Minocki, F. Op. cit., p. E2 v.

²⁷⁹ Quadros, G. Op. cit., p. 48; Kaszyc, J. Op. cit., p. 24; Huwaert, S. Op. cit., p. 23; Minocki, F. Op. cit., p. E4.

and Jan Komarzewski]; he began his argument by referring to the Roman law regulations on witnesses:

Ancient Roman law (Cod. 4.19) says about the plaintiff: 'All accusers need to know that when bringing an action before the court they should ensure the presence of most suitable witnesses, strong documents, and other evidence that leave no doubt and are clearer than light in revealing the truth.' What are these witnesses capable of *testes idonei*? Another customary law teaches us (D. 22,5 *de testibus*) 'The court should carefully verify witnesses' credibility by, for example, assessing their condition, inquiring into their status and rank. Are they honest and faultless or recorded and depraved? And if they are rich or poor and easily bribed to speak what they are told to? And if they are enemies of the one they witness for? For if the testimony is not dubious because it is given by a fair person, not motivated by profit, favour, or friendship, such testimony should be accepted...' Those who interpret this general law formally exclude as witnesses the following: children, lunatics, the mindless, the deaf, the blind, the obscene, people of vile pedigree and despised status, the condemned by a public tribunal, the corrupted, forgers, servants against their masters, children against their parents and other next of kin and affiliated, strangers and the unknown (*ignoti*), delators, accomplices in the crime, and enemies.²⁸⁰

Although the procedural rules in cases of lese-majesty are - due to the unique harm of the offence - specific, for example, admission of the enumerated persons as witnesses, the author did not consider their testimony as full-proof:

After all, these people, although capable of *intestabiles*, shall not convince the court to accept their version of criminal events. Two persons having capacity to testify and admitted to do so allow the application of a legal test if they see eye to eye. Two persons having no capacity to testify but admitted to do so shall not even attempt to convince the court, yet their testimony is likely to convey a grain of truth and may be a presumption or an important supposition about the truth.²⁸¹

²⁸⁰ Pp. 170-172.

²⁸¹ Ibidem, p. 223. The author revealed an equally critical approach to credibility of a report of a certain Mrs. Dogrumowa concerning an alleged plan to poison King Stanisław August Poniatowski: "It was all about the safety of the king. The slightest suspicion in matters of such importance, if not an offence, should make the informer fearful of possible punishment if they failed to prove it. But considering the character of the person, notorious for her frauds and corrupted lifestyle, her despicable report was turned down, especially that she purported to have been leading a conspiracy of persons of noble descent and occupying high offices in the country." (p. 10).

Section 29 Distinctive Features of Lese-Majesty Proceedings in Poland

One of the most convincing evidence was an admission of guilt by the accused himself, which also happened to be extorted by torture. The authors pointed out that, unlike in the proceedings in other matters, no rank or dignity save the accused from torture (C. 9,8,4).²⁸² Although torture is inflicted only when extra support is needed for the existing evidence, in the case of lese-majesty, torture can be the preliminary stage of evidence-taking. Moreover, mere allegation may be enough to prove the guilt; expressing such a view, F. Minocki referred to the works of P. Farinacius and T. Deciani.²⁸³ Torture is also a means for the accused to prove his innocence if the accuser fails to substantiate the charge convincingly enough; this is yet another unique feature of the proceedings in lese-majesty cases introduced by C. 9,8,3 - in other cases, in the absence of incontrovertible evidence against him, the accused is released.²⁸⁴ Finally, witnesses may also be put to torture, no matter - as in the case of the accused - their social background, privileges and dignity, which the authors justify by the provision in C. 9,8,3-4.²⁸⁵

Among the distinguishing features of the proceedings in lese-majesty cases, there is the incapability to lodge an appeal, which means that the penalty is exacted with immediate effect. This feature was discussed by S. Huwaert who pointed to Modestinus D. 49,1,16 prescribing non-admissibility of an appeal for persons whose immediate punishment is in the public interest (e.g. rebels and conspiracy leaders).²⁸⁶

The authors advised - as in C. 9,7,5,2 - against interceding for the convict with the emperor, as requesting the authority to refrain or mitigate the punishment was threatened with infamy and even, according to the modern doctrine, the punishment for complicity in the crime. This is contrary to the principle that the emperor can be implored to show clemency towards a person condemned for offences (C. 11,19).²⁸⁷

Lese-majesty proceedings may also take place in absentia; since no execution of the perpetrator is workable, he was dishonoured by having his portrait hanged publicly upside down; according to Ulpian D. 2,1,7 pr., the unlawful removal of the portrait was punishable.²⁸⁸

²⁸² Quadros, G. Op. cit., p. 50; Kaszyc, J. Op. cit., p. 24.

²⁸³ Minocki, F. Op. cit., p. E2 v.

²⁸⁴ Ibidem; cf. Quadros, G. Op. cit., p. 50 v.

²⁸⁵ Kaszyc, J. Op. cit., p. 24; Huwaert, S. Op. cit., p. 23.

²⁸⁶ Op. cit., p. 23.

²⁸⁷ Quadros, G. Op. cit., p. 51; Kaszyc, J. Op. cit., p. 25; Minocki, F. Op. cit., p. E v.; Ostrowski, T. Op. cit., p. 317.

²⁸⁸ Minocki, F. Op. cit., p. G4.

The proceedings in lese-majesty cases does not close - as with other offences (Modestinus D. 48,2,20; C. 9,6,1) - with the death of the accused, but it continues and can eventuate in the sentence of confiscation of property. Only the heirs of the accused can attempt to clear him of the charges to prevent the forfeiture of his assets to the imperial treasury. However, the extension of the proceedings after the wrongdoer's death does not occur - as the authors reaffirm after Ulpian D. 48,4,11 - in every case of *crimen maiestatis*, but only in *perduellio* understood as going *hostili animo* against the state or the emperor.²⁸⁹ Finally, the process can be initiated after the suspect's death (C 9,8,6), which, in the event of a conviction, also entails confiscation of property.²⁹⁰ G. Quadros, considering the issue of the application of the statute of limitations to lese-majesty, presented a view, based on the gloss to a provision of C 1,5,4,2 dealing with the instituting of proceedings against the deceased Manicheans, that a five-year limitations period should apply (running from the moment of the suspect's death); he himself, however, advocated to prolong this period, which was consistent with the contemporary practice (e.g. in Spain) of prosecuting heresy and apostasy; in his opinion, it was desirable to adopt a forty-year and even longer period of limitations, arising from the provision of C. 7,39,9, concerning legal action aimed against heretics' offspring.²⁹¹ The supporter of the five-year statute of limitations was also F. Minocki who counted the period from the suspect's death; while he is still alive, no limitations can be given on the prosecution of an offence of lese-majesty (unlike other crimes where a twenty-year period applied).²⁹²

The effect of convicting (also posthumous) the perpetrator of lese-majesty is *damnatio memoriae* - condemnation of memory (C 9,8,6), which F. Minocki defines as the imposition of eternal infamy on the offender's name.²⁹³ The same author, relying on foreign literature, drew attention to the in-

²⁸⁹ Quadros, G. Op. cit., p. 49; Kaszyc, J. Op. cit., p. 25. F. Minocki challenged the interpretation proposed by some modern authors that expanded the term *perduellio* to include crimes against non-sovereign rulers or royal officials (op. cit., pp. E3-E4 v.).

²⁹⁰ Kaszyc, J. Op. cit., p. 25. F. Minocki pointed out that a contemporary action brought or continued after the perpetrator's death was not aimed against him but against - as it was referred to - his memory; if so, it required a proper formulation of the claim as "contra memoriam mortui." Ultimately, the court did not sentence the deceased ("nec enim mortuus damnari potest"), but announced him guilty of committing a crime, which gave grounds for confiscation of property (op. cit., p. F3).

²⁹¹ Op. cit., p. 49 v.

²⁹² Op. cit., p. F3 v.

²⁹³ "Damnare quippe memoriam nihil aliud est, quam Nomini perpetuam infamiae notam inuere" (op. cit., p. E4).

creased procedural guarantees if the accused is dead, and the proceedings are taking place with his successors participating; full evidence-taking is mandatory, and the accused is granted the right to have a counsel (even if in other circumstances this right depends on the ruler's consent). Finally, the principle of presumption of innocence works to the deceased suspect's advantage because the burden of proof is on the accuser (representing the state treasury) and not on the heirs.²⁹⁴

Damnatio memoriae involves - as the authors pointed out - the removal of the external signs of the deceased person's activity. His name is erased from the list of *virii honesti*, his house demolished and his land sprinkled with salt.²⁹⁵ Destroyed are also his images, emblems related to served functions and his private weapon.²⁹⁶ Relatives of the condemned to *damnatio memoriae* should not - according to Roman law (Ulpian D. 3,2,11,3; Marcellinus D. 11,7,35) - go into mourning, nor are they allowed to bury him (Ulpian D. 49, 24.1).

Section 30 Roman Law as a Unifying Factor in the Polish Doctrine on *Crimen Laesae Maiestatis*

As follows from the above discussion about the influence of Roman law on the Polish legal literature on *crimen laesae maiestatis*, it should be noted that, although it is not an easy work to collate legal writings spanning three centuries, their authors' views on lese-majesty do not seem to have evolved much; despite the weaknesses of royal authority in Poland and the decline of its authority - especially in the 18th century, any attempts on the ruler's life drew unequivocal condemnation as deserving 'the ultimate penalty.' The most profound justification for this view - as demonstrated elsewhere - is to

²⁹⁴ If the accused died during the process, the burden of proof is on the descendant (ibidem, p. E2 v.-E3).

²⁹⁵ Minocki, F. Op. cit., p. H. The author, based on foreign literature (T. Deciani, H. Gigas, M. de Afflictis et al.), elaborated the problem of demolishing the house owned by the convicted person if other persons, not participating in the crime, have the right to this house. The convict's house is to be demolished even if it is co-owned by a third person who holds a larger share; the convicted person is only obliged to pay compensation to that person. A different procedure applies if the house is a security for the wrongdoer's wife's dowry.

²⁹⁶ Huwaert, S. Op. cit., pp. 26; the author referred to C. 9,8,5 pr. and Canon 5, Title 9, Book 5 of *Liber Sextus*.

be found in F. Minocki who concluded that the severity of the punishment was intended as a general prevention measure. This rule applied especially for the most serious crimes, lese-majesty being among them.²⁹⁷ So radical an approach, especially of the 18th-century authors, encounter a critical assessment of contemporary researchers; the above-quoted S. Salmonowicz's observations on F. Minocki's work illustrates the point. Still, Minocki's opinions were not isolated among Polish theoreticians and practitioners of criminal law: strict sanctions and the cruelty of aggravated forms of the death penalty were warranted by the gravity of the illegal act.²⁹⁸

A shared feature of the legal works of the period was the influence of Western literature which had evolved under the spell of Roman legal sources. This influence is particularly conspicuous in the monographs devoted to the subject of *crimen laesae maiestatis* which, demonstrably, proved to be insufficiently covered in domestic law. Some authors even went so far as to justify that the seriousness of the offence authorizes the judge to act beyond or bend the law: "Among this kind of secret vices, there is a crime of insulted majesty of the King, or the Commonwealth. These and only these crimes jurists call *crimina atrocissima*... Because they impinge on the entire Homeland or the Monarch *in atrocissimis leviores coniecturae sufficiunt, et licet iudici jura transgredi*, that is: A judge may act beyond the letter of the law in order to punish the crime that poses the threat of civic danger, unrest and impending doom."²⁹⁹ A careful study of the Polish legal literature of the 16th to 18th century, reveals that the legal writers of the period devote

²⁹⁷ Op. cit., p. G2 v.-G3.

²⁹⁸ Lityński, A. *Przestępstwa polityczne...* p. 41. It is in the trial of the Bar Confederates that inspired F. Minocki's work where a physical attack on the monarch was termed "the most appalling act of all", and the seriousness of the crime was legitimized by God's laws, natural law and the laws of nations ("Replika z Strony UU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Jana Kuźmy Inkarcerata, o kryminał Królobójstwa przekonanego, po ekspediovanych skrutyniach i Inkwizycjach w Sądach Sejmowych przez U. Antoniego Opelewskiego, Patrona Asesorii Koronnej, czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 116-117), and hence "the gravity of a committed crime is determined and indicated by the severity of punishment" ("Replika Z strony UU. Instygatorów i Vice Instygatorów Koronnych i Lit. tudzież Ich Delatorów przez U. Pawła Białobrzskiego Patrona Asesorii Koronnej, w Sądzie Sejmowym miana, na wyżej wyrażone odpowiedzi, od Łukawskiego, Cybulskiego, Peszyńskiego i Frankemberga czyniona." In *Processus iudiciarius...* pp. 99-100.).

²⁹⁹ *Sprawa między Księciem Adamem Czartoryskim ... a Janem Komarzewskim...* p. 223.

Section 30 Roman Law as a Unifying Factor in the Polish Doctrine

much more space to legal solutions that build on Roman law (and even the institutions of Roman law) than to domestic legal achievements, which they approach as secondary to their mainstream analysis. Indeed, Roman law did not only surface in the doctrine but also in the judicial practice, which will be expounded in the following chapter.

CHAPTER IV

ROMAN LAW IN *CRIMEN LAESAE MAIESTATIS* TRIALS FROM 16TH TO 18TH CENTURY

Section 31 Selected Trials for Lese-Majesty in Poland before the Turn of the 18th Century

The earliest of the trials covered in this chapter took place in 1538 and was a consequence of the tragic end of the conflict between Mikołaj Rusocki, castellan of Biechów and *starosta* of Rawa, and Tomasz Lubrański, castellan of Brest. In 1533, Grzegorz Lubrański, Queen Bona Sforza's cup-bearer, died without issue; his cousin Tomas married his widow, Anna nee Oporowska, and took possession of the Lubraniec *Ordynacja* (Pol. landed estate and institution for governing landed property; entail). The right to inherit the *ordynacja* was also claimed by Mikołaj Rusocki on behalf of his wife, Grzegorz Lubrański's own sister. The lengthy dispute between the parties escalated, despite queen's intervention and support for Lubrański; finally, on 18 May 1537, Rusocki, travelling to a dietine in Środa with a king's message, killed Lubrański, who was on his way to a dietine in Brześć Kujawski, near Konin. Rusocki was charged - mainly because of the queen - for the crime of lese-majesty; ¹ to answer the charge, the accused appeared before the Diet Tribunal in Piotrków in March 1538. The case was described in the chronicle of M. Bielski, together with the trial against the members of the Lwów Rebellion: "To this diet, people arrived irate. And because some deputies represented the magnates and some the gentry, they were in great contention over the general diet. And there was the issue of Mikołaj Russocki of

¹ Pocięcha, W. *Królowa Bona*. Vol. 2, Poznań 1949, p. 97; Kowalska, H. „Rusocki (Russocki) Mikołaj.” In *Polski Słownik Biograficzny*. Vol. 33, Wrocław 1991-1992, pp. 151-152.

the noble clan of Korab, castellan of Biechów, who was summoned before the Diet for the murder of Tomasz Lubrański, castellan of Brest. Russocki arrived with a large entourage and tried to convince the deputies that the king's (and some of his councils') proposed punishment was too severe; but when he saw that the king adopted a hard-line stance on the matter, the castellan left the Diet with his comrades. Later, a few nobles were called in suspected of heading the unrest in Lwów and were bound by an oath, but the king, advised to do so, pardoned them mercifully.² Because this affair coincided with the king's and queen's endeavours to toughen penalties for the crime of lese-majesty,³ the instigator demanded that the accused be put to death. The resistance of the deputies and some senators to king's plans created a favourable climate for Russocki and on 2 March the tribunal handed down a compromise ruling. Actually, Mikołaj Russocki was found guilty of lese-majesty, but he was not deprived of honour and office, and the final decision on the ultimate punishment was in the hands of the king; the king demanded that the accused swear a knight's oath [a pledge to being at

² Bielski, M. Op. cit., vol. 2, pp. 1076-1077.

³ February 1537 saw the end of the trial of *Wojewoda* of Podolia Stanisław Odrowąż who, in spite of the 1526 agreement to annex the eastern and central Masovia to the Crown after the death of Duke Janusz of Masovia, tried to persuade the king to leave Masovia in the hands of his wife Anna, last duchess of Masovia. This led to a conflict with Bona Sforza who saw Masovia as a Jagiellonian dominion, ruled in a manner similar to Lithuania and thus hereditary. Royal commissioners, authorized to take over Duchess Anna's Masovia lands, encountered defiance. The queen felt that such an open act of "rebellion" against the royal authority must be dealt with accordingly. On his wife's advice, King Zygmunt I sued Odrowąż before the Diet Tribunal on a charge of lese-majesty. Not only did the issued sentence dismiss all Odrowąż's wife's claims, but also deprived Odrowąż of the *starostwo* of Lwów and Sambor (that he was forced to buy back). In this case, which increased the unpopularity of Queen Bona Sforza among the nobility and furnished the reasons for reproaching her with greed and pettiness, the queen was impelled by the necessity to defend the authority of the monarch and the desire to nip any attempts on the dynasty and the throne in the bud (Bogucka, M. *Bona Sforza*. Wrocław 2004, p. 217). It seems to have been corroborated by further processes for lese-majesty started on Bona Sforza's initiative. In addition to the case of Mikołaj Russocki, another noteworthy trail was that of *Wojewoda* of Podlasie Jan Sapieha of 1541. The reason for his imprisonment was, as reported by Stanisław Hozjusz, an alleged oath sworn to the queen "to destroy all the dignitaries of the Grand Duchy of Lithuania." The allegations against Sapieha are not known because no entries have been preserved in the Lithuanian Register. Sapieha was stripped of his offices and imprisoned in the upper castle in Vilnius. Sapieha's incarceration sowed general confusion in Lithuania; although royal counsellors and even King Zygmunt August interceded for him, he was still in gaol in April 1542. In 1545, his son Łukasz wrote to Emperor Ferdinand I that because of accusations hurled by his opponents, the father "though innocent... was deprived of his honour, dignity and assets, and was thrown into poverty" (Michalewiczowa, M. "Sapieha Iwan." In *Polski Słownik Biograficzny*. Vol. 34, Wrocław 1992-1993, p. 620).

king's disposal - translator's note] to appear in Malbork castle on 5 May to accept the judgement. Rusocki arrived in Malbork on time and by the grace of the king was sentenced to 18 months' imprisonment in the lower tower; the king, acceding to the deputies' request, commuted the penalty by moving the inmate to the upper tower.⁴

The widow of slain Tomasz Lubrański soon married Jakub Drzewicki, *starosta* of Inowłódź, with whom Mikołaj Rusocki was in a lasting conflict. On 8 July 1548, Rusocki was killed by Drzewicki and his servants in Kazimierz Biskupi, where he paused on his way from a dietine in Środa to a dietine in Koło.⁵ Although this event occurred after the adoption of the constitution of 1539, which narrowed the object of protection under criminal law only to the king, the accuser charged Drzewicki with the crime of lese-majesty. How this case ended is not known; the Diet Journal of 1548 only reveals that he was not among the convicted to the death penalty.⁶

There was also another noteworthy trial during the reign of Zygmunt I. The lower chamber of the parliament abruptly discontinued a Diet in Kraków convened at the turn of 1536. The reason for that was - according to S. Górski's account - the king's delaying of filling offices (especially the Grand Chancellor of the Crown and Deputy Chancellor of the Crown).⁷ In order to attend to the issues that could not have been settled at the Diet (e.g. the enactment of tax law), the king summoned a levy under a different guise; the nobles who gathered in Sokolniki near Lwów, led by the Kraków judge, Mikołaj Taszycki rose in a rebellion and put forward a number of demands for the king to fulfil, most of which present on the broken diet's agenda.⁸ The demands were also addressed to the queen; the nobles protested especially against her initiative of purchasing pledged royal lands (aimed to increase the royal dominion).⁹ The king failed to close the levy by the enactment of new taxes and was forced to end it. Although the master-

⁴ Kowalska, H. Op. cit., pp. 151-152. The trial records have been published and commented on in Bojarski, A. „Dwa zabytki polskiego sądownictwa karnego z wieku XVI.” Explained by A. Bojarski. *Rozprawy Polskiej Akademii Umiejętności. Wydział Historyczno – Filozoficzny*. Kraków 1874, p. 256ff.

⁵ Kowalska, H. Op. cit., p. 152.

⁶ „Dyaryusz sejmu piotrkowskiego r. 1548.” In *Scriptores Rerum Polonicarum*. Vol. 1, *Dyaryusze sejmów Koronnych 1548, 1553 i 1570. Z rękopismów wydał i przypisami objaśnił J. Szujski*. Kraków 1872, p. 257.

⁷ Górski, S. „Diariusz sejmu krakowskiego r. 1536.” In Pociecha, W. *Panowanie Zygmunta Starego (1506-1548) w świetle źródeł*. Kraków 1923, pp. 24-25. For more on this political game, see Wojciechowski, Z. *Zygmunt Stary (1506-1548). Opracował i wstępem poprzedził A.F. Grabski*. Warszawa 1979, p. 361.

⁸ Wojciechowski, Z. Op. cit., p. 362.

⁹ The nobles believed that the take-over of Odrowąż's property was illegitimate (but M. Bogucka showed that their purchase had been absolutely legal - op. cit., pp. 218, 232); the queen was also

minds behind the rebellion were taken to court - owing to Bona Sforza who attempted to defend the king's authority - and made liable for lese-majesty, the judgement proved to be very mild: "...so hereby His Majesty King orders that the defendants swear a knight's oath and remain bound by it at king's discretion."¹⁰ This meant that the rebels were forced to take an oath that they would appear at king's every request to accept the punishment; later, they were gradually released from this oath. This trial exerted a major influence on the adoption of the 1539 constitution.

Another change in the legislation on *crimen laesae maiestatis* before the adoption of the constitution of 1588, was triggered by the trial of Krzysztof Zborowski in 1585. Zborowski was charged with an assassination attempt on Stefan Batory, the defecting to the imperial side and betrayal of the country to Moscow.¹¹ This last accusation was supported by witnesses but also by Zborowski's letter to his brother Samuel of 17 July 1583. Samuel Zborowski, sent into exile in 1574 for insulting the majesty of the king, was at that time seconded to Zaporozhian Sich with a covert mission from Batory. The letter, proving - as alleged by Jan Zamoyski - an engineered attempt on the king and Zamoyski himself, went into the hands of Stefan Batory through a Zborowski's servant, and Krzysztof Zborowski's authorship was authenticated by the addressee, Samuel, shortly before his execution in May of 1584.¹² Therefore, the arguments of Krzysztof Zborowski's defenders and supporters before the Diet Tribunal, questioning the credibility of the evidence, failed to outweigh the arguments of instigator Andrzej Rzeczycki. On 22 February Krzysztof Zborowski was sentenced to infamy and confiscation of property. The account of the proceedings is known mainly from the Diet Journal of 1585¹³ and from published speeches of Andrzej Rzeczycki.¹⁴

One of the most famous trials for lese-majesty as held against Michał Piekarski who, on 15 November 1620, made an unsuccessful attempt on the life of King Zygmunt III. Mentally unstable Piekarski attacked the king

blamed for falsifying the Crown Register, which was the fundamental document for the enforcement of rights to royal lands.

¹⁰ The full text of the sentence published in: Pociecha, W. *Panowanie Zygmunta Starego...* p. 28.

¹¹ The text of the lawsuit available in *Pamiętniki do życia i sprawy Samuela i Krzysztofa Zborowskich*. Collated by Ż. Pauli, Lwów 1846, pp. 137-138).

¹² Cf. e.g. Grzybowski, S. *Jan Zamoyski*. Warszawa 1994, p. 165f; Leśniewski, S. *Jan Zamoyski, hetman i polityk*. Warszawa 2008, p. 84f.

¹³ „Dyaryusze sejmowe r. 1585.” Czuczynski, A., ed. In *Scriptores Rerum Polonicarum*. Vol. 18, Kraków 1901.

¹⁴ Rzeczycki, A. *Accusationis in Christophorum Sborovium actiones tres*. Cracoviae 1585.

when he was walking to the holy mass in the collegiate church of St. John and hit him twice with a hatchet, inflicting slight wounds.¹⁵ Piekarski was inspired by the murder of King Henry IV of France in 1610 and “thought about assassinating His Majesty King; he flirted with this idea for 10 years and few times was about to put it into practice, following the king and his court and waiting for the opportune moment to fulfil his evil plan...”¹⁶ After several days of trial, the accused confessed during torture that he had acted alone. By the ruling of the Diet Tribunal, he was pronounced guilty of lese-majesty and sentenced to death in an aggravated form, confiscation of property and infamy. Piekarski’s descendants were also made infamous and disinherited (although Piekarski was childless); his manor house in Bieńkowice was to be razed to the ground and replaced by a stone pyramid as a symbol of his shameful deed.¹⁷ Following the decision of the Grand Marshal of the Crown, who was authorized by the court to determine the form of Piekarski’s death, Piekarski was to be torn apart by four horses; before the execution, his body was pinched with hot tongs and his right hand burnt and cut off (it was used to perform the attack). After his death, Piekarski’s body was burnt; his ashes were to be scattered by a cannon shot but ultimately were thrown into the Vistula river.¹⁸

Of a political character was the 1664 lawsuit against Great Marshal of the Crown and Field Hetman Jerzy Lubomirski. As an ardent opponent of the *vivente rege* election endorsed by Queen Marie-Louise, Lubomirski stood in the way of the court’s plans. He was suspected for, among others, the inspiration of a Ukraine-based confederation of the Crown army, known as the Sacred Association, whose members put forth economic (payment of the soldier’s pay) as well as political demands. One of the points in the indictment concerned his speech delivered during the sitting of the Senate in Lwów in April 1663, which came to be regarded as an anti-roy-

¹⁵ According to R. Piasecki, Piekarski’s resentment to the king was caused by guardianship that the monarch had established for him because of his mental illness: “And then, this madman, thinking that he has been hurt...decided to seek revenge on the king” (*Kronika Pawła Piaseckiego biskupa przemyskiego. Polski przekład wedle dawnego rękopismu, poprzedzony studyjum krytycznym nad życiem i pismami autora*. Kraków 1870, p. 289).

¹⁶ *Ibidem*.

¹⁷ The text of the judgement has been preserved as a copy in the files of the proceedings for kidnapping King Stanisław August: “Kontynuacja Indukty od UU. Instygatorów Koronnych wraz z ostateczną przeciw wszystkim Pozwanym i Przekonanym o ten Kryminal Konkluzją, przez Ur. Jana Nepomucena Słomińskiego Metrykanta Kancelarii Większej Koronnej czyniona.” In *Processus iudiciarius*... pp. 65-66.

¹⁸ A description of the execution available in Piasecki, P. Op. cit., p. 290.

al manifesto. Lubomirski's proposal of summoning a levy, allegedly with a view to exerting pressure on the confederates and persuading them to accept a settlement, was, in fact, intended to limit the royal sway.¹⁹

The final court's decision on instituting the proceedings was made in June 1664 and, despite Lubomirski's considerable effort to prevent the exposure of his case before the Diet (including an attempt to discontinue the diet), Marshal Jan Gniński appointed parliamentary deputies to form the tribunal on 5 December. At the request of Lubomirski's son, Stanisław, who stood proxy for his father, the court appointed counsels of the defence: Stanisław Zesteliński and Andrzej Mniszch. A formal charge was brought by Lord Prosecutor of the Crown Jan Tański, assisted by the delator, Hieronim Dunin. The main points of indictment revolved around the establishment of and incitement to an armed confederation and the intention to overthrow the royalty. The trial closed on 22 December and Jerzy Lubomirski was found guilty of lese-majesty and sentenced to death, infamy and confiscation of property. The course of the proceedings is known from an official report published immediately after the court session.²⁰

The last of the trials to be covered in this section took place in 1773; before the Diet Tribunal appeared the perpetrators of a failed assassination attempt on King Stanisław August Poniatowski, who intended to force him to lead the Confederation of Bar. The mastermind of the attempt was Stanisław Strawiński; Kazimierz Puławski, leader of the Bar Confederation, dispatched troops commanded by Jan Kuźma and Walenty Łukawski to support him. Late evening, on 3 November 1771, after shelling the royal carriage, the conspirators succeeded in abducting the king and drove him away from Warsaw; but when the king found himself alone with Kuźma, he promised him impunity and Kuźma set the king free. On the basis of Kuźma's testimony, many of the conspirators were arrested, including Walenty Łukawski, Józef Cybulski, Walenty Zembrzuski, Walenty Peszyński and Bogumił Frankenberg, and Łukawski's wife Marianna; Puławski and Strawiński managed to escape. Pursuant to the resolution of the Senate of 8 February 1773, the Crown and Lithuanian instigators launched an investigation; on 29 May later that year, the

¹⁹ For more, see Kłaczewski, W. *Jerzy Sebastian Lubomirski*. Wrocław 2002, p. 183f. Among older works, some noteworthy are Czermak, W. „Sprawa Lubomirskiego w roku 1664.” In *ibidem Ostatnie lata Jana Kazimierza*. Prepared and introduced by A. Kersten, Warszawa 1972, pp. 69-222; Bąkowa, J. *Szlachta województwa krakowskiego wobec opozycji Jerzego Lubomirskiego w latach 1661-1667*. Kraków 1974, pp. 13-79.

²⁰ *Processus iudiciarius in causa ... Georgio ... Lubomirski ... ex instantia instigatoris Regni et delatione ... Hieronymi de Magna Skrzywno Dunin ad comitia Regni anni 1664 institutae et ibidem iudicatae ac decisae*, Varsoviae 1664 (quoted below as: *Processus Lubomirski*).

Diet formed the tribunal chaired by Grand Marshal of the Crown Stanisław Lubomirski; the proceedings started on 7 June after the swearing-in of the judges. The present defendants were assigned court-appointed counsels of defence, but their position was somewhat awkward as all the accused pleaded guilty. Although the king himself spoke in defence of the conspirators, the judgement passed on 2 September 1773 was consistent with the accuser's expectations. The leaders and organizers of the attempts were sentenced to death, perpetual infamy, prohibition from using the name by the children and confiscation of property. Kuźma was sentenced to perpetual banishment under the threat of death if he had returned. Peszyński and Frankenberg, who were not directly involved in the attack but failed to denounce the conspiracy, suffered from infamy and life imprisonment in Kamieniec fortress, combined with forced labour. Tubałowicz and Słaczewski, who died before the judgement was passed, were made perpetually infamous. Marianna Łukawska was sentenced to three years in a correction facility for failing to inform on the assassins' intentions (her sentence was shortened on account of 22 months of earlier temporary detention); Zembrzusi was sentenced to incarceration in an upper tower for aiding the perpetrators and refraining from arresting them. The trial itself as well as the preceding events can be pieced together on the basis of published court files²¹ and a reconstruction by W. Ostrożyński.²²

Section 32 The Problem of Admissibility of the Subsidiary Application of Roman Law in Cases Involving *Maiestas*

A careful analysis of court files and other sources (including the literature) describing *crimen laesae maiestatis* trials reveals a repeatedly raised question of admissibility of 'common law' or 'imperial law' in the heard cases. How these concepts were interpreted needs some clarification. Researchers no longer doubt that it they referred to Roman law, yet, considering the popular statement of Romuald Hube, it was not pure Roman law but "an amalgam of various laws originating in the Middle Ages from the blending of Roman laws, canon laws, and feudal and local laws of many countries on which the legal theory and practice was often rested in the ab-

²¹ See above, note 17.

²² *Sprawa zamachu na Stanisława Augusta z 3 listopada 1771 roku przed sądem sejmowym*. Lwów 1891.

sence of comprehensive national legislation.”²³ The analysis of the content of court files reveals that different authors who alluded to “common law” were often influenced by the Western literature, where Roman law had been dovetailed with the legal requirements of the time; still, as regards the quotations used in that literature, most of them come from the Code of Justinian, the *lex Quisquis* in particular. This source was used by the accuser of Mikołaj Rusecki, although as reported by the Rev. Stanisław Górski, secretary of Queen Bona Sforza and canon of Kraków and Płock, the term “imperial law” was not seen as equivalent to Roman law. Górski’s account of the Piotrków Diet of 1538 reads: “Summoned before the Diet Tribunal were also Mikołaj Russocki, castellan of Biechów and *starosta* of Rawa, with the accomplices and supporters of matricide and killing of Tomasz Lubrański, castellan of Brest. They were threatened with severe penalties because Jan Tarnowski, castellan of Kraków (well disposed towards the Lubrańskis) insisted that they be tried according to the new imperial law, as they had dared to assault and murder an acting senator and royal envoy on a public road on his way to dietines in Wielkopolska.” The author left no doubt as to the meaning of the phrase “imperial law” because he explained in a footnote: “The *Constitutio Carolina Criminalis* recently adopted in 1533; Article 137 on Robbers, since domestic laws are too indulgent.”²⁴ The court files published by A. Bojarski show, however, that the instigator, suggesting that the case should be decided not only according to “statutum regni desuper edictum,” i.e. the constitution of 1510, but - as for the sentence (“quomodo praescribunt poenas criminis laesae M.”) - by having recourse to “leges imperatorias,” a passage of that latter source leaves no doubt that the *leges* refers to the *lex Quisquis* (erroneously labelled in the files as “Sub título ad Regiae Majestati L. primo [sc. 51] codice 10.”)²⁵ Moreover, the article from *Carolina* mentioned by Górski deals with murder (threatened with the death penalty) and not an offence of lese-majesty, as the killing of a senator should be classified; hence, it seems more justified for the instigator to make references to the *lex Quisquis* which, after incorporation into the Code of Justinian adopted in the German Empire legislation, also deserves

²³ Hube, R. „O znaczeniu prawa rzymskiego i rzymsko-bizantyjskiego u narodów słowiańskich.” In idem *Pisma*. Vol. 1, Warszawa 1905, p. 383. See also e.g. Sondel, J. „Prawo rzymskie w procesie sprawców porwania Stanisława Augusta.” In *Crimina et mores. Prawo karne i obyczaje w starożytnym Rzymie*. Kuryłowicz, M., ed., Lublin 2001, p. 195.

²⁴ „Czwarty wypis z rękopisma x. Stan. Górskiego.” *Pamiętnik Warszawski*. Vol. 12, 1818, pp. 133-134.

²⁵ *Dwa zabytki...* p. 291. A comparison of the passage cited by the instigator with the text of the *lex Quisquis*, ibidem, pp. 278-279.

to be termed "imperial law."²⁶ What is more, if, for the sake of the trial, the lawyers had intended to supplant the constitution of 1510 with Article 137 of the *Carolina*, the remark from S. Górski explaining the use of "imperial law" in place of too mild Polish law would have been unfounded because the said constitution in connection with the statute of 1507 also prescribed capital punishment for such a deed.

Roman law as finally shaped in the time of Justinian was perceived as a synonym of common law in the records of the trial against the participants of the Confederation of Bar, as demonstrated in the words of A. Rogalski, a spokesman for the prosecution:

When trying to pinpoint the original causes [of the crime], for which the Romans made their early laws, and which were later elaborated and broadened to meet the needs of a greater and populous nation, and are today known as common law...²⁷

In the opinion of the trial lawyers, "common law" is not just part of Justinian's codification and the *Novels* embedded in the *Corpus Iuris Civilis*, but also commentaries to these sources produced by contemporary authors. When replying to the argument of Wiktoryn Wiszowaty, counsel of Marianna Łukawska, Antoni Opelewski, representing the prosecution, quoted the works of J. Clarus and J. Damhouder,²⁸ the defence responded by describing them as "common law taken from Damoderius [sic] and ex Julio

²⁶ Further in his text, S. Górski commented on the final stage of Mikołaj Rusocki's trial, emphasizing the application of exceptional - in his opinion - law, however without associating it with the *Constitutio Criminalis Carolina*: "...Where according to a law that had not been used before, he was found guilty of violating majesty...but his honour and dignity were saved, and his life or death was to be decided by the king himself." Apparently, fate was on Rusocki's side; as reported by the author, "On a designated day, he arrived in Malbork castle to do his time in its foul prison for eighteen months in isolation; after that he was released in good shape and with his honour regained and immediately headed for Vilnius to seek king's forgiveness, which he successfully found." (op. cit., pp. 149-150).

²⁷ „Kontynuacja dalsza Indukty także z Powództwa UU. Instygatorów Obojga Narodów i ich Delatorów, w sprawie o gwałtowne i najszkaradniejsze Majestatu i w nim Osoby Najjaśniejszego Pana obrażenie; przeciwko Inkarceratom, i ich współcznikom nieprzytomnym w Terminach wyrażonym, po ekspediowanych Skrutyniach i Inkwizycjach przez U. Antoniego Rogalskiego Metrykanta Kancelarii Mniejszej Koronnej.” In *Processus iudiciarius*... p. 71.

²⁸ „Replika z strony UU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Marianny Łukawskiej o społeczeństwo Królobójstwa przekonanej, po ekspediowanych skrutyniach i inkwizycjach w Sądzie Sejmowym przez U. Antoniego Opelewskiego Patrona Asesorii Koronnej miana.” In *Processus iudiciarius*... p. 129.

Claro."²⁹ Also eagerly quoted were the legal writings of P. Farinaccius³⁰ and B. Carpzov.³¹

The issue of subsidiary application of Roman law also emerged during the trial of Krzysztof Zborowski, when, at the early stage of the proceedings, the lawyers highlighted the absence of a provision allowing the accused of *crimen laesae maiestatis* to act by proxy. The instigator demanded the presence of Krzysztof Zborowski because considering the type of evidence (a letter to his brother and witnesses' testimonies) he was required to respond to it himself.³² Zborowski's defence counsel, Jakub Niemojewski, appealed to the king to permit the participation of a proxy "because nothing in our customary law prohibits that", so that the accused refers to the custom ("utitur usu et consuetudine pro scripta lege").³³ Surprised by Niemojewski's proposal, departing from the solutions adopted in foreign laws, the king suggested that if statutory law was insufficient the existing gaps should not be eliminated by means of custom but by Roman law:

And where *de dignitate et securitate nostra* is involved, they must wonder in foreign countries when they hear that in such a trial the one subjected to *contra principem machinatur* is allowed to speak through a representative. Then, *Rpca rex et unum sunt*, if our laws fail to deliver solutions, and the custom is not enough to remedy this deficiency, we should have recourse to imperial law.³⁴

King's suggestion was opposed by the defender who called for non-application of Roman law, while reproaching the instigator for resting certain

²⁹ „Odpowiedź na Replikę z strony UU. Instygatorów Koronnych i Lit. przeciwko U. Mariannie Łukawskiej uczynioną, przez tegoż U. Wiszowatego czyniona.” In *Processus iudiciarius...* p. 131.

³⁰ Cf. e.g. „Odpowiedź z Strony Urodzon. Józefa Cybulskiego Ucz. Walentego Peszyńskiego i Bogumiła Frankemberka oskarżonych na Indukcję od UU. Instygatorów Koronnych i W.X. Lit. tudzież i Ich Delatorów po ekspediowanych Inkwizycjach w Sądzie Sejmowym mianą, przez U. Andrzeja Przeździeckiego Patrona Referendarii Koronnej i Komisji Skarbu Kor. Tymże oskarżonym dla obrony przydanego, czyniona.” In *Processus iudiciarius...* p. 97; „Kontynuacja Indukty od UU. Instygatorów Koronnych wraz z ostateczną przeciw wszystkim Pozwanym i Przekonanym o ten Kryminal Konkluzją, przez Ur. Jana Nepomucena Słomińskiego Metrykanta Kancelarii Większej Koronnej czyniona.” In *Processus iudiciarius...* p. 68.

³¹ Cf. e.g. *Replika z Strony UUU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Jana Kuźmy...* p. 117.

³² *Dyaryusze sejmowe...* pp. 62-63, 66.

³³ *Ibidem*, p. 65; see in particular p. 66: "Conceditur id in legibus expresse non haberi, de quo contendimus, tamen consuetudine, quae legum est interpres optima, inolevit, ut criminaliter accusatus per amicum aut mandatarium respondeat; eam consuetudinem conservandam petimus."

³⁴ *Ibidem*, p. 69.

aspects of the procedure on arguments borrowed Roman law, which considerably differed from Polish law:

...on the list or rather on his interpretation, the instigator based his intention and took *modum procedendi et probandi coniecturas suas* from imperial laws, *ex grossis doctoribus*, who have different offences that we have, because we Poles *non habemus caesarem nisi regem*, we do not have *codicem* but our Polish statute *de crimine laesae maiestatis: in persona tantum committitur*.³⁵

Unlike during the proceedings against Mikołaj Rusocki, when the king's idea to use imperial law sparked outrage, besides the defence counsel, no one registered their disagreement or questioned the legitimacy of referring to that law. Invoking senators' patriotism, the arguments of Jakub Niemojewski that Poles are governed by their own law, and their ruler is the Polish king and not the emperor, was in point of fact intended to - as held by the archbishop of Gniezno - to avoid the application of the law that clearly was less favourable to the accused. The counsel's argument, it seems, did not quite convince the king either: because of the significance of the matter and the interest of international public opinion, he decided to resolve the case primarily relying on national law, but, at the same time - as shown in one of the versions of his statement - took the liberty of consulting common practice:

Omnēs externae nationes nunc ea in causa in nos respiciunt. Quapropter nolimus hac in parte a consuetudine totius orbis terrarum discedere, ne videlicet vel pueri videamur vel pusillanimes: pueri, ut tantum facinus agnoscere non possimus...³⁶

King's leniency, referred to in the last part of this statement, would have been shown if only Polish law had been used, which, as regards the offences of lese-majesty, prescribed the criminalization of neither violation of majesty as such nor the individual stages of its commission (although, as discussed below, during the proceedings, criminal legislation on other offences was referred to by analogy). The king, therefore, did not want to allow Krzysztof Zborowski to answer his charges solely on the basis of national law because the imposed penalty would have been too light; this was the last thing that King Stefan Batory wanted as he expected Zborowski's punishment to serve as a deterrent. As it was emphasized during the trial,

³⁵ Ibidem, p. 125.

³⁶ Ibidem, p. 234.

the deed of the accused did not only harm the king but the state interest,³⁷ and even, as the Marshal of the Crown put it, "it is against God, from whom the royal supremacy is given."³⁸ The severity and selection of the penalties specified in the judgement (infamy and confiscation of property) indicate that the king's expectation was satisfied.

The most widespread rationale for seeking the assistance of Roman law was the imperfection of national law in lese-majesty matters, which was, in turn, justified by limited practicability of legal standards governing lese-majesty due to very few local instances of such a crime. Charged with *crimen maiestatis* and imploring the king for a lenient sentence, Mikołaj Rusocki underlined the lack of precedents in such cases: "And because in former times, no one was punished so severely for such a crime, I trust Your Lord's mercy that you shall not punish your subject more harshly than other offenders."³⁹ The same was also noticed by the instigator in the trial who was trying to explain the deficiencies of domestic law:

Et licet in regno M. vestrae serenissimae nullae cumque leges de huiusmodi crimine laesa M. nationi et generi polonica tale numquam crimine commissum nec auditum fuerit, quo maiestas Regia et dignitas laesae et offensa sit quum semper probe et virtuose maiores nostri erga M.v. praedecessoresque se gesserunt, proinde non extantibus criminibus et scandalis non extabant etiam desuper et leges, nisi nunc demum, ubi sub tempore felicis regnationis Serenissimae Maiestatis Vestrae insolentia et licentia hominem facinosum intabescere fecit.

He continued that only the instances of violations of safe operation of diets and land courts by attacking state officials and deputies had led to the adoption in 1510 of the constitution aimed to protect public order.⁴⁰ This statement suggests that in cases involving *crimen maiestatis* the standards of customary law were not seen as adequate, since along with the growing number - as can be inferred from the instigator's words - of attacks on public persons, the Diet inclined towards regulating the crime by statute, at least to a limited extent.

³⁷ Responding to senators' dissent that the king should not be a judge in cases of lese-majesty that affect him directly, Stefan Batory, among other arguments, highlighted the enormous implications of the case for the interest of Republic (p. 89).

³⁸ Ibidem, p. 234.

³⁹ *Dwa zabytki...* p. 290.

⁴⁰ Ibidem, pp. 292-292. The shortage of former practice in cases of *crimen laesae maiestatis* was also emphasized in the judgement: "...and there are misdeeds, and must be, that have never been heard of before, but must not go unpunished. His Majesty has never been violated before. And it is proven that Polish law has not provided for any punishment for that, nor has any court imposed any such penalty" (ibidem, p. 294).

—— Section 32 The Problem of Admissibility of the Subsidiary Application...

Also in the trial of Krzysztof Zborowski, the shortcomings of Polish law, and even customary law, as regards lese-majesty were highlighted a number of times. The *wojewoda* of Podolia admitted that many issues arising during the proceedings may not be resolved by resorting to the existing regulations, "How to decide it? There are no *leges*, only one weak statute, no *consuetudines*...So how to decide in such a great crime?" The reason for these shortcomings was, according to the said *wojewoda*, the conviction of past legislators that, through God's care and human caution, no attacks on the monarch would ever take place: "...They thought *providentiam Dei* as superior to "the anointed of God" and believed *custodiam corporis* of His Majesty King, which is useful for the health and security of His Majesty King, and understood that there would be no one bold enough to ruin either *aperte Marte* or *ex insidiis*."⁴¹ In contrast to foreign laws, domestic legislation did not provide for any penalties administered for the crime in question, as noted by the castellan of Brest: "They also must ne *documento exempla*, but there are only few, *apud exteros* content-rich and varied. Because there are *poenae capitales*, *confiscationes*, *exilia*, and there are *poenae arbitrarie principum*."⁴²

Loopholes in national law provided grounds for the use of Roman law in the lawsuit of attempted assassination of King Stanisław August. Addressing the bench of the Diet Tribunal, the instigators expressed a view that these deficits stemmed from the fact that offences of lese-majesty, at least regicide, had had almost no tradition in Poland:

Indeed, so great and savage is the crime that your predecessors and past law-makers neither envisaged any penalties for it, nor described it because in their impeccable minds they never considered such a crime to be ever possible... In fact, thanks to the grace of God, no such a crime occurred in our Nation before.

When during the reign of Zygmunt III, Piekarski was brought to court, it transpired that made law did not offer any solutions as regards the penalty for his crime, for the legislators:

...in the purity of their minds failed to prescribe any clear penalty because where there is no sin or anticipated transgression there is no need for a penalty. The constitution of 1588 only said that such an offender *reus Criminis condemnabitur*, but without explicitly pointing to or describing the penalty.⁴³

⁴¹ *Dyaryusze sejmowe*... pp. 190.

⁴² *Ibidem*, p. 191.

⁴³ *Replika Z strony UUU. Instygatorów i Vice Instygatorów Koronnych i Lit. tudzież Ich Delatorów*... pp. 99-100. The instigators noted that even Piekarski's case had not considerably contributed to the

Roman law can therefore - according to the instigators - be helpful in deciding penalties:

Let no one, including the accused, be astonished that, when accusing the perpetrators of lese-majesty, we refer to common law for punishment; our national, provincial law does not lay down any retribution for such a vile deed.⁴⁴

An additional argument for the use of Roman law was - as claimed by one of the accusers, J.N. Słomiński - the fact that it was thought to have laid the foundations of European laws, including Polish and Lithuanian laws:

I only lay before the court's eyes, and to seek justice, the laws commonly pursued across Europe and penalties for the perpetrators of this crime, that is, death, loss of honour, rank and assets, demolition of the house as a memento, loss of honour, nobility and inheritance by the perpetrator's issue of both sexes. Our national laws have inclined towards them: first the constitution of 1588 and later the Lithuanian Statute, Chapter I, Article 3...⁴⁵

The connection between the Roman law regulations and modern laws was observed earlier in the trial of Mikołaja Rusocki, whose instigator argued that, "... ex quibus [sc. legibus imperatoriis] leges singulorum provinciarum christianarum et Regni Poloniae emanarunt..."⁴⁶ J. Sondel confirms that focusing attention on such connections served to underpin the authority of common law.⁴⁷

Despite the recognition of Roman law and its impact on European laws, there was a commonly shared opinion that, as a subsidiary source, it was only indispensable in places where national law turned out deficient. Wiktoryn Wiszowaty, defender of Marianna Łukawska, having questioned the applicability of the Roman law standards in his client's case, concluded:

remedying of legislative defects: "That crime committed during the reign of His Majesty King Zygmunt III and tried before the Diet was ignored by law based on the conviction that having punished that mindless man, the crime would have been staved off for good" (ibidem).

⁴⁴ Ibidem.

⁴⁵ „Kontynuacja Indukty od UU. Instygatorów Koronnych, przeciw Inkarceratom Kryminalistom, po wyprowadzonych Inkwizycjach, wraz z ostateczną przeciw wszystkim pozwanym i przekonanym o ten Kryminal Konkluzją." In *Processus iudiciarius...* p. 64. Cf. Bukowska-Gorgoni, K. „Kilka uwag o mocy obowiązującej praw obcych w Polsce w świetle akt procesu o zamach na Stanisława Augusta." *Zeszyty Naukowe Uniwersytetu Jagiellońskiego DCXXV. Prace prawnicze.* Fasc. 97; *Studia z historii praw obcych w Polsce.* Vol. 1, p. 98. The author also draws attention to other statements of trial participants who acknowledged the compatibility between domestic law and common law as its source (ibidem, pp. 98-99, note 75).

⁴⁶ *Dwa zabytki...* p. 291.

⁴⁷ Sondel, J. *Ze studiów nad prawem rzymskim w Polsce w okresie Oświecenia.* Kraków 1988, p. 94.

Section 32 The Problem of Admissibility of the Subsidiary Application...

I do not want to say that common law has gone down in my esteem because this law is the source of all local laws, which are bred by it as a living spring; so all laws have its origin in common law. Instead, I wish to prove that common law can be used when our national and applicable law fails to supply the necessary regulation. Don't we have our local law on the crime of violated majesty...let alone other constitutions, the law of 1588 is extremely tough on this wrong, thus we should adhere to it and to its descriptions.⁴⁸

Next, the defender argued that, since national law did not list failure to inform on a conspiracy among the offences of lese-majesty, the more so because it had not been rested on reliable information, and, by extension, no sanction for such negligence was ever provided,⁴⁹ this deficiency should rather be construed in favour of the accused than replaced by a foreign law:

Łukawska expects that the Serene Court shall not follow the merciless guidelines of alien laws but shall be governed by the mildness of the law laid down by the Serene Republic, and, I presume, it is Her that the Court represents here...and shall adjudicate in accordance with Crown's law.⁵⁰

Evidently, W. Wiszowaty tried to convince the bench that the Polish legislation, and primarily the constitution of 1588, provides sufficient framework for lese-majesty, while the forms of this crime not explicitly mentioned in statutes should not be punished at all. It should be noted that the trial for kidnapping Stanisław August coincided with the heyday of the Enlightenment, when criminal law introduced the principle of *nullum crimen, nulla poena sine lege*; the defender's position is fully aligned with it. Yet, compared with other speeches of both the accusers and defenders in this trial, this position seems isolated: the legitimacy of resorting to common law where the domestic legislation was imperfect was not debatable.

Based on the preserved court files and other sources, a number of issues can be identified where the proposals to apply Roman law as an auxiliary body of canons were not uncommon, especially if Polish law omitted to furnish the desired solutions. These are in particular: some forms of the crime of lese-majesty, the assessment of evidence, criminalization of the stages of commission and phenomenal forms of the crime, the circumstances excluding unlawfulness or culpability, and the punishment.

⁴⁸ *Odpowiedź na Replikę z strony Uu. Instygatorów Koronnych i Lit. przeciwko U. Mariannie Łukawskiej uczynioną...* p. 131.

⁴⁹ *Ibidem*.

⁵⁰ *Ibidem*.

Section 33 Roman Law and the Legal Classification of Certain Forms of Lese-Majesty

1. Defamation of the Monarch

In several of the trials for *crimen maiestatis* discussed above, one of the contentious issues was oral or written defamation of the king (slander and libel). Because, as already mentioned, this act was not manifestly classified in Polish law as lese-majesty, which - according to A. Lityński - could be related to the concept of freedom nurtured by the nobility, including freedom of speech.⁵¹ This view is plausible considering the reaction of senators, described by M. Bielski, who learned about Krzysztof Zborowski's letter to his brother, allegedly containing offensive remarks insulting King Stefan Batory:

When it came to voting, the archbishop of Lviv shared his opinion and reminded the king that he had been elevated to kingship by God's and his people's will, and his predecessors had always been before all else and safe with their subjects...hence, the king should not fear or expect any harm from his people; and he should not fear the letters so much, but rather follow the example of many other rulers who thought nothing of them and either did not read them and returned them to their owners, or kept them secretly at home and knew everything but at the same time did not disclose it...

A particularly zealous defender of the brothers was Jan Zborowski who, besides emphasizing their contribution to the state (and credit gained before the king), pointed to the inadvertent character of Krzysztof's actions:

...Because if a brother writes to his brother, he does not need to weigh his words and may become exasperated and complain about his king, especially if something troubles him; he was far from thinking about murdering the king, so he does not deserve to lose his head for that.⁵²

When debating Krzysztof Zborowski's case, many speakers stressed that Polish law attached comparatively little importance to letters. Instigator Andrzej Rzeczycki imputed to Zborowski that he had insulted the king by calling him abusive names: "In his letter, Mr Krzysztof also called the king 'Baal,' 'an idol,' 'a Hungarian hound,' 'tyrant,' which the letter clearly

⁵¹ Lityński, A. *Przestępstwa polityczne...* p. 27.

⁵² Bielski, M. *Kronika polska*. Vol. 3, Sanok 1856, pp. 1521-1524.

illustrates..."⁵³ The defender, Jakub Niemojewski, juxtaposed Crown law with imperial law, which the king wished to apply:

Strictly speaking, I can see him [the king] talking only about the letter, and he rested his accusation on this letter only, or rather on his interpretation of this letter, and took *modum procedendi et probandi coniecturas suas* from imperial laws...There will be no *suspitio*, no *coniectura*, but only *factum*, only *commissum* and no *elicium* from the letters, because the statute says that a letter proves nothing in our law and is not *documentum autenticum*, just like a pact with the devil has little probative value.⁵⁴ This is, Your Majesty King, *antiquissima consuetudine* here with us *receptum*; as our predecessors used to say: a letter means nothing, the most important thing is what its author and addressee keep in their minds. There is also a traditional old Polish parable: when someone bad-mouths you to someone else or talks about you on the side and not to you face to face, it is as if he was saying nothing, and you do not have to respond...God forbid that because of a letter, which as a document has no legal value, someone was sentenced for *reus crimine laesae maiestatis*.⁵⁵

The *wojewoda* of Poznań also paid attention to the private nature of the letter which was never made public.⁵⁶

The proponents of de-criminalizing oral defamation based their arguments not only on Polish traditions, but also on the constitution penned by Theodosius, Arcadius and Honorius in AD 393 (C. 9,7: *Si quis Imperatori maledixerit*). J. Niemojewski, reminding the king of clemency shown by his predecessor on the Polish throne, also invoked the example of Emperor Theodosius:

For *ab exemplis* is a powerful argument. People still remember what the late King Zygmunt the Old used to say about such statements: *regium est male audire, cum bene feceris*. There is also *Theodosii, pientissimi imperatoris, lex in iure civili paragrapho: Si quis*. I do not raise it because I want to use that law against which I am now speaking, but to show a separate *moderamen* of holy law...This

⁵³ *Dyaryusze sejmowe...* pp. 99. The letter available in Rzeczycki, A. Op. cit., p. 169f.

⁵⁴ It is the constitution on lese-majesty of 1539 which, however, does not address the question of the probative value of a letter.

⁵⁵ *Dyaryusze sejmowe...* pp. 124-125, 127. The bishop of Kiev took a similar stand on that claiming that the king should not pay attention to a verbal insult: "These words are filthy, ugly, and offensive, but they harm His Majesty just as they harm the sun in the sky; though the sun rises *in obscuro*, it may not get dirty or smelly, it is always beautiful. The same Our Majesty King, as a holy, pious, Christian, watchful, and elected Lord, cannot be harmed by such words." (ibidem, pp. 177-178).

⁵⁶ Ibidem, p. 179.

is a great *magnanimitas contemnere leves sermones, leves motus* and does not rage where he can prove his point easily.⁵⁷

The defender, although opposing the use of “imperial law” in the trial as generally more severe for the offender, did not hesitate to quote a principle of that law pertaining to milder treatment of abusive words, which advantaged the accused. The bishop of Przemyśl retorted that the constitution referred to by Niemojewski did not, contrary to appearances, recommend leniency in punishing verbal insults but put pressure on assessing the perpetrator’s intent - *animus* - when committing such an act; too cursory an evaluation, taking into account only the objective side of the offence, led to obvious abuses.⁵⁸ The speaker thus suggested that if the evidence weighed in favour of interpreting the offender’s words as an intentional insult, he must be punished. The opinion of the bishop of Przemyśl preserved in another version shows that he thought Krzysztof Zborowski’s act to have been intentional since he had handwritten the letter and had affixed the seal:

Some say that we have only this letter, and a letter means next to nothing in our law. Your Majesty! Everyone uses his hand and seal to sign for himself, and these two more than anything else. He might swear that they are not his, but it is too late - his brother recognized his handwriting.⁵⁹

The instigator demanded a penalty for defaming the king with offensive statements by challenging the famous Tacitus’ passage about non-criminalization of words before the reign of Augustus; yet, this opinion - as put by A. Rzeczycki - contradicts the Roman practice: as an example he cited the text of judgement in the trial of Claudia, Claudius Pulcher’s sister.⁶⁰ The rationale for harsh treatment of oral defamation was justified by the need to protect the royal dignity, since, if a private person has the right to seek damages for suffered abuse, the king should enjoy this right even more:

Qui enim minus princeps existimationem laesam persequi debeat, quam privatus? privati honor, fama, nomen si ab aliquo violetur, injuriae persequendae actio ei prodita est, aut manu etiam, vindicandae potestas datur: debet enim bonis viris non minor dignitatis atque existimationis suae, quam vitae cura esse. Ita ne igitur? privati existimationi consulitur, principis dignitas impune violari

⁵⁷ Ibidem, pp. 126-127.

⁵⁸ Ibidem, pp. 173-174.

⁵⁹ Ibidem, p. 173.

⁶⁰ Rzeczycki, A. Op. cit., pp. 156-157.

potest? Non est ita. Quod enim in privato honor est, in principe maiestas est: in privato laesi honoris crimen iniuriae est, in principe maiestatis.

Therefore, the instigator expressed a view that the defamation of a monarch is an act deserving a greater punishment than the same act committed against a private person; he stressed, however, that not every statement critical of the king should be deemed to be an insult, because freedom of speech is also worthy of legal protection:

...quae tamen non ita a me dicta existimari velim, ut quaecumque vontra voluntatem principis ab aliquo dicantur, in crimen hoc vocanda putem. Neque is Rex est, neque hic populus, qui vel cupiat id, vel patiat: libera dicta impunita esse debent, contumeliosa puniri: sententiae de repub. liberae esse debent, convitia paenis coerceri: illa punire tyrannorum est, haec etiam liberrimorum populorum.

Thus, according to A. Rzeczyckiego, if the criticism is directed at the state affairs, it should remain unpunished, but if it affect the monarch personally and in a manner considered abusive, it encroaches not only on the majesty of the monarch but also of the state.⁶¹ Further, the Instigator intended to demonstrate that the wording in Krzysztof Zborowski's letter did not deserve leniency recommended in the previously cited constitution of AD 393. For the perfectness of that constitution ("sapientissime etiam scripta") does not consist in the abolition of punishment for an insult, but in prescribing an individual assessment of every offender in order to determine whether his act deserves punishment, as manifestly indicated in the final sentence.⁶²

Some thoughts on the shortcomings of law in relation to lese-majesty were also voiced in the trial of Jerzy Lubomirski and were triggered by the discussion on a letter penned by the accused. The instigator regretted that Polish law protected the honour of a private person more than of the king due to the lack of appropriate legal standards. Although such acts were very rare, and the last known case of insulting the king in a letter was that of Krzysztof Zborowski, legislative deficiencies should be regularly remedied, but since then there had been no change. As a result, common laws must be exploited. The instigator's tone of voice shows that he saw the establishment of the relevant national law to be a much better solution.⁶³

The most famous trial for oral defamation of the king was the case of Aleksander Weryha Darowski in 1679. Darowski violated the majesty by

⁶¹ Ibidem, pp. 103-105.

⁶² Ibidem, pp. 105-106.

⁶³ *Processus Lubomirski...* p. 12 v.

cursing King Jan III Sobieski and chopping his portrait at the same time threatening - as given in the judgement - to take away king's life ("impio ore, ac mox imaginem ipsius sacrilega manu...crimen laesae Majestatis commisse...sine omni resipiscentia et specie poenitentiae in honorem S.R. et resipiscentia poenitentiae specie in honor of SR Majestatis...exuta omni debita reverentia, licentiose nimis, diffidationes in vitam declarasse.")⁶⁴ Severe punishment handed down against the perpetrator: death (aggravated), confiscation of property and infamy shows that, although common law did not expressly underlie the judgement (as in the judgement against Michał Piekarski), at least, it inspired the ultimate verdict. The instigators appearing in the trial of 1773, referring to Darowski's case, set that judgement in the context of a passage from the *lex Iulia maiestatis* on damaging a sacred image of the emperor and against the backdrop of the doctrine of common law addressing the punishment of verbal insult.⁶⁵ To justify severe action towards the kidnappers of King Stanisław August, the accusers indicated that the Diet Tribunal "did not take into account...Weryha Darowski's case, as he only cursed King John III and cut his portrait."⁶⁶

Generally speaking, oral defamation of the monarch was not prosecuted as an isolated offence but in conjunction with other forms of lese-majesty or other criminalized acts, e.g. political opposition to the king. Discussing the Lwów Rebellion in 1537, S. Górski mentioned that during the trial its participants were lambasted for their critical statements:

Judge Taszycki from Kraków, Płaza, Dębiński, Morski, Koścień, summoned before the royal and diet court for similar offences: that at a rally of the nobility near Lwów, they initiated meetings and plots detrimental to the kingdom, and, rebellious in spirit, they hurled abuse at the king, his son, the queen, the Senate and the royal power, which, allegedly, had been exceeding its authority: that they passionately advocated disobedience to the king; that their action caused the agitated knights to refuse to face the enemy; and to punish Wołoszyn: that he failed to leave troops at the Wallachian border and, having deserted his king, almost fled and exposed the kingdom to great defeat and collapse...and not

⁶⁴ The text of the judgement was cited in the trial against the Bar Confederates by Jan Nepomucen Słomiński ("Kontynuacja Indukty od UU. Instygatorów Koronnych..." In *Processus iudiciarius*... p. 66).

⁶⁵ "If guilty of the violation of majesty were those who insulted the image of Emperor Theodosius; if a woman was punished for a similar wrong done to the statue of Emperor Theodoric; if anyone else culpable of such a crime bring a penalty on himself *Criminis laesae Majestatis, juxta Leg. ff. 6 § Qui statuas Principis*... so the law of the Republic imposes the penalty *Criminis laesae Majestatis* to the insulters Tolossanus Lib. 35 Cap. 8 de maledicis Principis fol. 365" ("Replika Z strony UU. Instygatorów i Vice Instygatorów" In *ibidem*, p. 99).

⁶⁶ *Replika Z strony UUU. Instygatorów Obojga Narodów i ich Delatorów*... p. 118.

only destroyed the dignity of the king but also of the state, and therefore are guilty of violating the majesty.

It can be inferred from this account that the rebels' words were regarded as both abusive to the king and inciting to rebellion, which, by all means, meets the criteria of treason than lese-majesty, and it was that latter offence that was investigated before the Diet Tribunal. It is particularly noteworthy that - as seen from the same account - the accused who appeared before the court attempted to justify their offensive words rather than negligence in warfare:

...that neither in the diet nor in the camp did they say or do anything that might have insulted and offended His Majesty King or have done any harm to the Republic; and that they only requested - to satisfy the will and expectations of the chivalry- the king and the Senate to do the right thing, beneficial to the nobility and salutary to the kingdom and the Republic.⁶⁷

In the trial of Jerzy Lubomirski, among many other more serious allegations appeared the accusation of the lack of response to the criticism of the king, going beyond accepted standards, and levelled by the leaders of a military confederation along with suggestions that King Jan Kazimierz should share the fate of King James I of England, executed during a civil war.⁶⁸ A. Lityński's opinion is admissible that defamation of the monarch - oral or written - was a crime, but its boundary was extremely vague, which resulted not only from the shortage of relevant regulations in statutory law but from the social and political relations in the country.⁶⁹ It is worth noting that due to the lack of legal standards that would justify both light and - more often - severe punishment the lawyers sought arguments in common law.

2. Arguments for a Broader Legal Protection

The trials of Mikołaj Rusocki in 1537 and of Jakub Drzewicki in 1548 provide examples of how Roman law was employed to justify the classification as *crimen laesae maiestatis* of attempts not only on the life of the

⁶⁷ *Czwarty wypis z rękopisma...* pp. 142-144. Unlike the accused listed in the cited passage, Marcin Zborowski, royal cup-bearer, did not escape punishment: "on queen's initiative... he was deprived of his office, and isolated from the king's table and services; the grounds were that he had espoused noble conspiracies in Lwów and talked a lot and disrespectfully about the king, queen and the Senate" (ibidem, p. 133).

⁶⁸ *Processus Lubomirski...* p. D4 v.-E.

⁶⁹ Lityński, A. *Przestępstwa polityczne...* p. 29.

monarch, but also of other state officials. The judgement against the former of the mentioned wrongdoers, based on the first statutory law on this crime, i.e. the constitution of 1510, adopted the following formula: "It ill befits us to wrong the members of the royal council as they are members of the king's body."⁷⁰ This phrasing is not to be found in the text of the said constitution but clearly refers to the *lex Quisquis*, which was nevertheless mentioned further in the judgement, in the part imposing sanctions on the offender's offspring. The problem of legal protection was discussed more thoroughly in the latter trial, held after the adoption of the constitution of 1539, which narrowed the concept of lese-majesty only to the assassination of the king. When the instigator demanded punitive measures under the 1510 constitution,⁷¹ the accused made a plea of incompetence of the royal royal and argued that his deed - murdering a deputy travelling to a diet - was not an offence of lese-majesty because the cited constitution was no longer effective.⁷² The instigator deemed this plea unfounded, as - in his opinion - the constitution of 1539 did not repeal its predecessor, but it only explained and reinforced it.⁷³ Because when committing the crime Mikołaj Rusocki was a public figure, the king as the head should decide this matter and the victim, and all senators alike, is - according to his words - a part of this head:

...regemque esse supremum Caput, Consiliarios vero esse membra huius capitis, non ignotum esse allegabat. Quia vero G. olim Nicolaus Rusoczki Castellanus Biechoviensis erat publica persona, Consiliarius regni, in officio Reipublicae ad conventionem praefatam, interemptus tamquam membrum huius capitis R.M. haec actio competit.

A similar instigator's reasoning appeared later in his speech: all the king's officers and advisers are considered members of the royal body by law, and after losing at least one such member, the whole body suffers.⁷⁴ The wording used in these as well as other instigator's statements⁷⁵ leaves no doubt as to the inspiration by the *lex Quisquis*.

⁷⁰ *Dwa zabytki...* p. 294.

⁷¹ *Ibidem*, p. 305.

⁷² *Ibidem*, pp. 306-307.

⁷³ *Ibidem*, p. 310.

⁷⁴ *Ibidem*, pp. 308-309.

⁷⁵ „Nec aliud statutum ostendi potest, praeter hoc, quod per instigatorem allegatum et ostansum est, qua poena videlicet violatores personarum publicarum, officia Reipublicae peragentium puniendi sunt, etiam ex quo membrorum R.M. vre et consiliariorum nuntiorumque regni negotia obeuntium, afficiendi ... Etiam ex quo membrum Maiestatis vre utpote consiliarium enormiter et atrocissime

Drawing attention to the fact that the constitution of 1539 did not supplant the law of 1510 but only clarified it, the instigator justified that clarification by the instances of misusing the former constitution to protect private individuals: "Sed quia hoc statutum etiam in privatis personis abutebatur, propterea necessarium fuit eiusdem statuti declaratio et simul ad declarationem interpretatio, ut illud ultra mentem praescripti nemini extendere liceat, nisi duntaxat in personas publicas, publica negotia exercentes."⁷⁶ In support of this assertion, the instigator gave examples of the application of the constitution of 1510 even after 1539 in matters seemingly not related to lese-majesty, such as the breach of inviolability of a person holding a royal safe-conduct.⁷⁷ Of significance was also the idea of potentially discouraging individuals causing a public nuisance by attacks on official persons, which also calls for harsher penalties: "... ne ceteris regni incolis per impunitatem eius tam enormis excessus et delicti similis occasione peccandi praebeatur."⁷⁸ Therefore, in the instigator's opinion, every act which at least indirectly impairs the dignity of the monarch meets the criteria of lese-majesty: disregarding safe-conduct issued by the king, or assaulting a person who holds a public office and discharges certain duties to the state, as such person should be considered part of the state body with the monarch as its head. The wording borrowed from the *lex Quisquis* clearly demonstrates that this argument was founded on Roman law.

The problem of the abuse of certain provisions of the constitution of 1510 and groundless prosecution of crimes arbitrarily qualified by some rulers as a violation of their majesty, even before the adoption of that constitution, also surfaced during the trial of Krzysztof Zborowski. Stanisław Czarnkowski, recapitulating the history of noble privileges in Poland and reminding of the statute of 1496 ensuring safety in the venue of court sessions, drew attention to the failure by the then ruler, Jan Olbracht, to observe the law:

It is widely known that Olbracht intimidated many people with his deed, instigated by Calimachus, when some 37 people were jailed and some fled; and those in prison were made to die there and those who fled died *in exilio miserrime*. Therefore *in posterum* our ancestors being *recenti casu* scared at the same time plotted what to do that would be *in tali eventu*. Also during the late king

occidit, merito iniuria Maiestatis vestrae Regiae, violatio videlicet inventus, qui auctoritate Regia indicitur et promulgatur, tum et publicae personae factum est" (ibidem, p. 310).

⁷⁶ Ibidem, p. 311.

⁷⁷ Ibidem, pp. 311-312.

⁷⁸ Ibidem, p. 312.

[Zygmunt I], many were charged for different reasons, which is still remembered. And some wanted to prevent it, so that only *crimen in personam* only *regis* were prosecuted...⁷⁹

Finally, the orator reminisces the proceedings of 1538, instituted, upon the instigation of Queen Bona Sforza, against the architects of the Lwów Rebellion;⁸⁰ already during the trial, queen's endeavours were seen as an attempt to strengthen royal power at the cost of noble privileges: "...many were sued after the rebellion war, I remember, to pave the way for *absolutum dominium*... Zygmunt wished to broaden this *crimen laesae mtis*, and Queen Bona wished even more..."⁸¹ The enactment of the constitution of 1539 motivated by the Lwów rebellion meant the rejection of the broad definition of lese-majesty applicable under the influence of Roman law,⁸² although - as mentioned elsewhere - the examination of the case records reveals some attempts of more liberal interpretations of this crime based on the *lex Quisquis*.

Section 34 Examples of the Use of Roman Law for Evidence Evaluation

In the trial of the Bar Confederates, selected criteria for evidence evaluation provided by common law were employed to examine the testimony of both the accused and the witnesses. Stanisław Baczyński, defender of Walenty Zembrzuski, when demanding a fair examination of such evidence pointed out that "common law requires that in such cases involving specific deeds any court's decision be preceded by evidence from testimony,"⁸³ while Cyprian Sowiński, representing Walenty Łukawski, pointed out, after the Code of Justinian (C. 4,19,25), that the law concerning "the punish-

⁷⁹ *Dyaryusze sejmowe*... p. 212.

⁸⁰ See more in e.g. Wojciechowski, Z. Op. cit., p. 367.

⁸¹ *Dyaryusze sejmowe*... p. 212.

⁸² A political character of many *crimen laesae maiestatis* trials is discussed in Lityński, A. *Przestępstwa polityczne*... pp. 29-31.

⁸³ „Odpowiedź z Strony Urodzonego Walentego Zembrzuskiego, w Sprawie o zarzuty współczesstwa Kryminału Królobójstwa jakoby przez wiadomość popełnionego, na Sądy Sejmowe od Urodzonych Instygatorów Koronnego i W. Xięstwa Litewskiego, tudzież Ich Delatorów Powodów Przypozwanego przez U. Stanisława Baczyńskiego Patrona Komisji Skarbowej, temuż U. Zembrzuskiemu dla obrony w Sądach Sejmowych przydanego, uczyniona.” In *Processus iudiciarius*... p. 46.

ment of vice does not allow to proceed as long as the accused is not proven his guilt by the clearest evidence."⁸⁴ Then C. Sowiński tried to prove that his client's extrajudicial confession of committing the crime could not justify a conviction because "pursuant to common law...Confessio extraiudicialis non nocet confitenti, nec condemnat reum."⁸⁵ W. Łukawski made his confession not before the Diet Tribunal but before the land court of Zakroczym, which was not competent to hear the case, therefore, according to the defence counsel, the common law principle of *nulla maior probatio quam propria oris confessio* was not applicable.⁸⁶ Consequently, the defender demanded evidence-taking before the Diet Tribunal pursuant to the constitution on lese-majesty of 1588 and in relation to another law of the same year, the Constitution on Murderers, Scrutinies and the Penalty of Tower.⁸⁷ It follows from Przeździecki's speech - he also invoked the same principle - that the the Diet Tribunal was not satisfied with the incriminating testimony given by the defendants in the investigation, but "pursuant to the constitution of 1588 ...at the request of the accusers, it ordered other voluntary confessions from the prisoners."⁸⁸ What follows, the said principle was common - contrary to the suggestions contained in C. Sowiński's statement - to both common law and Polish law.

The defenders and accusers both touched upon the the issue of credibility of evidence given by accomplices. Stanisław Baczyński defending Walenty Zembrzuski, incriminated by the testimony of his subordinate, Łukawski, although confirmed the validity of the principle of common law that - due to the specific nature of the crime of lese-majesty - the testimony accusing the accomplices deserve credibility (*nemini praeterquam in crimine laesae maiestatis de se confesso credi potest super crimen alterius*⁸⁹), still, in his

⁸⁴ „Odpowiedź z strony U. Walentego Łukawskiego, na powództwo UU. Instygatorów Koronnych i W.X. Litt. i ich Delatorów do Sądu Sejmowego w sprawie obrażenia Majestatu wyprowadzone przez U. Cypriana Sowińskiego Patrona Asesorii Koronnej, dla obrony Łukawskiemu przydanego w tymże Sądzie uczyniona.” In *Processus iudiciarius...* p. 42. See also: Sondel, J. *Prawo rzymskie w procesie...* p. 195.

⁸⁵ Cf. e.g. Gigas, H. Op. cit., p. 91 v. The author inferred this principle from C. 7,59,1 and Ulpianus D. 9,2,25,2.

⁸⁶ „Odpowiedź z strony U. Walentego Łukawskiego...” In *Processus iudiciarius...* p. 42. Cf. e.g. Gigas, H. Op. cit., p. 93.

⁸⁷ *Volumina Legum*. Vol. 2, p. 255.

⁸⁸ „Powtórna odpowiedź z strony Ur. Cybulskiego, Peszyńskiego i Frankemberka, przez U. Przeździeckiego Patrona tymże obwinionym przydanego, w Sądzie Sejmowym czyniona.” In *Processus iudiciarius...* p. 108.

⁸⁹ Cf. e.g. Gigas, H. Op. cit., p. 79 v. K. Bukowska-Gorgoni noted that the general rule of inadmissibility of accomplices' testimonies as lacking credibility was raised by Marianna Łukawska's

opinion, it cannot be the sole basis for indictment.⁹⁰ What is more, in the trial of Jerzy Lubomirski, the instigator drew an equal sign between the admission of guilt by the accused and the testimony of his accomplice: "... nulla vero in Jure major est Probatio, quam aut proprii oris delinquentis, aut eorum qui ejusdem delicti comparticipes fuere, confessio."⁹¹ The same principle was brought up by Łukawski's defender, C. Sowiński, arguing that sometimes the testimony of accomplices happens to be the only proof: "...Because the testimony may not come from elsewhere but from the people who were involved and refused to part with the wrongdoers; still, they should be trusted, since, first, there is nowhere else to learn the truth, and, second, this is what the law prescribes..."⁹² S. Baczyński attempted to undermine Łukawski's deposition by exposing his flaws and the intention to harm Zembrzusi because of the long-lasting hostility that he had shown against his commander.⁹³ By imputing - with a quotation from C. 9,2,17,1 - hostile intentions to Łukawski, he wished to convince the court that he could not be regarded as a trustworthy person:

...he is very likely to be ranked among those villains whose traits are clearly outlined in the law of *Codice Justiniano* Book IX, under Title II, 'De Accusationibus et Inscript.' number 17, as follows: *Veniam sperantes propter flagitia adjuncti, vel pro Communionem Criminis Consortium Personae Superioris optantes, aut inimici supplicio, in ipsa supremorum suorum sorte satiandi, aut eripi se posse confidentes.*⁹⁴

This is how Baczyński referred to the well-known Western literature principles *Inimicus in crimine laesae maiestatis repellitur ab accusando* and

defence counsel („Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej o wspólność występku Obrażonego Majestatu Królewskiego obwinionej, i Przypozwanej, przez U. Wiktoryna Wiszowatego Żupnika i Komornika Ziemi Łomżyńskiej, przed Sądem Sejmowym w Izbie Senatorskiej uczyniona." In *Processus iudiciarius...* p. 125); yet, he seems to have ignored the rule of the exceptional nature of lese-majesty crimes; most probably, the change of the quotation was driven by the desire to defend the accused woman (op. cit., p. 93).

⁹⁰ „Odpowiedź z strony U.rodzonego Walentego Zembrzuskiego..." In *Processus iudiciarius...* p. 49.

⁹¹ *Processus Lubomirski...* p. C4-C4 v.

⁹² „Odpowiedź na Indukcję UU. Instygatorów i ich Delatorów z Strony Urodz. Walentego Łukawskiego przy złożeniu Inkwizycji z mocy Dekretu Sądu Sejmowego wywiedzionej w tymże Sądzie przez U. Cypriana Sowińskiego Patrona Asesorii Koronnej, przereczonemu U. Łukawskiemu, dla obrony przydanego, czyniona." In *Processus iudiciarius...* p. 86.

⁹³ „Odpowiedź z strony U.rodzonego Walentego Zembrzuskiego..." In *Processus iudiciarius...* pp. 45, 49.

⁹⁴ *Ibidem*, p. 45.

*Conspirantes et inimici non admittuntur in testes in crimine laesae maiestatis.*⁹⁵ The prosecution did not question these principles, though, admitting that “summoning criminals to testify is not a decisive factor in determining the guilt of the accused but is a *semiplena probatio*, and its effect is that the defendant should rebut this accusation in order not to be found guilty. And when the defendant’s rebuttal is considered insufficient, the accusation shall be thought even more credible, and the witness’s testimony shall be regarded as true evidence, and that is comes from one of the offenders shall not be held as a hindrance.”⁹⁶ This means that when the accused fails to prove his innocence, and the testimony of the accomplice finds confirmation during the inquisition, it is regarded as complete evidence.

Section 35 The Influence of Common Law on the Assessment of the Stages of Commission and Phenomenal Forms of the Offence

Krzysztof Zborowski’s case of a letter to his brother afforded an opportunity of reflecting upon the assessment of the constituent stages of the crime. Instigator Andrzej Rzeczycki claimed that the defendant’s letter, containing *consilia*, i.e. an action plan against the king, was a manifestation of

⁹⁵ Cf. e.g. Gigas, H. Op. cit., p. 81 and 95. Another Zembruski’s defender, Węgrzecki, tried to demonstrate that his client as a citizen of Masovia “shall not seek the answer in common law (even if he might find a most perfect one)”, but in Stefan Batory’s *Zwyczaje Województwa Mzowieckiego* [Customs of Masovia], according to which any nobleman may testify on condition that “he has a good reputation and is of unflinching honesty,” while the “deposition of Mr. Łukawski cannot be on a par with other summoned witnesses, reputed citizens of unquestioned honesty” (“Replika z strony U. Walentego Zembruskiego, przez wspomnianego U. Węgrzeckiego miana.” In *Processus iudiciarius...* pp. 151-152). Michał Węgrzecki wanted to present Łukawski in a bad light downplaying his testimony as “besides presented less solemnly, comes from an evildoer stigmatized for attempting to sacrilegiously slay the king, the Vicar of Christ and God’s anointed...; then, what can stop him from threatening the life of one of his peers, let alone his enemy” (“Sprawa U. Walentego Zembruskiego w propozycjach: 1mo. Że Ur. Zembruski nie wiedział o sekrecie uknowanego Królobójstwa przed wykonaniem onegoż, a zatem nie mógł zatamować występu tego. 2do. Że po wykonaniu zbrodni Królobójstwa dowiedziawszy się o niejże donosił komu należało i o pojmanie U. Łukawskiego starał się wprowadzane na Sądach Sejmowych przez U. Michała Węgrzeckiego Burgrabiego Grodzkiego Warszawskiego, Patrona temuż U. Zembruskiemu dla obrony przydanego.” In *Processus iudiciarius...* p. 133).

⁹⁶ „Replika od UU. Instygatorów na Indukcję ze Strony U. Zembruskiego, przez U. Antoniego Rogalskiego Metrykanta Kancelarii Mniejszej Koronnej czynioną.” In *Processus iudiciarius...* p. 149. See also: Bukowska-Gorgoni, K. Op. cit., p. 94.

intent: "...where are some *consilia*, there must be *voluntas* which...must be so penalized as the *factum*."⁹⁷ The defence replied that the letter, fairly ambiguous in its phrasing, was no proof of intent; what is more, the penalty should be imposed only for the commission, alternatively for an attempt:

There is no *factum*, there is no *conatum maturescentem*; there is only a letter written with words that are *ambigua*. So, is this already a *commisum*? God forbid. To end with, our ancestors did not describe the *poenam* of this law on purpose. Because it does not end with *in nuda voluntate* but with any further action *qui ad factum vergeret*.⁹⁸

To demonstrate the falsity of this position, the instigator cited numerous provisions of Polish law prescribing the penalization of criminal intent⁹⁹ (e.g. Kazimierz the Great statute on drawing a sword in the presence of the king, the regulations on the protection of courts prohibiting the carrying of weapons at the venue of court's session, and the constitution of 1578 laying down penalties for all forms of crimes against relatives' life and health¹⁰⁰), and the senators supported his arguments by invoking Roman law. Archbishop of Gniezno, emphasizing the legitimacy of punishing *voluntas*, pointed out that the real reason for Krzysztof Zborowski's defender trying to dissuade the king from applying imperial law in the proceedings was that it was less favourable to the accused, as seen, among others, in the approach to the punishing of criminal intent:

And the party itself...asking that His Majesty resolved the case by Polish law and not by imperial law said: *non habemus caesarem nisi regem*; Your Majesty, you have vowed to adhere to Polish not imperial law, and this is understood and this is prudent because in *iure caesareo* aequè punitur *voluntas* atque *factum*. What is more, I can see in *iure caesareo* that such a *crimen* is great. If someone is suspected, the case begins by *captivazione*. In our Polish law, a *convictione* begins: *neminem captivabimus nisi iure victum*. And for these two reasons the party asked well; it is obvious that Mr Niemojewski asked for that urgently, he was aware that he would quickly lose under imperial law. But looking at justice and our insufficient regulations, as they read: *crimen laesae maiestatis nisi in persona nostra*, the late King August often used to say about this: 'you would start investigating the crime no earlier than when someone stabbed me with a dagger or a sword, so you must write it down more precisely;' this is what he said, I remember well; to do justice, he wanted that *voluntas* should be punished

⁹⁷ *Dyaryusze sejmowe*... p. 157.

⁹⁸ *Ibidem*, pp. 158-159.

⁹⁹ *Ibidem*, pp. 157-158.

¹⁰⁰ "De injuriis erga parentes." In *Volumina Legum* Vol. 2, p. 190.

like *factum*...So if any proceedings had been initiated and punishment imposed, it would have been only after the deed.¹⁰¹

Also according to the *wojewoda* of Podolia's account, King Zygmunt August criticized that the legislators had omitted to regulate punishability of the stages of commission of an offence: "Let me recollect the words of the late king when I was standing by him in Lublin: 'Sooner or later, you must correct *de crimine mtis* in this statute; you do not want anyone to put a dagger or a bullet in my ribs."¹⁰² In terms of criminal intent, the archbishop claimed that "the only difference between Crown's law and imperial law lies in *criminalibus*, the latter allows *personam suspectam captivari* and the former *nisi iure victum*," and "it is enough for the instigator to prove *voluntatem et consensum et non factum*."¹⁰³ The author of the above quote argued that the threat of sanction for the manifestation of intent aimed to prevent the transition from *voluntas* to the stage of *factum*, and this is a shared objective of both Roman and Polish law. What contrasted the principles of Roman and Polish law was that the former allowed for the imprisonment of a suspect, and the latter, under the Privilege of Jedlnia and Kraków, permitted the imprisonment of a nobleman only after a conviction. This opinion was shared by Vice-Chancellor Baranowski who also highlighted the common feature of both legal systems:

The party itself becomes exposed to *absurdum magnum* when he admits the intent. And because he did not do it, he says, he wants to go unpunished? It would be *absit, funestum et exitiosum factum*, God save us and the Republic. Who would believe, who would support *ipsam voluntatem*? *Laesa maiestas, laesa dignitas* Your Majesty and *voluntatem agnoscit, aequè puniendus est atque factum*, which not only imperial, but also our Polish law also criminalizes.

In the next part of his speech, the speaker argued that punishability of intent was justified by the extreme gravity of the crime, affecting not only the king but the interest of the whole state.¹⁰⁴ Krzysztof Zborowski's trial, which exposed the shortcomings of national legislation in determining

¹⁰¹ *Dyaryusze sejmowe*... pp. 164-166. Another available version of archbishop's statement shows a strong emphasis on the nature of the letter; the speaker sees it as a component of preparatory activities, and, in his opinion, to convict the author, it is sufficient to prove that the letter was written by his hand, which, in the case of Krzysztof Zborowski's letter, was absolutely undisputed (*ibidem*, pp. 164-165).

¹⁰² *Ibidem*, pp. 185-186.

¹⁰³ *Ibidem*, pp. 164-168.

¹⁰⁴ *Ibidem*, pp. 171-172.

the penalization of forms of *crimen laesae maiestatis*, certainly contributed to modifications in the proceedings involving such cases, but also to the listing - though very cursory - of these forms in the constitution of 1588 addressing lese-majesty.

The question of criminality of particular stages of the offence of lese-majesty was discussed at length in the trial of the Bar Confederates; to deploy their arguments, both the accusers and defenders referred to the *lex Quisquis* and the said constitution of 1588, which, as it turned out, did not resolve all the procedural doubts either. The prosecution assumed that every stage of involvement in the crime, including the emergence of intent, should be subject to penalty: "Because they should suffer punishment for the sheer will, as we have in *Lege 5at Codicis as Legem Jul. Majestatis*, that eadem severitate voluntatem sceleris, qua effectum in reos laesae Majestatis jura puniti volunt." Common law, as noted by Jan Nepomucen Słomiński in his induction to the trial, "was appealed to by our national rights, that is, the already mentioned constitution on lese-majesty and the Third Lithuanian Statute, which decreed penalties "if someone conspired or convened, or rebelled against Our the Lord's life, and God saves the Lord from the conspiracy being put into action."¹⁰⁵ The comparison of the two quotations indicates that the term *voluntas sceleris* (*conspiratio* - according to the terminology used in the constitution of 1588) the accusers understood as involvement in a conspiracy. J.N. Słomiński intended to demonstrate that participants' ultimate objective was to kill the king, hence he classified the kidnapping as an attempt.¹⁰⁶ In another speech, the instigators emphasized that each of the stages of commission is a crime in itself, "already the conspiracy is an offence of violated majesty, and the *machinatio* is yet another."¹⁰⁷ As follows from J.N. Słomiński's words,¹⁰⁸ the first stage of the crime, i.e. *machinatio*, was understood as a manifestation of intent (e.g. through orders or commands) and the preparatory activities:

First, Pułaski disclosed and ordered his wicked project to Strawiński. He gave Strawiński his handwritten order to...proceed with the plan...and another to Marshal of Wyszogród Józef Czachorowski to designate forty armed men to join Strawiński...

¹⁰⁵ „Kontynuacja Indukty od UU. Instygatorów Koronnych „ In *Processus iudiciarius...* p. 64.

¹⁰⁶ *Ibidem*.

¹⁰⁷ „Replika Z strony UU. Instygatorów i Vice Instygatorów Koronnych „ In *Processus iudiciarius...* pp. 103-104.

¹⁰⁸ „Kontynuacja Indukty od UU. Instygatorów Koronnych „ In *Processus iudiciarius...* pp. 61.

The stage known as *conspiratio* began with swearing an oath to enter a conspiracy, which was regarded by the accusers as sufficient to convict the participants, including those who did not partake in any other ensuing action. Therefore, Walenty Łukawski's defender argued that the accused was not originally a member of the conspiracy but merely followed orders,¹⁰⁹ and Jan Kuźma, just like Łukawski, pleaded ignorance of the true purpose of the conspiracy to which he has sworn.¹¹⁰

Among the phenomenal forms of the offence, most attention was drawn to complicity because - as the accusers argued relying on the constitution to 1588 - "there can be no doubt that *complices criminis* and *principales* are punished alike;"¹¹¹ therefore, all the accused in the case "are entangled in the same crime in which both the *Socios Criminis* and their leaders are to suffer punishment."¹¹² This rule was not denied by the defence, yet they made a reservation that punishable should only be co-perpetration by intentional fault, "We speak of a society only when its people become part of it voluntarily; if people join a society by mistake or when forced or ordered, no society can be formed, and all law-makers agree about that..."¹¹³

The argument from common law prevailed in the evaluation of one of the phenomenal forms, namely failure to notify the authorities of the engineered conspiracy. Based on this law, the instigators demonstrated that such negligence is a form of complicity, ergo it deserves full punishment:

¹⁰⁹ „Odpowiedź na Indukę UU. Instygatorów i ich Delatorów z Strony Urodz. Walentego Łukawskiego...” In *Processus iudiciarius...* pp. 79-80.

¹¹⁰ „Odpowiedź ze strony Jana Kuźmy o Kryminal Królobójstwa obwinionego na Powództwo UU. Instygatorów Obojga Narodów i ich Delatorów po ekspediowanych Skrutyniach i Inkwizycjach, przez U. Walentego Rzętkowskiego Patrona Asesorii Koronnej, przereczonemu Kuźmie dla obrony przydanego, w Sądzie Sejmowym czyniona.” In *Processus iudiciarius...* p. 111.

¹¹¹ „Kontynuacja dalsza Indukty...” In *ibidem*, p. 75. The term *complices* covered, based on the 1588 Constitution on Capturing Outlaws (*Volumina Legum*. Vol 2, p. 257), not only accomplices but also instigators, helpers and supporters because, in instigators' opinion, "the circumstances constituting *complicitatem* are not only close to the crime, e.g. secret assistance, but also more distant from the crime, according to the same 1588 constitution...which defined *complicitatem* as follows: He who would harbour them, advise and assist them and talked to them." The instigators called for punishment of any activity covered by the phenomenal forms, even those that seemed to have little relationship to the perpetration: "Let no one be astonished that such actions, seemingly distant from the crime, are treated as *complicitatem*; we have a similar example in the constitution of 1673 which addresses the criminal case of surrendering the Kanieniec fortress to the Turks, where culpable were not only the commander and his officers, but also citizens who stopped the supply of provisions to the castle (*ibidem*; see the constitution "Sprawa Kamieniecka." In *Volumina Legum*. Vol. 5, Petersburg 1860, p. 71).

¹¹² „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *Processus iudiciarius...* p. 61.

¹¹³ „Odpowiedź z Strony Urodzon. Józefa Cybulskiego...” In *ibidem*, p. 94.

But does that give them an excuse to avoid criminal charges? Not at all. That they possessed information of this conspiracy against the Royal Person demands a penalty and condemnation equal to others. It is a common *in materia Criminis laesae Majestatis omnium Juris Consultorum sententia*, about which...*Autor Prosper Farinaceus* says *in verbis*: 'Sciens conspirationem contra suum Principem, et Rempubicam, et non revelans, illius criminis reus est, sicut principalis delinquens. Adeoque eadem poena mortis puniendus est, sicut et Conspirans.'¹¹⁴

Therefore, supporting the argument by other examples of the doctrine of Roman law, the instigators sought the death penalty for Marianna Łukawska:

As written down in *de Crimine laesae maiestatis Julius Clarus lib. 5 quaest. 87. no. 2 sciens tractatum prodicionis contra principem, vel contra patriam, et illum non revelans, debet puniri poena mortis...* Damhouderius also in *criminalibus* author writing *de crimine laesae Majestatis cap. 62. nro 11* with other authors he says...*itidem puniuntur qui istius criminis...laesae Majestatis fuerunt conscii, et non prodiderunt.*¹¹⁵

Importantly, the defence did not deny that common law saw failure to notify of a conspiracy as a form of complicity; Stanisław Baczyński, when trying to prove that his client, Zembrzuski, had no knowledge of the attack, admitted,

These are terrible charges, because in such cases common law recommends that not only the deed or its design, but even mere information about it, if not uncovered early, and without taking any other criminal action, deems its owner guilty of lese-majesty.¹¹⁶

Still, some pointed out that not only did the Crown legislation impose no duty of denunciation, but also discouraged from disclosing information about a crime under severe penalties. Wiktoryn Wiszowaty tried to explain Marianna Łukawska who was said to have feared them:

But I ask again, was she able to report information which was insecure, meaningless and ephemeral? The law of 1588 reads that having no well-founded and unshakable knowledge it is not safe to accuse others of such an offence; because if the informer fails to prove his point and is of plebeian descent, he is put to death, and if he is a nobleman, he pays one hundred grivnas and goes to tower; this is what Łukawska might have suffered if she had failed to furnish convincing evidence.¹¹⁷

¹¹⁴ „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *ibidem*, p. 68.

¹¹⁵ *Ibidem*.

¹¹⁶ „Odpowiedź z strony Urodzonego Walentego Zembrzuskiego...” In *ibidem*, p. 44.

¹¹⁷ „Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej...” In *ibidem*, p. 125.

The penalties for not substantiating the accusation of lese-majesty were also mentioned earlier by Stanisław Czarnkowski during the trial of Krzysztof Zborowski, thus even before the adoption of the cited constitution of 1588: "Here in this case, the delator must be like a plaintiff; and hence what they *breviter* say: *actore non probante reus absolvitur*. And if the delator has no *notorias et manifestas probationes*, he would have to *in delatione sua succumbere*, and so *poenas* have the effect of *falsae delationis suae*."¹¹⁸ The defenders of the Bar Confederates, hoping for royal clemency, also pointed to the fact that the doctrine omit to supply an unequivocal argument for the death penalty for non-denunciation, and some authors even advocated more lenient treatment by the ruler:

So says and advises the cited Farinaceus, author of *de Crimine laesae majestatis*: and even if it the accused knew about the plotted conspiracy and did not disclose it, they should be excluded from the death penalty in a sense that: 'Et licet Clarus teneat posse imponi poenam mortis super non revelantibus machinationem, Consulit tamen Principibus, ut in huiusmodi casibus potius humanitate quam severitate utantur, et ex quacunque Causa, non solum iusta sed etiam probabili hos non revelantes a poena mortis.'¹¹⁹

Section 36 The Use of Roman Law in the Assessment of Circumstances Excluding Unlawfulness or Guilt

Both Polish law and the doctrine did not attach much attention to the circumstances excluding or limiting the perpetrator's liability. Among 'grounds for indulgence', S. Petrycy enumerated: "age, drinking, anger, ignorance, error, chance, person's virtues and sex;"¹²⁰ yet, he discussed only some of them more thoroughly, often from an unequivocal perspective. Brevity of the sources of law and the doctrine made lawyers resort, in particular cases, to arguments derived from common law.

The trial of Michał Piekarski opened up an opportunity to discuss the impact of Roman law on a circumstance of mental illness. That the perpetrator of the assassination attempt on King Zygmunt III was insane was

¹¹⁸ *Dyaryusze sejmowe...* p. 208.

¹¹⁹ „Odpowiedź z strony Urodzon. Józefa Cybulskiego...” In *Processus iudiciarius...* p. 97.

¹²⁰ *Polityki Arystotelesowej to jest Rządu Rzeczypospolitej z dokładem ksiąg ośmioro. Część pierwsza.* Kraków 1605, p. 320.

obvious already in the proceedings;¹²¹ however, the sentence passed *iuxta Leges tam communes, quam Regni huius* was anything but lenient. This fact was alluded to even after two hundred and fifty years during the trial of the Confederates of Bar; demanding a harsh punishment for Jan Kuźma, Antoni Opelewski argued that with such a weighty crime as lese-majesty, the offender's mental condition did not secure him indulgent treatment: "In 1620 the Diet Tribunal had no compassion for Piekarski who, being mentally unstable, hit King Zygmunt III once only!"¹²² The judgement passed on Piekarski proves that the Diet Tribunal - contrary to Roman law and the Third Statute of Lithuania - did not make allowances for the defendant's lunacy. For, as follows from Modestine's words in D. 48,4,7,3, even in cases of *crimen maiestatis*, which was tried with much greater severity than other crimes, certain perpetrator's features were highlighted: "...nam et personam spectandam esse, ...et an sane mentis fuerit." Also noteworthy is the constitution of Theodosius, Arcadius and Honorius (C. 9.7) pardoning the authors of defamatory words against the emperor uttered *ex insania*, because they deserve mercy in the first place (*miseratione dignissimus*).¹²³ Thus, mental illness was a factor certainly reducing, if not totally excluding, guilt. The Third Statute of Lithuania, in its Chapter XI, Article 35, addressing the question of mental individuals committing offences, said:

And there are insane people who, as God allowed, are out of their mind and happen to wound and even kill others. Then, if they possess some wealth, they should be taken care of by their friends or servants and kept in confinement and well guarded, especially if the authority finds them guilty, then they should be kept away; and if they are poor and mad, the municipal authorities, Lords, or Dukes, whichever may be, should lock them up in jail. And if the lunatic breaks free from jail and kills or wounds someone, then he shall be confined to the bottom of the tower for one year and six weeks if he kills, and for six months in a less dire prison if he wounds someone. And if someone gives a weapon to a lunatic, or spurs him into some wrongful act, that same person shall suffer a penalty, depending on how grave the act has been.¹²⁴

¹²¹ W. Stryjeński, based on descriptions of Piekarski's behaviour preserved in historical sources, identified his illness as a variant of schizophrenia (*Uwagi sądowo – psychiatryczne na marginesie historii. Zamach Michała Piekarskiego na króla Zygmunta III*. A photocopy from *Przegląd Lekarski* 5(1949). Series II. Issue 10, p. 15).

¹²² „Replika Z strony UU. Instygatorów Obojga Narodów i ich Delatorów...” In *Processus iudiciarius*... p. 118.

¹²³ Cf. *Third Lithuanian Statute*, Chapter I, Article 4.

¹²⁴ The closing part of that article is noteworthy: it holds the mentally ill full responsible if they fail to secure themselves appropriate care over the period of temporary health improvement: "When

The idea to hold liable guardians who neglect their duty to mind a patient refers to the rescript by Emperors Marcus Aurelius and Commodus cited by Macer in D. 1,18,14; more important, however, seems to be relationship between the principle laid down in the Third Statute of Lithuania on the non-exclusion but only limitation of liability of a perpetrator affected by mental illness and the provisions of the rescript concerning the liability of such an offender if he committed the offence during the remission of illness (which, as underlined, was often the case), subject to the condition that his mental state at the time of the offence should be carefully investigated.¹²⁵ This leads to a conclusion that insanity does not guarantee impunity, although, according to the said Modestine's recommendation, the defendant's mental state should be taken into account in lese-majesty cases. While the passage D. 1,18,14 refers to the commission of any offence by a mentally ill person, it is highly probable that his condition was not seen as an extenuating circumstance in the violation of majesty. A somewhat similar approach can be seen, though, in a limited, and sometimes even full liability, of juvenile persons committing this crime (*impuberes* - between seven and fourteen years of age),¹²⁶ in criminal law often equated with *furiosi*.¹²⁷ Although the Third Statute of Lithuania did not expressly prescribe the punishment of perpetrators of *crimen laesae maiestatis* regardless of their mental health, still, the fact that they were penalized for, for example, murder may testify to a full, or perhaps only slightly limited, liability for much more severe crimes, such as an attempt on the monarch. Therefore, although - as discussed below - the penalties imposed on Piekarski demonstrate a subsidiary application by the court of the provision of the *lex Quisquis* (quoted in

someone goes insane, but later recovers and is in command of all his faculties, but his illness returns again and he kills someone, he shall be condemned to death and payment of *głównoszczyzna* [weregild] because when he realized what his condition was, he should have trusted in providence and have got himself a guard and have minded his daily routines." This provision was already criticized in its time (for more, see Stryjeński, W. Op. cit., pp. 8-9).

¹²⁵ Macer D. 1,18,14: "... Si vero, ut plerumque assolet, [author's emphasis] intervallis quibusdam sensu saniore, non forte eo momento scelus admiserit - nec morbo eius danda est venia - diligenter explorabis; et si quid tale compereris, consules nos, ut aestimemus, an per immanitatem facinoris, si quum posset, videri sentire, commiserit, supplicio afficiendus sit." See also: Mommsen, T. *Strafrecht*... p. 77.

¹²⁶ Cf. e.g. Tacitus. *Annales* 5,9. Withdrawal from the general rule of excluding criminal liability of minors also occurred in the case of liability under *senatusconsultum Silanianum* (Kuryłowicz, M. "Odpowiedzialność „nieletnich” za czyny bezprawne w prawie rzymskim." In *Postępowanie z nieletnimi. Orzekanie i wykonywanie środków wychowawczych i poprawczych*. Bojarski, T., ed., Lublin 1988, pp. 14-15).

¹²⁷ Cf. Kuryłowicz, M. *Odpowiedzialność „nieletnich”*..., p. 13f.

Article III, Chapter I of the Third Statute of Lithuania), it is very likely that the lawyers also took advantage of the Roman and Lithuanian legal principle of liability of the mentally ill for the most serious crimes.

In the trial of 1773, both the accusers and defenders discussed the issue of reduced liability on grounds of sex, because one of the accused was Marianna Łukawska charged with failure to inform the authorities about a planned assassination attempt. Wiktoryn Wiszowaty argued that:

...due to the weakness of woman nature, common law exempted women from the obligation to know the law and, by extension, from the obligation to adhere to it; therefore, Mrs. Łukawska, even if she had known about the planned felony, she was not obliged to be familiar and skilled in law, thus she should go unpunished.¹²⁸

Another argument borrowed from common law argument was the principle of a wife's obedience to her husband:

...common law, as well as national law, require that wives be subordinated and at the mercy of their husbands in all circumstances; it further strictly specifies that a wife cannot do anything, or get involved in any affair, or suffer anything from the authorities without her husband's will.¹²⁹

The defender, however, as can be seen from his reasoning, referred to Roman law only when it was favourable to the accused. An attempt to turn Roman law to the advantage of the accused is also evident in the following statement:

Because if it is true that women should not be allowed to lodge a deposition in higher priority issues, and are not able, according to law, to convince anyone with their accusations, even if given under oath, because of the weakness of their nature, it goes without saying that they should not try to denounce or inform because no one would be willing to listen to that; and the law of 1588 accepts even a person of inferior status as an informer in lese-majesty cases, but does not provide that women are capable of denouncing and accusing, quite the contrary, they seem to be legally excluded from that.¹³⁰

¹²⁸ „Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej...” In *Processus iudiciarius*... p. 127. Cf. Paulus D. 22,6,9 pr.: “... minoribus viginti quinque annis ius ignorare permissum est, quod et in feminis in quibusdam causis propter sexus infirmitatem dicitur...” See also: Bukowska-Gorgoni, K. Op. cit., p. 96.

¹²⁹ „Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej...” In *Processus iudiciarius*... In *Processus iudiciarius*... p. 126.

¹³⁰ *Ibidem*, p. 125.

Based on the cited constitution, *De crimine laesae Majestatis Regiae, et per-duellionis*, W. Wiszowaty attempted to prove that if this legislation did not expressly provide for the participation of women as delators or witnesses in the trials for lese-majesty, his client was not obliged to do so, and the allegation of non-notification of the authorities about the attack planned by her husband could be anything but well-founded. Interestingly enough, if the defender had been consistent in supplying arguments derived from Roman law, this method would have been even incriminating because, according to Papinian in D. 48,4,8 and the modern doctrine, women were exceptionally admitted to accuse and testify in such proceedings. When replying to that, the instigators did not address the problem of women's participation in the proceedings for *crimen laesae maiestatis*, they only responded to the reminder of the defender's pleading.¹³¹

The participants in the same proceedings also addresses the problem of acting at the behest and under duress. On behalf of the defendants, Andrzej Przeździecki tried to prove that Józef Cybulski, Bogumił Frankenberg and Walenty Peszyński had been initially unaware of the true purpose of their coming to Warsaw. When the purpose had been subsequently disclosed, the first had decided to act for fear of death.¹³² The defender rested his argument on the definition of an offence taken from common law, more specifically from the work by Farinacius, which recommended that the defendants' liability be assessed differently (or even excluded) if they were acting in a case of absolute necessity:

A crime should only be called a crime if someone with perverted mind, deliberately and deceitfully dares to commit a wicked deed and really does it; otherwise, although the deed is evidently evil, it cannot be seen as criminal if not preceded by consideration and purpose. The author Farinacius Lib. I Quæst. 18. fol. 251 of Common Law says as follows: *Crimen tunc proprie dicitur, quando*

¹³¹ A. Opelewski admitted that indeed women were not required to be familiar with law, but the accused could have at least known the Decalogue and the commandment "Thou shalt not kill", and that the marriage vow was no excuse for concealing husband's crimes ("Replika z strony UU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Marianny Łukawskiej..." p. 129).

¹³² "So he [Cybulski] could not desert his party because of the ban and tight security - he feared inevitable death if he had attempted that against the plans and arrangements made by the conspirators... [Frankenberg] admits that he was part of the conspiracy but the described circumstances speak in his favour and extenuate his participation in the crime committed by others...because he had been forced into a terrible oath that he, for fear of death, had agreed to take... This obligation of swearing an oath and the fear of harsh punishment led this soldier to do what his commanders had told him to" ("Odpowiedź z Strony Urodzon. Józefa Cybulskiego..." pp. 95-96).

quis dolo malo, et prava intentione delinquit, sine enim dolo malo, non videtur proprie posse dici crimen.¹³³

Based on this definition emphasizing the subjective side of a crime, A. Przeździecki presented Frankenberg's position who "...in this matter refers to common law which lays down that any action taken by coercion or motivated by fear should neither result in penalty, nor be called a misdeed."¹³⁴ Finally, the defender explained that the third of the accused, Peszyński, had followed his commander's, Stanisław Strawiński's, orders and had not wanted to violate his oath.¹³⁵ The importance of the oath was also raised by Łukawski's defence counsel, Cyprian Sowiński, who sought the confirmation for his argument in the *Institutes of Justinian* whose provision - he said - "provides that faith be kept even in vile matters if sworn under oath."¹³⁶ The accusers replied that Łukawski's oath had not been forced by a threat because for a threat to have a legal effect it must be serious: "...not every fear can serve as an excuse for villainy, but only that which exposes a man to the threat of punishment or loss of life;" in addition, the accused must also know that an oath sworn in order to commit a crime is a crime in itself, which the accuser, Paweł Białobrzeski, justified by the provisions of "common law", this time exceptionally meaning canon law (*Decretum Gratiani*. C. 5 C. 22 q. 4).¹³⁷

A circumstance adduced by Walenty Rzętkowski to defend Jan Kuźma was active repentance, i.e. withdrawal from participating in the conspiracy. The defender, taking advantage of a loophole in the constitution of 1588¹³⁸ and quoting the *lex Quisquis*, argued that his client should not only avoid the penalty, but he even deserved a reward, the more so because an identical solution was recommended in "...statutory law of the Grand Duchy of Lithuania, exhibiting more correlation with common law."¹³⁹ The same article was invoked by the prosecution, but in order to show that it related to the informing on a conspiracy 'before the deed,' that is, before an attempt,

¹³³ Ibidem, p. 95.

¹³⁴ Ibidem, p. 96. See also: Bukowska-Gorgoni, K. Op. cit., p. 95-96.

¹³⁵ „Odpowiedź z strony Urodzon. Józefa Cybulskiego...” In *Processus iudiciarius...* p. 96.

¹³⁶ „Odpowiedź na Indukę UU. Instygatorów i ich Delatorów z Strony Urodz. Walentego Łukawskiego...” In ibidem, p. 83. The defender even cited that provision (I. 4,13,1) which, however, did not refer to an oath taken "in vile matters," but to a commitment arising as a result of a pledge made erroneously or under threat.

¹³⁷ „Replika Z strony UU. Instygatorów i Vice Instygatorów...” In ibidem, p. 103.

¹³⁸ „Odpowiedź z strony Jana Kuźmy...” In ibidem, p. 114.

¹³⁹ Ibidem, pp. 114-115.

and Kuźma had withdrawn at the stage of the perpetration.¹⁴⁰ Furthermore, the instigators argued that “any leniency shown against the law would be equal to a sin and injustice.” Arguing that even Jan Kuźma did not deserve a milder treatment, although promised impunity by the king, Antoni Opelewski, speaking for the prosecution, cited Article 4, Chapter I of the Third Statute of Lithuania, based on C. 9,8,3, which revoked all the privileges earned by the perpetrator of lese-majesty.¹⁴¹ The accusers’ arguments about the inadmissibility of any circumstances excluding unlawfulness or guilt were directed at Kuźma and probably all other defendants and rested not only on domestic but also on common law, “Legis auxilio indigni sunt, qui in legem peccant.”¹⁴²

Section 37 A Subsidiary Role of Roman Law in Deciding the Size of Penalty

One of the primary reasons for employing common law during trials for lese-majesty was - as elaborated above - the insufficient coverage of penalties for this crime in Polish law. This is probably what S. Górski had in mind when he spoke of the intention of trying Mikołaj Rusocki according to imperial law (which he mistakenly identified, as already mentioned, with the *Constitutio Criminalis Carolina*), which he justified by excessive indulgence of domestic law. This “indulgence” consisted probably - in the author’s opinion - in an inadequate determination of penalties for murdering a person holding a public office; at the same time, such a measure (capital punishment) was manifestly provided both in the cited Article 137 of the *Carolina*, as well as in the statute of 1507. If, however, the offence attributed to Rusocki had been treated as an ordinary murder, the offender would have only faced *głównoszczyzna*. Apparently, in the opinion of both the king and his delegated instigator, the two penalties were considered too light for the murder of a senator committed on the road, that is, in a public place. By contrast, “imperial law”, i.e. *lex Quisquis* prescribed tougher measures. Particularly interesting was the reaction described by S. Górski to the infor-

¹⁴⁰ *Replika z Strony Uu. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Jana Kuźmy...* p. 119.

¹⁴¹ *Ibidem*, p. 118.

¹⁴² „Replika Z strony Uu. Instygatorów i Vice Instygatorów...” In *ibidem*, p. 106. The quotation is a paraphrase of Tryphonianus D. 4,4,37,1. See also: Bukowska-Gorgoni, K. *Op. cit.*, p. 96-97.

mation of the intention to have recourse to imperial law in the proceedings: "This incredible severity agitated not only the noble deputies but also many senators and lords' servants, all the nobles attending the Diet, and anyone who have arrived to have their business settled before the courts: everyone grumbled at the king..."¹⁴³ What follows, imperial law was commonly perceived as too harsh, yet its jurisdiction over the matter was not challenged.

The judgement passed against Mikołaj Rusocki openly stated that the cause of using the *lex Quisquis* was that it stipulated penalties for *crimen laesae maiestatis*.¹⁴⁴ It was also noted that although Polish law listed offences threatened by *poena capitis*, this penalty was too lenient for crimes against the king, where the perpetrator's family should also be affected. The description of these measures is almost a literal translation from the *lex Quisquis*: "And the one who offends against His Majesty King shall not only lose his head, but his descendants shall suffer a lasting punishment of disgrace and ordeal, and they shall rather prefer to die than live their miserable lives."¹⁴⁵

Roman law, as the fountainhead of regulations on penalties, was repeatedly invoked in the proceedings against the perpetrators of the abduction of King Stanisław August. The instigators justified the necessity of resorting to common law as follows:

The constitution of 1588 only said that such an offender *reus criminis condemnabitur*, but without explicitly pointing to or describing the penalty...Thus, let no one, including the accused, be astonished that, when accusing the perpetrators of lese-majesty, we refer to common law for punishment; our national, provincial law does not lay down any retribution for such a vile deed...¹⁴⁶

Also W. Wiszowaty paid attention to the deficiency in statutory sanctions.¹⁴⁷ Yet, the defender of Marianna Łukawska did not seem eager to remedy this deficiency by referring to Roman law; in his above-cited statement, he suggested that judges administer an arbitrary penalty, depending on the degree of guilt - perhaps hoping to prove his client's innocence, alternatively a limited degree of guilt - rather than the severe penalties provided for in the *lex Quisquis*. Ignoring the solutions of Roman law on punishment, he still invoked the authority of this law when it was likely to be more ad-

¹⁴³ Czwarty wypis z rękopisma... p. 134.

¹⁴⁴ Dwa zabytki... p. 291.

¹⁴⁵ Ibidem, p. 295.

¹⁴⁶ „Replika Z strony UU. Instygatorów i Vice Instygatorów...” In *Processus iudiciarius*... p. 100.

¹⁴⁷ „Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej...” In *ibidem*, p. 127.

vantageous to the accused, for example, as regards the need for a greater tolerance towards women oblivious of legal implications.

Referring to common law, the accusers demanded the imposition of penalties listed in the *lex Quisquis*, i.e. capital punishment, condemnation of memory, infamy and confiscation of property, and the extension of infamy to include the perpetrator's descendants, who were also deprived of their right of succession:

Finally, common law in *C. tit. De Crimine laesae Majestatis* having laid down the penalty *1mo. amissionem vitae. 2do: damnationem memoriae alias infamiam perpetuam nominis; 3tio. confiscationem bonorum omnium. 4to. Infamiam super Liberos* and that they can neither inherit from their relatives by law, nor from aliens if bequeathed in the last will and testament...;

at the same time, they pointed out that Lithuanian law provided similar punitive measures.¹⁴⁸ Besides, the prosecution recollected a precedent judgement against Michał Piekarski, and they substantiated the selection and severity of penalties with examples from the history of ancient Rome and Greece.¹⁴⁹

When pronouncing the death penalty, the court rarely specified how it was going to be performed. In the judgement against Michał Piekarski, the court only suggested that an aggravated death penalty be exacted (“*corpus ipsius...quam atrocissimis poenis subijciendum esse censeamus*”), leaving the marshal to determine the details.¹⁵⁰ The manner of performing the execution, i.e. dismemberment of the body by horses starting in opposite directions, preceded by the pinching with hot tongs and the burning of the right hand, allegedly inspired by the execution of the murderer of the French king, Henry IV, Francis Ravailac, was known much earlier Europe-wide, and one example of its use was related to the planned attack on Władysław Jagiellończyk while in Hungary.¹⁵¹ The sentence in the trial of Aleksander Weryha Darowski spoke generally about the infliction of capital punish-

¹⁴⁸ „Replika z Strony UU. Instygatorów i Vice Instygatorów „ In ibidem, p. 101.

¹⁴⁹ Ibidem.

¹⁵⁰ „Kontynuacja Indukty od UU. Instygatorów Koronnych „ In ibidem, p. 69.

¹⁵¹ This case, described by Marcin Bielski, took place in 1439 when the King Albrecht of Hungary's widow, Elizabeth, tried to prevent the enthronement of Władysław Jagiellończyk designated by the Hungarian nobility. According to the chronicler, the queen “hired a Hungarian traitor and promised him a pursefull of gold to kill or poison the king treacherously before the coronation, but when he arrived in Budzyń...told the king everything, reportedly wanting some prize, but the king did not want to bother dealing with him; and the Hungarian lords had the traitor captured and torn with tongs and horses” (op. cit. Vol 2, pp. 655-656).

ment (“capite plectatur”), but, interesting as it might have been, it also prescribed that prior to the execution the convict’s right arm must be cut off and burnt.¹⁵² Even in the late 18th century, the three main defendants in the trial for the abduction of King Stanisław August were sentenced to death, although not aggravated but by beheading; additionally, however, the court decided that Łukawski’s and Strawiński’s right hands must be cut off and put in public display, their bodies quartered, burnt and ashes scattered.¹⁵³ Although it is difficult to draw a parallel between the executions of Michał Piekarski and Metius Fufecius, the very idea of severe punishment for the perpetrators of lese-majesty was seen to have stemmed from common law.

The demolition of the wrongdoer’s house in Polish law was also evidently linked to the Roman historic tradition. Such a measure was taken against Michał Piekarski: the court ordered to raze his manor house in Bieńkowice to the ground because - it was argued - there was conceived a treacherous intent to kill the king; to commemorate the evil deed, a stone column was erected near the site.¹⁵⁴ “Demolition of the house as a memento” was mentioned by J.N. Słomiński in his speech against the Bar Confederates as one of the penalties provided for in common law for the crimes of lese-majesty.¹⁵⁵ However, the passage of the sentence condemning the chief defendants contains no such measure, though - as pointed out by K. Bukowska-Gorgoni - that passage was almost a verbatim quotation of the judgement in Piekarski’s case.¹⁵⁶ On the other hand, the imposition of *damnatio memoriae* on Tubałowicz and Słaczewski, both died before the court’s verdict, clearly adverts to common law.¹⁵⁷

While the legal basis for capital punishment and infamy was attributed almost exclusively to the standards of common law and - as regards cases tried after 1620 - to the judicial precedent involving Michał Piekarski, the rationale for the penalty of confiscation of property was sought not only in common law, but also in Crown’s and Lithuanian laws.¹⁵⁸ Already

¹⁵² „Kontynuacja Indukty od UU. Instygatorów Koronnych „ In *Processus iudiciarius...* p. 67.

¹⁵³ „...ut quilibet eorum Capite plectatur, manus ferro abscissae palis circa vias publicas affigantur, post aliquot vero tempus igne comburantur, et cineres dissipentur, corpus vero quod libet, eorum statim post decollationem ferro dismembretur, ac deinde in Rogo comburetur, et cineres in aerem projiciantur” („Oblata Dekretu Sądów Sejmowych w wyżej wyrażonej sprawie Criminis Regicidii ferowanego.” In *ibidem*, p. 172).

¹⁵⁴ „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *Processus iudiciarius...* p. 66.

¹⁵⁵ *Ibidem*, p. 64.

¹⁵⁶ Bukowska-Gorgoni, K. *Op. cit.*, p. 100-101.

¹⁵⁷ „Ideo nomina ipsorum Infamia perpetua ignominia afficenda esse volumus” („Oblata Dekretu Sądów Sejmowych...” In *Processus iudiciarius...* p. 172).

¹⁵⁸ Bukowska-Gorgoni, K. *Op. cit.*, p. 67.

the judgement against Piekarski emphasized that the guilty of the crime of lese-majesty, both pursuant to common laws and national regulations (“juxta Leges tam communes, quam Regni huius”) do not deserve to bequeath their wealth to the offspring; therefore, Piekarski’s assets were forfeit to the treasury and his linear and collateral descendants excluded from inheriting.¹⁵⁹ An almost identical wording appears in the conclusion of the accusers’ speech¹⁶⁰ and, afterwards, in the judgement against the Confederates of Bar. However, in comparison with Piekarski’s case, some new elements occurred; for example, on the one hand, the confiscated property of Kazimierz Pułaski, Stanisław Strawiński and Walenty Łukawski included any of their due receivables and, on the other, the court recognized Pułaski’s mother’s, Łukawski’s wife’s and their creditors’ rights to debt incurred by the offenders prior to the offence: “Ideo inhaerendo iisdem Legibus Regni Bona eorum realia, utpote Casimiri Pułaski ex divisione cessa, vel cedenda mobilia, et immobilia, summasque pecuniarias ubivis reperibiles tum Strawiński, et Łukawski ubicunque in Regno Poloniae Provinciisque annexis existentia, Fisco et Delatori, agenti, adjudicamus ... Salvis tamen Juribus Generosae Pułaska Capitaneae Varencensi Matris, ac Łukawska Valentini Łukawski consortis tum Creditorum Jura sua ante patratum hoc nefarium crimen habentium esse volumus.”¹⁶¹ Also respecting Marianna Łukawska’s right to the dower was consistent with her defender’s, who relied on the provisions of Polish (i.e. the constitution of 1588) and Lithuanian law.¹⁶² Perhaps the explicit reference to the principles of national law was decisive in phrasing the legal basis for Piekarski’s judgement: “iuxta leges communes Regni” appeared in lieu of “juxt leges tam communes quam Regni.” In the opinion of K. Bukowska-Gorgoni, it was a “characteristic shift” which occurred, perhaps, “under the influence of the accuser’s statement;”¹⁶³ but in the conclusion of the accusers’ speech the older version was used,¹⁶⁴ it is therefore likely that the new version was motivated by simplicity, with no effect on the original meaning. According to the “general laws of the Kingdom”, as the expression used in the 1773 judgement should be translated, i.e. according to the constitution of 1588 on lese-majesty, confis-

¹⁵⁹ „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *Processus iudiciarius...* pp. 65-66.

¹⁶⁰ *Ibidem*, p. 69.

¹⁶¹ „Oblata Dekretu Sądów Sejmowych...” In *Processus iudiciarius...* p. 170.

¹⁶² „Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej...” In *ibidem*, p. 127-128. This is the constitution of 1588 “O siostrach jure victorum i paniach wiennych.” In *Volumina Legum*. Vol. 2, p. 257, and Chapter I, Article of the Third Lithuanian Statute.

¹⁶³ Bukowska-Gorgoni, K. *Op. cit.*, p. 101.

¹⁶⁴ „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *Processus iudiciarius...* p. 69.

cation of property as a punitive measure for the prosecuted crime was not mentioned, which, as a matter of fact, prompted the parties to the lawsuit to seek guidance on penalties in common law.

At the same time, attention should be paid to the fact that the safeguarding of the rights of creditors and wife of the condemned for lese-majesty had not occurred until the time of the Enlightenment,¹⁶⁵ as evidenced by the sentence against Jerzy Lubomirski. Sentencing him to “*penas Legum criminales, nimirum privationem honoris et Vitae, ac Confiscationem omnium bonorum*” and ordering the forfeiture of his property to the state, the tribunal secured the Church’s, wife’s and creditors’ rights to his debt.¹⁶⁶

The discussions on the types of penalties prescribed for the perpetrator of the crime of lese-majesty usually alluded to sanctions envisaged for his offspring. A standard reason - after the *lex Quisquis* - for this kind of collective responsibility was a concern that children might inherit their parents’ inclination towards crime. This explanation was given in the judgement against Michał Piekarski: “*Jam vero quoniam et liberi ejusmodi nefariorum Siccariorum juxta praescriptum Juris communis malitiam paternam imitaturi praesumuntur...*”¹⁶⁷ The speaker for the prosecution in the trial of the Bar Confederates, Paweł Białobrzęski, recalling the ancient instances of convicting both the perpetrator of lese-majesty and his children, explained, “...therefore, although among pagans, the law says that children *haereditaris criminis exempla metuuntur*. Macedonian’s law ordered that not only the wrongdoers but also their relatives be put to death...”¹⁶⁸ Among the specific features of the crime of lese-majesty, which make it stand out among other felonies, the speaker for the prosecution, Antoni Opelewski, mentioned, referring to the work by B. Carpzov, that “if found guilty of *Crimen laesae Majestatis*, the offender should not only suffer and his property be forfeit, but also his children, though playing no part in this crime, are subject to a penalty.”¹⁶⁹ Therefore,

¹⁶⁵ Cf. Lityński, A. *Przestępstwa polityczne...* p. 37.

¹⁶⁶ *Processus Lubomirski...* p. M v.-M2.

¹⁶⁷ „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *Processus iudiciarius...* p. 66.

¹⁶⁸ „Replika Z strony UU. Instygatorów i Vice Instygatorów Koronnych...” In *ibidem*, p. 101. The author of this statement referred to the work Tholosanus, P. *Syntagmatis iuris universi pars III*. Venetiis 1593. See also: Bukowska-Gorgoni, K. Op. cit., p. 97. J.N. Słomiński describing to the court the severity “of the penalties imposed by the Persians, Macedonians or the people of Carthage on the perpetrators of lese-majesty. Because besides punishing the crime with the most sophisticated torture, they even slew their babies and eradicated their entire family nest” (“Kontynuacja Indukty od UU. Instygatorów Koronnych „ In *Processus iudiciarius...* p. 64).

¹⁶⁹ „Replika z Strony UU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Jana Kuźmy...” In *ibidem*, p. 117.

the prosecution, highlighting the presumption of inheriting criminal traits, demanded that all the perpetrators' descendants, with no consideration to the degree, be deprived of the nobility and all dignities.¹⁷⁰ The Diet Tribunal acceded to this demand and repeated it almost verbatim in the final judgement. The children of the main culprits, Stanisław Strawiński and Walenty Łukawski, lost their nobility and were banned from using their family name.¹⁷¹ It is worth noting that also Marianna Łukawska was prohibited from using her husband's name, following his conviction to infamy.¹⁷² Other perpetrators' descendants were imposed similar penalties, though were not refused their right to fathers' names.¹⁷³ In the earlier judgement against Mikołaj Rusocki, the offender managed to escape the ultimate punishment but was obliged to remain at king's mercy, still his sentence did not overlook to mention that his children would also have been held liable for his misdeed.¹⁷⁴

Section 38 The Problem of Direct Application of Roman Law in *Crimen Laesae Maiestatis* Proceedings in Poland

The discussion on the application of Roman law during the trial of the Bar Confederates sparked the literature-wide debate on the direct use of this law in proceedings held before noble tribunals in old Poland. K. Bukowska-Gorgoni expresses the view that not only was Roman law cited, but actually directly applied in this trial. She also emphasizes that both among the accusers and defenders there were a few Crown assessors, whose institution, beyond doubt, applied common law in its practice;¹⁷⁵ this, in turn, argues for the legitimacy of the use of this law in the trial of 1773. Consequently, a question arises as to whether the use of Roman law was commonplace in the decisions of noble tribunals. The author is inclined to assume that the weighty role ascribed to common law stemmed from the character of the case, since nearly all European legislations resorted to this

¹⁷⁰ „Kontynuacja Indukty od UU. Instygatorów Koronnych...” In *ibidem*, p. 69.

¹⁷¹ „Oblata Dekretu Sądów Sejmowych...” In *ibidem*, p. 170.

¹⁷² *Ibidem*, p. 174.

¹⁷³ *Ibidem*, pp. 172-173.

¹⁷⁴ *Dwa zabytki...* p. 295.

¹⁷⁵ In the author's opinion, it is proven by the works of A. Lipski, G. Czaradzki (*Processus iudiciari pragmatici in iure civili et saxonico recepti ad praximque accomodati syntagma compendiosum*. Cracoviae 1612), and other lawyers' statements, e.g. M. Zalasowski (op. cit., p. 92, note 36).

law when prosecuting the crimes of violation of majesty. Although - according to K. Bukowska-Gorgoni - the sentence, which in its phrasing so much resembled the one of 1620, does not fit into the general ambience of the Enlightenment, and its mediaeval-like severity can be explained by the pressure exerted on the court, more attention should be paid to those elements that the unique character of the trial could not influence, such as the evaluation of evidence, the approach to the circumstances excluding guilt and mitigating the perpetrators' liability, and finally taking into account such issues as the offenders' debt and receivables, or claims under matrimonial property law.¹⁷⁶

Less reserved a position was adopted by J. Sondel who demonstrated that the citation and application of Roman law in old Poland was not limited to the cases involving *crimen laesae maiestatis*. Already a hundred years before the trial of the Bar Confederates, the Diet Court expressly opted for the use of Roman law in connection with the party's proposal to authorize an oath sworn according to the standard sanctioned by Justinian's law.¹⁷⁷ The author underscored that in the trial of 1773 both parties to the lawsuit freely invoked Roman law; interestingly, also the court used this law to shape its final ruling, and none of the parties challenged this kind of argument. No one opposed even when, first, the accusers and, second, the defenders advocated the idea to refer to common law when national law failed to supply the desired legal standard. The use of common law did not follow from any provision of domestic legislation but from its absolute

¹⁷⁶ Ibidem, p. 98.

¹⁷⁷ Sondel, J. *Ze studiów nad prawem rzymskim...* pp. 29, 98. The reason for the judgement issued by the Diet Tribunal in the well-known case of Grand Treasurer Jan Andrzej Morsztyn was his refusal of swearing an oath while residing abroad. Morsztyn, who was accused of accepting servitude to a foreign state, embezzlement of public money, violating the Republic and mismanagement in the treasury, was sentenced in absentia during the 1685 Diet; he was deprived of the office of treasurer; further, the court ordered him to return an 18-month income from mints, to present treasury accounts and cancel any covenants, and to return appropriated jewels. Before the judgement was passed, Morsztyn had released his office and had fled to France; he also swore in writing that the jewels had been returned in full and intact. The judgement of the Diet Tribunal, which, on 25 February 1690, recognized the oath as legally effective, exceptionally permitted (Morsztyn was abroad) the validity of swearing the oath as prescribed by Roman law: the oath was submitted on a sheet with the text of the oath formula, sealed and signed by the oath-maker. This decision was a breach of the rule governing the established forms of oath in Polish judicial law. This ruling was equivalent to a *praeiudicatum* because the Diet Tribunal was the exclusive authorized body to allow the application of a new institution, not yet regulated by law (Rafacz, J. "Z dziejów prawa rzymskiego w Polsce." In *Księga pamiątkowa ku czci Leona Pinińskiego*. Vol. 2. Lwów 1936, pp. 197-200; Palmirski, T. „Koniec Morsztyna. Przyczynek do dziejów prawa rzymskiego w Polsce." *Zeszyty Prawnicze UKSW* 3.1(2003), pp. 168-169).

authority. J. Sondel concluded that the trial for the abduction of Stanisław August supplies clear evidence for the use of the common law principles in judicial practice, primarily taken from Justinian's codification, which actually made it a subsidiary source of law.¹⁷⁸

This opinion has proven legitimate also for other lese-majesty trials in old Poland. Although the use of Roman law across the entire judicature of noble courts in Poland goes beyond the scope of this work, however, the author's endeavour to explore the investigated cases of *crimen laesae maiestatis* corroborates that this law served a much more pivotal function than a speech embellishment intended to supply convoluted arguments: it was employed directly and subsidiarily when Polish law proved deficient or imperfect. K. Bukowska-Gorgoni has made an observation, which is true of both the trial of the Bar Confederates and all proceedings covered in this paper, that common law was recognized in Poland as the *lex generalis*, while Polish statutes and constitutions thought of as provincial law often contained specific provisions, repealing the generally applicable standards; still, in the absence of such separate regulations, common law was invariably applied.¹⁷⁹

¹⁷⁸ Sondel, J. *Ze studiów nad prawem rzymskim...* pp. 98-99.

¹⁷⁹ Bukowska-Gorgoni, K. *Op. cit.*, p. 99.

CONCLUSION

The author's dissertation, contributory to the research on the history of Roman law in old Poland, was intended to demonstrate the influence of Roman criminal law on Polish legislation, jurisprudence and the views on the offence of lese-majesty surfacing in the doctrine. The concept of the offence goes back to the Republican Rome, its prototype being *perduellio*, involving broadly understood acts against the wider community of citizens; the scope of these acts was anything but strictly defined: the recognition of specific conduct as *perduellio* was often determined by political considerations. Still, such acts shared one feature: *animus hostilis*, or intentional fault, manifested in taking hostile action against the state. The offence originally known as *crimen imminutae maiestatis* was a subcategory of *perduellio* and denoted acts detrimental to both the internal order of the state, as well as to external relations, regardless of the type of *animus hostilis*. From 245 BC, *perduellio* became to be considered an aggravated form of *crimen maiestatis*, and the term was used in this meaning over Justinian times.

Crimen maiestatis was regulated by specific laws beginning with the *lex Appuleia de maiestate* of about 103 BC and ending with the *lex Iulia maiestatis* of Julius Caesar from AD 47; the latter law was effective until the decline of the Roman state, and the commentaries to that law preserved in the writings of later jurists made up Title 4, Book 48 of Justinian's *Digesta*. The primary source of knowledge on the legal standards relating to *crimen maiestatis* is also Title 8, Book 9 of the Code of Justinian, whose essential part is the *lex Quisquis* of Emperors Arcadius and Honorius of AD 397; these two parts of Justinian's codification, adopted across the medieval Europe, underpin the European doctrine on the crime in question.

The insufficiently and ambiguously defined catalogue of deeds classified as *crimen maiestatis* gradually broadened over the period of the empire to take its ultimate shape in Justinian's codification (permitting the use of analogy). These acts were certainly penalized: by death (initially, during the Republic, it was avoidable by going to the voluntary exile, or interdiction of fire and water), infamy and confiscation of property. The court practice, relevant regulations, in particular the *lex Quisquis*, also prescribed sanctions against the perpetrator's family, especially sons: exclusion from inheritance from any testators and perpetual infamy (combined with no access to public offices) were intended to cause the social debasement and degradation of the family in the social hierarchy. Moreover, the course of proceedings in cases of *crimen maiestatis* differed in a number of ways.

Judging by the results of research, both the catalogue of unlawful deeds and corresponding sanctions permeated into the legislations of medieval European states and was carefully studied by legal writers. These authors sought inspiration in Roman law when discussing the penalization of the stages of commission of the offence and its phenomenal forms, the liability of perpetrator's family, or the unique features of the *maiestas* proceedings. Although supplemented by observations made in various national laws, or even canon law (seen as providing the legal basis for the demolition of the offender's house), the analysis were largely based on Roman law; consequently, this law should be regarded as a unifying factor in the European doctrine on the crime of violation of majesty. The Western European doctrine, supplementing the standards developed in Justinian's law and considered to be part of common law, had a considerable bearing on the views of Polish legal writers as well as on the Polish legal standards governing lese-majesty. Resting these views on common law law determined the uniformity of Polish doctrine concerning the crime of lese-majesty and developed over three centuries. The authors regarded the standards of Roman law as complementary to Polish law, customary law and positive law, and justifying the many deficiencies of domestic legislation by a limited usefulness of regulations on violation of majesty. The rationale for the subsidiary role of Roman law was provided in the Third Statute of Lithuania, used as an auxiliary legal source in the Crown, which permitted the use of other Christian laws if national law had proven imperfect; by "Christian laws," the legislator meant Roman law in the first place. Stringent standards of Roman law, especially in terms of punishment or retributions affecting the family, was explained by the nature of the crime which, in the opinion of many authors, was the gravest of all felonies - *crimen omnium delictorum gravissimum*; thus, the punishment should correspond to the un-

speakable effect of the crime and serve as a general deterrent. Roman law also explored other aspects of the offence besides commensurate penalties that Polish law never addressed: the classification of different offences as lese-majesty and criminalization of the phenomenal forms of the crime and its constituent stages of commission.

The participants in the proceedings involving *crimen laesae maiestatis* frequently sought solutions and grounds for their decisions in common law, as highlighted in the analysis of their speeches and statements made during different trials; indeed, their Roman law-based arguments were hardly even challenged. In their statements, unlike in the general court practice of the time,¹ citations of Roman law were not intended to serve as stylistic figures. Common law was seen as a factor that might expedite the resolution of numerous issues surfacing because of the deficiencies of Polish law. There is a well-substantiated opinion voiced in the literature (by K. Bukowska-Gorgoni, J. Sondel) of the subsidiary use of Roman law - or rather common law - in the trials for *maiestas*. The judgements admitted to have relied upon *leges communes* or *iura communia*; what is more, Roman law supplied the criteria for the evaluation of evidence, phenomenal forms of the crime and its constituent stages, or circumstances excluding unlawfulness or guilt. Roman law underlay the choice of penalties, which was only vaguely covered in domestic law. Finally, common law was an ample source conducive to the classification of certain misdeeds and forms of lese-majesty (particularly attempts on the life of a person exercising public functions and defamation of the monarch).

The preformed study allows a number of conclusions to be drawn. It has been already noted that the influence of Roman law on criminal law in old Poland seems to have been less evident than on the science of criminal law (certainly less developed than in Western Europe). While the literature on the subject, some of its monographs on *crimen laesae maiestatis* have been carefully studied for the sake of this work, reveals numerous references to the standards of Roman law and Western literature exposed to its influence, such direct references are not so much discernible in the sources of positive law. However, a conclusion that the regulations of Roman law had limited impact on Polish law standards is, in the author's opinion, premature. Such

¹ For example, Józef Wybicki, recalling his early legal practice, admitted to have used Roman law terminology without actually understanding their content. "I recited Roman laws and the Magdeburg statutes like a parrot, because my whole respectable congregation were doing so" (*Życie moje oraz Wspomnienie o Andrzeju i Konstancji Zamoyskich*. Kraków 1927, p. 15; see also Jakubowski, I. „Józef Wybicki a prawo rzymskie.” *Acta Universitatis Lodzianis. Folia Iuridica* 4(1981), p. 64).

influences are corroborated in the texts of certain legal acts, for example, the constitution of 1510, reaffirming the previously applied rule of criminalization of assault on Diet deputies, king's advisers and judges in the same way as lese-majesty (which was put into practice, as shown in Chapter Four), or the Edict of Wieluń recommending the same for individuals suspected of professing Hussitism and prescribing specific punitive measures for such a deed. Second, it must be borne in mind that the legislation on *crimen laesae maiestatis* were materially shaped by individual trials which exposed legal loopholes and deficiencies and stimulated the legislator to seek adequate solutions for the future. For that reason, it seems reasonable to advance a thesis that Krzysztof Zborowski's case led to the deprivation of the king in the constitution of 1588 of the right to chair (and sit on) the Diet Tribunal in the trials for *maiestas*; this consequence is mostly indicated in modern literature, but no doubt had some impact on the classification of the stages of commission of the offence (*machinatio, conspiratio, conatus violentus*) as a form of crime subject to punishment just like the perpetration (*factum*). In this trial, as mentioned elsewhere, Roman law furnished the criteria for the assessment of individual stages of the offence, therefore, a view that this law worked upon the ultimate shape of the said constitution is by far legitimate. Because of the specific political context, the trial of the Bar Confederates of 1773 did not translate into a lasting change in legislation, still that event had an impact on the provisions of the Four-Year Diet with regard to the Diet Tribunals and the forms of lese-majesty and envisaged penalties. The new catalogue of forms of the offence, taking account of its phenomenal forms, stages of commission and penalties, with death and infamy in the first place (and also other penalties "depending on the circumstances and crime:" confiscation of property, imprisonment, banishment or loss of offices), was consistent with the previous few centuries' practice and was the most comprehensive regulation of *crimen laesae maiestatis* in Polish statutory law.

It is worth emphasizing that Roman law served in some trials not only as a set of subsidiary or auxiliary standards, but also - as was the case in Michał Drzewicki's trial - as a criterion of interpretation of national law (strictly speaking, the constitution of 1539). The instigator making his point challenged the defendant's argument of the court's incompetence arguing that the constitution, which had set out the legal basis for the proceedings, provided that an attempt on the monarch's life was not the only case where lese-majesty could occur. Using a purposive (teleological) interpretation, the instigator attempted to demonstrate that the phrasing of the constitution that the crime was "in persona Regia locum habere" should not to be taken

literally, because the legislator's intention was not in fact to exclude persons performing public functions from the special legal protection, but to avoid broadening this protection to include private persons, which - according to the instigator - led to abuse and malpractice. The expressions used in his speech testify to the direct reference to the *lex Quisquis*: he termed royal officials and advisers parts of the body whose head is the king; an attack on any of these parts calls for the same punishment as an attack on the king. Because - as already mentioned in Section 33 - the ultimate judgement in this case is not known, there is no answer as to whether such an interpretation actually convinced the judges; yet, regardless of its effect, the very fact of using this kind of argument proves Roman law to have been used as a factor helping explain vaguely phrased (in the instigator's opinion) standards of national law. That reaching for Roman law with such an end in view was not incidental was visible in the trials of Krzysztof Zborowski and Jerzy Lubomirski, when this law was consulted to clarify whether the insult of the monarch was a form of the offence of lese-majesty. Interestingly enough, opinions on this issue - both for and against the penalization of insult - were supported by the same imperial constitution (C. 9,7): on the one hand, the defendant's defence counsel and supporters wished to perceive the constitution as justifying the greatest possible indulgence for insults, on the other, the accuser argued that it only recommended a proper assessment of the intentional facet of the offender's action.

At the outset, the author paid attention to existing research limitation due to the scarcity of the source material, especially the records of judicial practice. Also the period between the early 16th century and the Third Partition of Poland (1795) yielded very few legislative acts and legal writings on the offence of lese-majesty. Particularly valuable for this study are monograph works, but their modest number and the level of quality often departing from their counterparts in Western Europe only allow an essential conclusion that they used Roman law as a starting point for a debate: the authors rarely examined specific issues as thoroughly as their foreign peers, generally restricting themselves to outlining some fundamental principles and referring to Polish legal standards only cursorily. Certainly a reason for this was - as mentioned elsewhere - the brevity of positive law, supplying no basis for an in-depth analysis. Many of the legal works of more generic character would now be rated as the collections of source text rather than monuments of legal literature; these works, often illustrative of the budding codification movement, created collections of documents collating the sources of positive law, arranged in a chronological or alphabetical order. The monograph works devoted exclusively to the crime of lese-majesty

Conclusion

would most probably have been very limited in content, had their authors confined themselves only to discuss the sources of Polish law; thus, seeking the explanation of many issues, not covered in national law, they resorted to common law and less frequently to the examples from the Polish judicial practice. However, it should also be stressed that because of exploiting the wealth of Roman law sources and established standards the legal works by Polish authors are in the mainstream of the European science of criminal law. The examination by the author of this work of available sources, such as the norms of positive law, (legal) works and records of judicial practice, allowed not only to respond to the ideas propounded in the contemporary literature, but also - thanks to the latest findings - to offer a comprehensive look at the impact of Roman law on the construct of *crimen laesae maiestatis* in pre-partitioned Poland.

BIBLIOGRAPHY

I. Dictionaries and Encyclopaedias

- A Latin Dictionary*. Lewis, Ch.T., Short, Ch., eds. Oxford 1962.
- Dictionnaire étymologique de la linguæ latine. Histoire des mots*. Ernout, A., Meillet, A., eds. Vol. 1-2. Paris 1959.
- Heumann, H., Seckel, E. *Handlexikon zu den Quellen des römischen Rechts*. Graz 1958.
- Lateinisches etymologisches Wörterbuch von A. Walde, 3 Aufl. von J.B. Hofmann*. Vol. 1-2. Heidelberg 1938-1954.
- Paulys Realencyklopädie der classischen Alterumwissenschaft*. neue Bearb. von Wissowa, G., Kroll, W., Mittelhaus, K., Ziegler, K., Stuttgart 1894.
- Polski Słownik Biograficzny*. Kraków – Wrocław 1935.
- Słownik łacińsko – polski*. Plezia, M., ed. Vol. 1-5. Warszawa 1999.
- Thesaurus linguæ latinae*. Leipzig 1990.

II. Research Literature

- Allison, J.D., Cloud, J.E. "The Lex Iulia Maiestatis." *Latomus*. 21(1962), pp. 711-731.
- Amielańczyk, K. *Rzymskie prawo karne w reskryptach cesarza Hadriana*. Lublin 2006.
- Amielańczyk, K. „Ustawodawstwo Korneliusza Sulli na rzecz restauracji republiki i zaprowadzenia porządku publicznego.” *Annales UMCS. Sectio G*, 38(1991), pp. 1-14.
- Amielańczyk, K. „Z historii ustawodawstwa rzymskiego w sprawach karnych. Próba periodyzacji.” In *Studia Historycznoprawne, Prawo CCCV. Tom poświęcony pamięci profesora Edwarda Szymoszka*. Konieczny, A., ed. Wrocław 2008, pp. 11-24.

- Arnold, S. „Podziały administracyjne województwa sandomierskiego do końca w. XVIII.” In *Pamiętnik świętokrzyski*. Kielce 1931, pp. 56-63.
- Badian, E. „Quaestiones Variae.” *Historia* 18(1969), pp. 447-491.
- Bąkowa, J. *Szlachta województwa krakowskiego wobec opozycji Jerzego Lubomirskiego w latach 1661-1667*. Kraków 1974.
- Bardach, J. „Geneza romanizacji II Statutu Litewskiego.” In *Dawne prawo i myśl prawnicza. Prace historyczno – prawne poświęcone pamięci Wojciecha Marii Bartla*. Malec, J., Uruszczak, W., eds. Kraków 1995, pp. 191-206.
- Bardach, J. *O dawnej i niedawnej Litwie*. Poznań 1988.
- Bardach, J. *Statuty litewskie a prawo rzymskie*. Warszawa 1999.
- Bardach, J. „Statuty litewskie w Koronie Królestwa Polskiego.” *Studia z Dziejów Państwa i Prawa Polskiego* 4(1999), pp. 17-28.
- Bardach, J. „Uczone prawo w II Statucie litewskim.” In *1566 Metą Antrasis Lietuvos Statutas*. Łazutka, S., ed. Wilno 1993, p. 15-23.
- Bardach, J. „Wpływ prawa rzymskiego na Statuty litewskie oraz ich oddziaływanie na kraje sąsiednie.” *Lithuania* 8(1997), fasc. 1-2, pp. 12-25.
- Baszkiewicz, J., Ryszka, F. *Historia doktryn politycznych i prawnych*. Warszawa 1984.
- Bauman, R.A. *Crime and Punishment in Ancient Rome*. London – New York 1996.
- Bauman, R.A. *Impietas in Principem. A study of treason against the Roman emperor with special reference to the first century A.D.* München 1974.
- Bauman, R.A. „Maiestatem populi Romani comiter conservanto.” *Acta Iuridica* 36(1976), pp. 19-36.
- Bauman, R.A. „Some Problems of the Lex Quisquis.” *Antichthon* R 1(1967), pp. 49-59.
- Bauman, R.A. *The Crimen Maiestatis in the Roman Republic and Augustan Principate*. Johannesburg 1970.
- Bauman, R.A. *Women and Politics in Ancient Rome*. London–New York 1992.
- Bleicken, J. *Senatsgericht und Kaisergericht. Eine Studie zur Entwicklung des Prozeßrechts im frühen Prinzipat*. Göttingen 1962.
- Bock, D. *Römischrechtliche Ausgangspunkte der strafrechtlichen Beteiligungslehre*. Berlin 2006.
- Bogucka, M. *Bona Sforza*. Wrocław 2004.
- Braginton, M.V. „Exile under the Roman Emperors.” *Classical Journal* 39(1944), issue 7, pp. 391-407.
- Brasiello, U. *La repressione penale in diritto Romano*. Napoli 1937.
- Brecht, Ch.H. „Perduellio.” In RE. Vol. 37. Stuttgart 1937, col. 615-639.
- Brecht, Ch.H. *Perduellio. Eine Studie zu ihrer begrifflichen Abgrenzung im römischen Strafrecht bis zum Ausgang der Republik*. München 1938.
- Briquel, D. „Sur le mode d'exécution en cas de parricide et en cas de perduellio.” *Melanges d'archeologie et d'histoire de l'École Française de Rome* 92(1980), pp. 87-107.
- Bukowska, K. *Tomasz Drezner, polski romanista XVII wieku i jego znaczenie dla nauki prawa w Polsce*. Warszawa 1960.
- Bukowska-Gorgoni, K. „Kilka uwag o mocy obowiązującej praw obcych w Polsce w świetle akt procesu o zamach na Stanisława Augusta.” *Zeszyty Naukowe Uniwersytetu Jagiellońskiego DCXXV. Prace prawnicze*. Fasc. 97: *Studia z historii praw obcych w Polsce*. Vol. 1, p. 87-103.

- Cantarella, E. *I supplizi capitali. Origine e funzioni delle pene di morte in Grecia e a Roma*. Milano 2005.
- Carry, M., Scullard, H.H. *Dzieje Rzymu od czasów najdawniejszych do Konstantyna* > Vol. 2. Warszawa 1992.
- Chilton, C.W. "The Roman Law of Treason under the Early Principate." *Journal of Roman Studies* 45(1955), pp. 73-81.
- Cloud, J.D. "The Text of Digest XLVIII,4. Ad Legem Iuliam Maiestatis." *Zeitschrift der Savigny – Stiftung für Rechtsgeschichte. Romanische Abteilung* 80(1963), pp. 206-232.
- Costa, E. *Crimini e pene da Romolo a Giustiniano*. Bologna 1921.
- Czapliński, W. „Lipski Andrzej.” In *Polski Słownik Biograficzny*. Vol. 17, Wrocław 1972, p. 415-417.
- Czermak, W. „Sprawa Lubomirskiego w roku 1664.” In idem. *Ostatnie lata Jana Kazimierza*. Prepared and introduced by Kersten, A. Warszawa 1972, pp. 69-222.
- Dąbkowski, P. *Prawo prywatne polskie*. Vol. 1. Lwów 1910; vol. 2. Lwów 1911.
- De Robertis, F. *Studi di Diritto Penale Romano*. Bari 1944.
- Dębiński, A. "Ecclesia vivit lege Romana. Znaczenie prawa rzymskiego dla rozwoju prawa Kościoła łacińskiego." In *Starożytne kodyfikacje prawa. Materiały z konferencji zorganizowanej 10-11 kwietnia 1999 r. w Lublinie*. Dębiński, A., ed. Lublin 2000, pp. 131-146.
- Dębiński, A. *Church and Roman Law*. Lublin 2010.
- Dębiński, A. *Sacrilegium w prawie rzymskim*. Lublin 1995.
- Dębiński, A. *Ustawodawstwo karne rzymskich cesarzy chrześcijańskich w sprawach religijnych*. Lublin 1990.
- Drexler, H. „Maiestas.” *Aevum* 30(1956), pp. 195-212.
- Dumézil, G. „Maiestas et gravitas. De quelques différences entre les Romains et les Austronésiens.” *Revue de Philologie* 78(1952), pp. 7-28.
- Dyjakowska, M. „Crimen laesae maiestatis jako przykład wpływów prawa rzymskiego na prawo karne Polski przedrozbiorowej. Stan badań i postulaty.” In *Współczesna romanistyka prawnicza w Polsce*. Dębiński, A., Wójcik, M., eds. Lublin 2004, pp. 65–75.
- Dyjakowska, M. „Ewolucja poglądów na prawo rzymskie w Polsce do końca XVIII wieku.” In *Prawo rzymskie a kultura prawna Europy*. Dębiński, A., Jońca, M., eds. Lublin 2008, pp. 71-99.
- Dyjakowska, M. „Kara konfiskaty majątku za crimen laesae maiestatis.” In *Podstawy materialne państwa. Zagadnienia prawno – historyczne*. Bogacz, D., Tkaczuk, M., eds. Szczecin 2006, pp. 601-614.
- Dyjakowska, M. „Kobieta a przestępstwo obrazy majestatu.” In *Contra leges et bonos mores. Przestępstwa obyczajowe w starożytnej Grecji i Rzymie*. Kowalski, H., Kuryłowicz, M., eds. Lublin 2005, pp. 71-82.
- Dyjakowska, M. „Naruszenie bezpieczeństwa obrad Trybunału Koronnego jako crimen laesae maiestatis.” In *Trybunał koronny w kulturze prawnej Rzeczypospolitej szlacheckiej*. Dębiński, A., Bednaruk, W., Lipska, M., eds. Lublin 2009, pp. 113-130.
- Dyjakowska, M. „Postępowanie w sprawach o crimen maiestatis w okresie republiki rzymskiej.” *Zeszyty Prawnicze UKSW* 6.1(2006), pp. 27-46.

Bibliography

- Dyjakowska, M. „Procesy chrześcijan w świetle korespondencji Pliniusza Młodszego.” In *Cuius regio eius religio? Zjazd historyków państwa i prawa, Lublin 20-23 IX 2006 r.* Górski, G., Ćwikła, L., Lipska, M., eds. Lublin 2006, pp. 25-40.
- Falchi, G. *Diritto penale romano. I singoli reati.* Padova 1932.
- Fałkowski, W. „Rytwiański Dzierśław.” In *Polski Słownik Biograficzny.* Vol. 33. Wrocław 1992, pp. 583-588.
- Fiori, R. *Homo sacer. Dinamica politico – costituzionale di una sanzione giuridico – religiosa.* Napoli 1996.
- Fuhrmann, M. „Publicatio bonorum.” In *RE* 46, col. 2484-2515.
- Garofalo, L. *Studi della sacertà.* Padova 2005.
- Gawęda, S. *Możnowładztwo małopolskie w XIV i w pierwszej połowie XV wieku. Studium z dziejów rozwoju wielkiej własności ziemskiej.* Kraków 1966.
- Greenidge, A.H.J. *Infamia. Its place in Roman Public and Private Law.* Oxford 1894.
- Grodziski, S. *Z dziejów staropolskiej kultury prawnej.* Kraków 2004.
- Gruen, E.S. „The lex Varia.” *Journal of Roman Studies* 55(1965), pp. 59-73.
- Grzybowski, S. *Dzieje prawa. Opowieści, refleksje, rozważania.* Wrocław 1981.
- Grzybowski, S. *Jan Zamoyski.* Warszawa 1994.
- Gundel, H.G. „Der Begriff Maiestas im politischen Denken der römischen Republik.” *Historia* 12(1963), pp. 281-320.
- Handelsman, M. *Kara w najdawniejszym prawie polskim.* Warszawa 1907.
- Handelsman, M. *Prawo karne w Statutach Kazimierza Wielkiego.* Warszawa 1909.
- Hedrick, Ch.W. *History and Silence. Purge and Rehabilitation of Memory in Late Antiquity.* Austin 2000.
- Henning, D. „T. Labienus und der erste Majestätsprozeß de famosus libellis.” *Chiron* 3(1973), pp. 245-254.
- Herzog-Hauser, G. „Kaiserkult.” *RE Suppl.* Vol. 4. Stuttgart 1924, col. 806-853.
- His, R. *Das Strafrecht des deutschen Mittelalters.* Weimar 1935.
- His, R. *Geschichte des deutschen Strafrecht bis zur Karolina.* München – Berlin 1928.
- Hube, R. „O znaczeniu prawa rzymskiego i rzymsko – bizantyjskiego u narodów słowiańskich.” In idem *Pisma.* Vol. 1. Warszawa 1905, pp. 341-397.
- Lengle, J. *Römisches Strafrecht bei Cicero und den Historikern.* Leipzig und Berlin 1934.
- Jacynowska, M. *Historia starożytnego Rzymu.* Warszawa 1979.
- Jacynowska, M. *Religie świata rzymskiego.* Warszawa 1987.
- Jakubowski, I. „Józef Wybicki a prawo rzymskie.” *Acta Universitatis Lodziensis. Folia Iuridica* 4(1981).
- Jakubowski, I. „Prawo rzymskie w projektach kodyfikacyjnych polskiego Oświecenia.” *Acta Universitatis Lodziensis. Folia Iuridica* 15(1984), Łódź.
- Jońca, M. *Parricidium w prawie rzymskim.* Lublin 2008.
- Jones, A.H.M. *The Criminal Courts of the Roman Republic and Principate.* Oxford 1972.
- Kaser, M. „Infamia und ignominia in den römischen Rechtsquellen.” *Zeitschrift der Savigny – Stiftung für Rechtsgeschichte. Romanische Abteilung* 73(1956).
- Kawecka-Gryczowa, A. „Januszowski Jan.” In *Polski Słownik Biograficzny.* Vol. 10. Wrocław 1962, pp. 598-600.

- Kellner, O. *Das Majestätsverbrechen im deutschen Reich bis zur Mitte des 14. Jahrhunderts*. Halle 1911.
- Kelly, G. *History of exile in the Roman Republic*. Cambridge 2006.
- Kelly, J.H. *Historia zachodniej teorii prawa*. Warszawa 2006.
- Kłaczewski, W. *Jerzy Sebastian Lubomirski*. Wrocław 2002.
- Koranyi, K. „Konstytucje cesarza Fryderyka II przeciw heretykom i ich recepcja w Polsce.” In *Księga pamiątkowa ku czci Władysława Abrahama*. Vol. 1. Lwów 1930, pp. 317-340.
- Koranyi, K. „O niektórych postanowieniach karnych Statutu litewskiego z r. 1529 (Studium prawno – porównawcze).” In *Księga pamiątkowa ku uczczeniu czterechsetnej rocznicy wydania pierwszego Statutu litewskiego*. Ehrenkreutz, S., ed. Wilno 1935, pp. 123-157.
- Koschaker, P. *Europa und das römische Recht*. München und Berlin 1966.
- Kowalska, H. „Przyłuski Jakub.” In *Polski Słownik Biograficzny*. Vol. 29. Wrocław 1986, pp. 206-209.
- Kowalska, H. „Rusocki (Russocki) Mikołaj.” In *Polski Słownik Biograficzny*. Vol. 33. Wrocław 1991-1992, pp. 150-152.
- Kras, P. *Husyci w piętnastowiecznej Polsce*. Lublin 1998.
- Kübler, B. „Maiestas.” *RE* 14.1, col. 543-559.
- Kuryłowicz, M. „D. 48,24: De cadaveribus punitorum.” Prawo rzymskie o zwłokach osób skazanych za przestępstwa przeciwko państwu.” In *Salus rei publicae suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*. Dębiński, A., Kowalski, H., Kuryłowicz, M., eds. Lublin 2007, pp. 115-126.
- Kuryłowicz, M. *Historia i współczesność prawa rzymskiego*. Lublin 1984.
- Kuryłowicz, M. „Odpowiedzialność ‚nieletnich‘ za czyny bezprawne w prawie rzymskim” In *Postępowanie z nieletnimi*. Lublin 1988, pp. 9-19.
- Kuryłowicz, M. „Prawo rzymskie jako fundament europejskiej kultury prawnej.” *Zeszyty Prawnicze UKSW* 1(2002), pp. 9-26.
- Kuryłowicz, M. „Rzymskie prawo karne w polskich badaniach romanistycznych.” *Zeszyty Naukowe Uniwersytetu Rzeszowskiego, Prawo* 1(2003), fasc. 7, pp. 167-175.
- Kuryłowicz, M. „Taedium vitae w rzymskim prawie karnym.” In *Contra leges et bonos mores. Przestępstwa obyczajowe w starożytnej Grecji i Rzymie*. Kowalski, H., Kuryłowicz, M., eds. Lublin 2005, pp. 189-200.
- Kutrzeba, S. *Historia źródeł dawnego prawa polskiego*. Vol. 1. Lwów 1925.
- Kutrzeba, S. „Starostowie, ich początek i rozwój do końca XIV w.” *Rozprawy Wydziału Historyczno – Filozoficznego Akademii Umiejętności w Krakowie* 45(1903), pp. 231-348.
- Kwiatkowski S. *Średniowieczne dzieje Europy*. Warszawa 2006.
- Rutkowski, H. „Z dziejów Sandomierza w okresie Odrodzenia.” In *Studia sandomierskie. Materiały do dziejów miasta Sandomierza i regionu sandomierskiego*. Wąsowicz, T., Pazdur, J., eds. Sandomierz 1967, pp. 39-110.
- Lateinisches etymologisches Wörterbuch von A. Walde, 3 Aufl. von J.B. Hofmann*. Vol. 2. Heidelberg 1954.

Bibliography

- Lear, F.S. "Crimen Laesae Maiestatis in the Lex Romana Visigothorum." In idem. *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 108-122.
- Lear, F.S. "Notes of Public Law: Ostrogothic, Burgundian, Lombard, North German." In idem. *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 227-251.
- Lear, F.S. "The Idea of Fidelity in Germanic Customary Law." In idem *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 3-48.
- Lear, F.S. "The Idea of Fidelity in Germanic Customary Law." In idem *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 73-107.
- Lear, F.S. "The Public Law of the Ripuarian, Alamannic, and Bavarian Codes." In idem *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 196-226.
- Lear, F.S. "The Public Law of the Visigothic Code." In idem *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 136-164.
- Lear, F.S. "Treason and Related Offences in the Anglo – Saxon Dooms." In idem. *Treason in Roman and Germanic Law. Collected Papers*. Austin 1965, pp. 181-195.
- Leśniewski, S. *Jan Zamoyski, hetman i polityk*. Warszawa 2008.
- Levick, B.M. "Poena legis maiestatis." *Historia* 38(1979), pp. 358-379.
- Liebenam, W. "Duoviri perduellioni iudicandae." In *RE*. Vol. 10. Stuttgart 1905, col. 1799-1800.
- Lityński, A. "Prawnokarna ochrona sądów szlacheckich w Polsce XVI – XVIII w." *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji*. Vol. 15. 1981, pp. 215-245.
- Lityński, A. „Prawo karne w projekcie Kodeksu Stanisława Augusta.” *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji* 5(1974), pp. 177-183.
- Lityński, A. *Przestępstwa polityczne w polskim prawie karnym XVI-XVIII wieku*. Katowice 1976.
- Lityński, A. „Zabezpieczenie Trybunału Koronnego w polskim prawie karnym na tle prawnokarnej ochrony innych sądów prawa polskiego.” In *400-lecie utworzenia Trybunału Koronnego w Lublinie. Materiały z sesji naukowej z dnia 20.XI.1978 r.* Lublin 1982, pp. 7-24.
- Łoziński, B. *Infamia. Studium prawno – społeczne*. Lwów 1897.
- Maciejewski, T. *Powszechna historia ustroju i prawa*. Warszawa 2000.
- MacMullen, R. *Enemies of the Roman Order. Treason, Unrest, and Alienation in the Empire*. Cambridge 1966.
- Makarewicz, J. „Instygator w dawnym prawie polskim.” *Archiwum Towarzystwa Naukowego we Lwowie*. Sec. 2. Vol. 1. Fasc. 4. Lwów 1922.
- Makarewicz, J. *Polskie prawo karne. Część ogólna*. Lwów 1919.
- Malinowska, J. *Mikołaj Zalasowski, polski prawnik XVII stulecia na tle ówczesnej nauki prawa*. Kraków 1960.
- Masiello, T. "Osservazioni sulla cognitio senatoria in materia penale." In *Diritto e giustizia nel processo. Prospettive storiche costituzionali e comparatistiche*. Cascione, C., Masi Doria, C, eds. Napoli 2002, pp. 447-463.
- Merill, E.T. "Some Remarks on Cases of Treason in the Roman Commonwealth." *Classical Philology* 13(1918), pp. 34-52.

- Michalewiczowa, M. „Sapieha Iwan.” In *Polski Słownik Biograficzny*. Vol. 34. Wrocław 1992-1993, pp. 618-620.
- Mommsen, T. „Die Geschichte der Todesstrafe im Römischen Staat.” In idem. *Reden und Aufsätze*. Berlin 1905, pp. 437-448.
- Mommsen, T. *Römisches Strafrecht*. Leipzig 1899. Nachdr. Graz 1955.
- Mommsen, T. *Römisches Staatsrecht*. Vol. 1-2. Basel 1952.
- Nehlsen, H. „Alarich II. als Gesetzgeber. Zur Geschichte der Lex Romana Visigothorum.” In *Studien zu den germanischen Volksrechten. Gedächtnisschrift für Wilhelm Ebel. Vorträge gehalten auf dem Fest – Somposion anlässlich des 70. Geburtstages von Wilhelm Ebel am 16. Juni 1978 in Göttingen*. Hrsg. Götz Landwehr. Frankfurt am Main 1982, pp. 143-204.
- Nicolini, U. „Intorno al progetto di una nuova storia del diritto romano nel medio evo.” In idem. *Scritti di storia del diritto italiano*. Milano 1983, pp. 32-45.
- Nicolini, U. „L’ordinamento giuridico nel comune medievale.” In idem. *Scritti di storia del diritto italiano*. Milano 1983, pp. 433-469.
- Nogrady, F. *Römisches Strafrecht nach Ulpian. Buch 7 bis 9 De officio proconsulis*. Berlin 2006.
- Ostrożyński, W. *Perduellio i crimen maiestatis. Przyczynek do dziejów rzymskiego prawa karnego*. Warszawa 1886.
- Ostrożyński, W. *Sprawa zamachu na Stanisława Augusta z 3 listopada 1771 roku przed sądem sejmowym*. Lwów 1891.
- Osuchowski, W. „Des études sur la genèse du crimen maiestatis en Rome républicaine.” *Archivium Iuridicum Cracoviense* 14-15(1981-82), pp. 19-32.
- Osuchowski, W. „The Origins of Prosecuting High Treason in Roman Republic.” *Archivium Iuridicum Cracoviense* 11(1978), pp. 57-67.
- Osuchowski, W. „Zu einigen Hochverratsfällen im republikanischen Rom.” *Archivium Iuridicum Cracoviense* 12(1979), pp. 33-50.
- Palmirski, T. „Koniec Morsztyna. Przyczynek do dziejów prawa rzymskiego w Polsce.” *Zeszyty Prawnicze UKSW* 3.1(2003), pp. 163-170.
- Pankiewicz, R. „Apotropaiczno – odnawiające funkcje kary śmierci w społeczeństwie wczesnorzymskim.” In *Kara śmierci w starożytnym Rzymie*. Kowalski, H., Kuryłowicz, M., eds. Lublin 1996, pp. 23-40.
- Pawlak, M. *Walka o władzę w Rzymie w latach 425-435*. Toruń 2004
- Pesch, A. *De perduellione, crimine maiestatis et memoria damnata*. Aachen 1995.
- Pharr, C. „The Interdiction of Magic in Roman Law.” *Transactions of the American Philological Association* 63(1932), pp. 269-295.
- Płaza, S. *Historia prawa w Polsce na tle porównawczym*. Vol. 1. 10th-13th c. Kraków 1997.
- Rafacz, J. *Dawne polskie prawo karne. Część ogólna*. Warszawa 1932.
- Rafacz, J. „Z dziejów prawa rzymskiego w Polsce.” In *Księga pamiątkowa ku czci Leona Pinińskiego*. Vol. 2. Lwów 1936, pp. 197-200.
- Rein, W. *Das Criminalrecht der Römer von Romulus bis auf Justinianus*. Leipzig 1844.
- Ritter, J.M. *Verrat und Untreue an Volk, Reich und Staat. Politischen Dekikts in Deutschland bis zum Erlass des Reichstrafgesetzbuches*. Berlin 1942.
- Robinson, O.F. *Penal Practice and Penal Policy in Ancient Rome*. London-New York 2007.

- Robinson, O.F. *The Criminal Law of Ancient Rome*. London 1995.
- Rogers, R.S. *Criminal Trials and Criminal Legislation under Tiberius*. Middletown 1935.
- Rollin, J.P. *Untersuchungen zu Rechtsfragen römischer Bildnisse*. Bonn 1979.
- Rotondi, G. *Leges publicae populi Romani*. Milano 1912. Nachdr. Darmstadt 1962.
- Rutkowski, H. „Z dziejów Sandomierza w okresie Odrodzenia.” In *Studia sandomierskie. Materiały do dziejów miasta Sandomierza i regionu sandomierskiego*. Wąsowicz, T., Pazdur, J., eds. Sandomierz 1967, pp. 287-344.
- Rzeplińska, I. *Konfiskata mienia. Studium z historii polityki kryminalnej*. Warszawa 1997.
- Sajkowski, R. *Divus Augustus pater. Kult boskiego Augusta za rządów dynastii julijsko – klaudyskiej*. Olsztyn 2001.
- Sajkowski, R. „Julia Augusta a prawo o obrazie majestatu.” In *Religia i prawo karne w starożytnym Rzymie Materiały z konferencji zorganizowanej 16017 maja 1997 r. w Lublinie*. Dębiński, A., Kuryłowicz, M., eds. Lublin 1998, pp. 127-138.
- Sajkowski, R. „Klasyfikacja przestępstw o obrazę majestatu za rządów Tyberiusza na podstawie katalogu Swetoniusza (Tib. 58).” *Echa Przeszłości* 1(2000), pp. 17-28.
- Sajkowski, R. „Próba oskarżenia Lucjusza Enniusza (Tac. Ann. III 70).” In *Od starożytności do współczesności. Studia historyczne. Wydanie jubileuszowe z okazji 75. rocznicy urodzin i 55 – lecia pracy zawodowej, w tym 30 – lecia pracy naukowej Profesora Tadeusza M. Gelewskiego*. Śliwiński, J., ed. Olsztyn 1997, pp. 73-78.
- Sajkowski, R. „Sprawa Falaniusza i Rubriusza. Początek procesów o obrazę majestatu za rządów Tyberiusza.” *Zeszyty Naukowe Wyższej Szkoły Pedagogicznej w Olsztynie* 13(1998). *Prace Historyczne II*, pp. 11-21.
- Salmonowicz, S. „Franciszek Minocki (1731-1784) jako pisarz prawa karnego.” In *Miscellanea iuridica złożone w darze Karolowi Koranyiemu*. Warszawa 1981, pp. 121-146.
- Santalucia, B. *Diritto e processo penale nell'antica Roma*. Milano 1989.
- Santalucia, B. *Studi di diritto penale romano*. Roma 1994.
- Saumagne, Ch. “La passion de Thrasea.” *Revue des Études latines publiée par la Société des Études latines* 33(1955), pp. 241-257.
- Sawicki, W. „Prawo międzynarodowe średniowiecznej ‚Christianitas‘.” *Roczniki Teologiczne – Kanoniczne KUL* 14(1967), fasc. 5, pp. 21-40.
- Sawicki, W. *Studia nad wpływami praw obcych w dawnej Polsce*. Warszawa 1971.
- Sbriccoli, M. *Crimen laesae maiestatis. Il problema del reato politico alle soglie della scienza penalistica moderna*. Milano 1974.
- Schisas, P.M. *Offences against the State in Roman Law and the Courts Which Were Competent to Take Cognisance of Them*. London 1926.
- Seager, R. “Lex Varia de maiestate.” *Historia* 16(1967), pp. 37-43.
- Seibt, W. *Die Majestätsprozesse vor dem Senatsgericht unter Tiberius*. Wien 1969.
- Siber, H. “Analogie, Amtsrecht und Rückwirkung im Strafrechte des römischen Freistaates.” *Abhandlungen der philologisch-historischen Klasse der sächsischen Akademie der Wissenschaften* 43. Leipzig 1936.
- Sitek, B. *Infamia w ustawodawstwie cesarzy rzymskich*. Olsztyn 2003.
- Śląpek, D. „Damnatio ad bestias w rozwoju venationes okresu republiki rzymskiej.” In *Kara śmierci w starożytnym Rzymie*. Kowalski, H., Kuryłowicz, M., eds. Lublin 1996, pp. 127-142.

- Solidoro Maruotti, L. "La disciplina del crimen maiestatis tra tardo antico e medioevo." In *Diritto e giustizia nel processo. Prospettive storiche costituzionali e comparatistiche*. Cascione, C., Masi Doria, C., eds. Napoli 2002, pp. 361-446.
- Sondel, J. „Kodeks Justyniana jako podstawa prawna w postępowaniu sądowym o crimen laesae maiestatis w osiemnastowiecznej Polsce.” *Nowy Filomata* 4(2000), issue 2, pp. 143-148.
- Sondel, J. „Prawo rzymskie jako podstawa projektów kodyfikacyjnych w dawnej Polsce.” *Zeszyty Prawnicze UKSW* 1(2001), pp. 47-70.
- Sondel, J. „Prawo rzymskie w procesie sprawców porwania Stanisława Augusta.” In *Crimina et mores. Prawo karne i obyczaje w starożytnym Rzymie*. Kuryłowicz, M., ed. Lublin 2001, pp. 191-200.
- Sondel, J. *Ze studiów nad prawem rzymskim w Polsce w okresie Oświecenia*. Kraków 1988.
- Starowieyski, M. „Pisarze pogańscy o chrześcijanach (część I).” *Przegląd Powszechny* 102(1985), fasc. 1, pp. 18-31.
- Strachan-Davidson, J.L. *Problems of the Roman Criminal Law*. Vol. 1-2. Oxford 1912.
- Szcząska, Z. „Sąd sejmowy w Polsce od końca XVI do końca XVIII wieku.” *Czasopismo Prawno – Historyczne* 20(1968), fasc.1, pp. 93-124.
- Taubenschlag, R. „Jakób Przyłuski, polski romanista XVI w.” *Rozprawy Akademii Umiejętności. Wydział Historyczno – Filozoficzny*. Series II. Vol. 36. Kraków 1918, pp. 232-276.
- Taubenschlag, R. *Prawo karne polskiego średniowiecza*. Lwów 1934.
- Taubenschlag, R. *Wpływy rzymsko – bizantyńskie w drugim Statucie litewskim*. Lwów 1933.
- Thesaurus linguae Latinae*. Vol. 10. Leipzig 1936.
- Uruszczak, W. *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.* Warszawa 1979.
- Uruszczak, W. „Zapomniany prawnik hiszpański Garsias Quadros z Sewilli.” *Odrodzenie i Reformacja w Polsce* 22(1977), pp. 57-74.
- Vetulani, A. „Opory wobec prawa rzymskiego w dawnej Polsce.” *Analecta Cracoviensia* 1(1969), pp. 372-387.
- Voci, P. *Diritto ereditario Romano*. Vol. 2, Milano 1963.
- Voci, P. “Diritto sacro romano in età arcaica.” *Studia et Documenta Historiae et Iuris* 19(1953), pp. 38-103.
- Vogt, J. *Upadek Rzymu*. Warszawa 1993.
- Volkman, H. *Zur Rechtsprechung im Prinzipat des Augustus*. *Historische Beiträge*. München 1969.
- Volterra, E. „Processi penali contro i defunti in diritto romano.” *Revue Internationale des Droits de l'Antiquité* 3(1949), pp. 485-500.
- Watson, A. “La Mort d’Horatia et le Droit Pénal Archaique á Rome.” *Revue Historique* 57(1979), pp. 5-20.
- Wieacker, F. *Privatrechtsgeschichte der Neuzeit*. Göttingen 1967.
- Wołodkiewicz, W. *Europa i prawo rzymskie. Szkice z historii europejskiej kultury prawnej*. Warszawa 2009.
- Wołodkiewicz, W. *Rzymskie korzenie współczesnego prawa cywilnego*. Warszawa 1978.

Bibliography

- Zabłocka, M. *Romanistyka polska po II wojnie światowej*. Warszawa 2002.
- Zäch, C. *Die Majestätsprozesse unter Tiberius in der Darstellung des Tacitus*. Winterthur 1972.
- Zakrzewski, K. „Ostatnie lata Stilichona.” *Kwartalnik Historyczny* 39(1925), pp. 445-514.
- Zakrzewski, K. „Rządy i opozycja za cesarza Arkadiusza.” *Rozprawy Polskiej Akademii Umiejętności. Wydział Historyczno – Filozoficzny. Series II. Vol. 41*. Kraków 1927, pp. 75-231.
- Zakrzewski, W. *Powstanie i wzrost reformacji w Polsce 1520-1572*. Lipsk 1870.
- Zdrójkowski, Z. *Teodor Ostrowski (1750-1802), pisarz dawnego polskiego prawa sądowego*. Warszawa 1956.
- Zumpt, A.W. *Das Criminalrecht der römischen Republik*. Vol. 1. Part 2. Berlin 1865 (Neudruck Aalen 1993)
- Żak, E. „Prawnicy rzymscy o sposobach wykonania kary śmierci.” In *Kara śmierci w starożytnym Rzymie*. Kowalski, H., Kuryłowicz, M., eds. Lublin 1996, pp. 109-120.
- Żelewski, R. „Herbert Jan.” In *Polski Słownik Biograficzny*. Vol. 9. Wrocław 1960-1961, pp. 440-442.

INDEX OF SOURCES

I. Ancient sources

1. Legal

Codex Iustiniani

1,2	Sec. 24	5,4,6	Sec. 19
1,3,23	Sec. 11	6,23,15	Sec. 18
1,4	Sec. 24	6,26,11	Sec. 19
1,5,2	Sec. 11	6,56,4 pr.-1	Sec. 11
1,5,4,2	Sec. 29	7,2,2	Sec. 11
1,5,4,4	Sec. 11	7,39,9	Sec. 29
1,5,19	Sec. 27	8,5 pr.	Sec. 27
1,12	Sec. 24	8,17 (18),11,1	Sec. 11
1,14,8	Sec. 17	9,1,20	Sec. 19, Sec. 29
1,14,12	Sec. 23	9,2,17	Sec. 18
1,23,5	Sec. 23	9,2,17,1	Sec. 35
1,49	Sec. 24	9,5	Sec. 24
1,49,1	Sec. 18	9,5,1	Sec. 9
1,49,1 pr.	Sec. 18	9,5,3-4	Sec. 19, Sec. 26
2,11,4	Sec. 11	9,6,1	Sec. 29
2,15	Sec. 19	9,7	Sec. 25, Sec. 33,
2,16	Sec. 19		Sec. 36
4,1	Sec. 18	9,7,1	Sec. 9
4,19	Sec. 29	9,7,5,2	Sec. 29
4,19,25	Sec. 35	9,8,1	Sec. 12

Index of sources

9,8,2	Sec. 18	11,58,2	Sec. 24
9,8,3	Sec. 12, Sec. 13, Sec. 26, Sec. 36	11,60,2 12,1,2	Sec. 18 Sec. 11
9,8,3-4	Sec. 18, Sec. 29	12,1,12	Sec. 11
9,8,4	Sec. 13, Sec. 29	12,35	Sec. 24
9,8,5	Sec. 8, Sec. 9, Sec. 11, Sec. 12, Sec. 23	12,35 (36),3 12,36,3	Sec. 11 Sec. 18
9,8,5 pr.	Sec. 9, Sec. 11, Sec. 17, Sec. 18, Sec. 19, Sec. 23, Sec. 29	12,36,18	Sec. 18
<i>Codex Theodosianus</i>			
9,8,5,1	Sec. 11, Sec. 19	9,4,1	Sec. 9
9,8,5,2	Sec. 13	9,5,1	Sec. 15
9,8,5,4	Sec. 27	9,6,2-3	Sec. 15
9,8,5,7	Sec. 18, Sec. 26, Sec. 29	9,7,3	Sec. 11
9,8,6	Sec. 16, Sec. 18, Sec. 27, Sec. 29	9,11,1 9,21,9	Sec. 15 Sec. 9
9,8,6,2	Sec. 2, Sec. 6, Sec. 8, Sec. 9, Sec. 11	9,26,1 9,38,6	Sec. 10 Sec. 9
9,12,1	Sec. 19	9,42,23	Sec. 12
9,22	Sec. 9	10,10,15	Sec. 15
9,24	Sec. 24	16,5,5	Sec. 11
9,24,2	Sec. 9	16,5,40	Sec. 9
9,30	Sec. 18, Sec. 24	16,5,40,4	Sec. 11
9,30,1	Sec. 18		
9,30,2	Sec. 13	<i>Collatio legum Mosaicarum et Romanarum</i>	
9,39,2,3	Sec. 19	1,3,1	Sec. 11
9,41,1	Sec. 13, Sec. 15		
9,41,11 pr.	Sec. 13	<i>Digesta Iustiniani</i>	
9,41,16	Sec. 18	1,1,5	Sec. 18
9,42,3	Sec. 18	1,1,11	Sec. 23
9,42,3-4	Sec. 13, Sec. 29	1,3,31	Sec. 15, Sec.17
9,43,3	Sec. 11	1,4,1 pr.	Sec. 15
9,46,8	Sec. 18	1,9,2	Sec. 11
9,47,22	Sec. 12, Sec. 26	1,18,14	Sec. 36
9,49,10	Sec. 12, Sec. 19	2,1,7	Sec. 19
9,51	Sec. 13	2,1,7 pr.	Sec. 27, Sec. 29
10,59,1	Sec. 18, Sec. 19	2,1,9	Sec. 23
11,19	Sec. 29	3,1,1,9	Sec. 11
11,19,1 pr.	Sec. 11	3,1,1,10	Sec. 11
11,44,1	Sec. 18	3,2,11,3	Sec. 11, Sec. 27, Sec. 29

3,2,13,7	Sec. 11	48,2,12	Sec. 29
4,4,37,1	Sec. 36	48,2,20	Sec. 11, Sec. 12, Sec. 19, Sec. 29
4,48,1,7	Sec. 11		Sec. 9, Sec. 18
4,2,8,3	Sec. 19	48,4	Sec. 18
5,1,53	Sec. 15	48,4,1	Sec. 17, Sec. 23
11,7,35	Sec. 19, Sec. 29	48,4,1 pr.	Sec. 6, Sec. 9, Sec. 18, Sec. 23, Sec. 24
14,2,9	Sec. 17	48,4,1,1	Sec. 9, Sec. 18
22,4,14	Sec. 11		Sec. 8, Sec. 9, Sec. 18, Sec. 19
22,5	Sec. 29	48,4,2	Sec. 18
22,5,14	Sec. 11	48,4,3	Sec. 19
22,5,3,5	Sec. 11		Sec. 18
23,5,4-6	Sec. 19	48,4,4	Sec. 9, Sec. 18
24,1,1	Sec. 11	48,4,4 pr.	Sec. 9, Sec. 10
24,1,10	Sec. 11	48,4,4,1	Sec. 9
24,1,32,7	Sec. 11	48,4,5 pr.-2	Sec. 9, Sec. 18, Sec. 25
24,1,32,8	Sec. 11	48,4,6	Sec. 19, Sec. 29
24,1,7,8	Sec. 23	48,4,7	Sec. 13
24,1,9,2	Sec. 11	48,4,7 pr.-2	Sec. 9, Sec. 10, Sec. 29, Sec. 36
28,1,9	Sec. 11	48,4,7,3	Sec. 25
28,1,10,6	Sec. 11		Sec. 13, Sec. 19, Sec. 29, Sec. 36
28,1,13,2	Sec. 11	48,4,7,4	Sec. 11, Sec.19
28,1,18,1	Sec. 11	48,4,8	Sec. 9, Sec. 18
28,3,6,11	Sec. 11		Sec. 7, Sec. 11, Sec. 18, Sec. 19, Sec. 25, Sec. 29
28,5,1	Sec. 27	48,4,9	Sec. 13
29,2,85,1	Sec. 18	48,4,10	Sec. 11
30,1	Sec. 11	48,4,11	Sec. 10
31,76,9	Sec. 11		Sec. 9, Sec. 24
37,14,10	Sec. 11		Sec. 18
40,4,56	Sec. 11	48,4,18,10	Sec. 11
40,5,40,1	Sec. 23	48,7,1 pr.	Sec. 11
40,9,15 pr.	Sec. 10, Sec. 19	48,8,3,5	Sec. 11
44,7,3 pr.	Sec. 6	48,8,14	Sec. 10
45,1,108	Sec. 19	48,10	Sec. 9, Sec. 24
47,2,21	Sec. 18	48,10,25	Sec. 18
47,20	Sec. 19	48,11,6	Sec. 11
47,22	Sec. 24	48,16,15,3	Sec. 11
47,22,2	Sec. 9	48,18,10,1	Sec. 18
48,2,1,1	Sec. 10	48,18,15	Sec. 26
48,2,4	Sec. 11	48,19,6	Sec. 24
48,2,8	Sec. 11, Sec. 13, Sec. 29	48,19,18	Sec. 10, Sec. 18

Index of sources

48,19,24	Sec. 11, Sec. 19	4,2	Sec. 6
48,19,26	Sec. 12	4,182	Sec. 11
48,19,40	Sec. 19		
48,19,42	Sec. 19	<i>Institutiones Iustiniani</i>	
48,22,1	Sec. 11	3,1,5	Sec. 11
48,22,6 pr.	Sec. 11	4,8,7	Sec. 19
48,22,17	Sec. 11	4,13,1	Sec. 36
48,24,1	Sec. 11, Sec. 27	4,13,11 (10)	Sec. 11
48,24,3	Sec. 11	4,18,3	Sec. 23
49,1,16	Sec. 13		
49,14,22 pr.	Sec. 19	<i>Novellae Iustiniani</i>	
49,14,46,6	Sec. 19	22,15,1	Sec. 23
49,15,7,1	Sec. 6	95,1,1	Sec. 9
49,15,21,1	Sec. 7	117,8,1	Sec. 13
49,16,3,1	Sec. 13	117,9,1	Sec. 13
49,16,3,10	Sec. 13		
49,16,4,4	Sec. 11	<i>Pauli Sententiae</i>	
49,16,7	Sec. 13	1,12,4	Sec. 15
49,24,1	Sec. 29	1,2,1	Sec. 11
50,2,2,7	Sec. 12	5,13,3	Sec. 15
50,2,13,2	Sec. 12	5,15,1	Sec. 11
50,3	Sec. 19	5,21,3-4	Sec. 15
50,4,3,9	Sec. 12	5,23,18	Sec. 15
50,6,1	Sec. 19	5,29	Sec. 8, Sec. 11
50,13,5,1	Sec. 11	5,29,1	Sec. 8, Sec. 9
50,16,15	Sec. 23	5,29,1-2	Sec. 15
50,16,53,2	Sec. 10		
50,16,234 pr.	Sec. 7	<i>Regulae Ulpiani</i>	
		20,14	Sec. 11
<i>Gai Institutiones</i>			
1,128	Sec. 11	<i>Tituli ex corpore Ulpiani</i>	
2,147	Sec. 11	25,4	Sec. 11

2. Literary

Livius Andronicus
Aegisthus **Sec. 6**

Ammianus Marcellinus
Rerum gestarum libri
 23,6,81 **Sec. 12**
 28,2,14 **Sec. 12**

Appianus		<i>De domo sua</i>	
<i>Bella civilia</i>		101	Sec. 11
1,31	Sec. 11	<i>De inventione</i>	
		2,17,53	Sec. 6
Appuleius		<i>De legibus</i>	
<i>Florida</i>		2,6,14	Sec. 8
4,20	Sec. 10	<i>De natura deorum</i>	
		2,30,77	Sec. 6
Asconius		<i>De oratore</i>	
<i>Orationum Ciceronis quinque enarratio</i>		1	Sec. 23
58 C	Sec. 9	2	Sec. 23
73-74 C	Sec. 8	2,25,107	Sec. 8
79	Sec. 8	2,39,164	Sec. 6
<i>Ad Herennium</i>		2,107	Sec. 8
1,12,21	Sec. 9	2,197-201	Sec. 8
1,15,25	Sec. 8	2,214	Sec. 8
1,21	Sec. 8	<i>De re publica</i>	
2,12,17	Sec. 9	1,3	Sec. 6
2,17	Sec. 8	<i>Divinatio in Q.Caecilium</i>	
4,24,34	Sec. 8	69	Sec. 6
		<i>Divinatio in Caecilium oratio</i>	
Caesar		3,7	Sec. 8
<i>Commentarii de bello Gallico</i>		<i>Epistolae ad Brutum</i>	
1,7,4	Sec. 8	1,12,2	Sec. 12
6,23	Sec. 15	<i>In Marcum Antonium Orationum Philippicarum Libri XIV</i>	
		1,9,21	Sec. 11
Charisius		1,9,21-22	Sec. 11
<i>Artis grammaticae libri V</i>		1,9,21-23	Sec. 8
273,23	Sec. 7	1,91,21	Sec. 9
		2,7,17-18	Sec. 11
Cicero		13,11,26	Sec. 11
<i>Ad Quirites</i>		<i>In Pisonem</i>	
18	Sec. 9	21,50	Sec. 9
<i>Brutus</i>		<i>Oratio in Verrem</i>	
44,16,2	Sec. 9	2,1,84	Sec. 9
46,169	Sec. 9	2,5,50	Sec. 6
89,304	Sec. 8	<i>Partitiones oratoriae</i>	
<i>De divinatione</i>		30, 105	Sec. 6, Sec. 8
1,38,8	Sec. 6	<i>Pro Balbo</i>	
1,38,82	Sec. 6		

Index of sources

16,37	Sec. 6	81,26,4L	Sec. 11
35-36	Sec. 6		
<i>Pro Cluentio</i>		Frontinus	
54,148	Sec. 11	<i>Strategmata</i> 4,1,38	Sec. 11
42,119	Sec. 11		
<i>Pro Sestio</i>		Horatius	
14,33	Sec. 11	<i>Carmina</i>	
37,79	Sec. 8	1,12,51-52	Sec. 6
<i>Pro Sexto Roscio Amerino oratio</i>			
131	Sec. 6	Livius	
		<i>Ab Urbe condita</i>	
Dio Cassius		1,26	Sec. 7, Sec. 9
<i>Historia Romana</i>		1,28	Sec. 9, Sec. 11
37,26	Sec. 8	2,4	Sec. 9
39,56	Sec. 9	2,7,7	Sec. 6
42,51,1-2	Sec. 8	2,8,2	Sec. 9, Sec. 11
54,3,4	Sec. 11	2,41,10-12	Sec. 7
56,27,2	Sec. 11	2,57,3	Sec. 6
57,10,5	Sec. 11	3,55	Sec. 6
57,18,8	Sec. 11	3,55,7	Sec. 11
57,19,1	Sec. 9	38,11,2	Sec. 6
57,22,5	Sec. 11	4,15,8-4,16,1	Sec. 12
58,15,4	Sec. 11	6,18	Sec. 9
58,16,1	Sec. 11	25,4	Sec. 11
58,21,6	Sec. 11	<i>Periochae</i>	
		65	Sec. 8
Dionysius Halicarnassensis		127	Sec. 10
<i>Antiquitates Romanae</i>		Ovidius	
2,10,3	Sec. 8	<i>Fasti</i>	
2,74	Sec. 8	2,131-133	Sec. 6
2,74, 3	Sec. 11	2,138	Sec. 6
6,89,3	Sec. 11	5,46	Sec. 6
7,17,5	Sec. 8		
7,17,5	Sec. 11	Plinius	
8,80,1-3	Sec. 12	<i>Epistolae</i>	
10,32,1	Sec. 8	2,11,10-18	Sec. 11
Festus		4,9,3-15	Sec. 11
<i>De verborum significatu</i>		2,11,19-22	Sec. 11
47	Sec. 7	4,9,16-19	Sec. 11

4,9,17	Sec. 11	56,4	Sec. 11
2,11,4	Sec. 11	58,1-2	Sec. 6
Polybius,		<i>divus Iulius</i>	
<i>Historiae</i>		37	Sec. 8
21,32,3	Sec. 6	42	Sec. 8
Plutarchus		42,2	Sec. 11
<i>Vitae paralellae</i>		42,3	Sec. 11
<i>Publicola</i>		75,4	Sec. 10
12,1	Sec. 9	<i>Tiberius</i>	
<i>Romulus</i>		2	Sec. 7
22,3	Sec. 11	8,1	Sec. 11
<i>Gaius Gracchus</i>		10	Sec. 10
38	Sec. 11	61	Sec. 11, Sec. 12
<i>Tiberius Gracchus</i>		30	Sec. 23
20	Sec. 11	<i>Nero</i>	
Quintilianus		16	Sec. 9
<i>Institutiones oratoriae</i>		36	Sec. 12
3,7,7	Sec. 6	<i>Caligula</i>	
7,3,35	Sec. 6	12,3	Sec. 10
<i>Res Gestae Divi Augusti</i>		<i>Scholia Bobiensia ad Ciceronem</i>	
10	Sec. 6, Sec. 9, Sec. 11	27	Sec. 7
25	Sec. 6	Tacitus	
35,1	Sec. 6	<i>Annales</i>	
Sallustius		1,8	Sec. 6
<i>De coniuratione Catilinae</i>		1,72,3	Sec. 6, Sec. 8
23,3-4	Sec. 13	1,72,4	Sec. 9
Seneca		1,73	Sec. 9
<i>De beneficiis</i>		1,74	Sec. 9, Sec. 11
4,19,4	Sec. 6	2,72	Sec. 23
<i>Epistulae morales ad Lucilium</i>		2,31	Sec. 11
14,5	Sec. 11	2,32	Sec. 11
Suetonius		2,50	Sec. 9
De vita Caesarum		2,50,1-3	Sec. 9
<i>divus Augustus</i>		3,10	Sec. 11
		3,17,8	Sec. 11
		3,17-18	Sec. 11
		3,18	Sec. 11
		3,23,49-51	Sec. 11
		3,23,68	Sec. 11

Index of sources

3,24,3	Sec. 6	Valerius Maximus	
3,38,3	Sec. 11	<i>Facta et dicta memorabilia</i>	
3,49	Sec. 11	2,2,2	Sec. 6
3,51,3	Sec. 11	2,7,15	Sec. 11
3,66-69	Sec. 9	4,7,3	Sec. 8
3,68,2	Sec. 11	6,1,8	Sec. 10
3,70	Sec. 9	6,9,13	Sec. 8
3,76	Sec. 11	8,1,4	Sec. 7
4,13,2	Sec. 11	8,5,2	Sec. 8
4,21	Sec. 11	8,6,4	Sec. 8
4,21,5	Sec. 11		
4,28,4	Sec. 10	Velleius Paterculus	
4,30,2	Sec. 11	<i>Historiae Romanae</i>	
4,34,2-3	Sec. 8	1,20	Sec. 23
4,52	Sec. 9	2,76,4	Sec. 10
5,9	Sec. 12,	2,91,3	Sec. 11
	Sec. 36	2,130,3	Sec. 10
6,2	Sec. 11		
6,29,2	Sec. 11	Varro	
6,30,1	Sec. 11	<i>De lingua Latina libri</i>	
6,48,6	Sec. 11	1,1,7,49	Sec. 7
50,2	Sec. 9	5,3	Sec. 7
11,38	Sec. 11		
12,52	Sec. 9	Vergilius	
14,48	Sec. 11	<i>Aeneis</i>	
15,44	Sec. 9	12,819	Sec. 6
16,14	Sec. 9		
<i>Germania</i>		Zosimos	
7	Sec. 15	<i>Historia nova</i>	
14	Sec. 15	5,7-8	Sec. 8

II. Mediaeval and modern sources

1. Legal

- 1588 metų Lietuvos Statutas. Vol. 2. Tekstas. Kaunas 1938 (*The Statutes of the Grand Duchy of Lithuania*. English transl. by Konrad Szulga) **Sec. 21, Sec. 24, Sec. 25, Sec. 26, Sec. 27, Sec. 29, Sec. 35, Sec. 36**
- „Artykuły wojenne hetmańskie.” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 478-482. **Sec. 24**
- „Bezpieczeństwo obrad publicznych i osób w nie wchodzących.” In *Volumina Legum*. Vol. 7, Petersburg 1860, pp. 42-43. **Sec. 24, Sec. 26**
- „Bezpieczeństwo sądów i sejmików.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 184 **Sec. 24**
- “Crimen laesae Majestatis... (incip.)” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 269. **Sec. 21, Sec. 24, Sec. 27, Sec. 33**
- “De crimine laesae Majestatis Regiae, et perduellionis.” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 251-252. **Sec. 21, Sec. 24, Sec. 25, Sec. 26, Sec. 27, Sec. 29, Sec. 35, Sec. 36, Sec. 37**
- “De eo qui coram Regia Maiestate aliquem vulneraverit, vel gladium extraxerit.” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 23. **Sec. 21, Sec. 24**
- “De eo quod pater non teneatur ferre iniquitatem filii et e converso.” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 24 **Sec. 28**
- “De injuriosis erga parentes.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 190 **Sec. 35**
- “De poena eorum, qui manu armata ad judicia et Conventus Generales et particulares veniunt.” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 165. **Sec. 24, Sec. 26**
- Decretum Gratiani* **Sec. 16, Sec. 18, Sec. 36**
- „Deklaracja dekretu jaśnie wielmożnego Lubomirskiego, Marszałka Wielkiego Koronnego i Hetmana Polnego Koronnego, od stanów Rzplitej Obojga Narodów.” In *Volumina Legum*. Vol. 5. Petersburg 1860, pp. 9-10. **Sec. 29**
- „Dekret na sądy nowe przeszłe.” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 32-33. **Sec. 27**
- “Edictum contra Lutheranos.” In *Acta Tomiciana*. Vol. 6. Posnaniae 1857, p. 289. **Sec. 24**
- Lex Romana Visigothorum* **Sec. 15**
- Lex Visigothorum* **Sec. 15**
- Liber Sextus* **Sec. 18, Sec. 19**
- “Litera obligatoria in qua D. Rex Poloniae promittit terram Sandomiriae se nunquam cuiquam obligaturum.” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 106-107. **Sec. 21, Sec. 24**
- “Lustracya.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 388. **Sec. 24**

- „Mandatum ad capitaneos regni de quibusdam articulis constitutionum in conventu generali regni Piotrcoviensis anno 1510 latarum publicandis et exequendis.” In *Corpus Iuris Polonici*. Vol. 3. Cracoviae 1906, p. 118. **Sec. 24**
- „Myśli do prospektu Kodeksu.” In *Kodeks Stanisława Augusta. Zbiór dokumentów*. Borowski, S., ed., Warszawa 1938, pp. 55-63. **Sec. 21, Sec. 25**
- „O imaniu wywołańców.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 257. **Sec. 35**
- „O marszałku Związkowym.” In *Volumina Legum*. Vol. 6. Petersburg 1860, p. 34. **Sec. 27**
- „O mężobójcach, i skrutyniach, i wieży.” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 255-256. **Sec. 29**
- „O monecie.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 394. **Sec. 24**
- „O mynicy tak domowej jako i postronnej.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 367. **Sec. 24**
- „O przyjeżdżaniu na Trybunał i insze sądy podkomorskie, ziemskie i grodzkie.” *Volumina Legum*. Vol. 3. Petersburg 1859, p. 133. **Sec. 24**
- „O rusznicach.” In *Volumina Legum*. Vol. 2. P. 402. **Sec. 24**
- „O rzeczach, które się poczcliwości dotyczą (1565).” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 52-53. **Sec. 29**
- „O rzeczach, które się poczcliwości dotyczą (1588).” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 256-257. **Sec. 29**
- „O siostrach jure victorum i paniach wiennych.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 257. **Sec. 37**
- „O zabiezeniu Konfederacyi żołnierskiej, i wszelkiej nawalnej domowej swywoli.” In *Volumina Legum*. Vol. 3. Petersburg 1859, pp. 216-217. **Sec. 27**
- „Ordynacya sądów sejmowych.” In *Volumina Legum*. Vol. 8. Petersburg 1860, p. 541-543. **Sec. 24, Sec. 29**
- Pirmasis Lietuvos Statutas. Tekstai senąja baltarusių, latynų ir senąja lenkų kalbomis*. Lazutka, S., Gudavičius, E., eds. Vol. 2. Part 1. Vilnius 1991. **Sec. 24, Sec. 27**
- „Poena statuta contra violatores consiliariorum et Nuntiorum, ad conventus publicos proficiscentium.” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 169. **Sec. 21, Sec. 24, Sec. 25, Sec. 27, Sec. 32, Sec. 33**
- „Prohibitio severa Sigismundi, Regis, ne in ejus Regnum et Dominia inferantur nec fiant in usu opera Martini Lutheri, Augustiniani, novi heresiarchae.” In *Acta Tomicianiana*. Vol. 5. Posnaniae 1855, p. 284. **Sec. 24**
- „Restytucja Urodzonego Krzysztofa Zborowskiego.” In *Volumina Legum*. Vol. 2. Petersburg 1859, pp. 332-333. **Sec. 27**
- „Rewizorowie.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 25. **Sec. 24**
- „Sądy Sejmowe.” In *Volumina Legum*. Vol. 10. Kraków 1889, p. 151. **Sec. 27**
- „Sądy sejmowe.” In *Volumina Legum*. Vol. 9. Kraków 1889, p. 246. **Sec. 21, Sec. 24, Sec. 25, Sec. 26, Sec. 27**

- „Scrutinium i oznaczenie dni ad causas criminales.” In *Volumina Legum*. Vol. 2. Petersburg 1859, p. 184. **Sec. 29**
- „Sprawa Kamieniecka.” In *Volumina Legum*. Vol. 5. Petersburg 1860, pp. 71-72. **Sec. 35**
- „Sprawa Smoleńska.” In *Volumina Legum*. Vol. 4. Petersburg 1859, p. 221. **Sec. 29**
- „Statut Litewski drugiej redakcji (1566). Statut wołyński.” In *Pomniki prawa litewskiego z XVI wieku*. Piekosiński, F. *Archiwum Komisji Prawniczej*. Vol. 7. Kraków 1900. **Sec. 24, Sec. 26, Sec. 27, Sec. 37**
- „Statuta Juris Armenici.” In *Corpus Iuris Polonici*. Vol. 3. Kraków 1906, pp. 401-538 **Sec. 27**
- Szymanowski, J. „Myśli do prospektu prawa kryminalnego.” In *Kodeks Stanisława Augusta. Zbiór dokumentów*. Borowski. Warszawa 1938, pp. 189-198. **Sec. 21, Sec. 24, Sec. 27**
- „Vladislaus Jagello contra haereticos et fautores eorum in Wieluń constituit.” In *Volumina Legum*. Vol. 1. Petersburg 1859, p. 38. **Sec. 21, Sec. 24, Sec. 27**
- Zbiór praw sądowych przez ex – kanclerza Andrzeja Ordynata Zamoyskiego ułożony, i w roku 1778 drukiem ogłoszony, a teraz przedrukowany, z domieszczeniemi źródeł i uwag, tak prawoznawczych, jak i prawodawczych, sporządzonych przez Walentego Dutkiewicza*. Warszawa 1874 **Sec. 21, Sec. 24, Sec. 25, Sec. 26, Sec. 27**

2. Procedural

- „Duplika z strony U. Walentego Zembrzuskiego, przez wspomnianego U. Węgrzeckiego miana.” In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lithuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 150-152 **Sec. 34**
- „Dwa zabytki polskiego sądownictwa karnego z wieku XVI.” Explained by Bojarski, A. *Rozprawy Polskiej Akademii Umiejętności*. Wydział Historyczno – Filozoficzny. Kraków 1874, pp. 256-314. **Sec. 31, Sec. 32, Sec. 33, Sec. 37**
- „Dyaryusz sejmu piotrkowskiego r. 1548.” In *Scriptores Rerum Polonicarum*. Vol. 1. *Dyaryusze sejmów Koronnych 1548, 1553 i 1570. Z rękopismów wydał i przypisami objaśnił J. Szujski*. Kraków 1872. **Sec. 31**
- „Dyaryusze sejmowe r. 1585.” Czuczynski, A., ed. In *Scriptores Rerum Polonicarum*. Vol. 18, Kraków 1901. **Section 32, Section 33, Section 35**
- „Kontynuacja dalsza Indukty także z Powództwa UU. Instygatorów Obojga Narodów i ich Delatorów, w sprawie o gwałtowne i najszkaradniejsze Majestatu i w nim Osoby Najjaśniejszego Pana obrażenie; przeciwko Inkarceratom, i ich

- współcznikom nieprzytomnym w Terminach wyrażonym, po ekspediowanych Skrutyniach i Inkwizycjach przez U. Antoniego Rogalskiego Metrykanta Kancelarii Mniejszej Koronnej." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773. Varsaviae 1774, pp. 69-76* **Sec. 32, Sec. 35**
- „Kontynuacja Indukty od UU. Instygatorów Koronnych wraz z ostateczną przeciw wszystkim Pozwanym i Przekonanym o ten Kryminał Konkluzją, przez Ur. Jana Nepomucena Słomińskiego Metrykanta Kancelarii Większej Koronnej czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773. Varsaviae 1774, pp. 60-69* **Sec. 31, Sec. 32, Sec. 33, Sec. 35, Sec. 37**
- „Oblata Dekretu Sądów Sejmowych w wyżej wyrażonej sprawie Criminis Regicidii ferowanego." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773. Varsaviae 1774, p.* **Sec. 37**
- „Obraza Majestatu przez zabicie sędziego grodzkiego w chwili jego urzędowania popełniona." In *Starodawne Prawa Polskiego Pomniki. Vol. 6. Kraków 1881, pp. 25-26* **Sec. 24**
- „Obrona z przydania przez Dekret Sejmowy od U. Marianny Łukawskiej o współność występku Obrażonego Majestatu Królewskiego obwinionej, i Przypozwanej, przez U. Wiktoryna Wiszowatego Żupnika i Komornika Ziemi Łomżyńskiej, przed Sądem Sejmowym w Izbie Senatorskiej uczyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773. Varsaviae 1774, pp. 122-128* **Sec. 34, Sec. 35, Sec. 36, Sec. 37**
- „Odpowiedź na Induktę UU. Instygatorów i ich Delatorów z Strony Urodz. Walentego Łukawskiego przy złożeniu Inkwizycji z mocy Dekretu Sądu Sejmo-

- wego wywiezionej w tymże Sądzie przez U. Cypriana Sowińskiego Patrona Asesorii Koronnej, przyznanemu U. Łukawskiemu, dla obrony przydanego, czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 77-88 **Sec. 34, Sec. 35, Sec. 36**
- „Odpowiedź na Replikę z strony UU. Instygatorów Koronnych i Lit. przeciwko U. Mariannie Łukawskiej uczynioną, przez tegoż U. Wiszowatego czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 129-131 **Sec. 32**
- „Odpowiedź z strony U. Walentego Łukawskiego, na powództwo UU. Instygatorów Koronnych i W.X. Litt. i ich Delatorów do Sądu Sejmowego w sprawie obrażenia Majestatu wyprowadzone przez U. Cypriana Sowińskiego Patrona Asesorii Koronnej, dla obrony Łukawskiemu przydanego w tymże Sądzie uczyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 40-43 **Sec. 34**
- „Odpowiedź z strony Urodzon. Józefa Cybulskiego Ucz. Walentego Peszyńskiego i Bogumiła Frankemberka oskarżonych na Induktę od UU. Instygatorów Koronnych i W.X. Lit. tudzież i Ich Delatorów po ekspediowanych Inkwizycjach w Sądzie Sejmowym mianą, przez U. Andrzeja Przeździeckiego Patrona Referendarii Koronnej i Komisji Skarbu Kor. Tymże oskarżonym dla obrony przydanego, czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 88-97 **Sec. 32, Sec. 35, Sec. 36**
- „Odpowiedź z Strony Urodzonego Walentego Zembrzuskiego, w Sprawie o zarzuty współczesństwa Kryminału Królobójstwa jakoby przez wiadomość popełnionego, na Sądy Sejmowe od Urodzonych Instygatorów Koronnego i W. Xię-

- stwa Litewskiego, tudzież Ich Delatorów Powodów Przypozwanego przez U. Stanisława Baczyńskiego Patrona Komisji Skarbowej, temuż U. Zembrzuskiemu dla obrony w Sądach Sejmowych przydanego, uczyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 43-50 **Sec. 34, Sec. 35**
- „Odpowiedź ze strony Jana Kuźmy o Kryminał Królobójstwa obwinionego na Powództwo UU. Instygatorów Obojga Narodów i ich Delatorów po ekspediowanych Skrutyniach i Inkwizycjach, przez U. Walentego Rzętkowskiego Patrona Asesorii Koronnej, przerwczonemu Kuźmie dla obrony przydanego, w Sądzie Sejmowym czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 109-115 **Sec. 35, Sec. 36**
- Pamiętniki do życia i sprawy Samuela i Krzysztofa Zborowskich*. Collated by Ż. Pauli, Lwów 1846, pp. 31-138. **Sec. 31**
- „Powtórna odpowiedź z strony Ur. Cybulskiego, Peszyńskiego i Frankemberka, przez U. Przeździeckiego Patrona tymże obwinionym przydanego, w Sądzie Sejmowym czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 107-109 **Sec. 34**
- Processus iudiciarius in causa ... Georgio ... Lubomirski ... ex instantia instigatoris Regni et delatione ... Hieronymi de Magna Skrzywno Dunin ad comitia Regni anni 1664 institutae et ibidem iudicatae ac decisae, Varsoviae 1664*. **Sec. 31, Sec. 33, Sec. 34, Sec. 37**
- “Replika od UU. Instygatorów na Induktę ze Strony U. Zembrzuskiego, przez U. Antoniego Rogalskiego Metrykanta Kancelarii Mniejszej Koronnej czyniona." In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 148-150 **Sec. 33**

- „Replika Z strony UU. Instygatorów i Vice Instygatorów Koronnych i Lit. tudzież Ich Delatorów przez U. Pawła Biało-brzeskiego Patrona Asesorii Koronnej, w Sądzie Sejmowym miana, na wyżej wyrażone odpowiedzi, od Łukawskiego, Cybulskiego, Peszyńskiego i Frankemberga czyniona.” In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 97-107 **Sec. 30, Sec. 32, Sec. 33, Sec. 35, Sec. 36, Sec. 37**
- „Replika Z strony UU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Marianny Łukawskiej o społeczeństwo Królobójstwa przekonanej, po ekspediowanych skrutyniach i inkwizycjach w Sądzie Sejmowym przez U. Antoniego Opelewskiego Patrona Asesorii Koronnej miana.” In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 128-129 **Sec. 32, Sec. 36**
- „Replika z Strony UU. Instygatorów Obojga Narodów i ich Delatorów na odpowiedź Jana Kuźmy Inkarcerata, o kryminal Królobójstwa przekonanego, po ekspediowanych skrutyniach i Inkwizycjach w Sądach Sejmowych przez U. Antoniego Opelewskiego, Patrona Asesorii Koronnej, czyniona.” In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773*. Varsaviae 1774, pp. 115-119 **Sec. 30, Sec. 32, Sec. 33, Sec. 36, Sec. 37**
- Rzeczycki, A. *Accusationis in Christophorum Sborovium actiones tres*. Cracoviae 1585. **Sec. 31, Sec. 35**
- „Sprawa U. Walentego Zembrzuskiego w propozycjach: 1mo. Że Ur. Zembrzuski nie wiedział o sekrecie uknowanego Królobójstwa przed wykonaniem onegoż, a zatem nie mógł zatamować występku tego. 2do. Że po wykonaniu zbrodni Królobójstwa dowiedziawszy się o niejże donosił komu należało i o pojmanie U. Łukawskiego starał się wprowadzane na Sądach Sejmowych przez U. Michała Węgrzeckiego Burgrabiego Grodzkiego Warszawskiego, Patrona temuż U. Zembrzuskiemu dla obrony przydanego.” In *Processus iudiciarius in causa respectu horrendi criminis regicidii in Sacra Persona Serenissimi Stanislai Augusti*

Regis Poloniae die 3 Novembris 1771 Anno Varsaviae commissi, ex instantia generosorum instigatorum Regni et M. D. Lihuaniae illorumque delatorum contra eiusdem criminis principales, comprincipales ac complices citatos, in iudiciis comitialibus Regni, Varsaviae gestus et formatus, Anno Domini 1773. Varsaviae 1774, pp. 132-137
Sec. 34

3. Literary

a. Manuscripts

Quadros, G. *Tractatus de crimine laesae maiestatis* (National Library in Warsaw, cat. no. BOZ 112) **Sec. 22, Sec. 24, Sec. 25, Sec. 26, Sec. 29**

b. Prints and Source Editions

Aretinus, A. *Commentaria seu Lectura super quatuor Institutionum Iustinianarum libris*. Lugduni 1545. **Sec. 19, Sec. 22**

Besold, Ch. *Dissertatio Politico – Juridica, de Majestate in genere, ejusque Juribus specialibus, in tres sectiones distributa ...* Argentorati 1625. **Sec. 17**

Bielski, M. *Kronika polska*. Vol. 3. Sanok 1856. **Sec. 24, Sec. 31, Sec. 33, Sec. 37**

Bocer, H. *Disputationum de universo, quo utimur, iure, pulchra methodo conscriptarum, denuo studiosa recognitarum, materiis, et quaestionibus variis adauctarum et eleganter reformatarum, Pars prima*. Tubingae 1612. **Sec. 17**

Bocer, H. *Tractatus compendiosus de Crimine Maiestatis*. Tubingae 1629. **Sec. 17, Sec. 18, Sec. 19**

Bossi, E. "Tractatus de crimine laesae maiestatis." In *Tractatus varii qui omnem fere criminalem materiam ... complectuntur*. Venetiis 1570. **Sec. 18, Sec. 19, Sec. 22**

Brodowski, S. *Corpus Iuris Militare Polonicum, w którym się znajdują Artykuły wojenne hetmańskie, Auctoritate Seymu walnego koronnego R. 1609, za Króla Jmci Zygmunta III w Warszawie aprobowane ...* Elbląg 1753. **Sec. 24, Sec. 26**

Carpzov, B. *Practica nova imperialis saxonica rerum criminalium*. Lipsiae 1739. **Sec. 17, Sec. 18, Sec. 19, Sec. 22**

Clarus, J. *Opera omnia sive Practica civilis atque criminalis*. Venetiis 1614. **Sec. 18, Sec. 19, Sec. 22**

Contius, A. *Digestorum liber XXXXVIII. Ad legem Juliam majestatis tit. IV*. Parisiis 1616. **Sec. 17, Sec. 18**

Cremani, A. *De iure criminali libri tres*. Vol. 2. Ticini 1792. **Sec. 17, Sec. 18**

Czaradzki, G. *Proces sądowy ziemskiego prawa karnego*. Warszawa 1636. **Sec. 24**
„Czwarty wypis z rękopisma x. Stan. Górskiego." *Pamiętnik Warszawski*. Vol. 12, 1818. **Sec. 32, Sec. 37**

Damhouder, J. *Praxis rerum criminalium*. Antverpiae 1570. **Sec. 19**

- Deciani, T. *Tractatus criminalis*. Vol. 1. Augustae Taurinorum 1593. **Sec. 17, Sec. 18, Sec. 29**
- Długosz, J. „Dziejów Polskich ksiąg dwanaście.” In *Jana Długosza Kanonika Krakowskiego Dzieła Wszystkie*. Vol. 6. Kraków 1870. **Sec. 24**
- Drezner, T. *Institutionum iuris Regni Poloniae libri IV*. Zamosci 1613. **Sec. 22, Sec. 23, Sec. 24, Sec. 25, Sec. 27, Sec. 29**
- Farinacius, P. *Praxis et Theoricae criminalis libri duo*. Venetiis 1595. **Sec. 17, Sec. 18, Sec. 22, Sec. 27, Sec. 29**
- Folleri, A. *Practica criminalis*. Lugduni 1556. **Sec. 18**
- Gigas, H. “De crimine laesae maiestatis.” In *Tractatus Universi Iuris*. Vol. 11. Venetiis 1584. **Sec. 8, Sec. 17, Sec. 18, Sec. 19, Sec. 22**
- Górski, S. „Diariusz sejmu krakowskiego r. 1536.” In Pocięcha, W. *Panowanie Zygmunta Starego (1506-1548) w świetle źródeł*. Kraków 1923. **Sec. 31**
- Groicki, B. *Porządek sądów i spraw miejskich prawa majdeburskiego w koronie polskiej*. Warszawa 1953. **Sec. 24**
- Hartknoch, M. *Res Publica Polonica Duobus Libris Illustrata*. Francofurti et Lipsiae 1687. **Sec. 24**
- Herburt, J. *Statuta i przywileje koronne z łacińskiego języka na polski przełożone, nowym porządkiem zebrane i spisane*. Kraków 1570. **Sec. 22, Sec. 24**
- Herburt, J. *Statuta regni Poloniae in ordinem alphabeti digesta*. Kraków 1563. **Sec. 22**
- Huwaert, S. *De foemina criminis laesae maiestatis rea*. Gedani 1732. **Sec. 22, Sec. 23, Sec. 25, Sec. 27, Sec. 29**
- St. Isodore. *Etymologiae* **Sec. 15**
- Januszowski, J. *Statuta, prawa i konstytucje koronne łacińskie, polskie ...* Kraków 1600. **Sec. 22, Sec. 23**
- Kaszyc, J. *Assertiones ex utroque iure de crimine laesae maiestatis*. Moguntiae 1605. **Sec. 22, Sec. 23, Sec. 24, Sec. 25, Sec. 26, Sec. 29**
- Kołątaj, H. „Prawo polityczne narodu polskiego.” In idem. *Listy Anonima i Prawo polityczne narodu polskiego*. Prepared by Leśnodorski, B., Werszycka, H. Warszawa 1954. **Sec. 24**
- Łączyński, J. „Kompedium sądów Króla Jegomości, prawem koronnym na dwie części rozdzielone.” In Kolankowski, Z. *Zapomniany prawnik XVI wieku Jan Łączyński i jego Kompedium sądów Króla Jegomości. Studium z dziejów polskiej literatury prawniczej*. Toruń 1960. **Sec. 29**
- Laudensis, M. „Tractatus de crimine laesae maiestatis.” In *Tractatus Universi Iuris*. Vol. 11. Venetiis 1584. **Sec. 19, Sec. 22, Sec. 29**
- Lipski, A. *Decas quaestionum publicarum Regni in quibus ecclesiastica jura et immunitates ecclesiastici status elucidantur*. Cracoviae 1616. **Sec. 22, Sec. 24**
- Lisiecki, A. *Trybunał Główny Koronny siedmią splendorów oświecony*. Kraków 1638. **Sec. 24**

Index of sources

- Menochius, J. *De arbitrariis iudicium quaestionibus et causis*. Venetiis 1575. **Sec. 22, Sec. 25**
- Minocki, F. *Dissertatio canonico – civilis de crimine laesae maiestatis*. Posnaniae 1775. **Sec. 22, Sec. 23, Sec. 24, Sec. 25, Sec. 26, Sec. 27, Sec. 29, Sec. 30**
- Orsaio, D. *Institutiones criminales*. Romae 1701. **Sec. 17**
- Ostrowski, T. *Prawo cywilne narodu polskiego ... Edycja druga poprawna*. Vol. 1. Warszawa 1787. **Sec. 22, Sec. 23, Sec. 24, Sec. 27, Sec. 29**
- Petrycy, S. *Polityki Arystotelesowej to jest Rządu Rzeczypospolitej z dokładem ksiąg ósmioro. Część pierwsza*. Kraków 1605. **Sec. 36**
- Piasecki, P. In *Kronika Pawła Piaseckiego biskupa przemyskiego. Polski przekład wedle dawnego rękopismu, poprzedzony studjum krytycznym nad życiem i pismami autora*. Kraków 1870. **Sec. 31**
- Pisarski, J.S. *Mówca polski*. Vol. 1. Kalisz 1683. **Sec. 23**
- Przyłuski, J. *Leges seu statuta ac privilegia Regni Poloniae*. Kraków 1553. **Sec. 22, Sec. 23, Sec. 24, Sec. 27**
- Redin, J. "Tractatus ... de maiestate Principis." In *Tractatus Universi Iuris*. Vol. 16. Venetiis 1584. **Sec. 17**
- Sarnicki, S. *Statuta i metryka przywilejów koronnych*. Kraków 1594. **Sec. 22**
- Skrzetuski, W. *Prawo polityczne narodu polskiego*. Vol. 1. Warszawa 1782. **Sec. 23**
- Sprawa między Księciem Adamem Czartoryskim generałem Ziem Podolskich oskarżającym a Janem Komarzewskim Generałem Majorem przy boku J.K. Mci, i Franciszkiem Ryxem Starostą Piaseczyńskim Kamerdynerem Królewskim, oskarżonemi jakoby o zamysł strucia tego Księcia*. Np 1785. **Sec. 22, Sec. 23, Sec. 29, Sec. 30**
- Tholosanus, P. *Syntagmatis iuris universi pars III*. Venetiis 1593. **Sec. 37**
- Wybicki, J. *Życie moje oraz Wspomnienie o Andrzeju i Konstancji Zamoyskich*. A. Skałkowski: Kraków 1927. **Conclusion**
- Zalaszowski, M. *Ius Regni Poloniae*. Posnaniae 1702. **Sec. 22, Sec. 24, Sec. 27, Sec. 29**
- Zawacki, T. *Compendium to jest krótkie zebranie wszystkich ... praw, statutów i konstytucji koronnych aż do r. 1613 inclusive*. Cracoviae 1614. **Sec. 22, Sec. 24**