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PRINCEPS QUI DELATORES NON CASTIGAT, IRRITAT. *ACCUSATORES* AND *DELATORES* IN THE EARLY PRINCIPATE BETWEEN LAW AND POLITICS

This paper aims at giving an overview of the different, and usually conflicting, actions taken by the emperors at the time of the Principate until Trajan to approach the sets of problems connected to the judicial activities of the criminal and fiscal 'delatores'. Their activities were an essential part of the imperial ruling system in the early Principate, striking the political opponents of the emperors and contributing consistent revenues to the public purse, yet they were generally despised by the public. This conundrum forced each emperor to find a balance between the need to confront the negative consequences of the delatores' activities to ensure the support of the public and the necessity not to hinder their outreach excessively, thereby prompting the adoption of different kinds of measures, both on a political and a legal level.

Keywords: *Roman criminal law. – Delator. – Calumnia. – Tergiversatio. – Senatus consultum Turpillianum.*

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1. In order to fully comprehend the extent of this topic, it's necessary to look at some of the characteristics of the structure of the criminal trials in front of the *quaestiones perpetuae*, the standing jury courts upon which rested the administration of criminal justice at the end of the Roman Republic.[1] It must be pointed out that in the trials in front of the *quaestiones*, there was nothing close to a modern system of public prosecution, with public officials tasked with the duty of filing charges against the alleged culprits. It was the responsibility of a private citizen, acting as a representative of the *civitas*, to formally bring charges against someone who was deemed to have committed a crime.[2] Once he was given the permission to prosecute by the magistrate and the name of the suspect culprit was inserted in the list of the accused (*nomen reorum*),[3] the trial could begin. The accuser, or *nominis delator*,[4] was not regarded as a mere informant but actually took part in the criminal trial, tasked with numerous responsibilities that he was obliged to fulfil in order to allow the jurors to render judgement. Indeed, the absence of a public law enforcement agency entrusted with the assignment of searching for evidence meant that this task also pertained to the accuser, who was then responsible for presenting the case in front of the *quaestio*.[5]

1 For an overview on the *quaestiones perpetuae*, their history and the procedural rules of those kind of trials until the end of the Republic, see Wolfgang Kunkel, v. «Quaestio», *PWRE* XIV, 1963, 720 ff., Olivia Robinson, *The Criminal Law of Ancient Rome*, The Johns Hopkins University Press, Baltimore 1995, 2 ff.; Bernardo Santalucia, *Diritto e processo penale nell'antica Roma*, Giuffrè, Milano 1998[2], 103 ff.

2 See Th. Mommsen, *Römisches Strafrecht*, Wissenschaftliche Buchgesellschaft, Darmstadt 1961, 366–357 (reprint of the original 1899 edition); Giovanni Pugliese, "Processo privato e processo pubblico", Id., *Scritti giuridici scelti*, 1, Jovene, Napoli 1985, 17; B. Santalucia, *Diritto e processo penale*, 165.

3 See Th. Mommsen, *Römisches Strafrecht,* 382–383; Moriz Wlassak, *Anklage und Streitbefestigung im Kriminalrecht der Römer,* Hölder, Wien 1917, 8 ff. (on the importance of this work for the studies of Roman criminal law, see also Tommaso Beggio, "A obra centenária: Moriz Wlassak, Anklage und Streitbefestigung im Kriminalrecht der Römer", *Interpretatio Prudentium* 2, 2017, 17 ff.); B. Santalucia, *Diritto e processo penale*, 169.

4 In the sources, the term *delator* was used interchangeably to describe a private citizen who voluntarily took upon himself the role of accuser in criminal trials, or the equivalent role in fiscal trials of the *vindicatio caducorum*: see Tullio Spagnuolo Vigorita, *Exsecranda pernicies: delatori e fisco nell'età di Costantino*, Jovene, Napoli 1984, 48 ff. The polysemy of the term makes it difficult to distinguish when the sources are referring to a criminal accuser, a fiscal *delator*, or both.

5 See Olivia Robinson, "Roman Law: reality and context. The role of delators", Richard Gamauf (Hrsg.), *Festschrift für Herbert Hausmaninger zum 70. Geburtstag*, Manz, Wien 2006, 256; Richard Gamauf, "Zu den Rechtsfolgen der abolitio in klassischen römischen Recht", Kaja Harter-Uibopuu, Fritz Mitthof (Hrsg.), *Vergeben und Vergessen? Amnestie in der Antike. Beiträge zum 1. Internationalen Wiener Kolloquium zur antiken Rechtsgeschichte, 27.-28.10.2008*, Holzhausen, Wien 2013, 316–317.

2. The private citizen did not have the legal duty to present an *accusatio* if he learned that a crime was committed, nor if he had directly witnessed it, not even if he was a victim of it. This system operated exclusively on a voluntary basis, even though it was an essential component in carrying out one of the fundamental functions of every state, to ensure that the criminals were held accountable for their actions. To ensure the uninterrupted functioning of the criminal judiciary system, the *leges iudiciorum publicorum* usually provided some form of award for the accusers who successfully managed to convict the indicted person.[6]

The importance of the activity performed by the accusers for the *civitas* is clearly stated by Cicero. In a passage of his defence of Sextus Roscius, the orator gives a generally positive assessment of the role of the accusers:

> Cic., *S. Rosc.* 55-56: [55] (...) *Accusatores multos esse in civitate utile est, ut metu contineatur audacia; verum tamen hoc ita est utile, ut ne plane illudamur ab accusatoribus. Innocens est quispiam, verum tamen, quamquam abest a culpa, suspicione tamen non caret; tametsi miserum est, tamen ei, qui hunc accuset, possim aliquo modo ignoscere. Cum enim aliquid habeat, quod possit criminose ac suspiciose dicere, aperte ludificari et calumniari sciens non videatur.* [56] *Quare facile omnes patimur esse quam plurimos accusatores, quod innocens, si accusatus sit, absolvi potest, nocens, nisi accusatus fuerit, condemnari non potest; utilius est autem absolvi innocentem quam nocentem causam non dicere.* (...)
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> [55] (...) It is a useful thing that there should be a number of accusers in the State, so that audacity may be held in check by fear, but only on condition that they do not openly play the fool with us. So-and-so is innocent; but although he is free from guilt, he is not free from suspicion. Although it is a misfortune for him, still, I could to a certain extent pardon one who accuses him. For since the accuser is able to state something to incriminate the accused and create suspicion against him, he may not appear to be openly fooling us or knowingly slandering us. [56] This is the reason why we are all ready to allow that there should be as many accusers as possible, because an innocent man, if he is accused, can be acquitted, and one who is guilty, unless he is accused, cannot be condemned; but it is more serviceable that an innocent man should be acquitted than that a guilty man should not be brought to trial (...).

Cicero says that it is a good thing that the state has a lot of accusers, since their presence has a two-fold effect. On one hand, their activity is essential to convict those who have broken the law, since the *nocens* could

6 See also Carlo Venturini, *Studi sul crimen repetundarum nell'età repubblicana*, Giuffré, Milano 1979, 33 ff.; Giorgio Luraschi, "Il *praemium* nell'esperienza giuridica romana", *Studi in onore di Arnaldo Biscardi*, 4, Istituto Editoriale Cisalpino-La Goliardica, Milano 1983, 270 ff.; Pietro Cerami, "*Accusatores populares*, *delatores*, *indices*. Tipologia dei «collaboratori di giustizia» nell'antica Roma", *Index* 26, 1998, 120 ff.

not be found guilty and punished without someone who accuses him (*nocens, nisi accusatus fuerit, condemnari non potest*). On the other hand, they also have a deterrent effect, as the fear that anyone can be accused of committing a crime (*innocens est quispiam, verum tamen, quamquam abest a culpa, suspicione tamen non caret*) would keep potential criminals from realising their unlawful schemes (*ut metu contineatur audacia*).[7]

However, the positive judgement of the *accusatores* by the then mostly unknown Cicero is not free from criticism, as testified by the prosecution of his argument:

> Cic., *S. Rosc.* 56-57: [56] (...) *Anseribus cibaria publice locantur et canes aluntur in Capitolio ut significent si fures venerint. At fures internoscere non possunt, significant tamen si qui noctu in Capitolium venerint, et quia id est suspiciosum, tametsi bestiae sunt, tamen in eam partem potius peccant quae est cautior. Quodsi luce quoque canes latrent, cum deos salutatum aliqui venerint, opinor, iis crura suffringantur, quod acres sint etiam tum cum suspicio nulla sit*. [57] *Simillima est accusatorum ratio. Alii vestrum anseres sunt, qui tantum modo clamant, nocere non possunt, alii canes, qui et latrare et mordere possunt. Cibaria vobis praeberi videmus; vos autem maxime debetis in eos impetum facere qui merentur. Hoc populo gratissimum est. Deinde, si voletis, etiam tum cum veri simile erit aliquem commisisse, in suspicione latratote; id quoque concedi potest. Sin autem sic agetis, ut arguatis aliquem patrem occidisse neque dicere possitis aut quare aut quo modo, ac tantum modo sine suspicione latrabitis, crura quidem vobis nemo suffringet, sed, si ego hos bene novi, litteram illam cui vos usque eo inimici estis ut etiam Kal. omnis oderitis, ita vehementer ad caput adfigent, ut postea neminem alium nisi fortunas vestras accusare possitis*.
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> [56] (...) The food for the geese of the Capitol is contracted for at the public expense, and dogs are kept there, to give the alarm in case thieves should break in. Certainly they cannot distinguish thieves from others, yet they give the alarm if any persons enter the Capitol by night, because this looks suspicious, and although they are merely animals, if they make a mistake, it is rather on the side of caution. But if the dogs should bark by daylight as well, when people come to worship the gods, I imagine they would have their legs broken, for being on the alert even at a time when there is no room for suspicion. [57] It is just the same in the case of the accusers. Some of you are geese, who only cackle but cannot do any harm, others are dogs, who can both bark and bite. We take care that food is provided for you, but

7 On this passage of Cicero, see also Emilio Costa, *Cicerone giureconsulto*, 2, L'Erma di Bretschneider, Roma 1964, 76 ff.; Giuseppe Provera, *La vindicatio caducorum. Contributo allo studio del processo fiscale romano*, Giappichelli, Torino 1964, 16 fn. 10; Yann Rivière, *Les délateurs sous l'Empire romain*, École Française de Rome, Roma 2002, 65 ff.; O. Robinson, "The role of delators", 260; Fabio Botta, "Ancora in tema di *causae accusationis* e *calumnia* nel processo per *quaestiones*", *Archivio Giuridico online* 2, 2023, 22 ff.

> you ought especially to attack those who deserve it; this is most agreeable to the people. Next, when there is a probability that someone has committed a crime, if you have any suspicions, you may bark, if you like; that also is permissible. But if you act in such a manner as to endeavour to prove that a son has murdered his father, without being able to say why or how, if you only bark when there is no cause for suspicion, certainly your legs will not be broken, but, if I know these gentlemen well, they will brand your forehead with that letter, which is so odious to you accusers that you even hate all the Kalends, so deeply that in future you will have no one to accuse but your own ill-luck.

The orator employs a long metaphor in which the activity of the accusers is compared to that of the geese[8] and the watchdogs[9] of the Capitol hill. These animals were used to keep watch against theft; hence they were fed at public expense. Their role was to report the presence of anyone who should wander around by night, regardless of whether the person was simply a passer-by or a real thief, since roaming in the middle of the night at the top of the hill was per se a suspicious activity and therefore to be reported. If the person had no malicious intent, the animals should not be blamed, as they were merely overzealous. Yet, if the dogs were to bark at people that were walking up the hill to honour the gods in the middle of the day, they should be punished harshly, since the animals were hostile without any reason to be so.

Cicero then addresses directly Erucius, the accuser of Roscius, stating that the activity of the accusers should be treated similarly. He says that, as in the case of the sacred geese, the State provides food to them,[10] hinting at the prizes promised in the *leges iudiciorum publicorum* to the victorious *delatores*, but that their activity must first and foremost be directed against those who deserve it, the blatant criminals. Only after having dealt with these can they start blaming those who were only suspected of committing a crime. In any case, they should not be allowed to accuse someone without any grounds, otherwise they should be punished. Since *delatores* were not dogs, their legs could not be broken,[11] but they should be branded as *calumniators*.

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8 The goose was an animal sacred to Juno and the Romans believed that it had an innate aptitude for watchfulness, as proved by the well-known episode of the sacred geese of the goddess, in which the Romans guarding the Capitol were warned of the Gallic attack during the sack of Rome by Brennus: Liv. 5.47.3; Plin. *nat.* 10.51.

9 Later, the rhetorician Quintilian will speak of *canina eloquentia*, referring to those orators who resort to verbally abusing one's counterpart during a case: *inst.* 12.9.9.

10 The sustenance for the sacred geese was paid by the State and the relative invitation to tender was always the first one that the censors had to issue when they took office: Plin. *nat.* 10.51.

11 Here Cicero is hinting at the annual ceremony in which a dog was crucified to an elderberry cross, recalled also by Pliny the Elder (*nat.* 29.57). The dogs were deemed

3. This generally positive opinion of the accusers changed significantly within a few decades. The misuse of the *accusation* and, consequently, of the instrument of the criminal trial, already quite widespread during the late Republic, became a common practice throughout the early Principate. Referring the infamous case of the *Vibii Sereni*, father and son, Tacitus declared:

> Tac. *ann.* 4.30: (...) *Et quia Cornutus sua manu ceciderat, actum de praemiis accusatorum abolendis, si quis maiestatis postulatus ante perfectum iudicium se ipse vita privavisset. Ibaturque in eam sententiam, ni durius contraque morem suum palam pro accusatoribus Caesar inritas leges, rem publicam in praecipiti conquestus esset: subverterent potius iura quam custodes eorum amoverent. Sic delatores, genus hominum publico exitio repertum et ne poenis quidem umquam satis coercitum, per praemia eliciebantur.*
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> (...) And since Cornutus had fallen by his own hand, a proposal was discussed that the accuser's reward should be forfeited whenever the defendant in a charge of treason had resorted to suicide before the completion of the trial. The resolution was on the point of being adopted, when the Caesar, with considerable asperity and unusual frankness, took the side of the accusers, complaining that the laws would be inoperative, the country on the edge of an abyss: they had better demolish the constitution than remove its custodians. Thus the informers, a breed invented for the national ruin and never adequately curbed even by penalties, were now lured into the field with rewards.

While the historian recalls Tiberius' positive opinion of the accusers as *custodes* of the laws of the State, Tacitus is very critical towards them and of the emperor's attitude towards them. He calls the accusers a kind of people created to destroy the commonwealth: they were not kept in check by the fear of the current penalties and, on the contrary, were lured by the desire for promised rewards, knowing very well that they were backed by the new imperial government.

4. This change of views was the consequence of a series of developments in the legal practice, mainly the reshaping of the *crimen maiestatis* and the appearance of people who put forth accusations on behalf of the various emperors, in exchange for political support and economic profit.[12] Additionally, the new marital legislation established by Augustus intro-

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guilty of *proditio* because they did not warn the Romans when the Gauls tried to storm the Capitol.

12 On the evolution of the *crimen maiestatis* in the early Principate, see Richard A. Bauman, *Impietas in principem. A study of treason against the Roman emperor with special reference to the first century A.D.*, Beck, München 1974, *passim*; Giovanni Pugliese, "Linee generali dell'evoluzione del diritto penale pubblico durante il Principato", Id., *Scritti giuridici scelti* 2, Jovene, Napoli 1985, 681 ff; Lucia Fanizza, *Delatori e accusa-*

duced a new kind of fiscal procedure, with a framework patterned after the criminal trials of the *ordo*. In the *vindicatio caducorum*, the fiscal *delator*, similarly to the criminal accuser, acted on behalf of the public treasury to enforce the provisions of the *lex Iulia de maritandis ordinibus* and the *lex Papia Poppaea*. If victorious, the *delator* was rewarded with a part of the *bona* claimed by the treasury.[13]

Augustus' successors found themselves in a difficult position. They could not do without the activity carried out by the criminal and fiscal *delatores*, on one hand. Besides the fact that their intervention was necessary to fulfil a basic function of the Roman state, as it was during the Republic, the revenue their activities secured for the public treasury was deemed essential, especially since the economic boom produced by the conquest of Egypt waned by the end of Augustus' life.[14] Furthermore, the criminal accusers rapidly became the main weapon used by the emperors to keep their political opponents (real or perceived) under control, and to strike them when needed.

On the other hand, the growing public hatred towards the *delatores* meant that an emperor could not simply endorse their activities, yet had to at least show disdain for them. This can be seen in an excerpt of Suetonius' recount of emperor Domitian's life:

> Suet. *Dom.* 9.3: (...) *Fiscales calumnias magna calumniantium poena repressit, ferebaturque vox eius: "Princeps qui delatores non castigat, irritat".*
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> (...) He checked false accusations designed for the profit of the privy purse and inflicted severe penalties on offenders; and a saying of his was current, that an emperor who does not punish informers hounds them on.

Domitian was referring to the fiscal *delatores*, but the rationale behind this reasoning could be extended also to the criminal accusers.[15]

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tori. L'iniziativa nei processi di età imperiale, L'Erma di Bretschneider, Roma 1988, 16 ff.; B. Santalucia, *Diritto e processo penale*, 236 ff.

13 On the *leges Iuliae* about marriage, see Vincenzo Arangio-Ruiz, "La legislazione", Id., *Scritti di diritto romano* 3, Jovene, Napoli, 1977, 259 ff.; Riccardo Astolfi, *La lex Iulia et Papia*, CEDAM, Padova 1996[4], *passim*; Tullio Spagnuolo Vigorita, *Casta domus. Un seminario sulla legislazione matrimoniale augustea*, Jovene, Napoli 2013[3], 10 ff.; Filippo Bonin, *Intra legem Iuliam et Papiam. Die Entwicklung des augusteischen Eherechts im Spiegel der Rechtsquellenlehren der klassischen Zeit*, Cacucci editore, Bari 2020, 122 ff. and 165 ff.

14 See R. Astolfi, *La lex Iulia et Papia*, 337 ff. The fiscal aspects became the main purpose of the Augustan marital legislation only in a lat•er period: see also T. Spagnuolo Vigorita, *Exsecranda pernicies,* 121 ff. As pointed out by Olivia Robinson (*Penal Practice and Penal Policy in Ancient Rome*, Routledge, London 2007, 63), the increasing number of the *delatores* was «an unintended result of Augustus' laws supporting marriage and the family».

15 The *irritat* in Domitian's motto usually refers to the activities of the *delatores* and the phrase is usually translated as "The emperor who does not chastise the *delatores*

5. The literary sources are full of accounts of misuses of criminal proceedings under the emperors of the Julio-Claudian dynasty.[16] One notable example is the aforementioned case of Vibius Serenus, which occurred under Tiberius. Vibius Serenus was accused by his son, who was also called Vibius Serenus, of treason against the emperor in front of the Senate:[17]

> Tac. *ann.* 4.28-30: [28] *Isdem consulibus miseriarum ac saevitiae exemplum atrox, reus pater, accusator filius (nomen utrique Vibius Serenus) in senatum inducti sunt. Ab exilio retractus inluvieque ac squalore obsitus et tum catena vinctus peroranti filio pater comparatur. Adulescens multis munditiis, alacri vultu, structas principi insidias, missos in Galliam concitores belli index idem et testis dicebat, adnectebatque Caecilium Cornutum praetorium ministravisse pecuniam; qui taedio curarum, et quia periculum pro exitio habebatur, mortem in se festinavit. At contra reus nihil infracto animo obversus in filium quatere vincla, vocare ultores deos ut sibi quidem redderent exilium ubi procul tali more ageret, filium autem quandoque supplicia sequerentur. adseverabatque innocentem Cornutum et falso exterritum; idque facile intellectu si proderentur alii: non enim se caedem principis et res novas uno socio cogitasse.* [29] *Tum accusator Cn. Lentulum et Seium Tuberonem nominat, magno pudore Caesaris, cum primores civitatis, intimi ipsius amici, Lentulus senectutis extremae, Tubero defecto corpore, tumultus hostilis et turbandae rei publicae accerserentur. Sed hi quidem statim exempti: in patrem ex servis quaesitum, et quaestio adversa accusatori fuit. Qui scelere vaecors, simul vulgi rumore territus, robur et saxum aut parricidarum poenas minitantium, cessit urbe. Ac retractus Ravenna exsequi accusationem adigitur, non occultante Tiberio vetus odium adversum exulem Serenum. Nam post damnatum Libonem missis ad Caesarem litteris exprobraverat suum tantum studium sine fructu fuisse, addideratque quaedam contumacius quam tutum apud auris superbas et offensioni proniores. Ea Caesar octo post annos rettulit, medium tempus varie arguens, etiam si tormenta pervicacia servorum contra evenissent.* [30] *Dictis dein sententiis ut Serenus more maiorum puniretur, quo molliret invidiam, intercessit. Gallus Asinius cum Gyaro aut Donusa claudendum censeret, id quoque aspernatus est, egenam aquae utramque insulam referens dandosque vitae usus, cui vita concederetur. Ita Serenus Amorgum reportatur. Et quia Cornutus sua manu ceciderat, actum de praemiis accusatorum abolendis, si quis maiestatis postulatus ante perfectum iudicium se ipse vita privavisset. Ibaturque in eam sententiam, ni durius contraque morem suum palam pro accusatoribus Caesar inritas leges, rem publicam in praecipiti conquestus esset: subverterent potius iura quam custodes eorum amoverent. Sic delatores, genus*

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arouses their activities". However, the verb could also refer to the *princeps* itself: "The emperor who does not chastise the *delatores*, irks [the general opinion]".

16 An overview on this phenomenon can be found in Fanizza, *Delatori e accusatori*, 13 ff. A brief summary of the *delatores* and their activities named in the literary sources until the end of Caracalla's reign is portrayed in Rivière, *Les delateurs*, 501 ff.

17 On Vibius Serenus' trial, see also Andreas Schilling, *Poena extraordinaria. Zur Strafzumessung in der frühen Kaiserzeit*, Duncker & Humblot, Berlin 2010, 153 ff.

hominum publico exitio repertum et ne poenis quidem umquam satis coercitum, per praemia eliciebantur.

[28] In the same consulate, as an appalling example of the miseries and heartlessness of the age, there appeared before the senate a father as defendant and a son as prosecutor, each bearing the name of Vibius Serenus. The father, haled back from exile, a mass of filth and rags, and now in irons, stood pitted against the invective of his son: the youth, a highly elegant figure with a cheerful countenance, informer at once and witness, told his tale of treason plotted against the sovereign and missionaries of rebellion sent over to Gaul; adding that the funds had been supplied by the ex-praetor, Caecilius Cornutus. Cornutus, as he was weary of his anxieties and risk was considered tantamount to ruin, lost no time in making away with himself. The prisoner on the other hand, with a spirit totally unbroken, faced his son, clanked his chains, and called upon the avenging gods: for himself, let them give him back his exile, where he could live remote from these fashions; as for his son, let retribution attend him in its own time! He insisted that Cornutus was guiltless, the victim of an unfounded panic, and that the fact would be patent if other names were divulged: for certainly he himself had not contemplated murder of the emperor and revolution with a solitary ally! [29] The accuser then named Gnaeus Lentulus and Seius Tubero, greatly to the discomfiture of the Caesar, who found two most prominent nobles, close friends of his own, the former far advanced in years, the latter in failing health, charged with armed rebellion and conspiracy against the peace of the realm, These, however, were at once exempted: against the father resort was had to examination of his slaves under torture – an examination which proved adverse to the prosecutor; who, maddened by his crime and terrified also by the comments of the multitude, threatening him with the dungeon and the rock or the penalties of parricide, left Rome. He was dragged back from Ravenna and forced to proceed with his accusation, Tiberius making no effort to disguise his old rancour against the exile. For, after the condemnation of Libo, Serenus had written to the emperor, complaining that his zeal alone had gone without reward, and concluding with certain expressions too defiant to be safely addressed to that proud and lightly offended ear. To this grievance the Caesar harked back after eight years; finding in the interval materials for a variety of charges, even though, through the obduracy of the slaves, the torture had disappointed expectations. [30] When members then expressed the view that Serenus should be punished according to ancestral custom, he sought to mitigate the odium by interposing his veto. A motion of Asinius Gallus, that the prisoner should be confined in Gyarus or Donusa, he also negatived: both islands, he reminded him, were waterless, and, if you granted a man his life, you must also allow him the means of living. Serenus was, therefore, shipped back to Amorgus. And since Cornutus had fallen by his own hand, a proposal was discussed that the accuser's reward should be forfeited whenever the defendant in a charge of treason had resorted to suicide before the completion of the trial. The resolution was on the point of being adopted, when the Caesar, with considerable asperity and unusual

> frankness, took the side of the accusers, complaining that the laws would be inoperative, the country on the edge of an abyss: they had better demolish the constitution than remove its custodians. Thus the informers, a breed invented for the national ruin and never adequately curbed even by penalties, were now lured into the field with rewards.

The son accused the father of having plotted a rebellion in Gallia against Tiberius, pointing also at the ex-praetor Caecilius Cornutus as a co-conspirator. Afraid of taking his chances in a criminal trial in front of the Senate, since an accusation of *maiestas* was very difficult to repel, Cornutus took his own life. The fearless Vibius Serenus Sr fought back, declaring his and Cornutus' innocence, since no man could organize a plot against the emperor with only one accomplice. Caught by surprise, the accuser found himself in a tight spot. He tried to implicate in the plot two prominent political figures and friends of Tiberius, Gnaeus Cornelius Lentulus and Lucius Seius Tubero, yet they were quickly exculpated: the first was very old, and the second was gravely ill. The questioning under torture of the slaves of Serenus' father led to nothing of relevance.

At this point, it was clear that the charge of *maiestas* was completely made up, probably fabricated by the son as a quick way to gain prestige in the eyes of the emperor. He considered his father as an easy prey, since he was perceived as a political opponent by Tiberius, and he had already been convicted for *vis publica* and exiled. The position of the accuser was very tenuous: with no evidence of the alleged crime and the public opinion threatening him with death, Vibius Serenus Jr fled Rome and found shelter in Ravenna. The emperor commanded him to return to the city of Rome and compelled Vibius Serenus to carry on with the trial. The natural outcome of the trial would have been the acquittal of the father and the conviction for *calumnia* of the accuser according to the provisions of the *lex Remmia de calumiatoribus*. Despite this, the hatred of the emperor against Vibius Serenus Sr was not over: the indicted was deemed guilty of some other minor charges, but was allowed to return to the island where he was detained. The accuser was not punished for his slanderous charges and was probably rewarded, since Tiberius repelled the senators' proposal not to give prizes to the accusers in cases where the accused person committed suicide before the verdict (as in Cornutus' case).

Vibius Serenus Jr appears also later in the *Annales* when he slanderously accused Fonteius Capito:

> Tac. *ann.* 4.36: (...) *At Fonteius Capito, qui pro consule Asiam curaverat, absolvitur, conperto ficta in eum crimina per Vibium Serenum. Neque tamen id Sereno noxae fuit, quem odium publicum tutiorem faciebat. Nam ut quid destrictior accusator, velut sacrosanctus erat: leves, ignobiles poenis adficiebantur.*

(...) On the other hand, Fonteius Capito, who had administered Asia as proconsul, was acquitted upon proof that the accusations against him were the invention of Vibius Serenus. The reverse, however, did no harm to Serenus, who was rendered doubly secure by the public hatred. For the informer whose weapon never rested became quasi-sacrosanct: it was on the insignificant and unknown that punishments descended.

Tacitus makes very clear that the false accusers were generally subject to some penalties, but those protected by the emperor's approval – as in Vibius Serenus' case – were essentially untouchable.

6. The *delatores* thus anticipated some form of economic and political rewards for their activities.[18] This could be seen in another passage of the *Annales*, referring to the trial against Libo Drusus in 16 A.D.:[19]

Tac. *ann.* 2.27-30: [27] *Sub idem tempus e familia Scriboniorum Libo Drusus defertur moliri res novas. Eius negotii initium, ordinem, finem curatius disseram, quia tum primum reperta sunt quae per tot annos rem publicam exedere.* (...). [28] (...) *Celebre inter accusatores Trionis ingenium erat avidumque famae malae. Statim corripit reum, adit consules, cognitionem senatus poscit. Et vocantur patres, addito consultandum super re magna et atroci.* (...) [30] *Accesserant praeter Trionem et Catum accusatores Fonteius Agrippa et C. Vibius, certabantque cui ius perorandi in reum daretur, donec Vibius, quia nec ipsi inter se concederent et Libo sine patrono introisset, singillatim se crimina obiecturum professus, protulit libellos vaecordes adeo ut consultaverit Libo an habiturus foret opes quis viam Appiam Brundisium usque pecunia operiret. Inerant et alia huiusce modi stolida, vana, si mollius acciperes, miseranda. Uno tamen libello manu Libonis nominibus Caesarum aut senatorum additas atrocis vel occultas notas accusator arguebat.* (...)

[27] Nearly at the same time, a charge of revolutionary activities was laid against Libo Drusus, a member of the Scribonian family. I shall describe in some detail the origin, the progress, and the end of this affair, as it marked the discovery of the system destined for so many years to prey upon the vitals of the commonwealth (...). [28] (...) Trio's genius, which was famous among the professional informers, hungered after notoriety. He swooped immediately on the accused, approached the consuls, and demanded a sen-

18 The emperor's endorsement was paramount not only for those who wanted to climb the ranks of the new imperial bureaucracy, but also for those who aimed at the magistratures of the old *cursus honorum*. The *princeps* could not merely endorse someone in an informal way (like the *suffragatio*), but he had the power to directly appoint a certain number of candidates to the offices too (*commendatio*): on these topics, see Stephan Brassloff, v. «Commendatio», *PWRE* IV.1, 1901, 722 ff.; Barbara M. Levick, "Imperial Control of the Elections under the Early Principate: *commendatio*, *suffragatio*, and *nominatio*", *Historia* 16, 1967, 207 ff.; Virginie Hollard, *Le rituel du vote. Les assemblées romaines du people*, CNRS Éditions, Paris 2010, 177 ff.

19 A good overview over this particular case can be found in Bauman, *Impietas in principem*, 60 ff.; Schilling, *Poena extraordinaria*, 119 ff.

> atorial inquiry. The Fathers were summoned, to deliberate (it was added) on a case of equal importance and atrocity. (...) [30] Besides Trio and Catus, Fonteius Agrippa and Gaius Vibius had associated themselves with the prosecution, and it was disputed which of the four should have the right of stating the case against the defendant. Finally, Vibius announced that, as no one would give way and Libo was appearing without legal representation, he would take the counts one by one. He produced Libo's papers, so fatuous that, according to one, he had inquired of his prophets if he would be rich enough to cover the Appian Road as far as Brundisium with money. There was more in the same vein, stolid, vacuous, or, if indulgently read, pitiable. In one paper, however, the accuser argued, a set of marks, sinister or at least mysterious, had been appended by Libo's hand to the names of the imperial family and a number of senators. (...)

The historian points out how the prosecutor's case was not well grounded, to say the least. However, Libo Drusus took his own life before the verdict, fearing the impossibility of rebutting an accusation of high treason against Tiberius.

Drusus' estate was nonetheless divided among the accusers – Firmius Cato, Fulcinius Trio, Fonteius Agrippa and Gaius Vibius – and those of them who were part of the senatorial order were also given the rank of praetors *extra ordinem*, that is without having to become magistrates and performing the duties connected to it:[20]

> Tac. *ann.* 2.31-32: [31] (...) *Accusatio tamen apud patres adseveratione eadern peracta, iuravitque Tiberius petiturum se vitam quamvis nocenti, nisi voluntariam mortem properavisset.* [32] *Bona inter accusatores dividuntur, et praeturae extra ordinem datae iis qui senatorii ordinis erant.* (...)

20 The emperor could decide the composition of the Senate by merely using the *lectiones*, appointing or removing senators at his will: as example, see Pierangelo Buongiorno, "La *tabula Lugdunensis* e i fondamenti ideologici e giuridici dell'*adlectio inter patricios* di Claudio", Orazio Licandro, Claudia Giuffrida, Margherita Cassia (a cura di), *Senatori, cavalieri e curiali fra privilegi ereditari e mobilità verticale*, L'Erma di Bretschneider, Roma 2020, 67 ff. In addition, he could also award to someone the honorary title of ex-magistrate (*adlectio*), granting him a place in the Senate: Vincenzo Arangio-Ruiz, *Storia del diritto romano*, Jovene, Napoli 1957[7], 228 ff.; Francesco De Martino, *Storia della costituzione romana* 4.1, Jovene, Napoli 1974[2], 549 ff.; Richard J.A. Talbert, *The Senate of Imperial Rome*, Princeton University Press, Princeton 1984, 9 ff. As seen in the case of the accusers of Libo Drusus, the *princeps* could also shift the senators into a different rank of the internal hierarchy of the assembly, enrolling them into a higher (or lower) class – like those of the former quaestors or praetors – without having performed the pertinent magistrature. On these subjects, see V. Arangio-Ruiz, *Storia*, 229–230; R. Talbert, *The Senate*, 15 ff.; André Chastagnol, *Le Sénat romain à l'époque impériale. Recherches sur la composition de l'assemblée et le statut de ses membres*, Les Belles Lettres, Paris 1992, 97 ff.; Giuseppe Camodeca, "*Delatores*, *praemia* e processo senatorio *de maiestate* in una inedita *tabula Herculanensis* di età neroniana", *SDHI* 75, 2009, 398 ff.

> [31] (...) In the senate, however, the prosecution was carried through with unaltered gravity, and Tiberius declared on oath that, guilty as the defendant might have been, he would have interceded for his life, had he not laid an over-hasty hand upon himself. [32] His estate was parcelled out among the accusers, and extraordinary praetorships were conferred on those of senatorial status. (...)

7. The sources sometimes recall the punishment of the *delatores*, even those strictly connected to the new imperial rule. This would usually happen at the beginning of the reign of a new emperor to mark a break from the rule of the predecessor. One of the leading examples is that of Publius Suilius Rufus, *consul suffectus* in 41 A.D. and an infamous *delator* under Claudius:[21]

> Tac. *ann.* 13.42-43: [42] *Variis deinde casibus iactatus et multorum odia meritus reus, haud tamen sine invidia Senecae damnatur. Is fuit P. Suillius, imperitante Claudio terribilis ac venalis et mutatione temporum non quantum inimici cuperent demissus quique se nocentem videri quam supplicem mallet.* (...) [43] (...) *Ii acerbitate accusationis Q. Pomponium ad necessitatem belli civilis detrusum, Iuliam Drusi filiam Sabinamque Poppaeam ad mortem actas et Valerium Asiaticum, Lusium Saturninum, Cornelium Lupum circumventos, iam equitum Romanorum agmina damnata omnemque Claudii saevitiam Suillio obiectabant. Ille nihil ex his sponte susceptum, sed principi paruisse defendebat, donec eam orationem Caesar cohibuit, compertum sibi referens ex commentariis patris sui nullam cuiusquam accusationem ab eo coactam. Tum iussa Messalinae praetendi et labare defensio.* (...) *Igitur adempta bonorum parte (nam filio et nepti pars concedebatur eximebanturque etiam quae testamento matris aut ab avia acceperant) in insulas Balearis pellitur.* (...)
>
> [42] And now the hero of a chequered and stormy career, who had earned himself a multitude of hatreds, received his condemnation, though not without some detriment to the popularity of Seneca. This was Publius Suillius, the terrible and venal favourite of the Claudian reign, now less cast down by the change in the times than his enemies could wish, and more inclined to be counted a criminal than a suppliant. (...) [43] (...) By these the venomous indictment which had driven Quintus Pomponius to the necessity of civil war; the hounding to death of Drusus' daughter Julia, and of Poppaea Sabina; the trapping of Valerius Asiatieus, of Lusius Saturninus, and of Cornelius Lupus; finally, the conviction of an army of Roman knights, and the whole tale of Claudius' cruelty, – were laid to the account of Suillius. In defence he urged that none of these acts had been undertaken voluntarily, and that he had merely obeyed the sovereign; until the Caesar cut short his speech by stating that he had definite knowledge from his father's papers that he had compelled no prosecution of any person. Orders from Messalina were now alleged, and the defence began to totter. (...) Hence, after the for-

21 See A. Schilling, *Poena extraordinaria*, 231 ff.

> feiture of half his estate – for his son and granddaughter were allowed the other half, and a similar exemption was extended to the property they had derived from their mother's will or their grandmother's – he was banished to the Balearic Isles. (...)

The defence put forward by Suilius is quite interesting, as it emphasises the close relationship between the emperors and the *delatores* acting on their behalf. Suilius did not attempt to deny the facts, but stated that he acted according to Claudius' instructions. Yet, Nero did not find any trace of those appointments in his adoptive father's registers of official acts (the *commentaria*) which were handed down from one emperor to another. Among other things, those documents apparently also contained the names of the accusers acting vicariously for the *princeps* and the tasks given to them.[22] In the end, Suilius was exiled to the Balearic Islands and half of his estate was confiscated.

22 The importance of the activities of the *delatores* as safeguard for the new imperial establishment is proved by the fact that the names of those accusers who acted on behalf of the *princeps* were kept in the *commentaria*. In another instance, Tacitus highlights the close relationship between those records of official acts and the activities of the accusers (*hist.* 4.40.3). In December 69 A.D., after Vitellius' death, Vespasian was declared emperor. The emperor was still in Egypt, and he did not manage to reach Rome until mid-70 A.D. His firstborn, Titus, was still committed to the suppression of the Jewish revolt and could not leave Judaea, so the young Domitian, who was already in Rome, was chosen to rule in his father's absence, backed up by another of Vespasian's top men, Gaius Licinius Mucianus. During the first session of the Senate, the senators saw the opportunity to settle the score against those senators who had acted as accusers, following the orders given by the predecessors of the new emperor. During the first Senate assembly, chaired by the young Domitian, the continuation of the trial against Publius Celer, a notorious *delator* under Nero, took place. As stated by Tacitus, the conviction of Celer signalled the start of the revenge of the senators against those among them who were employed by the former emperor Nero as *delatores* (*signo ultionis in accusatores dato*). Iunius Mauricus asked the future emperor Domitian to allow the senators to consult the *commentaria*, to show to everyone which one of them made accusations on behalf of Nero (*per quos nosceret quem quisque accusandum poposcisset*). The sensitivity of the information stored in them can be deduced by the negative reply of Domitian, who refused the access to the *commentaria* stating that the authorisation to consult those records could be given only by the ruling emperor. See L. Fanizza, *Delatori e accusatori*, 31 ff.; Y. Rivière, *Les delateurs*, 236 ff. and 448 ff.

This episode also sheds light on the real extent of the act of Caligula when he burned Tiberius' records concerning the trials against his brothers and his mother, so that the *delatores* and the witnesses of those trials would not fear negative consequences in the future: Suet. *Cal.* 15.4, 30.1; Dio Cass. 59.4.3. See also A. Schilling, *Poena extraordinaria*, 190 fn. 789. Similarly, this is also why Suetonius places side by side the act of burning the *commentaria* with other gestures usually enacted by the new emperor to mark the discontinuity with the predecessor's rule, such as the *restitutiones in integrum*, the grant of legal pardon and sometimes the chastisement of the prominent figures of the old regime: L. Fanizza, *Delatori e accusatori*, 28.

Less frequently, the literary sources recount instances of punishment even if the subject was under the aegis of their imperial guardian. In return, those subjects usually expected protection; however, the *princeps* sometimes had to yield the *delator* to the punishment, especially if he went too far, threatening to alienate the public and lose their support. This was the case of the above-mentioned Firmius Cato:

> Tac. *ann.* 4.31: (...) *Eadem poena in Catum Firmium senatorem statuitur, tamquam falsis maiestatis criminibus sororem petivisset. Catus, ut rettuli, Libonem inlexerat insidiis, deinde indicio perculerat. Eius operae memor Tiberius, sed alia praetendens, exilium deprecatus est: quo minus senatu pelleretur non obstitit.*
>
> (...) The same penalty was invoked upon Firmius Catus, a member of the senate, for laying a false charge of treason against his sister. Catus, as I have said, had laid the trap for Libo and afterwards destroyed him by his evidence. In the recollection of that service, Tiberius, though producing other reasons, now procured a remission of his banishment: to his ejection from the senate he raised no hindrance.

Tiberius still managed to protect Cato from the wrath of the other senators. He saved him from the relegation to an island, yet he could not prevent his expulsion from the Senate.[23]

8. Although these incidents seem to suggest there was no form of legal protection against the abuses of the right to present an *accusatio*, this was not the case.

The possibility of misuses of the right to accuse was not a new thing that emerged in the late Republic or the early empire. As stressed by Ernst Levy,[24] in a procedure that was intimately dependent on private initiative, as in the trials in front of the *quaestiones*, the correct implementation of the criminal legislation rests completely upon the integrity of the *accusatio*. The abuse of criminal trials by private citizens for reasons beyond (or parallel to) the public interest in seeing the punishment of whoever committed a crime is probably as old as the *quaestiones perpetuae*, maybe even older.[25]

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23 See A. Schilling, *Poena extraordinaria*, 161 ff. Firmius Cato was not only the main accuser against Marcus Scribonius Libo Drusus, but he was also paramount in fabricating the case against him: Tac. *ann.* 2.27–32.

24 See Ernst Levy, "Von den römischen Anklägervergehen", Id., *Gesammelte Schriften* 2, Böhlau, Köln 1963, 401: «anderseits aber mußte gerade ein Verfahren, das wie der Geschworenenprozeß die ganze Verwirklichung des Strafrechts von privater Initiative abhängig machte, mit deren Intaktheit stehen und fallen; es konnte gar nicht peinlich genug darüber wachen, daß die Initiative unbelastet blieb von Machenschaften, die dem Interesse der staatlichen Gemeinschaft bewußt entgegebenarbeiteten».

25 It was already sketched out in Plautus' comedy *Persa*, even though it was written well before the birth of the first *quaestio perpetua* and the approval of the *lex Remmia*. In this work by Plautus, the parasite Saturio complains about the *quadruplatores*, who

The almost complete liberty granted to the accuser soon became an instrument used to obtain personal or political gains. The prospect of gaining the prizes in the case of a successful conviction, the personal hatred, the possibility to hamper or eliminate political enemies,[26] the exposure granted to young and ambitious Romans[27] who prosecuted famous people were all reasons that could lead someone to press charges against somebody.

These risks were intrinsic to the new criminal procedure of the standing jury court trials, hence it's no wonder that already in the early development phase of the *quaestiones* it was possible to find legal provisions against these kinds of misuses.

Already in the text of the *lex repetundarum*, ratified in 123/122 B.C., it's possible to find some form of regulation. On one hand, the *lex Acilia* provided against the introduction of slanderous accusations (*calumnia*),

obtained the fourth part of the sums paid by those who were by them denounced: Plaut. *Persa* 63. See also Francesco De Martino, "I *quadruplatores* nel *Persa* di Plauto", Id., *Diritto e società nel mondo romano*, 2, a cura di Francesco D'Ippolito, Jovene, Napoli 1996, 99 ff.; G. Luraschi, "Il *praemium*", 275 ff.; O. Robinson, "The role of delators", 255.

26 See Orazio Licandro, "Candidature e accusa criminale: strumenti giuridici e lotta politica nella tarda repubblica", *Index* 25, 1997, 454 ff.; Donato A. Centola, "L'accusa nel sistema processuale delle *quaestiones perpetuae* tra funzione civica, dimensione premiale e disciplina sanzionatoria", Laura Solidoro (a cura di), *Regole e garanzie nel processo criminale romano*, Giappichelli, Torino 2016, 16 ff.

One of the most resounding cases of using the criminal trial as an instrument to undermine political rivals was recalled by Cicero in his *Pro Roscio Amerino* (§ 33). In 86 B.C., during the funerals of Gaius Marius, Gaius Flavius Fimbria – one of the fiercest Marian partisans – attempted to stab and kill the *pontifex maximus* and jurist Quintus Mucius Scaevola, as Fimbria perceived Scaevola as an enemy of the Marian faction. The *pontifex* survived the attempted murder; however, Fimbria did not relent. Since Fimbria did not manage to kill him, he tried nonetheless to eliminate his rival from the political arena by pressing charges against Mucius in front of the assembly of the people (*iudicium populi*). When asked about the kind of charge that could be brought against a revered and well-respected member of the Roman political elite, Fimbria allegedly replied that he would accuse the *pontifex* of not having completely received the blow to his body. On this episode, see also Andrew W. Lintott, "The Offices of C. Flavius Fimbria in 86–5 B.C.", *Historia* 20, 1971, 696.

27 The exposure granted by participating in trials in which renown parties were involved is clearly illustrated by Cicero: *Sed cum sint plura causarum genera, quae eloquentiam desiderent, multique in nostra re publica adulescentes et apud iudices et apud populum et apud senatum dicendo laudem assecuti sint, maxima est admiratio in iudiciis. Quorum ratio duplex est. Nam ex accusatione et ex defensione constat; quarum etsi laudabilior est defensio, tamen etiam accusatio probata persaepe est* (Cic. *off.* 2.49). On this passage, see also O. Robinson, "The role of delators", 260–261. Cicero did the same, utilizing the spotlight granted to him as lawyer of Sextus Roscius of Amera in 80 B.C., who was accused by Erucius acting on behalf – among others – of Lucius Cornelius Chrysogonus, the poweful freedmen of Sulla (at that time still dictator of Rome), as a springboard to his political career.

forcing the would-be accuser to take an oath that he was not acting calumniously.[28] On the other, this *lex* also tried to counteract an acquittal judgement achieved through the collusion between the accuser and the accused (the case of the so-called *praevaricatio*), striking off the previous verdict and allowing the repetition of the trial by a new accuser.[29]

The subsequent *lex Remmia de calumniatoribus*, approved at some point between 123/122 and 80 B.C., established a general legislation against *calumniatores* that was to be applied in any criminal trial in front of every *quaestio perpetua*.[30] The *lex Remmia* sanctioned with a penalty

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28 *Lex Acilia repetundarum*, line 19: (...) Sei deiurauerit calumniae causa non po[*stulare, is iudex nomen recipito ––– facitoque utei die ??? ex eo die, quo quoiusque quisque nomen detulerit, is quoius nomen*] (Ed. Michael W. Crawford, *Roman Statutes* 1, Institute of Classical Studies, London, 1996, 67 = Andrew W. Lintott, *Judicial Reform and Land Reform in the Roman Republic*, Cambridge University Press, Cambridge 1992, 92 = C. Venturini, *Studi sul crimen repetundarum*, 134). The solemn oath (*ius iurandum calumniae*) was probably to be pronounced by the *nominis delator* to allow the magistrate to implement the *nominis receptio*, which closed the pre-trial phase: see also Liv. 33.47.4. On the other hand, there is a passage in one of Cicero's letters, where the *ius iurandum* was sworn by one of the would-be accusers before the *divinatio*: Cic. *ad fam.* 8.8.3.

Regardless of its positioning in the pre-trial phase, the *ius iurandum* was mandatory at the start of the trial against the accused, and the trial could not begin without it. Unfortunately, there is little information about this, especially regarding the hypothesis of perjury; however, it's quite safe to assume that there were negative consequences for the violation of the oath.

On the *ius iurandum calumniae,* see also Mariagrazia Bianchini, *Le formalità costitutive del rapporto processuale nel sistema accusatorio romano*, Giuffrè, Milano 1964, 21 ff.; C. Venturini, *Studi sul crimen repetundarum*, 134 fn. 15; Julio G. Camiñas, "Régimen jurídico del *iusiurandum calumniae*", *SDHI* 60, 1994, 457 ff.; B. Santalucia, *Diritto e processo penale*, 166 fn. 202.

29 *Lex repetundarum*, lines 54–56: (...) de r//eo ap[*soluendo. vac quoius ex h(ace) l(ege) nomen delatum erit – – – nisei de eo sententiae ibei plurumae erunt, condemno*,] [55] [*qu*]od praeuaricationis causa factum non erit, is ex hace lege eius rei apsolutus esto. vac De reo condemnan[*do. vac sei de eo reo*] senten[*tia*]e ibei plurumae erunt, condemno, pr(aetor), qu[*ei ex h(ace) l(ege) quaeret, eum reum pronontiato fecisse uideri – – – sei is ex h(ace) l(ege) condemnatus*] [56] [*a*]ut apsolutus erit, quom eo h(ace) l(ege), nisei quod postea fecerit aut nisei quod praeuaricationis caussa factum erit, au[*t nisei de leitibus*] aestumandis aut nisei de sanctioni hoiusce legis, actio nei es[*to – – – vac*] (Ed. M. Crawford, *Roman Statutes*, 1, 70–71 = A. W. Lintott, *Judicial reform*, 100–102). The conviction of the first accuser for *praevaricatio* was one of the four hypotheses in which the trial could be repeated. For an overview about the *crimen praevaricationis*, see Th. Mommsen, *Römisches Strafrecht*, 501 ff.; M. Wlassak, *Anklage*, 30 ff.; E. Levy, "Von den römischen Anklägervergehen", 395 ff.; Louis Mer, *L'accusation dans la procédure pénale du Bas-Empire romain*, Université de Rennes, Rennes 1953, 446 ff.; B. Santalucia, *Diritto e processo penale*, 181 fn. 254.

30 Scholars usually set the *terminus post quem* in 149 B.C., when the *lex Calpurnia de repetundis* was passed into law, as clearly stated by James L. Strachan-Davidson, *Prob-*

the slanderous accuser, probably with the loss of the *ius accusandi*, i.e. he was barred from the possibility of exercising ever again the right to accuse anyone else.[31]

From a legal perspective, the main statutory bulwark against the misdeeds of the *accusatores* in this period were the provisions of the *lex Remmia*, as this law (or, rather, some parts of it) remained formally in force throughout the Principate, as still stated by the jurist Marcian in the waning years of the Severian dynasty:

> D. 48.16.1.2 (Marcian. *l.s. ad sc Turpill.* = Pal. 287): *Calumniatoribus poena lege Remmia irrogatur.*
>
> Calumniators are subjected to the penalty of the *lex Remmia*.

9. As seen in the aforementioned cases taken from the literary sources, the *calumniators* were not always punished with the penalty imposed by the *lex Remmia*. This ostensible inconsistency can be explained looking

lems of the Roman Criminal Law 2, Rodopi, Amsterdam 1969, 140 (reprint of the 1912 edition): «this law can hardly be earlier than the institution of the standing jury courts, which introduced the private prosecutor in criminal charges, for under the older system the magistrate who initiated the case was supposed to be only fulfilling his official duty». However, I think that it is more appropriate to postpone it to the approval of the *lex repetundarum*, which marked the birth of the "classical" archetype of the *quaestio perpetua*. It seems unlikely that before the *lex repetundarum*, when there was only one standing jury-court, the Romans felt the need to regulate the *crimen calumniae* via a general law. Moreover, the text of the *lex* did not mention the *lex Remmia* when it deals with the *ius iurandum calumniae*. The *terminus ante quem* raises fewer problems, since the oldest mention of the Remmian law is found in Cicero's *Pro Roscio Amerino*, a speech which Cicero made in 80 B.C.: see J. Strachan-Davidson, *Problems* 2, 2; Andrew R. Dyck (ed.), *Cicero. Pro Sexto Roscio*, Cambridge University Press, Cambridge 2010, 4.

31 Since the penalty stipulated for the slanderous accuser by the *lex Remmia* is never clearly stated in either legal or literary sources, Roman law scholars have long argued about which kind of punishment was originally established by this law. An overview of the various theories can be found in Julio G. Camiñas, *La lex Remmia de calumniatoribus*, Universidade de Santiago de Compostela, Santiago de Compostela 1984, 91 ff. In this paper, I have accepted the theory outlined by J. Strachan-Davidson (*Problems* 2, 140 ff.) and then developed by E. Levy, "Von den römischen Anklägervergehen", 380 ff. Those scholars have – in my opinion correctly – proved that the only punishment set by the *lex Remmia* was the loss of the right to accuse again. This was not the only negative consequence that the *calumniator* faced by the end of the Republic. Other statutes and the praetor's edict could provide for additional measures. For example, in the *Tabula Heracleensis* (lines 108–110 and 119–120), those convicted for *calumnia* or *praevaricatio* could not became decurions: see M. Crawford, *Roman Statutes* 1, 367. Another negative side effect of being a slanderous accuser established in the edict of the praetor was the inability to *postulare pro aliis*, except for certain persons (*nisi pro certis personis*): see Otto Lenel, *Das Edictum perpetuum*, Bernhard Tauchnitz, Leipzig 1927³, 77 ff. On the other hand, the *lex Remmia* did not bar the *calumniator* from giving testimony: see D. 22.5.13 (Pap. 1 *de adult*. = Pal. 8).

at the dichotomy between the *ordo iudiciorum publicorum* and the new *cognitiones extra ordinem*.[32] The gradual development of the criminal jurisdiction of the new *cognitiones extra ordinem* at the expense of the jury courts of the *ordo* meant that during the Principate these two systems had to coexist.[33] It's now believed that the adversarial system was still generally applied to the trials in front of the *cognitiones* as well, not only when the

32 A clear overview of the thesis embraced in this paper can be found in Fabio Botta, "*Ordo/extra ordinem*. Sistemi giurisdizionali e ordinamenti penali durante il Principato", Antonio Guidara (a cura di), *Specialità delle giurisdizioni ed effettività delle tutele*, Giappichelli, Torino 2021, 3 ff. On this topic, see also Mario Lauria, "*Accusatio-inquisitio*. *Ordo-extra ordinem-cognitio*: rapporti ed influenze reciproche", Id., *Studii e ricordi*, Jovene, Napoli 1983, 277 ff.; Arnaldo Biscardi, *Aspetti del fenomeno processuale nell'esperienza giuridica romana*, Cisalpino-Goliardica, Milano 1978², 73 ff.; G. Pugliese, "Linee generali", 701 ff.; Arnaldo Biscardi, "C. 9.2.7. *Inquisitio* ed *accusatio* nel processo criminale *extra ordinem*", *Seminarios complutenses de derecho romano* 1, 1989, 235 ff.; Stefania Pietrini, *Sull'iniziativa del processo criminale romano (IV-V secolo)*, Giuffrè, Milano 1996, 13 ff.; B. Santalucia, *Diritto e processo penale*, 241 ff.; Giorgia Zanon, *Le strutture accusatorie della cognitio extra ordinem nel Principato*, CEDAM, Padova 1998, 1 ff.; Fabio Botta, "Opere giurisprudenziali *de publicis iudiciis* e *cognitio extra ordinem* criminale", *Studi in onore di Remo Martini* 1, Giuffrè, Milano 2008, 281 ff.; Bernardo Santalucia, "*Accusatio* e *inquisitio* nel processo penale di età imperiale", Id., *Altri studi di diritto penale romano*, CEDAM, Padova 2009, 313 ff.; Fabio Botta, *Profili essenziali di storia del diritto e del processo penale romano*, Edizioni AV, Cagliari 2016, 49 ff.; Anna Maria Mandas, *Il processo contro Paolo di Tarso. Una lettura giuridica degli Atti degli Apostoli (21.27–28.31)*, Jovene, Napoli 2017, 133 ff.

33 At least until the *epistula* of Septimius Severus and Caracalla to the urban prefect Fabius Cilo formalised the obsolescence of the jury courts, which awarded the *praefectus urbi* with the jurisdiction over all criminal cases in Rome and in Italy up to hundred miles from the *pomerium*: D. 1.12.1 pr. (Ulp. *l.s. de off. praef. urb.* = Pal. 2079). See also Dario Mantovani, "Sulla competenza penale del *praefectus urbi* attraverso il *liber singularis* di Ulpiano", Alberto Burdese (a cura di), *Idee vecchie e nuove sul diritto criminale romano*, CEDAM, Padova 1988, 177 ff.; Valerio Marotta, *Ulpiano e l'Impero* 2, Loffredo, Napoli 2004, 164 ff.; Botta, "Opere giurisprudenziali", 293 fn. 38. The survival of the *quaestio de adulteriis* in the Severan age even after the *epistula ad Fabium Cilonem* is theorised by some authors, based on a statement by Cassius Dio (76.16.4). Dio declares that at the start of his suffect consulship in 204 A.D. there were more than 3.000 adultery trials still pending, allegedly in front of the relative *quaestio*. On this topic, see Th. Mommsen, *Römisches Strafrecht*, 220 fn. 5 and 696 fn. 2; Ugo Brasiello, "Sulla desuetudine dei *iudicia publica*", *Studi in onore di Emilio Betti* 4, Giuffrè, Milano 1962, 556 ff.; W. Kunkel, v. «Quaestio», 99 ff.; Peter Garnsey, "Adultery Trials and the Survival of the Quaestiones in the Severan Age", *JRS* 57, 1967, 56 ff.; G. Pugliese, "Linee generali", 676; S. Pietrini, *Sull'iniziativa*, 25 fn. 35; B. Santalucia, *Diritto e processo penale*, 214 fn. 96; Valerio Marotta, *Ulpiano e l'Impero* 1, Loffredo, Napoli 2000, 175 fn. 35; O. Robinson, *Penal Practice*, 75 ff. Moreover, in D. 48.1.8 (Paul., *l.s. de iudic. publ.* = Pal. 1264) Paulus recalls that, at the time he was writing, only the *ordo exercendorum publicorum capitalium* had fallen into disuse, i.e. the jury courts which were in charge of the punishment of the capital crimes. Considering all this, some authors have also hypothesised the survival of other non-capital *quaestiones* until at least the Severan age.

new judge *extra ordinem* was tasked with a criminal offence provided by the old *leges iudiciorum publicorum*. In these cases, however, the question arose regarding whether the old procedural rules that were originally applied in front of the *quaestio* should be complied with in front of the new *extra ordinem* judge as well.[34]

The same problem became apparent for the regulation set by the *lex Remmia*, especially regarding the fixed penalty imposed by the law. The loss of the *ius accusandi* was not enough to have a deterrent effect during the Principate, so the new judges started to punish the *calumniatores* with extraordinary penalties in addition to the old *poena legis*,[35] as later stated in the *Pauli Sententiae*:

> *Paul. Sent.* 1.5.2: *Et in privatis et in publicis iudiciis omnes calumniosi extra ordinem pro qualitate admissi plectuntur*.[36]
>
> In both judgements of the *ordo iudiciorum privatorum* and *publicorum* all the calumniators are punished *extra ordinem* according to the severity of the offence.

The punishment of Firmius Cato happened at the end of the trial against his sister, which took place in front of the senatorial court. The same could be said about the punishment of Paetus under Nero, who formally accused the powerful freedman Pallas and the *praefectus praetorio*

34 The answer to this question, as far as Roman jurists are concerned, is generally positive, except for those rules which could not be applied to the *cognitiones* because of their incompatibility with the structure of the new criminal trial, like those regarding the vote of the judges: see F. Botta, "Opere giurisprudenziali", 310 ff.

35 See also Ernst Levy, "Gesetz und Richter im Kaiserlichen Strafrecht. Erster teil. Die Strafzumessung", Id., *Gesammelte Schriften* 2, Böhlau, Köln 1963, 446 ff.; Francesco Maria De Robertis, "Sull'efficacia normativa delle costituzioni imperiali", Id., *Scritti varii di diritto romano* 3, Cacucci, Bari 1987, 109 ff.; G. Provera, *La vindicatio caducorum*, 72 ff.

36 This work was originally ascribed to Paulus; however it's now commonly believed that the *Pauli Sententiae* were written in the late Antiquity, probably drawing a lot of its contents from works of jurists of the Classical age: for an overview of the debate around this topic, see Iolanda Ruggiero, *Ricerche sulle Pauli Sententiae*, Giuffrè, Milano 2017, 20 ff. This text can be found in two other versions in the legal sources, with substantial variations: in the Digest (D. 48.16.3 [Paul. 1 *sent.* = Pal. 1940]: *Et in privatis et in extraordinariis criminibus omnes calumniosi extra ordinem pro qualitate admissi plectuntur*) and in the *Consultatio veteris cuiusdam iureconsulti* (6.21: *Idem lib. V tit. de privatis et publicis iudiciis: Omnes calumniosi extra ordinem pro qualitate admissi plectendi sunt*). Ernst Levy proved that the version found in the *Sententiae* was essentially the discipline of the *crimen calumniae* in force during the Severian age. Moreover, on the basis of the use of the technical term *iudicium publicum*, Levy was able to place the drafting of this *sententia* no later than the reign of Diocletian: see Ernst Levy, "Die römische Kapitalstrafe", Id., *Gesammelte Schriften* 2, Böhlau, Köln 1963, 372 ff.; Id. *Pauli Sententiae. A Palingenesia of the Opening Titles as a Specimen of Research in West Roman Vulgar Law*, Cornell University Press, Ithaca 1945, 107 ff.

Afranius Burrus of trying to overthrow the emperor and put Faustus Cornelius Sulla on the imperial throne. Pallas was acquitted and the accuser was exiled.[37] These episodes took place in front of an extraordinary *cognitio*, therefore, the penalty that could be imposed for *calumnia* was not the fixed one set by the *lex Remmia*; instead, the judge could decide what kind of punishment would be appropriate for the matter at hand.

10. There are also examples of the chastising of fiscal and criminal *delatores* not related to a pending lawsuit, as seen in the case of Publius Suilius who was punished during Nero's reign for his actions under Claudius. In other cases, the sources even recount the collective punishment of criminal and/or fiscal accusers as such, similarly to a political purge against a particular group of people. Those instances were one-time measures, the outcome of the ambivalent attitude that the emperors had towards the *delatores*. However, they did not tackle the root of the problem since the adversarial system at the basis of criminal and fiscal trials was not touched by any reform, and the emperors still had to rely heavily upon the *delatores*' actions.[38]

11. The beginning of a criminal trial structurally rested upon the presence of an *accusatio*, as we have seen before. The activity of the accuser didn't end there, since he had to search for evidence and to present the case in front of the jury.[39] He also had to sustain the trial until the

37 Tac. *ann.* 13.23. Pallas and Burrus' trial was probably a *cognitio principis*, since Burrus later sat and voted among the "judges", namely the members of the *consilium principis*. Burrus was of equestrian rank: since he was not a member of the Senate, the trial could not be a *cognitio senatus*: see Wolfgang Kunkel, "Die Funktion des Konsiliums in der magistratischen Strafjustiz und im Kaisergericht" II, Id., *Kleine Schriften: zum römischen Strafverfahren und zur römischen Verfassungsgeschichte*, Böhlaus Nachfolger, Weimar 1974, 204–205; A. Schilling, *Poena extraordinaria*, 231 fn. 1105.

38 Other instances can be found in the sources, like the aforementioned attempted punishment of the accusers close to Nero under Vespasian (Tac. *hist.* 4.40–41), the purging of Sejanus' accomplices after the former *praefectus praetorio*'s death (Dio Cass. 58.14.1–4)) or the collective chastisement against *delatores* under Tito (Svet. *Tit.* 8.5 and Mart. *epig.* 4 and 4a), Nerva (Dio Cass. 68.1.2) and Trajan (Plin. *paneg.* 35.3). The collective punishment of the *delatores* usually concerned only the fiscal *delatores*, while the criminal *delator* was generally punished singularly: see Y. Rivière, *Les delateurs*, 37.

39 See Cic. *dom.* 88: *Ac si me populus Romanus, incitatus iracundia aut invidia, e civitate eiecisset idemque postea mea in rem publicam beneficia recordatus se conlegisset, temeritatem atque iniuriam suam restitution mea reprehendisset, tamen profecto nemo tam esset amens qui mihi tale tale populi iudicium non dignitati potius quam dedecori putaret esse oportere. Nunc vero cum me in iudicium populi nemo omnium vocarit condemnari non potuerim qui accusatus non sim, denique ne pulsus quidem ita sim ut, si contenderem, superare non possem, contraque a populo Romano semper sim defensus, amplificatus, ornatus, quid est qua re quisquam mihi se ipsa populari ratione anteponat?*

judgement: if the *delator* neglected these assignments, the jury could not reach a verdict on the matter. The criminal trial was completely at the mercy of the accuser, who could decide to interrupt the course of it. The most unambiguous way to express this purpose by the *delator* was simply by means of not showing up in court at the hearing. During the Republic, the absence of the accuser determined the abatement of the pending trial, with no negative consequence for any of the parties involved.[40] This is stated clearly by Cicero and his commentator Asconius:

> Cic. *Verr*. II.2.99: *Si praesens Sthenius reus esset factus, si manifesto in maleficio teneretur, tamen, cum accusator non adesset, Sthenium condemnari non oportet. Etenim si posset reus absente accusatore damnari, non ego a Vibone Veliam parvulo navigio inter fugitivorum ac praedonorum ac tua tela venissem, quo tempore omnis illa mea festinatio fuit cum periculo capitis, ob eam causam ne tu ex reis eximerere si ego ad diem non adfuissem. Quod igitur tibi erat in tuo iudicio optatissimum, me cum citatus essem non adesse, cur Sthenio non putasti prodesse oportere, cum eius accusator non adfuisset? Itaque fecit ut exitus principio simillimus reperiretur: quem absentem reum fecerat, eum absente accusatore condemnat*.
>
> Now if Sthenius had been there to meet the charge in person, had his guilt been manifest and undeniable, even so, with no prosecutor there, it would have been wrong to convict him. Why, if it were possible for an accused man to be convicted with his prosecutor absent, I should never have made that voyage in a small boat from Vibo to Velia, risking the murderous assaults of revolted slaves and pirates – and your own; I hurried forward the whole of my journey then at the risk of my life, simply in order that my failure to appear at the time appointed should not mean your liberation from the ranks of the accused. You could have desired nothing better in your own trial than that I should not be there when called upon: why did you not hold that Sthenius had a right to the same advantage when his prosecutor failed

Cicero recalls how his banishment imposed by Publius Clodius Pulcher was unlawful, since the *aqua et igni interdictio* was not established at the end of a trial, but through a plebiscite proposed by Pulcher during his tribunate. He remarks how he could not legally be exiled, as he was not formally accused and condemned (*condemnari non potuerim qui accusatus non sim*).

40 Even though there were no negative consequences for the accuser from the legal standpoint, this kind of behaviour was not necessarily free from criticism. The accuser who dropped his case was at the very least viewed with suspicion, as stated in Ascon. *in Corn*. p. 49, ll. 8–9, where the Cominii brothers were suspected of being bribed off the prosecution by Cornelius: see Th. Mommsen, *Römisches Strafrecht*, 498; Gianfranco Purpura, “Il papiro BGU 611 e la genesi del SC Turpilliano”, *Annali del Seminario Giuridico dell'Università di Palermo* (*AUPA*) 36, 1976, 225–226; Michael C. Alexander, *Trials in the Late Roman Republic: 149 BC to 50 BC*, University of Toronto Press, Toronto 1990, 102; B. Santalucia, *Diritto e processo penale*, 172; Stefano Giglio, *Il problema dell'iniziativa nella cognitio criminale. Normative e prassi da Augusto a Diocleziano*, Giappichelli, Torino 2009², 173; Bernardo Santalucia (a cura di), *Asconio. Commento alle orazioni di Cicerone*, Marsilio, Venezia 2022, 253.

to appear? And so the last stage of his proceedings was like the first. He had allowed Sthenius to be prosecuted when Sthenius himself was absent; and now, when the prosecutor was absent, he pronounced Sthenius guilty.

Ascon. *in Corn.*, p. 49, ll. 6-8: *Postero die, cum P. | Cassius adsedisset et citati accusatores non adessent, exemptum nomen est de reis | Cornelii.*[41]

The next day Publius Cassius took his seat as president of the jury court, but since the accusers were not present after have being summoned by the public crier, the name of Cornelius was struck out from the list of the accused.[42]

The absence of the accuser at the hearing set at the end of the period granted to Cicero to make an inquiry in Sicily would have led to the abatement of the trial against the former governor of Sicily.[43] Similarly, the absence of the Cominii brothers – Publius was the *nominis delator*, Gaius was the *subscriptor* – after being summoned by Publius Cassius, the *praetor* in charge of the *quaestio*, forced the magistrate to delete the name of Cornelius from the list of the accused, sealing formally the abatement of the trial.[44]

To sum up, in the late Republic and in the early Principate the punishment of the misuse of the *accusatio* revolved around two criminal offences: *calumnia* and *praevaricatio*. Both of these offences entailed the acquittal of the *reus*, but the accuser had an escape route, in the case that he felt that he was going to be accused of slander or collusion, or simply lose interest in the punishment of the presumed culprit. The abandonment of the *accusatio* made it impossible to reach a verdict in the case, so the accuser would have avoided a possible counter charge of *calumnia* or *praevaricatio*.

12. The legal custom of abatement in case of absence of the *delator* underwent a significant change between the time of Cicero and the Augustan principate:

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41 Ed. Thomas Stangl, *Ciceronis orationum scholiastae*, Olms, Hildesheim, 1964 (original reprint of the Wien, 1912 edition).

42 My translation, based on the Italian one which can be found in B. Santalucia, *Asconio*, 253: «Il giorno dopo Publio Cassio prese il suo posto di presidente della corte, ma siccome gli accusatori, quando furono chiamati dal banditore, non risultarono presenti, il nome di Cornelio fu cancellato dalla lista degli accusati».

43 Cicero was given 110 days to make the inquiry in the province and collect evidence against the former governor: Cic. *Verr.* I.6 and II.1.30.

44 Cornelius was elected tribune of the plebs in the year 67 B.C. The following year he was accused by the Cominii brothers of *maiestas.* On the events during Cornelius' tribunate that led to the trial, see Friedrich Münzer, v. «Cornelius (n. 18)», *PWRE* IV.1, 1901, 1252 ff.; Richard A. Bauman, *The crimen maiestatis in the Roman Republic and Augustan Principate*, Witwatersrand University Press, Johannesburg 1967, 71 ff.; Miriam Griffin, "The Tribune C. Cornelius", *JRS* 63, 1973, 196 ff.; Andrew W. Lintott, *Cicero as Evidence. A Historian's Companion*, Oxford University Press, Oxford 2008, 112 ff.

Suet. *Aug.* 32.2: (...) *diuturnorum reorum et ex quorum sordibus nihil aliud quam voluptas inimicis quaereretur nomina abolevit condicione proposita, ut si quem quis repetere vellet, par periculum poenae subiret*. (...)

(...) He struck off the lists the names of those who had long been under accusation, from whose humiliation nothing was to be gained except the gratification of their enemies, with the stipulation that if anyone was minded to renew the charge, he should be liable to the same penalty. (...)

Suetonius recalls how at the end of the civil war Augustus tried to normalise various aspects of public life that had been distorted in recent decades. One of the measures recalled by the historian was the removal of the name of those people who had been lingering as accused for a long time. This means that at an unspecified moment between the late Republic and the Principate, the presidents of the *quaestiones* started not to order the abatement of trial in case of absence of the accuser, but only to command a postponement of it.[45]

This allowed for an unnatural extension of the length of the trial, keeping the accused in a state of uncertainty, which implied numerous negative consequences from a social and legal standpoint. The same problematic situation is more explicitly presented by the emperor Claudius, when he spoke against the *regnum accusatorum*, the tyranny of the accusers:

BGU 611, col. II, ll. 11-15: (...) Nam quidem accu-
satorum regnum ferre nullo modo possum,
qui, cum apud curiosum consilium inimicos suos
reos fecerunt, relincunt eos in albo pendentes
et ipsi tanquam nihil egerint peregrinantur.[46]

On the other hand, we cannot tolerate the tyranny of the accusers, who – after having accused their enemies in front of the jury panel – leave them in this state and they even go around as if nothing happened.

Claudius complained about those who, having denounced someone, wander around as if nothing happened, leaving their accused *in albo pendentes* and losing any interest in the pending trial.[47]

Luckily, the text of this *oratio principis in senatu habita* was preserved in the BGU 611 papyrus.[48] In this speech, made in front of the Senate in

45 See Gianfranco Purpura, "Il papiro BGU 611", 227; L. Fanizza, *Delatori e accusatori*, 24; S. Pietrini, *Sull'iniziativa*, 94–95; D. A. Centola, *Il crimen calumniae*, 65; S. Giglio, *Il problema dell'iniziativa*, 174.

46 My translation, based on the new edition of the papyrus found in Pierangelo Buongiorno, *Senatus consulta Claudianis temporibus facta. Una palingenesi delle deliberazioni senatorie dell'età di Claudio (41–54 d.C.)*, Edizioni Scientifiche Italiane, Napoli 2010, 204–205.

47 See R. Gamauf, "Zu den Rechtsfolgen der *abolitio*", 301–302.

48 On this papyrus, see also Rodolphe Dareste, "Nouveaux textes de droit romain", *NHR* 22 (3e série), 1898, 687 ff.; Johannes Stroux, *Eine Gerichtsreform des Kaisers Claudius*

42, 43 or 47 A.D.,[49] the emperor Claudius expresses his purpose in tackling a series of misconducts in the administration of justice.[50] Among other things, in this speech the emperor voices his concern for the cases of the absence of the accuser only and exclusively in the trials of the *ordo iudiciorum publicorum*:[51]

> BGU 611, col. III, ll. 5-9: [...] ut pot]est[atem]
> faciam[u]s praetori pr[aeteriti]s inquisition[is]
> di[e]bus c[i]tandi acc[usatorem], et si neq[ue a]-
> der[unt] neque excusa[buntur pron]untiet c[al(umniae)]
> caussa negotium r[eis fec]isse videri [eos?].[52]
>
> We empower the praetor, once the days granted for the inquiry has passed, with the power to summon the accusers, and if they will not appear in court nor they will excuse themselves [for not appearing in court], [the praetor] should declare them as they had accused someone slanderously.

The emperor granted the *praetor*, once the days granted for the inquiry had passed, the power to summon the absent accuser to a new hearing. If he did not appear in court, nor excuse himself for not appear-

(BGU 611), Bayerischen Akademie der Wissenschaften, München 1929, 82 ff.; Friedrich von Woess, "Die *oratio* des Claudius über Richteralter, Prozeßverschleppung und Anklägertyrannei (BGU. 611)", in *ZSS* 51, 1931, 336 ff.; André Fliniaux, "Une réforme judiciaire de l'empereur Claude (BGU 611). A propos de travaux récents", *NRH* 10 (4e série), 1931, 509 ff.; E. Levy, "Von den römischen Anklägervergehen", 418 ff.; Edoardo Volterra, v. «Senatus consulta», *Novissimo Digesto Italiano* (*NNDI*) 16, 1969, 1068–1069 (newly republished by Pierangelo Buongiorno, Annarosa Gallo, Salvatore Marino [a cura di], *Edoardo Voterra. Senatus consulta*, Franz Steiner Verlag, Stuttgart 2017, 152–153); G. Purpura, "Il papiro BGU 611", 230 ff.; S. Giglio, *Il problema dell'iniziativa*, 174 ff.; P. Buongiorno, *Senatus consulta Claudianis*, 206 ff.; A. M. Mandas, *Il processo contro Paolo di Tarso*, 273 ff.

49 See P. Buongiorno, *Senatus consulta Claudianis*, 213 ff.

50 The *oratio* regarded also other problems and can be divided into three parts. In the first one (column I, lines 1–7), the emperor recommends that judges younger than 25 years old should be exempted from giving judgement in certain delicate matters, such as the *causae liberales*: see P. Buongiorno, *Senatus consulta Claudianis*, 208–209. In the second part (column I, line 8 – II, line 11), Claudius aims at tackling the scheming put together by some accusers to artificially prolong the duration of trials by ordering that some of the judicial activity of the courts should take place also during the judicial vacation days: see F. von Woess, "Die *oratio* des Claudius", 361; P. Buongiorno, *Senatus consulta Claudianis*, 209–210. The third and last part (column II, line 11 – III, line 19) was devoted to the topic of the *absentia* of the accusers.

51 The area of application of the *oratio* can be correctly inferred by the reference to the *praetor* in his role as chairman of the *quaestio* made in column III, line 6. Moreover, in column II, line 13 Claudius speaks about the *curiosum consilium*, which is none other than the jury panel of the *quaestio*: see J. Stroux, *Eine Gerichtsreform*, 87.

52 My translation, based on the edition of BGU 611 by P. Buongiorno, *Senatus consulta Claudianis*, 204–205, with the proposed integration of the last line put forward in Pierangelo Buongiorno, "Das „verleumderische" negotium. Geschichte einer Ergänzung von BGU II 611", in *Journal of Juristic Papyrology* 40 2010, 111–134.

ing, the magistrate was required to declare that the absentee had accused someone slanderously. Scholars have debated at length the correct interpretation of the expression "*potestatem faciamus*".[53] These subjects were then considered the same as the calumniators, thus punished with the loss of the *ius accusandi*.[54]

Claudius was the first to try to limit the until-then unrestricted liberty given to the accusers by the means of a structural intervention on the procedural rules of the criminal trials, not only of the *ordo iudiciorum publicorum*, but also of the *cognitiones extra ordinem*.[55]

53 Some argue that the power to summon the absent accuser and to condemn him if he did not show up was to be exercised at the discretion of the magistrate. Others have pointed out that the emperor was not simply stating that the regulation of the *absentia* dictated in this *oratio* was to be exercised at the *praetor*'s will; rather, with the expression "*potestatem faciamus*" Claudius was masking the fact that the application of these provisions was mandatory for the magistrate: see F. von Woess, "Die *oratio* des Claudius", 357 ff.; Mario Lauria, "*Calumnia*", Id., *Studii e ricordi*, Jovene, Napoli 1983, 257 and fn. 73; G. Provera, *La vindicatio caducorum*, 66–67; G. Purpura, "Il papiro BGU 611", 235–236; L. Fanizza, *Delatori e accusatori*, 24; D. A. Centola, *Il crimen calumniae*, 66; P. Buongiorno, *Senatus consulta Claudianis*, 211–212; A. M. Mandas, *Il processo contro Paolo*, 275 fn. 63. I think that the correct explanation was given by Ernst Levy, who stated that the magistrate was compelled to declare the *calumnia* of the absent accuser only when he was not present after being summoned and did not give any justifications. If he tried to justify his absence, the *praetor* had to evaluate if the excuses given by the accuser were adequate or not, thus putting the power to condemn him totally in the hands of the magistrate: see E. Levy, "Von den römischen Anklägervergehen", 418–419.

54 More generally, the absent accuser was deemed as infamous, but the infamy was a consequence of being acknowledged as a *calumniator*, not the penalty itself. *Infamia* as a unitary legal concept with a precise set of negative consequences probably did not appear until later on in the classical age, although the majority of modern scholars think that it came to be in the late Antiquity or the age of Justinian (even though some admit that the seeds of this development were planted in the late Severan age). A republican law could not dictate *infamia* as a kind of penalty: see E. Levy, "Von den römischen Anklägervergehen", 385; Ugo Brasiello, *La repressione penale in diritto romano*, Jovene, Napoli 1937, 152 ff.; Max Kaser, "*Infamia* und *ignominia* in den römischen Rechtsquellen", *ZSS* 73, 1956, 220 ff.; Joseph G. Wolf, "Lo stigma dell'ignominia", Alessandro Corbino, Michel Humbert, Giovanni Negri (a cura di), *Homo, caput, persona. La costruzione giuridica dell'identità nell'esperienza romana (dall'epoca di Plauto a Ulpiano*), IUSS Press, Pavia 2010, 491 ff.

This hypothesis seems to be corroborated by the fact that the term *infamia* was not used by the Roman jurists until much later: the first instance of the use of the term with a technical meaning can be found in a passage from the *Digesta* of Salvus Julianus in D. 37.15.2 pr. (14 *dig.* = Pal. 239). Before that time, the preferred term was *ignomnia*: see U. Brasiello, *La repressione penale*, 162; M. Kaser, "*Infamia* und *ignominia*", 227 ff.; J. G. Wolf, "Lo stigma dell'ignominia", 493 ff.

55 Another papyrus, the BGU 628 *r*, contains a copy of an edict of Nero, in which the emperor recalls the provisions implemented by his late father, i.e. Claudius, to guarantee the presence of the parties in those trials that took place in front of the imperial court (*cognitio principis*). There is still a debate regarding the identity between the provisions of Claudius recalled in BGU 628 *r* and those recalled by Suetonius (*Claud.* 15.2) and Cassius Dio (60.28.6). More broadly, over these topics, see R. Dareste, "Nouveaux tex-

13. Claudius' intervention punished for the first time the abandonment of an *accusatio* by the *delator*, but it did not lead to the creation of a new criminal offence; the creation of the *crimen tergiversationis* must be ascribed to the *senatus consultum Turpillianum* of 61 A.D.[56] The Turpillian decree referred to the regulation set forth by the speech of Claudius, clarifying some aspects of it,[57] but also added the possibility for the accuser to file a request to the judge, asking for the authorisation to drop the charges without being punished (*abolitio privata*),[58] as clearly stated by Papinian:

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tes de droit romain", 689 ff.; Édouard Cuq, "Trois nouveaux documents sur les *cognitiones* caesarianae", *NRH* 23 (3e série), 1899, 111 ff.; Arthur A. Schiller, "The First Edict of BGU II 628 *Recto*", Id., *An American Experience in Roman Law*, Vandenhoeck & Rupprecht, Göttingen 1971, 179 ff.; Gianfranco Purpura, "*Edictum Neronis de praefinitione temporum circa appellationes in criminalibus causis*", Id. (a cura di), *Revisione ed integrazione dei Fontes Iuris Romani Anteiustiniani (FIRA). Studi preparatori. I. Leges*, Giappichelli, Torino 2012, 383 ff.; Bernardo Santalucia, "Osservazioni su BGU II 628 *r*", *Iura* 64, 2016, 265 ff.; A. M. Mandas, *Il processo contro Paolo*, 276 ff.

56 See D. A. Centola, *Il crimen calumniae*, 67; A. M. Mandas, *Il processo contro Paolo*, 284 fn. 88.

57 See E. Levy, "Von den römischen Anklägervergehen", 419–420; L. Mer, *L'accusation*, 462–463; G. Provera, *La vindicatio caducorum*, 66–67; Tullio Spagnuolo Vigorita, *Secta temporum meorum. Rinnovamento politico e legislazione fiscale agli inizi del principato di Gordiano III*, Sophia, Palermo 1978, 31; P. Buongiorno, *Senatus consulta Claudianis*, 212.

58 The accuser had to directly petition the judge when he was in court, as stated by Papinian (D. 48.16.10 pr. [Pap. 2 *de adult*. = Pal. 16]) and Marcianus (D. 48.16.1.8 [Marcian. *l.s. ad sc Turpill*. = Pal. 287]). The Turpillian decree probably specified that the request had to be presented to the *praetor* as president of the *quaestio*, while Papinian and Marcianus were alluding to the new judge of the *cognitio* in charge of the *iudicium publicum*, since the *quaestiones* had fallen in disuse: see L. Fanizza, *Delatori e accusatori*, 62. If the accuser's request was to be granted, the magistrate would have deleted the name of the accused from the list and the abatement of the trial and the trial would be abated. The only negative effect for the accuser was that he could not renew the same accusation for which he had requested the *abolitio* – see D. 48.16.4.1 (Pap. 15 *resp*. = Pal. 731) and C. 9.1.6 (Imp. Alex. A. Probo, a. 224) – but someone different from the first accuser could freely accuse the same *reus* of the same crime, as declared by Macer (D. 48.2.11.2, [2 *de publ. iudic*. = Pal. 34]).

The *abolitio privata* was the only type of *abolitio* that was introduced by the *senatus consultum Turpillianum*. The other two kinds, *abolitio publica* (D. 48.16.12 [Ulp. 2 *de adult*. = Pal. 1957]) and *ex lege* (D. 48.16.10 pr. [Pap. 2 *de adult*. = Pal. 16]), were already in use at the time of the approval of the Turpillian decree. There is no proof of an *abolitio publica* for the Republican age: see Th. Mommsen, *Römisches Strafrecht*, 455. Differently, what will be labelled by Papinian as *abolitio ex lege* was probably as old as the *quaestiones perpetuae*, since death or serious illness of the accuser produced the abatement of the trial. In the aforementioned text taken from the *Verrinae*, Cicero says that he had to face not only the risks of sailing from Sicily to Rome, but also the blades of hitmen hired by Verres to kill him (*tua tela*), to manage to be present at the first hearing of the trial, implying that if Cicero had died, the trial could not continue. Moreover, the reason of the absence of the accuser in court did not matter, since if he did not put forward some suitable justification of his absence to allow an adjournment of the trial, the *praetor* had to dismiss the case: see Th. Mommsen, *Römisches Strafrecht*, 453; L. Fanizza, *Delatori e accusatori*, 61.

D. 50.2.6.3 (Pap. 1 *resp*. = Pal. 392): *Qui iudicii publici quaestionem citra veniam abolitionis deseruerunt, decurionum honore decorari non possunt, cum ex Turpilliano senatus consulto notentur ignominia veluti calumniae causa iudicio publico damnati*.

Those who have abandoned the investigation of a criminal charge, unless there has been granted the concession of an amnesty, may not be graced with the rank of decurions, since those condemned in criminal proceedings are branded with ignominy under the *senatus consultum Turpillianum* as if for calumny.

Some years later, with another senatorial decree, the provisions of the *senatus consultum Turpillianum* were extended to fiscal proceedings as well, owing to their similarities with criminal proceedings:

D. 49.14.15 pr. (Mauric. 3 *ad leg. Iul. et Pap*. = Pal. 3): *Senatus censuit, si delator abolitionem petat, quod errasse se dicat, ut idem iudex cognoscat, an iusta causa abolitionis sit, et si errasse videbitur, det inprudentiae veniam, si autem calumniae, hoc ipsum iudicet eaque causa accusatori perinde cedat, ac si causam egisset et prodidisset*.

The senate resolved that if an informer seeks an annulment because, he says, he has made a mistake, the same judge should conduct a hearing into whether there is just cause for an annulment, and if he shall seem to have made a mistake, [the judge] may pardon his lack of judgment, but if he seems to have committed calumny, he shall pronounce that [crime] committed, and the accuser's situation shall be the same as if he had brought an action and abandoned it.

The introduction of the *crimen tergiversationis* compelled the accuser to carry on with the trial until its end or to ask for the *abolitio*, which could be granted only in the presence of a just cause and was generally not easy to obtain.[59]

However, since the emperors still needed the services of both kinds of *delatores*, the threat of being punished for *calumnia* or the introduction of the new criminal offence of *tergiversatio* was hardly enough to solve the problems of the criminal justice system. These provisions were easily avoidable by employing a straw man acting on behalf of the real *accusator*, especially if the instigator was a powerful man.[60] Moreover, the fixed *poena legis Remmiae*

See also E. Levy, "Von den römischen Anklägervergehen", 421 ff.; Miroslav Boháček, "Un esempio dell'insegnamento di Berito ai compilatori", *Studi in onore di Salvatore Riccobono nel XL anno del suo insegnamento* 1, Castiglia, Palermo 1936, 367 ff.; Wolfgang Waldstein, *Untersuchungen zum römischen Begnadigungsrecht: abolitio, indulgentia, venia*, Universitätsverlag Wagner, Innsbruck 1964, *passim*; R. Gamauf, "Zu den Rechtsfolgen der *abolitio*", 299 ff.

59 Plin. *epist.* 6.31.12 and 7.6.6; D. 38.2.14.2 (Ulp. 45 *ad ed.* = Pal. 1172); C. 9.42.2 pr. (Imp. Const. A. ad Ianuarinum pu., a. 319).

60 The *senatus consultum Turpillianum* originally included a provision that extended its regulation against *tergiversatio* and *praevaricatio* to whoever purchased or sold such services: Tac. *ann.* 14.41. However, the Roman jurists later expanded its scope of application to every sort of instigation to accuse coming from a third party, except

imposed for calumny and *tergiversatio* was scarcely a deterrent for anyone, except for those who were part of the upper echelon of Roman society.[61] But in this case, if the accusers were acting on behalf of the emperor or were making accusations of *maiestas*, there was barely any risk of being punished.

14. The situation began to change at the end of the Julio-Claudian dynasty.[62] Starting with Vespasian,[63] but especially with Titus[64] and, later,

when the latter merely encouraged the accuser, and even when the instigator used another person to instigate the accuser (*mandare accusatorem*): see D. 48.16.15 pr. (Macer 2 *publ.* = Pal. 36) and D. 48.16.1.13 (Marcian. *l.s. ad sc Turpill.* = Pal. 287). These texts, however, have been heavily interpolated, as demonstrated by T. Spagnuolo Vigorita, *Secta temporum meorum*, 23 ff. See also E. Levy, "Von den römischen Anklägervergehen", 423 ff. Nevertheless, it was probably not so easy to prove the existence of these kinds of agreements between the formal *delator* and the instigator, so the latter could safely pull the strings of the trial without being at risk.

61 Plin. *paneg.* 35.3: *neque ut antea exsanguem illam et ferream frontem nequiquam convulnerandam praebeant punctis et notas suas rideant, sed spectant paria praemio damna nec maiores spes quam metus habeant tiemeantque, quantum timebantur*. The *delatores* are represented by Pliny as laughing at the mark of infamy, the old *poena legis Remmiae*, but cease to do so under Trajan, since the emperor started to adopt a harsher approach towards criminal and fiscal accusers. The equivalence between the expectation of prizes and the fear of retributions Pliny talks about seems to hint at the *extra ordinem* penalty that could be imposed on them: see E. Levy, "Von den römischen Anklägervergehen", 391; G. Provera, *La vindicatio caducorum*, 73 ff.; J. G. Camiñas, *La lex Remmia*, 102; T. Spagnuolo Vigorita, *Exsecranda pernicies*, 199 ff.

62 See O. Robinson, "The role of delators", 265: «the literary figure of the *delator* was already beginning to fade in the lifetime of Tacitus and Pliny, and was effectively to disappear in the course of the second century. This is linked no doubt with the change in the dynamic between emperor and Senate under the Flavians and Antonines, but it is also certainly connected with the change in penal procedure from an accusatory to an inquisitorial process». The adversarial system in criminal trials endured throughout the Principate, so the main change was to be found in the remodelling of the relation between the imperial power and the ruling class.

63 The change of approach under Vespasian can be seen in the session of the Senate recalled in Tac. *hist.* 4.44. After the first rough session of the Senate chaired by Domitian on behalf of Vespasian in which the senators' request to see the *commentaria* was rejected, as a harbinger of the revenge against the influential accusers of Nero in the Senate, Domitian and Mucianus (who, as seen, was sent by Vespasian to Rome to shadow the young prince) both made a speech in which they invited the senators to discard their revengefulness and adopt a merciful approach towards the supporters of Nero. Vespasian's aim was to heal the rift that divided the Senate to ensure the support of the assembly to the first emperor who was not descendant from Augustus and the Julio-Claudian family. The reign of Vespasian was seemingly characterised by the decrease of the *delatores*' activities. See also L. Fanizza, *Delatori e accusatori*, 32–33; Y. Rivière, *Les delateurs*, 441 ff.

64 Titus' reign marked a turning point in the history of the relationship between *delatores* and imperial rule. He seemingly shifted from the quite passive approach adopted by his father against the fiscal and criminal accuser to a more proactive one. He went ahead with the collective punishment of the fiscal *delatores* (Suet. *Tit.* 8.5, Mart. *epig.* 4 and 4a, Dio Cass. 66.19.3), he swore an oath to not put any senator to death and he did not allow anyone, himself included, to accuse someone of *maiestas* (Dio Cass. 66.19.1–2). Titus' approach would be followed by the Antonines, as acknowl-

Domitian,[65] a rearrangement in the relationship between emperors and *delatores* took place, especially concerning the fiscal ones. The literary sources note how these emperors shifted to a harsher approach:

> Suet. *Tit.* 8.5: *Inter adversa temporum et delatores mandatoresque erant ex licentia veteri. Hos assidue in Foro flagellis ac fustibus caesos ac novissime traductos per amphitheatri harenam partim subici ac venire imperavit, partim in asperrimas insularum avehi. Utque etiam similia quandoque ausuros perpetuo coerceret, vetuit inter cetera de eadem re pluribus legibus agi quaerive de cuiusquam defunctorum statu ultra certos annos.*
>
> Among the evils of the times were the informers and their instigators, who had enjoyed a long standing licence. After these had been soundly beaten in the Forum with scourges and cudgels, and finally led in procession across the arena of the amphitheatre, he had some of them put up and sold, and others deported to the wildest of the islands. Further to discourage for all time any who might think of venturing on similar practices, among other precautions he made it unlawful for anyone to be tried under several laws for the same offence, or for any inquiry to be made as to the legal status of any deceased person after a stated number of years.

Under Nerva,[66] and especially Trajan, the emperors started to generally oppose the use of criminal trials to keep the opposition in check. They favoured the assimilation of the opponents in the new ruling apparatus

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edged by Pliny the Younger in his *Panegyric* in honour of Trajan (*paneg.* 35.4). See G. Provera, *La vindicatio caducorum*, 74; L. Fanizza, *Delatori e accusatori*, 34–35; Y. Rivière, *Les delateurs*, 37; A. Schilling, *Poena extraordinaria*, 263–264.

65 See L. Fanizza, *Delatori e accusatori*, 34 ff. Early in his reign, Domitian took some measures against the *delatores*, especially the fiscal ones, following in the footsteps of his brother and predecessor Titus. As witnessed in Suet. *Dom* 9.3, Domitian hit the *fiscales calumnias* hard. Moreover, Suetonius (*Dom.* 9.2) recalls how he commanded the termination of the proceedings against the *reos* (debtors) to the *aerarium* for more than five years, adding that anyone who wanted to renew a trial could do so within a year, under one condition – that the *delator* who did not win the suit was to be punished with exile. This attitude changed dramatically later in his reign, when the historian recollects the way in which «the property of the living and the dead was seized everywhere on any charge brought by any accuser», especially of *maiestas*. The inheritance of deceased people was seized from the legitimate heirs if someone came forward saying that he had heard the testator state during his lifetime that the emperor was to be his heir: Suet. *Dom.* 12.1–2. Another dramatic picture of the resurgence of the criminal *delatores* under Domitian is given by Tacitus (*Agr.* 45.1) and Cassius Dio (67.1.3–4).

66 Nerva renewed Titus' oath to not put to death any senator (Dio Cass. 68.2.3). He restored the exiles and released all who were on trial for *maiestas*, preventing any other accusation of *maiestas* (Dio Cass. 68.1.2). Pliny says that Nerva added provisions to Titus' edict against the *delatores*; however, he doesn't specify what was the content of the edict, nor of those additions (Plin. *paneg.* 35.3): see L. Fanizza, *Delatori e accusatori*, 37 fn. 88.

over the sheer repression of dissent.[67] The Antonine emperors generally maintained their strong opposition against the fiscal *delatores*, even going so far as to order collective punishments against them and casting them out from the city, as stated by Pliny in his Panegyricus dedicated to Trajan:

> Plin. *paneg.* 35: *Memoranda facies, delatorum classis permissa omnibus ventis, coactaque vela tempestatibus pandere, iratosque fluctus sequi, quoscunque in scopulos detulissent* (...). *Quantum diversitas temporum posset, tum maxime cognitum est, quum iisdem, quibus antea cautibus innocentissimus quisque, tunc nocentissimus affigeretur; quumque insulas omnes, quas modo senatorum, iam delatorum turba compleret, quos quidem non in praesens tantum, sed in aeternum repressisti, in illa poenarum indagine inclusos. Ereptum alienas pecunias eunt? perdant, quas habent: expellere penatibus gestiunt? suis exturbentur: neque, ut antea, exsanguem illam et ferream frontem nequidquam convulnerandam praebeant punctis, et notas suas rideant; sed spectent paria praemio damna, nec maiores spes, quam metus habeant, timeantque, quantum timebantur. Ingenti quidem animo divus Titus securitati nostrae ultionique prospexerat, ideoque numinibus aequatus est: sed quanto tu quandoque dignior caelo, qui tot res illis adiecisti, propter quas illum deum fecimus! Id hoc magis arduum fuit, quod imperator Nerva, te filio, te successore dignissimus, postquam magna quaedam edicto Titi adstruxerat, nihil reliquisse tibi videbatur, qui tam multa excogitasti, ut si ante te nihil esset inventum* (...).
>
> The sight was unforgettable: a whole fleet of informers thrown on the mercy of every wind, forced to spread sail before the tempests, driven by the fury of the waves on to the rocks in their course (...). Then indeed we knew how times had changed; the real criminals were nailed to the very rocks which had been the cross of many an innocent man; the islands where senators were exiled were crowded with the informers whose power you had broken for all time, not merely for a day, held fast as they were the meshes of punishment untold. They set out to rob other men of money: now let them lose their own. They sought to evict men from their homes: let them be homeless too. Let them stop presenting a brazen and unblushing front, unmarked by any disgrace, stop laughing off all reproaches. Now they can expect losses in proportion to their rewards, and know apprehension to match their former hopes; now they can feel the fear they once inspired. It is true that the divine Titus in the nobility of his spirit had taken measures for our security and need for vengeance, and because of this was placed among the gods; but how much more will you one day deserve your seat in heaven, for all your additions to those measures for which we recognized his godhead! And your achievement was the more difficult because the Emperor Nerva, worthy as he was of you as his son and successor, had himself made notable additions to Titus's edict, so that it seemed that nothing was left – except for you, whose ideas were so many that nothing might have been thought of before. (...)

67 See L. Fanizza, *Delatori e accusatori*, 37 fn. 89.

The new policy set by these emperors did not completely eliminate the problems of the Roman criminal and fiscal justice system that we have described before.[68] They were innate in a system in which it was up to the *quivis de populo* to step up and act on behalf of the collective. However, the new course set by Trajan, later followed by his successors, managed to limit the negative aspects of the activity of the *delatores*, when compared to the extremes reached in the previous age.

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68 «Delators continued to exist, as shadows in the literary sources, more clearly in the legal sources. One must remember that the role of all delators, whether fiscal or criminal, led to the enrichment of the treasury, whether through fines or confiscation, or through doubled tax payments or estates lapsing to the fisc»: O. Robinson, *The role of delators*, 266. I don't agree with Robinson in that she affirms that «presumably for the jurists the *SC Turpillianum* had brought sufficient order into the law governing criminal accusations». The legal sources prove how the criminal offences of the accuser (*calumnia*, *praevaricatio*, *tergiversatio*) were a topic discussed by the jurists and the imperial chancellery throughout the Severian age. This can be confirmed by looking at the title in the Digest that concerns these crimes. D. 48.16 (*Ad senatus consultum Turpillianum et de abolitionibus criminum*) is made of 18 fragments, and 17 out of 18 came from works attributed to Severan jurists, with only one (D. 48.16.18 pr.-2 [Papir. 1 *de const*. = Pal. 7]) taken from a jurist of the Antonine age. This is no surprise, since the adversarial system remained mostly at the foundation of the criminal trials during the Principate. Moreover, the various literary genres dealing with various aspects of Roman criminal law began to develop in the Antonine age and became fully mature under the Severian dynasty: see L. Fanizza, *Delatori e accusatori*, 95 ff.; F. Botta, "Opere giurisprudenziali", 281 ff.

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PRINCEPS QUI DELATORES NON CASTIGAT, IRRITAT. АКУЗАТОРИ И ДЕЛАТОРИ У РАНОМ ПРИНЦИПАТУ ИЗМЕЂУ ПРАВА И ПОЛИТИКЕ

Сажетак

Овај рад има за циљ да да преглед различитих, и обично супротстављених, радњи које су предузимали цареви у време принципата, до Трајана, да би се посветили проблемима везаним за правосудне активности кривичних и фискалних „делатора”. Активности делатора су биле суштински део царског система владавине у раном принципату, ударајући на политичке противнике царева и доприносећи доследном дотоку прихода у јавну касу, али их је јавност генерално презирала. Ова проблематика приморала је сваког од царева да тражи начин да успостави равнотежу између потребе да се суочи са негативним последицама активности делатора, како би се обезбедила подршка јавности, и неопходности да се њихово деловање претерано не омета, што је подстакло усвајање различитих врста мера, како на политичком, тако и на правном плану.

Кључне речи: *Римско кривично право. – Delator. – Calumnia. – Tergiversatio. – Senatus consultum Turpillianum.*

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