Monsters and Monstrosity

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Monsters and Monstrosity

From the Canon to the Anti-Canon:
Literary and Juridical Subversions

Edited by
Daniela Carpi

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Carlo Pelloso

Sew It up in the Sack and Merge It into Running Waters! *Parricidium* and Monstrosity in Roman Law

1 Cicero's "pro Sexto Roscio Amerino" and the crime of parricide

In his speech *pro Sexto Roscio Amerino* a young and obscure lawyer named Marcus Tullius Cicero reported how in 81 BC Sextus Roscius's relatives had killed the old Roman citizen and cast him into the waters of the Tiber. Then, according to Cicero again, they had tried to seize his estate and to shield themselves by accusing Sextus's son of parricide.[1] The lawyer was persuaded that his client, whose name was Sextus Roscius Amerinus, had been charged with this heinous and ignominious crime with no grounds.[2] So, in his vigorous defence, he addresses the court with the following questions:

> The prosecutor assumes that my client has killed his father. But what kind of human being is he? Is he a young and corrupt man? Has he been induced to kill by criminals? No, he is more than forty years old. Did he kill because of foolish revelry, or as a consequence of his incredibly enormous debts? No, he did not. He has been acquitted of the

1 See, e.g., J. Duncan Cloud, "*Parricidium*, from the *Lex Numae* to the *Lex Pompeia de Parricidiis*," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Romanistische Abteilung* 88 (1971): 1–66; Max Radin, "The *Lex Pompeia* and the *Poena Cullei*," *Journal of Roman Studies* 10 (1920): 119–130; Dominique Briquel, "Sur le mode d'exécution en cas de parricide et en cas de *perduellio*," *Mélanges d'Archéologie et d'Histoire de l'école Française de Rome, Antiquité* 92 (1980): 87–107; Yan P. Thomas, "*Parricidium*, I, Le Père, la famille et la cité," *Mélanges d'Archéologie et d'Histoire de l'école Française de Rome, Antiquité* 93 (1981): 643–715; André Magdelain, "*Paricidas*," in *Du châtiment dans la cité. Supplices corporels et peine de mort dans le monde antique* (Rome: École française de Rome, 1984): 549–571; Olivia F. Robinson, *The Criminal Law of Ancient Rome* (Baltimore: Johns Hopkins University, 1995), 13, 45–6, 67; Richard A. Bauman, *Crime and Punishment in Ancient Rome* (London: Routledge, 1996), 30–2, 70–4, 128–9; Bernardo Santalucia, *Diritto e processo penale nell'antica Roma* (Milano: Giuffré, 1998); Eva Cantarella, *I supplizi capitali* (Milano: Rizzoli, 2011), 264–285; Filippo Carlà-Uhink, "Murder Among Relatives. Intrafamilial Violence in Ancient Rome and Its Regulation," *Journal of Ancient History* 5.1 (2017): 26–65; Barbara Biscotti "What Kind of Monster or Beast Are You? Parricide and Patricide in Roman Law and Society," in *Parricide and Violence Against Parents throughout History. World Histories of Crime, Culture and Violence*, eds. Marianna Muravyeva and Raisa Maria Toivo (London: Palgrave Macmillan, 2018): 13–33.

2 *Rosc. Am.* 70–72; see, moreover, *Orat.* 107.

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> accusation of revelry thanks to Erucius, who testified that he hardly ever took part at a banquet. As far as debts are concerned, he never incurred one. Furthermore, what wantonness could exist in that man who has always lived in the country cultivating his land, as the prosecutor himself did refer. This is a way of living which is far from greed, and linked to virtue. What moved Sextus Roscius to such insanity? One might say that he did not like his father. He did not like his father? But why? Here, a right, significative, and notorious reason must be demonstrated. As it is unbelievable that a son gives death to his own father without the most numerous and substantial reasons; it sounds equally unlikely, that a son is hated by his father without many and important and necessary causes. [. . .] Had he, perhaps, other possible motives? You, the accuser, argue: "His father wanted to disinherit him!" I hear you: now your argument may have a bearing on the present issue. [. . .] Even if you need mention and enumerate all the reasons, I do not ask you to disclose them. I ask you just that: how do you know it?[3]

Cicero rejects any accusation against Roscius either as weak or inconsistent, or as unlikely, if not even unfounded. He knows very well that luxury and debts, alongside the desire of inheriting, are commonly considered the most plausible reasons for perpetrating parricide. Thus, he pragmatically denies that his client had any economical interest in murdering his father[4]; but,

3 *Rosc. Am.* 39–40, 51–52: *patrem occidit Sex. Roscius. qui homo? adulescentulus corruptus et ab hominibus nequam inductus? annos natus maior quadraginta. vetus videlicet sicarius, homo audax et saepe in caede versatus. at hoc ab accusatore ne dici quidem audistis. luxuries igitur hominem nimirum et aeris alieni magnitudo et indomitae animi cupiditates ad hoc scelus impulerunt. de luxuria purgavit Erucius, cum dixit hunc ne in convivio quidem ullo fere interfuisse. nihil autem umquam debuit. cupiditates porro quae possunt esse in eo qui, ut ipse accusator obiecit, ruri semper habitarit et in agro colendo vixerit? quae vita maxime disiuncta a cupiditate et cum officio coniuncta est. quae res igitur tantum istum furorem sex. Roscio obiecit? "patri" inquit "non placebat." patri non placebat? quam ob causam? necesse est enim eam quoque iustam et magnam et perspicuam fuisse. nam ut illud incredibile est, mortem oblatam esse patri a filio sine plurimis et maximis causis, sic hoc veri simile non est, odio fuisse parenti filium sine causis multis et magnis et necessariis [. . .] numquid est aliud? "immo vero" inquit "est; nam istum exheredare in animo habebat." audio; nunc dicis aliquid quod ad rem pertineat; [. . .] Mitto quaerere qua de causa; quaero qui scias; tametsi te dicere atque enumerare causas omnis oportebat.* Cf. *Rosc. Am.* 58; 75. My translation.

4 In Roman declamation, the son that has committed parricide, or that is suspected to, is usually portrayed as a greedy and indebted man that intends to take his father's place in advance and to control, manage and use the family estate: the stereotype that emerged from Plautus and Terence seems to be unchanged: see Maria Vittoria Bramante, "*Patres*, *filii* e *filiae* nelle commedie di Plauto. Note sul diritto nel teatro," in *Diritto e teatro in Grecia e a Roma*, eds. Eva Cantarella and Lorenzo Gagliardi (Milano: Led, 2007): 95–116. The accusation of *cupiditas* in terms of motivation for the crime is well attested: see Ps.Quint. *Decl. maior*. 17.10.5; *Decl. min*. 281.6 and 377.4; Quint. *Inst. Or.* 4.2.73; Sen. *Contr*. 6.1.1; Ps.Quint. *Decl. maior*. 2.10.5; 2.3; 2.5.5; 1.6.8; Emporius, p. 566, 26–28 (Halm). As for the *captatio hereditatis*, see Ps.Quint. *Decl. min*. 258.9; 281; 377; Quint. *Decl. maior*. 17; Quint. *Inst. Or.* 4.2.72–74; Sen. *Contr*. 6.1. The so-called *senatus consultum Macedonianum* (D. 14.6.1, pr., 14.6.1.3, 14.6.3.3 Ulp. 29 *ad edictum*) gives further support to this view: in order

first of all, although rhetorically and hyperbolically, he emphasises that his client, the defendant in a parricide case, is a *homo*, using a Latin word that means any 'very human being', despite gender, social class, or legal status. This remark, as it will be later underlined, is not a superfluous one for the purpose of this paper. The term *homo* effectively and sophistically underpins a subtle implication, an unspoken antithesis between what is human and what is not.

As a matter of fact, this Ciceronian speech turns out to be an interesting source, at first since it explains some of the most common and despicable reasons that might lead a son to the perpetration of one of the most outrageous wrongdoings contemplated in Roman law, that is a crime consisting in killing the highest authority of Roman family (and, more importantly, the only one entitled to kill a member of it, according to the law)[5] for mere economic reasons,

to limit the increasing number of patricides (Suet. *Vesp*. 11) and to face the specific crime committed by Macedo, the Senate, on a proposal by Vespasian, provided that, if a *mutuum* to a *filius* was completed, the creditor could not bring any legal action to recover his loss. According to Theophilus's version (Paraphrase 4.7.7), Macedo, still under his father's *potestas*, had borrowed some money. Anyway, the creditor started pressing him harder and harder. Macedo, unable to find the money, killed his father to inherit his wealth and, thus, repay the debt. Justinian makes it clear that the Senatorial provision concerned only monetary loans since moneyborrowers were inclined to kill their parents and moneylenders were seen as instigators of parricide and other wrongdoings such as theft, forgery, and murder (Institutiones 4.7.7). See Francesco Lucrezi, *"Senatusconsultum Macedonianum"* (Napoli: Edizioni Scientifiche Italiane, 1992), 144, 211; Sara Longo, *"Senatusconsultum Macedonianum": interpretazione e applicazione da Vespasiano a Giustiniano* (Torino: Giappichelli, 2012), 11–19, nt. 32.

5 According to the traditional view on Roman family, the atrocious character of *parricidium* (meaning, *stricto sensu*, patricide), without a doubt, was due to the role played by *patres familiarum*: they were indeed granted an all-encompassing authority, so that the main – if not unique - difference between *filii* and slaves would be, for many centuries, the following: "when the father died, the slaves continued to be slaves, belonging to a new *dominus*, while sons and daughters became *sui iuris*, that is acquired the legal capacity" (Eva Cantarella, "Fathers and Sons in Rome," *The Classical World* 96.3 [2003]: 281–298, 283). Due to such absolute paternal mastery that covered even adult *filii*, the death of the father would represent the end of a kind of slavery, according to Veyne; moreover, from a psychological perspective, adult Roman males would be in such an unbearable situation, that they would be obsessed with parricide, and the fear of "parenticide" would bring about an authentic "national neurosis": Paul Veyne, *La vie privée dans l'Empire romain*, in *Histoire de la vie privée. De l'Empire romain à l'an mil*, eds. Philip Ariès and George Duby, 1 (Paris: Seuil, 1999, now in a separate volume, Paris: Seuil, 2015): *passim*; Paul Veyne, "La famille et l'amour sous le Haut-Empire romain," *Annales. Économies, Sociétés, Civilisations* 33 (1978): 35–63, 36. Veyne's view is shared by Yan Thomas, "Fathers as Citizens of Rome, Rome as City of Fathers (2nd century BC – 2nd century AD)," in *A History of the Family*, eds. A. Burguiere et al., 1 (Cambridge, Mass.: Polity, 1996): 228–269. Among the supporters of the idea of arcahic and classical Roman family as a

like debts, economic disability, uncertainty concerning one's future. At the same time and from a highly irrational yet highly impressive perspective, it is also important since it discusses at length the atrocious character of the crime at issue, as well as the legal-religious tradition and justification of the exotic and cruel method of punishment linked to it.

community being subject to a kind of "paternal tyranny," see the following authors (although their work deals with this topic from different perspectives and with different results): Theodor Mommsen, *Römisches Strafrecht* (Leipzig: Duncker & Humblot, 1899), 17, 20; Max Kaser, "Der Inhalt der *patria potestas*," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Romanistische Abteilung* 83 (1971): 62–87, 62; David Daube, *Roman Law. Linguistic, Social and Philosophical Aspects* (Edinburgh: Edinburgh U.P., 1969), 87–88; cf., also, Eva Cantarella, "Persone, famiglia e parentela," in *Diritto privato romano. Un profilo storico*[2], ed. Aldo Schiavone (Torino: Einaudi, 2010): 157–211. This view is grounded on two main sources. On the one hand, Dionysius of Halicarnassus lists the powers granted by Romulus to the *pater familias* towards his sons: for instance, to imprison them, flog them, keep them working in the country, sell them, and kill them (Dion. Hal. 1.26.4). On the other hand, Gaius writes that Roman people recognised to fathers a virtually unlimited authority over their offspring that was greater than anywhere else (Gai 1.52); see, moreover, Cic. *dom.* 77; Sen. *Ben.* 3.23.3; Gell. 5.19.9. A variety of concrete examples occurs: the first consul Brutus killed his sons for conspiring with the *Tarquinii*, while the other conspirators were publicly executed (Plut. *Publ.* 3–7; Zon. 7.12; Dion. Hal. 5.8–13; *contra* Liv. 2.5.5–8; Val. Max. 5.8.1); Spurius Cassius's father summoned a council of relatives and friends and condemned his son to death (Val. Max. 5.8.2; *contra* Liv. 2.41.10–12); Aulus Fulvius killed his son in 63 BCE for joining Catiline's conspiracy (Sall. *Cat.* 39.5; Val. Max. 5.8.5; Dio 37.36.4); according to Cicero, Clodius's father had the right to kill his son, since he had committed crimes against Rome (Cic. *dom.* 84); see William V. Harris, "The Roman Father's Power of Life and Death," in *Studies in Roman Law in Memory of A. Arthur Schiller*, eds. Roger S. Bagnall and William V. Harris (Leiden: Brill, 1986): 81–95, 82–87; Judy E. Gaughan, *Murder Was not a Crime. Homicide and Power in the Roman Republic* (Austin: University of Texas P., 2010), 23–52; Carlà-Uhink, "Murder Among Relatives," 26–65. As for the so-called *iudicium domesticum* (an institution that also represented a guarantee aiming at preventing accusations of abuses of paternal powers), see Edoardo Volterra, "Il preteso tribunale domestico in diritto romano," *Rivista Italiana per le Scienze Giuridiche* 85 (1948): 103–155, now in *Scritti giuridici* 2 (Naples: Jovene, 1991): 127–177; Antonio Ruggiero, "Nuove riflessioni in tema di tribunale domestico," in *Sodalitas. Scritti in onore di A. Guarino* 4 (Naples: Jovene, 1984): 1593–1600; Yan Thomas, "Remarques sur la jurisdiction domestique à Rome," in *Parenté et strategies familiales dans l'antiquité romaine*, eds. Jean Andreau and Hinnerk Bruhns (Rome: Ecole Française de Rome, 1990): 449–474; Alberto Ramon, "Repressione domestica e persecuzione cittadina degli illeciti commessi da donne e *filii familias*," in *Il giudice privato nel processo civile romano. Omaggio ad Alberto Burdese*, ed. Luigi Garofalo, 3 (Padova: Cedam, 2015): 617–678.

2 *Parricidium*: the worst crime of all

Limiting the semantic sphere of the term *parricidium* to its recent concept of voluntary murder of either a father, or a relative[6] (and regardless of its supposed

6 From an etymological point of view, ancient authors do not share the same beliefs. On the one hand, Priscian. *inst*. 2.2524–26, 2.177.18–24 (Keil) doubtfully suggests a derivation from *par* ("peer") or, alternatively, from *pater*, or from *parens* (cf., supporting the first derivation, Isid. *orig*. 10.225, whereas in another work, i.e. *diff*. 1.432, the bishop suggests the following difference between *parricida* and *paricida*: *parricidam dicimus qui occidit parentem, paricidam qui socium atque parem*; similiarly, Lyd. 1.26 connects two semantic areas to the same noun, depending on the quantity of the first 'a' : *parricida* would stand for both 'person who kills relatives-*pārentes*' and 'person who kills subjects-*pārentes*'); on the other hand, Quint. *Inst. Or*. 8.6.35 maintains that the term meant the murder of brothers and mothers exclusively out of catachresis (Donat. 4.400.1–2 Keil; Caris. 1.273.3–4 Keil; Diomedes 1.458.5–6 Keil; Serv. 4.430.5–5 Keil; Pomp. 5.306.14–18 Keil; see, moreover, Cicero, who, in *Rosc. Am*. 70, *Mil*. 7.17, *Phil*. 3.7.18, *Tusc*. 5.2.6, confirms the supposed relationship between the terms "parricide" and *pater* as *parens*). See, on this topic, Cloud, "*Parricidium*," 7–12 (who believes that Numa intended "to assimilate the murderer of a Roman citizen to the murder of a kinsman with a view to regulating or abolishing vendetta"), and Thomas, "*Parricidium*," 660–683 (who holds that the term *parricidium* originally stood for "killing the father," and that the *lex Numae*, amounting to a forgery, was pointless). On the contrary, Pomp. (*Comm. artis Donati*: Keil, *Grammatici Latini*, V, 306.14–23) relates how *apud maiores* this word had the semantic value later attributed to *homicidium*: see Mommsen, *Römisches Strafrecht*, 613, and nt. 2. Likewise, *quaestores parricidii* were magistrates responsible for inquiring into the killing of a *homo liber*, and, above all, on the *mens rea* of the killer (probably, as regards their beginnings, they were even allowed to give final judgments on the behalf of the king; explicitly, see Tac. *ann*. 11.22.4; D. 1.13.1 pr.; Lyd. *mag*. 1.24; implicitly, Zon. 7.13; Varr. *l.L*. 5.81; Paul.–Fest. *verb. sign*. s.v. *parrici<di> quaestores* [Lindsay 247]; *contra*, see Plut. *Publ*. 12.3 and D. 1.2.2.22–23, where the *quaestores* are considered only a republican institution; on a possible harmonisation of the two views, see Luigi Garofalo, *Appunti sul diritto criminale nella Roma monarchica e repubblicana* (Padova: Cedam, 1997), 71–86; see, moreover, Roberto Fiori, *Homo sacer. Dinamica politico–costituzionale di una sanzione giuridico–religiosa* (Napoli: Jovene, 1996), 387–388; Vera Dementyeva, "The Functions of the Quaestors of Archaic Rome in Criminal Justice," *Diritto@Storia* 8 (2009): online; Piotr Kołodko, "The Genesis of the Quaestorship in the Ancient Rome. Some Remarks," *Legal Roots* 3 (2014): 269–280. This clearly implies that, as concerns the legal phrase at issue (i.e. *quaestores parricidii*), it includes the term *parricidium* as covering any form of murder: as Festus makes it clear, by pointing out that *parricida non utique is, qui parentem occidisset, dicebatur, sed qualemcumque hominem indemnatum* ("the term parricide, or rather patricide, was not used to mean anyone who kills his/her own father, but anyone who kills a person not condemned yet"), after reporting the *lex Numae* herself ("*Si qui hominem liberum dolo sciens morti duit, paricidas esto*" / "If anyone intentionally kills a free human being, *paricidas esto*"). This view is shared by Plutarch himself (*Rom*. 22.4: πᾶσαν ἀνδροφονίαν πατροκτονίαν προσειπεῖν), who assumes that the term parricide, or rather patricide, originally referred to "any killing of a man" (see, moreover, Pomp. 5.306.18–23 Keil).

links to the monarchical legal regulation of "generic murder committed with wrongful intent" which included the imperative formula *paricidas esto*),[7] as of

7 On this problem, alongside Magdelain, "*Paricidas*," 549–561, see the recent account provided by Biscotti, "What Kind of Monster or Beast Are You?," 14 (who, *pace* Thomas and Cloud, believes that "the term [. . .] is deployed for the first time in the form '*paricidas*' in the royal law attributed to Numa Pompilius," and that "it could not originally mean the killing of a father committed by the offspring"); similarly, according to Carlà-Uhink, "Murder Among Relatives," 35, "it is clear that its first meaning is that of 'generic' (voluntary) murder; only later was it connected with murders committed against relatives." Letting Thomas's thesis apart, these two opposite views (Cloud vs. Magdelain) share a common feature: the idea that *paricidas* and *parricidium* are etymologically linked and that between the 3rd and the 2nd century BC the word *parricidium* started indicating any voluntary murder of a relative, while *homicidium* started covering the original semantic sphere of the former. This theory, supporting a linear development from *paricidas* to *parricidium*, is, to some extent, unconvincing. At first, it is undoubted that *paricidas esto* represents, in the *lex Numae*, the legal consequence (if not a proper penalty) contemplated if the murder of a *homo liber* is perpetrated (that is the formula at issue would concern procedure or, anyway, secondary rules); on the contrary, *parricidium* never relates to consequences or penalties, being the legal label of a crime (that is this noun would concern substance or primary rules). Unsurprisingly this divergence, as well as the supposed shift from one level to the other, remains totally unexplained. Secondly, these two interpretations (assuming that *paricidas esto* either covers the concept of "person assimilated to the murderer of a kinsman," or tautologically means "anyone who kills a *homo liber*") fail to consider alternative ideas about the original meaning of the term *paricidas*. For instance, if one conceived of *Paricidas esto* as a short form for *paricidatus esto*, this phrase would allude to the authorisation of private vengeance or to the punishment accomplished by the *civitas*: Fernand de Visscher, "La formule *paricidas esto* et les origines de la jurisdiction criminelle à Rome," *Bulletins de l'Académie Royale de Belgique. Classe de Lettres et des Sciences Morales et Politiques* 13 (1927): 298–332; Ugo Coli, "*Paricidas esto*," in *Studi in onore di U.E. Paoli* (Firenze: Le Monnier, 1956): 171–194; Franco Cordero, *Riti e sapienza del diritto* (Roma, Bari: Laterza, 1981) 61 and nt. 2; see, for similar results, Cantarella, *I supplizi capitali*, 314–315; Bernardo Santalucia, *Diritto e processo penale*, 17 nt. 32. If one thought of it as referring to a specific archaic *status personae*, neither punishment by death, nor murder of kinsmen would be implied: Marco Falcon, "*Paricidas esto*. Alle origini della persecuzione dell'omicidio," in *Sacertà e repressione criminale in Roma arcaica*, ed. Luigi Garofalo (Neaples: Jovene, 2013): 191–274; Aldo Prosdocimi, *Forme di lingua e contenuti istituzionali nella Roma delle origini* 1 (Napoli: Jovene, 2017), 171–211. Therefore, in both cases, a direct connection between *paricidas* and *parricidium*, grounded on etymology and legal history, would be missing. A link between the *lex Numae* and the more recent *parricidium* could be supported by suggesting a linguistic connection between *paricidas* and *pera*, that is *culleus*: accordingly, *poena cullei* would be originally inflicted to any murder of any free person, while only later it would be related to the murder of a parent or a close relative (this being the same conclusion pointed out by Cloud): see Philippe Meylan, *L'étymologie du mot parricide à travers la formule "Paricidas esto" de la loi romaine* (Lausanne: Rouge, 1928); Salvatore Tondo, *"Leges regiae" e "Paricidas"* (Firenze: Olschki, 1973), 170–174. These remarks make it plausible that, in spite of their linguistic similarity (what led ancient writers to etymological misinterpretations of the term *parricidium* as meaning generic and voluntary murder), *paricidas* is not bound to *parricidium*, and that no actual development or shift occurred in the mid-Republic (Coli,

the mid-Republic onwards, the Romans never ceased to think of it as "the worst crime of all."[8]

To the Romans, indeed, *parricidium* amounted to a criminal offence whose inherent severity and whose societal danger were unparalleled, since it was not a mere infringement of human rules, but it violated the natural order and implied a non-human bravery in the culprit. Cicero himself strongly supports this belief, at first by relating the exemplary case of Titus Caelius of Terracina, occurred a few years before the murder of Sextus Roscius. This noble man had gone to bed in the same room as his two adult sons, and in the morning was found dead with his throat cut. The two Caelii brothers were therefore charged with parricide. Yet, since the young men had been discovered asleep when the door was opened, they had to be acquitted: Cicero makes it clear that parricide is such an atrocious, impious, and horrendous crime that no one, after violating all human and divine rules, would be able to sleep. As stated by the judges themselves, those who committed such an offence could neither rest without anxiety nor breathe without terror: on account of this, the Caelii brothers were declared innocent.[9]

"*Paricidas esto*," 171–194). The latter, or better its *nomen actionis parricida*, is a more recent linguistic form (appearing in Plaut. *Pseud*. 362 and in *Rud*. 651 as "one who kills one's own father and mother"), likely used as a synonym for the less common term *parenticida* that Plautus, at the end of the 3rd century BC, already connected with the *culleus* (Plaut. *Epid*. 349–351): Cantarella, *I supplizi capitali*, 277. See, *contra*, Marco Mancini, "Una premessa filologico-linguistica all'etimologia di Lat. *paricidas*," in *Ce qui nous est donné, ce sont les langues. Studi linguistici in onore di Maria Pia Marchese*, edited by Monica Ballerini, Francesca Murano, Letizia Vezzosi (Alessandria: Edizioni dell'orso, 2017): 49–78, who believes that the linguistic sign *paricidas* represented neither a mere *hapax* nor a graphic archaism, as Prosdocimi maintains, it being, on the contrary, an ancient allotrope of *parricida*.

8 *Rosc. Am.* 37: *scelestum, di immortales, ac nefarium facinus*; Sen. *Clem.* 1.23: *nefas ultimum*; Sen. *Contr.* 7. 1. 22: *ad expiandum scelus triumviris opus est, comitio, carnifice. tanti sceleris non magis privatum potest esse supplicium quam iudicium*; Ps.Quint. *Decl. min.* 299 e 373.1–2: *antequam parricidium inertiam obicio . . . patrem captum deseruisti: maximum crimen, immo parricidium. quantum in te fuit, occisus sum, et gravissimis quidem tormentis*; Ps.Quint. *Decl. maior*. 1.10: *Occidit ergo aliquis patrem et novercae pepercit? Maximum omnium nefas fortiter fecit, minori sceleri statim par non fuit? Omnia humana sacra confudit, violare non ausus est pectus odiosum? Incredibile est, sine fide est non occidere novercam cui inputes quod patrem occidat*. Parricide at times represents the apex of a list of increasingly serious crimes: see Ps.Quint. *Decl. maior*. 1.6.2. See, on the crime, Eva Maria Lassen, "The Ultimate Crime. *parricidium* and the Concept of Family in the Late Roman Republic and Early Empire," *Classica et Mediaevalia* 43 (1992): 147–161.

9 *Rosc. Am.* 64: *Non ita multis ante annis aiunt T. Caelium quendam Terracinensem, hominem non obscurum, cum cenatus cubitum in idem conclave cum duobus adulescentibus filiis isset, inventum esse mane iugulatum. Cum neque servus quisquam reperiretur neque liber ad quem ea suspicio pertineret, id aetatis autem duo filii propter cubantes ne sensisse quidem se dicerent, nomina filiorum de parricidio delata sunt quid poterat tam esse suspiciosum? neutrumne*

If we rely on Cicero, to the Romans parricide evoked an unspeakable and ancestral dread and apprehension; it represented the most repugnant and the most incomprehensible deed, so that only a super-human halo – although within the rational frame provided by historiography, declamation, judicial oratory – turned out to be the sole way to explain it and accept it. For instance, Livy, describing the fundamental shift from monarchy to republic in 509 BC, harshly denigrates the wife of Tarquinius the Proud, Tullia, for her implicit connection with the murder of King Servius and her actual abuse of his corpse. Influenced by evil "avenging ghosts," Tullia even drove her carriage over the unburied body of her father, committing a "horrible and inhuman deed" and polluting herself and her house with his blood. Finally, once forced to leave Rome by Brutus, Tullia was "cursed wherever she went by men and women, who called down upon her the furies that avenge the wrongs of kindred."[10]

sensisse? ausum autem esse quemquam se in id conclave committere eo potissimum tempore cum ibidem essent duo adulescentes filii qui et sentire et defendere facile possent? erat porro nemo in quem ea suspicio conveniret. Tamen, cum planum iudicibus esset factum aperto ostio dormientis eos repertos esse, iudicio absoluti adulescentes et suspicione omni liberati sunt. Nemo enim putabat quemquam esse qui, cum omnia divina atque humana iura scelere nefario polluisset, somnum statim capere potuisset, propterea quod qui tantum facinus commiserunt non modo sine cura quiescere sed ne spirare quidem sine metu possunt (Not many years ago they say that Titius Caelius, a well-known man and a citizen of Terracina, after supper, retired to rest in the same room with his two youthful sons. He was found in the morning with his throat cut. The sons were accused of the parricide, as, on the one hand, there was no slave and no free person on whom suspicion of the act could fall, and his two sons of that age lying near him stated that they did not even realize what had been done. It was, indeed, a suspicious procedure. Neither of them was aware of the crime: how could this be possible? Some one had ventured to introduce himself into that chamber, especially at that time when two young men were in the same place, who might easily have heard the noise and defended him: how could this be possible? Moreover, there was no one on whom the suspicion of the deed could fall. Yet, as it was plain to the judges that they were found sleeping with the door open, the young men were acquitted and released from all suspicion. For no one thought that there was any one who, when he had violated all divine and human laws by a nefarious crime, could immediately go to sleep; because those who have committed such a crime not only cannot rest free from care, but cannot even breathe without fear). My translation.

10 Liv. 1.48.7: *foedum inhumanumque inde traditur scelus monumentoque locus est — Sceleratumuicum uocant — quo amens, agitantibus furiis sororis ac uiri, Tullia per patris corpus carpentum egisse fertur, partemque sanguinis ac caedis paternae cruento uehiculo, contaminata ipsa respersaque, tulisse ad penates suos uirique sui, quibus iratis malo regni principio similes propediem exitus sequerentur* (Then, the tradition runs, a foul and unnatural crime was committed, the memory of which the place still bears, for they call it the Vicus Sceleratus. It is said that Tullia, goaded to madness by the avenging spirits of her sister and her husband, drove right over her father's body, and carried back some of her father's blood with which the car and she herself were defiled to her own and her husband's household gods, through whose anger a

Furthermore, as far as a more recent case is concerned (that is, according to Livy, the first case of *parricidium* to be punished through the sack around the 101 BC),[11] the will written by a condemned matricide, that is Publicius Malleolus, between the sentence and the execution, was held invalid: the culprit, on the grounds of his conduct, was formally qualified as a *furiosus*, that is totally insane, raving mad, and accordingly the related decemviral rule was applied.

The human inconceivability of parricide (together with an idealised view of the past) often emerges as a rhetorical and aetiological *topos*: Plutarch highlights the seriousness of the crime, maintaining that the first Roman king did not enact any law about it, since to him it was implausible that some human beings would dare perpetrate such an extreme offence.[12] Quite the opposite (although sharing the same ideas), Cicero reports that, if, on the one hand, Roman ancestors immediately inflicted the most severe punishment to parricides, on the other hand, as for the Athenian legal system, Solon himself failed to define a particular punishment for parricides, as he was persuaded that the lawgiver should not even mention such a heinous crime, in order to not move the citizens to commit it.[13] Finally, Seneca, together with Valerius Maximus, wrote in the early empire that parricide

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reign which began in wickedness was soon brought to an end by a like cause); Liv. 1.59.10: *indigna Ser. Tulli regis memorata caedes et inuecta corpori patris nefando uehiculo filia, inuocatique ultores parentum di* (He reminded them of the shameful murder of Servius Tullius and his daughter driving in her accursed chariot over her father's body, and solemnly invoked the gods as the avengers of murdered parents); Liv. 1.59.13: *inter hunc tumultum Tullia domo profugit exsecrantibus quacumque incedebat inuocantibusque parentum furias uiris mulieribusque* (During the commotion Tullia fled from the palace amidst the execrations of all whom she met, men and women alike invoking against her father's avenging spirit). In this paper I used Livy's translation by Rev. Canon Roberts (New York: E. P. Dutton and Co., 1912).

11 Livy *Per.* 68; Oros. 5.16.23; *rhet. ad Her.* 1.13.23; Cic. *inv.* 2.149 (see, also, Mod. 12 *pandect.* D. 48.9.9, and Macer 2 *de iud. publ.* D. 1.18.14): see Ferdinando Zuccotti, "Il testamento di Publicio Malleolo," in *Studi in onore di A. Biscardi* 6 (Milano: Cisalpino – La Goliardica, 1987): 229–265. Sharing Plutarch's view, in the first six hundred years Rome had no cases of patricide and the first Roman to be punished for such a crime by the sack (*poena cullei*) was Lucius Hostius after the Hannibalic War (Plut. *Rom.* 22.5). See, however, Cantarella, *I supplizi capitali*, 275, who remarks Plutarch's unreliability, as Plautus implicitly attests earlier uses of the *poena cullei* and the mask made with wolf's skin for parricide (or anyway the theoretical connection between sack and parricides): *Plaut. Epidic.* 349–435 with Carlo Lanza, "*Plautus*, *Epidicus*, 349–351," in *Fides Humanitas Ius. Studii in onore di L. Labruna*, eds. Cosimo Cascione and Carla Masi Doria (Naples: Editoriale Scientifica, 2007): 2757–2766.

12 Plut. *Rom.* 22.4–5.

13 *Rosc. Am.* 70: *prudentissima civitas Atheniensium, dum ea rerum potita est, fuisse traditur; eius porro civitatis sapientissimum Solonem dicunt fuisse, eum qui leges quibus hodie quoque utuntur scripserit1. is eum interrogaretur cur nullum supplicium constituisset in cum qui parentem necasset, respondit se id neminem facturum putasse. sapienter fecisse dicitur, cum de eo nihil sanxerit quod*

had remained for a long time a crime without a law, implicitly confirming, at least from an ideological perspective, the view that parricide was such an intolerably marginal crime that human society, when ruled by law, could not even contemplate [14]

In the light of the previous remarks, it is unsurprising that ancient sources attest metaphorical and hyperbolic uses of the noun *parricidium*. This formal and legal label suggested the supreme degree of impiety and inhumanity to the Roman audience. As a consequence, covering less severe, or anyway different, behaviours under this legal label clearly represented a rhetorical strategy directed to inspire an authentic sense of horror and so to depict any political

antea commissum non erat, ne non tam prohibere quam admonere videretur. quanto nostri maiores sapientius! qui cum intellegerent nihil esse tam sanctum quod non aliquando violaret audacia, supplicium in parricidas singulare excogitaverunt ut, quos natura ipsa retinere in officio non potuisset, ei magnitudine poenae a maleficio summoverentur. insui voluerunt in culleum vivos atque ita in flumen deici (The city of the Athenians is said to have been the wisest while it was the most powerful. Moreover, Solon is said the wisest man of that city, as he enacted the laws which the Athenians use even nowadays. He was asked why he had provided no punishment for those who killed their fathers, he answered that he had not supposed that any one would do so. He is said to have done wisely in determining nothing about a crime which had never been committed: he chose to persuade his people instead of forbidding this crime. But our ancestors acted much more wisely! They were aware that nothing was so holy that audacity could violate it; accordingly, they established a peculiar punishment for parricides, so that those whom nature did not refrain, might be kept from committing such crime by the severity of the punishment. They ordered them to be sown alive in a leather sack, and in that condition to be thrown into a river). My translation.

14 Sen. *Clem.* 1.23.1: *Multo minus audebant liberi nefas ultimum admittere, quam diu sine lege crimen fuit. Summa enim prudentia altissimi viri et rerum naturae peritissimi maluerunt velut incredibile scelus et ultra audaciam positum praeterire quam, dum vindicant, ostendere posse fieri; itaque parricidae cum lege coeperunt, et illis facinus poena monstravit* (As long as the greatest crime remained without a special law, children committed it much more rarely. Wisest men, highly skilled in human nature, preferred to pass over this unbelievable and oureageous crime, rather than teach men that it might be committed by inflicting a penalty: parricides, consequently, were unknown until a law was enacted against them, and until a penalty showed them how to perpetrate the crime). My translation. See, also, Val. Max. 1.1.13. Sharing Plutarch's view, Seneca here discusses the theory that crimes frequently punished must be frequently committed; he also argues that severe punishments do not compress the incidence of crimes, but they encourage them by giving prominence to particular offences. See Barbara Levick, *Claudius* (New Haven: Yale University P., 1998), 117, 124, and Bauman, *Crime and Punishment*, 703. For the date of promulgation, see Cloud, "*Parricidium*," 26–38 (who maintains that the *poena cullei* was introduced as a specific form of punishment only in the late 3rd or in the 2nd century BC; moreover, he points out that such punishment came together with the statutory definition of parricide as an autonomous category of crime); see Enzo Nardi, *L'otre dei parricidi e le bestie incluse* (Milan: Giuffrè, 1980), 68 and Santalucia, *Diritto e processo penale*, 28, 148, 161. Anyway, it is more than plausible that these two sources just imply that a substantial and procedural distinction between *parricidium* and murder took place in the mid-Republic, and not that *parricidium* was not covered by any Roman statute.

opponent or any procedural counterparty in terms of a higher level of dishonour and despicableness. Although it properly meant either the murder of a parent (*stricto sensu*), or the murder of a relative (*lato sensu*), *parricidium* applied also to the betrayal of the fatherland (as in case of treason or attempted tyranny),[15] and to any conspiracy against the emperor's life. In quality of *pater patriae*, he was like a very parent; thus, who plotted to kill, or who actually killed, the "father of the fatherland" was metaphorically charged with parricide, whether attempted or committed. Suetonius reports that after Julius Caesar's killing, the Senate voted to call the Ides of March 'the day of parricide'.[16] This fact allows for a better understanding of the reasons that led the Romans to label Brutus, called *filius/teknon* by Caesar himself, in terms of parricide.[17] What is more, the conception of *parricidium* could be so stretched that it ended up including either injuries that fall short of any homicidal *actus reus* and *mens rea* (such as beating and blinding one's own father), or even forms of actual insubordination or ideological disagreement.[18] It is

15 Ps.Quint. *Decl. min.* 315.18; 371.3; 322.4. It is worth reminding that in the Gracchan era (ca. 133 BC) Gaius Villius seems to have been charged with *perduellio* or *maiestas* and, being tied in a sack together with some serpents, was drowned (that is he suffered the *poena* for parricides): Plut. *Ti. Gr.* 20.3. Cf. Cic. *de amic.* 37; Val. Max. 4.7.1; Jillian Lea Beness, "The Punishment of the Gracchani and the Execution of C. Villius in 133/132," *Antichthon* 34 (2000): 1–17. Roman tradition considered the case of the *duumvir* Marcus Atilius to be the first case of execution by the sack: anyway, he was not punished by Tarquinius the Proud for parricide, but for having revealed information included in the Sibylline books (Val. Max. 1.1.13; Dion. Hal. *Ant. Rom.* 4.62.4: see Cloud, "*Parricidium*," 26–38). Yet, also with regard to this case, Dionysius mentions the crime of parricide, implying that the culprit was drowned in the sack for treason of his fatherland.

16 See, for example, Cic. *Phil.* 2.7, 2.13, 6.4, 11.27, 11.29, 13.20–21; *Cat.* 1.17, 29, 33; *de off.* 3.21.83; *pro Sull.* 6; *ad fam.* 10.23.5; Tac. *Ann.* 15.73.4; *Hist.* 1.85.5; Sall. *Cat.* 31.8; 52.31; Suet. *Iul.* 88. See Lassen, "The Ultimate Crime," 155–156, 158–160.

17 Suet. *Caes.* 1.82 and Cass. Dio *Hist. Rom.* 44.19; Cic. *phil.* 2.3.

18 Roman declamation provides a variety of examples where the word parricide assumes a broad and loose range of meanings. A son who has beaten his father is called *parricida*. The young and greedy son that has blinded his own father may be described as *parricida*; disobeying a father who has commanded his son to abandon the daughter of the pirate who freed him is labelled as *parricidium*. The pirate's daughter herself commits parricide by preferring the young man to her father. Even if a son saves his father's life in battle, the father discredits him, boasting that his only glory corresponds to not having committed parricide by abandoning his father in battle. *Parricidium* includes the case of a son who, being in love with his stepmother, makes his father give him the woman as consideration provided for preventing his own son from dying of heartache. A father even claims that his son would have committed *parricidium*, if he had preferred suicide to a life spent with his own father: this could only come from patricidal hatred. Parricide is also committed by a daughter if she takes her husband's side during civil war instead of her father and brother's (Sen. *Contr.* 9.4.6, 7, 12, 15, 17, 22; Ps.Quint. *Decl. min.* 372.1, 4, 7; Calp. Flacc. *Decl.* 9.6; see, moreover, Sen. *Contr.* 1.6.1; 3.4.2; 6.7.2; 7.3.5; 10.3).

clear that, above all in these last cases, the declaimer, by mentioning *parricidium*, intended to amplify the gravity of the misconducts carried out by the opponent, rhetorically converting a mere violation into the *maximum crimen* for anyone to commit, and then suggesting to the audience that such behaviours, if correctly understood, amounted to a prefiguration of a future possible murder.[19]

3 The punishment of the sack: a short description

The most heinous and horrific crime obviously deserves the harshest of the punishments.[20] Modestinus, in the 3rd century AD, provides a rather complete account of the terrible and exotic ritual that was performed during the execution

19 Mario Lentano, "*Parricidii sit actio*: Killing the Father in Roman Declamation," in *Law and Ethics in Greek and Roman Declamation*, eds. Eugenio Amato, Francesco Citti, and Bart Huelsenbeck (Berlin, Munich, Boston: de Gruyter, 2015), 133–153, 143–144: "the term is never completely devoid of its proper connotations: in uses like these, there seems to be an implicit understanding that a son capable of such behaviours is also capable of patricide. If he is not yet a *parricida* according to the law, the potential for him to become so nevertheless remains, at least in the suspicious minds of *duri patres*.". See Cic. *leg*. 2.9.22; *Cat*. 1.12.29; Sall. *Cat*. 51.25; Tac. *hist*. 1.85.

20 On this *poena* (also inflicted for crimes against the state or religion), see Adolf Joseph Storfer, *Zur Sonderstellung des Vatermordes. Eine rechtsgeschichtliche und völkerpsychologische Studie* (Leipzig, Wien: Franz Deuticke, 1911), 26–34; Rudolf Düll, "Zur Bedeutung der *poena cullei* im römischen Strafrecht," in *Atti del congresso internazionale di diritto romano. Bologna e Roma*, 2 (Pavia: Tip. successori F.lli Fusi, 1935): 363–408, 365–366; Cristina Bukowska Gorgoni, "Die Strafe des Sackens. Wahrheit und Legende," *Forschungen zur Rechtsarchäeologie und rechtlichen Volkskunde* 2 (1979): 145–162, 146–148; Florike Egmond, "The Cock, the Dog, the Serpent, and the Monkey. Reception and Transmission of a Roman Punishment, or Historiography as History," *International Journal of the Classical Tradition* 2 (1995): 159–192; Beness, "The Punishment of the Gracchani," 1–17. Mommsen's idea that the *poena cullei* was originally inflicted to the murder of any free person and only later became connected to the murder of a parent or a close relative has been rejected: see, along with Emil Brunnenmeister, *Das Tödtungsverbrechen im altrömischen Recht* (Leipzig: Duncker & Humblot, 1887), 186–189; Cloud, "*Parricidium*," 26–38; Magdelain, "*Paricidas*," 548–550; Cantarella, *I supplizi capitali*, 266–269, 276. The sack seems to have been applied for the first time during the reign of Tarquinius the Proud for treason and later extended by law to the parricides (Val. Max. 1.1.13; Dion. Hal. *Ant. Rom*. 4.62.4; Zon. 7.11); the enactment of an ancient Republican law is suggested by many ancient sources: Sen. *Clem*. 1.23; Ps.Quint. *Decl. min*. 377; *rhet. ad Her*. 1.13.23; Cic. *inv*. 2.50.149. See Nardi, *L'otre dei parricidi*, 129; Magdelain, "*Paricidas*," 550.

of parricides according to immemorial customs[21]: in the most comprehensive and final form of this capital punishment, the murderer, after being flogged with the *virgae sanguinae*, that is red-coloured rods, was put into a *culleus*, that is leather sack, together with a dog, a dunghill cock, a viper, and a monkey; then, the sack was thrown into a sea, river, or lake.[22] Further details appear in classical literary

21 On the contrary, Justinian (I. 4.18.6) – according to the *Pauli Sententiae* (5.24) – states that the *Lex Pompeia de parricidiis* introduced the new punishment consisting in the drowning in a leather sack together with the four animals: but this is denied by precedent cases attested in the sources (Cloud, "*Parricidium*," 38–47). On the contradiction existing between Digesta and Institutiones, see Cloud, "*Parricidium*," 47–66; Radin, "The *lex Pompeia*," 126. Furthermore, the jurist Marcian (D. 48.9.1), adhering to a view consistent with Modestinus's account, maintains that the *Lex Pompeia* extended the punishments prescribed by the preceding *Lex Cornelia* to parricides (in this sense, see Mommsen, *Römisches Strafrecht*, 643–645; Düll, "Zur Bedeutung der *poena cullei*," 366, 36, believing that the *Lex Cornelia* repealed the death penalty); likewise, Cloud, "*Parricidium*," 47–66, suggests that this law substantially defined parricide in terms of murder of parents or close relatives, and procedurally mapped it onto other forms of homicide, by unifying the different forms of punishment. *Contra*, see Ernst Levy, "Die Römische Kapitalstrafe," in *Ernst Levy Gesammelte Schriften zu seinem achtzigsten Geburtstag*, ed. Wolfgang Kunkel and Max Kaser, 2 (Köln, Graz: Böhlau, 1963): 325–378, assuming that the *Lex Pompeia* did not abolish the *poena cullei*, but intensified the magisterial powers in connection with the execution of punishments. Later sources show the use of this punishment, despite the supposed abolishment introduced with the *Lex Pompeia*. Suet. *Iul.* 42.3 maintains that Caesar punished parricides with confiscation of their property and that, at least under Augustus, the sack was limited to the *manifesti* or *confessi* parricides (Suet. *Aug.* 33.1). Claudius is said to have used the sack more times in five years than it had ever been used before, becoming this *poena* even more common than the cross: Sen. *Clem.* 1.23.1; Suet. *Claud.* 34.1. The cruel practice is also attested in Nero's time: see Dio 61.16.1 and Juv. 8.213–14. As concerns the 2nd century AD, a new practice under Hadrian is attested in D. 48.9.9 pr. The sack was in use in the 3rd century (D. 48.9.9 pr.; D. 48.9.1; see Apul. *met.* 10.8; Tert. *anim.* 33.6; Lactant. *div. inst.* 5.9.16, *pace* Paul. *Sent.* 5.24 that suggests that the sack was obsolete). On Constantine's expansion of the punishment in 318–319 AD to all forms of parricide, see Radin, "The *lex Pompeia*," 128–129 and Cloud, "*Parricidium*," 56–58.

22 D. 48.9.9 pr.: *Poena parricidii more maiorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur. Hoc ita, si mare proximum sit: alioquin bestiis obicitur secundum divi Hadriani constitutionem* (The penalty inflicted to parricides, as provided by our ancestors, is the following: the culprit shall be beaten with red rods, and then shall be sewn up in a sack with a dog, a dunghill, a viper, and a monkey; the sack shall be cast into the depths of the sea, if the sea is near at hand; alternatively it shall be thrown to wild beasts, according to the constitution of the Divine Hadrian). My translation. Furthermore, see I. 4.18.6; Dosith. 3.16; Cic. *Rosc. Am.* 69–70. As regards the alternatives to the sea, Cic. *inv.* 2.50.149 mentions *perfluens* water; C. Theod. 9.15.1 and C. 9.17.1, mention a river. As for the animals sewn up in the sack together with the *parricida*, Iuv. *Sat.* 8.213 mentions a monkey and a viper (while in 13.154 ff. there is a reference to the monkey only); Sen. *Contr.* 5.4.2; *Clem.* 1.15.7; Ps.Quint. *Decl. maior.* 17.9; C. Theod. 9.15.1, and C. 9.17.1 attest for the presence of snakes. In the speech written to

sources[23]: the *parricida* was led to the place of execution on a cart drawn by black oxen; then his head was covered with a cap made of wolf's skin (the so-called *folliculus lupinus)*, while shoes whose soles were made of wood were tied to his feet. Finally, the *parricida* was put together with the four live animals (or at times with some of them) into the sack. It is also clear that an agonising death could occur even before the drowning into the depths of the waters: indeed, the raging beasts could come in fury to tear to pieces the flesh of the culprit with their teeth, claws and nails, not to mention the viper's fatal venom. If this did not happen, the culprit was unavoidably condemned to die by drowning or of asphyxiation.

4 *Parricida*: that is to say *monstrum*?

The previous preliminary remarks about the heinousness inherent to the crime of *parricidium,* about the sense of terror it brings about, and finally the extremely cruel and bizarre character of the *poena cullei* help contextualise two

defend Sextus Roscius of Ameria, Cicero – as already stated – deals with the *poena cullei* at length, but makes no mention of any animals (see, moreover, Cic. *inv*. 2.50.149; Cic. *ep. Quint. frat*. 1.2.5). Likewise, neither Valerius Maximus, nor Zonaras, nor the author of the *rhetorica ad Herennium*, nor Orosius, hint at the presence of any of the four animals (Val. Max. 1.1.13; Zon. 7.11; *rhet. ad Her*. 1.13.23; Oros. 5.16.23). According to Egmond, "The cock, the dog, the serpent, and the monkey," 176, "in its simplest form of drowning in a sack the *poena cullei* was undoubtedly a very old Roman punishment, but the use of none of the animals can be traced back earlier than the era of the Gracchi (ca. 133 BC). The snake was clearly first, as it should be. The monkey came second. The dog and the cock only materialised after Hadrian's time, during the early 3rd century AD. The whole series of four in the order snake-dog-cock-monkey only occurs in the compilations of the 6th century, nor do we hear of any of the other ritual elements before the 1st century BC. Cicero mentions the wooden soles and the wolf's cap. The cart and the black oxen are first mentioned during Hadrian's time, and the flogging with the *virgae sanguineae* occurs for the first time in *Digesta* (which tells us nothing about its age)."

23 Cic. *inv*. 2.50.149: *Quidam iudicatus est parentem occidisse et statim, quod effugiendi potestas non fuit, ligneae soleae in pedes inditae sunt; os autem obvolutum est folliculo et praeligatum; deinde est in carcerem deductus, ut ibi esset tantisper, dum culleus, in quem coniectus in profluentem deferretur, compararetur* (A certain man was convicted of parricide. Immediately after, in order to ensure that he could not escape, wooden soles were put on his feet, and his face was covered with a wolf's cap, and bound fast. Then he was led to prison: he would remain there until the leather sack was ready for him to be cast into running water); *rhet. ad Her*. 1.13.23: *Ei damnato statim folliculo lupino os <obvolutum est> et soleae ligneae in pedibus inductae sunt: in carcerem ductus est* (After he was convicted, his face was covered with a wolf skin cap and wooden soles were tied to his feet; then he was led to prison). My translation.

famous passages included in the speech written by Cicero for Sextius Roscius of Ameria: two passages that clearly connect parricide and monstrosity.

First, the orator equates such wrongdoing to a portent or prodigy, portraying the culprit as a man whose manners are savage, whose nature is unrestrained, and whose life is devoted to any sort of vice and transgression.[24] Then, he even boasts that the person who commits parricide is undeniably a portent and monster; he or she is a 'being' in human shape, on the one hand; but he or she supersedes the beasts themselves in wildness, on the other hand.[25] This motif comes not alone. Ps.Quintilian reports a case concerning a mother charged of poisoning her son to prevent him from testifying against her on the accusation of adultery; according to the rhetor, the woman had to be considered *inter prodigia*, due to the fierce unnaturalness of her behaviour.[26] Once again, Ps.Quintilian confirms that Cicero's *pro Sexto Roscio Amerino* was a fundamental point of reference for any declaimer dealing, directly or indirectly, with the topic of parricide, even if in Roman declamation this term was, frequently and plainly, used to mean a *pater* who has killed his son,[27] abusing his *ius vitae necisque* (that is a power which, even though wide,

24 *Rosc. Am.* 38: *in hoc tanto, tam atroci, tam singulari maleficio, quod ita raro exstitit ut, si quando auditum sit, portenti ac prodigi simile numeretur, quibus tandem tu, C. Eruci, argumentis accusatorem censes uti oportere? nonne et audaciam eius qui in crimen vocetur singularem ostendere et mores feros immanemque naturam et vitam vitiis flagitiisque omnibus deditam, denique omnia ad perniciem profligata atque perdita? quorum tu nihil in Sex. Roscium ne obiciendi quidem causa contulisti* (In the case of so enormous, so atrocious, so singular a crime, as this one which has been committed so rarely, that, if it is ever heard of, it is accounted like a portent and prodigy–what arguments do you think, O Caius Erucius, you as the accuser ought to use? Ought you not to prove the singular audacity of him who is accused of it? And his savage manners, and brutal nature, and his life devoted to every sort of vice and crime, his whole character, in short, given up to profligacy and abandoned? None of which things have you alleged against Sextus Roscius, not even for the sake of making the imputation). My translation.

25 *Rosc. Am.* 63: *Magna est enim vis humanitatis; multum valet communio sanguinis; reclamitat istius modi suspicionibus ipsa natura; portentum atque monstrum certissimum est esse aliquem humana specie et figura qui tantum immanitate bestias vicerit ut, propter quos hanc suavissimam lucem aspexerit, eos indignissime luce privarit, cum etiam feras inter sese partus atque educatio et natura ipsa conciliet* (For the power of human feeling is great; the connection of blood is of mighty power; nature herself cries out against suspicions of this sort; it is a most undeniable portent and monster, for any one to exist in human shape, who so far outruns the beasts in savageness, as in a most scandalous manner to deprive those of life by whose means he has himself beheld this most delicious light of life; when birth, and bringing up, and nature herself make even beasts friendly to each other). My translation.

26 See Ps.Quint. *Decl. min.* 319.2, 3, 5; see also Calp. Flacc. *Decl.* 10.8 (Håkanson), where a mother induces one son of hers to commit suicide and, accordingly, commits *parricidium*.

27 See Ps.Quint. *Decl. maior.* 8.1, 2, 4, 6, 8, 11, 14, 15, 19, 21. For further cases where fathers are called parricides, see Ps.Quint. *Decl. maior.* 10.17; 18.1, 2, 3, 5, 8, 11, 14, 15, 17; killing the brother

amounts to parricide in Sen. *Contr*. 7.1.1, 5, 6, 7, 9, 10, 15, 16, 17, 22, 23; Ps.Quint. *Decl. min*. 286.9; 321.6 and 11; Calp. Flacc. *Decl*. 21.7. Yan Thomas, "Paura dei padri e violenza dei figli: immagini retoriche e norme di diritto," in *La paura dei padri nella società antica e medievale*, eds. Ezio Pellizer and Nevio Zorzetti (Roma, Bari: Laterza, 1983), 115–140, 119, pointed out, on the grounds of a close analysis of the writings of Quintilian, Seneca the Elder, and Calpurnius Flaccus, the following results both concerning father-son litigation, and, for most part, entailing cases of patricide: 54 cases out of 90 in Quintilian, 37 out of 50 in Seneca, 21 out of 33 in Calpurnius Flaccus. In his opinion, if *parricidium* meant the murder of the father only, this strict sense was widened by Pompey so as to cover close relatives: this would overcome the conflict between the duty, existing on those nearest to the killed person, of avenging, and the duty of protecting the family: see Thomas, "*Parricidium*," 643–715, and above all Yan Thomas, "Sich rächen auf dem *Forum*. Familiäre Solidarität und Kriminalprozess in Rom (1. Jh. v. Chr. – 2. Jh. n. Chr.)," *Historische Anthropologie: Kultur, Gesellschaft, Alltag* 5 (1997): 161–186. According to Lentano, "*Parricidii sit actio*," 139, "a systematic analysis of the declamatory texts controverts any claim that *Parricidium* and *parricida*, in declamation, refer above all to the killing of a father. And yet this definition is to some degree correct, as it recognises that extended uses of the concept of *parricidium* appear almost exclusively within the declaimers' treatment of the *controversiae*. In the theme, on the other hand – or in the laws that regulate its formulation – the category of *parricidium* refers most frequently by far to the killing of a father, while other terms are used for these other crimes." Therefore, using the term *parricidium* to designate a father who has killed his son would represent the greatest deviation from its "juridical value." This idea can hardly be shared since it is grounded on an old-fashioned and exaggerated representation of paternal powers in Roman law (see next footnote), on the one hand, and it seems to imply what is an erroneous conception of parricide on the legal level, on the other hand. At first, according to Marcian, the *lex Pompeia de parricidiis* (enacted by Pompey in 55 or 52 BC) provided a long and analytical list of "relatives" as possible victims of the crime of parricide: father, mother, grandfather, grandmother, brother, sister, first cousin on the father's side, first cousin on the mother's side, paternal or maternal uncle, paternal or maternal aunt, first cousin (male or female) by mother's sister, wife, husband, father-in-law, son-in-law, mother-in-law, daughter-in-law, stepfather, stepson, stepdaughter, patron or patroness; son or daughter killed by the mother; grandson killed by grandfather. The law also stipulates that a son who purchased poison to kill his father be punished as a parricide, even if he was not able to administer it, and Ulpian attests that even moneylenders being aware of the fact that a *filius* planned to use the money he borrowed to pay for poison or for a killer to murder his own father had to be punished as parricide (D. 48.9.1; D. 48.9.7). It is undeniable that the list at issue fails to cite sons and daughters (so that this omission has been read as a clear confirmation of the existence of the absolute *vitae necisque potesta* until the time of Marcian). Secondly, this omission cannot be justified on the basis of the allegedly absolute prerogatives granted to a *pater* by *patria potestas*. Actually, shorter lists of victims are attested by Modestinus, who refers to parents and grandparents only (D. 48.9.9.1), and by the *Pauli Sententiae*, where parents, grandparents, siblings, and patrons are mentioned (Paul. *Sent*. 5.24). Therefore, these lists, if they were not modified by the Compilers in the 6th century AD, seem to be the differentiated results of jurists' interpretation about the legal meaning of the term "relative": see Lucia Fanizza, "Il parricidio nel sistema della *lex Pompeia*," *Labeo* 25 (1979): 266–289; Henryk Kupiszewski, "Quelques remarques sur le *parricidium* dans le droit romain classique et post-classique," in *Studi in onore di Edoardo Volterra*, 4 (Milano: Giuffrè,

deep, and articulated, never consisted of an unrestrained and absolute one, not even at its beginnings).[28]

1971): 601–614. Furthermore, C. Theod. 9.15.1 and C. Theod. 11.17.1 include the murder of sons in the category of *parricidium*. Thirdly, it is worth reminding that a father was never granted the right to kill his son without any legal ground and factual reason (see Fragm. Aug. 4.86: *De filio hoc tractari crudele est, sed . . . . . non est post . . . . r . . . . <occi> dere sine iusta causa, ut constituit lex XII tabularum*): for instance, as for the republican era, out of an alleged (but unproved) sexual offence (*dubiae castitatis*), Quintus Fabius Maximus Eburnus ordered two slaves of his to kill his son, already relegated to the countryside to atone his misconduct; anyway Quintus Fabius Maximus Eburnus, although *pater familias*, committed *parricidium*: he was therefore prosecuted by Gnaeus Pompeius and condemned to exile (Val. Max. 6.1.5; Oros. 5.16.8; see Ps.Quint. *Decl. maior*. 3.14; Cic. *Balb*. 28). Moreover, Valerius Maximus reports the case of Lucius Gellius (Val. Max. 5.9.1): he suspected his son of adultery with his stepmother and of plotting to commit patricide. As a consequence, he summoned a wide *consilium domesticum*, which finally had to declare the accused's innocence. The father would have committed a crime rather than punished one, if he had killed his son *sine causa*. As far as the 2nd century AD is concerned, what is more, Marcian reports the case of a man who, during a hunt, had killed his son (just suspected to have committed adultery with his stepmother); as a consequence, the emperor Hadrian deported the killer to an island: this father had acted like a brigand, rather than as one with *patria potestas* (D. 48.9.5). See, also, Dio Cass. 36.37.4 (concerning the Augustan case of Tricho).

28 See William V. Harris, "The Roman Father's Power of Lfe and Death," 81–95, and, above all, Richard P. Saller, "*Patria Potestas* and the Stereotype of the Roman Family," *Continuity and Change* 1 (1986): 7–22, 19–20; Richard P. Saller, *Patriarchy, Property and Death in the Roman Family* (Cambridge: Cambridge University P., 1994), 121–122 (supporting an evolutionary model and considering the *vitae necisque potestas* in terms of an archaic institution subjected to limitations and desuetude); see Lassen, "The Ultimate Crime," 147–148. See Gaughan, *Murder Was not a Crime*, 23–52, recently followed by Carlà-Uhink, "Murder Among Relatives," 40, where he assumes that "crimes against the State could allow the use of *vitae necisque potestas* - and even of *parricidium* - it also implies that this should not normally be the case, and that sons were not considered to be victims of violence without reason." If the traditional view fails to depict accurately the multiple nuances characterising *patria potestas*, that does not mean that the opposite view is totally persuasive. For instance, some authors argue that literary evidence indicates that the father/son relationship was bilateral in nature and founded on *pietas* (devotion and affection). On the contrary, Cantarella, "Fathers and Sons," 297, has convincingly pointed out that "bilateral does not mean the same thing as symmetrical: while filial *pietas* meant obedience and respect, paternal pietas could coexist with the exercise of paternal powers." Moreover, on the grounds of demographical researches, some social historians have argued that Roman family was composed of a small group of individuals, as of the 2nd century BC, and that the relations between generations were not based on an authoritarian, if not even tyrannical, mastery on the part of the father. Once again, Cantarella, "Fathers and Sons," 297, correctly maintains the following: "let us accept the picture of a society where, in every generation, a significant number of young adults were independent individuals, free to administer their own property. Can we believe that this situation would have mitigated the conflict between generations? I do not believe so. Instead I believe that the minority still *in potestate* would have felt even more disadvantaged, in comparison to most of their more fortunate

Cicero highlights the non-human character of the crime allegedly committed by his client: the perpetrator acts against all values and principles inspired by the term *homo* and ruled out in a ferocious state of nature; in fact, he takes away the life of the person who had given life to him. By committing such abomination, the parricide places himself beyond the boundaries of the political society and can therefore be numbered among the wild animals. The exceptionally harsh punishment provided by Roman ancestors and confirmed in more recent statutes perfectly fits the societal offence here dealt with.[29]

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contemporaries. I believe that their situation would have been even more unendurable than would have been the case if it were more prevalent. I believe that contradictions between the opportunities of adulthood and the constraints imposed by a living father would have been even more problematic."

29 *Rosc. Am.* 71–72: *O singularem sapientiam, iudices! nonne videntur hunc hominem ex rerum natura sustulisse et eripuisse cui repente caelum, solem, aquam terramque ademerint ut, qui eum necasset unde ipse natus esset, careret eis rebus omnibus ex quibus omnia nata esse dicuntur? noluerunt feris corpus obicere ne bestiis quoque quae tantum scelus attigissent immanioribus uteremur; non sic nudos in flumen deicere ne, cum delati essent in mare, ipsum polluerent quo cetera quae violata sunt expiari putantur; denique nihil tam vile neque tam volgare est cuius partem ullam reliquerint. etenim quid tam est commune quam spiritus vivis, terra mortuis, mare fluctuantibus, litus eiectis? ita vivunt, dum possunt, ut ducere animam de caelo non queant, ita moriuntur ut eorum ossa terra non tangat, ita iactantur fluctibus ut numquam adluantur, ita postremo eiciuntur ut ne ad saxa quidem mortui conquiescant. tanti malefici crimen, cui maleficio tam insigne supplicium est constitutum, probare te, Eruci, censes posse talibus viris, si ne causam quidem malefici protuleris? si hunc apud bonorum emptores ipsos accusares eique iudicio Chrysogonus praeesset, tamen diligentius paratiusque venisses* (O singular wisdom, O judges! Do not they seem to have cut this man off and separated him from nature? They deprived him at once of heaven, sun, water and earth, so that he who had slain the man from whom he himself was born, might be deprived of all those things from which everything is said to derive. They did not want to throw the body to wild beasts, lest we should find the beasts that had touched such wickedness; they did not want to throw them naked into the river, since they would pollute the sea where all other things which have been polluted are believed to be purified. There is nothing in short so trivial or so common that they left them any share in it. Indeed, what is so common as breath to the living, earth to the dead, the sea to those who float, the shore to those who are cast up by the sea? These men stay alive, as long as they can, unable to draw breath from heaven; they die and the earth does not touch their bones; they are tossed about by the waves so that they are never washed; lastly, they are cast up by the sea so that, when they are dead, they do not even rest on the rocks. Do you think, o Erucius, that you can prove to such men as your charge for such an enormous crime, a crime for which such a remarkable punishment is provided for, if you do not allege any motive for the crime? If you were accusing him before the purchasers of his property, and if Chrysogonus was presiding at that trial, still you would have come more carefully and with more preparation). See, for a similar approach (emphasising the afflictive and retributive character of the ritual), I. 4.18.6: *in vicinum mare vel in amnem proiciatur, ut omni elementorum usu virus carere incipiat et ei caelum superstiti, terra mortuo auferatur* (He shall be cast into the nearby sea or river so that he may begin to be

As a matter of fact, this picture is complicated by the explanation of the *poena* inflicted to parricides. On the one hand, Cicero plainly qualifies those who commit this appalling act in terms of monstrous and portentous beings; on the other hand, he deals with the *poena cullei* conceving it as a very form of punishment. The inconsistency does clearly emerge within the framework provided by the theme of *parricidium*: if the interpretation given to the bizarre ritual of the sack is accurate, it must be held that the Ciceronian use of the terms connected to monstrosity (*monstrum, prodigium, portentum*) amounts to a purely rhetorical strategy; if, on the contrary, this use shows solid legal grounds, it must be held that his explanation of the objectives pursued through *poena cullei* is unlikely, since – as we will show in the next paragraphs – a monster is to be expelled to preserve the natural order from contamination. If parricides were monsters, they should not be punished or denied all honours granted to the dead, but it should simply be removed from the political community of the living.

5 Roman monsters: the legal and religious background

Ancient Romans used quite a broad terminology to indicate strange events that, if correctly interpreted, might forecast the future: besides *monstrum*, one finds the overlapping nouns *ostentum, portentum, prodigium, miraculum*.[30] Cicero

totally denied use of the elements, while still alive, and he may be denied the sky while alive and the earth when dead). My translation. Cf., moreover, C. Theod. 9.15.1 and C. 9.17.1; on the contrary, Ps.Quint. *Decl. min.* 299 and Zon. 7.11.4 adhere to a view that reads the *poena* as a real disposal of an evil prodigy and a device to protect the universe from contamination, rather than as a very form of punishment.

30 Jean Céard, *La nature et les prodiges* (Geneve: Droz, 1977); Clemens Zintzen, "*Prodigium*," in *Der Kleine Pauly* 4 (München: Deutscher Taschenbuch, 1979): 1151–1153; Anton Szantyr, s.v. *monstrum*, in *Thesaurus Linguae Latinae* 8.10 (Leipzig: Teubner, 1964): 1446–1454. Annie Allély, "Les enfants malformés et considérés comme prodigia à Rome et en Italie sous la République," *Revue des études anciennes* 105 (2003): 127–156, 134; Blandine Cuny-Le Callet, *Rome et ses monstres. Naissance d'un concept philosophique et rhétorique* (Grenoble: Million, 2005), 43–54; David Engels, *Das römische Vorzeichenwesen. Quellen, Terminologie, Kommentar, historische Entwicklung* (Stuttgart: Steiner, 2007); Robert Garland, *The Eye of the Beholder. Deformity and Disability in the Graeco-Roman World 2* (London: Bristol Classical P., 2010), 4; Laura Cherubini, "Mostri vicini, mostri di casa. Di alcune creature straordinarie del mito antico," *I Quaderni del Ramo d'Oro* 5 (2012): 137–150; Philippe Charlier, *Les monstres humains dans l'Antiquité. Analyse paléopathologique* (Paris: Fayard, 2008), 23–44; Arduino Maiuri, "Il

and Varro, though diverging one from the other with regard to secondary etymological aspects, explain all these terms as being in connection with the supernatural sphere and the divinatory art (even if each of them would show a peculiar point of view of the same phenomenon). Furthermore, both suggest that each of the terms at issue constantly denotes a serious infringement of "the normal order of things," that is *monstrum* and related terms apply to beings or events that are or move *contra naturam*.[31] Pliny the Elder himself, acknowledging the possible existence of actual monsters, appears to be accustomed with the religious implications of the Latin vocabulary of monstrosity. Accordingly, if, on the one hand, he does not hesitate to admit the prophetic power of *omina*,[32] on the other hand, he alludes to the corruption of traditional conceptions, arguing that, during the Republican period, Romans were used to

lessico latino del mostruoso," in *"Monstra." Costruzione e Percezione delle Entità Ibride e Mostruose nel Mediterraneo Antico*, ed. Igor Baglioni, 2 (Roma: Edizioni Quasar, 2013): 165–178.

31 Cic. *div*. 1.93: *Quia enim ostendunt, portendunt, monstrant, praedicunt, ostenta, portenta, monstra, prodigia dicuntur* (Because they show, predict, indicate, forecast, they are called *ostenta, portenta, monstra, prodigia*); Serv. *in Aeneidem* 3.366: *Ostentum, quod … ostendit, portentum, quod … portendit, prodigium, quod porro dirigit, miraculum, quod mirum est, monstrum, quod monet* (*Ostentum*, because it shows something, *portentum*, because it predicts, *prodigium*, because it leads us further into the future, *miraculum*, because it is a wonder, *monstrum*, because it shows us something). My translation. See Char. *Ars* p. 389.4 (Keil); Tert. *cor*. 51.33; Cic. *nat*. *deor*. 2.7; Non. *compend*. *doc*. 429.27 (Lindsay); Aug. *civ*. *Dei* 21.8; Fest. 138 (Lindsay); Isid. *orig*. 11.3; Cic. *nat*. *deor*. 2.13–14; Varro *agr*. 2.4; Tac. *ann*. 12.64. Anyway, monstrosity implies a violation of the natural order: for instance, according to Cicero, *nat*. *deor*. 1.92, having useless extra body parts was not monstrous (see also Aug. *civ*. *Dei* 16.8.2, who did not consider polydactyly a serious aberration from the norm either). This approach seems to be ruled out by Cic. *div*. 2.60 (*Quicquid enim oritur, qualecumque est, causam habeat a natura necesse est, ut, etiamsi praeter consuetudinem exstiterit, praeter naturam tamen non possit exsistere*): *monstra* are not *praeter naturam*, but only *praeter consuetudinem*, since there is always a reasonable explanation for them (see Lucr. *rer*. *nat*. 2.700–709 and 4.732–743, who denies the possible existence of hybrids or mythological monsters, and ranks them among the *simulacra*).

32 Plin. *nat*. *hist*. 7.33–35 (see, however, Cic. *div*. 1.53 who reports the case of a child born with two heads, considered clearly a signal of future civil war). The seventh book of Plyny's encyclopaedia (Plin. *nat*. *hist*. 7.9, 21, 32, 34, 45, 47, 69, 83) contains many references to monsters and prodigies within the frame of the fundamental divide between monstrous human races (7.6–32) and monstrous individual human beings (7.33–215): anthropophagous races such as the Scythian tribes, the Cyclopes and the Laestrygones are labelled as *gentes huius monstri*; eastern monstrosities and weird customs are called *miracula*; strange human races are regarded as *prodigia* or *miracula*; hermaphrodites are *prodigia*, while a woman who brought forth an elephant is a *portentum*. To be born feet foremost is *contra naturam*. The case of a twin that remains in the womb while the other prematurely dies is a *miraculum*; a female born with the genitals closed up represents an *infaustum omen*. Miraculous displays of strength are *prodigiosae ostentationis*.

conceive of many monstrous human beings (such as persons born of both sexes combined) as *prodigia*, i.e. 'theological phenomena', while by the 1st century AD, the same human beings were even ranked among 'sexual entertainments' (*deliciae*).[33]

Along with the above mentioned religious connotations, a specifically legal significance of the terminology at issue arises from some of the classical texts included in Justinian's Digest. Labeo tries to define the exact meaning of *ostentum*: according to the classical jurist, this term denotes "unnatural" appearances in humans, animals or plants, as well as prodigious events.[34] Ulpian, dealing with the *ius trium liberorum*, argues that a human *monstrum* does not resemble its parents, and looks or even sounds like an animal more than a human being.[35] A later imperial constitution faces the problem concerning the testamentary *praeteritio* ("passing over") of posthumous children. Justinian, adhering to the Sabinians' view, maintained that the testament was generally

33 Plin. *nat. hist*. 7.34: *gignuntur et utriusque sexus quos hermaphroditos vocamus, olim androgynos vocatos et in prodigiis habitos, nunc vero in deliciis* (at times individuals were born belonging to both sexes; we call such persons hermaphrodites; they were formerly called *androgyni*, and were looked upon as prodigies, but nowadays they are employed for sexual purposes). My translation. Cf. Orsolia Márta Péter, "*Olim in prodigiis nunc in deliciis*. Lo *status* giuridico dei *monstra* nel diritto romano," in *Iura antiqua, iura moderna. Festschrift F. Benedek*, ed. Gabor Hamza et al. (Pécs: Dialog Campus Kiado, 2001): 207–216.

34 Ulp. 25 *ad edictum* D. 50.16.38: *"Ostentum" Labeo definit omne contra naturam cuiusque rei genitum factumque. Duo genera autem sunt ostentorum: unum, quotiens quid contra naturam nascitur, tribus manibus forte aut pedibus aut qua alia parte corporis, quae naturae contraria est; alterum, cum quid prodigiosum videtur, quae Graeci φαντάσματα vocant* (Labeo defines *ostentum* to mean everything which is generated or produced contrary to nature. There are, however, two kinds of *ostentum*; one if something is born contrary to nature, for instance with three hands or feet, or with some other part of the body deformed; another, if something is considered to be unusual. The Greeks call them *phantasmata*). My translation.

35 Ulp. 25 *ad legem Iuliam et Papiam* D. 50.16.135: *Quaeret aliquis si portentosum vel monstrosum vel debilem mulier ediderit vel qualem visu vel vagitu novum, non humanae figurae, sed alterius, magis animalis quam hominis, partum, an, quia enixa est, prodesse ei debeat? Et magis est, ut haec quoque parentibus prosint: nec enim est quod eis imputetur, quae qualiter potuerunt, statutis obtemperaverunt, neque id quod fataliter accessit, matri damnum iniungere debet* (Let us suppose that a woman brings forth a child. This is deformed, monstrous, or defective, or has something unusual in its appearance or its voice; to say it differently, it has no resemblance to a human being, seeming to be more an animal than a human being. Shall it be any benefit to her to have brought forth such creature? According to the best opinion, consideration must be taken for its parents. They must not be harmed, since they have done their duty as far as they could. Thence, the mother must not be prejudiced, because an unfortunate occurrence has occurred). My translation.

broken and, as a consequence, recognised the rights of such descendants as legitimate heirs, with the only exception of monstrous births.[36]

The birth of monstrous or prodigious children seems thus to have had great relevance from the legal, as well as from the religious, perspective. What is more, within this kind of *monstra*, ancient authors (above all annalistic historians concerned with the Republican era) appear to be extremely interested in reporting cases of hermaphrodites or androgynes, that is cases of bodily bisexuality in the same person.[37] As of the end of the 3rd century BC and increasingly between the 2nd and 1st centuries BC (that is times of crisis of Republican values and war), Livy, Julius Obsequens, Orosius, Tacitus, and Phlegon of Thralles[38] relate how the

36 I. 6.29.3: *Cumque Sabiniani existimabant, si vivus natus est, etsi vocem non emisit, ruptum testamentum, apparet, quod, etsi mutus fuerat, hoc ipsum faciebat, eorum etiam nos laudamus sententiam et sancimus, si vivus perfecte natus est, licet ilico postquam in terram cecidit vel in manibus obstetricis decessit, nihilo minus testamentum corrumpi, hoc tantummodo requirendo, si vivus ad orbem totus processit ad nullum declinans monstrum vel prodigium* (Sabinians argued that if the posthumous child was born alive, the testament was broken, even if the child uttered no sound, or, similarly, if it had been dumb. We support their opinion and provide that if it had been born totally alive, though it died immediately either after coming to this earth, or in the hands of the midwife, the testament would be broken, provided that it had been born as a human being and not as a monster or prodigy).

37 See, on the terms found in ancient sources, Cic. *div*. 1.98; Liv. 27.11.4–5, 31.12.8, 39.22.5; Ov. *Metam*. 4.381–384; Plin. *nat. hist*. 7.15, 7.34, 7.36, 11.263; Paul. *Med*. 6.69 (CMG IX 2, 112, 6–20); Aug. *civ. Dei* 16.8; Hdt. 4.67; Plato *Symp*. 189d – 193d; Diod. Sic. 4.6.5, 32.10.2, 4, 9, 32.12.1; Galen. *De Semine* 2.3.17 (4.619.6–11 Kühn = CMG V 3, 1, 170, 19–23); Ps.-Galen. *Definitiones Medicae* 448 (19.453.12–14 Kühn); Hippocr. *De victu* 1.28 (6, 502–504 Littré). Cf. Lutz Alexander Graumann, "Monstrous Births and Retrospective Diagnosis: The Case of Hermaphrodites in Antiquity," in *Disabilities in Roman Antiquity Disparate Bodies. A Capite ad Calcem*, eds. Christian Laes, Chris F. Goodey and M. Lynn Rose (Leiden, Boston: Brill, 2013): 181–120.

38 See Liv. 27.11.4–6: *Sinuessae natum ambiguo inter marem et feminam sexu infantem, quos androgynos volgus, ut pleraque, faciliore ad duplicanda verba Graeco sermone, appellat . . . ea prodigia hostiis maioribus procurata, et supplicatio circa omnia pulvinaria et obsecratio in unum diem indicta; et decretum, ut C. Hostilius praetor ludos Apollini, sicut iis annis voti factique erant, voveret faceretque* (At Sinuessa it was reported that a child was born of doubtful sex, these are commonly called *androgyni* – a word like many others borrowed from the Greek . . . These portents were expiated by sacrifices of full-grown victims, and a day was appointed for special intercessions at all the shrines [year 209 BC]); Liv. 27.37.5–6: *Liberatas religione mentes turbavit rursus nuntiatum Frusinone natum esse infantem quadrimo parem nec magnitudine tam mirandum quam quod is quoque, ut Sinuessae biennio ante, incertus mas an femina esset natus erat. Id vero haruspices ex Etruria acciti foedum ac turpe prodigium dicere: extorrem agro Romano, procul terrae contactu, alto mergendum. Vivum in arcam condidere provectumque in mare proiecerunt* (No sooner were men's fears allayed by these expiatory rites than a fresh report came, this time from Frusino, to the effect that a child had been born there in size and appearance equal to one four years old, and what was still more startling, like the case at Sinuessa two years previously, it was impossible to say whether it

occurrence of *androgyni* was interpreted as the most horrible and dreadful sign (*foedum ac turpe prodigium*) sent from the gods to Rome. As Cicero furtherly

was male or female. The diviners who had been summoned from Etruria said that this was a dreadful portent, and the thing must be banished from Roman soil, kept from any contact with the earth, and buried in the sea. They enclosed it alive in a box, took it out to sea, and dropped it overboard [year 207 BC]); Liv. 31.12.6–9: *Iam animalium obsceni fetus pluribus locis nuntiabantur: in Sabinis incertus infans natus, masculus an femina esset, alter sedecim iam annorum item ambiguo sexu inventus; Frusinone agnus cum suillo capite, Sinuessae porcus com capite humano natus, in Lucanis in agro publico eculeus cum quinque pedibus. foeda omnia et deformia errantisque in alienos fetus naturae visa; ante omnia abominati semimares iussique in mare extemplo deportari, sicut proxime C. Claudio M. Livio consulibus deportatus similis prodigii fetus erat. nihilo minus decemviros adire libros de portento eo iusserunt. decemviri ex libris res divinas easdem, quae proxime secundum id prodigium factae essent, imperarunt. carmen praeterea ab ter novenis virginibus cani per urbem iusserunt donumque Iunoni reginae ferri. ea uti fierent, C. Aurelius consul ex decemvirorum responso curavit. carmen, sicut patrum memoria Livius, ita tum condidit P. Licinius Tegula* (Numerous monstrous births were also reported amongst the Sabines; a child was born of doubtful sex; another similar case was discovered where the child was already sixteen years old; at Frusino a lamb was yeaned with a head like a pig; at Sinuessa a pig was littered with a human head, and on the public domain-land in Lucania a foal appeared with five feet. These were all regarded as horrid and monstrous products of a nature which had gone astray to produce strange and hybrid growths; the hermaphrodites were looked upon as of especially evil omen and were ordered to be at once carried out to sea just as quite recently in the consulships of C. Claudius and M. Nero similar ill-omened births had been disposed of. At the same time the senate ordered the decemvirs to consult the Sacred Books about this portent. Following the instructions found there, they ordered the same ceremonies to be observed as on the occasion of its last appearance. A hymn was to be sung through the City by three choirs, each consisting of nine maidens, and a gift was to be carried to Queen Juno. The consul C. Aurelius saw that the instructions of the Keepers of the Sacred Books were carried out. The hymn in our fathers' days was composed by Livius, on this occasion by P. Licinius Tegula [year 200 BC]); Liv. 39.22.5: *Sub idem tempus et ex Umbria nuntiatum est semimarem duodecim ferme annos natum inventum; id prodigium abominantes arceri Romano agro, necarique quam primum iusserunt* (Almost at the same time a report came from Umbria of the discovery of a child there, nine years old, who was a hermaphrodite. Horrified at such a portent, the auruspices gave orders for it to be removed from Roman soil as speedily as possible and put to death [year 186 BC]). See Iul. Obseq. *Liber prodigiorum* 22 (*Lunae androgynus natus praecepto aruspicum in mare deportatus*: year 142 BC); 25 (*cinisque eius in mare deiectus*: year 122 BC); 27a (*in agro Ferentino androgynus natus et in flumen deiectus*: year 133 BC); 32 (*in foro Vessano androgynus natus in mare delatus est*: year 136 BC); 34 (*androgynus in agro Romano annorum octo inventus et in mare deportatus*: year 119 BC); 36 (*Saturniae androgynus annorum decem inventus et mari demersus*: year 117 BC); 47 (*item androgynus in mare deportatus*: year 98–97 BC); 48 (*supplicatum in urbe quod androgynus inventus et in mare deportatus erat*: year 98–97 BC); 50 (*androgynus Urbino natus in mare deportatus*: year 95 BC); 53 (*Arretii duo androgyni inventi*: year 92 BC). See Oros. 5.4.8 (*androgynus Romae visus iussu haruspicum in mare mersus est* [as an androgyne appeared in Rome, the haruspices ordered to have him drowned into the sea]: year 142 BC). See Tac. *ann.* 12.64 (*biformis hominum partus et suis fetum editum cui accipitrum ungues inessent* [hermaphrodites had been born and a pig had been produced with the claws of a hawk]: year 54 BC). See Phleg. Thralles 10

remarks, androgynes represent *monstra fatalia*.[39] On the contrary, as Pliny himself attests, beliefs and practices tend to change from the Imperial period on. Ulpian and Paulus acknowledged the legal existence of 'hermaphrodites', classifying them in accordance with a binary male-female scheme, where one or the other gender had to prevail. If the hermaphrodite was considered more like a human being, he was allowed to testify and to leave a will.[40]

On the grounds of monarchical and republican conceptions, these beings, created by a nature that had gone astray, indicated, as *portenta*,[41] that something, as monstrous as they were, was going to happen to the *civitas* as a whole. In the light of the principles and the practices denoting the so-called *pax deorum*, and in order to obtain divine help and mercy, the sign itself, together with its intrinsic pollution, had to be removed as such, and rituals of purification had to be performed:

(Ἐγεννήθη καὶ ἐπὶ Ῥώμης ἀνδρόγυνος, ἄρχοντος Ἀθήνησιν Ἰάσονος, ὑπατευόντων ἐν Ῥώμῃ Μάρκου Πλαυτίου [καὶ Σέξτου Καρμινίου] Ὑψαίου καὶ Μάρκου Φουλβίου Φλάκκου: year 125 BC).

39 Cic. *div*. 1.98: *ortus androgyni nonne fatale quoddam monstrum fuit?*

40 Ulp. 1 *ad Sabinum* D. 1.5.10: *Quaeritur: hermaphroditum cui comparamus? Et magis puto eius sexus aestimandum, qui in eo praevalet* (this is the question: whom does the hermaphrodite resemble? My firm belief is that it follows the gender that prevails in it); Paul. 3 *sententiarum* D. 22.5.15.1: *Hermaphroditus an ad testamentum adhiberi possit, qualitas sexus incalescentis ostendit* (A hermaphrodite is allowed to testify in a case of a will, according to gender); Ulp. 3 *ad Sabinum* D. 28.2.6.2: *Hermaphroditus plane, si in eo virilia praevalebunt, postumum heredem instituere poterit* (A hermaphrodite, if the male gender prevails, can plainly appoint a posthumous as heir). My translation. Cf. Yan Thomas, "La division des sexes," in *Histoire des femmes en Occident. L'antiquité*, ed. Pauline Schmitt-Pantel 1 (Paris: Plon, 1991): 104–105; Giuliano Crifò, "*Prodigium* e diritto: il caso dell'ermafrodita," *Index: quaderni camerti di studi romanistici* 27 (1999): 113–120. Cf., moreover, Andreas Wacke, "Vom Hermaphroditen zum Transsexuellen. Zur Stellung von Zwittern inder Rechtsgeschichte," in *Festschriftfür Kurt Rebmann zum 65. Geburtstag*, eds. Kurt Rebmann, Heinz Eyrich, Walter Odersky and Franz-Jürgen Säcker (München: Beck, 1989): 861–903; Allély, "Les enfants malformés et handicapés," 73–101, 94, 98; Marguerite Hirt Raj, "La législation romaine et les *droits* de l'enfant," in *Naissance et petite enfance dans l'Antiquité. Actes du colloque de Fribourg, 28 novembre–1er décembre 2001* ed. Véronique Dasen (Göttingen, Vandenhoeck & Ruprecht, 2004): 281–291; Sandrine Vallar, "Les hermaphrodites: l'approche de la Rome antique," *Revue International de Droits de l'Antiquité* 60 (2013): 202–217; Lorenzo Franchini, "Lo *status* dell'ermafrodita ed il problema della determinazione del sesso prevalente," *Teoria e storia del diritto privato* 9 (2016): 1–35.

41 Raymond Block, *Les prodiges dans l'Antiquité classique* (Paris: P.U.F., 1963), 73; Brunnenmeister, *Das Totungsverbrechen im altromischen Recht*, 193–196, Cloud, "*Parricidium*," 35; Lutz Alexander Graumann, "Angeborene Fehlbildungen in der Zeit der römischen Republik in den Prodigien des Iulius Obsequens," in *Behinderungen und Beeinträchtigungen/Disability and Impairment in Antiquity*, ed. Rupert Breitwieser (Oxford: BAR, 2012): 91–101.

the future of Rome, it was argued, depended on the hasty removal of the *monstrum*, a being of evil portent.[42] If one relies on two archaic provisions attested by Dionysius and Cicero and concerning, in general, *patria potestas*, and, particularly, the so-called *ius vitae necisque*, the above-mentioned idea was deeply rooted at the beginnings of Rome: the former allowed, while the second seems to order, the father to kill (or, alternatively, to expose) monstrous, deformed, and maimed births.[43] So, monsters being generated by human beings – regardless of any fault and liability – were to be removed and not punished.

42 Marie Delcourt, *Stérilités mystérieuses et naissances maléfiques dans l'Antiquité classique* (Paris: Droz, 1938), 49 and *passim*; Bruce MacBain, *Prodigy and Expiation: a Study in Religion and Politics in Republican Rome* (Bruxelles: Latomus, 1982), 127; Maurizio Bettini, "L'arcobaleno, l'incesto e l'enigma. A proposito dell'*Oedipus* di Seneca," in *Affari di famiglia. La parentela nella letteratura e nella cultura antica*, ed. Maurizio Bettini (Bologna: il Mulino, 2009): 183–219; Mario Lentano, "Sbatti il mostro in fondo al mare, Caligola e le *spintriae di* Tiberio," *I quaderni del Ramo d'Oro* 3 (2010): 292–319.

43 Dion. Hal. 2.15.2: πρῶτον μὲν εἰς ἀνάγκην κατέστησε τοὺς οἰκήτορας αὐτῆς ἅπασαν ἄρρενα γενεὰν ἐκτρέφειν καὶ θυγατέρων τὰς πρωτογόνους, ἀποκτιννύναι δὲ μηδὲν τῶν γεννωμένων νεώτερον τριετοῦς, πλὴν εἴ τι γένοιτο παιδίον ἀνάπηρον ἢ τέρας εὐθὺς ἀπὸ γονῆς. ταῦτα δ' οὐκ ἐκώλυσεν ἐκτιθέναι τοὺς γειναμένους ἐπιδείξαντας πρότερον πέντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν, ἐὰν κἀκείνοις συνδοκῇ. κατὰ δὲ τῶν μὴ πειθομένων τῷ νόμῳ ζημίας ὥρισεν ἄλλας τε καὶ τῆς οὐσίας αὐτῶν τὴν ἡμίσειαν εἶναι δημοσίαν (At first, he obliged the inhabitants to bring up all their male children and first-born females: then he prohibited them to kill any children younger than three years, unless they were maimed or monstrous by their birth. Anyway, he did not forbid the parents to expose them, provided that they had first shown them to their five nearest neighbours and these had approved. Those who disobeyed this law suffered a variety of penalties, such as the confiscation of half their property). Cic. *leg*. 3.8.19: *quom esset cito necatus tamquam ex XII tabulis insignis ad deformitatem puer* (monstrous children, by a law of the Twelve Tables, are to be killed). My translation. On these provisions and their reliability, cf. Miriam Padovan, "Nascita e natura umana del corpo," in *Il corpo in Roma antica. Ricerche giuridiche*, ed. Luigi Garofalo, 1 (Pisa: Pacini, 2016): 5–57, 36–41 and nt. 96, and Cantarella, *I supplizi capitali*, 283, *pace* William V. Harris, "Child-Exposure in the Roman Empire," *The Journal of Roman Studies* 84 (1994): 1–22, 5, 12; Laure Chappuis Sandoz, "La survie des monstres: ethnographie fantastique et handicap à Rome, la force de l'imagination," *Latomus* 67 (2008): 21–36, 31. As far as the so-called *ius vitae necisque* is concerned, according to Harris, "The Roman Father's Power of Life and Death," 93–95, it shows a connection with the right of the Roman father to recognise children after their birth: he had the power to condemn them to exposure (this amounting to the *ius vitae*) or to kill them (this amounting to the *ius necis*). This interpretation has been criticised by Raymond Westbrook, "*Vitae necisque potestas*," *Historia* 48 (1999): 203–223, 208–209; see, moreover, Brent D. Shaw, "Raising and Killing children: Two Roman Myths," *Mnemosyne* 54 (2001): 31–77 (who believes that the *ius vitae necisque* never existed as such, being a legendary feature shaped according to archaism). On the development of this paternal power from an absolute and unrestrained power to kill their children, to a limited legal capacity that *patres* were allowed to use only under specific circumstances (or even to a pure concept that was not put in practice), see Yan Thomas, "*Vitae necisque potestas*. Le père, la cité, la mort," in *Du châtiment dans la cité. Supplices corporels et peine de mort dans le*

As for the main and more recurrent method applied for the disposal of *monstra*, ancient authors, like Livy, Julius Obsequens, and Seneca, clearly attest the following: monsters were drowned, dumping them into the depths of the sea or alternative bodies of waters (*mergere alto*).[44] This ritual undeniably resembles the final part of the punishment of the sack inflicted to parricides.

6 Does "sewing up the parricide in the sack" stand for "expelling the monstrum"?

The ritual referred to in the previous paragraph leads us back to the explanation of the *poena cullei* found in the Ciceronian speech *pro Sexto Roscio Amerino*, where, as we already know, first, a mere comparison between *monstrum* and *parricida* occurs, and, then, the two terms completely overlap.

The modern and contemporary debates about nature and functions of the bizarre ritual, connecting with the crime of parricide, reveal a wide range of interpretations, at times as bizarre as the ritual itself.

The crime of parricide together with its punishment has been analysed from a psychological (Freudian) and legal-historical perspective, assuming that there exists a link between parricide and incest with the mother, that all four

monde antique (Roma: École française de Rome, 1984): 499–548, 501, 503–506; Bernardo Albanese, "Note sull'evoluzione storica del *ius vitae necisque*," in *Scritti in onore di C. Ferrini pubblicati in occasione della sua beatificazione* 3 (Milano: Vita e Pensiero, 1948): 343–366, 354; Reuven Yaron, "*Vitae necisque potestas*," *Tijschrift voor rechtsgeschiedenis* 30 (1962): 243–251, 249–250; John Crook, "*Patria Potestas*," *The Classical Quarterly* 17 (1967): 113–122, 114; Alfredo Mordechai Rabello, *Effetti personali della "patria potestas." Dalle origini al periodo degli Antonini* (Milano: Giuffrè, 1979), 49; Pasquale Voci, "Storia della *patria potestas* da Costantino a Giustiniano," *Studia et documenta historiae et iuris* 51 (1985): 1–72, 50–51; Richard P. Saller, "*Patria potestas*," 19–20; Carlà-Uhink, "Murder Among Relatives," 26–65; see the recent contribution Thomas A.J. McGinn, "La *familia* e i poteri del *pater*," *XII Tabulae. Testo e commento*. ed. Maria Floriana Cursi, 1 (Neaples: ESI, 2018): 198–230.

44 Sen. *Ira* 1.15: *Portentosos fetus extinguimus, liberos quoque, si debiles monstrosique editi sunt, mergimus*. Tib. 2.5.79: *Prodigia indomitis merge sub aequoribus*; Liv. 27.37.5–6 (and, implicitly, Liv. 27.37.5–6); Iul. Obseq. *Liber prodigiorum* 22, 25, 32, 34, 36, 47, 48, 50; Oros. 5.4.8.

animals show sexual symbolism, and that the drowning represents a way of preventing the killer of a father from having sex with Mother-earth.[45] If some have read any form of capital punishment in terms of human sacrifice, others have argued that the formal disposal of the *parricida* might have originated as a human sacrifice to the water-gods.[46] Moreover, one has suggested that, originally, the *poena cullei* might represent an archaic burial that then shifted into a punishment, while the animals might work as attendants of the *parricida* in the realm of the dead.[47] On the contrary, one has construed the animals as negative burial gifts aiming at persecuting the sacked person even after his death, and has labelled the *poena* as a defamatory ritual which ranked the culprit among the wild animals.[48] One has emphasised the Indo-European aspects emerging from the ritual, pointing out the totally religious character of the punishment.[49]

Among the historians of Roman law, Eva Cantarella has made profit of previous researches[50] and devoted attention to the idea of this punishment in terms of *procuratio prodigii*.[51] In other words, the leather sack, the wooden soles, and wolf skin cap as well as the red rods would give support to the interpretation of the *poena* that Romans inflicted to parricides as a ceremony of 'removing' the monster and 'cleansing' the cosmos. Arguing against Cicero's functional explanation, she assumes that the wooden soles would hardly work as means intended to prevent the culprit from escaping; on the contrary, she stresses the use of wood in rituals as an isolating device, and makes it clear that, in this case, the wooden soles would protect the soil from contamination. As for the wolf skin cap, it would refer to the pre-civic and, thus, pre-human character of the *parricida*: the mask made it evident to everyone that the *parricida* was not a *homo* any longer, although he remained in human shape; he was a savage beast, out of his nature and his behaviours: he was a wolf

45 Storfer, *Zur Sonderstellung des Vatermordes*, 26–34.

46 Karl von Amira, *Die germanischen Todesstrafen. Untersuchungen zur Rechts- und Religionsgeschichte* (München: Abhandlungen der Bayerischen Akademie der Wissenschaften, 1922), *passim*; Hans von Hentig, *Die Strafe*, I, *Frühformen und Kulturgeschichtliche Zusammenhänge* (Berlin – Göttingen – Heidelberg: Springer, 1954), 297–298, 304–306.

47 Hans Albert Berkenhoff, *Tierstrafe, Tierbannung und rechtsrituelle Tiertötung im Mittelalter* (Leipzig, Straßburg, Zürich: Heitz & Co. 1937), 114–115.

48 Paul Fischer, *Strafen und sichernde Massnahmen gegen Tote im germanischen und deutschen Recht* (Düsseldorf: Nolte, 1936), 23–24.

49 Briquel, "Sur le mode d'exécution en cas de parricide et en cas de *perduellio*," 101.

50 Brunnenmeister, *Das Totungsverbrechen im altromischen Recht, passim*; see Radin, "The *lex Pompeia*," 119–130; Düll, "Zur Bedeutung der *poena cullei*," 363–408; Magdelain, "*Paricidas*," 549–571; Cloud, "*Parricidium*," 1–66.

51 Cantarella, *I supplizi capitali*, 266–286.

deserving expulsion from civic society and abandon to the wilderness, like a very outlaw, for instance the Germanic *Friedlos* (i.e. man without peace) and the Salic *Wargus* (i.e. wolf-man).[52] To say it differently, according to Cantarella, at its beginnings the *poena cullei* was functionally and structurally directed to remove a prodigy, to avoid pollution, and to prevent the occurrence of a bad event. Only later – as shown by Cicero in his speech, and by Constantin and Justinian in their constitutions – the ritual was re-interpreted as a mechanism directed to deny the cosmic elements to the culprit, although the 'monstrous' character of the *parricida* was never forgotten.

This theory, implying a linear development from religious ritual to punishment, presents, in my opinion, some flaws.[53]

First, Julius Obsequens never quotes cases of *parricidia* in his book on prodigies.

Secondly, as for the structural elements of the most ancient ritual (that is regardless of the four animals included in the sack and regardless of the flogging by means of red rods), one has to remark the following data. The use of the leather sack is constantly related to parricides, not to monstrous births and hermaphrodites (that are simply said to be drowned into the sea

52 According to Wilhelm Eduard Wilda, *Das Strafrecht der Germanen* (Halle: C. A. Schwetschke, 1942), Germanic law stemmed from the concept of peace (*Fried*) and the corresponding exclusion from the commun, that is *Friedlosigkeit*. This would represent the common legal consequence occurring for the most serious crimes: the criminal, as enemy of the people and of the gods, was banned from the Bund and denied any right or protections granted to any member of the Community: he could accordingly be killed by anyone with impunity. The *Friedlos* was a sort of demon, commonly depicted as a wolf, and wearing a wolf-mask would give him animal qualities. The *Friedlos* has regularly been equated to the *Wargus* found in Salic and Ripuarian law, and in the *Leges Henrici Primi* with reference to profanation of graves (*PactSal* 55.4; *LexRib* 88; *LegesH* 83.5); see Heinrich Brunner, "Abspaltungen der Friedlosigkeit," *Zeitschrift der Savigny-Stiftung Germanistische Abteilung* 11 (1890): 62–100, 62; Heinrich Mitteis, *Deutsche Rechtsgeschichte*[19], ed. Heinz Lieberich (München: Beck, 1992), 40–42; Gianna Chiesa Isnardi, *I miti nordici* (Milan: Longanesi, 1991), 580; Georg Christoph von Unruh, "Wargus," *Zeitschrift der Savigny-Stiftung Germanistische Abteilung* 74 (1957): 1–40, 20–21; Kim R. McCone, "Werewolves, Cyclopes, Díberga and Fíanna: Juvenile Delinquency in Early Ireland," *Cambridge Medieval Celtic Studies* 12 (1986): 1–22; Frederic Liebermann, "Die Friedlosigkeit bei den Angelsachsen," in *Festschrift H. Brunner* (Weimar, Böhlau: 1910), 17–37, 17–20. For the equation *Friedlos/Wargus/homo sacer*, see Rudolph von Jhering, *L'esprit du droit romain dans les diverses phases de son developpement*, trans. fr. O. de Meulenaere 1 (Paris: Marescq, 1886), 286; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. D. Heller-Roazen (Stanford: Stanford University P. 1998), 104.

53 See Tondo, *"Leges regiae" e "Paricidas,"* 147–157, who adds further criticisms.

or other current water, if an *arca* is not mentioned). The wolf-mask (which is attested by Plautus's times onwards) never maps onto cases of disposals of monsters.

Third, intrinsic dissimilarities exist between *monstra* and *parricidia*. The *poena cullei* is always related to an actual crime – or rather to the most terrible crime – acknowledged and condemned by sentence before a capital court, while no priest seems to be involved during the declaratory procedure or execution. On the contrary, monstrous births and hermaphrodites – whether newborn or not – are not criminals *per se* and, as such, their existence is mainly examined and valuated by *haruspices* and *decemviri sacris faciundis*.

Fourth, as regards the coherence of this view, ranking the killing of a parent or a close relative among prodigies or monstrous phenomena means admitting that murders of this kind amount to signs sent from the gods. This would imply a religious, and not a lay, inquiry, which actually is never found in the sources. At the same time, this would take for granted the perpetration of the killing by the gods through a human agent and, as a consequence, justification and absence of liability, according to a common mechanism attested with regard to *sacertas*,[54] which is actually never found in the sources. The internal inconsistency of this view, if analysed through religious and legal lenses, is rather apparent.

Fifth, with reference to the historical development of parricide, it is undoubted that a specific statutory provision (or custom) dealing, substantially and procedurally, with it as an autonomous crime was enacted (or arose) only in the mid-Republic. This just meant that parricide was formerly treated like a normal homicide, and not that it was left without punishment by the monarchical period onwards.[55] Anyway, the reconstruction at issue – once combined with the idea of parricide as prodigy – sounds less reliable, being in contrast with the archaic regulation concerning voluntary murder, provided that recent

54 This scheme would overlap that one relating to *sacertas*: the superhuman being, in the quality of owner of the *homo sacer*, can let the *homo sacer* live; it can make him or her crazy; it can make him or her die of disease or of other natural causes; it can even kill him or her by means of a human agent, that is an executor of the divine determination. Accordingly, from the human and legal point of view, no one who kills the *homo sacer* is punishable, since the killing is lawful and no crime is perpetrated: see Karol Kerényi, *Die antike Religion. Ein Entwurf von Grundlinien* (Düsseldorf, Körf: Diederichs, 1953), 84; Luigi Garofalo, *Studi sulla sacertà* (Padova: Cedam, 2005), 117; Carlo Pelloso, "Sacertà e garanzie processuali in età regia e protorepubblicana," in *Sacertà e repressione criminale in Roma arcaica*, ed. Luigi Garofalo (Neaples: Jovene, 2013): 57–144, 131.

55 See, on the *lex Numae*, Falcon, "*Paricidas esto*," 191–274.

researches persuasively deny any infringement of the *pax deorum* in such cases.[56] Accordingly, there would be a need for a higher extent of data to be found in ancient sources, to maintain that, by the 3rd century BC, a misconduct previously conceived of as a crime suddenly started to be considered even and at the same time a violation of the natural order, a sign of the gods, an evil portent deserving immediate disposal.

Sixth, perpetrating a crime that violated the *pax deorum*, according to Roman sacred law, determined the activation of devices intended to restore the infringement of the peaceful relationship between human and super-human beings, such as human sacrifices (*deo necari*), compensative offers (*piacula*), destination of the offender to the offended god (*sacertas*).[57] On the basis of the available *testimonia*, parricide hardly meets this scheme, since neither the culprit becomes a *homo sacer*, nor is a specific god ever mentioned as the addressee of the *poena cullei* if allegedly vested with sacrificial connotations.

Last, but not least, despite the seeming and merely structural resemblance between the Roman parricide wearing the wolf's mask, on the one hand, and the Germanic and Salic wolf-man, on the other hand, it is clear that these two institutions are embedded in totally different backgrounds and imply totally different legal consequences: according to Germanic law, anyone was

56 *Pace* the *communis opinio* (see Santalucia, *Diritto e processo penale*, 15–19), Marco Falcon has recently demonstrated that, during the archaic era, the negative consequences prescribed by Numa in case of homicide – either murder (*dare aliquem morti dolo sciens*) or manslaughter (*occidere aliquem imprudentia*) – did not restore the harmony and the state of peace between the community of the Romans, on the one hand, and the community of the gods, on the other hand (i.e. they did not reconstitute the so-called *pax deorum*). Homicide was not, at its beginnings, a *scelus* (crime), that is a wrong implying the state of collective "impurity" and, as a consequence, the infringement of a public interest. The commission of this offence, according to the original legal–religious system of Rome, the penalties prescribed in the two *leges Numae* at issue were not directed to eliminate the public impurity due to the unlawful killing of a human being. The legal term *paricidas* designated, for the murderer, a status of dependence under the victim's relatives. The former, as such being caught in the grip of the latter, lost the previous *status* and the consequent rights and prerogatives; the relatives were religiously compelled to "avenge" the deceased or, rather, to "restrain the anger of his ghost." Likewise, the *subactio* of the *aries*, if the killer did commit the offence unknowingly (*imprudentia*), aimed at avoiding the return of the dead to haunt the living (see Falcon, "*Paricidas* esto," 230–236, 237–272).

57 For an explanation of the so-called *sacertas* in terms of divine ownership, see Bernardo Albanese, "Sacer esto," *Bullettino dell'Istituto di Diritto Romano* 30 (1988): 155–177; Garofalo, *Studi sulla sacertà*, passim; John Scheid, *An Introduction to Roman Religion* (Edinburgh: Edinburgh University P., 2003), 23; Leon ter Beek, "Divine Law and the Penalty of *sacer esto* in Early Rome," in *Law and Religion in Roman Republic*, ed. Olga Tellegen-Couperus (Leiden: Brill, 2012): 11–29; *amplius*, see Pelloso, "Sacertà," 57–144.

permitted (but not compelled) to kill the so-called wolf-man, no matter how and where, without committing homicide. Totally the opposite, in Rome the death of the parricide was compulsory and, pursuant the ritual of the sack, had to be bloodless.

It is true that the ritual of the sack seems to show a twofold function in Cicero's reconstruction. On the one hand, the culprit, as such, deserves punishment: his body, when still alive, has to be mangled by beasts tied into the sack; moreover, he has to be denied, while both alive and dead, the sky, the sun, the water, and the earth forever. On the other hand, the culprit, as a perverse, unnatural, phenomenon, has to be isolated and removed from any contact with all basic elements granting natural life, in order to avoid any possible pollution.[58] Yet, if the parricide was a *monstrum*, no punishment would be necessary, as the killing was a sign from the gods and the killer an agent of the gods. If, on the contrary, a legal consequence in terms of punishment was needed (no matter if this was a human or a religious one), the parricide would consist of no *monstrum*, as the killing could be looked upon as an offence. In other words, one has to rule out any ambivalence in the *poena cullei*, no matter if one maintains the monstrous nature of *parricidium* or not. Indeed, a human being cannot be at the same time a monster (in its legal-religious meaning) and a criminal; a ritual of cleansing amounts to a *procuratio prodigii* only provided that the object to be removed amounts to a prodigy (in its legal-religious meaning). So, the Ciceronian reference to the vocabulary of monstrosity, as well as the description of the ritual of the sack in terms of bifunctionality, imply a collapse of two different levels, the rhetorical one and the legal one, due to *iuvenilis redundantia*.[59] From the rhetorical perspective, the parricide was a monster to be punished and expelled; according to Roman law, what was rhetorically possible became, from the legal perspective, a 'monstrous' nonsense.

58 *Rosc. Am.* 71; I. 4.18.6; C. Theod. 9.15.1, and C. 9.17.1 (supporting a mainly afflictive function); Ps.Quint. *Decl. min.* 299 and Zon. 7.11.4 (supporting the idea of a device directed to prevent the cosmos to be polluted).

59 Cic. *Orat*. 107–108.