

Children as Culprits and Criminals: Children in Mischief, Delict, and Crime in Roman Empire

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Abstract

A new trend that has emerged in the childhood studies of antiquity. This approach considers the child to be an active agent and participant of the life in family and society, as opposed to the traditional view of the child as a mere object in the hands of the adults around. In this paper, I propose to follow this trend to push further the discussion the problematic of children breaching the legal and social norms as children could be not only the victims of dark and violent situations that could happen, they could also be the perpetrators. Focusing on extant legal and literary evidence from the long-lasting era of Roman Empire (though better evidence we have for the late imperial era) I would like to discuss our possibilities to reconstruct the phenomenon of children as active participants in violence in Roman antiquity, how were they treated, what can we know about their motivation and experience. However, given the sources, only the frame of the reality in which the children acted can be reconstructed.

Keywords

children; youths; ancient Rome; crime; delict; mischief; misbehaviour

In the field of childhood studies, a new trend has recently emerged approaching the child as an active agent and participant of the life in family and society,¹ as opposed to the traditional view of a child as a mere object in the hands of the adults around him or her. In this paper I would like to focus on a bit darker side of childhood and youth in Roman antiquity, this time, however, not on the child's role as a victim, but as a perpetrator.

The issue of children's conflict with the law was so far dealt (to my subsequent knowledge) mainly within the Roman legal studies and from a legal perspective. The main question here was the definition of legal categories where children belong to and determining whether the children were held responsible for their actions and what were the consequences; generally, how child's perpetrators were treated within the concept of Roman law.²

Here I would like to use the above mentioned new methodological approach to discuss the topic from a different perspective than that offered in legal history. What do we know about the phenomenon of children as active participants in rule-breaking or violation of law in Roman antiquity? How do the society, the law and the family deal with children who committed mischief, delicts or crimes? What does move children to those actions? When and how are they responsible?

Firstly, I have to point out that this subject unfortunately generally suffers from the lack of sufficient evidence that might help us to shed more light on the situation in the ancient Roman world. Comparative history (a method of comparison with periods for which we have more sources of evidence for children's misbehaviour), as helpful as it could be, can hardly offer more than mere potential scenarios that might have been more or less similar. Interdisciplinary study is probably also unable to offer much more than mere probabilities as we do not have much "first-hand detailed stories" where it would be reasonable to apply for example psychology or sociology.³ Nevertheless, they can be helpful and without a careful application of this multi-layered approach, we would be hardly able to move past positivistic analysis.

The main source in which we can search for the answers is the corpus of extant Roman legal texts. The surviving edicts, laws, rescripts, codes, as well as legal textbooks, enable the most systematic discussion of this issue. The normative character of these texts can help us reconstruct the frame of norms and expectations in which people lived their lives. Best documented here is the era of the Late Roman Empire due to the Justinian's codification. To get past mere legal history so we could see closer social and cultural reality, use solely the legal texts are not enough. The written literary sources also provide

1 Methodologically formulated in Laes & Vuolanto (2017: pp. 1–25).

2 E.g. Thomas (1977) discussed the delictal responsibility as well as the criminal liability of children, attempting to reconstruct the situation not only for much better documented imperial era, but mainly to reconstruct the situation, respectively the legal attitude during the republican times. Strictly legal analytical overview discussing the legal treatment of children, who were divided into two specific age categories in Roman law, is offered in the study by Kuryłowicz (1988). Besides the legal history, also Laes & Strubbe (2014; pp. 30–36) touched the issue of children's legal responsibility when discussing the Roman concept of minority and majority, which the Roman law clearly distinguished.

3 For the question of application of this method see e.g. Laes & Strubbe (2014: pp. 3–14); Laes & Mustakallio & Vuolanto (2015: pp. 4–5).

important information, though here the mentions about children's misdeeds are more or less of anecdotal character and thus are rather supportive in the discussion. The literary evidence at our disposal is rather scattered in various types of writings from different periods and places of the Roman empire thus reflects different social and particular realities. However, given the scarcity of references in the Roman literature, we should study all that is left and that could help us to shed some light on the discussed situation.⁴

The difficulty to find out particular cases does not lie only in the character of sources, but also in the problem that until the reign of Justinian, the age line between childhood and adulthood was not strictly given,⁵ not to mention the fact that the precise data about age of a person in literature are rarely given, especially in the context of coming out of age. Also, when they are, it is not so rare that it is in the case when the mentioned age deviates from the expected norm.⁶ In addition, the Latin terminology for children and youths is problematical as well as the words that were in use to describe those categories usually have more than just one meaning and are not tied strictly to a particular age group (e.g. *infantia* mostly includes only children up to 7 years of age in legal sources, however in literature sometimes also a bit older ones; *puer* may refer not only to a boy but also to a slave, not necessarily of a child's age; *adulescens* or *iuvenis* can refer to a teenager, youth, as well as to a man still in his prime, i. e. about 30 years of age). As Grubbs and Parkin (2013; pp. 6–7) sum the problem up: „What we can say with certainty is that

4 Thus a variety of sources is used in this study - from Gaius' legal textbook, Digests to Justinian's Institutes when it comes to law; from the pagan writers of 1st century AD such as Pliny the Elder or Quintilian to the late antique Christian authors such as St. Augustine or even Procopius.

5 That is especially in case of boys who should be according to some of the opinions examined whether they actually are physically mature, i.e. capable of procreating, not just reaching some generally given age (contrary to girls who were not required to undergo a similar form of examination). Gaius, classical jurist from mid-2nd cent. AD, claims that: „...Puberty, according to Sabinus and Cassius and the other authorities of my school, depends on physical development, that is, on capacity of generation; or in case of impotence, eunuchs for instance, on the completion of the age which usually implies capacity of generation. The other school hold that puberty is to be exclusively measured by age, that is to say, that it should always be deemed to be attained on the completion by a male of his fourteenth year” (Gaius *Inst.* 1.196; translation by Poste). However, which of the opinions made by these schools would be dominantly followed? From the 2nd century AD we have also one non-legal definition given by Festus who states that maturity starts with the ability to procreate, at 14 years in case of boys, 12 in case of girls (*Pubes* in Fest., p. 296). Here it seems to be that the dominant consensus was the start of puberty was given simply by the age. Nevertheless, we still hear about the physical examination of boys in the times of the emperor Justinian (rule AD 527 – 565). In his *Institutions*, where this old habit is criticized and considered obsolete: “The ancients judged of puberty in males, not only by their years, but also by the development of their bodies. But we, from a wish to conform to the purity of the present times, have thought it proper, that what seemed, even to the ancients, to be indecent towards females, namely, the inspection of the body, should be thought no less so towards males; and therefore, by our sacred constitution we have enacted, that puberty in males should be considered to commence immediately on the completion of their fourteenth year; while, as to females, we have preserved the wise rule adopted by the ancients, by which they are esteemed fit for marriage on the completion of their twelfth year” (Just. *Inst.* 1.22; translation by T. C. Sandars).

6 As e.g. in cases of Britannicus (41 – 55 AD), Nero (37 – 68 AD) or Caligula (12 – 41AD) who received the *toga virilis* in an unusual age (the first two earlier – shortly before reaching the age of 14, the latter on the contrary at generally quite late age for this occasion, i.e. in age of 19 years). (Suet. *Claud.* 43; Tac. *Ann.* 12.41; Suet. *Cal.* 10).

childhood in antiquity was not defined by a set number of years consistently across societies, and variety of terms was employed for different stages.⁷

In general, we do not have many paragraphs, both in legal and in literary sources, that would have dealt with the question of child's actual delinquency. Nevertheless, what picture can we set up if we put together the scattered pieces of information that we have in Roman law and literature of imperial era?

In legal sources, children's prospective (or actual) law-breaking appears to be of marginal interest. Within the concept of the Roman law, a child below the age of puberty was hardly considered to be capable of committing anything against the law *de jure* (crime especially) because of the lack of intellectual capacity (i.e. lack of reason, will and intent, which must be present in case of "crime" for the perpetrator to be actionable) and thus could not be held responsible and sentenced fully in terms of the law. In the eyes of the law (as mentioned many times in the paragraphs), children were supposed to be incapable of sufficient reasoning, realizing consequences and fully understanding the wrongdoing.

Children in these circumstances are sometimes compared to insane persons, who as well are not held legally responsible for any actual wrongdoing they could have committed: "But what we have said about a pupil is of course only true of one who has some understanding: for infants and those who are bordering on infancy do not differ much from insane persons, not being capable of judging for themselves; nevertheless, when they will benefit by the transaction, a more accommodating interpretation is put on the law" (Gaius *Inst.* 3.109; translation by Poste). Thereby, they are "excused" based on their age and a benign interpretation of the law is recommended. Similarly, this is put also centuries later in Justinian's *Institutions* (III.19.10) and also in various specialized paragraphs⁸ in the *Digest* that remind the exemption of infants (or *impubes* generally) from criminal responsibility: explicitly stated for cases of *iniuria* (*Dig.* 47.10.3), forgery (*Dig.* 48.10.22), theft (*Dig.* 47.2.23), adultery (*Dig.* 48.5.36), violation of tombs (*Dig.* 47.12.3.1) or homicide which I am giving here as an example: "When an infant or an insane person commits homicide, he is not liable under the Cornelian Law; for absence of intention protects the one, and his unhappy fate excuses the other." (*Dig.* 48.8.12; translation by Scott).

However, the category of *infantes* in Roman law is to be understood as children under seven years of age. The Romans considered this age to be the starting point in a child's ability to understand what they are doing (*Dig.* 23.1.14).⁹ The age of puberty was settled

7 For the closer discussion of age categories, the terminology and of the question of the boundaries between childhood and adulthood see further e.g. Gray-Fow (1985); Eyben (1993: pp. 1–29); Laes & Strubbe (2014: pp. 23–48); Laes (2011: pp. 278–284); Minten (2002: pp. 13–20, 59–69); Rawson (2005: pp. 134–145); Kosior (2016; 2018).

8 The quoted paragraphs from Digest come from the works of roman jurists of late 2nd and 3rd century AD.

9 The number seven has traditional and mystical meaning and background (Rawson), though not only this can lie behind this age line, as according to some research in developmental psychology, children the age 7–9 start to develop deeper understanding of moral and social principles of the society, though they understand them as universal and they are not capable of distinguishing the context. The ability to comprehend the intention and motive of someone's action usually comes around the age 12–13 (Thorová 2015: pp. 213–219, 413–432).

to 12 years for girls and to 14 for boys (although as mentioned above, it appears the firm line was not legally instituted till Justinian).¹⁰ In case of a child between these age lines, the age (i.e. whether he/she is *infantis* or *pubertati proximus/a*¹¹) and the actual intellectual capacities of the culprit, especially when coming closer to the age of puberty, would have to be examined to determine the actual “level” of responsibility and answerability, that is to determine whether the *impubes* is *pubertati proximus* and whether the child understands that he or she committed a delict (Gaius *Inst.* 3.208). A child in the category *pubertati proximus* could be indeed judged and sentenced by the discretion of the appropriate judge as an “adult” as it for example happened to a slave boy sentenced by Trebius Germanus (the first half of 2nd cent. AD) to death according to *SC Silanum* (issued 10 AD) as he had stayed silent about the murder of his master despite sleeping at his bed (*Dig.* 29.5.14).

Minores, i.e. youths over the age of puberty but below the age of full legal maturity which was 25, albeit still protected by law in certain (especially business) matters, were no more protected in cases of crimes they had committed.¹²

To the question what would happen to a child who would e.g. happen to commit a homicide, and who would be excused due to his/her age according to the above-quoted paragraph? The jurists do not bother themselves mentioning the consequences as there was no “state” penal institution to deal with such a child for the purpose of “correcting” him/her. The correction would be most probably the responsibility of said child’s family. There aren’t any indications whether the official authorities could have possibilities or rights of intervention or supervision in these cases unless the *pater familias* himself dragged his offspring to the court (*Dig.* 1.16.9.3.) The existence of *patria potestas* in this could limit the access of the magistrate to the child.¹³ That is hypothetically in cases where the child is fully excused. What about the situation where the child is held responsible? Already according to the Twelve Tables the magistrate had the discretion to order the *impubes* for theft or damage to the crops to be punished more mildly than the adult would have been for committing the same crime, e.g. scourging and paying the damage instead of capital penalty (Plin. *Nat.* 18.3.12 = LDT 8.9; Gell. 11.18.8. = LDT 8.14). Although in these cases the general term *impubes* is used, without any clue for specifying the age group or distinguish between the two legal groups of *impuberes infantia minores et maiores*,¹⁴ so literally taken, based on his discretion the praetor could have ordered the guilty child to be flogged regardless the age.¹⁵

10 See the note 5.

11 That is whether the child is closer to the age category of childhood (*infantis proximus*) or maturity (*pubertati proximus*).

12 *Dig.* 4.4.9; Kincl & Urfus & Skřejpek (1995: pp. 76–77, 110–111); Laes & Strubbe (2014: p. 34); Thomas (1977: p. 23).

13 That is, before its erosion at least. For the problematic of changes within the concept of *patria potestas* see e. g. Arjava (1998), Vial-Dumas (2014) or Skřejpek (2005).

14 That is a group of minors below the age of 7 years (*impuberes infantia minores*) and the minors above this age line (*impuberes infantia maiores*).

15 Thomas (1977: pp. 12, 22) hypothetically argues that back in archaic and republican times, the authorities

When it comes to dealing with child's delinquency, not only this concept within the classical law, but also the Roman concept of above-mentioned *patria potestas* is of great significance here as it is the family (represented mainly by the powers of the *pater familias*) who is held responsible for the child's behaviour and proper punishment in case of misconduct. To remind briefly, the power of the father over his offspring did not end with the maturity of the child but continued until the death of the father or legal emancipation of the child. Within his power, the father had a right to judge and punish his child for his/her misbehaviour arbitrarily, even by death in case of serious offences, though we do not have many cases documented in which the father would use his powers to this extreme. This potential arbitrariness and "absolutism of the *patria potestas*" (which ancient Romans themselves believed was part of the *potestas* in the archaic times of Rome since the laws of Romulus¹⁶) however, was already in times of the early empire cut short: Ulpianus mentioned that a father could not put his son to death within domestic justice (*domesticum iudicium*) unless the son was heard in front of a magistrate (*Dig.* 48.8.2). In Hadrian's (rule AD 117 – 138) rescript, a father who killed his son while hunting because he had committed adultery with his step-mother, was deported to an island on the grounds of murder "on the ground that he killed him rather as a thief than by asserting his right as a father" (*Dig.* 48.9.5; translation by Scott), that is acting with cruelty and without holding the *domesticum iudicium*.

However, it should be noted that though the concept of *patria potestas* was distinctively Roman (only Roman citizens of just marriage could claim this power or be subjected to it), not all citizens would understand it properly (that is, as it was understood in the law), especially citizens from the provinces (who might have rather followed a local socio-cultural tradition than lived according to the Roman law¹⁷).¹⁸

These above-mentioned patterns explain the lack of interest in this subject matter in surviving legal sources. However, the fact that in classical legal theory children below the age of puberty were hardly considered capable of breaching the rules (legal, social, familial) *de jure* (except those who were coming closer to the age of puberty), does not mean that they could not break them *de facto*.

In fact, trespassing different kinds of rules, disobedience to authorities are generally considered to be part and parcel of growing up (in our society as well as in the Roman world, despite the stress the Romans put on obedience and discipline in relationships and education).¹⁹ Especially for a teenager this might be part of the path to find out

and the public could consider the child to be prepared for assuming the responsibility at earlier age than in the imperial era. Though we have no concrete sources from Roman era to definitely support this claim.

16 Shaw (2001; p.68).

17 The question of the confusion and reception of *patria potestas* among the people living in distant provinces, especially after the *Constitutio Antoniniana* (212 AD) is dealt by Arjava (1998: pp.155–164).

18 The problematic of *patria potestas*, in general, presents an important yet complicated aspect of Roman family life and law that lies beyond the possibilities of this article. For the problematic of *patria potestas* see closer e.g. Saller (1986: pp. 7–22); Saller (1999: pp. 182–197); Saller (2000: pp. 857–868); Shaw (2001: pp. 31–77); Skřejpek (2005: pp. 549–557); Vial-Dumas (2014: pp. 307–329); McGinn (2013: pp. 355–358); Arjava (1998: pp 147–165).

19 Next to *pietas*, *obsequium* and *reverentia* belong to ideal values that should rule within the family. While *pi-*

oneself, one's own place in the family and society. In general, the attempts of trespassing any kinds of boundaries is a way of trying them – a way of finding out what is acceptable or not. Impulsiveness and lack of foresight that would press the young to consider the consequences of his/her actions, social peer pressure, desire to have fun or existential struggle (esp. in cases of poor), etc. could also lie behind.²⁰ The extent (from misbehaviour and disobedience to actual criminality) of course, would depend largely on the individual – his/her character, social and family background and circumstances. Also, as suggested even in Roman approach, on the age of the child, or rather, on the stage of his/her cognitive development – whether or not is the child able to understand what he/she is doing. This was the main thing that was necessary to take into an account when dealing with a child – whether it would be up to parent or magistrate.

When we look into the Roman literature in general, children are mostly mentioned almost as marginal beings, “outsiders”²¹, despite their actual importance for the family in real life. When it comes to the depiction of children (more often rather youths than children by the definition of age) in various forms of wickedness or wrongdoing, they are mostly captured in the generational types of conflicts or ethical misconduct (such as misbehaviour within the education)²² rather than in committing an actual crime. On top of that, the majority of our information deals with children from well-to-do families, especially boys, and (more often in this context) youths.²³ Moreover as mentioned above, the particular cases are scattered in works from various periods and places of the Roman empire and hardly enable a systematic generalisation, but can show us possibilities of what could have happened and how it could be perceived.

Potential youth's activity that would be considered to be on the edge of the law or even of criminal character (such as gangs of youngsters stealing or fighting in public) is but vaguely suggested as occurring in the extant narrative sources. For example, the Greek rhetor from Antiochea Libanius (314 – 393 AD) mentions gangs of young students in Athens as a part of “traditional atmosphere”. These gangs would have competed and fought among themselves even by using violence on the street in support of their teacher

etas was supposed to be reciprocal, obedience would be expected (or at least wished for) from the younger generation towards its elders. For the ideal of Roman family life see e.g. Dixon (2004: pp. 99–113); Saller (2000: pp. 855–857).

- 20 Ch. Laes and J. Strubbe (2014: pp. 1–15, 136) draw attention to modern brain research. Current psychological handbooks and sociological studies and reports also point out that physical, genetic and developmental dispositions, influence of the environment – especially the social one, such as behaviour of the closest relatives, peers etc. – are of great importance as they effect significantly the behaviour of the young evolving human being. Concerning criminal behaviour (or behaviour on the edge of a slippery slope) contemporary reports point out especially the negative influence of alcohol, drugs, the criminal history of relatives (or peers) and cultural influence. See e.g. Thorová (2015); Calouste (1995: pp. 29–76); Seifert (2012: pp. 19–35, 69–118).
- 21 See Laes (2011: pp. 105; 283–284).
- 22 Here, the moralistic aspects of literature and lament over the wrongful behaviour of the young generation would be dominant, although in the interpretation of these messages we have to keep in mind the literary stereotypes.
- 23 To my subsequent knowledge, I haven't crossed a specific example where a girl would be mentioned as a culprit committing violence.

and in an attempt to raise his status and to discredit the competing teachers, vaguely mentioned are the consequential court sessions (*Lib. Or.* 1.19). Violent pranks of the older students prepared for the newbies that involved kidnapping and “imprisoning” are also documented (*Lib. Or.* 1.16). St. Augustine, bishop of Hippo Regius in North Africa (354–340 AD) mentions the disturbances by young students in Carthage, their arrogance and the feeling that they “are allowed to” do as they please (especially at school) as the authorities would not intervene and take proper measures despite these youngsters: “divers outrages do they commit, with a wonderful stupidity, deserving soundly to be punished by the laws, were not custom a defendress of them (*Aug. Conf.* 5.8; translation by Watts).

Unfortunately, the statements about the activity of these gangs are not very detailed. Besides the gangs of young Athenian students, Libanius mentions rioters, among whom there were also some little boys (παιδάρια), street urchins taking part in the riots²⁴ disturbing peace in Antiochea and denigrating the emperor’s statues (*Lib. Or.* 19.29; *Or.* 22.8–9). However, he does not offer any more information than mere mentioning that these also took active part in riots using the situation to their advantage, and were not spared punishment on account of their age (thus probably they might have been in age closely around the minimal age for puberty), but on the contrary, their tender age was a disadvantage to them (*Lib. Or.* 19.38). For the question about gangs of poor street-children (apart from aristocratic youths), we know nothing in particular from antiquity.

The sins of children and youths range (depending on age) mostly from “general misbehaviour” (cheekiness and disobedience – to parents, teachers), thefts (especially from parents) to gambling or deception and general debauchery and prodigality.²⁵ However, a bit “wild” and flamboyant lifestyle of youth was in ancient Rome more or less expected part of coming out of age (that is among the elite boys who could have the time and money and who are mostly mentioned in the literature)²⁶, although the moralising older generations frowned upon it with condemnation (and considered it a “proof” of general moral decline). Both, the waywardness of youth as well as the moralisation, are sort of topoi in literary depiction of youth especially. The topic is discussed already in the literature of the classical era. Representatively we can quote Greek essayist with Roman citizenship Plutarch (46 – 120 AD) here:

“For who is not aware that the faults of children are trivial and altogether corrigible – heedlessness, perhaps, towards their attendants, or deceiving and refusing to mind their teachers? But the iniquities of early manhood are often monstrous and wicked – unlimited gluttony, theft of parents’ money, gambling, revels, drinking-bouts, love affairs with young girls, and corruption of married women. The impulses of young men should therefore be kept fettered and restrained by careful supervision” (*Moralia: De liberis educandis* 16; translation by Babbitt).

24 In *Or.* 1.21 Libanius briefly mentions also that children excused by their age took part in a great (closely unspecified) riot in Athens as well, as “everybody” was involved, that is except Libanius himself who claims that he stayed away from these wild actions.

25 E.g. Petron. 3–4; *Iuv.* 14.207–247; Tac. *Dial.* 28–29; Pers. 5.30–46; Seneca: *Dial.* 2.12; *Aug. Conf.* 1.9–10; 1.19; 2.3–4; 2.8–9; Plu. *De liberis educandis* 7; 16; Suet. *Otho* 2.1; Plin. *Epist.* 9.12.

26 Laes & Strubbe (2014): pp. 136–140; Eyben (1993): pp. 36; 98–112).

As Plutarch reminds his readers in his “manual” on education where he vouches for the “golden mean” in upbringing: benevolent attitude and judgement but not too lenient or indulgent one, accompanied by firm hand but not cruelty in cases when correction is needed, that is especially in the age of “teenagers” and youth. Similar ideas can be found among the Plutarch’s contemporaries, e.g. Quintilian (*Inst.* 1.2–3) or Pliny who reminds the father in inflicting chastisement upon his son to remember one’s own childhood and growing up with its sins (Plin. *Epist.* 9.12). On the other hand, even young men could face severe physical correction in case of waywardness as suggested by the experience of Otho, who was “from earliest youth so extravagant and wild that his father often flogged him” (Suet. *Otho* 2.1).

Thus, even in literature, we can see the differentiation and consideration of the actual age and intellectual and volitional capacity of the child.

The most detailed case on child’s and youth’s mischief and wrongdoing comes again from Late Roman world. It is the description of one’s own child’s experience captured by Augustine in his *Confessiones*, a rare example of distant memory on one’s own childhood, distorted by his later conversion and purpose of his work. In Augustine’s theory, there is nothing such as an innocent child – even infants are sinning (Aug. *Conf.* 1.7). In his penance he depicted his child’s and youthful “sins”: starting with laziness and preference of games instead of studying, that have many times resulted in corporal punishment inflicted upon the boy by his teacher and approved by his parents; and ending in actual participation in youthful gang, committing mostly thefts (from family stores as well as from neighbourhood) or deception, all of this done only for the pleasure and amusement, succumbing to the peer pressure (Aug. *Conf.* 1.9–10; 1.19; 2.3–4; 2.8–9). But in retrospective, for Augustine “sinning” against the commandments of God is of greater importance and the course of remorse, rather than trespassing the social and legal norms (he used to “ignore” as a youth) as such.

Child’s mischief was seemingly not much a matter of public or rather institutional interest. It was considered to be an issue and concern of the family (or nearby community – such as the neighbours from whose garden the youngsters stole some fruit – as in case of Augustine’s gang). Milder delicts probably (especially when the improper behaviour would endanger the good status or name of the family) were dealt within the family (or among families involved, respectively their *patres familias*) as much as possible (washing the dirty linen in public would not be in the interest of the family). Even in late antiquity, we can still find in the Theodosian (9.13) and Justinian Code (9.15) a paragraph (issued in 365 AD by the emperors Valentinian and Valens) that testifies to the power of near kin to punish the minors for their misbehaviour and (especially moral) wrongdoing that can be dealt within the domestic justice in order to correct the improper behaviour of minors (so they could grow up into responsible “good citizens” for the glory of the family – and the state). However, in the case of serious offences (*atrocitas; culpa gravior*), judgment and punishment are supposed to be rendered to the judges. Unfortunately, what exactly is meant by the “atrocitas” and “serious offence” is not specified.

The most heinous crime a child could have committed was parricide, the extreme outcome of potential conflict between parent and child (this time by definition of the

relationship's type rather than age). This act would gravely disturb the sacred relationship and *pietas* that should rule in the family. Since the *leges regiae* a son (from whom obedience and submissiveness were required) who would have raised a hand against his father would be consecrated to the gods.²⁷ Later, the capital penalty called *poena cullei* was supposed to be inflicted upon the perpetrator (*Dig.* 48.9.9.pr; *Cod. Inst.* 9.17). According to Ulpian, due to the atrocity of the crime, also the accomplices or those who despite knowing about a murderous plan had not warned the victim, are subjected to the same punishment (*Dig.* 48.9.6). In preserved fragments, explicitly excused are those who would kill their parent in insanity. According to Modestinus, those should not be punished on life as insanity itself is a punishment, but they should be carefully guarded or kept in chains if necessary (*Dig.* 48.9.9.2). Though immature children are not mentioned (as it is hard to imagine these could commit such a crime), the hypothetical procedure would most probably follow this pattern.

Generally, very rare are the mentions and examples of extreme violence committed by children.²⁸ A particularly brutal case in which children below (or around at maximum) the age of puberty are acting violently is mentioned by Latin Christian poet Prudentius (348/349 – after 405 AD) in one of his hagiographical poems (*Passio sancti Cassiani Forocorneliensis*; *Prud. Perist.* 9). Given the genre itself, it is hard to determine and easy to doubt the credibility and genuineness of the story. In the martyrdom of Saint Cassian of Imola, a Christian teacher of reading and writing (apparently a very strict one), his pupils are lively described while taking out their frustration and fears instilled by the alleged severity and strictness of their teacher whom the boys had hated, thus finally having their revenge. These boys used the current severe situation for the Christians (though we do not know, what time exactly this incident was supposed to happen as the date of Cassian's death is not known) and after playing a “fictive” trial, they have stabbed him brutally to death by their styluses. The murder and torture (if we, for now, consider at least the core of the story to be inspired by real occurrence) was inspired by generally approved violence on children as corporeal punishment and scourging at school were considered to be “normal” way of how to punish a child and enforce obedience and discipline (despite some intellectual voices against this practice).²⁹ Augustine recalls great

27 According to the Festus (*Plorare* in *Fest.*, p. 260) this should have been formally introduced by the king Servius Tullius (6th cent. BC).

28 Another case of cruelty, despite a milder one, as here the fatal result was not intended, is mentioned again in Late Antique text. Byzantine historian Prokopios (cca 507 – 555 AD) described a group of young boys who enjoyed themselves in a violent role-playing game that reflected the current affairs – from the group two selected boys duelled, one played Belisarius, the other Vitigis. The boy who played Vitigis lost the fight and was hanged up on a tree by the others for fun. A wolf appeared in the area and the boys fled – leaving the boy on a tree. The result was the boy's death. The boys who left their friend were not punished, more the adults allegedly understood the situation as an omen that Belisarius will win over the barbaric king (*Procop. Goth.* 1.20.1).

29 The most famous being Quintilian (*Inst.* 1.3.14–17) and Plutarch (*Moralia: De liberis educandis* 12) who consider flogging not only as an insult to the citizen as it is used for slaves, but they also express the concern that the fear of punishment can harm the child psychologically and result in the disinterest in education. Lately, also Augustine claims that the fear of punishment is not the greatest incentive for learning (*Aug. Conf.* 1.14).

fear he used to have as a child from punishment at school, and prayers to God so he would help him to avoid it, as well as general laughing of the adults when he complained about the punishment (Aug. *Conf.* 1.9). What pressure would these boys have to be put through to resort to such violence?

Unfortunately, we don't have any further information, only the colourful description by Prudentius who clearly sides with the martyr (child age does not love strictness at all, even when it needs it; the potential misuse of teacher's corrective power is not a mitigating circumstance in their wickedness, nor is their age which on the contrary underlines the brutality of the act). We have no idea what would have happened to those children and we could only speculate, in case of such or similar occurrence, what attitude would be taken towards the perpetrators by the family and community. After all, everything would depend on the actual children's age, their intellectual capacities and final judgment of the adults (magistrates as well as fathers).

As Vuolanto has suggested in his methodological study about children's agency, what we can actually reconstruct are the limits of children's experiences, not the experiences themselves.³⁰ This is also true for studying the child's misbehaviour and criminality in the ancient world. What we can reconstruct from the surviving evidence is the frame of legal, social and cultural reality in which the child's life was happening, in which he/she would breach the given norms and would be treated accordingly. The Romans were clearly aware of the possibility that children could decide (in reaction to various situations and from various reasons) not to act according to the social and legal norms even though one of the central ideas of education was the transmission of traditional values and stress was put on obedience. They were as well as aware of the impulsiveness of young age that lacked the foresight and full understanding of complex reality which one gained, or more precisely was considered to gain when he/she reached maturity.

This awareness, that is expressed both among the legal and literary writers, enabled "an excuse" that could protect young children who would trespass the norms from punishment too severe. Ideally, they were to learn a lesson by firm (not cruel) hand but should not be ruined by the mistakes caused by mere immaturity. Though we should not idealize the reality in the Roman world.

It would be interesting to push the research further as there are still many questions to answer as they are beyond the scope of this preliminary study. For example, could we manage to reconstruct the frame of possibilities how children could use this "gap" and "excuse" to their advantage and get what they wanted?

30 Vuolanto (2017: pp. 21).

Bibliography

Primary Sources

- Babbitt, F. C. (Ed.). (1972). *Plutarch's Moralia* (Vol. I; repr.). London: William Heinemann.
- Beneš, P. (Ed.). (1985). *Prokopios: Válka s Góty*. Praha: Odeon.
- Butler, H. E. (Ed.). (1963). *The institutio oratoria of Quintilian* (4 Vols.). London: William Heinemann.
- Fisher, C. D. (Ed.) (1906). *Tacitus, Publius Cornelius: Dialogus de oratoribus*. Oxford.
- Heseltine, M. & Rouse W. H. D. (Eds.) (1997). *Petronius: Satyricon; Seneca: Apocolocyntosis*. Cambridge, Mass.: Harvard University Press
- Heubner, H. (Ed.). (1994). *P. Cornelii Taciti libri qui supersunt. Tom. I: Ab excessu Divi Augusti*. Stuttgartiae: Bibliotheca Teubneriana.
- Ihm, M. (Ed.). (1933). *Gaii Suetonii Tranquilli Opera. Vol. I: De vita Caesarum*. Monachii: Bibliotheca Teubneriana.
- Kincl, J. (Ed.). (2007). *Gaius: Učebnice práva ve čtyřech knihách*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk.
- Lindsay, W. M. (Ed.). (1913). *Sexti Pompei Festi De verborum significatu quae supersunt cum Pauli epitome*. Lipsiae: Bibliotheca Teubneriana.
- Mayhoff, K. F. T. (Ed.). (1906). *Pliny the Elder: Naturalis Historia*. Lipsiae: Teubner.
- Melmoth, W., & Hutchinson, W. M. L. (Eds.). (1963). *Pliny: Letters* (2 Vols.). London: William Heinemann.
- Meyer, P. M., & Mommsen, T. (Eds.). (1905, 1954). *Theodosiani libri XVI*. Berolini: Apud Weidmannos.
- Mommsen, T., & Krueger, P. (Eds.). (1954). *Iustiniani Digesta*. In *Corpus iuris civilis*. Berlin: Weidmann.
- Norman, A. F. (Ed.). (1992). *Libanius: Autobiography and selected letters* (2 Vols.). London: William Heinemann.
- Norman, A. F. (Ed.). (1992). *Libanius: Selected works* (II Vols.). London: William Heinemann.
- Page, T. E., & Rouse, W. H. D. (Eds.). (1912). *Aurelius Augustinus: Confessiones* (2 Vols.). Translated by W. Watts. London: William Heinemann.
- Pharr, C. (Ed.). (1952). *The Theodosian Code and Novels and the Sirmondian Constitution*. Princeton, NJ: Princeton University Press.
- Poste, E. (1904). *The Institutes of Roman law by Gaius*. Oxford: Clarendon Press.
- Ramsay, G. G. (Ed.) (1928). *Juvenal and Persius*. London: William Heinemann.
- Rolfe, J. C. (Ed.). (1982). *The Attic nights of Aulus Gellius* (3 Vols.). Cambridge, Mass.: Harvard University Press.
- Sandars, T. C. (1917). *The Institutes of Justinian: with English introduction, translation, and note*. London: Longmans, Green.
- Scott, S. P. (1932). *The Civil Law, XI*. Cincinnati.
- Skřejpek, M. (Ed.). (2010). *Iustiniani Institutiones. Justiniánské instituce*. Praha: Karolinum.
- Thomson, H. J. (Ed.). (1953). *Prudentius* (2 Vols.). London: William Heinemann.

Secondary Sources

- Arjava, A. (1998). Paternal Power in Late Antiquity. *The Journal of Roman Studies*, Vol. 88, 147–165.
- Calouste Gulbenkian Foundation (1995). *Children and Violence: Report of the Gulbenkian Foundation Commission*. London: Calouste Gulbenkian Foundation.
- Dixon, S. (2004). Sentimental Ideal of Roman Family. In B. Rawson (Ed.), *Marriage, divorce, and children in ancient Rome* (pp. 99–113). Oxford: Clarendon Press.
- Evans-Grubbs, J – Parkin, T. (2013). Introduction. In J. Evans-Grubbs, T. Parkin, & R. Bell, *Oxford Handbook of Childhood and Education in the Classical World* (pp. 1–16). Oxford: Oxford University Press.
- Eyben, E. (1993). *Restless Youth in Ancient Rome*. London: Routledge.
- Gray-Fow, M. J. G. (1985). *The nomenclature and stages of Roman childhood*. Ann Arbor, Mich.: University of Wisconsin-Madison.
- Kincl, J., Urfus, V., & Skřejpek, M. (1995). *Římské právo*. Praha: C. H. Beck.
- Kosior, W. J. (2016). The stages of human life distinguished in non-legal Roman sources, *Krytyka Prawa. Niezależne studia nad prawem*, Vol. 8/2, 27–46.
- Kosior, W. J. (2018). Index Romanorum Verborum Iuridicorum Ad Aetatem Pertinentium (Index of Roman Legal Sources Associated with Age), *Вісник Львівського університету. Серія юридична* 67/2018, 148–169.
- Kuryłowicz, M. (1988). Odpowiedzialność „nieletnich” za czyny bezprawne w prawie rzymskim. In Bojarski, (Ed.)T., *Postępowanie z nieletnimi. Orzekanie i wykonywanie środków wychowawczych i porawczych* (pp. 9–19), Lublin.
- Laes, Ch. (2011). *Children in Roman Empire: Outsiders Within*. Cambridge: Cambridge University Press.
- Laes, Ch., & Strubbe, J. (2014). *Youth in the Roman Empire: The young and the restless years?* Cambridge: Cambridge University Press.
- Laes, Ch., & Vuolanto, V. (Eds.). (2017). *Children and everyday life in the Roman and late antique world*. New York: Routledge.
- Laes, Ch., Mustakallio, K., & Vuolanto, V. (2015). Limits and Borders of Childhood and Family in the Roman Empire. In Ch. Laes, K. Mustakallio, & V. Vuolanto (Eds.), *Children and Family in Late Antiquity* (pp. 1–14). Leuven: Peeters.
- McGinn, T. A. J. (2013). Roman children and the law. In J. Evans-Grubbs, T. Parkin, & R. Bell, *Oxford Handbook of Childhood and Education in the Classical World* (pp. 341–360). Oxford: Oxford University Press.
- Minten, E. (2002). *Roman Attitudes towards Children and Childhood: Private Funerary Evidence c. 50 BC–c. AD 300*. Stockholm: Department of Classical Archaeology and Ancient History, University of Stockholm.
- Rawson, B. (2005). *Children and childhood in Roman Italy*. Oxford: Oxford University Press.
- Saller, R. P. (1986). Patria potestas and the stereotype of the Roman Family. *Continuity and Change*, 1, 7–22.
- Saller, R. P. (1999). Pater Familias, Mater Familias, and the Gendered Semantics of the Roman Household. *Classical Philology*, 94(2), 182–197.

Saller, R. P. (2000). Family and Household. In A. K. Bowman, P. Garnsey, & D. Rathbone (Eds.), *The Cambridge Ancient History* (Vol. 11; pp. 855–874). Cambridge: Cambridge University Press.

Seifert, K. (2012). *Youth Violence: Theory, Prevention, and Intervention*. New York: Springer Publishing Company.

Shaw, B. (2001). Rising and Killing Children: Two Roman Myths. *Mnemosyne*, 55(1), 31–77.

Skřejpek, M. (2005). Moc bez hranic? (Právo otce římské rodiny nad životem a smrtí). *Právní rozhledy*, 15, 549–557.

Thomas, J. A. C. (1977). Delictal and Criminal Liability of the Young in Roman Law. In *L'enfant: congrès organisé à Strasbourg en mai 1972* (Vol. 38; pp. 9–31). Bruxelles: de Boeck.

Thorová, K. (2015). *Vývojová psychologie: proměny lidské psychiky od početí po smrt*. Praha: Portál.

Vial-Dumas, M. (2014). Parents, Children, and Law: Patria Potestas and Emancipation in the Christian Mediterranean during Late Antiquity and the Early Middle Ages. *Journal of Family History*, 39(4), 307–329.

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