

Maciej Jońca

University of Lomza, Poland

ORCID: 0000-0003-4982-8936

mjonca@al.edu.pl

Emperor Hadrian and Addicted Soldiers? Notes in the Margin of D. 49.16.6.7

*Cesarz Hadrian i uzależnieni żołnierze?
Uwagi na marginesie D. 49.16.6.7*

ABSTRACT

The Digest of Justinian preserve an enigmatic decision by Emperor Hadrian pertaining to a specific incident of violation of military discipline. The emperor spoke in the case of soldiers who made a failed suicide attempt. Those who had a valid reason that pushed them to take this desperate step, he ordered to be dismissed from service in disgrace. The others faced death. A surprising solution was provided for would-be suicides who decided to take their own lives *per vinum aut lasciviam*. The ruler ordered these to be spared. The only consequence was their transfer to inferior service. Juxtaposing Hadrian's resolution with contemporary psychological and psychiatric knowledge allows us to hypothesize that the emperor's rescript refers to people who broke the rules of military discipline due to some form of addiction.

Keywords: Roman law; alcoholism; military discipline; suicide; Hadrian

INTRODUCTION

In imperial Rome, rescripts played an important law-making role. Annually, the imperial chancellery undertook hundreds of interventions on behalf of the ruler in cases with which it was approached by citizens and representatives of state bodies. Many of these resolutions not only played an important stabilizing role, but also influenced the directions in which the law evolved. Although they were punctual and ad

hoc in nature, courts and offices were eager to use them as prejudices and precedents. The ruler to whom a thoughtful and coherent rescriptive policy can undoubtedly be attributed was Hadrian. The picture of Roman criminal law formed on the basis of his decisions was reconstructed by Krzysztof Amielńczyk.¹ The research conducted by this scholar shows that imperial interventions addressed a wide range of issues. A lot of attention was paid by the emperor to the proper functioning of the army.² He spoke willingly and forcefully on military matters.³ Maintaining discipline among soldiers was clearly on his mind.⁴ Hadrian has gone down in history as one of the most outstanding Roman emperors. All the more eagerly, over the centuries, the justification for modern criminal theories was found in his decisions.⁵

“No idea can be protected from changes in meaning, and any argument can meet a fate that sometimes turns out to be more astonishing than the famous words about *fata liberorum foretell*”, emphasizes Carl Schmitt.⁶ Roman law, used for centuries as a legislative building block and an inexhaustible treasure trove of argumentative instruments, began to be studied in the 19th century with a view to reconstructing the evolutionary processes in law,⁷ and in the 20th century it was perceived as a highly promising material to reconstruct anew the social history of ancient Rome and to penetrate deeper into ancient material culture.⁸ Is it possible to go even further? Can the material collected in the Digest be subjected to research, e.g., using modern tools from the field of psychology? The temptation is great, because for researchers it is still *terra incognita*.⁹ In this text, I would like to do a bit of an intellectual experiment and look through the prism of modern psychological and psychiatric knowledge at Emperor Hadrian’s famous rescript relating to would-be suicides in the army.

¹ K. Amielńczyk, *Rzymskie prawo karne w reskryptach cesarza Hadriana*, Lublin 2006.

² A. Manni, „*Per vinum*”: *stato di ebbrezza e sanzioni militari*, [in:] *LAWINE. Commercio e consumo del vino nel mondo antico. Aspetti giuridici. Atti del Simposio internazionale, Napoli, 17–18 Gennaio 2019*, eds. G.D. Merola, P. Santini, Napoli 2020, pp. 195–196.

³ In this, he took the example of his predecessor on the throne. The content of the correspondence that Pliny the Younger had with Trajan clearly shows that in matters related to military discipline and the organization of the army, the governor could always count on clear and specific guidance. Cf. *Plin. ep.* 10.19; 10.20; 10.21; 10.22; 10.27; 10.28. 10.29; 10.30; 10.77; 10.78.

⁴ SHA. *Hadr.* 10.3; Dio Cass. 69.9.2–4; Front. *Princ.* 2.8–9. See also A. Birley, *Hadrian: The Restless Emperor*, London–New York 2005, p. 53, 117, 134, 303; V. Giuffrè, *La letteratura “de re militari”*. *Appunti per una storia degli ordinamenti militari*, Napoli 1974, p. 60.

⁵ This process is rightly subjected to critical evaluation by Paweł Madejski (*Pomiędzy robur animi a ritus barbarus. Zemsta w życiu społecznym republikańskiego Rzymu*, Lublin 2018, pp. 32–33).

⁶ C. Schmitt, *Nomos ziemi*, Warszawa 2019, p. 99.

⁷ For example, see B. Dupret, *Prawo w naukach społecznych*, Warszawa 2010, pp. 21–25.

⁸ For example, see J.A. Crook, *Law and Life of Rome 90 B.C. – A.D. 212*, New York 1984, p. 7.

⁹ Cf. M. Dymkowski, A. Porada, *Z zagadnień psychologii historycznej. Interpretacje historyczne w oczach psychologa*, Kraków 2015, pp. 7–15. See also P. Madejski, *op. cit.*, p. 24; T. Watt Smith, *Księga ludzkich uczuć: ciekawość, empatia, odwaga, rozkosz, pogarda oraz wiele innych*, Warszawa 2017, p. 22.

THE RESCRIPT AND THE CIRCUMSTANCES
OF ITS PRODUCTION

The content of the document is preserved in the Justinianic Digest. It became known to Byzantine compilers thanks to Arrius Menander's treatise entitled *On Military Matters* (*De re militari*). There it was written: "In the case of a soldier who mutilated himself or otherwise attempted to inflict death on himself, Emperor Hadrian replied in a rescript that the circumstances of the event should be investigated individually. If he wished to die due to unbearable pain, depression, illness, confusion of the senses or disgrace, he need not be executed, but disciplinary discharged. If nothing of the sort has occurred, the death penalty is imposed. If he has done so while drunk or acting in a compulsive manner, he should be given the punishment and transferred to inferior service".¹⁰

It is not possible to write much about the circumstances of the settlement. The same refers to its author. In a monograph on Roman jurists, Wolfgang Kunkel limits himself to a laconic statement: "The author of the work *De re militari* was mentioned by Ulpian (D. 4.4.11.2) as an imperial *cancellarius*, from which we can infer his membership in the state of the *equites*. Nothing is known about his other turns of fate".¹¹ Tony Honoré stresses that the addressee of Menander's work, which is dated between 198 and 210 A.D., was a simple soldier.¹² This scholar also takes it for granted that Emperor Caracalla, who depended on his army completely, appointed a lawyer proficient in military law as his secretary.¹³

The problem described in the monograph *On Military Matters* does not seem complex. While a suicide attempt by a civilian did not involve any consequences, and many philosophers even promoted this way of ending life,¹⁴ whereas a soldier

¹⁰ D. 49.16.6.7: *Qui se vulneravit vel alias mortem sibi conscivit, imperator Hadrianus rescripsit, ut modus eius rei statutus sit, ut, si impatientia doloris aut taedio vitae aut morbo aut furore aut pudore mori maluit, non animadvertatur in eum, sed ignominia mittatur, si nihil tale praetendat, capite puniatur. Per vinum aut lasciviam lapsis capitalis poena remittenda est et militiae mutatio irroganda.* Tony Honoré points out Menander's tendency to use the conditional mode in his narrative. See T. Honoré, *Emperor and Lawyers: With a Palingenesia of Third-Century Imperial Rescripts 193–305 A.D.*, Oxford 1994, p. 90.

¹¹ See W. Kunkel, *Die römischen Juristen: Herkunft und soziale Stellung*, Köln–Weimar–Wien 2001, p. 233. In a broader context about Menander and his work, see V. Giuffrè, *Arrio Menandro e la letteratura "de re militari"*, "Labeo" 1974, vol. 20, pp. 27–63.

¹² T. Honoré, *op. cit.*, p. 90.

¹³ *Ibidem*, p. 91. On the decline of prominent jurists in the imperial council during the reign of Caracalla, see D. Okoń, *Severi et Senatores. Polityka personalna cesarzy dynastii Sewerów wobec senatorów w świetle badań prozopograficznych (193–235 r. n.e.)*, Szczecin 2009, p. 133.

¹⁴ For example, see A. Wacke, *Der Selbstmord im römischen Recht und in der Rechtsentwicklung*, "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung" 1980, vol. 97(1), pp. 45–47. It was not until the Fathers of the Church that the dam was put in place. Saint Augustine,

kidnapping his own life was endangering not only himself, but also his comrades-in-arms.¹⁵ The good protected by the law in this case was not the life of the would-be suicide, but the combat readiness of his unit,¹⁶ and in a broader sense the security of the state. A soldier who took the oath ceased to be a master of himself. In this case, a suicide attempt was seen as a kind of failed desertion.¹⁷ It was perceived as an act of cowardice and a form of betrayal.¹⁸ It is no coincidence that the Justinianic compilers placed Hadrian's rescript outside the two terrible books treating criminal law (*libri terribiles*).¹⁹ The members of the imperial commission felt that it better matched the content of book forty-nine, which bears the same title as Menander's work, *On Military Matters (De re militari)*. This makes it all the more surprising that, in the literature on the subject, Hadrian's rescript appears as an important source in considerations relating to criminal responsibility for a crime committed in a state of alcoholic intoxication.²⁰

THE RESCRIPT AND ITS REINTERPRETATION

Literary sources abound with descriptions of alcoholic excesses and the troubles that alcohol abusers pursued upon themselves. Jens Uwe Krause rightly points out: "A factor that was instrumental in the escalation of violence not only in the cities was the consumption of alcohol. Many criminal acts were committed while drunk, and the accused then tried to get out of trouble by claiming limited sanity".²¹ Seneca

already in the first book of his treatise *On the State of God*, made it clear: "whoever kills himself is a murderer" (Aug. *de civ. Dei*: 1.17: *Qui se occidit, homicida est*).

¹⁵ K. Amielańczyk, *op. cit.*, p. 242.

¹⁶ A. Watson, *Studies in Roman Private Law*, London–Rio Grande 1991, p. 247. In this dimension, a failed suicide attempt had the same effect as self-harm. This convergence is rightly emphasized by Gustav Geib (*Lehrbuch des Deutschen Strafrechts*, vol. 2, Leipzig 1862, p. 206).

¹⁷ A similar model of thinking was adopted for slaves. Cf. L. Schumacher, *Niewolnictwo antyczne. Dzień powszedni i los niewolnych*, Poznań 2005, p. 268: "A failed suicide attempt was treated under the law in the same way as a failed escape: this 'mental defect' of the slave had to be reported at the time of sale". See also D. 47.2.3.

¹⁸ T. Nótári, *Some Remarks on the Issue of Suicide in Roman Criminal Law*, "Acta Universitatis Sapientiae – Legal Studies" 2019, vol. 8(1), pp. 84–85. Anton J.L. van Hoof, then, does not seem to fully understand the ways of the ancient Roman army when he deems anything but illogical an imperial order to punish with death or expel from service anyone who was not drunk or disheveled at the time of the act. See A.J.L. van Hoof, *From Autothanasia to Suicide: Self-killing in Classical Antiquity*, London–New York 1990, p. 84.

¹⁹ See comments on the material collected in them: M. Kuryłowicz, *Libri terribiles. Z historii rzymskiego prawa karnego*, [in:] *W kręgu teorii i praktyki prawa karnego. Księga poświęcona pamięci profesora Andrzeja Wąska*, eds. L. Leszczyński, E. Skrętowicz, Z. Hołda, Lublin 2005, pp. 745–755.

²⁰ Cf. C. Ferrini, *Diritto penale romano. Teorie generali*, Milano 1899, pp. 95–96.

²¹ J.U. Krause, *Kriminalgeschichte der Antike*, München 2004, p. 100.

the Younger advocated that young age and possible falling into a state of intoxication (*per vinum lapsus*) should be treated as a mitigating circumstance when imposing punishments.²² For Roman lawyers, however, the subject seemed to be nonexistent.²³ In the Justinianic Digest, surprisingly few resolutions have been preserved about crimes committed under the influence of alcohol and their legal consequences.²⁴ One of the few is Marcian's short lecture, according to which "a crime is committed intentionally, in an affect or by accident".²⁵ In it, the jurist explains that a crime of affect occurs, e.g., when "a drunken brawl or armed struggle takes place".²⁶

Obviously, Marcian's opinion should not be contrasted with Hadrian's resolution, since the imperial rescript is of a completely different nature. Unlike the jurist's opinion, it is material that is definitely not suitable for building a theory of general nature.²⁷ The ruler's decision is casuistic and on point. It touches on a special situation in the subjective dimension (the case concerns a soldier), rare in the subjective sense (a failed suicide attempt made in a state of alcoholic intoxication), and above all, unrelated to the issues of criminal responsibility but disciplinary.²⁸ However, the opposite happened. In the Middle Ages, lawyers used the Justinianic codification as much as theologians used the Scriptures.²⁹ It was believed that this collection hid the answers to all questions. If the solution to a problem was not apparent at first glance, a little more careful searching was required. Authors of treatises both relating to canon law,³⁰ as well as secularists have not dug too deeply. Consequently, even in the 18th and 19th century literature on the subject, one can find opinions formulated in all seriousness that committing a crime under

²² Sen. *de clem.* 2.7.2.

²³ Similarly, in the law of the pre-partition Poland. Cf. J. Makarewicz, *Polskie prawo karne. Część ogólna*, Lwów 1919, p. 89.

²⁴ Cf. M. Jońca, *Rzymskie prawo karne. Instytucje*, Lublin 2021, pp. 106–109.

²⁵ D. 48.19.11.2: *Delinquitur aut proposito aut impetu aut casu.*

²⁶ D. 48.19.11.2: *cum per ebrietatem ad manus aut ad ferrum venitur.*

²⁷ G. Galdo, *Elementi di psicologia ed ideologia di diritto penale*, vol. 1, Salerno 1857, p. 139: "[In Roman law] there are cases in which it appears that in criminal cases, the impact of drunkenness has been taken into account. However, what is lacking in the Justinianic codification is a general provision that would allow for aggravation or mitigation of liability for committing any crime while intoxicated".

²⁸ These circumstances have occasionally been pointed out in English-language literature. For example, see R. Boyd, *The Office, Powers, and Jurisdiction*, vol. 2: *Of His Majesty's Justices of the Peace, and Commissioners of Supply*, Edinburgh 1787, p. 488: "Nothing certain can be drawn from this law, because it regards a special matter, and cannot properly admit of a general interpretation". Similarly R. Mentxaka, *El suicidio de los militares en época de Adriano*, "Index" 2010, vol. 38, p. 139.

²⁹ This phenomenon was described by Alejandro Guzmán (*Ratio scripta*, Frankfurt am Main 1981).

³⁰ Cf. *Decr. Grat.* C. 15, q. 1, c. 7. Teachings of medieval canonists on the crime committed by a drunken offender collected: S. Kuttner, *Kanonistische Schuldlehre: von Gratian bis auf die Dekretalen Gregors IX*, Roma 1935, pp. 119–123. The author contrasted the action of a drunk with that of a sleeping person. In the chapter *Sleep and Drunkenness*, in addition to drunkenness, there were also considerations of nocturnal pollutions and the suffocation of a child by a mother while sleeping. See *ibidem*, pp. 110–119.

the influence of alcohol is an important mitigating circumstance for offenders.³¹ In turn, the footnotes often include Hadrian's decision quoted above.³²

In the 19th century, mankind began to doubt that the Final Judgment would correct all the errors and injustices committed by earthly courts through the original interpretation of the *doctores*.³³ The scholastic method of studying Roman law was then definitively abandoned. These processes coincided with increased public awareness and bold campaigns emphasizing the destructive effects of alcohol. The first abstinent clubs and societies for the promotion of sobriety were formed. The stereotype of the Romans' leniency towards drunks began to waver.³⁴ More and more people saw that *ex iure Romano* argument was fragile and essentially ridiculous.³⁵ *Nolens volens*, scholars have returned to the study of Hadrian's resolution. Paul Krüger and Theodor Mommsen assumed that the text we now have was transcribed with errors.³⁶ Ernst Levy concluded that it was changed (interpolated)

³¹ Cf. *Gelesens (ueber Trunkenheit)*, "Annalen der deutschen und ausländischen Criminal-Rechts-Pflege" (1840), vol. 11, p. 166: "Under Roman law, the state of intoxication was a mitigating circumstance".

³² This is what Olivia F. Robinson still builds her argument on. Cf. O.F. Robinson, *The Criminal Law of Ancient Rome*, London 2001, p. 21.

³³ In the Middle Ages and in the modern era, places where justice was administered (town halls, tribunals, churches) were often decorated with scenes of final judgment. They were meant to remind earthly judges that the most important trial was yet to come. See R. Rupiewicz, *Sąd nad sędziami. O sprawiedliwych wyrokach w ikonografii prawnej przełomu średniowiecza i nowożytności obszarów zaalpejskich*, [in:] *Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce*, eds. A. Dębiński, M. Jońca, I. Leraczyk, Lublin 2019, pp. 277–295.

³⁴ Still, a "traditional" approach was occasionally presented. Cf. J.E. Usher, *Alcoholism and Its Treatment*, New York 1892, p. 92: "But Roman law was on the other hand far more lenient, and admitted drunkenness as an excuse for crime; at all events, in the Digest (49.16.6.7) it is said, treating of punishments on soldiers for breaches of military discipline, *per vinum aut lasciviam lapsis capitalis poena remittenda est*"; J.A. Little, *Ebriedad y alcoholismo*, "Lecciones y Ensayos" 1958, vol. 9, p. 95: "It can be concluded that the Romans considered drunkenness as a mitigating circumstance, *per vinum aut lasciviam lapsis capitalis poena, remittenda est, militae mutatio irroganda*. Punishment was applied not for a crime committed while intoxicated, but for the offense of becoming intoxicated: *ebrius punitur non propter delictum, sed propter ebrietatem*". Przemysław Kubiak, who placed Hadrian's ruling against the background of other sources related to criminal responsibility for a crime committed in the state of alcoholic intoxication, tried to reach conclusions that already appeared in the 19th-century literature on the subject. See P. Kubiak, *Stan nietrzeźwości jako „afekt” w rzymskim prawie karnym?*, "Zeszyty Prawnicze" 2015, vol. 15(1), p. 37: "The present solution, which is in principle consistent with the previous one, contains a rather intriguing premise, from which it follows that acts committed in a state of intoxication were punished even more lightly than those committed under conditions justified by the circumstances". In the conclusion we find recognition of the "complementarity" of the sources compiled by the author, although the thesis posed at the beginning of the work was not confirmed. See *ibidem*, p. 51.

³⁵ For example, see E.C. Clark, *An Analysis of Criminal Liability*, Cambridge 1880, p. 29.

³⁶ *Digesta Iustiniani*, [in:] *Corpus Iuris Civilis*, ed. P. Krüger, vol. 2, Berolini 1963, p. 894 fn. 4. See also O. Lenel, *Palingenesia Iuris Civilis*, vol. 1, Lipsiae 1889, p. 699 fn. 1. Interestingly, Theodor Mommsen, in his monumental monograph *Römisches Strafrecht* (Leipzig 1899), did not refer to this source at all, although he did touch on the themes of attempted and suicide.

by the Justinianic compilers.³⁷ Alan Watson, meanwhile, tried to explain that the drunken soldier who injured himself with suicidal intent actually did not want to take his own life, but only to make a joke, but this ended badly for him.³⁸

SAVY OR ADDICTED?

Watson is right when he argues that the phrase *per vinum aut lasciviam* is not an interpolation or gloss.³⁹ It is more reasonable (although this generates a number of research problems) to assume that we are dealing with an authentic text that refers to actual events, and its author is most likely Hadrian, although Menander may have distorted the original shape of the rescript by introducing some mental shortcuts. The context of the issuance of the decision remains unknown. Its philological analysis may come to our aid. Let's try to assume that the expressions "wine" (Latin: *vinum*) and "lack of measure", "compulsiveness" (Latin: *lascivia*) were juxtaposed not by accident.

In the first case, there is no doubt. Soldiers have been stereotyped as prone to drunkenness and brutality.⁴⁰ At the same time, it is a truism to say that a drunk person is capable of antisocial, irrational and self-destructive actions. Suicide falls within this catalog. It is possible that a particular soldier bargained for his life while under the influence of alcohol (the failed suicide attempt may also have been related to the so-called withdrawal effect⁴¹), survived, and since the superiors were hesitant about the punishment, the emperor has spoken. In this context, Hadrian's decision should be placed in the same line with another decision of this ruler, namely the rescript relating to the responsibility of the escort soldiers who escaped the prisoner.⁴² There, too, drunks were treated more leniently. Both decisions relate to the realities of duty and have to do with the desire to maintain discipline.

³⁷ E. Levy, *Die römische Kapitalstrafe*, [in:] *Gesammelte Schriften*, vol. 2, Köln–Graz 1963, p. 362.

³⁸ A. Watson, *op. cit.*, p. 247.

³⁹ *Ibidem*, pp. 246–247.

⁴⁰ For example, see Amm. Marc. 22.4.6–8.

⁴¹ Cf. D. Soszyńska, *Alkohol i psychika*, Warszawa 1980, p. 54. Of course, there is no reason to assume that the soldier in whose case Hadrian issued the rescript had a chronic alcohol problem. See also I. Kowalewski, *Zespół uzależnienia od alkoholu wśród dorosłych*, Kraków 2016, p. 167: "Alcohol consumption intensifies the intensity of depressive experiences and reduces the effectiveness of self-control, which promotes suicide attempts. About 30% of people consume alcohol before attempting suicide, and about half of them are in a state of deep alcoholic intoxication at the time".

⁴² Cf. D. 48.3.12 pr.: *Milites si amiserint custodias, ipsi in periculum deducuntur. Nam divus Hadrianus Statilio Secundo legato rescripsit, quotiens custodia militibus evaserit, exquiri oportere, utrum nimia negligentia militum evaserit an casu, et utrum unus ex pluribus an una plures, et ita demum adficiendos supplicio milites, quibus custodiae evaserint, si culpa eorum nimia deprehendatur: alioquin pro modo culpae in eos statuendum. Salvio quoque legato Aquitaniae idem princeps rescripsit in eum, qui custodiam dimisit aut ita sciens habuit, ut possit custodia evadere, animadvertendum: si*

More effort should be put into finding an explanation, and for what reason the noun *lascivia* was placed next to wine. Taking a semi-pandectist point of view, Karl Binding saw in this procedure a connection with the “Roman theory of guilt”.⁴³ He presented his argument in a chapter titled *Die Schuldarten des dolus malus und der culpa lata im gemeinen römischen Rechte* (*Types of guilt of dolus malus and culpa lata in common Roman law*). The same track was followed shortly thereafter by Contardo Ferrini.⁴⁴ Both detached Hadrian’s decision from its original context and lumped it in “one bag” with settlements in which they saw “technical expressions” (*termini technici*) of a similar nature.⁴⁵

In more recent literature, *lascivia* from Hadrian’s rescript is sometimes translated as: wantonness (Amielańczyk, Kubiak, van Hoof),⁴⁶ lasciviousness (Tomasz Palmirski),⁴⁷ irresponsible play (Sara Elise Phang)⁴⁸ and boorishness (Watson).⁴⁹ None of these authors explains, however, under what circumstances debauchery, swagger, lasciviousness, imprudence or pranks can be associated with a suicide attempt.⁵⁰ Dictionaries and lexicons don’t help much here either. For Hermann

tamen per vinum aut desidiam custodis id evenerit, castigandum eum et in deteriorem militiam dari: si vero fortuito amiserit, nihil in eum statuendum (“If soldiers lose prisoners, they expose themselves to liability. The deified Hadrian wrote back to Statilius Secundus in a rescript that whenever a prisoner escapes from the soldiers, an investigation should be conducted as to whether he escaped from them due to excessive negligence or accidentally, and whether one prisoner or many escaped. Only then should the escort soldiers be subjected to punishment when it is found that their negligence was gross. In other cases, the punishment is to correspond to the degree of culpability. The same emperor wrote in a rescript to Savius governor of Aquitania, that whoever releases a prisoner or allows him to escape should be punished by death. However, if the prisoner escaped through a soldier’s drunkenness or laziness, he should be flogged and transferred to inferior service. If the escape was accidental, no punishment should be meted out”). Comments regarding this text: K. Amielańczyk, *op. cit.*, pp. 222–224; P. Kubiak, *op. cit.*, pp. 34–35; A. Manni, *op. cit.*, pp. 197–201.

⁴³ K. Binding, *Die Normen und ihre Übertretung: Eine Untersuchung über die Rechtmässige Handlung und die Arten des Delikts*, vol. 2, Leipzig 1877, pp. 367–368. See also S. Kuttner, *op. cit.*, pp. 219–220.

⁴⁴ C. Ferrini, *op. cit.*, p. 102.

⁴⁵ Cf. K. Binding, *op. cit.*, pp. 367–368 fn. 555, pp. 269–390. On the subject of the legal qualification of criminal acts committed in a state of intoxication, Binding writes quite a bit, but in his argument, he does not act the passage from Menander. An attempt is also made to establish a uniform “legal” meaning of the term *lascivia*: A. Manni, *op. cit.*, pp. 204, 208–209.

⁴⁶ K. Amielańczyk, *op. cit.*, p. 243; P. Kubiak, *op. cit.*, p. 37; A.J.L. van Hoof, *op. cit.*, p. 84.

⁴⁷ *Digesta Iustiniani. Digesta justyniańskie. Tekst i przekład*, eds. T. Palmirski et al., vol. VII.2, Kraków 2017, p. 247.

⁴⁸ S.E. Phang, *Roman Military Service: Ideologies of Discipline in the Late Republic and Early Principate*, New York 2008, p. 260: “*per vinum aut lasciviam... irroganda* probably should conclude D. 49.16.6.6, thus referring to a soldier’s wounding another when drunk or in jest”.

⁴⁹ A. Watson, *op. cit.*, p. 247.

⁵⁰ Also unconvincing is the thesis that the phrase *per vinum aut lasciviam lapsis capitalis poena remittenda est et militiae mutatio irroganda*, although not interpolated, was in the wrong place, and

Gottlieb Heumann, *lascivia* means “willfulness” (cf. German: *Muthwille*),⁵¹ and for Adolf Berger: “wantonness, lasciviousness, negligence”. Then Berger goes on to explain: “In certain situations it is considered as *culpa* and involves the responsibility of the person who neglected his duties *per lasciviam*”.⁵² Among the meanings of the noun in question listed by Janusz Sondel’s dictionary are “pursuit of effect”, “abundance”,⁵³ which, it seems, finally leads us on the right track.

Assuming that *lascivia* in Hadrian’s rescript means “intemperance”, “lack of control”, “compulsiveness”, it is possible to assume that the emperor meant here some form of addiction. Since alcoholism was mentioned separately (*per vinum*), the expression *per lasciviam* may refer to other self-destructive behavior. Alessandro Manni rightly intuits when he writes: “The latter expression [*lascivia* – M.J.] was probably meant to indicate excessive, unbridled, unrestrained behavior that could have fatal consequences for the soldier, although I don’t think it was meant to refer to ‘unrequited love passion’ or ‘amorous exaltation’”.⁵⁴ So if Palmirski is right, then one should see sexaholism in the “debauchery” of a soldier. If we concede Amielińczyk is right, “swagger” would be gambling, for example. People who have lost control over their lives often have suicidal thoughts and sometimes make attempts to take their own lives.⁵⁵ They are tired of their own impotence (*taedium vitae*?). There is no reason to believe that things were different in ancient times.

IN VINO VERITAS?

Much has been written about wine in antiquity. Its species,⁵⁶ methods of cultivation, and impact on the life and functioning of societies were discussed on many occasions.⁵⁷ The reasons why Roman women were forbidden to drink it were care-

Hadrian was not referring to a suicide attempt, but to injure a comrade-in-arms. So claims: A. Manni, *op. cit.*, pp. 204–205, 210. See also S.E. Phang, *op. cit.*, p. 132 fn. 146.

⁵¹ H.G. Heumann, *Handlexikon zu den Quellen des römischen Rechts*, Jena 1891, p. 287.

⁵² A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, p. 537.

⁵³ J. Sondel, *Słownik łaciński-polski dla prawników i historyków*, Kraków 2000, p. 559.

⁵⁴ A. Manni, *op. cit.*, pp. 205–206. The dictionary of “sexual Latin” omits the noun in question entirely. Cf. J.N. Adams, *The Latin Sexual Vocabulary*, London 1990.

⁵⁵ Prominent among the ten characteristics “significantly associated with suicide” are: “abuse of alcohol, drugs, psychotropic drugs”. See M. Makara-Studzińska, *Wybrane zagadnienia z problematyki suicydologii*, “Annales UMCS. Sectio I” 2001, vol. 26, p. 228.

⁵⁶ Pliny the Elder boasted that he knew 185 varieties of wine. See Plin. *nat. hist.* 14.29.50.

⁵⁷ On wine in Roman law and society, see M. Jońca, *Prawo rzymskie. Marginalia*, Lublin 2015, pp. 321–325; M. Kuryłowicz, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 2020, pp. 99–111. About the Roman “drinking culture”, see K.-W. Weeber, *Nachtleben im alten Rom*, Darmstadt 2004, pp. 85–102. On the subject of alcoholic excesses immortalized in Roman sources, see J.H. D’Arms,

fully sought out.⁵⁸ At the same time, the figure of the male drunk was more often amused than admonished. On stage, Plautus' drunken slaves seemed even funnier when they acted in a tipsy state or wondered where to get alcohol from. The tendency to drunkenness was openly accused of evil characters who had committed other transgressions. The word "drunkard" was an insult.⁵⁹

As mentioned above, the list of alcoholic excesses of historical figures is long. Mark Antony, after a lavish wedding, was said to have vomited during a public speech.⁶⁰ Tiberius made the city's prefect a drinking companion who impressed him with a strong head.⁶¹ The infamous canon of drunken behavior included wandering around town at night and causing brawls.⁶² With regard to figures whom historiography gave the name of "good", weakness for liquor was skillfully covered up. Of Trajan, whom imperial propaganda immortalized as the best ruler (*optimus princeps*), Aurelius Victor writes that he was "a little too devoted to food and drink".⁶³ However, this author makes a disadvantage into an advantage when he emphasizes: "He never made his decisions after the banquets that dragged on until late".⁶⁴

When reading ancient sources, one often gets the impression that alcohol was drunk by almost everyone and that it harmed no one. This illusion is dispelled by a deeper analysis of documents like Hadrian's rescript. Among the reasons for a soldier's attempt to take his own life, the emperor listed: unbearable pain, depression, illness, confusion of the senses and disgrace. Modern textbooks on clinical psychiatry use a surprisingly similar catalog of stressors.⁶⁵ But why would a soldier want to commit suicide over wine or "swagger"? Well, because alcohol drunk in large quantities is a depressant⁶⁶ and was one in ancient times as well. Other

Heavy Drinking and Drunkenness in the Roman World, [in:] *In Vino Veritas*, eds. O. Murray, M. Tecusan, Rome 1995, pp. 304–317.

⁵⁸ P. Komar, *Wine Taboo Regarding Women in Archaic Rome, Origins of Italian Viticulture, and the Taste of Ancient Wines*, "Greece and Rome" 2021, vol. 68(2), pp. 239–254; J. Zabłocki, *Si mulier vinum bibit condemnatur*, "Prawo Kanoniczne" 1989, vol. 32(1–2), pp. 223–232.

⁵⁹ For example, see *Apul. met.* 9.14.

⁶⁰ *Plut. Marc. Ant.* 11.

⁶¹ *Plin. nat. hist.* 14.28.145.

⁶² A. Demandt, *Prywatne życie cesarzy rzymskich*, Gdynia 1997, p. 84: "The evil emperors roamed the pubs and brothels at night and feasted. (...) In the process, Nero plundered stores, fought with passersby and sometimes took a severe beating himself. Since he performed half incognito, others imitated him and behaved as if each of them was an emperor himself. Similarly, sources speak of Caligula and Otho, Vitellius, Commodus and Gallus in Rome, as well as Lucius Verus and Gallus in Antioch".

⁶³ *Aurel. Vict. De caes.* 13.4. Cf. A. Demandt, *op. cit.*, p. 61: "memorable drunkard".

⁶⁴ *Aurel. Vict. Epit.* 13.10: *curari vetans iussa post longiores epulas*.

⁶⁵ Cf. H.I. Kaplan, B.J. Sadock, *Psychiatria kliniczna*, Wrocław 1995, pp. 186–187.

⁶⁶ Cf. N. Kessel, H. Walton, *Alkoholizm*, Warszawa 1967, p. 103. See also A. Klimkiewicz, P. Serafin, M. Wojnar, *Czynniki ryzyka zachowań samobójczych u osób uzależnionych od alkoholu*, "Psychiatria" 2011, vol. 8(1), pp. 7–8: "According to the World Health Organization (WHO), about 900,000 people commit suicide annually worldwide. The incidence of suicide attempts is estimated to

addictions are also a source of depression leading to suicide attempts. Although the law of universal gravity was formulated by Isaac Newton in 1687, apples were nevertheless also falling from trees before his birth. The view that Mediterranean societies sipped wine with almost all meals and suffered no consequences for it is a childish and naive stereotype. The same should be said about the alleged “cheerful disposition” of some nations.

The high risk of suicide also applies to various addictions. A person who has fallen into the snare of addiction and is unable to help himself. Such a man “feels then in a more acute way than before how much he has harmed himself with his actions. He feels weak, guilty for the situation he has found himself in, and feels shame about it. As a result of these thoughts, such a person’s self-esteem and sense of agency plummet. Suicide attempts or other behaviors indicative of engaging in self-destructive behavior, such as self-harming, may occur”.⁶⁷

TABOO

The Latin of ancient Roman jurists lived by the verb. In addition, Roman jurists had the conviction that any attempt at definition carried a lot of risk.⁶⁸ As a result, peculiar situations occurred. If the ancient jurists had already succeeded in developing some “technical term”, they stopped and did not try to “wrap” it with a definition. Where they did manage to create a definition, on the other hand, it turned out that many different-sounding terms could be fitted to it.⁶⁹ The same phenomenon can be observed in relation to their stereotypes, fears and phobias.⁷⁰ They avoided naming them because they wanted to avoid the unhappiness caused by unnecessary interaction.⁷¹ Therefore, there was no definition of what an addiction

be 10–20 times higher (...). The risk of attempting suicide is much higher among addicts than in the general population. It is estimated that patients with a diagnosis of alcohol dependence have a 60–120 times higher risk of suicide than those without any mental disorder. According to some researchers, the risk of suicide among alcohol addicts is even higher than among those with depression. The risk of suicide death among alcohol addicts is estimated at 7–15%. Less optimistic figures put it as high as 18%. Combined with research results saying that about 24% of addicts attempt suicide at least once in their lives, this indicates the high lethality potential of such attempts among addicts”.

⁶⁷ I. Kowalewski, *op. cit.*, p. 21.

⁶⁸ D. 50.17.202.

⁶⁹ Cf. F. Schulz, *Prinzipien des römischen Rechts*, München 1934, pp. 30–33.

⁷⁰ Lawyers and psychologists are not the only ones who make such accusations against the Romans. Even contemporary historians have a grudge against them. Cf. T. Mommsen, *Das Weltreich der Caesaren*, Wien 1933, p. 10: “They said things that rightly should have been left out, and left out those that should have been said”.

⁷¹ Cf. T. Watt Smith, *op. cit.*, p. 16.

is, but there was a keen awareness of the existence of self-detrimental behavior and its social consequences.⁷²

The margin to which well-born Quirites were eager to push their spiritual demons was the world of myths, fairy tales,⁷³ dreams⁷⁴ and... slave trade market. As for the “talking thing” (*instrumentum vocale*), it was not afraid to take on socially difficult subjects, since any physical or mental ailments could impinge on its market value.⁷⁵ The twenty-first book of the Digest included an impressive catalog of diseases from which a slave could suffer. About most of them, the buyer had the right to know.⁷⁶ The seller who concealed them exposed himself to liability for eviction. Among them, we find certain spiritual ailments, some of which the World Health Organization now recognizes as diseases. Thus, gamblers (*aleatores*), drunkards (*vinarii*) and gluttons (*gulosi*) appear in the commentary to the edict of the curule edils.⁷⁷ Sensational sounds a testimony showing that the ancients were well aware that one can fall into addiction over time.⁷⁸ The afflictions in question are called “vices” (*vitia*) or “defects of the spirit” (*animi vitia*) by Roman sources. Modern popular vocabulary tends to operate with such terms as “problem” or “weakness”. Medicine uses the term addiction.

CONCLUSIONS

Hadrian certainly did not receive therapy for codependency and did not use the modern psychological and psychiatric net of concepts. About what effect Trajan’s forcing alcohol into him had on him, we would have to ask him

⁷² The Roman legislator always showed considerable restraint when it came to the various embarrassments that occurred within the family. It seems, however, that he was aware that the effects of addiction affect not only the addict, but also (or perhaps especially?) his loved ones. When (probably driven by the best intentions) Emperor Constantine forbade a wife to leave her husband even if he was: a drunkard (*ebriosus*), a gambler (*aleator*) or a playboy (*muliercularius*), three modern addictions that devastate family life immediately come to mind: alcoholism, gambling and sexaholism. See CTh. 3.16.1. Extensively on this regulation, see J. Urbanik, *Konstantyńskie ograniczenie rozwodów. Wolność małżeństw przebita szpilką do włosów*, “Studia Iuridica” 2006, vol. 55, pp. 255–268.

⁷³ See J. Henderson, *Telling Tales on Caesar: Roman Stories from Phaedrus*, Oxford 2001, pp. 1–2.

⁷⁴ See G.W. Bowersock, *Fiction as History: Nero to Julian*, Berkeley–Los Angeles–London 1994, pp. 77–98; E.R. Dodds, *Grecy i irracjonalność*, Kraków 2014, pp. 86–110.

⁷⁵ W.W. Buckland, *The Roman Law of Slavery*, Cambridge 1908, pp. 52–67; L. Schumacher, *op. cit.*, pp. 61–63.

⁷⁶ Cf. Cic. de off. 3.23.91: *In mancipio vendundo dicenda ne vitia non ea quae nisi dixeris redhibeatur mancipium iure civili sed haec mendacem esse aleatorem furacem ebriosum* (“When selling a slave, is it necessary to reveal not only those defects of the slave that the seller is obliged to reveal by civil law under threat of returning the slave, but also the fact that the slave is a liar, a vagabond, a thief or a drunkard?”).

⁷⁷ D. 21.1.4.2.

⁷⁸ D. 21.1.25.6.

himself.⁷⁹ As a field commander gifted with a certain natural instinct, he was aware of the perennial problems faced by his subordinates. Manni rightly notes that the state of mind of the would-be suicide soldier, who acted *per vinum aut lasciviam*, was exceptional. His transfer to an inferior service reflects the age-old ways in which soldiers are knocked out of their minds by absurd ideas.⁸⁰ In his new position, such a delinquent could have been better watched over, and, above all, ensured that he was not bored (we will leave the effectiveness of the procedures in question this time without comment).

The forbearance shown to a would-be suicide, who at the time of the act was drunk or was in an amok caused by some other addiction, does not authorize general conclusions such as: the Romans were lenient towards this kind of perpetrators of crimes. Instead, the confrontation of the imperial settlement with the achievements of modern psychology and psychiatry shows that they understood a lot. The rescript maintained in D. 49.16.6.7 represents the emperor's attempt to embrace phenomena that have always devastated social life, but only in the 20th century were they tamed by having clinically resounding names and definitions.

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⁷⁹ SHA *Hadr.* 3.3. Cf. A. Demandt, *op. cit.*, p. 61: "Trajan, himself a memorable drunkard, persuaded Hadrian to drink against his will". Sources agree that Hadrian did not inherit his predecessor's propensity for pleasantly spending time with wine (cf. Dio Cass. 69.7.3). He preferred traveling and hunting (cf. SHA *Hadr.* 20.12). His love of knowledge, relegated to the shadows by his military and administrative achievements, is still waiting to be properly exposed (cf. SHA *Hadr.* 1.1: *poematum et litterarum nimium studiosissimus*). Further comments with a compilation of sources: A. Birley, *op. cit.*, p. 47, 299; A. Demandt, *op. cit.*, pp. 228–230.

⁸⁰ A. Manni, *op. cit.*, p. 211.

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ABSTRAKT

W Digestach Justyniana zachowała się enigmatyczna decyzja cesarza Hadriana dotycząca konkretnego przypadku naruszenia dyscypliny wojskowej. Cesarz zabrał głos w sprawie żołnierzy, którzy podjęli nieudaną próbę samobójczą. Tych, których popchnął do tego desperackiego kroku jakiś ważny powód, kazał zwolnić ze służby w niesławie. Pozostałych czekała śmierć. Zaskakujące rozwiązanie przewidziano dla niedoszłych samobójców, którzy postanowili odebrać sobie życie *per vinum aut lasciviam*. Tych władca kazał oszczędzić. Jediną konsekwencją było przeniesienie ich do gorszej służby. Zestawienie uchwały Hadriana ze współczesną wiedzą psychologiczną i psychiatryczną pozwala postawić hipotezę, że reskrypt cesarza odnosi się do osób, które złamały zasady dyscypliny wojskowej z powodu jakiejś formy uzależnienia.

Słowa kluczowe: prawo rzymskie; alkoholizm; dyscyplina wojskowa; samobójstwo; Hadrian