

# MATER FAMILIAS

## SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

A CURA DI

**ZUZANNA BENINCASA**  
**JAKUB URBANIK**

CON LA COLLABORAZIONE DI

**PIOTR NICZYPORUK**  
**MARIA NOWAK**

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*Scritti per Maria Zabłocka*

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## **SUPEREXACTIONES IN THE LATE ROMAN LAW**

### **A SHORT REVIEW OF THE IMPERIAL CONSTITUTIONS IN THE THEODOSIAN CODE**

ONE OF THE MOST DISTINCT FEATURES of the late Roman Empire was excessive fiscal policy backed by the bureaucratized state administration and complicated tax system. With the introduction of generally applicable *iugatio* and *capitatio* and, above all, incorporating the Italy to the rest of the provinces obligated to pay the land tax, Diocletian inaugurated a new era described by Ramsay MacMullen as the ‘great age of tax-collectors’.<sup>1</sup> General obligation to pay taxes is confirmed by the numerous imperial constitutions of this period. One of the manifestations of high tax-pressure was the strong limitation of tax exemptions (*immunitas*). The circle of privileged subjects was *de iure* restricted mainly to the property of *res privata* and Church.<sup>2</sup> However a lot of taxpayers

<sup>1</sup> R. MACMULLEN, *Changes in the Roman Empire. Essays in the ordinary*, Princeton 1990, p. 68.

<sup>2</sup> See *CTh.* II.1.1: ‘... ideoque omnes pensitare debebunt quae manu Nostra delegationibus adscribuntur ...’. The date of issue of this law and the name of the emperor is uncertain. The constitution was sent to the proconsul of Africa Proclianus which may suggest the later period of its promulgation (see A. H. M. JONES, J. R. MARTINDALE & J. MORRIS, *The Prosopography of the Later Roman Empire* 1. AD 260–395, Cambridge 1971, Proclianus 2, p. 741). The modern editions of the *Theodosian Code* (e.g. P. KRUEGER & Th. MOMMSEN) assume that the law was promulgated in 360 AD by the emperor Constantius.

were exempted thanks to their high social status and the position in the state administration,<sup>3</sup> despite the fact that emperors frequently denounced the favoritism of the individuals at the cost of the public interest.<sup>4</sup>

The tax-system of the late Roman state was a very sophisticated machine with numerous direct and indirect taxes. Landowners in general (both *possessores* and humble farmers) were obligated to pay the land tax (*iugatio*) and the poll tax (*capitatio*).<sup>5</sup> This system invented in the reign of Diocletian was in the course of the fourth century gradually modified to the mixed form of *iugatio-capitatio*.<sup>6</sup> In a state with economy based on agricultural production, the land tax could make up more than ninety per cent of all revenues from the public levies.<sup>7</sup> The remaining ten per cent were other taxes: direct one (like the one imposed on *negotiatores collatio lustralis*, paid by the senators *collatio glebalis*, *aurum oblaticum*, *aurum coronarium* and many others) and indirect one (e.g. local taxes – *vectigalia* – incorporated probably by the emperor Constantine to the state budget,<sup>8</sup>

<sup>3</sup> *Privilegia dignitatum*. See e.g. *CTh.* 11.12.2, also P. SAWICKI, 'Remarks on some tax exemptions in ancient Rome', *Studia Ceranea* 2 (2012), pp. 66–70.

<sup>4</sup> In their constitution issued in 399 AD the emperors Honorius and Arcadius considered the public welfare as more important than the *dignitas* of the taxpayers (*CTh.* 11.1.25–26). The law issued in 407 AD (*CTh.* 11.12.4) provided for the penalty of *quadruplum* if the taxpayer gained the tax exemption by swindling (*obreptio*).

<sup>5</sup> The amount of *iugatio* was calculated by the use of the *iugum*. It was supposed to help in the introduction of uniformity of taxation for all provinces of the Empire. In some places however this measure was not accepted, as happened for example in Egypt (A. H. M. JONES, *The Later Roman Empire* 284–602. *A Social, Economic And Administrative Survey*, Oxford 1964, p. 62). To calculate the amount of poll tax the government used the information gained from censuses.

<sup>6</sup> JONES, *The Later Roman Empire* (cit. n. 5), p. 453; A. H. M. JONES, *The Roman Economy. Studies in Ancient Economic and Administrative History*, Oxford 1974, pp. 286–292; D. FEISSEL, 'L'empereur et l'administration impériale', [in:] C. MORRISON (ed.) (ed.), *Le Monde Byzantin. 1 L'Empire romain d'Orient 330–641*, Paris 2004, p. 93.

<sup>7</sup> JONES, *The Roman Economy* (cit. n. 6), p. 83.

<sup>8</sup> JONES, *The Later Roman Empire* (cit. n. 5), p. 110. Even then the cities remained to some extent financially independent, see S. SCHMIDT-HOFNER, 'Die städtische Finanzautonomie im spätrömischen Reich', [in:] H.-U. WEIMER (ed.) *Staatlichkeit und politisches Handeln in der römischen Kaiserzeit*, Berlin – New York 2006, pp. 209–248.

import and export charges).<sup>9</sup> In exceptional circumstances the budget revenues were being supplemented through extraordinary levy (*superindictio*). The tax collection was one of the competences of *praefecti praetorio* (except of that sphere of state economy which came under the power of *comes sacrarum largitionum* or *praefectus annonae*). In practice, vicars (*vicarii*) and governors of the provinces (*iudices ordinarii*) subordinated to the prefects supervised the agents of the fisc. Each levy had to be justified by the annual *indictio* approved by the emperor.

Taxpayers paid their taxes annually. The dues were divided into three installments payable every four months.<sup>10</sup> Starting from the year of 297 AD, the government reviewed and corrected the calculations every fifteen years. Taxpayer who delayed his payment suffered the consequences. According to the constitution of Gratian, Valentinian and Theodosius I issued in 381 AD the sanction for the delay in payment of *annona* should be imposed in the form of *duplum*. If the taxpayer was still contumacious, the penalty of *quadruplum* was imposed.<sup>11</sup> In extreme cases, when the taxpayer persistently evaded the obligation, it was possible to restrict his property rights. Finally, unrestrained stubbornness resulted in the sale of the burdened property at auction (*distractio*).<sup>12</sup> The liability for the delay of payment was financial but in practice the taxpayers from the lower class of the Roman society (*humiliores*) were subjects to personal responsibility. They were locked up in the

<sup>9</sup> *Octavae*. JONES, *The Later Roman Empire* (cit n. 5), p. 429.

<sup>10</sup> It was applied especially to the taxes which were paid in kind, like the *annona*. Cf. *CTh.* 11.1.15–16; *CTh.* 11.7.11.

<sup>11</sup> *CTh.* 11.1.18. The constitution obligated only these *possessores* who delivered the *annona* to the Rome (and probably Constantinople). Probably the *duplum* imposed at the beginning of the new fiscal year was composed of the overdue last year's tax and the new year's tax amount. So was the *duplum* in this case the penalty or rather some kind of the summons for payment? Undoubtedly the disciplinary measure can be seen in the penalty of *quadruplum*. See also *CTh.* 11.1.27.

<sup>12</sup> This kind of solution is showed in the law of Constantine (*CTh.* 11.7.3 and *CTh.* 11.7.4). Reduction of the owner's rights was reasonable especially in the situation of the joint liability of the taxpayers. Those poorer often merged into *consortia* in order to face the high costs of the public burdens as in the case of the *onus temonararium*, see. A. ŚWIĘTOŃ, 'Przymus służby wojskowej w późnym cesarstwie rzymskim' [Compulsory military service in the Later Roman Empire], *Studia Prawnoustrojowe* 7 (2007), pp. 124–125.

prison or flogged. Constantine and his successors prohibited this kind of sanctions but their demands had no effect whatsoever.<sup>13</sup> However there was a possibility to cancel tax arrears.<sup>14</sup>

One of the effects of state's economy collapse in the third century was the significant weakness of the purchasing power of currency. This may partially explain the remedy applied by Diocletian, namely a large-scale collection of taxes in kind (*in speciebus*):<sup>15</sup> the agricultural products, live-stock, wine,<sup>16</sup> textiles and clothes (*textrina*, cf. *CTh.* 11.1.24), minerals (*metallica materia*, cf. *Nov. Marc.* 2.1). Among the burdens there were counted also the services and other contributions in kind provided as the part of *munera publica*: reparation of public roads, animals for the *cursus publicus*, recruits for the army levied through *onus temonarium*.<sup>17</sup> However with the gradual stabilization of currency, above all thanks to the emission of the Constantine's golden *solidus*,<sup>18</sup> the Roman authorities sometimes resorted to the commutation of the taxes in kind into taxes in money. This method was rather rare and it could have been met only in the exceptional cases.<sup>19</sup> By the half of the fourth century the taxes in kind remained as the general rule but in the midst of the century its commutation into the money tax became more frequent.<sup>20</sup> The collection of the

<sup>13</sup> *CTh.* 11.7.3, *CTh.* 11.7.7. Ammianus Marcellinus confirms the imprisonment of the insolvent debtors in the reign of Valentinian (*Amm. Marc.* xxx 5.6). Libanius complained to Theodosius for the excessive incarceration of the *humiliores* (*Or.* 45). See P. KUBIAK, 'Imprisonment of tax non-payers – an abuse of power or a measure of legal discipline?', *Studia Ceranea* 2 (2012), pp. 45–51.

<sup>14</sup> The constitutions related to this problem are contained in the *Code* in the title 11.28: *De indulgentiis debitorum*, see also *Nov. Val.* 1.1–3, *Nov. Mai.* 2.1.

<sup>15</sup> JONES, *The Later Roman Empire* (cit. n. 5), pp. 61; 65.

<sup>16</sup> For the purposes of free food distribution in Rome and probably in Constantinople (cf. *CTh.* 11.2.2–3).

<sup>17</sup> See ŚWIEŃTOŃ, 'Przymus służby wojskowej' (cit. n. 12), pp. 124–126.

<sup>18</sup> C. MORRISON, 'Peuplement, économie et société de l'Orient byzantin' [in:] IDEM, *Le Monde Byzantin* (cit. n. 6), pp. 218–220.

<sup>19</sup> Cf. e.g., *CTh.* 11.1.6. Sometimes the commutation of the taxes was strictly prohibited (*CTh.* 11.1.8 and the ban on conversion of *annona* for Rome into the gold).

<sup>20</sup> This was quite convenient action especially in the case when the object of the tax obligation that burdened a group of taxpayers was indivisible. For instance in the case of *onus*

*annona* in kind still was carried on in the last decade of the 4th century (CTh. 11.2.5) but finally the *adaeratio* was also applied to it.<sup>21</sup>

The whole system had poor efficiency for lots of reasons. As long as the majority of taxes were levied in kind, the Roman state met difficulties in building the sufficient reserves. The objects of *species* were materials of little durability (like e.g. meat), moreover because of lack of its equivalence it was impossible to construct the flexible state budget.<sup>22</sup> Transportation of the taxes in kind to the state granaries (*horrea fiscalia*) was expensive, especially by land, and quite often the expenses exceeded the amount of the imposts.<sup>23</sup> The collection of the taxes was supervised by the numerous officials and agents of the fisc. Besides the tax collectors (styled by the legal language as *exactores*) who acted on behalf of the *praefectus praetorio*, *praefectus annonae* and *largitio*,<sup>24</sup> there existed also *opinatores*, the officers dispatched by the mobile units of *comitatenses* to meet the basic needs of the army (food and fodder).<sup>25</sup> As the sources show, the

*temonarium* the commutation of the recruits into the gold (*aurum tironicum*) allowed the equal, just and effective sharing of the burden among the taxpayers (JONES, *The Later Roman Empire* (cit n. 5), pp. 432; 460, ŚWIE.ŁON', 'Przymus służby wojskowej' [cit. n. 12], p. 126). Cf. also J. WIEWIÓROWSKI, *Stanowisko prawne rzymskich dowódców wojsk prowincjonalnych – duces w prowincjach Scythia Minor i Moesia Secunda* [The Legal Standing of Roman Provincial Army Commanders – *Duces* in Provinces Scythia Minor and Moesia Secunda], Poznań 2007, p. 241

<sup>21</sup> FEISSEL, 'L'empereur et l'administration impériale', (cit. n. 6), p. 113.

<sup>22</sup> JONES, *The Later Roman Empire* (cit n. 5), p. 449.

<sup>23</sup> At the beginning of the fourth century the costs of grain's land transportation (according to Diocletian's Edict on Prices) were so expensive that they would increase the cargo value by nearly 40 % for every 100 miles (R. LAURENCE, 'Land transport in Roman Italy: costs, practice and the economy' [in:] H. PARKINS & C. SMITH (eds.), *Trade, traders and the ancient city*, London – New York, 1998, pp. 133–134). A constitution of Valentinian, Theodosius and Arcadius promulgated in 385 AD (CTh. 11.1.21) forbade to force the taxpayers to furnish taxes in kind (*species*) at a long distance – the length of transportation should be moderate. Also the law of the same Emperors promulgated in 386 AD (CTh. 11.1.22) indicates that maritime cities were burdened with the tax payments of inland municipalities and *vice versa*. This caused the high costs of transportation of the *species* ('... ut plus haberet dispendii translatio quam devotionis inlatio').

<sup>24</sup> In addition *cura exactorum* was also entrusted to members of the local *curiae* (cf. CTh. 12.6.22).

<sup>25</sup> JONES, *The Later Roman Empire* (cit n. 5), p. 459. The levying of the tax by the *opinator* directly from the taxpayer was prohibited in 401 AD because of the frequent abuses (CTh.

officials under the control of *comes sacrarum largitionum* often violated the sphere of competences of the *exactores* subordinated to the governors of the provinces and the prefecture.<sup>26</sup>

The problems were intensified by the high level of corruption of imperial administration, embracing all its levels – both the military (*militia armata*) and civilian (*militia cohortalis*). Intricate procedures of tax base calculation (e.g. in the case of land tax the amount was depended on acreage and class of soil) were creating many occasions for abuses. So it was also at the moment of collection of the taxes *in speciebus* as a result of the usage of false measures and weights. In addition, the losses were caused by dishonest officials during the transport (*transmissio et pervectio*) of the *species*.<sup>27</sup> The cases of abuse were numerous. The legal language uses the common and clichéd ancient literature topos of ‘greedy tax collectors’ but it must be remembered that it reflects to some extent the corruption of the fiscal machine.<sup>28</sup> Many laws show the fraudulent practice of the officials of the fisc who exacted the ‘surplus’ at the cost of the taxpayer.<sup>29</sup>

Among these practices it was *superexactio*, a fraudulent and unlawful extortion of overestimated tax quota. This term appears in the Theodosian Code only once: in the constitution of emperors Arcadius and Honorius promulgated in 397 AD.

11.7.16: ‘... nihil his sit cum possessore commune, cui non militem, sed exactorem, si sit obnoxius, convenit imminere’). The governors of the provinces were responsible for the enforcement of this rule. If they failed, they were forced to pay the double amount of the sum exacted by the *opinator*. Therefore from this moment *opinatores* acted through the ‘civil’ *exactores*.

<sup>26</sup> See for instance *CTh.* 11.7.17 and *CTh.* 11.7.8 about the unauthorized *exactio* carried by the *iudices maiores* (probably *vicarii*).

<sup>27</sup> See *CTh.* 11.8.3 pr. The law issued in 365 (*CTh.* 11.1.13) for the African diocese obliged the *tabularii* of the annona prefects and prefect of the City to register all levied and transported taxes in kind.

<sup>28</sup> H. ZICHE, ‘Making late Roman taxpayers pay: Imperial government strategies and practice’ [in:] H. A. DRAKE (ed.), *Violence in Late Antiquity. Perceptions and Practices*, Aldershot 2006, pp. 130–133.

<sup>29</sup> For example *CTh.* 11.7.1; *CTh.* 11.1.1: ‘... ideoque omnes pensitare debebunt quae manu nostra delegationibus adscribuntur, nihil amplius exigendi’; *CTh.* 11.1.3 (*in fine*).



*CTh.* 11.8.1 Impp. Arcadius et Honorius AA: Caesario praefecto praetorio. Si quis exactorum superexactionis crimen fuerit confutatus, eandem poenam subeat, quae divi Valentiniani sanctione dudum fuerat definita. Capitis namque periculo posthac cupiditas amovenda est, quae prohibita totiens in isdem sceleribus perseverat. Dat. prid. non. mart. Constantinopoli Caesario et Attico cons.

The law is addressed to the *praefectus praetorio Orientis* Flavius Caesarius.<sup>30</sup> As the prefecture controlled the whole collection of the taxes (except for these spheres which were subordinated to the *comites sacrarum largitionis* and *praefecti annonae*), the constitution was probably legally binding in all provinces of the Roman East. It contained regulations about the sanctions that threatened the tax collectors (*exactores*) who perpetrated the act described as *superexactionis crimen*. Referring to the undefined *sanctio* of Valentinian the emperors added to it the death penalty.<sup>31</sup> The intention of tightening of the punishment was the limitation of the fraudulence of the *exactores*, that was continued, even though such behaviors were previously repeatedly (*totiens*) prohibited by the law. With this sole exception none of the constitutions preserved in the Theodosian Code use the term of *superexactio* (*superexactionis crimen*). It is true that we find it in the later *interpretatio* to the constitution of Honorius and Theodosius II (issued in 412 AD) on the abuses caused by the *exactores*,<sup>32</sup> but in the original text the legislator put the word *concussio*.

However, the word *superexactio* appears in several constitutions issued or renewed after the promulgation of the *Theodosian Code*. One of them is the constitution of Theodosius II and Valentinian III issued in 440 AD and contained in the post-Theodosian Novels. The law concerns, among

<sup>30</sup> JONES, MARTINDALE & MORRIS, *The Prosopography* (cit. n. 2), s.v. 'Fl. Caesarius 6', p. 171.

<sup>31</sup> The question of liability for *superexactiones* will be discussed on the next pages.

<sup>32</sup> *CTh.* 11.7.20 (Impp. Honor. et Theodos. aa. Eucharis proconsuli Africae): '... si in concussione possessorum deprehensi fuerint, illico et capitali periculo subiacent ...'. Dat. prod. kal. mart. Ravenna, Honorio IX et Theodos. V. AA. COSS. *Interpretatio*: '... si in dispendia provincialium de superexactionis crimine convinci potuerint, et capitali periculo subiacent, et ex eorum facultatibus in quadruplum, quae sunt superexacta, reddantur ...'.

other things, the *praescriptio fori* of the officials in accordance with the *privilegium fori*. Here we find the phrase ‘quive superexactionum vel concussionum involvuntur’, which describe the perpetrators of the *superexactio* trying to evade the responsibility through mentioned prescription.<sup>33</sup> In the *Justinian Code* the word *superexactio* may be found in some interpolated constitutions originally issued in the fourth and at the beginning of the fifth century – the above mentioned *CTh.* 11.8.1 (= *CJ.* 10.20.1.1) and substantially abbreviated *NTh.* 7.2. (= *CJ.* 3.23.2 pr.). In this case the compilers copied the expression routinely. *Superexactio* was also used in the undated constitution of Constantine the Great, perhaps omitted by the compilers of Theodosius II or not preserved in the survived editions of the Theodosian Code. The law was included in the code of Justinian. However it does not relate to the question of taxation and tax abuses, but probably concerns the problem of unlawful overestimation the rent that was paid by *colonus* to the *dominus*.<sup>34</sup> Unfortunately there is little chance to ascertain if this text was preserved in the Justinian Code in its original form. Here, in my opinion, the term *superexactio* most likely is an interpolation. Otherwise we would face the extensive and an incomprehensible time gap between the usage of this word in the early fourth century and its emergence in 397 AD (first use of the word in *CTh.* 11.8.1). Likewise, the word *superexactio* appearing in the constitution of Arcadius and Honorius (*CJ.* 11.50.2.4.) contained in the same title of *Justinian Code* as the above mentioned constitution of Constantine. This law also gives the particular regulations of the problem related to the abuses of *dominus* towards *colonus* with reference to overestimation of the rent, and the term *superexactio* is most certainly used in this view.<sup>35</sup> Here, anyway, the proba-

<sup>33</sup> Nov. Th. 7.2.1. In the following part of text (Nov. Th. 7.2.2) the phrase appears: ‘... eosve qui superexactiones vel concussiones perpetrassent firmentur ...’ The interpolated law was included in the Justinian Code (*CJ.* 3.23.2) with the paraphrase: ‘... eos etiam, qui superexactiones vel concussiones perpetrassent firmentur ...’.

<sup>34</sup> *CJ.* 11.50.1. The addressee of this law, Maximus, was in charge of *vicarius Orientis* in 325 AD (*PLRE*, Valerius Maximus 49, p. 590, see also R. MACMULLEN, ‘Tax-pressure in the Roman empire’, *Latomus* 46.4 (1987), p. 747; D. P. KEHOE, *Law and the Rural Economy in the Roman Empire*, Michigan 2007, p. 132 n. 2 and the literature cited there.

<sup>35</sup> KEHOE, *Law and the Rural Economy* (cit. n. 34), p. 185.

bility of interpolation is lesser; given the fact that '*superexactio*' was used by the same emperors in *CTh* 11.8.1. In the *Code of Justinian* we also find an interesting constitution of Constantine the Great (*Cj.* 12.57.1), which is interpolated form of the original text preserved in the Theodosian Code (*CTh.* 8.4.2).<sup>36</sup> According to its provisions the abuses of all<sup>37</sup> *stationarii* were prohibited, including extortions.<sup>38</sup> The expression *extorquere* used in *CTh.* 8.4.2 was replaced in the Justinian Code by *superexactio*. It seems that this is the sole certain use of the *superexactio* by the Justinian's compilers as an interpolation. The short overview of the legal sources gives the evident conclusion that the presence of this term is rather small.

So the question must be asked about the basic difference between the meaning of *superexactio* and the meaning of other words which were used by the late Roman lawyers to describe the extortions and abuses of fiscal officers.

Etymological meaning of the word *superexactio* is connected with the act of collection of dues in excessive amount.<sup>39</sup> Sebastian Schmidt-Hof-

<sup>36</sup> *Cj.* 12.57.1: 'Omnes stationarii neque superexactionem audeant neque carcerem habeant, neve quis personam licet pro manifesto crimine apud se habeat in custodia, sciens quod, si quid tale fuerit commissum, capite puniendus est'. *CTh.* 8.4.2 (Imp. Constantinus A. edicto suo ad Afros): 'Stationariis primipilariis, quorum manifesta sunt loca, coram mandatum est, ut, si extra modum aliquid extorserint, sciant se capite puniendos: praeterea ne carcerem habeant neve quis personam pro manifesto crimine apud se habeat in custodia neve quis amplius quam duos Agasones ex provincia secum habeat vel de Numidia sibi adiungat neve ex aliis provinciis agasonem habeat vel qui alicuius iam stationarii minister fuit proposita'. VI Id. Mai. Karthagine Constantino A. IIII et Licinio IIII consss.

<sup>37</sup> Before interpolation the restrictions concerned only the officers (*primipili*).

<sup>38</sup> *Stationarii* kept the public order outside the cities. They were deployed at the outposts (*stationes*) located along the main roads. Their main role was to fight against banditry. The extortions mentioned in the constitution had to do with the fact that the *stationarii* also collected the local tolls, fees and charges (*vectigalia, portoria*) – *CTh.* 4.13.2–3 (321). See also C. DUPONT, *Le droit criminel dans les constitutions de Constantin. Les infractions*, Lille 1955, p. 89.

<sup>39</sup> *Super, supra* means: 'above, more than, to a higher amount', cf. Festus, s.v. 'super' [L 402]: 'sed per se super significat quidem supra, ut cum dicimus: super illum cedit'. P. G. W. GLARE (ed.), *Oxford Latin Dictionary*, Oxford 2010, s.v. 'supra', p. 1885. In the late Roman constitutions *exactio* is a general term used to denote 'the tax levy'. It derives from the

ner states that this word appears in the imperial law only in reference to the various kinds of taxes and the levy.<sup>40</sup> But the imperial constitutions on *exactiones* use another conceptually similar expression and phrases to denote the abuses of tax collectors: *ultra debitum elicere*,<sup>41</sup> *extorquere*,<sup>42</sup> *exculpere*, *exigere*, *depraedare* and *concussio*.<sup>43</sup> While *superexactio* or *ultra debitum elicere* are doubtless associated mainly with the execution of the dues (debts), the rest of expressions may be applicable to the facts and conducts connected with the general corruption of the officials and *apparitores* (extortion of the bribes, illegal confiscation of the goods, judicial corruption etc.).<sup>44</sup> Had therefore the term *superexactio* some special meaning in the late Roman legal language of the fiscal law? As explicit term it

word *exigere*: the execution of the debt from the private debtor (*exigere debitorem*) or collection of the dues from the taxpayer (*vectigalia exigere, exactio tributorum*); GLARE (ed.), *op. cit.*, s.v. 'exigo', p. 642; cf. also A. BERGER, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, s.v. 'exactio', p. 458.

<sup>40</sup> S. SCHMIDT-HOFNER, *Reagieren und Gestalten. Der Regierungsstil des spätrömischen Kaisers am Beispiel der Gesetzgebung Valentinians I*, München 2008, p. 50 n. 46. It seems that the only exception are two above mentioned constitutions C<sup>J</sup>. 11.50 1–2, but the question of interpolation is uncertain.

<sup>41</sup> C<sup>Th</sup>. 11.8.2. This phrase in fact is a synonym of *superexactio*. According to Gothofredus *ultra debitum* = *ultra tributi modum* (*Codex Theodosianus cum perpetuis commentariis Iacobi Gothofredi*, Lipsiae 1740, p. 90).

<sup>42</sup> The constitution of Constantine the Great quoted above (C<sup>Th</sup>. 8.4.2 = C<sup>J</sup>. 12.57.1).

<sup>43</sup> C<sup>Th</sup>. 11.1.1 (315): 'nihil amplius exigendi'; C<sup>Th</sup>. 11.7.1 (315): 'quam quidem exactionem sine omni fieri concussione oportet'; C<sup>Th</sup>. 11.1.3 (337): 'an exactores ultra quam oportuit de fortunis provincialium aliquid exculpere voluerunt'; C<sup>Th</sup>. 8.10.3 (400): 'quotiens compulsor arguitur in depraedatione convictus'; C<sup>Th</sup>. 11.1.32 (412): 'si depraedator fraudium pareat'; C<sup>Th</sup>. 11.7.20 (412): 'si in concussione possessorum deprehensi fuerint'; C<sup>Th</sup>. 7.4.12 (364) describes the undue quotes of *annona militaris* as *superstatutum*.

<sup>44</sup> In this meaning *concussio* appears in the laws: of Constantine the Great against the ubiquitous bribery of the state representatives (C<sup>Th</sup>. 1.16.7, 331); of Arcadius and Honorius on the abuses of *agentes in rebus* (C<sup>Th</sup>. 6.29.8, 395); of Honorius and Theodosius II on abuses with reference to the supervising the vessels of merchants (C<sup>Th</sup>. 7.16.3 [420]) and many others targeted at the greedy and corrupted officials (eg. C<sup>Th</sup>. 9.27.6–7; 13.5.9; 14.3.22). Using the word *exculpere* Valentinian and Valens prohibited the *duces* to extort the *sportulae* above the customary level: 'nihilque amplius duces sportulae sollemnibus praetextu conentur exculpere' (C<sup>Th</sup>. 8.4.9, 368).

appears only once – in the law of Arcadius and Honorius promulgated in 397 AD (*CTh.* 11.8.1). It is remarkable that it is described as *crimen superexactionis*. Another constitution of these emperors that was contained in the Code of Justinian (*CJ.* 11.50.2.4) is not trustworthy. It is uncertain that the word of *superexactio* is original or interpolated. Again, Honorius and Arcadius in the constitution promulgated in 400 AD against the abuses of *exactores* omitted any mention of *superexactio/superexactionis crimen* and used the phrase previously mentioned: *ultra debitum elicere*. In the law of Honorius and Theodosius issued in 412 AD (*CTh.* 11.7.20) the wrongdoing of *exactor* is described as *concussio*.<sup>45</sup> In the law of Theodosius II and Valentinian III dated 440 AD the phrase *superexactio vel concussio* is used twice. On the other hand, there is no mention of the word of *superexactio* in the legal sources before 397 AD.<sup>46</sup> In the *Code of Justinian*, however, it appears in the texts of the compiled constitutions<sup>47</sup> or, in some cases, it replaced the original words used previously.<sup>48</sup> This shows the lack of consistent application of the *superexactio* as a rigid term, at least in the fourth and fifth century. Perhaps the intention of Arcadius and Honorius was to distinguish the abuses connected with the collection of taxes from the others. It is doubtful that those emperors tried to establish some new category of the crime (*crimen superexactionis*), limited only to the extortions of the ‘tax surplus’ and more specialized than *crimen concussionis*. The *superexactio crimen* was rather a synonym of the *concussio* (*superexactio vel concussio*).<sup>49</sup> Therefore, the information about the responsibility of the tax collectors for the *superexactiones* should be traced in the constitutions, in which the facts (*ultra debitum elicere*) are described by the words: *concussio*, *exigere* or *extorquere*.

<sup>45</sup> As already mentioned, the term of *superexactio* appears in the later *interpretatio* of this constitution.

<sup>46</sup> The use of word of *superexactio* in the law of Constantine the Great (*CJ.* 11.50.1) is in my opinion the interpolation (see above).

<sup>47</sup> *CJ.* 10.20.1 (= *CTh.* 11.8.1); *CJ.* 3.23.2 pr (= *NTh.* 7.2); probably *CJ.* 11.50.2.4.

<sup>48</sup> *CJ.* 12.57.1 (= *CTh.* 8.4.2), most probably *CJ.* 11.50.1.

<sup>49</sup> Cf. C. VENTURINI, ‘Concussione e corruzione: origine romanistica di una problematica attuale’ [in:] *Studi in onore di Arnaldo Biscardi* VI, Milano 1987, p. 136.

The earliest constitution about the responsibility of *exactores* preserved in the Theodosian Code was promulgated in 315 AD by Constantine the Great. The addressee, Aelianus, was the proconsul of Africa.<sup>50</sup> According to its provisions the tax levy should be carried out without any extortion (*sine concussione*). If any person should complain that the tax collector unduly extorted the payment and if he should be able to prove this fact, such tax collector shall face the severe sentence.<sup>51</sup> The phrase *severa sententia* gives little information about the nature of the punishment. However, it is not sure that this meant the death penalty (*poena capitis*).<sup>52</sup> On the other hand, the *stationarius*, who extorted the unduly payment on the occasion of the collecting of the *vectigal*, was sentenced to death (*CTh.* 8.4.2). It may be easily explained by the differences in the social status of the humble soldiers and the officials mentioned in the *CTh.* 11.7.1.

A half century before in their constitution issued in 365 AD<sup>53</sup> the emperors Valentinian and Valens ordered that the tax collector guilty of *superexactio* should restitute the fourfold of the extorted sum (*quadruplum*).<sup>54</sup> In addition the same (*similis*) penalty threatened the governors of

<sup>50</sup> *CTh.* 11.7.1. Constantinus A. ad Aelianum proconsulem Africae: 'Post alia: ducenarii et centenarii sive sexagenarii non prius debent aliquem ex debitoribus convenire, quam a tabulario civitatis nominatim breves accipiant debitorum. Quam quidem exactionem sine omni fieri concussione oportet ita ut, si quis in iudicio questus, quod indebite exactus est vel aliquam inquietudinem sustinuit, hoc ipsum probare potuerit, severa in exactores sententia proferatur'. Dat. Kal. Nov. Treviris Constantino A. IIII et Licinio IIII cons.

<sup>51</sup> See also *CTh.* 8.10.1. The obscure *severitas* was imposed on the officials if they were found guilty of *concussio*.

<sup>52</sup> The law of Constantine issued in 314 AD (*CTh.* 9.40.1) indicates the clear distinction between *sententia severa* and *sententia capitalis*. C. DUPONT claims, in contrast to M. BRASIELLO, who treats both phrases as synonyms, that the phrase of *severa sententia* may describe the heavy penalties other than death (for instance *deportatio*). C. DUPONT, *Le droit criminel dans les constitutions de Constantin. Les peines*, Lille 1955, p. 25.

<sup>53</sup> *CTh.* 11.16.11. This law cancelled the *munera extraordinaria* in the eastern provinces of the Empire. See S. GIGLIO, *Il tardo impero d'Occidente e il suo senato*, Napoli 1990, p. 107.

<sup>54</sup> *CTh.* 11.16.11: 'ut, si quis usurpatoria temeritate amplius aliquid fuerit conatus exigere, obnoxius quadrupli repetitione teneatur'.

the provinces and the members of their *officium*<sup>55</sup> if committing crime was the result of their favoritism<sup>56</sup> or negligence.

The death penalty for the *superexactio* was enacted in the above mentioned constitution of Arcadius and Honorius (*CTh.* 11.8.1, 397). From this moment (*posthac*) it complemented the upheld sanction of Valentinian and Valens. In 412 AD Eucharius, Proconsul of Africa, received the already mentioned law issued by Honorius and Theodosius 11 (*CTh.* 11.7.20) They stated that the tax-collector guilty of *concussio* (in *interpretatio: crimen superexactionis*) should fear of the capital punishment. In addition the penalty of fourfold of the exacted sum (*poena quadrupli*) shall be imposed. The *quadruplum* was exacted from the *patrimonium* of the perpetrator and was used in order to repay the losses of the harmed subjects.<sup>57</sup> The responsibility of the *iudices odrinari* was also upheld – they were compelled to pay thirty *libra* of gold. These two constitutions issued in 397 AD (for the provinces in the East) and in 412 AD (for the proconsular Africa in the West) show that the scope of liability for the *superexactiones* was uniform. In the reign of Justinian the penalty of *quadruplum* was moderated to the form of *duplum* (*CJ.* 10.20.1).



Finally, it is worth to note/noting the order of the title *De superexactionibus* (*CTh.* 11.8). It is composed of three constitutions that regulate res-

<sup>55</sup> More information about the collective responsibility of the *praeses provinciae* and his *officium* in: K. ROSEN, 'Iudex und officium. Kollektivstrafe, Kontrolle und Effizienz in der spätantiken Provinzialverwaltung', *Ancient Society* 21(1990), pp. 273–292.

<sup>56</sup> As for the pejorative overtone of *gratia*, *gratiosus* in the late imperial constitutions see J. N. L. MYRES, 'Pelagius and the end of Roman rule in Britain', *The Journal of Roman Studies* 50 (1960), pp. 25–26.

<sup>57</sup> Cf. *CTh.* 11.8.2 Impp. Arcad(ius) et Honor(ius) AA. Apollodoro proconsuli Africae: 'Quidquid ultra debitum elicatum fuerat, eruat. Quod provinciae restitui protinus oportebit'. Dat. prid. Id. Mart. Mediolano Stilichone et Aureliano cons. See also its interpolated version contained in the *Justinian Code* (*CJ.* 10.20.1 *pr.*: 'Quidquid ultra debitum elicatum fuerit a curialibus vel cohortalibus vel aliis exactoribus, in duplum eruat, quod provincialibus restitui protinus oportebit.').

pectively the question of liability of the wrongdoer (*CTh.* 11.8.1), the question of restitution of the extorted sum (*CTh.* 11.8.2), and the question of the procedure (*CTh.* 11.8.3). This may indicate that the compilers of the *Theodosian Code* intended to highlight the problem and to create its legal framework. However, as it was mentioned in the text above, the insufficient number of the sources and the lack of consistency in usage of the term *superexactio* do not provide enough grounds to define *crimen superexactionis* as a separate crime.

*Adam Świętoń*

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Chair of Common History of Law,  
Roman Law and Comparative Law  
Faculty of Law and Administration  
University of Warmia and Mazury  
Al. Warszawska 98  
10-702 Olsztyn  
POLAND

e-mail: [adamswieton75@gmail.com](mailto:adamswieton75@gmail.com)