**Riding The Horse: Punishment of Forgery in the Theodosian Code**

While many of the punishments used throughout Late Antiquity and into the Middle Ages are today considered cruel and unusual, their contemporary use and sanction followed specific guidelines expressed in law codes which governed the process of punishment. Functioning as legislative timelines, law codes also convey the issues a society deemed punishable, and to what extent; one such document is the *Codex Theodosianus*, or *Theodosian Code*. In 369 AD, the emperors Valens and Valentinian I received an anonymous petition requesting the organization of the law. According to the petitioner, legal confusion existed throughout the Roman state that was generated by “wicked men.” Organization of the law codes did not occur for another sixty years until the creation of the first code commission in March 429 under Emperor Theodosius II.[[1]](#footnote-1) Prior to the commissioning of the code, a codification existed in the Diocletianic compilations of Gregorian and Hermogenian laws dating from the 290s.[[2]](#footnote-2) The *Theodosian Code* compiled Roman laws issued by the emperors from 313 AD, after Constantine consolidated power in the Western Empire, until 438 AD, when the code was completed.[[3]](#footnote-3)

         The *Theodosian Code,* also referenced as CT, covers over a century of Roman legislation, spanning the rule of numerous emperors. Among the various punishments which appear in the code, this paper will specifically discuss the torture horse. This torture method is often associated with the Spanish Inquisition and may be more popularly known as the Spanish donkey, or wooden horse. However, this method of punishment was in use long before the late fifteenth century.

The ‘torture horse’ was also known as e*quuleus*, Latin for ‘little horse’. According to Brian Innes, “Its name implies that it may have been a frame rather like a vaulting-horse, over which the victim was stretched by weights.”[[4]](#footnote-4) In fact, the weight of the body alone, positioned naked over a triangular beam, would cause immense pain after only a few moments. Genital discomfort and hip displacement often occurred once weights were added. In only one of the three instances mentioned in the *Theodosian Code,* in which the torture horse was approved as punishment, was this brutality used in isolation. The other two occurrences called for additional punishments such as iron claws or further lacerations.

         The choice of torture implements for specific crimes was not arbitrary. The three cases in which the punishment is mentioned allude to cases of forgery, specifically forgery against the Roman state. The first, usurpation of step bread required forgery of official documents and corrupted the ration system (CT 14, 17; 6). The second, fraudulent accounting, directly affected the finances of the government (CT 8, 1; 4). Witchcraft, the third case in which the torture horse was used as punishment, may initially seem to be an outlier alongside the two cases which discuss forgery (CT 9, 16; 6). However, further discussion concerning the history of witchcraft, soothsaying, and sorcery in the Roman Empire will reveal its connections to forgery. This paper asks if crimes were categorized and disciplined by government sanctioned forms of punishment that were regulated by structures found in law codes, using the torture horse as it is found in the *Theodosian Code* as an example.

         Laws concerning the care and sale of horses within the empire will be briefly discussed to gain an understanding of their place in Roman society. These laws, analyzed in conjunction with the arguments of scholars, such as Jill Harries and Ruth Mellinkoff, help to explain why the torture horse was used to punish the crime of forgery.

Horses were highly prized in Roman society, especially those bred in the stables of Pamatius in Cappadocia and Hermogenes in Ponus, both located in modern day Turkey. Horses from outside the empire, specifically Spain and Greece, were considered inferior and potentially cursed. A Roman proverb conveys the misfortunes which befell all who possessed a specific Greek horse originally bred for the clerk, Seius.[[5]](#footnote-5) The clerk, as well as Dolabella, Gaius Cassius, and Mark Antony were all said to have owned the horse and met gruesome ends shortly after taking possession of it. A tablet excavated in 1984 from a first or second century tomb in the Villa Doria Pamphili, contains Greek and Latin inscriptions cursing the horses and drivers of eight teams.[[6]](#footnote-6) It is unknown why the tablet was included in the grave goods, but the object, as well as the proverb, alludes to the possibility that cursed horses were not uncommon in Roman society.

         Generals rode fine horses into battle and emperors rode in chariots pulled by horses during the ceremony of adventus, the arrival of emperors to a town.[[7]](#footnote-7) Sabine MacCormack mentions depictions of horses relating to the ceremony in her article “Change and Continuity in Late Antiquity: The Ceremony of “Adventus.” A medallion commemorating Constantine’s arrival in Milan depicts him mounted on a horse led by the goddess Victoria, victory, holding a wreath and followed by the goddess Roma, virtus.[[8]](#footnote-8) This depiction reflects the prestige and valor of the emperor, a symbol which the horse was instrumental in portraying. The privilege of possessing a horse was bestowed upon senators, dignitaries, administrators, army veterans, and decurions.[[9]](#footnote-9) For a member of the elite class, who was allowed to own horses, having the privilege removed and being forced to ‘ride’ the torture horse would be both painful and humiliating.

         As the Roman Empire expanded and began governing non-Roman peoples, new techniques of taxation were imposed.[[10]](#footnote-10) Accountants played a crucial role in tracking the empire’s revenue. The *Theodosian Code* contains legislation for civil accountants, military accountants, and judicial assistants, all of whom possessing critical roles in the monetary functioning of the empire. Laws regulating forgery, extortion and embezzlement can be found throughout the law codes. Reforms which produced courts handling such crimes can be attributed to second century B.C. Roman general, Sulla.[[11]](#footnote-11) “*Crimen laesae maiestatis,* Latin for the diminishing of the majesty of the *populus romanus* – the emperor”[[12]](#footnote-12), included the embezzlement of money from the empire. According to Clyde Pharr, a translator of the *Theodosian Code*, embezzlement and corruption were rampant within Roman bureaucracy. CT 8.1.4 mentions the “rapacious and fraudulent conduct of the accountants” as well as the laws that “We formerly sanctioned and as We now sanction again.”[[13]](#footnote-13) Repeated sanctions against fraudulent accountants and other bureaucratic authorities did little to stem the crimes. Pharr notes, that many brave threats were made to end the corruption; however, the guilty generally evaded punishment due to the power held by great landholders.[[14]](#footnote-14)

Concerns with government funds extended to the payment of soldiers. CT 7.4.28, created in 406, states that excessive funds would no longer be sent to the military accountants to disseminate to soldiers; all requests for compensation needed to be made in person in order to keep funds away from fraudulent accountants.[[15]](#footnote-15) A considerable list of laws exist concerning accounting fraud within the *Theodosian Code*. Indeed, CT 8.1 contains seventeen edicts alone regarding “Civil Accountants, Military Accountants, Bureau Clerks, and Secretaries (*De Numerariis, Actuariis, Scriniariis, et Exceptoribus*).”[[16]](#footnote-16) In an attempt to enforce decrees and end the corruption within the empire, stripping accountants of their status in society and submitting them to a torture both painful and humiliating may have been a desperate effort that proved ineffective. CT 8.1.4, states that those found guilty of fraud, be they landowner or slave, “shall be made subject to the ignoble status,”[[17]](#footnote-17) placing them in the class of plebeian and susceptible to torture. After they had been subjected to the torture horse “and to lacerations”, they would not be allowed to perform the duties of an accountant for at least two years.[[18]](#footnote-18)

Harries mentions the limited time accountants were allowed to hold their positions in order for them to be held accountable for any wrongdoings which may have occurred during their tenure.[[19]](#footnote-19) Previous law codes may have stated the restricted time an accountant could hold tenure which substantiates her claims of accountability after tenure has ended. However, CT 8.1.4 makes specific declaration that any accountants who committed fraudulent acts would be removed from their status in order that they may be held accountable at the time of the offense.

The second case is that of “step bread,” which is literally bread sold from the step. Bread was the staple foodstuff of the Roman Empire, so laws sought to control those who produced it. Susan R. Holman discusses the near enslavement of bakers and their children to the state, forbidding the changing of occupation and enforcing marriages to other bakers.[[20]](#footnote-20) They were not allowed to sell or distribute the bread independently, but instead distributed it from *gradus*, “steps at various points throughout the city.”[[21]](#footnote-21) CT 14.17.3 states that “no man shall have conferred upon him the favor, and no man shall have incurred on him the outrage”[[22]](#footnote-22) of receiving his rations from the baker’s storefront. The code does not express if it would be considered an outrage to those receiving bread or if officials would find this outrageous.

Recipients of step bread were required to be on lists to receive their neighborhood’s *gradus*.[[23]](#footnote-23) The *Theodosian Code* contains edicts pointing to the bread being distributed according to household size, and was also placed on public steps in relation to ‘grade’.[[24]](#footnote-24) The transfer of bread from one step to another was expressly prohibited by edict CT 14.17.2. This edict mentions the use of the torture horse in accordance with the illegal procurement of step bread. “If any overseer, procurator, or slave of a Senator should ever obtain step bread by usurpation, through the favoritism, venality, or even the consent of the scribe, he shall be subjected to the punishment of the torture horse.”[[25]](#footnote-25) Overseers, procurators and senators were wealthy citizens; the slave of the senator’s household is here considered an extension of the household. As such, they were not viable candidates for receiving step bread since other foodstuffs was available to them. It was necessary to possess a bronze ticket, described in CT 14.17.5, a type of ration card stating the amount of step bread the holder could receive. If members of wealthier households wished to procure step bread, they would have to obtain a ticket or the bread through illegal means. If a scribe forged a ticket for a member of these groups, “the sword, as an avenger of the law, shall be employed against the scribes who are proved to have perpetrated this forbidden crime.”[[26]](#footnote-26) If the senator, who owned the slave, was aware of the plot to receive step bread, his house would become the property of the fisc. However, if the senator was unaware of the crime, the slave would be placed in chains and would serve the baker.

Rations could be given through hereditary inheritance, or sold in an official transaction. Bread rations were considered a gift “granted by the liberality of the sainted Constantine,”[[27]](#footnote-27) and were the property of each individual. Those who chose to violate the ration system, therefore, were not only acting against the empire’s legislation, but also the people. This supports the argument for, what O.F. Robinson called “diminishing the majesty of the *populus romanus*.”[[28]](#footnote-28)

The final case is witchcraft, which may appear to be an outlier. Witchcraft, soothsaying, and sorcery existed in tandem with faiths and religions well into the early stages of Christianity.[[29]](#footnote-29) Oracles and fortune tellers would be turned to for advice prior to battles or to assist in imperial legislation. However, acceptance of witchcraft of any kind began to decline in the late third and early fourth centuries. Joao de Pina-Cabral, in his chapter, “The gods of the Gentiles are demons,” in *On Histories,* considers the possibility that the decline in the toleration of witchcraft is related directly to the rise of Christianity. Since the existence of numerous beliefs is essentially a plurality of truth, this would undermine the infallibility of the new faith.[[30]](#footnote-30) Initially, the church did not discount the existence of pagan gods but claimed the power held by the pagan gods was destructive and demonic.[[31]](#footnote-31) The demonization of pagan practices created a ‘phantasmagoric anti-order’[[32]](#footnote-32) that could not exist harmoniously with the new ‘true’ order upon which Christianity was then constructed. With the transition to Christianity, any beliefs or practices related to the old divinities were considered superstition.

Soothsayers and practitioners of sorcery were able to defame the emperors with unsupported accusations; a punishment was therefore necessary to fit the crime. In the third century, free men who made any remarks against another’s reputation were subject to flogging.[[33]](#footnote-33) Other groups specifically persecuted in the code were those who practice *mathematicus,* Latin for astrology or numerology. In his *Odes XI* to Leuconoe, Horace asks that she *nec Babylonios temptaris numeros*, not be tempted by Babylonian numbers. Numbers is a reference to tarot cards and those who claimed they were capable of telling the future. Telling the future or untruths created an issue of imperial security and was deemed an act of forgery by emperors Valens and Valentinian I. Robinson wrote that the emperors, “in the fourth century, ordered defamatory writings to be destroyed and their contents kept secret, on pain of capital punishment, as if the finder, by publication, became the author.”[[34]](#footnote-34) This deemed fortune tellers and soothsayers as forgers because they were “authors” of a future that could not be proven.

In 356, CT 9.16.6 was passed which subjected *magi*, those who practiced sorcery, to the torture horse. Law codes generally required that a person of high rank be stripped of their noble status, and demoted to the rank of plebian, in order to be subjected to torture. However, CT 9.16.6 specifically notes that rank does not exempt a practitioner of witchcraft from torture, and a high-ranking official would be tortured as such. Further adding to the seriousness with which sorcery was considered, the offender was “delivered to the torture horse, iron claws shall tear his sides, and he shall suffer punishment worthy of his crime.”(CT 238).

Jill Harries recounts an incident which occurred during the reign of Valentinian I. In 369, he received a report that senators were “engaged in murderous and magical practices.”[[35]](#footnote-35) Valentinian I, enraged, issued a ruling which equaled these crimes to treason, making all those suspected of the act liable to torture. This decree placed practitioners of sorcery within the same realm as those who committed treason, subjecting them to capital punishment, death. As Harries notes, “This was a serious violation of the civil rights of those who counted most in society, the senatorial elite, and the result was a bloodbath in Rome.”[[36]](#footnote-36) A delegation approached Valentinian, requesting that the punishment fit the crime and, upon realizing his wrongdoing, rescinded the decree, reinstating the previous edict of using the torture horse as punishment. This story is not only a vignette into the understanding of how disliked the idea of senators engaged in magical practices would be to the emperor, but it also reinforces the acceptance there had to be for ordained punishments.

Harries discusses the allowance for amnesties at certain times of the year due to the interaction of the empire with Christianity. She states, “however, the imperial indulgence did not extend to more serious crimes: no remission was granted to those guilty of treason, homicide, sorcery and magic, fornication and adultery, sacrilege, violation of tombs, abduction and the counterfeiting of money.”[[37]](#footnote-37) Inclusion of the activities of accountants in the same vein as adulterers and sorcerers may have been an attempt by the emperors to demean the status of the men. Humiliation, as well as pain, may have been the ultimate goal of the use of the torture horse.

         Scholar Ruth Mellinkoff, in her article “Riding Backwards: Theme of Humiliation and Symbol of Evil,” discusses instances where an offender was forced to ride an animal backwards, occasionally to the gallows, as a form of public humiliation. Mellinkoff records occurrences from the first century B.C.E. and the donkey ride of adulterer Nicolaus of Damascus,[[38]](#footnote-38) to the present day Holi festival in India where local bullies are made to ride donkeys backwards.[[39]](#footnote-39) The relevance of Mellinkoff’s argument to the case of the torture horse is the humiliation associated with riding incorrectly upon a horse or a simulation thereof. As previously discussed, riding and owning a horse was a privilege only elite members of society were afforded. Hence, using this symbol of high status as an emblem of punishment added layers of humiliation and public torment.

Analysis of the *Theodosian Code* and sanctioned punishments provide examples of legislation that reveal a deeper meaning within Roman society. The three cases punishable by the torture horse are all instances of forgery which reflected in some way against the Roman state. This paper serves as one example of a broader area of research deserving of attention. Further study of contemporary legislation will continue to illuminate the relationship between law codes and prescribed forms of punishment.

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1. Jill Harries and Ian Wood, *The Theodosian Code* (Ithaca, New York: Cornell University Press, 1993), 1. [↑](#footnote-ref-1)
2. Harries and Wood, 1. [↑](#footnote-ref-2)
3. Clyde Pharr, trans., *The Theodosian Code and Novels and the Sirmondian Constitutions* (London: Oxford University Press, 1952), xvii. [↑](#footnote-ref-3)
4. Brian Innes, *The History of Torture* (London: Brown Books, 1998), 21. [↑](#footnote-ref-4)
5. David Matz, *Daily Life of the Ancient Romans* (Connecticut: Greenwood Publishing Group, 2002), 70. [↑](#footnote-ref-5)
6. David Jordan, “A Curse on Charioteers and Horses at Rome,” *Zeitschrift Fur Papyrologie Und Epigraphik* 141 (2002): 141. The article acknowledges an earlier translation by Gabriella Bevilacqua, and offers an interpretation. [↑](#footnote-ref-6)
7. Sabine MacCormack, “Change and Continuity in Late Antiquity: The Ceremony of ‘Adventus,’” *Historia: Zeitschrift Fur Alter Geschichte* 21, no. 4 (Qtr 1972): 727. [↑](#footnote-ref-7)
8. MacCormack, 729. [↑](#footnote-ref-8)
9. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions*, 248. [↑](#footnote-ref-9)
10. Margaret Levi, “Revenue Production in Republican Rome,” in *Of Rule and Revenue* (California: University of California Press, 1989), 71. [↑](#footnote-ref-10)
11. O.F. Robinson, *The Criminal Laws of Ancient Rome* (Maryland: John Hopkins University Press, 1995), 2–3. [↑](#footnote-ref-11)
12. Robinson, 74. [↑](#footnote-ref-12)
13. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions*, 186. [↑](#footnote-ref-13)
14. Pharr, 17. [↑](#footnote-ref-14)
15. Pharr, 162. [↑](#footnote-ref-15)
16. Pharr, 186. [↑](#footnote-ref-16)
17. Pharr, 186. [↑](#footnote-ref-17)
18. Pharr, 187. [↑](#footnote-ref-18)
19. Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: University of Cambridge, 1999), 127. Harries cites CT 8.1.4 as evidence for the restriced time allowed for accountants to hold positions. However, this is stated after the fraudulent accounts have been discovered. Further reading of law codes within the *Theodosian Code* and Roman law uncovers restricted occupancy of their government roles. [↑](#footnote-ref-19)
20. Susan Holman, *The Hungry Are Dying: Beggers and Bishops in Roman Cappadocia* (Oxford: Oxford University Press, 2001), 40. [↑](#footnote-ref-20)
21. Holman, 41. [↑](#footnote-ref-21)
22. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions*, 418. [↑](#footnote-ref-22)
23. Holman, *The Hungry Are Dying: Beggers and Bishops in Roman Cappadocia*, 41. [↑](#footnote-ref-23)
24. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions*, 418. [↑](#footnote-ref-24)
25. Pharr, 418. [↑](#footnote-ref-25)
26. Pharr, 419. [↑](#footnote-ref-26)
27. Pharr, 419. [↑](#footnote-ref-27)
28. Robinson, *The Criminal Laws of Ancient Rome*, 74. [↑](#footnote-ref-28)
29. Raymond Buckland, *Witch Book* (Michigan: Visible Ink Press, 2001), xi. [↑](#footnote-ref-29)
30. Joao de Pina-Cabral, “The Gods of the Gentiles Are Demons: The Problem of Pagan Survivals in European Culture,” in *Other Histories* (Abingdon: Routledge, 1992), 45. [↑](#footnote-ref-30)
31. de Pina-Cabral, 33. [↑](#footnote-ref-31)
32. de Pina-Cabral, 46. [↑](#footnote-ref-32)
33. Robinson, *The Criminal Laws of Ancient Rome*, 51. [↑](#footnote-ref-33)
34. Robinson, 50. [↑](#footnote-ref-34)
35. Harries, *Law and Empire in Late Antiquity*, 40. [↑](#footnote-ref-35)
36. Harries, 40. [↑](#footnote-ref-36)
37. Harries, 151. [↑](#footnote-ref-37)
38. Ruth Mellinkoff, “Riding Backwards: Theme of Humiliation and Symbol of Evil,” *Viator* 4 (1973): 154. [↑](#footnote-ref-38)
39. Mellinkoff, 165. [↑](#footnote-ref-39)