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THE CENSORS' INFLUENCE ON MARRIAGE IN REPUBLICAN ROME

In Republican Rome the family was more than just a socially important institution. It also had an economic and political significance¹. Its head was the *pater familias*, who was responsible for religious worship (*sacra*) in the family, owned its property, and had unlimited power over the rest of the family, those of its members who were free: *patria potestas* over his descendants in the direct line, and *manus* over his wife. He also exercised unlimited power, *dominica potestas*, over his slaves and other persons with a similar status. What the *pater familias* did could have a serious effect on the operations of the state, such as having his sons in its political organisations and military, paying taxes, or even on its *pax deorum* – the maintenance of a balance between the human world and the world of the gods. Hence the family was not left completely beyond state control. The instrument for the state supervision of family affairs was the *regimen morum*, the care the censors exercised over morality².

¹ Cf. J. ZABŁOCKI, *The Image of a Roman Family in 'Noctes Atticae' by Aulus Gellius*, «Pomoerium» 2/1996, p. 36; IDEM, *Rodzina rzymska w świetle 'Noctes Atticae' Aulusa Gelliusa*, [in:] *Rodzina w społeczeństwach antycznych i wczesnym chrześcijaństwie. Literatura, prawo, epigrafika, sztuka*, red. J. Jundziłł, Bydgoszcz 1995, p. 45 ff.

² For *regimen morum* see inter alia A.E. ASTIN, 'Regimen morum,' «JRS» 78/1988, pp. 14-34; E. BALTRUSCH, 'Regimen morum'. *Die Reglamentierung des Privatlebens der Senatoren und Ritter in der römischen Republik und frühen Kaiserzeit*, München 1989; M. HUMM, *Il 'regimen morum' dei censori e le identità dei cittadini*, [in:] 'Homo, caput, persona'. *La costruzione giuridica dell'identità nell'esperienza romana*, a cura

These magistrates could impose a censorial note³ on any citizen they found guilty of moral laxity⁴.

The censorship held an important role in the Republican political and social order. Its foundation is dated to 443 BCE⁵. The censors' chief duty was to conduct the census, a list of all the citizens, which concluded with the making of a sacrifice of purification called the *lustratio*. As time went on censors were entrusted with more duties: the compilation of a list of members of the Senate and of the elite cavalry *centuriae*, as well as *regimen morum*, the duty to see to it that the citizens of Rome observed the customs of the forefathers (*mores maiorum*). The censors had a wide range of legal and administrative powers at their disposal, including the right to lease out state revenues and expenditure to private individuals⁶, and entitlements connected with the care of the city's public places⁷. However, the fundamental problem was a lack of continuity in the magistracy, as censors were appointed at intervals of five years, but their term in office was only eighteen months.

di A. CORBINO, M. HUMBERT, G. NEGRI, Pavia 2010, pp. 283-314; A. TARWACKA, *Prawne aspekty urzędu cenzora w starożytnym Rzymie*, Warszawa 2012, pp. 239-263; N. EL BEHEIRI, *Das 'regimen morum' der Zensoren. Die Konstruktion des römischen Gemeinwesens*, Berlin 2012, p. 14 ff.

³ For a list of the grounds for the imposition of a censor's note, see TH. MOMMSEN, *Römisches Staatsrecht*³, II.1, Graz 1952 (reprint), pp. 377-382. Cf. C.E. JARCKE, *Versuch einer Darstellung des censorischen Strafrechts der Römer: ein Beytrag zur Geschichte des Criminalrechts*, Bonn 1824, pp. 14-45; E. DE RUGGIERO, s.v. *censor*, [in:] *Dizionario epigrafico di antichità romane*, Roma 1900; M. NOWAK, *Die Strafverhängungen der Censoren*, Breslau 1909, pp. 58-71; E. SCHMÄHLING, *Die Sittenaufsicht der Censoren. Ein Beitrag zur Sittengeschichte der römischen Republik*, Stuttgart 1938, passim; M. KURYŁOWICZ, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 1994, p. 194 ff.; A. TARWACKA, *Prawne aspekty...*, pp. 239-241.

⁴ Women were not subject to the censorial note. Cf. A. TARWACKA, *Prawne aspekty...*, pp. 263-269.

⁵ Cf. Liv. 4,8; A. TARWACKA, *Prawne aspekty...*, p. 25 ff.

⁶ Cf. A. TARWACKA, *Prawne aspekty...*, pp. 270-282.

⁷ Cf. A. TARWACKA, *Prawne aspekty...*, pp. 288-306; EADEM, *The Roman Censors as Protectors of Public Places*, «Diritto@Storia» 12/2014, <http://www.dirittoestoria.it/12/tradizione-romana/Tarwacka-Roman-Censors-Protectors-Public-Places.htm>.

Cicero enumerated the powers of the censors in his treatise *De legibus*. Although his subject was a vision of the ideal state, the duties he listed for the various magistracies were generally in line with the realities in Republican Rome:

Cic., *De leg.* 3,7: *'Censoris populi aevitates suboles familias pecuniasque censento, urbis templa vias aquas aerarium vectigalia tuento, populique partis in tribus discribunto, exin pecunias aevitatis ordinis partiunto, equitum peditumque prolem discribunto, caelibes esse prohibento, mores populi regunto, probrum in senatu ne relinquonto'*⁸.

The catalogue of censors' rights was quite broad. It included the drawing up of a census of the people (and their offspring) subdivided into categories according to wealth and property ownership, the *centuriae*, and tribes; the compilation of a list of members of the cavalry *centuriae*; the compilation of a senatorial list; the supervision of morality; and the imposition of censorial notes. Cicero's schedule also mentions a prohibition on persistent celibacy, which the censors were to put into effect. The aim of this paper will be to establish the way the censors carried out this particular duty⁹.

A population census was conducted every five years. This was the censors' main duty from the very foundation of their magistracy. Every male citizen *sui iuris*, in other words every *pater familias*, had to make a declaration involving a series of personal data and information on his material status – his name, social background, age, the number and names of his children, his material assets, especially his real property, and

⁸ *Let the censors take a census of the people, according to age, offspring, family, and property. Let them have the inspection of the temples, the streets, the aqueducts, the rates, and the customs. Let them distribute the citizens, according to their tribes; after that let them divide them with reference to their fortunes, ages, and ranks. Let them keep a register of the families of those of the equestrian and plebeian orders. Let them impose a tax on celibates. Let them guard the morals of the people. Let them permit no scandal in the senate.* (transl. F. Barham).

⁹ Cf. A. TARWACKA, *Cenzorzy jako propagatorzy polityki prorodzinnej w starożytnym Rzymie*, [in:] *Przyszłość rodziny w UE. Doświadczenie różnych rozwiązań prawnych i podstawowe problemy współczesnych rodzin*, Warszawa 2017, pp. 249-270.

his slaves¹⁰. These declarations were made as a *iusiurandum* – a religious oath taken before Jupiter on the grounds of the Roman virtue of *fides*, fidelity in private and public matters¹¹. During a citizen's declaration the censor receiving it or his assistant (a *iurator*)¹² asked questions which the declarer had to answer:

Gell. 4,20,3-6: *Censor agebat de uxoris sollemne iusiurandum; verba erant ita concepta: "Ut tu ex animi tui sententia uxorem habes?" Qui iurabat, cavillator quidam et canicula et nimis ridicularius fuit. Is locum esse sibi ioci dicundi ratus, cum ita, uti mos erat, censor dixisset «ut tu ex animi tui sententia uxorem habes?», «habeo equidem» inquit «uxorem, sed non hercle ex animi mei sententia.» Tum censor eum, quod intempestive lascivisset, in aerarios rettulit causamque hanc ioci scurrilis apud se dicti subscripsit¹³.*

One of the questions citizens had to answer concerned marriage. Since one of the conditions of a *iustum matrimonium* was *affectio maritalis*, a firm resolve to persist in the union, perhaps the purpose of the formula *Ut tu ex animi tui sententia uxorem habes?* was to determine whether the man declared his resolution to remain married. The anecdote shows that this particular man was not happy with his wife and marriage. He must have thought that he was being witty, which shows that jokes about marriage and misogynistic attitudes were not deemed unacceptable. The censors' severe reaction was due to the seriousness of the situation. The *iusiurandum* was a religious act, to be made solemnly and

¹⁰ Cf. *Tab. Her.* 144-148; D. 50,15,4 pr. (Ulp. 3 *de cens.*); A. TARWACKA, *Prawne aspekty...*, pp. 173-175.

¹¹ Cf. Cic., *De off.* 3,104.

¹² A. TARWACKA, *Prawne aspekty...*, p. 103 ff.

¹³ *The censor was administering the usual oath regarding wives, which was worded as follows: "Have you, to the best of your knowledge and belief, a wife?" The man who was to take the oath was a jester, a sarcastic dog, and too much given to buffoonery. Thinking that he had a chance to crack a joke, when the censor asked him, as was customary, "Have you, to the best of your knowledge and belief, a wife?" he replied: "I indeed have a wife, but not, by Heaven! such a one as I could desire." Then the censor reduced him to a commoner for his untimely quip, and added that the reason for his action was a scurrilous joke made in his presence.* (transl. J.C. Rolfe).

respectfully. Moreover, the magistrates could have taken the joke as an attack on their dignity. Hence they punished the joker by administering a censorial note and degrading him to a lower social status. His relegation to the *aerarii* meant that he was put on the list of individuals not exempt from paying the *tributum* tax (unlike the Romans resident in Italy). Another noteworthy point is the fact that the censor recorded the reason why he had imposed a censorial note. This entry in the records, made next to the offender's name, was known as the *subscriptio censoria*¹⁴.

Another part of Aulus Gellius' *Attic Nights* shows that there was another question concerning marriage the censors asked during the census. This quote comes from the passage on Spurius Carvilius Ruga's famous divorce case:

Gell. 4,3,2: ...*Spurius Carvilius, cui Ruga cognomentum fuit, vir nobilis, divortium cum uxore fecit, quia liberi ex ea corporis vitio non gignerentur, anno urbis conditae quingentesimo vicesimo tertio M. Atilio P. Valerio consulibus. Atque is Carvilius traditur uxorem, quam dimisit, egregie dilexisse carissimamque morum eius gratia habuisse, set iurisiurandi religionem animo atque amori praevertisse, quod iurare a censoribus coactus erat uxorem se liberum quaerendum gratia habiturum*¹⁵.

Carvilius performed a *repudium* (unilateral divorce)¹⁶. Gellius dated the event to the consulate of M. Atilius and P. Valerius, in other words

¹⁴ Cf. Ascon. 84 C.

¹⁵ ...*Spurius Carvilius, who was surnamed Ruga, a man of rank, put away his wife because, owing to the some physical defect, no children were born from her; and that this happened in the five hundred and twenty-third year after the founding of the city, in the consulship of Marcus Atilius and Publius Valerius. And it is reported that this Carvilius dearly loved the wife whom he divorced, and held her in strong affection because of her character, but that above his devotion and his love he set his regard for the oath which the censors had compelled him to take, that he would marry a wife for the purpose of begetting children.* (transl. J.C. Rolfe).

¹⁶ Gellius used the term *divortium*, which meant divorce by bilateral consent (cf. Gai. D. 24,2,2, pr.-1). This discrepancy is due to the fact that the terminology regarding divorce was not used consistently in the source texts. Cf. O. ROBLEDA, *El*

230 BCE¹⁷. Ruga justified the repudiation of his wife on the grounds of her infertility, arguing that he had taken an oath before the censors that he was contracting the marriage in order to have offspring. It will be worthwhile to take a look at the grounds for divorce before I embark on my observations on the oath¹⁸.

At the dawn of the history of Rome, Romulus, its first king, is said to have regulated divorce. He prohibited women from leaving their husbands, and granted men the right to put away their wives only in justified circumstances. The grounds he recognised for divorce were adultery, the woman drinking alcohol, and probably administering poison or having an abortion, or perhaps exchanging her child at birth for another newborn¹⁹. Under Romulus' law on divorce the penalty laid down for its violation was the forfeiture of the man's estate, half of which went to the wife, and the other half was dedicated to Ceres.

By Republican times such severe punishment was no longer meted out. With time²⁰ the censors assumed responsibility for seeing to it that the marriage law was observed. Their powers included punishing recalcitrant divorcees, who could expect penalties such as removal from the Senate²¹. Ruga challenged the censors with a highly problematic

matrimonio en el dercho romano. Esencia, requisitos de validez, efectos, disolubilidad, Roma 1970, p. 258 ff.

¹⁷ Gellius mentioned the case elsewhere: Gell. 17,21,44. Cf. Plut., *Comp. Thes. Rom.* 39b; *Comp. Lyc. Num.* 77c; *Mor.* 267c; 278e; Dion. Hal., 2,25,7; Val. Max. 2,1,4.

¹⁸ Cf. A. WATSON, *The Divorce of Carvilius Ruga*, «TR» 33/1965, pp. 38-50; O. ROBLEDA, *Il divorzio a Roma prima di Constantino*, «ANRW» II.14/1982, pp. 355-365; A. TARWACKA, *Rozwód Carviliusa Rugi – czy naprawdę pierwszy?*, «CPH» 54.1/2002, pp. 301-308; A. JACOBS, *Carvilius Ruga v Uxor: A famous Roman divorce*, «Fundamina» 15.2/2009, pp. 92-111.

¹⁹ Plut., *Rom.* 22 = *leg. reg.*, *Rom.* 9 (FIRA I). Cf. R. FIORI, 'Homo sacer'. *Dinamica politico-costituzionale di una sanzione giuridico-religiosa*, Napoli 1996, p. 236 ff.; J. ZABŁOCKI, 'Si mulier vinum bibit condemnatur', «Prawo Kanoniczne» 32.1-2/1989, pp. 223-232; IDEM, *Illeciti delle donne romane*, «Ius Antiquum» 1(8)/2001, p. 78 ff.

²⁰ Cf. E. PÓLAY, *Das 'regimen morum' des Zensors und die sogenannte Hausgerichtsbarkeit*, [in:] *Studi Volterra*, III, Milano 1971, p. 263 ff.

²¹ In 307/306 BCE the censors removed L. Annius from the Senate for divorcing his wife without having consulted his friends, even though she was a virgin when he married her, which was proof of her good reputation (Val. Max. 2,9,2). It appears that

dilemma: they could either punish him for sending his wife away, and thereby admit that the procreative function of marriage was of secondary importance; or they could waive the penalty, which would mean toleration of divorce on grounds other than those specified by Romulus²². Their choice of the latter option resulted in a substantial change in the law. It opened up the floodgates to divorce for trivial reasons, or even on no grounds at all.

But what was the sense of the *iusiurandum* oath taken during the census, as regards the contracting of marriage for the purpose of breeding progeny? It appears to have been part of a consistent policy the censors pursued for population growth. Yet the immediate aim was not so much to impose a strict rule but rather to draw citizens' attention to the importance of the issue.

This is how we should understand the orations the censors delivered, in which they exhorted their fellow-citizens to wed. Such speeches were delivered at the *contiones*, informal assemblies of the people²³.

a husband had to summon witnesses if he caught his wife in an act which justified divorce. Cf. A. TARWACKA, 'Vidua visas patrem'. *Threats of Divorce in Plautus' Comedies*, «Diritto@Storia» 10/2011-2012, <http://www.dirittoestoria.it/10/D&Innovazione/Tarwacka-Plautus-divorce.htm>.

²² Cf. A. TARWACKA, *Urząd cenzora w świetle 'Nocy attyckich' Aulusa Gelliusa*, «Zeszyty Prawnicze» 14.3/2014, p. 232 ff.

²³ Gell. 13,16,3. Cf. G.W. BOTSFORD, *The Roman Assemblies from their Origin to the End of the Republic*, New York 1909 (reprint New Jersey 2001), pp. 139-151; L.R. TAYLOR, *Roman Voting Assemblies. From the Hannibalic War to the Dictatorship of Caesar*, Ann Arbor 1966 (reprint 2003), p. 2 ff.; F. PINA POLO, *Las 'contiones' civiles y militares en Roma*, Zaragoza 1989, pp. 4-11, 41 ff.; J. ZABŁOCKI, *Kompetencje 'patres familias' i zgromadzeń ludowych w sprawach rodziny w świetle 'Noctes Atticae' Aulusa Gelliusa*, Warszawa 1990, pp. 32-36; IDEM, 'Leges votatae' nelle assemblee popolari, «Diritto@Storia» 10/2011-2012, <http://www.dirittoestoria.it/10/Tradizione-Romana/Zablocki-Leges-voto-assemblee-popolari.htm>; IDEM, *Uchwały rzymskich zgromadzeń ludowych*, [in:] 'Regnare, gubernare, administrare'. *Prawo i władza na przestrzeni wieków. Prace dedykowane profesorowi Jerzemu Malcowi z okazji 40-lecia pracy naukowej*, eds. S. GRODZISKI, A. DZIADZIO, Kraków 2012, pp. 4-7; R. FROLOV, *Public Meetings in Ancient Rome. Definitions of the 'contiones' in the Sources*, «Graeco-Latina Brunensia» 18/2013, pp. 75-84. For the censorial *contiones*, see Varr., *De ling. Lat.* 6,90; Val. Max.

Gell. 1,6,1-2: *Multis et eruditis viris audientibus legebatur oratio Metelli Numidici, gravis ac disertus viri, quam in censura dixit ad populum de ducendis uxoribus, cum eum ad matrimonia capessenda hortaretur. 2. In ea oratione ita scriptum fuit: "Si sine uxore possemus, Quirites, omnes ea molestia careremus; set quoniam ita natura tradidit, ut nec cum illis satis commode, nec sine illis uno modo vivi possit, salutis perpetuae potius quam brevi voluptati consulendum est"*²⁴.

Gellius quoted a passage from the speech of the censor Metellus Numidicus, who argued that though a man's relations with his wife might be troublesome, nonetheless marriage was an necessity. We may assume that the expression *salus perpetua* referred not so much to the individual's well-being, but rather to the benefit for the entire community, viz. the state²⁵. Gellius wrote that the speech launched an intense debate. The censor was accused of putting people off marriage, rather than encouraging them to marry. Titus Castricius spoke up in Metellus' defence, observing that an attorney's speech was different from one delivered by a censor. The former was permitted to resort to lies, providing what he said seemed reasonable, while the latter had first and foremost to stand on guard of his dignity, and therefore he should present matters exactly as they were.

4,1,3; A. TARWACKA, *Cenzorzy a zgromadzenia ludowe w Rzymie okresu republiki*, «Opolskie Studia Administracyjno-Prawne» 14.2/2016, p. 48 ff.

²⁴ *A number of learned men were listening to the reading of the speech which Metellus Numidicus, an earnest and eloquent man, delivered to the people when he was censor, On Marriage, urging them to be ready to undertake its obligations. In that speech these words were written: "If we could get on without a wife, Romans, we would all avoid that annoyance; but since nature has ordained that we can neither live very comfortably with them nor at all without them, we must take thought for our lasting well-being rather than for the pleasure of the moment."* (transl. J.C. Rolfe).

²⁵ It is clear Metellus meant the interest of the state (*salus rei publicae*): *persuasit civitatem salvam esse sine matrimoniorum frequentia non posse* (Gell. 1,6,6). Cf. A. TARWACKA, 'Censoria potestas' Oktawiana Augusta, «Zeszyty Prawnicze» 11.1/2011, p. 361; EADEM, *Prawne aspekty...*, p. 315.

The censors also encouraged citizens to have children.

Liv., *Per.* 59: Q. Metellus censor censuit ut cogereantur omnes ducere uxores liberorum creandorum causa. Extat oratio eius, quam Augustus Caesar, cum de maritandis ordinibus ageret, velut in haec tempora scriptam in senatu recitavit²⁶.

Livy's epitomist wrote that in 131 BCE the censor Quintus Metellus exhorted the citizens to contract marriage in order to beget offspring (*liberorum creandorum causa*). His oration must have had a timeless appeal, since over a century later Augustus referred to it when he announced his draft of the *lex Iulia de maritandis ordinibus* (18 CE). The plebiscite passed at his request laid down a duty on citizens to persist in the married state, and Augustus hoped that Metellus' impassioned speech would help to break the senators' reluctance to adopt his measure. Another who wrote that Metellus' oration had been read out was Suetonius²⁷, and that thereby the emperor wanted to show that he wasn't the first to address the issue, that the forefathers had attended to the problem as well.

It is not clear whether Gellius and Augustus were referring to the same oration²⁸. In the *Attic Nights* the speech is attributed to Metellus Numidicus, who was censor in 102 BCE, while in the epitome of Livy Metellus Macedonicus (131 BCE) is named as the orator. Certainly the arguments used were very persuasive and memorable, and need not have been resorted to only on one occasion. Occasionally members of the same family would consistently press for a policy based on the

²⁶ *Censor Quintus Metellus suggested that everyone ought to be forced to marry to create more children. (His speech still exists, and was quoted in the Senate by the emperor Augustus as if it had recently been written, when he proposed a marriage law.)* (transl. J. Lendering).

²⁷ Suet., *Aug.* 89,2.

²⁸ A. BERGER, *Note on Gellius, N.A., I,6*, «AJP» 67.4/1946, pp. 323-328, argued that Gellius had made a mistake; the same observation is made by L. HOLFORD-STREUVENS, *Aulus Gellius. An Antonine Scholar and his Achievement*, Oxford 2003, p. 318. M. McDONNELL, *The Speech of Numidicus at Gellius, N.A. I.6*, «AJP» 108.1/1987, pp. 81-94, claims that Metellus Numidicus also made an oration on the necessity of marriage. Cf. *ORF*, 18 III, 107-108.

same assumptions. This happened with the Valerii and the Porcii, who initiated legislation on *provocatio ad populum*²⁹, and with the renowned Gracchi brothers and their agrarian laws³⁰.

There were consequences to a censor's oration, which was a forecast of the decisions that would be taken during the next census. Those who did not meet the censors' expectations could anticipate penalties.

Val. Max. 2,9,1: *Camillus et Postumius censores aera poenae nomine eos, qui ad senectutem caelibes pervenerant, in aerarium deferre iusserunt, iterum puniri dignos, si quo modo de tam iusta constitutione queri sunt ausi, cum in hunc modum increparentur: 'natura vobis quemadmodum nascendi, ita gignendi legem scribit, parentesque vos alendo nepotum nutriendorum debito, si quis est pudor, alligaverunt. accedit his quod etiam fortuna longam praestandi huiusce muneris advocacionem estis adsecuti, cum interim consumpti sunt anni vestri et mariti et patris nomine*

²⁹ Cf. J. BLEICKEN, *Ursprung un Bedeutung der Provocation*, «ZSS» 76/1959, pp. 324-377; G. CRIFÒ, *Alcune osservazioni in tema di 'provocatio ad populum'*, «SDHI» 29/1963, pp. 288-309; A.W. LINTOTT, 'Provocatio'. *From the Struggle of Orders to the Principate*, «ANRW» 1.2/1972, pp. 226-267; IDEM, 'Provocatio' e 'iudicium populi' dopo Kunkel, [in:] *La repressione criminale nella Roma repubblicana fra norme e persuasione*, ed. B. SANTALUCIA, Pavia 2009, pp. 15-24; L. AMIRANTE, *Sulla 'provocatio ad populum' fino al 300*, «Iura» 34/1963, pp. 1-27; L. GAROFALO, *In tema di 'provocatio ad populum'*, «SDHI» 53/1987, pp. 355-371; IDEM, *Ancora sul processo comiziale 'de capite civis'*, «SDHI» 54/1988, pp. 285-332; B. SANTALUCIA, *Processo penale*, [in:] *Studi di diritto penale romano*, Roma 1994, s. 178-180; P.A. BRUNT, 'Libertas' in the Republic, [in:] *The Fall of the Roman Republic and Related Essays*, Oxford 1998, pp. 332-334; F. DE MARTINO, *Il modello della città-stato*, [in:] *Storia di Roma*, ed. A. GIARDINA, Roma 1999, pp. 140-143; E. LOSKA, 'Provocatio ad populum', [in:] 'Salus rei publicae suprema lex'. *Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Lublin 2007, pp. 128-135; R. PESARESI, 'Improbe factum'. *Riflessioni sulla 'provocatio ad populum'*, [in:] 'Fides humanitas ius'. *Studii in onore di Luigi Labruna*, VI, Napoli 2006, pp. 4179-4205; E. TASSI SCANDONE, 'Leges Valeriae de provocatione'. *Repressione criminale e garanzie costituzionali nella Roma repubblicana*, Napoli 2008 with a review by P. KOŁODKO, «Zeszyty Prawnicze» 9.2/2009, pp. 377-391; A. LINTOTT, 'Provocatio' e 'iudicium populi' dopo Kunkel, [in:] *La repressione criminale nella Roma repubblicana fra norme e persuasione*, ed. B. SANTALUCIA, Pavia 2009, pp. 15-24.

³⁰ Cf. D. STOCKTON, *The Gracchi*, Oxford 1979 (reprint 2002), p. 40 ff.; 131 ff.

*vacui. ite igitur et non odiosam exsolvite stipem, utilem posteritati numerosae*³¹.

Censors Camillus and Postumius³² ordered confirmed bachelors who had reached old age dodging marriage to pay a fine³³ called the *aes uxorium*³⁴ into the state treasury. This is the only record in the sources of an instance of the fine being exacted. Valerius Maximus quoted a passage from the oration in which the censors explained the reason for their decision. They said that you pay off your debt to your parents by bringing up children of your own; hence those who could not boast of being a husband and father had to settle the debt in another way – by paying a fine.

Plutarch throws additional light on the details of this episode in his biography of Camillus³⁵. He wrote that the censor applied persuasion and threatened to resort to fines to encourage unmarried men to marry widows, of whom there were large numbers due to the numerous wars. At the time Rome was at war against the Veians and besieging the city of Veii. It seems that the censors were also trying to gain additional revenue;

³¹ *The censors Camillus and Postumius ordered any men who had reached old age without marrying to pay a sum of money into the treasury as a penalty. They were liable to a second penalty if they dared in any way to complain about this very just rule and were denounced in the following way: Nature has laid this law down that just as you were born, so you should beget children. If you had any sense of shame, you would see that by rearing you, your parents have obliged you to pay this debt off by rearing grandchildren for them. Furthermore, you have had the good fortune to enjoy a long grace period for performing this duty, but you have allowed those years to go by without earning the name of husband and father. So you must go now and pay that tough fine, which will go to benefit people with large families.* (transl. H.J. Walker).

³² 403 BCE. Cf. C. DE BOOR, 'Fasti censorii', Berolini 1873, p. 4; T.R.S. BROUGHTON, *The Magistrates of the Roman Republic*, I, Atlanta 1951 (reprint 1986), p. 82; J. SUOLAHTI, *The Roman Censors. A Study on Social Structure*, Helsinki 1963, p. 176 ff.; E. REIGADAS LAVANDERO, *Censura y 'res publica': aportación constitucional y protagonismo político*, Madrid 2000, pp. 71-75.

³³ Cf. M. NOWAK, *op. cit.*, p. 10.

³⁴ Fest. (Paul.) 519 L., s.v. *uxorium*: *Uxorium pependisse dicitur, qui quod uxorem non habuerit res populo dedit*. We may admit and acknowledge Mommsen's conjecture, that *res* should be replaced by *aes*.

³⁵ Plut., *Camill.* 2.2.

another hint pointing in this direction (apart from the imposition of the *aes uxorium* fine) is the fact that they made it obligatory for orphans to make census declarations.

We may ask why in this case the censors availed themselves of the fairly untypical measure of imposing a fine, rather than their usual censors' note. Presumably it was because in the 5th century BCE they had not yet achieved the full range of their powers as custodians of morality. Originally the censors' official duties were to oversee the citizens' property declarations. Only later did they start to impose penalties in connection with the *regimen morum*. We may conjecture that the evolution of the censors' powers in this respect reached its peak and concluded when they were authorised to compile lists of senators on the grounds of the *plebiscitum Ovinium* ca. 318 BCE³⁶.

Here it may be worthwhile to consider a passage from Suetonius' biography of the Emperor Claudius:

Suet., *Claud.* 16,3: *Plures notare conatus, magna inquisitorum negligentia sed suo maiore dedecore, innoxios fere repperit, quibuscumque caelibatum aut orbitatem aut egestatem obiceret, maritos, patres, opulentos se probantibus*³⁷.

By the final phase of the Republic the censors' office was going through a profound crisis, and as of the reign of Augustus no censors were appointed at all. Claudius decided to restore the magistracy in its traditional form. With a high regard for tradition, he kept the standard, 18-month term of office and selected L. Vitellius as his fellow-magistrate³⁸. They assumed the office in 47 CE, the eighth centenary of the City's foundation. Claudius was very prodigal about handing out censorial notes, and Suetonius castigated him for this. The quoted passage shows that

³⁶ Cf. Fest. 290 L., s.v. *praeteriti senatores*; A. TARWACKA, *Prawne aspekty...*, pp. 221-230.

³⁷ *When he attempted to degrade still more, he found them in most cases blameless; for owing to the great carelessness of his agents, but to his own greater shame, those whom he accused of celibacy, childlessness, or lack of means proved that they were married, or fathers, or well-to-do.* (transl. J.C. Rolfe).

³⁸ Cf. Suet., *Vit.* 2,3; Tac., *Hist.* 3,66. Cf. C. DE BOOR, *op. cit.*, p. 32.

Claudius intended to use the censorial note as a punishment on the unmarried and childless. Despite the fact that Augustus' legislation, the *lex Iulia et Papia*, was in force, Claudius wanted them punished in the traditional way, by having them degraded socially. This shows that the promotion of procreation was perceived as a typical duty exercised by censors, who not only could, but should have administered the censorial note to those who remained unmarried and had no children.

Fining childless bachelors was not the only measure used in Rome's policy for the promotion of procreation. Since Republican times fathers could expect to benefit from a number of rewards and bonuses. Aulus Gellius wrote that in the beginning the elderly enjoyed the greatest respect, but later progeny was a worthier asset than age³⁹. In Republican times the benefits that could be gained from having children do not appear to have been permanently established. Decisions to award them were made in specific situations. For example, in 169 BCE the censors decided to admit all the freedmen to one of the four municipal tribes, but made an exception for those who were fathers of a son of at least five, and entered the names of these in the group they had belonged to in the previous census⁴⁰. However, such benefits prompted abuse.

Gell. 5,19,15-16: *Animadvertimus in oratione P. Scipionis, quam censor habuit ad populum de moribus, inter ea, quae reprehendebat, quod contra maiorum instituta fierent, id etiam eum culpavisse, quod filius adoptivos patri adoptatori inter praemia patrum prodesset. Verba ex ea oratione haec sunt: "In alia tribu patrem, in alia filium suffragium ferre, filium adoptivum tam procedere, quam si se natum habeat..."*⁴¹.

³⁹ Gell. 2,15,3. Cf. A. TARWACKA, *Aulus Gellius, 'Noce attyckie' 2,15. Tekst – tłumaczenie – komentarz, «Zeszyty Prawnicze» 15.3/2015*, pp. 247-252, on the honours given in olden times to elderly persons, and why these honours were later transferred to husbands and fathers, and on Chapter Seven of the *lex Iulia* in this connection.

⁴⁰ Cf. Liv. 45,15. Caesar's agrarian law prescribed the distribution of land to twenty thousand citizens with three or more children; cf. Suet., *Iul.* 20,3. Cf. A. TARWACKA, *Urząd cenzora...*, p. 228 ff.

⁴¹ *I have observed in a speech of Publius Scipio On Morals, which he made to the people in his censorship, that among the things that he criticized, on the ground that they were done contrary to the usage of our forefathers, he also found fault with this, that*

Gellius also cited a passage from one of Scipio's censorial orations, in which he described and reprimanded the practice of counting adopted children as one's own natural offspring⁴². We may assume that what Scipio had in mind was adoption done only for the gains which could accrue. Scipio's enunciation shows that an adoptive son was not registered in the same tribe as the father, though that is what should have been done⁴³. This is clear evidence that such adoptions were not intended to be permanent relationships, and presumably when the benefit had been acquired the adopted son was emancipated.

We may thus conclude that the policy of promoting marriage and procreation was an important part of the censors' activities. They used a variety of instruments to achieve their aims. In the first period of the operations of these magistrates, before the emergence of the *regimen morum*, their only means of applying pressure was by meddling in the censorial lists. A censor who conducted a census decided how much tax was due from a particular citizen, and he had the option of fining a confirmed bachelor. During a census the censors made citizens take an oath to stay married, and to marry in order to have children. In later times the censors' principal duty was to supervise morality. Usually the first step they would take in this respect would be to deliver an oration to the people describing the advantages of marriage and the begetting of offspring. The next stage could be the administration of a censorial note, with the result that the particular individual who received it was socially degraded. In the Republican period there were occasional benefits for the fathers of many children. Sometimes the censors granted such privileges, for instance allowing freedmen to be admitted to tribes other than the municipal ones.

an adopted son was of profit to his adoptive father in gaining the rewards for paternity. The passage in that speech is as follows: "A father votes in one tribe, the son in another, an adopted son is of as much advantage as if one had a son of his own..." (transl. J.C. Rolfe).

⁴² Cf. M. KURYŁOWICZ, *Die 'adoptio' im klassischen römischen Recht*, Warszawa 1981, p. 18.

⁴³ Cf. G.W. BOTSFORD, *op. cit.*, p. 61 nt. 3.

The censors appear to have endeavoured to create and propagate social opinion. They did not strive to suppress the misogynistic attitude characteristic for Antiquity, but they did try to persuade the people of the advantages of procreation, both for the individual as well as for society in general in outcome of the state's need for new citizens.

WPLYW CENZORÓW NA MAŁŻEŃSTWO W RZYMIE REPUBLIKAŃSKIM

Streszczenie

Urząd cenzora stanowił jedną z gwarancji ustrojowych w okresie republikańskim. Cenzorzy czuwali nad moralnością społeczeństwa, dbając przy tym także o przyrost naturalny. W związku z tym starali się nakłaniać obywateli do zawierania małżeństw i posiadania potomstwa. Jako instrumenty nacisku wykorzystywali głównie wygłaszane podczas *contiones* mowy. Czasami jednak stosowali ostrzejsze formy nacisku, wykorzystując swoją kompetencję do nakładania noty cenzorskiej, a także nagrody dla ojców liczego potomstwa.

THE CENSORS' INFLUENCE ON MARRIAGE IN REPUBLICAN ROME

Summary

The office of censor was one of the institutions guaranteeing the stability of the socio-political system of Republican Rome. The censors supervised public morality and promoted population growth. In this connection they encouraged citizens to contract marriage and raise children. Their chief instruments of pressure were the orations they made during the *contiones*. But sometimes they resorted to more stringent measures, such as administering a censorial note or granting rewards to men who fathered many offspring.

Słowa kluczowe: cenzor, małżeństwo, *census*, *iusiurandum*, rozwód, nota cenzorska, prokreacja

Keywords: censor, marriage, *census*, *iusiurandum*, divorce, censorial note, procreation

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