

ANNA TARWACKA

Cardinal Stefan Wyszyński University in Warsaw

## AS FAR AS THE BEDROOM... THE CENSOR'S MARK IN FAMILY MATTERS IN REPUBLICAN ROME\*

Dionysius of Halicarnassus left posterity a vivid picture of a Roman censor peering into his fellow citizens' bedrooms and poking his nose into every aspect of family life<sup>1</sup>. Plutarch asserted that no married couple in Rome, no adolescent, no aspect of everyday life and certainly no banquet was free of state control exercised by the censors<sup>2</sup>. These opinions show that strangers could have found the extent of Roman magistrates' interference in family matters odd, or even disturbing. Nonetheless there were specific reasons for the practice.

In Republican Rome the family had a political significance, apart from its social and economic importance<sup>3</sup>. The head of the family was its *pater familias*, who was responsible for the religious worship in his family (*sacra*). He was the owner of the property and had unlimited

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<sup>1</sup> Dion. Hal. 20,13,3: Ῥωμαῖοι δὲ πᾶσαν ἀναπετάσαντες οἰκίαν καὶ μέχρι τοῦ δωματίου τὴν ἀρχήντων τιμητῶν προαγαγόντες ἀπάντων ἐποίησαν ἐπίσκοπον καὶ φύλακα τῶν ἐναυταῖς γινομένων. Por. Dion. Hal. 19,16,5; M. COUDRY, *Dénys d'Halicarnasse, Plutarque, Dion Cassius: trois visions grecques de la censure?*, [in:] *Visions grecques de Rome. Griechische Blicke auf Rom*, eds. M.L. FREYBURGER, D. MEYER, Paris 2007, p. 36-46.

<sup>2</sup> Plut., *Cat. Mai.* 16. Cf. M. COUDRY, *op. cit.*, p. 46-50.

<sup>3</sup> 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. Praca zbiorowa pod redakcją Juliusza Jundzilla*, Bydgoszcz 1995, p. 45-46.

power over all the free members of his family: over his progeny (*patria potestas*) and his wife (*manus*), as well as over his slaves (*dominica potestas*) and others with a status like the slaves. His actions could have a significant influence on the operations of the state: he had to pay taxes and his sons had to participate in the state's political life and military structures. He was even expected to keep a balance between the human and divine worlds (*pax deorum*). Thus the family was not left completely beyond state control, which was exercised by means of the *regimen morum* or censorial supervision of morality<sup>4</sup>. The magistrates could issue a censorial mark to a citizen<sup>5</sup> whom they deemed guilty of negligence<sup>6</sup>.

Greek observers diligently recorded the behaviour considered reprehensible and likely to earn a censor's mark: cruelty to slaves, treating children too mildly or too severely, the unjust treatment of a wife, filial insolence with respect to elderly parents, unwarranted quarrels among siblings to gain more than their fair share of an inheritance. Other offences included all-night banqueting, corrupting young people, and failure to observe the prescribed forms of ancestor worship and con-

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<sup>4</sup> On *regimen morum* see, for instance, A.E. ASTIN, 'Regimen morum', «JRS» 78/1988, p. 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*, eds. A. CORBINO, M. HUMBERT, G. NEGRI, Pavia 2010, p. 283-314; A. TARWACKA, *Prawne aspekty urzędu cenzora w starożytnym Rzymie*, Warszawa 2012, p. 239-263; N. EL BEHEIRI, *Das 'regimen morum' der Zensoren. Die Konstruktion des römischen Gemeinwesens*, Berlin 2012.

<sup>5</sup> Women were not liable to the censor's mark. See A. TARWACKA, *Prawne aspekty...*, p. 263-269.

<sup>6</sup> For grounds for the administration of a censor's mark see TH. MOMMSEN, *Römisches Staatsrecht*<sup>3</sup>, II.1, Graz 1952 (reprint), p. 377-382. Cf. C.E. JARCKE, *op. cit.*, p. 14-45; E. DE RUGGIERO, *Dizionario epigrafico di antichità romane*, Roma 1900, s.v. *censor*; M. NOWAK, *Die Strafverhängungen der Censoren*, Breslau 1909, p. 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. 194-195.

duct in connection with funerals<sup>7</sup>. Cases when the censorial mark was applied deserve detailed scrutiny on the basis of as many records in the sources as possible.

However, care must be taken, as some of the situations described bear too much of an anecdotal flavour and therefore cannot be treated as typical. An example is provided by a decision taken by Cato the Elder.

Plut., *Cat. Mai.* 17,7:

Ἄλλον δὲ βουλῆς ἐξέβαλεν ὑπατεύσειν ἐπίδοξον ὄντα, Μανίλλιον, ὅτι τὴν αὐτοῦ γυναῖκα μεθ' ἡμέραν ὀρώσης τῆς θυγατρὸς κατεφίλησεν. αὐτῷ δ' ἔφη τὴν γυναῖκα μηδέποτε πλὴν βρόντης μεγάλης γενομένης περιπλακῆναι, καὶ μετὰ παιδιᾶς εἰπεῖν αὐτὸν ὡς μακάριός ἐστι τοῦ Διὸς βροντῶντος.

Plutarch noted<sup>8</sup> that Cato removed Manilius from the senate for having kissed his wife in front of his daughter<sup>9</sup>, thereby depriving the senator of a chance to be consul. Cato himself asserted that he embraced his wife only when there was a clap of thunder, joking that he was a happy man when Jupiter thundered.

Amm. Marc. 28,4,9: *Et haec admittunt hi, quorum apud maiores censoria nota senator adflictus est, ausus, dum adhuc non deceret praesente communi filia, coniugem osculari.*

Ammianus Marcellinus seems to have been referring to the same story when he criticised the conduct of some citizens, underlining that in their forefathers' times a senator was punished with a censorial mark because he dared to kiss his wife at an inappropriate moment – in the presence of his daughter. However, this example cannot prove that this was a rigid rule followed by all the censors. Rather it is a testimonial

<sup>7</sup> Dion. Hal. 20,13,3.

<sup>8</sup> Cf. Plut., *Mor.* 139 e.

<sup>9</sup> Cf. M. NOWAK, *Die Strafverhängungen der Censoren*, Breslau 1909, p. 24 i 59; O. SCHÖNBERGER, *Der glückliche Cato*, «RhM» 112/1969, p. 190-191.

to Cato's proverbial severity<sup>10</sup>. With time the case acquired an anecdotal veneer, abstracted from its specific personal details, and served as a general example of the censorial *severitas*.

It is worth analysing if the censors intervened in matters concerning the contracting of marriages or if they imposed a mark on citizens whose relationships seemed inappropriate<sup>11</sup>, that is on those who had relationships with women of ill repute, or with freedwomen in the case of freeborn citizens.

Liv. 39,19,5: *Sp. Postumius aliquanto post Romam venit: eo referente de P. Aebutii et Hispalae Faeceniae praemio, quod eorum opera indicata Bacchanalia essent, senatus consultum factum est, [...] utique ei [scil. Faeceniae Hispalae] ingenuo nubere liceret, neu quid ei qui eam duxisset ob id fraudi ignominiaeve esset.*

In his account of the Bacchanalian affair of 186 BC<sup>12</sup>, Livy highlighted the role played by one Hispala Faecenia, a freedwoman turned prostitute, in bringing the business to light. She warned her lover P. Aebutius, not to embark on initiation into the Bacchic cult, and he in turn informed the consul of the whole affair. Later the couple was rewarded for the information they disclosed in their statements, in a plebiscite adopted on the grounds of a *senatus consultum* which Livy reproduced in full. One of the privileges granted Hispala was the right to marry a freeborn man without bringing ignominy and loss of reputation on him<sup>13</sup>. The term *ignominia* is a direct reference to the censor's power to supervise morality; hence we should conclude that without the spe-

<sup>10</sup> Cf. A. TARWACKA, *Prawne aspekty...*, p. 44-45.

<sup>11</sup> Cf. M. NOWAK, *op. cit.*, p. 64.

<sup>12</sup> For the Bacchanalian affair, see, for instance, E.S. GRUEN, *Studies in Greek Culture and Roman Policy*, Leiden 1990, p. 34-78; A. BARTNIK, 'Senatus consultum de Bacchanalibus' z 186 roku p.n.e. jako próba przywrócenia porządku publicznego w Rzymie, [in:] *Ochrona bezpieczeństwa i porządku publicznego w prawie rzymskim*, eds. K. AMIELAŃCZYK, A. DĘBIŃSKI, D. SŁAPEK, Lublin 2010, p. 41-52.

<sup>13</sup> For the term *fraus* see H. KRÜGER, M. KASER, 'Fraus', «ZSS» 63/1943, p. 117-174.

cial privilege any man contracting a marriage with Hispala would have been liable to a censorial mark. We cannot be certain whether this would have been so because she was a freedwoman or because of her profession – perhaps either would have been sufficient<sup>14</sup>. However, this does not mean that every pair of censors was equally scrupulous in penalising such unions. Most probably “upper-class” delinquents, primarily senators and members of the equestrian order, were more likely to bring down censorial castigation on themselves.

Cic., *Pro Sest.* 110: *qui [scil. Gellius], ut credo, non libidinis causa, sed ut plebicola videretur, libertinam duxit uxorem.*

This passage from Cicero’s defence of Sestius in 56 BC is the evidence usually invoked as proof that marriage between freeborn men and freed women was permitted in the late Republic<sup>15</sup>. Cicero wrote that the knight Gellius wedded a libertine woman not out of concupiscence but to flaunt his plebeian sympathies. Such an interpretation does not seem very credible. Cicero was trying to present Gellius as unworthy of membership of the equestrian order, a spendthrift and a seditionist. The list of allegations against him included his marriage, which must therefore have been regarded as inappropriate. So why did it go unpunished? At the time the censor’s office, and particularly the *regimen morum* duties, were going through a serious crisis. On the grounds of the *lex Clodia de censoria notione* of 58 BC whenever the censors wanted to administer a mark they had to initiate proceedings and take all the allegations into consideration, which meant they

<sup>14</sup> Cf. TH. MOMMSEN, *op. cit.*, III, p. 429-431; M. HUMBERT, *Hispala Faecenia et l’endogamie des affranchis sous la République*, «Index» 15/1987, p. 131-140; S. TREGGIARI, *Roman Marriage. ‘Iusti coniuges’ from the Time of Cicero to the Time of Ulpian*, Oxford 1993, p. 64. See also T.A.J. MCGINN, *Prostitution, Sexuality, and the Law in Ancient Rome*, Oxford 2003, p. 86-91 and the literature cited.

<sup>15</sup> Cf. L. VILLERS, *Le mariage envisagé comme institution d’État dans le droit classique de Rome*, «ANRW» II.14/1982, p. 295–296; T.A.J. MCGINN, *op. cit.*, p. 85 *przyp.* 159; E. LOSKA, *Sytuacja aktorów i aktorek w rzymskim prawie małżeńskim*, «Zeszyty Prawnicze» 12.4/2012, p. 83.

needed far more time and effectively had their hands tied by red tape<sup>16</sup>. Not surprisingly, no-one was excessively worried at the time by the threat of a censor's mark.

Another piece of evidence showing that liaisons between citizens and actresses (*mimulae*) were looked down on as contraventions of the *mores maiorum* is provided in Cicero's taunts at Mark Antony for his "marriage" with Fadia, a libertine's daughter, followed by their "divorce"<sup>17</sup>. Thus the censors appear to have treated a union between a freeborn citizen with a libertine woman, prostitute, or actress, and most probably with any other woman of ill repute, as sufficient grounds for the imposition of a mark.

The family's fundamental role was to supply the state with new citizens<sup>18</sup>, especially soldiers. Citizens making their *iusiurandum*<sup>19</sup> during a census had to swear that they had taken a wife in order to breed children – *liberorum procreandorum causa*<sup>20</sup>. The oath was one of the key elements in the story of Spurius Carvilius Ruga, the first Roman to have divorced in spite of a lack of any of the grounds<sup>21</sup> admitted by

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<sup>16</sup> Cf. TH. MOMMSEN, *Römisches Staatsrecht...*, II.1, p. 386-387; W.J. TATUM, *The 'lex Claudia de censoria notione'*, «CQ» 85.1/1990, p. 34-43; A. TARWACKA, *Prawne aspekty...*, p. 250-258.

<sup>17</sup> Cf. Cic., *Phil.* 2,3; 2,69; *Ad Att.* 16,11,1.

<sup>18</sup> Cf. D. 50,16,220,3 (Call. 2 *quaest.*); O.M. PÉTER, '*Liberorum quaerendorum causa*'. *L'image idéale du mariage et de la filiation à Rome*, «RIDA» 38/1991, p. 285-331.

<sup>19</sup> *The iusiurandum* took the form of a religious oath dedicated to Jupiter and was based on the Roman virtue of *fides*, fidelity in private and public matters. Cf. Cic., *De off.* 3,104. For *iusiurandum* during a census see A. TARWACKA, *Prawne aspekty...*, p. 174-175.

<sup>20</sup> Cf. Plaut., *Aulul.* 146-149; *Capt.* 889; Val.Max. 7,7,4.

<sup>21</sup> The legitimate grounds for divorce were adultery, administering poison to the children or poisoning in general, abortion, unlawful exchange of children, and substitution of keys. Cf. Plut., *Rom. 22 = leg. reg.*, Rom. 9 (FIRA I). Por. R. FIORI, '*Homo sacer*'. *Dinamica politico-costituzionale di una sa'nzione giuridico-religiosa*, Napoli 1996, p. ; J. ZABŁOCKI, '*Si mulier vinum bibit condemnatur*', «Prawo Kanoniczne» 32.1-2/1989, p. 223-232; IDEM, *Illeciti delle donne romane*, «Ius Antiquum» 1(8)/2001, p. 78-79.

Romulus' law<sup>22</sup>. Ruga sent his wife away because of her barrenness claiming that he had assured the censors to have married her for the purpose of begetting children<sup>23</sup>. The disapproval of society at large to the repudiation of Ruga's wife shows that notwithstanding *iusiurandum* divorce on the grounds of infertility was not considered justified. Nonetheless from the censors' point of view the right conduct for a Roman citizen was to marry and have children, and they were known to penalise those who did not follow this pattern.

Val. Max. 2,9,1: *Camillus et Postumius censores aera poenae nomine eos, qui ad senectutem caelibes pervenerant, in aerarium deferre iusserunt...*

The censors Camillus and Postumius<sup>24</sup> imposed a fine<sup>25</sup> known as the *aes uxorium* on inveterate bachelors<sup>26</sup>. There is only one instance on record in the sources of this fine being imposed. Valerius Maximus cites an extract from a speech explaining why the censors had made such a decision. By raising children a citizen was paying back the debt of gratitude to his parents; therefore those who could not claim the honour of being a husband and a father had to settle the account in

<sup>22</sup> Cf. A. WATSON, *The Divorce of Carvilius Ruga*, «TR» 33/1965, p. 38-50; O. ROBLEDA, *Il divorzio a Roma prima di Constantino*, «ANRW» II.14/1982, p. 355-365; A. TARWACKA, *Rozwód Carviliusa Rugi – czy naprawdę pierwszy?*, «CPH» 54.1/2002, p. 301-308; A. JACOBS, *Carvilius Ruga v Uxor: A famous Roman divorce*, «Fundamina» 15.2/2009, p. 92-111.

<sup>23</sup> Dion. Hal. 2,25,7: ἀναγκαζόμενος ὑπὸ τῶν τιμητῶν ὁμόσαι τέκνων ἔνεκα γυναικὶ συνοικεῖν (ἦν δ' αὐτῷ στεῖρα ἢ γύνη), Gell. 17,21,44: ...*Sp. Carvilius Ruga primus Romae de amicorum sententia divortium cum uxore fecit, quod sterilis esset iurassetque apud censores uxorem se liberum quaerendorum causa habere.*

<sup>24</sup> In 403 BC. 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. 176-178; E. REIGADAS LAVANDERO, *Censura y 'res publica': aportación constitucional y protagonismo político*, Madrid 2000, p. 71-75.

<sup>25</sup> Cf. Plut., *Camill.* 2; M. NOWAK, *op. cit.*, p. 10.

<sup>26</sup> Fest. (Paul.) L. 519, s.v. *uxorium*: *Uxorium pependisse dicitur, qui quod uxorem non habuerit res populo dedit*. Mommsen's conjecture that *res* should be replaced with *aes* deserves recognition.

another way – by paying money into the coffers of the state<sup>27</sup>. There are more records of censors' speeches urging citizens to marry and bring children into the world<sup>28</sup>.

This aspect to the censor's activities was acknowledged as important by Cicero as well.

Cic., *De leg.* 3,7: *...caelibes esse prohibento...*

One of the censors' duties Cicero enumerated was to put a ban on the unmarried state for men<sup>29</sup>. The texts I have quoted clearly appear to indicate a hiatus between the interest of the state represented by the censors, and public opinion. Many citizens did not want to marry and have children, and had to be persuaded to do so. Interestingly, censors voiced their opinion on the drawbacks in the measures which they were enforcing.

Gell. 1,6,2: *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.*

The censor Metellus admitted that if it were possible to live without a wife every man would keep as far away as possible from such an encumbrance. However, since nature had made life with a wife inconvenient, but impossible without a wife, therefore one should be

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<sup>27</sup> Val. Max. 2,9,1: *... '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 advocatorem estis adsecuti, cum interim consumpti sunt anni vestri et mariti et patris nomine vacui. ite igitur et non odiosam exsolve stipem, utilem posteritati numerosae'.*

<sup>28</sup> Metellus delivered a speech of this type, and Augustus read it out in the Senate. Liv., *Per.* 59; Gell. 1,6. Cf. A. TARWACKA, 'Censoria potestas' Oktawiana Augusta, «Zeszyty Prawnicze» 11.1/2011, p. 360-362; EADEM, *Prawne aspekty...*, p. 314-316.

<sup>29</sup> Cf. A.E. ASTIN, *Cicero and the Censorship*, «CP» 80.3/1985, p. 234-235.

guided in one's conduct by the enduring good<sup>30</sup> rather than by transient pleasure.

The sanction the censors imposed on those who refused to marry seems to have been the mark; while the fine appears to have been an exceptional, one-off remedy the real cause of which were the Republic's financial needs during the war against the Veii<sup>31</sup>. Presumably many censors turned a blind eye to bachelorhood and did not penalise singles at all.

Valerius Maximus compared Camillus and Postumius' severity with a case where a censorial mark was administered for abuse of the right to divorce.

Val. Max. 2,9,2: *Horum severitatem M. Valerius Maximus et C. Iunius Brutus Bubulcus censores consimili genere animadversionis imitati sunt: L. enim Annium senatu moverunt, quod quam virginem in matrimonium duxerat repudiasset nullo amicorum [in] consilio adhibito.*

Another pair of censors, M. Valerius (the antiquarian's namesake) and C. Iunius<sup>32</sup>, had L. Annius removed from the Senate for divorcing his wife, a virgin on marriage, without the required consultation with friends<sup>33</sup>. The grounds on which the mark could be administered were not want of the Romulan grounds for divorce, but the lack of evidence – witnesses, friends who were to be summoned to a counsel<sup>34</sup>.

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<sup>30</sup> Metellus was clearly referring to 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'..., p. 361; EADEM, *Prawne aspekty*..., p. 315.

<sup>31</sup> Perhaps at the time the censors were not yet empowered to exercise supervision over the *regimen morum*, which they acquired on the grounds of the *lex Ovinia* around 318 BC. Cf. A. TARWACKA, *Prawne aspekty*..., p. 226-230. That is why they imposed a fine, but did not issue a censor's mark.

<sup>32</sup> 307 BC. Cf. T.R.S. BROUGHTON, *op. cit.*, I, p. 165; E. REIGADAS LAVANDERO, *op. cit.*, p. 153-159.

<sup>33</sup> Cf. M. NOWAK, *op. cit.*, p. 11-12.

<sup>34</sup> However, see O. ROBLEDA, *Il divorzio a Roma prima di Constantino*, «ANRW» II.14/1982, p. 358-359, according to whom Annius needed a *consilium* because he had

We may assume that the censorial mark gradually replaced the sanction prescribed by the Romulan law for divorce without legitimate grounds. That sanction was the confiscation of the guilty man's property and dedication to Ceres<sup>35</sup>.

In this light Carvilius Ruga may be seen as having devised an exceptionally crafty plan. He did all he could to eschew official retribution for unwarranted divorce: first he asked his friends to advise him, and secondly, although the reason he gave for repudiating his wife was not on the official list of justifications enumerated by Romulus, nevertheless it could hardly be liable to a censorial mark since it was in absolute compliance with the policy pursued by the state as represented by the censors, which was procreation.

The pressure put on citizens to marry meant that a stern attitude was also taken to breach of promise to marry<sup>36</sup>.

Varr., *L.L.* 6,71: *Qui sponderat filiam, despondisse dicebant, quod de sponte eius, id est de voluntate, exierat: non enim si volebat, dabat, quod sponsu erat alligatus: nam ut in comoediis vides dici: "Sponden tuam gnatam filio uxorem meo?" Quod tum et praetorium ius ad legem et censorium iudicium ad aequum existimabatur.*

Varro explained that the verb *despondere* ("to promise in marriage") meant that a father betrothed his daughter of his own free will (*de sponte*); the promise was voluntary<sup>37</sup>. According to the antiquarian the formula the future bridegroom's father used during the betrothal

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divorced without having sufficient grounds.

<sup>35</sup> For a potential development path of the sanction, from a punishment meted out within the structure of the *gens* to the censors' mark, see E. PÓLAY, *Das 'regimen morum' des Zensors und die sogenannte Hausgerichtsbarkeit*, [in:] *Studi Volterra*, III, Milano 1971, p. 263-317.

<sup>36</sup> On betrothal, see E. VOLTERRA, *Ricerche intorno agli sponsali in diritto romano*, [in:] *Scritti giuridici*, I, Napoli 1991, p. 339-420; H. KUPISZEWSKI, *Das Verlöbnis im altrömischen Recht*, «ZSS» 77/1960, p. 125-159, R. ASTOLFI, *Il fidanzamento nel diritto romano*, Padova 1987.

<sup>37</sup> Cf. Gell. 4,4,2; J. ZABŁOCKI, *The Image...*, p. 40-41; IDEM, *Rodzina...*, p. 48.

ceremony was, “Do you promise to give your daughter in marriage to my son?” and it appeared on the stage in the comedies of Plautus<sup>38</sup>. Betrothal was subject both to the laws of the praetor’s court (*ad legem*) as well as to the censorial court of equity (*ad aequum*) and in the event of breach of promise the father of the jilted boy could use *actio ex stipulatu* against the girl’s father, who in turn could expect a censorial mark.

The head of the family enjoyed a broad scope of freedom in the exercise of his *patria potestas*, nonetheless the limit to his power was set by the powers of the censors. If he was too hard or too lenient the censors could respond by issuing a mark against him. An example is provided in the story of Manilius and Cato removing him from the Senate for having kissed his wife in the presence of his daughter. I have already observed that the story is anecdotal, but it still shows the extent of the censors’ powers – they could intervene if children were being corrupted by their father.

A telling instance of censorial intervention in the exercise of paternal power is supplied by the edict issued in 92 BC by censors Cn. Domitius Ahenobarbus and L. Licinius Crassus. It concerned the schools run by the Latin rhetors, and the entire text has been preserved in the works of Suetonius and Aulus Gellius.<sup>39</sup> The censors wrote that it had been brought to their attention that certain individuals calling themselves the Latin rhetors had established schools with a new type of curriculum, and that young men attending these schools were spending days on end there. It had been established by the forefathers what kind of schools they wanted for their children, and what was to be taught in them. Novelties which were contrary to the custom established by the

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<sup>38</sup> Plaut., *Aul.* 204-205; *Curc.* 670-671; *Poen.* 1156-1157; *Trin.* 1156-1168; *Ter., Andr.* 73-75; *Phorm.* 924-925. Cf. M.V. BRAMANTE, ‘*Patres*’, ‘*filii*’ e ‘*filiae*’ nelle comedie di Plauto. *Note sul diritto nel teatro*, [in:] *Diritto e teatro in Grecia e a roma*, eds. E. CANTARELLA, L. GAGLIARDI, Milano 2007, p. 108-113.

<sup>39</sup> The edict’s text should be treated as authentic. Cf. G. BLOCH, *De l’authenticité de l’édit censorial de 92 av. J. C. contre les rhéteurs latins*, «*Klio*» 3/1903, p. 68-73; A. MANFREDINI, *L’editto ‘de coërcendis rhetoribus latinis’ del 92 a.C.*, «*SDHI*» 42/1976, p. 100-106; E.S. GRUEN, *op. cit.*, p. 179.

forefathers were neither agreeable nor proper. Therefore, said the censors, it seemed right to express their disapproval of these new schools both to those who ran them as well as to those who attended them<sup>40</sup>.

The edict expresses the censors' disapproval of the new schools, it is not fully clear for what reasons<sup>41</sup>. It was addressed not only to the tutors, but primarily to the *patres familias* whose sons were attending these institutions. It was the fathers who were responsible for the education of their sons, and who would be punished with a censorial mark if they were negligent in this respect.

The censors' supervision of public morality also encompassed matters concerning the cult of the dead. Alongside the mention in Dionisius of Halicarnassus we have the title of Cato's speech *de sacrificio commisso*<sup>42</sup>, against the knight Veturius, who was punished by being removed from his equestrian century.

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<sup>40</sup> Suet., *De rhet.* 25=Gell. 15,11,2: «*Renuntiatum est nobis esse homines, qui novum genus disciplinae instituerunt, ad quos iuventus in ludum conveniat; eos sibi nomen inposuisse Latinos rhetoras; ibi homines adulescentulos dies totos desiderare. Maiores nostri, quae liberos suos discere et quos in ludos itare vellent, instituerunt. Haec nova, quae praeter consuetudinem ac morem maiorum fiunt, neque placent neque recta videntur. Quapropter et his, qui eos ludos habent, et his, qui eo venire consuerunt, visum est faciundum, ut ostenderemus nostram sententiam nobis non placere*». Cf. FIRA I no. 52.

<sup>41</sup> For reasons for the issue of the edict see J.-M. DAVID, *Promotion civique et droit à la parole: L. Licinius Crassus, les accusateurs et les rhéteurs latins*, «MEFRA» 91.1/1979, p. 169-170; A. MANFREDINI, *op. cit.*, p. 114-148; E.S. GRUEN, *op. cit.*, p. 180-183; A.R. JUREWICZ, 'Nobis non placere!' – un provvedimento dei censori nelle testimonianze del Suetonio e di Aulo Gellio, «Studia Prawnoustrojowe» 12/2010, p. 69-80; P. ŚWIĘCICKA, 'Latinitas' i greckie 'humaniora'. O sceptycyzmie Rzymian okresu republikańskiego wobec greckich obyczajów, myśli naukowej i kultury słowa, [in:] *Ochrona bezpieczeństwa i porządku publicznego w prawie rzymski*, eds. K. AMIĘLAŃCZYK, A. DĘBIŃSKI, D. SŁAPEK, Lublin 2010, p. 257-261; A. TARWACKA, 'Censores edixerunt'. Przedmiot i cele edyktów cenzorskich, «CPH» 63.1/2011, p. 203-210; EADEM, *Prawne aspekty...*, p. 133-143.

<sup>42</sup> Cf. ORF 8 XII, p. 34-36; P. FRACCARO, *Ricerche storiche e letterarie sulla censura del 184/183 (M. Porcio Catone L. Valerio Flacco)*, [in:] *Opuscula*, I, Pavia 1956, p. 444-448; F. DELLA CORTE, *Catone Censore. La vita e la fortuna*, Torino 1949, p. 26; A.E. ASTIN, *Cato the Censor*, Oxford 1978, p. 81-82; F. ZEVI, *Catone e i cavalieri*

Another aspect of conduct subject to censorial authority was the practice of mourning, which Seneca the Rhetorician discussed in one of his controversies.

Sen. Rhet., *Contr.* 4,1: *Quis est iste, qui supra flentem patrem censuram lugendi postulat? proiectus in omnia gulae libidinisque flagitia, omnibus notandus censoribus saeculo praecepta componit: scit, quantum super amissos tres liberos patri flendum sit, quem, si viveret, pater fleret.*

This passage comes from a rhetorical exercise on an *actio iniuriarum* brought by a father who had lost three children and was sitting by their graveside, from whence he was dragged away by a youth into the nearby gardens, shaved, forced to change his clothing and made to attend a banquet. Seneca delineated the arguments of both parties: the bereaved father should plead that no-one had the right to prevent him from mourning his children and force him to make merry, whereas the other party should endeavour to prove that his aim was to console the grieving father and that by bringing a court case the father had himself withdrawn from mourning.

The words put into the bereaved father's mouth bear the indelible stamp of rhetoric: "Who is he who calls for limits on the grief of a bereaved father? Incited to commit all manner of offences of desire and appetite, the one who should be hounded by all the censors lays down all the rules of the age. He knows exactly for how long the father who has lost three of his children is to mourn them – he, the one whose own father would surely weep for him if he were alive".

Some scholars see this passage as evidence for the existence of a penalty, a censorial mark, on those who persisted in mourning beyond the prescribed time limit<sup>43</sup>.

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*grassi. Il culto di Vulcano ad Ostia: una proposta di lettura storica, «MEFRA» 121.2/2009, p. 505-513, A. TARWACKA, Prawne aspekty..., p. 219-220.*

<sup>43</sup> Cf. P. NICZYPORUK, *Żaloba i powtórne małżeństwo wdowy w prawie rzymskim*, Białystok 2002, p. 42 ff. A similar reading was given by J. GARCIA SANCHEZ, *Algunas consideraciones sobre el 'tempus lugendi'*, «RIDA», 23/1976, p. 147; however, he

The text entails two expressions which may be associated with the activities of the censors: *censura lugendi* and *omnibus notandus censoribus*. The term *censura* originally meant the censor's office; with time it came to mean opinion, criticism, or constraint<sup>44</sup>. Its secondary meaning was no longer connected with the office and could appear with a qualifying expression used in the genitive. So there are no grounds to suppose that the censors punished those who went over the prescribed term with the mourning practices. It was the young man who disrupted the bereaved father's pensive reflections at his children's graveside; the young man was the one who imposed a constraint on the expression of mourning by snatching away the father to a banquet; and later on he had to appear in court to face charges due to these actions.

The latter term is clearly to be associated with the censor's mark, but has no connection with mourning. It was the young man who was worthy of the censor's mark, and the grounds were his life of luxury. Seneca calls the young man *luxuriosus*. Luxury was a typical charge warranting the issue of a censorial mark<sup>45</sup>.

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misunderstood Seneca, thinking the text referred to a deceased father who would have grieved for his three dead children if he were alive. Under Numa's law there were limits on the period of mourning for children: to one year for children of ten and over, and to as many months as the age of the deceased child for under-tens, but there was no mourning for children under three. Cf. *Leg. reg.* Numa 10; FIRA I. Cf. G. FRANCIOSI ed., '*Leges regiae*', Napoli 2003, p. ; A. TARWACKA, '*Leges regiae*'. *Tekst – tłumaczenie – komentarz*, «Zeszyty Prawnicze» 4.1/2004, p. ; *Frag. Vat.* 321. Nonetheless from D. 3,2,23 (*Ulp. 8 ad ed.*) it may be concluded that every bereaved parent set the time of mourning his child for himself *secundum pietatis rationem et animi sui patientiam, prout quisque voluerit*. Perhaps after a time the legal provisions ceased to be enforced and there were no statutory limits on the time of mourning children. However, the issue is complicated due to a suspicion that interpolation may be involved. Cf. P. NICZYPORUK, *Żaloba...*, p. 47 ff.

<sup>44</sup> Cf. *TLL*, s.v. *censor*; *Totius Latinitatis Lexicon*, ed. A. FORCELLINI, Patavii 1805, s.v. *censor*.

<sup>45</sup> Examples of offences liable to a censorial mark included the possession of an exorbitant amount of silver: Gell. 4,8,7; 17,21,39; Liv., *Per.* 14; Dion. Hal. 20,13,1; Val. Max. 2,9,4; Flor. 1,13,22; Zon. 8,6; Plut., *Sull.* 1; Plin. Mai. 18,39; 33,142; Sen., *De vit. beat.* 21; Varr. apud Non. 163; Iuv., *Sat.* 9,141-142; the purchase of luxury items: Plin. Mai. 8,209; 14,95; 36,4; Sen., *Epist.* 95,41; a licentious lifestyle: Plut.,

The use of the words *censura* and *notandus* in close proximity is a deliberate rhetorical device. The speaker wants to suggest that the defendant is usurping the title to a magistracy he is unworthy of performing. In fact he deserves to be punished by the legitimate and lawful censors. The application of the word *censura* in a meaning which had diverged from its original sense, viz. with reference to the magistracy, does not diminish the effect; in any case the recipient's connotative response is instant.

Hence this passage gives no grounds for a claim that the censors punished those who carried the customs of mourning beyond the conventional time limit. On the other hand we may conclude that the use of coercive measures to make someone stop mourning was considered disrespectful or offensive and could bring a charge of *iniuria*.

In conclusion we may observe that the censors had far-reaching powers to interfere in family life. The matters that they dealt with probably included marriage and the social acceptability of particular matches, breach of promise to marry, divorce, procreation and the upbringing of children, and perhaps even the practice of mourning. However, there are no grounds to believe that all censors exercised the *regimen morum* to the same degree of exactitude. Not every censor was a Cato. Undoubtedly though the threat of a censor's mark made many a citizen think twice before he did anything that might be considered an infringement of the *mores maiorum*. Furthermore, the emphasis many of the censors put on family matters was a factor reinforcing general awareness of a code of principles and maintaining the ethical status quo. The crisis of the censor's office that attended the last years of the Republic seems to have contributed to the decline in the observance of the *mores maiorum*, while the aim of Augustus' family reforms was to reinstate the old system of values, formerly guarded and upheld by the censors.

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*Cat. Mai.* 16; *Ti. Gracch.* 14; *Dion. Hal.* 20,13,2. *Por. Iuv., Sat.* 11,90-100; and wasteful expenditure: *Ascon.* 84 C.

AŻ PO SYPIALNIĘ... NOTA CENZORSKA W SPRAWACH RODZINNYCH W RZYMIE  
REPUBLICAŃSKIM

Streszczenie

Dionizjusz z Halikarnasu przekazał potomnym niezwykle plastyczny obraz rzymskiego cenzora, zaglądnącego do sypialni współobywateli i kontrolującego każdy przejaw życia domowego. Taki stan rzeczy wynikał z faktu, że rodzina miała w Rzymie republikańskim nie tylko znaczenie społeczne czy ekonomiczne, ale także polityczne i dlatego nie pozostawała zupełnie poza kontrolą państwa. Instrumentem tego nadzoru była cenzorska piecza nad obyczajami – *regimen morum*. Wydaje się prawdopodobne, że cenzorzy uznawali za powód zastosowania noty związek wolnourodzonego obywatela z wyzwolenicą, prostytutką czy aktorką, a zapewne również z innymi kobietami o nagannej reputacji. Zasadniczą rolą rodziny było zapewnienie państwu nowych obywateli, a zatem nocie mogła też podlegać bezżenność. Istnieją przekazy o mowach cenzorskich nakłaniających do ożenku i posiadania dzieci, a także informacja o nałożeniu podatku na starych kawalerów. Nocie mogło też podlegać nadużycie prawa do rozwodu. W świetle źródeł bardzo ciekawy wydaje się plan Carviliusa Rugi, który – rozwodząc się z żoną ze względu na jej bezpłodność – zrobił wszystko, aby uniknąć kary, podając taką przyczynę *repudium*, która nie była wprawdzie wymieniona w *leges regiae* jako słuszna, ale nie mogła podlegać nocie ze względu na jej spójność z reprezentowanym przez cenzorów interesem państwa, dla którego liczyła się przede wszystkim prokreacja. Kary cenzorskie mogły też dotyczyć ojców zaniedbujących wychowanie dzieci. Źródła nie dają natomiast podstaw do twierdzenia, że cenzorzy karali notą za przedłużanie okresu żałoby.