

ANNA TARWACKA

Uniwersytet Kardynała Stefana Wyszyńskiego

THE CENSORIAL MARK IN ANCIENT ROMAN MARITAL MATTERS*

Finding the right woman to marry was an important matter in Republican Rome¹. In the top strata of Roman society it could mean a political alliance and a springboard to a public career. A misalliance spelled numerous social problems. But it is debatable whether a marriage which earned disapproval could be sanctioned, and if so, how.

The aim of this paper is to examine the possibility of the censors issuing a censorial mark against a man who married an unsuitable woman. This problem was, of course, addressed in later regulations, primarily in Augustus' marriage legislation², but the question is not so well documented for the Republican period.

Marriage was one of the aspects within the sphere of interest of the censors, who conducted a series of activities to reduce celibacy

* The article is a result of the project 2018/29/B/HS5/00949 financed by the National Science Centre, Poland.

¹ Cf. S. TREGGIARI, *Roman Marriage. 'Iusti coniuges' from the Time of Cicero to the Time of Ulpian*, Oxford 1993, p. 83 ff.; J.F. GARDNER, *Women in Roman Society and Law*, London 1986 (reprint 1995), p. 31 ff.

² Cf. B. BIONDI, *La legislazione di Augusto*, [in:] *Scritti giuridici*, II, p. 77 ff.; L.F. RADITSA, *Augustus' Legislation Concerning Marriage, Procreation, Love Affairs and Adultery*, «ANRW» 2.13/1980, p. 278 ff.; M. ZABŁOCKA, *Przemiany prawa osobowego i rodzinnego w ustawodawstwie dynastii julijsko-klaudyjskiej*, Warszawa 1987, p. 34 ff.

and encourage procreation for the sake of the continuity of the state³. But perhaps they also considered the fact that not every marriage was in the public interest. Any restrictions which they could apply in this respect were thus an outcome of customs, the observance of which was within the responsibility of the censors. But custom was not reflected in the legislation. There were certainly no regulations negating the *conubium* towards women regarded as unsuitable marriage partners⁴.

I shall start with a few introductory remarks. First, the penalties censors meted out applied only to men, so only husbands who made a mismatch could have been liable to censorial punishment. Secondly, we must ascertain what kind of marriages this concerned. The ones that seem to have been questionable may have involved women who were ex-slaves, or *feminae famosae*, as the Augustan legislation would suggest. However, it has to be said that a marriage of a patron with his own freedwoman enjoyed a special legal status. Cases of *manumissio matrimonii causa* were not at all rare⁵.

Unsuitable marriage is on the lists drawn up in the literature of the subject of grounds on which culprits were liable to a censorial mark⁶. The source quoted is the following passage from Livy on the Bacchanalian affair:

³ 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, p. 249-270; EADEM, *The Censors' Influence on Marriage in Republican Rome*, «Zeszyty Prawnicze» 18.1/2018, p. 173-191.

⁴ Cf. R. ASTOLFI, *La 'lex Iulia et Papia'*, Padova 1986, p. 104-105; J. URBANIK, *Husband and Wife*, [in:] *The Oxford Handbook of Roman Law and Society*, ed. P.J. DU PLESSIS, C. ANDO, K. TUORI, Oxford 2016, p. 475 ff.

⁵ M.J. PERRY, *Gender, Manumission, and the Roman Freedwoman*, Cambridge 2014, p. 90 ff.

⁶ Cf. TH. MOMMSEN, *Römisches Staatsrecht*³, II.1, Graz 1952 (reprint), p. 377-382; M. NOWAK, *Die Strafverhängungen der Censoren*, Breslau 1909, p. 64; E. SCHMÄHLING, *Die Sittenaufsicht der Censoren. Ein Beitrag zur Sittengeschichte der römischen Republik*, Stuttgart 1938, p. 64; M. KURYŁOWICZ, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 1994, p. 194-195; A. TARWACKA, *Prawne aspekty urzędu cenzora w starożytnym Rzymie*, Warszawa 2012, p. 241. See also O. KARŁOWA, *Römische Rechtsgeschichte. I. Staatsrecht und Rechtsquellen*, Leipzig 1885, p. 172.

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 scandal which occurred in 186 BC⁷ Livy emphasised the role Hispala Faecenia played in its disclosure. Hispala, a freedwoman who was a prostitute⁸, warned her lover P. Aebutius not to undergo the initiation rite for the Bacchic cult. Aebutius reported all that was going on to the consul. Both informants were rewarded on the grounds of a plebiscite based on a *senatus consultum*, the full text of which is given in Livy's account. One of the privileges⁹ granted to Hispala was that she was allowed to marry a freeborn man, who would not be considered to have committed an act that was shameful¹⁰ or disreputable. The term *ignominia*¹¹ which occurs in the text is an explicit reference to the censors' duty to see that good customs were kept. We may thus infer that if Hispala had not been granted this privilege, any man who married her would have been liable to a censorial mark¹². That

⁷ For the Bacchanalia, see, for instance, E.S. GRUEN, *Studies in Greek Culture and Roman Policy*, Leiden 1990, p. 34-78; R.A. BAUMAN, *Women and Politics in Ancient Rome*, London 1992 (reprint 2003), p. 35 ff.; 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*, ed. K. AMIELAŃCZYK, A. DĘBIŃSKI, D. SŁAPEK, Lublin 2010, p. 41-52.

⁸ Livy (39,9,5) wrote *scortum nobile libertina Hispala Faecenia*. See T.A.J. MCGINN, *Prostitution, Sexuality, and the Law in Ancient Rome*, Oxford 2003, p. 86 ff.

⁹ For the tutelage over Hispala, her marriage and rights of inheritance of her estate, see A. WATSON, 'Gentis enuptio', [in:] *Studies in Roman Private Law*, London-Rio Grande 1991, p. 3-13.

¹⁰ For *fraus*, see H. KRÜGER, M. KASER, 'Fraus', «ZSS» 63/1943, p. 117-174.

¹¹ Cf. M. KASER, 'Infamia' und 'ignominia' in den römischen Rechtsquellen, «ZSS» 73/1956, p. 220-278; J.G. WOLF, *Das Stigma 'ignominia'*, «ZSS» 126/2009, p. 55-113; IDEM, *Lo stigma dell' "ignominia"*, [in:] 'Homo', 'caput', 'persona'. *La costruzione giuridica dell' identità nell'esperienza romana*, ed. A. CORBINO, M. HUMBERT, G. NEGRI, Pavia 2010, p. 491-550; A. TARWACKA, *Prawne aspekty...*, p. 261 ff.

¹² It is not certain whether this was due to the fact that she was a freedwoman, or that she was a prostitute; perhaps either reason would have been enough. See TH.

does not mean that every pair of censors always meted out rigorous punishment for such marriages. Those most likely to get a censor's mark for such conduct were members of the upper classes, the senators and knights.

On the basis of the *Hisपालa* case we may draw a conclusion that a freeborn Roman citizen who married a prostitute, or perhaps a freedwoman (though rather not one whom he had freed himself) would be guilty of *fraus* and lose his good name, in other words he would be in breach of customary law and therefore liable to get a censorial mark.

The following passage from Cicero's oration in defence of Sestius (56 BC) is usually cited as evidence that marriage with a freedwoman was permitted in the later Republican period¹³.

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

Cicero spoke of an *eques* called Gellius who married a freedwoman, not out of lust but because he wanted to manifest his plebeian sympathies. Incidentally, the orator was mocking his adversary by travestying his name, Lucius Gellius Publicola. The cognomen Publicola means "one who is concerned for the plebs". Cicero was insinuating that Gellius' marriage made him live up to his name, and that therefore he was a profligate and seditious unworthy of membership in the equestrian order. The list of charges against him includes his marriage, which must therefore have been inappropriate. So why did it go unpunished? At the time the censors' magistracy, and particularly their duties concerning the *regimen morum*, was in a serious crisis, because on the grounds of the *lex Clodia de censoria notione* which was passed in 58 BC the censors had to conduct special proceedings every time they

MOMMSEN, *op. cit.*, III, p. 429-431; M. HUMBERT, *Hisपालa Faecenia et l'endogamie des affranchis sous la République*, «Index» 15/1987, p. 131-140; S. TREGGIARI, *Roman Marriage...*, p. 64; T.A.J. MCGINN, *Prostitution...*, p. 86-91.

¹³ 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 fn. 159; E. LOSKA, *Sytuacja aktorów i aktorek w rzymskim prawie małżeńskim*, «Zeszyty Prawnicze» 12.4/2012, p. 82.

wanted to administer a censorial mark, and they were also obliged to admit and hear all the complaints brought to them. This protracted the procedure and in practice prevented the efficient exercise of their duties¹⁴. Not surprisingly, no-one worried about getting a censorial mark.

However, the incident suggests that *equites* were required to refrain from wedding a freedwoman. Matters were quite different for the *plebs*; a plebeian's marriage with a freedwoman would probably not have been disapproved of. But how should we understand the term *plebs*? In the 1st century BC there was still a distinction between the patricians and the plebeians, but its significance was largely historical. Members of wealthy plebeian families aspired to *adlectio inter patricios*, which could mean their ennoblement. But on the other hand a candidate for the office of plebeian tribune had to be a member of the *plebs*. An informal meaning of the term *plebs* emerged; already by the 2nd century BC *plebs* started to be used to refer to "the poor"¹⁵. So while a poor citizen could take a freedwoman to wife, an *eques* or a senator was required to refrain from such conduct.

The incompatibility of a marriage between a man from the noble estate with a low-born woman with the customs of the forefathers may be illustrated by a set of source texts on the marriages of Mark Antony¹⁶. Mark Antony's first wife was Fadia, the daughter of Q. Fadius, a freedman. This marriage offered Cicero numerous opportunities for snide remarks.

Cic., *Phil.* 2,3: *Sed hoc idcirco commemoratum a te puto, ut te infimo ordini commendares, cum omnes te recordarentur libertini generum et liberos tuos nepotes Q. Fadi, libertini hominis fuisse.*

¹⁴ Cf. T. 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.

¹⁵ Cf. J. KORPANTY, *Studia nad łacińską terminologią polityczno-socjalną okresu republiki rzymskiej*, Wrocław-Warszawa-Kraków-Gdańsk 1976, p. 46-47.

¹⁶ Cf. E.G. HUZAR, *Mark Antony. Marriages vs. Careers*, «The Classical Journal» 81.2/1986, p. 97 ff.

He mocked Antony in the Second Philippic, pointing out that Antony could count on the sympathy of members of the lower social strata if they all remembered that he had been a son-in-law to a freedman, and that his children were the grandchildren of Fadius¹⁷.

Cic., *Phil.* 13,23: *Is autem humilitatem despiciere audet cuiusquam, qui ex Fadia sustulerit liberos?*

In the Thirteenth Philippic he reproached Antony for being brazen enough to look down on someone's lowly origin while he himself had brought up¹⁸ his children by Fadia.

This case is certainly not an outright proof, but only an indirect hint. Fadia was not a freedwoman herself; she was born free, but her father was a freedman. It is a fact that the sons of freedmen enjoyed only limited public rights, since they could not stand for office. Nonetheless, even if marriages of freeborn men with freedwomen were held in contempt, Fadia was not a freedwoman; she had been born as a free citizen of Rome. Yet Cicero must have been sure that his remark would fall on sympathetic ears. Being the descendant of an ex-slave was perceived as a social defect standing in the way of a marriage with a member of the nobility.

According to Plutarch¹⁹, Antony spent too much time in the company of actors, often as a guest at their weddings, which did not make him popular. On his travels he was accompanied by the mime actress Cytheris, a freedwoman, whom he had carried in his litter next to himself. This story provided the subject for yet another of Cicero's mockeries.

Cic., *Ad Att.* 10,10,5: *hic tamen Cytherida secum lectica aperta portat, alteram uxorem.*

In his letter to Atticus Cicero ridiculed Antony²⁰ for having Cytheris carried next to himself in his litter, as another wife. The expression *alteram uxorem* suggests Antony was a married man, and that Cytheris

¹⁷ Cf. Cic., *Ad Att.* 16,11,1.

¹⁸ For the meaning of the verb *sustulerit* in this context, see B.D. SHAW, *Raising and Killing Children. Two Roman Myths*, «Mnemosyne» 54.1/2001, p. 3.

¹⁹ Plut., *Ant.* 9,4.

²⁰ Cf. Cic., *Ad Att.* 15,22.

was his mistress. Antony was not discreet about this affair and treated Cytheris like a wife. The sources tell us that he was at the time married to his cousin Antonia.

Cicero wanted to discredit Antony by observing that he was a married man but treated another woman, and a mime actress at that, as a wife. The affair itself was nothing out of the ordinary, but it should have been kept within the accepted bound of conduct. Antony had crossed the bounds of good taste by flaunting the affair, and of course Cicero took the opportunity in the Philippics to make fun of him.

Cic., Phil. 2,58: Vehebatur in essedo tribunus pl.; lictores laureati antecedeabant, inter quos aperta lectica mima portabatur, quam ex oppidis municipales homines honesti ob viam necessario prodentes non noto illo et mimico nomine, sed Volumniam consalutabant. Sequebatur raeda cum lenonibus, comites nequissimi; reiecta mater amicam impuri filii tamquam nurum sequebatur. O miserae mulieris fecunditatem calamitosam! Horum flagitiorum iste vestigiis omnia municipia, praefecturas, colonias, totam denique Italiam inpressit.

In his second oration against Antony Cicero showed the dissonance between the gravity the holder of the office of plebeian tribune²¹ escorted by lictors should have had, and the fact that he had a mime actress carried about in his litter. He added that the inhabitants of the *municipia* Antony visited, who knew how seriously he treated the affair, addressed Cytheris as Volumnia, after her patron and former master Volumnius. Antony's retinue was followed by a carriage full of pimps, and after Cytheris came Antony's disdained mother, as if following a daughter-in-law. That is how Antony crossed all the towns, prefectures, and colonies, in other words he travelled all over Italy, Cicero added. Incidentally, according to Pliny's *Natural History*²², Antony was the first to have

²¹ Antony was a plebeian, but as he was in the *nobilitas* milieu his relationships with women of ill repute were disapproved of.

²² Plin. Mai. 8,55: *iugum subdidit eos primusque Romae ad currum iunxit M. Antonius, et quidem civili bello, cum dimicatum esset in Pharsalis campis, non sine ostento quodam temporum, generosos spiritus iugum subire illo prodigio significante. nam quod ita vectus est cum mima Cytheride, super monstra etiam illarum calamitatum fuit.*

a pair of lions harnessed up to his chariot, and was driven around in it with Cytheris by his side.

In the same Philippic Cicero availed himself yet again of the story of Antony's quasi-marriage to the actress.

Cic., *Phil.* 2,69: *Huius in sedibus pro cubiculis stabula, pro conclavibus popinae sunt. Etsi iam negat. Nolite quaerere; frugi factus est; mimulam suam suas res sibi habere iussit, ex duodecim tabulis clavis ademit, exegit. Quam porro spectatus civis, quam probatus! Cuius ex omni vita nihil est honestius, quam quod cum mima fecit divortium.*

Since Antony treated Cytheris as his wife, then their split-up could be regarded as a divorce. Cicero made rhetorical use of a reference to one of the provisions in the Law of the Twelve Tables. He contrasted a dignified and respected act of law with behaviour unworthy of a Roman citizen.

According to Cicero, Antony told Cytheris to take her things, then he took the keys from her and sent her away. This is the passage which is the basis for the reconstruction of the legal provision²³. Cicero wanted to discredit his adversary. So it seems his reference to the Twelve Tables must have been precise, which would have secured the best rhetorical effect – a clash between the solemnity of the law laid down by the *decemviri* and a controversial politician's scandalous relationship. We may thus conjecture that the provision in question contained the formula for divorce, *Res tuas tibi habeto*, as well as a regulation which said that the husband was to take the keys away from the wife. This act would have been the exact opposite of the ritual performed during the marriage ceremony, when the bride was given the keys to the house in which she was to live with the groom²⁴. At any rate it seems that the provision regulated

²³ Tab. 4,3 (FIRA I p. 36); the reconstruction has the word *illam* instead of *mimulam*. There are doubts as to the provision's exact wording. In the edition by M.H. CRAWFORD, *The Roman Statutes*, II, London 1996, p. 580 and 632–633, the reconstruction reads <<<repudium mittito>>>. Cf. R. YARON, *Minutiae on Roman Divorce*, «TR» 28/1960, p. 1-12; A. WATSON, *The Divorce of Carvilius Ruga*, «TR» 33/1965, p. 42.

²⁴ Cf. Athen. 440e-441b.

the form the divorce procedure should take for the sake of evidence, since both divorce and the contracting of marriage were informal legal acts. Yet what was important was the time when it was performed, in view of the problem of the validity of gifts exchanged between the spouses, and the paternity of a child begotten around that moment. That was why the *decemviri* would have prescribed the performance of the customary formulae and gestures to accompany the act itself²⁵.

Finally Cicero rounded off his ridicule with a quip that divorcing the mime actress was the most honest thing Antony had done in his life.

None of Cicero's texts mention a censorial mark, yet it is quite clear from them that the social reaction to marriages contracted by men from the nobility with women who were freedwomen themselves or whose fathers were libertines was not very favourable. An officially recognised relationship between a nobleman and an actress was completely out of the question.

Thanks to the *lex Clodia de censoria notione* of 58 BC mentioned above, neither Gellius Publicola nor Antony needed to worry about the censors. Moreover, in Antony's case none of the situations described by Cicero was a marriage which could have been penalised by the censors. Fadia was not a freedwoman but the daughter of a freedman; while Cytheris was never formally Antony's wife. Though a scrupulous censor would certainly have found other grounds to mete out punishment...

Incidentally, we should add that Cicero definitely aspired to censorship²⁶. It was the only office he needed to hold to complete his political career, rounded off with "the most sacred magistracy"

²⁵ Cf. J. URBANIK, "Tuas res tibi habeto": la funzione delle „parole approvate" nel divorzio, [in:] *Dire le droit: normes, juges, jurisconsultes*, ed. B. ANAGNOSTOU-CANAS, Paris 2006, p. 87-98.

²⁶ Cic., *Ad Att.* 4,2,6: *ego me a Pompeio legari ita sum passus ut nulla re impedire. quod nisi vellem mihi esset integrum ut, si comitia censorum proximi consules haberent, petere possem, votivam legationem sumpsissem prope omnium fanorum, lucorum; sic enim nostrae rationes utilitatis meae postulabant. sed volui meam potestatem esse vel petendi vel ineunte aestate exeundi et interea me esse in oculis civium de me optime meritorum non alienum putavi.*

(*sanctissimus magistratus*)²⁷. Had his dream been fulfilled, he would no doubt have administered censorial marks wherever and whenever he considered the *mores maiorum* had been infringed, such as in the case of marriages with unworthy women.

The administration of a censorial mark was discretionary, and absolutely up to the censor's decision. The only restriction was the collegiality of the office²⁸, which acted as a guarantee of fairness for citizens liable to the census, the *lectio senatus*, or the review of the *centuriae* of the cavalry. Each censor could block his partner's decision, thereby saving the skin of the man facing a penalty.

The list of acts and pursuits punishable by the censors was not fixed. Each pair of censors issued an edict announcing the things they would be watching out for. But there can be no doubt that certain types of conduct were always (or almost always) punishable by a censor's mark. The *mores maiorum* was not a strictly defined category, but there was never any doubt that certain kinds of behaviour violated the customs of the forefathers. The *senatus consultum* passed in the Hispala Faecenia case suggests that an unsuitable marriage was one of these indisputable offences. The Senate ruled that Hispala's future husband should be exempted from the loss of his reputation, and hence we may infer that any freeborn citizen who married a freedwoman or a prostitute was liable to *ignominia*.

Of course we should also take the realities of the magistracy into account. The citizens subject to rigorous supervision by censors were the upper echelons of Roman society, primarily the senators and *equites*. The rest delivered their census declarations to the *iuratores*, which meant a substantial reduction of the chances of getting a censorial mark. That is why the sources show that it was admissible for poorer citizens to marry freedwomen.

²⁷ Cic., *Pro Sest.* 55; Quint., *Inst. or.* 4, pr. 3; *Nov. Mar.* 4,2. See also Plut., *Aem. Paul.* 38,7; *Camill.* 14,1; *Flam.* 18,1. More on this subject in A. TARWACKA, *Prawne aspekty...*, p. 70 ff.

²⁸ Cf. A. Tarwacka, *Prawne aspekty...*, p. 73 ff.

Another indirect piece of evidence on this matter comes in a passage by Cassius Dio on the Augustan marriage regulations²⁹.

Dio Cass. 54,16,2:

ἐπειδὴ τε πολὺ πλείον τὸ ἄρρεν τοῦ θήλεος τοῦ εὐγενικοῦς ἦν,
ἐπέτρεψε καὶ ἐξελευθέρας τοῖς ἐθέλουσι, πλὴν τῶν βουλευόντων,
ἄγεσθαι, ἔννομον τὴν τεκνοποιίαν αὐτῶν εἶναι κελεύσας.

Cassius Dio wrote that the emperor permitted the well-born except for the senators to marry freedwomen, and ruled that the children born of such unions would be treated as born in wedlock. Hence a knight or a nobleman who was not a senator could contract a *iustum matrimonium* with a freedwoman. We may infer from this that such marriages had not been permitted before, and that Augustus' regulation was a new right rather than a restriction on previously enjoyed rights.

The following passage in Celsus' commentary concerns the same issue:

D. 23,2,23 (Cels. 30 dig.): *Lege Papia cavetur omnibus ingenuis praeter senatores eorumque liberos libertinam uxorem habere licere.*

This passage also appears to suggest that Augustus admitted marriages which had not been allowed earlier. Still most publications on the issue tend to agree that Augustus' prohibition was a *novum*³⁰.

However, for the Republican period we can arrive at a more specific formulation on the basis of the sources. Marriage to a freedwoman was not prohibited by the legislation, but it was regarded as an act *contra bonos mores* in the eyes of the law, at least for the upper strata of Roman society.³¹ A man who contracted a marriage of this kind could expect to get a censorial mark.

The censors' activities in the sphere of *mores maiorum* were correlated with the law (*ius*) in many respects. They could still administer penalties within the *regimen maiorum* in situations where the law prescribed

²⁹ Cf. Dio Cass. 56,7,2.

³⁰ Cf. J. URBANIK, *Husband and Wife...*, p. 475-476 and literature cited there.

³¹ Cf. R. ASTOLFI, *op. cit.*, p. 104, who wrote of "matrimoni (...) riprovevoli per la società."

other means of protection. Nonetheless, often the powers enjoyed by the censors gave them more opportunities for action. For example, with spendthrifts: under the civil law only those who squandered the estate they inherited *ab intestato* from their ancestors and to the detriment of his own prospective inheritors³² could be declared *prodigi*, whereas the censors were authorised to punish anything they deemed a sign of luxury. The same held for the *leges sumptuariae*. But in some situations a censorial mark was the only penalty possible. And such was the case with unsuitable marriages.

So why did Cassius Dio and Celsus write that Augustus permitted marriages which had previously been inadmissible? Although the first emperor never took over the censors' magistracy officially, he did assimilate its powers³³. Moreover, he clearly aspired to be seen as a censor and made a show of his postulates for a renewal of public morality and a return to the *mores maiorum*. And that is why he permitted citizens (except for senators and the sons of senators) to contract marriage with freedwomen.

THE CENSORIAL MARK IN ANCIENT ROMAN MARITAL MATTERS

Summary

This article is on the administration of the censor's mark on Roman citizens who contracted inappropriate marriages in republican Rome. An examination of the source texts has led me to conclude that marriages contracted by members of the nobility with freedwomen or women with a bad reputation were considered unacceptable and were liable to a censor's mark. That is why authors writing on Augustus' reform of the marriage laws say that the Emperor permitted all the citizens except senators to marry a freedwoman.

³² Cf. Ascon. 84 C.; E. ŻAK, *Działania państwa rzymskiego wobec marnotrawstwa jako patologii społecznej*, [in:] *'Salus rei publicae suprema lex'. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Lublin 2007, p. 379-394.

³³ Cf. A. TARWACKA, *Prawne aspekty...*, p. 313 ff.

NOTA CENZORSKA W SPRAWACH ZWIĄZANYCH Z MAŁŻEŃSTWEM
W STAROŻYTNYM RZYMIE

Streszczenie

Artykuł dotyczy problematyki nakładania noty cenzorskiej w związku z zawarciem nieodpowiedniego małżeństwa w okresie republikańskim. Analiza tekstów źródłowych prowadzi do wniosku, że związki członków *nobilitas* z wyzwolenicami oraz kobietami o wątpliwej reputacji były postrzegane negatywnie i jako takie mogły podlegać nocie. Dlatego też autorzy opisujący wprowadzenie przez Augusta ustaw małżeńskich piszą, że *princeps* zezwolił na małżeństwa z wyzwolenicami wszystkim oprócz senatorów.

Keywords: censor; marriage; the census; the censorial mark; *feminae famosae*.

Słowa kluczowe: cenzor, małżeństwo; *census*; nota cenzorska; *feminae famosae*.

Bibliography

- ASTOLFI R., *La 'lex Iulia et Papia'*, Padova 1986.
- BARTNIK A., '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*, ed. K. AMIELAŃCZYK, A. DEBIŃSKI, D. SŁAPEK, Lublin 2010, p. 41-52.
- BAUMAN R.A., *Women and Politics in Ancient Rome*, London 1992 (reprint 2003).
- BIONDI B., *La legislazione di Augusto*, [in:] *Scritti giuridici*, II, p. 77-188.
- CRAWFORD M.H., *The Roman Statutes*, II, London 1996.
- GARDNER J.F., *Women in Roman Society and Law*, London 1986 (reprint 1995).
- GRUEN E.S., *Studies in Greek Culture and Roman Policy*, Leiden 1990.
- HUMBERT M., *Hispana Faecenia et l'endogamie des affranchis sous la République*, «Index» 15/1987, p. 131-140.
- HUZAR E.G., *Mark Antony. Marriages vs. Careers*, «The Classical Journal» 81.2/1986, p. 97-111.

- KARLOWA O., *Römische Rechtsgeschichte. I. Staatsrecht und Rechtsquellen*, Leipzig 1885.
- KASER M., 'Infamia' und 'ignominia' in den römischen Rechtsquellen, «ZSS» 73/1956, p. 220-278.
- KORPANTY J., *Studia nad łacińską terminologią polityczno-socjalną okresu republiki rzymskiej*, Wrocław-Warszawa-Kraków-Gdańsk 1976.
- KRÜGER H., KASER M., 'Fraus', «ZSS» 63/1943, p. 117-174.
- KURYŁOWICZ M., *Prawo i obyczaje w starożytnym Rzymie*, Lublin 1994.
- LOSKA E., *Sytuacja aktorów i aktorek w rzymskim prawie małżeńskim*, «Zeszyty Prawnicze» 12.4/2012, p. 81-100.
- MCGINN T.A.J., *Prostitution, Sexuality, and the Law in Ancient Rome*, Oxford 2003.
- MOMMSEN TH., *Römisches Staatsrecht*³, II.1, III, Graz 1952 (reprint).
- NOWAK M., *Die Strafverhängungen der Censoren*, Breslau 1909.
- PERRY M.J., *Gender, Manumission, and the Roman Freedwoman*, Cambridge 2014.
- RADITSA L.F., *Augustus' Legislation Concerning Marriage, Procreation, Love Affairs and Adultery*, «ANRW» 2.13/1980, p. 278-339.
- SHAW B.D., *Raising and Killing Children. Two Roman Myths*, «Mnemosyne» 54.1/2001, p. 31-77.
- SCHMÄHLING E., *Die Sittenaufsicht der Censoren. Ein Beitrag zur Sittengeschichte der römischen Republik*, Stuttgart 1938.
- TARWACKA A., *Cenzorzy jako propagatorzy polityki prorodzinnej w starożytnym Rzymie*, [in:] *Przyszłość rodziny w UE. Doświadczenie różnych rozwiązań prawnych i podstawowe problemy współczesnych rodzin*, Warszawa 2017, p. 249-270.
- TARWACKA A., *The Censors' Influence on Marriage in Republican Rome*, «Zeszyty Prawnicze» 18.1/2018, p. 173-191.
- TARWACKA A., *Prawne aspekty urzędu cenzora w starożytnym Rzymie*, Warszawa 2012.
- TATUM W.J., *The 'lex Clodia de censoria notione'*, «CQ» 85.1/1990, p. 34-43.
- TREGGIARI S., *Roman Marriage. 'Iusti coniuges' from the Time of Cicero to the Time of Ulpian*, Oxford 1993.
- URBANIK J., *Husband and Wife*, [in:] *The Oxford Handbook of Roman Law and Society*, ed. P.J. DU PLESSIS, C. ANDO, K. TUORI, Oxford 2016, p. 473-486.
- URBANIK J., *'Tuas res tibi habeto': la funzione delle „parole approvate” nel divorzio*, [in:] *Dire le droit: normes, juges, jurisconsultes*, ed. B. ANAGNOSTOU-CANAS, Paris 2006, p. 87-98.

- VILLERS L., *Le mariage envisagé comme institution d'État dans le droit classique de Rome*, «ANRW» II.14/1982, p. 285-301.
- WATSON A., *The Divorce of Carvilius Ruga*, «TR» 33/1965, p. 38-50.
- WOLF J.G., *Das Stigma 'ignominia'*, «ZSS» 126/2009, p. 55-113.
- WOLF J.G., *Lo stigma dell' 'ignominia'*, [in:] *'Homo', 'caput', 'persona'. La costruzione giuridica dell' identità nell'esperienza romana*, ed. A. CORBINO, M. HUMBERT, G. NEGRI, Pavia 2010, p. 491-550.
- YARON R., *Minutiae on Roman Divorce*, «TR» 28/1960, p. 1-12.
- ZABŁOCKA M., *Przemiany prawa osobowego i rodzinnego w ustawodawstwie dynastii julijsko-klaudyjskiej*, Warszawa 1987.
- ŽAK E., *Działania państwa rzymskiego wobec marnotrawstwa jako patologii społecznej*, [in:] *'Salus rei publicae suprema lex'. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Lublin 2007, p. 379-394.