

## Colleagues with rules. Censorship and the principles of holding office in Republican Rome\*

Koledzy z zasadami. Cenzura a zasady sprawowania urzędów w Rzymie republikańskim

Коллеги с принципами. Цензура и правила ведения государственной службы в республиканском Риме

Колеги з принципами. Цензура і правила займання посади в республіканському Римі

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**Summary:** The article discusses the principles of holding office of censor. Even though it seems that such principles were respected, there were some deviations from the general rules due to the peculiarities of this magistracy. Particularly strong was the principle of collegiality, allowing colleagues in office to block each other and preventing them from acting alone against the will of the other censor.

**Key words:** Roman Republic, censorship, *censores*, Republican magistrates, Roman law, collegiality

**Streszczenie:** Artykuł dotyczy zasad sprawowania urzędów w republikańskim Rzymie w odniesieniu do cenzury. Wydaje się, że były one respektowane, choć zdarzały się pewne odstępstwa od ogólnych reguł, wynikające ze specyfiki tej magistratury. Szczególnie silna była zasada kolegalności, pozwalająca kolegom na urzędzie wzajemnie się blokować i uniemożliwiająca im samodzielne działanie wbrew woli drugiego cenzora.

**Słowa kluczowe:** republika rzymska, cenzura, *censores*, urzędy republikańskie, prawo rzymskie, kolegalność

**Резюме:** В настоящей статье рассматриваются правила ведения государственной службы в республиканском Риме в отношении цензуры. Судя по всему, они соблюдались, хотя и были некоторые отклонения от общих правил, связанные с особенностями этой magistratury. Особенно сильным был принцип коллегиальности, позволявший коллегам по должности блокировать друг друга и не позволявший им действовать самостоятельно против воли другого цензора.

**Ключевые слова:** Римская республика, цензура, *censores*, республиканские должности, римское право, коллегиальность

**Резюме:** У цій статті йдеться про правила займання посади у республіканському Римі щодо цензури. Здається, їх дотримувалися, хоча були деякі відхилення від загальних правил, зумовлені особливостями цього магистрату. Особливо сильним був принцип колегалності, що дозволяв колегам на посаді блокувати один одного і не давав можливості діяти незалежно всупереч волі іншого цензора.

**Ключові слова:** Римська республіка, цензура, *censores*, республіканські посади, римське право, колегалність

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After the expulsion of the last king, Tarquin the Proud, from Rome, efforts were made to introduce principles that would prevent the reintroduction of monarchy. Therefore, the power of republican officials was limited by introducing some principles of holding their office: tenure, collegiality, incompatibility and gratuitousness. The present discussion will focus on the application of these principles to the office of censor.<sup>1</sup> However, the main emphasis will be on the principle of collegiality because of its complexity in relation to censorship.

The principle of collegiality, which meant that a given office was held simultaneously by at least two officials of the same rank, was one of the basic systemic guarantees of Republican Rome. It was intended to counter abuses of power by enforcing the need for colleagues in office to reach consensus. It was inextricably linked to the right to oppose the decisions of a colleague in office – the *ius intercedendi*. It is precisely the collegiality of the office of censor<sup>2</sup> that seems to have been particularly strong, which had a specific character that manifested itself not only during the holding of the office but also earlier, already during the elections.

The assembly at which censors were elected was subject to special rules, as confirmed by Livy's account:<sup>3</sup> if two candidates did not receive a sufficient number of votes, the election of one of them was not announced by *renuntiatio*; the meeting was postponed and the whole procedure started all over again.<sup>4</sup> In the case of elections for other offices, the announcement (*renuntiatio*)<sup>5</sup> was made as soon as a candidate had obtained enough votes, without waiting for the others to obtain a majority. It was also possible to complete the election the following day.<sup>6</sup> For

<sup>1</sup> Cf. A. Tarwacka, *Prawne aspekty urzędu cenzora w starożytnym Rzymie*, Warszawa 2012, pp. 73–77.

<sup>2</sup> Cf. Cic. *De leg.* 3.7: *Bini sunt...* Cf. H. Siber, *Zur Kollegialität der römischen Zensoren*, in: *Festschrift Fritz Schulz*, vol. 1, Weimar 1951, pp. 466–474; W. Kunkel, R. Wittmann, *Staatsordnung und Staatspraxis der römischen Republik. Zweiter Abschnitt. Die Magistratur*, München 1995, pp. 199–201; R. Bunse, *Die frühe Zensur und die Entstehung der Kollegialität*, *Historia* 2001, vol. 50, no. 2, pp. 145–162; N. El Beheiri, *Das regimen morum der Zensoren. Die Konstruktion des römischen Gemeinwesens*, Berlin 2012, pp. 127–131; C. Bur, *La citoyenneté dégradée. Une histoire de l'infamie à Rome (312 av. J.-C. – 96 apr. J.-C.)*, Rome 2018, pp. 65–70.

<sup>3</sup> Liv. 9.34.25: [...] *ita comparatum a maioribus sit ut comitiis censoriis, nisi duo confecerint legitima suffragia, non renuntiato altero comitia differantur [...]*.

<sup>4</sup> Cf. O. Karlowa (*Römische Rechtsgeschichte*, vol. 1. *Staatsrecht und Rechtsquellen*, Leipzig 1885, p. 229), who concluded that this was because the censor himself could not carry out the election and – once the election was announced – it was inappropriate for the consul to do so since the censor in principle stood higher in the hierarchy than he did.

<sup>5</sup> Cf. N. Rampazzo, *Quasi praetor non fuerit. Studi sulle elezioni magistratuali in Roma repubblicana tra regola ed eccezione*, Napoli 2008, pp. 145–160.

<sup>6</sup> Cf. L.R. Taylor, *Roman Voting Assemblies. From the Hannibalic War to the Dictatorship of Caesar*, Ann Arbor 1966 (reprint 2003), p. 98; A. Dosi, *Così votavano i Romani. Il sistema elettorale*, Roma 2004, pp. 33–36.

censorship, such a possibility was excluded. The election had to be restarted from the beginning.

This particular regulation justified running for the office of censor in agreement with a potential colleague. The candidates often campaigned together.<sup>7</sup> This led people to vote for both of them, associating them with each other and hoping that together they would implement the programme they had announced. Perhaps plans for censorship were already being born during the consulate. Cases of immense generosity shown by incumbent consuls can be interpreted as attempting to induce future voters to elect them as censors.<sup>8</sup>

In the case of censorship, consensus among colleagues was of paramount importance due to the exceptionally strong effect of the principle of collegiality also during the term of office. Disputes between censors were generally considered unacceptable, as the case of M. Aemilius Lepidus and M. Fulvius Nobilior in 179 BC clearly shows. It was they who were admonished by Q. Caecilius Metellus, who, a short time after the assembly on the Campus Martius, asked the new censors for a reconciliation.<sup>9</sup> He explained that, for voters, both of them individually were the best candidates, but that their enmity, which had so far only harmed themselves, could prove fatal to the Republic. Therefore, all citizens demanded a reconciliation between those who had already been united by their election to the same office.<sup>10</sup> Censors were therefore expected to cooperate and to resolve any conflicts. In the event of a major disagreement between censors, it was considered impossible to hold

<sup>7</sup> Cf. R. Stewart, *Public Office in Early Rome. Ritual Procedure and Political Practice*, Ann Arbor 1998, pp. 159–174; G. Forsythe, *A Critical History of Early Rome. From Prehistory to the First Punic War*, London 2005, pp. 269–270. Censorship was often carried out jointly by colleagues in the consulate, cf. H. Beck, *Karriere und Hierarchie. Die römische Aristokratie und die Anfänge des cursus honorum in der mittleren Republik*, Berlin 2005, p. 85.

<sup>8</sup> Perhaps this was the aim of Crassus' actions during his consulship. Cf. Plut., *Crass.* 12.2; A. Jakobson, *Elections and Electioneering in Rome. A Study in the Political System of the Late Republic*, Stuttgart 1999, p. 41.

<sup>9</sup> Liv. 40.46: *singulos cum intuemur, M. Aemili, M. Fulvi, neminem hodie in civitate habemus, quem, si revocemur in suffragium, velimus vobis praelatum esse. ambo cum simul aspicimus, non possumus <non> vereri, ne male comparati sitis, nec tantum rei publicae prosit, quod omnibus nobis egregie placeatis, quam, quod alteri displicetis, noceat. inimicitias per annos multos vobis ipsis graves et atroces geritis, quae periculum est ne ex hac die nobis et rei publicae quam vobis graviore fiat. [...] has ut hodie, ut in isto templo finiatas simultates, quaesumus vos universi, et quos coniunxit suffragiis suis populus Romanus, hos etiam reconciliacione gratiae coniungi a nobis sinatis.*

<sup>10</sup> Cicero, too, wrote of how M. Lepidus immediately after the election reconciled with his former enemy and now colleague, M. Fulvius, for which he was widely praised – Cic., *De prov. cons.* 9; Gell. 12.8.5–6. Cf. D.F. Epstein, *Personal Enmity in Roman Politics 218–43 B.C.*, London–New York 1987 (reprint 1989), pp. 13–18.

office. Cassius Dio, for example, notes that the censors Q. Catulus and M. Crassus<sup>11</sup> became involved in a debate about granting citizenship to the Transpadians.<sup>12</sup> One of them believed that they should be granted citizenship, the other the opposite. For this reason, they did not carry out their duties and resigned from office.

Sometimes conflict between censors erupted during their terms of office. This was the case with M. Livius Salinator and C. Claudius Nero.<sup>13</sup> The censors had already been at odds with each other before but had previously held the consulship in unison in 207 BC. Also, the *lectio senatus* and the leasing of public contracts proceeded without dispute. It was only during the review of the equestrian centuries that the two officials tried to deprive each other of horses, i.e. to impose a censorial mark on each other. Nero included his colleague in the list of *aerarii*, upon which the latter moved thirty-four *tribus* (all but his own) into this category. It must be stressed, of course, that none of these actions had any legal effect due to the disagreement between the censors. Each of them was certainly applying *intercessio* to the other. Nevertheless, the entire situation was fairly scandalous and – above all – embarrassing. These circumstances were exploited by the plebeian tribune Cn. Baebius,<sup>14</sup> who accused the censors of exercising their office too harshly and set a trial date before the assembly. However, the Senate relieved the censors of the need to defend themselves by passing a decree declaring censorship an office free from the fear of all courts. The decree included a provision that the censors should not be held accountable for their decisions.<sup>15</sup> This episode clearly indicates that censors were able to block each other's actions by using *intercessio*. In doing so, one might be tempted to argue that Nero and Salinator acted in full knowledge that their decisions would be vetoed. Their anger was so intense that they acted more for show than to actually achieve anything. This could have led to a weakening of censorship as a magistracy, which was, however, prevented by the decision of the

<sup>11</sup> Cf. C. de Boor, *'Fasti censorii'*, Berolini 1873, p. 27; T.R.S. Broughton, *The Magistrates of the Roman Republic*, vol. 2, New York 1952, p. 157; J. Suolahti, *The Roman Censors. A Study on Social Structure*, Helsinki 1963, pp. 464–472; E. Reigadas Lavandero, *Censura y 'res publica': aportación constitucional y protagonismo político*, Madrid 2000, pp. 455–460.

<sup>12</sup> For a broader discussion of the issue of the Transpadians, see E.S. Gruen, *The Last Generation of the Roman Republic*, Berkeley–Los Angeles 1974, pp. 409–411.

<sup>13</sup> Cf. Liv. 29.37; D.F. Epstein, *Personal Enmity...*, p. 17; M.D. Thomas, *Censure of the Censors: Livy in a 'Comic' Mode*, *Ancient History Bulletin* 1994, vol. 8, pp. 18–27.

<sup>14</sup> Cf. T.R.S. Broughton, *The Magistrates...*, vol. 1, Atlanta 1951 (reprint 1986), pp. 307 and 312.

<sup>15</sup> Cf. in more detail A. Tarwacka, *Come vendicarsi dei censori? Scontri politici e responsabilità penale dei guardiani della morale*, *Diritto@Storia* 2016, no. 14, <http://www.dirittoestoria.it/14/tradizione/Tarwacka-Come-vendicarsi-dei-censori.htm> [access: 15.06.2024].

Senate, which became the foundation of the principle of the non-responsibility of censors for official decisions related to the *regimen morum*.

The desirable situation was when the censors mutually supported each other as demonstrated in the case of Tiberius Sempronius Gracchus and Gaius Claudius Pulcher.<sup>16</sup> The colleagues were both accused of *perduellio* by a plebeian tribune Rutilius.<sup>17</sup> The trial before the *comitia centuriata* took a dramatic course. First, the assembly was to decide the fate of Claudius. When the vote took an unfavourable turn, Gracchus – despite being convinced that he was in no danger – tipped the scales in favour of his colleague, vowing to go into exile with him in the event of a conviction, without waiting for a decision on his case.<sup>18</sup> The conviction was avoided by a vote of only eight centuries. The acquittal of Claudius caused Rutilius to withdraw<sup>19</sup> the charges against Gracchus. This case is a proof of loyalty between censors who were ready to support their colleagues not only for the sake of personal matters but in order to defend the magistracy itself.

The principle of collegiality also translated into other aspects of the exercise of the office of censor. During the Republican period, edicts were usually issued jointly by both censors, as expressed in the sources by the phrase *censores edixerunt*.<sup>20</sup> Even if only one censor is mentioned in a source text, this usually only indicates that he was perceived as more influential. Most often, this situation arises in sources that speak of eminent personalities. And so, for obvious reasons, little is known about Appius Claudius' colleague in office, because while he completed his censorship within the time limit provided by the *lex Aemilia*, Appius refused to do likewise and continued – with the *odium* accompanying his person – to hold office. Mentions of Cato's censorship are also known, from which the character of his colleague rarely shines through a little. The principle of issuing an edict jointly could only be altered exceptionally when one of the censors needed to react ad hoc by promulgating an *edictum repentinum*, which he could do independently, although undoubtedly only in the absence of a colleague's *intercessio*.

<sup>16</sup> Cf. C. de Boor, 'Fasti censorii', p. 18; T.R.S. Broughton, *The Magistrates...*, vol. 1, pp. 423–424; J. Suolahti, *The Roman Censors...*, pp. 371–376; E. Reigadas Lavandero, *Censura y 'res publica'...*, pp. 331–342.

<sup>17</sup> Cf. Liv. 43.16.

<sup>18</sup> Cf. Gell. 6.9.9.

<sup>19</sup> Th. Mommsen, *Römisches Staatsrecht*, vol. 1, 3rd ed., Graz 1952 (reprint), p. 146, was convinced that the tribune presided over the assembly. However, it seems more likely that it was a higher official, in this case, the city praetor, who presided. Cf. B. Santalucia, *I tribuni e le centurie*, in: idem, *Studi di diritto penale romano*, Roma 1994, pp. 56 ff.

<sup>20</sup> Gell. 15.11.2; Suet., *De rhet.* 1.25; Liv. 43.16.2.

A particularly important competence of the censors was to perform the purification sacrifice<sup>21</sup> intended to ensure the prosperity of the state for the next five years – *lustrum condere*. At the head of the procession, according to sources, there was a *scriba* reading the formula of the prayer (*precatio*).<sup>22</sup> The culmination of the whole ceremony was a sacrifice called *suovetaurilia* where a boar, ram and bull were offered to the god Mars. Some regulations concerning this rite can be found in the *tabulae censoriae*, excerpts of which were provided by Varro.<sup>23</sup> It is clear from the text that it was decided by lot which of the censors would carry out the lustration.<sup>24</sup> One may wonder whether this does not violate the principle of collegiality. A very important clue is the information that, despite the draw, both censors carried out the lustration. This was referred to by the term *ambilustrium*, which Servius invoked when commenting on Virgil's Aeneid, meaning that it was not legal to purify the state without both censors.<sup>25</sup> Some indication illuminating the problem of collegiality in the context of *lustratio* may also be provided by the case of the censorship of Mummius and Scipio.<sup>26</sup> Already after the end of their tenure, the plebeian tribune Ti. Claudius Asellus,<sup>27</sup> whom Scipio had previously wanted to punish with a mark but was blocked by the colleague, accused the former censor of irregularities in lustration, which had the effect of failing to ensure the prosperity of the state.<sup>28</sup> It is known that during the ceremony Scipio ordered a change in the *precatio* formula, in which the immortal deities had hitherto been asked to improve the situation of the Roman people.<sup>29</sup> Scipio felt that it was already good enough and asked that this should never change. He also ordered this innovation to be inserted into the *tabulae publicae*, so that subsequent censors could take advantage of it when carrying out lustrations. A major problem with this case is that it is uncertain whether it was Scipio who performed the ceremony in this case. The source texts seem to contradict each other. Cicero quoted an anecdote about how

<sup>21</sup> Cf. R.M. Ogilvie, 'Lustrum Condere', *The Journal of Roman Studies* 1961, vol. 51, no. 1–2, pp. 31–39.

<sup>22</sup> Cf. *Mag. et sac. p. R. exp.* 41b, s.v. *censores*.

<sup>23</sup> Varr., *L.L.* 6.87–88.

<sup>24</sup> However, it is difficult to imagine the actual application of this principle between 351 and 280 BC. For, despite the admission of plebeians to exercise censorship, the performance of lustration always fell to the patrician censor. Only later were plebeian censors allowed to perform it. Cf. Liv., *Per.* 13.

<sup>25</sup> Serv., *In Verg. Aen.* 1.283.

<sup>26</sup> Cf. C. de Boor, 'Fasti censorii', p. 20; T.R.S. Broughton, *The Magistrates...*, vol. 1, pp. 474–475; J. Suolahti, *The Roman Censors...*, pp. 393–394.

<sup>27</sup> Cf. T.R.S. Broughton, *The Magistrates...*, vol. 1, p. 480.

<sup>28</sup> Gell. 4.17: *Lucilii ex XI. versus sunt: Scipiadae magno improbus obiciebat Asellus /lustrum illo censore malum infelixque fuisse*. On the *lustrum infelix* cf. Fest 366 L, s.v. *referri diem predictam*; J. Linderski, *The Augural Law*, in: *Aufstieg und Niedergang der römischen Welt*, vol. 2. *Principat*, ed. W. Haase, Berlin–New York 1986, pp. 2186–2189.

<sup>29</sup> Cf. N. El Beheiri, *Das regimen morum...*, pp. 133–135.

Scipio, to the accusation of the rite's unsuccessfulness made by Asellus, countered that there was nothing to be surprised about since the sacrifice was made by the censor who reversed the decision to place Asellus among the *aerarii*,<sup>30</sup> namely Mummius. It can therefore be assumed that it was Mummius who offered the sacrifice, but Scipio, present after all, interfered with the ceremony. Perhaps, therefore, the basis of the accusation was precisely that the conqueror of Carthage dared to change the *precatio*, the text of which was strictly fixed and inscribed in the *tabulae censoriae*, which was to determine the unsuccessfulness of the entire ceremony. This case indicates that both censors were present at the lustration and that the fact that one of them was appointed by lot to conduct it did not mean that the other could not interfere.

The *regimen morum*, or ensuring that the customs of the ancestors were observed, was one of the most important tasks of the censors. This is another example of the collegial nature of the office. In a passage from his *Pro Cluentio* speech concerning the *regimen morum*, Cicero emphasised<sup>31</sup> that a censor could not only criticise but also annul a colleague's decision.<sup>32</sup> He therefore tried to prove that the decisions of censors did not constitute a judgment (*res iudicata*).<sup>33</sup> This view implied further consequences because, according to the speaker, *res iudicatae* were a source of law<sup>34</sup> and as such they were binding. If a matter judged could constitute evidence in a subsequent trial, it was treated as a prejudicial circumstance in the subsequent proceedings (*praeiudicium*). Similarly, if the judgment entailed further consequences, as in the case of adjudication from an defamatory complaint (*iudicium famosum*),<sup>35</sup> officials and judges had to take this into account when denying the convicted person the right to act as judge, witness or guardian and the possibility of *postulatio*. The censorial mark, on the other hand, had no such effect.

<sup>30</sup> Cic., *De or.* 2.268: *ut Asello Africanus obicienti lustrum illud infelix, 'noli' inquit 'mirari' is enim, qui te ex aerariis exemit, lustrum condidit et taurum immolavit. Tacita suspicio est, ut religione civitatem obstrinxisse videatur Mummius, quod Asellum ignominia levarit.*

<sup>31</sup> Cic., *Pro Cluent.* 122: *Atque etiam ipsi inter se censores sua iudicia tanti esse arbitrantur ut alter alterius iudicium non modo reprehendat, sed etiam rescindat; ut alter de senatu movere velit, alter retineat et ordine amplissimo dignum existimet; ut alter in aerarios referri aut tribu moveri iubeat, alter vetet.*

<sup>32</sup> Cf. G. Clemente (*Cicerone, Clodio e la censura: la politica e l'ideale*, in: *Munuscula. Scritti in ricordo di Luigi Amirante*, ed. E. Dove, Napoli 2010, pp. 51–56), who considers this passage to be an open criticism of censorship. The present author disagrees with this view. Cicero only wanted to distinguish between a censorial mark and court judgements.

<sup>33</sup> Cf. L. Lange, *Römische Alterthümer*, vol. 1, 2nd ed., Berlin 1863, pp. 679–680.

<sup>34</sup> Cic., *Top.* 28: *Atque etiam definitiones aliae sunt partitionum aliae divisionum; partitionum, cum res ea quae proposita est quasi in membra discernitur, ut si quis ius civile dicat id esse quod in legibus, senatus consultis, rebus iudicatis, iuris peritorum auctoritate, edictis magistratum, more, aequitate consistat.*

<sup>35</sup> Cf. Cic., *Pro Rosc. Amer.* 111–115, where Cicero stated that *qui mandatum neglexerit, turpissimo iudicio condemnatur necesse est* and equated *crimen mandati* with *furtum*. Other *famosa iudicia* in Cic., *Pro Caec.* 7–8; *Top.* 42 and *D.* 3.2.1 (Julian. 1 *ad ed.*).

The imposition of *nota censoria* was not subject to strict rules. The censor could punish a citizen if he wanted to and his colleague did not object. He simply had to give a reason in the *subscriptio*. The legal construction of this sanction therefore did not require the existence of evidence of guilt. The *ius intercedendi* was certainly an important constraint, but it was not always applied. For example, Tiberius Gracchus was praised and even reappointed consul because he did not hide anything from his colleague during his term as censor.<sup>36</sup> It follows that one censor was not obliged to inform the other of his actions and allow him to decide whether or not to object.

It happened that the strong personality of one censor prevented the other from vetoing his decisions. This was the case during the censorship of Appius Claudius Pulcher and L. Calpurnius Piso in 50 BC,<sup>37</sup> when Piso did not oppose the degradation of many senators (including Sallustius) and equestrians.<sup>38</sup>

As the principle of collegiality was exceptionally strong in the case of censorship, some scholars assume<sup>39</sup> that the power of the censors was indivisible and therefore one cannot speak of *intercessio*, but rather of the necessity of joint decision-making.

In the already mentioned passage from the *Pro Cluentio* on the *regimen morum*, Cicero stressed that a censor could not only criticise but also annul a colleague's decision. This could happen when one censor wanted to remove someone from the Senate and the other allowed him to stay and deemed him worthy of the highest state, or when one transferred someone to the ranks of the *aerarii* and to an inferior *tribus* and the other opposed it. A colleague in office could therefore block any change in the status of a citizen.

This competence overlaps *prima facie* with the *ius intercedendi*. Why, then, did Cicero speak of it as something special? A view has emerged according to which the function described by the orator is not *intercessio*, because it implied a compromise between the censors.<sup>40</sup> The case of Popillius described by Cicero in *Pro Cluentio* 132 is strongly emphasised in this respect: one censor found Popillius guilty of taking

<sup>36</sup> Cic., *De inv.* 1.48: *Adprobatum est, quod homines, cum dubium esset, quale haberi oporteret, sua constituerunt auctoritate: velut Gracchi patris factum populus Romanus, qui eum [ob id factum] eo quod insciente collega in censura nonnihil gessit post censuram consulem fecit.*

<sup>37</sup> Cf. C. de Boor, 'Fasti censorii', p. 29; T.R.S. Broughton, *The Magistrates...*, vol. 1, pp. 247–248; J. Suolahti, *The Roman Censors...*, pp. 483–490; E. Reigadas Lavandero, *Censura y 'res publica'...*, pp. 478–485.

<sup>38</sup> Cf. Dio Cass. 40.63–64; D.-A. Kukofka, *Cass. Dio 40,63–64 zur Kollegialität der römischen Zensoren*, *Historia* 1991, vol. 40, no. 1, pp. 119–122.

<sup>39</sup> Th. Mommsen, *Römisches Staatsrecht*, vol. 2, part 1, p. 357; F. de Martino, *Storia della costituzione romana*, vol. 1, 2nd ed., Napoli 1973, p. 333. Differently H. Siber, *Zur Kollegialität...*, pp. 466–474; R. Bunse, *Die frühe Zensur...*, pp. 146–148; D.-A. Kukofka, *Cass. Dio 40,63–64...*, pp. 119–122.

<sup>40</sup> Cf. W. Kunkel, R. Wittmann, *Staatsordnung und Staatspraxis...*, p. 201, fn. 361 and p. 408.



a bribe as a judge, the other disagreed, but he refused to admit Popillius to the Senate because he was a son of a freedman, while at the same time letting him retain a senatorial seat during the games and freeing him of ignominy. This situation is very problematic: it seems that both censors agreed to the fact that Popillius should not become a member of the Senate but their opinions concerning the reason differed. If Popillius was a son of a freedman he was hardly eligible to the Senate and this may explain the fact that he was spared ignominy. However, the fact that he was allowed to retain his senatorial seat is rather puzzling and seems a unique and personal decision. The events may be reconstructed as follows: both censors decided that they would not admit sons of freedmen to the Senate. Subsequently one of them wanted to punish Popillius for bribery with a censorial mark applying *praeteritio*. His colleague blocked the charge of bribery using *intercessio* but pointed to the fact that Popillius may not be admitted to the Senate nevertheless because of his ancestry. Such a *praeteritio* should not result in *ignominia* because Popillius could not be blamed for it. This single case does not however constitute proof that the censors did not use *intercessio* during their *regimen morum* activities or that they could reach a kind of a compromise. Rather, it would seem reasonable to treat it as an exception.

It might be useful to take into account a wider context of Cicero's statements. The speaker was trying to prove that the censorial mark differed from a judicial sentence because it was not treated as a *praeiudicium*, i.e. a prejudicial decision serving as the basis for a later judgment.<sup>41</sup> One of the features that Cicero mentioned was precisely the possibility of blocking a colleague's decision. In a normal trial, one judge could at most condemn the decision of another, but not overrule it. Proceedings before censors sometimes resembled a trial, but the possibility of using objections distinguished them from judicial proceedings. This interpretation is consistent with the text and makes it possible to define the described competence of the censors as *ius intercedendi*.

If one of the censors was no longer in office – most often because of death, or possibly *capitis deminutio maxima* or *media*, that is, loss of freedom or citizenship – the same rules initially applied as in the case of the consuls, that is, a supplementary election. Such a newly elected official would be called *ensor suffectus*, because he joined his colleague during his term of office, rather than holding office from the beginning. Livy states<sup>42</sup> that on the death of the censor C. Iulius in 393 B.C., his

<sup>41</sup> Cf. Quint., *Inst. or.* 5.11.13.

<sup>42</sup> Liv. 5.31: *C. Iulius censor decessit; in eius locum M. Cornelius suffectus; -quae res postea religioni fuit quia eo lustrum Roma est capta; nec deinde unquam in demortui locum censor sufficitur.*

successor was M. Cornelius.<sup>43</sup> However, as Rome had been conquered by the Gauls at the time of this *lustrum*,<sup>44</sup> it was considered that such a supplementary election was against the will of the deities.<sup>45</sup> Since then, a successor was no longer chosen to replace the deceased. The other censor should in such a case lay down the office.<sup>46</sup>

Plutarch cited this principle as a comparison to the situation of the priest of Jupiter (*flamen Dialis*), who had to resign from his priestly functions when his wife died.<sup>47</sup> He also gave the example of the censor Aemilius Scaurus, who – when his colleague Livius Drusus died in 109 BC<sup>48</sup> – refused to step down. He only did so when the plebeian tribunes ordered him imprisoned.

The power of the censors was discretionary. Their decisions were non-appealable and they themselves, once their term of office was over, were free from responsibility for official decisions. They were not subject to any control other than a very strict application of the principle of collegiality. Censors were elected simultaneously, strongly urged to avoid any conflict within the college, and forced to resign their office in the event of the death of a colleague. Collegiality was also manifested in the *intercessio*, by means of which colleagues opposed each other, especially with regard to censorial marks that could threaten the position of citizens in the social hierarchy. Unanimity among the censors was desirable, and serious conflict between them threatened to paralyse the office and prevent them from performing their duties.

It is worth noting that the principle of collegiality was also observed in the assumption of the office of censor during the Principate. Although the magistracy generally declined and its powers were taken over by the emperors, there were a few

<sup>43</sup> Cf. Plut., *Camill.* 14.1; C. de Boor, 'Fasti censorii', p. 5; T.R.S. Broughton, *The Magistrates...*, vol. 1, pp. 91–92; J. Suolahti, *The Roman Censors...*, pp. 178–181.

<sup>44</sup> The phrase *eo lustrum* signifies the time until these censors perform the purification ceremony. Indeed, *lustrum* is the five-year period separating one such ceremony from the next. Cf. Varr., *L.L.* 6.11; Fest. 107 L s.v. *lustrum*; Censorin., *De die nat.* 13.

<sup>45</sup> *Religioni esse* means that something is contrary to the will of the deities. Fest. 348 L., s.v. *religiosus*: [...] *quod homini non liceat, ut si id faciat, contra deorum voluntatem videatur facere*. Cf. Fest. 358 L., s.v. *religioni*.

<sup>46</sup> Cf. Liv. 6.27; 9.34; 24.43; 27.6; O. Karlowa, *Römische Rechtsgeschichte*, vol. 1, p. 229; J. Suolahti, *The Roman Censors...*, pp. 78–79; A. Manzo, 'Lustratio' e divieto del 'suffectus': due aspetti sacerdotali del censore?, *Teoria e Storia del Diritto Privato* 2019, no. 12, pp. 1–22.

<sup>47</sup> Plut., *QR* 50: ἦττον δ' ἂν τις τοῦτο θαυμάσειε προσιστορήσας, ὅτι καὶ τῶν τιμητῶν θατέρον τελευτήσαντος ἔδει καὶ τὸν ἕτερον πεπαῦσθαι τῆς ἀρχῆς ἀποθανόντος δὲ τιμητοῦ Λιβίου Δρούσου, Σκαῦρος Αἰμίλιος συνάρχων οὐκ ἐβούλετο τὴν ἀρχὴν ἀπειπασθαι, μέχρι οὗ τῶν δημάρχων τινὲς αὐτὸν ἐκέλευον εἰς τὸ δεσμοκτήριον ἀπάγεσθαι. Cf. Gell. 10.15.22. The priestly office of the *Flamen Dialis* was subject to a number of restrictions. On this subject, see Gell. 10.15.

<sup>48</sup> Cf. C. de Boor, 'Fasti censorii', p. 23; T.R.S. Broughton, *The Magistrates...*, vol. 1, p. 545; J. Suolahti, *The Roman Censors...*, pp. 420–426.

cases where censorship was reactivated in its former shape. Some emperors formally assumed the office of censor together with a colleague. This was done by Claudius, who became censor with Vitellius in 47 AD. Twenty-five years later, in April 73 AD, Vespasian, aware of the decline of many senatorial and equestrian families and the increasing demoralisation of society, took up the office of censor with his son Titus.<sup>49</sup> However, it is important to note that, particularly in the case of Claudius' and Vitellius' censorship, the source texts emphasise their independent decisions. Both issued separate edicts,<sup>50</sup> with Claudius himself imposing the penalties associated with the *regimen morum*. The main censorial duties were still performed by them jointly. The absolute revolution, however, was carried out by Domitian, who in 84 AD assumed the office of *censor perpetuus*, or lifelong censor, without choosing a colleague.<sup>51</sup> The epitomator of Cassius Dio noted that Domitian was the first and only among citizens and rulers to assume the office of censor for life.<sup>52</sup> This was a radical departure from the principle of collegiality, as well as the tenure of the office of censor, which resulted in successive emperors choosing not to reinstate the office.

The principle of *annualitas*, i.e. the annual holding of office, applied to most offices. This rule can, however, be somewhat generalised by reducing it to the principle of tenure. The term of office of censors was – most likely from *lex Aemilia*<sup>53</sup> onwards – eighteen months, and the censorship was not a permanent office, as elections were held once every five years. This caused a lack of continuity in the performance of official duties and resulted in other magistrates having to take over some of the censorial tasks in between terms. When Cicero described the ideal system in his treatise *De legibus*, he envisaged censorship as an office with a five-year term,<sup>54</sup> which would ensure greater stability and more complete fulfilment of duties.

<sup>49</sup> Cf. Suet., *Tit.* 6; C. de Boor, 'Fasti censorii', p. 33; J. Suolahti, *The Roman Censors...*, pp. 513–515; A.B. Bosworth, *Vespasian and the Provinces: Some Problems of the Early 70's A.D.*, Athenaeum 1973, vol. 51, pp. 49–50.

<sup>50</sup> Cf. Suet., *Claud.* 16; Tac., *Ann.* 12.4.

<sup>51</sup> Cf. B.W. Jones, *Some Thoughts on Domitian's Perpetual Censorship*, *The Classical Journal* 1973, vol. 68, no. 3, pp. 276–277; T.V. Buttrey, *Domitian's Perpetual Censorship and the Numismatic Evidence*, *The Classical Journal* 1975, vol. 71, no. 1, pp. 26–34.

<sup>52</sup> Dio Cass. 67.4.3: τμητῆς δὲ διὰ βίου πρῶτος δὴ καὶ μόνος καὶ ἰδιωτῶν καὶ αὐτοκρατόρων ἐχειροτονήθη... Cf. Dio Cass. 53.18.5.

<sup>53</sup> Cf. G. Rotondi, *Leges publicae populi Romani. Elenco cronologico con una introduzione sull'attività legislativa dei comizi romani*, Milano 1912, p. 211; D. Flach, *Die Gesetze der frühen römischen Republik. Text und Kommentar*, Darmstadt 1994, pp. 245–246.

<sup>54</sup> Cic., *De leg.* 3.7: [...] magistratum quinquennium habento eaque potestas semper esto [...]. Cf. A.E. Astin, *Cicero and the Censorship*, *Classical Philology* 1985, vol. 80, no. 3, pp. 233–239.

An interesting fact is recorded by Livy:<sup>55</sup> in 169 BC, the censors G. Claudius Pulcher and Tiberius Sempronius Gracchus<sup>56</sup> asked the Senate for an extension (*prorogatio*) of their term of office in order to complete the contracts they had signed and to claim the work from the contractors. The plebeian tribune Tremellius, who had not been included in the list of senators by the censors, objected (*intercessio*) to the request and their term was not extended.

It can be deduced from Livy's account that after the census of the citizens and the *lustratio* had been completed, the censors could ask for an extension of their term of office because of the need to complete matters relating to the public contracts that had been concluded.<sup>57</sup> This involved accepting completed and renovated buildings. It was of particular importance to the censors, as the completion of works during their tenure sometimes gave them the opportunity to name the building after themselves. When, for example, Appius Claudius' colleague Plautius resigned from office earlier, the road and aqueduct under construction were named Via and Aqua Appia,<sup>58</sup> respectively, omitting Plautius' name.

The principle of incompatibility was also observed when holding office. According to Theodor Mommsen, however, this applied primarily to offices with a one-year term of office.<sup>59</sup> This author cites sources that confirm the simultaneous holding of censorship and consulship,<sup>60</sup> praetorship,<sup>61</sup> dictatorship<sup>62</sup> and the office of *magister equitum*.<sup>63</sup> It might therefore seem that there was no rigid rule prohibiting

<sup>55</sup> Liv. 45.15.9: *petentibus, ut ex instituto ad sarta tecta exigenda et ad opera, quae locassent, probanda anni et sex mensum tempus prorogaretur, Cn. Tremellius tribunus, quia lectus non erat in senatum intercessit.*

<sup>56</sup> Cf. C. de Boor, *Fasti censorii*, p. 18; T.R.S. Broughton, *The Magistrates...*, vol. 1, pp. 423–424; J. Suolahti, *The Roman Censors...*, pp. 371–376; E. Reigadas Lavandero, *Censura y 'res publica'...*, pp. 331–342.

<sup>57</sup> G. de las Heras Sánchez, G. Polo Toribio, *Plus quam annua ac semestris*, Anuario da Facultade de Dereito da Universidade da Coruña 2007, vol. 11, pp. 169 ff.; G. Polo Toribio, *La prorogatio en la magistratura censoria*, Revista General de Derecho Romano 2009, no. 13, passim.

<sup>58</sup> Cf. Front., *De aquaed.* 5.

<sup>59</sup> Th. Mommsen, *Römisches Staatsrecht*, vol. 1, pp. 513–515. Cf. F. Guizzi, *Censores*, in: *Novissimo digesto italiano*, vol. 3, eds. A. Azara, E. Eula, Torino 1964, p. 102.

<sup>60</sup> Front., *De aquaed.* 6. This text, however, does not at all make it certain that these offices were held simultaneously, nor that the same person is involved. Cf. T.R.S. Broughton, *The Magistrates...*, vol. 1, pp. 197–198.

<sup>61</sup> L. Postumius Megellus in 253 BC. Cf. A. Degrassi, *Fasti Capitolini*, Torino 1954, pp. 56–57; T.R.S. Broughton, *The Magistrates...*, vol. 1, p. 211.

<sup>62</sup> Cn. Domitius Calvinus Maximus in 280 BC. Cf. A. Degrassi, *Fasti Capitolini*, pp. 52–53; T.R.S. Broughton, *The Magistrates...*, vol. 1, p. 191.

<sup>63</sup> P. Licinius Crassus in 210 BC. Cf. A. Degrassi, *Fasti Capitolini*, pp. 62–63; T.R.S. Broughton, *The Magistrates...*, vol. 1, p. 278.

cumulation. Perhaps, however, the holding of two offices was merely due to extraordinary circumstances or even overlapping terms of office, and probably concerned short periods allowing the duties associated with one magistracy to be completed quickly and another to be taken up. This was related to the unusual length of the censor's term of office, which was eighteen months and could therefore end in the middle of the year, especially with extensions occurring, as mentioned.

During the period of the Republic, the magistrates carried out their duties without being paid. The censors, of course, did not receive any salary either. The Senate did, however, assign funds to them to be used for building projects. These were public investments, but they could contribute to the popularity of the official who led them and after whom they were often named, as was the case with the Via Appia and Aqua Appia already mentioned. The money for these investments was collected by the censors from the *aerarium* and was thus paid to them by the quaestors. In principle, the Senate determined how the money was generally to be spent. However, it can be assumed that the censors themselves sometimes proposed projects of their own devising. That these sometimes met with opposition among the senators can be seen, for example, in the controversy that arose over Cato's proposed construction of the Basilica Porcia.<sup>64</sup>

In summary, it must be said that, in the case of censorship, the principles of holding office were respected, although there were some deviations from the general rules due to the peculiarities of this magistracy. The principle of collegiality, allowing colleagues in office to block each other and preventing them from acting alone against the will of the other censor, was particularly strong. Both censors had to be elected simultaneously without the possibility of announcing the election of one while the other had not yet gained the necessary number of votes. If during the term of office one colleague died, the other was obliged to resign. They were also able to veto each other's decisions concerning the *regimen morum* and *locationes censoriae*. Their official tasks were usually performed jointly: the *lectio senatus*, *recognitio equitum* and census. Only one censor performed the lustration but the other one was present and took part in the ceremony.

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<sup>64</sup> Cf. Plut., *Cat. Mai.* 19.2.

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