Sánchez-Moreno Ellart, Carlos

Notes on some new issues concerning the birth certificates of Roman citizens

The Journal of Juristic Papyrology 34, 107-119

2004

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.
NOTES ON SOME NEW ISSUES
CONCERNING THE BIRTH CERTIFICATES
OF ROMAN CITIZENS

A very interesting article recently published by Giovanni Geraci, entitled “Le dichiarazioni di nascita e di morte a Roma e nelle province”, devotes a number of pages to a subject area which I have also had the opportunity to investigate: the birth certificates of Roman citizens. Indeed, in 2002 I published a short study on this subject, but unfortunately I was unaware then of Geraci’s contribution, mainly because it was being printed at practically the same time as my own book. There are a number of key issues which emerge from Geraci’s article, and perhaps it would be of interest not only to clarify some of the points that I raised in my study, but also to outline my position with respect to certain problems which I did not fully explore before.

First of all, I will proceed to present my main thesis: there is no reason for thinking that illegitimate children were excluded from the register before the reign of Marcus Aurelius. The documents known as professio

3 This is the most accepted theory: F. Schulz, “Roman Registers of Birth and birth Certificates”, JRS 32 (1942), pp. 78 ff. and 33 (1943), pp 145 ff. (= BIDR 55-56 [1951], pp. 170 ff); F. Lanfranchi, Ricerche sul valore giuridico delle dichiarazioni di nascita, Faenza,
and testatio are, perhaps, both related to a return before an authority, i.e. a professio, although it is probable that different procedures were established. Next, I propose to examine whether all the documents quoted by Geraci are really birth certificates of Roman citizens; finally, I will discuss whether the professio liberorum was an institution of an obligatory nature.

I think it is important to devote a few lines to my main thesis: I consider the professio, according to the common acceptance of the term, as a return before an authority, in this case the Prefect of Egypt. If we accept that legitimate and illegitimate children were declared before an authority, then clearly both cases are professions. In this sense, and for reasons that I have had the opportunity to discuss, the difference is reduced to the ways of proving that return: a copy made of the tabula albi or, in the case of illegitimate children, a simple testatio of the birth. Ultimately, both are testationes, but both also presuppose a professio. The source materials for tracing these procedures are far from satisfactory: an ambiguous reference in SHA (Marc. 10.1), the not lesser ambiguous D. 22.3.29.1 (Scaev. 9 dig.: ...absente marito ut spurium in actis professa est...), one professio of vicesima hereditatum and some επίκρισις returns (SB i 5217, BGU IV 1032, P. Oxy. XII 1450, SB vi 9228 = Daris 95 and P. Diog. 6).

I must outline that, among the documents directly related to our institution, only P. Mich. III 169 is an example of a testatio of illegitimate children. Perhaps P. Michael. 61 is also such a case, but the other three alleged examples (P. Diog. 1, P. Mich. vii 436 and BGU vii 1690) are no more than testationes made by members of the auxilia, i.e. non-citizens who were trying to keep a piece of documentary evidence to be alleged in the future (e.g. the επίκρισις), when they had attained the honesta missio. The citizenship of the deponents – or the lack of it – in these testationes is the key problem. Schulz was aware of this difficulty and as a result he reads

---


4 This is, in fact, the usual sense for the term ‘professio’, cf. e.g. A. Berger, Encyclopedic Dictionary of Roman Law, Philadelphia 1953, s. v. ‘professio’.

carefully but ambiguously around it.\textsuperscript{6} For my part, I do not believe in the citizenship of M. Lucretius Clemens, because the publication \textit{P. Diog. 5} – the \textit{epiKrhois} of the same M. Lucretius Clemens – demonstrated that he was a \textit{peregrinus} when he produced the \textit{testatio} of \textit{P. Diog. 1}.\textsuperscript{7} The other two cases usually mentioned as \textit{testationes} of illegitimate children – \textit{P. Mich. VII 436} and \textit{BGU VII 1690} – by no means provide conclusive evidence of the citizenship of their deponents: in the former, the name – Epimachos Longinos – shows, with a high degree of probability, that he was not a Roman citizen; in the latter, not even the name of the deponent has been preserved.\textsuperscript{8} It should be emphasised that the problem of considering the three aforementioned documents as birth certificates of illegitimate children along the same lines as \textit{P. Mich. III 169} is partly related with the fact that soldiers were not allowed to marry, at least not until Septimius Severus.\textsuperscript{9} I think it is important to distinguish between illegitimacy in the case of a child citizen, which perhaps only involved a less honourable procedure, such as being excluded from the \textit{tabula albi}, and illegitimacy in the case of the children of the auxiliary troops. In the latter case, illegitimacy is secondary, simply deriving from the prohibition to marry affecting every soldier, not only the \textit{auxilia}. The real reason for being excluded from the

\textsuperscript{6} SCHULZ, “Roman Registers”, (cit. n. 3), p. 200; “The eques M. Lucretius Clemens […] was certainly in possession of the Roman citizenship, as his \textit{tria nomina} show. The soldier Epimachus Longini was probably not a Roman citizen, though the name is not absolutely decisive. But in military circles Latin was the official language. Moreover \textit{Epimachus} certainly expected to acquire the Roman citizenship by the \textit{missio honesta}.”


register is the lack of citizenship.\textsuperscript{10} the abbreviation CREAK, which was written in the end of descripta et recognita, definitely refers to Roman citizenship of the children and, significantly, is not in testationes of the auxilia.

In my opinion, the meaning of the texts confirms this thesis. \textit{P. Mich.} III 169, ll. 10–12 (scriptura exterior) states: \textit{lex Aelia Sentia et Iulia et Papia spurii in albo profiteri vetat:} the prohibition is only to declare the birth \textit{in albo} and it seems coherent with \textit{lex Papia Poppaea nuptialis}, which offered the same advantages to illegitimate children, for example the \textit{ius trium liberorum}: the law discriminated “very little against illegitimates”\textsuperscript{11}. In \textit{P. Mich VII} 436, ll. 5–9 (scriptura exterior) on the other hand, we find: \textit{testari ex lege A[elia Sentia et Papiae] Poppaea quae de filis procreandi]s nec potuisse s e profiteri propter districctionem militiae}. I agree with Sanders and Schulz in interpreting \textit{propter districctionem militiae} as ‘rigor, severitas, disciplina’, but not in the sense that they – the soldiers – could not marry: \textit{districcio} means that they had not yet attained their \textit{bonesta missio}, without which they were not citizens. In conclusion, I believe that a supplementary argument can be found: following the change of the formula in military diplomas (cf. \textit{CIL XVI} 90 and \textit{RMD} 39) which occurred during the reign of Antoninus Pius,\textsuperscript{12} in 144–145, no more \textit{testationes} of the auxilia can be found.

In this context, the next issue to discuss is fundamental to our purpose: whether or not to include certain items in the list of documents related to the \textit{professio liberorum}, in its broad sense, i.e. the declaration of legitimate and illegitimate children. In this respect, there are five documents and one literary text (Petr. Sat. 53 1–2) mentioned by Geraci that raise some doubts. The documents are \textit{TH} 5, \textit{P. Col. VIII} 225, \textit{PSI XI} 1183 (= \textit{FIRA} III 8 = \textit{CPL} 170), \textit{SB VI} 9228 (Daris 95) and \textit{BGU III} 847 (= Wilcken 460).

\textsuperscript{10} There are, in fact, very few cases of citizens among the auxilia on the first and second centuries AD: vid. G. \textsc{Webster}, \textit{The Roman Imperial Army}, New York 1998, 3 ed., p. 191 ff.

\textsuperscript{11} Vid. c. g. B. \textsc{Rawson}, \textit{Marriage, Divorce and Children in Ancient Rome}, Oxford 1996, p. 26 ff.

With regard to the inclusion of the first, TH 5, a document of AD 60, I cannot agree with Geraci’s opinion: in fact, this matter was resolved at the latest in 1959, when Arangio-Ruiz published his article “Lo status di L. Venidio Ennico ercolanese”. In this work, the author demonstrated that the deponent in TH 5, L. Venidius Ennichus, was actually a Junian Latin, not a Roman citizen. Actually, TH 83, TH 84 and TH 89 provide the original context for TH 5: in TH 83 and TH 84 we discover a process in which L. Venidius Ennicus is excluded from a ius honoris, – according the interpretation of Arangio Ruiz – so as not to have Roman citizenship at that time, and in TH 89 we find a professio anniculae, the same annicula declared through testatio in TH 5 (TH 89, ll. 5–8: *quod filiam a se procreatam anniculam habere prōfe[nsi sunt ... qua de re agitur] eorum sibi causam probam esse Romano* [*siqua*] *esse*).

As for Junian Latins, we know for certain that they were slaves manumitted against the provisions of the lex Aelia Sentia and the lex Iunia Norbana; for example, they had been freed before the age provided by the former, or manumitted in a form not recognised by the *ius civile*, for instance, through *manumissio inter amicos*. They had no *ius connubii* with Romans and had no right to make a testament, and so all their property went to their patron when they died. However, according to the lex Aelia Sentia – or, perhaps, the lex Iunia – a Junian Latin could be granted Roman citizenship *si filium anniculum habere*. As we know, the *anniculi pro-batio* consisted of a special procedure designed to examine certain aspects

of matters relating to citizenship or, in general terms, personal status. As Gai 1.29 says:

Statim enim ex lege Aelia minores triginta annorum manumissi et Latini facti si uxores duxerint vel cives Romanas vel Latinas coloniarias vel eiusdem condicionis, cuisi et ipsi essent, idque testati fuerint adhibitis non minus quam septem testibus civilibus Romanis suberibus et filium proceaverint, cum is filius annicus esse coeperit, datur eis potestas per eam legem adire praetorem vel in provinciis praesidem provinciae et adprobare se ex lege Aelia Sentia uxorem duxisse et ex ea filiam annicum habere; et si is, apud quem causa probata est, id ita esse pronuntiaverit, tunc et ipse Latinus et uxor eius, si et ipsa eiusdem condicionis sit, et filius, si et ipse eiusdem condicionis sit, cives Romani esse iubentur.

According to the lex Aelia Sentia, a Junian Latin freed before the age of thirty and married to a Roman woman acquired Roman citizenship, if there was a one-year old child born within this marriage. This is the reason for excluding TH 5 from the professio liberorum, a procedure designed only for Roman citizens.

There is greater ambiguity in the case of P. Col. VIII 225 (= SB v 7662, a private letter of recommendation, dated the end of the second century AD, in which its author told someone about his sending την ρροφεστίονα (sic!) 'Epevviov. According to the interpretation of Wilcken and, today, Geraci, there is indeed no reason to think in terms of a professio natalis. I, for my part, agree with this assumption: if this document referred to a birth certificate, it would not add any information about the main subject, i.e. we cannot decide whether this is a case of a declaration of a legitimate child or a declaration of an illegitimate child, and thus we are not able to add any information about the main problem, this being whether there was any difference in the procedure of each case. In support of our argument, the context of P. Col. VIII 225, ll. 10–14 reveals that the mention of a professio is quite vague here:

17 About the problem of comparing this text and Ulp. 3.3, vid. WEISS, "Professio und testatio" (cit. n. 3), p. 321 ff. and GARDNER, "Proofs of Status..." (cit. n. 16), p. 9 ff.
Clearly, the *professio* is mentioned here among many different items: Amonianus sent to Apollinarus, through someone called Antas (l. 6), a basket containing dried fish, some pairs of sandals and, according to the interpretation of Bagnall, Renner and Worp, some baskets of empty jars, a letter of introduction and the *professio* of Herennius. The enumeration is heterogeneous and, in many respects, unclear: the term *συστατική* and the term *professio* show a relationship with public offices, but perhaps *professio* could mean no more than any declaration before the public authority, not necessarily a *professio natalis*.

Among the documents mentioned by Geraci, more important for our purposes is perhaps *PSI* XI 1183. The author discuss this document, that, according to Burkhalter, could be considered as a Roman certificate of birth. In fact, the author believes that the document is divided into three parts: a supposed birth declaration of a Roman citizen, Pollia Nigra; a citizenship declaration of the father, Pompeius Niger and, finally, a property return. Burkhalter’s hypothesis is based on the reconstruction of the archive of L. Pompeius Niger: according Whitehorne and, in their turn, Gilliam and Parasoglou, *PSI* XI 1183 might be included in that archive and, starting from this fact, L. Pollia Nigra identified as the daughter of L. Pompeius Niger, not – that was, mistakenly, the interpretation of Arangio-Ruiz in *FIRA* III – as his wife. The reading *L. Pompeiam (Lucii) filiam Poll(ia) Nigram* is, as Geraci points out, confirmed by Pintaudi. If not, the clause *...idem professus se et filios civitate donatos esse ab...* would remain without any sense.

---

21 P. Col. viii, p. 123.
The critical analysis of Geraci about PSI χι 1183 and the conclusions of Burkhalter could be abridged in two points: \(^23\) first, both copies (A and B) of the return are broken and, consequently, the initial missing lines maybe mentioned the names of all the sons and daughters of Niger: that would justify the phrase *idem professus se et filios civitate donatos esse ab...*; second. The space after the name *L. Pompeiam (Lucii filiam) Pollia Nigram* is not enough to write the rest of the data usually recorded in Roman birth certificates, i. e., the name of the mother and the date of birth in accordance with Roman an Egyptian calendars, the mention of the consuls, the number of the imperial year and, finally, the name of the prefect.

We must remind however that PSI χι 1183 has been further discuss and object of different interpretations: Wilcken, comparing with D. 50.15.4 pr. (Ulp. 3 de censibus) considered the question was about a fourteen years census return, made by a Roman citizen: \(^24\) the use of Latin in a κατ οίκίαν ἀπογραφή would be related to the citizenship of the subscriber. On the other hand, Müller, after the publication of some examples of κατ οίκίαν ἀπογραφαί of Roman citizen in Greek and similar to the rest, expressed another opinion: the use of Latin and the different formula indicate that we are before an early example, dated in the first half of first century and, to the best of our knowledge, without parallel in the documentation. \(^25\) I think that, in despite of the fact that Burkhalter’s hypothesis deserves further investigations, the theory of Müller is the most convincing one because PSI χι 1183 is a document of a period – the first century – where is possible to discover many differences with the cases of hundred years later: Schulz indicated that the oldest birth certificate of a Roman citizen – P. Mus. Cairo 29812 (= CPL 148 = FIRA ιιι 2) – has a different praescriptio from the documents of second century, for example, the next one, P. Mich. ιιι 167. \(^26\) In these, there is a close similitude with the παρεπιγραφαί of the τόμοι ἐπικρίσεων and the τόμοι τῆς κατ οίκίαν ἀπογραφαί. Perhaps there is a relationship between a reform of both the census and the ἐπίκρισις and a reform of the formula in the birth certificates.

\(^{23}\) GERACI, “Le dichiarazioni” (cit. n. 1), p. 683, n. 34.
\(^{26}\) SCHULZ, “Roman Certificates” (cit. n. 3), p. 185 ff.
SB VI 9228 (Daris 95b) is also an *epikrisis* return. The declaration is made by a father, who produces the diploma of his *bona missio* and the δέλτος προφεσσίωνος of his son. This is the interpretation of Daris, but Geraci proposes δέλτος μαρτυροποιεύεται. He does not specify whether his interpretation is based on an examination of the original, but the fact is that the deponent, according to his own words, gained his discharge from the army (*bona missio*) in 154, when he was already a citizen. In this context, δέλτος προφεσσίωνος is also possible. At all events, this document does not provide us with many new details of interest to our study.

Everything suggests that *BGU* III 847 (= Wilcken 460), another epikrisis return, mentions, in accordance with some new integrations, a δέλτος προφεσσίωνος. The formula has obvious parallels with *BGU* IV 1032, *P. Diog. 6*, P. Oxy. xii 1451, *SB* I 5217 (= FIRA III 6) and SB VI 9228, all mentioned above, but once again, this fact does not provide us with any new details about the difference between *professio* and *testatio*. Perhaps the new interpretation of *BL* could add another epikrisis return that mentions a *professio*, but this return has no more significance than the others.

The second issue to consider is whether to include a text by Petronius (*Sat. 53, 1–2*) as related to the register of births. Geraci is quite optimistic when he declares this fragment to be particularly important. We discover someone, an *actuarius*, who reads a report to his master, Trymaldcio. The auctor says:

```
Actuarius, qui tamquam urbis acta recitavit: VII Kalendas Sextiles: in predio Cumano, quod est Trimalchionis, nati sunt pueri XXX, puellae XL.
```

The text, obviously nothing but a parody, is quite ambiguous: the births occur between many different events: a blaze, a harvest, a slave condemned to crucifixion... Petronious may have been thinking of the

---

27 Cf. *BL* I 441 and *BL* v 13.
declarations of birth placed in the public archives (acta), or maybe not: the exacted concept of acta is not easy, because the term covered many different concepts: perhaps the author wanted to allude to another kind of acta, i.e. the acta diurna or Urbis, but there is not close relationship between acta diurna and acta of the registers of birth, a codex or maybe a papyrus roll where professiones were recorded by the public official. According to Suetonius (Jul. 20), Julius Caesar established a kind of newspaper, usually mentioned by historians of early journalism, that could include – among imperial decrees or public events – private matters comparable with these read by the actuarius. These acta diurna were a gazette, read in Rome, but also in provinces.

Finally, I would like to consider once more the problem of the compulsory nature of the professio liberorum or, at least, the need to declare the births within a 30-day term. It is evident that all the documentation, from P. Mus. Cairo inv. 29812 to BGU vii 1694 (P. Michael. 61 is quite badly preserved for the dates to be read), was produced within the 30-day term. Only P. Oxy. vi 894 = SB vii 9200 = CPL 163 and P. Oxy. xxxi 2625 were produced more than two years later. But this fact is simply proof of a change in procedure, as Guéraud outlined in his accurate analysis of SB vii 9200 = CPL 163. It is worth stating at this point that – according Guéraud’s assumptions – the new system is related, in a complex way, with the propostio libellorum. This new system means, in few words, the addition of a recognovi to the copies, different from the Greek subscriptions found in P. Mich. iii 169 (CPL 162 = FIRA iii 4), BGU vii 1690 (= CPL 160 = FIRA iii 5) or BGU vii 1692 (= CPL 152 = FIRA iii 3). Therefore, the change in the system for the publication of imperial rescripta does not necessarily imply the end of authenticated copies: the procedure is similar in the sense that in both cases first the propostio can be found and later the copies from the public archives, but as far as the theory of D’Ors and Martin is concerned, in the propostio a distinction could be made

32 B. BALDWIN, “The Acta Divina”, Chiron 9 (1979), p. 187 ff; vid. p. 199; the passage perhaps is an indication of the real thing (as ROSE, “Accountant” [cit. 29]) or perhaps not: according to Baldwin the announcements of births are “redolent of the real thing”.
33 O. GUÉRAUD, “Une déclaration de naissance”, Epap. 6 (1940), p. 21 ff.
between two different bases in terms of the materials used, and therefore between two different procedures: one on a hard base – for edicta and for professiones liberorum in the case of the album – and another on a soft base, as in the case of libelli, i.e. imperial rescripta. So perhaps the problem raised by Guéraud is not so difficult to solve: apart from similarities in the procedure, the case of imperial rescripta, accepting the theory of Wilck-en, is clearly not similar to the case of the tabula albi professionum: there are some differences with respect to the physical base, and furthermore, abolishing the public exhibition of rescripta does not imply, as Guéraud seems to believe, abolishing the possibility of sending the original to the petitioner. Therefore, in spite of all the similarities, there are no close parallels between the two procedures.

Turning our attention to the possibly binding nature of our institution, Geraci appears to relate this possibility with the 30-day term. It is true that in the 3rd century some imperial rescripta were discovered answering the petition of persons who did not have the instrumenta of their professiones, or did not even observe this procedure (P. Tebt. II 285, CI 1.5.49, Probus; CI 4.21.6, Dio. Max.; CI 7.16.15, Dio. Max.) But this is a situation that can be found before the 3rd century, i.e. before the change in the procedure. D. 22.3.29 pr. (Scaev. 9 dig) reports a rescriptum of the divi frates in this respect. In my opinion, some important scholars – Taubenschlag or Geraci himself – were therefore mistaken in asserting that the professio liberorum was a compulsory act. As Jane F. Gardner points out in CI 1.5.9, the emperor answers relating the tabulae nuptiales and their value as documentary evidence with birth certificates. Bearing in mind the Roman conception of marriage, free in its form and in its documentary evidence, it is hard to believe in a duty to declare births.

36 GARDNER, “Proofs” (cit. n. 16), p. 2 ff.
In conclusion, the most widely accepted theory, defended in slightly different ways by Schulz, Lanfranchi and Weiss, among others, draws a clear distinction between *professio* and *testatio* as acts of a different nature. When Sanders first published *P. Mich. III* 169 in 1928, two questions were subject to debate: whether the exclusion of illegitimate children from the *album* also involved exclusion from the birth register, and whether the exclusion from the register – according to my interpretation, the *professio* – of the member of the auxiliary troops (the *auxilia*) was actually due to illegitimacy. The second question has already been dealt with, but the first is worthy of some explanation. Cuq must take the credit for focusing the discussion on the public or private nature of *P. Mich. III* 169. According to the accepted theory, the practice developed around *Lex Iulia et Papia* created the *testationes* as proof of the birth of illegitimate children, in order to make some documentary evidence available and thereby reap the benefit of those laws. But maybe this is not entirely true, because, as Cuq claimed, there are some elements – the use of Latin, the intervention of a *tutor mulieris*, the abbreviation *d e r e b s s*, interpreted by Dittman *d(e) e(adem) r(e) e(odem) e(xempl) b(inae) t(abulae) s(criptae) s(ynt)*, the *subscriptio* in Greek and the reference to Alexandria as the place to declare the birth – that could indicate that the act included in *P. Mich. III* 169 was of a public nature. I believe that Cuq’s interpretation was essentially right, but he failed perhaps to define our document as a copy made by the tabularius from a document deposited in the public reports in the same way as *P. Flor. 57* or *P. Amb. 77*. I find no reason to state that *P. Mich. III* 169 was a public document, because there is no evidence of the intervention of public authority in it. But perhaps it is just evidence – a private document – of a public act: a *professio* before the public register,

---

but excluded from the public exhibition of the *tabula albi*. When all is said and done, the *descripta et recognita* of that *album* were also private documents and, at the same time, proof – which could of course be freely evaluated by the judge – of a public act. In the same way, the distinction between δέλτος προφεσίωνος and δέλτος μαρτυροποιείσθεος only relates to the documents, not to the act, which is essentially the same, a *professio* before the public authority.

**C. Sánchez-Moreno Ellart**

University of Valencia  
Dept. of Roman Law  
Avda. Los Naranjos s/n  
E-46071 Valencia  
SPAIN  
e-mails carlos.sanchez-moreno@uv.es  
carsane@ceipac.ub.edu