

# Sánchez-Moreno Ellart, Carlos

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

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Tekst jest udostępniony do wykorzystania w ramach  
dozwolonego użytku.

C. Sánchez-Moreno Ellart

**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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> The documents known as *professio*

<sup>1</sup> G. GERACI, “Le dichiarazioni di nascita e di morte a Roma e nelle province”, *MEFR* 113 (2001–2002), pp. 675 ff., vid. 675–696.

<sup>2</sup> *Professio Liberorum. Los registros y las declaraciones de nacimientos en Derecho romano* [Professio Liberorum. Registrations and declarations of births in Roman Law], Madrid 2002.

<sup>3</sup> 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,<sup>4</sup> 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 *professiones*. 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 ἐπίκρισις returns<sup>5</sup> (*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.* I, *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 ἐπίκρισις), 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 treads

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1942; E. WEISS, “*Professio* und *testatio* nach der *Lex Aelia Sentia* und der *Lex Papia Poppaead*”, *BIDR* 10–11 (1948), p. 316 ff.; O. MONTEVECCHI, “Ricerche di sociologia nei documenti dell’Egitto greco-romano. VII: certificati di nascita di cittadini romani”, *Aegyptus* 28 (1948), p. 129 ff.; J. PH. LÉVY, “Les actes d’état civil des romains”, *RH* 30 (1952), p. 449 ff, cf. *Professio liberorum* (cit. n. 2), p. 30 ff.

<sup>4</sup> 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*’.

<sup>5</sup> Vid. *Professio liberorum* (cit. n. 2), p. 83 ff.

carefully but ambiguously around it.<sup>6</sup> For my part, I do not believe in the citizenship of M. Lucretius Clemens, because the publication *P. Diog.* 5 – the ἐπίκρισις of the same M. Lucretius Clemens – demonstrated that he was a *peregrinus* when he produced the *testatio* of *P. Diog.* 1.<sup>7</sup> The other two cases usually mentioned as *testationes* of illegitimate children – *P. Mich.* VII 436 and *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.<sup>8</sup> It should be emphasised that the problem of considering the three aforementioned documents as birth certificates of illegitimate children along the same lines as *P. Mich.* III 169 is partly related with the fact that soldiers were not allowed to marry, at least not until Septimius Severus.<sup>9</sup> 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 *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 *auxilia*. The real reason for being excluded from the

<sup>6</sup> SCHULZ, “Roman Registers”, (cit. n. 3), p. 200: “The *eques* M. Lucretius Clemens [...] was certainly in possession of the Roman citizenship, as his *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 *Epimachus* certainly expected to acquire the Roman citizenship by the *missio honesta*.”

<sup>7</sup> P. SCHUBERT, *Les archives de M. L. Diogenes et textes apparentés*, Bonn 1990, p. 9 ff.

<sup>8</sup> Even the *tria nomina* are a weak argument to suppose someone – specially a soldier – as being a citizen: G. FORNI, “L’anagrafia del soldato e del veterano”, in *Actes du VII<sup>e</sup> congrès international d’épigraphie grecque et latine de Constanza*, Bucarest – Paris 1979, p. 205 ff. (= *Esercito e marina a Roma antica*, Stuttgart 1992, p. 183 ff.); A. MÓCSY, “Die Namen der Diplomempfänger”, W. ECK & H. WOLF, *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*, Köln – Wien 1986, p. 437 ff.

<sup>9</sup> J. LESQUIER, *L’armée romaine d’Égypte d’Auguste à Diocletien*, Cairo 1918, p. 262 ff; M. KASER, *Römisches Privatrecht* I, München, 2 ed., 1975, p. 317; B. CAMPBELL, “The Marriage of Soldiers under the Empire”, *JRS* 68 (1978), p. 153 ff.; J. H. JUNG, “Das Eherecht der römischen Soldaten”, *ANWR* II 14, p. 302 ff. Against the most accepted theory, vid. P. GARNSEY, “Septimius Severus and the Marriage of Roman Soldiers”, *CSCA* 3 (1970), p. 45 ff. About the special status of soldiers, vid. R. ALSTON, *Soldier and Society in Roman Egypt*, London 1995, p. 53 ff.

register is the lack of citizenship:<sup>10</sup> 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. *P. Mich.* III 169, ll. 10–12 (*scriptura exterior*) states: *lex Aelia Sentia et Iulia et Papia spurii in albo profiteri vetat*: the prohibition is only to declare the birth *in albo* and it seems coherent with *lex Papia Poppaea nuptialis*, which offered the same advantages to illegitimate children, for example the *ius trium liberorum*: the law discriminated “very little against illegitimates”.<sup>11</sup> In *P. Mich.* VII 436, ll. 5–9 (*scriptura exterior*) on the other hand, we find: *testari ex lege A[elia Sentia et Papiae] Poppaea quae de filis procreandi]s nec potuisse se profiteri propter distractionem militiae*. I agree with Sanders and Schulz in interpreting *propter distractionem militiae* as ‘*rigor, severitas, disciplina*’, but not in the sense that they – the soldiers – could not marry: *districtio* means that they had not yet attained their *honesta 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. *CIL* XVI 90 and *RMD* 39) which occurred during the reign of Antoninus Pius,<sup>12</sup> in 144–145, no more *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 *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 *TH* 5, *P. Col.* VIII 225, *PSI* XI 1183 (= *FIRA* III 8 = *CPL* 170), *SB* VI 9228 (Daris 95) and *BGU* III 847 (= Wilcken 460).

<sup>10</sup> There are, in fact, very few cases of citizens among the *auxilia* on the first and second centuries AD: vid. G. WEBSTER, *The Roman Imperial Army*, New York 1998, 3 ed., p. 191 ff.

<sup>11</sup> Vid. e. g. B. RAWSON, *Marriage, Divorce and Children in Ancient Rome*, Oxford 1996, p. 26 ff.

<sup>12</sup> K. KRAFT, *Zur Rekrutierung der Alen un Kohorten an Rhein und Donau*, Bern 1951, p. 117 ff.; B. GEKOV, “Zwei neugefundene Militärdiplome aus Nordbulgarien”, *Klio* 37 (1959), p. 196 ff.; G. ALFÖLDY, “Zur Beurteilung der Militärdiplome”, *Historia* 17 (1968), p. 215 ff.; M. M. ROXAN, “Observations on the Reasons for Changes in Formula in Diplomas circa AD 140”, W. ECK & H. WOLF, *Heer und Integrationspolitik*, cit. p. 265 ff.

With regard to the inclusion of the first, *TH* 5, a document of AD 60, I cannot agree with Geraci's opinion:<sup>13</sup> in fact, this matter was resolved at the latest in 1959, when Arangio-Ruiz published his article "Lo status di L. Venidio Ennico ercolanese".<sup>14</sup> 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 to 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 pr[o]fe[ssi] sunt ... qua de re agitur | eorum s[ibi] causam probam esse Romano][sque] c[ives] 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*.<sup>15</sup> They had no *ius connubi* 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*<sup>16</sup> – a Junian Latin could be granted Roman citizenship *si filium anniculum habere*. As we know, the *anniculi probatio* consisted of a special procedure designed to examine certain aspects

<sup>13</sup> GERACI, "Le dichiarazioni" (cit. n. 1), p. 684 ff.

<sup>14</sup> V. ARANGIO-RUIZ, "Lo status di L. Venidio Ennico ercolanese", *Mélanges Lévy-Bruhl*, Paris 1959 (= *Studi epigrafici e papirologici*, Napoli 1974, p. 295 ff.); G. CAMODECA, "Per una riedizione dell'archivio ercolanese di L. Venidius Ennichus", *C. Erc.* 32 (2002), p. 257 ff.; cf. *Professio liberorum* (cit. n. 2), p. 113 ff.

<sup>15</sup> W. SHERWIN-WHITE, *The Roman Citizenship*, Oxford 1973, 2 ed., p. 328 ff.; A. J. B. SIRKS, "Informal Manumissions and the *Lex Junia*", *RIDA* 28 (1981), p. 247 ff.; "The *lex Junia* and the Effects of Informal Manumissions and Iteration", *RIDA* 30 (1983), p. 211 ff.

<sup>16</sup> This question is dealt with in WEISS, "*Professio* und *testatio* nach der *lex Aelia Sentia* und der *lex Papia Poppaea*" (cit. n. 3), p. 316 ff. Today, J. F. GARDNER, "Proof of Status in Roman World", *BICS* 33 (1986), p. 1 ff., argues that this law could be the *lex Iunia*. The problem is based on the contradiction between Gai. 1.29 and Ulp. 3.3. P. GRÖSCHLER, *Die tabellae-Urkunden aus den pompejanischen und herculanischen Urkundenfunden*, Berlin (1997), p. 144 and n. 256.

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 conditionis, cuius et ipsi essent, idque testati fuerint adhibitis non minus quam septem testibus Romanis puberibus et filium procreaverint, cum is filius anniculus 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 filium anniculum habere: et si is, apud quem causa probata est, id ita esse pronuntiaverit, tunc et ipse Latinus et uxor eius, si et ipsa eiusdem conditionis sit, et filius, si et ipse eiusdem conditionis 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.<sup>17</sup> 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  $\tau[\eta]\nu$  *προφροστίονα* (*sic!*) *Ἐρηννίου*. According to the interpretation of Wilcken and, today, Geraci, there is indeed no reason to think in terms of a *professio natalis*.<sup>18</sup> 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:

<sup>17</sup> About the problem of comparing this text and Ulp. 3.3, vid. WEISS, “*Professio und testatio*” (cit. n. 3), p. 322 ff. and GARDNER, “Proofs of Status...” (cit. n. 16), p. 9 ff.

<sup>18</sup> U. WILCKEN, “Urkunden-Referat”, *AfP* 12 (1937), p. 83 ff.; GERACI, “Le dichiarazioni”, (cit. n. 1), p. 696 and n. 88.

<sup>19</sup> F. BURKHALTER, “PSI 1183: une déclaration de naissance de la fille légitime d’un citoyen romain”, *Analecta Papyrologica* 5 (1993), p. 145 ff.

αἴπενψά σὺ δὲ δι' αὐτοῦ σφυρίδιν μικρὸν  
 ὄπου τάριχοι ι καὶ σολίο ζεύγη δ  
 καὶ κενομάτ(ων) κοίκιον δ καὶ τήν  
 συστατικὴν καὶ τ[ῆ]ν προφεστίονα  
 Ἑρηνίου.

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.<sup>19</sup> 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*.<sup>20</sup>

Among the documents mentioned by Geraci, more important for our purposes is perhaps *PSI XI 1183*. The author discusses 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.<sup>21</sup>

Burkhalter's hypothesis is based on the reconstruction of the archive of L. Pompeius Niger: according to Whitehorne and, in their turn, Gilliam and Parasoglou,<sup>22</sup> *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 [L(ucii) f(iliam)] Pol(lia) 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.

<sup>20</sup> J. E. G. WHITEHORNE, "More about Pompeius Niger, Legionary Veteran", *Proceedings of the XVIII International Congress of Papyrology*, Athens 1988, p. 445 ff.

<sup>21</sup> *P. Col.* VIII, p. 123.

<sup>22</sup> Cf. WILCKEN, "Urkunden-Referat" (cit. n. 18), p. 84, against C. W. KEYES, "Four private letters from the Columbia Papyri", *CPh* 30 (1935), p. 150.



The critical analysis of Geraci about *PSI XI 1183* and the conclusions of Burkhalter could be abridged in two points:<sup>23</sup> 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 [L(ucii) filiam]* *Pol(lia) 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 and 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 XI 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:<sup>24</sup> the use of Latin in a *κατ' οἰκίαν ἀπογραφή* would be related to the citizenship of the subscriber. On the other hand, Müller, after the publication of some examples of *κατ' οἰκίαν 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.<sup>25</sup> 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 XI 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* III 2) – has a different *praescriptio* from the documents of second century, for example, the next one, *P. Mich.* III 167.<sup>26</sup> In these, there is a close similitude with the *παρεπιγραφαί* of the *τόμοι ἐπικρίσεων* and the *τόμοι τῆς κατ' οἰκίαν 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.

<sup>23</sup> GERACI, “Le dichiarazioni” (cit. n. 1), p. 683, n. 34.

<sup>24</sup> U. WILCKEN, “Urkunden-Referat”, *AfP* 12 (1936), p. 75 ff.

<sup>25</sup> W. MÜLLER, “Zensus-deklaration einer civis romana”, *Eos* 48 (1957), p. 155 ff.

<sup>26</sup> 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 *honesta missio* and the δέλτος προφεσσίωνος of his son. This is the interpretation of Daris, but Geraci proposes δέλτος μαρτυροποιείσεως. 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 (*honesta 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,<sup>27</sup> 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 Petronious (*Sat.* 53, 1–2) as related to the register of births. Geraci is quite optimistic when he declares this fragment to be particularly important.<sup>28</sup> We discover someone, an *actuarius*, who reads a report to his master, Trimalchio. 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,<sup>29</sup> is quite ambiguous: the births occur between many different events: a blaze, a harvest, a slave condemned to crucifixion...<sup>30</sup> Petronious may have been thinking of the

<sup>27</sup> Cf. *BL* I 441 and *BL* V 13.

<sup>28</sup> GERACI, “Le dichiarazioni”, (cit. n. 1), p. 682.

<sup>29</sup> K. F. C. ROSE, “Trimalchio’s Accountant”, *CPh* 62 (1967), p. 258 ff. Perhaps Trimalchio “wants his property to appear organised as a miniature Rome”, as if he needed, to govern it, a daily report.

<sup>30</sup> H. C. SCHNUR, “The Economical Background of the Satyricon”, *Latomus* 18 (1959), p. 798, about this problem.

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 (*Iul.* 20), Julius Caesar established a kind of newspaper,<sup>31</sup> 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*.<sup>32</sup> 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* VI 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* VI 9200 = *CPL* 163.<sup>33</sup> It is worth stating at this point that – according to Guéraud's assumptions – the new system is related, in a complex way, with the *propositio 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 *propositio* can be found and later the copies from the public archives, but as far as the theory of D'Ors and Martín is concerned, in the *propositio* a distinction could be made

<sup>31</sup> G. BAGNANI, *Arbiter of Elegance. A Study of the Life and Works of C. Petronius*, Toronto 1954, p. 14; E. POSNER, *Archives of the Ancient World*, Harvard 1972, p. 191.

<sup>32</sup> 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".

<sup>33</sup> 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 Wilcken, 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.<sup>34</sup> 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. Tèbt.* II 285, CI 1.5.49, Probus; CI 4.21.6, Diocl. *Max.*; CI 7.16.15, Diocl. *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 fratres* in this respect. In my opinion, some important scholars – Taubenschlag<sup>35</sup> 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.<sup>36</sup> 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.

<sup>34</sup> A. D'ORS & F. MARTÍN, "Propositio libellorum", *AfPh* 100 (1979), p. III ff.: posting papyrus would be more difficult than posting in wood. Vid. contra W. WILLIAMS, "The Publication of Imperial Subscripts: A Survey", *ZPE* 40 (1980), p. 283 ff. The most accepted theory, U. WILCKEN, "Zu den Kayserreskripten", *Hermes*, 55 (1920), p. 1 ff. and "Zur propositio libellorum", *AfP* 9 (1930), p. 157 ff.

<sup>35</sup> R. TAUBENSCHLAG, *The Law of Roman Egypt in the Light of the Papyri*, Warsaw 1955, 2 ed., p. 621.

<sup>36</sup> 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:<sup>37</sup> 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.<sup>38</sup> 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 e b t s s*, interpreted by Dittman *d(e) e(adem) r(e) e(odem) e(xemplo) b(inae) t(abulae) s(criptae) s(unt)*,<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> But perhaps it is just evidence – a private document – of a public act: a *professio* before the public register,

<sup>37</sup> H. J. SANDERS, "A Birth Certificate of the Year 145 AD", *AJA* 32 (1928), p. 309 ff.

<sup>38</sup> E. CUQ, "Les lois d'Auguste sur les déclarations de naissance", *Mélanges Fournier*, Paris (1929), p. 129 ff.

<sup>39</sup> Cf. *SC de Nundinis*: G. DITTMANN, s. v. 'exemplum', *Thesaurus Linguae Latinae*, 5,2, Leipzig 1931, col. 1350.

<sup>40</sup> E. CUQ, "Un dyptique latin sur la tutelle des femmes", *CRAI* (1920), p. 40 ff.; "Les lois" (cit. n. 32), p. 133 ff.

<sup>41</sup> Cf. E. WEISS "Zur Rechtsstellung der unehelichen Kinder in der Kaiserheit", *SZ* 49 (1929), p. 269 ff.

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 προφρεσσίωνος and δέλτος μαρτυροποιέσεως only relates to the documents, not to the act, which is essentially the same, a *professio* before the public authority.

*C. Sánchez-Moreno Ellart*

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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.uv.edu*