

# REGIMEN MORUM\*

By ALAN E. ASTIN

## INTRODUCTION

In his account of the year 443 B.C., Livy, reporting the first appointment of censors, introduced the censorship as an institution which

sprang from a small beginning but grew to such an extent that the guidance of Roman *mores* and discipline was in its hands ('*morum disciplinaeque Romanae penes eam regimen*'), the distinction between honourable and dishonourable amongst the senators and the centuries of the *equites* was under the judgement of that magistracy ...<sup>1</sup>

This passage, with its mention of a *regimen morum*, is one of many which either attest explicitly or illustrate by anecdote that the censors concerned themselves with *mores*. In the eyes of several authors of antiquity it was this aspect which most strongly characterized the censorship, and there can be no doubt that it was a prominent and central feature.

The purpose of this paper is to examine this *regimen morum*, principally with regard to its operation in practice. This will include consideration of the means through which censors normally exercised this function, the grounds on which they acted, the recurring theme of censorial concern about luxury and extravagance, and whether the *regimen* impinged evenly or unevenly on the different sections of Roman society. A closer examination of the *regimen's* significance for those sections about which most is known, the senatorial and equestrian orders, will open the way for a more general assessment of its role and of the reasons for the persistence of such a remarkable mechanism.

The sources upon which this examination must be based are not negligible in quantity, but have certain limiting features. There are a few authors who, like Livy (above), refer to the *regimen* in general terms, but the bulk of the evidence consists of particulars relating to individual censorships. Only a handful of these refer to events earlier than the Second Punic War. From 214 onwards more information survives, and from then to 167 Livy's history provides a substantial framework to which much of it can be related. Even so, much that is known about individual cases is derived from anecdotes and fragments of speeches, which by their nature are unevenly distributed and yield an erratic picture; and after 167 these are the principal form of surviving information. Nevertheless, from 214 to the end of the Republic the total volume is considerable and embraces very varied instances, bearing upon more than twenty of the censorships.

## DEFINITION AND FORM

Despite its prominence, the concept embodied in the phrase *regimen morum* is nowhere clearly defined in the sources. Indeed, the term itself was not formal, nor is there any legal or formal expression which does embody this responsibility or the powers specifically directed to its discharge. Although the phrase itself does occur several times (notably in Livy, though usually as *mores regere*), the incidence and variety of alternatives (such as *moribus praepositus*, *moribus praeuisse*, *magister*

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<sup>1</sup> Livy 4. 8. 2. Bibliography of works with special relevance to this article: Th. Mommsen, *Römisches Staatsrecht* (1887–8) 11<sup>3</sup>, esp. 375 ff., 418 ff.; M. Nowak,

*Die Strafverhängungen der Censoren* (1909); E. Schmähling, *Die Sittenaufsicht der Censoren*, Würzburger Studien zur Altertumswissenschaft 12 (1938); G. Pieri, *L'Histoire du cens jusqu'à la fin de la république romaine* (1968), 99 ff. Also A. H. J. Greenidge, *Roman Public Life* (1901), 216 ff.; J. Suolahti, *The Roman Censors* (1963), 47 ff.; C. Nicolet, *The World of the Citizen in Republican Rome* (1980), esp. 73 ff.; A. E. Astin, *Cato the Censor* (1978), ch. 5; id., 'Censorships in the Late Republic', *Historia* 34 (1985), 175–90.

*morum*)<sup>2</sup> confirm that all are to be understood as descriptive rather than as formal terminology. This suggests that although *mores regere* in broad terms undoubtedly came to be regarded as a responsibility of the censors, it was a responsibility which did not originate with a formal definition or a clear delimitation of its content. The use of the very general and imprecise term *mores* points to the same conclusion. Generally speaking the word is used to mean approximately 'habitual conduct', 'characteristic conduct', or 'life-style', frequently in contexts with overtones of approval or disapproval. Its scope is almost always wider than that of the English word 'morals', though the fluctuations in specific content are just as varied. As with 'morals', probably in practice users of the word did so with a general sense of what they each intended, but with it rarely, if ever, occurring to them to attempt to define the word even to themselves or to establish its exact field of reference; and there is no evidence that a definition was specially devised for the word in connection with the censorship.

This in-built imprecision—or flexibility—has a bearing on the scope of the *regimen morum* and on the variations in practice between individual censors—matters which will be taken up later. But it also strengthens the case for another inference: it is highly unlikely that there had been a particular moment at which the task of supervising *mores*, or powers specifically for the execution of that task, had been conferred upon the censors. No such moment, no such act is recorded; and that silence, coupled with both the imprecision and the variety of the terminology, points to the evolution of this function out of the performance of other functions rather than to a specific legislative act. Such an evolutionary origin seems all the more probable when it is understood how intimately this function was bound up with the exercise of other functions.

#### DESCRIPTIVE TERMS AND MODES OF OPERATION

In the practical operations of the censors, *mores regere*, even though it could be envisaged as a particular responsibility, was not a discrete and sharply defined function in the sense in which, for example, the census itself and the letting of contracts were discrete and distinct. The censors' concern with *mores* manifested itself principally in the discharge of other responsibilities—in the *lectio senatus*, the *recognitio equitum* and the census itself; and in matters of *mores* virtually the only sanction open to them was to depose a person from a higher to a lower order or classification, as a scholiast explained when commenting upon a phrase of Cicero's:

Censors were customarily appointed every fifth year to regulate the *mores* of the state ('regendis moribus civitatis'). The censors penalized ('notabant') citizens in the following manner: one who was a senator was expelled from the Senate; one who was an *eques* was deprived of his public horse; one who was a plebeian was transferred to the list of *Caerites* and was made an *aerarius*, and in consequence was not in the register of his own century but remained a citizen only in the sense that in accordance with his personal liability he made payments termed *tributum*.<sup>3</sup>

This account requires some minor qualification, though nothing to change its substance. Certain censors are known to have included exhortations on aspects of *mores* in some of their speeches: this may have been common practice, and at least it shows that some censors interested themselves not only in the conduct of particular individuals but in some recurring features of social behaviour.<sup>4</sup> Occasionally censors used forms of action different from those described by the scholiast. Some in the later Republic issued edicts which bore upon social conduct, but the known instances are

<sup>2</sup> e.g. Cic., *Pro Cluent.* 119; 129; *Ad Fam.* 76 (3. 13).  
2; *De Prov. Cons.* 46; *In Pis.* 9.

<sup>3</sup> Pseudascon. 189 St., commenting on Cic., *Div. in Caec.* 8.

<sup>4</sup> Cato: *ORF*<sup>4</sup> frs 93 and 94; Astin, *Cato the Censor*, 83; Scipio Aemilianus: *ORF*<sup>4</sup> frs 13–15; Astin, *Scipio Aemilianus* (1967), 116, 119, 253–4; Metellus Macedonicus: *ORF*<sup>4</sup>, frs 4–7.

few, and very limited in scope.<sup>5</sup> In 184 Cato imposed financial penalties for the possession of certain luxury items, yet even this was done not by direct fines or imposts but by adjustment of census assessments.<sup>6</sup> The same is probably to be understood of the penalties alleged to have been imposed on unmarried men by a very early pair of censors in 403.<sup>7</sup> From time to time direct fines were imposed by censors, but on persons who had flouted their authority.<sup>8</sup> It is certain—and significant—that they did not employ this sanction in the field of *mores*, as Cicero makes quite clear:

The censor's decision inflicts almost nothing except a blush on the person he has condemned. Therefore, as that whole judgement bears only upon a man's good name ('versatur tantum modo in nomine'), that punishment is called 'ignominy' (*ignominia*).<sup>9</sup>

Primarily and predominantly, therefore, the *regimen morum* was given expression in the *lectio senatus*, the *recognitio equitum*, and the census itself. That further reinforces the view that it was the product of an evolutionary process rather than an act of legal creation,<sup>10</sup> with the implication that it originated and developed in a direct relationship with those other functions. Consequently it is a plausible conjecture that the downgrading of an individual was originally not merely a punishment for unacceptable behaviour but a judgement that the individual was unfit to be a member of the group or the category of citizens to which he had belonged hitherto. Judgements upon isolated actions would have merged into judgements on the habitual conduct of individuals and thence developed in scope to the point where *mores regere* could be envisaged as a general responsibility of the censors, though a responsibility which was still largely integrated with such judgements and discharged principally through them. Indeed it is conceivable that a concern with *mores*, like the census itself, went back even beyond the creation of the office of censor to more primitive practices or institutions. Several theories have been put forward, mostly emphasizing the likelihood that in primitive times disgraceful conduct in war and religious pollution would be grounds for loss of status<sup>11</sup>—though the broad spectrum of cases known from later times cannot be accommodated directly under these two heads. Such theories are, however, highly speculative. Certainly it is likely enough that already in very early times, once an elaborate centuriate system had been developed, there were occasions on which individuals were downgraded—by depriving an *eques* of his public horse, and perhaps by enrolling someone in the *aerarii* and transferring him to an inferior tribe (both mentioned in an episode ascribed to 434).<sup>12</sup> But almost all the surviving information relates to later periods, after the censors had

<sup>5</sup> Restrictions upon actors or dramatic performances in 115: Cassiod., *Chron.*, under *cons.* of 115. Teachers of Latin rhetoric expelled in 92: Cic., *De Orat.* 3. 93–4; Gell. 15. 11. 2; Suet., *Rhet.* 1. 1; Tac., *Dial.* 35. In 89 prohibition on sale of exotic ointments and maximum price prescribed for Greek and some high quality Italian wine: Pliny, *NH* 13. 24; 14. 95. Serving of dormice and some other luxury foods at banquets prohibited: Pliny, *NH* 8. 223; 36. 4 (no date given; there is a textual problem, but if 'leges censoriae Claudianae' is read in 36. 4, the censors of 169 or 136 could be considered; for the latter, Schmähling, *Die Sittenaufsicht*, 63 n. 79).

<sup>6</sup> Plut., *Cato Mai.* 18. 2–3; Livy 39. 44. 1–3; Nepos, *Cato* 2. 3.

<sup>7</sup> Val. Max. 2. 9. 1; Plut., *Cam.* 2. 4; cf. also Cic., *De Leg.* 3. 7.

<sup>8</sup> Livy 43. 16. 3–5; Cato, *ORF*<sup>4</sup> frs 99–105.

<sup>9</sup> Cic., *De Rep.* 4. 6. A possible exception is that the investigation of M. Aemilius Lepidus Porcina by the censors of 92 (Vell. 1. 10. 6) seems to have led on to a conviction and fine in a trial before the *populus* (Val. Max. 8. 1. d. 7), but the procedure and other details are obscure in this case.

<sup>10</sup> Mommsen, *Röm. Staats.* II<sup>3</sup>, 375 ff., though he emphasizes the unfettered discretion of the censors in determining the grounds for action, appears to imply

that a *cura morum* was a formal addition by legislative act to the duties of the censorship, since he suggests that it was added very shortly after the office was created. It is perhaps possible in principle that the censors were instructed *mores regere* without further definition, and the other arguments of this article would not be impaired if that were so; but in that case it would still be surprising that the only sanctions are those associated with the census itself. F. De Martino, *Storia della costituzione romana* II (1960), 226–8, believes that only at the end of the fourth century did the censors acquire the *cura morum*, which he sees as an instrument of control in the hands of the newly emerged patrician-plebeian nobility and supposes to have been created for that purpose.

<sup>11</sup> G. Dumézil, *Servius et la fortune*<sup>2</sup> (1943), 173–5; Schmähling, *Die Sittenaufsicht*, esp. 1–13; Pieri, *L'histoire du cens*, 101–13; Suolahti, *The Roman Censors*, 48. For the views of Mommsen and De Martino, both of whom favour a later origin, see previous note.

<sup>12</sup> Livy 4. 24. 7. The censors of 434, indignant because Mamercus Aemilius had successfully proposed limitation of their tenure to eighteen months, are said to have moved him from his tribe, assessed him at an eightfold census, and made him an *aerarius*; but the details of such an early episode must be treated with considerable caution.

been given responsibility for the *lectio senatus* (probably shortly before 312), to which indeed much of it is directly related. The adoption of a procedure under which at intervals censors prepared a new list of senators, and thus had an opportunity to omit an existing senator, added a major new dimension to exclusion and downgrading. Whatever stage had been reached previously, this must have facilitated the development of the censorial interest in *mores* and eased the way for a broadening of the range of undesirable conduct which might move censors to action.

#### FIELDS OF APPLICATION

##### (i) *Social Range*

One immediate question is that of which sections of Roman society were affected by the censors' concern with *mores*. In legal terms the answer is straightforward, and well represented by the account given by the scholiast to Cicero who has been quoted already. In the field of *mores*, all Roman citizens were subject to the authority of the censors and liable to penalties corresponding to their status: a senator was expelled from the Senate; an *equus* was deprived of his public horse; a plebeian (i.e., in the later sense of the term, a member of the lower orders) was 'transferred to the list of the *Caerites* (in effect deprived of his vote) and made an *aerarius*'.<sup>13</sup>

The potentially all-embracing scope of the *regimen morum* is spectacularly confirmed by the action of M. Livius Salinator, censor of 204, who as the culmination to a series of gestures in a quarrel between himself and his colleague, C. Claudius Nero, proposed to register as *aerarii* the entire membership of thirty-four of the thirty-five tribes<sup>14</sup> (though it may safely be inferred that this proposal was not implemented). There is further confirmation in two, more sober episodes which Livy records under 214 and 209. In each of these years, the censors reduced to the *aerarii* a large number of men who were not senators or *equites equo publico*—two thousand in 214—who had not performed military service since the start of the Second Punic War.<sup>15</sup> On a different level again, there is evidence that on occasion actors were moved to an inferior tribe.<sup>16</sup> Finally, two individual cases are known: in 142 Scipio Aemilianus moved from his tribe a centurion whom he apparently accused of dereliction of duty at the battle of Pydna in 168; and in the *Pro Cluentio* Cicero mentions a scribe named D. Matrinius, 'a man of humble status' (*homo tenuis*), who had been registered as an *aerarius* by the censors of 70.<sup>17</sup>

On occasion then, the *regimen morum* impinged upon individuals and groups who were not of senatorial or equestrian status, and who in some cases probably were not close to those orders by reason of wealth and connections; but whether it regularly did so to a significant extent is more open to question, despite the instances just cited. The affair of 204 was clearly a gesture far removed from reality; actors formed a special category which repeatedly attracted adverse attention; and the military requirements of 214 and 209 were exceptional circumstances. Moreover, Livy's comment on the action in 214 seems to indicate that he assumed it to be abnormal to give attention to persons below equestrian status ('The diligence of the censors did not confine itself to regulating the Senate or the equestrian order.')<sup>18</sup> There remain the two individual cases, one of which, that of the centurion, arose from an event twenty-six years before which apparently had not attracted the attention of four intervening pairs of censors, among whom was Aemilius Paullus, the commander at Pydna and Aemilianus' father. This is a slender body of evidence to support a belief that censors regularly did concern themselves to a considerable degree with the *mores* of the mass of the population or of a noticeable number of individuals of relatively humble status. It is in

<sup>13</sup> Pseudascon. 189 St. Cf. Zon. 7. 19; Lydus, *De Mag.* 1. 43. Being made an *aerarius* was frequently accompanied by transfer to an inferior tribe: e.g. Livy 24. 18. 8; 42. 10. 4; 44. 16. 8; 45. 15. 8.

<sup>14</sup> Livy 29. 37. 13-15.

<sup>15</sup> Livy 24. 18. 7-8; 27. 11. 15.

<sup>16</sup> Cic., *De Rep.* 4. 10; cf. Livy 7. 2. 12; Cassiod., *Chron.*, under *cons.* of 115.

<sup>17</sup> Cic., *De Orat.* 2. 272; *Pro Cluent.* 162.

<sup>18</sup> Livy 24. 18. 7.

marked contrast to the many allusions to persons of wealth and high standing, mostly explicitly indicated to be senators or *equites*.

In principle the cause of this disparity could be that the authors of our sources, like most authors in antiquity, were generally uninterested in individuals among the lower orders and therefore largely ignored censorial action at that level, automatically concentrating their attention upon the censors' dealings with senators and *equites*. Alternatively, the cause could be that in considerable measure the disparity reflects the reality of censorial activity: that although from time to time censors did act against persons of humbler status, when they concerned themselves with *mores* their attention was directed much more towards the higher orders.

For the choice between these explanations decisive proof is, in the nature of things, hard to come by, but there are considerations which point towards the latter. First, the whole system of downgrading, bringing the 'blush' of shame mentioned by Cicero, is much more appropriate in relation to those with wealth and high status; and the fact that no alternative sanction was developed suggests that it was indeed with these that the censors principally concerned themselves. Second, numerous passages in the writings of Cicero leave no doubt that for him the significant application of the censors' concern with *mores* lay in the *lectio senatus*: the senatorial order is to be 'without fault, an example to the rest', and to achieve that immaculate condition a censor is needed. When he wrote in the *De Legibus* that the censors 'shall regulate the *mores* of the people, they shall retain in the Senate no one guilty of unworthy conduct', he was not thinking in terms of two distinct responsibilities, and the focus of his thought was certainly upon the second part of the injunction.<sup>19</sup> Third, there is a passage in which Dionysius of Halicarnassus takes it for granted that only senators and *equites* come under scrutiny: 'I could wish that the censors ... would examine those slaves who are freed each year ... just as they examine the lives of the *equites* and the senators'.<sup>20</sup> Fourth, it is probable that during a considerable period of the later Republic a substantial and increasing proportion of Roman citizens did not come under the direct scrutiny of the censors. Under the arrangements set out in the Tabula Heracleensis, the Roman citizens who lived in *municipia*, *coloniae* and *praefecturae* (except, no doubt, some of the wealthy who wished to foster their connections and advance their ambitions at Rome) made their census declarations locally, before the local magistrates. It is improbable in the extreme either that these officials exercised a delegated *regimen morum*—the law charges them explicitly and only with a duty to receive declarations, to make records and to transmit copies to Rome—or that in relation to the returns so received the censors summoned humble individuals to Rome or adjusted their status on the basis of allegations against them.<sup>21</sup> Finally, the practical logistics of the census operation make it most improbable, at least from the middle of the third century onwards, that even if all declarations had been made at Rome, the censors themselves would have attempted to deal directly and personally with more than a small proportion, and presumably, therefore, they did so mainly with declarations made by men of wealth and high status.<sup>22</sup>

<sup>19</sup> Cic., *De Leg.* 3. 28; 3. 7; Astin, 'Cicero and the Censorship', *CPh* 80 (1985), 233–9.

<sup>20</sup> Dion. Hal. 4. 15. 6.

<sup>21</sup> Tabula Heracleensis, *FIRA*<sup>2</sup> 1, no. 13, ll. 142–58. P. A. Brunt, *Italian Manpower 225 B.C.–A.D. 14* (1971), 36–42 and 519–23, rightly suggests that the procedures set out in this document probably had antecedents before the first century.

<sup>22</sup> Some persons did make declarations in the immediate presence of the censors themselves, as is shown by stories of censors responding. Nevertheless, it is not possible that every declaration in turn was made to the censors personally. By the later third and early second centuries there were at least a quarter of a million adult male citizens recorded in the census (despite a temporary drop in number caused by the Hannibalic War). Not all made declarations, but if it be supposed for the sake of argument that only 60,000 of these were *sui iuris*, and if it be supposed further that the *average* time

for a declaration was one minute, with no additional allowance for breaks or pauses, 1,000 hours would have been required. If the censors in person presided over all these and sat for 7 hours per day (net of interruptions), that would have occupied 143 days. If the total was 90,000, 214 days would have been required; and if the average time for a declaration were 2½ minutes, the number of days needed for 90,000 would almost exactly have equalled the censors' entire term of office. Obviously all these figures are arbitrary, but no plausible adjustment will eliminate the practical problem they illustrate; more probably they underestimate it. Aside from any arrangements for devolution to municipal officials, for the procedure at Rome it was an obvious solution to have a number of *iuratores* receiving declarations simultaneously, all in the presence of the censors but mostly not with their direct participation. Cf. Livy 39. 44. 2; Plaut., *Trin.* 878; also references to *scribae*: Livy 4. 8. 4; Varro, *Ling. Lat.* 6. 87; Val. Max. 4. 1. 10.

These considerations do not amount to incontrovertible proof, but they do point strongly towards a particular conclusion. The overwhelming dominance of passages which link the censors' concern with *mores* to the *lectio senatus* and the *recognitio equitum* is probably not the result of chance or of selective bias in the sources but a reasonable reflection of the actual state of affairs. These were the normal and principal areas of practical application. From time to time the *regimen morum* did lead to action involving lesser members of society, but probably it did so only irregularly and usually impinged very little upon such people. It was perhaps a natural association of ideas which caused Livy, in the passage quoted at the beginning of this paper, to follow his reference to 'the guidance of Roman *mores* and discipline' ('*morum disciplinaeque regimen*') directly with 'the distinction between honourable and dishonourable amongst the senators and the centuries of *equites*'.

## (ii) *The Grounds for Censorial Action*

Long lists have been compiled of the instances in which censors are known to have acted in the *regimen morum* and of the grounds upon which they acted.<sup>23</sup> It is generally agreed that they were not acting on the basis of some statutory code or list of prohibited actions, and that they exercised a large measure of personal discretion in deciding what merited their attention. Attempts have been made, however, to classify their grounds for action, in a search for some principle or principles which imparted a *rationale* to their involvement with *mores*. Some of the grounds can be grouped into such categories without difficulty: acts of military indiscipline; religious offences, such as perjury and the neglect of responsibilities for rituals; abuses of magisterial power. Furthermore, all these can be understood as threats to the well-being of the state. That indeed, though imprecise and elastic, is one broad principle which is self-evident and which was embodied in the censors' oath that all their deliberations and decisions were taken in the interests of the *res publica*.<sup>24</sup> Other known grounds for action, however, are more heterogeneous and are less obviously and less directly associated with the interests of the state: luxurious and extravagant living; poor management of personal estates; and areas of domestic life.

In fact, though such categorization may be a useful means of identifying broad areas of concern, there is no basis for supposing that these or other categories reflect the conscious analysis of their task by the censors themselves, or that they demarcate the limits within which censors might act. It has been seen that almost certainly the *regimen* had never been formally assigned to the censors as a specific task, that its field of application had not been formally defined. Moreover, as the role developed, the one characteristic and recurring term for the field is *mores*, a term of notable imprecision even when qualified in the phrase *mores maiorum*, 'traditional standards of conduct'. Hence clear-cut, well-defined principles are not to be expected, nor should it be supposed that the censors' every action must have been a logical expression of a well-considered *rationale*.

That is not to say that no principles at all were operative, that there was no continuity of criteria and no *rationale* behind individual decisions. There was the broad principle of the interests of the state, and the secondary but probably almost independent principle that senators and *equites* should not have shown themselves unfit to occupy their special status. Also standards of acceptable behaviour, though determined by convention rather than by rule, and subject to the changing perceptions of successive generations, nevertheless provided an important element of continuity, the more so in that they were conceived of in the main as traditional standards, *mores maiorum*. None of these, however, offered precise criteria or a fixed set of values. In application all were invested with the potential for change and all

<sup>23</sup> Mommsen, *Röm. Staats.* II<sup>3</sup>, 377–82; Nowak, *Die Strafverhängungen der Censoren*; Greenidge, *Roman Public Life*, 219 ff., esp. 226–8; cf. Nicolet, *The World*

*of the Citizen*, 73–81; Suolahti, *The Roman Censors*, 51 f.

<sup>24</sup> Zon. 7. 19.

were open to, indeed required, interpretation and selection. A strong personal element was thus superimposed on the principle of upholding a probably widely understood but ill-defined set of standards.

It would be unreasonable to suppose that this personal element was always or even commonly thought through with rigour. It was supplied by officials who enjoyed a large amount of arbitrary power, and who were not required to account formally for their actions as censors. It would be absurd to suppose that because censors were not accountable none of them gave serious thought to their reasons for judging particular conduct to be unacceptable; but it is the case that they were not under constant pressure to formulate a *rationale* for their actions with the care and precision that might otherwise have been demanded.<sup>25</sup> That left the way open for a censor to respond emotively to some instances of misconduct as being flagrantly outrageous and self-evidently requiring censorial action, to regard any conduct which seemed to him especially shocking as harmful to the state and as incompatible with the dignity of the senatorial or the equestrian order. To react in such a manner was all the easier in a society one of whose principal terms for acceptable standards was *mores maiorum*, which had a strong sense of continuity, and in which, generation after generation, the *maiores* were strongly associated with achievement and success. No doubt a sense of outrage often springs from a sense of threat to security or to the orderly framework of life; but the sense of threat itself is not always or only derived from logical calculation, and at times it may spring simply from received assumptions. The circumstances of the Roman censors permitted them to take action prompted by just such a variety of responses.

Nevertheless, whether the response owed more to logic or to emotion, it often was associated with a concern for the interests of the state. There is no problem in understanding why, in a state in which military virtues were valued very highly, some senators and *equites* were expelled from their orders on account of military indiscipline or evasion of military service; or why the same grounds should have led to actions against men of rather lower status. Censors are known to have taken action of the latter kind in 214 and in 209, in episodes which have been mentioned already. Somewhat earlier, in an affair which was clearly exceptional and perhaps unique, not to say sensational, the censors of 252 removed from their respective orders sixteen senators and four hundred *equites*. At least the *equites*, and probably also the senators, were expelled because they had refused an order to construct a military fortification.<sup>26</sup> When in 184 Cato deprived L. Veturius of his public horse, he alleged among other complaints that the excesses of Veturius' life-style had rendered him unfit for military service.<sup>27</sup> In 174 a certain Fulvius was removed from the Senate because he had discharged a legion without authority.<sup>28</sup> And in 142 the former centurion reduced to the *aerarii* by Scipio Aemilianus was evidently accused of some dereliction of duty.<sup>29</sup>

Nor is there any difficulty in understanding how censors could come to concern themselves with violations of oaths and neglect of cults,<sup>30</sup> each of which could be thought to expose the state to the risk of losing divine favour. Neglect of a cult was a

<sup>25</sup> It was common and perhaps usual for a censor to indicate briefly the objectionable conduct which had led him to take action; in the case of a senator this took the form of a *subscriptio* to the *nota* placed against the individual's name. Ascon. 84C may reproduce the actual *subscriptio* written by the censors of 70 B.C. concerning Antonius Hybrida. Censors questioned some of those involved and may frequently have given them an opportunity to rebut the accusations (e.g. Gell. 4. 20. 11), though this was at their discretion and was not always done. Complaints against *equites* were not necessarily recorded formally: Cicero's story in *De Orat.* 2. 287 implies that the grounds of complaint against M. Antistius had not been stated or set down in writing. From 58 to 52—which in practice means in the censorship of 55–54—some extra formality was imposed by the Lex Clodia, which apparently required a formal hearing of complaints against a senator, conducted in judicial form in the presence of both censors:

Ascon. 8C; Dio 38. 12. 2, cf. 40. 57. 1–3. Even so the change was by no means as far-reaching as Cicero frequently claimed (always in broad, imprecise terms). And none of this goes beyond a requirement to state the conduct which was held to be objectionable; censors were not obliged to explain the *rationale* for acting against any particular form of conduct.

<sup>26</sup> Livy, *Per.* 18; Val. Max. 2. 9. 7; Frontin., *Strat.* 4. 1. 22.

<sup>27</sup> *ORF*<sup>1</sup>, Cato, frs 78 (= Gell. 6. 22. 1 ff.), 79 and 80 (the latter two do not name Veturius but are almost certainly assigned to this speech correctly).

<sup>28</sup> Val. Max. 2. 7. 5; Frontin., *Strat.* 4. 1. 32; n.b. Livy 41. 27. 2; Vell. 1. 10. 6. There is considerable confusion about the names and careers of various Fulvii, including this man: *MRR* 1, 391 n. 3.

<sup>29</sup> Cic., *De Orat.* 2. 272.

<sup>30</sup> Dion. Hal. 20. 13. 3; Cic., *De Off.* 3. 111.

further criticism levelled by Cato at L. Veturius.<sup>31</sup> Violation of an oath sworn to Hannibal, in a well-known episode during the Second Punic War, prompted action by the censors of 214.<sup>32</sup> In 174 the ground on which a former praetor, M. Cornelius Scipio Maluginensis, was expelled from the Senate was probably that he had sworn to a false statement.<sup>33</sup> In 142 Scipio Aemilianus intended to remove the public horse of C. Licinius Sacerdos, whom he accused of perjury, though in the absence of corroborative testimony he took no action.<sup>34</sup> Perjury was also the ground on which the censors of 115 expelled Cassius Sabaco from the Senate.<sup>35</sup>

In addition to its religious implications, perjury was also a threat to the orderly conduct of society's affairs within a reliable framework. The same can be said of other crimes and offences. Prominent among these was judicial corruption, which became an important issue with the development of the standing courts of the later Republic. It is known to have been the ground for action against several senators by the censors of 70—to the evident embarrassment of Cicero when in his *Pro Cluentio* he wished to defend the credibility of a verdict which had particularly engaged the critical attention of these censors.<sup>36</sup> It is equally understandable that from time to time censors decided that an individual was unfit to be a member of the Senate—which above all institutions symbolized not only privilege but the orderly government and continuity of the state—because they held him responsible for some serious dereliction of duty or abuse of magisterial power. The best known and most dramatic instance of this kind occurred in 184, when Cato expelled Lucius Flamininus, a former consul, declaring that at a banquet during his campaign in Cisalpine Gaul (in 192) Lucius had carried out an execution (according to one version, with his own hand) merely to gratify the whim of a paramour;<sup>37</sup> but other cases are mentioned. The censors of 70 expelled C. Antonius Hybrida for extortion from allied or subject peoples. In 50 Appius Claudius accused C. Ateius Capito of having made false statements about *auspicia*. At some uncertain date C. Lucilius was marked with a *nota*—and presumably expelled—because as tribune he had imprisoned a citizen in defiance of his fellow-tribunes. And when in 124 Gaius Gracchus returned prematurely from his assignment as quaestor in Spain he was questioned by the censors, though they took no action.<sup>38</sup> Although these attested instances are few, they are not to be understood as rare and unexpected vagaries of unusual censors. The author of the Lex Acilia certainly assumed that censors might act against persons accused of corruption or extortion when he provided that a person 'who receives money in accordance with this law ... shall not on that account ... be moved from his tribe, nor deprived of his horse ...'.<sup>39</sup>

Nor, finally, is it surprising that, since deprivation of status lay readily to hand as a sanction, censors occasionally used it to punish conduct which they deemed detrimental to the dignity of their office. Whether this happened frequently may be doubted, but two men (in 184 and 159 respectively) are known to have been reduced to the *aerarii* because they responded with witticisms to questions which censors expected to be taken seriously; and another only just escaped by convincing the censors that his recurrent yawning was caused by an affliction rather than disinterest in the proceedings. Scipio Aemilianus used two of these examples in an admonitory speech early in his censorship in 142, presumably as a warning that disrespectful conduct might meet with a like response.<sup>40</sup>

<sup>31</sup> ORF<sup>4</sup>, Cato, frs. 72, 73, 74, 76; cf. 77.

<sup>32</sup> Livy 24. 18. 5–6; Val. Max. 2. 9. 8; Cic., *De Off.* 1. 40; 3. 115; Gell. 6. 18. 10.

<sup>33</sup> Livy 41. 27. 2; cf. 41. 15. 10.

<sup>34</sup> Cic., *Pro Cluent.* 134; Val. Max. 4. 1. 10; 'Plut.', *Apopht. Scip. Min.* 12; Quint., *Inst.* 5. 11. 13.

<sup>35</sup> Plut., *Mar.* 5. 3–5. An accusation that false evidence had been given was also among the mutual recriminations of the censors of 204; Livy 29. 37. 11.

<sup>36</sup> Cic., *Pro Cluent.* 117–35.

<sup>37</sup> Livy 39. 42. 5–43. 5; Plut., *Cato Mai.* 17. 1 ff. and *Flam.* 18–19; Cic., *De Sen.* 42; 'Victor', *De vir. ill.* 47. 4; Val. Max. 2. 9. 3; 4. 5. 1. Astin, *Cato the Censor*, 79 f., esp. no. 6.

<sup>38</sup> Antonius: Ascon. 84C; cf. Cic., *Comm. Pet.* 8. Ateius: Cic., *De Div.* 1. 29. Lucilius: 5. 41. 2 and 42. 2 v.d.H; M. Dondin, 'Pour une identification du censeur de 64', *REL* 57 (1979), 126–44, argues for 64 as the date, but this is not certain. Gaius Gracchus: Plut., *C. Graec.* 2. 6–16; ORF<sup>4</sup>, C. Grac., frs 23–5. The censorial *nota* was the mark by which a censor indicated his wish to omit a name from the revised list which was in preparation.

<sup>39</sup> Lex Acilia repetundarum, *FIRA*<sup>2</sup> 1, p. 84, l. 28.

<sup>40</sup> Gell. 4. 20. 1–11; Cic., *De Orat.* 2. 260.



Much, then, can be related to the interests of the state in a straightforward manner. However, there is a good deal of evidence—both general and particular—that censors also involved themselves with aspects of private conduct which are not so obviously matters of direct public interest. One such was lack of care for cultivable property. This was stated succinctly by the elder Pliny—‘To cultivate land badly was judged worthy of disgrace at the hands of the censors’—and explicitly and clearly by Gellius:

If anyone had allowed his land to run to waste and was negligent in its management, and had neither ploughed nor weeded it, or if anyone treated his orchard or vineyard as if it was derelict property, such conduct did not go unpunished but was a matter for the censors, and the censors made such a person an *aerarius* ... (Similarly an *equus* who neglected his horse was punished.) ... There are authorities for each of these matters, and M. Cato frequently attests this.<sup>41</sup>

Clearly Cato, who may well have been the source for Pliny’s statement as well as Gellius’, showed a special interest in this topic, and despite the reference to ‘authorities’, it cannot be safely inferred that all (or most) censors took a comparable interest. On the other hand, it was not merely an idiosyncrasy of Cato’s, for a story about a certain M. Antistius of Pyrgi shows that when his standing as an *equus* was in question his performance as a landowner was thought likely to be a relevant factor. When (in 179) Antistius was ordered by the censor M. Aemilius Lepidus to surrender his horse, his friends raised a clamour in his support, proclaiming among other virtues that he was an excellent farmer (‘*optimus colonus, parcissimus, modestissimus, frugalissimus*’).<sup>42</sup> Furthermore, this interest in the quality of cultivation is almost certainly to be understood, not in isolation, but in close relation to a further, wider concern which is known to have been long-standing and enduring.

Cato himself gave expression more than once to a strong sense of the responsibility which lay upon those who had inherited property not to allow their inheritance to diminish, but rather to increase it. The theme is echoed by later censors: Scipio Aemilianus, who accused Tiberius Claudius Asellus of squandering more than a third of his paternal inheritance; the censors of 70, one of whose accusations against C. Antonius Hybrida was that because of the magnitude of his debts he had sold estates and did not have control of his property; Appius Claudius, who in 50 was reported by Caelius to be busying himself with the size of estates and with debt; and Augustus, who alleged that a certain *equus* had diminished his resources (only to suffer an embarrassing public demonstration that the man had actually increased them).<sup>43</sup> The importance and power of the social attitude inherent in this is seen also in the embarrassment caused to M. Brutus (probably in 91) when the orator L. Crassus pointedly enquired about various properties which Brutus’ father had mentioned in his writings as belonging to him.<sup>44</sup> But the concept long antedated all of these instances.

At least as far back as the Twelve Tables there was provision for a *prodigus*—one who was squandering his inherited substance—to be interdicted from the management of the property in question and for *curatores* to be placed in charge.<sup>45</sup> The wording of the interdiction which was to be pronounced by the intervening magistrate, as it is known from a later period, makes clear the importance attached to the concepts of continuity and trust in relation to the ownership of the property: ‘Since by your prodigality (*nequitia*) you are squandering your paternal and ancestral property and are leading your children to poverty, on that account I prohibit you from buying and selling and from commercial interchange’.<sup>46</sup>

<sup>41</sup> Pliny, *NH* 18. 11; Gell. 4. 12. 1–3.

<sup>42</sup> Cic., *De Orat.* 2. 283.

<sup>43</sup> Cato: Plut., *Cato Mai.* 8. 11; 21. 8; cf. *ORF*<sup>4</sup>, fr. 246. Scipio: Gell. 6. 11. 9 = *ORF*<sup>4</sup>, fr. 19. Censors of 70: Ascon. 84C. Claudius: Cic., *Ad Fam.* 97 (8. 14). 4. Augustus: Macrob., *Sat.* 2. 4. 25.

<sup>44</sup> Cic., *Pro Cluent.* 141; *De Orat.* 2. 220–6 (= *ORF*<sup>4</sup>, L. Licinius Crassus, frs 45 and 46).

<sup>45</sup> *Dig.* 27. 10. 1. *pr.* (Ulpian); *Epit. Ulp.* 12. 2–3. A. Watson, *Rome of the XII Tables* (1975), 78–80.

<sup>46</sup> *Pauli Sent.* 3. 4a. 7.

It appears from the *Epitome of Ulpian* that this legal arrangement was applicable only in cases where the property had been received by intestate succession, a state of affairs which already by the second century B.C. probably applied only to a minority of holdings; but for the present discussion what is significant is the implied assumption concerning the responsibilities associated with inherited property. It is an assumption which is familiar and understandable in stratified societies in which land is both the principal form of wealth and the essential basis for the standing of the family. Among the propertied members of a society where such values were central to issues of status and privilege and to the continued enjoyment thereof by the family, the gross neglect and feckless alienation of property—above all of inherited landed property—seemed shocking, a violation of a pattern of conduct integral to their way of life and a betrayal of both past and future generations of the family.<sup>47</sup> It is scarcely surprising that some censors saw this as evidence that certain individuals were unworthy of senatorial and equestrian status.

Whether any censors took action on these grounds at a level of society much below that of senators and *equites* is another question. It seems improbable, though the reasons for saying so are necessarily *a priori*. The censors certainly did not institute a survey of the quality of farming throughout Roman territory; nor is it to be believed that each property-owner's declaration was systematically compared with his previous declarations in order to determine whether or to what extent he had alienated property, carefully distinguishing between inherited property and the rest. The instances in which censors acted—probably few and fairly extreme—presumably came to their notice through hearsay and personal knowledge; and that points to the small section of society centred upon the senatorial and equestrian orders, numbered in hundreds rather than thousands, in which knowledge about such matters must have spread with ease and rapidity, and where the values which were being flouted mattered most.

A more familiar feature of the censors' involvement with private conduct is hostility towards luxury and extravagance, in which by the very nature of the matter their attention must have been directed principally to the wealthier sections of society. Although numerous acts and sayings are known which manifest this hostility, it happens that almost all of them belong to the last century and a half of the Republic, commencing with the censorship of Cato and Valerius Flaccus in 184. The one instance firmly attested as earlier is the case of P. Cornelius Rufinus, removed from the Senate in 275 under the accusation that he possessed silver goblets weighing ten pounds.<sup>48</sup> However, while the contrast in the volume of material may reflect a greater interest in and after 184, it reflects even more the much greater amount of surviving anecdotal material which stems from the later period; for by far the greater part of the relevant evidence is anecdotal. The case of Cornelius Rufinus is enough to demonstrate that the concern with luxury was no new phenomenon in the second century, and it also happens to be one of the most extensively reported of all censorial actions. Nor is it safe to assume that this was the earliest or the only occasion in the third century on which the censors interested themselves in luxury. As the many references to it indicate, this particular episode stood out because of its remarkable and dramatic quality, and it was repeatedly recalled because it was excellent material for a moralizing *exemplum*.

That is not to deny that change and development are likely to have occurred. Both in the forms of extravagant behaviour which attracted the censors' interest and in the intensity of that interest, change is to be expected with changing circumstances, above all with the defeat of enemies overseas and the concomitant influx of wealth. It

<sup>47</sup> Cf. Anthony Trollope, *Framley Parsonage*, ch. xxvii: 'But to have squandered the acres which have descended from generation to generation; to be the member of one's family that has ruined that family; to have swallowed up in one's own maw all that should have graced one's children and one's grandchildren! It seems to me that the misfortunes of this world can

hardly go beyond that!' Nicolet, *The World of the Citizen*, 78, rightly points out that censors would be interested in the practical question of whether a man retained sufficient wealth to continue in his status; but attitudes were clearly more deeply rooted than this alone.

<sup>48</sup> *MRR* 1, 196 for numerous references.

is a far cry from Rufinus' ten pounds of silver goblets to a Lucullan estate where there was 'less to plough than to sweep', or even to the jewellery with which L. Crassus, himself censor in 92, bedecked his pet eel; and when Cato promised that with Valerius in 184 he would 'cut and sear the hydra-like luxury and softness', he may well have been initiating an increase in intensity and severity.<sup>49</sup> Nevertheless, he was giving extra emphasis to an existing role of the censorship, not grafting on a new one.

Given the fragmented, anecdotal nature of most of the evidence, the reasons for the attention given by many censors to cases of luxury and extravagance, as also the origins of the practice in general, are necessarily dim and largely conjectural. One element was certainly an association with the attitude to the stewardship of inherited property, discussed above: self-indulgence in luxury and extravagance could lead easily to the squandering of resources. The connection is implied in several stories and sayings, not least in Scipio Aemilianus' invective against Claudius Asellus, shortly after the former's censorship: 'If you have spent more on one harlot than the value you declared in the census for the entire equipment of your Sabine estate, ... if you have squandered and spent on your scandalous doings more than a third of the wealth you received from your father ...'<sup>50</sup> A second strand of motivation, which is evident in various remarks made by Cato and which in any case seems *a priori* probable, is a belief that the pursuit of luxury, by inciting avarice, was one of the causes of extortion and misgovernment on the part of Roman officials. A probable third is the recurring and superficially plausible belief that luxurious living was detrimental to the fundamental military qualities of physical and mental hardiness, a belief probably reflected in Cato's bracketing of 'luxury and softness'. Military virtues were a major constituent of the ethos of the senatorial class, from which the censors were drawn and with which they concerned themselves in no small measure—a class which provided the military leadership of the state as its unquestioned right and role.

No doubt the motivation of individual censors had more complexity and variety—and more self-interest and quiriness—than could be explained in terms of these three strands alone; but these at least can be posited with some confidence as having played a part. And they do help to explain the recurring concern with luxury and extravagance, a concern which was manifested not only in the actions of the censors but in a series of sumptuary laws introduced during the second and first centuries.<sup>51</sup> It is not to be supposed, however, that individual censors constantly troubled to differentiate sharply between their various motives, or to consider carefully which was uppermost in any particular case. Although they gave reasons for taking action against an individual, they did not argue a case in detail.<sup>52</sup> It was sufficient for them to cite as their grounds extravagance or particular instances of extravagance. It was possible, therefore, for the curbing of extravagance frequently to be treated as an end in itself, without constant reference back to deeper motives; and for this to be thought of as one of the accepted duties of the censors.

The phenomenon, then, of the censors' concern with luxury and extravagance, because, like so much else about the censorship, it lacked a well-defined and systematic basis, was a mixture of rational, emotive, semi-considered and semi-automatic responses. Consequently it produced very varied types and levels of action. In 184 Cato, as has been mentioned, used the census declarations systematically to impose what was in effect punitive taxation on certain very expensive 'luxury' items: ornaments, women's clothing and vehicles valued at more than 15,000 *asses*, and slaves under the age of twenty who had been purchased since the previous census for 10,000 *asses*. A censorial edict of not much later date was directed at a different kind of extravagance when it forbade the serving of dormice and certain other rare delicacies at banquets; in 89 another prohibited the sale of exotic scents, and a third, also in 89, probably attempted to discourage the consumption of expensive wines. Late-night

<sup>49</sup> Pliny, *NH* 18. 32. Crassus: Aelian, *Hist. Anim.* 8. 4; Macrobi., *Sat.* 3. 15. Cato: Plut., *Cato Mai.* 16. 7.  
<sup>50</sup> Gell. 6. 11. 9=ORF<sup>4</sup>, fr. 19. Other instances: Polyb. 31. 25a; Plut., *Cato Mai.* 8. 11; Cic., *De Orat.* 2. 283 (Antistius); Pliny, *NH* 18. 32 (Lucullus); Cic., *Ad*

*Fam.* 97 (8. 14). 4; cf. *Ad Att.* 123 (6. 9). 5 (preoccupations of Appius Claudius as censor in 50).

<sup>51</sup> Astin, *Cato the Censor*, 93; see esp. Gell. 2. 24. 1 ff.; Macrobi., *Sat.* 3. 17. 2 ff.

<sup>52</sup> See n. 25.

banqueters, it was said, feared to be discovered by the elder Tiberius Gracchus when he was censor in 169. In 142 Scipio Aemilianus removed the horse of an *eques* who had put before his guests a confection elaborately shaped into a model of Carthage. In 126 Servilius Caepio and Cassius Longinus investigated the former consul M. Aemilius Lepidus Procina and apparently arranged for him to be prosecuted and fined because of the extravagant rent he was paying for a house. In 50 Appius Claudius busied himself with statues and paintings.<sup>53</sup> And in 92, when the censors L. Licinius Crassus and Cn. Domitius Ahenobarbus quarrelled violently and assailed each other in public speeches, they engaged in sharp recriminations about the columns of Hymettian marble and the expensive arbours with which they had enhanced their respective residences—not to mention Domitius' observation that Crassus wept bitterly at the death of the pet eel which he had adorned with jewelled earrings and necklaces.<sup>54</sup> These instances by their very variety demonstrate that, in their interpretation of the concept of curbing extravagance, censors were liable to be erratic and idiosyncratic; but they also demonstrate how firmly that concept became established as an unquestioned and by no means insignificant element in the censors' approach to matters of *mores*. Effectiveness is another question, about which more will be said in due course.

One final aspect of the *regimen* is the alleged probing of domestic affairs. Dionysius of Halicarnassus said that the Romans 'threw open every house and extended the authority of the censors even to the bed-chamber'. As well as referring to such matters as all-night banquets and neglect of ancestral sacrifices, he ascribes to the censors an interest in relationships between masters and slaves, fathers and children, husbands and wives, and siblings with each other. Similar areas of the censors' concern are mentioned also, albeit more succinctly, by Plutarch in his account of Cato.<sup>55</sup> That censors could act over this whole field and enquire into the intimate details of a household is not in doubt; and to that extent the account given by these two authors is correct. Nevertheless, the impression of a widespread supervision of the details of domestic affairs should be viewed with considerable reserve. The censors patently could not and did not initiate systematic investigations into the affairs of each household, or even each senatorial and equestrian household. As in other matters they must have summoned individuals for questioning on the basis of their own awareness of reputations and report, or of allegations brought to them. It is probable in fact that when they did probe into domestic affairs it was usually to do with alleged luxury and extravagance, with which most of the known particular instances can be linked. Otherwise there are very few firmly attested instances. Scipio Aemilianus' charges of promiscuous homosexuality against P. Sulpicius Galus may belong in this context. Lucius Annius is said to have been removed from the Senate in 307 because he had divorced his wife without consulting a *consilium* of his friends. Another senator (Manlius or Manilius) is said to have been expelled by Cato in 184 because he kissed or made love to his wife in the presence of his daughter.<sup>56</sup> It is quite possible that some of Plutarch's remarks are generalizations from this last case, which he reports in his account of Cato's censorship. Moreover, the generalizations of both authors may have been influenced by a different form of censorial concern with marriage. Two anecdotes indicate that on occasion—perhaps regularly—censors required the *paterfamilias* who was making a declaration to swear on oath that he was married, and one of them further implies that he was required to swear also that the marriage was for the begetting of children.<sup>57</sup> In addition there is other evidence of censors encouraging marriage and the propagation of children: fines said to have been inflicted on *caelibes* by the censors in 403; Cicero's injunction in his model

<sup>53</sup> Cato and the edicts: above, p. 15–16, with nn. 5 and 6. Gracchus: Plut., *Ti. Grac.* 4. 4. Scipio: 'Plut.', *Apophth. Scipio Min.* 11. Servilius and Cassius: Vell. 2. 10. 1; Val. Max. 8. 1. d. 7. Claudius: Cic., *Ad Fam.* 97 (8. 14). 4; cf. *Ad Att.* 123 (6. 9). 5.

<sup>54</sup> Pliny, *NH* 17. 1–4; 36. 7; Val. Max. 9. 1. 4; Aelian, *Hist. Anim.* 8. 4; Macrobi., *Sat.* 3. 15. *ORF*<sup>4</sup>, L. Licinius Crassus, frs 34–40; *MRR* II, 17.

<sup>55</sup> Dion. Hal. 20. 13. 3; Plut., *Cato Mai.* 16. 1–3.

<sup>56</sup> Sulpicius: Gell. 6. 12. 4–5. Annius: Val. Max. 2. 9. 2. Manlius: Plut., *Cato Mai.* 17. 7, also *Coniug. praec.* 13.

<sup>57</sup> Cic., *De Orat.* 2. 260; Dion. Hal. 2. 25. 7; Gell. 4. 3. 1–2; 4. 20. 1–6; 17. 21. 44.

instructions to censors in his *De legibus* that they should 'prohibit *caelibes*'; and the famous speech of Metellus Macedonicus, quoted *in extenso* by Augustus a century later, in which he urged marriage as a regrettable duty.<sup>58</sup> In this way some censors did indeed involve themselves with matters of marriage and household, though scarcely with the constant attention to detail that Dionysius and Plutarch might be taken to imply.

From all that has been said thus far it is evident that, exhortations apart, censors gave practical effect to their concern with *mores* very largely through their dealings with individuals rather than by prescribing codes of conduct or seeking to enforce general rules. There were some exceptions: Cato's financial impositions on the owners of certain luxury items, and the edicts on dormice and other delicacies, on rhetoricians, on the sale of exotic perfumes, and on the price of wine. These, however, were few, probably short-lived, and concerned with a limited group of particulars. In the main the censors' actions in this field, effected through the operations of the *lectio senatus* and the census, were punitive and were directed against individuals. Moreover, they were not comprehensive or systematic in application. Quite apart from the ample opportunity for variations in criteria and judgement between different pairs of censors, it was impossible for censors to carry out a detailed examination of the lifestyle, conduct, property and household of each senator and *equus*, let alone of every citizen. They necessarily took up individual cases mainly on the basis of personal observation, common knowledge, and hearsay evidence; and there are obvious limitations inherent in such a manner of proceeding. Questions arise, therefore, about the actual incidence of censorial action, about its impact and effectiveness, and about any wider significance it may have had for Roman society as a whole as well as for the relatively small section upon which most of the concern about *mores* seems to have been focused.

#### LECTIO SENATUS AND RECOGNITIO EQUITUM

The two orders of the senators and *equites equo publico* together numbered less than two thousand—until the late Republic, and even then the total was probably not dramatically greater. Despite very considerable disparities of wealth and status to be found within them, they had a close social affinity; indeed they overlapped, since young men from senatorial families were commonly enrolled as *equites*, and it is probable that until the late second century most senators were also *equites*. In assessing the expulsions effected by the censors, however, it is proper to separate the senators from those *equites* who were not senators. The procedures were quite separate; the effect differed, since the senator lost not only a higher status but participation in the deliberations of the Senate itself; and the evidence differs considerably in kind and in quantity. Indeed, the distinction is reflected in the sources, which regularly report the expulsions of senators and of *equites* as separate items. The number of senators expelled at each census was recorded and somehow handed down from at least the late third century onwards, though unfortunately only a handful of figures now survive.

For the *equites*, the only figures known are for 312, when it is said that none lost their status, and for the *recognitio* of 252, when four hundred were deprived of their horses. Clearly, however, these numbers are mentioned because they were extraordinary—by what margin cannot be determined. The censorship of Appius Claudius in 312 was an extraordinary episode in many respects, and the severity of 252 was a special disciplinary measure undertaken by the censors at the instigation of a consul, because a body of *equites* in Sicily had refused to work on some fortifications.<sup>59</sup> It is significant that at the same census sixteen senators were expelled<sup>60</sup> (many of whom had probably been serving as *equites* and were associated with the four hundred); for that too is almost certainly not a typical number, since in the period from 209 to 164

<sup>58</sup> Val. Max. 2. 9. 1; Plut., *Cam.* 2. 4; Cic., *De Leg.* 3. 7; *ORF*<sup>4</sup>, Q. Caecilius Metellus Macedonicus, frs 4–7.

<sup>59</sup> For 312: Diod. 20. 36. 5. For 252: Val. Max. 2. 9. 7; Frontin., *Strat.* 4. 1. 22.

<sup>60</sup> Livy, *Per.* 18.

the largest number expelled in any one *lectio* was nine, and that figure was reached only once. Sternness in the *recognitio* for disciplinary reasons is also twice recorded during the Second Punic War, but without figures; and thereafter there are only indications of relative mildness or severity: 'very few' in 194; 'mild' in 189; 'moderate' in 164; 'many' in 174; 'severe', 'many', 'more than in earlier instances' in 169.<sup>61</sup> There are two tentative observations to be made. The first is that it is difficult to believe that the system could have been sustained if it had been common for a substantial number of *equites* to be deprived of their horses. It would not be surprising if even in a severe *recognitio* the number did not exceed forty or fifty, and in the 'mild' years it could well have been in single figures. The second is that, for what it is worth when so few instances are in question, comparison with what is known about senators suggests that 'mildness' or 'severity' on the part of particular censors was experienced by senators and *equites* alike.

About the number of senators expelled, on the other hand, there is a useful if still modest body of precise information. There are fourteen *lectiones* (excluding a special *lectio* of 216 which is not comparable) for which the total number of those expelled is known. In several instances it is stated that no person who had held curule office was expelled, while in other instances such persons are known to have been. The number expelled can be related to the notional total of the Senate, which until Sulla was approximately three hundred and thereafter six hundred. The accompanying table sets out this information.<sup>62</sup>

It can be seen that four of the totals are isolated and in one way or another differ from those in the main group. Of these, it has been observed already that the figure for 252 is very large by comparison with those for the period 209–164, but that this is probably because it was connected with an extraordinary circumstance. Similarly, the zero figure for 312, even if it is accurate, is from the censorship of Appius Claudius (Caecus), which was extraordinary in several respects. The totals for 115 and 70, besides being widely separated from the earlier group, are so much greater that they were clearly affected by factors additional to or different from those at work between 209 and 164. The remaining ten totals, however, from 209 to 164 inclusive, constitute an unbroken sequence and will therefore be considered first.

Whether as absolute numbers or as percentages of the approximate total of the Senate, the figures for the period 209–164 are small and fall within a narrow range: 0–9 senators (0–3 per cent) (average 5.1 = 1.7 per cent). Nevertheless, even within that range it seems possible to detect a pattern. The figures evidently fall into two groups (0–4, 7–9), reflecting respectively a more relaxed and a sterner attitude on the part of censors. With the end of the Second Punic War a more relaxed attitude was adopted and continued for three successive censorships, until in 184 Cato and Valerius returned to a sterner approach. It happens to be attested that the censors of 179 were divided, one wishing to expel significantly more senators than the other.<sup>63</sup> If this is borne in mind, the censorship of 184 looks like the start of a phase, having apparently engendered a spirit which made itself felt over the next two decades. Whether the reduced level of expulsions in 164 was an aberration or the beginning of a new phase unfortunately cannot be determined. How marked the contrasts between three or four expulsions and seven to nine are likely to have seemed to senators at the time requires some further consideration; but it was surely no coincidence that the higher level was resumed—after an interval of twenty years—in a censorship which achieved an enduring reputation for its vigour and strictness, or that Livy's references to mildness and harshness, which allude principally to the censors' treatment of the *equites*, correlate closely with the lower and higher figures in the record of senators expelled. It is reasonable, therefore, to expect that the difference

<sup>61</sup> Livy 34. 44. 5; 38. 28. 2; 41. 27. 13; 43. 16. 1; 44. 16. 8; 45. 15. 8; Plut., *Aem.* 38. 9.

<sup>62</sup> Size of the Senate: *RE*, s.v. *senatus* (Supp. vi), col. 686; total nowhere stated explicitly to have been raised to 600 by Sulla, but beyond reasonable doubt: Mommsen, *Röm. Staats.* III, 847 f.; cf. E. Gabba, 'Il

ceto equestre e il Senato di Silla', *Athenaeum* 34 (1956), 124 ff. For an interesting but questionable comment on the proportion of senator expelled see K. Hopkins, *Death and Renewal* (1983), 75 n. 55.

<sup>63</sup> Livy 40. 51. 1.

TABLE I. EXPULSIONS FROM THE SENATE BY CENSORS: RECORDED TOTALS

Year	Total expelled	% of 300 (600 from Sulla)	Former curule magistrates	Sources
312	0	0	None	Diod. 20. 36. 5
252	16	5.33	—	Livy, <i>Per.</i> 18
209	8	2.66	—	Livy 27. 11. 12
204	7	2.33	None	Livy 29. 37. 1
199	0	0	None	Livy 32. 7. 3
194	3	1	None	Livy 34. 44. 4
189	4	1.33	None	Livy 38. 28. 2; Plut., <i>Flam.</i> 18. 2
184	7	2.33	1 ex-consul known; see also n. 5	Livy 39. 42; various refs. to L. Flamininus
179	3	1	—	Livy 40. 51. 1
174	9	3	2 ex-praetors known	Livy 41. 27. 1-2
169	7	2.33	—	Livy 43. 15. 7
164	3	1	'None distinguished'	Plut., <i>Aem.</i> 28. 9
115	32	10.66	1 ex-consul known	Livy, <i>Per.</i> 62; Cic., <i>Pro Cluent.</i> 119; Val. Max. 2. 9. 9
70	64	% of 600 10.66	1 ex-consul known	Livy, <i>Per.</i> 98; Plut., <i>Cic.</i> 17. 1

<sup>1</sup> The table includes only those *lectiones* for which a total is explicitly recorded.

<sup>2</sup> The special *lectio* of 216, when no senator was expelled, is excluded because it was restricted on principle to emergency action to fill vacancies.

<sup>3</sup> The *lectiones* of 136 and 131 are excluded. Festus 360 L, l. 35 was at one time believed to indicate that three senators were expelled in 136, but this was based on an erroneous reading in a very fragmentary text. Ll. 36-7 and 362 L, ll. 1-2 could be restored plausibly to record a total of three for 131, but the element of conjecture is large.

<sup>4</sup> One further ex-consul, in addition to the three indicated, is known to have been expelled: P. Cornelius Rufinus in 275. Presumably Q. Servilius Caepio (*cos.* 106) was removed from the Senate, but that would have been required by the Lex Cassia of 104 following conviction, and would not have been a decision of the censors.

<sup>5</sup> One further ex-praetor is known to have been removed by censors: Ap. Claudius Pulcher in 86; but since he had already been exiled by the Marian government, this too may have been an automatic consequence of the Lex Cassia. The 'Manlius' or 'Manilius' expelled by Cato in 184 has often been assumed to have been an ex-praetor, but this is not certain: Astin, *Cato the Censor*, 80 n. 7.

did not appear so slight as to be without significance in the minds of the senators themselves.

One element not to be overlooked in the censorship of 184 is the sense of shock, the shattering of complacency which it is likely to have brought about. In the experience of the majority of senators this was the first *lectio* in which as many as seven senators had lost their status; but there was a greater shock than that. Among those expelled was L. Quinctius Flamininus. This was sensational partly because he was the brother of one of the shrewdest and most distinguished men in Rome, partly because of the devastating speech in which Cato expounded the reasons for his action, but also and perhaps most of all because Lucius Flamininus was a former consul.<sup>64</sup>

<sup>64</sup> Astin, *Cato the Censor*, 79 f.

It is not possible to prove definitively that all or almost all the instances are known in which censors removed an ex-consul from the Senate, but this is very likely to be so. In a society which was aristocratic, highly status-conscious, and permeated with hierarchical social connections, a basic reluctance to disgrace an especially eminent fellow-member of the ruling group is likely to have been reinforced by the risks involved in attacking those best able to wield influence. But more than that, the instances which do appear in the sources suggest that the downfall of an ex-consul at the hands of the censors was a dramatic *exemplum* to be seized upon; it is hard to believe that even a few additional cases remain unattested. In all probability the expulsion of Lucius Flamininus in 184 was the first such case since that of P. Cornelius Rufinus in 275 (which may have been the only precedent); but in any event there is firm evidence, as a glance at the table reveals, that no former consul, nor even any person who had held a curule office, had been removed from the Senate for *at least* twenty-five years. It is perhaps unlikely that the expulsion of a former praetor was quite so uncommon as that of a former consul seems to have been; it happens that fewer instances are known, but that is probably because the fall of a former praetor offered less dramatic scope to the orator and moralizer. Cato may have expelled one in 184, the expulsion of two in 174 is mentioned expressly. Yet clearly it was unusual to expel an ex-praetor, while the expulsion of a former consul was surely extremely rare in the whole history of the censorial *lectio*. When it did happen that a senator who had held curule office was expelled, this must have created an effect throughout the senatorial class far greater than the mere number of such victims would have warranted, precisely because it was no routine matter.<sup>65</sup>

As for the expulsions in general, it could be argued that even here the impact was not especially great in numerical terms: in the ten *lectiones* from 209 to 164 the proportion of senators expelled averaged only 1.7 per cent of the notional total membership and on no occasion did it rise above 3 per cent. It was certainly not on such a scale as to effect a major change in the composition of the Senate. Yet that is not necessarily a reliable measure of how the expulsions were actually perceived. In the first place, at the time of each *lectio* (at least until the late second century) the Senate was almost certainly well below its full complement. Second, the group of senators which perceived itself as vulnerable was normally limited to those who had not held curule office—at one time the great majority, but by the middle of the second century probably less than two hundred persons.<sup>66</sup> Third, it is conceivable—a *priori* it might be supposed probable—that even the non-curule senators were by no means equally vulnerable and that the expulsions have actually to be related to some much smaller category.

In any event, the real effect of such a procedure, and the manner in which it was perceived, especially by the senators themselves, cannot be judged merely by numbers or by numerical proportions. On the one hand, it is certainly the case that after each *lectio* from 209 to 164 the overwhelming majority of senators found themselves back in the Senate and, since so few familiar faces were missing, must have experienced a strong sense of continuity. On the other hand, even in total the senators were a very small group, with a strong sense of identity *vis-à-vis* the remainder of Roman society, and within which there were numerous interrelationships based on kinship, social obligation and personal association. Those expelled must always have been more than mere names and faces to many of the rest. As each *lectio* approached the senators knew that several of them would be expelled. The grounds for expulsion

<sup>65</sup> A considerable stir was probably caused when Cato in 184 deprived L. Cornelius Scipio Asiaticus of his horse, but he did not expel him from the Senate and, formally at least, the reason is likely to have been Scipio's physical infirmity. Livy 39. 44. 1; Plut., *Cato Mai.* 18. 1; 'Victor', *De vir. ill.* 53. 1-2; Astin, *Cato the Censor*, 81.

<sup>66</sup> The critical office is the praetorship, since most curule aediles soon went on to that office and most

consuls were former praetors. In the late third and early second centuries the number of praetors was increased from two to four and then to six. Since the total size of the Senate almost certainly remained approximately the same (three hundred), this increase will have affected the proportion of former curule magistrates significantly by the middle of the second century.



would be recorded in writing by the censors (see n. 25). There would be no tactful attempt to effect it discreetly and quietly; on the contrary, those who went would suffer a severe loss of status and a large measure of public humiliation—probably felt all the more keenly because their small number itself made them conspicuous individually. There was no comfort of the kind which may be gained from the semi-anonymity of a substantial group or from the sharing of a sense of grievance, whether justified or not. If the small numbers imply—as they probably do—that only those whose misconduct was serious or flagrant were vulnerable, it is to be remembered, first, that though this narrowed the field, it by no means eliminated the atmosphere of uncertainty, since at their own discretion each pair of censors not only assessed the degree of misconduct but determined what kind of misconduct most concerned them; and second, that an essential purpose was to use exemplary humiliation as a deterrent to misconduct and an incentive towards the maintenance of acceptable standards.

It is sometimes assumed that the attempt to achieve this purpose was futile and a failure; but that is by no means clearly the case. Success in such a matter is relative and all the harder to assess since the censorship was not the only instrument employed; instances of corruption and abuse of power, and their persistence into the late Republic, are not proof of total failure. Small though the numbers of expelled senators were, the deterrent was a powerful one, and it is difficult to believe that it did nothing at all to curb flagrant and gross misconduct. That the censors themselves did not regard their efforts as futile is evident from their actions, especially those of Cato and his successors; and the belief in efficacy clearly survived to the end of the Republic. The censors of 70 concerned themselves with, amongst other matters, judicial corruption, and with the variegated delinquencies of C. Antonius Hybrida, who 'plundered the allies, defied a judicial enquiry, sold his estates because of the magnitude of his debts, and did not have control of his own property'.<sup>67</sup> As late as 50, Appius Claudius was throwing himself into the work with a vigour which led the cynical Caelius to comment that Appius seemed to think that the censorship was soap or soda, with which he was trying to scrub out stains.<sup>68</sup> And Cicero looked upon the censorship not as a device which had proved ineffective but as a potent instrument, the more intensive application of which could rid the Senate of misconduct and enable it to set an example to the whole of Roman society.<sup>69</sup>

After 164 there are two further years for which the number of expulsions is recorded: 32 in 115; 64 in 70; it is presumably a coincidence that each is 10.66 per cent of the notional total membership of the Senate at the respective dates. Manifestly they reveal a dramatic increase in the scale of the expulsions which could be contemplated. Even though these two *lectiones* may have stood out as especially determined attempts at renewed severity (in each case a consul of the previous year was expelled from the Senate), the scale of expulsions is of a totally different order to that of Cato's severe action in 184 or to any known previous experience. Yet despite this sharp contrast, there is no indication of outcry or general complaint, no legacy of anecdotes to illustrate the severity or the exemplary strictness of these censors. Cicero in the *Pro Cluentio* bent over backwards to demonstrate that when the censors of 70 expelled two men for judicial corruption, this created no presumption of guilt, but he goes no further than to allege that the censors were unduly influenced by public opinion; he nowhere suggests that they had been excessively zealous and too ready to expel.<sup>70</sup>

In principle it would be possible that this increase in the number of expulsions was accepted because it came about gradually, that the figure in 115 represents the culmination of a progressive increase which had taken place over the previous half-century; but in fact this is unlikely. Slight though the evidence is for censorships in that half-century, it is known that both in 142 and in 136 the intended vigour of one censor was restrained or thwarted by the other; there is a possibility (though the evidence is insecure) that in 131 the number expelled was three; and in that same

<sup>67</sup> Ascon. 84C.

<sup>68</sup> Cic., *Ad Fam.* 97 (8. 14). 4.

<sup>69</sup> Astin, 'Cicero and the Censorship', *CPh* 80 (1985), 233–9.

<sup>70</sup> Cic., *Pro Cluent.* 117–35, esp. 130.

census Metellus Macedonicus attracted much attention to himself but inspired no surviving reports of unusual severity.<sup>71</sup> It does seem probable, therefore, that the number of expulsions in 115 reflects a sharp increase in scale which occurred either in that censorship, or at least in the short period since 131. A sudden increase at that time suggests that partisan politics may have become a factor, in the shape of a backlash against supporters of Tiberius and Gaius Gracchus; but if that is the major or primary explanation for a quite dramatic change of practice, it remains surprising that no traces survive of recriminations, no anecdotes embodying confrontations between political figures, nor any other hints.

Another possibility is that the increase may have come about largely in consequence of some constitutional change which had injected new problems of a practical and technical nature into the procedure. There is reason to believe that until as late as 61 censors attempted to adhere in their revised list of members to the notional total of the Senate, which was three hundred before Sulla, six hundred after.<sup>72</sup> There is also reason to believe that in filling vacancies which had occurred since the previous *lectio* censors drew principally upon men who had held public office but were not yet enrolled as senators, the great majority of whom would be former plebeian aediles, tribunes and quaestors.<sup>73</sup> An average in the region of sixty vacancies (prior to Sulla's changes) is a plausible but very insecure guess; and in any case the actual number must have fluctuated noticeably from one *lectio* to another. Consequently it is probable that sometimes—perhaps quite often—the number of non-senators who had held office since the previous *lectio* exceeded the number of places available, and therefore that some were not placed on the list by the censors. Exactly this problem faced the censors of 61, who resolved it by ignoring the upper limit. However, those non-senators who in the interval since the previous *lectio* had held *curule* office thereby at once obtained the right of participation in the Senate—the *ius sententiae dicendae*. Though technically not yet senators, they were so much regarded as part of the Senate that if the censors did not enrol them, this was looked upon as expulsion and was described by the formal terminology for expulsion.<sup>74</sup> For as long as this right remained a prerogative of former *curule* magistrates, the number of persons exercising it at any one time was very small, and probably there were many times when there were none. Later however—probably in the second half of the second century—it was extended to tribunes (and presumably plebeian aediles) and quaestors.<sup>75</sup> Thereafter censors attempting to adhere to the notional total of the Senate and faced with more former magistrates than there were vacancies would be said to have expelled any of these men whom they did not add to the list of formally enrolled senators.

If this is correct, the change in the scale of expulsions, though obviously an important change in practice, does not necessarily reflect any major change in principle or policy in the exercise of the *regimen morum* through the *lectio senatus*. Such a change in scale, however, must have had some effect upon prevalent attitudes towards the expulsion of senators. Possibly, since those expelled were less isolated and perceived themselves as members of a sizeable group, it tended to diminish in some measure the intensity both of the disgrace and of the deterrent effect. It is noticeable that the two former consuls expelled in 115 and 70, and C. Antonius Hybrida, also expelled in 70, all secured early election to posts which returned them to the Senate;

<sup>71</sup> For 142: Dio 22. 76. For 136: Dio fr. 81. For 131 see n. 3 to Table 1, above, and refs. collected in *MRR* 1, 500.

<sup>72</sup> Dio 37. 46. 4.

<sup>73</sup> The special *lectio* of 216 is important evidence, since the dictator appointed to conduct it was concerned to adhere closely to established convention: Livy 23. 23. 1–7. Cf. the story of Licinius Crassus, who in 150 was assumed by Q. Fabius Maximus to be a senator because he had been quaestor three years before (Val. Max. 2. 2. 1); also the tribune Cn. Tremellius who in 168 protested because he had not been made a senator (Livy 45. 15. 9).

<sup>74</sup> See esp. Gell. 3. 18. 5–7; Festus, s.v. *senatores*, 454L. P. Willems, *Le Sénat de la république romaine* (1883–5), I<sup>2</sup>, 859; *RE*, s.v. *senatus* (Supp. VI), col. 688; E. Gabba, 'Notee Appianee', *Athenaeum* 33 (1955), 219 f.

<sup>75</sup> The *ius* is usually believed to have been extended to tribunes in the later second century and to quaestors by Sulla (so Mommsen, *Röm. Staats.* II<sup>2</sup>, 420 ff. and III, 858 ff.); Gabba, loc. cit., argues that this occurred much earlier, but his arguments are not secure at every point.

indeed the ex-consul expelled in 115, C. Licinius Geta, was actually elected censor in 108. Even so, as was seen earlier, a belief in the value of the procedure survived to the end of the Republic.

#### THE SOCIAL ROLE OF THE *REGIMEN MORUM*

Indeed, any general assessment of the *regimen morum* in Roman society must recognize that to the end of the Republic, and beyond, it was perceived or assumed to be performing functions useful to that society and to which the society attached considerable value. This is implied by the long history and persistence of the phenomenon in the midst of far-reaching social and political changes; by the tolerance of the remarkable range and variety of its intrusions into personal affairs and individual conduct; by the aristocracy's astonishing and perhaps unparalleled acceptance of a procedure which at frequent intervals led to the denunciation and expulsion of several of its own members; by the absence of any attempt, except for the short-lived law of Clodius,<sup>76</sup> to impose control on an unfettered censorial discretion which to the end was by no means a dead letter or token survival. It will not suffice, therefore, to interpret the censorial concern with *mores* as primarily an instrument in the conduct of political struggle; to look upon the complaints of censors against individuals or their power to expel and downgrade merely as weapons with which political opponents struck at each other. In a political environment it is to be expected that from time to time some element of narrow political motivation will have entered in, and occasionally may have been a major factor; and no doubt censors often found it more difficult to act against those with whom they had close connections of one kind or another (though in 174 the censors did expel the brother of one of them from the Senate).<sup>77</sup> Nevertheless, despite the extraordinary conduct of the censors in 204, in the extensive and varied evidence which survives there are very few accusations that censors did act from partisan motives; nor is it plausible to suppose that the phenomenon of the *regimen morum* could have developed and persisted as it did if it had fulfilled no deeper function.

The direct and immediate role of the censorial concern with *mores* was to be found very largely in its relationship to that small section of Roman society which was made up of the senatorial and equestrian orders. So far as can be discerned, it had little direct application to the rest of society; and, despite its ill-defined scope and the unfettered discretion of the censors, it was not developed into a device for controlling or disciplining the mass of the population. Instead, it evolved as a mechanism by which the politically dominant section of society imposed restraints upon itself and its individual members. It was a mechanism which discouraged flagrant breaches of accepted restraints and obligations of aristocratic society, and which did so by the exemplary exclusion of a few offending individuals from the principal organizations which gave external form to that aristocratic society.

It was a mechanism which had weaknesses. The discontinuity of the censorship meant that it was applied only at intervals of several years. The reliance upon the unfettered discretion of two persons, and to a great extent upon their initiative in identifying individual cases which they deemed to require attention, necessarily produced variation and inconsistency. To an extent this was tempered by the susceptibility of censorial judgement to the influence of convention and of current norms of conduct, but since both of these were imprecise and fluid, their contribution to consistency was limited. Subject to change themselves, they were a weak barrier against the changes in *mores* that did occur. Indeed, the mechanism of the *regimen morum* has been judged a failure because it was unable to maintain the patterns and standards of conduct associated with the aristocracy of pre-imperial Rome.<sup>78</sup>

<sup>76</sup> Astin, 'Censorships in the Late Republic', *Historia* 34 (1985), 187-8; and above, n. 25.

<sup>77</sup> Livy 41. 27. 2; Val. Max. 2. 75; Vell. 1. 10. 6; Frontin., *Strat.* 4. 1. 32. See also *MRR* 1, 391.

<sup>78</sup> Schmähling, *Die Sittenaufsicht*, esp. 128 ff.

This last is, however, an over-harsh judgement, not to say a misconceived one. The mechanism also had features which were sources of strength and which contributed to its endurance. First of all, as a form of discipline it could be tolerated by the senators and *equites* because the proportion of them who actually suffered the censorial *nota* was small (at any rate, until the late second century) and rarely included any of the most senior and distinguished senators; and because the penalty, though one which must have been felt keenly in such a society, involved neither economic loss nor physical suffering, but was limited, in Cicero's phrase, to 'the raising of a blush'.<sup>79</sup> Thus neither resentment nor sympathy were fostered so widely or to such a degree that they undermined the procedure, either by making the censors reluctant to act or by causing major restraints to be put upon them.

A second source of strength lay in the fact that, probably because it had evolved rather than been created by formal act, the mechanism was not tied to any prescribed principle. The censors were not attempting to enforce a particular, invariable code of conduct which was liable to become outdated. They could be responsive (consciously or unconsciously) to altered circumstances and changing attitudes in the society around them, the more so in that all action was at their own discretion and they were answerable to no higher authority. The very factors which made for variation and inconsistency made also for flexibility and adaptability. Hence in the eyes of Cicero and many of his contemporaries 'to regulate *mores*' could still not only be a relevant but, especially in the *lectio senatus*, an important function to be carried out by the censors.

Manifestly, no institution or institutionalized practice could have prevented changes in the standards and values of Roman society, nor is the censorship to be judged on the basis of so unrealistic a criterion. Similarly, it would be superficial and misleading to attempt to measure the value of the censorial involvement with *mores* by the extent to which extravagance, corruption and abuse of power declined or grew. Undoubtedly they grew as the empire expanded and the flow of wealth therefrom increased. But the censorship was not the only, or even the principal, means available for combatting that growth; and what is impossible to measure is the contribution made by censorial action at various times to that far from negligible section of opinion which, for example, gave expression to its disapproval of malpractices through the passage of laws and the creation of judicial institutions. What cannot lightly be ignored is that even in the last difficult days of the Republic such men as Cicero, the censors of 70, Appius Claudius, and others saw censorial intervention in matters of *mores* not as a discredited practice but as one to be applied vigorously.

It is evident, however, that the *regimen morum* is not to be assessed merely as one of the weapons used against corruption and abuse of power. Its wide scope, its early development and its long persistence all point to its having had a deeper significance in Roman society. One aspect of that deeper significance was that the procedures themselves, the recurring reviews of membership of the orders, and the practice of excluding a few existing members (normally relegated to the lowest category of citizens) must all have powerfully reinforced the sense of identity and common status which went with membership of the Senate or the equestrian order. They were among the experiences which set the members of these orders apart, both in their own eyes and in those of the remainder of society. But they reinforced a sense not merely of identity but also of the values which members of the aristocracy applied to their own conduct and interrelationships and by which they judged each other. No doubt the ultimate origin of such values varied considerably, but a good many will have persisted because they came to be associated with the maintenance of security and order, and with practices, such as the passing on of landed property, which were important to the aristocracy for its own continuity. When the censors concerned themselves with *mores* they in effect drew attention—unsystematically but forcefully—to some of these values and thereby tended to reinforce them.

<sup>79</sup> Cic., *De Rep.* 4. 6.

To reinforce but not to freeze. Values change with changing circumstances; old and new values are found together, often in a state of flux. In Rome this is especially familiar as a phenomenon of the first half of the second century B.C., when Roman society experienced a particularly rapid widening of horizons; but in some degree it was probably a common state of affairs, if only because of the frequency with which the Roman state experienced change and growth. An unduly rigid attempt to uphold older values could all too easily have exacerbated the conflicts between old values and new and laid a basis for more serious and pervasive division within the aristocracy. As it was, the flexibility inherent in the *regimen morum* permitted not only the censors but the aristocracy to contain such conflicts, to avoid precipitate abandonment of the old while adjusting to new situations and new values, and to do so without social and political fragmentation of itself.

In short, while the censors' concern with *mores* touched upon a remarkable variety of matters and was directed by a complex of motives, some calculated, some springing from received assumptions, one of its major effects, and probably a major underlying reason for its persistence, was that it helped to reinforce the sense of identity, the social values, and the coherence of the Roman aristocracy.

*The Queen's University, Belfast*