

MATER FAMILIAS

SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

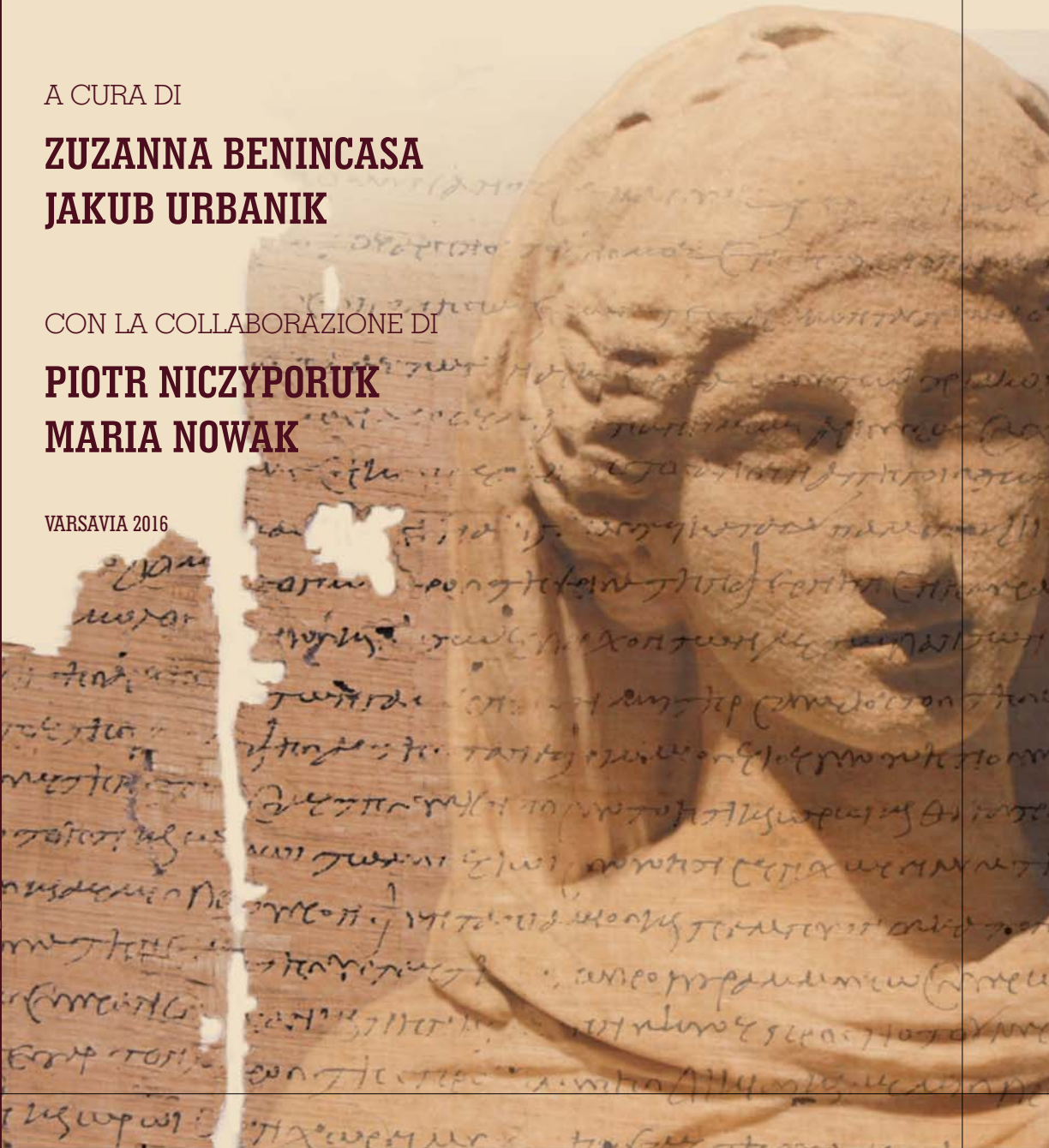
A CURA DI

**ZUZANNA BENINCASA
JAKUB URBANIK**

CON LA COLLABORAZIONE DI

**PIOTR NICZYPORUK
MARIA NOWAK**

VARSAVIA 2016



MATER FAMILIAS

SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

A CURA DI

**ZUZANNA BENINCASA
JAKUB URBANIK**

CON LA COLLABORAZIONE DI

**PIOTR NICZYPORUK
MARIA NOWAK**

VARSAVIA 2016

Supplements to The Journal of Juristic Papyrology are jointly published by the Faculty of Law and Administration of the University of Warsaw, the Institute of Archaeology of the University of Warsaw, and Fundacja im. Rafała Taubenschlaga, Krakowskie Przedmieście 26/28, 00-927 Warszawa 64 tel. (+48 22) 55 22 815 and (+48 22) 55 20 384, fax: (+48 22) 55 24 319 e-mails: g.ochala@uw.edu.pl, t.derda@uw.edu.pl, kuba@adm.uw.edu.pl web-page: <<http://www.taubenschlagfoundation.pl>>

Cover design by Maryna Wiśniewska
Computer design and DTP by Jakub Urbanik

© for the book by Zuzanna Benincasa & Jakub Urbanik
and Fundacja im. Rafała Taubenschlaga

© for the constituting papers by the Authors

Warszawa 2016

ISBN 978-83-938425-9-9

Wydanie I.

Druk i oprawa: Sowa Sp. z o.o., Piaseczno



Mater Familias
Scritti per Maria Zabłocka

INDICE

Zuzanna BENINCASA & Jakub URBANIK	
<i>Prefazione</i>	XIII
<i>Elenco delle opere di Maria Zabłocka</i>	XXIII
José Luis ALONSO	
<i>The Emperor, the ex-prostitute, and the adulteress.</i>	
<i>Suet. Cal. 40 revisited</i>	3
Krzysztof AMIELAŃCZYK	
<i>In search for the origins of the Roman public law offences (crimina)</i>	
<i>in the Archaic period</i>	23
Zuzanna BENINCASA	
<i>Alcune riflessioni sulla libertà di caccia nel diritto romano.</i>	
<i>vivai e riserve di caccia</i>	39
Witold BORYSIAK	
<i>Roman principle</i>	
<i>Nemo pro parte testatus pro parte intestatus decedere potest</i>	
<i>and the reasons of its modern rejection</i>	63
Luigi CAPOGROSSI COLOGNESI	
<i>Un ordinamento giuridico e le sue trasformazioni</i>	85
Cosimo CASCIONE	
<i>Celso lettore di San Paolo?</i>	
<i>Una nota minima in tema di interpretazione</i>	101

Alessandro CORBINO	
<i>Personae in causa mancipii</i>	107
Božena Anna CZECH-JEZIERSKA	
<i>Roman law in Polish People's Republic: Stages of transformation</i>	119
Tomasz DERDA & Maria NOWAK	
<i>Will of [---]is daughter of Pachois from Oxyrhynchos.</i>	
<i>P. Oxy. II 379 descr.</i>	135
Marzena DYJAKOWSKA	
<i>Verba impia et maledicta.</i>	
<i>The influence of Roman law upon the western European doctrine</i>	
<i>of verbal insult of the ruler in the 16–17th centuries</i>	145
András FÖLDI	
<i>Appunti sugli elementi romanistici nel nuovo Codice civile ungherese</i> ..	161
Ewa GAJDA	
<i>Elements of theology in Roman law.</i>	
<i>On Zenon's Henoticon and Justinian's letter (Cf. I.I.8)</i>	191
Luigi GAROFALO	
<i>Roma e i suoi giuristi nel pensiero di Nicolás Gómez Dávila</i>	207
Tomasz GIARO	
<i>L'expérience de l'absurde chez les juristes romains</i>	243
Sławomir GODEK	
<i>Ignacy Daniłowicz on the impact of Roman law</i>	
<i>on the law of the pre-partition Commonwealth</i>	
<i>in the light of his letters to Joachim Lelewel</i>	269
Ireneusz JAKUBOWSKI	
<i>Some remarks about Roman law</i>	
<i>in Tadeusz Czacki's opus magnum</i>	285
Maciej JOŃCA	
<i>Per aspera ad astra.</i>	
<i>Johann Bayer, römisches Recht</i>	
<i>und das Ausbildungsprogramm der jungen Radziwiłłs</i>	295

Aldona Rita JUREWICZ	
<i>TPSulp. 48 und actio quod iussu.</i>	
<i>Konnte Prudens adjektivisch belangt werden?</i>	307
Agnieszka KACPRZAK	
<i>Obbligo del lutto e il controllo sociale sulla sessualità di vedove</i>	323
Leszek KAZANA	
<i>Il delitto Matteotti: qualche dubbio sul colpevole</i>	351
Piotr KOŁODKO	
<i>Some comments on the role of the quaestor as a prosecutor</i>	
<i>in criminal proceedings in the times of the Roman Republic</i>	375
Przemysław KUBIAK	
<i>Between emotions and rationality</i>	
<i>Remorse as mitigating circumstance in Roman military law</i>	397
Sławomir KURSA	
<i>Capacity of women to make testamentum parentis inter liberos</i>	415
Marek KURYŁOWICZ	
<i>Ancarenus Nothus und Gaius von Hierapolis</i>	
<i>Miscellanea epigraphica: CIL VI 7193a & IGR IV 743</i>	425
Luigi LABRUNA	
« <i>Necessaria quanto la giustizia ...</i> »	
<i>Etica e tradizione dell'avvocatura</i>	445
Paola LAMBRINI	
<i>Ipotesi in tema di rescissione per lesione enorme</i>	453
Elżbieta LOSKA	
<i>Testamenti factio passiva of actresses in ancient Rome</i>	465
Adam ŁUKASZEWICZ	
<i>Remarks on Mars Ultor, Augustus, and Egypt</i>	487
Rafał MAŃKO	
<i>Roman roots at Plateau du Kirchberg</i>	
<i>Recent examples of explicit references to Roman law</i>	
<i>in the case-law of the Court of Justice of the EU</i>	501

Carla MASI DORIA	
<i>Una questione di «stile»?</i>	
<i>A proposito di una critica di Beseler a Mommsen</i>	527
Rosa MENTXAKA	
<i>Sobre la actividad comercial del clero hispano en los inicios del siglo IV</i>	
<i>a la luz de dos cánones del Concilio de Elvira</i>	535
Joanna MISZTAL-KONECKA	
<i>The non-litigious proceedings in Polish Law</i>	
<i>and Roman iurisdictio voluntaria</i>	569
Józef MÉLÈZE MODRZEJEWSKI	
<i>Modèles classiques des lois ptolémaïques</i>	579
Piotr NICZYPORUK	
<i>La capacità giuridica e la tutela del nascituro nella Roma antica</i>	597
Dobromiła NOWICKA	
<i>Family relations in cases concerning iniuria</i>	619
Tomasz PALMIRSKI	
<i>Some remarks on legal protection of commodans</i>	
<i>prior to the introduction of the praetorian actio commodati</i>	639
Anna PIKULSKA-RADOMSKA	
<i>Über einige Aspekte der Steuerpolitik und Propaganda</i>	
<i>der öffentlichen Macht im römischen Prinzipat</i>	653
Manex RALLA ARREGI	
<i>Sobre una posible relación causal entre regulación canónica</i>	
<i>y legislación imperial en los primeros siglos del monacato</i>	677
Francesca REDUZZI MEROLA	
<i>Schiavitù e dipendenza nel pensiero di Francesco De Martino</i>	693
Władysław ROZWADOWSKI	
<i>Sul trasferimento del credito in diritto romano</i>	705
Francesca SCOTTI	
<i>Actio aquae pluviae arcendae e «piccola bonifica agraria»:</i>	
<i>Un esempio dalle fonti giustinianee</i>	725

Michał SKŘEJPEK	
<i>La pena di morte nel diritto romano: necessità o no?</i>	785
Marek SOBCZYK	
<i>Recovery of performance rendered dotis nomine</i> <i>on account of a future marriage that did not take place</i>	797
Andrzej SOKALA	
<i>Władysław Bojarski Paterfamilias</i>	819
Janusz SONDEL	
<i>Alcune considerazioni sulla storia e sull'insegnamento</i> <i>del diritto romano in Polonia</i>	849
Agnieszka STĘPKOWSKA	
<i>Il ruolo del consenso muliebre</i> <i>nell'amministrazione dei fondi dotali in diritto romano</i>	889
Dorota STOLAREK	
<i>Lenocinium in the Lex Iulia de adulteriis</i>	909
Paulina ŚWIECICKA & Łukasz MARZEC	
<i>From Roman oratores to modern advocates</i> <i>Some remarks on the formative of lawyer's ethics in Antiquity</i>	935
Adam ŚWIĘTOŃ	
<i>Superexactiones in the Late Roman Law</i> <i>A short review of the imperial constitutions in the Theodosian Code</i> ..	965
Renata ŚWIRGOŃ-SKOK	
<i>Family law in the private law systematics</i> <i>from the Roman law until the present day</i>	979
Sebastiano TAFARO	
<i>Il diritto per l'oggi</i>	993
Anna TARWACKA	
<i>Manomissioni di schiavi nelle commedie di Plauto</i>	1025
Jakub URBANIK	
<i>Dissolubility and indissolubility of marriage</i> <i>in the Greek and Roman tradition</i>	1039

Andreas WACKE	
<i>Führte die Unveräußerlichkeit des Mitgiftgrundstücks im römischen Recht zu relativer Nichtigkeit? Grenzen vom Verbot des venire contra factum proprium</i>	1069
Jacek WIEWIORSKI	
<i>Deformed child in the Twelve Tables</i>	1157
Witold WOŁODKIEWICZ	
<i>Apices iuris non sunt iura</i>	1177
Karolina WYRWIŃSKA	
<i>Functionality of New Institutional Economics in research on Roman law</i>	1187
Jan ZABŁOCKI	
<i>Il concetto di mater familias in caso di arrogazione</i>	1199

Mater Familias
Scritti per Maria Zabłocka
pp. 1157–1176

Jacek Wiewiorowski

DEFORMED CHILD IN THE TWELVE TABLES

MARIA ZABŁOCKA CO-EDITED the modern Polish translation of *Leges Duodecim tabularum* and has written several papers concerning the *Twelve Tables*, its significance and the reconstructions of its text.¹ The current paper focuses on a small section of the law regarding deformed newborn (*XII Tab.* IV 1). This topic has not yet been discussed by Zabłocka, and I hope that my adding some refreshing views to the long-standing discussion of the subject will be welcomed by the Dedicatee.

According to most popular modern reconstruction² of *XII Tab.* IV 1, based on Cicero's dialogue *de legibus* (Cic. *Leg.* III 8.19) runs as follows:

¹ Maria & J. ZABŁOCKY, *Ustawa XII Tablic. Tekst. Tłumaczenie. Objasnienia* [The Law of XII Tables. Text. Translation. Commentary], Warszawa 2000.

² Cf. editions: C. G. BRUNS, *Fontes iuris Romani antiquae* 1, Tübingen 1909, pp. 15–40; S. RICCOBONO, *Fontes iuris Romani antejustiniani* 1, Firenze 1941, pp. 21–75; P. F. GIRARD & F. SENN, *Textes de droit romain* 1, Paris 1967, pp. 22–73. Editions and studies concerning the Twelve Tables are collected in: O. DILIBERTO, *Bibliografia ragionata delle edizioni a stampa della Legge delle XII Tavole (secoli XVI–XX)*, Roma 2001. Cf. also in general e.g., G. CRIFÒ, 'La legge delle XII tavole. Osservazioni e problemi', *ANRW* 1 1.2 (1972), pp. 115–133; J.-L. FERRARY, 'Saggio di storia della palingenesi delle Dodici Tavole', [in:] M. HUMBERT (ed.), *Le Dodici Tavole. Dai Decemviri agli Umanisti*, Pavia 2005, pp. 503–558; P. ARCÉS, 'Appunti per una storia dei tentativi di palingenesi della legge delle XII Tavole', *RDR* 8 (2008), available at <<http://www.ledonline.it/rivistadirittoromano/allegati/dirittoromano08arces.pdf>>

cito [necatus]³ tamquam ex XII tabulis insignis ad deformitatem puer.
 – A notably deformed child⁴ shall be killed immediately.⁵

This fragment is supplemented by the postclassical *Gai. Aug.* 4.86,⁶ what led recently to its slightly different reconstruction:

si deformis natus est, ast non tollit⁷ se fraude esto – If he is born deformed, and if he does not pick him up, it is to be without liability.⁸

³ *legatus/ leto datus?* For the latter reconstructions of the text and other possibilities see: M. H. CRAWFORD (ed.), *Roman Statutes* I, London 1996, p. 630.

⁴ Puer in Cicero's works means not only a boy but also a child. Cf. H. MERQUET, *Handlexikon zu Cicero*, Leipzig 1905 (reed. Hildesheim 1964), p. 577. Therefore, incorrect is the remark of S. MEIRA, 'Os seres monstrosos em face do direito romano e do civil moderno', *Revista de informação legislativa* 96 (1987), p. 319, who points out that Cic. *Leg.* III 8.19 refers only to boys.

⁵ Translation by A. Ch. JOHNSON, P. R. COLEMAN-NORTON & F. C. BOURNE, *Ancient Roman Statutes*, Austin 1961 (reprint 2003), p. 10.

⁶ *Frag. Gai August* 4.85–86: ... cum patris potestas talis est, ut habeat vitae et necis potestatem. De filio hoc tractari crudele est, sed... non est.. n post r... occidere sine iusta causa, ut constituit lex XII tabularum, sed deferre iudici debet propter calumniam (text according to GIRARD & SENN, *Textes* [cit. n. 2], pp. 219–239). According to CRAWFORD (ed.), *Roman Statutes* (cit. n. 3), p. 630: [---] cum patris potestas talis est ut habeat vitae et necis pot[estatem]. de filio hoc tractari crudele st, sed [---] non est [---] post r[---]occi]dere sine iusta causa, ut constituit lex XII tabularum.

⁷ It can also mean *ast exponit* (exposed) | *ast abicit* (expelled) | *ast necat* (killed). For details see: P. LANFRANCHI, *Ricerche sulle azioni di stato nella filiazione in diritto romano*. II: *La c.d. presunzione di paternità*, Bologna 1964, pp. 5–35 (esp. p. 8, n. 13: '... non tolerare, exponere, necare, abicere sono manifestazioni della patria potestas riconducibili alle più svariate ragioni ...'). For contradictions concerning the nature and importance of *tollere liberos* from modern studies, cf. e.g., L. CAPOGROSSI COLOGNESI, 'Tollere liberos', *MEFRA* 102.1 (1990), esp. pp. 113–127; B. D. SHAW, 'Raising and killing children: Two Roman myths', *Mnemosyne* 54.1 (2001), esp. pp. 32–56; V. DASEN, 'Roman birth rites of passage revisited', *JRA* 22 (2009), 199–214, esp. p. 200. W. V. HARRIS, 'The Romans father power of life and death', [in:] R. S. BAGNALL & W. V. HARRIS (eds.), *Studies in Roman Law in Memory of Arthur A. Schiller*, Leiden 1986, pp. 94–95 also noticed correctly that old Roman law treated *expositio* as killing. For a contrary view, see: Mirelle CORBIER, 'Child Exposure and Abandonment', [in:] Susan DIXON (ed.), *Childhood, Class and Kin in the Roman World*, London 2001, pp. 52–73; A. ALLÉLY, 'Les enfants malformés et considérés comme prodigia à Rome et en Italie sous la République', *REA* 105.1 (2003), esp. pp. 130–131.

⁸ Translation according to: CRAWFORD (ed.), *Roman Statutes*, (cit. n. 3), pp. 580–581 and 630.

As rightly stated by Marie-Therese Fögen, ‘Die Forschung der Neuzeit hat einen Text [of the *leges duodecim tabularum*], der schon in der römischen Republik ein virtueller Text war, kodifiziert und kanonisiert’.⁹ We do not know the original text of the Twelve Tables, and some believe that the original tablets must have been destroyed when the Gauls burnt Rome in 387 BC (cf. Liv. v 43.1). However the opinion of the German jurist and historian concerning the limited knowledge of the Twelve Tables text goes too far. Knowledge of the contents of the *Leges duodecim tabularum* was likely widespread among the Romans even in Late Antiquity.¹⁰ *Gai fragmenta Augustinensia*, which itself is proof that studies were developed and preserved in the West Gaius even up to the time of the Visigothic kings,¹¹ confirms this fact well.¹²

As far as the killing of deformed new-born is concerned, Paul Robinson Coleman-Norton in 1950 stated correctly ‘that the statute belongs in the code rests on Cicero’s sole authority ... and so we must suppose that Cicero’s paraphrase preserves none of the original words.’¹³ He underlines

⁹ Marie-Therese FÖGEN, *Römische Rechtsgeschichte. Über Ursprung und Funktion eines sozialen Systems*, Göttingen 2002, p. 73.

¹⁰ Cf. e.g., O. DILIBERTO, ‘Conoscenza e diffusione delle XII Tavole nell’età del Basso Impero. Primo contributo’, [in:] *Studi in onore di F. Gallo* 1, Napoli 1997, pp. 205–227 = *Ius Antiquum* 1 (2) (1997), pp. 74–83; IDEM, ‘La Legge delle XII Tavole nel Basso Impero’, *Koivovía* 38 (2014), pp. 235–247.

¹¹ Cf. the still valid P. KRÜGER: ‘Der Kommentar zu Gai *Institutiones* in Autun’, *ZRG RA* 24 (1903), pp. 375–408 [text: 378–404] and more recent J.-D. RODRÍGUEZ MARTÍN, *Fragmenta Augustodenensia*, Granada 1998; IDEM, ‘Das nachklassische Recht im Lichte der *Fragmenta Augustodenensia*’, [in:] M. AVENARIUS, (ed.), *Hermeneutik der Quellen des römischen Rechts [= Rheinische Schriften zur Rechtsgeschichte* 7], Köln 2008, pp. 135–156. About the postclassical West Gaius studies see also: J.-D. RODRÍGUEZ MARTÍN, ‘A handbook for Alaric’s codification’, *RIDA* 46 (1999), pp. 451–463.

¹² B. ALBANESE, ‘Note sulla evoluzione storica del *ius vitae et necis*’, [in:] *Scritti in onore di C. Ferrini pubblicati in occasione della sua batificazione* III, Milano 1948, p. 357, despite hesitations concerning the value of frag. *Gai August.* 4.85–86 underlines that ‘... Gaius si può ritenere buon conoscitore del codice decemvirale’. Cf. also: RODRÍGUEZ MARTÍN, *Fragmenta Augustodenensia* (cit. n. 11), pp. 334–342, who noticed its dependence on *Gai Inst.* 1.53 and limited value for the reconstruction of the *ius vitae et necis* evolution.

¹³ P. R. COLEMAN-NORTON, ‘Cicero’s contribution to the text of the Twelve Tables’, *CJ* 46.2 (1950), p. 53. The inaccuracy of Cicero was noted already in H. E. DIRKSEN, *Ueber-*

rightly too that Cic. *Leg.* III 8.19 likens only the law establishing the power of the plebeian tribunes, a measure born in civil strife and for civil strife, to a child, whom, distinctly deformed, the Twelve Tables commanded to be killed quickly, and he says that after its abolition the law soon was resuscitated in some way or other and was reborn much more hideous and horrible.¹⁴ We should remember therefore that Cicero intended to present in the dialogue an idealistic vision of the late Republic and to promote his philosophical and political views.¹⁵

Coleman-Norton indicates that we should believe there is truth in Cicero's words for there was no point in preserving indefinitely an obviously physically malformed infant in ancient times.¹⁶ Evidence shows the phenomenon was indeed widespread.¹⁷ Regarding possible influences on

sicht der bisherigen Versuche zur Kritik und Herstellung des Textes der Zwölf-Tafeln-Fragmente, Leipzig 1824, pp. 269–270. Cf. also R. SCHOELL, *Legis duodecim tabularum reliquiae*, Lipsiae 1866, pp. 124–125.

¹⁴ Cic. *Leg.* III 8.19: ‘Marcus: “At vero Tite si parebunt his legibus, nihil erit iis urbe, nihil domo sua dulcius, nec laboriosius molestiusque provincia. Sed sequitur lex quae sancit eam tribunorum plebis potestatem, quae est in re publica nostra. De qua disseri nihil necesse est”. Quintus: “At mehercule ego frater quaero, de ista potestate quid sentias. Nam mihi quidem pestifera videtur, quippe quae in seditione et ad seditionem nata sit. Cuius primum ortum si recordari volumus, inter arma civium et occupatis et obsessis urbis locis procreatum videmus. Deinde quom esset cito necatus tamquam ex XII tabulis insignis ad deformitatem puer, brevi tempore nescio. IX quo pacto recreatus multoque taetrior et foedior natus est. Quae enim ille non edidit? Qui primum, ut in pio dignum fuit, patribus omnem honorem eripuit, omnia infima summis paria fecit, turbavit, miscuit. Cum adflixisset princeps gravitatem, numquam tamen conquievit”’.

¹⁵ Cf. e.g., E. RAWSON, ‘The interpretation of Cicero’s *De legibus*’, *ANRW* I 1.4 (1973), esp. pp. 349–354; S. BENARDETE, ‘Cicero’s *De Legibus* I: Its plan and intention’, *AJPh* 108.2 (1987), pp. 295–309; A. H. KASTELY, ‘Cicero’s *De Legibus*: Law and talking justly toward a just community’, *Yale Journal of Law & Humanities* 3.1 (1991), Article 2. Available at <<http://digitalcommons.law.yale.edu/yjlh/vol3/iss1/2>>; L. PAULSON, ‘A painted republic: the constitutional innovations of Cicero’s *De legibus*’, *Etica & Politica* 16.2 (2014), esp. pp. 319–321.

¹⁶ COLEMAN-NORTON, ‘Cicero’s Contribution’, (cit. n. 14), p. 53, n. 33.

¹⁷ Cf. the vast literature of the subject presented in: G. B. FENGREN, ‘The status of defective newborns from late Antiquity to the Reformation’, [in:] R. C. McMILLAN, H. T. ENGELHARDT JR. & S. F. SPICKER (eds.), *Euthanasia and the Newborn. Conflicts Regarding Saving Lives*, Dordrecht 1987, pp. 3–22; 47–64; R. OLDENZIEL, ‘The historiography of infanticide in antiquity. A literature stillborn’, [in:] J. BLOK & P. MASON (eds.), *Sexual Asymmetry*.

Roman law, it borrowed extensively from the legal traditions of Greeks but the *Leg. XII. Tab.* 4.1. is not presented as its example.¹⁸

The killing of deformed children among the Romans in the Archaic period is documented by Dionysius Halicarnassensis, *Antiquitates Romanae* II 15.2 (7 BC):

πρῶτον μὲν εἰς ἀνάγκην κατέστησε τοὺς οἰκήτορας αὐτῆς ἅπασαν ἄρρενα γενεὰν ἐκτρέφειν καὶ θυγατέρων τὰς πρωτογόνους, ἀποκτινύναι δὲ μηδὲν τῶν γεννωμένων νεώτερον τριετοῦς, πλὴν εἴ τι γένοιτο παιδίον ἀνάπηρον ἢ τέρας εὐθὺς ἀπὸ γονῆς. ταῦτα δ' οὐκ ἐκώλυσεν ἐκτιθέναι τοὺς γενομένους ἐπιδείξαντας πρότερον πέντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν, εἰάν κακένοις συνδοκῆ. κατὰ δὲ τῶν μὴ πειθομένων τῷ νόμῳ ζημίας ὄρισεν ἄλλας τε καὶ τῆς οὐσίας αὐτῶν τὴν ἡμίσειαν εἶναι δημοσίαν – In the first place, he [Romulus] obliged the inhabitants to bring up all their male children and the first-born of the females, and forbade them to destroy any children under three years of age unless they were maimed or monstrous from their very birth. These he did not forbid their parents to expose, provided they first showed them to their five nearest neighbours and these also approved. Against those who disobeyed this law he fixed various penalties, including the confiscation of half their property.¹⁹

Studies in Ancient Society, Amsterdam 1987, pp. 87–107; W. SCHEIDEL, 'Progress and problems in Roman demography', [in:] IDEM (ed.), *Debating Roman demography*, Leiden – Boston – Cologne 2001, esp. pp. 32–40; Judith EVANS GRUBBS, 'Infant exposure and infanticide', [in:] EADEM & T. PARKIN (eds.), *The Oxford Handbook of Childhood and Education in Classical World*, Oxford 2013, pp. 83–107; C. LAES, 'Raising a disabled child', *ibidem*, esp. pp. 125–136. Cf. also the sketch of S. TAFARRO, 'Diritto alla vita e infanticidium', *Diritto@Storia* II (2013), <<<http://www.dirittoestoria.it/II/tradizione/Tafaro-Diritto-vita-infanticidium.htm>>>. In this respect it is hard to believe that the *Twelve Tables* introduced new principles as wanted in general A. M. RABELLO, *Gli effetti personali della patria potestas. Dalle origini al periodo degli Antonini I*, Milano 1979, esp. pp. 85–86.

¹⁸ Cf. recently e.g.: R. A. BAUMAN, 'The Interface of Greek and Roman Law', *RIDA* 42 (1996), pp. 36–62 with an extensive bibliography of the subject. Cicero's knowledge of Roman law in general is summarized J. WIKARJAK, *Warsztat pisarski Cyncerona* [Cicero's Writing Workshop], Warszawa – Poznań 1976, pp. 129–131, who notes correctly that Cic. *Leg.* was based on previous studies by lawyers. Cf. also about the relations between Cicero and jurists in general J. HARRIES, *Cicero and the Jurists. From Citizen's Law to Lawful State*, London 2006, *passim*.

¹⁹ Translation according to E. CARY [in:] *The Roman Antiquities of Dionysius of Halicarnassus* I, Cambridge MA – London 1937, available at: <<<http://penelope.uchicago.edu>>>.

The Roman Antiquities, the principle work of Dionysius of Halicarnassus, glorifies the Roman past; he had no interest in objective historical truth, and in this section his work praises the methods used by Romulus to control the Roman population effectively.²⁰ Despite modern-day discussions concerning the value of his description of paternal power in the Archaic period,²¹

²⁰ For more on Dionysius of Halicarnassus and his works, cf. e.g., E. SCHWARTZ, s.v. 'Dionysios (113) von Halikarnassos', *PWRE* 5.1 (1905), coll. 934–961; C. W. WESTRUP, *Introduction to Early Roman Law. Comparative Sociological Studies. The Patriarchal Joint Family* v 2, London – Copenhagen 1954, pp. 87–106; E. GABBA, *Dionysius and the History of Archaic Rome*, Berkeley 1991, *passim*. About the so-called *leges regiae*, cf. e.g., S. TONDO, 'Introduzione alle *leges regiae*', *SDHI* 37 (1971), pp. 1–73; Z. BUJUKLIĆ, '*Leges regiae: pro et contra*', *RIDA* 45 (1998), pp. 89–142; E. GABBA, 'Studi su Dionigi da Alicarnasso v.1. La costituzione di Romolo', [in:] *IDEM, Roma arcaica. Storia e storiografia*, Roma 2000, esp. pp. 78–79. About Roman law in the light of Dionysius' works in general, see also: M. DUCOS, 'Denys d'Halicarnasse et le droit', *MEFRA* 101.1 (1989), pp. 175–186; J.-M. DAVID, 'Denys d'Halicarnasse, exégète du droit romain', [in:] M.-L. FREYBURGER & D. MEYER, *Visions grecques de Rome. Griechische Blicke auf Rom*, Paris 2007, pp. 11–30.

²¹ About *patria potestas* in the archaic period and the value of the description of Dionysius, see from modern studies: B. ŁAPICKI, *Władza ojcowska w starożytnym Rzymie. Czasy królewskie, czasy republikańskie* [The Paternal Power in Ancient Rome. Kingdom and Republic], Warszawa 1933, esp. pp. 3–21; 91–101; C. W. WESTRUP, *Family Property and Patria Potestas*, London – Copenhagen 1936, pp. 24–42; M. KASER, 'Der Inhalt der *patria potestas*', *ZRG RA* 71 (1938), pp. 62–87; ALBANESE, 'Note sulla evoluzione' (cit. n. 12), *passim*; E. SACHER, s.v. '*Potestas patria*', *PWRE* 22.1 (1953), esp. coll. 1084–1085; F. WYCISK, 'Obowiązek alimentacyjny i wychowawczy w prawie rzymskim okresu królewskiego' [The duty to educate and to maintain in Roman law in the times of the kings], *Roczniki Teologiczno-Kanoniczne* 10.4 (1963), pp. 215–245; M. KASER, *Das römische Privatrecht* 1, München 1971 (2 ed.), esp. pp. 61–62; A. WATSON, 'Roman private law and the *leges regiae*', *JRS* 62 (1972), esp. pp. 102–103; *IDEM*, *Rome of the XII Tables. Persons and Property*, New Jersey 1975, pp. 40–46; L. CAPOGROSSI COLOGNESI, s.v. '*patria potestas* (dir. rom.)', *ED* xxxii (1982), pp. 242–249; E. LONGO, s.v. 'pater familias', *NNDI* xii (1982), pp. 575–577; Th. YAN, 'Vital necisque potestas. Le père, la cité, la mort', [in:] *Du châtement dans la cité. Supplices corporels et peine de mort dans le monde antique. Table ronde de Rome (9–11 novembre 1982)*, Rome 1984, pp. 499–548 (he omitted, however, the statements of *Gai Aug.* 4.85–86 and *D.H.* 11 15.2 at all); Carla FAYER, *La familia romana. Aspetti giuridici ed antiquari* 1, Roma 1994, esp. pp. 140–144; R. WESTBROOK, '*Vital necisque potestas*', *Historia* 48.2 (1999), pp. 203–223 (about the disputed influence of ancient Near Eastern intellectual traditions on early Roman law); SHAW, 'Rising and killing' (cit. n. 7), esp. pp. 56–77; E. JOHNSON, 'Patriarchal power in the Roman Republic. Ideologies and realities of the *paterfamilias*', *Classical Studies* 5 (2006–2007), pp. 99–117; M. JOŃCA, *Parricidium w prawie rzymskim* [*Parricidium* in Roman Law], Lublin 2008, pp. 178–194; María Luisa LÓPEZ HUGUET, 'Consideraciones generales sobre los conceptos

one should note that in the quoted passage Dionysius presents the limitations of parents (οἱ γεινάμενοι) rights, not only those of the father.²² While exposure was a popular method of *ex post facto* birth control in the Greco-Roman world in general, he underlines that parents have the right to expose their deformed children only after permission is given by the five nearest neighbours (πέντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν).²³ Egon Weiss

de *patria potestas*, *filius*-, *pater*- y *materfamilias*. Una aproximación al estudio de la familia romana', *Revista electrónica del Departamento de Derecho de la Universidad de La Rioja – REDUR* 4 (2006), esp. pp. 193–201; G. M. OLIVIERO, 'Il diritto di famiglia delle *leges regiae*', *SDHI* 74 (2008), esp. pp. 559–569; T. NÓTÁRI, 'Remarks on two aspects of *patria potestas* in Roman law', *Fiat Iustitia* 2 (2013), pp. 29–49; H.-J. HÖLKESKAMP, 'Under Roman roofs', [in:] H. I. FLOWER (ed.), *Cambridge Companion to the Roman Republic. Second Edition*, Cambridge 2014, esp. pp. 110–118. Cf. also the summary of modern opinions concerning the nature of *ius vitae necisque*: S. THOMPSON, 'Was ancient Rome a dead wives society? What did the Roman *paterfamilias* get away with?', *Journal of Family History* 31.1 (2006), pp. 3–27.

²² Most scholars, however, write that this word should be understood to refer to *paterfamilias* (or *patres*), because according to Roman law the mother was forbidden to kill a child without the father's approval. This point of view rejects the established first meaning of the word οἱ γεινάμενοι. Cf. e.g. *ThLG*, p. 619; *LSJ*, s.v. 'γεῖνομαι'. Cf. about the possible power of *mater* in regard to *expositio* RABELLO, *Gli effetti* (cit. n. 17), pp. 41–43.

²³ Cf. J. CARCOPINO, 'Les prétendues lois royales', *Mélanges d'archéologie et d'histoire* 54 (1937), pp. 371–372: 'Elle est en flagrante contradiction, non seulement avec les XII Tables qui imposent l'infanticide comme un strict devoir à l'égard des enfants mal conformés et le reconnaissent à la *patria potestas*, mais avec le droit postérieur dont l'horrible exercice, commun aux Romains et aux Grecs, sest perpétué jusqu'au I^{er} siècle de notre ère. Elle nest d'accord, dans toute l'antiquité hellénique et latine, qu'avec les enseignements du Pythagorisme.' About *exposition*, cf. e.g., H. KUPISZEWSKI, 'Porzucanie dziecka w prawach antycznych' [The child-exposure in ancient laws], *Meander* 11.1 (1956), pp. 57–67; E. VOLTERRA, 'Esposizione dei nati', *NNDI* VI (1957), pp. 878–879; J. E. BOSWELL, 'Expositio and Oblatio. The abandonment of children and the ancient and medieval family', *AHR* 89, 1 (1984), esp. pp. 10–16; IDEM, *The Kindness of Strangers. The Abandonment of Children in Western Europe from Late Antiquity to the Renaissance*. New York 1988, pp. 53–182; W. V. HARRIS, 'Child-exposure in the Roman Empire', *JRS* 84 (1994), pp. 1–22; Elżbieta ŻAK, 'Elementy sakralne i karne w uregulowaniach prawa rzymskiego dotyczących porzucenia dziecka' [Sacral and penal elements in the Roman law norms concerning child-exposure], [in:] A. DĘBIŃSKI & M. KURYŁOWICZ (eds.), *Religia i prawo karne w starożytnym Rzymie*, Lublin 1998, pp. 87–101; CORBIER, 'Child Exposure' (cit. n. 7), *passim*; K. BRENNAN, 'Evidence of infanticide and exposure in Antiquity: Tolerated social practice, uncontrolled phenomenon or regulated custom?', *Dublin Law Review* 92 (2002), esp. pp. 102–107; W. SUDER, *Census populi. Demografia starożytnego Rzymu* [Census populi. Demography of Ancient Rome], Wrocław

recognized already in 1921 that this law of Romulus ‘ist dies wohl hellenische Fälschung’ and joined it with the Roman family court: *iudicium/consilium domesticum*.²⁴ As far as the latter is concerned, Dionysius does not write about the family court, the existence and nature of which is one of the most discussed issues in modern Roman legal studies.²⁵ He does not use the word *συγγενεῖς* (‘congenital, inborn’) in D.H. II 15.2, which is applied for *iudicium/consilium domesticum* in following section.²⁶ On the

2003, pp. 210–212; NÓTÁRI, ‘Remarks’ (cit. n. 21), pp. 41–48. There is no mention of sex of the child as wanted MEIRA, ‘Os seres monstruosos’ (cit. n. 4), p. 319.

²⁴ E. WEISS, ‘Kinderaussetzung’, *PWRE* XXI 1 (1921), col. 466.

²⁵ Cf. e.g., R. DÜLL, ‘*Iudicium domesticum, abdicatio und apoceryxis*’, *ZRG RA* 63 (1943), esp. pp. 57; 59; 69; 85; E. VOLTERRA, ‘Il preteso tribunale domestico nel diritto romano’, *RISG* 3.2 (1948), pp. 103–153 [= IDEM, *Scritti giuridici II. Famiglia e successioni*, Napoli 1991, pp. 127–177]; W. KUNKEL, ‘Das Konsilium im Hausgericht’, *ZRG RA* 83 (1966), esp. pp. 241–244 (basing on *Gai Aug.* 4.85–86); E. PÓLAY, ‘Das regimen morum des Zensors und die sogenannte Hausgerichtbarkeit’, [in:] *Studi in onore di Edoardo Volterra* III, Milano 1971, pp. 263–317, esp. pp. 278–317; A. RUGGIERO, ‘Nuove riflessioni in tema di tribunale domestico’, [in:] *Sodalitas. Scritti in onore di Antonio Guarino* IV, Napoli 1984, pp. 1593–1600; J. ZABŁOCKI, ‘The image of a Roman family in *Noctes Atticae* by Aulus Gellius’, *Pomoerium. Studia et Commentarii Ad Orbem Classicum Spectantia* 2 (1996), pp. 47–58; Nunzia DONADIO, ‘*Iudicium domesticum* – riprovazione sociale e persecuzione pubblica di atti commessi da sottoposti alla *patria potestas*’, *Index* 40 (2012), pp. 175–195; Emese VON BÓNÉ, ‘History of the Roman family court (*iudicium domesticum*)’, *Nova tellus. Anuario del Centro de Estudios Clásicos, Número Extraordinario* 5 (2013), pp. 201–223.

²⁶ Cf. *LSJ*, s.v. ‘*συγγενεῖς*’; *Thayer’s Greek Lexicon, Electronic Database*, available at: <<http://biblehub.com/greek/4773.htm>> s.v. ‘*συγγενεῖς*’. Cf. D.H. II 25.6 (see also: IV 66.1–3). Cf. also, R. FIORI, *Homo sacer. Dinamica politico-costituzionale di una sanzione giuridico-religiosa*. Napoli, 1996, esp. p. 489: ‘Ma é difficile attribuire a questa procedura altro valore che quello di un controllo della comunità sull’operato del singolo essendo l’atto determinato da ragioni di mera pubblicità; dal passo non possiamo perciò desumere l’intervento di alcun tribunale domestico – e oltretutto Dionigi non parla, come nel caso precedente, di *συγγενεῖς*, ma di *πέντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν*, in una ipotesi cioè in cui tra il *pater* e le persone chiamate e testimoniare non sussiste alcun rapporto di parentela che possa far pensare ad un *iudicium domesticum*’. Contra e.g. M. OLIVIERO, *Il diritto di famiglia* (cit. n. 22), p. 563, n. 15: ‘Largomento terminologico non mi sembra però convincente in quanto la vicinanza territoriale non esclude necessariamente anzi spesso presuppone un rapporto di parentela (*gentilitas*) o di affinità (*adfinitas*)’. Although the idea that *πέντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν* means the five nearest *agnati/cognati* is frequently repeated in literature, one should notice that the ambiguity of Dionysius terminology is well known, and it cannot be explained by adding additional assumptions to it.

contrary, Dionysius writes specifically about confirmation of the parents decision to kill a maimed or monstrous child by the five nearest neighbours: therefore, in the quoted section he combines the word ἀποκτινύναι (to destroy/kill) with ἐκτιθέναι (to expose).²⁷

Another question is the limit of three years, which is recognized by some historical sources. Plutarch, for example, ascribes the law denying formal mourning for children younger than three to the second Roman king Numa Pompilius (Plut. *Num.* 12), while *FVat.* 321 preserves the rule that a child younger than three years does not receive formal mourning (while a child younger than one year requires none); the age of three was also the minimum age for both sexes receiving the *alimenta* (*CIL VIII 1641 = ILS 6818*).²⁸

Following Egon Weiss opinion, the account of Dionysius was recently called ‘probably a rhetorical fictional reworking of the regulations attributed to Spartan rules concerning the exposure of infants’.²⁹ Dionysius, a

²⁷ It is hard to say whether the monstrous child needed to be killed as soon as possible after the parturition: ŁAPICKI, *Władza* (cit. n. 21), p. 16; WYCISK, ‘Obowiązek alimentacyjny’ (cit. n. 21), p. 236; and following them: JOŃCA, *Parricidium* (cit. n. 21), p. 188, n. 170.

²⁸ However, this limit was not very common in general. Cf. E. EYBEN, ‘Die Einteilung des menschlichen Lebens im römischen Altertum’, *RbM* 116 (1973), pp. 150–190; W. SUDER, ‘Klasyfikacja wieku ludzi w imperium rzymskim’ [Age classification of people in the Roman empire], *Kwartalnik Historyczny* 84, 3 (1977), pp. 583–592; RABELLO, *Gli efetti* (cit. n. 17), pp. 37–40; J. M. TURNER, *A History of the Study of Human Growth*, Cambridge 1981, esp. pp. 1–13; C. LAES, *Children in the Roman Empire. Outsiders Within*, Cambridge 2011, esp. pp. 81–83 and 86–106; C. LAES & J. STRUBBE, *Youth in the Roman Empire. The Young and the Restless Years?*, Cambridge 2014, pp. 23–40.

²⁹ SHAW, ‘Rising and killing’ (cit. n. 7), p. 58, n. 69. The most important source is Plut. *Lyc.* 16, 1–2. Cf. also H. BENNETT, ‘The exposure of infants in Ancient Rome’, *CJ* 18.6 (1923), pp. 343–344 and quoting him P. LANFRANCHI, ‘*Ius exponendi* e obbligo alimentare nel diritto romano classico’, *SDHI* 6 (1940), p. 26, n. 85. Cf. similar opinion presented by BOSWELL, *The Kindness of Strangers* (cit. n. 24), p. 59–60; P. BRULÉ, ‘Infanticide et abandon d’enfants. Pratiques grecques et comparaisons anthropologiques’, *Dialogues d’histoire ancienne* 18, 2 (1992), p. 82 and more recently TAFARRO, ‘Diritto alla vita’ (cit. n. 17), n. 23. About Greek traditions and opinions of ancient authors, cf. e.g., WEISS, ‘Kinderaussetzung’ (cit. n. 24), esp. coll. 463–467; Sarah B. POMEROY, ‘Infanticide in Hellenistic Greece’, [in:] Avril CAMERON & A. KURHT (eds.), *Images of Women in Antiquity*, Detroit 1983, pp. 207–222; C. PATTERSON, ‘Not worth the rearing: The causes of infant exposure in Ancient Greece’, *TAPhA* 115 (1985), pp. 103–123. About modern disputes concerning the importance of family for the Spartans, see also: R. KULESZA, ‘The Spartan family’, *Eos* 100 (2013), pp. 207–221.

professional teacher of rhetoric, possibly wrote the work to be read aloud,³⁰ and *Ῥωμαικῆς ἀρχαιολογίας* exploits rhetorical techniques and traditions.³¹ However, doubt remains as to why he presents the constraints by ‘sakralrechtliche Milderungen’, the *γείναμαι* power in the quoted section of the *Roman Antiquities*, while in others he describes paternal power as almost unlimited?³² The extended family was not the norm in the earliest times of Rome, which has been deduced from the restricted size of Archaic huts on the Palatine, and the mother-father-child triad, which seems to have been then the normal family structure of the Roman family, just as the nuclear family was the norm in the West of the Roman empire in later times.³³ In this respect the role of both parents looks comprehensible. Yet, perhaps the role of the neighbours is the example of another phenomenon, the power of public opinion, and corresponds with the old Roman tradition of five persons participating in acts *per aes et libram*?³⁴

³⁰ Cf. W. J. ONG, *Orality and Literacy. The Technologizing of the Word*, London – New York 2002 (2 ed.), p. 168 who correctly asks ‘How interpret ancient historians, such as Livy, who wrote to be read aloud?’

³¹ Cf. M. FOX, ‘History and Rhetoric in Dionysius of Halicarnassus’, *JRS* 83 (1993), pp. 31–47. Dionysius himself also composed the theoretical work *Περὶ συνθησεως ὀνομάτων*, called ‘the most detailed account we have of how educated Greeks reached to the beauties of their native language’, cf. G. A. KENNEDY, *A New History of Classical Rhetoric*, Princeton 1994, p. 165.

³² However, the truth is that also in this respect ‘... la description que propose l'historien nest pas exhaustive’, cf. DUCOS, ‘Denys d’Halarnasse’ (cit. n. 20), p. 177, who notes also that ‘Denys a donc repris un certain nombre d’informations exactes, où se retrouvent des institutions caractéristiques du monde archaïque; certes, ce sont des données bien connues, mais elles laissent au moins conclure que Denys a acquis des informations précises et puise à des sources de qualité.’ Cf. also in general: A. ALLÉLY, ‘Les enfants malformés et handicapés à Rome sous le principat’, *REA* 106,1 (2004), pp. 90–91. The quotation is borrowed from: M. KASER, *Altrömische Ius*, Göttingen 1949, p. 377, who writes however about ‘die Milderungen der Hausgewahl’ of *pater familias*. I omit here the discussion concerning the real nature of Roman law in the period. Cf. e.g. *ibidem*, *passim*.

³³ About recent opinions concerning the structure of Roman Family and rejection of the concept of ‘Roman primitive joint family’, see: L. A. CURCHIN, ‘The Roman family. Recent interpretations’, *Zephyrus* 53–54 (2000–2001), esp. pp. 536–537, with an extensive bibliography of the subject.

³⁴ Cf. A. BERGER, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, pp. 625–626. Cf. in this respect: CAPOGROSSI COLOGNESI, ‘*Tolere liberos*’ (cit. n. 7), p. 113: ‘La testimonia

We should also remember that at least three other sources mention more or less directly the removal of a deformed child by Romans.

Controversiae of Seneca the Elder concerning imaginary legal cases (ca mid 30s AD?), preserves the opinion of his friend Clodius Turrinus, a well-born Spanish declaimer, about the popularity of casting off rather than exposing the malformed and weak children:³⁵

Sen. *Contr.* 10.4.16: Turrinus Clodius hoc colore usus est: multos patres exponere solitos inutiles partus. Nascuntur, inquit, quidam statim aliqua corporis parte mulcati, infirmi et in nullam spem idonei, quos parentes sui proiciunt magis quam exponunt; aliqui etiam vernulas aut omine infausto editos aut corpore invalidos abiciunt ... – Clodius Turrinus used this colour:³⁶ Many fathers are in the habit of exposing useless offspring. Some right from birth are damaged in some part of their bodies, weak and hopeless. Their parents throw them out rather than expose them. Some even cast out home-bred slave children, when they are born with an evil omen or are physically weak. ...³⁷

di Dionigi esprime tuttavia, riferita alle origini stessa della città, un momento significativo della tendenza a restringere l'autonomia dei gruppi familiari. E del resto il controllo degli sviluppi demografici della popolazione non poteva non interessare direttamente e immediatamente lo stato cittadino, anzitutto per ragioni militari. ... e cioè che rituali e processi attestati nella società arcaica non hanno inizio con la città ma hanno già una storia sovente ben più lunga.' Cf. similarly RABELLO, *Gli efetti* (cit. n. 17), p. 44.

³⁵ Cf. A. CABALLOS RUFINO, 'Los caballeros romanos originarios de la Provincia Hispania Ulterior Bética. Catálogo Prosopográfico', *Koilaos* 4 (1995), pp. 292–293 with bibliography. Cf. also the still valid: O. ROSSBACH, s.v. 'Annaeus 16', *PWRE* 1 2 (1894), coll. 2237–2240 and more recently M. GRIFFIN, 'The elder Seneca and Spain', *JRS* 62 (1972), pp. 1–19; L. A. SUSSMAN, *The Elder Seneca*, Leiden 1978, esp. pp. 91–93; J. FAIRWEATHER, *Seneca the Elder*, Cambridge 1981, esp. pp. 142–143; KENNEDY, *A New History of Classical Rhetoric*, (cit. n. 33), pp. 166–171.

³⁶ Colour in ancient Roman rhetoric is a technical term for a range of strategies supporting a particular line of argumentation, especially in the declamatory exercises known as *controversiae*; it occurs for the first time in its technical sense in Seneca the Elder's *controversiae*. Colours occupy the third section of each *controversia* collected by him. Cf. M. B. ROLLER, 'Color', [in:] T. O. SLOANE (ed.), *Encyclopedia of Rhetoric*, Oxford 2001, pp. 115–119 and in detail SUSSMAN, *The Elder Seneca* (cit. n. 35), *passim* (esp. pp. 41–43); FAIRWEATHER, *Seneca the Elder* (cit. n. 35), pp. 166–178.

³⁷ Translation after Seneca Maior, *Declamations* 11, *Controversiae*, Books 7–10. *Suasoriae. Fragments*, transl. by M. WINTERBOTTOM, London 1974, pp. 438–439, as amended by HARRIS, 'Child-exposure' (cit. n. 23), p. 12.

His son, Seneca the Younger, in dialogue *De ira* (ca 41 AD) also says the Romans killed or exposed infants who were weak and abnormal at birth usually.

Sen. *De ira* 1.15.2: non est illa ira, sed misera curatio. Rabidos effligimus canes et trucem atque immansuetum bovem occidimus et morbidis pecoribus, ne gregem polluant, ferrum demittimus; portentosos fetus exstinguimus, liberos quoque, si debiles monstrosique editi sunt, mergimus; nec ira, sed ratio est a sanis inutilia secernere. ...³⁸ – that is not an act of anger, but a lamentable method of healing. We knock mad dogs on the head, we slaughter fierce and savage bulls, and we doom scabby sheep to the knife, lest they should infect our flocks: we destroy monstrous births, and we also drown our children if they are born weakly or unnaturally formed; to separate what is useless from what is sound is an act, not of anger, but of reason...³⁹

One could say that those sources are too late to compare them with accounts concerning the Archaic period, *i.e.* D. H. 2.15.2 and *Leg. XII. Tab.* 4.1. However, both of the former are supported by many examples of killing/exposing of all deformed creatures by the Romans as a means for restoring *pax deorum* in the times of Roman Republic.⁴⁰

³⁸ On Seneca the Younger see, the still valid: O. ROSSBACH, *s.v.* 'Annaeus 17', *PWRE* 1 2 (1894), coll. 2240–2248 and recently studies gathered in: G. DAMSCHEN & A. HEIL (eds.), *Brill's Companion to Seneca. Philosopher and Dramatist*, Leiden 2011, with an extensive bibliography.

³⁹ Translation by A. STEWART, [in:] *L. Annaeus Seneca, Minor Dialogs Together with the Dialog 'On Clemency'*, Cambridge 1900, available at <<http://en.wikisource.org>>. On the dialogue, *cf. e.g.*, M. MONTELONE, 'De Ira', [in:] DAMSCHEN & HEIL (eds.), *Brill's Companion to Seneca* (cit. n. 38), pp. 127–134.

⁴⁰ *Cf. e.g.*, in general: R. BLOCH, 'Les prodiges romains et la *procuratio prodigiorum*', *RIDA* 2 (1949), pp. 119–131; IDEM, *Prodigi e divinazione nel mondo antico. Greci, Etruschi, Romani*, transl. L. Chiavarelli, Roma 1978, pp. 73–128; W. DEN BOER, *Private Morality in Greece and Rome. Some Historical Aspects*, Leiden 1979, esp. pp. 98–103; V. ROSENBERGER, *Gezähmte Götter. Das Prodigienwesen der römischen Republik*, Stuttgart 1998, esp. pp. 175–196; A. ALLÉLY, 'Les enfants malformés et considérés comme *prodigia* à Rome et en Italie sous la République', *REA* 105, 1 (2003), esp. pp. 139–156; B. CUNY-LE CANET, *Rome et ses monstres. 1: Naissance dun concept philosophique et rhétorique*, Grenoble 2005, esp. pp. 43–62. *Cf.* also about the disputable question of 'peace of the gods': P. MADEJSKI, 'Pax deorum?', *Res Historica* 29 (2010), [= H. KOWALSKI & P. MADEJSKI (eds.), *Terra, Mare et Homines. Studies in Memory of Professor Tadeusz Łoposzko*, Lublin 2010], pp. 109–119.

Seneca the Elders *Controversiae* confirms directly the practice of exposing useless offspring by fathers, but it also talks about parents who throw forth rather than expose physically abnormal neonates who are weak with no prospects (and cast out home-bred slave children born with an evil omen or physically weak). This fits partially in the D.H. 11 15.2 about the right of parents to expose maimed or monstrous children. Seneca the Younger, a champion of stoicism, adds to words attributed to Clodius Turrinus to underscore the necessity of removing all monstrous births and all weakly or unnaturally formed children because they were inutile.⁴¹ This corresponds with his objective attitude toward the phenomenon of a child's death in general.⁴²

All quoted sources suggest that only particularly severe abnormalities may have led to exposure or other means of killing a baby. A more rational attitude toward all children who are abnormal at birth is found in the Principate – despite their appearance they still were treated as a kind of *prodigia* – which then led to defining the legal position of the disabled and even examples of handicapped persons from upper classes families and many disabled infants being allowed to live.⁴³

⁴¹ Cf. CUNY-LE CANET, *Rome et ses monstres* (cit. n. 40), pp. 95–106 and K. M. VOGT, 'Anger, present injustice and future revenge in Seneca's *De ira*', [in:] K. VOLK & G. WILLIAMS (eds.), *Seeing Seneca Whole. Perspectives on Philosophy, Poetry and Politics*, Leiden 2006, pp. 57–74. Cf. also B. INWOOD, *Reading Seneca. Stoic philosophy at Rome*, Oxford 2005, p. 208, discussing Sen. *De ira* (1 16.6–7), 'the judgement on misdeeds which is required should be carried out in a spirit of quasi-judicial calm and control.'

⁴² Cf. e.g. I. BŁASZCZYK, *Seneka o wychowaniu w rodzinie rzymskiej* [Seneca about education in the Roman family], Bydgoszcz 2003, esp. pp. 193–197, with an extensive bibliography of the subject. Seneca the Younger does not focus on the type of weakness or deformation, contrary to the works of his uncle Pliny the Elder (23–79 BC). Cf. B. GEVAERT & C. LAES, 'What's in a monster? Pliny the Elder teratology and bodily disability', [in:] C. LAES, C. F. GOODEY & M. LYNN ROSE (eds.), *Disabilities in Roman Antiquity: Disparate Bodies. A Capite ad Calcem*, Leiden – Boston 2013, pp. 211–229. Cf. also in the respect of hermaphrodites e.g. Eva CANTARELLA, 'Hermaphrodite et la bisexualité à l'épreuve du droit dans l'antiquité', *Diogenes* 208.4 (2004), pp. 3–15; L. A. GRAUMANN, 'Monstrous births and retrospective diagnosis: the case of hermaphrodites in antiquity', [in:] LAES, GOODEY & LYNN ROSE (eds.), *op. cit.*, pp. 181–209.

⁴³ Cf. in details ALLÉLY, 'Les enfants malformés et handicapés' (cit. n. 32), esp. pp. 84–87 and 90–101; C. LAES, 'Learning from silence: Disabled children in Roman antiquity', *Arc-tos* 42 (2008), pp. 85–122.

Indirect confirmation of the *expositio* (and even killing) of malformed children in the period of the Principate was given by Soranus, a Greek physician from Ephesus, who lived at the turn of the first and second century AD.⁴⁴ He wrote an obstetrical and gynaecological treatise, the *Gynaecology* (*Τὰ γυναικεία*) and *On Womens' Diseases* (*Περὶ γυναικείων παθῶν*), in which chapter five of book two, entitled *Πῶς γνωρίζεται τὸ πρὸς ἀνατροφήν ἐπιτήδειον* ('How to recognise the new-born that is worth rearing'), states:⁴⁵

Sor. *Gyn.* II 5 [10(79)]. Ἡ τοῖνυν μαῖα τὸ βρέφος ἀποδεξαμένη πρῶτον εἰς τὴν γῆν ἀποτιθέσθω προεπιθεωρήσασα, πότερον ἄρρεν τὸ ἀποκεκυημένον ἐστὶν ἢ θήλυ, καί, καθὼς γυναιξὶν ἔθος, ἀποσημαίνετω· κατανοεῖτω δὲ καί, πότερον πρὸς ἀνατροφὴν ἐστὶν ἐπιτήδειον ἢ οὐδαμῶς. κριθήσεται δὲ τὸ πρὸς ἀνατροφὴν εὐφυνὲς ἐκ τοῦ τὴν ἀποκυήσασαν ὑγιεινῶς ἐν τοῖς τῆς κυοφορίας βεβιωκένοι χρόνοις· αἱ νοσηλείαι γὰρ καὶ | μάλιστα τοῦ σώματος, συναδικοῦσαι τὸ κατὰ γαστρὸς τὰ πρῶτα τῆς ζωῆς αὐτοῦ θεμέλια θραύουσιν. δεύτερον δὲ ἐκ τοῦ κατὰ τὸν ὀφείλοντα καιρὸν ἀποκεκυηθῆναι, μάλιστα μὲν τὸν ἔννατον μῆνα καί, εἰ τύχοι, βράδιον, ἤδη δὲ καὶ τὸν ἔβδομον. εἶτα λοιπὸν ἐκ τοῦ τεθὲν ἐπὶ γῆς εὐθέως αὐτὸ κλαυθμυρίσαι μετὰ τόνου τοῦ προσήκοντος· τὸ γὰρ ἕως πλείονος ἀκλαυστὶ διάγον ἢ καὶ παρέργως κλαυθμυρίζον ἐνύποπτον ὡς διὰ τινα περίστασιν τοῦτο πάσχον. ἔκ τε τοῦ πᾶσιν τοῖς μέρεσι καὶ μορίοις καὶ ταῖς αἰσθήσεσιν ἄρτιον ὑπάρχειν καὶ τοὺς πόρους ἔχειν ἀπαρεμποδίστους, οἷον ὠτων, ῥινῶν, φάρυγγος, οὐρήθρας, δακτυλίου, καὶ τὰς ἐκάστου (μορίου) φυσικὰς κινήσεις μὴ νωθρὰς [καὶ] μηδὲ ἐκλύτους καὶ τὰς τῶν ἄρθρων κάμψεις τε καὶ ἐκτάσεις μεγέθη τε καὶ σχήματα καὶ τὴν πᾶσαν ἐπιβάλλουσαν εὐαισθησίαν, ἣν γνωρίζομεν κακὰ τῆς ἐπιφανείας ἐπερείδοντες τοὺς δακτύλους· κατὰ φύσιν γὰρ ἐστὶν τὸ πρὸς ἕκαστον ἀλγεῖν τῶν νυσσόντων ἢ θλιβόντων. ἐκ δὲ τῶν ἐναντίων τοῖς εἰρημένοις τὸ πρὸς ἀνατροφὴν (ἀν)ἐπιτήδειον. — Now the midwife, having received the new-born, should first put it upon the earth, having examined beforehand whether the infant is male or female, and should make an announcement

⁴⁴ Cf. e.g. E. KIND, s.v. 'Soranus', *PWRE* IIIA (1929), coll. III3–III0 (esp. III8–III26); P. BURGUiÈRE, D. GOURÉVITCH & Y. MALINAS, 'Introduction générale' [in:] *Soranus d'Ephèse, Maladies des femmes* I, Paris 2003 (2 ed.), pp. VII–XV; P. PRIORESCHI, *A History of Medicine* III. *Roman Medicine*, Omaha 1998, pp. 134–150; Ann E. HANSON & M. H. GREEN, 'Soranus of Ephesus: Medicorum princeps', *ANRW* II 37.2 (1994), pp. 968–1075.

⁴⁵ Text according to BURGUiÈRE, GOURÉVITCH & MALINAS, [in:] *Soranus d'Ephèse, Maladies des femmes* II (cit. n. 44), pp. 16–17. Cf. also J. ILBERG (ed.), *Sorani Gynaeciorum libri IV*, [in:] *Corpus Medicorum Graecorum* 4, Leipzig 1927, pp. 57–58.

by signs as is the custom of women. She should also consider whether it is worth rearing or not. And the infant which is suited by nature for rearing will be distinguished by the fact that its mother has spent the period of pregnancy in good health, for conditions which require medical care, especially those of the body, also harm the foetus and enfeeble the foundations of its life. Second, by the fact that it has been born at the due time, best at the end of nine months, and if it so happens, later; but also after only seven months. Furthermore by the fact that when put on the earth it immediately cries with proper vigour. For one that lives for some length of time without crying, or cries but weakly, is suspected of behaving so on account of some unfavourable condition. Also by the fact that it is perfect in all its parts, members and senses; that its ducts, namely of the ears, nose, pharynx, urethra, anus are free from obstruction; that the natural functions of every are neither sluggish nor weak; that the joints bend and stretch; that it has due size and shape and is properly sensitive in every respect. This we may recognize from pressing the fingers against the surface of the body, for it is natural to suffer pain from everything that pricks or squeezes. And by conditions contrary to those mentioned, the infant not worth rearing is recognized.⁴⁶

Soranus writings determined medical understanding and practices relating to womens health, pregnancy and infant care for nearly 1500 years, and *Gynaecology* was in circulation until the sixteenth century. In the section quoted above, he proposes selective inspection for midwives of newborn.⁴⁷ Of particular interest is Soranus method for assessing the health status of newborn, which resembles today's Apgar score (evaluating the muscle tone, reflex or irritability and respiratory effort).⁴⁸ The

⁴⁶ Translation by O. TEMKIN, [in:] SORANUS, *Gynecology*, Baltimore 1956, pp. 79–80.

⁴⁷ Cf. studies quoted in n. 44. Cf. also the short review of Soranus achievements in respect to pregnancy in: A. ADAMS, 'Roman pregnancy practises', *Tiresias* 1 (2012), pp. 15–23. There are sources which confirm similarities between Soranus theory and ancient practice. Cf. e.g. K. R. BRADLEY, 'Wetnursing at Rome. A study in social relations', [in:] Beryl RAWSON (ed.), *The Family in Ancient Rome. New Perspectives*, London – Sydney 1986, pp. 201–229; A. TATARKIEWICZ, 'Childbirth under the care of a midwife in Rome. The ideal of Soranus and the reality of inscriptions. An outline of the problem', [in:] *Society and Religion IV: The Roman Empire in the Light of Epigraphical and Normative Sources*, Toruń 2013, pp. 127–151.

⁴⁸ Cf. E. GALANAKIS, 'Apgar score and Soranus of Ephesus', *The Lancet* 352.9145 (1998), pp. 2012–2013; D. GOURÉVITCH, 'Soranos, adieu Soranos', [in:] *La médecine grecque antique. Actes du 14^{ème} colloque de la Villa Kérylos à Beaulieu-sur-Mer les 10 & 11 octobre 2003*, Paris 2004

Soranus selection is based on whether the child seems strong enough to survive; he states directly, however, nothing about what is to be done in the case of a negative result, but it seems logical that he would allow exposing such a child at the least.⁴⁹ Soranus description does not concern directly the malformed children, but his test of whether a child is worth rearing indicates them, as well.⁵⁰ Although his medical knowledge in general is still a mixture of scientific and magical approaches,⁵¹ Soranus statement proves that the discovery of physical defects in a child no longer held such great religious significance in the period of the Principate as it had under the Republic.⁵² Soranus inspection looks similar to contemporary prognostic factors, and may have been useful in part because of their ability to predict the quantity of life.⁵³ But in the light of Sor. *Gyn.* 2.5 [10 (79)] it seems obvious that at least the exposure of malformed child was allowed and practised ‘by rich and poor alike’, with no distinction between boys and girls.⁵⁴

[*Cahiers de la Villa Kérylos* 15], esp. pp. 135–139. Cf. also about the importance of Soranus work in this respect in general: P. M. DUNN, ‘Soranus of Ephesus (circa AD 98–138) and perinatal care in Roman times’, *Archives of Disease in Childhood* 73 (1995) pp. 51–52; LAES, *Children in the Roman Empire* (cit. n. 28), pp. 57–64.

⁴⁹ Cf. Sor. *Gyn.* 2.6 [12 (81)], where he opposes barbarian (and popular among some Greeks) customs concerning the treatment of newborn with cold water, wine etc. to test their health status, but he does not oppose the exposure of the weak child. Cf. W. H. YORK, *Health and Wellness in Antiquity through the Middle Ages*, Santa Barbara 2012, pp. 88–89.

⁵⁰ Cf. BURGUIÈRE, GOURÉVITCH & MALINAS, [in:] *Soranus d’Ephèse* 11, (cit. n. 44), p. 16, n. 99. According to correct remark of CUNY-LE CANET, *Rome et ses monstres* (cit. n. 41), p. 110 among the Romans in general ‘la pratique très libérales de l’exposition des nouveau-nés ne rend pas nécessaire l’établissement d’une classification théorique des anomalies.’

⁵¹ Cf. G. E. R. LLOYD, ‘Soranus’ theoretical concepts’, [in:] *SORANUS, Gynecology* (cit. n. 46), pp. xxx–xxxii; HANSON & GREEN, ‘Soranus of Ephesus’ (cit. n. 44), pp. 1025–1029; CUNY-LE CANET, *Rome et ses monstres* (cit. n. 41), pp. 107–110 and 159.

⁵² Cf. J. J. LENNON, *Pollution and Religion in Ancient Rome*, Cambridge 2013, p. 59, quoting in this respect DASEN, ‘Roman birth rites’ (cit. n. 7), esp. pp. 200–207. Cf. also: ALLÉLY, ‘Les enfants malformés’ (cit. n. 7), esp. pp. 84–101.

⁵³ Cf. D. WILKINSON, *Death or Disability? The Carmentis Machine and decision-making for critically ill children*, Oxford 2013, p. 160.

⁵⁴ This quotation is borrowed from: P. GARNSEY, ‘Child rearing in Italy’, [in:] *IDEM, Cities, Peasants and Food in Classical Antiquity. Essays in Social and Economic History*, [ed. with addenda by W. SCHEIDEL], Cambridge 1998, p. 260. The problem of femicide in the

The exposure of children (and less frequently *infanticidium*, as well)⁵⁵ continued to be practised by the Romans, in spite of its formal ban by imperial enactments issued in 374 AD,⁵⁶ and was committed in later times, as well.⁵⁷ We should remember, however, that despite the fact that archaeological evidence concerning the burials of newborns in the Roman empire is limited, scholars have recently undermined the widespread assumption that infants were disposed of without ceremony and as a result of infanticide (also in the light of epigraphical evidence and narrative sources).⁵⁸

Greco-Roman World is one of the hot issues in modern studies. Cf. W. SCHEIDEL, 'Greco-Roman sex ratios and femicide in comparative perspective', *Princeton/Stanford Working Papers in Classics. Version 1.0.* January 2010, available at <<http://www.princeton.edu/~pswpc/pdfs/scheidel/011003.pdf>>; IDEM, 'Epigraphy and demography: birth, marriage, family, and death', [in:] J. DAVIES & J. WILKES (eds.), *Epigraphy and the Historical Sciences*, Oxford 2012, esp. p. 106.

⁵⁵ Cf. apart the studies quoted in n. 23; 24–26 also D. WILKINSON, *Death or Disability?* (cit. n. 53), pp. 105–107. Therefore, there are also disputes concerning the reliability of *D.* 25.3.4 (Paul. 2 *sent.*): 'Necare videtur non tantum is qui partum praefocat, sed et is qui abicit et qui alimonia denegat et is qui publicis locis misericordiae causa exponit, quam ipse non habet'. Cf. HARRIS, 'Child-Exposure' (cit. n. 24), pp. 19–20, with further literature.

⁵⁶ *CTh.* 9.14.1 (= *CJ.* 9.16.7, AD 374 [with minor amendments]): Imppp. Valentinianus, Valens et Gratianus AAA. ad Probum pf. p. 'Si quis necandi infantis piaculum aggressus aggressave sit, erit capitale istud malum'. pp. VII. Id. Febr. Romae, Gratiano a. III. et Equitio cons.; *CJ.* 8.51.2 (AD 374): Imperatores Valentinianus, Valens, Gratianus AAA. ad Probum pp. 'Unusquisque subolem suam nutriat. Quod si exponendam putaverit, animadversioni quae constituta est subiacebit. Sed nec dominis vel patronis repetendi aditum relinquimus, si ab ipsis expositos quodammodo ad mortem voluntas misericordiae amica collegerit: nec enim dicere suum poterit, quem pereuntem contempsit'. III non. Mart. Gratiano A. III et Equito cons. Tertianus in his early apologetic work *Ad nationes* I 15.3 from 197 AD, writes about the *leges* suppressing the *infanticidium*, but he does not make links to any historical material, although his remarks are frequently quoted by authors who write about the problem. Cf. also about the first of the constitutions, e.g., J. WIEWIORSKI, 'Granice ojcowskiego *ius vitae et necis* wobec dziecka w prawie rzymskim okresu późnego antyku', [The limits of paternal *ius vitae et necis* over children according to Roman law in late antiquity], [in:] K. ILSKI et al., *Zabójstwo dziecka w literaturze i kulturze europejskiej*, Poznań 2014, pp. 45–70.

⁵⁷ Cf., e.g., E. R. COLEMAN, 'L'infanticide dans le haut Moyen Âge', *Annales (ESC)* 29.2 (1974), pp. 315–335; BOSWELL, 'Expositio and oblatio' (cit. n. 23), esp. pp. 16–33; IDEM, *The Kindness of Strangers* (cit. n. 23), pp. 181–427; R. VAN DÜLMEN, *Frauen vor Gericht. Kindsmord in der Frühen Neuzeit*, Frankfurt am Main 1991, *passim*.

⁵⁸ Cf. e.g., S. MAYS & M. FAERMAN, 'Sex identification in some putative infanticide victims from Roman Britain using ancient DNA', *Journal of Archaeological Science* 28 (2001),

Another reason the attitude towards children then differed somewhat from those of modern-day developed societies was the high rate of mortality suffered by children. For example, by one estimate, among the Romans 28% of live births did not survive the first year, and 50% of children died before the age of ten; in general, probably only about half of all children survived their first five years of life.⁵⁹ Therefore, although the Romans grieved their lost infants and children, the extremely high chance of infants dying early in life may make the Romans seem callous or even heartless in comparison to modern standards.⁶⁰ From an evolutionary standpoint, parents had to decide whether to invest their energy in raising a deformed or sick child that might not survive to perpetuate the family lines. One should also remember that the Christian concept of every newborn's right to life was unknown to the Greeks and the Romans.

Among humans in general, however, 'Infanticide has been practised on every continent and by people on every level of cultural complexity, from hunters and gatherers to high civilization, including our own ancestors. Rather than being an exception, then, it has been the rule'.⁶¹ Both mental and physical deformities are common reasons for infanticide because in the past children born with malformations posed significant problems for the survival of the whole group, and *infanticidium* had been

pp. 555–559; M. CARROLL, 'Infant death and burial in Roman Italy', *JRA* 24 (2011), pp. 99–120; S. MAYS & J. EYERS, 'Perinatal infant death at the Roman villa site at Hambleden, Buckinghamshire, England', *Journal of Archaeological Science* 38 (2011), pp. 1931–1938; C. LAES, 'Latin inscriptions and the life course. Regio III (Bruttium and Lucania) as a test case', *Arctos* 46 (2012), pp. 93–111 and the studies published in: M. CARROLL & E.-J. GRAHAM (eds.), *Infant Health and Death in Roman Italy and Beyond*. Portsmouth 2014 [= *Journal of Roman Archaeology Suppl.* 96], *passim*.

⁵⁹ Cf. e.g. GARNSEY, 'Child rearing' (cit. n. 54), p. 51; SUDER, *Census populi* (cit. n. 23), pp. 230–231.

⁶⁰ Cf. WILKINSON, *Death or Disability?* (cit. n. 53), p. 21–22, and, e.g., SUDER, *Census populi* (cit. n. 23), pp. 229–234; CURCHIN, 'The Roman family' (cit. n. 33), pp. 538–541; LAES, 'Learning' (cit. n. 42), pp. 92–99.

⁶¹ L. S. MILNER, 'A brief history of infanticide', available at <<<http://www.infanticide.org>>>. Cf. in detail: IDEM, *Hardness of Heart/Hardness of Life. The Stain of Human Infanticide*, Lanham 2002, *passim*.

committed by both parents at least since Pleistocene times.⁶² Worth mentioning here is that modern anthropological studies have found no information on the punishment for abortion in many societies, and information on the punishment for infanticide so sparse that it could not be coded. The absence of punishment may be viewed as a recognition of parents rights to dispose of unwanted infants; some tribal societies explicitly recognize this right until the cord is cut, a birth ceremony is performed, or, in a few societies, the infant is weaned.⁶³

The biological roots of infanticide among humans are well described by the modern sciences; what is more, *Homo sapiens* is not unique among mammals and primates in this respect.⁶⁴ Infanticidal behaviour is an intrinsic feature present extensively in mammalian populations, and in many of them, infanticide is considered to be the main or a significant cause of juvenile mortality,⁶⁵ Humans, however, do not commit infanticide as frequently as other primates.⁶⁶ From a human point of view, the

⁶² Cf. S. C. M. SCRIMSHAW, 'Infanticide in human populations: societal and individual concerns', [in:] G. HAUSFATER & S. HARDY (eds.), *Infanticide. Comparative and Evolutionary Perspectives*, New York 1984, pp. 439–462.

⁶³ L. MINTURN, 'The birth ceremony as a rite of passage into infant personhood', [in:] E. DOERR & J. W. PRESCOTT, *Abortion Rights and Fetal Personhood*, Long Beach 1989, pp. 81–88. Cf. also: M. DICKEMAN, 'Demographic consequences of infanticide in man', *Annual Review of Ecology and Systematics* 6 (1975), pp. 107–137; A. A. BREWIS, 'Anthropological perspectives of infanticide', *Arizona Anthropologist* 8 (1992), pp. 103–119.

⁶⁴ Cf. e.g., studies collected in: DOERR & PRESCOTT, *Abortion Rights* (cit. n. 63), *passim*; C. P. VAN SCHAIK, G. R. PRADHAN & M. A. VAN NOORDWIJK, 'Mating conflict in primates: infanticide, sexual harassment and female sexuality', [in:] P. M. KAPPELER & C. P. VAN SCHAIK (eds.), *Sexual Selection in Primates. New and Comparative Perspectives*, Cambridge 2004, pp. 131–150, with a bibliography of the subject. Aggression among the Romans in the Archaic period and its biological roots is discussed in general in: R. PANKIEWICZ, 'Biologiczne i społeczne podstawy zachowań agresywnych w społeczeństwie wczesnorzymskim. Uwagi wprowadzające' [Biological and social bases of aggressive behaviour the early Roman society. Preliminary remarks], [in:] M. KURYŁOWICZ (ed.), *Crimina et mores. Prawo karne i obyczaje w starożytnym Rzymie*, Lublin 2001, pp. 143–160.

⁶⁵ T. POIKONEN et al., 'Infanticide in the evolution of reproductive synchrony: effects on reproductive success', *Evolution* 62 (2008) p. 613.

⁶⁶ Cf. C. P. VAN SCHAIK & P. M. KAPPELER, 'Infanticide risk and the evolution of male-female association in primates', *Proceedings of the Royal Society of London. Series B* 264 (1997),

decision is harder in part because one of the major forces stimulating the behaviour of humans (and to some point other primates as well) is the power of public opinion, a force that is especially strong among *Homo sapiens*.⁶⁷ Taking this into account, the role of neighbours in Dionysius of Halicarnassus story concerning the *lex* of Romulus would be a trace of this force, a factor which in every period of Rome hedged about the *patria potestas* with non-legal rules, counter-balancing his legal power.⁶⁸

In conclusion, it is hard to deny the reliability of *XII. Tab.* 4.1 as far as the killing of deformed newborn is concerned, regardless of the reliability of the Twelve Tables as a whole. However, there is also truth in Dionysius of Halicarnassus description of Romulus law, which constrained the power of Roman parents by their five neighbours (not only *pater familias*) to kill their maimed or monstrous children, despite the disputed reliability of all *leges regiae* in general.

Jacek Wiewiorowski

Chair of Roman Law
and of the History of Jurisprudence
Faculty of Law and Administration
Adam Mickiewicz University
św. Marcin 90
61-809 Poznań
POLAND
e-mail: *wiew@amu.edu.pl*

pp. 1687–1694; A. A. VOLK & J. A. ATKINSON, ‘Infant and child death in the human environment of evolutionary adaptation’, *Evolution and Human Behavior* 34 (2013), pp. 182–192.

⁶⁷ Cf. e.g., C. BOEHM, *Moral Origins. The Evolution of Virtue, Altruism, and Shame*, New York 2012, *passim*. His book is an example of the modern revival of the idea of *group selection* among Humans (it refers to one mechanism of evolution in which natural selection acts at the level of the group instead of at the more conventional level of the individual). Cf. esp. M. A. NOWAK, C. E. TARNITA & E. O. WILSON, ‘The evolution of eusociality’, *Nature* 466 (2010), pp. 1057–1062 and the discussion concerning it. Cf. e.g., *Nature* 471 (2011). Cf. also: E. O. WILSON, *The Social Conquest of Earth*, New York 2012, *passim*.

⁶⁸ Cf. in regard to the Republican period: J. CROOK, ‘*Patria Potestas*’, *CQ* 17 (1967), pp. 113–122.