

#### 4. *The Characteristics of the ‘Leno’ in the Comedy of Plautus.*

After this brief résumé on infamy, ignominy and the legal definition of the *Leno* and *lenocinium*, we will analyze the most important characteristics of the *Leno* in the comedies of Plautus, raising them to ‘paradigm’ of the nature and the personality of the *Leno*, as a representation of infamy, in contradiction to the identity of the honest and virtuous person. Analyzing the characteristics of the *Leno*, narrated by Plautus, and comparing them to the characteristics of the virtuous person, we can reconstruct the most important social and personal qualities of the infamous *Leno* in opposition to the qualities of the honest man.

All *Lenones*, in fact, are persons that, because of their activity, represent a special social ‘type’, to which particular negative characteristics are attributed and that are consequences of their social and moral opinion. The examples of the comedies of Plautus will depict the characteristics that make the category of the *Lenones* so unappreciated in social and moral understanding and legally punished with infamy.

This analysis will begin with several texts of the *Curculio*, a comedy where the protago-

## THE LEGAL ASPECTS OF THE PERSONALITY OF THE *LENO*

**SUMMARY:** 1. General Introduction to the Figure of the *Leno* and the *Lena*. 2. The Activity of *Lenocinium* of the *Leno* and its Problematics. 3. Infamy and Ignominy in the Different Roman Legal Periods. General and Particular Aspects. 4. The Characteristics of the *Leno* in the Comedy of Plautus. 5. Characteristic Aspects of the Infamy of the *Leno* from a Social-Legal Point of View.

### 1. *General Introduction to the Figure of the ‘Leno’ and the ‘Lena’.*

In the legal panorama of the old roman society, a very particular character is the ‘*Leno*’, also thanks to his intrinsically funny side and his paradigmatic personality. The *Leno* in the comedy of Plautus, corresponding to the *Pornoboskos* of Menander, is someone who enslaves prostitutes in order to gain profit or keeper of a brothel. As manager of prostitutes and ‘*lupanares*’, the figure of the *Leno* is well represented in various theater

plays and pieces of ancient Latin and Greek literature.

Thanks to the Latin comedies of Terentius and Plautus, the history has transmitted a very precise and detailed image of this character from a moral and social point of view<sup>1</sup>. In addition, thanks to the many ancient legal fragments, we can reconstruct his legal positions, his rights and the characteristics of his business of *'lenocinium'*.

The theatrical masks, preserved until today in several museums, such as the mask of the *pornoboskos* in the archaeological museum of Lipari, leave us a vivid and comical image of this character.

In order to present the legal aspects of the activity of the *Leno* we will begin with the depiction of juridical sources of the classical and Justinian Roman period, which are contained in the Digest of Justinian and give an appropriate definition of the *lenocinium* and the activity of the *Leno*.

Under these considerations, a text of Ulpian contained in Ulp. 1 *ad leg. Iul. et Pap. D.* 23.2.43.6-9 is very important:

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<sup>1</sup> See R.F. HARTKAMP, *Von 'Leno' zu 'Ruffiano': die Darstellung, Entwicklung und Funktion der Figur des Kupp-  
lers in der römischen 'Palliata'*, Tübingen, 2004, 12.

sequences of the 'infamy' pronounced by law<sup>58</sup>.

The Justinian infamy, augmented with new hypotheses and effects, was not conceived anymore as a merely legal category (or as public incapacity) but as autonomous juridical institute diminishing the personal capacity of a subject<sup>59</sup>.

However, this is not the place to study the difficult problem of the contents and effects of infamy more in detail<sup>60</sup>. The present research, in fact, intends to deal with a particular aspect of infamy, which is related to the figure of the *Leno* and becomes his paradigm.

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<sup>58</sup> Concerning these reflections, see S. PEROZZI, *Istituzioni*, I, cit., 548. See also U. BRASIELLO, entry '*Infamia*', in *Noviss. dig. it.*, VIII, Torino, 1962, 641.

<sup>59</sup> See A. GUARINO, *Diritto privato romano*, Napoli, 2001, 299.

<sup>60</sup> Further investigation of infamy and the analysis of the sources are in M. KASER, '*Infamia*', cit., 220. Interesting on the topic is also B. KÜBLER, Review on L. POMMERAY, *Études sur l'infamie en droit romain*, in *ZSS*, LVIII, 1938, 298.

public and private ‘incapabilities’, though. In addition, in the classical period the ‘legal’ infamous<sup>55</sup> received the status of ‘ignominious’ underlying not only the public and social disapproval<sup>56</sup>, but also the original technical signification of the term ‘ignominious’<sup>57</sup>.

During the Justinian period the figure of the infamous is more ‘institutionalized’ and becomes a ‘legal’ status and infamy becomes a veritable juridical category.

The Justinian right seems to transform the ‘social-juridical’ infamy into a ‘legal’ infamy, where the juridical incapacities are direct con-

<sup>55</sup> That were considered as such since they suffered from the incapacities mentioned in the edict and the laws *Iuliae*.

<sup>56</sup> See, for example, Gai 4.182: *‘Quibusdam iudiciis damnati ignominiosi fiunt, uelut furti, ui bonorum raptorum, iniuriarum, item pro socio, fiduciae, tutelae, mandati, depositi. sed furti aut ui bonorum raptorum aut iniuriarum non solum damnati notantur ignominia, sed etiam pacti, ut in edicto praetoris scriptum est; et recte. plurimum enim interest, utrum ex delicto aliquis an ex contractu debitor sit. nec tamen ulla parte edicti id ipsum nominatim exprimitur, ut aliquis ignominiosus sit, sed qui prohibetur et pro alio postulare et cognitorem dare procuratoremue habere, item procuratorio aut cognitatorio nomine iudicio interuenire, ignominiosus esse dicitur.’*

<sup>57</sup> See M. KASER, ‘*Infamia*’, cit., 229 and Gai 4.60; 2.154.

*Lenocinium facere non minus est quam corpore quaestum exercere. Lenas autem eas dicimus, quae mulieres quaestuaris prostituunt. Lenam accipiemus et eam, quae alterius nomine hoc vitae genus exercet. Si qua cauponam exercens in ea corpora quaestuaris habeat ( ut multae adsolent sub praetextu instrumenti cauponii prostitutas mulieres habere), dicendum hanc quoque lenae appellatione contineri.*

According to Ulpian, practicing *lenocinium* is not less wrong than deriving profit from one’s own body<sup>2</sup>. The so called ‘*Lenae*’ (today we call these women ‘procuresses’) are those who induct other women to prostitution in order to gain money. Also the women who live this kind of life in ‘*alterius nomine*’ are considered *Lenae*<sup>3</sup>.

<sup>2</sup> According to the translation of T.J. MCGINN *Prostitution and Julio-Claudian legislation in early imperial Rome*, Ann Arbor, 1986, 486.

<sup>3</sup> There are two interpretations on how to intend the expression *alterius nomine*. One followed by Gardner, who would translate ‘under someone else’s name’, supposing, for example, the owner of a brothel hiding behind the name of a manager working for him. A second interpretation is followed by Riggsby, who translates the expression as ‘false name’. See J.F. GARDNER, *Women in roman law and society*, Bloomington, 1986, 250; and M. RIGGSBY, ‘*Lenocinium*’: *Scope and Consequence*, in *ZSS*, CXII, 1995, 423.

Moreover, if an innkeeper of a tavern derives profits from the bodies of her employees (like many innkeeper do by prostituting their waitresses), she too is considered a *Lena*<sup>4</sup>. This text is certainly referring to the woman who exercises the profession of a *Lena*, but we can extend this description also to the men who exercise this profession, the *Lenones*, since they do the same things, the same ‘dirty’ work, and they were subjected to the same social and moral ‘reputation’<sup>5</sup>, as we can learn from the comedies of Plautus. In addition, there is no legal text that states a difference between the profession and the legal condition of the *Leno* and the *Lena*<sup>6</sup>. The doctrine is, however,

<sup>4</sup> See the translation of R. McLeod in the English edition of the Digest: Edition T. MOMMSEN-P. KRÜGER-A. WATSON, *The Digest of Justinian*, II, Philadelphia 1985, 662.

<sup>5</sup> Confronting the description of the *Lena* mother of Gymnasium, who prostitutes her daughter, and the *Lena* Melaenis, both in the *Cistellaria* of Plautus, we can see that they act in the same way as Ballion and Cappadox in the *Curculio* and the *Pseudolus*. Both behave in the same manner and have the same social esteem, as can be seen in the Plautinian comedies.

<sup>6</sup> Both would have been inflicted with the sanction of infamy and the resulting consequences, since there is no trace of different juridical effects of ‘male’ and

term infamy, but refers to many persons considered infamous by the praetor) it seems that they were excluded from certain public appointments, such as the decurionate, the senate and other magistrateship, and were even subjected to limitations in the right to vote<sup>53</sup>.

According to a passage in Plautus, which will be examined later in this article, the infamous did not have the *auctoritas*<sup>54</sup> and could not be guaranteed by others. A long series of

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*sasse fecisseue qu<i>d iudicatum est erit; quouie aput exercitum ingnominae/ caussa ordo ademptus est erit; quemue imperator ingnominae caussa ab exe<r>citū decedere ius<i>t iuserit;/ queiue ob caput c(iuis) R(omane) referundum pecuniam praemium aliudue quid cepit ceperit; queiue corpor<e> quaestum/ fecit fecerit; queiue lanistaturam artemue ludic<r>am fecit fecerit; queiue lenocinium faciet <feceritue>. quei/124 aduersus ea in municipio colonia praefectura{ue} foro conciliabulo <in senatu> decurionibus conscripteisue <f>uerit/ sententiamue dixerit, is (sestertium) (quinquaginta milia) p(opulo) d(are) d(amas) esto, eiusque pecuniae quei uolet petitio esto. vacat/ quoi h(ac) l(ege) in municipio colonia praefectura foro conciliabulo senatorem decurionem conscriptum esse/ inque eo ordine sententiam dicere ferre non licebit, nei quis, quei in eo municipio colonia praefectura/...?'. The complete text is available in M. H. CRAWFORD, *Roman Statutes*, I, London, 1996, 355-391.*

<sup>53</sup> On this topic see A.H.J. GREENIDGE, ‘*Infamia*’, cit., 154-156.

<sup>54</sup> On the significance of *auctor* and *auctoritas* see M. KASER, in *Römisches Privatrecht*, München, 2005, 45-46.

*maritandis ordinibus*, since he could not marry a senator nor the son or daughter of a senator<sup>49</sup>. The same law also states that the *ingenui* could not marry the madams (*Lenas*) and those manumitted by a pimp or a madam, and they were excluded from marrying those sentenced for adultery<sup>50</sup> and prostitutes<sup>51</sup>.

In addition, according to the law *Iulia municipalis*<sup>52</sup> (that, however, doesn't contain the

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*nam, et a lenone lenave manumissam, et in adulterio deprehensam, et iudicio publico damnatam, et quae artem ludicram fecerit; adicit Mauricianus et a senatu damnatam*'. See also H. KRÜGER, *Verweisungsedikte im prätorischen Album*, in *ZSS*, XXXVII, 1916, 266.

<sup>49</sup> See the entry 'Infamia', cit., 635. See also M. KASER, 'Infamia', cit., 263.

<sup>50</sup> On this topic see S. SOLAZZI, *L'errore nella 'condictio indebita'*, in *Atti Accademia di Napoli*, LIX, 1939, 276.

<sup>51</sup> On the prohibition of marriage between *ingenui* and procuresses or someone who has committed *lenocinium*, see M. TALAMANCA, *Istituzioni di diritto romano*, Milano, 1990, 344.

<sup>52</sup> On the exclusion of the infamous from decurionate and the senate, see the *Tabula Heracleensis* ('vulgo' *lex Iulia municipalis*) in the edition of Crawford, lines 108-125, where instead of infamy the word ignominy is used: '*...queiue iudicio publico Romae/ condemnatus est erit, quocirca eum in Italia esse non liceat, neque in integrum resti<tu>tus est erit; queiue in eo/ municipio colonia praefectura foro conciliabulo, quoinus erit, iudicio publico condemnatus est erit; quemue/120 k(alumniae) praeuaricationis causa accus-*

discordant on the possibility of the application of *infamia* to a woman and about its origin and contents<sup>7</sup>.

After this general statement, we have to consider that in the text just presented, the activity of *lenocinium* is considered as equal to the activity of prostitution – as if the two activities were regarded as equal under the point of view of the social public esteem deriving by exercising these professions<sup>8</sup>.

Of major importance is the definition itself of a *Lena* (or *Leno*): someone who earns profit from the speculation on prostitution. A speculator, who derives money by selling the bodies of prostitutes. *Leno* is someone who speculates on the woman that prostitutes themselves, earns money by this and manages directly their activities. This completely de-

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'female' infamy. It is true that there existed differences between men and women in postulating, but on the praetorian declaration of infamy both would result in the class of the *infames* with all resulting legal consequences. On the general problem of infamy applicable to women, see A.H.J. GREENIDGE, *Infamia, Its place in roman public and private law*, Oxford, 1894, 171.

<sup>7</sup> See O. KARLOWA, *Zur Geschichte der 'Infamia'*, in *ZSS*, IX, 1872, 224.

<sup>8</sup> For example, A. PETIZIOL, *La Prostituzione. Profilo psicologico storico-sociale*, Roma, 1962, 32.

finis who is considered a *Leno* because of his activity of *lenocinium*.

## 2. *The Activity of ‘Lenocinium’ of the ‘Leno’ and its Problematics.*

The reading of the Digest of Justinian<sup>9</sup> teaches us that the edict of the Praetor inflicts infamy to those who exercise the activity of *lenocinium*, and therefore also to the *Lenones* who speculate on prostitution, as we can see in a text of Julian in Iul. 1 *ad ed.* D. 3.2.1 where the categories of people branded with infamy are enunciated:

*Praetoris verba dicunt: ‘infamia notatur qui ab exercitu ignominiae causa ab imperatore eove, cui de ea re statuendi potestas fuerit, dimissus erit: qui artis ludicrae pronuntiandive causa in scaenam prodierit: qui lenocinium fecerit [...]’.*

In the same chapter of the Digest (*De his qui notantur infamia*) a further passage of Ulpian (in Ulp. 6 *ad ed.* D. 3.2.4.2) gives once

<sup>9</sup> See G. LONG, entry ‘*Leno*’, ‘*Lenocinium*’, in W. SMITH, *Dictionary of Greek and Roman antiquities*, London, 1875, 680.

*stulare pro alio*), and could not be *cognitor* or *procurator*.

Kaser seems to come to similar conclusions, according to him the infamous were not only prohibited to postulate for others, but they were also interdicted from the *advocatio*<sup>46</sup> at least for a determined period<sup>47</sup>.

The infamous was also subjected to limitations in marriage, as stated by the *lex Iulia*<sup>48</sup> *de*

<sup>46</sup> On the *advocatio* and the function of the *advocatus* in relation to the infamous, mainly in the field of the Justinian reforms of the *exceptiones praetoriae*, the I. 4.13.11 are interesting to observe: ‘*Praeterea etiam ex persona dilatoriae sunt exceptiones: quales sunt procuratoriae, veluti si per militem aut mulierem agere quis velit: nam militibus nec pro patre vel matre vel uxore nec, ex sacro rescripto, procuratorio nomine experiri conceditur: suis vero negotiis superesse sine offensa disciplinae possunt. eas vero exceptiones quae olim procuratoribus propter infamiam vel dantis vel ipsius procuratoris opponerentur, cum in iudiciis frequentari nullo perspeximus modo, conquiescere sancimus, ne, dum de his alteratur, ipsius negotii disceptatio proteletur*’. See also M. LEMOSSE, *Études romanistiques-Maxime Lemosse. Recueil publié en hommage à l’auteur par la Faculté de droit de l’Université d’Auvergne*, Clermont-Ferrand, 1990, 233.

<sup>47</sup> On the interdiction from the *advocatio* see M. KASER-K. HACKL, *Das römische Zivilprozessrecht*, cit., 560.

<sup>48</sup> See Tit. Ulp. 13: ‘*Lege Iulia prohibentur uxores ducere senatores quidem liberique eorum libertinas et quae ipsae quarumve pater materve artem ludicram fecerit, item corpore quaestum facientem. Ceteri autem ingenui prohibentur ducere le-*

*procurator*<sup>42</sup>. In addition he was not able to bring a popular action<sup>43</sup>.

In the opinion of von Haimberger, the infamous could not propose popular actions, testify in a criminal process and administrate the goods of others. In addition, he could be subjected to an action *inofficiosi testamenti*, in case he was appointed heir<sup>44</sup>. According to Perozzi and Greenidge the *infamis* was almost totally excluded from the *postulatio*, except in personal actions<sup>45</sup> (and could certainly not po-

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<sup>42</sup> See the *Vat. Fragm.* 322-24: *Verba autem edicti haec sunt: 'alieno', inquit, 'nomine, item per alios agendi potestatem non faciam in his causis, in quibus ne dent cognitorem neve dentur, edictum comprehendit'. Quod ait 'alieno nomine, item per alios', breviter repetit duo edicta cognitoria, unum, quod pertinet ad eos qui dantur cognitores, alterum ad eos qui dant; ut qui prohibentur vel dare vel dari cognitores, idem et procuratores dare darive arceantur. Ob turpitudinem et famositatem prohibentur quidam cognituram suscipere, adsertionem non nisi suspecti praetori.* See also the remarks of M. KASER, '*Infamia*', cit., 246.

<sup>43</sup> In these terms and particularly on *cognitor* see also M. KASER-K. HACKL, *Das römische Zivilprozessrecht*, cit., 212.

<sup>44</sup> See A. VON HAIMBERGER with the translation of F. FULVIO, in *Diritto romano privato e puro*, Napoli, 1863, 42.

<sup>45</sup> See S. PEROZZI, *Istituzioni*, I, cit., 544 ss. and A.H.J. GREENIDGE, '*Infamia*', cit., 158.

more a definition of those who practice *lenocinium*.

*Ait praetor: 'qui lenocinium fecerit'. lenocinium facit qui quaestuarium mancipia habuerit: sed et qui in liberis hunc quaestum exercet, in eadem causa est. sive autem principaliter hoc negotium gerat sive alterius negotiationis accessione utatur (ut puta si caupo fuit vel stabularius et mancipia talia habuit ministrantia et occasione ministerii quaestum facientia: sive balneator fuerit, velut in quibusdam provinciis fit, in balneis ad custodienda vestimenta conducta habens mancipia hoc genus observantia in officina), lenocinii poena tenebitur.*

In this text, Ulpian defines the person who exercises or practices the so-called '*lenocinium*' as someone who sullies one's reputation with this infamous behavior. A person who practices *lenocinium* is someone who forces slaves into prostitution in order to gain profit<sup>10</sup> or forces even a free person into prostitution in order gain money. A person is liable to the penalty of *lenocinium* if he operates this as a 'main' business primarily or in addition to an-

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<sup>10</sup> See the entry '*Leno*', in *Thesaurus linguae latinae*, VII-1, Leipzig, 1979, 1149-1150; and also the entry '*Lenocinium*', in *Thesaurus linguae latinae*, VII-2,2, Leipzig, 1956, 1151-1153.

other profession (for example an inn-keeper who prostitutes his waitresses).

This definition of Ulpian is also important to see how a punishment (the *poena*) is connected to the definition of *lenocinium*, which is infamy and strikes those who exercise this activity<sup>11</sup>.

This legal definition is only one of the many who describe the character of the *Leno*, the keeper of a brothel and his professional activity. Interesting to remark is the last phrase of the text: '*lenocinio poena tenebitur*', that expresses the fact that someone who exercises this activity is subjected to the punishment of the *lenocinium*. The Digest therefore specifies that a punishment – infamy<sup>12</sup> – is related to the *lenocinium*, with all the legal consequences deriving from infamy<sup>13</sup>.

It is important to underline that neither prostitution nor speculation with prostitution was, in classical Roman law, forbidden as professional activity, but the people who exer-

<sup>11</sup> See A.H.J. GREENIDGE, '*Infamia*', cit., 38.

<sup>12</sup> That the penalty is infamy can be deduced by the title itself of the Digest '*De his qui notantur infamia*', where the fragment is included.

<sup>13</sup> On the general consequences of infamy see P. BONFANTE, *Istituzioni di diritto romano*, Torino, 1946, 62-63.

of those who could not postulate at all. A second class comprises those who could postulate only for themselves. The infamous<sup>40</sup> appertain to the third class, to which only certain rights to propose actions were negated, but who could postulate in determined cases concerning themselves or others (usually for the closest relatives).<sup>41</sup>

The doctrine is discordant with the contents of these limitations of the right of the *postulatio*. According to Kaser, the infamous, with regard to his private rights, could postulate in front of the praetor only in certain cases (strictly personal). However, he could not be assigned a cause of action for others, as well as he could neither be *cognitor* nor

<sup>40</sup> This list of infamous is contained in Iul. 1 *ad ed.* D. 3.2.1, however, some authors, among which are O. Lenel and F. Girard, retain that the word infamy is Justinian interpolation and that organically the edict of the praetor contained the word ignominy. See F. GIRARD, *Manuel*, cit., 207-208.

<sup>41</sup> See the text of Ulpian (6 *ad ed.*) in D. 3.1.1.8: *Ait praetor: 'qui lege, plebis scito, senatus consulto, edicto, decreto principum nisi pro certis personis postulare prohibentur: hi pro alio, quam pro quo licebit, in iure apud me ne postulent.'* hoc edicto continentur etiam alii omnes, qui edicto praetoris ut infames notantur, qui omnes nisi pro se et certis personis ne postulent.



nominy, and derived from the reproach of the censors<sup>36</sup>. The ‘social declassing’ was carried out by the censors and had the effect of a public diminution of the *existimatio*.

With roman classical law, instead, the concept of infamy undergoes a process of ‘legalisation’<sup>37</sup> and becomes a legal typology, having then precise juridical consequences. Infamy then mainly tends to exclude determined people from certain rights, as, for example, the *postulatio*<sup>38</sup>.

Concerning the right of the *postulatio*, in fact, the edict of the praetor divides the people in three classes<sup>39</sup>. A first class is composed

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<sup>36</sup> See Charisius Grammaticus, ‘*Ars Grammatica*’, book 5, page 401, line 8: ‘*Ignominia imponitur ab eo qui potest animadversione innotare; infamia ex multorum sermone nascitur*’. Here *animadversio* has the technical meaning of censorial blame, as has been noted by T. MOMMSEN, *Römisches Staatsrecht*, II, Leipzig, 1889, 384. In reality, the word infamy begins to be used in a legal term only beginning with Ulpian and Paulus, as shown by M. KASER, ‘*Infamia*’, cit., 233.

<sup>37</sup> M. Kaser therefore calls infamy of the classical period ‘gesetzliche Infamie’ (legal infamy). See M. KASER, ‘*Infamia*’, cit., 254.

<sup>38</sup> On the partial exclusion of the *postulatio* see, in general, F. SCHULZ, *Interpolationenkritische Studien*, in *Festschrift Ernst Zitelmann*, II Abteilung, Leipzig, 1913, 11.

<sup>39</sup> See M. KASER-K. HACKL, *Das römische Zivilprozessrecht*, München, 1996, 206-207.

cised it directly were punished with the brand of infamy<sup>14</sup>. Those who exercised directly or collaterally the activity of exploitation or prostitution were disregarded by society and punished by law, although the activity itself, in theory, was legal. In this roman perception, the crime of ‘*lenocinium*’ seems to be a crime of conduct and punished as such.

Interesting is the definition of *lenocinium* contained in the *lex Iulia de adulteriis*, Ulp. 8 *disp.* D. 48.5.2.2:

*Lenocinii quidem crimen lege iulia de adulteris praescriptum est, cum sit in eum maritum poena statuta, qui de adulterio uxoris suae quid ceperit, item in eum, qui in adulterio deprehensam retinuerit.*

Here the *lenocinium* is defined as ‘*crimen*’ and is accomplished if the husband allows his wife to commit adultery in order to gain

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<sup>14</sup> Evidence of the fact that prostitution, brothels and being a client was not prohibited can be found also in Plautus, in the comedy of *Curculio*, presented in detail later in this text. In the verses 33-36 Palinurus tells Phaedromus nobody forbids to sell and buy the merchandise of this store (referring to the house of the *Leno*): ‘*Nemo hinc prohibet nec vetat, quin quod palam est venale, si argentum est, emas*’. See also G. LONG, entry ‘*Leno*’, cit., 682.

money from it. The law provides for different cases of *lenocinium*, for example the marriage of a woman condemned for adultery in precedent, the husband discovering that his wife committed adultery and keeps silent in change of money, the landlord who loans his house to someone committing adultery or rape (*stuprum*)<sup>15</sup>, and many another possibilities.

This law marks an ‘evolution’ of the crime of *lenocinium*, that gains additional cases and possibilities and new punishments, even stronger than those of classical infamy<sup>16</sup>. The *lenocinium* is being enriched, thanks to the moralizing law of Augustus, with punishments and serious penal consequences, differing from the normal consequences of the infamy, and more similar to those of adultery and rape<sup>17</sup>.

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<sup>15</sup> Concerning the sources see, in general, title 5 ‘*Ad legem Iuliam de adulteriis coercendis*’, book 48 of the Digest. A critical analysis of the cases of *lenocinium* proposed by this law is in A. METTE-DIETMANN, *Die Ehegesetze des Augustus*, Stuttgart, 1991, 67.

<sup>16</sup> See W. REIN, *Criminalrecht der Römer*, Leipzig, 1844, 883.

<sup>17</sup> See A. METTE-DIETMANN, *Die Ehegesetze*, cit., 34, 61.

decrease of esteem<sup>30</sup>. With the establishment of censorship then, the censors were assigned the ‘*cura morum*’, and they had the faculty to compile the lists of *census*<sup>31</sup>.

Compiling these lists, the censors could ‘lower’<sup>32</sup> those from one class to another who became unworthy to remain in a higher class because of their bad conduct. The censors annotated the motif of the exclusion in the list (therefore the name censorial note)<sup>33</sup>, that usually was not determined by law, but left to their judgement<sup>34</sup>. They inflicted a note for severe shortcomings on roman moral (the *boni mores*), and those who were afflicted were considered ‘*ignominiosus*’. Ignominy was the antecedent of infamy<sup>35</sup>. At the beginning, in Roman literature juridical infamy was called ig-

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<sup>30</sup> See L. POMMERAY, *Etudes*, cit., 26.

<sup>31</sup> See J. M. RAINER, *Römisches Staatsrecht*, Darmstadt, 2006, 84.

<sup>32</sup> They could, for example, exclude a senator from senate, a knight from the Order of the Knights, or a citizen from his tribe, degrading them to a lower social class.

<sup>33</sup> See T. MOMMSEN, *Droit publique romaine*, IV, Paris, 1894, 53-57.

<sup>34</sup> Consider the opinion of S. PEROZZI, *Istituzioni*, I, cit., 546.

<sup>35</sup> See M. KASER, ‘*Infamia*’ und ‘*Ignominia*’ in den römischen Rechtsquellen, in *ZSS*, LXXIII, 1956, 227.

roman citizens not only had to follow the juridical rules, but also the precepts of morality and honor<sup>25</sup>, in order to avoid the restriction of their *existimatio*<sup>26</sup>. The *existimatio* is, as we can see in a definition of Callistrato in Call. 1 *de cogn.* D. 50.13.5.1, the rank of dignity and personal and social-juridical honor: ‘*existimatio est dignitas inlaesae status, legibus ac moribus comprobatus*’. The diminution of the *existimatio* was a form of a decrease of the public esteem one had<sup>27</sup>. An important concept in the archaic period and defined, in principle, by the precepts of the *boni mores*, which was sanctioned mainly at a social level<sup>28</sup>. The decrease of esteem became, in the Republican era, cause of certain juridical degradations of the person<sup>29</sup>. These degradations were, in general, consequences of the official ascertainment of the

<sup>25</sup> See C. A. BARTON, *Roman Honor*, Berkeley, 2001, 199.

<sup>26</sup> See S. PEROZZI, *Istituzioni di diritto romano*, I, Roma, 1928, 545.

<sup>27</sup> See also M. KASER, *Das römische Privatrecht*, München, 1973, 274.

<sup>28</sup> On the social sanctions of those with a diminished reputation, and the general relation between *existimatio* and *infamia*, see L. POMMERAY, *Études sur l’infamie en droit romain*, Paris, 1937, 75-111.

<sup>29</sup> S. PEROZZI, *Istituzioni*, I, cit., 545.

If this law was really enforced, which is doubtful, a permissive husband could be accused to be a miserable *Leno* and would be punished like a criminal rapist<sup>18</sup>.

Also the Justinian legislation extends the cases of *lenocinium* and the connected penal punishments that become more and more serious, even for the landlord who loans the houses to the *lenones* in order to exercise a brothel<sup>19</sup>.

However, these new cases of *lenocinium* and the related penal punishments, introduced by the *lex Iulia de adulteriis* and the Justinian legislation, are not directly related to the present research. The present research focuses on *lenocinium* committed by the *lenones* of the comedies of Plautus and the brand of infamy attached to them.

In fact, it is the *Leno* of Plautus, an exploiter of prostitution and keeper of brothels,

<sup>18</sup> On the matter of the probable scarce application of the Augustan law on marriage in certain cases see, for example, the research of S. TREGGIARI, *Roman marriage. ‘Iusti coniuges’ from the time of Cicero to the time of Ulpian*, Oxford, 1991, 453.

<sup>19</sup> As can be seen in the *Novellae* 14 and 117, that contain (especially the Novella 14) numerous new ‘cases’ of *lenocinium*, and, moreover, new penal sanctions. See also G. LONG entry ‘*Lenocinium*’, cit., 680.

who will be presented as a paradigmatic character of infamy. The crime of *lenocinium* committed by the ‘pimp’ and to which the praetorian infamy is connected is a special crime ‘*sui generis*’. With the praetorian infamy not the fact in it-self is punished (prostitution and the exploitation of prostitution are both tolerated) but who exercises it. The punishment is similar to an accessory sanction and not to a principal penalty. Who exercises this activity, the *lenocinium*, will be punished and suffer from legal incapacities, but neither the brothel is closed nor prostitution forbidden. Both activities are legal, but the fact of exercising them is considered disgraceful and shameful and causes a diminution of the ‘*existimatio*’<sup>20</sup>. This diminution of the public honor and reputation (the *existimatio*) is related to legal effects, which are the legal incapacities connected to the declaration of infamy.

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<sup>20</sup> On the diminution of the public esteem of a person (*existimatio*) see, in general, F. GIRARD, *Manuel élémentaire de droit romain*, Paris, 1924, 206.

### 3. *Infamy and Ignominy in the Different Roman Legal Periods. General and Particular Aspects.*

Infamy in Roman law was generally considered as a special sanction in the field of the *existimatio*, which diminished the reputation of a person<sup>21</sup> and gave rise to certain juridical incapacities, however, not the *capitis deminutio*<sup>22</sup>. A sort of legal condition of sanction of certain behaviour considered defaming<sup>23</sup> (such as committing *lenocinium*) though, that determined unfavourable juridical consequences in public and private law. There are, however, differences according to the historical periods of Roman law. The concept of infamy itself, the subjects afflicted and the relevant juridical consequences change according to the historical period<sup>24</sup>. During the antique period the

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<sup>21</sup> For the many testimonies of the concept of infamy, see the entry ‘*Infamis*’, in *Thesaurus linguae latinae*, VII, Leipzig, 1979, 1339-1342.

<sup>22</sup> A general definition and the negation of the fact that it would be a *capitis deminutio* see E. LEVY, *Die römische Kapitalstrafe*, Heidelberg, 1930, 31, 45.

<sup>23</sup> See the entry ‘*Infamia*’, cit., 634, where also the so-called defaming behaviors are enunciated, such as perjury, affirming the false, not being trustworthy, greediness etc. See also J. G. WOLF, *Das Stigma ‘Ignominia’*, in ZSS, CXXVI, 2009, 55.

<sup>24</sup> See F. GIRARD, *Manuel*, cit., 207-208.

Egli è un personaggio, il cui lavoro è ‘tollerato’ dall’ordinamento giuridico, ma che allo stesso tempo è sanzionato nei suoi diritti e nella sua ‘reputazione’ sociale per il fatto di esercitare questo mestiere. Tramite l’esposizione delle fonti letterarie e non e della dottrina giuridica si cerca di mettere in evidenza questo aspetto giuridico contrastante del personaggio Lenone, come soggetto di diritti e doveri, e del suo mestiere.

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nist is a parasite (Curculio) and where Plautus introduces the character of the *Leno* Cappadox, the despicable antagonist of the love between the adolescent Phaedromus and the virgin Planesium.

A clear example of the contempt against the personage of the *Leno*, that reflects the collective sentiment of the Roman society, is contained in the verses 38-41 where Phaedromus tells the servant Palinurus that ‘this is the house of a *Leno*’ and the friend answers with insulting the *Leno* Cappadox (the housekeeper) and affirming that he makes a ‘scurvy service’<sup>61</sup>:

PH: *Lenonis hae sunt aedes.*

PA: *Male istis evenat!.*

PH *Qui...*

PA: *Quia scelestam servitutem serviunt.*

Subsequently Palinurus expresses a moral judgment related to the lack of ‘*pudor*’ of the *Leno* in line 53: ‘*Credam, pudor si cuiquam lenoni siet?*’. In the precedent verses Palinurus and Phaedromus spoke about the *pudicitia* of Planesium. In the verses 63-65 we can find

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<sup>61</sup> See the Latin text and the English translation of P. NIXON, *Plautus*, II, in *Loeb Classical Library*, Cambridge (Massachusetts), 1965, 192.

another affirmation of Phaedromus, that has a particular relevance for the present work, where he says that you can't never get something 'decent and just' from a pimp and Palinurus answers that you couldn't ask a pimp 'for what no pimp deals in'<sup>62</sup>:

PH: *Alias me poscit pro illa triginta minas, alias talentum magnum; neque quicquam queoaequi bonique ab eo impetrare.*

PA: *Iniuriu's, qui quod lenoni nulli est id ab eo petas.*

In the second act, Palinurus, a servant, meets the pimp Cappadox and greets him by calling him '*scelerum caput*', that we could translate in English as 'king of rascals'. Therefore, even a servant can offend a *Leno* and probably the servant himself could be considered as better (from a social point of view) than an infamous person like Cappadox. Afterwards we can observe another essential quality of the infamous pimps: being a perjurer. In a dialogue with the cook of the house of Phaedromus, he derides Cappadox for his false oaths. The *Leno* in turn answers that

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<sup>62</sup> See the Latin text and the English translation of P. NIXON, *Plautus*, II, cit., 195.

Hartkamp on the *Leno*<sup>102</sup> – he is infamous because he doesn't respect the rules and the society he appertains. For these reasons he finds himself living on the fringe of society, is sanctioned with the deprivation of important rights and disdained by the majority. His behaviour and acting are the reasons for his troubles and his social and legal condition.

### ABSTRACT

La presente ricerca mira a mettere in luce i differenti aspetti giuridici del personaggio del Lenone nell'ambito del sistema giuridico Romano. Il Lenone, infatti, non è solamente un personaggio 'da commedia', creato da Plauto, ma una personalità costante nella società romana, dotato di diritti e doveri, come tutte le altre persone giuridiche all'interno dell'ordinamento. È interessante notare come il Lenone, a causa del suo 'sporco' lavoro subisca delle limitazioni riguardo ai suoi diritti e allo stesso tempo una diminuzione della stima sociale da parte dei suoi concittadini e dell'ordinamento.

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<sup>102</sup> See R. HARTKAMP, '*Leno*' *perit* - die Rolle des Kupplers Dordalus zwischen Ritual und Realität, in St. Faller (Hg.) *Studien zu Plautus' Persa, ScriptOralia* 121, Tübingen, 2001, 135-137.

The first affirmation is supported by the dominating doctrine<sup>99</sup> and also new studies by McGinn and Riggsby, moreover in the field of *lenocinium*, which tend to devalue the idea of ‘contagion’ in the juridical Roman society<sup>100</sup>.

The remarks of Smith<sup>101</sup> support the second point of view, according to which infamy is a provision not mainly aimed at sanctioning certain behaviour, but is intended to avoid the appearance of vile and defamatory people in honourable places like tribunals, and deprives them of certain rights and political appointments dedicated to ‘honest’ people.

A mechanism of self-defence of the system though, in order to alienate people without honour, who represent a sort of ‘pestilence’ that could contaminate the virtuous people.

The complicated topic related to the definition and nature of infamy cannot be dealt with here exhaustively. Concluding with

<sup>99</sup> L. POMMERAY, *Etudes*, cit., 16. As supported by A.H.J. GREENIDGE on the base of the reflections on *cognitor e procurator*, in ‘*Infamia*’, cit., 58. See also M. KASER, ‘*Infamia*’, cit., 222.

<sup>100</sup> M. RIGGSBY, ‘*Lenocinium*’, cit., 426-427. See also T.J. MCGINN, *Prostitution*, cit., 474.

<sup>101</sup> See the entry ‘*Infamia*’, cit., 635.

there are so many people lying that the Temple of Capitoline Jupiter would be full if all went inside in order to expiate (with the holy sleep). Even the cook (probably another servant) insults the pimp: ‘*Quae res male vortat tibi?*’ (And bad luck may it bring to you!)<sup>63</sup>.

On the theme of perjury, we can find another testimony in the verses 458-463, where the *Leno* Cappadox asks the banker what will happen if he doesn’t respect the oath and Lyco answers ‘What’s the odds to you so long as you get your money?’<sup>64</sup>. Cappadox replies that this was good advice. Another characteristic of the infamous *Leno* is the predisposition to betray each and everyone in order to gain money: the pure venality without any ethics.

In the fourth act of the *Curculio* a very interesting speech is pronounced by the parasite Curculio (he responds in these verses to the promise of the *Leno* to give him a servant woman in real property) who express a social, moral and legal judgment on the personality of the pimps:

<sup>63</sup> See the Latin text and the English translation of P. NIXON, *Plautus*, II, cit., 219.

<sup>64</sup> See the Latin text and the English translation of P. NIXON, *Plautus*, II, cit., 239.

CA: *Memini, et mancipio tibi dabo.*

CU: *Egon ab lenone quicquam mancipio accipiam, quibus sui nihil est nisi una lingua, qui abiurant si quid creditum est? alienos mancipatis, alienos manu emittitis alienisque imperatis, nec vobis auctor ullus est nec vosmet estis ulli. item genus est lenonium inter homines meo quidem animo ut muscae, culices, cimices pedesque pulicesque: odio et malo et molestiae, bono usui estis nulli, nec vobiscum quisquam in foro frugi consistere audet; qui constitit, culpant eum, conspicitur vituperatur, eum rem fidemque perdere, tam etsi nil fecit, aiunt.*

Curculio commences his speech saying that no one can receive something in real property from a *Leno* because he would only own a tongue to make false oaths and say the false. In the verses 513-516 Curculio states that he doesn't recognize the *Lenones* any right to own real property. These statements seem quite important, although modern Roman law doctrine never considered this affirmations until now, asserting that the law in the comedies of Plautus is in reality a comic law and can't be considered as corresponding to reality<sup>65</sup>.

<sup>65</sup> This opinion is sustained for example by Prof. G. Lotito of the University of Pisa. However, Plautus,

The *Leno*, being the opposite, a shameful and dishonorable man, is being sanctioned by the social morality and the legal system. Because of these remarks and the many examples in the comedies of Plautus, the *Leno* can be assumed as a paradigmatic example of social and legal infamy<sup>96</sup>.

At this point we have to inquire if the infamy of the *Leno* has to be considered as a public diminution of the social esteem and a legal condition with sanctions for defamed persons and people on the fringe of society<sup>97</sup>, or if it is a sort of defence of the system in order to not being contaminated by the dishonest and unworthy<sup>98</sup>.

<sup>96</sup> The infamy of the *Leno* not only derives from the declaration of the praetor, but also social morality. In the case of the *Leno*-infamous the will of the legal system and society correspond. Both sanction the actions of these people. In my opinion, there is no reason to find the origins and differences of the law and social morality, since both consider the *Leno* in the same way, as social and juridical infamous. Defamed and with legal incapacities that 'dishonor' him.

<sup>97</sup> As supported in different periods by the dominating doctrine: Savigny, Perozzi, Pommeray, Kaser and Greenidge.

<sup>98</sup> See both theories in J. G. WOLF, *Das Stigma 'Ignominia'*, cit., 55.



If we consider the examples outlined in the precedent chapters, a clear representation of the personality of this infamous, shameful and immoral (even for those who have infamy) *Leno* derives. Summing up all these characteristics they result being the opposite of those of a virtuous person.

In the reconstruction of the characteristics of the honest man, I would like to resume with the review of Senn of actions against the *boni mores*<sup>95</sup>. An honest man always keeps his word, he doesn't try to fraud, he doesn't perjure, he always tells the truth, he respects the *mores*, he exercises the public authorities with honor, he serves in the military, he respects the roman authorities, he respects the *pietas*, he takes care of the family, he doesn't make abuse of the domestic power, he administers the family's patrimony, he is an upright man, he respects the good faith in private relations, he exercises honorable professions, he won't be damned for shameful acts, and, in addition, he pays attention to his good name, his social dignity and to having a good relationship with society.

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<sup>95</sup>F. SENN, *Des origines et du contenu de la notion de bonne moeurs*, in *Recueil d'études sur les sources du droit en l'honneur de Francois Gény (Mélanges Gény)*, II, Paris 1934, 58.

If we take this affirmation as true, we have to consider that in the time of Plautus (the republican period) almost the totality of the roman *actions* were based on 'words' and oaths, and it would be comprehensible they were inaccessible for the pimps, who are perjurers. How could, in fact, a pimp intent an action to defend the ownership or the possession or transfer a real right with an *in iure cessio*? He is a man without honour and his word or oaths are false and worth nothing. In a period where the *existimatio* of a man had a fundamental importance, and where the legal system was based on oral forms that were in turn based on oaths and on the 'given word' of the parts, especially in the field of the real property rights, how could an infamous man without honour, whose words have no value, enunciate a valid oath and participate to this legal system?

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seems to know in depth the Roman law and shows a strong interest. See for example D. CHRISTENSON, *Grotesque Realism in Plautus' Amphitruo*, in *The Classical Journal*, XCVI.3, 2001, 243-260. Or see E. FANTHAM, *The Curculio of Plautus: An Illustration of Plautine Methods in Adaptation*, in *The Classical Quarterly*, XV.1, 1965, 84-100. And see also T. J. MOORE, *Seats and Social Status in the Plautine Theater*, in *The Classical Journal*, XC.2, 1995, 113-123.

After these considerations we have to ask if an infamous person like the *Leno* could have access to the system of Roman property and its tutelage, both based on the credibility of oaths, or if he could possess only outside of the law<sup>66</sup>.

Underlying what has just been stated and considering the invalidity of the term *Leno* in commercial transactions, we just have to remember he is a master in the art of lying, for example when he sustains to not having received the payment on delivery of a slave<sup>67</sup>, as we can see in the lines 494-496 of the long discourse of the parasite ‘*Egon ab lenone quicquam mancipio accipiam, quibus sui nil est nisi una lingua qui abiurant siquid creditum est?*’.

Curculio even affirms that the *Leno* sells things not in his possession (and therefore is also a thief) or frees those not in his possession<sup>68</sup>.

<sup>66</sup> On the transfer of property in ancient Roman and Republican law, see M. KASER, *Eigentum und Besitz im älteren römischen Recht*, in *Forschungen zum römischen Recht*<sup>2</sup>, Book I, Part I, Köln-Wien, 1956, 34.

<sup>67</sup> See the Italian translation of the verses 493-494 of E. PARATORE, *Il Curculio di Plauto*, Roma, 2004, 352.

<sup>68</sup> See R. F. HARTKAMP, *Von ‘Leno’ zu ‘Ruffiano’*, cit., 134.

and having sometimes some accessorial and occasional legal procedural disadvantages.

On the other hand, Pommeray<sup>92</sup> and also Smith affirm that perhaps infamy had its origins in unwritten rules, and therefore in the Roman *mores* and the popular moral sentiment and has then inspired the Censors and their note of ignominy (*nota censorial*), the edict of the praetor and even the *lex Iulia municipalis* and *de adulteriis* and evolved therefore into a legal institution. This very ancient origin in the archaic period could explain the strong connection of both themes (infamy and ignominy) with honor and dishonor. As the studies of Carlin A. Barton show, in this period the social, legal, religious and political Roman point of view was strongly influenced by the concepts of honor and dishonor<sup>93</sup>.

The definition of the infamy therefore derives not only from the legal system, as Savigny affirmed, but also from Roman social morality. A person is not only infamous because he has been declared infamous, but also because the social morality says so. A certainly good example of this social and in parallel legal phenomenon is the character of the *Leno*<sup>94</sup>.

<sup>92</sup> L. POMMERAY, *Etudes*, cit., 43.

<sup>93</sup> See C.A. BARTON, *Roman Honor*, cit., 31.

<sup>94</sup> See L. POMMERAY, *Etudes*, cit., 2.

eral. In his studies, in fact, the author focuses the principal characteristics of infamy on the contrariety to the social, political and legal principles (*boni mores*) of the Roman legal system. According to Pommeray, infamy as a consequence of disregarding the *boni mores* would derive directly from the activity of the *Censors* (the *nota censorial*) and from ignominy. Whereas the infamous disregard of the *fides* and the *pietas* would derive from the popular and social sentiment of disgust caused by disrespecting a *ius iurandum* or the moral and religious rules of the Roman society<sup>89</sup>. In the reality the origin of infamy is uncertain, as we can see in the opposite theories of Savigny and Mommsen. Savigny<sup>90</sup>, in fact, affirms that the legal origin of this institution was related to the *existimatio*, delineating it as a legal category born in connection with the civic honor. Mommsen<sup>91</sup> instead strongly denies this legal origin, stating that infamy was only a popular reaction against the misact of the *boni mores*, normally not related with penal consequences

<sup>89</sup> See L. POMMERAY, *Etudes*, cit., 12.

<sup>90</sup> F.C. SAVIGNY, *System des heutigen römischen Rechts*, Berlin, 1840, II, § 76, 170.

<sup>91</sup> T. MOMMSEN, *Römische Staatsrecht*, cit., 496, and *Römische Strafrecht*, Leipzig, 1899, 993.

Most important, from a juridical point of view is the affirmation: ‘*nec vobis auctor ullus est nec vosmet estis ulli?*’, that is, a *Leno* cannot be guaranteed for and cannot act as a guarantor (*auctor*) for others, which would result in a total absence of *auctoritas*<sup>69</sup>.

Finally, even a parasite as Curculio, who certainly is not at the top of the Roman society, expresses a very low opinion on the *Lenones*, comparing them not only to bugs, but also stating they are odious, harmful and annoying. In addition, still according to Curculio, who risks speaking to a *Leno* is then himself subjected to being defamed and badly seen by the crowd. Another sign that the infamous *Lenones* were isolated and marginalized by society.

Another characteristic of the ‘typology’ of the *Leno* is to cheat and to deceive others in order to make profits. We can clearly see that

<sup>69</sup> On the signification of *auctor* and *auctoritas* see V. ARANGIO-RUIZ, *Istituzioni di diritto romano*, Napoli, 1984, 202 e 342-343. We also have to ask how a *Leno* could perform a *mancipatio* in the Republican period, without being able to give the *obligatio auctoritatis*. Another point that could support the affirmation of impossibility to possess for *Lenones*.

in the words of Cappadox (lines 527-532)<sup>70</sup> who boasts of how he obtained the girl Planesium and how much he earned by this. The lines 535-580 testify the tricks and dishonesty when Therapontigonus laments that the *Leno*, in order to gain profits, breaks his words. The vigour of how he expresses his disapproval (for example in line 587: ‘*Male vale, male sit tibi?*’) expresses once again the despise of the *Leno*.

Concluding with a final passage of the *Curculio*, a discourse between Therapontigonus and Cappadox (vv. 705-09) once again underlines the perjury of the *Lenones*:

T. *Quodne promisti?*

CA. *Qui promisi?*

PH. *Lingua.*

CA. *Eadem nunc nego. dicendi, non rem perdendi gratia haec nata est mihi.*<sup>71</sup>

<sup>70</sup> Consider the text: ‘CA. *Quando bene gessi rem, volo hic in fano supplicare. nam illam minis olim decem puellam parvulam emi, sed eum qui mi illam vendidit numquam postilla vidi; periisse credo. quid id mea refert? ego argentum habeo. quoi homini di sunt propitii, lucrum ei profecto obiciunt. nunc rei divinae operam dabo. certumst bene me curare.*’

<sup>71</sup> See the translation of E. PARATORE, *Il Curculio di Plauto*, cit., 372.

adds the *fides*: ‘*Nunc simul res, fides, fama, virus, decus deserunt*’<sup>87</sup>.

#### 5. *Characteristic Aspects of the Infamy of the ‘Leno’ from a Social-Legal Point of View.*

On the basis of the precedent examples it seems that the infamy of the *Leno*, considering the point of view of Plautus in his comedies, has its beginnings as a popular, social and legal reaction against behaviors contrasting the ‘*boni mores*’, as sum of honesty and virtue, with the *pietas*, and with the *fides*.

These characteristic aspects of the infamy of the Plautinian *Leno*, as we can see in the observations of Leon Pommeray<sup>88</sup>, which are based on the precedent studies of Mommsen and Savigny, correspond in majority to the typical characteristics of the infamous in gen-

<sup>87</sup> L. POMMERAY, *Etudes*, cit., 12.

<sup>88</sup> See L. POMMERAY, *Etudes*, cit., 10. Here the author depicts the opinions of T. Mommsen and F.C. Savigny on the origin of infamy. According to the first, infamy was a popular and moral reaction and not a penalty. According to Savigny infamy is a juridical concept related to the *existimatio*, an institute of public law we can encounter during the whole roman history.

GRIP. *Iuratust mihi dare.*

LABR. *Libet iurare. Tu n' meo pontifex peiurio es?*

As can be seen in these verses, the *Leno* Labrax, accused by the fisher Gricus of perjury, makes fun of him and asks him whether he would be the pontiff, since he is accusing him of perjury. Another characteristic which we can add, therefore, to the short list of the *Pseudolus*.

All these characteristics could now be retraced to a major aspect characterizing the infamy of the *Leno*: the affront against *boni mores* (comprising honesty and virtue) and *pietas*.

Another thread of examples characterizes infamy as resulting from the *Leno* breaking the *bona fides* (by committing perjury and deceiving).

Examples are the words of Plautus (pronounced by the Virgin) in line 347 of the *Persa*: ‘*Nam ad paupertatem si admigrant infamiae, gravior paupertas fit, fides sublestior.*’ And in line 144 of the *Mostellaria*, where the author, in addition to the offence of virtue, the good name and how one should behave properly,

In some passages of the *Pseudolus* we can find the same characteristics of the *Lenones* shown before, almost as if the infamous *Lenones* would possess them by nature<sup>72</sup>. In this comedy, the young Calidorus tempts to liberate, with the help of the servant Pseudolus<sup>73</sup>, the maiden Phoenicium from the *Leno* Ballio, who menaces to make her prostitute herself. We begin with the topic of perjury and social disregard of the infamous *Lenones*, that can be seen in the lines 130-133:

CAL. *Ostium lenonis crepuit.*

PS. *Crura mavellem modo.*

CAL. *Atque ipse egreditur intus, periuri caput.*

Here we can see how the servant Pseudolus hopes that the knees of the *Leno* would creak instead of the doors<sup>74</sup>.

Also Calidorus doesn't have nice words for our Ballio, since he defines him as perjurer

<sup>72</sup> The *Leno* would acquire in this way a true ‘social typicality’. The *Leno* has these characteristics because of his activity, independently from his individual personality.

<sup>73</sup> See the *Pseudolus* of Plautus, Italian translation of E. PARATORE, Milano, 2000, 6-8.

<sup>74</sup> See the English translation of P. NIXON, *Plautus*, IV, cit., 162.

(*periuri caput*). The quality of perjury seems to be innate to the *Leno* as ‘typical’ infamous, independently of his actions.

In the verses 193-194 Calidorus attacks again Ballio, calling him ‘*Furcifer*’<sup>75</sup>, whereas Pseudolus gives him the appellation of ‘*malifcus*’. Ballio himself jokes about the capability of the *Lenones* and the butchers to make false oaths (verses 197-200):

BAL. *Aeschrodora, tu quae amicos tibi habes lenonum aemulos lanios, qui, item ut nos iurando, iure malo male quaerunt rem, audi: nisi carnaria tria gravida tegoribus onere uberi hodie mihi erunt, cras te quasi Dircam olim, ut memorant, duo gnati Iovis devinxere ad taurum, item ego te distringam ad carnarium id tibi profecto taurus fiet.*

In this text, as in many other Plautinian texts, we can see how the *Leno* makes fun of

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<sup>75</sup> We could translate ‘*furcifer*’ as ‘rascal’ in the negative sense of the term, corresponding to the Italian translation ‘*furfante*’ in *Vocabolario della lingua latina* (Castiglione-Mariotti), Torino, 1966, 599. However, a more appropriate translation corresponds to the Italian ‘*pendaglio da forca*’, that indicates the rascal fated to the gallows, in *Dizionario della lingua latina* (Georges-Calonghi), Torino, 1966, 1175.

These verses synthesise the qualities of the *Leno*/infamous, who, probably because of these characteristics is considered infamous<sup>85</sup>.

Another characteristics, for which already some examples have been shown, but for which I would like to point out another aspect – to be lacking in respect towards the institutions, the legal system and the religious systems – can be seen in another famous passage of Plautus, in the lines 1372-1377 of the *Rudens*<sup>86</sup>:

GRIP. *Non tu iuratus mihi es?*

LABR. *Iuratus sum, et nunc iurabo, si quid voluptati est mihi: ius iurandum rei servandae, non perdendae conditum est.*

GRIP. *Cedo sis mihi talentum magnum argenti, periurissime.*

DAEM. *Gripe, quod tu istum talentum poscis?*

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<sup>85</sup> According to Pommeray, infamy had its origins as social-moral reaction against certain behavior, and has then been transformed, first by the censors and then by the praetor and the imperial provisions, into a legal condition sanctioned by law in addition to social sanctions. However, for the classical Roman period it has remained closely connected to the public *existimatio*. See L. POMMERAY, *Etudes*, cit., 271.

<sup>86</sup> See the translation of P. NIXON, *Plautus*, IV, cit., 428.

Only few lines after (362) Calidorus calls Ballio a delinquent (*scelestes*) and he responds calmly that he would be – it almost seems to be a compliment for him.

It may seem that the *Leno* ‘wants’ to be defined as delinquent in order to ‘gain’ a certain reputation and credit in his social milieu populated with scoundrels<sup>83</sup>.

The major testimony of the social disrespect and disvalue of the *Leno* (and probably all infamous) in the Plautinian period can be observed in the verses 360-369, where the *Leno* is adorned with a series of epithets summarizing his peculiarities, among which are: *Bustirape*, *Furcifer*, *Parricida*, *Sacrilege*, *Periure*, *Legerupa*, *Inpure*, *Fur*, *Fraudulente*<sup>84</sup>.

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radox: for Ballio being honest is something to be ashamed of, as if it would ‘devalue’ him in his world of villains and infamous.

<sup>83</sup> As example, the *Leno* Labrax of the *Rudens* of Plautus shows himself in more than one occasion proud of being a villain and delinquent.

<sup>84</sup> The words *Legerupa*, *Periure*, *Parricida*, *Fraudulente*, seem to come from the juridical language. Although many researchers affirm that the law in the comedies of Plautus is a ‘law of comedy’, the thorough knowledge of Plautus could led to think that these words define the negative characteristics of the *Leno* also in a juridical way.

himself and the society<sup>76</sup>. Indeed, he is pleased and proud to make a fortune with false oaths, although a virtuous man would never do so.

A strong impact has the line 204 where Pseudolus defines the *Lenones* as a ‘pestilence’ to get rid of: ‘... *quin una omnes peste hac populunt hunc liberant?*’. Once again a testimony of the disdain of the people – since even a villain servant like Pseudolus can make this assertion – showing how little social consideration the infamous had in Rome<sup>77</sup>, even less than a servant.

Let’s consider now another important characteristic of a *Leno*/infamous: the disrespect of religion and morality – the so-called impiety<sup>78</sup> (in strong contrast with the honest and virtuous man). In the lines 265-269 we can read:

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<sup>76</sup> On these general remarks on the characters of the Plautinian comedies (and therefore also the *Leno*) see R. DANESE, *Modelli letterari e modelli culturali del teatro plautino*, in *Due seminari plautini*, edited by C. Questa and R. Raffaelli, Urbino, 2002, 133-154.

<sup>77</sup> See also C. A. BARTON, *Roman Honor*, cit., 268.

<sup>78</sup> On the concept of impiety and the concept of *pietas* from a social-juridical point of view, see P. DE FRANCISCI, *La legittimazione attiva nell’azione funeraria*, in *Il Filangeri*, XL, 1915, 19.

BAL. *Respiciam istoc pretio; nam si sacrificem summo Iovi atque in manibus exta teneam, ut poriciam, interea loci si lucri quid detur, potius rem divinam deseram. non potest pietati opsisti huic, utut res sunt ceterae.*

PS. *Deos quidem, quos maxime aequom est metuere, eos minimi facit.*

While Pseudolus asserts that one has to have fear and respect of the gods, Ballio, in order to gain profits, would offend Jove personally by letting a sacrifice unfinished. Even the servant is scandalized by the impiety of the *Leno*. While even the servant follows his moral and religious rules, the other has none<sup>79</sup>.

Another testimony of the impiety of the *Leno* can be found in the lines 278-295, where Ballio suggests Calidorus to steal money from his father in order to pay Phoenicium and Pseudolus responds scandalized that this was not right. While Ballio answers that a right action is not of a *Leno*.<sup>80</sup>

<sup>79</sup> See the comments of G. Faranda to the *Pseudolus* of Plautus, Milano, 2000, 247. Here the *Leno* shows his side of impiety, another important characteristics of an infamous.

<sup>80</sup> See the text and the English translation of P. NIXON, *Plautus*, IV, cit., 178-180.

Calidorus, subsequently replies that the *pietas* would prohibit it (*'pietas prohibet'*), while Ballio makes fun of him and his *pietas*<sup>81</sup>. In the lines 351-356 Calidorus accuses Ballio to have made a solemn oath (with the appropriate formula and words '*..conceptis verbis*') and to have broken it like a villain. The *Leno* responds candidly that this is how he has earned money. Ballio makes fun of Calidorus and his honesty, as if it would be a disvalue<sup>82</sup>.

<sup>81</sup> Consider the original text: BAL. *Si amabas, invenires mutuom, ad danistam devenires, adderes faenusculum, surruperes patri.* PS. *Surruperet hic patri, audacissime? non periculumst ne quid recte monstres.* BAL. *Non lenoniumst.* CAL. *Egon patri surrupere possim quicquam, tam cauto seni? atque adeo, si facere possim, pietas prohibet.* BAL. *Audio. pietatem ergo istam amplexator noctu pro Phoenicio. sed cum pietatem te amori video tuo praevortere, omnes <homines> tibi patres sunt? nullus est tibi quem roges mutuom argentum?.* It is interesting to note that a villain servant like Pseudolus speaks of the *Leno* as '*audacissime*'

<sup>82</sup> Consider the following verses: CAL. *Quid ais, quantum terra tegit hominum periurissu-me? iuravistin te illam nulli venditurum nisi mihi?* BAL. *Fateor.* CAL. *Nempe conceptis verbis?* BAL. *Etiam consutis quoque.* CAL. *Periuravisti, sceleste.* BAL. *At argentum intro condidi. ego scelestus nunc argentum promere possum domo: tu qui pius, istoc es genere gnatus, nummum non habes.* Here we can see the pa-