

## Edict of the consuls on Bacchanals: realism and caution

Livy concludes the eighteenth chapter of the thirty-ninth book of his *Stories* citing an important provision probably approved in the first *senatus consultum* on the Bacchanalia<sup>1</sup> and an extract of the legislative norms approved by the senate in the session of October 7 of 186 BC. These rules were later rendered executive with an edict of the consuls of which we possess an original copy found on a bronze tablet in Tiriolo (Catanzaro).

Livy makes no reference to this edict of the consuls, but simply reproduces a concise summary of the provisions approved by the Senate, probably made from its source. In fact, he did not have the habit of going to consult the documents in their original, but he accepted those he found reported by the analysts.<sup>2</sup>

Therefore the author of the summary of the rules recommended by the consuls on Bacchanals reported by Livio was based not on the text of the edict of the consuls, erroneously believed to be the text of the senate, but on the minutes of the *consultum* of the senate. The historian, in fact, introduces the provision of the first *senatus consultum* with the words: *Datum deinde consulibus negotium est ut...* Certainly it was the senate that commissioned the consuls.

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<sup>1</sup> The first *senatus consultum* (39, 14, 5 - 10) sets in motion the persecution of the followers of Bacchus and fixes the concrete modalities of the inquiry. It is specified by the rules of application, rendered executive by the consuls with an edict.

<sup>2</sup> G. De Sanctis, *Livio e la storiografia romana*, in *Problemi di storia antica*, Bari, 1932.

After citing this rule, Livy brings back some provisions approved in the senate consultation on October 7 and introduces them with very eloquent words: "later, with a consultation of the senate, he arranged that ...".<sup>3</sup>

Livy's text only reports the senatorial provisions deemed most important by the author.<sup>4</sup> In fact, it does not mention some important rules, which instead are present in the edict of the consuls. Of course, Livy does not report the provisions relating to the publication of the edict that the consuls communicated to the local authorities. We can add that even the lack of the rules relating to the publication of the edict in Livy's text shows that his source did not take this document into account.

If we carefully analyse all the norms reported in Livy's brief summary and compare them with the corresponding norms promulgated by the consuls in their edict, we have a well-founded suspicion that the source of historian reported from the consultum only the provisions that seemed most important to him, but he brought them back with more loyalty. They are characterized by greater precision and concreteness but also by greater hardness. It seems quite normal that an annalist (Livy's source) reproduced the rules as they were written on the minutes of the *senatus consultum*. The provisions show a very precise logic: in the decisions of the Senate the will of the

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<sup>3</sup> LIVIO, XXXIX, 18, 8: *In reliquum deinde senatus consulto cautum est ne ...*

<sup>4</sup> LIVIO, XXXIX, 18, 7-9: *Si quis tale sacrum sollemne et necessarium duceret, nec sine religione et piaculo se id omittere posse, apud praetorem urbanum profiteretur, praetor senatum consuleret. Si ei permissum esset, cum in senatu centum non minus essent, ita id sacrum faceret, dum ne plus quinque sacrificio interessent, neu qua pecunia communis, neu quis magister sacrorum aut sacerdos esset.*

ultra-conservatives prevailed. We must add that Livy's source had no interest in modifying the text of the minutes.

As usual, the consuls, for many matters, were obliged to consult the senate, but the related *consultum* was never conceived as binding but was always subordinate to the clause "if it seems appropriate to the magistrates".<sup>5</sup> The magistrates therefore could not comply with the requirements of the consultation, respect them in whole or in part. The word "key" ITA (so), which the consuls use in the preamble, suggests that in our case they have followed fairly faithfully the norms approved by the senators. The consuls, when they prepared their edict, realized that some rules were too strict and peremptory. Perhaps, among other things, they also realized that they were dealing with the followers of a divinity who used to take revenge severely on his opponents. So they acted with more realism and caution and perhaps with the support of authoritative senators they tried with a few brushstrokes to make the rules a little less draconian.

They reported all the norms approved in the *consultum*, but they used their decision-making power and, with slight tweaks, they made the too restrictive prescriptions more conciliatory.

Livy begins his summary with the news that «The consuls were then instructed to demolish all the places of worship of the Bacchantes, first in Rome and then throughout Italy, except for those where there was an ancient altar or statue of the God".<sup>6</sup>

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<sup>5</sup> GUARINO 1963, p. 204 : *si magistratibus videbitur*.

<sup>6</sup> Livio (18,7) *Datum deinde consulibus negotium est ut omnia Bacchanalia Romae primum, deinde per totam Italiam diruerent, extra quam si ibi uetusta ara aut signum consecratum esset*.

This norm was almost certainly approved in a session of the senate preceding that of 7 October, the one in which it was decided to take the first measures against the followers of Bacchus and to entrust to the consuls with an extraordinary mandate an investigation into Bacchanals and nightly rites. In fact, the consul Postumius, in his speech to the people (*contio*) immediately after this session, among other things states: "I thought it well to inform you before about the problem, so that your hearts are not surprised by some religious disturbance when you saw us demolish the seats of the Bacchanals and disperse those nefarious congregations".<sup>7</sup>

Even in the demolition of places of worship, the senators grant an exemption but under a certain condition. In Livy the condition is precise and punctual: there must have been an ancient altar or a consecrated statue of God.

In this case we can hypothesize that Livy's brief summary reports how the condition of the derogation was expressed in the minutes of the Senate consultation. This provision, on the other hand, concludes the edict of the consuls to the Teurans and is directed to the competent authorities by territory.<sup>8</sup> It is part of the edict execution requirements. When the consuls included this provision in their edict, they judged the problem with more realism and caution. They used their decision-making power and made the condition of the derogation more general: «except if there was an ancient altar or a consecrated statue» it

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<sup>7</sup> Livio, XXXIX, 16: *Haec vobis praedicenda ratus sum ne qua supertitio agitare animos uestros, cum demolientes nos Bacchanalia discutientesque nefarios coetus cerneretis.*

<sup>8</sup> CIL, X, 104, r. 28 -30: *atque utei Bacanalia sei qua sunt, exstrad quam sei quid ibei sacri est ita utei suprad scriptum est, in diebus X quibus uobeis tabelai datai erunt faciat is utei dismota sient.*

becomes in the edict «except if there is something sacred». They simply made the rule more general. Thus the local authorities would have had greater autonomy of judgment and the possibility of carefully considering also other conditions of the place before demolishing a Bacchanal. There could have been cases where the destruction of a sanctuary in certain environments had to be avoided even if there was no ancient altar or consecrated statue of the god.

The first ban approved by the senate states that no one can hold a place of worship. **With this prohibition, the senators aim to achieve their main objective: the drastic limitation of the places of worship of the Bacchantes.** It is these places, symbols for the activities that take place in them, the particular target of the senate.<sup>9</sup> If many of the existing places of worship were eliminated and the possibility of creating others was avoided, at the same time associates were prevented from attending numerous at their night meetings, dangerous for public order and morals, but also any possibility of future development of their community.

However, some people may have considered it necessary to keep a sanctuary.<sup>10</sup> According to the Romans, the relationship between man and divinity was consecrated by a contract, which could not be violated with impunity. Now, if in general the Bacchanals were a danger to the state and had to be eliminated, there was also a god who was called Bacchus or Libero and had a right in certain respects

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<sup>9</sup> FLOWER 2002, p. 84; PAILLER, 1985, p. 267.

<sup>10</sup> CIL X, 104, r. 3-4: *sei ques esent quei sibi dicerent necesus ese bacanal habere*. LIVIO, 18, 7: *si quis tale sacrum sollemne et necessarium duceret*.

and it was necessary to honour and venerate him, even if in the forms allowed by the Roman ritual. There could therefore be cases in which abandoning his cult could represent a serious offense against divinity. In such cases, a derogation had to be granted, logically under certain conditions. Livy tells us precisely who could ask the urban praetor for an exemption: *quis tale sacrum sollemne et necessarium duceret, nec sine religione et piaculo se id omittere posse*.

*Sollemnis* is an adjective of the religious language and applied to ceremonies, rites, customs solemnly performed and celebrated on a fixed date.<sup>11</sup> The first meaning, that of regularity, is noted with precision by Festo: *stata sacrificia sunt, quae certis diebus fieri debent ... Sollemnia sacra dicuntur, quae certis temporibus annisque fieri solent*.<sup>12</sup> The word also has the meaning of "mandatory".<sup>13</sup> As Fugier points out, the fundamental sense of periodic has two derivatives: habitual and obligatory, which are closely connected to each other.<sup>14</sup> This almost organic connection of the two senses explains that in almost all the texts *sollemnis* is associated with *necessarium*.<sup>15</sup> On the basis of these elements the term also contains the third meaning of "conforming to the customs of a people, national".<sup>16</sup> So with

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<sup>11</sup> ERNOUT-MEILLET, s.u. *sollemnis*.

<sup>12</sup> FESTO, p. 466, 24 LINDSAY; cfr. CICERONE, *Tusculanae*, I, 47, 113: *Ad sollemne et statu[tu]m sacrificium*.

<sup>13</sup> Cfr. FESTO, 304, 36 Lindsay : *Sollemne quod omnibus annis sacrari debet*.

<sup>14</sup> FUGIER, 1963, pp. 310 – 311.

<sup>15</sup> PAILLER, 1988, p. 216 ; cfr. Livy, XXXIX, 15, 2 : *non solum apta, sed etiam necessaria haec sollemnis deorum comprecatio fuit*.

<sup>16</sup> FUGIER, 1963, pp. 316 – 317. For a complete examination of the term *sollemnis*, see: PAILLER, 1988, p. 214 ss.

the expression *sacrum sollemne et necessarium* Livy means a religious ceremony that took place annually on fixed dates and that had become mandatory as it became an integral part of the uses of the Roman people, i.e. national. The other words (*religio* and *piaculum*) both contain the notion of obligation, of a moral bond. *Religio*, a very complex term for us, represents the religious scruple of not being able to interrupt a long-practiced cult: *sine religione* means "without profanation, without betraying an obligation taken towards the divinity". *Piaculum* corresponds to an act of impiety for which it is necessary to make atonement for an offense made against the *ius sacrum*.<sup>17</sup>

In this case too, the consuls make the precise expression used by Livy more generic and simply say "if it was deemed necessary". In this way the praetor with the consent of the senators would have in the future had the possibility of considering it necessary to maintain a place of worship also for reasons other than those highlighted by Livy and which were probably those decided by the senate. In practice, they grant the magistrate and the senate greater freedom of decision-making, if this was necessary.

Livy ends his brief summary by highlighting the conditions of the derogation: "If a person was granted the faculty by the senate in a session composed of at least one hundred senators, he would also do his ceremony, but on condition that no more than five people took part, there

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<sup>17</sup> BRUHL, 1952, p. 104.

was no common fund, nor a master of ceremonies, nor a priest ».<sup>18</sup>

According to Livy's text in a ceremony authorized, among other things, there could be no priest. The consuls realized that it was not logical to do a sacred ceremony without a priest and therefore confirmed the exclusion of a male priest (too dangerous) but implicitly believed that a priestess could be admitted<sup>19</sup>. In effect, they merely exclude a male priest.

The historian also adds that with the consent of the praetor and at least a hundred senators the religious ceremony could take place but more than five people could not participate in it.<sup>20</sup> However, it seems illogical that only five people could participate in a ceremony deemed mandatory, necessary and an integral part of the customs of the Roman people.

Livy or his source may have reported the five-participant limit as it had been approved by the senators, although, we must admit, it remains a fairly irrational measure. The consuls later in formulating their edict may have become aware of the contradiction and, as the law allowed it, have remedied this oddity.<sup>21</sup> They thus decided that a religious ceremony which took place annually on fixed dates and which had become mandatory as it had

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<sup>18</sup> Livio, 18,9: *Si ei permissum esset, cum in senatu centum non minus essent, ita id sacrum faceret dum ne plus quinque sacrificio interessent neu qua pecunia communis neu quis magister aut sacerdos esse.*

<sup>19</sup> CIL X, 104, r. 10: *Sacerdos nequis uir eset.*

<sup>20</sup> Livio (18,9) *Si ei permissum esset, cum in senatu centum non minus essent, ita id sacrum faceret dum ne plus quinque sacrificio interessent.*

<sup>21</sup> As we pointed out earlier, the consuls were not obliged to respect the senators' advice.



become an integral part of the customs of the Roman people, if it was regularly authorized, could have the normal participation of all the people concerned. In fact in the fourth ordinance the consuls affirm: "Nobody wanted to celebrate sacred rites if there were more than five people in all, men and women and between sexes they did not want to be present more than two men and more than three women, if not after authorization of the urban praetor and the senate, as was written above".<sup>22</sup> From this provision it can be deduced that, after specific authorization from the authorities, it was allowed not only that the composition (no more than two men and no more than three women) could be different but also there was a number of participants greater than five (basically everyone who wanted).<sup>23</sup> The two requirements regarding the number of participants and their composition are in fact closely connected by the coordinating conjunction *neue*, therefore the possibility of derogation can only refer to both.<sup>24</sup> The consuls specify that among the five participants, three must have been women and two men. So if one of the women performed the necessary function of priestess, the other participants came to find themselves in perfect equality. The authorization of the urban praetor and the senate was not necessary if five people or less were present at a ceremony. The consuls with more realism believed that below this figure one could not even speak of real sacred ceremonies but of simple acts of veneration for a divinity

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<sup>22</sup> CIL X, 104, r. 19 – 21: *homines plous V oinuorsei uirei atque mulieres sacra ne quisquam | fecise uelet, neue inter ibei uirei plous duobus, mulieribus plous tribus | arfuisse uelent, nisei de pr. urbani senatuosque sentiadiad, utei suprad | scriptum est.*

<sup>23</sup> JEANMAIRE 1949, p. 456 ; DUMÉZIL 2001, p. 446.

<sup>24</sup> ERNOUT – THOMAS 1964, p. 443.

recognized by the State, performed by a very small number of people, from whom it would not have no negative consequences could have arisen. Overall, the provisions contained in this prohibition are those which differ most from those contained in Livy's text. If we accept the hypothesis that the rules reported by Livy are more faithful to those reported in the minutes of the senatorial consultum, these rules of the consuls are those in which they show greater autonomy of decision. In the first three ordinances, the consuls, with the use of *censuere* (it indicates the approval of the senate to the previous rule), showed that they limited themselves to implementing the provisions approved by the senate. In the fourth ordinance the *censuere* is missing. Perhaps the consuls realized that they could not say that these rules had also been decided by the senate. In fact, they had been significantly modified by them and made less drastic and more human.<sup>25</sup> In conclusion, we can say that the consuls in their edict viewed things with more realism and caution. So without distortions and with very few tweaks they made some senatorial norms on Bacchanals less rigid and more reasonable.

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<sup>25</sup> ALBANESE 2001, p. 23: «It seems to me more probable that this trait, which constitutes, as I have already said, a fourth normative clause, is a summary of senatorial prescriptions made by the consuls. In this sense, the circumstance of the absence of the *censuere*, that recurred in the three previous clauses, immediately guides ».