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## LUCRETIA AND HER *CONSILIUM DOMESTICUM*\*

The article takes a critical look at the idea that the gathering of men Lucretia confronts a few moments before her suicide is to be understood as an ancient Roman domestic court (*consilium domesticum*). Arguing from the basis that the paternal power (*patria potestas*) is a constitutive element of this private-law institution, it examines what supports and what conflicts with the interpretation.

**Keywords:** Lucretia, Collatinus, *consilium domesticum*, *patria potestas*, *manus*, Roman marriage, private law, T. Livius, Dionysius of Halicarnassus, P. Ovidius Naso

The following investigation will deal with a critical moment within the Lucretia episode: the short time between Lucretia's rape and suicide. The three earliest versions that have come down to us in their entirety,<sup>1</sup> and which were written within a short time of each other, all attest to the fact that Lucretia is said to have faced a group of men in her last moments.<sup>2</sup> This gathering has been interpreted several times as an

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<sup>1</sup> Livy (1.57.4–58.12), Dionysius of Halicarnassus (*Ant. Rom.* 4.64.4–67.49), Ovid (*Fast.* 2.723–836). I am going to cite the following translations: E. Cary, *Dionysius of Halicarnassus. Roman Antiquities, Volume I: Books 1–2* (Cambridge, MA, 1937); E. Cary, *Dionysius of Halicarnassus. Roman Antiquities, Volume II: Books 3–4* (Cambridge, MA, 1939); B. O. Foster, *Livy. History of Rome, Volume I: Books 1–2* (Cambridge, MA, 1919); J. G. Frazer, *Ovid. Fasti*, rev. by G. P. Goold (Cambridge, MA, 1931). On the further reception of the myth of Lucretia, see I. Donaldson, *The Rapes of Lucretia. A Myth and its Transformations* (Oxford, 1982); P. Chrystal, 'Two Case Studies on Receptions of Sex and Power: Lucretia and Verginia', in K. R. Moore (ed.), *The Routledge Companion to the Reception of Ancient Greek and Roman Gender and Sexuality* (London/New York, 2023), 317–56; T. Späth, 'Zwei Lesebrillen für Lucretia: Vom paganen exemplum zur christlichen controversia', in C. Semenzato and L. Hartmann (eds.), *Von der Antike begeistert! Philologie, Philosophie, Religion und Politik durch drei Jahrtausende* (Basel, 2023), 339–49.

<sup>2</sup> Livy 1.58.5–12, Dion. Hal. *Ant. Rom.* 4.66–7, Ovid. *Fast.* 2.815–36.

ancient Roman domestic court (*consilium domesticum*).<sup>3</sup> This interpretation is sometimes applied to Livy's version, but mostly to the story of Lucretia in general, suggesting that all accounts were alike without exception. Thus, it is necessary to get an overview of our three accounts, to briefly outline them and to work out similarities and differences. Unfortunately, almost all scholars identify the gathering as a *consilium domesticum* without explaining why or reflecting on the nature of the domestic court. Accordingly, a certain preliminary consideration is needed before discussing the actual interpretation. It seems useful to me to approach the domestic court via a constitutive element: the central aspect of 'paternal power' (*patria potestas*), or at least the one most often observed, is the 'right of life and death' (*ius vitae necisque*), which allows the 'male head of the household' (*pater familias*) to kill his children.<sup>4</sup> The first step is to look for possible holders of *patria potestas*, which includes the question of possible indications for the form of Lucretia's marriage.<sup>5</sup> After this preliminary consideration, it is necessary to clarify what corroborates this thesis, but also what is contrary to it.

## I

The story begins with the siege of the city of Ardea (Dion. Hal. *Ant. Rom.* 4.64.1; Livy 1.56.3–5; Ov. *Fast.* 2.721–4). In Livy and Ovid (Livy 1.56.5–57.11; Ov. *Fast.* 2.725–66), the men in the army camp are arguing about which of their wives is the most virtuous and decent. L. Tarquinius Collatinus, Lucretia's husband, proposes to let actions

<sup>3</sup> R. M. Ogilvie, *A Commentary on Livy. Books 1–5* (Oxford, 1965), 219; A. Watson, *Rome of the XII Tables. Persons and Property* (Princeton, NJ, 1975), 67; Donaldson (n. 1), 24; G. Doblhofer, *Vergewaltigung in der Antike* (Stuttgart, 1994), 13; B. Kowalewski, *Frauengestalten im Geschichtswerk des T. Livius* (Munich, 2002), 117; C. F. Amunategui Perello, 'Lucretia and the Historical System of Noxality', *RIDA* 55 (2008), 74; C. Schultze, 'Ways of Killing Women: Dionysios on the Deaths of Horatia and Lucretia', in R. L. Hunter and C. de Jonge (eds.), *Dionysius of Halicarnassus and the Augustan Rome. Rhetoric, Criticism and Historiography* (Cambridge, 2019), 171. We will return to Weissenborn's attribution to this group in the course of our study.

<sup>4</sup> Watson (n. 3), 42; W. V. Harris, 'The Roman Father's Power of Life and Death', in R. S. Bagnall and W. V. Harris (eds.), *Studies in Roman Law in Memory of A. Arthur Schiller* (Leiden, 1986), 81; S. Treggiari, *Roman Marriage. Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1991), 16; R. Westbrook, 'Vitae necisque potestas', *Historia* 48 (1999), 203–23; J. Curran, 'Ius vitae necisque: The Politics of Killing Children', *JAH* 6 (2018), 111–35.

<sup>5</sup> On the nature of *patria potestas* with consideration of the 'authority of a husband over his wife' (*manus*), see Watson (n. 3), 9.

speak instead of words and to see for themselves. So the men saddle their horses and ride home. Once there, they find Lucretia, in contrast to the other wine-drinking and misbehaving wives, weaving with her maids. Among the men is the king's son, Sextus Tarquinius, who falls in love with Lucretia. Dionysius (*Ant. Rom.* 4.64.4) speaks only of Sextus' earlier encounters with Lucretia. Whether this 'competition of women' (*certamen muliebre*) is meant must remain unclear. In all three versions, however, Sextus is unable to calm his sexual desire for long and sets off again for Lucretia and rapes her under cover of night, threatening her with violence and death (*Dion. Hal. Ant. Rom.* 4.64.4–65.4; *Livy* 1.57.11–58.4; *Ov. Fast.* 2.767–812). After the king's son leaves Lucretia the next morning, our accounts part ways.

According to Dionysius (*Ant. Rom.* 4.66.1–67.1), Lucretia sets off to tell her father, Sp. Lucretius Tricipitinus, of the crime. She goes silently into her father's house, where other relatives are also present, falls at her father's feet and, when asked by her father, tells him what has been done to her. Beforehand, she asks Lucretius to call in other friends and relatives. Then she tells the gathered crowd about her rape. Only one option remains for her: suicide. After instructing her father and relatives to avenge the rape and bidding farewell with prayers and last words, she stabs herself. Collatinus knows nothing of all this and is only informed of the events afterwards in the army camp (*Dion. Hal. Ant. Rom.* 4.67.4).

Livy and Ovid know nothing of Lucretia's journey. According to their accounts (*Livy* 1.58.5–12; *Ov. Fast.* 2.813–36), Lucretia, completely depressed, sends a messenger to summon father and husband to her house. Lucretius and Collatinus appear in Ovid alone, in Livy together with P. Valerius Publicola and L. Iunius Brutus, who were to play decisive roles in the constitution of the Roman Republic (*res publica libera*). Lucretia recounts the disgraceful act of Sextus. The men see no guilt or wrongdoing on Lucretia's part and try to build her up and calm her down. However, she no longer wants to live like this and then kills herself by sword.

All sources agree on the consequences of this event: the behaviour of Sextus Tarquinius is emblematic for the tyranny and arrogance of the Tarquinians and forms the starting point for the expulsion of the Roman kings and for the formation of the *res publica libera* (*Dion. Hal. Ant. Rom.* 4.67.2; *Livy*, 1.59.1–2; *Ov. Fast.* 2.837–52).

## II

Right at the beginning, it must be noted that our sources mention neither *patria potestas* nor the ‘authority of a husband over his wife’ (*manus*) explicitly. In order to be able to make fitting statements, we must therefore resort to the analysis of words (the authors’ linguistic means) and deeds (the protagonists’ behaviour towards each other). With regard to *patria potestas* and *manus*, only Sp. Lucretius Tricipitinus and L. Tarquinius Collatinus, as well as Lucretia’s relationship to both, will be the focus of our investigation for the time being.

The account of Dionysius differs in this point from those of Livy and Ovid. What is most striking is that Collatinus, as Lucretia’s husband, is initially (Dion. Hal. *Ant. Rom.* 4.67.3–4) completely sidelined.<sup>6</sup> In Dionysius’ version, Lucretius is the only person besides Lucretia who acts individually (Dion. Hal. *Ant. Rom.* 4.66.2–3, 4.67.2), whereas all the other characters act as a collective kind of group (Dion. Hal. *Ant. Rom.* 4.66.1–3, 4.67.1). Lucretia even begins to speak only after Lucretius has asked her a question: ‘And when he raised her up and asked her what had befallen her, she said “I come to you as a suppliant, father, having endured terrible and intolerable outrage”’ (ἔπειτ’ ἀνιστάντος αὐτὴν τοῦ πατρὸς καὶ τί πέπονθεν ἀξιούντος λέγειν· Ἰκέτις, ἔφη, γίνομαι σου, πάτερ, δεινὴν καὶ ἀνήκεστον ὑπομείνασα ὕβριν, Dion. Hal. *Ant. Rom.* 4.66.2). It seems as if she is waiting at her father’s feet for a ‘permission to speak’ (*venia loquendi*).<sup>7</sup> Moreover, Lucretia behaves in a decidedly passive manner. For example, she begs her father: ‘Send for as many of your friends and kinsmen as you can, so that they may hear the report from me, the victim of terrible wrongs, rather than from others’ (κάλεσον ὅσους δύνασαι πλείστους φίλους τε καὶ συγγενεῖς, ἵνα παρ’ ἐμοῦ τῆς τὰ δεινὰ παθούσης ἀκούσωσι καὶ μὴ παρ’ ἐτέρων, Dion. Hal. *Ant. Rom.* 4.66.3). However, she does not send for them herself. At the same time, she emphasizes that her misfortune affects Lucretius as well: ‘Consult with them in what

<sup>6</sup> Schultze (n. 3), 176.

<sup>7</sup> The *venia loquendi*, i.e. the permission to speak, is part of the concept of *vires loquendi* (‘power to speak’) as a visualization of gender-specific power positions. Men speak, whereas women are the ones who remain silent or are silenced. Sextus Tarquinius, for example, addresses Lucretia with the words: ‘Be silent, Lucretia!’ (*Tace, Lucretia*, Livy 1.58.2). See V. Rosenberger, ‘Die schöne Leiche: Lucretia und der römische Mythos von der Vertreibung der Könige’, in H. Macha and C. Fahrenwald (eds.), *Körperbild zwischen Natur und Kultur. Interdisziplinäre Beiträge zur Genderforschung* (Opladen, 2003).

manner you will avenge both me and yourself' (βούλευσαι μετ' αὐτῶν ὄντινα τιμωρήσεις ἐμοί τε καὶ σεαυτῷ τρόπον, Dion. Hal. *Ant. Rom.* 4.66.3). Even shortly before her death, it is her father alone to whom she addresses personal words of farewell: 'After embracing her father and addressing many entreaties both to him and to all present...' (μετὰ τοῦτ' ἀσπασαμένη τὸν πατέρα καὶ πολλὰς λιτανείας ἐκείνου τε καὶ τῶν σὺν αὐτῷ παρόντων ποιησαμένη..., Dion. Hal. *Ant. Rom.* 4.67.1). Collatinus, meanwhile, remains in the army camp knowing 'nothing of the misfortunes that had befallen his household' (τῶν κατεσχηκότων τὴν οἰκίαν αὐτοῦ κακῶν οὐδὲν εἰδώς, Dion. Hal. *Ant. Rom.* 4.67.4). This is a difference from the other versions that cannot be overlooked.<sup>8</sup>

What conclusion can be drawn from this depiction? Lucretia obviously feels that she is accountable only to her father. The constant reference to Lucretius combined with the marginal nature of Collatinus points to a marriage 'without *manus*' (*sine manu*).<sup>9</sup> Lucretia, in Dionysius' account, seems to have remained in her father's *patria potestas* instead of being given over to her husband (*conventio in manum*, i.e. the 'entry into *manus*').<sup>10</sup> Considering the popularity of *manus*-free marriage in the first century BC,<sup>11</sup> it can be assumed that this should probably be seen as a testimony to the author's 'contemporaneity' (*Zeitgebundenheit*).<sup>12</sup> It is probable that Dionysius was guided by the idea of a genuine Roman right of the father over his children, which can still be found in Gaius (*Inst.* 1.55).<sup>13</sup> This also follows Claassen's thesis that the accounts of early Rome correspond above all to the expectations of the author's contemporary readers.<sup>14</sup>

<sup>8</sup> Watson (n. 3), 35.

<sup>9</sup> Amunategui Perello (n. 3), 77.

<sup>10</sup> The *convenire in manum* is already mentioned by Gaius *Inst.* 1.108–11. On the other hand, marriage *sine/cum manu* is a modern term. The Roman equivalent would be, for instance, *uxor (quae) in manu viri est* ('a wife under the power of her husband'), Treggiari (n. 4), 17.

<sup>11</sup> C. Kunst, 'Eheallianzen und Ehealltag in Rom', in T. Späth (ed.), *Frauenwelten in der Antike* (Darmstadt, 2000), 34; A. Richlin, *Arguments with Silence. Writing the History of Roman Women* (Ann Arbor, 2014), 39. The marriage *cum manu* was more widespread until the beginning of the second century BC, Watson (n. 3), 18.

<sup>12</sup> Treggiari (n. 4), 265, recognizes in Dionysius the same preference for the self-regulating family and a dislike of direct state influence as in Cic. *Rep.* 4.6. Possibly the fact mentioned also by Treggiari (n. 4), 266, that Augustus' legislation allowed a former 'head of the household' (*pater familias*) to kill an adulterous daughter, even if he lost his *patria potestas* by *conventio in manum*, ties in with this *Zeitgebundenheit*.

<sup>13</sup> Harris (n. 4), 92.

<sup>14</sup> J.-M. Claassen, 'The Familiar Other: The Pivotal Role of Women in Livy's Narrative of Political Development in Early Rome', *AC* 41 (1998), 75. On Dionysius, see Schultze (n. 3), 161.

Since Collatinus appears far more dominantly in Ovid's account and in Livy, it is all the more troublesome to make statements about *patria potestas* and *manus*. It is obvious that Livy focuses on Collatinus when he arrives. He is the only one of the men directly addressed by Lucretia: 'The print of a strange man, Collatinus, is in your bed' (*vestigia viri alieni, Collatine, in lecto sunt tuo*, Livy 1.58.7). However, this should not necessarily be taken as evidence for Lucretia's accountability to her husband. Schubert regards the tone as rather accusatory, on the basis that the vocative *Collatine* is a *cognomen* and actually too formal for a wife; he holds that Lucretia's address should be understood as an implicit accusation of her husband.<sup>15</sup> To this it must be objected that the use of the *cognomen* in this passage is not an exceptional, but rather common form of address, so that an accusatory tone cannot be based on the use of the *cognomen*.<sup>16</sup> The direct address becomes more understandable when one asks who else is mentioned by Lucretia: 'Sextus Tarquinius is he that last night returned hostility for hospitality' (*Sex. est Tarquinius, qui hostis pro hospite priore nocte*, Livy 1.58.9). It should not be forgotten at this point that Collatinus is the one in the Livian version who incites the men in the army camp of Ardea to the *certamen muliebre* and boasts in advance that Lucretia will be victorious: 'Collatinus said that there was no need to talk about it, for it was in their power to know, in a few hours' time, how far the rest were excelled by his own Lucretia' (*Collatinus negat verbis opus esse, paucis id quidem horis posse sciri, quantum ceteris praestet Lucretia sua*, Livy 1.57.7).<sup>17</sup> That occasion constituted, according to Livy, the first fateful encounter between Sextus and Lucretia.<sup>18</sup> Livy is obviously trying to construct a sort of guilt on the part of Collatinus. Doblhofer, on the other hand, sees Collatinus as a fellow victim.<sup>19</sup> If, as Freund assumes, chastity (*pudicitia*) is to be understood as an emotive word intended to make a male audience aware of the threat to their wives and children,<sup>20</sup> the behaviour of Collatinus, in contrast to Verginius and Icilius as the preservers of Verginia's *pudicitia*, provides the opportunity for this threat to be

<sup>15</sup> W. Schubert, 'Herodot, Livius und die Gestalt des Collatinus in der Lucretia-Geschichte', *RhM* 134 (1991), 88.

<sup>16</sup> E. Dickey, *Latin Forms of Address. From Plautus to Apuleius* (Oxford, 2002), 276.

<sup>17</sup> Kowalewski (n. 3), 110.

<sup>18</sup> For Kowalewski (n. 3), 113, the actual purpose of the *certamen muliebre*.

<sup>19</sup> Doblhofer (n. 3), 12.

<sup>20</sup> S. Freund, 'Pudicitia saltem in tuto sit: Lucretia, Verginia und die Konstruktion eines Wertbegriffs bei Livius', *Hermes* 136 (2008), 314.

actualized. Given that the death of the woman is not directly caused by the perpetrator,<sup>21</sup> both Sextus and Collatinus can therefore be considered guilty. However, Collatinus is only a facilitator, an enabler that created this situation, not an actual perpetrator in the same sense that Sextus Tarquinius is, but the consequences of his thoughtless actions and daring remarks (Livy 1.57.7) are revealed to him by his wife. A clue as to Lucretia's actual guardian could have been found if Livy had specified who in the order (*ordine*) was the first to give Lucretia his promise (Livy 1.58.9). Because this is not the case, and both father and husband appear almost equally in the further course of the episode, a decision in this regard cannot be made or would be too speculative: Watson and Schubert point out that the messenger first goes to Lucretius, and Collatinus is generally mentioned second.<sup>22</sup> Against this it must be objected that Livy regards Rome and Ardea, respectively Lucretius and Collatinus, as equivalent elements of the sentence: 'Lucretia, grieving at her great disaster, dispatched the same message to her father in Rome and to her husband at Ardea' (*Lucretia maesta tanto malo nuntium Romam eundem ad patrem Ardeamque ad virum mittit*, Livy 1.58.5). Moreover, Collatinus is placed in first position at the end of the episode – but also on the same syntactic level: 'The wail for the dead was raised by her husband and her father' (*conclamat vir paterque*, Livy 1.58.12).

In Ovid's version of the episode, which also begins with a *certamen muliebre*, Lucretia receives Collatinus in a different manner and without an explicit address: only Sextus Tarquinius is accused (Ov. *Fast.* 2.825). This, however, does not make the assessment of the *patria potestas* or *manus* any easier. When they arrive, father and husband act almost as one, with all their actions corresponding to each other (Ov. *Fast.* 2.817, 821, 835). The father, however, is given little priority in the course of the episode: 'Her aged sire and faithful spouse she summoned from the camp, and both came without delay' (*grandaevumque patrem fido cum coniuge castris / evocat, et posita venit uterque mora*, Ov. *Fast.* 2.815–16). Collatinus, as a faithful spouse, is at this point merely subordinated (*fido cum coniuge*) to the aged father. Ovid does not base this infinitesimally superior position of Lucretius on *patria potestas* or on an explicit mention of *manus*, but grants it to Lucretius because of his great age (*grandaevumque*) and his importance as Lucretia's 'biological father' (*genitor*). Age and descent are therefore the determining

<sup>21</sup> *Ibid.*, 319.

<sup>22</sup> Watson (n. 3), 167; Schubert (n. 15), 91.

factors here. At the same time, however, they are – along with the magistracy held – the main criteria for differentiation within the senatorial order (*ordo senatorius*) and thus part of a traditional Roman conception of values that should not be equated lightly with *patria potestas*. Mirković emphasizes that in many cases the actions of the *pater familias* are hastily interpreted as an expression of *patria potestas*, although the head of the family acted because of a public-political or military area of responsibility. Such fathers were not acting primarily in respect of their status as *patres familias* but as magistrates or military officers towards their children.<sup>23</sup> The position of *pater familias* is, however, based on similar values: the idea of a strict and serious father seems to stem mainly from a senatorial-patrician environment.<sup>24</sup> At the end Lucretius and Collatinus are united in mourning: ‘Lo, heedless of appearances, the husband and father fling themselves on her body, moaning their common loss’ (*ecce super corpus communia damna gementes / obliti decoris virque paterque iacent*, *Ov. Fast.* 2.835–6). The fact that Lucretia falls at her father’s feet does not necessarily have to be understood as an expression of Lucretius’ superior authority over his daughter. Rather, this depiction may refer to the tragic death of Polyxena in Euripides’ *Hecuba*.<sup>25</sup> Indications for *patria potestas* and the position of the father with regard to his daughter remain elusive and difficult to justify even in Ovid’s version.

### III

An interpretation as *consilium domesticum* may appear to be justifiable by some aspects, which it is therefore necessary to present briefly. An undoubtedly weak argument is Bóné’s assumption that the word συγγενεῖς (‘kinsmen’) is synonymous with the Latin *consilium domesticum*.<sup>26</sup> We will have to come back to this quite problematic argument later on.

It would be less speculative, however, to refer to the fact that in both Dionysius and Livy other relatives and friends are consulted, which

<sup>23</sup> M. Mirković, ‘Patria potestas or Murder in the Family’, *Anali Pravnog Fakulteta u Beogradu* 63 (2015), 7–8. Likewise Harris (n. 4), 86.

<sup>24</sup> Mirković (n. 23), 13. On the correlation of *patria potestas* and senatorial *auctoritas* see Harris (n. 4), 89.

<sup>25</sup> J. D. Hejduk, ‘Epic Rapes in the Fasti’, *CPh* 106 (2011), 29.

<sup>26</sup> K. E. von Bóné, ‘The Roman Family Court (*iudicium domesticum*) and its Historical Development in France and the Netherlands’, *Osaka University Law Review* 60 (2013), 28.

corresponds to the practice of the domestic court.<sup>27</sup> The fact that further persons are missing in Ovid's version is not problematic insofar as the holder of *patria potestas* could have passed judgement without further advisors, although this remains controversial.<sup>28</sup> In the majority, however, the involvement of friends and relatives (*amici et propinqui*) is considered obligatory.<sup>29</sup> Ovid's account therefore lacks evidence for a *consilium domesticum* already at this point.

The most striking aspect and therefore most likely to be used to support this idea is the language of Lucretia's speech in Livy, the tone and vocabulary of which almost suggest a defence speech within a forensic context:

They tell her it is 'the mind that *sins*, not the body; and that where *purpose* has been wanting there is no *guilt*. It is for you to determine, she answers, what is *due* to him; for my own part, though I *acquit* myself of the *sin*, I do not *absolve* myself from *punishment*; nor in time to come shall ever unchaste woman live through the example of Lucretia'.

*mentem peccare, non corpus, et unde consilium afuerit, culpam abesse. Vos, inquit, videritis, quid illi debeatur: ego me etsi peccato absolvo, supplicio non libero; nec ulla deinde impudica Lucretiae exemplo vivet* (Livy 1.58.9–11, emphasis mine).

In his recently published study, Schlip says that the exculpation rather is meant to remove any doubts the reader may have about Lucretia's *exemplum*.<sup>30</sup> The men are not judges, but have the function of witnesses. However, these considerations are not new: Donaldson already saw the gathering as one of witnesses.<sup>31</sup>

Weissenborn seems to support the thesis by referring to a passage in the second book of Livy.<sup>32</sup> In this context, he speaks of a family council,

<sup>27</sup> W. Liebenam, 'Consilium', *RE* 4.1 (1900), 915.

<sup>28</sup> W. Kunkel, 'Das Konsilium im Hausgericht', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 83 (1966), 219 n. 2; Harris (n. 4), 81; Treggiari (n. 4), 266.

<sup>29</sup> Liebenam (n. 27), 915; Kunkel (n. 28); J. Crook, '*Patria potestas*', *CQ* 17 (1967), 119; Watson (n. 3) 35, 38; Donaldson (n. 1), 24; Treggiari (n. 4), 265; Bóné (n. 26), 26.

<sup>30</sup> C. Schlip, *Typen, Gruppen und Individuen bei Livius. Untersuchungen zur Darstellung und Funktion historischer Akteure in ab urbe condita* (Berlin/Boston, 2020), 187.

<sup>31</sup> Donaldson (n. 1), 103. See also N. S. Rodrigues, 'Lucretia, Tullia and Tanaquil: Shaping the Identity of Rome's Women in the Augustan Period', in L. Roig Lanzillotta, J. L. L. Brandão and A. Rodrigues (eds.), *Roman Identity. Between Ideal and Performance* (Turnhout 2022), 98, who thinks that Lucretia – as a woman of *pietas* – had to inform her father and husband about what has happened to her.

<sup>32</sup> Livy 2.36.1–8; W. Weissenborn, *T. Livii ab urbe condita libri. Erklärende Ausgabe 1.1*, ninth edition (Berlin, 1908), 260.

such as was held for important matters.<sup>33</sup> It can be assumed, however, that he does not mean the *consilium domesticum* at all with this expression, but rather a family-internal advisory board without a private-law character. The situation Weissenborn refers to has surprisingly little to do with Lucretia's 'family council': after a dream the plebeian T. Latinus has to decide between pious humility towards Iuppiter and obedience towards the consuls, which is why he calls in relatives for consultation (*consilio propinquorum adhibito*). The gathering comes to a unanimous decision, which is then followed: Latinus is brought to the consuls to describe to them what Iuppiter had told him in his dream. In this episode there is no act comparable to that of Lucretia, which the family council would have to judge in the sense of a private-law trial. Compared to the Lucretia episode, it also lacks the vocabulary and tone insinuating a forensic context. It thus remains questionable whether Livy, with the expression *consilium propinquorum*, was at all insinuating the concrete idea of a domestic court or rather a family-internal consultation in a broader sense. This expression is also missing in his account of the legal basis of a private-law condemnation of wives and children (Livy 39.18.6).<sup>34</sup>

Immediately after the rape, on the other hand, we receive relatively clear indications that the men called together must not necessarily be understood as a domestic court. As in Diodorus, whose version we now only have as transmitted through later excerpts, Livy and Ovid describe Lucretia calling the men together.<sup>35</sup> In the case of a conventional domestic court, however, she would not have been authorized to do so at all. Only the holder of *patria potestas*, who is also the chairman of the gathering, would have been allowed to call the men together, whether friends or relatives.<sup>36</sup> Only in Dionysius can one recognize this practice: Lucretia asks her father to summon more men, but does not summon them herself (for example, through a messenger).<sup>37</sup> Similarly, it contradicts the traditional domestic court that both father and husband attend it. Assuming that Lucretia had been married *sine manu* according to our sources, Collatinus as

<sup>33</sup> W. Weissenborn, *T. Livi ab urbe condita libri. Erklärende Ausgabe 1.2*, eighth edition (Berlin, 1894), 99.

<sup>34</sup> Harris (n. 4), 87.

<sup>35</sup> Diod. Sic. 9.20.3; Livy 1.58.5; Ov. *Fast.* 2.815–16.

<sup>36</sup> C. G. Paulus, 'Iudicium', *DNP* online (2006) <[http://dx.doi.org/10.1163/1574-9347\\_dnp\\_e529500](http://dx.doi.org/10.1163/1574-9347_dnp_e529500)>, accessed 24 November 2023.

<sup>37</sup> Cf. Livy 1.58.5.

husband would be excluded from the *consilium domesticum*. Her father Lucretius would preside over it. This corresponds to the version that Dionysius provides us and also with his (possible) assignment of the *patria potestas* (see above). In the opposite case (marriage *cum manu*), Collatinus would have presided over the domestic court with regard to Lucretia as his wife.<sup>38</sup> It is now decisive that Lucretius and Collatinus in Livy and Ovid almost appear to be equal, which already made the question of *patria potestas* considerably more difficult. One could argue that Lucretia was still subordinate to her father Lucretius and that he was therefore equal to Collatinus. However, this would not take into account that with a *conventio in manum* Lucretia would henceforth be part of the husband's 'family' (*gens*) and the father would have to give up *patria potestas* towards his daughter.<sup>39</sup> Accountability to the father only applies to an unmarried woman; once married, she is accountable to her husband.<sup>40</sup> In a *manus*-marriage, rape (and likewise adultery) would be an 'internal affaire of the Tarquin family'.<sup>41</sup> Childless, as Collatinus was according to our sources, he would just be joined as the holder of *manus* by the *pater familias* of the Tarquinians: L. Tarquinius Superbus.<sup>42</sup> But how, if the king had held the domestic court – in this constellation the term is appropriate – together with Collatinus, could L. Iunius Brutus, who as a relative would certainly have been present, have sworn revenge? Donaldson describes Brutus' oath as a particularly impressive moment that would have been missing in this alternative conception of a Tarquinian *consilium*.<sup>43</sup> A domestic court held in accordance with the rules would have been incompatible with this transition to the *res publica libera*.

Another point that reveals that Livy and Ovid may have created their versions primarily without consideration of a domestic court<sup>44</sup> is

<sup>38</sup> Gell. *NA* 10.23.4; Amunategui Perello (n. 3), 77 (*sine manu*), 78 (*cum manu*); Richlin (n. 11), 43.

<sup>39</sup> Watson (n. 3), 12; Amunategui Perello (n. 3), 77. She is henceforth considered agnate of her husband and loses the status of *filia familias* ('daughter of her father's household'), Treggiari (n. 4), 28–9.

<sup>40</sup> Rosenberger (n. 7), 109.

<sup>41</sup> Amunategui Perello (n. 3), 77.

<sup>42</sup> *Ibid.*, 78. According to the definition of *pater familias* by Watson (n. 3), 9. Likewise Mirković (n. 23), 12.

<sup>43</sup> Donaldson (n. 1), 8.

<sup>44</sup> However, it is by no means the case that Livy did not know about the nature of *consilium domesticum* and *manus*. For the year 186 BC he gives a paraphrase: 'Convicted women were turned over to their relatives or to those who had authority over them, that they might be punished in private' (*mulieres damnatas cognatis, aut in quorum manu essent, tradebant, ut ipsi in privato animadverterent in eas*, Livy 39.18.6). Kunkel (n. 28), 224–5, recognizes *eum cognita domi causa verberasse*

Lucretia's handling of the men's statements. Although the council, including her father and husband, absolves her, she defies the opinion and kills herself. According to Donaldson, Lucretia's absolution is 'rather beside the point', because, whether adultery or rape, the 'polluting effect' is irreversible.<sup>45</sup> The suicide would have been, as Treggiari points out, an entirely correct punishment 'if her father was among those who would have judged her'.<sup>46</sup> However, this is not the case and Lucretia's suicide rather appears as her own counter-judgement. The decision of Lucretia, which is fixed from the beginning,<sup>47</sup> virtually nihilates the competence of the gathering if it is interpreted as a domestic court.<sup>48</sup> It is thus quite arguable to see the preservation of patriarchy as the purpose of the Livian version.<sup>49</sup> The judgement of the *pater familias* would normally have imposed strict obedience upon the daughter.<sup>50</sup> The account of Dionysius is again committed to this idea. Although Lucretia has already decided to commit suicide, this is not sufficient for her to gain absolution from her father for the (involuntary) unchastity created by the rape. He is silent and his silence, his calmness during his daughter's parting words, is like a 'judgement from silence' (*iudicium e silentio*), which seems to agree with Lucretia's self-condemnation. While Ovid's and Livy's accounts are clearly opposed to a *consilium domesticum* and render such an idea absurd, Dionysius' account corresponds most closely to the Roman domestic court. However, the interpretation is hardly ever applied to Dionysius, but usually associated with the better-known version of Livy.<sup>51</sup>

On the basis of Dionysius' account, which seems to be least opposed to the idea of a domestic court, it could be assumed that earlier accounts of the Lucretia episode, which we can admittedly no longer

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('that he tried the case in his house', Livy 2.41.10) as the result of a domestic court, which for Livy did not require any further elaboration.

<sup>45</sup> Donaldson (n. 1), 23.

<sup>46</sup> Treggiari (n. 4), 265.

<sup>47</sup> F. Prescendi, 'Weiblichkeitsideal in der römischen Welt: Lucretia und die Anfänge der Republik', in Späth (n. 11), 220. Freund (n. 20), 319, bases Lucretia's suicide on her own judgement and, in contrast to Verginia, attests her an active role. He goes on (p. 324) to call her suicide a lonely decision of her own. Similarly M. Fox, *Roman Historical Myths. The Regal Period in Augustan Literature* (Oxford, 1996), 293.

<sup>48</sup> S. R. Joshel, 'The Body Female and the Body Politic: Livy's Lucretia and Verginia', in L. K. McClure (ed.), *Sexuality and Gender in the Classical World. Readings and Sources* (Oxford, 2002), 179.

<sup>49</sup> B. Russell, 'Wine, Women and the Polis: Gender and the Formation of the City-State in Archaic Rome', *G&R* 50 (2003), 79.

<sup>50</sup> Liebenam (n. 27), 916.

<sup>51</sup> E.g. Doblhofer (n. 3), 13; Kowalewski (n. 3), 117. On Dionysius, Schultze (n. 3), 171.

grasp, or a wide-spread oral version,<sup>52</sup> could have contained a more or less concrete form of the *consilium domesticum*. However, this assumption is not verifiable. Since such a domestic court could not have constituted the major part of the plot, Watson is right in stating that Lucretia could never have been used as a paradigm of a *consilium domesticum* nor as an origin story (ᾠτίον) of this private-law institution.<sup>53</sup>

It seems necessary, however, to say a few more words about Dionysius, so that we do not get the impression that he is giving us the perfect description of a *consilium domesticum*. Although his version is the least contrary to this interpretation, it is also hardly conducive to it. First to Bóné's equation of the συγγενεῖς with the *consilium domesticum*: undeniably, in the 'royal laws' (*leges regiae*) of Romulus we have evidence of the vocabulary in connection with the domestic court. But this by no means justifies the assumption that συγγενεῖς is without exception equivalent to *consilium domesticum*. In the *leges regiae* of Romulus it says: 'Other offences, however, were judged by her relations together with her husband' (ταῦτα δὲ οἱ συγγενεῖς μετὰ τοῦ ἀνδρὸς ἐδίκαζον, Dion. Hal. *Ant. Rom.* 2.25.6). Here, then, the relatives judge together with the husband.<sup>54</sup> It should not be denied that Dionysius describes the basic elements of a *consilium domesticum* in *Ant. Rom.* 2.25.6. It would be questionable, however, to equate a relatively common vocabulary (συγγενεῖς) with a specific legal institute (*consilium domesticum*). That the συγγενεῖς do not seem to have the same task in the case of Lucretia as in the *leges regiae* of Romulus can also be seen in the fact that they act with Lucretius as Lucretia's father, whereas the *leges regiae* prescribe that the συγγενεῖς should hold the legal power together with the husband, who certainly exists in the form of Collatinus.

It is perhaps useful also to ask what Dionysius means by συγγενεῖς in the first place. Obviously, as Treggiari rightly pointed out, this cannot be answered with certainty:<sup>55</sup> are they relatives by blood (*cognati*) or by marriage (*affines*)? This issue becomes even more complicated when we ask whose (Lucretia's or Collatinus') kinsmen are meant. If the husband were acting in a fashion similar to that of a *pater familias*

<sup>52</sup> Prescendi (n. 47), 217, and P.-M. Martin, 'Livy's Narrative of the Regal Period: Structure and Ideology', in B. Mineo (ed.), *A Companion to Livy* (Chichester, 2015), 259, assume the same source for Livy and Ovid.

<sup>53</sup> Watson (n. 3), 167.

<sup>54</sup> Kunkel (n. 28), 236.

<sup>55</sup> Treggiari (n. 4), 265.

together with a *consilium*, then at first glance it appears plausible to regard the συγγενεῖς as the husband's own relatives. But then the 'friends' (*amici*) would be missing, who could participate in the *consilium*. This is an important difference between the *leges regiae*, in which only συγγενεῖς are mentioned, and the Lucretia episode in Dionysius, where φίλοι ('friends') are also explicitly present. I consider it more likely to understand the συγγενεῖς as relatives of the wife: there would be an opportunity for the wife's family to take part in the *consilium domesticum*, even if she is legally separated from her own, i.e. blood relatives due to the *conventio in manum*. Furthermore, this would be in line with the Augustan legislation, which granted a father the right to kill his daughter in the case of an *adulterium*, even if she had been married in a *manus*-marriage.<sup>56</sup>

After this brief digression, let us return to Dionysius and his version of the Lucretia episode. He certainly creates the image of Lucretius on the basis of the idea of *patria potestas*. The actions of the two protagonists (Lucretius and Lucretia) seem coherent. Lucretius is undoubtedly a true *pater familias* in Dionysius. The same, however, cannot be said of his role as chairman of the 'domestic court'. While his silence indirectly signals approval of Lucretia's self-condemnation, he fails to deliver an unambiguous opinion. The assessors of the gathering (relatives and friends) seem to completely fail in their role as Lucretius' advisors.<sup>57</sup> However, this is presumably not the function that Dionysius assigns to them. Lucretia asks her father to summon those men so that as many as possible may hear of her misfortune, not so that they may give him advice (Dion. Hal. *Ant. Rom.* 4.66.3, quoted above).<sup>58</sup> The συγγενεῖς in the Lucretia episode cannot, therefore, be equated with those in the *leges regiae* of Romulus: they completely lack jurisdictional competences. This is all the more important because Watson assigns a 'greater role' to the wife's relatives than to the husband.<sup>59</sup> Rather, the gathering fulfils the function of witnesses. It should be noted at this point that Dionysius writes primarily for a Greek audience.<sup>60</sup> For such a readership, the *patria*

<sup>56</sup> *Ibid.*, 266.

<sup>57</sup> On the advisory function of the friends in the *consilium domesticum*, see Watson (n. 3), 35.

<sup>58</sup> Lucretia's motivation to let as many people as possible hear of her misfortune also contradicts the idea of a private-law *consilium*. Treggiari (n. 4), 268, for instance, notes that 'it was more decent for women to be dealt with privately than by public trial'.

<sup>59</sup> Watson (n. 3), 34; Kunkel (n. 28), 236.

<sup>60</sup> G. Forsythe, 'The Beginnings of the Republic from 509 to 390 BC', in Mineo (n. 52), 315.

*potestas* is a clearly delineated, relatively easy to understand, and genuinely Roman element, which Dionysius clearly accentuates. A description of the discussions within the domestic court, on the other hand, would probably be difficult for Greek readers, both terminologically and in terms of content, if only because of the legal issues discussed. Therefore, it remains to be questioned to what extent Dionysius of Halicarnassus could have drafted such a discussion with all its arguments without severe legal inconsistencies. Bauman, for example, accuses Dionysius of neglecting ‘legal issues’.<sup>61</sup> It is one thing to draft a legal text as in the *leges regiae* of Romulus, but another to construct a trial with legal finesse. With regard to his readership, or also bearing in mind his own legal deficiencies, Dionysius seems to have preferred a comparatively simple phenomenon as the *patria potestas* to the domestic court. A convincing attribution of *patria potestas* combined with the consequent behaviour of a daughter towards her *pater familias* does not necessarily make a *consilium domesticum* seem plausible. We have the fortunate circumstance that Dionysius describes his idea of a domestic court in detail:

Other offences, however, were judged by her relations together with her husband; among them was adultery, or where it was found she had drunk wine – a thing which the Greeks would look upon as the least of all faults. For Romulus permitted them to punish both these acts with death, as being the gravest offences women could be guilty of, since he looked upon adultery as the source of reckless folly, and drunkenness as the source of adultery.

ταῦτα δὲ οἱ συγγενεῖς μετὰ τοῦ ἀνδρὸς ἐδίκασον ἐν οἷς ἦν φθορὰ σώματος καί, ὃ πάντων ἐλάχιστον ἀμαρτημάτων Ἑλλῆσι δόξειεν ἂν ὑπάρχειν, εἴ τις οἶνον εὐρεθείη πιούσα γυνή. ἀμφοτέρω γὰρ ταῦτα θανάτῳ ζημιούην συνεχώρησεν ὁ Ῥωμύλος, ὡς ἀμαρτημάτων γυναικείων ἔσχατα, φθορὰν μὲν ἀπονοίας ἀρχὴν νομίσας, μέθην δὲ φθορᾶς. (Dion. Hal. *Ant. Rom.* 2.25.6–7)

It is remarkable in how many ways his Lucretia episode contradicts this description. In addition to the lack of a jurisdictional function of the assessors, to which I have just referred, Lucretia also asks her father to ‘send for as many of your friends and kinsmen as you can’ (κάλεσον ὅσους δύνασαι πλείστους φίλους τε καὶ συγγενεῖς, Dion. Hal. *Ant. Rom.* 4.66.3). This is problematic insofar as, on the one hand, it was – as Dionysius has it in the *leges regiae* – usual to call in only relatives when women were sentenced, and on the other hand because the

<sup>61</sup> R. A. Bauman, ‘The Rape of Lucretia’, *Latomus* 52 (1993), 551.

decision as to who should be called in was the exclusive responsibility of the *pater familias*.<sup>62</sup> Lucretius, on the other hand, receives instructions from Lucretia herself (!), which he then follows. Furthermore, Dionysius speaks of the role of the husband as head of the domestic court.<sup>63</sup> Even assuming that Collatinus as husband *sine manu* is missing here, this circumstance cannot be reconciled with the nature of the *consilium domesticum*, especially since Kunkel assigns to the husband in a *manus*-free marriage the role of accuser in the domestic court,<sup>64</sup> which Collatinus undoubtedly does not take. By comparison within the *Antiquitates Romanae*, it can therefore be doubted that Dionysius of Halicarnassus, while writing his Lucretia episode, had the domestic court in mind which he had described in the *leges regiae* of Romulus.

If we now summarize the results of the investigation, it can be said that none of our sources is explicit as to the form of Lucretia's marriage, and in the case of Livy and Ovid it is even unclear to whom Lucretia is accountable at all. The inconsistencies in the accounts that have been pointed out make it likely that none of the three authors provides us with a proper *consilium domesticum*. Dionysius seems closest to this concept, but simplifies matters for a Greek readership. Is it therefore still appropriate to speak of a *consilium domesticum* in the sense of a private-law institution? It is certainly necessary for the further course of the story, which leads to the 'flight of the king' (*regifugium*), that Lucretia kills herself and that witnesses are present who learn the cause of her suicide and are thereby incited to overthrow the Roman kingship. To implement these factors, a *consilium domesticum* would indeed be a possibility, but not inevitable.

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<sup>62</sup> Kunkel (n. 28), 240, 250; Treggiari (n. 4), 266.

<sup>63</sup> Kunkel (n. 28), 233.

<sup>64</sup> *Ibid.*, 237–8.