

"T F I" on Inscriptions of Salona (*)

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1. Salonitan (1) tombstones from the Early Empire frequently contain the well known "*testamento fieri iussit*" clause (here most often denoted by *T F I* siglas), as for example in the following inscription :

*C CAESIVS L F / CAM BASSVS / DOMO PISAVRI /
VET LEG VII C P F / AN LIII STIP XXXIII / H S E T F
I H P / IN F P VI A P X (2).*

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1) Salona (near the present-day Split in Croatia) was the largest and most important city in the Roman province of Dalmatia. It became the capital of the province at the beginning of the first century A.D. when this Province was formally constituted. Salona is particularly interesting as a very rich source of epigraphic monuments. Some 6000 of them have been found, while new ones are coming to light daily.

2) *CIL* III, 2014. The complete transcription runs : *Caius Caesius Lucii filius Camilia tribu Bassus, domo Pisauri, veteranus legionis VII Claudiae*

Those are inscriptions from the 1st and 2nd centuries A.D. (3). The initials *TFI* show that the tombstone was erected as a wish of the deceased expressed in his testament. Consequently, we can conclude that the testaments of the inhabitants of Salona from the first Roman period, when the town was flourishing as a colony (4), often included the expressed last will related to the construction of tombstones. The person who was burdened by the will, as the executor of such a testator's wish, immortalized his act on the tombstone inscription with the above-mentioned clause; for apparently this had become a standard practice.

We encounter a similar situation in the following legal sources: Alfenus Varus (D. 35,1,27), Javolenus (D. 35,1,40,5), Gaius (*Inst.* II, 235), Gaius (D. 35,1,17,4), Pomponius (D. 35,1,6 pr.), Q. Cervidius Scaevola (D. 35,1,80), Papinianus (D. 5,3,50,1), Ulpianus (D. 10,2,18,2). The quoted fragments mostly originate from the same time of our inscriptions, except for the fragments of Papinian and Ulpian, which are younger but discuss literary works and opinions of

Piae Fidelis, annorum LIII stipendiorum XXXIII, hic situs est. Testamento fieri iussit. Heres posuit. In fronte pedes ...

3) Their dating is most often determined by the signs of the military units in which the deceased had served while in the province. Especially significant is the sign *CPF* (*Claudia Pia Fidelis*), the honorary title given to the 7th and 11th Legions in 42 A.D. Those were the legions stationed in Dalmatia from 10 to 60 and 69 A.D. respectively.

4) The municipal status of a colony (*colonia civium Romanorum*) was acquired most probably under Caesar (*Colonia Martia Iulia Salona*).

older jurists. The fragment of Javolenus (5) is of particular interest. It dates back to the second half of the 1st century A.D. as is the case of the majority of Salonitan inscriptions. It deals with the *responsum* of the older jurist Trebatius (from Caesar's time), confirmed by Labeo, Proculus and Javolenus himself (6). Alfenus Varus's and Javolenus's fragments indicate that the order in the testament to erect the tombstone was treated legally as early as the time of the late Republic or the earliest Principate. In Justinian's Digest these fragments are mainly contained in a separate title: "*De condicionibus et demonstrationibus et causis, et modis eorum, quae in testamento scribuntur*" (D. 35,1), for the reason that a *modus mortis causa* is a separate matter within the whole question of *modi* due to its origin and development. In the Code of Justinian we find separate titles too (C. 6,45 and C. 8,54). It is probable that the very *modus mortis causa monumentum facere* was initiated and developed as a special relation, thus becoming one of the first cases of *modus* in general as a specific institution.

5) Caius Octavius Tadius Tossianus Lucius Javolenus Priscus it seems was born in Dalmatia near Zadar (*Colonia Iader*), where he performed the high function of *legatus legionis* (CIL III, 9960 = ILS, 1015); see however W. KUNKEL *Herkunft und soziale Stellung der römischen Juristen*², Graz - Wien - Köln 1967, p. 139-140, who is of the opinion that Javolenus was of Italian origin.

6) D. 35,1,40,5 (*Javolenus, l. 2 ex posterioribus Labeonis*): *Thermus minor quorum arbitrato monumentum sibi fieri vellet testamento scribserat, deinde ita legaverat: 'Luciis Publiis Corneliis ad monumentum meum aedificandum mille heres meus dato'. Trebatius respondit pro eo habendum ac si ita legatum esset, si satisdissent se ita id monumentum ex ea pecunia facturos. Labeo Trebatii sententiam probat, quia haec mens testantis fuisset, ut ea pecunia in monumentum consumeretur: idem et ego et Proculus probamus.*

2. What was the Salonitan *iussum*, in the will (*testamentum*) which is mentioned in the *TFI* formula, like? What did the Salonitan will in connection with such *iussum* contain? All related Salonitan inscriptions containing the mentioned clause, indicate that it was taken over from the testamental expression "*iubeo*". It is a question of a testator ordering to have his tombstone erected, which means that he had not done this during his life, as would have been done by some other co-citizens and contemporaries of his in Salona ("*se vivo*", "*vivus fecit sibi*"). Therefore, by a testamental clause he was entrusting a third person with, for a Roman, a very important matter.

Who were these testators in Salona? They were mostly veterans who had completed their military career and after *honesta missio* settled in Salona. Those were mostly legionnaires (soldiers) of the 7th and 11th legions, foreigners in Dalmatia, who had decided to spend the rest of their lives in the regions in which they had served (7). The sources indicate that this was a common practice. They probably sold land which they had been allocated elsewhere in Dalmatia by *missio agraria*, or had been discharged with *missio nummaria*. They were particularly attracted to the nearby Mediterranean towns of Salona, Jader and Naron (8). We also encounter there as testators freedmen who had been *seviri*. We also have, although a small number, tombstones which are neither of veterans nor of *seviri*, but of

7) *CIL* III, 2004, 2014, 2035, 2060, 2065, 14244¹. *Vjesnik za arheologiju i historiju dalmatinsku* 53 (1950-51), p. 226, n. 35.

8) J.J. WILKES, *Dalmatia*, London 1969.

persons not having completed the *cursus honorum*. This directs us to believe that all of them belonged to the group of common inhabitants of Salona - not prominent in public life. Hence, we can say that we are dealing with "new" people, who lived in Salona as the first generation, not having a family tomb (*sepulcrum familiare*) prepared for them by their fathers and grandfathers ("*sibi posterisque suis*") (9). For some reason they had not built their own tomb during their life. The veterans did not do it, probably because they were still settling down in a new environment. They possibly did not know where they would wish to be buried. They certainly had to take care of numerous existential matters and they did not have either time or funds, or simply they were not interested in building a tomb. Death probably approached earlier than they expected. They provided for their life after death by the testament, in such a way entrusting this important matter to others. The expression of a wish in the form of an order, shows that the testators were apprehensive of having their wish complied with by a simple non-legal request. It was necessary to phrase it in the form of a legal order (the customary testamental expression "*iubeo*").

The fact that the executor of the *iussum* would mention this on the tombstone itself, probably shows the legal character of this relation, where he wanted to demonstrate publicly that he had fulfilled the testamental order. This indicates that there were cases of persons who did not comply with the order fully or not at all. That was the reason for the creation of the above-

9) See e.g. *CIL* III, 2059, 2161, 6390, 8788, etc.

mentioned fragments of juristic literature which deal with these matters as controversial.

In our inscriptions we find testamental heirs (*heredes*) as the executors of the orders (wife, sister and often freedmen) (10). Some freedmen are signed as "*libertus et heres*" which means that they had been freed by a preceding order in the same will by which they were nominated heirs (*manumissio testamento*).

Therefore, in Salona the executors of the *iussum* "*monumentum facere*" are the heirs (*heredes*) (*CIL* III, 2014, 2060, 8803, etc.), although on the basis of the analysis of the epigraphical sources from other provinces, some authors claim that this order was more frequently connected with the legacy than with the designation of heirs (11).

Our inscriptions confirm that the testator also determined how much money the heir must spend on the construction of the *monumentum*. That can be concluded from legal sources (Papinianus : "*quantum testator iusserit*" (12)). The tombstone of the Salonitan *patrona Pomponia Vera* bears the inscription : "*Pomponia / Vera testamento fieri iussit sibi et / libertis libertabusque suis ex sestertium viginti milibus / curantibus heredibus / in quo opere adiecerunt heredes sestertium quattuor*

10) *CIL* III, 2035, 9031, 2096, 8803, 2035, 2092, etc.

11) S. PEROZZI, *Istituzioni di diritto romano*², Roma 1928, vol. II, p. 546 ; P.F. GIRARD - F. SENN, *Manuel élémentaire de droit romain*⁸, Paris 1929, p. 970, n. 5. Also similar E. COSTA, *Storia del diritto romano privato*, Torino 1925, p. 550.

12) D. 5,3,50,1 ; similar D. 35,1,40,5 (Javolenus), etc.

milia" (13). Thus, the amount was 20 000 sesterces. A *sevir Augustalis* ordered his heirs (freedmen) to spend 6 000 sesterces for the same purpose (14), while a veteran established that 10 000 sesterces be spent (15). By deciding about the amount, the testator practically determined the behaviour of the executor.

3. It is very probable that the Salonitan testament also included the description of the monument. We are reminded of Petronius's *Trimalchion*, the contemporary of our testators who determined by his testament in detail the design of his tomb. This could also be confirmed by the inscription of *Pomponia Vera*, on which the heirs proudly stated that they spent additional 4 000 sesterces - it seems in order to have the monument appear the way she had wished.

The Salonitan testator sometimes decided about this important matter in another way, ordering that the decision about the form of the monument be left to a third person. A *sevir's* tombstone inscription (first half of the 1st century) reads: "*Lucius Curius Luci libertus Sosibus / sevir Augustalis sibi / et Iuliae Scepsidi uxori / testamento fieri iussit arbitrato / Iuliae Scepsidis / in fronte*

13) CIL III, 14827².

14) CIL III, 2092: *T ANCHARIVS ANTHVS / IIIII VIR AVG T F I / EX HS VI SIBI / ET PETRONIAE PROTHESI VXORI ET / LIBERT HEREDIBVSQ /*

15) CIL III, 2035: *M IVL M F VOL / PATERNVS / AQVIS SEXTIIS / MIL LEG VI VICTRIC / O LEG VIII AVG 7 LEG XIII / G M V 7 LEG XI C P F / T F I EX HS X / IVLIA T F MAXIMA VXOR / ET M IVL M L DOCIMVS H F C.*

pedes XX in agro pedes XXX" (16). The testator's wife was chosen as an *arbitrator* (17), which means that "according to her decision and choice" the person who was liable will fulfil the order. The executor of the order stated this in the inscription.

"*Arbitratus*" is also used in the above-mentioned fragment of Javolenus, who - as we already stated - accepts and confirms juristic opinions which belong to the time of these very inscriptions - the first half of the 1st century A.D. (Trebatius, Labeo, Proculus) (18). We still find *arbitratus* in the Pomponius-fragment from his Commentary *ad Sabinum* (19). Consequently, it deals with older legal problems. According to Pomponius, the executor of the order ("*qui alicuius arbitrato monumentum facere iussus sit*") may not fulfil the order without the cooperation of the one "*cuius arbitrium est*". Thus, the behaviour of the executor is determinable by the decision of the third person. It will be determined when the third person (*arbitrator*) proceeds according to the testator's expectation. The *arbitrator* is a person who enjoys particular confidence of the testator (*bonus vir*). In our inscriptions those are : *uxor, collibertus, amicus* and two friends

16) *Bullettino di archeologia e storia Dalmata*, Spalato, 37, p. 58, n. 4659 ; E. DE RUGGIERO, *Dizionario epigrafico di antichità romane*, Roma 1895, s.v. "*arbitratus*".

17) Medieval term for Roman institution (M. VASSETTI, s.v. "*Arbitraggio*", in *Novissimo Digesto Italiano*, vol. I², Torino 1968, p. 825).

18) See n. 6.

19) D. 35,1,6 pr.

together ⁽²⁰⁾. By highlighting the "*arbitrator's*" name on the inscription, he is given high but corresponding significance because his decision bears decisive importance regarding the construction of the tomb. He was nominated *intuitu personae* (according to Pomponius), so that he could not be replaced by another person. Such an *arbitratus* can be found only in the oldest inscriptions dating from the first half of the 1st century.

4. The Salonitan *iussum "monumentum facere"* can be considered the early classical form of the post-classical *modus. iussum "monumentum facere"* was developed early in order to cover a very significant human need. It is the result of the belief that an appropriate tomb and inscription on the posthumous resting place guarantee maximum security in the world reigned by *Dii Manes*. Therefore, for the person who does not have a tomb, and is writing his last will - probably thinking about his nearing death - a tombstone is a matter of great importance. When he had enough confidence, this wish of his was probably expressed in the form of a request, which was possibly the basis for the origin of moral duty. When he had no confidence, he chose the order (*iussum*), which was naturally given to the beneficiary. Often the testator nominated the heir primarily or mostly to order him to erect his monument. Some authors consider that the burden

20) *CIL* III, 2449, 2531 ; *Bullettino di archeologia e storia Dalmata*, 37, p. 58, n. 4659 A ; 36, p. 14, n. 4407 A.

could be as large as the benefit (21). That is the reason why Prof. VOLTERRA deems that the criticism of the *modus* being placed in *accidentalialia negotii* is founded (22). The testamental gratuitous disposition (act of liberality) is here of minor importance, but formally indispensable, while the burden is crucial. This is indicated by our inscriptions which mention heirs being freedmen as the executors of the *iussum*. The testator freed a slave by his will in order to nominate him as his heir who thus became *heres necessarius* (23). Like this he could not refuse either the inheritance nor the obligation to execute the order whether he liked it or not. This is another motive for manumissions, which in most part were not the expression of benefaction of the master. Gratuitous disposal *mortis causa* is only a form used by the testator to formulate his order legally. Here we are dealing with the fundamental wish - to which everything else was subordinated - to have the tomb built.

5. Our sources have not dealt directly with the legal protection for the realization of this *iussum*. In general, the *modus* was not finally legally formulated until the late Empire as

21) V. ARANGIO-RUIZ, *Istituzioni di diritto romano*¹⁴, Napoli 1974, p. 92; M. HORVAT, *Rimsko pravo*, Zagreb 1967, p. 188.

22) E. VOLTERRA, *Istituzioni di diritto privato romano*, Roma 1962, p. 163.

23) *Necessarius heres est servus cum libertate heres institutus, ideo sic appellatus, quia sive velit sive nolit, omni modo post mortem testatoris protinus liber et heres est* (Gaius, *Inst.* II, 153).

a uniform legal institution (24), so that different forms provided different legal protection. It seems that the *iussum* "*monumentum facere*" as a way of realizing that very important wish of the testator was protected as early as the Principate. Papinian's fragment deals with this matter: the authority of the *princeps* or the pontiff may in the *extra ordinem* process have forced the heir to fulfil the last will of the testator (25). KASER deems that this *modus* contains some elements of sacral and public law (26), so that its enforcement surpasses the sphere of private interest. This enters into the field of public interest, and that is why the intervention of public authority is engaged. By the intervention of the same kind the ordered burial was ensured (27).

Some authors think that this is an interpolation in coherence with Justinian's view that the *modus* should be protected (28). Justinian introduced other direct legal measures for the realization of the *modus mortis causa* (29). He would not have brought in just this kind of special protection for this very case

24) G. PACCHIONI, *Corso di diritto romano*, Torino 1920, vol. II, p. 269, and M. KASER, *Das römische Privatrecht*, I², München 1971, p. 259.

25) ... *Quamvis enim stricto iure nulla teneantur actione heredes ad monumentum faciendum, tamen principali vel pontificali auctoritate compelluntur ad obsequium supremæ voluntatis* (D. 5,3,50,1).

26) *Op. cit.*, p. 259.

27) D. 11,7,14,2.

28) F. SCHULZ, *Classical Roman Law*, Oxford 1954, p. 331.

29) C. SANFILIPPO, *Istituzioni di diritto romano*⁸, Catania 1992, p. 93.

monumentum facere, had it not already existed, probably from the time of the early Principate, when all matters dealing with graves (*sepulchra*) were under the jurisdiction of the Pontiffs and regulated by sacral law (30).

Old Alfenus Varus mentions that in case of non-compliance the punishment was determined by the testator (31). We have learnt from Labeo of an oath (*iusiurandum*) (32). In the first half of the 1st century A.D., the praetor indirectly protected the execution of the *modus* in such a way that he denied the *actio legati* to the burdened *legatarius* (after Nerva and Atilicinus through Alburnius Valens) (33). It is hard to believe that the praetor provided protection in the case of the breach by the *legatarius*, but left unprotected the case when the heir was burdened with a *iussum*.

May this be supported by the detailed and clear story of Justinian's compilers in the Institutions, telling us how *fideicommissum* obtained legal protection (34). *Fideicommissum*, of course, differs from our *modus* both by the form and person on whose behalf a certain act is performed. But by the economic effect on the burdened person it is almost identical to the *modus*. If one can believe Justinian's compilers, *fideicommissum* got

30) B. BIONDI, *Successione testamentaria e donazioni*², Milano 1955, p. 569; *Istituzioni di diritto romano*⁴, Milano 1964, p. 201.

31) D. 35,1,27. Cf. Pomponius, *l. 3 ad Sabinum* (D. 35,1,6 pr.).

32) D. 29,2,62 (Iavolenus, *l. 1 ex posterioribus Labeonis*).

33) D. 32,19.

34) Inst. 2,23,1; 2,25 pr.

legal protection for the first time upon the initiative of Augustus himself on the occasion when he, being the heir of Lucius Lentulus, was burdened by a *fideicommissum* in a codicil. In order to respect the will of the *de cuius* and with expert support of distinguished jurists (Trebatius and Labeo), Augustus protected the *fideicommissum* legally in the *extra ordinem* procedure, which was initiated by the consuls. As Augustus provided such protection to the request (*rogatio*) of the testator expressed in the codicil, it seems to us convincing that he also legally protected the testator's wish expressed by an order in his testament for his tombstone to be built.

Although our inscriptions do not tell us directly something about the existence of legal protection, I deem that it is worthwhile to take into consideration that the great majority of those inscriptions mention exactly *heredes* as burdened by the *iussum*. Would such a practice have prevailed in Salona, if such an order (together with the designation of an heir) had not been protected legally? The form in which this testator's wish was formulated and the above described contents prove, as it seems to me, the testator's intention of establishing a legal relationship. The testator fully determined the behaviour of the burdened person, which could be claimed legally.

The very fact that the inscription on the monument read that it was erected for the purpose of compliance with an order, gives us information about the wish of the executor to provide a direct evidence that he had fulfilled the wish of the testator, probably as a legal duty. After all, this is probably also indicated indirectly

by other numerous inscriptions in Salona which state by whom and how the tomb was erected for the deceased in another manner. The very fact that the clause *TFI* in the inscriptions of Salona appeared for almost two centuries, tells us something about the legal efficiency of this order.