

The *lex Voconia* and Cornelia's Jewels

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1. *Jewels as symbol of female integration*

The stereotyped representation of Roman women handed down from republican tradition is that of chaste matrons, queens of their households and wool spinners, humble in their appearance. But outside the literary stereotypes things were quite different. Bejewelled matrons paraded through Rome, because many of them were rich, some immensely rich. Metaphorically speaking wool was not the only thing they spun. Sometimes they were able to pull the strings of politics. How was this possible? Their large estates often served to support the careers of husbands and sons in the *cursus honorum*. They inherited from their family of origin in an intestate succession, i.e. in the absence of a will; and thanks to a will they could inherit from their husbands, their parents, even from strangers. I would like to give some figures. In 42 BC when the ability of women to receive by will had long been limited by the *lex Voconia* there were more than one thousand wealthy matrons, 400 of which had more than 100,000 denarii. Conscious of their exclusion from public life they refused to pay taxes¹. Men were aware that they could be used for social climbing,

¹ Appian. *b.c.* 4.32-33, see also Val.Max.8.3.3. Appian relates the story of Hortensia, the daughter of the great orator Q. Horatius, who addressed the triumvirs in the Roman forum to protest against the proposal of taxing women. Hortensia's argument is that if women do not participate to public life they should not be required to pay. L.PEPPE, *Posizione giuridica e ruolo sociale della donna romana in età repubblicana*, Milano 1984, 17-42, analyses in detail her story that becomes for the scholar the starting point for a general evaluation of woman's role and patrimonies during the republic. One of the important conclusions of the study is that the function of female wealth at the end of the republic is identical to male wealth. The objective is to ensure a personal situation in which one can fulfil the occupations proper to one's status.

for their wealth of course², and also for their potential for mediation among the families. Unexpectedly during the first centuries CE of the empire in Egypt, both the erotic *defixiones*³, the epigraphic documents containing magic rituals, and the *Magical Papyri* (the recipe books from the library of a sorcerer) attest that it was not girls seeking for a husband who requested love spells, as we would be inclined to think, but shrewd men wishing to marry a rich woman⁴. Once again the epigraphic evidence contrasts with the literary representation of Theocritus or Vergil of a female preference for magic, as survives in our contemporary imagery. Likewise the archaeological evidence from the catastrophe of Pompeii (79 CE) offers information on several towns of Campania showing how the liberal behaviour of women of the higher classes reverberated also on those of the lower ones. Women of different segments of society⁵ occupy a significant part of the finan-

Therefore male and female *sui iuris* citizens participate in the same ideology. See more recently D.A.HART, *Hortensia*, in M.Ballif (edd.), M.G.Moran, *Classical Rhetorics and Rhetoricians: Critical Studies and Sources*, Westport, CT and London 2005, 219-222.

² Cicero's wife Terentia brought him creditable connections and a handsome dowry. Furthermore she was his trusted intermediary in negotiating and managing loans on his behalf during troubled times, cf. S.TREGGIARI, *Terentia, Tullia and Publilia: The Women of Cicero's Family*, London-New York 2007, 30-32, 49.

³ F.GRAF, *La magia nel mondo antico*, Roma-Bari 1995 (original edition: Paris 1994), 179-184.

⁴ During the second century CE the philosopher Apuleius was accused of having used magic to lure into marriage the rich widow Pudentilla whose wealth added up to 4.000.000 denarii (and who had once rejected his proposal). Of course the actual facts were only the basis for a complex literary elaboration. See on these problems especially F.LAMBERTI, *Ricchezza e patrimoni femminili in Apuleio*, in G.Urso (ed.), *Moneta mercanti banchieri. I precedenti romani dell'Euro. Atti del Convegno Internazionale Cividale del Friuli 26-28 settembre 2002*, Pisa 2003, 301-320. The scholar analyses in detail Pudentilla's wealth (p.310-314) emphasizing her qualities of manager in increasing with *summa industria* (*Apol.* 70.16) what she had received by inheritance. On Apuleius' trial see the recent in depth analysis by L.PELLECCHI, *Innocentia eloquentia est. Analisi giuridica dell'apologia di Apuleio*, Como 2013, *passim*.

⁵ F.REDUZZI, *Le donne nei documenti della prassi campana*, in *Index* 40 (2012) 381, emphasizes how "Le *tabulae ceratae* da Pompei ed Ercolano sono una meravigliosa cartina di tornasole delle attività giuridicamente rilevanti compiute da donne, perché riguardano sia signore dell'aristocrazia locale, sia personaggi degli strati più 'popolari'; documenti che non sono stati generalmente presi in considerazione nelle opere sulla condizione femminile a Roma". Likewise É.JAKAB, *Financial Transactions by Women in Puteoli*, in P.J.du Plessis (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh 2013, 130, points out: "In the rich material from the Ar-

cial transactions preserved in the legal documents of the Archive of the Sulpicii⁶. Particularly fascinating is the moneylender Titinia who operated in the harbour of Puteoli⁷ attesting female participation in different professions.

Jewellery, the visible sign of this wealth, was a symbol of women's role in Roman society and of their degree of "emancipation"⁸. As is well known the only female public protest in Rome was when in 195 BCE they supported the tribunes of the plebs M. Fundanius and L. Valerius' proposal to repeal the *lex Oppia*. The statute passed in 215 BC during the Second Punic war forbade women from owning more than a half-ounce of gold, wearing colourful garments, and using the chariot through the city streets except while performing religious functions. The official *ratio* of these provisions had been to contain costs⁹ in a moment of hardship. But certainly during a war that decimated thousands of men, women must have administered the family estates gaining visibility and independence. The concern for this situation is explicitly expressed in the speech delivered by Cato the elder, the censor *par excellence*, to maintain the law¹⁰.

For the Censor the lack of individual control (Liv. 34.2.1.) created a scary phenomenon: collectively women resembled a group of political pressure comparable to the plebs in turmoil. He believed it was

chive of the Sulpicii, twenty-three tablets (24%) record legal transactions performed by women. The simple statistics already hints at the importance of women in the business life of Puteoli".

⁶ G.CAMODECA, *Tabulae Pompeianae Sulpiciorum*, (TPSulp.). *Edizione critica dell'archivio puteolano dei Sulpici*, Roma 1999.

⁷ See on Titinia: F.REDUZZI, *o.u.c.* 383-384, and É.JAKAB, *o.u.c.* 145-147.

⁸ R.VIGNERON, J.-Fr.GERKENS, *The Emancipation of Women in Ancient Rome*, in RIDA 47 (2000) 110, maintain that the start of the independence of Roman women should be traced to the time of the repeal of the *lex Oppia*.

⁹ Liv. 34.6.16. C.CAMBRIA, "Res parva". *Magistro dicata*, in C.Russo Ruggeri (ed.), *Studi in onore di Antonino Metro I*, Milano 2009, 353ff., suggests that an aim of the *lex Oppia* was to avoid squandering of assets so that matrons could financially aid the war when asked for a *tributum*.

¹⁰ Against the authenticity of the debate related by Livy (43.1-8.3): P.FRACCARO, *Le fonti per il consolato di M. Porcio Catone*, in Studi St. per l'Ant. Class. 3 (1910) 129ff. [= *Opuscula I* (Pavia 1970) 179ff.]. In favour of its substantial credibility: P.DESIDERI, *Catone e le donne. (Il dibattito liviano sull'abrogazione della lex Oppia e la condizione giuridica della donna romana)*, in Opus 3 (1984) 64; and A.BOTTIGLIERI, *La legislazione sul lusso nella Roma repubblicana*, Napoli 2002, 123-127.

necessary to limit them. Thus it was essential to preserve the laws that kept women under the control of fathers, brothers, and husbands and as far away as possible from politics (Liv. 34.2.7). Equally interesting is the speech of the Tribune Lucius Valerius who wanted to repeal what he considered a special law, unnecessary because “women cannot aspire to magistracies, priesthoods, the triumphs, the rewards, gifts or spoils of war; *the elegance, the jewels, the hairstyle: those are the signs of power, (insignia) of women, their delight and their glory*”. For the tribune control and guardianship were preferable to servitude. Men should be called fathers and husbands, rather than masters¹¹. Women crowded around the two tribunes who opposed the proposal of their colleagues and did not disperse until the law was repealed unanimously. If we examine the arguments of Cato and his antagonist Valerius, we realize that it’s actually the former who somehow understood better the potential power of women and therefore he feared them as a social component of political pressure. For the Censor, as a group they had the potentiality to act in “sedition” and “secession”. Valerius’s arguments, albeit favourable to women, express the intention of enacting a measure of *Realpolitik*, a compromise. The repeal of the *lex Oppia* resulted in the restitution of their jewels. The restored *insignia* were the emblem of a social compromise between the sexes. The latter would not lose their situation of privilege until they continued to accept being guided by men. The repeal was a very intelligent decision able to control a centrifugal movement, reaffirming the functions and roles of women and especially absorbing their discontent.

2. The *Lex Voconia*

A little less than thirty years later the repeal of the *Lex Oppia* Cato supported the passing of a law, the *lex Voconia*¹² (169 BCE) limiting

¹¹ Liv. 34.7.8-9. *non magistratus nec sacerdotia nec triumphi nec insignia nec dona aut spolia bellica iis contingere possunt: munditiae et ornatus et cultus, haec feminarum insignia sunt, his gaudent et glorientur, hunc mundum muliebrem appellarunt maiores nostri.*

¹² Sources on the statute are in G.ROTONDI, *Leges publicae populi Romani*, Hildesheim 1990 (reprint; original edition: Milano 1912) and T.R.S.BROUGHTON, *The Magistrates of the Roman Republic* 1, Cleveland 1968, 425; J.C.HASSE, *Zur lex Voconia*, in *Rheinisches Museum für Jurisprudenz* 3 (1829) 183ff.; C.GIRAUD, *Du vrai caractère de la Loi Voconia chez les Romains*, Paris 1841; J.J.BACHOFEN, *Die lex Voconia und die mit ihr zusammenhängenden Rechtsinstitute*, Basel 1843; F.C.VON SAVIGNY,

the capacity of women of receiving inheritance. Its first provision prevented the citizens of the first class of census¹³ – the wealthiest citizens in Rome – to establish women as heirs¹⁴. According to the second provision a legacy could not exceed half of the estate¹⁵. This

Über die Lex Voconia, in *Vermischte Schriften* I, Berlin 1850, 440ff. (the study appeared in 1820/21 was revised in 1849); C.VON VANGEROW, *Ueber die Lex Voconia*, Heidelberg 1863; P.GIDE, *Étude sur la condition privée de la femme dans le droit ancien et moderne et en particulier sur le sénate-consulte Velleien*², Paris 1885; J.CHAUVET, *Essai sur la loi Voconia*, Grenoble 1891; Th.MOMMSEN, *De lege Voconia. Excursus ad Iuvenalis sat. I, 55*, in *Gesammelte Schriften III. Juristische Schriften* III, Berlin 1907, 192ff.; A.STEINWENTER, s.v. “Lex Voconia”, in PWRE XII/2, Stuttgart 1925, 2420ff.; S.CASSISI, *L’editto di Verre e la lex ‘Voconia’*, in AUCT 3 (1949) 490ff.; G.LONGO, s.v. “Lex Voconia”, in NNDI IX, Torino 1963, 825; U.WESEL, *Ueber den Zusammenhang der lex Furia, Voconia und Falcidia*, in ZSS 81 (1964) 308ff.; J.PÖLÖNEN, *Lex Voconia and Conflicting Ideologies of Succession. Privileging Agnatic Obligation over Cognatic Family Feeling*, in *Arctos* 33 (1999) 111ff.; L.LABRUNA, *Astronomi e storici: due leggi ‘immaginarie’ nella ‘pro Rhodiensibus’ di Catone?*, in *Att. Acc. Pont.* 30 (1981) 339 f. [= in *Adminicula*³, Napoli 1995, 93ff.]; A.GUARINO, *Lex Voconia*, in *Labeo* 28 (1982) 188ff.; R.VIGNERON, *L’antiféministe loi Voconia et les “Schleichwege des Lebens”*, in *Labeo* 29 (1983) 140ff.; A.J.B.SIRKS, *Sacra, Succession and the Lex Voconia*, in *Latomus* 53 (1994) 273ff.; O.E.TELLEGEN-COUPERUS/J.W.TELLEGEN, *La loi Voconia et ses séquelles*, in *TR* 66 (1998) 65ff.; L.MONACO, *Hereditas e mulieres. Riflessioni in tema di capacità successoria della donna in Roma antica*, Napoli 2000; J.A.J.M.VAN DER MEER, *Made for men. The lex Voconia: mulier heres institui non potest*, Eijsden 1996; A.WEISHAUP, *Die lex Voconia*, Köln-Weimar-Wien 1999; on which see the critical note of N.BENKE, in *ZSS* 117 (2002) 488ff.; A.MCCLINTOCK, *Polyb. 31.26-28: la successione di Emilia*, in *Index* 33 (2005) 317ff.; G.MELILLO, *La media iurisprudentia e le limitazioni alla legittimazione successoria delle donne*, in Id., *Personae e status in Roma antica. Saggi*, Napoli 2006, 67ff.; M.BALESTRI FUMAGALLI, *Riflessioni sulla ‘lex Voconia’*, Milano 2008, includes three preceding studies by the author on the topic; T.SPAGNUOLO VIGORITA, *Joersiana IV: Livia, Augusto e il plebiscito voconio*, in *Index* 40 (2010) 257ff.; G.GULINA, “Cum intellegam legem Voconiam”. *Il ruolo del pretore circa l’apprezzamento della ricorrenza dei presupposti di applicazione della legge*, in *Iuris Quidditas. Liber Amicorum per Bernardo Santalucia*, Napoli 2010, 121ff.; T.A.J.MCGINN, s.v. “Lex Voconia”, in *The Encyclopedia of Ancient History* (2012) 1ff. of the offprint.

¹³ The monetary limits of the *lex Voconia* are still a *vexata quaestio*. The probable limit was set at 100,000 asses although various authors give different figures or none at all as Cicero and Livy. Cf. A.WEISHAUP, *Die lex Voconia* cit., 41ff.; 67ff.

¹⁴ The most synthetic formulation of the provision is given by Gaius: Gai.2.274. *Item mulier, quae ab eo qui centum milia aeris census est per legem Voconiam heres institui non potest, tamen fideicommisso relictam sibi hereditatem capere potest.*

¹⁵ The second provision of the statute forbade them from leaving bequests of greater value than the inheritance of the ordinary heirs. Gai.2.226. *Ideo post lata est lex Voconia, qua cautum est, ne cui plus legatorum nomine mortisve causa capere lic-*

means that combining the two provisions women could receive at the most half of the inheritance of a citizen of the first class. The capacity of women of inheriting in legitimate succession was untouched¹⁶. It is debated if both the provisions were aimed only at the wealthiest Roman citizens. In the impossibility of establishing with certainty if the second provision had general application, perhaps the following reconstruction may give a clue to who were the aimed recipients of the law. The law has been considered an enigma for over two centuries by scholars who have attempted to study it. Some of the reasons of its obscurity are found in the fact that the provisions could be at a first glance easily evaded (and they were), and did not prevent all women from receiving inheritance. Several scholars have emphasized its anti-feminist aim of preventing female power fuelled by conspicuous wealth¹⁷, more recent studies have strongly rejected this approach denying that men were ever really threatened by women¹⁸. According to the *media sententia* dear to scholars the regulation was aimed at protecting the stability of the ruling social groups (i.e. the first class) as the other sumptuary laws by preventing female squandering and

eret, quam heredes caperent. Ex qua lege plane quidem aliquid utique heredes habere videbantur; sed tamen fere vitium simile nascebatur; nam in multas legatariorum personas distributo patrimonio poterat testator adeo heredi minimum relinquere, ut non expediret heredi huius lucre gratia totius hereditatis sustinere. The application limits of this second provision are discussed. Some scholars maintain that the prohibition regarded the same category of citizens with a patrimony of 100.000 asses as the first provision. Others consider the second provision aimed at all citizens emphasizing the connection of the statute with the other general laws concerning bequests: the antecedent *lex Furia* and successive *lex Falcidia*. A synthesis of the various positions can be found in J.A.J.M.VAN DER MEER, *Made for men*, cit., 16ff.

¹⁶ Cf. *infra* nt.36.

¹⁷ P.GIDE, *Étude sur la condition privée de la femme*², cit., 148; H.HERRMANN, *Le rôle judiciaire et politique des femmes sous la République romaine*, Bruxelles 1964, *passim*; R.VIGNERON, *L'antiféministe loi Voconia*, cit. *passim*; E.CANTARELLA, *Passato Prossimo*, cit., 89-90, stresses men's fear of rich women.

¹⁸ J.A.J.M.VAN DER MEER, *Made for men*, cit., 54ff., maintains that the law was not aimed at women directly and negative effects were only the consequences of provisions designed in favour of men. A.WEISHAUPT, *Die lex Voconia*, cit., *passim*. A more complex and multifaceted position is expressed by L.MONACO, *Hereditas e mulieres* cit. *passim*, who does not consider acceptable an interpretation of the *lex Voconia* as a law limiting consolidated rights.

promoting male accumulation of property¹⁹. No definitive answer has yet been given.

Undoubtedly female wealth continued to be lasting and conspicuous notwithstanding the limitations of the law. Rarely was a law as evaded as the *lex Voconia*. Vigneron elegantly defined “Schleichwege des Lebens²⁰” the impressive number of ruses adopted by male and female citizens to ensure inheritance to daughters, sisters, wives, and mothers. Evasions include in course of time: restrictive interpretations of the law²¹; very favourable interpretation of wills; *legatum partitionis*²²; *fideicommissum*²³; deliberate failure to register in the *census*; *legatum ususfructus*, dowries²⁴; dying without making a testament (although in theory possible, quite improbable since wealthy Romans would find repulsive not to write in detail their final provisions²⁵); *praeteritio*²⁶. Probably the same Augustus had to ask the Senate for a special permission to name his wife Livia as heir²⁷.

¹⁹ G.CLEMENTE, *Le leggi sul lusso e la società romana tra III e II secolo a.C.*, in A.Giardina, A.Schiavone (edd.), *Società romana e produzione schiavistica III. Modelli etici, diritto e trasformazioni sociali*, Bari 1981, 10, speaks of “leggi intese a proteggere il patrimonio romano, e con esso la stabilità della prima classe di censo”; likewise E.GABBA, *Ricchezza e classe dirigente romana fra III e I sec. a.C.*, in RSI 103 (1981) 541ff. [= *Del buon uso della ricchezza*, Milano 1988, 27ff.]. Following this reconstruction among others: M.BALESTRI FUMAGALLI, *Riflessioni sulla 'lex Voconia'*, cit., 80ff.; G.GULINA, “*Cum intellegam legem Voconiam*”, cit., 151ff.

²⁰ R.VIGNERON, *L'antiféministe loi Voconia* cit. 148.

²¹ See the case of Publius Annius Asellus related by Cic. *Verr.* II 1.104 who was not registered in the *census* and therefore had instituted his daughter as heir. Unfortunately Verres had extended the scope to unregistered citizens in his edict. However, the extensions had not been reprised by the following magistrates and unregistered citizens such as a woman named Annaea (Cic. *Verr.* II 1.111 see *infra* 190) had been able to institute her daughter as heir.

²² Cic. *pro Caecina* 4.12. See also the *Laudatio Murdiae* (CIL 6.10230 = ILS 8394 = FIRA III 70).

²³ Cic. *de fin.* 2.55.

²⁴ See *infra* 197 the dowries paid to the two daughters of Scipio Africanus and Aemilia. Cf. J.A.J.VAN DER MEER, *Made for men*, cit., 102ff.; A.WEISHAUP, *Die lex Voconia*, cit., 112ff.; A.MCCLINTOCK, *Polyb.* 31.26-28 cit. 324.

²⁵ R.VIGNERON, *L'antiféministe loi Voconia*, cit., 150.

²⁶ Suggested by some scholars: J.A.J.M.VAN DER MEER, *Made for men*, cit., 105ff., M.BALESTRI FUMAGALLI, *Riflessioni sulla 'lex Voconia'*, cit., 61. Cf. Gai.2.123-126.

²⁷ Cass. Dio. 56.32.1. This is the opinion of the late lamented Tullio SPAGNUOLO VIGORITA, argued in great detail in *Joersiana IV: Livia, Augusto e il plebiscito voconio*, in Index 40 (2010) 257ff., with recent bibliography. The scholar follows Paul JÖRS' reconstruction set out in *Über das Verhältnis der Lex Iulia de maritandis or-*

I have maintained in a previous study²⁸ that the first provision of the *lex Voconia* applied not only to male citizens of the first class but also to female citizens who had been registered for the same amount in the census. Women were enlisted in the census²⁹ and Cicero relates explicitly of Annaea a rich matron – *pecuniosa mulier* – who was able to make a will avoiding the prohibition of the *lex Voconia* naming her daughter as heir because she had not been previously registered³⁰. Restricting the first provision solely to male citizens would have narrowed even more the scope of the statute, especially considering the large estates owned by women.

Cicero in the *de republica* speaking about the restrictions concerning women's capacity to inherit rhetorically asks himself: *cur virgini Vestali sit heres, non sit matri suae*³¹? "Why can a woman inherit from a Vestal Virgin and not from her own mother?" These sources reflect the concerns of many Romans. In my opinion the statute prevented a rich woman or a rich man from preferring a daughter to a son.

If my reconstruction stands both male and female citizens with a personal patrimony included in the first class adopted many different ways to escape from the provisions of the law. Women addressed the passing of the law in the same way men addressed it. They preferred evasion to an overt protest as had happened with the *lex Oppia*.

dinibus zur Lex Papia Poppaea, Jur. Dissert. Univ. Bonn, Bonn 1882, 35ff.; 56 (§ 40 nt.4); and *Die Ehegesetze des Augustus*, Marburg 1893, 54; 63 f., both republished with an introduction by T.SPAGNUOLO VIGORITA in P.JÖRS, '*Iuliae rogationes*'. *Due studi sulla legislazione matrimoniale augustea*, Napoli 1985 [*Antiqua* 36]).

²⁸ *Polyb.* 31.26-28, cit., 321ff. The hypothesis had already been advanced by S.B.POMEROY, *The Relationship of the Married Woman to her Blood Relatives in Rome*, in *AS* 7 (1976) 222-223. Sceptical, recently, although not denying that women were registered in the census well before Augustan times see T.SPAGNUOLO VIGORITA, *Joersiana IV*, cit., 258 nt.1.

²⁹ On women enlistment in the census P.A.BRUNT, *Italian Manpower*, Oxford 1971, 5; 7: 15f.; 22; 27; 113ff. The procedures are quite obscure, cf. J.LE GALL, *Un critère de différenciation sociale*, in *Recherches sur les structures sociales dans l'antiquité classique*, Paris 1970, 275ff.

³⁰ Cic. *Verr.* II 1.111. *in his nuper Annaea de multorum propinquorum sententia, pecuniosa mulier, quod censa non erat, testamenti fecit heredem filiam*. This happened because as is well-known at the end of the Republic the census was very irregular. Annaea died in 71-70 BCE.

³¹ Cic. *de rep.* 3.17.

Did the law impact women's lives? According to the ancient rules of intestate succession³² when a woman (married *sine manu*) died her children did not inherit from her. By definition she had no heirs³³. Her property went to her nearest relative in the male line. Likewise if her husband died without leaving a will she would not be his heir (if she was married *sine manu*) until the praetor included her in the last class of successors. Even in this last case therefore her chances were slim. The only privileged women in intestate succession were daughters who inherited in equal shares with their brothers, and women married *in manu* who inherited from their husband *filiae loco* in equal shares with their children.

One can assume that practically everyone who had something to leave would make a will³⁴. Especially the propertied classes. Clearly many wills must have concerned husbands instituting their wives as heirs, parents (male and female) naming their daughters sometimes in preference of sons. Testaments were the means of escaping from the ancient rules of intestate succession. Proof of it was that to make a valid will a woman had to sever her agnatic connections by a fictitious act³⁵. Then she could leave her wealth to her daughter, to her son, to her husband, to whomsoever she liked. From the point of view of the *testamenti factio passiva* up to the 169 BCE female citizens could receive virtually from everyone.

The *lex Voconia* obtained the practical result of reaffirming for women the agnatic line of succession³⁶ and imposing men in the role of heirs. It has been observed that legitimate succession was a loophole for the provisions of the *lex Voconia* because the law did not

³² For an outline of Roman regulation see J.A.CROOK, *Women in Roman Succession*, in B.Rawson (ed.), *The Family in Ancient Rome. New Perspectives*, Ithaca 1986 (republished 1992) 58ff.

³³ D.50.16.195.5 (Ulp. 46 *ad ed.*) *Mulier autem familiae suae et caput et finis est.*

³⁴ Scholarship is unanimous on the point: A.GUARINO, *Diritto privato romano*¹², Napoli 2001, 449; F.VON WOESS, *Das Römische Erbrecht und die Erbanwärter*, Berlin 1911, 78ff.; M.AMELOTTI, *Le forme classiche di testamento I*, Torino 1966; R.VIGNERON, *L'antiféministe loi Voconia*, cit., 150; A.E.CHAMPLIN, *Final Judgments. Duty and Emotion in Roman Wills, 200 B.C. – A.D. 250*, Berkeley - Los Angeles - Oxford 1991, 45.

³⁵ Cic. *top.* 4.18; Gai.1.115a and Gai.2.122. See L.PEPPE, *Posizione giuridica e ruolo sociale della donna romana*, cit., 55ff.

³⁶ Cf. J.PÖLÖNEN, *Lex Voconia and Conflicting Ideologies of Succession*. cit., 111-131.

limit women in that capacity³⁷. In my opinion the rules set by the statute were a perfect complement to those of the intestate succession with just a soupçon of compromise³⁸. Only a daughter *in potestate* if she were a single child would really benefit from her father dying intestate. If the daughter had brothers she would inherit in equal shares with them in accordance with the spirit of the *lex Voconia* that explicitly allowed women to receive up to half the estate. Of course also women married *in manu* would benefit from a legitimate succession from their husband (*filiae loco*). Furthermore if a woman who was married *sine manu* died without making a will her estate would return to her family and therefore to her nearest relative in the male line.

I think the allowance of the second provision of the law regarding legacies has not been stressed enough. Compromise was from the beginning embedded in the *esprit* of the statute. The legislators were ensuring that women of the wealthiest classes would always get their fair share of property. What they were aiming to achieve, in my opinion, was to link the concept of “heir” only to “men”. Women would continue to receive property and to “hold” it, waiting to transfer it to a husband or to a son.

The *lex Voconia* is explicit in stating the principle that a woman could not be her father’s or her mother’s heir in a full sense. Inheritance was not only a matter of property and cash. It embraced power, prestige, clientele, the ancestral house, and the *sacra* (the family cults). The *lex Voconia* prevented women from receiving this net of relations and forms of power. Evidently as heirs they had gained independence in managing the key-estates of Rome. These estates through marriages and alliances could change the politics of Rome. Therefore it is probable that the first provision would not have aimed

³⁷ Gaius (3.14) describing intestate succession of women specifies that women beyond the degree of sisters were not admitted to intestate succession. A passage of the *Pauli Sententiae* (P.S.4.8.20; cf. Coll.16.3.20) links this limitation to the *lex Voconia* inducing some scholars to think this provision was included in the law. However, a textual analysis of all the relevant sources suggests that the rule was introduced from jurisprudential interpretation on the principle of male preference set by the *lex Voconia*. See recently on the different positions expressed by scholars M. Balestri Fumagalli, *Riflessioni sulla ‘lex Voconia’*, cit., 55-58.

³⁸ *Contra* B.KUEBLER, *Das Intestaterbrecht der Frauen im alten Rom*, in *ZSS* 41 (1920) 26ff.; M.BALESTRI FUMAGALLI, *Riflessioni sulla ‘lex Voconia’*, cit., 60-61.

at limiting only male *testamenti factio* since we know as a fact that many women were in possession of conspicuous patrimonies. Both mothers and fathers of the ruling social groups should prefer sons when making a will.

Cato won a symbolic battle destined to cross the centuries to modern times³⁹. Pierre Bourdieu⁴⁰ has explained that women's history cannot limit itself to describe the transformations in the female condition during time or the fights for emancipation. The research perspective must be revised so as to embody a reconstruction of the history of the mechanisms and institutions, which made possible the continued reproduction of this age-old domination by men. In this sense the *lex Voconia* represents an "invariant of domination", concerning the preference of male heirs for the propertied classes.

Male preference in inheritance (with diverse features and variations) would become sometimes an interiorized and customary social rule, other times actual legislation in the most different contexts. For example in England still at the beginning of the nineteenth century restrictive rules of inheritance were enforced to preserve larger properties from being broken up into small portions, which might weaken the power of nobles. Entail (restriction of inheritance to a limited class of descendants for at least several generations) together with primogeniture (whereby land descended to the oldest son) was invoked to ensure that the rights to real property would go to men. Several novels of Jane Austen recount the story of heroines who await full of hope for the birth of a brother to maintain the possibility of living in the paternal mansion or on hurry: the quest for a profitable marriage before the 'cruel' cousin comes to ask his due.

3. *Aemilia: a case study*

Aemilia, wife of Scipio Africanus the great general who defeated Hannibal, was one of the prominent and rich matrons of her time. She was the daughter of the general Lucius Aemilius Paullus who died at Cannae, mother of Cornelia, grandmother of the Gracchi, natural aunt

³⁹ E.HÖBENREICH, *Die lex Oppia und Catos Rache*, in E.Höbenreich, G.Rizzelli (edd.), *Scylla. Fragmente einer juristischen Geschichte der Frauen im antiken Rom*, Wien-Köln-Weimar 2003, 97-111, justly speaks of Cato's revenge in obtaining the approval of the *plebiscitum*.

⁴⁰ P.BOURDIEU, *Masculine Domination*, Stanford 2001 (original edition Paris 1998) 4.

and adoptive grandmother of Scipio Aemilianus who razed Carthage to the ground.

She lived to see all the events affecting female citizens. She was a young girl at the time of the *lex Oppia*, an adult during the fight for the repeal, an elderly lady when the *lex Voconia* was voted. Her death in 162 BCE came only a few years after the passing of the *plebiscitum de mulierum hereditatibus*⁴¹.

The lady was famous for her glamorous attire. Polybius a historian not inclined to talk about women's matters, dedicates nevertheless long passages to describe her character, succession and the consequent actions of her heir Scipio Aemilianus. Her life and her death had created quite a stir in Rome. The admiration produced by Aemilia during her strolls through Rome was great. Her "luxurious display at women's festivals was the equivalent of the masculine triumph, when generals like her husband paraded their booty". It has been justly observed that "we cannot know when she first put together her memorable show or how often it would have been staged, but in forty years between Africanus' victory at Zama and Aemilia's death it would have served the purpose of showing off Scipio's military success and wealth to the world at large (...) Triumphs, religious processions and funerals – all could be part of a status display and the ever-present competition for honours⁴²". As Polybius writes:

"This lady whose name was Aemilia, used to display great magnificence whenever she left her house to take part in the ceremonies that women attend, having participated in the fortune of Scipio when he was at the height of his prosperity. ... For apart from the richness of her own dress and of the decorations of her carriage, all the baskets, cups, and other utensils for the sacrifice were either of gold or silver, and were borne in her train on all such solemn occasions while the number of maids and men-servants in attendance was correspondingly large⁴³".

⁴¹ The definition is given by Cicero: *pro Balbo* 21.

⁴² S.DIXON, *Cornelia: Mother of the Gracchi*, London 2007, 38.

⁴³ Polyb. 31.26. Συνέβαινε δὲ τὴν Αἰμιλίαν, τοῦτο γὰρ ἦν ὄνομα τῆ προειρημένη γυναικί, μεγαλομερῆ τὴν περίστασιν ἔχειν ἐν ταῖς γυναικείαις ἐξόδοις, ἅτε συνημακυῖαν τῷ βίῳ καὶ τῆ τύχῃ τῆ Σκιπίωνος: χωρὶς γὰρ τοῦ περὶ τὸ σῶμα καὶ τὴν ἀπήνην κόσμου καὶ τὰ κανὰ καὶ τὰ ποτήρια καὶ τὰλλα τὰ πρὸς τὴν θυσίαν, ποτὲ μὲν ἀργυρᾶ, ποτὲ δὲ χρυσᾶ, πάντα συνεξηκολούθει κατὰ τὰς ἐπιφανεῖς ἐξόδους αὐτῆ, τό τε τῶν παιδισκῶν καὶ τὸ τῶν οἰκετῶν τῶν παρεπομένων πλῆθος ἀκόλουθον ἦν τούτοις. Diod. Sic. (31.27.3-4) who also

How had she obtained this great wealth⁴⁴? Polybius is clear in emphasizing that during her youth she had shared Scipio's "life and fortune". Her husband had died in 184 in Liternum in disgrace, after the many trials orchestrated against him by his enemy Cato⁴⁵. It seems likely that Africanus named Aemilia as sole heir in his will⁴⁶. The Greek historian calls her patrimony οὐσία, which means a visible estate individualized by a constant and durable use⁴⁷.

In the only surviving excerpt of the *suasio*⁴⁸ pronounced by Cato in support of the *lex Voconia* he speaks of a woman who had obtained by inheritance⁴⁹ a large sum and had lent a quantity to her husband. The unknown woman had asked the money back in a dishonourable fashion: she had sent in the Forum a *servus recepticius*, a vile kind of slave⁵⁰ to ambush her husband. Cato's rhetorical aim was probably to warn the Romans of the effects of female independent control of es-

describes the richness of her attire cannot be considered an independent source because it can be considered a transcription of Polybius' passage.

⁴⁴ On the successions of Scipio, Aemilia, Papiria and Lucius Aemilius Paullus (including the technical details regarding Aemilia's wealth, the prosopographic data on her surviving children, the possible dates of the marriages of the two Corneliae, the unusual modalities of the payment of the dowries to the husbands of the Corneliae) see A.McCLINTOCK, *Polyb. 31.26-28*, cit., 317ff., especially the notes.

⁴⁵ The date of his death is contested. Livy puts it under 184 BCE. Cf. H.H.SCULLARD, *Roman politics*², Oxford 1973, 152 nt.1. On the trials see G.BANDELLI, *I processi degli Scipioni: le fonti*, in Index 3 (1972) 204ff.; Id., *Il processo dell'Asiatico*, in Index 5 (1974-1975) 93ff.

⁴⁶ *Contra* J.P.HALLETT, *Fathers and Daughters in Roman Society*, Princeton 1984, 94, who thinks that Aemilia was married *in manu* with Scipio Africanus and therefore had inherited *filiae loco*. But it is important to note that Publius Cornelius Scipio was still alive at the time of Africanus' death (cf. P.BOTTERI, "Africani filius", in Index 2 [1971] 204) and therefore he should have inherited with his mother (and depending on their marriages his sisters). Everything points to a testament made by Africanus in favour of Aemilia.

⁴⁷ Ταύτης ἀπολιπούσης οὐσίαν μεγάλην κληρονόμος ὄν πρότον ἐν τούτοις ἔμελλε πείραν δώσειν τῆς ἑαυτοῦ προαιρέσεως. On the notion of οὐσία see L.GERNET, *Antropologia della Grecia antica*, Milano 1983 (original edition Paris 1968) 37.

⁴⁸ *Cato maior de senectute* 5.14.

⁴⁹ Most scholars think the sum came to the woman by inheritance. See on the different positions L.PEPPE, *Posizione giuridica e ruolo sociale della donna romana*, cit., 108ff.

⁵⁰ On the mysteries of the *servus recepticius* see L.LABRUNA, *Minima de servis II. I misteri del servus recepticius*, in Index 7 (1989) 167ff. [= *Adminicula*³ (Napoli 1995) 118ff.].

tates⁵¹. Even if Aemilia was not the insolent woman quoted in the *suasio*, it is difficult to think that a matron as dignified as she – perceived in Rome as republican royalty – would publicly display such behaviour. Nevertheless, I share the opinion⁵² that Aemilia had to be in Cato’s mind while he was supporting the statute. She was precisely the example of everything he disliked: a rich, powerful, influential, and rather independent female. A woman to fear and whose assets could also change the fortunes of politics. Maybe she had even fought in 195 BCE to wear the symbols of wealth for which she was so famous⁵³.

But probably for Cato she was most of all the wife of his long-time enemy. The Censor had always hated the Scipios. He must have considered the political consequences of placing in the wrong hands such a large inheritance. Aemilia had two surviving daughters both named Cornelia already married and her adoptive grandson Scipio Aemilianus who had been adopted by her own son Publius Cornelius Scipio but was also her natural nephew because he was son of her brother Lucius Aemilius Paullus. At the time of her succession there are no *testimonia* for her son Publius, which induces us to think he had already died⁵⁴.

Aemilia made a will leaving her adoptive grandson Scipio Aemilianus as heir. He was a man politically closer to Cato than to the Circle of the Scipios. Had she died intestate her wealth would have probably gone in the same direction⁵⁵.

This is one of the most ancient female testaments of historical times. Aemilianus in his first act as heir did something described by Polybius as in Rome “θαυμαστόν”, incredible, because spontaneously no one gives anything of one’s wealth to anyone (31.26.9. Τοῦτο δὲ πανταχῆ μὲν ἂν εἰκότως φαίνοιτο καλόν, ἐν δὲ Ἱώμῃ καὶ

⁵¹ In this sense R.VIGNERON, *L’antiféministe loi Voconia*, cit., 148.

⁵² G.BOYER, *Le droit successoral romain*, cit., 176ff.; F.W.WALBANK, *A Historical Commentary on Polybius III*, Oxford 1979, 503. D.MUSTI, *Polibio e l’arricchimento nella sfera pubblica e privata*, in *Index 13* (1985) 38, emphasizes how all the themes used from Polybius regarding Aemilia’s wealth are present in Cato’s works — suffice it to think to *de vestitu et vehiculis*.

⁵³ C.PETROCELLI, *Cornelia the Matron*, in A.Fraschetti (ed.), *Roman Women*, Chicago 2001 (original edition Roma-Bari 1994) 46.

⁵⁴ Cf. A.McCLINTOCK, *Polyb. 31.26-28*, cit., 328, nt.21.

⁵⁵ Cf. A.McCLINTOCK, *o.u.c.*, 322.

θαυμαστόν: ἀπλῶς γὰρ οὐδεὶς οὐδενὶ δίδωσι τῶν ἰδίων ὑπαρχόντων ἐκῶν οὐδέεν). Of course the intention of the historian was to praise Aemilianus' generosity but the term could also suggest the sense of "not customary". Aemilianus gave the entire set of ornaments⁵⁶ to his mother Papiria who for years had lived in misery repudiated by his father. Papiria was now able to attend the public festivities with no shame arousing the admiration of the matrons.

The act of incredible generosity seems almost a response by Scipio to the clever provisions drawn in her will by Aemilia regarding the dowries of her two daughters. According to Polybius, Africanus had fixed the amount himself: 50 talents for each daughter (31.27.2. ὁ γὰρ πατήρ συνέθετο μὲν ἑκατέρῃ τῶν θυγατέρων πενήκοντα τάλαντα δώσειν). These are probably two of the most gigantic dowries that the Roman world records. Half of the sum had already been paid by Aemilia. The second half was to be paid at her death. And Aemilianus, her heir, obeyed. Romans were men of honour. He settled at a single stroke a dowry that according to Roman νόμοι could have been divided over three years (31.27.5. κατὰ δὲ τοὺς Ῥωμαίων νόμους δέον ἐν τρισὶν ἔτεσιν ἀποδοῦναι τὰ προσοφειλόμενα χρήματα τῆς φερνῆς ταῖς γυναῖξι) after a first transfer of mobile property in the first ten months. Some anomalies regarding these dowries are emphasized by the same Greek historian: the lump payment against Roman customary rules (κατὰ τὸ παρ' ἐκείνοις ἔθος) and the great surprise of the husbands in receiving the sum since "no Roman would ever pay anything before the final deadline". In my opinion the timing, the quantity and the unusual modalities of payment of the two dowries are a further argument in maintaining that Aemilia was prevented from choosing her daughters as heirs⁵⁷ by the *lex Voconia* and thus compensated them as she could.

The story of Aemilias' ornaments had a sequel. At the death of Papiria the jewellery went back to Scipio Aemilianus quite certainly by testament. There is no way he could have inherited from his mother by intestate succession given the impossibility between them of any

⁵⁶ This set of precious objects was intended both for ritual and to create and maintain a social network. For the anthropologic notion of value see L.GERNET, *Antropologia della Grecia antica*, cit., 65ff., and on the anthropology of gift, the recent very interesting considerations by D.LYONS, *Dangerous Gifts. Gender and Exchange in Ancient Greece*, Austin 2012, *passim*.

⁵⁷ In this sense cf. S.DIXON, *Cornelia*, cit., 38.

agnatic line (if present it would have been severed from the adoption⁵⁸). Aemilianus once more decided to give the set of precious objects as a gift to his two natural sisters, of whom one had married the son of Cato the elder. Polybius remarks that the Aemiliae had “no legal right to these” (31.28.8. ἡς οὐδὲν αὐταῖς προσήκε κατὰ τοὺς νόμους). In a sense Aemilia’s well-known set of jewels and religious objects was now in the hands of her nieces who shared her same name. However the irony of it all was that one of the two sisters was now married with the son of Cato⁵⁹, staunch enemy of Africanus and Aemilia and of female luxury.

Apparently there was no family feud. Sempronia the daughter of Cornelia and sister of the Gracchi would be given in marriage to Scipio Aemilianus. But history tells us that he would be for the Gracchi a political enemy and when he died in his sleep around 129 BCE suspicion fell on his wife Sempronia but also on his mother-in-law Cornelia⁶⁰.

4. A new form of social integration

Cornelia the mother of the Gracchi had lost the precious objects which were the symbol of the power of her family. Scipio Aemilianus had displayed this with grandeur in Rome. As Polybius stated all the Roman women were talking about the affair. She would react to this insult. Cornelia would be herself the sign and the creator of signs. She would become an icon while history slighted her own sister as many other noble women.

How far the flesh-and-blood Cornelia was responsible for generating the legends surrounding her is impossible to assess although lit-

⁵⁸ G. BOYER, *Le droit successoral romain*, cit., 180, analysing this succession states that Papiria given the provisions of the *lex Voconia* could not have established as heirs her daughters. Therefore we are brought to think that he as well considered female citizens limited in their *testamenti factio activa*. Strangely Boyer does not comment on the impact of the law on Aemilia’s will.

⁵⁹ Aemilia had married M. Porcius Cato (Plut. *Aem.* 5; *Cato maior* 24). The other sister had married Q. Aelius Tubero (Val. Max. 4.4.8).

⁶⁰ Appian. *b.c.* 1.19-20. S. DIXON, *o.u.c.*, 17.

erature offers some hints of her doings⁶¹. She was certainly from the beginning a “public construct”⁶².

Daughter of parents of whom she could not become by testament heir she capitalized on their prestige. Even if she didn't drive through Rome in her mother's fashion, Cornelia was in some way able to maintain symbolically the role of heir. Almost two centuries after her death, Juvenal asks himself rhetorically who could stand such a perfect wife as Cornelia who included in her dowry haughtiness, massive virtues and many triumphal processions but also the same spoils of Hannibal, Syphax and Carthage⁶³.

The ancient sources describe her as a well-educated woman, blessed by elegant speech and writing, who surrounded herself with philosophers and intellectuals.

Evidently Cornelia was able to channel her father's prestige towards her sons⁶⁴. She spent all her efforts in giving her children the best possible education, certainly pushing them to renew with their political careers the family glory. Plutarch in the *Life of Tiberius Gracchus* relates that Cornelia repeatedly reproached her sons “because the Romans still called her the mother-in-law of Scipio, and not yet the mother of the Gracchi⁶⁵”.

Cornelia opposed a new form of social integration founded on the awareness of transmitting knowledge and educating children to her mother's form, which was based on a subordinated role (i.e. the matron's traditional role as wool spinner, where jewels and parades represented her status).

⁶¹ S.DIXON, *Cornelia*, cit., 11-12, suggests that Sempronia, Cornelia's daughter, was instrumental in generating and maintaining the family legend.

⁶² S.DIXON, *Cornelia*, cit., 60.

⁶³ Iuv. 6.162-171. *sit formosa, decens, dives, fecunda, vetustos / porticibus disponat avos, intactior omni / crinibus effusis bellum dirimente Sabina, / rara avis in terris nigroque simillima cycno, / quis feret uxorem cui constant omnia? malo, / malo Venustinam quam te, Cornelia, mater / Gracchorum, si cum magnis virtutibus adfers / grande supercilium et numeras in dote triumphos, / tolle tuum, precor, Hannibalem victumque Syphacem / in castris et cum tota Carthagine migra.*

⁶⁴ Caius Gracchus in fragment 47 of a speech attributed to him links his lineage to his maternal grandfather, see E.MALCOVATI, *Oratorum Romanorum Fragmenta*³, Torino 1953, 190ff.

⁶⁵ Plut. *TG.* 8.7.

The exemplum related by Valerius Maximus⁶⁶ on Cornelia's jewels is perhaps one of the best known of antiquity. A matron from Campania who was said to own the most beautiful jewellery of that century was boasting of her possessions to Cornelia. She questioned Cornelia about her mode of dress and personal adornment, which was far more simple and understated than was usual for a wealthy Roman woman of her rank and station. Cornelia waited for her sons to come back from school and pointing at them said: "These are my jewels".

Behind the anecdote on the perfect wife and mother cherishing the virtues of her children there is the objective fact of an intricate and unpleasant succession⁶⁷. The valuable ornaments had been removed from the direct hereditary line. The matron maybe was mocking the high-browed daughter of Africanus and Aemilia by asking her: "Where is your power now?"

Cornelia's answer to the simpleminded matron implied that she was the perfect wife and mother and educator of children (political formation included), custodian of the male values of which she ensured the reproduction. Her two sons would renew her prestige.

If it is true that the Romans established on a new basis the ratio between the sexes in the West⁶⁸, Roman women were not passive in carrying out their role and exploiting it. They wove the threads of power and politics as mothers and wives, securing sometimes secretly often overtly the rise of sons and husbands.

⁶⁶ Val.Max.4.4 init. *Maxima ornamenta esse matronis liberos, apud Pomponium Rufum collectorum libro [...] sic invenimus: Cornelia Gracchorum mater, cum Campana matrona apud illam hospita ornamenta sua pulcherrima illius saeculi ostenderet, traxit eam sermone, donec e schola redirent liberi, et 'haec' inquit 'ornamenta sunt mea'.*

⁶⁷ C.PETROCELLI, *Cornelia the Matron*, cit., 47, stresses the difference between Cornelia and the women of her family. The scholar also suggests that Cornelia's remark "may conceal the bitterness about the fortune she had lost".

⁶⁸ E.CANTARELLA, *Passato Prossimo*, cit., 145ff.