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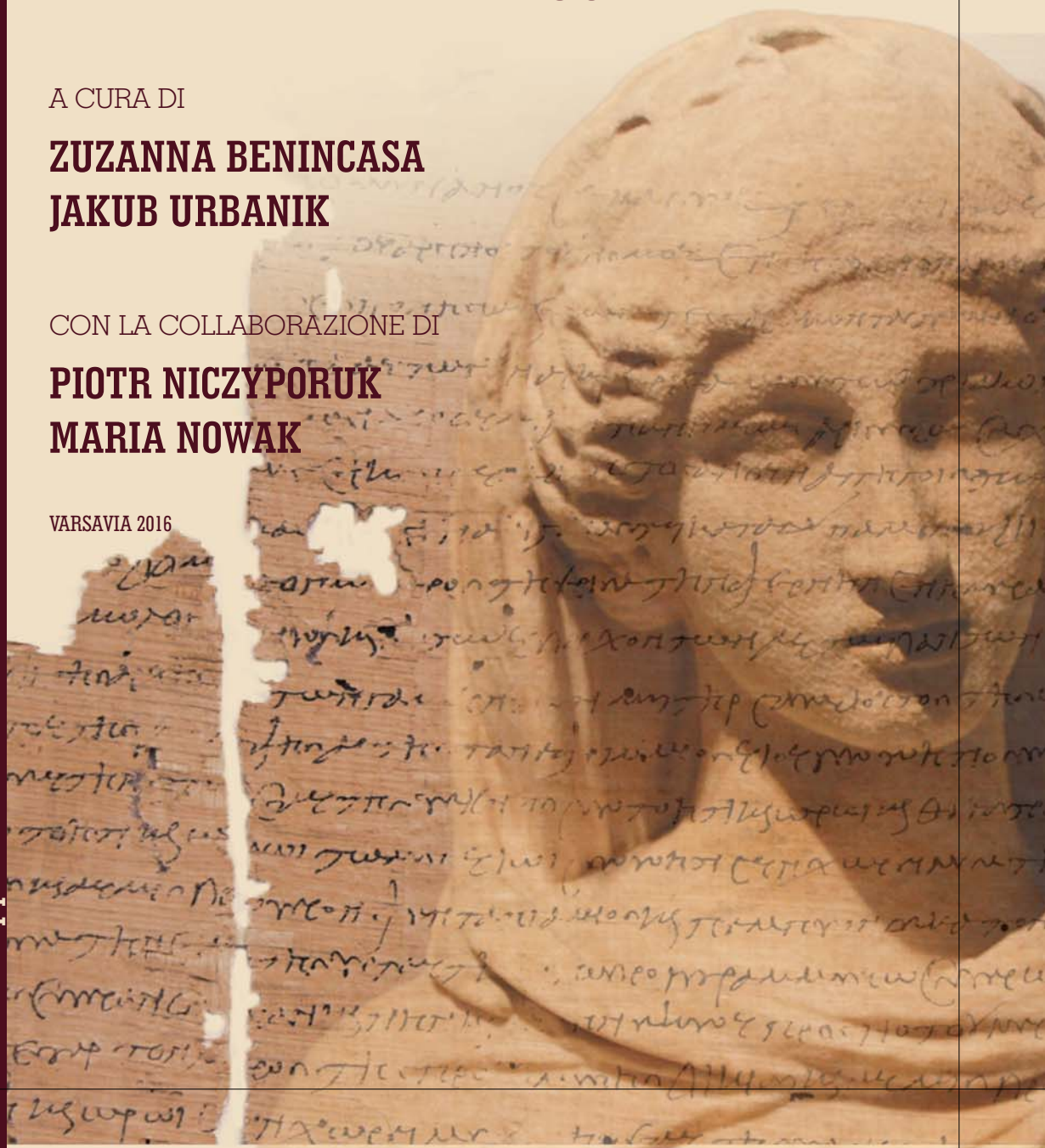
Supplement XXIX

MATER FAMILIAS
SCRITTI ROMANISTICI PER MARIA ZABŁOCKA



A CURA DI

ZUZANNA BENINCASA
JAKUB URBANIK

CON LA COLLABORAZIONE DI

PIOTR NICZYPORUK
MARIA NOWAK

VARSAVIA 2016

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Elżbieta Loska

TESTAMENTI FACTIO PASSIVA OF ACTRESSES IN ANCIENT ROME*

I. INTRODUCTION

In order to determine the legal standing of actresses in any part of Roman law, it is necessary to analyze both the texts that explicitly refer to actresses as well as those speaking of *feminae probrosae* in general, as the legal status of a woman appearing on stage must be examined from at least three perspectives – she should be treated as female, a *femina probosa* and an actress at the same time. Belonging to any of these groups was related to certain restrictions in the law of succession.

In general, especially in the preclassical period of Roman law, the legal standing of women was different from that of man, especially if she was a subject to paternal authority or her husband's *manus*. If not, her person and her property were controlled by a legal guardian (*tutor*).[1] Initially, the only exception to this regulation was the situation of Vestal Virgins, privileged in many areas of life.[2] Since the introduction of Augustus' marriage

* The work on this article has been financed from the funds of the National Centre for Science awarded in the decision number DEC-2013/09/B/HS5/01384.

[1] Gai. 1.144–145; Carla Fayer, *La familia romana* 1, Roma 2005, p. 515.

[2] Among others Gai. 1.145; Plut. *Numa* 10.3; Cic. *Rep*. III 17; Gell. I 12.9; Gell. VII 7.2–4; Gell. 10.15.31; Suet. *Aug* 44; Suet. *Nero* 12, Tac. *Ann*. 2.34; Asc. *Mil*. 34. *Cf.* Mary Beard,

laws, women posessing the *ius liberorum*[3] could be freed from a tutor's custody. It was originally presented to them after having three children[4] (in the case of a freedwoman – four), and included also the children's father. Over time, it was presented to other people not meeting the earlier requirements; for instance, Livia, Augustus' wife, despite the fact that she had only two sons,[5] or the poet Martial, in recognition for his work (Mart. II 92). These women could independently dispose of their property, and thus also make a will and accept inheritances and legacies. Gradually, the *tutela* over women was lessening,[6] and so was the institution of husband's *manus* over the wife.[7] That allowed a growing number of them participate in legal transactions autonomously.

Feminae probrosae were the next category of women whose position in the law of succession was unusual.[8] Of course, not all the authors include

'The sexual status of Vestal Virgins', *Journal of Roman Studies* 70 (1980), pp. 17–18; R. L. Wildfang, *Rome's Vestal Virgins. A Study of Rome's Vestal Priestesses in the Late Republic and Early Empire*, New York 2006, pp. 64–65 (the author treats the legal privileges of Vestal Virgins as a logical consequence of an immunity to the *tutela*); Joanna Misztal-Konecka, '*Incestum*' *w prawie rzymskim* [*Incestum* in Roman Law], Lublin 2007, pp. 232–234; J. Zabłocki & Anna Tarwacka, *Publiczne prawo rzymskie* [Public Roman Law], Warszawa 2011, pp. 105–106.

[3] Juv. *Sat*. IX 89; Mart. II 91.6; III 95.6; VIII 31.6; A. Steinwenter, *PWRE* X 2 (1919), coll. 1281–1283, *s.v*. 'ius liberorum'; J. E. Spruit, *De 'lex Iulia et Papia Poppaea'. Beschouwingen over de Bevolkingspolitick van Augustus*, Deventer 1969, p. 28; R. Astolfi, *Lex Iulia et Papia*, Padova 1986, pp. 72–74; Maria Zabłocka, 'Il *ius trium liberorum* nel diritto romano', *BIDR* 91 (1988), pp. 361–362; Fayer, *La familia* II (cit. n. 1), pp. 581–582.

[4] Gai. 1.194; Gai. 3.44; *TUlp*. 29.3; Maria Zabłocka, *Przemiany prawa osobowego i rodzinnego w ustawodawstwie dynastii julijsko-klaudyjskiej* [Changes of Law of Family and Law of Persons under the Julio-Claudian Dynasty] Warszawa 1987, pp. 47–48; Fayer, *La familia* II, (cit. n. 3), p. 588.

[5] Dio Cass. LV 2.6; T. A. J. McGinn, *Prostitution, Sexuality and the Law in Ancient Rome*, New York 1998, p. 77.

[6] Gai. 1.157; Gai. 1.171; Gai. 1.190; Maria Zabłocka, 'Zanikanie instytucji *tutela mulierum* w prawie rzymskim' [Disappearance of *tutela mulierum* in Roman law], *Prawo Kanoniczne* 30.3–4/ 1987, pp. 239 252; eadem, *Przemiany* (cit. n.6), pp. 101–102; Fayer, *La familia* I (cit. n. 1), pp. 535–536.

[7] Maria Zabłocka, '*Confarreatio* w ustawodawstwie pierwszych cesarzy rzymskich' [tłumaczenie tytułu na angielski], *Prawo Kanoniczne* 31.1–2 (1988), pp. 237–246.

[8] Carla Fayer, *Meretrix. La prostituzione femminile nell'antica Roma*, Roma 2013, pp. 594–615.

actresses into this group but it seems that they should belong there.[9] The essence of *probrositas* was moral and social degradation, and not necessarily debauchery. In the opinion of Astolfi,[10] *probrositas* was connected with women whose behaviour was publicly scandalous and repetitive. The disclosure of the shameful conduct was unfortunately strictly connected with the women of the two professions – prostitutes and actresses, and especially with the latter. Actresses were perceived infamous as performing was the sense of their profession.

Thus many of the sources concerning actresses speak of the whole category of *feminae probrosae*. It can be noticed, however, that sometimes their legal status was slightly different than position of other women belonging to this group.

The quoted source texts will concern mainly the *testamenti factio passiva*. The difficulty in finding the preserved texts relating to the making of wills by actresses and other *feminae probrosae* suggests that their position on the issue was the same as other women's.

II. QUERELA INOFFICIOSI TESTAMENTI

There are few preserved source texts that refer to inheriting in the period of the Republic. These include texts concerning the *officium pietatis*, which should guide the parents when making a will.[11] Over time, more

[9] The opinions treating actresses as *feminae probrosae* voice among others: C. Fadda, *Concetti elementari del diritto ereditario romano*, Napoli 1900, p. 183; S. Solazzi, 'Attorno ai *caduca*', [in:] *Scritti di diritto romano* IV, Napoli 1963, p. 335; R. Astolfi, '*Femina probrosa*, *concubina, mater solitaria*', *SDHI* 31 (1965), p. 20; P. Bonfante, *Corso di diritto romano* VI, Milano 1974, p. 408. Contrary opinion: T. A. J. McGinn, '*Feminae probrosae* and the litter', *Classical Journal* 93.3 (1998), pp. 244–245.

[10] Astolfi, '*Femina probrosa*', (cit. n. 9), p. 20; idem, *Lex Iulia et Papia* (cit. n. 3), pp. 54–55.

[11] *Cf.* Serena Querzoli, *I testamenta e gli officia pietatis. Tribunale centumvirale, potere imperiale e giuristi tra Augusto e Severi*, Napoli 2000, pp. 107–108; A. Guarino, *Diritto privato romano*, Napoli 2001 (12 ed.), pp. 451–452.

and more attention was paid to wills being compatible with this requirement, and from the 1st century AD the immediate family of the testator, left out in the will,[12] had the right to claim a part of the assets through intestacy using the *querela inofficiosi testamenti*.[13]

The circle of people entitled to bring an action was clearly defined. These were children and parents.[14] The testator's siblings were included only when an heir indicated did not have a good reputation[15] – but this was probably the result of an imperial constitution only, so it is not possible to maintain anything certain for the earlier period. The text states:

> *CTh*. 2.19.1. Imp. Constant(inus) A. ad Lucrium Verinum: Fratres uterini ab inofficiosis actionibus arceantur et germanis tantummodo fratribus adversus eos dumtaxat institutos heredes, quibus inustas constiterit esse notas detestabilis turpitudinis, agnatione durante sine auxilio praetoris petitionis aditus reseretur.[16]

[12] To be exact: those who did not receive the proper amount of *portio debita*.

[13] *Cf.* among others G. WESENER, *PWRE* LXXIV (1963), coll. 858–869, s.v. 'querela'; P. VOCI, *Diritto ereditario romano* II, Milano 1963 (2 ed.), pp. 670–672; M. KASER, *Das römische Privatrecht* I, München 1971 (2 ed.), pp. 709–710; A. WATSON, *The Law of Succession in the Later Roman Republic*, Oxford 1971, pp. 62–63; M. TALAMANCA, *Istituzioni di diritto romano*, Milano 1990, pp. 768–769; Daniela DI OTTAVIO, *Ricerche in tema di querela inofficiosi testamenti*. I: Le origini, Napoli 2012. On this action in the later period A. SANGUINETTI, *Dalla 'querela inofficiosi testamenti' alla 'portio legitima'. Aspetti della successione necessaria nell'epoca tardo imperiale e giustinianea*, Milano 1996.

[14] The summary of the opinions concerning the circle of people entitled to *portio debita* in: DI OTTAVIO, *Ricerche* (cit. n. 13), pp. 20–25.

[15] VOCI, *Diritto ereditario romano* II (cit. n. 13), p. 674.

[16] The text was slightly changed in the *Codex Iustinianus*: *CJ*.3.28.27 (Imp. Constantinus A ad Lucrium Verinum): 'Fratres vel sorores uterini ab inofficiosi actione contra testamentum fratris vel sororis penitus arceantur: consanguinei autem durante vel non agnatione contra testamentum fratris sui vel sororis de inofficioso quaestionem movere possunt, si scripti heredes infamiae vel turpitudinis vel levis notae macula adsparguntur vel liberti, qui perperam et non bene merentes maximisque beneficiis suum patronum adsecuti instituti sunt, excepto servo necessario herede instituto. D. Id. April. Sirmio Constantino A. V et Licinio C. conss.' (a. 319). The change consisted mainly of admitting that also the full sisters had the possibility of bringing an *actio* – *cf.* SANGUINETTI, *Dalla 'querela inofficiosi testamenti'* (cit. n. 13), pp. 97–98.

The siblings entitled to *actio inofficiosi* [*testamenti*] were full brothers or at least the brothers who shared the same father, and the uterine siblings were denied this possibility. It is most probably the first time when the 'quality' of the person appointed heir was playing an important part in the emperor's decision.[17] It should also be noticed, that in this case, if the testator did non leave the abovementioned people the proper amount of value of his property, the will could be an object of *querela inofficiosi testamenti*, but the *persona probrosa* still remained the heir.

Therefore, it cannot be simply and directly stated that inheriting by *feminae probrosae* was limited – they had a *capacitas* as such. It can be said that they certainly could be heirs of people without any family. If there was a family, a group of people who could reduce their inheritance might have been bigger. So the bad reputation of the person appointed heir, regardless of their gender, did not mean that the will was invalid, it only meant that testators must have left a certain part of their property not only to their *sui heredes* and parents, but to their siblings too, if there were any paternal ones.

III. THE MARRIAGE LAWS OF AUGUSTUS

The *lex Iulia de maritandis ordinibus*[18] of 18 BC, enacted at the request of Augustus, limited the possibility to inherit by those who were not married 'properly' at a certain age.[19] Only the heirs from the first class *ab intestato* were excluded from the regulation as they inherited through intestacy.[20]

[17] *Cf.* Sanguinetti, *Dalla 'querela inofficiosi testamenti'* (cit. n. 13), p. 36.

[18] G. Rotondi, *Leges Publicae Populi Romani*, Milano 1912, pp. 443–444.

[19] 'Properly' meaning between people whose relationship was not excluded by the *lex Iulia*.

[20] *TUlp*. 18.1; *CJ*. 6.51.1.1b; *cf.* Voci, *Diritto ereditario romano* I (cit. n. 13), pp. 426–427; R. Astolfi, 'Le *exceptae personae* nella *lex Iulia et Papia*', *BIDR* 67 (1964), pp. 220–221; Maria Zabłocka, 'Zmiany w ustawach małżeńskich Augusta za panowania dynastii julijsko-klaudyjskiej' [Amendements of the marriage laws of Augusts under the Julio-Claudian dynasty], *Prawo Kanoniczne* 30.1–2 (1987), p. 154.

The *lex Papia Poppaea*,[21] 30 years later, granted only half the inheritance to those married but childless.[22] Why is it essential to mention these regulations, and the *lex Iulia* especially, in the context of inheriting by actresses? The reason is the women belonging to the *feminae probrosae* category could not legally marry some groups of people (senators or senatorial family members) in the light of the *lex Iulia*.[23] That meant that although their marriage was probably *iustae nuptiae*, the spouses had not stopped being *coelibes*, which deprived them of the *capacitas* in the law of succession.[24] This, of course, concerns only actresses that had Roman citizenship.

It seems, therefore, that in the period after the implementation of the *lex Iulia* actresses could inherit, provided, however, that their marriage was recognized valid. Still, there were contradictory opinions as to whether such a relationship was at all possible.

In the research of Roman family law there appeared a thesis of the complete *incapacitas* of *feminae probrosae*.[25] It stemmed from the recognition that women of this category remained in compulsory celibacy.

[21] Rotondi, *Leges* (cit. n. 18), pp. 457–458.

[22] On Augustus' marriage legislation see among others: S. Solazzi, 'Sui divieti matrimoniali delle leggi augustee', [in:] *Scritti di diritto romano* IV, Napoli 1963, pp. 81–98; B. Biondi, 'Legislazione di Augusto', [in:] *Scritti giuridici* II, Milano 1965, pp. 77–198; P. Csillag, *The Augustan Laws on Family Relations*, Budapest 1976; L. F. Raditsa, 'Augustus' legislation concerning marriage, procreation, love affairs and adultery', *ANRW* II 13 (1980), pp. 278– 339; Astolfi, *Lex Iulia* (cit. n. 3); also Zabłocka, *Przemiany* (cit. n. 4); Angelika Mette-Dittmann, *Die Ehegesetze des Augustus. Eine Untersuchung im Rahmen der Gesellschaftspolitik des Princeps*, Stuttgart 1991.

[23] *D.* 23.2.44 *pr.*; *D.* 23.2.42.1; *TUlp.* 13.1. On the discussion of basic source texts and the doctrinal position on actresses getting married see: Maria Virginia Sanna, *Matrimonio e altre situazioni matrimoniali nel diritto romano classico. 'Matrimonium iustum – matrimonium iniustum'*, Napoli 2012, pp. 113–117; Elżbieta Loska, 'Sytuacja aktorów i aktorek w rzymskim prawie małżeńskim' [The standing of actors and actresses in Roman marriage law], *Zeszyty Prawnicze* 12.4 (2014), pp. 81–100.

[24] Solazzi, 'Sui divieti' (cit. n. 22), p. 81; O. Robleda, 'Matrimonio inexistente o nulo en derecho romano', [in:] *Studi in memoria di Guido Donatutti,* Milano 1973, p. 1142–1143; Astolfi, *Lex Iulia* (cit. n. 3), pp. 98; 108; Anna Maria Demichelli, 'Le attrici da Augusto a Giustiniano. Valutazioni sociali ed interventi legislativi', [in:] F. M. D'Ippolito (ed.), *Filia. Scritti Franciosi* I, Napoli 2007, p. 698.

[25] B. Biondi, *Successioni testamentarie. Donazioni*, Milano 1955, p. 153; E. Nardi 'La *incapacitas* delle *feminae probrosae*', *Studi Sassaresi* 17 (1938), p. 151, *apud* Solazzi, 'Attorno ai *caduca*' (cit. n. 9), p. 336.

The crucial text supporting this view is the fragment of the *Tituli ex corpore Ulpiani*:

> *TUlp*. 13.1: Lege Iulia prohibentur uxores ducere senatores quidem liberique eorum libertinas et quae ipsae quarumve pater materve artem ludicram fecerit, item corpore quaestum facientem. 2. Ceteri autem ingenui prohibentur ducere lenam, et a lenone lenave manumissam, et in adulterio deprehensam, et iudicio publico damnatam, et quae artem ludicram fecerit; adicit Mauricianus et a senatu damnatam.

However, the text of the source seems incoherent, also while compared to other sources. For instance, prohibiting senators only to marry prostitutes is inconsistent, knowing that all freeborn men were not allowed to marry procurers and procuresses. It is not in agreement with the text of Ulpian.[26] If the act of procuration is equal to prostitution, the lack of prohibiting the marriage between the prostitutes and all the freeborn men seems at least strange. Mommsen[27] proposed the amendment, which is now widely accepted. The words 'item corpore quaestum facientem' should be taken out of the fragment 13.1 and put in the other one. It seems as if it was put in the text by an inattentive copyist. The fragment *D.* 23.2.44.8[28] clearly states that senators cannot marry women whom other freeborn men are forbidden to marry. It made no sense then to put a specific ban for senators if there existed the general one.[29]

It is also very probable that the repetition in the second paragraph was simply superfluous – if actresses could not marry any of the freeborn men, it was even more impossible for them to marry a senator. The words about actresses in this paragraph should be omitted then.[30] This amend-

[26] *D.* 23.2.43.6: 'Lenocinium facere non minus est quam corpore quaestum exercere.'

[27] *Iurisprudentiae anteiustinianae quae supersunt*, ed. Huschke, Lipsiae 1859; *Cf.* Th. Mommsen, *Juristische Schriften* II, Berlin 1905, pp. 49–50. The Autor criticized carelessness of person who summarized the works of Ulpian.

[28] 'Eas, quas ingenui ceteri prohibentur ducere uxores, senatores non ducent.'

[29] *Cf.* S. Solazzi, 'Glossemi nelle fonti giuridiche romane', *BIDR* 46 (1939), p. 51; recently Sanna, *Matrimonio* (cit. n. 23), p. 109.

[30] Astolfi, *Lex Iulia et Papia* (cit. n. 3), p. 106; Demichelli, 'Le attrici' (cit. n. 24) pp. 698–699.

ment allows to preserve the correspondence between *TUlp*. 13.1–2 and most important text from the *Digest* concerning this matter – *D*. 23.2.44 *pr*.,[31] which specifically banned the marriage between actresses (or freedwomen) and the male members of the senatorial order. It is always possible, though, that there existed a discrepancy between the juridical opinions of Ulpian and Paulus. But seeing the personal situation of emperor Justinian (his marriage with Theodora) one can presume that the Digest contains the real regulation of the *lex Iulia*.

It should be underlined that the ban on marrying prostitutes regarded all freeborn men. Only for the senatorial order was it forbidden to marry actresses.

So, the theory of compulsory celibacy of the *feminae probrosae* can be certainly considered incorrect,[32] and so can any conclusions based on it. Actresses who married legally in the light of the *lex Iulia*, had *capacitas* in the law of succession.

There existed also a theory according to which *feminae probrosae*, including actresses, were a group of people that were not influenced by penalties associated with celibacy in the l*ex Iulia et Papia Poppaea*, and it was Domitian only who imposed such sanctions on them.[33] It seems this claim cannot be considered correct either as there is not a single source text confirming. Presumably, it comes from the above-mentioned theory that women belonging to the category of *feminae probrosae* could not marry at all. Therefore, they would not be required to follow the regulations of Augustus' marriage law, when it was a legal regulation, not a woman's free will, that commanded her to remain unmarried. However,

[31] *D*. 23.2.44 *pr*. (*Paul*. 1 *Iul. Pap*.): 'Lege Iulia ita cavetur: "qui senator est quive filius neposve ex filio proneposve ex filio nato cuius eorum est erit, ne quis eorum sponsam uxoremve sciens dolo malo habeto libertinam aut eam, quae ipsa cuiusve pater materve artem ludicram facit fecerit. neve senatoris filia neptisve ex filio proneptisve ex nepote filio nato nata libertino eive qui ipse cuiusve pater materve artem ludicram facit fecerit, sponsa nuptave sciens dolo malo esto neve quis eorum dolo malo sciens sponsam uxoremve eam habeto".'

[32] *Cf*. also Loska, 'Sytuacja aktorów' (cit. n. 23), pp. 82–93.

[33] Sanna, *Matrimonio* (cit. n. 23), p. 111.

as indicated before, this assumption needs to be regarded as incorrect. The fact that *feminae probrosae* could not marry a senator, or even a free-born person did not mean compulsory celibacy for them. The authors who opt for necessary celibate rule seem to always forget about a possibility to be married to freedmen.

Hence, it must be considered that actresses and other *feminae probrosae* were subject to the same penalties related to Augustus' marriage law as other women – they enjoyed neither worse nor better position. The only difference was that they could choose from a slightly narrower circle of men if they wished to avoid legal sanctions.

Sometimes decent women became *probrosae* (for example, they registered as prostitutes,[34] or began to appear on stage). However, they could not escape penalties for celibacy.[35] Still, such an action was to avoid penalties for the *stuprum*, rather than to recover *capacitas* – a person could not commit this offence with *feminae probrosae*. Thus, to be able to inherit they had to enter into an *iustum matrimonium*, one with a legal effect in the light of the *lex Iulia de maritandis ordinibus*.

In this context, it is interesting to look at one of Paulus' texts from his comments to the *lex Iulia*.

> *D.* 23.2.47 (Paul. 2 *Iul. Pap.*): Senatoris filia, quae corpore quaestum vel artem ludicram fecerit aut iudicio publico damnata fuerit, impune libertino nubit: nec enim honos ei servatur, quae se in tantum foedus deduxit.

[34] Such as Vistilla mentioned by Tacitus (*Ann.* II 85). This female registered at the aedilles as a prostitute in order to have extramarital sex. Her husband apparently turned a blind eye as when he learned about his wife's adultery he should have performed the *repudium* to avoid any suspicions and penalties of procuration; but he did not. When asked why he did not accuse the wife of *adulterium*, he said that 60 days to think had not passed yet, and he meant the period of time in which the father and the husband of the woman had priority to prosecute (and they in fact were obliged to do so). It is interesting that actually it is unknown whether Vistilla really committed adultery. Being the main source of information about the event, Tacitus' text only informs us that a woman registered as a prostitute to avoid any punishment for *adulterium*. But it is not clear whether the offense had already been committed; perhaps the woman wanted to protect herself in advance. This woman was not an actress, but this situation can show the general attitude towards social degradation and as such it is important here.

[35] Astolfi, '*Lex Iulia*' (cit. n. 3), p. 63.

According to the *lex Iulia de maritandis ordinibus,* the members of senatorial families could not marry former slaves.[36] It could be only a confirmation of the custom, but here it was written explicitly. Paulus said, however, that when a senatorial daughter who practiced acting married a freedman, she ceased to belong to the category of *caelibes*, as the word *impune* seems to refer to the issue of avoiding penalties under Augustus' marriage law. And it must have been the sanctiones of the law of succession as the marriage ruled out the possibility of committing the *stuprum*, and maintaining sexual intercourse with one's own husband could not be perceived as *adulterium*. This meant that the marriage of a woman from a senatorial family and a freedman was valid also in the light of the *lex Iulia et Papia*, resulting in her obtaining (or actually obtained by both spouses) *capacitas* in the law of succession. It is true that, according to the jurist, such a relationship meant the woman was deprived of her diginity (resulting from belonging to a senatorial family), but the same effect would have taking up the acting profession (as well as being a prostitute or being convicted in a criminal trial). It is not completely clear from this text what exactly deprived the woman of her honor; I would say, however, that it was her profession – because then she could marry a freedman in spite of the existing ban. It seems important that the source is a confirmation of the woman's right to inherit.

The following fragment refers to women's intestate succession:

> *D.* 38.11.1 *pr.* (Ulp. 47 *ed.*): Ut bonorum possessio peti possit unde vir et uxor, iustum esse matrimonium oportet. Ceterum si iniustum fuerit matrimonium, nequaquam bonorum possessio peti poterit, quemadmodum nec ex testamento adiri hereditas vel secundum tabulas peti bonorum possessio potest: nihil enim capi propter iniustum matrimonium potest.

Women, including actresses, could receive the *bonorum possesio* if the husband died intestate. The condition, however, was that marriage had to be *iustum matrimonium*, that is, it seems, a marriage following the requirements of the *leges Iulia et Papia*. The same opinion tends to be shared by

[36] *D.* 23.2.44 *pr.*; *Cf.* Loska, 'Sytuacja aktorów' (cit. n. 23), pp. 85–86.

Solazzi[37] – for him, the *matrimonium iniustum* meant 'incompatible with the *lex Iulia*'. This view can be perfectly justified because the spouses did not belong to the circle of people who in the course of succession would not be influenced by any limitations of Augustus' marriage law,[38] and allowing them to inherit from each other could be unlawful. The source text shows it – when the *matrimonium* was *iniustum* in character, they could not inherit from each other on the basis of the will too. As generally there existed the freedom of making a will, it must have been about the limitations introduced by Augustus. Woman in *matrimonium iniustum* would be spouseless in the light of the *lex Iulia*, and for this reason incapable to inherit.

What was *matrimonium iniustum*? It can be deduced from the sources. It seems that the marriage concluded in spite of any of bans issued by the *leges* was legal and valid *iure civili* at the beginning. This kind of marriage, however, was not regarded as such by the *lex Iulia et Papia*. For those laws the spouses remained unmarried (*coelibes*); consequently, they did not have the privileges of the married.[39]

Several premises lead to this conclusion. Firstly, the sources concerning the invalid marriage use the phrase 'nuptiae/matrimonium non est', and not the phrase *matrimonium iniustum*.[40] Furthermore, in the sources speaking of marriages conflicting with the *lex Iulia* jurists often used the terms *matrimonium*, or *vir et uxor*.[41] Marriages conflicting with the *lex Iulia*

[37] Solazzi, 'Attorno ai *caduca*' (cit. n. 9), p. 372. For other views – *cf. infra*, pp. 476–477.

[38] Sanctions imposed by the *lex Iulia et Papia* did not refer to the immediate family of the testator, *i.e.* those who belonged to the *sui heredes* group and would receive inheritance through intestacy anyway. The *lex Iulia* also allowed the widows the period of one year (*vacatio*), when they could be spouseless, yet still inherit. The *lex Pappia* extended this period to two years (*TUlp*. 14). *Cf.* Zabłocka, 'Il *ius trium liberorum*' (cit. n. 3), p. 362.

[39] Solazzi, 'Sui divieti' (cit. n. 22), s. 81; Robleda, 'Matrimonio inexistente' (cit. n. 23), pp. 1142–1143; Astolfi, *Lex Iulia et Papia* (cit. n. 3), pp. 98; 108; Demichelli, *Le attrici* (cit. n. 24), p. 698.

[40] *D.* 23.2.16 *pr*.; *D.* 23.2.42.1; *D.* 23.2.63; *D.* 23.2.66 *pr*.; *D.* 23.3.3; *D.* 24.1.3.1.

[41] It was noticed for the first time by P. E. Corbett, *The Roman Law of Marriage*, Oxford 1930, pp. 36–37. The most explicit example would be *D.* 23.2.48.1 (Clem. 8 *ad leg. Iul. et Pap.*): 'Si ignominiosam libertam suam patronus uxorem duxerit, placet, quia contra legem

et Papia resulted in other effects of *iustum matrimonium* – first of all children were treated as legitimate.[42] The marriage forbidden by the said *lex* was valid for the *lex Iulia de adulteriis coërcendis*. Even when a woman caught at adultery was *uxor contra leges nupta* her husband and her father still had *ius occidendi* and *ius accusandi iure patris vel mariti* respectively.[43] It seems important to notice that jurists distinguished between *uxor iusta* and *iniusta*[44] – that divergence would be meaningless if the marriage prohibited by the *lex Iulia* was invalid as there would be no 'wife' then.[45]

It means that the *lex Iulia et Papia* inflicted a penalty but the banned act remained legally valid. Still it did not have one important effect – the spouses were nevertheless treated as the *coelibes*. The penalty was *incapacitas* in the hereditary law but the marriage contracted was legal and valid.[46]

The contrary view was presented by Volterra.[47] For him it seemed impossible for Roman jurists to create the legal institution of *iniustum*

maritus sit, non habere eum hoc legis beneficium.' – the marriage is *contra legem*, but the jurist used the terms *uxor* and *vir* regarding the persons in this union.

[42] This was the conclusion of Astolfi, *Lex Iulia et Papia*, (cit. n. 3) pp. 109–110, from the fragments *FVat*. 168 and 194 – the differentiation *filii iusti/iniusti* must have concerned the *lex Iulia et Papia*, because it would be unreasonable if the children *vulgo quaesiti* gave any sorts of privilege.

[43] *D.* 48.5.25.3 (Macer 1 *publ.*): 'Illud in utroque ex sententia legis quaeritur, an patri magistratum occidere liceat? item si filia ignominiosa sit aut uxor contra leges nupta, an id ius nihilo minus pater maritusve habeat? et quid, si pater maritus leno vel aliqua ignominia notatus est? et rectius dicetur eos ius occidendi habere, qui iure patris maritive accusare possunt;. *Cf.* Solazzi, 'Attorno ai *caduca*' (cit. n. 9), p. 365.

[44] *Cf. e.g.*, *D.* 48.5.14.1–2.

[45] Very interesting example supporting this conclusion was given by Solazzi, 'Sui divieti' (cit. n. 22), p. 96 – the author used the text *D.* 23.2.31. It is apparent from it, that freedwoman could become *iusta uxor* for the senator, if the emperor allowed – thus the problem was if she was *uxor iusta* or *iniusta*, and not if she was a wife or not. Even the emperor's grace could not made valid the act invalid in the light of *ius civile*. However, he could free the senator from the penalty provided for *coelibes*. Differently E. Volterra, '*Iniustum matrimonium*', [in:] A. Biscardi (ed.) *Studi Scherillo* II, pp. 458–459.

[46] J. Gaudemet, '*Iustum matrimonium*', *RIDA* 2 (1949), pp. 333–334; Raditsa, Augustus' Legislation (cit. n. 23), p. 319; Susan Treggiari, *Roman Marriage. Iusti Coniuges from the Time of Cicero to the Time of Ulpian*, Oxford 1993, pp. 63–63

[47] Volterra, *Iniustum matrimonium* (cit. n. 47), pp. 442–453.

matrimonium contrasted with the invalid marriage. He thought that every time this phrase was used in sources it should be viewed as the the lack of *conubium* – the premise necessary to contract the marriage. At first his reasoning seems convincing and his view could be accepted. But there is the text of *D.* 48.5.25.3 (cit. n. 43) connected with *Coll.* 5.1.[48] The fragment from *Collatio* shows that no Roman citizen is allowed to bring *iure mariti* accusations of adultery against the woman if there was no *conubium* between them. The text of the Digest nevertheless confirms this possibility if the wife was *contra leges nupta*, the husband could accuse also *uxor iniusta*.[49] Therefore Volterra's opinion could not be concerned justifiable.

The fact that, at least initially, *feminae famosae* (namely prostitutes) were allowed to inherit, is proved by the following passage in *Institutio Oratoria* by Quintilianus:

> Quint. *Inst.* VIII 5.19: Placet hoc ergo, leges, diligentissimae pudoris custodes, decimas uxoribus dari, quartas meretricibus.[50]

These words are quoted by the orator as an example of the *comparatio*. The text refers to a trial[51] that took place in the second half of the 1st cen-

[48] *Coll.* 5.1 (Pap. 15 *resp. s. tit. ad l. Iul. de adul.*): 'Civis Romanus, qui civem Romanam sine conubio sive peregrinam in matrimonio habuit, iure quidem mariti eam adulteram non postulat.'

[49] *D.* 48.5.14.1 (Ulp. 2 *de adult.*): 'Plane sive iusta uxor fuit sive iniusta, accusationem instituere vir poterit: nam et Sextus Caecilius ait, haec lex ad omnia matrimonia pertinet'. The text explicitly shows the possibility of accusation against *uxor iniusta*.

[50] Possibly, the *meretrix* term was used by Quintilianus figuratively to identify all the *feminae probrosae* of whom prostitutes were the most obvious female representatives. *Cf.* the issue disscussed by Fayer, *'Meretrix'* (cit. n. 8), pp. 600–602. Another theory claimed that the very word *meretrix* was the opposite of the term 'wife' and meant a concubine – *cf.* G. Hartmann, 'Über die Voraussetzungen und Grenzen die Incapazität nach der lex Iulia et Papia', *ZRG RA* 5 (1866), pp. 221–222; Tonia Wycisk, *Quidquid in foro fieri potest. Studien zum römischen Recht bei Quintilian*, Berlin 2008, pp. 159–160.

[51] On this fragment and the circumstances of the process during which the quotation was delivered: Olga Tellegen-Couperus, 'A clarifying *sententia* clarified: on *Institutio Oratoria* VIII.5.19', [in:] eadem (ed.), *Quintilian and the Law. The Art of Persuasion in Law and Politics*, Leuven 2003, pp. 213–221.

tury. Trachalus, who delivers these words, seems to deplore the fact that the law applied to protect the moral virtues allowed prostitutes to take a quarter of inheritance[52] with wives[53] taking only one-tenth. This comment seems to be openly ironic.[54]

Trachalus delivered his speech in the interest of the plaintiff, while the defendant was a woman named Spatale, probably a woman of easy virtue, as her name suggests. The prostitute was appointed an heir by her young lover (Quint. *Inst.* VIII 5.17). Comparing the two texts mentioning the trial, Olga Telegen-Couperus came to the conclusion that the woman was one of the heirs, and that Spatale had taken possession of her share before the trial. She thinks it most likely that Spatale did not have any rights to inherit as she was unmarried.[55] So a quarter of inheritance, as Trachalus noted, would therefore be specifically left for her in the will,[56] and was not granted prostitutes by law.

If the regulations Quintilianus referrs to are the *lex Iulia et Papia*, which is very probable, it means that the successory *capacitas* of prostitutes (and perhaps all *feminae famosae*)[57] was there limited, but it existed. The orator was shocked not because the prostitute would inherit, but that she would get more of inheritance than the wife. Then Telegen-Couperus' argument could even lead to the conclusion that if the prostitute was married, she could come across no limitations to inherit. It could be even worse: maybe she could take a quarter of the inheritance even if she was unmarried. This, however, is the least probable possibility, because if the prostitute was

[52] McGinn, *Prostitution* (cit. n. 7), pp. 94–97 believes that it was unmarried prostitutes who were granted the ability to inherit the quarter of the inheritance to dissuade them from the idea of marriage.

[53] It was about a childless wife inheriting from her husband. Spouses could inherit from each other if they had at least one child together. Cf. *TUlp*. 15; Voci, *Diritto ereditario romano* I (cit. n. 13), p. 222; Solazzi, 'Attorno ai *caduca*' (cit. n. 9), pp. 334–335; Zabłocka, 'Il *ius trium liberorum*' (cit. n. 3), p. 363; Fayer, '*Meretrix*' (cit. n. 8), p. 600.

[54] Fayer, *La familia* III (cit. n. 1), p. 215.

[55] Tellegen-Couperus, 'A clarifying *sententia*' (cit. n. 51), pp. 219–220.

[56] This theory is far more plausible than this of Astolfi's, '*Femina probrosa*', (cit. n. 9), p. 18, who stated that *feminae probrosae*, even married and with children, had only partial *capacitas*.

[57] B. Albanese, *Le persone nel diritto privato romano*, Palermo 1979, p. 416.

spouseless, this argument would have certainly been used by Trachalus, as the most apparent one. Unfortunately there are no other sources referring to this trial, so this puzzle should remain unsolved.

IV. THE POSTERIOR REGULATIONS IN CLASSICAL LAW

Domitian regulated the status of *feminae probrosae* in the law of succession:

> Suet. *Dom*. 8.3: Suscepta correctione morum ... probrosis feminis lecticae usum ademit iusque capiendi legata hereditatesque.

Having decided to improve the moral standards,[58] Emperor Domitian introduced many regulations,[59] among which there was one limiting the rights of *feminae probrosae*. He deprived them of the right to use a litter and of *capacitas* in the law of succession; as stated in the text – they lost the possibility of accepting both inheritances and legacies. The reasons for such restrictions are not entirely clear but perhaps it was a method of pulling potentially interested women from taking up the *feminae famosae* profession. It might be that banning the use of the litter was to reduce physical comfort,[60] banning inheriting – financial one.

[58] F. Grelle, '*Correctio morum* nella legislazione flavia', *ANRW* II 13 (1980), pp. 347–350. Even if we find the relation of Suetonius a dubious one, we must remember that Domitian acted as censor then (he was appointed this office in April 85 and later that year became a *censor perpetuus* – Dio Cass. LXVII 4.3; Mart. VI 4.10), so the actions claimed by Suetonius were entirely possible. Cfr. F. Galli (ed.), *Svetonio, vita di Domiziano. Introduzione, traduzione e commento*, Roma 1991, pp. 77–78; B. Jones, *Suetonius, Domitian, Edited with Introduction, Commentary And Bibliography*, Bristol 1996, p. 73.

[59] According to R. A. Bauman, 'The resumé of legislation in Suetonius', *ZRG RA* 99 (1982), p. 81, Suetonius did not invent any of the laws and his description of its merit is rather reliable.

[60] Women used litters to manifest their wealth and respectful position – *cf.* Fayer, '*Meretrix*' (cit. n. 8), p. 594.

Francesco Grelle attributes to Domitian an inspiration from Augustus' marriage law.[61] Now, however, the regulation concerning *incapacitas*, which had served as a stimulus to marry and have children, became a means of repression of women's behaviour that the princeps decided to curb.[62] According to Astolfi,[63] *feminae probrosae* were then fully deprived of inheritance rights. Enzo Nardi[64] claimed the text shows that in times of Domitian the number of *feminae probrosae* increased. In practice, they were often forced to remain *coelibes* and therefore had previously been granted the privilege of the *ius capiendi*, which was then abolished by Domitian. It seems, however, that such a finding would be rather inconsistent with the purpose of Augustus' marriage law, which after all encouraged to marry, with some limitations to prevent people from certain social groups from mingling. Moreover, there was no need to give ill-famed women any privileges referring to the possibility of accepting inheritance as every woman in this category was allowed to marry, which allowed them to get the full *capacitas* in the law of succession.

On the other hand, Thomas McGinn thinks that this text refers only to women sentenced for *adulterium*[65] but such narrowing down of the regulation mentioned by Suetonius seems to be quite unlikely. For one thing, the historian did not write here directly about adulterers (and he knew the term, as he used it in the same paragraph), but about ill-reputed women.

It is therefore concluded that *feminae probrosae*, although they could marry, were deprived *capacitas* in the law of succession by Domitian's novel regulation.

[61] Therefore this regulation should be treated as a result of a considerate tactic, not as Domitian's hypocritical arrangement. About Domitians hypocrisy, see: E. S. Ramage, 'Juvenal and the establishment. Denigration of predecessor in the *Satires*', *ANRW* 33.1 (1989), pp. 688–670.

[62] Grelle, '*Correctio morum*' (cit. n. 58), p. 346.

[63] Astolfi, '*Lex Iulia et Papia*', (cit. n. 3), p. 56.

[64] Nardi, 'La *incapacitas*' (cit n. 26), quoted after: Solazzi, 'Attorno ai *caduca*' (cit. n. 9), pp. 336–337.

[65] McGinn, '*Feminae Probrosae*' (cit. n. 9), p. 249.

In his extensive law-making activities, also emperor Hadrian paid some attention to *feminae probrosae*:

> *D.* 29.1.411 (Tryph. 18 *disp.*): Mulier, in qua turpis suspicio cadere potest, nec ex testamento militis aliquid capere potest, ut divus Hadrianus rescripsit.

In the rescript, the emperor decided that a woman suspected of disgrace could not accept anything from a soldier's will (and therefore, it seems, from any other, as a soldier's will was subject to fewer restrictions than other forms of the same act).[66] Women belonging to the category of *feminae famosae* were undoubtedly suspected of indecency so it can be assumed they were included in the rescript, perhaps with some other groups.

The question arises as to what purpose Hadrian had in mind to place such a decision in the rescript, knowing that Domitian had ultimately deprived *feminae probrosae* of being able to accept inheritance. Three answers are possible. The emperor either repeated an existing regulation to a person not educated sufficiently about the subject (so simply confirmed the existing law),[67] or corrected the existing regulation. Perhaps, therefore, the earlier decision of Domitian did not matter? The reason could be that the *damnatio memoriae* imposed on him, immediately caused the cancellation of all his legal acts. Suetonius' text quoted earlier (*Dom*. 8.3) suggests women were deprived of the *ius capiendi hereditatisqu*e through the imperial constitution, so this provision could therefore no longer apply after the death of Domitian.

A third possibility is related to the specifics of a soldier'will, which since its inception had not been limited by so many formal constraints as a regular will. Domitian's regulation might not have refered to the *testa-*

[66] Gai. 2.109–114; *TUlp*. 23.10. On the *testamentum militis*, *cf.* Voci, *Diritto ereditario romano* II (cit. n. 13), pp. 99–100; J. Meyer-Hermann, *'Testamentum militis – das römische Recht des Soldatentestaments. Entwicklung von den Anfängen bis zu Justinian*, Aachen 2012.

[67] Astolfi, '*Femina probrosa*' (cit. n. 9), p. 42; idem, '*Lex Iulia*' (cit. n. 3), p. 58.

mentum militis[68] and Hadrian's rescript filled that legal gap. Unfortunately, on the basis of the laconic source text, it is difficult to dispute which hypothesis is most likely. There is no doubt, however, that since the release of this rescript a woman who had been suspected of misconduct was deprived of anything from a soldier's will.

There remains a question of intestacy as Domitian robbed *feminae probrosae* of inheriting in any way. It is known that in the period of the Dominate stage women were restored the right to inherit through intestacy (*CJ*. 5.4.23.3, *infra* p. 484) so perhaps Domitian's regulation remained in force during the period of the classical law. If not, it must have been abolished at a later date, otherwise there would not have occured the need to restore it.

If such a restriction existed in the early principate, a possibility provided by the *SC Tertullianum*[69] (from the times of Hadrian) was an exception to the rule – since its release a mother had been able to inherit from her children *ab intestato*,[70] regardless of her status. Although limited by many restrictions,[71] this possibility existed.

> *D.* 38.17.2.4 (Ulp. 13 *Sab.*): Si mulier sit famosa, ad legitimam[72] hereditatem liberorum admittetur.

Even if the woman was ill-famed, she was still allowed to inherit through intestacy from her children. It is clearly an exception from the existing rule.

[68] Suetonius' comment is very curt, and it is difficult to say whether the historian knew all the cases.

[69] On *sc. Tertullianum*, *cf. PSent*. 4.9; *TUlp*. 26.8; *Inst*. 3.3; *D*. 38.17; *Cf.* Voci, *Diritto ereditario romano* II (cit. n. 13), pp. 18–19; M. Meinhart, *Die senatusconsulta Tertullianum und Orfitianum in ihrer Bedeutung für das klassische römische Erbrecht*, Graz 1967; Zabłocka, 'Il *ius trium liberorum*' (cit. 3), p. 373–374; F. Bellandi, 'Giovenale 6.627–33 e il *S. C. Tertullianum*', *Rheinisches Museum für Philologie* 149.2 (2006), pp. 162–163.

[70] The opinion that this fragment discusses intestacy supports, among others, Solazzi, 'Sui divieti' (cit. n. 22), p. 92.

[71] *Cf.* source texts listed in footnote 69.

[72] In the opinion of McGinn, *Prostitution* (cit. n. 7), p. 109, n. 20, there is nothing unusual in the word *legitimam* used here – it was commonly used in the law of succession, even before Justinian. *Cf. TUlp*. 26.8 also in the context of *SC Tertullianum*.

Pietro Bonfante[73] suggested the original text could include the word *non* before *admittetur*. In his *Palingenesia*, Otto Lenel did not suggest any change.[74] It seems, however, that including this notion in the title of the Digest between the fragments indicating the situation when a woman inherits from her children shows that at least in Justinian law *femina famosa* could also inherit from her offspring.

V. THE PERIOD OF POST-CLASSICAL LAW

Subsequent changes of the legal status of actresses in the law of succession were brought by post-classical law, as long as we can talk about the legal status of actresses at all – the changes concerned women abandoning the profession. In the period of post-classical law stage women could still inherit neither through the will nor through intestacy. This prohibition, as well as other *capacitas* restrictions, were abolished only by emperor Justin. It seems that he did this for his nephew, Justinian, who wished to marry Theodora, a mime actress. The regulation was later confirmed by the said Justinian, who placed it in the Code. The regulation was addressed to actresses – women living disgraceful lives. The reason for its release was most likely the desire of recreating moral standards among those women who 'had gone astray'. In fact, it gave them the opportunity to restore the lost reputation, and thus to improve their legal position, as long as such a lifestyle was abandoned. The emperor decided that women's erroneous behaviour was the result of their weaker sex,[75] and

[73] P. Bonfante, *Corso di diritto romano* VI. *Le successioni. Parte generale*, Milano 1974, p. 408, n. 3.

[74] O. Lenel, *Palingenesia iuris civilis* II, Lipsiae 1889, col. 1046.

[75] *CJ*. 5.4.23 *pr*. '... lapsus quoque mulierum, per quos indignam honore conversationem imbecillitate sexus elegerint, cum competenti moderatione sublevandos esse censemus minimeque eis spem melioris condicionis adimere, ut ad eam respicientes improvidam et minus honestam electionem facilius derelinquant.'

therefore they should be helped. All of the rights listed in the constitution, including those relating to the law of succession, referred to actresses who would abandon their easy virtue and manifest their disgust and rejection of their previous life:

> *CJ*. 5.4.23.3 (Imp. Justinus): Sed etsi tales mulieres post divinum rescriptum ad preces earum datum ad matrimonium venire distulerint, salvam eis nihilo minus existimationem servari praecipimus tam in aliis omnibus quam ad transmittendam quibus voluerint suam substantiam et suspiciendam competentem sibi legibus ab aliis relictam vel ab intestato delatam hereditatem. (a. 520–523).

Emperor Justin decided to grant these women the right to inherit through the will and intestacy provided they gave up their shameful activities. The constitution of Justin was a rescript addressed to the prefect of the Praetorian Guard, Demosthenes, and most likely was to help the official to resolve a case pending before him. It seems that it primarily concerned giving a permission to former actresses to marry people they had not been able to marry legally before. However, this fragment of the constitution specifically emphasized that restoring *capacitas* in the law of succession also referred to actresses who, after having left the profession as a result of the rescript, could marry but decided not to. This meant good reputation after abandoning the profession of the actress was restored permanently. There is little doubt that after the release of this constitution actresses continuing practising their profession still could not inherit. Nevertheless, the mere existence of this constitution confirms that there was a period when actresses could not inherit at all.

VI. MALE ACTORS

Finally, a few words on male actors' status in the law of succession should be added. Not much is known, though. A small hint, however, may be an anecdote recounted by Valerius Maximus:

> Val. Max. VII 7.7: Multo Q. Metellus praetorem urbanum severiorem egit quam Orestes gesserat. qui Vecillo lenoni, bonorum Vibieni possessionem secundum tabulas testamenti <petenti>, non dedit, quia vir nobilissimus et grauissimus fori ac lupanaris separandam condicionem existimauit, nec aut factum illius conprobare voluit, qui fortunas suas in stabulum contaminatum proiecerat, aut huic tamquam integro civi iura reddere, qui se ab omni honesto vitae genere abruperat.

Valerius Maximus included this text in the chapter called 'Of wills that were rescinded', among others more or less reliable examples.

The event took place in the time of Q. Metellus Creticus' pretorship.[76] The magistrate, as an antiquarian claimed, paid particular attention to the conduct of people whose cases he analyzed. In this particular case, he refused to grant the *bonorum possessio* to a procurer Vecillius, despite the will statement, as he said, public matters are not to mingle with public house sins. True, the text refers to a procurer but it was known that they belonged to *personae probrosae* along with actors,[77] thus their position was the same. Therefore a general but careful conclusion can be drawn from Valerius's words: in comparison to other heirs *ab intestato*, actors could have smaller chances of getting the *possessio* of inheritance.[78] On the other hand, in *TUlp*. 20, fairly an extensive catalogue of people who are not entitled to participate in the making of a will could be found, along with a directory of

[76] T. R. S. Broughton, *The Magistrates of the Roman Republic* II, New York, 1952, p. 102.

[77] If the situation described by Valerius Maximus was not a separate incident, and resulted from the edict regulations, it can be assumed that it did not mention explicitly procurers, but rather a broader category of people who had to be refused the *bonorum possession* – *cf.* Watson, *The Law of Succession* (cit. n. 13), pp. 75–76.

[78] *Cf.* Meinhart, *Die senatusconsulta* (cit. n. 69), p. 112. In the time of the empire refusing the *bonorum possessio* to certain people resulted from the *edictum perpetuum* – O. Lenel, *Edictum perpetuum*, Leipzig 1927 (3 ed.), p. 360.

people who could not inherit at all. Neither of them lists *personae probrosae*. The *ex silencio* argument is not, however, too strong – they may have been omitted as their exclusion from inheriting was obvious. These texts were also a reflection of the views of jurists making up the collection on the basis of Ulpian's works; therefore, they might not have anticipated all cases.

VII. CONCLUSIONS

The analysis of the sources shows that actresses were not initially treated exceptionally by the law of succession; similarly to other women, since Augustus' marriage law, they had had the right to accept inheritance if married at the age prescribed by law. It was emperor Domitian who introduced changes, later on supplemented by Hadrian – their legislative activities deprived all *feminae probrosae*, and therefore actresses, any rights to inherit.

With the second regime of inheriting – intestacy – the regulation seems to be more complicated. Initially, like other women, those remaining in *iustum matrimonium* could inherit. It seems that, just as with inheriting through the will, since Domitian's times, *feminae probrosae*, including actresses, generally did not have the right to inherit. The exception was mothers who inherited through intestacy from their children under the *SC Tertullianum*.

Since emperor Justin's rule former actress and their daughters were given the right to inherit both through the will, as well as in its absence. However, women who did not abandon their occupation, still did not have *capacitas* in the law of succession. The situation of male actors in the law of succession remains, unfortunately, unclear.

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