
AEMILIA PUDENTILLA – A LANDOWNING LADY¹

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1 Introduction

1.1 Property implies power. Power is not the only meaning of property but one of its essential meanings. Thus, as a rule, people who enjoy property are (more or less) in a power position.² Gender is about power, too. Gender is the set of rules which society produces regarding the phenomenon that mankind appears in two sexes: women and men.³ Gender rules either provide for gender equality – in this case it does not make a difference whether an individual is a man or a woman⁴ – or they provide for a regime of domination. The dominating positions are largely and traditionally held by men. Within the wide range of means and methods to construct domination, property rules have often and extensively been used to create gender hierarchies.

1.2 The leading question of my paper is whether in Roman antiquity women were submitted to a negative gender bias as far as their holding and enjoying property was concerned. I will discuss this question by looking at a specific person in a specific source: Aemilia Pudentilla in Apuleius' *Apologia*. The framework I have chosen confines my analysis: The report on Aemilia Pudentilla does not envisage equally the whole range of property rights, but directs the attention to *dominium* in land. Apuleius' *Apologia* focuses largely on how Aemilia Pudentilla holds and administers her huge agricultural estate. It is, however, just this focus which produces an intriguing gender issue since authors like Cato and Columella characterize *agricultura* as men's business.⁵ These authors design a strongly interdependent relationship between the farmer's role and the soldier's role. But if the farmer/soldier constitutes the

1 Eric Pool chaired the session of the 2002 *SIHDA Conference* in Cagliari where I had the honour to present a paper on Aemilia Pudentilla. The positive appreciation of Legal Gender Studies that he evinced both in Antalya in 2000 and in Cagliari has been a wonderful reward for hard pioneering work. I am delighted to submit this article and thus express my gratitude to Eric Pool, in particular for his encouragingly kind empathy. The main text of this article repeats my presentation at the 2002 Conference of *SIHDA*. I added references to sources as well as to secondary literature and made a few contextualising remarks.

2 Cf. e.g. in the Austrian *Civil Code*'s section on property the definition of ownership, § 354 *ABGB*: "Regarded as a right, ownership is the entitlement to arbitrarily dispose of the substance and the utilization of an object, and do so to the exclusion of all other persons."

3 This very brief introductory remark does not go beyond some key words, and its brevity should not be misunderstood. It would be a fatal mistake to disregard that gender constructions, made up by "biologic" components and cultural designs, are truly complex. For this issue, see e.g. J. Lorber, *Paradoxes of Gender* (1994).

4 This does not mean that gender differences are ignored, but that they are perceived, analysed and treated in a way which renders equal freedom and justice to the individual.

5 See *infra* 4.2.

concept of masculinity, one would assume that women have no or very limited scopes of action when owning land and agriculture is at stake.

1.3 The sources that have inspired me to write this paper are primarily Apuleius' *Apologia* and the essay by Andreas Gutsfeld, "Zur Wirtschaftsmentalität nichtsenatorischer provinzieller Oberschichten: Aemilia Pudentilla und ihre Verwandten";⁶ supplemented by Birgit Feldner's study on Roman women and *officium*.⁷ Finally, I will combine Feldner's analysis with some observations I made on the complex of *lex Voconia* when reviewing Arnd Weishaupt's book *Die lex Voconia*.⁸

2 Main regimes to restrict property rights

For a discussion of how enjoying property can be controlled or even prevented it may be helpful to remember the three main devices which are used for restrictive property regimes.

First, barring certain persons from property can be accomplished by legal provisions which determine that these persons lack the legal capacity of holding property. Whenever such persons use or dispose of objects, these objects legally belong to other people. We find such devices in Rome, represented by the various forms of *alieni iuris status*.⁹

Secondly, there may be legal restrictions on the administration of property. The concept of *tutela* works with such a restriction. In the case of *tutela impuberum* the minor is entitled to hold property, but not to dispose of it by himself.¹⁰

Thirdly, there may be societal rules which determine that some type of property (e.g. land) is not to be conveyed to certain persons – for instance to women. As far as Roman antiquity is concerned, the Roman custom to make a testament which treats sons as another category of persons than daughters and wives evidences this third strategy. We know that, as a rule, sons would be chosen as heirs and recipients of *dominium* (outright ownership), in

6 A. Gutsfeld, "Zur Wirtschaftsmentalität nichtsenatorischer provinzieller Oberschichten: Aemilia Pudentilla und ihre Verwandten", in: *Klio* 74 (1992), 250-268.

7 B. Feldner, "Zum Ausschluß der Frau vom römischen *officium*", in: *RIDA* 47 (2000), 381-396; (see also the English version (slightly modified): "Women's exclusion from the Roman *officium*", *Forum Historiae Iuris*, <http://www.rewi.hu-berlin.de/online/fhi/articles/pdf-files/0209feldner.pdf>).

8 N. Benke in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Rom. Abt.* 119 (2002) 488-510.

9 Cf. e.g. Gaius *D.* 1.6.1.1, Gai. *Inst.* 2.86sq. An important exception was developed for the soldier under *patria potestas* by vesting him with some legal capacity as to his *peculium castrense*.

10 For *tutela mulieris* see e.g. J.-U. Krause, *Witwen und Waisen im römischen Reich II, Wirtschaftliche und gesellschaftliche Stellung von Witwen* (1994) 178sq.; J. Gardner,

particular of land. Contrary to this, the female family members would be entitled to legacies, often not providing for *dominium*, but for a limited property interest, a *ius in re aliena*, such as *usus* or *usufructus*.¹¹

3 Aemilia Pudentilla, portrayed in Apuleius' *Apologia*

3.1 In his *Apologia*¹² the rhetorician, advocate and philosopher Apuleius reports how he defended himself in court against the accusation of having applied *magia* on Aemilia Pudentilla, his wife. The trial against Apuleius took place in Sabrata, a town in the area of Tripolis.¹³ The procedure was initiated in A.D. 158¹⁴ by his stepson Sicinius Pudens and the stepson's uncle Sicinius Aemilianus.¹⁵ In this trial, Apuleius fought for his life because the sanction on the crime of *magia* was capital punishment.¹⁶ Finally, Apuleius' defence succeeded and he was acquitted.

3.2 What is the plot? When Apuleius meets Pudentilla, he is in his early thirties and she is in her late thirties.¹⁷ Originally married to Sicinius Amicus, she has been a widow for at least fourteen years, and her two sons have come of age. As long as they were minors, their grandfather, Pudentilla's father-in-law, was their *tutor impuberum* – a role which he used to pursue his and his family's interests in Pudentilla's impressive wealth.¹⁸ Modern scholars estimate

Women in Roman Law and Society (1986) 257sqq.

- 11 Generally A. Watson, *The Law of Property in the Later Roman Republic* (1968) 204sqq. G. Grosso, *Usufrutto e figure affini nel diritto romano* (1958) 344; G. Wesener, *RE IX A*, 1, Sp. 1164sq., s.v. *usus fructus*. For *usus fructus* as a proprietary interest mainly employed for the widow's maintenance, see Watson, (*supra* fn. 11) 206. For the position of women in the Roman law of succession in general see J.A. Crook, "Women in Roman succession", in: *The Family in Ancient Rome*² ed. B. Rawson (1992) 58-82.
- 12 See Apuleius of Madauros, *Pro se de magia (Apologia)*, ed. V. Hunink, 2 vol. (1997). The references to the *Apologia* provided in following footnotes are intended to serve as illustrations, not as complete documentations of the respective issues in Apuleius' defence.
- 13 Whereas the story is located at Pudentilla's hometown Oea (Apul. *Apol.* 17.2), the case was tried in Sabrata where the proconsul administered justice (Apul. *Apol.* 59.2).
- 14 This is based on the identification of the judge Claudius Maximus (e.g. Apul. *Apol.* 1.1) as the proconsul of Africa in A.D. 158/159 (cf. B.E. Thomasson, *Laterculi praesidium 1* (1984) 382). The trial started in autumn (see A. R. Birley, *Septimius Severus. The African Emperor* (1971) 46-60) or in winter 158 (see J. Guey, "Au theatre de Leptis Magna: Le proconsulat de Lollianus Avitus et la date de l'*Apologie* d'Apulée", in: *REZ 29* (1951), 317).
- 15 Apul. *Apol.* 1.7-2.3.
- 16 Apul. *Apol.* 25.5-65. Recently (F. Lamberti "De *magia* als rechtsgeschichtliches Dokument", in: J. Hammerstaedt/P. Habermehl/F. Lamberti/A. M. Ritter/P. Schenk, *Apuleius. Über die Magie* (2002) 331-350) disputed the traditional view that the indictment was based on the *lex Cornelia de sicariis et veneficis*. The *lex* speaks of homicide – which had not occurred in Apuleius' case. Taking into consideration the reports about *Senatusconsulta* that "interpreted" the *lex Cornelia* (D. 48.8.3) and about *Senatusconsulta* against astrologers (*Coll.* 15.2.1 Ulpianus *libro VII de officio proconsulis sub titulo de mathematicis et veticatoribus*, Tac. *Ann.* 2.32.2, 12.52.3), Lamberti suggests that Apuleius was indicted according to such a *Senatusconsultum*, presumably dating from the 1st century B.C.
- 17 Gutsfeld (*supra* fn. 6) 252.
- 18 Apul. *Apol.* 91.7, 92.3. Apuleius reports that she owned a sum of 4 million sesterces (Apul. *Apol.* 71.6). She could even afford to donate 400 slaves to her sons (Apul. *Apol.* 93.4).

that her property comprised 8.800 *iugera* of land and at least 600 slaves.¹⁹ Since the Sicinii want to remain connected with Pudentilla's riches even after her husband's death, they push her to marry another Sicinius, namely a brother of her deceased husband. Hence Pudentilla becomes engaged to Sicinius Clarus but for years she manages to avoid marriage.²⁰ In late 155, however, Pudentilla meets Apuleius, and they marry in 158.

Reacting to this step, two members of the Sicinii develop a plan to get rid of Apuleius. They purport that Apuleius must have bewitched Pudentilla – otherwise she would not have changed her mind so radically and turned away from the Sicinii family.²¹ They start criminal prosecution, and the indictment for *magia*.

3.3 How does Apuleius handle this very delicate and dangerous situation in court? He focuses on demonstrating that his adversaries are indecent, greedy, uncultivated people,²² whereas his faction – in particular Pudentilla and himself – is not to blame for anything.²³ In order to achieve such a positive presentation, his arguments elaborate on two points.

First, Pudentilla must be respected as a highly reputed lady because she has immaculately preserved her womanly honour, her *pudicitia*:

Apuleius, *Apologia* 69.2: *Mulier sancte pudica, tot annis viduitatis sine culpa, sine fabula ...*

A woman absolutely chaste, blameless after so many years of widowhood, without gossip ...

Secondly, Apuleius emphasises that everything she did in the crucial period of time complied persuasively with the code of proper conduct and therefore refutes any touch of misbehaviour.²⁴ Obviously, Apuleius concentrates on arguing that nothing exceptional or even strange is to be discovered in the way Pudentilla lived in the recent past. He stresses that Pudentilla managed her property and family affairs as usual, and that he supported her in doing so, without any attempt of interfering to his own benefit.²⁵

19 For references see Gutsfeld (*supra* fn. 6) 252-254, fnn. 20sq., 35.

20 Apul. *Apol.* 68.2-6.

21 Apul. *Apol.* 87.2.

22 Sicinius Pudens, Sicinius Aemilianus, Herennius Rufinus, Iunius Crassus; see Gutsfeld (*supra* fn. 6) 256-259; also J.E. Ifie/L.A. Thompson, "Rank, social status and esteem in Apuleius", in: *MusAfr* 6 (1977/1978) 21-36.

23 Apul. *Apol.* 87.10-102.

24 Apul. *Apol.* 68.2-6, 70.6-71.2.

25 Apul. *Apol.* 93.3-6.

4 Gender concepts reflected in Pudentilla's portrayal

What are the main features of Pudentilla as portrayed in the *Apologia*? She is *sui iuris*, and she has large estates. She conducts her life as the head of a vast agricultural estate. Apuleius describes this as a social environment in which certain economic procedures and a specific lifestyle are closely connected.²⁶ Let us put Apuleius' words in a historical and an institutional perspective:

4.1 Living in the second century A.D., Pudentilla can expect a largely unfettered property position as far as the law is concerned. She benefits from shifts of former times. During the Roman Republic, women's access to property changes. It changes from legal incapacity – established by women's *alieni iuris* status, as daughters under *patria potestas* and when married under *manus* – and from legal control of *sui iuris* women effected by the *tutela mulieris* to an autonomous position.²⁷ Becoming *sui iuris* on the occasion of the first marriage seems to have become a regular step and *tutela mulieris* has been reduced to something of little legal impact.²⁸

When looking at Pudentilla, mainly two points seem remarkable. First, the dimension of her wealth; she is extremely rich. Secondly, she plays a decisive role in administering her possessions. This does not mean that she indulges in arbitrariness. On the contrary, she is depicted as diligently pursuing the correct and prosperous management of her property. Accordingly, she resorts to the *auctoritas* of her *tutor mulieris*.²⁹ Apart from that, she abides by codes of custom and morals which reflect obligations to the community and to her family. She gives donations and she writes a testament in favour of her son whose disloyal behaviour would be sufficient reason not to do so.³⁰

4.2 In order to analyse Pudentilla's role more profoundly, one must look beyond the *tutor mulieris* and some societal duties. No doubt, on a legal level Pudentilla has impressive liberties. But the law is not the only regime which determines a person's position as to property. One must still consider that non-legal regulations may undermine legal liberties and thus diminish or paralyze the substantial impact of formal entitlements. What about societal rules that

26 Gutsfeld (*supra* fn. 6) 252-256, 264.

27 See e.g. J. Gardner (*supra* fn. 10) 257-266. For intriguing examples of women's economic activities documented in the *Codex Iustinianus*, see V. Halbwachs, "*Ipsae sibi negotia tractant*". Zur Frau als Geschäftspartnerin im Spiegel römischrechtlicher Quellen", in: *Règle et pratique du droit dans les réalités juridiques de l'antiquité*. Atti della 51a Sessione della S.I.H.D.A. Crotone-Messina 16-20 settembre 1997 (1999) 349-363.

28 Cf. Gai. *Inst.* 1.190sq. For *tutela mulieris* see e.g. J.-U. Krause, *Witwen und Waisen im römischen Reich II, Wirtschaftliche und gesellschaftliche Stellung von Witwen* (1994), 178sqq.; Gardner (*supra* fn. 10) 14-29.

29 Apul. *Apol.* 101.6.

determine leadership in the field of holding and administering property? To put the question more precisely: Does Pudentilla act according to a positive societal conception when she appears as owner and manager of a vast agricultural estate? Is this a proper role for a reputed Roman lady? Cato's statements suggest a negative answer.

Cato, *De Agricultura* 2: *Et virum bonum quom laudabant (sc. maiores), ita laudabant: bonum agricolam bonumque colonum; amplissime laudari existimabatur quo ita laudabatur.*

And the man whom they (i.e. the forefathers) approved as *vir bonus*, they approved in this way: a good farmer and a good tenant. Such approval was regarded as the highest praise.

Cato, *De Agricultura* 4: *At ex agricolis et viri fortissimi et milites strenuissimi gignuntur, maximeque pius quaestus stabilissimusque consequitur minimeque invidiosus, minimeque male cogitantes sunt qui in eo studio occupati sunt ...*

From the farmers the bravest men and the toughest soldiers come forth, and thus the most dutiful and reliable benefit succeeds, and the least jealous; by no means badly minded are those who commit themselves to that task (i.e. agriculture) ...

Cato depicts the *agricola* as a distinctly masculine role, since he regards a *bonus agricola* as a *vir bonus*, and according to him being a farmer is the cultural source which generates the *vir fortissimus* and the *miles strenuissimus*.³¹ Columella expresses a very similar view. He considers being a good farmer and a brave soldier the two pillars of Roman masculine virtue. Urban life, however, he disapproves of as the utterly negative type of society, explaining that urban people hide behind the city walls and indulge in effeminate actors and their womanish performances.

Columella, *Praefatio* 1.13: *Verum cum pluribus monumentis scriptorum admonear apud antiquos nostros fuisse gloriae curam rusticationis, ex qua Quintius Cincinnatus obsessi consulis et exercitus liberator, ab aratro vocatus ad dictaturam venerit, ac rursus*

30 Apul. *Apol.* 87.10, 93, 100.5-10.

31 Roman military service was confined to men. For women's roles around the Roman army see M. Debrunner Hall, "Eine reine Männerwelt?" in: M. H. Dettenhofer (ed.), *Reine Männersache? Frauen in Männerdomänen der antiken Welt* (1994) 207-228.

*fascibus depositis, quos festinantius victor reddiderat, quam sumpserat imperator, ad eosdem iuencos et quattuor iugerum avitum herediolum redierit.*³²

Still, with numerous records of writers I would remind that for our ancestors commitment to farming was something glorious. That is where Quintius Cincinnatus, the liberator of a captured consul and army, was called away from the plough to dictatorship. And after having relinquished the *fascēs* again – which he, being victor, had faster handed over than he had accepted as commander – he returned there, to the same oxen and the hereditary four *iugera* plot of land.

Columella, *Praefatio* 1.14-16: *Et ne singulos intempestive nunc persequar, cum tot alios Romani generis intuear memorabiles duces hoc semper duplici studio floruisse, vel defendendi, vel colendi patrios quaesitosve fines, intelligo luxuriae et deliciis nostris pristinum morem virilemque vitam displicuisse. Omnes enim (sicut M. Varro iam temporibus avorum conquestus est)³³ patres familiae falce et aratro relictis intra murum correpsimus, et in circis potius ac theatris, quam in segetibus et vinetis manus movemus, attonitique miramur gestus effeminatorum, quod a natura sexum viris denegatum muliebri motu mentiantur, decipiantque oculos spectantium.*³⁴

Let me skip now a time-consuming inquiry of single characters: As I consider that so many other memorable leaders of the Romans always excelled in this twofold task of either defending or cultivating the inherited or acquired areas, I learn that for our luxuries and delights the old code of honour and the manly life has fallen into disregard. Then all of us, the *patres familias* (as Varro complained already in our grandfathers' times), relinquished plough and sickle, and retreated behind city walls, and we move our hands in theatres and circuses rather than in fields and vineyards. Paralyzed we adore the performances of effeminate, because they simulate through womanish acting the sex which is by nature denied to men, and cheat the eyes of the spectators.

32 Cf. also the subsequent phrase in Columella *Praef.* 1.14.

33 Cf. Varro *Rust. 2 Praef.* 3.

34 Cf. also Columella *Praef.* 1.17.

Even if one de-emphasizes the authors' concern with the physical aspect of farm labour (an adequate assumption regarding well-to-do estate holders in the Principate), Cato's and Columella's images³⁵ still seem to incapacitate women's high standing in agriculture. How do such role definitions correspond to Pudentilla's portrayal? Is she a strange exception, an outcast of society – or does the gender code valid for her (and Apuleius) differ significantly from the role concepts vindicated by Cato and Columella?

4.3 The most important gender point documented in Apuleius' presentation lies in a remarkable compliance – it is the compliance of being a woman with agricultural *kosmos*, including outstanding wealth, economic management and a landed gentry lifestyle. Obviously, these are the main elements of a scenario that can be transferred to the people in court as honourable, a scenario that is felt to be positive – after all, Apuleius' presentation convinces his audience in court.

Apuleius, *Apologia* 70.6: *Nihil praeterea esse, cur amplius deberet obdurare, hereditatem avitam longa viduitate cum despectu salutis suae quaesisse, eandem summa industria auxisse.*

There was no more reason why she should further endure, having procured grandfather's inheritance during a long widowhood – disregarding her own well-being – and having enlarged that inheritance by her most diligent activity.

Apuleius, *Apologia* 87.7: *Neget eam rationibus villiconum et upilionum et equisonum sollertissime subscripsisse.*

Let him deny that she applied highest scrutiny when endorsing the accounts of bailiffs, grooms, and shepherds.³⁶

35 In spite of significant social changes, this Roman ideology seems to have remained quite firm. Cf. e.g. Plin. *Nat.* 18.4. Veg. *Mil.* 1.3.

36 Apul. *Apol.* 101.5. *Dico exiguum herediolum sexaginta milibus nummum, id quoque non me, sed Pudentillam suo nomine emisse, Pudentillae nomen in tabulis esse, Pudentillae nomine pro eo agello tributum dependi. Praesens est quaestor publicus, cui depensum est, Corvinus Celer, vir ornatus; adest etiam tutor auctor mulieris, vir gravissimus et sanctissimus, omni cum honore mihi nominandus, Cassius Longinus. Quaere, Maxime, cuius emptionis auctor fuerit, quantulo pretio mulier locuples agellum suum praestinarit* (I say that a small plot of land was bought for 60.000 sesterces, and bought not by me but by Pudentilla in her own name, that Pudentilla's name is on the deed and in name of Pudentilla the tax is paid for this land. The *quaestor publicus*, to whom the tax was paid, Corvinus Celer, a distinguished man, is here (in court). The wife's guardian and advisor, Cassius Longinus, a most venerable and virtuous man, whom I must speak of with the deepest respect, is also present. Ask him, Maximus, whose purchase he assisted as *auctor*, and for what a low price the wealthy woman bought her little estate).

This scenario is considered to be positive according to the rules of a proper, decent, respectable life, and in no way strange, irritating or even scandalous. Pudentilla's profile and conduct is not irregular and therefore perhaps disturbing or subversive: Quite contrary, Apuleius' defence strategy derives its convincing force from a societal scheme which allows Pudentilla to succeed splendidly by being the owner and the manager of a vast agricultural estate.³⁷

5 A counter-scenario of Roman gender rules

5.1 Now let me work out that gender point by way of contrast. In other contexts, being a woman and exerting power are considered to be strange, irritating or even scandalous. In order to underline the specific character of the woman's role we have found in the example of Pudentilla, I will refer briefly to another source of power, namely the power of taking action in the arena of state, law and politics.³⁸

Roman patriarchy remained largely successful in excluding women from the arena of state, law and politics: In this field, active participation of women is rare and truly marginalized.³⁹

5.2 How does the Roman patriarchal gender construction work to accomplish this goal? The basic device is to create a specific collective mind, a collective mind that is incapable of appreciating (perhaps even imagining) women as agents of legal, political or state-related performances. This blind spot is most clearly manifested by sources which reflect a peculiar dilemma: Women who act publicly in a legal, political or state context are either ostracized as adulteresses or prostitutes (they lack what constitutes proper women, namely *pudicitia*)⁴⁰ or – if, rarely enough, the judgement is positive – the publicly active woman is transgendered into a person with a man's spirit.

37 There are good reasons to assume that Pudentilla also engaged in trade and money lending. However, in Apuleius' world those economic activities were not highly reputed and hence were to be suppressed in the defence strategy. Gutsfeld (*supra* fn. 6) 263-268.

38 Cf. e.g. Ulpianus *D.* 50.17.2*pr.*, Paulus *D.* 5.1.2.12, Ulpianus *D.* 3.1.1.5.

39 See N. Benke, "Women in the courts, an old thorn in men's sides", in: *Michigan Journal of Gender and Law* 3/1 (1995), 202-212; Feldner, (*supra* fn. 7) 381-393.

40 See Feldner (*supra* fn. 7) 387-396; Chelidon (Cic. *Verr.* 2.1.138), Carfania (Ulpianus *D.* 3.1.1.5, Juv. 2.69, *Val. Max.* 8.3.2), Agrippina Minor (for references see Feldner (*supra* fn. 7) 393-395).

Let me point out Amesia Sentinas, whose skilled and courageous speech affords her the epitheton “Androgyne”, or “manwoman”.⁴¹ According to Birgit Feldner’s analysis,⁴² this is not meant to disqualify her, but as a compliment, and I think Feldner is right:

Valerius Maximus 8.3.1: Amesia Sentinas rea causam suam L. Titio praetore iudicium cogente maximo populi concursu egit modosque omnes ac numeros defensionis non solum diligenter, sed etiam fortiter executata, et prima actione et paene cunctis sententiis liberata est. quam, quia sub specie feminae uirilem animum gerebat, Androgynen appellabant.

Amesia Sentinas, the defendant, pleaded her case before Lucius Titius, the praetor, who directed the legal proceedings, and a very big assembly of people. She performed all the figurations and details of the defence not only diligently but also vigorously, and in the first hearing she was acquitted, almost unanimously. Since she produced a man’s spirit under the appearance of a woman, they called her Androgyne.

6 Is property private?

Pudentilla’s image and the counter-scenario that I have just briefly described provoke another question. Property implies power. Participating actively in politics, law and state means power, too. What about private property as an access to public power? How do the Romans – to be more precise, the Roman patriarchal mind – treat this constellation?

They treat it with mixed feelings, applying measures that may be characterized as discreet and flexible, but still repressive. In my view, the Roman bias towards women’s *postulatio* and *intercessio* reflects this attitude quite clearly.

6.1 This is not the place to examine *postulatio* and *intercessio*.⁴³ I will, however, present some of my recent observations on the *lex Voconia*. On the one hand, legal and non-legal sources tell us that the *lex* prohibited first-

41 Similarly, Hortensia achieves approval by delivering a splendid speech. Also she is transgendered by Valerius Maximus, who says that her father, the famous rhetorician Q. Hortensius, resurged when she was speaking: *Val. Max.* 8.3.3. See Feldner (*supra* fn. 7) 392sq. See also E. Höbenreich/G. Rizzelli, *Scylla* (2003) 88sq.

42 Feldner (*supra* fn. 7) 392sq.

43 See e.g. N. Benke, “Why should the law protect Roman women? Some remarks on the *Senatus Consultum Velleianum* (ca. 50 A.D.)”, in: *Gender and Religion in Europe, European Studies*, eds. K. Børresen/S. Cabbibo/E. Specht, (2001) 41-56.

census class women from being made testamentary heiresses.⁴⁴ Some ancient sources as well as generations of modern Roman-law scholars assume that the provision intends to bar women from acquiring considerable wealth.⁴⁵ On the other hand, we learn that the restriction had (for a long time) no counterpart in the rules of intestate succession – thus, intestate succession would work in favour of one's own daughters. Perhaps even more importantly, *fideicommissum* offered a good chance for the woman to obtain the property she could not acquire being appointed heiress by the deceased's testament:

Gaius, *Institutes* 2.274: *Item mulier, quae ab eo qui centum milia aeris census est, per legem Voconiam heres institui non potest, tamen feideicommisso relictam sibi hereditatem capere potest.*

Likewise a woman, who under the *lex Voconia* can not be made heiress by a person census-listed in the category of 100.000, is able to take the *hereditas* that is bequeathed to her by way of *fideicommissum*.

How is this inconsistency to be explained? It seems to me that the answer may be found in the two different roles that are vested in the person who becomes heir or heiress by way of a testament.

The one role is succession in terms of material matters, such as land, moveable goods, but also claims and debts. I believe that barring women from this role was not the crucial idea behind the *lex Voconia*. The other role is to administer the testator's *hereditas*.⁴⁶ This office had to be conducted by the heir. It was not a merely private matter and internal family business, but it had legal and political dimensions. Thus it led to the public which was supposed to be only men's domain. As a rule, administering a Roman testament would require to manage more tasks than administering an intestate succession. In particular, negotiating with claimants of *legata* and *fideicommissa* and the whole performance and realization of what Christoph Paulus calls "the posthumous personality of the testator"⁴⁷ entails complex participation in various societal networks.

Assuming and accomplishing such tasks means presence in men's domains, getting into networks and acquiring social prestige. My impression is that this

44 See A. Weishaupt, *Die lex Voconia* (1999) 40-71.

45 See Weishaupt (*supra* fn. 44) 128-140.

46 See Benke (*supra* fn. 8) 505-510.

47 C. Paulus, *Die Idee der postmortalen Persönlichkeit im römischen Testamentsrecht. Zur gesellschaftlichen und rechtlichen Bedeutung einzelner Testamentsklauseln* (1992).

avenue, the avenue to the public, had to be barred for women – not the avenue to private property in the strict sense. These two different roles may explain the seemingly schizoid profile of the *lex Voconia*.⁴⁸

6.2 So is property private? It is, as an institution of private law, within the framework of certain economic allocations and dispositions. Property may, however, adopt dimensions clearly beyond that framework and then support the shift to a genuinely public discourse. This sounds modern but is in fact an issue already reflected in Roman sources:

Paulus, *Sententiae Quint. decl.* 264.12: ... *Quid enim putas voluisse legis latorem cum hoc ius constitueret? Ne feminae nimias opes possiderent, ne potentia earum civitas premeretur ...*

So what do you think did the legislator intend when he established this law? (The legislator intended) that women should not have extraordinary fortunes lest their power should apply pressure to the civic community ...⁴⁹

7 Concluding remarks

Let us get back to Pudentilla and let me suggest some concluding remarks.

Pudentilla's portrayal is not an incidental report on economic activities somewhere in Northern Africa, but a strategically motivated and highly sophisticated picture of Roman institutions and values. As Gutsfeld emphasizes, the *Apologia* does not aim at reality, but at mentality. This seems true if mentality stands for the societal standards of a certain cultural setting.⁵⁰

In addition, Apuleius' focus on rural gentry life is a relatively broad and differentiated source of gender concepts. The gender construction right at the core of the *Apologia* can be put in a brief sentence: Owning and administering a huge agricultural estate is a role which is not reserved for men, but complies also perfectly with being a woman. Thus, Pudentilla's portrayal constitutes a remarkable example of Roman gender equality – although perhaps more typical for a provincial area than for the capital of Italy.

48 See Benke (*supra* fn. 8) 507sq.

49 Cf. Cato's philippic to prevent women from getting involved in public affairs, in Liv. 34.2-3. See Benke (*supra* fn. 8) 509.

50 Gutsfeld (*supra* fn. 6) 265, 268.

We must, however, keep in mind that property appears at the same time as a means of gender inequality. A long and broad track of Roman statements suggests a negative answer to Cicero's question *cur enim pecuniam non habeat mulier?*⁵¹ – an answer like “because wealth might enable women to break into the *officia virilia* of *ius*, *civitas* and *res publica* and thus change our societal landscape quite substantially”.⁵²

51 Cic. *Rep.* 3.10.17. Transl.: So why should a woman not have money?

52 Livius 34.2-3 (*supra* fn. 49) lets Cato articulate the fears aroused by the idea that women might increasingly conquer the public sphere: *Omnium rerum libertatem, immo licentiam, si vere dicere volumus, desiderant ... Quid? Si carpere singula et extorquere et exaequari ad extremum viris patiuntur, tolerabiles vobis eas fore creditis?* (They claim freedom in everything, rather licentiousness, if we want to put it correctly ... What? Do you believe they will be bearable for you if you allow them to seize single bits and tear them off and eventually reach equal standing with men?)