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Annex 21 (Book XXVII)

- The Spirit of Law - Annexes to the edition of 1758 -

Date de mise en ligne : samedi 8 septembre 2018

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[...] The law fixed a certain sum which was to be given to women whom it deprived of succession. Cicero, who informs us of this fact, [1] does not say what that sum was, but Dio says it was one hundred thousand sesterces. [2]

The Voconian law was made to regulate wealth, and not to regulate poverty, and Cicero tells us that it only determined who was listed in the *cens*. [3]

That furnished a pretext for eluding the law. We know that the Romans were extremely formalistic, and we have said above that the spirit of the republic was to follow the letter of the law. There were fathers who did not have their names registered for the *cens*, so they could leave their succession to their daughter, and the prætors judged that this was not a violation of the Voconian law, since it did not violate the letter.

A certain Anius Asellus had designated his daughter as sole heir. He could, says Cicero [4] : the Voconian law did not prevent him, because he was not listed in the *cens*. Verres, being a prætor, had deprived the daughter of the succession ; Cicero maintains that Verres had been corrupted, because otherwise he would not have reversed an order which the other prætors had followed.

Who then were these citizens who were not in the *cens* that included all citizens ? But according to the institution of Servius Tullius reported by Dionysius of Halicarnassus, every citizen who did not enroll in the *cens* was made a slave [5] ; Cicero himself says that such a man lost his freedom [6] ; Zonaras says the same thing. There had to have been some difference, then, between not being in the *cens* according to the spirit of the Voconian law, and not being in the *cens* according to the spirit of the institutions of Servius Tullius.

Those who had not had themselves enrolled in the first five classes, where one was placed according to the proportion of his assets, were not in the *cens* according to the spirit of the Voconian law [7] ; those who were not listed in the six classes, or who were not placed by the censors among those who were called *oerarii*, were not in the *cens* following the institutions of Servius Tullius. Such was the force of nature that fathers, to elude the Voconian law, were willing to bear the shame of being mixed in the sixth class with the proletarians and those who were taxed by capitation, or perhaps even of being relegated to the tables of the Cærites. [8]

We have said that the jurisprudence of the Romans did not allow for trustees. The hope of eluding the Voconian law introduced them : one designated an heir eligible to receive by law, and asked him to remit the succession to a person whom the law had excluded. This new manner of disposing had very different effects. Some passed on the inheritance, and the act of Sextus Peduceus was remarkable. He was given a large succession ; there was no one on earth but him who knew that he was asked to pass it on : he went to find the testator's widow and gave her all her husband's assets. [9]

The others kept the succession for themselves, and the example of P. Sextilius Rufus was also famous, because Cicero uses it in his disputes against the Epicurians. "In my youth," he says, "I was asked by Sextilius to accompany him to his friends' house, to learn from them whether he should pass on the inheritance of Quintus Fadius Gallus to his daughter Fadia. He had assembled several youths, along with some very grave personages, and not one expressed the opinion that he should give more to Fadia than what she was supposed to receive under the Voconian law. Sextilius had a large inheritance, of which he would not have retained one sesterce if he had chosen what was just and honest over what was beneficial to him. I can believe, he added, that you would have remitted the inheritance ; I can even believe that Epicurus would have remitted it ; but you would not have followed your principles." [10] I shall make a few observations here.

It is a misfortune of the human condition that legislators should be obliged to make laws that counter even natural

sentiments : such was the Voconian law. That is because legislators determine more on society than on the citizen, and more on the citizen than on the man. The law was sacrificing both the citizen and the man, thinking only of the republic. A man asked his friend to pass his succession to his daughter ; the law was spurning, in the testator, the sentiments of nature ; it was spurning, in the daughter, filial piety ; it had no consideration for the person entrusted with passing on the inheritance, who was in a deplorable situation. If he remitted it, he was a bad citizen ; if he kept it, he was a dishonest man. Only people of good character thought of evading the law ; there were none but honest men one could choose for evading it, for it is always a triumph to be won over avarice and sensual delights, and it is only honest men who obtain these sorts of victories. Perhaps it would even have been severe to regard them in this as bad citizens. It is not impossible that the legislator had obtained a good part of his objective, when his law was such that it forced only honest men to elude it.

In the time when the Voconian law was made, the ethos had preserved something of its ancient purity. The public conscience was sometimes solicited in favor of the law, and an oath was required that it would be observed, [11] so that probity was, so to speak, waging war on probity. But in the latter times, the ethos became corrupted to the point where trustees needed less strength to elude the Voconian law than was in the law to make itself obeyed.

[1] *Nemo censuit plus Fadiæ dandum, quam posset ad eam lege Voconia pervenire. (De finibus bon. & mal, book II).*

[2] *Cum lege Voconia mulieribus prohiberetur ne qua majorem centum millibus nummum hæreditatem posset adire (book LVI).*

[3] *Qui census esset (second oration against Verres).*

[4] *census non erat (ibid.).*

[5] Book V.

[6] In *Oratione pro Cæcinnâ.*

[7] These five first classes were so considerable that sometimes writers record no more than five.

[8] *In cæritum tabulas referri ; ærarius fieri.*

[9] Cicero, *De finib. boni et mali*, book II.

[10] Cicero, *De finib. boni et mali*, book II.

[11] Sextilius said he had sworn to observe it (Cicero, *De finib. boni & mali*, book II).