THE CASE OF VALERIA: AN INHERITANCE-DISPUTE IN ROMAN ASIA

In a vigorously argued passage of the oration *Pro L. Flacco*, Cicero defends his client L. Valerius Flaccus against the charge that he had acted improperly during his governorship of Asia three years previously in claiming as *heres legitimus* the estate of one Valeria, wife of Sextilius Andro, who had died intestate in the province.[1] This section of the speech involves Cicero in a brief display of his knowledge of the civil law concerning *tutela*, the forms of acquiring *manus* in marriage by *usus* and *coemptio* and inheritance *ab intestato*, and it is described by the scholiast as 'negotialis quaestiuncula'. The passage is regularly cited in the handbooks to illustrate those features of the civil law which Cicero treats, but the Valeria in question is otherwise wholly obscure. However, her case has wider implications for our understanding of the extent and nature of the interests held by the Republican nobility in the eastern provinces, and it repays closer study than it has hitherto attracted.[2]

The affair is a puzzling one, since although Cicero claims to dispose easily of legal objections to the soundness of his client's claim to Valeria's estate, he nowhere clearly sets out the positive ground of that claim. He only reveals *en passant* that the estate fell to him jointly with another, younger L. Flaccus, under the civil law, and establishes, as the basis of his defence, that his client was one of Valeria's *tutores legitimi*.[3] During the course of his argument, he first disposes of the claim that Valeria was married to Sextilius *cum manu*, a development which would have entailed that all her property had automatically been transferred to the husband's sole ownership and the *tutela* over her extinguished.[4] This part of Cicero's defence assumes a general awareness that marriage *cum manu* was now so rare that the prosecution needed to bring clear proof that it existed in Valeria's case. Cicero's initial pretence at puzzlement over the basis of the charge, and the affected realization implied by his exclamation 'Nunc audio' with which he launches into his treatment of *manus* marriage, reflect a natural assumption that marriage would be 'free' and *sine manu*. This seems to be the point of the opening manœuvre in which Cicero pretends to have forgotten the very possibility of marriage *cum manu*.[5]

He next proceeds to counter the argument that Valeria's husband had acquired full claim to her estate by contracting such a marriage by showing that the procedures for *conventio in manum* by a woman who was *sui iuris* required the express consent of her *tutores*, a consent which Flaccus certainly had not

[1] *Flacc.* 34. 84–36. 89. Cf. T. R. S. Broughton, *The Magistrates of the Roman Republic* (New York, 1952), ii. 177. Sextilius Andro was not present at the trial, and Cicero had to deal with the hostile witness M. Lurco in this matter (*Flacc.* 4. 10; 36. 88).

[2] For the scholiast's commentary see Th. Stangl (ed.), *Ciceronis Orationum Scholiastae* (Leipzig, 1912), ii. 106 f.

[3] *Flacc.* 34. 84; 36. 89 ('lege'). For the *tutela*, see 35. 86. For plurality of tutors cf. Cic. *Verr.* 2. 1. 37. 92; *Sest.* 52. 111; *Fam.* 13. 61.

[4] See Gaius, *Inst.* 2. 90, with P. E. Corbett, *The Roman Law of Marriage* (Oxford, 1930), 108 ff.; F. Schulz, *Classical Roman Law* (Oxford, 1951, hereafter cited as *CRL*), 118, 180; idem, *Principles of Roman Law* (Oxford, 1956), 195 ff.

[5] Cf. A. Watson, *The Law of Persons in the Later Roman Republic* (Oxford, 1967), 20 ff.; E. Costa, *Cicerone Giureconsulto* (Bologna, 1927), i^2. 53 ff.

given. He deals here with *usus* and *coemptio*, omitting the possibility of the third form which also led to marriage *cum manu*, namely *confarreatio*, presumably because this was extremely rare and socially restricted.[1] This portion of the argument establishes for us that at the time of her death, Valeria was *sui iuris* and no longer *in potestate* to a *paterfamilias*, and also that she was still a member of her original family since she was not *in manu* to Sextilius.[2] The claim advanced by the prosecution that Valeria had performed *dotis dictio* of all her property also implies that she was *sui iuris* at the time of her marriage. This claim appears to constitute the next line of attack upon the legal soundness of the right of Flaccus to inherit, since even if the marriage were conceded to be a 'free' one, dowry was normally retained *in toto* by the husband in the event of the wife's prior death. Cicero again plugs this loophole with the reminder that the tutor's consent was equally necessary for *dotis dictio*.[3]

If Cicero's contentions are so far correct, Sextilius Andro will have been left with a hopeless claim, since the *ius civile* simply did not recognize any right of intestate succession between spouses in 'free' marriage. Even the praetorian innovations of the Imperial period would allow a husband *bonorum possessio sine tabulis* only in default of claims to his wife's estate by the prior classes of *liberi*, *heredes legitimi*, and *cognati*.[4] However, when we turn to assess the validity of the claim of Flaccus himself, the light of Cicero's legal argument begins to fail us. As a *tutor legitimus*, he was definitely numbered among the *heredes legitimi* whose claim was maintained by the civil law. For *tutela* automatically went, in default of any testamentary tutor appointed by the *paterfamilias*, to the heirs at civil law, and so normally to the *agnati* or *gentiles* of the woman. But this fact in itself tells us little unless we can also discover how Flaccus came to be Valeria's *tutor* in the first place. For *tutela* was consequential upon the right of intestate inheritance in that the purpose of *tutela legitima* was precisely to safeguard the interests of the prospective heirs in the property that was to come to them. We are also told that the *adulescentulus* L. Flaccus, a *propinquus* of the defendant, was co-heir under the civil law but received all the legacy by the latter's voluntary act of generosity. This young man shared the *tutela* over Valeria and was presumably a cousin or nephew of the older Flaccus.[5]

[1] For *usus*, *coemptio*, and the tutor's control, see W. Kunkel, *R.E.* xiv[2] (1930), cols. 2260 ff., s.v. 'Matrimonium'; J. G. A. Wilms, *De Vrouw sui iuris, Cicero, pro Flacco* 34, 84, *en de manusvestiging door usus* (Ghent, 1938); Corbett, *Roman Law of Marriage*, 78 ff.; Schulz, *Principles*, 192 ff., and *CRL*, 116 ff.; Th. Mayer-Maly, 'Studien zur Frühgeschichte der usucapio II', *Z.S.S.* (Roman. Abt.) lxxviii (1961), 221–76, at 259 ff.; W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*[3] (rev. P. Stein, Cambridge, 1966), 119 ff.

[2] For the Roman woman *sui iuris* see H. F. Jolowicz, *Historical Introduction to the Study of Roman Law*[2] (Cambridge, 1952), 120 ff.; J. A. Crook, *Law and Life of Rome* (London, 1967), 113; Schulz, *CRL*, 157 ff., 166 ff.

[3] *Flacc.* 35. 86. For the husband's retention of *dos adventicia* furnished by a woman *sui iuris* see R. Leonhard, *R.E.* v[2] (1905), cols. 1587 ff., s.v. 'Dos'; Corbett, *Roman Law of Marriage*, 183 ff.; Kunkel, *R.E.* xiv[2], col. 2286; Buckland, *Text-Book*, 107 ff.; Schulz, *CRL*, 126; Watson, *Law of Persons*, 57 ff. For the procedure of *dictio dotis*, see Corbett, op. cit. 163 ff.; R. Leonhard, *R.E.* v[1] (1903), cols. 390 ff., s.v. 'Dictio Dotis'.

[4] See Kunkel, *R.E.* xiv[2], col. 2285; Corbett, op. cit. 117; Jolowicz, *Historical Introduction*, 261; P. Voci, *Diritto ereditario romano* i (Milan, 1960), 171 ff., ii (Milan, 1963), 10 ff. D. Magie, *Roman Rule in Asia Minor* (Princeton, 1950), 379, flatly states that Flaccus wrongfully diverted the estate from Sextilius.

[5] *Flacc.* 36. 89. For the connection between

Previous investigators of the claim of Flaccus have taken at its face value Cicero's concession that Valeria was *ingenua*, and have proceeded to base their discussion upon the familiar pattern of intestate inheritance at civil law from a free-born woman who was *sui iuris*. In such a case, the woman's estate went to the *proximus agnatus* in the nearest degree, however remote that degree might be (or to the *proximi agnati* if there were several in the same degree) or failing them to her *gentiles* as a group.[1] But the conclusions so reached have tended to be vague and unhelpful precisely because Cicero nowhere points to any degree of family relationship at all between Valeria and the two Flacci. In the most recent discussion of the problem, Professor A. Watson has argued that the claim of Flaccus followed the pattern of regular gentile inheritance *ab intestato* and was based upon his fellow-membership with Valeria of the *gens Valeria*.[2] But if this were the case, the members of that *gens* would have taken equally, and it would surely be odd that Cicero, while defending his client from the imputation of greed, should mention that he shared the legacy only with one other Valerius rather than a larger circle of the *gentiles*.[3]

The vital clue which has been overlooked lies, I suggest, in the nomenclature not just of Valeria herself but also of her husband, Sextilius Andro. For the latter's name plainly indicates that he was a freedman or freedman's descendant, presumably a man of Greek stock who owed his citizenship to one of the numerous Sextilii who were active in the eastern provinces as *negotiatores*.[4] The name Ἄνδρων is, of course, found in the Greek world, and it would, as 'Andro', have formed the new *cognomen* of an enfranchised Greek who bore it. Although inversion of the *nomen* and *cognomen* of freedmen is common in the inscriptions, it is possible that Cicero deliberately refers to Valeria's husband as 'Andro Sextilius' in order to draw derisive attention to his servile origins by emphatic placement of the tell-tale *cognomen*.[5]

But if Sextilius was a freedman, or freedman's descendant, his wife is far more likely to have been of similar background than to have been a full member of the patrician *gens Valeria* or an agnatic relative of those consular Valerii from

tutela legitima and *hereditas legitima* see Costa, *Cicerone Giureconsulto*, i. 65 ff.; Buckland, *Text-Book*, 144 ff.; Schulz, *CRL*, 166, 186; Voci, *Diritto ereditario*, i. 63 ff.; Crook, *Law and Life of Rome*, 113 ff.

[1] *Flacc.* 34. 84. See O. Lenel, 'Die Rechtsstellung des proximus adgnatus und der gentiles im altrömischen Erbrecht', *Z.S.S.* (Roman. Abt.) xxxvii (1916), 129–35; Jolowicz, *Historical Introduction*, 123 ff.; Buckland, *Text-Book*, 367 ff.; Schulz, *CRL*, 220 ff.; Voci, *Diritto ereditario*, ii. 3 ff.; A. Watson, *The Law of Succession in the Later Roman Republic* (Oxford, 1971), 175 ff.

[2] *Law of Succession* (above, n. 1), 175–81. But he seems hesitant about his conclusions (p. 181), and at one point (p. 180 n. 1) inclines to the view that Flaccus took as *agnatus* rather than *gentilis*. Costa, *Cicerone Giureconsulto*, i. 54, simply assumes that Flaccus was *agnatus* to Valeria.

[3] *Flacc.* 36. 89. For collective succession by the *gentiles* in cases of intestacy, without regard to degrees of proximity, see Costa, op. cit. i. 11; Kübler, *R.E.* vii[1] (1910), col. 1189, s.v. 'Gens'.

[4] For Sextilii and their freedmen as businessmen in the Greek East see J. Hatzfeld, 'Les Italiens résidant à Délos', *B.C.H.* xxxvi (1912), 5–218, at p. 78; idem, *Les Trafiquants italiens dans l'Orient hellénique* (Paris, 1919), 403; A. J. N. Wilson, *Emigration from Italy in the Republican Age of Rome* (Manchester, 1966), 110, 152.

[5] *Flacc.* 34. 84. Cf. Hatzfeld, *B.C.H.* loc. cit. 138 ff.; S. Treggiari, *Roman Freedmen during the Late Republic* (Oxford, 1969), 250 ff. For the name Ἄνδρων see W. Pape and G. Benseler, *Wörterbuch der griechischen Eigennamen*, i[3] (Braunschweig, 1911), 89; F. Preisigke, *Namenbuch* (Heidelberg, 1922), cols. 30, 379; D. Foraboschi, *Onomasticon Alterum Papyrologicum*, i (Milan, 1967), 33. Costa, *Cicerone Giureconsulto*, i. 54, infers somewhat superfluously from the lack of reference to *confarreatio* as a possible marriage form that Sextilius was a plebeian!

whom the defendant was descended. Although Cicero's description of Valeria as 'ingenua' must mean that she had herself never been in lawful slavery, there may be a half-truth contained in the scholiast's comment 'Verum fuit haec Valeria de libertis Flacci, ac propterea in legitima tutela quasi aput patronum habebatur.' For although an *ingenua*, she may still have been the descendant or even daughter of a *libertus* of the Valerii.[1]

If this is the case, Valeria will have belonged to the *gens* of Flaccus not by blood but by virtue of the manumission of a male antecedent, and the scholiast is correct if he means to convey that this fact was very pertinent to the disposal of her estate.[2] Certainty in this area of Roman law is not attainable, but it is probable that the agnatic descendants of a Roman who manumitted his slave maintained over the descendants of the original *libertus* a right of inheritance in cases of intestacy which would secure the estate for them provided there were no familial heirs, or *sui heredes*, of the deceased. In such cases, the right of succession would go in the first instance to the descendants of the original *patronus*, and only if the agnatic descendants of the manumittor had now died out could the patron's *gentiles* as such take the estate.[3] Since a woman could not leave any prior class of *sui heredes*, that is, relatives freed from *patria potestas* by her death, the descendants of the manumittor of the original Valerian *libertus* could not be excluded, and Valeria's estate will have fallen to Flaccus and his young relative by this right.

Thus far, the claim of Flaccus would appear to have been a sound one which exhibits no legal flaw. But the main thrust of the attack delivered by the witness M. Lurco in connection with this inheritance seems to involve the broader charge that it was improper for a governor actively to prosecute a claim to the estate of a resident of his own province. It is this aspect of the case, no doubt, which caused it to be brought up at a trial for *repetundae* some three years after Sextilius had finally lost his wife's estate.[4] To this Cicero retorts that at least one other governor of Asia, namely L. Licinius Lucullus (who was

[1] Stangl, *Scholiastae* (above, p. 82 n. 2), ii. 106. For definition of *ingenuitas* see Gaius, *Inst.* 1. 11, with W. W. Buckland, *The Roman Law of Slavery* (Cambridge, 1908), 438; Crook, *Law and Life of Rome*, 48 ff. For the strong social barrier to intermarriage between senatorial families and families of servile origin see Corbett, *Roman Law of Marriage*, 31 ff.; Treggiari, *Roman Freedmen*, 82 ff. For the Valerii in the East see Hatzfeld, *Les Trafiquants*, 405 ff.

[2] The definition of Q. Mucius Scaevola (Cic. *Top.* 6. 29) would exclude descendants of slaves from full membership in a *gens*. But Th. Mommsen, *Römisches Staatsrecht* iii (Leipzig, 1887), 427, contends that a *libertus* did belong to his patron's *gens*, which acquired rights of inheritance over him. Kübler, *R.E.* vii[1] (1910), cols. 1176 ff., s.v. 'Gens', holds that freedmen's descendants were legally attached to the patron's *gens* as *gentilicii*; Treggiari, op. cit. 82, also holds that they belonged to it in a looser sense.

[3] See Cic. *De Orat.* 1. 39. 176; Ulpian, *Digest* 50. 16. 195. 1, with S. Riccobono, *Fontes Iuris Romani Antejustiniani* (Florence, 1941), i[2]. 41, no. 8; Kübler, *R.E.* vii[1] (1910), cols. 1188 ff.; C. W. L. Launspach, *State and Family in Early Rome* (London, 1908), 272 ff.; Buckland, *Law of Slavery*, 426 ff. Most recently, Voci, *Diritto ereditario*, i. 37 ff., ii. 26 ff., has cogently argued that manumission created a hereditary relationship of *clientela* between the *stirps libertina* and the patron's *gens*, also a closer bond of 'quasi-agnazione' between patron's family and *libertus*. See Voci, op. cit. i. 308 ff., for the hereditary nature of patronage over *liberti*. None of these discussions notices the case of Valeria.

[4] See *Flacc.* 34. 85 'Relinquitur illud quod vociferari non destitit, non debuisse, cum praetor esset, suum negotium agere aut mentionem facere hereditatis'; 34. 86 'Atque eodem etiam M. Lurco, vir optimus, meus familiaris, convertit aculeum testimoni sui: negavit a privato pecuniam in provincia praetorem petere oportere.'

opportunely one of the *iudices* at the trial of Flaccus) had received legacies while in office, and further speculates that neither Lucullus nor T. Vettius, governor-designate of Africa and another *iudex*, would let disputed legacies go by default in their provinces. Cicero is also able to remark, more pointedly, that Lurco himself had recently employed a *libera legatio* to collect some debt which he was owed in an unnamed province.[1] He proceeds to point out that an application for possession of Valeria's estate had already been made in the name of Flaccus before P. Servilius Globulus, his predecessor as Asian governor in 63 B.C. We must assume that this application had been unsuccessful, if Flaccus is accused of wrongfully seeking the estate again in 62 B.C., but Cicero brings it up to show that his client had not seized any unfair advantage conferred by his office to raise his initial claim while actually governor.

None of these arguments can, however, alter the awkward fact that Flaccus, whose claim was admittedly contentious, obtained possession of Valeria's estate while he was, as holder of the *imperium*, in charge of the very judiciary which must resolve such disputes.[2] Since *hereditas ab intestato* was not automatic but a matter of choice, Flaccus must have taken deliberate steps to claim the estate.[3] Moreover, it is indicative of the governor's discretionary power in these matters that by Cicero's day the provincial edict regularly covered intestate succession. It contained the promise of investigation of claims to the status of *heres legitimus*, and the grant of *bonorum possessio sine tabulis* was made *ex edicto* to applicants whose claim was upheld. It is clear that the investigation and final settlement of these claims would involve some degree of judgement based upon equity where the magistrate had to resolve conflicting claims.[4]

Even so, whatever the potential of his office for undue influence, Flaccus did not, as the scholiast carelessly states, choose to serve as actual judge of his own claim. The dispute with Sextilius was resolved by submission to an arbiter, whose written decision was duly sealed and witnessed.[5] Since arbitration is the procedure prescribed by the Twelve Tables for the delicate matter of the division of an inheritance, and since the arbiter would be freely chosen by the parties, Flaccus seems to have acted with reasonable fairness.[6]

The details which Cicero gives of this arbitration offer a final clue, which is

[1] A. Watson, *The Law of Property in the Later Roman Republic* (Oxford, 1968), 37, is confused in stating that Flaccus himself is here being accused of obtaining Valeria's estate by *usucapio*. Cicero mentions *usucapio* only in a hypothetical question addressed to the prospective governor T. Vettius (34. 85 'Tu, T. Vetti, si quae tibi in Africa venerit hereditas, usu amittes . . .'), as an option by which he could let a legacy go by default to a rival claimant.

[2] Cf. T. B. L. Webster, *M. Tulli Ciceronis Pro L. Flacco Oratio* (Oxford, 1931), p. xviii, who cites *Ad Herennium* 2. 4. 7 and classifies Cicero's use of the dating of the initial claim to 63 B.C., prior to the governorship of Flaccus, as 'argumentatio coniecturalis a tempore'.

[3] Cf. Buckland, *Text-Book*, 368; Schulz, *CRL*, 223.

[4] See Cic. *Att.* 6. 1. 15; *Part. Orat.* 28. 98; *Verr.* 2. 1. 44. 114–45. 117; 2. 1. 46. 118; 2. 1. 47. 124; *Pro Cluent.* 60. 165; Val. Max. 7. 7. 5. Cf. O. Lenel, *Das Edictum Perpetuum*[3] (Leipzig, 1927), 360; Costa, *Cicerone Giureconsulto*, i. 213 ff.; Jolowicz, *Historical Introduction*, 261; Voci, *Diritto ereditario*, i. 123 ff., 180.

[5] *Flacc.* 36. 89 'Decisionis arbiter C. Caecilius fuit . . . obsignator C. Sextilius.' Cf. Stangl, *Ciceronis Orationum Scholiastae*, ii. 106.

[6] For the Twelve Tables see Riccobono, *Fontes Iuris Romani Antejustiniani*, i. 41; cf. Cic. *Pro Caec.* 7. 19. For resort to arbitration to resolve disputes over intestate succession see *Digest* 10. 2. 2. See further E. de Ruggiero, *Dizionario Epigrafico*, i (1895), 613–16, s.v. 'Arbiter'; A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford, 1901), 39 ff.

to be found once again in a shared *nomen*. It is unlikely to be mere coincidence that the witness to the seals set upon the agreement which ended the dispute with Sextilius Andro was also named Sextilius. That this C. Sextilius was a man of high social standing is suggested by Cicero's respectful description of him as 'homo et pudens et constans et gravis', and by the fact that his uncle, M. Lurco, had held a *libera legatio*. It is therefore probable that he acted at the settlement as the representative of the patronal family which had enfranchised either Sextilius Andro himself or one of his antecedents, and which retained an interest in the estate of this *cliens* in Asia. The fact that M. Lurco was maternal uncle to C. Sextilius also suggests an explanation for the presence of Lurco as a witness at the trial of Flaccus and his keen interest in the fortunes of the obscure provincial Sextilius Andro. Indeed, it is tempting to speculate that the claims concerning Valeria's marital status and dowry which Cicero refutes may represent legal 'dodges' originally thought up by the Sextilii to secure over her estate the kind of patronal family control that the Valerii had exercised.

But even if the legal claim of Flaccus could not be faulted, the attack could be shifted to the vaguer and more general question of the propriety of his seeking the estate at all while in office. While Lurco insists that 'non oportet', Cicero seeks to confine the argument to the question of strict legality and insists defensively that he first demonstrate that 'non licet'. The vehemence of Lurco's contention has led one investigator to conclude that Cicero is here trying to obfuscate his client's breach of an ethical rule which was generally recognized by the Roman ruling class. According to this view, Lurco's criticisms represent a disinterested attempt to challenge Flaccus over his departure from the norms of honourable conduct in taking money from a provincial resident while in office.[1] If, however, Cicero's adversary may himself have been a spokesman for the personal interests of the Sextilii, his credibility as a disinterested moralist is open to question.[2] The dispute must be set against a more realistic background if its real significance is to be grasped. Here we may see a glimpse of a conflict in Asia, wealthiest of all Roman provinces, a conflict which involved the financial interests of patronal families of the Valerii and Sextilii and which centred around the estate of the obscure Valeria.

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[1] *Flacc.* 34. 86 '. . . petere non oportere numquam ostendes, nisi docueris non licere.' Cf. Costa, *Cicerone Giureconsulto*, i. 30 ff., 244 ff., ii. 110 ff., an inconclusive discussion which does not explain how entrance into a legacy which can hardly have constituted deliberate bribery and did not involve fraud or violence can have fallen under such a general moral ban.

[2] For Lurco's watchful concern for the fortunes of his own *liberti* in Asia in 62 B.C. see *Flacc.* 4. 10; 35. 87–8.