

THE *IUS HEREDITATIUM* IN THE LATIN INSCRIPTIONS OF THE ROMAN DACIA

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The hereditary succession was inaugurated only when a person died, as the possibility for a dying person to be inherited was impossible. The demise was followed by summoning to succession the legitimate heirs or the people (*heredes*)¹ who might have been heirs as a result of the wish expressed in the will.

A person could have been summoned to succession due to two reasons: he was either appointed as a heir by the defunct; or it was a legal decision in the absence of the will; thus, according to the laws of the XIIth tables, the first to come to succession were the sons and then the agnates followed by the rest of the race.

Therefore, there were two incompatible types of succession: *testamentaria* and *legitima* or *ab intestato*; there is no other way the succession can be organized so that there could be a middle way. During the republic there was a definite distinction between the *testamentaria* and *ab intestato* succession. The only valid document to introduce a *mortis causa* disposition was the will that contained the names of the heirs¹. If there was no will, then the *ab intestato* succession was adopted². The rule of incompatibility between the two types of succession (*testamentaria* and *ab intestato*) allowed just one exception: the military will³.

The summoning to succession had a personal character because this inheritance was a favour made to a determined person, that is why the heirs of the one who was summoned to succession could not benefit from the right to touch the inheritance, only its selling being permitted (*venditio hereditatis*)⁴.

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¹ Pasquale Voci, *Linee storiche del diritto ereditario romano*, in *Aufstieg und Niedergang der Römischen Welt. Geschichte und Kultur Roms im Spiegel der neueren Forschung*, Herausgegeben von Hildegard Temporini und Wolfgang Haase, II, 14, Berlin - New York, 1980, p. 426.

² M. J. G. Garrido, *Il diritto privato romano* Padova, 1992, p. 506.

³ Ulpianus, *Digesta* (further D.). 28. 1. 6 or Ulp. 5. *ad Sab.*: "*Si miles unum ex fundo heredem scripserit, creditum quantum ad residuum patrimonium intestatus decessisset: miles enim pro parte testatus potest decedere, pro parte intestatus*" and Paulus, D. 29. 1. 37: "*Si duobus a milite liberto scriptis heredibus alter omiserit hereditatem, pro ea parte intestatus videbitur defunctus decessisse, quia miles et pro parte testari potest, et competit patrono ab intestato bonorum possessio, nisi si haec voluntas defuncti probata fuerit, ut mittente altero ab alterum vellet totam redire hereditatem*".

⁴ D. 18.4, apud Pasquale Voci, *op. cit.*, p. 428.

A. The Legitimate Succession or the *ab intestato*

During the republican time, the law summoned to the *ab intestato* succession the *adgnates* for several times; thus, the closest agnate was first summoned and the farthest was excluded; among the agnates, the first to be summoned were the *sui iuris* even if some of them were emancipated. When there were more agnates of the same remove, the inheritance was equally divided between them. For example: if there were more brothers of the defunct, all of them were summoned to the succession but, if one brother or a nephew competed for the same inheritance, only the brother attended the succession, the nephew being left out. Among brothers, no sex distinction is made, still the daughters did not receive more than a quarter of the inheritance and the agnates of a subsequent remove were excluded (aunts, nieces)⁵. This is a consequence of *lex Voconia* from the year 169 B. C. sustained by Cato, too, who established that women can not be appointed as heirs by the Roman citizens from the first class that paid taxes, and they could not inherit but a part of the familial patrimony⁶.

In order to tame the succession norms from the "laws of the XII tables", the praetors established a different succession system based on the *cognate relationship* or the blood relationship.

The reform of the legitimate succession started by the praetor was continued by the Senate and by the emperors having as a consequence the imposing of the blood relationship instead of the agnatic one. Thus, the *senatusconsultum Tertullianum* from Hadrian's time (117-138 A. D.) permitted the appointing of the mother to her own son's succession, this law confirming once again one of Claudius' disposition by which the mother benefited of a so-called *ius liberorum* that also appears in *lex Iulia et Papia*⁷. *Senatusconsultum Orfitianum* from 178 A. D. (from the reign of Marcus Aurelius) summoned to succession the sons of their own mother before her agnates.

The evolution of the succession right was in a close relation with the evolution of the relationship system; the replacement of the agnatic relation with the cognate one had as a consequence in the field of legitimate succession the apparition of a complete system of succession called *bonorum possessio*.

Bonorum possessio admitted for all successors who were in turn summoned to succession by the magistrate: the first to be called were those established as heirs in the will; if there was no will or they were dead, the next to follow were the "praetorians" or the "civilians", summoned in the established order through the legitimate succession (*succession ordinum in graduum*)⁸.

⁵ Ulpianus, 15. Sab. or D. 38. 16. 2.1: „Adgnati autem sunt cognati virilis sexus ab eodem orti. nam post suos et consanguineos statim mihi proximus est consanguineus mei filius et ego ei: patris quoque frater, qui patruus appellatur: deincepsque ceteri, si qui sunt hinc orti, in infinitum”.

⁶ Nuovo dizionario giuridico romano, 2nd edition, Napoli, s. a., s.v. *lex Voconia*, p. 323; *Gai, Institutiones*, 2, 274: „Item mulier, quae ab eo, qui centum milia aeris census est, per legem Voconiam heres institui non potest, tamen fideicommisso relicta sibi hereditatem capere potest”.

⁷ For demographic purposes extra rights were granted (*ius liberorum*) to the woman, citizen who gave birth to three sons and to the freedwoman who gave birth to four sons (n. a.).

⁸ Pasquale Voci, *op. cit.*, p. 422.

Ulpianus gives us information about the Praetorian system of summoning to succession; he sustains that there were four classes of heirs summoned in turn to succession⁹:

- a) *unde liberi* the sons and their descendants, being *in potestate*¹⁰;
- b) *unde legitimi* emancipated sons, *sui iuris* and *agnati proximi* (the closest paternal relatives)
- c) *unde cognati* the consanguine maternal relatives;
- d) *unde uir et uxor* the husband or wife that had survived.

All the heirs were summoned in turn to the succession, depending on the class they belonged to. First, all the descendants came, not only the sons and nephews devoted to the paternal power but also those emancipated or given for adoption and later emancipated by those who adopted them. But some belonged to the first class, others to the second one; if the first class heirs didn't show; those from the second class were called.

The sons given for adoption did not belong to this category, they belonged to the adopters succession. All the descendants of those who died before the *pater familias* defunct came to succession, too.

Cognati, the consanguine relatives descendants and ancestors and the collateral relatives up to the 6th remove and even the descendants of the women who were excluded from the agnatic succession, *Postumii* (the sons conceived before the fathers death but born afterwards) are also summoned.

Vir et uxor (the husband and wife), in *Digesta* appears the information that the widower was summoned to succession provided that an *iustum matrimonium* should have existed even if the matrimony was *sine manu*¹¹.

In the case of a freeman's succession, the praetor granted *possessio bonorum* in the following order: to the freeman's sons, to the legitimate heirs (the patron, the patroness, the patrons son), to the libbers cognates, to the patrons agnates, to the patrons patron and to his descendants or ancestors, to the widow or widower of a freeman or freedwoman, the patrons cognates.

Various examples of *ab intestato* or *legitima* succession were found on funeral inscriptions, especially on the ones where legitimate sons appeared as heirs of the head of the family (*pater familias*). The heir quality of the children is expressed through the words: "*heres*", "*heredes*", "*filius et heredes*", "*filius et heres*", "*filia et heres*", "*heres matri*", "*heres patri*". For example in the inscription:

IDR III 1. 269: *D(is) M(anibus)/Fabricus/Iucun[dus] / uix(it) an(nis) L_ _/5/ Fab(ricius) I[u]c[un]d[us] her(es) et F[a]-/[b]rici S[i]lu[an(us)] / et Licinia[n(us)] / fratres [cum] /10/ collegio Fa[b-] /rorum tit(ulum) / [p]os(uerunt). Fratri / plen(tissimo).*

⁹ Ulpianus, 44 ed. D. 38. 6. 1.1: "*Posteaquam praetor locutus est de bonorum possessione eius qui testatus est, transitum fecit ad intestatos, eum ordinem secutus, quem et lex duodecim tabularum secuta est: fuit enim ordinarium ante de iudiciis testantium, dein sic de successione ab intestato loqui*".

¹⁰ Calus, III. 26.

¹¹ D. 38. 11; Ulpianus 47 ad 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*".

Translation: "To Manes Gods. Fabricius Iucundus lived 5 years. Fabricius Iucundus (his heir) and Fabricius Silvanus and Fabricius Licinianus as brothers, put down this affectionate epitaph to their brother together with the college of *fabrii*."

On the funeral inscription, dedicated to Fabricius Iucundus, member of the college of craftsmen, by his son, his brothers and colleagues, Fabricius Iucundus junior appears as "heres". The defunct's brother and his colleagues are not mentioned as "heredes", although they contribute to the building of the funeral monument. Fabricius Iucundus probably did not leave any will, so, the magistrate acted according to the law and opened an *ab intestato* succession, through which he summoned all the descendants of the first class. Fabricius' only living son was his homonym son who was part of the first class of successors (*unde liberi*). Fabricius' showing at the succession of Fabricius Iucundus senior, led to the granting of the whole inheritance. The defunct's brothers represented the second category of heirs (*unde legitimi*), being the closest relatives on paternal scale. (*agnati proximi*), they are summoned to succession only if no other heir from the first class showed. Anyway, the inheritance that Fabricius Iucundus received is fairly modest, as it needs the material support of the uncles and of the Craftsmen College to make the funeral monument meant for the memory of his father.

IDR III 2. 448¹²: [*D(is) M(anibus) / M(arco) Ulpio / Restuto / Iluir(o) col(oniae) Sarm(izegetusae) / Ulpiae /5/ Marcellina / et Restuta fil(lae) et heredes. T(itulum) p(onendum) c(uraverunt).*]

Translation: "[To Manes Gods?], to Marcus Ulpus Restutus duumvir of Sarmizegetusa, Ulpia Marcellina and Ulpia Restuta, his daughters and heiress took care for the epitaph to be written down."

The duumvir Marcus Ulpus Restutus of *Ulpia Traiana Sarmizegetusa* colony, is inherited by Ulpia Marcellina and Ulpia Restuta whose quality is that of *filiae et heres*. The two daughters are part of the first class of heirs (*unde liberi*) and they come to succession according to the legitimate succession. Their mother does not appear on the inscription because she has probably died before her husband. If the mother had appeared on the inscription in the quality of heir, then, instead of the legitimate succession she would have had to deal with a testamentary one. As the mother could not appear at the succession in the same class with her daughters, the defunct could have left something to his wife only through the testament. In this case, the nature of the succession was changed because it was not admitted for a part of the inheritance to be granted through the will and the other part through legitimate succession.

D(is) M(anibus) / Ael(ius) Sebl[_ _ _ er ex Numero) Ma/ur(or)um) Tib(iscensium) uix(it) anni(s)? VL et Aeliae Sa[_ _ _ _]tus [u] / ix(it) a(nnis) XXX et Ael[. ? Val]ens fil[ius] / eorum [_ _ _] AT (?) I h(eres) ponendum curavit.

Translation: "To Manes Gods. Aelius Sebl..., from numerus Maurorum Tibiscensium, lived 45 years and Aelia Sa...tus (who) lived XXX years and Ael...Valens, their son AT? as heir took care (for this epitaph) to be put down."

Aelius Valens, the son of an officer and of an Alenia Sa.. citizen, puts an epitaph to his parents, as a son and a successor. He is a first class heir, one who obtains the succession without a will, too.

¹² *Corpus Inscriptionum Latinarum* (further CIL), Berlin, 1963 sqq, III 1520.

IDR III 2. 376: *D(is) M(anibus) / L(ucius) Ant(onius) Ruf[us] / Iluiral(is) col(oniae) / Sarmizegetusae / 5 / uix(it) an[nis]- - - / L(uci) Anton[us] Prisc[us] / cus eq(ues) [Romanus] / et Ruf[us] et Ru- / finus [decur(iones)]/10/ co[l]l[on]ia[e] [s.s.?] / [heredes].*

Translation: "To Manes Gods. Lucius Antonius Rufus, duumvir of Sarmizegetusa colony lived ... (?) years. Lucii Antonii Priscus, Roman chevalier, Rufus and Rufinus, decurions of the colony (s.s.) sons and (inheritors?)."

The three sons of the duumvir Lucius Antonius Rufus from Ulpia Traiana: Lucius Antonius Priscus, Lucius Antonius Rufus and Lucius Antonius Rufinus are *heredes sui et necesari*, who are summoned in the first class to succession as direct descendants, the closest ones (*unde liberi*).

IDR III 5. 574: *D(is) M(anibus) / C(aio) Sentio C(ai) f(filio) Sulp(icia) / Flacco Antiq(uaria) / uet(erano) leg(ionis) XIII G(eminae) M(artiae) V(ictoris)/5/ dec(urioni) col(oniae) Dacicae Sarmizegetusae / uix(it) an[nis] LXXV / C(aius) Sentius Flaci- / [n]us filius et heres/ [f(aciendum)] c(uravit).*

Translation: "To Manes Gods. To Caius Sentius Flaccus, son of Caius of Sulpicia tribe, originating in Flacco Antiquaria, veteran of Gemina Martia Victrix, the XIVth legion, decurion of Dacica Sarmizegetusa colony, who lived 75 years. Caius Sentius Flaccinus his son and heir took care to make this monument."

Caius Sentius Flaccinus makes a monument for his father, Caius Sentius Flaccus, a funeral one, on the text of which he mentions his quality as a son and heir. Flaccinus is a legitimate son, so, he is a first class heir.

IDR III 5. 584 Apulum: *Tuticiae Adrastillae/ uixit ann(is) XVIII m(ensibus) II d(ies) XX/ Tuticia Victoria fil(ia) / et heres matri /5/ karissimae.*

Translation: "To Tuticiae Adrastilla (who) lived 18 years 2 months and 20 days. Tuticia Victoria, the daughter and heiress of the beloved mother (put the epitaph)."

Tuticia Victoria is a *spuria filia*, but she comes to the succession of her mother and grandfather as a legitimate child, so she is a first class heir in the mothers family. She is practically under *patria potestas* of the head of the family, her condition being that of a *filia legitima*.

CIL III 835: *D(is) M(anibus)/Ael(ius) diales/ vis(it) (sic!) an(nos) LXXXV/ et posui(t) Au-/ relius Ditu-/genius filiu(s)/et heres patri/ carissimo/b(ene)m(erenti).*

Translation: "To Manes Gods. Aelius Diales lived 85 years. And Aurelius Ditugenius, his son and heir put the monument and the epitaph to his beloved father (who) deserved it."

IDR III 5. 530: *D(is) [M(anibus)]/ Finit(io) [...]/ u(eterano) l(egionis) XIII G(eminae) Fin- / itius I [... et] /5/ Ursin[us] fili(i)/ et h(eredes).*

Translation: "To Manes Gods. To Finitius..., veteran of the XIIIth legion Gemina. Finitius I...et Ursinus (his sons) and heirs".

IDR III 5. 577: *[- - -] / [- - -] Se[uerus] / [- - -] h(eredes) p(onendum) c(uravit).*

Translation: "... Severus...erede took care and put the epitaph."

The inscriptions give information not only about the legal condition of the legitimate sons, mentioned as heirs, but also about the new position they get in the family (*status familiae*), it is about the status of *sui iuris*.

In the epigraphic sources from Dacia second class heirs that are summoned to the legitimate succession do not appear. But, on some inscriptions, third class heirs appear: brothers and sisters.

Sometimes on the soldiers' inscriptions the brother appears as a heir, in such situations, to determine the type of succession, the certification of the kinship between the defunct and heir is necessary. If the defunct and the heir have the same tribal sign, the two are brothers; if not the word *frater* used in the epitaph means a religious or military fellowship¹³.

If the two brothers that are in the army appear alone in the text of the inscription, with no other relatives, than it may be supposed that the heir obtained the goods with the help of a legitimate succession.

Such an example appears on an inscription discovered near the Cincsor Roman camp (Brasov county):

IDR III 4. 179: *[D(is) M(anibus) S(acrum)] / _ _ Caruilius/ [Se]cundinus uix(it) an[us] (nos) _ _] /5/ L(ucius) [Car]uilius / Rusticinus/ praef(ectus) coh(ortis) / II Flauie Bessorum / fratri in ex(emplum) pi(issimo) p(onendum) c(uraverunt).*

Translation: "To Manes Gods worship, {-} Carvilius Secundinus lived years _ /5/ Lucius Carvilius Rusticinus, the second military base of Bessi, to his brother who was of a great affection, took care and built the monument."

Lucius Carvilius Rusticinus builds a funeral monument to his brother Carvilius Secundinus. As no daughters or sons appear on the epitaph, it means that the officer was a bachelor or that he has no family yet, therefore his only heir was the brother (second class successor). Even if he had had parents, they would have come to the succession after the brother.

On some inscriptions laid by officers for defunct fellows, the existent relations between the defunct and heir are difficult to establish, because the name of one of the two or of the one called brother might be missing, he might be only a colleague from a religious or military union. Such an ambiguous situation appears on the inscription IDR II 644: *[...] / (centurio) Ferox mil/ itavit an(nos) XXV, / eq(ues) an(nos) XVIII, uix(it) / ann(os) VIII. M Pomponius/ eius Proculus, frater, beneficiarius/ Tironis leg(ati)/ h(eres), b(ene) mere(nte) posuit.*

Translation: "... to the centurion....Ferox who has been in the military service for 25 years, (from which) 18 as a chevalier, lived for 43 years. Marcus Pomponius Proculus, brother and beneficiary of governor Tiro, as heir laid (the epitaph)."

Marcus Pomponius Proculus a *beneficiarius legati legionis* lays the epitaph to a centurion whose name was preserved only partially. (cogn. or sign. *Ferox*). Marcus Pomponius Proculus appears as brother and heir.

If the two soldiers are good brothers, than the centurion was wearing the same tribal sign and Popilius Proculus was a third class heir according to the legitimate succession. If between the centurion Ferox and M. Proculus there were no kinship

¹³ Also see Karoly Visky, *Tracce del diritto ereditario romano nelle iscrizioni della Pannonia*, in „Rivista internazionale di diritto romano e antico”, XIII, Napoli, 1962, p. 115, who reaches the same conclusion while researching the two inscriptions from Pannonian province.

relations, Proculus was a fellow and he could become heir of the centurion only as a result of a legitimate succession.

On other inscriptions laid by brothers or sisters for the dead brothers, due to the fragmentary status in which funeral texts are, it is difficult to determine the type of succession.

IDR III 2. 468: [...e]t laboribus aegrum / [...]memor esto / [...] fratri...

The dative *fratri* indicates the fact that the funeral monument could be built for a brother by brother or a sister or by his brothers.

IDR III 3. 162¹⁴: D(is) M(anibus) / Antonia Quaeta/ uix(it) an(nis) XXXIII et / Antonia Valenti /5/ na fil(ia) uix(it) an(nis) XII/ Antonius/ Valent(inus) fil(ius) m(atri) et so(rori)/ b(ene) m(erenti) p(osuit).

Translation: "To Manes Gods, Antonia Quaeta lived for 33 years and Aelia Valenti/5/na (her) daughter lived years 12, Antonius Valentinus, son, to his mother and sister who deserved it, laid (the funeral monument)."

Antonius Valentinus is, as it seems, the only survivor from a family of Antonii, he lays the epitaph to his defunct mother and sister. The mother has the same tribal sign with her sons, which means the two children are *spuri filii* no matter if their mother is at the same time the *liberta* of their brother, or she bears the same name accidentally. Antonius Valentinus is a first class successor in the case of his mother's succession no matter his legal condition is (*spurious filius* or *filius legitimus*). To the succession of his sister, Antonia Valentina, Valentinus is summoned in another category of heirs, because he is not her descendant, if they have a legal father and they are legitimate, Valentinus is summoned to succession in the second class as *agnatus proximus*, if Valentinus and Valentina are illegitimate children, then Valentinus is a third class heir (*cognatus* – consanguine brother).

When there was no will, it was compulsory resorted to the *ab intestato* succession. This type of succession can be discovered even on funeral inscriptions where no terms appear to indicate the *heres* quality of the one who lays the epitaph or builds the monument, but they indicate the kinship between *heres* and the defunct (*mater, pater, frater filius, frater, soror, amita, nepos, coniux*, etc) or other relations which allow the heir to participate to succession (example: the patron or the patron's son who participates to the freemen's succession without any descendants).

Thus, on the funeral inscriptions laid by sons and daughters to their parents, they act as heirs, the sons are the so-called *heredes sui et necesarii* who automatically receive the succession (*bonorum possessio*) through the manifestation of the *usucapio* right. Building a funeral monument to their parents and the accomplishments of the rituals of burial or prayer represent a moral duty and sacred in the same time. Laying a funeral panel or building a funeral monument to the relatives represents visible signs of respecting the duties towards the dead. Due to this, beside the defunct's name, that of the one who paid the respects to the dead relatives was also engraved, with a monument to perpetuate their memory.

Funeral inscriptions laid by children to their parents are relatively numerous, among which we shall give only some examples:

¹⁴ CIL III 7869; „Sargetia“, XIV, 1979, p.162, fig. 7 photo.

IDR III 2. 375: *D(is) M(anibus)/ L(ucio) An(tonio) Pap(iria tribu)/ Prisco ui-/xit ann(os) LXII /5/ Antonius Ru--/fus dec(urio) col(oniae)/ et Antonia/ Priscilla/ patri.*

Translation: "To Manes Gods. To Lucius Priscus, who lived 62 years, Antonius Rufus decurion of the colony (Sarmizegetusa) and Antonia Priscilla (made/ laid the funeral monument) to their father."

(Lucius) Antonius Rufus decurion of *Ulpia Traiana Sarmizegetusa* colony and his sister Antonia Priscilla lay a funeral monument to their father Lucius Antonius Priscus, their kinship is certified by the term "patri" - the dative "to their father"

Lucius Antonius Priscus' two children are legitimate ones, therefore they are *heredes sui et necesarii*, they become heirs of him with no will. Lucius Antonius Rufus becomes a *sui iuris* person, at the same time with his father's death, that is, he obtained full legal capacity.

IDR III 1. 72: *D(is) I(nferis) M(anibus) S(acrum)/ Septi(mius) Bitus et Septim(ia)/ Valentina uixerunt/ annis LIIII poseur-/5 unt Septim(ius) Bas(sus) et Aur(elius)/ Vale(nōs patris b(ene)/ m(erentis).*

Translation: "To the underworld Manes Gods worship. Septimius Bitus and Septimia lived for 54 years. Septimius Bassus and Aurelius Valens built (the funeral monument) to their worthy father (parents?)."

The two brothers with distinct names lay an epitaph to their parents, their action contains the declaration of their condition as sons and thus, as *heredes sui et necesarii*.

IDR III 5. 576: *D(is) M(anibus)/ Sertoriae/ Felicl(a)e do-/mi Aequo ui/ xsit ann(is) LX po/ suit M(arcus) Vater/ nius Primige-/ nius bene meren-/ti matri.*

Translation: „To Manes Gods. To Sertoria Felicla, born in Aeque (who) lived for 60 years. Marcus Vaternius Primigenius built (this monument) to his mother who was worthwhile."

Marcus Vaternius Primigenius as a son, builds a funeral monument to his mother, Sertoria Felicla, through which he expressed on the one hand his piety and on the other hand his condition of unique heir of his mother.

An inscription from Potaissa, discovered in 1903 and published by I. Téglaş in 1904¹⁵, relates an interesting case of a legitimate succession of the mother to her children: *D(is) M(anibus)/ Valeria Maximil-/ la uix(it) an(nis) XXIX mensibus VII/ Valerius Maximus uet(eranus) /5/ ex? Pater et Valeria/ Marcella mater / fil(iae) pientissimae et/ P(ublius) Ael(ius) Tertius uet(eranus) ex dec(urio) / coniugi optimae /10/ et pientissimae/ et Terentius et Valeria / Maximinianus fil(ii)/ matri carissimae/ fec(erunt).*

Translation: "To Manes Gods. Valeria Maximilla lived for 29 years (and) 7 months. Valerius Maximus was a veteran (miles legionis V. Mac?) and Valeria Marcella, the mother, to her too affectionate daughter and Publius Aelius Tertius, veteran and former decurion, to his too affectionate wife and Terentius and Valeria and Maximinianus, the children, to their beloved mother, built (this monument)."

All the woman's relatives appear on the inscription (parents, husband and children), but none of them is presented as having the quality of *heres*; which may also

¹⁵ Téglaş, Istvan, in „Archeologiai Ertesítő", XXIV, 1904, p. 411.

mean that the woman left no will, but the succession had to take place, consequently it could have been resorted to the legitimate succession which divided the family members in more heir classes.

The descendants were the first to be summoned to Valeria Maximilla's succession, forming the first class of successors (*unde liberi*), therefore the first to be called were the three children: Terentius, Valeria and Maximianus. Valeria Maximilla's legacy was shared between the children who each received a third of it and they had to pay to the fisc a tax having the value of the twenty part of the inheritance. If Valeria Maximilla hadn't had any children, the next to succession were her parents, who came to succession in different classes, therefore the father, Valerius Maximus, as an *agnatus proximus*, was the next summoned to his daughter's succession (*unde legitimi*), the mother was part of the third class of successors made of the *cognati* kinship. Valeria Maximilla's husband, P. Aelius Tertius was the last to come to the succession (*unde uir et uxor*).

Parents that lay the epitaph to their children appear on some inscriptions in the case when they are major then the parents can be regarded as the heirs of their children, provided they didn't have any direct descendants.

An interesting example may be represented by the inscription that Terentia Hermione of *Ulpia Traiana Sarmizegetusa* lays to her son Caius Antonius Ursinus, decurion in the colony.

IDR III 2. 377: *D(is) M(anibus) / C(aio) Ant(onio) C(aii) f(ilio) Pap(iria tribu) / Ursino dec(ur)ioni col(oniae) Dacic(a)e / 5/ Sarmiz(egetusae) / uix(it) ann(os) XXVIII/ Terentiae Her-/mione ma-/ter infelicis/sima/[b(ene)m(erenti) p(osuit)]*.

Translation: "To Manes Gods. To Caius Antonius Ursinus, Caius' son of Papiria tribe, decurion in Dacia Sarmizegetusa colony, (who) lived 28 years, Terentia Herminone, the unhappy mother, laid (the funeral inscription) to the one that deserved."

Caius Antonius, decurion in Dacia Sarmizegetusa colony is the son of one of the notables from Ulpia Traiana, he is a decurion himself at the age of 28. The decurion's father does not appear on the funeral inscription beside the mother, because he has been already dead in the moment of his death. At the moment of the demise, Caius Antonius Ursinus is the only possessor of the family patrimony, which, as it seems, he leaves as a legacy, to his mother. Besides Terentia Hermione, no other person appears on the inscription to benefit from the *heres* condition, there is no sign that the decurion C. Antonius Ursinus had left any will, therefore, following the tradition of the Roman hereditary right, it was resorted to the legitimate succession, by which Terentia was the only heiress of the child as a third class heiress (*unde cognati*).

The inscriptions laid by the brothers without mentioning the *heredes* quality, certifies on the one hand the fact that the defunct has no descendants and on the other hand, the building of the funeral monument by the brothers shows that they owned the inheritance.

IDR III 4. 217: *[D(is) M(anibus)] / [_ _ _ _] / [_ _ _ _ uix(it)] / an(nos)? L] XXXV/? Ael(ius) S(urio) fr[at]ri / 5/ cari] ssimo(po) suit*.

Translation: " _ _ _ _ lived years 85, Aelius? Surio, to his dear brother /5/ built (the monument)."

IDR III 3.362

D(is) M(anibus)/ Scauriani/ caes(aris) n(ostri) ser(uus) uill(icus)?/ uix(it) an(nis) XXIII /5/ Fuscianus/ fratri b(ene)m(erenti) p(osuit).

Translation: "To Manes Gods, to Scaurianus, administrator slave of the emperor, lived 23 years /5/ Fuscianus, his worthy brother who built the monument."

Other examples of legitimate succession, to which heirs are summoned with no will needed or in the absence of it, is the freeman's succession with no children by the patron. In the case of freeman's succession, the praetor granted *possessio bonorum* to the freeman's sons first, and if he had no direct descendants, the legitimate heirs, who, in this case, are the patron, the patroness and the patron's son were summoned to succession.

IDR III 3. 349: *D(is) M(anibus)/ Calu(e)ntia Asella/domo u(erna) uix(it) an(nis) XXXV posuit Ca[l] /5/ u(e)n(t)ia Marcellina/ patrona libertae/ benemeritae.*

Translation: "To Manes Gods. To Calventia Asella, slave, born in the house, lived years 35, Calventia Marcellina, the freedwoman's patroness who was worthwhile, laid the epitaph"¹⁶.

Calventia Marcellina built the funeral monument to her slave Calventia Asella, who seemed to have died without having any children or will, which led to the summoning of the patroness to the slave's succession. The patroness inherited the goods as a second class heir, which situates the patroness on a privileged position at the succession even towards the freedwoman's husband who was summoned to succession in the last class of successors.

IDR III 5. 547: *D(is) M(anibus)/ Iulia Valeria/ uixit annis XXX/[Iulia]/ Iunilla libertae/ [et...] non[?]i coniugi/ bene mer(enti)/ h(ic) s(iti) [?]s(unt)].*

Translation: "To Manes Gods. Iulia Valeria lived 30 years. Iulia Iunilla (built this monument) to her freedwoman and.....to her husband who deserved it. Here they rest."

Iulia Iunilla appears on this inscription as the freedwoman's heiress and probably of her husband, too.

In IDR III 4. 23, on a fragmentary epitaph, some letters of the words...are preserved, the fragment of the text is for sure an epitaph laid by a patron of the freeman. Freeman are not legitimate heirs, they are mostly *ex testamento* heirs.

B. The Testamentary Succession

The Certifying on Funeral inscriptions from Dacia of the testamentary succession and of different types of heirs.

The testamentary succession is certified in some of the inscriptions from Roman Dacia through the words: "*heredes testamento*", "*libertus testamento*", "*uoluntatem testamenti arbitrati*", "*iuxta uoluntatem testamenti*".

Heredes sui et necesarii. There are few funeral inscriptions which certify the *heredes sui et necesarii* quality of some dead citizens' children, who set them up as heirs. Many citizens left their fortune to their successors through *successio legitima* or *ab intestato*, which assured the right sharing of the fortune to all the descendants. The setting up of some testamentary heirs attested in fact the testator's intention of leaving

¹⁶ D. Tudor, *Istoria sclavajului in Dacia romană*, București, 1957, p. 259, nr. 85.

a part of his fortune to a person, who, not being one of the descendants (mother, brother or sister) or, not being part of the family group (a friend or a fellow), did not have the possibility to be summoned to the legitimate succession. Among the few discovered examples, we present you four inscriptions, which seem to be the most interesting from the problems they raise:

IDR III 2. 366: *P(ublius) Ae(lius) Sept(imius) Audeo qui et Maxi-/mus uet(eranus) ex (cent.) n(umeri) P(almyrenorum) O(?) uix it ann(is) LX Ael(ius) Sept(imius) Romanus mil(es) leg(ionis) XIII G(eminae) / [a] diut(or) offic(ii) cornicul(ariorum) et Septimia / [5] Septimia quae et Revocata fil(ia) et [C]ornelia Antonia uxor, heredes / [p]onendum curaverunt cura agent(e) / {S}eptimio Ascepiade aug(ustali) col(oniae)/ liberto eius.*

Translation: "Publius Aelius Septimius Audeo, also called Maximus, veteran and former centurion from the auxiliary base of Palmyreni, lived 60 years. Aelius Septimius Romanus, soldier in the XIIIth legion Gemina, helper in the corniculars' office, and Septimia Septimina, daughter, also called Revocata and Cornelia Antonia uxor, took care and built the funeral panel with the help of his freeman, Ascepiade the augustal of the colony."

To the veteran Publius Aelius Septimius Audeo, his children Aelius Septimius Romanus, Septimia Septimina and his wife Cornelia Antonia as *heredes*, lay the epitaph on the funeral monument. The adding of the mother on the list of heirs is an argument in the favor of the existence of a will. The children and the mother could come to the legitimate succession in the same class of heirs only if Cornelia Antonia was *uxor in manu*, as only being under the authority, Aelius Septimius Audeo was considered the *filia* of the husband.

The married union of Cornelia Aelius Septimius Audeo was for sure a *concubinatus*, changed into *iustum matrimonium* after Audeo received *conubium*. Therefore, Cornelia Antonia could not appear in the text of the inscription as *heredes* in the case of an *ab intestato* succession; she is a testamentary successor, her statute is that of *heres voluntarius*, because she may refuse her defunct husband's succession while the children Romanus and Septimina become heirs free of will.

IDR II 47: *D(is) M(anibus)/ prim(us) Ael(ius)/ Ion(icus) neg(otiator)/ uix(it) an(nis) L /5/ Iulia Pris-/cilla uxor / et Ael(ius) Iulia-/ nus fil(ius) co-/ heredes, per /10/ Ael(io) Primiti-/ uo lib(erto).*

Translation: "To Manes Gods. Primus Aelius Ionicus merchant, (who) lived 50 years, Iulia Priscilla, wife and Aelius Iulianus, son, as coheirs (built the monument) with the help of the freeman Aelius Primitivus."

Aelius Iulianus, Primus Aelius Ionicus and Aelia Priscilla's son seems to be a *heres sui necessarius*, established as heir together with his mother. If the mother hadn't been a *coheres*, then the child would have inherited the whole family patrimony. The establishing of Aelia Priscilla as a heiress by her husband, certifies the existence of a testamentary succession, the only one that permitted mother to show to the succession beside her son. As in the inscription above, the testator's wife is a *heres voluntaris*.

IDR II 46: *D(is) M(anibus) / P(ublio) Ael(io) Diophan/to, uet(erano) coh(ortis) V Gal(lorum). Vixit /5/ an(nos) LXXXVI. H(ic)s(itus) e(st). Aelia Ammis, fil(ia)/ et Aelia Eutychia, lib(erta), heredes /10/ fecerunt.*

Translation: "To Manes Gods. To Publius Aelius Diophantus, veteran of infantry base V Gallorum. He lived for 76 years. Here he rests. Aelia Ammis daughter and Aelia Eutychia freedwoman (as) heiress built (the funeral monument)."

Aelia Ammis, Aelius Diophantus' legitimate daughter is a *heres sui et necessarius*, if her father's succession had been *ab intestato*, she would have received only a quarter of the family fortune. The freedwoman Eutychia's condition of *coheres*, certifies the fact that a testamentary succession took place.

Eutychia has a privileged position in this family as she shows at the veteran's succession together with her daughter, she might be the veteran's concubine. But, not even if she had been Aelia's mother and Aelius Diophantus' wife, she would have been nothing else but a testamentary heiress because the daughter was the first to be summoned to succession and she would have received the whole inheritance, being the only child of the veteran.

IDR III 1. 87: *D(is) M(anibus) /Aur(elius) Sur[us? Mil(es)?]/ coh(ortis) III Del(matarum) ui[xit]/ an(nos) XXXX, Aur(elius) /5/ proculus/ sig(nifer) et (h)eres et Qui(n)ina co(n)iu(x) et / Surilleo et Quin(tinus) et Sura pii /10/ patri/ b(ene) m(erenti) posuerunt.*

Translation: "To Manes Gods. Aurelius Surus officer in cohors III Delmatarum, lived 40 years, Aurelius Proculus signifier and heir and his wife Quintina and Surielleo and Quintinus and Sura (children) built (the funeral monument) to their beloved father who deserved it."

Aurelius Surus' eldest son, Aurelius Proculus¹⁷, as *heres*, inherits the entire family patrimony, he is a testamentary heir (*heres sui et necessarius*) because, if there was no will, it was resorted to the *ab intestato* succession, where all the descendants (the rest of the brothers) were summoned for succession.

IDR III 2. 2: *M. Proc(ilius) M(arci) filius Pap(iris) tribu Niceta / Iluir et flamen col(oniae) Sarmiz(egetusa) / item sac[er]d(os) Laurentium/ Lavinat(ium) aedem augustalibus/ pecunia sua faciend(am) instituit eandem M. Proci[l]ius Regulus/ dec. col. eq. publ. Filius et here(s)/ eius perfecit dedicavit[q].*

Translation: "Marcus Procilius Niceta, son of Marcus, from Papiria tribe, duumvir and Jupiter's priest of Sarmizegetusa colony and the priest Laurentium Lavinatium, the augustals' residence on his expense, started to build the construction. Marcus Procilius Regulus decurion of the colony (mentioned above), chevalier with a horse given by the state, son and heir, finished and dedicated (the building)."

Heredes necesarii. The former masters could leave inheritances to their freemen and that they could not refuse, some of them being *heres necesarii*, others, due to moral obligations they had towards their patron¹⁸. The patrons who leave some inheritances to their freemen are also certified on the inscriptions from Dacia:

¹⁷ I. I. Russu, in „Banatica“, II, 1973, p. 108-110, fig. 4.

¹⁸ *Novissimo Digesto Italiano*, Milano, 12, s.v. *Patrono*, Cristoforo Consentini, p. 707. The freed slave owed to their masters respect (*obsequium*) and certain services (*opera*), in exchange, the patron granted them support and protection to his former slaves.

IDR II 40: *D(is) M(anibus)/ Aelius [B]assus / uet(eranus) leg(ionis) V Mac(edonicae)/ uix(it) ann(os) LXVI m(ensibus) X diebus XVI/ [Ae]l(ius) Helpizon/ (l)ibert(us) et her(es)/ eius posuit.*

Translation: "To Manes Gods. Aelius Bassus veteran of the Vth legion Macedonica¹⁹, lived 66 years, 10 months and 16 days. Aelius Helpizon (as) freeman and heir of him laid (the epitaph)."

[- - -]/?Aemilia H[er]/ mias lib(ert)a [et]/ h(eres) p(atrono -ae) b(ene) m(renti)/ fecit.

Translation: "...Aemilia hermas, freedwoman (?) and heir(ess) built (this monument) to her patron(or patroness) who deserved it."

IDR III 3. 359: *Memor[iae]/ Papiri[I] Rufi FA/ _ _ PINAPQ. Proc(uratoris)/ aurar(iarum) libert(i) et he/5/redes patrono pi/etissimo [fe]cer[unt] [et] si[bi].*

Translation: "In the memory of Papirius Rufus Fa _ _ , administrator of the gold mines, the freemen and heirs of their patron built (this monument) for him."

IDR III 5. 582: *[P(ublio) Tenac(io) P(ublii) fil(io)/[P]ap(iria) Vinidici / (centurio) leg(ionis) XXII Pri-/ mig(eniae) buleutae /5/ ciuitatis Ni-/ copolitanor(um)/ P(ublius) Tenac(ius) Gemel-/ linus Aug(ustalis) col(oniae)/ Apul(ensis) libertus /10/ t(estament)o p(onendum) c(uravit) l(oco) d(ato) d(ecruiouum) d(ecreto).*

Translation: "To Publius Tenacius Vindex, Publius' son of Papiria tribe, centurion in the XXIInd legion Primigenia, magistrate of the Nicopolitane community. Publius Tenacius Gemellinus, augustal in the Apulum colony, freeman according to the will, took care and built (the commemorative monument) in (public) place, granted through decree by the decurions."

Publius Tenacius Gemellinus, orcitan freeman²⁰ (*libertus testamento*) of Publius Tenacius Vindex, magistrate of Nicopolis community, who freed him according to the will. The freeman is a *heres necessarius*, he can not refuse the inheritance left by his patron.

D(is) M(anibus)/ Q(uinto) Aurelio Q(uinti) f(ilio)/ Pap(iria tribu) Tertio/ dec(urioni) et flamin(i) /5/ col(oniae) Sarm(izegetusa)/ Quintus Aurelius/ Saturninus/ aug(ustalis) coloniae) et Proshodus /10/ et Logismus / lib(erti) et hered(es)/ f(aciendum) e(uraverunt).

Translation: "To Manes Gods. To Quintus Aurelius Tertius, Quintus' son of Papiria tribe, decurion and Jupiter's priest of Sarmizegetusa colony. Quintus Aurelius Saturninus, augustal in the colony and Proshodus and Logismus, freemen and (their) heirs, took care and built (this monument)."

IDR III 2. 434: *Maxi(m)...? Fann...?/ an(nis) XXX, Domitia S[e]/c[u]nd(ina)? Patrono (a?)/ pientissimo (a?) merito fecit...*

Translation: "...Maxim-Fann..., lived 30 years, Domitia Secundina of the patron(?) too pious according to the merits, laid this epitaph."

Domitia Secundina is a freedwoman, who as a heiress builds a funeral monument to her master or mistress. The freedwoman is a *necessarius* heiress.

¹⁹ D. Tudor, *op. cit.*, *Supplementul ephigraphicum*, 4.

²⁰ I. Piso, *Inscriptions de la Dacie Romaine*, III 5 (after IDR III 5), Paris, 2000, 582, p. 441, considered that the freeman built the funeral monument in public place according to a testamentary stipulation

Two other inscriptions from Ulpia Traiana laid by Valerius Threptus (heres) and the freemen, heirs of a very rich augustal from the colony, certifies the practice of leaving the accomplishing of some promises made by the testator on the heirs.

Quintus Aurelius Tertius establishes himself as freemen heirs, who as *necessarii* heirs of the decurion, built him a funeral altar made of marble.

IDR III 2. 219: *Genio ord(inis)/ quem Ulp(ius) Dom(itius) / Hermes aug(ustalis) col(oniae)/ ob honor(em) ornam(entorum) /5/ dec(urionalium) promiserat/ Valerius Threptus et/ Domitii/ Regulus Hipponicus Hermes Onesimus/ augustales col(oniae). H(eredes) p(onendum) c(uraverunt)/ L(ocus) d(atu)s d(ecurionum) d(ecreto).*

Translation: "To the genius of the (decurion) order, (the homage) that Ulpus Domitius Hermes promised for the honouring of the decurional signs /5/, Valerius Threptus and Domitii Regulus, Hipponicus, Hermes (and) Onesimus /10/ augustals in the colony, as heirs, took care and laid; (in) give place by the decurions' decree."

IDR III 2. 271: *Minervae / Aug(ustae) / Ulp(ius) Dom(itius) Her/mes aug(ustalis) col(oniae) orna/5/tus ornam(entis) decur(ionalibus) / t(estamento) p(oni) i(ussit)/ Val(erius) Threptus et / Domitii / Regulus Hipponic(us) / Hermes Onesimus/ aug(ustales) col(oniae) h(eredes) p(onendum) c(uraverunt) l(oco) d(dato) d(ecurionum) d(ecreto).*

Translation: "To Minerva Augusta (worship). Ulpus Domitius Hermes, augustal of the colony²¹, decorated with the decurional signs. Through the testament he ordered to be built (the monument); Valerius Threptus and Domitius Regulus, Domitius Hipponicus, Domitius Hermes and Domitius Onesimus, augustals in the colony, as heirs, took care and laid (the votive altar), on a place given by the decurions' decree."

Ulpus Domitius Hermes is a freeman and augustal in Ulpia Traiana Sarmizegetusa colony, and he promised in the honor of the reception of the *ornamenta decurionalia*, that he will dedicate votive altars to some official divinities (Minerva Augusta, to the Genius of the decurions' order).

Ulpus Domitius Hermes didn't succeed during his life to carry out the promise made to the Gods, thus he left through the testament to his heirs the fulfillment of this promise. It is exactly what they did according to the will.

It can be noticed that most Ulpus Domitius Hermes' heirs are his freemen and only one is a citizen, Valerius Threptus, both the freemen and Valerius Threptus were excluded from the legitimate succession, therefore, the dead augustal had to establish them as heirs through the will. Valerius Threptus is not a *heredes necessarius*, he is a *heredes voluntarius*, who could refuse the augustal's succession Ulpus Domitius Hermes.

Sometimes the patrons added in the will special clauses regarding the funeral monument that they desired, and the heirs were obliged to accomplish the task the defunct left for them in order to get into the possession of the goods. The freedwoman Cassia Ponticilla did the same, who built her patroness, Cassia Saturnina, a funeral monument according to her testamentary will and to the instructions and care of Publicius Ianurius, her husband and of Publicius Severus.

²¹ D. Tudor, *op. cit.*, p. 247, nr. 30

IDR III 5. 510: *D(is) M(anibus)/ Cassiae/ Saturninae/ uix(it) an(nis) L /5/ Cassia Ponticilla/ secundum voluntatem/ testamenti patronae/ bene meritae fecit/ arbitratu /10/ Publici(i) Ianuari(i)/ coniug(is) et/ Publici(i) Seueri.*

Translation: "To Manes Gods. To Cassia Saturnina (who) lived 50 years Cassia Ponticilla built (this monument) to her patroness who deserved it, according to her testamentary dispositions, the administrators were Publicius Ianurius (her) husband and Publicius Severus."

Cassia Saturnina's epitaph is important, because it provides considerable information about the defunct who leaves a valid will, she seemed to have been a *sui iuris* person, who disposed of her fortune as she wished, through the will. The testamentary dispositions seem to be accomplished, which is a sign that the testament was valid.

IDR II 35: *D(is) M(anibus) / [C.?]itio C(ai) f(ilio) / [Vi]ctrice(nsi) / [la]nuario /5/ [(centurioni)] leg(ionis) IIII F9laviae fr(umentario) / [u]ix(it) ann(is) LVI. / [C.?] Titius Epipo/[di]us lib(ertus) et heres / optimo patro/10/no b(ene) m(erenti) f(aciendum) c(uravit). H(ic) s(itus)e(st).*

Translation²²: "To Manes Gods. Caius? Titius Ianuarius, Caius' son, originary from Victrix colony, centurion in the IVth legion Flavia, frumentarius, lived 56 years. C. Titius Epidodius, freeman and heir, took care and built (the funeral monument) to his beloved patron, who deserved it. Here he rests."

Although Epidodius does not appear as *heredes ex voluntate testamenti*, he could not be a legitimate heir, but only a testamentary one. That's why, as some other freemen did, he insists on honoring the defunct patron with the epithet *optimus* (the Latin superlative *bonus*).

IDR III 5. 511: *[- - -]/[... ..] L(ucius) Ca-[uenti]us Cleme/[ns...leg](ionis) XIII G(eminiae) S(everiane) u(ixit) / [ann(is)] V. L(ucius) Cauenti(us) / [?] Apolli[n]aris h(eres) p(osuit).*

Translation: "...Lucius Caventius Clemes, from the XIIIth Gemina Severina legion, (who) lived [.]5 years. Lucius Caventius (?) Apollinaris laid (the epitaph) as a heir."

Lucius Caventius Apollinaris appears in the funeral text as the *heres* of Lucius Caventius Clemens, officer in the XIIIth legion Gemina, the inscription does not offer any extra information on Apollinaris who rather seems to be Lucius Caventius Clemens Chira's freeman than his fellow. He is a *heres necessarius* in this case.

IDR III 3.179: *D(is) M(anibus) / memoriae C(ai) Licini / Coll(ina tribu) Caesarea/ Pontici ueterano / alae I Aug(ustae) / I[tura]eo[r(um)] uix(it) an(nis) L [militavit] an[---]/Licin[iu]s Eup/[r]epes [l(ibertus)] p(atrono) f(ecit).*

Translation: "To Manes Gods. In the memory of Caius Licinius Ponticus, of Collina tribe, from Caesarea, veteran of ala I Augusta Ituraeorum lived...years. Licinius Euprepes, his freeman, built (the monument) to his patron."

Licinius Euprepes is a *heres necessarius* for his patron, whom he inherits and whom he builds a funeral monument, too.

²² C. Daicoviciu, in „AISC“, 4, 1944, p.300; D. Tudor, *op. cit.*, *Supplementum ephigraphicum*, 7.

IDR III 3. 367: *D(is) M(anibus)/ Val(erius) Rufinus/ uix(it) an(nis) L_ /et Opelia Cal[1]/ [tych]e uix(it) a(nnis) LXVIII, Val(erius) Cres-/cens lib(ertus) eor(um) / b(ene) m(erentibus) p(osuit).*

Translation: "To Manes Gods. Valerius Rufinus lived 50-? Years and Opelia Calityche lived 68 years, Valerius Crescens, their freeman, those who deserved it, built the monument."

Heredes extranei uel uoluntarii. On some inscriptions, women as *coheredes* appear as heirs, who, being the wives of some dead men, would have been summoned to succession as *ab intestato* only in the fourth class of successors, which means that they would often inherit nothing because they would arrive at the succession after the children, paternal relatives and maternal relatives of the husband. The wives who appear as *coheredes sunt*, unlike the children *heredes uoluntarii* of the head of the family (*pater familias*).

I have illustrated above²³ two examples of *coheredes* wives by their children, where I managed to demonstrate the *heredes uoluntarius* quality of the wives established as heiress. There are also other inscriptions in which the wives accepted the *heres* quality or carried out the testamentary clauses.

IDR III 5. 488: *D(is) M(anibus) /P(ublio) Ael(io) Victo-/ri Plautiano/ dec(urioni) muni[ci]pi /5/ Salvia co? n (iux) se-/ cund[u]m u[o]-/ [l]unta[tem testa-]/menti [arbitr(atu)]/ frontina[e] /10/ [...] M[...]*

Translation: "To Manes Gods. To Publius Aelius Victorius Plautianus, decurion of the county, Salvia (his wife, built this monument), according to the testamentary dispositions (administrator being) Frontina ..."

Salvia, a citizen from Apulum built her dead husband a funeral monument according to the testamentary dispositions, which implicitly certifies the acceptance of the inheritance and the woman's *heres uoluntarius* condition.

IDR III 2. 435: *D(is) M(anibus)/ C(aio) Octavio Nepoti/ uix(it) an(nis) LXX. Iulia/ Valenti(n)a heres con- /5/ iugi pientisimo/ faciendum procu-/ravit. H(ic)s(itus) e(st).*

Translation: "To Manes Gods. To Caius Octavius Nepos (who) lived years 70. Iulia Valentina, heiress, to her very affectionate /5/ husband, took care and built (the monument). Here he rests."

Iulia Valentina, a citizen from Apulum, another *heres uoluntaria* heiress.

Men are summoned to their wives' succession in the last class of heirs, that's why they appear sometimes on inscriptions as heirs of their wives, too. They are voluntary testamentary heirs.

Thus, on an inscription from Ulpia Traiana Sarmizegetusa, an augustal from the name of whom only the cognomen was preserved Marcio lays an epitaph to his wife, he is mentioned in the text as *heres*, he may probably be a testamentary heir as his statute of husband made him to be summoned to his wife's succession only if any other heir was absent.

IDR III 2. 431: *[D(is) M(anibus)]/ [...] / Marcio aug(stalis) / col(oniae) Sarmiz(egetusa) / heres coniugi / piissime /5/ fecit.*

²³ See the inscriptions *Inscriptiile Daciei Romane* (further IDR) II 47 and IDR III 2. 366.

Translation: "[To Manes Gods _ _ _] Marcio, augustal in Sarmizegetusa colony, heir, to his beloved wife, laid the epitaph."

To the category of *heredes uoluntarii* may also belong the brothers or sisters, who are called heirs by testament, an example of *heres uoluntarius* appears in an epitaph from Drobeta laid by the citizen Arria Saturnina to her brother Arrius Saturninus:

IDR II 49: *D(is) M(anibus) /M(arcus) Arrius Saturninus/ dec(urio) m(unicipii) H(adriani) D(robetensium) uix(it) ann(is) XVI. Arria Saturnina /5/ soror et heres, iuxta/ voluntate (sic!) testa-/menti facendum/ curavit.*

Arria Saturnina is the testamentary sister and heiress of her brother, Marcus Arrius Saturninus, decurion in Drobeta county. Arrius Saturninus dead at the age of only 16, had no first class direct heirs, because he had no descendants. But maybe he had at least a second class heir whom the fortune belonged to, *agnatus proximus* or any other agnates, to avoid this, Arrius left his sister his entire fortune through the testament provided she made him a funeral monument. Arria Saturnina fulfills it according to the text of the inscription. Through this act, Arria Saturnina expresses his will of getting into the possession of his brother's inheritance.

In other inscriptions laid by brothers the fact that they are testamentary heirs does not appear as clear, they could go to the *ab intestato* succession but not to the testamentary succession. Such a situation appears on an epigraph from Ulpia Traiana Sarmizegetusa: *D(is) M(anibus)/ Maria Secun-/dina uix(it) an(nis) LIII/ [et?] Aurelia Satur-/5/nina uix(it) an(nis)/ XVIII/ Aurel(ius) Ingenius/ mil(es) leg(ionis) XIII G(eminae)/ Antoniniana/ 10/ matri et so/rori posuit.*

Translation: "To Manes Gods. Maria Secundina lived 18 years. Aurelius Ingenuus, officer in the XIIIth legion Gemina Antoniniana, to his mother and sister built (this monument)."

Aurelius Ingenuus does not appear as a testamentary heir, no word on the inscription certifies the fact that the soldier would have inherited his mother and sister by testament. If beside the military a person who was not summoned to the *ab intestato* succession in the same class had appeared, then it would have been an obvious sign that the dead persons who appeared on the inscription left their fortune to the testamentary heirs.

Aurelius Ingenuus laid the epitaph by himself to his mother and sister and thus he seems to be the only heir, legitimate or testamentary.

If the military is summoned to succession through *successio legitima* he is a first class heir (*unde liberi*) for his mother, and a second class heir (*unde legitimi*) for his sister.

If Aurelius Ingenuus was summoned to a *successio secundum tabulas*, he was then a *heres sui necessarius* for his mother and a *heres uoluntarius* for his sister.

The testator could leave his personal fortune to some persons who were not part of the family, for example, to a friend. This situation is certified in Dacia by the funeral inscriptions laid by friends to some Roman citizens, or by the fellows of some dead officers:

IDR III 3. 350: *D(is) M(anibus)/ P(ublio) Celsenio Constanti/ dec(urioni) col(oniae) Delmatiae/ Claudia Aequo item dec(rioni) col(niae)/ Dacicae u(ixit) a(nnis)*

XXX. *M(arcus) O[p]ellius/ Adiutor Iluir col(oniae) Daci(cae)/ h(eres) t(estamento) u-
p(osuit).*

Translation: "To Manes Gods, to Publius Celsenius Constans, decurion of the delmatic colony Claudia Aequum, and also decurion of the /5/ colony, lived 30 years, Marcus Opellius Adiutor duumvir of the Dacica colony, heir according to the testament v--- laid."

Marcus Opellius Adiutor, member of a family from the local aristocracy, appears in the funeral text as being the testamentary heir of another notable, Publius Celsenius Constans, dead at the age of only 30 years. There is no blood relationship between the two, the only common feature being that both are members of the decurions' order. Maybe there was a very close relationship between them, which determined Publius Celsenius Constans, to leave a part or all of his fortune to his friend. This was the only way to make a *mortis causa* donation to a friend. That's why we consider that the friend who builds a funeral monument to a defunct is a *heres extraneus uel uoluntarius* who can be nothing else but a testamentary heir, because friends cannot be summoned to an *ab intestato* succession. An inscription from Drobeta certifies another *heres uoluntarius*²⁴:

IDR II 43: *D(is) M(anibus)/ C(aio) Iul(io) Ve-recun-/do ueterano/ ex
dec(urione) al(ae) / Cl(audiae), Claudius Lon-/ginus ami-/cus et he-/res, pecunia sua.*

Translation: "To Manes Gods. To Caius Iulius Verecundus, veteran, former decurion in ala Claudia, Claudius Longinus friend and heir, on his expense (built the funeral monument)."

Claudius Longinus builds a funeral monument to his friend Caius Iulius Verecundus, a former decurion who has left him an inheritance. Claudius Longinus as a friend was not obliged to accept the inheritance. Accepting to become a heir of Caius Iulius Verecundus, he became a *heres extraneus uel uoluntarius*. We can not determine the nature of this inheritance because of the laconic expression of the text scribe, but it was something rather symbolic, for sure, as Longinus built his friend a monument on his expense.

On some funeral inscriptions of the officers, the heirs are mentioned (*heres, heredes; heredes et coniux*) having the name and the position owned or, simply with their names, if they do not have the same tribal signs with the defunct, then the heirs or comrades are his fellows or friends, who represent a special category of voluntary heirs.

IDR III 3. 263: *D(is) M(anibus)/ Iulio Secundo/ expl(oratori) stip(endiorum)/
domo Agrip(inensi) /5/ uix(it) an(nis) LV/ [h(eres) f(aciendum) c(urauit)].*

Translation: "To Manes Gods. To Iulius Secundus, scout, who served 32 years, originally of Agripina (The colony Ara Augusta Agripinensium), lived 55 years, the heir (heirs) took care and built (the funeral monument)."

The heirs who build a funeral monument to Iulius Secundus, officer represents the so-called *heredes uoluntarii* category. Being more heirs for the same *hereditas* they are *heredes ex parte*, (they each inherit a part of the defunct's inheritance).

²⁴ CIL III 14. 216; IDR II 43.

IDR III 5. 598; CIL III 1199: [---] PIVSIIP [....] / Verec[u]n[du]s / [Sa]rmiz(egetusa) mil(es) l[eg](ionis) / [XI] II G(eminae) stip(endiorum) XI uix[it] / 5 / [an]nos XXX titu[lum] / [p]osuerun[t] fi [I(i) / et heredes? Ei[us] / [...] I BATI [...]

Translation: "... PIVSIIP?...Verecundus, Sarmizegetusa, officer in the XIII-A Gemina, payed as officer for 11 years, lived for 30 years. The epitaph was laid by the son and heirs (?)...I BATI..."

Verecundus soldier from the XIIIth Gemina legion, left his fortune and that one gathered by the soldiers through the testament to his son and probably to some comrades unnominated. The summoning to the succession of the son and comrades or friends in the same time, was possible only in the case of testamentary succession, only for civils, the military could make the testament the way he wished and as he could. Thus, he leaves the family patrimony to his son through *successio ab intestato* and a part of *peculium castrense* through *successio testamentaria*, with the mention that, in the case of the fortune gathered, the son was sharing the inheritance with the father's comrades, so he became *heres ex parte* like all the other *heredes*.

IDR III 5. 530: D(is) M(anibus) / Finit(io) [...] / u(eterano) l(egionis) XIII G(eminae) Fin- / itus I [...] / 5 / Ursin[us] fili(i) / et h(eredes)].

Translation: "To Manes Gods. To Finitus..., veteran from the XIIIth legion Gemina. Finitius I...and Ursinus (his sons) and heirs."

Finitius ... the veteran? ... could leave his fortune to his sons through *successio ab intestato*, situation in which they were first summoned to succession, and as heirs they were *heres sui et necessarii*, who each inherit a part of the parents' patrimony (*heredes ex patre*). But they could leave their fortune to their sons through the will when the son represented the same category of *heredes sui et necesarii* and they are *heredes ex parte*.

IDR III 2. 428: D(is) M(anibus) / Q(uinto) Manilo / Pap(iria) Vero / uet(erano) leg(ionis) XV / 5 / sig(nifer) dec(urio) col(oniae) / uix(it) an(nis) LXXV C(aius) Iulius Macer / (centurio) h(er)es fecit.

Translation: "To Manes Gods. To Quintus Manlius Verus from Papiria tribe, veteran from the XVth legion, signifier, decurion in (Ulpia Traiana) colony, lived years 75, Caius Iulius Macer, centurion, (his) heir built (the funeral monument)."

Caius Iulius Macer is a *heres uoluntarius*, too, established as heir through the testament, he is at the same time a *heres ex asse*, being the unique heir of the defunct Quintus Manlius Verus.

IDR III 160: D(is) M(anibus) / Antonio / Marco / Val(erio) Iulian- / 5 / o mil(itibus) ex Pa-/lmyr(a) vix(erunt) a- / nnis XXX, po(suit) Ae-/lius Priscus / b(ene)m(erenti).

Translation: "To Manes Gods, to Antonius Marcus and Valerius Iulianus, officers from Palmyra, (who) lived 30 years, built Aelius Priscus to those who deserved (this monument)."

Aelius Priscus lays the epitaph on the funeral stones of two officers, he is a *heres extraneu uel uoluntarius* of the two defunct men, because he doesn't seem to be related to them in any way.

On some inscriptions, the heirs have the same tribal sign as the defunct, but the remove cannot be established.

IDR III 5. 479: [---]/[...? *stipend(iorum)*] / *XV uix(it) ann(is)* / *XXXV Aelius Mar/[c]us et Aelius Agrip(p)a /5/ h(eredes) f(aciendum) c(uraverunt)*.

Translation: "... (after a military service) of 15 years, he lived years 35. Aelius Marcus and Aelius Agrippa took care and built (the funeral monument)."

IDR III 5. 513: *D(is) M(anibus) / C(aio) Censorio / C(ai) fil(io) Sereno / Fl(auia) Solua/ (centurioni) leg(ionis) XIII Gem(inae) / Fuscus Suc/cessus et Censo/rius Fortunatus/ h(eredes) f(aciendum) c(uraverunt)*.

Translation: "To Manes Gods. To Caius Censorius Serenus²⁵, Caius' son, originally from Flavia Solva, centurion in the XIVth legion Gemina. Fuscus Successus and Censorius Fortunatus, his heirs, took care and built (this monument)."

IDR III 5. 542: *C(aio) Iul(io) C(ai) fil(io) Thevest(e)/ Corinthiano praef(ecto)/ coh(ortis) VII Gall(or)um tribun(o)/ coh(ortis) I Britt(annicae) item uexil(lationis) /5/ Dacor(um) Parthic(ae) cui/ ob uirtute(m) sua(m) sacra-/tissimi imper(atores) coro-/nam muralem et hastam/ puram et uex[il]lum argent(o) /10/ insigne dederunt / praef(ecto) alae Campag(norum) / idem (miliariae) uixit annis/ XXXVIII / Marcus Arrianus /15/ et Iuli(l) Clinias et / Pisonianus he/redes f(aciendum) c(uraverunt)*.

Translation: "To Caius Iulius Corinthianus, Caius' son, originally from Theveste, prefect of *cohors VII Gallorum*, tribune of *cohors I Britannica* and of *uexillatio Dacorum Parthica*, to whom the sacrosanct emperors gave a *corona muralis* for courage, a *hasta pura* and a *uexillum* set in silver, prefect of *ala de Campagioni* and of military *ala*. He lived 39 years. Marcus Arrianus and Iulii Clinias and Pisonianus, as heirs took care and built (the funeral monument)."

IDR III 5. 560. A military from the XIIIth legion Gemina, to whom his heirs... *Mucus* (and)... *Niger*, built a funeral monument.

IDR 5. 592: [---]/[*V*] *al(erius) Siluan[us et] / [... Crpia[nus] / et h(eredes) f(aciendum) c(uraverunt)*

Translation: "Valerius Silvanus and... Crispinianus took care and built (this monument)."

IDR III 5. 587: *D(is) [M(anibus)] / Val(eriu) / s Cl(emens) / leg(ionis) XIII G(eminae) uix(it) a(nnis) /5/ XXXXI[...]/ ellus [leg(ionis) ei]-/ dem[...]/ et he(res) / b(ene) [m(erenti)]*.

Translation: "To Manes Gods. Valerius Clemens (soldier) from the XIIIth legion Gemina lived 41? years.... ellus (from the same legion)... and heir (built the monument to the one who deserved)."

On some inscriptions laid by militaries, the heirs' wives appear beside them, but not as heiress, although the funeral text certifies that they participated at the expenses for the building of the tomb or of the funeral monument²⁶.

The wives probably receive the inheritance through the *mancipatio*, or they do not receive anything because the main heir is their son.

We propose some examples of funeral inscriptions:

IDR III 5. 484: *D(is) M(anibus) / P(ublio) Ael(io) Tertio / domo Cl(audia) Virun(o) / uel(erano) ex (centurione) coh(hortis) I Brit(annicae) /5/ (miliariae)*

²⁵ CIL III 1615.

²⁶ See the inscriptions IDR II 45; IDR III 1. 166; IDR III 1. 154; IDR III 1. 156; IDR III 3. 169; IDR III 5. 484.

C(luium) R(omanorum) eq(uitatae) an(norum)] LX Ael(ia) A[e]stiu[a] con(iux)/ et heredes posuerunt.

Translation: "To Manes Gods. To Publius Aelius Tertius, originally from Claudia Virunum, veteran, was a centurion in *cohors I Britannica militaria ciuium Romanorum equitata*, aged 60. Aelia, (his) wife and the heirs laid the epitaph."

IDR III 5. 475: *D(is) M(anibus)/ Ael(io) Dubita-/ to misscio / alae Bat(auorum) ex /5/ a(la) n(umeri) Il(l)yr(icorum) q(ui) uix(it) / an(nis) XXX her(edes) et / coniunx fecerunt./ H(ic) s(itus) e(st).*

Translation: "To Manes Gods. To Aeliu Dubitatus, retired soldier from Batavorum ala, originated from Illyricorum ala numeri, who lived 30 years. His heirs and (his) wife built (this monument). Here he rests."

CIL III 7644: *D(is) M(anibus)/ Aurel(ius) Masinnius/ dupli(carius) al(a)e (militaria)/ uix(it) ann(is) /5/ XXXVI. Iulia Se-uera coniux/ et Fl(auius) Saturni-nus heres/ ob merita posue-runt f(aciendum) c(urauit).*

Translation: "To Manes Gods. To Aurelius Masinnius, *duplicarius alae militaria*, (who) lived 36 years. Iulia Severa, (his) wife and Flavius Saturninus heir, took care for good merits and built."

IDR III 1. 166²⁷: *... uit ... / [uix(it)] an(nos) XXX ... / ... TICIA ... / [he]res Gad-/5/ des Aninas/ uete(ranus) uix(it) an(nis) L. Iul(ia) M[a]r-cia erapoles/ p(osuit) coniux.*

Translation: "... [was in the army] lived 30? Years... TICIA,... Eres Gaddes, Aninas' son, veteran, (who) lived 50 years. Iulia Marcia Erapoles laid to her husband (the epitaph)."

Marcia Erapoles, a soldier's wife, is a *heres voluntarius*.

IDR II 45: *D(is) M(anibus)/ Liccaius/ Vinentis/ mil(es) coh(ortis) III /5/ Cam(pestris), b(ene) f(ficiarius) trib(uni),/ mil(itavit) annis XL/ Linda Se-/uerus /10/ h(eres), b(ene)m(erenti) p(osuit).*

Linda Severus accepts to become the heiress of Liccaius Vinentis, the officer, he is voluntary testamentary heir, who seems to have received the entire fortune of the dead military (*heres ex asse*).

The militaries' mothers were established as heiress specifically through the testament, otherwise the military's was taken by the fisc, or by his comrades. A military's mother *ignotus* appears on the inscription IDR 3 169: *[...]/ [_ _ _ s]t(p)endiorum) XII uix(it) [ann(os) _ _ _ /H(ic)] s(itus) e(st)./ Aur(elius) Primus et Val(erius) Maximus [et] Val(alerius)/ Valerianus heredes et Aelia Pilipis/ mater b(ene)m(erenti) p(osuerunt).*

Translation: "[To Manes Gods _ _ _ _] has been in the army for 12 years, lived years [_ here] he rests. Aurelius Primus and Valerius Maximus and Valerius Valerianus heirs, and Aelia P(h)ili(p)is, mother, laid him (who) deserved²⁸."

Some officers could leave the fortune gathered during the military service, to some temples or priests, but the temple and the priests could both claim the inheritance only if there was a testament in their favor.

²⁷ CIL III 8000: „Acta Musei Napocensis“, VI, 1969, p.178.

²⁸ Also see CIL III 1381.

In Dacia, Aelius Habibis, an oriental priest, appears as heir (*heres voluntarius*) of a siro-palmirean soldier, Aelius Guras, son of Iideus.

IDR III 1. 154: *D(is) M(anibus)/ Ael(ius)Guras Iiddei/ [op]tio ex N(umero) Palmur(enorum)/ uix(it) ann(os) XXXXII, mil(itavit) /5/ [an]n(os) XXI, Ael(ius) Habibis/ [pon]tif(ex) et h(eres) B(ene)m(erenti) posuit.*

Translation: "To Manes Gods. Aelius Guras, Iiddeus' son, non-commissioned officer from numerus Maurorum Tibiscensium (who) lived 42 years, and the military service 21 years. Aelius Habibi priest and heir built to the one who deserved (the funeral monument)."

Two funeral inscriptions discovered in Ulpia Traiana²⁹ and Apulum testify the so-called *substitutio heredis* or *heres substitutio*, which consisted in the appointing of a substitute of the heir, summoning to succession another person if the *vocatus ad hereditatem* (the one summoned to succession) did not accept the inheritance.

Therefore, *secundus heres*, is in fact the rightful heir's substitute, who due to distinct motifs, refused to accept the inheritance.

IDR III 5. 477: *D(is) M(anibus)/ Ael(io) Genia[li]/ ex singul(ari)/ uix(it) an(nis) XXXII /5/? Uexilarius/ Valerius? Libr(arius)./ pri(mus) heres et / Atticus sec(undus) he(res)/ b(ene)m(erenti) p(osuit).*

Translation: "To Manes Gods. To Aelius Genialis, former soldier in guard, (who) lived 32 years. His comrade *uexillum* (?) and Valerius Librarius (and) first heir and Atticus, the second heir, built (this monument) to the one who deserved it."

Valerius who appears in the funeral text as *primus heres*, the one his comrade Aelius Genialis establishes as heir. The testator was not sure that Valerius would accept the inheritance, therefore, he established Atticus as heir, too, another comrade who seemed willing to accept the inheritance under the circumstances imposed in the will by his former comrade.

Aelius Genialis' two heirs probably shared the inheritance because they appear together on his funeral monument, although legally speaking, Valerius is a *heres ex asse* (heir of the entire fortune) and not a *heres ex parte*.

IDR III 2. 460: *D(is) M(anibus) / M(arco) Verpidio/ Siluano eq(uiti) al(ae) / II Pannonio[r(um)] /5/ Valerius Procul(us) / [se]c(undus) h(eres) p(onendum) c(uravit).*

Translation: "To Manes Gods, to Marcus Verpidius Silvanus, horseman in the Iind ala Pannoniorum, Valerius Proculus, the second heir took care and built."

Marcus Verpidius Silvanus, the horseman, resorted to *heres substitutio*, too suspecting that the one established as first heir could refuse the inheritance. We don't know neither who was the first heir, nor if he refused the inheritance or he died. The first heir probably refused the inheritance because the one who lays the epitaph is Valerius Proculus, the second heir of Marcus Verpidius Silvanus.

People belonging to the peregrine do not appear at all in the epigraphic sources regarding the hereditary right in Roman Dacia, the ones who made an exception were probably some soldiers from the auxiliary troops who left their peculium to their comrades, as the horseman Dasas of Scenobarbus did, soldier from the Ista Batavorum, who left his peculium to a decurion, Bersius Ingenuus, who might have been his commander himself from the governor's guard. In this case Dasas' decurion and

²⁹ CIL III 7799; IDR III 5. 477.

comrade was a testamentary heir (*heres voluntarius*) who seemed to receive the defunct's entire fortune. (*heres ex asse*).

IDR III 5. 522: Dasa(n)ti [S]ceno-/barbi eq(uiti) alae/ Ba[t]a[urum]/ ex n(umero) sing(ulariorum) st[ip(endiorum)] /5/? V [a]nnorum XXXI. Bers(ius)/ [l]ngenu(u)s de[c(urio)]/ ex n(umero) eodem (h)e[r]-/ es posuit.

Translation: "To Dasas, Scenobarbus' son, horseman from the Batavorum chivalry auxiliary troupe, former soldier of the governor's guard, (dead) after 5 years of military service at the age of 31. Bersius Ingenuus, decurion of the same military base, (his) heir laid (the epitaph)."

IDR III 5. 559: D(is) M(anibus) / Mucatra / Brasi miles / n(umeri) Palmyren(or)um /5/ Tibiscensium / uixit annis XXXVIII / Mucapor Mucatal(is) heres eonutbern(alis) / carissimo posuit.

Translation: "To Manes Gods. Mucatra, Brasus' son, military from *numerus Palmyrenorum Tibiscensium* lived 39 years. Mucapor, Mucatal(is)' son, as heir laid the epitaph to his beloved comrade."

Mucatra, Brasus' son, military in *numerus Tibiscensium*, dead at 39 years, leaves his fortune to his roommate Mucapor, Mucatalis' son. Mucapor is a voluntary heir and he seems to inherit the whole Mucatra's fortune, so he is a *heres ex asse*.

IDR III 5. 521: D(is) M(anibus) / Crescenti/ Platoris / fi[l(io)] uix(it) an(nis)/ XXXV /5/ Vibius Ru-/ fi[n]us si[g(nifer)]/ leg(ionis) XIII G(eminae)/ h(?eres) f(aciendum) c(uravit).

Translation: "To Manes Gods. To Crecens, Plator's son³⁰ (who) lived 35 years. Vibius Rufus, banner bearer of the XIIIth legion Gemina, as heir, took care and built (the funeral monument)."

Crecens, Plator's son is a *heres uoluntarius* of a banner bearer from the XIIIth legion Gemina. He is probably a *heres ex asse* as the militaries from the mentioned above inscriptions.

The Testament of Sucidava

The Roman testators of a certain social rank had in view first the concern for the preservation of the last home and its funeral cult maintenance. According to this conception only in the memory of the living, there was that force which was able to prevent souls from loosing and dissolving themselves into the unknown world of the dead³¹.

According to the Roman laws the legitimate or testamentary heirs were obliged to accomplish the periodical sacrifices at the tomb, there were very elaborate religious inscriptions that indicated in the smallest details, the rituals that had to be carried out³².

The defunct people could leave their fortunes, established especially for preserving and care of the tomb, they have the role of some foundations in the modern

³⁰ CIL III 1192; I. I. Rusu, *Illirii. Istoria – limba și onomastica – romanizarea*, București, 1969, p. 273.

³¹ F. De Visscher, in *Studi in onore di Siro Solazzi*, Napoli, 1948, p. 542.

³² Idem, *Le droit des tombeaux romains*, Milano, 1963 p. 83.

meaning of the word, by the continuous adding of some goods devoted to the maintenance of the tomb³³.

The establishment of such a funeral foundation is certified in Dacia on the testament inscription from Sucidava (IDR II 187) in which the defunct was leaving the two *iugera* of vineyard and the using of a building attached to the tomb, for the tomb servants:

[---]
[uolo [iubeo... ..curatori sepulchri mei fructum]
[u]i [nearum iug(erum) duorum... ..[et usum eius aedifi-]
[ci] quod iunctum sepulchro meo non est concedere sub suprascripta]
condicione quicumque hereditatem adierit ex heredibus meis]
uel ex is per gradus uel qui substitutus erit, si quis eorum]
interciderit. Volo et iubeo [heredes meos suratorem sepulchri mei,]
inlocum eiu, <i>, qui obierit aut officium suum
deseruit,] substituere eadem conditione qua curatori instituti sint],
qui similiter officium g[erat et.....]
sit et quicumque ea [condicione urator institutus aliquid neglexerit]
petinens ad uoluntat[em meam dimittatur eique alius sufficatur ut]
sit, qui ex iussu meo in[sepulchro meo quotannis sacra faciat]
ita ut [supra] scriptum e[st)]
ut iunea et aedificium curatoribus reseruata? Sint, ius heredibus]
meis ap[er]t[ur] dand[um] ea aut alienandi. Sit quis uoluerit
uendere ea] alienare quod aduersus uoluntatem testamenti mei]
fecerit, uenditio et [alienatio irrita sit et (denariorum)...
m[il]ia dare damnas esto. Pecunia]
ea reliquo[rum] caus[us] hereditati ad crescat...
ita ut post [mortem meam curatores quotannis sacra faciant]
ex fructu [supra] scriptarum uinearum].

"...I want and I order...for the crops of my two *iugera* of vineyard...and the usage of the building which is attached to my tomb to be left, under the conditions mentioned above, to my tomb servants, no matter who among my direct descendants or from those not too close or anybody that would replace one of those mentioned dead will inherit the fortune.

I want and I order to my heirs to appoint a new servant of my tomb, instead of the one who would die or would leave the service and the same....and any servant, established according to this condition would neglect something from my wish, to be removed and replaced with another one so that there would be someone to do the honors at my tomb every year, exactly as I written above.

In order that my vineyard and the building to be reserved to the servants, heirs should not have the right to give them away or to alienate them. If one of them wanted to sell or to alienate them, which would be against my testamentary will, the selling or alienation should be null, and he should be condemned to pay....thousand of diners. This money should be added to the others' inheritance....so that, after my death,

³³ Idem, in *Studi Solazzi, op. cit.*, p. 543.

servants should do the honors each year from the income from the mentioned vineyard. The testament represents an important document of the Roman successor right, appreciated and disputed by historians who dealt with it³⁴, thus C. C. Petolescu and Fernand de Vischer considered that the testament represented an act by which a funeral foundation was established, meant to perpetuate for ever the memory of the testator³⁵. I.I. Rusu considered the selling interdiction, as a confirmation of the fact that the tomb from the respective testament, was a *locus religiosus*³⁶, to whom a vineyard and a building were attached given for utilization to the servants, others than the heirs who were not allowed to alienate them.

In a recent published study, Ilie Șandru made an analysis, not at all inspired, of the successor right issues that appear in the testament from Sucidava³⁷. Mistaking the *taking the possession* (the establishing of the property towards the inheritance) with the *usufruct*, he considers that the one who has the usufruct right on the vineyard and house, is a so-called "nude owner"³⁸ and that the exercising of the usufruct right does not presuppose the existence of some obligations³⁹. Taking the possession does not apply to the usufruct goods, on which the legatee had only the right to use them. *Usucapio pro herede* was a legal procedure that assured the taking the possession of some defunct goods by mastering of these goods by the heirs for a year⁴⁰, but *usucapio* was on the run only if the testament was missing, in the situation of *ab intestato* succession.

Șandru sustained that peregrines and inhabitants were excluded from the inheritance of the two *jugera* of vineyard and of the house, because "no references are made to legatees and to those who were to transmit the defunct fortune"⁴¹.

But the legatees were used only to transmit the patrimony with property right and not to grant the usufruct (so, only the usage) of some goods. Even if he was heir and owner being a third person of some goods, if the idea of transmitting them appeared, they could not be alienated any more but transmitted to those who had the right (for example: to the descendants).

Therefore, if on the testament from Sucidava, real estate goods were left for usage, no references related to the text were possible to appear.

If the tomb servants had *possessio* of the vineyard and house and they are owners, as Șandru sustained⁴², then, as a legal consequence they can not be estranged from owning the building and the vineyard, or it was stipulated by contract that the servants who do not follow the obligations to be removed and replaced with others⁴³.

³⁴ The will from Sucidava (IDR II 187; CIL III 14. 493) was researched, presented and discussed in articles and studies by D. Tudor, *Oltenia romană*, 4th edition, București, 1972, p.415; C. C. Petolescu, IDR II 187, p. 102-104; I. Șandru, in M. Bărbulescu (coord.), *Funeraria Dacoromană. Arheologia funerară a Daciei romane*, Cluj-Napoca, 2003, p. 196 sqq; Fernand de Vischer, *op. cit.*, p. 248 sqq.

³⁵ C. C. Petolescu, *op. cit.*, p. 103; Fernand de Vischer, *op. cit.*, p. 239.

³⁶ See Caius, IV, 4: "*religiosae (res sunt) quae diis manibus relictæ sunt*".

³⁷ I. Șandru, *op. cit.*, p. 204.

³⁸ *Ibidem*.

³⁹ *Ibidem*.

⁴⁰ Paulus, 1 ed. Nerat. D. 47. 19. 6.

⁴¹ I. Șandru, *op. cit.*, p. 201

⁴² *Ibidem*.

⁴³ See IDR II 187, lines 10-11.

According to the nature and the good expression of the text, the inscription was laid by a Roman citizen, from the elite, connoisseur of the Roman right, or who found a lawyer to council him. The testator is a *sui iuris* and he has full legal capacity thus he can leave a testament⁴⁴. The usufruct character of the inheritance of the two *jugera* of vineyard and of the house, is clearly sustained by the testator (lines 1-2 of the inscription) and reaffirmed by conditioned yielding of the usufruct of the real estate goods attached to the tomb.

In my opinion the testament from Sucidava represents the establishment of a funeral foundation, meant to assure the maintenance as *locus religiosus* of a tomb and the perpetuation of the funeral cult.

To demonstrate this I will resort to the analysis of the content of the inscription from Sucidava together with the presentation of a famous analogy from Ostia; it is about Iunia Libertas' funeral inscription⁴⁵.

Iunia, the same as the testator from Sucidava was leaving a wide spread domain attached to a tomb to those who were to take care of it, having the right of usufruct (in the case of Iunia, the servants were freemen, their freedwomen and heirs, inclusively the freed slaves). At Sucidava, the tomb has a vineyard and a house attached, given with an usufruct right to those who will take care of the periodical funeral honors, prescribed by the Roman religion.

The usufruct system that consisted in using the inheritance in certain conditions appears at both funeral testaments. But this system represents also the greatest drawback that it stops together with the death of the last legatee. Then the heirs could ask for a *possessio bonorum* and they would become owners with full rights on the funeral monument and on the real estate goods that are attached and which they could then alienate. To avoid this and to assure the preserving of the tomb and of the funeral cult, the anonymous testator from Sucidava acts different from Iunia Libertas, thus, he declares null any attempt of selling or alienating of the tomb by the heirs, while Iunia offers the property to the local community through *sine commissum*, provided the eventual heirs should ask *bonorum possessio*. This type of heirs is approved by the interdictions of the following type: H · M · H · N · S (*hoc monumentum heredes non sequetur* = this monument is not part of the goods that are given to heirs)

The apparition of the inscription: H · M · H · N · S in the text of an inscription with funeral character means that the defunct left his fortune to his heirs through the testament. As a consequence, the above mentioned formulae always certifies a testamentary succession where often heirs are not relatives, thus the getting out of the funeral monument from the category of the goods which can be inherited, could have the purpose of protecting the sacred environment of the family from some intruders.

For example, on two inscriptions from Sarmizegetusa (see the inscriptions below), the persons who lay the epitaphs, seem to have no descendants left or any hope to have any successors. In this situation the last survivors of those families try to protect the tomb from the heirs outside the family group.

⁴⁴ *Novissimo Digesto Italiano*, Milano, 1937 sqq, see s.v. *sui iuris*, p. 506; *op.cit.*, s.v. *status*, p. 500.

⁴⁵ Published by G. Calza in *Epigraphica*, 1939, p. 160 sqq; this inscription it was analysed from the Roman private right by F. De Visscher in *Studi Solazzi*, 1948, p. 542 sqq.

IDR III 2. 396: *D(is) M(anibus)/ Aureliae Victoriae/ incomparabili feminae/ Fortunatus aug(usti) lib(ertus) /5/ adiutor tabul(arii)/ coniugii karissimae./ H(oc) m(onumentum) h(eredes) n(on) s(equetur).*

Translation: „To Manes Gods, to Aurelia Victoria, incomparable woman, Fortunatus, freeman of the king /5/ civil servant at the local archives, to (his) beloved wife. This monument is not part of the goods, which return to the heir“.

The imperial freeman Fortunatus lays his wife, Aurelia Victoria, an epitaph on the funeral monument. In the text of the inscription appear only the defunct wife and the freeman that may mean that the two had no children, an extra argument in the favor of this hypothesis could be the removing of the funeral monument from the goods that constituted the patrimony. Fortunatus could institute the usufruct to some third persons towards one of his real estate goods, in exchange of taking care of the monument and of making the periodical honors, as the testator from Sucidava did.

IDR III 2. 418: *D(is) M(anibus)/ C(ai) Iul(i) C(ai) f(ili) Rufi dom(o) Vimin(acio) ann(or)um XXX Iulia/ Gemellina fratri pientissimo et/ M(arco) Aurel(io) M(arci) f(ili) Maximo mensium VIII /5/ Aurel(ius) Helico et Iul(ia) Gemellin(a) parentes. H(oc) m(onumentum) h(eredes) n(on) s(equetur).*

Translation: To Manes Gods. To Caius Iulius Rufus, Caius' son, originally from Viminacium, aged 20, Iulia Gemellina, to her beloved brother and to Marcus Aurelius Maximus, Marcus's son, aged 8 months. Aurelius Helico and Iulia Gemellina parents (built the monument). This monument is not part of the goods which return to the heirs.

Iulia Gemellina and Aurelius Helico bury their son in the same place where the mother's brother has been buried. The absence of some close relatives from the text of the inscription seem to certify in the case of this family, too, the wish that no stranger should be buried in the same place with those beloved. The absence of another son or of a close relative make us sustain that this inscription certifies the owner's intention of leaving the fortune to the heirs through the testament.

The same preoccupation for the maintenance of the funeral monument inside the family property appears on an fragmentary funeral inscription from Drobeta⁴⁶: *[T]e autem her[es rogo]/ [aliqu]em amplius n[evelis]/ [condid]isse patris m[onu-]/[mento] quot fratres m[ei]/ [et...s]oror mea b[ene]m(erentibus) f(ecerunt).*

Translation: “But, please, dear heir, do not put anyone in my father's tomb which my brothers and sister built for those who deserved it”. Iulia Lasciva seems to be a person who survived the death of her close relatives (parents and children), her request, addressed to a possible heir, is in fact synonym with the formulae: H · M · H · N · S. The inscription is interesting because it certifies once again the women's habit of leaving testaments, a practice attested in Dacia and by other funeral inscriptions.

⁴⁶ See the funeral inscription laid by Iulia Lasciva to her parents, brothers and sons (IDR II 62): “[...] / [...] a(n)is)] III.P.Iul(ia) Ca[...] / [uix(it) an(nis)... ..] nepotibus e(or)um/ [Iul(ia?)] Lasciva patr[is] et/ [matri] et/ fil(i)is suis ex bo[nis] /5/ [suis fecit. T]e autem her[es rogo]/ [aliqu]em amplius n[evelis]/ [condid]isse patris m[onu-]/ [mento] quot fratres m[ei]/ [et...s]oror mea b[ene]m(erentibus) f(ecerunt)”. Translation: “three years, P.Iulius CA... lived...years.... grandchildren (?). Iulia (?) Lasciva built the monument to her father, mother and sons from her fortune. But, please, heir, do not put in someone else in my father's tomb which my brothers and sister did to those who deserved.”

In Apulum, on a fragmentary inscription from a funeral monument of a woman, the H · M · H · N · S⁴⁷ formulae appear again and the dimensions of the tomb are indicated (which was probably built from a monument and a funeral precincts).

IUS HEREDITATIUM ÎN INSCRIPTIILE LATINE DIN DACIA ROMANĂ

Rezumat

Stadiul cercetării istoriei sociale în Dacia romană în istoriografia românească a momentului este nesatisfăcător din numeroase motive. Cercetătorii dreptului roman au fost în majoritatea lor "istorici de cabinet" sau juriști care, în marea lor majoritate au pornit de la premiza că dreptul roman a fost aplicat pe întreg teritoriul stăpânit de Roman și prin urmare în Dacia familia și instituțiile sale, raporturile dintre diversele categorii sociale și evoluția societății provinciale ar urma același evoluție ca în restul Imperiului Roman; Însă pornind de la această premiză izvoarele folosite au fost îndeosebi scrierile juridice romane, colecțiile de legi și nu izvoarele de drept din Dacia, aceasta a determinat ecranarea realităților istorice din provincie care au fost judecate după situații similare atestate în Roma. Însă evoluția societății și a instituțiilor familiale din provincie nu a fost tratate în mod diacronic, ceea ce a dus la prezentarea și tratarea unor aspecte din viața socială și privată a locuitorilor Daciei prin utilizarea clișee și legi anulate care nu mai corespundeau realității sociale din sec. II-III p. Chr. În tratatul de istorie a României aplicarea principiilor de drept în plan privat sunt insuficient și nesatisfăcător tratate. Publicarea inscripțiilor din Dacia Romană a avut drept consecință apariția unor *corpora* de izvoare ale vieții sociale din provincie izvoare care, deși par puține la o primă vedere, ar putea ocupa un tom de dimensiuni respectabile. Unele izvoare epigrafice din Dacia se impun în atenția cercetărilor prin calitatea deosebită a informațiilor conținute (testamentul de la Sucidava, tăblițele cerate). Dacia este astfel o provincie privilegiată din punctul de vedere al izvoarelor de drept privat prin urmarea raportarea la informațiile existente în *Digesta* sau *Institutiones* este necesară numai pentru acele inscripții a căror interpretare ridică probleme de metodă. Testamentul de la Sucidava de exemplu atestă faptul că locuitorii provinciei Dacia aveau un nivel ridicat de cunoaștere a problemelor de drept și a limbajului juridic latin.

În acest studiu am încercat să descopăr, utilizând izvoarele epigrafice, cele două tipuri principale de succesiune: *successio legitima* și *successio testamentaria*, sunt atestate și în Dacia și modul în care principiile dreptului privat sunt aplicate în provincie. Textele juridice preluate din *Digesta* au fost selecționate în așa fel încât am citat numai din cele care erau aplicate în epoca stăpânirii romane asupra Daciei.

Atestarea succesiunii testamentare este mai evidentă datorită testamentului de la Sucidava și apariției unor formule juridice ca *herres ex testamento* și *ex voluntate testamenti*. Însă nu toți locuitorii Daciei romane știau carte de aceea unii dintre ei nu lăsau testament atunc intra în vigoare succesiunea

⁴⁷ IDR III 5. 565.

pretoriană sau *ab intestato*, conform căreia moștenitorii erau chemați pe rand la succesiune în clase de moștenitori: *unde liberi*; *unde legitimi*; *unde cognati*; *unde vir et uxor*. Cele două tipuri de succesiune nu sunt complementare chemarea la succesiunea *ab intestato* avea loc numai în absența testamentului. Mulți preferau să-și lase patrimoniul prin testament, pentru că numai astfel puteau lăsa o parte din averea lor unor persoane față de care nutreau sentimente de iubire, admirație și respect, dar care în cazul succesiunii *ab intestato* nu primeau nimic ca soțul sau soția de exemplu.

Capacitatea de a lăsa testament o aveau în principiu numai indivizii *sui iuris*, dar în sec II-III p. Chr. chiar și femeile puteau face testament, chiar dacă acesta se afla în marginea legalității și putea fi anulat oricând. Condiția de moștenitor o aveau numai cetățenii. Moștenitorii testamentari se împărțeau și ei în câteva categorii: *heredes sui et necessarii*, *heredes necessarii*, *heredes extranei uel uoluntarii*. Condiția de moștenitor era o onoare de aceea este menționată uneori în textul inscripțiilor. Putem presupune că majoritatea monumentelor funerare pe care nu apare specificat faptul că au fost construite încă din timpul reprezintă monumente ridicate de către moștenitori, poate aceasta a dus la răspândirea pe scară largă a epitetului la dativ *bene merenti*.

Dacă nu apare în epitaf indicația faptului că cei care fac monumentul funerar sunt moștenitori *ex testamento*, ar fi posibil ca ei să fie chemați la succesiunea *ab intestato*; acest tip de succesiune dezmoștenește soția care supraviețuiește soțului pentru că aceasta nu venea la succesiune în aceeași clasă cu copiii, care astfel primeau întreaga moștenire. Astfel de situații trebuie să fi fost și în Dacia dar nu ne putem pronunța cu certitudine asupra atestării lor este sigur însă că mulți dintre fiii care pun epitaful părinților sunt moștenitori *ab intestato*. Dacă aceștia apar în calitate de *coheredes* cu mama, după cum atestă unele izvoare epigrafice din Dacia, atunci avem cu siguranță de a face cu o succesiune testamentară, căci numai prin testament puteau fii instituiți *coheredes* mama și copiii.

Succesiunea stăpânilor de către liberi este de asemenea atestată, aceasta trebuia să fi fost tot o *successio testamentaria*, pentru că altfel patronul ar fi fost moștenit de rude prin *successio legitima*. Nu aceeași situație este atunci când patronul își moștenește libertății situație care este atestată epigrafic și în Dacia, pentru că patronul era chemat la succesiunea legitimă a libertților săi. Succesiunea testamentară este atestată și de inscripțiile în care moștenitori sunt prieteni sau soția și camarazii în cazul militarilor. Aceștia compun însă o altă categorie de moștenitori, *heredes extranei uel uoluntarii*. De fapt această situație este atestată din plin în inscripțiile din provincie.

Pentru cei care nua veau încredere în felul în care moștenitorii se vor îngriji de mormânt și de sacrificiile prescrise de tradiție exista alternativa instituirii unei fundații funerare, menită să asigure perpetuarea memoriei defunctului, pentru a susținerea materială a acestui tip de fundație se lăsa adesea o proprietate cu drept de uzufruct pentru cei care își asumau sarcina îngrijirii mormântului, o astfel de situație este reprezentată în Dacia de testamentul de la Sucidava.

Prin această cercetarea am vrut să atrag atenția asupra însemnătății subiectului, prezintă o metodă nouă modernă de tratare a materialului epigrafic din Dacia și să deschid noi orizonturi de cercetare în domeniul vast al istoriei sociale.