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MICHEL ABERSON, MARIA CRISTINA BIELLA,
MASSIMILIANO DI FAZIO,
MANUELA WULLSCHLEGER (eds)

NOS SUMUS ROMANI QUI FUIMUS ANTE… MEMORY OF ANCIENT ITALY

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In 2011 Michel Aberson, Maria Cristina Biella, Massimiliano Di Fazio and Manuela Wullschleger (two Italians and two Swiss, two archaeologists and two historians of antiquity) met in Geneva at the Fondation Hardt pour l'étude de l'Antiquité classique and decided to undertake a challenging project together: to organize three conferences on the peoples of central Italy, taking into consideration the key milestones in their history, from their independence, through their relations with Rome and ending with the (re)construction of their identities within the Roman world.

Underpinning the project, which immediately found the support of many colleagues and institutions, was the idea of bringing historians, archaeologists, linguists and specialists of Latin literature together to collaboratively create a comprehensive picture of these significantly multifaceted and sometimes even conflicting topics.

The present volume is the outcome of the third conference of the series *E pluribus unum? Italy from the Pre-Roman fragmentation to the Augustan Unity*, held at the University of Oxford in October 2016; it deals with the specific moments of conscious rediscovery of conquered peoples' contribution to Roman culture from the late Republic and during the Empire. These influences can be recognized particularly during the Late Republic and Augustan period, and the final outcome is the formation of a connective tissue, which can be described as the cement of the "unaccomplished identity" of ancient Italy.

The volume investigates the issue from different perspectives in order to avoid the adoption of a Romanocentric perspective.

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Roberto Fiori

Roman Law and the Laws of the Italian Peoples: Relations and Influences*

1. It may seem paradoxical that the Romans of the late Republic and early Principate, so jealous of their rights of citizenship, nonetheless easily conceded the influences of other cultures when reconstructing the history of Roman law.

These influences are especially readily acknowledged in the context of the beginnings of the City. Varro writes that in Latium cities were founded *Etrusco ritu*[1], and Verrius Flaccus ascribes to the Etruscans the *libri rituales*, which described the rules for the foundation of cities, for the consecration of the *loca sacra*, for the urban walls and gates, for the distribution of *tribus*, *curiae* and *centuriae*, for the formation and organisation of the army, and all those matters regarding war and peace[2]. The tradition that the three *tribus* and possibly also the *curiae* were created after the synoecism of Latins and Sabines dates at least to Ennius (frg. 59 Vahlen). According to other writers the names of the tribes were Etruscan[3], and the origin of the *insignia imperii* was Etruscan as well[4]. The story of the embassy sent to Greece and Magna Graecia at the time of the composition of the XII Tables to study the legislation of the Greek cities[5] is well known, and in many sources we find the statement that some decemviral rules were borrowed from Greek law: Gaius (2nd century AD), for example, recalls the Solonian laws when discussing the regulations concerning the *sodalitates*[6] and the *actio finium regundorum*[7].

It is not a coincidence that the acknowledgement of such influences is restricted to the great events of Roman legal history. To a large extent, this picture is the result of a work of historical reconstruction, and the Romans paid particular attention to the foundation of the City, the creation and development of the constitutional authorities, and the formation of the most important legal text of the archaic period — the Twelve Tables. Other influences, possibly equally important but less apparent to the eyes of the scholars of the time, are not mentioned. However, contacts and influences with the legal systems of other peoples were probably more frequent and pervasive than is usually thought by legal historians.

In my opinion, even the nature of primitive Roman kingship should be studied taking into consideration what we know about the forms of government of the other Italian peoples, because there are clues that between the 8th and the 7th century BC constitutional models circulated in

* I would like to express my gratitude to Christopher Smith for the linguistic revision of the text.

1 Varro *ling.* 5, 143.

2 Fest. p. 358 L. s.v. *rituales*.

3 Varro *ling.* 5, 55.

4 Cf. the sources collected by De Martino 1972, p. 130 n. 38.

5 The reference to the Greek cities is in Dion. H. 10, 54, 3. Cf. most recently Cascione 2018.

6 Gai. 4 *ad leg. XII tab*. D. 47, 22, 4 = tab. 8, 27.

7 Gai. 4 *ad leg. XII tab*. D. 10, 1, 13 = tab. 7, 2.

Italy[8]. As for the 6th century, the period of the so-called Etruscan monarchy, such influences are widely recognised in constitutional law — the *rex* resembling a Greek tyrant, the assembly reformed on the model of Solonian timocratic constitution — but they should be acknowledged also in private law.

The archaic Roman private law, the *ius Quiritium*, had been shaped to meet the needs of the ancient *gentes* and their land-based economy, so that when the growing importance of the city in trades attracted Greeks, Etruscans, and other Italians, and the social composition of the Roman people changed, private law needed to be significantly transformed. This transformation did not develop through the creation of new institutions, but rather by adjusting the old ones to new purposes. This is a process which comes to light especially in the Twelve Tables, in many ways a compromise between patricians and plebeians, where many archaic institutions appear modified, sometimes on the influence of Greek law[9].

2. After the crisis of the 5th century, a new development started in the 4th century BC. The political hegemony which Rome gradually gained in the Mediterranean dramatically changed its economy, which was no longer centred on agriculture and livestock breeding but on international trades, and the contacts with the laws of the Italian peoples certainly caused another significant change in private law.

The *ius Quiritium* was reserved to Roman citizens and protected by the procedure *per legis actiones*, being accessible to foreigners only on the basis of specific concessions: for example, the members of the Latin League were allowed to perform formal legal acts relevant for Roman law (*ius commercii*) and to enter into 'just marriage' with Roman citizens (*ius conubii*). By the end of the 4th century, however, the relations between Romans and foreigners were so intense that the *res publica* felt the need to grant trial protection also to transactions not considered by the *ius Quiritium* and involving aliens. This protection was not based on statutes or on a broader interpretation of the *ius Quiritium*, but rather on the power of the Roman magistrate, who created a whole new procedure, named *per formulas*.

Since the power of the magistrate did not allow him to create law, the subject-matter protected by this procedure was not considered properly 'law' but — at least at the beginning — was rather taken into account from a remedial perspective, forming a system called *ius honorarium* or *praetorium*: the difference between this system and the *ius Quiritium* was that the latter was protected because it was binding, whereas the first was binding because it was protected.

However, the peculiarities of the Roman idea of law were such that the opposition between *ius Quiritium* and *ius honorarium* did not encompass all the possible dimensions of law. For the Romans, the *ius* was not a system of 'positive' law, i.e. a set of rules arbitrarily chosen by the members of the social group. On the contrary, law was seen as the inner structure of the natural world, the condition for the survival of the universe, the necessary requirement for the preservation of the *pax deorum*: it is not a coincidence that until the Middle Republic the Roman jurists were all priests, and that even in the 3rd century AD they called themselves figuratively *sacerdotes*[10]. 'Positive' systems of rules — such as, in Roman law, the *ius Quiritium* and the *ius honorarium* — were allowed only when consistent with the 'natural' *ius*, which was not known or revealed once for all, but was studied and gradually discovered by the *ars* of the jurists. The logical consequence of these conceptions was that when an institution appeared to be 'natural' because common to all peoples, it was considered by the Romans as 'law' even if it was not protected by the structures of the Roman *res publica*: it was called 'law of the peoples', *ius gentium*. For example, the only relevant promise in *ius Quiritium* was the *sponsio*, whose peculiarity was the use of the verb *spondeo*, that foreigners were not allowed to use; but the promise of a foreigner, although not a *sponsio* and therefore not recognised by the *ius Quiritium* and not protected

8 Fiori 2019.

9 The best treatment of this period is in Serrao 2006. On the XII tables, see now the work edited by Cursi 2018.

10 Ulp. 1 *inst.* D. 1, 1, 1, 1.

by the *legis actiones*, was however 'juridical': it was felt as binding by the parties and could give rise to claims in private arbitrations.

When the *praetor* created the formulary procedure, open to foreigners, there were no reasons why it should not be used also to protect the institutions of *ius gentium*. And since the *ius gentium* was properly 'law', contrary to the *ius honorarium* which as we said was only a set of remedies, the institutions that the Romans decided to protect were considered as part of the 'law of the City' (*ius civile*). The result of this development was that Roman private law was divided in two main fields: on the one side, the *ius honorarium*; on the other side, the *ius civile*, composed of *ius Quiritium* and *ius gentium*[11].

It is highly probable that the institutions of *ius gentium* accepted in Roman law were primarily shaped by the contact with the other peoples of Italy. However such influences can only be presumed and not verified, because the process is traceable only on the basis of what is poorly attested by much later sources: the historians of the Augustan age do not deal with these issues, while the jurists are concentrated on their contemporary law, and give us insufficient information of legal history.

3. By the time we reach the period following the Social War, it becomes very difficult to admit Italian influences on Roman law. Both public and private law are already formed, and the Roman hegemony in Italy is undisputed. What we witness is only the impact of Roman law on the legal systems of the other peoples.

This is a tendency already evident before the Social War, in the spontaneous reception of Roman models into the political institutions of the Italian cities, motivated by the prestige of the dominant culture; after the war this trend continues even more distinctly[12]. The same happens with regard to legislation: it is often the case that the Latin colonies and perhaps also the allied cities chose to adopt the Roman *leges* instead of voting for their own[13]. Indeed, it is significant that the fundamental reason for the Social War was the policy of the Senate to restrict the granting of the Roman citizenship, and that the end of the war was achieved by a completely opposite strategy[14].

The granting of Roman citizenship had an essentially political significance[15] and did not interfere with the Italian cities' citizenship (*origo*). Theoretically, the local systems of law could therefore survive, but the sources give us clues that they were in fact gradually abandoned. A fragment from the *de dotibus* by Servius Sulpicius Rufus, a jurist of the age of Cicero, witnesses that in ancient Latium marriage vows (*sponsalia*) took the form of mutual promises (*stipulationes*) between the betrothed and the woman's *pater*, and that in case the marriage was called off, the promisor who was held responsible was sued and condemned to what the other party had lost because of the broken engagement (*quanti interfuerat eam uxorem accipi aut dari*). These rules, writes Servius, were observed until the *lex Iulia* of the 90 BC granted the Roman citizenship to all Latins[16]. We are not informed about the Roman rules that replaced the law of

11 Fiori 1998–1999 and Id. 2016a.

12 Letta 1979, p. 85–88 (see in general *ibid*., 33–88). For a wider picture see Bispham 2007.

13 Cic. *Balb*. 20–21, on which see Albanese 1973; Gabba 1987; Humbert 1993, p. 295–309; Bispham 2007, p. 187–189. See also Paul.-Fest. p. 79 L s.v. *fundus*; the relevance of Gell. 16, 13, 6 is disputed: cf. for all Talamanca 2006.

14 On the causes of the war see recently Kendall 2012. On the process of granting the citizenship and the related *leges* and *rogationes* see for all Luraschi 1978, and, more recently, Bispham 2007, p. 162–172 and Tweedie 2012; the sources are collected by Rotondi 1912, p. 335 ff.

15 The Roman citizenship allowed the Italians to share privileges such as the *provocatio ad populum* that, starting from the *leges Porciae* of the 2nd century BC, was conditioned only by the status of citizen and no longer by territorial limitations (Santalucia 1998, p. 71 ff.), and to be part of the Roman political life. However, the actual political participation was restricted to the élites that could travel to Rome for the assemblies: the Italians were registered in the Roman tribes (on the related problems see most recently Gagliardi 2013), but the assemblies were always summoned in Rome, and in general the republican constitution did not change (see for all De Martino 1973, p. 340).

16 Gell. 4, 4, 1–4 = Serv. *dot*. fr. 2 Bremer.

the Latin cities[17], but what is certainly attested by this source is that, after the Social War, Roman law started taking the place of local laws.

Actually, at the beginning of the 1st century BC, the incentives to a renovation of Roman law were not coming from Italy, but rather from of the necessity to manage international trade across the Mediterranean. However, once again, we are led to these conclusions by considerations of political and economic nature: the sources do not expressly witness cases of influence or reception of legal institutions. It is an odd silence, and one might wonder what the reason is. I think that an answer could be found once more in the specificities of the Roman idea of law.

In Western legal culture, law is today conceived as a completely human creation – based, whatever the constitutional rules, essentially on the will of the lawgiver – and thus the reception of a foreign rule in a legal order needs to be confirmed by the organs designated to legislate. Consistently with this view, international law is mostly regarded as the result of agreements between sovereign states.

On the contrary, for the Romans, law coincides essentially with the order of the world. Therefore a foreign rule can be automatically considered 'legal' in Roman law, when believed to be consistent with a 'natural' rule. For this reason, it is very difficult to identify cases of the reception of a foreign institution into Roman law, for it is depicted by the Romans as immediately legal. For example, it is possible that the rule called *lex Rhodia de iactu* – according to which, when it is necessary to jettison a part of the cargo, all the shippers should contribute to the losses – derived from Greek law; more generally, a comparison between the Roman legal sources and the Graeco-Egyptian papyri shows that all the rules of Roman maritime law have a resemblance with the customs of the Mediterranean, and probably derived from it[18]. However, nothing can be deduced from the Roman sources on their own, because they treat these rules as immediately 'Roman', integrating them without any effort into the normal functioning of the Roman contract of *locatio conductio*. The same happens with international public law. As long as international relations are basically restricted to ancient Italy, the international law developed by the Roman priests (*ius fetiale*) is naturally binding, with no need of a previous treaty, probably because it works within a system of shared values and principles[19]. But the Roman attitude remains the same when the City enters into diplomatic relations with other Mediterranean peoples: we have evidence that rules of Greek origin were also automatically recognised as fully 'legal'[20].

The naturalistic idea of law of the Romans thus becomes universalistic: every foreigner can use Roman law ― with the sole exception of the *ius Quiritium* ― and every foreign institution can potentially be accepted in Roman law without a formal reception.

4. This mindset is clear in Cicero's *de officiis*, a work which is primarily addressed to the new members of the ruling class formed in the aftermath of the Social War through the involvement of the leaders of the Italian cities[21]. These Italians came from cultural milieus different from those of the Romans, and did not share the traditional values of a *res publica* which had been to a large extent developed by an elite minority ― at the beginning patrician, then also plebeian. When not occupied in an unscrupulous climbing to the magistracies, they were inclined to refuse an active participation in political life and were rather concentrated on more practical occupations, feeling more close to Caesar's economic politics[22]. In addition, the extraordinary diffusion of Epicurus' doctrines among the *multitudo*[23] encouraged political non-alignment

17 It is possible that the Latin law preserved a regime abandoned in Rome during the Middle Republic: see for example Talamanca 1990, 136.

18 Fiori 2018.

19 Catalano 1965.

20 Cursi 2013, on the combination between the concepts of *amicitia* and *societas*.

21 On all this paragraph see Fiori 2011 (an English summary in Fiori 2014).

22 Gabba 1979.

23 From the 2nd century BC, Epicurus' doctrine was widespread in Italy thanks to the treatises by Amafinius and Rabirius (cf. Cic. *Tusc*. 4, 6–7 and Gemelli 1983) and the presence of Epicurean philosophers such as

and the centrality of *voluptas*. Both were in Cicero's opinions actual dangers, and therefore he tried to show the new classes that the good citizen should fulfil the same duties equally in public and in private life, and that political choices are relevant for economic prosperity. He sees no alternatives to the republican principles, because they are consistent with the *natura* of a free society: outside the *res publica* there is no true justice, and without justice the human society cannot survive.

To show all this, and to rebuild a system of definitive values after the disaster of the Civil War, Cicero chooses to write his work in accordance with Stoic principles. In general, Stoicism is not his favourite doctrine: he is more inclined to follow the New Academy. However, the doctrine of the Stoics allows him to support a concept of knowledge and ethics not affected by methodical doubts, and to create a doctrine consistent with the Roman tradition and with the virtues of the *res publica*.

To understand Cicero's efforts, it should be remembered that, in Roman culture, law and philosophy are not separated as different subject-matters, but are rather distinct methods for the study of the same reality. One significant example is the juristic discussion in the *de officiis*, pivoted on the concept of *bona fides*, which in Roman law is the standard that allows the judge to adapt the rules of a contract to the principles of fair conduct. This concept is based on the model of the *bonus vir*, namely of an individual who enjoys the social and ethical respect of the members of his community. Although the idea of *bona fides* is typically Roman and not comparable with Greek πίστις, Cicero identifies the *bonus vir* of Roman tradition with the ἀνὴρ ἀγαθός, a concept that in the history of Greek thought had strong social and ethical connotations, but which in the Middle Stoa became the ideal standard in ethics and knowledge. This operation may seem, to a modern reader, an intentional *contaminatio*, but to Cicero it is instead a 'natural' connection, because both the Roman (juristic) and the Greek (philosophical) perspectives are intrinsically 'true' and referred to the same reality.

In other words, Rome can export its values and its law to other peoples, and accept other peoples' values and law, as long as both are 'true': in this case, since they pertain to reality, they do not need a formal act of reception. On the contrary, if the institution is part of 'positive law', i.e. of a system of rules arbitrarily chosen by the community and not necessary by nature, the reception has to be formal.

5. All this considered, I think it is clear that our chances to identify influences and legal borrowings between Roman law and the laws of the peoples of ancient Italy rely on the actual possibility to compare Roman and Italian institutions. And this condition poses, in turn, the problem of what we know of the non-Roman legal systems.

This is a much more complex issue than is usually thought. The ways in which two legal orders react to identical social or economic needs are not necessarily alike, and this is often the case even within the same legal system at different periods. Moreover, the same institution can develop differently in different contexts, so that not only the single rule, but the whole legal framework should be taken into account. Legal comparison and the attempt to trace influences between legal systems are therefore reliable only when there is enough information to reconstruct at least the major structures of each system: the use of Roman law, and especially of 'classical' Roman law[24] as a 'model' for the study, out of context, of single Italian institutions can be extremely dangerous.

I will limit myself to an example, taken from a well-known document, the 3rd–2nd century BC[25] inscription known as *tabula Cortonensis*[26]. The text belongs to a historical period when, as

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Zeno of Sidon and Phaedrus, who sought refuge in Rome after the Mithridatic Wars (cf. for all Benferhat 2005, p. 58 ff.). Cicero himself heard them teaching (Cic. *fin*. 1, 16).

24 Namely, the law of the period between the end of the Republic and the 3rd century AD, which can be found in handbooks (in English, see e.g., Schulz 1951, p. 1; Johnston 1999, p. 1; a wider perspective in du Plessis *et al.* 2016).

25 For this date see Agostiniani & Nicosia 2000, p. 46.

26 The inscription is on two faces, labelled A and B, and is divided in five parts, mostly marked by a paragraph

I said, a (mutual?) influence between Roman law and the laws of the peoples of ancient Italy is extremely probable. However, even in this case it is very difficult to relate the document to Roman law.

There are many interpretations, but we do not need to go into details[27]. It is enough to discuss those proposals that are more remarkable from a legal point of view.

According to the first[28], a Petru Ščevas had received from two brothers, Velχe and Lariš sons of Lariš of the noble family of the Cušu, the enjoyment of a parcel of land. It is maintained that this is proved firstly by the verb *cenu*, translated as 'to acquire a right of enjoyment on someone else's thing'[29], what the Romans called *ius in re aliena*; secondly by the noun *peš*, interpreted as indicating the legal relationship between the parties, namely 'a form of letting and hiring' or an emphyteusis: a sale should be excluded because the land remained in the brothers' ownership[30]. The absence of an expiring term — quite odd, if the relationship were letting and hiring or emphyteusis — should be explained by the reference to the 'law of the Etruscans', namely to a form of integration of the contract by law[31].

The whole reconstruction is based on a close comparison with the Roman law found in Justinian's *Digest*, that is with rules attested for the period between the 1st century BC and the 3rd–4th century AD. However, as far as we know, in the 3rd–2nd century BC Roman law was different. At this time, there was no clear distinction between letting and hiring (*locare conducere*) and sale (*emere vendere*), the same verbs being used for both contracts[32]. Moreover,

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sign. The five paragraphs seem to be referring to (see for all AGOSTINIANI 2012, p. 138–139): (1) the transaction between the parties (ll. A.1–7); (2) a list of fifteen witnesses to the transaction (ll. A.7–14); (3) the names of the parties and the recording of the document (ll. A.14–23); (4) a second list of fourteen or fifteen (depending on whether or not a name can be guessed in the missing text of l. A.32) witnesses to the recording of the document: among them is a magistrate, head of the Etruscan league (ll. A.23–32 and B.1); (5) the eponymous magistrates and four people, among those already named in the second list, entrusted with the care of the document (ll. B.2–8). Each single part is important to elucidate the document, but it is clear that the most interesting to us is the first.

27 An analysis in SCARANO USSANI 2003. The idea that the legal act consisted in the transfer of land from some owners (the names in the first section) to their subordinates (the names in the second list) (AGOSTINIANI & NICOSIA 2000, p. 105–108), has been abandoned in AGOSTINIANI 2012, p. 137.

28 FACCHETTI 2000, p. 59–88.

29 FACCHETTI 2000, p. 62: «l'acquisizione di un diritto di godimento su una cosa altrui».

30 FACCHETTI 2000, p. 65.

31 FACCHETTI 2000, p. 67.

32 The idea that the verb *cenu* means the acquisition of a right to enjoy someone else's things is based on the author's interpretation of the *Cippus Perusinus* (3rd–2nd century BC), where it is suggested the verb to be related to the creation of a servitude similar to the Roman *aquae haustus* (FACCHETTI 2000, p. 20; for a different solution cf. MANTHE 1979, p. 277 ff.). However, in Roman law a praedial servitude could be created by *mancipatio*, and in this act the performances of the parties are described as *emere* and *vendere* also when the aim of the act is to create a different power from the owner's (cf. GAI. 2, 104: *familiae emptor*; tab. 4, 2b = *Tit. Ulp.* 10, 1 and GAI. 1, 132: *si pater filium ter venum duit* ...). Actually, in Latin *emere* and *vendere* are not exclusively connected to the contract of sale, but can generally express the act of receiving and conveying something for money (*venum dare*), regardless of the legal form of the act: for example, both are used in the Twelve Tables, well before the appearance of the consensual contract of *emptio venditio* (see tab. 12, 1 = GAI. 4, 28; tab. 4, 2b = *Tit. Ulp*. 10, 1 and GAI. 1, 132; on these issues see FIORI 1999, p. 14 ff.). The same can be said with regard to *locare* and *conducere*, which are not exclusively connected to the contract of letting and hiring, but rather express the economic-social interest to usefully 'place' a thing or a person and to 'conduct' them to make the most of them. Also in this case the verb *locare* can already be found in the Twelve Tables (tab. 12, 1 = GAI. 4, 28), and until the 2nd century BC the sources employ in a quite undifferentiated way the verbs *emere* and *conducere* on the one side, and *vendere* and *locare* on the other side. For example, in Plautus we find expressions like *emere* or *vendere operam* (PLAUT. *Epid*. 120; *mil.* 1076) beside *locare* or *conducere operam* (PLAUT. *aul*. 455; *rud*. 843–844; see also *locare conducere agnos caedundos* in PLAUT. *aul*. 567–568 and *capt*. 818–819). Indeed, since in public contracts of letting and hiring — which were not protected by the formulary trial (cf., with regard to public works,

these verbs could express a number of different legal forms of acquisition — temporary or definitive, creating a right on a thing (*mancipatio, traditio, in iure cessio*) or an obligation (*stipulatio* or consensual contract) — so that without further details the identification of the act is impossible. Therefore, if we have to infer from the analogy with Roman law — as it is suggested by the theory here discussed — the verb *cenu* is of no help in identifying the nature of the transaction. We may suppose a transaction more similar to a contract of letting and hiring than to a sale only if we were certain that the land remained in the ownership of the Cušu: but the only hint for this is the genitive *cušuθuras larišališvla*[33], that may simply have the purpose of identifying the parcel of land as the object of the transaction ('the land of the Cušu sons of Lariš')[34].

According to a second interpretation[35], the act would be similar to the Roman *in iure cessio*, i.e. a fictitious lawsuit where the defendant did not react to the declaration of ownership pronounced by the plaintiff before the magistrate, substantially transferring him the right of property. It has been suggested that in our case the land in the ownership of Petru Ščevas had been claimed by the brothers Cušu, whose estate was still undivided, as in the Roman *consortium ercto non cito*. Moreover, since the Roman *in iure cessio* is attested already in the XII Tables, it has been proposed that it may have been introduced under Etruscan influence at the time of the so-called Etruscan kings, whose strong central power would be consistent with the role of the magistrate in the procedure.

This interpretation also raises difficulties. Assuming the Roman *consortium ercto non cito* as a model, we could not explain why both the brothers Cušu acted as plaintiffs: when the property was undivided, it was enough for one brother to bring the claim. In addition, at the time of the *tabula*, the Roman procedure *per legis actiones* did not allow more than one plaintiff[36], while in the Etruscan document both brothers are mentioned. Neither the *consortium ercto non cito* nor the *in iure cessio* can therefore be taken into account.

In conclusion, comparison with Roman law seems not to help in the interpretation of the *tabula*. Until the text can be better explained through linguistic analysis, all that can be deduced from it is that it deals with a

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Trisciuoglio 1997, espec. p. 200 ff.; as for the *agri vectigales*, the picture is more complicated: cf. Fiori 1999, p. 23 n. 31) — the terminological uncertainty continues (see Fest. p. 516 L s.v. *vend<itiones>*; Hyg. *cond. agr.* 116, 11 ff. Lachmann; *CIL*, I², 585 = *FIRA*, I, 8, l. 25 and ll. 85–89 [*lex agraria*, 111 BC]; *CIL*, I², 756 = IX, 3513 = *FIRA*, III, 72 ll. 8–11 [*lex a Vicanis Furfensibus templo Iovis dicta*, 58 BC]); *CIL*, I², 594 = *FIRA*, I, 21 c. 82 ll. 32–34 [*lex Ursonensis*, 44 BC]), it is probable that the distinction between *emptio venditio* and *locatio conductio* was strictly connected to the formulary procedure, i.e. to the tipicality of the actions: a tipicality that, if I am not wrong (cf. Fiori 2016b, p. 565 ff.), in sale and letting and hiring — as in all contracts protected by formulas with *demonstratio* — may have arisen only after the *lex Aebutia*, i.e. after the end of the 2nd and the beginning of the 1st century BC.

33 Facchetti 2000, p. 65.

34 As for the lack of a date for the end on the supposed *locatio conductio*, Scarano Ussani 2003, p. 42–43, has objected that it is difficult to think of an integration of the contract by the 'Etruscan legal order', because at this time the political entities of Central Italy were rather cities with their own laws — just like Rome.

35 Scarano Ussani 2003.

36 It has to be remembered that *in iure cessio* is the result of a (although fictitious) lawsuit, however subject to the rules of procedure. During the 3rd–2nd century BC, it was performed as a *legis actio sacramenti in rem*: the formulary *rei vindicatio* had not arisen yet, being introduced after the *lex Aebutia*, while the *agere per sponsionem* — the bridge from the *legis actio* to the *formula* — was performed as an *actio in personam*, and therefore had a structure inconsistent with a judicial transfer of property (see for all Talamanca 1990, p. 444–445). It is common opinion that — with the sole exception of the so-called *iudicia divisoria* or of the *actio auctoritatis* — the *legis actiones* did not allow more than one plaintiff or defendant: if the claim was indivisible, each party was entitled to stand trial alone for the whole claim; if it was divisible, there were as many trials as were the parties (see for all Pugliese 1962, p. 230 ff.).

transfer of land between Petru Ščevas and the brothers Cušu. Moreover, given the number of interpretations, there seem to be no clues to help us clarify who was the transferor and who the transferee, whether the transfer was temporary or definitive, if it endowed the transferee with a position similar to the Roman *dominium*, *possessio* or *detentio*, and least of all to give a legal qualification of the act. In such uncertainty, it is impossible to trace the influences of one legal system on the other[37].

6. The difficulties encountered in the interpretation of the *tabula Cortonensis* — one of the longest texts which have survived in Etruscan language and therefore, at least theoretically, one of the most promising — are in my view significant to show how little can be deduced from the sources about the relation between Roman law and the laws of the peoples of ancient Italy[38].

For reasons of context, a mutual influence is highly probable at least until the 3rd–2nd century BC, and for the same reasons it is probable that after this date it was Roman law that influenced the Italian law systems. However, when from the general assertions we try to go into details, the study becomes nearly impossible. On the one hand the Italian evidence is scant and sometimes obscure, and since it does not consist of juristic treatises but rather of documents of legal praxis or statutes, the texts take for granted a number of information unknown to the modern reader. On the other hand the Roman evidence, although richer, is affected by the characteristic features of the Roman idea of law: since the acceptance of foreign institutions did not need an express reception but simply an adaption of the novelty to the pre-existing system, the sources give poor indications of the process.

To the modern scholar, this means that reliable proofs of relations and influences between Roman law and the laws of the peoples of ancient Italy come firstly from linguistic and textual analysis, i.e. from the formal evidence offered by etymologies and formulary structures[39], and only secondly from the juristic study of institutions, which only in rare cases allows to identify true instances of reception.

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37 The idea that the Roman *in iure cessio* arose during the so-called Etruscan monarchy because of the strong central power of this king (Scarano Ussani 2003, p. 52–53) is not consistent with what we know of the procedure: in *in iure cessio* it was essential that the defendant remained silent, while the magistrate had simply a role of acknowledgement; there was no coercive intervention of the magistrate, consistently with the general features of the Roman private procedure, that was a private business to such an extent, that some scholars even exclude the presence of the magistrate until the 367 BC (Nicosia 1986 and Nicosia 2012).

38 The situation is not very different with regard to the Italic sources, on which see for all Poccetti 2009.

39 To give some examples, an Etruscan influence on the creation of the ceremony of triumph is proved by the derivation of Lat. *triumpe* from Gr. θρίαμβε, that can be phonologically explained only thinking of an Etruscan mediation (it is the theory by Kretschmer 1923, p. 112, upheld by Versnel 1970, p. 48–55). An influence of Roman law on Oscan institutions is proved by Osc. *kvaísstur*, that must derive from Lat. *quaestor*, because it does not follow the regular Sabellic development k^w- > *p*- and implies a Latin borrowing (cf. for all Untermann 2000, p. 423–424). The transmission of legal concepts from Roman to Etruscan law may be proved by the fomula *acilune turune scune* in the Cippus Perusinus: it has been suggested that it corresponds — with a variation in the word-order — to the Roman *dare facere praestare* (Manthe 1979, p. 270 ff.), the three verbs which express the content of the obligation (Paul. 2 *inst.* D. 44, 7, 3 pr.): a correspondence that, if true, may represent the older (indirect) evidence of the series. However, even in these cases we have evidence of the origin, not of the sameness of the institutions: in different context, they may have evolved differently.

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