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KINSHIP AND SOCIAL STRUCTURE OF EARLY ROMAN SOCIETY: SUBSTITUTION IN FUNCTION THE FATHER AND THE SON

The king's family in Rome represents the model of social relations in the early period of Roman history. Roman mythology and legends offer examples of kinship and the social interaction of persons which are not characteristic of Indo European societies. Early social structure, in the time of the seven kings, left vestiges in both the legends and the language. Parallel to that in existence in Rome and some other countries is the structure in primitive societies, which were investigated by L. H. Morgan, B. Malinowski, and other early anthropologists, who based their conclusions on direct contact with communities in America and the Pacific in the nineteenth and early twentieth centuries, and anthropologists today who conducted their research in Africa. The elementary family type, father mother children, characteristic of the Indo European society from antiquity until to day, is not attested as a social entity in the legends concerning the Roman kings.

Key words: *Roman kings. Social structure in early Rome. Pater and filius. Epicleros. Vesta. Daughter heiress.*

In his study *Structure and Function in Primitive Society*, Radcliffe-Brown formulates the relation of the kinship and the social system as follows: "The idea is that in a given society we can isolate consequentially, if not in reality, a certain set of actions and interactions amongst persons which are determined by the relationships of kinship or marriage, and that in a particular society these are interconnected in a such way that we can give a general analytical description of them as constituting a system".¹ What is of particular importance here is his further statement

¹ A. R. Radcliffe Brown, *Structure and Function in Primitive Society*, London 1965, 6 ff. especially 10 11.

that institutions, if such a term is used to refer to the ordering by society of the interactions of persons in social relationships, have this double connection with structure, with a group or class which can be said to be an institution and with those relationships within the structural system to which the norms apply. The conduct of persons in their interactions with each other is controlled by norms, rules and patterns. Along with that, he states that the basis of science is systematic classification.

This statement could be fully applied to early Rome. Roman society in historical times was, as were those of other Indo-European peoples, strictly patriarchally organized. The Roman family was monogamic and based on the father's power over his wife, his sons and their wives, his daughters until their marriage and his grandchildren. The schema of the family group in the Indo-European society with the classificatory system is reconstructed as follows: father, son, and grandfather with their families, all of the wives and children controlled by the *pater*. The grandfather in the father line could be a *pater*. His power extended to all members of the family; his wife, his sons with their family, wives and children, and all daughters before marriage. Daughters were excluded from the family after marriage².

Stories about mythical heroes and kings which are preserved in the works of Livy, Dionysius of Halicarnassus and Plutarch, and other Roman and Greek authors prove that social structures in early Rome differ from the later known ones. Mythology and legends offer examples of kinship and the social interaction of persons which are not characteristic of Indo-European societies. Early social structure, in the time of the seven kings, left vestiges in both the legends and the language. Parallel to that in existence in Rome and some other countries is the structure in primitive societies, which were investigated by Morgan, Malinowski, and other early anthropologists who based their conclusions on direct contact with communities in America and the Pacific in the nineteenth and early twentieth centuries and anthropologists today who conducted their research in Africa³. They could contribute essentially in understanding some of the social structures of early society in antiquity.

² E. Risch, "Verwandschaftsnamen und Struktur der Familie", *Museum Helveticum* 1, 1944, 115-122.

³ H. L. Morgan, *Ancient Society*, New York 1879; J. G. Frazer, *Totemism and Exogamy, A Treatise on Certain Early Forms of Superstition and Society*, I-IV London 1910; B. Malinowski, "Der Vater in der Psychologie der Primitiven", in: *Gesellschaft ohne Staat II, Genealogie und Solidarität* (ed. F. Kramer), Chr. Siegrist 1983, 31-61. Theoretical studies by P. Francisci and J. Franciosi also open the way to the new approach to the early Roman past and structure which are common to many peoples on the determined level of development when the only certain kinship was based on the blood relationship with the common mother (P. de Francisci, *Primordia civitatis*, Rome 1959; G. Franciosi, *Clan gentilizio e strutture monogamiche. Contributo alla storia della familia Romana*. Corso di diritto romano I II, Naples 1975-1976; "La formazione della comunità

1. KINSHIP AND SOCIAL FUNCTION: THE FATHER

The language reflects the social relationship, action and interaction as well as the structure of the society. In his *Vocabulaire des institutions indoeuropeen*, Benveniste made a clear distinction between the general term and those signifying the personal kinship relations in Indo-European languages. In the social structures and the classification process in ancient societies biological kinship was not always the decisive element; *pater* is not necessarily the biological father, *filius* is not always the real son. Even the mother could be replaced by another woman, as was Rea Silvia by Larentia. The primitive nuclear Indo-European family does not have a term for marriage, *pater* is not the biological father, *filius* did not originally designate the son, and the term for cousins is missing. *Pater* in the Indo-European language (*skr. pitar, arm bayr, gr. pater, lat. pater, got. fadar etc.*) does not mean the physical father.⁴ Parallel terms existed signifying the classificatory and physical kinship, *pater – atta, mater – anna, frater* and *adelphos* and *frater germanus* *lat. Maritus* was a Latin word, unknown in the original Indo-European and in Greek, because there was no marriage at the beginning. Benveniste also noted that the vocabulary, Greek above all, denotes the different social structure which was probably not of Indo-European origin.⁵

The concept of paternity in the Indo-European social structure is not absolutely valid. In the primitive stage of development in many societies *pater* is not necessarily the biological father; he was not a blood relative but a social institution. *Pater* has a social value, and does not represent a sentimental connection. He is the institution which existed when the man accepted the child as his own or when marriage was instituted. In some societies in the ancient world this happened some months or even some years after the child was born.⁶ *Pater* and *filius* existed if their mutual connection was established. *Filius* existed only in the rela-

politica romana primitiva”, *Conferenze romanistiche*, 1951, Milano 1960, 69-105; “Il processo di Virginia”, *Mnemeio Siro Solazzi*, *Bibl. di Labeo* I, 1964, 135-169; “La plebe senza genti e il problema della ‘Rogatio Canuleia’”, in: *Ricerche sulla organizzazione gentilizia Romana* (a cura di Gennaro Franciosi) I, Roma 1984, 121-179; Esogamia gentilizia e regalita Latina. ‘L’ecternus heres’ e la successione obliqua”, *Ricerche sulla organizzazione gentilizia Romana*, III, ed. G. Franciosi Roma 1995, 53-67; B. Linke, *Von der Verwandtschaft zum Staat, Die Entstehung politischer Organisationsformen in der frühromischen Geschichte*, Leipzig 1995.

⁴ E. Benveniste, *Le vocabulaire des institutions Indo européennes*, Paris 1969, 209 ff.

⁵ E. Benveniste, 217 etc. This conclusion is proved by examples such as Zeus Heraios and the couple Hera Heracles, as well as the Greek words for brother, *adelphos* and *casignetos* which could not be explained by the reference on the matrilineal filiation.

⁶ See n. 11.

tion to the father. Risch remarks the absence of special terms designating the mutual kinship between such blood relatives as brothers and sisters' children and for the grandparents. They were all called sisters and brothers because they all were subject not to their physical father but to the *pater familias*, most often to their grandfather.⁷

The king's family in Rome represents the model of the social relations in the early period of Roman history. The elementary family type, father – mother – children, characteristic of the Indo-European society from antiquity until to-day, is not attested as a social entity in the legends concerning the Roman kings. The father is not recognized as belonging to the family in the early society in Rome.⁸ The king's father is mostly unknown, and there is no evidence concerning the king's relation to his descent. In the king's family in early Rome no son inherited the father's position. Linguistic data concerning kinship show that the structure was not necessarily patriarchal. In the legends about the Roman kings as they are preserved in the works of the classical authors who lived in a society which was strictly patriarchal in character, as the Roman one was in this historical period, the father is lacking. Romulus's father does not exist, the father of Servius Tullius was either *ignotus*, or illegitimate, and the fathers of the remaining Roman kings, except that of Tarquinius Priscus, are not recorded. As an adjustment to the patriarchal system the father appears in the later literature as an imaginative figure, as a god, Mars for Romulus, Vulcan for Servius Tullius, or as a disguised relative (Amulius) or even as a symbol, represented by a phallus in the hearth.⁹ The king's son is seldom recorded, but never as heir and successor. The son of Numinor is mentioned by Dionysius from Halicarnassus, but he had to disappear from the story in time because he was unimportant as the heir or successor. He was killed while hunting.¹⁰ The king's daughter on the other hand had an important duty, to procreate and produce a child as her father's future successor in the generation that was to follow. Between the king and his grandson the daughter's husband is sometimes attested as king, as was Aeneas between Latinus and Lavinia's son, or Servius Tullius between two Tarquinius. The pattern of the king's family, as it appears not only in Roman society, but also in Latium, can be seen as a very simple one: the king, who does not exercise any power over his children or his wife, has a daughter whose son could inherit the throne in the third generation. This pattern is shown in Latinus-Lavinia-Ascanius or Silvius

⁷ E. Risch, 117

⁸ E. S. Hartland, *The Primitive Paternity, the Myth of supernatural Birth in Relation to the History of the Family*, London 1909, with examples in societies in Europe, Asia and other countries from the Middle Ages until recent times. Many nations did not recognize the problem of paternity.

⁹ Livy, I 4, 1 2; Dionysius of Halicarnassus, I 77, 1; Plutarch, *Romulus*, II 5 6

¹⁰ Dionysius of Halicarnassus, I 76, 2

and again Numitor – Rea Silvia – Romulus, Numa Pompilius – unnamed daughter – Ancus Marcius. Between the grandfather and grandson there is usually a stranger on the throne, the son-in-law, except in the case of Romulus. Between Numitor and him is his uncle Amulius. Institutions in function, the mother and her son and the mother's father, are crucial in the line of succession. That means that the daughter and her children had to stay in her father's clan and to follow this kinship line. It could be suggested that the son went to live in his wife's clan, the form which is known in primitive societies. Romulus, however, did not stay in his mother's clan; his destiny leads him outside the family of his grandfather Numitor and uncle Amulius. Even later, when the victory over Amulius enabled them to return, Romulus and Remus left Alba Longa. In all likelihood the son had to leave the original clan, as is the custom in some primitive communities to-day. The king's daughter appears in the tradition as the mother of the future king (Rea, Tarquinia II?), the son-in-law was the successor to the throne (Aeneas, Servius Tullius, Tarquinius Superbus). Roman society was divided into those who could declare who their father was – *qui patrem ciere possint* called patricii, and plebei who could not do so even later in the historical period, until the middle of the fourth century BC.¹¹ There were societies in the ancient world in which it was necessary to publicly recognize a child as belonging to a certain father some years after his birth. This custom is described by Nicolaus Damascenus in the tribe of Liburni in Dalmatia: Similar procedures are known in some other communities in the antiquity.¹²

The father and the relation father – son appears not as a biologically conditioned connection, but as a position defined by custom. In many societies the function of the father in raising children was performed by the mother's brother. In some primitive peoples the relationship mother's brother – sister's son is also present today as the most important kinship relation. An illuminating example of the relationship between an uncle and a nephew in the society of the Trobriands is described by B. Malinowski.¹³ These indigenous people believe that the mother creates the child from her own flesh and blood and that there are no links connecting it to its father. The brother and the sister are also created from the same substance, as they descend from the same mother. This view has influenced the definition of descent and the order of succession in the ranks of leadership, inherited positions, magic and all the rules in transmission according to kinship. In all these cases, a person transmits his

¹¹ M. Mirković, "Der Vater und die Patrizier: *qui patrem ciere possint*", *Klio* 86/2004, 83–100.

¹² Jacoby, *FrGrHist* IIA 103d; Arist. *Pol.* II 1,13; J. Bachofen, *Das Mutterrecht*, Basel, 1897², 27; M. Mirković, "Son in law, Mother's brother, and Father in Lycian Inscriptions", *ZSS RA*, 128/2011, 352–365.

¹³ B. Malinowski, 31 etc.

own social position in the mother's line to his sister's children. This conception exclusively of matrilineal kinship is of crucial importance for the regulation of marriage, taboos and the relationship between the sexes. The feeling of kinship is extremely intense in the case of the death of a group member. The social rules defining the burial and mourning ceremonies, as well as the relevant expenses, prescribe that only those who are connected by the mother's line constitute an indivisible group in the intensity of feeling and interests; all the rest, even if they are connected by marriage, such as the father or child, are strictly separate and, naturally, cannot take part in the loss. Although the institution of marriage is known to the people from the Trobriand Islands they do not recognize the husband's role in bringing up the child. The father is defined socially as the person who marries the mother, who lives in her house and is a member of the household. He does not exist as a father in the sense he has in our society.

There are some modern parallels. In South Africa a good deal of importance is attached to the relationship of the mother's brother to his sister's son. Radcliffe-Brown considers the relation of a man to his relatives on the mother's side and to his mother's in the Friendly Islands in his own time. The peculiar relation between a sister's son and a mother's brother also exist between a daughter's son and his mother's father. The daughter's son must be honored by his grandfather. He is a "chief" to him. The mother's father and the mother's brother are the objects of a very similar behavioral pattern. The custom in some tribes in Africa today of calling the mother's brother *kokwana* (grandfather) is significant. According to the records that deal with the customs of the Ba-Tonga people, the sister's son has certain special rights over the property of the mother's brother. Anthropologists regard those customs as being connected with matriarchal institutions, and hold that their presence in a patrilineal people could be regarded as evidence that this people were at some time in the past matrilineal.¹⁴

The mother's brother was important in early Greek society as someone who could exercise power and make decisions in society instead of the king. A well known example is the case of Creont, the brother of the king's wife, Iokasta, in the myth of Oedipus. He was the uncle of Oedipus and the great-uncle of Eteocles and Polinices, as well as of An-

¹⁴ A. R. Radcliffe Brown, "The mother's brother in South Africa", in: *Structure and Function in Primitive Society*, 15 etc. He does not agree with the idea that the customs relating to the mother's brother can only be explained by supposing that at some past time these peoples had matrilineal institutions and that the children in South Africa be longed to the social group of the mother. He explains this as follows: "Where the classificatory system of kinship reaches a high degree of development or the elaboration of another tendency makes its appearance: the tendency to develop patterns by regarding the former as a sort of male mother and the latter as a sort of female father".

tigone and Ismene. After Oedipos' death, he became the supreme political authority in Thebes, who also made decisions on the cult and prohibited Antigone and Ismene from burying their dead brothers and was even able to punish them. This system is known in some other Indo-European peoples. Tacitus reports that among the Germanic people the sister's son enjoyed the same honors from his uncle as from his own father. This blood connection was regarded as even more sacred and closer than that with the father. The German tribes preferred to have them because they trusted them more than those belonging to the extended family.¹⁵

The term *avunculus*, designating the mother's brother, is preserved in Latin. There is no doubt that the mother's brother once existed as an institution in Rome, but *avunculus* has no importance in the legend about the seven kings. However, the memory of him is preserved in the legends. Ancus Marcius' uncle¹⁶ is mentioned; the mother's brother appears in the legend about the end of the kingdom in Rome. Lucretia's husband Tarquinius Collatinus, her father Lucretius Tricipitanus, and Iunius Brutus, her *propinqui* (relatives), were the main actors in revenging her death, Livy, I, 58–59. In Servius' commentary of *Aen.* VIII 646, Iunius Brutus appears as her *avunculus*, meaning her mother's brother. In reality, he represented the last remnant of the old system in which the *avunculus* was as important as the father was later. The memory of the mother's brother who protects his sister's daughter is preserved in the Virginia story, which is placed by Livy in the middle of the fifth century.¹⁷ Livy, *Ab urbe condita* III 44, linked this with the plebeians' struggle for written laws. M. Bettini was one of the scholars who pointed out this case.¹⁸ The *avunculus* appears as one of the main actors in the dramatic events in the story of the girl Virginia and Appius Claudius, one of the ten elected members of the commission chosen to bring the XII Tables laws in Rome, in the middle of the fifth century. The story reflects a social structure that was older than the patriarchal system. When Appius Claudius tried to abduct the plebeian girl Virginia under the pretext that she was his slave girl, it was her *avunculus* Numitorius who defended her. *Avunculus* might have represented the remnant of an old system before the classificatory father was established as an institution. The important element in the story is that Virginia, who was protected by her mother's brother, is of plebeian origin. As a plebeian girl, Virginia had no certain father and was considered a slave. In Livy's story the father who was absent all the time

¹⁵ Tacitus, *Germania*, 20,5: *Sorum filiis idem apud avunculum qui apud patrem honor; quidam sanctiorem artioemque hunc nexum sanguinis arbitrantur et in accipien dis obsidibus magis exigent tanquam et animam firmiter et domus latius teneant*..

¹⁶ Plutarch, *Numa*, V 2–4 and IX 4.

¹⁷ Livy, III, 44 ff. Cf. R. M. Ogilvie, *A Commentary on Livy Books 1–5*, 476 ff.

¹⁸ M. Bettini, *Antropologia e cultura Romana, parentella, tempo, imagine dell'animata*, Roma 1986.

appears at the end as a frightened Indo-European *pater*, who had the right to exact extremely harsh punishment and to kill his own child. This act of extreme cruelty seems more like revenge on Appius Claudius, who was a patrician, than the right of a plebeian biological father to the life and death of his children. One more element in the story could be recognized as the remnants of an older social system: Icilius, another plebeian in the story, was designated as Virginia's betrothed, but not her husband, which could be explained by the fact that plebeians had no right to *matrimonium iustum*. Thus, the story contains the elements of kinship in the mother's line (*avunculus*) and plebeian customs (betrother), and, at the same time, the patriarchal structure with the father, who had the right to the life and death of his children. The absence of the father from the story was, until the last moment, as Livy tells us, symbolic. He had to fight the enemy, but he had no right to defend his biological child because the plebeians still had no right to marry legally or to have legal posterity. The *avunculus*, as the mother's brother, was the next relative whose duty was to defend Virginia, and he appears in this role. The *avunculus* and the father appear successively in the story, because in reality they belonged to different stages of the social development.

It is no accident that Livy placed the story of Virginia in the time of the plebeians' struggle for their civil rights, above all, the right to *conubium*, which they were granted thereafter, in 444 BC. It symbolizes the transition from the matrilineal to the patriarchal system with the father at the head of the family. Virginia was a plebeian girl and plebeians retained the old system longer than the patricians, according to which kinship on the mother's side was more important than that on the father's. We can suppose that the father appears later, at the end of Virginia's story, not as a plebeian father but as a *pater familias* with the right of a dominant patrician father. This right came together with the *matrimonium iustum* when the plebeians accepted the patriarchal system and the *patria potestas*, which demonstrates its cruelest form in this story. With the *lex Canuleia* which gave them the right to marry legally, plebeians were included in the society whose members were entitled to name their fathers, *qui patrem ciere possent*.¹⁹ The point about the story of Virginia is to show that in order to solve a problem in the family in one way or another, it was necessary to have a father, which meant belonging to the patrician class in which only the father could decide about the destiny of his children, property and inheritance.

The *avunculus* belonged to the mother's family and was part of the matrilineal system. He was the main figure in raising his sister's children in a social system that was based on the blood relationship: brothers and

¹⁹ M. Mirković, "Der Vater und die Patrizier: *qui patrem ciere possent*", *Klio* 86/2004, 108 ff.

sisters were children of the same mother, they were *homogalaktai*. The Latin term *avunculus*, the mother's brother, derived from *avus*²⁰ who was the common father of the mother and her brother. In some Indo-European languages *avus* denoted not the grandfather, but the uncle on the mother's side²¹. Both *avus* and *avunculus* derived from blood kinship.

The uncle – nephew relationship persisted in the classical period but it was more affective than formal, as opposed to the relationship with a strict and sometimes cruel father.²² The succession of the uncle by the nephew was probably less exceptional, as supposed by M. Beekes, who discusses this question in terms of classical law. In the historical period, the uncle – nephew tie could have been more or less affective, as has been suggested by Beekes and others, but in the early stage of social development it represented a relationship that was closer than the link with the biological father.²³ There was a difference regarding the uncle in early Roman history; in the case of Iunius Brutus in the story of Lucretia and Numitorius and in the story about Virginia on the one hand, and his later position in Roman society in the time of Augustus. The former belonged to the social system in which the sister's brother was a socially recognized institution. In this early social structure, it was the uncle's duty to protect and raise his sister's children. This relationship was not based on affection but was regulated by the customs of the primitive community.

2. DAUGHTER HEIRESS IN THE PLACE OF THE MISSING SON: *EPICLEROS*

The substitution of the father by the mother's brother could be expected in the structure based on the blood relationship; the relationship father – son is fundamental in the patriarchal society. In the patriarchal family only the son of the family could organize the *sacra* in the proper

²⁰ Festus, 14 M states: *Avunculus matris meae frater, traxit appellationem ab eo quod aequae tertius a me, ut avus est, sed non eiusdem iuris: ideoque vocabuli facta deminutio est* “The avunculus as my mother's brother is so named as the third in the line beginning from me, like the grandfather, but not of the same *iuris* as he is”.

²¹ E. Benveniste, 223

²² As characterized by M. Bettini and thereafter by J. Bremmer. Bremmer discussed the problem of the relationship between the nephew and uncle in his article *Avunculate and postorage*, *The Journal of Indo European Studies* 4, 1976, 65 ff. comparing cases taken from two different systems, the one prevailing probably under the kings in Rome and the other that only existed in classical times. An affective relationship was the most likely explanation for the example of Augustus and his nephew Marcellus. It was Augustus' personal choice, not expected duty, which would have been prescribed by the customs of the community.

²³ R. S. P. Beekes, “Uncle and nephew”, *The Journal of Indo European Studies* 4/1976, 43–64.

way and only the male heir could continue the family cult. The ancestral cult could only be transmitted by the male descendants.²⁴ The problem arose when there was no son in the family. *Filia familiae suae finis*. Introducing the dispute regarding the epicleros as daughter heiress W. Westrup limited his arguments to the historical époque. The institution of the *epicleros* in Greece and the *putrica* in India, represent for him the crucial argument for the thesis that the daughter could not inherit except in those families without a son. Even in such cases the daughter could neither inherit nor dispose of property as long as the father was alive. The daughter's son became the heir when he grew up. Westrup describes the daughter as the main heir as follows: In the sonless family *epikleros* and *putrika* serve to perpetuate the family and its cult. By giving birth to the heir *epikleros* and *putrika* transmit the inheritance and the paternal sacra. But they themselves do not inherit, they are merely the intermediate link between the grandfather and the grandson, between the bequeathed and the heir. The inheritance does not pass on to the daughter, it passes on together with the daughter for temporary management, to the nearest male relative, whose right and duty it is to marry her in order to fall definitively to the son who may be born of this marriage, i.e. the heir, when he comes of age.²⁵

The phenomenon of the daughter taking over the position of the son in a sonless family is widespread in different countries in the Balkans in the nineteenth and twentieth centuries and in some remote regions even today. They could be paralleled with the Greek *epikleros* as suggested by S. Avramović.²⁶ In northern Albania in the nineteenth and twentieth centuries this social model is called *virginesa* or *virgina*, *tobelias* in Montenegro, *ostajnica* in Serbia and *blagarica* or *blagastica* in Croatia. This status is often assumed after the father's death. The metamorphosis of the daughter into the missing son is followed by changes to the name in the masculine form and her appearance is accommodated to that of men: she dresses like a man and her behaviour is masculine; she may be equipped with arms and practice hunting. There are different kinds of virginese: some of them changed their status as children because the father or the community, akin to the phratia, decided so. These types of heir usually vowed to remain unmarried and could continue the gens only as long as they lived. However, some of them produced children outside marriage and thus continued the gens. The adoption of the closest male relative's children is another way of preventing the extinguishing of the family. A

²⁴ See W. Westrup, *Introduction to Early Roman Law. Joint Family and Family Property*, Copenhagen London 1934, II 102 ff.

²⁵ W. Westrup, 110. See Theilheim, *Epikleros* in *RE VI A*, 1907, 114 etc.

²⁶ S. Avramović, "Response to Monique Bilé", *Symposion 1993, Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (ed. G. Thür), Wien 1994, 58 ff.

blagarica in Croatia is allowed to marry a relative in order to prevent the property from being transferred outside the gens.²⁷

These examples could help in understanding not only the *epicleros* in Greece, but also the phenomenon of the daughter heiress in Rome. Legends concerning early Rome know of two daughters heiresses, Lavinia and Rea Silvia. Lavinia was betrothed to her relative, the son of her *amita*. However, she did not marry him, but the extraneous Aeneas: thus the principle of exogamy prevailed. Rea Silvia in Rome is a daughter heiress and must have been close to the *epikleros* in the Greek world. As the king's daughter and his only child she had to choose between two possibilities: to marry a close relative as *epicleros* in Greece or to stay unmarried and to become a Vestal Virgin. The first possibility could be connected with her uncle Amulius, the closest male relative who appears in one version of the story as the possible father of her children Romulus and Remus. As she did not accept him, Amulius proclaimed her a Vestal Virgin in order to prevent her from having children. Vesta's priestesses had to remain virgins. Rea chose neither of the two possibilities but opted for the third and produced children with somebody outside the clan. The father was also identified as a suitor or the god Mars himself, in both cases somebody outside her own gens. Rea was punished not because she produced children out of wedlock, but because she broke the family rule and gave birth to children outside her gens. That is why she was punished and the children had to be killed.

The fact that Rea was proclaimed a Vestal Virgin is crucial in explaining the position of the daughter heiress who broke the rules of the gens. That leads us to the question of the real nature of this institution. Modern research on the possible original position of the Vestal in the king's house in Rome starts with the question: was she in reality the king's wife or daughter? There are elements in the cult (maintaining the fire in the Vestal temple, preparing the *mola salsa*) which could be equally used as proof that Vestals performed the duties of a matrona or of the daughter of the house. Hommel, like M. Beard after him sees Vestals as the wives of the early kings.²⁸

²⁷ The examples are recorded by V. Bogišić, *Zbornik sadašnjih pravnih običaja u južnih Slovena* I, Zagreb 1874; Fr. S. Krauss, *Sitte und Brauch der Südslaven, nach heimischen*, Wien 1885. A short notice is consecrated to the problem by T. Djordjević, "Do mazetstvo", *Naš narodni život*, 1984, 466 470. See also small contributions by M. Barjaktarević, "Prilog proučavanju tobelija (zavetovanih devojaka)", *Zbornik Filozofskog fakulteta Beograd* 1, 1948, 843 852; P. Šarčević, "Sex and Gender Identity of 'Sworn Virgins' in South Eastern Europe: Historical Perspectives", in: *Womenhood and Manhood in XIX and XX Century* (eds. M. Jovanović, S. Naumović), Belgrade Graz 2002, 125 143.

²⁸ See H. Hommel, "Vesta und die frühromische Religion", *ANRW* I, 2/1992, 397 420. M. Beard, "The Sexual Status of Vestal Virgins", *JRS* 70/1980, 13, cites five major

It is not possible, on the one hand, on the level of real life to take any of these home duties as specific either for *matrona* or for daughters, and on the other, the earliest known examples of Vestal Virgins suggest that Vestal Virgins must have originally been the daughters of the family: Rea Silvia was the daughter of the king or the king's brother, and the Vestal Virgin Tarpeia who gave the name to the rock on Capitol Hill in Rome was also known as the daughter of King Titus Tatius and his only child. Although it is true that Rea Silvia gave birth to children, she could not have been a matron because she was not married. Rea's original position was that of the daughter heiress and that allows us to compare her with *epikleros* in Greece. The daughter as the only heiress in Greek law was forbidden to marry, except to the next male relative, her father's brother or his son.²⁹

The daughter heiress could take over the role of the male heir in two main duties: first of all she had to take care of the property and prevent its transfer outside of the gens. This meant either to marry a relative, an uncle or his son, or to remain unmarried. The former solution meant the continuation of the gens; the son born from this union could inherit the gens' property and cult. The latter represented the way of the Vestals: as the last in the family she had to take care of the home and hearth, meaning the common cult as if she were a son.

Discussing the sexual status of the Vesta priestesses M. Beard emphasizes the male aspect as a very important element in the nature of Vestal Virgins. She suggests that the priestesses of Vesta were regarded as playing a male role and were, in part, classified as masculine. Certain of their privileges are, she concludes, almost exclusively associated with men so that it is at least arguable that the priestesses were regarded as playing a male role and were in part, classified as masculine.³⁰ Vestals enjoyed the services of a lictor in Rome, a right with a particularly male association. Even later in the historical times the occasional granting of this privilege to the wives of emperors must have been connected with their role as the priestesses of *divi* and hence the imitation of vestal privileges. Since this privilege could only be enjoyed by men in Rome it

factors as proof that Vestals represented the wives of the early Roman kings. Several of the ritual tasks are closely related to those of the early Roman *mater familias*, primarily the guarding of the hearth, and the preparation of *mola salsa*, the annual cleaning of the *aedes vestae*. None of these duties could be qualified as characteristic of the wife, and not of the daughter. As M. Beard argued, virginity would not mean total abstinence from sexual intercourse, but rather chastity (*puclitia*). As one of her direct arguments she cites the data that in the year A.D. 9 Augustus granted Vestals all the rights of women who had borne children, thus legally assimilating their status to that of Roman matrons.

²⁹ *Epikleros* in *RE* VI A, 1907, 114 etc (Theilheim).

³⁰ M. Beard, *JRS* 70, 1980, 17 ff. Her further dispute about the sexual status of Vestal Virgins see the paper Re reading (Vestal) virginity, *Women in antiquity, New assessment*, (ed. R. Hawley, B. Levick), London New York 1995, 167-177.

seems that the lictor accorded the virgins certain elements of masculine status. Furthermore, Vestals were granted some rights in the court that were generally associated with men only. As Aulus Gellius and Plutarch imply they alone among all women were *testabilis*, i.e. capable of giving evidence. That would have been appropriate for the time preceding classical law. This privilege, considered very male, was subsequently granted occasionally to other categories of women in Rome. Vestals could bequeath property in their own right and unlike other categories of women, without undergoing the process of *capitis deminutio* and without the need for the tutor's permission as they came out of *tutela* when they entered the order. Their testamentary powers were defined in male terms. The privileges enjoyed by Vestals testify more to their legal independence than to the sexual ambiguity of their nature. In the classical period they are connected with men in Roman society.

This statement is significant when debating the origin and primary nature of this order. It is clear to M. Beard that these Vestal privileges in this respect are treated as something particularly un-female, and thus most naturally, male. Her explanation is covered by the suggestion that the Vesta priesthood was originally held not by virgins but by men. The male aspect might have had a social meaning in the developmental stage which left no traces in the written tradition. The debate about the male aspect of the Vestals in the very early stage of religious development could contribute to an understanding of the origin of the institution of the virgin order in a society where the accentuated idea of fertility in their nature was a sign of prosperity and the continuity of the clan.

The male elements characteristic of Vestals could be explained by the fact that they had to be the substitute for the son in the family. The male rights characteristic of Vestal Virgins could have meant that they had to take the place of the missing son. Rea was proclaimed a Vestal Virgin by her uncle Amulius, her next relative. If she was the daughter and the only heiress she united two of these characteristics in one person: i.e. she was not allowed to marry. The position of Rea Silvia is that of the Vestal who has born sons outside of her gens. By producing children she violated both the vow of chastity and the custom of the only heiress remaining unmarried.

If we bear in mind the fact that the legend has two versions: one in which the father of her children was the god Mars, that means extraneous, and the second which presents the possibility of the father being her uncle Amulius disguised as the god Mars, Rea's crime could be explained in two different ways, either in terms of the customs of an early society as a violation of the rules provided for Vestals or as an infringement of family law in the classical era. She might have transgressed as a Vestal Virgin who broke the vow of chastity (the version with Mars as the father) and

gave birth to twin sons, or because of engaging in sexual intercourse with her uncle (the second version with Amulius as the father) in a society which was exogamic. By proclaiming Rea a Vestal, Amulius's intention was to prevent the only daughter of his brother Numitor from marrying outside the gens. By declaring her a Vestal Virgin, Amulius intended to prevent her from giving birth to her father's future successor. This could have brought about the transition of the property and power outside the family, which is what happened when Rea's children were saved: with Romulus Silvii ceased to be kings. The center moved from Alba Longa to newly founded Rome.