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The “Appropriateness” of Dowry: Women and Inheritance in the Papal States in the Early Nineteenth Century

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Abstract

Through consultation of two judicial proceedings, I will explain the relevant role that the institution of the dowry played in nineteenth-century Papal States, and I will highlight how the notion of its “appropriateness” was framed and how fluid its boundaries were. If, at the time of Napoleon’s conquests, the *Code Civil des Français*, or its translated Italian version, the *Codice Civile pel Regno d’Italia*, gave the opportunity to all children to inherit from their father regardless of their gender, with the Restoration, the return to the previous legal *régime* meant a deterioration in women’s condition. Once again, women could only ask for a dowry and were excluded from any other right on paternal inheritance. The first *motu proprio* of Pope Pius VII (1816) provided that the dowry was to be equal to the *legitima portio*. This provision was quickly repealed a few years later, and the dowry returned to be just “appropriate” to the social class of the wife. In other words, it went again from an arithmetical definition to a vague concept of appropriateness, its amount being definitely lower than even the *legitima portio*.

Keywords

dowry, women, law, Napoleonic code, Papal States

“Si veggono [...] sussistere de’ secoli, col mezzo de’ maschj, li più illustri casati, che ritengono colle loro sostanze lo splendor del loro cognome ad ornamento di queste contrade.”
(through centuries the most illustrious families prospered by means of men, who, thanks to their substance, preserved the splendor of their name to adorn these lands).¹

The words used by the Vicenza jurist Giovanni Maria Negri are a powerful reminder of the social structure of the nineteenth-century Italian peninsula. The importance given by society to men, as honour, prestige and name were considered to be transmitted through the male line, led to women’s exclusion by law from inheritance of consistent shares of their parents’ patrimony. As a compensation, women were entitled to receive only dowries, sometimes very scant, and this resulted in the huge difference between men’s and women’s patrimonies.

The dowry was a woman’s economic contribution to the family she was going to be part of after getting married. Therefore, its main purpose was ‘*ad sustinenda onera matrimonii*’, to bear the burden of matrimony. Formally belonging to the woman, the dowry was managed by her husband, who also collected the interests it produced. As marriages created alliances and links with other families, the constitution of the dowry had great significance and it was a process in which even friends and relatives participated with their means.² The dowry, which was the only right of women to paternal inheritance, was also the

¹ Negri, G.M., *Dei difetti del Codice Civile Italico, che porta il titolo di Codice Napoleone e dei pregi del Codice Civile Austriaco*, Vicenza, 1815, pp. 76-7. In this text, the author criticised the Napoleonic code introduced in almost the entire Italian peninsula a few years earlier.

² Having a dowry was very important to a woman to play a role in the marriage market to the extent that on several occasions all over the Italian peninsula some charities drew dowries for poor but deserving girls. See,

economic support of women when their marriages ended.

Its amount was to be ‘*congrua*’ (appropriate), given the spouses’ and their families’ status, and the value of their patrimony. The concept of appropriateness had very fluid boundaries and the amount of an appropriate dowry was framed by consuetudes, both local and familial.

This article will examine the implications of the concept of appropriateness and the difference between sons and daughters in regard to inheritance in the Papal States during the early decades of the nineteenth century.³ In particular, after a brief overview on the legal framework concerning the institution of the dowry, I will use two judicial proceedings as case studies. These will be analysed to demonstrate that, in spite of several laws passed in the period from the end of eighteenth century and the mid-nineteenth century, which granted equal rights to women regarding inheritance, in practice nothing changed with regard to their status and their access to wealth. Families continued to give women only dowries, the amounts of which were definitely lower than the portion of inheritance given to men. The two cases that I am going to examine were reported in the *Giornale del Foro*,⁴ a journal of jurisprudence published in the Papal States from 1816 up to 1875, and which were a guidance for courts that had to deal with similar cases. These cases also give us an insight into families’ dynamics and customs,⁵ and testify how the concept of ‘appropriateness’ of the

for example, *Archivio della Biblioteca Federiciana di Fano, 1846, Documenti vari*, where documents show that many dowries were drawn to celebrate the election to the papacy of pope Pius IX. Along with dowries given during particular events, these were also provided by some charities to spinsters ‘*d’onesta condotta e di povera condizione*’ (of good moral conduct and poor). See, for example, Moroni, G., *Dizionario di erudizione storico-ecclesiastica da S. Pietro sino ai nostri giorni*, Vol. XXXIX, Venice, 1861, pp. 476-8. See also Kirshner, J., ‘Pursuing Honor While Avoiding Sin: The ‘Monte Delle Doti’ of Florence’, *Quaderni di studi senesi* 41 (1978), pp. 1-82.

³ A brief overview on the legal status of women in the Papal States can be found in Delmedico, S., *Breve studio sulla condizione giuridica della donna nello stato pontificio dell’ottocento*, [n. p.]: [lulu.com], 2014. Several studies have been undertaken on various aspects of women’s history: in particular, see Duby G., and Perrot, M., *Storia delle donne, L’Ottocento*, Rome and Bari, 1991; Calvi, G. and Chabot, I. eds., *Le ricchezze delle donne: diritti patrimoniali e poteri familiari in Italia*, Turin, 1998; Bock, G., *Le donne nella storia europea. Dal Medioevo ai giorni nostri* (Rome: Laterza, 2001); Anna Bravo et al., *Storia sociale delle donne nell’Italia contemporanea* (Rome: Laterza, 2001); Simona Feci, *Pesci fuor d’acqua: donne a Roma in età moderna*, Rome, 2004; Clark, L.L., *Women and Achievement in Nineteenth-Century Europe*, Cambridge, 2008.

⁴ From 1816 to 1824, *Giornale del foro* was called *Raccolta delle più importanti decisioni dei Supremi Tribunali di Roma in materia contenziosa* and from 1824 to 1833, the title was changed to *Giornale del foro: raccolta delle decisioni e massime più importanti dei supremi tribunali di Roma in materia contenziosa*. In 1833, the title became to *Giornale del foro ove si raccolgono le decisioni e massime più importanti dei supremi tribunali di Roma e dello Stato Pontificio in materia contenziosa*, and, from 1839 up to its last issue, the title slightly changed to *Giornale del foro: in cui si raccolgono le più importanti regiodicate dei supremi tribunali di Roma e dello Stato Pontificio in materia civile*.

⁵ With regard to family, see Goody, J., *Production and Reproduction: A Comparative Study of the Domestic Domain*, Cambridge, 1976; Goody, J., *The Development of the Family and Marriage in Europe*, Cambridge, 1983; Barbagli, M., *Sotto lo stesso tetto. Mutamenti della famiglia in Italia dal XV al XX secolo*, Bologna, 1984; Melograni, P. and Scaraffia, L., eds., *La famiglia italiana dall’Ottocento a oggi*, Rome and Bari, 1988; Kertzer, D.I. and Saller, R.P., *The Family in Italy: From Antiquity to the Present*, New Haven and London 1991; Marzio Barbagli, and David I. Kertzer, eds., *Storia della famiglia italiana, 1750-1950*, Bologna, 1992; Vecchio, G., *Profilo storico della famiglia: la famiglia italiana tra Ottocento e Novecento*, San Paolo, 1999; Lombardi, D., *Matrimoni di antico regime*, Bologna, 2001; Kertzer, D.I. and Barbagli, M., eds., *The History of the European Family*, New Haven and London 2001-2003; Ungari, P., *Storia del diritto di famiglia in Italia (1796-1975)*, Bologna, 2002; Porciani, I., ed., *Famiglia e nazione nel lungo Ottocento italiano: modelli, strategie, reti di relazioni*, Rome, 2006; Lombardi, D. *Storia del matrimonio dal Medioevo a oggi*, Bologna, 2008.

dowry was handled and exploited by courts and families, who profited from its fluid boundaries.

1. Dowry, from ancient times to the nineteenth century

Dowry was an ancient institution approximately dating back to the II century BC.⁶ Its provision was once a moral and social obligation, and not providing the dowry to a daughter was a sign of extreme poverty.⁷ The exact time when it became a juridical obligation is still debated among scholars: some determine its origin in the *Lex Iulia de Maritandis Ordinibus* (18 BC), while others locate it in a constitution of the Roman emperors Septimius Severus (146-211 AC) and Caracalla (188-217 AC). However, it is generally accepted that the dowry became a legal obligation at the time of the Byzantine Emperor Justinian, in the sixth century.⁸ Later, during the Early Middle Ages, the custom of constituting a dowry lost importance and was substituted by other institutions such as the *faderfio*, the value of which was negligible.⁹ In the twelfth century, the rediscovery of the *Corpus Iuris Civilis* of Justinian led to a revival in the use of the dowry,¹⁰ which began to replace a daughter's rightful share of paternal inheritance. The so-called *exclusio propter dotem*, 'exclusion because of the dowry', gained the force of law and became part of the *ius proprium* of the *communes*.¹¹ Not all statutes in force during the *Ancien Régime* had the same provisions: despite every statutes firmly excluding women from access to paternal inheritance and providing that a dowry was to be given instead, some statutes ruled that a dowry had just to be 'appropriate' to the *status* of the families involved in the marriage, and to local and familial consuetudes. Other statutes gave a more precise yardstick to calculate a dowry as they specified that, to be considered appropriate, it had to be equal to the *legitima portio*. Statutes and legal acts usually did not describe how the *legitime* was calculated, and, for topics not covered, Roman law was to be used. In particular, according to Novel 18, 1 of the *Novellae Constitutiones*, enacted by the Byzantine Emperor Justinian from 534 until his death in 565, the *legitima portio*, or the portion of estates that could not be bequeathed by will, was a third of the deceased's estate, if there were four or less children, and a half if children were more than four.

During the *Ancien Régime*, several sources of law, such as municipal statutes, Roman,

⁶ See Fayer, C., *La familia romana: aspetti giuridici ed antiquari*, vol. II, 2 vols., Rome, 1994, p. 673.

⁷ Fayer, *La familia romana*, p. 673.

⁸ For a further discussion see Fayer, *La familia romana*, pp. 717-37.

⁹ On the *faderfio*, see Criscuolo, F., *La donna nella storia del diritto privato italiano*, Palermo, 1885, pp. 49-50; see also Bellomo, M., *Ricerche sui rapporti patrimoniali tra coniugi*, Milan, 1960, pp. 61-3.

¹⁰ See Criscuolo, *La donna nella storia del diritto privato italiano*, pp. 49-50; see also Bellomo, *Ricerche sui rapporti patrimoniali tra coniugi*, pp. 61-3; Bellomo, M., 'Dote (diritto intermedio)', *Enciclopedia del diritto*, Vol. XIV, 16 vols., Milan, 1958-1965, p. 9.

¹¹ Bellomo, *Ricerche sui rapporti patrimoniali tra coniugi*, pp. 163-84. A number of studies dealt with dowry during the Middle Ages up to the Late Renaissance, see Bellomo, 'Dote (diritto intermedio)', *Enciclopedia del diritto*, pp. 8-32; Chojnacki, S., "Dowries and Kinsmen in Early Renaissance Venice", *The Journal of Interdisciplinary History* 5/4 (Spring, 1975), pp. 571-600; Goody, J., Thirsk, J. and Thompson, E. P., eds., *Family and Inheritance - Rural Society in Western Europe, 1200-1800*, Cambridge, 1979; Kaplan, M.A., ed., *The Marriage Bargain: Women and Dowries in European History*, New York, 1985; Kuehn, T., *Law, Family and Women: Toward a Legal Anthropology of Renaissance Italy*, Chicago, 1991; Bellomo, M., *La condizione giuridica della donna in Italia. Vicende antiche e modern*, Rome, 1996; Goody, J., 'Dowry and the Rights of Women to Property', in Hann, C.H., ed., *Property Relations: Renewing the Anthropological Tradition*, Cambridge, 1998, 201-213; Green, D.R. and Owens, A., *Family Welfare: Gender, Property, and Inheritance since the Seventeenth Century*, London, 2004; Kirshner, J., *Marriage, Dowry, and Citizenship in Late Medieval and Renaissance Italy*, Toronto, 2015.

canon and customary law, formed the legal system of the Papal States. It was a fragmentary framework with a vast amount of law norms often conflicting and overlapping.¹² Moreover, as the pope was, at the same time, the head of a religious institution, the Catholic Church, and a temporal ruler, an important role was played by religion and religiosity. The papal courts, in addition to having to deal with this important *corpus* of legislation, often had concurrent powers between them and were fluid in their judgements, focusing also on the reputation and the position of a person in society, and on the defendant's morality.

With regard to dowry, the turning point was represented by Napoleon's conquests which unified, for a period of time, the Italian peninsula both politically and legally.¹³ The first law acts promulgated during the French revolution, in particular Law 6 Thermidor V (24 July 1797), which together with other acts formed the so-called *droit intermédiaire*,¹⁴ and, later, Napoleon's *Code Civil des Français*,¹⁵ introduced real novelties in the *Ancien Régime* legal systems. Along with the abrogation of the *paterna paternis, materna maternis* principle used to identify the origin of assets to regulate inheritance,¹⁶ the *Codice Civile pel Regno d'Italia*, the translated version of the *Code Civil des Français* applied to the Italian peninsula, gave the opportunity to all children to inherit regardless of their gender.¹⁷ Therefore, the constitution of the dowry was admitted, but it was just considered as an advance on parental inheritance. Despite the French laws providing that daughters should inherit in the same way as sons, families continued to circumvent this rule through legal acts in which women gave up their inheritance rights in favour of their brothers. Well before the introduction of the Napoleonic Code, while constituting dowries, families used to ask women to sign documents by which they renounced any future right on their parents' patrimony. These waivers were considered valid even by the Napoleonic Code,¹⁸ which means that during the two decades

¹² On this point, see also Grossi, P., "Tradizione e modelli nella sistemazione post-unitaria della proprietà", *Quaderni Fiorentini per la storia del pensiero giuridico moderno* 5-6 (1976-1977), pp. 203-4.

¹³ After Napoleon's conquests, several states existed in the Italian peninsula: Kingdom of Italy and the Kingdom of Naples, for example, even if formally independent, these states were under Napoleon's hegemony.

¹⁴ The *droit intermédiaire* comprised the laws promulgated in the areas under the French Empire between 1789 and 1804. It is called *intermédiaire* to evoke the idea of a transition period between the *Ancien Régime* and the Napoleonic Code.

¹⁵ From the date of its enactment, the Civil Code of 1804 was in force in the territories already conquered by France, such as Piedmont, and was progressively extended to others as they were conquered, such as Parma and Piacenza (1805), the areas in northern Italy called by Napoleon the Kingdom of Italy (1806), the Principality of Lucca (1806), Tuscany and the Kingdom of Naples (1809), and the Papal States (1809 and 1812). The code, which was the work of a committee of jurists appointed by Napoleon and led by Jean-Étienne-Marie Portalis, consisted of 2281 articles, retained the tripartite division of the Roman law (*personae, res, actiones*) and was strongly influenced by the Roman law in force in the south of the country. The *Code civil des Français*, generally known as Code Napoléon, was promulgated on 21 March 1804. Its Italian translation, the *Codice Civile pel Regno d'Italia*, was applied by decree on 30 March 1806, and unified the legal *régime* of the entire peninsula, with the exception of Sicily, Sardinia and some territories of the Venetia. Despite the Italian jurists' and politicians' attempts to introduce changes that would be more suitable to the country's juridical tradition, Napoleon's will in preventing the introduction of codes other than a direct translation of the *Code Civil des Français* prevailed. See Ghisalberti, C., *Unità nazionale e unificazione giuridica in Italia*, Rome, 1988, p. 135. See also 'Decreto di promulgazione', 16 January 1806, in *Codice civile di Napoleone il grande pel Regno d'Italia*, Milan, 1807), p. 687.

¹⁶ Art. 732, in *Codice Civile del Regno d'Italia*, in *Collezione Completa dei Moderni Civili*, Turin, 1845, p. 42. The expression *paterna paternis, materna maternis* was used to signify that goods coming from the father of a deceased person descended to his paternal relations and those from the mother to the maternal side.

¹⁷ Art. 745, in *Codice Civile del Regno d'Italia*, p. 43.

¹⁸ Despite the Napoleonic code ordering that it was forbidden to renounce to the inheritance of a person still alive (see art. 791), jurisprudence considered these waivers as valid and equated to contracts. On the basis of art. 1164, a contract could express a particular circumstance which could be the object of an obligation. But

between the Napoleonic conquests and the Restoration, provisions that permitted women to inherit were overridden in practice.

With the Restoration, the law in force during the *Ancien Régime* was recalled and, if, on the one hand, institutions such as the *fideicommissum* faced a decline, on the other, women's legal status worsened again. From a juridical standpoint, the repeal of the Napoleonic Code meant that daughters were again excluded by law *propter dotem*.

Immediately after the Congress of Vienna, most monarchs of the Italian peninsula introduced new legal acts. In the Papal States, too, as soon as he returned to power, Pope Pius VII abolished the French legislation, repealed the laws in force prior to the Restoration, and shortly thereafter introduced several civil law reforms by means of the *Moto proprio della Santità di Nostro Signore papa Pio VII sull'organizzazione dell'amministrazione pubblica del 6 luglio 1816*. This act ordered that an appropriate dowry was to be equal to the legitime, the amount of which was to be based on Roman law.¹⁹ This article, which was intended to be applied only to those not yet dowered at the time of their father's death, allowed women to have a certainly quantifiable dowry.

A few years later, in 1824, Pope Leo XII issued another *Motu Proprio* concerning the reform of public administration. The part of the article providing that the dowry was to be equal to the *legitime* was removed.²⁰ The dowry went again from being equal to the *legitime* to having just the legal requirements of 'appropriateness', which meant that its value could be uncertain and extremely flexible, calculated as it was according to several, different criteria: the status of the family, its patrimony, consuetudes observed among the family and among families of similar status. Besides, a dowry was considered appropriate without any further appraisal if a woman married a man of her social class.²¹

Social status was crucial in eighteenth and nineteenth century. Despite several changes taking place in Europe, and in the Italian peninsula as well, such as the French revolution with its ideals, agricultural crisis and industrialisation, the society was still rooted in its strict class stratification. In this context, a *familia* was a sort of 'micro-monarchy' with a patriarchal structure and its own hierarchies and consuetudes. Yet in the nineteenth century as well as in the Middle Ages, the *familia* '*accipitur in iure pro substantia*' (was considered by law for its goods),²² and a key issue was preserving the patrimony in its entirety.²³ The marriage of its female members was very important, as it created alliances and was a way to increase the family's importance. At the same time, however, it was crucial not to dissipate the family's wealth with conspicuous dowries. To such a static society, it might have been difficult to accept and assimilate the changes introduced by the French Revolution and its

this would not automatically exclude every other cases which could arise '*a termini di ragione*' (in terms of reason). Therefore, acts of renunciation to their rights signed by married women were effective, if drawn up with the same formalities of a contract. See Art. 1164, in *Codice Civile del Regno d'Italia*, p. 66.

¹⁹ Art. 113, in *Moto proprio della Santità di Nostro Signore papa Pio VII in data de' 6 luglio 1816 sull'organizzazione dell'amministrazione pubblica*, Rome, 1816, p. 47.

²⁰ Art. 117, Tit. IV, *Moto proprio della Santità di Nostro Signore Papa Leone XII in data dei 5 ottobre 1824 sulla riforma dell'amministrazione pubblica della procedura civile e delle tasse dei giudizi*, Rome, 1824, p. 22.

²¹ Art. 116, Tit. IV, *Moto proprio della Santità di Nostro Signore Papa Leone XII in data dei 5 ottobre 1824*, p. 22.

²² De Saxoferrato, B., *Commentaria in primam infortiati partem*, Lyon, 1551, p. 75.

²³ On this point, see also Romano, A., *Famiglia, successioni e patrimonio familiare nell'Italia medievale e moderna*, Turin, 1994, pp. 1-3.

droit intermédiaire, and then by the Napoleonic code.²⁴ As we will see in the judicial proceedings examined in the next sections, not only common people were not culturally ready to conceive the idea that a woman could inherit like a man, but courts, too, hindered this possibility.

2. The Fiscaris. A Family from Velletri

The first case I am considering in this article is a lawsuit initiated in 1825, in which Maria Grazia Fiscari, a woman from Velletri, a town near Rome, the capital city of the Papal States, sued her brother Benedetto to obtain what was due to her by law after the death of her father. Her brother held the whole inherited patrimony, including her dowry, as it was common in that period. Indeed, several judicial proceedings showed that sons, especially the first-borns, took over their father's role of *paterfamilias*, thus becoming the head of the family, administering the family's patrimony, and managing their sisters' dowries as well.²⁵ Women, despite being in a subordinate position, were aware of the few rights they could enjoy and did not hesitate to resort to a judge and initiate a lawsuit.²⁶

In 1825, in her claim before the bishop of Velletri, judge of first instance, Maria Grazia asked for 3500 *scudi*: this money came from the dowry of her mother (in the Papal States, women could inherit from other women),²⁷ from the *legitima portio* over the inheritance of her brothers Paolo and Cesare, from her dowry, and from the dowry that her sister Maddalena had bequeathed to her before dying at the age of 43 without being married. However, she also pointed out that she was not asking for more money because she wanted to '*venerare i voleri dell'amato Genitore*' (honour the wishes of her beloved father), and was aware that her dowry was constituted on the basis of the Statute of Velletri, where Maria Grazia and her family lived.²⁸ The amount of a dowry as provided by this statute was to be given '*inspecta conditione personarum, et viribus Patrimonii*' (taking into account the people's status and the strength of their patrimony),²⁹ and had been constituted by her father Francescantonio in an *inter vivos* donation. The exact date of this act and of the death of Francescantonio are

²⁴ With regard to inheritance laws, the first legal acts issued during the French Revolution improved the status of women. However, despite scholars considering family law provisions of the Napoleonic code as reactionary if compared to the Constitutions of the Sister Republics of Italy, and to what the Revolutionaries had envisioned, this code 'appariva l'immagine stessa della rivoluzione [e] uno *standard* giuridico che ancora per molti decenni si presenterà come una meta' (appeared as the emblem of the Revolution itself [and] a juridical *standard*, which, yet for many decades, was to be pursued as a goal), Ungari, P., *Storia del diritto di famiglia in Italia (1796-1975)*, Bologna, 2002, p. 104, see also pp. 93-124, and Vismara, G., *Il diritto di famiglia in Italia dalle riforme ai codici: appunti*, Milan, 1978, pp. 25-51. However, as the French historian Jean-Louis Halpérin argued, the Napoleonic code was 'révolutionnaire' (revolutionary) for what concerns goods and contracts, 'réactionnaire' (reactionary) for what concerns family and 'transactionnel' (transactional) with regard to inheritance and matrimonial regime. Besides, despite being considered egalitarian, 'il y a dans le Code civil des personnes plus égales que d'autres: les maris par rapport aux femmes' (in the Civil Code, some people are more equal than others: husbands compared to wives), Halpérin, J.-L., *L'impossible Code Civil*, Paris, 1992, pp. 276-277. See also Gordley, J., 'Myths of the French Civil Code', *The American Journal of Comparative Law*, 42/3 (Summer 1994), pp. 459-505.

²⁵ See the cases of various families living in the Papal States, for example Rosselli versus Rosselli, *Giornale del foro* 1 (1844), pp. 245-251; Livi versus Livi D'Antonj, *Giornale del foro* 2 (1853), pp. 166-170; Vasurri versus Longhi, *Giornale del foro* 7 (1839), pp. 24-30.

²⁶ See, for example, Delmedico, S., "Alimenti e dote alla periferia dello Stato Pontificio: la famiglia Pucci", *The Italianist* (2017), forthcoming.

²⁷ Art. 114, Tit. IV, *Moto proprio* (1824), p. 22.

²⁸ *Giornale del foro* 1 (1825-1828), p. 161.

²⁹ *Statuta Civitatis Velitrarum* (1544), p. 76.

unknown but we can assume from the text that they both took place at the time when the French laws were in force in the Papal States (from 1797 to 1799 or from 1809 to 1814). In the *inter vivos* donation, he also gave all his goods to his only son Benedetto and constituted a monastic dowry to his daughter Matilde, who wanted to become a nun. To his other two daughters Maddalena and Maria Grazia, Francescantonio provided the so-called ‘*decente trattamento*’ (decent treatment),³⁰ for as long as they wanted to live within their natal family and constituted a 1,000-*scudi* dowry each to be given to them at the time of their marriage.

In the case of the Fiscari family, the donation was made during the Napoleonic conquests, on the basis of the Statute of Velletri, which stated that the only right guaranteed to daughters on paternal inheritance was an ‘appropriate’ dowry. As we already mentioned, honour and prestige were considered to be transmitted through the male line, and, therefore, the Statute of Velletri, as that of other towns of the Italian peninsula, explained that the aim of this rule was ‘*Ad conservandas Agnationes, et familiarum dignitates, quas per masculos, non foeminas conservari notissimum est*’ (to preserve both agnation and families’ dignity, which was widely known to be transmitted through males and not through females).³¹

The Bishop of Velletri, while examining the case of Maria Grazia Fiscari, maintained that he could not judge on all her claims, and especially on those about the inheritance of her mother and her brothers. The *inter vivos* donation that Francescantonio, the father of Maria Grazia, had made was presumably aimed at excluding his daughters from the inheritance of their mother’s and brothers’ goods, which, as he was the *paterfamilias*, he held. In this way he wanted to favour Benedetto, his only son still alive. The Bishop of Velletri, therefore, explained that he could not rule over this part of the claim because he would have needed to invalidate the donation, whereas he maintained that Maria Grazia was entitled to receive 2,000 *scudi* which were the amount of her dowry and that of her sister who made her will in her favour. He ordered Benedetto to deliver the sum of 2,000 *scudi* to Maria Grazia, but her brother appealed the cause before the tribunal of the Sacra Rota.³²

From the time Francescantonio, the *paterfamilias* of the Fiscaris, drew up his *inter vivos* donation until 1825, several laws were passed in the Papal States, and despite French law granting women the right to succeed equally to men, as we saw, Maria Grazia had only asked for her dowry and not for a portion of paternal inheritance equal to that of Benedetto.

The patrimony of Francescantonio Fiscari, the father of Maria Grazia, Maddalena, Matilde and Benedetto, was worth 35,551 *scudi* and included also their mother’s dowry, the value of which was 10,500 *scudi*. On the basis of Roman law, in this case the *legitima portio* was to be the third part of Francescantonio’s assets, namely 11,333 *scudi*. As Francescantonio had four children, their *legitimes* should have been 2,962 *scudi* each. This means that a 1,000-*scudi* dowry was roughly less than half the *legitima portio*. However, the sum fulfilled the

³⁰ The terms ‘decent treatment’ meant the support provided to a person. On the basis of the Roman law (Ulpianus liber 33 Ad Edictum, in Digest, 24, 3, 22, 8), the person who held a woman’s dowry was obliged to ‘sustentationem sufferre et alimenta praestare et medicinae eius succurrere’ (to support, and to provide food and medicines). In particular, Papal jurisprudence pointed out that a husband had always to provide to his wife the “ordinary display”, namely clothes and ornaments for everyday life. See for example, *Giornale del foro* 2 (1839), p. 101. See also Art. 24, *Regolamento legislativo e giudiziario per gli affari civili*, Rome, 1834, p. 14.

³¹ Statuta Civitatis Velitrarum (1544), Lib. II, Cap. 23, in *Volumen statutorum, et ordinationum tam civilium, quam criminalium inclytæ civitatis Velitrarum*, 2nd edn, Velletri, 1752, p. 76.

³² *Giornale del foro* 1 (1825-1828), p. 167. On the tribunal of the Sacra Rota, see Salonen, K., *Papal Justice in the Late Middle Ages: The Sacra Romana Rota*, London, 2016.

legal requirement of ‘appropriateness’.

Benedetto based his appeal on his interpretation of article 120 of the 1824 *Motu Proprio*. As this article provided that, after the age of 25, women could ask for their dowries from their brothers or continue to live with them and receive alimony, he argued that this age was a sort of deadline by which the dowry had to be asked, or otherwise lost. Therefore, on his interpretation, Maddalena, their deceased sister, forfeited her right to a dowry because she had not sought it. As a consequence, she could not have made any bequest to Maria Grazia. Benedetto also maintained that Maddalena had a 1000-*scudi* dowry, but that he used to pay 72 *scudi* for her alimony instead of the 50 that were due to her as the interest of her dowry, taking into account the fact that, in the nineteenth century, the return of money was 5 per cent.³³ He did not want to give Maria Grazia her dowry either, because he claimed that it was not due until she married or became a nun.

Before the tribunal of the Sacra Rota, Maria Grazia’s lawyer claimed that a dowry was always due, no matter what, and if Maddalena had preferred to receive alimony in her natal home instead of her dowry, this alimony was to be given because her dowry, which was kept by Benedetto, generated interest. A woman who did not ask for her dowry did not lose her right to it, and therefore the possibility to dispose of it by will. Maria Grazia was 25 years old and had the right by law to obtain her dowry, even if she was not going to marry. Similarly, Maddalena, who, as we saw, died at the age of 43, had the right to a dowry and to bequest it to her sister Maria Grazia.³⁴

On 4 July 1825, the Sacra Rota, aiming to reassure ‘*la più dolce metà del genere umano di malconcepiti timori*’ (the sweetest half of mankind of ill-conceived fears),³⁵ argued that if a woman did not ask for her dowry she would not lose it as the exercise of this right was just deferred. She should receive alimony for as long as she had not obtained it, and, when at the age of 25, she could choose to receive her dowry or continue to be supported. The court explained that, on basis of the law Quintus Mucius,³⁶ women’s dowries were assumed to be their sole patrimony and other goods they could have were presumed to have been bought with the money of their husbands. The aim of this law was to defend women’s reputation and to avoid suspicion that these goods could have been purchased through an illegal trade. As a result, not having requested their dowries or having asked for it at a later stage would mean that women would remain without any goods at all,³⁷ and, ‘*sarebber punite di un riguardo usato a’ fratelli, non provocandoli subito giudizialmente, col morire indotate, ed intestate*’ (for having been respectful towards their brothers and not provoking them judicially, they would be punished by dying intestate and without a dowry).³⁸

The Sacra Rota ruled that Maria Grazia had the right to inherit the dowry of her sister

³³ See, for example, the judgement of Sacra Rota (30 April 1819) in the case Giannuzzi versus Apollonj, in *Giornale del foro* 2 (1819), pp. 33-40.

³⁴ Art. 118, Titolo IV, *Moto proprio della Santità di Nostro Signore Papa Leone XII in data dei 5 ottobre 1824 sulla riforma dell’amministrazione pubblica della procedura civile e delle tasse dei giudizi*, Rome, 1824, p. 23.

³⁵ *Giornale del foro*, 1 (1825-1828), p. 160.

³⁶ *Digest*, 24.1.51.

³⁷ See also Carillo, F., *Dizionario universale ossia repertorio ragionato di giurisprudenza e quistioni di diritto*: 4, Venice, 1836, pp. 1035-36; Forti, F., *Trattati inediti di giurisprudenza*, Florence, 1854, pp. 456-7. See also the discussion on the presumption that a wife’s goods were bought with her husband’s money in the case Gramiccia versus Querciola, *Giornale del foro* (1840), pp. 231-7 (in particular, pp. 231-4).

³⁸ *Giornale del foro*, 1 (1825-1828), p. 167.

Maddalena and pointed out that the dowry of 1,000 *scudi* was appropriate unless the contrary was proved, but this had to be done in a suitable way following a ‘scrupulous investigation’. Instead, six *scudi* per month as alimony were not too much as this was the amount her father used to spend for her when he was alive.³⁹

The dowries of Maria Grazia and Maddalena were a little higher than a third of the *legitima portio* they could have been entitled to, and fulfilled the requirement of ‘appropriateness’. Against the 1,000-*scudi* dowry provided to Maria Grazia, Benedetto inherited a patrimony worth more than 32,000 *scudi*, and, despite her dowry being so scant, Maria Grazia needed to bring her case before a court to obtain its delivery by her brother.

3. Waiver of future and unknown rights: the case of the Lega family

Another case in point, that of the Lega family, showed the difference between the inheritance portion of women and men. Silvestro Lega, from Fugnano, a small hamlet under the rule of Brisighella, near Ravenna in the Romagna Region, had three sons and three daughters. The three daughters all received a dowry when they married: Luigia married in 1786 with a 3,600-*scudi* dowry, Paola, in 1795, with a 2,200-*scudi* dowry, and Anna received 3,600 *scudi*, in 1797. They all signed a document by which they renounced any right to their paternal inheritance and declared that the constitution of their dowries was made on the basis of the Statutes of the towns of Brisighella and Faenza, where they were going to live after their marriage. Silvestro, their father, made his will in 1794, in which he devolved all his possessions to his three sons, Giovanni, Girolamo and Antonio, made a bequest of ten coins of gold to Luigia and Anna, and added a further 1,800 *scudi* to the dowry of Paola. Then, in 1800, through an *inter vivos* donation he gave all his patrimony to his sons, as also Francescantonio Fiscari did in the case I examined earlier. A few years later, in July 1810, he died plagued by mental health problems.

The three daughters sued their brothers claiming that the act of renunciation, the will and the donation were not valid because they violated their rights to succeed in the paternal inheritance. As the *droit intermédiaire* and the *Codice Civile pel Regno d’Italia* were respectively in force at the time of Silvestro’s donation to his sons and at the time of his death, the claim was made on the assumption that the three daughters were entitled to inherit as their brothers. In support of the lawsuit that they initiated before the court of Forlì, the three sisters also argued that even the acts they signed when receiving their dowries were void because Roman law explicitly forbade the renunciation to the inheritance of a person still alive.⁴⁰ Besides, these acts were equated to contracts, and, as provided by the Bull of Pope Benedict XIV, if signed by a woman or a minor, they were to be drawn up according to several formalities.⁴¹ Moreover, in this particular case, these acts of renunciation, which had been signed by Paola, Luigia and Anna at a time when they were not yet emancipated,⁴² were

³⁹ *Giornale del foro*, 1 (1825-1828), pp. 160-7.

⁴⁰ *Digest*, 38, 16, 16, De suis et legitimis heredibus, *Papinianus libro 12 responsorum*.

⁴¹ See *Benedicti XIV Bullarium*, 17 Vols, I (Prato: Aldina, 1845), pp. 479-90. In this regard, an important sentence, which was broadly cited in nineteenth-century jurisprudence, was the *Centumcellarum Pecuniariae, Lunae 20 Junii 1818*. In this case, the court, presided by the authoritative cardinal Joachim-Jean-Xavier d’Isoard (1766-1839), ruled that an act of renunciation to a mortgage drawn up by a woman was declared void because it did not respect the norms of pope Benedict’s Bull (Luigi Diomedi-Camassei, ed., *Decisiones Sacrae rotae romanae coram J. J. X. Isoard*, Rome, 1827, pp. 237-39).

⁴² The term emancipation was used to define the release of a *filiusfamilias* from the *potestas* his or her *paterfamilias*, i.e. the release of a person from his or her father’s or grandfather’s authority. Since ancient time

also considered very prejudicial to them and consequently had no force of law.⁴³

On 30 August 1811, the court ruled in their favour and ordered that Silvestro's patrimony was to be equally divided among his six children.⁴⁴ This decision was appealed by Giovanni, Girolamo and Antonio Lega several times.⁴⁵ The first appeal was initiated before the court of Bologna, which ultimately confirmed the first judgement.

Then, three further appeals were filed before the tribunal of the Sacra Rota in July 1816, in January and in March 1817. The final ruling overturned the initial decision, and the court supported instead the appeal of the three Lega brothers.

According to the sons' lawyer, the renunciation was valid because it was made against an appropriate dowry. The municipal statutes of Brisighella and Faenza provided that a dowry was to be calculated on the basis of the *portio legitima* but, he claimed, since their Rubric 24 began with the sentence '*statuimus quod mortuo patre*' (we establish that once the father had died), this referred only to the dowry brothers had to give on paternal inheritance after their father's death and not to the one given by the father himself while alive.⁴⁶ Besides, the sons' lawyer argued that in '*quasi tutto il mondo civilizzato, e particolarmente in Italia*' (all the civilised world and particularly in Italy),⁴⁷ the act of renunciation to the inheritance of an alive person was permitted by Canon law,⁴⁸ especially if it was accompanied by an oath.⁴⁹

The Lega brothers showed documents demonstrating that, among the most honest and

up to the promulgation of the Napoleonic code, emancipation was an act that had to be explicitly made by the *paterfamilias*. While the Napoleonic code ordered that emancipation occur automatically upon the attainment of the age of majority, with the Restoration and the code's withdrawal the situation returned to be that of the *Ancien Régime*. On the *patria potestas*, see also Cavina, M., *Il padre spodestato: l'autorità paterna dall'antichità a oggi*, Rome, 2007, pp. 171-5.

⁴³ *Raccolta delle più importanti decisioni* (1816), pp. 82-102. Even if signed with all the required formalities, contracts could be contested if there was an 'enorme' (huge) or 'enormissima lesio' (very huge infringement) of their rights. The *lesio* was 'enorme' if it exceeded the correct value of a contract by a half, while it was 'enormissima' if the right value was overrun by two-thirds. See also Boccardo, G., *Dizionario della economia politica e del commercio*, vol. III, 4 vols., Turin, 1859, pp. 59-60. For an overview on the concept of *lesio enormis* in Roman law, see Jolowicz, H.F., 'The Origin of Laesio Enormis', *Juridical Review*, 49 (1937), pp. 50-72; Baldwin, J.W., 'The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries', *Transactions of the American Philosophical Society*, 49/4 (1959), pp. 1-92; Watson, A., 'The Hidden Origins of Enorm Lesion', *The Journal of Legal History*, 2/2 (1981), pp. 186-193.

⁴⁴ *Ibid.*, pp. 82-6.

⁴⁵ In the Papal States, an important court was the Segnatura di Giustizia. This court was able to reverse the judgement of an inferior court and order to discuss again this case before the same court or before the courts of the Auditor Camerae or the Sacra Rota, which were higher courts. See Lodolini, E., "L'ordinamento giudiziario civile e penale nello Stato Pontificio (sec. XIX)", *Ferrara viva* I /2 (1959), p. 46, pp. 51-2 and p. 54. In this case the Segnatura di Giustizia ordered to discuss the case before the Sacra Rota, which did not reach a unanimous verdict. Therefore, this proceeding was debated other two times until a final decision was taken on 24 March 1817.

⁴⁶ *Raccolta delle più importanti decisioni* (1816), p. 90.

⁴⁷ *Ibid.*

⁴⁸ This rule contained in the chapter *Quamvis de Pactis* was issued by Pope Boniface VIII and included in his collection of decisions called *Liber Sextus* published in 1298. The chapter *Quamvis de Pactis* could be found in Johann Dauth, *Exposito capituli Quamvis de pactis in VI* (Frankfurt: Ex officina Paltheniana, 1597).

⁴⁹ Since ancient times, the oath was very relevant to confirm to a legal transaction. It was an act of religion through which 'God was the witness of the oath' (*Enciclopedia dell'ecclesiastico*, Vol. II, 4 vols., Naples, 1844, pp. 241-4. Its importance was also granted by the relevance it had in Canon law (Pertile, A., *Storia del diritto italiano: dalla caduta dell'Impero Romano alla codificazione*, Vol. IV, 7 vols., Padua, 1874, pp. 467-70.

wealthy people of Brisighella,⁵⁰ it was customary to give daughters dowries of 700, 1,500 or 2,000 *scudi*. Even among the Lega family, dowries had similar value and even Silvestro obtained from his wife a 1,500-*scudi* dowry. The lawyer argued that the patrimony of the family as such was not a parameter to be taken into consideration. In any case, its estimate was '*fatto a pompa*' (made with great pomp) because, in 1800, Antonio, one of Silvestro's sons, was to marry Domenica Nediani, a very wealthy woman, and the Legas wanted to show that they, too, were wealthy enough to achieve a good marriage. Therefore, '*un tratto di ostentazione non può di norma servire a stabilire la verità*' (a stretch of ostentation could not normally serve to establish the truth).⁵¹

In its judgement of 24 March 1815, the court of the Sacra Rota accepted this view. In particular, the court explained that the patrimony underwent many vicissitudes and due to

il turbamento d'Italia, il soqquadro delle pubbliche e delle private cose, l'aumento dei dazi, le contribuzioni, e gli aggravii a cui come tutte le altre primarie famiglie, quella dei Lega andò soggetta - [...] Silvestro [...] molti debiti contrasse, [...] uno de' figlioli [...] si illaqueò in debiti, dovè ricorrere al padre il quale disgustato da questo, dalla insolenza dei tempi, dal turbamento della domestica economia miseramente impazzò (the disturbance of Italy, disorders of public and private things, tariff escalation, contributions and burdens to which the Lega family as well as all other important families underwent - [...] Silvestro [...] incurred debts, [...] one of his children [...] was even ensnared by debts and had to resort to his father who, disgusted by this request, by the insolence of the times, by the disturbance of his patrimony, went miserably mad).⁵²

The court suggested that Silvestro's three daughters had to consider themselves very fortunate because of the provision that their father made for them. As a matter of fact, it had been advantageous to them '*aver la dote libera e sicura da ogni sinistro accidente*' (to have their dowries free and safe from any unexpected event), and their dowries were a very just and profitable compensation for them to quit their family).⁵³

The court agreed with Silvestro's sons and stated that women were entitled to succeed on the basis of Law 6 Thermidor. Nonetheless,

le rinuncie poi fatte ai simili diritti dalle donne maritate saranno operative ed efficaci, semprecchè riguardate come contratto possano essere sussistenti a termine di ragione. [...] Che per conseguenza l'ammissibilità delle donne alla consuecutione allora soltanto può aver luogo, quando investigata la validità delle rinuncie nulla per avventura si ritrovassero. (renunciation to rights signed by married women were operative and effective, if they were reasonable and made with the same formalities of a contract. [...] Only if after an investigation of its validity, the act of renunciation was found void, women were allowed to co-succeed).⁵⁴

Indeed,

sarebbe stato assurdo il toglier di mezzo patti stabiliti di comun piacimento, e turbar lo stato di quelle famiglie dale quali le donne, ricevuta una congrua dote, erano precedentemente uscite. (it would be absurd to dismiss pacts which were drawn up with satisfaction by the contracting parties and to

⁵⁰ As explained in an 1855-judicial proceeding, 'honesty', in a juridical sense, meant honour, dignity and comfort. See *Giornale del Foro ossia Raccolta di regiudicate romane e straniere* 1 (1855), p. 89. See also Vicat, B.P., *Vocabularium juris utriusque*, [n.p.], 1759, p. 94, where *honestum* is 'id, quod non modo licet, sed et virtuti et bonis moribus non adversatur, sed hoc amplius, quod decorum, conveniens honorique congruum est', 'what is not just permitted, but that does not oppose both virtue and good morals, and much more, that which is becoming, compliant and appropriate to honour'.

⁵¹ *Raccolta delle più importanti decisioni* (1816), p. 101.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

upset the state of those families which women left, after receiving a fair dowry).⁵⁵

Moreover, contracts signed with the required formalities could be contested only if very prejudicial and, as the court affirmed, this was not such a case. In particular, these acts of renunciation of the Lega sisters were not being made because the daughters stood in awe of their father as suggested by their lawyer: Silvestro's daughters renounced their rights because they were compensated with good dowries for being excluded from paternal inheritance and not because of a statutory provision. This was also the reason why their dowries were so opulent.

The Sacra Rota maintained that the acts of renunciation were valid as they were made in such an extensive way, and included future rights, too, particularly if made to renounce the paternal inheritance.⁵⁶ Besides, a father might provide a dowry lower than the *legitime*, but several requirements had to be met. In particular, the *status* of the spouses and families, and the customs of the area where they lived had to be considered and might be sufficient to conclude an 'honest' marriage, as was the case of the Lega sisters.

Similar to the case of Francescantonio Fiscari that we examined before, the daughters' dowries were far from being equal to the *legitime*: indeed, the *legitima portio* as calculated by the brothers' lawyer was worth 7,314 *scudi*. Therefore, his patrimony should have been worth 87,768 *scudi*. In this case, too, the dowries were less than a half of the *legitima portio*, but the court, nonetheless, considered the dowries as opulent.

4. Conclusion

The two cases examined were both taking place in the period immediately before the Napoleonic conquests up to the early decades of the Restoration. As has been seen earlier, the constitution of the dowry was first regulated by municipal statutes which provided that it had to be 'appropriate', and in rare cases equal to the *legitima portio*; then, the *droit intermédiaire* and the Napoleonic Code permitted all children to inherit from their father regardless of their sex, and the dowry was considered as an advance on paternal inheritance. With the Restoration, the first *motu proprio* of the pope, the one that allowed that the dowry was to be equal to the *legitima portio*, was withdrawn a few years later, in 1824.

The cases related showed that during the limited period in which things slightly improved for women, e.g. from 1797 to 1824, in practice nothing changed. Families continued to exclude women from inheriting large shares of their patrimonies by overriding the law through private acts of renunciation, and, when the *Motu proprio* of 1824 was introduced in the Papal States redefining again the dowry within the boundaries of 'appropriateness', this change was not even noticed.

The nineteenth century was a period of great changes, but we can observe that what the American historian Joan Kelly-Gadol described as a 'fairly regular pattern of relative loss of status for woman precisely in those periods of so-called progressive change' held true also by considering the legal framework of the Papal States, as well as that of the Italian peninsula.⁵⁷

⁵⁵ *Ibid.*, p. 100.

⁵⁶ *Ibid.*

⁵⁷ Kelly-Gadol, J., "The Social Relation of the Sexes: Methodological Implications of Women's History", *Signs* 1/4 (Summer, 1976), p. 810.

Indeed, while, in the nineteenth century, the restored monarchs promulgated new legal norms taking into consideration many aspects of the Napoleon code such as contracts and mortgages, which were assumed to be modern and adequate, family law, and women in particular, witnessed a '*vera e propria scure della reazione politica e morale*' (real axing of the political and moral reaction).⁵⁸

In this context, judges endorsed this trend by often ruling in favour of men. In particular, while explaining that they ruled to make everyone content and to provide the right everyone was entitled to, they very rarely ventured to move from the amount of dowries constituted by fathers: as we saw in the two case, dowries were confirmed as appropriate by courts. While in the Fiscaris' case, only a 'scrupulous investigation' could challenge its appropriateness, in the Legas' case the court declared explicitly that the dowries were 'opulent'. By recalling numbers, we saw that the dowries of the Fiscari sisters were worth 1,000 *scudi* each, while the patrimony inherited by their brother Benedetto was worth 30,000 *scudi*. The difference between the Legas was relevant too, namely the three daughters obtained roughly 4,000 *scudi* each and the three sons 25,000 *scudi* each.

With the Unification of Italy, the new code promulgated in 1865 permitted all children to succeed to their parents regardless of their sex. However, the path towards obtaining equal rights in all aspects of life was still long and the new *Civil Code of the Kingdom of Italy* still provided the dichotomy of the Napoleonic code by which women were entitled to protection while men to obedience, thus confirming again the subordinate position of women towards men.⁵⁹

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⁵⁸ Ungari, *Storia del diritto di famiglia*, 125.

⁵⁹ See, for example, articles 131 and 132 of the Civil Code of the Kingdom of Italy, in *Codice civile del regno d'Italia*, Turin, 1865, p. 35. This code bore the same name of the Italian translation of the Napoleonic code.

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