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Encouraging Marriage and Childbearing with Financial Penalties[1]

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ABSTRACT

The *Gnomon of the Idios Logos*, a second-century epitome of rules governing the Roman procurator's administration of confiscated property, devotes much of its text to the Augustan marriage laws. This paper asks which parts of those laws the epitome retains and which it leaves out. Comparing *Gn*. 24–32 with the jurists' accounts of the *lex Iulia et Papia Poppaea* and the senatus consulta that supplemented it, it argues that the epitome generally records the condition that triggers a forfeiture and its fiscal consequence, while omitting the rewards and the persons who could claim forfeited property before it passed to the fiscus. At several points (*Gn*. 25, 29 and the thresholds of *Gn*. 30 and 32) it adds to or departs from what the jurists report, and elsewhere (*Gn*. 39 and 46) it preserves successive layers of one rule. The *Gnomon* thus shows how the Augustan legislation looked from the desk of the fiscal official, and why, in this text, the promotion of marriage and childbearing survives mainly as a schedule of penalties.

Keywords: *Gnomon of the Idios Logos*, marriage laws, Augustan legislation, Roman Egypt, *lex Iulia et Papia Poppaea*, *bona caduca*, *fiscus*

[1] An earlier version of this paper was presented at the international conference *Cultures and Religions in the Balkans, the Mediterranean and the East*, University of Veliko Tarnovo, 20–21 November 2020. The *Gnomon* and the papyri discussed here are also treated, with commentary in Macedonian, in Тошева (2020) and Тошева (2021); the present article differs from that work in its question and its argument.

1. Introduction

The *lex Iulia de maritandis ordinibus* of 18 BC and the *lex Papia Poppaea* of AD 9 gave statutory form to the Augustan programme of encouraging marriage and legitimate offspring. They built on the older Roman conception of marriage *liberorum procreandorum causa*, while their novel combination of social aims and legal sanctions soon became a subject of contemporary literary response, most explicitly in Propertius 2.7.[2] The laws were also instruments of social control. Their penalties fell above all on citizens whose failure to marry or to have children affected their capacity to receive property by will, and their enforcement relied in significant part on testamentary sanctions, which created incentives for third parties—whether rival heirs or informers rewarded by the treasury—to bring violations to light.[3]

A selection of these rules is preserved in the *Gnomon of the Idios Logos*, a Greek epitome of rules for the procurator of the Idios Logos, the Roman official responsible for the administration of revenues and property falling to the fiscus. The epitome survives in two papyri, BGU V 1210 from the Arsinoite nome and P.Oxy. XLII 3014 from Oxyrhynchus.[4] Its prologue says that it abridges a rulebook established by Augustus and supplemented by emperors, senate, prefects and idiologi. Dolganov has shown that both papyri copy one epitome compiled under Antoninus Pius, and that the text should be read not as an informal compilation of Ptolemaic and Roman material but as a Roman administrative text.[5]

Until recently the *Gnomon* was used mainly as a quarry for individual rulings. Dolganov (2022) has analysed its Augustan material as a whole. At least 26 of its 62 chapters on status, marriage and inheritance derive from Augustan laws on marriage and manumission, and she reads the epitome as a fiscal lens on a status order of Romans, *astoi* and Egyptians, and as evidence that Augustan social engineering was meant to extend to the provinces.[6] Thoma (2016, 145–151) approaches the same

[2] See Wallace-Hadrill (1981); Treggiari (1991), esp. 66–80; McGinn (1998), 70–139; Astolfi (1996).

[3] On testamentary sanctions as a means of enforcement see Dolganov (2022). Tacitus (*Ann.* 3.25, 3.28) describes the informers whom the rewards of the Papian law set over the childless.

[4] Editions: Schubart (1919) for BGU V 1210; Parsons (1974) for P.Oxy. XLII 3014. Commentaries and studies: Uxkull-Gyllenband (1934); Riccobono (1950); Swarney (1970) on the office; Babusiaux (2018) on the law of succession.

[5] Anna Dolganov (2020, 169 n. 11), notes that the Arsinoite copy of the epitome — BGU V 1210 — has a terminus post quem of 23 August 149 CE, which is established by the grain-tax records on the recto (BGU IX 1893); she argues in the paper that the Oxyrhynchite copy (P. Oxy. XLII 3014) was also compiled in the reign of Antoninus Pius. Treggiari (1991, 78), likewise dates the *Gnomon* 'in the form in which we have it' to 150–161.

[6] On the legal position of women in Roman Egypt more generally see Тошева (2020) and Vandorpe and Waebens (2010).

material from the point of view of women's economic position: she reads the rules on women's inheritance (*Gn.* 28–33) as reflecting the aim of the Augustan legislation to limit the economic power of upper-class women without husband or children (146–147), and compares them with the rules for Alexandrian women (*Gn.* 6) and for women of other status (*Gn.* 9, 11, 13, 45–50) (148–150). Writing before Dolganov's redating, Thoma (2016, 145) still places the compilation of the *Gnomon* in the second half of the second century. The present paper does not repeat these arguments. It asks a narrower and more textual question: of the Augustan marriage laws, what does the epitome keep, what does it drop, and where does it differ from what the jurists tell us?

I argue that the *Gnomon* treats the marriage laws as a ledger. For each rule it records the condition (age, marital status, number of children, property) that triggers a forfeiture, and the fiscal consequence. It generally leaves out the rewards of the laws, the claimants who stood between the heir and the treasury in the jurists' accounts, and the penalties that produced no revenue. The comparison also exposes a few points where the epitome says more, or something different, from the jurists — notably *Gn.* 25 and 29 and the thresholds of *Gn.* 30 and 32 — and others (*Gn.* 39 and 46) where it keeps an earlier and a later layer of the same rule side by side. The promotion of marriage and childbearing is therefore present in the *Gnomon*, but as the fiscal price of not complying.

The analysis concentrates on *Gn.* 24–32, the run of rules on the age, marital status, children and property of Roman citizens, and on *Gn.* 39 and 46 as a test of how the epitome records change. I set them against the legal sources — the *Tituli Ulpiani*, Gaius, *Digesta* — and against modern reconstructions of the laws.[7]

2. The Augustan laws in the jurists' accounts

The *lex Iulia de maritandis ordinibus* of 18 BC and the *lex Papia Poppaea* of AD 9 formed the core of Augustan legislation on marriage and procreation. The second law supplemented and modified the first, and the two are commonly treated together in the legal sources under the designation *lex Iulia et Papia Poppaea*[8]. There are, how-

[7] Greek text of the *Gnomon* and numbering follow Schubart (1919). P.Oxy. XLII 3014 preserves only *Gn.* 35–41 and is re-edited by Dolganov (2020). Translations are my own.

[8] The jurists of the High Empire treat the *lex Iulia* and the l*ex Papia* as one body, so that the original provisions are difficult to separate from later interpretation (Dolganov 2022). For the laws see Astolfi (1996); Treggiari (1991); McGinn (1998), 70–139.

However, in the legal papyri, these statutes are referred sometimes separately: *P. Ryl.* IV.612 (between AD 151 and AD 200), is a Latin marriage agreement in which *Lex Iulia* is referred to: *e lege Iulia [quae de maritandis ordinibus] | [lata est liberorum procrea]nḍorum causa. Lex Papia Poppaea* is mentioned in another marriage agreement from AD 305 (*P. Vind. Bosw* 5): *τέκνων γνησίον σπορᾶς] | ἕνεκεν κατὰ νόμον Πάπιον Παππαῖον.*

ever, some discrepancies[9] between the two statutes concerning the minimum age for bearing children and the minimum age for marriage.[10] Neither *Lex Iulia* nor *Lex Papia Poppaea* are preserved in authentic and integral form, but only as citations or perhaps quotations in legal literature and other literary sources. The dating is also problematic: the *lex Iulia de maritandis ordinibus* is generally placed in 18 BC, the *lex Papia Poppaea* in AD 9.[11] The principal aim of the legislation was clear: citizens of the upper orders to marry within the social order and to have children during the years of fertility — the Papian law fixed at 20–50 for women and 25–60 for men — by attaching both benefits (*praemia*) and penalties (*poenae*).

The penalties fall into three groups. The first concerns capacity to take under wills (*testamenti factio*): the unmarried (*caelibes*) could not take inheritances or legacies under the Julian law, and the childless (*orbi*) lost half under the Papian law (Gaius 2.111, 2.286a). The sanctions therefore operated not simply by imposing a monetary fine but by restricting the capacity of persons who failed to satisfy the requirements of the legislation to benefit from testamentary dispositions. This mechanism was particularly significant for wealthy citizens, whose estates provided the principal material basis for the operation of the laws.

The second group concerned who could marry whom. Senators and members of their family were forbidden to marry freedwomen, and *personae turpes*, i.e., persons who were sanctioned with *infamia facti* due to their professions (the other categories with *status civitatis* were also forbidden to marry the latter, Just. *D*. 23.2.44).[12] The text in *D*. 23.2.44 does not specify the sanctions for violating these prohibitions. Ulpian (*Tit. Ulp.* 15.2), however, explains that spouses who contracted a marriage contrary to the *lex Iulia et Papia Poppaea* could not take from one another: *Aliquando nihil inter se capiunt: id est, si contra legem Iuliam Papiamque Poppaeam contraxerint matrimonium, uerbi gratia si famosam quis uxorem duxerit, aut libertinam senator*. Later, under Marcus Aurelius (AD 161–180) marriages contracted in contraventions to these rules were considered void, which means the relevant prohibition acquired the character of a *lex perfecta*[13], and the couple didn't enjoy the benefits provided by this law. Sanctions of

[9] Tertullian in Apologeticum 4.7 discusses this discrepancy between the two laws.

[10] Ulpian discusses the disprepancy between the two statutes concerning *tempus lugendi* (1) *Tit.Ulp.* 14: *feminis lex Iulia a morte uiri anni tribuit uacationem, a diuortio sex mens(ium),* l*ex autem Papia a morte uiri biennii, a repudio anni et sex mens(ium).*

[11] McGinn (1998); Dolganov (2022).

[12] People with infamous professions, such as actors/actresses, people in the theatrical business generally, as well as prostitutes, gladiators, etc., were considered *personae turpes*, and had restricted civil rights, especially *ius conubii*, with a decision of a state organ.

[13] For the tightening of the rules on marriages between senators' daughters and freedmen under Marcus Aurelius see Just. *D*. 23.2.16.

this kind, which did not operate through the confiscation or redirection of property, were generally of no concern to the Idios Logos and are therefore not attested in the *Gnomon*.

The third group concerns what spouses could take from one another within a lawful marriage. For instance, husband and wife could take only a tenth of each other's estate, increased by further tenths for children of earlier marriages and for children who had died; if the marriage itself had been contracted in contravention of the laws, they could take nothing from one another. A *senatus consultum Calvisianum* (AD 61) declared the marriage of a woman over fifty to a man under sixty unequal (*impar*): the couple could not take legacies, inheritances or dowry, and the wife's dowry became *caduca* at her death (*Tit.Ulp*. 16.4: *Quod si maior quinquagenaria minori sexagenario nupserit, 'inpar matrimonium' appellatur et senatus consulto Caluisiano iubetur non proficere ad capiendas hereditates et legata <et> dotes, itaque mortua muliere dos caduca erit.*). These rules illustrate the close connection between age, marriage, procreation, and property in the Augustan system. The legislation did not merely distinguish between married and unmarried persons; it also differentiated between marriages according to their capacity to produce the offspring that the laws sought to encourage.

The principal reward was the *ius liberorum*. A freeborn woman with three children, and a freedwoman with four if her guardian was her patron, was released from guardianship (Gaius 1.145, 194), and parents received preference in office-holding and other privileges.[14] The right of a mother to succeed to her children's intestate estates, which the sources attach to the *ius liberorum*, was given only later, by the *senatus consultum Tertullianum* of Hadrian's reign.[15]

Property that could not be inherited or received as a legacy because the beneficiary was disqualified under the Augustan laws became *caduca*. Under the Papian law such property went first to others named in the will who had children and, only in the absence of such claimants, to the treasury. Informers who denounced violations of this law could also receive a share.[16] In the jurists' accounts, therefore, the treasury appears as the final claimant in a hierarchy of competing beneficiaries. This is the point at which the *Gnomon* will turn out to differ.

[14] Gaius 1.145, 194; Dolganov (2022, 7 n. 18), notes that Gaius 3.42 requires three children of a freedman and that the requirement may have differed for men and women.

[15] The *lex Voconia* of 169 BC, which limited women's inheritance from men of the highest census class, was left in force; Augustus improved the position of the wife who had borne children. On the *senatus consultum Tertullianum* see Treggiari (1991), 79.

[16] Tac. *Ann.* 3.28. Suetonius (*Nero* 10) reports that Nero reduced the informers' share to a quarter.

3. What the epitome keeps: *Gn.* 24–32

3.1 Dowry and gifts between ill-matched spouses (Gn. 24–26)

κδ τὴν διδομένην προοῖκα ὑπὸ γυναικὸς Ῥωμαίας ὑπὲρ πεντήκοντα ἔτη γεγονυίας ἀνδρὶ Ῥωμαίῳ ἐντὸς ἑξήκοντα ἐτῶν γεγονότι μετὰ θάνατον ὁ φίσκος ἀναλαμβάνει.
24. The dowry given by a Roman woman over fifty years of age to a Roman husband under sixty is taken by the fisc after death.
κε ὁμοίως καὶ τὴν διδομένην ὑπὸ γυναικὸς ἐντὸς ν ἐτῶν οὔσης ἀνδρὶ ὑπὲρ ἑξήκοντα ἔτη γεγονότι ἀναλαμβάνεται.
25. Likewise what is given by a woman under fifty to a man over sixty is taken.

Gn. 24 corresponds to the *senatus consultum Calvisianum*, which Ulpian reports in the same terms: where a woman over fifty marries a man under sixty the marriage is *impar* and, when the wife dies, the dowry is *caduca* (*Tit.Ulp*. 16.4). Treggiari has already noted that the *Gnomon* incorporates this decree.[17] The *Gnomon*'s version differs from Ulpian's in what it leaves out and in what it says. It records neither the couple's inability to take legacies and inheritances, nor any claimant other than the fisc, and it says only 'after death', where Ulpian specifies the death of the wife.

Gn. 25 begins *ὁμοίως καὶ τὴν διδομένην*, 'likewise also what is given', and so continues the dowry of *Gn.* 24 for the opposite combination of ages: a woman under fifty and a man over sixty. This is not the *impar matrimonium* of Ulpian. On the contrary, the *senatus consultum Claudianum*, which Ulpian treats as still valid, allowed a man over sixty who married a woman under fifty to be treated as if he were under sixty (*Tit.Ulp.* 16.3). Treggiari therefore saw a conflict between *Gn.* 25 and the Claudian decree.[18] *Gn.* 25 may preserve a rule older than the decree, reflect a stricter practice in Egypt, or compress a rule whose exceptions the reader was expected to know; the text does not allow a choice among these. *Gn.* 26 repeats the confiscation for a *Latina* over fifty who gives something to a husband over sixty:

κς κἂν Λατείνα ὑπὲρ πεντήκοντα ἔτη δῷ τι ὑπὲρ ἔτη ὁμοίω(ς) ἀναλαμβ(άνει).
26. And if a Latin woman over fifty years of age gives anything to a husband over sixty, is taken likewise.

[17] Treggiari (1991, 78), notes that the *Gnomon* incorporates this decree and that the dowry goes to the fisc rather than to others who were qualified to take it.

[18] Treggiari (1991), 78: the rule 'conflicts with the *Senatusconsultum Claudianum*, which Ulpian recognizes as still in force'.

Since independent Latin status in the Empire belonged to municipalities, the Latina of a rulebook for Egypt is most plausibly a Junian Latin.

All three rules give the ages, the object and the recipient. None says anything about the status of the marriage.

3.2 Inheritance by the unmarried and childless (Gn. 27, 28, 30, 32)

> κζ ὅσα Ῥωμαίοις ἑξηκονταετὴς ἄτεκνος ἀγύναιος ὢν κληρονομεῖ, ἀναλαμβάνεται. ἐὰν δὲ ἔχῃ γυναῖκα τέκνα δὲ μὴ καὶ ἑαυτὸν προσαγγείλῃ, τὸ ἥμισυ αὐτῷ συνχωρεῖται.
> 27. Whatever a Roman of sixty inherits, if he is childless and without a wife, is taken. If he has a wife but no children and declares himself, half is conceded to him.
> κη γυνὴ ἐὰν <ᾖ> ἐτῶν ν, οὐ κληρονομεῖ, ἐὰν δὲ ἡττόνων καὶ ἔχῃ τέκνα γ, κληρονομεῖ, ἀπελευθερικὴ δέ, ἐὰν ἔχῃ τέκνα τέσσαρα.
> 28. If a woman is fifty, she does not inherit; if she is younger and has three children, she inherits; a freedwoman, if she has four children.

Gn. 27 punishes a Roman of sixty who is childless and without a wife: whatever he inherits is taken by the fisc. The first part matches the capacity rules of the Julian and Papian laws (Gaius 2.111, 2.286a). The second part, in which relief depends on self-denunciation (ἑαυτὸν προσαγγείλῃ), matches the practice by which those who informed against themselves could recover part of the forfeited property.[19] The *Gnomon* does not report the rule that persons who had married and subsequently passed the Papian age limits were released from the penalties (*Tit.Ulp.* 16.1). It does, however, correspond to the decree that continued to penalise men and women who had passed the age limits without ever having complied with the marriage and procreation requirements (*Tit.Ulp.* 16.3). *Gn.* 27 and 28 may reflect this latter rule.

Gn. 28 says that a woman of fifty does not inherit, that a younger woman inherits if she has three children, and a freedwoman if she has four. Two readings are possible. The rule can be read as a rule of capacity of the kind just described, with the *ius liberorum* removing the incapacity. Or, as Dolganov's note on the four children required of freedwomen implies, it can be read as a rule on succession to children under the *senatus consultum Tertullianum*.[20] Thoma (2016, 146 and n. 12) reads *Gn.* 28 as a reflection of the *ius trium liberorum* and of the *lex Iulia de maritandis ordinibus*: the woman's capacity to inherit depends on childbirth and on the age of fertility, and she takes the *ius liberorum*

[19] *D*. 49.14. 15. On the Pernician decree see *Tit.Ulp.* 16.3; Treggiari (1991, 78) dates it to the reign of Tiberius.

[20] Dolganov (2022, n. 18) cites Paul, *Sent*. 4.9.1 and 4.9.7 for the four children required of freedwomen, in connection with the senatus consultum Tertullianum. Cf. Treggiari (1991), 79.

to include both release from guardianship and the right to succeed to the children's inheritance, without distinguishing the two functions that are separated here. She also notes (148) that the rule on Alexandrian women in *Gn.* 6 knows no age limit comparable to that of *Gn.* 28. The epitome says only *κληρονομεῖ*, 'inherits', and gives the trigger (age, number of children) without the legal basis. That was enough for a procurator. For the historian it means that *Gn.* 28 cannot be used as evidence for what the original *ius liberorum* contained.

Gn. 30 and 32 set the thresholds for women and men: 50,000 and 100,000 sesterces, below which the unmarried and childless may still inherit (*Gn.* 32 says so expressly).

> λ αἱ καταλειπόμεναι κ̣ληρονομείαι γυναιξὶ Ῥωμαίαις ἐχούσ|αις οὐσίας σηστερτίων ν ἀγάμοις κ[α]ὶ ἀτέκνοις ἀναλαμβανεται.
> 30. Inheritances left to Roman women possessing property worth 50,000 sesterces who are unmarried and childless are taken up [by the fiscus].
> λβ Ῥωμαίοις ὑπὲρ ἑκατὸν σηστέρτια̣ ἔχοντες ἄγαμοι καὶ ἄτεκνοι οὐ κληρονομοῦσι, οἱ δὲ ἔλαττον ἔχοντες κληρονομοῦσι̣.
> 32. Roman men possessing more than 100,000 sesterces who are unmarried and childless do not inherit; those possessing less do inherit.

These figures correspond to the property qualification of the decurial order, and they might belong to the original law, though many of the detailed rules may be unique to Egypt.[21] According to Thoma (2016, 147) *Gn.* 30 is reflecting the aim of the Augustan legislation to limit the economic power of upper-class women who had neither husband nor children, and compares the earlier *lex Voconia*; she notes that this law had fallen into disuse by the time of Aulus Gellius (reign of Pius; Gell. 20.1.21–23), but that the idea that unmarried and childless women should not inherit large sums survived in *Gn.* 30 (147 nn. 26, 28). Also, the threshold for women (50,000 sesterces) is half of that for men in *Gn.* 32, which points to the conclusion that, since women in Roman Egypt had more legal and social disabilities than men, they were more often disadvantaged economically by the office of the Idios Logos (147–148). For *Gn.* 32 she remarks that in Egypt it applied to free men of the upper order, whereas Gaius's rule on 100,000 sesterces concerns freedmen (147 n. 32). What matters here is that the *Gnomon* again gives only the condition and the outcome "taken" (*ἀναλαμβάνεται*), without mentioning the claimants who appear in the jurists' account of the *caduca*.

[21] Dolganov (2022) relates the figure of 100,000 sesterces to the curial census (Pliny, *Ep.* 1.19.2) and to Gaius 3.42.

3.3 A tax and a tenth (Gn. 29 and 31)

> κθ Ῥωμαία ἐνγενὴς ἔχουσα οὐσίαν σηστερτίων κ, μέχρι ἄγαμός ἐστιν, δίδωσι κατ᾽ ἔτος ἑκατοστήν, καὶ ἀπελευθερικὴ δὲ ἔχουσα σηστερτίων κ τὸ αὐτὸ δίδωσι, ἕως ἂν γαμήσῃ.
> 29. A freeborn Roman woman possessing 20,000 sesterces pays one-hundredth annually as long as she is unmarried; a freedwoman possessing 20,000 pays the same until she marries.
> λα Ῥωμαίᾳ ἐξὸν ἀνδρὶ καταλείπειν τὸ δέκατον ὧν κέκτηται, ἐὰν δὲ πλείονα, ἀναλαμβάνεται.
> 31. A Roman woman is permitted to leave her husband a tenth of what she possesses; if more, it is taken.

Gn. 29 is unlike its neighbours. It is the only rule in the group that imposes a recurring payment instead of a forfeiture, and it is not reported by the jurists.[22] Dolganov observes that it presupposes the ability of the Roman administration to follow the age and marital status of individuals, an ability the provincial census and the registration of births provided.[23] It reads as the fiscal counterpart of the Augustan pressure to marry: where the laws made the unmarried woman unable to take under wills, the *Gnomon* makes her pay every year. Thoma (2016, 146 and nn. 18–19) describes the tax as the first taxation of unmarried women in the ancient world. It applied to free and freed women of substantial means who had not fulfilled their maternal role. She compares it with the fine that, according to Valerius Maximus (2.9.1), the censors imposed in 403 BC on those who remained unmarried, who were predominantly men.

Gn. 31 corresponds to the *decima* between spouses (*Tit.Ulp.* 15.1–4), the basic proportion that husband and wife could take from each other on account of the marriage. The *Gnomon* retains only this base figure. It omits the further tenths for children of other marriages and for common children who had died, the usufruct of a third, the legacy of the dowry, and the circumstances in which spouses could take the whole estate (*Tit.Ulp.* 16.1). Read literally, *Gn.* 31 would confiscate far more than the law did. The right inference is not that the law had changed but that the epitome presupposes what it does not state. Its prologue tells the reader to apply his memory to the abbreviated list, and Dolganov has argued that it is a mnemonic aid for an official who already knew the rules.[24] The omissions of the epitome are not evidence of abolition.

[22] Treggiari (1991, 78) lists the tax among the features of the *Gnomon* 'not attested elsewhere'.

[23] Dolganov (2022), 21–22: the provincial census, taken in fourteen-year cycles and supplemented by declarations of birth and death, recorded the name, age, status, residence, family and property of every member of a household.

[24] BGU V 1210, ll. 1–7. On the epitome as a mnemonic aid see Dolganov (2022), 2.

4. What the epitome leaves out

Within *Gn.* 24–33 three kinds of material in the jurists' accounts have no counterpart: the rewards, the other claimants, and the penalties that raised no revenue.

The rewards of the laws are absent, apart from the numbers of children in *Gn.* 28. This is what the nature of the office predicts: nothing is confiscated when a woman has three children. Yet the *ius liberorum* lived in documents. Papyri show women acting 'without a guardian by the right of children', and the only known petition to have the right registered, P.Oxy. XII 1467, dates from AD 263.[25] The promotion of marriage also appears in private documents: in a Latin marriage contract of the second century mentioned previously, the bride's father gives her in marriage *e lege Iulia [quae de maritandis ordinibus lata est liberorum procrea]ndorum causa*.[26] The *Gnomon* and the documents are two views of the same legislation, one from the treasury and one from the household.

The other claimants are omitted systematically. Where the jurists' *caduca* pass first to qualified co-heirs and legatees, every rule in *Gn.* 24–32 gives the fisc as the immediate taker. The rules on the validity of marriages contracted against the laws, and on the loss of rank, which in the jurists' accounts lie behind the spouses' incapacity, have no counterpart in *Gn.* 24–33 either.

5. Departures and additions

Three features do not match what the jurists report. *Gn.* 25 appears to conflict with the Claudian decree. *Gn.* 29 imposes an annual tax that the jurists do not mention. And the property thresholds of *Gn.* 30 and 32, together with the exemption of the poorer, may be, in Treggiari's words, among the rules that are unique to Egypt. There are three possible explanations: that these rules are older than the jurists' sources, that they adapt the law to the province, or that they were added later. Dolganov has shown that the epitome has a diachronic texture, with Augustan rules next to Flavian, Hadrianic and Antonine rulings, and each explanation is therefore possible. The evidence does not allow a choice for any single rule. But the direction of the deviations is consistent: *Gn.* 25 makes the fisc the immediate beneficiary where the law did not, and *Gn.* 29 turns the pressure to marry into annual revenue. Table 1 summarises the comparison.

[25] The formula *χωρὶς κυρίου χρηματίζουσα δικαίῳ τέκνων κατὰ τὰ Ῥωμαίων ἔθη* ('transacting without a guardian by the right of children according to Roman custom') is regularly found in the papyri. For P.Oxy. XII 1467 (AD 263), the only document petitioning for registration of the right, and P.Oxy. XII 1475 (AD 266), in which the same woman buys land as a holder of the right, see Тошева (2020), no. 8. The *ius liberorum* is attested in the papyri long after the date of the epitome.

[26] P.Ryl. IV 612 + P.Mich. VII 434 (second century CE); Dolganov (2022, 24) cites the contract as showing that procreation was an explicit aim of the law; Тошева (2020), no. 37. The Latin is partly restored.

Table 1. Gn. 24–32 compared with the jurists' accounts

Gn.	**Rule in the *Gnomon***	**Corresponding rule in the jurists**	**What the *Gnomon* keeps or adds**
24	Dowry of a Roman woman over 50 to a Roman husband under 60 taken by the fisc after death	*SC Calvisianum: impar matrimonium*; the couple cannot take legacies, inheritances or dowry; dowry *caduca* at the wife's death (*Tit.Ulp.* 16.4)	Keeps ages, dowry and fisc. Omits the couple's incapacity and other claimants.
25	Same for a woman under 50 giving to a man over 60	*SC Claudianum* treats a man over 60 who marries a woman under 50 as if under 60 (*Tit.Ulp.* 16.3): an apparent conflict (Treggiari)	A stricter or older rule, or a compression; not decidable.
26	A Latin woman over 50 giving anything to a man over 60: taken	No parallel found in the sources consulted	Probably Junian Latins.
27	Roman of 60, childless and wifeless: inheritance taken; half kept if he has a wife and declares himself	*Caelibes* cannot take; *orbi* lose half (Gaius 2.111, 2.286a); relief for self-denunciation (Treggiari 77 n. 158)	Keeps trigger, outcome and the relief for self-declaration.
28	Woman of 50 does not inherit; younger woman with three children, freedwoman with four, does	Capacity (*Tit.Ulp.* 16.3); three/four children for the *ius liberorum* (Gaius 1.145, 194); succession to children under the *SC Tertullianum*	Compressed; the legal basis is not stated.
29	Annual tax of 1% on unmarried Roman women and freedwomen with 20,000 sesterces	Not reported by the jurists	Probably a provincial or later addition; the only recurring payment.
30	Inheritances left to unmarried and childless Roman women with 50,000 sesterces taken	Papian capacity rules; threshold possibly original or the curial census	Keeps threshold and fisc; omits other claimants.
31	A Roman woman may leave her husband a tenth; the excess is taken	*Decima* between spouses, with further tenths and exceptions (*Tit.Ulp.* 15.1–4, 16.1)	Keeps only the base tenth; presupposes the rest.
32	Romans with more than 100,000 sesterces, unmarried and childless, do not inherit; those with less do	Papian capacity rules; Gaius 3.42 (100,000 sesterces for freedmen)	Keeps threshold and result; omits other claimants.

6. Layers within the epitome: *Gn.* 39 and 46

The epitome records change as well as rules. Two rules on mixed unions show how.

> λθ Ῥωμαίου ἢ Ῥωμαίας κατ᾽ ἄγνοιαν συνελθόντων ἢ ἀστοῖς ἢ Αἰγυπτίοις τὰ τέκνα τῷ ἥττονι γένει ἀκολουθεῖ.
> 39. If a Roman man or a woman have entered into a union through ignorance with *astoi* or Egyptians, the children follow the lesser status.
> μς Ῥωμαίοις καὶ ἀστοῖς κατ᾽ ἄγνοιαν Αἰγυπτίαις συνελθοῦσι συνεχωρήθη ἀνευθύνους εἶναι καὶ τὰ τέκνα τῷ πατρικῷ γένει ἀκολουθεῖ.
> 46. To Romans and *astoi* who through ignorance have cohabited with Egyptian women it has been conceded to be free of liability, and the children follow the paternal status.

Gn. 39 states the rule of the *lex Minicia*, reported by Gaius: the child of parents without *conubium* follows the lower status.[27] Seven rules later, *Gn.* 46 says that, in a case of error, Romans and *astoi* are exempt from liability and the children follow the father. For the children the two rules point in opposite directions. Dolganov's explanation is that the *Gnomon* reflects both the original rule (*Gn.* 38, 39, 48–52) and later concessions (*Gn*. 46[28], 47), and that the concessions are signalled by *συνεχωρήθη*, 'it has been conceded'; the prohibition of marriage between Romans and *peregrini* was relaxed under Hadrian for cases of mistaken identity.[29] The same verb marks the concession of the emperor Antoninus in *Gn*. 36, where the Oxyrhynchite copy adds that it was granted 'for the first time'.[30]

To the question why the *Gnomon* contains both a rule and its exception, the answer is therefore that the epitome is a text with a history. It was compiled when the concession was recent, and it sets the older rule and the newer concession side by side as the procurator would have had to apply them. Its own means of recording the change is a verb of concession. *Gn.* 33 may be another example: it conditions a Roman woman's will on *coemptio*, a requirement that, according to Gaius, was removed under Hadrian.[31]

[27] Gaius 1.78. The date of the *lex Minicia* is disputed; see Cherry (1990).

[28] Thoma (2016, 149–150 and n. 51) reads *Gn.* 46 as a causae probatio in the sense of Gaius 1.67, probably a milder provision in favour of the children, and reports the view that *Gn.* 39 represents the main thrust of the *lex Minicia* and *Gn.* 46 that of the senatus consultum; she adds that, if the exception of *Gn.* 38 (children inherit from both parents) were applied to *Gn.* 39 and 47, these children too would inherit from both parents.

[29] Dolganov (2022), n. 6; Gaius 1.67–75; Bagnall (1993), 26 on the meaning of *συνεχωρήθη*.

[30] Dolganov (2020), 174: the Oxyrhynchite copy reads *πρώτιστα συνεχωρήθη*, 'it was conceded for the first time'.

[31] Gaius 1.114–115a. Testamentary *coemptio* was no longer required after Hadrian.

7. Conclusion

The *Gnomon*'s treatment of the Augustan marriage laws is selective in a consistent way. For the rules on dowry, inheritance and spouses' capacity (*Gn.* 24–32) it keeps the trigger and the fiscal result. It omits the rewards, the claimants who stood between the heir and the treasury, and the penalties that raised no revenue. In a few places it adds to the jurists or departs from them (*Gn.* 25, 29), and in others it holds two layers of one rule (*Gn.* 39 and 46).

Two conclusions follow for the use of the *Gnomon* as a source for the Augustan laws. First, the fact that the text does not mention a rule does not mean that the rule did not exist. Rather, the *Gnomon* selectively presents the law, sometimes leaving exceptions unstated. *Gn.* 31 shows that it assumes the existence of exceptions even when it does not explicitly mention them. Second, differences between the *Gnomon* and the jurists' accounts do not necessarily mean that the law had changed. They may reflect a shorter presentation of the rules, their adaptation to provincial conditions, or the combination of rules from different periods. Each possibility must be assessed on a case-by-case basis. The *Gnomon* remains a valuable source because it shows how the law was understood and applied from the perspective of the fiscal administration. It also provides evidence for the ages, thresholds and proportions used in Egypt in the mid-second century.

The epitome does not promote marriage and childbearing in the real sense; it prices their absence. The promotion is found elsewhere, in the marriage contracts and in the petitions for the *ius liberorum*. Two limits should be noted. The rules in *Gn.* 24–32 address Roman citizens (*Gn.* 29, 30 and 32 name them expressly), so that the epitome tells us little about how, if at all, the marriage laws touched the rest of the population. And the epitome is a text about what the procurator was to take, not about what he took; how often these rules were applied remains a question for the documents.

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