ADOPTION IN THE ROMAN WORLD

Adoption in other cultures and other times provides a background to understanding the operation of adoption in the Roman world. This book considers the relationship of adoption to kinship structures in the Greek and Roman world. It considers the procedures for adoption, followed by a separate analysis of testamentary cases, and the impact of adoption on nomenclature. The impact of adoption on inheritance arrangements is considered, including an account of how the families of freedmen were affected. Its use as a mode of succession in Rome is detailed, and this helps us to understand the anxiety of childless Romans to procure a son through adoption, rather than simply to nominate heirs in their wills. The strategy also had political uses, and importantly it was employed to rearrange natural succession in the imperial family. The book concludes with political adoptions, looking at the detailed case studies of Clodius and Octavian.

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Preface

This is a book about the social and political impact of adoption in the Roman world, with the main emphasis on the period from the Gracchi to Hadrian, and a primary interest in its operation in Rome and Italy. It has a different focus from the work of Olli Salomies (1992), which concerns itself with adoptive and polyonomous nomenclature, with a special focus on the Imperial period. It has some common ground with Jane Gardner's works, especially *Family and Familia in Roman Law and Life* (1998), although it is on the whole less legal, and more concerned with the practical operation of adoption in different situations. My concern has been with how Romans viewed adoption and what problems they believed it could be used to solve. Some of the same ground is covered by both Salomies and Gardner, but here more space is devoted to the functioning of adoptions in politics and everyday life, and trying to understand how adoption has been utilised in other places and times. Despite extensive use of legal sources to understand the theory behind Roman adoption, the cases discussed are mostly selected from literary sources, since it is here that the functioning of adoption in real situations can be assessed. The onomastic evidence is useful, and the main features of Roman nomenclature after adoption are explored, but by its very nature nomenclature can only provide answers to a restricted range of questions about the impact of adoption. Considerable attention is given to adoption as a mode of succession, utilising primarily legal and literary sources. This is most relevant to the elite and the imperial family, although the legal sources are not so confined, and in both cases raises questions about whether adoptions are being used to serve political rather than familial ends. It is hoped that the material brought together here may be of interest to students of European social history in general as well as to those concentrating on Rome.

After some introductory remarks about Roman family life and the extent to which adoption may have been used in the community, the first three chapters consider adoption broadly as a strategy, and the use to which it can

be put in different social, cultural and temporal situations. This represents a revision and expansion of an essay which first appeared in S. Dixon, ed., *Childhood, Class and Kin in the Roman World* (2001) under the title 'Adoption and its Function in Cross-cultural Contexts'. The nature of Greek and Roman kinship structures is also reviewed, since discussions of the Classical world have been greatly influenced by now discredited approaches to the development of the family. In the case of Rome, the picture today is of the family still under the theoretical power of the *paterfamilias*, but the later Republican and early Imperial periods saw greater recognition of the female line and its capacity to continue family interests. Changes in the law of inheritance which take more account of cognate relationships are part of this trend in the period between the second century BC and the second century AD. Fashions in nomenclature also demonstrate these bilateral trends. The treatment of adoption in the Greek world is designed to provide some pertinent background for Roman adoptions, especially testamentary cases. By the mid second century BC the Greek world was under Roman rule, and some influence on Roman custom can be expected. An earlier version of this study appeared as 'Adoption in Greek Law: Some Comparisons with the Roman World' in *Newcastle Law Review* 3.2 (1999) 91–110.

Chapters 4 to 6 discuss what is known of the origins of adoption at Rome and describe the procedures relating to adoption, focusing on the period from the second century BC to the second century AD. Chapter 4, on *adoptio* and *adrogatio*, covers the origin and functioning of these institutions at Rome. This includes treatment of age and capacity, aspects of the legal and sexual status of adopters, assimilation and participation of adoptees in the family, guardianship and the adoption of minors, and adoptions of and by women. The procedure for *adoptio* and *adrogatio* is described, including sections on the role of the *comitia curiata* and the investigation by the pontiffs. Chapter 5 is devoted to testamentary adoptions and their relationship to other testamentary arrangements. Chapter 6 reviews the effect of these different social transformations on individual nomenclature. This presents a review of Roman nomenclature after adoption, with a review of the main findings of Salomies in his 1992 work. It also treats his simplified conclusions published in M. Corbier, ed., *Adoption et fosterage* (1999).

Chapters 7 and 8 treat adoption as a strategy for succession. The legal position of adoptees under the civil law and praetorian law is scrutinised and assessed. Both inheritance under a will and intestacy are considered as well as the circumstances under which adoptees could claim under a complaint of an undutiful will. This is a reworking of an essay which first appeared as 'Adoption

and Succession in Roman Law' *Newcastle Law Review* 3.1 (1998) 57–81. Chapter 8 is devoted to manumission and succession in freedman families with special emphasis on the adrogation of freedmen. In these cases adoption seems to be employed by citizens in order to harness the wealth of freedmen.

Chapters 9 to 12 review some of the best-known cases of *adrogatio* and *adoptio* amongst the elite where there is sufficient evidence to provide a commentary. Examples of testamentary adoptions are also treated, again selectively. Here examples are discussed which seem not to be motivated primarily by politics; the main aim is inheritance. In both groups attention is paid to the proximity between adopter and adoptee. A large number of the cases known involve close kin, often maternal kin. These are often identifiable because of transformations in nomenclature. In contrast, adoptions within the agnatic line are hard to track through nomenclature and may be underrepresented in the record. In other cases friends of the family are chosen: some of these may in fact be relatives, but the links are not evident on the basis of the available evidence.

In chapters 13 to 16 significant political adoptions are discussed. There are special studies of the adoption of Clodius, the adoption of Octavian, and after discussion of the motives behind elite adoption at Rome, Pompeii and Ostia, finally imperial adoptions. In the study of Clodius, adoption is seen as an institution which can serve a particular political end. Cicero's analysis in *De domo sua*, where he outlines his objections to the adoption, is conditioned by his irritation at the advancement of Clodius. He presents an argument which is dependent on thinking about adoption in the domestic sense, but major political players at the time saw no problem in using it quite cynically to acquire the relevant plebeian status for a candidate whose interests they chose to promote. The domestic concerns were shoved aside and effectively ended by the immediate emancipation of Clodius. The case of Octavian may have been influenced by this precedent. It also involves the use of adoption to secure political ends. Caesar's murder in 44 BC revealed a will in which Octavian received a large part of Caesar's estate, as well as his testamentary adoption. The testamentary adoption gave him only limited rights in relation to Caesar, but the adrogation which he orchestrated after entering on his extraordinary consulship on 19 August 43 BC legitimated his access to Caesar's tribe and filiation, and, just as importantly, presented the succession of Octavian to Caesar's power as an act willed by the dictator. The parallel with Clodius is that politically interested parties once again supported what was clearly a sham. An adrogation could only take place when the two parties to the adoption were present. It was theoretically not possible for Caesar to adrogate

Octavian. Adoptions amongst the elite are often hard to classify, since motives may be partly political, partly merely for inheritance. Inscriptional evidence from Pompeii and Ostia suffers from similar problems. The early imperial adoptions are familial adoptions, but involve overtly political ends. Under the Julio-Claudians the façade of a domestic situation was maintained, but the public nature of these adoptions soon became apparent. Imperial adoption was gradually assimilated to designation as imperial successor. Nevertheless, the institution was a useful method of underlining family solidarity and dynastic continuity.

The strands are brought together in a conclusion which emphasises both the common thread of fictitious kinship running through the various uses made of adoption and the particular aims that each approach served. Adoption for a Roman, as Cicero emphasises in *De domo sua*, was about *sacra*, inheritance and continuation of a name (Cic. *Dom*. 13.35).

As I have mentioned, this study includes developed versions of three papers already published, all significantly revised. Two of the papers appeared in the *Newcastle Law Review*, and I am pleased now to be able to offer them to a wider audience.

At a late stage when the text was substantially complete I received a copy of Christiane Kunst's book (2005). She covers many of the same areas and is interested in a number of the same issues. My material is arranged very differently from hers, and I have not dealt with the more speculative issue of intra-familial conflict treated in the latter part of that book, but I have taken account of her arguments where I could.

I am pleased to acknowledge assistance I have had from many quarters in my pursuit of ancient adoption. Several years ago Mireille Corbier, on learning that I was working on adoption, very kindly supplied me with a copy of *Adoption et fosterage* (1999). Suzanne Dixon was very supportive and helped me to utilise comparative material. The chapter in *Childhood, Class and Kin in the Roman World* (2001), a volume in honour of Beryl Rawson, provided an opportunity to share some of my findings, and to contribute to a volume celebrating her contribution to the study of the Roman family. I have now greatly expanded its ambit, and I hope it helps to make sense of Roman adoptions. Thanks also to Tim Parkin and to my colleagues at Newcastle, especially Elizabeth Baynham, Jane Bellemore, Terry Ryan and Harold Tarrant. I would also like to thank Brian Bosworth for commenting on an early version of my chapter on Greek adoptions. The readers for Cambridge University Press provided useful criticism of a first draft of the text and I hope that the revised version meets with their approval. Thanks also to my wife, Kate, and son, Leo, for their patience.

Abbreviations

Abbreviations of titles of ancient works correspond to those used in the *Oxford Classical Dictionary*, ed. S. Hornblower and A. Spawforth.

AE	*L'Année epigraphique*, Paris 1888–
Broughton, *MRR*	T. R. S. Broughton, *The Magistrates of the Roman Republic*, New York, 1951–2
CIL	*Corpus Inscriptionum Latinarum*, Berlin 1863–
Cod. Iust.	*Codex Iustinianus*, ed. P. Krueger, Zurich 1880
Dig.	*Digesta Iustiniani*, ed. T. Mommsen, Berlin 1877, translated in *The Digest of Justinian*, 4 vols., Philadelphia 1985
EJ	V. Ehrenberg and A. H. M. Jones, *Documents Illustrating the Reigns of Augustus and Tiberius*, 2nd edn, Oxford 1955
Hist. Aug.	*Historia Augusta*
IG	*Inscriptiones Graecae*, Berlin 1873–
ILS	*Inscriptiones Latinae Selectae*, ed. H. Dessau, Berlin 1892–1916
LT	*Laudatio Turiae* (= EJ 357)
PIR^2	*Prosopographia Imperii Romani*, 2nd edn, Berlin 1933–
PLRE	*Prosopography of the Later Roman Empire*, vol. I, ed. A. H. M. Jones and others, Cambridge 1971; vols. II and III, ed. J. R. Martindale, Cambridge 1980–92
RE	*Real-Encyclopädie der klassischen Altertumswissenschaft*, Stuttgart 1894–1980

Introduction

Today, in the Western world, adoption is seen as a means for couples who are unable to have children to experience parenthood. In general, the idea is that people with a strong commitment to raising children will be able to take over children whose situation is in some way substantially impaired.

In the recent past, relatively large numbers of unwanted children became available in this way. An element that has changed is the attitude to sole parenting, and children resulting from unplanned pregnancies are more often retained than adopted out. Community attitudes have shifted considerably, and it is now seen as psychologically desirable for the child to be brought up in its birth family, if possible, rather than to be reassigned.

The result is that adoptees have to be sought from further away, from parts of the world where it is economically impossible for the birth family to bring up the child, or where social conditions, including famine and war, have created large numbers of orphans. Children brought in under these conditions raise complex issues such as the paternalism of rich countries, which lead on to other controversies, for example the cultural displacement of the children.

Rome from its inception was a different type of community, and conditions of family life differed substantially. The presence of slaves as well as an enormous gulf between rich and poor is only a beginning. This was a high-mortality regime, in which children would often lose one or both parents early, and likewise hazards of childhood diseases were a tough proposition.

Agrippina the Elder provides us with a case where most of the facts about a large Roman family are known. Altogether Agrippina had nine children of whom six survived to adulthood. These were produced in a period of approximately thirteen years, between AD 5 and 18 (Lindsay [1995] 4–5), by a mother who was between about eighteen and thirty-one. In this case, a third of her family never reached maturity. She was typical of the aristocracy in making extensive use of wet nurses (Treggiari [1975b] 56; Bradley [1986]

210; 221; Lindsay [1995] 12–14). This underlines features of upbringing at Rome, which may often have led to parents being disconnected from the process, and in other cases early death of a partner must have been commonplace. Miscarriages and wives less fortunate with their health than Agrippina are on record. Quintilian's young wife, dead at eighteen, after bearing two children, is an example (Quint. *Inst.* 6 pr. 4).

Other features of the society are also distinctive. Both infanticide and abandonment of children show that not all children were reared or thought worth rearing (Boswell [1984]; B. Rawson [2003] 114–18). While some abandoned children will have been retrieved, reasons for abandonment might not be merely economic; the emperor Claudius exposed Claudia, the daughter of his wife, Urgulanilla, by the freedman Boter, in order to disavow paternity (Suet. *Claud.* 27). Not all children were equally valued. There has, however, been some toning down in recent years of ideas about the prevalence of infanticide (B. Rawson [2003] 115–17).

Pliny is an example of a childless man who never managed to rectify his childless state despite three marriages. His attitudes to the advantages of having descendants, which concentrate on questions of continuity and prestige, appear in a letter to his wife's grandfather Calpurnius Fabatus, after the loss of a child (Plin. *Ep.* 8.10). Although in this case he blames Calpurnia for lack of care during her pregnancy, fertility was something of a problem in the family. His uncle, the elder Pliny, was forced to resort to adoption, adopting Pliny himself. Several modern studies have concluded that the elite at Rome had serious problems with achieving continuity. Conditions of life in the Roman family gave the male partner extraordinary powers to determine the shape of his family, and there are few signs of couples working together to settle on suitable candidates for adoption. Altogether we have few female voices from the ancient world, and little chance of reconstructing female attitudes to family life. The extended absences of Roman males abroad may have created further problems and encouraged or reinforced the development of an ethos where little account was taken of the female viewpoint, and recourse to adoption at Rome may have been commonest in cases where a male has survived his partner or partners.

HOW COMMON WAS ADOPTION AT ROME?

Estimates of the number of adoptees at Rome are usually based on questions of nomenclature, but nomenclature is very fluid, and nomenclature which appears to be adoptive can be explained in other ways (Chapter 6 below).

Nevertheless some general guidelines may be helpful. Keith Hopkins, in reviewing consuls between 350 BC and AD 50, estimated that 4 per cent were adopted (Hopkins [1983] 49). Moreau reports that under 2 per cent of equestrians from the Julio-Claudian period were found to be adopted in a study by Ségolène Demougin, while the rather larger figure of 8–9 per cent of magistrates and decurions at Pompeii were identified as adoptees by Jean Andreau (Moreau [1992] 13). These figures are all drawn from elite groups where questions of inheritance and position were most important, and where the strongest results can be expected.

This study aims to look at adoption synoptically, and to attempt to understand the motives of Roman adopters. Succession for the childless male seems to have been a common problem, but the institution had a much larger ambit, which included political and other social objectives.

CHAPTER I

Adoption, kinship and the family: cross-cultural perspectives

A broad survey of adoption across cultural boundaries will reveal how different historical and contemporary communities have responded to the issue of introducing outsiders into their kinship network. This impressionistic account will attempt to comment on how issues of integration are handled in a wide range of contexts, under markedly different arrangements regarding kinship.

There is no attempt here to see kinship in evolutionary terms, or even to suggest direct comparability between the various communities surveyed. They have been chosen on the basis that they represent distinctive and potentially illuminating responses to particular kinship arrangements. It is hoped that this discussion will help an appreciation of how the Romans used the institution.

Other agnatic systems may superficially resemble the Roman one, at least in this strong emphasis on the perpetuation of the male line, but even communities with very strict customary procedures tend to find that factors other than mere kinship are important in selecting adoptees when their own line is in jeopardy. Rome undoubtedly fits this model. All adoptions create a fictitious proximate relationship for the purpose of inheritance of wealth, position or both. The adopter will in turn expect reciprocal obligations of some sort. These range from taking on the mantle of heir to emotional and physical support. Different communities with different social and political systems handle the details in different ways.

Once a community allows that adoption is a feasible way of bestowing social personality on the next generation, purely familial ties are potentially under threat. An outsider may be the only possibility for adoption. Nevertheless in a majority of communities preference still lies with close kin. Traditional Chinese communities have the strictest regulations about adoption from amongst close agnates, but other communities also find that this is the normal place to look for an heir. A conflicting pressure is totally to assimilate the adopted child into the adoptive family, and this tends to make

outsiders seem attractive. Completely fictitious arrangements, where the intention is simply to transfer property, and where the motives may be based far more on commercial objectives, are also found. Less emphasis on close kinship can be anticipated. Here the inalienability of certain types of property in Mesopotamia is a key example.

Goody in his influential article 'Adoption in Cross-cultural Perspective' (1969, reprinted with some changes 1976) does not include this type of arrangement but does raise several definitive functions of adoption:

1. To provide homes for orphans, bastards, foundlings, and children of impaired families.
2. To provide childless couples with social progeny.
3. To provide an individual or couple with an heir to their property (Goody [1976] 68).

His categories provide some guidelines for the scope of adoptive arrangements. The following outline illustrates some of the range of possibilities encompassed in varied cultural and temporal environments.

MESOPOTAMIA

The population mix in Mesopotamia at the beginning of the second millennium was Semitic and Sumerian. The earliest dynasty at Babylon was founded by Semites, but the people represented a blending of Semitic and Sumerian culture (Oates [1979] 19). Sophisticated arrangements for adoptions are already to be found in the Code of Hammurabi (1792–1750 BC), which provides material regulating entry to the family generically similar to some of the Roman legal material. The Code dates from late in his reign, apparently after the thirty-eighth year of the reign (van de Mieroop [2005] 100). The arrangements outlined show a close awareness of some of the hazards of the artificial creation of parental bonds. An adopted child could be treated differently from a natural child, or one party could prove ill suited to the other, and maternal deprivation was recognized as a danger. A child might persist in seeking out its natural father and mother, and consequently have to be returned to them. These provisions amount to an admission of the reality that child and adoptive family may not be mutually suited. Adoptees are envisaged as infants, and this marks out a major difference from the Roman norm. The adoption of children appears to be a rarity at Rome. The Code of Hammurabi also encompassed harsh and different rules for those adopted by courtiers (Benet [1976] 23–5). Roman legal writers never mention the possibility of an adoption's failing, nor anything comparable to the harsh regulation of some adoptees in Babylon.

To summarise, Babylonian adoption remained valid only if the adopter treated the child in every way as his own. If the child persisted in searching out its father and mother, it was returned to its natural parents. Thus the issue of maternal deprivation was acknowledged and dealt with. The only adoptive child who was punished for seeking out the natal family was one adopted by a courtier, since courtiers were prevented by law and sometimes by castration from begetting their own children. The adoption was seen as a signal honour, and since it represented a great leap in status for the child, it was not reversible:

> 187 The [adopted] son of a chamberlain or the [adopted] son of an epicene shall not be [re]claimed … If the [adopted] son of an epicene states to the father who has brought him up or the mother who has brought him up 'Thou art not my father' [or] 'Thou art not my mother', they shall cut out his tongue. (Driver and Miles [1955] 75–7)

Lower-status adoptions are also covered in the Code, and consequently there is a discussion of apprenticeship and wet-nursing. Boys were adopted by free craftsmen to learn and inherit their trade, but the adoption was invalid if the craftsman did not teach his craft. Because of the age of adoptees, any adopter was likely to need a wet nurse, who would be in charge of the child for two or three years. Her conduct was strictly monitored and she was subjected to fierce penalties if the child died under her care (her breasts were to be cut off: Code 194).

The use of adoption in Mesopotamia has been seen as evolving from an initial concern to perpetuate the family and its religious rites, to a later stage when secular reasons are clearly important. Whatever is thought of the evolutionary model, there is evidence for these secular concerns. Passing on a trade, continuation of business, or maintenance in old age can all be included under this category. Adoption was perhaps still possible for a man who already had a son.

Elizabeth Stone adds 'fictive' adoption to these more traditional types of adoption in Mesopotamian society (Stone and Owen [1991] 2–6). This was used as a method of property transfer in a situation where property was theoretically inalienable (Cassin [1938] 1–48). In these cases no parent–child relationship was implied between the two parties. The fictive adoption texts from Nuzi (near Kirkuk) date from the mid second millennium BC (perhaps between 1475 and 1350 BC: Cassin [1938] 7). These serve to transfer real estate when fields and orchards could only be disposed of within a very narrow range of close kin. Some individuals were 'adopted' up to 120 times, which serves to demonstrate that these cannot be conventional adoptions (Cassin

[1938] 16–17). Obligations to provide food and clothing to the adopter are recorded, but not the more intimate obligation to provide for the adopter's funeral (Cassin [1938] 37). Again, at Rome precise obligations of adoptees in relation to support and maintenance are not enumerated in legal authorities, since much of this was regulated at a domestic level. *Patria potestas* ensured that the adopter was in a very strong position financially.

Stone points out that use of a fictive relationship in this way is itself a sign of a system under siege, and it seems to represent an evolution in the employment of adoption, already at this early date. All adoptions create fictive relationships, but here it appears that traditional practices were serving new functions and fulfilling new societal needs. The types of adoption described by Goody, which are designed to redress deficits in family make-up, may be termed 'familial' adoptions, and, in contrast, those at Nuzi are primarily motivated by economic concerns. These are termed by Elizabeth Stone 'economic' adoptions. However, Goody's categories have an economic dimension as well. The composition and economic circumstances of an individual family would have had some impact on the decision to alienate property through the dodge attested in the Nuzi texts. Fictitious adoptions are found in Rome under very different conditions; the classic example is that of the Republican politician Clodius, who used adoption to change from patrician to plebeian status so that he was eligible for the tribunate (see Chapter 14 below). Both at Babylon and at Rome, in these cases adoption serves to give the adoptee the requisite status to achieve an identifiable social goal.

Types of adoption at Nippur

The socioeconomic system at Nippur has to be grasped to understand the role of adoption in this society. As at Nuzi, there were restrictions on the alienation of real estate which applied especially to field property, and thus fields and orchards could only be disposed of within a very narrow range of close kin. House purchases were not quite so constrained. Temple offices were similarly heritable but not alienable before about 1800 BC. When they did become alienable few restrictions appear to have been applicable, but they could only be purchased by a person whose inheritance had already made him into a property owner. Nippur had a very important temple of Enlil, the principal deity of the Mesopotamian pantheon, which gave both the city and the temple particular status, no doubt important to the developments under consideration (Oates [1979] 27–8).

The restrictions on alienability themselves seem to stem from the idea of communal land ownership by kinship groups. Gradually and within the documented period this ideology had to coexist with a system of individual land registration. All adoptions have elements of both the social and economic attached to them, but at Nippur what is significant is that the adoptions are known to us through contracts; in other words, they were only recorded as part of the process of protecting economic rights, and our knowledge thus reflects the peculiarities of record keeping at Nippur.

The contracts from Nippur are not uniform but they are all witnessed, dated and sealed (dates between 1873 and 1721 BC: tabulated in Stone and Owen [1991] 4). The general format is a statement of adoption followed by a discussion of the settlements in cash or property through inheritance. The adopter may receive an adoption payment. This is often followed by a section in which the penalties for breaking the contract are spelled out. Finally, either before or after the oath, before or after the witness list, the text may describe the monthly and annual rations which are to be delivered by the adoptee to support his new father until his death.

There are some twenty-five Old Babylonian Nippur adoption contracts, which are divided by Stone into four different categories. In some instances the parties to the adoption can be given a wider context as a result of surviving documentation of further contractual activity:

1. A man alone adopts one or more sons. This is the most common and is found across the full range of the texts, which span two centuries. In all except two texts the adopted son(s) receives an inheritance in exchange for a contribution to the future support of the adoptive father. There appear to be no penalty clauses such as threat of slavery or disinheritance if he does not comply. This type is closest to the Roman norm.
2. A man and his wife adopt one or more sons. In this type the wife joins her husband as the adopter. In these instances there is never any clause in which the adopted son promises support to his adoptive parents in their old age, although property inheritance is always a feature of these adoptions. It is deduced that in these instances the parenting aspects of adoption are dominant, something never encountered in the surviving Roman evidence.
3. The sons from a previous marriage are adopted by the new spouse. These consist of adoptions which are associated with a second marriage. Marriage texts which do not treat adoptions are rare, and the record of the marriage appears to be made only because of the adoption. In an instance where the father is the surviving parent of the adoptive sons, they have to promise to contribute to the support of their stepmother in

her old age. When it is the mother who contracts a second marriage, the treatment for her sons depends on her status. If she were to be sold into slavery in a case of divorce, then her sons would be in jeopardy of like treatment. The main aim behind these adoptions appears to have been to restructure the families in a manner consistent with the new marital arrangements. A high-profile Roman example is the adoption of his stepson Tiberius by the emperor Augustus in AD 4.

4. A woman alone is the adopter (probable) or the adoptee. Adoptions involving women are very hard to appreciate. Badly damaged tablets make it hard to determine the identity of the adopter and adoptee. In most cases one of the participants was a *naditu* or unmarried votary; she could be expected to be the adopter on analogy with texts from Sippar (R. Harris [1975]; Stone [1982] 50–70). In these cases she would nominate a girl who could follow her calling and inherit her property. Unlike at Sippar, the other participants in the transactions are all either men or married women. None of these could have become a *naditu*. So adoption is used differently from at Sippar, but the fragmentary state of the record precludes exactitude. Of course this category is quite out of keeping with anything found at Rome, where adopters had to be males capable of exercising *patria potestas*.

Types 1 and 2 reflect contrasting socioeconomic relations between the adopter and adoptee. Type 1 places emphasis on immediate economic gain for the adopter, while type 2 is centred more on the nurturing aspect of the parent–child relationship. In type 1 texts penalty clauses tend to be identical for both parties, or property is held hostage for support, or in one instance the adopter stands to lose more if he breaks the contract. In type 2 either the penalty clauses are equal or the adoptees are threatened with slavery if they break the contract. Thus the adopters appear to have the advantage – quite different from type 1. Penalty clauses are clear indicators of different relationships between adopter and adoptee; expected levels of support provide a barometer for these penalty clauses.

In the Mesopotamian situation adoption could be manipulated to the point where economic motives became paramount. At its best it served to mediate between the social needs of some and the political and economic needs of others. If economic and political ambitions are once allowed into the adoption process, it is only a short step to make them the actual basis of the transaction. This is illustrated by the archive of Mannum-mesu-lissur, dating to about 1739 BC. This is a case of a wealthy individual lacking property. Apparently he used his family's wealth as an opportunity for social mobility. He had no real estate but was able to purchase an adoption from a

financially troubled but established family. The consequences for them were serious: the sons were demoted but expected to be eventual heirs to the adoptee – an expectation which was apparently never realized. Important details remain obscure (Stone and Owen [1991] 19–23).

INDIA

Goody warns of the complexity of the Indian situation and the impact of nineteenth-century thinking on interpretation ([1976] 73). Ideas about Indo-European unity and the evolution of European culture were at that time influential, and similarities to the civilizations of Greece and Rome tended to be exaggerated. It is still an interesting case to review, but caution is in order. Certain general tendencies in India can be noted, although regional and religious differences must have led to many variations in practice. We might expect adoption to be more common in communities which frowned upon the remarriage of widows or in other ways curtailed alternative methods of securing succession.

Hindu law shows that the chief aim of adoption was maintenance of the ancestral line (Mayne [1898] 123). An adopted boy should be the closest possible male relative: if feasible, a brother's son. If no male was available, the next best solution was a son of a family following the same spiritual adviser as the adopting family. Here the spiritual connection took the place of the blood tie. Some idea of procedure can be gleaned from the *dharma-sûtra* of Vasishtha (Bühler [1882] 75–6):

> xv.6 He who desires to adopt a son shall assemble his kinsmen, announce his intention to the king, make burnt offerings in the middle of the house, reciting the Vyâhritis, and take (as a son) a not remote kinsman, just the nearest among his relatives.

Interestingly, the adopted son was only partially protected from the birth of subsequent legitimate children, and the same text shows that in that event his share would be reduced to one-quarter (Bühler [1882] 76):

> xv.9 If after an adoption has been made, a legitimate son be born, (the adopted son) shall obtain a fourth part.

The reduction in the adoptee's share can be compared with a like provision in the Gortyn Code.

Under the Laws of Manu, twelve types of son were enumerated, and this reveals the emphasis on acquiring sons by whatever means possible. This did not mean that there was no pecking order – quite the reverse – primacy

went to the child born of two spouses of the same caste. An adoptee was also to be of the same caste as adopter and should bear a resemblance to or be a reflection of a natural son (Tambiah [1974] 81). It is also noteworthy that there is emphasis not merely on capacity to continue religious duties to the adopter after his decease, but also on identifying a worthy successor to the social personality of the adopter. Also of interest is the exclusion of the adopted son from inheritance in his natal family (the situation at Rome became increasingly complex as certain rights within the natal family were acknowledged under the influence of praetorian law: see Chapter 7). This is made quite explicit in the Laws of Manu (Bühler [1886] 355):

IX.141 Of the man who has an adopted son possessing all good qualities that same son shall take the inheritance, though brought from another family.

IX.142 An adopted son shall never take the family name and estate of his natural father.

All this shows the primacy of the family as corporate identity. An outstanding feature of this world is the lack of permeability in barriers between castes. Status is very carefully monitored within this system. At Rome too adoption was essentially between persons of similar caste.

OCEANIA

In Oceania adoption is used far more casually than at Rome, and often the arrangement seems closer to fostering. Children were circulated as part of the process of building kinship ties. Preference here is for adopting the child of a relative or friend rather than a child of unknown parentage. Reasons include fear that a child of unknown parentage might have the character flaws of its parents. Such a child was seen as an affront to the kin group through their failure to find their own solution to the child's inadequacies.

The adopter will usually be one of the natural parent's siblings or parents. Oceanic adoption is not characterised by formal legal procedures. Normally it is an individual who adopts, rather than a couple. The adopter is normally married and will often have existing children. Adoption is frequent and adopters are less fussy about the physical attributes of the child. Sometimes a child is even adopted before it is born. Nevertheless, the social attributes of the child's natural parents are of importance to Oceanic adopters. Adoption is not denied on economic grounds and the like; there is no kudos in adopting, no stigma in giving in adoption. Rather it is seen as an act of generosity. Most parents giving up children in adoption are ready, willing and able to keep their children (Carroll [1970] 3–20).

This type of close-kin arrangement is not replacement of one set of parents by another, but a new layer of kinship obligations, and the adoptions are reversible. A typical example can be found amongst the Kamano villagers of the Eastern Highlands of New Guinea. As elsewhere in Oceania, the commonest adoptions do not involve orphans or provision of children for the childless. The norm is for adults with children to adopt children who have parents. The adoptee ends up with two rightful homes throughout life, and there is no total severance of ties with the natal family, similar to the situation with the sons of Aemilius Paullus. This may be considered of interest for comparison with Rome, despite the profoundly different social organisation; the intention of securing access to inheritance of wealth or position may have meant that it was common for an adult Roman, too, to enter an adoption while retaining links with the natal family. Amongst the Kamano, however, children are taken from the natural mother at the earliest possible moment, either immediately or as soon as the child may safely be weaned. The aim of this is to achieve loyalty and commitment to the adopting family. In Rome substantial financial and/or political benefits may have been thought to ensure commitment. In both societies it can be expected that tensions continued to exist between the competing interests of natal and adopting family. Kamano adoptions often involve a demonstration of affection between friends and relatives. An unusual feature is the very private nature of the transactions, although the adoptee is informed of natal identity. The commonest adopters are matrilineal kin, and after adoption the incest taboo against relations with natal kin is operational. More precision on the reasons for the relatively free exchange of offspring amongst the Kamano has proved elusive (Mandeville [1981] 229–44).

On Kosrae Island many of the same features can be found, but there are some differences. After agreement between parents and the adopter, the adoptee will normally move to reside with the adopter. The expectation is that adoptees, who are usually infants, will in due course help, obey and care for the adopter, and in return will gain a share of the adopter's land when it is divided. Natural parents seem to retain stronger control over their offspring than amongst the Kamano. Thus mutual support continues to be expected, and adoptive children in return expect their natural parents to provide them with land, unless they have been thoroughly catered for by the adopting parent. The same taboo on incestuous relations with members of the natural family is maintained, and, although there is no absolute taboo on relations within the adopting family, such relationships are frowned on as contrary to the spirit of the adoptive relationship. As amongst the Kamano, there is no attempt to hide the genealogical identity of the adopted

individual, and this must remain an important consideration in order to avoid incest problems. Motives for asking for children can be differentiated from those of the Kamano, where adoption follows the more general Pacific trend of providing a means of testing and asserting kinship ties. Here sterility is a factor, and it is statistically clear that most mature adults who do not have children do eventually adopt. Children are seen as a desirable commodity for labour, economic well-being and companionship. Despite this, the norm is not to choose a child who is already of an age to be of assistance. Subjects for adoption include illegitimates and children from parents who have closely spaced children or very large families. On Kosrae Island residence with the adopter is not always an essential component of these relationships. Here an elderly person may be incapable of caring for a small child. The idea behind adoption in these cases may be to gain eventual support in the event of sickness or a more general need for continued care (Ritter [1981] 45–61).

On Kosrae many adoptees eventually return to live permanently with their natural parents, and the adoptive relationship is terminated. This may reflect the difficulties Kosraean adopters have in winning over adoptees on a permanent basis, and the pressures generated by the continuing relationship with the natal family. Sometimes this can be perceived as a problem even in instances where the best financial interests of the adoptee would be served by staying with the adopter. In Oceania some of the relationships which have been analysed as adoptions may be better seen as mere fosterage. The distinctions are often fine. There is no doubt that the functioning of Oceanic kin groups is very unusual and should be carefully differentiated from European societies.

JAPAN

Japan and China are both of interest for comparison with Rome because of the strong interest in agnatic descent, although other features, especially political developments, proceeded along very different lines. Family name and hierarchy are closely interconnected in Japan as well as in other oriental contexts. In China the surname was supposed to be immutable and hence there was close guarding of adoptive possibilities (Waltner [1990] 11). Adoption was not restricted in Japan to those of the same surname. In Japan promising young men were adopted by families with no sons or those whose sons possessed only minor talent (the Japanese household [the *ie*] was seen as a corporate unit rather than a blood one). Adoption by a prominent family was potentially a significant way of bettering one's status. The key

seems to be the furthering of the interests of the adopting group – for kinship, friendship, spiritual affinity or ability. With Japanese adoptions there was no restriction preventing an adopted child from himself engaging in adoption.

In Tokugawa Japan (1600–1868) adoption was regarded as a method of encompassing social mobility in a society in which status was generally seen as hereditary (Moore [1970] 617). This was particularly the case with samurai families and has been linked explicitly with the need for fresh blood within the ruling class, in a system which generally frowned upon social mobility. Adoption in Japan allowed a measure of flexibility in a system which might otherwise have become closed and decayed.

The socioeconomic background of adopted sons in relation to the adopting families was crucial. Also significant was the impact of adoption on the life and expectations of the adoptees. Firstly, it is clear that the norm was adoption from within the samurai class; there were sometimes differences of status within the class, but it seems to have been rare for adoptees to be taken in from significantly lower status groups. The problem does not seem to have been low fertility throughout the whole samurai group; rather, that surplus sons from some samurai families were being redistributed through adoption. Nevertheless, biological continuity of samurai families has been considered only a part of the problem. The adopted son might achieve the status otherwise reserved for his elder brother, and thus become head of a samurai family. This behaviour may also help an understanding of adoption in the Roman elite, although extant examples often do not reveal much about the relative status of the parties: in elite families fine distinctions regarding the family record in obtaining *honores* were important. In Japan the adoptee might also be from a family of lower social status than the adopter, a further aspect of his social elevation. Thus an artificial method of generating continuity within the family preserved the outward impression that the samurai class operated on an entrenched hereditary principle. An alternative avenue of advancement for younger sons helped to alleviate some of the internal pressures for change within the samurai system.

Where an adoptee could not be found from the same stratum as the adopting family, there was a preference for higher-status candidates. Social mobility for an adopted son was, in this case, more likely to be to his disadvantage in social terms. In compensation he would in due course become head of his new family. However, it was normal to remain within the same stratum, and this was encouraged by laws requiring the adoption of agnates. Failing this, the next in line were more distant relatives of the same social standing. Other strategies might meet with disapproval.

The only real reason for going outside the family was the ill health or incompetence of available family representatives, and only after the possibility of adopting more distant kin had been thoroughly explored would the search extend beyond the lineage.

It is interesting to note some changes brought about by the introduction of Confucian tradition into Tokugawa Japan. The main rival was Buddhism. I. J. McMullen has dealt with differences between contemporary Japanese practice and the Confucian norm, which included a prohibition on non-agnatic adoption. A primary difference between the societies was in the basic unit of Japanese society, the *ie*. Chinese Confucian kinship was based on the agnatic principle, and recognised patrilineal descent as the only legitimate means of perpetuating a family line. Therefore adoption of a non-agnatic heir was condemned as immoral. In the Japanese *ie* the agnatic principle was weaker, and the question of succession could be determined in a more flexible manner. Nevertheless social mobility in Japan was curtailed by the rigid emphasis on hereditary occupation. The *ie* can be seen as a corporate rather than a kinship unit, where value was placed less on perpetuation of blood from father to son than on perpetuation of the family as a corporate group through its name and occupation. Thus in Japan it was at least possible to resort to adoption of a non-agnatic relative – or even a totally unrelated person. The Confucian prohibition would create extinctions of families, and in Samurai society this would result in confiscation of hereditary office and emoluments (McMullen [1975] 134–5).

McMullen also notes that political structure was very important. Tokugawa Japan was still a feudal society at this stage, unlike China. The consequences of extinction of a feudal house were severe because the Samurai depended on reciprocal obligations to great feudal houses. If a house were to fail to produce an heir, the livelihood of its dependents would be thrown into jeopardy. Adoption could avert disaster. Conflict between the Confucian system and existing norms was inevitable. The threat was both to the *ie* and to the wider feudal society.

Significantly the Confucian prohibition on non-agnatic adoption took its origin in the ancient Chinese cult of ancestor worship. Where the great head of a clan had no natural heir to succeed to the ritual headship of the family and continue sacrifices to his parents after his own death, it was prescribed that a son from a cadet branch, provided he was not himself heir to the ritual headship of his own branch, could be adopted to succeed the great head. These adoptions were restricted to those descended through the male line from a common ancestor and sharing the same surname. Sacrifices offered from any other person were thought of as a form of impiety.

CHINA

Adoption in China has been linked to the bias towards male heirs. Adopted sons have a favoured status comparable to that of a natural son, and this is closely linked to ancestor worship, which in this agnatic society is the responsibility of the male heir (Ahern [1973]).

Careful distinctions were made in China between those children who were adopted from agnates as compared with those adopted from non-agnates. In some cases there was a prohibition on adopting a male child from a non-agnate. If no agnate could be found who was willing to surrender one of his sons, it might be permitted. A distinction was always made between boys adopted from within the lineage and those taken from outside (Wolf and Huang [1980] 108, discussing the period 1845–1945). There was some regional difference in the severity of the rules. It was not uncommon for people to prefer to adopt from outside the lineage, even though this met with some disapproval (the idea of adopting on grounds of virtue and sentiment was felt to be inferior) (Wolf and Huang [1980] 204).

J. L. Watson in his discussion of adoption practices of the Man lineage in Hong Kong found that the Mans usually tried to adopt a son of a close agnate or, failing that, to buy a boy from a stranger ([1975] 293–306). That is, they avoided adopting boys from agnates who were not close relatives (Wolf and Huang [1980] 209). This is a little puzzling since, in order to have his son accepted as a member of the lineage, the man who adopted from outside had to give a banquet for all the lineage elders, at which the guests would do their best to insult the host on the subject of his inability to produce children, would berate him as they left for defiling the lineage and would complain about the miserable food. Watson claims that they endure this because of concern about the loyalty of the adopted son. Because brothers and first cousins usually live together there is little danger of conflict over rights in an adopted son. Beyond this level there is always some danger that the natal family may try to reclaim the boy. The Man lineage members would try to get such a child from as far away as possible as protection against later claims. This kind of advantage was appreciated in Hai-shan, where a dealer as part of his sales pitch placed emphasis on the contention that when the child he had available grew up he would never find his real parents, because they lived so far away.

Another view opposed to that of Watson is that close agnates cannot be avoided under the lineage rules amongst the Mans. In Hai-shan it should be expected that most adopted children would come from outside the lineage (since there was no insistence here on taking close agnates). Buying from a

stranger only had the disadvantage of the price paid in compensation (Wolf and Huang [1980] 210–11). Clearly Watson is right in thinking that a major goal is to cut off the boys from their natal family and to bind them to their foster family. This approach has some impact on the normal age for adoption, which is very young.

Wolf and Huang identify several forms of adoption corresponding to these differences of status. The Royal Commission appointed to investigate the *mui tsai* problem in Hong Kong and Malaysia discussed the various statuses (*mui tsai* were a kind of marginal family member: young girls taken into families with a virtually servile status). The commission found that if a son adopted is an agnate, the transfer is called *shing kai*, or taking over the succession, or *kwo tsz*, or going over to be heir, or going over to the *sacra*. Contrast the adoption of cognates, *kwai tsung*, or returning to stock. The adopted son who is a stranger is known as *yeung tsz*, a sort of foster son (Wolf and Huang [1980] 108).

Similar classifications can be found in Hai-shan. A male child adopted from an agnate was called *ke-pang-kia*, that is, a child passed from one branch of a descent group to another. The child had to have been adopted from a close agnate. A *ke-pang-kia* assumed all the rights and duties of a son with respect to his foster parents, including the right to inherit a share of their property and the duty to support them in their old age and worship their souls after death. But surprisingly the *ke-pang-kia* did not sever his relationship with his natural parents. This was not merely informal. He addressed them as father and mother, contributed to their support, mourned when they died, made offerings to their souls and, in return, commonly inherited a share of their estate. They were said to 'suck from two tits', that is, they drew support from two lines of descent (Wolf and Huang [1980] 108–9). No such formal retention of links with the natal family can be found in the Roman context.

In some instances in China payment was made for a boy adopted from an agnate although larger amounts were paid for children with a different surname. But in Hai-shan it was not usual to ask for compensation for a child taken by a recognised agnate. Adoption would only be commercialised when the parties were strangers or distant relatives who no longer observed the formalities of kinship. Again the nature of the exchange in the Roman context is quite distinct. It seems most unlikely that this was ever seen as a commercial transaction as such; rather, the emphasis was on the exchange of social and political benefits. In China this may also be seen as a reflection of the poor economic standing of the parties. In Hai-shan, unlike certain other Chinese communities, the pressure to adopt an agnate

was not there. It was one of the more liberal communities. People who wanted to adopt could take any child they could find and those who wanted to sell one of their sons were free to seek the best price. This was the rule of the market place, not kinship ties. Adopted children were often bought from dealers who might have come from afar; this increased the price paid (because of the wider, non-localised market) but also meant that a child who was sold would raise a better price (Wolf and Huang [1980] 204).

A purchased child was given the status of *bieng-lieng-kia*. In contrast with the *ke-pang-kia*, the *bieng-lieng-kia* broke all ties with his natal family and became the exclusive property of his foster family. There was total relinquishment of the former identity. The term *bieng-lieng-kia* itself had an interesting origin, as related by Lu Hsun in *Ch'un mo hsien-t'an* (*Idle Thoughts at the End of Spring*) and passed on by Wolf and Huang ([1980] 110):

> The old folk informed me that the slender-waisted wasp was the *sphex* mentioned in the old classics, who, since all *spheges* are female, must adopt bollworms [*bieng-lieng*] to carry on her line. This wasp imprisons the green caterpillar in her nest, while she herself raps and taps outside day and night, praying: 'Be like me! Be like me!' Then after a certain number of days – I forget exactly how many, but probably seven times seven – the caterpillar turns into a slender-waisted wasp. That is why the *Book of Songs* says: 'The bollworm's young is carried off by the *sphex*.' This bollworm is the green caterpillar found on mulberry trees.

Both classes of adoptee would wear mourning for their foster parents but ideally a *bieng-lieng-kia* did not even attend his natal parents' funerals (Wolf and Huang [1980] 111). This was something the natal family could not expect once they had sold their son.

The term which corresponds to *kwai tsung* in the *mui tsai* report is not immediately obvious and it has been doubted whether any distinction is made in Hai-shan between classes of non-agnate adoptee. All might have been included under the category *bieng-lieng-kia*. But it is suggested that this is not the right solution – a child adopted from an affine is called *cieng-kia*, a gift child (Wolf and Huang [1980] 109–12).

Goody has argued for a narrow definition of adoption, which allows only those instances where the subject is ranked as the child of its adopters and ceases to be the child of its parents. This is restrictive for the Chinese situation, since it would not include *ke-pang-kia*. A case can be made for including instances in which rights over a child are divided between two parties (Wolf and Huang [1980] 113).

Adopting women

In China women are not valued in the same way as men as family members. When exposure of children was accepted practice, far more women than men were exposed. In late Imperial China, this is illustrated by the following extract from Adele Fielde's observation of the situation in the 1870s, cited by Wolf and Huang ([1980] 230):

> The decision whether any more girls are wanted is usually made in the family before the child's birth, and an undesired girl is stifled by the mother, father, or grandmother, as soon as her sex is known. A neighbor of one of my Bible-women bore six daughters successively, and smothered five of them. When the sixth came, she said it was always the same girl coming back, and she could no longer endure her. She wanted boys, and would see whether that girl could be deterred from again presenting herself. She cut the child into minute particles, and scattered them over the rice-fields.

In modern times prediction of the sex of children has been possible and far more girls have been terminated than their male counterparts (North China) (Wolf and Huang [1980] 230). Moreover, since a woman in China is born to leave her natal lineage, this process is in some cases hastened, especially in families where economic factors are critical. The Chinese custom of daughter-in-law adoption exemplifies this process. A girl may become *sim-pua* or 'little daughter in law', with the intention that she should marry her foster brother or some male member of the lineage into which she has been adopted (Wolf and Huang [1980] 113–14). There is no sign in China that the impact of the agnatic nature of the society is to prevent the adoption of females. In contrast very little is heard of female adoptions at Rome.

The practice of daughter-in-law adoption diminished the value placed on both natural daughters and adopted daughters. Daughters born into the family were devalued because girls ultimately became somebody else's possession after the family of origin had borne the expense of rearing them. Thus girls commonly came to be removed for adoption even younger than males, and girls might thus be nursed by future mothers-in-law, who gave away their own daughters to make room for daughters-in-law. This did not, however, mean that an adopted daughter did better than a natural daughter – rather the reverse. They were not allowed to go to school for long, and were kept at home to do the housework. An apparent paradox was that despite the normality of mistreatment by their future mothers-in-law these adopted girls seem to have become deeply attached to their mothers-in-law, and to have had poor relationships with their real mothers because

the natural mother had given them away. This tension probably goes a long way towards explaining the dynamics of the situation (Wolf and Huang [1980] 232–40).

Two classes appear in household registers: *sim-pua* and *iong-lu*. The *sim-pua* form required that a family already have a son and declare their intent to marry him to their adopted daughter. Otherwise the girl had to be registered as *iong-lu*. This was regardless of whether or not the family hoped to marry her to a son if they produced one in time.

In Hai-shan, with the exception of girls purchased as servant-slaves, all adopted daughters were called *sim-pua* (Wolf and Huang [1980] 114). Custom drew a distinction between *u thau-tui* and *bou thau-tui*, girls 'with an opposite' and girls 'without an opposite'. This is only an indicator of the fact that they were or were not matched at the moment of adoption. In either case, circumstances could change (Wolf and Huang [1980] 115). Effectively this institution was somewhat different from adoption because these transactions were a first step towards marriage and granted the girl status as a daughter-in-law. If candidates died before marriage, their tablets were installed on the altar as required for a daughter-in-law and not relegated to a back room, as was customary in the case of a daughter.

Ca-bo-kan are the girls referred to as servant-slaves. Villagers would not usually purchase a girl to serve in their own home. They would rather adopt a *sim-pua*, on the grounds that a girl who could marry a son and bear children for the line was more use than one who was good for nothing but household chores. *Ca-bo-kan* was close to the *mui tsai* system in Hong Kong and Singapore. Although apparently a domestic servant with no wages and no personal freedom, the employer of a *mui tsai* regarded her as a family member and was obliged to provide her with board, lodging, clothing, medical attention, and, eventually when she reached marriageable age, she was to be married to a suitable husband. It has thus been seen as a form of female adoption (Wolf and Huang [1980] 117). There is, however, some question whether *ca-bo-kan* had an automatic right to marry – was this not rather seen as a generous concession on the part of the family which had purchased rights over the girl's person?

The Roman experience is quite different from the *sim-pua* type of arrangement; women may be betrothed early but do not, at least in the high-status examples which are known to us, leave the natal home in advance of matrimony. Even then the development of marriage without *manus* shows that close links are retained with the family of origin. Marriage without *manus* is a late development, and motives for that development appear to relate to inheritance patterns. The retention of the female close to

the family at Rome is related to her capacity to take from her relatives, especially male relatives (Treggiari [1991a] 37–82; 379–83).

In this comparison the *sim-pua* adoptee is drawn from a different social milieu, the world of the marginal Chinese peasant. Nevertheless, the financial considerations which keep a Roman girl who has been married without *manus* so closely linked to her natal family can be related to the fact that Romans males did not see their female relations as naturally extraneous, but rather as powerful adjuncts to political and social advancement. In contrast, the very rapid disposal of the female in China diminishes not just her cost but also the extent to which her natural origin is seen as significant.

Issues raised in a Chinese context by adoption

Disputes in adoption cases centred on questions regarding filial piety to the natal father. In general, legally and ritually sanctioned adoptions of an heir were restricted to persons of the same kin group or same surname – others were legally prohibited – but adoption of persons of a different surname seems to have been relatively common (sanctioned by custom). Adoption can be seen as mediating between the principle of heredity and the principle of merit. Waltner suggests that it is not surprising that this should take on importance when China was run by a civil service recruited through an examination system ([1990] 4). In nineteenth- and twentieth-century China adoption across surname lines was common; it seems that adoptive parents were not pressured to select a member of the surname group as heir, and it was thought that a child was more likely to opt out and return to the family of birth in the case of adoption of close relatives. It can be seen that these adoptions were centred on children rather than on the adults, as preferred in the Greek and Roman worlds.

ADOPTION – FROM ROME TO THE MODERN SITUATION IN THE WESTERN WORLD

Adoption in Rome took on special importance in relation to the perpetuation of the family *sacra* as well as providing an artificial continuity of line for purposes of inheritance of property. Concern for continuity of the *sacra* might have had links with a phase when ancestor worship was important at Rome, although this has been disputed. A Roman with no legitimate children would attempt to create an heir by other means, and might adopt a son still under paternal power (*filiusfamilias*) from another family, or adrogate one who was legally independent (*sui iuris*). Whether religious

or material considerations were originally behind Roman thinking cannot finally be settled, but it is clear that adoption was employed on a considerable scale, and the practice deserves careful investigation. In the late Republican and early Imperial examples where the evidence is fullest, the signs are that inheritance has become dominant, and this may also help to explain the growth of testamentary cases.

In Classical times legitimation was virtually unknown. This is the process of acquiring *patria potestas* over natural children born outside marriage. These could not be adopted in the early Empire or before. A restricted exception allowed a man with no other children under his power to bring under his power by means of *adrogatio* one or more illegitimate children of free status – that is freeborn or freed. These might include children by a concubine (Gaius, *Inst.* 1.102; *Dig.* 1.7.15.2–3; Corbier [1991b] 64). The practice does not seem to have been widespread, and most leading citizens seem to have chosen to adopt from members of their own class. They still had to be Roman citizens at the time of adoption (Corbier [1999b] 1267). Concubinage and other features of Roman society in the late Republic and early Empire must have ensured that significant numbers of potential heirs were prevented from ever legitimating their claim to membership of the father's family.

Certain groups in Roman society were prevented from contracting legitimate marriages. These included soldiers, who were prevented from marrying until the time of Septimius Severus (Campbell [1978] 153–66). In the Roman Empire Constantine introduced a form of legitimation *per subsequens matrimonium*. However, this was subject to certain restrictions. It applied only to existing cases of concubinage, and children would be legitimated and become citizens – if not already so – under the *patria potestas* of their father, when their father married his concubine. The woman had to be freeborn (*ingenua*), the man could not have an existing wife and legitimate children by her, and the offspring in question had to assent to the process of legitimation. Hand in hand with this was an attempt to root out future instances of concubinage. A further measure under Anastasius shows that the measure was ineffective (J. A. C. Thomas [1976] 433–5).

Under Justinian a more realistic version of the legislation was instituted. Even in cases where the father had existing legitimate children, marriage with a concubine would legitimate his offspring provided that the woman was not a slave. She no longer had to be freeborn. Justinian also created or confirmed another method of legitimation, *per rescriptum principis* (Just. *Inst.* 1.10.13). This was applicable to cases where the concubine was either

deceased or otherwise unfit to marry. Here the petition to the emperor might occur during the father's lifetime or by petition in the father's will.

The third form of legitimation was *per oblationem curiae*. In the fifth century it was validated under a constitution of Theodosius II and Valentinian III to help to find candidates for the municipal office of *decurio*. A man with no legitimate issue could make his son by a concubine a *decurio* or marry his natural daughter to a *decurio*, and that child could then succeed to his estate on intestacy as though legitimate (J. A. C. Thomas [1976] 434). A child legitimated *per oblationem curiae* could only be legitimated if there had been no hindrance to marriage at the moment of conception. Children born of incest or adultery could not be legitimated in this way. In any case the resulting rights of the child were restricted to legitimation in the eyes of the family itself with no consequences for remoter relatives of the father.

The Christian Church disapproved of attempts to move children between domestic groups through wet-nursing, fostering and adoption. The last of these was effectively prevented for something like 1500 years. The other two continued unabated despite the Church's condemnation of the practices (Corbier [1991a] 128).

Adoption was essentially a legal act requiring formal enactment. Its dominant position in Roman law was soon to diminish in the post-Classical period. The adoption of women (i.e. of those who were legally independent [*sui iuris*]) became possible, and after the time of Justinian it became possible for women to adopt, since *adoptio* no longer necessarily involved the creation of *patria potestas*. Nevertheless, the requirements of an age gap of eighteen years between adopter and adoptee, and a minimum age of sixty for the adopter, were retained (Goody [1983] 72).

Goody notes the absence from Anglo-Saxon codes of anything resembling adoption, and it remained in abeyance in most Western nations until the latter part of the nineteenth century. In the United States it was introduced in Massachusetts in 1851 and later spread to other states (Goody [1983] 72–3). Goody argues that the Church of the Middle Ages would have opposed adoption since it has the effect of creating fictional heirs. In the event of a man's dying without natural heirs, the Church would hope to be principal beneficiary. He draws the contrast with the Roman situation where Ulpian can say in about AD 200 'we are not permitted to appoint the gods as our heirs' (*Rules* 32.6) (Goody [1983] 95–6).

Goody also charts some important developments in the capacity of the Christian Church to become a beneficiary of private estates. *Collegia* had not been allowed to inherit unless especially privileged, and the

Christian Church only began to receive special dispensation in the time of Constantine. The Edict of Milan (AD 313) formally recognised its power to own land, and in AD 321 that emperor enlarged the Church's power to inherit. Within a short time restrictions began to be placed on the greed of the clergy, but it was no doubt this background which brought about the decline of adoption in the later Roman Empire (Goody [1983] 96). Goody accuses the Church of taking on a role comparable to that of those notorious inheritance sharks of the early Empire, the *captatores*; the classic example of a *captator* is Regulus, whose antics are detailed in a famous letter of the younger Pliny (*Ep.* 2.20). The Church itself was able to provide the continuities, which had previously been generated artificially through adoption. More recently Mireille Corbier has advised caution concerning the more extreme aspects of Goody's argument about the influence of the Church and has modified details of interpretation (Corbier [1999a] 10–11).

Adoption itself did not escape direct comment from Christian critics. The fifth-century Christian writer Salvian, a priest of Marseilles, was a vocal critic of those who in a state of childlessness adopted children of others:

> In this way some very wretched and most unholy people, who are not bound by the bonds of children, nevertheless provide for themselves chains with which to bind the unfortunate necks of their own souls. When there is no crisis at all within the home, they summon one outside the home. Although the causes of danger are lacking, they rush headlong as if into voluntary death. (Cited by Goody [1983] 101)

The criticism is very clearly directed at the question of inheritance.

Adoption was slow to recover from this lengthy period of neglect. When it did so, it was serving new social circumstances and was much more concerned with the interests of adoptees than the adopters. In England the common law recognised neither adoption nor legitimation until 1926. Informal adoption was in widespread use before that date. A person or married couple commonly put themselves into the role of parents to a child, but it was legally impossible for the natural parents to discharge their parental rights and liabilities through such a transfer. The need for the Adoption Act of 1926 had been generated as a result of the growth of adoption societies (such as the Waifs and Strays, later to become the Church of England Children's Society). These had grown in size especially as a result of the circumstances of the 1914–18 war, and this led to political demands for the legal protection of children. In 1920 a committee was set

up, chaired by Sir Alfred Hopkinson, and this in turn generated the Adoption of Children Act 1926 (Strachan [1992] 8–10).

The Adoption Act of 1926 was experimental in scope and aimed to prevent the natural parents from subsequently reclaiming the child, and, further, to secure guardianship for the child within another family. As in the Roman situation, the approval of the state was required, and in both systems there was emphasis on preventing adoption in undesirable circumstances, allowing it only on the consent of the interested parties. Until 1958 the Act required a difference of age such that the adopter might have been the natural parent, another similarity to the Roman situation. Under the Act of 1926 a distinction was drawn between the natural and adopted child as far as rights over property and succession were concerned.

Either parent can adopt, and either spouse can adopt separately. No married person and nobody over twenty-one can be adopted. This is an important distinction from the Roman situation in that it is essentially only the adoption of children. The bias in the Roman situation must have favoured the adoption of adults, since it was only through survival to adulthood that maintenance of the *sacra* could be assured. The rights transferred under the Act of 1926 were only those of future custody, maintenance and education. At the time of the Act the number of children available for adoption far exceeded the number wishing to adopt, but this trend has been reversed in more recent years.

The Adoption of Children Act 1949 effected important changes to the Act of 1926 and brought it much closer to the Roman practice. Until then an adopted child gained no right of succession in the new family on intestacy and retained rights within the old family. This is in direct opposition to the purpose of Roman adoption, which was directly related to questions of inheritance of rights and liabilities. Also no quasi-blood relationship was envisaged (again in contrast with the Roman situation), such as might prevent a marriage. This all changed in 1949. Adoption now brings the adopter and the adopted child for marriage purposes within the prohibited degrees of consanguinity, and moreover the prohibition survives any subsequent adoption of the adopted child by yet another person. Importantly the Act assimilated adopted children to natural children for the purposes of inheritance. Thus they now acquire rights of succession on intestacy and the term children in a will or any instrument *inter vivos* will be held to apply equally to adoptive and natural children. These modern developments have advanced adoption beyond the scope of the Act of 1926, at which time it was envisaged as little more than a special form of

guardianship. It is now intended that the adoptive child should be assimilated to an actual child of the adopter.

Legitimation in a modern context

Legitimation was introduced into English law by the Legitimacy Act 1926, emended by the Legitimacy Act 1959. Unlike the Roman regulation, it does not extend to children of an adulterous union. Like the Roman rules of the period after Justinian, this act creates the same parental rights and duties as in the case of legitimate birth. Rights of succession in both directions are created, as are all rights accruing after the date of legitimation, with the exception of a dignity, title of honour, or any property going with it. A major difference from the Roman situation is that legitimation can only come about through the marriage of the parties. Marriage itself effects the legitimation, and there is no question of consulting the interests of other parties such as children of an earlier marriage.

A CONTEMPORARY CASE

Modern adoptions do not all conform to the general structure of English law as described, and variants are found in different jurisdictions. Contemporary issues about property rights in same-sex relationships can be revealing. A case recently reported in the *Sydney Morning Herald* (20 March 2007, reported by Pam Belluck for the *New York Times*) uncovers some interesting features of adoption in the US state of Maine. It concerns descendants of the IBM founder Thomas Watson, in particular Olive Watson, fifty-nine, granddaughter of the founder, and daughter of Thomas J. Watson Jnr, the company's chief executive, and Patricia Ann Spado, now fifty-nine, her former lesbian partner for fourteen years. A Maine law allows one adult to adopt another. In 1991 Olive Watson, then aged forty-three, adopted Spado, then forty-four, and thus marginally her senior. Spado in court documents claimed that this was done in order to allow her to qualify as an heir to Watson's estate. Less than a year after the adoption the relationship broke up. In 2004 Olive Watson's mother died leaving trusts to be divided amongst eighteen grandchildren. Spado put in a claim to a share as a nineteenth granddaughter.

The Watson trust lawyers have been trying to annul the adoption on the grounds that the law was not intended for same-sex partners and that it was not applicable to the women who were only temporary residents in Maine. Spado's lawyers have countered with the objection that the

arrangement regarding the adoption is of long standing, was not fraudulent, and the basis of objection is 'third-party aversions to personal lifestyles'. US experts say that adult adoption, which is allowed in many states, was intended to cover cases where a step-parent adopts a stepchild. This case highlights a feature of the times: in 1991 same-sex couples used adoption to secure the financial position of partners in the absence of the possibility of same-sex marriage.

After the couple separated Olive Watson paid Spado a $500,000 settlement, but its purpose is disputed and it is claimed by Spado to represent her interest in mutually owned property. Nevertheless there are complications for the Watson camp. Watson signed a letter confirming 'our agreement that I shall at no time initiate any action to revoke or annul my adoption of you'. Watson now lives in Miami with a new partner and two adopted boys, aged six and eight, included as heirs under the trust arrangements. A judge ruled against Spado in 2005, but matters are now under appeal. The case shows that where large estates are concerned, disputes over status are crucial to the outcome. Roman cases had some common ground, although an age difference replicating nature was expected between adopter and adoptee.

CONCLUSION

In this review of the way in which adoption is used in different timeframes and different types of social organisation, the aim has been to look at the whole range of purposes for which strangers may be integrated into a family on what is intended to be a permanent basis. It is to be hoped that this review will help in not merely an understanding of the features which are present in Roman adoptions, but also a clearer appreciation of some of the possibilities which were deliberately excluded from its scope. Today the emphasis has swung away from the interests of couples who are trying to remedy family deficits, and the main purpose of adoption is to secure the welfare of the child. Other recent developments show that modern adoptions are quite far removed from Roman ideals. While the idea of severing legal relations with biological parents is part of the Roman procedure, the severance of all other contact, which was the norm in modern cases of adoption until recently, seems unlikely to have been a normal consequence of Roman adoption. For some years now the right of the adoptee to information about identity has been acknowledged and this has gone far in lifting the veil of secrecy from adoption (Stonehouse [1992] 1–8). Some problems about the way adoptees are perceived are also

beginning to be confronted, and there is acknowledgement of the need for the biological connection with the birth mother which seems psychologically important to generational continuity (March [1995] 653–60). What cannot usually be encompassed in modern adoption is the adoption of older candidates. It is because nurture rather than inheritance is at the centre of most modern procedures that we cannot expect to understand Roman adoption simply by reviewing contemporary conditions.

CHAPTER 2

Kinship in Greece and Rome

In the nineteenth century, as the discipline of anthropology developed, kinship was seen as a key to understanding the working of social systems. Pioneers of that field suggested that societies without highly evolved political and individual roles defined their social relations with respect to kinship. Those involved were legally trained in the Classical tradition; they could see in Roman law attempts at defining a wide range of familial relationships and obligations, and they saw Rome as an important evolutionary phase in a more sophisticated social setting, removed from the primitive. Even today kinship is seen as more important in simple societies, whereas complex societies have evolved away from it (Trautmann [1987] 180). The result has been that in modern studies of kinship there is still much recourse to terminology from Roman law, which had provided the seed bed for the analysis of family in terms of kin relationships. It also raises the question of whether kinship beyond the household did have a deep impact in the ancient world.

Family relationships in both Greece and Rome have been subjected to considerable scrutiny over the past forty years; today after much detailed investigation of male and female power in both contexts it appears that the two cultures were less alike than was first thought. Sarah Pomeroy, in her study of *Families in Classical and Hellenistic Greece* (1997), warns of the dangers of approaches which try to pin down a unified European identity and exaggerate similarities between communities which clearly developed separately and to some degree in isolation. Older approaches tried to force the evidence into a preconceived evolutionary mould.

In the nineteenth century Greek society was fitted into an evolutionary model in which its priority to Rome was assessed as implicated in its different structure. Thus, according to Bachofen, Homeric society was seen as in transition towards a more evolved state (Patterson [1998] 11–12). In Homeric society there appeared to be a role for both patrilineal and matrilineal kin, while it was claimed that the evolution of the *polis* resulted in an exaggerated patriarchal society, where patriarchy not only enhanced

male participation in the public sphere but seriously damaged the role of women in the private sphere. Why evolution took that particular direction was seen as self evident and was never truly tested, a view which it has taken a long time to modify. The mechanics of the evolution into the world of Rome were also glazed over.

Modern studies of the social system in the Greek world were initially extremely Athenocentric, as exemplified by Lacey (1968), but some balance has been attempted by more recent work on Sparta, as well as in the overview by Pomeroy (1997) and a study of Greek households by Cox (1998). Parkin has emphasised that Lacey, rather than discussing theory, preferred to give a broad chronological survey of the Greek family based on literary texts (Parkin [1999]).

As Saller points out in an important work, the study of Roman kinship is complicated by the central role it had in the development of the discipline of anthropology and the formulation of social theory (Saller [1997] 7). He follows the approach taken by Robin Fox (1967). Anthropology had its beginnings with lawyers who were trained in and highly influenced by Roman law, and they used that framework to generate much of their classificatory vocabulary. Saller believes that this legal slant has in fact been a major hindrance in comprehending the actual working of Roman kinship. A lot of interest has been generated in the world-view of the 1860s as manifested in the work of Lewis Morgan, Fustel de Coulanges and Henry Maine.

Maine thought that kinship was defined culturally through the law rather than biologically, and his approach involves the most extreme adherence to legal texts in his analysis of the nature of Roman kinship (Maine [1861] 93–141; 219–22; Shils [1991] 143–78). Consequently, to give an example, he saw the *gens* as a fictitious creation and confined to patricians (Smith [2006] 106).

Fustel de Coulanges saw the ancient family as a religious rather than a natural association controlled by laws and a legal framework generated by the family before the growth in the power of the state ([1980] 104):

> What we have seen of the family – its domestic religion, the gods which it had created for itself, the laws that it had established, the right of primogeniture on which it had been founded, its unity, its development from age to age until the formation of the *gens*, its justice, its priesthood, its internal government – carries us forcibly in thought, towards a primitive epoch, when the family was independent of all superior power, and when the city did not yet exist.

As Smith has recently emphasised there are signs in Fustel de Coulanges of an evolutionary view of the world, and a very bleak view of decline at that (Smith [2006] 104).

Lewis Morgan, an American lawyer with extensive knowledge of and acquaintance with the realities of Iroquois society, was still working with a Classical paradigm, although he set human development against a very long time line as a result of growth in geological knowledge – but still highly dependent on the evolutionary model (as emphasised by Trautmann [1987]). Stages in his scheme were savagery, barbarism and civilisation, while Greece and Rome were located as evolved barbarism, about to transmogrify into civilisation. Naturally this revisionism of Maine and Fustel de Coulanges, since it required moving the evolutionary categories (hitherto Greece and Rome had been seen as their starting point), should have been a warning about the inadequacy of the model. Morgan also had ideas about the nature of evolution of social organisation; these too were employing the world of Greece and Rome as a yardstick. A brief quotation is sufficient to illustrate:

> Commencing then, with the Australians and Polynesians, following with the American Indian tribes, and concluding with the Roman and Grecian, who afford the highest exemplifications respectively of the six great stages of human progress, the sum of their united experiences may be supposed fairly to represent that of the human family from the Middle Status of savagery to the end of ancient civilisation. Consequently, the Aryan nations will find the type of the condition of their remote ancestors, when in savagery, in that of the Australians and Polynesians; when in the Lower Status of barbarism in that of the partially Village Indians of America; and when in the Middle Status in that of the Village Indians, with which their own experience in the Upper Status directly connects. So essentially identical are the arts, institutions and mode of life in the same status upon all the continents, that the archaic form of the principal institutions of the Greeks and Romans must even now be sought in the corresponding institutions of the American aborigines … (Morgan [1877] 17)

It can be seen that the nineteenth-century views were influenced by the belief that certain types of result could be obtained by comparing different cultures. The belief in a universal paradigm that would emerge if certain cultural buttons were pushed is probably the most damaging and unhelpful part of this. It is not merely the idea that social institutions are subject to evolution, which is problematic, but also the inflexible search for deviation from certain norms, and the attempt to force them back into the evolutionary scheme. Although the Classical world was not always seen as the highest good – witness Morgan – the structure of politics and families in Greece and Rome provided a classificatory scheme of great importance, a framework drilled into educated contemporaries as a result of the Classical education. Morgan can be considered typical:

It may be here premised that all forms of government are reducible to two general plans, using the word plan in its scientific sense. The first, in order of time, is founded upon persons, and upon relations purely personal, and may be distinguished as a society (*societas*). The *gens* is the unit of organisation; giving as the successive stages of integration, in the archaic period, the *gens*, the phratry, the tribe, and the confederacy of tribe, which constituted a people or nation (*populus*). At a later period a coalescence of tribes in the same area into a nation took the place of a confederacy of tribes occupying independent areas. Such, through prolonged ages, after the *gens* appeared, was the substantially universal organisation of ancient society; and it remained among the Greeks and Romans after civilisation supervened. The second is founded upon territory and upon property, and may be distinguished as a state (*civitas*). The township or ward, circumscribed by metes and bounds, with the property it contains, is the basis or unit of the latter, and political society is the result. Political society is organised upon territorial areas, and deals with property as well as with persons through territorial relations. The successive stages of integration are the township or ward, which is the unit of organisation; the country or province, which is the aggregation of townships or wards; and the national domain or territory, which is an aggregation of counties or provinces; the people of each of which are organised into a body politic. It taxed the Greeks and Romans to the extent of their capacities, after they had gained civilisation, to invent the deme or township and the city ward; and thus inaugurate the second great plan of government, which remains among civilised nations to the present hour. In ancient society this territorial plan was unknown. When it came in it fixed the boundary line between ancient and modern society … (Morgan [1877] 6–7)

This makes it very clear that Morgan framed his discussion of all other societies against the Classical world.

Bettini sees, in the highly differentiated kinship terms known in Latin, evidence that the Romans had a highly differentiated series of roles for this battery of kin [(1991) 1]. Some confusion has crept into his discussion of Roman kinship as a result of the inclusion of kin to the sixth degree, some 448 types of kin, by the third-century AD jurist Paul (*Dig.* 38.10.10–18). He believed this specificity to show Roman concern with remote kin, but it appears only to be relevant to detailed legal analyses, in cases of inheritance and guardianship. Apart from the inadequacy of the evidence to prove his theory, Saller has pointed out that Bettini still employs the evolutionary model: Bettini invokes anthropology dependent on the nineteenth-century tradition to validate his argument whereas Saller underlines the scarcity of evidence to support the idea of a wide range of kin obligations (Saller [1997] 9–10). Patterson also underlines the pervasive influence of the nineteenth-century; she treats Engels and notes the employment of the evolutionary paradigm in both Grote and Mahaffy, popular late nineteenth-century accounts of the Greek world (Patterson [1998] 23–4).

Saller, who demonstrates the culture-bound nature of nineteenth- and early twentieth-century approaches to Roman kinship, divides the problem of the relevance of kinship to an understanding of Roman society into three parts ([1997] 18). The first problem was to establish the cultural paradigm for kinship inherent in Roman society – allowing of course for individual divergence from the norm. The second issue was one of social identity, or how the Romans construed their own place in the social hierarchy in relationship to kinship. And finally there was the behavioural question: did certain kinship roles prompt certain social responses?

Corbier points out that the range of prohibitions connected with kinship in Rome was extremely limited, and access to marriage was not reserved to a limited number of siblings as in the later European family (Corbier [1991a] 128–42). Most Romans had a simple conception of family, friends and their place in their day-to-day lives. The correspondence of Cicero is quite revealing on this issue. When we look at social identity we might expect a heavy emphasis on agnatic kin, but this is not consistently observable in the surviving evidence. Finally, the evidence for specific responses to particular kinship roles is extremely sparse.

The issues raised by Saller are highly significant in relation to Roman adoption. It would be most revealing if we could obtain compelling answers to his questions. Adoption enabled Romans to reorganise their social presentation at several levels. The creation of fictitious relationships in theory enabled Romans to introduce complete outsiders to the group or to promote comparatively close kin in the pecking order. Other cases have more palpably political motives, and any existing lineage tie to the adopter may be doubted. However, really conclusive answers to our questions may be impossible. Often too little is known about the precise reasons for the choice of an adoptee; much has to be inferred on the basis of nomenclature and little more.

Another point brought up by Corbier is that celibacy was a personal choice available only to men. State authorities did not regard it with favour, and they tried to limit rights to succession for unmarried persons; also for widows and widowers who did not remarry. Serial monogamy was the order of the day. Unfortunately we are forced mainly to study the social elites (Corbier [1991a] 133–42). Adoption came in as a method of repair, especially when at the end of a Roman life all else had failed.

I have thought it worth while to compare Greek and Roman adoptions on the grounds that the two civilisations eventually became interdependent. After the second century BC Greece and the Greek world were subject to the yoke of Rome, and it can be expected that there was some exchange of ideas

about social organisation between the two cultures. Close kin were commonly chosen for adoption in both communities to shore up a deficit of immediate family.

As Corbier points out, this freedom for Roman citizens either during their lives or in their wills to create their own kinship groups did not continue, and she argues for rupture rather than continuity from Rome to later ages. The power of the Church and later the state broke this freedom. At Rome heirs could be chosen by testament, and although some state control existed, the power of the *paterfamilias* remained central. Actual choices often involved close kin and reorganising the order of inheritance. The concentration of family ties which could result is exemplified by the Julio-Claudian family and attracted criticism from St Augustine (*City of God* 15.16) (Corbier [1991a] 142–3). His ideal of wider interaction with the community has remained the dominant paradigm to this day.

CHAPTER 3

Greek adoptions: comparisons and possible influences on the Roman world

Adoption is an important institution in Greek life. Coverage on the area in Classical sources is uneven. The earliest surviving evidence is from the Gortyn Code, which provides evidence from about the mid fifth century BC, applicable to a Dorian community on Crete. The significance of the provisions of the Code has given rise to some controversy. There is a gap between the extant legal provisions and any idea of their operation in context. We are well served for Athens, partly because more is known about domestic life at Athens than elsewhere in Greece, and at Athens the evidence is clearest for the fourth century, since the topic frequently arises in the orators, especially Isaios. These cases often involve complicated inheritance disputes in which issues of status are crucial, and details of community feeling and social reality emerge. The context is hardly objective; the orators attempt to influence their audience to believe certain ways of reading situations. Those involved are of high status, and there is no hint of adoption further down the social scale. There is also dispute over the extent to which adoption at Athens has evolved since the Classical period. To supplement this picture, some details of adoptions on Rhodes have become better known in recent years; these cases are an unusual manifestation of the epigraphic habit and the earliest known cases were recorded in the third century BC. This material about Greek adoptions has quite different characteristics from the Roman evidence, which has far more emphasis on institutionalised interpretations of how to proceed with legal matters relating to family relations.

Rubinstein in a 1999 study notes the excessive influence of the Roman law model on analyses of Athenian legal history (see also Cartledge, Millett and Todd [1990] 1–18). She asks valuable questions about how Athenian families were structured, and the relevance of comparisons between the two systems. She concludes that adoption created 'an artificial relationship of descent which had both legal and social consequences for the parties concerned' (Rubinstein [1999] 46). She attempts to break down the three

categories of adoption established by modern authorities (for example, by Harrison [1968] 82–96) into two (*inter vivos* adoptions and posthumous adoptions) by questioning whether a so-called testamentary adoption involved the same underlying conditions in the two cultures.

Her analysis shows how different matters in Athens were from those in Rome. Nevertheless, it is important not to exaggerate differences. Some essentials were very close. The aim was to clarify issues of succession. Political developments in the two cultures were far from uniform, and the handling of power in the family was managed differently. Despite this, the threefold model for Greece has some enduring value. The timing of the clarification of relationships between parties to an adoption was crucial in both cultures. Adoption during lifetime was least open to dispute: the deceased had made his position clear in the presence of phratry and deme. If an heir was adopted under a will, his situation was nearly as strong, subject to the validation of the will (if disputed). The third category has no equivalent in the Roman sphere and is an interesting response to a vacant estate: the estate was adjudicated by the people's court, which would appoint an heir under an inheritance procedure (*epidikasia*) and organise his adoption so that he could succeed to the property with the rights of a descendant.

Although the evidence on Greek adoptions dates from well before the Roman domination of the Greek world, it may provide a dual benefit in understanding the operation of Roman adoptions. It opens our eyes to adoptive arrangements elsewhere in the Mediterranean world, and it also shows the operation of inheritance systems in Greek communities. Greeks were present in Italy from a very early stage in Rome's development, and Romans must have become aware of the outlines of these customs. Whether or not Roman legal rules were in any way influenced by the operation of the Greek family may be more controversial, since Romans outside the imperial family generally practised exogamy rather than endogamy, but some comparisons may help to clarify the operation of both Greek and Roman law and custom (for discussion of endogamy at Rome see Y. Thomas [1980]; Corbier [1994]).

In recent years Greek adoptions have been reviewed in the light of the mode of operation of the *oikos*. Greek marriages were characterised by endogamy, perhaps largely to preserve the integrity of estates, which were conveyed by inheritance through the male line. There has been some questioning of the agnatic inheritance model, which has long had currency. Cheryl Cox has shown that there were methods by which strict legal principles could be circumvented. Review of the *domus* in the Roman world has also shown that the main domestic unit extended beyond the

nuclear family; individual motivations extended outside family and household interests. Cox was able to show how much the law at Athens differed from practice and concludes that the basic legal situation was that descent should be patrilineal, that is, through the father's kin, with priority to transmission through males, and in the absence of sons, through daughters. In the absence of male and female children, male agnates were preferred, then female agnates, and only thereafter was matrilineal succession countenanced (Cox [1998] 3–37).

Some aspects of conventional Greek inheritance are worth reviewing. Since the time of Solon, goods could be willed in accordance with the testator's wishes, provided that there were no legitimate male heirs (Isaios III.68; Plut. *Solon* 21). All bar one of the extant speeches of Isaios concern estates without a natural son.[1] Although the sample is limited, this appears to show that matters were not commonly subject to dispute when the line of inheritance was intact. Gernet doubted whether adoption of an heir under a testament was initially permitted. The lack of favour accorded to testamentary heirs can be noted (e.g. Isaios VII.1), but most importantly adoption in public was insisted on in our earliest written evidence – both at Gortyn (Code col. X.1.34) and in Sparta (Hdt. 6.57). On this basis Gernet suggested that the Solonian measure authorised only lifetime adoptions (Gernet [1920]). Gernet considered that before Solon adoption might have been restricted to the *genos*. However, the Solonian measure seems not to have broadened the scope of those who could be adopted to a great extent. Gernet's model is implicated in the evolutionary view of social behaviour and should not be given undue weight.

Rubinstein's approach starts with findings based on the law court speeches ([1999] 45–62). She emphasises that adoption itself was not authorised under a general law but publicly in the phratry and the deme. Women who were adopted could not participate in the deme. In order to succeed to an estate, an heir needed to be recognised as the deceased's legitimate descendant by his phratry and deme. Either a natural or an adopted son could do this without further ado. If the deceased had not already clarified the situation with phratry and deme, the inheritance had to be adjudicated by the people's court under an inheritance procedure (*epidikasia*):

> The archon is to allocate inheritance and heiresses every month except Skirophorion. It is not allowed to possess an inheritance without *epidikasia*. ([Dem.] XLVI.22)

[1] Isaios VII. As noted by Pomeroy (1997) 25.

A claim could be validated under intestate right (*kata genos*) or under a will (*kata dosin*). A will could disturb intestate arrangements; consequently wills were often at the heart of contested legal cases and sometimes produced in court. If a will encompassed an adoption, provided that the will itself was genuine the adoptee was placed on terms equal to an *inter vivos* candidate. There were further challenges in court possible beyond the *epidikasia* under a procedure called *diamartyria*.

Despite the availability of testamentary arrangements, a review of the cases covered by Isaios shows that the preference in the fourth century was still for close kin.[2] The adoption of an heir by a deceased who possesses a legitimate son is decried (Isaios III.72–3). In Classical Athens adoption is before the phratry, while in the smaller community of Gortyn it was before the people (Code X.I.34). Sarah Pomeroy has emphasised the need to see in each of these approaches the operation of political life since the phratry was formed as an artificial political unit, and not as a natural result of tribal or other evolutionary development (Pomeroy [1997] 12). Different politics might make significant differences to the management of questions of status.

GORTYN

The main provisions of the Gortyn Code concerning adoption (texts cited from Willetts [1967] 48–9, by column and line number):

Column X

33 Adoption may be made from whatever source anyone wishes. [*This is a clear indication that there is no restriction to close kin.*]

35 Declaration of adoption shall be made in the place of assembly when the citizens are gathered, from the stone from which proclamations are made.

37 Let the adopter give to his *hetaireia* a sacrificial victim and a measure of wine.

40 If … there should be no legitimate children besides, he must fulfill all the obligations of the adopter towards gods and to men … if he should not be willing to fulfill these obligations as is written, the next of kin (the *epiballontes*) shall have the property.

48 If there should be legitimate children of the adopter, the adopted son shall receive with the males just as females receive from their brothers …

52 If there should be no males, but females, the adopted son is to have an equal share.

[2] Examples: Isaios I: Kleonymos leaves a will with the *astynomos* leaving his estate to collaterals; Isaios II.14: Menekles adopts the brother of his second wife; Isaios III.1: Pyrrhos adopts one of two sons of his sister; Isaios VI.4: Philoktemon adopts a nephew; Isaios VII.14 Apollodoros adopts a son of his half-sister.

Column XI

1 … and it shall not be incumbent upon him to pay the obligations of the adopter and accept the property which the adopter leaves.

5–6 For the adopted son is not to take possession of more (than the females).

6 If the adopted son should die without leaving legitimate children, the property is to revert to the heirs of the adopter (the *epiballontes*).

The Gortyn Code incorporates legislation much earlier than the date at which it was drawn together in its surviving form. The laws were particularly concerned with the family and property and appear to have been enacted as need arose. At Gortyn property tenure had initially been wholly invested in the clan (the *epiballontes*), and at the time of the extant code (*c.* 450 BC) was still to some extent so vested.[3] Willetts suggests a model, which has not been universally accepted, much influenced by the evolutionary concerns of L. H. Morgan (1877). Under this model, as the *oikos* developed, the obligations to the *oikos* increased. Thus both social and religious obligations developed – to maintain the family estate and ensure the fulfilment of family obligations, especially upkeep of the founder's tomb. As clan ties of kinship and inheritance weakened, this model suggests that there would be a growing pressure not to allow possessions to go outside the limits of the *oikos* and especially not to allow them to go into the hands of serfs in the absence of the *epiballontes*. Here the system of adoption had become a state responsibility through the medium of the *hetaireiai* – no longer a direct concern of the clans.

Willetts claims that the provisions in general mark innovation in procedure relating to adoption. Also, the original aim of adoption was thought of as a device to ensure succession in the male line when there were no legitimate male heirs. The consequence of such an arrangement was that the adoptive son inherited all his father's possessions and had to maintain his social and religious obligations just like an authentic son. Usually in fourth-century cases at Athens an adopted son was chosen from near relatives. Under this legislation from Gortyn a stranger could now be adopted into the household; the bond was less binding and could be repudiated; and an adoption was possible even though other immediate heirs existed (Willetts [1967] 30–1).

Willetts allows for evolution. But he claims that adoption originated in the clan – as Gernet had in relation to Athens – and not in the family. At that stage since the adoptee was drawn from the clansmen, he was inevitably of the same blood as the adopter. An adoption into the family did establish priority over the fellow-clansmen.

[3] The nature and organisation of the document is discussed by M. Gagarin (1982).

Clansmen's rights would later be limited (on this scheme) by the acceptance of non-clansmen. It seems in the code that freedom of choice in adoption is implicit. This was a move in the direction of free testamentary disposition. From being a means to assist claims of kinship within the clan, adoption is considered to have evolved into a method of denying such rights. There was a passive role for the assembled people by this stage. The adopter would offer his adoptive son as a candidate for entry into his own *hetaireia* and present a sacrificial victim and a measure of wine.

Inheritance seems central, and it is important whether or not the adopter died with legitimate sons. If there were none, the adoptive son became heir. He had to take on heiresses, the *sacra* and debts and other obligations associated with the role. If this condition failed to be fulfilled, then the estate passed on to the *epiballontes*. Willetts suggests that growth in the individual rights of clansmen persuaded the *epiballontes* to allow the practice of adoption into the household.

In the event that there were other children (this provision is generally assumed to mean those born later than the adoption) then the adopted son would receive a daughter's share. At Athens he would have received more – an equal share with the other sons (Maffi [1991] 218–20). The provision that if the adoptee died without legitimate offspring, the property he had received from the adopter had to be returned to the adopter's *epiballontes* showed that the main aim of adoption into the household was ensuring adequate succession in the male line (Maffi [1991] 220).

Revocation had to be formally promulgated in the same way as the act of adoption. The adopter had to deposit a sum with the court, and the secretary of the magistrate concerned was to hand this over to the renounced person. Clearly this was to be compensation for diminution of status – the person renounced could no longer now inherit land.

Details of Willetts' approach can be questioned. The provisions might imply that adoption at Gortyn was possible regardless of whether an adopter had children. This is certainly the approach taken by Morris in his 1990 study ([1990] 252). He imagines adopters trying to gain more desirable heirs. The fact that an adoptee could effectively revoke the inheritance also has led to questioning of whether adoption at Gortyn was primarily about inheritances. A useful summary of similarities and differences between the systems at Gortyn and Athens is provided by Maffi ([1991], especially 218–22).

ATHENS

Adoption in fourth-century Athens has been the subject of a careful study by Lene Rubinstein. This work has uncovered one important area of

similarity between Greece and Rome: individual initiative was the crucial element in the preservation of families (*oikoi*), rather than active intervention by the community.[4] As far as we can tell, Athenian adoptions of the fourth century seem to have the same focus as those of the sixth–fifth centuries during the high Classical period. As in Rome, most cases about which anything is known involve adult adoptees rather than children, and this is closely related to the focus in these societies on the interests of the adopter rather than the adoptee. There is preference for the adoption of agnatic relatives. Adoption enabled a person of standing, but lacking descendants, to continue his line and to ensure that his own interests were protected in old age. In the case of both Greece and Rome, adoption appears to be largely for the rich. Cases covered by Isaios often concern considerable estates, and it is true to say that the more property the adopter has, the greater the rewards for the adoptee.[5] Clear distinctions between Greece and Rome can be detected at a kinship level. One interesting difference from Rome was that an adoptive relationship was no bar to marriage at Athens (Harrison [1968] 23). It was common to adopt a son or sons for marriage to a daughter or daughters.

This is exemplified by Demosthenes' speech *Against Spoudias* (XLI). In this case, a certain Polyeuktos adopted his wife's brother, Leokrates, to marry to one of his two daughters (thus clearly an *inter vivos* adoption: see below). The plaintiff in the case had married the other daughter, and he claimed that under the terms of the marriage contract he was to have had 40 *minae* as a portion to go with his wife; 30 *minae* were to be paid outright, while the remaining 10 *minae* were guaranteed to be paid by the heir, Leokrates, after the death of Polyeuktos. However, there was a quarrel between Leokrates and Polyeuktos, and as a result Leokrates severed all connection with the family. Leokrates' wife was then remarried to Spoudias (the defendant) (see Figure 1).

Polyeuktos mortgaged his house to the plaintiff to cover the outstanding part of the marriage portion (no longer payable by Leokrates since he had relinquished the role of heir to Polyeuktos). After an attempt at a negotiated settlement after the death of Polyeuktos, the plaintiff brought his action to recover his monies – as well as making additional demands. His case was backed up by the will of Polyeuktos. The case shows that the renunciation

[4] Rubinstein (1993) 1–15. A useful study of the role of the household and its relationship to issues of gender and property is Foxhall (1989). She argues that in Greek society this critical focus on households had primacy over individuals and their rights over property.

[5] Rubinstein has surveyed all known cases for the fourth century and tabulates her results at Rubinstein (1993) 30.

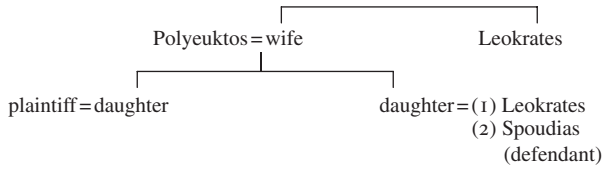


Figure 1 Demosthenes XLI

of an adoption could complicate many aspects of the financial position of the testator.

It has been thought probable that an Athenian could not adopt a son without marrying him to an existing daughter. An illegitimate could not be legitimated by adoption. The difficulty encountered in trying to adopt an illegitimate at Athens would be in proving that an illegitimate was a citizen and hence eligible for adoption (Harrison [1968] 69). Foundlings also presented special problems: the finder of an exposed child might treat it as a slave or free but had no rights over it. The reason was that adoption of a minor was a reciprocal transaction between the adopter and the adopted child's father or representative (Harrison [1968] 71).

In Greece, as elsewhere, there was always a close tie between adoption and the making of wills. The earliest case for which there is evidence is the adoption of Achilles by Phoinix (*Iliad* 9.494ff.). Later under Solon, as outlined above, a childless man could choose an heir whom he adopted. Already at this stage it seems that an adopted son could not in turn adopt (Gagarin [1986] 78). If the adopter had a daughter, but no son, he could choose for her a husband whom he adopted. To satisfy the agnatic preference, in the absence of sons, adoption might extend to agnatic nephews. Even nieces were a possibility for adoption. If a niece were chosen she would succeed as an heiress (*epikleros*). The role of such heiresses was clear: they were merely temporarily inserted into the inheritance net and were to be married to a close male relative to generate male children to restore agnatic succession.[6] The aim of adoption is similar to that in Rome in that it includes perpetuation of family name and family cults as the *quid pro quo* for the inheritance. What is not found at Rome is the epiklerate system. This reflects the immense importance placed on the preservation of the *oikos*, especially in Athenian society.[7] Individual interests were not so completely subordinated to those of the household in Roman society.

[6] On the epiklerate see Gernet (1921) 337–79. [7] As outlined in Foxhall (1989) 22–44.

Types of adoption in the Greek world

Greek adoptions could be arranged by three methods. I have retained these categories for reasons outlined above:

1. *Inter vivos*, as probably originally contemplated by Solon. We know something of the procedures for adoptions in cases of this sort from the fourth-century orator Isaios.[8] In one passage it becomes clear that introduction to the phratry is the absolutely critical element of the social recognition (Isaios II.14: 'he adopted me not by writing in a will … but being in good health and sane and in possession of his faculties he adopted me and introduced me to his phratry in the presence of these men [my opponents] and enrolled me as a member of his deme and of his *orgeon* group').[9] Interestingly, primary emphasis is not on acceptance within the *oikos* but, at this more public level, by phratry and deme.[10] The testamentary and posthumous heirs cannot claim these public acknowledgements. The procedure is in essence similar to enrolment of a natural son, with a consequent concern about the origin of the candidate as son of a citizen woman (Isaios VII.16). In Rome many of the legal features are also aimed at giving an adoptive son a status that as far as possible replicates that of a natural son. Some complications ensue under Roman law when limited rights of inheritance are retained within the family of origin (Lindsay [1998] 57–81; Chapter 7 below). In Greece the adoptee was now heir to his adoptive parent's estate and consequently lost the right of succession to his natural father or his natural father's relatives. He still had a claim on property left by his mother's relatives. Isaios emphasises that an adoption only affects the relationship with the father; the mother remains the mother whether he remains in his father's house or is adopted out (Isaios VII.25). In an *inter vivos* adoption the adopted son had immediate and uncontested rights to his inheritance and was effectively in as strong a position as a natural son of the adoptive parent. The adoptive son during the lifetime of the adopter was expected to engage in a relationship with his adoptive father replicating a biological father–son relationship. It goes

[8] The most important edition of the speeches of Isaios is that of Wyse (1904). This work is still very valuable and alert to the gap between what was claimed in court on behalf of the client and the actual situation between the parties. There is an accessible translation with brief notes in the Loeb series: *Isaeus* (translated by E. S. Forster), London: Heinemann, 1927.

[9] Wyse (1904) 250 considers possible identifications of the *orgeon* group. His view that the *orgeon* group was a private religious association rather than a subordinate group within the phratry is the better view.

[10] See recently E. M. Harris (1996) 123–7, who examines the question of whether an adopted son who returned to the household of his natural father retained membership of the deme of the adoptive father. On the structure of the phratries see Andrewes (1961) 1–15.

without saying that adoptions by will or posthumously could never be so organised.

In Isaios there are several illuminating examples of the operation of *inter vivos* adoption. Very often the choice of adoptee is from close kin. The speech on the adoption by Menekles (Isaios II) is of particular interest because the adoptive father survived for some twenty-three years after the adoption. His brother and his brother's son put in a claim for the estate. The son Menekles adopted was in fact the brother of his second wife, with whom he had parted on friendly terms after their union proved barren. His first marriage had also been childless. His brother's claim on the estate was based on a challenge under a law of Solon, on the ground that the adoption had been made 'under the influence of a woman' (Wyse [1904] 232–7.).

Since a legitimate or adopted son who was adopted within the lifetime of the adopter had an automatic right to the inheritance without application to the court, the adopted son was able to thrust back on the claimant the burden of proving that the adoption was invalid. In doing so, he obtained support for his contention that the adoption was valid from his father-in-law, Philonides. The brother of the deceased thus had to resort to a charge of perjury by Philonides; the adopted son makes the present speech in defence of his father-in-law and in the process pleads his own right to inherit.

The prosecutor's claim is based on the contention that there was no legal marriage to the adoptee's sister, and that the adoption had been due to her influence. To support this, the prosecutor contended that the sister was never dowered. The adoptee gives evidence that a dowry of 20 *minae* was paid, and, moreover, points out that it was natural for Menekles to look to the family of his old friend Eponymos for an adoptive son when his own marriages had proved fruitless. It was certainly not the second wife who determined the adoption.

Interesting points emerge about the expectations generated by an adoption. Here the adopted son makes much of his belief that his dutiful behaviour had replicated that of a natural son and of the fact that he had performed all due rights over his adoptive father after his death. It also becomes evident that the disputed inheritance has in the meantime become almost valueless (or so the adopted son claims), and therefore the aim of the adoptee is merely to vindicate the memory of his adoptive father (in this way he attempts to make much of the contrast between his own duteous conduct and the venal interests of the prosecution) (see Figure 2).

There is a very clear statement in this speech of the aims of the adopter, Menekles; he hoped to put an end to his childless condition, to have someone to tend his old age, bury him when he died, and thereafter carry

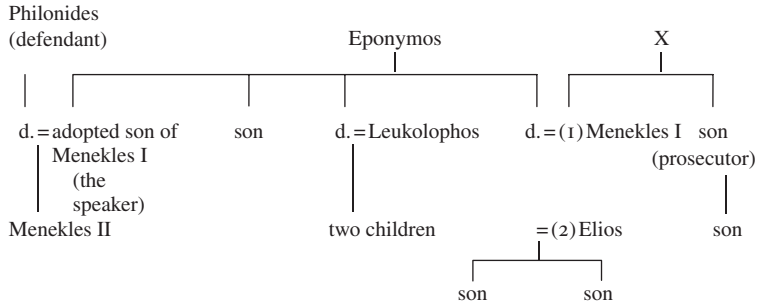


Figure 2 Isaios II

out the customary rites (II.10). Some of his considerations in choosing an adoptee are also discussed. His brother had only one son, and therefore he had qualms about depriving him of male offspring by asking for an only son in adoption (see also II.21). In the absence of other close relatives he turned to the family from whom he had hoped to get heirs initially (II.11). Also of interest is the alleged consultation of the two sons of Eponymos over which would like the role of adoptee (II.12).

Comparable consultative processes are revealed in the case on the estate of Apollodoros (Isaios VII; dated after 357/6 BC) (Wyse [1904] 548–50). Here an *inter vivos* adoption had been attempted, but was still incomplete when the adopter died. Nevertheless all the main stages of the adoption had been carried through. Details are as follows. Three brothers Eupolis, Mneson and Thrasyllos I had inherited the family fortune; Mneson died without issue, and Thrasyllos I died in the Sicilian expedition of 415–413 BC, leaving a son, Apollodoros I. The guardian of this son was Eupolis. The widow of Thrasyllos remarried to Archedamos, who helped his stepson obtain redress when he discovered that the guardian was defrauding him. As a result of the close relationship which developed between stepfather and Apollodoros I, Apollodoros I determined to adopt Archedamos' grandchild, since he had himself lost his only child. Thus he planned to adopt the son of his half-sister but himself died before the formalities of the adoption had been completed. The adoptee was registered with the phratry but not yet with the deme, but he was admitted to the deme after the adoptive father's death. The estate was then claimed by the wife of Pronapes, a daughter of Eupolis. Her sister's son Thrasyboulos, with an equal claim, refused to press it since he was said by the speaker to have accepted the validity of the adoption. Because the adoption had not been formally completed, although the intention was clear, this had created the legal problem, and thus the estate

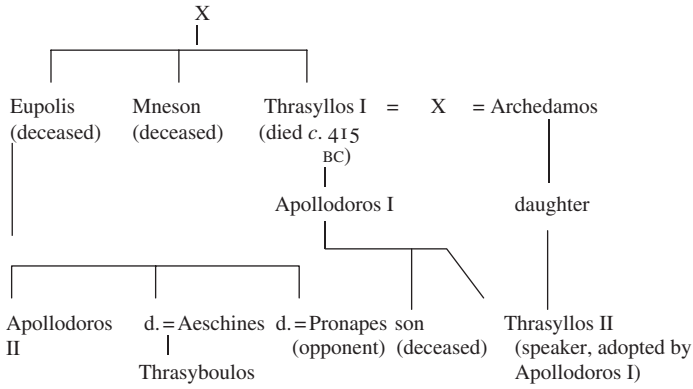


Figure 3 Isaios VII

had become vacant, and claimable under the law. Clearly Thrasyllos II had a strong claim in equity (see Figure 3).

In the introduction to this case some very clear contrasts are made between adoptions *inter vivos* and those under a testamentary disposition. The very process of committing the adoption to a will, rather than realising it during the lifetime of the adopter, enshrines secrecy and thus leaves the adoption more open to challenge (VII.1–2). Even with adoption *inter vivos* it was possible to challenge an adoption on grounds of insanity (II.14). In the speech about the estate of Pyrrhos (Isaios III: of uncertain date *c.* 350 BC) (Wyse [1904] 276ff.), it is claimed that all adoptive cases are open to challenge (III.61):

> all relatives belonging to the *genos* think themselves worthy to lay claim to property against adopted sons. In order therefore that claims for such estates may not eventuate from any passing claimant and that individuals may not dare to get a decision about them as vacant estates, all adopted sons apply for property adjudication (*epidikasia*).

However, testamentary and posthumous adoptions were more vulnerable, and it is not surprising that many of the cases dealing with adoption in Isaios actually concern these. The speaker in the case of the estate of Apollodorus aims to highlight the authenticity of his own adoption (VII.14–17):

> 14 Apollodoros had a son whom he educated and looked after with care, as indeed was only appropriate. So while that child was alive, he was hoping to make him successor to his property. But when he died after an illness last year in the month of Maemacterion, Apollodoros, depressed by his circumstances and complaining of his age, took account of those from whom he had received good treatment from

the beginning; therefore he came to my mother, his own sister, whom he regarded more highly than anyone else and thought it worthwhile to adopt me and asked her permission, which he received. 15 He was so keen to act rapidly that he immediately took me off to his place and handed over to me the management of all his affairs, on the grounds that he in his view was no longer capable of conducting anything himself, and he thought that I would be able to do all of this. And when it was the Thargelia, he took me to the altars, and to the heads of families and the phratry. 16 These groups have the same rule, that, if a man introduces someone as his natural son or as his adopted son, he swears an oath on the offerings, whether the son produced is natural or adopted, that he is introducing one born of an Athenian woman and legitimately; and even after the person introducing him has done this, the other members nonetheless have to conduct a vote, and if they approve, they then, and not before, inscribe him on the public register; such is the accuracy of their legal requirements. 17 This being the law, the heads of families and the phratries, not distrusting Apollodoros and not being unaware that I was born his sister, all voted for me and enrolled me in the public register, after Apollodoros had sworn on the offerings. So in his lifetime I was adopted by him, and I was enrolled in the public register as Thrasyllos the son of Apollodoros, after he had adopted me like this, as the laws had given him this right.

Later in the speech he is even more explicit about how he was chosen (VII.33):

Since such was the inclination of the cousins towards one another and so great in extent the hostility towards Apollodoros, who adopted me, what better could he have done than what he had conceived? Would he, by Zeus, have done better if he had taken a child from the family of one of his friends and adopted him and handed over his property? But it would have been unclear even to such a child's own parents owing to his age whether he would turn out to be excellent or worthless. 34 On the other hand, he took me on, after sufficient scrutiny; he knew precisely how I had treated my mother and father, and he also knows my care for my relatives and how I manage my own affairs. He knew clearly that in office as thesmothete I was neither unjust nor grasping. So not in ignorance, but with clear knowledge, he put me in control of his property. 35 Moreover I was no stranger but his own nephew; I undertook not little things but great benefits; nor was I a man lacking in love of honour, who intended to make away with his possessions, as these men have done with the property related to the estate; but I would plan to act as trierarch and go to war and act as *choregos* and do everything else required by you, as he himself had done. 36 Since I was his kinsman, his friend, his benefactor, and a lover of public distinction, and I had been thoroughly scrutinized, who would dispute that this adoption was the act of a man of sound mind? Moreover I have already performed one thing at least which has been thoroughly scrutinized by him. I have acted as gymnasiarch at the festival of Prometheus in this very year with distinction, as my tribesmen know.

Several points can be noted. The speaker aims to show that his status as an adult and a person who is close kin to the adopter makes him most

eminently suited for the role of adopted son. The contrast is drawn with the unsuitable notion of bringing in a minor from outside the family. This argument appears to rely on widespread acceptance of this type of analysis of the advantages of adult adoption. Other emphases are on the opportunity the adopter had to become thoroughly acquainted with the character and capacities of his chosen adoptee, and the opportunity for the adopter to engage in replication of the social role of a natural father.

In Rome, as will be seen in greater detail later, *inter vivos* adoptions took two separate forms. These were *adoptio*, which was adoption of a son still under *patria potestas*, and *adrogatio*, which was adoption of an independent person (*sui iuris*). *Adrogatio* had to be ratified by the *comitia curiata*, since it involved the extinction of a family, while *adoptio* involved a series of mancipations in the presence of the praetor. The *comitia curiata* had a role not unlike that of the *phratry*, but emphasis was placed more on its collective view of the benefits of the adoption and how best to settle the adopter's estate rather than on the future of the household as such (Aulus Gellius, *Noctes Atticae* 5.19). With an *adoptio*, the adopted son became a member of his adoptive father's tribe and probably also his *gens*, but little is known of the mechanics of this. Only the procedure in the presence of the praetor is well known.

2. *Adoptions by will* (a development of 1). Here there was a nomination of an heir in a will – a so-called testamentary adoption. The beneficiary was to succeed as adopted son or daughter. At Rome the only requirement was to take the testator's name as well as the inheritance. In Greece the adoptee had to have the will formally ratified by an inheritance procedure, the *epidikasia*, which involved adjudication by the people's court (see Isaios VI.3). Thus he was not in so strong a position as the *inter vivos* adoptee – he had to wait for legal process. In this sense he is on an equal footing with the collaterals of the deceased. He is weaker through not necessarily having an existing claim to the phratry and deme of the adopter. The next category, the posthumous adoption, has many similarities.

With testamentary dispositions, as already noted, the opportunity for questioning the authenticity of the will often presented a bone of contention. In the case on the estate of Nikostratos (Isaios IV: date soon after 374 BC) (Wyse [1904] 367ff.), two cousins of the deceased are in contest with a person who claims to have been adopted under his will (Chariades). The aim of the claimants in this case is to show that the will is a forgery. The method is to blacken the character of the witnesses on the grounds that they are friends of Chariades, the aspiring beneficiary, and to claim that they have perjured themselves on his behalf. A major weakness in the adoptee's case is that the alleged witnessing of the will occurred overseas. In the case of

the estate of Astyphilos (Isaios IX: dated after 371 BC) (Wyse [1904] 625–8), the speaker tries to show that the deceased had not (as claimed) adopted a son under a will. The estate had come into possession of his opponent Kleon, his first cousin, as a result of the claimant's absence overseas on military service. Much depends on the moral right of the claimant to inherit on grounds that the alleged adoptee, Kleon's son, did not bury Astyphilos (Isaios IX.4). Some interesting points about testamentary adoptions emerge from the discussion. The secrecy provisions which commonly surrounded such dispositions provided the claimant with room to manoeuvre and to attempt to show that the will was a forgery (Isaios IX.11):

> Moreover, gentlemen, it was obligatory for Kleon himself, who seems not to be useless, when Astyphilos was adopting this son and making the will, to summon any kinsmen whom he knew to be in Athens and any others with whom he knew Astyphilos to be closely associated. For no one could stop Astyphilos from giving his property to whomever he wished; but the fact that this will was not written secretly would have been strong testimony for Kleon's case. Further, gentlemen, if Astyphilos did not wish anyone to know that he was adopting Kleon's son, nor that he had left a will, it was appropriate for no other person to be inscribed as witness on the document; but if he appeared to have made a will in front of witnesses, and those witnesses were not taken from among those who were particularly acquainted with him, but were those happening to be at hand, how is it likely that the will is genuine? I for my part do not think that anyone, in adopting a son, would have dared to summon any other persons apart from those with whom he was intending to leave that son in his own place for the future in their religious and civic actions. Moreover, it is not appropriate for anyone to be ashamed to summon as many witnesses as possible for such a will, since there is a law by which it is possible for a man to give his goods to whomever he wishes.

Problems could arise through the elapse of time. In the case on the estate of Philoktemon (Isaios VI: 364 BC) (Wyse [1904] 483–8), a testamentary adoption is disputed where the beneficiary, Chaerestratos, did not immediately take up the inheritance. Chaerestratos was in fact a son of one of Philoktemon's sisters. When the adoptive father, Philoktemon, died in about 376 BC, his father was still alive; as a result Philoktemon's estate was at that stage of little value. Furthermore, in order to take up an inheritance under a testamentary adoption, an application to the courts was required. It was not worth while in financial terms for the potential adoptee, Chaerestratos, to make a claim until later. In fact the testator's father did not die for some twelve years, aged by then ninety-six, and it is at this point that the monies become contested (see Figure 4).

A kinsman, Androkles, attempted to obtain the estate first by demanding possession of a daughter of Euktemon, the widow of Chaereas, as an

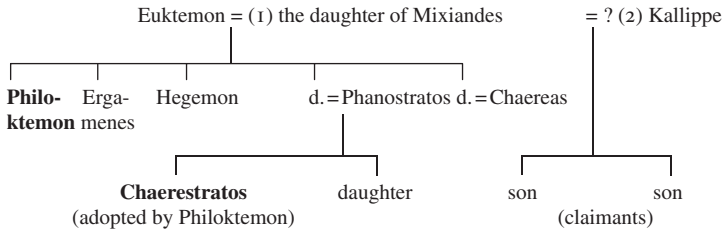


Figure 4 Isaios VI

epikleros. Then he claimed that the estate was not liable to adjudication because Euktemon had left two legitimate sons. There was also a claim that Philoktemon had left no will. The strength of the claim was enhanced by the fact that Euktemon had introduced the elder of these supposed sons to his phratry as his son. To counter this, Chaerestratos had to prosecute Androkles and his associate for perjury in their protestation. He worked on proving the will of Philoktemon and disproving the legitimacy of the sons of Euktemon – alleged to be sons of a slave prostitute and a freedman, children whom Euktemon was induced to introduce to his phratry through her wiles. Various other moves were undertaken to bolster the position, but it seems probable that they were unsuccessful. Inscriptional evidence from a later date shows Chaerestratos as son of Phanostratos, not son of Philoktemon (*IG* II.1177.11).

Sometimes claims under a will could be rendered doubtful by the discovery of an additional will. In these cases counterclaims of perjury are something of a commonplace. An example is provided by the case on the estate of Dikaiogenes II (Isaios V). This man was a member of a family which held several high posts in the state over a lengthy period. Initially this case concerned a substantial estate. Dikaiogenes II left no issue, although he had four married sisters. Proxenos, husband of his father's sister, and a descendant of that Harmodios who had been involved in the slaying of the tyrant Hipparchos in 514 BC, produced a will under which his own son Dikaiogenes III was testamentarily adopted as son of the deceased and as heir to one third of the estate. This will was accepted; Dikaiogenes III took his portion and the remainder was divided between the four sisters (see Figure 5).

Twelve years later Dikaiogenes III produced another will under which the entire estate fell to himself. By then one sister was dead, two others had lost their husbands, but Polyaratos, husband of the eldest sister, was still extant. He acted for his wife and the surviving sisters. The court, however,

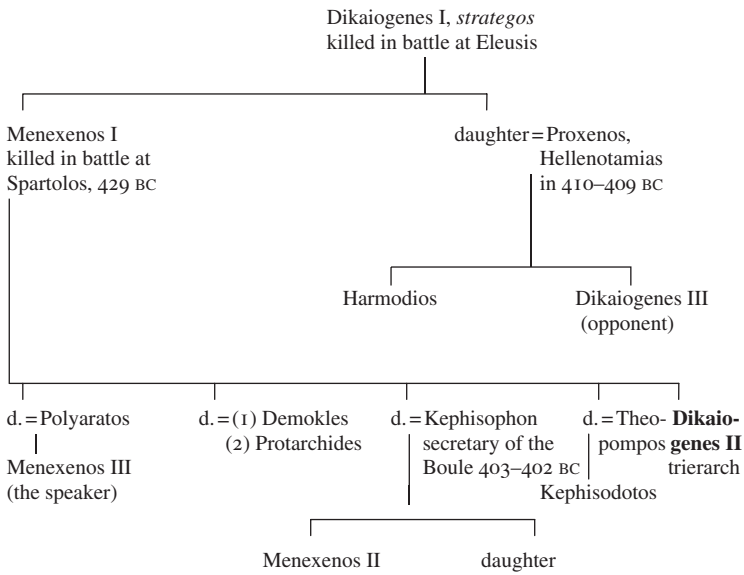


Figure 5 Isaios v

favoured Dikaiogenes III; although Polyaratos hoped to make a counter-move by bringing an action for perjury, he died before this was possible.

Another ten years passed. In this time, the children of the sisters had reached maturity, and one of them, Menexenos II, brought a successful action for perjury against Lykon who had been a witness in support of the genuineness of the second will. At this point Dikaiogenes III offered to restore to Menexenos II his mother's share of the estate on condition that he should abstain from further legal action. Menexenos II in disregard for his cousins accepted this deal, but it was not honoured. At this point he made common cause with his cousins for the whole estate on the grounds that the first will was annulled in favour of the second, which was now found defective as a result of the conviction of Lykon for perjury.

The problem for their claim was that Dikaiogenes III had been recognised as the adopted son of Dikaiogenes II, as his friend Leochares protested on his behalf. The claimants were forced to change tack and go after Leochares as a false witness. Leochares lost the case, and this time Dikaiogenes agreed to abide by the terms of the first will, namely that he was to surrender two-thirds of the estate. The prosecutors accepted this arrangement, after sureties were taken to guarantee that Dikaiogenes III fulfilled his promise. One of these sureties was Leochares.

By now twenty-two years had elapsed since the death of the testator. In the meantime Dikaiogenes had sold, mortgaged and otherwise dealt with the assets in question; there was little remaining to be recovered from him, so the claimants resorted to suing Leochares in his role as surety. This action was taken by Menexenos III, son of Polyaratos and the eldest sister of Dikaiogenes II, and his role was to compel Leochares to discharge his liability as surety. This then is the main aim of the suit, which serves to show how easily testamentary dispositions of any type could be subjected to challenge. It also shows the dangers of acting as witness in adoption cases. Here Leochares ends up being sued for the original value of a now virtually worthless estate.

3. *Posthumous adoptions*. When a man died intestate leaving no son, one of his heirs, usually his heir by the rules of intestate succession, could be made his adoptive son posthumously, having to marry the *epikleros* if one existed. This act is called *poiesis* or *eispoiesis*.[11] What is interesting here is that a posthumous adoption could be carried out without any requirement for the presence of the adopter or any willed act on his part. Some confusion has crept into modern discussions of this institution; it has been seen as sign of the collective responsibility of the community for seeing to the future of the *oikos* of the deceased. However, it appears that a person could only be posthumously adopted in this manner if he had already been recognised as the intestate heir of the deceased by the people's court under the inheritance procedure mentioned above and known as *epidikasia* – or *diadikasia* if there were several competing claims (Rubinstein [1993] 1–15). This is still to be seen as an act willed by the deceased, in the sense that his intention is arbitrated by the people's court (cf. Isaios VI.30) and should not be thought of as an intrusion into his decisions by the body politic (Rubinstein [1993] 105–12). In the event that a deceased had failed to nominate his heir testamentarily, his personal choice was to be determined as comparable with the rules of intestate succession and thus merely mediated by the people's court. The archon was, in some way which is far from clear, involved in cases of posthumous adoption (Dem. XLIII.75);[12] in all probability, he was there to decide on the comparative strength of competing claims under the rules of intestacy. The whole procedure was a useful legal mechanism for clearing up an untidy situation. It is a considerable broadening of the scope of succession

[11] For the terminology see Harrison (1968) 84.

[12] On the role of the archon see Aristotle, *Athenaion Politeia* 55–9, and Rhodes (1981) 612–68. For the range of the archon's ambit in relation to civil and criminal matters see Aristotle, *Athenaion Politeia* 56.6ff., where his overall supervision of claims to inheritances and heiresses is mentioned.

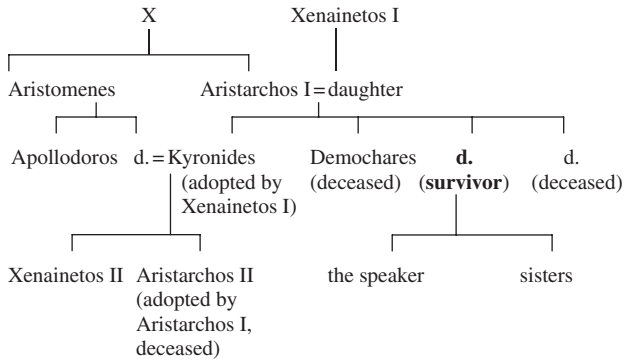


Figure 6 Isaios x

arrangements as compared with Roman procedures, where no such provision is attested. An adopted son under the posthumous adoption would be in a strong position to take up the inheritance, since by definition he was already a person who had been awarded the inheritance in the people's court. He was only identified at all by the legal process under which he was adopted posthumously, and thus was in a stronger immediate position than the testamentary heir.

In the case on the estate of Aristarchos (Isaios x: *c.* 378–371 BC) (Wyse [1904] 649–52), some of the problems that could arise in posthumous cases are revealed. Aristarchos I had two sons, Kyronides and Democharis, and two daughters. Kyronides was adopted *inter vivos* by his maternal grandfather, Xenainetos I, and passed out of the family (presumably as an infant or very young adult), and Democharis became heir to his father's estate. When Aristarchos I died his brother Aristomenes became guardian of his children (an indication of their age). Democharis died before reaching adulthood (x.4). Eventually succession became vested in a surviving daughter. It is her son who is the plaintiff (see Figure 6).

Under the epiklerate rule, the estate and the surviving daughter of Aristarchos I might have been claimed by Aristomenes or his son Apollodoros. In fact she married a husband with no connection to the family; had there been no male heir to Aristarchos I and had she been married under the epiklerate rule, her male offspring would have been the inevitable successors to the estate. Meanwhile Aristomenes gave his own daughter to Kyronides and handed over to him the estate of Aristarchos I despite the fact that Kyronides had left the family as result of adoption by his maternal

grandfather, Xenainetos I. Kyronides had two sons, Xenainetos II and Aristarchos II, of whom the latter was alleged to have been adopted posthumously by Aristarchos I. This is disputed by the speaker, son of the surviving daughter of Aristarchos I. When Aristarchos II fell in battle without issue, after enjoying the property during his lifetime, he bequeathed the property to his brother Xenainetos II. The archon has forced the speaker to recognise the posthumous adoption of Aristarchos II (x.2).[13] This has put him in a difficult position which he tries to put in a better light in the following passage (x.9):

> So I think you all know, gentlemen, that the introduction of adoptees occurs by way of a will, with testators both bestowing their effects and adopting sons, and it is not possible otherwise. If therefore someone says that Aristarchos I himself made a will, he will not be telling the truth; for while he had a legitimate son, Democharés, he would not have wished to do this and it was not possible for him to give his property to another. Further if after the death of Aristarchos I they claim that Democharés adopted Aristarchos II, they will be lying about this too. 10 For it is not possible for a child to make a will; the law explicitly excludes the possibility of any child or woman contracting for more than a bushel of barley. Now evidence has been given that Aristarchos I died before his son Democharés and the latter after his father; so even if they had made wills, it was not permissible for Aristarchos II to succeed to this property under their wills … 11 Nor again was it possible for Kyronides to give a son in adoption to Aristarchos I; it was possible for him to have returned to his father's family, leaving a son in the family of Xenainetos I, but there is no law by which it is possible for him to substitute a son of his own in his place.

The archon's perspective in granting the posthumous adoption in this case may reflect a subterranean feeling in Greek thinking that a son who had been adopted out (such as Kyronides) continued to have some moral right of inheritance in his family of origin, regardless of other factors.

Annulling an adoption

A case of dispute between adopter and adoptee is known, but the precise procedure for annulling an adoption in Athens is far from clear. Inheritance rights at least could not be withdrawn (Rubinstein [1993] 33–61). There was

[13] This is made clear by the fact that the archon has forced the plaintiff to add to his petition at the preliminary inquiry that his mother was sister of Aristarchos II. This has the effect of acknowledging the posthumous adoption, and as a result it changes the status of the plaintiff's claim in relation to the inheritance from grandson of Aristarchos I to nephew of Aristarchos II. The plaintiff's only hope is to prove that the adoption of Aristarchos II has been illegal – difficult since it seems that the matter has already been legally determined.

a law limiting the right of an adoptee to return to the *oikos* of his natural father, and he was guaranteed his right to an equal share in the inheritance left by the adopter even if the adopter had subsequently begotten natural sons after the adoption. Once the adopted son had produced heirs for his adoptive father, he was entitled to return to his natural family (see Dem. XLIV.64), but the consequence of this was to place him in a different *oikos* from the heir to the adoptive parent (Isaios VI 44; X.11).

An interesting case, which shows that this might not have been a disincentive in every case, is discussed by Goody ([1976] 72). In Demosthenes' speech *Against Leochares* (Dem. XLIV), Archiades had died without issue, leaving a brother, Meidylides, and a sister's grandson, called Leokrates. The brother had an advantage as intestate heir but was out of the country when Archiades died. Leokrates had himself recorded as the posthumous adopted son and entered into possession of the property. On returning Meidylides was angry but was persuaded to avoid legal action. In the meantime Leokrates transferred the estate to his own son Leostratos, who was in turn incorporated in Archiades' clan and deme. Leostratos did the same with his son Leokrates II. At this point Meidylides' lineal descendants made a claim on the property against Leokrates II, whose brother Leochares is defendant in the case after Leokrates II died without issue. The serial adoption arrangements made by Leokrates and Leostratos served a very practical purpose: as each of them produced heirs, they returned to their natal *oikos* but kept the estate in the family. Thus each *oikos* was kept intact, and there seems to be little sense of distress on the part of Leokrates and Leostratos at the separation of interests so produced. On the other hand, the prosecution does claim that something illegal has happened. Their claim was that an adoption could not be preserved through three separate lives. This is surely a valid complaint, if the idea is that the original posthumous adoption is taking effect in the case of Leokrates II (as is claimed by the prosecution at *Against Leochares* 22–3, who also allege various improprieties over the whole procedure by which the descendants of Leokrates have continued their claim to the estate (*Against Leochares* 17–44)). Since Leokrates II has died without issue, there is a further problem for the claim of Leochares to the estate since his father Leostratos has returned to his natal deme of Eleusis. To which family does he belong? It seems that an attempt has been made to register Leochares as son of Archiades (*Against Leochares* 46ff.) (see Figure 7).

This reveals certain holes in the rules about proof of status in the Greek world. If the allegations presented by the prosecution in this case are valid, Leokrates, Leostratos, Leokrates II and Leochares have all been bending the rules as far as they can. They have tried confusions such as making

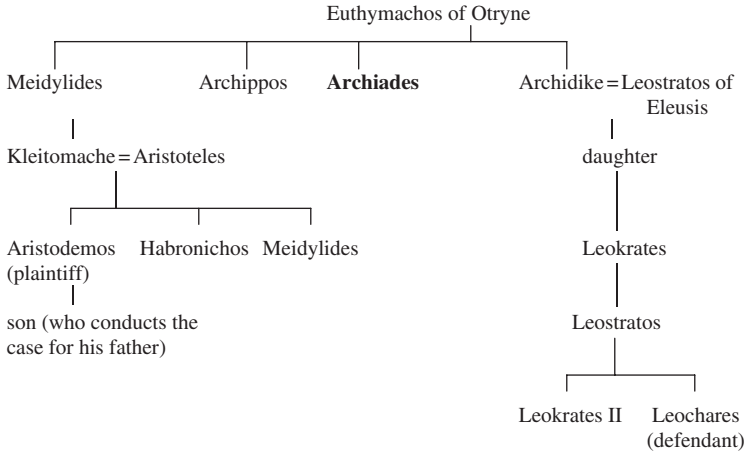


Figure 7 Demosthenes XLIV

surreptitious entries in deme lists to buttress their position against the competing claim. A key issue emerges at the end of the speech. Under Solon's laws an adoptive son could not dispose of property by will within a family which he had entered as a result of adoption. The measure was intended to give primacy to lineal descendants, and this is a very strong argument in favour of the interests of the plaintiff Aristodemos.

Qualifications for the adopter and adoptee

As was required for the making of a will, an adopter had to be a male citizen of age with no legitimate sons alive. It is not clear whether the presence of a son's son also disqualified a candidate. If he had a son or sons who were minors, he could still adopt some other person in a will and the adoption would only take place if the natural son(s) died before coming of age. This may partly explain certain forensic speeches in which we find adoptive sons defending themselves against attacks from intestate heirs of their adoptive fathers (Rubinstein [1993] 62ff.). Also, although sometimes adoptive children would directly correspond to the heirs under intestacy, resentments might occur if a childless man chose from completely outside that group, or perhaps if he promoted someone in the pecking order of the intestate heirs. If there were daughters only, he could adopt conditional on marriage to her. If after adopting a son he had sons born to him, the adopted son was entitled to share the estate with the others.

Women could not adopt, and other social restrictions related to inheritance and capacity are relevant. Thus women had restrictions on disposing of more than a small amount of property, and their welfare was overseen with great particularity by the *kyrios*; in the event that a woman did inherit significant wealth, the epiklerate ensured that she was at best temporarily custodian of the inheritance, which was quickly returned to the male line under the supervision of proximate male relatives. The Athenian woman was not seen as suited to the process of choosing an heir to adopt and could not do so legally. If a male died leaving only female descendants, his daughter or daughters would become *epikleroi* on his death. Both the inheritance and the female descendant(s) would become objects for determination by an *epidikasia* (Harrison [1968] 9–12). Under the epiklerate the nearest male relative would only gain control over the inheritance if an agreement was reached that he would marry the girl. The intention was not that this relative should be heir, but rather his role was as administrator of the estate until a son or sons came of age (Rubinstein [1993] 87–104).

Sometimes the situation might be simplified by the existence of a daughter who already had male issue. In such cases grandsons might be adopted by their maternal grandfathers. If such an adoption were not encompassed before the decease of the grandfather, an *epikleros* would not in fact be continuing her father's line as such, since her male offspring would belong within their own natural father's *oikos*.

Some uncertainty subsists regarding the adoption of women. The testator could not ensure that the family line would be continued, since an adopted woman's offspring would go to the *oikos* of the husband. Rubinstein suggests that cases of this sort would be explicable if we imagined that posthumous adoptions of sons born of the *epikleros* were something of a commonplace (Rubinstein [1993] 87–104). However, a difficulty is also acknowledged. How would the *kyrios* respond to the obligation to provide for the posthumous adoption of one of the sons born to him from an *epikleros*? It is suggested that arrangements of this kind would have been informal and far from mandatory.

A man himself adopted was thereby disqualified from adopting, but in the event of renunciation of adoption (as mentioned above, this was something which was possible after the adoptee had produced an heir for his adoptive father), he could then adopt provided that he had no other son. The reason was that he had now returned to his natural family. The aim of disqualifying an adopted son from adopting seems to have been to ensure that the inheritance would return to the adopter's family in the event that the adopted son did not succeed in continuing the *oikos* as intended (Rubinstein [1993] 16–32).

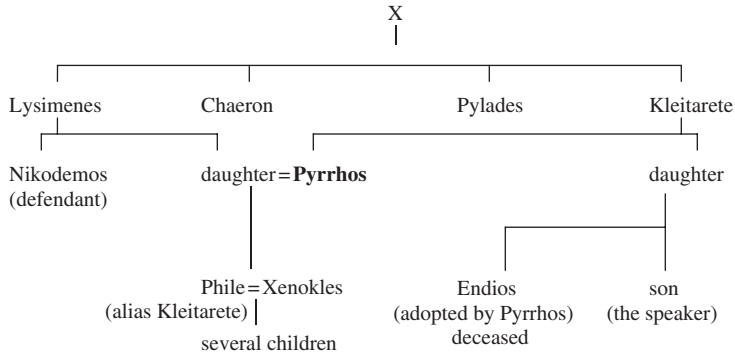


Figure 8 Isaios III

In the case on the estate of Pyrrhos (Isaios III; *c.* 350 BC) (Wyse [1904] 273–84), the circumstances are that an adopted son has died without issue, and dispute arises over the identity of next of kin. Under these circumstances (lack of an heir), the adopted son has no right to dispose of the property. This would pass by law to the legal heir. Pyrrhos had adopted his sister's son, Endios, and made a will leaving his property to him. When Pyrrhos died, Endios succeeded to the property without question and enjoyed it for some twenty years before his death. He died without issue. Two days after the death of Endios the estate was claimed by one Xenokles on behalf of his wife, Phile. He claimed she was the legitimate daughter of Pyrrhos, and he seems to have tried to seize a portion of the property. His claim was opposed by the mother of Endios, who is his next of kin. She is represented by her younger son (see Figure 8).

The case was based on the premise that Pyrrhos had a legitimate daughter in the form of Phile. In evidence Xenokles claimed that his wife's mother, who was sister to a certain Nikodemos, had been legitimately married to Pyrrhos. The story was that Phile was the legitimate offspring of that union. But a charge of perjury had already been successfully brought against Xenokles, and thus the illegitimacy of Phile was beyond question. The speaker is now bringing a further charge of perjury against Nikodemos because he had substantiated Xenokles' claim in regard to Pyrrhos' marriage to his sister. It has to be assumed that in thus supporting the claims of Pyrrhos' sister to the estate many of the same arguments are being raised against Nikodemos as on the occasion of Xenokles' conviction for perjury.

Argument is based on the improbability of the circumstances; it includes argument that there was no dowry as well as demonstrating conspicuous

weakness in other proofs of the marriage; the defendants claimed the marriage had only been witnessed by one person. Others who claimed to have been at the ceremony also appeared to have given inconsistent evidence (for example whether the child was called Phile or Kleitarete). Two interesting arguments are raised during the case; one is that if Phile was legitimate, the adoptive son Endios ought to have married her as an *epikleros* rather than let her go to another (III.51), and the second, that it would be shameful for both the uncle Nikodemos and for Endios if a legitimate daughter of Pyrrhos had been allowed to marry with the claimed levels of dowry. The complicated facts of this case show how an adoption which failed to remedy a deficit in male heirs could lead to intricate family squabbling.

Other disqualifications included mental incapacity brought about by madness, senility, drugs, sickness, and the like. Already the laws of Solon had made provision to prevent those who disposed of their property through adoption from depriving legitimate heirs of their inheritance.

As in Rome, through adoption a childless Athenian was able to generate an artificial order of inheritance or even to import an heir from outside the family group. He could control the fate of his daughter by choosing an adoptive son, rather than allowing her to fall into the hands of a close male relative whose succession to his goods and chattels might be uncongenial. It is conceivable that a son could also be adopted without the requirement that he marry an existing daughter.

To qualify to be adopted, a person had to be of Athenian parentage on both sides. This seems to mean that he had to be child of a union by *engue* (Just [1989] 47–50). Parental consent was required of a minor. It can be assumed that even a boy who was of age could have his adoption vetoed by his father if he was an only son. Daughters could be adopted and thus become *epikleroi*, though this happened less often than the adoption of sons. Here again there is an important difference from Roman society. It was usual to choose a relative to adopt, but there was no legal ban against adopting a complete stranger. A magistrate who had not rendered his accounts could not be adopted, nor could anyone condemned to *atimia*, but sons of such people were apparently eligible. Isaios mentions adoption as a method employed to evade parental financial disabilities (X.17):

> But other people indeed, when they are unlucky over money, place their children in other families so that they may not share in their parents' loss of honour (*atimia*).

The focus in every type of case is largely on the needs of the adopter rather than the adoptee. Since the aim was to provide the adopter with a descendant, in most known cases the subjects are adults rather than very young

children. Some reasons for this prejudice have already been discussed, but it may partly relate to the idea of providing for old age as well as continuation of the family line. In the Greek world the interests of the *oikos* do seem to transcend individual interests with more regularity than in the cases from the Roman world where sufficient detail is available.

RHODES

Nearly five hundred epigraphically attested cases of adoption are known in the Rhodian state. As Ellen Rice points out, we are forced to use inference from the Attic orators and the Law Code of Gortyn to understand the system (Rice [1988] 138). As we have seen, adoption is employed at Athens to cover a situation where there are no natural heirs. The adoptee would give up rights of inheritance in his natural family to become heir to the adoptive father. He was formally enrolled in the adoptive father's phratry and deme and became for all intents and purposes a member of the family he was adopted into. Was Rhodes substantially similar?

At a certain period nearly one in three of the priests of Athana Lindia were adopted, and this is not best explained on grounds of community infertility (Stavrianopoulou [1993] 177–9). The priests of Athana Lindia – priests of the same tribe – succeeded each other at three-year intervals. Adoption could be and was used to circumvent this tribal cycle. So a priest of one tribe standing for election in a year which was restricted to a member of another tribe could be adopted by a man from a deme of the appropriate tribe to become eligible for election. This is something close to the adoptions in Nippur to acquire eligibility for property ownership where the community did not allow alienation of property. It implies a community which has already employed adoption for matters of inheritance for some time, and the community (or opportunistic members of the community) now use the institution for new ends.

The earliest attested cases are from the mid third century BC, fully reviewed by Gabriella Poma (Poma [1972] 169–91). These are from Kamiros and dated (using the *damiourgos*) to *c.* 263 BC. In inscriptions listing successive eponymous magistrates at Kamiros, the earliest adoption is from 240 BC. At Lindos at the same time there is an adopted priest of Poseidon Hippias, and a year later an adopted priest of Athana Lindia. A lack of standardisation in the formulae used to indicate adoptions has been thought to show that a process is just beginning. Poma suggests that the adoptions were a novelty at this stage, but Rice prefers the notion that recording is now happening for the first time (Poma [1972] 189–91; Rice [1988] 139) – and perhaps the

first adoptions of this sort occurred up to a hundred years earlier. Inscribed documents earlier than the third century are scarce on Rhodes. It would be interesting to know if adoption was much used on Rhodes before the pro-Athenian revolution in the 390s BC. Rice counts nearly a hundred adoptions by close relatives, and she assumes comparability with Athens. These include eight adopted by brothers and three adopted by uncles, as well as nineteen female adoptions. These may be comparable to Athenian female adoptions – *epikleroi* being adopted to retain inheritances within the family (Rice [1988] 139; Stavrianopoulou [1993]). There is still a great deal of speculation about the significance of what appears to be an extraordinary number of adoptions for a small community. Poma suggests that adoption might have represented a measure intended to preserve the solidarity of old families in the three old cities. Synoecism might have created its own pressures (Poma [1972] 202; Rice [1988] 140–1), while little is known of the fate of foreigners working on Rhodes. Adoption would be an obvious way to incorporate resident aliens into the body politic. Another possibility is that adoption was used to counteract the extinction of citizenship inherited through the demes. The argument has some danger of circularity since most of the possibilities canvassed can be seen in operation elsewhere in the Greek world. The Rhodian evidence could illustrate a local need for the adoptions to be epigraphically recorded.

The world of the Athenian orators of the fourth century is closely concerned with inheritance amongst the elite. Although childless males were entitled to nominate anyone they chose, adoptions were used with the intention of making transitions smoother. At Gortyn adoption seems to be compatible with the continued existence of legitimate descendants, and it may be suspected that the institution was employed with a view to installing a preferred heir. There is no indication of how such interlopers were received in practice. At Rhodes the problems seem to have been at least twofold: providing access to the priesthood in a system which restricted membership by tribe, and integrating outsiders. Here also the epigraphic texts hinder closer analysis of the working of adoption in practice, but it is evident that the creation of fictitious kinship is applied to a localised use in the Rhodian environment.

CHAPTER 4

Procedural aspects of Roman adoption

BACKGROUND AND HISTORICAL DEVELOPMENT OF ADOPTION AT ROME

Adoption can be defined as a method developed to regulate the entry of new members to the family. This chapter is concerned with the procedures and formalities used to complete an adoption at Rome, and attempts, in so far as is possible, to assess how and when they originated, and how they developed over time. A previous chapter (2) discussed older views of Roman kinship, which were dominated by an evolutionary approach. Roman adoption as an institution has also been seen in evolutionary terms. The resulting picture is now embedded in modern thinking about Roman adoption. It is thus hard to study adoption without a coherent approach to the Roman family and its development, whether evolutionary or otherwise. Political arrangements also go hand in hand with any discussion.

For the earliest phases of Roman history, little can be said about family structures since there are no contemporary sources, and there is little prospect of using later sources to create a completely convincing picture. In the late Republic and early Empire a text from the Twelve Tables was considered important in understanding issues of personal status within the family. Table IV: 2 is a text relating to emancipation, and its significance has been much discussed:

si pater filium ter venum duit, filius a patre liber esto.[1] (Crawford [1996] II: 631–2)

If a father gives his son in sale three times, let the son be free from his father.

or

If a father hires out his son three times, let the son be free from his father.

[1] The text appears in Gaius (*Inst.* 1.132) and Ulpian (fr. 10.1).

The text concerns the terms under which a son may be freed from his father's control. It implies the existence and exercise of *patria potestas*. The breaking of *patria potestas* made it possible for sons to fall under a new regime. Kelly denies that this process is a triple sale of the son and claims instead that it reflects a hiring out of sons for labour at the time of the Twelve Tables (Kelly [1974] 183–6). Its survival as a fossil into the later period is thus construed to represent the continuing importance attached to the breaking of *patria potestas* – by whichever means. In the Decemviral period (traditionally 451–450 BC) there was as yet limited access to slaves, and the procedure could reflect the almost exclusive use of slaves in the domestic context and consequent urgency to solve manpower issues by some other means, such as purchased labour. The process has affinities in other cultures, particularly the idea of taking in a son to gain his labour and marry a daughter in Chinese society (Wolf and Huang [1980] 114–17; Lindsay [2001] 198).

The text is interesting for what it fails to reveal. Why the need for the triple sale to free the son? What social background is implicit to the arrangement, and what had been the social custom before the provision was enacted? In short, what social ill was the law designed to remedy? Finally, was it still used to serve the same ends it was designed for in the period when more evidence is available?

By the time of the jurist Gaius, in the second century AD, the procedure described by Table IV: 2 was seen as an essential preliminary to adoption. This was how *patria potestas* could be broken and an individual could become *sui iuris*. This allowed him then to fall under the *patria potestas* of a new *paterfamilias*. The legal writers comment only on the mechanism, not the motives of the parties:

> Furthermore, parents also stop having under their power children given in adoption. Indeed for a son, supposing he is given in adoption, three mancipations and two intervening manumissions accordingly occur, as customarily happens when a father releases him from power in order to make him legally independent (*sui iuris*). Then he may either be remancipated to his father, and the adopter lays his claim against the father before the praetor that he is his own son. And provided that the father does not enter a counterclaim he is awarded as a son to the claimant. Or he is not remancipated to his father, and the adopter lays his claim against the person with whom he is after the third mancipation …[2] (Gaius, *Inst*. 1.134).

[2] Gaius, *Inst*. 1.134: praeterea parentes etiam liberos in adoptionem datos in potestate habere desinunt. et in filio quidem, si in adoptionem datur, tres mancipationes et duae intercedentes manumissiones proinde fiunt, ac fieri solent, cum ita eum pater de potestate dimittit, ut sui iuris efficiatur. deinde aut

The rubric is discussed in the age of Augustus by Dionysius of Halicarnassus in a passage which definitely treats the topic as the sale of sons. He claims to provide a discussion of the laws of Romulus, but the content is a commentary on this *placitum* from the Twelve Tables:

> The Roman Lawgiver did not stop even at this but permitted the father to sell his son, not considering whether the authorisation would be viewed as cruel and tougher than was in tune with natural affection. He even authorised the father to make money from his son, up to a third sale, something which a person brought up under the relaxed Greek customs might wonder at above all else as bitter and tyrannical, giving greater power to the father over his son than to a master over his slaves. For a slave once sold on, then acquiring his liberty, is thereafter his own master, but a son sold by his father, were he to become free, again came under his father, and sold a second time and freed a second time was as in the beginning his father's slave. But after the third sale he was freed from his father. The kings safeguarded this law whether written or unwritten, considering it the most powerful of all laws. When the monarchy was overthrown, when first the Romans decided to display openly to all citizens in the Forum all their ancestral customs and laws as well as those introduced, so that the rights of individuals might not be overthrown through the powers of magistrates, the Decemvirs, who took their power to collect and write down the laws from the people, inscribed it with the others (*Ant. Rom.* 2.27.1–3).

Dionysius appears to have derived his picture of ancient law from Varro (*Ant. Rom.* 2.21.2), and he comments casually that the majority of the laws of Romulus were unwritten, but some were committed to writing (2.24.1). He specifically refers to Table IV: 2 of the Twelve Tables in this context (2.27.3). Dionysius appears to have thought that major elements of the scheme originated by Romulus were reflected in the codification in the Decemviral period. What must be underlined is that our best sources are at a considerable remove from the background under discussion. Dionysius also adds that the original provision was cut down under Numa Pompilius: 'if a father agrees for his son to marry a woman who under the laws is to share his sacred rites and possessions, the father shall no longer have the power of selling his son' (2.27.4). He assumes that this implies that hitherto it had been possible for a father to sell his sons. Dionysius finds this quite puzzling, and his treatment can provide us with an Augustan slant on the interpretation of a *placitum* of the Twelve Tables. Although admiring the capacity of *patria potestas* to ensure familial loyalty (2.26.1–6), he uses

patri remancipatur, et ab eo is, qui adoptat, vindicat apud praetorem filium suum esse, et illo contra non vindicante a praetore vindicanti filius addicitur, aut non remancipatur patri, sed ab eo vindicat is, qui adoptat, apud quem in tertia mancipatione est …

the Roman father's authority to sell his son as further evidence of Roman strictness in comparison with the Greeks. Dionysius describes the father's power as greater than that of a master over his slaves. Indeed, the whole relationship is depicted by Dionysius in slave-master terms, and he appears to view the matter with concern on the grounds that it is based solely on the profit motive.

In reality the legal effects of adoption were mostly related to inheritance. *Patria potestas* was a fact of life for both natural and adoptive children. As an outsider, Dionysius may have been bothered by the theoretical power of life and death held by a *paterfamilias* over both adoptive and natural children (Y. Thomas [1984] 500–1). Modern opinion has doubted the more extreme application of *patria potestas* in all but a minority of cases (W. V. Harris [1986] 81–95; Saller [1994] 102–32). Adoptees were subject in theory to the absolute power of the *paterfamilias*, and there was an emphasis on replicating the natural child's rights as completely as possible. As will emerge, an adoptive child lost substantial rights of inheritance in the family of origin but gained those of a natural child in the adoptive family. He was also subject to the same considerable financial restrictions placed on a natural child as a result of *patria potestas*. A son under power, whether natural or adoptive, continued until late antiquity to be held under a tight financial rein (Y. Thomas [1982]; Arjava [1998] 147–65).

Adoption, as opposed to adrogation, is thought to be a newer procedure (Horvat [1974]). J. A. C. Thomas suggests that adrogation was pre-decemviral, and he bases his case on its close relationship to will-making. His evolutionary argument is that before the general acceptance of testation, a *paterfamilias* without an automatic heir (a *suus heres*) needed to be able to nominate a successor. The process of adrogation allowed this to be achieved while the testator was alive, although it involved the extinction of one family to perpetuate another. This made adrogation a concern both public and religious (because it involved the extinction of the *sacra* of the family of the person adrogated; this renunciation of family rites was called *detestatio sacrorum*: Aulus Gellius, *NA* 15.27.3). On this view, *adoptio* was a development out of Table IV: 2 of the Twelve Tables. It was a matter of private law, although sanctioned by the praetor, and it could be a product of economic considerations such as those discussed above (J. A. C. Thomas [1976] 437). Emancipation and adoption were thus both made possible at the latest at the time of the Twelve Tables (Gardner [1998] 127).

The Roman jurists in dealing with legally sanctioned adoption treated the two types of adoption in terms of the legal status of the individual undergoing the procedure.

CAPACITY TO ADOPT AND AGE REQUIREMENTS

Since Roman adoption resulted in the adopting father gaining *patria potestas* over his adoptee, a preliminary requirement for the adopter was the legal independence implicit in the possession of *patria potestas*. Sons under the control of a *paterfamilias* were thus not eligible to adopt (Russo Ruggeri [1990a] 249ff.). This may in fact help to explain why provisions for the adoption of a grandson are so common in the legal authorities. The grandfather could thus set up an heir on behalf of his childless son. Some of the refinements mentioned in the *Digest* are quite suggestive of the tensions that could potentially arise within families:

> When a grandson is adopted as though born of a son, the agreement of the son is required, and Julian too writes this.[3]

This was related to questions of succession: adoption of a 'fictitious' grandson did not make the adoptee heir to the grandfather since on his death, he would fall under the *potestas* of the son.[4] Presumably the aim was to secure succession into the next generation before the father's death. Such a grandson cannot be foisted on the natural son; the grandson is only to be seen as under the *potestas* of the son if the son has agreed to this.[5] This may be an example of the legal authorities covering every possible contingency, but it also serves to suggest a high level of anxiety on the part of male citizens to secure the continuity of their line.

There was requirement for an age difference between adopter and adoptee, which was intended to replicate nature.[6] The adopter was required to be eighteen years older than the adoptee.[7] This was already in place in the

[3] *Dig.* 1.7.6 (Paulus, *On the Edict* 35): cum nepos adoptatur quasi ex filio natus, consensus filii exigitur, idque etiam Iulianus scribit.

[4] *Dig.* 1.7.10 (Paulus, *On Sabinus* 2): si quis nepotem quasi ex filio natum quem in potestate habet consentiente filio adoptaverit, non adgnascitur avo suus heres quippe cum post mortem avi quasi in patris sui recidit potestatem. (If a man should adopt a grandson as though born of a son whom he has in power with the consent of that son, the grandson is not recognised as automatic heir (*suus heres*) to his [adoptive] grandfather, seeing that if the grandfather dies he falls into the *potestas* of his 'fictitious' father.)

[5] *Dig.* 1.7.11 (Paulus, *On Sabinus* 4): si is qui filium haberet in nepotis locum adoptasset perinde atque si ex eo filio natus esset, et is filius auctor factus non esset: mortuo avo non esse nepotem in potestate filii. (If a man who has a son should adopt someone into the position of grandson as though he was born of that son but the son himself was not the instigator, then on the death of the [adoptive] grandfather such grandson is not under the *potestas* of the son.)

[6] *Dig.* 1.7.16 (Javolenus, Extracts from Cassius 6): adoptio enim in his personis locum habet, in quibus etiam natura potest habere (adoption only takes place between those persons between whom the natural relation could have existed). The age requirement is discussed by Russo Ruggeri (1990a) 277–92.

[7] *Dig.* 1.7.40.1 (Modestinus): non tantum cum quis adoptat, sed et cum adrogat, maior esse debet eo, quem sibi per adrogationem vel per adoptionem filium facit, et utique plenae pubertatis, id est decem

time of Cicero in view of comments he makes about the relative ages of Fonteius and Clodius, although he does not specify the precise age difference expected.[8] It seems to have been normal to investigate this at the pontifical enquiry, and the pontiffs in the case of Clodius assessed this consideration as either immaterial or something to be ignored on political grounds. Cicero does admit that it was not investigated.[9] He clearly hopes to persuade us nonetheless that it was a firm legal requirement![10] He even claims that pontifical approval was never obtained.[11] This can hardly be the case, and no doubt Cicero was grandstanding and attempting to shame the pontiffs into a recantation. Caesar as *pontifex maximus* was well known to have orchestrated the whole affair.[12] Gaius says that the age requirement – the requirement for the relative ages of the parties to an adoption to replicate nature – was still in dispute in his time, under the Antonines.[13] If an intending adrogator was under sixty, Ulpian suggests that he should beget his own children unless there is some known impediment.[14] An exception was made for those already linked to the adrogator (*Dig.* 1.7.15.2). Ulpian also insists that an older man must not be adopted by a younger one, both points reflecting views that Cicero thought compelling, and the impropriety of the actual case of Clodius – still perhaps notorious in the age of Ulpian. He adds that a man ought not to adrogate more than one person without lawful cause, nor someone else's freedman (*Dig.* 1.7.15.3). In AD 4 Augustus adrogated both Agrippa Postumus and Tiberius (Suet. *Aug.* 64). No doubt it was

et octo annis eum praecedere debet (not only when someone adopts, but also when he adrogates, he must be older than the person he makes his son either by adrogation or adoption, and without fail to the extent of complete puberty, that is he must be eighteen years older than him).

[8] Cic. *Dom.* 14.36. See Gardner (1998) 146.

[9] Cic. *Dom.* 13.35: non aetas eius, qui adoptabat, est quaesita (the age of the man who was adopting was not questioned).

[10] The matter has also been debated by legal authorities. See Russo Ruggeri (1990a) 278 n. 65.

[11] Cic. *Dom.* 14.38: dixi apud pontifices istam adoptionem nullo decreto huius collegii probatam, contra omne pontificium ius factam pro nihilo esse habendam (I have said in the presence of the pontiffs that your adoption was approved by no decree of this college, and should be considered as invalid and performed contrary to all pontifical regulation).

[12] As Russo Ruggeri (1990a) 282 n. 74 notes.

[13] *Inst.* 1.106: sed … quaestio, an minor natu maiorem natu adoptare possit, utriusque adoptionis communis est (a question common to both types of adoption is whether a younger person can adopt an older one).

[14] *Dig.* 1.7.15.2 (Ulpian, *On Sabinus* 26): in adrogationibus cognitio vertitur num forte minor sexaginta annis sit qui adroget, quia magis liberorum creationi studere debeat: nisi forte morbus aut valetudo in causa sit aut alia iusta causa adrogandi, veluti si coniunctam sibi personam velit adoptare. (In a case of adrogation enquiry turns on whether the adrogator happens to be under sixty years of age, since, in that case, he ought rather to think of begetting children; unless it so happens that there is some disease or health reason in the case, or there is some other good ground for an adrogation, as for example, if he wishes to adopt a person to whom he is connected.)

easy for him as Pontifex Maximus to show that he had the requisite just cause (Moreau [1992] 24).

PATRIA POTESTAS AND THE PHYSICAL AND SEXUAL STATUS OF ADOPTERS

An adopter had to be legally independent (*sui iuris*) and thus a *paterfamilias*. As head of the *familia*, the adopter would exercise *patria potestas* over adoptive children, and in this sense his role replicated that of a father of natural children. He did not need to be married, but he was required to be potentially capable of begetting children (J. A. C. Thomas [1976] 440). In theory, both male and female children could be adopted. *Spadones* (eunuchs) could adopt, but not *castrati*.[15] A eunuch, although impotent, was classed as potentially capable of fathering children. The blind could both adopt and be adopted.[16] This was a disability irrelevant to the capacity to procreate, and thus adoption in these cases was authorised.

ASSIMILATION AND PARTICIPATION IN THE FAMILY

As part of the process of assimilation of adoptees, incest taboos, which applied to natural children, were also applied to adoptees. The same prohibited degrees of marriage were in place for adoptive as for natural children and continued to operate even in the event that the adoption was later dissolved (Gardner [1998] 119). However, 'brother' and 'sister' in this situation could marry following emancipation. This may have been quite common in cases where a son-in-law was to be adopted: an essential preliminary was the emancipation of the adopter's daughter to avoid infringing the incest taboo (Minieri [1982] 278–84; Gardner [1998] 119).

Other status-related issues arise. Under the Augustan social legislation, advantages accrued to parents of three children (the *ius trium liberorum*). Adoptive children did not enable the adopters to access these advantages. The Tacitean passage which seems to suggest that adoptees did count until the age of Nero (AD 62) is puzzling, but it should probably be interpreted as a short-term abuse of the system (Tac. *Ann.* 15.19; Gardner [1998] 47–55).

[15] Gaius, *Inst.* 1.103; *Dig.* 1.7.2.1 (*spadones*): but it is common to both types of adoption that even those incapable of procreating, such as eunuchs (*spadones*), can adopt. See Just. *Inst.* 1.11.9; *Dig.* 28.2.6 (*castrati*).

[16] *Dig.* 1.7.9 (Ulpian, *On Sabinus* 1).

On the other hand, a person adopted by a senator gained or retained the rank of senator's son. Even if a senator's son married down, his rank still prevented him as a senator from marrying either his adoptive or natural children to freedmen or actors. The emphasis was on preserving the prestige of the hierarchy, and it seems that an adoptee deemed worthy by a senator was thus guaranteed his status. Not so in the case of the adoption of freedmen, who remained under notable disadvantages.[17]

ADOPTION OF MINORS AND THOSE UNDER GUARDIANS AND CURATORS

It was legally possible to adopt a child who was under the father's *potestas* at any age. The authority of the *paterfamilias* guaranteed that the adoptee's interests were being sufficiently considered. Instances are known (in the imperial family, for example) where the children were still infants. More problematic were cases where the subject was a minor and *sui iuris* – and therefore subject to a *tutor* (Donatuti [1961] 127–98). According to Aulus Gellius it was not possible for a *tutor* to represent his charge in the *comitia curiata* (*NA* 5.19.10); his role was confined to managing the property of his charge and did not extend to questions of status (Gardner [1998] 165–6). But Gaius shows that Antoninus Pius had authorised adrogations of those under age under strict rules:

> At one time it was prohibited for a person under puberty to be adopted by popular authority, but presently it is permitted. Now as a result of a letter which the excellent emperor Antoninus wrote to the pontiffs, if the reason for the adoption seems to be legitimate, it is permitted under certain conditions.[18]

Some of these conditions are explicated further in a passage from Ulpian that is preserved in the *Digest*. The main concern with this group is that the adopter may be attempting to take advantage of his charge financially. There is covert concern about the possibility of sexual abuse, for example in the specification that children under the age of puberty ought normally to be related to the adopter, but money was the key issue at Rome. Ulpian outlines the main requirements for this group:

> A man is not allowed to adrogate a person to whom he has been acting as a guardian or curator so long as the person whom it is proposed to adrogate is under

[17] See Chapter 8.

[18] Gaius, *Inst*. 1.102: item, impuberem apud populum adoptari aliquando prohibitum est, aliquando permissum est. nunc ex epistula optimi imperatoris Antonini, quam scripsit pontificibus, si iusta causa adoptionis esse videbitur, cum quibusdam condicionibus permissum est.

twenty-five in case perhaps he is adrogating him to avoid submitting his accounts. Moreover, there ought to be an inquiry over whether a dishonourable ground for adrogation may underlie the case. (1) The adrogation of those children under the age of puberty is permitted to persons who are led to adopt either by blood relationship or most pure affection; in all other cases, it is forbidden in case it should be in the power of guardians to end guardianship and at the same time to extinguish a testamentary substitution which may have been made by the father of the ward. (2) Accordingly first of all the ward's means will have to be determined, also the means of the person who wants to adopt him, so that it may be weighed up by comparison of the two whether the adoption can be considered healthy for the ward; next, the manner of life of the man who wishes to bring the ward into his family; thirdly as to his age, to weigh up whether it would not be better for him to think about begetting children for himself rather than bringing under his *potestas* someone who is taken from another man's family. (3) It should further be investigated whether when a man has one or more children of his own he ought to be allowed to acquire another by adoption in case the expectation of those children whom he begot in legitimate marriage may be less than every child prepares for himself through dutiful conduct towards parents, or the adoptee would receive less than it would be fair for him to get. (4) Sometimes a poorer person will even be allowed to adopt a richer if his sober habits are conspicuous and his disposition is honourable and well known. (5) However, security is customarily given in such cases.[19]

These detailed provisions give a summary of the issues normally subjected to scrutiny during the pontifical inquiry. Nearly all the provisions relate to financial matters. In ascertaining whether there exists genuine affection between the parties, the test relates to financial interests, and there is no coherent attempt to provide against sexual exploitation, despite some clear hints that this was an issue.

[19] *Dig.* 1.7.17 (Ulpian, *On Sabinus* 26): nec ei permittitur adrogare, qui tutelam vel curam alicuius administravit, si minor viginti quinque annis sit qui adrogetur, ne forte eum ideo adroget, ne rationes reddat. item inquirendum est, ne forte turpis causa adrogandi subsit. (1) eorum dumtaxat pupillorum adrogatio permittenda est his qui vel naturali cognatione vel sanctissima affectione ducti adoptarent, ceterorum prohibenda, ne esset in potestate tutorum et finire tutelam et substitutionem a parente factam extinguere. (2) et primum quidem excutiendum erit, quae facultates pupilli sint et quae eius, qui adoptare eum velit, ut aestimetur ex comparatione earum, an salubris adoptio possit pupillo intellegi: deinde cuius vitae sit is, qui velit pupillum redigere in familiam suam: tertio cuius idem aetatis sit ut aestimetur, an melius sit de liberis procreandis cogitare eum quam ex aliena familia quemquam redigere in potestatem suam. (3) praeterea videndum est, an non debeat permitti ei, qui vel unum habebit vel plures liberos, adoptare alium ne aut illorum, quos iustis nuptiis procreaverit, deminuatur spes quam unusquisque liberorum obsequio paret sibi, aut qui adoptatus fuit minus percipiat quam dignum erit eum consequi. (4) interdum et ditiorem permittetur adoptare pauperiori, si vitae eius sobrietas clara sit vel affectio honesta nec incognita. (5) satisdatio autem in his casibus dari solet. See also *Dig.* 1.7.18–20 for further provisions.

ADOPTION BY WOMEN

Women were not able to adopt because of lack of *patria potestas*, which was a requirement equally for *adoptio* and *adrogatio* (Arjava [1996] 88).[20] Moreover adoption at Rome should not be seen as a move engaged in by a couple: a woman, unless she was in a *manus* marriage, was not in the same *familia* as her own children and had no legal authority over them. There was in fact no requirement to be married in order to adopt, and it might be suspected that many of the Roman adoptions occurred in bachelor establishments where there was no longer a female partner, or perhaps never had been. It was in fact a possible alternative to marriage (Kunst [2005] 63). Since an *adrogatio* took place in the *comitia curiata*, a wife could not even participate in the ceremony (Moreau [1992] 15; 22). One way or another, there was little recourse to a feminine view on suitable candidates. An adoption had no direct relevance to the actions of a wife, as emphasised by Yan Thomas ([1991] 147). In contrast, in Mesopotamia at Nuzi we can note in passing that a wife was required to confirm her husband's choice (Cassin [1938] 40).

Paulus does cover the issue of the relationship of an adoptee to the adopter's wife as part of a broader discussion of the adoptee's status:

> A person given in adoption becomes cognate to everyone to whom he becomes agnate, and he does not become cognate to anyone to whom he does not become agnate; adoption does not create the tie of blood, but the tie of agnation. Hence if I adopt a son, my wife is not in the place of mother to him; he does not become agnate to her, consequently she does not become his cognate; again my mother is not in the place of grandmother to him as he does not become agnate to those who are outside my family; but the man whom I adopt [as a son] does become brother to my daughter, as my daughter is in my family: and of course the two are not allowed to marry.[21]

Russo Ruggeri has suggested that some passages which have hitherto been regarded as examples of testamentary adoptions may show that already in

[20] Gaius, *Inst.* 1.104: feminae vero nullo modo adoptare possunt, quia ne quidem naturales liberos in potestate habent. (In contrast women cannot adopt at all, since they do not even have the children of their own blood under their power.) See also Just. *Inst.* 1.11.10. Other minor sources to the same effect cited in Russo Ruggeri (1990a) 258.

[21] *Dig.* 1.7.23 (Paulus, *On the Edict* 35): qui in adoptionem datur, his quibus adgnascitur et cognatus fit, quibus vero non adgnascitur nec cognatus fit: adoptio enim non ius sanguinis, sed ius adgnationis adfert. et ideo si filium adoptavero, uxor mea illi matris loco non est, neque enim adgnascitur ei, propter quod ne cognata eius fit: item nec mater mea aviae loco illi est, quoniam his, qui extra familiam meam sunt, non adgnascitur: sed filiae meae is quem adoptavi frater fit, quoniam in familia mea est filia: nuptiis tam etiam eorum prohibitis.

the Republic women could employ adoption. The examples are Livia instituting Dolabella as heir on condition of taking her name (*Att.* 7.8.3), and the later case of Galba taking both *nomen* and *cognomen* from his stepmother Livia Ocellina (Suet. *Galba* 4).[22] These will be dealt with in this work as testamentary adoptions.[23] Nevertheless, more general changes to the rights of women in this period might not rule out specially authorised cases. The advances represented by the *Senatusconsultum Orfitianum*, which placed a woman's child ahead of her agnates for purposes of inheritance, may indicate that by this time *patria potestas* was on the wane (Meinhart [1967]).

A constitution of Diocletian dating from AD 291 reveals that a very special exemption was allowed for a certain Syra:

> It is certain that a woman, who does not even have her own sons in her power, cannot adrogate. Indeed since you wish to obtain your stepson in place of lawful offspring as a solace for your lost sons, we agree to your prayers on those conditions we have noted, and we permit you to have him, just as if he were born from you, as a token of a natural and legitimate son.[24]

This is seen by most commentators as a very special case, although again Russo Ruggeri sees it as confirmation that occasional cases were authorised (Russo Ruggeri [1990a] 266; cf. J. A. C. Thomas [1976] 440–1). In an opinion on undutiful wills Ulpian, writing in the third century, implies that occasional cases were by then referred to the emperor:

> Since a woman cannot adopt a son without an order from the emperor, neither can anyone bring an action against the undutiful will of the person he wrongly thought to be his adoptive mother.[25]

As Gardner points out there must have been a general ban on adoption by women, which lasted until the age of Justinian, since even that emperor reiterates it. The *Institutes* add the mother's loss of her children as a specific ground for an appeal to the emperor.[26] Arjava has pointed out that papyri

[22] Russo Ruggeri (1990a) 259–65. Suetonius uses the phrase *adoptatus a noverca sua Livia*, on which the argument is based. See also her (1990b) 57–75.

[23] So also Gardner (1998) 156 n. 102.

[24] *Cod. Iust.* 8.47 (48) 5: a muliere quidem, quae nec suos filios habet in potestate, adrogari non posse certum est. verum quoniam in solacium amissorum tuorum filiorum privignum tuum cupis in vicem legitimae subolis obtinere, adnuimus votis tuis secundum ea, quae adnotavimus, et eum proinde atque ex te progenitum ad fidem naturalis legitimique filii habere permittimus.

[25] *Dig.* 5.2.29.3 quoniam femina nullum adoptare filium sine iussu principis potest, nec de inofficiosi testamento eius, quam quis sibi matrem adoptivam falso esse existimabat, agere potest.

[26] Just. *Inst.* 1.11.10: ex indulgentia principis ad solacium liberorum amissorum adoptare possunt. (By imperial indulgence, as a solace for lost children (women) can adopt.) Text explicated by Gardner (1998) 157, and see earlier discussion in Russo Ruggeri (1990a) 270.

from late Roman Egypt seem to show evasions of the law, and he thinks private arrangements are involved, reflecting a popular consciousness that mothers did have *de facto* power over their children. Many of these cases may have involved widows (Arjava [1996] 85; 88). Testamentary adoptions were possible for women and overcame many of the legal hurdles, although not encompassing identical results.

ADOPTION OF WOMEN

No Republican examples are known. Octavia, the daughter of Claudius, is the earliest known case (Dio, excerpta 60.33.2), adopted into another unspecified family to enable her marriage to Claudius' adopted son Nero, and thus technically avoid the incest taboo. Apart from this, the clearest Imperial example of a female adoption is Domitia Lucilla.[27] As Moreau points out, there was little need to use adoption in the case of women, who could never gain *patria potestas*, could not have *sui heredes*, and could be circulated through marriage (Moreau [1992] 22).

Adrogatio was not possible, because of the requirement for presence at the assembly, as emphasised by Aulus Gellius (*NA* 5.19.10). Minors (*impuberes*) were also excluded on the grounds that a guardian should not have the right to transfer their control to another free person. The restriction on women is irrelevant once *adrogatio per rescriptum principis* became available, and this represents a chronological evolution in the use of adoption (Kunst [2005] 126). There is a real link between women and *impuberes* in their inability to have *sui heredes*. Antoninus Pius allowed *adrogatio impuberum* with safeguards, and this should have removed the last objection to the adrogation of women. Thomas points out the practical objection that a woman could only extend her family by one generation (J. A. C. Thomas [1967] 418–27).

Several relevant texts which have been decried as interpolations give support for the idea that adrogation of women became possible under Diocletian (J. A. C. Thomas [1967] 418–27). This can be seen as a logical development of the procedure under rescript, but there is little hint as to when this option first became available.[28]

However, provision for *adoptio* is to be found in Gaius, and the adoption of women might have been commoner than existing sources

[27] For examples on inscriptions see discussion in Salomies (1992) 20 n. 1.

[28] See *Dig.* 1.7.21: nam et feminae ex rescripto principis adrogari possunt (for even women can be adrogated under imperial rescript).

suggest. Moreau thinks the dispensation is a second-century novelty (Moreau [1992] 22):

> Women are not adopted by the people, for that was what was agreed upon. But women are customarily adopted in the presence of the praetor at Rome, and the proconsul or legate in the provinces.[29]

In Justinian's law adoption did not create any relationship between the adopted person and the children of the adoptive *pater* except in cases of *adoptio plena* (Kurylowicz [1979] 163–82). This was the term used for adoption by a natural ascendant such as a maternal grandfather. A paternal grandfather could also engage in *adoptio plena* if the adoptee was in the power of his father, who had been emancipated. Under *adoptio minus plena* the adoptee – adopted by somebody other than a natural ascendant – retained the right of succession in his natal family and did not fall under the *potestas* of the adopter. He did, however, gain rights of intestate succession to his adoptive father. In contrast, *adrogatio*, which Justinian retained, did create *patria potestas* (Bergmann [1912] 7–40).

PROCEDURES UNDER *ADROGATIO* AND *ADOPTIO*

For adoption at Rome there were two procedures, depending on whether it was a public or private adoption. Our knowledge of these procedures comes from a limited number of passages mostly from Imperial sources of second-century date or later (Cic. *Dom.* 34–8; Aulus Gellius, *NA* 5.19.1–14; Gaius, *Inst.* 1.99–107; discussed by Volterra [1966]). The earliest is Cicero. A passage from Aulus Gellius provides our earliest comprehensive summary:

> When strangers are taken into another family and into the position of children, this occurs either through the praetor or through the people. When it happens through the praetor it is said to be *adoptatio*, when through the people *adrogatio*. Moreover, they are adopted when they are ceded in court under a third mancipation by the father in whose power they are, and they are claimed by the adopter in front of the person in whose presence the legal proceedings take place. Those people are adrogated who, when they are legally independent (*sui iuris*), hand themselves over to the power of another, and they themselves are the authors of this act. But adrogations are not entered upon rashly nor without investigation; for the *comitia* which are called *curiata* are on hand with the pontiffs presiding, and there is consideration of whether the age of the person who wants to adrogate may rather be suitable for begetting children, and whether the possessions of the person who

[29] Gaius, *Inst.* 1.101: item per populum feminae non adoptantur, nam id magis placuit; apud praetorem vero vel in provinciis apud proconsulem legatumve etiam feminae solent adoptari.

is adrogated may be being coveted treacherously. An oath, which should be sworn during an adrogation, conceived by Q. Mucius Scaevola, the *pontifex maximus*, is pronounced. But a person cannot be adrogated unless he is already sexually mature (*vesticeps*). It is called *adrogatio* because this type of transition into another family occurs through a popular mandate (*rogatio*).

The terms of the mandate are these: 'Will you request and command that Lucius Valerius should be son to Lucius Titius as justly and lawfully as if he had been born of that father and the mother of that man's family, and that he should have power of life and death over him, as a father has over his son. I request this, Romans, of you, just as I have pronounced.'

Neither a ward nor a woman who is not under her father's power can be adrogated; since on the one hand there is no participation of women in the *comitia*, and on the other it is not right for guardians to have so great an authority and power over their wards that they might subject a free person committed to their care to another's sovereignty. Masurius Sabinus writes that freedmen can legally be adopted by freeborn citizens. But he says that it is not permitted and he thinks it never should be permitted that men of freedman rank should through adoptions proceed to the rights of freeborn citizens. 'Moreover', he says, 'if that ancient law should be protected, even a slave can be given by his master in adoption through the praetor.' And he says that several writers on ancient law have written that this can be done.

I have noticed in a speech of Publius Scipio *On Customs*, which he made to the people as censor, amongst elements of which he was critical, because they occurred contrary to the customs of our ancestors, he also found fault with the fact that an adoptive son was of benefit to the adopting father amongst the rewards for fathers. The terms of this speech are these: 'A father has a vote in one tribe, the son in another, the adoptive son is of as much use as if he has his own son; there is an order to take the census of those absent, so that it is necessary for nobody to come to the census.' (Aulus Gellius, *NA* 5.19).

This passage, which describes the legal act accompanying an *adrogatio* and instituting the *detestatio sacrorum*, is a comprehensive account of the power thus gained by the *paterfamilias*. This includes power of life and death over his adopted son and represents the legal expression of the comprehensiveness of paternal power rather than a realistic picture of the working of Roman society (Y. Thomas [1984] 500; Saller [1994] 115–17; [1999] 185).

THE ROLE OF THE *COMITIA CURIATA*

Per populum or public adoption was required when the individual adopted was *sui iuris* – legally independent – and thus head of his own *familia*. Roman tradition held that the *comitia curiata* was the oldest of the Roman assemblies, and long after its initial use as the main people's assembly by Romulus it continued to have residual functions, including the approval of

adoptions (Smith [2006] 184–234). The meeting place for the *comitia curiata* was the *comitium*, according to Varro (*Ling.* 5.155). This is probably confirmed by the case of the adoption of Tiberius by Augustus, when Suetonius says that he was adopted by a *lex curiata in foro* (*Aug.* 65). There is evidence for meetings on the Capitol, and the venue might not have been fixed (Taylor [1966] 5; 45–6).

The assembly could be called by the *pontifex maximus* (besides meetings under magistrates) for the inauguration of certain priests, for transfer of patricians to plebs, wills and testamentary adoption (Taylor [1966] 4). Two attested uses are its employment by Caesar as *pontifex maximus* in 59 BC to transfer Clodius to the *plebs* under an adoption; and in 44 to confirm Caesar's testamentary adoption of his grand-nephew, the plebeian C. Octavius. As will be shown later, this latter was highly irregular, and apparently outside the normal scope of the business of the assembly, although wills and adoptions were within its purview.

THE INVESTIGATION BY THE PONTIFFS

In cases of adrogation, the pontiffs were required to investigate certain matters relevant to the adoption. When Clodius was under consideration, according to Cicero, the following matters merited consideration (Cic. *Dom.* 34–6):

1. Was the adopter of an age to beget his own children? Cicero thought that adoption should be available to those no longer capable of begetting children, and who when capable did make the attempt.[30] Clodius fails this test because his adopter Fonteius was young and had a wife, and also because the relative ages of adopter and adoptee were not such that the adoptee might stand in the role of son to the adopter.
2. What were the adopter's motives in adopting? Cicero sets up the ideal with the examples Cn. Aufidius and Marcus Pupius, who adopted Orestes and Piso respectively. These candidates were to inherit the name, the wealth and family rites of the adopter (*Dom.* 35).
3. Was he of inferior status to the adoptee? If the adrogated person were pubescent (*vesticeps*), was the adoption likely to harm his interests? It is usually stated that the main concern here is with the extinction of the adoptee's family and their *sacra* (Gardner [1998] 127), but there are signs of some broader concern related to the welfare of the adoptee.

[30] *Dom.* 34: nempe ut is adoptet qui neque procreare iam liberos possit et, cum potuerit, sit expertus.

Following this investigation there was a meeting of the curiate assembly presided over by the *pontifex maximus*.

Jane Gardner considers that *adrogatio* must always have been something of a rarity because of its inherent complications and limitations. There were risks associated with the procedure because the surrender of property to the adopting father could jeopardise arrangements for the adoptee's children ([1998] 127–8). Much depends on whether the restrictions limiting adrogation spatially and temporally continued to operate after the second century AD (Moreau [1992] 15–16). *Adrogatio per rescriptum principis* in the provinces is already attested under Hadrian (Gaius, *Inst.* 1.55; 93; 94). There is dispute over whether the older procedure *per populum* (i.e. employing the *comitia curiata*) continued to operate at Rome, and if so, for how long. Buckland held that it was not until the fourth century AD that the old procedure was abandoned as a consequence of Christianity (Buckland [1963] 125). This has been questioned by J. A. C. Thomas ([1967] 413–18). He suggests with much plausibility that once the convenience of the rescript system was appreciated, the old method of *adrogatio per populum* would have atrophied. The interest of Antoninus Pius in *adrogatio impuberum* reveals that legal changes were happening in this area during the second century AD (Gaius, *Inst.* 1.102). The role of the pontiffs was taken over by the emperor as Pontifex Maximus under the rescript system, and this change was probably brought to completion sometime in the second century (Millar [1977] 359–61; Gardner [1998] 127).

Private adoptions were so called because they did not require a legislative act. This was a procedure that was nevertheless conducted in court before a magistrate (*per praetorem*) and had affinities with emancipation. There were two stages: the breaking of the existing *patria potestas*, and the declaration of the power of the new father by the praetor (J. A. C. Thomas [1976] 439). Both adoption and emancipation were effectively authorised by Table IV: 2 of the Twelve Tables, as discussed above. The main difference between emancipation and adoption was that with adoption the final remancipation was omitted; thus the adoptee remained under the control of the adopter (Gardner [1998] 126). Under a private adoption the person being adopted was still under the power of a *paterfamilias*. This meant that the arrangement was essentially one between the two male members of the senior generation. Although the financial interests of the adoptee were of considerable interest to all three parties, other priorities, including the short-term political interests of the senior generation, could intrude. Their very nature means that they have left little trace in surviving sources.

PROCEDURE FOR SO-CALLED TESTAMENTARY ADOPTIONS

Finally there is the matter of testamentary adoptions. As will be seen in a separate fuller treatment, although these are mentioned by a number of ancient authors, not necessarily in a technical sense, most authorities now doubt these were true adoptions. Perhaps no more was involved than institution as heir and a direction to take the name of the deceased. From a formal point of view nothing is known of the legal procedures involved in testamentary cases. Only in the case of Octavian was a formal *adrogatio* carried through, and this appears to have been conditioned by the political situation.

Recent critics have noted that literary authorities do not differentiate between *adoptio*, *adrogatio* and testamentary adoption in the forms of words used to describe the event. Phrases such as *adsciscere/in familiam/nomen adsumere/transire* cover what are known to be quite different types of case (Salomies [1992] 1–19; Kunst [1996] 90–1; [2005] 117). This has created some confusion, and shows that by the early Empire in Roman thinking the main emphasis was on the transformation of nomenclature.

CHAPTER 5

The testamentary adoption

Romans became very interested in the destination of their material goods, and this is well evidenced by the concerns of authors in the late Republic and early Empire. Property was generally devised by will, and this gave individuals an opportunity to express preferences for family members and others, and otherwise give utterance, usually from beyond the grave. Examples can be found, however, of individuals who preferred their dispositions to be common currency while they were still alive (Val. Max. 7.8.4); others such as Antony did not manage to keep their arrangements private until death. His will was seized from the temple of Vesta in 32 BC and read out in the Senate and assembly to damaging effect (Plut. *Ant.* 58.4–8; Dio 50.3.4; Suet. *Aug.* 17.1).[1] When a 'testamentary adoption' was envisioned, it is not obvious whether the potential beneficiary habitually knew of this before the event.

The motives for wills are reviewed by Seneca in *De beneficiis* in a passage considered by Edward Champlin ([1991] 7):

> When we stand at the very end of life, and set out our will, do we not divide up goods that are no boon to us at all? How much time is wasted, how long do we secretly ponder over how much there is and to whom we give it? What concern of ours is the recipient, when we will get nothing? Nonetheless, we never give more carefully, we never torment ourselves as much over our decisions … We seek out those most worthy to take over our possessions, nor do we arrange anything with more meticulous care than this matter which has no relevance to ourselves. Yet, by Hercules, great pleasure arises when we think: 'I will make this man richer, and, with the addition of my wealth, I will add a bit of colour to this man's distinction.' If we do not give except reciprocally, we ought to die intestate! (Sen. *Ben.* 4.11.4–6)

It is interesting to review this statement in considering Roman testamentary adoptions. What exactly did a testator expect to be the benefit from adopting someone in his will? It must go beyond a basic act of bestowing

[1] Discussed by Crook (1957) 36–8; Johnson (1978) 494–503; Sirianni (1984) 236–41; Crook (1989) 221–3.

goods. If this was the aim, the testator could achieve this in various other ways: he could make the person heir, leave a substantial legacy, or adopt during his lifetime and thus designate the individual as heir. The first two would entitle the beneficiary to the inheritance without necessarily involving any binding familial obligations. It is also of interest to note that a testamentary arrangement must be differentiated from a lifetime adoption in very important respects. A lifetime adoption automatically included the adoptee as one of the *sui heredes* and thus made the adoptee an automatic heir with rights which were already obvious to the entire community. A testamentary adoption might only be revealed on decease; a testator could thus gain some of the benefits of an adoptive relationship without the need for a close personal lifetime relationship with the subject. It also leaves the recipient free to refuse the inheritance; this arrangement cannot be equated with either an *adrogatio* or an *adoptio*, because these are ceremonial and require the presence of the parties, and once settled require legal process to terminate the arrangement. True adoptions could be terminated by emancipation, but a testamentary adoption might be perceived as more desirable to the recipient because of the absence of complications in regard to inheritance and power relationships within the family (Kunst [2005] 116).

Salomies points out that in the Imperial period the evidence for testamentary adoptions is far more extensive than for *inter vivos* cases (Salomies [1992] 53). Much of the evidence is based on questions of nomenclature; individual cases are hard to identify conclusively, and it may be suspected that *inter vivos* examples are underrepresented or unrecognised in the surviving sample. Nevertheless, the evidence seems to show that fashions were changing, and wills were taking over functions traditionally handled during the testator's lifetime.

Syme, towards the end of his long life, suggested ironically some of the attractions of testamentary adoption:

> It carried sundry attractions. Men of property are reluctant to renounce and disburse up to the end. For the indecisive the device left options open, wavering perhaps with reason between the aspirations of sundry kinsmen; and the malicious took pleasure in encouraging the hopes of *captatores*, to baffle their arts in the end. That was the comportment of Domitius Tullus (II suff. 98), one of the ancestors of the Antonine dynasty. Pliny tells the full story, disclosing more than his wont about the less amiable features in the manners of high society. (Syme [1988a] 160)

Testamentary adoptions have been viewed as akin to modern systems under which a person is nominated as heir on the condition of taking the testator's

name. In a sense this is close to *adrogatio* in its effect, since the principal aim of *adrogatio* seems to be to allow a *paterfamilias* without a *suus heres* to create one during his lifetime. In testamentary adoption this was simply attended to in the will. J. A. C. Thomas sees *adrogatio* as a precursor to testation itself, redundant once wills became widespread ([1976] 437). He implies that once nomination of an heir in a will was possible, a major reason for *adrogatio* had disappeared. Still, an adrogation might have been a convenient way to identify the heir in advance, and thus advertise the connection. Adrogation can be expected to have had continuing social and political importance, and not to have been totally ousted by a growing trend to write wills. In contrast, a testamentary adoption was an option where hasty arrangements had to be made, although this is unlikely to account for the fashion for testamentary adoption in the late Republic and early Empire. A factor contributing to the demise of *adrogatio* might have been that it could only be solemnised on two days in the calendar, 24 March and 24 May, the meeting dates of the *comitia calata* (Aulus Gellius, *NA* 15.27.3; Gaius, *Inst*. 2.101). This limitation was overcome in the second century AD by the development of *adrogatio per rescriptum principis*, but it is possible that the remedy was devised after *adrogatio* had already been seriously undermined by a trend in favour of testamentary dispositions.

Girard thought that adoption by testament was bound up with the same considerations as adoptions *inter vivos* – as essentially a variant on *adrogatio*. In *adrogatio* two major concerns were perpetuation of the name and continuance of the domestic cults. But he noted two differences ([1929] 850):

1. A testamentary heir does not normally take the name of the deceased.
2. He is free to repudiate the inheritance.

The first point is the more controversial of the two. At the time of Girard hardly enough examples could be raised to judge the normality of taking the deceased's name.[2] Girard did not have access to the large amount of inscriptional evidence now so fully considered by Salomies (Salomies [1992]). Even without that evidence his conclusion is questionable. In relation to Tiberius it seems as though Suetonius may be rather shocked that Tiberius could take an inheritance from M. Gallius despite the fact that he soon dropped the name (Suet. *Tib*. 6.3)(Simpson [1993] 154–5). The case seems to have been controversial on other grounds: he was apparently the brother of the praetor Q. Gallius, who had been executed after a suspected assassination attempt on Augustus in 43 BC (Suet. *Aug*. 27.4). Tiberius could have repudiated the inheritance outright; Suetonius may be shocked at the

[2] Main literary examples listed in Schmitthenner (1973) 44–9. See further Salomies (1992).

cupidity involved in taking an inheritance under these circumstances. Given Tiberius' age at the time – he was born on 16 November 42 BC (Suet. *Tib*. 5) – the decision was doubtless taken for him. The chances are that Suetonius misunderstands, perhaps deliberately. As Simpson suggests, the adoption was probably approved by his father and mother on their return to Italy in 39 BC, and the name was subsequently a political embarrassment when his mother remarried. Livia's remarriage to Augustus was in early 38 BC (17 January) (Simpson [1993] 155). This will explain why the name was quickly abandoned.

Treatment of adoption in legal writers creates problems for the idea that a testamentary adoption had full legal effect. The term 'testamentary adoption' designates a category which seems to be unknown to the jurists, at least under that title. It appears in the elder Pliny (*adoptio testamentaria*) and seems not to be a technical term (Plin. *HN* 35.8), and thus it is neither covered as a separate category in the jurists nor clearly identified as a specific problem in passages dealing with adoptions. One problematic passage specifies that an adoption involves the presence of the parties and cannot be performed through any other ceremony:

> A person in absence can neither adopt nor adrogate nor carry through another ceremony of this type.[3]

Gaius also anticipates the situation where a son is adopted after the creation of the will – not a reference to testamentary adoption. A person who has made a will could clearly still engage in either *adrogatio* or *adoptio*, and this is what is covered. Any adoption breaks the will since it alters the agnatic line of the testator:

> If anyone after making a will has adopted a son … in every respect his will is invalidated as though by the agnation of a *suus heres*.[4]

A testamentary adoption did not have the consequences of the other forms of adoption.[5] It imposed an obligation to take the testator's name as a *quid pro quo* for the inheritance and could not impose *patria potestas* on the beneficiary. Johnston comments on the frequent requests from testators that external heirs should take the *gentilicium* as well as the inheritance.[6]

[3] *Dig*. 1.7.25 (Ulpian): neque adoptare neque adrogare quis absens nec per alium eiusmodi sollemnitatem peragere potest.

[4] Gaius, *Inst*. 2.138: si quis post factum testamentum adoptaverit sibi filium … omni modo testamentum eius rumpitur quasi agnatione sui heredis.

[5] See, for example, A. Watson (1971a) 21: 'we have no information on the wording of adoptions in wills and it is by no means certain that such were true adoptions'.

[6] See Johnston (1988) 88.

The *condicio nominis ferendi* is discussed in the *Digest* in relation to *fideicommissa*, where Julian is cited as authority for the proposition that the condition is not legally enforceable, although it is right to fulfil the praetor's directive:

> If indeed there is a condition of bearing the name, which the praetor requires, a man would appear to act correctly if he were to fulfil it; for there is nothing wrong about assuming the name of an honourable man … but nonetheless were he to refuse to bear the name, the condition must be remitted to him. So says Julian.[7]

This seems to show that the condition was not legally enforceable, but that it was understood that an honourable man would comply with the condition.

The earliest reference to the testamentary type of adoption is to be found in Plautus.[8] No details of the concomitant obligations emerge. The case is based on Greek customs, and it reflects social circumstances Plautus found in his model, consequently not directly relevant to Roman testamentary cases. Still, the Greek world is a likely influence for the change in Roman fashion. Greek testamentary adoption amounted to an incomplete legal act because on the decease of the testator the adoptee was not necessarily yet enrolled in his adoptive father's phratry and deme (Rubinstein [1993] 46–7). The will had to be ratified under an inheritance procedure, the *epidikasia*, which in the Greek context clearly differentiated the situation from an *inter vivos* adoption (Chapter 3 above). At Rome there are no traces of the development of a comparable procedure with the exception of the anomalous case of Octavian (see below and Chapter 15).

The strongest evidence demonstrating that the testamentary form of adoption involved no more than this condition of bearing the testator's name is provided by two cases of women 'adopting' members of the patriciate (Dolabella and Galba) (Syme [1988a] 159). Legal writers deny that a woman can adopt, and these examples can only be testimony to the *condicio nominis ferendi* (Syme [1988a] 159–60). The real problem is that *inter vivos* adoption was bound up with the transfer of *patria potestas*. Since a woman cannot have *patria potestas* this seems automatically to rule out any capacity for females to adopt in the real sense of the word.

[7] *Dig*. 36.1.65.10: si vero nominis ferendi condicio est, quam praetor exigit, recte quidem facturus videtur, si eam expleverit: nihil enim male honesti hominis nomen adsumere … sed tamen si recuset nomen ferre, remittenda est ei condicio, ut Iulianus ait …

[8] *Poen*. 904: is in divitias homo adoptavit hunc, quom diem obiit suom.

Syme summarises the situation:

> No citizen by his last will and testament can change the legal status of his heir. He cannot transfer him from plebeian to patrician, or vice versa; and he cannot assign him to a different tribe. (Syme [1988a] 159)

This is all highly relevant to the situation of Octavian, who was a plebeian and a member of a different tribe from Julius Caesar (Scaptia rather than Fabia). To achieve the desired transformations Octavian had to engage in a complicated procedure; by a last will and testament in itself it was impossible for Julius Caesar to achieve these alterations to the standing of his heir (if he ever intended to) (Syme [1988a] 160; Kunst [1996] 93–104). No other instance is known of the extraordinary privilege Octavian sought to accompany his testamentary adoption. He wanted to be adrogated by the *curiae* (App. BC *iv* 3.94). This is the only known instance of a testamentary adoption involving an *adrogatio*. It is perhaps not over-cynical to imagine that Octavian himself forced the point precisely because of some of the weaknesses of normal testamentary procedures.

Syme raises a number of instances which demonstrate some important certainties about testamentary cases, and their impact on nomenclature. A full adoption results in his view in the disappearance of *praenomen*, *nomen*, filiation and tribe, and the only remnant will be a *cognomen* derived in some way from his natal family name (Syme [1988a] 159). With a testamentary case the nomenclature will be headed by the adopting father's *praenomen* and *nomen*, but a differing filiation will designate the adoptee's original paternity. Cases such as that of the younger Pliny demonstrate this. Syme's most significant contribution to debate on testamentary adoptions was to underline that real adoption involved a complete transfer of the adoptee into the adoptive father's family, and thus into a new agnatic family, consequently supplying him with a new filiation and tribe. Henceforward filiation would refer to the adoptive rather than the natural father (Salomies [1992] 2). As we shall see, this still leaves some marginal cases.

The tribe of a Roman citizen is not always mentioned, even in cases where documentation is quite full. Evidence from literature, epigraphy, coins and papyri starts in about 170 BC and continues until the time of Aurelian. The area has been carefully investigated by Forni (1977). It has a utility in a limited number of cases where the tribe of both adopter and adoptee are known.

Salomies has suggested that in the late Republic there was an earlier stage of development when testamentary adoptions were equated with full adoptions. It is, however, surely inherently implausible that development should

occur in this direction (Salomies [1992] 7–14). Mommsen's approach was a precursor of this perspective, and he had been influenced by the case of Octavian, which he believed was a full adoption (Mommsen [1906] 397–412). Subsequent scholars have found many difficulties, most forcibly W. Schmitthenner in his book on Caesar's will. In the second edition of Schmitthenner's book (1973), a list of authorities who agree that testamentary adoption never existed as a legal concept is provided, and these take the view that the testamentary adoption of Octavian was never a valid adoption (Schmitthenner [1973] 104–17); others still follow Mommsen.

Lefas, late in the nineteenth century, had provided an explanation for adoptions by women during the Republic (Lefas [1897] 721–63). He acknowledged the problem of the need for adopters to be capable of exercising *patria potestas* but thought that some kind of *condicio nominis ferendi* already existed in the Republic alongside valid adoptions by testament ([1897] 752). This would be a very neat solution, but unfortunately cannot be confirmed on the basis of legal or literary authorities.

Salomies concludes that the two Republican cases of adoption by testament by private persons show that these adoptions were equivalent to real adoptions. This is very close to the position taken by Lefas, who suggested that the *condicio nominis ferendi* was an evolution from this, first developing in the first century BC ([1897] 763). Salomies bases his conclusion on questions of nomenclature.

1. Metellus Scipio, cos. 52 BC. He was a son of P. Scipio Nasica, pr. 93, and was adopted by testament by Q. Caecilius Metellus Pius, cos. 80 (Dio 40.51.3). After adoption he was called Q. Caecilius Q. f. Metellus Pius Scipio (Cic. *Fam.* 8.8.5). He has clearly taken the filiation from his adopter,
2. Atticus was originally a T. Pomponius. His adoption by his maternal uncle Q. Caecilius is mentioned by two authorities (Nep. *Att.* 5.2; Val. Max. 7.8.5). Both specify that the adoption was testamentary. Cicero in a letter congratulating Atticus heads his letter Q. Caecilius Q. f. Pomponianus Atticus. Whether this was something of a joke or not and whether Atticus himself subsequently took on this nomenclature is not known. What the evidence shows is that after adoption Atticus' freedmen were Caecilii and his daughter a Caecilia. Atticus does seem to have continued to go under the name Pomponius at an informal level, and this is attested in other cases as well. The filiation employed by Cicero is again clearly that of the adopter. That the father of Pomponius was also a Titus has now been confirmed from inscriptional evidence.

Salomies insists that the reference in the filiation to the adoptive father and not to the natural father after adoption shows that these are genuine

adoptions. Others have seen the nomenclature issue as something highly informal (Weinrib [1967] 247–78). Support for Salomies' position is the fact that Atticus was eventually buried in his maternal uncle's tomb.[9] Nevertheless, the evidence is far from satisfactory, and the legal issues do present formidable obstacles to Salomies' approach, and it seems preferable to take a narrow view of the scope of testamentary adoptions. I shall argue that in the cases reviewed by Salomies, the adoptee takes the adopting father's filiation for highly personal reasons (Chapter 11).

CONCLUSIONS

In the event that provision for an adoptive heir had not been made in advance, a testamentary adoption might have been a measure employed to achieve some of the same ends. It seems improbable that arrangements of this type did amount to full adoptions, and a testator had no guarantee that he would do more than get the nominated individual to take on his name as the *quid pro quo* for the inheritance. Some testators such as Gallius did not even achieve this; it can be imagined that this was not the only instance in which the person taking the inheritance was not prepared to comply with the *condicio nominis ferendi*, and it might in practice have been unenforceable.

[9] Nepos, *Att.* 22.4, wrongly describing him as *avunculus*.

CHAPTER 6

Roman nomenclature after adoption

Once the procedures for an adoption had been completed, an adoptee was expected to employ the nomenclature of the adopter. An example of this has already been reviewed, where Cicero, in a letter congratulating Atticus on his testamentary adoption, heads his letter with the revised nomenclature: Q. Caecilius Q. f. Pomponianus Atticus (*Att.* 3.20, dated 6 October 58 BC). The lack of a tribal indication in the Ciceronian formula is noteworthy. Cornelius Nepos independently records that the adoption was testamentary (Nepos, *Att.* 5). It is uncertain whether Atticus actually employed this handle, since Cicero's mock formalism seems to be intended simply to congratulate Atticus on taking up his inheritance from Caecilius. Caecilius was a knight and had no *cognomen* (Doer [1937] 82). After this time Atticus' freedmen were Caecilii, and his daughter was known as Caecilia Attica (Salomies [1992] 8). Atticus may well have taken on the revised nomenclature. In the case of M. Gallius, who adopted Tiberius in his will, the *condicio nominis ferendi* proved unenforceable. Political factors were influential. In cases where an *adoptio* or *adrogatio* is known or surmised to have taken place, changes in nomenclature are often observable, but formal requirements are unknown, and the picture is far from complete. It is assumed that formal adoptions *inter vivos* resulted in a stronger compulsion to adjust nomenclature. Other uncertain issues include whether an adoptee on emancipation retained his adoptive nomenclature, as seems inherently probable.

A Roman's nomenclature, including his tribe and filiation, is thought to have been officially fixed only when he was entered on the census lists and had received the *toga virilis* (Wiedemann [1989] 113–15; Salomies [1992] 56). From the time of Augustus, a child's birth could be recorded in the official register, thus avoiding the wait until the next census (Gardner [1986] 144–6; B. Rawson [2003] 111–12). Much is uncertain, and questions remain. Firstly, how and when did Roman women receive or record their nomenclature, and was it subject to exactly the same rules

as the men's? It has been noted, for example, that in the case of women and children tribe is not mentioned (Forni [1977] 73). For a Roman male, how much had to be recorded on the census, and how fixed was the formulation of the name recorded by the censor? In the event of an adoption, whether an *adoptio*, an *adrogatio* or a testamentary case, was there a requirement to update the entry, or was it possible to have one entry on the census lists but employ a revised nomenclature in public life?

As censor in 142 BC, Scipio Aemilianus apparently protested against the retention by adoptees of their original tribes, arguing that it was contrary to *mos maiorum* (Aulus Gellius, *NA* 5.19.15). His complaint was apparently disregarded (Shackleton Bailey [1991] 57). The complexity of nomenclature revealed in Salomies' 1992 publication has shown that questions such as those posed above are extremely difficult to answer. There was a lot of informality in the system; it became fashionable to include additional items, often hard to trace, in full versions of a name. Furthermore, the use of abbreviated forms of nomenclature was widespread, and hard to classify under precise rules (Salomies [1992] 83–9; [1999] 151–4).

Doer provided one of the earliest relatively systematic treatments ([1937] 74–95). His examples concentrate primarily on testamentary cases, where the evidence is most extensive, and clearest. His approach is to combine Republican and Imperial cases in a single treatment, and this significantly reduces his value (Salomies [1992] 1).

Some significant but basic results did emerge and have been built on by more recent work. One *inter vivos* adoption was that of Scipio Aemilianus, who was born *c.* 185/4 BC as the younger son of L. Aemilius Paullus, consul in 168 BC. He was taken on by the conqueror at Zama in perhaps 178 BC. His father was still alive, so he was not *sui iuris*, and the case was therefore an *adoptio* rather than an *adrogatio*. Consequently he moved from the *potestas* of his father to that of his adoptive father, P. Cornelius Scipio. His name beforehand seems to have been L. Aemilius Paullus. He then took on *praenomen*, *gentilicium* and family *cognomen* from his new father – the old *gentilicium* was turned into an adjective in -anus. The adoption of his brother by Q. Fabius Maximus was handled in like manner (see further Chapter 11). Each of these was a *datio in adoptionem* of a *filiusfamilias* – both *impuberes* (Just. *Inst.* 1.7.42). Family inheritance was secured before these sons were given in adoption. As it happened, the two sons who remained in the family died, and the original arrangement did not work out (Livy 45.40.7; Doer [1937] 74). This style of adoptive nomenclature is the best attested, in use in both Republic and Empire.

Doer's review of the adoption of Octavian is flawed, but it raises some important issues regarding nomenclature. His classification of the adoption as an *adrogatio per testamentum* will be discounted in the review of political adoptions. Here the nomenclature issues will be covered. Octavian is recorded as going under the names C. Octavius Kaipias (Dio 45.1.1) and C. Octavius Thurinus before adoption (Suet. *Aug.* 7.1). There is no evidence for the use of the latter before or after the adoption by Caesar, and the name Kaipias has been suspected of corruption (Shackleton Bailey [1991] 75) – a recent suggestion is that it represents a corruption of the tribal indicator Scaptia: Scaptia was the tribe into which he was born (Schumacher [1999] 67). According to Dio, after adoption Octavian became Caius Iulius Caesar Octavianus (Dio 46.47.5). The *praenomen*, *gentilicium* and *cognomen* of the new father Caesar are listed, but Dio's comments on nomenclature cannot be relied on. Doer looks at evidence of various actual names used by Augustus – C. Caesar and Imperator Caesar (Doer [1937] 77–8). Cicero's usage is also revealing: he calls him in letters from 44 BC C. Octavius (*Att.* 14.5.3; 6.1; 10.3; 11.2; 12.2; 20.2), Caesar Octavianus (*Fam.* 12.23; 12.25), and Octavianus (*Att.* 15.12; 16.8; 16.9; 16.11; 16.14). Cicero was suspicious of the use of the name of Caesar by Octavian, and he points out that though Octavian's entourage, consisting of Balbus, Hirtius and Pansa, addressed him as Caesar, his stepfather Philippus did not (*Att.* 14.12) (Doer [1937] 77–80)! The letter in question was dated 22 April 44 BC, well before the testamentary disposition was converted to an adrogation (see Chapter 15). Cicero and Philippus seem to be insisting that Octavian follow the legal requirements. In their view Octavian should not usurp the name until formalities had been completed. What Octavian wanted, it seems, was not the Julian name, but above all the link directly with Caesar. This was the name that commanded loyalty and would lead to power. Doer had a good appreciation of this political dimension.

The case of P. Cornelius Scipio Nasica – born in 95 BC – is another testamentary adoption, with interesting consequences in terms of nomenclature (Dio 40.51.3). He had as grandparents P. Cornelius Scipio Nasica (cos. III BC), and Caecilia Metella, daughter of Metellus Macedonicus (cos. 143 BC). His parents were Scipio Nasica (pr. 93 BC) and Licinia, daughter of L. Licinius the orator. Until 63 BC he was called P. Scipio; then in Plutarch's account he is Scipio Metellus (Plut. *Cic.* 15). In 63 BC Metellus Pius died; he had been Sulla's fellow consul in 80 BC, Pontifex Maximus and head of the Caecilii Metelli. He testamentarily adopted his kinsman Scipio, who was already *paterfamilias* in 78 BC. At the end of the process the adoptee's name as a whole became Q. Caecilius Q. f. Metellus Pius Scipio. It seems that the

adoptive *gentilicium* (Caecilius) was customarily omitted (Doer [1937] 80). It was not the most distinctive component. What mattered in this instance was acknowledgement of both strands of distinguished pedigree. This case shows the importance of a comprehensive view of all relevant materials, and an investigation of which components were changed and which retained – still an essential approach when reviewing cases of adoptive nomenclature.

Two prominent cases of females who testamentarily 'adopted' heirs are also treated by Doer ([1937] 83–5). He saw that since a woman could not have the requisite *patria potestas* for a 'true' adoption, these can only represent testamentary requirements for an heir to take the testator's name (women could not adopt: Gaius, *Inst.* 1.104). The first case is that of an otherwise unknown Livia, offering an inheritance to P. Cornelius Dolabella on condition that he changes his name (Cic. *Att.* 7.8). Cicero questions whether it is right for a noble youth to change his name under a woman's will. Nothing is known of the outcome. Dolabella may or may not have taken up the inheritance. He is not known to have taken the name. The second case is that of Galba, with a known impact on nomenclature. He was born Servius Sulpicius Galba and was adopted by his stepmother, Livia Ocellina, and he changed his *praenomen* (Suet. *Galba* 4.1). His revised nomenclature is recorded on the *Fasti Ostienses* at the time of his consulship in AD 33 as L. Livius Ocella Sulpicius Galba (EJ, p. 43). Suetonius says that he reverted to his original *praenomen* when he became emperor (Suet. *Galba* 4.1). The case interested Doer because there was no sign of -anus type indicator (Doer [1937] 85). These cases and others examined by Doer began to show the complexity of Roman nomenclature but lacked a comprehensive framework.

Since the time of Doer there have been considerable advances in the study of Roman nomenclature. More useful than Doer, and far more recent, is Shackleton Bailey's account of adoptive nomenclature in the Roman Republic (Shackleton Bailey [1991] 51–86). This highly regarded study includes a list in which all certain or possible adoptive names from the period are discussed. All relevant sources are carefully detailed. It has the advantage of treating a restricted timeframe (*c.* 130–43 BC). This does not include a comprehensive analysis of nomenclature types, a gap now filled by Salomies (Shackleton Bailey [1991] 60–86; Salomies [1992] 11). As Salomies has shown, there is in fact a range of standard types of nomenclature. He concentrates on the Imperial period, but also provides a list of standard types of nomenclature for the late Republic. His study shows that new forms developed over time and supports the view that changes were dictated by fashion.

This chapter sets out to survey a number of issues. It explores the standard components in Roman nomenclature and their utility in identifying those who have undergone adoption. It examines the historical development of nomenclature and whether transformations in nomenclature were at any time consistent and static. This section considers the significance of the fashion for acknowledging the importance of the female line in nomenclature, and the resulting possibility of confusing this with an adoption. Ex-slave names are also classified and differentiated from adoptive nomenclature. Finally, I have a discussion of Salomies' 1992 study, and his updated comments from 1999.

Relatively few individual adoptions are known from literary sources, yet many more may be suspected or even identified on the grounds of shifts in nomenclature from one generation to another. These are sometimes attested only through a careful collation of disparate sources. Unfortunately this method, while of value, is limited by the fact that transformations in nomenclature may occur for reasons other than an adoption (Gardner [1998] 133–8). The system is not sufficiently fixed to enable us to identify hard and fast rules, so we have to settle for a good understanding of the possible reasons for employing a particular nomenclature (Salomies [1992] 1).

The *tria nomina* appear in the Augustan *Fasti Capitolini* for individuals whose tenure of office dated as early as 483 BC. Double *cognomina* known as *agnomina* are found in this source from 466 BC (in that case an honorary *agnomen* celebrating participation in the battle of Lake Regillus). This has been thought suspect and anachronistic, its interpretation influenced by the Augustan context of the *fasti*. Single nomenclature is often bound up with tales about the legendary period. A full masculine name from around 160 BC includes tribe and sometimes place of origin in the ablative. *Cognomina* may have made an appearance in the early city and developed in importance during the second century BC, since it is only in that period that they begin to be used in official inscriptions (Kajanto [1977] 64–6). The *cognomen* was sometimes eschewed, as in the case of Marius (Plut. *Mar*. 1.1). His status as a *novus homo* and the relative obscurity of his equestrian background at Arpinum may be relevant, but Gallivan notes that the Antonii also avoided *cognomina* ([1992] 51). It was partly a question of fashion. Republican generals in the field start the trend of replacing a *cognomen* with the honorary title *imperator*, a move carried much further by Augustus. Suetonius actually claims that the *praenomen imperatoris* was already in use by Caesar (Suet. *Iul*. 76.1; cf. Dio 43.44.2ff.; 52.41.3), but on the *Fasti Triumphales* for Caesar's final years there is no

sign of this, and the first mention is of Augustus bearing this nomenclature (A. E. Gordon [1983] 18).

An article by Benet Salway provides a convenient survey of Roman names and has underlined the evolutionary nature of Roman nomenclature. It is suggested that modern scholarship has placed too much emphasis on the *tria nomina* as typical of the fully developed phase of Roman nomenclature. Rather, the *tria nomina* represent 'a transitory stage in an evolutionary process' (Salway [1994] 124). Salway points out that in the period covered by the *PIR*, classification of individuals by *nomen gentilicium* operates effectively, but the same consistency has not been possible for the later period covered by *PLRE*, where the final name, usually a *cognomen*, is dominant. Nevertheless, the *tria nomina* provide the most readily identifiable elements within the Roman system, and these have to be examined to identify the possible presence of adoptive relationships in doubtful cases. The later and more random system is fated to provide inevitably poor results for this enquiry.

According to Salway, the Romans believed that at an early stage in their development there had existed simple names typified by those from the legendary period such as Romulus, Remus and Faustulus. Varro had thought of these not as *praenomina* or *cognomina*, but as *nomina*, as revealed by the grammarian Titius Probus (*De praenominibus* 4.1). The emergence of an individual name (i.e. a *praenomen*) was attributed by Priscian to the combination of Sabine and Roman interests, and this survived into the late Republic and early Empire as a comparatively insignificant element within an entire nomenclature. Salomies has devoted a detailed study to the area (Salomies [1987]). Salway notes the small number of *praenomina* in common usage, as well as following older scholarship in suggesting that the *praenomen* was not needed or used by women because of their exclusion from the public domain (Salway [1994] 125–6). This view had already been modified by Kajanto in 1972, and Kajava in a detailed study of Roman female *praenomina* has clarified the area (Kajanto [1972]; Kajava [1994]). The importance of the *praenomen* in relation to adoption is considerable. A key factor is to know whether assumption of the *praenomen* of the adoptive parent was an inevitable concomitant of an adoption.

As for the *gentilicium*, this was employed as the indicator of patrilineal ancestry. Not only was the father's *gentilicium* inherited from generation to generation but all known cases of adoption reveal that the adoptee took the adoptive father's *nomen*. Moreover, according to Syme and Salomies, adoptees always put the *praenomen* and the *nomen* of the adoptive father at the beginning of their nomenclature (Syme [1988a] 162; Salomies

[1992] 1). The taking of the *nomen* may have been hard to enforce in testamentary cases.

The *cognomen* has an interesting history, and this has been explored in a number of studies, especially those of Kajanto (Kajanto [1965]; [1977]). However, after adoption the *gentilicium* becomes the dominant element in the adoptee's nomenclature, and the commonest transformation, as already observed, was for the *nomen* to be converted into a *cognomen* (commonly in -anus). Thus the son of L. Seius Strabo seemingly adopted by an Aelius becomes L. Aelius Seianus. In this case, provided that this does represent adoptive nomenclature, the only nomenclature question which is unresolved is whether Sejanus retained his natural father's *praenomen*, as appears to be the case. Since the circumstances under which the adoption took place are not known, this has promoted speculation (Lindsay [2003]). If this were the only way in which a *cognomen* terminating in -anus could be attained, undetected cases of adoption would be easy to identify. The picture is, however, clouded by known instances where a *cognomen* in -anus actually involves the acknowledgement of the maternal line rather than an adoptive relationship (Salomies [1992] 2). An early instance of this is the case of Cato the Censor's son, born from the daughter of his client Salonius in about 154 BC and named Marcus Porcius Cato Salonianus (Aulus Gellius, *NA* 13.20.8; Astin [1978] 105). In that instance the wife's background, although clearly deemed important and acknowledged, was not prestigious. Astin suggests that her father was probably a freedman (Astin [1978] 263).

The notion that an adoptee was under compulsion to take the adoptive parent's *nomen* is of interest since, Salway claims, it shows that 'to noble families the importance of perpetuating the *nomen* far outstripped the continuation of the blood-line' (Salway [1994] 126). The process really amounts to the assimilation of a nominated heir to the status of a natural son. In this sense the aim of adoption is closely related to the transmission of property, resources and personal reputation into the next generation. In default of a natural heir, adoption at least enabled a *paterfamilias* to make a personal choice over the future of his physical world. At stake is more than the continuation of the *nomen*, rather a whole complex of elements associated with personal identity. Polyonomy can also be used to preserve the record of the mother's side of the family in elite families (Syme [1988b]). Already Etruscan epitaphs sometimes record the mother's name. Republican cases of the perpetuation of matrilineal relationships may be commoner than has been thought (Wikander [1996]). Polyonomy provided scope for recording pride in bilateral ancestry. The peak in multiple names is reached with Q. Pompeius … Sosius Priscus, consul in AD 169, who has a

total of thirty-eight names, including multiple *praenomina* and *nomina* as well as *cognomina*. Many came from his ancestors (but perhaps not all) (*CIL* 14.3609 = *ILS* 1104; Syme [1988a] 162).

SLAVES ACQUIRING FREEDMAN STATUS

Ex-slave names take many different forms and are often hard to distinguish from the freeborn. Some resemble adoptive nomenclature. In the second and first centuries BC ex-slaves at manumission took on their master's *gentilicia*, and conquered peoples became clients to their conquering generals. As such they took on the *gentilicia* of their conquerors (Badian [1958] 252–60).

The nomenclature of slaves and ex-slaves has been explored in older studies (Frank [1916]; M. L. Gordon [1924]). These studies concentrate on questions of place of origin. Names can reveal status and place of origin, as well as date, within limits. Where the *nomina* correspond to family names of emperors, *cognomina* may reveal nationality through their specifically national character. However, this type of approach is now regarded very warily (Weaver [1972]; Treggiari [1975a]).

Warnings were issued many years ago about the dangers of seeing certain *cognomina* as markers of slave or freeborn status (Weaver [1964]). Weaver demonstrated that the freedman Icelus, when he was elevated to equestrian status, of his own accord adopted the style Marcianus, a name associated with equestrian rank (Tac. *Hist*. 1.13; Plut. *Galba* 7; cf. Suet. *Galba* 14). This personal name is to be carefully distinguished from a second name in -anus as taken by imperial slaves from Augustus to Trajan. That second name had other significance – again not connected with adoption – rather it showed that the bearer as a slave had passed from possession of a former master into the hands of the emperor.

The identification of imperial freedmen is also relatively free from problems, because of the distinctive use of the term 'Aug. lib.' and other variants, which are clear markers of their origin (Weaver [1963]; [1965]). They can also be dated to within about forty years of the reign of the emperor who manumitted them. In the case of slaves it is not uncommon for the name of their emperor to be omitted, but in any case none of the known practices can be mistaken for persons who have been adopted. Slaves are commonly marked by 'Caesaris' under the Julio-Claudians and 'Caes. ser.' under the Flavians or Trajan. 'Caes. nostri ser.' is found in the period from Hadrian to the Antonines, and 'Aug.(g) vern.' and variants later (Weaver [1964]).

Finally, observe also the concept of dynastic nomenclature, which Salomies notes in relation to the children of Marcus Aurelius (Aelius, Annius, Aurelius, etc.) for which there was a precedent in the first century. The sons of M. Licinius Crassus Frugi (cos. AD 27) were given the names Cn. Pompeius Magnus, M. Licinius Crassus Frugi, Crassus Scribonianus and L. Calpurnius Piso Frugi Licinianus, names not justified by adoption, nor strictly through maternal inheritance but bestowed by their father in support of dynastic celebration and ambition (Salomies [1992] 4).

TYPES OF ADOPTIVE NOMENCLATURE

Salomies in his 1992 study provides an updated account of the usage of styles of adoptive nomenclature in the Republican and Augustan periods. This developed the findings of the earlier study of Shackleton Bailey, and systematised his findings into seven categories, variants in the organisation of the main features and derivatives from a Roman name: *praenomen*, *nomen* and *cognomen* and adjectives in -anus based on the *cognomen* (Shackleton Bailey [1991] 51–86; Salomies [1992] 11–14). Salomies' categories do not distinguish between testamentary and *inter vivos* adoptions, and they place the main emphasis on the resulting styles. The main part of his study is an exhaustive treatment of adoptive nomenclature under the Empire; by this time he is forced to admit that as many as seventeen categories can be distinguished. The author is well aware of the complexity of his scheme, and the possibility that other reasons apart from adoption can explain a particular style (cf. Wiseman [1993] 445). He also warns that an adoptive nomenclature may not look like one; this would be especially in the case of adoptions within the agnatic line of descent. An important caution relevant to all considerations of Roman adoptions is that any study based purely on the interpretation of nomenclature is very insecurely anchored (Salomies [1992] 17–18).

One area not dealt with in detail by Salomies is the position of tribal name in cases where it is employed. Forni treats this, and it is hard to systematise. He regards the normal location of the tribal indicator as after the filiation and before the *cognomen*, but nevertheless significant variations on this pattern are also found (Forni [1977] 83–8).

If used with caution, Salomies' categories provide a guide to all the commonest permutations to be found in Roman adoptive nomenclature under the Empire. In a subsequent study he has offered a simplification of the system, which cuts down the categories by listing the two most typical patterns (Salomies [1999] 147).

The main warnings about the utility of nomenclature as a method of identifying adoption had already been sounded by Syme in two studies reprinted in *Roman Papers* IV and V (=Syme [1988a]; [1988b]). He believed that in every full adoption, the adoptee would shed *praenomen*, *nomen*, filiation and tribe ([1988a] 159). For the Republican and Augustan period, all of Salomies' categories except one fit with this. For the Imperial period only a few of Salomies' categories fit Syme's theory. However, Syme's solution seems to be correct. After the time of Augustus, testamentary adoptions came into vogue, and with them the very flexible nomenclature outlined by Salomies.

CHAPTER 7

Adoption and inheritance

Many Roman adoptions are directly about the inheritance of estates. I shall be examining the use of adoption as a strategy for succession under Roman law, with a main focus on the period from 200 BC to AD 200. It is admittedly a difficult task, since a majority of our legal sources took final form rather later than this, some as late as the age of Justinian (AD 527–65). Gaius' *Institutes* provides the theory from the second century AD, the age of the Antonines, while Justinian's *Digest* and *Institutes* are valuable for the accumulated theory on adoption and emancipation. Nevertheless, the earlier period is more extensively illuminated by literary sources, and in consequence it is here that we can engage in detailed comparison of legal rules and social practice. It is to be hoped that a plausible picture may emerge, and that as far as possible anachronism can be avoided.

FAMILY LIFE AND *PATRIA POTESTAS*

To understand the mechanisms employed for passing property from one generation to its successor at Rome, certain aspects of family life in that context have to be appreciated. Marriages under Roman law by the late Republic fell into two main categories, according to the intention of the parties (Corbett [1930]; Treggiari [1991a]). In the earlier form, the woman passed into the *manus* of her husband. This meant that she left the agnatic family of birth just as fully as if she had undergone adoption. If she already owned property at this stage, this now fell under the control of her husband (or his *paterfamilias*, if the new husband was a son who had not been emancipated). If the woman had been legally independent before the marriage (*sui iuris*), she lost that independence as a result of entering a *manus* marriage. In the other non-*manus* form of marriage (*sine manu*), the woman did not pass from her family of origin into her husband's agnatic family; rather she continued to be under control of her own *paterfamilias*, or in the event that he was no longer alive, she remained legally independent

(*sui iuris*), and consequently in control of her own property, under supervision by a tutor. A dowry would become the husband's for the duration of the marriage, but it was subject to certain restrictions. For example, the husband could not unilaterally alienate Italian land forming part of the dowry (Gaius, *Inst*. 2.63; Crook [1967a] 103–4). Moreover, a dowry clearly often did not encompass the entirety of the wife's fortune.[1] In the event of death or divorce, the dowry had to be returned to the wife's family after discounts for children of the marriage (Crook [1986] 61). In the case of divorce there might also be penalties for misbehaviour on the part of the woman (Dixon [1985a] 353–78).

The power of the *paterfamilias* (*patria potestas*) meant that those who were subject to him (including not only natural and adopted children, but also wives under *manus*) could own no property in their own right (Crook [1967b]). These might include married sons and daughters. Indeed, a *paterfamilias* might in theory force them to marry or divorce. Note the case of Tiberius, forced to divorce Vipsania for dynastic reasons (Suet. *Tib*. 7.2). Those still subject to the *potestas* of the *paterfamilias* might already have acceded to high office. The power of the *paterfamilias* did not end until his death, unless an individual was emancipated. This implies a highly restricted world for those still subject to the *paterfamilias*, and the idea that individuals might crave emancipation at first sight seems plausible. Emancipation broke the bond of *potestas*. Although certain freedoms were obtained by emancipation, initially emancipation effectively reduced an individual's chances of inheritance from the *paterfamilias*. The intention of the legal rules was not to encourage the emancipation of undesirable individuals, and Jane Gardner has shown that over time emancipated offspring were looked after. A major gap in our sources is full discussion of the motives of emancipators. The interests of the family group as a whole seem to be at the centre of such arrangements (Gardner [1998] 6–113). In this atmosphere, it can be seen that the moment of succession must have taken on great importance in the Roman world.

In addition to the power of the *paterfamilias* over the future of his natural offspring, we can add the *potestas* artificially generated through adoptions. Adoption was in part an answer to the limitations of natural inheritance within the agnatic family. Its effect was to place a person adopted in an identical position to a child who was born under control of the *paterfamilias* (regardless of whether we are dealing with *adrogatio* or *adoptio*).

[1] Notice the example of Pudentilla, a widow, who married Apuleius. She had a fortune of 4 million sesterces, but Apuleius was to receive a dowry of only 300,000 (Apuleius, *Apologia* 71; 91–2).

Nevertheless there were some significant differences between the rights of natural and adopted children.

I conclude this introduction with a brief consideration of the enduring power of natural relationships in the face of emancipation and adoption. It is clear that Romans regarded natural relationships as the strongest bonds, and neither emancipation nor adoption could completely erode *patria potestas*. However, both emancipation and adoption did provide the candidate with new opportunities, and this was acknowledged under the praetorian rules. Consider the following (presumably hypothetical) situation:

> If a man has adopted his emancipated son in the role of grandson and has emancipated him, since he also has a grandson by him, the question is in Marcellus whether the rescinded adoption is a bar to the grandson. But although it is customary for a grandson to be joined with his emancipated father, who would deny that although he has been adopted and as if as a son, nonetheless he does not stand in the way of his own son, because he is in *potestas* not as a natural son, but as an adoptive son?[2]

Here the various transformations are not allowed to get in the way of the natural relationship in the case of the grandson, who has been a passive party to the transactions. The grandson is seen as actually related to his grandfather while the father now has been emancipated from an artificial bond.

More straightforward is the case where a son is emancipated leaving a grandson under his father's *potestas*:

> If a father has emancipated a son by whom he has a grandson under *potestas* and then has adopted him [the son], when the grandfather has died the grandson does not revert to the power of his father. Nor does a grandson revert to his father's *potestas* whom the grandfather had retained when he gave his son in adoption, and whom he then readopted.[3]

Here the son who has left the family under emancipation cannot return to his family of origin and on return reclaim *patria potestas* over his natural son, after the death of the grandfather. Similarly a son who has been taken into another family under an adoption cannot reclaim control over his natural son in like circumstances. This limitation on *patria potestas* is explained in

[2] *Dig.* 38.6.1.7: si quis filium suum emancipatum in locum nepotis adoptavit et emancipavit, cum haberet et nepotem ex eo, quaesitum est apud Marcellum an adoptio rescissa impediat nepotem. sed cum soleat emancipato patri iungi nepos, quis non dicat, etsi adoptatus sit et quasi filius, nihilo minus filio suo eum non obstare, quia quasi filius adoptivus est in potestate, non quasi naturalis?

[3] *Dig.* 1.7.41: si pater filium, ex quo nepos illi est in potestate, emancipaverit et postea eum adoptaverit: mortuo eo nepos in patris non revertitur potestatem. nec is nepos in patris revertitur potestatem, quem avus retinuerit filio dato in adoptionem, quem denuo readoptavit.

terms of the advantages that have accrued through access to adoption into another family, or even within the family.

INTESTATE SUCCESSION

Intestate succession has been considered to be the oldest form of succession in Rome (A. Watson [1971b] 93–116). It is assumed that intestate succession is related to customary inheritance where the individual was not entitled to nominate his heir but had to pass down the family inheritance in accordance with custom. In the period under consideration – after 200 BC – it was possible to leave a will, but if there was no will, or if for any reason the will was invalidated, then the rules of intestacy applied.

The *decemviri* had laid down certain principles, codified in the Twelve Tables, which established succession in cases of intestacy:

> Tab. v.4: si intestato moritur, cui suus heres nec essit, agnatus proximus familiam ?pecuniamque? habeto, si agnatus nec essit gentiles familiam ?pecuniamque? habento. (Crawford [1996] II: 641)
>
> If a man without an automatic heir dies intestate, let his nearest agnate have the estate and assets, if there is no agnate, let the members of the *gens* have the estate and assets.

This clarified the order of succession as *sui*, *agnati*, *gentiles*. Under these rules, a man's *sui heredes* automatically became his heirs. *Sui heredes* were defined as those persons under a man's *potestas* or *manus*, who would become *sui iuris* on his death. Under the civil law,[4] *sui heredes* became heirs in equal shares without regard to sex. If there were no *sui heredes*, then agnate relatives would inherit (those of nearest degree only), but again regardless of sex – this often meant brothers and sisters (Crook [1986] 60); finally if this solution failed, the inheritance fell to the *gens* (Smith [2006] 29). This automatic line of succession placed all emphasis on protection of agnatic rights. In the event that property descends to a *sua heres*, her inheritance under intestacy goes to the *proximus agnatus*. She has no one in her *potestas*, and therefore cannot have *sui heredes* (Crook [1986] 60–1).

Praetorian law had already made inroads into this system before the beginning of our period. The urban praetor was one of the higher magistrates at Rome entitled to issue edicts. From the praetorian edict derived *ius*

[4] Civil law or *ius civile* refers to the traditional common law based on statutes and their subsequent modification, as well as their later interpretation by the jurists.

honorarium (magisterial law). There were certain limits on the praetor's ambit. He did not have the power to make law, and in theory the *ius civile* remained unaltered by any praetorian edict. His jurisdiction was only over the methods employed in the enforcement of the law. It is difficult to determine the phases of development in praetorian law, but importantly it gradually allowed extra categories of person to apply for possession of the estate in cases of intestacy (Nicolas [1976] 19–27; Kelly [1966] 341–55; A. Watson [1970] 105–19). In the first degree all children (*liberi*) could claim. Some children who would have been *sui heredes* could be excluded as a result either of their own emancipation or their father's emancipation. These were reincorporated under the praetorian jurisdiction. If there were no children the blood relations down to the sixth degree could claim; finally a widow was allowed a share. Emancipated children had to engage in *collatio bonorum* if they were to take a share alongside civil law heirs. This meant that they had to give an account of property acquired since emancipation; an emancipated heir had had opportunities to acquire property which were not available to his co-heirs if they were *sui heredes*, and discounting of his share was felt to be appropriate. In the case of an emancipated woman, if she had received a dowry, this had to be included in the *collatio bonorum* because she had already had a substantial benefit from the estate (Crook [1986] 61). Crook emphasises that the way the *ius honorarium* modifies the intestate system implies a strong feeling that all natural children should have a right to their share in their father's estate (Crook [1986] 62). Intestate succession was of course only relevant if there was no will or the will was invalidated.

TESTAMENTARY SUCCESSION

In the period under consideration wills appear to have become fashionable (Daube [1964–5] 253–62; Crook [1973] 38–44). If there was a will it had to deal with the entire estate. It was not possible to combine testation with intestacy, because an heir (*heres*) was a universal successor and took over all the legal responsibilities of the deceased. Also included was responsibility for the family cult. The most important role of a Roman will was to name an heir or heirs since, if this were not done, the will would be void, and the intestacy provisions would come into effect. In the event of multiple heirs, the heirs did not inherit individual items but took on the role of 'joint universal successors' to the entire estate in the fractions named in the testament. Any number of individuals could be so named, and precautions could be taken against the possibility of a named heir's predeceasing the

testator by naming substitutes. Champlin has shown the extent to which Romans of standing employed wills as a method of reinforcing prestige (Champlin [1991] 5–28); perhaps the most notable instance here is the will of the emperor Augustus, who included the entire populace of Rome in his bequests (Suet. *Aug.* 101; Champlin [1989] 154–65). Entailment of an estate was not possible – each generation had freedom to dispose of the property it had received from its predecessor. Certain classes of marginal persons were not authorised to make wills (including criminals and lunatics: Crook [1967a] 120–1). A testator could disinherit his own children but was required to do so expressly. If they were not expressly disinherited either because the intention was to pass them over, or because they were born or adopted after the drafting of the will, this could cause upsets – they would have an entitlement to shares in the estate. A general phrase such as 'and let all others be disinherited' was generally sufficient to exclude these people. However, the feeling at Rome was that a man should only be able to exclude children on serious grounds, and there developed the important action of the *querela inofficiosi testamenti* – the complaint against an undutiful will (Di Lella [1972]). A successful plaintiff in an action of this sort obtained his intestate portion, provided that he was not already entitled to one-quarter of that amount (*Dig.* 5.2.8.8; Plin. *Ep.* 5.1.9). It was also possible to leave legacies (often numerous), but outside the scope of this discussion.

The general principle was freedom of testation, enshrined in the following form of words in the Twelve Tables:

Tab. v.3: uti legassit suae rei ita ius esto. (Crawford [1996] II: 635)

Let the law be set just as a man bequeaths his goods.[5]

This freedom to nominate an outsider was to a degree cut down by the feeling that it was natural for a son to succeed his father, usually today seen as linked to protection of the integrity of the nuclear family and archaic notions of peasant succession; added to this was another aspect of the regime of the Twelve Tables: the *suus heres* had priority in cases of intestacy.

This can to some extent explain the use of adrogation at Rome. A formerly external heir could in this way satisfy the requirement that he should be a *suus heres*. This was also the reason that such formality attended these adoptions. They had to be sanctioned by the citizen body in the form of the *comitia calata*. There was a similar requirement for the *testamentum calatis comitiis*, which instituted an heir for a childless man; this had

[5] Pomponius, *Dig.* 50.16.120; cf. Gaius, *Inst.* 2.224; note variants supported in Crawford [1996] II: 635–40.

preceded the much simpler and private *testamentum per aes et libram*, which was open to women as well as men, both as beneficiaries and testators (Crook [1986] 63–4; Smith [2006] 212). It may partly have been the complexity of the public procedures which led to the growth in the popularity of testamentary adoption.

Over the course of time there was an evolution in the direction of protecting the interests of natural descendants – provided that they were legitimate – against outsiders. We have evidence of this evolution from the hands of the jurists preserved in the *Digest*.

ADOPTION AND ITS RELATIONSHIP TO SUCCESSION

In societies ancient and modern, adoption has served a number of different functions, but a common thread has been that an adoption enables the adoptee to assume many aspects of the social personality of the adopter on his death. Childlessness appears to have been the commonest reason for adoption at Rome.[6] However, in theory adoption enables a testator during his lifetime to select an individual from outside the family group to be his heir and in this way to introduce new blood into the system. The impact of adoption is to create new *sui heredes*, new agnates and new cognates. In relation to succession, this means that an adoption can in theory result in a completely new complex of individuals entitled to take the estate (*bonorum possessio*).[7] Nevertheless in Rome it seems to have been commonest for those chosen to have been close relatives, such as a brother's or sister's child (Corbier [1991a]; [1991b]). At any rate, when the legal authorities are consulted there is little sign of adoption of complete strangers in provisions relating to aspects of adoption and inheritance. Often at Rome those adopted were adults. A clear advantage is that the adopter has the opportunity to engage with the individual before and after making his choice.

Seen from the perspective of the family giving a candidate in adoption, whether a child or an adult, adoption could be employed in cases where there was a surfeit of sons. Adopting a son out would enhance the size of the inheritance for those who remained, as well as linking the entire group more closely with the adoptive family. As discussed already (Chapter 4 above), as

[6] Demographic factors are usually cited to explain the importance of adoption in Roman society. Low fertility is attributed to this world. See Hopkins (1983) 69–106. For an analysis of the demographic structure of Roman society see Parkin (1992) 91–133.

[7] See Russo Ruggeri (1990a) 222f., who outlines some instances in the *Digest* where major changes to the order of inheritance were encompassed.

early as the time of the Twelve Tables, a situation was envisaged in which the bond between father and son might be broken:

Tab. IV.2: si pater ter venum duit filius a patre liber esto. (Crawford [1996] II: 631–2)

If a father gives his son in sale three times, let the son be free from his father.

The bond of *patria potestas* could thus be broken by three successive mancipations.

Various possibilities in terms of succession were thus opened up. Through adoption an *extraneus* (outsider) could be brought in from another *familia*, or the actual chain of succession within the family could be modified. Freedom of testation began to be affected by the jurisprudence generated by the centumviral court, which appears to have been established in 241 BC. An important principle was that automatic heirs must be instituted as heirs or disinherited. In other words, *sui heredes* could only be excluded expressly, not by omission. Express institution provided a bar to the intervention of the centumviral court (Kelly [1976] Ch. 1).

This is reflected in a passage where Gaius discusses the obligation to take account of sons in power:

Likewise a man who has a son under his *potestas*, must take care either to institute him as heir or to disinherit him by name. Otherwise if he has passed over him in silence, he will write his will in vain, indeed to the extent that, even if the son has died while his father is still alive, so our teachers conclude, nobody can be heir under that will, doubtless because institution as heir has immediately failed.[8]

Later he adds details about the required treatment of emancipated offspring:

Under the civil law, it is necessary neither to institute as heirs nor to exclude emancipated children, because they are not *sui heredes*. But the praetor demands all heirs whether of male or female sex, if they are not instituted as heirs, to be disinherited, the male sex by name, females either by name or amongst the remainder. If they have been neither instituted as heirs nor disinherited, as we have said above, the praetor attributes them *bonorum possessio contra tabulas*.[9]

[8] Gaius, *Inst.* 2.123: item qui filium in potestate habet, curare debet ut eum vel heredem instituat vel nominatim exheredet; alioquin si eum silentio praeterierit, inutiliter testabitur, adeo quidem, ut nostri praeceptores existiment, etiamsi vivo patre filius defunctus sit, neminem heredem ex eo testamento existere posse, quia scilicet statim ab initio non constiterit institutio.

[9] Gaius, *Inst.* 2.135: emancipatos liberos iure civili neque heredes instituere neque exheredare necesse est, quia non sunt sui heredes; sed praetor omnes tam femini quam masculini sexus si heredes non instituantur, exheredari iubet, virilis sexus nominatim, feminini vel nominatim vel inter ceteros; quodsi neque heredes instituti fuerint neque ita ut supra diximus exheredati, praetor promittit eis contra tabulas bonorum possessionem.

Vacca notes a general tendency of the *ius civile* and *ius honorarium* to favour legitimate descent through the male line over the actual dispositions of the *paterfamilias* (Vacca [1977] 165). In fact this can be seen as some level of intervention in regard to cases of adoption, adrogation and emancipation.

An interesting example of the application of *patria potestas* is presented by Valerius Maximus. In this case a son has left the family through adoption:

> There was also an excellent decision of the urban praetor C. Calpurnius Piso. For when Terentius brought a complaint in front of him that, of eight sons whom he had raised to adolescence, one whom he had given in adoption had disinherited him, Piso gave to him *bonorum possessio* of the young man's estate, and did not allow the heirs to proceed to law. Certainly a father's *maiestas*, the gift of life, the benefit of upbringing influenced him, but even the number of children standing around swayed him a bit, because he was seeing seven brothers impiously disinherited along with their father.[10]

Here it is not the father attempting to cut out his son, but rather the reverse. The father intervenes and thus protects the interests of those under his power, especially the remaining seven sons. This is described as *bonorum possessio* neither under law nor will, but Vacca prefers to see this as an act of the praetor applying equitable principles. It is a case of an undutiful will (*inofficiosum testamentum*), which, if allowed to take effect, will result in the estate of the son who had been given in adoption passing outside the family (Di Lella [1972] 68–70). What we do not discover from this passage is whether there were interests within the family that had adopted the eighth son which would be adversely affected by the inheritance's being applied to his natural family. Notwithstanding, although the urban praetor denied suit to the adopting family, he surely took their position into consideration in dismissing the claim.

Vacca deduces that by the end of the Republic the magistrate could intervene to supplement the *ius civile* by assigning *bonorum possessio* to persons who were not testamentary or legitimate heirs. These interventions were founded on equity (*aequitas*) – usually this favoured persons bound by cognate links, resulting in a preference for legitimate sons who had been emancipated (Vacca [1977] 166–9).

[10] Val. Max. 7.7.5: egregia est quoque C. Calpurni Pisonis praefecti urbis constitutio. cum enim ad eum Terentius ex octo filiis, quos in adulescentiam perduxerat, ab uno in adoptionem dato exheredatum se querelam detulisset, bonorum adulescentis possessionem ei dedit heredesque lege agere passus non est. movit profecto Pisonem patria maiestas, donum vitae, beneficium educationis. sed aliquid etiam flexit circumstantium liberorum numerus: quia cum patre septem fratres impie exheredatos videbat.

THE LEGAL AUTHORITIES ON ADOPTION AND SUCCESSION

My main aim here will be to outline the legal effects of adoption on succession in the family under different situations. The *Institutes* of Gaius and the *Digest* provide the main evidence; some caution is appropriate because of the possibility that the legal rules developed within the time frame under discussion.[11]

Adoption and sole succession: scope of property acquisition

An adrogated person at the time of adoption had to be a person *sui iuris*. This had consequences for succession rights since, as a result of the adrogation, the person *sui iuris* and all his property fell to the adrogator. The effective result is that sole succession is entrenched in the person adrogating. It is a form of succession while both parties are still alive (*inter vivos*). This can be seen from two passages in Gaius' *Institutes*.

> And so let us see now by what means property may be acquired by us in its entirety. If we have become heirs to someone, or we have pursued *bonorum possessio* of someone's estate, or we have bought their goods, or we have adopted someone, or we have taken a woman into *manus* as wife, the property of that person comes over to us.[12]

The person adrogated suffered from a reduction of status (*capitis deminutio*). Nearly all his property rights transferred to the adrogator. A further passage is specific about both inclusions and exclusions:

> For when a *paterfamilias* has given himself up in adoption or a woman undergoes *manus*, all their goods corporeal and incorporeal and all things owed to them are acquired by the adoptive father or the *coemptionator*, with the exception of those which perish through *capitis deminutio*, such as usufruct, agreements over the services of freedmen, and cases contested in legitimate court.[13]

The *Digest* is also helpful in identifying what is and is not covered:

[11] Significant elements of the structure employed here are owed to Kurylowicz (1981) 106–56.

[12] Gaius, *Inst.* 2.97–8: … videamus itaque nunc, quibus modis per universitatem res nobis adquirantur. si cui heredes facti sumus, sive cuius bonorum possessionem petierimus, sive cuius bona emerimus sive quem adoptaverimus sive quam in manum ut uxorem receperimus, eius res ad nos transeunt.

[13] Gaius, *Inst.* 3.83: etenim cum pater familias se in adoptionem dedit mulierve in manum convenit, omnes eius res incorporales et corporales, quaeque ei debitae sunt, patri adoptivo coemptionatorive adquiruntur, exceptis his, quae per capitis deminutionem pereunt, quales sunt usufructus, operarum obligatio libertorum quae per iusiurandum contracta est, et lites contestatae, legitimo iudicio.

Skilled craftsmen's services and other services, which amount as it were to an exchange for cash, transfer to the heir, but official services do not.[14]

It can be appreciated that while the person who is adrogated appears to lose substantive rights, in practice the expectation was quite the reverse. The person adrogated undergoes what is expected to be a relatively short-term loss of status to enter a new inheritance net. Legal rights were significantly diminished in the meantime. It was not possible for a person who had been adrogated to engage in legal contest with his adrogator since he was not legally independent. This is clarified in the *Digest*:

If a person who has been adrogated by me had been at law with me or I with him, Marcellus in the third book of his *Digest* writes that the proceedings are terminated; since from the start it cannot remain between us.[15]

On the more positive side this meant that the adrogator was responsible for securing his adrogated son's rights, as can be see in the following passage from the *Digest*:

Likewise if I adrogated a person who had begun an action for an undutiful will against a man who had given me a legacy, and I have carried through the case in the name of my son and not won, it is not right for me to lose my legacy, because I do not deserve to have taken from me by the imperial treasury what was left to me. For I have acted not in my own name, but through the right of a type of succession.[16]

This shows that the adrogator was expected to follow through with such cases and was protected under Roman law from consequent losses.

The obligation of the adrogated

The extent of this protection was not absolute. It was not clear what happened to debts and other obligations incurred by the person adrogated at a date earlier than the adrogation. Some of these debts did not transfer:

In contrast, what the person who gave himself in adoption and she who enters into *manus* owed does not transfer to the *coemptionator* or the adoptive father, unless the

[14] *Dig.* 38.1.6 (Ulpian, *On Sabinus* 26): fabriles operae ceteraeque, quae quasi in pecuniae praestatione consistunt, ad heredem transeunt, officiales non transeunt.

[15] *Dig.* 5.1.11 (Ulpian, *On the Edict* 12): si a me fuerit adrogatus qui mecum erat litem contestatus vel cum quo ego: solvi iudicium Marcellus libro tertio digestorum scribit: quoniam nec ab initio inter nos potuit consistere.

[16] *Dig.* 5.2.22.3 (Tryphonius, *Disputations* 17): item si adrogavi eum qui instituerat litem de inofficioso testamento eius qui mihi legatum dedit, litemque peregero nomine filii nec optinuero: perdere me legatum non oportet, quia non sum indignus, ut auferatur mihi a fisco id quod derelictum est: cum non proprio nomine, sed iure cuiusdam successionis egi.

debt was hereditary. In this case, then, because the adoptive father or the *coemptionator* himself becomes heir, he is held by a direct legal bond. Indeed he who gives himself in adoption and she who enters into *manus* ceases to be an heir. Concerning what those persons owe in their own name, although neither the adoptive father nor the *coemptionator* is bound, neither indeed does the person himself who gives himself in adoption nor she who enters into *manus* remain each individually bound, doubtless because each is freed by *capitis deminutio*. Nevertheless there is provided a valid action against both him and her which ignores *capitis deminutio*. And if they are not defended against this action, the praetor allows the creditors to sell outright all goods which will belong to them in the future, if they are not subject to a third party.[17]

It can be seen that there is a serious danger of loss for creditors in these circumstances. Some further details emerge in another passage in Gaius' *Institutes*:

Moreover sometimes we pretend that our adversary has not undergone *capitis deminutio*. For if a male or female contractually obliged to us were to undergo *capitis deminutio*, as in the case of a woman through *coemptio* or a male through adrogation, each ceases to owe us under the civil law, nor can it directly be claimed that the male or female ought to give it to us. But so that it may not be in their power to corrupt our legal claim, there has been introduced against the male or female parties a valid action which ignores *capitis deminutio*, that is one in which it is pretended that the *capitis deminutio* has not occurred.[18]

The area is also covered in the *Digest*:

Those who have undergone *capitis deminutio* remain under a natural obligation in respect of matters which have preceded *capitis deminutio*.[19]

[17] Gaius, *Inst*. 3.84: ex diverso quod is debuit, qui se in adoptionem dedit, quaeve in manum convenit. non transit ad coemptionatorem aut ad patrem adoptivum, nisi si hereditarium aes alienum fuerit: tunc enim, quia ipse pater adoptivus aut coemptionator heres fit, directo tenetur iure; is vero qui se adoptandum dedit quaeve in manum convenit, desinit esse heres. de eo vero, quod proprio nomine eae personae debuerint, licet neque pater adoptivus teneatur neque coemptionator, et ne ipse quidem, qui se in adoptionem dedit quaeve in manum convenit, maneat obligatus obligatave, quia scilicet per capitis deminutionem liberetur, tamen in eum eamve utilis actio datur rescissa capitis deminutione; et si adversus hanc actionem non defendantur, quae bona eorum futura fuissent, si se alieno iure non subiecissent, universa vendere creditoribus praetor permittit.

[18] Gaius, *Inst*. 4.38: praeterea aliquando fingimus adversarium nostrum capite deminutum non esse. nam si ex contractu nobis obligatus obligatave sit et capite deminutus deminutave fuerit, veluti mulier per coemptionem, masculus per adrogationem, desinit iure civili debere nobis, nec directo intendi potest sibi dare eum eamve oportere; sed ne in potestate eius sit ius nostrum corrumpere, introducta est contra eum eamve actio utilis rescissa capitis deminutione, id est in qua fingitur capite deminutus deminutave non esse.

[19] *Dig*. 4.5.2.2 (Ulpian, *On the Edict* 12): hi qui capite minuuntur ex his causis quae capitis deminutionem praecesserunt, manent obligati naturaliter …

This is all very well, but it seems to be correct to suspect that creditors would have great difficulty in recovering debts in these circumstances unless they could induce the adrogator to take responsibility for them. Some authorities seem to have taken the view that the adrogator was so obliged:

> Some authorities rightly believe that an action on the *peculium* is provided against the adrogator, although Sabinus and Cassius think that no action on the *peculium* should be provided against the adrogator in respect of prior dealings.[20]

The short summary of the position is that the person adrogating has total financial control. He can tell his adrogated son exactly what he can and cannot take in the way of inheritances. This is not unexpected when it is remembered that all such inheritances become the adrogator's personal property, as emerges clearly from the following passage from the *Institutes* of Gaius:

> and on this account if a *filiusfamilias* has been instituted heir he cannot enter into the inheritance except on our command; and if he has entered into it on our instructions, the inheritance is acquired for us just as if we ourselves had been instituted heirs; and doubtless in parallel with this a legacy is acquired by us through their agency.[21]

CONSEQUENCES OF ADOPTION UNDER INTESTATE SUCCESSION

Under intestate succession, it was entrenched that all children of the family should be incorporated in the group of *sui heredes*. The *Digest* discusses the various permutations which could arise from this situation.

*Intestate succession in the family of the adrogator/adopter: the civil law (*ius civile*) position*

The main point made in the *Digest* in relation to intestate succession under the *ius civile* is that a *filiusfamilias* or a *filiafamilias* was entitled to the role of *suus heres* whether a natural child or adoptive. In the passage concerned, the term adoptive covers both those adrogated and those adopted. It is clearly contemplated that both sons and daughters can be adopted, even though

[20] *Dig*. 15.1.42 (Ulpian, *On the Edict* 12): in adrogatorem de peculio actionem dandam quidam recte putant, quamvis Sabinus et Cassius ex ante gesto de peculio actionem non esse dandam existimant.

[21] Gaius, *Inst*. 2.87: et ideo si heres institutus sit [scil. filiusfamilias] nisi nostro iussu hereditatem adire non potest; et si iubentibus nostris adierit, hereditas nobis adquiritur proinde atque si nos ipsi heredes instituti essemus; et convenienter scilicet legatum per eos nobis adquiritur.

literary sources place so little emphasis on female adoption, and very little is known of its actuality. Women cannot themselves adopt within our timeframe, although later some special arrangements were made for those who had lost their children in tragic circumstances.

The inclusion of both natural and adoptive children in the group of *sui heredes* is a consequence of more general theory which places the standing of an adoptive child as equal to that of the natural child for the duration of the adoption. However, after emancipation it is a different matter, as is illustrated by a passage in the *Institutes* of Gaius:

> Adoptive sons, as long as they remain under adoption, are in the position of natural sons: but when emancipated by their adoptive father they are counted amongst children neither under the civil law (*ius civile*) nor under the praetor's edict.[22]

For those adopted as grandsons (*in locum nepotis*), the fictional family is operative in questions of succession. That is, the grandson does not automatically become a *suus heres* of his adoptive grandfather on his death; he is still under the power of the son in the intervening generation, provided that the adoption has occurred in the first place with that son's consent. This is discussed in the *Digest*:

> If a man who has a son in his *potestas* should with the consent of that son adopt anyone into the position of grandson as though born of that son, this will not make the party adopted *suus heres* to his adoptive grandfather, seeing that if the grandfather dies he falls into the *potestas* of the person who is, so to speak, his father.[23]

> If a man who has a son should adopt someone into the position of grandson just as though he were born of that son but the son himself has not concurred in the adoption, then on the death of the adoptive grandfather such a grandson is not under the *potestas* of the son.[24]

Intestate succession of the adrogated/adopted in the former family: the civil law position

Once a person had been adopted into another family and had consequently undergone a reduction in status (*capitis deminutio*), their right to

[22] Gaius, *Inst*. 2.136: adoptivi filii quamdiu manent in adoptione naturalium loco sunt: emancipati vero a patre adoptivo neque iure civili neque quod ad edictum praetoris pertinet inter liberos numerantur.

[23] *Dig*. 1.7.10 (Paulus, *On Sabinus* 2): si quis nepotem quasi ex filio natum quem in potestate habet consentiente filio adoptaverit, non adgnascitur avo suus heres, quippe cum post mortem avi quasi in patris sui recidit potestatem.

[24] *Dig*. 1.7.11 (Paulus, *On Sabinus* 4): si qui filium haberet in nepotis locum adoptasset perinde atque si ex eo filio natus esset, et is filius auctor factus non esset; mortuo avo non esse nepotem in potestate filii.

inheritance in the family of origin was gone, because they were no longer classed as agnates:

Likewise agnates who have undergone *capitis deminutio* are not under that law admitted to an inheritance, because the title of agnate is destroyed by *capitis deminutio*.[25]

A person in this category would then be classified as an *extraneus heres*, an heir of the third degree. On the other hand, if a person is adopted and then subsequently emancipated, he is no longer under the aegis of the adoptive parent in any sense from the point of view of succession. He reverts to the standing of emancipated son of his natural parents:

For this reason, in contrast, in what affects their natural ascendants, they are considered amongst the number of outsiders (*extranei*) as long as they are in the adoptive family; if they have been emancipated by their adoptive father, then they begin to be in that situation which they would have been in if they had been emancipated by their natural father.[26]

Intestate succession in the family of the adrogator/adopter: the position under praetorian law

The range of those eligible for intestate succession under the praetorian law is clearly identified in the *Digest*:

But we should accept as children those whom we said ought to be admitted to *bonorum possessio* contrary to the terms of a will, adoptive children as well as natural children. But we admit adoptive children only insofar as they have been in power, but if they have become *sui iuris*, they are not invited to *bonorum possessio*, because the rights of adoption have been lost by emancipation.[27]

Children who have suffered a change of civil status are also called to *bonorum possessio* of their parents' property by the praetor's edict, unless they have been adopted; for these last also lose the title of children after emancipation. But if

[25] See Gaius, *Inst*. 3.21: item agnati capite deminuti non admittuntur ex ea lege ad hereditatem, quia nomen agnationis capitis deminutione perimitur.

[26] See Gaius, *Inst*. 2.137: qua ratione accidit, ut ex diverso, quod ad naturalem parentem pertinet, quamdiu quidem sint in adoptiva familia, extraneorum numero habeantur; si vero emancipati fuerint ab adoptivo patre, tunc incipient in ea causa esse, qua futuri essent, si ab ipso naturali patre emancipati fuissent.

[27] See *Dig*. 38.6.1.6 (Ulpian, *On the Edict* 44): liberos autem accipere debemus quos ad contra tabulas bonorum possessionem admittendos diximus, tam naturales quam adoptivos, sed adoptivos hactenus admittimus, si fuerint in potestate: ceterum si sui iuris fuerint, ad bonorum possessionem non invitantur, quia adoptionis iura dissoluta sunt emancipatione.

natural children have been emancipated and subsequently adopted and have then been emancipated a second time, they keep the natural right of children.[28]

This sounds like a very hypothetical situation; the number of transformations to the status of one individual sounds unusual, and it is certainly outside the scope of anything mentioned in the literary sources. However, the legal sources thought it necessary to cover the contingency. In cases of this type, the significant factor is seen as the natural relationship to the adopter. A mother still remains in the wilderness, because of her lack of any claim to agnatic relationship:

> nevertheless, adoptive children are admitted after emancipation provided that they have been of the number of natural children; for instance a natural grandson who has been adopted by his grandfather, for although he has been emancipated, once he has received *bonorum possessio*, he will bar his mother.[29]

Intestate succession in the family of origin: the position under praetorian law

Under the civil law, emancipation and *capitis deminutio* automatically closed the door to succession.[30] The praetorian edict did, however, modify the situation in important ways. Children who were in an adoptive family were admitted to inheritance from their natural parents as heirs of the third degree, like female agnates who were not amongst the *consanguinei*.[31] As long as they were in the adoptive family they were considered as *extranei*.[32]

Intestate succession of the adopted/adrogated contrary to the will of the adopter/adrogator

How easily can an adopted child succeed to his adoptive parent if the will which has cut him out is invalidated? Provided that the adoptive child has

[28] *Dig.* 38.6.4 (Paulus, *On Sabinus* 2): liberi et capite minuti per edictum praetoris ad bonorum possessionem vocantur parentium, nisi si adoptivi fuerint: hi enim et liberorum nomen amittunt post emancipationem, sed si naturales emancipati et adoptati iterum emancipati sint, habent ius naturale liberorum.

[29] *Dig.* 38.17.2.6 (Ulpian, *On Sabinus* 13): … adoptivi autem liberi post emancipationem ita admittuntur, si ex liberis naturalibus fuerint, ut puta nepos naturalis ab avo adoptatus: nam licet sit emancipatus, bonorum possessione accepta matrem obstabit.

[30] See Gaius, *Inst.* 3.18–24.

[31] Gaius, *Inst.* 3.31: liberi quoque, qui in adoptiva familia sunt, ad naturalium parentum hereditatem hoc eodem gradu vocantur. (Children who are in an adoptive family are also admitted to inheritance from their natural parents as heirs in this same degree.)

[32] Gaius, *Inst.* 2.137.

not been emancipated (i.e. is still under the *potestas* of the *paterfamilias*), the adoptive child has a right equal to that of a natural child to succeed to *bonorum possessio contra tabulas* in the event that an intestacy is declared. Notice the problems which could arise for an adoptive child once he has been emancipated by his adoptive parent:

> And the praetor admits to *bonorum possessio* children who have become *sui iuris*. Therefore whether they have been emancipated or otherwise passed from *patria potestas* they are admitted to *bonorum possessio*; but the emancipated child of an adoptive father cannot be admitted, for so that he can be admitted, it is appropriate for him to rank amongst the children.[33]

The reasoning was that the bond created by the adoption was entirely severed by emancipation.[34] Slightly different emphases emerge in the following:

> A man who had a son and had a grandson by him emancipated the son and adopted him to the status of grandson, and then emancipated him. The question is whether he bars the grandson's claim, and it seems to me rather that this grandson is not excluded, whether his father has remained in the adoption as a quasi grandson or has been emancipated. For I think even if his father is emancipated the grandson is admitted along with his father in accordance with the edict.[35]

Here the question is whether the son after the transformations outlined is entitled to regain his status as a son. There seems to be some reaction against this sort of thinking: the son cannot both accept his adoption as grandson and turn round to cut out the 'genuine' grandson when it suits him. He is now stuck with equal status as a second grandson. He is no longer allowed the advantage of his natural status as a father to the grandson because he has accepted first the adoption as grandson and then the subsequent emancipation.

Further complex multi-generational situations are also envisaged:

> (1) If a man with two grandsons has emancipated one of them and adopted him in place of a son, we must see whether he alone may be admitted in the quality of a son; and this indeed is the result if he has been adopted as the father of the grandson

[33] *Dig.* 37.4.1.6: et sui iuris factos liberos inducit in bonorum possessionem praetor (sive igitur emancipati sunt sive alias exierunt de patris potestate, admittuntur ad bonorum possessionem); sed adoptivi patris non potest, ut enim, admitti possit, ex liberis esse eum oportet.

[34] See *Dig.* 38.6.1.6 (Ulpian, *On the Edict* 44).

[35] *Dig.* 37.4.1.7: qui habebat filium habebat nepotem ex eo, filium emancipavit et adoptavit in locum nepotis, deinde emancipavit. quaeritur an nepoti obstet, et mihi magis videtur hunc nepotem non excludi, sive pater eius in adoptione mansisset quasi nepos sive emancipatus est. puto enim et emancipato patre nepotem quoque cum patre suo ex edicto admitti.

who had been kept in power, but the better view is that he alone can come into *bonorum possessio*. (2) But if the grandson in question has been emancipated, it is true to say that he cannot be admitted in the quality of son; for the quasi-son does not rank as a child, since the rights acquired by adoption are concluded by emancipation. (3) If I have a son and a grandson of whom that son is the father and I have adopted the grandson as my son both will be admitted; but clearly if the grandson has been emancipated, he will not be admitted because his father takes precedence.[36]

These cases show that emancipation could effectively demote a candidate who was otherwise an eligible heir.

Intestate succession of the adopted/adrogated contrary to the will in the family of origin

This section canvasses what rights an adopted person has in his natural family in the case of an intestacy. A person who has been adopted loses his right of succession in his family of origin for the duration of that adoption. In the event that he is emancipated he regains an entitlement to *bonorum possessio* provided that emancipation predates the decease of his parents. Clearly this was aimed at preventing an adopted person from undergoing emancipation precisely with the intention of making himself eligible for inheritance from his natural family. This is articulated as follows in the *Digest*:

Adoption impedes rights only so long as a man may be in another family. However, once emancipated he obtains *bonorum possessio* of his natural parents' property, but after being emancipated in their lifetime, not after their death. For it is more correct to say that a man emancipated after their death is not admitted.[37]

If a man has emancipated his son and had kept in his power the grandson of whom that son is the father and then has given the grandson in adoption to his son, that grandson is admitted to *bonorum possessio* contrary to the terms of his grandfather's will if his father has predeceased him, because he is part of the family of one who

[36] *Dig.* 37.4.3.1–3 (Ulpian, *On the Edict* 39): (1) si duos habens nepotes alterum emancipatum loco filii adoptaverit, videndum, an solus ille quasi filius admittatur. quod ita scilicet procedit, si quasi patrem eius nepotis, quem retinuerat, sic adoptaverit: melius est autem dicere posse eum solum ad bonorum possessionem pervenire. (2) sed si sit hic nepos emancipatus, verum est dicere non admitti eum quasi filium: hic enim quasi filius non est ex liberis, cum iura adoptionis emancipatione finita sunt. (3) si filium habens et ex eo nepotem in locum filii nepotem adoptavero, ambo admittantur: plane si fuerit emancipatus nepos, non admittetur, quia pater eum praecedit.

[37] *Dig.* 37.4.6.4 (Paulus, *On the Edict* 41): … adoptio tamdiu nocet, quamdiu quis in familia aliena sit. ceterum emancipatus ad bonorum possessionem parentum naturalium venit, sed emancipatus vivis eis, non etiam post mortem eorum: hoc enim verius est post mortem eorum emancipatum non admitti.

could himself have been admitted to *bonorum possessio* contrary to the terms of the will.[38]

If a man had a son and by him a grandson under his *potestas* and gave his son in adoption, while retaining the grandson in *potestas*, and then the son is emancipated by his adoptive father and dies, having instituted strangers as his heirs. The son of this man who has remained in the *potestas* of his grandfather will be able to seek *bonorum possessio* contrary to the will of his father, although he was never in his power. To this extent it seems not to have been necessary to have been in *potestas*. For if it is viewed otherwise if a son has been emancipated, it will not be possible for a grandson of his who has remained in the power of the grandfather to seek *bonorum possessio* against the will. (1) And there is the same rule if the grandson by the emancipated son has remained in the power of his grandfather and afterwards has been given in adoption to his father; that is he will be able to seek *bonorum possessio* contrary to his grandfather's will, because through the adoption he was not in another family. (2) But if my emancipated son has adopted a son who is a stranger, the adopted son cannot seek *bonorum possessio* against my will, because he has never been in the relationship of grandson to me.[39]

Some further details emerge of the scope of the protection provided to sons who had been adopted out of the family, but had been appointed heirs, and the will had subsequently failed:

11 The praetor did not intend sons given in adoption to be excluded provided that they have been instituted heirs and Labeo says that his observance of this practice was most just; for they are not entirely strangers to the family. Therefore if they have been appointed heirs, they will receive *bonorum possessio* contrary to the terms of a will, but they themselves will not initiate the edictal procedure on their own unless another of the children that normally do so has been passed over. But if an adoptive son has not himself been appointed heir, but another who can obtain the inheritance from him has been, he is not in a position to be admitted to *bonorum possessio* contrary to the terms of the will. 12 To be admitted to *bonorum possessio*

[38] *Dig*. 37.4.3.7 (Ulpian, *On the Edict* 39): si quis filio suo emancipato nepotem, quem ex eo retinuerat, dederit in adoptionem, nepos iste ad contra tabulas bonorum possessionem avi sui admittitur patre eius ante defuncto, quia in eius est familia, qui et ipse admitti potuit ad bonorum possessionem contra tabulas.

[39] *Dig*. 37.4.21: si is, qui filium et ex eo nepotem in potestatem habebat, filium in adoptionem dedit, nepote retento in potestate, postea filius emancipatus a patre adoptivo decessit, extraneis heredibus institutis: filius huius, qui in potestate avi remansit, contra tabulas patris sui bonorum possessionem petere poterit, quamvis numquam in potestate huius fuerit. ideo nec debuisse in potestate esse videtur. nam si aliter observatur, nec si emancipatus filius fuerit, nepos ex eo, qui in potestate avi remansit, bonorum possessionem contra tabulas petere poterit. (1) idemque iuris est, si emancipato filio nepos ex eo in potestate avi remanserit et postea patri suo in adoptionem datus fuerit: id est contra tabulas avi bonorum possessionem petere poterit, quia per adoptionem in aliena familia non fuerit. (2) sed si emancipatus filius meus adoptaverit extraneum filium, is qui adoptatus est filius contra tabulas meas bonorum possessionem petere non poterit, quia numquam nepotis loco apud me fuerit.

they must rank as children. However, if I have given an adoptive son in adoption and have appointed him heir and others initiate the edictal procedure, he will not be given *bonorum possessio* contrary to the terms of the will.[40]

This last passage in particular is very clear in its discussion of praetorian motives, which concentrate on fair outcomes for all the eligible parties.

ADOPTION AND TESTAMENTARY SUCCESSION

Where the testator is adopted

Here I deal with the impact of the testator's change in status as a result of adoption on the arrangements in the testator's will. One overriding consideration is that a will fails if the testator between the time of testation and death suffers from *capitis deminutio*, as always happens in the case of adoptions.[41] Gaius has some general observations on factors causing wills to be voided, which are pertinent to this area:

But those wills which either from the beginning were not created legally or, after being created legally, afterwards were either invalidated or broken are not completely useless. For if wills have been signed by the seals of seven signatories, the heir nominated on the will can seek *bonorum possessio* on condition that the deceased testator was both a Roman citizen and under his own power at the time of his death. For if a will were to become invalid because, for example, the testator has lost his citizenship or liberty, or because he has given himself in adoption and at the time of death was under the power of an adoptive father, the heir nominated on the will cannot seek *bonorum possessio* according to the will.[42]

[40] *Dig.* 37.4.8.11–12 (Ulpian, *On the Edict* 40): 11 in adoptionem datos filios non summoveri praetor voluit, modo heredes instituti sint, et hoc iustissime eum fecisse Labeo ait: nec enim in totum extranei sunt, ergo si fuerunt heredes scripti, accipient contra tabulas bonorum possessionem, sed ipsi soli non committent edictum, nisi fuerit alius praeteritus ex liberis qui solent committere edictum, sed si ipse scriptus non sit, sed alius, qui ei adquirere hereditatem potest, non est in ea causa, ut eum ad bonorum possessionem contra tabulas admittamus. 12 ut autem admittantur ad bonorum possessionem, ex liberis esse eos oportet. ceterum si adoptivum filium dedi in adoptionem et heredem scripsi, commisso per alios edicto bonorum possessio contra tabulas ei non dabitur.

[41] Gaius, *Inst.* 2.145: alio quoque modo testamenta iure facta infirmantur, velut cum is qui fecerit testamentum, capite deminutus sit; quod quibus modis accidat, primo commentario relatum est. (Wills rightly instituted are also in another way invalidated, as when the person who has made the will undergoes *capitis deminutio*. How this occurs is related in the first commentary.)

[42] Gaius, *Inst.* 2.147: non tamen per omnia inutilia sunt ea testamenta, quae vel ab initio non iure facta sunt vel iure facta postea inrita facta aut rupta sunt. nam si septem testium signis signata sint testamenta, potest scriptus heres secundum tabulas bonorum possessionem petere, si modo defunctus testator et civis Romanus et suae potestatis mortis tempore fuerit. nam si ideo inritum factum sit testamentum, quod puta civilitatem vel etiam libertatem testator amisit, aut quia in adoptionem se dedit et mortis tempore in adoptiva patris potestate fuit, non potest scriptus heres secundum tabulas bonorum possessionem petere.

The particular issue of the impact of adoptions on wills is treated more fully in the *Digest*:

After making a will, Titius gave himself up to be adrogated and then after becoming *sui iuris* died. If the heir nominated in his will seeks possession, he will be rejected under the defence of fraud, because by giving himself into *adrogatio* the testator transfers along with his person his fortune into another family and household. Clearly if having become *sui iuris* he has declared through codicils or other written evidence that he wants to die under the same will, his intention which had lapsed will be considered to have been restored by his fresh statement no less than if he had made a new will and had destroyed the old will, so as to leave the earlier will as his last. Nor should anyone think that a will is being set up on a bare statement of intention; for the legality of the will is not the particular concern, but the strength of the defence, which in these proceedings is set up against the plaintiff, but draws its value from the character of the person who sets it up.[43]

Where the testator adopts

Questions of timing were of the essence in view of the last passage quoted. What will happen if the testator adopts after writing his will? The *Institutes* of Gaius and the *Digest* both provide insights; firstly Gaius:

If after completion of a will someone has adopted a son, either *per populum* one who is *sui iuris* – or through the praetor one who has been in the power of an ascendant, his will is in every respect broken as if by the agnation of a *suus heres*.[44]

Nor is it of advantage to the woman or the man who has been adopted if she or he has been instituted by the will. For it seems pointless to enquire about disinheritance, when at the time of making of the will they were not amongst the number of *sui heredes*. Moreover, a son who is set free by a first or second mancipation breaks a previously created will because he returns under *patria potestas*. Nor does it help whether he has been instituted or disinherited in the will.[45]

[43] *Dig*. 37.11.11.2 (Papinian, *Questions* 13): testamento facto Titius adrogandum se praebuit ac postea sui iuris effectus vita decessit. scriptus heres si possessionem petat, exceptione doli mali summovebatur, quia dando se in adrogandum testator cum capite fortunas quoque suas in familiam et domum alienam transferat. plane si sui iuris effectus codicillis aut aliis litteris eodem testamento se mori velle declaraverit, voluntas, quae defecerat, iudicio recenti redisse intellegetur, non secus ac si quis aliud testamentum fecisset ac supremas tabulas incidisset, ut priores supremas relinqueret. nec putaverit quisquam nuda voluntate constitui testamentum: non enim de iure testamenti maxime quaeritur, sed viribus exceptionis, quae in hoc iudicio quamquam actori opponatur, ex persona tamen eius qui opponit aestimatur.

[44] Gaius, *Inst*. 2.138: si quis post testamentum factum adoptaverit sibi filium aut per populum eum qui sui iuris est, aut per praetorem eum, qui in potestate parentis fuerit, omni modo testamentum eius rumpitur quasi adgnatione sui heredis.

[45] Gaius, *Inst*. 2.140–1: nec prodest, sive haec sive ille qui adoptatus est, in eo testamento sit institutus institutave: nam de exheredatione eius supervacuum videtur quaerere, cum testamenti faciundi

We turn to the *Digest* for some of the finer points:

If a person who has been instituted heir is adrogated by the testator, it can be said that he has been satisfactorily dealt with because even before he is adopted the institution had effect as being that of an *extraneus*.[46]

If Titius, having been instituted as heir, is adopted in the role of a grandson, should the son who will be regarded as father afterwards die, the will is not broken by the succession of the grandson in the person of one who is found to be the heir.[47]

This is in reality dealing with the question of the line of title in the event that an intervening generation dies. Aquillius Gallus had ruled on this area, as had the Lex Junia Vellaea of AD 26–8 (Thomas [1976] 494).

Cases of disinheritance and subsequent reinstatement also attract attention:

If a man has disinherited his emancipated son and subsequently adrogated him, Papinian in the twelfth book of his *Questions* says that his natural rights are paramount and for that reason disinheritance is harmful to his position. But in the case of an outsider (*extraneus*), he approves the opinion of Marcellus, that the disinheritance does not harm him when he has then been adrogated.[48]

Querela inofficiosi testamenti *against the natural father (*pater naturalis*)*

In relation to adoption certain questions spring to mind with regard to the possibility of an action for an undutiful will. What rights did an adoptee retain in his family of origin after adoption? How far is the natural bond broken by adoption?

Different views were taken by different legal authorities regarding the question of whether a son given in adoption retained recourse to the *querela inofficiosi testamenti* in the event that his natural father were to overlook him

tempore suorum heredum numero non fuerint. filius quoque, qui ex prima secundave mancipatione manumittitur, quia revertitur in potestatem patriam, rumpit ante factum testamentum; nec prodest, si in eo testamento heres institutus vel exheredatus erit.

[46] *Dig.* 28.3.18 (Scaevola, *Questions* 5): si qui heres institutus est a testatore adrogetur, potest dici satis ei factum, quia et antequam adoptetur, institutio ut in extraneo locum habet.

[47] *Dig.* 28.2.23.1 (Papinian, *Questions* 12): si Titius heres institutus loco nepotis adoptetur, defuncto postea filio, qui pater videbitur, nepotis successione non rumpitur testamentum ab eo qui heres invenitur.

[48] *Dig.* 37.4.8.7-8 (Ulpian, *On the Edict* 40): si quis emancipatum filium exheredaverit eumque postea adrogaverit, Papinianus libro duodecimo quaestionum ait iura naturalia in eo praevalere: idcirco exheredationem nocere. sed in extraneo Marcelli sententiam probat, ut exheredatio ei adrogato non noceat.

in his will. A passage in Valerius Maximus makes it evident that the *querela* was already available as early as 60–50 BC (A. Watson [1971a] 61–70; Di Lella [1972] 52). This is a case of adoption by an uncle:

> Similarly the son of that most splendid Roman knight M. Anneius of Carseoli, who had been adopted by his uncle Sufenas, invalidated the will of his natural father, from which he had been cut out, in the centumviral court, although Tullianus, a *familiaris* of Pompeius Magnus, was named heir in it, with even Pompeius himself as a signatory. So at the trial there was more bother for him over the influence of an outstanding man than with his parent's ashes. But although both these factors were contending against him, he still obtained his father's possessions; for L. Sextilius and P. Popillius, blood relations whom M. Anneius had made heirs in equal shares with Tullianus, did not dare to contest with the young man under oath, even though the particular strength of Magnus could have been an invitation to defend the will, and it helped the heirs a little that M. Anneius had transferred into the *familia* and *sacra* of Sufenas. But the very close bond between mortals of procreation outclassed both the wishes of a father and the authority of a leading man.[49]

The case highlights problems related to retention of bonds with the family of origin beyond adoption. M. Anneius was at this stage a *sui iuris* in order to have legal standing to bring his case before the centumviral court (Gardner [1998] 36–9). It is uncertain whether he achieved this by the death of his adoptive father before his natural father's death, or through emancipation by Sufenas. The date of the case cannot be determined precisely, although a date around 66–50s BC seems likely, judging from the statements about Pompeius.

Under the fully developed praetorian rules of succession as consolidated in the Hadrianic edict, emancipated children as well as *sui heredes* could claim *bonorum possessio contra tabulas*, placing reliance on their status as *liberi*. This supposes that they had been passed over, in other words, neither

[49] Val. Max. 7.7.2: item M. Anneii Carseolani, splendidissimi equitis Romani, filius, a Sufenate avunculo suo adoptatus, testamentum naturalis patris, quo praeteritus erat, apud centumviros rescidit, cum in eo Tullianus, Pompeii Magni familiaris, ipso quidem Pompeio signatore heres scriptus esset. itaque illi in iudicio plus cum excellentissimi viri gratia quam cum parentis cineribus negotii fuit. ceterum quamvis utraque haec adversa nitebantur, tamen paterna bona obtinuit: nam L. quidem Sextilius et P. Popillius, quos M. Anneius sanguine sibi coniunctos eadem ex parte qua Tullianum heredes fecerat, sacramento cum adulescentulo contendere ausi non sunt, tametsi praecipuis eo tempore Magni viribus ad defendendas tabulas testamenti invitari poterant et aliquantum adiuvabat heredes quod M. Anneius in Sufenatis familiam ac sacra transierat. sed artissimum inter homines procreationis vinculum patris simul voluntatem et principis auctoritatem superavit.

instituted as heirs nor expressly disinherited. Even children given in adoption could qualify, if they had subsequently been emancipated. But if they were still in an adoptive family it was only possible in extremely limited circumstances.[50]

Anneius' son has not brought his case before the praetor. Instead he has brought a *querela inofficiosi testamenti* before the centumviral court (Kelly [1976] Ch. 1). Cases of this sort help those unjustly disinherited or inadequately provided for in a will, where a testator has disregarded (whether accidentally or intentionally) his moral duty. This was a praetorian remedy. There is a total of only three texts exemplifying this remedy by the mid first century BC.[51] It shows that the praetorian category *unde liberi* was not at this time in existence since otherwise we could expect Anneius simply to have applied for *bonorum possessio contra tabulas*. *Unde liberi* included the *sui heredes* and those who would have been *sui heredes* if they had not been emancipated. This group did not include those currently in another's *potestas* (Gardner [1998] 21).

There are uncertainties left. We do not know whether Sufenas died or had emancipated his adoptive son at the time of the natural father's death. In the latter case under later rules he would have been able to claim under the edict, *unde liberi*.

Gardner suggests that the very close bond (*artissimum vinculum*) to which Valerius refers is a reflection of the age of Tiberius when he was writing, and when the clause *unde liberi* was already in operation. Clearly Anneius was not in that strong a position; had Sextilius and Popillius asserted their claims, it might have proved hard to sustain his counterclaim despite the strength of the blood tie. Gardner's suggestion is that the comment reflects the change brought about by the time of Valerius Maximus by the introduction of the clause *unde liberi*.

Based on the original *potestas* held by the father over his child, these claims *unde liberi* had a rationale behind them. The *querela inofficiosi testamenti* might have led to close scrutiny of moral claims in such cases, which then developed into the category *unde liberi*.

The remedy made provision in cases where a moral duty was felt to exist, and the testator had failed to make proper provision for that person. It has

[50] See *Dig.* 37.4.8.11 and Gardner [1998] 37 n. 55.

[51] See also Val. Max. 7.8.4: a case not actually brought. Pompeius Reginus was passed over in his brother's will. To demonstrate the injustice, he opened his will in public to show his own intentions towards the brother, but never took the matter on to court (*iudicium hastae*), which, Valerius implies, would be the next stage; Quint. *Inst.* 9.2.9; 9.2.34–5; discussed by A. Watson (1971a) 61–70.

been suggested that the commonest and perhaps essential prerequisite of this form of action was to show the insanity of the testator.

One complication was the type of instance where a *paterfamilias* gave himself up in adoption, but his emancipated son did not follow him into the adoptive net. Since father and son were now in separate families the son had no right to *bonorum possessio contra tabulas*. But it was reasoned that such situations left the emancipated son without a nominated father and therefore that was an unfair outcome:[52]

> A son in an adoptive family after marriage raises a son and emancipates him after the death of the adoptive father. He [Julian] gives the opinion that this grandson can seek *bonorum possessio* against the will of his natural grandfather by decree. Likewise if an emancipated son, having raised a son and emancipated him, has given himself in adrogation and has died after the death of his adoptive father, it ought not to be doubted that this son can be admitted to *possessio* in virtue of a decree against both his father's and grandfather's wills, lest he should otherwise be excluded from the property of everyone.[53]

CONCLUSION

This as a whole is a very complex picture of Roman succession, but underlying it are certain fundamental principles. The tie of blood is always seen as a very strong factor in assigning estates. It was possible to negate this with a will expressly disinheriting close relatives who would otherwise be entitled to inherit. Those who had been adopted out or emancipated were not necessarily excluded, but some account was taken of the additional

[52] See *Dig.* 37.4.17 (Ulpian, *On Sabinus* 35): si pater se dederit in adoptionem nec sequatur eum filius emancipatus ab eo antea factus. quia in alia familia sit pater, in alia filius, bonorum possessionem contra tabulas non potest filius eius habere: et ita Iulianus scripsit. Marcellus autem ait iniquum sibi videri excludi eos a bonorum possessione, cum pater se dedit in adoptionem: ubi enim filius non datur in adoptionem, at pater se dat, nullum patrem filio adsignat: quae sententia non est sine ratione. (If a father has given himself in adoption and his son previously emancipated does not follow him, because the father is in one family and the son is in another, his son cannot obtain *bonorum possessio* against the will. So states Julian. But Marcellus says it seems unfair to him that an emancipated son be excluded from *bonorum possessio*, when a father has given himself in adoption; for when the son is not given in adoption, but the father gives himself, he assigns no father to his son. This is not an unreasonable view.)

[53] *Dig.* 37.4.14.1: filius in adoptiva familia uxore ducta filium sustulit eumque post mortem patris adoptivi emancipavit: hunc nepotem contra tabulas avi naturalis decreto posse petere bonorum possessionem respondit. item si filius emancipatus sublato filio et emancipato adrogandum se dederit et mortuo adoptivo patre decesserit, et contra patris et contra avi tabulas ex decreto hunc admitti minime dubitari debere, ne alioquin ab omnium bonis excluditur.

opportunities which were available to them. Finally there was a danger for those emancipated that they might be excluded entirely from opportunities either in the family of origin or in an adoptive family. This was not viewed with favour, and various remedies attempted to address the problem. The corporate interests of families were balanced against those of individuals.

CHAPTER 8

Roman freedmen and their families: the use of adoption

Freedmen and freedwomen after manumission still had many checks on their personal lives. These included obligations to their patron (if the patron was still alive) which extended beyond respect and personal service (*obsequium* and *operae*), only the latter legally enforceable, and included intrusions into their personal financial arrangements such as the patron's right to inherit the estate of the manumitted slave under certain conditions (Y. Thomas [1982] 527–80). The legal sources show that this was accepted as a reasonable and fair outcome by the freeborn community. The most important factor for a freed slave in a very hierarchical system was the low regard in which the status was held by the freeborn community. Whatever they did, they could not escape the fact that they were *libertini*, and this encompassed some restriction on the speed of social advancement. As increasing numbers of ex-slaves entered the community in the early Imperial period, the status was hardly rare. A process of integration was under way which encouraged a level of social mobility. This process of course cannot be quantified. Rapid social advance must have been difficult for all but the select few, usually members of the *familia Caesaris*, who still caused outrage and resentment amongst the elite. The hostility of our aristocratically biased literary sources to the freedman class is notoriously based primarily on the rising status of the imperial slaves, and their social recognition at a legal and financial level. Nevertheless, a majority of ex-slaves may have taken comfort in their personal freedom and not expected much more. After manumission they will have remained in a life of limited opportunities and confined their exploitation of newfound freedom to matters close to their personal lives. The protection afforded by the Roman citizenship and Roman law may have helped to regularise their family life and ultimately to stabilise freedman families. In Roman society, in slave unions and other unions outside Roman marriage, children followed the status of the mother, so the freeing of a female slave was a crucial act.

MANUMISSION

Manumission could be formal by *vindicta*, *censu* or *testamento* (Duff [1928] 23–6; Treggiari [1969] 20ff.; 27–9; Fabre [1981] 5–39). The three forms of manumission seem to be ancient – *manumissio testamento* first appears in the Twelve Tables (Ulp. fr. 2.4), and the other two forms seem equally ancient. Estimates of the rate of manumission during the Republic between 357 and 209 BC are given by Duff, who estimates that 1200 slaves were released annually ([1928] 29), a statistic not commanding much respect. For the age of Augustus, at one time it was thought that the census statistics provided by Augustus in *Res Gestae* gave an indication of the large scale of manumission in the early Empire.[1] Between 28 BC and AD 14 census numbers rose from 4,063,000 to 4,937,000 (*Res Gestae* 8), and the increased numbers leave open for debate what is being counted and whether a substantial ex-slave population might be included in the later figure. Recent discussions of overall numbers of slaves and their origins have tried to clarify the situation. There has been debate about the role of natural reproduction as against other sources of slaves,[2] progress being impeded by disputes over absolute population numbers in both the free and servile classes in the Roman Empire (W. V. Harris [1999] 64). Despite these uncertainties, there does seem to be a consensus that manumission was not on such a scale as to create problems for the continued functioning of the system, and thus that manumission must have been a doubtful prospect for a majority of slaves.

RESTRICTIONS ON MANUMISSIONS AND THEIR MOTIVES

Dionysius of Halicarnassus in a highly rhetorical passage, after a review of the creditable record of the Roman practice of freeing slaves, turns his focus to the present:

> in my day … affairs have reached such confusion, and the fine aspects of the Roman state have become so dishonoured and befouled, that some who have made money by thieving, burglary, prostitution and every other disgusting path, purchase their freedom with this money and immediately are Romans. Others, who have been conspirators and assistants to their masters in poisonings, and murders, and misdeeds against the gods and the state, take their rewards from them. Some are

[1] Wiedemann (1985) 162–75 with some reservations about the normality of manumission.

[2] See Scheidel (1997) 156–69, arguing for replacement through reproduction; denied by W. V. Harris (1999) 62–75.

freed, so that on receiving the monthly corn ration given at public expense or some other humane act for the indigent originating in the leaders of the community, they may bring it to those who have given them their freedom. Still others have their freedom because of their lightweight masters, and their empty search for popularity. I know of some who have agreed to all their slaves being freed after their death so that they may be called good when dead, and many people follow and carry their biers wearing liberty-caps on their heads. Amongst those who processed, as one could hear from those who know, were evil-doers who had recently come out of the prisons, and had performed acts worthy of a thousand deaths. (Dion. Hal. *Ant. Rom.* 4.24.4–6).

This is part of a polemic against the indiscriminate admission of slaves to Roman citizenship, and it should be seen in the light of the author's theoretical Polybian admiration of things Roman. Whatever the truth of the actual claims, which clearly reflect certain elite concerns, as well as the jaundiced impression of an outsider,[3] within a few years the *Lex Fufia Caninia* of 2 BC did regulate the number of slaves who could be manumitted under a will (Gardner [1991] 21–39), and in AD 4 lifetime manumissions came under control of the *Lex Aelia Sentia*. These pieces of legislation had a great impact on the domestic lives of slaves and ex-slaves.

There were provisions entitling a master to free a slave for the purpose of marriage (Gaius, *Inst.* 1.19; *Dig.* 40.2.13). On the other hand, a mistress who wished to free a slave for marriage could be constrained. A woman who was herself an ex-slave was permitted to manumit a male slave only if he had been bequeathed to the woman precisely for marriage (*Dig.* 40.2.14.1).[4] A master was also entitled to free any blood relative (Gaius, *Inst.* 1.19).

In cases where slaves were released under a testament, by the early second century AD there were interventions to ensure that the testator's wishes were respected. Magistrates intervened in cases of fideicommissary manumission, where the heir refused to fulfil the terms of the *fideicommissum*. A patron stood to lose patronal rights over the individuals involved. This was entrenched, first in Italy, and then in the provinces (AD 103: *SC Rubrianum*; AD 123: *SC Articuleianum*) (Duff [1928] 26–7).

JUNIAN LATINS

Informal manumissions also took place under the *Lex Iunia*, although these are less important for present purposes since these ex-slaves did not become

[3] Dionysius came to Rome in 30 BC (Dion. Hal. *Ant. Rom.* 1.7.2) and published his *Roman Antiquities* twenty-two years later (7 BC). See Gabba, (1991) 1ff.; 210.

[4] For full discussion on liaisons of this sort see Evans-Grubbs (1993) 125–54.

full citizens with concomitant protection under Roman law and thus were not eligible to adopt or be adopted. However, a brief review of the status follows. The *Lex Iunia* (17 BC?) recognised freedom but did not make citizens (Gaius, *Inst.* 1.22). Junian Latins had rights very similar to those of Latin colonists (Duff [1928] 78). Three conditions had to be met to avoid becoming a Junian Latin on manumission from slavery. The slave had to be over thirty years of age, he had to be the Quiritary property of his master and he had to be released by lawful and statutory manumission (Gaius, *Inst.* 1.17). Apart from being over thirty, the *Lex Aelia Sentia* also provided that if freed *vindicta*, but under thirty, a slave could obtain the formal manumission after proof of adequate motive before a council (Weaver [1990] 275–305). Conditions were strict for this procedure (Gaius, *Inst.* 1.18). There were requirements at Rome for the presence of the magistrate and also five senators and five *equites*, while in the provinces not only was the governor required, but a panel of twenty assessors, all of whom had to be Roman citizens. Both at Rome and in the provinces there was also a requirement that the session should be held on specified days.[5] In contrast with this strict regime outlined in the legal sources is the widespread appearance of manumission of the very young in the epigraphic record. Very high percentages of those commemorated on the surviving inscriptions had been manumitted before they were thirty; large numbers even before they were twenty. Naturally this begs the question: were these formal or informal manumissions? Suspicion must be strong that we are dealing in most instances with informal manumissions.

If so, any children subsequently born would also be Junian Latins. There was, however, a procedure known as *anniculi probatio* (approval of a one year old), which enabled a Junian Latin marrying either a Latina or a *civis* to go before seven adult Roman witnesses expressly as a preliminary stage towards obtaining their own citizenship and citizenship for their future child when it was one year old. As can be appreciated, this delayed citizenship but not necessarily for very long. What is not clear is how common or easy this procedure was to realise. The bar to advancement was that all cases had to be with knowledge and consent of a patron. This group must have included sick slaves abandoned by their masters. These only became full citizens under Justinian (*Cod. Iust.* 7.6.1.3). After AD 75 all Latins gained the citizenship (Gaius, *Inst.* 1.31). Full citizenship also accrued after six years' service in the *vigiles* under the *Lex Visellia* of AD 24 (Gaius, *Inst.* 1.33; Ulp. 3.5), later reduced to three years (Ulp. 3.5).

[5] Weaver (1990) 280–1 is quite pessimistic about the ease of attaining full citizenship for these people.

However, Weaver cautions that Junian Latins did suffer serious social impediments. Children born of Latins after the informal manumission of their parents who did not get the advantage of the *anniculi probatio* would be illegitimate, that is *spurii filii* (B. Rawson [1989] 10–41). Furthermore, the estates of Junian Latins went to their manumitters as though by right of *peculium* (Gaius, *Inst.* 3.56). The main result was that the children of Junian Latins often did not succeed to their parents' estates (Just. *Inst.* 3.7.4) (Weaver [1990] 278).

PATRONAL RIGHTS

The bonds between patron and freedman have been compared to those of father and son, with the substitution of *obsequium* and *officium* for *pietas*. There were restrictions on legal action that could be taken against a patron (Gaius, *Inst.* 4.46). No criminal proceedings could be undertaken with exception of a charge of *maiestas*.

If a freedwoman married her patron and the marriage ended, she was obliged to obtain his consent for a subsequent marriage (Duff [1928] 40). She was obliged to remain under his *tutela* if she was under twenty (Duff [1928] 43). Moreover patrons were entitled to a share in any legacy to a freedwoman unless she was an actual descendant of the deceased. In the event that a freedwoman died without heirs the patron was entitled to her estate.

A patron had full control over ex-slave estates on death (Gaius, *Inst.* 3.56). Pliny (*Ep.* 10.104) illustrates:

> Valerius Paulinus, master, has left to me the right to his Latin freedmen, passing over Paulinus (his son). As a result I request Roman citizenship for three in the meantime; for I fear it would be inappropriate to call on your indulgence for all of them alike. I must take advantage of it all the more moderately because I have enjoyed it so fully. But I am petitioning on behalf of three: Gaius Valerius Ascaeus, Gaius Valerius Dionysius and Gaius Valerius Aper.

Note that these three already have the *tria nomina* under their Junian Latin status *before* the imperial grant of full citizenship (Weaver [1990] 279).

In regard to a freedman's estate, an important passage in Gaius, *Institutes* (3.40-2) deals with changes in the rights of freedmen over time:

1. Under the law of the Twelve Tables, the patron succeeds only if a freedman dies intestate without a *suus heres*. For a freedman that means without a legitimate child.

2. Under changes to the praetor's edict between 118 and 74 BC, *sui heredes* still exclude the patron, but the children cannot be adoptive and the wives cannot be *in manu*. The patron can claim half against these, even contrary to the will.
3. Finally, the *Lex Papia* of AD 9 allowed the patron to claim an estate of HS 100,000 or more, even against natural children, provided that they were not more than three in number.

It can be seen that this represents an erosion of the rights of freedmen, perhaps reflecting their increasing importance and wealth by the early Imperial period. As we shall see, the right to adrogate a freedman was also reserved for his *patronus*.

OPPORTUNITIES FOR EX-SLAVES

In Republican times certain sons of freedmen rose to the tribunate, perhaps as a result of political factors which made this expedient. Thus P. Furius, a Marian and son of a freedman, became tribune of the plebs (App. *BCiv*. 1.33.2) and similarly in 25 BC C. Toranius, when tribune, brought his freedman father into the theatre, and seated him on the tribune's bench (Dio 53.27).[6] The emperors experimented with increasing access to equestrian status for the ex-slave group. Under Augustus the notorious Vedius Pollio, who was a son of a freedman, was allowed into the equestrian order and had apparently risen to be proconsul of Asia in 31/30 BC before his ostentatious demise in 15 BC (Dio 54.23) (Syme [1979] 518–25). Tiberius, however, under a *senatus consultum* of AD 23 barred sons of freedmen from the equestrian order (Plin. *HN* 33.32). Claudius in turn allowed freedmen's sons to be adopted into equestrian families (Suet. *Claud*. 24), thus opening the door to the Senate.[7] Nero reversed this measure (Suet. *Nero* 15). The result of all this was to slow rather than to prohibit advancement, and the grandsons of freedmen could be regarded as truly freeborn.

A privilege granted by the emperor was the right to wear the gold ring, the *ius anuli aurei*. Its earliest appearance seems to be the grant by Sulla to Sextus Roscius (Macrob. *Sat*. 3.14.13); it was later granted by Augustus to his physician, Musa (Dio 53.30). Also of importance is the 'restoration of birth' (*restitutio natalium*). However, advances were tempered by some checks. The status of freedman resulted in some disabilities in the military.

[6] Treggiari (1969) 62 thinks that the father was freed by a *tutor* of Augustus, C. Toranius, and thus that the tribunician son was an imperial nominee.

[7] No cases are recorded. But the legislation is in line with privileges for sons of freedmen which already were current in the Republic. See Treggiari (1969) 62.

Freedmen were not eligible for some elite groups such as the praetorians, and they were excluded from priesthoods even in towns of Italy.

Even those who had ostensibly escaped from the slave past of their family might have the persistent stigma of ex-slave status. Larcius Macedo was an ex-praetor who was murdered by his own slaves; Pliny does not fail to mention that he was the son of a *libertus*, and that this might be a factor in his overbearing cruelty towards his own slaves (Plin. *Ep*. 3.14). Pliny was typical of his class in regarding the advancement of freedmen as out of control, as can be seen from his outburst over the advancement of Pallas (Plin. *Ep*. 8.6).

SLAVE AND EX-SLAVE FAMILIES AND THEIR UNIONS

During slavery slaves were encouraged to reproduce; this was a source of exemptions from tasks for females, as well as a reason for eventual manumission (Columella 1.8.19; Duff [1928] 4). The children so produced were *vernae*, and the reason their mother was given these exemptions was because of her contribution to the domestic economy. It is reasonable to assume that these slave offspring would have to be in service in turn for a reasonable period before they had any prospect of freedom (Treggiari [1969] 15).

The terms *concubina* and *contubernalis* are found in Roman inscriptions, and their relevance to slave and ex-slave unions has been discussed in a number of modern studies (B. Rawson [1974]; Treggiari [1981a][1981b]; McGinn [1991]). Beryl Rawson has emphasised the lack of substantial evidence that concubinage was chosen freely in preference to marriage, and she suggests that it usually reflects the impossibility of a legal marriage. It is worth noting, as Rawson does, that a man could not legally set up a woman as his concubine while he had a living wife (*Cod. Iust*. 7.15.3.2; B. Rawson [1974] 288). Some emperors had concubines, and these were normally freedwomen, and thus not eligible for marriage to a senator. Vespasian had Caenis, a freedwoman of Antonia, whose confidential secretary she had been (Suet. *Vesp*. 3.2; *Dom*. 12; Dio 65.14). Antoninus Pius had Lysistrate, a freedwoman of his wife (*Hist. Aug*., *Ant. Pius* 8.9). Nevertheless, a concubine was generally a person of low status. Rawson has charted what is known of the status of those attested as *concubinae* (B. Rawson [1974] 289). Susan Treggiari goes on to emphasise that men in these unions were generally of higher status than their partners. Tom McGinn looks at concubinage in relation to the Augustan laws on *stuprum* and adultery and concludes that the laws (particularly the *Lex Iulia* and *Papia*) did not actually prevent unions in violation of the statute but penalised

them. He suggests that the status is likely to have been commoner than statistics based on inscriptions might indicate, and he is also more inclined to see it as an acknowledged part of the social structure than does Rawson. *Contubernales* seem not to incorporate freeborn couples (B. Rawson [1974] 294). A majority of these unions involve at least one slave partner, or partner who was a slave during the union.

DEATH, BURIAL AND STATUS

There are interesting aspects to freedmen burials, which are explicated in the *Digest* (*Dig.* 11.7.5–6):

> Gaius, *Provincial Edict* 19: Tombs which a person sets up for himself and his *familia* are said to be household tombs, but those he sets up for himself and his heirs are said to be hereditary tombs.
>
> Ulpian, *On the Edict* 25: so too is a tomb which a *paterfamilias* has obtained by right of inheritance. But in either it is permissible for his heirs and other successors, whoever they are, to be buried and to bury a corpse, even if they are heirs under the will to a very small portion of the estate or as a result of intestacy and even if the other heirs do not consent. This same right is conceded to children of whichever sex or degree even to [sons in power and] emancipated children whether they have become heirs or may have counted themselves out. It is permissible for the disinherited to be buried there on humanitarian grounds unless the testator, motivated by righteous ill-will, has specifically excluded them, but they may not bring in others, except their own descendants. But freedmen can neither be buried nor bring in others, unless they are heirs to their patron, although some individuals have inscribed on their monument that they have created it for themselves and their freedmen: and this is Papinian's opinion and the same view has very often been confirmed.

The standard formula found on many tombs – often of ex-slave status – shows that it was felt to be important to declare interest in the continuity of freedman families (Duff [1928] 10ff.). The passage suggests that freedmen could no longer claim the right to burial in a patron's tomb on the basis of the formula unless actually an heir to the patron. Duff suggests that this was a prohibition originating in the second century AD.

ADOPTION

The area of adoption and freedmen has been pioneered by Jane Gardner in a number of studies (Gardner [1989] 236–57; [1998] 179–90). Since adoptions involve an artificial mode of acquiring status within the Roman family,

adoption has clear relevance to the ex-slave population. Slaves embarked on lives as freedmen with no recognition of pre-existing conjugal relationships, and consequently a rather different family structure from that existing amongst the freeborn community. On becoming free there were reasons for slaves to acknowledge existing biological relationships both because of practical considerations as well as because of affective relationships (Gardner [1998] 179). As a Roman citizen, an ex-slave was able for the first time to form his own *familia* with full legal support; this enabled him to provide for this group the same legally entrenched inheritance rights as those of freeborn families – subject to fulfilling obligations to the patron – to assert his *patria potestas* and to provide subsequent children with the benefits of Roman citizenship. Any pre-existing children at the time of manumission fell outside the scope of this.

As already noted, the *Lex Aelia Sentia* of AD 4 had curtailed early manumissions and made the age of thirty the minimum age (Gaius, *Inst.* 1.13–21; 25–6; 36–41), except under special conditions. This, combined with demographic factors, meant that for women a large part of their fertile adulthood had passed in slavery, and a relatively short time remained for bearing freeborn offspring.

The legal position of children born to freedwomen while still enslaved was that they were fatherless, and problems did not end there. Illegitimate children were still born to freedwomen after manumission, sometimes because the father was the patron, sometimes because the father's status precluded marriage. He might either still be in slavery or not be properly freed in terms of the *Lex Aelia*, for example a Junian Latin. These were described as *volgo concepti*. As Gardner points out, this does not necessarily reflect unstable relationships:

> *Dig.* 1.5.23 (Modestinus): People who cannot identify their father are said to have been conceived at large (*volgo concepti*) as are indeed those who can identify their father but have one whom they could not lawfully have.[8]

THE ADROGATION OF FREEDMEN. WHY ADROGATION?

A freedman on release in legal terms had no relatives in ascending or collateral lines. He was seen as the starter of his family line. In law he had no father and was a member of a different family from his parents. He would bear the name of his former owner. Legal sources demonstrate that it

[8] volgo concepti dicuntur qui patrem demonstrare non possunt, vel qui possunt quidem, sed eum habent, quem habere non licet; Gardner (1998) 180.

was possible for freedmen to be adopted by Roman citizens (Lavaggi [1946] 115–35). It has been suggested that there is some epigraphic attestation of the practice as well (Gardner [1989] 236–57). For the early Republic Watson has discussed the process of simultaneous manumission and adoption (A. Watson [1967] 90ff.).

A freedman on release was a *sui iuris*, so the only form of adoption under which he could be adopted was *adrogatio*. *Adrogatio* brought both the *adrogatus* and anyone and anything under his control into the family of the adopter. This sounds like a way for ex-slaves to make a rapid social advance, but some caution is in order.

Standing and restrictions

Although a freedman so adopted would gain the personal position of a son within the family of the adopter (that is, he gains the private rights of a son), his overall status in the public domain remained restricted, at least in the early Empire.

The status of *ingenuus* was defined by Gaius as someone born free (*Inst.* 1.11), but Livy goes further and requires that an *ingenuus* should be able to name his father (Livy 10.8.10). Since a *libertus* in legal terms had had no father previously, a question arose whether the acquisition of one by adrogation was sufficient to alter his status to that of an *ingenuus*. Legal opinion already in the age of Tiberius was clear on this issue; Masurius Sabinus, a Tiberian jurist (Kunkel [1967] 119–20; 341–2; *PIR*^{2} M 271), attests to the effect that such adrogations of freedmen were legal but did not confer the legal rights of a freeborn man:

> Masurius Sabinus has written that freedmen can lawfully be adopted by freeborn men; but he says that it is not, nor should ever be permitted that men of freed status should by means of adoptions usurp the legal rights of freeborn men. All the same, he says, if this ancient regulation is preserved, even a slave can be given in adoption by his master through the praetor; and this he says many authorities on ancient law have written is possible. (Aulus Gellius, *NA* 5.19.11–14)

This view is also taken by Ulpian (*Dig.* 1.5.27). Authorities cited by the *Digest* show that, in the Imperial period at least, the manumitted slave did not have unrestricted rights equivalent to those of his adopter in the public sphere. For instance, even if the adopter was senatorial, the individual manumitted could not marry into the senatorial class (Duff [1928] 60). There was no restriction on a senator's adopting a freedman, but he did not thus create extra members for his class. It would be of interest if we could

trace the fortunes of a freedman so adopted and his descendants, but no instance is known. We would then be able to chart the social advancement and its limitations.

The main point is that regardless of the status of the adrogator (surely normally a person of far less status than a senator), the freedman could not intermarry with the daughter of a senator. This is revealed in a commentary on the *Lex Julia et Papia* by Marcellus, a jurist in the reigns of Antoninus Pius and Marcus Aurelius:

> It must be known that a freedman who has given himself in adrogation to a freeborn man, although he obtains the rights of a freeborn man within his adopter's *familia*, is nevertheless, on grounds of being a freedman, to be barred from a senatorial marriage. (*Dig.* 23.2.32).

Had this always been the case or was this merely a later restriction? Some authorities have believed that freedmen earlier obtained full citizen rights, and that perhaps even slaves could be directly adopted during the Republic (A. Watson [1967] 90ff.). Restrictions on access to Roman citizenship were already tough during the Struggle of the Orders, and it seems reasonable to expect an early date for the implementation of restrictions on the access of freedmen to full citizen rights. It was certainly not the case in Classical law that a freedman could obtain advantages of this sort.

It has been thought that in the Republic it was more of a commonplace for slaves to fall within the class of those recently captured, that is, those who within their previous life had been freeborn citizens of another state. Such people might be considered in Roman terms more suitable for integration into their citizen mass than those born within servitude, apparently the commonest origin of slaves in the Imperial period.[9] Nevertheless, there clearly were strictly defined taboo areas. Livy cites the case of the freedwoman Hispala Fecenia, at the time of the Bacchanalian scandal in 186 BC, who was to be allowed to marry a freeborn husband. Livy notes that the husband was not to suffer any diminution as a result of this union (*fraus* and *ignominia* are mentioned) (Livy 39.19.5). It is implicit in this incident that there were restrictions at that time on such marriages and the arrangements refer to a special dispensation. This shows the implausibility of easy access to citizenship for ex-slaves at this point in Roman history. Some legitimate doubt may be registered over whether there ever was the possibility for a Roman slave to be adopted by his master.

[9] On the other hand, if Bradley is right and *vernae* were a commonplace from the beginning, this argument falls. See Bradley (1987) 42–64.

RIGHTS OF *PATRONUS*

Under Classical law the right to adrogate a freedman was reserved to the *patronus* (but appears to have been breached) (Gardner [1989] 244–8). Ulpian in the Digest discusses adrogation as part of a more general consideration of adoptions:

> In adrogation, enquiry is made whether the adopter is perhaps under sixty years old, because he ought rather to be trying to beget children of his own – unless that is, there is perhaps some illness or weak constitution or some other just cause for adrogation (if, for example, he wants to adopt a relative). Likewise, one ought not to adrogate more than one person, save for just cause, or *someone else's freedman*, or a person older than oneself (*Dig.* 1.7.15.2–3).

The special rights of the *patronus* in relation to inheritance from his freedmen are relevant, but it is not only inheritance rights that are being protected. The adopted freedman might still be subject to a requirement to provide *operae* to his patron.

WHY ADOPT A FREEDMAN?

One advantage of adopting a freedman was unquestioned access to any resources under his control. The adoptive father, as in the case of a natural son, would have control over his property. It seems unlikely that adoption of a freedman was a common resort for childless males of high status as a method of providing themselves with heirs. Although there is no hope of raising statistics or telling examples, adoptions aimed solely at providing heirs would normally occur within close degrees of relationship or from amongst family friends of suitable standing. These status considerations might be held to be of lesser importance for those who were themselves low in the pecking order.

PROBLEMS AND ADVANTAGES FOR FREEDMEN

The *adrogatus* would obtain rights of succession from his adoptive father, and this was probably the main advantage from his perspective, apart from the mere prestige of adoption by a citizen. The adrogation did restrict marriage within certain specified degrees of relationship to his *patronus* (*Inst.* 1.61; *Dig.* 23.2.17), but this is unlikely to have been a major disincentive. In terms of rapid social advancement a much greater problem was that a freedman could not marry within the senatorial class. Even here it is surely

to be expected in so hierarchical a society that social disapproval of these matches would in itself be sufficient to keep ambitious individuals in check. The Augustan prohibition on marriages between freedwomen and senators perhaps only hardened the rules in an area already subject to social or customary sanction.

The research conducted by Beryl Rawson, Paul Weaver and Susan Treggiari on the nature of 'freedman families' has shown that prior to freedom legal marriage was not possible for the individual so released. As we have seen, this raises the problem of the status of children generated from liaisons which started before the manumission. How might adoption help the status of such children, or how might a freedman legitimate his children if born to him before adoption by his *patronus*?

LEGITIMATION AND ADOPTION OF CHILDREN BORN INTO SLAVERY

What emerges from Beryl Rawson's study of family life amongst the lower classes at Rome is that the transition from slave to free resulted in mixed unions of various different types. Even in instances where one party was a slave it was not unusual for the child to bear a gentile name, traditionally thought of as an indicator of citizenship. This may be because of a manumission contemporaneous with that of the parent (in which case the child will bear the *nomen* of the manumitted mother), but can in any case be seen as evidence that the child has been manumitted (B. Rawson [1966] 71–83). Complicated cases in which some children are born as slaves and others after a legitimate union subsequent to manumission can also be detected ([1966] 77–8). It is also not necessarily the case that once manumitted children will bear the same gentile name as their father. Rawson cites a case of one daughter of Aelia Severa Aug. l. who also becomes Aelia Severa Aug. l., while another born after the mother's marriage to T. Flavius Ianuarius bore the father's *nomen* and became Flavia Severina (*CIL* 6.18428) (B. Rawson [1966] 78 n. 13). The general rule was that children of *iustae nuptiae* took on the status of their father at the time of conception (Gaius, *Inst.* 1.58; 89; Ulp. *Rules* 5.8–10), but here we appear to deal with a case where one child was born slave and manumitted with her mother while the second child was a product of a subsequent legitimate union.

It was not necessarily the case that slave children would end up winning freedom into their own parents' household, as Rawson has emphasised. Instances are known where the child's gentile name is quite different from that of the parents. These cases are thought to reflect a situation where the

slave child has been sold to another household at an early stage and then later manumitted by that family. Some of these cases may reveal an adoption instead. However, it is hard to establish any criterion for separating these differences for which the only evidence is the form in which the nomenclature appears on the epitaphs. Rawson cites the case of Antestia Glycera and her husband, Alius Potitus, and their daughter Munatia Paulina (*CIL* 6.11924; B. Rawson [1966] 78). This is not likely to be a case of adoption given the gender of the child. The only other possibility in such cases is second marriage (Weaver [1972] 144).

Adoption has obvious advantages as a method of integrating freedman families. It might have been used extensively for this purpose, but the evidence does not stretch to proving this.

TRUSTS AND EX-SLAVE FAMILIES

Trusts were one way for groups and individuals to transfer property to certain groups not covered by the civil law. In this section I investigate whether this might have been a viable alternative to adrogation for ex-slaves seeking continuity and to pass inheritances to children.

Under Augustus trusts first became actionable rather than a pledge reinforced by the social control of *fides* (Johnston [1988] 29–39). Naturally a child born in slavery and still of slave status could have no protection from this device. Interestingly peregrines, who had no capacity at civil law (Gaius, *Inst.* 2.285) since they were not citizens, were not automatically excluded from the use of trusts:

> peregrines could take trusts, and perhaps this was their origin. But later it was prohibited, and now in accordance with a speech of the late emperor Hadrian a decree of the senate was passed so that such trusts may be claimed by the fisc.[10]

The state gradually closed in on trusts, acting first on the unmarried and childless under the *SC Pegasianum* (*c.* AD 73), and Hadrian acted to invalidate those to peregrines. That was not an end of the matter (Johnston [1988] 39). Antoninus Pius is said to have introduced a law under which Roman citizens could leave property to their children even if they were not citizens (Pausanias 8.43.5; cf. *Hist. Aug.*, *Ant. Pius* 8.5). As Johnston points out, until the time of Hadrian this could have been managed by a trust. The case of

[10] Gaius, *Inst.* 2.285: peregrini poterant fideicommissa capere et fere haec fuit origo fideicommissorum. sed postea id prohibitum est, et nunc ex oratione divi Hadriani senatus consultum factum est ut ea fideicommissa fisco vindicarentur.

the peregrines shows some of the pressures on groups not included under the umbrella of the civil law.

Junian Latins also had no capacity under the civil law (Ulp. 25.7). Although not specifically mentioned in the survey of the history of trusts provided by Gaius (*Inst.* 2.285–6), it seems likely that trusts were employed to convey property to Junian Latins until the more stringent rules came into play. Some families with a mixture of libertine and Junian Latin members may have taken advantage of this device.

CONCLUSION

Roman freedmen and freedwomen after manumission had opportunities to establish Roman families, but these were cut down by existing disabilities and obligations to the patron. These could include the patron's entitlement to his freed slave's estate, if it was of sufficient worth. Pre-existing children born in slavery might not obtain freedom within a suitable timeframe to integrate the family group. Adoption seems potentially to be of some use to this group, but this is not the context within which it is found to be employed. Freedmen were sometimes adopted by their patrons but did not thereby gain enormous opportunities for advancement. A freedman did not gain the status of his adoptive father. The main reason for these adoptions was to enable the patron to exercise direct control over the freedman's property. If the freedman was lucky, he might gain the prospect of succession to the property of his adoptive father.

CHAPTER 9

Adoption in Plautus and Terence

In the early second century BC Plautus and Terence both use domestic situations as the basis for their plays, which are acknowledged to be heavily influenced by Greek models but to some extent modified to suit Roman audiences. There is still dispute over the detail. Cases of adoption mentioned by Plautus have generally been thought to reflect Greek rather than Roman customs. There are three relevant passages reviewed by Paoli (Paoli [1963] 548–51). The first is in *Menaechmi*:

> He had no children except his wealth.
> He adopts that kidnapped boy as his son
> and gave him a dowered wife,
> and made him his heir on the day he died.[1]

Here an Epidamnian trader has kidnapped one of the brothers Menaechmi at Tarentum, where he had been taken on a business trip by his real father. The trader carried him off home to Epidamnus and treated him like a son. The process is described as an adoption, although under the circumstances there can have been no official procedure, no granting of *patria potestas*, such as would occur under a Roman adoption. The author reflects ideas about adoption in the Greek rather than the Roman world. Even so, the whole case is highly irregular, since the status of the child is the result of fraud. The trader might nevertheless have passed off the child as his own in his phratry. None of this is revealed in the play. In the Greek world this could have resembled a testamentary adoption, since the existence of a will is implied, although the process of taking in the child and organising him a wife is a better fit with an *inter vivos* arrangement (cf. Kunst [2005] 56).

[1] *Menaechmi* 59–62:

> ei liberorum, nisi divitiae, nil erat:
> adoptat illum puerum surrupticium
> sibi filium eique uxorem dotatam dedit,
> eumque heredem fecit, quom ipse obiit diem.

The other two passages are both from the *Poenulus*:

> He sold him to some rich old man
> who wanted children, but was a hater of women.
> This old man unknowingly bought the son of a friend,
> adopted him as his son,
> and made him his heir on the day he died.[2]

> For my master Agorastocles was born there,
> stolen from there when about six years old, and afterwards
> the man who kidnapped him brought him here and sold him to my master.
> He adopted this man as heir on the day he died.[3]

Both passages deal with the same individual. In this case the adoptee is in fact of high status – although that is not known to the adopter at the time of his death. The adoptee has been purchased as a slave but was apparently to be brought up as the old man's son. He later turns out to be of higher status, since he had been kidnapped from a rich man's house at Carthage and carried off. On the old man's death he was adopted as the testator's son. Quite apart from the kidnap, these would be highly irregular circumstances at Rome, where known adoptees are of comparable status to the adopter. The passages again associate adoption with testamentary arrangements and are more compatible with Greek customs than Roman. Kunst notes the adopter as a woman hater (*osor mulierum*), and he sees the adoption as an alternative to marriage, clearly something relevant in either Greek or Roman culture (Kunst [2005] 63).

Changes to suit a Roman context are more evident in Terence. Terence's *Adelphoe* provides early literary evidence about adoption. The play was staged at the funeral games of L. Aemilius Paullus in 160 BC. These games were sponsored by his natural sons, Q. Fabius Maximus and Scipio Aemilianus, and elements of the plot take on particular meaning since these brothers were both themselves adopted into other families. The play places

[2] *Poenulus* 73–7:

> vendit eum domino hic diviti quoidam seni
> cupienti liberorum, osori mulierum.
> emit hospitalem is filium imprudens senex
> puerum illum eumque adoptat sibi pro filio
> eumque heredem fecit, quom ipse obiit diem.

[3] *Poenulus* 901–4:

> nam erus meus Agorastocles
> ibidem gnatust, inde surptus fere sexennis, postibi
> qui eum surrupuit huc devexit meoque ero eum hic vendidit.
> is in divitias homo adoptavit hunc, quom diem obiit suum.

much emphasis on natural ties of kinship, an approach deliberately intended to have relevance to the play's sponsors. There is no need to exaggerate the similarity of the circumstances, but the close relationship between the fictional brothers, Aeschinus and Ctesipho, must have been intended to resonate with the sons of Aemilius Paullus.

The sons of Paullus, although adopted into other families, had an ongoing history of joint activity, which included campaigning with their natural father at the time of the campaign against Perseus in 168/7 BC as well as the joint sponsorship of this play. The *Adelphoe* was based on a play of Menander, according to the foreword to the text, with other elements from Diphilus, revealed in the prologue (*Adelphoe* pr. 1–11; Fantham [1968]; [1971]; Grant [1980]). Naturally this may lead to questioning of the context of Terence's play, and the extent of borrowing from the world of Diphilus and Menander, but recent work seems to be satisfied that the play is designed to reflect issues relating to Roman kinship (Bannon [1997] 64–6; Goldberg [1986] 23–9). Some analysis is worth while, since the play and its action was expected to appeal to a Roman audience and was directed at two brothers with personal reasons to be interested in the main theme (Russo Ruggeri [1990a] 112–28).

The play involves two generations of brothers. The elder pair consists of Demea and Micio, while the younger brothers, Aeschinus and Ctesipho, are both sons of Demea. The older generation represent opposed theories about bringing up children, Demea supporting sternness and severity, while Micio promotes kindness and indulgence.

The father of both sons is Demea, but the elder son, Aeschinus, has been adopted by Micio. It thus portrays an adoption by a paternal uncle (Kunst [2005] 132; for adoption by paternal relatives in real life see Chapter 11 below). This provides the battleground for the play since Micio is bringing up Aeschinus indulgently, while Demea in his household has resorted to a stern regime of poverty. Problems arise for the older generation partly because of their conflicting views of the world, and ongoing interest in the two sons, partly because of the continued close relationship of the two younger men (Bannon [1997] 65).

Focus is on the adolescence and sexual development of the young men. Aeschinus has raped Pamphila, a poor girl, when he was drunk, but subsequently promised her marriage. Ctesipho is thought by his father to be better behaved because of his strict upbringing, but he has fallen in love with a flute-girl, Bacchis. She belongs to a slave dealer, who threatens to sell her unless Ctesipho buys her from him. Enter Aeschinus, who has such a strong bond with his brother that he breaks into the slave dealer's house and

carries the girl off. Demea is convinced that Aeschinus has taken the girl on his own account and berates Micio for his indulgent treatment of the young man. This is the situation that has to be resolved in the rest of the play.

As far as adoption and kinship is concerned, the relationship of Demea and Micio is of interest because it is a chance to view the two adult male parties to an adoption coping with their ongoing relationship. Admittedly it is complicated by the apparently Greek context, but the likelihood is that all has been accommodated to the Roman context. Micio introduces the audience to his feelings about his adopted son early in the play and also expresses his expectations of him:[4]

> What do I think of because my son has not come back?
> Such worries now bother me! In case he has caught a chill
> or fallen somewhere or broken something.
> Fancy any man taking on and bringing up a thing dearer to him than himself!
> And this one is not my son but my brother's. My brother
> already from youth had interests unlike mine.
> I pursued this gentle life in the city, and ease,
> and a wife, which some think lucky,
> I never had. He was quite different.
> He lived in the country; he always conducted himself
> sparingly and severely. He took a wife. Two sons were born.
> Then I adopted this elder one.
> I brought him up from very young, I kept him, I have loved him as my own,
> I take pleasure in him, he alone is dear to me.

[4] Terence, *Adelphoe* 35–54:

> ego quia non rediit filius quae cogito
> quibus nunc sollicitor rebus! ne aut ille alserit
> aut uspiam ceciderit aut praefregerit
> aliquid. vah, quemquamne hominem in animo instituere aut
> parare quod sit carius quam ipse est sibi!
> atque ex me hic natus non est, sed ex fratre. Is meo
> dissimili studiost iam inde ab adulescentia:
> ego hanc clementem vitam urbanam atque otium
> secutus sum et, quod fortunatum isti putant,
> uxorem numquam habui. ille contra haec omnia:
> ruri agere vitam; semper parce et duriter
> se habere; uxorem ducit; nati filii
> duo: inde ego hunc maiorem adoptavi mihi;
> eduxi a parvolo, habui, amavi pro meo.
> in eo me oblecto, solum id est carum mihi.
> ille, ut item contra me habeat, facio sedulo:
> do, praetermitto, non necesse habeo omnia
> pro meo iure agere; postremo, alii clanculum
> patres quae faciunt, quae fert adulescentia
> ea ne me celet consuefeci filium.

> I act zealously that he in turn should consider me in the same light.
> I give, I pass over matters, I don't consider it necessary
> for him to do everything according to my rules; finally
> others do adolescent acts in secret from their fathers.
> These I have taught my son not to conceal from me.

The passage is interesting because Micio tells the audience that the relationship with Aeschinus and the concern for his adopted son's welfare is beyond his own expectations. In addition to introducing how differently his own life has turned out from Demea's, he reveals important details of the adoption. Two elements stand out. He has adopted Demea's elder son, of interest since Aemilius Paullus, who had four sons, also allowed his two eldest sons, the sponsors of the play, to be adopted, apparently to please a new wife (see Chapter 11). This seems to be a case where all parties benefit: Demea provides his eldest son with opportunities of inheritance in the city, by harnessing the resources of his childless brother, while the younger son becomes heir apparent to his father's rural estate. Micio gets an heir with a minimum of fuss. He clearly has no desire for a wife (cf. Kunst [2005] 63). It may be suspected that the elder son, now under Micio's legal control, has in fact been given the better opportunity. The second point is the age of adoption. A very early childhood adoption is portrayed. This might have been an aspect drawn from the Greek original, but it might also have had relevance to the children of Aemilius Paullus.[5] Terence emphasises the impact of early adoption on the process of bonding. Unfortunately, the age at which adoption occurs in the Roman world is known in very few cases apart from the children of Paullus.

Demea intrudes into Micio's relationship with his adopted son quite freely and expresses his disapproval of his laxity, while Micio is quite accepting of his brother's continued interest in his natural son, even saying:

> Just as you are his father by nature, so I am through our decision.[6]

Presumably the conflict between Demea and Micio is not supposed to be a reflection of the real situation of Aemilius Paullus with the adopting fathers of his children, but it raises important issues about the relationship of the parties after adoption. We can assume that this was important for Roman fathers, both those giving and those obtaining sons by adoption. Aemilius Paullus is known to have retained very close links with both sons, Q. Fabius Maximus and Scipio Aemilianus, who campaigned with him and

[5] The actual age is far from clear, but they were adopted before 168 BC.
[6] Terence, *Adelphoe* 126: natura ut illi pater es, consiliis ego.

participated in his triumph. No source mentions any souring of relations with the adopting fathers.

Terence's play cannot tell us about the realities of Roman adoption, but it does have considerable significance for the topic. It uncovers themes that were considered significant in relationships between brothers, one of whom had been given in adoption. The natural father is not taken out of the equation but remains a significant force in the background. If it had been a Roman context, because it was an adoption by an agnate, it would have been hard to identify by nomenclature alone (Kunst [2005] 132).

CHAPTER 10

Sallust and the adoption of Jugurtha

During the Second Punic War Masinissa, king of Numidia, had befriended Scipio Africanus and become beneficiary of the kingdom of the Numidian Syphax and his interests in Africa. Masinissa's own son was Micipsa, but Masinissa also had two brothers, Mastanabal and Guluasa, who had predeceased him. In the next generation, Micipsa had two sons, Adherbal and Hiempsal, but Mastanabal also had a descendant, an older boy, Jugurtha, the son of a concubine.

Jugurtha was duly brought up in the palace, although his status was a little ambiguous because of his maternal heritage, and he was eventually sent to serve in the Roman interest at Numantia in Spain in 134 BC. There, according to Sallust, it was hoped he would meet his fate, and simplify the succession question (*Iug.* 7). He came back, however, with an enhanced reputation, and a letter of recommendation from Scipio (*Iug.* 9). Micipsa responded by adopting him, not immediately, as suggested in one passage in the *Jugurtha* (*Iug.* 9.3: *statim* may be intended to indicate a lifetime adoption rather than a testamentary one), but at some time between 121 and 118 BC (*Iug.* 11.6). He was also made joint heir along with Micipsa's own sons.

Naturally, the case cannot be viewed as a Roman adoption, but it is of interest for the attitudes exhibited by Sallust. Sallust no doubt had mixed feelings about the base-born Jugurtha. As a *novus homo* himself, he might have felt sympathy and even admiration for the outsider, and he undoubtedly despised the natural sons of Micipsa and their weak performance. This contrasted with Jugurtha's immediate understanding of the corrupt Roman system, his effective behaviour and his reputation as a soldier. Note especially the speech attributed to Micipsa as he gives advice to his three heirs. Jugurtha, the eldest, is asked to look after his two brothers by adoption. His advice to Adherbal and Hiempsal is to love and respect their adoptive brother and to strive to show that their father did not adopt better children than he had generated (*Iug.* 10). The story in general shows that Romans

imagined this as a situation likely to cause a good deal of friction, as it did, especially because of the inequality of birth of the intruder. In general, Romans did not adopt when there already existed a clear line of succession. The notable exceptions are those of Tiberius adopting Germanicus when he already had a son Drusus, and Claudius adopting Nero, against the interests of Britannicus. These later cases too prompted comment and disapproval from imperial sources. Sallust was himself to adopt an heir, the Augustan knight, C. Sallustius Crispus. His view of the adoption of Jugurtha was perhaps that it brought Micipsa results he should have anticipated. He certainly viewed Adherbal and Hiempsal with very little favour.

CHAPTER II

Adrogatio *and* adoptio *from Republic to Empire*

There are relatively few known Republican adoptions. Gardner estimates a total of about three dozen in the elite including the so-called testamentary adoptions (Gardner [1998] 138). Political aims do not always lie behind Republican cases and many may in fact merely represent the designation of an unchallengeable heir to property. There will be some cases in which this also provided a very significant chance of making a claim to succession to whatever political power was at stake. Examples at a lower social level are not recorded, although one equestrian case is treated by Valerius Maximus, that of Anneius (Val. Max. 7.7.2; *RE* Annaeus no. 4; Shackleton Bailey [1991] 71; 79). The other well-known equestrian case – that of Atticus – is not a true adoption, but a testamentary case. Below this level, adoptions might have been used, but cases have not survived in the type of evidence at our disposal. As adoption was so closely related to succession, it was frequently employed where significant assets were at stake. Adoptions under the Republic have often been deduced from nomenclature alone, a technique now discredited for examples from the Imperial period (Chapter 6; Salomies [1992]). This discussion is restricted to full adoptions under *adrogatio* or *adoptio*, since they have different legal implications from testamentary adoptions.

The earliest known example illustrates the difficulty in ascertaining motives for adoption in individual cases. L. Manlius Acidinus adopted one of two sons of the plebeian Fulvius Flaccus (Vell. Pat. 2.8.2) into his patrician family. The adopted son thus became L. Manlius Acidinus Fulvianus, undergoing a standard transformation in his nomenclature. Russo Ruggeri has suggested that this was to allow the two brothers to be consuls in the same year (179 BC) (Russo Ruggeri [1990a] 80). The Lex Genucia of 342 BC had ruled that one consul in each year should be plebeian (Cornell [1995] 337–8), but by 179 BC, the year of Fulvianus' consulship, there had never been a year when both were plebeian. Until 172 BC, although it was theoretically possible for both consuls to be plebeians, this had never eventuated.

Although Russo Ruggeri plausibly sees this adoption as a process to facilitate political advantage, it could be an incidental by-product of a standard adoption, since he is already attested as a Manlius at the time of his praetorship in Hither Spain in 188 BC (Gardner [1998] 142). There is a strong chance that Manlius Acidinus was a childless man who adopted the talented son of a rising plebeian family. Kunst believes the adoption might already have been in place in 205 BC (Kunst [2005] 61–2).

The case of the adoptions of the eldest natural sons of L. Aemilius Paullus, Fabius Maximus and Scipio Aemilianus, is significant at several levels, not least being the high status and political significance of the parties involved. In all Aemilius Paullus generated four sons, although this was not sufficient to secure the continuity of his line. Two sons predeceased him – a reminder of demographic realities. In the event, Aemilius Paullus in his will named as heirs Fabius Aemilianus and Scipio Aemilianus (Plutarch, *Aem.* 39). Adoptees could also succeed in cases of intestacy, in the absence of legitimate offspring and other agnates (Corbier [1991b] 75).

Although money and inheritances are involved in the arrangements for the adoption of the two elder sons, the political connections and the *clientela* thus gained seem to be powerful motives for the adoptions. There seem to be good and practical reasons for Aemilius Paullus to enter these arrangements. Disposing of his eldest children by a first marriage would enable him to promote the political interests of his younger sons with his own resources. The elder sons were the offspring of a marriage to Papiria, whom Paullus divorced before 181 BC. They could now be relocated in other families, while the interests of the second family by a new wife were fostered. Aemilius Paullus nevertheless expected sons located in other families to be of use to him, and this is borne out by what is known of their subsequent careers. Adoption in this case expands social relations – a major difference from modern adoptions in which the idea of an ongoing relationship with children given in adoption has until recently been viewed as undesirable. In modern cases, that attitude was closely related to the immature age of adoptees – as a policy decision it was determined to be too hard for adoptive mothers to cope with competition from the birth mother at an age when bonding was crucial. In contrast, in Rome adoption was not about nurture as such.

Q. Fabius Maximus, *praetor peregrinus* in 181 BC, adopted two sons from two separate families, including the elder son of Aemilius Paullus. He became Q. Fabius Maximus Aemilianus. Once more the transformation in the nomenclature is quite standard. It seems that the motive for Fabius was his childlessness, and the *quid pro quo* for Paullus' son was an opportunity in

politics, with the backing of an extra prominent politician. Fabius Maximus Aemilianus reached the consulship in 145 BC. The other adopted son was Cn. Servilius Caepio, who had two sons of his own – one was adopted out – but all three reached the consulship in 142–140 BC (Münzer [1999] 224–30). He became Q. Fabius Maximus Servilianus. Why two sons were adopted may attract attention, but it seems to be a situation not unlike that facing the imperial family in AD 4. Fabius was taking no chances and had two strings to his arrangements, including Caepio, who had already taken care of the next stage, the production of heirs.

Scipio Aemilianus was born in 185/4 BC (Astin [1967] 12–13) and was the second son of L. Aemilius Paullus, who in turn was the son of the consul who fell at Cannae in 216 BC. The father of Aemilianus was thus a man of considerable eminence in his own right, gaining reputation as the victor against Perseus in 167, and hence seen as the conqueror of Greece (Reiter [1988]). His mother was Papiria, the daughter of C. Papirius Muso, consul in 231 BC. His adoptive father was P. Scipio (the son of Africanus Major), who was in fact his cousin (see also Kunst [2005] 142). His paternal aunt was the link (see Figure 9).

The adoptive father did not hold high office because of infirmity, but the adoption made Aemilianus the grandson of Africanus, and this status was an outstanding political prize. It need hardly be added that there were other significant political connections in the family. Africanus' elder daughter had married P. Cornelius Scipio Nasica Corculum, while the younger daughter married the father of the Gracchi, Tiberius Sempronius Gracchus. Aemilius Paullus also had daughters: one married M. Porcius Cato, eldest son of Cato Censorius, while the other married Aelius Tubero.

Scipio Aemilianus accompanied his father Paullus on the campaign trail to Macedonia and fought at the battle of Pydna in 168 BC, aged about seventeen. Livy and Diodorus, who comment on these events, talk of the relief felt by his natural father on finding him safe after the battle (Diod. Sic. 30.22; Livy 44.37.8; 44.44.3). This illustrates the continued relations between father and son, beyond adoption, which is further instanced by

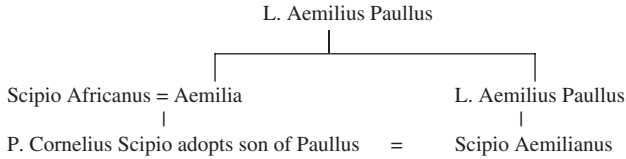


Figure 9 The adoption of Scipio Aemilianus

his participation in his father's triumph in November 167 BC. The adoption itself must have occurred sometime between 179 and 168 BC. The best evidence about the adoption of Fabius Maximus Aemilianus is provided by Polybius. The location is outside the house of Fabius Maximus, and both brothers are present. It is clear that the adoption of Scipio Aemilianus' brother Lucius as Fabius Maximus is already in place, but brotherly rivalry is evident. Polybius has Aemilianus complain about a perceived slight. Aemilianus claims that Polybius constantly converses with his brother because he shares the popular view that Aemilianus is indolent, because he has not appeared in the law courts (Polyb. 31.23.7–12). Polybius retorts that he was addressing Lucius merely on grounds of seniority, and that he believed the two brothers held common beliefs. This demonstrates that the two brothers were far from visibly separated by the process of adoption. The story is a bit problematic, because it is implicated in Polybius' personal biography (Polyb. 31.24.2–12). It provides Polybius' preferred explanation of the access he obtained to the Scipionic circle, by means of the two sons of Aemilius and the intercession of the urban praetor (31.23.5–6). This is at the time of Polybius' first arrival in Rome, perhaps in 167 BC – Aemilianus is said at this time to be no more than eighteen (31.24.1). Other instances of continued relations between the original parent and adoptive sons are known, a substantial difference between Roman adoptions and the modern world (Kunst [2005] 77).

Thanks to Polybius, there survives quite detailed knowledge of the financial consequences of the adoption of Scipio Aemilianus (Crook [1986] 70–1). It is an unusual case since it provides precious details about the payment of dowry, as well as other aspects of financial support within the family. All this is aimed at showcasing the generosity of Aemilianus but still reveals the obligations underlying the fabric of Roman families (Dixon [1985b] 150). When Aemilia, the widow of Scipio Africanus Maior died in 162 BC, she left her adoptive grandson a considerable fortune (Polyb. 31.26). By this time his adoptive father was dead and Aemilianus could therefore determine the future of her resources (Dixon [1985b] 151). He immediately donated all her finery to his natural mother Papiria, who was living at this time in comparatively reduced circumstances (Polyb. 31.26.6–7). Aemilianus is thus represented as a model of filial piety, but his access to the financial resources of the Scipios also demonstrates one of the main advantages he had secured from his adoption.

Africanus Maior had died in about 184 BC, apparently leaving Aemilia and his sons, including the adoptive father of Aemilianus as heirs (Crook [1986] 70). There had also been an arrangement that two daughters, the

sisters of the adoptive father P. Scipio, should each receive a dowry of 50 talents. Aemilia had paid half this amount at the time of their marriage, but left the remainder to be paid on her death (Polyb. 31.27.1–3). When Aemilianus secured Aemilia's estate, he was under an obligation to pay off this debt to his adoptive father's sisters. Exactly how this debt was incurred by Aemilia has been a subject of debate, but it is not the concern here (Dixon [1985b] 152–6). The debt fell to Aemilianus under Aemilia's will (Polyb. 31.27.1). Polybius makes much of the speed with which this sum was paid in full – ten months when he was entitled to wait three years (31.27.5–7). This time the result shows that Aemilianus wanted to be seen to be doing the right thing by his relatives acquired through adoption, but the surprise exhibited by Gracchus and Nasica, the husbands of the two women, suggests that his behaviour was hardly the norm (31.27.7–16; Dixon [1985b] 160).

In 160 BC Aemilius Paullus, the natural father of Scipio Aemilianus and Fabius Aemilianus, died. These sons of his first marriage became heirs to his estate worth more than 60 talents, since the sons of his second marriage had not survived. Scipio gave up his entitlement and also bankrolled funeral games for Paullus' funeral out of his own resources (Polyb. 31.28). The sons repaid the second wife's dowry of 25 talents, raising the cash sum after liquidating some assets (Polyb. 18.35). Here adoptive sons end up securing the estate from their natal family, but not without the complication of freeing the estate from the burden of the stepmother's dowry.

When Scipio's mother Papiria died around the same time (159/8 BC), although he was named as sole heir, he handed on the jewels which had originated in the estate of Aemilia as well as the residual estate to his sisters (Polyb. 31.28.8). Once again this shows the comprehensive nature of the extended family which resulted from these adoptions. Strictly speaking, Scipio had no more right than his sisters to succeed to Papiria under the rules of intestate succession (Dixon [1985b] 165). She had in fact apparently played favourites, since his brother Fabius Aemilianus was the elder and not obviously included in the will. It may be that neither son was the intended heir, and, as Suzanne Dixon suggests, the intention was always that the daughters should be beneficiaries (Dixon [1985b] 166–7).

As we have seen, the adoption of Scipio Aemilianus is at the same time familial and political. The main aim was probably to keep property closely held within the family, but it also shows the strength of emotional bonds within the family group (Gardner [1998] 13–14). He was adopted by his cousin, a relationship dependent on the link through his paternal aunt. His brother was adopted by the childless Fabius to prevent his line dying out.

Both brothers gained prestige by association with their new fathers, but that is not to say that the principal aim was political. These men were by definition destined for high office, and simply enhanced an already strong position through these extra ties.

ADOPTION BY RELATIVES – GENERAL CONSIDERATIONS

The case of the sons of Aemilius Paullus raises some of the ambiguities inherent in Roman adoptions. There are often motives related to family fortune and family continuity involved. Corbier notes the propensity to adoptions through relatives in the female line. Typical cases involve a choice of relatives from among *consanguinei* or *affines*. Amongst these are found maternal grandfathers and uncles or even great-uncles. One reason that these are known is that they are relatively easy to identify from onomastics. Paternal grandfathers and uncles also adopted, but in such cases the traces of the adoption will often not be visible in the resulting nomenclature – they would retain the same *gentilicium* and possibly other onomastic features. Adoptees generally did not have male siblings, although Germanicus was inserted into the imperial family ahead of Tiberius' natural son Drusus (Corbier [1991a] 142). In the imperial family precautions were taken to ensure that the succession was secured, but this did not go without remark.

ADOPTION BY MATERNAL RELATIVES

Maternal uncle

Marius' sister married into the Gratidii, and her brother M. Marius adopted her son. This was M. Marius Gratidianus (tr. pl. 87 BC; *RE* Marius no. 42), who in turn had a sister Gratidia who was married to L. Sergius Catilina (Schol. Bern. Luc. 2.173)(Wiseman [1971] 55; 240; Gardner [1998] 139 n. 62).

M. Iunius Brutus, son of M. Iunius Brutus (tr. pl. 83 BC), was adopted by his maternal uncle Q. Servilius Caepio in or before 59 BC. The father, Brutus, had been proscribed by Sulla and put to death in 78 BC. Hinard sees adoption as a method of retrieving political standing but admits that by its very nature adoption cannot have been very effective in concealing a past (Hinard [1985] 185–6). After adoption the son then became Q. Servilius Caepio Brutus or Q. Caepio Brutus – he is said to have dropped the *gentilicium* Servilius, but the evidence is contradictory, although he is frequently found with abbreviated nomenclature. The adoption was already

in place in 59 BC (Geiger [1973] 148–56). The example is of interest – apart from his fame as a future tyrannicide – because of the continued use of his earlier nomenclature, which is also against the notion of a purely political motive for the adoption (*RE* Iunius no. 53; Shackleton Bailey [1991] 83–4; Kunst [2005] 158).

Gardner draws attention to what seems at first sight to be a further example of adoption by a maternal uncle in the Imperial period. The very proper senator Minicius Acilianus, son of Minicius Macrinus, whom Pliny recommends as a husband for the niece of his friend Junius Mauricus, has a maternal uncle named Publius Acilius (Plin. *Ep*. 1.14). Gardner warns of the possibility that this is an example of a *cognomen* taken from the mother's nomenclature (Gardner [1998] 134; doubt first registered by Corbier [1991b] 69). The fact that Pliny specifically mentions the uncle as a person of substance in the same breath as Acilianus might suggest a close tie, but Pliny also emphasises the wealth of Minicius Macrinus as one of the main enticements. Whichever solution is correct, the case shows (not surprisingly) that the standing of the whole group was considered important in alliances of this sort.

Maternal grandfather

As a strategy, adoption of a daughter's child seems to have been commonplace in the Greek world (Isaios VIII.36). Examples can also be identified at Rome. C. Terentius Lucanus had been the patron of the playwright Terence, and he is recorded by the elder Pliny as having been adopted by his maternal grandfather before 166 BC (Plin. *HN* 35.52; Kunst [2005] 139). Similarly, T. Annius Milo was a Papius by birth and was adopted by his maternal grandfather T. Annius (Ascon. 53.13, Clark). His father came from Lanuvium. He is attested with the *tria nomina* (Livy, *Epit*. 107; Ascon. 28.21, Clark) but is not known to have borne the additional *cognomen* Papianus (*RE* Annius no. 67; Shackleton Bailey [1991] 66). Asconius says that his wealth and the extent of his property holdings was a result of three inheritances. Asconius thought that apart from his father and maternal grandfather, the third inheritance came from his mother (Ascon. 53, Clark).

Adoption by more remote maternal relatives

The Augustan *eques* C. Sallustius Crispus was the great-nephew of the historian and he was adopted by him (Tac. *Ann*. 3.30.2).The historian died in 34 BC (Perl [1967] 97–105). Since he was the historian's sister's grandson (*sororis nepos*) he was not a Sallustius Crispus by birth, but only these *tria*

nomina are ever attributed to him. The terminology used by Tacitus, which refers to the taking of Sallust's name (*in nomen adscivit*), could be thought to indicate a testamentary adoption, but Salomies points out that similarly ambiguous terminology is also used of Claudius' adoption of Nero, which definitely was a full adoption (Salomies [1992] 15).

Similar uncertainties are involved in the next generation in the same family. This extremely wealthy individual, whose death is recorded by Tacitus under AD 20 (Tac. *Ann.* 3.30), in turn adopted C. Sallustius Crispus Passienus (cos. suff. 27; II ord. 44) – who was the son of L. Passienus Rufus (cos. 4 BC). The probability that this adoption was testamentary is quite high, because Tacitus, in quite a full obituary, makes no reference to his succession arrangements. L. Passienus Rufus, the consul of 4 BC, is not a known relative of the Augustan *eques*. His son, also known after adoption as C. Passienus Crispus, was a noted orator and became a husband of Agrippina the younger (Suet. *Nero* 6.3; cf. Tac. *Ann.* 6.20.1) (Gardner [1998] 138 n. 59; Syme [1986] 159–60; Salomies [1992] 14; 24). Nero was to be the beneficiary under his will as well as under that of his natural father, a matter remarked upon by Suetonius (*Nero* 6.6). Agrippina had an eye for the interests of her son (Corbier [1995] 188–90). As Corbier points out, Passienus Crispus might have bequeathed his effects to Nero under a testamentary condition including the *condicio nominis ferendi*, but, if so, this was clearly never met (Corbier [1991b] 72).

Octavian was the grandson of Caesar's younger sister, Iulia, hence his great-nephew. His testamentary case is more fully discussed elsewhere (Chapter 15).

ADOPTION OF A DAUGHTER

Apart from the case of Domitia Lucilla who was adopted by her paternal uncle to protect the family fortune (see below), the adoption of women is scantily attested. Corbier suggests that in the *Laudatio Turiae* there is something akin to modern thinking – a project to adopt a daughter not a son. This seems questionable. The Latin is a little ambiguous but it seems to say that the *laudator* wished he had died first and left 'Turia' in place of a daughter to fill his childlessness (*orbitas*) (Corbier [1991b] 63; cf. Kunst [2005] 64–5).[1] This is nevertheless an interesting case because it shows circumstances under which female succession is contemplated.

[1] *LT* 51: utinan patiente utriusqu[e a]etate procedere coniugium [potuisset donec e]lato me maiore, quod iustius erat, suprema mihi praesta[res, ego vero super]stite te excederem, orbitat[i f]ilia mihi supstituta. (My English version: 'I wish that the marriage had been able to continue with the life span

ADOPTION WITHIN THE FAMILY

This is a category best known from the legal writers. These cases may be difficult to detect because they may not result in changes in nomenclature. It was possible to adopt both insiders and outsiders as either sons or grandsons (*Dig.* 1.7.15.1); moreover an emancipated son might be adopted as a grandson (*Dig.* 38.6.1.7) (Corbier [1991b] 67). As Corbier points out, we know of no actual examples of these transformations, which in theory at least allowed the father to restructure the natural order of inheritance. Adoption of the grandson by the paternal grandfather was given special status under the reforms of Justinian as *adoptio plena* (Kurylowicz [1979]). This could occur in cases such as that of Marcus Aurelius, who lost his father early, and was brought up by his paternal grandfather (*Hist. Aug.*, *M. Ant. Phil.* 4.7). The grandfather promoted his grandson in this way in the succession: it left Marcus with considerable assets and a capacity to be generous to other family members (Corbier [1991b] 68; see Chapter 16). However, although cases like this might have been relatively common under the Roman demographic regime, other cases are hard to chart because of the unchanged nomenclature.

OTHER PATERNAL RELATIVES

Uncle

The younger son of C. Claudius Pulcher, praetor in 56 BC, was adopted by the latter's elder brother Appius Claudius Pulcher, consul in 54 BC, to become Appius Claudius Ap.f. (*RE* Claudius no. 299). His original *praenomen* was probably that of his father, Caius (Gardner [1998] 139 n. 60; Shackleton Bailey [1991] 70). It has been suspected that a second son may also have been adopted (Syme [1986]: Table VII; Corbier [1991b] 68). No doubt the elder brother was childless.

The process would enable a *patrimonium*, split in the last generation between two brothers, to be once more amalgamated (Kunst [2005] 132). Here the result would be that the family resources were split in parallel in successive generations; this was apparently important in a large family consisting of these two sons and two daughters, who were married to cousins, one supposedly without a dowry to Lucullus (Treggiari [1991a] 110). The family

of each of us lasting until I, as the older party, was carried off, which would have been more just; you would have provided last rites for me, and I would be dying while you were still alive, as a daughter replacing my childlessness.')

was allegedly feeling the pinch (Varro, *Rust.* 3.16.2; Tatum [1992] 193–5). The cousin marriages have been thought to be financially motivated, and the adoption might fit into an attempt to garner scarce resources.

Cousin

Q. Caecilius Metellus Celer, consul in 60 BC (*RE* Caecilius no. 81), has been assumed to be the son of Q. Caecilius Metellus Nepos (cos. 98 BC; *RE* Caecilius no. 95). He was adopted by his father's cousin, Celer (tr. pl. 90; *RE* Caecilius no. 85). Nepos and the elder Celer were sons respectively of Balearicus and Diadematus, sons of Q. Metellus Macedonicus (cos. 143 BC). The adoption appears to have taken place before 80 BC (see further Kunst [2005] 142–3). As Shackleton Bailey points out, his nomenclature only changed marginally: he took on the *agnomen* and his grandfather's *praenomen* (Shackleton Bailey [1991] 69; Gardner [1998] 139 n. 61). This highlights the difficulty of recognising adoptions within the paternal line.

ADOPTIONS BY FAMILY FRIENDS (*EXTRANEI*), APPARENTLY TO SECURE THE SUCCESSION

A case which is Republican and seems to be a straightforward case of adoption to secure the succession is that of Cn. Aufidius Orestes (cos. 71 BC; *RE* Aufidius no. 32; Broughton, *MRR* II: 535). He was adopted by the aged Cn. Aufidius (Cic. *Dom.* 35), who thus remedied the loss of his children under tragic circumstances (Kunst [2005] 66). His family of origin has been deduced as the consular family of Aurelius Orestes (Shackleton Bailey [1991] 67). The adopting father apparently had no *cognomen*. The adopter is singled out by Cicero as a model of propriety in resorting to adoption only in extreme old age.

The brother of the historian Velleius Paterculus was Magius Celer Velleianus (Vell. Pat. 2.115.1). He served under Tiberius in Dalmatia, just after the capitulation of Pannonia (AD 8–9). He was apparently adopted by Magius (Celer?) (pr. AD 15 =*PIR*^{2} M 88) (Salomies [1992] 21). He himself was a *candidatus Caesaris* for the praetorship in AD 14 (Vell. Pat. 2.124.4). We must assume that Magius, the adoptive father, if correctly identified by Salomies, was considerably older than Velleius' brother, who became praetor with his historian brother a year earlier. No details of motive or circumstances of this adoption have survived. His adoption is surmised from his nomenclature (Salomies [1992] 15–16).

Corbier gives examples where the adoption becomes an adjunct of *amicitia*. L. Iunius Gallio Annaeanus was originally Annaeus Novatus, Seneca's eldest brother. He was adopted by L. Iunius Gallio, the elder Seneca's senatorial friend (cos. suff. 56; *PIR*^{2} 757), not necessarily a testamentary adoption (Salomies [1992] 24). Iunius Gallio had in fact been exhorted to remarry by Ovid (*Pont*. 4.2) and seems to have preferred the idea of an adoption to solve his *orbitas*. He chose a son of his equestrian friend, the elder Seneca. Many similar arrangements should be expected in a community where late male marriage was in any case the norm; many factors might lead to males choosing to eschew marriage or a new match: these include sterility, a preference for celibacy after becoming a widower, as well as other hazards of life such as extended absences from Rome in the provinces. To this may be added Q. Fabius Maximus, who had acquired his two adopted sons from two different friends with very different results. One line – the descendants of Servilius Caepio – died out after a single generation, the other lasted two hundred years (Corbier [1991b] 73). The last representative was Paullus Fabius Persicus, consul in AD 34 (Syme [1986] stemma XVII).

MULTIPLE ADOPTIONS

In the Empire a well-known letter of Pliny provides quite extensive evidence about adoption amongst the Domitii (*Ep*. 8.18). The letter, which is addressed to Fadius Rufinus, gives an account of the will of Domitius Tullus. The nomenclature of this family is complicated by elements derived from female relatives as well as adoption, so it is fortunate that most of the facts are known (Gardner [1998] 135). The family is worth investigating because it provides rare evidence about a female adoption, as well as a double adoption by one individual.

Domitius Tullus is said to have been prey to legacy hunters but ultimately left his adoptive daughter, who was in fact his brother's child, as heiress (Domitia Lucilla was thus adopted by her paternal uncle). Pliny says that he proved himself better through this will than anyone could have expected. The implication is that a childless man in the position of Tullus could easily be induced to leave his money outside the family; in the event, he not only kept the money within the family by naming his adoptive daughter as heiress but also spread legacies to his grandchildren and great-granddaughter. Pliny quite openly states that his devotion to his family was unexpected.

Pliny pretends impartiality in the matter, and to expose the conflicting views of others. Some complained of Tullus' behaviour as though he were a childless man and thus fair game for *captatores*. In fact he had manifold descendants. Another view was that he had rightly frustrated these *captatores* since Tullus was obliged to leave his money to the adoptive daughter, not merely because of the blood ties, but also because her branch of the family was the source of his wealth. We can see here how closely linked questions of inheritance are with adoptions in Pliny's mind, but also some of the ostensible flexibility which remains in the system for a person such as Tullus when he receives and eventually passes on an inheritance.

The history of the monetary arrangements in this family was that when Curtilius Mancia had taken a dislike to his son-in-law Domitius Lucanus, the brother of Domitius Tullus, he left his money to Lucanus' daughter, Domitia Lucilla, only on condition that she should be freed from her father's control. She was so freed but was then adopted by her paternal uncle. What is interesting here is that Pliny's version of events implies that after emancipation she became briefly a *sui iuris*, and she was then pulled back into the inheritance net by her uncle (Gardner [1998] 105). Pliny gives some further details of this part of the arrangement. It seems to be a plan concocted by the two brothers, who are said to have held their property jointly (Tellegen [1980]; Bannon [1997] 56–60). The result was that the property came back under the control of Lucilla's natural father as a result of the adoption. This use of a *consortium* was rare under the Empire and was employed here to secure enormous resources (Pavis d'Escurac [1978] 280–2). Even a man of Pliny's considerable wealth was impressed by the resources Tullus could command when he controlled the estate (Plin. *Ep.* 8.18.11) (see Figure 10, and Syme's detailed stemma of the Dasumii in *Chiron* 15 (1985) 62).

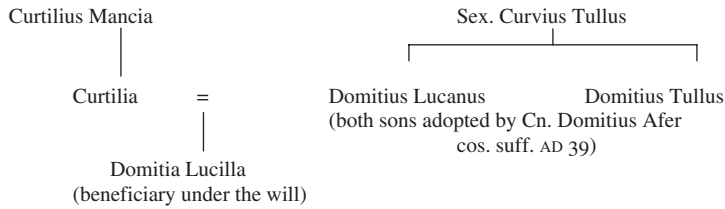


Figure 10 The Domitii

Pliny comments that the two brothers had been lucky with inheritances. They had both been adopted by the orator, Cn. Domitius Afer.[2] It clearly was a full adoption since he is said to have shared the children with their father.[3] The fact that both sons took the *nomen* Domitius tends to confirm this (cf. Salomies [1992] 2). Why he needed both sons is not revealed, but it may have had something to do with the circumstances of the choice of Curvius as the donor (Gardner [1998] 144–5). Both adoptee and adopter seem to come from Narbo (Nemausus), and a *propraetor* in Hispania Ulterior, Sex. Curvius Silvinus, appears to be the grandfather (Wiseman [1971] no. 149, 228; Kunst [2005] 170). We do not know why Curvius gave up his sons – not, apparently, as in the case of Aemilius Paullus, because of a large family and the competing interests of a new wife. There is an ambiguous comment about the intention of Afer's will, which was drawn up eighteen years before his death; he is in the meantime said to have been concerned about the realisation of his intentions in regard to the two men, and for some reason he had procured the confiscation of their natural father's property. Clearly in removing Curvius Tullus from the citizen roll for this purpose, some promotion of the interest of Afer was secured. Nevertheless, there cannot have been an overriding problem with the arrangements under Afer's will, since Afer had the power to disinherit the sons of Curvius, but did not do so (cf. Corbier [1991b] 76). The adoptive sons were allowed to take Afer's inheritance, and subsequently this fell to Lucanus' daughter Domitia Lucilla along with the two brothers' other joint possessions. She in turn must have been born after her father had been adopted by Domitius Afer. The succession to Afer had been achieved through an interesting process: Lucanus made Tullus his sole heir so that all the resources would end up amalgamated. Pliny comments on the unusual feature here; Lucanus had in this way apparently cut out his own daughter from what was clearly the expected pattern of inheritance. It is the ultimate in pragmatism; financial bonds and long term arrangements take precedence over individual expectations at a familial level.

Pliny's view is that the will is more creditable than he expected since it appears to be dictated by natural feelings. Apart from his other bequests to relatives to whom he was indebted, Tullus had made ample provision for his second wife. Again some of the dynamics of that arrangement emerge. She had been criticised for marrying him on a number of grounds, in particular that she had already produced a family, had long had status as a widow and

[2] Not by testament. See Gardner (1998) 129 n. 32 against Saller (1994) 79.
[3] A testamentary adoption was also assumed by Salomies (1992) 7–10.

therefore could have no reputable reason for marrying a wealthy old man who was also an invalid. All of this was cited as disreputable for a woman who previously could boast of her distinguished birth and blameless character (Treggiari [1991b] 97). Her genuine devotion to Tullus as proved by her constant attention to his care was in Pliny's view sufficient to justify the provision made for her under the will.

Domitia's natural father (Domitius Lucanus) turns out to be epigraphically attested. His full name was Cn. Domitius Sex. f. Afer Titius Marcellus Curvius Lucanus (*ILS* 990), which has been said to provide information about the wife of his natural father, Sex. Curvius Tullus – in all likelihood a daughter of a Titius Marcellus (Gardner [1998] 144). Here, despite the adoption, the patronymic from his natural father prevails. The inscription set up in honour of Tullus was acephalous (*ILS* 991), so we do not have a similarly complete nomenclature for him (Salomies [1992] 37–8).

Many of the best-known Roman adoptions fit into the patterns outlined above, and these provided a method for the wealthy to keep estates closely held within the extended family group. The examples given above show that in many cases maternal relatives view the prospect of adopting the available sons and grandsons of descendants as a good solution. In any case, there is close relationship to succession; in families where daughters were numerous and male successors in short supply, the male offspring of daughters were obviously the nearest thing to agnatic successors. In Athens an uncle would marry a niece to secure the fortune of the *epikleros*, but at Rome adoption provided a good solution to the needs of ascendants. The heiress Domitia Lucilla exemplifies this type of adoption by a paternal uncle (Corbier [1991b] 66). As for the paternal line, it seems inherently likely that agnatic descent was regarded as highly desirable, but little is known of the process of adopting to rearrange inheritance within the male lineage. These adoptions appear to be underrepresented in the surviving evidence. Cases where outsiders were chosen are also of some importance in this picture, but again evidence is limited to the few examples given above.

CHAPTER 12

Testamentary adoptions – a review of some known cases

Testamentary adoption[1] seems to be used in situations not significantly different from *inter vivos* cases. The main difference is in the timing. There is still a focus on choosing close kin or close friends. The purpose also remains similar. An elite testator has the capacity to provide his testamentary heir with financial resources and some of the attributes of his social standing, such as his domicile, slaves, freedmen, and political connections, whether in the form of *clientela* or ties to other influential Romans. Those of lesser status would have less to offer, but the situation was generically similar. From the perspective of the parties to a testamentary adoption, there was no need to develop a close personal relationship, but in most cases this probably existed in any case. Relatives could be suspected of being attentive to their childless kin with ulterior motives, as will be seen in the case of Atticus, who thereby secured his maternal uncle's estate.

ADOPTION BY MATERNAL KIN

Maternal relatives are quite prominent as testamentary adopters. In one of the earliest known cases, the maternal grandfather was the adopter. The adoptee was a son of P. Cornelius Scipio Nasica (pr. 93 BC), and his mother, Licinia, was the daughter of the orator L. Licinius Crassus (cos. 95 BC). The orator died in 82 BC, a victim of the Marians, so this must have been the date of the inheritance (Münzer [1999] 255–6; cf. Kunst [2005] 141). Scipio was adopted under the testament of L. Licinius Crassus (Cic. *Brut.* 212) (*RE* Licinius no.76; Schmitthenner [1973] 44; Shackleton Bailey [1991] 77). His supposed name after adoption, L. Licinius Crassus Scipio, is inferential rather than evidential (Shackleton Bailey [1991] 77). The *agnomen* is not attested. He is the brother to another testamentary adoptee, who became

[1] Main lists in Schmitthenner (1973) 44–8 – include only testamentary cases; Shackleton Bailey (1991) 65–98 – includes all probable adoptions from *c.* 140 to *c.* 143; Salomies (1992) 20–51 – Imperial period.

Q. Caecilius Metellus Pius Scipio (cos. 52 BC; Kunst [2005] 143). He was testamentarily adopted by Q. Metellus Pius (cos. 80 BC; Dio 40.51.3). Cicero's *Brutus* reveals that there was a family link here too. The full passage, which reveals quite a pedigree, is worth citing:

212 What, I said, do you think of the son of this Licinia who was adopted under the will of Crassus? [= L. Licinius Crassus]

He is indeed said to have been a man of the supreme intellect, and indeed the other Scipio [= Q. Caecilius Metellus Pius Scipio, cos. 52 BC], my colleague, seems to me to speak very well both publicly and privately.

You hit the mark, I said, for the stock of that man was generated from the root of wisdom itself. For I have already talked of his two grandfathers, Scipio and Crassus, and of three great-grandfathers: Q. Metellus and his four sons; P. Scipio who as a private citizen freed the state from the domination of Tiberius Gracchus; Quintus Scaevola the augur, who was considered extremely skilled in the law and also very affable.

213 Now, of the two great-great grandfathers, how glorious is the name of P. Scipio who was twice consul, who was called Corculum, and of the other, the wisest of the lot, C. Laelius.[2]

The brothers were both beneficiaries under the wills of maternal kin. This passage shows that inheritance could be received from the maternal line even a couple of generations later. Metellus Pius used his adoptive father's filiation after adoption (Cic. *Fam.* 8.8.6: Q. Caecilius Q. f. Fab. Metellus Pius Scipio), and this has been interpreted by Salomies as indicating that the adoption was equivalent to a genuine adoption ([1992] 8–10). Pride in the lineage discussed above might provide a plausible explanation. The case is unusual, however, since testamentary adoptees often retain their original filiation.

Adoption by maternal uncle

The adoption of Atticus is an equestrian example of a testamentary adoption by a maternal relative. Quintus Caecilius was maternal uncle to Atticus,

[2] *Brut.* 212: quid Crassum, inquam, illum censes istius Liciniae filium, Crassi testamento qui fuit adoptatus?

summo iste quidem dicitur ingenio fuisse, inquit; et vero hic Scipio conlega meus mihi sane bene et loqui videtur et dicere.

recte, inquam, iudicas, Brute. etenim istius genus est ex ipsius sapientiae stirpe generatum. nam et de duobus avis iam diximus, Scipione et Crasso, et de tribus proavis, Q. Metello, cuius quattuor filii, P. Scipione, qui ex dominatu Ti. Gracchi privatus in libertatem rem publicam vindicavit, Q. Scaevola augure, qui peritissimus iuris idemque percomis est habitus.

213 iam duorum abavorum quam est inlustre nomen, P. Scipionis qui bis consul fuit, qui est Corculum dictus, alterius omnium sapientissimi, C. Laeli!

and curmudgeonly. Atticus alone could stomach him and continued to cultivate him to extreme old age, according to his biographer. Still, there was compensation. His reward was three-quarters of an enormous estate, amounting to 10 million HS (Nepos, *Att.* 5.2).[3]

A different perspective comes to us from Valerius Maximus. Caecilius owed both rank and fortune to L. Lucullus. Nevertheless, although he gave Lucullus his rings, he adopted Pomponius Atticus and left him as his heir (despite previous repeated statements that he would name Lucullus). Valerius Maximus sees it as a notorious example of perversion of duty, which led to Caecilius' body being dragged through the streets by the Roman mob on the end of a noose (Val. Max. 7.9.1). This extreme reaction is omitted by Nepos, since it does his subject no credit but might suggest that there had been talk of a sexual liaison. Whatever the reality, the case reveals Atticus as something of a successful *captator* and gives an insight into the pressures on the rich childless at Rome.

In a letter of Cicero to Atticus dated 5 November 58 BC Atticus is no longer T. Pomponius Atticus, but now addressed by Cicero as Q. Caecilius Q.f. Pomponianus Atticus, perhaps as a joke. Varro also alludes to a change in name in a piece written in the 40s.[4] Shackleton Bailey cites the case as an example in which the highly personalised *cognomen* is retained (Atticus) in addition to taking the new *praenomen* and modifying the old *nomen* into an additional *cognomen* (Shackleton Bailey [1991] 56). Moreover, his daughter was known as Caecilia Attica and his freedmen were Caecilii (Shackleton Bailey [1991] 68; Salomies [1992] 8). This again is claimed by Salomies as evidence that the adoption had full effect, since he takes the adoptive father's filiation. Salomies also believes that this testamentary adoption had full effect, to explain why Atticus was buried in his uncle's tomb (Nepos, *Att.* 22.4). Another solution is possible. Atticus had acceded to his uncle's wealth under controversial circumstances and felt constrained to underline his genuine affection for the man at every turn.

There is other evidence apart from the case of Atticus that testamentary adoptions were regarded with a certain amount of suspicion. The elder Pliny suggests that M. Valerius Messala Corvinus, consul in 53 BC, composed a work about falsified genealogies in outrage at the Salvittones usurping the name of the Scipios through a testamentary adoption:

[3] Caecilius enim moriens testamento adoptavit eum heredemque fecit ex dodrante: ex qua hereditate accepit circiter centiens sestertium.

[4] Varro, *Rust.* 2.2.2: Atticus, qui tunc T. Pomponius, nunc Q. Caecilius cognomine eodem.

When he had passed through the *atrium* of Scipio Pomponianus, he had perceived the Salvittones – for this had been their *cognomen* – insinuating themselves disgracefully into the name of the Scipios through a testamentary adoption.[5]

This seems simply to be dismay at the idea of a Cornelius Scipio endowed with an *agnomen* Salvitto. What seems certain is that a Pomponius had been adopted by a Scipio. Pliny sees it as a backhanded compliment for the Salvittones to want to usurp the ancestral virtues of the *gens Cornelia*. Shackleton Bailey identifies him as a man on Caesar's staff in Africa in 46 BC. Other sources also harp on the disgrace of a Scipio with such a lowly name (Suet. *Iul.* 59; Plut. *Caes.* 52.5; Dio 42.58.1) (Shackleton Bailey [1991] 73–4; Kunst [1996] 95). This case may imply that a testamentary adoption did not confer an entitlement to employ ancestral *imagines* (Kunst [2005] 60).

Testamentary dispositions could fail for many reasons including attempts to defraud the beneficiaries. L. Minucius Basilus, a wealthy man, had intended that his nephew M. Satrius should bear his name and inherit his property. This seems to be a standard testamentary arrangement. However, certain predatory individuals brought a forged will of Lucius Minucius Basilus from Greece to Rome. In an attempt to cover their tracks and secure the inheritance, the forgers made Crassus and Hortensius joint heirs with themselves. The result of the fraud was that Satrius received nothing except his uncle's name (Cic. *Off.* 3.18.73–4; Cic. *Phil.* 2.41, 107)(Schmitthenner [1973] 45; Shackleton Bailey [1991] 78).

Rabirius Postumus perhaps had different reasons to be interested in adoption by his maternal uncle. His mother, Curtia, was the wife of a leading equestrian *publicanus*, Gaius Curtius (Cic. *Rab. Post.* 2.3), and sister to C. Rabirius. It was this Rabirius who adopted his nephew (*Rab. Post.* 17.45), and it is possible that one aim of this adoption was for the son to attempt to escape the reputation of his father, who had been tried on a capital charge (17.47–8) (Schmitthenner [1973] 46; Shackleton Bailey [1991] 82). However, the identification has been doubted by White (White [1995] 154–60; Konrad [1996] 106).

As already noted, testamentary adoptees could use their adoptive father's *praenomen* and *nomen* – sometimes also his *cognomen* and any additional names – but generally continued to use the filiation and tribe of the natural father, thus remaining members of their original agnatic family. Mommsen

[5] Pliny, *HN* 35.8: cum Scipionis Pomponiani transisset atrium vidissetque adoptione testamentaria Salvittones – hoc enim fuerat cognomen – Africanorum dedecori inrepentes Scipionum nomini.

noted that the younger Pliny referred to his natural father Lucius in his filiation (Mommsen [1906] 397). This confirms that his adoption was testamentary. His natural father was L. Caecilius C.f. Ouf. Secundus. The full name of the younger Pliny after adoption is attested in many inscriptions (Sherwin-White [1965] 732f.). What is not certain is whether a testamentary adoptee could refer to his adoptive father in his filiation, but it seems likely that this was optional (cf. Salomies [1992] 8–10). Perhaps it was more normal in cases where the natural father was deceased. Pliny does refer to his adoption, calling the equestrian elder Pliny his father by adoption (Plin. *Ep*. 5.8.5), but does not hint that the adoption was testamentary, as it must have been (Salomies [1992] 15). Salomies notes that the terminology used in relation to adoption is in no way revealing; this may indicate that for Pliny the important thing was to have been made his heir; he takes on his uncle's name and might have been a willing participant in an *inter vivos* adoption.

ADOPTION OF WOMEN

Augustus adopted his wife in his will. She was born Livia Drusilla, but under the adoption entered the Julian family and became Iulia Augusta. The procedure was only possible once the emperor was dead, and most of the emphasis is on bearing imperial nomenclature (Tac. *Ann*. 1.8: *Livia in familiam Iuliam nomenque … adsumebatur* (Livia was taken into the Julian family and Julian name); Suet. *Aug*. 101.2: *instituit … Liviam ex parte tertia … et ferre nomen suum iussit* (he instituted … Livia to a third of his estate … and ordered her to employ his name)). It is noteworthy that something very similar was required of Tiberius. He had been adrogated in AD 4, but the requirement to bear the name is part of Augustus' will (Suet. *Aug*. 101.2: … *instituit … Tiberium … ex parte dimidia et sextante … et ferre nomen suum iussit* (he instituted … Tiberius … to two thirds of his estate … and ordered him to bear his name); Dio 57.2.1; 57.8.1). He now transformed from Ti. Iulius Caesar to Ti. Iulius Caesar (Augustus). In the case of both Livia and Tiberius, these moves were more about dynastic image than about adoption (as noted by Corbier [1995] 186). Tiberius' already unassailable claim to the succession was thus buttressed.

ADOPTION BY WOMEN

Two female adopters show evidence of the substantial difference between testamentary cases and those conducted *inter vivos*. Since *inter vivos*

adoptions involved undergoing *patria potestas*, adoption by females was not possible. The strategy of using the testamentary procedure may have been popular amongst women of status as a means of continuing the family name, as well as conferring benefits on preferred family members or others deemed suitable.

Under the will of a certain Livia – probably a descendant of the Livii Drusi – Dolabella was to get one-third of the estate with two co-heirs but was to be required to change his name (Cic. *Att*. 7.8: the date was December 50 BC). Cicero debates whether it is right from a political perspective for a noble scion to change his name under a lady's will. The size of the fortune (he says archly) will help the decision. He does not expect the estate to amount to much. This seems to be a testamentary adoption, but it could be interpreted as a testamentary condition. As Syme points out, there is no sign that Dolabella ever complied with the condition (Mommsen [1906] 399; Syme [1988a] 159). Later Dolabella was adopted into a plebeian family to advance his political career, but the case is not related (Shackleton Bailey [1991] 72).

If Livia was a daughter of the tribune of 91 BC, her father's estate had presumably been largely taken up by M. Livius Drusus Claudianus, the father of Livia Augusta. He had been the son of a Claudius Pulcher before adoption by the tribune (Shackleton Bailey [1991] 77). This was probably an *inter vivos* adoption, but nothing is known of the circumstances. Nevertheless there has been much speculation over this, as well as over whom he in turn adopted (Weinrib [1967] 247–78).

The other testamentary case involving a woman is dealt with below, under the category of adoption by a stepmother, the case of Galba and Livia Ocellina.

ADOPTION BY STEPMOTHER

The adoption of Galba is of interest: he was testamentarily adopted by his stepmother, Livia Ocellina; according to Suetonius he took her name and the surname Ocella, and changed his *praenomen* from Servius to Lucius until he became emperor (Suet. *Galba* 4). His full name after adoption is to be found on the *Fasti Ostienses* as L. Livius Ocella Sulpicius Galba. He was consul in AD 33. This is a clear application of the *condicio nominis ferendi*. The case is of interest because it runs counter to the traditional image of the stepmother working against the interests of her husband's existing family (Gray-Fow [1988b]; Noy [1991]).

ADOPTION BY STEPFATHER

Voconius Romanus was a friend of Pliny who came from Saguntum. He had already received a gift of 4 million sesterces from his mother, which was to enable him to rise to senatorial rank once Trajan concurred. The arrangement had already been mooted under Nerva, but his mother had failed to complete the documentation (Plin. *Ep*. 10.4). According to Pliny he had been adopted by his stepfather (*Ep*. 2.13.4: his father was of distinguished equestrian rank, his stepfather more so, rather a second father – for he succeeded to his name because of his *pietas*; *Ep*. 10.4.4: his *pietas* earned him his inheritance from his father and adoption by his stepfather).[6] This seems to be a testamentary case (Salomies [1992] 33–4). It was, however, possible for a stepfather in the role of *tutor* to adopt his stepson during his lifetime (*Dig*. 1.7.32.1; see Y. Thomas [1982] 558; Kunst [2005] 146). His full adoptive name appears in an inscription as C. Licinius C.f. Gal. Marinus Voconius Romanus (*CIL* 2.3866). It thus appears that the stepfather was called C. Licinius Marinus, and the filiation recorded may be his own (Salomies [1992] 33).

Kunst suggests that the praetorian prefect L. Seius Strabo also adopted a stepson, as well as providing for the adoption of his natural son, the Tiberian prefect, by another (possibly Aelius Gallus). The suggestion is that L. Seius Tubero (cos. suff. AD 18) was a son of Seius Strabo's first wife, Iunia Blaesa, deriving from an earlier marriage to Q. Aelius Tubero. Seius Strabo thus adopted his stepson, which explains the mixed nomenclature (Kunst [2005] 145). This is an attractive suggestion, but other solutions are possible (Lindsay [2003] 273–6).

ADOPTION BY FAMILY FRIENDS (*EXTRANEI*)

As far as we can tell, there is no family relationship between D. Iunius Brutus and his adoptive father; on the basis of the resulting nomenclature (= D. Iunius Brutus Albinus) he has been thought to have been testamentarily adopted by an A. Postumius Albinus (cos. 99 BC), or by a younger Postumius. The likelihood is that Albinus was a family friend. It is generally agreed that his natural father was D. Iunius Brutus (cos. 77 BC; Shackleton Bailey [1991] 76). Although he does employ the name Albinus, he is commonly identified in Latin sources as D. Brutus.

[6] *Ep*. 2.13.4: pater ei in equestri gradu clarus, clarior vitricus, immo pater alius – nam huic nomini pietate successit; *Ep*. 10.4.4: pietas, quae … patris hereditatem et adoptionem a vitrico meruit.

Tiberius appears to have wanted to avoid the reputation of the testator in the case of his testamentary adoption by M. Gallius (Suet. *Tib.* 6.3). Gallius appears to be the brother to the praetor Q. Gallius, put to death by Augustus on suspicion of making an attempt on his life in 43 BC (Suet. *Aug.* 27; Appian, *BC iv* 3.95).

Tiberius, who was born in 42 BC as Ti. Claudius Nero, took the inheritance (*adita hereditate*), but soon abandoned the name (*mox nomine abstinuit*). This was probably some time after his father's return to Italy in 39, when either his father or his guardian accepted on his behalf (Shackleton Bailey [1991] 59). The implication of the Suetonian passage is that the name was initially assumed. Tiberius was not obviously closely related to Gallius, who was an Antonian, and may be supposed a friend of Tiberius' father (Appian, BC *iv* 3.95).

USURPING STATUS

C. Aelius Paetus Staienus, quaestor in 77 BC, is criticised by Cicero for taking on the Aelian name. It is not clear whether or not he has in fact been adopted (Shackleton Bailey [1991] 60 n. 12; 65). It is possible that he was adopted by an Aelius, but he attempted to raise his status by assuming a *cognomen* current amongst the consular Aelii. Cicero describes him as follows:

> A man who had adopted himself and from a Staienus had created an Aelius.[7]

Another Ciceronian passage is a little more revealing:

> He had chosen for himself this *cognomen* from the *imagines* of the Aelii.[8]

This seems to show that Staienus had been adopted by an Aelius but had the presumption to assume a particularly distinguished *cognomen*. He may in fact have been entitled to *nomen* Aelius: what concerned Cicero was the *cognomen*. The case could be testamentary, but the circumstances are far too uncertain to confirm this.

It is useful to interrogate the sources over reasons why particular testators at the end of their lives needed to find an heir to their estates and their name. Testamentary adoptions seem to show a trend towards keeping relatives guessing up to the end, and an increasing fashion for the testamentary adoption in the early Imperial period has been detected. Examples are

[7] Cic. *Brut.* 241: qui se ipse adoptaverat et de Staieno Aelium fecerat.
[8] Cic. *Clu.* 26.72: … (Paetus) – hoc … sibi Staienus cognomen ex imaginibus Aeliorum delegerat.

already showing up in the late Republic, not least the example of Octavian as successor to Caesar. Cases such as that of Atticus, where the adoptive father's *praenomen* and filiation has been accepted, may be seen as showing either individual variations or a concern to replicate as closely as possible the habits already entrenched for *inter vivos* cases. This may explain Cicero's precision in his congratulatory letter to Atticus. What has often been observed is that cases where the adoptee has retained either the filiation or the tribe with which he was born cannot be true adoptions. These are convincing evidence of a testamentary adoption.

CHAPTER 13

Political adoptions in the Republic

Already in Republican Rome adoption came to be used not merely to shore up deficits in family make-up, but also as a means of alliance for elite families – one of a number of strategies which emerged to cement and provide continuity for those families. Only in a relatively small number of cases has anything like enough evidence survived for us to piece together the motives and consequences of such adoptions (Corbier [1991b]). Some scholars have thought that these so-called political adoptions were generically different from those conducted in less significant families, where the custom did no more than provide a childless male with an heir.

Debate also arose amongst jurists during the nineteenth century about apparent differences between imperial adoptions and the theoretical familial situations envisaged in legal sources. The question of whether imperial adoptions were in fact fictitious adoptions arose. Did imperial adoptions simply use existing procedures to achieve unconventional ends? If so the aim might be to provide a kind of proclamation of the succession to the throne. The main result of an imperial adoption was to make the heir apparent a true member of the family. In the third century AD this method of designating a successor was abandoned and letters patent would designate the successor to the throne and give him the title of Caesar. Until that time, it can be seen that the hereditary principle was at least notionally observed.

All subsequent discussion of imperial adoptions has been affected by this idea of *adoptio regia*, even though its original formulation has now been abandoned. Firstly, it is mistaken to see the adoption and the concession of the *nomen Caesaris* as assimilated acts. Certainly attribution of the *nomen Caesaris* could be one of the effects of adoption until the time of Hadrian, but thereafter it was completely detached. It became the official method of designating the successor. Nevertheless adoption continued to be practised by the emperors, as first noted by Mommsen. Mommsen thought that the unusual trappings of imperial adoptions were a consequence of the absolute power of the prince, but that the basis was essentially the same as in private

law. Von Ihering and Mommsen joined in stating the existence of a new act which can be separated in most of its consequences from the primitive form. The fundamental question remains: why choose adoption as a method of proposing a successor? The agnatic principle is seen as crucial by Mommsen, and, if it is not there, it is replicated by adoption. In other words it promotes the hereditary ideal (Prévost [1949] 11–16).

In the case of adoptions in the late Republican period, which appear to have political ramifications, and the adoption of imperial successors, it has to be asked whether the political component does make the position different from what can be termed a 'family deficit adoption'. Let us review some of the purposes inherent in the process.

In cases where political interests are enhanced by links between competitive families within the elite, this can undoubtedly be seen as an aim of the adoption. It is precisely within the elite that the destination of property in cases of childlessness will become crucial, and there will be interest in inheritance of the social position of the adopter as well as of his chattels. The adopter aims to find and identify an individual to fill his position in the social hierarchy after he is gone. It amounts to an attempt to control both chattels and personal position in the next generation. The identification of a natural son as heir is quite comparable. Adoption provides an alternative to the hereditary approach, which enables the adopter to choose his successor.

One consular family which achieved continuity over a long timescale has been investigated in detail by M. Dondin-Payre. The Acilii Glabriones remained powerful for something like five hundred years, and their individual members can be tracked from the third century BC to the fifth century AD. She notes that when a grand family takes in a more humble adoptee, the presumption must be that the motive for an adoptee who is *sui iuris* is an inheritance, both financial and political, and that on the other hand the adopter must view this procedure as poor substitute (*pis aller*) for a natural son, despite the adoptee's equivalent legal status. Still, this was a good exchange for the parties to the transaction: notwithstanding, she can only find traces of two adoptions in four and a half centuries, and these are based on onomastic arguments rather than firmer criteria. However, M. Acilius Memmius Glabrio, a *curator riparum et alvei Tiberis* under Tiberius (*CIL* 6.31543 = *ILS* 5893; *PIR*^{2} A 75), was a Memmius who could trace his pedigree back to his great-grandfather Sulla and was thus related to the Acilii Glabriones through Sulla's fourth wife, Caecilia Metella. His adoptive father is thought to be M. Acilius Glabrio, consul in 33 BC (Dondin-Payre [1993] 163–9).

When we move to the imperial family the hereditary ideal is a significant determinant. Many of the adoptions amount to sanction by a predecessor of his successor, and often this need is a direct product of childlessness. Although the actual inheritance of the financial position of the predecessor may be less significant than inheritance of his position, the two notions are totally intertwined. The imperial household and its hierarchies will be part of the wealth bestowed by an emperor on his successor. The Julio-Claudian family exhibits endogamous tendencies and uses adoption to promote preferred heirs within the lineage (Corbier [1994]; [1995]).

CHANGES OF STATUS FOR POLITICAL PURPOSES

Some allowance will have to be made for adoptions not serving any of the purposes envisaged by the lawmakers. I am thinking here of the adoption of Clodius – one totally divorced from the notion of inheritance. Clodius and Fonteius never envisaged the arrangement lasting long enough for Clodius to become his heir. The adoption was merely intended to provide Clodius with the plebeian status he required for the development of his political position. Once it was achieved, Fonteius emancipated him. Cases of this sort clearly can and should be described as fictitious adoptions (see Chapter 14).

There had been examples of this sort of behaviour during the second century BC. It is not obvious in every case that a substantial political benefit was secured. One of the earliest known adoptions is the adoption of a son of the plebeian Q. Fulvius Flaccus into the patrician family of the Manlii Acidini, but as we have seen, this was probably not primarily politically motivated (Chapter 11 above; Gardner [1998] 142). We can also note the adoption by the plebeian Livii Drusi of a patrician Aemilius. This is witnessed by the presence in the Capitoline Fasti of a consul in 147 BC, C. Livius M. Aemiliani filius M. (n. D)rusus. Prévost speculates that the father of this man was adopted to become M. Livius Aemilianus and was related to L. Aemilius Paullus, consul in 219 BC (*RE* Aemilius no. 118), perhaps his son. This Paullus died at Cannae, and Prévost suggests that the son was adopted by an M. Livius Salinator (Prévost [1949] 23; Gardner [1998] 142). The circumstances are totally lost to us. Likewise a further obscure case of adoption of a patrician by a plebeian is that of D. Iunius Silanus Manlianus, praetor in Macedonia in 141 BC (Münzer [1999] 318; Gardner [1998] 142). His natural father was M. Manlius Torquatus, with whom he had a notorious dispute, resulting in his own suicide (Prévost [1949] 22).

The integration of patricians and plebeians was far advanced by this stage, and these alliances are only described as political at a stretch.

An example from the late Republic with political ramifications, but probably not politically inspired, is that of P. Cornelius Lentulus Spinther. He was a son of P. Cornelius Lentulus Spinther, consul in 57 BC. He was adopted in 57 BC by a Manlius Torquatus in order to make him eligible for a place in the College of Augurs in that year. This was not allowed to contain two members of the same *gens* (Dio 39.17.2). The name was never used, and his official style is found some years later as P. Lentulus P.f. (Shackleton Bailey [1991] 73; Kunst [1996] 90).

Again possibly not a political adoption is the case involving Theophanes of Mytilene (cf. Kunst [2005] 159–61). He was granted citizenship by Pompey, whose agent he was. Before 56 BC he adopted Balbus of Gades, who became a senator (for his role at Gades see Strabo 3.5.3 = C169; discussed by des Boscs-Plateaux [1994]). As a Roman citizen, Theophanes took on the style Cn. Pompeius Theophanes. Nevertheless it took time for Theophanes' family to rise to senatorial status. Theophanes' son, Marcus Pompeius,[1] was made procurator of Asia by Augustus, according to Strabo (13.2.3 = C617–618). In the next generation Q. Pompeius Macer, praetor in AD 15, made the family senatorial. In contrast L. Cornelius Balbus (cos. suff. 40 BC) had become a Roman citizen in 72 BC under the influence of Pompey, together with his brother Publius, the father of the younger Balbus.[2] Although he was adopted by Theophanes (Cic. *Balb*. 57; *Att*. 7.7.6), he later shifted allegiance to Caesar. There is no sign that he ever took his adoptive father's name: he never takes the *nomen* Pompeius. There is, however, a reference in the *Historia Augusta*'s life of Balbinus to an ascendant called 'Balbus Cornelius Theofanes' (*Hist. Aug*., *Maximus and Balbinus* 7.3), and this may show that the adoption was testamentary, possibly alluded to in the passage in the *Pro Balbo*:

> His adoption also by Theophanes was severely criticised; but by it Cornelius gathered nothing but the right to inherit the property of his own relatives (Cic. *Balb*. 57).[3]

What this obscure passage means has been debated, but it may imply that an inheritance was expected but not forthcoming, or that because of

[1] He may in fact be Theophanes' grandson. See Wiseman (1971) 24; 252 no. 330. Earlier discussion in Pflaum [1960–1] 1.11–13. The *praenomen* is disputed. See *PIR*² P 625.

[2] See Wiseman (1971) 226 no. 138.

[3] Et adoptatio Theophani agitata est, per quam Cornelius nihil est praeterquam propinquorum suorum hereditates adsecutus.

intermarriage between the two families there was no net financial advantage for the Balbi. There is also a letter to Atticus of 50 BC (Cic. *Att.* 7.7.6). Here the adoption of a man of Gades by a man of Mytilene is listed as an improper Caesarian concession. Shackleton Bailey thinks that the conservative Cicero views the case as a departure from the legitimate use of adoption. Adoption should, in his view, do more than merely continue the father's line. Both Theophanes and Balbus were extremely rich. Cicero does not like adoption as means of providing inheritance on its own – something which the fashion for testamentary adoptions suggests was becoming increasingly common (Shackleton Bailey [1991] 71–2). The emerging flexibility had also annoyed Cicero in the case of Clodius, as we shall see.

A few years later, in 48 BC, P. Cornelius Dolabella, Cicero's son-in-law, was adopted by a plebeian Cornelius Lentulus, to provide access to the tribunate (Dio 42.29.1). In the aftermath of Clodius, Cicero can hardly have been thrilled. Apparently there was no permanent name change although Dolabella's son is called Lentulus (Shackleton Bailey [1991] 72; Kunst [1996] 90; [2005] 156).

The overall picture is complex, and it is often hard to separate Roman adoptions into precise categories. Succession was nearly always a consequence. Some adoptions operated at more than one level and conveyed both property and position. In the late Republic the cases of Clodius and Octavian exemplified the most blatantly political motives. In the case of Clodius, there was no intention of creating a lasting bond between the parties: the aims were overtly political. In the case of Octavian, the prize was a closer relationship with Caesar, which helped to consolidate the claim to his troops and *clientela*, and ultimately to imperial power.

CHAPTER 14

Clodius and his adoption

In the period after the Bona Dea scandal, during 60 BC in particular, Clodius engaged in a sustained effort to encompass a change from patrician to plebeian status, with the tribunate in his sights. A transition of this sort undoubtedly was possible, but both available mechanisms had certain complications, which are far from clear today. Eventually Clodius achieved his goal of becoming plebeian not through the procedure of *transitio ad plebem*, but through a form of adoption, the *adrogatio*.

BACKGROUND ON *TRANSITIO AD PLEBEM*

It is unfortunate that our best evidence about *transitio* involves Clodius himself, and his attempt to employ it was unsuccessful. Some consideration of other known cases of *transitio ad plebem* is required (cf. Smith [2006] 213).

The *transitio ad plebem* was used either by individuals or *gente*s to enable them to qualify specifically for the tribunate or to widen their eligibility for office (Botsford [1909] 162). The earliest attested cases are highly contentious and may reflect events of the late Republic rather than their ostensible timeframe. Suetonius says that the Octavii were raised to the patriciate by Servius Tullius but subsequently transferred back to plebeian status, until Octavian's father, an equestrian from Velitrae (modern Velletri), was given patrician status once more by Julius Caesar. This seems to be a reflection of the process of faking genealogy, a fiction linking the previously obscure municipal family to the origins of the city (Suet. *Aug.* 2.1; Carter [1982] 91). Faking of this sort had some currency, as Cicero himself comments in another context (Cic. *Brut.* 62; Wiseman [1974]).

As tribune in 439 BC Minucius had a major role in crushing the aspirations of Sp. Maelius, a rich equestrian corn dealer who hoped for political domination through his control of the corn supply. According to Livy, Minucius was said by some writers to have transferred from the patricians to the plebeians (Livy 4.16.3). Ogilvie places Livy's account of Minucius on a

par with the passage about the Octavii but points out that the Minucii did have a high profile in the early *fasti*, and perhaps they did subsequently undergo a *transitio* (Ogilvie [1965] 457; 551). Livy rejects this *transitio*, as Tatum points out, simply on the grounds of the anomaly of Minucius' presence as an eleventh tribune (Tatum [1999] 92).

Feig Vishnia has recently discussed the case of C. Servilius Geminus, a plebeian aedile in 209 BC (Feig Vishnia [1996] 289–98). Some interest is created by the fact that Servilius Geminus is the earliest attested case of a patrician who went over to the plebs.[1] According to Mommsen his *transitio* was illegal since it was conducted without *patrum auctoritas*. Livy had claimed that the problem was rather different – that Geminus should not be able to hold plebeian positions while he still had a father who was alive and entitled to sit in a curule chair.[2] In 203 BC, some six years after Geminus held the plebeian aedileship in 209 BC, it emerged that his father, who had been presumed dead since 212 BC, was in fact alive; he had been a land commissioner amongst the Boii, was taken captive in 212 BC, and eventually reappeared in 203 BC. Feig Vishnia suggests that an adoption was the means used for the son's *transitio ad plebem* and became necessary after the presumed death of his father, and that a disgraced adoptive father led to resumption of the pre-adoptive name. This can only be described as an interesting hypothesis, since it cannot be proved on the available evidence. In none of the above cases does the actual mechanism used to achieve the *transitio* emerge. There is some evidence to suggest that the details of the procedure were far from well known in the late Republic. Three cases are known or suspected at the end of the Republic, namely those of P. Sulpicius Rufus, Clodius and Dolabella.

ACCOUNTS OF THE MANOEUVRES OF CLODIUS

Modern approaches have placed a strong emphasis on the independent political line taken by Clodius. He should not be seen simply as a pawn used by powerful individuals such as Caesar and Pompey. In an anti-optimate reaction after his trial, Clodius first became interested in securing the tribunate in 60 BC, but he could not gain the necessary support from the powerful for a *transitio ad plebem* (Gruen [1966] 122; Tatum [1999] 95–6; Smith [2006] 213). A year later Caesar became prepared to support him,

[1] Note however that at Livy 6.20.3 Appius Claudius is identified as the first patrician to desert the patricians in favour of the plebeians (*quod primus a patribus ad plebem defecisset*). There may be some doubt whether this is a reference to a *transitio* or merely to a change of political perspective.

[2] Livy 30.19.9; cf. Livy 27.21.10 with Feig Vishnia (1996) 289.

apparently as a foil to Cicero, after the orator's speech defending C. Antonius in March of 59 BC (Dio 38.9–11); Clodius convinced Caesar that Cicero was aiming a direct attack on the triumvirate. Within three hours Caesar now sanctioned his adoption under an *adrogatio* by a plebeian and thus made him eligible for the tribunate in 58 BC.[3] This was done with the connivance of Pompey, who served in his role as augur at the ceremony.[4] This version of affairs may suggest that the whole notion of employing the *adrogatio* to effect the change of status was an afterthought, when the legality of his acts in 60 BC had fallen into question. Alternatively, the adoption had already been mooted, and application to the *comitia curiata* was the main omission on the first occasion.

The events are treated by Dio, whose comments on the politics of the situation have been cast into doubt, especially by Tatum ([1999] 99–102). Dio outlines how he claims Clodius gradually secured support for his attempt at the tribunate. On his first attempt in 60 BC he met with various impediments. Clodius' motivation was said to be his hatred for the *optimates* as a group after his trial, and this led to his desire for the tribunate. An interesting detail is that he tried initially to lobby ex-tribunes to vote for patrician access to the tribunate. Tatum rejects this as totally unthinkable ([1999] 100), but it may be worth reconsidering. After this attempt failed, he tried to effect a transition to plebeian status: he foreswore his patrician status and even entered the plebeian assembly; there has been debate over whether Dio is thinking of the *concilium plebis*. Cicero, who is a political player at the time of these events, talks of a tribune for 60 BC, C. Herennius, presenting resolutions – presumably repeated attempts to pass a bill transferring Clodius to the plebs – in the Campus Martius (Cic. *Att.* 1.18.4). The date is 20 January 60 BC. Botsford denies that this is to a meeting of the *comitia centuriata*, relying on Cicero's reference to the *universus populus*, and suggests this was a meeting of the people organised into tribes: the *comitia tributa* (Botsford [1909] 162 n. 8). Lily Ross Taylor on the other hand thinks the *universus populus* could have been gathered in the centuriate assembly (Taylor [1966] 61). Botsford imagines that this process, if successful, would have enabled Clodius to retain his name, his *sacra* and other privileges not dependent on the patriciate (Botsford [1909] 162). Dio claims that this first attempt at the tribunate was blocked by Metellus, a relative who was opposed to Clodius' actions.[5] Nevertheless he

[3] Cic. *Dom.* 16.41; Suet. *Iul.* 20; Dio 38.10.4; 38.12.1–2.

[4] Cic. *Att.* 2.9.1; 2.12.1; 8.3.3; Dio 38.12.1–3.

[5] See also Cic. *Har. resp.* 21.45. Cicero implies that Clodius' action was illegal, but this does not mean that Metellus, in opposing it, shared this belief.

must have promulgated a *rogatio* for Clodius; perhaps only token support for his relative. Cicero actually says that the proposals were defeated by tribunician intercessions (Cic. *Att.* 1.19.5: *frequenter interceditur*), which might suggest that the real reason for failure had more to do with general political opposition. It was claimed that the transfer of Clodius had not been completed in accordance with tradition, since (according to Dio) the change could only be brought about through the introduction of a *lex curiata* (Dio 37.51.1 (60 BC)). It seems likely that it is only Dio's assumption that a *lex curiata* was required to effect a *transitio ad plebem*, but of course if this was a traditional requirement it might also explain the strength of the opposition that Clodius met. Perhaps it was not just in the time of Dio that the procedure for a *transitio* was obscure – the difficulties that Clodius had could be explained if Clodius was simply trying some novel procedure without precedent. Tatum suggests that Dio's muddle covers an attempt by Clodius to have himself co-opted as tribune (Tatum [1999] 100–1).

Dio also deals with the successful transfer. Subsequently Caesar cooperated with Clodius because he wanted to damage Cicero.[6] Therefore he transferred him with Pompey's cooperation to plebeian status for a second time, and immediately appointed him tribune (Dio 38.12.1ff. (59 BC)). Dio does not discuss or detail the procedures by which the transfer or election was realised. We have to turn to Cicero in the *De domo sua* for details. Aulus Gellius is also useful on procedures of adoption.

Taking the latter first, Aulus Gellius (*NA* 5.19), who talks about the mechanism of *adrogatio*, not the case of Clodius himself, says that when persons who are *sui iuris* deliver themselves into another's family and are given the relationship of children, this is done through the people. There must be an investigation (*nec inexplorate committuntur*). He describes a process by which the *comitia curiata* is summoned under the authority of the pontiffs: it is enquired whether the age of the one wishing to adopt is not rather suited to begetting children of his own; precautions are taken that the property of the one being adopted is not being sought under false pretences; and an oath formulated by Q. Mucius is administered in the following terms:

Will you request and command that Lucius Valerius should be son to Lucius Titius as justly and lawfully as if he had been born of that father and the mother of that man's

[6] Suetonius provides some further detail on Caesar's motives: emphasis is on a dislike of Cicero's constant harping on the theme of decline when pleading in court; therefore Caesar suddenly transferred his support to approve of Clodius' application for a change from patrician to plebeian status; it was now passed at the close of business for the day (Suet. *Iul.* 20.4). See also Appian, BC *iv* 2.14, where Caesar's motive is said to have been to counter Cicero's diatribes on the monarchical tendencies of the triumvirate.

family, and that he should have power of life and death over him, as a father has over his son. I request this, Romans, of you, just as I have pronounced. (*NA* 5.19.9)

It is unlikely that the members of the assembly thought that Fonteius, the adopter of Clodius, required an adoptive son on grounds of age or incapacity, and it would also be hard to imagine his exercising *patria potestas* over his charge. It is therefore reasonable to assume that the adoption was approved on political grounds, and much of Cicero's comment is simply the venting of frustration at the ignored guidelines. His point of view is that the adoption has not followed protocol and is not valid. He wants to show that the adoption is illegal to buttress his claim that the tribunate was illegal, and that Clodius' consecration of the site of his house to *libertas* was an illegal act because that tribunate was illegal (Vernacchia [1959] 197–200; Salvadore [1992] 284–5).

Clodius had himself adrogated by Fonteius and was immediately emancipated (Cic. *Dom.* 13.35; 29.77).[7] Cicero's principal claim is that the adoption is nullified by the fraudulent motives that inspired it.[8] He outlines what he claims are the accepted conditions under which an adoption is sanctioned. It actually creates fictitious filiation to replace natural filiation. He claims that the fundamental requirement is that the adopter cannot now procreate and when he was capable he made the attempt. The adoption of Clodius fails this test:

What is the law of adoption, pontiffs? Obviously that a man may adopt who cannot presently beget children and when he could has made the attempt. So the reason for someone to adopt, the rationale in terms of family and prestige, and the *sacra* of the family, these are the matters customarily investigated by the college of pontiffs. Which of these was investigated in that adoption of yours? A twenty year old or even less adopts a senator. For children? But he is capable of procreation. He has a wife; he will get children by her; in this way by adoption the father will disinherit his own son. Why? Are the *sacra* of the Clodian family to perish, in so far as they can?[9]

Cicero says that he does not consider the adoption to have fulfilled the requirements of pontifical law because of the ages of the participants, nor to

[7] Discussed by Gardner (1998) 104; 111. [8] Russo Ruggeri (1990a) 102ff.

[9] Cic. *Dom.* 13.34: quod est, pontifices, ius adoptionis? nempe ut is adoptet, qui neque procreare iam liberos possit et, cum potuerit, sit expertus. quae deinde causa cuique sit adoptionis, quae ratio generum ac dignitatis, quae sacrorum quaeri a pontificum collegio solet. quid est horum in ista adoptione quaesitum? adoptat annos viginti natus, etiam minor senatorem. liberorumne causa? at procreare potest. habet uxorem, suscipiet ex ea liberos. exheredabit igitur pater filium. quid? sacra Clodiae gentis cur intereunt quod in te est?

have fulfilled the requirement that the reason for the adoption should be looked into and that it should not diminish the *dignitas* of the families or religion. Finally, that there should be no *fraus*:

> I speak in the presence of the pontiffs: I deny that that adoption of yours was conducted under pontifical law: firstly, because your ages are such that the man who has adopted you could have been with respect to age in the role of a son to you or in that relationship in which he was; furthermore, because the reason for the adoption is customarily sought both so that he who adopts may seek through legal process and pontifical law what he is unable to accomplish naturally, and so that he may adopt in such a way that there may be no diminution either of the prestige of the families or of the sanctity of the *sacra*; above all, so that no sham, no fraud or trickery may be countenanced and so that this simulation, the adoption of a son, may seem to have copied as closely as possible that reality of bringing up children.[10]

There is an insinuation that a sexual relationship between Clodius and Fonteius lay behind the liaison. Although Cicero was keen to argue that the change of status had been achieved illegally, contemporaries actually rejected this approach. In *De domo sua* he is forced to admit that the Pontifical College sanctioned the adoption (*Dom*. 13.35). Moreover, a passage from Plutarch reveals that although Cicero claimed that Clodius had never legally been a tribune (relying presumably on the fact that he had never been a plebeian and thus eligible for office), Cato had strongly countered this contention on the grounds that he had through due legal process been transferred from patrician to plebeian (Plut. *Cat. Min*. 33).

Cicero elsewhere makes extravagant claims about the impact the adoption of Clodius would have on his family (*Har. resp*. 27.57: *iste parentum nomen, sacra, memoriam, gentem Fonteiano nomine obruit* (through the name of Fonteius he trampled on the name, the *sacra*, the memory, and the clan of his parents)).

The ideals Cicero adumbrates were not strictly adhered to. Kunst has described the whole process as a farce (Kunst [1996] 91). The actual investigation of the circumstances of candidates for adoption must in most cases

[10] Cic. *Dom*. 14.36: dico apud pontifices: nego istam adoptionem pontificio iure esse factum. primum quod eae vestrae sint aetates, ut is, qui te adoptavit, vel filii tibi loco per aetatem esse potuerit vel eo, quo fuit. deinde quod causa quaeri solet adoptandi, ut et is adoptet, qui, quod natura iam adsequi non potest, legitimo et pontificio iure quaerat, et ita adoptet, ut ne quid aut de dignitate generum aut de sacrorum religione minuatur. illud in primis, ne qua calumnia, ne qua fraus, ne quis dolus adhibeatur, ut haec simulata adoptio filii quam maxime veritatem illam suscipiendorum liberorum imitata esse videatur.

have been rather token. Otherwise it is hard to explain how the circumstances referred to by Tacitus under AD 62 could have arisen:

> A debased custom had become widespread at that time. When elections were close at hand, or the distribution of provinces, many childless individuals would adopt children under fictitious adoptions and, having obtained by lot praetorships and provinces along with real fathers, would immediately emancipate those they had adopted … [parents] approached the Senate with great indignation, and recited natural rights, and the burdens of an upbringing as against deception and trickery and a brief adoption. For the childless, it was enough return that they should obtain much without worries, influence, distinctions, everything at hand and available with no problems. For themselves, long awaited promises of laws had been turned into an object of derision when a so-called parent without a parent's anxiety or a childless person without the sorrow of loss might instantly be the equal of the endless prayers of true parents. Thereupon, a decree of the Senate was passed that a so-called adoption should not assist in any aspect public duty and should not be advantageous through the capacity to take possession of inheritances.[11]

This passage has puzzled commentators because of its apparent statement that individuals were given exemptions under the *ius trium liberorum* for adoptive children. Gardner suggests that they were able to claim adoptees as *iusti liberi* through specious reasoning – on the grounds that they were children under *potestas* (Gardner [1998] 50). Whether or not this is so, the cases show that the pontifical inquiry into the motives for adoption was not conducted with anything like the rigour demanded by Cicero in the case of Clodius. Incidentally, it also shows that adoptions were regarded more than a little ambiguously: potentially adoption, whether fictitious or otherwise, was a method of avoiding parental cares and responsibilities (cf. Kunst [2005] 63).

Cicero viewed the adoption of Clodius with a baleful eye partly because of his own political stance and the flagrant use of a traditional institution to achieve short-term political goals, and partly because he saw himself as a steadfast enforcer of the letter of the law. He had strict ideas about the duty of members of the pontifical college to uphold standards, and he believed that adrogations were essentially sent to the *comitia curiata* to safeguard

[11] Tac. *Ann.* 15.19: percrebruerat ea tempestate pravus mos, cum propinquis comitiis aut sorte provinciarum plerique orbi fictis adoptionibus adsciscerent filios, praeturasque provincias inter patres sortiti statim emitterent manu quos adoptaverant … magna cum invidia senatum adeunt, ius naturae, labores educandi adversus fraudem et artes et brevitatem adoptionis enumerant. satis pretii esse orbis quod multa securitate, nullis oneribus gratiam honores cuncta prompta et obvia haberent. sibi promissa legum diu expectata in ludibrium verti, quando quis sine sollicitudine parens, sine luctu orbus longa patrum vota repente adaequaret. factum ex eo senatus consultum ne simulata adoptio in ulla parte muneris publici iuvaret ac ne usurpandis quidem hereditatibus prodesset.

public interests against selfish private issues. He regarded the process as totally subverted by the intrusion of political machinations.

The case of Clodius may be an important indication of changes that were occurring in Roman society in the late Republic. The blatant use of *adrogatio* to achieve political ends was a sign of things to come. It was followed within a few years by the case of Octavian, and at the same time the popularity of testamentary adoptions seems to have been growing.

CHAPTER 15

The adoption of Octavian

The adoption of Octavian has in the past been considered controversial, but today there is something approaching consensus. Recent studies have suggested that the abnormal political circumstances can explain how an individual who was adopted under Caesar's will nevertheless underwent *adrogatio* (Schmitthenner [1973]; Kunst [1996] 93–104; Gardner [1998] 128–9). Dispute has previously been based on whether it was possible to encompass an *adrogatio* posthumously. Normally an *adrogatio* required the presence of the parties, and Octavian's case requires an explanation of how this condition was avoided or subverted.

Some Romanists have assimilated primitive wills to adrogation. This approach has behind it assumptions about the need for testators somehow to cater for continuity of the family in the absence of heirs of their own blood. By the time of the late Republic and early Empire, a will bequeathing an estate to someone who was not an automatic heir on intestacy (a *suus heres*) need not contain any obligation to continue the family or to take on the name. Nevertheless, use of the so-called testamentary adoption can be seen as an attempt to create obligations of this type, and this has been used to justify the interpretation that Caesar's will authorised an adrogation. The poor attestation of testamentary adoptions creates problems, because Octavian's undergoing testamentary adoption by Julius Caesar is our only detailed case. Appian, supplemented by Dio Cassius and Suetonius, provides the basis for a legal reconstruction, but some misgivings have been felt about the exactitude with which literary authors have employed legal terminology. Appian in particular seems to have a poor appreciation of Roman law. The overwhelming problem is that Octavian represents a special case accompanied by extraordinary circumstances, and this makes it difficult to use the case to identify general procedures for testamentary adoptions, which are dealt with elsewhere in this volume (see Chapter 5; see also Prévost [1949] 30; Lemosse [1953] 372).

Caesar's will indirectly had the practical effect of creating between testator and heir a new filiation, in due course consecrated by a *lex curiata*. Was this ever intended by Caesar? If this was a totally legitimate procedure, then it indicates a relationship between Roman wills and adrogation. Girard followed Mommsen in claiming that the public declaration by the adrogator in a standard *adrogatio* was replaced in the testamentary cases (not simply the case of Octavian, but all testamentary cases) by the written testamentary declaration (Girard [1929] 190).

Lemosse argues that there are insurmountable legal arguments against the idea that the testamentary adoption in itself gave Octavian the status of an *adoptatus* (Lemosse [1953] 374–5). A will only takes effect on the decease of the testator. This makes it difficult for Octavian to become an adoptive son as a result of posthumous volition. Until he accepts the succession, he has nothing. Clearly Caesar could have no certainty that Octavian would succeed him. This is proved by the institution of substitute heirs – if these had come into play there never would have been an adoption. Thus entry into the family only occurs and begins when succession is accepted. Since everything depends on voluntary entry into the inheritance, the adoption is quite remote.

The legal problem with wills entailed further complications, highlighted by Gaius (*Inst*. 2.138):

> If someone after making his will has adopted a son … the will is totally undermined as if by a new agnatic heir.[1]

The text adds that it is of no importance that the adoptee should be instituted in the will (Gaius, *Inst*. 2.140).

Regardless of all this, the revolutionary period of the civil wars was a period when ancient traditions were under challenge. Political developments were central: for the first time political power was to be transmitted through the existence of a family tie. This had never been possible under the Republic, since public offices were not hereditary. Octavian was fighting to obtain a political foothold, and a *lex curiata* would consolidate what he had obtained under Caesar's will. Lemosse also suggests that Octavian gained from the testamentary adoption the right to the *cognomen* Caesar, which he started using immediately (App. *BCiv*. 3.11; Dio 45.3), but could only legitimately take on the *gentilicium* after the *lex curiata*. Thus he did not become a Iulius until September 43 BC (Lemosse [1953] 386–9). With this

[1] Si quis post factum testamentum adoptaverit sibi filium … omni modo testamentum eius rumpitur quasi agnatione sui heredis.

entitlement he gained the rights to which children were entitled: heir to the name, the *sacra* and the *familia* (Livy 45.40: *nominis, sacrorum familiaeque heredes*). *Sacra privata* fall to whoever is heir or gains the largest segment of the patrimony, as a result of a rule under pontifical law (Cic. *Leg.* 2.20.49). Whether Octavian was truly adopted or merely heir is immaterial from this perspective. What changed after the *lex curiata* was his entitlement to *sacra gentilicia* (cf. App. *BC iv* 3.11 – the only source to mention this aspect, although Appian seems to assimilate it to an adrogation).

BACKGROUND

Octavian was heir under Caesar's will of 13 September 45 BC (Suet. *Caes.* 83.1). It was not his first will. Octavian was to be heir to three-quarters of the estate, and to take his name under adoption (Nicolaus, *Life of Augustus* 17.48; App. *BCiv.* 2.143; Dio 44.35.2.3). Apparently wrongly, Livy (or his epitomator) thought Octavian received only half the estate (Livy, *Per.* 116). All the sources agree that he was not sole heir (Cic. *Att.* 14.10.3 (19 April 44 BC)). Octavian was in fact the grandson of Caesar's younger sister, Iulia (Kunst [2005] 138). His co-heirs, who received the remaining quarter of the estate, were Q. Pedius and L. Pinarius, descendants of different husbands of Caesar's elder sister (Plin. *HN* 35.21; Suet. *Caes.* 83.2), thought to be a son and grandson respectively. This will was written after his return from Spain at his villa at Lavicum, and it was entrusted to the chief Vestal. It included a provision adopting Octavian *in familiam nomenque* (Suet. *Iul.* 83.1), if Suetonius reports the document correctly. The terminology is vague and untechnical, and it is used elsewhere by Suetonius to describe full adoptions as well as testamentary cases. The will specified an exclusion clause covering the possibility of the birth of a future male heir to Caesar between the date of the will and his death. According to Dio, on the Ides of March 44 BC Octavian still did not know either of his institution as heir, or of the testamentary adoption (Dio 45.3.1). We can only surmise what Octavian expected from Caesar and make deductions from his actions. On hearing of the murder, he crossed from Apollonia, and he received an official copy of the will at Brundisium, after first landing further up the coast at Lupiae (Appian, *BCiv.* 3.11; Dio 45.3.1).

When Caesar was murdered on the Ides of March in 44 BC, the standing of young Gaius Octavius was far less substantial than subsequent events might suggest. It is essential to notice that Octavian might not have been a *suus heres* but rather an *extraneus heres*. This means that he had a choice whether or not to take up the inheritance (*adire hereditatem*). The

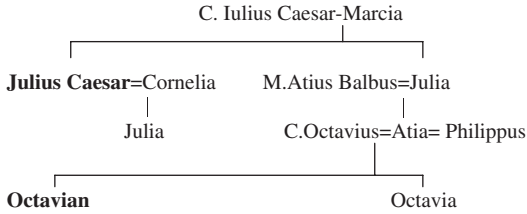


Figure 11 Octavian and Caesar

inheritance would in such a case be taken on by a set form of words (*cretio*) or by an unequivocal act (*pro herede gestio*) (Nicolas [1976] 238–9).

Octavian's actual relationship to Caesar should be kept in mind – he was in fact his great-nephew – that is, the son of the daughter of Caesar's younger sister (Figure 11). There is considerable emphasis in the sources on the role of advisers in determining whether he was to take up the inheritance. His stepfather, Philippus, is said to have advised caution and a private life at Rome (Gray-Fow [1988a] 184–97). The fullest account is provided by Nicolaus (*Life of Augustus* 18.52–4). Suetonius says he only entered upon the inheritance after doubts – both his own and those of his mother, Atia, and his stepfather (Suet. *Aug.* 8). The concerns of the stepfather no doubt reflected those of his mother but in any case show that Octavian was under no compulsion to take on the role of Caesar's heir. Velleius talks of widespread support for Octavian immediately on reports of Caesar's death reaching Apollonia, including support from centurions of neighbouring legions, as well as from Salvidienus Rufus and Agrippa (Vell. Pat. 2.59).

Appian has a full account and even explains some of the activities in which the young Octavian was engaged at Apollonia (App. *BCiv.* 3.9ff.). He was receiving military training so that he would be ready to assist Caesar on his military expeditions. He was set the task of drilling troops of horse sent to him from Macedonia. It is also stated that certain army officers were in this way becoming acquainted with him, and building a rapport. Octavian had been there for six months. Caesar's murder was announced to him, and Appian purports to know the conflicting emotions by which Octavian was overcome.

He is said to have had diverse advice from friends (App. *BCiv.* 3.10). Some of his military acquaintances were advising him to go and join the army in Macedonia and ultimately take revenge for Caesar; on the other hand, his mother and his stepfather, Philippus, wrote and advised caution

and a life away from politics, in view of the experience of Caesar, and urged him to return to Rome. Octavian did in fact head for Italy, and Appian seems to assume that this was because he was following the advice of Philippus and Octavia. His actions however belie this: he crossed not to Brundisium, but to Lupiae, to avoid meeting with Caesar's veterans, and to put out feelers.

Next he learnt of public grief and received copies of Caesar's will, as well as copies of the decrees passed by the Senate. His relatives were still more concerned now that he was revealed as Caesar's testamentarily adopted son and heir (App. *BCiv*. 3.11). Hitherto he apparently did not know of his standing under Caesar's will, although his actions suggest that he was expecting some level of recognition.[2] Appian says that he was told to renounce both the adoption and the inheritance but was concerned that this would be shameful (presumably Appian's own assumption or that of his source). After careful probing he went to Brundisium, where he was received as Caesar's son and immediately assumed the name of Caesar. Appian does not clarify whether this was an approach that he himself fostered or promoted. Subsequent history leads to an assumption of Octavian's precocity and initiative. He took full advantage of his new status since he not only took on the name of his adoptive father but went so far as to change his patronymic. Thus he styled himself as Caesar son of Caesar rather than Octavius son of Octavius.

There are important issues in this business of nomenclature. The adoption was testamentary and, since this only involved the condition of taking the testator's name (*condicio nominis ferendi*), the taking of the patronymic was hardly normal (see Chapter 5). It is well known that the tribe normally did not change under these adoptions, and thus tribe can assist in differentiating testamentary cases from true adoptions. Caesar and Octavian were not enrolled in the same tribe.[3] By birth Octavian belonged to Scaptia, and Caesar was a member of Fabia (cf. Suet. *Aug*. 40.2). After the *lex curiata* Octavian was to claim membership of Fabia.

[2] Compare Dio 45. 3.1 for a similar version: when he first heard of the murder of Caesar this was not accompanied by knowledge of his own status as heir; when he was told of the will on return to Brundisium, he immediately started on the politicisation of his position. Thus he immediately assumed the name of Caesar and took possession of the estate.

[3] A passage in Nicolaus' *Life of Augustus* seems to imply that Caesar had adopted Octavian when he was still alive, but it must be mistaken (8.17–18). It is quite impossible to reconcile Nicolaus with the other sources, especially Appian, and even Nicolaus himself subsequently identifies the adoption as testamentary (13.30). The aim is probably merely to underline the closeness of the relationship forged between Caesar and the young Octavian.

On arrival in the vicinity of Rome, his mother and stepfather are said to have been concerned about the way in which Caesar's memory was being treated – especially the decree that his murderers were not to be punished – but Octavian insisted that he could handle Antony through deferential behaviour. Once again Appian claims to know about thinking to which he cannot have been privy. However, it may be that at this point Octavian claimed publicly that to reject the inheritance would be false to Caesar. Some theatrical and rhetorical embellishments appear in Appian's narrative, suggesting that Octavian emphasised Caesar as a father rather than as a friend (App. *BCiv*. 3.13).

His mother is then said to have come round to supporting him as alone worthy of Caesar. His first overt action was to arrive at the Forum in the early morning and present himself to the *praetor urbanus*, C. Antonius, brother of Antony. He told him that he accepted the adoption by Caesar. The reason for this move is said to have been because adoptions were confirmed by witnesses before the praetors. Appian seems to have this wrong on several grounds. A testamentary adoption in itself is unlikely to have required this procedure. Moreover, Octavian as *sui iuris* could not have a formal adoption confirmed by the praetor. The requirements for an *adrogatio* were clear – an investigation by the pontiffs followed by a *lex curiata*. Octavian appears to have been engaged in the process of formal acceptance of his status as heir under Caesar's will (Lemosse [1953] 381; Schmitthenner [1973] 50; Kunst [1996] 100). According to Appian, public scribes took down the details (App. *BCiv*. 3.14). Appian relays a speech that he claims Octavian gave on arrival at Antony's house, which includes a remarkable statement about Antony's relationship with Caesar: Caesar (he claims) would have adopted Antony had Antony been prepared to exchange kinship with the family of Hercules for kinship with the family of Aeneas (App. *BCiv*. 3.16). Apart from asking Antony to take a different approach to political matters, especially the tyrannicides, Octavian is there to ask for Caesar's cash resources, which apparently had been moved to Antony's house after the murder (App. *BCiv*. 3.17). Antony's response is said to have involved explaining some of the facts of political life to Octavian – the difficulties which would have been created had he (Antony) conducted matters otherwise than he did. He interprets Octavian as needling him over the fact that he was not mentioned in the will (App. *BCiv*. 3.19). As far as the monies are concerned, Antony claims that the fortune has largely been dissipated but in any case should be subject to public investigation (App. *BCiv*. 3.20). The Senate voted for an investigation of public accounts, but Octavian proceeded to offer for sale property, and Appian highlights

apprehension ('most people', *hoi polloi*) especially lest Antony and Octavian should coalesce. Lawsuits were then brought against Octavian and also against his co-heirs, Pinarius and Pedius, until they intervened with Antony.

All this provides a cohesive narrative but clearly cannot be accepted uncritically. Appian is poor on Roman procedures, both legal and political, and has taken the main lines of interpretation unquestioned from his sources, and he presents the confrontation in a highly rhetorical style.

The next phase arises when Octavian enters his first consulate, quite some time later – over a year – on 19 August 43 BC (EJ, p. 50). Konrad has emphasised the irregular ratification of the adrogation immediately after the highly controversial circumstances of his accession to the consulship (Konrad [1996] 126–7). His election as consul was with Pedius as colleague; Pedius gave up his entitlement to the inheritance to Octavian (App. *BCiv*. 3.94). Octavian offered sacrifice (inaugurating his consulate), twelve well-omened vultures were seen – a link with Romulus – and this moment (i.e. when he was in control of affairs) was chosen for a further ratification of his adoption by *lex curiata*. He had been pushing Antony for a *lex curiata* in order to ratify his entry into the *gens Iulia*, to legalise his position as Caesar's son. Appian says that this was the form of adoption most commonly employed in the case of the fatherless; this is a reference to persons who were *sui iuris*, and who were adopted under an *adrogatio*. In Appian's eyes this gave Octavian additional privileges: he would have the same rights as a real son in respect of Caesar's relatives and freedmen; this was especially important because of the large number of freedmen in the *familia* of Caesar. Important implications flow from this; a testamentarily adopted son might not have access to the freedmen merely through the fact of being an heir (Lemosse [1953] 387–95). Clearly Appian thought that there was a political advantage in this act, and he implies that there was some irregularity. Dio has a different approach (Dio 45.5.3ff.). The irregular behaviour is transferred from Octavian to Antony, who stands in the way of the proposal of the *lex curiata* by which Octavian was to be transferred into Caesar's family. Antony claimed to be doing his best to have it passed but was in fact employing tribunes to secure its postponement. Antony hoped to keep him from the property and generally to weaken his political situation. Florus also adopts this approach (Florus 2.15): Antony was trying to destroy his inheritance by embezzlement and hinder his adoption into the Julio-Claudian family. He claims that Antony was jealous of the preferment of Octavian.[4] Both authorities seem to be under the influence of the 'official'

[4] Suetonius claims that Antony cited *stuprum* with Caesar as the reason for the adoption (Suet. *Aug*. 68).

line propagated by Octavian and his supporters. Either way it seems that the adoptive relationship had immense political importance for both parties.

The sources – and especially the Greek sources such as Appian – had some difficulty in understanding the legal implications of these events. Even Suetonius appears to be mistaken in assuming that Octavian had gained from his inheritance the right not just to the name Caesar, but also of entry into his family (Suet. *Iul.* 82.3). The view from the second century AD of the political events during the transition from Republic to Empire was that Octavian was Caesar's heir, above all a political heritage. There was consequently some blurring of the familial issues, and the process by which Octavian became a Julian. As Syme showed in *The Roman Revolution* (1939), Octavian was master in moulding public opinion.

Octavian's adoption was thus an immensely important symbolic and political event (Prévost [1949] 49–54; [1950]). What Octavian wanted was an appearance of continuity with the past. This operated at several levels. He wanted to be seen as heir to Caesar and the military resources of Caesar. He had already begun to develop his relationship with the military at Apollonia. As far as Caesar's political life was concerned, following directly in his footsteps might have been less important: in the event Octavian had to find his own way forward. He needed Caesar's political supporters, especially militarily. Caesar's financial resources as outlined in his will must have been very considerable. It is far from clear whether Octavian ever managed to get hold of these: but the role of Caesar's heir was sufficient compensation, and it guaranteed financial as well as political backing.

CHAPTER 16

Political adoption in the early Empire at Rome, Pompeii and Ostia; the imperial family

THE EARLY EMPIRE AT ROME

Elite adoption can be said to involve similar issues in both late Republic and early Empire. Politics and inheritance were paramount. Regardless of status, Romans were concerned about continuity of family traditions, broadly interpreted. In the senatorial class, focus was on individual and group success in the *cursus honorum* and on the bundle of activities which resulted in individual *honor*. Military success and its public acknowledgement formed part of this, especially in the period of Rome's greatest growth. Inheritance of wealth was also a key issue. Particular items of real property closely associated with elite success may have been in some cases tied to social and political identity. These questions of sentiment and control might have encouraged adoption as a tool to foster continuity. Admittedly properties were also often freely acquired and disposed of, as can be seen from the case of Cicero (E. Rawson [1976] 85–102). The concept of ancestral properties in the manner of the British aristocracy appears little developed, but this may simply be a gap in our evidence. However, Crook plausibly suggests that the power derived from inheritance was largely the power to alienate property and determine succession to the capital wrapped up in it (Crook [1986] 58).

Demographic factors conspired to make linear succession a relatively difficult prospect. In the case of the childless, adoption provided a method to continue a tradition under threat. The choice of relatives as subjects for adoption – or at least candidates of comparable status – was an obvious expedient to obtain an individual in sympathy with the ideals of the group. The case of the Scipios shows that children were shared around to give each branch of the family the best possible chance of achieving stability and predictability of succession (Dixon [1999] 221–2). These arrangements did not always turn out as intended. In that case Aemilius Paullus, the donor, although generating four male heirs, ended up at his death with his two surviving sons adopted into other families.

There are relatively few passages in Roman literature that go into the expectations of adoption from the point of view of the adoptee (Russo Ruggeri [1990a] 141–3). Since Roman adoptions do not involve persons of vastly different status, the change in circumstances might be relatively slight.

When Quintilian's sons died, he wrote a heartfelt tribute in the preface to Book 6 of the *Institutio Oratoria*. Their ages were five and nine respectively. Their mother had predeceased them at the age of eighteen (*Inst.* 6 pr. 4). In this tribute he talks of the importance of the elder son as his sole hope for his old age. This is naturally also a major consideration for adopters (Kunst [2005] 53). Significantly Quintilian regards his child as an important adjunct to his own status, and the reason for writing his handbook. At age nine the son is already claimed to show great promise intellectually. It is all the more surprising therefore to discover that the child has recently been adopted by a consular, and that his future status as son-in-law to a praetorian uncle is anticipated:

> (Have I lost you) when you have moved closer to expectations of every distinction through your recent adoption by a consular, destined to be son-in-law to a praetorian uncle …[1]

The adopter is unknown, so too the praetorian uncle. Another close relative is possible, but far from certain, since Quintilian started his life at Calagurris in Spain. At the time of death, the son is apparently still in direct contact with his natal family; if our information on adoptees were more complete, this might emerge as a common arrangement in which the adopter shares the responsibility for the child's upbringing (cf. Kunst [2005] 77). Since the mother predeceased the children, Quintilian would have been more than usually dependent on the customary carers, who included at least in this instance the grandmother (B. Rawson [2003] 233). Quintilian regards the adoption as one of the benefits he has been able to negotiate for his son, a benefit which is consolidated by the arrangement of a marriage at the same enhanced social level. He on his own account was something of a social climber: in about AD 90, after being appointed *tutor* to the Flavian heirs, the grandsons of Domitian's sister (*Inst.* 4 pr. 1), he was granted *ornamenta consularia* by Domitian (Ausonius, *Grat. act.* 10.7.204). This award gave him senatorial status, and at the time provoked some malicious comment about the advancement of mere teachers (Jones [1992] 48). Quintilian's

[1] Quint. *Inst.* 6 pr. 13: tene consulari nuper adoptione ad omnium spes honorum propius admotum, te avunculo praetori generum destinatum …

Spanish origin was also a factor both in his ambition for recognition, and in the suspicion with which this was met.

At the time of the adoption (*c.* AD 90), Quintilian was a man of about fifty-five (born AD 35). He himself tells us that when composing the *Institutio Oratoria* he was concerned about his own life expectancy, and he never anticipated losing his wife and sons (*Inst.* 6 pr. 1–4). This fear of personal mortality could provide an additional motive for allowing his son to be adopted. Apart from status, his son would thus be endowed with an additional mentor and sponsor.

Russo Ruggeri comments that provincials such as the Senecas, Martial and Quintilian were part of a group newly emerging in the early Empire with ambitions reflected in their social attitudes and habits. For them adoption was one way of improving status, as Seneca states explicitly in the *Controversiae* when he describes adoption as a corrective to one's fortune (Sen. *Controv.* 2.1.17: *remedium fortunae*) (Russo Ruggeri [1990a] 139–43). The close connection with succession is apparent.

The main difference in the Empire was the amount at stake. Senatorial adoptions are still important, but no longer in the limelight, and their political significance was altered by the distribution of imperial patronage. Attention thus turned to the imperial family. However, adoption within the imperial family was not much about property. Initially, under Augustus, there might have been some pretence of mere domestic arrangements as of old – a *paterfamilias* seeing to arrangements about inheritance while still alive. No doubt few contemporaries were taken in. It was soon apparent that imperial adoptions had greater significance. Under the Julio-Claudians sufficient immediate family members were in evidence for an appearance of domestic arrangements to be maintained. After the death of the last Julio-Claudian, Nero, adoption came to be used as a method of designation, and the political aspect of these adoptions swamped other considerations.

ADOPTIONS AT POMPEII

It has been thought that adoption was a significant tool employed in the service of the amalgamation of the plebeian and patrician aristocracy at Rome. Notables from Latin cities also combined with other families as part of a similar process on arrival at Rome.

In Campania the nature of the population of Pompeii and its elite has been a matter of debate in recent years. Andreau in a review of the situation points out the advances represented by Castrén's study (1983), as compared especially with the fixed view of Pompeian society provided

by M. L. Gordon (1927) (Andreau [1978]). Recourse to adoption appears to have been commonplace in this community, and many magistrates seem to originate from families from outside Pompeii (Castrén [1983] 25ff.; 85ff.). Dispute has been over the status of the outsiders and details of how the process worked (Mouritsen [1988] 117–24). There has also been the question of whether adoptions were a method used to enable individuals of freedman status to take part in municipal administration (Łoś [1987]; [1992]; D'Arms [1988] 61).

Russo Ruggeri follows a long-established view that the circumstances of the Sullan occupation in 89 BC through to the colonisation in 80 BC created an environment where the magisterial careers in the *ordo decurionum* were reserved for Romans and Roman colonists. Access remained in their hands in the aftermath until 49 BC when locals who had been on the proscribed list could return to politics (Russo Ruggeri [1990a] 95–6). Entry to the *ordo* of Pompeii was considered difficult in the Ciceronian period (Macrob. *Sat*. 2.3). A close relationship to an existing family was one way to gain access to the inner circle. It might be expected that the established families would gradually integrate outsiders through adoption when their own line failed.

Castrén raises some real difficulties and comes to the conclusion that the adopters were the incomers (Castrén [1983] 93; 99–100; Russo Ruggeri [1990a] 97). The case of the Maccii illustrates this. There is a sepuchral monument of L. Maccius Papi f. and his wife Spellia Ovi f. The *praenomina* of the previous generation here exhibited are Sabellian, so clearly they are not Pompeians. Their son was P. Maccius L.f. and he married a daughter of a more important *gens*, Epidia A.f. Their tombstone was put up by two *heredes*, apparently adopted sons, P. Maccius Mamianus Fubzanus and P. Maccius Velasianus. These sons were from families already belonging to the *ordo*, Mamius and Velasius. Another magistrate was P. Maccius P. f. Melas, who is considered by Castrén to be a relative (Castrén [1983] 93). The case leads to speculation about the motives of the established families in accepting the adoptive arrangement. Financial arrangements of some sort seem almost certain.

In Pompeian adoptions, Andreau notes examples both of the use of the original *gentilicium* as an adjective in -anus and of the use of the original *gentilicium* as an additional surname. He also provides two examples where the son of an adoptee abandons parts of his nomenclature. Thus we have M. Alleius Luccius Libella, quinquennial *duovir* in AD 25–6, whose son is called M. Alleius Libella (*CIL* 10.1036), and, rather later, the son of D. Lucretius Satrius Valens becomes D. Lucretius Valens (*CIL* 4.7992; 7995) (Andreau

[1974] 135–6). The problem here is that abbreviated forms of nomenclature might already have been employed by the father.

Franklin assumes that D. Lucretius Satrius Valens, a *flamen* of Nero as crown prince (between AD 50 and 54), was a Pompeian born Satrius Valens, adopted by a D. Lucretius. He identifies the father with the attested M. Satrius Valens (*CIL* 4.7556; 7564; 7620), and he assumes that the son started life with the same name. The adopting father must then be D. Lucretius Valens, aedile in AD 34. Interestingly the adoptee seems already to have children (*CIL* 4.7454) (Franklin [1979] 410–14).

The case of Alleius is of further interest because M. Alleius Luccius Libella had as his wife Alleia Decimilla (*CIL* 10.1036). The explanation of the shared *nomen* seems to be an adoption by the father-in-law (Castrén [1983] 133; Franklin [2001] 50). In this case the abbreviation of the name that Libella brought into the family in the next generation was understandable. The Allei also had a Neronian exponent, Cn. Alleius Nigidius Maius, who rose to the quinquennial duovirate in AD 55–6 (Franklin [1997] 437; [2001] 91–7). He was a Nigidius by birth and adopted by an Alleius, and his prominence has led to repeated interest in his career (Van Buren [1947]; Moeller [1975]). Not much is known of his pedigree, although an M. Nigidius Vaccula presented bronze furniture to the Forum and the Stabian Baths (*CIL* 10.818; 8071.48). The name of the member of the Allei who adopted him is beyond recovery (Franklin [1997] 436–7).

At an earlier phase in the life of the city the Lucretii had also employed adoption, as can be discerned from the nomenclature of M. Lucretius Decidianus Rufus, *quinquennalis*, *pontifex* and *tribunus militum a populo* (*CIL* 10.788–9; 815; 851; 952–4). The role of *tribunus militum a populo* was created in the Augustan age and is an indication of the eminence of this man who was only slightly less influential than M. Holconius Rufus (D'Arms [1988] 56–8; Franklin [1998] 78). This man is the earliest known Lucretius at Pompeii. He was born a Decidius Rufus and was adopted by an otherwise unknown M. Lucretius (Castrén [1983]162; Franklin [1998] 77). He seems to exemplify adoption by a family needing an heir through failure of their line. As Franklin points out, early mortality and partible inheritance must have made this a frequent recourse (Saller [1991] 26; Franklin [2001] 199).

An L. Obellius Lucretianus had been aedile in AD 1 (*CIL* 10.891). He is identified by Franklin as a relative of Lucretius Decidianus Rufus. He is claimed to be a Lucretius adopted by the first Obellius known at Pompeii (Castrén [1983] 198). After the earthquake in AD 62 there emerges a Decidius Pilonius Rufus. The nomenclature has been thought to enshrine an attempt to honour Decidius Rufus and his family of origin; I cannot agree that this

was a way of claiming relationship with the *gens Lucretia* (Franklin [1998] 78). He should in theory be a Pilonius Rufus adopted by a Decidius, but evidence is insufficient.

M. Holconius Gellius (Cellius), *duovir* in AD 22, has nomenclature which could reflect an adoption, but in this case Franklin suggests that the maternal line is being celebrated. The reason is the attestation of an L. Cellius as *tribunus militum a populo*, like M. Holconius Rufus. Franklin suggests that in the next generation a Cellia married M. Holconius Celer, and their offspring bore the amalgamated nomenclature (Franklin [2001] 22–3).

In total at Pompeii there are more than twenty names known which appear to reveal adoption. As Andreau points out, these all seem to be municipal magistrates or candidates for magistracies; two whose status is uncertain are likely to share this distinction (Andreau [1974] 137). When these were first noticed it was thought by Gordon that they represented cases where the adopter lacked an heir and engaged in adoption to perpetuate his name (M. L. Gordon [1927] 176). As Andreau points out, this fails to explain the exclusive use of adoption amongst the *ordo*, and that some *gentes* adopted several people all of whom became magistrates (thus M. Lucretius Manlianus, magistrate in AD 32; M. Lucretius Epidius Flaccus, *praefectus* in AD 34) (Andreau [1974] 176). Franklin concludes that families such as the Allei and Lucretii did suffer from failing bloodlines and viewed adoption as an opportunity to incorporate genuine talent, often choosing fully fledged adults (Franklin [2001] 199). The picture could be more complex. Certain families are observed to disappear over time, and this could be caused by adoption, financial decline, or shortage of male heirs, amongst other processes (Franklin [2001] 201–3). Some of the nomenclature may, as at Rome, reflect celebration of maternal ancestry. The evidence cited above shows the fragility of the reconstructions, and how hypotheses proliferate in the presence of scanty evidence.

OSTIA

At Ostia the problem is very similar to that at Pompeii. Quite a large number of individuals in the epigraphic record seem to reveal adoption in their complex nomenclature, often because it includes more than one *nomen*. Many of these are members of the governing class. Questions have arisen regarding the extent to which the elite have been integrated with the freedman class (Mouritsen [2004]).

Tribe is recorded in more than fifty Ostian inscriptions, and this is one of the tools which can be used in an analysis of social fabric. The tribe Voturia

is especially associated with Ostia, and its members include local magistrates. The other tribe heavily represented at Ostia is Palatina, and they seem to be of lower status, and to designate freedman origin (Meiggs [1973] 190–1). Even so, there are examples of some of the oldest families known at Ostia exhibiting individuals with the tribe Palatina, and these seem to be people of freedman descent who have infiltrated the old families by one means or another but have not inherited the more distinguished tribal indicator, Voturia.

Greek *cognomina* as well as other foreign names are recognised as a generally reliable indicator of ex-slave origins, and there are also some freedmen who continued to employ Greek *cognomina* (Mouritsen [2004] 283–4). In his review of Heinzelmann's study Mouritsen has shown that freedman status was common at Ostia, and that a large number of those commemorated in the necropolis of imperial Ostia had connections with freedmen in the very recent past (Heinzelmann [2000]; Mouritsen [2004] 286–7). It is important to appreciate this as a vagary of the commemorative record and to note that few monuments from the first century AD have survived. This has been seen as the ousting of the old families by newcomers, but this model has been criticised by Mouritsen in his 2001 study (Mouritsen [2001] 30–5). He doubts the 'social revolution' and sees this analysis as involving a very literal use of the epigraphic record.

Typical of the type of problem posed at Ostia is the case of C. Cartilius Poplicola, a distinguished figure in Augustan Ostia, who was eight times *duovir*, and whose tomb survives outside Porta Marina. No descendant was known, but Cartilius Sabinus emerged as a result of a restoration of inscriptional fragments in the 1960s (*AE* 1968.80). He was *patronus coloniae* and *omnibus honoribus functus*, thus clearly a *duovir*, and he dates from the Flavian period or early second century (Meiggs [1973] 584–5; D'Arms [1976] 390–1). However, his membership of the tribe Palatina suggests that he might not in fact have been a linear descendant or adoptee into the family, but rather a descendant of a freedman of the family. The record is simply too scanty to confirm this.

L. Fabricius Caesennius Gallus was an Ostian notable buried at Isola Sacra (Thylander [1952] A50a = *CIL* 14.354 = Helttula [2007] no. 5). He was an equestrian, *omnibus honoribus functus*. In addition to holding all Ostian offices, he was *pontifex Laurentis Lavinatis*. His double nomenclature may come from his two parents, but it is considered more probable by D'Arms that he was born L. (?) Caesennius Gallus and was adopted by a L. Fabricius (D'Arms [1976] 392). There is a possibility that he was related to the consular family of Caesennius Gallus, although he too exhibits the tribe

Palatina, and freedman stock is more likely. His career raises the possibility that the consular family had interests at Ostia, and that he is another example of successful advance from freedman to equestrian status (D'Arms [1976] 393).

Other Ostian adoptions seem to follow a comparable pattern. M. Acilius A.f. Vot. Priscus Egrilius Parianus appears to be the adopted son of M. Acilius Priscus, who held three military equestrian posts in the Flavian period. In this case the adoptee is from an old Ostian family, the Egrilii, who supplied at least three consuls in the second century, and his career included service in the provinces before his local career at Ostia (Meiggs [1973] 197–8). The Lucilii Gamalae were not so distinguished and remained confined to honours at Ostia, where they were very prominent. The earliest exponent of the family, commemorated in *CIL* 14.375, and often accorded an Augustan date (Salomies (2002) 157 n. 123; Panciera [2004]), is apparently a contemporary of Cicero and Caesar (Zevi [2004] 64–5; Cébeillac-Gervasoni [2004] 75–81). However, in the Flavian period or a little later, there appears Cn. Sentius Lucilius Gamala Clodianus, who seems to be a member of the family adopted by Cn. Sentius Felix; the adoptive father can be considered a man who, like some of the Pompeian examples, was of a lesser status (Felix is a common *cognomen* in freedman circles), and probably from Atina (*CIL* 14.377; 14.409; 6.2722; Meiggs [1973] 199–200). C. Domitius L.f. Pal. Fabius Hermogenes was a late second-century decurion. This man was a Roman knight and a *scriba aedilicius* at Rome and his natural father was a freedman, L. Fabius Spurii f. Eutychus. He seems to have undergone an adoption by a C. Domitius, but the circumstances and the identity of the adopter are elusive (Meiggs [1973] 513; D'Arms [1976] 400–1). Overall, the range of uses in which adoption is employed at Ostia seems similar to at Pompeii. Some of these may have been political.

THE JULIO-CLAUDIAN FAMILY

Recent discussion of the Julio-Claudian family has placed much emphasis on endogamy (Y. Thomas [1980]; Corbier [1994]; [1995]). Undoubtedly, dynastic interests resulted in considerable resort to close kin marriages, and this could be reinforced by adoption within the family to alter succession patterns, or to bolster existing arrangements. The descendants of both Augustus and his sister Octavia were key players.

Augustus, born 63 BC, came to prominence in the events following the murder of Caesar. His descent from Caesar was via Caesar's sister Julia (her grandson) (see Figure 11). His marital history was not untypical of his class

and status (Suet. *Aug.* 62–3). Augustus had no children in conjunction with his wife Livia, although each of them had previous offspring by a different partner. For Augustus there was a single daughter, Julia, born of his marriage to Scribonia. Julia's first marriage was to Marcellus, Octavia's son by her first husband, C. Claudius Marcellus. The union was childless, but when she was transferred to Agrippa she produced for the dynasty five grandchildren: Gaius, Lucius, Agrippa Postumus, Julia and Agrippina. Agrippa had been taken on by Augustus as his associate in power – his military man, but a man who owed everything to the emperor (Dio 54.12.4; 54.28.1). Immediately after the birth of his second grandson, Lucius, in 17 BC, Augustus adopted him along with his elder brother Gaius (Dio 54.18.1; Suet. *Aug.* 64; Tac. *Ann.* 1.3; Vell. Pat. 2.96.1). To judge from the *Digest*, adoptions of this sort within the family were commonplace, not merely in the imperial family. Suetonius says that the adoption was conducted by *mancipatio* (*Aug.* 64: *Gaium et L. adoptavit, domi per assem et libram emptos*), the normal process for sons in power (Aulus Gellius, *NA* 5.19; Gaius, *Inst.* 1.119–22). As a dynastic arrangement this is interesting because it leaves Agrippa without a male heir to his name; Agrippa's prestige was, however, guaranteed by his association with the imperial family; Velleius sees these connections as a suitable recompense for a man of his humble origins (Vell. Pat. 2.96.1). Whatever we think of this, in 17 BC Agrippa could not be adopted by Augustus in the manner of Tiberius in AD 4, because of the rule that adoption copies nature. Had an adoption occurred, Agrippa's marriage to Julia would have been construed as incestuous (Simpson [1996] 329). It is certainly too schematic to insist that Augustus would have wanted an arrangement similar to that of AD 4. At that later date Augustus adopted Tiberius, who in turn adopted Germanicus, thus creating the possibility of an eventual succession by Germanicus and Tiberius' natural son Drusus. Augustus, in contrast, directly adopted his grandsons, but the two died prematurely in AD 2 and 4 respectively. The arrangement failed at every possible level. The potential guardian Agrippa had died in 12 BC, followed by the adoptive sons themselves. The intention had been to promote and foster their status as the next generation of imperial dynasty.

The very year of the death of Gaius (AD 4, 26 June), Augustus engaged in the second double adoption, of Tiberius and Agrippa Postumus (*CIL* 12.1 p. 320; Vell. Pat. 2.103.3), but this time he was taking no chances. Before the adoption Augustus had ordered Tiberius to adopt his nephew Germanicus (Suet. *Tib* 15.2; *Calig.* 1.1; 4.1; Tac. *Ann.* 1.3; 4.57; Dio 55.13.2) although Tiberius already had a son of his own blood, Drusus (Tac. *Ann.* 1.3; Dio

55.13.2). Tacitus in particular sees this as a selfish move on the part of an Augustus who was merely bolstering his dynastic security. It was a dynastic move, but doubtless there was much activity behind the scenes, and it is unlikely that Tiberius was not party to this. He might have felt some of the anguish that Tacitus feels on his behalf. As Levick has underlined, once Tiberius was adopted he lost his legally independent status (*sui iuris*) and thereafter would not be able to adopt until either he was emancipated or he became *sui iuris* through the death of Augustus (Levick [1966] 232). Chronology was therefore crucial: he could not adopt Germanicus once he had himself been adopted. The result of these adoptions was that Augustus became grandfather by adoption of Drusus and Germanicus; since Germanicus was the elder, Tiberius now had two sons and had effectively demoted his own son. Augustus in this way became great-grandfather by adoption of their offspring. It was legally possible for Augustus to pass over Tiberius and directly adopt one or both of Drusus and Germanicus as his sons. Clearly this would not have worked dynastically, but it does show some flexibility within the possibilities. Note, however, that Corbier seriously countenances the possibility of Augustus' directly adopting Germanicus and sees the more complex arrangement as a sign of the power of Livia (Corbier [1994] 284).

According to Velleius, the adoption of Tiberius was accompanied by the words *hoc rei publicae causa facio* (Vell. Pat. 2.104.1). There is a similar notice in Suetonius (Suet. *Tib*. 21). It can be seen as a first imperial admission of the need to clarify that the issue is political rather than financial succession (Nickbakht [1998]; Ryan [2000]). There was no such rider to the adoption of Agrippa Postumus, although he seems initially to have been a potential heir. Other sources, including Tacitus, claimed that Augustus made the choice of Tiberius to enhance his own reputation: he knew that Tiberius would find him a hard act to follow (Tac. *Ann*. 1.10.6; Dio 56.45.3). As so often, speculative elements have intruded into major sources in situations which must have generated massive popular interest. Contemporaries must have been puzzled and uncertain why the imperial decisions took the form that they did.

The inclusion of Agrippa Postumus in the arrangement in AD 4 is of a piece with arrangements for his brothers Gaius and Lucius some years earlier. However, Agrippa was excluded from the succession in AD 7 (Suet. *Aug*. 65; Vell. Pat. 2.112.7; Dio 55.32). Precise reasons for this treatment remain obscure (Suetonius mentions his base and unruly intellect: *ingenium sordidum ac ferox*), but they amount to an acknowledgement on the part of Augustus that something more than mere hereditary descent was

to determine his successor.[2] The result was that the emperor now had only one agnatic descendant of the first degree, Tiberius, who was to succeed him in AD 14. Agrippa may be an interesting case because the emperor so quickly terminated the impact of an adoption, but he is nevertheless seen as a potential heir and focus of discontent at the time of the death of Augustus. Had the revolution of Clemens gone further, his blood claim to the throne would have mattered, rather than his legal status as rejected adoptive son of Augustus.[3]

The two sons of Tiberius died before him, Germanicus at Antioch in AD 19, and Drusus II in AD 23 at Rome. Germanicus had a highly fertile wife who produced nine children of whom six survived to adulthood (Lindsay [1995]). Germanicus was the grandson of Octavia and of Livia via his respective parents, Antonia minor and Drusus I. His wife, Agrippina, was directly related to Augustus, since she was a daughter of Julia and Agrippa, and sister of the previously adopted but now deceased Gaius and Lucius. Drusus II had produced twin boys by his subsequently disgraced wife, Livia Julia, who was in fact his cousin and the sister of Germanicus (Sinclair [1990] 238–56; Corbier [1994] 266). The two elder sons of Germanicus, Nero and Drusus, were damaged by the political activities or perceived political activities of their mother Agrippina and were out of the picture by the early 30s AD. The succession issue was never conclusively resolved during Tiberius' lifetime (De Visscher [1964]). When Tiberius in turn died on 16 March AD 37, he left as heirs under his will two agnatic descendants of the second degree: a grandson of his blood, Tiberius Gemellus, the son of Drusus, and the grandson through the adoptive line, Gaius Caligula, son of Germanicus (Suet. *Tib*. 76; Dio 59.1.2).

Gaius Caligula was older and also son of the elder of Tiberius' 'sons'. There might still have been a residual feeling amongst observers that, on grounds of blood, Tiberius should have had a closer interest in Gemellus, but age factors precluded his immediate succession. Caligula became emperor. He adopted his cousin Gemellus the day the young man took the *toga virilis* and gave him the title *princeps iuventutis* (previously held by Gaius and Lucius). He died soon after, probably executed, or driven to suicide (Suet. *Calig*. 15.4; Dio 59.8.1; Philo, *Leg*. 25.28) (Lindsay [1993]). Caligula thus despatched a rival and potential focus for sedition; even at

[2] On Agrippa see Pappano (1941) 30–45; Allen (1947) 131–9; Lewis (1970) 165–84; Levick (1972) 674–97; Jameson (1975) 287–314; Bellemore (2000) 93–114.

[3] Recently Jane Bellemore has revived the idea that Clemens was in fact Agrippa Postumus. See Bellemore (2000) 93–114.

the time of his death, Caligula was only twenty-nine and could have expected to live long enough to generate his own heirs (cf. Corbier [1995] 187). His initial move in adopting Gemellus, when he was only twenty-five in AD 37, was modelled on Augustan behaviour, and something of a conscious reaction to the dilatory approach taken by Tiberius. He did through the adoption gain greater control over Gemellus as a result of *patria potestas* (Corbier [1994] 274), but the inconsistent behaviour seems to have been politically damaging. Removing Gemellus was perhaps one of the acts which helped to generate the atmosphere that led to his assassination.

Claudius, the uncle of Caligula, was chosen as emperor by the praetorians after the assassination of Caligula and later confirmed by the Senate (Levick [1990] 29–40; Wiseman [1991] 32–9; 86–102). His dynastic claim included descent from Octavia via his mother Antonia minor. He had a son Britannicus by his marriage to Messalina but nevertheless adopted the son of Agrippina, the future Nero (25 February AD 50: *CIL* 6.2041, Acta Arvalia; see also Suet. *Claud*. 27.6; 29.5; *Nero* 4; 7.2; Tac. *Ann*. 12.25; 12.26; Aur. Vict. *Caes*. 4.15; Dio 60.33.2; Zonar. 11.10). Although contemporaries perceived this as the result of the machinations of Nero's mother, the younger Agrippina, it might at least partly have been a result of the poor status of Britannicus as a result of his mother's downfall. Agrippina on the other hand was viewed by Tacitus as a woman defined by her unusual eminence and multiple relationship to significant Roman males (Tac. *Ann*. 12.42.3; Corbier [1994] 288). The adoptive son, Nero, was married in AD 53 to a daughter of the emperor, Octavia. This would have infringed the rules regarding incest unless the girl was emancipated. We must assume this condition was met although there is no evidence, apart from Dio, who states that she underwent a fictional transfer into another *gens* (Dio 61.33.2). Perhaps he means an emancipation. Claudius was thus Nero's stepfather (*vitricus*) and father-in-law (*socer*). Suetonius claims that Claudius at the end of his life repented both of his marriage to Agrippina and of the adoption of Nero (Suet. *Claud*. 43). It is hard to corroborate, although not implausible. Suetonius also claims that an altered will was the reason for poisoning Claudius (Suet. *Claud*. 44.1).

Suetonius, in his life of Claudius, relates an anecdote about the emperor's absent-mindedness and blindness and thereby reveals a prejudice presumably typical of the elite against adopting when there was an existing heir:

> on the point of adopting Nero, as though that were not disapproved of sufficiently, since he was adopting a stepson when he already had an adult son, he repeatedly put

it about that nobody before this had ever been insinuated into the Claudian family by adoption.[4]

Tacitus says that Claudius cited the *adrogatio* of Germanicus by Tiberius to justify this adoption (Tac. *Ann.* 12.25) – Tiberius had also cut out his own son Drusus. Tacitus thus shares the view of Suetonius that the adoption of Nero was a doubly scandalous act (Prévost [1949] 41; Corbier [1991b] 66). His emphasis is on the disgrace of introducing an adoptee into the patrician line of the Claudii, which he claims was hitherto unsullied since the time of Attus Clausus.

In AD 54, after the death of Claudius, Nero acceded to the Empire and quickly disposed of his agnatic brother Britannicus, following other Julio-Claudian precedents (Corbier [1995] 187). According to Suetonius, Nero poisoned Britannicus because of a believable fear that his own status as an adopted son might diminish him in popular eyes (Suet. *Nero* 33.2). His supposed dealings with Locusta are outlined to show his cruelty not merely to his victim, but also to the poisoner herself. The poison was allegedly administered at a feast, and Nero initially claimed that Britannicus was the victim of an epileptic seizure. It has been thought that the epileptic fit was the 'official story', and some authorities have wondered whether the details of the poisoning might not be entirely fictitious (Warmington [1977] 90). Tacitus makes something of the notion that Agrippina, in pique at lack of acknowledgement by Nero, threw the adoption in Nero's face and suggested that Britannicus was a more worthy heir (Tac. *Ann.* 13.14). In his version of events this was what gave Nero the impetus to eliminate Britannicus. As in Suetonius, this was done through the employment of Locusta, and even more circumstantial material about the poisoning is related (Tac. *Ann.* 13.15–16). Bradley notices that Tacitus and Suetonius have much in common on this incident and suggests that a common source is likely; Suetonius has developed the material rather differently from Tacitus to highlight Nero's jealousy of Britannicus (Bradley [1978] 197). Josephus does not think that Claudius himself was poisoned and says that few knew at the time that the death of Britannicus had been artificially contrived (Jos. *AJ* 20.153). Warmington points out that even eight years later the people of Amisos in Pontus seem not to have known that he was dead (*AE* 1959.224; Warmington [1977] 90)! Nero did of course have a clear line

[4] Suet. *Claud.* 39.2: adsciturus in nomen Neronem, quasi parum reprehenderetur, quod adulto iam filio privignum adoptaret, identidem divulgavit neminem umquam per adoptionem familiae Claudiae insertum.

of descent from Augustus, which could be used to counter the claim of Britannicus.

Under the Julio-Claudians adoption was used as one of the strategies to promote candidates who were deemed suitable for succession. Many factors came into play, and the results were modified in part by political jockeying, in part by the hazards of court life and the contemporary demographic regime. Even amongst the elite, life was highly uncertain at the best of times.

YEAR OF THE FOUR EMPERORS

Although events developed so rapidly during AD 69 that there was hardly time for dynastic thinking, once the Julio-Claudians had been eliminated from future planning, concern turned to how to modify the imperial system to keep it viable.

Adoption provided a particularly adaptable solution to dynastic continuity, since it enabled the childless to provide themselves with social progeny. Galba's grip on affairs lasted long enough for the issue of the succession to arise. According to Tacitus (*Hist.* 1.13), Otho had hoped for adoption by Galba, but was soon disappointed when Piso was chosen instead. Once he was in control, Suetonius underlines Galba's poor choice of henchmen, and their insidious influence (Suet. *Galba* 14). This led to some restlessness amongst the troops on the Rhine; on 1 January troops under Verginius Rufus refused to take the oath of loyalty (Suet. *Galba* 16). Suetonius speculates that Galba felt that the main problem was his childlessness (Suet. *Galba* 17), and that he therefore looked for a means of solving the deficiency. According to Plutarch, friends had suggested adoption of a *propinquus* to Galba even before he became emperor, to strengthen his chance of gaining the throne. Their candidate was Cornelius Dolabella, his great-nephew (*PIR*^{2} C 1347; Plut. *Galba* 23; Tac. *Hist.* 1.88; Corbier [1991b] 70). His choice, however, fell on Piso. Suetonius makes the unlikely claim that Piso was picked on the spur of the moment at a *salutatio* (*repente e media salutantium turba* (suddenly from the midst of a crowd of individuals greeting him)). More believable is the assertion that he had always been a special favourite (*Pisonem Frugi Licinianum nobilem egregiumque iuvenem ac sibi olim probatissimum testamentoque semper in bona et nomen adscitum* (Piso Frugi Licinianus was a noble and distinguished youth and most agreeable to him and was always recognised in his will as heir to his name and property)). This suggests that Suetonius had heard that Piso was already marked out for a testamentary adoption but this was now considered insufficient. In contrast with the Tacitean version, considered below,

Suetonius claims that Galba took Piso to the camp, called him his son, and adopted him *pro contione*. Here the peculiar circumstances have to be borne in mind. Presumably Galba's own role as *pontifex maximus* should authorise his action at the camp (although there is unsurprisingly no mention of a *lex curiata* or any consultation with the pontifical college).

Some modern authorities have thought to uncover a completely new type of adoption, outside private law, in the adoptions of Piso and Trajan. Mommsen has the most complete exposition of this hypothesis. His view was founded on what he saw as the unilateral nature of these adoptions: he believed that the adoptions took place in the absence of the adoptee, and he imagines a unilateral declaration on the part of the adopter. Thus, on this interpretation, although emperors contemplating adoption were confined by the law at the beginning of the principate and could only divert from the requirements of legal rules through a special dispensation from the Senate, with time, emperors were granted the right to dispense with such authority. Mommsen called adoptions conducted by Galba and by Nerva public declarations (*nuncupationes pro contione*), and he supposed that they served as the model for all subsequent imperial adoptions (Mommsen [1887] 751). Prévost thinks this is too dominated by theory and points to the conformity of the Antonine adoptions with earlier practice, and I believe he is correct in demonstrating that all these adoptions can be fitted into the traditions of Roman private law (Prévost [1949] 44–5).

Most of the arguments in favour of the idea of a new type of adoption are based on the Tacitean account, and a review of his attitudes may assist. The adoption of Piso actually took place on 16 January AD 69. He was presented by Galba first to the praetorians and then to the Senate. His full nomenclature was L. Calpurnius Piso Frugi Licinianus; this shows that he had started life as a Licinius and had already undergone an adoption by a Calpurnius. He was in fact the son of M. Licinius Crassus Frugi (cos. ord. AD 27). This gave him a significant Republican pedigree since he was a descendant by adoption of Crassus the triumvir as well as Pompey the Great through Scribonia (Lindsay [2002] 167–86). This may serve to show Galba's thoughts were on pedigree; as already noted, Suetonius grudgingly admits that Galba himself had a considerable pedigree of his own, although he was not related to the Caesars (Suet. *Galba* 2). This thinking still shows a determination to keep rule in the hands of those families boasting a lineage extending back into the Republic.

According to Tacitus (*Hist.* 1.14), Galba summoned Piso as a response to the mutiny in Germany. The main participants were the consul and the prefect of praetorian guard, assisted by the consul elect and the prefect of the

city. Tacitus claims that there was a view that Galba was not capable of thinking out a strategy of his own. Tacitus casts doubt on the precise reasons for the choice of Piso and suggests that he was thrust upon Galba by Laco (1.14). The link was thought to be Cornelius Laco – prefect of the praetorians – bringing in Piso through his (Laco's) friendship with Rubellius Plautus. Laco thus knew Piso only through Rubellius Plautus (another imperial descendant) but actually gave his support to Piso as a stranger. Piso's lineage is given as son of Crassus and Scribonia – thus noble on both sides. As for character, he was stern – a mixed quality. There is talk of his severity and general appearance of being strait-laced. Tacitus suggests that the process of choosing the best man to be emperor by adoption was aimed at breaking the cycle of chance, demonstrated by the later Julio-Claudians (1.16).

The Tacitean treatment of the adoption as a whole centres on a speech put in the mouth of Galba by Tacitus at the moment of adoption (Tac. *Hist.* 1.15–17). In this Tacitus claims to give a paraphrase of the procedure at Piso's adoption: there is an admission that due legislative forms were not adhered to; this should have involved an adoption under a *lex curiata* before the pontiffs ('if I were adopting you as a private citizen by a *lex curiata* in the presence of the pontiffs as is customary'; *si te, privatus, lege curiata apud pontifices, ut moris est adoptarem*). Galba's comment is on differences between private adoption before the curiate assembly and his offer of inheritance of power through the adoptive act on behalf of the state. Noticeable is emphasis on the pedigree of each half of the equation as something worth while and approximately equal. This is surely a very traditional theme based on the standard aristocratic adoption where the rewards would amount to no more than succession to personal prestige and possessions. For Galba, the adoption involved the benefit of the somewhat superior connections of Piso – connections with Pompey and Crassus – while Piso was to gain connections with the Sulpicii and Lutatii.

In the Tacitean version (*Hist.* 1.17) there is debate whether the official proclamation of an adoption should take place at the *rostra*, in the Senate, or at the praetorian barracks. As a tribute to the army, the barracks were decided on. This whole section shows that some puzzlement was felt in the highest places over precisely how best to publicise and politicise this adoption. This need not mean that the actual form had moved away from procedures employed in private law, but clearly there was an emphasis on publicising the event for political consumption.

In the event Tacitus' Galba claimed to be acting in accordance with the precedent set by the emperor Augustus and the military practice whereby

one man used to pick another (*Hist.* 1.18). The Tacitean emphasis is on acting legally and within established forms. The need to justify these acts shows that Tacitus believed that what was done did not fall into the most obvious of existing patterns.

Dio Cassius has little to add to the picture. For Dio the adoption of Piso is a reaction to the revolt of Vitellius – emphasis is on his youth and family. He also describes him as promising and intelligent, and he says that Piso was appointed Caesar (Dio [epit.] 64.5).

Dio talks of the anger of Otho over this preferment, and in a variant in Zonaras this is given as the primary cause of Otho's rebellion (Dio [epit.] 64.5.2). At any rate Piso was killed in the coup – according to Dio this was the penalty he paid for being appointed Caesar (Dio [epit.] 64.6.5). Later he underlines that Otho was the author of Piso's murder (Dio [epit.] 64.10.2).

THE FLAVIAN DYNASTY

Vespasian on accession in AD 69 had the advantage of existing heirs, Titus and Domitian, both of whom were to succeed to the purple.

Domitian

The Flavian dynasty first struck dynastic problems with Domitian, who on accession was without male heirs. The Flavian *gens*, however, was a significant force with more than one branch. Flavius Clemens was closely integrated into the dynastic net, since he was married to Domitian's niece, Flavia Domitilla, in addition to his relationship (grandson) to Flavius Sabinus, Vespasian's brother. Domitilla and Clemens had in all seven children (*ILS* 1839). Details of the fate of these children have not come down to us, and the adoption of two sons of Flavius Clemens is only known from Suetonius; their nomenclature was changed to T. Flavius Domitianus and T. Flavius Vespasianus.[5] They were both very young and given apparently under the process *datio in adoptionem*. They moved from one branch of the Flavian *gens* to another (Corbier [1995] 192). Although they were marked out in this way as Domitian's successors, it was not to be. Flavius Clemens was executed around the time of the completion of his consulship (30 April AD 95: suffects took over on 1 May) (Jones [1992] 47–8; Jones and Milns [2002] 15). The case does not tell us much about adoption or

[5] *Dom.* 15: abolito priore nomine alterum Vespasianum appellari, alterum Domitianum. See *PIR*² F 257; *PIR*² F 397.

succession. It seems that initially the idea was that Clemens should groom these potential heirs for succession. When he was executed in AD 95 and his wife exiled to Pandateria, there is some evidence for a charge of 'atheism', which has been variously interpreted (Dio 67.4.1–2; Jones [1992] 48; Jones and Milns [2002] 158). The fate of the two adopted sons is not recorded. Whatever prompted Domitian's ire, it seems that the death of Clemens was avenged by those close to him: Domitilla's freedman Stephanus was a key figure in the plot to assassinate Domitian (Suet. *Dom.* 17.1).

Nerva and Trajan

Marcus Cocceius Nerva obtained the imperial power after the assassination of Domitian, and in due course had concerns about the succession. Pliny's *Panegyricus* is quite vague on the date of Trajan's adoption but specifies that it was after Nerva was compelled to put to death the murderers of Domitian (Plin. *Pan* 6.2; Dio 68.3.3). The praetorians put pressure on Nerva to dispose of Petronius Secundus, one of the praetorian prefects, and the *cubicularius* Parthenius (Eck [2002] 211). At least these are the named victims, and the murderers appear to have been coordinated by the other praetorian prefect, Casperius Aelianus, who had been dismissed by Domitian and had now been reinstated by Nerva. Casperius was a dangerous man of unstable loyalty. We know from other sources that the adoption of Trajan took place in the second half of October AD 97 (Birley [1997] 36–7; Bennet [2001] 41 n. 91). The candidate was at this time a legate in Germania Superior. Eck has recently reaffirmed that underneath the version of events provided by the sources may lurk a power struggle with M. Cornelius Nigrinus Curiatius Maternus (Eck [2002] 212). Could it be that he was behind the praetorian mutiny and used Casperius Aelianus as his agent? Why did Casperius betray Nerva who had reinstated him? This can be explained if Casperius was bribed by Nigrinus to support the move against the murderers of Domitian (Eck [2002] 212). There is some support for this in a late source (*Epit. de Caes.* 12.8). Although this had the effect of rehabilitating Domitian, Casperius went through with it to secure his position with Nigrinus, who appeared (as a younger man) to have a longer political future than Nerva. In the event Nigrinus did not prevail, and Casperius Aelianus was sent to Trajan in Germany and executed. The details of what happened elude us, but some such scenario lies behind the relatively smooth transition depicted in the sources.

As Eck points out, Trajan's presence in Germania Superior at this time gave him a great political advantage, not totally explicable in terms of his

career hitherto. Events of AD 69 had already shown the potential of the army in Germany, the largest close to Italy apart from Pannonia. Was Trajan sent by Nerva, another faction in the Senate, or was his presence pure coincidence? There is some evidence to support the idea that Trajan had influential supporters in Rome (Eck [2002] 216–20). Eck suggests a crucial role for Iulius Frontinus and Iulius Ursus, who both received consulships in AD 98 as well as in AD 100. These are seen as rewards for facilitating the adoption of Trajan. No doubt when Nerva came under pressure from the praetorians and specifically Cornelius Nigrinus, he was forced to make decisions. Advisers promoted the interests of a younger man (Trajan was at this time forty-four) and set him up with necessary support. Precisely how much input Nerva had into this decision is beyond discovery.

In the sources we are distracted from the political scene by the distinctive character of Trajan's adoption. A close resemblance has been noticed between the content of the speech put into the mouth of Galba on the adoption of Piso, and the circumstances of Trajan's adoption (Tac. *Hist*. 1.15–16). Thus, it is claimed, Trajan did not seek out power but waited until it was offered to him; distinctions between this case and earlier imperial adoptions are highlighted. There was no blood relationship, nor (as in the case of Augustus and Claudius) was the emperor taking on a stepson in order to gratify a wife (thus Tiberius was thought to have been adopted to gratify Livia, Nero to gratify Agrippina). The argument ran that it was not enough to look within the household when the issue of an adoption was so crucial to the welfare of the state (Plin. *Pan*. 7–8). There are interesting implications behind this argument. It shows just how common it must have been within families outside the imperial sphere to choose adoptees from close kin. The highly public character of the adoption is affirmed in another interesting passage, in which it is stated to have occurred in the temple of Jupiter Optimus Maximus. Contrasts are made with the more normal domestic nature of an adoption which apparently would be held in front of the marriage bed of the adopter (Plin. *Pan*. 8.1: 'it was concluded not in a bedroom but in a temple, not before a marriage bed, but before the holy couch of Jupiter Optimus Maximus'; *non in cubiculo sed in templo, nec ante genialem torum sed ante pulvinar Iovis Optimi Maximi peracta est*).

Comment on the public nature of the adoption shows that contemporary Romans now perhaps for the first time fully grasped the degree to which the private domestic concerns of other families had in the case of the imperial family become both very public and very political issues. The novelty was not in the nomination of an heir to either money or position, but rather in the fact that the imperial family now required their domestic arrangements

to be sanctioned and approved by the state. In this case Trajan himself was not present, a further element distancing the event from traditional domestic adoptions.

There were other technical features of the adoption that were noteworthy. Trajan did not take the *gentilicium* Cocceius from his adoptive father but remained an Ulpius. He did, however, take the *cognomen* Nerva (Eck [2002] 225). The pretence of a resemblance to a domestic adoption only went so far.

Hadrian

When Trajan was adopted by Nerva, according to the *Historia Augusta*, Hadrian was sent to convey the army's congratulations (*Hist. Aug.*, *Hadr.* 2.5). This was only one aspect of the designation of Nerva's successor; another important episode was the handing over of a ring. After the Dacian campaigns of AD 105–6, following an Augustan precedent, Trajan handed this on to Hadrian (*Hist. Aug.*, *Hadr.* 3.7; cf. Dio 53.30). The adoption followed during Hadrian's consulship in AD 108. The *Historia Augusta* notes that it was at this stage that Hadrian rose in standing with Trajan's *amici*. Apparently there had been some tensions, and Hadrian's rise was assisted by the fall of his enemies Palma and Celsus; at the same time there is an emphasis on the strength of his contacts in the senatorial and equestrian orders (*Hist. Aug.*, *Hadr.* 4.3).

Emphasis is also on the favour of Plotina, already signalled through Hadrian's second consulship (*Hist. Aug.*, *Hadr.* 4.5). The formal documentation of the adoption was handed over on 9 August AD 117 (4.6), and this came to be celebrated as the anniversary of his adoption. This was an unusual adrogation technically since the two parties were not present at the ceremony, as was in theory legally required. The date was some two days before the death of Trajan. It was apparently subsequently rumoured that Hadrian was not in fact adopted until after the death of Trajan, but this version still places emphasis on the work of Plotina's faction (4.10; Merten [1977] 250–2).[6] No doubt Hadrian's opponents would have been pleased to be able to prove the illegality of the adoption. As governor of Syria and commander of the Eastern army Hadrian was in a strong position regardless of these niceties. The legal position was secondary.

It can be seen that the status of both Trajan and Hadrian as Romans of Spanish origin, both with strong military connections, did create some

[6] For Plotina's importance see also Eutropius 8.6, with an emphasis on the idea that Trajan had refused to adopt Hadrian while he was alive despite a close family relationship; he was the son of his cousin. For other conflicting versions see Dio 69.1.1–4; Aur. Vict. *Caes.* 13.11–13.

change in the climate within which these adoptions occurred (Béranger [1965] 27–44). Jealousies within the army command structure and factionalism at court were not at this stage novelties in imperial life but are thoroughly evident in the above reconstruction. The idea of passing on the imperial mantle to an heir of the emperor's own blood does not re-emerge, and this leads to some pressure at the moment of transition. In such an atmosphere public speculation inevitably surrounds the exact circumstances under which the transition to a new candidate was brought to fruition. Rumours of Plotina's involvement also fit into this pattern.

Hadrian's reign was of some duration, and affairs stabilised for long enough for his family, relations and friends to form a united front. However, there were problems with the succession. The killing of Hadrian's sister's husband, L. Iulius Ursus Servianus in AD 138 underlined substantial problems. The grandson of Ursus, Pedanius Fuscus, fell from grace and was executed at the same time (Dio 69.2.6). Dio says that this was because the pair resented the adoption of L. Ceionius Commodus (Dio 69.17.1). The sources have in general little to say about the details (Champlin [1976] 79–89). Nevertheless, factionalism and speculation about motives were not far away, as can be see from the report in the *Historia Augusta* that Hadrian's decision to adopt Lucius Ceionius Commodus in 136 was based on his attraction to his beauty. L. Ceionius Commodus Verus thus became L. Aelius Verus Caesar (*Hist. Aug.*, *Hadr.* 23.10). Talk of the young man's appearance is of course a reflection of Hadrian's perceived interests but may also be a hint that moral danger was regularly seen as a significant hazard of adoption. Whatever Hadrian's motives on this occasion might have been, elsewhere in the *Historia Augusta* comment is made to the effect that Hadrian is supposed to have spoken at one time of the contrast between the process of finding an heir to one's property and that of finding an heir to the Empire (*Hist. Aug.*, *Ael.* 4.5), a further sign of a move away from the largely dynastic world of the Julio-Claudians.

Lucius Ceionius Commodus was in fact one of the ordinary consuls in the year of his adoption, and his father had been consul before him in AD 106 (Syme [1957] 306–8). Prévost points out that the date of adoption should be after 19 June AD 136 since an inscription of that date still labels him as Ceionius Commodus (Prévost [1949] 52; *RE* Ceionius no. 7). By 1 January AD 137 when he entered his second ordinary consulate he is bearing his new name, L. Aelius Caesar.[7]

[7] *RE* Ceionius no. 7. Some authorities have used an Alexandrian coin which alludes to the third year of his reign as a peg. The Alexandrian year begins on 29 August and Ceionius Commodus died on

A brief life is included in the *Historia Augusta* purely because Hadrian did adopt the man (*Hist. Aug.*, *Ael.* 7.5). He is identified as the first person to receive only the name Caesar as an indicator of his adoptive nomenclature (1.3). This is not strictly true since he clearly also was given the *nomen* Aelius. The *Historia Augusta* makes something of the fact that this was not an adoption by testament as had been customary (2.1). Comparison is made with adoptions under Diocletian. However, it is far from the case that imperial adoptions up to this point were normally testamentary, and it is hard to see how the author of the *Historia Augusta* reached this conclusion. Aelius Caesar's adoption had been accompanied by games and an enormous donative, subsequently much criticised (*Hist. Aug.*, *Hadr.* 23.12–14), and it seems to be implicit that this was closely associated with the scandal about Hadrian's sexual interest in the man (*Hist. Aug.*, *Ael.* 3.3–4; 6.1). Hadrian is said to have regretted his decision almost immediately, once he appreciated the poor state of his candidate's health (*Hist. Aug.*, *Ael.* 3.7). There was an expectation that the adoptee would give a speech of thanks for his adoption, but it was not realised (*Hist. Aug.*, *Hadr.* 23.16).

There has been speculation about other possible motives for choosing Ceionius Commodus. Syme first suggested that it might be to make amends for the killing of Avidius Nigrinus in AD 118 (Syme [1957] 310), who had been his stepfather and father-in-law (Birley [1997] 289). This might have been advantageous for relations with other influential senators (Birley [1997] 290).

On the death of Ceionius Commodus, Hadrian adopted Arrius Antoninus (later Antoninus Pius), subject to the condition that he adopt two young men as his sons. Antoninus was fifty-one and had already been testamentarily adopted by his mother's father (Kunst [2005] 140). Quite a detailed pedigree is supplied by the *Historia Augusta* (*Hist. Aug.*, *Ant. Pius* 1; his full name before adoption by Hadrian may have been Titus Aurelius Fulvus Boionius Arrius Antoninus [*CIL* 8.8239]; this formulation is not actually attested, as Salomies [1992] 75–6 notes). The adoption of Antoninus Pius was a reward for support and for his administrative capacities (*Hist. Aug.*, *Ant. Pius* 4.1). The two further adoptees were L. Ceionius Commodus, the son of L. Aelius Caesar (the man who had died), and M. Annius Verus, his wife's nephew. Annius Verus had already been singled out as dynastically important, since the daughter of Ceionius Commodus, Ceionia Fabia,

1 January AD 138 (*Hist. Aug.*, *Ael.* 3). If the coin is genuine (which has been doubted), this would place the adoption between 19 June and 29 August. Others favour the date on which he obtained the *tribunicia potestas*, 10 December AD 136.

was betrothed to him soon after he assumed the toga (*Hist. Aug.*, *Marc.* 4; Birley [1997] 290).

It seems that the future Antoninus Pius was adopted simply because of the youth of Ceionius Commodus and Annius Verus (*Hist. Aug.*, *Marc.* 16); this can be seen from the fact that the adoption was conditional on the adoption of the nephew and the other young man, and Hadrian allowed the older man a month to consider the desirability of the arrangement (*Hist. Aug.*, *Ant. Pius* 4.4). Annius Verus was at this time aged seventeen, while the son of Ceionius Commodus was only seven (*Hist. Aug.*, *Ant. Pius* 4). After adoption by Antoninus they were called respectively L. Aelius Aurelius Verus Commodus and M. Aelius Aurelius Verus.[8]

Dio purports to give us the actual words of Hadrian on the occasion of the adoption of Antoninus Pius. Although of dubious value, the version given by the Severan consular is of some interest for its emphases:

> Friends, nature has not permitted me to generate a son, but you have given me one through the law. The one differs from the other. The son generated becomes whatever sort of person divine power may determine but a man selects as an adopted son a chosen individual. Through nature a person is often given a crippled and stupid child, but by discrimination one completely sound in limb and mind is chosen. For this reason I formerly chose Lucius out of all the possibilities – a man such as I could never have prayed to be born to me. But since the divine power took him from me, I have found as your emperor in place of him, the man I give you, well born, gentle, adaptable, wise, neither flighty through youth, nor careless in his capacity to act through age, brought up under the laws and one who has been a leader in accordance with ancestral traditions, so that he is not ignorant of any matters with bearing on the leadership, and capable of managing all these matters well. I am speaking of Aurelius Antoninus here. Although I know him to be a man little concerned with politics and to be far removed from such a desire, still I do not think that he will lack thoughtfulness in regard either to me or to you, but will accept the leadership role even against his will. (Dio 69.20)

Emphasis in this version of Hadrian's speech is on choosing a candidate with conservative attributes.

There was an expectation of sentiment towards an adoptive parent; an anecdote claims that Hadrian wanted to commit suicide at about this time. Antoninus is supposed to have said that he would be no better than a parricide if he were to allow it (*Hist. Aug.*, *Hadr.* 24.10). An atmosphere of rivalry appears to have existed at court at the time of the adoptions, with other parties hoping to jockey for the succession (24.6). The adoption was completed on 25 February AD 138 (*Hist. Aug.*, *Ant. Pius* 4.4); an *aurum*

[8] See confusion at *Hist. Aug.*, *Ael.* 5.12.

coronarium was presented to Antoninus on the occasion of his adoption (*Hist. Aug.*, *Ant. Pius* 4.10) but remitted, following a precedent set by Hadrian after his triumph (*Hist. Aug.*, *Hadr.* 6.5). Hadrian subsequently died on 10 July AD 138. Both the adoption in 136 and its successor in 138 were formal adoptions, in other words performed through an *adrogatio* (cf. Aur. Vict. *Caes.* 14.4).

There are somewhat conflicting statements about the stage at which Hadrian had made his decision to adopt Antoninus – while Aelius Caesar was still alive or sometime later. The latter seems more plausible based on statements in the life of Hadrian. In addition to submitting to a condition of adopting two further sons, Antoninus was to give his daughter to the son of Hadrian's favourite, the adoptee Aelius Caesar, rather than to Marcus, who was more closely related to him (*Hist. Aug.*, *Ael.* 6.7–9). The daughter was Annia Galeria Faustina the Younger (*Hist. Aug.*, *Ant. Pius* 10.2). There are similarities in this adoption to some of the conditions imposed on Tiberius under the adoptions of AD 4. Hadrian appears to have wanted to treat young Verus as his grandson, a type of relationship which is envisaged in the legal writers. The author of the *Historia Augusta* also sees this as contradicting any notion that Hadrian ultimately came to regret his choice of the boy's father as his original choice for adoption (*Hist. Aug.*, *Ael.* 7.2–3). This adoption was hastened by Hadrian's own illness (*Hist. Aug.*, *Hadr.* 24.1).

Marcus Aurelius was adopted and reared by his paternal grandfather after his father's death (*Hist. Aug.*, *M. Ant. phil.* 1.10; Birley [1987] 23). He was born into the house of the Annii Veri in AD 121, and through his first adoption became M. Annius Verus. He also for a time at least bore in addition the names L. Catilius Severus, not as a result of adoption, but in acknowledgement of the maternal line, bearing the name of his *proavus maternus* (Birley [1987] 30; cf. Salomies [1992] 80–1). The nomenclature M. Aelius Aurelius Verus was a product of his adoption at age seventeen by Pius (*Hist. Aug.*, *M. Ant. phil.* 5.5). Marcus was deemed unsuitable for immediate succession on grounds of age, and this was thought to be why Pius was inserted into the inheritance sequence (5.1).

The *Historia Augusta* places emphasis on the fact that Marcus Aurelius retained respect for his natal family after adoption. The issue is related to his philosopher's approach to monetary and other matters (*Hist. Aug.*, *M. Ant. phil.* 5.7). His adoption had made him heir to his grandfather, so he relinquished his inheritance from his father to his sister and tried to convince his mother in addition to bequeath her own estate to his sister (4.7; Corbier [1991b] 68). There is also a claim that Marcus Aurelius was

dismayed at the prospect of the adoption by Pius and gave a disquisition on the ills of sovereignty (5.3).

Verus (son of Aelius Caesar) passed into the Aelian family at the moment of his father's adoption; it is interesting that the *Historia Augusta* comments that he stayed in that family after his father's death (as though there might have been some other expectation). He was then given in adoption to Antoninus Pius, on condition that he marry Pius' daughter (*Hist. Aug.*, *Ver.* 2.1). In his short life of Verus' father, the author of the *Historia Augusta* suggests that Antoninus Pius actually had to be forced to adopt Aelius Caesar's son (*Hist. Aug.*, *Ael.* 2.10). Ultimately, Pius' daughter was given to Marcus because Verus seemed too much her junior; perhaps there were other tensions as well. Verus then got Marcus' daughter Lucilla (*Hist. Aug.*, *Ver.* 2.4). Verus was something less than an ideal son for Pius but, claims the *Historia Augusta*, was retained because of Hadrian's passion for the link. Loyalty rather than affection was displayed by Verus towards Pius (*Hist. Aug.*, *Ver.* 3.6). The marriage to Lucilla was a little close, since in legal terms Verus and Marcus Aurelius were brothers (cf. *Hist. Aug.*, *M. Ant. phil.* 7.7; 16.1–2). It was perceived as a dynastic link and therefore permissible, a means of linking his adoptive brother as closely as possible to the power. Dynastic factors once again encourage endogamy. In the end Verus died in AD 169, and Marcus Aurelius' own son Commodus succeeded.

Several texts relate that Septimius Severus bestowed the title of Caesar on Clodius Albinus in AD 192 (*Hist. Aug.*, *Sev.* 6.9–10, who says that Severus considered abdicating in favour of Clodius Albinus, to whom *imperium* had already been granted *auctore Commodo*; *Hist. Aug.*, *Clod. Albin.* 1.2 says the grant was from Severus; Herodian and Dio say this was merely a trick on the part of Severus: Herodian 2.15.3; Dio 73.15.1; 75.4.1; *Hist. Aug.*, *Clod. Albin.* 2 also purports to give the text of a letter from Commodus in which he discusses the award to Albinus of the status of Caesar). However, by this stage there is no reference to an adoption as such. Birley points out that Severus was worried about the strength of Albinus, who had three legions and countless auxiliaries in Britain. Since Severus' own heir was very young, this provided Albinus with a prospect of succession should anything happen to Severus (Birley [1988] 98). Subsequently he bore the title D. Clodius Septimius Albinus Caesar. There exists certain coinage of Albinus which bears the name of Septimius. Whatever the precise political circumstances, the main focus of nomenclature changes in this environment has moved to legitimacy in the eyes of the soldiers, and the impact of the name of Caesar on political jockeying.

As Prévost points out, other artificial dynastic connections occur which are also removed from the strict legal regime of adoption (Prévost [1949] 58).

Thus Septimius Severus claims for himself and his descendants descent from the dynasty of the Antonines without any clear claim based on blood. He also flirted with other strategies such as representing himself as the avenger of Pertinax (Gardner [1998] 143). The aim of this was to establish legitimacy by any means; the ideal was to create continuity from the age of Nerva. This was advertised by giving Severus' son Caracalla the name M. Aurelius Antoninus. Again this relates to attempts to stabilise the dynastic claim of the family, and to consolidate claims that the whole imperial system represented continuity, and it does not relate directly to the world of adoption. Caracalla was one of two sons of Septimius Severus by Julia Domna. This was a second marriage that took place in AD 187, and the anxiety over the integration of the Emesan line may explain the conservative attitude to nomenclature and the Antonine connection. Julia Domna was the daughter of Julius Bassianus, the hereditary chief priest of the principal deity at Emesa, the sun god Elagabal.

The accession of Elagabalus also fits into this picture.[9] In AD 218 Elagabalus, who was now said to be an illegitimate son of Caracalla, was pushed to power, although only fourteen years old, in opposition to the usurper Macrinus, and he was saluted by the troops in the name of his supposed father, thus also becoming Marcus Aurelius Antoninus. In fact his ostensible links to the line of Domna and Septimius Severus were far more indirect; his grandmother Julia Maesa was Domna's sister. When he reached Rome his status as a son of Caracalla was officially 'confirmed'. He in turn adopted his cousin Gessius Bassianus Alexianus, a son of Julia Mamaea, through a solemn declaration in the Senate and bestowed on him the name of Caesar (Dio 79.17; Zonar. 12.14). His new nomenclature was Marcus Aurelius Alexander. This was all done under pressure from his grandmother Julia Maesa, and Elagabalus is said to have been anxious to abrogate the adoption (*Hist. Aug.*, *Heliogab.* 13). His own life, however, was over by March AD 222 when he was massacred by the praetorians. Julia Maesa and her advisors seem to have appreciated the political value of a public gesture; for this episode actually to be conducted in the Senate house is a symptom of dynastic weakness rather than a return to traditional ways.

Alexander, who did succeed him, avoided the repercussions of being regarded as a son of Elagabalus, and he too claimed to be an illegitimate son of Caracalla. He also liked the link with Septimius Severus, which he is said to have advertised on first entering Rome (*Hist. Aug.*, *Maximini duo* 5). Interestingly, although laying claim to an imperial heritage which could be

[9] For some problems with the value of biographical materials on Elagabalus see Barnes (1972) 53–74.

traced back to Hadrian (*CIL* 3.709) he naturally avoided the nomenclature Antoninus associated with his immediate predecessor (*Hist. Aug.*, *Alex. Sev.* 10) and adopted the handle M. Aurelius Severus Alexander.

I conclude the examples of imperial adoptions at this point. It is clear that the ceremonies moved from the purely domestic context of the Julio-Claudians to the far more public context first with Galba, and then more markedly with Nerva's adoption of Trajan. Very little is known of the Antonine adoptions, but several of the examples cited show that the author of the *Historia Augusta* – writing perhaps in the late fourth century – still expected some of the domestic concerns to be prominent. The advantage of an adoption for imperial succession was the clear designation of the intended successor and was expected to be mutually advantageous for the parties. The incumbent emperor could choose his intended heir, and the designated candidate could expect continuity and support for his claim to the throne. This did not always turn out as the parties envisaged because of both demographic and political factors. Septimius Severus and his family were also concerned with consolidating their position by emphasising their links with the past, but adoption was not the most commonly used tool in this quest. As Gardner suggests, adoption was a useful repair kit for the hereditary principle (Gardner [1998] 143).

Conclusion

The introduction of outsiders is used in many historical communities as a strategy for succession, and adoption proves to be a versatile method of accomplishing this. The first section of this book surveys the range of uses to which adoption can be adapted, which includes finding homes for children from impaired families, providing childless couples with a family life, as well as providing descendants and heirs to property. Adoption has also been used to make individuals eligible to inherit real property or social position from which they would otherwise have been excluded because of inalienability in the case of property or status in the case of position. The creation of fictitious proximate relationships satisfies social demands for stability and conservatism in cases of this sort. Not all the communities surveyed encouraged the adoption of complete strangers for these purposes, and in some cases the choices taken simply promote close relatives in the pecking order. Contemporary concerns have until recently ensured that adoption in the modern Western world was largely concerned with providing homes for disadvantaged children, while at the same time providing a family life for childless couples. Something closer to the ancient world has developed more recently in same-sex adoptions, which have been instituted to enable the parties to ensure the transfer of property rights to their partners.

The question of the role of kinship in Greece and Rome is important in relation to adoption. Nineteenth-century theoreticians viewed the ancient civilisations as evolving to greater sophistication, but contemporary approaches have reacted against this. Recent work has underlined an important role for both patrilineal and matrilineal inheritance. In Rome, despite the fact that adoption allowed the creation of artificial kinship, complete outsiders to the family were rarely admitted. Increasingly, women became beneficiaries under inheritance arrangements. A similar pattern is observable in Greece. Greek adoption was also concerned with succession and often close kin were chosen. At Gortyn it may have been possible to adopt even if the adopter had children. At Athens childless males could adopt to promote clarity over

their testamentary arrangements. More complicated were the testamentary and posthumous adoption cases, which always involved legal proceedings and could thus easily be subjected to challenge. The widespread use of testamentary adoption in the Greek world may have influenced the trend to testamentary cases at Rome. The genesis of adoption on Rhodes is little understood because Rhodian adoptions are only recorded epigraphically, and the earliest recorded cases do not prove that the institution itself only commenced in the third century BC. Adoption clearly came to be recorded rather frequently at this time, and several factors might explain how adoption became prevalent in the community: adoption proved a useful method of circumventing a system which restricted access to priesthood by tribe. Moreover, Rhodes was centrally placed in the Mediterranean world, and there may have been unusually large numbers of outsiders to be integrated into the citizen body.

Adoption became possible at Rome from the time of the Twelve Tables when the bond of *patria potestas* could be broken by the procedure recorded under Table IV: 2. An adoptee on release from the power of his natural father would fall under the *potestas* of the adopting father and would gain rights of inheritance in his new family. Only an individual who possessed *patria potestas* could adopt, and there was in theory a requirement for an age difference between adopter and adoptee which replicated nature. Adopters need not be married but had to have theoretical capacity to beget children. Adoptees were assimilated to natural children and incest barriers were applied. There was some protection for minors to prevent financial exploitation, but little interest in sexual exploitation. Women lacked *patria potestas*, and could not adopt. They could be adopted but not adrogated. Few cases are known. Public adoptions by *adrogatio* were conducted in the *comitia curiata* in cases of adoptees who were *sui iuris*, after pontifical investigation. In these cases there was a requirement that the subject had already taken the *toga virilis*, and this was because they were conducted in the assembly by a legislative act, after a *rogatio*. Private adoptions were employed in the case of adoptees still under the power of a *paterfamilias* but did not require a legislative act. The procedure was completed in court before the praetor. Testamentary cases involved none of these formalities and involved no substantive changes in status. There was usually an unenforceable requirement to take the name of the adopter in return for institution as heir. Considerable difficulty can arise in distinguishing the three types since the actual terminology used of them in non-technical literary sources does not make distinctions.

Roman nomenclature has been much scrutinised in order to determine the transformations normal after adoption. Nomenclature can, however, go only so far in the search for adoptees, since other factors, including tributes to the maternal line can also account for the use of complex nomenclature. In a full adoption the adoptee would lose his *praenomen*, *nomen*, filiation and tribe, and some testamentary adoptions can be separated out because the record does not observe this pattern.

Adoption at Rome is closely tied to succession. The tie of blood was regarded highly when assigning estates, and the *sui heredes* had to be expressly disinherited if they were to be cut out. Adoption out of the family could close doors, but this was not necessarily the case. Like those emancipated, they could have an entitlement under suitable circumstances. The picture is complicated and intricate, but the general rule is that due consideration had to be given to any enhanced opportunities that the adoptee had gained as a result of adoption.

Roman freedmen and freedwomen on release could start Roman families, but they still had obligations to their patrons. They also might have children born before their manumission and still locked in slave status. Children such as these on release might seem like obvious targets for adoption by their own parents, but no examples are known. Freedmen were sometimes adopted by their patrons, with the eye of the patron on control over the freedman's property. If the patron was senatorial, the freedman did not thereby gain his status. Freedmen could become beneficiaries of the patron's estate, but this must have been a rarity: people of standing and with property made sure of the suitability of their testamentary arrangements.

Plautus and Terence treat adoption in their plays. In Plautus the context is Greek, but Terence consciously makes his treatment relevant to his Roman audience and specifically the sponsors of the play, the natural sons of Aemilius Paullus, both of whom had been adopted into other families. There is in his play quite a detailed discussion of some of the complications involved in having a foot in two families. In Sallust's treatment of Jugurtha, Jugurtha's status as an adoptee gives the author a chance to illustrate the friction which could arise when intruders were included in existing families. Examples of adoption in real life are nearly all from the elite, and not very numerous. Political aims may lie behind some of these, but this is not the most conspicuous feature. The case of the sons of Aemilius Paullus is again prominent because so much is known about financial arrangements in the family. It also demonstrates an instance in which ties with the natal family continued after adoption. The adoptions were by a family friend, Q. Fabius Maximus, and by a cousin, P. Cornelius Scipio. Close relatives are involved

in many adoptions, and adopters are often known to be maternal ascendants. These are very conspicuous because of substantial alterations in nomenclature. In contrast, adoption within the paternal line does not stand out so obviously. A few examples of adoption by family friends are known, possibly a product of shared interests, politics or military service. The best-known female adoption, that of Domitia Lucilla, was in fact aimed at securing an elusive inheritance for the adopter.

Testamentary cases involve similar choices. Maternal kin are again prominent. This was a way of nominating an heir in a will, without any lifetime obligation to the beneficiary. Examples of women adopting are found in this case because there is no requirement of exercising *patria potestas* to write a will. Augustus adopted Livia into the imperial family, seemingly as a tribute. A growing trend to testamentary adoptions is evident from the late Republic onwards.

The adoptions most heavily influenced by political factors are evident in the late Republic, and in the case of the imperial adoptions. There has probably been some exaggeration of the importance of adoption in the elite as a means of alliance. Some clear examples of political adoption to encompass a change from patrician to plebeian status are known from the second century BC onwards. The most outstanding example is that of Clodius, who first attempted a *transitio ad plebem* and then finally secured an *adrogatio*. This case flouted convention and attracts very scathing comment from Cicero. He saw it as a deliberate and basically illegal use of a traditional institution to achieve political goals. Contemporaries, some of whom were actively involved, did not agree, or did not care, but the case reveals that widespread social changes were underway in the late Republic. The adoption of Octavian also had purely political ends. After his testamentary adoption Octavian wanted an even clearer mandate. He wanted to be adrogated as Caesar's heir to show the validity of his claim to power.

In the early Empire the elite continued to use adoption extensively, but less is heard of it in the literary sources. The elite in Pompeii and Ostia seem to have used it extensively, but the degree to which any analysis depends on epigraphic evidence impedes detailed analysis. Imperial adoptions take centre stage. Under the Julio-Claudians a domestic context was fostered, and the imperial family was ostensibly assimilated to other elite families. The context became more public with Galba, and the trend continued with the adoptions of Trajan and Hadrian. The Antonine adoptions still kept a semblance of domestic concerns, but the reality was that adoption was being used to give a clear indication of the designated successor. This was considered to promote stability, and in some cases it did.

Glossary

adire hereditatem to enter on an inheritance
adoptatus a person who has been adopted
adoptio, adoptatio adoption of a person under paternal power
adoptio minus plena adoption by somebody other than a natural ascendant (age of Justinian)
adoptio plena adoption by a natural ascendant (age of Justinian)
adoptio regia monarchic adoption
adoptio testamentaria adoption under a will
adrogatio/arrogatio adoption of a legally independent male
adrogatio impuberum adoption of minors who were legally independent but subject to a tutor
adrogatio per rescriptum principis adoption of a legally independent individual by imperial rescript
adrogatio per testamentum adoption of a legally independent individual by will
aequitas equality, equity
affinis/affines = adfinis/adfines a relation by marriage
agnatus/agnati agnate, male relation in the male line
agnomen additional name
amicitia friendship
atimia loss of reputation, dishonour (Greek)

bonorum possessio possession of an estate/inheritance
bonorum possessio contra tabulas possession of an estate/inheritance contrary to the will

capitis deminutio loss of legal status
captator/captatores legacy hunter
choregos person performing the liturgy of organising and paying for a dramatic festival
clientela a group of clients or adherents

coemptio a fictitious sale used in *manus* marriages by which a woman passed into a man's power
coemptionator the man acting as the fictitious purchaser in the *coemptio* of a woman
cognomen the surname of a family or individual, often a distinguishing feature or nickname
collatio bonorum contribution of proportion of their property by emancipated children to those hitherto under *patria potestas* in cases of intestacy
comitia calata an assembly under the presidency of the Pontifex Maximus called for religious purposes to witness ceremonies including adoptions
comitia curiata assembly of the *curiae*, which in the late Republic was replaced by thirty lictors and presided over by the Pontifex Maximus; confirmed by *lex curiata* power for minor magistracies, as well as adoptions and wills
comitia tributa assembly of the tribes, which voted for legislation and lesser magistrates
comitium the place in the Forum where the *comitia* met
condicio nominis ferendi the condition of taking the name in a testamentary adoption
consanguineus/consanguinei a blood relative
consortium a community of property
cretio declaration of acceptance of an inheritance
cubicularius bed-chamber attendant
curiae thirty voting units in the *comitia curiata*, traditionally established by Romulus, ten from each of the three ancient tribes
cursus honorum career ladder

damiourgos magistrate
datio in adoptionem transfer by adoption in contrast to *adrogatio*
decemviri board of ten supposedly set up in 451 BC to draw up ten tables of law. According to tradition, a second board in 450 BC added two tables to create the Law of Twelve Tables
deme a territorial district representing a constitutional subdivision in the Greek world
detestatio sacrorum abjuration of family *sacra*
diadikasia a suit brought to determine which of several persons had a right or privilege
diamartyria evidence given to prevent a case coming to trial
domus house, household (Roman)

eispoiesis adoption (Greek); also called *poiesis*
engue a pledge given by the male guardian at the time of a woman's marriage at Athens
epiballontes the collective term for the clan at Gortyn
epidikasia property adjudication
epiklerate Greek institution in cases where a girl is orphaned of father and mother and lacking brothers, and has property pertaining to her. She is called an *epikleros*, and was under compulsion to marry the closest male relative of her father within the kinship group (*anchisteia*)
epikleros/epikleroi a girl subject to the epiklerate (see above)
extraneus/extranei person not belonging to one's family

familia the household, including all persons therein under *patria potestas*
fideicommissum/fideicommissa trust
filius familias a son subject to *patria potestas*
fraus fraud

genos a clan, Greek
gens a clan, Roman
gentiles clan members
gentilicium/gentilicia the *nomen* or name indicating clan (*gens*)

heres/heredes heir
hetaireia/hetaireiai brotherhood
honor a distinction

ignominia loss of good name
imperium power granted to high ranking Roman magistrates and emperors
impubes/impuberes one below the age of puberty
ingenuus/ingenui/ingenua/ingenuae freeborn
inter vivos between living parties
iudicium hastae the judgement of the centumviral court, which adjudicated inheritance disputes; this court had a spear (*hasta*) as its symbol
ius civile the civil law
ius honorarium magisterial law
ius trium liberorum a legal right deriving from possession of three children under Augustan legislation
iustae nuptiae legitimate marriage

kyrios guardian of a woman or an orphaned minor

laudatio funebris funeral panegyric
lex curiata a law passed by the assembly of *curiae*

maiestas dignity
mancipatio laying hold of a thing in the presence of witnesses to formally convey the property
manus a marriage under which a woman is legally under the *patria potestas* of husband, in the same position as a daughter

necessarius heres obligatory heir
nomen name, often used to refer to the *gentilicium*
nomen Caesaris the name of Caesar
nuncupationes pro contione solemn pronouncements before an assembly

obsequium deference
oikos/oikoi the household in Greek society
omnibus honoribus functus having held all high offices
operae services
orbitas childlessness
ornamenta consularia consular ornaments, an honour without the office of consul

paterfamilias the father of the household, the senior agnate
patria potestas paternal power, the power of the *paterfamilias* over children not emancipated
patrimonium the property of the *paterfamilias*
peculium money under the control of a person incapable of legal ownership
per oblationem curiae through an offer from the Senate
per populum through the people (i.e. by voting)
per praetorem in front of the praetor (i.e. in his court)
per subsequens matrimonium by subsequent marriage
phratry/phratries a 'brotherhood' with hereditary membership, normally associated with specific localities within Greek states
pietas dutiful respect
placitum an agreed condition
poiesis adoption (Greek)
pontifex maximus Chief priest (Rome)
potestas power
praenomen/praenomina forename
praetor urbanus the urban praetor
pro contione at a public meeting convened by a priest or magistrate

pro herede gestio an unequivocal act indicating a decision to take up an inheritance
propinquus closely related
proximus agnatus nearest descendant in the male line

querela inofficiosi testamenti complaint of an undutiful will

restitutio natalium an official emancipation from the master or patron of a slave or freedman who had been illegally enslaved; in this way the individual's freeborn status was restored
rogatio a proposed law

sacra religious rites, commonly used of family rites for the dead
salutatio formal ceremony of greeting in the atrium
sine manu without *manus*
strategos general
stuprum illicit sexual intercourse
sua heres (f.)/*suus heres* (m.)/*sui heredes* automatic heir under intestacy. Included in the category were all the children of the deceased (male and female), and his wife if she was under his power (married under *manus*)
sui iuris legally independent

thesmothete judge at Athens
toga virilis the toga of manhood
transitio ad plebem transfer to the *plebs*
tria nomina three standard elements in Roman nomenclature: the *praenomen*, *nomen* and *cognomen*
trierarch originally a trireme commander, used of a person required to perform a liturgy (Greek)
tutela guardianship
tutor guardian

unde liberi this was an inclusive category which included not only children who were automatic heirs but also those who would have been had they not been emancipated
universus populus the entire people

verna/vernae slaves born within the household
vesticeps sexually mature, pubescent
vitricus stepfather
volgo concepti conceived at large, illegitimates

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Abbreviations of journal titles correspond to those used in *L'Année philologique*.

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