

offer a case study of a failed partnership (3.42, 3.43). An epitaph from Lyons offers a particularly striking warning of the possibilities of domestic violence (3.44). Seneca suggests that divorce and adultery were commonplace among the upper classes (3.45), but provision must be made for satirical and moralising intent in such passages.

While the emperor Augustus sought to restore traditional Roman morality (3.46, 3.54–7), it is apparent that infidelity (defined as female infidelity only) was a matter of concern. The Augustan adultery laws limited the family's (that is the father's and husband's) responsibility for handling such matters, but also greatly extended the state's involvement in domestic affairs by making infidelity a criminal offence (3.47). Divorce was commonplace (3.48) – it might be no-fault (3.49) or even instigated by a *paterfamilias* who still had control over his daughter (3.48). While some might have the joy of leaving, their property to a natural heir (3.50), even the emperor Augustus was finally forced to adopt his stepson, Tiberius, who was not of his bloodline, in order to ensure a successor (3.51). Childlessness could also have its benefits, increasing the attention of relatives and others who might hope to gain from the distribution of property after one's death (3.52). Because of the importance of transferring family name and property, the legitimacy of an heir needed to be beyond dispute (3.53), a process that was enhanced by the Augustan marriage legislation (3.54, 3.55). This is a remarkable piece of state intrusion, setting restraints on the power of the *paterfamilias* (3.55). Parents of children were rewarded with particular inheritance rights over the childless (cf. 3.55m). It was only after Augustus' death that exemptions were made for the elderly who could not be expected to produce children (3.56). Other privileges included advancement in political office, both at Rome and in the municipalities throughout the empire (3.57). For the childless male, adoption was a possible resort, although it removed the adoptee from his natural family (3.58). Women, however, would not normally have even this opportunity, except through imperial dispensation (3.59).

While the *paterfamilias* is sometimes portrayed as having absolute power over his family (3.59, 3.60), Roman law limited his powers by statute in many cases (e.g. 3.48f); it was also possible to seek legal redress if his behaviour would not conform to social norms (3.61). His wife, while not enjoying equal legal powers, nevertheless held a special status within the household (3.62) and in traditional aristocratic families played a considerable role in the upbringing of her children (3.63, 3.64). By at least from the time of the late republic, however, it was much more common for slave nurses to take care of infant children from birth (contrast the practices of the Germans: 3.65) and their education was generally entrusted to outsiders, such as tutors or schoolteachers. Roman families could limit their offspring by abortion or exposure (3.66), but, once the child was acknowledged, there was established a reciprocal bond of *pietas* that required parents and children to provide for each other's well-being (3.67).

Exceptions to the nuclear family, such as brothers living together or multiple generations of a family sharing the same dwelling, are recorded, but do not appear common among the Roman upper classes (3.68). In Egypt, however, census returns offer considerable evidence for extended family groups (3.69).

Finally, it must be remembered that all children required a legal guardian (3.70). With males, tutelage ended with puberty. Females never escaped the need to possess a tutor (3.71), although they might earn the right to choose this guardian themselves (3.57b), thus creating effective emancipation.

3.1 The theoretical sanctity of the *domus*

After his return from exile in 57 BC, Cicero attacked his bitter enemy P. Clodius Pulcher, who, among other things, had caused Cicero's house on the Palatine to be destroyed.

Cicero, *On His Own Home* 109

What is more holy, what better defended by a sense of religious awe than the *domus* of each individual citizen? Here the altars, here the hearths, here the household gods, here the sacred objects, the religious observances and rituals are contained; this is the sanctuary, so holy to everyone that it is considered sacrilege to tear anyone away from there.

3.2 The centrality of the *domus*

This well-known passage highlights contemporary aspects and conservative concerns. The importance of *amicitia* and patronage has been explored in Chapter 1. Note the clear reference to M. Antonius in section 57.

Cicero, *On Duties* 1.53–8

53. Now there are a number of degrees of association [*societas*] among human beings. Moving from the one that is unlimited, there is a closer one of the same race and tribe and language, by which people are particularly linked to one another. Closer still is that of the same community [*civitas*], for citizens enjoy many things in common, the forum, temples, porticoes, streets, laws, rights, courts, voting powers, as well as customs and friendships, and the matters and businesses many conduct with many others. A still closer tie is that involved in the association of relatives [*propinquus*]; hence, from that immense association of the human race, one ends up with a tiny and narrow one.

54. For since it is natural to all living creatures to have the urge to procreate, the first association is in marriage itself, the next in children, then the single house [*domus*], with all things held in common. That indeed is the basic principle of the city and, as it were, the nursery of the state. There follow the bonds between brothers, and after them those between cousins, who can no longer be contained within a single *domus* and go off into other *domus* as if into colonies. Then follow marriages and ties by marriage from which still more relatives arise. Such propagation and progeny are the origin of public life. What is more, shared blood links people by good will and affection.

55. For it is a great thing to have the same ancestral monuments, to practise the same sacred rites, and to have tombs in common . . .

56. . . . Important is the fellowship that comes from kindnesses given and received, back and forth; so long as they are reciprocal and welcome, they bind together those involved in a firm association.

57. But when you have surveyed all aspects reasonably and thoughtfully, of all associations there is none more serious nor more cherished than that which each one of us has with the state. Parents are cherished, children, relatives, and acquaintances are cherished, but our country has embraced all such affections of everyone within herself. What good man would hesitate to face death on her behalf if it would be to her advantage? It makes all the more detestable the savagery of those men who have tortured this country with every evil deed and who are, and always have been, bent on her utter destruction.

58. But if there should be a debate about and comparison of those to whom we ought to offer the greatest duty [*officium*], then in the first rank are one's country and one's parents, to whose good services we have the deepest obligations; next come our children and the entire *domus*, which looks to us alone and can have no other refuge; then come relatives, with whom we get on well and with whom even our fortunes are generally held in common. So the necessities of life are owed in particular to those I have just mentioned; but life itself, and shared living, along with plans, conversations, encouragement, comfort, and sometimes even rebukes, flourish particularly in friendships; and the most pleasing friendship is that which is bound together by similarity of character.

3.3 Degrees of dependence

Gaius, in his introduction to Roman law, written probably late in the second century AD, is discussing the divisions in the law of persons; he has already dealt with the fundamental difference between free and unfree.

Gaius, *Institutes* 1.48-55

Next comes another division in the law of persons. For some persons are independent [*sui iuris*], and others are dependent on another [*alieni iuris*]. Of those dependent on another, some are in *potestas*, others in *manus*, and others in *mancipium* . . . Slaves are in the *potestas* of their masters . . . Also in our *potestas* are the children whom we beget in legitimate marriage. This right is peculiar to Roman citizens; for scarcely any other people have over their sons a power such as we have.

3.4 The legal definition of *familia*

For the uses of *familia* and *domus* (both having senses of 'household'), see the Glossary at the beginning of this chapter. As Ulpian indicates, the main uses of the term *familia* are for the male line of a family and for groups of slaves (whether owned by individuals or corporations), which vary considerably from our notions of a household.

Digest 50.16.195-6

195. Ulpian, *On the Edict*, Book 46. Utterances using the male form generally apply to both sexes.

1. Let us consider what the term *familia* means. In fact, it has different meanings. Thus, it applies to both property and individuals. For property, for example, in the Twelve Tables, 'the nearest agnate [male relative] should have the *familia*'. The signification *familia* may also refer to individuals, as when the law talks about patron and freedman, 'from one *familia* into another *familia*'. Here it is agreed that the law is talking about particular individuals.

2. The label *familia* also refers to the indication of a particular group, which is either defined by particular rights of the persons or by a shared bond of wider kinship.

(a) In the sense of particular rights, we call several individuals, subject to the power of one by nature or law, a *familia*. For example: a *paterfamilias*, a *materfamilias*, a *filiusfamilias* [son under his father's power], a *filiatfamilias*, and whoever takes their place in succession, e.g. grandsons and granddaughters and so on. Besides, whoever has power [*dominium*] in a household [*domus*] is called the *paterfamilias* [father of the *familia*], even though he may not have a son. For we are not indicating his personality alone, but also his legal powers. Consequently we can even call a minor a *paterfamilias*. When a *paterfamilias* dies, whoever were under his control start to have their own *familiae*, as each individual takes on the title of *paterfamilias*.

The same thing will occur in the case of a person who is emancipated, since as an outcome of being *sui iuris* he has his own *familia*.

(b) By shared bond of kinship we are referring to the *familia* of all agnates. For, although when the *paterfamilias* dies they have their own individual *familiae*, still all those who were under the power of one person are rightly described as being members of the same *familia*, since they originate from the same household [*domus*] and family [*gens*].

3. We also customarily speak of slave *familiae*, for example in the Praetor's Edict, 'On Theft', where the praetor refers to the tax collectors' *familia*. Here it is not all their slaves that are indicated, but a particular group of slaves readied for this particular purpose, that is for tax collection. In other sections of the Edict, all slaves are grouped together, e.g. 'on unlawful assembly and goods taken by force', or 'return of goods' – if property is reduced in value due to the action of the buyer or his *familia*. In the Interdict, 'Concerning use of force', the term *familia* covers all one's slaves – as well as including sons.

4. A group of several individuals who are descended from the bloodline of a distant founder are also called a *familia* (for instance, we speak of the Julian *familia*, as if springing from a particular recalled origin.

5. A woman is both the start and finish of her *familia*.

196. Gaius, *On The Provincial Edict*, Book 16. The head of the *familia* is himself included in the term *familia*. Women's children are clearly not in their *familia*, since once they are born they pass into their father's *familia*.

3.5 Getting married

Gaius provides clear evidence that *manus* marriages were no longer the norm in the imperial period.

Gaius, *Institutes* 1.111

A woman used to pass into *manus* by *usus* if she remained with him for an uninterrupted year, for thus she was, as it were, acquired by a usucapion of one year, and in this way she passed into her husband's *familia* and held the place or rank [*locum*] of a daughter. So it was provided by the Twelve Tables that if any woman did not wish to come under her husband's *manus* in this manner, she should be absent for three nights annually and thus interrupt the *usus* of each year. But this entire legal institution has been in part removed by laws and has in part been obliterated through simple disuse.

3.6 Professed attitudes towards marriage: a satirical approach

In his famous sixth satire (early second century AD), Juvenal rails against women, wives in particular. Quite apart from expressing a stereotype and introducing the standard theme of adultery being rife, he also provides incidental details of the marriage process.

Juvenal, *Satires* 6.21–8

It is an ancient and long-established tradition, Postumus, to rattle the bedposts of another and to pour scorn on the genetic sanctity of the marriage-bed. Every other offence appeared later, courtesy of the Iron Age: the Silver Age saw the first adulterers. But here you are in our own day and age, making arrangements for engagement, dowry, and marriage contracts. Soon you'll be being preened by some master-barber. I suppose you've already put the ring on her finger? Postumus, you used to be quite sane. Why are you now getting married?

3.7 Marriage in absentia

It appears that a bridegroom did not have to be present at his wedding: a bride did, in order to be led to the husband's house (cf. Paul, *Sententiae* 2.19.8; Treggiani 1991: 164–7).

Digest 23.2.6, Ulpian

According to Cinna, when a man married a wife *in absentia* then died returning from dinner next to the Tiber, he had to be mourned by his wife.

3.8 The dowry in Roman law

By the terms of classical Roman law the dowry passed into the control and effective ownership of the husband; increasingly it became defined as only belonging to the husband, however, for as long as the marriage lasted. See Cicero's letter to Atticus (3.43).

Digest 23.3 and 24.3, various authors

(a) *Digest* 23.3.1–2, Paul

The right to a dowry is perpetual, and, in accordance with him who gives it, it is to be so agreed that it should always be in the husband's possession. It is in the interest of the state that women have their dowries safe, for it is these that make it possible for them to marry.

FAMILY AND HOUSEHOLD

(b) *Digest* 23.3.7.3, Ulpian

If property is given as a dowry, I believe it becomes part of the husband's estate.

(c) *Digest* 23.3.69.8, Papinian

If property has been valued and handed over as a dowry, although it remains in the wife's use, ownership should be seen to have passed to the husband.

(d) *Digest* 23.3.75, Tryphoninus

Although a dowry is in the estate of the husband, nevertheless it belongs to the wife.

(e) *Digest* 24.3.1, Papinian

An action for the dowry is always and in every case the primary one, for it is in the public interest for women to keep their dowries, it being absolutely essential for women to have dowries in order to ensure the production of offspring and to replenish the state with children.

(f) *Digest* 24.3.2, *prae*f., Ulpian

Where a marriage is dissolved the dowry must be returned to the woman.

3.9 Why marry?

This is an extract from a speech by (according to Gellius) Metellus Numidicus, censor 102–101 BC, on marrying and why one should.

Livy, *Periocha* 59 records that a speech 'urging all men to marry in order to produce children' was delivered by the censor Q. Metellus (i.e. Q. Caecilius Metellus Macedonicus, censor in 131–130 BC and uncle of the Metellus to whom Gellius refers). Suetonius, *Augustus* 89 also relates that the speech was delivered by Q. Metellus and states that it was entitled 'on the increase of offspring', and that this speech was later read to the senate (and people?) by Augustus. Hence, it is likely that Gellius has confused the two famous Metelli.

Aulus Gellius, *Attic Nights* 1.6

If, men of Rome, we could live without a wife, we would all avoid that annoyance. But, since Nature has so arranged it that it is impossible to live very comfortably with them, and not at all without them, we must look to our long-term well-being rather than to short-term pleasure.

FAMILY AND HOUSEHOLD

3.10 What is the chief end of marriage? Procreation is not the whole answer!

C. Musonius Rufus, an equestrian from Volturnum, lived from before AD 30 to before AD 101. A Stoic philosopher writing in Greek, he took Greek philosophical ideas and adapted them for a Roman audience.

Notice the point he raises that reproduction could take place outside marriage. This is of course true, and Romans were well aware of it; the difference marriage made, quite apart from what Musonius says, had to do with legitimacy.

Musonius Rufus, 13a

Husband and wife ought to unite one with the other on these terms: both to live with one another and to produce children; to regard everything as shared and nothing as belonging to the individual, not even their bodies themselves. For, while the birth of a human is a great thing and that is the result of this union, it is still not sufficient reason in itself for marrying, since this can also occur without marriage when people simply have intercourse, just as animals too have intercourse with one another. But in a marriage there must be a total union and concern of man and woman for one another, both in health and sickness and at all times: through aiming at this, just as at the production of children as well, they will enter into a marriage. So where this concern is achieved and those uniting together bring about its achievement, each striving to outdo the other, this marriage is suitably arranged and worthy of emulation. For such a union is a fine thing. But where one partner looks out for themselves without regard for the other – or, good heavens, both are like this – and they inhabit the same house but in their thoughts look outward, without a willingness to strain and breathe in unison with their yoke mate, then it is impossible for the union not to be destroyed and the affairs of those united not to be in bad shape, and they will either finally be divorced or maintain a union more lonely than solitude.

3.11 How should one choose a partner?

The criteria Musonius rejects were clearly those commonly applied in Roman society, at least by some.

Musonius Rufus, 13b

So those marrying should not consider their partner's background to see if they are of noble birth, nor consider wealth and how much they have acquired, nor their bodies and whether they are beautiful. For neither wealth nor beauty nor nobility can add anything more to a union than can concord

not can they in any way increase the production of children. Rather in marriage one should look for bodies that are sufficiently healthy, of average appearance, and capable of taking care of themselves – these will be less likely to be open to the wiles of the dissolute and will be more able to undertake the physical demands and achieve success in producing children. We should consider that the most suitable souls are those that have a natural bent towards sensible behaviour, justice, and virtue in general. What kind of marriage is fine unless it is harmonious? What kind of partnership is worthwhile without this? How could bad people share their thoughts with one another? This is no more likely than a bent piece of wood could fit with a straight one or two bent pieces with one another. For a bent piece cannot be fitted to a similarly bent piece and even less so to its opposite, a straight piece. The bad man is also no friend of the bad nor is he in agreement with him – and even less so with the good.

3.12 The benefits of getting married

Around AD 107 Pliny the Younger congratulates a distinguished friend on the forthcoming marriage of his daughter (nameless) to an up-and-coming pupil of Pliny's. The friend is L. Iulius Ursus Servianus, destined to be thrice consul: consul I 90, II *ordinarius* 102, and III *ordinarius* 134 at the age of 87 or 88 years; he was Hadrian's brother-in-law and it was he who secured the *ius liberorum* for Pliny in AD 98.

Gnaeus Pedanius Fuscus Salinator, the young man in question, was probably in his mid-twenties at the time, a man ripe for marriage in Roman terms, by age and status. He subsequently enjoyed a distinguished career, including as *consul ordinarius* in 118 with the new emperor Hadrian.

The letter demonstrates several aspects of the reality (or the desired reality) of aristocratic marriage and family life: in particular that the marriage is arranged, that such a marriage was clearly designed to enhance the family status and links, and that the desire for children, and grandchildren, was paramount. *Letters* 1.14, where Pliny has been asked to search for a husband for a friend's niece (his brother's daughter), includes an illuminating list of features considered worthy of mention (including the prospective husband's good looks, not to mention his family's wealth).

Pliny, *Letters* 6.26

To Iulius Servianus.

I am delighted and I offer my congratulations that you have settled on Fuscus Salinator for your daughter. His is a patrician *domus*, his father is a most highly respected gentleman, and his mother is equally highly thought of. He himself is scholarly, well read, and indeed eloquent; he combines a childish simplicity with the charm of a young man and the seriousness of

an elder. And I am not letting my affection for him cloud my judgement. Yes, I love him dearly (he has earned such strong feelings through his services), but I also can pass judgement on him – indeed, the more I love him, the keener is my judgement. Knowing him as well as I do, I can assure you that in him you will have a son-in-law who is better than you could ever have played for. It only remains for him to make you a grandfather as early as possible, with children who take after their father. What a happy time that will be, when, as if they were my own children or grandchildren, I can take from your embrace his children, your grandchildren, and hold them as if they were my own.

3.13 A new wife

There are innumerable literary and, in particular, epigraphical sources that illustrate marital bliss, precisely because they were written in part to parade marital bliss. We shall see the evidence of epitaphs shortly; first, some further examples from literature, and in particular from the well-known but still highly revealing and suggestive letters of Pliny the Younger, mostly written very early in the second century AD. On the theme of *coniugal* amor, see especially Treggiari (1991: ch. 8).

Pliny is writing to Calpurnia Hispania, aunt of his new, third, and much junior wife, Calpurnia: partly this is Pliny boasting of his devoted new wife (and this is clearly not a political marriage), perhaps even reassuring himself; partly it is to assure her relatives, and his wider audience perhaps, what a good husband he is to her. Along the way we learn of the expectations a husband and society might have of an upper-class wife, particularly that she not be seen too much in public, and, presumably, does not discuss public life with her husband (contrast, e.g., Cicero's Terentia and Augustus' Livia). It is also worth noting that Pliny is proud of the fact that she has learnt to love him. But what is perhaps most striking to a modern reader is how little appreciation Pliny expresses for Calpurnia's own qualities, as opposed to those she has learnt from her aunt and husband.

Pliny, *Letters* 4.19

You are a model of *pietas* and loved your excellent and most affectionate brother as dearly as he loved you, and you also love his daughter as your own and are not only an aunt to her but also you take the place of the father she has lost. So I have no doubt that you will be absolutely overjoyed to learn that she has turned out worthy of her father, worthy of you, and worthy of her grandfather. She is extremely clever and a model of modest living. She loves me, which is a sign of her uprightness. On top of all this she is interested in literature, something that has developed through her devotion to me. She has copies of my books, which she reads repeatedly and even memorises. How concerned she is when I look like I'm about to

in *curatio*, others are held under neither institution... Now it is permitted to parents to give to children whom they have in their power tutors by will, to males below the age of puberty, to females of whatever age, even if they are married. For men of old decided that women, even if they were of full age, should be in *tutela* on account of their lightness of mind [*animi levitas*]. Therefore, if a man has given a tutor to his son and daughter by will, and both reach the age of puberty, the son ceases to have a tutor, but the daughter nonetheless remains in *tutela*. For it is only by the *lex Iulia et Papia Poppaea*, by the rights attached to having children, that women are freed from *tutela*.

(b) *Epitome of Ulpian 11.1 (Fontes Iuris Romani Anteiustiniani?*, 2.273)

Tutors are appointed both for males and females, but for males only when they are below the age of puberty on account of their infirmity of age, but for females both before and after the age of puberty, both on account of their infirmity of gender and on account of their ignorance in business and legal matters.

3.71 The tutorship of women

(a) *Epitome of Ulpian 11.27 (Fontes Iuris Romani Anteiustiniani?*, 2.276)

Women require the authority of a guardian in the following matters: if they are engaging in a legal case or a lawsuit, if they are undertaking a legal or financial obligation, if they are transacting civil business, or if they are permitting their freedwoman to cohabit with another's slave, or if they are alienating something that is owned under *mancipium* [i.e. under solemn or ritual ownership].

(b) *Gaius, Institutes 1.171*

The *tutela* of agnates [i.e. relatives in the male line who, from the time of the Twelve Tables, automatically become tutors if no other tutors are named in a will] over women has been removed by a *lex Claudia* [a law passed in the reign of the emperor Claudius].

(c) *Gaius, Institutes 1.189-91*

That persons below the age of puberty should be in *tutela* is common to the law of all states, for it is consonant with natural reason that a person who is not of full age should be governed by the *tutela* of another. And there can hardly be another state in which it is not permitted to parents to

give a tutor to their under-age children by will, although, as we have said above, only Roman citizens seem to have their children in *potesas*. But hardly any valid reason seems to exist in favour of women who are of full age being in *tutela*. That which is commonly believed, that they are typically deceived through lightness of mind and that it was only fair that they be governed by the authority of tutors, is more specious than true. For women who are of full age conduct their own business affairs for themselves, and in certain cases the tutor interposes his authority *gratis*, as a matter of form, for often he is forced by a praetor to give his authority even against his will. That is why no action on the *tutela* lies at the suit of a woman against her tutor. But when a tutor manages the business affairs of a male or female ward, after the ward reaches the age of puberty the tutor is held to account by the action relating to *tutela*.

REFERENCES AND FURTHER READING

- Ariavá, A. (1996) *Women and Law in Late Antiquity*, Oxford.
- Bagnall, R.S. and Frier, B.W. (1994) *The Demography of Roman Egypt*, Cambridge.
- Bannon, C.J. (1997) *The Brothers of Romulus: Fraternal Pietas in Roman Law, Literature, and Society*, Princeton, NJ.
- Bauman, R.A. (1992) *Women and Politics in Ancient Rome*, London.
- Blok, J. and Mason, P. (eds) (1987) *Sexual Asymmetry: Studies in Ancient Society*, Amsterdam.
- Bradley, K.R. (1991) *Discovering the Roman Family: Studies in Roman Social History*, Oxford.
- Bruno, P.A. (1971) *Italian Manpower, 225 BC-AD 14*, Oxford (reissued with postscript, 1987).
- Burgini, A., Klapisch-Zuber, C., Martine Segalen, M., and Zonabend, F. (eds) (1996) *A History of the Family*, vol. 1, Cambridge.
- Chaplin, E. (1991) *Final Judgments*, Berkeley and Los Angeles, CA.
- Clark, G. (1989) *Women in the Ancient World*, Oxford.
- Clark, G. (1993) *Women in Late Antiquity: Pagan and Christian Life-styles*, Oxford.
- Cooper, K. (1996) *The Virgin and the Bride: Idealized Womanhood in Late Antiquity*, Cambridge, MA.
- Cornell, T. and Lomas, K. (eds) (1997) *Gender and Ethnicity in Ancient Italy*, London.
- Crook, J.A. (1967) *Law and Life of Rome*, London.
- D'Ambrosio, A. (2001) *Women and Beauty in Pompeii*, Los Angeles, CA.
- Dixon, S. (1984) 'Family Finances: Terentia and Tullia', *Antichthon* 18: 78-101.
- Dixon, S. (1988) *The Roman Mother*, London.
- Dixon, S. (1992) *The Roman Family*, London.
- Dixon, S. (1997) 'Conflict in the Roman Family', in Rawson, B. and Weaver, P. (eds) *The Roman Family in Italy: Status, Sentiment, Space*, Oxford, pp. 149-68.
- Dixon, S. (ed.) (2001) *Childhood, Class and Kin in the Roman World*, London.
- Evans, J.K. (1991) *War, Women and Children in Ancient Rome*, London.