THE ADOPTION OF ROMAN FREEDMEN

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IT IS A STRIKING FEATURE of Roman society that a slave could be made a Roman citizen by an act of manumission in due form by an individual citizen. However, in the eyes of the law the freedman had no relatives in the ascending or collateral lines. Although he bore the name of his former owner, he was himself the beginning of his own family line, as recognised by law. Roman freedmen could be, and were, adopted by Roman citizens; there is legal and (perhaps) epigraphic evidence for the practice. To date, however, very little attention has been paid by historians to this possibility. The early Republican practice of simultaneous manumission and adoption has been discussed by Alan Watson and the legal texts relating to the ambiguous status of adrogated freedmen in classical law have been the subject of a number of detailed legal studies.[1] The identification in the epigraphic evidence of "freedman families," i.e., families of which at least one member has at one time been a slave, has been the subject of a number of studies, especially by Beryl Rawson,[2] Paul Weaver,[3] and Susan Treggiari,[4] all of whom devote some attention to children born before the parents were legally able to marry, but mention the possibility of adoption only incidentally. The problems of the epigraphic evidence will be further discussed in an appendix. This paper will attempt to explore the extent of the practice of adoption of freedmen and some of the social and political implications. Who adopted freedmen, and for what sorts of reason?

The following works will be referred to by author's name alone: B. Rawson, ed., *The Family in Ancient Rome* (London 1986); A. N. Sherwin-White, *The Roman Citizenship*[2] (Oxford 1973); S. Treggiari, *Roman Freedmen during the Late Republic* (Oxford 1969); A. Watson, *The Law of Persons* (Oxford 1967).

[1]Watson 90 ff.; there is a brief mention, with reference to his earlier discussion, in A. Watson, *Roman Slave Law* (Baltimore 1987) 27–28. On adrogation of freedmen in classical law (not discussed by Watson) see especially G. Lavaggi, "L'arrogazione dei libertini," *St. Doc. Hist. Iur.* 12 (1946) 115–135.

[2]B. Rawson, "Family Life among the Lower Classes at Rome in the First Two Centuries of the Empire," *CP* 61 (1966) 71–83; see also her important contributions "Roman Concubinage and other *De facto* Marriages," *TAPA* 104 (1974) 279–305, and "Children in the Roman *familia*," in Rawson 170–200.

[3]P. Weaver, *Familia Caesaris* (Cambridge 1972) ch. 8, and "The Status of Children in Mixed Marriages," in Rawson 145–169.

[4]See especially "Family Life among the Staff of the Volusii," *TAPA* 105 (1975) 393–402, "*Contubernales*," *Phoenix* 35 (1981) 42–69, and "*Concubinae*," *PBSR* 49 (1982) 59–81. I am grateful to Professor Treggiari for helpful comments on an earlier draft of this paper.

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Two sorts of adoption were known to Roman classical law. *adoptio* in the narrower sense applied only to persons *alieni iuris* "in the power of another," e.g., sons *in potestate*, still subject to the power of the *paterfamilias*. A freedman was of course *sui iuris*, "in his own power" (i.e., legally autonomous, and, if male, head or potential head of a *familia*), and could be adopted only by the process of *adrogatio*, for which our main informant for the period of the Republic is Cicero at *Dom.* 34–38. For the procedure and conditions in classical law the main texts are Gaius *Inst.* 1.99–107 and *Digest* 1.7. As *adrogatio* terminated the *familia* of the person adopted, it was not to be lightly undertaken, and the civil and religious authorities of the state were involved. In its original form, an enquiry by the pontiffs to determine the admissibility of the adoption in question preceded a special meeting of the curiate assembly, which, presided over by the *pontifex maximus*, passed a decree of assent. With the decline of the curiate assembly, it was replaced by a token assembly of lictors to carry out the formal legislative act, the enquiry remaining the most important part of the proceeding. As these meetings took place only in Rome, *adrogatio* could be effected only there.[5] By the middle of the second century A.D. at the latest[6] direct resort could be made to the emperor to remedy defects in procedure. Diocletian[7] replaced the comitial vote with imperial rescript.

Adrogation and status

adoptio transferred a person *alieni iuris* from the *potestas* of one *pater* to that of another. *adrogatio* brought both the *adrogatus* and anyone in his

[5]Gaius *Inst.* 1.100, Ulp. *Reg.* 8.4. F. Schulz, *Roman Classical Law* (Oxford 1951) 144, suggests that parties living in a province might apply to Rome by letter or through a deputy; our first evidence for his assumption that the parties to the adoption need not appear in person appears to be Diocletian's rescript of A.D. 286 (below). It is not easy to reconcile this with the statement in Gaius *Inst.* 1.101 and Ulpian *loc. cit.* that women could not be adrogated by the people, for which the reason (not stated by either) is usually taken to be that women could not appear before the *comitia*; however, Gaius' phrase *magis placuit*, "the view that prevailed was," suggests the matter had occasioned some discussion (when?). The expansion of Roman citizen settlement through the Mediterranean would by the time of the late Republican jurists have created some demand for long-distance access to Roman legal procedures; the adrogation of women, however, might still be seen as undesirable or indeed pointless, since a woman could not legally perpetuate the *familia* into which she was adopted. Diocletian's rescripts of A.D. 286 (*Cod. Just.* 8.47.2) and 293 (below, n. 7) assume that *adrogationes* could take place in the provinces.

[6]*Dig.* 1.7.38 (Marcellus); 46 (Ulpian iv *ad legem Juliam et Papiam*) may also refer to adrogation. See further below.

[7]*Cod. Just.* 8.47.6 (A.D. 293) *adrogationes eorum, qui sui iuris sunt, nec in regia urbe nec in provinciis nisi ex rescripto principali fieri possunt*: "Adoptions of persons legally independent cannot take place, either in Rome or in the provinces, except by imperial rescript."

potestas into the *familia* of his adopter, and made him subject to *potestas*; the adopter became his *pater* and took over ownership of his property. Was a distinction maintained between the freeborn and freed *adrogatus*, either in theory or in practice? A *libertus* had had no *pater* previously; did acquiring one by adrogation give him the status of an *ingenuus* (defined by Gaius *Inst.* 1.11 as someone born free, but more narrowly by Livy 10.8.10 as someone who could name his father)?[8]

At least as early as the reign of Tiberius, legal opinion was clear that *adrogatio* conferred only the private rights of an *ingenuus*, within the *familia*, but none of the public rights. Masurius Sabinus[9] wrote on the subject:

libertinos vero ab ingenuis adoptari quidem iure posse Masurius Sabinus scripsit. sed id neque permitti dicit neque permittendum esse umquam putat, ut homines libertini ordinis per adoptiones in iura ingenuorum invadant. alioquin, inquit, si iuris ista antiquitas servetur, etiam servus a domino per praetorem dari in adoptionem potest. idque ait plerosque iuris veteris auctores posse fieri scripsisse. (Gell. *NA* 5.19.11–14)

Masurius Sabinus has written that freedmen can lawfully be adopted by freeborn men; but says that it is not, nor should it be, permitted that men of freed status should by means of adoptions usurp the legal rights of freeborn men. Otherwise, he says, if this ancient regulation were to be preserved, even a slave could be given for adoption by his master through the praetor; and this he says many authorities on ancient law wrote was possible.

Masurius' opinion is supported by Ulpian (*Dig.* 1.5.27): *eum, qui se libertinum esse fatetur, nec adoptando patronus ingenuum facere potuit.* "A patron cannot make a self-confessed freedman *ingenuus* even by adoption."

Although the *adrogatus* acquired the personal position of a son (*filius-familias*) within the *familia* (e.g., rights of succession and liability to restrictions on marriage within specified degrees of relationship—see Gaius *Inst.* 1.61, *Dig.* 23.2.17), in relation to Roman society at large he was still to be subject to the restrictions and disabilities of a freedman. Marcellus, whose career spanned the reigns of Antoninus Pius and Marcus Aurelius, specifically mentions one restriction in his commentary on the *lex Julia et Papia* (*Dig.* 23.2.32):

[8]The development of the idea of *ingenuitas* and its connection with citizen status will be further discussed below, 240–241.

[9]For Sabinus, see W. Kunkel, *Herkunft und Soziale Stellung der römischen Juristen* (Graz 1967) 119–120, 341–342, and *An Introduction to Roman Legal and Constitutional History*[2], trans. J. M. Kelly (Oxford 1973) 107. According to Pomponius (*Dig.* 1.2.2.48) Masurius was, under Tiberius, the first jurist from the equestrian class to be granted the *ius respondendi*, i.e., to be authorised by the *princeps* publicly to give opinions, which could then be produced in court, with binding effect on the court (see Kunkel, *An Introduction* . . . 107).

sciendum est libertinum, qui se ingenuo dedit adrogandum, quamvis in eius familia ingenui iura sit consecutus, ut libertinum tamen a senatoriis nuptiis repellendum esse.

It must be known that a freedman who has given himself for adoption to a freeborn man, although obtaining the rights of a freeborn man within his [the adopter's] *familia*, is nevertheless, as being of freedman status, to be barred from marrying within the senatorial class.

Marriage within the senatorial class was still closed to the adopted freedman. No legal text, however, mentions any ban on adoption of freedmen by senators. One literary text *might* relate to such adoptions. In A.D. 62, some candidates for office tried to secure the precedence offered to fathers of families under the Augustan marriage laws by fraudulent adoptions which were followed, once they had gained their ends, by immediate emancipations. This caused an outcry and elicited a senatorial decree in A.D. 62 (Tac. *Ann.* 15.19).[10] It is perhaps unlikely, however, that the candidates adopted freedmen for so public and prestigious a purpose. All the same, Tacitus' account of the incident has further implications concerning adoptions within the wealthier classes, discussed below (249–250).

There is perhaps a possibility that at an early stage in Roman history freedmen, on adoption by Roman citizens, acquired the full rights and status of freeborn Romans. Watson (90 ff.) has discussed in detail the Gellius passage quoted above, together with Justinian *Inst.* 1.11.12.[11] He is mainly concerned with the question whether *slaves* could be directly adopted during the Republic; it is clear from these two texts that this was no longer the case in classical law. Watson argues (94) that the inference to be drawn from what Sabinus says is that there had been a change in the law, affecting the status both of slaves and of freedmen.

[10]That adopted as well as legitimate biological children had apparently, at least until A.D. 62 (see below, n. 29), been accepted as giving exemption from the restrictions of the Augustan legislation supports the interpretation of A. F. Wallace-Hadrill, "Family and Inheritance in the Augustan Marriage Laws," *PCPhS* NS 27 (1981) 58–60, that the aim of the legislation was not solely to encourage the production of children, but to encourage the family (with, by implication, the rights of inheritance between its members) in order to "stabilise the transmission of property, and consequently of status, from generation to generation" (59).

[11]*apud Catonem bene scriptum refert antiquitas, servi, si a domino adoptati sint, ex hoc ipso posse liberari. unde et nos eruditi in nostra constitutione etiam eum servum, quem dominus actis intervenientibus filium suum nominaverit, liberum esse constituimus, licet hoc ad ius filii accipiendum non sufficit.* "History has handed down a wise remark from Cato's works: that slaves adopted by their owner by that alone attain their freedom. We too have learned from that and have laid down in our pronouncement that a slave whom an owner names as his son in proper documents becomes free. However, that is not enough to give him the full status of a son' (translation by P. Birks and G. McLeod [London 1987]).

A *libertinus* adopted by an *ingenuus* became an *ingenuus* only so long as it was accepted that the position in the state of an adopted person was that of the adopter. Also so long as this was the position, a slave adopted by a Roman citizen automatically became a Roman citizen. But once it was decided that status in the State was not altered by adoption—and for this change we have evidence in respect of *libertini*—a slave could not be adopted, because a non-Roman could not be a *filius in potestate* to a *civis Romanus*.

There is no further direct evidence of this change in the legal position of the adopted freedman, but it is not inherently implausible that such a change did take place and, indeed, that for some time during the earlier Republic freedmen who were adopted could enjoy the same status as *ingenui*, both within the family and the state. Such a position would accord with the relative openness and accessibility of Roman citizenship down at least to 338 B.C.[12] In addition, so long as slaves were acquired mainly by the conquest and capture of free peoples, *ingenuitas* would not be so obvious a criterion of social differentiation between the citizen by birth, the freeborn non-Roman admitted to citizenship, and the ex-slave, originally freeborn, restored to freedom and given citizenship. It might seem equally acceptable for any of the three to become *filiusfamilias* by adoption. Born slaves, however, were a different matter. K. R. Bradley[13] has recently argued for the existence of a significant female element, and hence for the presence of *vernae*, slaves born to female slaves in the household, in the Roman slave population from quite early in the Republic. This may well have brought about changes in the attitude of the Romans towards freed slaves, whether adopted or not.

Livy's narrative contains more than one reference to such status-consciousness. The censorship of Appius Claudius was held to have polluted (*inquinaverat*) the Senate by the admission of the sons of freedmen (Livy 9.46.11); this may reflect the attitudes of some Romans at the time of Fabius Pictor, rather than a century earlier. In a speech given by Livy to P. Decius Mus in the debate in 300 B.C. on the proposal to admit plebeians to the priesthood, an etymology for the word *patricios* is proposed (10.8.10): *qui patrem ciere possent, id est, ingenuos*: "those who can name their father, i.e., the freeborn." A *verna*, so far as the Romans were concerned, had no parents.

The idea of *ingenuitas* itself, however, seems to have undergone a historical development. The fanciful etymology apart, Livy's definition equates *ingenuus* with *patricius*; according to Festus 241, Cincius (presumably L. Cincius Alimentus, *floruit* ca 210 B.C.) said that *patricii* was the term

[12]Sherwin-White ch. 1; cf. H. Chantraine, "Zur Entstehung der Freilassung mit Bürgerrechtserwerb," *ANRW* 1.2 (1972) 65–66.

[13]K. R. Bradley, "On the Roman Slave Supply and Slavebreeding," in M. I. Finley, ed., *Classical Slavery* (London 1987) 42–64.

originally used for *ingenui*: *patricios Cincius ait in libro de comitiis eos appellari solitos qui nunc ingenui vocantur*. This, rather than Livy's suggested etymology, probably reflects the original usage of *in-genuus*—someone "born inside" the exclusive circle of the Roman patriciate rather than someone of *free* birth. Plebeians and ex-slaves were lumped together in the undifferentiated mass of those with no access to political office. With the progressive inroads of plebeians on the patrician monopoly of office, free birth rather than patrician birth was what mainly differentiated the potential magistrate from the rest; in addition, for much of the historical Republic efforts were made to restrict the voting-power of ex-slaves within the citizen-body at large.[14] The earliest example of *ingenuus* = "freeborn" in explicit contrast with "freed" is Plautus *Mil.* 784: *ingenuamne an libertinam?* (cf. 961). The original, class-based sense survived indirectly in the use of *ingenuus* to indicate nobility of character, found frequently in Cicero and later authors;[15] in this sense it is found even as a cognomen for freed slaves (and may have been their slave name), as, e.g., *CIL* VI 11995 *C. Antonio C. l. Ingenuo patronus lib. bono*, 14516 *fecit Cassia Ingenua patrono*.

According to Justinian (*Inst.* 1.11.12; see note 11) it seems that a slave could still be adopted by his master in the time of the elder Cato. Cato was apparently dealing merely with a procedural question—whether the adoption *ipso facto* constituted manumission. Our text tells us nothing about the *iura* of a slave, or a freedman, so adopted in Cato's time. By the reign of Tiberius at the latest, however, as we have seen, the law regarded the adopted freedman as still a freedman for all matters outside family law.

The essentially political development of the idea of *ingenuitas* outlined above, which differentiated the person who entered the citizen-body out of slavery from *all* freeborn citizens, was accompanied, it appears, by changes in relation to the private rights of freedmen.[16] A key passage illustrating this development is Gaius *Inst.* 3.40–42 (see Watson 231–235, Treggiari 78–79). Gaius indicates three stages of development in the law on inheritance to a freedman's estate:

(1) Patron succeeds only if the freedman dies intestate, leaving no *suus heres*, no immediate heir—i.e., for a freedman, no legitimate child (Twelve Tables).

[14]Treggiari 37–52; for restrictions on eligibility for office see Treggiari 52–68, Sherwin-White 127 ff.

[15]E.g., Cic. *Brutus* 67 *ingenuum fastidium*, *de Or.* 3.21 *ingenuae artes*, etc.; Juvenal 11.154 *ingenui vultus puer ingenuique pudoris*.

[16]Discussed by Treggiari 68 ff. and Watson ch. 19. *operae* ("services") were essentially contractual, and are not relevant to the present discussion. *obsequium*, roughly "respectful helpfulness," essentially a moral rather than a legal obligation, could have legal consequences (i.e., from *infamia*), but the obligation was not backed by any threat of legal penalty until the early Principate.

(2) Patron is still excluded entirely by *sui heredes*, but by natural children only, not if they are adoptive or wives *in manu* (i.e., subject to the *potestas* of their husbands); against these, patron can claim half even against a will (praetor's edict, between 118 and 74 B.C.; see Watson 31 ff.).
(3) Patron can claim a share of the estate of freedmen, testate or intestate, with 100,000 HS or more, even against natural children; three children required to exclude patron entirely (*Lex Papia*).

Stage 3 is part of the wide-ranging legislative programme of Augustus institutionalising demarcations within Roman society on the criteria of wealth and birth. For the present discussion, the important change is between stages 1 and 2. There appeared to be no cause of complaint, says Gaius, if the freedman's heir was his actual child, but it was "manifestly unfair" if an adoptive child or wife *in manu* (i.e., someone with no blood link) should oust the patron. Gaius refers to the attitude that prevailed at the time of the change. But things had not always been thus. In stage 1, the *libertus*, as regards his right to dispose of his property, had the same right as any other *paterfamilias*. If he died intestate without *sui heredes*, the estate went to his patron—there were no agnates or cognates to whom it could go, since, as far as the law was concerned, he had entered Roman society entirely alone; blood relationships between slaves did not survive into freedom for the purposes of Roman property law.[17] If he made a will, no one other than *sui heredes* had any right to challenge it; his patron had no more claim than he had in regard to any other freeborn Roman *pater* not related to him by blood. By the time of the edict, however, the *libertus*, in private as well as in public law, was clearly no longer regarded as indistinguishable from any other free Roman.

Power to adrogate

In classical law, there was a restriction (but, as we shall see, one that was breached) on who might adrogate a freedman. This right was reserved to his *patronus*.[18] This we learn from Ulpian (*Dig.* 1.7.15.2–3):

in adrogationibus cognitio vertitur, num forte minor sexaginta annis sit qui adrogat, 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. item non debet quis plures adrogare nisi ex iusta causa, sed nec libertum alienum, nec maiorem minor.

[17]They did for marriage, if there was any question of "incestuous" relationships; since the rules on forbidden degrees derived originally from custom, legally non-existent relationships could be recognised: so Pomponius, *Dig.* 23.2.8 (cf. *Dig.* 48.2.12.4 [Saturninus] on parricide).

[18]Female patrons were excluded since women, having no *potestas*, could not adopt (Gaius *Inst.* 1.104).

In adrogations, enquiry is made whether the adopter is perhaps under 60 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.

Clearly, the primary motive for adrogation is expected to be the perpetuation of the *familia* through the acquisition of a *suus heres*. When a man *sui iuris* was adrogated, his own *familia* was extinguished; he, his property, and everyone in his *potestas* came under the control of the adopter. This is the reason for the careful enquiry made into the circumstances and motives of the adopter, and also for the formality of the procedure (see also Cic. *Dom.* 34–38, *Dig.* 1.7.17).

A patron lacking direct heirs might prefer to adopt a known and trusted freedman rather than a free outsider. We are not told that senators were specifically prevented by Augustan legislation from adopting their freed slaves as they were from marrying them; it seems likely that they were, but equally, that such a contingency was so improbable that express prohibition was not thought necessary. The most likely candidate for adrogation by a patron would perhaps be his own natural child by a slave-woman (*ancilla*). The *lex Aelia Sentia* included such children among those who might be lawfully manumitted under the age of thirty (Gaius *Inst.* 1.19). This provision could be taken advantage of by freedmen who managed to buy their children born in slavery, then freed and adrogated them. For those who did not manage to become patrons of their own children, there was, under the empire, a further possibility (see below, 244).

The reason for the view that one ought not to adopt a freedman other than one's own was a desire to protect the rights of the patron: respect and assistance (*obsequium*), services (*operae*—if contractually agreed),[19] and, to some extent, inheritance. Whether such a view was already prevalent in the Republic is not known. Ulpian's mention (*Dig.* 1.7.15.3) comes from a commentary on Sabinus, who may himself have mentioned it. The *lex Papia Poppaea* had, as we saw, enhanced the rights of the patrons of wealthier freedmen by giving them a claim to part of the freedman's estate even against a will, and they could be fully excluded only by three children (Gaius *Inst.* 3.42). Already under the Republic the praetor's edict gave the

[19]For a detailed analysis of the place of *operae* in Roman law, and implications for relations between patrons and their freedmen, see W. Waldstein, Operae libertorum: *Untersuchungen zur Dienstpflicht freigelassener Sklaven* (Stuttgart 1986). Waldstein rightly stresses (ch. 7) the contractual nature of *operae*. That they could be the object of litigation between the two individuals concerned, patron and freedman, expressed their formal equality in law, both being Roman citizens.

patron some claim, whether there was a will or not, against all heirs not *sui heredes* by birth (Gaius *Inst.* 3.41, Ulp. *Reg.* 29.1).

The principle that such adoptions were inadmissible, however, does not seem to have been very strictly applied. Several legal texts show that breaches were tolerated (see below, 245–248), and the wording of the text ascribed to Ulpian suggests that exceptional permission to adrogate might be given to someone other than the patron: *non debet quis plures adrogare nisi ex iusta causa, sed nec libertum alienum, nec maiorem minor* (*Dig.* 1.7.15.3). If *nisi ex iusta causa* may be taken with all three phrases, and not only with the first, then possibly adrogation of a freedman by someone other than his own patron was permitted if good cause was shown to the presiding officials; Ulpian's use of *debet* gives further support to this interpretation.[20] *iusta causa* may cover, in relation to the adrogation of freedmen also, the range of possibilities mentioned in *Dig.* 1.7.15.2–3, but it is tempting to associate it particularly with the exemptions from the restrictions on manumission under the *lex Aelia Sentia* (Gaius *Inst.* 1.19 and 39), which mostly involve close personal connections, particularly blood-relationships, between patron and freedman.

At least one "just cause" relationship was given special consideration:

in servitute mea quaesitus mihi filius in potestatem meam redigi beneficio principis potest: libertinum tamen eum manere non dubitatur. (*Dig.* 1.7.46)

A slave born to me while I was a slave can by the special grant of the emperor be brought into my *potestas*; nevertheless it is not doubted that he remains a freedman.

This text is cited as being from the fourth book of Ulpian's commentary of the *lex Julia et Papia*, and the concession may well date to the period of that legislation. Like the exemptions in the *lex Aelia Sentia*, it shows a concern to favour close blood-relationships. It could appropriately be placed in the marriage legislation, since its presumed effect would be to free a father from the effects of childlessness (*orbitas*) or even to facilitate his achieving the *ius liberorum*, while not interfering with the patron's rights over the freedman son. Whether the effect of the emperor's grant was to put the freedman directly under his father's *potestas* or merely to give permission to apply for adrogation is not stated. We have no way of knowing how many families actually availed themselves of this permission.[21] It has been noted that the

[20]D. Daube, *Forms of Roman Legislation* (Oxford 1956) 12, distinguishes between the use of words such as *licuerit* or *possit* to enunciate strict law (*ius*) and *oportuerit* or *debeat* to express *aequitas*.

[21]Since funerary inscriptions commemorate only a self-selected portion of free, freed, and slave members of Roman society (and the two former categories, especially among the women, are often impossible to distinguish from each other), it is difficult to maintain that these can be successfully used as a basis for estimating either global numbers of

families epigraphically attested for freedmen tend to be small, which may reflect the loss, in various ways, from the family group of children born before their parents' manumission.[22] Once parents and children had lost touch, the possibility of adoption would also be lost.

From three other passages in the *Digest* it is clear that, whatever the official legal position, some sort of adrogation of freedmen was sometimes carried through by persons other than their patrons, and without demonstrating "just cause." The implication is that these adrogators were not the natural fathers of the freedmen. The first passage comes from the *Digest* title *De in ius vocando*:

patronum autem accipimus etiam si capite minutus sit; vel si libertus capite minutus, dum adrogetur per obreptionem. cum enim hoc ipso, quo adrogatur, celat condicionem, non id actum videtur, ut fieret ingenuum. (*Dig.* 2.4.10.2: Ulpian v *ad edictum*)

We regard him as patron even if he has undergone change of status,[23] or if the freedman has undergone change of status, provided that he is adrogated *per*

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freed slaves, or freed slaves as a proportion of all slaves, or of all free persons. G. Alföldy, "Die Freilassung von Sklaven und die Struktur der Sklaverei in der römischen Kaiserzeit," *Rivista Storica dell'Antichità* 2 (1972) 97–129 (= *Die Römische Gesellschaft* [Stuttgart 1986] 286–321) put forward the view that manumission for slaves surviving to the age of thirty was almost a matter of course. Reservations were expressed by Keith Hopkins, *Conquerors and Slaves* (Cambridge 1978) 127, n. 63, and there was rather stronger criticism from W. V. Harris, "Towards a Study of the Roman Slave Trade," *MAAR* 36 (1980) 117–140, esp. 118 and 133 ff., nn. 8–9, and especially from T. E. J. Wiedemann, "The Regularity of Manumission at Rome," *CQ* NS 35 (1985) 162–175. Alföldy's reply (*Die Römische Gesellschaft* 322–331) speaks (329) of "masses of data" without coming to grips with the questions of how representative these are, or, since they extend over a long chronological span, how great the totals at any given time are likely to have been.

[22] Treggiari (above, n. 14) 213–215 suggests this together with a number of other possible explanations (such as endemic subfertility or deliberate family limitation, 214), all of which are rejected, on insufficient grounds by G. Fabre, "Remarques sur la vie familiale des affranchis privés aux deux derniers siècles de la république; problèmes juridiques et sociologiques," in *Annales du Colloque 1971 sur l'Esclavage* (Paris 1971) 245. See also Appendix to this paper and P. Weaver, "The Status of Children in Mixed Marriages," in Rawson 161 ff., for discussion of some of the difficulties in determining the status of members of the family groups commemorated in inscriptions of Augustan freedmen. Children with the father's *nomen* and *cognomen* Weaver suggests were either born after his manumission or born free, to a free mother not affected by the *senatusconsultum Claudianum* (see below, n. 43) and subsequently adopted. This latter he suggests must have been the case with those whose recorded age at death is too young for them to have been, if slave-born, lawfully manumitted under the *lex Aelia Sentia*. However, there is also the possibility that these sons were given to their fathers and then manumitted, being natural sons, as a *iusta causa* exception. On the terminology used for adopted children in inscriptions, see further in the Appendix (below).

[23] *capitis deminutio* (loss of [previous] status) and its effects are explained in Gaius *Inst.* 1.158–164. It was a consequence of a number of legal acts, including adoption and adrogation.

obreptionem. For although by this very fact, that he is adrogated, he conceals his condition, nevertheless it does not appear to have been achieved that he becomes freeborn.

The praetor's edict normally afforded protection to patrons against prosecution, particularly in defaming actions, by their freedmen. Ulpian's expression is rather condensed, but what he appears to be saying is: (a) even if the patron has undergone change of status, he still counts as patron, and is still protected; (b) even if the *libertus* has undergone change of status, the patron is still protected if the adrogation is *per obreptionem*, i.e., in some way illicitly or clandestinely and so, by implication, by someone other than the patron. The meaning of *per obreptionem* will be further explored below (248). If the adrogation was regular, of course, it would normally have been with the patron as *adrogator*, so he would still have protection as *paterfamilias*. Ulpian does not mention here the case of the freedman son brought into his father's *potestas* by imperial dispensation (*Dig.* 1.7.46), but he stresses in the latter passage that the son remains a freedman. While the son was *in potestate*, he would have only a very limited power to prosecute at all (*Dig.* 44.7.9.), so the occasion might seldom or never arise. When he became *sui iuris*, was there no distinction between him and the irregularly adrogated freedman? If the *beneficium principis* of *Dig.* 1.7.46 meant permission for his father to adrogate, then it might be argued that as the freedman was not adrogated *per obreptionem* the patron lost his protection against prosecution.

Perhaps the imperial generosity had not gone quite so far as that in breaking down social distinctions. Ulpian goes on to say (*Dig.* 2.4.10.3) that in his opinion the *ius anuli aurei*, the right of wearing the golden ring that was the mark of equestrian rank, did not remove the obligation of *reverentia* towards a patron, even although the holder had all the benefits of freeborn status; on the other hand, *restitutio natalium*, a legal act embodying a fiction that a man was freeborn, did, "for the *princeps* makes a man freeborn." The *ius anuli aurei* was a privilege normally reserved for the freeborn, but on occasion bestowed on the freedmen by imperial grant.[24] The exercise of the *ius* by freedmen was unpopular with aristocratic opinion in the first century A.D., and was abused by some freedmen. An alternative method introduced some time later, possibly under the Antonines, was the conferment by the emperor of *restitutio natalium*. However, since this also removed the patron's right of inheritance, Marcian tell us (*Dig.* 40.11.2) it was normally conferred only with the patron's consent.

[24]An exception recognised by the *lex Visellia* of A.D. 24 (*Cod. Just.* 9.21), which animadverted upon freedmen who usurped the *honores et dignitates* of the freeborn unless they had received such a grant. For discussion of the *ius anuli aurei*, see C. Nicolet, *L'Ordre équestre à l'époque républicaine* 1 (Paris 1966) 139 ff.

A notable omission, however, is any mention of the patron's consent to the adrogation of his freedman by someone else. There could be advantage for the patron in his freedman's becoming *suus heres* to another Roman; the freedman's estate, to which the patron or his family would ultimately have a claim, might be enhanced thereby. There was, though, the risk that the freedman would die first, before his adoptive father, while still *in potestate* and unable to own any property at all. Legal texts are silent on this possibility, but it is in the highest degree unlikely that the Romans would have tolerated any inroads on the rights of ownership of a *pater*, such as by giving the patron any sort of claim on the adrogator's property. The patron's rights would be exercisable only after the death of the adrogator, once the ex-freedman became *sui iuris* again.

The second passage is as follows:

nepos ab avo manumissus dedit se adrogandum patri suo: sive manens in potestate patris decesserit sive manumissus diem suum obeat, solus admittetur avus ad eius successionem ex interpretatione edicti, quia perinde defert praetor bonorum possessionem, atque si ex servitute manumissus esset: porro si hoc esset, aut non esset adrogatus, quia adrogatio liberti admittenda non est aut si obrepserit, patroni tamen nihilo minus ius integrum maneret. (*Dig.* 37.12.1.2: Ulpian v *ad edictum*)

A grandson was emancipated by his grandfather and gave himself for adrogation to his father. Whether he died while still in his father's *potestas* or met his end after being emancipated, his grandfather alone is admitted to his succession. This derives from an interpretation of the edict, because the praetor grants possession of goods just as if he had been manumitted from slavery. Indeed, if he *had* been, either he would not have been adrogated, since the adrogation of a freedman[25] is not allowed, or *si obrepserit* his patron's right would none the less have remained unimpaired.

By an interpretation of the edict, *bonorum possessio* is given to the grandfather, not the father, of a deceased son who had been emancipated by his grandfather and adrogated by his father (who must himself already

[25]It is worth noting that Ulpian uses *libertus*, "a freedman," rather than *libertinus*, "one of freedman status." Gaius *Inst.* 1.9–11, discussing differences of status, says that free men are either *ingenui* or *libertini*: *ingenui* are those born free; *libertini* are those manumitted from lawful slavery (the mention of "lawful" distinguishes them from freeborn men unlawfully enslaved who secured restoration of status). A *libertus*, on the other hand, is someone who has ceased to be a slave: *Dig.* 1.1.4 (Ulpian). Unlike *libertinus*, the word *libertus* is frequently accompanied in legal texts by an adjective (or, as in inscriptions, the genitive of a noun) indicating the owner; *VIR* lists *alienus, avitus, communis, meus, noster, orcinus, paternus, proprius, suus.* Ulpian does not mean to say that *no one* of freedman status can be adrogated; *alieni*, "someone else's," must be understood. *sui*, "one's own," is ruled out here, since the clear implication of Ulpian's remark in *Dig.* 1.7.15.3 (above, 242), that one ought not to adopt *libertum alienum*, is that adoption of one's own freedman *was* permissible.

have been emancipated). In the comparison with the adrogation of a freedman, the grandfather is in the position of the *patronus*, the grandson of the freedman, and his father of a third party, not the patron, who has adrogated him. This particular passage brings out very clearly the essential similarity between the situation of the *parens manumissor*, or father who emancipates, and the patron; after Claudius abolished the agnate *tutela*, these two constituted the sole remaining categories of *tutores legitimi* (Gaius *Inst.* 1.192).

The third passage is from the *Digest* title *De bonis libertorum*: *liberto per obreptionem adrogato ius suum patronus non amittit* (*Dig.* 38.2.49: Paul *iii sententiarum*); "when a freedman is adrogated *per obreptionem* his patron does not lose his right."

What is meant by *per obreptionem* in these three passages? In the translation of the *Digest* edited by Alan Watson (1985), this is rendered in the first as "fraudulently" and in the third as "secretly." In the second *si obrepserit* is rendered as "if he has cheated (his way into adoption)." It is difficult to see what meaning is to be attached to "secretly" since, as already described, *adrogatio* was, until Diocletian, a public act involving an enquiry by the pontiffs and a *lex curiata*. The fraud or cheating involved could be some false testimony either about the status of the person being adrogated or the identity of his patron;[26] if *per obreptionem* meant that the patron's consent had not been obtained, some such deception might be necessary.

From these three passages we learn that although *adrogatio* of a freedman by a third party was not allowable, nevertheless if the adoption was by some means carried through "illicitly" it was valid, though the patron's rights remained unaffected—an example of something "forbidden but tolerated." Where adoption was by someone other than the patron, e.g., the natural father, adopting by special dispensation, and so not illicitly, then also the patron's rights remained unaffected. May we not infer a third possibility, *adrogatio* by a third party to which the patron had given his consent, and so not *per obreptionem*? In that situation, were the patron's rights terminated or not? Logically, one ought to suppose that they were terminated. (If *adrogatio* by patron's consent was possible, why should a natural father need to go to the emperor for permission to adrogate? Presumably, if the patron did not consent—in which case the maintenance of his rights is understandable.)

The purposes of adrogation of freedmen

A patron adrogating his freedman no doubt shared many of the motives of adopters in general. The two referred to by Cicero (*Dom.* 34–35) are

[26]Perhaps further evidence that, as suggested in J. F. Gardner, "Proofs of Status in the Roman World," *BICS* 33 (1986) 1–14, production of documentary evidence was not regularly required in contexts where this might have been expected.

the wish to acquire an heir (*heres*) and to secure the perpetuation of the family *sacra*; the latter might weigh less with patrons who were themselves freedmen of non-Roman origin. Being of an age still capable of procreation was a ground for refusal of permission to adrogate,[27] as was having children already.[28] Under the early Empire, relief from the penalties placed by Augustan legislation on *orbitas* or acquisition of the *ius liberorum* were other possible motives, and abuse had to be checked (Tac. *Ann.* 15.19). In A.D. 62 angry representations were made to the Senate against activities of certain ambitious candidates for office or appointment to governorships who used fraudulent adoptions to gain the priority of selection accorded to fathers of families, and then granted immediate emancipations when they had secured their object. This elicited a senatorial decree that for the future fictitious adoptions were to be of no assistance.[29] In Tacitus' account, the fraud lay in the fact that the adoptive fathers, having gained the advantages for which the adoptions were undertaken, promptly emancipated the adopted persons; it did not lie in the adoptions themselves. The enquiry by the pontiffs was concerned primarily with the acceptability of the termination of the adoptee's *familia*, and on that account at least a freedman, with no pre-existing connections, would seem to present no problem (providing, as we shall see presently, that the adopted was his own patron). However, Ulpian's account of the proceedings (below, 250–251) indicates that the enquiry was at least as much concerned with the circumstances of the adopter.

As suggested above, the social prejudice against freedmen is likely to have been a substantial reason for the candidates for office not to adopt them; in the circumstances, the pedigree of their adopted (even temporarily

[27]Cic. *Dom.* 34; *Dig.* 1.7.15.2. The age limit of sixty reflects Augustan legislation on marriage and inheritance.

[28]*Dig.* 1.7.15.3, 17.3; *Cod. Just.* 8.47.3 (below, 251).

[29]W. W. Buckland, *A Text-Book of Roman Law* (Cambridge 1966) 320 says "Adoptive children sufficed until Nero" (sc. to meet the requirements of the Julian and Papian Laws)—implying that *no* adoptive children counted thereafter, but only biological children. Confirmation cannot be found in the scrappy attestations of the laws in legal texts, since they are concerned either with rights of inheritance between husband and wife, in virtue of the children born to them, or with the exemption from *tutela* accorded to women (which could be only in virtue of children born to them, since women could not adopt). Tacitus actually says "*fictitious* adoption (*simulata adoptio*) was to be of no benefit." How was a fictitious adoption to be identified? According to Tacitus, by emancipation after a short interval. What we may perhaps infer from Tacitus' account is that adopted children did not cease to count in order to gain the benefits or avoid the penalties of the Augustan laws, but only so long as they remained in the *potestas* of the adopter. Whether the situation was different with emancipated biological children is unclear. Survival of a couple's own children for a relatively short time after birth was enough to guarantee husband and wife solid capacity to inherit from each other (Ulp. *Reg.* 15.1), and their emancipation after reaching the required minimum age should not have affected that. This is a complex question, and one that cannot be pursued here.

adopted) sons would be of some moment. According to Tacitus' account, however, the senatorial decree was to apply to qualification for inheritances as well. This suggests that some people had practised a similar fraud in order to qualify to receive inheritances; for them the status of their temporary *filii* would perhaps matter much less, especially if they were themselves not of senatorial status.

Another purpose for adoption could be to bring a son into the father's *familia*. *Dig.* 1.7.46 was interpreted above as applying to the case of a freedman wanting to adrogate his natural son, also a freedman, to whom he was not patron; another possible application could be to give dispensation to a freedman who *had* succeeded in buying and manumitting his son to adrogate him, despite having had other children since gaining his freedom.

If a patron with no sons was in the habit of employing his freedman to run some of his business affairs, the latter could be more directly controlled and brought to account by third parties as *filius* than as *libertus*, since a direct action would now lie against the patron for anything done by the ex-freedman on his patron's behalf. So credit and confidence would be enhanced, and a notorious defect in the Roman law of agency[30] would be obviated. Since from the patron's point of view the same strengthening of credit could have been achieved (and, indeed, achieved better) by using a slave as his agent, this is unlikely to have been of itself a sufficient motive for adoption.[31]

A more discreditable motive, and one which the Romans apparently felt it necessary to take into account, was desire to get control of the property of the *adrogatus*. According to Gellius (*NA* 5.19.6–7) the pontifical committee was supposed to enquire after any such ulterior motive and administer an oath; the oath was first instituted by Q. Marcius Scaevola as *pontifex maximus*.[32] Exceptionally, says Ulpian (*Dig.* 1.7.15.4), permission might be given for a poorer man to adrogate a richer if the former was of known

[30] J. A. Crook, *Law and Life of Rome* (Oxford 1967) 241–243.

[31] For slaves acting on behalf of owners in a business transaction see, e.g., the tablets from Pompei (Murecine): *AE* 1973.143 (A.D. 37) and 167 (A.D. 38). The legal implications of the use of slaves as agents are discussed by Watson (above, n. 1, ch. 7). Sons became less useful than slaves in any transactions involving money after the Vespasianic *senatusconsultum Macedonianum* (*Dig.* 14.6), directing magistrates to deny an action to one who lent money to a *filiusfamilias*. Y. Thomas, "Droit domestique et droit politique à Rome. Remarques sur le pécule et les honeurs des fils de famille," *MélRome* 94 (1982) 537–543, has observed that, although legal texts do not distinguish in principle between slaves and sons *in potestate* acting as agents (*institores*) virtually all the case studies concern slaves. The role of agents is now the subject of a detailed study by A. Kirschenbaum, *Sons, Slaves and Freedmen in Roman Commerce* (Jerusalem 1987).

[32] A further protection was the requirement, lifted by a rescript of Pius, that the *adrogatus* must not be under-age, *impubes*: Gaius *Inst.* 1.102; Ulp. *Reg.* 8.5. There were, however, safeguards: see Buckland (above, n. 29) 126. Those under the age of 25 also had protection: *Dig.* 1.7.17.1; 4.3.6.

good character and the sincerity of his intentions had been ascertained. Presumably the *adrogatus*, who could scarcely be adopted against his own will, would have been satisfied on these points before he agreed to surrender his person and property into the *potestas* of another.

The intending adopter had to present a statement of his reasons to the committee; if they were not satisfied, he would be turned down. In A.D. 286 Diocletian and Maximian answered one Martianus:

cum eum, quem adrogare vis, libertum tuum esse profitearis nec ullam idoneam causam precibus indideris, id est quod non liberos habes, intellegis iuris auctoritatem desiderio tuo refragari. (*Cod. Just.* 8.47.3)

As you state that the man whom you wish to adrogate is your freedman, and do not include in your petition any adequate reason, for example, that you have no children, you are advised that the authority of the law rejects your request.

Though possession of children was, in the absence of other good reasons, a ground for refusal of permission to adrogate, there are a few texts which suggest one particular circumstance in which it might be allowed. In *Dig.* 23.2.17 pr., 1 (Gaius xi *ad edictum provinciale*) we read:

(pr.) *per adoptionem quaesita fraternitas eousque impedit nuptias, donec manet adoptio: ideoque eam, quam pater meus adoptavit et emancipavit, potero uxorem ducere. aeque et si me emancipato illam in potestatem retinuerit, poterimus iungi matrimonio.* (1) *itaque volenti generum adoptare suadetur, ut filiam emancipet: similiter suadetur ei, qui nurum velit adoptare, ut emancipet filium.*[33]

A sibling relationship created by adoption is a bar to marriage so long as the adoption holds; therefore I can marry a woman whom my father has adopted and then emancipated. Equally, we can be married if he emancipates me and keeps her in *potestas*. Therefore someone who wishes to adopt his son-in-law is advised to emancipate his daughter, and likewise someone wishing to adopt his daughter-in-law is advised to emancipate his son.

The permutations on possible adoptions are no doubt in consideration of various possible situations that might arise concerning acquisition and transfer of property (particularly by inheritance) from persons outside the *familia*. L. Minieri[34] suggests, on no compelling grounds, that as the passage comes from Gaius' work on the provincial edict, it may reflect non-Roman practice in the eastern provinces; on the contrary, it seems to me to be entirely comprehensible in Roman terms.

This double manoeuvre would have the merit of preserving the name of the *familia*, providing an heir, and at the same time providing for an

[33] *Dig.* 23.2.17 pr. corresponds closely to the content of Gaius *Inst.* 1.61; with *Dig.* 23.2.17.1 may be compared Justinian *Inst.* 1.10.2.

[34] L. Minieri, "L'adozione del genero," *Labeo* 28 (1982) 278–284.

unmarried daughter's future—at least during the *pater*'s lifetime. As *pater* of the husband and *parens manumissor* of the wife, he would be in a strong position to discourage divorce.[35] A possibility worth considering is that a *pater* with no male heir may sometimes have contemplated adopting, not an *ingenuus*, but his own freedman, and marrying him to his emancipated daughter. This expedient is unlikely to have been in use very high up the social scale. Epigraphic and legal evidence suggests social disapproval of unions between freedmen and freeborn women, and marriage to a patroness or widow or female descendant of a patron was actually made an offence punishable with condemnation to the mines by Septimius Severus.[36] How vigorously this was enforced is unknown; it was not thought worth applying it to women of such low class "that even marriage to a freedman would be honourable" (*Dig.* 23.2.13 [Ulpian]). At an earlier date, marriage to a freedman was not regarded as a good catch for the daughter of an *eques*; if Valerius Maximus is to be believed, Pontius Aufidianus killed his daughter rather than contract a shameful shotgun marriage.[37] For less exalted citizens, however, it may have been acceptable.[38]

For the freedman himself, adrogation could have advantages. Though no longer capable of owning property in his own right, he would now be part of the legal family of (in principle) a wealthier man, with likely improvement in his style of living, and a legal entitlement to share in his adoptive father's inheritance.

Summary

In the early Republic, it appears that adoption by Roman citizens gave freedmen in all respects the same status as freeborn citizens. By the end of the Republic (for reasons probably connected with a change in the concept of citizenship itself), adoption no longer removed their public disabilities as freedmen or their obligations to their patrons. Adoption by someone other than the patron was formally disapproved of but tolerated, and even permitted, by imperial rescript, for the natural fathers, who could thus legitimate and acquire *potestas* over their ex-slave sons. Acquisition of an

[35]A father whose married daughter had already produced a child could preserve at least the name by making the grandchild his heir on condition of adopting his name.

[36]Paul *Sent.* 2.19.9; *Dig.* 23.2.13,62.1: *Cod. Just.* 5.4.3; J. F. Gardner, *Women in Roman Law and Society* (London 1986) 33. On the nature of this punishment, and its consequences for a person's legal status, see Fergus Millar, "Condemnation to Hard Labour in the Roman Empire, from the Julio-Claudians to Constantine," *PBSR* 52 (1984) 137–143.

[37]Another father whose status is not described, P. Maenius, stopped things from going further than kissing by severely punishing the freedman and warning the daughter to save herself for a husband (Val. Max. 6.3 and 4.)

[38]As it apparently was for a freedman to adrogate the only son of his late patron: *Dig.* 38.2.50.5 (Tryphoninus)—possibly a hypothetical case.

heir, and avoidance of the financial penalties laid by Augustan marriage legislation on the childless were other possible motives. There could also be direct economic advantages for the adopter, and ultimately, the adoptee. Adoption of freedmen is unlikely to have been common among the higher social classes.

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APPENDIX: THE IDENTIFICATION OF ADROGATED FREEDMEN

The epigraphic habits of Romans in the early Empire are unhelpful. As was observed long ago by Lily Ross Taylor[39] the majority of names in *CIL* VI have no indication of status. Even where status is indicated, this may not take us very far. When a freedman was adrogated, how was this customarily shown in the nomenclature of inscriptions?[40] As *adrogatus*, he was *filius*; as freedman, he was *libertus*. A description such as "*libertus et filius*" would be accurate and complete for one adrogated by his patron, and there are indeed one or two examples of such a designation in *CIL* VI.[41]

[39]Lily Ross Taylor, "Freedmen and Freeborn in the Epitaphs of Imperial Rome," *AJP* 82 (1961) 113–132.

[40]Adoption is rarely indicated in inscriptions. There is, e.g., a *pater adoptivus* in *CIL* XIII 415 and in *CIL* III 1181 and 1182 (Apulum, Dacia) the adopted son and daughter of a soldier are described as such, but also as the natural (in the biological sense) children of their respective fathers. Neither adoption nor adrogation is specifically mentioned in *CIL* VI.

[41]The habit of a freedman taking on the *praenomen* and *nomen* of his patron could lead to ambiguities, as pointed out by S. Treggiari, "M. Antonius Felix: Not a Freedman Transformed?," *LCM* 6 (1981) 71–72; I am grateful to Professor Treggiari for this reference. The following should *not* be taken as examples of *filius* and *libertus* being applied to the same individual.

(i) *[Gar]giliae Sp. f. Venustae / M. Antoni M. f. Pap(iria) / Flacci liberti Felicis / uxori piissimae, et / M. Antonio Felici* (S. Panciera *NSc* NS 29 [1975] 222–229; this and the following example are discussed by Treggiari, *loc. cit.*). This commemorates a husband and wife, Gargilia Venusta and M. Antonius Felix (who is named twice). The profusion of genitives in the first, longer, naming engenders ambiguity. Is *M. Antoni M. f. Pap.* to be taken with *Flacci* or with *Felicis*? Panciera interprets as follows: *M. Antonius M(arci) f(ilius) Pap(iria), Flacci libertus, Felix*, that is "Marcus Antonius Felix, son of Marcus, of the Papirian tribe, freedman of Flaccus." A more probable interpretation, however, is that Gargilia is described as the wife of "Felix, freedman of M. Antonius Flaccus son of Marcus of the Papirian tribe" (giving the patron his full nomenclature); the husband is then given his own full name, M. Antonius Felix, in the next line.

(ii) *M. Antonius M. Antoni M. f. Flori liberti Aprilis libertus Pothinus* (*CIL* VI 11617). A hasty glance might lead one to suppose that M. Antonius Pothinus was the freedman of someone who is designated both by filiation, *M. f.* and as a *libertus*: "M. Antonius

D. M. Passieniae Gemellae coniugi et lib. suae carissimae obsequentissimae et L. Passienio Doryphoro filio et Passienio Sabino filio et lib. sanctissimis. (*CIL* VI 23848)

To the gods of the dead. To Passienia Gemella his dearest, most compliant wife and freedwoman and his son L. Passienius Doryphorus and his son and freedman Sabinus, most holy.

The dedicator, L. Passienius, is commemorating his wife (whose patron he was), a freeborn son Doryphoros, and another son, Sabinus, apparently born in slavery and manumitted by his father. In calling Sabinus his *filius*, Passienius might not be designating a legal relationship, but merely a biological one. Whether Sabinus was also adopted and therefore legally *filius* we cannot say for certain, although the contrast with 27137 (below) suggests that he may have been. The double designation, as with that of his mother, may be a short way of indicating that, although they were freed below the age prescribed by the *lex Aelia Sentia*, there was "good cause" shown.[42] On the other hand, in *CIL* VI 22555, although a mother is patron, *filiae* must refer solely to the biological relationship, since women could not adopt:

Dis manibus Minucia Hesperis (sic) *vixit annis xx mensibus ii Minucia Damalis filiae et libert. suae fecit.*

For Minucia Hesperis who lived 20 years, 2 months. Minucia Damalis made this for her daughter and freedwoman.

Aprilis, son of Marcus, freedman of Florus." This designation itself is ambiguous, admitting of several possible interpretations. Was Aprilis the freedman of Florus, and also his son? And if his son, adopted, or merely natural? Or was he the natural son of *another* M. Antonius, born while one or other parent was a slave? Or was he freedman of Florus but the adrogated son of another M. Antonius? There is a simpler and more straightforward interpretation. This inscription refers to no less than *four* men, all of whom have the *praenomen* and *nomen* M. Antonius, though not all receive their full nomenclature. The name of M. Antonius Pothinus sandwiches a string of genitives. If we work backwards, i.e., from right to left, we get: "M. Antonius Pothinus, freedman of (M. Antonius) Aprilis, freedman of (M. Antonius) Florus, son of M. (Antonius)."

[42]This is probably the purpose of the use of the expressions both "patron and husband" and "freedwoman and wife"—more than 30 examples in *CIL* VI alone: J. F. Gardner (above, n. 36) 225 and (for the number of examples) J. Kolendo, "L'esclavage et la vie sexuelle des hommes libres à Rome," *Index* 10 (1981) 289–297, at 291. In an inscription from Dalmatia (*CIL* III 2371) the dual status of both mother and child is specified in this way: *L. Julius L. lib(ertus) Narcissus v(ivus) f(ecit) sibi et Juliae Helpidi coniug(i) et l(ibertae) et L. Julio Vestali f(ilio) et l(iberto).* "Lucius Julius Narcissus, freedman of Lucius, made this in his lifetime for himself and Julia Helpis, his wife and freedwoman, and L. Julius Vestalis, his son and freedman." Manumission with "good cause" shown in virtue of another relationship is probably to be seen in *CIL* VI 26811 "P(h)osphorus, brother of L. Statius Hesperus, and his freedman."

There are also three examples in *CIL* VI of the correlative, "father and patron," once as commemorator (of a daughter, 30408), twice (11895, 27137) as the person commemorated. In 11895, the commemorator, L. Antistius Diadumenus, describes himself simply by name, without giving either filiation or *lib.* The second inscription, 27137, is more detailed:

Telegennia C. L. Epiteuxis fecit sibi et / C. Telegennio C. L. Dionysio patrono suo / Anthus L. statuas patrono et patr(i) / Chryseis L. Maior aram.

Telegennia Epiteuxis, freedwoman of Gaius, made this for herself and C. Telegennius Dionysius, freedman of Gaius, her patron; Anthus, freedman, set up statues for his patron and father; Chryseis Maior, freedman, set up an altar.

Epiteuxis and Anthus, it seems, were wife and child (born in slavery) of the deceased Telegennius, who manumitted them; Chryseis was another manumitted slave. The fact that Anthus is described simply as *libertus*, not *filius et libertus*, suggests that he may not have been adrogated; his citizen status is attested by the mention that his manumitter was his father.

We have no examples in *CIL* VI of a freedman clearly adopted by someone other than his patron. Of the two examples cited by L. R. Taylor (above, n. 39, 118, n. 16) where father and son are both freedmen, in 10666 father and son are both imperial freedmen (*P. Aelius Aug. lib.*, i.e., Hadrianic), and so not candidates for adoption by their patron. The mother's name is given as Lucilia Chrysopolis, with no status indication, and she could be freeborn, in which case her son will perhaps have been a slave under the *senatusconsultum Claudianum*—one of the last before the modification of the rule by Hadrian.[43] With this inscription we may compare one found at Rhegium[44] commemorating a family in which C. Julius Celos, who describes himself as a freedman of Julia, daughter of Augustus, commemorates his mother, a freedwoman of Livia, and C. Julius Thiasus, who is described as freedman of Julia and father. As with the examples already cited, the use of the words *pater* and *filius* does not in itself show that adrogation had occurred. Taylor's other example, *CIL* VI 21540, commemorates a family in which father, mother, and son were all freed, but the son had apparently been jointly owned by his parents' patron and a woman (perhaps the latter's wife).

As for the enormous number of instances in which *pater* or *filius* occur, but not correspondingly *patronus* or *libertus*, what can be said of these? Beryl Rawson ("Family Life...," [above, n. 2] 75 ff.) was able to identify on the basis of nomenclature a few families containing ex-slaves, but these reveal themselves precisely because adoption of the illegitimate children

[43]Gaius *Inst.* 1.84; Paul *Sent.* 4.10.2; Weaver, *Familia Caesaris* ch. 9 and in Rawson 149–154.

[44]C. Turano, "Note di epigrafia classica," *Klearchos* 5 (1963) 76–81; *AE* 1975.289.

had *not* been resorted to and they did not have the *nomen* of the fathers. Weaver, in the studies cited earlier (above, note 3) is concerned mainly with children whom he believes to have been freeborn, of free mothers. It seems likely that he might now wish to alter his interpretations of some inscriptions, in so far as the assumption of free birth rested on the ages of the children or their mothers.[45] Nomenclature alone—in particular, for males, the *tria nomina* without tribal indication—is not a necessary indication of the possession of citizenship.[46] Junian Latins cannot be distinguished by their names from Roman citizens.[47]

Instances which prove that a change has occurred in the status of a child are rare. A striking example is the family commemorated in *CIL* VI 18398 and 8580:[48]

Fl(aviae) Phronime, Phoenix Caes. n. ser. coniugi et Fl. Cerealis et Phronimus et Celerina matri. (18398)

The mother, Flavia Phronime, apparently freed, is commemorated by her slave husband Phoenix and their children Flavius Cerealis (free), Phronimus and Celerina (apparently slaves).

T. Flavio Aug. lib. Ceriali tabul. reg. Picen., Phoenix Caes. n. ser. filio, P. Junius Frontinus fratri, Celerina soror. (8580)

The free brother, Cerealis, now revealed to have been a freedman of Augustus, not freeborn, has died and is commemorated by his father, still a slave, and his brother and sister. The surprise is the brother Phronimus, now apparently known as P. Junius Frontinus, with no status indication. Weaver mentions two possibilities, manumission of Phronimus followed by adoption by a P. Junius, and sale and subsequent manumission by a P. Junius. However, a third possibility, just chronologically feasible, is that Junius and Phronimus are not identical, and that the former is the son of Phoenix's subsequent "marriage" to a free woman Junia, born free, after the modification of the *senatusconsultum Claudianum*. There is no way of deciding between these possibilities.

Omission of designation would be a convenient way of disguising status. Masurius Sabinus' comment *id neque permitti dicit neque permittendum*

[45]I.e., below the minimum age for manumission (30) required by the *lex Aelia Sentia*. See especially Weaver in Rawson 155 ff.

[46]As shown convincingly and in detail for auxiliaries by A. Mócsy, "Die Namen der Diplomempfänger," in W. Eck and H. Wolff, eds., *Heer und Integrationspolitik* (Cologne 1986, Passauer Historische Forschungen 2) 437–466.

[47]As shown by Pliny *Ep.* 10.11 and 10.104; Weaver, "The Children of Freedmen (and Freedwomen)," unpublished paper delivered to Canberra conference on "The Roman Family," July 1988.

[48]Discussed in Weaver, *Familia Caesaris* 143, n. 1.

esse umquam, ut homines libertini ordinis per adoptiones in iura ingenuorum invadant (Gell. *NA* 5.19.12: "he says that it is not, nor should it be, permitted that men of freed status should by means of adoptions usurp the legal rights of freeborn men") suggests that adrogated freedmen were in the habit of presenting themselves to the society in which they moved simply as *filii* and dropping the "freedman" part from their nomenclature. If that was so, then, depressingly, we have to admit that there is no means by which we can now distinguish them from genuine *ingenui*.