

ROMAN CONCUBINAGE AND OTHER DE FACTO MARRIAGES

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By the late Republic and in the Imperial period Roman marriage required no formal ceremony to be valid; cohabitation between eligible partners basically created marriage. In such circumstances, what could constitute concubinage or unions which we would today call *de facto* (i.e., unions other than *matrimonium iustum*)? The obvious answer would seem to be "ineligibility" of at least one partner, e.g., status or military service which precluded marriage at the time the union began. It is argued below¹ that the obvious answer is probably the right one (at least for those unions which have left a record). Claims that concubinage is frequently attested for freeborn couples do not stand up to a detailed examination of the surviving evidence. Thus moral conclusions based on such claims are invalid.

Family life is an area of Roman studies that has usually been ignored or reduced to clichés and stereotypes. A disintegration of family life is often an implicit or explicit assumption in social histories of Rome, which portray a period of moral decadence setting in by the late Republic or early Empire.² Now that several other disciplines (e.g.,

¹ The preparation of this paper has been greatly assisted by the generous help of Dr. John Jory, of the University of Western Australia, who made available to me on a number of occasions sections of the complete *Index Verborum* to *CIL* 6, which he was preparing for publication. See below, n. 6, for details of this work. I have myself read all the inscriptions in *CIL* 6, but the relevant parts of the *Index* made checking easier and this has probably resulted in a fuller and more accurate set of references.

² See, for example, the sub-headings of ch. 4 ("Marriage, woman and the family") of Jérôme Carcopino, *Daily life in ancient Rome*, trans. E. O. Lorimer (New Haven 1940), which include "The weakening of paternal authority," "Feminism and demoralisation," and "Divorce and the instability of the family." Cf. Hugh Last in Cyril Bailey (ed.), *Legacy of Rome* (Oxford 1923) 231: "The new ideals which had come in from the East where home life was hardly known, overlaid on the Roman reluctance to suppress the female sex, ended in the spread at Rome of a moral licence which finally destroyed its victims."

sociology, psychology, demography) have turned their attention to "the family," we have a diversity of new approaches and methods available to encourage us to attempt a more systematic study of the Roman family. Moreover, we have in recent years learnt to interpret more skilfully the wide range of ancient evidence appropriate to such a study—not only literature, but also inscriptions, coins, works of art, architectural remains, and the law code.

One of the most important aspects of family life, and probably the one which provokes the most generalizations and condemnations, is that of marriage and the relationships between spouses. It is commonly claimed that there was widespread disrespect for marriage at Rome³—as an institution in itself, and for the ideals traditionally associated with it. Behind such claims there has often been a misunderstanding of the "informal" Roman marriage. From at least the late Republic onwards, marriage at Rome was not usually based on any intrinsic ceremony: it consisted essentially of cohabitation between two eligible partners, and the wife did not come under her husband's formal authority.⁴ Modern writers, especially when they use the colored phrase "free marriage," have tended to assume that relationships of this kind must have been immoral or, at least, unstable. Such assumptions draw heavily on our own prejudices, or social conditioning, e.g., the importance of a formal ceremony (especially, for Christians, a church wedding) and the appropriate role of the husband as head of household and owner (or at least co-owner) of all property. It is not, however, self-evident that the formal (often religious) marriages of modern Western society are more stable or enduring than were the informal ones of most Romans: they are certainly a good deal more difficult and expensive to dissolve, but for increasing numbers this is not an overwhelming deterrent.

Another belief that has been misleading and which is the subject of this paper is that many couples who were eligible to marry chose not to, preferring to live in what we should call a *de facto* union. The standard

³ E.g., L. Friedländer, *Roman Life and Manners Under the Early Empire*, 7th edn., trans. L. A. Magnus (London 1908) I 243: "Further, slavery, as everywhere, left its track of immorality very visible in Roman conjugal life."

⁴ Cf. J. A. Crook, *Law and Life of Rome* (London 1967) 101: "If you lived together 'as' man and wife, man and wife you were." Ceremonies often took place, of course: they helped to establish marital intention.

reference for such unions is still Paul Meyer's *Der römische Konkubinat* (Leipzig 1895), sometimes supplemented by Jean Plassard's *Le concubinat romain sous le haut Empire* (Paris 1921). Both of these are now unsatisfactory for a number of reasons, which will be discussed below; but they are still frequently referred to as authoritative and arguments are based on their conclusions.⁵ The major weakness of both these works is in their use of inscriptional evidence. Since it is precisely in this kind of evidence that great progress has been made since their times—the bulk of evidence available has increased, ancillary publications have made it easier to use such evidence,⁶ and important specialized work has brought a greater understanding of Roman names and status⁷—it is surely time for a new, systematic look at the epigraphical evidence for concubinage and similar unions, in the light of recent progress.

Both Meyer and Plassard claim that concubinage is recorded for couples in every status combination—freeborn, freed, and slave. Many of these partners should have been eligible to contract a legally recognized Roman marriage.⁸ Slaves could not legally marry, but all

⁵ Even such careful and excellent books as Crook's (above, n. 4) and P. R. C. Weaver's *Familia Caesaris. A Social Study of the Emperor's Freedmen and Slaves* (Cambridge 1972), repeat the conclusions of Meyer and Plassard without question. Weaver (170–71) quotes Plassard *in toto* for the claim that concubinage "was frequent when both partners were freeborn." Crook goes further: taking up Plassard's statement that women were often of "higher" status than their *de facto* spouses (true enough, in the juridical sense—see below, p. 297, on unions between free women and slave men), he misinterprets "higher" as "high" status, and is led to speculate on the "predominance" of concubinage between women "of high family" and men of lower status, e.g., slaves. This gets us back dangerously close to the moral judgments cited above, nn. 2 and 3. It is probably only in systematically using Meyer and Plassard in detail that one becomes aware of their inconsistencies and invalid assumptions. Thus they are dangerous books for the reader who uses them to check a single inscription and accepts their classification.

⁶ The most notable and significant of these is the complete word-index to *CIL* 6, long needed and now produced with the help of a computer: John Jory (ed.), *CIL 6: Index uerborum*, Berlin (de Gruyter) forthcoming. This work will make possible a wide range of new research, both linguistic and historical, on the inscriptions of Rome.

⁷ E.g., Weaver (above, n. 5) and H. Chantraine, *Freigelassene und Sklaven im Dienst der römischen Kaiser* (Wiesbaden 1967). G. Boulvert's *Les Esclaves et les Affranchis Impériaux Sous le Haut-Empire Romain* (Naples 1970) reflects the new interest in such problems, but is vitiated by some of the old misinterpretations of the Roman name form: see the review by Weaver, *Labeo* 18 (1972) 218–26.

⁸ Cf. Crook (above, n. 4) 102: "Numerous cases have been shown of concubinage between couples whom the Augustan rules would not have debarred from full marriage," citing Plassard 160.

Roman citizens, whether freeborn or freed, could marry another Roman citizen of the opposite sex unless they were disqualified by one of the following rules:⁹

girls must be at least twelve years of age, boys fourteen, at time of marriage;

freeborn citizens could not marry persons associated with "unsavoury occupations" such as prostitution, acting, and tavern-keeping, or (after Augustus made adultery a public offence) women who had been convicted of adultery;

too close a degree of relationship (usually blood relationship, sometimes marital) could prohibit marriage;

soldiers could not marry during their term of service;

governors could not marry women resident in their provinces during their governorship;

from the second century A.D., guardians could not marry their wards;

in addition to the above restrictions, members of senatorial families could not marry persons of freed status.

My purpose is to examine all the inscriptions of Rome¹⁰ attesting *de facto* marriages, to try to establish whether couples who were qualified to marry, at the time their union began, chose rather to live in a *de facto* relationship. In particular, was concubinage between two freeborn partners "frequent," as claimed by several scholars? (This is the most clear-cut test case. As we shall see, when one or both partners are of freed status, it is usually not possible to be sure whether the union began before or after manumission and therefore before or after there

⁹ Most of these provisions had probably been general social conventions even during the Republic; but most of them were formalized by Augustus in his marital legislation. I accept Corbett's argument (P. E. Corbett, *The Roman Law of Marriage* [Oxford 1930] 31-34) that there was no formal ban on freed-freeborn unions before Augustus, who introduced the ban for senatorial families. See Crook (above, n. 4), 99-100, for a summary of qualifications for marriage.

¹⁰ It is important to treat each geographical area separately, and I have limited this paper to Rome, because of the probable differences between the cosmopolitan capital and various provinces. Meyer and Plassard draw their examples indiscriminately from a wide geographical area; but none of their examples of freeborn couples, in any area, is valid. Meyer writes about "Roman" practices, but neglects the bulk of inscriptions from Rome—because there was no Index available for *CIL* 6!

was eligibility for legal marriage.¹¹) Further, is the presence of children relevant to the question of concubinage/marriage?¹² It is, after all, the status of children that is most seriously affected by the nature of the parents' union—did this factor influence eligible partners in their choice of concubinage or marriage?

The evidence is of two main types: (a) inscriptions which use terms specifically indicating a *de facto* union, e.g., *concubina*,¹³ *contubernalis*, *amica/-us*;¹⁴ and (b) inscriptions, other than those in (a), which attest illegitimate children.¹⁵

Since the question of status will be most important in the following discussion, the criteria on which I have classified each partner must be set out clearly before we proceed. Less than 20 per cent of the persons examined declare their status explicitly as do, e.g., Ti. Quaesstorius Ti. f. Col. Secundus (3532),¹⁶ with the freeborn indicators of filiation and tribe; Sempronia L. l. Apate (6873), a freedwoman; or Felix (38641a), whose spouse, Moschis, is his *conserua*. The percentage

¹¹ See Weaver (above, n. 5), ch. 5 on age of manumission, and ch. 6 on age at marriage, esp. p. 108 for marriage patterns according to status.

¹² This question is now posed with hindsight. It was only as my investigation proceeded that I became aware of how seldom children were mentioned in explicitly *de facto* unions, e.g., those where the term *concubina* or *contubernalis* was used. I knew from my earlier work on the *sepulcrales* of *CIL* 6 that there were indeed many illegitimate children attested (see esp. Beryl Rawson, "Family life among the lower classes at Rome in the first two centuries of the Empire," *CP* 61 [1966] 71–83): this led me to realize that the evidence for *de facto* unions with children must differ in some way from that for *de facto* unions without children. This difference is apparent in the tabulations and discussion that follow: the total number of unions with an explicit *de facto* term is much smaller than that for whom a *de facto* relationship can be deduced (324 vs. 959), and the percentage of the former attesting children is very low. This suggests that there was in general a preference for the marital terms (e.g., *uxor*) over the *de facto* ones (e.g., *contubernalis*) and that the *de facto* terms, when used at all, tended to be used by couples who had no children whose status or legitimacy would be at stake.

¹³ There is no *concubinus* in any of the Roman inscriptions.

¹⁴ Meyer and Plassard include several others, e.g., *hospes*, *hospita*, *sodalis*, *domina*, but these are rare in a conjugal sense in the Roman inscriptions. Terms such as *coniunx*, *uir*, *maritus*, *uxor*, are widespread for both legal marriage and *de facto* unions, and thus are of no help in themselves. We can detect that such unions were *de facto* only when one or both partners were slave (who thus had no choice between *de facto* and legal marriage) or when there was an illegitimate child (and the union is thus included in (b) below).

¹⁵ Children born of a regular marriage took the status of their father; in other unions the child, illegitimate, usually took the mother's status.

¹⁶ All inscription references are to *CIL* 6 unless stated otherwise.

with explicit status is considerably higher for the spouses in (a) than in (b). Sometimes status can be deduced with certainty from internal evidence, e.g., the title of Primus Ti. Claudii Caesaris Aug. disp(ensator) (8839) shows that he was a slave.¹⁷ Only when the evidence is explicit or similarly unambiguous have I classified persons as *ingenuus*, *ingenua*, *libertus*, *liberta*, *seruus* or *serua* without qualification. Often, however, the evidence suggests that a particular status is probable, although not certain: in such cases I have used a query mark, so that *ingenuus* (?) indicates a probably freeborn man, *liberta* (?) a probable freedwoman, and so on. Sometimes the probabilities seem to me quite strong (see examples below); but I have been as cautious as possible in attributing status, so that the reader can form a clear idea of the nature of the evidence, free of any built-in assumptions of mine. Finally, there are persons who bear a Roman *nomen* but whose inscription gives no clue at all to their status, e.g., "Octauia Attice / sibi et / P. Pomponio Theophilo / contubernali" (23336). There is no way of telling whether these were freeborn or freed Roman citizens, and they must be classified as *incerti*. Meyer and Plassard, however, regularly assume that such people are freeborn, and this is a major factor in their picture of frequent *de facto* marriages between freeborn partners.¹⁸

In suggesting probabilities, I have taken various criteria into account. The following examples indicate what these were and in what combination.

2777: Quartilla is a *contubernalis* of Verna, a slave of Hirria Bassilla. Her single name suggests that she, too, is a slave; but it is just possible that she has omitted her *nomen*, perhaps to save space on what is primarily her spouse's epitaph, so she is classified as *serua* (?).

4587: Again, the single name Cissus leads to the classification *seruus* (?). The fact that the epitaph is in a *columbarium*, a communal burial place which contains mainly slaves and freedmen of the house of Marcella, strengthens this possibility, but it falls short of certainty. Cissus' spouse, Iulia Apollonia, is classified as *liberta* (?) because her

¹⁷ See Weaver (above, n. 5) 201-06, 226, and Index s.v.

¹⁸ Examples will be given below. I. Kajanto also made this erroneous assumption in his book *The Latin Cognomina* (Helsinki 1965). See my review, *CP* 63 (1968) 154-59, and Weaver (above, n. 5) 84.

ashes are included in this *columbarium* and her *nomen* is one associated with this household.¹⁹

4054: In the *columbarium* of Livia's household, M. Antonius Beryllus set up an epitaph for himself and his *contubernalis* Antonia Lacena. Their common *nomen* suggests that they are fellow freedmen, and thus they are classified as *libertus* (?) and *liberta* (?), although it is just possible that they are freeborn offspring of fellow freedmen. Their presence in a *columbarium* strengthens the probability of their being of freed status.

17231: The parents, Epimachus and Pallas, are classified as probable slaves because of their single names; thus their son, L. Cornelius Epimachus, is a probable freedman.²⁰

21815: Faltonia Ephyre dedicates this epitaph to her *contubernalis* L. Meuius Cliens and to her son Successus. The son's name suggests that he is a slave, so he is classified as *servus* (?) and his mother as *liberta* (?). The father is classified as *incertus*: he could be either freeborn or freed.

24088: Manlia Primigenia dedicates this epitaph for her *contubernalis* Phileros, who died at the age of twenty-five, and their daughter Musa, who died at eleven. Primigenia, the only one with a *nomen*, is classified as *liberta* (?), the other two as *serui* (?).

26514: The parents are M. Iunius Maximus and Sextilia Nysa, their child Sextilia Polla (who died aged three). The common *nomen* of

¹⁹ Cf. 6618, where the woman is the probable slave, and the husband (T. Statilius Trophimus) a probable freedman because he set up an epitaph in the *columbarium* of the Statilii family. Plassard classifies the husband as *ingenuus*. Cf. 4521, from the *columbarium* of Marcella, where M. Antonius Symmachus is classified as *libertus* (?) because his *nomen* is associated with the household of this *columbarium*, but his concubine, Cusinia Chreste, is *incerta*. When spouses in a *columbarium* have different *nomina*, neither of them associated with the apparent owners of the *columbarium*, they have both been classified as *incerti* (e.g., 5036), although I believe that their presence in such a burial place suggests freed status for both. Plassard lists 5036 as *ingenui*.

²⁰ The son died at the age of five. Weaver (above, n. 5) 194 n. 1 criticizes my previous "assumptions" that manumission could take place at any age. But unambiguous examples of manumitted children do exist, as he admits. His evidence that early manumission was rare for the emperor's own slaves is convincing; but (again conceded by him in some sections) it was by no means rare outside the *familia Caesaris*. See esp. his ch. 5, which includes the special circumstances which could allow exemption from the rule that slaves had to be at least 30 years of age for manumission. Plassard classifies the parents in 17231 as slave, with no query against their status; he presumably therefore accepts the child as *libertus*.

mother and child could be due to manumission by the same master, but I have thought it more likely that the mother was a citizen (free-born or freed) before the child was born, thus making the child free-born though illegitimate. Thus the mother is classified as *incerta*, the child as *ingenua* (?). If the mother had citizenship when the child was born, why was she not married to her child's father? The most likely reason seems to me to be that the father was still a slave and only later won his *nomen* by manumission. I should therefore like to classify him as *libertus* (?), but that would be begging the question of this whole paper. He could be freeborn, and the concubinage of this couple could be a free choice in preference to marriage. I have thus classified the father as *incertus*.²¹

11206 is similar to 26514, except that the man here has the single name Herma, while the woman is Afrania Prote and the child Sex. Afranius Lautus Sp. f. The father is thus *servus* (?), and the child is explicitly freeborn and illegitimate. The mother must again be classified as *incerta*, although Meyer uses this as one of his examples of unions between a slave man and a freeborn woman.

7468: Ostorius Acte dedicates to her spouse Isidorus qui et Hermias, who is a *lintiarius*, and to their son T. Calestrius Herminus. (She also includes her *tutor* M. Ostorius Lamyrus.) Isidorus is probably a slave, and cannot give his son a *nomen*. But the mother has not given her son a *nomen* either, and in such circumstances I take it that the mother was a slave at the birth of her child, who was thus also slave-born, and that they owe their different *nomina* to later manumission in different households.²² The mother is thus classified as *liberta* (?) (and the son *libertus* (?)). 13237 is similar: the son T. Flavius Viator does not owe his *nomen* to either his mother Atilia Vitalis or to his father L. Aurelius Sotericus. I have therefore classified him and his mother as probably freed; but the father is *incertus*.²³

²¹ In 21607, however, where Lucilla is the slave and concubine of P. Coelius Abascantianus, I have let the man's *cognomen* dictate a classification of *libertus* (?): Abascantus is a very common slave name, and the *-anus* ending suggests that Coelius had once belonged to such a slave or freedman.

²² Adoption is the other possibility, but there is little evidence for adoptions in these lower ranks of society whereas there are many indications of slave and freed status. See, however, Weaver (above, n. 5) 144.

²³ Cf. 15221, where the son is explicitly freed—Aurelius Aug. lib. Melissus—and thus the mother, Aelia Aphrodite que et Sophe, must also be freed. The father, Ti. Claudius

11390 illustrates my principle that when a person applies a term such as *contubernalis* or *amica* to a member of the opposite sex their relationship is probably sexual. Alexander Atticianus, an imperial slave, set up this epitaph to Sextilia Prisca, his *contubernalis merens*. Alexander is Prisca's heir, and his relationship with her may have been that of friend or colleague or some kind of partner other than marital. *Contubernalis* can mean simply "companion," and in about 7 per cent of all the examples of the word in *CIL* 6 this is plainly its meaning (usually for fellow-soldiers²⁴). When a child is attested there can be no doubt about the relationship. And often the associated vocabulary points to a marital union, e.g., *carissima*, perhaps *sanctissima* and *optimus/-a*, and the phrase "cum quo uixi an(nis) XXXVIII." But the most common adjective is *bene merens*, and sometimes the term *contubernalis* is unadorned; so some non-marital relationships have probably been included in this study.²⁵ None of the apparently significant couples discussed below falls in this category.

When, however, a person is recorded with more than one *contubernalis* of the opposite sex, these groups have been excluded: they are either nonsexual relationships or polygamous unions, and in neither case can they properly be considered *de facto* marriages. There appear to be nine such groups, eight of them *ménages à trois*²⁶ and one (22738) a group of three men and one woman. There are no *ingenui* or *ingenui* (?) amongst these. In one epitaph (1906) which attests a *concubina* as well as two *uxores* for one man, the unions have been taken as consecutive rather than concurrent, and the *concubina* and her spouse have been included: see (a)(1) below.

(a)(1) *Concubina*. The term *concubina* is infrequent in inscriptions, as

Primulus, could be freed or freeborn, i.e., he is *incertus*. In 4228, which again shows three different *nomina* for the family attested, all three are certainly freed: the father is P. Aelius Aug. lib. Menophilus, the son is M. Vlpus Aug. lib. Menophilus and thus his mother Caminia Fortunata must have been a slave at his birth and now a *liberta*.

²⁴ E.g., 2483: M. Numicius Seuerus, "heres," set up an epitaph for his "contub. opt." P. Aelius P.f. Fuscus who was a member of a praetorian cohort.

²⁵ I have not, however, accepted any couple or group of three as a family group without the presence of a term like *contubernalis* or an attested child. Plassard does, e.g., the *conserui* and *colliberti* of pp. 118-19.

²⁶ Two women and one man in 7297; two men and one woman in 6647, 26036, 26451, 28534, 33666, 34351, 36456.

the table below reveals.²⁷ The law code recognized that a concubine's position was very similar to that of a legal wife, e.g., "concubina igitur ab uxore solo dilectu separatur" (Paulus, *Sententiae* 2.20.1); "sane enim nisi dignitate nihil interest" (Ulpian in *Digest* 32.49.4). A man could not set a woman up as his concubine while he had a wife living.²⁸ Roman marriage was monogamous, and the special relationship with a concubine would be tantamount to bigamy. Some emperors took a concubine, rather than another wife, after the death of their first wife. These relationships were public and honourable. But a concubine was likely to be of low social status, in the formal sense.²⁹ The concubines of Vespasian and Antoninus Pius were freedwomen.³⁰ The status and name of Marcus Aurelius' concubine are not known, but her father (a procurator of Marcus' wife) may have been a freedman.³¹

The foregoing might suggest that concubinage, in the strict sense of a relationship involving a *concubina*, existed between free partners and

²⁷ Of these 36 examples, Plassard includes twenty and Meyer four. *Concubina* is not very frequent in literary texts and seems to be used loosely. Plassard surveys the occurrences, 166-74.

²⁸ *Codex* 7.15.3.2, referring not only to Justinian's time but to "antiqua iura." Cf. Paul. *Sent.* 2.20.1.

²⁹ *Dig.* 25.7.1-3: a concubine could be a freedwoman or a freeborn woman, especially one of low birth or dishonorable life, e.g., a prostitute or a woman convicted of adultery.

³⁰ Vespasian's concubine was Caenis, freedwoman of Antonia (Suet. *Vesp.* 3.21, *Dom.* 12; Dio 65.14; *CIL* 6.12037). Antonia, mother of Claudius and grandmother of Gaius, died in A.D. 37. Since Caenis was her confidential secretary before the fall of Sejanus in A.D. 31 (Dio 65.14), Caenis was probably at least twenty years old by A.D. 31 and therefore well past the first flush of youth when she became Vespasian's concubine. She must have been at least 58 when he became emperor and kept her with him, even in this position, "paene iustae uxoris loco" (Suet. *Vesp.* 3). Suetonius uses both *contubernium* and *concubina* in the passages referring to Caenis. Antoninus Pius' concubine, Lysistrate, was a freedwoman of his wife's (*SHA Ant. Pius* 8.9; *CIL* 6.8972).

³¹ *SHA Marcus* 29. The position of *procurator* to an emperor's wife was probably a domestic position, rather than a public one, even when large estates were involved, and thus would usually have been held by a freedman belonging to the household. The equestrians Herennius Capito and Afranius Burrus were procurators of Livia, but they may have held semi-public positions involving administration of overseas territories: see H. G. Pflaum, *Les Carrières Procuratoriennes Equestres* . . . (Paris 1960) no. 9 vol. 1 pp. 24-25; no. 13 vol. 1 pp. 30-31. Other equestrian procurators of imperial women were C. Iulius Spartiacus (Agrippina the younger), Rufus (Plotina), and T. Iulius Saturninus (Faustina the younger), two of whom held their appointments jointly from an emperor as well as from an Augusta.

did not involve slaves.³² The table below shows that, on the whole, this was the situation recorded in inscriptions; but some couples are attested where one partner is a slave (more often, apparently, the woman). It is noteworthy, however, that there is no evidence (certain or probable) of *concubinatus* between two freeborn partners or between two slave partners. Moreover, no freeborn women are recorded as concubines. If freeborn women were taking freedmen and slaves as their *de facto* husbands,³³ they did not record themselves as *concubinae*. Some freeborn men are recorded with concubines of lower status than themselves: we shall look at details of these below. But concubinage seems to have been most frequent amongst freed persons.³⁴ The table below shows the distribution of the term *concubina* according to the

Status of *Concubina*

Status of Spouse	<i>Ingenua</i>	<i>Ingenua</i> (?)	<i>Liberta</i>	<i>Liberta</i> (?)	<i>Serua</i>	<i>Serua</i> (?)	<i>Incerta</i>	Totals
<i>Ingenuus</i>	—	—	4	1 (1 ch.)	—	—	1	6 (1 ch.)
<i>Ingenuus</i> (?)	—	—	—	—	—	1	—	1
<i>Libertus</i>	—	—	13	1	—	2	1	17
<i>Libertus</i> (?)	—	—	—	1	1	—	1	3
<i>Seruus</i>	—	—	—	1	—	—	—	1
<i>Seruus</i> (?)	—	—	1	—	—	—	1	2
<i>Incertus</i>	—	—	—	—	—	4	3 (1 ch.)	7 (1 ch.)
Totals	0	0	18	4 (1 ch.)	1	7	7 (1 ch.)	37 (2 ch.)

³² Meyer and Plassard make this distinction between concubinage and *contubernium*. A. Watson, *The Law of Persons in the Later Roman Republic* (Oxford 1967) 9, says of the *concubina*, as opposed to the *amica*, "apparently, she is free." But *Codex* 7.15.3.2 refers to "concubinas uel liberas uel ancillas."

³³ See Weaver (above, n. 5) ch. 7 on freeborn spouses of imperial slave men, and ch. 11 (esp. p. 188) on spouses of other slave men. The contrast is significant.

³⁴ This raises the ever-present problem of "How representative of the whole Roman population were those who set up epitaphs?" This problem may be insurmountable in some contexts, but can be allowed for in others. In the present context, the clustering of the evidence around the freed status, and the total absence of certain phenomena—e.g., either freeborn or slave couples; freeborn women—seem significant.

status of the women and their partners. Only two children are attested.

Some of the concubines' inscriptions can be dated, giving us a picture of such relationships from the late Republic through the second century A.D.³⁵ Three of the freeborn men (33090, 26556, 28431) have names with filiation and tribe but no *cognomen*, suggesting Republican date or, at latest, early imperial.³⁶ In two of these cases, there are further indications. In 33090, A. Clodius A. f. Col. set up an epitaph for his concubine Saturia D. l. Philoclea and for her apparent patron D. Saturius L. l. Damas.³⁷ Damas' *praenomen* is different from that of his own patron, a situation found only in the Republic. Auli Clodii are rare in Roman evidence;³⁸ but the famous P. Clodius of the late Republic had many supporters, or henchmen, in the Colline tribe,³⁹ and it is attractive to think that this may have been one of those supporters, either a member of a humbler branch of Clodius' family or the son of a Clodian freedman. A connection between a P. Clodius and an A. Clodius is given in 9375, where an ivory craftsman (*eborarius*) who is a freedman of an A. Clodius and of a Clodia is named P. Clodius A. et Clodiae l. Bromius. Again, the different *praenomina* suggest a Republican date (although the P. could be derived from this Clodia's father).⁴⁰

In 26556, L. Silius P. f. Cor. has filiation, tribe, no *cognomen*, and a *praenomen* different from his father's—a combination suggesting a date not later than early imperial. Added to the epitaph recording his name and his concubine's (a freedwoman) is the name of Cn. Plancius

³⁵ A. Watson (above, n. 32) 10 believes that *concubinae* were in a special social position as early as Plautus, although the concept of concubinage was not so formalized as it later became.

³⁶ For what follows on name dating, see H. Thylander, *Étude sur L'épigraphie Latine* (Lund 1952) ch. II, incl. summary p. 132.

³⁷ The patron's name precedes the concubine's, which may reflect his greater importance. And perhaps his inclusion here reflects Clodius' appreciation of having had access to Philoclea while she was still Damas' slave.

³⁸ See 9375 following, and 26169 which is counted with the families in (b) below. An A. Clodius was an intimate of Caesar and Metellus Scipio (Caes. BC 3.57.1). There are no other Auli Clodii in *MRR*. There are several other Roman epitaphs, and a few from Pompeii—two from the Augustan period.

³⁹ Lily Ross Taylor, *The Voting Districts of the Roman Republic* (Rome 1960) 145.

⁴⁰ This craftsman and his concubine, Curiatia Ammia, recorded several freedmen of their own, both joint and individual.

Cn. l. Turpio. The only Gnaei Plancii known belonged to Republican times; but no Luci Silii are attested certainly for the Republic. In 2843 I, the name C. Velius A. f. Scaptia again suggests a Republican or early imperial date, but the *nomen* Velius is very rare⁴¹ and there is no further clue to dating. Velius' concubine is not named; but, assuming that she is the mother of the child Velia Tertia, we can deduce that she was a freedwoman of Velius (and therefore called Velia) because the daughter is freeborn and illegitimate ("Sp(uri) f(ilia)") and thus has inherited her *nomen* from her mother and not from her father. The law code says or assumes in several places⁴² that it is better for a man to make his freedwoman his concubine rather than his wife. There are, however, many examples of apparently legal marriages between patrons and their freedwomen; and only a small proportion of the unions in this article are explicitly *patronus-liberta* ones.⁴³ Velius' inscription and one other (14706) are the only two recording a child for a *concubina*.⁴⁴

Another dating criterion is available when the epitaphs belong to a *columbarium* which seems to have been in use for only a limited period of time. E.g., 4521 and 4599 belong to the *columbarium* of Marcella, which was in use during the latter part of Augustus' reign and the beginning of Tiberius'. The epitaph (8972) which includes the name of Galeria Lysistrate, concubine of "diuus Pius," must date within a generation of the death of Pius in A.D. 161.

Apart from Antoninus Pius, whose senatorial status precluded marriage with a freedwoman, there are at least two other possible members of senatorial families whose concubines are recorded in

⁴¹ There is no Velius in *MRR*, and there are few senators in the Scaptian tribe.

⁴² *Dig.* 23.2.41; 25.7.1 pr.; 48.5.14(13) pr.

⁴³ Many of the unions classified by Meyer (e.g., pp. 67–68) as *patronus-liberta* concubinage could be explained otherwise. In 9692, for M. Fufius M. l. Eros, Arbuscula is "concub. eius," which expression is not necessarily equivalent to "liberta propria," as Meyer claims it is. In 16048, he has to amend the text brutally to obtain his interpretation. Often there is no evidence at all for the identity of a freedwoman's spouse, e.g., in 24039 the son P. Petronius Sp. f. Col. Ferox takes his *nomen* and *praenomen* from the patron of his mother, Petronia P. l. Isidora, but it is gratuitous to assume that this patron is the boy's father. Again, when spouses have the same *nomen*, they could as well be *colliberti* as patron and ex-slave.

⁴⁴ Does this suggest that children were consciously avoided in *concubinatus*? The numbers are too small to be sure.

epitaphs. One is L. Caesennius L. f. Stel[...] (13937), whose concubine is Maria O. l. Mu[...]. Many Caesennii were senators, e.g., L. Caesennius Paetus, consul of A.D. 61.⁴⁵ In 17170, Eon is probably a slave and her partner, Cossus Gaetulicus, probably freeborn and senatorial because his daughter, Cornelia, who apparently owned the burial space, was a Vestal Virgin. The consul of A.D. 26 was named Cn. Cornelius Lentulus Gaetulicus, and he had a son named Cossus Cornelius Lentulus Gaetulicus (*PIR*² C 1392), whose daughter may have been the "Cornelia ex familia Cossorum" chosen as a Vestal Virgin in A.D. 62 (*Tac. Ann.* 15.22).⁴⁶

Whether Caninia Musa (32734) was freeborn or freed is uncertain, but since her partner, the freeborn T. Tillius T. f. Pal. Sabinus, was a member of the urban cohorts it was presumably his military service that precluded marriage.

In 1906, a lictor named M. Seruilius M. l. Rufus tells us that in his own lifetime he set up this epitaph for himself and "Petiae C. l. Primae uxori et / Marciae O. l. Felici concub. obitae / Seruiliae M. l. Apate uxori suae." Both Meyer and Plassard assume that Rufus' three unions were contracted in the order in which they are listed; but I am inclined to think that the concubine came first, when she or Rufus or both were still of slave status.⁴⁷ She died (*obitae*) and for his next union Rufus was able to make a legal marriage. (Although *uxor* need not indicate a legal wife, it probably does here by contrast with *concubina*.) The wife may be given precedence over the concubine on the stone because of social standing; but if this is so we have to postulate that the third spouse's name, Seruilia Apate, was inscribed later than the others. This was not uncommon, and Rufus may not have foreseen

⁴⁵ There is one Republican Caesennius recorded in *MRR*, for 45-44 B.C., without *praenomen* or tribe.

⁴⁶ No public office is recorded for this man, although his brother became consul in A.D. 55 (*PIR*² C 1391). Was he the "playboy" of the family? Yet he must have been respectably married at the time his daughter was chosen as a Vestal Virgin. It is probably his father who was known for his love poetry: Pliny *Ep.* 5.3.5; Martial pref. bk. 1; Sidonius Apollinaris *Carm.* 9.259, *Ep.* 2.10.6. In the last of these references Gaetulicus is represented as writing poetry for a female friend Caesennia, who was clearly not his wife at that stage. Groag argues (*PIR*² A 976) that she was the woman who became Gaetulicus' wife. Perhaps.

⁴⁷ Crook (above, n. 4) 306 n. 24 thinks that the concubine and one wife were concurrent. Cf. 35343, where a legitimate son and *uxor* are inscribed before a *contubernalis*.

a third union when he first set up the stone; but I have not myself seen the stone and *CIL* says nothing about a change in the lettering of the last line. Perhaps two slight indications of a later addition are the absence of *et* before Seruilia's name and the different spelling of *uxor*.⁴⁸

(a)(2) *Contubernalis*. This term is frequent for both male and female partners, although the woman is so named approximately twice as often as the man is.⁴⁹ The references to *contubernium* in the law code are mostly to a relationship involving a slave, e.g., "inter seruos et liberos matrimonium contrahi non potest, contubernium potest" (Paulus, *Sent.* 2.19.6). When Meyer and Plassard contrast *contubernium* with *concubinatus*, the distinction they have in mind is between a union involving at least one slave partner and a union between free persons. Plassard assumes that *contubernalis* cannot ever refer to a legal wife.⁵⁰ We shall see, however, that *contubernalis* could be applied to people of free (freeborn or freed) status, and it may well be that a term which was more appropriate when first applied continued to be used of people or their relationship even after their official status had changed. A

⁴⁸ In addition to the 37 included in the table above, there are two other *concubinae* attested in *CIL* 6, but their partners are not known. 20929 is extremely simple: "Dis man(ibus) / Iustae concubinae." 20409 offers a little more interest: "Iuliae Hymni / regis Ptolemaei / L. l. Charidi / concub(inae)." Iulia Charis was the freedwoman of a (Iulius) Hymnus, whose patron was Ptolemaeus, king of Numidia. Ptolemaeus' father, Iuba II (*PIR*² I 65), had been restored to his throne by Augustus and apparently received Roman citizenship from him, thus gaining the *nomen* of Iulius. Ptolemaeus succeeded his father, probably in Tiberius' reign, and visited Rome in Gaius' reign—where he was executed (Suet. *Gaius* 35). Perhaps Charis was in his train during this visit and also died at Rome.

⁴⁹ Sometimes it is not clear which partner bears the title, usually because abbreviation obscures the case ending of *contubernalis*. One reason for the frequency of the woman partner's being named *contubernalis* is that the man dedicates the epitaph approximately twice as often as the woman does; but there is not a complete fit of dedicatee and partner named *contubernalis*.

⁵⁰ This leads him into error on 21264, where the parents are M. Licinius Herma and Tarquitia Felicula and the child M. Licinius Herma. If the child is freeborn and legitimate, his parents' union at his birth was marriage, although the woman is referred to as *contubernalis*. Both freed and freeborn could make a legal marriage, and the parents must be classified as *incerti*. Plassard, however, classifies all three as freeborn; but, because he is convinced that the *contubernalis* cannot be the wife in what he takes to be a legal marriage, he supposes that the child was born from a previous marriage of the father which preceded the present "concubinage." This ignores the explicit "mater" in the epitaph, relating Felicula to the boy. Cf. Plassard on 29532.

parallel to this can be seen in 5935, where a man named Seuerus refers to L. Arruntius Dionysius as his *conseruus*. (Dionysius is the *contubernalis* of Similis, who was probably also a slave in the same household as the two men.) Dionysius must have been a freedman by the time the epitaph was set up, but Seuerus records the basic, original relationship as one of fellow-slavery. It is important to remember how fluid status groupings were at Rome, especially under the Empire, and how frequently slaves were becoming freedmen. They did not necessarily change their whole personal vocabulary when their status changed. For a modern parallel—perhaps oversimplified—one could cite the not infrequent use by parents of terms like “Baby” for their long-since adult children.

The table below shows the distribution of the term *contubernalis* according to status, and the number of children attested in each category. Of the 270 couples, Plassard includes 114 and Meyer 11.

Female								
Male	<i>Ingenua</i>	<i>Ingenua</i> (?)	<i>Liberta</i>	<i>Liberta</i> (?)	<i>Serua</i>	<i>Serua</i> (?)	<i>Incerta</i>	Totals
<i>Ingenuus</i>	—	—	—	—	—	—	3	3
<i>Ingenuus</i> (?)	—	—	—	—	—	—	—	0
<i>Libertus</i>	—	—	14	5	3	4	10	36
<i>Libertus</i> (?)	—	—	1 (2 ch.)	26 (3 ch.)	1	2	—	30 (5 ch.)
<i>Seruus</i>	2	—	2	5 (1 ch.)	7 (1 ch.)	17 (2 ch.)	24 (1 ch.)	57 (5 ch.)
<i>Seruus</i> (?)	—	—	4	6 (1 ch.)	14 (2 ch.)	36 (3 ch.)	25 (2 ch.)	85 (8 ch.)
<i>Incertus</i>	2 (1 ch.)	—	4	3 (3 ch.)	1	15 (6 ch.)	34 (4 ch.)	59 (14 ch.)
Totals	4 (1 ch.)	0	25 (2 ch.)	45 (8 ch.)	25 (3 ch.)	75 (11 ch.)	96 (7 ch.)	270 (32 ch.)

Again, one of the striking features is the total absence of freeborn couples. *Liberti* are again frequent, but slaves are much more heavily represented than they were in the *concubinae* epitaphs.

The number of children attested is again low (32, produced by 27 of the 270 families). Two of the children could be said with some

probability to be legitimate and freeborn (21264, 29532): their parents have different *nomina* and the child bears the father's *nomen*.⁵¹ In another two (10321, 20329) the children are possibly legitimate and freeborn, but the common *nomen* of parents and child in each case makes the situation more obscure.⁵² If the children are legitimate and freeborn, their parents' union must have been a legal marriage at the time the children were born. But either freed or freeborn parents could marry; thus the parents of different *nomina* have been classified as *incerti*, while those of the same *nomen* have been put with the *liberti* (?), in accordance with the criteria set out above. The children's status (which Meyer and Plassard hardly discuss in any of the unions) would be *ingenuus* (?) when the parents' *nomina* are different but *incertus*/-a in the other two cases.

For the other 23 families where children are attested, the majority have children of slave status (certain or probable).⁵³ There is a note of humor in one of these (27674), where the woman's father, spouse, and son draw amused attention to the fact that they all bear the name *Martialis*: they are the "Martiales tres" dedicating to the imperial *uerna* Trophime who died at the age of twenty-one. One child (22188) is explicitly the freedman of his father (there is no indication that his mother ever became anything more than a slave), and in two other families (17231, 36475) the children appear to be of freed status.⁵⁴

⁵¹ See above, n. 50.

⁵² Plassard interprets these two epitaphs differently from each other, for no obvious reason. In 10321 he takes Ti. Claudius Agathopus as freeborn and his spouse Claudia Xanthe as freed. (For Xanthe's status there is some support from the stone—some editors read "L." after her name.) In 20329 he takes C. Iulius Vrbanus and his spouse Iulia Optata as both probably freed.

⁵³ 8022, 19718, 27674, 33691; 6628, 9328, 10899, 17298, 17438, 19392, 19895, 21815, 22424, 24088, 33745. As mentioned above, Plassard seldom refers to the status of children of *de facto* marriages. This is one of many factors leading him to rigid and probably erroneous assumptions about status of parents. Consider, for instance, 21815: "D. M. / L. Meuius Clienti / Faltonia Ephyre / contubernali suo / de se bene merenti / fec(it) et Successo filio / suo." Plassard classifies the parents as freeborn. But the child is probably a slave (although it is possible that he bears the *nomen* of one of his parents, and that this has been omitted), which would make his mother a probable freedwoman. The father, without status indication or other clue, must be *incertus*.

⁵⁴ In 17231, the probability is strong, in spite of the child's death at the age of five, because of the apparent slave status of both parents. In 36475, both parents have citizenship, but the sons (if "f. f." = "filiis fecit") bear a *nomen* different from either parent's.

One child (34321) who is explicitly freeborn is also illegitimate (Aemilia Sp. f. Pia), thus revealing her parents' union to have been not marriage at the time of her birth. In four other cases (10124, 18424, 26514, 28635), the children may be freeborn, but since they bear the mother's *nomen* they are illegitimate and thus not born of married partners. In three of these four families the father is certainly or probably a slave.

Thus the picture that emerges from the *contubernalis* unions attesting children is very largely one of unions involving at least one slave partner. Where both parents have a *nomen* by the time the epitaph is inscribed,⁵⁵ there are sometimes indications that at least one of them owed that *nomen* to manumission: thus they may not have had the required status for marriage at the time of their child's birth. This is the probable situation when both parents have the same *nomen* (6628, 10321, 10899, 20329), or when the child does not inherit a *nomen* from either parent (21815, 36475).

As the table shows, there are three men and four women of certain freeborn status recorded in the *contubernalis* inscriptions.⁵⁶ None of the men records a child, and only one of the women does (34321). In two instances it is the freeborn partner who is referred to as the *contubernalis* (8833, the woman; 23015, the man). The spouses of all three freeborn men are Roman citizens, but the men's situations involve special factors. Two of them were probably in no position to contract a Roman marriage: one was a soldier (3532) whose spouse died at the age of twenty, presumably before he was discharged; the other (25190) was apparently a foreigner (from Bithynia?), without Roman citizenship, for his name was Diogenes Rhodonis f(ilius) Flauipolitanus. The third of the freeborn men was illegitimate (L. Nonius Sp. f. Cultianus, 23015): perhaps the circumstances that led to his own parents' *de facto* union were at work in his "marriage" too.⁵⁷

Two of the freeborn women clearly "married down," in strict status terms, their spouses being slaves. In 20572 ("Iuliae Sp. f. Mopsidi / Felix Caesaris contuber") the woman is illegitimate though freeborn

⁵⁵ In 10 of the 27 couples with children.

⁵⁶ Men: 3532, 23015, 25190. Women: 34321, 8833, 20572, 26966.

⁵⁷ Note that three of the seven freeborn partners in *contubernalis* unions are illegitimate. See below, next paragraph, for the two women (20572, 34321).

and her spouse is an imperial slave. Such slaves could be influential, in their own right and as potential imperial freedmen, and a union with them could be very attractive even to freeborn women.⁵⁸ In 8833, Hyginus, the spouse of Atreia L. f. Procula, was at one remove from the emperor's own *familia*: he belonged to an imperial freedman, and held an official position (*dispensator*) in the important financial office of his *procurator* patron.⁵⁹ In the two other unions involving freeborn women (26966, 34321), their spouses have been classified as *incerti*. I suspect, however, that in 26966 the man is freed rather than freeborn, because his name, the primary one on the monument, lacks filiation, in contrast to his partner's: "Dis manibus / P. Sulpicio Narcisso / contubernali piissimo / Plaetoria L. f. / Maximilla." (Plassard classifies both partners as freeborn.) In 34321 the female partner, who has an illegitimate but freeborn daughter, is herself illegitimate and freeborn. Her spouse, Ti. Claudius Ialysus, has no status indication. She is very much the "senior" partner in the sense that it is she who has assumed responsibility for setting up this larger-than-usual epitaph ("... Aemilia Sp. f. Veneria mat(er) hoc mon(umentum) / macer(ia) clusum piissime f(iliae) uiua f(ecit) et s(ibi) / et Ti. Claudio Ialysso contub(ernali) et liber(tis) / libertab(us) su(is) q(ue) d(e) s(e) b(ene) m(erent)es⁶⁰ posterisq(ue) eor(um)") and it is the monument of her own *familia*, not her spouse's, which she hopes to retain for her family name with the final formula "h(oc) m(onumentum) h(eredem) n(on) s(equetur)."

The number of partners who must be classified as *incertus* or *incerta* is quite large, though not an overwhelming proportion. There is little more that can be said about them beyond the points made above in clarifying status criteria. My own opinion is that, in view of the extremely small number of freeborn certainly attested in *de facto* marriages and the much larger number of certain freedmen and slaves,

⁵⁸ See again Weaver (above, n. 5) ch. 7.

⁵⁹ This *procurator* was "Halotus Aug. l. proc." and may well have been the *procurator* of that name employed by both Nero and Galba: see *PIR*² H 11. Plassard is plainly in error when he classifies Hyginus as a freedman: he has presumably confused Hyginus' title with that of his master. Hyginus is named "Hyginus Haloti Aug(usti) l(iberti) proc(uratoris) ser(uus) disp(ensator)."

⁶⁰ This is how I interpret the abbreviation "d s b m es:" this kind of error in syntax is not unusual.

plus Lily Ross Taylor's analysis of persons without status indication,⁶¹ many of the *incerti* are probably freedmen. Thus I would suggest that by adding their figures to those of the freed we would get a not very distorted picture of the sort of people whose *de facto* marriages are recorded. But this is not susceptible of proof. Neither, however, are the claims of Meyer and Plassard capable of proof; some of them have been disproved above. Most of the persons whom they present, without qualification, as *ingenui* are at best *incerti* and often very probably something else. The principle which they followed, i.e., that a *nomen* indicates a freeborn citizen unless there is specific evidence to the contrary, is no longer tenable.⁶²

Sometimes Plassard's errors are grosser. In 9918 he calls both Tib. Claudius Auctus and his *contubernalis* Popilia Callinice freeborn. But Auctus calls himself a "tabellarius a ripa," and *tabellarii* began their careers as slaves.⁶³ This surely makes Auctus an ex-slave, i.e., a freedman, at the time of the inscription; and his spouse must remain *incerta*.

In 21104, A. Larcus Fructus and Larcia Secunda are explicitly *colliberti*, but Plassard lists them under his *ingenuus-liberta* unions. Further, he apparently misreads the *praenomen* "A." in line 4 for a preposition ("A. Larcio Epicuri / lib. Fructo / Larcia Secunda col / lib. A. Larcio Fructo / contubernali suo / benemerenti et / sibi fecit"), thus

⁶¹ "Freedmen and freeborn in the epitaphs of imperial Rome," *AJP* 82 (1961) 113-32. See discussion in Weaver (above, n. 5) 83-86.

⁶² They are not, however, entirely consistent in applying this principle. For 15430 ("Dis manibus / Claudia Felix / sibi et / T. Flauio Echo / contubernali / suo carissimo / uiua fecit"), where I have classified the partners as *incerti*, Plassard predictably types this as a freeborn couple; but Meyer, without explanation, groups them with the freed couples whose *contubernium* has become *concubinatus*. Again in 15963, a similar union between M. Coelius Fortunatus and Aquilia Syntyche, Meyer calls the couple *ingenuus-liberta*. In dealing with spouses of the same *nomen*, both Meyer and Plassard are unsatisfactory. In addition to the examples above, n. 52, note Plassard's inconsistency on 4888 and 5122. He labels Ti. Claudius Hermes and Claudia Secunda (4888) as *liberti*, but C. Iulius Apollonius and Iulia Marina* (5122) first as probable *ingenui* (p. 115), with the possibility of freed status being raised, then more firmly as *ingenui* (p. 141), then in the Conclusion (p. 161) as straightout *ingenui*. Plassard rejects the possibility of freed status on the erroneous principle that "le plus souvent, en effet, la qualité d'affranchi est expressément mentionnée." (See Taylor (above, n. 61) for illustration of the increasing frequency with which the title "libertus" was omitted in the imperial period.) Thus many of the couples listed as *ingenui*, without qualification, in Plassard's Conclusion may well be *colliberti*.

⁶³ See Weaver (above, n. 5) 227.

deducing that Secunda is Fructus' own freedwoman.⁶⁴ In 25090, Plassard makes Q. Propertius Secundus freeborn, in spite of Secundus' explicit reference in the inscription to his *patrona* Propertia Tryphosa.

(a)(3) *Amica*. This term is infrequent in epitaphs, and only about a quarter of the occurrences can be regarded, with any probability, as conjugal partners. Often *amica*, like the much more frequent *amicus*,⁶⁵ clearly means "just friends." In the 17 examples⁶⁶ that seem to indicate a sexual relationship, no child is recorded for the *amica* union. There are five persons of freed (certain or probable) status, seven slaves (certain or probable), twenty-one *incerti* (i.e., with *nomen* but no other clue to status) and one person, a woman, of freeborn status. Little can be deduced about the nature of these relationships; but the small number attested, together with the absence of children, suggests that *amicae* were usually transitory partners. The term does not seem normally to suggest a family unit in any sense, and thus probably does not indicate what we understand by a *de facto* marriage.⁶⁷ There is one epitaph (38513), however, where a man (Octavius Verna) claims to have lived for 57 years with his "*amica sanctissima*," Iulia Paterna.

The only freeborn person in this group of epitaphs is the girl Fabia

⁶⁴ Confusion is compounded in the footnote, 114 n. 3, where Fructus is referred to as "patron affranchi."

⁶⁵ With the *amicus* inscriptions it is even harder than with those of *amicae* to posit a conjugal relationship. In rather less than 10 per cent of the approximately 370 examples is such a relationship at all probable, and in most of those ordinary friendship seems to me equally probable. Children are included with only four such couples, and even then the *amicus* is not explicitly the father (6378, 19503, 25147, 37245). Probably the most conjugal of the couples is M. Vlpus Adauctus and Flauia Gemella (29131). They lived together "*sine lite ulla*" for forty-six years, and Gemella refers to Adauctus as her "*amicus sodalis uir optimus*." Most of the people in these *amici* epitaphs are *incerti*. There are several apparent slaves and one explicitly freeborn partner (Q. Triarius Q. f. Dexter, 36449). Several of the men referred to as the *amicus* of a woman are soldiers; but in the military epitaphs the great bulk of dedicators to *amici* are men, usually fellow-soldiers.

⁶⁶ 8659, 10977, 11254, 12603, 13329, 14697, 17026, 17607, 17787, 20684, 21153, 22778, 25548, 29409, 34237, 36151, 38513.

⁶⁷ Cf. A. Watson (above, n. 32) 9 on the difference between *concubinae* and *amicae* in Plautus. Meyer (82) points out that the freedwoman-spouse of her patron is never called *amica*, suggesting that this word was inappropriate for the tight bonds which linked such a couple.

L. f. Ionis (17607), who was the “amica carissima” of M. Clodius Zosimus.⁶⁸ She died at the age of fourteen.

In two epitaphs for *amicae*, there is mention also of a *coniunx*. In 11254 there are two men and one woman: Agilis, who died at the age of twenty-five, was the *amica* of Narcissus but the *coniunx* of L. S. Heuremon. Agilis also had a son, L. S. Oceanus, apparently fathered by Heuremon. Her relationship with Narcissus seems to have been one between slaves; but the son’s name suggests that her relationship with Heuremon may have been marriage. If so, she must be at least a freedwoman, with her *nomen* omitted. But possible alternatives are either that Heuremon and Oceanus are fellow-freedmen or that Oceanus was slaveborn but later adopted and legitimated by his free father. Whether the woman’s two relationships were concurrent or consecutive is impossible to tell. Narcissus was still involved enough with the family to join in setting up her epitaph.

In the other similar epitaph (20684), there are two women and one man. C. Antestius Ion set up the epitaph “Aucte patr[onae et co]niugi karissimae / et bene merenti / et sibi et suis et / Iuliae Soteridi / amicae sanctis / simae . . .” The contrast between *coniunx* and *amica* here makes it likely that Ion’s relationship with Aucte was marriage. Since she was his patron, she may have freed him for the purpose of marriage.⁶⁹ As in 1906 above, I suggest that the women’s names may be in hierarchical order (patron-wife before mistress) rather than chronological.

(b) Unions, other than those in (a), attesting illegitimate children.

As noted above, spouses in (b) are less frequently explicit about their status than are those in (a). Moreover, one cannot always be certain that a child’s birth is illegitimate (i.e., produced from a union other than *matrimonium iustum*). No previous writer on concubinage has attempted systematically to identify and analyze families of this kind,

⁶⁸ Marci Clodii are not as rare as Auli Clodii, but are not very frequent. There are two Republican examples in the combined lists of Taylor (above, n. 39) and *MRR*. The other examples seem to be imperial, including M. Clodius Pupienus who was emperor briefly in 238.

⁶⁹ Septimius Severus forbade marriage between women patrons and their freedmen, condemning such *coniunctiones* as *odiosae* (*Cod.* 5.4.3; cf. *Dig.* 23.2.61.1).

but it is important to do so. The evidence provided by these unions is much more extensive than that in (a).⁷⁰

I have allowed the probability of legitimate birth whenever two parents have the *tria nomina* and the child takes the father's *nomen*. (This pattern will sometimes, however, have obscured illegitimate birth, e.g., where the child is slave-born and later freed by its father or father's patron, or where an illegitimate child is later adopted by its father and thus legitimated.) There are 559 such families in *CIL* 6, yielding 602 children. There are 32 additional children, who could be considered legitimate by the above criteria, in families which also produced illegitimate children.

There are 424 families where all members (both parents and children) bear the same *nomen*. In most of these the nature of the union cannot be ascertained. According to the criteria set out early in this article, the parents were probably *colliberti* at the time their names were inscribed; but this tells us nothing about the legitimacy or status of their children. In 74 of the families the children have filiation and/or tribe, indicating free and probably legitimate birth. In 18 other families the children can be identified as illegitimate (usually by *Sp. f.* or *lib.* in their names).

The number of couples with apparently illegitimate children (i.e., children who do not derive a *nomen* from their father and who lack any other indication of legitimate birth) is much larger than either of the preceding groups: 959 families, yielding 1125 children. But, as the table below shows, nearly half of these parents were slaves (status certain or probable). Their unions were obviously *de facto* not by choice but by necessity of status.

The slave partners formed unions predominantly with spouses of the same status as themselves. 301 of the unions are of this kind, and in about two-thirds of them the children seem to have remained slaves.

⁷⁰ Many families with illegitimate children were discussed in my earlier article (above, n. 12). My evidence there, however, was limited to the *sepulcrales* of *CIL* 6 and to families where at least one member had citizenship. I have here eschewed some of the assumptions about status which I made there: see above, pp. 283–84, for discussion of criteria for status. Thus some of the people previously labelled as slave or freed would here have a query mark attached to their status, or some of the “freed” would now be listed as *incerti*.

Their epitaphs are usually very simple, e.g., 10440: "D. M. / Abascantus / pat. Veneria / mat. Veneriae / filiae feceru(nt)." Sometimes, however, the child won freedom and citizenship, e.g., M. Liuius Alexander, son of Chryseros and Paphie (3957) (in the empress Livia's household).

PARENTS OF ILLEGITIMATE CHILDREN NOT INCLUDED IN (a):

Father	Mother							Totals
	<i>Ingenua</i>	<i>Ingenua</i> (?)	<i>Liberta</i>	<i>Liberta</i> (?)	<i>Serua</i>	<i>Serua</i> (?)	<i>Incerta</i>	
<i>Ingenuus</i>	—	—	—	1 (1 ch.)	—	—	1 (1 ch.)	2 (2 ch.)
<i>Ingenuus</i> (?)	—	—	—	—	—	—	—	0
<i>Libertus</i>	1 (1 ch.)	—	45 (55 ch.)	24 (33 ch.)	3 (5 ch.)	10 (11 ch.)	20 (24 ch.)	103 (129 ch.)
<i>Libertus</i> (?)	—	—	14 (17 ch.)	98 (117 ch.)	—	4 (4 ch.)	1 (1 ch.)	117 (139 ch.)
<i>Seruus</i>	1 (2 ch.)	—	6 (6 ch.)	12 (16 ch.)	5 (6 ch.)	9 (9 ch.)	16 (19 ch.)	49 (58 ch.)
<i>Seruus</i> (?)	1 (1 ch.)	—	7 (10 ch.)	47 (57 ch.)	1 (1 ch.)	286 (329 ch.)	49 (62 ch.)	391 (460 ch.)
<i>Incertus</i>	1 (1 ch.)	—	21 (24 ch.)	98 (111 ch.)	—	69 (86 ch.)	108 (115 ch.)	297 (337 ch.)
Totals	4 (5 ch.)	—	93 (112 ch.)	280 (335 ch.)	9 (12 ch.)	378 (439 ch.)	195 (222 ch.)	959 (1125 ch.)

Sometimes it is explicitly the father's slave status that results in the child's illegitimate birth, e.g., Agrypnus Caes(aris) was the father of L. Volusenus Sp. f. Victor, who took his name from his mother Volusena Restituta (29513). But occasionally the wife in such mixed unions is the slave, and her children, slave-born, would be the property of her master. For instance (21756), the burial space for a family is provided by Sura Mamertinus (probably M. Petronius Sura Mamertinus, consul of A.D. 182), who is *patronus* of the father, M. Petronius Chresimus, and *dominus* of the mother Etete and the three children Macaria, Heliodorus, and Heliodora.

As the table above shows, the number of certainly freeborn parents is low. I have discussed the *ingenuus-incerta* example (21650) elsewhere.⁷¹ In the *ingenuus-liberta*(?) union (17586), the child Annia Vrbaniilla bears a *nomen* different from that of either her father Publius P. f. Popilius or her mother Fabia Chrysis. Of the four unions involving a freeborn woman partner, two seem to involve a slave spouse.⁷² In the *ingenua-incertus* union (23813), one child takes her name from the mother, Papia C. f. Modesta,⁷³ but a later child takes the *nomen* of the father C. Iulius Euplus. This suggests that whatever factors had prevented legal marriage at the time of the first child's birth had disappeared by the time the next child was born. Manumission of the father is one possibility.

In the union between the freedman T. Flavius Aug. lib. Eutactus and the freeborn woman Saluia M. f. Pisonina (12623), the child's name, T. Atilius Piso, is very difficult to explain. Adoption is one possibility; but another is that the *s.c. Claudianum* of A.D. 52 was invoked, if Eutactus was still a slave at the time of the child's birth. This decree made it possible for the woman in such unions to retain her freeborn status by surrendering her child as the slave property of the father's master. (Hadrian later repealed this, reverting to the basic principle that the child of a freeborn mother was itself freeborn.) The date of this inscription is consistent with such an interpretation, but further explanation is necessary for the son's not bearing an imperial *nomen*: he must have been transferred to another household, and manumitted there, before he died at the age of seven months.

Once again, as the table above reveals, there is no certain evidence, in this category of *de facto* unions, of freeborn couples.⁷⁴ Even the

⁷¹ Rawson (above, n. 12) 74.

⁷² 4440 depends on a restoration of the text. In 26279 the names suggest a Severan date.

⁷³ The filiation in the daughter's name suggests legitimation through adoption by the mother's father.

⁷⁴ Cf. Ronald Syme's discussion of the upper classes, "Bastards in the Roman aristocracy," *PAPhS* 104 (1960) 323-27, e.g., 324: "There is a singular dearth of evidence about aristocratic bastards." The lack of evidence does not prove, of course, that such liaisons did not exist; but it does make it difficult to draw any positive conclusions about them.

total number of *incertus-incerta* unions, which may include some free-born couples, is little more than 10 per cent of all the families in (b).

All the categories of *de facto* unions examined above show heavy concentration of partners of freed or slave status. A slave partner could not marry. Many of the freed persons may have been slaves at the time their union began and thus ineligible to marry.⁷⁵ In view of the total absence of evidence for two freeborn partners choosing *de facto* rather than legal marriage, and in view of the possibility that many of the citizen partners in *de facto* unions who have previously been labelled freeborn were actually freed, we must accept the high probability that it was status that precluded many couples from legal marriage. If this is so, it has important implications for Roman attitudes to marriage and to illegitimacy. It may help to explain the comparative lack of stigma for illegitimate children: their status belongs to a legal context rather than a moral one. And if there is little evidence of eligible partners preferring concubinage to marriage this strengthens other indications that marriage remained the norm. (Frequent divorce would not disprove this: divorce presupposes marriage.) Those who were precluded from marriage often borrowed its trappings and ideals. Much of the terminology of regular family relationships can be found applied to *de facto* unions: *uxor*, *maritus*, *coniunx* are very common; the standard attributes are proclaimed (e.g., *piissimus*, *sanctissimus*, *bene merens*); parents with Greek names tended to give their children Roman names. This is consistent with other evidence that slaves and freedmen (many of them immigrants?) were anxious to assimilate to Roman forms and practices as quickly as possible. Cultural influence filtering downwards is a fairly commonplace phenomenon to modern sociologists, but for Roman history the emphasis has rather been placed on "slave morality" corrupting upwards.

The evidence used by Meyer and Plassard can no longer be used to support their sweeping moral conclusions. For Plassard (109), the evidence reflected "le relâchement progressif des mœurs et des anciens

⁷⁵ Thirty was the minimum age for manumission set down by Augustus. Although many exceptions were made in favor of earlier manumission, thirty probably remained the norm. Most unions, therefore, were probably begun in pre-manumission days and most children of these unions were produced before both parents had eligibility to marry.

cadres familiaux et sociaux.” Meyer (10) put the blame squarely on Eastern immorality: “An die Stelle der römischen Zucht ist griechisch-orientalische Lascivität getreten: aussereheliche Verhältnisse sind an der Tagesordnung.” Later writers have often used this supposed unpopularity of marriage to condemn Easterners, slaves or women. It is time not only to get the facts straight but also to banish racial, class, and sexual prejudice from Roman social history.