Some Aspects of the Legal Position of Children in Roman Law

Janez Kranjc
University of Ljubljana, Faculty of Law, Ljubljana, Slovenia
janez.kranjc@pf.uni-lj.si

DOI
https://doi.org/10.18690/um.pf.4.2024.2

ISBN
978-961-286-855-0

The authority of the family father was a fundamental factor defining the position of free children under paternal power in Rome. The paternal power lasted until the death of *pater familias* who could waive it emancipating the child. At certain age a child-in-power obtained the capacity to act. However, his legal capacity was limited so he could not own property. The family father could leave certain assets to his son's free administration but could take them away at any time. This property was called *peculium*. Gradually, the son-in-power became the owner of the property he had acquired as a soldier or official, and the property he had acquired from his mother. The family father was held liable for wrongs committed by a son-in-power. Instead of paying the full damages, a *pater familias* had the option of surrendering the culprit to the injured party (noxal surrender). Gradually, the possibility of noxal surrender was limited to slaves who committed a delict. Children became criminally liable when they reached the age of maturity. Some Roman jurists were of the opinion that also children close to that age and capable of understanding the reprehensibility of their actions were criminally liable.

Keywords:
son-in-power, family father (head of the household), *pater familias*, *vitae necisque potestas*, noxal surrender

University of Maribor Press

DOI
https://doi.org/10.18690/um.pf.4.2024.2

ISBN
978-961-286-855-0

Ključne besede:
sin pod oblastjo,
družinski oče (glava družine),
pater familias,
vitae necisque potestas,
noksalna izročitev

NEKATERI VIDIKI PRAVNEGA POLOŽAJA OTROK V RIMSKEM PRAVU

JANEZ KRANJC
Univerza v Ljubljani, Pravna fakulteta, Ljubljana, Slovenija
janez.kranjc@pf.uni-lj.si

Avtoriteta očeta družine je bila v rimu temeljni dejavnik, ki je določal položaj svobodnih otrok pod očetovsko oblastjo. Očetovska oblast oblast je trajala do smrti *pater familias*, ki se ji je lahko odpovedal in otroka osamosvojil/osvobodil Pri določeni starosti je otrok pod očetovo oblastjo pridobil sposobnost delovanja. Toda njegova pravna sposobnost je bila omejena, tako da ni mogel imeti premoženja. *Pater familias* je lahko svojemu sinu prepustil določeno premoženje v prosto upravljanje, a mu ga je lahko kadar koli odvzel. To premoženje se je imenovalo *peculium*. Postopoma je sin pod očetovsko oblastjo postal lastnik premoženja, ki ga je pridobil kot vojak ali uradnik, ter premoženja, ki ga je pridobil od svoje matere. *Pater familias* je bil odgovoren za škodo, ki jo je povzročil sin, ki je prevzel oblast. Namesto plačila celotne škode je imel *pater familias* možnost, da krivca preda oškodovancu (noxal surrender). Postopoma se je možnost noksalna izročitev omejila na sužnje, ki so storili delikt. Otroci so postali kazensko odgovorni, ko so dosegli polnoletnost. Nekateri rimski pravniki so menili, da so bili tudi kazensko odgovorni tudi otroci, ki so bili blizu te starosti in sposobni razumeti spornost svojih dejanj.

Univerzitetna založba Univerze v Mariboru

1 Introduction

The category of a child has different meanings in Roman law. It is usually associated with the status, or with the question of a child's capacity to act or to own property. It also plays an important role in the area of the law of succession. Children had a special position in the law of succession because of the closeness of kinship. This applied not only to intestacy but also to testamentary succession. The testator could not pass them over in his will. In the archaic period the children under the testator's paternal power were the first to inherit the estate on intestacy as *sui heredes* of the deceased. After the praetor recognized the claims of the cognatic, i. e., of blood-relationship, all children, i.e., those under the paternal power of the testator, as well as those who were *sui iuris* were entitled to inherit in the first class of persons.[1]

2 The paternal power of the head of the household (*pater familias*) and his power of life and death

The position of a child in Roman law was largely conditioned by the power of the family father,[2] which as Gaius notes was an institution peculiar to Romans.[3] Paternal power was the power that a family father had over his children, his adopted children, his more remote descendants through males and his wife. He acquired power over his wife (*manus*) by a *conventio in manum*, i.e., by *confarreatio* or *coemptio* and also by prescription.[4] In such a case the wife entered into the family of her husband and acquired the legal position of a daughter (*filiae loco*).[5] No person under paternal power could marry without the consent of the head of the household. If a son-in-power (*alieni iuris*) married a wife, it was the family father who obtained the power over the wife who passed into his family.[6]

[1] More on this Jolowicz & Nicholas, 1972, p. 242.
[2] General on paternal power Kaser, 1938, pp. 62–87; Sachers, 1953, p. 1046; Lamberti, 2023, p. 859; Kaser, 1971, p. 60 and 341. See also Watson, 1975, p. 40; Arjava, 1998, pp. 147–165; Dixon, 1992, p. 98; Lamberti, 2019, p. 25.
[3] Gai. D. 1, 6, 3: Also in our *potestas* are our children (*liberi nostri*) whom we have begotten in lawful wedlock. The right over our children is peculiar to Roman citizens. English translation De Zulueta, 1946.
[4] Gai. 1, 110: Of old, women passed into *manus* in three ways, by *usus, confarreatio*, and *coemptio*. See also Gai. 1, 111: A woman used to pass into *manus* by *usus* if she cohabited with her husband for a year without interruption, being as it were acquired by a *usucapion* of one year and so passing into her husband's family and ranking as a daughter. Hence it was provided by the Twelve Tables that any woman wishing not to come under her husband's *manus* in this way should stay away from him for three nights in each year and thus interrupt the *usus* of each year. But the whole of this institution has been in part abolished by statutes and in part obliterated by simple disuse.
[5] Gai. 1, 114. More on *manus* power of the husband Perelló, 2007.
[6] Gai. 1, 111. More on this Jolowicz & Nicholas, 1972, p. 114, esp. p. 119.

The power of the family father lasted during the entire lifetime of the *pater familias*, and was not terminated on a child's arrival to the age of maturity. It could also end by a voluntary decision of the *pater familias*. If he transferred a child into adoption, or a daughter into the power of her husband (*manus*) his paternal power ended. The father could renounce his paternal power by emancipating the child who became himself a *pater familias*. The power of the family father also ceased if his son became a priest of Jupiter (*flamen Dialis*) or if the daughter became a Vestal virgin.[7]

The loss of paternal authority could also result from a conviction in a criminal trial but it did not depend on the father's capacity to act. Therefore, a Roman who became mentally ill retained his paternal power over his children.[8]

Although the son was under paternal power he could hold public office and was independent in this respect.[9]

The father's authority over the children was, at least initially, absolute and included the power of life and death (*vitae necisque potestas*),[10] the right to expose a child at infancy, sale, chastisement, noxal surrender, and the right to force his married child to divorce. It also included full ownership of all the family property, the right to alienate it or to dispose of it by will.[11]

---

[7] See Gai. 1, 145: From this statement, however, we except Vestal virgins, whom even the early lawyers out of respect for their priestly office desired to be free from *tutela*; and so it was provided by the law of the Twelve Tables. Other women *sui iuris*, i. e. those who were not subject to paternal or marital power had to have a guardian (*tutor mulieris*) who had to authorise more important transactions or acts performed by the woman.

[8] Ulp. D. 1, 6, 8 pr.: *Patre furioso liberi nihilominus in patris sui potestate sunt…* (Though a man be insane, his children are nevertheless in his power …). English translation of Digest fragments Watson, 1998.

[9] Pomp. D. 1, 6, 9: *Filius familias in publicis causis loco patris familias habetur, veluti ut magistratum gerat, ut tutor detur.* (A *filius familias* is held to have the same position as a *pater familias* in public matters, so he can, for example, hold magisterial office or be appointed as tutor.).

[10] *This power of the family father was explicitly mentioned in the formula of arrogatio quoted by Gellius (N. A. 5, 19, 9: "Velitis, iubeatis, uti L. Valerius L. Titio tam iure legeque filius siet, quam si ex eo patre matreque familias eius natus esset, utique ei vitae necisque in eum potestas siet, uti patri endo filio est. Haec ita, uti dixi, ita vos, Quirites, rogo." (Express your desire and ordain that Lucius Valerius be the son of Lucius Titius as justly and lawfully as if he had been born of that father and the mother of his family, and that Titius have the power of life and death over Valerius which a father has over a son. This, just as I have stated it, I thus ask of you, fellow Romans.) – English translation: Noctes Atticae (Attic Nights), Gellius, 1927 (revised 1946). This text is in the public domain. See also Paul. D. 28, 2, 11: … quod et occidere licebat (… because it was also permissible to kill them). More on this topic Sachers, 1953, p. 1084; Shaw, 2001, pp. 31–77; Yaron, 1962, pp. 243–251; Westbrook, 1999, pp. 203–223.*

[11] See Crook, 1967, p. 113.

The family father formally welcomed the child into the family by taking it in his arms and lifting it up (*tollere liberum*). If he failed to do so, the child was probably exposed.[12] Given that the strength of the family depended on the number of its members, it is conceivable that the father only rejected a child who was not able to live independently or, because of his disability, would not be able to work. This is, *inter alia*, what the XII Tables are supposed to have allowed.[13] The *pater familias* could also have rejected the child for a lack of means of support.

At first glance, this looks cruel and inhumane. But we must remember that hunger was a constant threat, hanging like a sword of Damocles over the poorer sections of Roman population. Just one bad harvest could threaten the family's existence. This is why Seneca concludes that the decision to murder a crippled or weak child was the result of a rational decision and not of anger.[14] According to the law, which is said to have originated from Romulus, the family father could only do so after he had shown the mutilated child to five neighbors and received their confirmation that his decision was reasonable.

According to Dionysius of Halicarnassus, the family father was obliged to bring up all his sons and the first-born daughter. Despite his right over the life and death of his children, according to the same author, he was not allowed to kill a child who had not yet reached the age of three.[15]

Although the provisions of the alleged law of Romulus give the impression that Roman fathers killed their children *en masse*, it seems reasonable to believe that, for the reason already given, there were no abuses of this institution. Roman tradition knew a range of sacral sanctions for the abuse of paternal power. The censors could also punish the family father for acts which violated the ancestral custom (*mos maiorum*). Such acts included abuse of the right over life and death, unjustified divorce, too harsh or too lenient upbringing of children, etc. In addition to the restrictions derived from ancestral custom, there were also legal restrictions of the power of *pater familias* over the life and death of his children. This right was already

[12] More on this Sachers, 1953, p. 1089; Westrup, 1944, p. 249; Israelowich, 2017, pp. 213–229.
[13] Cic. De leg. 3, 19: … *quom esset cito necatus tamquam ex XII tabulis insignis ad deformitatem puer* … See also Liv. 27, 37. More on this Pugliese, 1985, p. 629; Harris, 1994, pp. 1–22; Lovato, 2015, pp. 239 – 254; Mommsen, 1955, p. 619.
[14] Sen. De ira 1, 15, 2: ... *portentosos fetus extinguimus, liberos quoque, si debiles monstrosique editi sunt, mergimus; nec ira sed ratio est a sanis inutilia secernere«* (unnatural progeny we destroy ; we drown even children who at birth are weakly and abnormal. Yet it is not anger, but reason that separates the harmful from the sound …).
[15] Dion. 2, 15, 2.

limited by the XII Tables. As we learn from the fragments of Gaius' Institutes found in Autun, the XII Tables forbade the father to kill a child without just cause.[16]

In the course of time this right was further restricted. It was mainly reduced to the right of a family father to kill his adulterous daughter and her lover or a son having an affair with his step-mother. As the Papinian's text shows, this kind of right of the family father still existed in his time.[17]

The right of the family father over the life and death of his children was finally abolished by the Emperor Constantine in 318.[18]

It is not entirely clear when the right of the family father to expose his child was also abolished. It was certainly weakened by the view that the exposure of a child is the same as his killing. So, the classical jurist Paul writes that a father who denies his child food or exposes him in a public place kills him:

> Paul. D. 25, 3, 4: It is not just a person who smothers a child who is held to kill it but also the person who abandons it, denies it food, or puts it on show in public places to excite pity which he himself does not have.[19]

Also Lactantius writes that exposing a child is tantamount to murder, with the perpetrators using the excuse that they do not have the means of subsistence for bringing him up.[20]

It is worth noting that the nature of the right of the family father to expose his child is not entirely clear. There is every indication that it was a right of the family father, which originated in Roman tradition and customary law and, unlike infanticide, was not legally regulated.[21] It was limited only indirectly by the introduction of the mutual

---

[16] GA 85 s: … *cum patris potestas talis est ut habeat uitae et necis potestatem. 86. De filio hoc tractari crudele est, sed … non est post … r … occidere sine iusta cusa, ut constituit lex XII tabularum.*

[17] Coll. 4, 8, 1. Papinianus speaks of a royal law (*lex regia*) that gave the family father the right to kill his adulterous daughter together with her lover.

[18] Const. C.Th. 9, 15, 1 (= C. 9, 17, 1). See also Inst. 4, 18, 6. Killing a child was equated with the murder of one of the parents.

[19] Paul. D. 25, 3, 4: *Necare videtur non tantum is qui partum praefocat, sed et is qui abicit et qui alimonia denegat et is qui publicis locis misericordiae causa exponit, quam ipse non habet.*

[20] Lact., Divinarum Institutionum 6, 20: *Tam igitur nefarium est exponere, quam necare … nec se pluribus liberis educandis sufficere posse praetendunt.* (It is therefore as wicked to expose as it is to kill ... and allege that they have not enough for bringing up more children).

[21] Mommsen, 1899, p. 619: … die Aussetzung des Kindes erscheint durchaus als anerkanntes Recht des Vaters. Das Verhältnis des Aussetzungsrechts zu dem allgemeinen Tödtungsrecht wird dahin zu bestimmen sein, dass die Sitte

duty of parents to support their children or of children to support their parents.[22] Formally, the family father's right to expose his child was abolished by the law of the emperors Valentinian, Valens and Gratian in 374:

> Everyone should nourish his own offspring. If anyone meditates exposing them, he will be liable to the penalty laid down to this.[23]

The question that arises in relation to a father's right over the life and death of his children is in the first place why a father would expose or kill his child. Although the extent of the father's right over his children gives the impression of arbitrariness and despotism of the Roman family father exercising his right over his children, there can be no doubt that this was not the case. The father exposed the child because of scarcity when the family had not enough means of subsistence.

Killing a child during an uncontrolled outburst of anger would be unacceptable and contrary to Roman *mos maiorum*. Behind the right of the family father to kill the child was not an arbitrary power but exercising a sort of judicial authority.

It should not be forgotten that the right over the life and death of children was not vested in the natural father but in the family father (*pater familias*), who was not necessarily the same person. The *pater familias* could also be the child's grandfather or great-grandfather or adoptive father. If a member of a particular family killed or wounded someone or caused some other wrongdoing, (blood) vengeance followed on the part of the victim or his family. To prevent this, the family father, under whose power the perpetrator was, punished him. The family father did this with the cooperation of the family council and according to certain procedure.[24] Before killing a child the family father had to convene such a *consilium* and was bound by its

dem Vater die Aussetzung des Kindes in zartem Alter freigab, die Tödtung dagegen nur bei zureichender Begründung, also nur in vorgeschrittenem Alter Billigung fand (… the exposing of a child appears to have been a recognized right of the father. The relationship between the right of exposing a child and the general right to kill him seems to have been determined in such a way that the custom allowed the father to expose a child at a tender age, whereas the killing of a child was only allowed if there was sufficient justification, i.e. only at an advanced age.).

[22] Ulp. D. 25, 3, 1, 14: Julian also writes that if a woman notifies her husband that she is pregnant and he does not deny it, this will not make the child his, although he can be compelled to support it. Ulp. D. 25, 3, 5, 3: The same is true in the maintenance of children by their parents. Gl. tudi Ulp. D. 25, 3, 5, 4-6.

[23] Val. Val. Grat. C. 8, 51, 2 pr.: *Unusquisque subolem suam nutriat. quod si exponendam putaverit, animadversioni quae constituta est subiacebit*. English translation Blume et al, 2016.

[24] More on this Kaser, 1971, p. 62.

verdict.[25] Therefore, the killing of a child was not an act of the father's own free will but the execution of some kind of judicial decision.

Lucius Gellius, a man who had held all public offices up through that of censor, possessed near certainty that his son was guilty of very serious offenses, namely committing adultery with his stepmother and plotting the murder of his father. Still, he did not rush at once to vengeance but (instead) summoned almost the entire Senate to his *consilium,* set forth his suspicions, and offered the young man the chance to defend himself. And when he had very carefully examined the case, he acquitted him not only by the verdict of the *consilium* but also by his own. Now if, carried away by the force of anger, he had hastened to vent his cruelty, he would more have committed a wrong than avenged one.[26]

The accounts in Roman sources of cases where fathers executed their children show that these were punishments for specific crimes. So, according to the Roman tradition, in 508 B. C. Lucius Junius Brutus put his two sons to death for having joined the plot aimed at restoring the rule of Tarquins, which was a crime as they admitted; Marcus Fabius, in 222 B. C., executed his son for theft; Fulvius Nobilior in 64 B. C. inflicted the death penalty on his son for taking part in the Catilinian conspiracy; Pontius Aufidianus and Alilius Philiscus inflicted death penalties upon their daughters because of their immorality, etc.[27]

However, the jurisdiction of the family father was not limited to the punishment of crimes. He also adjudicated disputes between members of his household. Remnants of family justice can also be found in later periods. In a rescript to certain Galla the emperors Valerian and Gallienus stressed that the lawsuits between family members should be settled within the household. The two emperors advise Galla to resort to law and approach the provincial governor only if her sons insult her and behave inappropriately towards her. Then, the provincial governor will punish this injury to dutifulness (*pietas*).[28]

[25] Jolowicz & Nicholas, 1972, p. 119.
[26] Val. Max. 5, 9, 1. English translation Valerius Maximus: English translation (attalus.org).
[27] More on this Sachers, 1953, p. 1086. Breij, 2006, p. 58, lists 11 cases known in which fathers actually made use of this right; see also p. 64: Killing Sons in Roman Declamations.
[28] Valer./ Gallien. C. 8, 46, 4 pr.: *Congruentius quidem videtur intra domum, inter te ac filios tuos si quae controversiae oriuntur, terminari.* (If any lawsuits arise between you and your sons, it seems more fitting that this be settled within your household).

In imperial law the family father's power over the life and death of his children was largely abolished. A father who killed his child without due process was punished. If he thought he had reason to demand his son's death, he was, as Ulpian states, obliged to initiate ordinary proceedings:

> A father cannot kill his son without giving him a hearing but must accuse him before the prefect or the provincial governor.[29]

Emperor Hadrian had a father who killed his son without giving him a hearing exiled to an island:

> It is said that when a certain man had killed in the course of a hunt his son, who had been committing adultery with his stepmother, the deified Hadrian deported him to an island [because he acted] more [like] a brigand in killing him than as [one] with a father's right; for paternal power ought to depend on compassion, not cruelty.[30]

3 Sale of a child

The family father was also allowed to sell a child in his paternal power.[31] There were probably various reasons for this. The family may have been in hardship, or may not have had the means to nourish one more person, or may have wanted to keep the child out of poverty, etc. The child could be sold to another gens or another family.

Normally, the child who had been sold did not become a slave but entered into a special semi-free relationship called *in mancipio esse*. Although he remained free his actual situation was similar to that of a slave. If a son who had been sold was manumitted by the acquirer he returned to his father's authority.[32] It can be assumed that the buyer manumitted him, especially when his labor had worked off the purchase price. The father could sell his son again. In order to prevent the abuse of

[29] Ulp. D. 48, 8, 2.
[30] Marc. D. 48, 9, 5.
[31] Dion. 2, 27, 1; Sachers, 1953, p. 1096.
[32] Gai. 1, 138: Persons in mancipio, since they rank as slaves, become sui iuris if manumitted by uindicta, census, or will. (*Hi qui in causa mancipii sunt, quia servorum loco habentur, vindicta, censu, testamento manumissi sui iuris fiunt*). See also Gai, 1, 140: Gai. 1, 140: More than this, it is possible for them to obtain liberty by the census even against the will of their holder in mancipio, with the exception of one whom his father has mancipated with a proviso for remancipation to himself … (*Quin etiam invito quoque eo cuius in mancipio sunt, censu libertatem consequi possunt, excepto eo quem pater ea lege mancipio dedit, ut sibi remancipetur…*) See also Gai. 2, 141: Further, a son who is manumitted from his first or second mancipation by returning into *patria potestas* … (*Filius quoque, qui ex prima secundave mancipatione manumittitur, quia revertitur in potestatem patriam* …). English translation Zulueta, 1946.

this possibility, the XII Tables stipulated that a father who sold his son three times freed him from his paternal power.[33] A son, as Gaius states, "passes out of parental *potestas* by three mancipations, but all other children, male or female, leave it by a single mancipation".[34]

This provision of XII Tables was originally intended as a punishment for a hard-hearted or frivolous father who repeatedly sold his son. Later it was used as a formality for the emancipation which terminated paternal power. The father thus emancipated his son by selling him fictitiously three times, or another child in his power by selling him once.

Particularly during the economic crisis of the 4th century, there were frequent sales of newborn children whose parents did not have means to support them. Imperial law tolerated this practice because it wanted to prevent their exposure. Despite such a sale the family father retained the right to get his child back if he paid the buyer who reared the child his estimated money value[35] or gave him a slave of the same value in exchange for the child.[36]

4 Capacity of children-in-power to own property

In the agrarian society of ancient Rome, the family farm was the basic economic unit that supported the Roman family.[37] The head of the household had the power over persons and things. For this reason, the word familia also refers to the property held by the family father.[38] Persons under his power could not have property of their own. What they acquired, they acquired for the family father. Gaius thus notes:

---

[33] Tab. 4, 2: If a father sell his son three times, the son shall be free from his father. (*Si pater filium ter venum duit, filius a patre liber esto.*)

[34] Gai. 1, 132: … *filius quidem tribus mancipationibus, ceteri vero liberi sive masculini sexus sive feminini una mancipatione exeunt de parentium potestate.*

[35] This was contrary to the general principle of Roman law that "the body of a free person is not susceptible of valuation (*cum liberum corpus aestimationem non recipiat*" – Gai. D. 9, 1, 3). See also Gai. D. 9, 3, 7.

[36] See Const. C.Th. 5, 10, 1 (the text of the law in Justinian's Code is slightly changed - C. 4, 43, 2) and Const. Vat. 34. The interpretation to Const. C.Th. 5, 10, 1 reads: If any person should purchase a newborn child and rear it, he shall have the right to keep and possess it. Certainly, if an owner or father should wish to recover a child that has been so reared, he shall either give to the person who reared it a slave of the same value, or the person who reared the child shall obtain the price which the child that he reared is worth (*aut eiusdem meriti mancipium nutritori dabit, aut pretium nutritor, quantum valuerit, qui nutritus est, consequatur*). English translation: Pharr et al., 1952.

[37] More on this Burck, 1942, p. 91.

[38] See Ulp. D. 50, 16, 195, 1: Let us consider how the designation of "household" is understood. And indeed it is understood in various ways; for it relates both to things and to persons: to things, as, for instance, in the Law of the Twelve Tables in the words "let the nearest agnate have the household." The designation of household, however, refers to persons when the law speaks of patron and freedman: "from that household" or "to that household"; and

> Whatever children in our *potestas* or our slaves receive by mancipation or obtain by delivery, and whatever rights they acquire by their stipulations or any other title, are acquired for us, because a person in *potestas* can have nothing of his own. Thus such a person, if instituted heir, cannot accept the inheritance except with our sanction, and if he accepts it with that sanction, it is acquired for us exactly as if we had been instituted heirs ourselves; and of course any legacy left to them goes to us on the same principle.[39]

The persons in power therefore lacked the capacity to own property. In this respect, at least initially, there was *de iure* no distinction between slaves and children in paternal power. The only difference was in their status, since children under paternal power of the family father were free and Roman citizens having other aspects of legal capacity.

The Romans, however, were aware that it would be wrong to deprive children in power, who may have been adults and at the height of their productive abilities, of everything they had acquired. Therefore, a family father could leave to a son under his power – similarly to a slave – a *peculium*, i.e., certain assets to manage and enjoy them freely. *Peculium* could be a sum of money, a commercial business, or a small property. *De iure peculium* belonged to the family father (or the slave's master), and *de facto* it was son's or slave's.

> 3. A *peculium* is so-called because of the picayune nature of the money or property in it. 4. According to Celsus in the sixth book of his Digest, Tubero defines a peculium as the property which the slave, with his master's permission, keeps in a separate account of his own, less anything owed to the master.[40]

The extent of a *peculium* in concrete case of course depended on the family's financial situation and the earning capacity of the child or slave. The *peculium* was an important economic incentive. Yet at the same time it created the civil liability of the *pater*

---

here it is agreed that the law is talking of individual persons. (*"Familiae" appellatio qualiter accipiatur, videamus. et quidem varie accepta est: nam et in res et in personas deducitur. in res, ut puta in lege duodecim tabularum his verbis "adgnatus proximus familiam habeto". ad personas autem refertur familiae significatio ita, cum de patrono et liberto loquitur lex: "ex ea familia", inquit, "in eam familiam": et hic de singularibus personis legem loqui constat. "*). More on this: Dixon, 1992, p. 1; Saller, 1984, pp. 337; Saller, 1994, p. 71; Crook, 1967, pp. 113–122 and Capogrossi Colognesi, 2019, p. 37.

[39] Gai. 2, 87: *igitur liberi nostri, quos in potestate habemus, item quod servi nostri mancipio accipiunt vel ex traditione nanciscuntur, sive quid stipulentur vel ex alia qualibet causa adquirunt, id nobis adquiritur: ipse enim, qui in potestate nostra est, nihil suum habere potest. et ideo si heres institutus sit, nisi nostro iussu hereditatem adire non potest; et si iubentibus nobis adierit, hereditas nobis adquiritur, proinde atque si nos ipsi heredes instituti essemus; et convenienter scilicet legatum per eos nobis adquiritur.*

[40] D. 15, 1, 5, 3: *Peculium dictum est quasi pusilla pecunia sive patrimonium pusillum.* 4. *Peculium autem Tubero quidem sic definit, ut Celsus libro sexto digestorum refert, quod servus domini permissu separatum a rationibus dominicis habet, deducto inde si quid domino debetur.* More on the problem of *peculium* Thomas, 1982, pp. 527–580.

familias for debts and obligations contracted by the son or slave administering *peculium*. This liability was limited to the value of the *peculium* (*dumtaxat de peculio*) after a deduction of what the son or slave owed to his father or master.

> The person who deals with a son-in-power acquires two debtors, the son being liable in full and the father up to the amount of the *peculium*.[41]

The principle that the son always acquired for the head of the household was gradually relaxed in the light of the changed economic situation, which also affected the Roman family. Thus, the father was not considered to become the owner of property acquired by the son as a soldier (*peculium castrense*) or civil servant (*peculium quasi castrense*), or of anything that a *filius familias* acquired from his mother through a testament or by intestacy (*bona materna*):

> The *peculium castrense* is that which is given by parents or blood relations to a man engaged in military service, or that which a son-in-power has himself acquired in the army, and which he would not have acquired had he not served. For what was acquired outside military service is not a man's *peculium castrense*.[42]

The sons in power could dispose of this kind of *peculium* as if they were the family fathers themselves:

> the military *peculium*, which sons-in-power control just as if they were heads of a household.[43]

Without the permission of the family father a son-in-power could give away as a gift things pertaining to such a *peculium*, dispose of it in a will, etc.:

> Those, on the other hand, who have a *castrense peculium* or a *quasi-castrense peculium* are in a position to make gifts both *mortis causa* and otherwise, since they have the right to make a will.[44]

Although the free administration of a *peculium* gradually built up the economic and financial capacity of sons under paternal power, children *alieni iuris* never became fully financially capable under Roman law.

---

[41] Ulp. D. 15, 1, 44: *Si quis cum filio familias contraxerit, duos habet debitores, filium in solidum et patrem dumtaxat de peculio.*
[42] Macer D. 49, 17, 11.
[43] Ulp. D. 14, 6, 2: … *cum filii familias in castrensi peculio vice patrum familiarum fungantur.*
[44] Ulp. D. 39, 5, 7, 6: … *ceterum qui habent castrense peculium vel quasi castrense, in ea condicione sunt, ut donare et mortis causa et non mortis causa possint, cum testamenti factionem habeant.*

5 Children's capacity to act

Roman law dealt with capacity to act in business transactions and in connection with torts according to similar principles. Both required the ability to understand the nature of one's actions. The legal capacity was generally linked to age, although it was recognized that reaching certain age did not necessarily imply the ability to understand the legal dimensions of one's actions.

As we learn from Justinian's Institutes, old jurists used to propose a concrete test of physical maturity as a condition for a capacity to act. Instead, finally a general rule was established that the capacity to act was acquired at a certain age:

> Guardianship ends for both girls and boys when they reach puberty. In the case of boys the old jurists chose to make puberty not merely a matter of age but also of physical development. We ourselves have thought it better suited to the propriety of our imperial reign to extend to boys the ancient ruling as to girls, which condemned bodily inspection as immoral. By solemn pronouncement we have laid down: that for boys puberty shall be considered as beginning from the completion of the fourteenth year; that for girls the well considered ancient standard shall be retained, deeming them sexually mature on completion of their twelfth year.[45]

Age-related capacity to act is, by its nature a legal presumption. It can be challenged if it can be demonstrated that a person is not of sound mind. Praetor also interdicted from the administration of his affairs a spendthrift who was unable to manage his assets.[46] Although such a person had reached the age of maturity he was given a guardian (*curator*). As we learn from the rescript of Antoninus Pius it was necessary to place him under care and control because of his incapacity for rational perception and judgement we:

---

[45] Inst. 1, 22 pr.: *Pupilli pupillaeque cum puberes esse coeperint, tutela liberantur. pubertatem autem veteres quidem non solum ex annis, sed etiam ex habitu corporis in masculis aestimari volebant. nostra autem maiestas dignum esse castitate temporum nostrorum bene putavit, quod in feminis et antiquis impudicum esse visum est, id est inspectionem habitudinis corporis, hoc etiam in masculos extendere: et ideo sancta constitutione promulgata pubertatem in masculis post quartum decimum annum completum ilico initium accipere disposuimus, antiquitatis normam in femininis personis bene positam suo ordine relinquentes, ut post duodecimum annum completum viripotentes esse credantur.* English translation Justinian's Institutes, Birks, McLeod & Krueger, 1987.

[46] Paul (PS 3, 4a, 7) quotes the following praetor's formula depriving a spendthrift of legal capacity and placing him under the care of a guardian: *Quando tibi bona paterna avitaque nequitia tua disperdis liberosque tuos ad egestatem perducis, ob eam rem tibi ea re commercioque interdico.* (Since by your wickedness you are squandering the property which you have inherited from your father and grandfathers, and are thereby impoverishing your children, I hereby forbid you the commercial intercourse of it).

> The deified Pius also allowed a mother's complaint about her spendthrift sons, that they should accept a curator in these words: "It is nothing new that some persons, though they seem from their speech to be in full possession of their senses, nevertheless, handle the property belonging to them in such a way that unless help is given to them, they are reduced to poverty. Therefore, someone must be chosen to guide them by his advice; for it is right that we should take forethought also for those who, insofar as concerns their own property, bring things to a ruinous conclusion."[47]

The absence of the capacity for rational judgement was even more evident in the case of a person who was mentally ill:

> A lunatic is not to be regarded as one absent because he lacks the intellect to ratify anything done.[48]

In other cases, the presumption of maturity and capacity to act was age-related. As we have seen, boys reached it at the age of 14 and girls at the age of 12. Interestingly, however, the residue of the concrete test of maturity was retained to some extent in relation to the criminal capacity. This is clearly evident from Ulpian and Gaius' text:

> A child under the age of puberty can commit a theft if he is capable of crime, as Julianus states in the Twenty-second Book of the Digest.[49]

> *Finally, does a child commit theft if he removes something belonging to another? The majority view accepts that since theft depends on intent, a child only incurs the liability if he is near puberty. He can then understand that he is doing wrong.*[50]

From both fragments we can clearly see that Roman jurists were aware of the difficulties of sharp delimitation. That is why they allowed exceptions in cases where someone was close to the age limit:

> What we have said of a child is only true of one who has attained some understanding. A baby and a child barely past infancy (*infans et qui infanti proximus*) hardly differ from the insane, in that they are too young to understand anything. With those just past infancy (*proximis infanti*),

[47] Ulp. D. 26, 5, 12, 2: *Divus Pius matris querellam de filiis prodigis admisit, ut curatorem accipiant, in haec verba: "non est novum quosdam, etsi mentis suae videbuntur ex sermonibus compotes esse, tamen sic tractare bona ad se pertinentia, ut, nisi subveniatur is, deducantur in egestatem. eligendus itaque erit, qui eos consilio regat: nam aequum est prospicere nos etiam eis, qui quod ad bona ipsorum pertinet, furiosum faciunt exitum."*

[48] Paul. D. 3, 3, 2, 1: *Furiosus non est habendus absentis loco, quia in eo animus deest, ut ratum habere non possit.*

[49] Ulp. D. 47, 2, 23.

[50] Gai. 3, 208. See also Gai. D. 50, 17, 111 pr.: *A minor who is near the age of puberty is capable of theft and the commission of injury.*

> convenience has encouraged a generous interpretation of the law, so that they are treated as having the same capacity as those near puberty (*pubertati proximi*). A young child still within his family incurs no obligation even with the endorsement of the head of the family.[51]

Children under the age of seven who were said to be unable to speak legally relevant words (*qui fari non possunt*)[52] were considered to be incapable of reason and could perform no legal act at all.[53] They were considered incapable of entering into valid legal transactions even with the guardian's authorization, or being criminally liable. In terms of their capacity to act they were therefore compared to the insane:

> An infant or a madman who kills a man is not liable under the *lex Cornelia*, the one being protected by the innocence of his intent, the other excused by the misfortune of his condition.[54]

6 Liability for crimes and delicts of children-in-power

As we have already seen the criminal capacity arose at the same time as the contractual capacity. Nevertheless, we find two cases in the XII Tables where a minor was punished for a wrongdoing, albeit more leniently than the adult. We can assume with certainty that this was the case of a minor close to puberty while children under the age of seven (*infantes*) were completely lacking legal capacity.

The first case concerned the grazing of crops. As Pliny states "the Twelve Tables made shepherding animals by stealth at night on crops grown under the plough, or cutting them, a capital offence for an adult and enacted that a person found guilty of it should be executed by hanging in reparation to Ceres, a heavier punishment than in a conviction for homicide; while a minor was to be flogged at the discretion of the praetor or sentenced to pay the amount of the damage or twice that

---

[51] Inst. 3, 19, 10.
[52] Gai. D. 46, 6, 6, Ulp. D. 26, 7, 1, 2, Paul. D. 29, 2, 9. More on this Lamberti, 2014, p. 51.
[53] Ulp. D. 26, 7, 1, 2: … *ita tamen, ut pro his, qui fari non possunt vel absint, ipsi tutores iudicium suscipiant, pro his autem, qui supra septimum annum aetatis sunt et praesto fuerint, auctoritatem praestent.* (… However, just as tutors may themselves undertake the case on behalf of those who cannot speak or are absent, they may offer their authorization on behalf of those who are over seven years of age and are present.). See also Arc. Hon. Theod. CTh. 8, 18, 8 (of 407 AD). Constantius (CTh. 8, 18, 4), however, speaks about the completion of the sixth year (*post emensum vero sextum aetatis suae annum* - but after the completion of the sixth year of his age).
[54] Mod. D. 48, 8, 12: *Infans vel furiosus si hominem occiderint, lege Cornelia non tenentur, cum alterum innocentia consilii tuetur, alterum fati infelicitas excusat.*

amount."[55]

The second case is about manifest theft. According to Gellius, the decemviri "decided that boys under age should be flogged at the discretion of the praetor and the damage which they had done made good."[56] In neither case, however, does it seem to have been a punishment in the sense of criminal law but rather an educational measure (albeit perhaps a very severe one). This is easily deduced, among other things, from the fact that the decision about this was at the discretion of a praetor.

The Proculeian and Sabinian schools seem to have differing views on the question of the beginning of legal capacity of children. The Proculians advocated tying it to a particular age while the Sabinians advocated case-by-case consideration.[57]

In general, it can be said that the earlier classic jurists defended the criminal capacity of minors over 7 years of age, provided that they were capable of understanding what was right and what was wrong:

> Labeo says that if the child were over seven years of age, he could be liable under the *lex Aquilia* in just the same way as he could be liable for theft. I think this is correct, provided the child were able to distinguish between right and wrong (*si sit iam iniuriae capax*).[58]

We can find a similar distinction with Julian, quoted by Ulpian:

> Julian wrote in the twenty-second book of his Digest that an *impubes* can commit theft, if he be already capable of guilty intent; similarly, it is possible to proceed against such a person for damage wrongfully inflicted since theft can be committed by him. But, he says, there is a limit on this; for it does not apply to infants. Our view is that one can proceed with the Aquilian action against an *impubes* capable of fault. What Labeo says is also true, that is to say, that an *impubes* is not liable as an accomplice in respect of a theft.

[55] Nat. hist. 18, 3, 12: *frugem quidem aratro quaesitam furtim noctu pavisse ac secuisse puberi xii tabulis capital erat, suspensumque Cereri necari iubebant gravius quam in homicidio convictum, inpubem praetoris arbitratu verberari noxiamve duplionemve decerni.* English translation: Backham, 1961.
[56] Gell. N. A. 11, 18, 8: *sed pueros inpuberes praetoris arbitratu verberari voluerunt noxiamque ab his factam sarciri.* English translation: Gellius, 1927. The text is in public domain.
[57] Kaser, 1971, p. 275.
[58] Lab.-Ulp. D. 9, 2, 5, 2.

Later classic jurists probably tended to be more age-oriented. Therefore, they used the expression "if he is verging on puberty" (*proximus pubertati*)[59] or "if he is approaching puberty and so understands that he is doing wrong" (*si proximus pubertati sit et ob id intellegat se delinquere*).[60] It can be assumed that in classical as well as in imperial law the following principle prevailed:

> A pupil who is very near to puberty is capable both of theft and of causing injury.[61]

7 Liability of *pater familias* for the obligations of a child-in-power

In principle, the father was not responsible for the obligations of a child in his power.[62] The exception was where a son-in-power had assumed an obligation authorized by the family father.[63] The authorization rendered the family father (or the slave's master) liable for the full amount because "in a sense the person who authorizes a contract becomes a party to it".[64] The family father was also liable if he benefited from the transaction. Evan if he didn't authorize it, "the person with power over them has materially benefited from the performance rendered, that person is liable, much as if he himself had been party to the transaction".[65] In such a case the *pater familias* was liable to the value of the benefit taken.

If there was no authorization or benefit taken from the transaction of the son-in-power the father's liability was limited to son's *peculium*.[66]

It follows that the *de facto* son-in-power was liable for his obligations with his property, which *de iure* belonged to his family father. But, as Ulpian points out, "If the peculium of those in the power of another is empty or insufficient to pay the debt in full"[67] it was possible to claim the payment from the family father. This is

---

[59] Ulp. D. 4, 3, 13, 1.
[60] Gai. 3, 208. See also Ulp. D. 47, 2, 23, Maec. D. 29, 5, 14, and Alex. C. 9, 47, 7.
[61] Gai. D. 50, 17, 111 pr.: *Pupillum, qui proximus pubertati sit, capacem esse et furandi et iniuriae faciendae.* See Kaser, 1975, p. 116.
[62] More on this Longo, 2003.
[63] See D. 15, 4: *Quod iussu* and C. 4, 26 *quod cum eo qui in aliena est potestate negotium gestum esse dicitur, vel de peculio seu quod iussu aut de in rem verso.*
[64] Ulp. D. 15, 4, 1 pr.: … *nam quodammodo cum eo contrahitur qui iubet.*
[65] Ulp. D. 15, 3, 1 pr.: … *tenentur qui eos habent in potestate, si in rem eorum quod acceptum est conversum sit, quasi cum ipsis potius contractum videatur.* See: D. 15, 3 *De in rem verso.*
[66] D. 15, 1 *De peculio.* Ulp. D. 15, 1, 1, 1: *Est autem triplex hoc edictum: aut enim de peculio aut de in rem verso aut quod iussu hinc oritur actio.* (This section of the edict is in three parts: the action on the peculium, the action for benefit taken, and the action on an authorized transaction all stem from it.)
[67] Ulp. D. 15, 3, 1 pr.: *Si hi qui in potestate aliena sunt nihil in peculio habent, vel habeant, non in solidum tamen* …

logical, especially considering that the power of pater familias lasted until his death, which means the son could have been under authority at a ripe old age. If the son-in-power did not pay, the creditor could demand payment from his family father, who had to repay the obligation (*de iure*) out of his own pocket up to the value of *peculium*. Nevertheless, we can believe that this occurred only exceptionally when the son-in-power failed to meet his obligation and had to be sued.

In the case of obligations resulting form a wrongdoing the situation was somewhat different. The family father was liable for the delicts of persons under his paternal power. However, he could avoid payment of the damages if he handed over the perpetrator, i.e., his son-in-power (or his slave), to the injured party:

> Wrongdoing by sons or slaves, as where they have been guilty of theft or outrage, has given rise to noxal actions, the nature of which is that the father or master is allowed either to bear the damages awarded or to surrender the offender. For it would be inequitable that their misconduct should involve their parents or masters in loss beyond that of their persons.[68]

Gradually, this option of the family father was limited exclusively to slaves while allowing an action to be brought directly against the son-in-power who committed the delict:

> The old jurists applied these rules to dependants in family authority as well, both males and females. As attitudes changed it was rightly thought that such harshness could not be tolerated. Hence the practice of treating children in the same way as slaves has been abandoned. What father allows his son to be given in noxal surrender, much less his daughter? It would hurt the father almost more than the son. With daughters, sexual propriety provides another good reason for the change. A final reason for confining noxal actions to slaves is that in the old legal commentaries, we quite often find it said that sons who commit delicts can themselves be sued.[69]

8 Conclusion

This brief overview of some of the particularities regarding the legal position of Roman children can be concluded by arguing that the fundamental difference between Roman and modern law concerning the status of children was primarily the paternal power and, consequently, the absence of the child's capacity to own

[68] Gai. 4, 75; de Visscher, 1930, pp. 411–471.
[69] Inst. 4, 8, 7.

property. The authority of the family father was deeply rooted in Roman tradition. Remnants of this are still to be found today in some environments in the Mediterranean area. Much more than legal norms the authority of the family father was based on ancestral customs (*mos maiorum*). In particular, in the earlier periods of Roman history, the father's authority was a fundamental feature of the Roman tradition. This is perhaps best illustrated by the case of the tribune Gaius Flaminius:

> With C. Flaminius too parental authority was equally potent. As Tribune of the Plebs he had (in 232 B.C.) promulgated a law to distribute the Gallic territory individually against the will and resistance of the senate, vehemently opposing its entreaties and threats and undeterred even by the levying of an army against him should he persist in the same purpose. But when his father placed a hand on him as he was already on the rostra putting the law to vote, overborne by private authority he came down from the platform. Nor did the assembly which he left in the embarrassing position censure him by even the slightest murmurs.[70]

The reaction of the assembled people shows that the father's behavior was neither unusual nor shocking. Although probably not all Roman fathers were like the father of Gaius Flaminius, it was clearly a matter of course in Rome at that time that a son had to submit to his father's authority.

References

Arjava, A. (1998). Paternal Power in Late Antiquity. *The Journal of Roman Studies*, 88, pp. 147–165. doi: 10.2307/300809.

Atorino, A., D'Alessio, R. & Parenti, L. (2019). *Anatomia della paternità. Padri e famiglia nella cultura romana*. Lecce: Edizioni Grifo.

Birks, P., McLeod, G. & Krueger, P. (1987). *Justinian's Institutes. Translated with an Introduction by Peter Birks & Grant McLeod with the Latin text of Paul Krueger*. Ithaca, NY: Cornell University Press.

Blume, F. H. et al. (eds.). (2016*). The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text*. Cambridge: Cambridge University Press.

Breij, B. (2006). Vitae Necisque Potestas in Roman Declamation. *Advances in the History of Rhetoric*, 9(1), pp. 55–79. doi: 10.1080/15362426.2006.10557261.

Burck, E. (1942). *Die altrömische Familie, Das neue Bild der Antike II*, Leipzig, pp. 5-52 (reprinted in: Römertum. Ausgewählte Aufsätze und Arbeiten aus den Jahren 1921 bis 1961, Herausgegeben von Hans Oppermann, Wissenschaftliche Buchgesellschaft Darmstadt 1984)

Capogrossi Colognesi, L. (2010). La famiglia romana, la sua storia e la sua striografia. *MEFRA*. 122-1, pp. 147–174. doi: 10.4000/mefra.339.

Capogrossi Colognesi, L. (2019). La *patria potestas* ed i molti significati di 'famiglia'. In Capogrossi Colognesi, L., Cenerini, F., Lamberti, F., Lentano, M., Rizzelli, G. & Santorelli, B., *Anatomia della paternità. Padri e famiglia nella cultura romana* (pp. 37). Lecce: Edizioni Grifo.

Crook, J. (1967). Patria Potestas. *The Classical Quarterly*, 17(1), pp. 113–122. doi: 10.1017/S0009838800010363.

de Visscher, F. (1930). La nature juridique de l'abandon noxal. *Revue historique de droit français et étranger*, Quatrième série, 9, pp. 411–471.

[70] Val. Max. 5, 4, 5.

De Zulueta, F. (1946). *The Institutes of Gaius, Part I Text With Critical Notes And Translation*. Oxford: Clarendon Press.

Dixon, S. (1992). *The Roman Family*. Baltimore and London: The Johns Hopkins University Press.

Harris, W. V. (1994). Child-Exposure in the Roman Empire. *The Journal of Roman Studies*, 84, pp. 1–22. doi: 10.2307/300867.

Israelowich, I. (2017). The extent of the "patria potestas" during the High Empire: Roman midwives and the decision of "non tollere" as a case in point. *Museum Helveticum*, 74(2), pp. 213–229.

Jolowicz, H. F. & Nicholas, B. (1972). *Historical Introduction to the Study of Roman Law*. Third edition. Cambridge: Cambridge University Press.

Kaser, M. (1938). Der Inhalt der *patria potestas*. *Zeitschrift der Savigny Stiftung, Romanistische Abteilung*, 58(1), pp. 62–87. doi: 10.7767/zrgra.1938.58.1.62.

Kaser, M. (1971). *Das römische Privatrecht, Erster Abschnitt, Das altrömische, das vorklassische und klassische Recht*. Zweite, neubearbeitete Auflage. München: C. H. Beck.

Kaser, M. (1975). *Das römische Privatrecht, Zweiter Abschnitt, Die nachklassischen Entwicklung*en. Zweite, neubearbeitete Auflage mit Nachträgen zum Ersten Abschnitt. München: C. H. Beck.

Lamberti, F. (2023). Hauskinder. In Babusiaux U., Baldus, Ch., Ernst, W., Meissel, F. S., Platschek, J. & Rüfner, T., *Handbuch des Römischen Privatrechts herausgegeben*, *Band I* (pp. 859–875). Tübingen: Mohr Siebeck.

Lamberti, L. (2014). *La famiglia romana e i suoi volti. Pagine scelte su diritto e persone in Roma antica*. Torino: Giappichelli.

Lamberti, L. (2019). La patria potestà fra antichità e riletture moderne. In Capogrossi Colognesi, L., Cenerini, F., Lamberti, F., Lentano, M., Rizzelli, G. & Santorelli, B., *Anatomia della paternità. Padri e famiglia nella cultura romana* (pp. 25–36). Lecce: Edizioni Grifo.

Longo, S. (2003). *Filius familiae se obligat? Il problema della capacità patrimoniale dei filii familias*. Pubblicazioni della Facoltà di giurisprudenza, Nuova Serie 189, Giuffrè editore. Catania: Università di Catania.

Lovato, A. (2015). Vindicatio puerorum e status degli esposti nel Tardoantico. *Ravenna Capitale.* Giudizi, giudici e norme processuali in Occidente nei secoli IV-VIII, I – saggi, pp. 239–254.

Mommsen, T. (1899). *Römisches Strafrecht*. Reprint Akademie. Verlag 1955. Berlin.

Perelló, C. F. A. (2007). El Origen de los poderes del "Paterfamilias", II: El "Paterfamilias" y la "Manus." *Revista de Estudios Histórico-Jurídicos,* 29, pp. 51–163. doi: 10.4067/S0716-54552007000100002.

Pharr, C., Davidson, T. S., Pharr, M. B. & Dickerman Williams, C. (1952). *The Theodosian Code and Novels and the Sirmondian Constitutions*. Princeton: Princeton University Press.

Pugliese, G. (1985). Note sull'expositio in diritto romano. In *Studi in onore di Cesare Sanfilippo*, 6, p. 629.

Sachers, E. (1953). *Potestas patria*, Pauly-Wissowa, Realencyclopädie der classischen Altertumswissenschaft, (RE) XXII, 1, p. 1046-1175.

Saller, R. P. (1984). "Familia, Domus", and the Roman Conception of the Family. *Phoenix*, 38(4), pp. 336–355.

Saller, R. P. (1994). *Patriarchy, property and death in the Roman family*. Cambridge: Cambridge University Press.

Shaw, B. D. (2001). Raising and Killing Children: Two Roman Myths. *Mnemosyne*, Fourth Series, 54(1), pp. 31–77.

Thomas, Y. (1982). Droit domestique et droit politique à Rome. Remarques sur le pécule et les honores des fils de famille, Mélanges de l'École française de Rome. *Antiquité*, 94(2), pp. 527–580.

Watson, A. (1975). *Rome of the XII Tables: Persons and Property*. New Jersey: Princeton University Press.

Watson, A. (1998). *The Digest of Justinian. Revised English-language edition*. Philadelphia: University of Pennsylvania Press.

Westbrook, R. (1999). Vitae Necisque Potestas. *Historia: Zeitschrift für Alte Geschichte*, 48(2), pp. 203–223.

Westrup, C. W. (1944). *Introduction to Early Roman Law. Comparative sociological studies. The patriarchal joint family. Vol. I. Part I: The house community. Section 1: Community of cult*. Copenhagen – London: Oxford University Press.

Yaron, R. (1962). Vitae Necisque Potestas. *Tijdschrift voor Rechtsgeschiedenis/Revue d'histoire du droit/The Legal History Review (TR)*, 30(2), pp. 243–251. doi: 10.1163/157181958X00636.