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***THE PRIVATE LIFE
OF THE ROMANS***

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The Private Life of the Romans

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INTRODUCTION

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1 The topics that are discussed in this book have to do with the everyday life of the Roman people. Such things will be considered as the family, the Roman name, marriage and the position of women, children and education, slaves, clients, the house and its furniture, clothing, food and meals, amusements, travel and correspondence, funeral ceremonies and burial customs, etc. These things are of interest to us in the case of any ancient or foreign people; in the case of the Romans they are of especial importance, because they help to explain the powerful influence which that nation exerted over the old world, and make it easier to understand why that influence is still felt in some degree to-day.

2 Public and Private Antiquities.—The subjects that have been named above belong to what is called Classical Antiquities, taking their place in the subdivision of Roman Antiquities as opposed to Greek Antiquities. They are grouped loosely together as Private Antiquities in opposition to what we call Public Antiquities. Under the latter head we consider the Roman as a citizen, and we examine the several classes of citizens, their obligations and their privileges; we study the form of their government, its officers and machinery, its legislative, judicial, and executive procedure, its revenues and expenditures, etc. It is evident that no hard and fast line can be drawn between the two branches of the subject: they cross each other at every turn. One scarcely knows, for example, under which

head to put the religion of the Romans or their games in the circus.

3 In the same way, the daily employment of a slave, his keep, his punishments, his rewards, are properly considered under the head of Private Antiquities. But the state undertook sometimes to regulate by law the number of slaves that a master might have, the state regulated the manumission of the slave and gave him certain rights as a freedman, and these matters belong to Public Antiquities. So, too, a man might or might not be eligible to certain state offices according to the particular ceremony used at the marriage of his parents. It will be found, therefore, that the study of Private Antiquities can not be completely separated from its complement, though in this book the dividing line will be crossed as seldom as possible.¹

¹ Students in secondary schools will find useful for preliminary reading the outline of the Roman Constitution in the Introduction to the author's "Selected Orations and Letters of Cicero." For more advanced students three books have lately appeared on this subject: Abbott's "Roman Political Institutions," Granrud's "Roman Constitutional History," and Greenidge's "Roman Public Life."

4 Antiquities and History.—It is just as impossible to draw the boundary line between the subjects of Antiquities and History. The older history, it is true, concerned itself little with the private life of the people, almost solely with the rise and fall of dynasties. It told us of kings and generals, of the wars they waged, the victories they won, and the conquests they made. Then, in course of time, institutions took the place of dynasties and parties the place of heroes, and history traced the growth of great political ideas: such masterpieces as Thirlwall's and Grote's histories of Greece are largely constitutional histories. But changes in international relations affect the private life of a people as surely, if not as speedily, as they affect the machinery of government. You can not bring into contact, friendly or

unfriendly, two different civilizations without a change in the peoples concerned, without altering their occupations, their ways of living, their very ideas of life and its purposes. These changes react in turn upon the temper and character of a people, they affect its capacity for self-government and the government of others, and in the course of time they bring about the movements of which even the older history took notice. Hence our recent histories give more and more space to the life of the common people, to the very matters, that is, that were mentioned in the first paragraph as belonging to Private Antiquities. This may be seen in such titles as these: Green's "History of the English People," McMaster's "History of the People of the United States."

5 On the other hand it is equally true that a knowledge of political history is necessary for the study of Private Antiquities. We shall find the Romans giving up certain ways of living and habits of thinking that seemed to have become fixed and characteristic. These changes we could not explain at all, if political history did not inform us that just before they took place the Romans had come into contact with the widely different ideas and opposing civilizations of other nations. The most important event of this sort was the introduction of Greek culture after the Punic wars, and to this we shall have to refer again and again. It follows from all this that students who have had even the most elementary course in Roman history have already some knowledge of Private Antiquities, and that those who have not studied the history of Rome at all will find very helpful the reading of even the briefest of our school histories.

6 Antiquities and Philology.—The subject of Classical Antiquities has always been regarded as a branch—"discipline" is the technical word—of Classical Philology since Friedrich August Wolf (1759–1824) made Philology a science. It is quite true that in the common acceptance of

the word Philology is merely the science of language, but even here Antiquities has an important part to play. It is impossible to read understandingly an ode of Horace or an oration of Cicero, if one is ignorant of the social life and the political institutions of Rome. But Classical Philology is much more than the science of understanding and interpreting the classical languages. It claims for itself the investigation of Greek and Roman life in all its aspects, social, intellectual, and political, so far as it has become known to us from the surviving literary, epigraphic, and monumental records. Whitney puts it thus: Philology deals with human speech and with all that speech discloses as to the nature and history of man. If it is hard to remember these definitions one can hardly forget the epigram of Benoist: Philology is the geology of the intellectual world. Under this, the only scientific conception of Philology, the study of Antiquities takes at once a higher place. It becomes the end with linguistics the means, and this is the true relation between them.

7 But it happens that the study of the languages in which the records of classical antiquity are preserved must first occupy the investigator, and that the study of language as mere language, its origin, its growth, its decay, is in itself very interesting and profitable. It happens, moreover, that the languages of Greece and Rome can not be studied apart from literatures of singular richness, beauty, and power, and the study of literature has always been one of the most attractive and absorbing to cultivated men. It is not hard to understand, therefore, why the study of Antiquities has not been more prominent in connection with philological training. It was the end to which only the few pressed on. It was reserved, at least in systematic form, for the trained scholar in the university. In the congested condition of the old curricula in our colleges it was crowded out by the more obvious, but not more essential or interesting, subjects of

linguistics and literary criticism, or it was presented at best in the form of scrappy notes on the authors read in the classroom or in the dismembered alphabetical arrangement of a dictionary.

8 Within the last few years, however, a change has been taking place, a change due to several causes. In the first place, the literary criticism which was once taught exclusively in connection with classical authors and which claimed so large a part of the time allotted to classical study has found a more appropriate place in the departments of English that were hardly known a generation ago. In the second place, the superior preparation in the classics now demanded for admission to our colleges has relieved their courses of much elementary linguistic drill that was formerly necessary. In the third place, the last half century has seen a greater advance in the knowledge of Antiquities than all the years before, and it is now possible to present in positive dogmatic form much that was recently mere guesswork and speculation. Finally, modern theories of education, which have narrowed the stream of classical instruction only to deepen its channel and quicken its current, have caused more stress to be laid upon the points of contact between the ancient and the modern world. The teacher of the classics has come to realize that the obligations of the present to the past are not to be so clearly presented and so vividly appreciated in connection with the formal study of art and literature as in the investigation of the great social, political, and religious problems which throughout all the ages have engaged the thought of cultivated men.

9 Sources.—It has been already remarked (§6) that Classical Philology draws its knowledge from three sources, the literary, epigraphic, and monumental remains of Greece and Rome. It is necessary that we should understand at the

outset precisely what is meant by each of these. By literary sources we mean the writings of the Greeks and Romans, that is, the books which they published, that have come down to us. The form of these books, the way they were published and have been preserved, will be considered later. For the present it is sufficient to say that a mere fraction only of these writings has come down to our day, and that of these poor remnants we possess no originals but merely more or less imperfect copies. It is true, nevertheless, that these form as a whole the most important of our sources of information, largely because they have been most carefully studied and are best understood.

10 By epigraphic sources we mean the words that were written, scratched, cut, or stamped on hard materials, such as metal, stone, or wood, without thought of literary finish. These vary from single words to records of very considerable extent, and are briefly called inscriptions. The student may get a good idea of the most ancient and curious by merely turning over a few pages of Ritschl's "Priscae Latinitatis Monumenta Epigraphica" or of Egbert's "Latin Inscriptions." Of one sort of great importance, the legends on coins and medals, many have found their way into American museums. With modern inscriptions on similar materials and for similar purposes every student is, of course, familiar.

11 By monumental evidence we mean all the things actually made by the Greeks and Romans that have come down to us. These things are collectively very numerous and of very many kinds: coins, medals, pieces of jewelry, armor, pottery, statues, paintings, bridges, aqueducts, fortifications, ruins of cities, etc. It is impossible to enumerate them all. It is upon such remains as these that most of the inscriptions mentioned above are preserved. Of the most importance for the study of the private life of the

Romans are the ruins of the city of Pompeii preserved to us by the protection of the ashes that buried it at the time of the eruption of Vesuvius in the year 79 A.D.

12 It will be seen at once that the importance of these sources will vary with the nature of the subject we are studying and the fullness of their preservation. For example, we may read in a Roman poet a description of an ornament worn by a bride. A painting of a bride wearing such an ornament would make the description clearer, but any doubt that might remain would be removed if there should be found in the ruins of Pompeii a similar ornament with its character proved by an inscription upon it. In this case the three sources would have contributed to our knowledge. For other matters, especially intangible things, we may have to rely solely upon descriptions, that is, upon literary sources. But it may well happen that no Roman wrote a set description of the particular thing that we are studying, or if he did that his writings have been lost, so that we may be forced to build up our knowledge bit by bit, by putting together laboriously the scraps of information, mere hints perhaps, that we find scattered here and there in the works of different authors, and these perhaps of very different times. It is not hard to understand, therefore, that our knowledge of some things pertaining to Roman antiquities may be fairly complete, while of others we may have no knowledge at all. It may be worth remarking of literary sources that the more common and familiar a thing was to the ancients, the less likely is it that we shall find a description of it in ancient literature.

13 Reference Books.—The collecting and arranging of the information gleaned from these sources has been the task of philologists from very early times, but so much has been added to our knowledge by recent discoveries that all but the latest books may be neglected by the student. A very full list of books treating of Roman Antiquities may be found in Hübner's "Bibliographie der klassischen Altertumswissenschaft," and a convenient list in Professor Kelsey's "Fifty Topics in Roman Antiquities with References," but the student should not fail to notice at the head of each chapter the lists of authorities to be consulted in the books specifically mentioned below. These have been arranged in two classes, systematic treatises and encyclopedic works, and the student who lacks time to consult all the references should select one at least of the better and larger works in each class for regular and methodical study.

14 Systematic Treatises:

Marquardt, Joachim, "Das Privatleben der Römer," 2d edition by A. Mau. This is the seventh volume of the *Handbuch der römischen Alterthümer* by Marquardt and Mommsen. It is the fullest and most authoritative of all the treatises on the subject and has a few illustrations.

Voigt, Moritz, "Die Römischen Privataltertümer," 2d edition. This is a part of the fourth volume of the *Handbuch der klassischen Altertumswissenschaft* by Iwan von Müller. It is the latest work on the subject, especially rich in the citation of authorities.

Guhl and Koner, "Leben der Griechen und Römer," 6th edition by Engelmann. A standard and authoritative work enriched by copious illustrations. There is an English translation of an earlier edition which may be used by those who read no German.

Becker, W. A., "Gallus oder römische Scenen aus der Zeit Augusts," new edition by Hermann Göll. This is a standard authority in the form of a novel. The story is of no particular interest, but the notes and excursuses are of the first importance. There is an English translation of the first edition which may be used with caution by those who read no German.

Friedländer, L., "Darstellungen aus der Sittengeschichte Roms in der Zeit von August bis zum Ausgang der Antonine," 6th edition. This is the great authority for the time it covers and will be found to include practically the history from the earliest times of all the matters of which it treats.

Blümner, Hugo, "Technologie und Terminologie der Gewerbe und Künste bei Griechen und Römern." The very best description of the arts and industries of ancient Greece and Rome.

Ramsay, William, "A Manual of Roman Antiquities," 15th edition, revised and partly rewritten by Rodolfo Lanciani. This includes public as well as private antiquities, but the revision seems to have been but partial and the larger part of the book is hopelessly out of date.

Wilkins, A. S., "Roman Antiquities," and Preston and Dodge, "The Private Life of the Romans." Two little books, of which the former is by a good scholar and is worth reading.

15 Encyclopedic Works:

Pauly-Wissowa, "Real-Encyclopädie der classischen Altertumswissenschaft." A monumental work, destined to be for many years the great authority upon the subject. Unfortunately it is appearing very slowly and has reached only the word *Demodoros*. There are a few illustrations.

Smith, William, "A Dictionary of Greek and Roman Antiquities," revised edition by Wayte and Marindin. This is the very best work of the sort in English, the best possibly of similar size in any language.

Baumeister, "Denkmäler des klassischen Altertums." The most richly illustrated work on the subject, absolutely indispensable.

"Harper's Dictionary of Classical Literature and Antiquities." Largely from Smith, but with valuable additions.

Rich, "Dictionary of Roman and Greek Antiquities." A convenient manual with many illustrations. Very good for ready reference.

Schreiber, "Atlas of Classical Antiquities." A very copious collection of illustrations bearing on Greek and Roman life. The illustrations are accompanied by explanatory text.

Seyffert-Nettleship, "Dictionary of Classical Antiquities." The illustrations are numerous and the book is of some value on the side of ancient art.

Lübker, "Real-Lexicon des klassischen Altertums," 7th edition by Max Erler. The best brief handbook for those who read German. It is compact and accurate.

16 Other Books.—Besides these, three books may be mentioned treating of the discoveries at Pompeii, the importance of which has been mentioned ([§11](#)):

Overbeck, J., "Pompeii," 4th edition by August Mau, the standard popular work upon the subject, richly supplied with illustrations.

Mau, August, "Pompeii, its Life and Art," translated by Kelsey. This is the best account of the treasures of the buried city

that has appeared in English, at once interesting and scholarly.

Gusman, Pierre, "Pompeii, the City, its Life and Art," translated by Simmonds and Jourdain. The very best collection of illustrations, but not so trustworthy in letterpress.

Finally the student should be warned not to neglect a book merely because it happens to be written in a language that he does not read fluently: the very part that he wants may happen to be easy to read, and many of these books contain illustrations that tell their own story independently of the letterpress that accompanies them.

CHAPTER I

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THE FAMILY

REFERENCES: Marquardt, pp. 1-6; Voigt, 307-311, 386-388; Göll, II. 1-4, 61-65, 187; Pauly-Wissowa, under *adfinitās*, *agnātiō*, *cognātiō*; Smith, under *cognātī*, *familia*, *patria potestās*; Seyffert, under *agnātiō*, *cognātiō*, *familia*, *manus*; Lübker, under *agnātiō*, *cognātiō*, *familia*, *manus*, *patria potestās*.

Look up the word *familia* in Harper's lexicon and notice carefully its range of meanings.

See also Muirhead, "Roman Law," pp. 24-33, and the paragraph on the Quiritian Family in the article on Roman Law by the same writer in the "Encyclopaedia Britannica," Vol. XX.

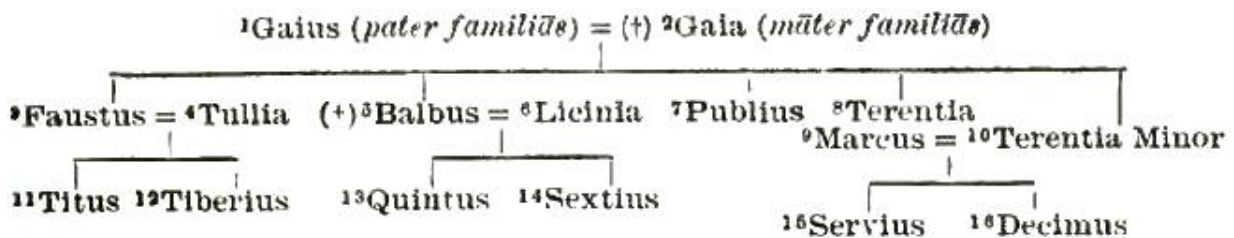
17 The Household.—If by our word family we usually understand a group of husband, wife, and children, we may acknowledge at once that it does not correspond exactly to any of the meanings of the Latin *familia*, varied as the dictionaries show these to be. Husband, wife, and children did not necessarily constitute an independent family among the Romans, and were not necessarily members even of the same family. Those persons made up the Roman *familia*, in the sense nearest to its English derivative, who were subject to the authority of the same Head of the House (*pater familiās*). These persons might make a host in themselves: wife, unmarried daughters, sons real or adopted, married or unmarried, with their wives, sons, unmarried daughters, and even remoter descendants (always through males), yet they made but one *familia* in the eyes of the Romans. The Head of such a family—"household" or "house" is the nearest English word—was always *suī iūris* ("independent," "one's own

master"), while the others were *aliēnō iūrī subiectī* ("dependent").

18 The authority of the *pater familiās* over his wife was called *manus*, over his descendants *patria potestās*, over his chattels *dominica potestās*. So long as he lived and retained his citizenship, these powers could be terminated only by his own deliberate act. He could dispose of his property by gift or sale as freely as we do now. He might "emancipate" his sons, a very formal proceeding (*ēmancipātiō*) by which they became each the Head of a new family, though they were childless themselves or unmarried or even mere children. He might also emancipate an unmarried daughter, who thus in her own self became an independent family. Or he might give her in marriage to another Roman citizen, an act by which she passed by early usage (§61) into the family of which her husband was Head, if he was *suī iūris*, or of which he was a member, if he was still *aliēnō iūrī subiectus*. It must be carefully noticed, on the other hand, that the marriage of a son did not make him a *pater familiās* or relieve him in any degree from the *patria potestās*: he and his wife and their children were subject to the same Head of the House as he had been before his marriage. On the other hand, the Head of the House could not number in his *familia* his daughter's children: legitimate children always followed the father, while an illegitimate child was from the moment of birth in himself or herself an independent family.

19 The Splitting Up of a House.—Emancipation was not very common and it usually happened that the household was dissolved only by the death of the Head. When this occurred, as many new households were formed as there were persons directly subject to his *potestās* at the moment of his death: wife, sons, unmarried daughters, widowed daughters-in-law, and children of a deceased son. The children of a surviving son, it must be noticed, merely passed from the *potestās* of their grandfather to that of their father.

A son under age or an unmarried daughter was put under the care of a guardian (*tūtor*), selected from the same *gēns*, very often an older brother, if there was one. The following diagram will make this clearer:



20 It is assumed that Gaius is a widower who has had five children, three sons and two daughters. Of the sons, Faustus and Balbus married and had each two children; Balbus then died. Of the daughters, Terentia Minor married Marcus and became the mother of two children. Publius and Terentia were unmarried at the death of Gaius, who had emancipated none of his children. It will be noticed:

1. The living descendants of Gaius were ten (3, 7, 8, 10, 11, 12, 13, 14, 15, 16), his son Balbus being dead.
2. Subject to his *potestās* were nine (3, 4, 6, 7, 8, 11, 12, 13, 14).
3. His daughter Terentia Minor (10) had passed out of his *potestās* by her marriage with Marcus (9), and her children (15, 16) alone out of all the descendants of Gaius had not been subject to him.
4. At his death are formed six independent families, one consisting of four persons (3, 4, 11, 12), the others of one person each (6, 7, 8, 13, 14).
5. Titus and Tiberius (11, 12) have merely passed out of the *potestās* of their grandfather Gaius to come under that of their father Faustus.

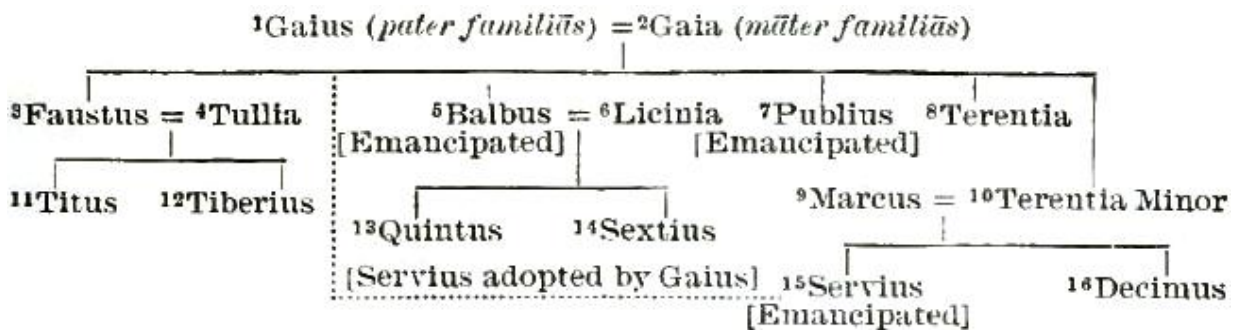
21 Other Meanings of Familia.—The word *familia* was also very commonly used in a slightly wider sense to include in addition to the persons named above (§17) all the slaves and clients and all the property real and personal belonging to the *pater familiās*, or acquired and used by the persons under his *potestās*. The word was also used of the slaves alone, and rarely of the property alone. In a still wider and more important sense the word was applied to a larger group of related persons, the *gēns*, consisting of all the "households" (*familiae* in the sense of §17) who derived their descent through males from a common ancestor. This remote ancestor, could his life have lasted through all the intervening centuries, would have been the *pater familiās* of all the persons included in the *gēns*, and all would have been subject to his *potestās*. Membership in the *gēns* was proved by the possession of the *nōmen*, the second of the three names that every citizen of the Republic regularly had (§38).

22 Theoretically this *gēns* had been in prehistoric times one of the *familiae*, "households," whose union for political purposes had formed the state. Theoretically its *pater familiās* had been one of the Heads of Houses who in the days of the Kings had formed the *patrēs*, or assembly of old men (*senātus*). The splitting up of this prehistoric household in the manner explained in §19, a process repeated generation after generation, was believed to account for the numerous *familiae* who claimed connection with the great *gentēs* in later times. The *gēns* had an organization of which little is known. It passed resolutions binding upon its members; it furnished guardians for minor children, and curators for the insane and for spendthrifts. When a member died without leaving natural heirs, it succeeded to such property as he did not dispose of by will and administered it for the common good of all its members. These members were called *gentīlēs*, were bound to take part in the religious services of the *gēns* (*sacra gentīlicia*), had a claim to the

common property, and might if they chose be laid to rest in the common burial ground.

Finally, the word *familia* was often applied to certain branches of a *gēns* whose members had the same *cognōmen* (§48), the last of the three names mentioned in §21. For this use of *familia* a more accurate word is *stirps*.

23 Agnati.—It has been remarked (§18) that the children of a daughter could not be included in the *familia* of her father, and (§21) that membership in the larger organization called the *gēns* was limited to those who could trace their descent through males. All persons who could in this way trace their descent through males to a common ancestor, in whose *potestās* they would be were he alive, were called *agnātī*, and this *agnātiō* was the closest tie of relationship known to the Romans. In the list of *agnātī* were included two classes of persons who would seem by the definition to be excluded. These were the wife, who passed by *manus* into the family of her husband (§18), becoming by law his agnate and the agnate of all his agnates, and the adopted son. On the other hand a son who had been emancipated (§18) was excluded from *agnātiō* with his father and his father's agnates, and could have no agnates of his own until he married or was adopted into another *familia*. The following diagram will make this clearer:



24 It is supposed that Gaius and Gaia have five children (Faustus, Balbus, Publius, Terentia, and Terentia Minor), and

six grandsons (Titus and Tiberius the sons of Faustus, Quintus and Sextius the sons of Balbus, and Servius and Decimus the sons of Terentia Minor). Gaius has emancipated two of his sons, Balbus and Publius, and has adopted his grandson Servius, who had previously been emancipated by his father Marcus. There are four sets of *agnātī*:

1. Gaius, his wife, and those whose *pater familiās* he is, viz.: Faustus, Tullia the wife of Faustus, Terentia, Titus, Tiberius, and Servius, a son by adoption (1, 2, 3, 4, 8, 11, 12, 15).
2. Balbus, his wife, and their two sons (5, 6, 13, and 14).
3. Publius, who is himself a *pater familiās*, but has no *agnātī* at all.
4. Marcus, his wife Terentia Minor, and their child Decimus (9, 10, 16). Notice that the other child, Servius (15), having been emancipated by Marcus is no longer agnate to his father, mother, or brother.

25 Cognati, on the other hand, were what we call blood relations, no matter whether they traced their relationship through males or females, and regardless of what *potestās* had been over them. The only barrier in the eyes of the law was loss of citizenship ([§18](#)), and even this was not always regarded. Thus, in the table last given, Gaius, Faustus, Balbus, Publius, Terentia, Terentia Minor, Titus, Tiberius, Quintus, Sextius, Servius, and Decimus are all cognates with one another. So, too, is Gaia with all her descendants mentioned. So also are Tullia, Titus, and Tiberius; Licinia, Quintus, and Sextius; Marcus, Servius, and Decimus. But husband and wife (Gaius and Gaia, Faustus and Tullia, Balbus and Licinia, Marcus and Terentia Minor) were not cognates by virtue of their marriage, though that made them agnates. In fact public opinion discountenanced the marriage of cognates within the sixth (later the fourth) degree, and persons within

this degree were said to have the *iūs ōsculī*. The degree was calculated by counting from one of the interested parties through the common ancestor to the other and may be easily understood from the table given in Smith's "Dictionary of Antiquities" under *cognātī*, or the one given here (Fig. 1). Cognates did not form an organic body in the state as did the agnates (§22), but the 22d of February was set aside to commemorate the tie of blood (*cāra cognātiō*), and on this day presents were exchanged and family reunions probably held. It must be understood, however, that *cognātiō* gave no legal rights or claims under the Republic.

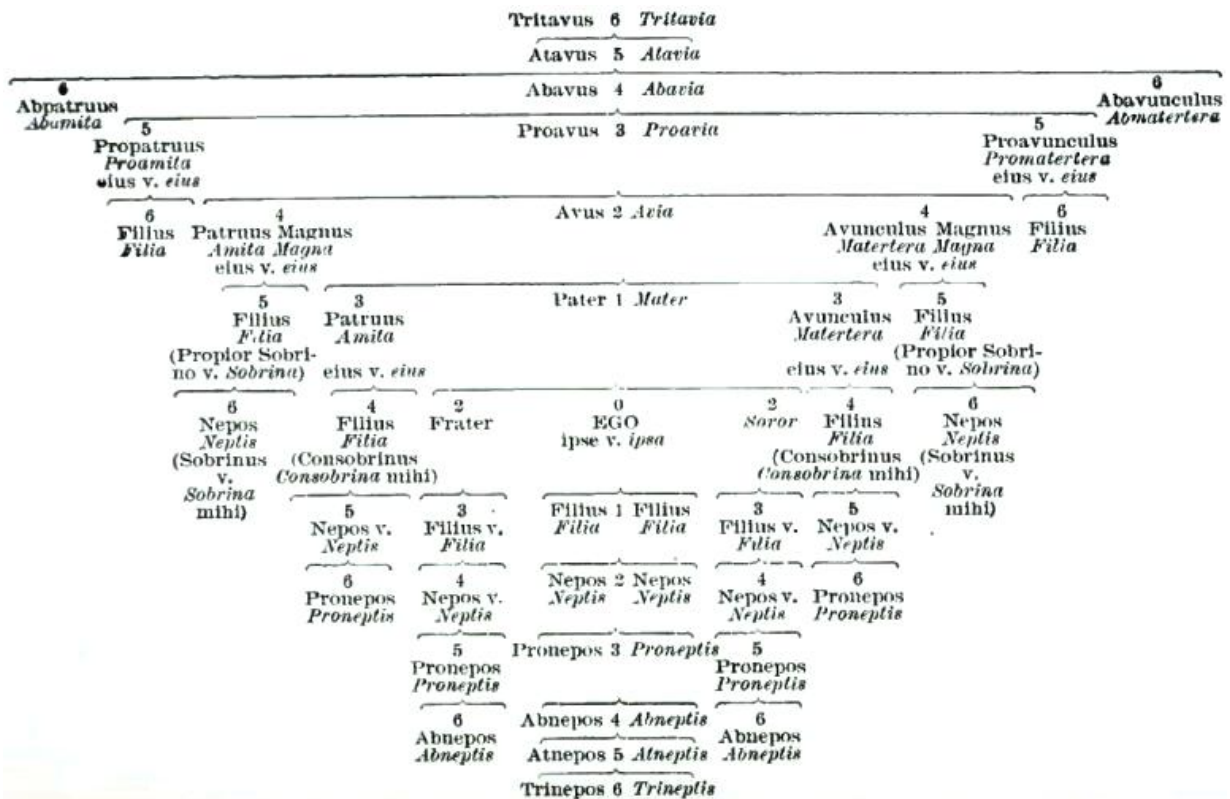


FIGURE 1. TABLE OF RELATIONSHIP

26 Adfines.—Persons connected by marriage only were called *adfīnēs*, as a wife with her husband's cognates and he with hers. There were no formal degrees of *adfīnitās*, as there were of *cognātiō*. Those *adfīnēs* for whom distinctive names were in common use were: *gener*, son-in-law; *nurus*,

daughter-in-law; *socer*, father-in-law; *socrus*, mother-in-law; *prīvignus*, *prīvigna*, step-son, step-daughter; *ritricus*, step-father; *noverca*, step-mother. If we compare these names with the awkward compounds that do duty for them in English, we shall have additional proof of the stress laid by the Romans on family ties: two women who married brothers were called *iānītrīcēs*, a relationship for which we do not have even a compound. The names of blood relations tell the same story: a glance at the table of cognates will show how strong the Latin is here, how weak the English. We have "uncle," "aunt," and "cousin," but between *avunculus* and *patruus*, *mātertera* and *amita*, *patruēlis* and *cōnsōbrīnus*, we can distinguish only by descriptive phrases. For *atavus* and *tritavus* we have merely the indefinite "forefathers." In the same way the language testifies to the headship of the father. We speak of the "mother country" and "mother tongue," but to the Roman these were *patria* and *sermō patrius*. As the *pater* stood to the *fīlius*, so stood the *patrōnus* to the *cliēns*, the *patriciī* to the *plēbēiī*, the *patrēs* (=senators) to the rest of the citizens, and *Iūpiter* (Jove the Father) to the other gods of Olympus.

27 The Family Cult.—It has been said (§23) that *agnātiō* was the closest tie known to the Romans. The importance they attached to the agnatic family is largely explained by their ideas of the future life. They believed that the souls of men had an existence apart from the body, but not in a separate spirit-land. They conceived of the soul as hovering around the place of burial and requiring for its peace and happiness that offerings of food and drink should be made to it regularly. Should these offerings be discontinued, the soul would cease to be happy itself, and might become perhaps a spirit of evil. The maintenance of these rites and ceremonies devolved naturally upon the descendants from generation to generation, whom the spirits in turn would guide and guard.



FIGURE 2. LUCIUS JUNIUS BRUTUS

28 The Roman was bound, therefore, to perform these acts of affection and piety so long as he lived himself, and bound no less to provide for their performance after his death by perpetuating his race and the family cult. A curse was believed to rest upon the childless man. Marriage was, therefore, a solemn religious duty, entered into only with the approval of the gods ascertained by the auspices. In taking a wife to himself the Roman made her a partaker of his family mysteries, a service that brooked no divided allegiance. He therefore separated her entirely from her father's family, and was ready in turn to surrender his daughter without reserve to the husband with whom she was to minister at another altar. The *pater familiās* was the priest of the household, and those subject to his *potestās* assisted in the prayers and offerings, the *sacra familiāria*.

29 But it might be that a marriage was fruitless, or that the Head of the House saw his sons die before him. In this case he had to face the prospect of the extinction of his family, and his own descent to the grave with no posterity to make him blessed. One of two alternatives was open to him to avert such a calamity. He might give himself in adoption and pass into another family in which the perpetuation of the family cult seemed certain, or he might adopt a son and thus perpetuate his own. He usually followed the latter course, because it secured peace for the souls of his ancestors no less than for his own.

30 Adoption.—The person adopted might be either a *pater familiās* himself or, more usually, a *filius familiās*. In the case of the latter the process was called *adoptiō* and was a somewhat complicated proceeding by which the natural parent conveyed his son to the other, the effect being to transfer the adopted person from one family to the other. The adoption of a *pater familiās* was a much more serious matter, for it involved the extinction of one family (§29) in order to prevent the extinction of another. It was called *adrogātiō* and was an affair of state. It had to be sanctioned by the *pontificēs*, the highest officers of religion, who had probably to make sure that the *adrogātus* had brothers enough to attend to the interests of the ancestors whose cult he was renouncing. If the *pontificēs* gave their consent, it had still to be sanctioned by the *comitia curiata*, as the adrogation might deprive the *gēns* of its succession to the property of the childless man (§22). If the *comitia* gave consent, the *adrogātus* sank from the position of Head of a House to that of a *filius familiās* in the household of his adoptive father. If he had wife and children, they passed with him into the new family, and so did all his property. Over him the adoptive father had *potestās* as over a son of his own, and looked upon him as flesh of his flesh and bone of his bone. We can

have at best only a feeble and inadequate notion of what adoption meant to the Romans.

31 The Patria Potestas.—The authority of the *pater familiās* over his descendants was called usually the *patria potestās*, but also the *patria maiestās*, the *patrium iūs*, and the *imperium paternum*. It was carried to a greater length by the Romans than by any other people, a length that seems to us excessive and cruel. As they understood it, the *pater familiās* had absolute power over his children and other agnatic descendants. He decided whether or not the newborn child should be reared; he punished what he regarded as misconduct with penalties as severe as banishment, slavery, and death; he alone could own and exchange property—all that his descendants earned or acquired in any way was his: according to the letter of the law they were little better than his chattels. If his right to one of them was disputed, he vindicated it by the same form of action that he used to maintain his right to a house or a horse; if one was stolen, he proceeded against the abductor by the ordinary action for theft; if for any reason he wished to transfer one of them to a third person, it was done by the same form of conveyance that he employed to transfer inanimate things. The jurists boasted that these powers were enjoyed by Roman citizens only.



FIGURE 3. PUBLIUS CORNELIUS SCIPIO AFRICANUS

32 Limitations.—But however stern this authority was theoretically, it was greatly modified in practice, under the Republic by custom, under the Empire by law. King Romulus was said to have ordained that all sons should be reared and also all firstborn daughters; furthermore that no child should be put to death until its third year, unless it was grievously deformed. This at least secured life for the child, though the *pater familiās* still decided whether it should be admitted to his household, with the implied social and religious privileges, or be disowned and become an outcast. King Numa was said to have forbidden the sale into slavery of a son who had married with the consent of his father. But of much greater importance was the check put upon arbitrary and cruel punishments by custom. Custom, not law, obliged the *pater familiās* to call a council of relatives and friends (*iūdicium domesticum*) when he contemplated inflicting severe

punishment upon his children, and public opinion obliged him to abide by their verdict. Even in the comparatively few cases where tradition tells us that the death penalty was actually inflicted, we usually find that the father acted in the capacity of a magistrate happening to be in office when the offense was committed, or that the penalties of the ordinary law were merely anticipated, perhaps to avoid the disgrace of a public trial and execution.

33 So, too, in regard to the ownership of property the conditions were not really so hard as the strict letter of the law makes them appear to us. It was customary for the Head of the House to assign to his children property, *pecūlia* ("cattle of their own"), for them to manage for their own benefit. And more than this, although the *pater familiās* held legal title to all their acquisitions, yet practically all property was acquired for and belonged to the household as a whole, and he was in effect little more than a trustee to hold and administer it for the common benefit. This is shown by the fact that there was no graver offense against public morals, no fouler blot on private character, than to prove untrue to this trust, *patrimōnium prōfundere*. Besides this, the long continuance of the *potestās* is in itself a proof that its rigor was more apparent than real.

34 Extinction of the Potestas.—The *patria potestās* was extinguished in various ways:

1. By the death of the *pater familiās*, as has been explained in [§19](#).
2. By the emancipation of the son or daughter.
3. By the loss of citizenship by either father or son.
4. If the son became a *flāmen diālis* or the daughter a *virgō vestālis*.

5. If either father or child was adopted by a third party.
6. If the daughter passed by formal marriage into the power (*in manum*) of a husband, though this did not essentially change her dependent condition ([§35](#)).
7. If the son became a public magistrate. In this case the *potestās* was suspended during the period of office, but after it expired the father might hold the son accountable for his acts, public and private, while holding the magistracy.



FIGURE 4. LUCIUS CORNELIUS SULLA

35 Manus.—The subject of marriage will be considered later; at this point it is only necessary to define the power over the wife possessed by the husband in its most extreme form, called by the Romans *manus*. By the oldest and most solemn form of marriage the wife was separated entirely from her

father's family (§28) and passed into her husband's power or "hand" (*conventiō in manum*). This assumes, of course, that he was *suī iūris*; if he was not, then though nominally in his "hand" she was really subject as he was to his *pater familiās*. Any property she had of her own, and to have had any she must have been independent before her marriage, passed to him as a matter of course. If she had none, her *pater familiās* furnished a dowry (*dōs*), which shared the same fate. Whatever she acquired by her industry or otherwise while the marriage lasted also became her husband's. So far, therefore, as property rights were concerned the *manus* differed in no respect from the *patria potestās*: the wife was *in locō filiae*, and on the husband's death took a daughter's share in his estate.

36 In other respects *manus* conferred more limited powers. The husband was required by law, not merely obliged by custom, to refer alleged misconduct of his wife to the *iūdicium domesticum*, and this was composed in part of her cognates (§25). He could put her away for certain grave offenses only; if he divorced her without good cause he was punished with the loss of all his property. He could not sell her at all. In short, public opinion and custom operated even more strongly for her protection than for that of her children. It must be noticed, therefore, that the chief distinction between *manus* and *patria potestās* lay in the fact that the former was a legal relationship based upon the consent of the weaker party, while the latter was a natural relationship antecedent to all law and choice.

37 Dominica Potestas.—The right of ownership in his property (*dominica potestās*) was absolute in the case of a *pater familiās* and has been sufficiently explained in preceding paragraphs. This ownership included slaves as well as inanimate things, and slaves as well as inanimate things were mere chattels in the eyes of the law. The influence of custom and public opinion, so far as these tended to