WOMEN AND CITIZENSHIP

IN THE LATE ROMAN REPUBLIC AND THE EARLY EMPIRE

Cornelis
Willem
van Galen

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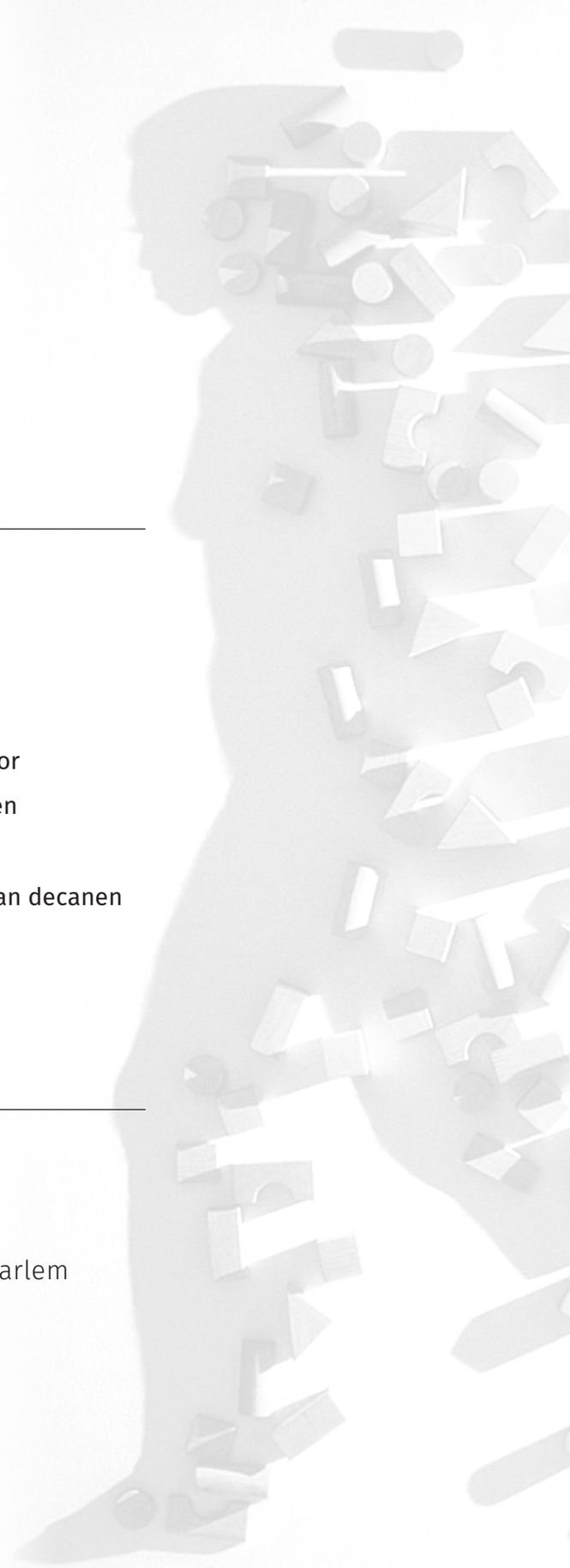

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Voor alle mensen die ondanks

ingebouwde tegenstand

iets moois van hun leven

hebben gemaakt.

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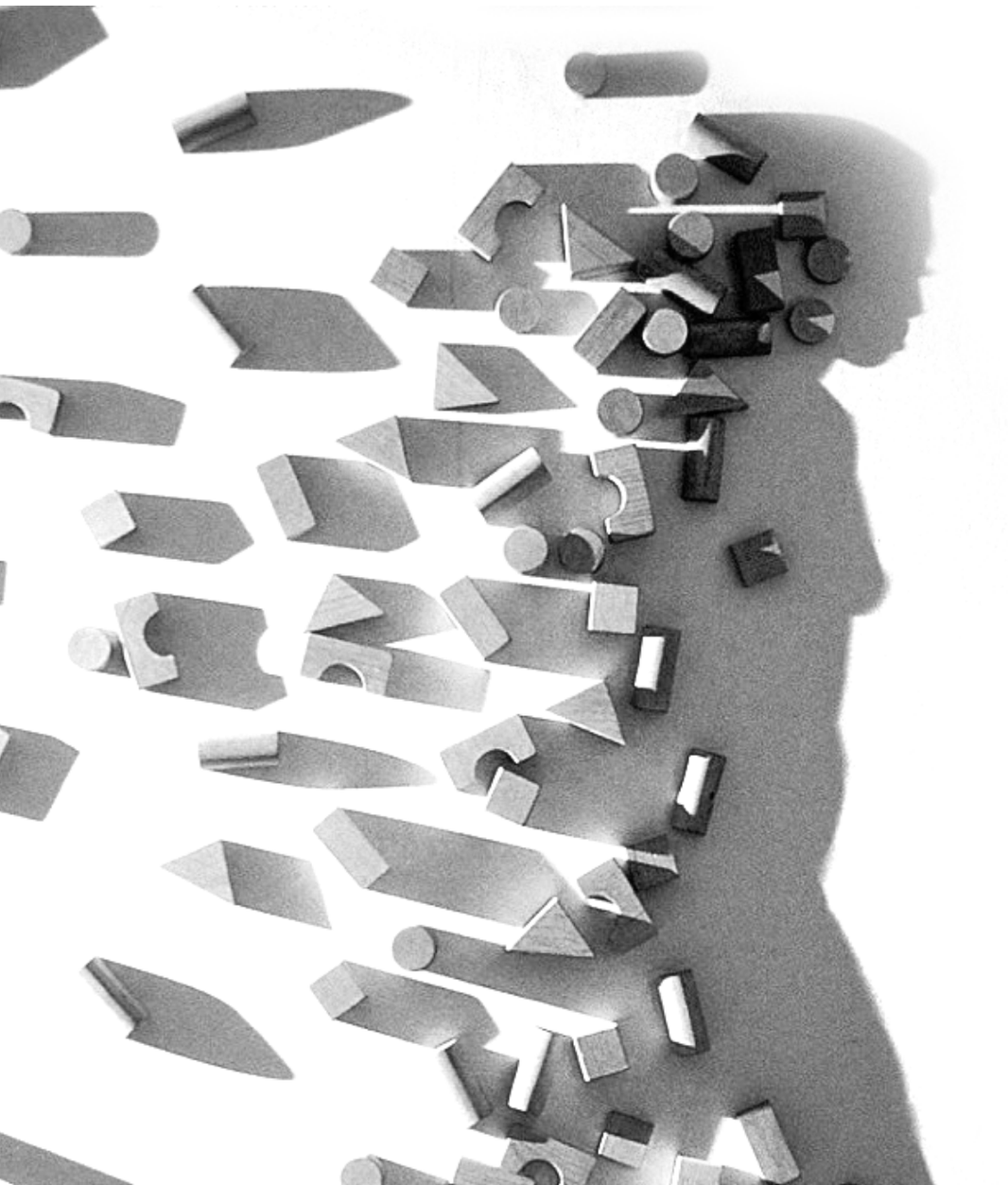


The past is a foreign country, they think *things differently there.*

Hartley (1953) 1, slightly adjusted

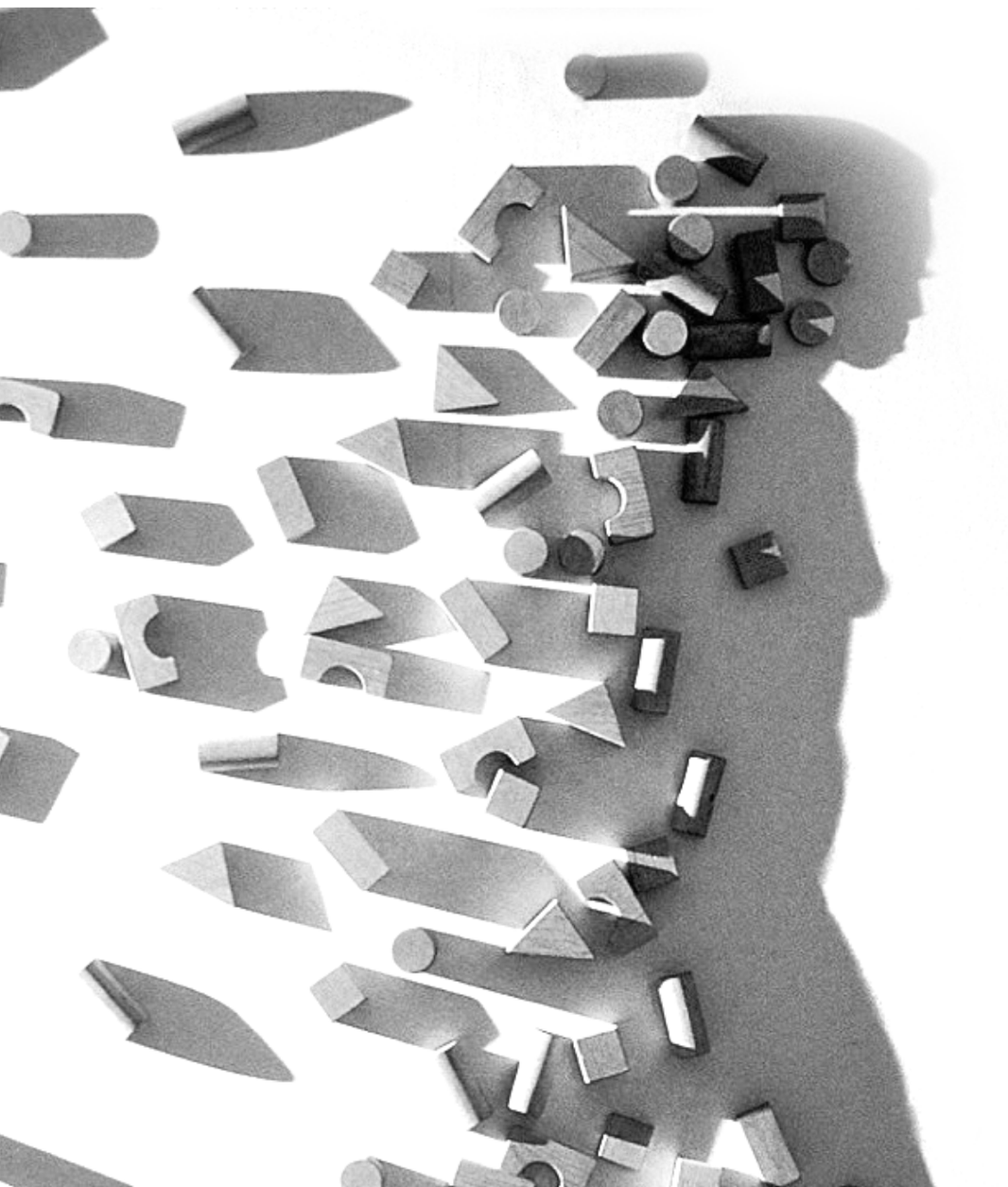
What the law says people may do, as we must constant remind ourselves, is not necessarily the same as what they actually do.

Gardner (1986) 5

People aren't just people, they are people surrounded by circumstances

Pratchett (2010) 314

PREFACE



PREFACE

A few years ago, I discussed the demography of ancient Rome in an undergraduate seminar for students in the classics. I asked the students to read a recent paper on ancient demography and to comment on the way that the argument was constructed within this paper. Looking at Roman history from a quantitative point of view certainly took the students out of their comfort zone. Most students were baffled by the paper. They were put off by the sheer number of figures, tables and graphs.

One student, however, was not deterred by the calculations. She looked at the actual sources used in the text and was amazed to find out that in the whole paper, which was over twenty pages long, only six ancient sources were referred to, of which only four were central to the argument. Based on the interpretation of these four small fragments, a demographic model and a lot of secondary literature the writer had built his argument. What the student discovered was that in the end it was not the author's calculations which were central to the paper, but the way in which the writer had interpreted the four small fragments. Since the fragments referred to numbers of citizens, this meant his interpretation of what a citizen was in the context of these sources. The rest of the paper was mainly an elaboration based on this interpretation.

This does not only hold true for that specific paper. The whole debate on the Roman census figures can be seen as essentially a discussion on the interpretation of what Roman citizenship meant in the context of the Roman census. The definition of citizenship chosen determines to a large extent the outcome of any calculations based on the census figures. This is the reason why there is such a wide range of different possible outcomes, based on the same sources. This is also the case for the interpretation of the corn dole recipients in Rome: time and again, it is not the calculations which are central, but the underlying discussion on the meaning of citizenship in the Roman context.

It is my aim to contribute to this underlying discussion. I want to know who counted as a Roman citizen in the context of the interaction between citizens and Roman magistrates. I am especially interested in the position of women as citizens, because they are often overlooked in discussions on public citizenship, yet they were presumably relevant enough to be counted during the census and in the census figures, at least according to the generally accepted Beloch-Brunt interpretation and the interesting new interpretation put forward by Saskia Hin a few years ago. Moreover, I wondered whether research into female citizenship could tell us more about the nature of Roman citizenship in general.

There are only a limited number of sources on the position of women in Roman society and the development of this position over time in the Late Republic and the Early Empire. There are hardly any opinions of Roman women themselves. To study this subject, a broad range of different sources and methods had to be used. Historical developments and Roman law and custom had to be taken into account, but also psychological principles, anthropological insights and gender concepts. Real proof is rarely to be found in ancient history, but I hope to show in this thesis that an alternative line of interpreting history is possible, one which gives a slightly different interpretation of Roman citizenship and, hopefully, opens up interesting new explanations for some of the enigmatic developments in which Roman history is so rich.

To write this thesis was a demanding task. As a social historian working in the field of ancient history and the classics who has tried to include relevant perspectives from gender studies, law, psychology and anthropology in his work, I have often doubted my own capacity to interpret all information and to understand all viewpoints which are relevant to this project. I persevered all the same, because it is my opinion that a research subject like this demands such a broad interpretation. This is not a subject for a detailed study, a finely drawn miniature sketch. This is a subject for a work like Building Blocks by Kumi Yamashita, the artwork on the front of this thesis. By combining a large number of different blocks and putting them in the right light, elements which at first sight seem unrelated to each other can reveal the vague outlines of the position of women as Roman citizens, when viewed together.

There will certainly be mistakes in this thesis, but I hope readers will also find some interesting insights on the position of Roman women and Roman citizenship. Whether they agree or disagree with my views on the underlying nature of Roman society, I look forward to the discussions which may follow.

Acknowledgments

The writing of this thesis would not have been possible without the support and encouragement of numerous people and institutions. I want to thank the NWO, whose PhDs in the Humanities program made my PhD project possible. I also want to thank the Radboud University Nijmegen for its cooperative attitude and the chances it has offered me by giving me the possibility to combine a PhD with work as a lecturer at the university. Other institutions which supported my research over the years are the Royal Dutch Institute in Rome (KNIR), the Erasmus Life Long Learning Program, the research school for the Classics OIKOS and the Institute for Gender Studies at Radboud University, where I was able to kick start my PhD project at the Centre for PhD Research. Finally, I want to thank the Classics departments of the University of Oxford and the University of Reading for the opportunity to work temporarily at these fine institutions.

Although institutions provided the framework for my research, it is the people I worked with who really made my PhD project into such a motivating experience. I especially want to thank my supervisors, Olivier Hekster, Willy Jansen and Gerda de Kleijn. I was very lucky in having three supervisors who were supportive, easily approachable and together have such a broad range of expertise that I always could discuss every detail of my research with them. Olivier, from whose insights my research hugely profited and who, as chair of Ancient and Medieval History, created such a beneficial working environment that I hardly had to worry about the practical details of working on my PhD at all. Willy, who opened up the exciting worlds of gender studies and anthropology for me and created an environment in which real interdisciplinary discussions were possible. And, last but certainly not least, Gerda who has been a constant factor during my whole career as a student and throughout my PhD. I feel blessed that I have had the opportunity no other PhD candidate had: to profit from Gerda's sharp views and the meticulous way she worked through my arguments.

Not only the discussions with my supervisors, but also discussions with countless other Dutch and international colleagues during conferences, workshops and individual meetings helped to further my research and interpretations. Although I cannot thank everyone personally, I want to single out some people who had a special influence on my research project: Claude-Emanuelle Centlivres Chalet, Simon Day, Luuk de Ligt, Jane Gardner, Johannes Hahn, Saskia Hin, Elio Lo Cascio, Quintijn Mauer, Leandro Polverini, Boudewijn Sirks, Bernhard Stolte, Marike van Aerde and Rick Verhagen. A special thanks to Emily Hemelrijk and Greg Woolf, who did more than their share in helping me to publish my first scholarly publication.

Within the Radboud University, I had the benefit of working in different circles, both inside and outside the History department. My closest colleagues were the current and former members of the staff of the Ancient History section, who made me feel part of the team from day one. Both in teaching and in research I can always count on them: Nathalie de Haan, Daniëlle Slootjes, Lien Foubert, Luuk de Blois, Erika Manders, Dorine van Espelo, Roald Dijkstra and Janneke de Jong. Another important influence were the PhD students in ancient history and people I shared an office with over the past six years: Ylva Klaassen, Liesbeth Claes, Sanne van Poppel, Raphael Hunsucker and Bernt Kerremans, Robin Satter, Chris Dickenson and of course my current roommates Aurora Raimondi Cominesi and Alessandro Maranesi who brought a sparkle of Italian sun into the dark Dutch winters.

The nice thing about working at the History department in Nijmegen is the cooperative environment and the team spirit that go well beyond the staff of Ancient History. While I worked together with most colleagues as a lecturer only, some of them had a direct influence on my thesis research. This holds especially true for the staff of the Economic, Social and Demographic History group, who made me feel like I had a second home within the History department. I want to thank Jan Kok, Angélique Janssens and the PhD students of the ESDG group for this. A special thanks also for Theo Engelen, who almost became my fourth supervisor. I am very glad that he did me the honour of presiding over my PhD defence.

Beyond the History department my research profited from the help of the members of the Classics department: Bé Breij, Vincent Hunink, Floris Overduin and André Lardinois who once guided me on a swim around the corner of Attica. I especially like to mention the archaeologists Eric Moormann and Stephan Mols with whom it is such a great pleasure to work and Suzanne van de Liefvoort, fellow student, fellow PhD candidate and now fellow doctor.

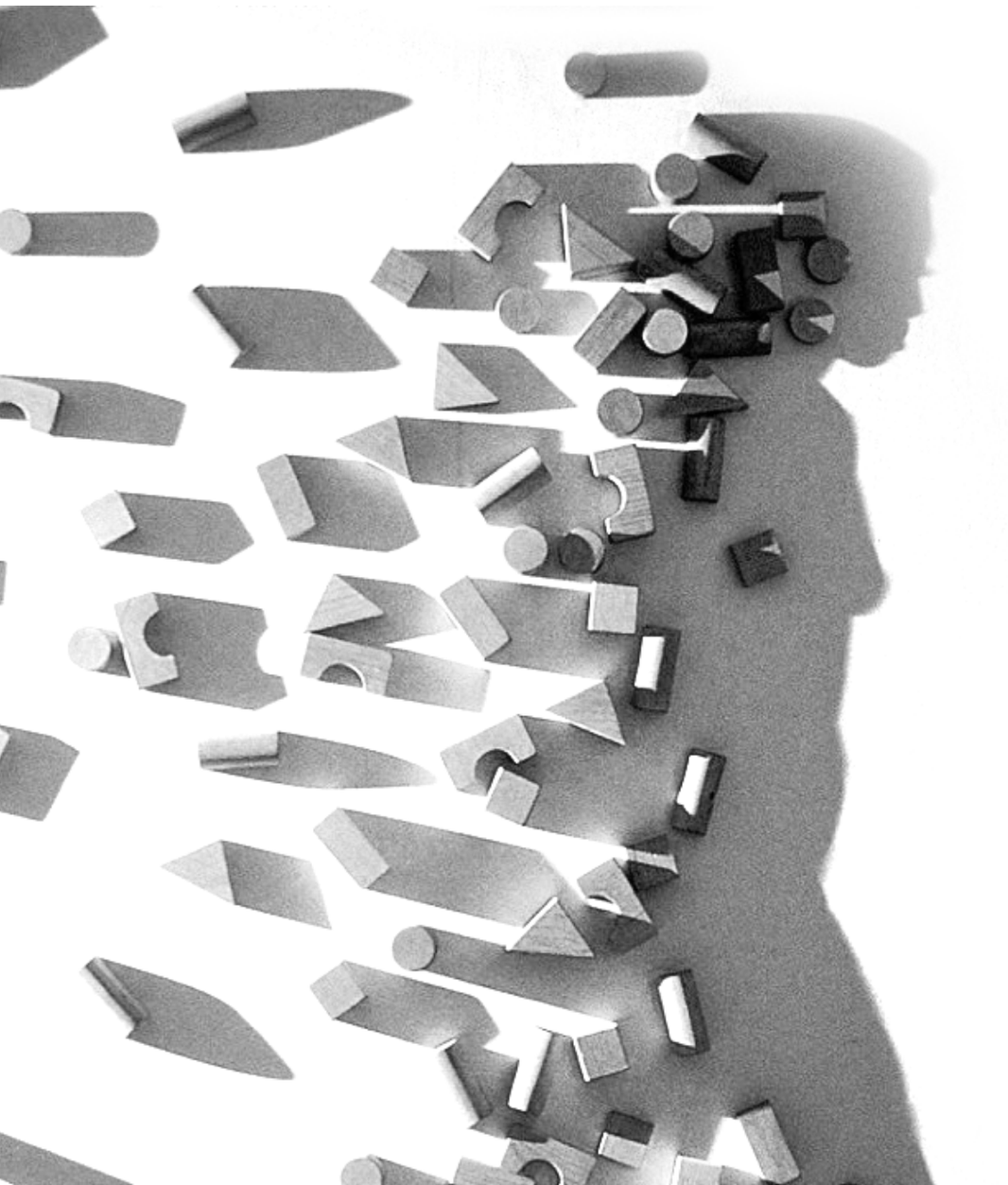
Fellow PhD students in the best sense are also Maaike Derksen and Saskia Bultman. With them I shared the opportunity to be part of both the History department and the Institute of Gender Studies. I thoroughly enjoyed our discussions, both individually and as part of the PhD seminar of the IGS. The IGS offered me a truly interdisciplinary environment, in which I could discuss my work with scholars ranging from anthropologists to philosophers. At the IGS I learned a lot about gender perspectives and interpretations. For this I would like to thank both the staff members and all the current and former PhD students who participated in the PhD-seminars at the IGS over the years.

Many more people supported my research than the ones mentioned above. I hope that everyone whom I did not mention will accept my heartfelt thanks for their contributions to my PhD project. Two different groups of people still deserve my special thanks, though. The first is the support staff of the Radboud University, who, often unacknowledged, do so much to make the university into the great working environment that it is. The second is the group which is the lifeblood of the university, our students. It is a commonplace to say that I learned a lot from my students, but this is certainly true in my case. What is more, I found it a real joy to teach students, to have discussions with them and to help them develop a critical academic attitude. I hope I will be able to teach and work with students for many years to come.

Many of the people mentioned above I consider to be friends as well as colleagues. That is certainly the case with Willeke Pak-Guelen, who, since our student years, has been a colleague, sparring partner and supporter. I am grateful that Daniëlle Slootjes and she will be my paranymphs during my thesis defence. Becoming a historian and doing a PhD turned out to be a life changing experience for me. I would therefore like to thank all those people who helped me come to terms with this new reality. My study companion Ruud Nillesen, all my friends outside of the academic world, who put up with stories about my research and envied my study travels over the years. My father and mother, my brother Pim, my cousins and all my other family members who are so obviously proud of my achievements while at the same time stand guard over me to keep me ‘normal’. However, most of all I would like to mention the one person who convinced me to start my academic career in the first place: my loving wife Katja. Without her help and support this thesis would never have been finished.

CHAPTER 1

INTRODUCTION



1.1 Hortensia and the triumvirs

The speech of Hortensia, in Appian's description of the civil wars of the first century BC, is an anecdotal example of a Roman woman reflecting on her position as a Roman citizen. Hortensia made her speech in 42 BC.[1] In that year, a new tax on the property of Roman citizens was introduced by the triumvirate, the three men who had seized political power in Rome after the death of Julius Caesar. The triumvirs wanted to raise this tax to finance the civil war against their political adversaries. In itself, such a tax was not unique. From the early Republic onwards, citizens had paid *tributum* when necessary in order to finance war or large infrastructural projects.[2] What made this case exceptional was that the triumvirs wanted to tax the property of 1,400 rich Roman women.[3] In protest, a group of these women went to the *Forum Romanum*, the political heart of the Empire. There the women addressed the triumvirs, among them Octavian, the man who would later become the first emperor Augustus.

On behalf of the women, Hortensia is said to have made a speech. In Appian's version of this speech, she rebuked the triumvirs by saying that women did not share in something as masculine as warfare. Women did not participate in war, and, therefore, should not pay for it. She reproached the three men that they had taken away the women's fathers, husbands and sons, who were either killed or exiled. By also taking away their property, they would deprive the women of their last remaining shred of dignity. Furthermore, she scolded, the triumvirs had deprived the women of the usual channels by which they had previously communicated with those in power, namely contacts with the wives and mothers of the rulers, and thereby forced them to the unwomanly expedient of a public demonstration.

According to Hortensia, the women were loyal citizens who were fully committed to contributing voluntarily if Rome were threatened by barbarian invasions. However, it was not legitimate to force them to finance a civil war between Roman men in which they had no part. The triumvirs were furious because they were publicly addressed in such a way, and by a woman! They sent in their bodyguards, but even in this time of civil war it was not acceptable to attack women in public. The public were roused and the triumvirs had to withdraw; the tax on the property of rich women was partly cancelled and limited to 400 persons.[4]

Can we learn something from this anecdote about the social position of Roman women and their opinions in the late Republic? Appian's description of this event is the only one which survived from antiquity. It was written in Greek, by a Roman citizen from the Egyptian city of Alexandria, some 200 years after the event.[5] This is not a contemporary source, at best it can be used as an anecdotal source reflecting the enduring interest in the demonstration of the women and Hortensia's speech during the Roman Empire.

This does not mean that Appian's description can give us no information at all. Although no other versions of Hortensia's speech have survived, it is known from references in Valerius Maximus (around AD 30) and Quintillian (around AD 100) that Hortensia's speech was well known before Appian's time and seen as something extraordinary.[6] Valerius Maximus also confirms some central elements in Appian's text. What seems clear is that Hortensia had publicly attacked the three most powerful men in Rome and survived. This was no mean feat at a time when numerous political opponents of the triumvirs had been proscribed, outlawed, and killed.

According to Appian, Hortensia had succeeded by framing her allegations within the boundaries of proper female behaviour according to Roman *mores*. She presented herself and the other women as patriotic and law-abiding female citizens, who knew the limits of their positions. They did not want to get involved in matters of state and only came to the fore because the honour of their families was under threat. She presented them as innocent bystanders who had been treated unjustly and, therefore, needed the support of influential Roman men. By restricting her speech to what was considered appropriate for a well-behaved Roman lady, Hortensia had given the triumvirs no opportunity to punish her or attack her arguments.

Hortensia had used the perceived weakness of women as leverage to increase her bargaining power vis-a-vis the triumvirs. She did this so effectively that the bystanders came to her aid when the women were threatened by the triumviral retinue. At the same time she had done something unheard of for a woman: she made a political speech in the *Forum Romanum* and intervened in the political process. What is more, she had done so out of self-interest. The property which the triumvirs tried to tax was not her father's or her family's, but her personal property.[7]

The importance Appian attached to this speech in his narrative of the civil wars can be viewed as suggesting that, in his own time, such behaviour was considered exceptional for a woman, and suitable for an exceptional time in history. However, it also seems to show an underlying point: that the boundaries between the masculine and the feminine, male and female spheres, were not always as strict as sometimes suggested by Roman writers. This group of Roman women presumably had their own network to influence politics and they could act in public when necessary. Roman men could understand and even appreciate this, as long as the actions of these women were based on dominant values of femininity and family interests.[8]

1 Appian, *Civil Wars* 4.32-33. Appian wrote his work in Greek around AD 160, some two hundred years after the event. It is possible that he used the text of the original speech as the basis of his text; only a generation before Appian, Quintilian remarked that Hortensia's speech was still read: Quintilian, *Institutio Oratoria* 1.1.6.

2 Northwood (2008) 265-266, n30. This tax on property was suspended in 167 BC.

3 Until 167 BC, the *tributum* was probably levied only on adult male citizens. Women and children paid other taxes to sustain the war effort: wards and widows paid *aes equestre* and *aes hordiarium* for the purchase of horses and fodder for the cavalry, Livy, *Ab urbe condita* 1.43.9 and Plutarch, *Camillus* 2.

4 Appian, *Civil Wars* 4.34.

5 Mehl (2014) 162-165.

6 Valerius Maximus, *Facta et dicta memorabilia* 8.3.3; Quintilian, *Institutio Oratoria* 1.1.6.

7 Hortensia was most probably *sui iuris*, an independent citizen in law. This meant that she owned her property. Her father, the orator Hortensius, had died in 50 BC: Cicero, *Epistulae ad Atticum* 6.6.2. A husband is not mentioned in the sources. For an explanation of citizenship *sui iuris* and ownership rights, see chapter 3.

8 Hemelrijk (2004) 193-194.

Both Appian and Valerius Maximus imply that these women owned property worth taxing and were responsible for its management. This means that they were citizens *sui iuris*: they were independent in law and not subordinate to a male head of the family. Only citizens *sui iuris* could own property.[9] The women are presented as citizens in more than one way, both as property owners and as patriots who felt responsible for the Roman state. They were, however, presented as a particular type of citizen, not directly involved in politics or war: although the women clearly expected to exercise political influence through female relatives of the triumvirs, there is no hint in Appian's story that they tried to bargain with the triumvirs for more public rights in exchange for the tax payments. Appian does not present them as a risk to the male-dominated social order.

What Appian's anecdote does not give is any information about the situation of Roman women in general. Hortensia's speech was exceptional and related to a specific situation in 42 BC. Appian does not make it clear whether the freedom of these women to manage their own property or their positioning as citizens was exceptional too. Based on this source alone, one may question whether this held true for all Roman female citizens or only for this specific group of elite women. Indeed, one may even question the historical accuracy of their position; it is possible that Appian's account does not reflect the position of women in 42 BC, but the situation in his own time, two centuries later.

This uncertainty reflects a common problem in the studies on women in the ancient world; a scarcity of sources on women's behaviour, which makes it hard to assess the wider relevance of Hortensia's speech. Public protests by women are rare in the sources. Two demonstrations organized by women are known from the late Roman Republic, in 195 and 42 BC.[10] These protests are one and a half centuries apart, which makes comparison difficult. Furthermore, they are both concerned with the personal interests of elite women who were members of the families who dominated the political life in Rome. This raises the question of whether these women saw themselves as protesting women or protesting members of an elite.[11] Sources do not mention public political activities by non-elite Roman women in this period.

This may lead to the conclusion that a public role for women was rare and limited to elite women, but this may not necessarily have been the case. Research into the history of women has shown that the participation of women in historical events rarely survives the canonisation of history.[12] As a daring elite woman, Hortensia stood out and became part of the historical canon. However, we do not know what role, if any, women had in other historical events of the time. We hardly know how mobs in Rome, which had such an influence on politics during the late Republic, functioned or were organised. We certainly do not know whether they consisted only of men, for the simple reason that Roman elite writers describe the plebs as an amorphous group.[13]

How elite Roman men interpreted Hortensia's public appearance is suggested by our literary sources. In the first century AD, the Roman writers Valerius Maximus and Quintillian commented on Hortensia's achievement.[14] Their main interest was in the question of whether a woman should have an education and use it to speak in public. In the thirties AD, the Roman orator Valerius Maximus presented eloquence in public as something women ought not to display. He starts his chapter on women speaking in public with the remark 'nor should I be silent about those women whose natural condition and the modesty of the matron's robe could not make them keep silent in the Forum and the courts of law'.[15] His description of Hortensia, however, is still positive:

> Hortensia, daughter of Q. Hortensius, pleaded the cause of women before the Triumvirs resolutely and successfully when the order of matrons had been burdened by them with a heavy tax and none of the other sex ventured to lend them his advocacy.
>
> Reviving her father's eloquence, she won the remission of the greater part of the impost. Q. Hortensius than lived again in his female progeny and inspired his daughter's words. If his male descendants had chosen to follow her example, the great heritage of Hortensian eloquence would not have been cut short with a single speech of a woman.[16]

Valerius Maximus presents Hortensia's speech as something positive, by framing her as a conduit for the eloquence of her father Hortensius, which made it a male effort after all. Even then, Valerius Maximus seems to regret that she, and not her male relatives, made the speech that carried on his legacy.

9 See chapter 3.

10 Besides Hortensia's speech in 42 BC, another historical example is the protests by women against the *Lex Oppia*, a law against sumptuous behaviour, in 195 BC: Livy, *Ab urbe condita* 34.1-8, Zonaras, *Extracts of history*, 9.17. Cf. Hemelrijk (1987).

11 Hemelrijk (1987) 229-232, argues that the women in the two historical protests were driven by class consciousness and that their male relatives were supportive because they actually profited from their protests.

12 Mak (2007).

13 Brunt (1966), Millar (1998), Mouritsen (2001), Courrier (2014). See Boatwright (2011) for a survey of literary sources on the use of the *Forum Romanum* by women.

14 In his narrative of the civil wars, Appian wrote that the crowd supported Hortensia and the other women when the bodyguards of the triumvirs tried to attack them (*Civil Wars* 4.34.1), but he does not comment on Hortensia herself. That he saw her speech as something exceptional can be deduced from the lengthy treatment of her story within the narrative of the proscriptions by the triumvirs in book 4, where it is used as a bridge between the stories of victims of the proscriptions who were killed and those who survived.

15 Valerius Maximus, *Facta et dicta memorabilia* 8.3.pr.: *Ne de his quidem feminis tacendum est, quas condicio naturae et verecundia stolae ut in foro et iudiciis tacerent cohibere non valuit.* Loeb translation.

16 Valerius Maximus, *Facta et dicta memorabilia* 8.3.3: *Hortensia vero Q. Hortensi filia, cum ordo matronarum gravi tributo a triumviris esset oneratus nec quisquam virorum patrocinium eis accommodare auderet, causam feminarum apud triumviros et constanter et feliciter egit: repraesentata enim patris facundia impetravit ut maior pars imperatae pecuniae his remitteretur. revixit tum muliebri stirpe Q. Hortensius verbisque filiae aspiravit, cuius si virilis sexus posteri vim sequi voluissent, Hortensianae eloquentiae tanta hereditas una feminae actione abscissa non esset.* Loeb translation.

In the nineties AD, the orator Quintilian mentioned Hortensia in his treatise on rhetoric. He used her as an example to argue that a good education for women is feasible and necessary in order for them to be able to educate their own children. In his view, Hortensia's successful speech was the result of a good upbringing: 'the speech delivered before the triumvirs by Hortensia, the daughter of Quintus Hortensius, is still read – and not just because it is by a woman."[17] Quintilian presents Hortensia's speech as something positive in its own right. However, in his remark there is also a hint that Hortensia went beyond what should be expected of a woman.

It is an open question whether the difference in opinions between Valerius Maximus and Quintilian was the result of their personal tastes, a difference in genre, or a change in opinion in Roman society in the sixty years between the two orators. Both authors frame Hortensia in the familiar literary framework of exemplary behaviour. The difficulty with this is that exemplary behaviour places an emphasis on individual behaviour and moral values. This use of traditional terminology makes it hard to assess whether they perceived Hortensia's behaviour as something new. We may assume that Quintilian's call for the education of women was a rather novel idea, but he still presents it in traditional terms. What remains in both texts is a certain ambivalence about the role of a woman as orator. It is both the position of Roman women as citizens and the ambivalence of this position which will be the central focus of this thesis.

17 Quintilian, *Institutio Oratoria,* 1.1.6: *Hortensiae Q. filiae oratio apud Triumviros habita legitur non tantum in sexus honorem*. Loeb translation.

1.2 Aim and research questions

Roman women were citizens, as far as we know, since the earliest days of Roman history, but there was a strong misogynistic tendency in Roman discourse. They were seen as incomplete men at best, always in need of male guidance. They were supposed to help to continue the male family line and follow the lead of their fathers, husbands and brothers. This discourse, together with nineteenth-century views on women and citizenship, has had a profound impact on research into Roman citizenship.[18] A research tradition of almost two hundred years tells us that women played no role in public life, other than as family members of Roman men and, to a limited extend, as priestesses. Only in recent decades has attention been given to elite women as political brokers behind the scene and as benefactors of Roman cities.[19] They are still left out as a factor in most research on the interactions between the magistrates and sub-elite and non-elite Romans.

This makes Roman women into an interesting research topic. One may wonder whether women, as a group, were indeed irrelevant to the magistrates or whether they acted to a certain extent in the same way as male citizens did. Women who were *sui iuris*, those who were citizens in their own right, had not only the interest of male family members to take into account but also their own private interests. It is possible that they needed to interact with magistrates at certain points in their lives, especially if they owned some property.

This thesis aims to gain more insights into the development of citizenship of Roman women, and the way in which women's citizenship was perceived by magistrates in a society which took male citizenship as normative. It will do so within a long term perspective on the development of female citizenship within public life and its interaction with Roman family life. This research will look at changes in Roman law and social traditions which could have effects on the position of Roman women as a group. To understand the position of female Roman citizens, I think it is necessary to understand how the social environment in which they lived could have worked. Since women were to a large extent exempt from acting in government or legal circles, this means first and foremost the family circle.

Our understanding of Roman family life, however, is hampered by a formidable obstacle; the legal construction of the *familia*. Led by the *pater familia*s, the sole owner of all family property who wielded a lifelong absolute power over his family members, it is hard to understand how this construction could have worked in everyday life. A number of authors have tried to solve this problem by working around it.[20] Others have taken its consequences to extremes and see Roman family life as a harrowing experience, almost a national trauma.[21] Neither approach seems satisfactory. In this thesis, the approach will be based on the assumption that the concept of *familia* was present and remained relevant to Romans.

18 Van Galen (2015).
19 Bauman (1992), Hillard (1992), Van Bremen (1996), Feldner (2000), Hemelrijk (2008, 2010, 2012a, 2012b), Meyers (2012b).
20 For a discussion of this point, chapter 4.
21 For example Veyne (1987), Thomas (1996). It has also been suggested that the 'absolute mastery' of the *pater familias* over his children was the reason for the Roman taste for blood sports: Kyle (1998) 2-10.

The focus will be on tendencies in the development of citizenship for a large proportion of the female citizens, not on the experiences of individual Roman women. By doing this, this research aims to create a framework of female citizenship which can give relevance to the fragmentary information on Roman women in our sources. To do this I will specifically look at developments in the position of female citizens which are, in principle, relevant to the whole of the female Roman citizenry. The main research question of this thesis is: how did citizenship develop for Roman women, in the late Republic and the early Empire?

Based on the work of the sociologist Tilly, I see citizenship as a special form of contract between persons and the state based on exclusive membership of the state.[22] The word contract suggests that the content of citizenship is negotiable, and, therefore, changeable. However, it also suggests that there were certain features which a Roman woman could expect her citizenship to entail: not only a defined legal status, but also a means of political identity, a focus of loyalty, a requirement of duties, an expectation of rights and a yardstick of good behaviour.[23] Central to this interpretation of citizenship is a sense of inclusion and a possibility for an individual Roman woman to influence her citizenship. In this thesis, I will mainly focus on the citizenship of freeborn Roman women and their male relatives.[24]

The notion of 'development' in the way that Roman female citizenship was perceived over time is central to this main question. Development has to be read as a neutral term, as a process of change which can be both beneficial and non-beneficial to persons involved.

The term 'Roman women' is taken to mean all adult, freeborn women who grew up within a Roman cultural context and lived in Rome or its surroundings. The term is meant to include elite, sub-elite and non-elite freeborn women.

The time frame under research is the Late Republic and the Early Empire. In the context of this research, this period starts around 200 BC, when the oldest surviving literary texts in Latin were written. It ends roughly halfway through the first century AD. Therefore, the whole period comprises two and a half centuries. This enables this study to follow Roman history over a longer period of time, nine to twelve generations of Roman citizens. It starts in the period of the Roman Republic when Roman citizenship is still mainly concentrated in and around the city of Rome, and ends in the middle of the first century AD when Rome is the centre of a large Empire and most free people in Italy, not to mention a growing number of people outside Italy, have citizenship rights.

This cut-off point has been chosen because of two, probably somewhat conflicting, interests: on the one hand the wish to include Augustan law-making and opinions and changes in the legal status of Roman women which presumably took place in the middle of the first century AD;[25] on the other hand, in order to limit this research to a period during which law-making can be said to reflect the public opinion and social situation at Rome. The transfer of power to a sole ruler and the spread of Roman citizenship to elites outside of the *Ager Romanus* make it harder to assess whether decisions were taken based on local concerns, empire-wide interests or the whims of a ruler. These developments had already started during the late Republic, but must have been clear to any observer by the middle of the first century AD, when the first provincial citizens started to appear in the senate and the secret was laid bare that the power to make emperors, and therefore the power of decision-making, lay elsewhere than at Rome, as Tacitus famously noticed.[26]

Social changes can rarely be connected to a fixed date. Therefore, in this thesis I will mostly refer to periods to give an indication of time for certain developments. A more specific discussion of the time frame and the different indications of time within this research can be found in the appendix.

Sub-questions

In order to answer the main question, a number of intermediate steps are necessary. First, it will be useful to deconstruct the discourse on Roman citizenship, both in scholarly research and in the sources. By looking at sources and their modern interpretations it may be possible to distinguish different meanings in the terminology of Roman citizenship. Second, through an in-depth analysis of different sources a picture has to be sketched of the leeway that Roman law gave to women to structure their lives. Third, it has to be established whether this legal leeway was actually relevant in Roman social life. Fourth, it has to be studied whether the resulting interpretations are reflected in a specific context. This last step will be carried out by looking at a relatively well-attested change which could influence the development of the social position of Roman women: the change in preference within Roman marital tradition from marriage arrangements in which a woman became part of her husband's *familia* to those in which she remained part of her natal *familia*. This change could theoretically have been very influential, because it had the potential to influence the lives of individuals at all levels of society. Based on this fourfold emphasis on the description of citizenship, the legal context, the social relevance of this context and a case study of this interpretation, the main question will be supported by four sub-questions.

The first sub-question that will be discussed in this thesis is the question of how Roman citizenship is described. The relevance of this sub-question for the main question is that it enables a clearer understanding of the developing meanings of the word citizenship. This thesis will look at two layers of understanding Roman citizenship. The first one is the use of terminology for citizenship in Roman times. Central in this layer is the question of whether

22 Tilly (1995) 8.
23 Heater (1990) 163.
24 I will not look specifically at the position of Romans who were somehow limited in their citizenship rights, for example due to *infamia*, a handicap or because they were former slaves: Gardner (1993) 110-178, Stahl (2011), Mouritsen (2001).
25 More specifically, the *Senatusconsultum Velleianum* and the abolition of the rules on agnatic tutorship. See chapter 3.
26 Tacitus, *Historiae* 1.4.

the use of different words for citizenship can be distinguished in Roman sources; furthermore, whether this terminology of citizenship developed over time. The second layer is the way in which scholars have understood and defined Roman citizenship from the 19th century onwards. Of central interest is the question of which elements of citizenship have been emphasised in scholarly research. Together, the purpose of these two layers is to give more context to the term 'Roman citizenship' as it is used in both the period under research and in scholarly discourse.

The question how the position of Roman female citizens was constructed in legal sources will be the second sub-question. In addressing this sub-question, the possibility for independent behaviour by female Roman citizens will be investigated. A number of factors can influence the scope for independent behaviour, including legal status, the position of a woman within her family, her network, property ownership and the possibility of acting in public. To research these factors, it will be necessary to look at the legal context. The legal context is seen as a framework which could be used both to legitimise female behaviour and to limit it. On the one hand, legal status could give women the right to own property. On the other hand, Roman law made authority over other citizens an exclusively male prerogative, one which not only banned women from having parental authority, but possibly barred them from being magistrates and judges as well. The legal context included both legal rules which were specifically targeted at women and rules targeted at the citizen body as a whole, including women.

The third sub-question is the question of what the social relevance is of the legal framework. The legal framework discussed in the second sub-question could only have been used by Roman women if it affected and interacted with Roman social life. The social context comprises not only actual behaviour, but also opinions on women and the way in which these could be used to extend or limit the position of Roman women.

The fourth and final sub-question is the question of what the connection was between the development of the social position of Roman women and the change in marital tradition among Roman citizens. This sub-question is meant to study whether the interpretations found in answering the other sub-questions are reflected in a specific context. Potentially one of the most influential changes in the position of Roman women as a group, was the shift in marital tradition. The Romans acknowledged two property regimes during marriage, each with a distinct effect on the position of married women. A shift in marital tradition between these two property regimes was potentially a very influential factor in the development of female citizenship. Marriage seems to have been almost universal among Roman women. Furthermore, Roman women married at a young age. Therefore, the legal arrangements made as part of their marriage could have had a profound influence on their position during adult life.

1.3 Background of the research

Relevance of the research

This research adds to the understanding of the working of Roman citizenship for female citizens and its development over time within the context of consistently male-dominated values of citizenship. By looking at which elements of women's citizenship were uncontested and which elements were seen as off-limits for women it helps to define Roman citizenship in more general terms. Furthermore, it offers a reflection on the way in which female citizenship has been perceived in discourse, both in the ancient world and in scholarly discourse from the 19th century onwards.

The last forty years has seen a flowering of research into the subject of women in the Roman world. This research interest was initially rooted in the rise of women's studies during the 1970s and 1980s.[27] Later, it branched out into a number of different areas. A large number of studies have explored, for example, the role of women within the Roman family and their relations towards specific family members[28], education and employment of women[29], trade by women[30], their legal position[31] and their representation in literature and art.[32] Other scholars have looked at specific groups of women, such as elite women or women within the imperial family[33] and female priestesses and benefactors.[34] This research on women coincided with a change in research focus within ancient history from political history and art history to social and economic history and, later, cultural history. There has been limited interest in the status and role of women as Roman citizens, however, besides the role of elite women within the political culture were they sometimes acted as advisors, go-betweens and supporters of the political careers of their husbands, brothers or sons.[35]

27 A special issue of the American journal *Arethusa* (1973) and Pomeroy (1975) are normally seen as the starting points for the use of a new, feminist perspective on women in antiquity. However, most main stream classical journals were slow to catch up and only started to publish articles influenced by feminist perspectives in the 1980s: Foxhall (2013) 7-10.

28 Pomeroy (1976), Clark (1981), Gratwick (1984), Rawson (1986b), Dixon (1988, 1991, 1992, 1997), Bradley (1991), Noy (1991), Treggiari (1991), Watson (1995), Eyben, Laes and Van Houdt (2003), Harlow (2007), Centlivres Challet (2012, 2013). On the Roman women and family in general: Rawson (1986a, 1991, 2011), Rawson and Weaver (1997), George (2005), Harlow and Larsson Lovén (2012), James and Dillon (2012).

29 Education: Hemelrijk (1999), Deslauriers (2012). Employment: Treggiari (1976, 1979), Kampen (1982), Joshel (1992), Saller (2011), Larsson Lovén (2012).

30 Halbwachs (1999), Jakab (2013).

31 Dixon (1984), Peppe (1984), Crook (1986a, 1986b), Gardner (1986, 1993, 1998), Ruggini (1989), Dodds (1991-1992), Manthe (1992), Culham (1997), Rizzelli (2000), De Ligt (2001), Evans Grubbs (2002), Baccari (2007), Caldwell (2007), Hermann-Otto (2012), Levick (2012), Giunti (2012).

32 Gubar (1977), Kampen (1982, 1991), Adams (1984), Santoro L'Hoir (1994), Petersen (2003), Diddle Uzzi (2007), Huskinson (2011), Ash (2012), Keith (2012), Mander (2012).

33 Hallett (1984, 1989, 2012), Purcell (1986), Dixon (1985b), Corbier (1991b), Delia (1991), Fantham [et al] (1994b), Treggiari (2005, 2007), Hejduk (2008), Skinner (2011), D'Ambra (2012), Haskins (2014).

34 Van Bremen (1996), Schultz (2006, 2007), Hemelrijk (2008, 2010, 2012a, 2012b), Takács (2008), Bielman (2012), Meyers (2012a, 2012b), Holland (2012).

35 Bauman (1992), Hillard (1992), Feldner (2000), Brennan (2012). On the legal position of Roman women as citizens, see: Gardner (1993) 85-109. On the role of women from the state's point of view: Henry and James (2012). For a different approach, see Blok's papers on citizenship as being part of the polis cult in Greece: Blok (2009, 2011, 2014).

At first sight, there seems to be little reason to look further, because it is well-known that women could not act as magistrates, were not able to vote during the Republic and could not serve as soldiers in the Roman army. However, citizenship consists of more than being active in politics or in the military. Citizenship is also about a sense of inclusion in the citizen body, sharing certain values and obeying the state's laws, supporting the state by paying taxes, benefiting from the citizen status and being registered as a citizen.[36]

In the Roman context it also included *conubium* and *commercium*, namely, the right to contract a legal marriage and the right to perform trade with other citizens, including the right of legal redress when a dispute arose.[37] Although it is rarely visible in literary sources, it is known from other sources that Roman women actively participated in trade and crafts. The study of Roman inscriptions and legal sources has shown that women could and did participate in trade and that a range of jobs outside the house was available to them.[38] Other sources underline this point: a study of stamps on lead pipes of the water supply system in Rome shows that women were not only mentioned as owners of water pipes but as plumbers as well.[39]

In this sense, women were sometimes accepted in Roman law and society as citizens in their own right, and not merely as the daughters or wives of Roman men. In Roman law it was accepted that certain categories of women could have their own property. Moreover, unlike women in classical Athens, they were also expected to manage it themselves.[40] This seems remarkable, in a society with such a strong association of citizenship with men and such a strong emphasis on family lines through men. The existence of both a strong emphasis on male citizenship and a relatively large degree of freedom for women to manage their own lives is specific to Roman society, at the least during the early Empire.

By looking at the development of women's citizenship, it will be studied how this position of women fitted into Roman society, and furthermore, where the boundaries lay between female citizenship and male citizenship. We may wonder, for example, whether women were excluded from most of the public roles of citizens on the basis of their femininity, or whether they were included as citizens, unless an activity was seen as strictly for men only. This may not seem like a difference, but it could have serious implications for the interpretation of sources which mention Roman citizens as an amorphous group, for example when the recipients of the grain distributions in Rome, or the citizens who were counted during the Roman *census*, are discussed.

36 See chapter 2.1.

37 *Conubium*: Buckland (1963) 114-116, *commercium*: Kaser (1971) 29.

38 Treggiari (1976), Kampen (1982), Joshel (1992), Halbwachs (1999), Larsson Lovén (2012), Jakab (2013).

39 De Kleijn (2001) 261-307.

40 Gaius, *Institutiones* 1.190-191. Cf. Kaser (1971) 312, Du Plessis (2010) 143.

Premises

A main premise at the start of this research is that it is possible to make observations which are relevant to the whole citizen body, not only to the elite. This may not seem so obvious, because we have only transmissions of elite behaviour and elite opinions on non-elite Romans. Our literary sources give a male-oriented and elite-oriented view of Roman society. However, in the late Republic and the early Empire there were a number of circumstances which may have fostered the transmission of norms and ideas between different groups within the Roman citizenry, and which could have helped to filter elite norms to sub-elite citizens, and, through them, to non-elite citizens. There was probably also some movement in the other direction.

One of these circumstances is the presence of a certain level of social cohesion among the citizens in the city of Rome, although it is probably better to say that there was a discourse of inclusion that comprised all freeborn citizens. Roman society was strongly hierarchical, but those at the top needed the support of other citizens to secure their position within the senatorial elite. Elite families needed to cultivate networks among sub-elite families to strengthen their position, while sub-elite families needed the elite's patronage, and probably also cultivated their own networks among non-elite families. The constant interaction between social layers suggests that Rome was an inclusive society in the late Republic. In daily life, the social differences between a senator and a non-elite Roman were probably huge, but there seems to have been no legal divide between freeborn Roman citizens based on social class. Even the senatorial families did not form a closed class.[41] The position of elite members of society was based on status, connections and property ownership, not on legal or hereditary rights.[42]

There is also no indication of a conscious effort to create an alternative culture among sub- or non-elite Romans in a reaction against the elite.[43] On the contrary, it seems that non-elite citizens in Rome created their own culture by imitating elite culture in their behaviour, for example in copying banqueting rituals. These non-elite rituals were sometimes copied in return by senators and *equites* in a form of reverse imitation.[44] This suggests a gradual shift between the elite, sub-elite, non-elite and poor Roman citizens. Elite Romans could only win votes and sustain their networks when they could connect with sub- and non-elite Romans. Although Roman senators probably did not consider themselves as part of the multitude of citizens, they had to present the citizen body as a unified whole in their political acts and speeches in order to gain popular support.[45]

41 Wiseman (1971).

42 The remaining patrician families still had some residual rights left from earlier periods. These remaining rights were for the most part of little relevance. The later divide between *honestiores* and *humiliores* did not yet exist: Rillinger (1988).

43 According to Finley (1973) 49, there was no such thing as a working-class culture in Roman society.

44 Lendon (1997) 54-55, Perry (2011) 505, Courrier (2014) 381-419.

45 Whether this was sincere is a matter of dispute; Syme in his influential work saw the Republic as a 'screen and a sham' of the oligarchic elite: Syme (1939) 15, while Millar argued that the Roman crowd 'itself was the sovereign body and as such exercised the legislative powers of the populus Romanus': Millar (1998) 215. For the debate regarding the nature of Roman politics, see North (1990a, 1990b), Williams (1990), Jehne (1995, 2006), Millar (1998, 2002), Mouritsen (2001), Flaig (2003), Hölkeskamp (2004, 2010). For overviews: Hillard (2005) and North (2006).

A striking example is found in Cicero's speeches against Verres. He concluded them with what he saw as Verres' most heinous crimes, his misdeeds against Roman citizens.[46] Cicero begins with the remark that in this last part 'it is no longer a question of the preservation of our allies: it is a question of the life and existence of Roman citizens, or in other words, of each and every one of ourselves.'[47] He ends with the crucifixion of Publius Gavius, a Roman citizen.[48] Gavius is certainly not an elite citizen. He is presented as a poor man who depended on the help of an *eques* to prove his citizenship.[49] In his speech, Cicero tries to stir up the emotions of his public by focusing on the indignation of the crucifixion and the infringement on Gavius' right of appeal as a Roman citizen.[50] Cicero emphasised that all Romans, especially 'poor men of humble birth' could travel safely through the Roman Empire and beyond due to their special status as Roman citizens.[51]

By crucifying a Roman citizen, Verres had undermined this safety which was shared by all Roman citizens. This shared status made all Roman citizens part of an empire-wide elite. Citizens in Rome could consider themselves as part of one body of citizens, which reached from senators to poor city dwellers. This idea created a sense of community, which allowed for social change to spread quickly between different groups of citizens. We may assume, therefore, that social developments within the elite took place in interaction with other layers of the citizenry.

Another circumstance which fostered the transmission of norms and ideas between different groups within the Roman citizenry was the position of the city of Rome as the focal point of social development in the period under consideration. Around half of all Roman citizens lived in Rome or within a few day's travelling distance from the city until the incorporation of the Italic peninsula and the Po area in the first century BC.[52] Even after this, those people who lived in Rome had a potential influence which went beyond their number, through social and patronage networks. Furthermore, direct contact between elite and non-elite Romans was the norm during public appearances in the face-to-face society that was Rome. During the whole period under research, Rome was the place where political decisions were taken. This gave the wider populace an opportunity to influence these decisions through formal or informal channels. These decisions, which were presumably valid for the whole *Ager Romanus*, were often directly influenced by local considerations in Rome. This suggests that these considerations influenced developments in other Roman territories.

46 Cicero, *in Verrem* 2.5.130-170.

47 Cicero, *in Verrem* 2.5.139: *quae non ad sociorum salutem, sed ad civium Romanorum, hoc est ad unius cuiusque nostrum, vitam et sanguinem pertinet.* Loeb translation.

48 Cicero, *in Verrem* 2.5.158-170.

49 Cicero, *in Verrem* 2.5.162.

50 Enos (1988) 73; Tempest (2007) 23-24.

51 Cicero, *in Verrem* 2.5.167: *homines tenues, obscuro loco nati (...).*Loeb translation.

52 During the census of 131-130 BC, 318,823 Roman citizens were counted: Livy, *Periochae* 59. This suggests somewhat more than a million citizens. The number of inhabitants of Rome is estimated to have been 350,000 to 500,000 in 130 BC: Brunt (1971) 384, Morley (1996) 39.

Moreover, every Roman citizen had to relate to the social norms, the *mores*, and the legal tradition, at least in public. Roman citizens who presented themselves as acting according to Roman *mores* and law could make their behaviour acceptable in the eyes of other Romans, as we have seen in the speech of Hortensia. To a certain degree, *mores* shaped what was seen as being Roman. This is not to suggest that Romans always lived according to the *mores*, which in themselves were often vague and ambivalent and which were only gradually set down in Roman law. However, *mores* presented social norms which were relevant to all Roman citizens. They had an effect on the way in which Romans behaved in public and have to be taken seriously when researching Roman social history. This suggests that the legal and social elements we find within the elite were also found among non-elite Romans. Examples of these are the life-long power of the *pater familias* over his descendants, the legal structuring of Roman families in the *familia*, and the obligation for Roman women to have a *tutor* when they became *sui iuris*.[53]

The relative cohesion among citizens, the concentration on Rome and the relevance of Roman *mores* and law for all citizens suggest that the information in our sources is relevant to the behaviour of all citizens, not only elite citizens. In the late Republic and the early Principate, Roman citizens as a group still formed an elite within the Empire. Based on citizenship, even the poorest citizen could claim a special status when dealing with non-citizens and authorities.[54] For citizens, especially poorer citizens, it was crucial to have their citizen status confirmed. As they did not have the social networks that elite citizens had, they had to rely on patronage from rich citizens and on behaving as Roman citizens to prove their status. This meant that they had to adapt to social norms as a standard of Roman behaviour.

Another, rather obvious, premise is the remark that we cannot talk about 'the Roman' or 'the woman'. Situations in people's lives are always muddled, and we cannot expect there to be one way of living which includes everyone. People's reactions towards social and legal opportunities and constraints are based on their personal situations and needs. In this research it will be assumed that this was also the case in Roman times. We should not expect to find one model of citizenship or one type of behaviour that fits all Romans. However, it may be possible to find some common ground: elements in Roman society, culture and law which have a tendency to influence the behaviour of Roman women and men in certain directions. These elements could lead to a general trend within the Roman citizen populace which may be recognizable in the sources.

53 The social relevance of the *familia* will be discussed in chapter 4.

54 The outrage in the case of Gavius was that Verres had denied him these rights. The description of the treatment of Paul in the *Acts of the Apostles* suggests that it was still perceived that a Roman citizen could expect a special treatment in the mid-first century AD. According to the story, Paul was not flogged, and was protected against an angry crowd, because he had the legal status of a Roman citizen. He was even brought from Judea to Rome to be tried: *Acts of the Apostles,* 22.24-28.30, Cf: Adams (2008).

Sources used and their limitations

For this thesis, three main types of sources are used. Legal sources and other literary sources from the classical period are used throughout this thesis. A third source, academic publications, will be used mainly in chapter two. These sources are supplemented with epigraphic sources where possible and sometimes with comparisons from other periods and cultures. By using comparisons, however, I will act according to Nippel's remark that 'we cannot fill the lacunae of our evidence with comparative materials, but comparison can indicate the range of possible solutions to structurally similar questions'.[55]

There is only a limited number of legal inscriptions and literary references to Roman laws, surviving from the late Republic and the early Empire.[56] Therefore, for this study I have to rely mainly on surviving texts by Roman jurists of the second and third centuries AD. The only more or less complete work from this era is the *Institutiones*, written by the jurist Gaius.[57] The works of other jurists have only survived in fragments, mostly as part of the *Digesta* compiled in the sixth century AD by order of the emperor Justinian. The *Digesta* is a compilation in fifty books of excerpts from earlier works of Roman jurists, ranging from the late Republic to the third century AD.

These sources have to be used with caution. Although the *Digesta* includes excerpts from the works of jurists from the late Republic and the early Empire, like Labeo and Sabinus, most of the sources are written a century or more after the period under research. Two circumstances alleviate the problem of working with these sources somewhat. The first is that Roman jurists had a tendency towards conservatism, the *mores* of earlier generations are a strong value in law and jurists tend to stick to them. The second is that our main legal source, Gaius' *Institutiones,* is a text-book introduction to Roman law from the second century AD. Gaius often goes to some lengths to explain the development of law over time and to indicate the differences between the rules of law in his own time and those in earlier centuries. In this thesis, Gaius' *Institutiones* will be the main legal source used. The *Digesta* will be used primarily in chapter three, where the legal position of Roman women within the *familia* is discussed.

As far as possible, the non-legal literary sources used for this thesis will be contemporary sources. This is especially relevant for sources which express explicit opinions. This thesis is about social development over a time period of 250 years, roughly from the early second century BC to halfway through the first century AD. This can only be assessed when taking into consideration the time in which the author wrote the text and placing the text in its own context. In principle, it is supposed that all opinions in Roman literature are those of the author. These opinions will be related to the time of the author, not to the historical period he presents them in. This means that, for the most part, opinions from sources will be used which are relevant for the period under discussion, either because they are written in this period or because these sources quote the works of earlier, contemporary, writers.

Unfortunately, it will not be possible to adhere to this starting point throughout this study. Due to a scarcity of sources, it will not always be possible to avoid the use of sources from a later period, since some information is not mentioned in contemporary sources. When contemporary literary sources are supplemented by literary texts from a later period, these later sources will mainly be used for their anecdotal value. They will be used to illustrate a specific point which also seems relevant to the period under consideration. An example is the discussion in chapter four about the bargaining between the early Christian martyr Perpetua and her father. Although this text is from a later period, it is used to illustrate some of the bargaining strategies possible within the context of a Roman *familia*.

The literary works that have survived from the late Republic and the early Empire offer a broad spectrum of different literary genres, ranging from comedies to philosophical treatises. Some were written to appeal to an audience of both elite and non-elite Roman citizens.[58] Others were probably written for a limited elite audience or even for one reader, such as philosophical treatises and letters.[59] The forte of this variety of sources is of course also its weak point. Not only is there a limited number of authors who write in a wide variety of different genres, but the available material and the different genres are also spread unevenly over the period under research.

We have, for example, quite a number of Roman comedies from the first half of the second century BC, but it is hard to compare them to other genres from the same period, because no other second-century texts have survived more or less complete, except for Cato the Elder's treatise on agriculture. Nor have any comedies survived from later centuries which could be used as a comparison. When a genre is spread more or less evenly over time, as in the case of treatises on agriculture, the number of texts is actually so limited that we cannot rule out the possibility that any apparent change of language related to the terminology of citizenship has more to do with the personal preferences of a writer than a chance of actual use. When looking for the terminology of citizenship in Roman literary sources, we have to take into account genre, audience and the authors. This all makes it difficult to assess whether the words used in these texts reflect actual changes in the use of citizenship terminology over time.

Another difficulty is the shared bias of the available Roman sources. Most of them are normative, elitist and male-oriented. By normative, I mean that Roman sources have a tendency to describe situations not as they are, but as they should be (or, in some cases, as they should not be). There is a tendency to describe the extremes of good and bad behaviour, to use them as moral examples.[60] Furthermore, most of the extant literary sources were written for an elite audience of senators, *equites* and their kin, and were often written by members of

55 Nippel (1995) 3.
56 Collected in Crawford (1996).
57 Gordon and Robinson (1988) is used in this thesis for text and translation of Gaius, *Institutiones*.
58 For example Plautus' comedies and Cicero's court speeches. On Plautus: Moore (1998), Cicero: Craig (2004).
59 It has been argued that many texts circulated mainly by personal exchange in a small elite group, so helping to define the relationships among the givers and recipients, Hedrick (2011) 185-187. Cf. Bowditch (2001), Stroup (2013). For the use of letters, especially Cicero's letters, Hall (2009), Williams (2012) 218-238.
60 Mehl (2014) 245.

the same elite group.[61] Finally, almost all writers were men, often people of some seniority. They wrote mainly with a male audience in mind. Voices of women are rare in Roman literature. We possess almost exclusively male interpretations of the words and deeds of women.[62]

There are exceptions, of course. Comedies, such as the works of Plautus, and some of Cicero's court speeches were written with a wider audience in mind.[63] Surviving writings by women from the period under research are rare. We have two excerpts of a letter of Cornelia written to her son Gaius Gracchus around 124 BC, a version of the speech given by Hortensia in 42 BC and some poems written by Sulpicia in the Augustan era. All of these has been preserved only in the works of male authors; Cornelia's letter in fragments of the works of Cornelius Nepos, Hortensia's speech in a Greek version as part of Appian's *Civil Wars*, and Sulpicia's poems in the collected works of the poet Tibullus.[64] Even these texts, however, tend to follow the norms. On the whole, Roman society, as visible through literary texts, is very much society as seen from the viewpoint of senior elite men.

This bias has an effect on the information on citizenship of Roman women that we can find in literary sources. Since philosophical treatises, histories and rhetorical texts were mainly written with elite male citizens in mind, they tend to focus on the skills and experiences of citizens who participated in the senate, as orators in the Forum, or as lawyers in the courtroom. This focus on the political role of elite men may give the impression that active political participation was central to Roman citizenship and may have overshadowed the role of citizenship for non-elite Roman citizens. We have to keep in mind that elite men formed only a tiny fraction of the Roman citizenry, probably a few thousand individuals among a citizen population of around a million c. 180 BC.[65]

Although a focus on elite men is common to all literary sources, a more specific bias can be found in Roman legal texts. When general rules were laid down, Roman lawyers started with the assumption that the person under discussion is an independent man who is a *pater familias*, the master in his own household, whose children are in his power. This bias is understandable from a legal and grammatical point of view. In law, the *pater familias* is the norm which includes all other citizens unless it is clear from the context or the text that they were excluded. In Latin grammar, masculine embraces feminine. Therefore, there was no need to mention women specifically, unless a rule applied to women only.[66]

The effect, however, is that the adult man is the norm, and legal texts are sometimes conveniently unclear, especially when women are concerned. For example, the term *pater familias* is never used in direct relation to women, although it is sometimes clear from the context that legal rules associated with the *pater familias* do apply both to men and women.[67] This normative use of the male form often makes it hard to tell from the text alone whether or not women are included in certain rules.

Legal sources are somewhat easier to compare, because they all belong to the same genre. Furthermore, Roman family law did not change fundamentally in this period, which makes the developments which did occur the more meaningful. The legal sources will be used to present a framework of possible moments of change. However, they have their problems too. The first and foremost problem is the fragmentary character of the legal sources of the period under consideration. There are legal speeches by Cicero, some remarks on legal issues in literary texts and some inscriptions. In addition, there are excerpts of the works of early Roman lawyers in the Digests, but these have been taken out of context, edited and shortened by the editors of the *Corpus Iuris Civilis*. A specific challenge for this thesis is the tendency of legal sources to present texts in the male gender, unless the treatment of women is different. The problem with this approach, of course, is that it is sometimes difficult to discern whether a description in legal sources only comprises men or both men and women.

To trace the development of Roman female citizenship in Roman sources will be a difficult task. Literary and legal sources do not give a clear picture of the citizen rights of women and their development over time. Non-legal literary sources are mainly interested in elite behaviour. Most of them were written by male writers for an elite male audience. In these sources, women are often presented as 'others', and the writers also have a tendency to present women as literary constructions.[68] Furthermore, the presentation of women could depend on the genre and, as mentioned above, there are no genres for which examples are extant for the whole period under research, apart from treatises on agriculture.

61 Hedrick (2011) 185-187.

62 Dixon (2001) 23-25, Milnor (2009).

63 On Plautus' audience: Moore (1998), esp. 159-160. This audience included women, as is made explicit in Plautus, *Poenus* 32-35. Cicero alludes to the great crowd gathered to listen to his prosecution of Verres: Cicero, *In Verrem* 1.4, 1.15, 1.54. It has been argued that the desire to display his skills before such a crowd in order to further his political career was the main reason for Cicero to act as prosecutor in this case, Vasaly (2009) 120-121.

64 Cornelius Nepos, Fragment 1.1-2, Appian, *Civil Wars* 4.32-33, Tibullus, *Corpus Tibullianum* 3.8-18.

65 During the census in 189-188 BC, 258,318 citizens were assessed, according to Livy, *Ab urbe condita* 38.36. These citizens were either adult men or *patres familias* which leads to a total citizen population of 900,000 or more (see Scheidel (2008) and Hin (2008) for discussion on the interpretation of the census figures). While the Senate had around 300 members (Livy, *Ab urbe condita* 2.1.10; Dionysius of Hallicarnassus, *Roman antiquities* 5.13.2) there were at least 2,200 *equites*, the number who received the *aera equestria* (ORF 8, fr. 85-86) .

66 Not the other way around. It was not desirable to take a feminine term to include men: *Digesta* 31.45.pr. (Pomponius).

67 Saller (1999) 187.

68 Dixon (2001), Centlivres Challet (2013).

1.4 Conceptual framework

Most Roman literary works show only a weak notion of the possibility that the social foundations of Roman society could develop over time. Changes were perceived either as the result of quantitative change, such as the expansion of Roman territory, or as the result of the moral or immoral conduct of individuals and groups. Most writers had a tendency to present changes within a moral framework, often related to a notion of decay as the result of a deviation from the behaviour of the exemplary forefathers.[69] Within this moral framework, changes were seen as the results of the good and bad behaviour of individuals, not as the results of social development. This means that social development itself is rarely described as such in the sources. However, the behaviour of individuals which was influenced by social change may have been described, when it was interesting enough to document. Furthermore, the explanation of ancient mores and laws by ancient writers can sometimes be used to deduce a change in social norms since the time when the laws or mores were introduced.

The weak notion of social change and the fragmentary state of the sources make it necessary to use a conceptual framework to research social change in Roman society. Close reading of the sources is a necessary and valuable start, but by itself it will not be enough to answer the question of how citizenship developed for Roman women in the late Republic and the early Empire. To make sense of these fragments of information, models are needed which have the potential to bind these fragments together and give them a context.

To focus the interpretation of the data in this research, two models will be used, as well as a number of concepts from gender studies and anthropology. The first model is one on power relations within social groups. It assumes that human interactions depend on bargaining power. The more bargaining power a person has, the stronger is his or her potential position vis-à-vis other people. The second model is one on the discourse of social change. It assumes that social change creates certain types of discourse, especially when it gains momentum and accelerates in a limited period of time. When certain opinions in the sources can be related to the process of social change, it may be possible to estimate when social change took place.

Model 1: power relations within relationships

The first model which will be used in this study is the assumption that all relationships between humans are based on bargaining power: balances of power between the participants which are renegotiated continuously. In sociology in particular, research has been conducted on these power balances between people, which are influenced by a number of factors, including exchanges between the participants, their relative status, their social networks, their personalities and the degree to which they depend on each other.[70] For research into pre-modern societies, status and property ownership are probably the two most recognizable factors influencing the balance of power. The role of status within friendship and political relations has been discussed in relation to ancient Rome, although not specifically with reference to women.[71] The role of property in the creation of bargaining power for women has been studied for medieval Europe.[72]

The ownership of property and the relative status are not the only relevant factors in the bargaining power of women. Research in modern societies has shown that factors which influence women's bargaining are the age of the woman involved, the possibility of earning her own income, her living situation (especially whether she lives in a nuclear household or in the house of her husband's family) and whether she has children.[73] Not all factors in the bargaining power will be extensively discussed in this thesis. I will mainly focus on those factors which have the potential to influence the bargaining power of women, not only within their relationships, but also towards Roman magistrates.

Particularly relevant in this context is the bargaining power which is offered by Roman law and custom. Since Mookin and Kornhauser's 1979 article it has been acknowledged that people often bargain with each other in what Mnookin and Kornhauser called 'the shadow of the law'.[74] People use the law, or the law as they perceive it, as a tool to strengthen their position in negotiations. This does not mean that they always seek the assistance of the law or the magistrates. Most of the time, they do not: it is enough to refer to the law. The formal legal rules provide the default outcome should negotiations break down and the dispute go to court; this in itself offers bargaining chips that affect negotiations between partners in cases that do not end up in court.[75]

Law is seen as a framework to which people have to relate in their negotiations with others, even if they do not stay within its boundaries. People tend to structure their position in such a way that they can use the law to optimise their bargaining potential. If seen in this way, the formal use of lawyers and magistrates is not central: they merely serve as a back-up for those situations in which bargaining between individuals fails to reach an acceptable conclusion.

The assumption that every relationship between individuals is based on bargaining power means that all relationships are conceived of as essentially dynamic in character. Within this study, the balance of power within relationships between people is seen as fluent and in

69 Mehl (2014) 243-246.

70 A fundamental work is Blau (1964); on balances of power within relationships: Sprecher and Felmlee (1997), Smits, Mulder and Hooimeijer (2003); within groups: Mannix (1993).

71 Verboven (2002), Williams (2012); relations between elite and emperor: Roller (2001).

72 Earenfight (2010).

73 Casterline, Williams and McDonald (1986), Blumberg and Coleman (1989), Morgan and Niraula (1995), Malhotra and Mather (1997), Schuler, Hashemi and Riley (1997).

74 Mnookin and Kornhauser (1979).

75 Kehoe (2011) 156, who directly relates it to the use of Roman law. His article also presents evidence that the Roman legal system was accessible to non-elite citizens.

constant development. Every time factors change, the balance between the people involved has to be renegotiated. This suggests that the balance of power within an individual relationship is almost impossible to determine by means of historical research. Most people tend to deviate from ideal models and social norms at some points in their lives, even if they adhere to them in words.

There is not necessarily a direct connection between the possibilities which are theoretically permitted by formal rules and the actual behaviour of people. Some people do not try to exploit these possibilities to the full or are barred from doing so by circumstances or by other people in their social environment. Other people go beyond the limits. Their actual behaviour depends on the interaction and the power balance between two or more people. In the Roman context this would suggest that a wife *in manu* with a strong character could enjoy a position far beyond the formal possibilities of her situation, while on the other hand a young wife *sui iuris* could be totally dependent on her older husband.[76] Too much depends on individual circumstances for us to see an individual woman who behaves submissively or who oversteps the boundaries of socially accepted behaviour as 'proof' of the position of all Roman women.

However, the concept of bargaining in the shadow of the law offers some scope for us to say something about the position of Roman men and women in general. For example, the strong position given in Roman law to the *pater familias* suggests that it was easier for a man in that position to make sure that his opinion or his interests prevailed over those of other family members. In the case of Roman women, the legal position of a woman who was married *cum manu* was very different from that of a woman married *sine manu*. In the first case a woman became part of her husband's *familia*, came in his power or that of his *pater familias* and could not have property of her own. Especially after the death of his *pater familias*, her husband had sole control over her. This would have restricted her bargaining power in relation to her husband, even if she was a strongminded woman.

Within a marriage *sine manu*, a woman had far greater opportunities to negotiate, not only after she had become *sui iuris* and could own property independently of her husband, but also while her father was still alive; the position of a woman who was in the *potestas* of her father while at the same time being married to another Roman man meant that the men involved had to share their authority over her. This offered ample opportunity for bargaining. A marriage *sine manu* created a situation in which male power over a woman was dispersed among a number of non-related persons: her father or *tutor*, her husband, and possibly also her husband's father. Research on modern societies has shown that women have much more authority in societies in which authority over women is shared between fathers (or brothers) and husbands.[77] Dispersion of power seems to make it more difficult for each of the men concerned to use his full authority against the woman, because they have to take the interests of the other men into consideration.

76 On bargaining power and household behaviour, see Becker (1981) and also Manser and Brown (1980), Sen (1983), Browning, Bourguignon, Chiappori and Lechene (1994), Lundberg and Pollak (1996), Haller (2000). Specifically on gender: Sen (1990), Udry (1996), Agarwal (1997), Basu (2006)

77 Schlegel (1972) 135, Mascia-Lees and Black (2000) 55.

Whether an individual Roman woman would use these opportunities of course depended on her character, the relationships between the woman, her husband and her father, and the specific circumstances of the moment.

Model 2: discourse on social change

Wallace-Hadrill has argued that there is a persistent tendency to regard Roman culture as an elite culture, caused by focusing on the 'high culture' of Latin literature. But if culture is about the construction of identities, he has argued, we cannot stop with the construction of elite identity. According to Wallace-Hadrill, Roman identity must start with citizenship and the social changes in it.[78] Social change is hard to study in Roman circumstances. Roman traditionalism, as embodied in the *mos maiorum*, 'the ways of the fathers', led most Roman writers to frown upon change or to present social change as the behaviour of individuals. As an alternative, Wallace-Hadrill has advocated social change within late republican Roman society based upon quantitative material, the demographic calculations of Peter Brunt. Between the late second century BC and the end of the Augustan era in AD 14, the citizen population doubled five or six times, according to Brunt.[79] This in itself suggests that citizenship 'had not merely expanded: it had changed its nature', according to Wallace-Hadrill.[80]

Wallace-Hadrill's circumvention of traditionalism in Roman literature by using quantitative sources is not very useful for looking at social change with regard to the identity of Roman women. For one thing, Brunt based his calculations on the census figures. Whether women were counted in these census figures, and, if so, from which point in time, is still a much debated subject.[81] Other quantitative data from the era under discussion is hardly available. This means that slow-changing processes of social development are almost impossible to trace, because cumulative quantitative data is needed to uncover these processes which are often invisible to the people who live through them. For example, the existence of a specific Western European marriage pattern in early modern Europe and its gradual demise as an effect of the industrial revolution are nowadays seen as fundamental for the understanding of population patterns in Europe from the sixteenth century onwards.[82] Nonetheless, the existence of this marriage pattern was not recognised in the nineteenth century; it only became apparent in the 1960s, when demographers started to collect and analyse cumulative quantitative data.[83]

78 Wallace-Hadrill (2008) 443.

79 Brunt calculated that the number of adult male citizens grew from 433,000 in 115 BC to around 2.1 million in AD 14: Brunt (1971) 72, 117. Adult men formed 29 to 35 percent of the citizen population, according to Brunt (1971) 59, 117.

80 Wallace-Hadrill (2008) 444-445.

81 See Scheidel (2008) for an overview of this discussion.

82 This so-called 'Hajnal thesis' became a norm for research on family systems, see for example Engelen and Wolf (2005), De Moor and Van Zanden (2010), Bradadjan (2012).

83 Hajnal (1965, 1982).

However, when social changes are radical enough and occur within a relatively short period, such as one or two generations, they are often noticed, because fundamental elements of society start changing within the living memory of the people involved. This holds especially true when these social changes influence a large part of the population. In these circumstances, social change can lead to debates between contemporaries, which often have strong moral overtones.

Particularly in French historiography on the French Revolution, it has been noted that periods of radical social change tend to follow different phases, each with its own specific discourse. Based on the French Revolution, scholars distinguish four phases: an initial phase, a moderate phase in which the revolution gains momentum, a phase of radicalisation, and a phase in which the tendency is towards a new equilibrium in society. The initial phase is a time of cautious discussions on change. The moderate phase is a time of broad optimism about the effects of change. In the radical phase, verbal clashes between revolutionary and more moderate elements in society occur. In the fourth and final phase, a focus on appeasement and restoration is discernible. These phases and their specific discourses are not unique to the political realm of the French Revolution. They are also reflected in the social discourses which accompanied the French Revolution and at other times, such as the secularisation debate in the 1960s.[84]

In this thesis it will be used to scan Roman sources to look for chains of discourses which may suggest possible periods of social change which influenced the role of female citizens. The most obvious candidate to look for is the change in marriage practices. There are no quantitative sources which give an indication of the ratio between marriages with and without *manus* at any moment during this period. However, the potential influence on the lives of Roman citizens is so great that a transition between the two marriage arrangements may have left its traces in the social discourse, especially when this transition took place within a limited period. Although a model like this is a rough tool, it may help to give an indication of the timing of this change.

Gender and notions of kinship and inheritance

A number of concepts and methods from gender studies and anthropology will be used in this study. Gender studies offer a critical framework which helps to analyse sources, scholarly works on these sources, and the interpretations made by the author of this research himself. This follows in the tradition of critical reading of texts, reading against the grain, in which texts are examined for those elements which do not fit into the picture the writer wants to present. Furthermore, in accordance with gender theorists, in this study it is assumed that male and female gender roles are not fixed categories, directly related to biological differences. They are seen as 'the structure of social relations that centres on the reproductive arena, and the set of practices (governed by this structure) that bring reproductive distinctions between bodies into social processes'.[85]

Gender identities are seen as individually, socially and historically embedded practices, but the patterns they create differ from one cultural context to another.[86] Gender identities are created within a social and cultural context and can change in different contexts. They are not fixed, but fluid and directly influenced by the situation. Like the balance of power within relationships, they are seen as constantly shifting on an individual level.[87] The specific character of this fluidity and the extent to which change is possible on the level of society are, however, limited by the social norms which surround gender.[88]

This situational gendering has to be kept in mind when reading Roman sources which often present a very normative picture of women. It is clear that Roman writers present men as the norm, while women are presented as others, the second sex in the De Beauvoirian sense.[89] Dixon, among others, even goes so far as to argue that each text in Latin literature is designed to project ideology of proper womanly behaviour rather than circumstantial information about any given woman, even when it purports to record a specific historicised woman.[90] This would suggest that we can know little about individual Roman women, but we can try to trace the development of the position of female citizens by looking at the way in which this ideology changed over time. At the same time, women could play male gender roles, albeit not too publicly and always in balance with the expected female roles.[91] This interaction of norms, expectations and implied behaviour makes this research subject interesting from a gender perspective.

One last remark on terminology. The aforementioned Roman tendency towards traditionalism meant that terminology continued in use, often throughout the whole of Roman history. Based on Said's concept of travelling theories, it is assumed in this thesis that the meaning of these terms can change when they are reused in different social contexts.[92] Concepts may not have travelled physically, but they did travel historically through 250 years of Roman history. This suggests a certain fluidity, even within a fixed terminology.

The main anthropological concepts used in this study are the relevance of kinship models and Goody's emphasis on inheritance patterns. Goody thought that the Roman pattern of inheritance was a form of 'diverging inheritance', an inheritance pattern in which property is transmitted from one generation to another through children of both sexes. He linked it to societies with intensive agriculture, where the transmission of family property, the farm, from one generation to the next was of central concern.[93] According to Goody, this pattern of

84 Heuer (2005), Fahrmeir (2007) 27-55.

85 Connell (2002) 10. Cf. Hirschon (1984), Scott (1986), Davis, Leijenaar and Oldersma (1991), Canning (2006)
86 McNay (2008) 18.
87 Bargaining is, in fact, a typical occasion in which gender roles tend to shift: Bowles, Babcock and McGinn (2005).
88 Ridgeway and Correll (2004), Martin (2004), Ridgeway (2009).
89 De Beauvoir (1949). Cf. Butler (1986).
90 Dixon (2001) IX.
91 Hemelrijk (2004), Centlivres Challet (2013).
92 Said (1983) 226-247.
93 Goody (1969, 1990).

inheritance was a defining element in the way that women were treated. Their ambivalent role as potential heirs who could not continue the male family line meant that there were strong tendencies to limit their sexual and public behaviour and control their marriages. This general pattern can be found in kinship patterns in most societies around the Mediterranean, albeit with clear cultural differences.[94]

The pattern of kinship followed in Roman law is the *familia*, a notion of family which adhered to a strict patrilineal line. People were related as long as they had the same ancestors in the male line, a so-called patrilineal agnatic relationship. In theory, they could trace their lineage back to one common ancestor, shared by a wider group of family, the *gens*.[95] Also in theory, the family lines through female ancestors, cognatic relationships, were irrelevant, even to the extent that women did not have authority over their children. However, in practice, there is ample evidence of the influence of mothers over their children and of close ties with cognatic relatives.[96] Roman law offered a wide range of devices to create official ties and inheritance lines between citizens with no agnatic relationships, for example through adoption and testaments. In this way, the *familia*, which is at first sight rather strict, could be transformed in a more fluid pattern, which served the needs of the people involved.[97]

This fluidity is also reflected in the Roman concept of citizenship, because citizenship and membership of a *familia* were connected. It was not possible to be a Roman citizen without being part of a *familia* as well. Unlike for example in Athens it was membership of a *familia*, rather than blood ties, which determined whether or not someone was a citizen. This fluid approach to citizenship probably made it easier for Romans to accept that slaves could become citizens (because they were already part of a *familia*, albeit as property), or to accept the inclusion of non-related subjects of the Roman Empire as citizens.

However, fluidity must not be confused with irrelevance. The wide range of devices available for adapting the *familia* to circumstances in itself suggests that the *familia* remained central to the Roman structuring of family life. Romans either adhered to the *familia* structure or had to work actively around it. They could not just ignore it, at least not as long as Roman citizenship and property was of some concern to them. As a structuring element, it remained part of Roman law until the end of antiquity. This suggests that the *familia* was seen by most Romans as a useful tool to form family life, not as its prison.

94 Viazzo (2003). Cf. Tillion (1983), Bettini (1991), Van Galen (2013b).
95 This ancestor was often legendary or even a deity: Smith (2006) 32-44.
96 Mothers: Dixon (1988), Hemelrijk (1999). Cognates: Corbier (1991a) 54-56.
97 See chapter 3.

1.5 Structure of the thesis

In this thesis, I will present an alternative interpretation of how Roman women were able to function as citizens, not only within the family circle, but also in public, in their interaction with Roman magistrates. Central to this interpretation is the way in which women dealt with the *familia*: rather than merely serving to restrict the freedom of Roman women, the *familia* could also be used to enhance their bargaining power towards their husbands, other relatives and Roman officials. The structure of this thesis follows the thread set out in the sub-questions. The thesis is divided into five chapters and a conclusion.

This first introductory chapter is followed by chapter two, in which interpretations of Roman citizenship will be discussed, both in modern literature and in ancient sources. It will be shown that in modern literature relatively limited definitions of Roman citizenship are used, which mainly focus on politically and militarily active male citizens. This focus on publicly active males, combined with a tendency to dismiss the relevance of the legal framework in Roman private life, has the effect that citizenship of Roman women remains somewhat invisible. Remarkably, this is in line with the way that Roman prose writers used citizenship terminology: they rarely acknowledged that women were included in the citizenship, not even in those cases where specific women are mentioned.

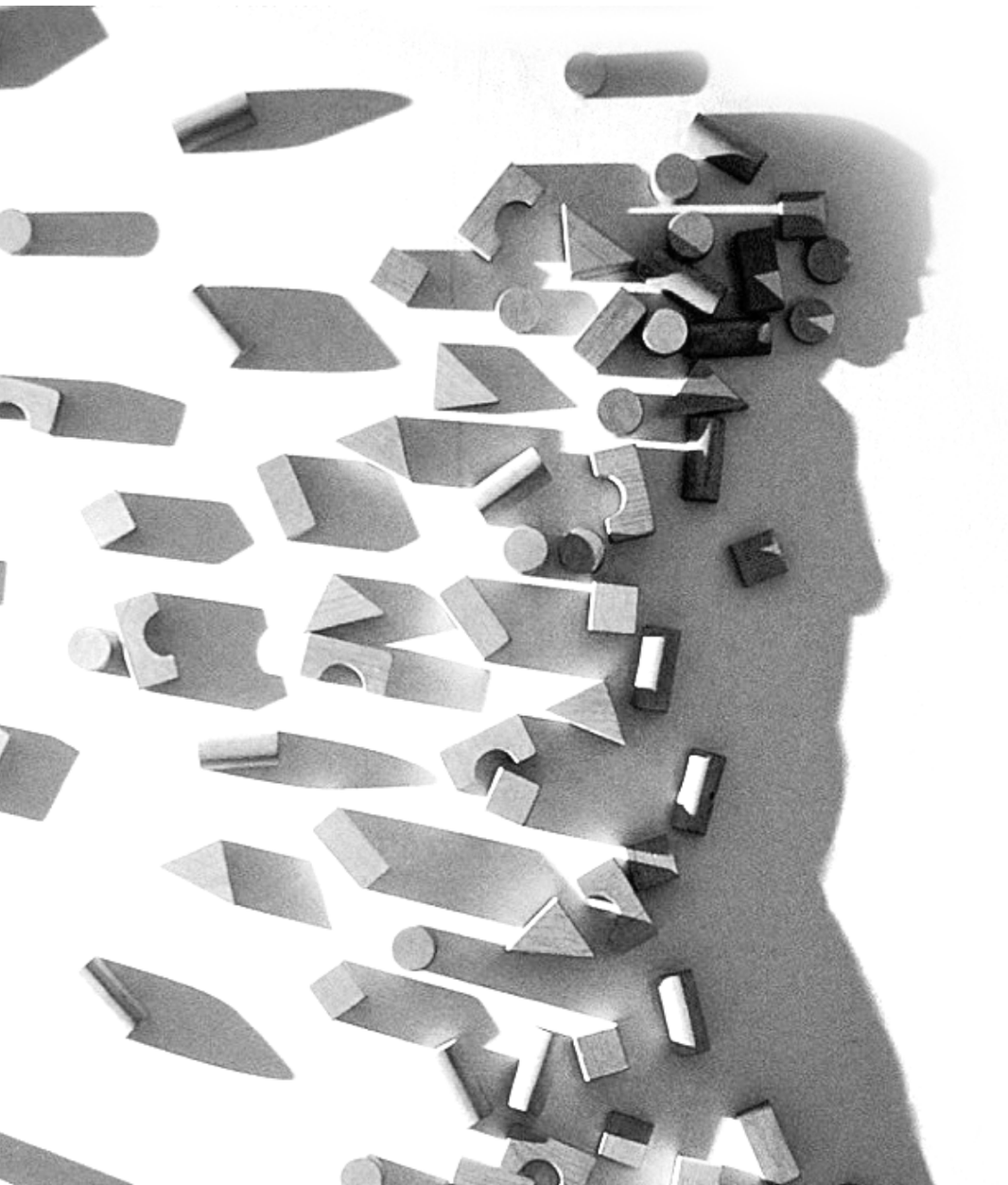
In chapter three, the legal position of Roman women as citizens is discussed. It will be shown that the freedom of Roman women to act strongly depended on their position within the *familia*. This *familia* is presented in legal sources as a corporate group led by a male citizen *sui iuris*, but due to the way in which the *familia* is defined women could also be the head of their own *familia*. It will be argued that during the Late Republic, a growing group of Roman women became *sui iuris*. This may have had the result that, by the time of the early Empire, most *familiae* consisted of one Roman citizen only, often a woman.

In chapter four, in order to assess the social relevance of the *familia*, four main arguments are discussed which have been made against the relevance of the *familia* in Roman society: the irrelevance of the *familia* in public life, the irrelevance of the *familia* outside of the elite, the effects of the demographic regime and the residence pattern of Roman households. It will be argued that these four arguments cannot be used to dismiss the social relevance of the *familia*. Even the public roles of citizens *alieni iuris* can be seen as a way of representing their *familia* in public life. Furthermore, it will be shown that conflicts between members of the same *familia* were scarce in literary sources, not because of the irrelevance of the *familia* but because of the social pressure to align the public behaviour of the members of a *familia*.

In chapter five, the interpretations found in answering the other sub-questions are reflected upon in a specific context, the change of preference among Roman citizens from a marital arrangement which involved the shift from the bride from her father's *familia* to her husband's *familia* to a marital arrangement in which the bride remained part of her father's *familia* after marriage. This change had the potential to increase the bargaining power of female Romans citizens. Through the effect of this change on the attitudes and opinions of Roman citizens, this development can be traced over a longer period, from the early second century BC until the first century AD. Finally, in the conclusion the threads of the chapters will be brought together in order to answer the main question.

CHAPTER 2

ROMAN CITIZENSHIP



> 'The girl who was my slave today belongs to herself now. [..] Aren't I a decent chap, a charming citizen? I've made the Athenian state a lot bigger today and increased it with a female citizen."[1]

In the fourth act of the Plautus' comedy *Persa* the pimp Dordalus is very pleased with himself. He has just received a large sum of money in exchange for the freeing of his slave girl Lemniselenis, who he rented out as a prostitute. In his opinion he did something good twice, he earned himself a sum of money and improved society by making her a free person, a citizen. Plautus was a Roman comedy writer and his plays are the oldest Latin works we have which are more or less complete: *Persa* was written shortly after 191 BC, right at the start of the period under discussion.[2] Although *Persa* is notionally set in Athens, it was written for an audience in Rome and included social situations which were particularly understandable to Romans.[3] The fragment reflects this, because the situation mentioned in this fragment could not have occurred in the Athenian state. Only in Rome did slaves owned by citizens become citizens themselves when freed.[4] This fragment is, therefore, the oldest literary fragment which makes it clear that women in Rome were considered citizens of the Roman state, not only in law but also in social life.[5] Also, the fragment shows that it was not only elite women who were considered to be citizens. Even a lowly slave-girl and prostitute, who was probably not even of Roman descent, became a Roman citizen when the owner who freed her was a citizen.

Although this fragment is an indication that women were considered Roman citizens in the beginning of the second century BC, it does not make clear what it actually meant for a Roman woman to be a citizen. Before we look at the development of citizenship for women in Rome in the late Republic and the early Empire, we have to try to fathom out what was the place of female citizenship and citizenship in general within the Roman context in this period of Roman history. Interpretation is difficult because citizenship is an essentially contested concept: modern discussions on citizenship are full of notions about the way that society is structured, or ought to be structured, and the role of the citizen within society.[6] Citizenship terminology is normative and its meanings depend strongly on the situation or the medium in which it is used. The same terminology can mean vastly different things to different people, depending on their society and the situation.

1 Plautus, *Persa* 472-475: *ita ancilla mea quae fuit hodie, sua nunc est [..] sumne probus, sum lepidus civis, qui Atticam hodie civitatem maxumam maiorem feci atque auxi civi femina?* Loeb translation.
2 De Melo (2011) 448.
3 Moore (1998) 50-66.
4 Another Roman element in the play is Dordalus' remark that Lemniselenis was freed through the act of a *praetor*, a Roman magistrate whose office had no direct equivalent in Athens: Plautus, *Persa* 487.
5 Another contender is a different comedy by Plautus which also has a reference to women as citizens: Plautus, *Poenulus* 372. This play was written between 189 and 187 BC, De Melo (2012) 14.
6 Waldron (2002) 149, Collier, Hidalgo and Maciuceanu (2006) 212. The term 'essentially contested concept' was coined by Gallie (1956).

That citizenship can have different meanings to different people and in different situations probably not only holds true for modern discourses on citizenship, but could also be true for the two-and-a-half centuries of Roman history under discussion in this thesis. If citizenship was a contested concept in Roman times, then we can expect to find some changes in the use of citizenship terminology over time between the Republic of Cato and the Principate of Claudius. The meaning of certain words probably changed over time or depending on the genre or the situation in which they were used and whether they referred to Roman men or women.[7] In this thesis, the possibility will be taken into account that citizenship is a fluid, dynamic concept, albeit one with a fixed terminology.

What makes the interpretation of Roman citizenship terminology even more complex is that Roman terminology and references to Roman authors were reused in later times to describe and justify citizenship concepts within totally different historical contexts.[8] The use of Roman examples in the Renaissance, the Enlightenment and nineteenth-century nation-states means that we, in interpreting Roman terminology, have to deal not only with Roman concepts themselves, but also with layers of historical reinterpretation. Furthermore, we have to keep in mind that research into Roman history from the nineteenth century onwards was, to a certain extent, influenced by contemporary reinterpretations of citizenship concepts.[9] This may have had its impact on the interpretation of Roman citizenship in ancient sources.

Therefore, it is necessary for this thesis to take a look at both the citizenship terminology in Roman sources in the late Republic and the early Empire and the interpretation of these sources in modern debates on Roman citizenship in the past decades. In this chapter, both elements will be studied based on the question 'How is Roman citizenship described?' The chapter starts with an overview of some common elements of citizenship which are shared by different cultures and periods. One point which is relevant to the interpretation of citizenship of Roman women is that theorists see public participation in politics as only one element of citizenship. Other, more 'private' elements of citizenship are as important, such as status, a sense of belonging and shared rules of behaviour. In the second and third section, the focus will be on the debates in modern research on the public and private sides of Roman citizenship. In the fourth section, an overview will be given of the citizenship terminology within Latin prose of the period, to obtain a clearer understanding of citizenship terminology and concepts in the period under discussion. The last section will bring the information from the other sections together to determine its relevance for citizenship of Roman women.

7 Jansen (1987).
8 For example in the French Code Civil, Heuer (2005) 137-140. Cf. Van Galen (2015) 368-371.
9 For the influence of nineteenth century concepts of citizenship on the interpretation of the Roman *census*, see Van Galen (2015) 373-374.

2.1 The different sides of citizenship

Before we look at citizenship in Roman sources, it is necessary to look more closely at the ways in which citizenship is interpreted in modern research. The question of what citizenship in general comprises is difficult to answer. The modern literature on citizenship in general is extensive. The meaning of citizenship is a much discussed topic and it is strongly influenced by assumptions about what it should mean to be a citizen.[10] Within this debate, there are two main lines of thought. One focuses on the duties of the citizen towards state and society, the other on the rights possessed by citizens. These lines of thought are often seen as a dichotomy, in which the focus on duties is associated with active and public citizenship, while the focus on rights is associated with passive and private citizenship.[11]

For a long time, views on Roman citizenship have been strongly influenced by the first line of thought. With references to Cicero, Seneca and other senatorial thinkers, Roman citizenship is often interpreted from the viewpoint of publicly visible elite men. Citizenship in this context is presented mainly in terms of obligations towards, or an active interaction with, the Roman state, either in politics or as part of the military. This tendency is visible in Sherwin-White's *The Roman citizenship*, whose emphasis is on the historical process of the extension of citizenship as part of the expansion of Roman dominance in Italy.[12]

It is also clear in Nicolet's *Le métier de citoyen dans la Rome républicaine*, although he focuses on non-elite citizens.[13] In his book Nicolet discusses the participation of Roman citizens in public life as soldiers, tax payers and voters. The focus on these three elements mirrors the interpretation of citizenship in the discussion of Roman census figures, in which the group of citizens counted in the census figures are judged to be those who fought, voted or paid taxes.[14] These were all functions which were interpreted by classicists and historians as being related to political and, eventually, military matters, because voting and tax collection were seen as an offshoot of the military obligations of the Roman state. This led Peter Brunt to the statement that 'it would be incomprehensible that the Roman state should attach any importance to figures irrelevant to military strength'.[15] Based on this opinion he assumed that the Republican census figures were a count of the ones who fought, the adult male citizens.[16]

10 On the contested character of citizenship, see Tilly (1995) 1-17. Other, more recent work of relevance: Skinner (2003), Heater (2004) on citizenship and education, Canning and Rose (2002) on citizenship and gender.
11 For example in Turner (1990) 189-217.
12 Sherwin-White (1973).
13 Nicolet (1976), for this thesis the English edition is used: Nicolet (1980).
14 Brunt (1971), Lo Cascio (1997, 1999), Scheidel (2008), Hin (2008) 207-211, De Ligt (2012).
15 Brunt, Italian Manpower, 16. See also: Toynbee (1965) 460, 465; De Ligt (2012) 84.
16 For an overview of the debate about the interpretation of the census figures, see Scheidel (2008).

Roman women were not allowed to vote and were not active in the military.[17] Therefore, a focus on the military and political side of citizenship actually makes the role of women as citizens almost invisible. Both Sherwin-White and Nicolet wrote their influential books on Roman citizenship without ever taking female citizens into account.[18] Even in more recent works on the role of the crowd in Rome, the possibility that women could have been part of this crowd rarely, if ever, comes to the fore.[19] Although there are some books which focus on the public performances of female citizens, their effect on the interpretation of female citizenship in public life seems limited to elite women.[20]

We may wonder, however, whether it is enough to consider political and military participation when we want to understand what Roman citizenship was. Even for adult Roman men, the relevance of politics and military activities quickly diminished as the Republic was replaced by an autocratic type of government in the late first century BC. The number of citizens who had actively participated in the voting assemblies had always been limited.[21] When the assemblies fell into disuse in the early Empire, political participation became practically limited to senators, courtiers and the members of the municipal councils of Roman cities: a group which could hardly have comprised more than one per cent of the total number of adult male citizens around AD 14.[22]

In the Augustan era, the actual number of citizens in the Roman army was probably not lower than it had been before the civil wars. However, the number of citizens grew rapidly in the first century BC, due to the admission of all free inhabitants of the Italic peninsula and the Po region into the category of Roman citizens.[23] This meant that relative participation declined, especially after the end of the civil wars. In AD 14, at the end of the reign of Augustus, there was a standing army of around 150,000 legionnaires, who served for 25 years. Even allowing for a generous replacement, this suggests that at most one half per cent of the adult male citizens were drafted into the legions every year. A percentage which gradually diminished further as the number of citizens grew in the first century AD. These simple statistics show that politics and the military were not part of the life experiences of most Roman men during the early Empire.

17 This does not mean than Roman women could not be active in a political or military context. For examples of women in the political context, see the introduction of chapter 1 and chapter 3. Women also played a rol in the functioning of the Roman army: Allisson (2013) 319-343, Greene (2013) 369-390. Indications of the presence of women in the military context can for example be found among the Vindolanda Tablets: Bowman (2003) 51-52, 54, 75, 88.
18 No women are mentioned in the indexes of either book: Sherwin-White (1973) 477-486, Nicolet (1980) 433-435.
19 Millar (1998), Mouritsen (2001).
20 Women and politics: Bauman (1992); women and religion: Schultz (2006). See, however, for the potential relationship between religion and citizenship, at least in the Athenian context: Blok (2011) 165-166.
21 MacMullen (1980).
22 Depending on which model is used, the number of adult male citizens ranged from two to five million in AD 14. The number of active senators, male courtiers (which included elite Romans from both senatorial and equestrian families) and city councillors for the approximately 400 cities in Italy together is taken as at most 20,000.
23 This happened in the eighties BC and in 49 BC, see Sherwin-White (1973) 150-173.

Are there other ways to look at Roman citizenship? A ground-breaking new interpretation of the Roman census figures, put forward by Hin, may provide a clue as to which direction we could take. Instead of taking adult male citizens as the starting point of demographic calculations, she proposed that the citizens counted in the Republican census figures could have been male citizens *sui iuris*.[24] This idea had had some popularity among scholars in the nineteenth century, but later it was largely dismissed because it seemed unable to explain the steep rise of the census figures in the first century BC.[25] Hin gave it new meaning by suggesting that this rise could be the result of the inclusion of women *sui iuris* in the Augustan census figures. She showed that an interpretation of the census figures based on male and female citizens *sui iuris* could be used to create a demographic model which avoided the high and low outcomes of calculations based on an adult male interpretation.

Hin saw the relevance of the citizens *sui iuris* first and foremost as property owners, and framed Roman citizenship within the familiar context of those who voted, fought and paid.[26] It is possible to take her interpretation one step further. Citizens *sui iuris* were not only property owners, they were also the heads of their own *familiae*, who had to represent their *familia* towards the magistrates. Registration of the heads of the *familiae* would make women certainly relevant for the magistrates, not as the wives of potential soldiers but as Roman citizens in their own right. I will come back to this in chapter three.

This focus on the citizen *sui iuris* as the head of a *familia* also opens up a new perspective which emphasizes the interests of the citizens in interactions with magistrates. In political studies it has been argued that both the focus on the duties of the citizen and that on the rights of the citizen are necessarily strongly state-centred and based on a modern nation-state concept.[27] Some thinkers have, therefore, argued for a more fluid concept of citizenship, based on the idea that citizenship is, in its essence, a contested concept in which citizens can play an active role. According to them, citizenship does not have a fixed meaning but is made specific by its use by historical participants in varying historical contexts.[28] In other words, its meanings change as the emphases in certain historical eras change.[29]

This does not mean that there are no common elements to be found in the meaning of citizenship. Tilly sees it as a 'special form of contract' between persons and (agents of) the state based on exclusive membership of the state.[30] The word 'contract' suggests that the content of citizenship is negotiable, and, therefore, changeable. However, it also suggests that there were certain features which a person could expect his or her citizenship to entail. According to Heater 'from very early in its history the term already contained a cluster of meanings related to a defined legal or social status, a means of political identity, a focus of loyalty, a requirement of duties, an expectation of rights and a yardstick of good behaviour [...]'.[31] In another context it has been argued that citizenship, at least in a society where inhabitants have an interest in the state, 'gives membership status to individuals within a political unit; confers an identity on individuals; constitutes a set of values, usually interpreted as a commitment to the common good of a particular political unit; involves practicing a degree of participation in the process of political life; implies gaining and using knowledge and understanding of laws, documents, structures, and processes of governance'.[32]

Both examples suggest that there are more elements to citizenship than those which are normally considered in treatises on Roman citizenship. Besides participation in the form of public duties and rights, we have also to take into account that, to the individuals involved, citizenship can mean status, identity, shared values and some knowledge of the working of the law and government. Identity has to be considered more broadly than the political identity mentioned above. It also includes cultural and, importantly in the ancient world, religious identity.[33] Specifically in the Roman context one could also think of rights such as *conubium*, a lawful marriage, and *commercium*, the right to trade and seek legal redress in the case of trade conflicts.[34] Other relevant acts which only citizens could perform were the making of wills, inheriting from other citizens, owning land in Roman territory and pass on citizenship to the next generation.

The meanings of citizenship as given by Tilly and Heater are based on a broad range of societies, but it is interesting to compare these with what Sherwin-White saw as the essence of Roman citizenship after the political content of citizenship had been whittled down by the middle of the second century AD. According to him, this 'left, as the core and the heart of citizenship, the social status which it conferred, the *iura privata* [private rights] affecting the family and its uniform subjection to Roman law, and so forth.'[35] His words suggest that, in the end, it is not public participation, either political or military, that makes citizenship, but a shared sense of status and identity, certain rights, rules of behaviour and ways of structuring private life. This emphasises the more private side of citizenship, which may have been relevant to both men and women.

24 Hin (2008), Hin (2013) 261-297.
25 Zumpt (1841) 19-20, Hildebrand (1866) 86-88, Mommsen (1874) 371 and Nissen (1902) 116-118. It was last revived by Bourne (1952a, 1952b).
26 Hin (2008) 207-211.
27 Roche (1992), Fahrmeier (2007).
28 This line of thought started with Almond and Verba (1963), who focussed on political culture, instead of political rights. Cf. Van Gunsteren (1978); Tilly (1995) 7-9; Canning and Rose (2002) 15.
29 And continues to change; see Fahrmeir (2007), esp. 228-232.
30 Tilly (1995) 8.
31 Heater (1990) 163.
32 Enslin (2000) 236.
33 Blok (2009, 2014) has argued that participation in *polis* cults, rather than in politics, was the essence of citizenship in the Greek world.
34 *Conubium*: Buckland (1963) 114-116, *commercium*: Kaser (1971) 29.
35 Sherwin-White (1973) 267.

2.2 The private side of citizenship

Based on the words of Sherwin-White, we may assume that the public and private sides of citizenship are related to each other. Traditionally, however, research on private Roman citizenship has been separate from research on the citizen in the public realm. The private life of citizens was originally a field which was almost exclusively the domain of specialists in Roman law. These legal historians looked at the ways in which Roman law structured the lives of its citizens and the interactions between citizens. They were primarily interested in the formal institutions themselves and looked at the private lives of citizens in terms of legal effects.[36] There is a strong assumption in Roman law that all citizens lived in a family group, called a *familia*, which was led by the eldest living male ancestor of the *familia* members, who was called the *pater familias*. Specialists in Roman law saw as the core of Roman life the life-long power and rights of the *pater familias* over his *familia*. This *familia* seemed to presuppose, ideally, a multiple family household structure: a household which comprised a married couple and resident married sons with their children.[37]

The problem with the picture we get from legal sources is that it seems hard to reconcile what we know from these sources about the organisation of Roman private lives with the world of adult men which is visible in public life. Consequently, the legal structuring of Roman private life in *familiae* is often treated as a peculiarity of law, with little impact on every day family life.[38] Sometimes explicitly but often implicitly, Roman private life is often framed in terms of the, to us, more familiar concept of nuclear families, each with an adult man as its head. This way of framing seems to make more sense, since we know that all adult men had voting rights in the Republic and were able to serve in the army, while women lacked these rights, regardless of their status within the *familia*.

Probably the closest thing to a description of the way in which Romans organised the members of their society, one which encompassed the whole citizen body, can be found in Roman legal sources. These sources offer a structuring of groups within society to make clear which laws and rulings were relevant to which groups. Since Roman law, the so-called *ius civile*, only applied to Roman citizens, it was necessary to indicate the boundaries of citizenship. By doing this, it made clear what a citizen was not, and thereby indirectly what was perceived to be the essence of citizenship in the eyes of Roman jurists. The most pronounced version of this type of structuring can be found in the first book of Gaius' *Institutiones*, a legal text-book from the second century AD. The pattern used by the jurist Gaius was followed by later legal works.[39] Therefore, we may assume that he either established a tradition or followed a path of reasoning which was already well-trodden in his day.

36 Schulz (1951), Buckland (1963), Kaser (1971), Watson (1967, 1971b).
37 Gardner (1998) 269-270.
38 Gardner (1998) 2.
39 Ulpian, *Tituli* 4.1, *Digesta* 1.5-6.

In all these cases, this structuring follows the same pattern. It starts with a first divide which divides humanity into either free persons or slaves.[40] The next step is to divide the free persons into those who are born free and those who are freed, that is, former slaves.[41] Not all freedmen are the same, however. According to Gaius some become Roman citizens, other Latins, others *dedictii*. The first group are citizens, albeit somewhat limited by their former status as slaves. The last two groups are not citizens, but aliens, although the Latins were privileged in such a way that they could, eventually, achieve citizenship. The exact nature of the status of these groups is not relevant here, but it shows the Roman attitude towards citizenship, which had a tendency to divide people into hierarchical layers. As a third step, the free citizens were divided into citizens who were independent, *sui iuris*, and those who were subject to other citizens.[42] Gaius does not explain who are *sui iuris*, those 'in their own right', but goes on to explain who are dependent, because 'if we find out who is dependent, we cannot help seeing who is independent'.[43] In the remaining part of the first book of the *Institutiones*, Gaius explains at length that those *alieni iuris* are free citizens in the power of a citizen *sui iuris*, either as his descendants, his wife, or in bondage to him.[44] As a hierarchisation, this division of persons was a simplification of reality. The divisions sometimes overlapped: for example, most freedmen were *sui iuris*, and there were other relevant dividing lines, like gender.[45]

This way of looking at private life, as a citizen *sui iuris* with other citizens and property, including slaves, in his power, was considered fundamental to the legal construction of Roman citizenship with citizens *sui iuris* at the centre.[46] A citizen *sui iuris,* together with dependents and property, was called a *familia* and considered by Roman jurists of the Principate as something almost uniquely Roman.[47] So uniquely, in fact, that a foreigner who became a Roman citizen automatically became the head of a *familia* upon receiving citizenship, but his children were not automatically part of his *familia*, not even when they became citizens at the same moment.[48] For the purpose of law, family relations which existed before citizenship were virtually non-existent, unless they were reaffirmed by the proper magistrate.

According to Roman law – and, therefore, in the interactions between private citizens and the Roman state – it was assumed that all Romans lived in a *familia*. This *familia* was not the same as an actual household or family. What a Roman saw as his or her family could change

40 Gaius, *Institutiones* 1.9.
41 Gaius, *Institutiones* 1.10-11, *Digesta* 1.5.1 (Marcianus)
42 Gaius, *Institutiones* 1.48: *quaedam personae sui iuris sunt, quaedam alieno iuri sunt subiectae*. Translation Gordon and Robinson (1988).
43 Gaius, *Institutiones* 1.50: *[...] Nam si cognoverimus, quae istae personae sint, simul intellegemus, quae sui iuris sint*. Translation Gordon and Robinson (1988).
44 See Gaius, *Institutiones* 1.55-1.96 (children), 1.97-1.107 (adopted children), 1.108-1.113 (marriage) and 1.116-1.123 (bondage). Citizens in bondage were free citizens who came under the power of another citizen to pay off a debt. They remained citizens, but their citizenship rights were temporarily suspended.
45 See for the ambivalences within this division, Gardner (1993) 3-4.
46 See also *Digesta* 1.6.4 (Ulpian).
47 Gaius, *Institutiones* 1.55.
48 Gaius, *Institutiones* 1.93.

according to situation, time-period and purpose, because 'like the contemporary family (...), the Roman family is an ambiguous concept and defies easy definition'.[49] The *familia*, however, is often interpreted as an unchangeable legal fiction:

> 'The *familia* was [...] a legal construct, an organizational device whose definition remained virtually unchanged [...] throughout a thousand years or more of Roman law. Though a purely notional 'family', it was a basic building block of Roman society, providing, on the whole successfully, through the paterfamilias for many of the needs of law-enforcement and welfare for which we now tend to look to state agencies.'[50]

The meanings of the word *familia* in Latin are more numerous, but in the legal sense it essentially meant two related things: a group of free Roman citizens subjected to the power of one person and the property of this group, including slaves.[51] The *familia* followed a patrilineal pattern in which its members were related to each other through the male line. At the centre of the *familia* was the *pater familias*, the only citizen within the *familia* who was *sui iuris*. Ideally, this was an adult man who was lawfully married. All his children born in wedlock were in his power, together with the children of his sons, and his grandsons, and so on in the male line. Because of this patrilinear principle, children of daughters did not come into the power of the *pater familias*, they became part of the *familia* of their fathers.[52]

The notion that a man was in the position of authority over his offspring was widespread in the ancient world. What made the Roman *familia* special was the rigorous and structured manner in which Roman law interpreted the power of the *pater familias*, the so-called *patria potestas*.[53] As a general rule, all other members of the *familia* remained subject to this power until the death of the *pater familias*. They did not become independent upon adulthood, but remained *alieni iuris*, even when they were married adults with children or grandchildren of their own.

The legal powers of a *pater familias* over the *alieni iuris* in his *potestas* were extensive: a *pater familias* could decide to expose new-born children, adopt other Romans, remove (grand) children from his *familia* by giving them into adoption or freeing them from his *potestas*, sell children or give them into bondage, force them to marry or divorce and discipline them, with violence if necessary.[54] Although some of these powers, like the power to force children to marry, gradually became obsolete, the formal powers of the *pater familias* remained extensive during the whole of Roman history. Indeed, they were so extensive that the Romans spoke of the *pater familias*' *vitae necisque potestas*, power of life and death.[55]

This rather bleak and harsh picture of the power of the *pater familias* was mitigated by the quintessential Roman 'family value', *pietas*. *Pietas* could be translated as the sense of affection, duty and responsibility towards relatives.[56] Although often associated with the dutifulness of children towards their parents, *pietas* was a two-way street. According to Richard Saller, 'the Romans associated pietas in the context of the family not so much with submission to higher authority as with reciprocal affection and obligations shared by all family members'.[57] In other words, while citizens *alieni iuris* had to obey their *pater familias*, he was expected to act with the best interest of his *familia* and its members in mind. Although a *pater familias* could to a large extent act as he pleased, when he really did misuse his position he faced social disapproval and sometimes legal penalties.

One such an example in which the magistrates did intervene was when a citizen *sui iuris* was considered to be wasting his *familia*'s property.[58] This was considered to be a serious problem, because the *familia* was organised as a corporate group, which meant that all property was the common property of the *familia*. Although the *pater familias* owned and managed the property and the income of the *familia*, the cherished idea was that the property within the *familia* was a *patrimonium*, which should be preserved complete, and preferably extended, throughout the generations. Although citizens *alieni iuris* were, in a sense, co-owners, they had no legal authority over the *familia*'s property as long as the *pater familias* lived.[59] Only after the death of the *pater familias* was the property of the *familia* divided, either according to the will of the *pater familias* or in equal parts among his male and female heirs when there was no will, because Romans did not practice primogeniture.[60] Because everything the members of the *familia* owned or acquired was at the disposal of the *pater familias* alone, a *pater familias* who wasted his property was a direct threat to the livelihood of his descendants.

49 Bradley (1991) 4-5.
50 Gardner (2011) 362, cf. Gardner (1993) 52-84.
51 *Digesta* 50.16.195 (Ulpian) mentions as the essence of *familia* (1) property or estate; (2) a group of persons subjected to the power of one person; (3) a group of slaves collected for one purpose; (4) persons who all descend from the same common ancestor. The *Oxford Latin Dictionary* which combines both legal and non-legal meanings of the term, gives the following definition of *familia*: (1) All persons subject to the control of one man, whether relations, freedmen, or slaves, a household; (2) the slaves of a household, servants; (3) a group of servants domiciled in one place; esp. a gang used for one purpose; (4) a body of persons closely associated by blood or affinity, family; (5) a school (of philosophy etc.); (6) (leg.) estate (consisting of the household and household property), cf. chapter 3.1, Bradley (1991) 4-5, Saller (1994) 75-80.
52 *Digesta* 50.16.195.2 (Ulpian), Cf. Gardner (1998) 1-2.
53 Crook (1967b), Lacey (1986), Saller (1986).
54 Buckland (1963) 103-105, Du Plessis (2010) 111-113. On divorce and adoption as family strategies: Corbier (1991a).
55 Yaron (1962) 243-261, Westbrook (1999) 203-223.
56 Saller (1994) 102-132, Evans Grubs (2011) 377.
57 Saller (1988) 399, for a critique on this vision see Cantarella (2003).
58 Watson (1967) 156-157. The so-called *Law of the XII Tables*, the earliest Roman law already contained rules to deal with spendthrifts: *Law of the XII Tables* 5.7c).
59 This idea of co-ownership is most clear in the rules of testation: when sharing the inheritance of their *pater familias*, the other members of the *familia* were called *sui heredes*, 'their own heirs', because, in a sense, they inherited what was already theirs, Gaius, *Institutiones* 2.156-157, *Digesta* 28.2.11 (Paul). Cf. Buckland (1963) 305-306; Kaser (1971) 96.
60 See chapter 3.3.

Male terminology was used throughout in the section above, because only men could have other citizens in their *potestas*. Women could not have formal power over other citizens, not even over their own children.[61] They could themselves be in the *potestas* of their husbands, although this was not always the case.[62] However, this did not mean that a woman could not be the head of a *familia*. When the *pater familias* died, his children (and his wife when in his *potestas*) became *sui iuris* and each became the head of his or her own *familia*.[63] If his sons had children of their own, these children became subject to the *potestas* of their father.[64]

Again, this rule was rigorously applied: even a baby girl was considered *sui iuris* if her father had died and she had no (great-) grandfather in the male line.[65] This had the effect that all Romans without a living male ancestor in the male line were considered to be the head of their own *familia*, regardless of age, sex, marital status and parenthood.[66]

Citizens *sui iuris* could inherit and own property and the Romans were of course aware that children were not able to manage this property. Therefore, a legal guardian, a *tutor*, was assigned to every child who became *sui iuris*. This *tutor* managed the child's property and had to give his authorisation for any transactions.[67] For boys, this legal guardianship ended when they became adults, around the age of fourteen. Women, however, had to have a *tutor* for their whole lives. Once they reached age of twelve, this *tutor* no longer managed her property but his consent was still required for certain transactions which could diminish her property, like the sale of land or the making of a will.[68]

Many if not most *familiae* in the legal sense consisted of one citizen only - although they could still comprise more than one person, because women or children *sui iuris* could own slaves, who were considered property. As the term *pater familias* has strong patriarchal and moral overtones, it is more convenient to limit the use of this word to those situations in which the parental power of a father is meant. In other cases, when the *familia* as a property unit is discussed, the head of the *familia* could be better called the citizen *sui iuris* because this head could be a child or a woman, as well as a man. In the rest of this thesis, the term 'citizen *sui iuris*' will be used in this way. Only when parental power by a male citizen *sui iuris* is discussed specifically, will the term '*pater familias*' be used.

61 Only a man could have paternal authority. Women could not, not even when an unmarried woman had a child: in that case the baby became *sui iuris* at birth and had no agnatic relatives, Kaser (1971) 298-299. Such children were called *spurii*: Gaius, *Institutiones* 1.64.

62 On Roman marriage and its effect on the status of women, see chapter 3.2.

63 When the *pater familias* did not leave a will, the property of the *familia* was divided into equal parts, regardless of the sex of the heirs. It was, however, normal practice to make a will, which gave a *pater familias* considerable freedom to divide his property to whom he pleased, including persons outside the *familia*: Champlin (1991).

64 In cases where their father was already dead by the time the *pater familias* died, these grandchildren became *sui iuris* upon the death of the *pater familias*.

65 Orphans in the Roman context were children without a living male ancestor in the male line: a child with a living parental grandfather was not considered an orphan, a child with only a living mother was.

66 *Digesta* 1.6.4, *Digesta* 50.16.195.2, *Digesta* 50.16.195.5, Ulpian, *Tituli* 4.1.

67 Du Plessis (2010) 136-142.

68 Watson (1967) 147-154, Gardner (1986) 5-30.

The relevance of this exploration of the legal position of Roman citizens is that when we think about the interaction of private citizens with the Roman society at large, we have to think first and foremost of citizens *sui iuris*. Only citizens *sui iuris* had a full set of private rights. Although citizens *alieni iuris* could be active in trade, make contracts and marry, they acted under the responsibility of their *pater familias* who was supposed to have the final say in all such matters and was liable for their actions. Private citizenship as presented in Roman law was not a world of adult men only. Although men were the norm, it was a world of heads of *familiae*, citizens *sui iuris*, and their *alieni iuris* dependants, who could be both men and women.[69]

69 Although, for female citizens *sui iuris*, there were some limitations on the use of those rights, see chapter 3.

2.3 Critique on a legalistic interpretation of private citizenship

Since the 1970s, research on the Roman family has flourished. Central to this approach was the search for actual families, beyond the legal framework of the *familia*. Work has been done on, for example, non-standard families, the Roman ideals of family life and the relationship between man and wife or that between parents and children. These studies show that the Roman experience of family life was far more diverse than the legal framework seems to allow for. As this type of research is, among other things, a reaction against the central position of Roman law in the interpretation of Roman social history, this has led to a tendency to see the legal difference in status between Roman citizens as less relevant.[70]

Gradually, historians recognised that an interpretation of Roman private citizens based on legal sources alone did not give an adequate picture of what it meant to be a Roman citizen and to live in an actual Roman family.[71] Alan Watson, a well-known specialist in Roman law argued that 'there is no necessary correlation between law and the society in which it operates. Of course, there is some connection but precisely what that is is not inevitable, and may often be tenuous'.[72] Realisation dawned that the personal lives of humans are not first and foremost structured by the rules of law, but by many other factors, like affection, economic situation and other far more fluid elements which influence the relationships between people. Articles and monographs written in the past decades tend to focus on Romans as people and on their personal relationships, not on their positions as citizens. They have a tendency, once the initial remark on the *familia* as a legal construct is made, to ignore this legal framework in favour of what real families can be found in the sources.[73]

This tendency should not be seen solely as a reaction to the earlier over-emphasis on legal constructions; it was also the effect of what was probably the most influential article written on Roman social life in this period, *Tombstones and Roman family relations in the Principate: civilians, soldiers and slaves*, a large scale epigraphic study by Saller and Shaw published in 1984.[74] Saller and Shaw were strongly influenced by Laslett's work on the endurance of nuclear families in history.[75] They wanted to investigate whether the dedications on Roman tombstones –the most abundant source on non- or semi-elite citizens– supported the idea of nuclear households or of multiple family households.

70 For example, Saller (1991a) who questions the notion of parental severity based on the absolute power of the father over his offspring. Cf. Hallett (1984), Rawson (1986, 1991, 2011): Dixon (1984, 1992): Rawson and Weaver (1997); George (2005), Harlow and Larsson Lovén (2013). Some scholars have tried to connect Roman law and social experience, like Gardner (1986, 1993, 1998) and Evans Grubbs (2002).

71 For a critique on the purely legal interpretation of Roman private life, see Saller (1991a: 144-146, 1991b).

72 Watson (2007) 9, cf. Freeman (2006) on the relation between law and social studies.

73 Gardner (1998) 2.

74 Saller and Shaw (1984).

75 Laslett (1965), Laslett and Wall (1972). Laslett argued that the nuclear family, consisting of a married couple and their children, had been the norm in parts of Europe from pre-modern times onwards and did not arise as a consequence of the Industrial Revolution, as was earlier assumed.

Multiple family households seemed to be presupposed by the *familia*, because a Roman *pater familias* maintained control over his descendants, not only his children, but also his grandchildren, etc., until his death. Saller and Shaw's conclusion was that 'for the populations putting up tombstones throughout the western provinces [of the Roman Empire] the nuclear family was the primary focus of certain types of familial obligation'.[76] Although they did not conclude that Romans lived in nuclear families, their work was often interpreted in this way. Within a few years, it became part of the orthodoxy. Already in 1988 Dixon wrote that 'classical scholars now tend to assume that the chief Roman residential unit was the nuclear family'.[77]

In his 1994 book *Patriarchy, property and death in the Roman family*, Saller also discussed the question of the excessive patriarchal power of the *pater familias*. He concluded that the power of the *pater familias* was not central to the way that Romans themselves understood family life. Reciprocity and *pietas* were far more central.[78] Furthermore, although Saller did not deny the theoretical power of the *pater familias* over his dependents, he argued that very few Roman men had the chance to wield this power in practice. Based on demographic simulations, Saller showed that, due to a combination of high mortality and late male marriage, one-third of the Romans were already fatherless before puberty, while another third had lost their fathers between the age of twenty-five and thirty, the age at which most Roman men seem to have married.[79] Both works together could easily lead to the assumption that the *pater familias* and the *familia*, central elements of Roman law, were irrelevant to the understanding of actual Roman life, which further undermined the relevance of Roman private law in the eyes of many social historians.

Attemps have been made to bridge the gap between juridical-historical and social-historical interpretations of Roman private life and to restore some of the relevance of Roman law as a way of understanding Roman family life.[80] Gardner wrote a book specifically on the connection between family and *familia*, in which she compared the legal *familia* with family life as it can be found in other sources and concluded that legal constructions did interact with social life in certain situations, especially in the field of property ownership and inheritance.[81]

However, this conclusion was somewhat undermined by two assumptions in her works. Following the interpretation based on Saller and Shaw, she assumed that Romans lived in nuclear families. She presents the *familia* as a purely notional family, nothing more than a legal construct. The *familia* was convenient to fulfil some legal needs, according to Gardner, but had nothing to do with actual Roman families.[82] In line with Saller, her second assumption is that the impressive legal powers of the *pater familias* – especially the more extreme ones, such as the power of life and death over his family members – were seldom if ever invoked in practice

76 Saller and Shaw (1984) 124.

77 Dixon (1988) 9. Cf. Rawson (1997) 296, who considers the Roman nuclear family as an established fact.

78 Saller (1994) 225-228.

79 Ibid. 43-69.

80 Among others, Gardner (1986, 1993.1998), Johnston (1999), Evans Grubbs (2002), Frier and McGinn (2004).

81 Gardner (1998), esp. 268-279.

82 Gardner (1998) 2, Gardner (2011) 362.

and are therefore irrelevant to our understanding of Roman life.[83] These assumptions can easily lead to the conclusion that the legal construction of the Roman *familia*, although interesting, is still hardly relevant to understanding Roman life.[84]

Research from the 1970s onwards into Roman private life beyond the realm of Roman law has brought huge rewards over the years. It has given us a far more nuanced picture of Roman society and family life. However, the tendency to avoid the perceived mistake of overemphasising legal sources had led to a certain amount of doubt as to whether the formal structuring of Roman private life in *familiae* has any relevance to Roman social history at all. While reconstructing the older legal interpretation of private citizenship, little work has been done on the relevance of these legal structures to the interaction between Roman citizens and the Roman state. Furthermore, no new research has been carried out on the relationship between the legal construction of the *familia* and the public side of citizenship.

83 Gardner (1998) 268

84 Osgood (2011) 70-71. See further, chapter 4.

2.4 Citizenship terminology in Roman sources

The first women in Rome received citizenship from Romulus himself, according to Livy.[85] This remark suggests that at least in Livy's time, the Augustan age, women were considered to be citizens. But what did citizenship mean, in a world where women could not actively participate in political life and could not have authority over other citizens? In this section, an overview will be made of the use of citizenship terminology in Latin prose from the second century BC until the middle of the first century AD. The goal of this overview is twofold. The first objective is to discern whether there was a development in the meaning of a given term over time. The second objective is to see whether women were included in this terminology.

For this overview, I have used the Library of Latin Texts database (LTT-A), which I searched using the different word forms of the following key words: *civis*, *quiris*, *populus* and *pater familias* and three words which may have been specifically relevant to female citizens: *matrona, vidua* and *mater familias*. As an extension of the term *pater familias*, a limited investigation has also been carried out on the word *pater*, to see whether this was used as an alternative to *pater familias* in the sense of a man with *patria potestas*. Only words which could refer to adult citizens are included in this overview. Terms used for children *sui iuris*, like *pupillus* and *pupilla*, are excluded. Also excluded are words which seem too general in their meaning, for example *vir* (man), *mulier* (woman) and words related to the marital state like *coniunx* and *uxor*.

Sources used in the overview

The sources used in this overview are prose written in Latin. Selected are all complete or partly complete works of Latin prose, written by Roman writers in the time period under discussion, roughly two and a half century from 200 BC onwards. They range from the oldest complete works in Latin prose, written by Plautus and Terence, to works written in the 60s AD by Seneca the Younger, Petronius and Columella. As an exception, I will include the *Institutiones*, an introduction to Roman law in four books which was written by the jurist Gaius approximately a century after this period. In my opinion, for an understanding of citizenship within the Roman context it is necessary to include Roman legal interpretations. There are no legal works handed down to us from the period under discussion and the information on legal matters in, for example, the works of Cicero is fragmentary. Therefore, the *Institutiones* is included, because it is the legal work which is closest to the period under investigation. Gaius' focus on the development of Roman law, makes it useful for the earlier period.

85 Livy, *Ab urbe condita* 1.9.14.

The reason for the focus on Latin prose is that I am interested in texts that reflect the use of citizenship terminology by elite Romans and the different interpretations of citizenship which were in vogue during this period. Because the terminology itself does not change much during the period studied here, it will be necessary to look very carefully at the way in which certain terms are used and in which context. To find the nuances in the use of citizenship terminology, texts will be considered which reflect an internal discussion on citizenship within the Roman context, with interpretations of citizenship which were understandable to other Roman citizens, even when not always agreed on.

Excluded from the overview are prose texts which cannot be placed in context because they are too fragmentary or of dubious origin. Also excluded are works by Greek authors who wrote about the Romans, since the translation of the key terms and concepts in Greek to make them understandable for a non-Roman Greek-speaking audience make them less suitable for an analysis of Roman citizenship terminology. Furthermore, Latin poetry is excluded: words in poems are dictated first and foremost by the structure and the metre of the poem. This suggests that we often do not deal with actual terminology of citizenship but with indirect, and often multi-layered, allusions. The level of reinterpretation needed to make poetry useful would go beyond the scope of this overview. Finally, Latin inscriptions are also excluded. Most of them are very short and formulaic, which makes it hard to make use of citizenship terminology for this overview. Of the longer inscriptions, only the *Res Gestae* is referred to in order to illustrate a point about the use of the word *populus*.

The limitations set above mean that the works involved are complete surviving works of twenty-two authors (or groups of authors, in the case of the Caesarian corpus) who worked between roughly 200 BC and the middle of the first century AD. From the second century BC we have the comedies by Plautus and Terence and Cato's treatise on agriculture. From the first century BC until the end of the Republic (around 40 BC), we have the large corpus of Cicero, the Caesarian corpus, the rhetorical treatise *Rhetorica ad Herennium*, a small work by Cicero's brother Quintus and a collection of *sententiae* (moral sayings) by Publilius Syrus. The writers who wrote in the aftermath of the civil wars and during the Augustan era are Sallust, Varro, Cornelius Nepos, Vitruvius and Livy, whose history work *Ab urbe condita* is by far the largest work surviving from this period. Finally, from the first half of the first century AD we have the works of writers as diverse as Velleius Paterculus, Valerius Maximus, Seneca the Elder, Celsus, Curtius Rufus, Seneca the Younger, Petronius and Columella.

Civis *and* populus

Of the words discussed in this overview, *populus* and *civis* are the most frequently used. *Populus*, in particular, is used surprisingly often: almost four thousand times, three times as often as *civis*.[86] *Populus* is often used in constructions like *populus Romanus* within this sample. This use of the word seems to emphasise the citizens as members of a group. Even without the affix *Romanus* it is often directly related to male citizens in their capacity as voters or soldiers. An example is the use in the treatise *Rhetorica ad Herennium* where a distinction seems to be made between the *populus* and the population at large: 'One whom the Senate has condemned, one whom the Roman people has condemned, one whom universal public opinion has condemned (...)'.[87] In the same work it is also used in a specific military context when it is mentioned that the *populus Romanum* conquered Numantia, Cathage, Corinth and Fregellae.[88]

It is probably no wonder that *populus* can be found relatively more often in the writings of authors who are most concerned with political matters, like Cicero, Sallust, Livy and Valerius Maximus. The focus on politics is clear when we look for example at Sallust's *Bellum Catilinae*. In this work, *populus* is used eighteen times: six times with reference to foreign peoples, mostly those defeated by the Romans; seven times it refers to the Roman voters or military; five times to the Roman people as a whole.

The word *populus* is not only used in a political and military context, however. For example, in the play *Curculio* by Plautus *populus* is used twice: once to indicate the voting assembly, and the second time in a broader meaning, something like 'what will the people think?'.[89] In *Poenulus*, another play by Plautus, *populus* is used to address the public watching the play. After this, different groups within the public are addressed, including women. This makes clear that women are considered to be part of this public.[90] While both meanings of *populus* appear in Plautus work, only *populus* in the sense of 'people in general' or 'crowd' is found in for example Celsus' medical treatise and Petronius' novel *Satyricon*, both from the first century AD. In these works, *populus* refers to an amorphous group which could comprise both men and women.

What we do not see is any use of *populus* to refer specifically to women. The aforementioned part of *Poenulus* is the closest thing I could find to a specific acknowledgement that women were considered part of a *populus*. On other occasions, we may assume that they were included because of the context, for example when *populus* refers to a crowd in the street, the

86 *Populus* is not only the Latin word for people, but also for the poplar tree. The use of the word *populus* for poplar tree is checked in the most obvious texts, the three agricultural treatises in this sample. It is possible that some examples of the use of the word in other texts remain.

87 *Rhetorica ad Herennium* 4.14.20: *quem senatus damnarit, quem populus Romanus damnarit, quem omnium existimatio damnarit* (...). Loeb translation.

88 *Rhetorica ad Herennium* 4.27.37.

89 Plautus, *Curculio* 509 and 27.

90 Plautus, *Poenulus* 11-35.

populace of a city or the whole Roman population. But this is not specifically stated to be the case. This may suggest that the association between the word *populus* and the citizens as a male political body remained strong, even when the word was used in a more general sense.

While *populus* often refers to citizens as a group, the use of *civis* seems to focus more strongly on the citizen as an individual. It is used to address other citizens or to describe someone's citizen-status. In philosophical works it is used as a generic term for a citizen. We should not make too much of this difference, however, because almost half the time the word *civis* is used, it is used in the plural form. This seems to be in line with what was presumably the early meaning of *civis*, that as 'co-citizen', the individual citizen as part of a larger group.[91]

As mentioned at the start of this chapter, already at the start of the period under discussion the word *civis* could refer to a specific woman.[92] However, like *populus* it is most often used in works on politics. The effect is that *civis* is mostly used in our sample in a male-dominated context, referring to men active in political or military life. However, when *civis* is used to refer to the citizen rights of a woman, it is not presented as something extraordinary. This is the case, for instance, in Cicero's *De Oratore*, where he mentions a conflict involving the citizen rights of a woman and her son which were in jeopardy because her husband had been married to two different women: 'involving as it did the civil rights of two citizens, the boy born of the second consort, and his mother.'[93]

In line with this, Livy's account makes it appear that women had possessed citizenship since the earliest days of Rome. According to him, after the Sabine women had been abducted by the first Roman men, their king Romulus decided that they 'should be wedded and become co-partners in all the possessions of the Romans, in their citizenship and, dearest privilege of all to the human race, in their children'.[94] That Roman women were *cives*, both socially and legally, is finally confirmed by the jurist Gaius. In his *Institutiones* he regularly refers specifically to women as *civis*, some sixteen times in the first book alone.[95]

Can *civis* and *populus* be interpreted as referring to exclusively male citizenship? This seems not to be the case. Both *civis* and *populus* are used in situations in which they can only refer to male citizens, but the use of the words in itself seems not to imply a specific male content. This is most clear for *civis*. Although it is often difficult to determine with certainty whether women are included, in these instances where we can be sure that this is the case, it is not presented as something exceptional.

For *populus* it is more difficult to tell. As far as I know, it is never mentioned specifically that women were included in this word, not even in situations where their inclusion is obvious from the circumstances. This probably has something to do with two different meanings of *populus*: one denoting a wider group of people or the populace as a whole, which could include both men and women; the other denoting specifically the exclusively male portion of the citizenry which was actively involved in politics or the military.

This last specific meaning gave the word a certain ambivalence which made the overt inclusion of women probably less acceptable. In this ambivalent way the word is even used in a semi-official inscription like the *Res Gestae Divi Augusti*, an inscription which is often considered to be Augustus' political testament.[96]

Quiris *and* quirites

The word *quiris*, almost always used in the plural *quirites*, presents another point of interest in this overview. The word is sometimes used to describe the citizen population as a whole in the construction *populus Romanum Quiritium*, especially by Livy, but also by Varro.[97] However, the word is mainly used to address citizens gathered in an assembly or in the court room. In this sense, it is clearer than in the case of *civis* that this is a word that describes the Roman citizen as male, because only men could act as voters and members of the jury in a court case. Moreover, judging by Varro, it seems to have the connotation of 'civilians living in the city of Rome'.[98] As mentioned before, this specific function limits the use of *quiris* mainly to those texts which include political speeches. This specific use of the word is probably the reason why it is far less frequent than *populus* and *civis*: it can be found some 360 times in the works discussed, mainly in the works of Cicero, Livy and Sallust.

It is interesting, therefore, that *quiris* is sometimes used in a different context in texts from the first century AD. For example, Seneca the Younger uses the word three times in his extant work: once in the traditional context of addressing a crowd, once to describe Roman citizenship rights and once as a word for a decent citizen.[99] *Quiris* as a term used in the context of Roman citizenship rights, the *ius quiritium*, can already be found in a few instances in the works of Cicero.[100] *Quiris* used in reference to solid, old fashioned citizenship is not found in this way in the works of earlier Republican and Augustan authors. However, it is used in this way in the works of Columella and Petronius, more or less contemporaries of Seneca the Younger.[101]

91 Benveniste (1973) 273-275.
92 Plautus, *Persa* 472-475, Plautus, *Poenulus* 372.
93 Cicero, *De Oratore* 1.183: *cum quaereretur de duobus civium capitibus, et de puero, qui ex posteriore natus erat, et de eius matre.* Loeb translation.
94 Livy, *Ab urbe condita* 1.9.14: *illas tamen in matrimonio, in societate fortunarum omnium civitatisque, et quo nihil carius humano generi sit, liberum fore; mollirent.* Loeb translation.
95 Gaius, *Institutiones* 1.29-33, 1.65, 1.68, 1.71, 1.74, 1.77, 1.78, 1.80, 1.84, 1.88 1.90 and 1.91.
96 The word *populus* is used twenty-five times in the *Res Gestae*, and at on least two occasions it refers to a group of people which comprised both men and women, *Res Gestae* 22, 23. Cf. Cooley (2009).
97 Varro, *De Lingua Latina* 6.9, Livy, *Ab urbe condita* 1.24.5, 1.32.12, 9.10.7, 10.28.14, 22.10.2, 41.16.1, among others. Interestingly, Cicero does not use this construction.
98 Varro mentions that *quirites* specifically referred to inhabitants of the city as opposed to those of the countryside: Varro, *De lingua latina* 6.7.
99 Seneca the Younger, *Epistulae morales ad Lucilium* 15.7, *Naturales quaestiones* 3.16, *Thyestes* 391.
100 Cicero, *De domo sua* 35, *In Verrem* 2.31, *Pro Caecina* 96.
101 Petronius, *Satyricon* 21.1, 119, 123, Cf. Columella, *De Re Rustica* Pr. 19.

What was the relevance of *quiris* for Roman women? In a sense, the word seems to have excluded them. In the sources, it is mainly used in an all-male context to address male citizens during political meetings. This probably gave it a strong association with male civilians in their capacity as politically active citizens. Even in those cases where women were present during a speech, for example at Cicero's speech *De Domo sua*, the use of the word *quirites* makes it clear that they were not among the citizens who were addressed.

The term *ius quiritium* as a reference to Roman citizens' rights, could refer to both men and women. It is used in this way by Gaius in his *Institutiones*. However, none of the other authors discussed here used it in such a way that it is clear from the text that women could be included.

Pater familias

According to a study carried out by Saller, the term *pater familias* was central to legal texts, but 'surprisingly rare' in non-legal literary texts from the late Republic and early Empire.[102] When the term was used in non-legal sources, Saller argued, it was almost never used in relation to parental control, but only to property ownership, especially in relation to the responsible management of rural estates.[103] Saller saw this as a warning not to overemphasise the modern stereotype of the *pater familias* when looking at Roman family life: jurists aside, Roman writers hardly ever used the term *pater familias*.

Saller's finding that the term *pater familias* is rare is confirmed in this overview. It can be found in the works of more than half of all writers in this sample, albeit not in the frequency we might expect: only 100 times in all the works discussed here, even less than *quiris*. In line with Saller's argument, *pater familias* is found in the works of the writers of agricultural treatises, especially in Columella's work.

In the first century AD, Valerius Maximus typified Cincinnatus, at one time dictator of Rome: 'not only did his status as *pater familias* stand firm for him as he ploughed the four *iugera*, but the Dictatorship was conferred'.[104] What made Cincinnatus a *pater familias* was that he worked his own land and did so with dignity, even though he had only a very small farm by Valerius Maximus' standards. Both the notion of property ownership and the dignity one obtained from working this property seem central in the sources of the sample.

These two types of meaning seem to interact in the use of the word *pater familias* which can be found in this sample. Firstly, the ownership and management of property, especially land. This also includes the role of a *pater familias* as testator, the one who decided who got a share of the property after his death. The second is the respectability that that can be conferred from ownership.

102 Saller (1999) 184.
103 Ibid. (1999) 189-193.
104 Valerius Maximus, *Facta et dicta memorabilia* 4.4.7: *ei quattuor iugera aranti non solum dignitas patris familiae constitit sed etiam dictatura delata est*. Loeb translation. C.f. Valerius Maximus, *Facta et dicta memorabilia* 8.13.1.

The connection of the term *pater familias* with property ownership is not only apparent in relation to land: ownership could also be indistinct or referring to a house in the city.[105] It could also specifically relate to slave ownership.[106] But in most works a *pater familias* is first and foremost a landowner who worked or managed his own farm. It can be found in this sense during the whole period under discussion. The association with landownership and farming is so strong that *pater familias* can also be used to indicate a country dweller.[107] In texts with a more juridical focus, *pater familias* is also used to indicate a testator, for example in *Rhetorica ad Herennium*, some works of Cicero, and Gaius.[108]

In Cato's treatise on agriculture and in *Rhetorica ad Herennium*, the earliest works in the sample to use the term *pater familias*, the term is not directly associated with respectability. Neither is this the case in Livy's historical work. In the middle of the first century BC, however, the notion of respectability was so clearly connected to *pater familias* that the term could be used simply to imply that someone was trustworthy.[109] By inversion, this could also be used to mock someone's respectability, for example when Petronius uses it in his novel *Satyricon* to introduce the character Trimalchio, a rich parvenu.[110]

This last example emphasises that wealth in itself did not make someone a *pater familias* in the eyes of the Romans.[111] Certain behaviour was expected: a *pater familias* had to care for his property and actively strive to improve it. The notion that a Roman had to be diligent and industrious to be a good *pater familias* can be found in the work of a number of writers, especially in Columella.[112] A *pater familias* had to work for the good of his *familia*, the *res familias*, in the same way that a magistrate worked for the good of the state, the *res publica*.[113] Not only for his own good: he managed the property which he had inherited and had to hand down to the next generation. He had to be temperate in his expenses, in order to keep the inheritance together.[114] Preferably he would increase it, according to Seneca the Younger: 'we should play the part of a careful *pater familias*; we should increase what we have inherited'.[115] In contrast, a bad *pater familias* was considered to be a Roman who abandoned his property or lost it through mismanagement.[116]

105 Cicero, *In Catilinam* 4.12, Livy, *Ab urbe condita* 26.36.8, Cornelius Nepos, *De viris illustribus: Atticus* 13.1, Seneca the Elder, *Controuersiae* 7.5.
106 Seneca the Younger, *De ira* 3.35.2, Columella, *Res rustica* 1.3.36.
107 Cicero, *In Verrem* 2.3.120, Cicero, *Pro Roscio Amerino* 120, Cicero, *In Calpurnium Pisonem* 51, Seneca the Younger, *Epistulae morales ad Lucilium* 122.6
108 *Rhetorica ad Herennium* 1.12.20, 1.13.23, Cicero, *De legibus* 2.48, Cicero, *De inventione* 2.42.122, Cicero, *Topica* 21, Gaius, *Institutiones* 2.44.
109 Cicero, *In Verrem* 2.4.58.
110 Petronius, *Satyricon* 27.2, cf. *Satyricon* 8.2, 31.6.
111 Cicero, *Pro Quinctio* 55.
112 For example, Columella, *Res rustica* 1.1 and 1.4.
113 Cicero, *Pro Roscio Amerino* 43, Cornelius Nepos, *De viris illustribus*: *Atticus* 4.3, Columella, *Res rustica* 1.1. Cf. Buckland (1930).
114 Cornelius Nepos, *De viris illustribus: Atticus* 13.1.
115 Seneca the Younger, *Epistulae morales ad Lucilium* 64.7: *Sed agamus bonum patrem familiae: faciamus ampliora, quae accepimus.* Loeb translation.
116 Varro, *Res rusticae* 2.3 and Columella, *Res rustica* 1.12, Seneca the Elder, *De beneficiis* 4.27.5, 4.39.2.

The connotations in the term *pater familias* of management of ownership (especially agricultural land), of being a testator, and of serving as a norm of good, properly Roman behaviour[117] are all connected to the *familia*. In this context, *familia* seems not to refer to a group of related kin, but specifically to the assets of this group.[118] Within the sample there is hardly any direct connection between the term *pater familias* and parental authority. The few exceptions all have to do with ownership as well, such as, for example, Cicero's remark in *De Legibus* that 'if the *pater familias* approves a gift made by a person under his authority, then the gift is valid'.[119]

Although there seems to have been a stronger relation between *pater familias* and *familia* as property than Saller suggests, in broad lines his conclusion that the term *pater familias* was not connected to paternal control in non-legal text holds firm. However, in this sample there is no proof for his second argument that *pater familias* was a legal construct which was abundant in legal sources. Saller used late Republican and early Imperial literary texts and compared them with the *Digesta*. In this legal compilation from the sixth century AD, the *pater familias* is indeed often referred to. But in neither the more legally oriented texts by Cicero nor in Gaius' *Institutiones* is *pater familias* used in this way.

Gaius used *pater familias* only four times in his whole work. The term is not mentioned in the context of family relations, for example when Gaius discussed paternal authority.[120] The term is even missing entirely from the first book of the *Institutiones*, which is about the structuring of family life. When it is used, it is in relation to the transmission of property.[121] This suggests that Gaius' use of the term is closer to that in the non-legal literary texts in this overview than to that in the *Digesta*.

Close reading of the first book of the *Institutiones* shows that Gaius always uses the word *pater* when he refers to the person with paternal authority. The word *pater* is used 52 times in this first book. In almost half of the instances there is no doubt that he is referring to the person who has *patria potestas* over the members of his *familia*. In most occasions it is also clear that *pater* refers to anyone who had *patria potestas*, including fathers, grandfathers and adoptive fathers. This suggests that for Gaius one of the meanings of the word *pater* was 'the one who has *patria potestas*', paternal power, over his descendants in the male line. As we have seen above, *familias* in the term *pater familias* seems mainly to refer to the property of the *familia*, not to the related kin which is part of the *familia*. This suggests that the use of *pater* by Gaius is not just a shorthand for *pater familias*, but that it denotes a distinct meaning.

117 Although *pater familias* as a yardstick of good behaviour could also be used to typify non-Romans: Cicero, *Pro rege Deiotaro* 27, Cicero, *Pro Flacco* 71, Julius Caesar, *Bellum Gallicum* 6.19.3.

118 Including non-corporeal assets like the religious cult of the *familia*: Cicero, *De Legibus* 2.48.

119 Cicero, *De legibus* 2.50: *quod pater familias in eius donatione, qui in ipsius potestate est, adprobavit, ratum est*. Loeb translation. Cf. Cicero, *Pro Roscio Amerino* 43.16, Seneca the Elder, *Controversiae* 7.5.

120 Gaius, *Institutiones* 1.27.

121 Gaius, *Institutiones* 2.144, 3.83, 3.154a, 4.77.

Whether *pater* could also have this distinct meaning in non-legal texts is difficult to establish. There are a number of cases where *pater* clearly refers to the person with paternal authority, for example, where Seneca the Elder remarks that 'the *filius familias* will be subject only to his *pater*; he is free of all other dependence."[122] The problem with this and other examples, however, is that they probably refer to a person who is both the actual father and the one who has paternal authority. Whether *pater* was also used in situations in which a grandfather had *patria potestas* cannot clearly be distinguished. An indication, but certainly no proof, that this could have been the case is the use of the word *pater* for forefathers in the male line, which indicates a broader meaning to the word and connects it to the generations who had paternal power before the actual father of a person.[123]

What is the relevance of this overview of the use of *pater familias* for female citizenship? We have seen that *pater familias* is used as a norm of behaviour. Furthermore, it can be used in the senses of 'property owner', especially to denote ownership of agricultural land, and of 'testator'. Actual fatherhood is not required and not even always supposed, as is made clear by Cicero who talks about 'the *patres familiae* who have children."[124] *Pater familias* in the sense of 'owner' or 'testator' was relevant to female citizens too. On at least one occasion when Gaius uses *pater familias*, it is in a context which is also relevant to female property owners.[125]

Furthermore, women who owned estates could also act as a diligent *pater familias*. When Varro in his agricultural treatise talks about the good *pater familias*, he includes the example of an aunt who had a successful farm along the Via Salaria outside Rome.[126] What we do not possess is any evidence that a woman was ever called a *pater familias* directly, nor that there was an alternative term for female property owners: *mater familias* had the different meaning of 'a respectable married woman'.[127] As in the case of *populus*, we can see that women were sometimes tacitly included in the term, but they were not explicitly denoted as such: on the surface, a *pater familias* could only be a man.

Matrona, vidua *and* mater familias

Like *pater familias*, the words *matrona, vidua* and *mater familias* are relatively rare in the texts in this overview. The word *matrona* is used more than a hundred times, more often than *pater familias*. However, both *vidua* and *mater familias* can be found less than fifty times in the works discussed. Notable is the lack of use in the texts of Cicero, especially for *matrona* and *vidua*

122 Seneca the Elder, *Controversiae* 7.4.4.: *Filius* (..) *familiae nulli poterit servire nisi patri; omni alia servitute liber est*. Loeb translation with adaptation for *filius familias*. Other examples: Cicero, *Pro Caelio* 36, Seneca the Younger, *De beneficiis* 2.21.4.

123 For example, Cicero De Legibus 2.3, 2.19, 2.27. Cf. Van Galen (forthcoming).

124 Cicero, *Pro Roscio Amerino* 43.16: *patres familiae qui liberos habent*. Loeb translation.

125 Gaius, *Institutiones* 2.144. Cf. Gardner (1995), Saller (1999).

126 Varro, *De re rustica* 3.2.14-16. Cf. Gardner (1995) 378.

127 See below and Saller (1999) 193-196.

which he used only 12 and 3 times respectively. *Matrona* is used most often in Livy's work, which comprises half of all instances. The use of the word within the other texts is fairly constant. During the whole of the period covered, *matrona* retains the connotation of an honourably wedded wife, with elite overtones. If there was a special citizen status related to the word *matrona*, it was probably only related to the wives of senators and *equites* who were responsible for a number of cults during the Republic.[128]

The idea that the natural state of a fertile adult woman was to be married is inherent to the word *vidua*, meaning something like 'lacking two-ness'.[129] Most references to *viduae* in this overview do not present them as a distinct group in Roman society. The exceptions are a few references in Livy's work which connect *viduae* to property ownership in the early and middle Republic.[130] All of these refer to early Rome, not to the time under consideration in this study. At most they imply that, in the Augustan era, it was thought that *viduae* were the only adult female citizens *sui iuris* in early Rome (except for the six Vestal Virgins), probably based on the assumption that all married women were in the power of their husbands.

The connection between *viduae* and property ownership is not made in the period under discussion, with a possible exception at the very start of the period. In the play *Cistellaria* by Plautus, it is mentioned that a women had to stay unmarried to own money herself. However, since this refers to a prostitute, it cannot be seen as unequivocal proof.[131]

According to Cicero in his *Topica*, written in 44 BC, *mater familias* was a title for a woman who had come under the *manus*, the power, of her husband.[132] The way in which Cicero presents it here suggests a very specific meaning and he framed it as an argument derived from Roman law. However, this specific meaning of the word *mater familias* can only be found in this fragment within this overview: there are no other explicit references to it. Other authors used it without restricting it to *manus* marriage, and even to indicate non-Roman women.[133]

In most instances, *mater familias* is used to refer to a respectable married woman. In this usage it can be found during the whole period under discussion. *Mater familias*, used in this way, had strong undertones of respectability, dignity and sanctity.[134] This respectability was considered such a serious concern, that the example of the sexual violation of a *mater familias* (and freeborn children) was sometimes used to suggest that the very fabric of Roman society was under threat, either by a person or a specific situation. It was a rhetorical tool to indicate that the social fabric of society was under threat of breaking down.[135] In this sense it was related to *pater familias*: not as a female alternative for the term *pater familias*, but to indicate the respectable consort of the good *pater familias*.

As already mentioned, *matrona*, *vidua* and *mater familias* were not often used in the sources in this overview. When they are found in the texts, they are hardly ever used to describe the status of a group of female citizens. Only for *vidua* are there some indications that it could have been used as a term for women *sui iuris*, but if this was ever the case it was probably no longer applicable in the period under discussion. *Matrona* and *mater familias* are more often used to underline the respectability of married women. In this sense, they do not relate to female citizenship as such, but to the status of respectable married male citizens.

Results of the overview

This overview was started with two objectives. The first objective was to discern whether there was a development in the meaning of a given word over time. The second objective was to see whether women were included in this terminology. We have seen that the use of citizenship terminology was mostly limited to *populus* and *civis*. *Populus* in particular is often used, almost four thousand times in a total corpus of more than three million words. *Civis* can be found one and a half thousand times. The other words discussed here, *quiris*, *pater familias*, *matrona*, *vidua* and *mater familias* were relatively rare: they range from a few dozen to a few hundred instances in this sample.

The use of the words seems more or less constant during the whole period. Only for the word *quiris* is there a possible development in meaning from the first century BC onwards. For *pater familias* and *vidua* there are also some indications that their meaning developed over time, but if this was the case than it was not during the period under discussion, but probably later for *pater familias* and earlier for *vidua*.

Were women included in the terminology? Only in the use of *civis* is the inclusion of women as citizens fully acknowledged. Women were probably not included when a crowd was addressed with the word *quirites*. In both the use of *populus* and *pater familias* we see the interesting element that women are not explicitly excluded, but not explicitly acknowledged either.

There is a certain tendency in the texts used in this sample to present these words as male-only and to ignore the fact that the situations described with these words did include both male and female citizens. This put Roman women in a sort of twilight situation. They were citizens. They could not openly participate in politics and the military, but apart from that there is no indication that they were excluded from other elements of citizenship. At the same time, they were rarely acknowledged as such. There is a strong preference in Latin literature for male citizens, but this obviously did not exclude women from the citizenship: it only made them less visible.

128 Livy, *Ab urbe condita* 5.25.8-9, idem, 27.37.7-10, Valerius Maximus, *Facta et dicta memorabilia* 5.2.1.

129 *Vidua* referred to adult women who were no longer married. According to the Augustan jurist Labeo the word *vidua* could also refer to a lack of sound reasoning: *Digesta* 50.16.242.3. Cf. Treggiari (1991) 498. It is also used in the male *viduus*: Plautus, *Mercator* 4.6.13, Ovid, *Ars Amatoria* 1.102, *Heroides* 8.86.

130 *Viduae* support the war effort by contributing to the treasury: Livy, *Ab urbe condita* 24.18.13-14, idem 34.5.10, idem 34.6.11; *viduae* registered in the Roman *census*: Livy, *Ab urbe condita* 3.3.9, cf. Livy, *Periochae* 59; *viduae* liable to pay taxes: Livy, *Ab urbe condita* 1.43.9, see also Cicero, *De re publica* 2.36.

131 Plautus, *Cistellaria* 40-46.

132 Cicero, *Topica* 3.14. For a discussion of this fragment, see chapter 5.4

133 Julius Caesar, *Bellum Gallicum* 1.50, 7.26.3, *Bellum Hispaniense* 19.3, Varro, *Res rusticae* 2.10.8.

134 Treggiari (1991) 279-280. Cf. *Rhetorica ad Herennium* 4.12, Cicero, *in Verrem* 2.5.137, Livy, *Ab urbe condita* 8.22.3.

135 *Rhetorica ad Herennium* 4.8.12, Sallust, *Bellum Catalinae* 51.9, Cicero, *In Verrem* 2.2.136, 2.4.116, *In Catilinam* 4.12, *Philippicae* 2.105, 3.31.

The tendency to present citizenship terminology as male-only is a possible reason why words which could indicate groups of female citizens were rarely used. Words like *matrona* and *mater familias* are not only rare in this sample, but they also tend to be used mainly in situations which refer to the position of Roman women in relation to Roman men. They do not underline the position of women as citizens in their own right, but, in a way, confirm that male citizens are central.

One specific remark on *pater familias*. Although this term is often seen as central to the understanding of Roman society, the actual frequency with which it is found in the works discussed is intriguingly low, even lower than, for example, *matrona*. This confirms Saller's finding that *pater familias* was used to only a limited extent by writers from the period under discussion. When it is used, it is used mainly to denote the owner/testator of the property of the *familia* and it is rarely if ever used to indicate parental authority. What it did not confirm is Saller's second finding that *pater familias* in the meaning of parental authority was abundant in legal sources. On the contrary, in the *Institutiones* Gaius used *pater familias* in the same way as it was used in the non-legal sources in this overview and never in the meaning of parental authority.

Instead of *pater familias*, Gaius used the word *pater* when he described the person who wielded parental authority. This seems to have been a distinct meaning of the word *pater* which also included grandfathers and adoptive fathers with parental authority. An overview of non-legal texts confirms that in these texts *pater*, rather than *pater familias*, is also used to refer to someone with parental authority. However, it was not possible to confirm that this is a distinct meaning of the word, because it could not be ruled out that the *pater* in these instances was both the person with parental authority and the real father.

2.5 Conclusion: the meaning of citizenship

In this chapter we have looked both at the discussion of Roman citizenship in modern literature and at the use of citizenship terminology in Roman sources from the late Republic and the early Empire. We concluded that both modern literature and Roman sources have a tendency to make citizenship of Roman women somewhat invisible.

What we have seen is that Roman citizenship is rather narrowly defined in most modern research. There is a tendency to look at public citizenship from a state centred perspective, which emphasises the role of citizens as political participants, soldiers and tax-payers. Because active political and military participation was only open to men, this leads to an emphasis on male citizenship and leaves the roles of women as Roman citizens out of sight.

It has been argued that it is possible to take a broader interpretation of citizenship and see it as a cluster of meanings which, besides political and military participation also comprises elements such as legal status, identity, a focus of loyalty, a requirement of duties, an expectation of rights and norms for good behaviour. Political and military participation are only two elements of this, which became gradually less important as citizenship spread and the Republic was transformed into the Empire. In this broader sense citizenship is relevant to both male and female citizens, because it emphasises duties and rights and norms of behaviour which were seen as fitting for Roman citizens. It was also directly relevant to the lives of individual citizens, because their possibilities for action, for example to make transactions, to marry, to seek redress in court, were influenced by their status as Roman citizens.

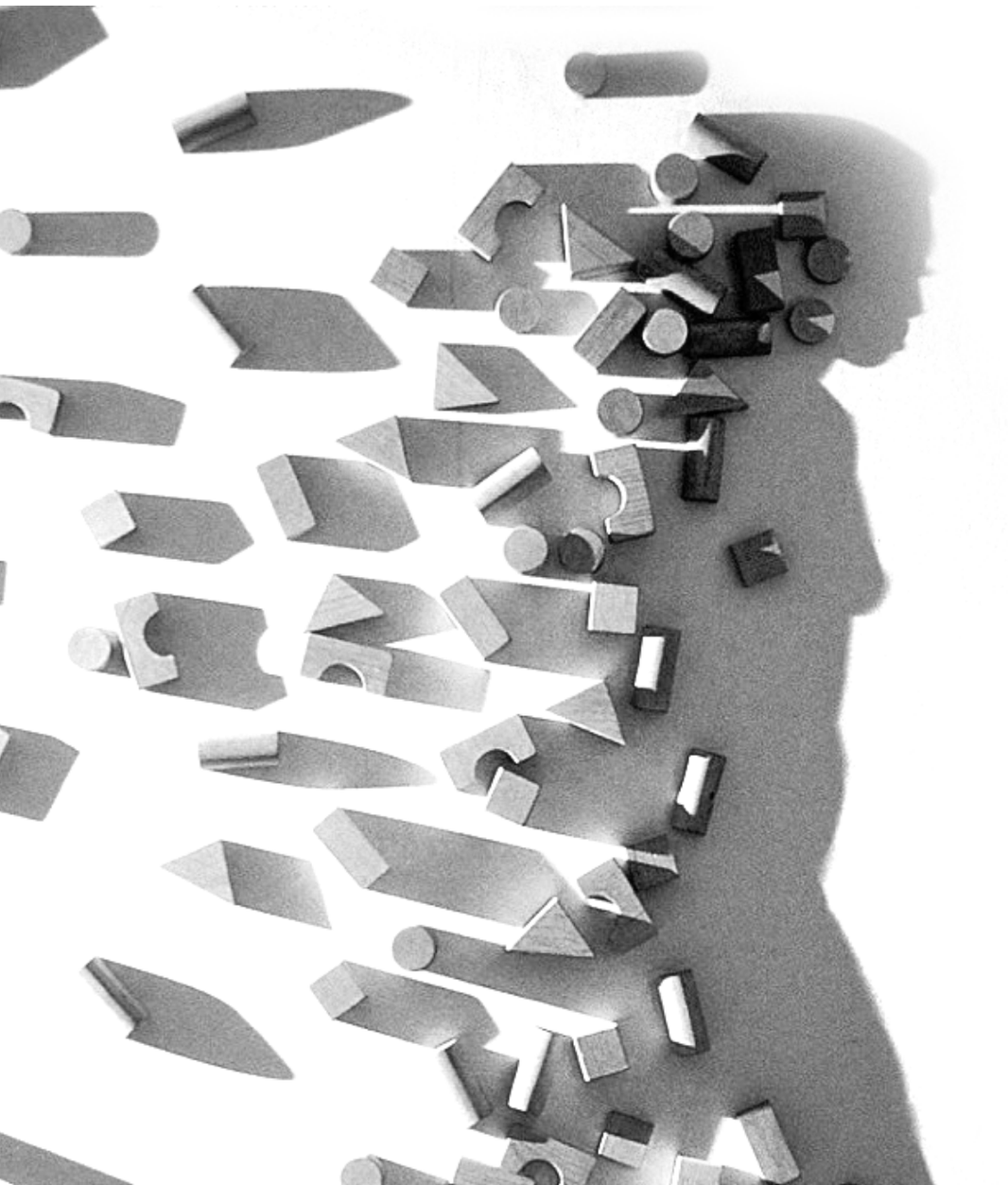
This broader interpretation of citizenship is not only relevant to both male and female citizens, but also connects the public and the private side of citizenship. Research into the private side of citizenship was once mainly the domain of Roman legal experts. Nowadays, research into the personal lives of Romans is stronger influenced by the field of family research. Within this field there is a tendency to correct a perceived earlier over-emphasis on legal constructions. This had led to an inclination to see the legal, and probably also social, structure of Roman society and family life as less relevant, and to present Roman law as presenting an idealised picture of Roman society with only a limited connection with social reality.

Finally, I have looked at citizenship terminology within the works of Roman prose writers from the late Republic and the early Empire. The conclusion is that there was not a word which specifically described female citizens or even women *sui iuris*. Of the more general terms for citizenship, *civis, populus, quiris* and *pater familias*, only in the case of *civis* is it clear from the sources that women were included, and from the earliest extant Roman literature onwards. For *quiris/quirites* as a way to address citizens in political meetings or legal courts it seems reasonably clear that women were not included, although the term *ius quiritium* as a way to describe Roman citizenship rights could certainly be used of women.

The use of *populus* and *pater familias* seems to imply that women were sometimes included in their meanings, for example in *pater familias* when a property owner or a testator is meant. However, this is not specifically acknowledged, not even for *populus*, although this could also be due to the amorphous character of this word which always comprised a larger group of citizens. The habit of Roman writers of accepting women in certain citizenship roles without acknowledging this as such placed female citizenship in a sort of twilight situation: the point that women were citizens was brushed over in order to create a picture of all-male, or at least masculine, citizenship.

CHAPTER 3

SUI IURIS: WOMEN AND THE FAMILIA



As shown in the previous chapter, there is a tendency to see Roman citizenship preferably as something male. This makes it difficult to comprehend the position of Roman women as citizens. It also obscures the fact that a woman could have a position as a citizen, independent from her male relatives. In this chapter, the legal basis for this position is studied, based on the question of how the position of Roman female citizens was constructed in legal sources.

A contested will

In the Augustan era, a long funerary inscription was erected for an unknown elite woman. In this inscription, traditionally known as the *Laudatio Turiae*, the husband of the woman praises her merits and gives some information about her life.[1] Part of it recalls a crisis that developed after the death of her parents when she was a young, newly-wed woman, presumably somewhere in the 40s BC:

> Then there was an attempt to make both you and your sister recognize that the will, in which we were heirs, was broken, because of the coemptio[2] your father had made with his wife. In consequence (it was said), you along with your father's entire estate automatically would revert to the guardianship of those who were pursuing this matter; your sister would be cut out of the inheritance altogether, because she had come under the manus of Cluvius. With what resolution you dealt with all this, with what present of mind you resisted, I know full well, even though I was then away.[3]

Some men, not directly related to the woman, claimed that her mother had become part of her husband's *familia* through *coemptio* recently. This meant her mother had become one of her father's heirs and should have been mentioned as such in the will to make it valid. If the will was void, the woman would become sole heir on intestacy, because her sister had become part of the *familia* of her husband Cluvius upon marriage. The woman herself had become *sui iuris* when her father died and the men who had challenged the will tried to force themselves upon her as her *tutores*, because they claimed to be part of the same *gens*. The woman tried to fend off the men and it was she, not her husband, who took action against them.[4]

1 *Corpus Inscriptionum Latinarum* 6.1527, 6.37053, *L'Année épigraphique* 1951, 2. Cf. Hemelrijk (2004) 185-97, Horsfall (1983) 85-98.

2 *Coemptio* was one of the ways of creating *manus*: as the result of *coemptio* a woman was transferred from the *familia* in which she was born (her 'family of orientation') to her husband's *familia* (her 'family of procreation'). She became part of her husband's *familia* and subordinate to him or his *pater familias*. On *coemptio*, see chapter 3.2.

3 *Laudatio Turiae* 13-17 (*Inscriptiones Latinae Selectae* 8398): *temptatae deinde estis ut testamen[tum] quo nos eramus heredes rupt[um diceretur] coemptione facta cum uxore ita necessario te cum universis pat[ris bonis in] tutelam eorum qui rem agitabant reccidisse sororem omni[no illius hereditatis] fore expertem quod emancupata esset Cluvio. Qua mente ista acc[eperis qua iis prae] sentia animi restiteris etsi afui conpertum habeo.* Translation Osgood (2014) 156-157.

4 On the legal details of this case, see De Ligt (2001), see also Osgood (2014) 18-24.

This inscription is a reminder of the effects that the *familia* could have on Roman citizens at crucial moments in their lives. It relates to the different effects of a will vis-a-vis the rules of intestate inheritance, the influence of the *gens*, the control of a woman's property by *tutores*. It also shows two different effects that marriage could have on the position of a Roman woman with respect to her husband's *familia*: either she became part of his *familia* as an *alieni iuris* or she stayed out of it and remained part of her natal *familia*. It was the change in state between these two possibilities within the marriage of the woman's parents which had triggered this crisis.[5] The woman herself remained part of her natal *familia* upon marriage and became *sui iuris* after her father's death. This gave her the possibility to begin legal proceedings, even without the involvement of her husband. Her sister could not do so, because she was *alieni iuris*. Furthermore, she and her husband Cluvius had no formal role in the crisis because they belonged to another *familia*.

This example shows the relationship between *familia*, patrilineage, property and inheritance in Roman law. It also makes it clear that the *familia* could be both an obstacle and a tool for women at crucial moments in their lives. This patrilineal system was based on a preference for men, but offered some leeway for women who had become *sui iuris*. The example also shows that in Roman law, society was interpreted as a network of interacting *familiae*, each with a citizen *sui iuris* as its head. Although this does not suggest that all citizens lived in a family structure resembling the *familia* or even strove to do so, it does suggest that the *familia* was the norm on which decisions by magistrates and priests were based.[6] The position of a citizen within the framework of the *familia* mattered, because citizens had to relate to it and judged other members of society by it.[7]

The *Laudatio Turiae* not only offers examples of the different effects of *familia* on the life of citizens, but it can also be seen as a reminder not to consider the *familia* as something unchangeable. This crisis could probably not have developed in the way that it did a century earlier or later. A century earlier, the chances of the woman and her mother being married without *manus* were probably slimmer and the possibility of taking legal action on her own account more limited. Some forty years after the event, by the time this inscription was made, the rules of intestate inheritance had been modified, the role of the *gens* had diminished and marriage with *manus* had probably become rare. A century later it was no longer possible for agnates or members of the *gens* to claim guardianship. By looking at the course of women's lives I will not present the *familia* as something unchanging, but will try to indicate where changes took place.

5 Watson (1967) 25, Gardner (1986) 12-13.

6 Gardner (1993) 52-84. This does not mean that *familia* was unrelated to actual family life: it set a norm for family structuring. For example, Cicero's main point of attack on Clodius' adoption is his breaching of the *familia* norm through his adoption by a younger man; Cicero, *De suo domo* 34-37.

7 Even in a society in which people are expected to adhere to a rather rigid organisational structure, the rigours of life often force people to structure their families according to their own economic and social needs. This does not mean that they dismiss the formal social structure, but they adapt it to their needs. This is visible in more recent societies where there is a gap between formal social structure and family formation and where there is more information available on actual family structure, for example in late-imperial China: Stockard (1989), Gates (1996) 96.

In this chapter, the question will be studied of how the position of Roman female citizens was formalised in a society where male citizenship was the norm. This will be done by discussing the legal rules which framed the lives of Roman women. In the first section, an overview will be given of some legal and anthropological aspects of the *familia*. In the subsequent sections, we will look at the specific circumstances of women with regard to property, marriage and inheritance.

I want to emphasise here that the centrality of the *familia* in Roman private law meant that the words we normally associate with the family must be interpreted in the context of the *familia*. In the last chapter it was shown that a *pater*, as in *pater familias*, did not necessarily mean a biological father. *Pater* could refer to any man who had *potestas* over his agnatic descendants or who was legally capable of doing so, if he had descendants. The frequent use of the shorthand *pater* for *pater familias* means that only the context of a text can tell us whether we are dealing with someone's father or with someone who is the citizen *sui iuris* within a *familia*.

The same holds true for other words. *Filii familias* may suggest a number of underaged sons, but in legal terminology it implies people who were in the *potestas* of their *pater familias*, independent of age.[8] The term could include both men and mixed groups of men and women: a thirty five-year old married man with children and his forty-year-old sister could still be termed *filii* in the legal sense. A Roman ward, a *pupillus*, was an under-age child in need of a *tutor*.[9] Whether his or her biological father or mother were still alive was irrelevant. A Roman child whose father had lost his citizen status was considered an orphan, but a child who still had his grandfather as his *pater familias* was not, not even when both the child's parents were dead.

8 Gardner (1993) 52-84.
9 Du Plessis (2010) 136.

3.1 *The Roman* familia

Of central relevance to the woman in the *Laudatio Turiae* was her position within the *familia*. She was probably very young, but she could take legal action on her own because she was a citizen *sui iuris*. What does that mean? An overview of some relevant works in the field give the following translations of sui iuris: 'in their own power'[10], 'in his own right', [11] 'under his own authority'[12], 'those who were (legally) independent'.[13] This legal independence is further explained by Gardner with the remark that 'the entire responsibility for action on behalf of the *familia* and for prosecutions both civil and criminal, lay with the individual *sui iuris*'.[14] Finally, Buckland defines *sui iuris* as 'in no *familia* but his own'.[15]

All these translations emphasise in a way the independence of the citizen *sui iuris*: he or she was not subordinate to someone else and could take legal action. His or her own power or own right was based on the position of the citizen *sui iuris* as the head of the *familia*. Whether this *familia* consisted of only the citizen *sui iuris* or of other people as well was irrelevant: the simple point that a Roman citizen was not in the power of another citizen made him or her into a citizen *sui iuris* and, therefore, into a head of a *familia*. The most fundamental definition, therefore, is Buckland's: the citizen *sui iuris* is the head of his or her own *familia*.

Defining the citizen *sui iuris* as the head of a *familia* calls for an explanation. At first sight, it seems very close to the definition of a *pater familias* as 'head of a family' which is used in some Latin dictionaries.[16] These definitions, however, presume a modern western concept of family and it remains to be seen whether the Roman *familia* can be equated to these modern concepts.[17] For this reason, I will not translate the term *familia* but I will try to identify what Romans seem to have understood by it in this section.

To see the citizen *sui iuris* as the head of a *familia* may seem like a very legalistic way of looking at the subject, and, in a way, a step backwards from the recent research into ancient family life. *Familia* is sometimes portrayed as an unchangeable legal fiction, and placed almost in opposition to the prevailing western uses of the word family. This view is most forcefully promoted by Gardner.[18] She devoted a book to the interrelation of family and *familia*, which is mainly concerned with citizens either joining or leaving the *familia*.[19] For Gardner, the *familia* is the family group under the authority of the male *pater familias*.[20]

10 Crook (1967a) 35; Saller (1994) 76.
11 Kaser (1971) 58: 'eigenen Rechtes', Hin (2013) 272.
12 Kaser (1971) 58n5: '[*sui iuris*] scheint von der Vorstellung einer Gewalt an der eigenen Person auszugehen'.
13 Johnston (1999) 30; Saller (1994) 183; Gardner (1993) 3; Hin (2013) 272.
14 Gardner (1993) 186.
15 Buckland (1963) 101.
16 For example in *Lewis and Short*, *Cassel's* and the *Oxford Latin Dictionary*.
17 See Saller (1984a) 337 for a critique on the definitions of *familia* used in dictionaries.
18 Gardner (2011) 362, cf. Gardner (1993) 52-84.
19 Gardner (1998).
20 Gardner (2011) 362: 'in strict legal definition (D 50.16.195.2), [the familia] consisted of a legally independent adult male Roman, the pater familias, and the free persons who were under his legal control (potestas). These were his children, born in legal marriage and adopted (and grandchildren, etc., if any, in the male line only) and his wife (if in manus).'

This definition is based on *Digesta* 50.16.196.2, which will be discussed below. A legal definition of *familia* can never cover the experience of family life for every Roman citizen, that is certainly true. However, I hope to show that the *familia* can be seen as more than a static and notional way of describing the Roman family in legal terms.

Gaius does not give an overview of the different meanings of *familia* in his *Institutiones*. His use of the term *familia*, however, does show that for him the *familia* meant a number of different things. The first is a group of related family members living under the authority of a *pater familias*, as in the remark that a woman married with *manus* 'would pass into her husband's *familia* in the position of that of a daughter'.[21] The second is property. In book 2 of the *Institutiones*, Gaius remarks specifically that *familia* can mean *patrimonium*.[22] *Patrimonium*, from *patris munia*, 'matters/affairs of the *pater familias*', can mean both property and a paternal inheritance, patrimony.[23] In this instance, *patrimonium* was used to denote the property of the *familia* which could be inherited.[24]

A third meaning of *familia* is a body of slaves in the possession of one owner, as mentioned in the remark that citizens in certain condition may free their entire *familia* of slaves.[25] A possible fourth meaning is patrilineage, a group of persons who could trace their descent through the male line to a common ancestor. The references to patrilineage are, however, ambivalent. For example, when Gaius remarks that 'the Senate is not thinking of descendants of patrons who are in another *familia*', this could refer either to a different family group under the authority of another *pater familias*, or to a different patrilineage.[26]

The ambivalences show how difficult it sometimes is to distinguish between the different meanings of the word *familia*, especially between that of 'family under a *pater familias*' and that of 'patrilineage'. Whether the Romans also had problems distinguishing between these different meanings remains an open question. It was probably not always necessary to tell them apart. Interestingly, the meaning of *familia* which is used the most is that of property (*patrimonium*). This meaning is also the most clearly identifiable. However, the use of *familia* in the sense of 'property' within the *Institutiones* is limited to discussions about inheritance. Furthermore, the fact that this is the only use of *familia* for which an explanation was deemed necessary could mean that it was not a use which was familiar to most Romans.[27] Both the meaning of 'property' and the meaning of 'body of slaves' imply that the concept of *familia* referred not only to family connections, but also to the authority over labour and over the management and distribution of property. In this sense, the *familia* was more than a group of related persons under one authority. It was also what Goody calls a 'corporate group': a group which shares common property and a common labour pool.[28]

21 Gaius, *Institutiones* 1.111: *in familiam viri transibat filiaeque locum optinebat.* Translation Gordon and Robinson (1988), adapted for 'position of that of'. For this type of marriage, the so-called *manus* marriage see paragraph 3.2. Cf. Gaius, *Institutiones* 2.137.

22 Gaius, *Institutiones* 2.102.

23 Definitions of *patrimonium* in Brill's New Pauly and Lewis and Short Latin dictionary. *Patrimonium* as property is mentioned in Gaius, *Institutiones* 1.33, 2.1, 2.102, 2.224-226 and 3.42.

24 Property did not only mean goods, but also any unfree people who were part of the *familia*, like slaves and citizens in bondage. *Familia* in the sense of 'property and *patrimonium*' is found in Gaius, *Institutiones* 2.102, 2.103-106, 2.109, 2.115, 2.116, 2.119, 2.121, 2.222, 2.149a.

25 Gaius, *Institutiones* 1.44. Cf. Gaius, *Institutiones* 4.72a.

26 Gaius, *Institutiones* 3.71: (...) *quia senatus de his liberis patronorum nihil sentiat, qui aliam familiam sequerentur*. Translation Gordon and Robinson (1988). Cf. Gaius, *Institutiones* 1.156, 1.195c.

27 *Familia* as property was rarely used outside legal discussions, according to Saller (1994) 75. However, see chapter 2.5 for a discussion about the use of the term *pater familias* for estate and slave owners.

Ulpian and the meaning of familia

A more exhaustive overview of the different meanings of *familia* was given by the third-century AD jurist Ulpian in his work on the Edict. This work did not survive, but Ulpian's definition was taken over in chapter sixteen of book fifty of the *Digesta*, which was aptly named *On the meaning of expressions*.[29] The editors of the *Digesta* also added a fragment from Gaius work on the provincial edict.[30] Together, these two fragments give an overview of what *familia* meant according to the Roman jurists in the second and third centuries AD. Modern definitions of the Roman *familia* are almost always based on *Digesta* 50.16.195, especially on fragment 50.16.195.2, which for example formed the basis of Gardner's definition used above.[31] The risk of using parts of this definition, however, is that we lose the context and the consistency of Ulpian's explanation. Therefore, it is worthwhile to mention them in full. *Digesta* 50.16.195 consists of a pretext and five fragments, while D50.16.196 has a pretext and one fragment. To start with the first pretext:

> *Digesta* 50.16.195 pr: Ulpian, Edict, book 46. The use of a word in the masculine gender is usually extended to cover both genders.[32]

The pretext of *Digesta* 50.16.195 refers to the origin of the fragment and makes an opening remark on the use of the masculine gender to cover both genders. Ulpian stresses that, although the tradition of legal texts (and the use of grammar in Latin) leads to a text written in the masculine gender, legal text normally cover the feminine as well. This pretext is one of a number of fragments in the *Digesta* which emphasises this point.[33] One fragment also remarks that it is not desirable to turn this around and to take term which specifically refers to women to include men.[34]

28 Goody (1990) 70-71, 78.

29 *Digesta* 50.16, *De verborum significatione*. Ulpian's definition is fragment 195.

30 *Digesta* 50.16.196. Gaius work on the provincial edict in thirty books does not survive either, although fragments of this work survive in the *Digesta*.

31 See also Saller (1994) 75-80; Dixon (1992) 2-3; Bradley (1991) 3n4; Evans Grubbs (2002) .

32 *Digesta* 50.16.195 pr.: *Ulpianus 46 ad ed. Pronuntiatio sermonis in sexu masculino ad utrumque sexum plerumque porrigitur.* Translation Watson (1985).

33 Other fragments which that make this point are: *Digesta* 50.16.152 (Gaius), *Digesta* 31.45.pr (Pomponius), 32.62 (Julian), 50.16.1 (Ulpian), 50.16.40.1 (Ulpian), 50.16.51 (Gaius), 50.16.52 (Ulpian) and 50.16.84 (Paul). All these jurists are from the second or third centuries AD.

34 *Digesta* 31.45.pr. (Pomponius).

Ulpian's remark is relevant to this study, because almost every Roman law text is written as if the subject is a man. This use of the masculine to cover both genders does not only emphasise the preponderance of the masculine form in Roman law and grammar, but it also tends to make the role of Roman women in law texts almost invisible.[35]

Only when women are specifically mentioned can we be sure that a certain rule is relevant to women only. In all other cases we have to assume that both women and men were meant, although the use of the term '*plerumque*' ('usually' or 'generally') by Ulpian serves as a warning that this may not always be the case. When it was obvious to the Romans themselves that something could only refer to men they did not specifically exclude women, for example when the power of a father over his offspring is discussed. In the case of *Digesta* 50.16.195, we may assume that Ulpian's emphasis on inclusion of women means that women are included in the following definition of *familia*.

> *Digesta* 50.16.195.1. Let us consider how the designation of *familia* 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 *familia*". The designation of *familiae*, however, refers to persons when the law speaks of patron and freedman: "from that *familia*" or "to that *familia*"; and here it is agreed that the law is talking of individual persons.[36]

In the first fragment, Ulpian draws a distinction between the use of *familia* as things (*res*) and as persons (*personae*). *Familia* in the meaning of *res* in this case is close to the definition we have seen in Gaius' *Institutiones*: it denotes not only property, but all material and immaterial things within the *familia*. That this usage is old is emphasised by Ulpian by referring to its use in the Law of the Twelve Tables, the oldest Roman legal text, which was written down around 450 BC.[37]

> *Digesta* 50.16.195.2. The designation of *familiae* relates also to any kind of body which is covered by a legal status peculiar to its members or common to an entire related group. We talk of several persons as a *familia* under a peculiar legal status if they are naturally or legally subjected to the power of a single person as in the case of a *pater familias*, a *mater familias*, a *filius familias,* a *filia familias*, and those who thereafter follow them in turn, as, for instance, grandsons and granddaughters, and so on. Someone is called *pater familias* if he holds sway in a house, and he is rightly called by this name even if he does not have a son; for we do not only mean his person but also a legal status; indeed, we can even call an orphan (*pupillus*) a *pater familias*. And when the *pater familias* dies, all the individuals who were subjected to him begin to hold their own *familia* for as individuals they enter into the category of *pater familias*. And the same will occur in the case of someone who is emancipated;[38] for when he has been made independent he has his own *familia*. We describe a *familia* consisting of all the agnates under a single legal rule for even if all of them have their own *familiae* after the *pater familias* has died, nonetheless, all of them who were under the power (*potestas*) of a single person will rightly be described as belonging to the same *familia*, since they belong to the same house and lineage (*domo et gente*).[39]

In this fragment, a *familia* is a group of persons who share the same legal status. Already in the first sentence, Ulpian refers to two types of groups which he discusses in the rest of the fragment. The first group comes closest to our modern concepts of nuclear and extended families. It is this meaning which is normally referred to when the Roman *familia* is discussed: a group of citizens under the *patria potestas* of a *pater familias*. All the elements of the family group are mentioned in Ulpian's description. The *potestas* is created naturally or legally, naturally by the birth of children and grandchildren and legally, for example, by marriage or adoption. Furthermore, it is made explicit that the *pater familias* is a man, not only because of the use of the term *pater*, but also because his wife, the *mater familias*, is specifically mentioned. The people in his power are mentioned: his wife, sons and daughters, grandchildren etc. In the next sentence Ulpian writes that a man without children and even a *pupillus*, a ward who has not yet reached adulthood, can be a *pater familias* and, therefore, the head of his own, one-person, *familia*. Here it is made clear that a *pater familias* is both a person in a specific situation and a legal status. Ulpian continues by describing how *potestas* ends. When the *pater familias* dies, or when he takes legal action to emancipate them, the family members in his power become heads of *familiae* themselves.

35 Gardner (1995) 379. The preponderance of the masculine form in grammar is not something which is peculiar to Latin. This preponderance is still very much visible in the modern grammar in most languages, think of the word 'man' in English, which can mean both 'male' and 'human being'. On grammar and gender see Unterbeck (2000) and Hellinger and Bussmann (2001-2003).

36 *Digesta* 50.16.195.1. *'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.* Translation Watson (1985).

37 Crawford (1996) 555-721; Watson (1975).

38 *Emancipatio* means that a citizen *alieni iuris* is freed from *patria potestas* by legal means while the *pater familias* is alive. See chapter 3.2.

39 *Digesta* 50.16.195.2. *Familiae appellatio refertur et ad corporis cuiusdam significationem, quod aut iure proprio ipsorum aut communi universae cognationis continetur. iure proprio familiam dicimus plures personas, quae sunt sub unius potestate aut natura aut iure subiectae, ut puta patrem familias, matrem familias, filium familias, filiam familias quique deinceps vicem eorum sequuntur, ut puta nepotes et neptes et deinceps. pater autem familias appellatur, qui in domo dominium habet, recteque hoc nomine appellatur, quamvis filium non habeat: non enim solam personam eius, sed et ius demonstramus: denique et pupillum patrem familias appellamus. et cum pater familias moritur, quotquot capita ei subiecta fuerint, singulas familias incipiunt habere: singuli enim patrum familiarum nomen subeunt. idemque eveniet et in eo qui emancipatus est: nam et hic sui iuris effectus propriam familiam habet. communi iure familiam dicimus omnium adgnatorum: nam etsi patre familias mortuo singuli singulas familias habent, tamen omnes, qui sub unius potestate fuerunt, recte eiusdem familiae appellabuntur, qui ex eadem domo et gente proditi sunt.* Translation Watson (1985).

Ulpian ends with the introduction of a second, larger group of persons which is also called a *familia*. This is what we would call a patrilineage: the persons who were formerly under the power of a deceased *pater familias*.[40] Despite the fact that after the death of the *pater familias* his *familia* is split up, all the people in his power who become *sui iuris* are still considered to be part of one *familia*. Kin originating from the same *pater familias* and related by blood (or a legal equivalent) through the male line are called agnates.

At first sight, Ulpian's description in *Digesta* 50.16.195.2 is coherent and logically structured. However, this coherency has been reached by smoothing over some illogical elements. The most visible one is in his description of the *mater familias*. The situation described is archaic: as far as our sources can tell it seems that virtually no women were still in the power of their husbands in the third century AD. This was one of the main ambivalences of the position of a Roman woman within the *familia*: she lived in the household of her husband and as his wife was part of this family of procreation, but legally she was still a member of the *familia* she grew up in, her family or orientation, until the death of her *pater familias*, when she became a citizen *sui iuris* and the head of her own *familia,* independent from that of her husband.[41] Another problem with this description is that Ulpian does not specify which persons in power become the heads of their own *familiae* at the death of the *pater familias*.[42] He also does not make clear which children and grandchildren were in the power of the *pater familias* and whether a *pater familias* himself was part of his own *familia*.[43] Lastly, there is a problem with the way in which Ulpian defines a *pater familias*. A *pater familias* is both a man and a status. As he mentions, this is somewhat problematic for men who have the status, but do not possess the suggested qualities of fatherhood and adult male seniority. It is even more problematic for women *sui iuris*, if we consider them as heads of their own *familiae*.

> *Digesta* 50.16.195.3. We are also accustomed to describe slaves as forming a *familia*, as we can show in the praetorian edict under the title on theft where the praetor talks about a *familia publicanorum*.[44] But there all slaves are not meant but a certain body of slaves collected for one purpose, namely in order to collect taxes. But in another part of the edict, all slaves are included as in the part dealing with gangs of men or force used to seize property or in the action for recovery if something is returned damaged by the activity of the purchaser or his *familia* and in the interdict on the use of force the designation of *familia* covers all slaves. And, indeed, children (*filii*) are also covered.[45]

40 Evans-Pritchard (1951).

41 More on this in chapter 3.2 and chapter 5.

42 These were the persons under his direct power: a wife in some cases and children. Grandchildren were in his power only when their father had already died, otherwise they came under the power of their father. See Gaius, *Institutiones* 1.127.

43 See *Digesta* 50.16.196, mentioned below.

44 *Publicani* were private contractors, who bid for the right to collect taxes or manage public property, Badian (1997).

45 *Digesta* 50.16.195.3. *Servitutium quoque solemus appellare familias, ut in edicto praetoris ostendimus sub titulo de furtis, ubi praetor loquitur de familia publicanorum. sed ibi non omnes servi, sed corpus quoddam servorum demonstratur huius rei causa paratum, hoc est vectigalis causa. alia autem parte edicti omnes servi continentur: ut de hominibus coactis et vi bonorum raptorum, item redhibitoria, si deterior res reddatur emptoris opera aut familiae eius, et interdicto unde vi familiae appellatio omnes servos comprehendit. sed et filii continentur.* Translation Watson (1985) with an adaptation for 'children'.

Slaves were property, and, therefore, already part of the *familia* of their owner in accordance with the definition in *Digesta* 50.16.195.1. *Digesta* 50.16.195.3 adds to this that the head of the *familia* had the authority to order other members of the *familia* to do certain tasks. This means that the head of the *familia* had control over the labour of the *familia*. This included not only slaves, but also family members in the power of the *pater familias*, as is made clear in the last sentence. The central point seems to be that they were a group under one power and could be ordered by this power to carry out a task.

> *Digesta* 50.16.195.4. Likewise, the name of *familia* is also used for several people who descend by blood from the same original founder (*genitoris*), as we talk of the *familiam Iuliam*, going back as it were to the origin of records.[46]

The fourth fragment is in line with the second group mentioned in *Digesta* 50.16.195.2. It develops the notion that the *familia* is not only the group under the power of the *pater familias*, but also the patrilineage: as long as persons could be traced back in the male line to a common *pater familias*, they were considered to be part of the same *familia*. This could even go so far as to include the whole *gens*, everyone with the same *nomen*, although Roman writers more often considered a *gens* to consist of a number of *familiae*.[47] Both *Digesta* 50.16.195.2 and 50.16.195.4 emphasise the notion of a patrilineage, which is continued through the generations from the earliest forefathers onwards until the present head of the *familia*, who has the responsibility to continue the patrilineage and pass the *familia* on to the next generation. The *familia* does not actually end with the death of the *pater familias*, but is continued in the next generation. This raises the question of what happens when the next generation is a woman. Ulpian is very definite about that:

> *Digesta* 50.16.195.5 . A woman, however, is both the beginning and end (*caput et finis*) of her *familia*.[48]

In a sense, Ulpian returns here to the pretext of *Digesta* 50.16.195. After first suggesting that everything that is mentioned here also refers to women, he ends by making one important exception. This one sentence shows both the possibilities and the tragedy of the position of women *sui iuris* in Roman society.

46 *Digesta* 50.16.195.4. *Item appellatur familia plurium personarum, quae ab eiusdem ultimi genitoris sanguine proficiscuntur (sicuti dicimus familiam iuliam), quasi a fonte quodam memoriae.* Translation Watson (1985).

47 Pauli Festus p94: *gens* Aemilia made up of many *familiae*, Valerius Maximus, *Facta et dicta memorabilia* 1.1.17: *gens* Potitius divided into twelve *familiae*. *Gens* and *familia* as interchangeable: Valerius Maximus, *Facta et dicta memorabilia* 4.1.5, 5.6.4; Livy, *Ab urbe condita* 6.40.3. On the *gens*, which is often interpreted as a Roman clan, see *Smith* (2006).

48 *Digesta* 50.16.195.5: *Mulier autem familiae suae et caput et finis est*. Translation Watson (1985).

According to Ulpian a woman is the head of her own *familia*, but she cannot have other citizens in her power, and, therefore, cannot continue the patrilineage. She remains the head of a one-person *familia*, which will die with her. This is what is meant by '*et caput et finis*'.[49]

Finally, we have to consider *Digesta* 50.15.196. This text is rather small and consists of a pretext and a fragment which seem to have no direct relation to each other:

> *Digesta* 50.16.196 Gaius, Provincial Edict, book 16. In the designation *familia*, the head of the *familia* (*princeps familiae*) is also included.[50] 1 It is clear that the children of women are not in her *familia* because those who are born join the *familia* of the father.[51]

These fragments were probably meant to complement Ulpian's definition, in particular *Digesta* 50.16.195.2, because they can be seen as refinements to this text. The pretext makes it clear that the head of the *familia* is also included in his or her own *familia*. This is not made clear in Ulpian's definition, where it seems that the *pater familias* is not part of his *familia*, because a *familia* is defined as several persons subjected to the power of a single person ('*plures personas, quae sunt sub unius potestate*').

An item of interest is the use of the term *princeps familiae*, 'first of the *familia*' in the pretext. Although the reason for this alternative is not totally clear, this term avoids the problems inherent to the combination of masculinity and status within the term *pater familias*.[52] Fragment *Digesta* 50.16.196.1 stresses the male principle, the agnatic line or patrilineage, on which the Roman *familia* is based: children always follow the father and do not become part of their mother's *familia*. Therefore, although a daughter in the *potestas* of her father was part of his *familia*, her children were not. According to the agnatic principle, they were not in the same patrilineage as their own mother, unless she had become part of the *familia* of the father of her children upon marriage.

49 In *Basilica* 2.2.188 fragment *Digesta* 50.16.195.5 is clarified: 'The women can be both the head and the end of her *familia*, because she is *mater familias* [a woman *sui iuris* is meant here, CvG], but has no children in her *potestas*; for they follow their father' ('Η δὲ γυνὴ καὶ κεφαλὴ καὶ τέλος τῆς φαμιλίας αὐτῆς εἶναι δύναται, ὡς καὶ αὐτεξουσία καὶ μὴ ἔχουσα παῖδας ὑπεξουσίους· τῷ πατρὶ γὰρ ἀκολουθοῦσι). Translation Bernard Stolte.

50 *Digesta* 50.16.196 pr.: *Gaius 16 ad ed. provinc. Familiae appellatione et ipse princeps familiae continetur.* Translation Watson (1985).

51 *Digesta* 50.16.196.1. *Feminarum liberos in familia earum non esse palam est, quia qui nascuntur, patris familiam sequuntur*. Translation Watson (1985).

52 This is not to suggest that the use of *princeps familiae* was meant to emphasise that both men and women could be the head of a *familia*. It seems more likely that Gaius used it because he was writing about the rules as used in the Roman provinces. In the second century AD most of the inhabitants of the provinces were not yet Roman citizens, which made the use of a typical Roman concept of *pater familias* perhaps less desirable. *Princeps familiae* is not used in Gaius' *Institutiones*.

The familia *as a corporate group and a patrilineage*

How to interpret this complex description of *familia* given by Ulpian? The careful structuring of the description by Ulpian seems to suggest that he is working through the description by first dividing property and people, then constructing the group under the power of one person, subsequently broadening this group to include both agnates and dependent people and placing this whole group within the patrilineage. His description of the *familia* is framed both at the start and the end with references to the less obvious possibility that the head of a *familia* was feminine. It is possible, therefore, that Ulpian saw his description as a way to define *familia* as a whole, a description of *familia* as a multifaceted phenomenon at the heart of the Roman social structure.

Interpreted in this way, the *familia* becomes something which could remain in existence almost indefinitely: a corporate group which included people, property and labour in which the decisions are taken by the oldest living person in the agnatic line who is part of this unit.[53] At his death, the *familia* does not die, but comes under the power of the next generation. If there is more than one heir, the unit is split up, but the sub-units are still considered to be part of the same *familia* as long as their relation can be traced back in the male line. Such an idea emphasises the patrilineage, and, in a way, makes both the people and the *patrimonium* (which covers not only property, including slaves, but also other dependents and incorporeal things such as, for instance, the family cults[54]) into assets of the *familia*. This would make the *familia* as a structure, and not the persons living within it, into the central element.

Due to the strong emphasis on the *pater familias*, both in legal sources and in modern research, it seems unlikely that the *familia* can be interpreted in this way. At first glance it seems as if the *pater familias* and the *familia* are identical. As mentioned before, the *pater familias* had the sole formal power within the *familia*, and the citizens *alieni iuris* were sometimes considered as part of the assets of the *familia*. This dependence, however, is somewhat nuanced if we look at the rules of testation. Within these rules the members of the *familia* who were in the direct power of the *pater familias* were called the *sui heredes*, 'their own heirs'.[55] They were so called because 'they come from inside the *familia* and are in a certain sense thought of as owners even while their parent is alive'.[56]

53 Goody (1990) 70-71, 78.

54 On family cults, see Manthe (1992, 1994), Sirks (1994).

55 This group comprised only the *alieni iures* who were under his direct power and excluded those in indirect power, like the children of a son of the *pater familias* and, in some instances, the wife of the son. Cf. Buckland (1963) 305-306, Kaser (1971) 96.

56 Gaius, *Institutiones* 2.157: *quia domestici heredes sunt et vivo quoque parente quodam modo domini existimantur.* Translation Gordon and Robinson (1988). Cf. *Digesta* 28.2.11 (Paul).

The whole *familia* was the communal property of its members. They did not inherit, but were in a sense already owners. Kaser explains this as a dormant joint ownership, which automatically became a full power at the death of the *pater familias*.[57] The consequence of this view is that, although the *pater familias* is the hierarchical head of the *familia*, he is not really the owner of the property of the *familia*. He is the one who administers the property and who takes the decisions, but he does so on behalf of all the members of the *familia*.

The suggestion that the *familia* as a corporate group is central, rather than the person of the *pater familias* is also found in the rules which governed the change in status of Roman citizens. The status of citizens *alieni iuris* within the *familia* was defined by the degree of distance from the *pater familias*. The children of the *pater familias* would become independent upon his death, but his grandchildren remained dependent, but now with their father as *pater familias*. However, if their father died *alieni iuris*, the grandchildren would move one degree closer to the *pater familias* and became *sui iuris* upon his death.[58] The whole arrangement worked by removing or adding layers, either caused by death or by some sort of legal intervention. For example, if a son *alieni iuris* was emancipated by his father and became independent, this did not mean that his children also left the *familia*. In cases where the *pater familias* decided to keep them in his *potestas*, they lost the ties with their father and moved a degree closer, as if their father had died.[59]

Children did not automatically follow their father, and the same held true if the father was a *pater familias*: when a *pater familias* lost his citizenship, for example because he was convicted, his children became *sui iuris* 'just as though he had died'.[60] This suggests that the position of the *pater familias* followed the same rules as those for citizens *alieni iuris* and that the fate of citizens *alieni iuris* was not necessarily determined by the fate of their *pater familias*.

There is one last suggestion that the *familia* did not depend on the *pater familias*. According to Gaius, in former times the *familia* of a deceased *pater familias* was not automatically split up between the *sui heredes*. It could remain as a *consortium* in the common ownership of the heirs until they decided to split it up.[61] Although there has been some discussion about this common ownership, this seems to imply that the *sui heredes* functioned as if they constituted a corporate *pater familias*.[62] This *consortium* between *sui heredes* was an outdated concept in the second century AD.[63]

These few examples are ambiquous. They all show the strong position of the *pater familias* within the *familia*, but they also show that he was just one of the members of the *familia*. His power was based on his position as the person with the ultimate responsibility and his role as the decision maker within the *familia*. But he was not indispensable: if he lost his position, somebody else would take over.[64] Especially with regard to inheritance, the central concern is not for the person with *patria potestas*, but for the continued existence of the *familia*.[65]

Outside the legal context, the most common sense of *familia* was that denoting all persons born of the blood of the same ultimate ancestor, in other words the patrilineage.[66] In their description of the *familia* they strictly adhered to the agnatic principle. In a number of texts it is made explicit that cognates were not included in the *familia*.[67] Cognates are people who are related in other ways than through the male line, such as a person's uncle or aunt on the mother's side. Even the ambivalent position of a married woman, who could be both inside and outside her husband's *familia*, rarely led to confusion. A rare instance is mentioned in Cicero's *Pro Caelio*, where Cicero talks about Clodia as having been married into the Metelli, a *familiam clarissimam*, and at the same time as being part of the *familia Claudia*.[68] As it was Cicero's purpose to shame her, we may assume that he did this on purpose to contrast her behaviour with the high standing of the *familiae* to which she was connected.

The agnatic lineage seems to be central to the Roman concept of *familia* in non-legal literature, but the use of *familia* in the sense of property is rarely found in these texts, although there was a strong association between the term *pater familias* and property management as we have seen in chapter two.[69] The term *familia* is used regularly in literary sources to refer to groups of slaves.[70]

Literary sources are in accordance with the legal sources in that they refer to *familiae* mostly as agnatic groups, both as a group under one head, and, far more often, as agnatic lineages. While the connection between the use of *familia* in legal and literary sources is clear, they also show different emphases. The use of *familia* to denote patrilineage, central in the literary texts, is less common in legal texts. On the other hand, while *familia* as property is the most common meaning in the *Institutiones*, this meaning is more rare in literary texts. The differences between legal and literary texts can be partly explained by the different functions of these two types of texts. Legal sources are mainly about solving conflicts and the possession and division of property was often central to the conflicts, for example as part of an inheritance. Literary texts are, in the main, more interested in relationships between people.

The different uses of the term *familia* in legal and literary texts seem to go beyond a mere attempt to define a notional family for the convenience of the law. *Familia* could be used in different meanings, but what these meanings have in common is that they somehow

57 Kaser (1971) 96.
58 Gaius, *Institutiones* 1.127, cf. *Digesta* 1.6.5 (Ulpian), 1.7.41 (Modestinus).
59 Gaius, *Institutiones* 1.133. Cf. *Digesta* 37.4.1.8 (Ulpian), 37.4.6.3 (Paul), 37.8.3 (Marcellus) 37.8.4 (Modestinus).
60 Gaius, *Institutiones* 1.128. Cf. *Digesta* 38.2.4.2 (Paul), 38.10.4.11 (Modestinus).
61 Gaius, *Institutiones* 3.154a, 3.154b. Buckland (1963) 404, Kaser and Knütel (2014) 267-268, 407.
62 Kaser and Knütel (2014) 267.
63 In Gaius, *Institutiones* 3.154a Gaius describes this *consortium* in the past tense as something that 'once was' (*olim ... erat*). See, however, Pliny the Younger, *Epistulae* 8.18.
64 Not only formal, when the *pater familias* lost his citizenship, but also informal, for instance when the *pater familias* became handicapped or elderly and frail: Gardner (1993) 155-178, Parkin (1997).
65 It is probably no coincidence that the earliest laws which limited the freedom of the *pater familias* seemed to have been concerned with the problem of how to keep the *familia* property and the *familia* cults together. Sirks (1994), Manthe (1994).
66 Saller (1994) 79.
67 Cicero, Pro Deiotaro 30, Pro Sestio 21, In Pisonem 53, Pro Cluentio 16; Valerius Maximus, Facta et dicta memorabilia 1.7.ext.5.
68 Cicero, *Pro Caelio* 33-34.
69 See chapter 2.5, cf. Saller (1994) 75.
70 For example, in Cicero, *De domo sua* 21 and Varro, *Rerum Rusticarum* 2.1.26. It is not always clear in these descriptions whether slaves are meant, or property in general: Cicero, *Post reditum in senatu* 20.

emphasise the assets of a patrilineage, including free persons, property and slaves. These assets could be split up, but remained in existence as long as there were heirs, although at any given moment only one person had the power to decide over the use of the assets of the *familia*. This concept is markedly different from the family as it is normally seen in modern western societies, although it overlaps at some points. This concept of *familia* was not seen as an empty shell by second and third century jurists, although it had probably become more nebulous during the Principate.[71] If this was the case, than the notion of *familia* was probably stronger in Roman minds during the late Republic and the Augustan era.

71 Saller (1994) 77n6, Evans Grubbs (2011).

3.2 Women and the *familia*

This overview of the *familia* seems to suggest that the status of the *pater familias* within the *familia* was not as exceptional as has sometimes been thought. A *pater familias* seems to be little more than a subcategory of the citizens *sui iuris*, albeit with the added ability to have other citizens *in potestate*. However, this was not central to the concept. As we have seen, a Roman man was called a *pater familas* independently of whether he had children or could ever have children.

The basic meaning of *pater familias* in Roman law and literature seems to be a man *sui iuris*, because, to be a property owner, a Roman citizen had to be *sui iuris*. This means that *pater familias* could also include Roman women *sui iuris* when it was used as a generic term for property owner-testator or slave owner.[72] Both the legal discussions of the *pater familias* as owner-testator and those as slave owner applied not only to 'fathers of the family', but to women *sui iuris* as well.[73] The legal position of women in the *Digesta*, however, is obscure. It is never suggested in the *Digesta* that *pater familias* should be read to include both men and women *sui iuris*, something which was done with the words 'parents', 'patrons', 'sons' and 'slaves'.[74] It has been assumed that this was omitted because women lacked the third authority, the *potestas* over children.[75]

The inclusion of women in the definition of *pater familias* as property owner, was never acknowledged in the *Digesta*, nor was a generally accepted female equivalent to *pater familias* developed in Latin. The most obvious option, *mater familias*, was very occasionally used in this way in Roman law, but never outside legal texts.[76] Furthermore, Ulpian himself also used the term *mater familias* in an almost diametrically opposed sense in his definition of *familia*, as a women *alieni iuris* in the power of her husband.[77] Furthermore, Ulpian also presents *mater familias* as a term somewhat equivalent to *matrona* when he writes that she was a woman 'who has not lived dishonourably; for her behaviour separates and distinguishes a *mater familias* from other women'.[78] Here, Ulpian emphasises that neither social position nor marriage were relevant: only behaviour made a *mater familias*.

This connotation of *mater familias* with honour was already common in literary sources in the Republic, although in those sources it often had the connotation of sexual honour within

72 See chapter 2.5.
73 Gardner (1995) 387.
74 *Digesta* 50.16.51 (Gaius), 50.16.52 (Ulpian), 50.16.84 (Paul) and 50.16.40.1 (Ulpian).
75 Saller (1999) 185.
76 *Digesta* 1.6.4 (Ulpian). Other examples in the *Digesta* are 24.3.30.1 (Julianus) and 24.3.34 (Africanus).
77 *Digesta* 50.16.195.2. There is one earlier example of this opinion, in Cicero, *Topica* 14 (which was copied by Aulus Gellius, *Noctes Atticae* 18.6.5). Based on Cicero, Gardner assumes that this was the original meaning of *mater familias*, Gardner (1995) 384, see, however, Saller (1999) 193.
78 *Digesta* 50.16.46.1: *quae non inhoneste fixit: matrem enim familias a ceteris feminis mores discercunt atque separant*. Translation Watson (1985).

a marriage, especially when the chastity of respectable married women was under threat.[79] Therefore, it seems that *mater familias* was in the first place a description of a norm of behaviour, not a status.[80] *Pater familias*, on the other hand, was a well-defined status and a central concept in law, to which a norm of behaviour was connected.

This raises the question of why it is necessary to use the term *pater familias*. It seems better to replace it with the more gender neutral and less loaded concept citizen *sui iuris*. *Pater familias* is a difficult term to use, not only because of the almost unavoidable modern connotations, but also because the use of this term seems to emphasise the 'natural' central role of men and obscures the participation of women *sui iuris*. In the most simple definition, the *patres familiarum* are a subgroup of the citizens *sui iuris*. Therefore, I will use the term citizen *sui iuris* instead. The term is more gender neutral and the limited attention hitherto paid to the term *sui iuris* has the advantage that its meaning is not obscured by opinions on fatherhood and seniority. The fact that the meaning of the term *sui iuris* did not evolve after the Roman era offers the possibility of coming closer to the Roman use of the concept, than it is possible with the use of *pater familias*.

The suggestion to replace *pater familias* by citizen *sui iuris* is connected with one last remark I will make on the use of male terminology in Roman law in situations which could include both men and women. Both Gardner and Saller have suggested that we should be aware that masculine phrased law texts could also refer to women if there are reasons to assume this.[81] It would be interesting to extrapolate from this. Could it be possible that women *sui iuris* were included in legal texts and the rules of magistrates unless there are reasons to assume they were not?

Joining and leaving the familia

Roman children were born into the lineage of their father and became part of his *familia* as an *alieni iuris* upon birth, as long as they were conceived within a legal marriage.[82] A child born in non-legal marriage or outside wedlock did not come into *potestas* and did not become part of the father's *familia*, not even when the father was known. The child did not became part of the *familia* of the mother either, because a woman could not have *potestas* over it. The child became *sui iuris* upon birth and was considered to have no agnatic relatives.[83] Roman law recognised the connection between the mother and the illegitimate child only insofar as that the child acquired the status of the mother and became a Roman citizen upon birth. Later on, this way of creating citizens was limited by the *Lex Minicia*, which ruled that children born from a union between a citizen and a free non-citizen no longer automatically acquired the mother's status, but the parent with the 'lowest' status.[84]

Roman children who were born into a legal Roman marriage remained in the *patria potestas* of their *pater familias* not only while they were children, but until his death. After his death, each child became *sui iuris* and the head of its own *familia* which, as we have seen, was considered to be a continuation of the *familia* of the late *pater familias*. This was seen as the natural order of things: a Roman citizen was born in his father's *familia*, and remained in his *potestas* until his death, when all remaining children became *sui iuris* and the *familia* was divided into as many *familiae* as there were children. However, there could be circumstances which necessitated the introduction or exclusion of members of the *familia* by legal means. This could happen on the instigation of the *pater familias*, in the cases of adoption, emancipation and marriage. It could also happen involuntarily, for example when a Roman citizen was punished by banishment or slavery.[85]

Not all of these options were available to women. Adoption came in two distinct varieties, *adoptio*, the adoption of a citizen *alieni iuris*, and *adrogatio*. *Adrogatio* was the adoption of a citizen *sui iuris*. The adopted citizen and his whole *familia*, including property and people *alieni iuris* came into the *potestas* of his new 'father'. Since *adrogatio* meant the extinction of the *familia* of the adopted person and its *sacra*, it was something that was not done lightly. An enquiry by the pontiffs was needed, as well as a vote by the *comitia curiata* in Rome. Adoption through *adrogatio* was seen as a device to save a *familia*-lineage which was in danger of extinction through lack of heirs.[86] As a general rule, only childless men over sixty years of age who were unlikely to have children were allowed to adopt another citizen through *adrogatio*.[87] Only adult men could be adrogated, which limited the possibility of using *adrogatio*, for example, to legitimise illegitimate children, who were by definition *sui iuris*.[88] The *adrogatio* of women was not

79 Terence, *Adelphoi* 747, *Rhetorica ad Herennium* 4.12.6, Cicero, *Pro Caelio* 32, 57, *In Verrem* 2.4.116, 2.4.135, *Philippicae* 2.105, 3.31, Sallust, *Bellum Catilinae* 51.9, Valerius Maximus, *Facta et dicta memorabilia* 6.1.8.

80 Modern scholars on *mater familias*: Treggiari (1991) 27-28, Gardner (1995) 384-386, Saller (1999) 193-196.

81 Gardner (1995), Saller (1999).

82 The divorce or even the remarriage of the wife did not change this: Livia married Augustus while pregnant, but her son Drusus came into the power of her former husband: Suetonius, *Tiberius* 4. For a discussion on the question of whether *patria potestas* started at birth or by acceptance of the child by the *pater familias*, see Watson (1967) 77-82.

83 An illegitimate child could not even inherit as cognate from its mother. This changed only in the second century BC: Gardner (1998) 252-254.

84 Such a union was not recognised as a marriage according to Roman law: Watson (1967) 27n4. When the *Lex Minicia* was enacted is not known. According to Kaser (1971) 241, it was before the Social War, but Watson (1967) 27n4 argues that it could be as late as the first century AD. Cf. Cherry (1990).

85 When banished or sold as a slave, a Roman lost his citizen-status. Because a non-citizen could not be part of a *familia*, such a citizen lost his *patria potestas*, or, when he or she was *alieni iuris*, was released from *potestas*, Gaius, *Institutiones* 1.128. An exception was made for citizens who were captured by Roman enemies. They were restored to their former status when they returned to Roman territory: Gaius, *Institutiones* 1.129.

86 Buckland (1963) 125.

87 However, the pontiffs could decide otherwise when they felt it necessary. Cicero questioned the legality of the pontiff's decision in the case of the *adrogatio* of Clodius, whose new '*pater*' was only twenty, younger than Clodius, and had children of his own: Cicero, *De suo domo* 32-38. According to Gaius, *Institutiones* 1.106 it was a point of discussion among jurists whether the adoption of someone who was older than the adopter was allowed, which suggests that Clodius was not the only citizen adopted or adrogated by a younger man.

88 This is understandable when continuation of a lineage was the prime reason for *adrogatio*: an adult man, preferably with children, gave the best prospects of continuity. According to Gaius, *Institutiones* 1.102, *adrogatio* of underaged children was sometimes forbidden, sometimes allowed. The main problem seem to have been that, although there was sometimes a need for *adrogatio* of children *sui iuris*, the Romans feared the misuse of *adrogatio* by the *tutor* who managed the property of the child: Aulus Gellius, *Noctes Atticae* 5.19.10.

possible during the Republic and early Empire, probably because they could not continue the lineage more than one generation, although according to Aulus Gellius it was because they were not allowed to appear before the *comitia*.[89]

The legal status of *adoptio* and *emancipatio* were different from that of *adrogatio*. They were seen as private transactions between two *familiae*, with only limited interference by Roman magistrates because they did not influence the continuity of a *familia* directly. The rituals necessary for both *adoptio* and *emancipatio* were almost identical. In the case of *adoptio*, a citizen *alieni iuris* was freed from the *potestas* of his *pater familias* and transferred into the *potestas* of another *pater familias*. In the case of *emancipatio*, the same thing happened, but the citizen *alieni iuris* was not claimed by another *pater familias* and acquired his or her own *potestas* as a citizen *sui iuris*. The ritual used was *mancipatio*, a symbolic sale . In the fifth century BC, the Law of the Twelve Tables had offered a *pater familias* the possibility of selling his children temporarily in bondage to other Roman citizens. After the price had been repaid, the children re-entered the *potestas* of the *pater familias*. The law stipulated that a *pater familias* could not sell a son more than three times into bondage, otherwise he would lose his *potestas*. In the centuries following, this rule, which was probably meant to limit bondage, developed into a device to free citizens from *potestas* or to transfer them to another *familia*.[90] It was reinterpreted as meaning that sons left *potestas* after three symbolic sales, while daughters, grandchildren and other citizens *alieni iuris*, who were not specifically mentioned in the ancient law, left *potestas* after one sale.

Mancipatio was a highly formalised procedure, which was also used for the transfer of *res mancipi*, property which, in early Rome, was seen as essential for the survival of the *familia* as a farming unit. A symbolic sale was made in the presence of five adult citizens as witnesses, and a sixth who held a bronze balance. The symbolic buyer grasped the citizen *alieni iuris* with one hand and held in the other a piece of bronze, while reciting a formula to claim ownership. He struck the scale with the bronze and gave it to the *pater familias* as a symbolic price.[91] When the citizen *alieni iuris* was a son, the symbolic buyer then manumitted him back to the *pater familias* and the whole procedure was repeated. After the *mancipatio*, or three *mancipationes* in the case of a son, the citizen *alieni iuris*, who was still in bondage at that point, was brought before a magistrate. The magistrate would ask to whom the citizen *alieni iuris* belonged. When the adopter laid claim, while the *pater familias* remained silence, the citizen *alieni iuris* was assigned to him and the adoption was concluded. In the case of *emancipatio*, nobody claimed the person and he or she became a citizen *sui iuris*.[92]

89 Aulus Gellius, *Noctes Atticae*, 5.19.10. Although Gellius' argument seems rather formalistic, there appears to be some grain of truth in it. When, from AD 200 onwards, it became possible to adrogate a woman, it was through an alternative route, by rescript from the emperor. This avoided the need for a woman to appear before the people (by this time no longer the people of the *comitia curiata* but a token group of thirty *lictores*, representing the *tribus*), Gardner (1998) 161-164.

90 *The law of the XII Tables* (4.2), Gaius, *Institutiones* 1.134. Cf. Buckland (1963) 103, 133-134.

91 Gaius, *Institutiones* 1.119-122, Varro, *de Lingua Latina*, 6.85 and 9.83. Cf. Watson (1968) 16-20.

92 Gaius, *Institutiones*, 2.24. This process before a magistrate was called *in iure cessio*.

This use of *mancipatio* may give the impression that citizens *alieni iuris* were treated as property. This was not the case. Unlike slaves, citizens *alieni iuris* were not considered as things.[93] Instead, the reuse of these procedures is a typical feature in the development of Roman law: venerated old rules were normally not abolished, but either fell into disuse when superseded by new rules, or were reused for new purposes. *Mancipatio* was associated with crossing the boundaries of the *familia*, and, therefore, was a convenient tool when the need arose to transfer citizens in and out of the *familia*.

A citizen *alieni iuris* who was given up for adoption or emancipated by his or her *pater familias* had no say in the matter: the decision was solely the *pater*'s to take. If he was a man, he could not even decide whether his children were adopted or emancipated with him.[94] Unless the *pater familias* specifically included them, they stayed in his *familia* when their father left and all agnatic bonds between father and child were broken. The only circumstance in which the consent of a son *alieni iuris* was needed, was when his *pater familias* adopted someone as a grandchild and his son *alieni iuris* became the adoptive father. In this case consent was necessary because the son *alieni iuris* would acquire *potestas* over the adoptee when the *pater familias* died.[95]

Adrogatio, *adoptio* and *emancipatio* created agnatic relationships, but they did not create cognatic ties, although quite often adoptees were chosen from among the children of close kin and friends, thus strengthening existing bonds between *familiae*.[96]According to law, they were devices to restructure a *familia* by limiting the number of members of a *familia* or by creating new heirs. This focus makes it likely that more men than women were adopted or emancipated, although we know that both men and women went through these procedures, at least during the Empire.[97] Women could not adopt, because they could not have *potestas* over the adoptee.[98] To a degree, they could circumvent this problem by adopting a person in their will. The woman left her property to a heir on the condition that the heir would change his name. Two cases are known: the Livia who tried to adopt Dolabella by testament in 50 BC and Livia Ocellina and Galba in the early first century AD.[99]

93 Buckland (1963) 239. However, Roman law was somewhat ambivalent on this point. To some extent children were indeed treated as possessions (Du Plessis (2010) 112-113) and in early law, a *pater familias* had the right to sell citizens in his *potestas* as slaves *trans Tiberim*, outside the Roman territory. Yet already in the XII Tables there seems to have been some hesitance regarding this. The sale of citizens as slaves to other Roman citizens was not permitted, although they could be sold by *mancipatio* into bondage, in which case they did enter into a slave-like state, but kept their citizenship and marital status. Upon relief of the bondage, they fell back into the *potestas* of their *pater familias*. *The law of the XII Tables* 4.2, limited the number of sales of a son by his *pater familias* to three times, and after this the son became *sui iuris* after release: Buckland (1963) 103, 133-134. *Mancipatio* as a way to create bondage over time developed into a juridical device to emancipate citizens *alieni iuris* (Gaius, *Institutiones* 1.134).

94 Gaius, *Institutiones* 1.133.

95 For a discussion on the consent to *adoptio* and *emancipatio*, see Gardner (1998) 175-179.

96 Lindsay (2009) 146-159.

97 Gaius, *Institutiones* 1.101, 1.137. There seems to be no fundamental obstacle to the assumption that this was already the case during the late Republic, since women did go through *mancipatio* for other reasons, for example to make a will or to create a marriage with *manus*.

98 Gaius, *Institutiones* 1.104.

99 Livia and Dolabella: Cicero, *Epistulae ad Atticum* 7.8, Livia Ocellina and Galba: Suetonius, *Galba* 4. Cf. Lindsay (2009) 165.

In *adoptio* and *emancipatio* the citizen went through a process of *capitis deminutio*, a loss of citizen status, at least temporary.[100] *Capitis deminutio* broke the agnatic tie between Roman citizens and was seen as necessary to end the *patria potestas*, something which otherwise only happened at the death of the *pater familias.* The only exceptions to this rule were the rare cases in which a girl became one of the six Vestal virgins, or a boy the *flamen dialis*, the priest of Jupiter. The moment they were 'taken' for these priesthoods, they became *sui iuris,* without loss of civil rights.[101] According to the Augustan-era jurist Labeo, the legal principle on which this change of status was based, which was probably very ancient, was uncertain.[102]

Roman marriage

For most Roman girls *adoptio* and *emancipatio* were probably of limited relevance.[103] As long as their *pater familias* was alive, they remained part of his *familia* at least until they married. Roman girls were considered adults and able to marry at the age of twelve.[104] Marriage seems to have been almost universal among Roman women. With the exception of the six Vestal Virgins, there were no groups of women in Roman society who lived their lives deliberately in celibacy. Furthermore, a legally valid marriage was relevant to all Roman citizens who wanted to continue their patrilineage. As mentioned before, a child born outside a valid marriage did not become part of the *familia* of either parent.[105] Therefore, although the sources offer no conclusive proof, we may assume that marriage was common among all layers of the Roman citizenry.[106]

100 During the Empire, jurists distinguished between three types of *capitis deminutio*: *capitis deminutio maxima* was the loss of freedom and citizenship, *media* the loss of citizenship and *minima* a change of *familia* or status within the *familia*. Gaius, *Institutiones* 1.159-163.

101 Gaius, *Institutiones* 1.130, 3.114, Aulus Gellius, *Noctes Atticae* 1.12. A Vestal virgin lost any legal connection to her natal *familia*, in order to be able to serve the Roman community as a whole, Staples (1998) 130; Cf. Wildfang (2006). Unlike other women *sui iuris*, a Vestal virgin did not need a *tutor* and could make a will without going through *capitis deminutio*.

102 Labeo, as quoted by Aulus Gellius, *Noctes Atticae* 1.12.18.

103 Among elite men the percentage of adoptions is estimated at four percent among the consuls between 350 BC and AD 50, Hopkins (1983) 49. Figures of two and eight to nine percent adoptions are mentioned for *equites* in the Julio-Claudian period and *decuriones* in Pompeii, Lindsay (2009) 3. As mentioned before, figures for women were probably lower. As far as I know, no estimates are made for the percentage of emancipations.

104 This age limit was fixed, probably by the end of the Republic, Watson (1967) 39. Boys had to be physically mature to enter marriage, although some authorities claimed that boys reached manhood at the age of fourteen; Gaius, *Institutiones* 1.196. For girls physical development seems not to have been a prerequisite, although it was sometimes taken into consideration, Treggiari (1991) 39-42.

105 Gaius, *Institutiones* 1.55, 1.76. Cf. Kaser and Knütel (2014) 333, 335-336.

106 In Roman literature, there is an underlying assumption that every citizen ought to be married and that children are always in the *potestas* of their *pater familias*, see for example Livy, *Ab urbe condita* 42.34. As a comparison, in Egypt marriage contracts from very poor people are found (Hopkins (1980) 342), while in most pre-modern societies marriage was almost universal: up to 99 percent of all adults married: only in western Europe did up to 20 percent of adults remained celibate: Engelen (2003) 280. An example of a non-European marriage pattern is late Imperial China, where everybody who could marry did so: Goody (1990) 137, Wolf (1980).

This assumption is strengthened by the legal organisation of a Roman marriage. Unlike the church-sanctioned Holy Matrimony of Early Modern Europe, Roman marriage in itself was a modest affair which was accessible for all citizens: it was nothing more than the agreement between two *familiae* that two citizens would live together with the purpose of begetting children; living together with the intention of being married was enough.[107] No formalities seem to have been required to create a state of marriage as such, although it was customary to give a dowry and to 'lead' the bride to the house of the groom to mark the wedding.[108]

Until the Augustan era, the only involvement of Roman magistrates with marriage was a ban on marriages which could not lead to legal offspring. Marriages between people below marital age, between citizens and non-citizens or slaves, close-kin marriages and polygamous marriages were seen as socially unacceptable.[109] The Roman magistrates did not stipulate marriage or divorce arrangements and did not even have a register of marriages between citizens. Marriages which were not allowed were not always actively prosecuted, although they were not recognised either: Roman law had a tendency to consider them as non-existent. A clear example is provided by the few instances of same-sex weddings found in the sources. Roman writers are invariable hostile towards same-sex weddings and see them as a mockery of marriage, because they could not produce offspring. However, these marriages seems to have been celebrated rather openly and there is no indication that magistrates prosecuted the persons involved.[110]

'It is hard for a modern reader to escape the feeling that the Roman institution of marriage was far too weak to be socially viable' concluded Frier and McGinn.[111] To understand this weakness, we have to look at the context in which Roman marriage functioned. In some areas, such as the rules of close-kin marriage, Roman magistrates were rather strict. These marriages were not only illegal, they could be punished, in some cases even by death.[112] No marriages were allowed between ascendant and descendant, whether the connection was by blood or adoption. This ban remained in place after *emancipatio*, even when an adopted person was emancipated and no cognatic ties existed.[113] Furthermore, early Roman law forbade marriages between collateral relatives who were second cousins or closer, although this rule was mitigated by the first century BC.[114] Marriage between close-kin without agnatic ties were

107 Marriage was seen as a fact of nature: *Digesta* 1.1.1.3 [Ulpian], cf. Cicero, *De Officiis* 1.54. Every Roman man and woman who lived together with *affectio maritalis*, the intention of being married, were considered to be married. Marriage in itself did not require documents to make it legally binding: *Digesta* 20.1.4 [Gaius], Gardner (1986) 47-50.

108 Hersch (2010). For a discussion of the dowry, see chapter 3.3.

109 Girls should be at least twelve years old, boys older. See Treggiari (1991) 37-51 for a discussion of these limitations.

110 Tacitus, *Annales* 15.37.4, Martial, *Epigrammata* 12.42, Juvenal, *Saturae* 2.117-142. Cf. Frier (2004).

111 Frier and McGinn (2004) 3-10.

112 The traditional punishment for incestuous relations with close blood relatives was the hurling of the offenders from the Tarpeian Rock, a punishment still carried out in the time of Tiberius, Tacitus, *Annales* 6.19.

113 Gaius, *Institutiones* 1.59, Ulpian, *Tituli* 5.6.

114 Corbett (1930) 48. Second cousins are people who share the same great-grandfather. By the first century BC marriages between first cousins were possible: Cicero, *Pro Cluentio* 5, Plutarch, *Brutus* 13, *Marcus Antonius* 9. Livy, *Ab urbe condita* 42.43 mentions a much earlier example, around 195 BC.

also excluded, such as a marriage with an illegitimate brother or sister or a marriage with the child of a sister. An adoptive brother and sister could marry, but only when one of them was emancipated.[115] Relationship by a terminated marriage was no reason for a ban in the late Republic, but they were illegal by Gaius' times.[116]

Overall, the rules against close-kin marriages seem to have become more clearly defined during the Empire, probably because the lawyers had to explain them to new Roman citizens who did not always share the same views on acceptable types of close-kin marriage. The strict rules on close-kin marriage are rather unusual for a society with a strong family influence upon marriage.[117] Prohibition was based on a combination of ascendancy, agnatic and cognatic ties. This combination sometimes led to very specific rules, for example that a man could marry the half-sister of his adoptive father, but only when they shared the same mother, not the same father.[118]

The rules on close-kin marriage show that Roman magistrates could and did intervene when they thought it necessary. The seemingly lax attitude to marriage in other respects can be explained by the limited function marriage had for the *res publica*. From the perspective of the magistrates, its sole function was to create a situation in which citizens could be born. Other functions that we tend to associate with marriage in the Western world, like parental authority, regulation of property, the creation of inheritance rights and of its use as a unit of registration were not regulated through marriage, but through the *familia*. Roman marriage was far too weak when we look at it as a stand-alone institution. Seen in connection with the Roman *familia*, there was no need to create a stronger institution of marriage. Only those elements of marriage had to be regulated which did not fit within the agnatic framework of the *familia*, as for example, close-kin marriage.

Public influence on marriages greatly increased during the reign of Augustus, when three laws were enacted, which had a direct impact on Roman marriage. In 18 BC, the *Lex Iulia de maritandis ordinibus* became law, and this was supplemented by the *Lex Papia Poppea* in AD 9, which solved some of the deficiencies of the earlier law. These laws, which were so closely related that later jurists called them the *Lex Julia et Papia*, laid down rules to improve the number and quality of marriages by Roman citizens, with the goal of raising the number of citizens. In 17 or 16 BC, a *Lex Iulia de adulteriis coercendis* was enacted, with the purpose of

115 The most famous example of this is Nero's wedding to Octavia, the daughter of Claudius. When Claudius adopted Nero, he gave Octavia as an adoptee to another *familia* to make their marriage possible, Cassius Dio, *Roman history* 61.33.2.2. Gardner (1998) 119-120, suggests that marriage between an adopted son-in-law and an emancipated daughter was used as a strategy to continue the *familia* when a male heir was lacking.

116 In the first century BC, Sassia married her former son-in-law Melinus: Cicero, *Pro Cluentio* 14. Such a marriage was illegal in the second century AD: Gaius, *Institutiones* 1.63. Cf. Corbett (1930) 51.

117 In many modern countries around the Mediterranean there is still a tendency to keep property in the family by marrying close relatives, such as cousins or nieces, Tillion (1983). An extreme example of this habit in the Ancient World is Roman Egypt, where brother-sister marriages were possible, although it has been suggested that they may have been marriages between adoptive brothers and sisters, Huebner (2007). For Rome, see Shaw and Saller (1984).

118 *Digesta* 23.2.12.4 (Ulpian).

curbing adultery, especially adultery by Roman female citizens. The first two laws offered a series of punishments and rewards to encourage citizens to marry and have children. Roman men were expected to be married between 25 and 60, Roman women between 20 and 50.[119] When a marriage ended through divorce or the death of one of the spouses, a limited time was given to remarry. Rewards were given to Roman citizens who had children, the most relevant of which for Roman women was the so-called *ius liberorum*. This *ius liberorum* could be called a 'motherhood premium': a Roman female citizen who had at least three children born in legal marriage was freed from the need to have a *tutor*, which in effect meant that she was able to handle all her financial and legal affairs without compulsory interference by a *tutor*. The jurists in the Imperial period debated endlessly about the precise details of this rule.

Marriage, manus *and the* familia

Girls could marry as soon as they were twelve years old and were betrothed at an even younger age.[120] According to Roman tradition they married rather early: most Roman women married in their teens or early twenties, to husbands who were often ten to fifteen years older.[121] The marriage was arranged by the woman's *pater familias*, and the woman had little say in the matter. At one point her agreement to the marriage was not relevant. Later on, her official consent was necessary for the wedding, but it was considered to be implicit unless the woman actively opposed the marriage.[122] In negotiation with the *familia* of the groom, the *pater familias* also decided how large the dowry would be and whether or not the woman was transferred to the *familia* of her husband upon marriage. This last point was important, because it involved *potestas* over the woman and her ability to own property in the future. Roman law offered two possibilities: either of absorbing the wife into the *familia* of her husband, or of leaving her completely outside his *familia* for all legal purposes.

In the first possibility, the bride was transferred to the *familia* of her husband and she came under the power, the *manus*, of her husband or his *pater familias*. In the second possibility, the bride and her property did not become part of the *familia* of her husband. She remained part of her natal *familia* and only her dowry became the property of her husband.[123] However,

119 The limits were set by the *Lex Papia Poppea*. The limits set in the *Lex Iulia* were probably higher: Tertullian, *Apologeticum* 4.8.

120 For a discussion of the legal minimum age for marriage, see Watson (1967) 39-40 and Treggiari (1991) 39-43. Until the Augustan era, there was no legal minimum age for betrothal. In the 30s BC, Vipsania Agrippina, the daughter of Agrippa and Caecilia Attica was betrothed to the future emperor Tiberius when she was only one year old: Cornelius Nepos, *De viris illustribus: Atticus* 19.4. According to Cassius Dio, Augustus disallowed engagements which did not result in marriage within two years in AD 9. This effectively raised the minimum age for betrothal to 10 years for girls: Cassius Dio, *Roman history* 54.16.7, cf. Treggiari (1991) 41.

121 Age at first marriage is a much discussed subject: Harkness (1896), Hopkins (1965), Saller (1987), Shaw (1987), Syme (1987), Saller (1994) 25-41, Lelis, Percy and Verstraete (2003), Scheidel (2007a), Harlow and Laurence (2007),

122 See Watson (1967) 41-47 for a discussion of consent in the late Republic. Cf. Treggiari (1981) and (1991a) 170-180.

123 Kaser (1971) 332-41.

in the first century BC women had the right to claim the dowry back in the case of divorce or the death of her husband.[124] The custom developed that the dowry was treated as something different from the other property of the husband, but it remained in the control of the husband and legal action was necessary for the woman to recover it.[125]

Marriages with *manus* existed at least since the fifth century BC, since the three ways by which a woman could come into the *manus* of her husband, *usus*, *confarreatio* and *coemptio*, were mentioned in the Law of the XII Tables which was enacted around 450 BC.[126] *Confarreatio* was an elaborate ceremony involving the offering of a cake made of *far*, in the presence of ten witnesses and two of the major Roman priests, the *pontifex maximus* and the *flamen dialis*, the priest of Jupiter.[127]

It is unknown how widespread *confarreatio* was: the presence of the *flamen dialis* virtually restricted the ceremony to Rome.[128] It probably fell into disuse during the first century BC, when this priestly office was vacant for more than seventy years.[129] After this interval, *confarreatio* is only mentioned in connection with the major priests, who could only hold their priesthoods when married with *confarreatio* and born in a marriage with *confarreatio*.[130] The rarity of *confarreatio* in the early Empire is suggested by Tacitus who mentioned that there were hardly any candidates left for the priesthood of *flamen dialis* who met these two requirements in the reign of the emperor Tiberius. The ceremony had fallen out of use and was only retained in a few families.[131] To have enough candidates for the priesthood in the future, the effect of *confarreatio* had to be diluted to make this type of marriage more attractive. The Senate ruled that the wife of the *flamen dialis* no longer came into *manus*, except during religious ceremonies. Although Tacitus only mentioned it in reference to the *flamen dialis*, it is clear from Gaius that this rule applied to all marriages with *confarreatio*.[132] In this limited form, *confarreatio* survived.[133]

Coemptio and *usus*, the other methods of creating *manus*, were adaptations of regular methods to create ownership over property. *Coemptio* was a variety of *mancipatio*, the symbolic sale described above.[134] Through this symbolic sale a woman became part of her husband's *familia* and entered his power. It seems evident that *coemptio* was normally performed at the start of the marriage, but in the middle of the first century BC it was possible to go through *coemptio* at any stage of a marriage as is shown in the example from the *Laudatio Turiae* mentioned at the start of this chapter. By this time, *coemptio* had developed into a device not only to create *manus*, but also to allow women *sui iuris* to make a will or to change their *tutor* without the creation of *manus*. This combination of functions is described by Gaius in the second century AD.[135]

Usus was related to *usucapio*, the acquisition of ownership by exercising control over property for a period of time.[136] In the case of *usus*, a woman started living with her husband while still in the *potestas* of her own *pater familias*. By one year of unbroken cohabitation, her husband automatically acquired *manus* over her.[137] *Manus* could only be avoided when the woman stayed away for three consecutive nights, with the goal to avoid *manus*.[138] While *coemptio* acquired new meaning, *usus* fell into disuse. According to Gaius 'this whole legal state was in part repealed by statute, in part blotted out through simple disuse'.[139] When this happened is unknown.[140]

Usus made marriage without *manus* at the least a temporary possibility already in the fifth century BC, but marriage *sine manu* seems to have become prominent only in the late Republic. In the early Empire marriage *sine manu* had superseded marriage *cum manu*.[141] No ceremonies were needed to avoid *manus*, although the tradition that a woman had to be led into the house of her husband to seal the marriage seemed to have become a legal requirement at some point.[142] *Potestas* and property ownership were not affected when a woman married without *manus*, because she did not transfer to her husband's *familia*.

Whether or not a woman came into the *manus* of her husband determined to a large degree her formal position within the marriage. When a woman came into *manus*, she became part of her husband's *familia* and became an agnatic relative to him. She became *filiae loco*, in the position of 'that of a daughter' to her husband.[143] This expressed that she did not join the *familia* on the same level as her husband, but one generation lower. She came in his power,

124 Watson (1967) 66-76.
125 Gardner (1985) 449-453.
126 Watson (1963) 337-338 and (1979) 195-201. The most comprehensive source on *usus*, *confarreatio* and *coemptione* is Gaius, *Institutiones* 1.109-1.113. Cf. Corbett (1930) 68-90, Watson (1967) 19-25, Treggiari (1991) 18-32.
127 Gaius, *Institutiones* 1.112, Ulpian, *Regulae* 9, Servius, *In Georg*. 1.31.
128 The office of the *flamen dialis* was surrounded by a large number of taboos, among them a taboo that he must not sleep away from his bed for three nights in succession. This had the effect that he could only travel within the immediate surroundings of Rome, Aulus Gellius, *Noctes Atticae* 10.15.
129 Treggiari (1991) 23.
130 Gaius mentions the *rex sacrorum* and the priests of Jupiter, Mars and Quirinus. Gaius, *Institutiones* 1.112.
131 This happened in AD 23 according to Tacitus, *Annales* 4.16.
132 Gaius, *Institutiones* 1.136. According to Gaius, this happened as early as 11 BC during the reign of Augustus. It could be that the limiting of the effects of *confarreatio* was a gradual development.
133 Treggiari (1991) 23-24.
134 Gaius, *Institutiones* 1.113.
135 To do this she could go through *coemptio* with her husband or with any other man. According to the jurist Gaius *manus* was only created when *coemptio* was done with her husband. In other circumstances *coemptio* was 'fiduciary', *fiduciae causa*, and merely created a formal trust, a legal fiction, Gaius, *Institutiones*, 1.114-1.115b, 1.136-1.137a. Cf. Kaser (1971) 324; MacCormack (1978).
136 Kaser (1971) 118-119.
137 Gaius, *Institutiones* 1.111.
138 This so-called *trinoctium* is mentioned in Gaius, *Institutiones* 1.111 and Aulus Gellius, *Noctes Atticae* 3.2.12. Cf. Wolf (1939).
139 Gaius, *Institutiones* 1.111: '(...) *hoc totum ius partim legibus sublatum est, partim ipsa desuetudine obliteratum est.*' Translation Gordon and Robinson (1988).
140 Both the early first century BC and the Augustan era are suggested: Corbett (1930) 90, Watson (1967) 19-23, Treggiari (1991) 20-21.
141 For a discussion of the development of marriage *sine manu*, see chapter 5.
142 According to Corbett (1930) 91-93 this had always been a requirement, while Watson (1967) 25-27 argues that this was not yet legally required in the first century BC.
143 Gaius, *Institutiones* 1.111, 1.114, 1.115, 1.118, 1.136.

or in the power of his *pater familias*, as a citizen *alieni iuris*.[144] Her situation was comparable to that of adoptive children, who were attached to the *familia*, but less closely than natural children.[145]

The effect of *manus* was that a woman, like her children, remained in the power of her husband until his death. She could not own property and could not divorce her husband, although he could divorce her. When he died, she was one of his heirs. If he was *pater familias* when he passed away, she became *sui iuris* upon his death, but within his patrilineage. Traditionally, her adult son or the brother of her late husband became her *tutor*. Her children were her heirs, or the agnates of her husband when there were no children. [146] The woman had no parental authority over her own children; this could be exercised solely by the husband. Being a '*filiae loco*' was not only about subordination, however. Gaius used it in a context related to privilege: the woman married with *manus* did not only own obedience to her new *familia*, she could also expect protection and support from it.[147]

A woman who married without *manus* also lived with her husband, but she did not become part of his *familia* and did not come under his power. She remained in the *potestas* of the *pater familias* of her own *familia*. When she was *sui iuris*, she remained so after marriage and she also kept her own *tutor,* whose *auctoritas* was necessary for some financial transactions. This *tutor* was a male agnate, normally her brother, or someone her *pater familias* had assigned by will. When both spouses were *sui iuris*, they were both the head of their own *familia*, each with its own property. Combining this property and exchanging gifts between spouses was forbidden.[148] Unlike in a marriage with *manus*, the woman, or her *pater familias*, could initiate a divorce.[149] Like a woman married with *manus*, she did not have paternal authority over her children, but in a *sine manu* marriage, she and her children were not even agnatic relatives. Unless she made arrangements in a will, her children did not inherit from her and her property went to her agnates within her natal *familia*, her brothers and sisters or the children of her brothers.

Unlike the fixed position of a woman in a marriage with *manus*, a woman married without *manus* had to take the opinions of the members of two different *familiae* into account. Her position in between her natal *familia* and her husband's *familia* could probably be difficult, but it also offered her some room for negotiation. It has been shown in anthropological research that women in general have more autonomy in situations where male authority is dispersed and men from different families, for example her brothers and her father, share power over

144 When her husband was *alieni iuris*, she came under the power of his *pater familias* and under the husband's power the moment his *pater familias* died.

145 Treggiari (1991) 30, who attributes this to the difference that natural children were an expense for their father, while a wife in *manus* brought a dowry and adoptive children were raised by others. According to Gardner (1998) 162, *manus* marriage was close in its effects to *adrogatio*.

146 Buckland (1963) 118-121.

147 Gaius, *Institutiones* 1.115b, 1.138. cf. Treggiari (1991) 30n126.

148 Kaser (1971) 331-332.

149 Treggiari (1991) 441-446.

her.[150] Furthermore, she had a serious chance to become *sui iuris* during her marriage. As a married woman *sui iuris* she could have her own property and arrange her own affairs, which made her potentially much less dependent on her husband.

This did not mean that she was totally free to act as she pleased: she still needed a *tutor*, a legal guardian, to give his authorisation to acts which could diminish her property, like the sale of land or slaves, or the making of a will. This *tutor* was normally not her husband, but a man related to her family of orientation. If her father had not made arrangements in his will the *tutor* was the closest male agnate. This nearest agnate was normally her brother, but if she had no brother it could be an uncle or a male cousin. When there were no nearest agnates, members of the *gens* could claim the guardianship. An agnatic *tutor* had a personal interest in keeping the women's property together because he was among the first in line to inherit it if she did not make a will.[151]

The influence of the tutor gradually diminished during the period under discussion. Already in the second century BC, it was possible for a *pater familias* in his will to bequeath to his wife in *manus* and his daughters the right to choose a *tutor* for themselves and to change *tutor*.[152] However, this freedom depended on the provisions her *pater familias* had made in his will. If there was no will, she could not refuse the claim of her nearest agnate to become her tutor and meddle with her affairs. This was the reason why the woman in the *Laudatio Turiae* mentioned at the start of this chapter worked so hard to avoid this situation.

This dependence disappeared gradually during the early Empire. Around the start of the Empire, the possibility for members of the *gens* to claim the guardianship seems to have disappeared.[153] Furthermore, the emperor Augustus introduced the rule that a free woman who had borne three or more children in legal wedlock no longer needed to have a *tutor* at all, not even if she had an agnatic *tutor*. Half a century later, Claudius abolished the right of agnates to claim agnatic guardianship.[154] By the middle of the first century AD, Roman women could do business largely without the interference of a *tutor*, as is shown in the examples of financial transactions by women in the so-called 'archive of the Sulpicii', documents from a Puteoli banking firm.[155] Having a *tutor* was not always negative for a woman, since he was normally somebody close to her whom she could ask for support. Also, since the *tutor* was normally not related to her husband, she could probably also use him to enhance her bargaining position towards her husband.

150 Schlegel (1972) 135.

151 Watson (1967) 146-153, Dixon (1984), Gardner (1986) 5-30.

152 Gaius, *Institutiones* 1.151-153. This was probably already possible around 186 BC, when the Senate gave Faeccenia Hispalae the right to chose her own tutor: Livy, *Ab urbe condita* 39.19.5.

153 Buckland (1963) 145.

154 Gaius, *Institutiones* 1.157, 1.171, Ulpian, *Tituli* 11.8. Cf. Dixon (1984).

155 The 'archive of the Sulpicii' contains documents of financial transactions done by a Roman banking firm from Puteoli written in the first century AD: Jones (2006), Wolf (2010). According to Jakab (2013), women were involved in a quarter of all transactions in the 'archive of the Sulpicii', in most cases without the use of a *tutor*. Jakab assumed that women circumvented the need for a *tutor* by using freedmen, slaves or other men as intermediaries: Jakab (2013) 148-149.

Her relative independent position came with a price, however. Legally, she became an outsider in her relationship with her husband and children. She could not count on the support of her husband's *familia* and had to look to her own relatives for support.[156] In a sense, marriage without *manus* weakened the marital bond in favour of the patrilineage. This holds especially true for as long as the *pater familias* of the woman was still alive. However, at the same time the position of the *tutor* was gradually weakened and guardianship was even abolished for women *sui iuris* with three or more children. This could have had the contradictory effect that a woman *sui iuris* became relatively more independent from her family of orientation during the early Empire, while at the same time the relative influence of the husband increased again.

156 Although the emperor Claudius abolished the obligatory agnatic *tutor* for freeborn women, this cannot be seen as exemplary for the development of the position of women during the early Empire: during Claudius' reign the Senate also enacted the *senatusconsultum Velleianum* which forbade women to undertake liability for others: Buckland (1963) 448, Crook (1986a), Mönnich (1999).

3.3 Property and inheritance

Legal possibilities alone were not enough to secure a certain degree of independence for a woman *sui iuris* in a marriage *sine manu*. A woman who wanted to benefit from these possibilities needed at least some property to support herself and to use as a bargaining tool. Terentia was such a woman. In the first century BC, she was married to the writer, rhetorician and politician Cicero. Through his letters we get a glimpse of her property, which included houses in Rome and landed estates.[157] Terentia was actively involved in the management of her property: she had a dispute with tax collectors over the payment of rent on her lease of public land, she probably invested in the school of a grammarian, and she could sell property without her husband's permission.[158] Indeed, she seems to have considered the management of her property to have been none of Cicero's business, although she did manage Cicero's property during his exile.[159] The freedom that Terentia possessed to act as an independent property owner is remarkable when compared with women in many later societies, especially married women, who often had limited opportunities to own property or to dispose of their property at will. This held true not only for women in Classical Athens, for example, but even as recently as 19th-and 20th-century Europe.[160]

Terentia was undoubtedly *sui iuris* during most of her marriage.[161] This was relevant, not only for her personally, but also for her position in relation to her husband Cicero. In the introduction, I emphasised as one of the premises of this thesis that human relationships are based on bargaining. Within every relationship between two people a dynamic equilibrium is formed that needs regular confirmation and renegotiation by both partners to avoid conflict or breakdown. The relative strength of both partners within this bargaining process depends on a series of factors. Factors such as character, skills, intelligence, beauty and relative status within their personal networks are important, but so too are the property of both partners, their relative legal position and the formal influence of family and the social environment; these factors constrain the leeway that each partner has within this process. The first five factors mentioned are very hard to determine historically, because they vary from one relationship to

157 Cicero, *Epistulae ad familiares* 14.1.5, *Epistulae Ad Atticum* 2.4.5. This was besides the dowry Terentia brought with her upon marriage, which had a value of 100,000 denarii (400,000 sesterces), according to Plutarch, *Life of Cicero* 8.2.

158 Public land: Cicero, *Epistulae ad Atticum* 2.15.4, grammarian: Treggiari (2007) 143, sale of property: Cicero, *Epistulae ad Familiares* 14.1.5.

159 Treggiari (2007) 56-70. Cicero criticised her management of property: Cicero, *Epistulae ad Atticum* 9.24. He especially distrusted her steward, the freedman Philotimus: Cicero, *Epistulae ad Atticum* 6.4, 6.5, 6.7, 6.9, 7.1, 7.23, 9.7, *Epistulae ad familiares* 14.5. It is uncertain whether these anxieties contributed to their divorce, Claassen (1996) 228-229.

160 For Athens, see Schaps (1979) and Just (1989). Until 1882 married women in England were not considered independent legal persons and all their property they owned became their husband's upon marriage: Stetson (1982) 5-7, Davidoff [et al] (1999) 135-146. Under the influence of the French *Code Civil*, the legal incapacity of married women was formally established in law in many European countries in the early 19th century (Damsma 1993, 191). Married women only received full legal capacity in the Netherlands in 1956, in Belgium in 1958: Blom (1993) 42, Gerlo (1989) 7.

161 Treggiari (2007) 34.

another.[162] The potential of both partners to own property, their relative legal positions, and, to a lesser degree, the influence of family members on a relationship, are factors which depend on social norms and are therefore relevant to a larger proportion of society ans somewhat easier to uncover. We looked at the legal position of Roman women in the preceding section; in this section we will look at property and inheritance rights.

Property rights

In section 3.1 it was shown that in its most basic meaning a *familia* comprised all the assets of a family group, commanded by the head of this group, the citizen *sui iuris*. Because Romans saw every citizen without a living ancestor in the male line as the head of a *familia*, not all *familiae* actually comprised a group. Quite a large proportion of them were one-person *familiae*.[163] Furthermore, although Roman sources make it abundantly clear that the head of a *familia* ought to be a man, their conception of society as a group of interacting *familiae* meant that they needed to accept women *sui iuris* as heads of *familiae* too. This was the legal basis for Roman women to own property.

Property ownership by Roman women was in itself not restricted by Roman law and social norms. The main divide in society was not between men and women, but, as we have seen, between citizens *sui iuris* who could own property and citizens *alieni iuris* who could not. The same rights of ownership applied to both men and women *sui iuris* and there were no types of ownership which were off-limit to women. The possibility for a woman to own property was well established long before 200 BC and seems not to have changed fundamentally between 200 BC and the middle of the first century AD. However, there were some limits to the freedom of Roman women to freely dispose of their property. An ancient category of property, the *res mancipi*, could not be sold or given away without the permission of their *tutor*. Furthermore, upon marriage, a woman, or her *pater familias* if she was still *alieni iuris*, was expected to bring a dowry which became the property of her husband, at least for the duration of the marriage.

During the late Republic and the early Empire, the difference between *res mancipi* and *res nec mancipi* was the major distinction within the Roman rules of private property and was of fundamental significance in the conveyance of property. *Res manicipi* as a category already existed in the time of the Law of the XII Tables, halfway through the fifth century BC.[164] Property considered *res mancipi* comprised land in Italy, buildings on this land, rural servitudes, slaves and draught animals: oxen, horses, mules and donkeys.[165] The list of *res mancipi* is in itself proof that this category of property was very ancient: these types of property were all essential for the traditional Mediterranean way of farming.[166] This made them crucial for the preservation of a *familia* as a corporate group during the time that small-scale farming was dominant in early Rome. All other property, including money, jewels, furniture, other animals and land and houses in the provinces were considered *res nec mancipi*. A woman *sui iuris* could sell them without the interference of her *tutor*.[167]

Ownership of *res mancipi* could only be transferred through a highly formalised procedure, either by *mancipatio* or *in iure cessio*. *Mancipatio* is the symbolic sale described in the preceding section.[168] *In iure cessio* was a transfer before the praetor or provincial governor, a sort of symbolic court case in which the magistrate decided who would have ownership. Both procedures necessitated the presence of the citizens involved, the *res mancipi* and the use of a formula.[169] In both instances the transfer of ownership took place unconditionally and immediately, the only exception being that in the case of an actual sale ownership only passed when the price was paid or formally promised.[170]

Both *mancipatio* and *in iure cessio* were highly formal and not well adapted to the Mediterranean-wide commerce that developed as the Roman Empire grew. They were seen as cumbersome, and the Romans did not add new categories to the list of *res mancipi* as their society evolved.[171] The distinction, however, between *res mancipi* and *res nec mancipi* was not abolished until the sixth century AD. The procedures of *mancipatio* and *in iure cessio* even gained new relevance during the Republic, because they came to be used as ways to transfer people in and out of the *familia*. The persistence of the category of *res mancipi* could hamper Roman women, because they needed the permission of their *tutor* to sell such property, whereas they could freely dispose of *res nec mancipi*.[172]

In the case of women who remained sui iuris after their marriage, there was another limitation on the use of their property. Although it was not compulsory, a woman, or her pater familias if alieni iuris, was expected to provide a dowry upon marriage, which was seen as a contribution to her upkeep in the household of the husband. This dowry became the property of the husband or his pater familias. Originally, the dowry had been irrecoverable, because divorce was only possible in case of grave fault by the wife.[173] However, from the middle Republic

162 They can only be assessed in individual cases and even then only rarely. Occasionally there is a glimpse of such relations in ancient sources, as in the case of Terentia and Cicero mentioned above. By sheer force of character women could sometimes overcome their legal and social disadvantages, as in the case of the Greek widow who confronted her father (who was also her guardian) in court over mistreatment of her and her children: Lysias 32 (*Against Diogeiton*) with Just (1989) 130-131.

163 Due to the high mortality rate, a large percentage of Roman children was *sui iuris* before marriage: Saller (1994) 49 and 52.

164 Buckland (1963) 236.

165 Gaius, *Institutiones* 1.120 and 2.29. A servitudes is, for example, a right of way or the right to pasture cattle on someone else's land: Buckland (1963) 259-268.

166 Kaser and Knütel (2014) 113, Buckland (1963) 239.

167 Gaius, *Institutiones* 2.80.

168 Gaius, *Institutiones* 1.119-122, Varro, *de Lingua Latina*, 6.85, 9.83. Cf. Watson (1968) 16-20.

169 Gaius, *Institutiones* 2.24.

170 In the fifth century BC, the transfer of bronze in *mancipatio* had been the payment: Gaius, *Institutiones* 1.122. During the Empire, payment as a condition for transfer of ownership became obsolete: Kaser and Knütel (2014) 142.

171 Gaius, *Institutiones* 2.16 mentions that camels and elephants, which could be used as draught animals, were not considered *res mancipi* because they were not known to the Romans at the time when it was determined which goods were *res mancipi*.

172 On the role of the *tutor mulieris*, see below.

173 Plutarch, *Romulus* 22.

onwards, probably due to the precedent of the divorce of Carvilius Ruga in 231 BC, it became possible to divorce an innocent wife.[174] This led to the development of a legal procedure for the dowry's recovery and pre-marital contracts to secure its recovery if the marriage ended.[175] Until the Augustan era, a husband was still free to do as he pleased with the dowry, but the principle was established that he had to maintain the value of the dowry during marriage in case he had to repay it.[176] The effect was that, although the formal ownership by the husband was not disputed, the dowry came to be seen as in a sense part of the wife's patrimony, or as the jurist Tryphoninus said around AD 200: 'although a dowry becomes part of the husband's property, it still belongs to the wife'.[177]

Dowries were seen as transactions between two *familiae*, not between two persons.[178] Many brides did not have to pay their own dowry, but relied on payment by their *pater familias* or even other family members and friends.[179] However, women *sui iuris* seem to have paid their own dowry. This dowry could consist of money, but for example also of slaves or land.[180] Although the husband owned the dowry, the fact that she or her familiy members had contributed to the marital household gave the wife some bargaining power. This was even the case in a marriage with *manus*, especially when a large dowry had been paid.[181]

We do not know how large Roman dowries were, although it has been argued that Roman dowries were considerable smaller than dowries in early modern Europe.[182] The size of the dowry probably depended on the bargaining power of both *familiae* and was a way to maintain their social status relative to each other.[183] Because the dowry was meant to alleviate the burden of matrimony for the husband, it had to be in line with the social standing of the husband's *familia*. This may explain why some fathers had to borrow money to provide their daughters with clothes and servants appropriate to their husband's standing, while someone like the rich widow Pudentilla gave less than ten percent of her property as dowry to her husband Apuleius, a man of relatively modest means.[184]

174 Watson (1965), Jacobs (2009).
175 Gardner (1985). On the so-called *actio rei uxoriae*: Kaser and Knütel (2014) 348-351.
176 The *Lex Julia de Adulteriis* and the *Lex Julia et Papia* enacted by Augustus forbade the alienation of dotal land in Italy and the manumission of dotal slaves without the wife's consent. Gaius, *Institutiones* 2.63, Paul, *Sententiae* 2.21b, *Institutiones* 2.8.pr and *Digesta* 24.3.61 (Papianus) on dotal slaves. Cf. Gardner (1986) 103.
177 *Digesta* 23.3.75 (Tryphoninus): '*Quamvis in bonis mariti dos sit, mulieris tamen est* (...)'. Translation Watson (1985).
178 The dowry was transmitted to the *pater familias*, not to the groom (unless he was *sui iuris*), which could give rise to a number of legal niceties upon the death of the *pater familias*: Gardner (1986) 108.
179 Roman law distinguished between *dos profecticia*, which was given directly by the bride's *pater familias* when she was *alieni iuris*, and *dos adventicia*, dowry provided by other means, Buckland (1963) 107. An example of the latter is Pliny the Younger, who paid for the dowries of his friend Quintilian's daughter and Calvina, the daughter of a relative: Pliny the Younger, *Epistulae* 2.4, 6.32.
180 Gaius, *Institutiones* 2.63.
181 Plautus, *Asinaria* 85-87, Aulus Gellius, *Noctes Atticae* 17.6.1.
182 In the Principate, dowries within the elite had approximately the value of one year's income, while in early modern Europe the value ranged from 3 to 5 times the annual income of a family, Saller (1984b) 200-202.
183 Saller (1984b) 197-199, Gardner (1986) 97. Cf. Jansen (1984).
184 Pliny, *Epistulae* 6.32, Apuleius, *Apologia* 71, 91-92.

Unless she married with *manus* or conducted a *coemptio* with her husband during marriage in which case she became *alieni iuris* and all her property went to her husband or his *pater familias*, a married woman *sui iuris* could still have her own property, as we have seen in the case of Terentia. However, dowries were not only part of elite marriages, but seem to have been in almost universal use.[185] For less well-to-do women *sui iuris*, the dowry was probably a severe limitation, because it effectively placed a considerable part of their property in the possession of their husbands for the duration of the marriage. This meant that there was perhaps little personal property left for most women after the dowry was paid, which limited the possibility for most women to enhance their bargaining power through property ownership.

Intestate inheritance

Although it was not to the direct benefit of the woman herself, a dowry can be seen as a sort of pre-mortem inheritance, a way of inheriting property while the *pater familias* is still alive.[186] This was not the only way that Roman women could inherit. Like their brothers, they could also share in the inheritance of their *pater familias* upon his death. The Roman pattern of inheritance can be placed in the category that the anthropologist Goody calls 'diverging inheritance', an inheritance pattern in which property is transmitted from one generation to the other through children of both sexes.[187] According to Goody, 'diverging inheritance' is linked to societies with intensive agriculture.[188] In this type of society, inheritance laws are focused on the transmission of property from one generation to the other as completely as possible, which makes the promulgation of the family line into a central concern. In most societies with 'diverging inheritance', the focus is on the male line, but women are necessary as potential heirs, because it cannot be taken for granted that

185 The only examples in Roman sources are those of elite dowries, ranging from 50,000 to one million sesterces in the Principate: Saller (1984b) 200-202. However, examples of marriage contracts from Roman Egypt show that at least in that region, dowries were common among less well-to-do citizens. In AD 42-46, the median dowry in the Egyptian village of Tebtunis was 80 drachmae, the smallest being only 18 drachmae: Hopkins (1980) 342, based on P.Mich. 121 V, 123 and 238. The Alexandrian drachma was roughly the equivalent of a Roman sesterce: Rathbone (2007) 698. Such a small dowry could comprise forty drachmae in cash, some earrings worth twenty drachmae and a women's dress worth twelve drachmae, as in the case of the marriage of Tryphon and Saraeus in Oxyrhynchus in AD 37: Oxyrhynchus Papyri v.2, 282. Payment of a dowry seem to have been a way to prove that both partners saw their relationship as a sincere marriage: *Digesta* 23.3.39 (Ulpian) suggests that even slaves tried to seal their informal marriage with a dowry.
186 This idea developed slowly in Roman law. Unlike emancipated children who wanted to claim a part of the parental estate, a married daughter who was still in the *potestas* of her father was not required to 'bring in' her dowry as part of her property to the common account for calculation of the division among the heirs. According to Gardner this was because it would in effect require her husband to take on some of the debts of his late father-in-law when the estate was debt-ridden: Gardner (1986) 109-110. An emancipated daughter had to give an undertaking of the dowry when she claimed part of the estate, but she only had to surrender a portion of it to her co-heirs if she recovered it. To me, this seems to suggest that in the period under consideration ownership, rather than the welfare of the husband, was the crucial factor: the dowry was owned by the husband and the daughter *alieni iuris* had never been the owner of it. The emancipated daughter had, but her ownership was postponed until after the marriage.
187 Goody (1969).
188 In his opinion 'diverging inheritance' is part of all agricultural societies from Europe to China, Goody (1990).

there is always a man available to become a heir. In societies with a focus on a male inheritance line women are also somewhat suspect. Upon marriage they, and their property, often transfer from one family to another. There was also the chance that they could interrupt the male line of the family in which they were married by having children from extramarital affairs. As mentioned in section 1.4, in societies in which women could inherit substantial property there is, therefore, a strong tendency to control the marriages and sexual morals of women.

As in the case of property ownership, the rights of Roman citizen women to share in an inheritance seem remarkable compared to other societies. Roman law did not know the concept of primogeniture, nor did it have a strong preference for men in the case of intestate inheritance. At the start of the period under research, around 200 BC, Roman women shared the inheritance on an equal footing with their brothers when their *pater familias* died intestate.[189] When no will was made, the inheritance was simply divided when the *familia* of the deceased *pater familias* was split among the new citizens *sui iuris*. As mentioned earlier, all the citizens who became *sui iuris* upon the death of the *pater familias* were considered to be *sui heredes*, their own heirs, because they were considered to inherit what was, in a sense, already theirs. This also implied that they could not refuse the inheritance, even when it consisted only of debts.[190]

These *sui heredes* were the *pater familias*' sons and daughters, both natural and adopted, and his widow when married with *manus*, who all received an equal share. When a son had died before the *pater familias*, the grandchildren from this son (and the daughter-in-law in *manus*) fell directly under the *potestas* of the *pater familias* and they also became *sui iuris* upon his death. However, they had to divide their late father's share among them.[191] Wives married without *manus* and children who were no longer in the *potestas* of the father, for example daughters in a *manus* marriage or emancipated sons, had no claim in the inheritance.

When there were no *sui heredes*, an intestate inheritance could be claimed by the nearest agnates, who could be either man or woman.[192] This was the normal category of the heirs of a Roman woman *sui iuris,* who had no *sui heredes*, because she could not have other citizens in her *potestas*. On intestacy her inheritance went to the people she had shared the *familia* with in the previous generation. These agnates could be her brothers and sisters from the same father, if she had married without *manus*, or her children if she had been married with *manus*.[193] Her children were her nearest agnates to a widow from a *manus* marriage, because *manus* made a woman *filiae loco*, 'as in the position of a daughter' to her husband.[194] When a woman died intestate, nothing went to her husband. If they had been married with *manus*, she had no property when her husband was still alive at the time she died. If they had been married without *manus*, her husband was not among the nearest agnates, because he was a member of another *familia*.

Unlike *sui heredes*, nearest agnates were not obliged to take the inheritance.[195] Only the nearest living agnates could inherit in this way. According to the Law of the XII Tables, if they refused the inheritance or failed to accept it, the inheritance did not go to the next agnates, but to a third category, the *gens*. The *gens*, or clan, was a wider group of which the *familia* was a part.[196] By 200 BC it was not at all clear to the Romans themselves who was part of the clan. At the very least, it consisted of all free citizens who shared the same *nomen*.[197] The influence of the *gens* can still be found in the first century BC.[198] The rules of intestacy followed the agnatic line. This had the effect that daughters married with *manus*, emancipated sons, and the children of daughters could not inherit, but a complete stranger with the same *gens*-name could in some cases.

In the late Republic, a reform of the rules on intestate inheritance started under the influence of the praetor's edict, a magistrate whose function it was to apply the basic rules of civil law in practice. At the beginning of his year of office each praetor published his edict, which set out the legal remedies he would grant. Through his responsibilities for granting legal remedies the praetor excersised control over the development of new causes of legal action.[199] In the case of intestate inheritance the praetors did not change the civil law rules, but started to allow *bonorum posessio*, possession of property, to deserving claimants who were left out by civil law. The major development was that non-agnatic blood ties were recognised. The first category who could claim were the children of the deceased, both the *sui heredes* and emancipated children; the second category were the legitimate heirs mentioned in civil law, like a wife *in manus* and the nearest agnates; the third category who could claim were cognates, those within the sixth degree of relationship, independent of their agnatic relationship. This last category effectively replaced the gens. The last category were husband and wife in a marriage without *manus*.[200]

189 Crook (1986b) 59-69.

190 Watson (1975) 94-95; Gaius, *Institutiones* 2.157, 2.158 is a later development.

191 Gaius, *Institutiones* 3.8. Grandchildren from a deceased daughter could not inherit on intestacy, because, as mentioned earlier, they were part of the *familia* of the daughter's husband: Gaius, *Institutiones* 3.24.

192 *Law of the XII Tables*, 5.4, Paul, *Sententiae* 4.8.20. In the late Republic, a rule was introduced which limited the right of women as nearest agnates to sisters. Buckland (1963) 369.

193 Gaius, *Institutiones* 3.11-16.

194 Kaser (1971) 282

195 Women had the same intestate inheritance rights as men, with one exception: only sisters could be nearest agnates (or daugthers when their mother was *loco filiae*). Aunts or nieces were excluded as nearest agnates; this rule was said to be *Voconiana ratione*, based on the concept of the *Lex Voconia* discussed below: Paul, *Sententiae* 4.8.20, Gaius, *Institutiones* 3.14. Cf. Kaser (1971) 581.

196 *Law of the XII Tables*, 5.5. The claims from this category were probably made by individuals, Gardner (2011) 364-365, although some have argued that the gens inherited collectively. For discussion: Smith (2006) 26-29.

197 According to Cicero *Topica* 29, the jurist Mucius Scaevola (around 100 BC) defined the *gens* as those who share the same family name, *nomen*, and had never suffered *capitis deminutio*, loss of civil capacity. They had to be born from freeborn ancestors, none of whose ancestors had ever been in slavery. Cf. Smith (2006) 15-17. This definition excluded freedmen and their descendants (who habitually took their master's *nomen* upon manumission) and wives in *manus* and adopted and emancipated children, because they had undergone *capitis deminutio*.

198 *Laudatio Turiae* 13-16, Cicero, *De Oratore*, 1.39.76, *In Verrem* 2.1.45.115, Catullus 68.119-121, Suetonius, *Divus Iulius* 1.2. Cf. Watson (1975) 99.

199 Johnston (1999) 3-4.

200 For an overview and discussion of the praetorian rules: Buckland (1963) 383-385, Kaser (1971) 582-585, Watson (1970).

When these new interpretations came into use is not quite clear. According to Watson, the second category already existed before 74 BC.[201] Gardner argues that between 71 and 66 BC the cognates were added as a category, and children only added in the second half of the first century BC, probably during the reign of Augustus. From that time onwards, *sui heredes* could probably refuse the inheritance.[202]

The effect of the praetorian intervention was that some of the most problematic anomalies of Roman civil law were mitigated. However, this did not automatically improve the situation for women. The role of women in *manus* as heirs became less prominent, while a woman without *manus* was recognised as an heir, but only if no other heirs existed. Furthermore, at a certain moment the rights for women to inherit were restricted when only sisters of a deceased were still accepted as nearest agnates.[203] According to the Imperial jurist Paul, this limitation was *Voconiana ratione*, which suggests that it was either part of the *Lex Voconia* or jurisprudence based on this law. Therefore, it could have been become the rule in 167 BC or anytime thereafter.

Inheritance through wills

Instead of leaving an inheritance intestate, a Roman citizen *sui iuris* could also choose to make a will.[204] The most common kind was the will by *aes et libram*, a form of *mancipatio*.[205] Gaius tells us that it emerged as a mancipation of the property of the *familia* to a trusted friend, who would become heir and distribute the property after the death of the *pater familias* according to his wishes.[206] By 200 BC this actual transfer of the *familia* was no longer necessary. The mancipation had become notional and one or more persons were instituted as heirs in the will. The institution of formal heirs was essential for the validity of the will. Furthermore, *sui heredes* who were not instituted as heirs had to be expressly disinherited, either by name or in a general clause, otherwise the will was also void.[207] As long as the will met the formal requirements, the citizen *sui iuris* could divide the inheritance in whatever proportions he or she wished and also add other clauses, for example to provide legacies to non-heirs or appoint certain persons as *tutores* for women and children in his *potestas*. The heirs were under an obligation to carry out the clauses of the will. [208] Roman women could make a will *per aes et libram* too, but there were some limitations: they had to have the consent of their *tutor* to make a will and before they could make a will they needed to undergo *capitis deminutio*. This was a change of status which cut the agnatic ties.[209]

After 200 BC, Roman law-makers gradually started to limit the freedom of a citizen *sui iuris* to distribute the *familia*'s property through wills, away from the *sui heredes*. Probably around 200 BC, a *Lex Furia Testamentaria* was enacted which limited the value of any legacies to 1,000 asses, except to persons within the immediate family circle. According to Gaius, this law failed because it did not limit the number of legacies.[210] In 169 BC a second statute was enacted, the *Lex Voconia*, which stipulated that no one could receive a legacy which was greater than that received by the heirs. Furthermore, it forbade people who had been classed in the first class of citizens in the Roman census from appointing a woman as heir.[211] The effect of this law was also limited, because it still meant that it was possible for only a small portion to be left to the heirs, as long as no one received a bigger legacy than this remaining portion. Finally, in 40 BC the *Lex Falcidia* was enacted, which left the testator free to leave any legacies, provided one-quarter of the inheritance remained with the heirs. This *lex* remained in operation until late antiquity.[212]

Apparently, Roman magistrates felt the need to protect heirs from ending up with a worthless inheritance.[213] However, the exclusion of women as heirs in the *Lex Voconia* seems to indicate that there were other factors involved. One of the reasons for this development seems to have been the concern for the preservation of the so-called *sacra privata* of the *familia*. The *sacra privata* were religious rites related to the *familia*.[214] Although they were private rites, carried out within the *familia*, their continuation was deemed to be of importance to the *res publica* and their observance was supervised by the *pontifices*.[215]

201 Watson (1971a) 183-185, based on Cicero, *In Verrem* 2.1.44.114-45.116. Watson also concludes that the categories of children and cognates did not yet exist in the seventies BC.
202 Gardner (1998) 39, 43.
203 Gaius, *Institutiones* 3.14.
204 How many Romans made a will has been subject to discussion. Maine's influential dictum that Romans had a 'horror of intestacy' (Maine (1861) 185) has been challenged by Daube (1965) and Watson (1971a) 175-176, who argued that most Romans did not make a will, either due to circumstances, poverty or because they were unable to do so under Roman law. In defence, Crook (1973) argued that even Romans of modest means made wills. Champlin (1989) 208-209, argued that within the elite there was a strong moral and social obligation to make a will. According to Stern, this was true for all layers of society: it was not the amount of property distributed through the will that was important, but the will as a means of honouring relationships: Stern (2000) 426-428.
205 Gaius *Institutiones* 2.101-103 describes the historical development of Roman wills.
206 Gaius *Institutiones* 2.103. In this way, the automatic inheritance by the *sui heredes* was circumvented.
207 Watson (1971a) 40-47 and (1971b) 106-107.
208 Watson (1971b) 100-116.
209 Watson (1971a) 22-23, based on Cicero *Topica* 4.28 and Gaius, *Institutiones* 1.115a. Women who had been in *manus* had already undergone *capitis deminutio* when they had come into *manus* and did not have to do so again to make a will. Watson suggests that in earlier times only widows from a *manus* marriage were allowed to make a will, because their heirs in the case of intestacy were often not their natural relatives. By using *capitis deminutio* as a symbolic way to cut the agnatic ties, this rule was extended to women not married with *manus*: Watson (1971b) 103.
210 Gaius, *Institutiones* 2.225.
211 On the *Lex Voconia*: Weishaupt (1999).
212 Gaius, *Institutiones* 2.227, *Digesta* 35.2.1. pr (Paul). It is not clear whether the *Lex Falcidia* replaced the *Leges Furia* and *Voconia* directly: Watson (1971a) 172n4 vs. Kaser (1971) 63n10.
213 Other possible reasons were the protection of the testator against the demands of social superiors and the restriction of avarice and luxury. For a discussion of the motivations, see Watson (1971a) 163-166.
214 What the *sacra privata* comprised is not clear, but they were concerned with honouring the death and the survival of the *familia* as a patrilineage. It is quite possible that they differed from one *familia* to the next. For a discussion of the possible elements of the *sacra privata*, see Sirks (1994) 277-286.
215 Wissowa (1912) 400, Watson (1975) 92. According to Gaius, Institutiones 2.55 the pontifices even accepted the seizure of an inheritance if this meant that the sacra privata were performed again.

These priests developed rules governing who had to perform the *sacra privata* and it was on this point that two meanings of the term *familia* collided. They ruled that the *sacra privata* followed the property of the *familia*. Normally, this meant that they went to the heir or heirs. The need to continue the *sacra* was probably one of the reasons why the discovery of the heir was of central importance, both in the case of intestate inheritance and when a will had been made.[216] However, when there was no heir, or when someone took more of the property than the heirs, the *sacra* followed the property of the *familia*.[217] The effect was that the *sacra privata* could end up outside the *familia*, even when the *familia* had not died out. In particular, this could happen in those cases where a testator did not follow the agnatic principle. The performance of the *sacra privata* had to be taken seriously and was often seen as onerous, so much so that the sentence *sine sacris hereditas*, to inherit without *sacra*, became proverbial for a windfall.[218]

The importance given to the *sacra privata* influenced the position of women, both as testators and as heirs. Since they could not have direct heirs, the *sacra privata* could not be continued after their death. From the point of view of the priests it was probably preferable that the property of women would go back to the *familia* where it came from, in other words, through intestate inheritance to children or brothers-in-law in the case of a marriage *cum manu*, or to their brothers or the children of their brothers in the case of a marriage *sine manu*. The rule in the *Lex Voconia* which forbade elite women to become heirs at all can be seen in this light as a radical solution to avoid problems around the preservation of the *sacra privata*.[219] This rule especially hit those Roman citizens who had only daughters. Early on, a number of devices were developed to avoid or circumvent the *Lex Voconia*.[220]

This rule of the *Lex Voconia* seemed unfair to Cicero in the first century AD.[221] and it seems to have become less relevant after the introduction of the *Lex Falcidia* around 40 BC.[222] This seems to imply that the interpretation of what a *familia* was changed in the late Republic. The observance of the *sacra privata* presumably became less central.[223] Furthermore, the interpretation of *familia* to denote first and foremost the property of the corporate group and not the related kin was probably less acceptable to Romans in the first century BC. The transmission of property remained central to the *familia*, but it had to be related to the kin group.

216 Watson (1971b) 93.

217 Cicero describes two sets of rules on the subject in *De Legibus* 2.19.47-2.21.53. The older set probably date from before the middle of the third century BC: in these, the people liable were the heirs, or anyone who took the greatest share of the property, or if the greater share was left by way of legacy anyone who took a part of this. In the later set the first group liable were the heirs or anyone who took as much as all the heirs. When there were no heirs, the person who took the largest share of the estate became liable; if no one took a portion of the estate, the creditor who recovered the most; or, finally, a debtor to the deceased who had not paid the debt. Watson (1971a) 4-5.

218 Festus, *'Sine sacris hereditas'*. Already in the second century BC it is used in two plays by Plautus, *Captivi* 775 and *Trinummus* 484.

219 Manthe (1992, 1994), Sirks (1994).

220 Cicero, *De finibus bonorum et malorum* 2.55, Cicero, *In Verrem* 2.1.104-10.

221 Cicero, *De re publica* 3.10.17.

222 Watson (1971a) 163-174, Kaser (1971) 629-630.

223 In Gaius' time, strict observance of the *sacra* is presented as a thing of the past: Gaius, *Institutiones* 2.55.

3.4 Conclusion

In this chapter, the legal position of female citizens was studied based on the question of how the position of Roman female citizens was constructed in legal sources. We have seen that the room for manoeuvre for female citizens *sui iuris* was relatively great. They could own property, which they could manage themselves without too much interference from their husbands or male relatives. Furthermore, they did not have to obey their husbands, they could initiate divorce, and they could represent themselves in court. In this respect, Roman women had more leeway than most women in western societies until the twentieth century.

As we have seen in this chapter, their legal freedom to act depended on their position within the *familia*. The room for manoeuvre described above was only available to women who were *sui iuris*. The legal freedom to act for women who were *alieni iuris* was far more limited and they depended strongly on their *pater familias*. However, this was to a large extent true for both men and women: these legal limitations were in essence no different from those placed on men who were *alieni iuris*.

The Roman *familia* had some similarities with the modern western concept of family, but it was also different in crucial aspects. The *familia*, as presented in Roman law, was a corporate group which pooled the persons, property, religious cults and labour of a family group. Although all free persons within this corporate group were in a sense co-owners of the *familia* and its assets, the responsibility for the management of the *familia* was limited to the eldest living ancestor in the male line. This person was the only citizen *sui iuris* within the *familia*, the one who could make decisions regarding the accumulated property of all members of the familia, and who officially represented the *familia* in the wider Roman society. All other free persons within the *familia* were citizens *alieni iuris*. They remained in the power of the head of the *familia* until his death.

Roman law structured the *familia* as part of a patrilineage. This patrilineage was based on the transmission of the property through the male line from generation to generation. In this way there was an assumption in law that the *familia* remained in existence throughout the generations. After the death of the head of the *familia*, the *familia* could be split up among the heirs. However, there was a presumption that when a citizen *sui iuris* died without heirs, the assets of the *familia* had to flow back into a wider group, either to the nearest agnates or to the *gens*.

The Roman *familia*, with its strong emphasis on the continuation of the male line, offered both possibilities and limitations to Roman women. The main possibility lay in the way that citizenship *sui iuris* was defined: every citizen without a living forefather in the male line was considered to be a citizen *sui iuris* and, therefore, the head of his or her own *familia*. The possibility to become the head of a *familia* was not limited by gender or age. In contrast to the ideal that a Roman *familia* consisted of an elderly male *pater familias*, his wife and his children and grandchildren, we may assume that a large percentage if not a majority of the *familiae* consisted of one Roman citizen, often a woman. The position of a citizen *sui iuris* gave a Roman woman rights which were in line with those of a Roman man: she could own property, conduct her own business and go to court on her own behalf.

However, the position of a *familia* as part of a patrilineage put some limits on her position as well. In law, a female citizen *sui iuris* was seen as both the head and the end of her *familia*. She could not continue the male line and her children became part of their father's *familia*. She did not even have parental authority over them. Because she could not continue her *familia*, her agnatic relatives also had an interest in the preservation of her property, which was probably why a woman *sui iuris* had to have a *tutor* to who had to give his assent to some acts which could diminish her assets.

How often did women became citizens *sui iuris*? Since marriage was almost universal in Rome, we may assume that the answer to this question strongly depended on the marriage arrangements. As long as there was a preference for marriage with *manus*, the chance of a women becoming *sui iuris* was limited. When a woman married with *manus*, she became part of her husband's *familia* and *filiae loco*, as in the position of a daughter. This meant that she remained *alieni iuris* to him until his death. In this situation, only girls whose *pater familias* died before their wedding and widowed women were *sui iuris*.

This changed as the preference for marriages without *manus* grew. When she married without *manus* a woman remained part of her father's *familia*, even after marriage. She entered into the position of being married to a husband who was part of a *familia*, while she herself was part of another *familia* and subordinate to another *pater familias*. The result was that she became *sui iuris* after her own *pater familias'* death, like her brothers. Eventually, during the Empire when almost all marriages were presumably without *manus,* this must have meant that most adult women eventually became *sui iuris*, many of them during their marriage.

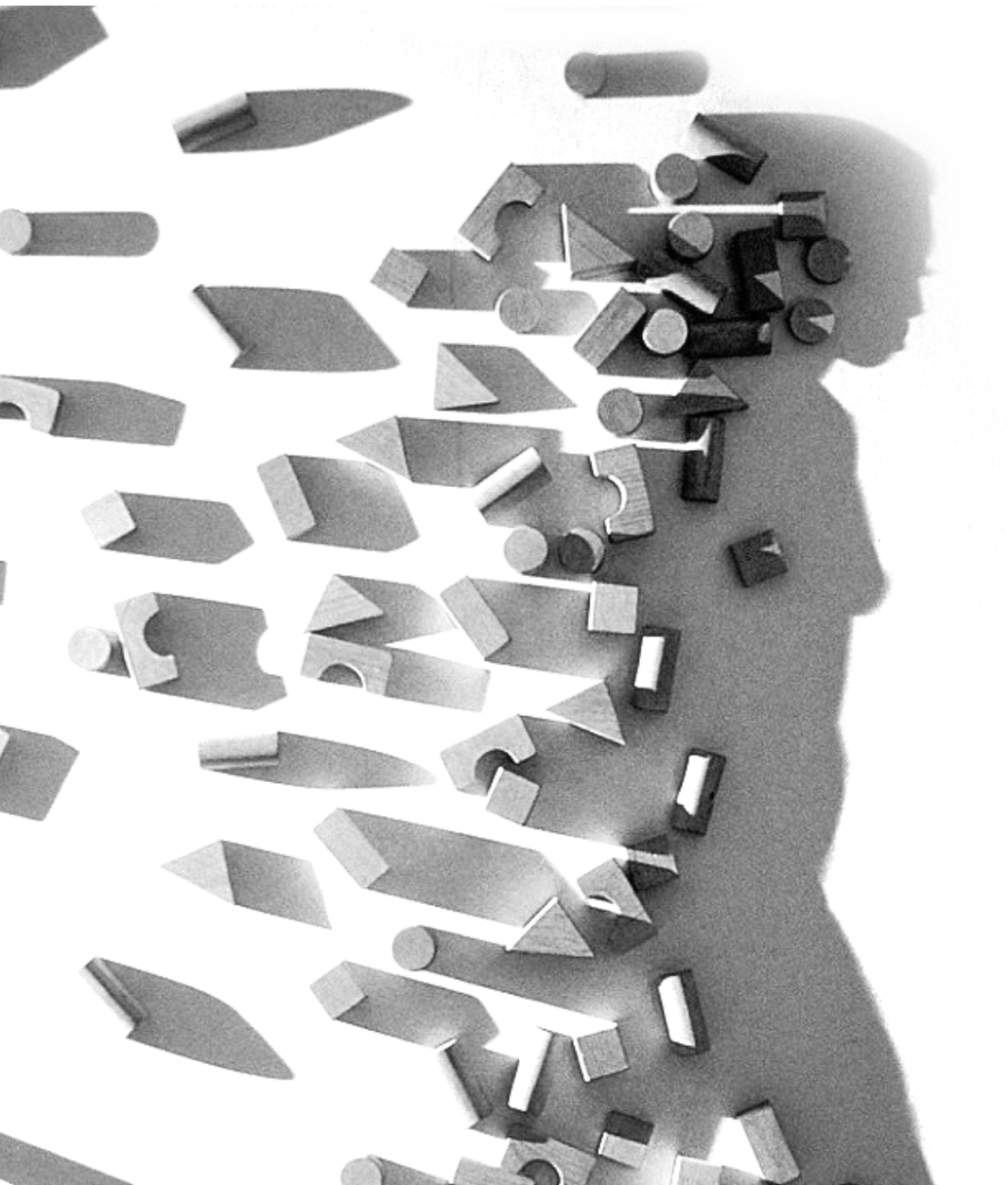
We may expect that the bargaining power of a woman *sui iuris* was in general stronger than that of a women who was *alieni iuris* to her husband. To what extent women could actually use this legal position is not always clear, however. On one hand, the legal rights of a woman *sui iuris* could have been greater than is sometimes assumed. As noted, Roman lawyers had a tendency to describe the law in male terms, unless something was specifically relevant to women. The effect of this is the same as we have already seen in the overview of the citizen terminology in chapter 2: at first sight it seems as if the citizens discussed in law are an exclusively male group.

Saller and Gardner have argued that we may recognise that women were often implicitly involved in Roman law. The inclusion of women is rarely acknowledged, but sometimes becomes visible through anecdotes or specific circumstances. It seems to me that women *sui iuris* basically had the same rights as men *sui iuris*, unless there are clear reasons that women were excluded, for example because it is mentioned explicitly in a law text or because it is clear from the situation. Where there are limitations in the position of women as citizens *sui iuris* they mainly seem to have been based on this fundamental difference in Roman law, that men could have other citizens in their power, but women could not.

On the other hand, there is also reason to expect that women could not exploit the position of a citizen *sui iuris* to its full potential. Even when the law allowed women to do something, this did not always mean that women were allowed to behave as such within their social framework. Whether we think that the position of a woman as a citizen *sui iuris* really strengthened her position in social life depends on whether we think that the *familia* had a broader relevance outside of the law books. This question will be discussed in the next chapter.

CHAPTER 4

THE FAMILIA IN ROMAN SOCIETY



In the previous chapters citizenship and the position of female citizens within Roman law was researched. We have seen that in Roman legal thinking there are a number of divisions within the freeborn citizen body. One is the division between male and female citizens, a division which Roman law shared with most pre-modern and many modern legal systems. Another is the division between citizens in their own right and citizens who fell into the power, *potestas*, of another citizen. This last concept is typical of Roman legal thinking.

We have seen that this second way of dividing Roman citizens could interfere with the division between the sexes and sometimes overrule it. A women *sui iuris* had in a number of ways a stronger legal position than a man who was *alieni iuris*.[1] Being a citizen in his or her own right, a citizen *sui iuris*, was not contingent upon either age or sex. It solely depended on the absence of living male ancestors in the agnatic line. While a fifty-year-old senator could be *alieni iuris*, because his aged father was still alive, even a new-born baby girl could be a citizen *sui iuris*, if she were born as a *pupilla*, an orphan. In the Roman context this meant that her father, her grandfather in the male line, and so on, were all dead. Whether her mother or her maternal grandparents were still alive was not relevant, because they could not have paternal authority over the child. As we have seen, this was probably the most essential point of difference between male and female citizens *sui iuris*: only men could have *potestas* over other citizens.

This typical Roman division between citizens *sui iuris* and those who were *alieni iuris* gave Roman women *sui iuris* a potential degree of independence which was almost unprecedented for any women in most pre-modern western societies. They could have their own property and were legally not forced to obey the orders and wishes of their husbands. Furthermore, if Roman magistrates did indeed interact with the citizens through the citizens *sui iuris*, then it would also suggest that Roman women who were *sui iuris* interacted on a regular basis with magistrates.

However, what the relationship is between this legal framework and the lives of Roman citizens in the late Republic and the early Empire is a much discussed point. Some authors have suggested that the status of citizens *sui iuris* was relevant to their private lives only, because only adult male citizens could participate in public life. This participation was not limited to citizens *sui iuris*; men *alieni iuris* could also act as magistrates, voters and soldiers. Others have suggested that the *familia* was only relevant for the elite. As a third argument, it is suggested that the effect of *potestas* was limited, because, due to the high mortality rate, more than half of Roman citizens were already *sui iuris* around the age of twenty and, therefore, the practical effects of *patria potestas* was almost identical to that of parental authority in later, Christian societies. A fourth argument is that the *familia* as a structure does not reflect the social reality of family life in the late Republic: while the *familia* seems to favour stem families, in which three generations lived under the authority of the *pater familias*, according to this argument Roman families increasingly lived in nuclear families, no longer under the same roof as the *pater familias*, which would limit his influence.

1 Gardner (1993) 1-6, 85-109.

It is quite possible that public life, lack of property, a high mortality rate and the residence pattern of Roman citizens all played a role in limiting the effects of *patria potestas* and the *familia* in the lives of Roman citizens. However, the question is whether they limited the effects to such an extent as to make the legal constructions of *pater familias* and the *familia* irrelevant in Roman society. Furthermore, we have to be aware that these arguments all share a tendency towards dismissing or minimizing the effects of the *familia* and the division of the citizens between *sui iuris* and *alieni iuris*. They make it seemingly less relevant, but do not really confront the way in which the *familia* could have functioned.

What should we think of life in those *familiae* where the *pater familias* did not conveniently die at the age of fifty or where the family had some property but its finances did not permit a *peculium* and a different residence for the children? Surely, such situations could have occurred. How did the members of these *familiae* manage to live without ending up with an unworkable *familia* as described by the legal historian Daube? Daube tried to show the absurdity of a strict adherence to the theoretical power of the *pater familias* as the only property holder, by positing an extreme case in which he envisaged a family of five generations of Roman men, ranging in age from the twenties to ninety. He concluded: "if the seventy-five-year-old senator or the forty-year old general or the twenty-year-old student wanted to buy a bar of chocolate, he had to ask the *senex* [old man] for the money".[2] Such a family structure seems clearly impossible to live in, unless we can understand how the legal and social frameworks could have functioned together.

Whether the status of citizen *sui iuris* was relevant for Roman women depends in part on the relevance of citizenship *sui iuris* and the legal framework of the *familia* in wider society. In this chapter, the relevance of the legal framework in society will be discussed. The first section will be about the public relevance of the *familia* for the Roman elite, because only when the *familia* is socially relevant can the argument be made that the status of citizen *sui iuris* improved the position of women in Roman society. The second section will be about the even more difficult question of what the public relevance of *familia* was in wider Roman society. The third section will be about the life expectancy of Romans and the influence of this life expectancy on the *familia*. The fourth and last section will be about the residence patterns of citizens.

2 Daube (1969) 75-76.

4.1 The *familia* and the public life of the elite

As we have seen in the last chapter, it was supposed in Roman law that the *pater familias* was the sole decision taker where his family members were involved. He was the one who was responsible for the management of property and labour within the corporate group that was the *familia*. He remained in power until his death. As Daube demonstrated, this legal construction seems to lead to an unworkable situation, especially when a *pater familias* lived to a great age. Furthermore, the Romans themselves did not make a distinction between citizens *sui iuris* and *alieni iuris* when it came to magistracies and military service. All adult male citizens could perform those roles, whether they were legally independent or not. Questions about whether a *familia* structure could have worked, combined with the seeming irrelevance of the legal status of male citizens in public life, have led to a certain consensus that the legal structure of the *familia* had only a limited relevance for everyday life for Roman families.

Daube took *patria potestas* very seriously and emphasised its influence in public life.[3] He tried to solve the problem of a seemingly unworkable situation by suggesting that it was exactly the grotesque family structure which made *patria potestas* and the *familia* appealing to elite Romans. Daube thought that it was only relevant in a small, well-to-do stratum of Roman society. According to him, the *familia* and the role of the *pater familias* were not relevant to lower strata because they did not have any property. For Daube, *patria potestas* functioned as a status symbol among the Roman upper class, something to distinguish themselves from, and show their superiority to, foreigners and, possibly, the 'rabble at home'.[4]

For Daube's interpretation to work, one has to agree with his view of Roman society as a world of a small super-rich elite and penniless masses, and nothing in between. In chapter 1, it has been argued that there were more social strata in late Republican society than only those two.[5] The discourse on inclusion of citizens, the almost complete absence of legal barriers between elite and non-elite citizens, the regular acceptance of new members in the Senate which was not a closed-off group, all suggest that the division within the citizen body was more gradual than Daube's view allows for. We have to take the possibility into consideration that not only a small elite, but a larger group of sub-elite and non-elite citizens in Roman society, had to deal with *patria potestas* and the *familia*. It is therefore a good starting point to look first at the relevance of the *familia* in public life.

When looking at Roman sources it is not hard to get the impression that the status of a freeborn citizen within the *familia* was not relevant in public life. What seems to matter in public life was whether a citizen was a man or a woman. Only man could fight and vote, or become a magistrate if he was lucky enough to be born to an elite family. It does not seem to matter whether a man was *sui iuris* or *alieni iuris*. Furthermore, it is not often mentioned in Roman literature whether someone was *sui iuris* or *alieni iuris*. Only in some particular texts when it is directly relevant is it specified that some of the citizens concerned are *alieni iuris*, as, for example, in the court case in which Cicero defends Roscius who is on trial for the murder of his father.[6] In this paragraph, we will look at both issues, starting with the role of citizens within politics.

That male citizens *alieni iuris* could be elected as magistrates in the late Republic is not in doubt.[7] The *Digesta* preserve an excerpt of a book by the second-century AD jurist Pomponius, who wrote a commentary on the writings of Quintus Mucius Scaevola, a jurist, *consul* and *pontifex maximus* in the early first century BC. Presumably quoting Mucius Scaevola or commenting on his work, Pomponius wrote:

> 'The *filius familias* is deemed to be a *pater familias* (*loco patris familias*) for purposes of state, for example, in order that he may act as a magistrate or may be appointed a tutor'.[8]

This fragment has been taken as proof of the irrelevance of *patria potestas* and the *familia* outside the family sphere. Based on this fragment, Jolowicz argued that '*patria potestas* had no concern with public law, and a son under power could vote and hold a magistracy just as freely as a pater *familias*'.[9] Daube criticised Jolowicz's view by arguing that 'in a formal sense this is correct, like the proverbial saying that anybody may stay in the Ritz [hotel]. Realistically, however, the private law restrictions on a *filius familias* could not but carry over into the public, political domain. It is not only that, up to a point, a *pater familias* might give his *filius familias* direct order to embark or refrain from a course of action. We must consider the overall effects of the legal set-up (...) In general, even in public life, a *filius familias* remained rigidly controlled by his *pater familias*, who held the purse strings.'[10]

Daube uses here two different arguments to show that although Jolowicz may be right in theory, he was not correct in practice. He argues first that the authority of the *pater familias* did not stop at the front door, and thus his son had to take his father's wishes into account. The second argument is that a son, especially a son embarking on an expensive political career, depended on his father's support to finance his career.

3 Daube (1969) 84-85.
4 Daube (1969) 81-82, 85-86.
5 See chapter 1.3.
6 Cicero, *Pro Roscio Amerino* 39, 42.
7 This was already the case before the second century BC, as in Valerius Maximus, *Facta et dicta memorabilia* 5.4.5 (discussed below) which presumably took place in 232 BC; see Broughton 1 (1986) 225.
8 *Digesta* 1.6.9: Pomponius 16 ad q. muc. *Filius familias in publicis causis loco patris familias habetur, veluti ut magistratum gerat, ut tutor detur.* Translation Watson (1985).
9 Jolowicz (1952) 118.
10 Daube (1969) 84-85.

A magistrate and his father

In a formal sense, Daube's first argument seems not to hold. The power of a *pater familias* could not overrule that of a son *in potestate* who acted as a magistrate. The one clear example where this seems to happen is Valerius Maximus' story about Flaminius, a tribune of the plebs in the third century BC:

> With C. Flaminius too parental authority was equally potent. As Tribune of the Plebs he had 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 lurch censure him by even the slightest murmur.[11]

This story of dutifulness of a son towards his father, and the public approval it received, fits well into Valerius Maximus' chapter *0f piety towards parents and brothers and country* in his collection of memorable deeds and sayings, written during the reign of the emperor Tiberius.[12] Valerius Maximus wrote his work as a collection of moral examples, to be used in rhetoric. He probably polished this story to fit this purpose, by focussing on the dutifulness of the son and leaving out the details which did not fit.[13] That may be one reason why his version is different from that of Cicero, written down a century earlier in *De Inventione*:

> Gaius Flaminius —the one who as consul conducted an unsuccessful campaign in the Second Punic War— when tribune of the people seditiously proposed an agrarian law to the people against the wishes of the Senate and in general contrary to the desires of all the upper classes. As he was haranguing the popular assembly his father dragged him from the rostrum, and was charged with lese-majesty. [...] The excuse is, "I used the authority which I had over my son." The denial of the excuse, "On the contrary, one who uses the authority belonging to him as a father—that is private authority—to lessen the authority of a tribune—that is, the authority of the people—is guilty of lese-majesty."[14]

Although the story is used as an example of a rhetorical technique, it is clear that in Cicero's version of the story, the encounter between father and son was less friendly. Flaminius' father dragged him away from the speakers' platform and was consequently charged with lese-majesty, because he obstructed the work of a magistrate. Although Valerius Maximus may have been right that Flaminius did not resist this with his full authority out of respect for his father, it was an extraordinary act by Flaminius senior.

In the way that Cicero presents it, the public authority of a magistrate *alieni iuris* should have precedence over his father's *potestas*. But there is room for ambivalence. A magistrate who is *alieni iuris* still has to show his respect to his *pater familias*. The discussion about who may sit in whose presence or who has to dismount first suggests that Romans had no clear answer to this problem and that it could easily lead to conflicts. This was something that had to be carefully orchestrated, to avoid either the magistrate or his *pater familias* losing face.[15]

Daube's second argument is stronger. A member of the Roman elite who aspired to climb the ladder of the *cursus honorum* needed serious financial resources to build up a network of allies and to finance his electoral campaigns. For a citizen *alieni iuris*, who did not have his own property, the most obvious source of money was his *pater familias*. Support from influential parents for the political careers of their children is not uncommon in other historical societies and in the modern world. What makes the Roman situation somewhat different is the inability of a son *alieni iuris* to make his own fortune, independent from his *pater familias*.

Not only could the *pater familias* free part of the property of the *familia* for this goal by giving him an allowance or financial support for elections, but the *pater familias* could also back up his son's or grandson's career in other ways: for example, by publicly supporting his political aspirations and by trying to mobilise his network of friends and relatives. Members of this network could help out not only by giving financial support themselves, thereby creating valuable links of patronage, but also by introducing the aspiring youth into the right circles. An example of how this could have worked is M. Caelius Rufus. At the instigation of his father, he was introduced into the right political circles by Cicero.[16] Later on, he rented a flat near the *Forum Romanum*, from which he had easy access to the Forum and where he could entertain guests, again with the approval of his father according to Cicero.[17] Cicero himself was in his youth introduced into Roman senatorial circles by the jurist Mucius Scaevola, also on the initiative of his father.[18]

11 Valerius Maximus, *Facta et dicta memorabilia* 5.4.5: *Apud C. quoque Flaminium auctoritas patria aeque potens fuit: nam cum tribunus plebis legem de Gallico agro viritim dividendo invito et repugnante senatu promulgasset, precibus minisque eius acerrime resistens ac ne exercitu quidem adversum se conscripto, si in eadem sententia perseveraret, absterritus, postquam pro rostris ei legem iam referenti pater manum iniecit, privato fractus imperio descendit e rostris, ne minimo quidem murmure destitutae contionis reprehensus.* Loeb Translation.

12 Valerius Maximus, *Facta et dicta memorabilia* 5.4: *De pietate erga parentes et fratres et patriam*.

13 Not only the political implications mentioned below, but also the outcome of the dispute: Flaminius' law was passed according to Polybius, *Histories* 2.21.7-8.

14 Cicero, *De Inventione* 2.52: C. *Flaminius, is qui consul rem male gessit bello Punico secundo, cum tribunus plebis esset, invito senatu et omnino contra voluntatem omnium optimatium per seditionem ad populum legem agrariam ferebat. Hunc pater suus concilium plebis habentem de templo deduxit; arcessitur maiestatis. [...] Ratio: "In filium enim quam habebam potestatem, ea sum usus." Rationis infirmatio: "At enim, qui patria potestate, hoc est privata quadam, tribuniciam potestatem, hoc est populi potestatem infirmat, minuit maiestatem."* Loeb translation.

15 Aulus Gellius, *Noctes Atticae* 2.2, cf. Valerius Maximus, *Facta et dicta memorabilia* 5.7.1.

16 Cicero, *Pro Caelio* 10, 72, Cicero, *Epistulae ad familiares* 2. 8. 1.

17 Cicero, *Pro Caelio* 17-18. On the use of a family network, see also Morstein-Marx (1998) 269.

18 Cicero, *De oratore* 1.200, cf. Cicero, *Laelius de Amicitia* 1, *De legibus* 1.13, *Philippicae* 8.31, *De oratore* 3.45. This Mucius Scaevola was the father of the Mucius Scaevola who was mentioned earlier in this paragraph.

As a magistrate, the public authority of a son *alieni iuris* overruled the private authority of his father, although he still had to acknowledge his father's private authority. At the same time the son depended strongly on his father's money, status and network to make his political career possible, especially in the early stages of this career. This is understandable, if we assume that a Roman magistrate saw himself not only as an individual, but also as a representative of his *familia*, both in the smaller and wider sense of the word.[19] This was easy for a citizen *sui iuris*, because, to a large extent, his interests coincided with those of his *familia*. For a citizen *alieni iuris* this was more complicated.

It is in this context that the commentary on the work of the jurist Mucius Scaevola, cited earlier, could also be read. According to this fragment, a *filius familias* was in all matters relating to the public interest *loco patris familias*.[20] The use of the word *locus* may be compared to the way in which the position of a woman who was married with *manus* was described: she was *loco filiae* towards her husband.[21] It is clear that a married woman was not really considered to be her husband's daughter, but in this specific situation (her position towards her husband within his *familia*) she was considered to be in the position of a daughter. *Loco patris familias* can be read in the same way: the citizen *alieni iuris* was not considered to be a *pater familias* in public life, but he was for this specific situation in the position of his *pater familias*. This legal fiction meant that he could act independently in public, because he was seen as representing his *familia*, acting as a replacement for his *pater familias* in this specific situation.

Public authority and private persuasion

When a son acted *loco patris familias* in public matters, the assent of the *pater familias* was implied, although his *pater familias* still held a financial and moral responsibility. The financial responsibility was of limited relevance for as long as public activities did not directly involve the property of the *familia*. More important was the moral responsibility. The central position that Roman law gave to the *pater familias* meant that he also had the ultimate responsibility towards the wider community. The Roman state did not exercise a monopoly on violence. It relied on the *pater familias* to defend its interests and to keep his family members in check. This made every head of a *familia* in a sense part of the political system, and a magistrate within the *familia*.[22]

The effect was that the public deeds of a citizen *alieni iuris* reflected on the *pater familias*. This held true not only for a son *alieni iuris* who was a magistrate, but for every citizen *alieni iuris*, whether male or female. A citizen *alieni iuris* could ignore the wishes of his or her *pater familias* and the *pater familias* could publicly disapprove of the actions of the citizen *alieni iuris*, like the father of Flaminius had done, but both would lose face and status if their disagreements became public. Public disagreement would suggest that the *pater familias* was not capable of upholding his authority, while the citizen *alieni iuris* could be blamed for a lack of dutifulness towards his or her (grand)father. To avoid this in the status-conscious Roman society, it was probably best if a *pater familias* and the citizens in his *potestas* worked in tandem in public life and solved any differences between them behind closed doors.[23]

We may assume that this need to keep differences of opinion private influenced the bargaining strategies of both the *pater familias* and the citizen *alieni iuris*. While a *pater familias* could overrule his family members through his *potestas* or by withholding money, a citizen *alieni iuris* could try to win a conflict by threatening to be disobedient in public or by acting without giving the *pater familias* the chance to interfere. Sources on this sort of private negotiation are of course scarce, in a tradition which saw as the perfect *pater familias* one who 'maintained not mere authority, but absolute command over his household; his slaves feared him, his children revered him, all loved him, and the customs and discipline of his forefathers flourished beneath his roof'.[24]

However, Cicero's letters offer some examples. One such example is the discussion between Cicero and his son Marcus, who asked his father for a 'handsome' allowance to go to Spain to fight in Caesar's army in 46 BC.[25] Cicero did not like this idea and wanted him to go to Athens instead, to study philosophy. At the end, Marcus settled for Athens, but he got his allowance. In a letter to his friend Atticus, Cicero wrote that this decision was not only taken out of concern for Marcus, but also for his own reputation: 'it's not only my duty to see that [Marcus] Cicero wants nothing, but it affects my reputation as well'.[26]

Another example is the marriage of Cicero's daughter Tullia in 50 BC. As her *pater familias*, Cicero had the legal right and social obligation to arrange a marriage for her. He could also decide who she was going to marry, or end her marriage, as he saw fit, although Cicero was aware that a marriage without Tullia's consent would not work.[27] But things were not that straightforward when Tullia became a divorcee in 51 BC. Cicero was not in Rome, but on official business in Cilicia (modern southeast Turkey). From a distance, he tried to arrange a marriage for her with Tiberius Claudius Nero, a member of one of Rome's most influential families. But when his envoys reached Rome, they discovered that Cicero's wife and daughter had taken matters into their own hands. Tullia

19 Being part of an old and established lineage could give a political advantage: Sallust, *Bellum Iugurthinum* 85.4, Cicero, *In Pisonem* 1.2. Cf. Hekster (2015) 12-17.

20 *Digesta* 1.6.9 (Pomponius).

21 See Chapter 3.2.

22 Harders (2012) 17, Martin (2009) 368-373, Thomas (1984).

23 Cooper (2007) 8-9; According to Kaster, conflict within a *familia* did not only affect those directly involved, but it reflected on a wider range of family and friends as well. When a conflict became public, it showed that they had someone in their network who was morally deficient. This meant that out of self-interest every effort should be made to shield the other party in a conflict from shame, and in this way 'a safety net of tacit complicity' was created; Kaster (1997) 15.

24 Cicero, *De senectute* 37: *tenebat non modo auctoritatem, sed etiam imperium in suos: metuebant servi, verebantur liberi, carum omnes habebant; vigebat in illa domo mos patrius et disciplina.* Translation Loeb.

25 Cicero, *Epistulae ad Atticum* 12.7.1.

26 Cicero, *Epistulae ad Atticum* 14.16.4: *nihil enim deesse Ciceroni cum ad officium tum ad existimationem meam pertinet.* Translation Gardner (1993) 56. Cicero looked at the practice of his peers to establish the amount of Marcus' allowance, Gardner (1993) 55-56.

27 Cicero, *Epistulae ad Atticum* 5.4.

was already publicly engaged to Cornelius Dolabella, a political opponent of Cicero. Although Cicero could have annulled the engagement, the fact that it was publicly known meant that he could not do so without losing face. Therefore, he decided to accept the facts and hope for the best, as he admitted to Atticus:

> [...] believe me it was the last thing I expected. I had actually sent reliable persons to the ladies in connexion with Ti. Nero, who had treated with me. They got to Rome after the *fiançailles*. However I hope this is better. The ladies are evidently quite charmed with the young man's attentiveness and engaging manners.[28]

Tullia got her way by giving her father no choice, but what she had done was risky behaviour. When an adult *alieni iuris* went too far, a father could decide to accept the public shame and to redeem it with a public punishment. A famous example is the emperor Augustus, who banned his daughter Julia when her promiscuous behaviour became too evident to remain hidden. As the emperor, Augustus obviously had the power to ban his daughter. But even he suffered the shame of a *pater familias* who had failed in his duty to keep the members of his *familia* in line.[29]

Negotiations going wrong: Perpetua and her father

As mentioned above, both the *pater familias* and his adult child had an interest in reaching an agreement which was acceptable to them both. This does not mean that their position was equal. The 'quintessential Roman family value' of *pietas* expected obedience of a citizen *alieni iuris* and benevolence of a *pater familias*.[30] The feeling that a child had to obey the father and the father had to take the interests of the child into account, combined with the feeling that they needed each other, will have worked towards some sort of settlement in most cases. When this did not happen, a *pater familias* had the strongest position: he could try to punish his son or daughter by withdrawing financial support or by throwing them out of his house or *familia*.[31] We sometimes see the possible results of failed negotiations in the sources, but we rarely see what went wrong in these negotiations.[32]

28 Cicero, *Epistulae ad Atticum* 6.6. (121): [...] *crede mihi, nihil minus putaram ego, qui de Ti. Nerone, qui mecum egerat, certos homines ad mulieres miseram; qui Romam venerunt factis sponsalibus. sed hoc spero melius. mulieres quidem valde intellego delectari obsequio et comitate adulescentis.* Translation Loeb.

29 Suetonius, *Divus Augustus* 65, who emphasises the shame that Augustus suffered.

30 Saller (1994) 102-132.

31 This happened to Junius Silanus. He was no longer in his father's power (he had been adopted), but his father's verdict was so damaging to him that he killed himself: Valerius Maximus, *Facta et dicta memorabilia* 5.8.3.

32 Although there was a tendency to keep quiet about conflicts (Kaster (1997) 11-16), deliberate openness could also serve as a weapon against opponents, as is shown by Cicero's use of it against Mark Antony and Clodia in *Philippicae 2* and *Pro Caelio*. Cf. Leen (2000).

One reason why we see only the effects of bargaining and not the negotiation process itself is that negotiations are rarely done in public. As a result of this we often only see the outcome, and actual descriptions of bargaining processes are rare, even in modern times. Discussions of the bargaining strategies used between a *pater familias* and a member of his *familia* are almost non-existent for the period under consideration, although sometimes we can guess how the negotiations went, as in the case of Cicero and his son Marcus.

A rare description of bargaining strategies used between a *pater familias* and a member of his *familia* can be found in the so-called *Passio Perpetuae et Felicitatis*. This *Passio* is one of the earliest martyr stories written presumably around AD 200, in large part by Perpetua herself.[33] The use of this source for this thesis is problematic, because it was written outside the period under consideration and in an early Christian context. Inclusion seems justifiable, however, because it is unique in the way that it shows the drawn-out negotiation process between Perpetua and her father in a Roman context, including the influence of Roman authorities.

Vibia Perpetua was a member of a (sub-)elite Roman family from Carthage, who was put in jail and later executed because she had become a Christian and would not renounce her faith.[34] Her father, who was a pagan, visited her four times during her imprisonment and tried to convince her to give up Christianity. Directly after Perpetua's arrest, he quarrelled with her for the first time and attacked her violently when she did not listen to him.[35] The second time, he visited her in prison and tried to convince her by showing his love for her and arguing that she would bring shame and misery on her family if she were convicted.[36] During Perpetua's public trial in the local *forum*, her father made a public last-ditch attempt to make her change her mind. He showed Perpetua her baby and begged her to give up her faith. His attempts were in vain and he was punished by order of the procurator who presided over the trial.[37] After Perpetua's conviction, he visited her in prison one last time, overwhelmed with grief.[38]

The interaction between Perpetua and her father in the *Passio* has received quite a lot of scholarly attention.[39] His behaviour seems mystifying because his pleading and begging seem so unlike the traditional picture of a *pater familias* who could command his children.[40] One could argue, however, that what Perpetua's father did was exactly what was expected from him. While he was obviously deeply concerned about his daughter's fate, he was also a *pater familias* who had a public responsibility for the behaviour of the members of his *familia*. To minimise the damage to his *familia* he had to convince Perpetua to abandon Christianity before her arrest became public. This seems to have determined his bargaining strategy. After the failure

33 See Hunink (2010) for a discussion on the authenticity of Perpetua's text.

34 Heffernan (2012) 28-35.

35 *Passio Perpetua et Felicitas* 3.

36 *Passio Perpetua et Felicitas* 5.

37 *Passio Perpetua et Felicitas* 6.

38 *Passio Perpetua et Felicitas* 9.

39 See for example the different interpretations of Lefkowitz (1976), Shaw (1993), Salisbury (1997), Cooper (2011), Gold (2011). For a bibliography on the *Passio Perpetua et Felicitas*, see Heffernan (2012) 457-470.

40 Cooper (2011) 895; Gold (2011) 240; Heffernan (2012) 26.

of his first frantic attempt to overrule Perpetua by his authority, at the second visit he tried to persuade her by an appeal to the sorrow her conviction will bring to him and other family members:

> 'My daughter, have pity on my grey hair, have pity on your father, if I am worthy to be called father by you, if with these hands I have raised you to this flower of youth, if I have preferred you to all your brothers, do not shame me among men. Think about your brothers, think about your mother and your mother's sister, think about your son who will not be able to live without you. Give up your pride; do not destroy us all. For, if you are punished, none of us will be able to speak freely again.'[41]

It is clear that public shame is at the forefront of his mind: he mentions it twice, first after lamenting himself and then after lamenting the other family members. Perpetua describes how her father used every means available to convince her to renounce her faith: kissing her, throwing himself at her feet and weeping. He also 'no longer called me daughter, but *domina*'.[42] This use of *dominus*, a title normally related to someone in power, like the *pater familias*, is relevant.[43] It seems to imply that her father thought that the responsibility for the fate of the *familia* now lay in Perpetua's hands, and no longer in his own.[44]

Perpetua's father had a last chance to convince her, just before she mounted the judge's platform during her trial in the forum. His attempt failed again, but what is interesting is the interaction between the father and the presiding magistrate, the procurator Hilarianus. Hilarianus at first supported the father's attempts, but when this failed 'Hilarianus ordered him to be thrown to the ground and beaten with a rod'.[45] Again, this seems mystifying. A Roman citizen should not have been beaten by the authorities.[46] A possible explanation is that, in the eyes of Hilarianus, Perpetua's father deserved a beating because he had failed so publicly in his responsibilities as a *pater familias* towards the Roman state. This fits well with epigraphic evidence which suggests that Hilarianus was a man with sharply conservative views on society.[47]

41 *Passio Perpetua et Felicitas* 5: *'Miserere, filia, canis meis; miserere patri, si dignus sum a te pater vocari; si his te manibus ad hunc florem aetatis provexi, site praeposui omnibus fratribus tuis: ne me dederis in dedecus hominum. Aspice fratres tuos, aspice matrem tuam et materteram, aspice filium tuum, qui post te vivere non poterit. Depone animos; ne universos nos extermines: nemo enim nostrum libere loquetur, si tu aliquid passa fueris.'* Translation Heffernan (2012).

42 *Passio Perpetua et Felicitas* 5: *me iam non filiam nominabat, sed dominam.* Translation Heffernan (2012).

43 Suetonius, *Divus Augustus* 53.1, *Corpus Inscriptionum Latinarum* 10.7457, Seneca, *Epistulae* 47.14, Cicero, *De Legibus* 2.15.

44 It is exactly this gender inversion between father and daughter which attracts the most attention, especially in feminist scholarly discourse. See for example Gold (2011) 240.

45 *Passio Perpetua et Felicitas* 6: *iussus est ab Hilariano proici, et virga percussus est.* Translation Heffernan (2012).

46 During the Empire a legal difference developed between lower class Roman citizens who could be beaten and elite Romans who could not. The beating of the father has been taken as an indication that he was a lower-class Roman; Cooper (2011) 694. However, this seems contrary to what is mentioned in the text about the upbringing and social status of Perpetua and her father; Heffernan (2012) 24-25.

47 Rives (1996).

Perpetua's father did not show the expected public behaviour of a *pater familias*. But that is the point: his behaviour was not meant to be public. It was the private bargaining strategy of an increasingly desperate father. He wanted to avoid at all costs the possibility that the crime of his daughter would become public, and when it did, he wanted to minimise its effect on his *familia*.[48] His strategy was unsuccessful because he failed to see that 'the moral issue which separates father and daughter is so great and is so much a part of their sense of themselves that even expected reciprocal relationships do not [longer] apply'.[49] Although Perpetua was obviously torn by her father's anguish, she had already disconnected herself from his world too much to be influenced by his arguments. Perpetua's example is extreme. There were probably also Romans who became estranged and totally ignored their *pater familias* for less exalted causes. However, as long as Romans wanted to remain part of their family network, they had to bargain with other family members.

These examples show an element of *patria potestas* which is rarely visible in the sources: the central position given to the *pater familias* could actually limit his freedom to act. Since the assumption was that important decisions like a marriage could only be taken through him and with his consent, a *pater familias* could not publicly revoke them without damage to his reputation. As the member of the *familia* with the highest standing, he had the most to lose when discord became public. It probably depended on his character and the specific circumstances whether a *pater familias* would take that risk.

However, it seems that the tendency to avoid this was strong enough to be exploited by Roman lawmakers in a later era. In late antiquity, city magistrates had to guarantee with their own property the upkeep of their city and the payment of taxes to the imperial government. A magistrate *alieni iuris* needed the consent of his *pater familias* to pledge the property of the *familia*, but the law assumed that this consent was given unless the *pater familias* denied his consent in a public meeting.[50]

48 Cooper (2007) 8-9.

49 Heffernan (2012) 27.

50 *Digesta* 50.1.2 (Ulpian).

4.2 The *familia* outside of the elite

In the previous section, the focus was on the elite, especially on the interaction between a magistrate who was *alieni iuris*, a *filius familias*, and his *pater familias*. Most of our sources discuss the matters of these elite citizens who are members of senatorial families or the *equites*. Much less is known about sub-elite or non-elite Romans. Daube's remark that the *familia* was only relevant to the elite shows that it is even possible to make the argument that non-elite Romans did not live in *familiae* at all. However, there are indications in the sources that non-elite Romans were supposed to be part of a *familia*. One is the *ius liberorum* mentioned in the previous chapter. This *ius* was established in the Augustan marriage laws. It was a motherhood premium given to women who had at least three children born in legal marriage. These women were exempted from the need to have a *tutor* and were free to handle all their financial and legal affairs themselves, including the making of a will. This premium was only relevant if we assume that all Roman women who had at least some property were part of a *familia*.

Another indication that the familia was relevant for Romans outside the elite is the introduction of the *peculium castrense* by the emperor Augustus. The *peculium castrense* was a narrow exception to the rule that citizens *alieni iuris* could not own property: Augustus decided that Roman soldiers who were *alieni iuris* could consider their military earnings as their private property until the end of their career in the army.[51] Augustus did this presumably to boost recruitment.[52] If this is true, then the introduction of the *peculium castrense* is an indication that being *alieni iuris* was common among the citizens who were recruited for the legions. Since most Roman soldiers were not from an elite background, this suggests that the *familia* was widespread among Roman citizens. It also implies that being *alieni iuris* was seen in Augustus' day as something which put you at a disadvantage: otherwise it could not have been used as a way to attract citizens to the army. It was not only a legal status, but it also had an effect on the social situation of citizens.

That the interaction of the Roman government assumed that all citizens were part of a *familia* is also suggested by the Roman *census*, where declarations had to be made by the heads of the *familiae*, the citizens *sui iuris*.[53] As the only property owners, the citizens *sui iuris* were also the ones who had to pay the taxes to the state, most of which were directly related to property, such as the *tributum*, the tax on the manumission of slaves, and the inheritance tax.[54] Whether the citizens *sui iuris* were also the ones who received the benefits from the state, like tax refunds and the grain distributions in Rome, cannot be said for certain, but it is likely.[55] In another way too, the Roman government seems to have emphasised that Roman citizens lived in *familiae*. According to Diddle Uzzi, Roman children (except those within the imperial family) are almost always depicted with fathers, hardly ever with mothers in official art from the early Empire. This is in contrast with depictions of non-Roman children.[56] Diddle Uzzi sees this as a reflection of the legal structure of society.[57] During the Empire a *familia* comprised a father and his children: their mother was normally not part of her husband's *familia*.[58]

Whether the types of interactions between members of a none-elite *familia* were the same as those between members of an elite *familia* is harder to discern, because we do not have the same type of sources on non-elite Romans as we have on the elite. A scarcity of sources makes it difficult to determine whether the same balance between dependence on the *pater familias*, internal negotiation, and the need for outwards concord was relevant to the interaction between a publicly active sub-elite or non-elite citizen *alieni iuris* and his or her *pater familias*. We may assume that a non-elite *pater familias* also ran the risk of losing face in front of his peers, for example when his son publicly took a different stance from his father during the elections in one of the Roman voting assemblies.[59] However, there seem to be no sources which directly confirm this.

What we can say is that the organisation of the Roman army and the military worked in favour of the same social mechanism among sub-elite and non-elite Romans. Like that of their elite counterparts, the public standing of the sub- or non-elite citizen *alieni iuris* depended on the position of his *pater familias*. Probably until the military reforms of the consul Marius in the last years of the second century BC, the position of a citizen within the legions depended on his wealth, and the military equipment he could afford. Only propertied citizens could serve in the Roman legions. Since a citizen *alieni iuris* did not have property himself, this means that his military equipment and his position within the legions depended on that of his *pater familias*.

The same holds true for the voting assemblies, especially the *comitia centuriata* which was also organised on the basis of wealth. The citizens were grouped in 193 or 194 voting groups, called *centuriae*, according to their property class.[60] The Roman knights, the *equites*, and the first-class citizens together had half the votes, the rest being divided among the other four classes. All citizens without property, the proletarians, were put together in one *centuria*, which voted last. Citizens *alieni iuris* from more propertied classes obviously did not vote in this last *centuria*, although they did not have any property themselves. It seems that they were assigned to the same property classes as their *pater familias*. Two other voting assemblies, the

51 Ulpian, *Tituli* 20.10.

52 Frier and McGinn (2004) 290.

53 Livy, *Ab urbe condita* 43.14.8, Dionysius of Hallicarnassus, *Roman antiquities* 9.36.3, *Tabula Heracleensis* 145-146 (citizens declaring their property), cf. Northwood (2008) 259.

54 According to Livy, *Ab urbe condita* 1.42-43 and Dionysius of Halicarnassus, *Roman antiquities* 4.18.2, the payment of *tributum* depended on the wealth a citizen had and proletarians were probably excluded, cf. Northwood (2008) 265-269. According to Nicolet (1980) 33, *tributum* was a tax paid by those who had a duty to serve for those serving. *Seniores*, soldier too old to serve, were not exempted from *tributum*: Livy, *Ab urbe condita* 5.10.5-9. This is an indication that the levy can be seen as military service by a *familia*, not by an individual.

55 Van Galen (2013a).

56 Diddle Uzzi (2007) 64-70.

57 Ibidem 79.

58 This official art is in contrast with private art in which both parents and their children do appear regularly, Huskinson (2011) 521-541.

59 At least in the second century BC. Between 139 and 107 BC four different balloting laws were enacted to introduce the secret ballot for different situations: Cicero, *De Legibus* 3.16. Cf. Taylor (1966)

60 Livy, *Ab urbe condita* 2.43; Dionysius of Halicarnassus, *Roman Antiquities* 2.16, 7.59; Cicero *De re publica* 2.22.

comitia tributa and the *concilium plebis*, were organised on the basis of the *tribus*, originally the area that a citizen's family came from. In all these cases, the position of the *pater familias* determined the position of the *filius familias*. Whether this also meant that the *pater familias* could influence his (grand)son's vote is not certain, though it seems reasonable to assume that considerations of status and family interests played a role here as well.

Sons and stepmothers

The examples above were presented in order to argue that *patria potestas* and the *familia* were relevant in public life, contrary to the opinion of Jolowicz and, to some extent, Daube. The public position of a citizen *alieni iuris* depended on that of his *pater familias*. There are indications that not only members of the elite, but also sub-elite and non-elite citizens *sui iuris* used their status and property to give their children a place in public life. But there is more to this than only the formal position. If the *familia* was only relevant in the context of law and inheritance, and the everyday life experience of Roman citizens was formed by nuclear families, than we may expect that this was reflected in the Roman world view.

Every society has categories of family members which are considered by the dominant members of a family group to be particularly problematic. Until recently, in western society this was the mother-in-law. Although both men and women can have difficulties with their mother-in-law, jokes made about mothers-in-law are mostly made from the husband's, male, point of view.[61] This is understandable when we interpret these jokes within the context of the 19th-and early 20th-century view of the family, in which the man was supposed to rule over the nuclear family unit consisting of him, his wife and their children. In this view, a mother-in-law can be seen as problematic because she is outside the influence of the husband, but close to his wife. Unlike his own parents and his father-in-law, he cannot be certain that she would side with him in domestic quarrels. This makes the mother-in-law potentially able to undermine his authority and, therefore, a target for ridicule.[62]

In Roman literature, that is from the point of view of elite Roman men, the mother-in-law plays hardly any role at all.[63] The main categories of family members which are seen as problematic are adult sons and stepmothers. Already in the earliest extant Roman literature, adult sons *alieni iuris* are stereotyped as irresponsible youths, getting into debt and impatiently waiting for their father's death or actively scheming to murder him.[64] This was such a well-known stereotype that Cicero had to debunk actively this line of thinking when he defended Roscius who was accused of the murder of his father: 'doubtless, then, it was riotous living, the enormity of his debts and unbridled passions which drove the accused to this crime?'[65] Parricide, the killing of one's parents, especially the father, was seen as a most heinous crime.[66] According to Veyne, the fear of parricide was almost a national obsession for the Romans.[67]

The stereotype of the evil stepmother was that of a younger woman marrying an elderly *pater familias* and becoming a destructive force within his *familia*. She was seen as a women who would scheme against her stepchildren and who tried to cheat them out of their rightful inheritance,[68] either by persuading her new husband to do so or by killing them with poison.[69] The idea of the evil stepmother was so commonplace that Seneca the Younger could praise his mother for living through the hardship of a childhood under a stepmother. Seneca had to admit that this stepmother was not a bad person, but 'even a good stepmother is a hard thing to endure'.[70] Both stereotypes of the evil son and the stepmother could also be combined, for example in the story of a son who started a relationship with his stepmother which led to the attempted murder of his father.[71]

Whether these cases really did occur or whether they were merely literary topics, the point is that these specific categories of family members were singled out as being potentially problematic to family life. This is understandable when we interpret these stories within the context of the Roman view of the *familia*. Like the mother-in-law for the family man in the 19th century, adult sons and stepmothers were potentially undermining forces for the authority of the *pater familias*. They were both dependent upon the *pater familias*; the son for his livelihood and the stepmother for the wellbeing of her children over whom she had no paternal authority herself. Both were also considered capable of undermining the benevolent power of the *pater familias*. This is not to suggest that adult sons and stepmothers normally behaved like this in real life: even in the strongly biased Roman literature there are examples of exceptionally good stepmothers, like Octavia, the sister of the emperor Augustus.[72] However, the anxiety and insecurity this created led to stereotyping which was directly related to the construction of the *familia*. The focus on these categories of family members is an indication that Roman citizens thought of family structures in terms of a *familia*, not of a western-style nuclear family.

This also explains why mothers-in-law played hardly any role in male-dominated Roman literary sources. It probably stems from the position of a Roman woman towards the husband of her daughter. She was either in another *familia* from that of her own daughter if she had been

61 Davies (2012) 14.
62 Davies (2012) 15-17. This relationship between kinship construction and jokes is possibly a reason for the decline of mother-in-law jokes in The Netherlands since the 1960s, when perception of family relations started to change: Kuipers (2001) 238-239.
63 In the play *Hecyra*, 'the mother-in-law', by Terence, mothers-in-law are actually a positive influence, unlike their husbands; Barsby (2001) 140-143 with bibliography.
64 Terence, *Phormio* 302-303, *Adelphoi* 874.
65 Cicero, *Pro Roscio Amerino* 14.39.
66 Suetonis, *Divus Augustus* 33, *Divus Claudius* 34, cf: Seneca, *de Clementia* 1.15.2, 1.23.
67 Veyne (1987)
68 Gray-Fow (1988), Noy (1991), Watson (1995), Barrett (2001). Like the stereotype of the adult son, it can already be found in early Latin literature: Plautus, *Pseudolus* 313–14.
69 Cicero, *Pro Cluentio* 26-27; Seneca the Elder, *Controversae* 7.11, Juvenal, *Satura* 6.626-633.
70 Seneca the Younger, *De consolatione ad Helviam* 2.4: *nulli tamen non magno constitit etiam bona noverca*. Translation Dixon (1988) 157.
71 Valerius Maximus, *Facta et dicta memorabilia* 5.9.1.
72 Gray-Fow (1988) 745.

married without *manus*, or she was in a subordinate position towards her husband in a marriage with *manus*. In both cases, it was her husband, not she, who was the main connection between the *familia* of her daughter and her son-in-law. The few glimpses we have of relationships between daughters-in-law and mothers-in-law suggest that the situation may have been different for daughters-in-law. A young married woman was expected to live with her mother-in-law when her husband was away for a longer period of time or in a period of mourning following his death. This was supposedly done to protect the young woman's reputation.[73] It suggests a sort of moral supervision of the mother-in-law over the daughter-in-law, mainly in the case of a young wife.[74]

The familia *as a template*

The relevance of the *familia* seems to go beyond that of family life. In chapter 3.1 it is mentioned that the *pater familias* not only controlled the property of the *familia*, but its labour as well. There seems not to have been a clear distinction between private family life and business. Rich Romans controlled their farms, fish ponds and other investments through a network of family members, slaves and freedmen, who were part of, or related to, their *familiae*.[75] One of the meanings of the word *familia* was actually that of a group of slaves or (adult) children designated for a specific task.[76] Where large-scale business was possible, this template was still used for larger-scale corporations like the *familiae publicanorum*, firms of tax gatherers.[77] The *peculium*, an element which was directly derived from the *familia*, was used to create the limited liability which was necessary to make investments in such large-scale businesses possible. *Peculium* was in essence an amount of money given by the *pater familias* to persons in his *potestas* for their own expenses. Since the liability of the *pater familias* for the transactions of citizens and slaves in his power was in certain situations limited to the *peculium*, the use of *peculium* was a good tool to limit the personal liability of Roman investors to their share of the investment.[78]

73 Cicero, *Pro Cluentio* 35, *Laudatio Turiae* 10-12, Treggiari (1991) 500.

74 The word *nurus*, daughter-in-law, is also used in poetry as an equivalent to a young married woman: Ovid, *Ars Amatoria* 3.248, *Metamorphoseon* 2.366, *Heroides* 16.184, Lucan, *Pharsalia* 1.146. There are no contemporary sources which elaborate on the relationship between mothers- and daughters-in-law. The text of most relevance is Plutarch's *Advice to bride and groom* 35-36 from the second century AD. According to Plutarch, a young bride could expect hostility from her mother-in-law, because mothers were especially attached to sons. He advised the bride to win her mother-in-law over by not turning her husband from his mother and by showing deference and trust to her husband's parents. Although this text was written by a Greek writer, it was probably recognisable to a Roman audience as well: Treggiari (1991) 224.

75 Treggiari (1969) 263-264 on Terentius Philotimus, the freedman steward of Terentia. On bankers: Andreau (1999) 64-70, Jones (2006).

76 *Digesta* 50.16.195.3 (Ulpian), discussed in chapter 3.1.

77 Badian (1997).

78 Treggiari (1969) 212-213, Gardner (1993) 59-60, Hansmann, Kraakman and Squire (2006) 1358-1360. See also Jones (2006) and Jakab (2013) on financial transactions by slaves in the 'archive of the Sulpicii'.

The commercial uses show that the *familia* structures could be adapted and reused in different contexts. This was probably more than a convenience. As presented in chapter 3, the nature of the *familia* was a corporate group of people and property, in which one person had the sole responsibility for making decisions for the group. This person had to confer on important issues with others, and he was expected to have the best interests of the group in mind. However, he was, in theory, not accountable for his actions to other members of the *familia* and they were expected to obey him without questioning.

This led to a strictly hierarchic organisational form, but one in which everyone could strive to become the leading person. This organisational form is visible everywhere in Roman society: not only in the organisation of companies and social organisations, but also in the Roman government. Just as the *familia* could be seen as a microcosm of the Roman state, the comparison could also be made in the other direction.[79] The analogy of the *familia* with the Roman state was close enough to be able to see the *res publica*, the common cause of all Romans, as a *familia* with the consul as a *pater familias* and the Senate as a family council.[80] During the Republic, the power of magistrates, mainly the consuls, to act without interference from others closely resembled that of a *pater familias*.[81] Other magistrates acted on delegated power as the consul's assistants. Only the praetors shared some of the consul's *imperium*, but this was at all times recognised to be inferior to the consul's *imperium*.[82] However, even minor magistrates had the freedom to fulfil this task as they saw fit, although they could be overruled by a consul or praetor. State and *familia* did not resemble each other in all respects, but the resemblance was close enough to allow observers to argue that the same template was used for both. The *imperium* of the magistrate and the *potestas* of a *pater familias* could be seen as basically one and the same, as Cicero did in in *De Legibus*.[83] The word *imperium* is sometimes used to describe the power of a citizen *sui iuris* over children and slaves.[84] Indeed, even the term *res publica* itself reflects the view that the Roman state was a group of families, acting together for the common cause.[85] The state operated as a 'super *familia*' whose *res publica* stood above the *familia* of an ordinary citizen *sui iuris* and its *res privata*.

79 Cicero, *De re publica* 1.58, Seneca the Younger, *Epistulae Morales ad Lucilium* 47.4; Pliny the Younger, *Epistulae* 8.14.16.

80 Mommsen (1899) 16, Crook (1955) 5, Lacey (1986) 125-140, who sees *patria potestas*, the power of the *pater familias* over his *familia*, as essential for understanding the working of the Roman state.

81 This is not necessarily contradicted by the fact that there were two consuls: even a ordinary *familia* could have more than one *pater familias*, as in the case of a shared *familia*, see chapter 3.1. When both consuls were in Rome, the consuls had the *fasces* and the authority in alternate months to avoid a conflict of authority.

82 Lacy (1986) 131, with references to Cicero, *Epistulae ad Atticum* 9.9.3 and Aulus Gellius, *Noctes Atticae* 13.15.4. See also Richard (1982).

83 Cicero, *De Legibus* 3.1.3.

84 Plautus, *Bacchides* 450, *Menaechmi* 1030.

85 Cicero, *De re publica* 1.25.39, 1.58.

The Empire and the familia

The template of the *familia* was also used by Augustus to create a new type of state leadership at the beginning of the principate.[86] He adopted his intended successors into his *familia*, like Gaius and Lucius Caesar and Tiberius.[87] He also promoted his *familia* and wider family in such a way that it became the *familia* above all other *familiae*, associated with the *res publica*. In 2 BC, the Senate, *equites* and people gave him the title of *pater patriae*, 'father of the fatherland'.[88] This was more than just an honorific title: its connotation was that of the *pater familias* of the state, a benevolent and protecting ruler but also an authority whom everyone had to obey. A literally familiar concept was reframed in a way that gave legitimacy to an autocratic rule. The importance of this title to Augustus can be seen in the *Res Gestae* inscription. Augustus ends this list of his 'accomplishments' with him receiving the title *pater patriae*.[89] After him, almost all emperors received the title *pater patriae* once they had established their rule.[90]

In another way too, the emperor used his *familia* as a template. To accommodate his rule, his *familia*, in essence his personal property and slaves, expanded in such a way that by the middle of the first century AD the slaves and freedmen of the emperor formed a formidable organisation, the *familia Caesaris*. This *familia* was responsible for the upkeep of the imperial court, the management of the private domains and the emperor's personal treasury, but also for the imperial secretariat. As an administrative centre, the *familia* of the emperor became part of the Roman government.[91]

The obvious answer to the question of whether the *familia* was relevant in public life is that it was relevant, not only through the influence of the *pater familias* on his family members, but also as an organisational model. One may wonder, however, whether this was the right question to ask. As the example of Augustus shows, his *familia* was not only a family group, but also a political tool, a way of positioning the next generation into society and a commercial organisation. There was no clear distinction between public, private, political and economic activities. This seems to have been true not only for the imperial *familia*, but also for other elite *familiae* and, as far as we can tell, for sub-elite *familiae* as well. A strict distinction between private and public is misleading, because, as the *res publica* was defined as the common cause of all *familiae*, a Roman citizen was always seen as a member of his or her *familia* and family group as well.

86 Severy (2003), Lassen (1991) 131-133..

87 Later emperors were also aware of the power of *familia* structures, even if they were not planning to keep within the *familia*'s traditional boundaries. See for the example of Trajan's succession, Hekster (2014) 380-385.

88 Suetonius, *Divus Augustus* 58.

89 *Res Gestae divi Augusti* 35, cf. Cooley (2009) 273-275.

90 Interestingly, the one exception is Augustus' successor Tiberius, who refused the title early in his reign when he still had the illusion that he could rule together with the Senate as a 'first among equals' instead of becoming an autocratic ruler: Suetonius, *Tiberius* 57.

91 Weaver (1972); Pavis d'Escurac (1987).

That brings us back to the question of why the citizen *sui iuris*, as the head of his or her *familia*, is rarely singled out in public life. This question can be answered as we realise that public life is mostly equated to military and political participation. What complicates the picture is the need to give those who fought some say in military matters, which led to the development of assemblies, which were only open to potential soldiers, adult men.[92] As we have seen in this section, even in politics and the military, citizens *sui iuris* and *alieni iuris* were only seemingly equal. A citizen *alieni iuris* depended on the status of his *pater familias* for his position in both the military and political organisations. Furthermore, although he could act in public, he could only do so *loco*, 'in the position of', his *pater familias*. This made a citizen *alieni iuris* in public a representative of the *familia* he belonged to and not really independent from his *pater familias*. This is not to say that a citizen *alieni iuris* always obeyed his *pater familias* in public life. The extent to which a citizen *alieni iuris* was bound to do what his or her *pater familias* wanted probably depended on the bargaining position between them.

92 Taylor (1966) 59, 85.

4.3 The demographic regime

In the previous section we focused on the relevance of the *familia* in public life. In this section, we will look at the demographics of the *familia*, as related to the female citizen *sui iuris*. As mentioned in chapter 2.3, Saller has argued that *patria potestas* affected only a small part of Roman society. Due to the constraints of a high mortality rate and the late age of marriage among Roman men, most Romans were already *sui iuris* in their early twenties. According to him, only a limited percentage of Roman citizens actually spent a significant part of their adult life being subordinate to a *pater familias*.[93] As we have seen in the previous section, the *familia* and the influence of the *pater familias* had an influence beyond the family circle. The question for this section will be whether a *pater familias* lived long enough to actually exercise his power over his adult children.

High mortality regime

Demography is one of the main arguments used against what is seen as the unduly legalistic patriarchal vision of Roman society.[94] According to Saller, the practical effect of *patria potestas* on Roman society was limited. Only a limited number of adult Romans were actually *alieni iuris*, because the Romans lived in a high mortality regime. That means that life for Romans was short, like that in most pre-modern societies. The average life expectancy at birth for Roman citizens is considered to be somewhere between twenty and thirty years.[95] This does not mean that most Roman citizens died in their twenties; the picture is influenced by high child mortality. Babies in their first year are vulnerable and statistics show that even in modern developed countries the mortality rate of babies is considerably higher than that of older children.[96] This difference was far more pronounced before the improvement in hygiene and medical standards which started in the 19th century. For example, in The Netherlands in the middle of the nineteenth century, around twenty per cent of all new-born babies died in their first year.[97]

High infant mortality was undoubtedly part of Roman life too. This means that a Roman who survived early childhood could expect to live longer than 25 years. How much longer is guesswork. There are some sources from antiquity which may give some information, such as funerary inscriptions, skeletal remains, the so-called Ulpian life table and the extant returns of Egyptian censuses, mainly from the first three centuries AD. According to Saller, most of these sources

93 Saller (1994).

94 Saller (1994) 225-232. Another one is his assumption that the legal powers of the *pater familias* were actually mitigated by his *pietas*, which Saller sees as affectionate devotion among family members.

95 Hopkins (1966) 263, Duncan-Jones (1990) 103-104, Parkin (1992) 84, Saller (1994) 22-23, Frier (2000) 791, Scheidel (2001) 25.

96 In The Netherlands in 2013, the mortality rate for children under five years old was four deaths per thousand live births. Three quarters of these deaths were among children younger under one year old; You, Hug and Chen (2014) 21.

97 Ekamper and Van Poppel (2008) 24.

are biased and/or not complete enough to give a statistically relevant indication of the life expectancy of Roman citizens.[98] He used Coale and Demeney's Model Life Tables instead, to construct a model that would give an indication of the age structure of a society with a high mortality. Model Life Tables start from the assumption that although the mortality in every population is different, they all follow more or less the same curve: a high mortality at birth, a decline in mortality until the age of ten, then a gradual increase until the later forties and a significant increase after that.[99] This idea was used by Coale and Demeney as a basis for their Model Life Tables, theoretical models of the change that someone born within a stagnant population would live to reach a certain age.[100] Coale and Demeney made a number of tables, divided into four regions, in which only the life expectancy and some regional variables changed.[101]

Saller used Model Life Table West 3 to estimate the number, proportion and age of living kin for both 'ordinary' and 'senatorial' men and women,[102] the difference between this two groups being a younger age at first marriage for senatorial men and women. He based his calculations on the assumption of an average life expectancy of 25 years and an average age of first marriage of twenty years for ordinary Roman women and thirty years for ordinary Roman men. For the senatorial Romans he set the age at marriage at fifteen and twenty-five respectively.[103] According to this table more than thirty percent of all new born girls died before their first birthday. By the age of ten, almost half of them had already died. For ten-year-old girls that had survived the childhood diseases, the average life expectancy had risen to 47.5 years. This means that almost half of them would reach the age of fifty; a little less than one-third, sixty; and ten percent of Roman women, seventy.[104]

Based on the Life Tables and an assumed average age of first marriage for ordinary men of thirty years, Saller estimated that almost a quarter of all 'ordinary' Roman children had already lost their father at the age of ten. At the same age, only around five per cent of children still had a living paternal grandfather. At the age of twenty-five, on average 38 per cent of all Romans still had a father, while the number with still living paternal grandfathers was negligible. By the age of forty, less than ten per cent of the 'ordinary' Romans still had a

98 Saller (1994) 12-20, cf. Parkin (1992) 92-111. The Ulpian life table is the one document which explicitly refers to life expectancy: *Digesta* 35.2.68 pr (Macer). The question whether this table was based on empirical data has been extensively discussed: Hopkins (1966) 264n32, Frier (1982) 214-219, Duncan-Jones (1990) 96-101, Parkin (1992) 28-39, De Vries and Zwalve (2004) 280-284, Flaumer (2014).

99 Saller (1994) 22, Howell (1976).

100 Coale, Demeny and Vaughan (1983). A stagnant population is a population in which no migration occurs: all persons are born and die within this population.

101 Coale and Demeney used the regions East, West, North and South and levels starting with an average life expectancy of twenty years (level 1) and gradually rising in steps of 2.5 years.

102 Saller (1994) 43-69.

103 The average age at first marriage was set for ordinary women at twenty years (distribution fifteen to forty) and for ordinary men at thirty years (distribution twenty-four to forty), Saller (1994) 45-46, based on Coale and Demeney Level 3 West. For the senatorial group Saller also calculated an alternative life expectancy of 32.5 years, based on Level 6 West.

104 Saller (1994) 24-25.

living father.[105] Among 'senatorial' Romans this percentage was somewhat higher, due to the supposed younger age at first marriage among the Roman elite and their probable higher life expectancy. But even in the most positive model Saller used, at the age of twenty-five only half of the 'senatorial' Romans still had a father and three per cent a living paternal grandfather.[106] Based on these calculations, Saller argued that 'despite a few sensational moral tales to the contrary, only a small proportion of Roman adults suffered under the continuing shadow of *patria potestas*', because most of them were born after the death of their paternal grandfather and a majority of Roman fathers were dead by the time their sons married.[107]

Demography and perception

Do Saller's calculations offer proof that *patria potestas* was not really relevant? As an argument, his calculations are somewhat problematic. On a fundamental level there is the problem that Saller is arguing against what is basically normative behaviour by using demographic probability as an argument when he argued that the practical effect of *patria potestas* on Roman society was limited, because only a limited group of adult Romans was actually *alieni iuris*.

That most Roman men would never become a *pater familias* in a three-generational *familia* does not mean that Romans could not strive to do so. Even in modern society it is often the case that an ideal falls somewhat outside the reach of most people: the appeal of an ideal can lay especially in the fact than only a minority is able to reach it. Therefore, we should not look in the first place to the demographic reality of life in Rome, but to the way in which Romans perceived *patria potestas* and the position of the *pater familias*. As we have seen earlier in this chapter, Roman writers regularly discussed *patria potestas* in a normative way and considered someone who reached such a position as lucky. This alone means that to them *patria potestas* was relevant and was seen as a norm to strive for.

Beside this fundamental remark, there is also a certain amount of technical critique possible on his calculations of the life expectancy of Romans and the underlying assumptions on which his calculations were based. The Model Life Tables he used have been criticised as non-realistic for use in ancient history, because the high mortality models are not based on real population data and the tables do not take into account the living conditions of a pre-industrial society. Scheidel argued that '[i]n view of the origins of standard mortality models and the impact of more 'archaic' disease patterns on age-specific chances of survival, it seems doubtful whether any model life table is capable of giving even 'an approximate notion of normal Roman mortality experience'.[108] Despite his remark, however, they are widely accepted as a useful tool to calculate different possibilities and give historians at least a general idea of population structure.[109] Even critics still use them in their own work.[110]

A major critique is that the Coale and Demeney Model Life Tables are based on modern populations which are hardly influenced by infectious diseases. This even holds true for high mortality regimes, because Coale and Demeny used mathematical formulas instead of empirical data to construct models for populations with lower life expectancy than 35 years, as the available data on populations with low life expectancy was considered to be too unreliable.[111] However, in high mortality regimes where modern medical care is lacking, the population structure could be influenced by infectious diseases. Some diseases especially target people in their teens and twenties, which are the age categories with the lowest death rates according to the Life Tables. This would suggest that those who survived this age had a greater chance of growing old.[112]

Furthermore, Saller's calculations also do not take local differences into account which could influence disease patterns. For example, Romans were well aware that life in the hills was more healthy than living in low-lying, marshy areas where malaria could thrive.[113] The healthy climate in the hills had a direct influence on life expectancy, according to Pliny the Younger: 'Hence the number of elderly people living there—you can see the grandfathers and great-grandfathers of people who have reached their own manhood'.[114] In these areas, the chance of living a considerable part of adult life with a living (grand)father was possibly much higher than in coastal plains.

Another point of critique is the presumed average age at first marriage. Saller put this age at twenty years for 'ordinary' Roman women. However, Roman girls could marry at the age of twelve.[115] There has been considerable discussion on this subject. Roman literary sources and the limited number of funeral inscriptions which mention both the length of the marriage and the age of the wife at death both suggest that Roman women on average were married at the age of fifteen.[116] However, Saller argued that these samples were both too small and biased.[117] Instead he looked at the commemorative habit: who commemorated the dead person on the tombstone. Based on research done by Shaw and him, Saller concluded that the commemoration of women by their parents declined from their late teens onwards, when

105 Saller (1994) 49, 52.
106 Ibid. 61, 64, based on Level 6 West (life expectancy at birth 32.5 years). Based on Level 3 West (life expectancy 25), around forty-two per cent of the 'senatorial' Romans still had a living father at age 25.
107 Saller (1994) 229. Based on Saller's work, Hin calculated that a quarter of the Roman children were already orphans (and, therefore, *sui iuris*) before reaching adulthood; Hin (2008) 222.
108 Scheidel (2001) 24, see also Sallares (2002) 165-170, Earnshaw-Brown (2009) 123-136.
109 Earnshaw-Brown (2009) 123.
110 For example, Harris (1999) 71, Scheidel (2004) 2 and Scheidel (2007b) 39.
111 Coale and Demeny (1983) 25.
112 Scheidel (2001) 6-7, who argues that models systematically overrate infant mortality and underrate mortality among older children and young adults. See also Hin (2013) 109-123 who proposes to use different life tables based on populations in developing countries, especially those which are influenced by infectious diseases like malaria and AIDS.
113 Cicero, *De Republica* 2.11; Livy, *Ab urbe condita* 5.54.4; Columella, *De Re Rustica* 1.5.6. On malaria, see Hin (2013) 126 and Sallares (2002).
114 Pliny, *Epistulae* 5.6.6: *Hinc senes multi: videas avos proavosque iam iuvenum*. Loeb translation.
115 At the least from the time of Augustus onwards according to Cassius Dio, *Roman Histories* 54.16.7 and *Digesta* 23.1.9 (Ulpian, but referring to an opinion of the Augustan jurist Labeo).
116 Hopkins (1965) 316-319, cf Lelis, Percy and Verstraete (2003).
117 Especially the literary sources, because they only mentioned elite marriages.

husbands started to take over the commemoration.[118] This suggests a higher age at first marriage, at around twenty years.

The advantage of this method is that it takes into account a larger body of funeral inscriptions, which are not limited to Rome and its surroundings like the ones mentioning the length of the marriage and the age at death.[119] The disadvantage is that commemoration is circumstantial evidence: it is based on the assumption that husbands started to commemorate their wives directly after marriage. This may not have been the case: it has been argued that husbands only started to commemorate their wives after the birth of their first child, some years after marriage.[120] Imperial law employed the principle that the one who received the dowry after the death of a woman had to pay for her funeral. While the dowry normally stayed with the husband, it had to be returned in full to the wife's father if she had not yet had any children at the time of her death.[121] In these cases the father paid for his daughter's funeral, which makes it possible that he commemorated her, even though she was married.[122]

A lower age at first marriage would increase the influence of the father on the marital life of his daughter. A comparison with Saller's calculations for 'senatorial' women (which were based on a supposed age at first marriage of fifteen) shows what a difference a few years could make. If one assumes marriage at age twenty, somewhat less than half of fathers were still alive, while if one postulates an earlier marriage at fifteen two-thirds of them still lived.[123]

However, it is not only the age at first marriage which is relevant. Another factor is the birth order of children. Especially for those children who were born early in a marriage, *patria potestas* during their adult lives must have been a common experience. Adulthood started at an early age for Romans: girls were considered to be adults, and ready for marriage, at the age of twelve, boys somewhat later, around the age of fourteen.[124] When a girl was born while her father was between twenty-five and thirty years of age, she could expect that he would live on average until she was between twenty-six and twenty-eight years old, according to Saller.[125] In the Roman context this meant that by the time her father died, she had been an adult for more than half her life and probably already married for eight to twelve years. Sons in the same situation would have been adults for ten to fourteen years when their father died, although they only started to marry around the time of his death. Again, it must be emphasised that this was an average: according to Saller's model, half of all fathers lived beyond this age.

It is especially the coincidence of survival which can be seen as a problematic element of Saller's interpretation. If we assume that his calculations did come close to the demographic reality of Roman life, his conclusion that on average a majority of the Romans were freed from *patria potestas* by the time they were adults still means that a large minority were not. Furthermore, as we have seen above, the chance of having a living father in adult life could differ greatly on an individual level, depending on circumstances like location and birth order. This still left a large group of young adult Romans in *potestas*, a situation which was probably even more frustrating, because a majority of their peers enjoyed greater personal freedom.[126]

Roman literature and demography

Roman writers seem to have taken it as normal that sons *in potestate* were, to some extent, frustrated because of their lack of opportunities.[127] As we have seen, it was part of their stock in trade. However, to see this merely as a literary construction with only a very limited connection to reality does not do justice to the sources.[128] Relations between fathers and sons which are not strained are also mentioned. In these cases, it is never presented as an exception that a father is still alive while his son is already an adult. This suggests that the Romans considered the survival of a father until his sons reached adulthood to be a normal state of affairs. The situation of a grandfather is different. It was certainly considered rare for a man to reach adulthood while his grandfather was still alive, as the earlier mentioned example from Pliny shows.

The situation for daughters is also different. Conflicts between fathers and adult daughters are hardly mentioned in the sources. Daughters are mostly mentioned either as little girls or as married women. This could be a literary topic, but if the sources reflect any social reality it is probably that these conflicts were rare. This seems to imply that daughters did not have the opportunity to engage in conflicts with their fathers during adulthood in the way that their brothers did. Daughters married earlier, but an average age at first marriage of around twenty years could still give them eight years of adult life within their father's household.

An explanation could be that daughters did marry in their mid-teens, and, therefore, did live in their father's household as adults for only a limited number of years. Alternatively, it could also have been the case that daughters did marry in their late teens or early twenties,

118 Saller (1987) on the age at first marriage for men; Shaw (1987) ditto for women.

119 Shaw (1987) 39-41. They are still biased, however. All inscriptions come from an urban environment and are set up by a relatively well-to-do part of the population, Saller (1987) 24, Shaw (1987) 33. This means that possible differences between an urban and rural environment cannot be taken into account, Scheidel (2007a) 400.

120 Lelis, Percy and Verstraete (2003) 87-88.

121 *Digesta* 11.7.16-30, cf. Gardner (1986) 106-107. Whether this principle was already followed in the late Republic is unknown: the oldest references within these fragments are to jurists from the first century AD. It seems likely that these rules were only relevant for marriages *sine manu*.

122 Scheidel (2001) 396-398 concludes that both interpretations fit the available evidence. See also Caldwell (2007) for the argument that Roman marriage *sine manu* was not an abrupt 'rite of passage', but a drawn-out process of transition in which a woman's family of orientation was only gradually replaced by her family of procreation.

123 However, this calculation is also based on an earlier age at first marriage of men.

124 Watson (1967) 39.

125 Coale and Demeney Model Life Table West 3.

126 Cantarella (2003) 213.

127 Lack of money seems to have been the main problem for most young men who were *alieni iuris*. Cicero even mentions in a matter of fact tone that young man were easily corrupted by elderly women, because of their father's stinginess: Cicero, *Pro Caelio* 38.

128 For example, strained relationships between sons and their fathers feature regularly in the so-called *declamationes maiores*. While these declamations are over often the top and clearly fictional, they were written by professional rhetoricians who had to compete for young male students. Therefore, they had to relate to the (perceived) experience of this audience; Sussman (1995) 191, Breij (2006) 7-9.

but were engaged some years earlier. Unlike their brothers, by the time conflict could arise they had either left the household of their fathers or had the prospect of leaving this household in sight and could focus on the preparations for their upcoming status as married women.[129] In another way too, available sources do underline the picture of a high mortality society with early marriage for daughters: unlike grandfathers, living grandmothers and elderly aunts are a regular feature in Roman texts.[130] This reflects the earlier age of marriage for girls: they became a parent at an earlier age than men and had, on average, a greater chance of surviving their husbands and being alive while their grandchildren grew up.

It seems to have been considered normal for young adult Romans, say in the range of the late teens and the first half of the twenties, to have a *pater familias*. What does this say about the relevance of the *familia* for the average Roman? It was quite normal for Roman men to live as citizens *alieni iuris* in a *familia* structure during their formative years. However, most of them would only marry after the death of their father.

For Roman women this was different; at least half of them were married and probably already had children while their fathers were still alive. Although a Roman woman's father had no authority over her children, he had an influence on her, especially when she was married *sine manu* and she was still part of his *familia*. A three-generational *familia* was out of reach for most Romans, or existed for only a limited period of time. This does not mean that it was not something to aspire to: both the literature and legal tradition present it as a situation which not only did occur, but was also something to be preferred.

The notion that a high mortality regime minimised the chance for a Roman citizen to be part of a *familia* comprising more than one married couple stretching over three generations, is a valuable addition to our understanding of the living situation of Romans. However, as has been argued above, this cannot be interpreted as proof that *patria potestas* and the *familia* were irrelevant to the daily living experience of Romans.

129 Treggiari (1991), Caldwell (2007).

130 See for example Polybius, *Histories* 31.26.6-7, Cicero, *De oratore* 2.44, Varro, *De re rustica* 3.2.14-16, Pliny the Younger, *Epistulae* 7.24, Tacitus, *Dialogus de Oratoribus* 28, Suetonius, *Divus Iulius* 6.2, *Divus Augustus* 8.1, *Corpus Inscriptionum Latinarum* 4.7469. Elderly women were not always seen as positive, however: Cokayne (2003) 134-152.

4.4 Residence pattern: *familia* and household

The argument has been made that the three-generational Roman *familia* with a tyrannical *pater familias* at its head was no social reality, because Romans did not live in in larger, multiple family households as implied by the *familia* structure but in nuclear families.[131] According to this argument, neolocality, living in another residence than the *pater familias* after marriage, supposedly freed the Roman citizens from the influence of the *pater familias* in everyday life.

Behind this remark seems to lie an assumption that *familia*, family and household should overlap in order to make the *familia*, and the influence of a citizen *sui iuris* in it, socially relevant.[132] However, we have to remind ourselves that *familia*, family and household are three different things, which do not necessarily overlap. It is not always clear which of these concepts is meant, even for Romans themselves matters were sometimes muddled.[133] *Familia* normally meant the agnatic group, but was sometimes used as the wider family group (although the use of *familia* to include wives was rare).[134] *Domus*, on the other hand, could mean house, household and family group.[135]

In this thesis, a difference is made between the agnatic concept of *familia* and the family, a wider group of related kin which could include both agnates and cognates. However, for this section we will take a look at Roman household composition. To separate household from family, a widely accepted definition is used that a household is the group of people who live under the same roof and eat from the same table.[136] This definition excludes family members who do not live under the same roof, but it does include non-related household members besides related kin. Since this section is about the relevance of household composition for the *familia*, the focus in this section will be only on the related kin-group. This related kin-group can have different forms, of which the nuclear, extended and multiple family households are the most relevant to this discussion.[137] A nuclear household is a household in which only one married couple lives with their children.[138] This is the most common household form in modern Western society. An extended household is a nuclear household extended by co-resident kin, such as an elderly parent or unmarried siblings or cousins. A multiple family household is a household in which two or more married couples live together, often parents with married children or married siblings.

131 Dixon (1988) 9, Dixon (1992) 6.

132 See also Gardner (1998), which starts from this assumption.

133 Bradley (1991) 5-6.

134 Saller (1984a) 339.

135 Bradley (1991) 4, Saller (1994) 75-94, Gardner (1998)

136 Laslett (1972) 23-28, Huebner (2013) 17-20

137 The distinction between multiple, co-resident and nuclear (or conjugal) households is based on Laslett (1972) 28-32.

138 Laslett (1972) 28-32, who also includes in this category childless married couples and widowed spouses with resident unmarried children.

The question for this section will be whether a *pater familias* was able to actually exert his power on his wife and daughters because of the living arrangements of Roman citizens.

Nuclear household and multiple family household

Since the 1980s, the idea that Romans predominantly lived in nuclear households has been broadly accepted. As mentioned in chapter 2.3, the acceptance of this idea was mainly the result of Saller and Shaw's 1984 study of commemorations on Roman tombstones. They concluded that Romans were mainly commemorated by parents and children, the type of close kin we tend to associate with the nuclear family. Commemorations by broader kin and paternal grandfathers hardly ever occurred.[139] They concluded that '[o]n the basis of our evidence, it seems a reasonable hypothesis that the continuity of the nuclear family goes back much further in time and that it was characteristic of many regions of western Europe as early as the Roman empire'.[140] The remark about the continuity of the nuclear family was a direct reference to the work that inspired this study, Laslett's research into the endurance of the nuclear family.

Since the 1960s, Laslett has argued against the then-prevailing idea that most people lived in patriarchal, multiple family households before the industrial revolution. Laslett showed that, at least in England, such households hardly ever occurred. Most people lived in small households consisting of a married couple and their children, who normally left the household upon marriage to set up their own household, a phenomena which is called neolocality. These nuclear households were the norm as far back as the records go.[141]

Saller and Shaw wanted to research whether the nuclear family had also prevailed in Roman times. Due to a scarcity of sources on household composition, they employed the same tool that was also used to estimate the age at first marriage: the data derived from commemoration on tombstones. The number of funerary inscriptions is large and they do not only show the attitude of the highest echelons of the elite, but also that of basically every Roman who had money enough to put up such an inscription. As mentioned above, however, they do have a drawback. These inscriptions are made according to certain conventions, which do not necessarily correspond with the demographic situation of the commemorated person. This is the reason why, in recent years, they have been largely discredited as a source of demographic information.[142] As Hopkins remarked: 'commemorative practice is useful for *analysing* Roman commemorative practice'.[143]

Saller and Shaw were aware of this, but held that due to the large sample used, they still gave an indication that the nuclear household was prevalent in Roman society. As mentioned above, they hypothesised that there was a continuum of prevalence of nuclear families from Roman times to later European history. This conclusion was taken over by others and it became the orthodoxy that Romans lived in nuclear households and saw this unit as their basic obligation.[144]

There was one problem, however. As the research based on Laslett's example developed over time, it became increasingly clear that Laslett's conclusions did not always hold. In northern and western Europe nuclear families had prevailed at least since the Middle Ages, but in the Mediterranean multiple family households were fairly common. Sons often lived in their parents' households and marriage was early, especially for women.[145] Those regions in central and northern Italy in particular, which offered the most inscriptions for Saller and Shaw's research sample, formed an area in which multiple family households had prevailed for as far back as the sources went.[146]

In a recent article, Huebner tried to put the conclusions of Saller and Shaw to the test. She compared the funeral commemoration with probably the only more or less unbiased source of information on household structure from the Roman era, the census declarations found in Egypt.[147] Preserved in the Egyptian desert are a few hundred declarations from individual Egyptian households, made during the provincial *census*, mainly in the first three centuries AD. The demographics of these declarations is extensively studied by Bagnall and Frier.[148]

Based on Bagnall and Frier's work, Huebner concluded that around 21 per cent of the households mentioned in these declarations were multiple family households. More than 43 per cent were nuclear households and 15 per cent extended households, a nuclear household extended by one or more co-resident kin like a parent or an unmarried sibling.[149] This outcome is in line with other societies where multiple family households were considered to be the norm. According to recent research, in both imperial China and early modern Northern Italy, only about 20 per cent of the households were actually multiple family households, while about half of the households were nuclear.[150]

It may appear strange that in societies where multiple family households were considered the norm, such households did not form a majority of all households. There are actually more than twice as many nuclear households in these societies as there are multiple family households. This difference is partly the result of an optical illusion: since multiple family households are larger in size than nuclear ones, the proportion of persons living in these households is

139 Saller and Shaw (1984) 136.
140 Ibid. (1984) 146.
141 Laslett (1965), Laslett and Wall (1972).
142 Bryce and Zahle (1986) 115, Hope (1997) 113-114, Bodel (2001) 38, Keegan (2014).
143 Hopkins (1987) 115, as quoted in Huebner (2011) 80.
144 Dixon (1988) 6, Dixon (1992) 6, Rawson (1997) 294, Gallivan and Wilkins (1997) 240, Lassen (1997) 116, Nielsen (1997) 172, Harrison (2005) 376, Parkin and Pomeroy (2007) 74, Dickmann (2011) 56.
145 In a later paper, Laslett sees southern Europe as one of four distinct areas of historical household structure in Europe: Laslett (1983) 526-527.
146 Barbagli and Kerzer (1990) 373.
147 Huebner (2011), See also Huebner (2013) 1-57.
148 Bagnall and Frier (1994).
149 Huebner (2011) 77-79, Bagnall and Frier (1994) 60.
150 China, 6-8th century AD: Liao (2001) 341; Tuscany 15th century: Herlihy and Klapisch-Zuber (1978) 292; northern Italy 16th and 18th century: Viazzo and Albera (1990) 466-467. For a comparison, see Huebner (2011) 79, table 4.1.

actually much higher. In the sample from the Roman-Egyptian *census*, more than 40 per cent of all people lived in multiple family households, while 35 per cent lived in nuclear households.[151]

Another point is that demographic probability worked strongly against multiple family households.[152] As we have seen in the last section, the life expectancy of the inhabitants of the Roman world was low and the Egyptian case was no exception: based on the census declarations Bagnall and Frier calculated the life expectancy at birth for Roman-Egyptian men at 25 years and for women somewhat lower at 22.5 years.[153] Like Roman citizens, Egyptian men seem to have married relatively late, on average around the age of 25 years, probably somewhat later in cities.[154] In many families one or both parents were already dead before their children married. This made it difficult to create a multiple family household, even for those who strove towards it. Seen in this light, when one-fifth of all households are multiple family in a high mortality society, it is a clear sign that this type was culturally preferred in a society.[155]

Furthermore, we should not look at nuclear and multiple family households as opposites. Household formations are not fixed, but should be understood as a process rather than a norm.[156] They can change depending on their position within the so-called household life cycle. They can start as a multiple family household, when a young married couple moves in with the husband's parents. This can gradually develop into an extended and a nuclear household when one and later the other parent dies, before it becomes a multiple family household again when the children start to marry, or, alternatively, become a solitary household when there are no resident children and one of the spouses dies. This concept of household as a flexible, changeable entity is meant in Hajnal's argument that in societies where the multiple family household was considered the ideal form this type of household rarely ever formed a majority, but a majority of people in these societies were members of a multiple family household at some stage in their lives.[157]

Based on the interpretation of the Egyptian census declarations, it can clearly be said that Roman Egypt was a society in which multiple family households were prevalent. However, when Huebner compared this outcome with funerary inscriptions from Egypt, she discovered that this was not reflected in the epigraphic evidence: only 4.9 per cent of the funerary inscriptions seem to refer to multiple family households and 8.2 per cent to extended family households. Almost 73 per cent were dedications by either parents or children, and another 14 per cent by siblings.[158]

151 Bagnall and Frier (1994) 60.
152 Huebner (2011) 78.
153 Bagnall and Frier (1994) 84-89 (women), 99-102 (men).
154 Ibid. (1994) 116-118.
155 As a comparison, in early modern societies were nuclear households were preferred, around eighty per cent of the households are nuclear, and almost none are multiple: Lions and Lachiver (1967) 521-537 (Northern France, seventeenth century), Laslett (1972) 85 (late sixteenth century England).
156 Huebner (2013) 18.
157 Hajnal (1982) 452.
158 Huebner (2011) 82-89.

This outcome is all the more remarkable, because Huebner used a slightly different method from Saller and Shaw to avoid an undercount of multiple family households.[159]

These results for Egypt came close to Saller and Shaw's estimation that 88 per cent of the dedications in the western part of the Roman empire were made within a nuclear household context and 5 per cent within a larger (extended or multiple family) household context. It was almost exactly in line with estimations for Lusitanita made by Edmondson, who had used the same method as Huebner. His estimation for this *provincia* in the western part of the empire was that 85.3 to 87.7 per cent of the dedications were made by parents, children and siblings. The other 12.2 to 14.8 per cent were made in a larger household context.[160]

It is clear that based on the epigraphic evidence alone, Roman Egypt shows the same dominance of the nuclear household as the sample used by Saller and Shaw for the Roman west. There is no indication for the preference of multiple family households which is so prevalent in the Egyptian census declarations. According to Huebner, the double check with the census declarations shows that funerary inscriptions were virtually useless to establish actual household composition.[161] Her conclusions undermine the widely accepted idea that funerary inscriptions can tell us something about Roman household preferences.[162]

Huebner's study is not actual proof that Romans in Italy did not live in nuclear households. It simply states that we cannot know what the household composition was, because we cannot be sure that inscriptions reflect anything other than commemorative practice and probably the effects of household cycles. Alternative sources for the Roman empire outside of Egypt are not available. The one thing that could give a vague indication of actual household composition in Roman times is the use of comparative studies for later periods in the same area. These comparative studies, we have to remind ourselves, show that central and northern Italy have a strong and enduring preference for multiple family households from the earliest available medieval records onwards.

159 Huebner looked at the inscription as a whole, while Saller and Shaw counted every individual relationship within an inscription. The first method made it possible to distinguish between multiple-family and extended family households and could arguably avoid an over-count of nuclear families, Huebner (2011) 82-83, 85-85, partly based on Martin (1996) and Edmondson (2005).
160 Saller and Shaw (1984) 497; Edmondson (2005) 215-217, for a comparison see Huebner (2011) 88, table 4.3.
161 Huebner (2011) 89-90, Huebner (2013) 36-37.
162 Scheidel, presumably ignorant of Huebner (2011), also warns against too much confidence in epigraphic commemoration as a source of information on household formation, Scheidel (2012) 110-112.

Literary and archaeological sources on household composition

> "I, Spurius Ligustinus of the tribe of Crustumina, come of Sabine stock, fellow-citizens. My father left me a *iugerum* of land and a little hut, in which I was born and brought up, and to this day I live there. When I first came of age, my father gave me as wife his brother's daughter, who brought with her nothing but her free birth and her chastity, and with these a fertility which would be enough even for a wealthy home. We have six sons, and two daughters, both of whom are now married. Four of our sons have assumed the toga of manhood, two wear the boys' stripe."[163]

With these words, Livy starts a speech which was purportedly spoken by the highly decorated Roman veteran centurion Ligustinus in 171 BC. Livy presents him as a rustic smallholder, a citizen-soldier and also as a good *pater familias*. Ligustinus was a man of small means: he did even own less than the two *iugera* (approximately 0.5 hectare) which, according to legend, Romulus had given to every citizen as a *heredium*.[164] He had undertaken extra service in the Roman army for most of his adult life, probably to supplement his income.[165] During these same years he and his wife had raised at least eight children beyond infancy and married off their two daughters. His six sons, four of them adults, presumably still lived with their parents in their little hut.

This makes Ligustinus' little hut clearly a nuclear family household. But that is not the whole story: it is a step in the household cycle. According to Ligustinus, he had lived in the same small hut since birth. His father had given him his wife, therefore he was still alive when Ligustinus married. This means that at a certain point in the past this had been an extended family household or a multiple family household, depending on whether Ligustinus' mother was also alive at the time. With four adult sons in the house, and both Ligustinus and his wife still alive, there is an expectation that this household will become a multiple family household again in the near future.

We do not know whether Ligustinus ever existed in the way in which he is described by Livy. What is presented here is certainly an idealised picture of Roman marital life: a long marriage, a large number of children, a son who was obedient to his father and whose children are obedient to him. His story is almost a lower-class version of Cicero's story about the consul and censor Appius Claudius Caecus from the late fourth century BC.

163 Livy, *Ab urbe Condita* 42.34.2-4: *Sp. Ligustinus Crustumina ex Sabinis sum oriundus, Quirites. Pater mihi iugerum agri reliquit et parvum tugurium, in quo natus educatusque sum, hodieque ibi habito. Cum primum in aetatem veni, pater mihi uxorem fratris sui filiam dedit, quae secum nihil attulit praeter libertatem pudicitiamque, et cum his fecunditatem, quanta vel in diti domo satis esset. Sex filii nobis, duae filiae sunt, utraeque iam nuptae. Filii quattuor togas viriles habent, duo praetextati sunt*. Translation Loeb.

164 Varro, *De Re Rustica* 1.10.2, Pliny the Elder, *Naturalis Historia* 18.6-7, 19.50.

165 Livy, *Ab urbe Condita* 42.34-36.

Although old and blind, Pulcher held sway over a large household, including four sons, five daughters and a large following.[166]

Hopkins and Saller and Shaw looked at funerary inscriptions in an attempt to say something about actual household composition for a good reason. Literary sources are not very useful for statistical purposes. The actual number of descriptions of household compositions in Roman literary sources is small. The ones we have are often used to make a moral point, like the two examples of Ligustinus and Appius Caecus mentioned here. They are examples that tell us little about the frequency of certain household compositions. They are mainly used to show the different household configurations which were possible within the Roman elite and sometimes to illustrate an alleged change in household composition, from large households in early Rome to nuclear households in the early empire.[167]

Cicero mentions adult men who live away from their fathers, like Sextus Roscius of Ameria on a farm and Caelius in a city apartment in Rome.[168] Seneca praises an unmarried adult son who lived in one household with his mother.[169] An extended family household is mentioned for Julius Caesar who presumably lived together with his young bride and his mother in one household around 61 BC.[170] Tacitus assumed that it was normal in former times that at least one elderly female family member lived in a household to take care of any small children.[171] A century before Caesar, the widowed Cato the Elder also lived in an extended household together with his married son and daughter-in-law. When he remarried as an old man, his household changed into a multiple family household with two married couples.[172]

The last two examples mentioned above are both from Plutarch, the Graeco-Roman biographer from the first century AD. Plutarch had a keen interest in family life. Two other fragments of his work are regularly quoted as examples of large early Roman households. The first is the example of Licinius Crassus, the famously rich magnate of the late Republic. Although his family was part of the senatorial elite, he spent his youth in rather simple circumstances, according to Plutarch. He describes Crassus' upbringing around the turn of the first century BC:

> Marcus Crassus was the son of a man who had been censor and had enjoyed a triumph; but he was reared in a small house with two brothers. His brothers were married while their parents were still alive, and all shared the same table, which seems to have been the chief reason why Crassus was temperate and moderate in his manner of life. When one of

166 Cicero, *De Senectute* 37. Cf. Valerius Maximus, *Facta et dicta memorabilia* 8.13.5.

167 Garnsey and Saller (1987) 129. Within the elite even a nuclear household could still be very large, due to the number of slaves and dependents who were part of it. For example, 400 slaves lived in the household of the city prefect L. Pedanius Secundus in AD 61: Tacitus, *Annales* 14.42-45. The Augustan *Lex Fufia Canina* on testamentary manumission deals with a range of less than ten slaves up to five hundred and more, cf. Bradley (1989) 128.

168 Cicero, *Pro Roscio Amerino* 39, 42; Cicero, *Pro Caelio* 17-18.

169 Seneca, *De consolation ad Marciam* 24.1.

170 Plutarch, *Life of Julius Caesar* 7.3, 9.3 en 10.2. Cf. Dixon (1988) 200, Bradley (1991) 163, Hölkeskamp (2004) 130.

171 Tacitus, *Dialogus de Oratoribus* 28.

172 Plutarch, *Life of Cato the Elder* 24.

> his brothers died, Crassus took the widow to wife, and had his children by her, and in these relations also he lived as well-ordered a life as any Roman.[173]

The other example is that of Aemilia, a sister of Cato the Elder's daughter-in-law. Around 170 BC, she married into the *familia* of the Aelii Tuberones:

> Of the daughters of Aemilius, one became the wife of the son of Cato, and the other of Aelius Tubero, a man of the greatest excellence, and one who, more than any other Roman, combined the greatest dignity with poverty. For there were sixteen members of the family, all Aelii; and they had a very little house, and one little farm sufficed for all, where they maintained one home together with many wives and children. Among these wives lived also the daughter of that Aemilius who had twice been consul and twice had celebrated a triumph, and she was not ashamed of her husband's poverty, but admired the virtue that kept him poor. Brethren and kinsmen of the present day, however, unless zones and rivers and walls divide their inheritances and wide tracts of land separate them from one another, are continually quarrelling.[174]

The references in literary sources to extended or multiple family households within the elite are mostly from the second or early first centuries BC. Some see this as evidence that Roman household composition developed from larger households during the Republic to neolocal nuclear households during the Empire.[175] Others see it as indicating that at the very least Plutarch himself thought that such a development had taken place.[176] According to Gardner, references to larger households have to be seen in the moralistic message in which the rich and decadent way of living in his own time is set in contrast with the virtuous poverty of the Roman past.[177]

All three of these interpretations are possible. It has to be remarked, however, that the only fragment in which Plutarch explicitly uses household composition to make the distinction between a problematic present and a better past is in the fragment on the sixteen Aelii. This fragment is somewhat problematic, because it seems to describe a very specific kind of *familia* which was manifest in this household: the common property *familia*.

As mentioned in chapter 3, *sui heredes* could keep the inheritance of their *pater familias* undivided and manage it together as common property. This was probably an effective strategy for a *familia* which contained too little property to divide it, like the sixteen Aellii who shared one house and one farm. In this situation all the *heredes* became *sui iuris* within the *familia*. By Gaius' time at least, each of them could sell property from the household even without the consent of the others.[178] This made this type of *familia* inherently instable and Gaius describes it as something from the past, although Pliny the Younger mentions two brothers who had a joint *familia* as late as the turn of the second century AD.[179] This interpretation is at least a possible explanation of the reference to inheritances in the Aelii-fragment and it would fit Plutarch's critique on contemporary family relations in *On brotherly love* that 'to use in common a father's wealth and friends and slaves is considered as incredible and portentous as for one soul to make use of the hands and feet and eyes of two bodies'.[180]

In the other fragments mentioned above, the emphasis is not that early Romans did not live in nuclear households. They mostly emphasise that ancient Romans controlled their offspring effectively and accomplished great feats for the state while living in very sober circumstances compared with the living conditions of the elite in the early Empire.[181] This could be placed within the familiar Roman discourse about the corrupting influence of luxury. From the second century BC onwards, the growing influx of riches into Rome from conquered territories made many within the Roman elite uneasy and led to a discourse on the corrupting influence of wealth on members of the governing group within Roman society.[182] Within this discourse, the examples of the poor but virtuous lives of the great Romans of the past were used to show how a good Roman citizen should behave.[183]

One of the elements of this discourse was that they could get along with each other even though they all had to live together in one house. By the end of the Republic it seems to have been considered normal that citizens *sui iuris* within the senatorial elite owned more than one house. For example Cicero, who was certainly not the richest senator of his time, had at least six houses around 60 BC: besides an ancestral house near Arpinum, he had bought a large

173 Plutarch, *Life of Crassus* 1: Μάρκος δὲ Κράσσος ἦν τιμητικοῦ καὶ θριαμβικοῦ πατρός, ἐτράφη δ᾽ ἐν οἰκίᾳ μικρᾷ μετὰ δυοῖν ἀδελφῶν. καὶ τοῖς ἀδελφοῖς αὐτοῦ γυναῖκες ἦσαν ἔτι τῶν γονέων ζώντων, καὶ πάντες ἐπὶ τὴν αὐτὴν ἐφοίτων τράπεζαν, ὅθεν οὐχ ἥκιστα δοκεῖ καὶ διὰ τοῦτο σώφρων καὶ μέτριος γενέσθαι περὶ τὴν δίαιταν. Translation Loeb.

174 Plutarch, *Life of Aemilius Paulus* 5.6-9: τῶν δὲ θυγατέρων τῶν Αἰμιλίου τὴν μὲν ὁ Κάτωνος υἱὸς ἔγημε, τὴν δ᾽ Αἴλιος Τουβέρων, ἀνὴρ ἄριστος καὶ μεγαλοπρεπέστατα Ῥωμαίων πενίᾳ χρησάμενος. 7ἦσαν γὰρ ἑκκαίδεκα συγγενεῖς, Αἴλιοι πάντες· οἰκίδιον δὲ πάνυ μικρὸν ἦν αὐτοῖς, καὶ χωρίδιον ἓν ἤρκει πᾶσι, μίαν ἑστίαν νέμουσι μετὰ παίδων 8πολλῶν καὶ γυναικῶν. ἐν αἷς καὶ ἡ Αἰμιλίου τοῦδε θυγάτηρ ἦν δὶς ὑπατεύσαντος καὶ δὶς θριαμβεύσαντος, οὐκ αἰσχυνομένη τὴν πενίαν τοῦ ἀνδρός, ἀλλὰ θαυμάζουσα τὴν ἀρετὴν δι᾽ ἣν 9πένης ἦν. οἱ δὲ νῦν ἀδελφοὶ καὶ συγγενεῖς, ἂν μὴ κλίμασι καὶ ποταμοῖς καὶ διατειχίσμασιν ὁρίσωσι τὰ κοινὰ καὶ πολλὴν εὐρυχωρίαν ἐν μέσῳ λάβωσιν ἀπ᾽ ἀλλήλων, οὐ παύονται διαφερόμενοι. See also Valerius Maximus, *Facta et dicta memorabilia* 4.4.8. Translation Loeb.

175 Garnsey and Saller (1987) 129.

176 Huebner (2011) 75.

177 Gardner (1998) 70.

178 Gaius, *Institutiones* 3.154b.

179 Gaius, *Institutiones* 3.154a, Pliny the Younger, *Epistulae* 8.18.

180 Plutarch, *On brotherly love* 478.1: τὸ χρῆσθαι κοινῶς τοῖς πατρῴοις χρήμασι καὶ φίλοις καὶ δούλοις οὕτως ἄπιστον ἡγοῦνται καὶ Δτερατῶδες, ὡς τὸ χρῆσθαι μίαν ψυχὴν δυεῖν σωμάτων χερσὶ καὶ ποσὶ καὶ ὀφθαλμοῖς. Translation Loeb.

181 For example the dictator Quinctius Cincinatus: Valerius Maximus, *Facta et dicta memorabilia* 4.4.7, Cicero, *De senectute* 56, Livy, *Ab urbe condita* 3.26.8-12, Pliny the Elder, *Naturalis Historia* 18.20 and Aemilius Paulus: Plutarch, *Life of Aemilius* 4.5.

182 Sallust, *Bellum Catilinae* 10.1-2, Livy, *Ab urbe condita* 34.4.1-3, Velleius Patercullus, *Historiae Romanae* 2.1.1, Pliny the Elder, *Naturalis Historia* 33.148, 34.34. Cf. Zanda (2011).

183 Hölkeskamp (2004) 115.

house on the Palatine in Rome, a country-house at Tusculum, a sea-side villa near Formiae, a town-house at Antium and a villa at Pompeii. His wife Terentia owned houses of her own.[184]

The idea that Roman citizens in the early empire lived in nuclear households is mainly based on Saller and Shaw's research on funerary inscriptions and the few fragments above which could indicate that something had changed during the last two centuries of the Republic. There are practically no positive indications in the sources that Roman citizens preferred nuclear households. When Saller researched the family terminology in Latin, he concluded that the Romans did not even have a word for a nuclear family, made up by a father, mother and children.[185] The closest words are *familia* and *domus*, which both refer to a wider group. Saller noted a shift in preference from the late Republic onwards from the agnatic *familia* to the more amorphous *domus*. This he interpreted as a sign that the agnatic *familia* had become less relevant.[186]

According to Saller and Shaw, the one clear reference in the sources to a Roman preference for nuclear families is Cicero, *De Officiis* 1.54.[187] In this fragment, Cicero refers to the partnership between man and wife when he talks about bonds between people:

> All living creatures have a common desire to reproduce their kind, and humans are no exception; the closest bond is therefore between man and wife (*coniugio*), the next closest with children, and thirdly that of the whole household which shares a common life (*una domus, communia omnia*). This lies at the root of every city and is as it were the seedbed of the state. Next comes the relationship of brother to brother, then that of cousins and second cousins, who sometimes become too numerous to inhabit the same house and so found other homes like colonists expanding their empire.[188]

Cicero presents the bond between husband and wife as something natural in order to procreate. With its central reference to man and wife and their children, this one fragment suggests, according to Saller and Shaw, that 'Romans felt that the mother-father-children triad was the nexus of primary kinship obligations'.[189]

One may wonder, however, whether this fragment does place the relation of husband and wife unequivocally within a nuclear household. The central person is a man and could also be interpreted as a *pater familias* and his wife. This representation could even be in compliance with a multi-generational *familia*: the reference to children in the Roman context can also refer to married adult children who are part of the household together with their children. Furthermore, the bond between a man, wife and children does not exclude a broader, shared household. Brothers and even cousins are part of the *domus*, until the number of inhabitants becomes too large. Obviously this is meant to be metaphorical, playing with the different meanings of *domus*, ranging from a building to a family group. It does, however, emphasise that not even in this famous example can it be assumed that Cicero actually states a preference towards a nuclear household.

That Cicero is not specifically thinking of a nuclear household is also indicated by the context of the fragment. Although Saller and Shaw see it as a suggestion that the mother-father-children triad was central to Roman kinship obligations, this is not what Cicero emphasises when he described the hierarchy of obligations a few lines later in the same text:

> If, however, there should be any conflict of priorities, our duty to our country and our *parentes* should come first, for we are bound to them by great debts of gratitude. Next come our children and the whole household (*domus*), which is entirely dependent on us, and finally those who are near to us and bound by ties of sympathy and common interest.[190]

There is a startling omission in this fragment: the most central obligation in a nuclear household, that between husband and wife, is missing in Cicero's hierarchy. This means that this fragment could also be read as referring to an agnatic family line, in which the persons denoted by 'us' are those between the forefathers and the next generation. Although the text seems familiar to us, we have to keep in mind that *parentes* can mean not only father and mother, but also a father and forefathers or even refer specifically to a *pater familias*, as in *parens manumissor*, the *pater familias* who emancipates a child or grandchild.[191]

Texts written by Cicero and other authors from the late Republic and the early Empire do present as an ideal the larger household, presumably of people related as part of a *familia*. The one reference to a preference for the nuclear household is ambiguous. This could be the reflection of a social reality or a normative literary tradition.

As an alternative source of information on actual household composition, one could turn to archaeology, especially to the houses in Herculaneum and Pompeii which were left in a hurry during the eruption of Vesuvius in AD 79. In the last two decades, intensive research has been carried out on the use of space in bigger Roman houses in this region.[192] According to

184 Treggiari (2007) 51.
185 Saller (1984a) 355.
186 Ibidem.
187 Saller and Shaw (1984) 137, cf. Saller (1984a) 344, Parkin (2011) 277.
188 Cicero, *De Officiis* 1.54: *Nam cum sit hoc natura commune animantium, ut habeant libidinem procreandi, prima societas in ipso coniugio est, proxima in liberis, deinde una domus, communia omnia; id autem est principium urbis et quasi seminarium rei publicae. Sequuntur fratrum coniunctiones, post consobrinorum sobrinorumque, qui cum una domo iam capi non possint, in alias domos tamquam in colonias exeunt.* Translation Higginbotham (1967) 58.
189 Saller and Shaw (1984) 137.
190 Cicero, *De Officiis* 1.58: *Sed si contentio quaedam et comparatio fiat, quibus plurimum tribuendum sit officii, principes sint patria et parentes, quorum beneficiis maximis obligati sumus, proximi liberi totaque domus, quae spectat in nos solos neque aliud ullum potest habere perfugium, deinceps bene convenientes propinqui, quibuscum communis etiam fortuna plerumque est.* Translation Higginbotham (1967) 59.
191 Buckland (1963) 132, 377. *Parens* and *potestate parentum* are regularly used to refer to the *pater familias* and his power over his children: Gaius, *Institutiones* 1.57, 1.65, 1.99, 1.132, 1.134.
192 Wallace-Hadrill (1994), Laurence and Wallace-Hadrill (1997), Dickmann (1999) 23-39, Wallace-Hadrill (2008) 144-196.

archaeologists themselves, however, classical archaeology is not yet able to deliver information on household composition.[193] This has partly to do with the tradition of classical archaeology which has tended to see household assemblages as a number of artefacts which were often not studied in context.[194] This is even more difficult for houses in Rome and Ostia, due to the constant rebuilding and reuse of these structures.[195]

Another factor is that material culture only acquires meaning through interpretation. This interpretational framework is related to that used in ancient history, which makes it difficult to use archaeology as an independent source. This is clear in a recent article, in which the writer presents it as a fact that Roman citizens lived in neolocal nuclear household (with reference to Saller and Shaw). A few pages further on in the same article he seems somewhat amazed that 'the number of rooms in a *domus* far exceeds those found in family homes today', without taking into consideration that this could be the effect of different living arrangements.[196]

Residence pattern and bargaining power of Roman women

The available sources discussed above do not offer a straightforward answer to the question of what the predominant residence pattern of Roman citizens was in the late Republic and early Empire. While there is no evidence that non-elite Roman citizens lived in nuclear families, literary sources seem to imply that among the senatorial elite it became more common for members of a *familia* to live in separate houses. This did not necessarily mean that the influence of the *pater familias* in elite *familiae* was waning. As the example of Cicero's six houses suggests, it is possible that there was some grain of truth in the remarks by Roman writers that wealth started to influence family life: the *familia* among elite Romans started to be spread out over a growing number of residences in most senatorial *familiae*.[197]

If a *familia* had a number of houses among its assets, it was possible to arrange separate households *within* the *familia*. For rich elite *familiae* it was probably preferable too: both sons and daughters had to learn how to manage estates, and could do so within one of the residences of the *familia*. This does not necessarily mean that the *pater familias* lost his authority over the members of the *familia*. They were probably living at other locations because he ordered them to do so, or at least had negotiated with them about it. This way of dealing with the *familia* is visible in Cicero's speeches and also in Seneca the Elder's *Controversiae* where a father ordered his son to move from his house and rented a house for him next door.[198] But it was probably not a new thing in the first century BC, as is suggested by the story of Manlius Torquatus who was sent to the countryside by his father in order to work the farm.[199]

For the bargaining power of Roman women, the possibility that Romans did not live in nuclear households was a mixed blessing. On the one hand, it suggests the enduring social relevance of the *familia*, something women *sui iuris* could profit from. On the other hand, living in the house of her parents-in-law could seriously limit a woman's bargaining power. Studies in more recent societies have shown that living in an nuclear household tends to increase the autonomy of a woman, while living amongst her husband's kin limits it.[200]

It is not hard to imagine that this was probably also the case in the Roman world. Roman women already had the disadvantage of a rather large age gap because they were married to men who were on average at least five years older than they were. This was exacerbated when a woman lived under the same roof as her parents-in-law. Take for example the *familia* of the centurion Spurius Ligustinus: if one of Ligustinus' sons should marry, his bride had to share a hut not only with her husband, but with her mother-in-law, her father-in-law and five brothers-in-law as well. Even if this bride was *sui iuris* upon marriage and married without *manus* she probably had very limited bargaining power within this family group, of which she was both a member of the household and an outsider within the *familia*.

However, her bargaining position could change over time. As mentioned before, household formations are not fixed, but should be understood as a process.[201] Over time, she could increase her status, especially as her parents-in-law had died and she had children herself. Roman sources present the begetting of children as the main reason to marry and encouraged it from the early Empire onwards through the *ius liberorum*.[202] This suggests that children enhanced a woman's status and bargaining power. Her bargaining position was probably further enhanced when her own sons started to marry and brought their brides into the family home.

193 Allison (2001), Dickman (2011) 71.
194 Allison (2001) 185, cf. Allison (2004) 124-157.
195 Wallace-Hadrill (2003).
196 Dickman (2011) 56 and 59-60, with reference to Wallace-Hadrill (1994) 72-82. For an opposite view (but also based on an interpretative framework) see Wallace-Hadrill (1996) who bases his interpretation of the Roman house on the needs of the *pater familias* and the *familia*.
197 Seneca, *De consolation ad Marciam* 24.1, Tacitus, *Dialogus de Oratoribus* 28.
198 Cicero, *Pro Roscio Amerino* 39, 42-4, *Pro Caelio* 17-18, Seneca the Elder, *Controversiae* 7.5.
199 Cicero, *De officiis* 3,112; Livy, *Ab urbe condita* 7.3.9-7.5.9; Valerius Maximus, *Facta et dicta memorabilia* 5.4.3, 6.9.1, Seneca, *De beneficiis* 3.37.4.
200 Moore (1988) 116-127.
201 Huebner (2013) 18.
202 Mette-Dittmann (1991) 132-161.

4.5 Conclusion: *Familia*, life expectancy and household

In this chapter, we have looked at the role of the *familia* in Roman society by discussing four main arguments against the relevance of the *familia*. These arguments are the supposed lack of relevance of the *familia* in the public sphere, lack of relevance of the *familia* outside the elite, low life expectancy, and the residence pattern of the Roman citizens.

It has been argued that although a magistrate *alieni iuris* was seen as having a higher authority in public life than his *pater familias*, he still depended on his *familia* for his position in Roman society, not only because he needed the financial support of his *familia*, but also in the more fundamental way that citizens *sui iuris* and *alieni iuris* were only seemingly equal in public life. A citizen *alieni iuris* depended on the status of his *pater familias* for his position in both military and political organisations. This effect is visible not only within the elite, but in the position of sub- and non-elite citizens alieni iuris as well. Furthermore, although he could act in public, he did so *loco*, 'in the position of', his *pater familias*. This made a citizen *alieni iuris* in public a representative of the *familia* he belonged to.

The *familia* also influenced Roman society in other ways. One of the main ways was the use of the *familia* as a template for a range of groups and organisations within Roman society, including the Roman state itself, which can be interpreted as a *familia* above the *familiae* of individual citizens. This became even more the case after the start of the Augustan era, due to the promotion of the Imperial *familia*.

In this chapter the high mortality in the Roman world was also discussed. This high mortality, combined with the later age at first marriage for men, limited the likelihood that a *pater familias* had more than one generation of descendants in his *potestas*. However, this demographic situation in itself is not proof that the Romans did not see a *familia* of more than two generations as something to strive for. If anything, the household composition in Roman Egyptian *census* declarations are a reminder that such a goal could be reached: according to calculations, a majority of the Egyptians lived in a multiple family household at some point in their lives.

In the last section, the alleged preference of Roman citizens for nuclear households was discussed. We have seen that that the main argument for such a preference, the funerary commemoration, is not as strong an argument as often thought. Comparison with Egypt shows that the commemorative habit does not necessarily reflects actual household composition. Other evidence, both legal and non-legal literary sources and comparisons, seem to point to an enduring preference for larger, multiple family households among the Romans.

The idea that the *familia* was not really relevant in Roman society outside the legal context seems to be based on two elements in our sources. One is the presumed irrelevance of the *familia* in military and political affairs, the other consists of the remarks in literary works about the living situation within the elite during the early Empire, where people mostly seem to have lived alone or within nuclear family households.

It seems to me that this interpretation is based on an incomplete understanding of the Roman *familia*. As mentioned before the *familia* was not the same as a household; it was a legal construction which could overlap with a household, but this was not necessary the case. In chapter 3 it was mentioned that the *familia* was not a cage but a corporate group which could be adjusted to specific circumstances. The devices of Roman law offered the head of a *familia* quite a lot of possibilities for structuring his or her *familia* to his or her needs. Family heads had options to adjust their *familia* which were either unavailable or scarcely available in most of the western world until the twentieth century: for example divorce, emancipation and the possibility of emancipating members of the *familia*. In chapter 4, we have seen that being part of a *familia* as a citizen *alieni iuris* did not mean plain submission to the will of the *pater familias*. There is interaction and room for negotiation.

Like the citizen *sui iuris*, a citizen *alieni iuris* could act in public as a representative of his *familia*. As long as there were no conflicts, it did not matter that much whether a citizen *sui iuris* or a citizen *alieni iuris* acted in public. There was not always a way of knowing whether the person a Roman citizen dealt with was a citizen *alieni iuris* or not. In everyday life, it was probably assumed that such a person was either *sui iuris* or acted with the approval of his or her *pater familias*. This attitude probably defined the role of citizens *alieni iuris* in public life and explains why a distinction between citizens *sui iuris* and *alieni iuris* is hardly ever made in Roman politics or military cases. It only became important when a conflict arose, and it is in Cicero's legal speeches that the difference between citizens *sui iuris* and *alieni iuris* sometimes crops up.

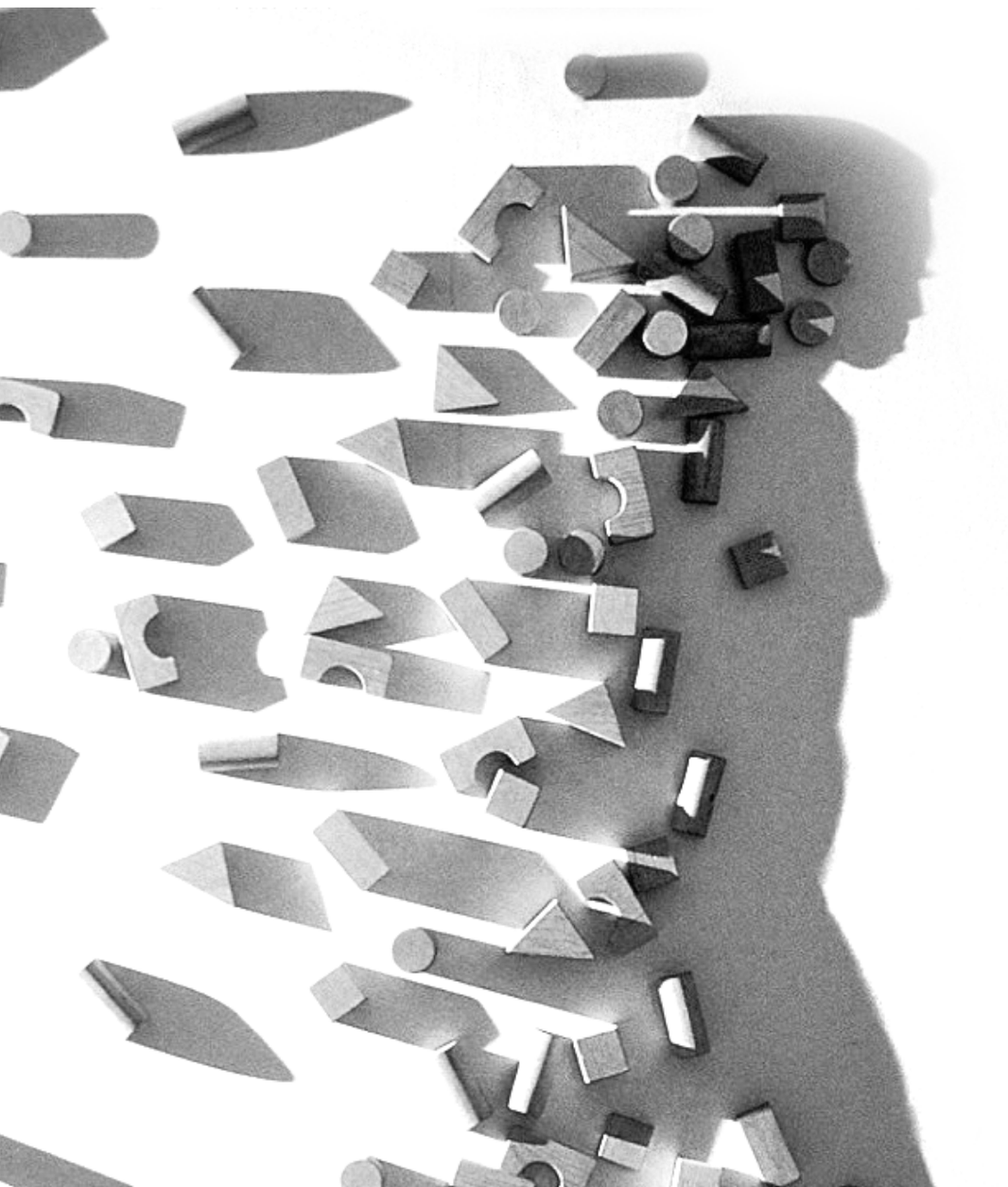
In my view, this is also the way to look at the question of how an adult citizen *alieni iuris* could have functioned in Roman society. He or she could participate in Roman society because he or she was seen as part of the *familia*, either as part of the common labour pool of the *familia* or acting independently, in which the tacit approval of the *pater familias* was assumed. In this way, citizens *alieni iuris* acted as what we could call a '*pater familias* by proxy': it was assumed that such a citizen was *loco patris familias* or acted with the approval of the *pater familias*. Only when a conflict arose which was too big to handle by the citizen *alieni iuris*, or when there was a conflict of interest between the *pater familias* and the citizen *alieni iuris*, did the legal position of the persons within the framework of the *familia* become relevant.

This perspective also offers a solution to the perceived change in household composition in the late Republic and the early Empire. As mentioned, a *familia* is not the same as a household, although it will often have overlapped, as in the case of the poor centurion Ligustinus who lived together with his wife and six sons. As the wealth within the Roman elite grew, however, the number of dwellings available to each elite *familia* rose. Even a senator like Cicero, who presumably was only averagely wealthy when compared to his senatorial colleagues, had six houses for himself and his two children, while his wife Terentia had a number of properties of her own. This suggests that there is some grain of truth in the remarks by Roman writers that wealth started to influence family life: the *familia* among elite Romans started to be spread out over a growing number of locations in most senatorial *familiae*. It was possible, but probably

also necessary, to arrange separate households *within* the *familia*. This does not have to mean that the *pater familias* lost his authority over the members of the *familia*. They were probably living at other locations because he ordered them to do so, or at least had negotiated with them about it.

The possibility that Roman citizens, especially those outside the elite, did not live in nuclear households should be taken into account when assessing the possible bargaining power of Roman women. Although the possibility of becoming *sui iuris* potentially increased a woman's bargaining power towards her husband and his family, living under one roof with her husband's parents and relatives could also have limited that bargaining power, especially that of young married women outside of the Roman elite.

CHAPTER 5



A CHANGE IN MARITAL TRADITION: A CASE STUDY

In the previous chapters, we have looked at female citizenship in Rome from different points of view. The terminology of citizenship has been discussed, the legal framework in which female citizens could work, and the social relevance of this framework in the broader Roman society. Based on these chapters it is possible to conclude that Roman women could derive bargaining power from their position within the *familia*, not only when they were *sui iuris* themselves, but also as a citizen *alieni iuris*, who was married *sine manu* and, therefore, part of one *familia* while married to a man belonging to another *familia*. While a marriage with *manus* made a woman part of her husband's *familia* and subordinate to him, a marriage without *manus* put her in a position in between two *familiae*. This could be disadvantageous to her, but could also afford ample bargaining opportunities.

In this chapter the interpretation that Roman female citizens derived bargaining power from their position within the *familia* will be reflected upon in a case study. This will be done by looking at a relatively well attested change which could have influenced the development of the social position of Roman women: the change in preference within Roman marital tradition from marriage arrangements in which a woman became part of her husband's *familia* to those in which she remained part of her natal *familia*. This could have been very influential, because it had the potential to influence the life of individuals on all levels of society. This change will be discussed based on the question 'What was the connection between the development of the social position of Roman women and the change in marital tradition among the Roman citizens?'

5.1 A freedom abhorred by women

In 195 BC a debate raged in the *Forum Romanum* regarding the repealing of the *Lex Oppia*, a law enacted during the Second Punic War to curb the display of luxury by Roman women. According to the writer Livy, the consul Cato the Elder spoke strongly against the repealing of the law. In his opinion, taking away the restrictions on luxury was only the women's first step on the road to claiming absolute freedom from their fathers and husbands, a claim that could only lead to licentiousness and misbehaviour.

In response to Cato, the tribune of the plebs Lucius Valerius, the promoter of the proposal, argued that this could not be the case, because women would always submit to the moral and legal authority of their husbands and fathers: 'never while their males survive is feminine slavery shaken off; and even they abhor the freedom which loss of husbands and fathers gives'.[1] Roman women, Valerius argued, had always been and would always be in the power (*manus*) of their husbands, in the power (*potestas*) of their *patres familiae*, or under the supervision of their brothers who became their *tutores* when they had no husband or *pater familias*. The women themselves would not want it otherwise, according to Valerius; they dreaded the time when their husbands and fathers died. According to Livy, this argument was convincing for the Roman voters. Valerius won the debate against the formidable orator Cato by a unanimous vote.[2]

In Livy's version of the debate, both Valerius and Cato used rhetorical exaggeration to make their point, and neither opinion was supported by what actually happened in the two centuries between the debate and Livy's own time. By the time the Roman Republic was replaced by the Empire, almost no Roman women were still in the *manus* of their husbands. On the other hand, this change did not lead to total unchecked freedom as feared by Cato. Much changed within Roman society between the time of Valerius and the early Empire. While political and military changes are rather well documented, however, few sources have survived to document a change which had the potential to influence every Roman citizen on a daily level: the disappearance of *manus*, the power of the husband over his wife and her property.

As mentioned before, the relationship between marriage, family structure and inheritance patterns has long been recognised by anthropologists and historical demographers.[3] In particular, marriage patterns are seen as fundamental to societies.[4] Hajnal showed that the importance of marriage patterns goes beyond the family circle; they have a direct effect on the demography and social structure of a society. Therefore, a shift in something so fundamental as marriage is a prime indicator for major social change.[5]

1 Livy, *Ab urbe condita* 34.7.12: *Nunquam salvis suis exuitur servitus muliebris; et ipsae libertatem quam viduitas et orbitas facit detestantur.* Translation Loeb.
2 See Livy, *Ab urbe condita* 34.1-7 for the story about the repealing of the *Lex Oppia*.
3 See chapter 1.4 and chapter 3.
4 Hajnal (1965, 1982).
5 Engelen (2003) 305-308.

For decades now, ancient history has shared in this surge of interest and a good deal has been written about Roman marriage.[6] However, the consequences of the disappearance of *manus* for Roman family life and Roman society as a whole have received less attention. The main problem is that it has not yet been determined when this shift from so-called *cum manu* to *sine manu* marriage happened, which makes it hard to establish the effects of this change on Roman society and to connect it to remarks in our sources. There are basically two strands of interpretation: some scholars have argued that marriage *sine manu* was already possible from the fifth century BC onwards, while others have argued that it took place in a more limited period of a few centuries during the late Republic and the early Empire.[7]

In this chapter it will be argued that for an analysis of this change, it is useful to start from the assumption that for society as a whole it is more relevant to determine when the bulk of the Roman citizens started to use different marriage arrangements than to look for the start or the end of this development. In other words, one should look for some sort of transition period when the effect of change was most keenly felt in Roman society. If the interpretation that Roman female citizens derived bargaining power from their position within the *familia* holds, then we should expect to see that the shift in itself will have had an effect on the position of female citizens within Roman society. For example, we may expect to find some forms of confusion caused by the existence of two different types of marriage side by side for some length of time. We may also expect to find a gradual strengthening of the position of women in Roman society when more and more women become *sui iuris*.

These expectations are all based on the assumption that the change between two different types of marriage arrangement was rather abrupt and that that women did indeed increase their bargaining power through a change of position within the *familia*. Absence of confusion or change in the social position could indicate that either the relevance of their position within the *familia* was limited or that the shift from one type of marriage to the other was a slow and gradual process, with plenty of time to adapt to new circumstances.

It is also relevant to look for some kind of hierarchisation between the two types of marriage. A strong bias in favour of one type of marriage would suggest that Roman society had sufficient time to make a differentiation between the two types of marriage. Therefore, it would be an indication that *cum manu* and *sine manu* marriage existed for a long time side by side within Roman society.[8] Furthermore, we would also expect to find changing opinions on marriage and womanly behaviour.

Finally, we should expect that some Roman citizens experimented with the new possibilities which sprang from different marriage arrangements which could give them more room for bargaining and more legal independence. We may think of women initiating divorce or making use of their own property, which was something that a woman in the *manus* of her husband could not do. While the social change that triggered the shift in marriage can only be determined when we know when the shift happened, popular opinions and the extraordinary behaviour of citizens may have left traces in our sources. If we can find these traces, then we will have an indication of when the Roman marriage pattern is likely to have changed.

As mentioned before, opinions are divided on the question of whether both types of marriage arrangement already existed in the fifth century BC or whether marriage without *manus* was a more recent development, which overtook marriage with *manus* during the late Republic and the early Empire. Therefore, for this case study not only sources from 200 BC to AD 50 are taken into account, but also the relevant sources on the change in Roman marriage and marital behaviour from the fifth century BC onwards up to and including the time of Augustus. Special attention will be given to signs of confusion caused by two types of marriage existing side by side, hierarchisation between those types of marriage, and indications of changing opinions and experimentation. The argument is chronologically ordered so as to take a closer look at sources which give an indication of the role of *sine manu* marriage in the early Republic, the third and second centuries BC, the first century BC, and the Augustan period, specifically with respect to the Augustan marriage laws.

6 Until the 1970s, the study of Roman marriage was mostly limited to its relation to Roman law, for example: Corbett (1930), Watson (1967) 11-76, Kaser (1971) 71-82, 310-340. In the last decades interesting works have been written on the combination of marriage and social reality in Roman times: Gardner (1986) 31-116, Treggiari (1991) 15-36, Gardner (1998), Evans Grubbs (2002). Cf. Dixon (2011).

7 For example, Corbett (1930) 87-91, Treggiari (1991) 33-34, idem (1996) 896-898, Crook (1994) 537 (gradual change from fifth century BC onwards), Dixon (2011) 251 (between second century and the time of Cicero), Evans Grubbs (2002) 21 ('mostly disappeared by the time of Augustus'), Looper-Friedman (1987) 281 (late Republic – early Empire), Watson (1967) 25 (*sine manu* common at the beginning of the second century BC). In other general works the subject of the timing of this change is hardly touched upon at all (Sanchez-Moreno Ellart (2013) 4319-4320, Hornblower and Spawforth (1998) 446-447.

8 An example of hierarchisation as a way of distinguishing between two types of marriage is the situation in southern China. Until recently, in southern China both virilocal and uxorilocal marriages existed (types of marriage in which the married couple live in the household of the parents of the groom or the bride and become part of their respective family lines). Virilocal marriage was the preferred way of marrying, while the uxorilocal marriage was seen as inferior and was only used in certain circumstances: Chuang and Wolf (2005) 280-283.

5.2 Roman marriage in the early Republic

Marriage *cum manu* already existed in the fifth century BC, since the three ways by which a woman could come into the *manus* of her husband, *usus*, *confarreatio* and *coemptio*, were mentioned in the Law of the XII Tables, the oldest written Roman laws, which were enacted around 450 BC.[9] As a way of creating *manus*, both *usus* and *confarreatio* had fallen into disuse before the second century AD.

This is clearest in the case of *usus*, because Gaius explicitly says so.[10] *Confarreatio* as a marriage ceremony still existed in the second century AD, because to be married with *confarreatio* and to be born *ex farreatis* was a prerequisite for the major priesthoods.[11] However, around the start of the Common Era the *manus* of the priest over his wife was limited to religious ceremonies in which both spouses were involved. In every other respect, a marriage with *confarreatio* was considered to be *sine manu*.[12]

Coemptio, a form of imaginary sale of the wife to her husband, survived into imperial times because it became a sort of legal loophole, used by women to make a will or to get rid of an unwanted *tutor*. To do this she could go through *coemptio* with her husband or with any other man. According to the jurist Gaius, *manus* was only created when *coemptio* was performed to create a marriage; in all other circumstances no *manus* was involved.[13]

Whether *sine manu* marriage already existed in the early Roman Republic is more difficult to assess. Some have argued that it did because of the characteristics of *usus*. While *confarreatio* and *coemptio* were acts performed to create *manus*, *usus* did not create *manus* directly. *Usus* was perhaps the simplest form of obtaining *manus*; living together as a married couple for a year automatically established *manus*. Marriage and *manus* were not synonymous: the marriage started by cohabitation (*nupta*), but *manus* only started after a year, unless deliberate action was taken by the wife to avoid *manus*. For this she had to stay away from the matrimonial home for three nights, the so-called *trinoctium*.[14] When she came back to her husband after three nights, she remained part of her old *familia* for another year.

Should we consider this as proof that *sine manu* marriages existed from the early Republic onwards or was this meant as a temporary situation?[15] The obvious answer is that we do not know. The sources we have on *trinoctium* assume that the wife had to take steps by absenting herself from her husband's house for three nights.[16] However, it has been argued that in the early Republic it was not the wife who decided to use *trinoctium* to avoid *manus*, but the husband.[17] In this view, the first year of *usus* is seen as a form of trial marriage. If the marriage did not work out, for example because the wife did not become pregnant, she could be 'returned' without legal difficulties because she had not yet became part of her husband's *familia*. This explanation has some appeal, because it seems to fit the logic of a society in which the continuation of the male bloodline was of central importance.[18] It also seems to match the concept of *trinoctium* with the traditional way that Romans described divorce: (...) he has taken away her keys according to the provisions of the [Law of the] Twelve Tables, he has put her out of doors.[19] The wife was put out of the door, and if she stayed out for three days the marriage was dissolved. This interpretation of *usus* can be no more than a possibility. We cannot be certain of how *trinoctium* functioned in the fifth century BC, whether it served only as part of a temporary trial marriage or whether it was also a way to create an enduring *sine manu* marriage in the later sense of the word.[20] There are no further sources available from this period which shed any light on the matter.

However, in Livy's historical work written in the early Empire, there are some suggestions that Livy thought that marriage *sine manu* was not yet common in the early Republic. These are his references to *viduae* as female property-owners, discussed in chapter 2.4. In his account of the census of 465 BC Livy mentioned, in addition to the main group of adult male *patres familiae*, that *viduae* and orphans were also citizen categories liable to the *census*, presumably because they were *sui iuris* and could possess property.[21] On another occasion he remarked that widows were liable to a specific tax.[22] Married women *sui iuris* are not mentioned in this context, although registration of their property would have been just as relevant for the censors. Besides these suggestions in Livy, there are no Roman stories about the early Republic which offer substantial arguments either for or against the existence of *sine manu* marriage in this early period.

9 Watson (1963) 337-338, Watson (1979). The most comprehensive source on *usus*, *confarreatio* and *coemptione* is Gaius, *Institutiones* 1.109-1.113.
10 Gaius, *Institutiones* 1.111.
11 Gaius. *Institutiones* 1.112, Linderski (2005) 223-238.
12 Gaius, *Institutiones* 1.136, Tacitus, *Annales* 4.16. Cf. Corbett (1930) 78.
13 Gaius, *Institutiones* 1.114, 1.115, 1.115a, 1.115b, 1.136, 1.137, 1.137a, Kaser (1971) 324, MacCormack (1978).
14 Gaius, *Institutiones* 1.111, Aulus Gellius, *Noctes Atticae* 3.2.12.
15 Lévy-Bruhl (1934), Treggiari (1991) 32-34.
16 Gaius, *Institutiones* 1.111, Aulus Gellius, *Noctes Atticae* 3.2.12. Both were written after *trinoctium* had fallen into disuse.
17 Looper-Friedman (1988), Lévy-Bruhl (1933). This argument is cautiously supported by Treggiari (1991) 21.
18 Treggiari (1991) 21.
19 Cicero, *Philippicae* 2.28.69: *ex duodecim tabulis clavis ademit, exegit.* Translation Loeb. Cicero used it in this occasion to mock Mark Anthony who ended an extramarital affair.
20 There is some discussion as to whether *sine manu* marriage evolved from *usus*: Watson (1967) 19-23, but see also Treggiari (1991) 20-21. We may at least expect that *usus* somehow helped to enable *sine manu* marriage, because *usus* was proof in itself that *manus* was not always necessary to contract a marriage.
21 Livy refers to the categories of widows and orphans in 465 BC and 130 BC, both times on occasions when these two categories were omitted from the census figures: Livy, *Ab urbe condita* 3.3.9, Livy, *Periochae* 59.
22 Livy, *Ab urbe condita* 1.43.9. Cf. Plutarch, *Camillus* 2, Cicero, *De re publica* 2.36.

5.3 The third and second centuries BC

According to Livy, *viduae* and orphans had supported the war effort with their property when the Roman state was in dire straits during the Second Punic War (218-201 BC).[23] Again, married Roman women *sui iuris* are not mentioned in this context. This suggests that marriage *cum manu* was still common in the late third century BC, or at least that Livy, who was writing in the Augustan era, thought it had been common in that era.

Nonetheless, some have tried to trace *sine manu* marriage as far back as the third century BC. They searched for fragments which are concerned with conflicting property interests between spouses, or fathers forcing their will on married daughters, situations that could not occur within a *cum manu* marriage. They found three fragments: the *Lex Cincia* of 204 BC, a fragment of the play *Cresphontes*, and a speech by Cato the Elder dated to 169 BC. This led to the assumption that the habit of marrying *sine manu* must have been common practice in the late third century BC and the second century BC.[24]

The fragment which refers to the third century BC is a commentary on the *Lex Cincia*, a law enacted in 204 BC which restricted the exchange of gifts between Roman citizens.[25] In this fragment, the third-century AD jurist Paul mentions that people to whom one is related by marriage, such as a stepchild or stepparent, a father- or mother-in-law, a son- or daughter-in-law, a spouse, or a fiancé or fiancée, are exempt from the restrictions imposed by this law, and one may exchange gifts with them freely.[26] There is, however, a serious problem with this fragment: exchanges of gifts between spouses were generally prohibited, a rule which is said to have been based on ancient tradition and due to the *maiores*, which probably means that it was already law during the middle Republic.[27]

Stein explained this by pointing out that the fragment is not the original text of the law, but a commentary by Paul on the law as it was in the early third century AD, when some exceptions to this prohibition had already been made. It is possible that the inclusion of husband and wife in the text was made during, or even after, Paul's time. Based on the style of Latin used - 'vir et uxor' is the only combination with the word 'et' in it - he also proposed that the inclusion of husband and wife was probably a post-classical gloss.[28] As an argument for the change in marital tradition, this text is highly problematic. We cannot rule out that the fragment refers to the original law, but it is equally likely to be a later addition, in which case it is not relevant to the discussion at hand.

23 Livy, *Ab urbe condita* 24.18.13-14, 34.5.10, 34.6.11

24 Corbett (1930) 90-91. Cf. Lévy-Bruhl (1933) 455.

25 *Fragmenta Vaticana* (MS 5766) fragment 302. Cf. Stein (1985) 145-153; Crawford (1996) 741-744.

26 *Fragmenta Vaticana* 302: *Item. Excipiuntur et adfinium personae ut privignus privigna, noverca viritcus, socer socrus, gener nurus, vir et uxor, sponsus sponsa.* Cf. Crawford (1996) 741.

27 *Digesta* 24.1.1 (Ulpian), 24.1.3 (Ulpian), 24.1.31.7 (Pomponius).

28 Stein (1985) 149-151. Cf. Crawford (1996) 743-744.

Possibly the earlier of the two fragments from the second century BC is a fragment of the play *Cresphontes* which was reused in *Rhetorica ad Herennium*, a textbook of rhetoric, probably dating from around 80 BC:

> Students in the rhetorical schools, therefore, in Proving the Reason, use a Dilemma, as follows: "You treat me, father, with undeserved wrong. For if you think Cresphontes wicked, why did you give me to him for wife? But if he is honourable, why do you force me to leave such a one against his will and mine?" Such a Dilemma will either be reversed against the user, or be rebutted in a single term. Reversed, as follows: "My daughter, I do not treat you with any undeserved wrong. If he is honourable, I have given him you in marriage; but if he is wicked, I shall by divorce free you from your ills." It will be a rebuttal in a single term if one or the other alternative is confuted, as follows: "You say: 'For if you think Cresphontes wicked, why did you give me to him for wife?' I thought him honourable. I erred. Too late I came to know him, and knowing him, I fly from him."[29]

The woman in this fragment is dependent on the actions taken by her father, actions which he could not take if his daughter were married *cum manu* and therefore no longer in his *potestas*. The lesson in rhetoric is based on either the *Cresphontes* by the Greek tragedian Euripides or a play with the same name by Ennius.[30] The text is only relevant to our argument if it is based on the play by Ennius; in that case, it describes a situation which was recognizable to a Roman audience before 169 BC.[31] If it is based on the play by Euripides, it relates to a marriage in Athens in the fifth century BC. Both plays are lost. Therefore we cannot be sure which play was used, but the play by Euripides seems the most likely candidate, not only because the *Rhetorica ad Herennium* was based on older Greek examples, but also because some of the words chosen in Latin seem too prosaic for Roman epic.[32]

The second fragment is taken from Cato the Elder's speech in favour of the *Lex Voconia*, enacted in 169 BC, as quoted by Aulus Gellius around AD 150 in his *Noctes Atticae*:

29 *Rhetorica ad Herennium* 2.24.38: *Utuntur igitur studiosi in confirmanda ratione duplici conclusione, hoc modo: "Iniuria abs te adficior indigna, pater; Nam si inprobum esse Cresphontem existimas, Cur me huic locabas nuptiis? Sin est probus, Cur talem invitam invitum cogis linquere?" Quae hoc modo concludentur aut ex contrario convertentur aut ex simplici parte reprehendentur. Ex contrario, hoc modo: "Nulla te indigna, nata, adficio iniuria. Si probus est, te locavi; sin est inprobus, Divortio te liberabo incommodis." Ex simplici parte reprehendetur si ex duplici conclusione alterutra pars diluitur, hoc modo: "Nam si inprobum esse Cresphontem existimas, Cur me huic locabas nuptiis?" "Duxi probum; Erravi; post cognovi, et fugio cognitum."* Translation Loeb.

30 Calboli (1969).

31 Tolkiehn (1917).

32 Calboli (1969) 128.

> Cato, when recommending the Voconian law, spoke as follows: "in the beginning the woman brought you a great dowry; then she receives a large sum of money, which she does not entrust to the control of her husband, but lends it to her husband. Later, becoming angry with him, she orders a *servus recepticius*, or 'slave of her own' to hound him and demand the money."[33]

We do not know what the relevance of this fragment was within Cato's speech, because Gellius' focus is on the term *servus recepticius* and not on the *Lex Voconia*. The *Lex Voconia* stipulated that no legatee was to receive more than the heir or the heirs taken together. It also stipulated that women were barred as heirs, although they could be legatees for half of the estate.[34] The law seems to have been restricted to the richest Romans, the citizens in the first tax class. Although a lot has been written on the *Lex Voconia*, much surrounding the law is unclear.[35] Despite Cato's words, it was not necessarily an anti-female law, although it seems probable from Cato's involvement that the law tried to enforce or restore a traditional situation.[36]

When we look at the three fragments, we have to conclude that the value of both Paul's commentary on the Lex Cincia and the *Cresphontes* fragment is limited. Both lack the necessary context. In the case of the *Cresphontes* fragment, it does not seem possible to decide whether it really is a second-century-BC fragment by Ennius. Even if we assume that it is, it is possible to argue that *Cresphontes* and the daughter were newly-weds, based on the last argument of the fragment. Therefore, this could also reflect a situation which was possible in the first year of a *cum manu* marriage by *usus*.

Firmer ground is presented by the fragment from Cato's speech, which was understandable to Roman citizens in 169 BC. They must have recognised Cato's fear: a rich woman who made her husband dependent upon her, instead of the other way around. The fact that she owns money and a slave suggests that she is *sui iuris* and the marriage is without *manus*. We have to be careful with this conclusion, however: the exact same situation can be found in the comedy *Asinaria* by Plautus.

In *Asinaria* the penniless Demaenetus married the rich Artemona, only to discover that she managed to keep control of her dowry and made him dependent on her, as the slave Libanus reminds Demaenetus: 'Your wife brought the slave Saurea as part of her dowry; even he might well have more in his pocket than you. Demaenetus: I took the money and sold my authority for the dowry.'[37] It has been suggested that Demanaetus' remark that he had sold his authority for the dowry only made sense when Demanaetus and Artemona were married *cum manu*.[38] The joke would be that he married her for her money, but came to be depended on her, even though he had the formal authority. It is emphasised in the play that Artemona's strong bargaining position was based on her control of the dowry.[39]

Unfortunately, the fragment of Cato's speech does not offer enough context for us to be able to conclude whether the marriage was *sine manu*, *cum manu*, or, for example, an *usus* marriage in its first year.[40] However, even if we assume that *sine manu* marriage was seen as a possibility by Cato in 169 BC, this assumption has to be limited by two remarks. The first is that the *Lex Voconia* was only relevant to citizens within the elite. The second is that the phenomenon of a wife with her own property was not yet widespread. If it was a normal situation, Cato could not have used it as an argument to strike fear in his audience.

That marriage *sine manu* was still rare in the second century BC is also suggested by other sources. None of the extant sources makes a direct reference to marriage *sine manu*, nor are there any traces of unusual behaviour by Roman citizens which can be connected to the emergence of a new type of marriage in the second century BC.

Except for Cato's remark mentioned above, most sources which relate to the second century BC seem to imply that all Roman wives were in the *manus* of their husbands. This holds true not only for the speech by Valerius which was mentioned in the introduction to this chapter, but also for the speech made on the same occasion by Cato himself. According to Livy, he argued that 'our ancestors permitted no woman to conduct even personal business without a guardian to intervene on her behalf; they wished them to be under the control of fathers, brothers, husbands'.[41]

Cato repeated this view on another occasion, where he presented it as a matter of fact that the husband is the 'censor' of his wife, a reference to the moral supervision of the *pater familias* over his wife in *manus*: "When a husband puts away his wife [divorces her]", says he, "he judges the woman as a censor would, and has full powers if she has been guilty of any wrong or shameful act."[42] It was also expressed by the playwright Titinius who has one of his female characters say: 'I think it's a sordid thing that I am at the mercy of the marital power of my husband, who squanders our property and devours my dowry'.[43]

Some of the comedies by Plautus may give hints that *sine manu* marriage was possible. In *Amphytrion* and *Miles Gloriosus*, for example, it seems to be suggested that women could

33 Aulus Gellius, *Noctes Atticae* 17.6.1. *Cato Voconiam legem suadens verbis hisce usus est: "Principio vobis mulier magnam dotem adtulit; tum magnam pecuniam recipit, quam in viri potestatem non conmittit, eam pecuniam viro mutuam dat; postea, ubi irata facta est, servum recepticium sectari atque flagitare virum iubet.*" Loeb translation with adaptation for the word '*recipit*'.

34 Weishaupt (1999) 1.

35 Weishaupt (1999) 35-38, Gardner (1986) 170-177.

36 See chapter 3.3.

37 Plautus, *Asinaria* 85-87: *lib: dotalem seruom Sauream uxor tua adduxit, quoi plus in manu sit quam tibi. dem: argentum accepi, dote imperium uendidi*. Translation Loeb.

38 Watson (1967) 29.

39 Plautus, *Asinaria* 897-898.

40 However, see Dixon 1985: 154, 157, who argues that there may have been alternatives, for example a *fideicommissum*. On *fideicommissum*, see Kaser and Knütel (2014) 422-426.

41 Livy, *Ab urbe condita* 34.2.11: *Maiores nostri nullam, ne privatam quidem rem agere feminas sine tutore auctore voluerunt, in manu esse parentium, fratrum, virorum*. Translation Loeb.

42 Aulus Gellius, *Noctes Atticae* 10.23: "*Vir", inquit, "cum divortium fecit, mulieri iudex pro censore est, imperium quod videtur habet, si quid perverse taetreque factum est a muliere.*" Translation Loeb. Cf. Astin (1988).

43 Titinius, fragment 25-26: *Ego me mandatam meo viro male arbitror. Qui rem disperdit et meam dotem* comest.

initiate divorce.[44] In *Mercator* and *Menaechmi* fathers are actively involved in their daughters' marriages.[45] This is no hard proof, however, because there are no actual divorces portrayed in the Plautus canon.[46] Furthermore, the influence of fathers seems not to go beyond what might be expected to be normal affection and duty between father and daughter.[47]

In *Mercator* and *Casina* Plautus stresses as a matter of fact that wives could not own property and could not initiate divorce, which seems to imply that Roman wives were expected to be married *cum manu*.[48] That marriage *cum manu* was still common can also be deduced from the work of the Greek author Polybius. Writing about the *familia* of the Roman general Scipio Africanus, he seems to imply that Scipio's wife and daughters were married with *manus*, because Scipio's wife Aemiliana was one of his heirs and the inheritance of his daughters was paid to their husbands. This is relevant because they were exactly the type of *familia* we would expect to have been a forerunner in the shift in marriage tradition: wealthy, Hellenistic in orientation and with independent female members.[49]

These examples are all from the first half of the second century BC. However, the absence of married women *sui iuris* as a separate category in the census of 130 BC suggests that Roman citizens did not marry *sine manu* in numbers which were relevant to the *censores* in the second half of the second century BC either.[50] At the end of the century, the jurist Quintus Mucius Scaevola still displayed a stern view on marriage *cum manu* in a remark about *trinoctium*.[51] According to Scaevola, a woman had to exercise her right of *trinoctium* in the proper way and her absence had to be with the intention of breaking possession, otherwise her desire to avoid *manus* was irrelevant. This suggests that at the turn of the century, the consent of the spouses in itself was still not enough to establish a *sine manu* marriage.[52]

44 Plautus, *Miles Gloriosus* 1164-1168, 1276-1278, *Amphytrion* 928.
45 Plautus, *Mercator* 784-788 and *Menaechmi* 720-830.
46 Treggiari (1991) 444.
47 Treggiari (1991) 443, see also Watson (1967) 50. McDonnell (1983) 59-66, sees no valid evidence in Plautus for divorce by independent women, contra Watson (1967) 49.
48 Plautus, *Mercator* 700-704 and *Casina* 198-202 (wife cannot own property), *Mercator* 817-823 (wives cannot divorce). Cf. Watson (1967) 29-31 and 49-50. On Plautus and women see: Moore (1998) 158-180.
49 Polybius, *Histories* 31.26-28. See: Dixon (1985a) 157-162.
50 Livy, *Periochae* 59.
51 Aulus Gellius, *Noctes Atticae* 3.2.12-13.
52 Watson (1967) 19-20.

5.4 The first century BC until the end of the Republic

In the first century BC, the different types of marriage are mentioned, and confusion appears, in at least two sources, Cicero's *Pro Flacco* and the so-called *Laudatio Turiae*. In 59 BC, Cicero defended Lucius Valerius Flaccus against accusations of extortion during his time as governor in the *provincia* Asia.[53] In his plea Cicero gives a different view on marriage *cum manu* as part of an ironic outburst:

> You claim that a serious and intolerable injustice has been done to Sextilius Andro because, when his wife Valeria had died intestate, Flaccus dealt with the case as if her estate belonged to him. I want to know what you find wrong in that. Is it that his claim was false? How do you prove it? (...) "She had come under the charge of her husband." Ah! Now I begin to understand; but I ask whether the marriage was by *usus* or by *coemptio*? If it was by *usus*, that was not possible because no alteration in the status of a legal ward can be made without the consent of all the *tutores*. If it was by *coemptio*? Then it was with the approval of all the *tutores*; but surely you are not going to say that Flaccus was one of them.[54]

Cicero's dawning comprehension that Valeria could have been married *cum manu* has been seen as proof that *manus* marriage was already rare around 59 BC, because Cicero had not realised that *cum manu* marriage was still an option in his day.[55]

This conclusion seems too strong. Cicero's probably had a rhetorical purpose for his 'confusion'. He pretended that he did not realise that Valeria could have been married *cum manu*, to underline his point that she had not obtained the consent of her tutors for *manus*. The consent of the tutors was not necessary for a marriage *sine manu*, but it was necessary for a marriage *cum manu*, because this included transfer of Valeria's property to her husband and the annulment of guardianship.[56] Cicero's miscomprehension can be seen as a rhetorical device, used to emphasise that *manus* was only possible with Flaccus' consent. Furthermore, this argument could only work if his public was aware of the different consequences of marriage with and without *manus*. It suggests that both types of marriage existed side by side in 59 BC.

53 Crook (1986b) 72-73.
54 Cicero, *Pro Flacco* 34.84: *At enim Androni Sextilio gravis iniuria facta est et non ferenda, quod, cum esset eius uxor Valeria intestato mortua, sic egit eam rem Flaccus quasi ad ipsum hereditas pertineret. In quo quid reprehendas scire cupio. Quod falsum intenderit? (...) "In manum", inquit, "convenerat". Nunc audio; sed quaero, usu an coemptione? Vsu non potuit; nihil enim potest de tutela legitima nisi omnium tutorum auctoritate deminui. Coemptione? Omnibus ergo auctoribus; in quibus certe Flaccum fuisse non dices.* Translation Loeb.
55 Watson (1967) 19-23, Marshall (1975) 82, Treggiari (1991) 21.
56 Cicero, *Pro Caecina* 25.72-73, contra Watson (1967) 22. Cf. Kaser (1971) 85-90, 367-369.

Cicero's rhetoric and mock confusion aside, Valeria's case shows traces of real confusion caused by the two types of marriage. Valeria's estate was probably quite substantial which raises the question of why Valeria and Sextilius Andro had not foreseen the possibility that Flaccus would seize it: Valeria was probably the descendant of a freedman of Flaccus' family, which made Flaccus her legitimate *tutor*.[57] It makes sense if Valeria in all sincerity thought that she was married *cum manu*, or maybe had not even realised that she could be married in another fashion. The absence of a will and Sextilius Andro's legal fight against Flaccus, the highest Roman magistrate in Asia, seem to point in this direction.[58] *Pro Flacco*, however, does not provide enough information to make this more than a suggestion.

That *cum manu* marriage was still around in the middle of the first century BC is made clear by other references to it by Cicero and Catullus.[59] Although Cicero's own marriage with Terentia was *sine manu*[60], for him *cum manu* marriage was still a living institution when he wrote the *Topica* in 44 BC. In the *Topica* Cicero mentions the transfer of property in a *cum manu* marriage[61], and makes a remark on the difference in legal terminology for women married *cum manu* and *sine manu*:

> For 'wife' is a genus, and of this genus there are two species: one *matres familias*, that is, those who have come under *manus*; the second, those who are regarded only as wives (*uxores*) (...).[62]

The value that Cicero gives to a woman who is married *cum manu* is interesting in two ways. It is the sole reference from the period under research to a restricted legal use of *mater familias* as a wife in *manus*. If this specific legal meaning existed during the Republic, it probably did not survive the Augustan age because in the Augustan law on adultery the term *mater familias* seems to have covered all women who were legally married.[63] It is also interesting due to the value given to *mater familias*: a woman married *sine manu* is a mere *uxor*, but a woman married *cum manu* is a *mater familias*, a phrase resounding with dignity and sanctity.[64] Cicero presents this as a matter of fact. Therefore, we may assume that it was an opinion shared by at least part of Roman society. This can be seen as a hierarchisation between the two types of marriage arrangements, a way to enhance the status of women who are married with *manus*. If this holds true, then it is the only source from the first century BC in which such a hierarchisation is made.[65]

57 Marshall (1975).
58 The case was submitted to an arbiter: Cicero, *Pro Flacco* 36.89, Marshall (1975) 86-87.
59 On Catullus, *Ad Mallium* 68.119-125 see Crook (1974) 242. On Cicero *Pro Cluentio,* see Watson (1971a) 180 over Sassia.
60 See chapter 3.3.
61 Cicero, *Topica* 4.23.
62 Cicero, *Topica* 3.14: *Genus enim est uxor; eius duae formae: una matrum familias, eae sunt, quae in manum convenerunt; altera earum, quae tantum modo uxores habentur*. Translation Loeb.
63 Treggiari (1991) 279-280, Gardner (1995) 384, see, however, Saller (1999) 193.
64 Treggiari (1991) 279-280. Cf. *Rhetorica ad Herennium* 4.12, Cicero, *In Verrem* 2.5.137, Livy, *Ab urbe condita* 8.22.3.
65 The remark is repeated in the second century AD: Aulus Gellius, *Noctes Atticae* 18.6.5.

Confusion caused by the existence of two types of marriages coexisting with each other is also described in the so-called *Laudatio Turiae*, the funerary inscription for a unknown Roman woman discussed earlier at the beginning of chapter 3.[66] In the fragment discussed, it is clear that the marriages of the parents and the sister of 'Turia' were *cum manu*, although it seems that the parents were originally married *sine manu* and only later changed their marriage by *coemptio*.[67] 'Turia' herself was probably married *sine manu,* because she would be the only heir and needed a *tutor*.[68]

This inscription shows both confusion and the effects of social change: things change, but they do not change in a straight line, because both progressive and conservative social conventions work their influences. In these circumstances, people tend to adapt in a way which best fits their personal situation (or in a way which reflects the balance of power between the two *familae* who are involved in the marriage arrangements). In this case, the parents were originally married *sine manu*, while one of their daughters married in a more traditional way, with *manus*.

In the middle of the first century BC, some Roman women seem to have experimented with the new social possibilities that the *sine manu* marriages offered. An indication of this is provided by the divorces initiated by women, which are mentioned for the first time in the middle of the first century BC.[69] Women also experimented with other roles in the middle of the first century BC, such as acting independently in court.[70] Some elite women seem to have taken their lives in their own hands and no longer dutifully followed the traditional role models of women. They took a more independent stance on property management, relationships and even politics. For some authors, their rather sudden appearance in the sources is striking enough to warrant the use of the term 'new woman' for these women and to discuss the possibility of a generational divide in Roman society.[71]

An example is Hortensia who made the political speech in the *Forum Romanum* against the taxation of women by the triumvirs, which was discussed at the beginning of chapter 1.[72] According to Valerius Maximus, Hortensia made this speech on behalf of the married women, which seems to imply that by now the group of wives married *sine manu* had become sufficiently important to warrant taxation.[73]

Still, the women who experimented walked a thin line. Behaving as an independent citizen was something to admire in a woman, but only as long as it was firmly rooted in and

66 *Corpus Inscriptionum Latinarum* 6.1527, 6.37053, *L'Année épigraphique* 1951, 2. Cf. Hemelrijk (2004) 185-197, Horsfall (1983) 85-98.
67 *Laudatio Turiae* 13-17 (*Inscriptiones Latinae Selectae* 8398), Watson (1967) 25, Gardner (1986) 12-13.
68 For a different interpretation, see Horsfall (1983) 89. For an explanation of the legal conflict and how it was possible for 'Turia' to argue that her father's will had retained its validity, see De Ligt (2001) 45-62.
69 Cicero *Pro Cluentio* 14, Cicero, *Epistulae ad familiares* 8.6.1, 8.7.2. Treggiari (1991) 444, 516-517.
70 Valerius Maximus, *Facta et dicta memorabilia* 8.3.2 on Caia Afrania, the wife of senator Licinius Bucco.
71 Fantham [et al](1994a), Isayev (2007), Brennan (2012). Cf. Dixon (1986), Delia (1991), Hejduk (2008), Skinner (2011).
72 Appian, *Civil war* 4.32-34.
73 Valerius Maximus, *Facta et dicta memorabilia* 8.3.3.

balanced by female virtues.[74] The women who explored the possibilities of a *sui iuris* status, could only go as far as society permitted. It is hard to assess whether Roman society changed its attitude towards womanly behaviour during this period. A possible indication that this was the case can be found in Cicero's critique on the *Lex Voconia*, the same law that Cato the Elder had defended a century earlier. In Cicero's view the law was 'full of injustice to women. For why should a woman not have money of her own?'[75] It shows that at least to Cicero the idea of a woman with independent property had become acceptable.

The sources mentioned in this section suggest a picture of confusion and the growing relevance of *sine manu* marriage in the middle of the first century BC. Although it is mainly Cicero's view that we have to rely on, his view seems to be in line with other sources, such as the *Laudatio Turiae*. Cicero is also the only source to make a hierarchical distinction between the two types of marriage. This attempt was made quite late in this period, however, and it was not repeated in other sources or in the Augustan marriage laws which were enacted some 25 years later.

Cicero and other writers only refer to elite citizens. Whether marriages without *manus* also became more relevant among sub-elite and non-elite citizens is harder to discern. There are some developments which can be interpreted in this way. During the first century BC there is a steep rise in census figures. According to Hin this rise can at least partly be attributed to the growing number of women *sui iuris* as the result of the popularity of marriage *sine manu*.[76]

I have argued elsewhere that the recipients of the grain distributions in Rome were not necessarily adult male citizens, but could also have been the heads of the *familiae*, the citizens *sui iuris*.[77] This group could have included women, because among the few individual grain recipients known from inscriptions, there is at least one adult woman.[78] Distribution to the male and female citizens *sui iuris* could explain the strange swings in the numbers of recipients under Caesar and Augustus as attempts by both rulers to replace the distributions to *familiae* with distributions to households, at a time when many households already consisted of two different *familiae*.[79]

Grain distribution to women *sui iuris* in Rome would have been a great enhancement to the livelihood and the bargaining power of Roman women and a great incentive for non-elite Romans to marry without *manus*. However, like Hin's interpretation of the census figures this interpretation is hard to substantiate, because of a problem which has been encountered earlier in this thesis: literary sources do not specifically mention that women were census declarants or grain recipients, although they do not state that women were excluded either.[80] When referring to the *census* or the grain distributions, Roman writers used terminology which seems to hint towards male citizens, without ever mentioning that only men could participate.

74 Hemelrijk (2004): 190-193 on 'Turia', Terentia and Ovid's wife (positive) and Fulvia (negative). Other negative examples are Sempronia (Sallust, *Bellum Catalinae* 25) and Gaia Afrania (Valerius Maximus, *Facta et dicta memorabilia* 8.3).

75 Cicero, *De re publica* 3.10.17: (...) *in mulieres plena est iniuriae. Cur enim pecuniam non habeat mulier?* Translation Loeb.

76 Hin (2008) 227-299. See, however, the critique by Launaro (2011) 22-24 and De Ligt (2012) 83-87, 126-128.

77 Van Galen (2013a).

78 *Inscriptiones Latinae Selectae* 9275. Cf. Virlouvet (2009) 247-256.

79 According to Suetonius, Caesar registered the citizens eligible for the grain distribution neither in the usual time and place (*recensum populi nec more nec loco solito*), but in a novel way, street by street with the help of the owners of blocks of houses: Suetonius, *Divus Iulius* 41.3. This would have allowed him to registrate households, while registration of citizens on the traditional time and place through the *census* method would have been useless for this purpose if the *census* indeed registered the heads of the *familiae*. Augustus also registrered grain recipients in a novel way, district by district according to Suetonius, Divus *Augustus* 40.2.

80 There are no specific references to the sex of the grain recipients in Rome in any literary sources: Rickman (1980) 156-186. From the late first century AD, alimentary schemes for children in Italy included girls although it seems that boys had a higher status and often received more than girls: Woolf (1990) 207-209.

5.5 The Augustan marriage laws

There is probably no time in Roman history at which Roman society was more concerned with marriage and relations than during the reign of Augustus. The first emperor played a central role in this concern, as he tried to improve the moral standards of Roman society with a number of measures, above all his laws on marriage and adultery.[81] Although the texts of these laws have not survived, some elements from them survived in later legal sources. In 18 BC the *Lex Iulia de maritandis ordinibus* became law. This law, which was supplemented by the *Lex Papia Poppaea* in AD 9, tried to improve Roman marriages and raise the number of children by three types of measure.[82] First, the law forbade marriages of freeborn Roman citizens with dishonourable people, such as prostitutes, pimps, procuresses and people condemned for adultery.[83] Second, all citizens had to be married between certain ages: men between the age of 25 and 60 years and women between 20 and 50 years.[84] Third, through a set of incentives and punishments, Roman citizens were encouraged to raise children.[85] In 17 BC the measures were enforced by the enactment of the *Lex Iulia de adulteriis*, a law against adultery.[86] As the laws seem to have been designed to promote marriage and procreation, we can expect that they give an indication as to which type of marriage was most relevant to the legislators. When they focused on *cum manu* marriage, we would expect that rewards and punishments were targeted at the husbands, while binding women more strongly to their marriage by enforcing *manus* and elevating the status of women married *cum manu*.

Based on the remaining fragments of the laws, this is not what happened. One of the central elements of the laws was the *ius liberorum*, the full set of rights and social benefits that a Roman citizen enjoyed when he or she was married with a legally acceptable partner and had produced an acceptable number of children according to the law.[87] In effect, this *ius liberorum* was a motherhood premium, which a free-born woman received when she had three or more children born in legal marriage.[88] A woman with *ius liberorum* was no longer obligated to have a *tutor* and could make her own will.[89] As an extra incentive, a freedwoman with *ius liberorum* was not obliged to leave more than a *virilis pars*, an equal part of her estate to her *patronus*.[90] These incentives made women who were married *sine manu* more independent. For women married *cum manu* they were irrelevant, because they had no *tutor* and no property, and therefore could not make a will or leave an estate.

Other rewards and punishments for women are also concerned with property rights. A woman with *ius liberorum* was exempt from the restrictions of the *Lex Voconia* and could therefore be a sole heir.[91] While citizens without children could receive only half of a bequest, one child was sufficient to qualify both men and women to receive bequests from others in their entirety.[92] Some measures, such as the rule that spouses with no children could receive only a tenth of each other's estate upon death, were relevant to both women married *sine manu* and those *cum manu*.[93] However, from the husband's point of view, this measure was only relevant if his marriage was *sine manu*.

The law on adultery shows the same pattern.[94] The law seems to focus on making social outlaws of adulterous women, while elevating women who behaved as chaste wives and good mothers to the moral position of *mater familias*.[95] No longer is the husband the sole controller of the moral behaviour of his wife. The husband was even denied a role in some cases. This is most striking in the rule which granted a *pater familias* the right to kill his adulterous daughter and her lover if he caught them in the act, while the husband was under no circumstances allowed to kill his wife.[96] Why this was done seems unclear: some scholars have argued that it was to discourage husbands from taking the law into their own hands, but this does not explain the role of the father in this situation.[97]

However, when the legislator had *sine manu* marriages in mind, then it starts to make sense. In ancient Roman law, a *pater familias* had, in some circumstances, the right to kill misbehaving members of his *familia*.[98] Within the *sine manu* marriage, however, the wife was not part of her husband's *familia*. The husband had no official legal authority over her and killing an adulterous wife who was in the *potestas* of her father, meant that he killed a member of another man's *familia*, which could lead to conflict. On the other hand, a father was still expected to have some social involvement with his daughters.[99] Limiting the right to kill an adulterous daughter to her father was a safe solution which fitted traditional values and preserved the honour of all men involved.[100]

81 Frank (1975), Raditsa (1980), Mette-Dittmann (1991); Treggiari (1991) 60-80; McGinn (2002); Severy (2003) 50-56; Milnor (2005) 140-154.
82 Crawford (1996) 801-809.
83 *Digesta* 23.2.43 pr.-9, 12-12 (Ulpian), Ulpian, *Tituli* 13.2. Members of the senatorial order were also prohibited from marrying freedmen, freedwomen, actors and the children of actors: *Digesta* 23.2.44 pr. (Paul).
84 Tertullian, *Apologeticum* 4.8, Ulpian, *Tituli* 16.1.3.
85 Gaius, *Institutiones* 3.42, 3.47, 3.49-54, Juvenal, *Satura* 9.87-88.
86 *Digesta* 48.5.6.1 (Papinian), Crawford (1996) 781-786, Mette-Dittmann (1991) 207.
87 Mette-Dittmann (1991) 132-161.
88 A freedwoman needed to have four children to receive this motherhood premium: Gaius, *Institutiones* 3.42.
89 Gaius, *Institutiones* 3.47, Ulpian, *Tituli* 29.3.
90 Ulpian, *Tituli* 29.2-3, Gaius, *Institutiones* 3.43-44.
91 Cassius Dio, *Roman Histories* 56.10.2, Cf. Mette-Dittmann (1991) 153.
92 Juvenal, *Satura* 9.87-88
93 Ulpian, *Tituli* 15.1, 15.3.
94 According to McGinn both laws formed a combination, in which the first one created a marriage situation that the second one protected by punishing promiscuous behaviour, McGinn (1998) 207-208.
95 McGinn (1998) 152, Treggiari (1991) 278-280.
96 This included daughters married both *cum manu* and *sine manu*. *Digesta* 48.5.25 (Macer). Cf. Benke 2012.
97 Treggiari (1991) 293, Mette-Dittmann (1991) 63, McGinn (1998) 204-205.
98 Kaser (1971) 56-71, Gardner (1998) 121-124, Treggiari (1991) 282-284, Westbrook (1999).
99 *Collatio legum mosaicarum et Romanarum* 4.2.3.
100 This argument is strengthened by the fact that only a *pater familias* was allowed to kill his adulterous daughter, not a father who was still *in potestate*: *Digesta* 48.5.21 (Papianus), 48.5.22 (Ulpian). Furthermore, a father could not kill a daughter whom he had freed from her family bonds by *emancipation*: *Collatio legum mosaicarum et Romanarum* 4.7.1.

Some scholars have argued that the Augustan laws were only relevant to the elite, while others hold that Augustus intended the law effectively to embrace the citizen body as a whole.[101] The remaining fragments of the laws do show a strong emphasis on elite behaviour, but some of the most important rules, such as the removal of guardianship, were relevant to both elite and non-elite women. Furthermore, the rules concerning freedmen and freedwomen were by definition only relevant to citizens outside of the elite.[102] The emphasis on the behaviour and procreation of the elite does not contradict this: the behaviour of the 'best of the citizens', especially the senatorial elite, could be seen as an *exemplum* for the lower orders.[103]

It is striking that the Augustan laws on marriage and adultery did not try to encourage *manus*. In practice, the effect may have been the opposite: the motherhood premium called the *ius liberorum* in particular could have been an incentive to marry *sine manu*. This holds true not only for the wife, but for the husband as well, since *ius liberorum* could take away some of the negative effects of *sine manu* marriage, such as the remaining influence on the wife's finances exercised by her family members through the guardianship and the possibility of claiming her estate after her death. It can be assumed, therefore, that restoration of marriage *cum manu* was no longer at issue. This would suggest that the lawmakers expected that citizens in all layers of Roman society were overwhelmingly married *sine manu* around 18 BC.

This is also suggested by the developments after the enactment of the Augustan marriage laws. Of the three ways to create *manus*, only *coemptio* was still used in this way in the middle of the second century AD.[104] However, by that time *coemptio* had been 'reinvented' as a tool to get rid of an unwanted *tutor* or to enable a woman to make a will. The ceremony did not create *manus*, unless it was performed with her husband.[105] This reinvention of *coemptio* can be seen as a way to deal with problems which became more pressing when it became common for women to be *sui iuris* for a large part of their lives. During the Empire, Roman law gradually adapted to accommodate women in a situation where their legal rights were largely the same as those of men.[106]

101 Elite: Shaw (1984), Jacques (1987), Gardner (1993) 126. Every citizen: Hopkins (1983), Dixon (1992) 123, McGinn (1998) 76.

102 They were not only targeted at the few rich freedmen either, as is shown by the rule that a freedman with two children *in potestate* was released from *operae*, as long as he was not an actor or beast fighter: *Digesta* 38.1.37 (Paul).

103 McGinn (2002) 46-93.

104 *Usus* had fallen into disuse: Gaius, *Institutiones* 1.111. During the reign of Augustus or Tiberius, the senate ruled that *confarreatio* would not longer create *manus*, except for the wives of the major priests during religious ceremonies only: Gaius, *Institutiones* 1.112, 1.36, Tacitus, *Annales* 4.16.

105 Gaius, *Institutiones* 1.113-1.115b.

106 For example, the emperor Claudius abolished agnatic guardianship: Gaius, *Instutiones* 1.157, 1.171, Ulpian, *Tituli* 11.8. The emperor Hadrian made it easier for women to make a will: Gaius, *Institutiones* 1.115a. According to Gaius, by his time the authority of the *tutor* was mainly given for form's sake and magistrates would compel *tutores* who refused to give up their authority: Gaius, *Institutiones* 1.190.

However, here also another tendency was visible in Roman law. It was all very well for a Roman woman to have personal rights, but she was not supposed to expand these rights to include any influence over other citizens, for example by defending others in court, intervening in other citizens' finances or claiming guardianship over children.[107] During the Empire, existing misogynistic tendencies and distrust against interference by women were used to introduce the argument of 'womanly weakness' into law, to exclude Roman women from interfering with certain areas of law, mainly those concerned with the possibility of having influence over other citizens.[108]

107 In classical Roman law, women were specifically prohibited from defending others in court. According to Ulpian this was done to prevent them from interfering in the cases of others and in order that women may not perform duties which belong to men: *Digesta* 3.1.1.5 (Ulpian). Ulpian mentions that this prohibition originated in the shameless behaviour of a female advocate called Carfania, possibly the same as Afrania mentioned by Valerius Maximus, *Facta et dicta memorabilia* 8.3.2. Cf. Marshall (1989) 44-45, Bauman (1992) 231. She could not even defend her husband in court, because it was as proper for a man to defend his wife, but not the other way around: *Digesta* 47.10.2 (Paul). On financial influence see *Digesta* 16.1.2 (Paul) for the motivation for the *SC Velleianum*. On guardianship: *Digesta* 38.17.2.25 (Ulpian).

108 Dixon (1984). According to Gaius, this argument was higly questionable: Gaius, *Institutiones* 1.190, although he did use it himself: Gaius, *Institutiones* 1.144.

5.6 Conclusion

In this chapter, the question of the shift in marital arrangement from marriages with *manus* to marriages without *manus* was discussed, based on the question of what the connection was between the development of the social position of Roman women and the change in marital tradition among the Roman citizens. This was done not only by examining sources on marriage, but also by looking for social side-effects which might be related to a transitional period. Based on this examination, some conclusions can be drawn.

First, there are no direct references to *sine manu* marriage in the sources before the first century BC. A fragment from Cato the Elder's speech on the *Lex Voconia* (169 BC) provides the only serious suggestion that this type of marriage did occur before this time. This fragment, however, also confirms that there was a strong moral and social bias against independent wives. Other sources from the second century BC firmly underline the notion that *cum manu* marriage was the norm.

Second, the side-effects one may expect to find in a transitional period are only visible in sources from the middle of the first century BC. Confusion as the result of the existence of two types of marriage side by side is mentioned in two sources, *Pro Flacco* (59 BC) and the *Laudatio Turiae* (describing events that happened between 50 and 45 BC). Around the same time, the first divorces initiated by women and other examples of wives experimenting with their *sui iuris* status occur.

Third, a hierarchisation between the two types of marriage scarcely existed. A possible attempt at making such a hierarchisation is Cicero's remark in the *Topica* (44 BC), which was quite late and was not repeated in other sources. The absence of hierarchisation refutes the idea that the transition took place gradually over the centuries.

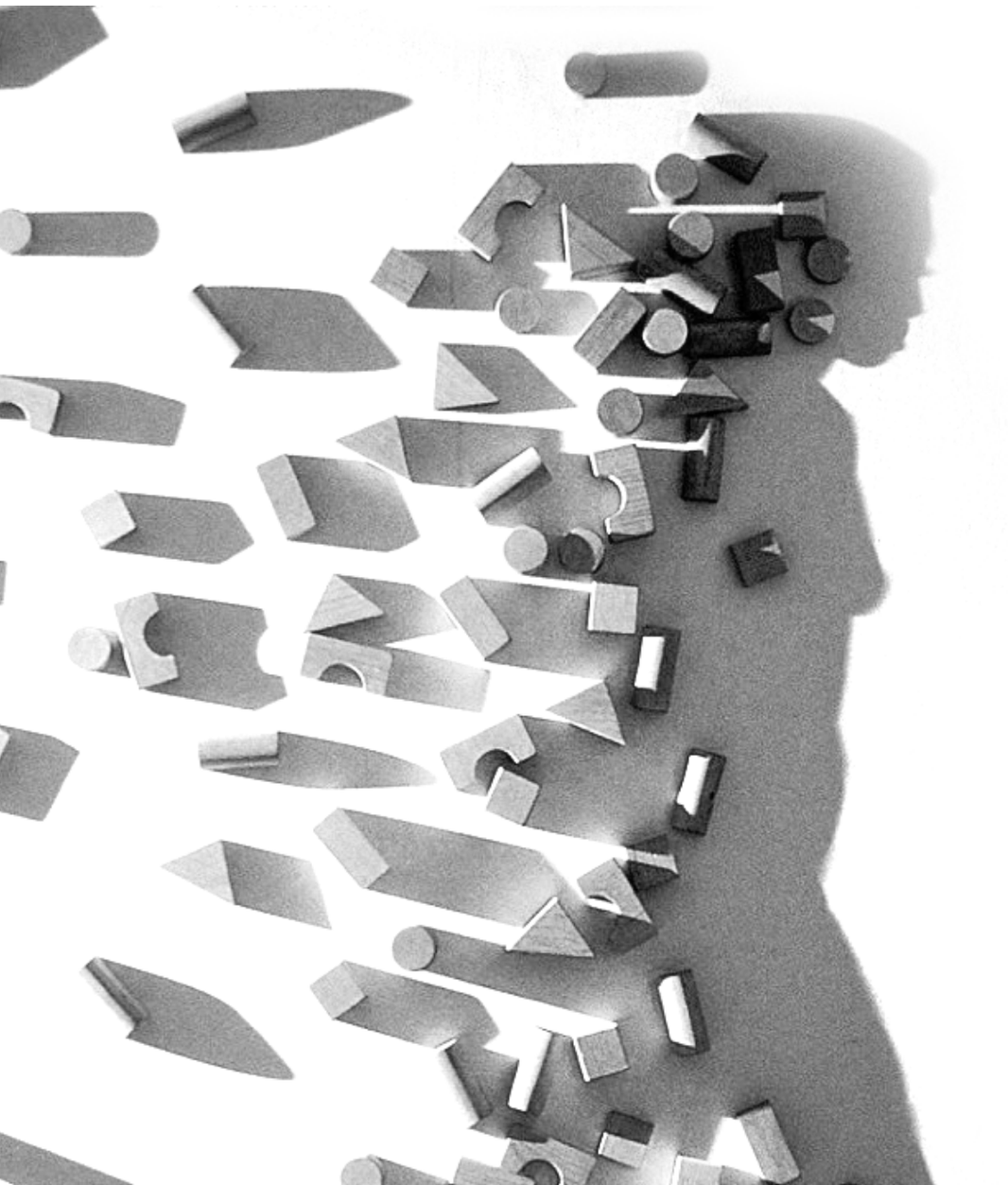
Fourth and finally, the Augustan marriage laws are the *terminus ante quem* for the transition from *cum manu* to *sine manu* marriage, because the incentives and punishments mentioned for these laws focus on marriages *sine manu* and the laws did nothing to strengthen the use of *manus*. To the contrary, these incentives and punishments seem to have been devised based on the presumption that most Roman women were married without *manus*.

Based on these conclusions, it is possible to say something about the effect of the change in marital tradition on the position and bargaining power of Roman women. In the third and the second centuries BC, most Roman women were probably still married *cum manu*. When their position is discussed, it is mainly in the context of dependence on their husbands. Although they could scheme in Plautus' comedies, even there they have hardly any serious leeway to act for themselves. A Roman man like Cato can argue that a man should bully his wife around. A wife who has some bargaining power because she brought her husband a large dowry is certainly someone to be feared.

In the middle of the first century BC, things appear to be different. There is some confusion, because both marriages *cum manu* and *sine manu* are referred to in the same period. Furthermore, there is no more discussion of women who are at the mercy of their husbands. On the contrary, writers discuss women who are managing their own property and are active in court. They even sometimes appear in political life, as Hortensia did. Although this was an extraordinary example, this seems to imply that women had more bargaining power in this period.

During the reign of Augustus, the Augustan laws on marriage and adultery are enacted. These laws seem to have been designed to promote expected behaviour of citizens. For women, they tried to force them into lawful marriage and to persuade them to have enough children to support the Roman state. Interestingly, this was not done by binding women more closely to their husbands and to give husbands more power over their wives. On the contrary, they were freed from the necessity of having a *tutor* when they had borne enough children. Furthermore, pressure was put upon women by shaming them and inflicting financial punishments. This all seems to imply that the Roman lawmakers considered most women to be married *sine manu* around 18 BC, and furthermore, that these women were considered to be able to manage their own property and to behave independently. This suggests that the bargaining power of women was by now more broadly accepted. They could act as Roman citizens, as long as they did their duty to the state, by bearing enough children within legal marriages. Furthermore, later laws seem to suggest that women were not allowed to trespass on what was seen as the central prerogative of Roman men, namely, that men could have power over other citizens and women could not.

CONCLUSION



'The past is a foreign country: they do things differently there', wrote Leslie Hartley in the famous opening line of his novel *The Go-Between*. At first sight, this is certainly the case when we look at the behaviour of Roman women as citizens in the late Republic and the early Empire. A closer look, however, may make one wonder whether Roman women really did things that differently there, or whether they thought things differently there: whether they behaved in an understandable way, but based on a different set of assumptions. Central to this thesis are the assumptions on which their possibility of acting was based: the framework, as it were, on which their position as Roman citizens depended and which determined to some extent their bargaining power towards magistrates, husbands and family members within Roman society.

Based on the main question of how citizenship developed for Roman women in the late Republic and the early Empire, I have looked at the interpretations of citizenship, the legal structure in which Roman women functioned, the social relevance of this legal structure and the specific case of the changing preference for marriage with *manus* to marriage without *manus* in Roman society. Central to my interpretation of citizenship for Roman women is the concept of bargaining power. The least one can conclude is that the position of female citizens in literary sources seems to have changed between roughly 200 BC and the first century AD. While Roman women are presented as basically at the mercy of their fathers and husbands in the second century BC, they were treated as potentially independent citizens in the Augustan laws on marriage and adultery at the start of the first century AD.

There is no indication that this development was the result of some emancipatory movement among Roman women or a conscious effort to improve the status of women as Roman citizens. As is shown in chapters 2 and 3, even during the Empire, Roman writers and lawyers still had a tendency to present Roman citizenship in a strongly male-oriented way and to give only very limited recognition to the existence of females as citizens. What did change, however, were the preferred marriage arrangements. It seems that women usually transferred to the *familia* of their husbands upon marriage at the start of the period under consideration. They came in the power of their husbands and could not own property as long as they were married. At the end of this period, there was a strong preference for keeping women in their father's *familia* after marriage. This meant that there was no longer just one man who had all the power over a woman. It also gave married women the opportunity to become *sui iuris* and own their own property.

This change in marital arrangements increased the potential bargaining power of Roman women and could make female citizens less dependent on husbands and male kin. This suggests an alternative interpretation of how Roman women were able to function as citizens, not only within the family circle, but also in public, in the interaction with Roman magistrates. Central to this interpretation is the way in which women dealt with the *familia*: the *familia* could be not only a limitation to Roman women, but it could also be used to enhance their bargaining power.

A number of conclusions can be drawn based on the research in this thesis. The first one is that Roman sources have a strong tendency to make women less visible as citizens. As is shown in chapter two, the use of citizenship terminology in Latin prose emphasises an interpretation of citizenship which is male-oriented. There is no word that specifically refers to women as citizens and writers make it seem as if only men are included in most words which refer to citizens in general. However, while Roman authors do not mention female recipients specifically, they do not state that women were excluded either. They used terminology which seems to hint towards male citizens, without mentioning that only males could participate. When a closer look is taken at specific situations it becomes clear that women are often included. For example, although it is never acknowledged directly, women *sui iuris* could even be included in a term like *pater familias* when it referred to a property owner, which seems to have been the main meaning of the term in the period under consideration.

This habit of Roman writers of accepting women in certain citizenship roles without acknowledging this as such placed female citizenship in a sort of twilight situation: the point that women were citizens was brushed over in order to create a picture of an all-male, or at least masculine, citizenship. This habit is not limited to Latin prose, it is also visible in legal sources, as was shown in chapter three: the construction of Roman citizenship in legal sources is built around the Roman male citizen as the head of his *familia*. All too often it seems as if Roman law refers only to males, without specifically excluding females. It is not always made clear that this head of the *familia* could be a woman too. There is the crucial division between men who could have power over other citizens and women who could not, but in other instances there seems no real reason to exclude them in other situations. In a sense, this tendency to make women as Roman citizens less visible can still be found in modern research. While the study of Roman women has been greatly intensified since the 1970s, the legal status of Roman women as citizens was to some extent ignored. Furthermore, Roman citizenship is often interpreted in a narrow top-down sense in which citizenship is equated to those who fought in the army, voted and paid taxes. Probably as a result of this, when public roles of Roman citizens are discussed they are mostly, implicitly or explicitly, referred to as if Roman citizens are adult male citizens only.

A second conclusion is that the *familia* is relevant as a way to structure Roman private and public life. In chapters three and four, it has been discussed that the *familia* was not only a legal construct, but also a way to organise groups and organisations which was repeated time and again in Roman society. In chapter four it has been shown that the *familia* was not limited to elite Roman families. The use of the *ius liberorum* as a premium on motherhood and the *peculium castrense* as a way to boost military recruitment suggests that Augustus and his lawmakers assumed that all citizens lived in a *familia* structure. The *familia* was both a patrilineage, a family line which continued through the generations, and the family groups under the power of the oldest living ancestor in the male line which were in existence at any given moment as part of this lineage. Not all of these family groups consisted of the archetypal elderly *pater familias*, his children and grandchildren. Probably, most did not: every Roman citizen who had no living ancestors in the male line was considered to be the head of his or her own *familia*. This suggests that a large percentage of the *familiae* consisted of one citizen only, often a woman.

Within Roman law, the central Roman citizen is not the adult male, but the citizen as the head of the *familia*. It was the citizen *sui iuris* who had the sole responsibility for the inter-

action between the *familia* and other *familiae* or magistrates. This may seem to contradict with Roman social norms according to which an adult man who was *alieni iuris* could be active in politics or the military. However, this contradiction is merely a surface one: as has been argued in chapter four, having the responsibility did not mean that the citizen *sui iuris* was the only member of the *familia* who could act in public. A citizen *alieni iuris* could do so too, but when he acted for example in politics, he did so *loco*, 'in the position of', his citizen *sui iuris*, his *pater familias*. This made a citizen *alieni iuris* in public a representative of the *familia* he belonged to.

Citizens *alieni iuris* could participate in Roman society because they were seen as part of the *familia*, either as part of the common labour pool of the *familia* or acting independently, in which the tacit approval of the *pater familias* was assumed. In this way, citizens *alieni iuris* acted as what we could call a '*pater familias* by proxy': they could act independently because it was assumed that such a citizen was *loco patris familias* or acted with the approval of the *pater familias*. Within elite circles, where a *familia* often comprised more than one residence, this enabled adult citizens *alieni iuris* to manage part of the family estate while still being under the power of their *pater familias*. Only when a conflict arose which was too big to handle by the citizen *alieni iuris*, or when a conflict of interest arose between the *pater familias* and the citizen *alieni iuris*, did the legal position of the persons within the framework of the *familia* become relevant.

Although citizens *alieni iuris* could act in public on behalf of their *pater familias* and sometimes in the position of their *pater familias*, the final responsibility for the *familia* remained firmly in the hands of the citizen *sui iuris*. However, the assumption that citizens *alieni iuris* acted in accordance with the wishes of the *pater familias* also gave them some leverage towards the *pater familias*. The high status given to the *pater familias* meant that his social position was most affected when conflicts within the *familia* became public. The need to keep conflicts private could be used by both male and female citizens *sui iuris* to increase their bargaining power towards the *pater familias*.

A third conclusion is that the *familia* as a structure offered both possibilities and limitations to Roman women. As mentioned earlier, the main possibility lay in the way that citizenship *sui iuris* was defined: every citizen without a living forefather in the male line was considered to be a citizen *sui iuris* and, therefore, the head of his or her own *familia*. This rule was rigorously applied: while a fifty-year-old senator whose father was still alive was a citizen *alieni iuris* according to Roman law, a new-born baby girl was considered to be a citizen *sui iuris* if her father and grandfather were dead at the moment she was born. Roman law did not limit the possibility for women *sui iuris* to own and manage their own property. They were also allowed to defend their own interests in court or in front of the magistrates and they could initiate their own marriage or divorce. In potential, this increased their bargaining power towards male relatives and made Roman women less dependent on support by men than women in most other pre-modern western societies.

At the same time, the *familia* was also a limitation for women. Because it was a patrilineage, only men could continue the *familia*. Roman tradition and law framed this in such a way that only men had authority over other citizens. Only men could have authority over their children and grandchildren; women were excluded from parental authority. This division between men and women seems to have been essential to Romans. Because the *familia* was an central organizing principle for the Romans, it is quite possible that it was an underlying assumption to exclude women from positions of authority over other citizens in public life too. This seems to be indicated by the way in which Romans handled women with political power. In general, women were excluded from official positions in the state, cities and organisations. When they acquired a position of power within a city or organisation it was often framed in a title like mother of a city or organisation, a title which connoted informal influence within the family sphere and avoided recognition of real power over others. Another indication is the rules regarding women made in the early Empire. While personal rights of women were extended or formalised, other rules limited women in their freedom to act. These rules seem to have been mainly concerned with avoiding situations in which women could acquire power over other citizens, for example by forbidding them to stand liability for other citizens or to represent others in court.

The exclusion of Roman women from parental authority also meant that a woman *sui iuris* did not have heirs: she could not continue the family line and her *familia* died with her. This has been recognised as a reason to create a life-long guardianship by men over women. The men who became her guardians when she became *sui iuris* were male relatives who would inherit her property after her death. Such a guardian, a *tutor*, could be a serious limitation for women. His assent was necessary to contract a marriage with *manus*, to make a will and to carry out certain transactions. However, his control of a woman's property was not absolute. A woman was expected to manage her property herself and the consent of the *tutor* was only necessary for acts which diminished certain types of property, the *res mancipi*, like slaves and land and houses in Italy. Women who owned other types of property, like money, livestock or trade goods, women who bought property and women who rented out land or slaves did not have the need for the interference of a *tutor*. This suggests that having a *tutor* was no obstruction to going into trade or to making a profit from property. Over time, the role of the *tutor* became even less relevant. By the middle of the first century AD agnatic guardianship had been abolished and women who had given birth to three or more children were freed from guardianship.

The initial strong position of the *tutor* towards women *sui iuris* can be seen as a warning that a status of citizen *sui iuris* in itself was not enough to increase the social status and bargaining position of Roman female citizens. A fourth conclusion from this research is that an extra factor was involved. This extra factor was a change in preferred marital arrangements from marriages with *manus* to marriages without. Women could be *sui iuris* and, as far as is known, this had always been the case in Roman law. However, probably only a limited number of women became *sui iuris* before the first century BC and those who did, often did so for a limited period of time and in circumstances which restricted their capacity to use this status.

As presented in chapter five, there are indications that marriage with *manus* was common before the first century BC. Within a marriage with *manus*, a woman became part of her husband's

familia and *alieni iuris* to her husband as long as he lived. As marriage was almost universal, only orphaned girls and widows became *sui iuris* as long as Romans preferred marriage with *manus*. For orphaned girls being *sui iuris* was a temporary status before their marriage, while widows also became *alieni iuris* again when they remarried with *manus*. Even if a widow did not remarry, she had become *sui iuris* within her husband's patrilineage and under the guardianship of either her husband's brothers or her adult sons. These were people who had most to gain if her property remained in their *familia*. This was probably not a position which offered her much bargaining power or gave her an opportunity to gain experience in the management of her own property.

Sources from the second century BC do give the impression that marriage with *manus* was common, while the Augustan laws on marriage and adultery seems to have worked from the assumption that most Roman women were married without *manus*. This implies that in a relatively short period of time within the first century BC the preferred marriage arrangements changed and marriage without *manus* had become common. Marriage without *manus* changed the position of a woman towards her husband. No longer did she become part of his *familia* and *alieni iuris* to him: after marriage she remained *alieni iuris* to her father.

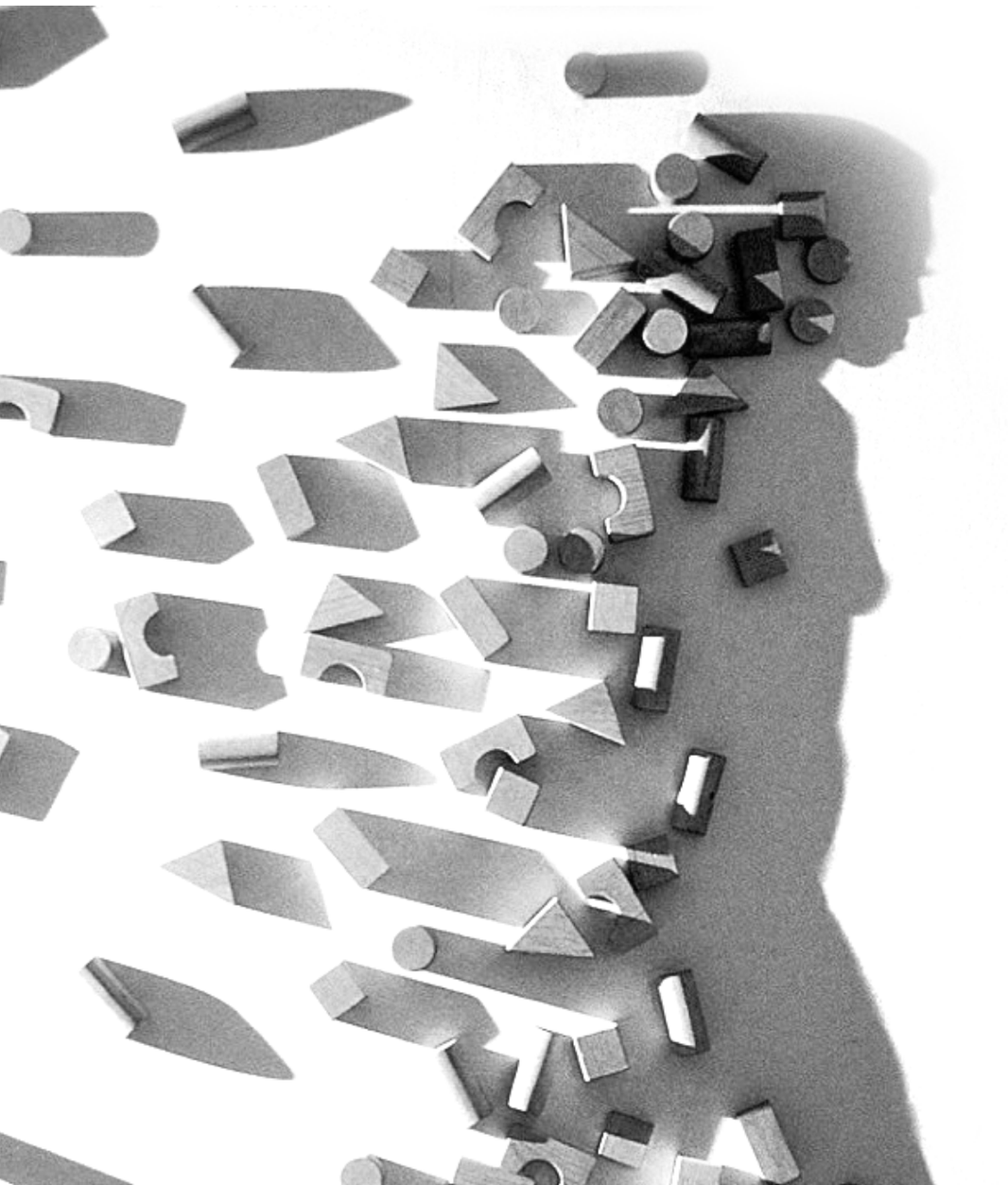
Marriage without *manus* profoundly changed the position of a woman towards her husband. Although she lived together with her husband, she was in the power of another man and part of another *familia*. After the death of her *pater familias* she became *sui iuris*, and not her husband or his relatives, but instead a male member of her own *familia*, normally became her *tutor*. This did change the formal position of women, in the sense that more women became *sui iuris*, because they could become so during marriage. As a citizen *sui iuris* she was the head of her own *familia* independent from the power of her husband. It also changed the power relations: while in a marriage with *manus* there was only one man who had power over her (either her husband or his *pater familias*), in a marriage without *manus* male power was always divided between two different *familiae*: her husband and her *pater familias* (or after his death her guardians). This dispersion of power made control by Roman men over married women less effective. It put a woman in a position in which she could increase her bargaining power, in the first instance towards her husband, but also towards her male kin, her agnates. In this situation, it was probably preferable for Roman men to let women manage their own lives, because too much involvement could easily lead to a conflict with the men of another *familia*.

This change in marital arrangements increased the potential bargaining power of Roman women. How it affected individual Roman women is hard to discern. As Gardner rightly remarked in the introduction of her book *Women in Roman law and society*, 'what the law says people may do (...) is not necessarily the same as what they actually do'. How people react to social and legal changes and chances depends to a large extent to the circumstances which surround them. However, in chapter five some indications are given that some women were affected and that Roman law adapted to the increased bargaining power of Roman women as a group. Seen in this light, the Augustan laws on marriage and adultery can be considered not only as a witness to this development, but also as a reaction to it: it is possible that they were enacted to check some of the perceived negative effects from this development by trying to force citizens into legal marriages and to bind women to their role as mothers of citizens.

In the late Republic and the early Empire, citizenship for Roman women developed within the conventional lines of the Roman *familia*. What was new in this period was the growing preference for marriage without *manus*, which not only gave women an increased change of becoming citizens *sui iuris* themselves, but also placed them in a position in between two *familiae* which potentially increased their bargaining power. As I have argued in this thesis, the Roman *familia* should be taken seriously not only as a legal but also as a social phenomenon. This means that the relevant citizen in the interaction with the magistrates was the citizen *sui iuris*. An increasing preference for marriages without *manus* suggests a growing number of women *sui iuris*. By the first century AD, their number could have been more or less equal to that of men *sui iuris*.

The main conclusion of this thesis is that the citizen *sui iuris*, as the head of the *familia*, was of central concern to the Roman magistrates and lawmakers. When we think of Roman citizens in the interaction with magistrates we have to think first and foremost of citizens *sui iuris*, not of adult men: citizenship *sui iuris* did not follow gender lines and a growing part of the citizens *sui iuris* were actually women from the first century BC onwards. This is a factor to take into account when sources are interpreted in which Roman magistrates dealt with the citizens, for example in the Roman *census* and in the grain distributions, the so-called corn dole, in Rome. We may assume that the numbers of citizens mentioned in these sources are actually numbers of citizens *sui iuris*, a group which included both men and women by the end if the Republic. This interpretation could have serious implications for any demographic calculations based on these sources. Furthermore, the quick rise in the number of married women *sui iuris*, and their increasing bargaining power, may explain the interest in the position of women and family life in Roman society in the late Republic and the Augustan period. Not only in literary sources, but also in the development of Roman law in this period and especially in the interpretation of the laws on marriage and adultery enacted by the first emperor Augustus.

APPENDIX



Indicators of time

In this thesis, the use of specific years to indicate the date of events or developments is not always possible. In many cases, it is not know when certain developments took place and sometimes not even when certain events happened. In these cases, indicators are used to specify the period of time during which an event or development took place. The terminology used to indicate certain periods is the one which is in use in the classics and ancient history, with some adaptations specific to this research. However, this thesis is not only meant for ancient historians and classicists, but also for readers with a wider interest in gender issues in history. As background information, a short overview will be given of the social-political development of Roman society between 200 BC and roughly the middle of the first century AD and the indicators of time related to them.

1 *Late Roman Republic*: In this thesis, the late Roman Republic refers to the period between 200 BC and 27 BC, the traditional starting date of the Roman Empire. During the whole of this period, Rome was the dominant force in the Mediterranean and continued to conquer new territories. The expanding military domination in the Mediterranean went hand in hand with growing social unease in Rome itself. The institutions of the Roman city state were not well suited to administering an empire. Furthermore, the luxury associated with the influx of wealth from the newly conquered territories was perceived as a threat to the Roman way of life and it increased the divide between richer citizens and their poorer neighbours.

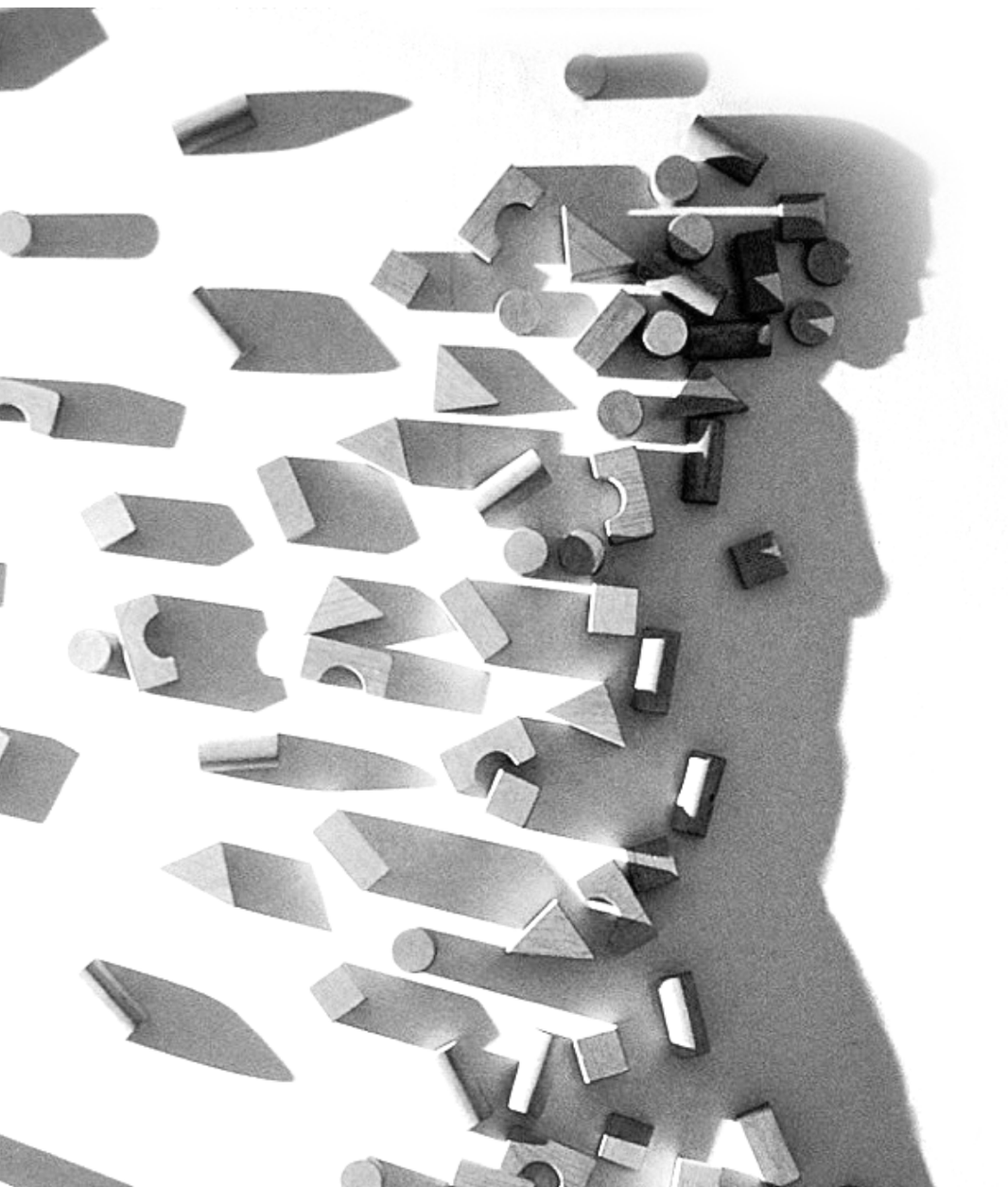
2 *Last century of the Republic*: the period between 131 BC and 27 BC, a period in which the social tension of the Late Republic erupted in a series of civil conflicts, which together destroyed the traditional power balance within the Roman Republic. The main civil conflicts in this period are the Gracchan Reforms (131-122 BC), the Social War (91-88 BC), the first Civil War (88-79 BC) and the second series of civil wars (49-30 BC). Despite, or probably due to, the civil unrest, it is also a period of social and cultural change.

3 *Augustan Era*: the reign of the first emperor Augustus. The traditional starting date is when the victor in the civil wars, Octavian, is bestowed the title of Augustus, 'the Sublime', in 27 BC and it ends with his death in AD 14. His rule is a period of great legal and cultural activity.

4 *The early Empire*: The early Empire in this thesis roughly denotes the period from the reign of Augustus until the end of the Julio-Claudian dynasty. It includes the reigns of Augustus, Tiberius (14-37), Gaius 'Caligula' (37-41), Claudius (41-54) and Nero (54-68).

Occasionally it will be necessary to venture outside this time frame. In these situations it is common practice to divide Roman history into four parts: Regal, Republican, Early Imperial (Principate) and late Imperial (Dominate) Rome. Regal Rome or Rome of the kings is the earliest era in Roman history. It refers to the period from the mythical foundation of Rome in 753 BC until 509 BC, when, according to tradition, the Republic was founded. The Republic (509 – 27 BC) saw the growth of Rome from a city state to the main power in the Mediterranean world.

The Early Imperial period or Principate (27 BC – AD 284) is a period in which most political structures of the Republic remained in place and the emperor was presented as the first among his senatorial equals, the *princeps*. A period of crisis in the third century brought this fiction to an end. The Principate was transformed into the Late Imperial period or Dominate, a more bureaucratic type of government. During this period, Christianity became the dominant religion in the Empire. In the city of Rome, the Dominate ended with the dissolvement of the Western Roman Empire in AD 476.



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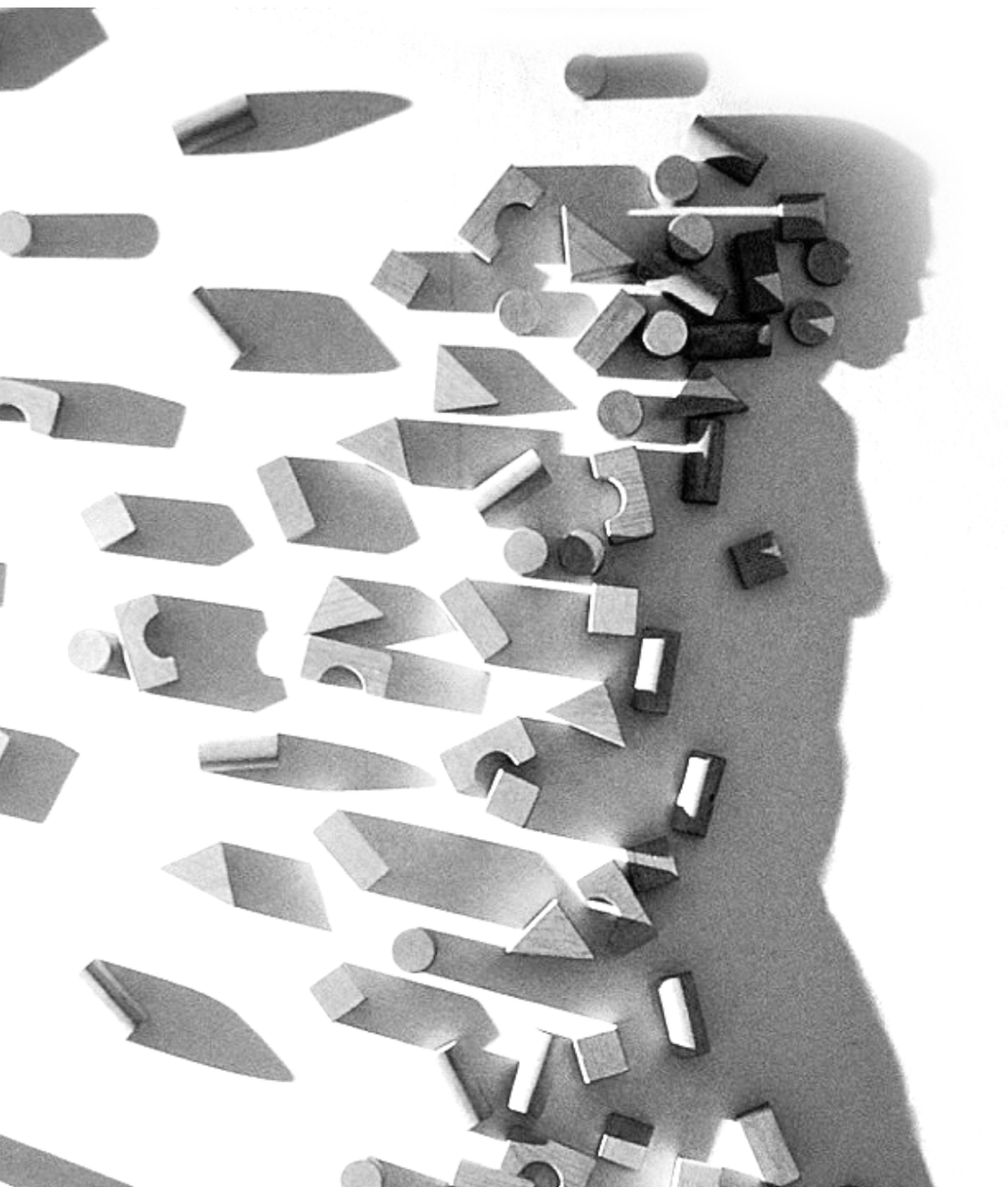


NEDERLANDSE SAMENVATTING

Dit proefschrift biedt een nieuwe interpretatie van de manier waarop vrouwen functioneerden als Romeinse burgers. Interpretaties van Romeins burgerschap kunnen grote invloed hebben op ons begrip van de Romeinse oudheid. Zo berusten de berekende inwonertallen van de stad Rome, Romeins Italië en het hele Romeinse rijk uiteindelijk op de interpretaties van wat een burger is in de context van de Romeinse censuscijfers en van de graanuitdelingen in Rome. Het doel van dit proefschrift is om bij te dragen aan de discussie over Romeins burgerschap, door te onderzoeken wat gold als een Romeinse burger in interactie met magistraten. Het gaat daarbij niet om de vraag welke burgers stemrecht of dienstplicht hadden, maar wie er meetelden in de *census*, uitdelingen, belastingen en in wetgeving. Daarbij wordt in het bijzonder gekeken naar de positie van vrouwelijke Romeinse burgers, een groep die regelmatig wordt gemarginaliseerd in de discussies over publiek burgerschap, zowel in de Oudheid zelf als in moderne wetenschappelijke studies. Omdat vrouwelijk Romeins burgerschap in zekere zin aan de rand staat van publiek burgerschap, kan dit onderzoek meer vertellen over het karakter van Romeins burgerschap in het algemeen.

Dit proefschrift draait om de hoofdvraag hoe het burgerschap van Romeinse vrouwen zich heeft ontwikkeld in de late Republiek en de vroege Keizertijd. Vergeleken met vrouwen in de meeste Westerse landen tot aan de twintigste eeuw hadden Romeinse vrouwen in de eerste eeuw na Christus een relatief grote persoonlijke vrijheid: ze konden hun eigen bezit beheren, scheiden en werden daarin nauwelijks belemmerd door de mannen om hen heen. De vraag is hoe die situatie is ontstaan. Omdat er slechts een beperkt aantal bronnen is over de positie van Romeinse vrouwen, en bijna geen opinies van vrouwen zelf, is het materiaal voor deze studie uit allerlei bronnen samengesteld: klassieke literatuur, Romeinse wetgeving en inscripties, maar ook modellen uit genderstudies, antropologie en psychologie. Op zichzelf zijn al deze verzamelde losse blokken bronnenmateriaal evenwel niet voldoende: net als het kunstwerk op de voorpagina van dit proefschrift moesten de blokken op een bepaalde manier worden belicht om de contouren van de vrouwelijke Romeinse burger zichtbaar te maken.

In dit proefschrift worden de blokken per hoofdstuk op een andere manier belicht. Samen zorgen ze voor een nieuwe interpretatie van de manier waarop vrouwen konden functioneren als Romeinse burgers, in hun familie en in interactie met de overheid. Een belangrijk, steeds terugkerend licht is de uitgangspositie dat elke relatie tussen mensen een onderhandelingsrelatie is en dat deze onderhandelingsrelaties beïnvloed worden door sociale en juridische normen. Mensen met een sterkere onderhandelingspositie zijn beter in staat om speelruimte voor zichzelf te creëren. Bij Romeinse vrouwen hing die onderhandelingspositie onder meer af van hun positie in de *familia*, de formele structuur van de Romeinse familie. De *familia* was sterk gericht op voortzetting van de mannelijke familielijn, maar door de manier waarop de *familia* was georganiseerd kon de *familia* niet alleen gebruikt worden om de bewegingsruimte van Romeinse vrouwen te beperken, maar ook als een manier om hun onderhandelingsruimte te vergroten ten opzichte van echtgenoten, mannelijke verwanten en Romeinse magistraten. Dit was mogelijk omdat de *familia*, en met name de positie van het hoofd van de *familia*, de burger *sui iuris*, de tweedeling in mannen en vrouwen kon doorkruizen.

De hoofdvraag hoe burgerschap van vrouwen zich heeft ontwikkeld is uitgesplitst in vier deelvragen die in de hoofdstukken twee tot en met vijf zijn behandeld.

In hoofdstuk twee worden interpretaties van Romeins burgerschap besproken, zowel in wetenschappelijk onderzoek als in Latijnse literaire bronnen uit de onderzochte periode. In dit hoofdstuk wordt beargumenteerd dat in wetenschappelijke publicaties over Romeins burgerschap meestal uit wordt gegaan van een relatief beperkte definitie van burgerschap. Burgerschap wordt bekeken vanuit het perspectief van de overheid, waarbij de rol van de burger als soldaat, kiezer en belastingbetaler centraal staat. Deze visie op burgerschap legt sterk de nadruk op de publieke rol van mannelijke burgers als soldaten en kiezers, waardoor de positie van vrouwen als burgers minder zichtbaar is. Dit effect wordt nog versterkt door de neiging in onderzoek sinds de jaren tachtig om de *familia*, de juridische organisatie van het Romeinse privéleven, als minder relevant te beschouwen voor het dagelijks leven.

Opvallend genoeg komt het effect van deze kijk op burgerschap in wetenschappelijke literatuur overeen met de manier waarop burgerschap werd beschreven door Romeinse prozaschrijvers uit de periode van onderzoek. Deze schrijvers presenteerden burgerschap vanuit een mannelijk perspectief, waardoor de indruk kan ontstaan dat alleen mannen burgers konden zijn. Anderzijds worden Romeinse vrouwen niet uitgesloten als burger. Door nauwkeuriger te kijken naar het gebruik van burgerschapstermen, blijkt dat deze meestal ook kunnen verwijzen naar vrouwelijke burgers. Dat geldt zelfs voor een typisch mannelijke term als *pater familias* (letterlijk ‘vader van de familie’) in de betekenis van eigenaar van bezit, de meest gebruikte betekenis in deze periode.

In hoofdstuk drie wordt de juridische positie van Romeinse vrouwelijke burgers besproken. Daarin wordt getoond dat de handelingsvrijheid van vrouwen sterk afhankelijk was van hun positie in de *familia*. De *familia* was een groep onder leiding van de oudst levende voorouder in mannelijke lijn. Als enige in de *familia* was dit familiehoofd *sui iuris*, handelingsbekwaam, en had het alleenrecht om te beslissen over het bezit en de arbeidsinzet van de *familia*. Centraal in de Romeinse wet stond de mannelijke burger *sui iuris* als familiehoofd, de *pater familias*. Hij had het ouderlijk gezag over al zijn afstammelingen in de mannelijke lijn: zijn kinderen en de (achter)kleinkinderen via zijn zonen. Zo lang hij leefde konden deze afstammelingen geen eigen bezit hebben. Mannen zowel als vrouwen bleven dus ondergeschikt aan hun *pater familias* tot aan diens dood. Pas als hij overleed werd de *familia* opgesplitst en werd volgende generatie zelf het hoofd van een eigen *familia*.

Hoewel de *familia* was gericht op het voortzetten van de mannelijke lijn, had de definitie van *familia* belangrijke consequenties voor Romeinse vrouwen. Iedereen zonder levende voorouder in mannelijke lijn was een burger *sui iuris* en daarmee het hoofd van zijn of haar eigen *familia*. Of een vrouw werkelijk *sui iuris* werd, was sterk afhankelijk van de voorwaarden van haar huwelijk. Ze kon overgaan naar de *familia* van haar man en kwam dan ‘in de positie van die van een dochter’, wat betekende dat haar man juridisch haar voorouder werd en ze tijdens haar huwelijk ondergeschikt bleef aan hem. Ze kon ook deel blijven van de *familia* van haar vader. In dat geval werd ze *sui iuris* als haar vader (of diens *pater familias*) overleed en was de

kans groot dat ze tijdens haar huwelijk het hoofd van haar eigen *familia* werd, onafhankelijk van haar echtgenoot. Wat niet veranderde was dat het gezag over de kinderen bij haar man bleef. Een vrouw kon geen gezag hebben over andere Romeinse burgers. Terwijl de *familia* van een man bij diens overlijden door kinderen kon worden voortgezet, eindigde de *familia* van een vrouw bij haar dood.

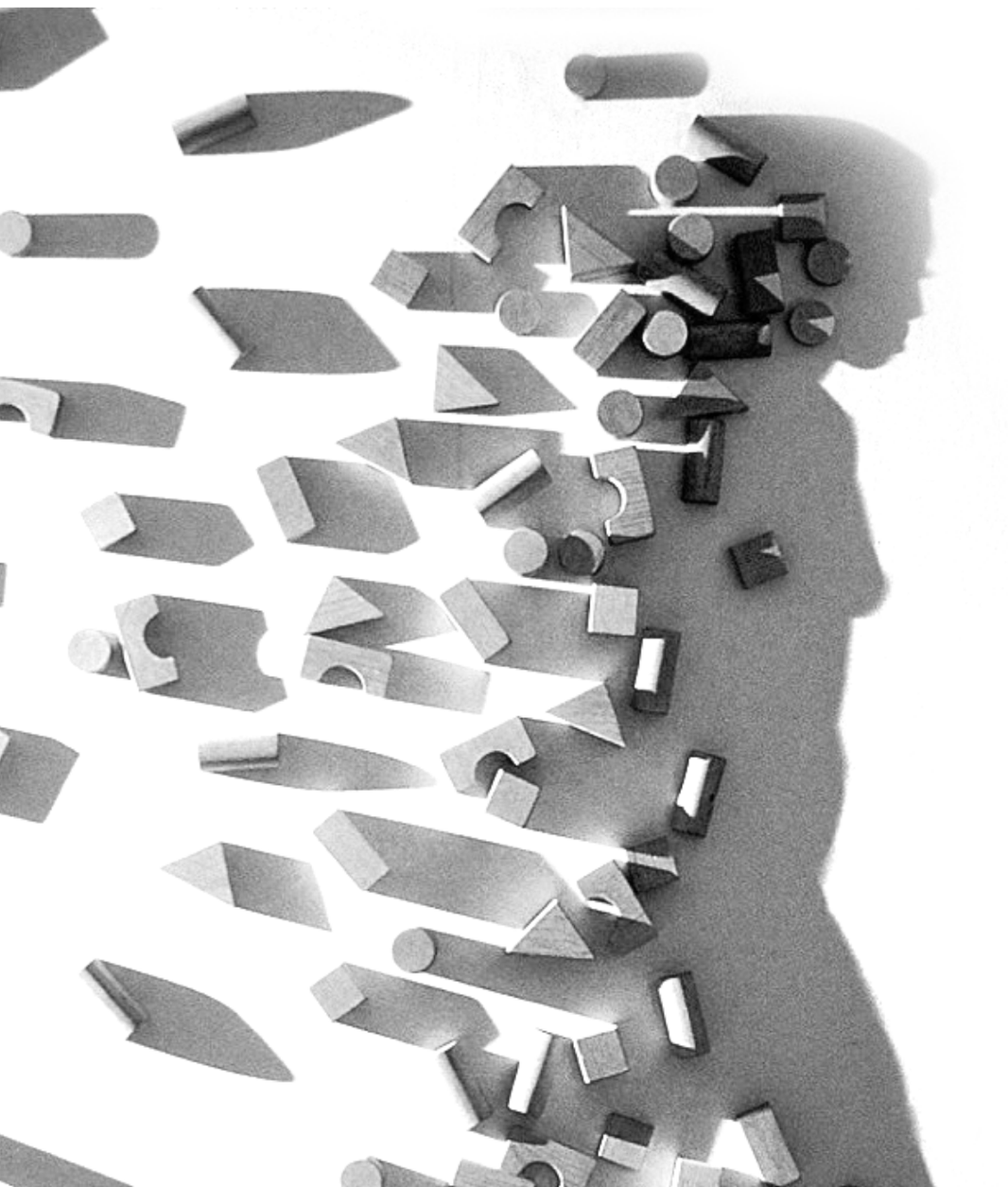
In hoofdstuk vier wordt het belang van de *familia* voor het Romeinse sociale leven bediscussieerd. Zoals eerder gezegd is in de afgelopen decennia het belang van de *familia* als sociale organisatievorm in twijfel getrokken: het is soms voorgesteld als een bijzonderheid van het Romeinse recht zonder al te veel maatschappelijke relevantie. In dit hoofdstuk zijn de belangrijkste argumenten onderzocht die ingebracht zijn tegen het belang van de *familia*: het gegeven dat niet alleen de burger *sui iuris*, maar ook ondergeschikte burgers in het publieke leven konden functioneren, de mogelijke irrelevantie van de *familia* buiten de Romeinse elite, de lage levensverwachting van Romeinen en de samenstelling van Romeinse huishoudens. Beargumenteerd is dat de *familia* relevant was in het publieke leven en niet alleen in dat van de elite: de maatregelen die de eerste keizer Augustus nam om het aantal geboorten te verhogen en de werving van soldaten te bevorderen laten zien dat de keizer en zijn wetgevers er van uit gingen dat alle Romeinse burgers in een *familia* structuur leefden. Ondergeschikte burgers die in de politiek of het leger actief waren deden dat als vertegenwoordiger van hun *familia*. Verder was de *familia* een belangrijke organisatievorm, niet alleen voor het privéleven, maar ook voor de structurering van verenigingen en zelfs van de Romeinse staat.

Een belangrijk argument tegen de maatschappelijke relevantie van de *familia* is de samenstelling van Romeinse huishoudens. Zeker sinds de jaren tachtig van de twintigste eeuw wordt vrij algemeen aangenomen dat Romeinen per gezin samenwoonden en niet in een groter familieverband van ouders met hun getrouwde kinderen en kleinkinderen, zoals gesuggereerd door de *familia*. In hoofdstuk vier wordt beargumenteerd dat er nauwelijks onderbouwing is voor die aanname. Alleen binnen de topelite lijkt sprake van spreiding van volwassen kinderen over meerdere locaties: niet omdat die op zichzelf gingen wonen, maar omdat binnen een elite-*familia* vaak meerdere huizen beschikbaar waren. Dit duidt er op dat Romeinen er niet bewust naar streefden om op zichzelf te gaan wonen na het huwelijk. Het lijkt er eerder op dat ze streefden naar een groter familieverband, hoewel de meeste Romeinen dat niet haalden door de lage levensverwachting.

In hoofdstuk vijf is de informatie uit de vorige hoofdstukken gebruikt om te kijken naar een specifieke situatie: de veranderende voorkeur voor huwelijkse voorwaarden waarbij de bruid naar de *familia* van haar man overging naar die waarbij de bruid deel bleef uitmaken van haar vaders *familia*. Deze verandering kon de onderhandelingspositie van vrouwen op twee manieren versterken: het vergrootte de kans dat een vrouw *sui iuris* werd en het zorgde ervoor dat de macht over de vrouw niet meer alleen bij haar echtgenoot lag (of diens *pater familias*), maar dat hij die moest delen met haar mannelijke verwanten. Een Romeinse vrouw haar positie tussen twee *familiae* gebruiken om haar onderhandelingspositie te versterken. In dit hoofdstuk wordt beargumenteerd dat het in het midden van de eerste eeuw voor Christus voor vrouwen gebruikelijk werd om na het huwelijk deel te blijven uitmaken van de *familia* van hun vader. De aandacht voor vrouwen in de Latijnse literatuur van deze periode en veranderingen in wetgeving duiden er op dat het tijd kostte om deze versterkte onderhandelingspositie van vrouwen een plek te geven in de Romeinse samenleving.

Hoewel het opnieuw belichten van de blokken bronnenmateriaal niet veel meer kan opleveren dan de contouren van een vrouwelijke Romeinse burger, zijn er uit die schaduw enkele relevante conclusies te trekken. De eerste is dat de veranderende positie van Romeinse vrouwen direct samenhangt met hun positie in de *familia*, met name tijdens hun huwelijk. Naarmate het meer gebruikelijk werd dat getrouwde vrouwen *sui iuris* werden, en daarmee het hoofd van hun eigen *familia*, lijkt hun onderhandelingspositie te zijn toegenomen. De weerslag daarvan is te zien in literatuur en wetgeving. Met name de wetgeving rond huwelijk en overspel van keizer Augustus kan gezien worden als een reactie op de nieuw ontstane situatie.

Een tweede conclusie is dat Augustus en andere wetgevers niet reageerden op deze veranderingen door de persoonlijke vrijheden van deze vrouwen in te perken, in een poging ze te dwingen om volgens traditionele normen te leven. Wetgeving lijkt er op gericht te zijn geweest om enerzijds de nieuwe situatie te faciliteren en anderzijds te voorkomen dat het ultieme mannelijke voorrecht werd aangetast: het gezag over andere burgers. Een mogelijke reden hiervoor is dat ondermijning hiervan de basis van de *familia* zou hebben aangetast. Dit duidt er op dat de *familia* en de burger *sui iuris*, als hoofd van de *familia*, van centraal belang waren voor Romeinse magistraten. Als we aan Romeinse burgers denken in de interactie met magistraten moeten we daarom in eerste plaats denken aan burgers *sui iuris*, niet aan volwassen mannen. Deze conclusie is niet alleen relevant voor de positie van Romeinse vrouwen, maar voor alle Romeinse burgers. Misschien gaat het zelfs verder dan dat: het laat zien dat de manier waarop een samenleving een sociale indeling maakt heel anders kan zijn dan de indelingen die we uit de latere West-Europese geschiedenis gewend zijn. Dat vrouwelijke familiehoofden relevant kunnen zijn, zelfs in een patriarchale samenleving als de Romeinse.



CURRICULUM VITAE

Coen van Galen (born Haarlem, 1971) worked as a journalist, PR officer and project manager alongside his full-time study in History at Radboud University Nijmegen, which he started in 2004. In 2007 he completed his bachelor's degree in Economic and Social History *(cum laude)* with a thesis on the Ommerschans, a labour camp for beggars in the nineteenth century. In 2009 he completed a master's degree in Ancient History *(summa cum laude)* with a master's thesis on the position of women in the Roman census figure debate. This thesis received several awards. With the support of NWO's *PhDs in the Humanities* programme he started studying for this PhD in the department of History and the Institute of Gender Studies at Radboud University Nijmegen in 2010. He also worked as a lecturer in the department of History, teaching on a wide range of subjects. In 2010 he undertook research at the Royal Dutch Institute in Rome (KNIR), having received a Ted Meijer stipend. He also stayed for two terms at the University of Oxford, in 2012 and 2014, and for several shorter periods of time in Rome, Oxford and Reading. He is currently working as a lecturer at the department of History at Radboud University Nijmegen, writing articles and preparing new research.