
Roman Monogamy

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Mating in Rome was polygynous; marriage was monogamous. In the years 18 BC and AD 9 the first Roman emperor, Augustus, backed the *lex Julia* and the *lex Papia Pop-paea*, his "moral" legislation. It rewarded members of the senatorial aristocracy who married and had children; and it punished celibacy and childlessness, which were common. To many historians, that suggests Romans were reluctant to reproduce. To me, it suggests they kept the number of their legitimate children small to keep the number of their illegitimate children large. Marriage in Rome shares these features with marriage in other empires with highly polygynous mating: inheritances were raised by inbreeding; relatedness to heirs was raised by marrying virgins, praising and enforcing chastity in married women, and discouraging widow remarriage; heirs were limited—and inheritances concentrated—by monogamous marriage, patriliney, and primogeniture; and back-up heirs were got by divorce and remarriage, concubinage, and adoption. The "moral" legislation interfered with each of these. Among other things, it diverted inheritances by making widows remarry; it lowered relatedness to heirs by making adultery subject to public, rather than private, sanctions; and it dispersed estates by making younger sons and daughters take legitimate spouses and make legitimate heirs. Augustus' "moral" legislation, like canon law in Europe later on, was not, as it first appears, an act of reproductive altruism. It was, in fact, a form of reproductive competition.

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In 31 BC, Octavian put an end to the civil wars by beating Antony at Actium. In 27 BC, he took the title "Augustus" and became the first Roman emperor. In AD 9, he stood before the knights in the Forum, lined up the bachelors on one side and fathers on the other. The bachelors far outnumbered the fathers. So to the fathers he offered "love and praise," "prizes," "honors and offices," for the bachelors he had harsh words. He said,

mine has been an astonishing experience, for though I am always doing everything to promote an increase of population among you and am now

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about to rebuke you, I grieve to see that there are a great many of you
 We do not spare murderers, you know Yet, if one were to name over
 all the worst crimes, the others are as naught in comparison with this one
 you are now committing, whether you consider them crime for crime or
 even set all of them together over against this single crime of yours For
 you are committing murder in not begetting in the first place those who
 ought to be your descendants, you are committing sacrilege in putting an
 end to the names and honours of your ancestors, and you are guilty of
 impiety in that you are abolishing your families, overthrowing their
 rites and their temples Moreover, you are destroying the State by diso-
 obeying its laws, and you are betraying your country by rendering her barren
 and childless, nay more, you are laying her even with the dust by making
 her destitute of future inhabitants

(Dio, *History*, lvi 4–5) In 18 BC and AD 9, Augustus backed the *lex Julia de maritandis ordinibus*, the *lex Papia Poppaea*, and the *lex Julia de adulteris*, his “moral” legislation Among other things, it punished bachelors politically, socially, and economically, and it rewarded fathers

Were Romans really reluctant to reproduce? Some seem to think so The younger Pliny refers to the “tedium and hard work” of raising children, Suetonius says Hortalus, a young senator “whom Augustus’ impassioned pleas had encouraged to rear four children,” was impoverished by them (Pliny, *Letters*, 18, Suetonius, *Tiberius*, 47) Contraception, abortion, and abandonment were common (e.g., Hopkins 1965a, Wiedemann 1989, Boswell 1988) When rich men raised families at all, they tended to be very small (e.g., Carcopino 1940 90–91, Fontanille 1977, Hopkins 1983)

I think there’s plenty of evidence that Romans were not at all reluctant to raise lots of *illegitimate* children—especially by their slaves (Betzig, this volume) Augustus, however, did not reward fathers for rearing bastards, in fact, in the *lex Papia Poppaea* of AD 9, illegitimate children were explicitly kept off the birth register (e.g., *Digest* 27 1 2 2–3, 50 5 2 5, see Rawson 1989 24, 28) What the emperors wanted was that Romans rear more *heirs*

That’s what they were reluctant to do Objections to, demonstrations against, and circumventions of the “moral” laws are alluded to in Livy, Horace, Ovid, Pliny, Martial, Juvenal, Tacitus, Suetonius, and Cassius Dio, to name a few To get the laws passed at all, Augustus had to go around the senate to the tribal assembly (Mommsen 1955) Why? I think Roman fathers, like fathers across empires, *limited* the number of their heirs in order to *raise* the inheritances they left them I’m not the only one to think so As early as the second century BC, Polybius, a Greek historian in Rome, said people were reluctant to raise more than a few children “so as to leave them in affluence,” as late as the fourth century AD St. Augustine said “fertility is a bother to wealthy people,” meaning a limited *hereditas* would get split up (Polybius, *Histories*, xxxvi 17 7, Augustine, *En Psalm*, 137 8, in Shaw 1987a 43) But I’d go further I think people kept the number of their heirs *small* in order to keep the number of their bastards *large*, I think they *married* monogamously so they could *mate* polygynously

Marriage in Rome had a lot in common with marriage in other empires (Table 1). First, inheritances were increased by inbreeding—even incest—among the aristocracy, and by early marriage—even infant betrothal—among the elite. Second, relatedness to heirs was ensured by choosing young brides and preferring virgins, by keeping wives indoors or under guard, and by ideologies enthusiastic about chastity. Third, efforts were made to concentrate inheritance on a single heir, by patriliney—which excluded daughters, by primogeniture—which excluded younger sons, and by monogamy—which excluded children by every mate but one legitimate wife. Last, in case a wife failed to bear and rear an heir, back-up heirs were gotten by divorce and remarriage, by concubinage, and by adoption. Marriage legislation in Rome interfered with each of these. Among other things, the effect of the “moral” legislation was to lower inheritances, by discouraging inbreeding and infant betrothal, to lower paternity confidence, by making adultery a public rather than a private crime, to raise the number of heirs, and so diminish the size of estates, by deterring patriliney and primogeniture, and to lower the odds of getting a contingency heir by divorce.

Why did marriage legislation take this form in Rome, and not in other empires? I think the obvious answer is that Augustus was the first Roman emperor. In spite of all the rhetoric about restoring the republic, the point of the empire was to put an end to it. That meant an end to the more equal distribution of power that came to manifest itself as anarchy and civil war, it meant the start of the less equal distribution of power that came to manifest itself as imperial law. It meant the fall of many clans, it meant the rise of a few *Pax et Princeps*. As Sir Ronald Syme put it in his *Roman Revolution*, “in the beginning kings ruled at Rome, and in the end, as was fated, it came round to monarchy again. Monarchy brought concord. ‘*Cum domino pax ista venit*’ ” (1939: 9).

Peace came in many ways. There were purges of men in high office; rich rivals were killed; and their estates were confiscated (e.g., Suetonius, Tacitus, Cassius Dio). There was a rise in the number of offices: there were more and more consuls, praetors, senators, and eventually even citizens, and every honor was cheaper (e.g., Hopkins 1983). There was the sumptuary and related legislation that kept the rich from fighting as gladiators, sponsoring too many games, having extravagant weddings, eating flashy food, wearing showy clothes, being interred in big tombs, and so on (e.g., Garnsey 1970). And there was the “moral” legislation: the aristocracy was asked to proliferate. Augustus’ “moral” laws were anticipated by centuries of sanctions against celibacy, among other things, and they were followed by centuries of legislation that stopped with Constantine’s conversion of the Roman state to the Catholic church (e.g., Csillag 1976, Brunt 1971, Treggiari 1991a). As Theodore Mommsen put it in his *Römisches Strafrecht*, they were “one of the most intrusive and long-lasting creations in criminal law in all history” (Mommsen 1955: 691, translated in Cohen 1991: 124).

Did they hasten the aristocracy’s demise? This paper reviews Roman

Table 1 Monogamy in the First Six Civilizations and in Rome (after Betzig 1992a, 1986, and text)

| Empire | Place | Focus in Time | A Focal Emperor | Number of Women in Harem | How Raise Inheritance? | How Limit Heirs? | Bar Widow Remarriage? | How Get Back-Up Heirs? | Number of Wives |
|------------|---------------|---------------|-----------------|---------------------------------|--|---|--|---|--|
| Babylonian | Mesopotamia | 1700 BC | Hammurabi | 1000s of slaves?? | Principal wives bring large dowries | Eldest legitimate son preferred daughters are 'God's wives' | Mass suicides at royal tombs include wives?? | Divorce and remarriage, adoption, concubinage | One 'secondary' slave wives |
| Egyptian | Egypt | 1300 BC | Akhenaten | 317 plus droves | Pharaoh weds eldest sister whose dowry comprised the kingdom | Eldest legitimate daughter is heir weds brother other noble girls virgins in god Amun's harem | Concubinage | Divorce and remarriage concubinage | One "Great Wife," many concubines and consorts |
| Aztec | Mesoamerica | 1500 AD | Montezuma | 4000 concubines | Aristocratic inbreeding | Eldest legitimate son preferred younger sons in priesthood bureaucracy or military | Divorce and remarriage concubinage | Divorce and remarriage concubinage | One <i>cuauhtlanth</i> , "asked for woman many concubines and consorts |
| Inca | Peru | 1500 AD | Atahualpa | 1500 in each house of virgins | Inca weds eldest sister received at king's hand of noble blood | Eldest legitimate son preferred noble girls virgin wives of the Sun | Harem virgins become <i>mamacunas</i> regarded as mothers to successor | Divorce and remarriage concubinage | One queen concubine cousins, commoners who mothered 'bastards' |
| Indian | India | From 500 BC | Udayama | Up to 16 000 | Chief wife not of low caste | Eldest legitimate son preferred | <i>Sati</i> | Divorce and remarriage concubinage | One Maharami several ranks many consorts |
| Chinese | China | From 700 BC | Fei-ti | 10 000 | Equality of class required for legitimate marriage | Eldest legitimate son preferred | Widows didn't remarry <i>sati</i> | Divorce and remarriage, concubinage adoption | One queen, three consorts nine wives of second rank etc |
| Roman | Mediterranean | From 27 BC | Augustus | Women of rank 1000s of slaves?? | Inbreeding in imperial clans, early betrothal | Limit legitimate family size favor elder sons?? | <i>Utrina</i> preferred | Divorce & remarriage adoption concubinage | One |

marriage in law and practice in order to answer that question I look first at limits on claims to an estate—at primogeniture, patriliney, and monogamy. I look next at law and practice on adultery I look third at the raising of inheritance by marriage—at infant betrothal and incest Last, I look at law and practice on raising back-up heirs—at concubinage, adoption, and divorce

THE LEX JULIA DE MARITANDIS ORDINIBUS AND THE LEX PAPIA POPPAEA: AUGUSTUS ON PRIMOGENITURE AND PATRILINITY

Wherever there is a lot of wealth to be passed on, it tends to get passed to the eldest son. Primogeniture and patriliney—ceding estates to first-born sons—were the rule in the first six civilizations, in later states, and in medieval and early modern Europe (e.g., Betzig 1992a, Duby 1980, Stone 1977) All—or most—of a family's wealth was funneled into a single vessel Just one son—the eldest—would take a legitimate wife and sire legitimate heirs As a result the lineage—and its land—would last from generation to generation Why, then, was primogeniture absent in imperial Rome? I think the evidence suggests rich Romans did what they could to practice it, and Roman emperors, from Augustus on, did what they could to prevent it (see too, e.g., Crook 1967: 104, 132, Brunt 1971: 562–566, Champlin 1991: 183)

They were anticipated by centuries of precedents As early as the fifth century BC, the Twelve Tables mandated that intestate Romans leave their estates equally to all legitimate sons—and daughters Romans could disinherit sons by will *as long as* each was specifically named But failure to disinherit in the proper manner made wills void, as a result, rules of intestacy held, and every legitimate son and daughter would get an equal share (Crook 1986: 59–65) In AD 26, the *lex Junia Velleia* extended that rule to grandsons (p. 64) And entail was strictly illegal—no one could make unborn generations heirs (Crook 1967: 122) After the second century AD, trusts set up to get around laws like these were declared invalid (in Hopkins 1983: 76 n. 57) John Crook asks, “What is at the back of all this? Well, it looks as if sweeping away all the male heirs (perhaps all but one, to achieve primogeniture by the backdoor and defeat partibility and splitting-up) was not thought very nice” (1986: 65)

Cicero said “the censors are to prevent celibacy” (*De Legibus*, III, in Kiefer 1934: 34) Censors asked every citizen, “have you a wife for the purpose of breeding children?” By 403 BC, they may have made bachelors pay fines In 132 BC, Q. Metellus Macedonicus made a famous speech against Romans' reluctance to marry, he was a censor too And Julius Caesar, in his land reform of 59 BC, gave priority to fathers of three children or more (see Brunt 1971: 559; Rawson 1986: 9–11, Treggiari 1991a: 57–9) In Augustus' own words, “it was never permitted to any man, even in olden

times, to neglect marriage and the begetting of children, but from the very outset, when the government was first established, strict laws were made regarding these matters . . . ” (Dio, *History*, lvi 6 4) But he “increased the penalties,” the force and extent of Augustus’ laws, the laws that began with imperial rule, are generally thought to be revolutionary. As early as 29 BC, just two years after Actium, the new emperor put together laws opposed to bachelors and in favor of fathers, but vigorous opposition made him withdraw them (Frank 1975: 43). Then in 18 BC, he introduced the *lex Julia de maritandis ordinibus*, supplemented in AD 9 by the *lex Papia Poppaea*. Those laws stuck for centuries.

Few direct quotes from Augustus’ laws, or their embellishments by successors, survive. Fragments exist in Gaius’ *Institutes*, Justinian’s *Digest*, and a few other sources. Their gist is that celibates of childbearing age—men from 25 to 60, and women from 20 to 50—were punished, while parents were privileged. Unmarried people were forbidden to take inheritances and legacies except from cognates to the sixth degree, married people without children could take half, married people with three children might come into the full bequest. Fathers of three children were preferred for promotion to provincial governorships, in standing for office, a man could subtract a year for each child from the minimum age requirement, fathers were preferred to fill vacant public posts. Mothers of three children were exempt from having a *tutor*, mothers could wear the *stola instuta*, unmarried men were banned from public games, fathers took precedence in having the *fascēs* carried before them, and married proconsuls could pick their provinces, priority depending on the number of their children (see, e.g., Frank 1975, Csillag 1976, Treggiari 1991a). Emperors rewarded *delatores*, or spies, on evaders. And they granted exemptions. Pliny the Younger’s letters to the emperor Trajan are full of sycophantic attempts to get his infertile friends granted the privileges given fathers of three children (*Letters*, x).

By his own account, Augustus was trying to keep Rome’s elite from dying out. He was particularly incensed at “‘you, then, who are Romans from the beginning and claim as your ancestors the famous Marcii, the Fabii, the Quintii, the Valerii, and the Julii, do you desire that your families and names alike shall perish with you?’” (Dio, *History*, lvi 8 1). Some take him at his word. To Andrew Wallace-Hadrill, for instance, fathers of three children were, given Rome’s high mortality rates, most likely to produce the single surviving heir on whom they could most conveniently concentrate a patrimony (1981: 59–61). The problem, I think, is that demographics are vicissitudinous. Fathers who were lucky enough to rear two or more sons wanted the option of disinheriting all but one.

People have looked in vain for primogeniture in Rome. There isn’t any evidence of it. But there is abundant evidence of *celibacy*. What nobody seems to have seen is that they amount to the same thing. To keep the majority from taking legitimate wives and making legitimate heirs is to disinherit them, eventually. Celibate sons’ lines die out. Only married sons’

lines last. The patrimony gets passed on, intact, to the married minority. A man with just one married son, and no matter how many celibates, was a man who put primogeniture into practice.

Again, the option to disinherit younger sons is one aristocrats have employed across empires to hold on to their estates. This is what primogeniture is all about. And this is the option Augustus closed—or tried to close—off. Lots of evidence is consistent with this. If, for instance, the “moral” legislation was in the aristocracy’s interests, they should have acquiesced. But they did not. Suetonius refers to “open revolts” by the knights, they forced Augustus to amend, and even suspend, the *lex Julia de maritandis ordinibus*—although 27 years later the *lex Papia Poppaea* may have been even severer, backed by a man who had been emperor for a full 36 years (Suetonius, *Augustus*, 34, Csillag 1976: 32). Nor, if the “moral” legislation suited aristocratic families, should fathers have tried to prevent their younger sons from getting married. But they did. According to the jurist Marcianus, in a passage from the *Digest*, “in the thirty-fifth chapter of the Julian Law those who wrongfully prevent the children whom they have in their power from marrying . . . are compelled through the proconsuls and governors of provinces to give them in marriage” (*Digest* 23.2.19, translated in Treggiari 1991a: 65). Clauses in wills leaving legacies *sub conditione caelibatus*, on condition of celibacy, were cancelled (Csillag 1976: 88–92).

Lots more evidence suggests men did what they could to favor a single son. Elder sons may have fared better in succession to high office. Only a quarter of elite consuls of 249–280 BC had more than one consular or known praetorian son, while in the early empire just 8 of 160 ordinary consuls, and not one of 233 suffect consuls, had more than one consular son. Keith Hopkins attributes that, in part, to “the bias against a second son of the same father attaining high political office” (1983: 105, see also pp. 65–66). Every emperor with more than two sons left Rome to the first (Corbier 1991c: 185). A father’s first name went to his male first born, and even eulogies in Rome were delivered by eldest sons (Hopkins 1983: 201).

More direct evidence that younger sons were given less than equal shares is that their parents tried to find livelihoods for them. The younger Pliny complained to a friend that when second children were born, fathers were forced to look for rich in-laws (e.g., *Letters*, 1.14). Rich mates might be sought for all sons, unigeniture would make it more important for the latter-born.

The classic alternative—to let younger sons fend for themselves in war, administration (secular or religious), or commerce—was common. Most men in the equestrian order—the bachelor knights who filled Augustus’ Forum—made their own living at money-lending, land-leasing, or trade, “big merchants and plutocrats were mainly recruited from their ranks” (Csillag 1976: 61). Many of these men were younger sons. As Susan Treggiari says, “senators were distinguished from the next order, that of the *equites*, by their constitutional functions. But socially the two groups were closely linked.” Father and son, or brothers, commonly came from different orders.

(1991b 92) Interestingly, the fact that men in command of regiments were called “young So-and-so,” regardless of age (Veyne 1987 105), also suggests some were younger sons—before the fashion of medieval knights, celibate latter-born sons plagued with the label “junior” (e.g., Duby 1983) In spite of all the legislation, the number of bachelors in Rome started out large, and grew Celibacy in the aristocracy increased in the last centuries of the republic, celibates seem to have outnumbered married men by AD 9 (Csillag 1976 43, Dio, *History*, lvi 1 2) Finally, as the empire wore on, more and more younger sons ended up in the church Peter Brown writes, “quite well-to-do village and urban families dedicated their children to the service of God, as often as not to keep the family heritage together, unburdened by excessive sons” (1987 293) Though the provincial church was chronically short of recruits, childhood celibates were common among the rich in Rome (Brown 1988 357) Late in the third century, and especially after Constantine from the fourth century on, celibacy increased dramatically in the great Roman families (Etienne 1978, Drijvers 1987) These kinds of disinheritance later paralleled the “three estates” in medieval Europe (e.g., Duby 1980, Boone 1986), and they were standard practice in other aristocracies, including nobilities as remote as Aztec Mexico and dynastic Egypt (e.g., Padden 1961 21, Redford 1984 14)

The most direct evidence of primogeniture in practice should come from Roman wills Although no complete Roman will exists in its original form from before the fourth century AD, and though the complete contents of only a handful survive, Edward Champlin has collected fragments of evidence on inheritance from hundreds of literary, legal, and inscriptional sources (1991 29–40) The testators referred to in these fragments were an elite group most empire inhabitants were noncitizens, so will-less, by law, most testators were landowners, many were rich (pp 42, 54) But, according to Champlin, “there is no hint of customary primogeniture in Roman *testaments*” (p 111) Why not? I think the answer is, if younger sons were kept from getting married, and so from getting legitimate heirs, explicit disinheritance may have been unnecessary The shares of family estates left to celibate sons should have been bequeathed, in the end, to elder brothers and *their* heirs As Champlin says, “the relatives most frequently named as heirs or legatees are brothers” Nephews are also commonly named (p 127)

Last, Romans went so far as to keep their freedmen from marrying, and Roman emperors tried to make them marry According to Csillag, “it often occurred that the *patronus* on the occasion of the *manumissio* made the *libertus* or *liberta* take a solemn vow that they would not marry,” the *lex Julia de maritandis ordinibus* decreed that those vows were not binding (1976 89–90) Freed slaves had obligations to their patrons, among them *obsequium*, or respect, *operae*, or a fixed number of days of work, and rights of succession on death (e.g., Watson 1987 35) According to a passage in Justinian’s *Codex*, the *lex Julia de maritandis ordinibus* exempted freedmen with two children of *operae*, though freedwomen were exempt only if they’d

married with the consent of their patron (in Csillag 1976 169; Watson 1987 42) Even more important, according to Gaius' *Institutes*, patrons of freedmen and freedwomen with a child could claim only half their estates, patrons of freedmen and women with two children could claim just a third; and three children excluded a patron's claims altogether (Brunt 1971. 565, Csillag 1976 157–158) Why should Augustus have encouraged freed slaves to reproduce? Maybe in order to disperse their estates as well These laws targeted the rich—freeborn men and women with property and, specifically, freed slaves worth 100,000 sesterces or more (e.g., Brunt 1971 561, 565) Some freedmen were “proverbially” rich—Petronius' Trimalchio amassed “estates it'd take a kite to fly over” and was “worth millions of millions,” and a freed Metellus left 7,200 oxen, 257,000 other animals, 4,116 slaves, and 60 million sesterces (Petronius, *Satyricon*, 15 37, Pliny, *Natural History*, 33 134) Many freedmen were descended from, and many fathered, the Roman aristocracy (e.g., Betzig, this volume) Many freedmen might, in fact, have been younger sons

Several facts give the lie to the argument that Augustus was after an increase in the citizen population For one thing, at the same time that he offered incentives to rich freedmen to bear children, the *lex Fufia Caninia* of 2 BC and the *lex Aelia Sentia* of AD 4 set limits on how many slaves a man could free, and how (e.g., Westermann 1955 89) For another, the law let the poor—freeborn and freed—alone, some soldiers were even prohibited marriage (Brunt 1971 562, Dixon 1992 55) And for another, *fathers* were the targets of many rewards, efforts to raise birthrates elsewhere have focused on mothers (see Dixon 1988 73). Besides, there was hypocrisy involved M Papius Mutilus and Q Poppaeus Sabinus, the consuls who sponsored the *lex Papia Poppaea*, were bachelors, Augustus himself, of course, was the father of a single legitimate daughter

I should add that, like aristocratic younger sons in the Middle Ages, and in other ages, Roman knights and monks weren't always chaste (cf Betzig 1992a, 1993a) Anthony and the earliest ascetics were obsessed with sex, more comfortable monks, centuries later, might have lived those fantasies out According to Aline Rousselle, even under the secular empire, monks got women with children “This was such a common occurrence that pregnant girls who did not want to betray their real lovers falsely accused the anchorites” As an abbot from Alexandria put it, if you weren't thinking about it, you were doing it (Rousselle 1988 144, 150, cf Duby 1978, Brundage 1987, Betzig 1992c) Knights were at least as notorious The emperor Claudius told one, a “seducer of girls and married women,” to restrain his passions, Augustus, with the help of ten senators, “cross-examined every knight on his personal affairs” and penalized the most scandalous, and in his famous speech in the Forum, he had them up for “wantonness and licentiousness”—an exceedingly common accusation (Suetonius, *Claudius*, 16, *Augustus*, 39, Dio, *History*, lvi 7 1)

But again, none of this mattered as far as the law was concerned The

“moral” legislation was indifferent to bastards. Its concern was with heirs. Its ostensible point was not to maximize the production of illegitimate children; the point was to maximize claims to aristocratic estates.

So much for primogeniture. When Romans could pull it off, it effectively cut the field of heirs to one. Two other strategies narrowed the field considerably. One was patriliney. Patriliney, of course, halves the field of heirs. Aristocrats have left estates to sons, and excluded daughters, across polygynous cultures (Dickemann 1979a, Hartung 1982; Betzig 1991). Inheritance in Rome, from the time of the Twelve Tables, is supposed to have been bilateral—passed on to sons *and* daughters. Why was patriliney absent in the Roman empire? Again, I think the evidence suggests rich Romans did what they could to practice it, and Roman emperors did what they could to prevent it.

The Twelve Tables said the estates of Romans without wills should be split up equally among male and female children—though sons had to be disinherited specifically by name, and daughters could be lumped in a single clause (e.g., Crook 1986: 64). Even earlier, the *leges Regiae*, or “royal laws” supposedly codified by Rome’s last king, required that Roman fathers rear their first-born daughters—suggesting some were reluctant to do that (e.g., Hallett 1984: 21, 123). Under the empire, the “moral” laws continued to sabotage patriliney. According to the *Gnomon of the Idilogus*, a set of administrative rules started under Augustus, free Roman women worth 20,000 or more were taxed at one per cent per year as long as they remained unmarried, and inheritances left to women worth 50,000 sesterces or more were confiscated if those women lacked husbands and children (in Treggiari 1991a: 78). Fathers were restrained from barring the marriage of daughters, like sons, Marcianus’ passage in the *Digest* compelled fathers to let their children marry, irrespective of sex (*Digest* 23.2.19, translated in Treggiari 1991a: 65). Other passages in the *Digest* suggest that by the time of Augustus it was obligatory that fathers provide daughters with dowries (e.g., Csillag 1976: 45, 93–95).

But Romans seem to have done what they could to favor sons. Male bias anticipated inheritance. Boys were favored over girls from birth, or even earlier—boys were better “cooked” in the womb. Dionysius of Halicarnassus said parents hoped for the birth of a son more than for a daughter, Plutarch said mothers had “greater love for their sons”—though daddies preferred their daughters (Brown 1987: 243, Eyben 1991: 119). Though numbers are hard to come by, it is commonly agreed that little girls were more often killed and abandoned than little boys. In the epitaphs, or inscriptions, males consistently outnumber females on the order of two to one—that holds for three elite families, for homeborn slaves or *vernae*, for foster children or *alumni*, for children commemorated in a sample of 16,106 from Italy, and for adults and children commemorated in a sample of nearly 55,000 from the whole Roman empire (Treggiari 1975, Rawson 1986, Hopkins 1983: 225, Shaw 1991). Some of the bias might mean nothing but selective commem-

oration—men and boys might have been more inclined to leave their names in stone (Hopkins 1966). But literary sources suggest female infanticide accounted for some of the bias—though it's impossible to tell how much (e.g., Pomeroy 1975, Harris 1982, Oldenziel 1987). And literary sources suggest, too, that girls were abandoned more often; if John Boswell is right that as many as 40% of city-born babies were abandoned, the number could have been high (1988: 135). The fact that well-to-do Romans differentiated among sons by giving them their father's *nomen*, plus his hereditary *cognomen*, plus a first name or *praenomen*, while daughters of the classical aristocracy got nothing but a feminine form of the *nomen* and had to be differentiated by adjectives like *major* (elder) and *minor* (younger), suggests that few of the best families reared more than one girl (Hallett 1984: 77–80). Dio, in the context of Augustus' laws, complained that “there were far more males than females” among Roman nobles (*History*, liv 16.2).

Once parents had decided to bring them up, rich boys may have fared better than girls in several respects. Keith Bradley, for instance, found 97 inscriptions listing pedagogues and their charges, 32 were assigned girls and 62 boys, though the last is an underestimate since some inscriptions refer to an unspecified number of sons (1991a: 48, 66 n. 36). Only rich boys went to school past the age of twelve (e.g., Veyne 1987: 19). At twelve, girls could be legally married (e.g., Gardner 1986). Girls of the highest orders—in senators' or emperors' families—sometimes married even earlier (e.g., Treggiari 1991b), girls in society at large married late in their teens (Shaw 1987a). As Paul Veyne says, “in the end, it was the husband who completed the education of a young woman of good family” (1987: 20), or, as Ludwig Friedlander put it, “girls left the nursery for the married state” (1908, v 1: 236). Boys married later, around twenty-two or -three in the senatorial orders, in their late twenties in society at large (Saller 1987, Syme 1987). So even before they came into an inheritance or dowry, sons seem likely to have been given more of what parents had to offer—like cash and direct care—than daughters.

But the biggest difference was probably in inheritance. According to Champlin, the *laws* of succession “were always more favorable to daughters than were the wishes of testators” (1991: 119). In his sample, more than four out of five wills were written by men, he infers that they must have owned proportionately more property (pp. 46–47). “Sexual inequality in testation reflects inequality in inheritance” (p. 49). Where both daughters and sons were heirs to an estate, sons came into a larger share. Typically, a son might get half, and each of his sisters a quarter, or a son three-quarters and his sister the remainder, or a daughter a specific property and a son everything else (p. 114). Often a daughter might get no more than her dowry. Dowries could be substantial in Rome, but they were a small fraction of family fortunes (e.g., Saller 1984). Champlin says they may have been small *because* they made up a daughter's portion (1991: 117). “In Rome, a model

of a patrilineal society , it was the father who passed on name, status, and patrimony” (Corbier 1991a 53)

Like younger sons, daughters might also be disinherited through celibacy This was common in other empires as well (e g , Dickemann 1979a, Boone 1986, Betzig 1992a,c) With the exception of the six Vestal Virgins in Rome at any time, celibate women were “practically unexampled” in the richest classes late in the republic and early empire (Treggiani 1991a 83) That changed as Christianity spread By the third century, according to Peter Brown, girls were dedicated to the church in infancy—only to be “with-drawn by their families, in an equally high-handed fashion, when a better use could be found for them” (1988 261, see too Duby 1983) Ascetic women were expected to be of substantial means (Brown 1988 344) Though the first converts to Christianity were poor, by the third century women from the senatorial class were common converts According to Jan Drijvers, “senatorial women in Rome showed an increasing interest in a Christian life of virginity and asceticism from the middle of the fourth century on” (1987 242, see too McNamara 1983) Fathers and grandfathers of the first nuns were consuls and prefects descended from the old republican aristocracy (Drijvers 1987 246) Interesting to add, like celibate sons who lived as monks or knights, celibate women were not always chaste, that disgusted Cyprian of Carthage, St Jerome, and Tertullian at least (in McNamara 1983 116–117, Drijvers 1987 249, Veyne 1987 12, cf Power 1922)

Given the consistent son bias in inheritance, some Roman law seems superfluous From the time of the Twelve Tables, females had no right to leave an inheritance to sons or daughters, later the *lex Voconia* of 169 BC barred people in the richest property class, worth 100,000 sesterces at least, from naming women as heirs—though effects of these laws were softened by praetor’s edicts in favor of equitable settlements late in the first century BC, and by the *senatusconsulta Tertullianum* and *Orfitianum* easing the transmission of property between mothers and children in the second century AD Under the *lex Voconia* women could take legacies, but never more than was left to the principal heir Romans got around the law by giving a *fideicommissum*, or trust, to third party men who would in turn pass the estates on to women (Hallett 1984 90–96, Dixon 1985a, Saller 1991) According to John Crook, “agnation gave way to cognation” in time (1986 79)

Why? I think the answer might have something to do with unigeniture If the object was to concentrate inheritance on a single heir, the best option would be to rear several sons in order to ensure a survivor, and then to disinherit the remainder That made the first born son the heir apparent, and latter born sons “contingency heirs ” When that option was closed by celibacy laws, second best was to limit fertility, and so raise a single surviving son But that was risky A father who reared fewer sons was less likely to end up with a male survivor (e g , Hopkins 1983) The way around *that* problem was to leave the estate to a daughter who could, in turn, pass it on to her own son Here daughters, rather than younger sons, were made “con-

tingency heirs." Patriline was sacrificed, for a generation, to unigeniture. The estate was conserved, and in the end it went to a son.

Plenty of evidence is consistent with this. Will fragments suggest daughters were common heirs. "In brief, sons before daughters, but daughters before everyone else," and literary sources from the late republic make it clear that children were expected to succeed to their mothers (Champlin 1991: 120, Dixon 1988: 53). Alternatively, a daughter's son, or a sister's son, might be made heir by adoption (e.g., Corbier 1991a: 67, cf. Hallett 1984: 109), this was tantamount to the same thing. That is, whether the inheritance was left with the woman directly, or with her husband or son, it ended up in the same hands. Her son's. Estates left with women were supposed to end up with men. Some estates went to daughters' sons. Daughters' husbands were often made heirs by adoption, ties were strengthened by the birth of a son (e.g., Hallett 1984). When bequests skipped a generation, grandsons were greatly preferred to granddaughters (e.g., Champlin 1991: 114). Other estates ended up with nephews. Judith Hallett refers to "the frequency with which we encounter well-born *avunculi* without sons who adopted their sisters' male issue," the elder and younger Pliny are a classic example (1984: 163). As Champlin points out, nephews were often named heirs—next after brothers. "Nieces, however, are never mentioned" (1991: 127). The etymological overlap between the Latin terms *avus*, or grandfather, and *avunculus*, maternal uncle, may be consistent with this. Ties to both men would be strong if they were likely to grant an inheritance—through the intermediary of daughters or sisters who acted as "contingency heirs" (see Hallett 1984: 127f. on etymology).

Two other trends are consistent with the shift from agnation—a stress on the male line, to cognation—a stress on both parents' kin. One is the switch in emphasis, as Richard Saller points out, from *familia* to *domus* (1984b). *Familia*, as in the Twelve Tables, often refers to a patrimony, it concentrates on agnates. *Domus*, on the other hand, literally refers to the "house," it takes in cognates as well (Saller 1984b: 338, 342). As Garnsey and Saller say, the new emphasis on *domus* coincided with "an increased interest in daughters as perpetuators of the family" (1987: 141). Again, I think that switch to cognation was *against* the first wishes of rich Romans, who were forced to use daughters, rather than younger sons, as contingency heirs—because of the *lex Papia Poppaea* and other celibacy laws.

The other trend that I think coincides with the shift to cognation is the switch toward marriage *sine manu* (e.g., Balsdon 1962, Hopkins 1983, Treggiari 1991a). If daughters, rather than younger sons, were to be back-up heirs, it was essential that they be eligible to *inherit*. That they were not under *manus* marriage, preponderant in the republic. In *manus* marriage, a daughter was transferred to her husband's authority, gained the right to inherit along with his children, but lost rights to her father's patrimony. In *sine manu* marriage, a daughter forfeited her right to inherit from her husband, but she retained her rights as her father's heiress. "For reasons which

are obscure,” marriage changed form in the last two republican centuries (Hopkins 1983: 86, see too Treggiari 1991a: 34). If so, that change coincided with the censors’ acts against celibacy, with the shrinking of the legitimate Roman family, and with increasing reliance on women to hold family property. Again, I think Romans were forced by the celibacy laws to make a choice, and unigeniture won over patriliney. When disinheritance was no longer an option—when all of their children were forced to marry legitimately and to have legitimate heirs—the Roman aristocracy shrank the size of their families in order to concentrate their patrimonies. And when they were often left without sons as a result, daughters became heirs to their estates—for a generation, at least. Contingency heirship by daughters required that they inherit from their fathers. Marriage *sine manu* let them do that.

So much for patriliney. If unigeniture cut the field of heirs to one, after patriliney cut the field in half, one last strategy was the first to narrow the field—monogamy. A man might beget as many children as he liked, but only legitimate children borne to his legitimate wife could come into his estate (Goody 1976: 104–111). The most polygynous empires on earth, in terms of mating, have been the most monogamous, in terms of marriage (Betzig 1992a). In the Roman empire, as in other empires, mating made children, marriage made heirs. Romans were explicit about it. For instance, to Cicero a man with wives in two countries just confused the issue of his succession, to Soranus “women are usually married for the sake of children and succession, and not for mere enjoyment,” and to Augustine sons and slaves were distinguished by the critical factor of heirship (Cicero, *De Oratore*, 1: 183, Soranus, *Gynaecology*, 1: 34, Augustine, *City of God*, xix: 16, see Shaw 1987b: 11: 19–20, 36–37). The term *matrona* conferred the legal right to bear a man’s heirs (Hallett 1984: 216).

Rich Romans who married at all kept their families small. Peasants might have been more prolific, Tacitus propagandistically approved of Germans who thought it “wicked” to restrict the number of their children (*Germania*, 19). Again, the trend toward infertility in the Roman aristocracy seems to have corresponded with celibacy sanctions. The Roman aristocracy limited fertility from the last century BC or before (Hopkins 1983: 78). As Treggiari says, family inscriptions from around then seldom include more than a few children, legal texts rarely mention guardianship of more than one or two children, and literary sources suggest it was typical to leave one, two, or three grown children (1991a: 404–5).

This was of course, in Jack Goody’s words, just another “strategy of heirship” (Goody 1973). Fertility limitation didn’t necessarily reflect a lack of interest in reproduction. Plenty of rich Roman men had sex with women other than their wives, and may have gotten many children by them (Betzig, this volume). Fertility limitation—by wives—reflected an interest in wealth. People—from Polybius to Augustine—were quite explicit about it. Under the Severi, abortion, infanticide, and exposure began to be regarded as “tan-

tamount to murder,” and were eventually punished (Gardner 1986 155–159)

THE *LEX JULIA DE ADULTERIIS*: AUGUSTUS ON ADULTERY

Rich men in Rome, then, like rich men in other places and times, made an effort to funnel wealth onto a single heir. They also did what they could to make sure that heir was a relative. They wanted to be both *pater* and *genitor* to their sons and daughters. Though many were happy to father bastards, none were happy to have bastards fathered upon them. This theme cuts, of course, across cultures as well, it has been called a “Mediterranean” pattern (e.g., Cohen 1991 112), but it’s more ecumenical than that. Fathers surest of their paternity have given more to their children, fathers with the most inheritance to offer have been most circumspect about infidelity (e.g., Gaulin and Schlegel 1980, Dickemann 1981, Flinn 1981, Hartung 1985, Daly and Wilson 1988). Why, then, did Augustus find it necessary to impose public sanctions against adultery? I think he *raised* the risk of adultery by making it a public, rather than a private, crime (see too Cantarella 1991, Cohen 1991). He raised the risk that nonrelatives would inherit in another way, as well. He insisted that widows—who were, and always had been, eulogized for fidelity to dead husbands—remarry. Remarried widows were at risk, of course, of leaving their own and their husband’s wealth to children by second husbands.

In Romulus’ Rome, according to Dionysius of Halicarnassus, an unfaithful wife should be killed by her husband and his, or her, kin. Cato’s classic double standard statement is consistent, he’s supposed to have said, “if you took your wife in adultery, you might kill her with impunity without trial, but if you committed adultery or were adulterated, she would not dare to lay a finger on you, nor has she the right to do so” (Aulus Gellius, *Noctes Atticae*, x 23 5, translated in Treggiari 1991a 269). Other husbands, in Plautus and other writers, beat or castrate their wives’ lovers, though actual killings of wives or their lovers are conspicuously absent in Roman writing. It isn’t clear what a husband could, or could not, do to an adulterous wife before Rome became an empire. But as Treggiari says, “the regulations of the Augustan Law suggest a society in which it was accepted as natural that either a woman’s father or her husband might attempt to kill her in the heat of the moment,” and her lover too (p. 274).

Augustus’ adultery laws are supposed to have wiped out several precedents, but it is unclear what they were. As early as the fourth century BC aediles may have prosecuted men for seducing married women, censors might also have interfered (Treggiari 1991a 275–277). Still Augustus’ law—the *lex Julia de adulteris* of 18 BC—was, again, apparently “revolutionary.” It was the first surviving Roman legislation addressed to infidelity, and it

ran contrary to the republican norm that the state should stay out of its citizens' homes (see Cohen 1991: 110, Treggiari 1991a: 293). Fragments from at least five of the nine chapters of the *lex Julia de adulteris* survive.

According to the second chapter, a father had the right to kill his daughter's lover—provided they were caught in the act, in his own or in his son-in-law's house, and that he kill his daughter at the same time. According to the jurist Papinian, most of that law reiterated a right older than the Roman republic, "the novelty was in ordaining that both should be killed" (Treggiari 1991a: 283). As Jane Gardner points out, "the requirement to kill both was likely to be a deterrent to killing either," that "may have been Augustus' intention" (1986: 130).

A husband was much more constrained. In the first place, according to the *Digest*, while the father could kill an adulterer regardless of his status—he might even kill an ex-consul—a husband could just kill pimps, actors, gladiators, condemned men, family freedmen, and slaves. As Treggiari points out, "calculations about the status of the *adulterer* would be difficult to make in the heat of the moment" (1991a: 284). The killing was to be reported to the magistrate within three days, the status of the adulterer and the fact of adultery proved, in order for the husband to be cleared of homicide. Even more to the point, a husband could *not* legally kill his adulterous wife—though he might get off with hard labor or relegation, instead of death, if he did. A man who caught, but did not divorce, an adulterous wife could be charged with pandering if he let her lover go. And a man who had killed his wife's lover was compelled to divorce his wife at once. He could prosecute her for adultery within sixty days, but not without divorcing her first. According to Ulpian, the *Digest* jurist, "as long as marriage lasts . . . a woman cannot be accused of adultery" (*Digest*, 48.5.18.28, translated in Treggiari 1991a: 286). If a husband failed to sue his guilty wife, anybody else could for the next four months. As Csillag put it, the emperor "wanted to give great publicity to procedure against sexual offenders" (1976: 193). Penalties were large: adulterer and adulteress were relegated to different islands, half of his property, and a third of her property and half of her dowry, were confiscated. Both suffered *infamia* and lost their right to testify in court, convicted women could not marry freeborn men, and lost part of their right to inherit. Panderers were subject to the same penalties as adulterers. Again, many of these penalties targeted the rich, as Gardner points out, loss of property, inheritance, and the right to marry free citizens would most likely effect those in the upper class (1986: 128–131).

In accounting for himself, Augustus wrote that he was keeping Rome's morals clean (*Res Gestae*, viii.5). Some scholars are more or less sympathetic. To Hugh Last, for instance, this *lex Julia* was "an outstanding piece of legislation," the beginning of the end of hedonic individualism, by bringing the family under the state's protection (1934: 447). More recently, to Richard Frank it was "part of an ideology designed to affirm the traditions of the gentry and soldiers reared in the hinterland of Italy," from whom Augustus

armies were drawn (1975–50), to Leo Radista it represented a reactionary regime's response to its subjects' "yearning for regeneration and cleanliness" (1980–288), to Karl Galinsky it tried "to make the ruling classes of Rome and Italy into a morally superior and better people," the better to civilize, read imperialize, the rest of the Mediterranean world (1981–134). But again, Augustus' contemporaries were not always enthusiastic. Martial and Juvenal made fun of the laws when Domitian revived them—"all/The while he himself was flouting the law—and spiced/His crime with a dash of incest, in the proper tragic tradition" (*Satires*, II 29–33, cf. *Epigrams*, VI 2, 4, 7, 22, 45, 91). Others were evasive. Suetonius says well-born wives registered as prostitutes to commit adultery legally (*Tiberius*, 35), that loophole was closed by senatorial decree in AD 19 (Treggiari 1991a–297). There were plenty of prosecutions.

I think the evidence suggests Roman men were, and always had been, enormously concerned with fidelity in their wives, these laws were more likely to inhibit than help an injured husband. Mediterranean men—and men everywhere else, for that matter—had always had a penchant to get revenge on their own. That is borne out, David Cohen suggests, by the homicide cases against husbands reported in the *Digest*, and by literary tales of adulterers whipped, castrated, bugged, and killed at the hands of offended husbands (1991–118). As Cohen puts it, "if the primary purpose of the law was to strike fear into the hearts of prospective adulterers, why did it sharply limit the greatest dangers they could incur?" (1991–123). Eva Cantarella comes to the same conclusion. So did the *Digest* jurist, Ulpian: "It is granted to the father and not to the husband to kill the woman and any adulterer, because the heat and violent impulse of a husband readily making a judgment was to be restrained" (*Digest*, 48.5.23.4, translated in Cantarella (1991–233)). As Cantarella, citing generations of Italians, points out, husbands didn't dare put the matter to the courts "for fear of the perpetual infamy that would be their lot" (p. 239). Men in the Roman empire, as in other empires, wanted very much to leave their estates to first-born sons related by blood (cf. Betzig 1992a). Augustus and other emperors made it more difficult to do that.

In Roman women, as in so many other women, no virtue was greater than chastity (cf., e.g., Broude and Greene 1976, Dickemann 1981, Buss 1992). Virgin brides were preferred (e.g., Treggiari 1991a–105–107). Martial, typically misogynistic, said he'd searched Rome for a girl who'd say "no" and found none, but then conceded there were thousands of virgins in town (*Epigrams*, IV 71). Soranus, the doctor, called a long section of his *Gynecology* "Whether permanent virginity is healthful," and another "Up to what time females should be kept virgins," he answered "yes," and around fourteen when menstruation began—and women were usually married (*Gynecology*, I 7–8). Plutarch and others were explicit about that. Romans "gave their maidens in marriage when they were twelve years old, or even younger. In this way more than any other, it was thought, both their bodies and their

dispositions would be pure and undefiled when their husbands took control" (*Moralia*, 138E, translated in Rouselle 1988: 74, see too Hopkins 1965b) Fortuna Virginalis, or Virgo, was the patroness of women coming of age (Pomeroy 1975: 206)

After they were married, Roman men kept a watch on their wives. Roman matrons are occasionally thought to have enjoyed quite a lot of freedom. Cornelius Nepos was shocked that "no Roman thinks it an embarrassment to take his wife to a dinner party," wives at home in Greece spent all their time in "The Women's Quarter, which is never entered by a man unless he is a very close relation" (*Vitae*, vi, translated in Balsdon 1962: 201, cf. Wallace-Hadrill 1988). But Roman women were probably "not so free" in many ways (cf. Gratwick 1984). Like matrons in other empires, they were often well covered, well attended, and even confined (e.g., Dickemann 1981, Betzig 1986, 1992a,c).

Brides spent the night before their nuptials "imprisoned in a crimson net," they were married in a long tunic, an orange veil, and a metal collar (Carcopino 1940: 81). A Roman matron from then on was often robed from head to toe, her *palla* might cover her head, her full-length *stola* was "a sign of her exalted rank" (Balsdon 1962: 252, plate 2, Carcopino 1940: 169). Exalted matrons abroad would be aloft. Suetonius refers to the "closed sedan-chair of the sort used by women," and Juvenal describes wives and mistresses "in a grotto-like sedan, blinds drawn" (Suetonius, *Otho*, 6, Juvenal, *Satires*, iv 19–20). They were surrounded by attendants, including the *custos* disliked by erotic poets, Veyne says "this mobile prison which followed a woman everywhere, was the Roman equivalent of the gynaeceum" (1987: 73, cf. Patlagean 1987: 573). In the republic, the praetorian edict *de adtemptata pudicitia*—"concerning attempts upon chastity"—made possible an action for injury against men who addressed virgins or matrons, took away their escorts, or followed them about (in Gardner 1986: 117). Should the assault end in rape, in Rome as elsewhere, the insult extended to the woman's husband, her father, and even her husband's father (in Treggiari 1991a: 309, cf. Thornhill and Thornhill 1990a,b). Some women seldom went out at all. Plautianus, Severus' notorious prefect, was the "most sensual of men," but refused to let his wife see or be seen by anyone (Dio, *History*, lxxvi 15–7).

Even when women stayed in, they were never alone. As Veyne goes on, "the omnipresence of slaves was tantamount to constant surveillance," well-to-do women were attended every waking, and even sleeping, minute (1987: 73). Inscriptions suggest most attendants were other women, though Livia's house included at least half a dozen *cubicularii*, men meant to guard bedchambers and refuse admittance to others (Treggiari 1975: 52, 1976, 1987: 12). Some might have been castrates. That operation is supposed to have been big business early in the empire, and to have swelled enormously by its end (e.g., Boswell 1988: 113, Hopkins 1978). There are plenty of literary

references to eunuchs. Juvenal, Martial, and Ovid mention them (e.g., *Satires*, vi 365–79; *Epigrams*, iii 58, *Amores*, ii 2–3), Dio says Severus' prefect had a hundred free Romans castrated to wait on his daughter (*History*, lxxvi 14 4–5), later in the empire, "hoardes" of eunuchs cleared noble women's ways (Hopkins 1978: 194).

Imperial legislation against castration might, then, have cut back—or tried to cut back—on the supply of guards. At the end of the first century, Domitian "strictly prohibited" castration, taking half the property of masters who castrated their slaves, and controlling the price of what castrates remained (Suetonius, *Domitian*, 7, Dio, *History*, lxxvii 2–3). Nerva, and later Hadrian in the second century, had volunteer castrates, masters or slaves who volunteered others for castration, and the doctors who castrated them killed, and their property confiscated by the treasury (Dio, *History*, lxxviii 2–4, *Digest*, 48 8 4 2, see Watson 1987: 123). And Aurelian, in the third century, limited the possession of eunuchs to men of senatorial rank (*Scriptores Historiae Augustae, Deified Aurelian*, xlix 8). If eunuchs in Rome, as in other empires, were meant to guard women against infidelity—on their own initiative or others'—then Roman emperors were, once again, acting to lower the odds that a man would sire his own heirs.

Chastity was *the* feminine ideal. Ovid was ironic: "A wife must fear her lord, a prisoner's life/Is lawful, right, and proper for a wife" (*Ars Amatoria*, iii 613–614), Jerome was eulogistic: "*Pudicitia* must be kept, for when it is lost all virtue collapses. This is the chief virtue in women. This recommends a poor woman, extols a rich one, redeems an ugly one, adorns a lovely one." (*Adversus Iovinianum*, i 49, translated in Treggiari 1991a: 219). A good wife was *morigera*, subservient to her husband, a good widow was *univira*, committed to a dead one. In Roman writing, wives are praised for *solus*, or fidelity to one husband, *obsequentem*, or obedience to that husband, and *sempiternum*, or eternal commitment to one marriage bond (Williams 1958). On Roman coins, women are remembered for *pietas* (devotion or piety), *fides* (fidelity), and *pudicitia* (chastity) (e.g., Pomeroy 1975: 184–185). And in the inscriptions, wives are eulogized for "old-fashioned" qualities, "the resemblance of children to their father" is stressed (Lattimore 1942: 277, 300). Augustus himself, chastising the knights in the Forum, asked "For is there anything better than a wife who is chaste?" (Dio, *History*, lvi 3–3).

A few well-known women were not. Augustus exiled Julia, his only legitimate offspring, for infidelity to the island of Pandateria and then to Rhegium (Tacitus, *Annals*, i 53, iii 24), she'd had fun drinking in the Forum with lots of lovers (Dio, *History*, lv 10 12–5), eventually she died "from general debility and starvation" after Tiberius, the ex-husband she'd always looked down on, had her put under lock and key (Dio, *History*, lvii 18 1). Claudius' wife, Messalina, was more vicious, one day, when the emperor was away, she and her lover Silius, a consul designate, took vows made

sacrifices broke bread and were married, Claudius, “soothed and a little fuddled,” might actually have taken her back, but Narcissus his freedman made sure of her death (Tacitus, *Annals*, xi 26–38). And Faustina, Marcus Antoninus’ wife, had a passion for gladiators (her son Commodus, Marcus’ successor, was “born a gladiator”), she did in one lover, her son-in-law Verus, with a dish of oysters after he was stupid enough to confess to his wife, and once, when Marcus was sick, she proposed to a Syrian called Cassius “so that, if anything should happen to Antoninus, he might obtain both her and the imperial power” (SHA, *Marcus Antoninus*, xix, xxix, *Verus*, x, Dio, *History*, lxxi 22). But these notorious women had another thing in common: their dowry was, or approximated, the Roman empire. Marcus was most explicit about it. Reminded of various indiscretions, he responded, “If we send our wife away, we must also return her dowry.” And what was her dowry? the Empire, which he had inherited from his father-in-law” (SHA, *Marcus Antoninus*, xix 7–9). Everybody played by these rules. Juvenal’s sixth satire, an apotheosis of misogyny, says “she brought him three million. In exchange he calls her chaste” (*Satires*, vi 137). Martial had a horror of rich women, “Why have I no desire to marry riches?/Because, my friend, I want to wear the breeches” (*Epigrams*, viii 12). Theophrastus might have put it best: “It is difficult to support a poor wife, and torture to put up with a rich one” (in Jerome, *Adversus Iovinianum*, i 47, translated in Treggiari 1991a: 192). To the extent that a wife’s riches raise his own, and his heir’s, reproductive prospects, a husband might let her be promiscuous (cf. Betzig 1992b). Seneca said “chastity merely implies ugliness” (*On Benefits*, iii 16). “Chastity implies poverty”—compared to a mate’s—might be more accurate.

Finally, how does all this relate to widow remarriage? The *univira*, the wife forever devoted to her husband, living or dead, was adored in Rome. There are classic examples. Condemned men often committed suicide, sometimes their wives joined them. The younger Pliny tells the story of the famous Arria who took her life along with her husband, “with the immortal, almost divine words: ‘It does not hurt, Paetus.’” (*Letters*, iii 16). Tacitus says Arria’s daughter, Thrasea’s wife, wanted to follow her mother’s example, but stayed alive for their own daughter’s sake (*Annals*, xvi 33). Seneca’s wife cut her own veins with his but revived (Tacitus, *Annals*, xv 63). The obvious parallel in India is *sati*, where widows threw themselves on their husbands’ pyres, there are equivalents in other empires. A less obvious parallel is getting put in a cloister (e.g., Dickemann 1979a; Betzig 1992a). Some Christian Romans were “Orders of widows” were common from the first century, the first “convent” in Rome was in a rich widow’s house, and by the Middle Ages cloistered widows—like cloistered virgins—tended to come from the upper class (e.g., Brown 1988: 147–148, Drijvers 1987: 24–28, Rouselle 1988: 133). Powerful men have tried to keep ex-wives from finding second husbands.

What was the fear here? That an inheritance would end up in step-

children's hands Champlin finds that wives were left with larger legacies than husbands (1991: 124) That makes sense if fathers were more likely to start second families A divorced or widowed father of the Roman upper class tended to choose a girl "at the height of her physical attractiveness" as a second wife, some of these men defrauded the *fideicommissum* established on behalf of their children (Treggiari 1991a: 401, Saller 1991: 40, cf. Buss 1992, Judge and Hrdy, this volume) But even women seldom got most of an estate from a dead spouse As Champlin writes, "in brief, and generally speaking, wives were fondly remembered and their welfare carefully considered, but they were firmly separated from the bulk of the patrimony" (1991: 124) According to *Digest* jurists, it was okay to leave property to a wife *on condition* that she not remarry (*Digest*, 35.1.62.2, in Saller 1991: 42) Fathers-in-law sometimes made sure they did not For instance Apuleius' wife Pudentilla, was "the victim of virtual blackmail" by her husband's father, who swore he'd disinherit her sons if she wed anybody but her husband's brother Tiberius kept both Agrippina, his brother's son's widow, and Livilla, his widowed daughter-in-law, from taking second husbands for the same reason (Corbier 1991a: 56) The elaborate procedures under which new widows gave birth suggest a related concern Among other things, a number of witnesses had to attend the birth, others had to be on guard outside to stop and search anyone entering, all entrances but one had to be boarded up, and at least three lights had to be on "for darkness is better adapted for the substitution of a child" (in Gardner 1986: 52)

But Augustus made widow remarriage mandatory And he limited his prescription to women of childbearing age In fact, postmenopausal women were not *allowed* to remarry, since legal marriage took place "for the purpose of producing children" (Rawson 1986: 10) Stipulations in wills making succession contingent on the celibacy of an ex-spouse had to be expunged (Csillag 1976: 87) Under the *lex Julia*, widows were punished unless remarried within a year, the *lex Papia Poppaea* extended the period to two (e.g., Treggiari 1991a: 73) Widows who failed to remarry might lose their dowries to the treasury (e.g., Csillag 1976: 94) Once again, "there was probably never an attempt to enforce this in the lower classes" (Rawson 1986: 31) And, once again, the rich resisted (e.g., Saller 1991: 46)

AUGUSTUS ON INCEST AND AGE AT MARRIAGE

So Romans tried to make sure their heirs were their relatives, and they tried to choose a single—legitimate, male, first-born—heir The third thing they did was try to raise his inheritance, and they did that, in part, by contracting a proper marriage A proper wife should be, first, as well-connected as they were, that often meant she'd be a relative herself Inbreeding, or even "incest," has kept assets within aristocratic families in many societies (e.g., van den Berghe and Mesher 1980, Thornhill 1991, Betzig 1992a) It may have

in Rome. Second, a good wife should be rich, and she should bring a good dowry. Competition for well-to-do husbands, and wives, has also been common across empires (e.g., Dickemann 1979a,b, Gaulin and Boster 1990, Betzig 1992a). It seems, too, to have been common in Rome. Rich Romans often interbred with rich, well-endowed relatives, and in some ways Augustus and other emperors interfered.

Matches could be made in infancy: a good man, and a good woman, were hard to find. Female infanticide, exposure, and disinheritance meant there were fewer available brides than grooms. And elite girls were, by definition, scarce. So were elite men. So rich Romans sometimes betrothed their babies. As Treggiari says, "there are instances where great heiresses or important dynastic *partis* were betrothed extremely young" (1984: 422). Most examples come from imperial families. Augustus' own daughter Julia, the one he eventually exiled, was betrothed to Marc Antony's eldest son at the age of two (the boy was killed with his father's defeat as the triumvirate became a monarchy). Augustus' stepson Tiberius, who succeeded him, was betrothed to Marcus Agrippa's one-year-old daughter (that tie was dissolved so that Tiberius could marry Augustus' daughter and Agrippa's widow, Julia) (see Treggiari 1984: 422, Corbier 1991a: 62). But the law seems to have said again, *do as I say, not as I do*. According to Suetonius, when Augustus found "that bachelors were getting betrothed to little girls, which meant postponing the responsibilities of fatherhood, . . . he dealt with these evasions of the law by shortening the permissible period between betrothal and marriage" (*Augustus*, 34, see too Corbett 1930: 1–23, Rawson 1986: 21).

In order to get a rich spouse, Romans tried to choose young, and they tried to choose kin. There has been some debate about how often close relatives married in Rome. After Jack Goody (1983) assumed inbreeding was common, Saller and Shaw (1984) looked systematically at 33 couples in the senatorial aristocracy and failed to find a single case of patrilineal parallel cousin marriage, unions of brothers' children were uncommon in their sample of inscriptions as well. But there are many cases of "incest" in the imperial family. Augustus gave Julia, his one legitimate child, three husbands: the first was his sister's son, Marcellus, the last was his stepson, Tiberius, only her second marriage, to Marcus Agrippa, bore fruit (Suetonius, *Augustus*, 63–64). Augustus gave his second stepson—who was arguably his own illegitimate son—to his sister's daughter, Antonia (Suetonius, *Claudius*: 1). The issue of that marriage included the emperor Claudius, Julia Livilla the elder, and Germanicus. Germanicus married Julia's daughter, Augustus' granddaughter, Agrippina the elder, from that union came nine children, the emperor Caligula among them (Suetonius, *Augustus*, 64, *Tiberius*, 54). Julia Livilla was married to the son of her father's brother, that is to Tiberius' son, Drusus. Claudius was married four times. Messalina, Claudius' third wife, was his second cousin, Agrippina the younger, his fourth wife, was his niece (Suetonius, *Claudius*, 26). I could go on, this sort of inbreeding didn't end with the Julio-Claudian line. There may be many

instances of incest in the senatorial aristocracy, too, when links through women as well as men are considered, and in-law as well as blood ties are taken into account (e.g., Dixon 1985b, Corbier 1991b, Treggiari 1991a: 109–116). Brother-sister marriage was common in Roman Egypt, for reasons unknown (Hopkins 1980).

Compared to canon laws of the Middle Ages, Roman law on incest was lenient (e.g., Goody 1983, Brundage 1987). Unions of kin between generations were not allowed—with the exception that, after Claudius wed his niece, the senate passed a decree permitting Romans to marry their brothers' daughters, a decree reversed half a century later under Nerva (Treggiari 1991a: 37–38, Dio, *History*, lxi 31.8, lxxviii 2.4). Until the third century BC, collaterals up to and including second cousins could not marry. That rule “derived from custom, not law,” and was first broken by a patrician. By the first century BC, marriage between first cousins was allowed (Gardner 1986: 35). In other respects, though, incest prohibitions were extended. At the turn of the first century, in-laws were included, eventually, fictive kin were included as well (e.g., Corbier 1991b: 134). As Pál Csillag says, “in the course of time, by the inclusion of the cognates, the notion of incest became even more comprehensive . . . [and] in the course of time the notion of incest was expanded so as to include persons beyond the cognates,” i.e., adoptive kin (1976: 184). This makes it clear that the issue was not mating but marriage, the problem was not one of concentrating genes, but of concentrating wealth. This is made even clearer by the penalty imposed: the issue of illegal marriages were illegitimate, i.e., ineligible to inherit. In addition, incestuous husbands or wives might be deported, relegated, or thrown from the Tarpeian rock (e.g., Csillag 1976: 199). It is surprising that the prohibitions weren't extended even further.

AUGUSTUS ON CONCUBINAGE, ADOPTION, AND DIVORCE

One set of marriage—or “heirship”—strategies remains. In case his rich, related wife failed to raise a single, related heir, a Roman husband tried the usual back-up tactics. He might divorce his first, unfaithful or infertile spouse, and then marry another, adopt an heir—often rich, and usually a relative, or give his estates to a child by a back-up wife, a woman who lived with him faithfully but brought him no dowry, a concubine. All of these tactics were in practice in other empires (e.g., Goody 1973, 1976, 1983, Betzig 1989, 1992a), they seem to have been practiced in the Roman empire as well (e.g., Corbier 1991a,b). Both concubinage and adoption are supposed to have increased with Augustus' legislation (e.g., Tacitus, *Annals*, xv 20). But there is little evidence, in this case, that Roman emperors interfered.

Divorce was free and easy in imperial Rome. It may not always have been. The “first divorce” on record is dated at 230 BC, when Spurius Car-

vilius Ruga got rid of his otherwise faultless wife for failing to rear an heir (e.g., Dixon 1985b: 357, see too Corbett 1930). Roman marriage required no more than mutual consent to live as husband and wife, Roman divorce had never required anything more than unilateral intent, or even a third party's intent, in the case of the *paterfamilias* of either spouse (e.g., Rawson 1986: 32). Imperial Roman law takes remarriage for granted (e.g., Humbert 1972). And anecdotes about divorce are frequent in imperial literature and biography, Seneca's complaint that women counted the years by husbands rather than consuls is notable (*On Benefits*, III 16). More systematic counts seem to bear such impressions out. Treggiari finds 32 attested divorces between 100 and 38 BC in the republican aristocracy, her guess is that the odds of divorce in the senatorial and equestrian class were about one in six (1991c: 43–46). And Keith Bradley studied the marital histories of consuls from 80–50 BC, and estimated a remarriage rate of about 39 percent (1991a,b). Syme, in his lifelong study of the Augustan aristocracy, found the more he knew about a man, the more wives he was likely to uncover (1986). According to Suetonius, Augustus made some effort to close the divorce and remarriage loophole. When he found “that married men were frequently changing their wives,” he responded “by limiting the number of lawful divorces” (*Augustus*, 34).

Another way to get heirs in the absence of children was by adoption. Peter Garnsey and Richard Saller suggest that Romans might adopt “to avoid the possibility of being burdened with a reprobate natural son” (1987: 144). That could be, but Corbier and others are probably right that it had more to do with succession (1991a: 63). Though it was legal in principle to adopt when a legitimate heir was already available, “adoption seemed pointless, indeed even suspicious, when the main obligation of the head of the family, the transmission of name and possessions, was already assured” (Corbier 1991a: 66, cf. Crook 1967: 112). Romans adopted men, in the absence of legitimate sons. And they adopted kin. The link was often through daughters: daughters' husbands, and daughters' sons, were most often adopted. Paternal grandsons might be as well, especially when the link between them—the son—had died. As Corbier says, “adoption by the grandfather (*avus*) was one of the most natural of all practices” (1991a: 68, 70). Less often, brothers' and sisters' children might be made heirs by adoption (Corbier 1991a: 70, cf. Champlin 1991: 126–129). If Hopkins' estimate, based on Goody's, is right, then around 20% of well-to-do Romans might have ended up without a grown son, and another 20% might have had only grown daughters, there should have been plenty of room for adoption as an heirship strategy (Hopkins 1983: 100, Goody 1973). Emperors seem to have had little to say on the subject.

They said more about a third contingency strategy, concubinage. As Saller points out, Roman concubines were used to *limit* the number of a man's heirs (1987b: 73–75). Quite so—it was an alternative to bigamy. One legitimate wife made heirs, concubines made stand-ins. That's suggested

by the fact that, as Crook points out, some tombs were put up for both a concubine and a wife, sometimes it's even "pretty certain that the women exercised their respective functions concurrently" (1967: 102, but see Rawson 1974: 288, Treggiari 1981, Watson 1987: 13). It's suggested in the *Digest* passage that says a wife could make her husband contract *not* to keep a concubine during their marriage (*Digest*, 45.1.121.1, see Treggiari 1991a: 107). And it's suggested in Juvenal, who says "Wives loathe a concubine's offspring/ to murder your stepson/Is an old-established tradition." He goes on "Trust none of the dishes at dinner /Those pies are steaming-black with the poison Mummy put there" (*Satires*, vi.626–632). Whether concubines and wives were kept serially or concurrently, the concubine's children tended to differ from wives' children in one overriding respect: their mother lacked a dowry (e.g., Gardner 1986: 56, cf. Daube 1969: 102–115). But they were willing and able to fill in as heirs. By the process of *adrogatio*, legitimization, a man could bring under his *potestas* children of free status—"his children, for example, by a concubine," though more often a man chose an heir of his own class (Corbier 1991a: 64). Even natural children by slave women might be made heirs by testamentary adoption (e.g., Treggiari 1960, Wiedemann 1981, Champlin 1991). The *lex Julia* of 18 BC made it impossible for men of the senatorial class to take their freedwomen as wives (e.g., Brunt 1971: 145). That prohibition *might* have stood, to some extent, in the way of the legitimization of their children as heirs. But people obviously got around it.

DISCUSSION

I think the point of Augustus' moral legislation was to sabotage the aristocracy. He made it harder for a rich man to get a rich spouse, to keep her faithful, to leave his estate to a single son and, to a lesser extent, to choose a back-up heir. Later Roman emperors stuck with those enactments, with modifications and additions, for more than three hundred years. What was the result? In Csillag's opinion, "the historical aristocracy began to wither away. The huge latifundia disintegrated into parcels in the course of the proscriptions" (1976: 67, cf. Hopkins 1983, Garnsey and Saller 1987: 145–155). The alphas—Roman emperors, strengthened their power by weakening the betas—the Roman aristocracy. As Syme and others point out, that may have been done in many ways. One of the most "intrusive and long-lasting" must have been the "moral" legislation.

Significantly, it all changed with Constantine's conversion. In AD 320, the first Christian emperor repealed the Augustan legislation on *caelibatus* and *orbitas*, on celibacy and childlessness, both holy conditions under the new state religion (e.g., Csillag 1976: 204–207). He also restored the right to prosecute wives for adultery to the immediate family, making the husband's responsibility primary, calling husbands "the avenger of the marriage

bed'' in the Theodosian Code (e.g., Cohen 1991: 125, see too Cantarella 1991: 234). And he abolished the law requiring that widows remarry, in fact, by the end of the fourth century widows had by law to yield rights to their first husbands' patrimonies if they remarried, to church fathers, remarriage banned women from the kingdom of heaven (e.g., Saller 1991: 46, Dixon 1988: 50, Csillag 1976: 205).

At the same time, new penalties were introduced. Most had to do with contingency heirs. Divorce by mutual consent was abolished, in the sixth century, by Justinian (e.g., Gardner 1986: 89), in 326, according to the *Codex Justinianus*, Constantine ruled against keeping a wife and concubine at the same time (e.g., Treggiari 1981: 77). Laws passed by Christian emperors, and eventually by the church itself, prohibited divorce and remarriage, concubinage, and even adoption, and they vastly extended the "incest" prohibition (e.g., Goody 1983).

I think a lot about that shift makes sense. Imperial Roman legislation pitted emperors against the aristocracy. The point was to disperse their wealth and influence by lowering their inheritance. That they did, most of all, by making them rear too many heirs. They did it, too, by interfering with marriage strategies—with infant betrothal and "incest." And they did it by interfering with a man's right to punish his wife for adultery—raising the risk that his estate might end up outside the family entirely. Incidentally, they made a lot of money, as penalties flowed into the treasury (e.g., Wallace-Hadrill 1981).

Christian legislation, on the other hand, pitted church men against laymen. The point here, as Jack Goody says, was to keep them from rearing heirs at all (Goody 1983). So the focus switched to interference with back-up strategies: people were free to limit heirs by primogeniture and patriliney, but they were prevented from getting substitute heirs by adoption, concubinage, or divorce. *Why* did Christianity condemn divorce and sanction celibacy? *Because*, I think, men of the church were noble men's younger sons. Conflict *between* families—emperors against the aristocracy, was superseded by conflict *within* the family—younger sons in the church against elder brothers who'd inherited their fathers' estates. Men in the church who kept their elder brothers from rearing an heir might come into their estates by default—either indirectly, by their bequests to the church, or directly, by becoming back-up heirs themselves (Betzig 1992c).

What was the point of the conflict, in either case? Obviously, inherited wealth. But why did that matter to anybody? Because it was, as it had always been, a means to reproduction. That may seem a superfluous conclusion. But I think it makes several pieces fall in place. For one thing, it fits with the fact that men in Rome, and in the Middle Ages, as in other ages, seem to have had sexual access to as many women as they could afford, and arguably fathered bastards by them (see Betzig, this volume, on Rome, Betzig 1992c on the Middle Ages, reviews in Betzig 1988, Betzig and Weber 1992 on other ages). For other things, it explains why men rather than women

should be preferred heirs, and why men should be so extraordinarily concerned with women's chastity

In this light, the whole point of *monogamy* must have been *polygyny*. Even more ironically, the point of *celibacy* must have been *polygyny*, too. Marriage rules exist to hold on to wealth, and men hold on to wealth to get access to women. Across empires, the choice of a single, legitimate wife by the eldest, legitimate son has concentrated patrimonies, the consignment of younger sons, and many daughters, to celibacy has been the consequence of that strategy. Few men in any aristocracy seem to have practiced chastity. But most were probably celibate. Most of them probably mated polygynously. But just one man in each family married, and he married monogamously (e.g., Betzig 1992a).

So it makes sense to choose one heir, but why must he be a son? The answer, as Robert Trivers and Dan Willard first suggested, may be that sons can be much more polygamous than daughters (1973, reviews in Trivers 1985, Hrdy 1987). A rich son might make hundreds of children, a rich daughter tens, so we expect, and find, polygyny to be common (e.g., Murdock 1972, Low 1988, White 1988 on evidence, Bateman 1948, Trivers 1972, Clutton-Brock and Vincent 1991 on theory). If Darwin (1859, 1871) was right, and the evolved end of existence is reproduction, then rich parents should give their inheritance to sons (e.g., Alexander 1974, Charnov 1982 for more theory). Daughters should inherit in sons' absence, so should sisters' and daughters' sons. It fits that nephews and grandsons were commonly left an inheritance, and that granddaughters and nieces were not. It fits, too, that more distant kin—on the order of first cousins and beyond—were generally left out (see Champlin 1991). As William Hamilton made explicit, if the evolved end of existence is the reproduction of *genes*, the means might include both direct reproduction and nepotism (theory in Hamilton 1964, reviews in Betzig 1988, Betzig and Lombardo 1992).

It may be more obvious why wives must be chaste. It was to Juvenal, who warned Postumus, "marry a wife, and she'll make some flute-player/Or guitarist a father, not you" (*Satires*, vi 76–77). If the name of the game is the proliferation of one's *own* genes, then fidelity in a female matters where fathers care for their young (theory in Williams 1966 on levels of selection, Trivers 1972, Alexander and Borgia 1979 on confidence of paternity). Again, this pattern extends beyond the Mediterranean, fathers with an inheritance to offer are consistently concerned that their heirs share not just their names, but their genes (e.g., Gaulin and Schlegel 1980, Dickemann 1981, Flinn 1981, Hartung 1985, Daly and Wilson 1988).

Secular Roman emperors passed laws to keep other men from punishing philandering wives, and from leaving estates to first-born sons. Christian Roman emperors, and later the church, did not. I think the reason has to do with who was competing with whom. Competition in the secular empire was *between* families—between emperors and the aristocracy. At best, competitors' estates were dispersed among many, female, unrelated heirs. But

competition in the Christian empire was *within* families between younger sons in the church and elder sons in the "state." At best, a younger son might keep an older brother from rearing an heir, and come into his estate by default. But failing that, better the patrimony get passed to a single heir than to many, better to a nephew than to a niece, and better to a blood relative than to a stranger.

Horace, admired by Augustus, was right that the risk of civil war was raised by "immoral" acts. "Sedition" at home meant peril abroad, and the cause of it all was a lack of morals. "Teeming with sin, the times have sullied/First marriage, our children, our homes /Sprung from that source disaster has whelmed/Our fatherland and our people" (*Odes*, III 6). Or, even better, Metellus was right to say "the state cannot survive without numerous marriages" (Aulus Gellius, *Noctes Atticae*, 166, translated in Galinsky 1981: 131). The point of the moral laws was to preserve the emperor's peace on the emperor's terms. That meant an end to infighting among equals in the republican aristocracy, it meant the beginning of the imperial rule of one over many.

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