Was Ancient Rome a Dead Wives Society? What Did the Roman *Paterfamilias* Get Away With?

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Abstract

Until recently, descriptions of the Roman family routinely attributed to the head of household the right of life and death over his wife, children of any age, and slaves, and assumed he exercised it. Challenges to this position by Roman law specialists have gradually impacted the way this right and its exercise are described by historians of the family. This article surveys these challenges, tracks their uptake by historians of the family, and notes the emerging consensus answer to the question "what did the Roman father get away with?" Relevant ancient sources are quoted and placed in context, and previously unexamined evidence from Roman playwrights and satirists is offered to support the emerging consensus answer, which is "he did not get away with murder."

Keywords: Roman fathers; Roman families; Roman children; Roman wives; right of life and death; Roman family law.

The Roman head of household, known as the *paterfamilias* (compounded of *pater* and the old genitive form of *familia*) meaning "father of a family or household" possessed an authority which ancient and contemporary historians have considered unique. It was known as *patria potestas*, meaning "legal authority (or power) of the head of household", and constituted a collection of powers and responsibilities in three well-defined areas: household religious observance, rights over household property, and rights over the persons of household members. Twentieth-century accounts of Roman law during its classical period (second century B.C.E. to

second century C.E.) typically provide the following profile: *potestas* over household religious observance made the *paterfamilias* responsible for its appropriate conduct; *potestas* over all household property, including that of the wife (if married in *manu*), grown sons and even married daughters (if not married in *manu*) gave the *paterfamilias* freedom to dispose of it as he pleased in his will; *potestas* over the persons of household members, known as *ius vitae necisque*. The term is loosely translated "right of life [and] death." *Ius* (sometimes spelled *jus*) refers to a generalized right, authority, or privilege.[1] The term *necisque* (from *nex*, sometimes spelled *necis*) refers to "murder, violent death". Some authors use the expression *vitae necisque potestas* with the same meaning. It granted the *paterfamilias* the right to: 1) expose infant offspring; 2) sell a son into slavery; 3) administer physical punishment to household members; 4) hand over a household member accused of wrongdoing for punishment by the wronged party; 5) end the marriages of his children; 6) violently take the life of his wife (if married in *manu*), child, grandchild or slave, without legal consequences, provided he had good reason.[2]

This fearsome catalogue of Roman fatherly authority was further strengthened by the lifetime duration of *potestas*, implying its coverage not only of his wife and children but also the wives of his sons (if married in *manu*) plus grandchildren. Only the death of the *paterfamilias* released family members from his *potestas*, unless he had previously emancipated them. No wonder Cicero, born 109 B.C.E., wrote "children should revere their father almost like a god" (*For Plancio* 12.29), and Livy, born 59 B.C.E., used the term *patria maiestas* "fatherly sovereignty" (*Books from the Foundation of the City* 8.7.15) to express the breadth and extent of *patria potestas*.

Profile of *ius vitae necisque* typical for twentieth-century Roman histories

The profile of *ius vitae necisque* just outlined was, with minor variations, frequently repeated in Roman histories and related studies appearing during most of the twentieth century. This consensus view of the extent and exercise of *ius vitae necisque* will be designated "accepted

doctrine" in this paper, adopting the term assigned it by William Harris.[3] Proponents of the accepted doctrine typically support, with minor variations, the following historical sketch of *ius vitae necisque*. Based on custom from the founding of Rome (c. 750 B.C.E.) and supported in legislation and practice from the period of the old Roman kings (616-510 B.C.E.), *ius vitae necisque* extended through the era of the Republic (509-27 B.C.E.), and, with some weakening, into the Principate (27 B.C.E. to the close of the classical period, about 600 C.E.). Its actual exercise would take place as part of a process in which the *paterfamilias* submitted his grievance to a *concilium* (informal court) convened at his request and consisting, usually, of male members of his (or his wife's) extended family. By the time of the late Republic (c.100 B.C.E.) although children had gained considerable freedom, stern Roman fathers sometimes killed their sons for serious insubordination or treasonous conduct, while wives and daughters were typically put to death for adultery or other acts which shamed the household. Occasionally the emperors intervened to prevent its exercise. Progressive weakening of the *potestas* of the *paterfamilias* during the Principate led to the abrogation of its harshest component, *ius vitae necisque*, during the late fourth century C.E. by the brother emperors Valentinian (ruled 364-375 C.E.) and Valens (ruled 364-378 C.E.).

Versions of the accepted doctrine have spread from Roman specialist publications into influential non-specialist publications. The following sampling, from the 1950s to the 1980s, gives an idea of its wide distribution. Simone de Beauvoir wrote in *The Second Sex* "…the paterfamilias has the right to put the guilty spouse to death … And if the right to take the law into his own hands has been abolished since Augustus…"[4] In these lines she implies both the existence of *ius vitae necisque* as a legal reality, and its practice in Roman society until at least the time of the emperor Augustus (27 B.C.E.-14 C.E.), who attempted to abolish it.

Roman law specialist John Crook supports the accepted doctrine in his semi-popular *Law and Life of Rome* when he states about the *paterfamilias*:

> His *potestas* included the well-known 'power of life and death', which was undoubtedly a reality in Republican times … His household jurisdiction, with a family council, … could inflict chastisement and even death. This extreme is rarely heard of in the period of the Principate – only as a concession by the government to avoid odium (which had happened also in the Republic – you handed over criminous women to their families for punishment) …[5]

Crook's time references clearly reveal his assumption that the actual exercise of *ius vitae necisque* took place throughout the era of the Republic and into the Principate.

In the third edition of their Roman history textbook M. Cary and H.H. Scullard declare: "The *paterfamilias*, having acquired his wife by simple arrangement with the bride's father, assumed *manus* or complete disciplinary control over her, and he wielded a similar despotic authority over his sons, of whatever age, and over his unmarried daughters … Roman husbands might put their wives to death, and fathers might sell their children into slavery, without committing a crime."[6] In spite of their statement's location in the chapter titled "Rome in the period of the kings" the context gives the impression that the rights of the *paterfamilias* were more than hypothetical, and actually exercised during Rome's early history and beyond: "… the *familia* or household … at all times remained a miniature state within the state. The patriarchal organization which was common to all peoples of Indo-European stock was maintained at Rome longer than elsewhere in its pristine rigour."[7]

Classical historian Sarah Pomeroy in *Goddesses, Wives, Whores and Slaves* describes the impact of *ius vitae necisque* on Roman women in the late Republic and early Empire: "The power of the *pater familias* … extended to the determination of life or death for all members of the household."[8] She elaborates the assumed implications for both unmarried and married daughters: "The *pater familias,* as we have noted, held the power of life and death over his daughters."[9] "Consistent with the powers of the *pater familias,* the father of the adulteress was permitted to kill her if she had not been emancipated from his power."[10]

Reay Tannahill writes in *Sex in History*: "Until the end of the first century B.C., a husband was legally entitled to kill his wife on the spot if she were caught in the act of adultery." While stopping short of claiming that Romans at the time actually exercised *ius vitae necisque*, she leaves with her reader the impression that it was exercised by the generalization: "As elsewhere in the ancient world, wives and children were the chattels of their menfolk."[11]

Gerald Leslie and Sheila Korman in *The Family in Social Context*, describing conditions in Rome down to the end of the Punic wars in 202 B.C.E., state: "The father also could sell children into slavery, banish them from the country, or kill them. Before he could kill them, he had to consult with the adult men of his *gens*, but, after doing so, no matter what their recommendations, he was free to do as he wished." They state regarding the wife: "After consulting with the adult men of both his *gens* and his wife's, he could kill her. If she committed adultery, he could kill her immediately."[12] However, they allow for changed conditions during the later Republic and into the Principate, when due to absentee husbands at war, *potestas* declined, allowing wives more autonomy. They maintain that by this time the father's power of life and death over children was taken away.[13]

Statements by Jo-Ann Shelton in her compilation of Roman sources assume the accepted doctrine. Chapter 2, titled "Families", opens with her description of assumed conditions as late as the sixties B.C.E.:

> Roman fathers enjoyed absolute legal control over the lives of their children. This control was called the *patria potestas* ("the father's power"). A Roman father had the legal right to expose a newborn child; he arranged marriages for his children and could force them to divorce spouses they loved; he could disown a child, sell a child into slavery, or even kill a child whose behavior displeased him. As late as 63 B.C. a senator … had his adult son executed because he was involved in a plot to overthrow the government.[14]

She reminds her reader "Remember, fathers expected absolute obedience from their children and could punish recalcitrant children even with death." She does however inform her reader "… the execution of an adult son by his father was rare."[15]

In summary, a broad sampling of authors from the 1950s through the 1980s subscribe to the accepted doctrine that *ius vitae necisque* was exercised at least as recently as the second century of the Roman Principate. Even authors who characterize it primarily as a legal construct do not adequately caution the reader against the assumption that it was actually exercised as a real and present sanction. Nor is the reader given guidance about whether its exercise was restricted to particular social levels, and whether it was empire-wide, or restricted to the city of Rome and its environs. Some authors even after the late 1980s have continued to express themselves in ways which assume the day-to-day exercise of *ius vitae necisque* during the early Principate. A sample will be provided later in this paper.

Challenges to accepted doctrine by Roman law specialists

The first challenge to the accepted doctrine seems to have originated with Anglo-American specialists in Roman law, who subjected the primary sources to a fresh examination. Their findings have led them to express serious doubt about whether *ius vitae necisque* was exercised to any noticeable extent, especially during the late Republic and the Principate.

John Crook pioneered this re-assessment in an article which appeared in 1967. Not content to read clauses of Roman law as if they were statements of day-to-day reality, Crook described his modified approach to primary sources: "To understand the true role of *patresfamilias* one must examine what they actually did in recorded examples …"[16] After examining actual accounts in Roman sources of the exercise of two other provisions of *patria potestas*, control by the *paterfamilias* of his sons' access during his lifetime to a share of their inheritance, and the emancipation of children, he concluded "The all-powerful *paterfamilias* of Rome, in the standard contrast with Athens, is, then, too crude a figure to correspond to the

nuances of reality … powerful public opinion set limits to the conduct of the *paterfamilias* both in earlier and in later times [of the Republic]."[17] About the same time another Roman law specialist, David Daube, expressed a similar protest against this misreading of Roman law relating to extremer aspects of *patria potestas*.[18]

In 1977 Alan Watson also examined the provisions of *patria potestas* covering ownership of property and emancipation, focusing on the time period commencing with the beginning of the Principate. Using what he designates "non-legal Roman writings" and "Roman lay authors" (writers who were not jurists and legal experts), he concludes that the near-complete failure of these authors to disclose whether or not a male about whom they wrote possessed *patria potestas* indicated that particular piece of information about the person's status was not important. "In general … the Roman lay authors write as if *patria potestas* was not a fact of life."[19] Such a vital fact would hardly be so regularly omitted, argued Watson, if it had the status attributed it by the accepted doctrine. He offers his assessment of the way historians and law specialists tended to use primary sources: "The frequency of use and the extent of the power of life and death have been exaggerated in ancient times … and in modern times by various scholars … many modern scholars write as if the father's power of life and death was unrestricted …"[20] "The threat of using the extremer powers of *patria potestas* can scarcely have been very real."[21]

Watson's 1977 view of *patria potestas* as an inconvenient relic by the time of the Principate had undergone considerable modification during the six years since the appearance of his 1971 monograph, in which he opens chapter 3, titled "Parent and Child", with a two-paragraph description of *patria potestas* which is classic accepted doctrine, including the assertion "The *paterfamilias* could…put his children of any age to death without cause (*ius vitae necisque*)…" He supports his assertion by declaring that "numerous instances of sons or daughters put to death by their fathers…"[22] Like Crook a decade earlier, Watson modified his view after a fresh reading of the primary sources, giving more balanced attention to non-legal texts.

Another decade was required, and a re-assessment by yet another Roman law specialist, to bring about a revolution against accepted doctrine which spread beyond Roman law studies into the ranks of Roman social historians. William Harris in his 1986 article also acknowledged the distortion resulting from reading legal statements as if they described everyday life reality. His stated aim was "not a re-statement of the classical law on the subject, but a contribution to the history of the Roman family."[23] After scrutinizing all ancient accounts of Roman fathers killing sons or daughters and reviewing recent critiques, Harris observed "Though it has sometimes been pointed out that this power was not used very often, no one seems to have realized the real rarity of historical instances in which it was relied on with regard to adult sons."[24] He concluded that *ius vitae necisque* had become a vital national legend, but that its actual exercise lay dormant for much of Roman history.[25]

This study marked the culmination of a twenty-year-in-the-making challenge by Roman law specialists to accepted doctrine. Its subsequent spread into the works of social historians has resulted in a major downward revision of the degree of real and present threat posed by the *paterfamilias* to the lives of those under his *potestas*.

Ancient literary sources for *ius vitae necisque*

Before tracing this abandonment or modification of accepted doctrine among Roman social historians, this paper will summarize the ancient sources which have most influenced contemporary views of *ius vitae necisque*. The following categories of material are included: clauses of relevant Roman law; influential phrases from ancient speeches and comments; a brief sketch of each reported case of the exercise of *ius vitae necisque*; and finally, relevant sketches of the father's authority over his family in Roman plays and satires. The purpose of this section is to make primary sources more accessible to readers who are not themselves able to conveniently access them.

Legendary Roman royal law, about 750 B.C.E.

The prominent second century C.E. jurist Papinian claimed that the Roman father's *ius vitae necisque* over sons and daughters was enshrined in the semi-legendary law collection *lex regia* stemming from Rome's earliest kings, about 750 B.C.E. According to Dionysius of Halicarnassus, Rome's founder Romulus was credited with originating a law granting *ius vitae necisque* to fathers and husbands. In his twenty-volume history, *Roman Antiquities*, which began appearing in 7 B.C.E., the Greek Dionysius loyally supported upper class Rome, earning him the reputation of being "more Roman than most Romans."[26] In a frequently-quoted passage, which has exerted perhaps greater influence than any other on subsequent understanding of the role of *ius vitae necisque*, he attributed to Romulus a law granting the husband the right to punish his wife with death if she was found guilty by the family of adultery or of drinking wine:

> But if she did any wrong, the injured party was her judge and determined the degree of her punishment. Other offences, however, were judged by her relations together with her husband; among them was adultery, or where it was found she had drunk wine—a thing which the Greeks would look upon as the least of all faults. For Romulus permitted them to punish both these acts with death, as being the gravest offences women could be guilty of, since he looked upon adultery as the source of reckless folly, and drunkenness as the source of adultery. And both these offences continued for a long time to be punished by the Romans with merciless severity (*Roman Antiquities* 2.25.6).

Dionysius reported this "law" to depict ancient Roman society as free of divorce, asserting "The wisdom of this law concerning wives is attested by the length of time it was in force; for it is agreed that during the space of five hundred and twenty years no marriage was ever dissolved at Rome" (2.25.7).

Semi-legendary Roman law of the Twelve Tables, about 450 B.C.E.

The legislative basis for *ius vitae necisque* most frequently cited by ancient and modern historians is the Twelve Tables, a law collection which came into existence probably as a result of the appointment of a group of patricians about 450 B.C.E. in response to the wish of mainly plebian inhabitants of the city of Rome to reduce to writing a summary their most important laws. The resulting collection, inscribed on bronze or wooden tables and displayed in the forum, exerted lasting influence on Roman life. Cicero, describing his school days 350 years later, implied that the content of the Twelve Tables was still common knowledge when he wrote "as boys we used to learn the twelve" (*Laws* 2.2.59). The actual Tables were destroyed about 390 B.C.E. and no transcript of their content has survived. All knowledge of their presumed content is therefore based on authors writing no earlier than the late Republic, who cite fragments relevant to their topics, using their own contemporary Latin rather than the archaic form of the language in which the Twelve Tables would have been written.[27]

Most modern authors citing the Twelve Tables fail to alert the reader that they are dependent on nineteenth-century conjectural reconstructions.[28] The reconstructed Table IV consists of four clauses, spelling out the right of the *paterfamilias* to: 1) destroy deformed infants; 2) sell his son into slavery a maximum of three times; 3) divorce his wife; 4) include as heir a child born as many as ten months after its father's death. The only reference to taking life is in clause 1, and the circumstances are very narrowly specified: "If he is born deformed, and if he does not pick him up, it is to be without liability." Reconstructed clause 2 reads: "If a father thrice sell a son, from the father the son is to be free."[29]

How, then, is *ius vitae necisque* over adults read back into Table IV? The usual method begins by citing a formula preserved in the Roman public ceremony for adopting sons. The relevant phrase is: "… and that [name of father] have that power of life and death over [name of adopted son] which a father has over a son." Unfortunately the antiquity of neither the ceremony nor the phrase can be determined. Aulus Gellius, who provided this account in *Attic Nights*

5.19.9, wrote about 150 C.E. The method progresses by working back to the presumably more ancient Table IV, inferring that it also contained some form of *ius vitae necisque* over adult children. Schulz exemplifies this type of reasoning, making the doubtful claim that "Domestic discipline lies in the hands of the father and this implies even the right to kill the child in the course of managing domestic affairs. This *potestas vitae necisque* expressly mentioned in the Twelve Tables (iv.2) …"[30] A glance at the very brief contents of the reconstructed Table IV reveals that it contains no such reference. Watson likewise claimed more than the evidence supports when, having cited the adoption formula, he asserted that *vitae necisque* "seems to have been expressly conferred by the XII Tables."[31] Note also his statement "… there is textual evidence that the XII Tables themselves contained a clause that the *paterfamilias* could put a son to death only with good reason …"[32] In an excursus Watson acknowledges the highly tentative nature of this projection of *ius vitae necisque* back into Table IV: "These formulations [from the adoption ceremony] are very old, even if they do not reach back to the XII Tables."[33] He further acknowledges the tentativeness of any effort to reconstruct ancient Roman law: "It is impossible to put flesh on the bones of early Roman law with any authority."[34]

More recent authors, possibly unaware of the tentative nature of the reconstructed Table IV and of Watson's caution, continue to cite the reconstruction as if it were the actual original wording. Gardner for example declares "The father had also the right, as mentioned in the Twelve Tables … to punish his children up to and including the infliction of the death penalty."[35] Anderson and Zinsser appeal to Table IV to support their generalization that the Roman father was granted "sole and absolute authority over his children."[36]

Harris on the other hand is aware that the relevant clause is absent from the reconstructed account of Table IV, attributing the uncertainty to an incomplete text of the Roman jurist Gaius (born about 100 C.E.): "Gaius seems to say that the power existed but that the Twelve Tables had specified that the father must have a *iusta causa*."[37]

Historical Roman law: Lex Julia de adulteriis coercendis (from 18 B.C.E.)

Often-cited evidence for *ius vitae necisque* during the time of the early Roman Principate comes from the *lex Julia de adulteriis coercendis*, a criminal code designed by Augustus and introduced beginning in 18 B.C.E. to curb behavior in Rome he considered inimical to strong upper class family life. Our knowledge of the contents of *lex Julia*, as it is usually known, depends again on a reconstruction which draws on the works of later Roman jurists. In this case however, there is little doubt about the reconstruction's accuracy. The following excerpts are from Iulius Paulus (born c. 180 C.E.), who cites the *lex Julia* in his own words, sometimes adding his own legal opinion. Relevant citations from his *Opinions* 2.26.1-7 include the following:

> In the second chapter of the *lex Julia* concerning adultery, either an adoptive or a natural father is permitted to kill an adulterer caught in the act with his daughter in his own house or in that of his son-in-law, no matter what his rank may be.
>
> If a son under paternal control, who is the father, should surprise his daughter in the act of adultery, while it is inferred from the terms of the law that he cannot kill her, still, he ought to be permitted to do so.
>
> A husband cannot kill anyone taken in adultery except persons who are infamous, and those who sell their bodies for gain, as well as slaves, and the freedmen of his wife, and those of his parents and children; his wife, however, is excepted, and he is forbidden to kill her.
>
> It has been decided that a husband who kills his wife when caught with an adulterer, should be punished more leniently, for the reason that he committed the act through impatience caused by just suffering.
>
> After having killed the adulterer, the husband should at once dismiss his wife…
>
> An angry husband who surprises his wife in adultery can only kill the adulterer when he finds him in his own house."[38]

The law obviously included provisions covering the conduct of all parties involved in cases of adultery: the father of the adulterous wife, her husband, the adulterous wife, and the adulterer. So, could a Roman husband kill an adulterous wife? "Many scholars hold that it may be taken for granted that a husband could legally kill his wife in certain circumstances" wrote Susan Treggiari in 1991.[39] She disagreed, and conjectured "A husband who killed his wife in the late Republic would probably have to answer to her kinsmen and defend himself on a murder charge."[40] The surprising prohibition in the *lex Julia* against the husband killing his adulterous wife is worded differently in the accounts by other jurists, according to Treggiari: "… other references to this chapter phrase the matter neutrally or suggest that the law gave a new permission."[41] "It is possible to understand the laws of Augustus granting to her father the power to kill an adulterous daughter, rather than to the husband."[42] If this is the case, the consequence is that Augustus in effect curtailed the power of the husband, leaving open the question whether a husband could legally kill his adulterous wife. "No text, therefore, demonstrates without doubt that a husband had the legal right to kill a wife out of hand if he took her in adultery."[43] Treggiari argues that the comments by ancient jurists are too unclear to support unambiguously any sound conclusion about the law's detailed provisions, and that under its provisions the husband was forbidden to take his adulterous wife's life.[44]

Jane Gardner questions whether, instead of encouraging *ius vitae necisque*, the *lex Julia* was actually a disincentive brought in to discourage such killing.[45] Pomeroy, assessing the same law, states: "…it is uncertain whether the husband had the right to kill the wife, or merely to divorce her, or to kill her only with the agreement of her male relatives."[46]

Speeches and passing comments used to support accepted doctrine

Historians have tended to cite a collection of phrases from ancient speeches and passing comments by ancient authors to support their sketches of *ius vitae necisque*. The most frequently-cited ones follow.

Homer: "Each man has power of law over children and wives"

Aristotle in *Politics* 1.1.7, hypothesizing about the origin of the village as a step towards the origin of the state, declared "For every household is ruled by its senior member, as by a king …" He then cites Homer's *Odyssey* 9.114-115: "each man has power of law over children and wives." But neither Aristotle nor Homer intended to say that Greek heads of households had anything approaching *ius vitae necisque*. To the contrary, such power, to them, was decidedly un-Greek. Homer used the phrase to describe the Cyclops, uncivilized cave dwellers whose ways contrasted "civilized" Greek ways. By following the Homer quotation with the statement "He is referring to scattered settlements, which were common in primitive times", Aristotle revealed that he, too, proposed a primitive stage of societal development, not actual Greek society. This becomes clear from his next sentence: " … men themselves were originally ruled by kings and some are so still."

Tullus Hostilius: "I would have done it myself"

Livy (*History* 1.26.9) recounts a well-known legend from Rome's early period, about 650 B.C.E. Triplet brothers, the Horatii, sons of king Tullus Hostilius, were returning triumphant from battle when their sister Horatia spotted the cloak of her betrothed over the shoulder of one of her brothers. In response to her on-the-spot mourning of her betrothed's death, which made her technically guilty of the crime of mourning for the enemy, her triumphant brother Publius (or perhaps it was Marcus) Horatius immediately killed her, thus committing the crime of parricide. Because of the unusual and complicated nature of the case, the king summoned a public assembly to hear it. In his appeal to the assembly to spare his son's life, the king asserted that Horatia "had been justly slain; otherwise he should have used a father's authority (*patrio iure*) and have 'dealt with' (*animadversurum* in the sense of "executing") his son, himself."

Marcus Porcius Cato: "dead wives society"

Cato (born 234 B.C.E.), very influential soldier, lawyer and politician, was also a capable orator and author. Nearly two hundred of his published speeches were known to later Romans, and fragments of eighty have survived. Alarmed by the rising flow of wealth into Italy from foreign expansion, Cato stood resolutely for the values and practices of Rome's sober past. An excerpt of his speech titled *On the Dowry* has been preserved by Aulus Gellius in *Attic Nights* 10.23, who introduces it with the clearly-declared intention of demonstrating that Cato supported *ius vitae necisque*:

> I have copied Marcus Cato's words from the oration entitled *On the Dowry*, in which it is also stated that husbands had the right to kill wives taken in adultery: "When a husband puts away his wife" 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; she is severely punished if she has drunk wine; if she has done wrong with another man she is condemned to death." Further, as to the right to put her to death, it was thus written: "If you should take your wife in adultery you may with impunity put her to death without a trial; but if you should commit adultery or indecency, she must not presume to lay a finger on you, nor does the law allow it."

Gellius (c. 130 - 180 C.E.) admired ancient Rome, especially its authors, whose style he sought to imitate and whose values he tried to resurrect. He makes use of Cato to present what may have been his own wishful thinking about the status of *ius vitae necisque*. According to Cato's speech, the husband is authorized to take the guilty wife's life for the crime of adultery, while the crime of drunkenness brings on her punishment which is described as "severe".

Both Gellius and some modern commentators on Roman law assume that Cato's reference to the status of *ius vitae necisque* applied to his own era, and the statement has been cited to support accepted doctrine. But there is good reason to read Cato's assertion as his comment on the epoch of the early kings of Rome, three centuries prior to his time, referring to

conditions applying in the tiny kingdom of Rome, a territory not extending more than 30 miles in any direction from the city. Treggiari further undermines the assumption that Cato's speech described *ius vitae necisque* in his own day by noting that "Cato does not say that a husband could condemn a divorced wife to death. But he claims that a husband who killed an adulterous wife in the heat of the moment would go scot-free …"[47] She raises two further points: first, that Cato only implies that the husband has the *ius* (right); second, that *ius* may be employed in Cato's speech in a general appeal to a person's "rights" rather than in a technical, sense to a specific right or custom supported by legislation.[48]

Cicero: "a responsible father should have dealt with his impudent son!"

Rome's most illustrious orator, Cicero (born 106 B.C.E.), in his speech *On his House* 84 said to his enemy Ap. Claudius Pulcher "If your father were alive, *you* would not be alive."[49] By this he implied that the behavior of Claudius would have provoked his father to exercise *ius vitae necisque* against his son. Cicero's assertion can be read as a passing reference to *ius vitae necisque* as a real possibility in his day. However, it can also be understood to be invoking the hypothetical or legendary "good old days" when the younger man's publicly-expressed attitude would supposedly not have been tolerated.

Dionysius of Halicarnassus: "fathers had the power, and many used it!"

Dionysius of Halicarnassus in *Roman Antiquities* 2.26.6, in his comment on the law of Romulus cited above, added "I forbear to mention how many brave men … have been put to death by their fathers…" He has already praised the founders of Rome who "gave the father unrestricted power over his sons. That power was to remain until the father's death. He might imprison or beat him, chain him up and send him to work in the country, or even execute him" (2.26.4).[50] By citing as an example the case of Manlius Torquatus, who was executed by his father in 340 B.C.E., Dionysius ascribed the father's power to an earlier period of Rome's history, not to his own day.

Cassius Dio: "many have done it!"

Senator Cassius Dio in his *Roman History*, written about 200 C.E., commented that "during the course of Roman history many fathers, not just those who were consuls, but private citizens as well, slew their children" (37.36.4). His generalization has probably contributed to the assumption of the widespread practice of *ius vitae necisque*; however, as will be demonstrated below, there is inadequate evidence to support it.

Adoption formula—did it confer ius vitae necisque*?*

The practice among leading Roman families of adopting adult men as sons was known as *arrogatio*, because it involved a formal, public request by the to-be-adopted adult male to place himself under his adoptive father's *ius vitae necisque*. This formula, recited at the appropriate point in the public adoption ceremony, is preserved by Gellius in *Attic Nights* 5.19.9 as part of the instruction given by the presiding official to the man about to enter his adoptive family:

> Express your desire and ordain that [adoptive son] be the son of [adoptive father] as justly and lawfully as if he had been born of that father and the mother of his family, and that [adoptive father] have that power of life and death (*vitae necisque in eum potestas siet*) over [adopted son] which a father has over a son (*uti patri endo filio est*).

An almost identically-worded formula has survived in Cicero's speech *On His House* 29.77, at the point where he reminds an opponent "even though your adoption was utterly illegal at every point, you were nevertheless asked whether it was with your full consent that Publius Fonteius received powers of life and death (*vitae necisque potestam*) over you as over a son…" Did this formula confer the literal right of death on the adoptive father? Unfortunately, nothing more is known about the history of this formula, although Shaw argues it was concocted no earlier than 89 B.C.E.[51] It is never invoked in accounts of fatherly discipline.

Reports of cases of the exercise of *ius vitae necisque*

The following summary of reports by Greek and Roman authors of the actual exercise of *ius vitae necisque* is included to provide some atmosphere, flavor and context to help the reader better assess the nature of the evidence. The list draws on E. Sachers.[52] Critiques of Sachers and additional data have been incorporated from more recent studies, mainly those by Harris and Yan Thomas.[53] Cases of fathers killing sons are cited first, followed by cases involving daughters, then cases involving wives. Cases are arranged in chronological order within each section, and are numbered continuously.

Fathers killing sons

Case 1: Lucius Iunius Brutus (509 B.C.E.)

Lucius Iunius Brutus executed his sons Vitellii and Aquilinii for their involvement in a plot by a neighboring Etruscan tribe to regain control of Rome in 509 B.C.E. When their conspiracy was exposed, their father, the consul Lucius Iunius Brutus, was obliged to inflict the death sentence on them. In the words of Livy, "the office of consul imposed upon a father the duty of exacting the penalty from his sons …" (2.5.5). Livy makes clear his view this was not a father's, but Rome's, punishment: "he administered a nation's retribution" (2.5.8). Both Livy and Valerius Maximus, a Roman historian active during the reign of emperor Tiberius (14-37 C.E.), who wrote about the case in his *Memorable Deeds and Sayings* 5.8.1, declared that Lucius Iunius Brutus "put off the father to play the consul."

Case 2: Spurius Cassius Vicellinus (485 B.C.E.)

Spurius Cassius Vicellinus was put to death in 485 B.C.E. by his father, according to Cicero *Republic* 2.35.60 and Pliny *Natural History* 34.15, although according to Dionysius of Halicarnassus *History* 8.77-80, Livy 2.41.10-12 and Valerius Maximus 6.3.11, only after he was condemned at a trial. Harris, noting the complications of this case and the controversy

surrounding its reports and their interpretation even during the Roman era, acknowledged that by the time of the late Republic this was considered to be an actual exercise of *ius vitae necisque*.[54]

Case 3: Aulus Postumius Tubertus (431 B.C.E.)

Aulus Postumius Tubertus, dictator of Rome, was reported by Livy 4.29.6 and Valerius Maximus 2.7.6 to have put his son to death in 431 B.C.E. for deserting the army. The fact that the father was dictator at the time, which would have obliged him to take his son's life for desertion, makes it doubtful that this was a case of *ius vitae necisque*.

Case 4: Titus Manlius Imperiosus Torquatus (340 B.C.E.)

Titus Manlius Imperiosus Torquatus, while consul in 340 B.C.E., put his son to death for engaging the enemy in individual combat in disobedience to a prohibition of such action. Livy (8.7) employs deliberate repetition of key terms in his account of this episode in order to highlight the conflicting roles of father and consul faced by Manlius: "consul" occurs six times, "father" four times and "son" six times. Livy's understanding of the main point of the account is expressed by the words he placed in the mouth of Manlius to his son: "authority of the consuls must either be established by your death, or by your impunity be forever abrogated." Neither Livy nor Valerius Maximus (2.7.6) claimed this execution was a case of *ius vitae necisque*; both saw it as an example of Roman devotion to duty.

Case 5: Marcus Fabius Buteo (about 220 B.C.E.)

Marcus Fabius Buteo (aka Fabius Censorius), consul in 245 B.C.E. and censor in 241, was reported to have put his son Fabius Buteo to death for theft about 220 B.C.E. This case, uncomplicated by either political nor military factors, seems a clear-cut instance of *ius vitae necisque*. However, the sole source of this case is the fifth century C.E. Christian apologist Orosius, for whom the episode illustrated an unsavory pagan Roman craving for fame (*Seven Books of History Against the Pagans* 4.13.8). Harris doubts its historicity because the case is not

mentioned by Valerius Maximus, who provides the most extensive collection of reports of alleged exercise of *ius vitae necisque*.[55]

Case 6: Decimus Iunius Silanus (about 140 B.C.E.)

A later Titus Manlius Torquatus, consul in 165 B.C.E., had a natural son Decius Iunius Silanus, who was accused of acting corruptly while praetor in Macedonia in 141 B.C.E. Although the son had been adopted out of the Manlius family, his natural father, after hearing the accusations and conducting a private investigation, declared his son guilty and banished him. The following night the son took his own life (Livy *Summaries* 54; Cicero *About the Ends of Goods and Evils* 1.24; Valerius Maximus 5.8.3). This should probably be considered an indirect case of *ius vitae necisque*, because the only honorable response of a high-born Roman son to lifetime banishment by his father was suicide.[56]

Case 7: Quintus Fabius Maximus (either about 110, or 102 B.C.E.)

Quintus Fabius Maximus (aka Eburnus), quaestor and consul in Spain, consul in Gaul, and censor in 108 B.C.E., was reported (by Pseudo-Quintilian *Major Declamations* 3.17; Valerius Maximus 6.1.5; Orosius 5.16.8) to have had his son killed by his slaves for an unspecified sexual misdeed. When sent to trial for the killing, he claimed that he acted in accordance with *ius vitae necisque*. His claim was rejected and he was sent into exile. Harris concludes "…it looks as if on one of the very rare occasions when *vitae necisque potestas* was invoked with respect to an adult son (conceivably the very first historical case), the plea was rejected."[57]

Case 8: Aemilius Scarus (102 B.C.E.)

Aemilius Scarus fled the battlefield while engaged against the Cimbri, probably in 102 B.C.E. and in consequence his father Marcus Aemilius Scaurus banished him from his presence. The banishment, in typical Roman patrician fashion, drove the son to suicide, which was the expected response, according to Valerius Maximus 5.8.4.

Case 9: Aulus Fulvius (63 B.C.E.)

Senator Aulus Fulvius, suspecting his son of the same name of plotting against Roman leadership during the Catiline conspiracy of 63 B.C.E., killed him, according to Cassius Dio 37:36, Sallust *Catiline Conspiracy* 39:5, and Valerius Maximus 5.8.5. Harris accepts this as a genuine case of *ius vitae necisque*, arguing it is "the first really clear historical use" of the right.[58] He implies that because the incident reflects the deeply-running emotions among upper-class Romans during the Catiline revolt, it should not be understood to indicate practice in more settled circumstances.

Case 10: Tricho (about 10 C.E.)

According to Seneca *On Clemency* 1.15.1, the knight Tricho flogged his son to death during the reign of Augustus. In response he was attacked in the forum by an angry crowd, either because they were incensed by his exercise of *ius vitae necisque* or by his brutality. This is the final reported Roman case of *ius vitae necisque*. Harris could not find a single instance after the time of Augustus.[59]

In reports of fathers killing sons, four points emerge which influence judgments whether reported cases are actual exercises of *ius vitae necisque*. First, surviving fragments of early Roman legislation, even after undergoing conjectural reconstruction, do not adequately establish the existence of *ius vitae necisque* over adult offspring even in Rome's earliest days. This has not been adequately understood by most social historians, who continue to claim more than reconstructions support. Second, several of the reports of fathers killing sons were complicated by the fact that the fathers were consuls or senators, placing them in a position of conflicting responsibilities to family and state. Sons sometimes lost their lives when fathers placed administrative responsibilities ahead of their roles as *patresfamilias*. Third, in cases where fathers banished sons permanently from their presence the resulting suicides do not technically qualify as *ius vitae necisque*, even when they resulted in the suicides of their sons. Fourth, genuine, unambiguous reported cases of *ius vitae neqisque* against adult sons were very rare. Harris,

commenting on the rarity of real cases, argues that the first "really clear" case of *vitae necisque potestas*, that of Aulus Fulvius (case 9), came in 63 B.C.E., while the final one (case 10) incited vigorous public displeasure.[60] Suzanne Dixon reaches a similar conclusion: "… there are few genuine examples of the parricide that obsessed Roman fathers and has apparently fascinated some modern authors."[61]

Fathers killing daughters

The literature reports three cases of *ius vitae necisque* exercised against daughters, a low number which counters the widespread assumption that daughters were frequent victims.

Case 11: Verginia (about 450 B.C.E.)

The earliest report is of Verginia, killed c. 450 B.C.E. by her desperate plebeian father after he exhausted the avenues of justice open to him to save his daughter from the predatory and unscrupulous *decimvir* Appius Claudius Crassus Inregillensis Sabinus. None of the sources of this well-known story (Livy 3.44-48; Valerius Maximus 6.1.1; Diodorus Siculus *Library* 12.24.2-4) attribute guilt to her or to her father. Their main point is the injustices behind the plebian-patrician conflict which led to a plebian revolt in the city of Rome in 449 B.C.E., possibly triggered in part by Verginia's death.

Case 12: Daughter of Pontius Aufidianus (possibly about 100 B.C.E.?)

The knight Pontius Aufidianus killed his daughter because of her alleged sexual involvement with a slave, probably during the late Republic. In the opinion of Harris, our sole source, Valerius Maximus 6.1.3, seemed to assume the girl's innocence.[62]

Case 13: Daughter of P. Atilius Philiscus (not dateable)

The third case, reported by Valerius Maximus 6.1.6, was of P. Atilius Philiscus, a freedman who killed his daughter, also for reported *stuprum* (unlawful sexual activity). "What made this case exceptional was that as a boy the father had himself been made to practice

stuprum, by prostituting himself at the command of his master," thus making this case unique for its glimpse into the exercise of *ius vitae necisque* in freedman circles.[63]

According to Harris, the ancient historians clearly understood these three accounts to be genuine cases of *ius vitae necisque*.[64] They also share a common element of class tension: plebian versus patrician for Verginia, equestrian versus slave for Pontius Aufidianus, and a freedman reacting against an unsavory element from his slave past for P. Atilius Philiscus.

Husbands killing wives

Case 14: Egnatius Mecennius about 750 B.C.E.)

Valerius Maximus, writing between 15 and 25 C.E., reported that Egnatius Mecennius, who supposedly lived at the time of the founding of Rome, about 750 B.C.E., "… beat his wife with a cudgel and killed her because she had drunk some wine, and not only did no one accuse him in court because of this deed but he was not even censured, for every man of good character believed that she deserved the punishment…" (6.3.9). Valerius, whose work has been described as "shallow, sententious, bombastic"[65], recounts this ancient story to support his view of the "good old days" as a time of marital stability and wifely submission, in contrast to the fragmented state of family life and the rapidly changing role of women among upper class Romans during the early Principate. He did not imply that the legal provision still existed in his day. The story was well known. Tertullian reported an abbreviated form of it: "Mecennius killed his wife, and suffered nothing for the deed" (*Apology* 6). Treggiari doubts the accuracy of one crucial element in his account and states "Slightly better authorities relate that he [Mecennius] was tried but acquitted by Romulus. If they are right, the story is irrelevant to our discussion" since it is not a case of *ius vitae necisque*.[66] The "slightly better authorities" include Pliny the Elder, who wrote concerning Mecennius: "Romulus acquitted him on the charge of murder" (*Natural History* 14.89).

Treggiari is skeptical of the credibility of Roman narratives of husbands executing wives:

> … since none of the evidence is earlier than the time of Augustus, it is likely to be contaminated by the debate on state intervention which began in Cicero's day and was prominent in the mind of Livy. Some apologists thought domestic jurisdiction should have existed as they described it. But they were unclear about the details of its workings and they produced few examples. This might mean that the antiquarians were inventing."[67]

So, did Roman husbands kill their adulterous wives and get by with it? Pomeroy hedges: "This power of husbands over wives—if, in fact, it had ever been prevalent in early Rome—was idealized …"[68] Treggiari points to the complete absence of evidence: "Actual killings of wives and adulterers are absent from the Roman record …"[69]

Families executing wives

Unnamed wives participating in Bacchanalian cultic rituals (186 B.C.E.)

The inhabitants of the city of Rome experienced profound unease at the arrival of the cult of Bacchus, and responded decisively to reports of somewhat orgiastic nocturnal celebrations in 186 B.C.E. which included well-born women. The senate commissioned two consuls to investigate, and in the words of Valerius Maximus 6.3.7 "Many were found guilty (*damnatae*) by them and all were executed (*animadverto*, literally "attended to", a euphemism meaning "punish with death") in their homes by their kinfolk (*cognatus*, "blood relatives")". Livy provides essentially identical information, but repeatedly presents the episode as a conspiracy (*coniuratio*)—nine times in book 39 according to Gruen.[70] Drastic intervention was necessary because the cult leaders allegedly intended a takeover of the state (39.16.3). Livy further reported that executions following hearings were for actual crimes committed by Bacchic initiates, including false testimony, forged seals, substitution of wills, and murder (39.18.4). This did not constitute the exercise of *ius vitae necisque*, since the state retained full control over the process,

convicting and sentencing the women, and executing in public those who had no family or other "suitable person" to carry out the sentence in private (39.18.6).

Publicia and Licinia (about150 B.C.E.)

Publicia, wife of ex-consul Postumius Albinus and Licinia, wife of ex-consul Claudius Asellus, came under suspicion of poisoning their husbands. After a hearing by the state they were executed by their respective families.[71] It is questionable whether these cases belong in a discussion of *ius vitae necisque*, but are included for the sake of completeness.

Pomponia Graecina (about 63 C.E.)

Because of its similarity to this category the famous trial of Pomponia Graecina is included here. She was charged with "foreign superstition" (possibly conversion to Christianity) and handed over to her husband for trial. The historian Tacitus continues the narrative: "Following ancient tradition he decided her fate and reputation before her kinsmen, and acquitted her" (*Annals of Imperial Rome* 13.32).

Again, the reader is struck by both the scarcity of reported cases in the literature, and the complicating factors which disqualify most, if not all, cases as the exercise of *ius vitae necisque*, a scarcity which prompted the heretofore unacknowledged initiative among Roman law specialists, cited above, to overturn accepted doctrine.[72]

Social historians abandon accepted doctrine

Following the lead of Roman law specialists, social historians, using new methods of doing Roman social history, have since the late 1980s revised their view of *ius vitae necisque*. Beryl Rawson, who pioneered this change, recently described the result as "a revision of the stern *paterfamilias* stereotype…"[73] By 1991 Evans, after examining the evidence, could state "For all intents and purposes, then, whether or not a parent was formally prohibited at law from involving the *ius vitae et necis* except *ex iusta causa*, the force of public opinion certainly would have discouraged most people from using this awesome power lightly."[74] Suzanne Dixon, another first-

wave Roman social historian to abandon accepted doctrine, echoes the cautions of Roman law specialists against reading Roman law as if it were social history: " … the law tells only part of the story."[75] She suggests a reason why the ancient sources left their readers with such a stark picture of this aspect of *patria potestas*: "Later authors typically invoked this past (favorably!) to contrast it with the decadence of their own day."[76] Richard Saller concurs: "The stories of early severity come from much later Latin authors whose accounts are highly dubious because they derive more from a schematic, idealized vision of their own past than from any reliable evidence."[77] His dismissal of accepted doctrine is complete: "In sum, there is no clear evidence for the successful invocation in the classical era of a father's *vitae necisque potestas* against a grown offspring except in defense of the *patria*."[78] Geoffrey Nathan abandons without reservation accepted doctrine. Writing from the perspective of the time of Constantine during the early fourth century C.E., he stated "While a father's *ius vitae necisque* had in theory endured in classical jurisprudence, it had been an abandoned practice for centuries … it was practically impossible for a *paterfamilias* to legally kill his own, whether as an adult or child …"[79]

This trend has not penetrated all circles however. A.R. Colón's 2001 history of children still assumes accepted doctrine[80], as does Sara Phang's 2002 study of the families of Roman soldiers.[81] Among the most recent studies by New Testament specialists who employ the findings of roman social historians, those by Judith Gundry-Volf and Michael F. Trainor, both appearing in 2001, continue to assume accepted doctrine.[82]

Evidence of Roman family life from playwrights and satirists

Incidental evidence of the place of *patria potestas* in Roman society is embedded in the work of Roman playwrights and satirists. While evidence from these sources has been applied to other areas of Roman social history, it has heretofore not been applied systematically to the study of *patria potestas*. Its judicious use can help sketch the place assigned to *patria potestas* in popular imagination. The following section briefly summarizes my initial findings.

Plautus, Stichus *and* The Brothers Menaechmus *(about 200 B.C.E.)*

Although the Roman playwright Plautus set his play *Stichus* in Athens, it reflects Republican-era Roman attitudes towards one of the traditional rights of *patria potestas*—that right of the *paterfamilias* to end his children's marriages.[83] His two married daughters acknowledge the existence of his right in line 17, which, with mock awe they extravagantly designate a "really great power"(*potestas plus potest*) in line 69. They proceed to thwart their father's intention to end their marriages, and effectively neutralize this aspect of his *potestas* by persistent application of charm, flattery, and logic.[84]

In *The Brothers Menaechmus* Plautus focuses on yet another aspect of the attenuated *patria potestas* during the Republican era. While the *paterfamilias* is able to exercise it over a young grandson by re-naming him after his father's death (lines 1152-55), his powerlessness over adults under his *potestas* constitutes a sub-theme of the play, illustrating Peter G.M. Brown's conclusion that in several of the plays of Plautus: "…it is the authority-figure, the male head of the household, who comes off worst …"[85]

Terence, Phormio *(161 B.C.E.)*

Terence's play *Phormio*, probably first performed in 161 B.C.E., has Demphio, a senior citizen of Athens, threaten to banish his son from home and wife (line 425). Saller cites this non-violent treatment to indicate that by Terence's day Roman father-son controversy was typically resolved not by *ius vitae necisque*, but by nothing more deadly than repudiation or banishment from the family home.[86] But did the plays of Terence reflect Roman attitudes? Unfortunately for Saller, specialists believe not, arguing that Terence remained faithful to Greek customs as well as Greek settings in his plays.[87]

Juvenal, Fourteenth *and* Sixth Satires

The most colorful portrait of the Roman father-son dynamic from the Principate is provided in Juvenal's fourteenth satire. In a sustained criticism of fathers who pass on to their

sons their own attitudes of avarice, greed and craving for wealth, Juvenal forcefully parodies the image of the stern Roman *paterfamilias*, caricaturing a man compensating for the loss of real power over his family by subjecting his slaves to sadistic cruelty. Juvenal declares that by his day a father must earn his son's respect by his decent and exemplary life: "…how can you assume the mien and privileges of a father when your old age is marred with worse indiscretions than his …?" (lines 55-56).[88] One skillfully sketched scene depicts the sudden breaking-off of a tense conversation between father and son, when the son impetuously rushes off, ignoring his father's attempts to call him back:

> He's off, reins flying, full pelt: if you try
> And call him back, he can't stop, his chariot whirls him
> Away past the turning-post, indifferent to your commands.
> Delinquency knows no limits: what youth will not overstep
> The margin of faults you allow him?
> Don't they always want more? (230-234).

A few lines later Juvenal, in the scenario of a son impatiently awaiting his father's death so he can come into his inheritance, counsels the father to secure an antidote against poisoning by his son: "Take a dose, before meals, of the stuff that saves kings—and fathers" (255). Here Juvenal hints at an ironic reversal of *ius vitae necisque*, with the son threatening the father's life, rather than the other way around, the capstone of the son's shocking liberties which he has usurped in consequence of the father's loss of moral authority.

The playwright hints at the debasement of another aspect of *patria potestas* by raising the specter of a fortune-craving son taking the life of his young wife, not for violation of family honor, but because he is impatient to possess her big dowry:

> Suppose you've a daughter-in-law,
> And she brings a big dowry—why then she's as good as buried
> The moment she crosses you threshold. Whose fingers, do you imagine,

Will throttle her while she's asleep? (219-222).

Dixon, while not citing this evidence, acknowledges the practical disappearance of *ius vitae necisque*: "We have some knowledge of the father-son conflict by the late Republic, and it is clear that such conflict was normally settled, not by recourse to violence and killing … but by nagging and persuasion."[89]

In his hardest-hitting sixth satire, Juvenal's jaundiced assessment of women and marriage achieves heights (or depths) unmatched by any other Roman author. The absence of any threat of husbandly exercise of *patria potestas* surfaces repeatedly: "Marry a wife, and she'll make some flute-player or guitarist a father, not you" (line 74). "Want to give someone a present? Buy or sell property? She has the veto on all such transactions …" (212-213). When a wife impetuously orders her husband to crucify a slave, and grows impatient when he is reluctant to act in the absence of due process, Juvenal ends their exchange with her assertion, employing words singularly inappropriate for a wife under *potestas*: "This is still my wish, my command" (219-227). Juvenal's notorious sketch of an intoxicated wife's shocking public behavior seems a deliberate mockery of the legendary fate of Roman wives who were caught drinking in the pantry (301-317). Her curiosity about the time remaining before her husband's death drives another wife repeatedly to the diviner (566-568), suggesting again that *ius vitae necisque* has been reversed, with the wife posing a threat to the life of her husband. Further on Juvenal declares "Our wives sit and watch Alcestis undertaking to die in her husband's stead: If they had a similar chance, *they'd* gladly sacrifice their husband's life for their lapdogs" (651-653). Would a Roman wife actually take her husband's life? After naming Eriphyle and Clytemnestra, two women from Greek legend who murdered their husbands, he attributes to Roman matrons the potential to commit the same act, using a different method: "The only difference is this: where Clytemnestra used a clumsy great double-axe, nowadays an ounce of toad's lung is just as effective" (656-659). He concludes by again admonishing the wise *paterfamilias* to condition himself against such a fate by prophylactic doses from the poison bottle.

While daily Roman life should not be read from comedy or satire any more than it should be from law codes, yet one assumes these sketches corresponded sufficiently to reality to support the conclusion that the Roman father had long since lost the deadly aspects of his *potestas*.[90]

Questionable assumptions impeding the abandonment of accepted doctrine

Roman law specialists and social historians who have distanced themselves from accepted doctrine call attention to four questionable assumptions which exerted undue influence on its supporters, and which delayed its abandonment. The first is the long-practiced mode of writing and teaching ancient history which focused on rulers, battles, and laws, and its accompanying tendency to read Roman law as if it were a window through which the reality of Roman life could be viewed. While this mode of doing history has been replaced, some of its assumptions continue to cross over unchecked into recent histories.

The second is the tendency to uncritically accept the veracity of anecdotal accounts of the exercise of *ius vitae necisque* preserved in ancient Roman authors. In 1997 Dixon cautioned "Too many discussions in the past accepted the legal provisions and literary stereotypes of the tyrannical *paterfamilias* with lifelong powers over his children as a realistic reflection of practice."[91] Contemporary literary theories and methods of literary criticism, when applied to ancient documents and other written sources, yield more nuanced insights into the intentions and motives of ancient authors, and more realistic glimpses of everyday reality in ancient society.

Third, the philosophies of Marxism and feminism, in Dixon's view, predisposed some family historians to uncritically accept as reality the ancient, stereotyped sketches of the harsh Roman *paterfamilias*. These historians then tended to react against this caricature, perceiving in him the forerunner of capitalism's and patriarchy's institutionalizing of the oppression of women and children.[92]

The fourth assumption is found among advocates of social and family evolution who employ the image of the absolutely authoritative, death-dealing Roman *paterfamilias* as the

starting point of a continuum of evolving family life, with the contemporary caring and sympathetic father at its opposite end. In critiquing this evolutionary view of family, Saller points out how the one-sided, accepted-doctrine view of *patria potestas* could be sustained only by overlooking abundant evidence that the same Roman fathers also acted with devotion (*pietas*) toward members of their household. He dismisses as inadequate simple evolutionary accounts for the contemporary caring father, and warns against what he terms self-serving reliance on the old Roman father construct to support the idea that the contemporary European family represents an evolutionary advancement from brutality into an institution of care, or the self-congratulatory belief that Judaeo-Christian family values gradually overthrew brutal pagan fathering, replacing it with loving non-violence.[93]

Conclusion

Most twentieth-century studies of *ius vitae necisque*, perhaps one-sidedly dependent on Roman legal sources and anecdotes of the early Roman exercise of *ius vitae necisque*, presented the *paterfamilias* as a stern authoritarian who did not hesitate to exercise *ius vitae necisque*. However, the scarcity of credible accounts of its exercise, and the fact that most referred to the era of Rome's founders and ancient kings and the early Republic, from 750 to about 200 B.C.E., do not support accepted doctrine. Few accounts addresses the situation during the late Republic and the Principate. Almost without exception they focus in somewhat legendary fashion on upper class citizens living in the city of Rome.[94] From them we learn next to nothing of the exercise of *ius vitae necisque* among lower class citizens and non citizens, or of those living outside Italy.

Roman law specialists, followed by social historians during the last two decades, have largely abandoned accepted doctrine. Application of a more thoroughgoing literary criticism to traditional sources, and incorporating evidence from inscriptions, personal letters, plays and satire, has led towards a picture in which the *paterfamilias* related to spouse and grown children without recourse to *ius vitae necisque*. The occasional violent act of a shamed and enraged

paterfamilias which resulted in the death of a spouse or child is now explained without invoking *ius vitae necisque*.[95]

Social historians acknowledge however that no one can know the extent of the exercise of *ius vitae necisque* because Roman writers may have neglected to report its everyday occurrence, especially "if household jurisdiction was informal, extra-legal, effective, and taken for granted."[96] However, it is no longer acceptable to assume that the Roman *paterfamilias* could call on his *ius vitae necisque* as a real and present sanction over his spouse and adult children. While the *paterfamilias* could kill, he could not get away with it.

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Notes

[1] Note that *ius* may be employed in a general, not a technical, sense, to assert a general "right" to something: "Although the word always has a legalistic flavor, it often has no juristic content. It is often used in argument where the speaker could not appeal to a specific law, recognized legal right, or even established custom." Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon Press, 1991), 270. For the opposite view, see Brent. D. Shaw, "Raising and Killing Children: Two Roman Myths," *Mnemosyne* 54 (2001): 57.

[2] This traditional sketch of the rights of the Roman *paterfamilias* is supported by the following authors, and many others of their era: W.W. Buckland, *Textbook of Roman Law from Augustus to Justinian*, 3rd ed. (Cambridge: Cambridge University Press, 1966), 102-04, John A. Crook, *Law and Life of Rome* (London: Thames and Hudson, 1967), 107-13, Jane Gardner, *Women in Roman Law & Society* (Bloomington, Ind.: Indiana University Press, 1986), 5-11, O.F. Robinson, "The Status of Women in Roman Private Law," *The Juridical Review* (1987): 145, Fritz Schulz, *Classical Roman Law* (Oxford: Clarendon Press, 1951), 151.

[3] William V. Harris, "The Roman Father's Power of Life and Death," in *Studies in Roman Law in Memory of A. Arthur Schiller*, ed. Roger S. Bagnall and William V. Harris (Leiden: E.J. Brill, 1986), 81. It is called "a textbook standard" by Shaw, "Two Roman Myths," 58.

[4] Simon de Beauvoir, *The Second Sex*, trans. H.M. Parshley (New York: Alfred Knopf, 1953), 107.

[5] Crook, *Law and Life of Rome*, 107.

[6] M. Carey and H.H. Scullard, *A History of Rome*, 3rd ed. (London: Macmillan, 1975), 49-50.

[7] Ibid., 49.

[8] Sarah B. Pomeroy, *Goddesses, Whores, Wives and Slaves* (New York: Schocken, 1975), 150.

[9] Ibid., 152.

[10] Ibid., 159.

[11] Reay Tannahill, *Sex in History* (London: Hamish Hamilton, 1980), 106-07.

[12] Gerald R. Leslie and Sheila K. Korman, *The Family in Social Context* (New York: Oxford University Press, 1985), 154.

[13] Ibid., 156-57.

[14] Jo-Ann Shelton, *As the Romans Did: A Source Book in Roman Social History* (New York: Oxford University Press, 1988), 18.

[15] Ibid., 20.

[16] John A. Crook, "*Patria Potestas*," *Classical Quarterly* 17 (1967): 119.

[17] Ibid.: 120.

[18] David Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (Edinburgh: University of Edinburgh Press, 1969), 75-91.

[19] Alan Watson, *Society and Legal Change* (Edinburgh: Scottish Academic Press, 1977), 27.

[20] Ibid., 26-27.

[21] Ibid., 27.

[22] Alan Watson, *Roman Private Law around 200 B.C.* (Edinburgh: Edinburgh University Press, 1971), 28.

[23] Harris, "Power of Life and Death," 81.

[24] Ibid., 82.

[25] Ibid., 88-91.

[26] Daube, *Roman Law*, 86.

[27] See Alan Watson, *Rome of the XII Tables* (Princeton, NJ: Princeton University Press, 1975), 3-8. For detailed analysis see chapter 40 of M.H. Crawford, ed., *Roman Statutes*, 2 vols., vol. 2 (London: Institute of Classical Studies, University of London, 1996).

[28] Olga Tellegen-Couperous, *A Short History of Roman Law* (London/New York: Routledge, 1990), 20-21. An often-employed one is S. Riccobono, ed., *Fontes Iuris Romani Antejustiniani*, 2nd ed., 3 vols., vol. 1 (Florence: S.A.G. Barbera, 1941), 35-36. See also Crawford, ed., *Roman Statutes*, 556-75.

[29] Crawford, ed., *Roman Statutes*, 581.

[30] Schulz, *Classical Roman Law*, 151. Even E. Sachers implies its existence in Table IV; see E. Sachers, "Patria Potestas," in *Paulys Realencyclopädie der classischen Alterumswissenschaft*, vol. 22, ed. Konrat Ziegler (Stuttgart: J.B. Metzler, 1953), 1085 (lines 3-4). He is more precise about the content of Table IV at the foot of the column.

[31] Watson, *XII Tables*, 42.

[32] Ibid. See also Watson, *Society and Legal Change*, 27.

[33] Watson, *Society and Legal Change*, 8, n. 15.

[34] Ibid.

[35] Gardner, *Women in Roman Law*, 20.

[36] Bonnie S. Anderson and Judith P. Zinsser, *A History of Their Own: Women in Europe from Prehistory to the Present*, 2 vols., vol. 1 (New York: Harper & Row, 1988), 20.

[37] Harris, "Power of Life and Death," 82. See also Shaw, "Two Roman Myths," 68.

[38] Cited in Mary R. Lefkowitz and Maureen B. Fant, *Women's Life in Greece and Rome*, 2nd ed. (London: Duckworth, 1992), 104.

[39] Treggiari, *Roman Marriage*, 268.

[40] Ibid., 275. See also Sarah B. Pomeroy, "The Relation of the Married Woman to Her Blood Relatives in Rome," *Ancient Society* 7 (1976): 219.

[41] Treggiari, *Roman Marriage*, 274.

[42] Ibid., 266.

[43] Ibid., 274.

[44] Ibid. Shaw goes further: "...the Augustan laws did not in fact offer any such legal grounds, and were never intended to do so..." Shaw, "Two Roman Myths," 63.

[45] Gardner, *Women in Roman Law*, 7.

[46] Pomeroy, *Goddesses, Whores, Wives*, 154.

[47] Treggiari, *Roman Marriage*, 269-70.

[48] Ibid., 270.

[49] As paraphrased by Harris, "Power of Life and Death," 89.

[50] Gardner and Wiedemann preface their translation of this passage with the note "In practice, the paterfamilias's power over the members of his *domus* was considerably restricted in the historical period. Nevertheless Romans liked to believe that it was absolute in principle." Jane F. Gardner and Thomas Wiedemann, eds., *The Roman Household: A Sourcebook* (London/New York: Routledge, 1991), 12-13.

[51] Shaw, "Two Roman Myths," 60, n. 76.

[52] Sachers, "Patria potestas,"1084-89.

[53] Harris, "Power of Life and Death.", Yan Thomas, "Vitae Necisque Potestas: Le Père, la Cité, la Mort," in *Du Châtiment dans la Cité*, ed. Yan Thomas, *Collection de L'école Française de Rome* (Rome: École Française de Rome, 1984), 449-548. For the most recent brief re-examination of some of these reports, see Shaw, "Two Roman Myths," 59-69.

[54] Harris, "Power of Life and Death," 82-83. For more detailed analysis see A.W. Lintott, "The Tradition of Violence in the Annals of the Early Roman Republic," *Historia* 19 (1970): 18-22.

[55] Harris, "Power of Life and Death," 84.

[56] See detailed analysis in Erich S. Gruen, *Roman Politics and the Criminal Courts* (Cambridge, Mass.: Harvard University Press, 1968), 32.

[57] Harris, "Power of Life and Death," 85. See also Thomas, "Vitae Necisque Potestas," 511. See also 14 n.34.

[58] Harris, "Power of Life and Death," 88.

[59] Ibid., 91-92.

[60] Ibid., 88, 91.

[61]Suzanne Dixon, *The Roman Family* (Baltimore and London: Johns Hopkins University Press, 1992), 149.

[62] Harris, "Power of Life and Death," 87.

[63] Ibid.

[64] Ibid., 87.

[65] George C. Whittick, "Valerius Maximus," in *The Oxford Classical Dictionary*, 2nd ed., ed. N.G.L. Hammond and H.H. Scullard (Oxford: Clarendon Press, 1970), 1106.

[66] Treggiari, *Roman Marriage*, 268.

[67] Ibid.

[68] Pomeroy, *Goddesses, Whores, Wives*, 154. She acknowledged that reports of a husband's power over his wife were exaggerated (p. 218), and that the reports of such power even in the royal period are late (p. 226).

[69] Treggiari, *Roman Marriage*, 275.

[70] Erich S. Gruen, *Studies in Greek Culture and Roman Policy* (Leiden: E.J. Brill, 1990), 47.

[71] Livy, *Summaries* 48 and Valerius Maximus, *Memorable Deeds and Sayings* 6.3.8 imply these were state, not private, executions. For a detailed discussion of these cases see Thomas, "Vitae Necisque Potestas," 535-36.

[72] See most recently Shaw, "Two Roman Myths," 59. He follows Saller in deconstructing and dismissing the authenticity of several of the ancient accounts.

[73] Beryl Rawson, "'the Roman Family' in Recent Research: State of the Question," *Biblical Interpretation* 11 (2003): 127.

[74] John K. Evans, *War, Women and Children in Ancient Rome* (London/New York: Routledge, 1991), 178.

[75] Dixon, *The Roman Family*, 5.

[76] Ibid., 44.

[77] Richard P. Saller, *Patriarchy, Property and Death in the Roman Family* (Cambridge: Cambridge University Press, 1994), 112, n.42.

[78] Ibid., 117.

[79] Geoffrey S. Nathan, *The Family in Late Antiquity: The Rise of Christianity and the Endurance of Tradition* (London/New York: Routledge, 2000), 67.

[80] A.R. Colón, *A History of Children: A Socio-Cultural Survey across Millennia* (Westport, Conn./London: Greenwood Press, 2001), 80.

[81] Sara Phang, "The Families of Roman Soldiers (First and Second Centuries A.D.): Culture, Law, and Practice," *Journal of Family History* 27 (2002): 362.

[82] Judith Gundry-Volf, "The Least and the Greatest: Children in the New Testament," in *The Child in Christian Thought*, ed. Marcia J. Bunge (Grand Rapids, Mich.: Eerdmans, 2001), 32-33. Michael F. Trainor, *The Quest for Home: The Household in Mark's Community* (Collegeville, Minn.: Liturgical Press, 2001), chapter 4.

[83] "Plautus ... exhibits a keen sensitivity to the issues of his time and the dispositions of his contemporaries." Gruen, *Roman Policy*, 157.

[84] For further elaboration of relevant allusions, see Judith P. Hallett, *Fathers and Daughters in Roman Society* (Princeton, NJ: Princeton University Press, 1984), 137. For evidence in this play for fatherly affection, see Saller, *Patriarchy in the Roman Family*, 113.

[85] Peter G.M. Brown, "Plautus," in *The Oxford Classical Dictionary*, 3rd ed., ed. Simon Hornblower and Antony Spawforth (Oxford: Oxford University Press, 1996), 1195.

[86] Suggested by Saller, *Patriarchy in the Roman Family*, 118.

[87] " … unlike Plautus, Terence does not introduce Roman customs …" Gordon W. Williams, "Terence" in N.G.L. Hammond and H.H. Scullard, eds., *The Oxford Classical Dictionary*, 2nd ed. (Oxford: Clarendon Press, 1970), 1106.

[88] For Juvenal I have used the vivid translation by Peter Green. See Juvenal, *The Sixteen Satires*, trans. Peter Green, revised ed. (Harmondsworth, Middlesex: Penguin Books, 1974).

[89] Dixon, *The Roman Family*, 47. She lists examples in note 44 and in chapter 5, on inter-generation conflict.

[90] "In Roman comedies … which often feature conflicts between fathers and sons, the most serious punishment threatened against a son is repudiation and expulsion from the house." Saller, *Patriarchy in the Roman Family*, 117-18.

[91] Suzanne Dixon, "Conflict in the Roman Family," in *The Roman Family in Italy: Status, Sentiment, Space*, ed. Beryl Rawson and Paul Weaver (Oxford: Clarendon Press, 1997), 152. Cf. Saller, *Patriarchy in the Roman Family*, 114-15. "There is no doubt that *patria potestas* was a central principle organizing the Roman law of persons and property, but its legal centrality does not warrant reading the nearly absolute legal powers of a father over his children as a sociological description of family relationships."

[92] Dixon, "Conflict in the Roman Family," 150-51. She cites examples in note 4.

[93] Saller, *Patriarchy in the Roman Family*, 103-05; 231-32. Vigorously supported by Shaw, "Two Roman Myths," 76.

[94] Referred to as "the comfortable fraction of the population" by Daube, *Roman Law*, 91.

[95] In the words of a more recent Roman law specialist, the Roman father's power of *ius vitae necisque* "seems always to have been mainly symbolic, and in Late Antiquity it was clearly considered obsolete." Antti Arjava, "Paternal Power in Late Antiquity," *Journal of Roman Studies* 88 (1998): 153.

[96] Treggiari, *Roman Marriage*, 268.