

Problems Concerning *familia* in Early Rome

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Abstract — This article discusses the meaning of *familia* in early Rome. The word seems originally to have had no meaning coincident with the modern word “family.” Rather it carried one of two other broad meanings, the earlier one economic, the later one based on relationship. It referred first to the economic family, analogous to patrimony, but including the family house, and even the group of persons who lived in the family house. It next came to signify a group of persons joined by relationship, eventually undergoing division into *familia proprio iure* and *familia communi iure*, assimilated respectively to the much older notions of *adgnatio* and *cognatio*.

1. Introduction

The family in archaic Rome is full of controversy. For an entire century, supporters of the economic theory¹ and followers of the political theory² of the Roman family have debated, sometimes bitterly, on the origins of the institution and the role it played in ancient societies. Was the family a kind of miniature state, where the *pater* was the king and the *patria potestas* his sovereignty? Or was it really an economic phenomenon, a part of the rise of a class society and a consequence of the change in the means of production, as Engels would put it? In these discussions, the

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¹ Supporters include V. Arangio-Ruiz, *Le genti e le città* (Messina 1914), followed by P. Voci, “Esame delle tesi del Bonfante su la famiglia romana arcaica,” in *Studi in onore di Vincenzo Arangio-Ruiz*, 1 (Naples 1953), 101; M. Kaser, “La famiglia romana arcaica,” in *Conferenze romanistiche* (Milan 1960); G. Pugliese, “Aperçu historique de la famille romaine,” *Scritti giuridici scelti*, 3 (Naples 1985), 11.

² See P. Bonfante, *Corso di diritto romano, Diritto di famiglia* (Milan 1963), 7, and idem, “La gens e la familia, scritti giuridici,” in *Famiglia e successione* (Turin 1916). Accepting partially the political theory: F. De Martino, “La gens, lo stato e le classi in Roma antica,” in *Studi in onore di Vincenzo Arangio-Ruiz*, 4 (Naples 1953), 25.

Roman concept of *familia* is frequently left out, and the fact that it has its own intriguing history is forgotten.

The first problem we face when we try to understand the concept of *familia* in archaic Rome is that the definitions the Roman juridical sources give us come from a later period. We can also detect a certain imprecision in language, even in the jurists, when referring to it. This is probably because of the different family models that existed in the Roman world, such as the *cognati*, the *adgnati*, and the *gentiles*, all considered family but in different contexts. In this work, we will compare the texts of the jurists with the oldest literary texts we have, that is to say, the comedies of Plautus and Terence.

It is a well known fact in Roman studies that the word *familia* does not seem to have in its origins a sense that is coincident with the modern word “family.” It has a double sense, one economic, and the other linked to relatives. Nevertheless, one can feel the lack of a coherent explanation about the exact way both senses combine in one word. To attempt this search is the object of this essay.

2. Economic Family

In an economic sense, the use of the word *familia* can be traced back to the XII Tables.³ The expression *familia pecuniaque* describes the whole patrimony of a person.⁴ The word *pecunia*, which the sources place against “family,” points to small cattle, *pecus*, and also to coined money, to which *pecus* gave its name. In this context, *familia* is opposed to unstable goods, that is to say, *familia*, as an economic concept, is linked to the permanent assets that belong to a person.

³ D.50.16.195.1 (Ulpian 46 *ad ed.*):

“Familiae” appellatio qualiter accipiatur, videamus. Et quidem varie accepta est: nam et in res et in personas d<e>ducitur. In res, ut puta in lege duodecim tabularum his verbis “adgnatus proximus familiam habeto.” Ad personas autem refertur familiae significatio ita, cum de patrono et liberto loquitur lex: “ex ea familia,” inquit, “in eam familiam”: et hic de singularibus personis legem loqui constat.

⁴ Cic. *Inv.* 2.148.5–7; *Rhet. Her.* 1.23.11; Festus s.v. *Sacrae leges*: *Sacrae leges sunt, quibus sanctum est, qui[c]quid adversus eas fecerit, sacer alicui deorum sicut familia pecuniaque.* Gell. 16.10.11: *Sed quoniam res pecuniaque familiaris obsidis vicem pignerisque esse apud rempublicam videbatur amorisque in patriam fides quaedam in ea firmamentumque erat, neque proletarii neque capite censi milites nisi in tumultu maximo scribebantur, quia familia pecuniaque his aut tenuis aut nulla esset.*

We find in both Plautus and Terence cases where the word is used in the sense of patrimony, that is to say, the whole sum of goods that belong to someone. In Plautus this use is uncommon, although there are two cases in which a character refers to his economic affairs as *rem familiarem*.⁵ Although this use is rare in Terence too, we can appreciate it very clearly in *Hauton* 906:

Chremes: fili est amica Bacchi? Menedeme, occidi.

Menedemus: quam ob rem?

Chremes: decem dierum vix mi est familia.

Here, Chremes complains because he believes that his son has fallen in love with the greedy prostitute Bachide. The father is scandalized by the prospect of his patrimony (*familia*) lasting only ten days because of the coming expenses of his son.

Another use we can find in several fragments is the word *familia* pointing to a group of slaves under the power of one master:

D.50.16.195.3 (Ulpian 46 *ad edictum*). Servitutium quoque solemus appellare familias

The use of the word *familia* in this sense is also common in the comedies of Plautus⁶ and Terence.⁷

There is a close relation between the words *familia* and *famulus*. The latter designates a slave. A group of slaves that work on a specific property is called *famulia* when they are linked to the same real estate. Both the supporters of the economic theory⁸ and the followers of the political theory underline this relation to ground their view on the origins of the Roman family. If a *famulus* is a slave, and therefore the property of the *pater*, then *familia* would be the conjunct of goods that belongs to the *pater*, as the supporters of the economic theory assert. On the other hand, the followers of the political theory highlight the relation of subordination in which a slave stands regarding his master. The *pater* would be a kind of sovereign to which he, the slave, would be a

⁵ *Bacch.* 458–459; *Stich.* 525–526.

⁶ *Capt.* 307; *Cas.* 330; *Epid.* 2; *Men.* 623; *Merc.* 69; *Mil.* 278, 351; *Mostell.* 106; *Per.* 213; *Poen.* 168, 186, 396; *Pseud.* 191; *Trin.* 250.

⁷ *Haut.* 751; *Phorm.* 571; *Ad.* 89, 910.

⁸ Especially useful in this sense are the works of G. Franciosi, *Clan gentilicio e strutture monogamiche* (Naples 1978); idem, *Famiglia e persone in Roma antica dall'età arcaica al principato* (Turin 1992); idem, "Sull'ampiezza dell'antica famiglia agnaticia," *Index: Quaderni camerti di studi romanistici*, 27 (1999), 35–42.

subject. Therefore, the *familia* would be the group of persons under the sovereignty of a *pater*.

A fact usually overlooked in these analyses is that *familia* is not simply the whole group of slaves under the power of one master. A *familia* is a group linked to specific real estate.⁹ A *pater* may have many *familiae* as groups of slaves working in different properties. So, one *pater* can have one, two, or three families, depending on the number of farms that he has.

We can point out an interesting use of the word *familia* in connection with farms and real estate. There are a great number of cases in Plautus' and Terence's comedies in which the term is used to refer to the house in which members of the same group live or work. That is to say, *familia* would be the *Einzelhof*, the common property.

Perhaps the most remarkable can be found in Terence, *Adelphoe* 924:

Micio: Iubet frater? ubi est est? tu[n] iubes hoc, Demea?

Demeas: Ego vero iubeo et hac re et aliis omnibus quam maxime unam facere nos hanc familiam, colere adiuvare adiungere.

This text is especially interesting, because there is a confrontation between the notion of relationship and of *Einzelhof*. Esquinus, natural son of Demeas, was adopted by his brother Micio. Esquinus has just married Pamphila, daughter of Sostrata. Because of the marriage, Demeas, in this scene, orders the demolition of the wall that separates Micio's and Sostrata's house. The reason that Micio gives is that he wants to make the two *familiae* into one, by the destruction of the wall between the houses.¹⁰

Together with this concept of *familia* as the family house, there develops another concept of *familia* as the group of people that live in the same house, whether they are free or slave. This last concept is manifest both in Plautus'¹¹ and Terence's¹² works.

⁹ E.g., Cato, *Agr.* 5.3.2 states: *duas aut tres familias habeat, unde utenda roget et quibus det, praeterea nemini. rationem cum domino crebro putet.* Each *familia* is a group of slaves that belong to a specific farm.

¹⁰ It is remarkable too to observe that at *Phorm.* 748 the place from where Sophrona exits is called *familia* (physical place or *Einzelhof*):

Chremes: Eho dic mihi quid rei tibist cum familia hac unde exis? ubi illae sunt?

Also, Plautus calls the fireplace of the house *lar familiaris*: *Aul.* 2; *Mil.* 1339; *Rud.* 1207.

¹¹ *Aul.* 342; *Merc.* 398, 679, 811; *Mil.* 166, 172, 174, among others.

Therefore, a *familia* is a group of people that share the same house, and the feeling of intimacy between them is called *familiaritas*.¹³

3. *Familia* as a Group of Relatives

Together with the economic sense of the word *familia*, there is also another sense linked to relationship. This is quite clear in expressions like *materfamilias*, *paterfamilias* or *filiusfamilias*, all greatly used in second century BC comedy.¹⁴ Much more important in describing blood relations are the concepts of *adgnatio* and *cognatio*, as we shall see.

The notion of the adgnatic family is developed from the power relations between the members of a group. The *adgnatio* follows from the father's dominant position in the Roman family structure. Two people are *adgnati* if they are under the *potestas* of the same *pater* (*quae sunt sub unius potestate*), whether it is by "nature" (birth within *iustae nuptiae*) or by law (*adoptio* or *adrognatio*). The adgnatic family is the center of Roman society's organization. As a consequence, the law orbits around it too: it is the base on which the systems of inheritance and guardianship are built in the XII Tables. Submission to the father's power (*potestas manu mancipioque*) is the basic element that marks the entrance to and the exit from the adgnatic group.

A late classification of *familia* mixes the concept of *adgnatio* and *familia*, dividing *familia* into *commune* and *proprio iure*:

D.50.16.195.2 (Ulpian 46 *ad edictum*). Familiae appellatio refertur et ad corporis cuiusdam significationem, quod aut iure proprio ipsorum aut communi universae cognitionis continetur. Iure proprio familiam dicimus plures personas, quae sunt sub unius potestate aut natura aut iure subiectae, ut puta patrem familias, matrem familias, filium familias, filiam familias quique deinceps vicem eorum sequuntur, ut puta nepotes et neptes et deinceps Communi iure familiam dicimus omnium adgnatorum: nam etsi patre familias mortuo singuli singulas familias habent, tamen omnes, qui sub unius potestate fuerunt, recte eiusdem familiae appellabuntur

¹² *Phorm.* 287; *Ad.* 481.

¹³ In Plautus: *Aul.* 134; *Epid.* 2; *Men.* 374; *Mil.* 389; *Trin.* 355. In Terence: *Haut.* 184; *Eun.* 874; *Phorm.* 583, 721, 851.

¹⁴ Plaut. *Capt.* 273; *Merc.* 405, 415; *Stich.* 98; *Ter. Ad.* 747.

In this context, the *familia proprio iure* is one where every member is actually under the power of one *paterfamilias*. *Familia communi iure*, on the other hand, used to be a *familia proprio iure*, but the death of the *pater* separated its members, constituting them into new independent *proprio iure familiae*.

These two notions can be linked to the anthropologic notions of *Kleinfamilie* and *Grossfamilie*. The first type, the *Kleinfamilie*, includes all the inhabitants of the family house that work the family estate (*Einzelhof*). In the second type, *Grossfamilie*, other relatives, who have their own independent economic units, would be included.¹⁵ Apparently, through the *consortium ercto non cito*¹⁶ the members of the *Grossfamilie* could keep the *Einzelhof* undivided as a whole.¹⁷

From this analysis we can observe an interesting evolution in the term *familia*. It is originally an economic term to describe patrimony. Next, it indicates specifically the place where the group lives and establishes itself, and therefore, the relationship between the inhabitants of the same house. *Familia* becomes the word used to describe the group of persons who live together under the power of one sovereign, the *paterfamilias*. From the power the *pater* exercises over the group, the *familia proprio iure* or *Kleinfamilie* is formed.

Together with the concept of *adgnatio*, there is *cognatio*.

Gaius, *Institutes* 1.156. Sunt autem agnati per virilis sexus personas cognatione iuncti, quasi a patre cognati, veluti frater eodem patre natus, fratris filius neposve ex eo, item patruus et patruus filius et nepos ex eo. At hi, qui per feminini sexus personas cognatione coniunguntur, non sunt agnati, sed alias naturali iure cognati. Itaque inter avunculum et sororis filium non agnatio est, sed cognatio. Item amitae, materterae filius non est mihi agnatus, sed cognatus, et invicem scilicet ego illi eodem iure coniungor, quia qui nascuntur, patris, non matris familiam secuntur.

Gaius, *Institutes* 3.10. Vocantur autem adgnati, qui legitima cognatione iuncti sunt. Legitima autem cognatio est ea, quae

¹⁵ Kaser (note 1), 46.

¹⁶ G.3.154a.

¹⁷ The supporters of the political theory indicate in this matter that, in a system of heir *ex testamento*, the powers of the testator would be passed to the successor like sovereignty. See, e.g., Bonfante (note 2), 14. Unfortunately, there is no evidence of it: Kaser (note 1), 52; E. Volterra, "Famiglia," in *Scritti giuridici*, 3 (Naples 1991), 133.

p<er> v<i>rilis sexus persona<s> coniungitur. itaque eodem p>atre nati fratres agna<ti> si>b<i> sunt, qui etiam consanguinei> vocantur, nec requiritur, an etiam matrem eandem habuerint. Item patruus fratris filio et invicem is illi agnatus est. Eodem numero sunt fratres patruales inter se, id est qui ex duobus fratribus progenerati sunt, quos plerique et<iam> consobrinos vocant; qua ratione scilicet etiam ad plures gradus agnationis peruenire poterimus.

D.38.10.10 (Paul *libro singulari de gradibus et adfinibus et nominibus eorum*). 1. Nomen cognitionis a Graeca voce dictum videtur: συγγενεῖς enim illi vocant, quos nos cognatos appellamus. 2. Cognati sunt et quos adgnatos lex duodecim tabularum appellat, sed hi sunt per patrem cognati ex eadem fam<i>lia: qui autem per feminas coniunguntur, cognati tantum nominantur. 3. Proximiores ex adgnatis sui dicuntur. 4. Inter adgnatos igitur et cognatos hoc interest quod inter genus et speciem: nam qui est adgnatus, et cognatus est, non utique autem qui cognatus est, et adgnatus est: alterum enim civile, alterum naturale nomen est.

The notion of *cognatio* would be the more generic relationship, because all the *adgnati* would be *cognati*, but only certain *cognati*, the ones that come from the male line and *iustas nuptias* (and therefore subject to *patria potestas*) would be *adgnati*. In Justinian's time, the notion of *adgnatio* will be left aside, and *cognatio* will take its place. But from this fact it cannot be assumed that *cognatio* is a late concept and foreign to archaic times. Marriage prohibitions of incest are established with reference to *cognatio*¹⁸ and the very word *cognatio* appears in the text of the *lex Cincia* of 204 BC.

So, in early Rome there existed two kinds of relationship, *cognatio* (not based on personal power) and *adgnatio* (through the male line and based on *potestas*). The *adgnatio* could be *proprio iure*, when everybody in the group is a genuine dependant of the *pater*, or *commune iure*, when by the death of the *pater* each child becomes an independent *familia*. Although *adgnatio* is the central legal concept of early Rome, *cognatio* also produces both social and legal effects.

Surprisingly enough, the word *adgnatio* is not used once either in Plautus' or Terence's comedies, rather only *cognatio* is

¹⁸ Livy 20.11.2: *Cloelius patricius primus adversus veterem morem intra septimum cognitionis gradum duxit uxorem*.

present. We read in Plautus *cognatus* (twice),¹⁹ *cognato* (eight times),²⁰ and *cognati* (six times).²¹ It is always used to refer to a relationship and correctly includes the mother. The same is true of Terence, who uses *cognatus* four times²² and *cognato* three.²³

The omission of the term *adgnatio* both in Plautus' and Terence's works is somewhat mysterious. An explanation could lie in the absence of the notion of *adgnatio* in the Greek world, from where the comedies are taken.²⁴ In fact, the Greek family is closer to *cognatio*, especially because the mother and her family are considered to be related to the son, unlike *adgnatio*, where the mother needs *manus* to be placed *loco filiae* to her husband, as a sister to her son.²⁵ In *adgnatio*, the maternal relatives are never

¹⁹ *Capt.* 528: *perdidit me Aristophontes hic qui venit modo intro is me novit, is sodalis Philocrati et cognatus est. Poen.* 1251–1257:

Hanno: Advortite animum, mulieres. primum, si id fieri possit, ne indigna indignis di darent, id ego evenire vellem; nunc quod boni mihi di danunt, vobis vostraeque matri, eas dis est aequom gratias nos agere sempiternas, quom nostram pietatem adprobant decorantque di immortales. vos meae estis ambae filiae et hic est cognatus vester, huiusce fratris filius, Agorastocles.

²⁰ *Amph.* 860; *Cas.* 567; *Mil.* 705, 1119; *Poen.* 1323; *Rud.* 1198; *Trin.* 260, 702.

²¹ *Capt.* 388–392: *Tyndarus: Facis ita ut te facere oportet. nunc animum advortas volo: omnium primum salutem dicito matri et patri et cognatis et si quem alium benevolentem videris; me hic valere et servitutum servire huic homini optumo, qui me honore honestiorem semper fecit et facit.* Other cases: *Mil.* 707; *Poen.* 1064; *Stich.* 580; *Trin.* 307; *Truc.* 59.

²² *An.* 926; *Phorm.* 391; *Hec.* 171; *Ad.* 673.

²³ *An.* 71; *Haut.* 194; *Ad.* 351.

²⁴ On *contaminatio* and the presence of Greek and Roman law in Plautus' comedies, see Emilio Costa, *Il diritto privato nelle commedie di Plauto* (Turin 1890); E. I. Bekker, "Die römischen Komiker als Rechtszeugen," *ZSS* (RA), 13 (1892), 53; U. E. Paoli, *Comici latini e diritto attico* (Milan 1962); C. St. Tomulescu, "Observations sur la terminologie juridique de Plaute," *Scritti in onore de Antonio Guarino*, 6 (Naples 1984), 2771; C. Amunátegui, "Algunas consideraciones sobre las cortesanas en la comedia de Plauto," *Centro de Estudios Públicos*, 104 (2006), 347.

²⁵ G.1.118:

Idem iuris est in earum personis, quae in manu sunt: <nam feminae a> coemptionatoribus eodem modo possunt <mancipari, quo liberi a parente possunt>, adeo qu<i>dem, <ut quamvis ea sola> apud coemptionatorem filiae loco sit. <Quae ei> nupta sit, <tamen> nihilo minus etiam quae ei nup<t>a non sit nec ob id filiae loco sit, ab eo mancipari possit.

On the subject there is plenty of available literature. See C. Amunátegui "Loco filiae," in *Estudios en Homenaje a Francisco Samper* (Santiago 2007), 43.

related to the son, while in the Greek family, as in *cognatio* and in the modern family, they always are.

4. Conclusions

From this analysis, we can appreciate an interesting evolution in the term *familia*. Its original meaning is economic. It indicates a stable patrimony, opposed to the word *pecunia*, that indicates unstable assets. Specifically, we find texts where the family house, the physical place where the group lives and works, is called *familia*. Therefore, in its primary meaning, *familia* would be equivalent to *Einzelhof*. For indicating relationships, much more common is the term *cognatio*, which designates properly the group of blood relatives.

The sense of relationship that the word *familia* acquires seems to come from the emotion generated among the people who live in the same house, which is called *familiaritas*. Therefore, *familia* indicates everybody that lives in the same house (*familia*), whether they are free or slave.

Finally, in the classical period, the idea of *familia* as a group of relatives is superimposed on the older figures of *adgnatio* and *cognatio*, giving birth to *familia proprio iure* and *commune iure*.
