Introduction

Today, in the Western world, adoption is seen as a means for couples who are unable to have children to experience parenthood. In general, the idea is that people with a strong commitment to raising children will be able to take over children whose situation is in some way substantially impaired.

In the recent past, relatively large numbers of unwanted children became available in this way. An element that has changed is the attitude to sole parenting, and children resulting from unplanned pregnancies are more often retained than adopted out. Community attitudes have shifted considerably, and it is now seen as psychologically desirable for the child to be brought up in its birth family, if possible, rather than to be reassigned.

The result is that adoptees have to be sought from further away, from parts of the world where it is economically impossible for the birth family to bring up the child, or where social conditions, including famine and war, have created large numbers of orphans. Children brought in under these conditions raise complex issues such as the paternalism of rich countries, which lead on to other controversies, for example the cultural displacement of the children.

Rome from its inception was a different type of community, and conditions of family life differed substantially. The presence of slaves as well as an enormous gulf between rich and poor is only a beginning. This was a high-mortality regime, in which children would often lose one or both parents early, and likewise hazards of childhood diseases were a tough proposition.

Agrippina the Elder provides us with a case where most of the facts about a large Roman family are known. Altogether Agrippina had nine children of whom six survived to adulthood. These were produced in a period of approximately thirteen years, between AD 5 and 18 (Lindsay [1995] 4–5), by a mother who was between about eighteen and thirty-one. In this case, a third of her family never reached maturity. She was typical of the aristocracy in making extensive use of wet nurses (Treggiari [1975b] 56; Bradley [1986]

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210; 221; Lindsay [1995] 12–14). This underlines features of upbringing at Rome, which may often have led to parents being disconnected from the process, and in other cases early death of a partner must have been commonplace. Miscarriages and wives less fortunate with their health than Agrippina are on record. Quintilian's young wife, dead at eighteen, after bearing two children, is an example (Quint. *Inst*. 6 pr. 4).

Other features of the society are also distinctive. Both infanticide and abandonment of children show that not all children were reared or thought worth rearing (Boswell [1984]; B. Rawson [2003] 114–18). While some abandoned children will have been retrieved, reasons for abandonment might not be merely economic; the emperor Claudius exposed Claudia, the daughter of his wife, Urgulanilla, by the freedman Boter, in order to disavow paternity (Suet. *Claud*. 27). Not all children were equally valued. There has, however, been some toning down in recent years of ideas about the prevalence of infanticide (B. Rawson [2003] 115–17).

Pliny is an example of a childless man who never managed to rectify his childless state despite three marriages. His attitudes to the advantages of having descendants, which concentrate on questions of continuity and prestige, appear in a letter to his wife's grandfather Calpurnius Fabatus, after the loss of a child (Plin. *Ep*. 8.10). Although in this case he blames Calpurnia for lack of care during her pregnancy, fertility was something of a problem in the family. His uncle, the elder Pliny, was forced to resort to adoption, adopting Pliny himself. Several modern studies have concluded that the elite at Rome had serious problems with achieving continuity. Conditions of life in the Roman family gave the male partner extraordinary powers to determine the shape of his family, and there are few signs of couples working together to settle on suitable candidates for adoption. Altogether we have few female voices from the ancient world, and little chance of reconstructing female attitudes to family life. The extended absences of Roman males abroad may have created further problems and encouraged or reinforced the development of an ethos where little account was taken of the female viewpoint, and recourse to adoption at Rome may have been commonest in cases where a male has survived his partner or partners.

HOW COMMON WAS ADOPTION AT ROME?

Estimates of the number of adoptees at Rome are usually based on questions of nomenclature, but nomenclature is very fluid, and nomenclature which appears to be adoptive can be explained in other ways (Chapter 6 below).

Nevertheless some general guidelines may be helpful. Keith Hopkins, in reviewing consuls between 350 BC and AD 50, estimated that 4 per cent were adopted (Hopkins [1983] 49). Moreau reports that under 2 per cent of equestrians from the Julio-Claudian period were found to be adopted in a study by Ségolène Demougin, while the rather larger figure of 8–9 per cent of magistrates and decurions at Pompeii were identified as adoptees by Jean Andreau (Moreau [1992] 13). These figures are all drawn from elite groups where questions of inheritance and position were most important, and where the strongest results can be expected.

This study aims to look at adoption synoptically, and to attempt to understand the motives of Roman adopters. Succession for the childless male seems to have been a common problem, but the institution had a much larger ambit, which included political and other social objectives.

CHAPTER I

Adoption, kinship and the family:
cross-cultural perspectives

A broad survey of adoption across cultural boundaries will reveal how different historical and contemporary communities have responded to the issue of introducing outsiders into their kinship network. This impressionistic account will attempt to comment on how issues of integration are handled in a wide range of contexts, under markedly different arrangements regarding kinship.

There is no attempt here to see kinship in evolutionary terms, or even to suggest direct comparability between the various communities surveyed. They have been chosen on the basis that they represent distinctive and potentially illuminating responses to particular kinship arrangements. It is hoped that this discussion will help an appreciation of how the Romans used the institution.

Other agnatic systems may superficially resemble the Roman one, at least in this strong emphasis on the perpetuation of the male line, but even communities with very strict customary procedures tend to find that factors other than mere kinship are important in selecting adoptees when their own line is in jeopardy. Rome undoubtedly fits this model. All adoptions create a fictitious proximate relationship for the purpose of inheritance of wealth, position or both. The adopter will in turn expect reciprocal obligations of some sort. These range from taking on the mantle of heir to emotional and physical support. Different communities with different social and political systems handle the details in different ways.

Once a community allows that adoption is a feasible way of bestowing social personality on the next generation, purely familial ties are potentially under threat. An outsider may be the only possibility for adoption. Nevertheless in a majority of communities preference still lies with close kin. Traditional Chinese communities have the strictest regulations about adoption from amongst close agnates, but other communities also find that this is the normal place to look for an heir. A conflicting pressure is totally to assimilate the adopted child into the adoptive family, and this tends to make

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outsiders seem attractive. Completely fictitious arrangements, where the intention is simply to transfer property, and where the motives may be based far more on commercial objectives, are also found. Less emphasis on close kinship can be anticipated. Here the inalienability of certain types of property in Mesopotamia is a key example.

Goody in his influential article 'Adoption in Cross-cultural Perspective' (1969, reprinted with some changes 1976) does not include this type of arrangement but does raise several definitive functions of adoption:

1. To provide homes for orphans, bastards, foundlings, and children of impaired families.
2. To provide childless couples with social progeny.
3. To provide an individual or couple with an heir to their property (Goody [1976] 68).

His categories provide some guidelines for the scope of adoptive arrangements. The following outline illustrates some of the range of possibilities encompassed in varied cultural and temporal environments.

MESOPOTAMIA

The population mix in Mesopotamia at the beginning of the second millennium was Semitic and Sumerian. The earliest dynasty at Babylon was founded by Semites, but the people represented a blending of Semitic and Sumerian culture (Oates [1979] 19). Sophisticated arrangements for adoptions are already to be found in the Code of Hammurabi (1792–1750 BC), which provides material regulating entry to the family generically similar to some of the Roman legal material. The Code dates from late in his reign, apparently after the thirty-eighth year of the reign (van de Mieroop [2005] 100). The arrangements outlined show a close awareness of some of the hazards of the artificial creation of parental bonds. An adopted child could be treated differently from a natural child, or one party could prove ill suited to the other, and maternal deprivation was recognized as a danger. A child might persist in seeking out its natural father and mother, and consequently have to be returned to them. These provisions amount to an admission of the reality that child and adoptive family may not be mutually suited. Adoptees are envisaged as infants, and this marks out a major difference from the Roman norm. The adoption of children appears to be a rarity at Rome. The Code of Hammurabi also encompassed harsh and different rules for those adopted by courtiers (Benet [1976] 23–5). Roman legal writers never mention the possibility of an adoption's failing, nor anything comparable to the harsh regulation of some adoptees in Babylon.

To summarise, Babylonian adoption remained valid only if the adopter treated the child in every way as his own. If the child persisted in searching out its father and mother, it was returned to its natural parents. Thus the issue of maternal deprivation was acknowledged and dealt with. The only adoptive child who was punished for seeking out the natal family was one adopted by a courtier, since courtiers were prevented by law and sometimes by castration from begetting their own children. The adoption was seen as a signal honour, and since it represented a great leap in status for the child, it was not reversible:

187 The [adopted] son of a chamberlain or the [adopted] son of an epicene shall not be [re]claimed … If the [adopted] son of an epicene states to the father who has brought him up or the mother who has brought him up 'Thou art not my father' [or] 'Thou art not my mother', they shall cut out his tongue. (Driver and Miles [1955] 75–7)

Lower-status adoptions are also covered in the Code, and consequently there is a discussion of apprenticeship and wet-nursing. Boys were adopted by free craftsmen to learn and inherit their trade, but the adoption was invalid if the craftsman did not teach his craft. Because of the age of adoptees, any adopter was likely to need a wet nurse, who would be in charge of the child for two or three years. Her conduct was strictly monitored and she was subjected to fierce penalties if the child died under her care (her breasts were to be cut off: Code 194).

The use of adoption in Mesopotamia has been seen as evolving from an initial concern to perpetuate the family and its religious rites, to a later stage when secular reasons are clearly important. Whatever is thought of the evolutionary model, there is evidence for these secular concerns. Passing on a trade, continuation of business, or maintenance in old age can all be included under this category. Adoption was perhaps still possible for a man who already had a son.

Elizabeth Stone adds 'fictive' adoption to these more traditional types of adoption in Mesopotamian society (Stone and Owen [1991] 2–6). This was used as a method of property transfer in a situation where property was theoretically inalienable (Cassin [1938] 1–48). In these cases no parent–child relationship was implied between the two parties. The fictive adoption texts from Nuzi (near Kirkuk) date from the mid second millennium BC (perhaps between 1475 and 1350 BC: Cassin [1938] 7). These serve to transfer real estate when fields and orchards could only be disposed of within a very narrow range of close kin. Some individuals were 'adopted' up to 120 times, which serves to demonstrate that these cannot be conventional adoptions (Cassin

[1938] 16–17). Obligations to provide food and clothing to the adopter are recorded, but not the more intimate obligation to provide for the adopter's funeral (Cassin [1938] 37). Again, at Rome precise obligations of adoptees in relation to support and maintenance are not enumerated in legal authorities, since much of this was regulated at a domestic level. *Patria potestas* ensured that the adopter was in a very strong position financially.

Stone points out that use of a fictive relationship in this way is itself a sign of a system under siege, and it seems to represent an evolution in the employment of adoption, already at this early date. All adoptions create fictive relationships, but here it appears that traditional practices were serving new functions and fulfilling new societal needs. The types of adoption described by Goody, which are designed to redress deficits in family make-up, may be termed 'familial' adoptions, and, in contrast, those at Nuzi are primarily motivated by economic concerns. These are termed by Elizabeth Stone 'economic' adoptions. However, Goody's categories have an economic dimension as well. The composition and economic circumstances of an individual family would have had some impact on the decision to alienate property through the dodge attested in the Nuzi texts. Fictitious adoptions are found in Rome under very different conditions; the classic example is that of the Republican politician Clodius, who used adoption to change from patrician to plebeian status so that he was eligible for the tribunate (see Chapter 14 below). Both at Babylon and at Rome, in these cases adoption serves to give the adoptee the requisite status to achieve an identifiable social goal.

Types of adoption at Nippur

The socioeconomic system at Nippur has to be grasped to understand the role of adoption in this society. As at Nuzi, there were restrictions on the alienation of real estate which applied especially to field property, and thus fields and orchards could only be disposed of within a very narrow range of close kin. House purchases were not quite so constrained. Temple offices were similarly heritable but not alienable before about 1800 BC. When they did become alienable few restrictions appear to have been applicable, but they could only be purchased by a person whose inheritance had already made him into a property owner. Nippur had a very important temple of Enlil, the principal deity of the Mesopotamian pantheon, which gave both the city and the temple particular status, no doubt important to the developments under consideration (Oates [1979] 27–8).

The restrictions on alienability themselves seem to stem from the idea of communal land ownership by kinship groups. Gradually and within the documented period this ideology had to coexist with a system of individual land registration. All adoptions have elements of both the social and economic attached to them, but at Nippur what is significant is that the adoptions are known to us through contracts; in other words, they were only recorded as part of the process of protecting economic rights, and our knowledge thus reflects the peculiarities of record keeping at Nippur.

The contracts from Nippur are not uniform but they are all witnessed, dated and sealed (dates between 1873 and 1721 BC: tabulated in Stone and Owen [1991] 4). The general format is a statement of adoption followed by a discussion of the settlements in cash or property through inheritance. The adopter may receive an adoption payment. This is often followed by a section in which the penalties for breaking the contract are spelled out. Finally, either before or after the oath, before or after the witness list, the text may describe the monthly and annual rations which are to be delivered by the adoptee to support his new father until his death.

There are some twenty-five Old Babylonian Nippur adoption contracts, which are divided by Stone into four different categories. In some instances the parties to the adoption can be given a wider context as a result of surviving documentation of further contractual activity:

1. A man alone adopts one or more sons. This is the most common and is found across the full range of the texts, which span two centuries. In all except two texts the adopted son(s) receives an inheritance in exchange for a contribution to the future support of the adoptive father. There appear to be no penalty clauses such as threat of slavery or disinheritance if he does not comply. This type is closest to the Roman norm.

2. A man and his wife adopt one or more sons. In this type the wife joins her husband as the adopter. In these instances there is never any clause in which the adopted son promises support to his adoptive parents in their old age, although property inheritance is always a feature of these adoptions. It is deduced that in these instances the parenting aspects of adoption are dominant, something never encountered in the surviving Roman evidence.

3. The sons from a previous marriage are adopted by the new spouse. These consist of adoptions which are associated with a second marriage. Marriage texts which do not treat adoptions are rare, and the record of the marriage appears to be made only because of the adoption. In an instance where the father is the surviving parent of the adoptive sons, they have to promise to contribute to the support of their stepmother in

her old age. When it is the mother who contracts a second marriage, the treatment for her sons depends on her status. If she were to be sold into slavery in a case of divorce, then her sons would be in jeopardy of like treatment. The main aim behind these adoptions appears to have been to restructure the families in a manner consistent with the new marital arrangements. A high-profile Roman example is the adoption of his stepson Tiberius by the emperor Augustus in AD 4.

4. A woman alone is the adopter (probable) or the adoptee. Adoptions involving women are very hard to appreciate. Badly damaged tablets make it hard to determine the identity of the adopter and adoptee. In most cases one of the participants was a *naditu* or unmarried votary; she could be expected to be the adopter on analogy with texts from Sippar (R. Harris [1975]; Stone [1982] 50–70). In these cases she would nominate a girl who could follow her calling and inherit her property. Unlike at Sippar, the other participants in the transactions are all either men or married women. None of these could have become a *naditu*. So adoption is used differently from at Sippar, but the fragmentary state of the record precludes exactitude. Of course this category is quite out of keeping with anything found at Rome, where adopters had to be males capable of exercising *patria potestas*.

Types 1 and 2 reflect contrasting socioeconomic relations between the adopter and adoptee. Type 1 places emphasis on immediate economic gain for the adopter, while type 2 is centred more on the nurturing aspect of the parent–child relationship. In type 1 texts penalty clauses tend to be identical for both parties, or property is held hostage for support, or in one instance the adopter stands to lose more if he breaks the contract. In type 2 either the penalty clauses are equal or the adoptees are threatened with slavery if they break the contract. Thus the adopters appear to have the advantage – quite different from type 1. Penalty clauses are clear indicators of different relationships between adopter and adoptee; expected levels of support provide a barometer for these penalty clauses.

In the Mesopotamian situation adoption could be manipulated to the point where economic motives became paramount. At its best it served to mediate between the social needs of some and the political and economic needs of others. If economic and political ambitions are once allowed into the adoption process, it is only a short step to make them the actual basis of the transaction. This is illustrated by the archive of Mannum-mesu-lissur, dating to about 1739 BC. This is a case of a wealthy individual lacking property. Apparently he used his family's wealth as an opportunity for social mobility. He had no real estate but was able to purchase an adoption from a

financially troubled but established family. The consequences for them
were serious: the sons were demoted but expected to be eventual heirs to
the adoptee – an expectation which was apparently never realized.
Important details remain obscure (Stone and Owen [1991] 19–23).

INDIA

Goody warns of the complexity of the Indian situation and the impact of
nineteenth-century thinking on interpretation ([1976] 73). Ideas about
Indo-European unity and the evolution of European culture were at that
time influential, and similarities to the civilizations of Greece and Rome
tended to be exaggerated. It is still an interesting case to review, but caution
is in order. Certain general tendencies in India can be noted, although
regional and religious differences must have led to many variations in
practice. We might expect adoption to be more common in communities
which frowned upon the remarriage of widows or in other ways curtailed
alternative methods of securing succession.

Hindu law shows that the chief aim of adoption was maintenance of the
ancestral line (Mayne [1898] 123). An adopted boy should be the closest
possible male relative: if feasible, a brother's son. If no male was available,
the next best solution was a son of a family following the same spiritual
adviser as the adopting family. Here the spiritual connection took the place
of the blood tie. Some idea of procedure can be gleaned from the *dharma-sûtra* of Vasishtha (Bühler [1882] 75–6):

xv.6 He who desires to adopt a son shall assemble his kinsmen, announce his
intention to the king, make burnt offerings in the middle of the house, reciting the
Vyâhritis, and take (as a son) a not remote kinsman, just the nearest among his
relatives.

Interestingly, the adopted son was only partially protected from the birth of
subsequent legitimate children, and the same text shows that in that event
his share would be reduced to one-quarter (Bühler [1882] 76):

xv.9 If after an adoption has been made, a legitimate son be born, (the adopted son)
shall obtain a fourth part.

The reduction in the adoptee's share can be compared with a like provision
in the Gortyn Code.

Under the Laws of Manu, twelve types of son were enumerated, and this
reveals the emphasis on acquiring sons by whatever means possible. This did
not mean that there was no pecking order – quite the reverse – primacy