## Wissenschaftliche Untersuchungen zum Neuen Testament · 2. Reihe 48

James M. Scott

# Adoption as Sons of God



# Wissenschaftliche Untersuchungen zum Neuen Testament · 2. Reihe

Begründet von Joachim Jeremias und Otto Michel Herausgegeben von Martin Hengel und Otfried Hofius

48

# Adoption as Sons of God

An Exegetical Investigation into the Background of YIO $\Theta$ E $\Sigma$ IA in the Pauline Corpus

by James M. Scott



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# For Gail, Kathryn and Elizabeth

#### Foreword

The present volume presents a somewhat shortened version of my dissertation which was accepted by the Evangelisch-theologische Fakultät of the University of Tübingen in 1989.

I realize that in offering this dissertation for publication, I am deeply indebted to many people. My profound thanks go first and foremost to my Doktorvater, Prof. Dr. Peter Stuhlmacher, because he not only very graciously allowed me to pursue my own research interests, but also personally encouraged and guided me every step of the way to the completion of the project. One could not wish for a more dedicated and stimulating doctoral supervisor. My thanks go also to Prof. Dr. Otto Betz, who was nothing less to me than a second *Doktorvater*, always willing to discuss my research and share his own insights. Prof. Betz's vigorous example of scholarship and humanity has marked me for life. I would like to thank the Protestant Faculty and the University of Tübingen for the opportunity of studying in such ideal conditions. I gratefully acknowledge the scholarships from the University and from the Deutscher Akademischer Austauschdienst which allowed me to finish my dissertation in Tübingen. I must also express my gratitude to my family for wholeheartedly supporting me in the process of research and writing. Without their help and encouragement, I could not have made it. In particular, I would like to thank my wife Gail for all her hard work in editing and typing the various drafts of the manuscript. Finally, I would like to thank Professors Hengel and Hofius for accepting this monograph in the series, Wissenschaftliche Untersuchungen zum Neuen Testament.

June, 1991 James M. Scott

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#### **Abbreviations**

References to journals and standard references are abbreviated according to Siegfried Schwertner, *Theologische Realenzyklopädie*, Abkürzungsverzeichnis (Berlin/New York: Walter de Gruyter, 1976), and Jean S. Wellington, *Dictionary of Bibliographic Abbreviations found in the Scholarship of Classical Studies and Related Disciplines* (Westport, CT/London: Greenwood Press, 1983).

Classical sources are abbreviated according to N. G. L. Hammond and H. H. Scullard, eds., *The Oxford Classical Dictionary*, 2nd ed. (Oxford: Clarendon Press, 1970), and supplementally to Henry George Liddell and Robert Scott, eds., et al., *A Greek-English Lexicon*, rev. ed., with a Supplement (Oxford: Clarendon Press, 1978).

Rabbinic sources are abbreviated according to Thomas Lehnardt, Einheitssachtitel zur rabbinischen Literatur. Midraschim, Traktate in Mischna, Tosefta und den Talmuden, Wochenabschnitte, Arbeitsblätter zur rabbinischen Literatur (Tübingen: privately published, 1987).

Other Jewish sources are abbreviated as follows:

Apoc Abr	The Apocalypse of Abraham
Apoc Mos	The Apocalypse of Moses
Ass Mos	The Assumption of Moses
1 Bar	1 Baruch (Apocryphal)

2 Bar 2 Baruch (Syriac Apocalypse of Baruch)
3 Bar 3 Baruch (Greek Apocalypse of Baruch)
1 En 1 Enoch (Ethiopic Book of Enoch)
2 En 2 Enoch (Slavonic Book of Enoch)
3 En 3 Enoch (Hebrew Book of Enoch)
4 Ezra The Ezra Apocalypse (2 Esdras)

Jos As Joseph und Asenath

Jub Jubilees

LAB Pseudo-Philo, Liber Antiquitatum Biblicarum

1 Maccabees

XII Abbreviations

2 Macc2 Maccabees3 Macc3 Maccabees4 Macc4 Maccabees

Ps Sol Psalms of Solomon Sib Sibylline Books

Sir Sirach

TJud Testament of Judah
TLev Testament of Levi
TAbr Testament of Abraham

Tob Tobit Wisd. Wisdom

#### Introduction

This monograph provides an opportunity to explore a concept which has been largely overlooked or inadequately handled in the secondary literature. Although two recent, rather wide-ranging dissertations on sonship in Paul go a long way towards meeting the need, their very scope prohibits them from devoting special attention to  $vlo\theta\epsilon\sigma(a)$ . Yet such attention is warranted; for, although  $vlo\theta\epsilon\sigma(a)$  occurs in some of the most interesting and crucial passages in Paul (Gal. 4:5; Rom. 8:15, 23; 9:4; Eph. 1:5), there is still much confusion about the meaning and background of the term. Does  $vlo\theta\epsilon\sigma(a)$  mean "adoption as son" or "sonship" in Paul? Is the term to be seen against a Greco-Roman background, an Old Testament/Jewish background, or some other? The answer to these

<sup>&</sup>lt;sup>1</sup>Cf. Allen Mawhinney, "ΥΙΟΘΕΣΙΑ in the Pauline Epistles: Its Background, Use and Implications" (Ph.D. diss., Baylor University, 1982); Jan Lodewyk de Villiers, Die betekenis van ΥΙΟΘΕΣΙΑ in die Briewe van Paulus (Amsterdam: Drukkerij Holland, 1950). Add to these, of course, a trickle of journal and encyclopedia articles on vioθεσια (see the Bibliography).

<sup>&</sup>lt;sup>2</sup>Cf. Brendan Byrne, 'Sons of God'—'Seed of Abraham': A Study of the Idea of the Sonship of God of all Christians against the Jewish Background, Analecta Biblica, 83 (Rome: Biblical Institute Press, 1979), with a concise history of research on pp. 2-6; Charles A. Wanamaker, "The Son and the Sons of God: A Study in Elements of Paul's Christological and Soteriological Thought" (Ph.D. diss., University of Durham, 1980). Although both of these British dissertations (Byrne's was supervised by Morna D. Hooker, and Wanamaker's, by C. K. Barrett) were able to profit from Martin Hengel's insightful booklet, Der Sohn Gottes. Die Entstehung der Christologie und die jüdisch-hellenistische Religionsgeschichte, 2nd ed. (Tübingen: J. C. B. Mohr [Paul Siebeck], 1977). neither was able, unfortunately, to benefit from the work of the other. Therefore, one of the advantages of the present study is that the others have already done some of the groundwork. On the new "symbolic" approaches to sonship in Paul, see Norman R. Petersen, (Rediscovering Paul: Philemon and the Sociology of Paul's Narrative World [Philadelphia: Fortress Press, 1985], pp. 206ff) and Daniel von Allmen (La famille de Dieu: La symbolique familiale dans le paulinisme, Orbis Biblicus et Orientalis, 41 [Fribourg: Éditions Universitaires; Göttingen: Vandenhoeck & Ruprecht, 1981]).

<sup>&</sup>lt;sup>3</sup>Cf. Byrne, Sons of God, p. 8: "What might be termed the fine point of focus of the enquiry—though by no means its chief aim—lies upon the term υἰοθεσία."

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questions is not inconsequential to the aforementioned passages and, to that extent, to Pauline theology as a whole.

The present study addresses these issues in three main parts. In the first part (chap. 1), the meaning of the term is substantiated beyond all doubt by an extensive, computer-assisted word study. The whole study rests on the well-founded premise, about which there can be no confusion, that in the Hellenistic period  $\nu lo\theta \epsilon \sigma la$ always denotes "adoption as son" and never merely, as commonly supposed, "sonship." This terminological distinction has important methodological consequences. For one, it justifies the restriction of the study to "adoption" in Paul; for, as the means by which believers enter into divine sonship,  $vlo\theta\epsilon\sigma la$  provides the logical starting point for any further investigation of sonship in Paul. This strict distinction also allows the study to focus on "adoption" wherever it occurs in relevant primary sources, rather than open up the floodgate of material on "sonship" in general. Thus the first part also contains a brief outline of the Greco-Roman institution of adoption. The second part (chap. 2) follows with a discussion of Old Testament/ Jewish adoption. Much of the confusion about the background of  $vio\theta\epsilon\sigma i\alpha$  in Paul, when rightly understood as a term of adoption, stems from the common misconception that the Old Testament and ancient Judaism contain little or nothing about adoption, and that therefore Paul must have had some other background in mind. However, the second part provides ample evidence to dispel this notion. In the third part (chaps. 3-5), the use of υlοθεσία in the Corpus Paulinum is examined exegetically in light of the cumulative evidence of the first two parts.<sup>4</sup> This final section

<sup>&</sup>lt;sup>4</sup>In the rest of the New Testament, several passages are sometimes discussed in terms of adoption, but few of them contain a demonstrable term of adoption or an adoption formula. For example, idiosyncrasies in the Matthean and Lukan genealogies of Jesus are occasionally attributed to implicit adoptions (see chap. 2 below); the fact that (as a child?) John the Baptist was "in the desert" (Lk. 1:80) is often taken to indicate that John was adopted by the Essenes (see chap. 2 below); the highpoints of the Gospel of Mark are frequently summarized as Jesus' *baptism*, transfiguration, and crucifixion, directly corresponding to a supposed ancient Egyptian enthronement scene involving *adoption*, presentation and acclamation (see chap. 5 below); and Jesus' address to Mary and the beloved disciple standing at the foot of the cross (Jn. 19:26–27) is often explained as the pronouncement of a son-mother relationship between the two (cf., e.g., H. J. Wolff, "Römisches Provinzialrecht in der Provinz Arabia [Rechtspolitik als Instrument der Beherrschung]," in *ANRW* II.13, ed. Hildegard Temporini

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resists the urge to commence with the use of  $vlo\theta\epsilon\sigma la$  in Rom. 9:4,5 and begins instead more naturally with Gal. 4:5 (chap. 3), the earliest occurrence of the word in Paul. For purposes of the present study, the use of  $\nu lo\theta \epsilon \sigma la$  in Rom. 9:4, appearing as it does in a later Pauline epistle and that in a bare list of Israel's privileges, serves rather to corroborate the suggested interpretation of υἰοθεσία in Gal. 4:5 against a specific Old Testament/Jewish background of adoption.<sup>6</sup> For reasons that will become clear later, 2 Cor. 6:18 also attests to this interpretation of  $vlo\theta\epsilon\sigma la$  in Gal. 4:5, and so a full discussion of it is included (chap. 4), even though  $vio\theta\epsilon\sigma i\alpha$  does not occur there and 2 Cor. 6:14-7:1 is widely held to be spurious. The inclusion of 2 Cor. 6:18 does not represent a departure from the limits set for the study, but rather a confirmation that a particular Old Testament/Jewish background of adoption influenced Paul. Furthermore, the correlation between Gal. 4:5 and 2 Cor. 6:18, among other evidence, shows that the recent doubts about the authenticity of 2 Cor. 6:14-7:1 are largely unsubstantiated. Finally, Gal. 4:5 remains the point of departure for the discussion of  $vio\theta\epsilon\sigma i\alpha$  in Rom. 8 (chap. 5). There the twofold aspect of the concept—present (v. 15) and future divine adoption (v. 23)—has often compounded the confusion of the exegetes.

[Berlin/New York: Walter de Gruyter, 1980], p. 795 n. 91; S. Ben-Chorin, "A Jewish View of the Mother of Jesus," *Concilium* 168 [1983]:12–16). A full discussion of these tentative suggestions lies outside the scope of the present study on divine adoption in Paul, although some of them will be encountered again in the course of the paper. Other passages, however, more or less clearly contain a term or formula of adoption and need to be considered below: the statement of Jesus' adoption by Joseph in Lk. 3:23 (see chap. 5); the mention of Moses' adoption by Pharaoh's daughter in Acts 7:21 (see chap. 2); and the use of 2 Sam. 7:14 in Heb. 1:5; Rev. 21:7 (see chap. 5).

<sup>5</sup>So expressly, Byrne, Sons of God, p. 81; de facto, Mawhinney, "ΥΙΟ-ΘΕΣΙΑ," pp. 134ff.; Martin W. Schoenberg, "Huiothesia: The Adoptive Sonship of the Israelites," American Ecclesiastical Review 143 (1960):261–273.

<sup>6</sup>Likewise the use of  $vlo\theta\epsilon\sigma la$  in Eph. 1:5, occurring as it does incidentally in an exegetically difficult passage (vv. 3–14) in a letter of disputed authenticity, may be drawn into the discussion marginally for the purpose of comparison.

### PART I

Greco-Roman Background

#### Chapter 1

# ΥΙΟΘΕΣΙΑ: The Greco-Roman Institution and the Semantic Field

#### INTRODUCTION

Although it has often been alleged that Paul's concept of  $vio\theta \epsilon \sigma ia$  can be traced to a Greco-Roman background of one sort or another (see Ch. 3 below), only one other New Testament study, the dissertation by J. L. de Villiers, has made an attempt to delve into this background material, and even his work leaves room for improvement. Therefore, the purpose of this chapter is (1) to sketch the Greco-Roman institution of adoption, and (2) to examine the semantic field of  $vio\theta\epsilon\sigma ia$ . The latter in particular has long been needed, in order to demonstrate conclusively that, in the period under consideration,  $vio\theta\epsilon\sigma ia$  univocally denotes "adoption as son," and to appreciate Paul's use of  $vio\theta\epsilon\sigma ia$  over against other possible word choices. In the process, the word study surfaces many interesting examples of adoption which have so far gone unnoticed.

# THE GRECO-ROMAN INSTITUTION OF ADOPTION GREEK ADOPTION

Sources for Greek Adoption. It seems impossible to refer to "Greek adoption" as if it took on the same complexion in all the Greek city-states and at all times. Nevertheless, more attention has been given to the Athenian adoption of the fourth century B.C., because most of the extant literary sources on adoption come from Attic orators, particularly Isaeus and Demosthenes, who dealt with

<sup>&</sup>lt;sup>1</sup>Jan Lodewyk de Villiers, "Die Betekenis van ΥΙΟΘΕΣΙΑ in die Briewe van Paulus" (Amsterdam: Drukkerij Holland, 1950), pp. 48–70.

<sup>&</sup>lt;sup>2</sup>However, Isaeus stresses the continuity of the Attic practice compared with that of the barbarians (2.24).

cases of disputed inheritance. Although these Attic sources do not contain a code of laws on adoption, as found for example in Gortyn,<sup>3</sup> they clearly presuppose a code and occasionally cite it. Therefore, the present study sketches Attic adoption as a point of reference.<sup>4</sup>

Purpose of Adoption. Attic adoption in general served to perpetuate the family line and cultus, and adoption inter vivos provided in addition a means of securing care for the adoptive father in his old age.<sup>5</sup> Thus towards the end of his life Menecles "began to consider how he could put an end to his childless condition and have someone to tend to his old age and bury him when he died and thereafter carry out the customary rites over him," so he adopted a son from another family (Isae. 2.10–12).<sup>6</sup> In Attic adoption, the adopter's personal interests and purposes were paramount. Therefore, although a few cases of adoption of a daughter are recorded,<sup>7</sup> the adoption of a son—often an adult<sup>8</sup>—was

<sup>&</sup>lt;sup>3</sup>Cf. Ronald F. Willetts, *The Law Code of Gortyn*, Kadmos, Suppl. 1 (Berlin: Walter de Gruyter, 1967), pp. 3, 7, 10–11, 13, 21, 30–31, 34, 48–49, 73, 76–78; idem, *Aristocratic Society in Ancient Crete* (London: Routledge and Kegan Paul, 1955), pp. 63–68 *et passim*; W. K. Lacey, *The Family in Classical Greece*, Aspects of Greek and Roman Life (London: Thames and Hudson, 1968), pp. 201, 213–214.

<sup>4</sup>On Attic adoption: A. R. W. Harrison, *The Law of Athens: The Family and Property* (Oxford: Clarendon Press, 1968), pp. 82–96; *PW*, s.v. "Adoption," by Theodor Thalheim, 1:396–398; *Der Kleine Pauly*, s.v. "Adoption," 1:71; *Encyclopaedia of Religion and Ethics*, s.v. "Adoption (Greek)," by W. J. Woodhouse, 1:107–110; Douglas M. MacDowell, *The Law in Classical Athens*, Aspects of Greek and Roman Life (Ithica, NY: Cornell University Press, 1978), pp. 99–101; Robert J. Littmann, "Kingship in Athens," *Ancient Society* 10 (1979):17–20; Frederic Earle Whitaker, "The Legal Fiction of Adoption in Ancient Greece" (Ph.D. diss., Brown University, 1899); Lacey, *Family*, pp. 145–147; *OCD*, s.v. "Adoption, Greek," by Martin S. Smith, p. 9; W. E. Thompson, "Athenian Attitudes towards Wills," *Prudentia* 13 (1981):13–23; Ugo Enrico Paoli, "Note giuridiche sul Δύσκολος di Menandro," *Museum Helveticum* (1961):53–62; J. K. Davies, *Athenian Propertied Families 600–300 B.C.* (Oxford: Clarendon Press, 1971), index; V. Polaček, "Quelques remarques sur l'adoption dans le 'Dyskolos' de Ménandre," *RIDA* 14 (1967):157–167.

<sup>&</sup>lt;sup>5</sup>For the Greek ideal, cf. Pl. *Hipp. mai.* 291D.

<sup>&</sup>lt;sup>6</sup>Adoption could also provide a cure for the loneliness of the adoptive father (Isoc. 19.49; Isae. 2.20).

<sup>&</sup>lt;sup>7</sup>Cf. Isae. 7.9; 11.8, 41. Thus the primary purpose of adoption should not be made into a *sine qua non*. Cf. Justus Hermann Lipius, *Das attische Recht und* 

predominant, because only a son could perpetuate the family and the family cultus. The state had a vested interest in preserving the olkos from dying out and thus encouraged adoption as a last resort.

Modes of Adoption. There were three modes of adoption in Attica: inter vivos, testamentary, and posthumous. In adoption inter vivos, the adopter acquired an adopted son during his life time. <sup>10</sup> In testamentary adoption, the adopter designated an adopted son in his last will and testament to take effect after his death. <sup>11</sup> In posthumous adoption, if a man died without legitimate male offspring, and without having adopted a son (either by adoption inter vivos or testamentary adoption), the next-of-kin succeeding to the estate, or that person's offspring, was adopted into the family of the deceased. <sup>12</sup>

Restrictions on Adoption. Although the head of a household was relatively free to adopt whomever he wished, <sup>13</sup> he was in fact limited by law and custom. For example, both parties had to be citizens, and the candidate had to be a legitimate son of another marriage. <sup>14</sup> Moreover, the law required the adopter be without a legitimate son and free from outstanding debts. <sup>15</sup> A man could not adopt if he had pending litigation, indebtedness to the state, or a conviction. <sup>16</sup> For an adoption to be considered valid, the adopter had to be in his right mind and had to be acting on his own

Rechtsverfahren (Leipzig: O. R. Reisland, 1915), p. 513 n. 51.

<sup>&</sup>lt;sup>8</sup>Cf. Isae. 2.6, where the adopted son is old enough to go off on a campaign in Thrace. Adopting an adult had the advantage that the adopter knew by experience his successor's ability and integrity (cf. Isae. 7.33, 34).

<sup>&</sup>lt;sup>9</sup>Cf. Isae. 7.30.

<sup>&</sup>lt;sup>10</sup>Cf. Isae. 2.12, 14.

<sup>&</sup>lt;sup>11</sup>Cf. Isae. 6.6; 5.6; 9.5, 6; 11.8, 9; 10.9; Dem. 46.24; Pl. Leg. 11.923E.

<sup>&</sup>lt;sup>12</sup>Cf. Isae. 7.31; 11.49; Dem. 43.11; 44.43. Cf. also Pl. Leg. 9.878A.

 $<sup>^{13}</sup>$ Cf. Isae. 2.17—' $\Omega$ ς μέν τοίνυν έξην τ $\hat{\varphi}$  Μενεκλε $\hat{\iota}$  ποιήσασθαι ύδν αύτ $\hat{\varphi}$  δντινα έβούλετο. Cf. Dem. 20.102.

<sup>&</sup>lt;sup>14</sup>Cf. Isae. 7.16. There were exceptions to this general rule which will be noted subsequently under "municipal adoption." Cf. Whitaker, "Legal Fiction," p. 37–42.

<sup>&</sup>lt;sup>15</sup>Cf. Dem. 44.49; Isae. 2.46.

<sup>&</sup>lt;sup>16</sup>Cf. Aeschin. In Ctes. 3.21; Dem. 22.34; Cf. Plut. Antiphon 834B.

volition, not under persuasion of a woman.<sup>17</sup> Furthermore, although the adopter was not legally required to adopt a relative, the extant evidence shows that he customarily did so.<sup>18</sup>

Ceremony of Adoption. In the case of adoption inter vivos, the three introductory ceremonies encompassed aspects both public and private, legal and sacred. First, the adopted son was introduced into the  $\gamma \epsilon \nu \nu \hat{\eta} \tau \alpha \iota$  or associated relatives, then into the  $\phi \rho \hat{\alpha} \tau \rho \alpha$  or religious brotherhood, and finally into the  $\delta \hat{\eta} \mu o s$  or local township. Isae. 7.15–17 details how a man introduced his adopted son into the familial and religious orders: 19

When the Thargelia came round, he conducted me to the altars and to the members of the families and the phratry. Now these bodies have a uniform rule, that when a man introduces his own son or an adopted son, he must swear with his hand upon the victims that the child whom he is introducing, whether his own or an adopted son, is the offspring of an Athenian mother and born in wedlock; and, even after the introducer has done this, the other members still have to pass a vote, and, if their vote is favorable, they then, and not till then, inscribe him on the official register; such is the exactitude with which their formalities are carried out.

All three bodies were needed to witness to one's proper adoption in case it was ever challenged.<sup>20</sup>

Rights and Duties of the Adopted Son. The adopted son had the duty of fulfilling the purpose for which he was adopted. As the perpetuator of his adoptive father's family, the adopted son took a new name, usually that of his new paternal grandfather. Thus in one case the adopted son says that he was registered in the phratry records as "Thrasyllus the son of Apollodorus." As perpetuator of his adoptive father's cultus, the adopted son collected the remains of his deceased adoptive father, laid them out and performed the burial rites. As curator of his adoptive father in old age, the

<sup>&</sup>lt;sup>17</sup>Cf. Isae. 2.1, 14, 19, 25, 38; 6.10. For a similar concern about the influence of women in Roman adoption, cf. Pliny *Pan.* 7.4.

<sup>&</sup>lt;sup>18</sup>Cf. Isae. 2.20, 23.

<sup>&</sup>lt;sup>19</sup>For further detail on the role of the animal sacrifice in the admission ceremonies, see Dem. 44.14, 22.

<sup>&</sup>lt;sup>20</sup>Cf. Isae. 2.16.

<sup>&</sup>lt;sup>21</sup>Isae. 7.17. Cf. Dem. 39.27; Isae. 2.36.

<sup>&</sup>lt;sup>22</sup>Cf. Isae. 9.4.

adopted son had to serve and honor him as faithfully as a natural son would. Thus one adopted son testifies to his own filial piety:

Menecles exercised the forethought on my behalf which a father would naturally exercise for his son, and I tended him and respected him as though he were my true father . . . . I, the adopted son, . . . tended Menecles while he lived and gave his name to my little son, in order that his family might not lack a representative. On his death, I buried him in a manner befitting both him and myself, and I erected a fine monument to him and celebrated the commemorative ceremony on the ninth day and performed all the other rites at the tomb in the best manner possible . . . . . 23

There were also privileges associated with adoption, the chief being the right of inheritance. The adopted son became at once the legal and necessary heir of his adoptive father, as he severed ties with his natural family.<sup>24</sup> In the case of adoption *inter vivos*, the adoptive son was like a natural son, in that he could enter without litigation into the possession of the estate upon his adoptive father's death.<sup>25</sup> Collaterals and testamentary heirs, on the other hand, had first to establish their claims in court.<sup>26</sup>

#### ROMAN ADOPTION

Sources for Roman Adoption. Roman adoption may have been more unified than Greek adoption, but it was no less susceptible to change. In his monograph on adoption law in the classical period of Roman jurisprudence (ca. A.D. 120–250), Marek Kurylowicz emphasizes that Roman adoption presents a difficult and complex problem "wegen der tiefgreifenden Veränderung, die sie im Laufe der Jahrhunderte in der rechtlichen Regelung wie in der sozialen Funktion erfahren hat . . . ."<sup>27</sup> Kurylowicz refers here to the

<sup>&</sup>lt;sup>23</sup>Isae. 2.18, 36. On the second speech, cf. Liselot Huchthausen, "Betrachtungen zur II.Rede des Isaios," *Klio* 46 (1965):241–262.

<sup>&</sup>lt;sup>24</sup>Cf. Isae. 10.4. The main exception to this general rule was that the relationship to the natural mother was never severed (Isae. 7.25).

<sup>&</sup>lt;sup>25</sup>Cf. Isae. 2.

<sup>&</sup>lt;sup>26</sup>Cf. Isae. 3.1, 56, 60; 4.10ff; 5.6; 9.3.

<sup>&</sup>lt;sup>27</sup>Marek Kurylowicz, *Die adoptio im klassischen römischen Recht*, Studia antiqua, 6 (Warsaw: Univ. Warszawskeigo, 1981), p. 12 [emphasis mine]; cf. p. 164. The purpose of Kurylowicz's monograph is to give a complete outline of Roman adoption in the classical period such as has not been available previously (pp. 12–13). It is to be regretted therefore that Kurylowicz's work is marred by poor editing and printing. Kurylowicz considers C. Gunnar Bergmann's work, *Beiträge zum römischen Adoptionsrecht*, Lunds Universitets Årsskrift, N.F.

change which began in the Republic and continued until the Justinian reform.<sup>28</sup>

In view of this situation, it is disconcerting to realize that, except for a few political adoptions<sup>29</sup> and some inscriptional evidence,<sup>30</sup> knowledge of first-century Roman adoption must be

AFD. 1, Bd. 8, Nr. 1, pp. 3–157 (Lund: Gleerup/Leipzig: Otto Harrassowitz, 1912), inadequate. On Roman adoption see further: *PW*, s.v. "Adoption," by R. Leonard, 1:398–400; ibid., s.v. "Adrogatio," 1:419–421; *RAC*, s.v. "Adoption," by L. Wenger, 1:100–102; *OCD*, s.v. "Adoption," by Adolf Berger and Barry Nicholaus, pp. 8–9. Judith P. Hallet, *Fathers and Daughters in Roman Society: Women and the Elite Family* (Princeton: University Press, 1984), index, s.v. "adoption"; Max Kaser, *Das römische Privatrecht*, Part 1: "Das altrömische, das vorklassiche und klassische Recht," 2nd ed., Handbuch der Altertumswissenschaft, 10.3.3.1 (Munich: C. H. Beck, 1971), pp. 65–68, 347–350.

<sup>28</sup>On the changes which took place at that time, cf. Marek Kurylowicz, "Die justianische Adoption," in *Sodalitas. Scritti in onore di Antonio Guarino*, 10 vols., Biblioteca di Labeo, 8 (Naples: Jovene, 1984–1985), 7:3305–3315.

<sup>29</sup>Cf. Marcel-Henri Prévost, Les Adoptions politiques à Rome sous la République et le Principat, Publications de l'Institut de Droit Romain, 5 (Paris: Recueil Sirey, 1949), pp. 35-59; Herbert Nesselhauf, "Die Adoption des römischen Kaisers," Hermes 83 (1955):477-495; Barbara Levick, "Drusus Caesar and the Adoption of A.D. 4," Latomus 25 (1966):227-244; Hans Ulrich Instinsky, "Augustus und die Adoption des Tiberius," Hermes 94 (1966):324-343; PW, s.v. "Princeps," by Lothar Wichert, 22:2187–2190; Elke Merten, "Die Adoption Hadrians," in Bonner Festgabe Johannes Straub zum 65. Geburtstag am 18. Oktober 1977, Beihefte der Bonner Jahrbücher, 39 (Bonn: Rheinland-Verlag, 1977), pp. 247–259. By Trajan's day (the beginning of the so-called "Adoptivkaisertum" of the second century), adoption as a means of Imperial legitimization had lost its effectiveness, so that legitimization by the deity overshadowed the adoption which transferred imperium. Although this divine election was never called an "adoption," it is significant that, in adopting Trajan, Nerva was simply the agent of Jupiter (cf. Pliny Pan. 8.2: Nerva tantum minister fuit, utque adoptaret . . .). Cf. Dietmar Kienast, "Nerva und das Kaisertum Trajans," Historia 17 (1968):51-71; J. Rufus Fears, "The Cult of Jupiter and Roman Imperial Ideology," ANRW II. 17.1, ed. Wolfgang Haase (Berlin/New York: Walter de Gruyter, 1981), pp. 81–85; idem, Princeps a diis electus: The Divine Election of the Emperor as a Political Concept at Rome, Papers and Monographs of the American Academy in Rome, 26 (Rome: American Academy, 1977), pp. 145-154; Karl Büchner, "Tacitus und Plinius über Adoption des römischen Kaisers (Das Verhältnis von Tacitus hist. I. 15–16 zu Plinius, Panegyricus 7-8)," Rheinisches Museum für Philologie N.F. 98 (1955): 289-312.

<sup>30</sup>Cf. P. R. C. Weaver, Familia Caesaris: A Social Study of the Emperor's Freedmen and Slaves (Cambridge: Cambridge University Press, 1972), pp.

inferred from the agreement between literary sources of the late Republic and the law code of the classical period. In both eras, however, the picture is surprisingly sketchy.<sup>31</sup>

Purpose of Adoption. Similar to Attic adoption, the original purpose of Roman adoption was to perpetuate the familia and the gens. A person who was not by birth part of the family was made son of an adoptive father, in order that he might carry on the nomen, the pecunia, and the sacrum of a family which might have otherwise died out.<sup>32</sup> According to Kurylowicz, however, this original purpose did not hold for the late Republic and on into the classical period, when adoption had the main purpose of establishing patria potestas over the adoptee. This authority, in turn, was used for social and/or political maneuvering, for avoiding the responsibility of raising one's own children, for helping a child, etc.<sup>33</sup> In his dissertation on the subject, G. Alfs also notices a shift in emphasis in adoptions during the late Republic, but he does not argue that the original purpose of the institution was thereby forsaken. According to Alfs, perpetuation of the family line remained the primary purpose of adoption, while such things as social and political maneuvering were secondary motives, and establishing patria potestas was the overall result of adoption.<sup>34</sup>

<sup>143-145, 153, 158-159, 171, 176, 254;</sup> Ursula Vogel-Weidemann, Die Statthalter von Africa und Asia in den Jahren 14-68 n.Chr. Eine Untersuchung zum Verhältnis Princeps und Senat, Antiquitas, 1.31 (Bonn: Rudolf Habelt, 1982), index, s.v. "Adoption."

<sup>&</sup>lt;sup>31</sup>Cf. Kurylowicz, *Die adoptio*, p. 50; Gerd Alfs, "Adoptionen in der Zeit der römischen Republik bis auf die des Caesar Octavianus" (Ph.D. diss., Universität Köln, 1950), p. v. As Alfs mentions (p. viii n. 48), the fact that extant sources are fragmentary is shown by Cicero's reference to "countless other cases" of adoption (*Dom*. 35); Alfs can muster only 83 cases from the period 329 B.C.–31 B.C. Note, however, that D. R. Schackleton Bailey (*Two Studies in Roman Nomenclature*, American Classical Studies, 3 [New York: American Philological Association, 1976], pp. 81–135) lists approximately 85 cases of adoption from the shorter period of ca. 130 B.C.–43 B.C!

<sup>&</sup>lt;sup>32</sup>Cf. Cic. Dom. 35: quorum uterque nostra memoria, summa senectute, alter Oresten, alter Pisonem adoptavit: quas adoptiones, sicut alias innumerabiles, hereditates nominis, pecuniae, sacrorum secutae sunt.

<sup>&</sup>lt;sup>33</sup>Cf. Kurylowicz, *Die adoptio*, pp. 14, 17–18, 24, 26–27, 157. Note, however, that in subsequent pages Kurylowicz seems to say that the original purpose of adoption still held sway in the classical period (cf. ibid., pp. 76, 81).

<sup>&</sup>lt;sup>34</sup>Cf. Alfs, "Adoptionen," pp. v, vii n. 38, 85–87.

Modes of Adoption. Of the three forms of Attic adoption—inter vivos, testamentary, and posthumous—Roman adoption had analogues to the first two, no trace of the third, and a new mode called adrogatio (ad + rogatio "request," referring to the fact that a motion had to be put before the comitia curiata for its approval).<sup>35</sup> The Latin adoptio (adoptare) is a generic term which can refer to either adrogatio or adoptio sensu stricto. It was not until the second century A.D., in Gaius and Gellius, that the two modes of adoption began to be distinguished terminologically and thus ended possible equivocation.<sup>36</sup>

The original mode was *adrogatio*. This was required when the person to be adopted was *homo sui iuris* (one who was free of his father's *potestas*). With *adrogatio*, the one adopted lost *patria potestas* over his own children, and he, his children and his property came under the *potestas* of the adoptive father.<sup>37</sup> In the process, all the previous debts of the adopted son were cancelled.<sup>38</sup> Because *adrogatio* actually extinguished one *familia* (including possibly its *sacrum*) to perpetuate another, the institution required public approval and pontifical sanction.

Adoption sensu stricto (datio in adoptionem) was a later development in Roman law to supplement adrogatio. It involved a more private and secular transaction, in which a homo alieni iuris (someone still under his father's authority) was removed from the potestas of his natural father and placed under that of an adoptive father. This mode of adoption did not entail such an extensive reordering of society as adrogatio and did not therefore require public approval.

The third and latest mode, testamentary adoption,<sup>39</sup> was practiced from the time of the late Republic, and parallels testamentary adoption in Attica.<sup>40</sup> It is uncertain whether Roman testamentary

<sup>35</sup>Cf. Gai. Inst. 1.99.

<sup>&</sup>lt;sup>36</sup>Cf. Kurylowicz, *Die adoptio*, pp. 14 n. 1, 24–26, 78.

<sup>&</sup>lt;sup>37</sup>Cf. Gai. Inst. 1.107; 3.83.

<sup>&</sup>lt;sup>38</sup>Cf. Gai. *Inst.* 3.84; 4.38. There is some question, however, how early this aspect of *adrogatio* may have applied (cf. Kaser, *Privatrecht*, p. 67).

<sup>&</sup>lt;sup>39</sup>The most conspicuous example is the will of Julius Caesar adopting Octavius (Suet. *Iul.* 83.2). Cf. Walter Schmitthenner, *Oktavian und das Testament Cäsars*. Eine Untersuchung zu den politischen Anfängen des Augustus, 2nd ed., Zetemata, 4 (Munich: C. H. Beck, 1973).

<sup>&</sup>lt;sup>40</sup>Cf. Kaser, *Privatrecht*, p. 349; Rudolf Düll, "Bausteine und Lücken im

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