

Bisha Eugena,
Karl-Franzens University of Graz,
PhD candidate in Law, the Faculty of Law
E-mail: eugenabisha@yahoo.com

Adoption in ancient times

Abstract: Since in ancient times, in all human cultures, children transferred from biological parents to parents that want them to create family, for political alliances, for inheritance, for a future marriage, or to care for elderly parents. The practice of adoption was fairly common in different places and periods. Adoption is mentioned on Bible and Quran. Greeks, Romans, Egyptians and Babylonians had adoption systems.

Keywords: adoption, ancient times, Roman law, ancient Mesopotamia.

Introduction

The adoption of children has been practiced throughout the history of mankind with its legal, social, and ethical implications [1, 1]. Adoption — legally taking an individual born to others as one's own child — dates back to ancient times, though the practice has changed significantly over time and is not common to all cultures [2, 1]. The death of parents from famine, disease, age, and war, all contributed to the possibility that a child would suddenly be left parentless [3; 4]. The connection between adoption and infertility is a modern phenomenon. Nowadays, adoption is closely tied with orphan children.

We will look at who in ancient times would do adoptions and why.

Roman Law

The Roman term was *adoptio*. *Adoptio* comprehended *adoptio* and *adrogatio*. *Adrogatio* was the act of adopting an adult as *son homo sui iuris* that was not in the power of his parent; or was himself a *paterfamilias*. Both, *adoptio* and *adrogatio* gave the adopted person the same rights and responsibilities as a birth child of their adopter, legally entitled to inherit and to carry on the family name. In the Roman law and culture of the first century A. D., an affluent but childless adult who wanted an heir, would adopt a post-pubescent male, often a slave, to be his son [4, 25]. Children of the ruling class had a different function in society and therefore had a different lifestyle [5]. Children played an important role in the life of the Roman family; they were under the absolute possession and control of the father [6, 6]. The legal authorities to effect adoption were magistrate (*magistratus*), the praetor, or a governor (*praeses*) in the provinces.

Adoptions in ancient times were conducted in different ways than we do now, and not always in the interests of children. In Rome, the adoptee was usually an adult male. Adoption was practiced as a means of securing an heir, with a focus on the interests of the adults; the emperor Trajan, for example, adopted Hadrian, who succeeded him as emperor in 117 [7, 2]. Octavius, called Augustus once he became emperor, was the adopted heir of Julius Caesar (posthumously adopted) through the process of *adrogatio*. He was Caesar's nephew. This adoption gave Octavius the possibility to have all the political support he needed to become

the first Emperor of Rome. Like Octavian, there were a lot of other boys adopted almost always for political reasons. A lot of Roman emperors like Tiberius, Caligula, Nero, Antoninus Pius, Marcus Aurelius (161–180), Hadrian (117–138), and Trajan (98–117), were adopted.

Why did so many Roman emperors adopt their successors?

The lack of natural heirs was the main reason why all these emperors were all adopted. Only some of emperors were related by blood with his predecessor. As Susan Treggiari notes in the *Oxford Classical Dictionary* (4th Edition, 2012):

“Adoption of adult men was a convenient recourse for childless aristocrats and for emperors in need of successors”.

Adoption of girls, was less common.

The Romans had a technique at their disposal — the adoption of adult men — that enabled the different ideologies of succession to coexist for hundreds of years [8].

A Roman citizen entered another family and came under their protection. Firstly, only men could adopt because of their *paterfamilias* status. This changed later (2nd century AD), and women were allowed to adopt also. The Roman relation of parent and child arose either from a lawful marriage or from adoption [9, 15–16].

The Codex Justinianus states: *“... when a filiusfamilias is given in adoption by his natural father to a stranger, the power of the natural father is not dissolved; no right passes to the adoptive father, nor is the adopted son in his power, although we allow such son the right of succession to his adoptive father dying intestate. But if a natural father should give his son in adoption, not to a stranger, but to the son's maternal grandfather; or, supposing the natural father has been emancipated, if he gives the son in adoption to the son's paternal grandfather, or to the son's maternal great-grandfather, in this case, as the rights of nature and adoption concur in the same person, the power of the adoptive father, knit by natural ties and strengthened by the legal bond of adoption, is preserved undiminished, so that the adopted son is not only in the family, but in the power of his adoptive father”.*

For slaves, adoption was one of few ways to come into the *patria potestas*.

Ancient Mesopotamia

The number of orphan or abandoned children was high in ancient Mesopotamia. The ancient Mesopotamians wrote laws and set social customs and traditions to protect the rights

and interest of both the adopters and adoptees alike [1, 1]. The most common form of adoption was that of a newborn. Adults could become part of another family by their own will, called “*arrogation*” [10, 131].

The reasons they adopted children were similar with those today. Childless couples adopted orphan or abandoned children to give them protection and family. But, not only childless couples adopted children, also couples with their own sons and daughters could adopt a son or a daughter, who had the same rights as biological children, even the inheritance rights. Slaves could be adopted too.

Contract for Adoption, c. 2000 B. C.

ARAD-ISKHARA, son of Ibni-Shamash, has adopted Ibni-Shamash. On the day when Arad-Iskhara to Ibni-Shamash, his father, shall say, “You are not my father”, he shall bind him with a chain and sell him for money. When Ibni-Shamash to Arad-Iskhara, his son, shall say, “You are not my son”, he shall depart from house and household goods; but a son shall he remain and inherit with his sons [11].

If in ancient Mesopotamia the family property was based not on land, but rather on a workshop, men without sons would be looking not only for an heir to their property but rather a successor in their workshop [12, 185].

Adoption was realized through a written contract between the adopter and the natural parents or guardian of the adopted child [1, 6]. Sometimes adoption contract consisted in teaching the craft to adoptive child by adoptive father. If the teaching failed the child had to return to his biological family.

Adoption laws were different from place to place, “Laws of Eshnunna”, the “Law Code of Hammurabi”, and the “Middle Assyrian Law” and Nuzi Contracts. Adoption in general was allowed for women and men too. A woman could adopt a boy or a girl as her heir and she or he would take care of her mother in her old age. She had the right to permit her daughter to marry or to work as a prostitute [10, 132].

A different option is to give a girl *ana kalluti*, by taking a female as a daughter-in-law the adopter promises to marry her to a son or a slave — slaves were also regarded as members of the family [13, 121].

We see differences between motivation to adopt in ancient Rome and in ancient Mesopotamia. Only in more recent times has the process come to focus on the interests of children [14, 59–61].

In recent times adoption has become an international phenomenon that tests both precepts about universal human rights and the interface of different legal customs and systems [15, 1].

References:

1. Dr. Robert Paulissian. Adoption in Ancient Assyria and Babylonia.
2. Pereboom Maarten. The European Union and International Adoption, Salisbury University, Center for Adoption Policy.
3. Baina David King. Adoption in New Testament Times, New Testament Adoption. – Liberty University, 2005.
4. Lincoln Andrew T. Word Biblical Commentary: Ephesians. Ed. Ralph P. Martin. – Word Books: Dallas, 1990. – Vol. 42.
5. Sarah Julien Quodlibet Journal: Volume 5, Number 2–3. – July 2003.
6. [Electronic resource]. – Available from: <http://www.pbc.org/dp/dorman/romans/rom35.html> (11/10/2001).
7. Howard Altstein and Rita J. Simon. Introduction to Altstein and Simon, eds., Intercountry Adoption: A Multinational Perspective. – NewYork: Praeger, 1991.
8. Peppard Michael, Assistant Professor of Theology, Fordham University, December 2012. // [Electronic resource]. – Available from: <http://www.bibleinterp.com/articles/pep368014.shtml>.
9. Smith William, D. C.L., LL. D.: A Dictionary of Greek and Roman Antiquities. – John Murray, London, 1875.
10. Daily Life in Ancient Mesopotamia, von Karen Rhea Nemet-Nejat Greenwood Press Westport, Connecticut. – London, 1998.
11. [Electronic resource]. – Available from: <https://legacy.fordham.edu/halsall/ancient/mesopotamia-contracts.asp> dt. (02.10.2015).
12. Huebner Sabiner. The family in Roman Egypt, A comparative approach to intergenerational solidarity and conflict. – Cambridge University Press, 2013.
13. Jeanette c. Fincke. Adoption of Women at Nuzi, Leiden, the Netherlands.
14. Jack Goody. Adoption in Cross-Cultural Perspective. – Comparative Studies in Society and History, January, 1969.
15. Pereboom Maarten. The European Union and International Adoption. – Salisbury University, Center for Adoption Policy.