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## ‘Child Labour’ and Law in Ancient Rome. A New Approach to Research?



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### ABSTRACT

#### ‘Child Labour’ and Law in Ancient Rome

The aim of paper is to present an initial, absolutely provisional, assessment of the legal regulation of what, in modern terminology, we have called ‘child labour’. The point of view is that of the legal historian, but in an interdisciplinary perspective it can also assume relevance in the medical sphere, as it allows us to better focus on certain aspects, referring in particular to the conditions of psycho-physical stress of children and adolescents engaged in work activities, which can then be reflected in bio-archaeological analyses. More precisely, the aim of this paper is to submit to scholars working on these themes the proposal to extend research to a hitherto unexamined sphere that, on the basis of the testimonies of the ancient sources, we can define as ‘work for the gods’, meticulously regulated by law.

**Keywords:** Child labour - Roman Law - Vestals - *Flamen Dialis*

### 1. For a study of ‘child labour’ in ancient Rome. The contribution of law

The aim of these pages is to present an initial, absolutely provisional, assessment of the legal regulation of what, in modern terminology, we have called ‘child labour’<sup>1</sup>. The point of view, in fact, is that of the legal historian, but in an interdisciplinary perspective, which is the one that characterises this research, it can also assume relevance in the medical sphere, as it allows us to better focus on certain aspects, referring in particular to the conditions of psycho-physical stress of children and adolescents engaged in work activities, which can then be reflected in bio-archaeological analyses. More precisely, the aim of this contribution is to submit to scholars working on these themes the proposal to extend research to a hitherto unexamined sphere that, on the basis of the testimonies of the ancient sources, we can define as ‘work for the gods’<sup>2</sup>, meticulously regulated by law<sup>3</sup>.

The tasks entrusted to the priest-children (*sacerdotes-pueri*) are considered to be on a par with all other work activities, as can be deduced from the testimony of the ancient sources<sup>4</sup> that use the same terminology to indicate this work as all other work activities: *labor, facere, opera, operam dare*<sup>5</sup>. The difference lies in the purpose of ‘work for the gods’, which is not the enrichment of the individual, but the public worship of Rome’s oldest and most important deities, Vesta and Jupiter.

Specifically, we will examine the vestal and *flamen Dialis* priesthoods, which, as we will see, share many common elements, starting with their origin, which predates the very birth of Rome<sup>6</sup>. On the other hand, we reserve the right to deal elsewhere with the duties and legal status of other *pueri* engaged in the performance of the ‘work for the gods’, such as the *camilli* and *tutulatae*, with respect to whom we have fewer sources and who require a very in-depth study, due to the links that these subjects, defined as *ministri/ministrae deorum/dearum*<sup>7</sup>, have, on the one hand, with the Greek religion and, on the other, with the Etruscan one<sup>8</sup>.

But before going into the merits of the research, it is important to dwell on a fact that emerged in many of the papers presented at this conference: namely the absence of a specific terminology that unambiguously defines, in terms of age, non-adult individuals<sup>9</sup>.

It is interesting to note how this vagueness also characterises law. The ancient authors in referring to the work performed by non-adult individuals<sup>10</sup> use a rather generic definition, which is moreover substantially superimposable, in terms of age range, to that of today. They use the term *puer*, which already in archaic law indicates males and females<sup>11</sup>, from birth to the age of seventeen or eighteen<sup>12</sup>. The use of a single term to define a heterogeneous group of individuals, irrespective of gender and family ties, leads to the assumption that, for the pre-civic community, the socially and legally relevant fact was not having reached adulthood<sup>13</sup>. From the point of view of criminal responsibility, on the other hand, the distinction between pubescent and impubescent

has been relevant since fairly ancient times<sup>14</sup>, where, as is well known, originally the ascertainment of this physical condition took place on a case-by-case basis, by means of an *inspectio corporis*, and was subsequently set by jurists at fourteen for males and twelve for females<sup>15</sup>.

As has already been noted in other essays, archaic law recognises *puer* as having full legal subjectivity<sup>16</sup>. This is testified not only by the rules of *ius divinum*, on which we shall focus in the second part of this contribution in relation, in particular, to the obligations imposed on the *flamen Dialis*, but also by those of *ius humanum*, which are only partly the object of investigation here, but which are nevertheless important in order to better focus on certain aspects of a fundamental institution such as *patria potestas*<sup>17</sup>. This power allows the *pater* to economically exploit his children as a labour force to be used in his own activities or to rent them out to others, against payment of a fee, which is his responsibility and in the absence of any protection in favour of the children. In this respect, as we shall see, the *fili familias* are in fact equated with slaves.

## 2. The work of *pueri* according to *ius humanum*

*Pueri*, employed in labour activities from a very young age, could be free or slaves. The institution of slavery, which, as Gaius states, is of *ius gentium*, since it was widespread in many ancient civilisations<sup>18</sup>, indicates not only a precise legal qualification but, at the same time, reveals the profound difference between Roman society and ours. The way of life of slaves is not homogeneous: the more burdensome is the condition of those engaged in productive work, the less burdensome is that of the slaves in charge of domestic work or administration, who participate, in some cases, in the welfare of their masters, who belong to the ruling classes<sup>19</sup>. Slaves are considered *res*, more precisely they are called *instrumenta vocalia*<sup>20</sup>. The qualification of slaves as means of production implies that their persons, their bodies, their very existences are indistinguishable from the labour skills and works they produce<sup>21</sup>. Slaves do not sell anything in their name; they have no bargaining power over those who profit from them. Slaves may manage assets separate from that of the *dominus (peculium)*, but the acts they perform produce effects only within the legal sphere of the free person<sup>22</sup>. *Fili familias* legally belong to the category of freemen, but in fact, their condition is not very dissimilar to that of slaves<sup>23</sup>. The *patria potestas* attributes to the *pater* the *ius vendendi*, the right to sell the son to make a profit; the *noxae deditio*, the right to cede the offending son to the injured party so that he does not have to pay compensation for the damage at his own expense; the *ius vitae ac necis*, the power of correction that goes so far as to provide, in the most serious cases, the possibility of putting the son to death<sup>24</sup>. These powers are identical to those the *dominus* has over slaves<sup>25</sup>.

There are multiple testimonies of the employment of children, whether free or slaves<sup>26</sup>, in labour activities<sup>27</sup>. The ancient sources, and in particular the treatises *De agri cul-*

*tura*, document the active participation of *pueri* and *puellae* in all the different phases of harvesting<sup>28</sup> and processing the produce of the estate<sup>29</sup>. *Pueri* and *puellae*, due to their small size and agility, lead their livestock, in particular sheep and goats, to pasture<sup>30</sup>. Varro points out that some paths, very narrow and impervious, are only passable by children. The working hours are very long, from dawn to dusk, and coincide with the times of the animals' *pastio*<sup>31</sup>.

That this type of work activity was widespread is very clearly demonstrated by a rule in the Twelve Tables, which punishes the nocturnal grazing of animals on someone else's cultivated land and the harvesting, always at night and therefore by stealth, of the products of someone else's land. The punishment differs depending on whether the *puer* is pubescent, and therefore it is assumed that he has deliberately engaged in unlawful conduct, or impubescent, whose conduct is assessed less severely because he may not yet be fully aware of the consequences of his actions due to his age. In the first case, the offender is sentenced to death: he is tied to a sterile tree (*suspensio*) and left to die<sup>32</sup>. The deity to whom he is consecrated is Ceres, because by secretly gathering other people's harvests, he has prevented the owner of the land from offering the first fruits to the deity<sup>33</sup>.

Tab. XII.9: *frugem quidem aratro quaesitam furtim noctu pavisse ac secuisse puberi XII tabulis capital erat, suspensumque Cereri necari iubebant gravius quam in homicidio convictum, inpubem praetoris arbitrato verberari noxiamve duplionemve decerni.*

“Indeed the Twelve Tables made pasturing animals by stealth at night on crops grown under the plough, or cutting it, a capital offence for a adult, and enacted that a person found guilty of it should be executed by hanging, in reparation to Ceres, a heavier punishment than in a conviction for homicide; while a minor was be flogged at the discretion of the *praetor* or sentenced to pay the amount of the damage or twice that amount<sup>34</sup>.

The *pueri* are employed in the various activities that take place in artisan workshops, both in those tasks that are not too heavy but require a certain amount of skill and experience, such as mixing colours to obtain the desired shade<sup>35</sup>, and in those that are physically heavier, such as moving the lathe<sup>36</sup>. Children and adolescents then work in particularly unhealthy contexts, as in the widely documented case of fullonics<sup>37</sup>, and in the purging and maintenance of *cloacae*<sup>38</sup>. The spread of the phenomenon is confirmed by the precise and meticulous regulation of the most risky activities, especially with regard to liability and compensation for damages<sup>39</sup>. Jurisprudence does not consider a seller, who has sold a slave assigned to purging sewers but has not immediately handed him over to the buyer, who has already paid the price, to be in default if the slave in the performance of his task, which consists of purging the sewer, has broken his leg. The connecting tunnels (*cloacae*), which, as archaeological excavations have shown, are long and particularly narrow and therefore require, in addition to specific skill, a particularly petite physical structure combined with great agility<sup>40</sup>. Moreover,

as Ulpianus points out well, it is slaves at a young age who are bought and sold, to the point that the jurist states that *pueros* is the term used to indicate *omnes servos*<sup>41</sup>.

### 3. The work of *pueri* according to *ius divinum*

#### 3.1 The Vestals

The priestesses in charge of the cult of Vesta are called *Virgines Vestales*<sup>42</sup>, a name that emphasises the two essential characteristics of the priesthood: female gender and chastity. The virgins destined to attend the public cult of the goddess are chosen from among girls of patrician rank, aged between six and ten<sup>43</sup>, whose parents are both living and married according to the ancient rite of *confarreatio*<sup>44</sup>. Vestal girls must be good-looking and have no hearing or speech defects<sup>45</sup> or other physical defects<sup>46</sup>. Entry into the priesthood is by means of the *captio* exercised first by the rex and then by the *pontifex maximus*<sup>47</sup>. Following this act, the chosen one officially assumes the priesthood and enters the *Atrium Vestae*, the seat of the college, located next to the temple of Vesta, where she lives together with her companions<sup>48</sup>. The duties to which the virgins must attend, only in part, as scholarship has pointed out, coincide with those of the *materfamilias* and this very fact has led most scholars to rule out the existence of a derivative relationship between the Latin cult of Vesta and the Greek cult of Hestia<sup>49</sup>. From this point of view, two data appear most relevant: the age of the priestesses; elderly and experienced women in the case of the cult of Hestia, children in that of Vesta; the nature of the cult, which in Greece is both public and private, while in Rome it is only public<sup>50</sup>. The tasks the Vestal Virgins have to perform are multiple and are all marked by a great responsibility that has significant and inevitable repercussions in terms of psycho-physical stress. The priestesses must ensure that in the public hearth, the fire, a guarantee for the survival of Rome and its citizens, is never extinguished<sup>51</sup>. This continuous surveillance activity, to protect the *ignis inextinctus*, proves psychologically and physically very taxing, since the priestesses are originally four and later six. Consequently, the shifts of vigilance are long and the rest breaks short<sup>52</sup>. If the extinguishing of the fire is caused by negligence, the vestal on duty is led to a dark place and flogged by the *pontifex maximus*<sup>53</sup>; if, on the other hand, the fire goes out without a cause, this is considered a terrible *omen*, as it makes it manifest that the vestal on duty has lost her virginity and consequently divine wrath will fall upon the city and its inhabitants<sup>54</sup>. This nefarious act can therefore only be atoned for through the elimination of the culprit<sup>55</sup> and the rekindling of the fire, which takes place according to a precise ritual<sup>56</sup>.

Another very important task relates to the preparation of the *mola salsa*, a mixture of water, flour and salt, used to sprinkle the victims destined for sacrifice<sup>57</sup>. This is a complex task that engages the vestals for several days and consists of distinct work activities that require effort and skill, as Cicero also states<sup>58</sup>: harvesting, roasting and

grinding<sup>59</sup>. In fact, we know from other sources that the vestal college is the owner of several estates used for cultivation<sup>60</sup>.

*Serv. in Verg. Buc. 8.82: virgines Vestales ex nonis Maiis ad pridie idus Maias alternis diebus spicas adreas in corbibus messuari isponunt easque spicas ipsae virgines torrent, pinsunt, molunt atque ita molitum condunt. ex eo farre virgines ter in anno molam faciunt, Lupercalibus, Vestalibus, idibus septembribus, adiecto sale cocto et sale duro.*

The virgins are then engaged in the celebration of *sacra publica* in honour of the goddess, the *Vestalia*, aimed at invoking the divinity's protection over the harvests<sup>61</sup> and *sacra pro populo Romano Quiritibus*, a formula that reveals the antiquity of such ceremonies, to be correlated with the birth of the city, or even, as has been hypothesised, of pre-civic origin<sup>62</sup>. Vestals also participate in solemn celebrations officiated by other priests<sup>63</sup>.

As the sources point out, it is the responsibility of these young priestesses to slit the throats of the animal victims destined for sacrifice with the sacrificial knife, the *cultrum*.

*Fest. verb. sign. s.v. Secespita, 472 L: Secespitam esse Antistius Labeo ait cultrum ferreum, oblungum, manubrio eburneo rotundo, solido, vincto ad capulum argento aureoque, fixum clavis aeneis, aere Cyprio, quo flamines, flaminicae, virgines, ponteficesque ad sacrificia utuntur.*

The tasks performed by the vestals also included *stercoratio*<sup>64</sup>, the solemn cleansing of the temple, which took place on a predetermined day, indicated in the calendar.

### 3.2 The *flamen Dialis*

Like the vestal, the *flamen Dialis* also entered the priesthood following the *captio*, an act that sanctioned the individual's departure from the family to which he or she belonged and the passage to the status of subject *sui iuris*, without undergoing any *capitis deminutio*<sup>65</sup>.

The origin of this priesthood, which was also held by *pueri*<sup>66</sup>, is obscure and very ancient, as Varro notes<sup>67</sup>. The *flamen Dialis* must be of patrician status<sup>68</sup> and born of parents married with the solemn rite of the *confarreatio*<sup>69</sup>. Compared to the vestal, who as a rule begins the priesthood at the age of six, the flamen is chosen from among young boys who have reached puberty, since a necessary condition for the exercise of his ministry is that he contract a solemn marriage<sup>70</sup>. If the flamen's wife, the *flaminica*, who takes an active part in the sacred rites together with her husband, dies, the flamen immediately ceases from the priesthood<sup>71</sup>.

As doctrine has amply pointed out, this is a very ancient institution, dating back to the pre-civic age and to be correlated, as with the Vestal Virgins, with the political and socio-cultural reality of the *curiae* and the more ancient religion founded on the divine triad of Jupiter, Mars and Quirinus<sup>72</sup>. The term *flamen*, which Dumézil juxtaposes with the Sanskrit brahman, would derive, according to the ancients, from the white wool

bandage, the *filum* or *filamen*, that descends from the characteristic pointed headdress (*apex*)<sup>73</sup>. The *flamini* are priests specialised in the worship of a single deity: *Divisque aliis sacerdotes, omnibus pontifices, singulis flamines sunt*. “For some deities there are some priests, for all the pontiffs, for only some the *flamini*”<sup>74</sup>. All three major *flamini* have the privilege of having *calatores* in their service, but the *Dialis* is the only one to whom certain important rights are granted: participation in the meetings of the assembly of *patres*, the right to use the chariot and to be escorted by the *lictor*, the latter two whom he shares with the *vestal virgins*<sup>75</sup>.

This priest must perform specific activities and respect a multiplicity of prohibitions that have a very strong impact in terms of psycho-physical stress, since the salvation of the community, founded on the maintenance of the *pax deorum*, the bond of friendship between the community and the divinities, the only guarantee of survival for the *civitas*<sup>76</sup>, depends on the *flamen*’s correct execution of actions and scrupulous observance of the prohibitions. It is up to Jupiter’s *flamen* to carry out the solemn *precationes* for the *salus* of the *populus Romanus*<sup>77</sup>: during the *Vinalia* ceremony, after sacrificing a lamb to Jupiter, it is up to him to pluck the first bunch of grapes and then give orders to the *cives* to proceed with the harvest<sup>78</sup>. This priest, according to the testimony of the jurist Gaius Ateius Capito, celebrates the solemn sacrifice of the pig, using, like the *vestals*, the ritual knife, the *cultrum*<sup>79</sup>.

The priest of Jupiter shall not: sleep outside the city for more than one night<sup>80</sup>; take an oath<sup>81</sup>; see the army in arms<sup>82</sup>; use a mount<sup>83</sup>; wear a ring, unless it is broken or open<sup>84</sup>; accommodate in his house people with bound hands or feet<sup>85</sup>; may not touch or name the goat, uncooked meat, ivy and broad beans<sup>86</sup>; pass under vine shoots tied up<sup>87</sup>; stand uncovered without a headdress<sup>88</sup>; touch flour mixed with yeast<sup>89</sup>; undress his ‘intimate’ tunic except in a covered place<sup>90</sup>; enter the place where corpses are burnt or touch a dead person<sup>91</sup>, but may attend the funeral<sup>92</sup>.

In the *domus* of the *flamen*, not unlike that of the *vestals*, there is a hearth that must always remain lit and it is only permitted to use the flame taken from it for the celebration of sacred rites<sup>93</sup>.

The priest of Jupiter also has a number of obligations that add to the burden of life. The *flamen Dialis* must marry upon reaching puberty, around fourteen years of age, by means of the ancient ritual of the *confarreatio*<sup>94</sup>; resign in the event of his wife’s death<sup>95</sup>; have his hair cut only by a free man and bury cut hair<sup>96</sup> and nails under a fruit-bearing tree<sup>97</sup>; not sleep in the same bed for no more than three nights<sup>98</sup>; keep a container for sacrificial buns at the foot of the bed<sup>99</sup>.

The observance of these prescriptions, which considerably limit the freedom of this child-priest, entails a condition of considerable and continuous psycho-physical stress, since, as mentioned above, failure to perform the tasks entrusted to him or failure to comply with the duties he is required to perform endangers the existence of the community and the *salus* of the *populus Romanus*.

#### 4. *Pueri* ‘and work for the gods’. Some preliminary observations for a re-examination of ‘child labour’ in ancient Rome

The characteristics of these two priesthoods, held by girls and boys, show how, in the community of the origins, it is distinctions based on age and gender that are relevant on a socio-cultural and, consequently, on a juridical level<sup>100</sup>.

In this respect, of particular interest are certain rules concerning the celebration of *sacra* by the *curiae*. Ancient sources agree in affirming the existence of rites and cults celebrated by non-adult individuals of both sexes. Dionysius of Halicarnassus, who cites an authoritative source such as Varro, author of the *Antiquitates divinarum*, writes:

Dion. Hal. 2.22.1: ἐπεὶ δὲ καὶ διὰ γυναικῶν ἔδει τινὰ ἱερά συντελεῖσθαι καὶ παίδων ἀμφιθαλῶν ἕτερα, ἵνα καιταῖα γένηται κατὰ τὸ κράτιστον, τάς τε γυναῖκας ἔταξε τῶν ἱερέων τοῖς ἑαυτῶν ἀνδράσι συνιεῖσθαι, καὶ εἴ τι μὴ θέμις ἦν ὑπ’ ὀργιάζεσθαι κατὰ νόμον τὸν ἐπιχώριον, ταύτας ἐπιτελεῖν καὶ παῖδας αὐτῶν τὰ καθήκοντα λειτουργεῖν: τοῖς δὲ ἄπαισιν ἐκ τῶν ἄλλων οἶκον τοὺς χαριστάτους καταλεγέντας ἐξ ἑκάστης φράτρας, κόρον καὶ κόρην, τὸν μὲν ἕως ἡβῆς ἐπὶ τοῖς ἱεροῖς, τὴν δὲ κόρην ὅσον ἂν ἦ χρόνον ἀγνῆ γάμων.

“And because some rites were to be performed by women, others by children whose fathers and mothers were living, to the end that these also might be administered in the best manner, he (scilicet *Romulus*) ordered that the wives of the priests should be associated with their husbands in the priesthood; and that in the case of any rites which men were forbidden by the law of the country to celebrate, their wives should perform them and their children should assist as their duties required; and that the priests who had no children should choose out of the other families of each *curia* the most beautiful boy and girl, the boy to assist in the rites till age of manhood, and the girl so long she remained married”<sup>101</sup>.

According to the law of the place, κατὰ νόμον τὸν ἐπιχώριον, - the historian explains - certain sacrifices must be officiated by παῖδας. Consequently, those who have no children within their *curia* choose from the other *curias* a boy and a girl to perform the sacred rites, one until puberty, the other until marriage. Dionysius then specifies that both the cults and the deities honoured are different for each *curia*, and that some of these were instituted as a consequence of the diarchy of *Romulus* and *Titus Tatius*<sup>102</sup>. This role that the *pueri* play in officiating the *sacra publica pro curis* leads one to believe that they are recognised as having full legal subjectivity. An important confirmation of this is precisely the two pre-civic priesthoods, both reserved for *pueri*, examined above. The vestal must be no younger than six years old and no older than ten<sup>103</sup>, while the *flamen Dialis* is chosen from among young men who have reached puberty<sup>104</sup>.

The rites and institutions through which *pueri* become *vestalis* and *flamen Dialis* respectively are of particular interest for our purposes. Both become priests, *vetusto more*<sup>105</sup>, through the ancient rite of *captio*, which determines the subject’s exit from



the *patria potestas*, *sine emancipatione* and *sine capite deminutione*<sup>106</sup>, so much so that Gaius, in describing the ways of extinguishing *patria potestas*, equates it to the death of the *pater familias*<sup>107</sup>. The circumstance that the exit from *patria potestas* is not the consequence of a voluntary act of the person having power, such as *emancipatio*<sup>108</sup>, together with the fact that there is no change of status in the legal condition of the subject, make it possible to hypothesise that these priesthods date back to a period in which the *familia proprio iure*, founded on the absorbing power of the father, had not yet taken on the value of “struttura fondante della comunità giuridica”<sup>109</sup>.

The sovereignty of the *civitas* can only fully assert itself on condition that the political autonomy of the *gentes* is eliminated or at least significantly reduced<sup>110</sup>. *Patria potestas* was born with the city insofar as it was functional to the maintenance of the new social and political order resulting from the synecism of the ancient village communities into a larger community, the *urbs*. From this point of view, as the doctrine has well pointed out, the *proprio iure* family, due to the transient nature of *patria potestas*, appears much more compatible with the affirmation of a strong central power in the head of the king than the *gentes*. While in fact, on the death of the father, the family is dissolved and the sons become *patres* in their turn, giving rise to as many *familiae*, this does not happen for the gens: the new families will continue to belong to it. The process of disintegration of tribal and gentilitial bonds, which is fundamental to the transformation of ancient village communities into new and more complex forms of social and territorial organisation, is made possible thanks to the powers that archaic Roman law already attributed to the pater, the sole subject of full rights and holder of all legal and economic relations<sup>111</sup>. Hence the affirmation of another distinction, destined to last for a long time, that between *sui iuris* and *alieni iuris*. The affirmation of this distinction also has considerable consequences with reference to the subject we are interested in.

With the exception of the vestals and the *flamen Dialis*, who retained their importance even within the new political-institutional order of the *civitas*, because they officiated in public cults, in the meaning proper to the adjective, which derives from *populus*, the other cults that were always celebrated by boys and girls for the *salus* of the individual *curiae* and not of the entire people lost their importance. *Camilli*<sup>112</sup> and *tutulati*<sup>113</sup>, which Dionysius always tells us about, have only an auxiliary function, their service to the deity is temporary and they remain in the condition of *alieni iuris* subjects, subject to their father’s *patria potestas*.

Even worse is the condition of the *fili familias* not destined to ‘work for the gods’ (*sacer labor*): in fact, they are equated with slaves and used by their father exclusively as labour power, without any protection.

## Bibliography and notes

1. On the different concept of work in antiquity, see De Robertis FM, *Lavoro e lavoratori nel mondo romano*. Bari: Adriatica Editrice; 1963. p. 9 ff.
2. See § 3.1 and 3.2 below.
3. See § 3.1 and 3.2 below.
4. *Ex multis*: Plaut. *Curc.* 532, Liv. 1.20.3: *his (scl. virgines Vestae) ut adsiduae temple anti-sties essent stipendium de publico statuit...* Cic. *har. resp.* 37, Cic. *rep.* 2.8, 2.9, 2.12. Cf. also Liv. 25.7.9, Sen. *Dial.* 8.2.2, Dion. Hal. 2.65.2, 2.66.1, 2.67.2.
5. De Robertis FM, Ref. 1, pp. 11-17.
6. See below, § 4.
7. For the term *administra*, see Varr. *ling. Lat.* 7.34 and for the term *praeministri* see Serv. *Aen.* 11.543.
8. In this respect, particularly interesting is the testimony of Dion. Hal. 2.22.2.
9. Roggini M, D'Avanzo M, Pepino D, Gobbi E, Aspetti radiografici di reperti scheletrici pediatrici risalenti al I-II sec. d.C. In: *Children in the History of Medicine. New intradisciplinary and transdisciplinary approaches to infantile disease, lifestyle and labour*. Rome; Sapienza University of Rome, 16/06/2022; Cintura F, Baldoni M, De Angelis F, Catalano P, Stasolla FR, Gazzaniga V, Rickards O, Martinez-Labarga C, He or she. The use of an integrated approach for sex determination in bioarcheological research. In: *Medicina nei Secoli* 2022;34(3):119-140; Panella S, Micarelli I, Paine R, Tafuri MA, Manzi G, *Analisi paleopatologica dei subadulti dalla necropoli della Selvicciola (Ischia di Catro, VT)*. In: *Children in the History of Medicine*.
10. See *supra*, note 9.
11. On the archaic nature of the term, whose etymology is unclear, see Prodocimi AL, *Forme di lingua e contenuti istituzionali nella Roma delle origini*. I. Naples: Jovene; 2016. p. 133. Gell. *noct. Att.* 10.28.1 and Ulp. 2 *fidecomm.* D. 34.1.14.1 on which recently Brutti M, *Il diritto privato nell'antica Roma*. Torino: Giappichelli; 2015. p. 144.
12. Gell. *noct. Att.* 10, 28, 1 and Ulp. 2 *fidecomm.* D. 34.1.14.1 on which recently, Brutti M, *ibid.*, p. 144.
13. On this point Capogrossi Colognesi L, *Dalla tribù allo stato: le istituzioni dello stato cittadino*. Rome: La Sapienza Editrice; 1990. p. 23 ff., who points out how this situation seems to be reflected in the archaeological documentation from the necropolis of Osteria dell'Osa. This may explain why the feminine *puera* and the more recent *puella* have established themselves in the common lexicon in rather recent times and have not taken on a legal value. Cf. s.v. *Puer*. In: Ernout A, Meillet A, *Dictionnaire etymologique de la langue latine*. Paris: Klincksieck; 1951. p. 957.
14. See below, § 2.
15. In this respect, the linguistic history of *puer* is clearly distinguished from those of *filius familias* and *filia familias*, terms that indicate the subject even at a young age in relation to the position he has within the family. Cf. s.v. *Filius*. In: Ernout A, Meillet A, ref. 13, p. 234. In this case, the presence *ab origine* of the masculine and feminine signifies that the gender element is legally relevant. A very important confirmation in this regard is offered by the creation, in the indirect cases of the plural, of the form *filiabus*, functional to distinguish always and in all circumstances male sons from female daughters. Brutti M, ref. 11, pp. 147-149.

16. Faced with such a different social and legal conception of the individual at a young age, the doctrine has essentially followed two paths: denying historical reliability to the testimony of the sources; tracing the rules of *ius divinum* and *ius humanum* of the royal and republican ages that mention the *puer* within the *pater familias-filius familias* relationship. This thesis, which is the one followed by the majority of the doctrine, presents a series of difficulties that are hard to overcome, in the writer’s opinion, starting with the terminological datum. The reference is, in particular, to two royal laws, the first issued by Romulus and Titus Tatius, and concerning the *nurus*, the second, attributed to Servius Tullius, has as its object the *peur*, responsible for acts of violence against *the parens*, the parent. If *puer* and *parens* must in fact be interpreted as father and son, it is unclear why the terms *pater* and *filius* were not used, as is, moreover, the case in the laws regulating relations between these two subjects since the royal age. (For such laws see Franciosi G (ed.), *Leges regiae*. Naples: Jovene; 2003. p. 45 ff.). Secondly, and this appears to be a much more relevant problem, it is necessary to explain why the *ius vitae ac necis* of the person having power does not apply to *alieni iuris* and young subjects, as in the case of *puer* and *nurus*.
17. On the subject, recently, Tassi Scandone E, *Familia, gens, civitas. All’origine della patria potestas*. In: Franchini L (ed.), *Armata sapientia. Scritti in onore di Francesco Paolo Casavola per i suoi novant’anni*. Naples: Editoriale Scientifica; 2020. pp. 897 ff.
18. Gai. 1.52.
19. Brutti M, Ref. 11, p. 124.
20. Varr. *re rust.* 1.17.1.
21. Brutti M, Ref. 11, p. 124.
22. Serrao F, *Impresa e responsabilità a Roma nell’età commerciale*. Pisa: Pacini; 1989. See also Petrucci A, *Mensam exercere. Studi sull’impresa finanziaria romana*. Naples: Jovene; 1991. Di Porto A, *Impresa collettiva e schiavo ‘manager in Roma antica. (II sec. a.C - II d.C)*. Milan; Giuffré; 1984. Id., *Filius, servus, e libertus. Strumenti dell’imprenditore romano*. In: Marrone M (ed.), *Imprenditorialità e diritto nell’esperienza storica (Erice 22-25 November 1988)*. Palermo: Arti Grafiche Siciliane; 1992. p. 231 ff. Id., *Il diritto commerciale romano. Una “zona d’ombra” nella storiografia romanistica e nelle riflessioni storici-comparative dei commercialisti*. In: *Nozione formazione e interpretazione del diritto dall’età romana alle esperienze moderne. Ricerche dedicate al Prof. Filippo Gallo, III*. Naples: Jovene; 1997. p. 413 ff.
23. Capogrossi Colognesi L, *La costruzione del diritto romano*. Bologna: Il Mulino; 2016. 36, 48 ff.
24. Lorenzi C, *De iure necandi et vendendi et exponendi liberos*. Naples: Edizioni Scientifiche Italiane; 2018. 13 ff.
25. Capogrossi Colognesi L, *Ancora sui poteri del pater familias*. In: *Scritti Scelti, II*. Naples: Jovene; 2010. 676 ff.; Id. *Voce patria potestà (diritto romano)*. In: *Enciclopedia del Diritto XXXII*. Milano: 1982. 769 ff.
26. Plaut. *Aul.* 228, Ter. *Phorm.* 645-646, Varr. *ling. Lat.* 5.14.
27. For archaeological data, see Battistini A, Caldarini C, Catalano P, Di Giannantonio S, Pantano W, Zavaroni F, *The Work Done in Rome by Children and Adolescents: Hypothesis Based on the Anthropological Analysis of Three Suburban Necropolises of the Imperial Age*. *Medicina nei secoli* 2022;34(3):21-30.
28. Varr. *re rust.* 2.10.1.
29. Plin. *nat. hist.* 35.66.4, 35.66.5.

30. Varr. *res rust.* 2.10.1., 2.10.1.5, 2.10.1.7, 2.10.2.1.
31. Varr. *res rust.* 2.10.1: *eos cogere oportet in pastionem diem totum esse*. On particularly heavy hours, albeit with reference to adult labour, see already De Robertis FM, ref. 1, pp. 189-190.
32. Most probably under the blows of rods, as happens in the case of the *suspensio* all'*arbor infelix* of one accused of treason. Cf. Cantarella E, I supplizi capitali in Grecia e a Roma. Milan: Feltrinelli; 2011. p. 197 ff. Miglietta M, Le norme di diritto criminale. In: Corsi MF (ed.), *Le XII Tabulae*. Testo e commento, II. Naples: Jovene; 2018. pp. 495-497.
33. Miglietta M, *ibid.* p. 497.
34. Cf. Plin. *nat. hist.* 18.3.12. Pliny, *Natural History, V, Books 17-19*. In: Rackham H (translated by), *Loeb Classical Library 371*. Cambridge, MA: Harvard University Press; 1950.
35. Plin. *nat. hist.* 35.85.9, 35.86.1.
36. Plin. *nat. hist.* 36.90.3.
37. Plin. *nat. hist.* 35.143.2, 35.143.4.
38. D. 19.1.54.pr.
39. The law allows the use of slaves and men of free condition and even minors in the performance of activities dangerous to health, as in the case of fullonics or the purging of sewers. The case, dealt with by Labeo, of the sale of the sewer maintenance slave who breaks his leg when descending into the sewer pipe to purge it is emblematic. The jurist asks whether the seller, after the conclusion of the contract but before the delivery of the slave, is liable to the buyer. Such liability is excluded, because the slave is purchased to perform the task in which he is specialised. Since the accident occurred in the course of performing the ordinary task of emptying the sewer, for which it was necessary to descend into the pipe, the seller could not have been held liable. See Lab. 2 *pith.* D. 19.1.54 pr.
40. Palombi D, *Receptaculum omnium purgamentorum* (Liv. 1, 56, 2). *Cloaca Massima e storia urbana*. *Archeologia Classica* 2013;64:133-168.
41. Ulp. 2 *ep.* Alf. D. 50.16.204: '*Pueri*' *appellatio tres significationes habet: unam, cum omnes servos pueros appellaremus: alteram, cum puerum contrario nomine puellae diceremus: tertiam, cum aetatem puerilem demonstraremus*.
42. Varr. *ling. Lat.* 6.17: *Dies Vestalia, ut virgines Vestales ab Vesta*. The number of priestesses is uncertain for the early period. The majority tradition admits four, two from each of the original tribes (Ramnes and Titienses), raised to six by Tarquinius Priscus following the addition of the Luceres tribe. The interesting element is the close link between the Vestals and the system of tribes and curies, which appears to predate the birth of the *urbs*. On this point, see de Francisci P, *Primordia civitatis*. Rome: Apollinaris; 1959. p. 449 and recently Capogrossi Colognesi L, *Storia di Roma tra diritto e potere*: Bologna: Il Mulino; 2014. pp. 28-29.
43. The maximum age is set at ten years. Cf. Gell. *noct. Att.* 1.12.1 on which Guizzi F, *Aspetti giuridici del sacerdozio romano*. Naples: Jovene; 1968. p. 81. About legal status of vestals, see Ortu R, *Condizione giuridica e ruolo sociale delle Vestali in età imperiale: la Vestale Massima Flavia Publicia*. I. Le immunità. Cagliari: Sandhi Editore; 2018.
44. This is an archaic rite, reserved for patricians only, in which the two spouses, in the presence of the highest religious authorities and ten witnesses, divide and eat a spelt flatbread (*panis farreus*), offering part of it as a sacrifice to Jupiter Farreus (*Iuppiter Farreus*). Cf. Astolfi R, *Il matrimonio romano classico*. Naples: Jovene; 2018, p. 227 ff. with discussion of sources and literature.
45. *Fronto* 116 on which Guizzi F, Ref.43. p. 82.
46. Gell., *noct. Att.* 1.12.1-3, on which Guizzi F, Ref. 43. p. 83.

47. Gell.1.12.11. See Ravizza M, Pontefici e Vestali nella Roma repubblicana. Milano: Edizioni Universitarie di Lettere Economia Diritto; 2020. p. 80 ff.
48. Cf. Coarelli F, Il Foro romano I. Periodo arcaico. Roma: Edizioni Quasar; 1985. 28 ff.; Carandini A, Roma. Il primo giorno. Roma-Bari: Laterza; 2007. p. 70 ff.; Filippi D, Regio VIII. Forum Romanum Magnum. In: Carandini A (ed.), Atlas of ancient Rome. Biography and Portraits of the city. Princeton: Princeton University Press; 2017. pp. 143-206.
49. Daremberg C, Saglio E, Dictionnaire des antiquités Grecques et Romaines. Paris: Hachette; 1919. V, p. 753.
50. Giannelli G, Il sacerdozio delle Vestali romane. Florence: Galletti e Cocci; 1913. p. 9 ff.
51. Cf. Scheid J, The religious Roles of Roman Women. In: A History of Women: from ancient Goddesses to Christian Saints. I. Harvard: Belknap Press; 1992. p. 380 ff., Ravizza M, Ref. 47. p. 88 ff.
52. Val. Max. 1.1.6.
53. Cantarella E, Ref. 32. p. 160.
54. Cantarella E, Ref. 32. p. 159. Ortu R, Vestali, crimina e processo in Roma antica. Roma: Inschibboleth; 2021.
55. Guizzi F, Ref. 43. p. 142 ff.
56. Plut. *Numa*, 9.10-15. See De Sanctis G, La religione a Roma. Luoghi, culti, sacerdoti, dei. Rome: Carocci; 2012, p. 127.
57. Cfr. TLL s.v. *immolare*.
58. Cic. *leg.* 2.26.14.
59. Guizzi F, Ref. 43. p. 123, Diluzio MJ, A place at the Altar. Priestesses in Republican Rome. Princeton-Oxford: Princeton University Press; 2016. pp.190-192.
60. Hyg. *Grom. cond. agr.* 117, 5-11 Lach. = 80, 7-13 Th.; Sic. Flac. *cond. agr.* 162, 28-163, 4 Lach. = 127, 14-20 Th.; 235, 4-7 Lach.; 283, 18-23 Lach.
61. Varr. *ling. Lat.* 6.16, 6.17, 6.21.
62. Gell., *noct. Att.* 1.12.14; Fest. *verb. sign.* s.v. *Sex Vestae sacerdotes*, 468 L.
63. Luc. *bell. civ.* 1.595, 1.597; Plin. *nat. hist.* 28.39.5, Aug. *res gest.* 2.30, 2.31, 2.39, 2.40, 2.41, Tac. *ann.* 2.86.
64. Cic. *leg.* 2.20; Liv. 28.11.6; Fest. *verb. sign.* s.v. QRCE, 310 L, Cf. Dumézil G, *Quaestiunculae Indo-Italiae*. 7. Trois règles de l’aedes Vestae. REL. 1959;37:97 ff.; Guizzi F, ref. 43. p. 109; Wildfang RL, Rome’s Vestal Virgins. A study of Rome’s Vestal Priestesses in the Late Republic and Early Empire. London-New York: Routledge; 2006. p. 119.
65. Guizzi F, Ref. 43. p. 31 ff.
66. Guizzi F, Ref. 43. pp. 34-35. See also Sull. *comm. rer. gest.* 2.2.
67. Varr. *ling. Lat.* 5.84.
68. Cf. Guizzi F, Ref. 43. p. 78.
69. Fayer C, La familia romana: aspetti giuridici e antiquari. Rome: L’Erma di Bretschneider; 2005. pp. 223-45.
70. Cfr. Liv. 27.8.4-5; Gell. *noct. Att.* 10.15.1. Cf. Santi C, Iuppiter nella religione civica di Roma arcaica. Chaos e Kosmos 2014;15:3.
71. Gell. *noct. Att.* 1.12.1.
72. Cf. Prosdocimi AL, Forme di lingua e contenuti istituzionali nella Roma delle origini. I. Naples: Jovene; 2016. p. 431 ff.
73. Varr. *ling. Lat.* 5.84.
74. Cic. *leg.* 2.8. Cf. De Sanctis G, La religione a Roma. Luoghi, culti, sacerdoti, déi. Roma: Carocci; 2012. p. 112.

75. De Sanctis G, *ibid.* p. 112.
76. Sulla *pax deorum*, Sini F, Diritti e pax deorum in Roma antica. *Diritto@storia*. 2006;5: <https://www.dirittoestoria.it/5/Memorie/Sini-Diritto-pax-deorum.htm>. Wildfang RL, ref. 64. p. 43.
77. Vell. Pat. *hist. Rom.* 2.22.2.
78. Cf. Varr. *ling. Lat.* 6.15.
79. Cf. Ateius Capito (Macr. *Sat.* 3.10.3): *Iovi tauro, verre, ariete immolari non licet.*
80. Liv. 5.52.13.5: *...flamini Diali noctem unam manere extra urbem nefas est.*
81. Liv. 31.50.7.2; Gell., *noct. Att.* 10.15.5.
82. Fest. *verb. sign.* s.v. *procinctam classem*, p. 295 L.
83. Gell. *noct. Att.* 10.15.4. This prohibition is also imposed on the ancient dictator. On the possible reasons, cf. Valditara G, Studi sul magister populi. Dagli ausiliari del rex ai primi magistrati repubblicani. Milan: Giuffrè; 1989. p. 353.
84. Gell. *noct. Att.* 10.15.6.
85. Gell. *noct. Att.* 10.15.7-8.
86. Gell. *noct. Att.* 10.15.12.
87. Gell. *noct. Att.*, 10.15.13.
88. Gell. *noct. Att.* 10.15.17.
89. Gell. *noct. Att.* 10.15.19.
90. Gell. *noct. Att.* 10.15.19-20.
91. Gell. *noct. Att.* 10.15.24.
92. Gell. *noct. Att.* 10.15.24. For such prohibitions see also Plut. *Quaest. Rom.* 40, 44, 50, 107-113. On which see Mora F, Nuclei of interest and interpretative strategies in Plutarch's *Quaestiones Romanae*. *Gerion* 2007;25(1):332,345-347. Plutarch also states that the *flamen Dialis*, unlike the other priests, cannot hold magistracies, although, like the vestal, he is entitled to have the *lictor* and *sella curulis*. Cf. Fest. *verb. sign.* s.v. *Flaminius lictor*, p. 82 L.: *Flaminius lictor est, qui flamini Diali sacrorum causa praesto est.*
93. Gell. *noct. Att.* 10.15.7-8.
94. Ov. *Fast.* 3.397.
95. Ov. *Fast.* 3.397.
96. Gell. *noct. Att.* 10.15.11-12.
97. Gell. *noct. Att.* 10.15.15-16.
98. Gell. *noct. Att.* 10.15.14.
99. Gell. *noct. Att.* 10.15.14.
100. Cf. Capogrossi Colognesi L, ref. 13. p. 25.
101. Dionysius of Halicarnassus, *Roman Antiquities, Volume I: Books 1-2*. Cary E (Translated by), Loeb Classical Library 319. Cambridge: Harvard University Press; 1937.
102. Macr. *Sat.* 1.16.32 on which Franciosi G, Ref. 16, p. 39-40.
103. Gell. *noct. Att.* 1.12.1.
104. The *flamen Dialis* ceases from the priesthood in the case of the death of his wife. Cf. Gell. *noct. Att.* 10.15.1.
105. Guizzi F, Ref. 43. pp. 38-39. Cf. Tac. *ann.* 4.16.
106. Gell. *noct. Att.* 1.12.9. Cf. also Gai. 3.114 on which Guizzi F, Ref. 43. p. 45., Cf. Capogrossi Colognesi L, Ref. 25.
107. Gai. 3.114 with reference to the *Flamen Dialis* mentions the *inauguratio*. In the oldest sources the *flamen Dialis* is *captus* (Liv. 27.8.4.5; Tac. *ann.* 4.16) like the vestal. It can be assumed that from a certain moment in history, which we cannot determine with certainty, such a priest is inaugurated. The effects of the *inauguratio* are, however, identical to those of the *captio*: the

*liber* comes out of the *potestas* of the father *sine capite deminutione*. Cf. also Gai. 1.130, Tit. Ulp. 10.5. On these aspects, see Guizzi F, Ref. 43. p. 32 ff. This situation could be at the origin of the divergence of opinions among jurists, reported by Gell. *noct. Att.* 1.12.15.

108. Brutti M, Ref. 11. p. 180.

109. Capogrossi Colognesi L, Ref. 23. p. 24.

110. de Francisci P, Appunti intorno ai ‘*mores maiorum*’ e alla storia della proprietà romana. In: Studi Segni I. Milan: Giuffrè; 1967. pp. 630-631.

111. Capogrossi Colognesi L, Ref. 13 pp. 30-31.

112. Fest. *verb. sign.* s.v. *Camillus*, p. 38 L: *Camillus proprie appellatur puer ingenuus*. See also Fest. *verb. sign.* s.v. *Flaminius Camillus*, p. 82 L.

113. Fest. *verb. sign.* s.v. *tutulus*, p. 484 L.

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