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*CREDITUR VULGO TESTAMENTA HOMINUM SPECULUM  
ESSE MORUM: WHY THE ROMANS MADE WILLS*

EDWARD CHAMPLIN

I

Tamdiu contenditur de hereditate mortuorum, quamdiu testamentum proferatur in publicum; et cum testamentum prolatum fuerit in publicum, tacent omnes, ut tabulae aperiantur et recitentur; iudex intentus audit, advocati silent, praecones silentium faciunt, universus populus suspensus est, ut legantur verba mortui, non sentientis in monumento. Ille sine sensu iacet in monumento, et valent verba ipsius.

[August. *Enarr. in Ps.* 29 2. 30–31]

Augustine's arresting tableau, sketched shortly before the collapse of the central Roman power in the West, touches on two essential elements that can be traced back through the history of Rome: an intense public interest in the last will and testament of the individual; and the unshaken acceptance (in principle at least) by both society and the law of the fundamental paradox that the wishes of an individual who had ceased to exist, ceased to have a "will," should be held valid. At the beginning and the end of its existence—when it was sealed and when it was opened—the Roman will was a very public document. Its earliest form was indeed a public ceremony, a declaration made before the *comitia calata*, called specifically for that purpose (and others) twice a year (Gai. *Inst.* 2. 101). And the form standard throughout the classical period, the *testamentum per aes et libram*, was in essence an oral ceremony before witnesses, although the mere written record displaced the act.<sup>1</sup> Similarly, at the other end of its existence, of the formal public opening of the will Ulpian could remark: "tabularum testamenti instrumentum non est unius hominis, hoc est heredis, sed universorum quibus quid illic adscriptum est: quin potius publicum est instrumentum" (*Dig.* 29. 3. 2 pr.); hence the public interest in the opening so vividly described by Augustine and

I am most grateful for much helpful comment on earlier versions of this paper from audiences at Heidelberg, Austin, and Princeton; from W. R. Connor, B. W. Frier, and T. J. Luce; from the Editor and referees of *CP*; and particularly from C. B. Champion, J. D. Chaplin, A. R. Keller, and S. Maxwell. Warmest thanks also to G. Alföldy and the Alexander-von-Humboldt Stiftung for their support of a profitable year in Heidelberg. It should be understood throughout that many of the subjects briefly discussed or passed over (e.g., the social and economic status of testators, their number, the position of women, the horror of intestacy, the revision of wills, captation) are reserved for more detailed treatment elsewhere.

1. Briefly, M. Kaser, *Das römische Privatrecht*, Erster Abschnitt: *Das altrömische, das vorklassische und klassische Recht*<sup>2</sup> (Munich, 1971), pp. 678–80.

others.<sup>2</sup> Inevitably this strong social dimension affected the will itself. What is for us a very personal document was for the Romans much more the product of a tension between private hopes and public expectations.

Certain elements of Roman society—that is, the propertied and the educated—were obsessed with the making of wills, both their own and others', to a degree and for reasons that may be hard to grasp today.<sup>3</sup> True, some with higher concerns could profess incomprehension of an individual's interest in a world left behind. The Christian Augustine naturally made much of the care expended on the earthly testament to the neglect of God's. You will certainly die, he thundered in one sermon, and be quite unaware of what goes on in your house, yet you want your will to have effect there, you pass on the buildings to your sons, and if you know that they will divide them otherwise you mourn. What care, what anxiety over a mere house, a roof doomed to collapse! How you resist to the limit raging fevers, pressing illness, the onset of death itself, gasping out your last words so that you can finish your testament (August. *Serm.* 47. 22). Similarly, more than two centuries earlier, Lucian's Platonist friend Nigrinus poured scorn on the Romans' concern with last wills and with life after their own deaths, on their testamentary outspokenness after a lifetime of careful repression ("The Romans tell the truth only once in their lives, in their will"), and on the vanity of their desire to burn favorite clothing at the funeral, to have servants tend their tombs, or to strew the grave with flowers: they remain foolish, he said, even on their deathbeds (Lucian *Nigr.* 30).

Philosophical minds might rise above such folly, but clearly both Augustine and Nigrinus were criticizing something that they and their audiences considered to be a fact of daily life and an act of great importance. Thus, to Pliny, the normal daily round in Rome included the witnessing of wills (*Epist.* 1. 9. 2), and Seneca could sum up the active life as appearing as a lawyer, witnessing wills, and supporting candidates for election (*Epist.* 8. 6); indeed most Roman writers betray a keen interest in the composition and contents of wills. And for once we can be sure that the writers reflect something of the larger world for, insofar as we can measure it, some sixty to seventy percent of all Roman civil litigation arose over problems connected with succession on death.<sup>4</sup>

2. On the meaning of "public," cf. P. Leuregans, "Testamenti factio non privati sed publici iuris est," *RHDFE* 53 (1975): 225–57, discussing an assertion of Papinian (*Dig.* 28. 1. 3). He traces a shift in thought from emphasis on the *voluntas defuncti* to concern for the common good. Augustine's tableau can be matched by one in Lucian (*Timon* 21, trans. A. M. Harmon): "When I [viz., Plutus] am to go from one to another, they put me in wax tablets, seal me up carefully, take me and carry me away. The dead man is laid out in a dark corner of the house with an old sheet over his knees, to be fought for by the weasels, while those who have expectations regarding me wait for me in the public square with their mouths open."

3. That we are dealing only with a minority must be understood: cf. the ironical reminder of D. Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (Edinburgh, 1969), pp. 71–75.

4. The calculations are those of J. M. Kelly, *Studies in the Civil Judicature of the Roman Republic* (Oxford, 1976), pp. 71–92 ("The Statistics of Litigation"). For a sociological explanation of the phenomenon, see B. W. Frier, *The Rise of the Roman Jurists* (Princeton, 1985), pp. 37–38.

Despite such general interest, no extended meditation on the fundamental question "Why does a person leave a will?" has survived: the loss of Galen's "On Making Wills," listed among his works on moral philosophy (*Libr. propr.* 13 [46. 19 K.]), is particularly sad. The closest thing to such a meditation comes, not surprisingly, in Seneca's treatise *On Benefits* (4. 11. 4-6; from the Loeb translation of J. W. Basore, slightly modified):

And tell me, when we have reached the very end of life, and are drawing up our will, do we not dispense benefits that will yield us nothing? How much time is spent, how long do we debate with ourselves to whom and how much we shall give! For what difference does it make to whom we give since no one will make us any return? Yet never are we more careful in our giving, never do we wrestle more in making decisions. . . . We search for those who are most worthy to inherit our possessions, and there is nothing that we arrange with more scrupulous care than this which is of no concern to ourselves. Yet, heavens! the great pleasure (*voluptas*) that comes as we think: "Through me this man will become richer, and I, by increasing his wealth, shall add new luster to his high position." If we give only when we may expect some return, we ought to die intestate!

Although he considers only one aspect of the will, Seneca here touches upon several elements worth further consideration, and one of his observations, however superficial, deserves repetition: people simply derive present pleasure (*voluptas*) from making wills, they enjoy what might otherwise seem a morbid or futile act. If nothing else, in the words of pseudo-Quintilian, making a will was a *solacium* in the face of death.<sup>5</sup>

It is the interaction of this private pleasure in testation with intense public interest in it that gives the Roman will a character markedly different from its modern counterpart. The motives of the Roman testator are the subject of this paper.<sup>6</sup>

## II

Wills are, most obviously, expressions of emotion: *testamenta, quibus omnem adfectum fateremur* ([Quint.] *Declam.* 332. 4). Fundamentally,

5. [Quint.] *Declam.* 308. 1. From this sentiment perhaps derives the slip on the part of lapicides who wrote forms of *voluptas* for *voluntas*: *CIL* 5. 4488 (Brixia); 3. 4282 = *RIU* 690 (Civitas Azaliorum) *ex voluptate testamenti*.

6. Among works on social aspects of the will in general, the following are particularly useful: E. Wistrand, *Arv och testamenten i romarnas sociala liv* (*Studia graeca et latina Gothoburgensia* 22 [Göteborg, 1966]); L. Boyer, "La fonction sociale des legs d'après la jurisprudence classique," *RHDFE* 43 (1965): 333-408; K. Hopkins, *Death and Renewal* (Cambridge, 1983), pp. 235-47; M. Corbier, "Idéologie et pratique de l'héritage (1er s. av. J-C-11 s. ap. J-C)," *Index* 13 (1985): 501-28 (mainly on Pliny the Younger).

The terminal dates of this study are, for several reasons, 200 B.C. to A.D. 250. These coincide roughly, at the one extreme, with the beginning of Latin literature and, at the other, with the end of classical jurisprudence; moreover, no individual wills are attested before the second century B.C., while the number of known testators drops off dramatically with the falling off of juristic literature. At the same time, the period is bounded by important legislation. Its beginning coincides with the first major testamentary laws, the *Lex Furia testamentaria* (204/169) and the *Lex Voconia*, while the end is marked by two imperial constitutions that profoundly affected the character of Roman law of testation, the *Constitutio Antoniniana* (ca. 212) and the constitution of Severus Alexander that allowed Roman wills to be written in Greek.

and implicitly, they offer a simple index of likes and dislikes, and particularly of concern for the future happiness and well-being of loved ones when the testator is no longer there to care for them. The law of intestacy imposed a standardized pattern of succession on all citizens: in the late Republic, for instance, *sui heredes*, *proximi agnati*, *gentiles*, in that order. The will is in essence a vehicle for moderated deviance from the rules of intestacy, deviance moderated both by law and by custom, as (broadly speaking) most wills name children or near agnates as heirs. But so simple are the nature and intent of the law of intestate succession that it cannot possibly answer the needs of most people who have something to leave. To assign a larger share of the inheritance to one child than to another, to disinherit a third, to nominate guardians, to subtract from the estate legacies of varied nature and value for different friends and relations, to manumit slaves: all these acts are impossible under intestate succession in the classical law, and all can be read with caution as indications of the individual testator's emotions, his love and his concern to protect, to reward, and to punish. They were indeed commonly read as such—witness the testator who carefully explained to his dearest daughter in his will that her brother would be getting more of the estate than she because, as she knew, the brother's expenses would be great and he would be responsible for payment of the legacies (*Dig.* 31. 34. 6).

What naturally catches the eye are the explicit expressions of emotion: the dearest, most affectionate, most pious (or most ungrateful) of children, the rarest (or most obnoxious) of friends, the most (or least) deserving of slaves, the most beloved of fatherlands.<sup>7</sup> Seldom do the actual documents that survive at any length omit some overt indication of the testator's feelings. Hope, fear, rage, doubt, delight, satisfaction, and disappointment can visibly tumble over each other in the succeeding paragraphs of a single will, all tremendously compressed by the nature of the document and normally presented as the explanation of an action or an instruction: "I beg you, my dearest wife, not to leave anything to your brothers when you die: you have your sisters' sons to whom you may leave things. You know that one of your brothers killed our son while robbing him: and another did worse things to me" (*Dig.* 31. 88. 16).

What distinguishes such expressions of emotion from those in other societies is how the Romans perceived them. According to the unfriendly critic Nigrinus, only once in life did the Romans speak without reserve, in their wills, so that they might not be harmed by the truth they spoke (*Lucian Nigr.* 30); and whatever the reality, it is abundantly clear that the will was indeed perceived as a vessel of truth, a document carefully weighed and written free of ordinary constraints and without fear or favor, since it became public knowledge only when its author was past caring. Such, for instance, was Seneca's point in speaking of one's

7. E.g., *FIRA*<sup>2</sup> 3. 48. 3 (*amicus rarissimus*), 7 (*filia pietissima*), 92 (a slave *peissime de me merito*); 3. 53 (*patriae meae amantissimae*); 3. 55b (*municipes carissimi*); *CPL* 222 (*uxori quam dilego*).

freedom in the will from the hopes, fears, and desires that compromise daily judgment, and it is one aspect of the popular saying recorded by the younger Pliny (*Epist.* 8. 18. 1): “*creditor vulgo testamenta hominum speculum esse morum*”—that is, they revealed men’s true nature.

Two particularly dramatic examples attest the public perception of the will as the vessel of truth. Valerius Maximus tells of a Pompeius Reginus whose dead brother had passed him over in silence in his will. To show the iniquity of this act, Reginus took his own will to the assembly and opened it before a large number of senators and knights in order to demonstrate that, if he had died first, he would have left his brother as his major heir: there could be no stronger evidence for his own proper conduct toward his brother.<sup>8</sup> Equally instructive here is a crucial incident in Octavian’s propaganda campaign against Mark Antony, the seizing and reading of Antony’s will in 31 B.C., instructive first because great scandal was raised by the terrible act of reproaching a man with what were to be his private and posthumous wishes, but second because on this grave occasion Octavian was held to be excused by the very nature of those wishes, for here was proof positive that Antony was no longer acting as a Roman citizen.<sup>9</sup> Antony himself could not deny the contents: in one’s will one said, at last, exactly what one felt.

This perception of freedom from restraint in the testament is central to the Roman point of view. Obviously, life was led, at least by the will-making classes, in the midst of considerable social restraint. There were clearly correct Roman ways to act toward parents and children, toward brothers and sisters, toward kinsmen and friends, toward patrons and clients and servants: *amicitia*, for instance, suggests a whole code of behavior corresponding only in part to modern notions of emotional friendship.<sup>10</sup> But after death everything changed, and the testator’s freedom of expression depended not so much on his lack of posthumous accountability as on his reasonable certainty that society would sanction his last wishes, within the confines of the law. There was, in brief, a commonly recognized *licentia testamentorum*.<sup>11</sup> The Romans accepted this particular license to say what one wished because it was felt to be the truth, confirmed or revealed: one could be sure of what another thought only after he or she had laid aside the mask of daily life.

### III

The importance of this final revelation of a testator’s true feelings is strikingly illustrated in Suetonius’ account of a man who inherited

8. Val. Max. 7. 8. 4.

9. Plut. *Ant.* 58. 4–8 (scandal); Dio 50. 3. 4 (excuse); Suet. *Aug.* 17. 1 (proof). The will named Antony’s children by Cleopatra as his heirs and ordered that his body be buried in Alexandria. There is no good reason to doubt the authenticity of the document, and it should have been valid in law: see J. R. Johnson, “The Authenticity and Validity of Antony’s Will,” *AC* 47 (1978): 494–503, with earlier bibliography.

10. P. A. Brunt, “‘Amicitia’ in the Late Roman Republic,” *PCPS* 11 (1963): 1–20 = *The Crisis of the Roman Republic*, ed. R. Seager (Cambridge, 1969), pp. 199–218.

11. Which Augustus refused to curtail: Suet. *Aug.* 56. 1.

perhaps more than any other Roman from his duly grateful friends, the first citizen, Augustus. It was the emperor's habit to weigh the *suprema iudicia* of friends with obsessive anxiety. Economic advantage was the least of his interests, as Suetonius demonstrates and as we can well believe. What he demanded from his friends after their deaths was the same *benevolentia* that they had shown him in life. If they left him too little or failed to praise him enough, he was visibly upset, but he was delighted if they spoke of him *grate pieque* (Suet. *Aug.* 66. 4). The last wishes of the dead were also a last—and therefore true—judgment, *supremum iudicium*, and that judgment mattered terribly to the living.

"Let P. Novanius Gallio, to whom as my benefactor I will and owe all that is good, in return for the great affection which he has borne me [then follow other details], be my heir" (Quint. *Inst.* 9. 2. 35, trans. H. E. Butler, modified). There is an appropriate technical term for just such an explicit last judgment: *elogium*. The term is defined generally as a clause added to wills, yet it is not just any clause but one that sums up the character of (normally) the heir. Thus, a man leaves an heir and adds the *elogium*, "I found her chaste" (Sen. *Controv.* 2. 7); or "they recited the wills of his *saluarii* in which Trimalchio was disinherited *cum elogio*" (Petron. *Sat.* 53. 8). More often the judgment is negative, and the original idea, connected with the dedicatory inscription, is transmuted into the reason for disinheritance, as in Augustine's note that a man disinherited his two children, one with praise, the other with *elogium*, "that is, with vituperation."<sup>12</sup>

Most commonly, of course, by the simple choice of heirs, legatees, and the slaves to be freed, a will indicated positive judgments. Naturally the greatest honor (*honor*), and the greatest burden, lay in being instituted an heir, particularly if one was not a *suus heres*.<sup>13</sup> Nevertheless, the institution of an heir was determined by a number of external factors. Much greater freedom of expression or judgment lay in the assignment of legacies, which also allowed a much more precise evaluation of the testator's relations with others. Again, family affection was to a large extent expected to dictate action: "He distinguished his grandchildren with many most pleasing legacies" (Pliny *Epist.* 8. 18. 2), or "I have treated my grandson honorably" (Cic. *Att.* 2. 18a. 2). Such affection aside for the moment, by one standard a legacy was simply a mark of honor, inevitably intended and understood as a reward for friendship and its services; and the receipt of a legacy was a matter of pride: "he was approved by the *iudicia* of many *cognati* and *propinqui*" (*CIL* 2. 3504); or, "Curianus has left me a legacy, and marked out my deed with a notable honor" (Pliny *Epist.* 5. 1. 1); or, "he showed his gratitude to all of his relatives for the services of each" (*Epist.* 8. 18. 7); or, "in that recent testament of his he remembered me most dutifully and most

12. *Sermo* 355. 2 "ambos exheredavit: illum cum laude, istum cum elogio, id est, cum vituperatione"; cf. [Quint.] *Declam.* 2. 15, Cic. *Clu.* 135.

13. See Cic. *Quinct.* 14; cf. Ulp. *Dig.* 37. 5. 5. 6, and F. von Woess, *Das römische Erbrecht und die Erbanwärter* (Berlin, 1911), pp. 138–51.

honorably" (Apul. *Apol.* 92. 2). In Martial's words, "iam sibi defunctus, caris dum vivit amicis" (4. 73. 5). For the *amicus legato honoratus*, the economic value of the legacy was professedly immaterial, "modest but extremely gratifying" (Fronto *M. Caes.* 1. 6. 6), "some small amount *honoris gratia*" (Apul. *Apol.* 100. 2). And all our sources, literary and documentary alike, show clearly that at all levels of society legacies outside the family were for the most part little more than keepsakes when measured against the total wealth of the testator and the legatee.<sup>14</sup> The honor for the legatee rested on the simple theory that merit was being publicly rewarded—real merit, since the bestower of the honor could expect nothing in return.<sup>15</sup>

More arresting is the extraordinary indulgence by Roman wills in negative *iudicia*. Such condemnations were expressed in three different ways: through omission, disinheritance, and abuse.

The most dramatic of omissions occurred in the will of the ancient and wealthy Iunia, sister of Brutus and widow of Cassius, which named almost every leading citizen of Rome with honor but pointedly passed over the emperor Tiberius: this was the topic of much popular discussion, according to Tacitus (*Ann.* 3. 76), but Tiberius did, and could do, nothing. Here Iunia followed the dictator Sulla one hundred years earlier, who had named all but one of his friends as legatees or as guardians for his son, pointedly ignoring the young Pompey.<sup>16</sup> Should that prove too subtle, there was a useful variant on the insult: one could leave a trifling sum to one who might expect much more, so that (in the words of Apuleius) it would be clear that the testator had judged the legatee in anger rather than passed him over in absence of mind.<sup>17</sup>

The key point here is the public interest: the insult is intended less to upset its recipient than to damage his reputation. Such omission from the wills of one's nearest and dearest was a joy to one's enemies,<sup>18</sup> and Valerius Maximus devotes a lively and highly disapproving section to a series of bad examples, testators who should have rewarded a relative or a friend or a patron, yet who shocked society by ignoring them in their wills.<sup>19</sup>

Disinheritance, far more damaging and confined to those in the testator's *potestas*, is accordingly more restricted. The law required explicit disinheritance of a *suus heres*, by name if he was a son in his father's

14. See, e.g., the will of Antonius Silvanus, *FIRA*<sup>2</sup> 3. 47, with fifty denarii to the procurator of the estate and fifty to his commanding officer; or the so-called *testamentum Dasumii*, *FIRA*<sup>2</sup> 3. 48. 15–26, single pounds of gold and silver; Mart. 2. 76.

15. See von Woess, *Erbrecht*, p. 149, for references to *merita* rewarded. Cf. the institution of an *extraneus* as heir at Quint. *Inst.* 9. 2. 35 (quoted above); Nep. *Att.* 21. 1 "multas enim hereditates nulla alia re quam bonitate consecutus [!]." Pliny professed shock at Regulus' acceptance of inheritances and legacies *quasi mereatur* (*Epist.* 2. 20. 11); Apuleius spoke of *immeritae hereditates* (*Apol.* 23. 7).

16. Plut. *Sull.* 38. 2, *Pomp.* 15. 3; cf. the insult at Hor. *Serm.* 2. 5. 62–69.

17. See Apul. *Apol.* 97. 5, Cic. *Caec.* 17 (an heir to one-seventy-second); cf. Val. Max. 8. 8. 2.

18. Cic. *Dom.* 49, *Sest.* 111, *Att.* 1. 16. 10, and below; cf. Petron. *Sat.* 43. 5 "et ille stipis, dum fratri irascitur, nescio cui terrae filio patrimonium elegavit."

19. Val. Max. 7. 9. 1–5: one was an ungrateful client of that careful reader of wills, Augustus.



power. But, in Seneca's words, what sane person would disinherit his own son, save for great and repeated offense?<sup>20</sup> At the least, there was a strong notion throughout Roman history of the natural right of family members to family property.<sup>21</sup> Society and the law took a dim view of the upsetting of natural affection and of the transfer of property away from those who had a natural claim on it; thus there is a real tone of experienced disapproval in the observation of the jurist Gaius that "we must not approve of parents who injure their own children in their wills, which many do, ill-naturedly passing judgment on their own blood, corrupted by the wiles and incitements of stepmothers."<sup>22</sup> Moreover, disinheritance, if upheld, was a stigma, grounds for abuse of the prospective heir by his enemies if it were even contemplated.<sup>23</sup> Therefore, to avoid successful challenge to the will, to show that one was both sane and justified, it was essential to give a reason: my son was bribed while acting as a judge, he fell in love with a harlot, he is not my son, and so forth.<sup>24</sup> A *suus heres* had, by definition, a right to the inheritance: posterity had to be persuaded by the testator that he had forfeited that right.

Not so with explicit abuse of people who did not stand to gain from the will: they posed no threat to its validity, and the testator could express himself freely, thus causing immense discomfort to those left behind. Routinely he could urge that certain offensive slaves never be manumitted, that ungrateful freedmen be denied access to house or tomb.<sup>25</sup> Indeed, there seems to have been a commonplace that malefactors in general should receive as a bequest a rope (with or without a nail) to hang themselves.<sup>26</sup> Historically notorious, and to Tacitus worth recording, were the wills of Fulcinius Trio, which flung accusations of senility at Tiberius and of terrible crimes at the praetorian prefect Macro and the imperial freedmen (*Ann.* 6. 38; cf. Dio 58. 25. 2); or of Petronius, which set out a list of Nero's debaucheries (*Ann.* 16. 17. 7); or of Annaeus Mela, whose testamentary charges led to a man's suicide (*Ann.* 16. 19. 5). A real appreciation of the problems for the living caused by the adverse judgment of the dead can be gained from the letters of the orator Cornelius Fronto in the mid-second century. Fronto was acutely embarrassed by a friend who, after naming him part heir in an otherwise

20. *Clem.* 1. 14. 1; cf. Apuleius' struggle with his wife over her son: "ne hunc ob tot insignis contumelias, ob tot iniurias exheredaret" (*Apol.* 99).

21. Cf. Pliny *Pan.* 37. 2 "quae sanguine gentilitate sacrorum denique societate meruissent, quaeque numquam ut aliena et speranda sed ut sua semperque possessa ac deinceps proximo cuique transmittenda cepissent."

22. *Dig.* 5. 2. 4; see Pliny *Epist.* 6. 33 for precisely such *novercalia delenimenta*; cf. Scaev. *Dig.* 28. 2. 19 *exheredationes autem non essent adiuvandae*.

23. See Cic. *Caec.* 17, *Rosc.* 52-53, *Phil.* 2. 42; Pliny *Epist.* 6. 33. 6; Tert. *De praescr. haeret.* 37.

24. See Cic. *Chu.* 135; Quint. *Inst.* 7. 4. 20; *Dig.* 28. 2. 14. 2, 15.

25. E.g., the so-called *testamentum Dasumii*, *FIRA*<sup>2</sup> 3. 48. 82, 92, 109; *PBerl.* 7124; *Dig.* 34. 4. 29.

26. See Mart. 4. 70; *CIL* 6. 12649 (apparently in earnest); cf. 6. 20905 = *CLE* 95 (not a will). There is a variation in the *Testamentum Porcelli*, the *popia et pistillum* to be worn from the neck of the unmentionable cook who is about to slay the piglet-testator: see F. Buecheler, ed., *Petronii Saturae*<sup>8</sup> (Berlin, 1963), pp. 346-47.

blameless testament, had proceeded to vilify a third person in unmeasured terms. But there was more than just embarrassment, for the testator was a former imperial procurator, and his victim was the prefect of the praetorian guard himself, M. Gavius Maximus, a man, says Fronto, “whom I must treat with respect.” The judgment of a dead man forced the living heir into a difficult choice between his duty to a friend and the displeasure of a powerful man—and delicately phrased letters to the emperor, to the emperor’s son, and to Gavius Maximus himself set out the orator’s position.<sup>27</sup>

To repeat: the last judgment mattered terribly to the living. Accordingly, the concept pervades both Latin literature and epitaphs, and, most important, it is accepted and heavily used by the jurists, who dealt so often with disputes over inheritance.<sup>28</sup>

#### IV

The attention devoted by Roman testators to explicit and implicit judgments of the living in their wills is striking. Why did they feel impelled to deliver these judgments? A clue is offered in the sometimes mechanical nature of the honor accorded to heirs and legatees by the testator’s supposedly free last judgment. Take, for instance, the dozens of scrupulously equal keepsakes bequeathed to friends and recorded in the so-called testament of Dasumius: these occupy some fifteen lines of a huge inscription and appear in what might be taken as a position of honor, immediately after the institution of heirs; but they are an undifferentiated lump—“to the friends listed below”—in sharp contrast to the subsequent sixty lines of detailed bequests to individuals. A pleased remark by Pliny in a letter to Tacitus is directly relevant (*Epist.* 7. 20. 6): “you must have observed how in testaments, unless the testator is a close friend of one or the other of us, we both receive the same legacies of equal value.” That is, outside the circle of close friends, there were others who simply had to be remembered.

The last judgment at Rome was tempered with a strong sense of duty, mixed with self-esteem. The Iunia who so pointedly omitted Tiberius from her will named almost every other leading citizen *cum honore*. Caesar listed “the greater part of his [future] assassins” as tutors to his son, if one should be born.<sup>29</sup> Augustus, too, named the *primores civitatis* as heirs in the third degree: many of them he detested, Tacitus noted, but by naming them he would increase his own glory (*Ann.* 1. 8. 2).

27. *Ant. Pium* 3, 7, 4; for exegesis of the affair, see E. Champlin, *Fronto and Antonine Rome* (Cambridge, Mass., 1980), pp. 100–101.

28. Cf. *TLL* 7. 2. 610, s.v. *iudicium*. Some ninety instances are found in the *Vocabularium Iurisprudentiae Romanae* (*VIR*) 3:1376–78, s.v. *iudicium* 2. 15. By the third century the *praetor fideicommissarius* was known as the *praetor supremarum*: *ILS* 1168, 8978. Cf. *CIL* 2. 3504 (cited above, in text) and *ILS* 8394 (the *laudatio Murdiae*, where the word appears twice). The *iudicia* of *CLE* 999, 1000, and 2091 do not refer to wills.

29. Suet. *Iul.* 83. 2 *plerosque percussorum*; cf. Dio 44. 35. 2. Whatever number *plerosque* may signify, there were clearly many tutors *honoris causa*; inevitably each would have received a legacy as well.

Augustus' choice uncovers a real conflict for normal citizens: philosophers and popular perception to the contrary, even in their wills Romans could not speak without reserve. They might have to mask or to exaggerate their feelings in order to ensure that beneficiaries complied with their wishes and particularly to avoid giving grounds for challenge in court.<sup>30</sup> Notoriously, under certain emperors it might be necessary to flatter the prince with words or bequests in order to safeguard part of the property for the heirs.<sup>31</sup> And less dramatically, even while contemplating his own extinction a testator might temper his freedom of expression by an inclination to tell people what they wanted to hear, to leave a good memory behind.

Inevitably, people talked about wills: "I hear that Sextus is dead. Let me know who is his heir and when his testament will be opened."<sup>32</sup> Cicero in particular not only was interested in the wills of others in which he had no concern—"I want to know who the secondary heirs are and the date of the testament" (*Att.* 15. 2. 4), "I desire earnestly to know what Hortensius has done" (*Att.* 7. 2. 7; cf. 7. 3. 9), "let me know what Mundus has done in his will (for I'm curious)" (*Att.* 15. 26. 5)—but also passed judgment on them: "I'm delighted that Macula has done his duty" (*Fam.* 6. 19. 1), "I learned of Calva's will, an odious and sordid character" (*Att.* 15. 3. 1). A whole series of letters shows his concern that his estranged wife, Terentia, "give enough to those she ought to" in her will, and to her complaints about his own testament he replies that he has treated their grandson with honor and will give his will to be read by anyone who wishes to see it.<sup>33</sup> Similarly, Pliny, whose correspondence betrays throughout an avid interest in matters of inheritance and detailed knowledge of other people's wills, can remark with satisfaction that "she died with a most respectable will, leaving her grandchildren heirs" (*Epist.* 7. 24. 2), or "his will is all the more praiseworthy since he wrote it with *pietas, fides, and pudor*" (*Epist.* 8. 18. 1). The *honestum testamentum* was cause for satisfaction, a will that not only conferred honor but was also considered praiseworthy in itself.<sup>34</sup>

It is very clear that a sense of duty was a strong motivation for the Roman testator: he was obliged to do the proper thing, to repay favors,

30. What precisely were the emotions of the man who made Aurelius Claudius his heir "if he can prove to a judge that he is my son" (*Dig.* 35. 1. 83)?

31. E.g., Piso the conspirator "testamentum foedis adversus Neronem adulationibus amori uxoris dedit" (*Tac. Ann.* 15. 59. 8); or Q. Veranius, with *multa in Neronem adulatione* (14. 29. 1). See in general R. S. Rogers, "The Roman Emperors as Heirs and Legatees," *TAPA* 78 (1947): 140–58; and J. Gaudemet, "'Testamenta ingrata et pietas Augusti': Contribution à l'étude du sentiment impérial," *Studi in onore di Vincenzo Arangio-Ruiz*, vol. 4 (Naples, 1953), pp. 115–37.

32. *PMich.* 8. 475 (Karais): Papirius Apollinarius to the veteran Claudius Terentianus, early second century A.D.

33. *Att.* 11. 16, 25, 23, 24, 22; 12. 18a. 2. On reading the testament in the testator's lifetime, see below.

34. Fronto *Ant. Pium* 4. 1 *testamentum cetera honesto*; Apul. *Apol.* 92. 2 *honestissime meminuit*, 97. 5 *honesto legato*; cf. *HA Pius* 12. 8 *legatis idoneis*. For Cicero (*Off.* 3. 74), inheritances won by captation were *hereditates non honestae*. Cf. *Nov. Marc.* 5 (A.D. 455): a disputed will is confirmed because it remembered all who deserved remembering.

to honor friends.<sup>35</sup> Cicero, in the *De finibus* (3. 64–65), attributes to the younger Cato a revealing explanation of wills: man was born for society and social intercourse, wills and last wishes were born of patriotism and care for posterity. Therefore one's final judgment was not merely the subject of great interest, it was the subject of judgment itself, praised or blamed as the final mirror of one's character. This is strikingly conveyed in the funeral laudation of Murdia, preserved in part on stone, which devotes ten lines to praising the testamentary dispositions of the speaker's mother. Not only are their contents sketched, they are interpreted as expressions of virtue: maternal love, honor to a second husband, loyalty to the memory of the first.<sup>36</sup>

The more prominent the testator, the wider the comment, as with the testament of Iunia, *multo apud vulgum rumore*. The whole city, reports Pliny, was filled with debate over the will of the wealthy Domitius Tullus, some blaming him for hypocritically encouraging inheritance-hunters, other praising him for frustrating his captators by leaving his wealth to his family. Inheritance lawsuits aroused intense public interest, if we can trust Pliny's vivid description of a packed courtroom eagerly following the case brought against her stepmother by a woman who had been disinherited by her aged father.<sup>37</sup> And if one did not do what the public judged the proper thing, there was always the terrible fate of the wealthy knight Q. Caecilius, who owed everything, rank and fortune, to the patronage of Lucullus, and who constantly proclaimed that Lucullus would be his heir, even passing to him his ring on his deathbed. Despite these protestations, he left his property in the end to his nephew, Cicero's friend Atticus: the outraged people of Rome dragged his corpse through the streets with a rope around its neck, and the horrible man (says the moralist) got the heir he wanted but the funeral he deserved. The social climate that could produce such a public reaction is difficult to appreciate. It does not matter much whether the story is true or not: it was true enough for Valerius Maximus' purpose; and Mark Antony's will was certainly used to rouse public fury, indeed civil war, against him.<sup>38</sup>

The strong interest shown in wills by those who did not stand to gain, the influence of public interest on the testator, his sense of duty to others and his concern for his own memory among posterity: all lead to a familiar issue. In his classic *Ancient Law*, Sir Henry Maine observed almost in passing that the Romans had a "passion for Testacy" or, more dramatically, a "horror of Intestacy," and the phrase has become en-

35. Cf. R. P. Saller's observation that "legacies constituted the final gifts in exchange relationships" (*Personal Patronage under the Early Empire* [Cambridge, 1982], p. 124; cf. pp. 71–73).

36. *FIRA*<sup>2</sup> 3. 70. 4–13.

37. *Epist.* 8. 18. 2 *varii tota civitate sermones*, 6. 33. Cf. Tac. *Dial.* 38. 2 "causae centumvirales, quae nunc primum obtinent locum": the greatest prestige for an orator was to be won in the centumviral court from the time of Augustus on.

38. Val. Max. 7. 8. 5, part of his outrage against bad wills. The anecdote is not to be found in Cicero's letters to Atticus or in Nepos' biography.

grained in subsequent legal literature.<sup>39</sup> The notion has recently been attacked and powerfully defended, and it should still stand, though in a slightly modified form.<sup>40</sup>

Indeed, one should go further. The observable public interest in wills and the testator's sense of duty offer strong confirmation: the "horror of intestacy"—or better, deep distaste—is essentially a reflection of the social responsibility of the individual citizen; it is a communal, not an individual emotion. The law of intestacy took care of property only. The making of a proper will was an actual duty, designed to honor or rebuke family, friends, and servants as they deserved. If the *officium* was properly fulfilled, the testator was praised.<sup>41</sup> If it was done improperly, from the time of the late Republic certain close relatives were allowed legal recourse with the *querela inofficiosi testamenti*, the complaint of the unduteful will.<sup>42</sup> But if the *officium* was not performed at all, if you died intestate, you risked having (in Juvenal's blunt formulation) a lot of angry friends at your funeral (l. 144); if, at the other extreme, you wrote your will with such care that it could not be broken—if a will were broken, intestacy would ensue—you were praised by posterity (cf. *CIL*. 12. 4036 = *CLE* 112 [Nemausus]). Cato's notorious regret, that he had lived one day without a will, reflected the proper attitude.<sup>43</sup> There was, in short, among those who had something to leave, a duty of testacy.<sup>44</sup>

## V

The blend of individual emotion and judgment with social duty and social pressure, of personal with communal needs, brings to the testator a present sense of future security, security both before and after death. In Rome, that sense of security has three distinct aspects, each shaped

39. *Ancient Law* (New York, 1864), p. 216 (chap. 7).

40. The first and salutary criticism of Maine's dictum came from D. Daube, "The Preponderance of Intestacy at Rome," *Tulane Law Review* 39 (1964-65): 253-61; repeated in his *Roman Law*, pp. 71-75, and extended by A. Watson, *The Law of Succession in the Later Roman Republic* (Oxford, 1971), pp. 175-76. Nevertheless, a convincing defense was mounted by J. Crook, "Intestacy in Roman Society," *PCPS* 19 (1973): 38-44. Further arguments can be added, but one of Daube's major points must be conceded, that the "horror" was confined only to that small minority of Roman citizens who had the ability to make a will and who had some property worth leaving. These "will-making classes" are the subject of this paper.

41. E.g., Cic. *Fam.* 6. 19. 1 "Maculam officio functum esse gaudeo," *Att.* 3. 20. 1 "avunculum tuum functum esse officio vehementer probo"; *CJ* 9. 23. 1 (A.D. 212) *functus dulci officio* (of a father naming his son in his will).

42. Principles and bibliography at Kaser, *Privatrecht*<sup>2</sup>, pp. 709-13.

43. Plut. *Cato Mai.* 9. 9. The meaning of the passage and of ἀδιάθετος in it is debated by Daube and Crook.

44. Thus, it was vitally important to keep your will up-to-date, by adding codicils or by completely replacing it. At the worst, an antiquated will might be legally voided, e.g., by the subsequent birth of a *suus heres* or by a change in the testator's status at law. Yet it could be equally damaging if an old will remained valid, for obvious reasons, witness Pliny's remark about one friend: "I am distressed that he died with an old will, for he left out some people whom he highly esteemed, while he honored some with whom he was very offended" (*Epist.* 5. 5. 2; cf. 8. 18. 5). Cicero demonstrates that his client Archias acted as a good Roman citizen (*Arch.* 11): "he often made his will according to our laws." *Dig.* 31. 89. 1 shows the problems caused by a five-year-old will. The social obligation to leave a will is discussed by A. Wallace-Hadrill, "Family and Inheritance in the Augustan Marriage Laws," *PCPS* 207 (1981): 58-80, at 66-68.

by a reciprocity between the individual and his society: first, a very real security for oneself while still alive; second, a security in the foreknowledge that one's family would continue after one's death; and third, a security in the feeling that one would be remembered after one's death.<sup>45</sup> All are notably pragmatic, with relatively little of altruism or religious sentiment: all are concerned to some extent with individual survival.

The most striking of these is the measure of security afforded a testator in his lifetime, not merely the mental tranquillity resulting from a proper and dutiful will, but simple physical security in old age. The will is an instrument of control. Power over the future devolution of property, when combined with the ability to change one's mind, gives the testator present influence over those who might expect to benefit. In theory, such control could be passive or active: passively, the very secrecy of the document might ensure the good behavior of potential beneficiaries; but actively, the testator was always free to go further, to promise or to threaten. Most commonly, the will reinforces a father's control over mature children in his power, with its potent double effect on the child's future wealth and reputation, its mixing of praise or blame with the distribution of property.<sup>46</sup> On the other hand, where no children existed, one could in effect buy the solicitude for one's old age that children might be expected to provide, through indicating to *extranei* what they could anticipate by way of inheritance or legacy. Built on these basic premises are three particularly Roman practices that attracted the notice of historians and satirists; all are extreme, or at least prominent, manifestations of the underlying phenomenon.

First, it was a common and accepted practice for a testator to talk openly about his intentions, despite the privacy of the will: "you swear by your *sacra* and your head, Garrica, that you have made me your heir to one quarter, and I believe you," says Martial.<sup>47</sup> The evidence for this is particularly striking in those notorious cases where the living testator, taking advantage of the privacy of his will, lied. The anecdotes are improving: Caecilius, who constantly asserted that Lucullus was his sole heir (Val. Max. 7. 8. 5); Marius of Urbinum, who told Augustus up to the day before he died how he owed everything to him and yet did not so much as mention his name in his will (ibid. 6); one Barrus, who on his deathbed gave Lentulus Spinther his ring and called him his only heir (ibid. 8); Rubrius of Casinum, who always openly called his good friend Fufius his heir (Cic. *Phil.* 2. 41). As a supposedly wiser Martial put it later (12. 73), "You say that I am your heir, Catullus. I won't believe it until I read it."

45. The formulation may be recognized as that of J. Goody, "Strategies of Heirship," in his *Production and Reproduction* (Cambridge, 1967), p. 87, although he uses it there in a different and much broader sense. He goes on to illustrate how difficult it is "for individuals in advanced industrial economies to understand the importance of such security in other societies and other sectors." The last two aspects of security could be combined in a general notion that a testator wishes to regulate the world after his death.

46. For a reevaluation of the practical effect of *patria potestas*, see R. P. Saller, "*Patria Potestas* and the Stereotype of the Roman Family," *Continuity and Change* 1 (1987): 7-22, with bibliography.

47. 9. 48. 1-3; cf. 11. 67. 12. 40; Lucian *Dial. mort.* 19 (9). 3.

The most obvious heir or legatee was the emperor, patron of all, and a patriotic citizen would not only leave him something but would boast about it.<sup>48</sup> Again, the best evidence is negative, not the immense amount in inheritances that we know came to the emperor as heir or co-heir, but the amount that did not. Caligula and Domitian even raised money by taking advantage of this custom, confiscating the estates of those who were said to have claimed that the emperor was their heir but did not in the event name him as such (Suet. *Calig.* 38. 2, *Dom.* 12. 2); and we can judge how widespread such loyal promises were from the sympathetic notice taken of them by the third-century jurist Paul in his *Sententiae* (*Dig.* 28. 1. 31): "The property of one who boasted that he would make the emperor his heir is not to be taken over by the fisc."

More dramatic than proclaiming who the heir would be was the actual recitation from a copy of the will, or at least the offer to read the will or to have it read, to prove what one's intentions were. By such means the man ignored in his brother's testament showed by his own how generous he would have been to that brother (*Val. Max.* 7. 8. 4); others on trial showed that the emperor was heir to half (*Dio* 58. 4. 5; cf. 55. 9. 8; Suet. *Vit.* 14. 2; cf. *Iul.* 83. 1); others offered to demonstrate that a son or grandson or friend was honorably treated (*Apul. Apol.* 100. 2; *Cic. Att.* 12. 18a. 2); the first emperor wanted to prove that he had left no successor to the Empire (*Dio* 53. 31. 1). Thus, the will could be an instrument of defense for the living testator, protecting his person or his reputation. But the classic example is found in a parody, the will ascribed in the *Satyricon* to Trimalchio: not content with discussing certain legacies and announcing at dinner that his wife is to be his heir, he orders a copy of the document to be brought in and reads it out complete, from the first paragraph to the last, accompanied by the groans of his servants (*Sat.* 71). His motives are clearly demonstrated by Petronius: self-glorification, the approval of his friends, and the present assurance that he will be mourned after his death. The satire may be gross, but it surely reflects a wider reality: beyond any desire for financial or physical advantage, a testator might publicize his will in his lifetime simply to win the affection of those around him.

The practice of announcing or reciting the contents of a will plays a considerable part in the third and most difficult aspect of personal security, *captatio*. Captation, or inheritance-hunting, is such a commonplace among ancient writers that it is important first to remember that it is precisely that, a literary commonplace. In origin and development it is a fishing metaphor: the captator "angled" for inheritance, baiting his hook with kindness, services, and gifts to the testator.<sup>49</sup> The major problem is that it was as difficult for the Romans as it is for us to distinguish the cold-hearted captator from the ordinary friend who

48. See the articles of Rogers and Gaudemet cited in n. 31 above.

49. E.g., *Mart.* 4. 56 "sic avidis fallax indulget piscibus hamus," 5. 18, 7 *imitantur hamos dona*, 6. 63. Cf. *Hor. Serm.* 2. 5. 23-26, 44; Lucian *Timon* 22. The latest list of testimonia to *captatio* is provided by A. R. Mansbach, "Captatio: Myth and Reality" (Ph.D. diss., Princeton, 1982), pp. 118-35.

would be duly rewarded: "Someone sits at the bedside of a sick friend: we approve. But another does it for the sake of an inheritance: he is a vulture waiting for a corpse. The same deed is base or honorable: it matters why and how it is done."<sup>50</sup> Yet while identifying the problem here, Seneca offered no solution. *Captatio* was a matter of immense interest to satirists and philosophers, but there are distressingly few historical instances among the scores of ancient notices, and the few that do exist are heavily distorted by literary stereotype or personal animus. It is probably misleading to conceive of a "tribe of legacy-hunters" (in fact, "inheritance-hunters") as an identifiable group in society, mercenary social adventurers. *Captatio* is merely *amicitia* viewed in a negative light; indeed, it springs from the very wide Roman notion of friendship, with its particular emphasis on the exchange of *beneficia*. *Captatio* and the captator are stock elements of literature and undoubtedly existed in life, but as actual practice and figure in Roman society they are nearly impossible to identify.<sup>51</sup>

The interesting figure here is the *captandus*, the testator who submits to and encourages the attentions of *captatores*, even to the point of simulating illness.<sup>52</sup> The *captandus* of literature is invariably old (or very ill), childless (or pretending to dislike his children), and rich—but he is not a victim.<sup>53</sup> As early as the bachelor Miles Gloriosus, the advantages of being courted and sacrificed for, of receiving meals and gifts, have become obvious (Plaut. *Miles* 705–15), and according to caustic observers the *captandus* might gain anything from sexual favors to free advocacy in court to ostentatious naming in the wills of the *captatores* themselves.<sup>54</sup> Childlessness in Roman society, so the consensus held, visibly brought *auctoritas*, *potentia*, *praemia*, *gratia*, *pretia*, *regnum*. All of this is again simply a distorted reflection of reality. Undoubtedly, the corrupt and corrupting rich old schemers and young adventurers of Martial or Juvenal or Lucian existed, immorally exploiting the expectations of society. The reality reflected is that the ability to leave property gave one power in one's lifetime, whether that power was recognized or unrecognized by the testator or his friends. Unscrupulous use of that power by captator and *captandus* is the visible and negative side of the security derived from the mutual exchange of benefits by friends.

50. Sen. *Epist.* 95. 43. The "friend" who sat by the bed for gain was *ingratus*: *Ben.* 4. 20. 3.

51. Again, full discussion is postponed here. *Captatio* is treated as a social phenomenon by (e.g.) K. Hopkins, *Death and Renewal* (Cambridge, 1983), pp. 238–47, and Wallace-Hadrill, "Family and Inheritance"; but see Mansbach, "'Captatio.'" On Pliny's notorious caricatures of the captator Regulus, see E. Champlin, "Pliny the Younger," in *Ancient Writers: Greece and Rome*, ed. T. J. Luce (New York, 1982), pp. 1040–41.

52. Pliny *HN* 20. 160; Sen. *Brev. vitae* 7. 7; Mart. 2. 40, 12. 56.

53. Cic. *Parad.* 39 "quem nutum locupletis orbi senis non observat?" References in Mansbach, "'Captatio,'" pp. 24–39. Pretended dislike of children: Sen. *Consol. ad Marc.* 19. 2, Lucian *Dial. mort.* 16. 3; cf. Pliny *Epist.* 8. 18, Plut. *Mor.* 497A–C.

54. Examples drawn from a wide range: gifts (Cic. *Parad.* 39, Petron. *Sat.* 116); food (Juv. 4. 18–19, Mart. 2. 40); lodging (Mart. 11. 83); naming in the captator's will (Luc. *Dial. mort.* 18 [8]); salutation (Sen. *Epist.* 19. 4, Tac. *Dial.* 6); sickbed attendance (Pliny *Epist.* 2. 20. 2, 7, Ov. *Ars am.* 2. 332); sacrifice (Juv. 12. 111–14, Luc. *Dial. mort.* 15 [5]); sex (Hor. 2. 5. 79–84, Juv. 1. 37–41); flattery (Cic. *Off.* 3. 74, Pliny *Epist.* 7. 24. 7).



Security after death is more difficult to arrange, and nowhere is the social nature of the will more evident than in the testator's attempt to continue his existence in the world of the living—specifically, to live on in his family. Cicero touches on the matter in a curious passage in the *Tusculan Disputations*. The greatest proof of the immortality of the soul is that Nature herself implants in man anxiety over life after death. "Why," he asks, "do we have children, why continue our name, why adopt sons, why take care over our wills, why take care over eulogies and the monuments of tombs? We are thinking of the future" (*Tusc.* 1. 31). Personal immortality is conceived not in terms of an afterlife but as an extension of existence by various means on this earth. Whether or not this is a good argument for the immortality of the soul, as it is intended to be, the concept is by no means unfamiliar. One clear example is the bond between family affection and the idea of the family as a continuation of the self as one lives on in one's descendants. The huge majority of known Roman testators with surviving children leave all or some of them as heirs or major legatees, and where a spouse survives as well there is a strong urge to keep the family unit together.<sup>55</sup> Particularly interesting also, where the testator was childless, is the practice in the upper classes of the late Republic and early Empire known as "testamentary adoption," probably no legal adoption at all, but the institution of an *extraneus* as heir on the condition that he take the testator's name.<sup>56</sup> But most significant, from the time of Augustus on, is the very common use of the *fideicommissum* in the attempt to entail property: for example, "I commit it to the faith of my heirs, that they not alienate the *fundus Tusculanus* and that it not leave the family of my name" (*Dig.* 31. 77. 11).<sup>57</sup> The breakup of property risked the breakup of the family, and hence the passing of the testator from the memories of men.

For the Roman testator, personal immortality was survival in the memory of others. The will was not the place for reflections on the afterlife or for those measures to ensure the welfare of the soul familiar from medieval and early modern wills; it was the place to strike bargains with posterity. All wills are effectually tacit pacts for remembrance with the heirs instituted, the legatees honored, the slaves manumitted: at the least, those who profited should make the funeral a memorable occasion.<sup>58</sup> But a great number of those who left some wealth behind made

55. E.g., O. Montevecchi, "Ricerche di sociologia nei documenti dell'Egitto greco-romano I. I testamenti," *Aegyptus* 15 (1935): 67–121, at 100–105. This is not to deny the importance of legacies to *extranei*, on which see Hopkins, *Death and Renewal*, pp. 237–38. The important factor is the existence or nonexistence of spouse and children.

56. On which see most recently: E. J. Weinrib, "The Family Connections of M. Livius Drusus Libo," *HSCP* 72 (1967): 247–78; W. Schmitthenner, *Oktavian und das Testament Cäsars*<sup>2</sup> (Munich, 1973); D. R. Shackleton Bailey, *Two Studies in Roman Nomenclature* (State College, Pa., 1976), pp. 92–99.

57. On the mechanisms available, see D. Johnston, "Prohibitions and Perpetuities: Family Settlements in Roman Law," *ZSS* 102 (1985): 220–90.

58. See Dion. Hal. *Ant. Rom.* 4. 24. 6 (a reason for freeing slaves by testament), and cf. esp. Trimalchio at Petron. *Sat.* 71.

explicit arrangement for the use of a part of the estate in visible preservation of the testator's memory, in two main ways.<sup>59</sup>

The first was the establishment of the tomb, with instructions ranging from simple assignment of money for an epitaph to long and elaborate blueprints. Such arrangements are standardized, and they are well illustrated in the longest surviving blueprint, the testament of an anonymous Gallo-Roman aristocrat of the second century. This includes instructions for a chapel with a seated statue of the deceased, furnishings, and altar; careful orders for its maintenance and protection, with anxious concern for ensuring future generations of caretakers; equally detailed care that no one use the burial place save the testator and his *familia*; and instructions for sacrifice to the testator's memory at six specified times in the year.<sup>60</sup> With variations and omissions, these same four elements are the main concern of testators in scores of inscriptions: the establishment of a physical memorial, care for the memorial, exclusion of others from the memorial, and sacrifice for the occupant. All fostered and protected the memory of the dead in the minds of the living.

The second method for preserving memory is through nonfunerary foundations, devised for a myriad of purposes: the distribution of money or food, the erection of buildings for public use, the staging of games, the endowment of alimentary schemes.<sup>61</sup> Again, one example here, the elaborate provisions by a Greek woman for her hometown of Gytheion, the Laconian port, in A.D. 41/42.<sup>62</sup> Money left for the purpose was to be lent out by the magistrates, with land given as security, the interest on these loans was to supply the people of Gytheion with oil forever, and even slaves were to share in the distribution of the oil three times yearly. What is striking is the insistence on eternity: the elaborate moral and legal sanctions against the magistrates if they ever allowed the gift to lapse; the request that the terms of the bequest be set out on three marble pillars in specified public places; and the frank admission that the purpose of her philanthropy is "to achieve immortality." Not so explicit but equally clear are the hundreds of other foundations entrusted to communities or their magistrates, to professional or religious colleges, or to the order of Augustales: as long as the group benefits, the memory

59. Cf. Hopkins, *Death and Renewal*, pp. 247-55.

60. *FIRA*<sup>2</sup> 3. 49; cf. Petron. *Sat.* 71, or Lucian *Nigr.* 30. A most elaborate program of sacrifices is laid down (e.g.) in *CIL* 6. 10248. Much relevant material is to be found in F. de Visscher's standard *Le droit des tombeaux romains* (Milan, 1963), and in J. M. C. Toynbee, *Death and Burial in the Roman World* (Ithaca, 1971).

61. The only general work on foundations remains B. Laum's antiquated *Stiftungen in der griechischen und römischen Antike* (Leipzig, 1914). Standard essays are those by E. Bruck, "Foundations for the Deceased in Roman Law, Religion, and Political Thought," *Scritti in onore di Corrado Ferrini*, vol. 4 (Milan, 1949), pp. 1-42 (German version: *Über römisches Recht im Rahmen der Kulturgeschichte* [Berlin, 1954], pp. 46-100); and G. Le Bras, "Les fondations privées du Haut-Empire," *Studi in onore di Salvatore Riccobono*, vol. 3 (Palermo, 1936), pp. 23-67. Among more recent work, particularly valuable are the papers by J. Andreau, "Foundations privées et rapports sociaux en Italie romaine (Ier-IIIe s. ap. J-C)," *Ktema* 2 (1977): 157-209, and C. P. Jones, "A Deed of Foundation from the Territory of Ephesos," *JRS* 73 (1983): 116-25.

62. *SEG* 13. 258 (reproducing a much improved reading of *IG* 5. 1. 1208 by A. Wilhelm).

of the founder is preserved, and there is a strong tendency to direct that annual celebrations or distributions of largesse take place on the testator's birthday.<sup>63</sup> The simple urge to be remembered is one of the strongest motives for writing a will, in a world with only vague or uncomfortable views of an afterlife.

In the heat of the French Revolution, Mirabeau argued passionately for the abolition of wills in favor of intestate succession: "What is a testament? It is the expression of the will of a man who no longer has any will, respecting property which is no longer his property. It is the action of a man no longer accountable for his actions to mankind. It is an absurdity, and an absurdity ought not to have the force of law."<sup>64</sup> The emotion and the logic are powerful, but the argument is valid only for a society where individual caprice operates unchecked. That was not the case at Rome. The Roman will was indeed an expression of deepest emotion, particularly of affection in the form of concern for the future happiness or security of family and friends. But it was also a solemn evaluation of the surrounding world, one prompted by a deep sense of duty and of reciprocity, and it was an insurance that the individual would be remembered by others both in life and in death. At all points the testator's motives intersected with the needs or expectations of other people, from those benefited explicitly in the will to the community interested in the proper fulfillment of the testator's duty to it. The will itself was a compromise or mediation between what the individual needed and what the community wanted, and it was thus very much a social document. Hence it was that "ille sine sensu iacet in monumento, et valent verba ipsius."

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63. E.g., *FIRA*<sup>2</sup> 3. 55a, *ILS* 6468.

64. Quoted by B. Nicholas, *An Introduction to Roman Law* (Oxford, 1962), p. 252 (not attributed), and by F. Bresler, *Second Best Bed* (London, 1983), p. 22. I have not yet been able to trace the source of this. It does not appear in the *Discours de M. Mirabeau l'ainé sur les héritages et sur l'égalité des successions en ligne directe, par l'abolition des testaments* (Paris, 1791), but that speech, delivered posthumously to the assembly by Talleyrand, is packed with similar sentiments.