

## Marriage in Classical Rome – just a Tiresome Necessity?

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(Translated by Graham Pascoe, section headings by MoneyMuseum)

*As in Athens, marriage in Rome was originally based on custom and tradition. But in contrast to Athens, the political system scarcely affected the nature of marriage. Only on the change from the republic to the empire did interference in private life become clearly detectable.*

### Marriage as duty and privilege

In republican Rome, marriage was viewed as a social obligation, and by men apparently rather as a tiresome necessity. When the censor of the year 131 BC, Q. Metellus Macedonicus, called upon his fellow citizens to enter into marriage, he expressed himself in drastic terms: "If we could live without wives, we would be free of tiresome matters. But since Nature has so arranged things that we cannot live very comfortably with them, but cannot live at all without them, we must think rather of our long-term welfare rather than our short-term pleasure." That clearly shows that marriage was seen as a community of purpose: it existed to maintain the family and to provide for old age through the raising of legitimate children. Under the Roman republic there was no legal obligation to marry, but it is noticeable that in contrast to Athens the preconditions and forms of marriage were established at an early period and varied very widely.

From the early republican period (510 BC onwards) certain conditions had to be fulfilled for a marriage to be regarded as a valid marriage from which legitimate children could spring. Those conditions included the *conubium* (legal marriageability), attainment of the minimum legal age for marriage (12 for girls, 14 for boys), and consent to marriage (the agreement of bride and bridegroom). In comparison with Athens, the *conubium* is especially interesting. It existed if both partners were freeborn and possessed Roman civil rights, but it did not subsist between Roman citizens and foreigners *peregrini*, though these latter could be awarded the *conubium*.

Internal and external changes in Rome affected eligibility for the award of marriageability. Following the civil wars in which the plebeians attained political equality with the ruling patricians, marriage between patricians and plebeians was legalised in 445 BC. The end of the Social War in 89 BC resulted in the award of Roman civil rights to the *socii*, which naturally included the *conubium*. The expansion of Rome also led to more and more awards of civil rights and thus automatically swelled the ranks of marriageable people. So the development went in the opposite direction from that in Athens.

### The family as the cornerstone of society

The basic unit of society under the Roman republic was, as in Athens, the family. In Rome that meant the family of three to four generations that was under the legal authority (*potestas*) of the *pater familias*. He alone represented the family in public, with the result that the other members of the family did not appear as legal subjects. Accordingly, the law regulated at most the relations between families; within a family it was the *pater familias* who decided. And that included the power of decision over life, death, or the sale of the members of his family. Only upon the death of the *pater familias* were his children, and in certain circumstances his wife too, no longer under his authority but became persons with their own rights – *sui iuris*. The women of the family, however,

remained for life under legal guardianship (*tutela*). Their *tutor* was either the head of their family or another male relative. The Roman *tutela* was, however, very different from the *kyreia* to which Greek women were subject. A Roman woman was not only equal to her brothers under the law of inheritance, but as a person *sui iuris* she could possess assets of her own, administer them and invest them. At least in the case of upper-class women, the *tutela* developed into a mere formality. In the second century AD, the Roman legal authority Gaius therefore doubted the purpose of such a rule: "There is actually no logical reason why mature women should remain under guardianship."

## Two types of marriage

On marriage, a woman could either remain under the *potestas* of her natural family or join her husband's family. She had the choice because the Romans practised two different forms of marriage, though in both cases the children belonged to the father's family. Until the later republican period the principal form of marriage seems to have been that in which the woman left the *potestas* of her father and entered that of her husband or that of her husband's guardian. Or, as the Romans put it: she came into the *manus*, into the hand, of her husband, after her father had performed the *emancipatio*, which meant giving up his *potestas* over her. Any assets brought into the marriage by the woman, together with the dowry, became part of the assets of her husband or his *pater familias*. In the eyes of the law the woman was now equal to a daughter, and received rights of inheritance in her husband's family.

A *manus* marriage could be based on a *confarreatio*, a religious ceremony based on patrician religious law, which was restricted to patricians. Or, secondly, a *manus* wedding could be performed by *coemptio* – a symbolic purchase, in which the woman passed into the authority of the man in the presence of witnesses. The third form was the marriage based on *usus*: if the woman lived with the man for one unbroken year, she passed into his *manus*. From as early as the Law of the Twelve Tables of 450 BC, the *usus* could be interrupted if before the expiry of a year the woman stayed away from her husband's house for three successive nights; that avoided the *manus* and she came once more under the *potestas* of her father. In the late republican period, however, this form of marriage, intermediate between a *manus* marriage and a *manus*-free marriage, passed out of use.

From the earliest times there had also been the form of marriage without *manus*: the woman entered into a marriage but remained under the *potestas* of her father; after the death of her father or after the end of the marriage she was therefore able to become a person *sui iuris*. In this form of marriage, the woman – but not the children born in it – did not become part of the *familia* of her husband, but remained a member of her original family. This *manus*-free marriage was always performed informally, by the mere establishment of a partnership based on the mutual wish of the partners for marriage. During the Roman republic this form of marriage seems to have become much more common in comparison to marriages with *manus*. It was undoubtedly the more attractive alternative both for women and for the fathers of daughters, since it gave the husband no rights over the assets of his wife.

## The dowry - a gift from man to man

By custom and tradition, the handing over of a dowry (*dos*) was part of a marriage. It was a financial offering to the husband on the part of the bride's father. It no doubt originated in the *manus* form of marriage, but was customary in *manus*-free marriages as well, and was a sure sign that a marriage and not a mere concubinage was intended. The *dos* was a special asset of the husband, which he administered and benefited from, including any profits. In addition, it had the function of providing for the wife after the end of the marriage. The husband and his heirs were therefore obliged to hand back the dowry when a marriage ended, whether through death or

divorce. If, however, the woman or her guardian was the guilty party in a divorce, the husband had the right to retain part of the dowry – one sixth for each child of the marriage, but not more than half the total amount.

### Divorce - not difficult, but not desirable either

Like the establishment of a marriage, a divorce was a private act and as such was not subject to any legal restrictions. For the same reason, no reasons for divorce were necessary. Apart from *confarreatio* marriages, which could only be dissolved by the appropriate religious ceremony, there was no prescribed form for declarations of divorce. A common way of getting divorced, though it was in no way compulsory, was to send a divorce messenger. Persons *sui iuris* living in a free marriage, i.e. without *manus*, could end the marriage themselves. That required only a declaration of will by one partner that the partnership was dissolved; partners who were still under a *potestas* required the agreement of their guardian.

In the case of a *manus* marriage, divorce was more complex, since the woman was part of the *familia* of her husband, and to get divorced the husband had to give up his *manus* over his wife. That required a new *emancipatio* of the woman, who now returned into the *potestas* of a *tutor*, who could make her a person *sui iuris*. In a *manus* marriage, the woman, unlike the man, was originally not entitled to initiate a divorce herself. Later, however, thanks to the increasing number of *manus* marriages, it was evidently also possible for a woman or her natural father to initiate a divorce.

Although divorce was relatively easy, lifelong marriage represented the ideal form of partnership for man and woman. The *univira*, the woman married only once, was a Roman ideal. However, when this ideal, which originated in religious belief, began to conflict with the interest of the community in having adequate progeny, remarriage began to be favoured. Apart from that, some members of the aristocracy were impelled by political and economic reasons to conclude several marriages, since in Rome as elsewhere, marriage policy was a traditional instrument of individual power politics.

### The differences between Roman and Greek marriages

In practical life within a marriage, Roman marriages may resemble Greek marriages, but there were fundamental structural differences. The basic division of responsibility was the same as in Athens: the man was responsible for matters outside the household, while the woman's sphere was the management of the household and the raising of the children. However, there was greater equality between the marriage partners than in Athens. As in Athens, the marriage age of girls was between 12 and 16 years, but their husbands seem not to have been much older. For example, Julius Caesar was only 16 when he put on the men's toga, which symbolised entry into adult life, and concluded his first marriage. The fathers of young men of such an age were normally still alive, so that the young husband was subject to the *patria potestas* of the head of his family. In the case of a *manus* marriage, his young wife was therefore not subject to the authority of her husband, but to that of his guardian. Thus the "balance of power" between the marriage partners, at least in the first years of their marriage, was considerably more equal than in Athenian marriages. In addition, from the later republican period, upper-class women at any rate had received the same education as their brothers, even though there was a prejudice against educated women – they were seen as insufferable and hysterical. Despite being under the *tutela* of men, Roman women – at least the upper-class ones – were in several ways in a better position than Greek women. And being in a marriage without *manus* in fact extended a woman's freedom of action.

In Rome as in Greece, however, only women were obliged to maintain marital fidelity, and for the same reasons. If a husband caught his wife committing adultery, he could kill her with impunity. By contrast, even after marriage it was open to a man, and entirely socially acceptable, to seek his pleasures outside marriage. As Aulus Gellius says: "If you catch your wife in adultery, you can kill her with impunity without a court judgement, but if you commit adultery or if adultery is committed with you, she does not dare to lay a finger on you, nor has she any right to." Emotional abstinence with one's wife was positively desirable; love was not supposed to enter into a man's sexual relations with his wife. A wife was supposed to be an object of dutiful respect, not of love. What was important was that she should fulfil her role as housekeeper and mother, and that her status as a wife remained unimpaired; it was desirable that she should be peaceable and tolerant.

### Compulsion to marry and obligation to have children

As the political system changed from a republic to a monarchy, the legal regulation of marriage was strengthened. In the years 18 BC and 9 AD, Augustus made deep inroads into the power of heads of families with three laws in which he ordained new prohibitions and obligations concerning marriage. Adultery was now made a criminal offence subject to the authority of the state, and carried heavy punishments. Freeborn citizens were forbidden to marry women of ill repute such as prostitutes, procuresses or adultresses; senators and their sons were forbidden to marry freed slaves, actresses or the daughters of actresses. In addition, from then on all men between the ages of 25 and 60, and all women between 20 and 50 had to be married. Being unmarried thenceforth brought massive disadvantages, above all in inheritance: unmarried people of marriageable age were declared incapable of receiving testamentary inheritances and legacies unless they married within 100 days. And unmarried people were not allowed to attend the public games.

Childlessness was punished too: childless married people could only inherit half of what was bequeathed to them. By contrast, the possession of three or more legitimate children was an advantage in a man's political career and freed him in future from the obligation to marry. The "three-children" law even freed women from male guardianship. The official purpose was to raise the birth rate, though Augustus seems not to have been very successful with the old senatorial ruling class, since many wealthy Romans evidently preferred to suffer financial loss rather than limitations on their personal freedom. Children could of course be used to exert political pressure, whereas being childless brought political freedom of action. So when Aulus Cassellius, a critic of the new system, was warned by his friends that he was speaking too freely, he was able to answer that there were two things that people normally found extremely unpleasant but which gave him complete freedom – old age and childlessness.

There may have been another reason behind the desire to increase the number of children in senatorial families – a large number of children split up wealth and hence averted the danger that too much power might accumulate in the hands of a few individuals. Like Pericles, Augustus made marriage an instrument of his new form of government, by intervening profoundly in family life, above all in that of the upper class.

In the long run, the establishment of the monarchy resulted in a certain withdrawal of the ruling class from politics. The desire to serve the state was no longer the central concern it had been in the days of the republic. That field was left to the *princeps*, his family and those who served him. That caused a change in attitudes to marriage, in which the human dimension became increasingly important: it was allowed – and was intended – to become more and more a centre of human affection. Plutarch's writings on the rules of marriage, which were probably written around the beginning of the 2nd century AD, bear eloquent witness to that.

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