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FAMILY AND PRO-FAMILY POLITICS IN ANCIENT ROME

Summary: A Roman family consisted of the *pater familias*, his wedded wife, two or three children, house slaves, freedmen, friends and customers. In ancient Rome, the husband ruled the family and his wife was subjected to him. Was marriage a relationship similar to today's marriages? An analysis of source materials will bring answers to those questions. Family – related politics applied by Roman emperors, marital law, paternal authority and protective law will be presented. Romans attributed the following features to women: modesty, weakness, lack of endurance, unfamiliarity with state affairs, and also purity and faithfulness to the husband. In ancient Rome, wives and mothers were supposed to manage the household and raise children. A fully valid marriage for Romans was a relationship called *matrimonium legitimum*, and only such relationship had social and legal impact. Legal marriage existed in Rome as either a marriage with authority over the wife, this was the *cum manu* relationship, or as *matrimonium* without the authority of the husband – the *sine manu* marriage.

Keywords: family, ancient Rome, marriage, pro-family politics, Imperial Rome, marital law.

What did the family look like in ancient Rome? What part did a woman play in it, and what role did a man play? Was marriage a relationship similar to today's marriages? The analysis of source materials will bring answers to those questions. Family – related politics applied by Roman emperors, marital law, paternal authority and protective law will be presented.

The basic cell of the social life in ancient Rome was the family. It differed, however, very much from the today's family. A Roman family consisted of the *pater familias*, his wedded wife, two or three children, house slaves, freedmen, friends and customers. The concept of the family was then very broad. The *pater familias* was a spouse, an owner of property and slaves and a patron of customers and freedmen. He also held jurisdiction over his daughters and sons. In Rome, a family meant marriage. Who therefore ruled in this marriage? As a matter of principle, it was the *pater familias*. He gave orders to slaves and allocated tasks to them. Some men also entrusted their spouse with the management of the household and even with the family treasury.

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Definition of the family

The definition of the family can be found at Ulpian:

(1) Let us examine how the word *familia* is used. It has various usages... (2) The word *familia* is also employed to signify a sort of body (*corpus*) defined either by a rule particular to its members or by the common rule of general relationship. By a particular rule, we describe a *familia* as a number of persons who, either by nature or by law, are subjected to the power (*potestas*) of one person: for example, a *pater familias* (male head of a household), a *mater familias* (here, a wife if she is subject to her husband's *manus*), a son or daughter in their father's power, and those who then follow them in turn, for example, grandsons and granddaughters (from sons), and so on. The person called the *pater familias* has mastery (*dominium*) in the home, and he is correctly so called even if (in fact) he has no son; for we refer not only to his person but to his legal right. And so even a young ward (*pupillus*) is called a *pater familias*. And when the *pater familias* dies, all the individuals who were subject to him start to have their own households; for they each assume the status of *pater familias* By a common rule, we use *familia* for all agnates. For although, when the *pater familias* dies, they each have their own *familiae*, still all those who were once under one person's power are properly described as belonging to the same *familia*, since they stem from the same home and lineage. (3) We also customarily describe slaves as *familiae*. We see this in the praetor's Edict in the title on theft, where the praetor speaks of the *familia* of public contractors (4) Likewise, *familia* is used of many persons who descend from the blood of the same original ancestor; for example, we speak of the Julian *familia*, as it were, from some wellspring of memory. (5) But a woman is both the beginning and the end of her *familia*.¹

According to a quotation in ancient Rome, a permanent relationship between a man and a woman for permanent living was considered a marriage. As a family, a larger community was defined which included: husband, wife, children, slaves, friends and clients.

The role of the father

Who ruled in marriage? In fact, the father of the family. He gave orders to slaves and assigned them work. Some men also entrusted the wife with managing the home and even the family treasury. In Roman law, a family was a social relationship based on legal kinship. The kinship from the father's side was cal-

¹ Ulpian, *D.* 50.16.195.1-5, in: B. W. Frier, *A Casebook on Roman Family Law*, New York 2004, p. 18–19.

led the paternal line (*linea paterna*), and from the mother's – maternal line (*linea materna*). Another relation in the family was the affinity (*adfinitas*), used to determine the relation between one of spouses and with close consanguineous relatives of the spouse. Free persons who were members of the same family and used the same name, were called gentiles.²

As for the expiration of the paternal authority, it happened as a result of:

- death of *pater familias* or persons under his authority;
- *capitis deminutio maxima* (loss of freedom), *media* (loss of citizenship) or *minima*; *capitis deminutio minima* (change of position in the family) by means of adrogation of the *pater familias*, and on the side of subjects to his authority by means of *adoptio*, *conventio in manumlib emancipatio*;
- the child becoming a priest or obtaining high state offices (prefect of praetorians, the prefect of the city, the consul);
- serious abuses in the performance of *paterae potestas*, e.g. the abandonment of a descendent;
- the emancipation (*emancipatio*).³

Wedding

In Rome, there existed a protectress of legal relationships named *matrimonium iustum* – Juno, called upon under the name of *Iuno Iuga*. Protection in the sphere of marriage was therefore expected not from a god, but from a goddess.⁴ A kind of elevation of women was also shown the name of the marriage itself – *matrimonium*, which comes from the words *mater* – the mother. It may be concluded that to marry a woman, means to appoint her to fulfil of the role of mother. One of the main reasons for concluding marriage, was to have children – this was also required by the Republic. Modestinus, who lived at the beginning of the third century AD, allegedly determined marriage in the following way: “Marriage is a union of a man and a woman, and a communion of the whole of life, a participation in divine and human law.”⁵ Ulpian who was the master of Modestinus, wrote:

If a wife and her husband have for a long time lived apart, but they reciprocally continued to honour the marriage – something that we know sometimes occurs

² D. Górski, *Kobieta w starożytnym Rzymie: podmiot... czy przedmiot prawa?*, „Studenckie Zeszyty Naukowe” 2002, no. 5/8, p. 67–73.

³ A. Dębiński, *Rzymskie prawo prywatne*, Warszawa 2008, p. 197.

⁴ P. Noailles, *Junon, deesse matrimoniale des Romains*, Paris 1948, p. 29–43.

⁵ Modestinus, *D. 23.2.1.*, in: M.G. Lawler, *Marriage and the Catholic Church: Disputed Questions*, Collegeville 2002, p. 12

even among persons of consular rank –, I think gifts between them are invalid since their marriage continues. For it is not sexual intercourse that makes a marriage but rather marital affection (*maritalis* affection). But if the donor dies first, then the gift is valid.⁶

One can therefore conclude that a Roman marriage was a relationship concluded between two persons both before people, and before gods. Carnal relations do not create marriages, but result from the strong connection between the two spouses. Harmony in marriage may only be reached by applying the patriarchal model, where the wife is the subject of the rational, love-based authority of the husband. The reversal of this order is a violation of the order and causes harm to the marriage. Generally, in the Roman world, three types of marriage can be distinguished:

- **coemptio** – literally “the purchase”. This was the oldest form of marriage. The validity of marriage required the presence of an official and five witnesses of age. The ceremony resembled a commercial transaction – the couple stood before an official holding a symbolic pound and scales. The woman gave her consent to be sold and pass to her husband’s household.⁷
- **usus** – literally “the use”. This was an archaic marriage – based on customs; the man had intercourse with the woman for a whole year. If the woman remained with her partner for three subsequent nights, she passed under the authority of the in-laws. Otherwise, the relationship was also deemed valid, although the spouse would stay with her own family.⁸
- **confarreatio** – an official ceremony of marriage, which unlike the types mentioned above, was of a religious nature. There were both sacral and legal grounds. The patron of the ceremony was Jupiter Farreus – the guardian of grain, to whom one submitted a spelt cake. This cake was then consumed by the newlyweds and the wedding guests. The conclusion of the relationship was performed in the presence of two priests and ten witnesses.⁹

After the wedding ceremony, a wedding feast began. After it finished, the bride went to the bridegroom’s house in a ceremonial cortege. The procession was accompanied by frivolous remarks and jokes. The future husband was already waiting at the threshold, and the fiancée made the famous oath to him: *Ubi tu, Caius, ibi ego, Caia* (where you are master, I shall be mistress).¹⁰ Attending

⁶ Ulpian, D. 24.1.32.13., in: B. W. Frier, *A Casebook*, p. 49.

⁷ L. Winniczuk, *Ludzie, zwyczaje i obyczaje starożytnej Grecji i Rzymu*, Warszawa 1983, p. 238.

⁸ Ibidem.

⁹ M. Zabłocka, *Confarreatio w ustawodawstwie pierwszych cesarzy rzymskich*, „Prawo Kanoniczne: kwartalnik prawnohistoryczny” 1988, no. 31/1–2, p. 237–246.

¹⁰ P. Werner, *Life in Rome in Ancient Times*, Minerva 1978, p. 21.

guests shouted *Feliciter!*¹¹ – May happiness accompany you! After the door was anointed with animal fat, the wedding guests carried the bride across the threshold. It is said that in this way they wanted to protect her from stumbling on the threshold of the new house, which would be a bad omen for her new life. At the bedroom door, the husband offered the wife water and fire, then led her to the room. To conclude marriage, one had to be of appropriate age: 12 years old for women and 14 for men.¹² A free marriage, where the wife was not subjected to the husband but to the fictitious authority of a guardian, quickly became popular.¹³

In the history of Rome, the period of the empire is characterized not only by political changes, but also by many social transformations. One of the fields where transformations happened was the institution of marriage. Following the decline of the republic, the mother recovered the formal law to be respected by children just as the father was. She had the right to supervise the progeny when her husband did not fulfil his duties. In Hadrian's times, thanks to *senatus consultum Tertullianum*, she obtained the right of inheritance for her children, if there were at least three of them and the husband did not have his own progeny, even if they born out of wedlock. The imperial lawyer Salvius Julianus stipulated that marriage was concluded through the mutual consent of spouses; and not through rape.¹⁴

Legislation of Octavian Augustus

During the reign of Mark Aurelius, an act called *Senatus Consultum Orphitianum* in the year 178, authorized children to obtain inheritance after their mother, regardless of the legal validity of the relationship from which they came, making them primary heirs, before “agnates of the deceased.”¹⁵ Here, I would like to say a bit more about the socio-cultural legislation of Octavian Augustus. The laws of Augustus were meant to normalize marital and family life of the Romans, as it became disturbed with the decline of the Republic. They stipulated that marriages should be concluded in compliance with the states and made getting divorced more difficult.

¹¹ J. Carcopino, *Życie codzienne w Rzymie w okresie cesarstwa*, transl. M. Pąkcińska, Warszawa 1966, p. 89.

¹² P. Grimal, *Miłość w starożytnym Rzymie*, transl. J. R. Kaczyński, Warszawa 2005, p. 72.

¹³ Ibidem, p. 61.

¹⁴ J. Carcopino, *Życie codzienne w Rzymie*, p. 91.

¹⁵ W. Smith, *A Dictionary of Greek and Roman Antiquities*, New York 1843, p. 746–747.

Lex Iulia de Maritandis Ordinibus law

In compliance with this law, all Roman citizens had to marry: men aged 25 to 60; women aged 20 up to 50. Marriages could not be concluded freely, but in compliance with provisions provided stipulated in the act I mentioned. Free Roman citizens could not, for example, conclude legally valid marriage with ill-famed women, i.e. prostitutes, with procuresses, convicted adulteresses or other public offenders; they could not even marry actresses. Senators could not enter into legally valid marriage with freedwomen. If someone decided to enter a marriage forbidden by law and remained in such a relationship, they were treated as unmarried. Sanctions for being unmarried or childless were mainly of financial nature. The unmarried could not use the inheritance they obtained in a testament or a will; the childless inherited only a half. The property which could not be inherited, passed to other co – heirs (having at least one child) or to the State Treasury (when there were no co – heirs), as the so-called *caducum*. Persons remaining in valid marriage, had priority over the unmarried and the childless when applying for state offices. Furthermore, the unmarried could not participate in celebrating national or religious holidays. If the marriage was dissolved (divorce, or death of spouse), singles were obliged to conclude a new marriage: men had to get married immediately; divorced women had to get married within eighteen months; widows – within two years. Single women with at least three children were released from the obligation of the getting married again, they had the privilege called *ius liberorum*, which also released them from remaining under the statutory authority of the father or the husband; they could also inherit from their children by the power of a special resolution of the senate (*senatus consultum Tertulianum*). Roman marriages (free citizens) with at least three children were families that had full rights and privileges, as opposed to childless marriages (i.e. even those with one or two children). The *lex Iulia* resolution was criticized by the Romans, who tried to find loopholes in it. An example of such a loophole was the engagement. Getting engaged excluded the engaged people from the circle of *caelibes*, thus making them equal with spouses as far as the legal status was concerned, while allowing them to prolong the time before concluding the marriage. To prevent this in the next marital law, making the stipulations of *lex Iulia* stricter, i.e. in *lex Papia*, Augustus took appropriate steps, as we find out from Suetonius. The second instruction of Augustus Ceasar, i.e. the law aimed against the luxury and the adultery of year 18 B.C. (*lex Iulia sumptuaria et de adulteriis coercendis*), granted adultery the status of a public offence, and not a private business between spouses and families. According to the law of Augustus, the *pater familias* (*paterae familias*) had the right to kill a daughter unfaithful to the husband and her adulterer if caught

in the act in either his own, or his son-in-law's house. Thus, when evaluating today the effectiveness of pro-family and pro-natalistic politics of Augustus, we should first of all pay attention to the research conducted by modern historians of the demography of ancient Rome. It proves that in the period between years 8 B.C. and 47 AD there was an increase in the number of Roman citizens from about 4,233,000 to 5,984,000, when obtaining the Roman citizenship was not already as easy as it had been earlier during the reign of Julius Cesar.¹⁶

[Augustus] imposed heavier taxes on unmarried men and women without husbands, and in contrast, offered awards for marriage and childbearing. And since there were more males than females among the nobility, he permitted anyone who wished (except for senators) to marry freedwomen, and decreed that children of such marriages be legitimate.¹⁷

To sum up, during the reign of Augustus' descendants, changes were made both *ub lex Iulia et Papia* and *lex Iulia de adulteriis coercendis*. *Lex Julia et Papia* imposed the obligation to stay married on men and women only up to specified age; beyond that age, negative consequences of disobeying the applicable laws were eliminated.

Ancient authors about marriage

And what did other ancient authors have to say about family and marriage? What was their attitude towards a Roman family? Let me present a few examples:

Marcialis in his epigrams describes marriage the following way:

Wife, get out of the front door or fit in with my morals [*moribus utere nostris*]. I am not a Curius, no Numa and no Tadius. I am pleased by nights drawn out with cheering cups: You hasten to get up sad when you have drunk water. Darkness makes you happy. I get pleasure from playing games with the lamp as witness and from exhausting my loins with the daylight let in. You are covered with a brassiere and tunics and obscuring robes. But for my taste, no girl lies naked enough. Kisses that equate with those of sexy doves thrill me: You give me such as you give your grandmother in the morning. You do not deign to help the job along with movement, voice or fingers, as if you were preparing incense and wine: Phrygian slaves used to masturbate behind the door whenever his wife rode Hector's horse, and although the Ithacan was snoring, Modest Penelope always used to keep her hand at that part. You forbid me sodomy: It was allowed

¹⁶ M. Kuryłowicz, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 1994, p. 66.

¹⁷ Dio Cassius, 54.16.1-1, in: P. Chrystal, *When in Rome: Social Life in Ancient Rome*, Stroud 2017.

by Cornelia to Gracchus as well as by Julia to Pompey, and by Porcia to you, Brutus. When the Dardanian servant did not yet mix the sweet drinks, Juno was Jupiter's Ganymede. If you are pleased by austere morals, you may be Lucretia the whole day: at night I want Lais.¹⁸

Ovid in his Love songs talks about love in such a way:

What we can have for the asking we never want; to forbid a thing adds ardour to our longing. He must have a heart like iron, who loves a woman he is free to love. As for us, who are versed in the art, we must have our hopes and fears, and we must have a few rebuffs to give zest to our appetite.¹⁹

Catullus in Poetry wrote about the married life:

Ah now, you didn't linger long: here you are! May good Venus give you support, since your longing for what you long for is plain, and you don't conceal your good passion. All the sand grains of Africa, every one of the glittering constellations he first must count, he who wants to enumerate all your thousands of love plays. Play as pleasure dictates, and soon give us children: so old a name shouldn't, no, they should renew themselves out of the same stock forever. What I want is a tiny Torquatus, held on his mother's lap, stretching out little hands to his father, prettily smiling with tiny lips semi-parted.²⁰

In the year 48 B.C. Cicero so wrote in letters to his wife: "Sorrow for the illness both of Dolabella and Tullia is an addition to my other miseries. Every single thing goes wrong, and I don't know what to think or do about anything. Pray take care of your own and Tullia's health. Good-bye."²¹

Valerius Maximus in his Unusual Doings and Sayings described the situation in which the daughter helped her mother in prison, so that she would not starve. Out of love, the daughter breastfed the mother. In this way, the convicted woman charmed the authorities and they decided to release her: "Where does Piety not penetrate, and what does she not devise? In prison she found a new way to be a parent. For is there anything so extraordinary, so unusual, as for a mother to be nourished by her own daughter's breast? One might think this to be contrary to natural order, if it were not the first law of nature to esteem one's

¹⁸ Martial, *Epigrams*, 11.104; M. Fox, *Winckelmann's Legacy: Decorum, Textuality, and National Stereotype in the Eighteenth-Century Reception of Homosexuality*, in: J. Ingleheart, *Ancient Rome and the Construction of Modern Homosexual Identities*, Oxford 2015, p. 80.

¹⁹ Ovid, *Amours*, 2.19, in: *Delphi Complete Works of Ovid*, transl. J.L. May, Hastings 2012.

²⁰ Catullus, *The Poems of Catullus: A Bilingual Edition*, transl. P. Green, London 2005, p. 121–123.

²¹ Cicero, *Letters*, CDXVII (F XIV.9), transl. E. Shuckburgh, London 1908–1909, in: *Crane, G. R. ed. The Perseus Project* [online], access: 15.03.2018, <<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0022%3Ayear%3D48>>.

parents.”²² Julius Caesar concluded marriage with Cornelia during a special *confarreatio* ceremony. The name comes from the wheat from which sacrificial bread for Jupiter *Farreus* was prepared. The bride carried the bread and it was probably consumed by both spouses. During the ceremony there had to be 10 witnesses and a sheep was also sacrificed. Later, the spouses with their heads covered took their seats of chairs covered with sheepskins. This marriage was concluded with the consent of the families.

Conclusion

Romans attributed the following features to women: modesty, weakness, lack of endurance, unfamiliarity with state affairs, and also purity and faithfulness to the husband.²³ In ancient Rome, wives and mothers were supposed to manage the household and raise children. A fully valid marriage for Romans was a relationship called *matrimonium legitimum*, and only such a relationship had social and legal impact. A legal marriage was, in Rome, a marriage with authority over the wife, this was the *cum manu* relationship, or as *matrimonium* without the authority of the husband – the *sine manu* marriage. Based on the concluded marriage, the wife received the social position of the husband, even when she was not placed under his authority. By means of *conventio in manum* in the *cum manu* marriage, the wife completely left the family of her father, and became a part of the family subject to the authority of her husband or her father-in-law. The wife in the *sine manu* marriage only was provided for, and the chances of obtaining inheritance after the husband died were uncertain. Extreme financial outcomes of the *cum manu* and *sine manu* marriage were mitigated in practice by the institution of the dowry and the antenuptial donation.

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²² Valerius Maximus, *Nine Books of Memorable Deeds and Sayings*, 5.7, in: W. Hansen, *The Book of Greek and Roman Folktales, Legends, and Myths*, Oxford 2017, p. 225–226.

²³ L. Winniczuk, *Ludzie, zwyczaje i obyczaje starożytnej Grecji i Rzymu*, p. 234.

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Rodzina i polityka prorodzina w starożytnym Rzymie

Streszczenie: Rzymską rodziną określano ojca rodziny, żonę, dwoje lub troje dzieci, niewolników domowych, wyzwolenców oraz przyjaciół i klientów. W starożytnym Rzymie w rodzinie rządził mąż, a żona była mu poddana. Czy małżeństwo było związkiem podobnym do dzisiejszych małżeństw? Analiza źródłowa pozwoliła sformułować odpowiedź na tak postawione pytanie. Jednak czytelnik na podstawie klarownie nakreślonej w artykule ówczesnej polityki dotyczącej rodziny i prawa małżeńskiego będzie mógł sam sformułować wnioski w zakresie podjętego problemu, bowiem prawnie zawarte małżeństwo u Rzymian oznaczało po prostu władzę nad żoną, ale również istniały małżeństwa bez władzy męża jako *sine manu*. Rzymianie uważali, że kobietom przystoi: wstydlivość, słabość, brak wytrwałości, nieznamość spraw państwowych, jak również czystość i wierność mężowi. Żona i matka w starożytnym Rzymie miała zarządzać gospodarstwem i zajmować się wychowaniem dzieci.

Słowa kluczowe: rodzina, starożytny Rzym, małżeństwo, polityka prorodzina, Imperium Rzymskie, prawo małżeńskie.