

The Role of Roman *Manus* Marriage in the Institution of Classical “Free” Marriage

While *manus* marriage, in which the wife literally enters into the “hand,” or control, of her husband, was virtually obsolete by the end of the Roman Republic and the writing of many of these Cases, the practice is nevertheless mentioned by many jurists in their discussions of marriage rituals and contracts. In contrast to the later “free” consensual marriage of the Roman Empire, *manus* marriage allowed the wife to break away from the *patria potestas* and *familia* of her father and enter into the *familia* of her husband while at the same time assuming his agnatic relationships. Although a wife in *manus* might eventually rise to the elite position of *mater familias* and take on added responsibilities within her new *familia*, her power and independence were still greatly restricted by the *manus* of her husband and potentially his *pater familias* since she was in the position of a daughter (*loco filiae*) to her husband. However, the *locus filiae* of a wife in *manus* did grant her some benefits not inherent in “free” marriage, such as her right as a *sua heres* to inherit from both her husband and children. Nevertheless, the seemingly seamless transition from *manus* marriage to classical “free” marriage provided the wife with a greater amount of independence from her husband while still remaining subject to the *patria potestas* of her original *pater familias*.

Not only do *manus* marriage and the later classical “free” marriage differ greatly in practice throughout the course of the marriage, but they also vary significantly in their ceremonial rituals for establishing the union. Under classical “free” marriage, the legitimacy of the marriage was determined primarily by the existence of *conubium*, adulthood, and consent of all involved parties (Case 13). The *conubium* and age requirements fall under the modern requirements of capacity, and the consent requirement was necessary for at least the bride and groom and possibly their *patres familiarum* if they were still *alieni iuris*. However, aside from the *deductio in domum*, the procession of the bride to the home of her new husband, and possibly

some marriage documents, no formal process or ceremony for “free” marriage existed. But as Gaius describes in his *Institutiones* 1.110-113 in Case 19, there were once three specific ways for women to enter a *manus* marriage—although he claims that only one was still in use in his time.

Of the three methods of entering a *manus* marriage, Gaius states that only *coemptio* was still in use during his time. Like adoption and emancipation, this imaginary sale used the mancipation ritual for transferring the bride into the family of the groom. Although no money actually changed hands, this ceremony transmitted the *patria potestas* of the bride’s father to the *manus* of the groom. In *confarreatio*, another archaic Roman ceremony for establishing *manus* marriage, a sacrificial cake (*farreum*) was presented to Jupiter Farreus in a ritual before ten witnesses. However, this practice fell into disuse because of its unfavorable *manus* connection and soon became associated only with the ancient priesthoods due to the requirement that all *flamines* be sons of couples married by *confarreatio*. The final method for entering a *manus* marriage, *usus*, ensured that all women would eventually become subject to a *manus* marriage regardless of their type of marriage ceremony as long as they lived for one continuous year with their husbands. However, a wife in *manus* could avoid such an outcome by spending at least three nights of the year away from the house of her husband. As Barry Nicholas says in *An Introduction to Roman Law*, “*Usus* makes clear the nature of *manus* as something added on to marriage,” that is, there is a clear difference between *manus* marriages and those without *manus* (83). Since Gaius states that *usus* virtually no longer existed by his time, the abolition of this practice may have been key in establishing the tradition of classical “free” marriage.

Under the Twelve Tables, as Gaius describes in his *Institutiones* 3.1-3 in Case 37, the rights of succession for an intestate *pater familias* fall first to his *sui heredes*, or his privileged heirs. These *sui heredes* would include not only the children-in-power of the *pater familias*, but also his wife in *manus*. In this respect, the wife is in the position of a daughter (*loco filiae*) and

has the same right to inherit from her husband as her children do. Since a wife in *manus* also adopts her husband's agnatic relationships by severing her own, she can therefore inherit from their children and vice versa as well—a practice that is nearly impossible in intestate succession under classical “free” marriage since the wife would have remained in the *familia* of her own father. Despite this added benefit under intestate succession, a wife in *manus* was still subordinate to her husband because of her relation to him as a daughter and therefore a granddaughter to his own *pater familias*. While the wife in *manus* does fully take on the position of a daughter in this respect, she is not literally a daughter in regard to the *patria potestas* of her husband or his *pater familias*. Although the wife does remain subject to her husband's *manus*, this form of control is not equivalent to the unilateral authority of *patria potestas*. Just as the wife in a “free” marriage retains some rights over her husband, especially in the requisition of the dowry, the wife in *manus* could not be sold, given in adoption, or executed (without a *consilium*) by her husband. Since *patria potestas* often granted these rights to a *pater familias* over his children-in-power, the wife in *manus* is not literally in the position of a daughter with respect to *patria potestas*. Rather, this term is applied more to her benefit in some matters, such as intestate succession.

Unlike in classical “free” marriage, however, the wife in *manus* relinquished all property to her husband's control. As Gaius says in his *Institutiones* 3.83 in Case 38, “For when ... a woman enters into *manus*, all her property both incorporeal and corporeal, as well as what is owed to her, ... is acquired for (her husband), except for those things lost through her change of (family) status” (91). However, in the same Case, Cicero states in his *Topica* 23, “When a woman comes into her husband's *manus*, everything that belonged to the woman becomes her husband's as a dowry” (91). Whereas Gaius implies that the wife's property becomes the husband's regardless, Cicero's reference to the transfer of property as a dowry suggests that the

wife may have been able to recover it in the event of divorce or the death of her husband.

Nevertheless, the fact that Sp. Carvilius Ruga was able to retain his wife's dowry after his wife failed to bear him any children suggests that even if the husband obtained his wife's property under the pretense of a dowry, it became his nonetheless. However, the dispute surrounding this decision may have led to the eventual right of the wife in a "free" marriage (or her *pater familias*) to sue for the *actio rei uxoriae*, or the claim for return of the dowry. This extended the protections awarded to the wife and her property greatly from the provisions of *manus* marriage while still defending her husband's interests as well.

Another example in which a wife's interests were better protected under the conditions of classical "free" marriage was in the acquisition of property. While a wife in a "free" marriage maintained some control over her dowry and other property provided that she was *sui iuris*, a wife in *manus* could acquire property only for her husband as stated in Case 39. The husband's ability to acquire property through his wife in *manus* further emphasizes the wife's position as a daughter (*locus filiae*) since the *pater familias* typically acquires property through his children-in-power and slaves. Further, the wife in *manus* would not even be allowed to accept an inheritance without the knowledge and consent of her husband. However, as in Case 114, this practice seems like it would encourage deception and apathy on the part of those-in-power and wives in *manus* because the incentive to benefit the *pater familias* lessens alongside the decreased personal profit. As long as the wife in *manus* is unable to acquire any property for herself, she is disinclined to run the household properly since she does not even have control of her own slaves or household goods. Without these basic rights, the wife in *manus* would be incapable of functioning on her own within the household without being at the discretion of her husband—essentially making her worthless to the household.

Divorce for a wife in *manus* was also not as free as for a wife in a classical “free” marriage. While a repudiation notice sent by either party often initiated a divorce in “free” marriage since it nullified the original consent to the union, a wife in *manus* could obtain a divorce only through mancipation and then manumission from her husband. Once again like a daughter-in-power, a wife in *manus* first had to be freed from *manus* by the same process of emancipation used to free a daughter from the *patria potestas* of her *pater familias*. However, while this process seems to free a wife from her husband’s *manus*, she is not fully *sui iuris* until he also manumits her as he would a slave. While the original *pater familias* of the wife would have been able to help her file for divorce in a classical “free” marriage, the *pater familias* of a wife in *manus* no longer has any jurisdiction over her after the dissolution of his *patria potestas* through the *manus* marriage. Nevertheless, the wife does not appear to be entirely subject to her husband’s wishes in the continuation of the marriage. As Gaius says in his *Institutiones* 1.137a in Case 40, “< ... [A] woman who makes a *coemptio* with her husband ... > can no more force <her husband> (to emancipate her) than a daughter can force her father. But there is no way that a daughter can force a father, even if she is adopted; while the woman can force her husband after giving notice of divorce, just as if she had never been married to him” (94). Although Gaius first says that the wife in *manus* has no more power to initiate a divorce than a daughter has to demand her emancipation, he then says that the wife in *manus* can demand a divorce simply by sending her husband a repudiation as she would in a classical “free” marriage. As Nicholas says, “[T]he marriage itself could be broken by repudiation by the wife, but she would still be *in manu* until her husband emancipated her, though she could require him to do so” (83). Since the text of Gaius is mostly reconstructed and somewhat contradictory, the wife’s ability to send a repudiation and force her own emancipation was probably a later development that led to the concept of “free” divorce within traditional marriages without *manus*.

Due to the many problems for women inherent in *manus* marriage, the subsequent transition to classical “free” marriage is not entirely unexpected. While this alteration seems to have had no transitional period, many of the adjustments follow logically from the problems of the Cases on *manus* marriage discussed by the jurists. The position of a wife in *manus* to her husband as equivalent to that of a daughter to her father led to problematic issues regarding intestate succession, property management, divorce, and the overall authority of *patria potestas*. Since wives in *manus* often relinquished all their property to their husbands without any hope of restitution or new acquisition for themselves, they could be left with very little or nothing in the event of divorce or the death of their husbands. While the *locus filiae* of a wife in *manus* allowed her to inherit her husband’s property through intestate succession, this stipulation was no longer necessary under the new dowry laws of classical “free” marriage, which allowed a wife to regain control of her dowry for self-reliance and remarriage. Similarly, this *locus filiae* created problems for the execution of *patria potestas* since a *pater familias* did not have the same degree of control over his wife in *manus* as he did over his children-in-power. Also, without the intervention of her original *pater familias*, a wife in *manus* had little recourse against her husband or his *pater familias* in the event of abuse, adultery, or squandering of property. Although a husband’s lack of control over his wife in classical “free” marriage may have presented some problems, the protections granted to the wife by the preservation of the *patria potestas* of her father outweighed the drawbacks of potential marital discord.

Works Cited

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