The Family in Roman Civil Law.

1. *The History and Principles of the Civil Law of Rome.* By SHELDON AMOS, M. A. London. 1883.
2. *Outlines of Roman Law.* By WILLIAM C. MOREY, Ph. D. New York. 1889.
3. *Gallus, or Roman Scenes of the Time of Augustus.* By Prof. W. A. BECKER. Translated by the Rev. FREDRICK METCALF. London. 1888.
4. *The Ancient City.* By FUSTEL DE COULANGE. Translated by WILLARD SMALL. Boston. 1889.

IN attempting an exhaustive study of the great social institutions of the family and marriage in Roman Civil Law, it is necessary at the very outset to understand certain fundamental conceptions. Neither the institution of the family, nor that of marriage, nor indeed the Roman Civil Law was "an abiding entity knowing no change." The Roman Law, for instance, was in process of constant change from age to age. It was the resultant of many influences, social, political, and religious. At no time can one understand the changes in such law, unless he understands the social and religious movements which went on contemporaneously. "What can be made of the repeated agrarian laws, the criminal legislation of Sulla, the Julian laws, the laws in prevention of celibacy, and the rest of the Augustan reforms, apart from all reference to current social facts, wants, and conditions?" [Sheldon Amos, *Roman Civil Law*, p. 5.] The *Institutes* of Gaius, in the time of the undivided empire, present to us one phase of ancient law and custom; an entirely new conception arises in the empire of the East, when Justinian attempted to reduce to a code the heterogeneous legal theories and practices of the past. And yet the history of general legal development can be quite minutely traced from remotest antiquity. "Thus there are preserved, in the writings of the Roman historians and on the older monuments, clear indications of the state and working of the law in the early days of the Republic, and also at every chief epoch in the development of its

history, — such as those of the several successions of the Plebs, of the Punic wars, of the reforms of the Gracchi, of the revolutions of Marius, Sulla, Pompey, and Caesar. The law at the close of the Republic is repeatedly alluded to in Cicero's speeches, his essays, and his letters. The writers of the early empire — such as Tacitus, Suetonius, Plutarch, Aulus Gellius, and others less well known — give abundant testimony to the state of the law at the beginning of the Empire and up to the time of the writings of the great jurists of the Antonine period" [Sheldon Amos, *Roman Civil Law*, p. 4]. From this time on, the stream of development is easily traced. The writings of the great jurisconsults, Gaius, Ulpian, and Paul, early in the third century, indicate clearly the legal conceptions of their times. Then came the epoch of the Codes — Gregorian, Hermogenian, and Theodosian, — until finally, at the beginning of the sixth century, the attempt was made by Justinian to crystallize all law into the Code and Pandects. This Corpus Juris Civilis represents the culminating point of Roman Civil Law, and is of special interest to the student because it is the most successful codification in the world, and has furnished the foundation for all European codes and for canon law, and is said to furnish an ideal basis toward which English and American law will ultimately move.

Again, in studying the family in Roman life, the most noticeable fact is that one conception of this institution prevailed in primitive times, and an entirely different one from the time of Gaius on to Justinian. In an early day the family, and not the individual, was the unit of society. This anomaly of an *imperium in imperio* arose, as we shall see, from the peculiar power given to the head of the household over his subordinates, and also the, to us, strange relationship which existed between this ruler of the family and the rest of society. To understand fully how it came to pass that the patriarch of the old family was given such exceptional power, it will be necessary to tarry by the way and discuss in a cursory manner the primitive religious conceptions of the Roman people. The picture would of necessity be indistinct and incomplete were it not for the fact that the primitive Roman religion is essentially the same as that which obtained among the Greeks and the Hindoos. In other words, this type of religion appears to have been generally received by the races which sprang from a common Aryan stock and which then dispersed themselves to their final abiding-places.

THE PRIMITIVE ROMAN RELIGION. — Nothing is more persistent in the life of a nation than the ceremonies which spring from religious belief. Long after any form of religion has disappeared, its rites and customs continue. So even in the Augustan age in Rome there may be traced the remains of a primitive faith. The worship of Indra, Zeus, or Jupiter was an after-development in the Indo-European life. Another widely divergent form of religion preceded this; and even Cicero practised some of its earlier rites, although their meaning was either wholly or in part forgotten.

The belief in the immortality of the soul seems to be as old as the Aryan race; but the departed, according to the notion of the early Greeks and Romans, did not ascend to celestial abodes, nor did they experience rewards and punishments according to their temporal life. Tartarus and the Elysian fields were a later development of religious thought. The prevailing conception seems to have been that the soul and body remained together in the grave. Cicero says, "*Sub terra censebant reliquam vitam agi mortuorum*" [*Tusc.* i. 16]. The description by Virgil of the burial of Polydorus shows that the participants thought they were burying something that was living: "We enclose the soul in the grave." In the rites which took place at any well-regulated funeral, the friends were accustomed to call the deceased three times by name. They wished that he might be happy underground. Three times they said, "Fare thee well;" and finally they added, "May the earth rest lightly upon thee!" Thus carefully was the whole ceremony elaborated; and much depended on the scrupulous performance of all the required rites, for without burial, or at least without the proper funeral ceremony, the soul wandered, a restless, hostile spirit, troubling its former friends until they attended to all the requirements of their religion. Thus it happened that all men were exceedingly anxious to procure for themselves proper burial. Even when the body had been put in the tomb and all the religious customs fulfilled, then there was required the yearly funeral feast called *Feralia* or *Parentalia*. At their *Feralia* victims were sacrificed and food placed on the grave. The tomb was crowned with garlands and sprinkled with essences and also with milk, oil, and honey [Becker's *Gallus*, p. 521]. Out of this conception of the condition of the dead sprang other related ideas. The dead, irrespective of their

former life, were counted happy and holy. With this there grew up the other notion, that the departed were divine. The unburied or improperly buried souls, which wandered restlessly to and fro, were called *Larvae;* those who were properly buried and happy were called *Lares* or *Genii.* All the departed souls were called the *Manes*, subterranean deities; and Cicero says: "Render to the Manes what is due them: they are men who have quitted this life; consider them as divine beings" [*De Legg.* i. 9]. The tombs were considered the temples of these divinities, and were inscribed, "*Dis Manibus.*" If the Larvae were looked upon as malignant spirits, the Lares were considered tutelary deities and were invoked as such. Electra thus addresses the Manes of her father: "Take pity on me and on my brother, Orestes: make him return to this country; hear my prayer, O my father; grant my wishes; receive my libation." And to show that the Lares had control of something beyond the mere material circumstances of life, she adds, "Give me a heart more chaste than my mother's, and purer hands" [Aesch. *Choeph.* 122–155]. A striking illustration of the growth of this custom is found in the Apocryphal Book of Wisdom: "For a father afflicted with untimely mourning when he hath made an image of his child soon taken away, now honored him as a god which was then a dead man, and delivered to those that were under him ceremonies and sacrifices. Thus in process of time an ungodly custom grown strong was kept as a law, and graven images were worshipped by the commandments of kings" [chap. xiv. 15, 16].

Another primitive custom claims our attention. In each household was a sacred fire on the private altar. This was kept at first in the main *atrium* of the house; but later, when the privacy of the household was much invaded, as at the sumptuous banquets, this altar and sacred fire were removed to some private room, — the *lararium* or *sacrarium.* This sacred fire was looked upon as a god. The utmost care was given lest by any chance it might be extinguished. If ever this fire died out, it was supposed at the same time a god expired. Prayers were made and hymns were sung to this deity. If misfortune came, then execrations were heaped upon the sacred fire; but if fortune smiled, thanksgivings were promptly rendered at the hearth-fires, and the firstfruits of all gains were offered.

Many special rites and ceremonies clustered about this an-

cient type of worship. The fire was looked upon as pure and chaste; hence no unclean thing could be cast into it, and no impure or immodest act could be done in its presence. Certain kinds of wood were prescribed for fuel. On the first day of March each year this sacred fire was allowed to burn out, and then with certain forms it was again lighted. But no other fire could be used; the new fire must be started either by focalizing the sun's rays with a lens or else by rubbing two sticks together. Thus was symbolized the idea of the purity and spirituality of this flame. Each time on leaving the house the housemaster invoked this domestic god. Each time on returning after any absence, before saluting the members of his own household and even before giving his worship to Jupiter or any of the greater gods, his first care was to adore the hearth-fire. The firstfruits of the harvests appear to have been offered; and certainly at the meals a portion of the food and wine were presented on the altar. The primitive form of marriage shows what an intimate place the sacred fire held in the early Roman household. In later times, by a gradual development of the idea, this sacred fire was named Vesta; and so persistent was the hold that this ancient faith had on the Romans that though Jupiter was accounted the superior god, yet the worship of Vesta always took the precedence. Even "Horace, Ovid, and Petronius still supped before their fires and poured out libations and addressed prayers to them" [Horace *Sat.* i. 6, 66; Ovid *Fast.* i. 631; Pet. 60]. Though this fire-spirit was early personified and added to the great pantheon of the Romans, yet the primitive belief was never entirely effaced. Vesta might be called a goddess. She was a virgin, and represented neither fecundity nor power, but only moral order; yet there continued the belief which Ovid himself confesses, that Vesta was after all nothing more or less than a "living flame" [Ovid *Fast.* vi. 291]. Numerous prayers are found, which the ancients were accustomed to offer to this sacred flame. One of these prayers is preserved in an Orphic hymn: "Render us always prosperous, always happy, O fire, — thou who art eternal, beautiful, ever young; thou who nourishest, thou who art not rich, receive favorably these our offerings, and in return give us happiness and sweet health" [*Orphic Hymns*, 84]. Or again, when Troy has been taken, and the palace destroyed, Hecuba thus exhorts Priam: "Thy arms cannot protect thee; but this altar will protect us all" [Virg. i. 523]. So

Alcestis, dying to save her husband, invokes the sacred fire, begging happiness and a long life for her children [Eurip. *Alces.* 162, 168]. Another Orphic hymn shows both the material and spiritual power of this deity: "Render us rich and flourishing; make us also wise and chaste."

If now we compare the worship of the dead and this worship of the sacred fire, we shall find that after all they shade one into the other. Either they were two distinct primitive beliefs which were merged into one, or, more likely, they were two phases of the same faith. There are certain indications that in most primitive times the dead were not put away by themselves in tombs, but were buried in the houses. The altars then in the early *atria* served no other purpose than to mark the place where some ancestor of the family was buried. The flame therefore represented the provident, tutelary spirit of some head of the family long since dead; and the worship was only the ancestor-worship which afterward took on a somewhat different form. In all ways these two worships conform to each other, and in the pages of classical writers abundant proof can be found that they identified the two sets of ceremonies as essentially one. In Servius we read: "By hearth the ancients understood the Lares" [*Serv. in Aen.* iii. 134]. Passages in Plautus, Columella, and Cicero bear out the same idea. In the Aeneid, when Hector says he is about to commit to Aeneas the Trojan Penates, he gives him only the hearth-fire. Servius was a learned antiquarian, and he speaks of the ancient custom of burying the dead in the houses and says, "As a result of this custom they honor the Lares and Penates in their houses" [*In Aen.* v. 84; vi. 152]. There is no absolute proof that these two ancient forms of worship were one and the same; but this much we do know, — that the worship of the dead and the worship of the hearth-fire did have a profound influence on social and political institutions in Rome; and, most of all, they gave peculiar form to the family, and consequently to marriage, which without this precedent consideration it would be difficult to understand. This domestic religion was essentially a separative influence. It offered no one god for the worship of a nation; it gave different gods to different families. The ceremonies were a sacred trust which were in no case to be published to the rest of the world. The stranger was forbidden to be present or to participate in the domestic worship. Even the child who was born into the family

only became a participant in the family rites after a sort of initiation on the ninth day after birth; and the wife was received under a solemn form in which she renounced the worship of her fathers. To the head of the family was intrusted all the secret work of this domestic worship. He alone knew the prayers and chants. Even the Pontifex Maximus had no right to interfere any further than to discover whether the father performed all the rites of his religion. The absolute rule was: "*Suo quisque ritu sacrificia faciat*" [Varro *De Ling. Lat.* vi. 88]. The father thus became sole interpreter, sole priest. He alone could teach his child to take his place. The priestly office was always handed down in the male line, probably because the ancients thought the power of generation rested exclusively with the male. This necessarily placed the wife and daughter in a different position from that which the father and son always occupied, and also put unlimited power into the hands of the head of the family.

We can thus present to ourselves a picture of the ancient family. In every house was an altar; here the first thing in the morning and the last at night all the members of the household gather for the most important duty of the day, — the domestic worship. The father acts as priest; the family join in chanting the hymns of their ancestors. Each meal occurs near this altar, and begins with certain prayers, offerings, and libations to the sacred fire. Here again the father is leader, the rest only participants. Then near the house is the tomb in which all the ancestors lie buried, and at which is enacted the second scene of this domestic worship. At stated seasons the family gather to bring the needed oblations to their departed ancestors. Here the father is priest, and all strangers are excluded. In all this we find the bond which made the family such a firm institution. In this too we find the potential influences which gave the peculiar forms and laws to the ancient Roman family. One cannot discover the foundation of the Roman family in birth, natural affection, or mere brute force. Birth did not give such foundation, else an emancipated son would have still inherited the place of priest from his father. Natural affection did not furnish it, else the daughter would have stood on an equal footing with the son. As it was, she was never his equal in the domestic rites, and could never be priest; and, furthermore, at first she could not inherit property from the parental estate. It is not neces-

sary to refer the precedence of the head of the family to force, since the unvarying custom of primogeniture must then sometimes have been overturned and set aside. The domestic religion gave ample sanction for the authority of the father, and placed every member of the family in exactly that condition which he occupied in early historic times. The ancient Greek has a very notable word to designate the family, — *ἑπίστιον*, "that which is near the hearth." Hence that only which could come near the hearth was an essential part of the ancient family.

THE ROMAN FAMILY. — The word "family" has a variable use both in modern speech and in the ancient Latin. The word is from the Oscan *famel* or *famul* [Becker's *Gallus*, 157], and thus signifies everything which an independent man has by his own right *in potestate*. It therefore includes property and all persons under his control, free and slave. In another sense *familia* in the Latin includes all the persons of any one household, both free and slave. Again, *familia* may signify only the free persons of a house who are under one *paterfamilias;* this idea is so extended as to include all those who are descended from a common ancestor, — the *agnati* and the *gens*. The *agnati* comprised all those who traced their descent through the male line. From the *agnati* were excluded all women who married into other families and all sons who left the family through adoption. The *gens* was an aristocratic institution which at a later period disappeared from Roman life. It seems to have been essentially the family on a large scale. There were the *Dii gentiles*, corresponding to the domestic divinities. The *gens* had its special form of worship, and also an accredited priest or chief to conduct its religious ceremonies. Apparently all the members of the *gens* were at least theoretically descendants of a common ancestor. Or, further, *familia* is sometimes limited in its idea to the slaves of a household. And, lastly, *familia* often signifies simply property, especially the property of a deceased person; as "*agnatus familiam habeto*" [*Liv.* ii. 41]. Every free man not in the power of another, even though he had no children, was yet called a *paterfamilias*. "*Paterfamilias appellatur, qui in domo dominium habet, recteque hoc nomine appellatur quamvis filium non habeat*" [Ulp. *Dig.* 50 etc.]. It is our intention to consider the Roman family in that sense which includes simply the persons of any household, but embracing both the slaves and those who were free.

It has been said that the ancient unit of Roman social life was the family. This was rather contrary to the natural course of events after many families had gathered together in cities; but this peculiar unity was preserved by the influence of the separative religion which taught each family to worship its own Manes and its own hearth-fire. The form of this primitive family was destined to be totally disintegrated, and a new unit was constantly sought for in society; and that unit was the individual. Every revolution and every emancipation in Roman life tended to bring about this result. The *jus gentium* and the legal innovations and fictions of the Pretorian edict assisted materially in this progress of thought. Hence we are to study the family under two distinct phases: in the one the paternal power is a pure despotism over wife, son, daughter, and slave; in the other every member of the household, even to the slave, has his rights, and the father's priestly and judicial power is expressly limited by law.

In the earlier type of the family, we see one man exalted by religious sanctions to the position of despot. He is sole priest and judge. Against his decision there is no appeal, either within the family or to the civil power. This man is called a *pater-familias*. He gathers about him and under him a wife, children, slaves, clients, and property, over which he is absolute master. Sir Henry S. Maine thus quotes a picture of primitive life from the Odyssey of Homer: "They have neither assemblies for consultation nor *themistes*; but every one exercises jurisdiction over his wives and his children, and they pay no regard to one another." He adds these remarks: "These lines are applied to the Cyclops, and it may not perhaps be an altogether fanciful idea when I suggest that the Cyclops is Homer's type of an alien and less advanced civilization; for the almost physical loathing which a primitive community feels for men of widely different manners from its own usually expresses itself by describing them as monsters, such as giants, or even (which is almost always the case in Oriental mythology) as demons" [*Ancient Law*, 120–21]. At any rate, we have here a distinct picture of the family as it arose by itself; and the family carries with it these same characteristics when it unites with others and forms the city. The more developed picture is given us by Cicero in his description of the house of Appius Caecus: "*Quatuor robustos filios, quinque filias, tantam domum,*

tantas clientelas Appius regebat et senex et caecus,—tenebat non modo auctoritatem, sed etiam imperium in suos; metuebant servi, verebantur liberi, carum omnes habebant; vigebat illa in domo patrius mos et disciplina" [*De Sen.* 11].

It will be most convenient to describe in order each class in the household and its relation to the *paterfamilias;* and thus we may have a complete picture of the Roman family, and also a clearer comprehension of the shifting provisions of the Roman law for these various classes. These may be considered under the following heads: (1) Slaves; (2) Clients; (3) Children and descendants; and (4) Wife. If a person was not subject to the power of any other, he was said to be *sui juris.* If he was thus subject, he was said to be *alieni juris.* As stated above, a person *sui juris* was called a *paterfamilias.* All others were subject to some person, *alieni juris.* The kind of subjection differed, and each kind of authority had its peculiar name. The word *potestas* was used in the largest sense to indicate all the power of a *paterfamilias.* By some it is supposed to be the ancient term for power of every sort. In a fragment of the XII Tables the word is thus used: "*Si furiosus est, adgnatorum gentiliumque in eo pecuniaque ejus potestas esto.*" This implies nothing more than superintendence; and hence *potestas* could not be the archaic word which included all the authority of a *paterfamilias.* Sir Henry S. Maine thinks that *manus* was the old term; but be that as it may, in the later civil writers *potestas,* in its largest meaning, includes all the power of the head of a family; in its narrower acceptation it implies the authority over the children. *Manus* is the name of the power as exerted over the wife. In the case of slaves this power was called *dominium.* When a son was emancipated he was put under the power of some other *paterfamilias,* and this second sort of subjection was called *mancipium.*

THE SLAVES.—In early times the slaves formed an important part of Roman society; but as the love of luxury became greater, and as the possessions were multiplied, so the number of slaves increased. The early jurisprudence did not deal very extensively with the condition of the slave for two reasons: first, there were very few slaves; and second, there appears to have been a half-latent repugnance to consider the system. Of course the ancients tried to excuse slavery. The Greeks laid stress on the mental inferiority of their slaves. The Romans

referred back to some supposed compact, wherein the victors granted life to the vanquished, in return for which the conquered were to serve their conquerors. But this was manifestly a weak subterfuge; and as the influence of the *jus gentium* increased, the condition of the slave was steadily ameliorated. It was left for the Christian Church to improve still further the condition of the slave and to facilitate his emancipation.

Among the Greeks the slaves were treated with far greater consideration than among the Romans; and the Greek use of slaves differed diametrically from that of the Roman. The Greek looked on his slave as a source of revenue. The slave must work, for instance, as a mechanic, and was required to pay to his master a certain amount per day, or the master might let him out on hire to others. The Roman would recognize no such use of his slaves; they were simply to minister to his wants or to his comfort and luxury. The early civil law has but few provisions relating to slavery; but the XII Tables take cognizance of the *vindicta*, or method of manumission, and they also provide a remedy against a master whose slave has committed an injury against another person. ("*Si servus furtem faxit noxiamve nocuit.*")

In the *Institutes* of Justinian this general rule is laid down: "*Servi aut nascuntur aut fiunt*" [i. 3]. The antecedent facts which determined that a person was a slave had reference to the condition of birth or some event after birth. A person was a slave whose mother was a slave at the time of his birth. There was something of an exception made to this regulation: if a mother had been free at any time during the period of gestation, then her offspring was declared to be free. But in general, the rule laid down was "*partus sequitur ventrem.*" A person once free might become a slave either *jure gentium* or *jure civili*. By the *jus gentium* he would become a slave on being captured in war; and by the *jus civile* he became a slave on being condemned to certain kinds of punishments. It was the rule, quite rigidly adhered to, that no Roman citizen could serve another [Plaut. *Trin.* ii. 4, 144].

The number of slaves gathered in a wealthy home in Rome became almost incredibly large. It is hard to understand how so many could be employed until it is realized that the work was minutely divided, and it was considered disgraceful not to have a slave for every kind of labor. Ulpian thus distinguishes

some of their classes: "*Multum interest qualis servus sit; bonae frugi, ordinarius, dispensator, an vero vulgaris, vel mediastinus, an qualisqualis* [*Dig.* xlii. 10, 15]. In Greece the master respected the rights of his slaves. Gaius is wrong when he says: "*Apud omnes peraeque gentes animadvertere possumus, dominis in servos vitae necisque potestatem esse et quodcunque per servum acquiritur, id domino acquiritur*" [*Inst.* i. 53]. In earlier times among the Romans the slave was looked upon as a mere piece of property which the master could use as he chose. As the number of slaves increased, they really became a dangerous class, and so the masters became more tyrannical; and it was sometimes doubted whether the servile class should be looked upon as human beings at all. A touching saying was that of Trimalchio (himself a slave) to his guests: "*Amici, et servi homines sunt et aeque unum lactem biberunt*" [*Petron.* 71].

The most refined punishments were invented for the slaves, and they were tortured to extort evidence from them. Even the women were inhumanly cruel toward their attendants [cf. Wiseman's *Fabiola*, p. 22]. Sometimes the slaves would turn on their tormentors even in the face of punishment and death. Pliny relates the case of Largius Macedo, a man who had been arrogant and cruel to his slaves. They attacked him in the bath and left him only when they thought him dead. The wretch lived long enough, as Pliny says, to experience a doubtful *solatium ultionis*. In the days of the emperors the learned jurists began to exert some influence. They showed this in the growing tendency to protect the slave against his master. Augustus allowed the prefect of the city to interfere and prevent certain kinds of cruelty on the part of masters. Claudius enacted that if a master exposed a sick or infirm slave, he forfeited all rights over him. Hadrian put an end to the *ergastula*, or workhouses, and forbade a master to sell his slave for gladiatorial purposes. Antoninus Pius declared that a master had no more right to kill his own slave than that of another, and further, any master, on proof of inhuman treatment, should be compelled to sell his slave to a more lenient master. "Both ordinances," says Gaius, "are just; it is proper that the abuse of legal right should be restrained" [*Inst.* i. 53]. It was left to the Christian empire to develop the greater protections of the rights of slaves, and these appeared in the code of Justinian [cf. *Inst.* i. 3–8; ii. 9; iii. 8, 9. *Dig.* i. 5, 6; xxxviii. 1–4. *XL Code* vi. 4, 5;

vii. 1–23]. In the first place, the slave was further protected from the cruelty of his master, and then much encouragement was given to manumission. "A slave could be freed by a letter from his master (*per epistolam*), by a declaration of the master in the presence of witnesses (*inter amicos*), or in the presence of the congregation (*in ecclesiis*). Many legal restraints upon manumission were also removed" [Morey's *Roman Law*, 149, 150]. The Church further encouraged the masters to manumit their slaves as a token of their Christian benevolence. Closely allied to this sort of slaves were the *adscriptitii* and *coloni*. The Adscriptitii were rural slaves who could not be removed from their homes. They also had the right of legal marriage without the master's consent. The Coloni were more like freedmen. They had a right to the fruit of the soil after paying a fixed rent to the owner. They could also bring an action against their master for injury to themselves or family.

It was a general principle, "*Quodcunque per servum acquiritur id domino acquiritur.*" And yet from very early times it was the custom for the master to give a certain allowance to the slave. With this the slave might trade and if possible purchase his freedom. The technical name for the slave's property was *peculium*. No civil or religious marriage was permitted to slaves; but a kind of natural marriage, called *contubernium*, was practised. The master alone decided which slaves should enter the contubernium; but it was usually to his interest to see that only such should marry as had a natural attraction toward each other.

THE CLIENTS. — In the household of the wealthy there gradually grew up another class who were not slaves and yet were more or less dependent on the head of the household. These were the clients, or as a body were called the *clientela*. At first they appear to have been composed exclusively of the freedmen of the family; that is, former slaves who were manumitted. Poor relatives and even strangers from the country found it to their own benefit to attach themselves to some wealthy and influential person. Thus the clientela became a public institution. The client was debarred from bringing very serious actions against his patron, and he might even be bound by oath to perform certain offices for the patron or his family. In return for all this the patron, at least in the later days of the Empire, virtually supported his clients. They had then lost the character

of freedmen, and had become dependants or hangers-on to the wealth of their patrons.

THE CHILDREN. — If the condition of women in the ancient Roman family was more desirable than that of their sisters in Greece, there can be no question but that the condition of children, owing to the persistent and inflexible *patria potestas*, was more burdensome and servile. The rightful power of the *paterfamilias*, as the tutor and guardian of his offspring, was so extended as to cover the life of the child until the death of such *paterfamilias*. The society of the time recognized but one person in the family, and he was the oldest male ascendant. Any delict (or tort) committed by wife or son or slave must be answered for by the legally responsible father. This father could surrender the person of his child or slave as full restitution for any injury done. Or, again, the father was sole judge within the family circle, and he had the power of life and death (*jus vitae necisque*). This paternal power seems to have been established by Romulus as a civil measure, though the power doubtless already existed, springing forth from the religious position which the father of the family early occupied. The institution of Romulus is reiterated and confirmed in the fourth of the XII Tables. Thus a son (for the expression may be taken to include son and daughter, unless otherwise specified) became a thing rather than a person. The son was confounded with property, with cattle or slaves. An avaricious or indigent father could sell his sons as well as his slaves. Indeed, the position of the slave was far preferable; for if he were freed, he need not return to his former master; if, however, the son were manumitted, he returned into the control of his father. He could be condemned to servitude a second and a third time before he could become free. A father in punishment could send his son to the *ergastulum* or out into the country, there to work in chains like a disgraced slave. There are cases on record where the father has sat in judgment on his own son and condemned him to death. There were certain limitations which seem to have worked against the apparent stringency of the law. If the father was given large rights over his children, he was likewise burdened with certain duties, as, for instance, of supplying the wants of his family from the common fund and of being responsible for their welfare on all occasions. Again, public opinion must have done much to limit the boundless possibilities of the

exercise of paternal power. And though the XII Tables recognize the right of the father to sell his child, yet practically there are no known cases, and the *trina mancipatio* was really used to free the child from all control.

The paternal power extended to a complete control of all the property in the family, so that primarily neither son nor slave could hold property in his own right; and no one except a person *sui juris* could make a will, even to very late times. Indeed, in earliest times the property seems to have been looked upon as belonging to the family in common. The *paterfamilias* was simply steward, but absolute steward. Without the formality of will the property descended by natural course of events to the next *paterfamilias* in agnatic succession. Later, through certain stages of development, the head of the family gained the right to make testaments; but not until the time of the Empire did the son acquire the right to hold and will property independently.

The term *patria potestas* denotes the natural relation which existed between the head of the family and certain persons under him. These subordinates range themselves into three classes: (1) All the descendants through the male line from the *paterfamilias;* (2) Children by marriage, or the wives of the male descendants; (3) All adopted children, — these were called the sons and daughters of the *paterfamilias*, the *filiifamilias* and *filiaefamilias*. According to Dionysius the XII Tables gave the father "absolute power over his children, the right existing during their whole life, to imprison, to scourge, to keep in rustic labor in chains, to sell them, even though they might be in the enjoyment of high state offices" [*Antiq. Rom.* ii. 26, 27]. Cicero also says that the XII Tables authorized the immediate destruction of monstrous or deformed offspring [*De Legg.* iii. 8]. In all probability originally this power of the father was terminated at his death; but in the XII Tables there is a provision under which the son could be freed by the *trina mancipatio*, or three successive sales *per aes et libram*. This was what was known as emancipation, and was the first recorded attempt of the State to interfere with and end the tyranny of the paternal control. It is indicative, too, of a growing opposition on the part of the conscience of the people to an absurd regulation of a now obsolete religious faith. The form of this mancipation was developed with great minuteness by the XII Tables.

Gestures and forms have a very important part to play in early judicial procedures. Three times did the *paterfamilias* sell his son to a *pater fiduciarius*, who by contract manumitted him back to his father. Then at length the father could manumit his son *in libertatem*. Thus Ulpian, "*Liberi parentum potestate liberantur emancipatione, i. e. si posteaquam mancipati fuerint manumissi sint. Sed filius quidem ter mancipatus ter manumissus sui juris fit. Id enim lex XII tabularum jubet his verbis: Si pater filium ter venum duit, filius a patre liber esto. Ceteri autem liberi praeter filium tam masculi quam feminae una mancipatione manumissioneque sui juris fiunt* [X. i.].

Otherwise the power of the father only ceased at his death, or when either the father or the son had suffered a *capitis diminutio*, or when the father was taken prisoner of war, which was for the time being a *capitis diminutio*. The son was also freed when he became a *flamen dialis*, and the daughter when she entered into marriage with *manus*, or when she became a vestal virgin. "*In potestate parentum esse desinunt et hi, qui Flamines Divales inauguruntur, et quae virgines Vestae capiuntur*" [Ulp. x. 5]. Two surprising customs may be noted here. It was not an uncommon thing among many nations of antiquity to kill or expose new-born children. In Rome this was not as common a practice as elsewhere in the ancient world, but it existed even there. Romulus seems to have forbidden the killing of sons and first-born daughters. There appears to have been a very prevalent custom of killing all deformed children [Cicero, *De Legg.* iii. 9]. Certain it is that the exposure and killing of new-born children was very common, even among leading families. Another fact to be noted arose from the priestly and judicial power of the father. He alone had the power to accept a new-born child into the family circle, or finally to reject it. Probably there were comparatively few rejections, since owing to the desire to have descendants to perpetuate the worship, the father would wish to have as many accepted children as possible; and then, later, public opinion would do much in restraining the father from any such undue manifestation of the paternal power.

The *jus gentium* did much to modify Roman law in all its departments. This modification shows itself in the more equitable provisions of the praetor's "perpetual edict." Then, further, the *jus gentium* gave coloring to the writings and opinions

of the great jurisconsults of the time of the Empire. Those learned in the law in turn gave general direction to the constitutions of the emperors. Thus, finally, by imperial enactments the more liberal provisions of the *jus gentium* began to work themselves out against the unjust and tyrannical *patria potestas* [*Inst.* i. 9; *Dig.* i. 6, 7; *Code* vii. 47, 48, 49]. It took years to emancipate the son from the absurd trammels of his father's power; and vestiges of that power appear even in the Code of Justinian. Public opinion must long have been at work limiting the exercise of the paternal power; and probably in general that power had been, during the latter days of the Republic, more a matter of the letter of the law than of actual practice. Trajan was the first one who gave voice to the prevailing idea that natural rights belonged to persons of every class. He compelled a father who had been unduly cruel to his son to emancipate him; and he forbade the father to inherit any property which the son had acquired after his emancipation. It is said by Papinian that Trajan was led to do this by the advice of the jurists, Neratius and Aristo [D. xxxvii. 12, 5]. Alexander Severus began to treat the power of life and death as entirely obsolete; and though he gave the father full power in the matter of simple punishments, yet all graver offences were referred to the public magistrate. Valentinian and Valens also put a rather indefinite limit on the father's right to chastise his son. Those guilty of great offence (*enormis delicti reos*) were to be handed over to public justice. Under Diocletian it had been declared that no title could be given in the sale of a child. But Constantine again sanctioned the sale of new-born children, if sold through want; but even then the vendor, the child, or any one could purchase his freedom, and the child would be restored to all previous civil rights. Justinian condemns the practice as flagrantly inhuman and immoral. The degrees of offence of which a son might be guilty toward his father and the corresponding punishments are thus laid down by Justinian: "If your son is in your power, he cannot part with property acquired from you. If he does not recognize the dutiful obligations owing to his father, there is nothing to prevent you punishing him in the exercise of your parental power. If he persists in the same contumacious conduct, you can resort to severer remedial measures. You may further take him before the president of the district, who will pronounce a sentence such

as will meet your wishes" [C. iii. 8, 47]. It was provided by a constitution of Diocletian and Maximian that the governor of a province could compel a son to show his father due reverence, and to furnish him with the necessities of life. It was also decided, if a son occupied a higher civil position than his father, that father was bound to waive his paternal power, and show reverence to his son as his political superior [Aul. Gell. *N. A.* ii. 2]. The essential unity of father and son for legal purposes appears in the following sentiment of Paulus, embodied in the Digest: "That a father cannot sue his son for theft is not so much the result of legal prohibition as of essential natural impediments; because we can no more sue those who are in our power than we can sue ourselves [D. xvi. 47, 2]. Savigny thus summarizes the position of the son: "The son lacks the capacity, in matters of private legal relationship, to exercise any power or authority, while in every other relationship his capacity is unrestricted. Furthermore, the defective capacity is not to be treated as an inherent want in the child himself, but merely as a consequence of the rule of law by which the father acquires the benefit of all the rights which spring from the son's acts" [Qtd. in Amos' *Roman Civil Law*, 270]. The influence of Christianity simply deepened and intensified the convictions which sprang from a study of the *jus gentium*, that certain natural rights inhered in the son as a member of society, and that those rights should be respected.

The amelioration of the condition of the son appears nowhere more strikingly than in the matter of the control of property. Primarily the son could hold no property and could make no will, no matter what his age might be, provided his father still lived. In the course of time a certain amount of property was intrusted to the son, called *peculium*. This might correspond almost exactly to a slave's *peculium*, or it might be "a distinctly different species of wealth, over which the son could exercise greater or less power of independent management, free from his father's general influence, though not free from all present or ulterior rights of the father to co-operation in legal acts, to ownership in the principal, to usufruct of the proceeds, or to hereditary succession" [Sheldon Amos, *Roman Civil Law*, 271]. Under Justinian, property in the possession of the son might be grouped under three heads: (1) First there was the *peculium*, or property which the father intrusted to the son, and

of which the father alone could enjoy the permanent increase. (2) There were the *castrense peculium* and *quasi-castrense peculium*. Augustus allowed the son to enjoy whatever he acquired in military service. This was called *peculium castrense*, and is thus defined by Macer to be, "Whatever the son receives from his father or relatives by way of equipment, or whatever he himself obtained while in the service" [D. xlix. 17, 11]. The *quasi-castrense peculium* was gradually defined by the emperors, from Constantine up to and including Justinian. It was thus made to cover whatever was derived from any civil office. By one of the Novels of Justinian the service of the Church, so far as it was carried on by a regularly ordained minister, was brought within this category [Nov. cxxiii. 19]. The father had no rights over the property under the second head except to enter into the guardianship if his son became insane, or to inherit if his son died intestate and without children. (3) Under the third head falls that part of the son's private property not included under the two previous heads. It was also called *peculium*, and is said to have been introduced by Constantine. It includes all property "which came to the son, as it was said, by fortune's favor, or by his own exertion" [C. vi. 6, 60]. The father could not touch the principal, but had the usufruct; and in certain exceptional cases he lost all rights to this kind of *peculium*.

In earlier times it was often the custom to adopt or arrogate a son, in order that the domestic religion might not cease. This reception of the son was called adoption when a son was taken from some other *patria potestas* and subjected to a new paternal power. The process was called arrogation when a person *sui juris* submitted himself to the *patria potestas* of another. In later times the custom of adoption was sharply limited by civil law, and was made to depend on consent of the adopted child. As a regulated system of concubinage arose, out of respect to the ancient form of marriage, it was permitted the father by various methods to legitimate his *natural* children. This was done principally by the subsequent marriage of father and mother, or by a rescript of the emperor. The consent of the child was necessary to a valid legitimation, and the legitimated child entered into all the rights and privileges of children born in lawful wedlock.

In the ancient Roman life, when the father died and the

children were under the age of puberty, some of the agnates took charge of them as guardians. But this speedily proved to be an irresponsible guardianship, and the State took the management of such matters under its own control. The age of puberty was rather rashly fixed upon as the age of legal responsibility. But even at the age of puberty, it was found that the child was not competent to manage his property, and therefore two kinds of guardians were appointed; namely, tutors and curators. The office of tutor is thus defined by Servius, and the definition is incorporated into the *Institutes:* "Tutela is the right and power conferred or authorized by the civil law for the protection of an independent person who is, by reason of age, incapable of protecting himself. And tutors who have this authority are so called from the nature of their office, in that they act as protectors (*tuitores*) and defenders" [*Inst.* i. 13, 1, 2]. Tutors were of three kinds, — testamentary, legal, and tutors-dative. Testamentary tutors were those appointed by the father in his will. Legal tutors, or tutors-at-law, were those who, in default of testamentary tutors, became such by reason of their relationship. It was a maxim of the Roman law that "he who has the benefit of the succession ought also to have the burden of the tutelage" [*Inst.* i. 17]. At first the legal tutor was sought for among the agnates, or in the *gens;* but as soon as the blood-relationship of cognates was recognized, the principle obtained that the nearest heir who was capable of undertaking the duty was bound to become tutor. Tutors-dative were those appointed by the public magistrate when no guardians had been appointed by will, and when there were no relatives. Tutors had anciently been appointed for women whenever they became freed from the *patria potestas* of father and husband. But as soon as the two sexes approached a substantial equality, this office fell into abeyance. The curator's duties were limited by the purpose for which he was appointed. He could in no case transcend this limitation. He might be appointed for some special duty, as in case of a law-suit, or a settlement of accounts; or he might be a general curator, in which case his duties differed but slightly from those of a tutor.

The legal regulations governing wives, and their relation to the paternal authority, can be best discussed under the general subject of marriage.

ROMAN MARRIAGE [*Inst.* i. 10; *Dig.* xxiii., xxiv., xxv.; *Code* v.; Ulp. *Frag.* Tit. ix. pp. 590, 591; Serv. in *Georg.* i.; in *Aen.* iv.; Gai. i. 59–64; Becker's *Gall.* 153]. — In the eye of the primitive law, the wife was a *thing* rather than a person. She passed her life under a perpetual guardianship. At first she was under the *patria potestas* of her father; thence she passed under *manum* to her husband. And should it ever occur that her father and her husband should both be dead, a guardian was immediately appointed for her. Over the person of the wife the husband had absolute and unlimited sway. He might sell her as he would a slave, or if she were taken in the act of committing some great crime, her life paid the forfeit. The wife had no property rights whatever; she could acquire no estate, nor could she manage one. Of course all these stringent limitations were confined to the very earliest day.

In the time of Justinian it was still true that "in many particulars the legal position of women was inferior to that of men." Several causes may have conspired to bring about this result. It was either through a belief in the comparative inferiority of the feminine mind; or as a result of "the deeply seated institution of the paternal power, and of the strict idea of the legal family which sprang from it;" or, lastly, through a repugnance to women appearing in public. For a long period women were included, by the praetor's edict, in that class who were excusable for being ignorant of the law. Women were expressly forbidden to perform any public function, especially judicial, magisterial, or religious; they were also excluded from such quasi-public offices as that of banker. By the time of Justinian many of the old restrictions were removed. The life-long tutelage had disappeared; Christian legislation against divorce had put women upon an equality with men; new laws of inheritance put an end to the old preference of male heirs to the manifest injury of female descendants [Nov. cxviii.]. "The general rule of interpretation was that where the masculine name or pronoun was used, the feminine was included, but not *vice versa*" [Sheldon Amos, *Roman Civil Law*, 111].

And yet the Roman matrons appear always to have had large liberty, and to have been treated with great consideration. They were never relegated to the gynaekonitis, like the Athenian women, and were permitted to go abroad on the streets, to the theatres, to the circus, and to the banquets. They

were confined to no part of the house, and the term *materfamilias* appears to have been one of great honor. Chastity appears to have been one of the notable characteristics of Roman matrons for centuries. But after the Punic wars, and as the luxuries of life increased, the Roman women became more and more profligate. The same complaint could be laid against many women that Clitipho made of his Bacchis: "*Mea est petax, procax, magnifica, sumptuosa, nobilis*" [*Ter. Heaut.* ii. 1, 15]. This looseness and arrogance led the men to prefer celibacy, and Augustus found it no easy matter to encourage marriage.

Marriage in ancient times may be divided into two classes: *matrimonium justum* and *matrimonium non justum*. The *matrimonium justum* occurred when both parties had *connubium;* that is, did not belong to classes between which marriage was forbidden. *Matrimonium non justum* occurred when persons married whom the law forbade to marry, as plebeians with patricians, or *peregrini* with the Romans. But these distinctions gradually wore away, so that servile condition was the sole obstacle to legitimate marriage with a citizen. By the *lex Canuleia* (445 B.C.) the first inroad was made on this earlier prohibition when plebeians were allowed to intermarry with patricians. In the several epochs of Roman law and custom four different forms of marriage appear to have been used, three of which were of ancient origin and gave the wife into *manum* to her husband; that is, placed her in his power, much the same as though she had been his daughter. She was *filiae loco* [Gai. i. 111]. It appears, in the process of time, that before a husband could exercise his power of punishment, he was compelled to call a family council and seek their advice. In later times at least, this family gathering, in case the wife was *in manu*, consisted of the *cognati* of the husband; or when the wife was not *in manu*, then this council was composed of the wife's *cognati* [Becker's *Gall.* 156]. The husband could never decide by himself, except only when he took his wife in the very act of adultery, and then he might put her to death [Gell. x. 23].

The essential part of a Roman marriage rested in the mutual consent of the contracting parties, always subject, of course, to the approval of those in whose power they might at the time be. It was considered an infamous crime to abduct a woman without the consent of her parent or guardian. And yet we are surprised to find that due attention must have been given to the

natural inclination of the contracting parties; for it is a maxim of the civil law, "All marriages are brought about by affection" [*Code* v. 5, 4]. The mutual consent on either side was indicated in the act of cohabitation *ad individuam vitae consuetudinem* and *liberorum quaerendorum causa*. And no marriage ceremony was absolutely necessary, in addition to this mutual consent. In a marriage with *manus*, certain ceremonies followed on the consent, and these ceremonies became rather public evidence of marriage than marriage itself. These forms were three in number: *confarreatio*, *coemptio*, and *usus*. *Olim itaque tribus modis in manum conveniebant; usu, farreo, coemptione* [Gai. i. 109, 110]. The first was essentially a religious ceremony; the other two rested on the sanctions of the civil law, but derived many of their rites and usages from the first. In the *coemptio* a contract, and in the *usus* a sort of prescription brought the woman *in manum viri*. The ceremony of *confarreatio* appears to have been the most ancient form of marriage, and was of Sabine origin. It was always confined to the patrician order, and was perpetuated into the middle empire only in the case of the priests. Essentially the ceremony consisted in taking the wife away from her old domestic religion and adopting her into that of her husband. This form of marriage comprised three acts: *traditio*, *deductio in domum*, *confarreatio* [Gai. i. 112; Ulp. ix.; *Dig.* xxiii. 2, 1]. The *traditio* consisted in the yielding up of the daughter by her father, who alone had the authority to give her in marriage. The *deductio* comprised the carrying of the bride to her new home with a certain customary *cortége* and the singing of time-honored hymns, in which was always a sacramental refrain, *Thalassie*, the meaning of which is lost in antiquity. Before the house the procession stopped, and fire and water were presented to the bride. The fire represented the domestic divinity, and the water was "the lustral water that served the family for all religious acts" [De Coulange, *Ancient City*, 58]. Then the husband, simulating violence, carried his bride over the threshold. Within the house the *confarreatio* took place at the hearth, in the presence of the Penates and all the domestic gods. The husband and wife offered a sacrifice, poured out a libation, pronounced set prayers, and ate together a cake of wheaten flour,—*panis farreus*. This was a sacramental act, and put a religious sanction on the marriage, since husband and wife were thenceforward partakers of the same

domestic worship. This gave rise to the ancient definition of the jurists: "*Nuptiae sunt divini juris et humani communicatio.*" And again: "*Uxor socia humanae rei atque divinae*" [*Dig.* xxiii. 22; *Code* ix. 32, 4]. There remains to us but a trace of the mystical forms which were observed in the house. For instance, the bride greeted the groom, "*Ubi tu Caius, ego Caia;*" but the exact purport of this expression is lost.

For centuries there appear to have been but few divorces, but finally they occurred in ever-increasing numbers. The form of divorce corresponding to the sacramental method of marriage was the *diffarreatio*, in which the husband and wife met again at the domestic hearth. The wheaten cake was passed to each and refused; and then the wife invoked horrible imprecations on the domestic gods of her husband.

In the *coemptio*, a civil contract took the place of the religious ceremony, and in this was determined the proportion of dependence of the woman. It was a symbolic sale *per aes et libram patre vel tutoribus auctoribus* [Gai. i. 113; Virg. *Aen.* iv. 103; Boethius in *Cic. Top.* iii. p. 269]. *Usus* was the third form of marriage, and was a sort of prescription, in which the wife was looked upon as a piece of movable property, of which full ownership might be obtained after one year's possession. When a woman had remained with a man a full year without any absence, she passed into his power by prescription. An absence of three nights (*usurpatio trinoctii*), consecutively, relieved a woman from the burden of submitting to her husband's power [Gai. i. 111].

A fourth form of marriage gradually grew up in later times which was probably introduced by the *peregrini*, or the Etruscans. In this the husband and wife stood on a sort of equality, and the wife never passed into the power of her husband. Gradually this became legalized and popular, and in the time of the emperors was the prevailing form of marriage.

At first divorce could be secured only with the consent of parents and friends, but after the Punic wars divorces multiplied rapidly and began to be easily obtained. A divorce from the marriage by *coemptio* was obtained by *remancipatio*. Finally divorces were obtained by mutual consent, the only necessary formula being some expression like the following: "*Tuas res tibi habeto;*" "*tuas res agito.*" Augustus in the *lex Julia de adulteriis* required seven witnesses to the divorce by mutual consent.

The Christian emperors constantly wavered between the dictates of Christianity and those of the Pagan jurisconsults. But when such men as Sylla, Caesar, Pompey, Cicero, Antony, Augustus, and his successor put away their wives, it was not at all remarkable that the custom became disgracefully common. The poet thus sings: —

"Sic fiunt octo mariti
Quinque per autumnos" [Juven. *Sat.* vi. 20].

And Seneca: "*Non consulum numero sed maritorum annos suos computant*" [*De Ben.* iii. 16]. Thus it was fully proven that freedom in the matter of procuring divorces tends to weaken public morality and does not minister to the sum of human happiness.

It was finally decided by Justinian that the highest officers of the State should make proof of their marriage in certain written marriage settlements. Others might testify to their marriage before three or four of the clergy, and their declaration had to be written, signed, and registered [*Nov.* cvii. 4]. There were certain conditions laid down in the later civil law which were absolute prerequisites to marriage. They were: (1) Personal capacity; (2) The consent of all persons holding *potestas* over the contracting parties; (3) Absence of all restrictions founded on relationship or custom. 1. As to personal capacity, it was determined by Justinian that the valid age should be fourteen for males and twelve for females. Otherwise the marks of capacity were the same as those required for any legal act. 2. The rule was that the consent of the persons in whose power the contracting parties were was indispensable. A daughter was required to have her father's consent up to the age of twenty-five. In case of the death of the father, then the consent of the mother, or friends, or guardian must be had. Sometimes the local magistrate could interfere and dispense with the father's consent, when he was irrational in his objections. 3. The restrictions which were gathered under this head pertained to some prohibitions of the civil law and the obstacles which were presented by relationship. Justinian forbade the intermarriage of Christians and Jews, but he did away with the most of the previous restrictions. For prudential reasons, a governor was prohibited from taking a wife from his province, and a guardian from marrying his ward. Gibbon thus fully describes the impediments to marriage: "An instinct almost innate and univer-

sal appears to prohibit the incestuous commerce of parents and children in the infinite series of ascending and descending generations. Concerning the oblique and collateral branches, nature is indifferent, reason mute, and custom various and arbitrary. . . . The profane law-givers of Rome were never tempted by interest or superstition to multiply the forbidden degrees; but they inflexibly condemned the marriage of sisters and brothers, hesitated whether first cousins should be touched by the same interdict, revered the paternal character of aunts and uncles, and treated affinity and adoption as a just imitation of the ties of blood. According to the proud maxims of the republic, a legal marriage could only be contracted by free citizens; an honorable, at least an ingenuous, birth was required for the spouse of a senator; but the blood of kings could never mingle in legitimate nuptials with the blood of a Roman; and the name of Stranger degraded Cleopatra and Berenice to live the concubines of Mark Antony and Titus" [*Decline and Fall of the Roman Empire*, iii. 691].

In the primitive marriage the wife's property was merged in that of her husband. In the more liberal form of marriage in vogue in the time of the Empire, the wife's own property was not subject in any way to her husband; but still certain proprietary relations arose between husband and wife, owing to the peculiar character of the Roman dowry and marriage settlement. Under the new conception of marriage, the husband was not compelled to support the wife, unless some provision had been made on the part of her friends. The wife still belonged to the father's family, and he was compelled finally by the *lex Julia* to give his daughter a *dos*, or marriage settlement, when he was able. The husband could manage this, but could not mortgage or sell it. In case of the death of the wife, the *dos* reverted to her father or his heirs. Sometimes the *dos* was furnished by friends of the wife, in which case its disposition was the same as that of the *dos* furnished by the father, except that in some cases when the wife died the *dos* reverted to such friends, or else became the property of the husband, or of the wife's heirs.

The husband, in turn, could make his wife a conditional gift (*donatio propter nuptias*), which was to vest in her, if she survived him. During the life of the wife this gift could not be disposed of, even with her consent; but in case the husband

outlived the wife, it reverted to him. The *donatio propter nuptias* came to be considered a necessary correlative to the *dos*. The wife had complete liberty in the management of her own property (*paraphernа*).

In the primitive society we found the unit to be the family, and the only person the law recognized in the family was the patriarchal head. Wife, child, and slave stood on a plane with material possessions, and were absolutely subject to a sometimes tyrannical over-lord. The patriarch was likewise sole priest and interpreter in the domestic worship. In the developed society all this is changed: the *patria potestas* is a mere shadow; the primitive religion has become a tradition, and the individual is the unit of the new society. The law recognizes all classes and protects them in their several rights. In fine, a long step has been taken in the emancipation of man, and the outline of the future course of development is broadly indicated to those social reformers whose idea is to grant the greatest individual liberty consistent with the welfare of society as a whole.

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