**The Institution of Marriage in Ancient Rome**

The family (*familia*) in Ancient Rome played a significant role in the social, economic, political and religious aspects. Therefore, it is not surprising that many aspects of family life, i.e. marriage, paternal authority, custody of persons, guardianship, etc., were regulated in statutory law and in the customs and culture of the ancient Romans.

After this introduction, let's move on to the substantive part - marriage in ancient Rome.

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As has been said a moment ago, marriage (in Latin: *nuptiae*) in the Roman sense can be understood as a recognized, lasting community of life of a man and a woman, which should ensure the possession of legal offspring. Such a description of the institution of marriage can be regarded as its general definition.

As part of the doctrine, Roman lawyers already worked out the definition of marriage. Two of them have survived:

The first comes from the jurist Modestine (D. 23,2,1): *uptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humanis iuris communicatio*

– that is “marriage is a union of a man and a woman and a community of all life, a union of divine and human law”.

The second is provided by the Justinian Institutions (Inst. 1, 9, 1): *Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuam consuetudinem vitae continens*

- that is “marriage is a union of a man and a woman, including an indivisible community of life”.

As we can see, both definitions emphasize the durability of the marital community and the difference in the sex of the spouses. Marriage in ancient Rome was a secular union.

The Romans did not treat marriage as a legal relationship, but rather as a social institution with which the law connects significant legal effects and defines its contours.

The basis for marriage should be an externally expressed and permanently continued marriage consensus (*consensus*), i.e. a consensual and permanent will to marry, live together and treat each other as spouses (*affectio maritalis*). As long as this will actually exists, there is marriage; when it ceases, there is no marriage.

In order for the already mentioned actual community of life to have legal effects as a valid Roman marriage within the meaning of Roman civil law, it had to meet certain legal conditions:

1) The first of them is physical maturity, which was determined by age - 14 years of age for men and 12 years for women.

2) The second of them was *conubium* - that is, the legal possibility of entering into a valid Roman marriage. It existed as a rule among Roman citizens; exceptionally, other social groups could obtain the right to marry

3) The third of them was the already mentioned marriage consensus - that is, a joint declaration of will to marry. The meaning of the declaration of will is expressed in the Roman principle:

*Nuptias non concubitus, sed consensus facit*

– that is: “marriage does not arise through cohabitation, but through consenting declarations of will”. A person *alieni iuris* (that is, remaining under the paternal authority) also needed the consent of the family superior to marry.

Marriage concluded in accordance with these premises was recognized by civil law and was called *iustum matrimonium* (or *matrimonium legitimum* or *iustae nuptiae*).

Marriage could be connected with the entry of the wife under the husband's authority (*manus*) and into his agnatic family. A *cum manu* marriage then took place.

Entrance to power (*conventio in manum*) took place in ways other than marriage itself. If the wife did not come under the authority of her husband, marriage remained *sine manu*.

However, even if all of the above conditions were met, there could be obstacles and marriage prohibitions preventing the conclusion of a marriage. Among them were obstacles of a social nature, such as:

- marriages between patricians and plebeians (this ban was abolished by the *lex Canuleia* of 445 BC),

- marriage was forbidden for soldiers during their military service,

- as well as Roman officials in the provinces with female inhabitants of these provinces.

- above all, however, marriage between blood relatives was forbidden, in the straight line always, in the collateral line initially up to the sixth and finally up to the third degree.

- marriage obstacles were also consanguinity resulting from adoption and affinity.

- under Emperor Diocletian, bigamy and polygamy, previously sanctioned only indirectly, became a crime.

Marriage could be preceded by an engagement (*sponsalia*), understood as a contract in which the parties promised each other to marry in the future. Initially, this was done by the fathers of the brides; later the bride and groom. During the late empire, the institution of engagement deposit (*arra sponsalica)* was introduced, which the fiancé gave to the bride.

Marriage was concluded by submitting unanimous declarations of will. In this regard, it is worth quoting two Roman parems:

*Libera matrimonia esse antiquitus placit*

– meaning "It has long been accepted that marriages are free"

and *Nuptias non concubitus, sed consensus facit,*

- id est "Marriage is established not by cohabitation, but by consent of will".

Due to the fact that the marriage was an informal and private act, the presence of state officials or priests was unnecessary. Wedding traditions were also indifferent to the law, except for the *deductio in domum mariti*, that is, the introduction of the wife into the husband's home, which was considered the beginning of marriage; and uttering the old Roman formula: *Ubi tu Gaius, ibi ego Gaia* - "Where you Gaius, there I am Gaia".

Marriage was dissolved by the death of the spouse, by the loss of the *connubium* (*capitis deminuntio maxima / media*) or by divorce (*divortium*). Divorce - in classical law - was not a formal legal act that would be dependent on the existence of any recognized reasons or subject to the control of state authority or court.

A marriage was dissolved by divorce (*divortium*) if one of the spouses (at that time it was called a *repudium*) - or both - expressed their will to separate, as a result of which the marital community was permanently dissolved. Over time, and mainly under the influence of Christian doctrine, attempts were made to prevent divorce by making it dependent on the occurrence of specific reasons, the threat of negative financial consequences, or by specifying the prescribed form.

On the level of personal effects, first of all, the wife shared her husband's social position (*honor matrimonii*). An affinity arose between one spouse and the relatives of the other. Children born in wedlock came under the authority of the father and gained the status of children of wedlock. The wife bore the honorable title of *mater familias*. In a marriage without a *conventio in manum*, the wife's previous affiliation and family status did not change. She was bound to the children born of marriage only by the bonds of cognition; from the point of view of legal kinship (agnatic) was alien to them.

In terms of property, the wife *in manu* could not have property as a person *alienii iuris*. If before the marriage she was a *sui iuris* person, all her property passed to the head of the husband's agnatic family. The situation was different in *sine manu* marriages, because such a marriage itself did not change the financial situation of the spouses. If the wife previously had her own property (being *sui iuris*), she continued to keep it under her control, or she could entrust its management to her husband, of course retaining ownership.

Such extra-dowry property of the wife was called parapherna property (*parapherna*). In this case, there was therefore a separation of the property of the husband and wife.

The dowry mentioned above (*dos* or *res uxoria*) means the property that the husband received at the time of marriage in order to help him bear the costs of maintaining the marriage and family - as expressed in the principle:

*Ibi dos esse debet, ubi onera matrimonii sunt* (D. 23, 3, 56 , 1)

- id est "Dowry should be where the burdens of marriage lie."

The dowry was given (or undertook to be given) to the husband or the woman's *pater familias* (so-called *dos profecticia*), either herself or some other person, e.g. the mother or the woman's debtor (so-called *dos adventicia*). The husband acquired, in principle, the right of ownership on the dowry property, however, it was limited by the statutory ban on disposing of Italian lands without the wife's consent (*lex Iulia de fundo* *dotali* from 18 BC), and also by the obligation to return the dowry in the event of dissolution of the marriage. The husband did not have to return the dowry only when the marriage was dissolved due to the wife's death, and the husband could keep certain parts of the dowry for certain reasons (the so-called right of retention - e.g. for each child still with the husband).

Donations between spouses (*donationes inter virum et uxorem*), which were prohibited, were subject to a separate regulation. Probably, this prohibition was intended to eliminate the pressure of property in marriage. If a man – in accordance with the prevailing custom – wanted to protect his future wife in the event of the dissolution of the marriage, he could make a pre-marital donation (*donatio ante nuptias*) to her. Justinian allowed it to be performed during marriage (“because of marriage” – *donatio propter nuptias*).

However, there were some exceptions (e.g. small gifts) or ways to circumvent the prohibition, e.g. donations made during the marriage and not revoked by the donor until his death became valid at that moment (*convalidation* took place).

In addition to marriage, concubinage (*concubinatus*) existed in Roman society. The reasons for cohabitation were probably cases where it was impossible to marry because of social differences (e.g. freeborn with freedwoman) or other special obstacles. Concubinage was a permanent union between a free man and a free woman, concluded and maintained without the will to establish marriage (without *affectio maritalis*). This fact affected both the position of the concubine, who was not called wife (*uxor*), did not enjoy her husband's social position and rights, and the position of children, who were not subject to the authority of their natural father and did not inherit from him by law. They were children born out of wedlock, related only cognitively.

A relationship with features of marriage was the so-called *matrimonium iuris gentium*. It occurred when there was a lack of *conubium* between the spouses, e.g. in mixed marriages of Roman citizens with non-citizens (Latin women, peregrines) or vice versa. Such a marriage had no effects according to *ius civile*, but was considered a union according to *ius gentium*. Children from such a union were not subject to paternal authority. Because such unions were common, for example, among soldiers and veterans, they sometimes obtained legalization of the union, citizenship and granting of *patria potestas* by way of a privilege.

A union similar to marriage between persons of the slave state or between a free person and a slave was called *contubernium* and did not produce the effects of marriage. A slave girl's child became the property of her master.

Incestuous relationships (*incestum*) and adulterous relationships (*adulterium*) as well as indecent free relationships of men with unmarried, decent women (so-called *stuprum*) were forbidden and prosecuted.

Children born in unions not recognized as marriages in the legal sense were considered fatherless (*quasi sine patre filii* – children as if without a father), were not subject to paternal authority and had no inheritance rights. They acquired the legal status of the mother. Some may have changed their status by arrogance or legitimacy.