The Decline of *Cum Manu* Marriage in the Late Roman Republic

The decline of *cum manu* marriage and the correlative rise of *sine manu* marriage in the late Roman Republic can be attributed to a number of demographic processes within the Roman population. Of the two types of marriage, *cum manu* resulted in a much more subjugated status of the wife, although we will see that marriage *sine manu* far from represented a fundamental change in the status of the Roman wife. Instead, we can see it as a reflection of high mortality, low fertility, and skewed sex-ratios that the Roman Republic suffered in its late years. These same demographic processes are accounted for in the legislation, attitudes and changing family structures of the late Roman Republic and early Empire. Ultimately, it is this shift from Republic to Empire that created the overarching conditions which led to the decline of *cum manu* marriage in the Roman population.

I

Roman Family Structure

To understand the possible causes for a shift from *cum manu* marriage to *sine manu* marriage, we must first understand the situation of Roman men and women within the family. Roman family structures were primarily based on agnatic ties, or the succession of the father’s line. The head patriarch of the family was known as the *paterfamilias,* and all children and the children of his sons were placed completely under his *patria potestas*. The children of his daughters, however, would have been under the control of their father’s *paterfamilias.* Under this custom, all property legally belonged to the *paterfamilias,* and all legal proceedings had to go through his authority. Upon the death of the *paterfamilias*, men and unmarried women became what was known as *sui iuris*, or independent in the eyes of the law. Sons might become the *paterfamilias* of their own families once they became *sui iuris.* Women who were *sui iuris* had to be appointed a *tutor,* but often this resulted in a great deal of freedom for them in managing their own affairs.

In the case of marriage *cum manu*, however, women left *patria potesta* and instead their husband assumed control of them in a similar manner. If the *paterfamilias* of the husband was still alive, the wife would be under his control as well. Marriage *cum manu*, therefore, allowed a woman to pass completely from the control of herfamily to the control of her husband’s family. She was given the same status as a daughter in her husband’s family, a status known as *loco filiae,* and he was given the same control over her that her father had had. Wives in this position could own no property, as their property legally belonged to their husbands. Anything the wife owned prior to marriage passed into legal control of her husband, and she was unable to come into ownership of anything after the marriage, thus making her unable to inherit property from her own family. The practice of marriage *cum manu*, therefore, cut all legal ties to the cognatic line.

In contrast, when a woman was married *sine manu,* she remained under the control of her *paterfamilias.* In the case of women who were *sui iuris,* they remained relatively independent from their husband’s control. In either case, marriage *sine manu* resulted in wives that were somewhat legally independent from their husbands. They remained in control of their own property, could manage their own affairs, and, as will be discussed later, could instigate divorce. She could also inherit property from her family without it coming into the control of her husband. Marriage *sine manu* kept the woman relatively independent of her husband, but it also had the effect of retaining her ties with her own family.

Prior to the 3rd century BC, marriage *cum manu* was virtually the only institution available to Roman families. There were three ways wives could be placed *in manu* to their husbands, and most historians agree that these three types of marriage originated, or were at least fully detailed, in the early legislation known as the XII Tables1. Though there is no written account of these specific types of marriage in the XII Tables, legal historian Alan Watson postulates that the XII Tables did, in fact, contain a clause that outlined the three ways marriage *cum manu* was created. Several ancient sources list these three types of marriage, *conferratio, coemptio*, and *usus,* and all three list them in the same order. He theorizes that the specific grammatical intricacies of ancient references to these three types of marriage point to a single, authoritative source that originally outlined these three types of marriage2. His conclusion is that this original source could only have been the XII Tables, and this is a point nearly uncontested by modern historians.

The three types of *cum manu* marriages, *conferratio, coemptio,* and *usus,* each reflect a different aspect of Roman custom. *Conferratio* marriages required an elaborate religious ceremony and were limited to aristocracy. *Coemptio* marriages were far more widely used, and involved a ceremony in which the wife was fictitiously bought from her family by her husband. Some historians argue that *coemptio* would have become the preferred method of *cum manu* marriage3 over the third type*, usus.* *Usus* automatically placed the wife *in manu* after a year of cohabitation with her husband, and required no ceremony. A loophole existed within the custom of *usus* in that if a woman stayed away from her husband for three consecutive nights, she would not come under her husband’s *manum.* This custom, known as *trinoctium,* made *usus* easily avoidable, and thus made marriage *cum manu* avoidable.

Historians have a harder time finding the origin of marriage *sine manu*. As Susan Treggiari puts it, “Whether this kind of wife (as Cicero would put it) had existed from the beginning, alongside the wife *in manu,* is an insoluble problem.4” The custom of *usus* provides one possible explanation for the origin of *sine manu* marriage. As Susan Looper-Friedman points out in her article “The Decline of Manus-Marriage in Rome,” the first year of cohabitation between husband and wife was a form of marriage that was not *cum manu*. Therefore, by default, that first year of cohabitation was marriage *sine manu*, and if the wife enacted the custom of *trinoctium* and stayed away for three nights, the marriage might remain *sine manu* indefinitely5. Looper-Friedman points to evidence that *usus* began to fall into disuse. The abolition of *usus,* therefore, was a result of increased exercise of *trinoctium*6*.*

However, this position fails to recognize that *usus* was a custom that completely lacked ceremony and required no formal recognition of the custom itself. *Usus* was automatic—therefore the only way to avoid marriage *cum manu* was to recognize the custom of *usus* and perform positive action (i.e. staying away for three nights) in order to counteract what would become automatic in the course of a year. Therefore, the exercise of *trinoctium* cannot be a cause of the abolition of *usus*. Rather, by exercising *trinoctium,* Roman husbands and wives acknowledged the continued existence of this custom and its automatic effects. According to Looper-Friedman’s theory, marriage *sine manu* could only exist as an avoidance of marriage *cum manu*, and this avoidance could only continue as long as the practice of *usus* were recognized. What we see instead is *usus* falling into disuse and *sine manu* becoming popular as a separate institution.

The perception of marriage *sine manu* as an offshoot of *cum manu* marriage has important effects on how marriage *sine manu* could have grown to become popular by the 1st century AD. *Lex Cincia* may be the oldest evidence of legislation regarding *sine manu* marriage, but some historians argue that *sine manu* existed long before the XII Tables7, and thus did not originate as an avoidance of *usus.* Treggiari notes that “By the end of the 3rd century BC it was worth legislating about wives who were not *in manu.* The Cincian Law, of around 204 BC, which regulated gifts, allowed them between husband and wife. A wife *in manu* by definition had no property to give to her husband.8” The existence of marriage *sine manu* by the 3rd century BC is uncontested, but Treggiari argues that such a law represents an evolution in the Roman ideology of marriage.

II

Augustan Reproductive Reforms

Now that we have some idea of the probable ways in which marriage *sine manu* arose, we can begin to depict a picture of Roman civilization that may have led to its becoming a more popular form of marriage. The basic timeline for the decline of *cum manu* marriage is between the 3rd century BC, when *sine manu* is first attested in *Lex Cincia,* and the 1st century AD, when *sine manu* all but replaces marriage *cum manu.* In this time frame lies the shift from Republic to Empire, and the demographic processes that brought about that shift. Many of these demographic processes cannot be tracked by statistics and record-keeping, as Census data from that time would not have included Roman women. Our most trustworthy source for investigating demographic shifts is in viewing legislation from this time, which shed some light on at least the top-to-bottom responses to demographic realties. Specifically, the Augustan reproductive reforms of the 1st century AD provide a likely picture of the processes within the Roman population as they went from Republic to Empire.

The driving force behind the Augustan reforms, some posit, is low fertility within the empire, particularly among the upper classes of society. If this were a demographic reality, it would certainly make sense based on the rhetoric employed by Cassius Dio in detailing the Augustan reforms.

Inasmuch, too, as certain men were betrothing themselves to infant girls and thus enjoying the privileges granted to married men, but without rendering the service expected of them, he ordered that no betrothal should be valid if the man did not marry within two years of such betrothal,— that is, that the girl must in every case be at least ten years old at her betrothal if the man was to derive any advantages from it, since, as I have stated, girls are held to have reached the marriageable age on the completion of twelve full years.9

The emphasis on a pro-natalist policy is clear. A provision limiting the amount of time a man can be betrothed to a woman without acting on that betrothal is a clear indication that Augustan reforms were meant to maximize reproduction by requiring the upper classes to marry and act upon those marriages with reproductively viable spouses. If fertility were not a real concern, a betrothal to “infant girls” may have been a sufficient stand-in for marriage, but Augustus specifically prohibits such reproductively unviable tactics. The legislation has pro-natalist intent, and thus low fertility throughout the empire, at least in the upper classes, is a logical conclusion to draw.

There is also a strong emphasis in Cassius Dio’s interpretation of the Augustan reforms as a response to an imbalance in female-male sex ratios. One of the provisions of the reproductive reforms is the allowance of men not in the senatorial class to marry freedwomen. That is, all but the upper classes could marry ex-slaves, who were more than likely foreign-born10. Such a provision is a fairly clear indicator that a shortage of Roman born women existed at the time, and thus Roman would be allowed to turn to alternate sources of women to marry. The rhetoric of Cassius Dio also contains a reference to the myth-history of the Rape of the Sabine women in the form of chastisement.

Nay, our fathers even fought the Sabines to obtain brides and made peace through the intercession of their wives and children; they administered oaths and made sundry treaties for this very purpose; but you are bringing all their efforts to naught.11

The reference to Rape of Sabines may indicate that at the time of the Augustan reforms there was a shortage of Roman women, as there was in the Rape of the Sabines. Such an imbalance in the ratio of men and women may also help explain the territorial expansion that transformed the Republic into an empire.

Other information about Roman demography during this time can be gleaned from the historical context. The civil wars of the 1st century BC resulted in high aristocrat mortality, and we can easily extrapolate that the majority of these mortalities would have been amongst male members of the aristocracy. Other reasons for high male mortality may have been the simple fact that “as a general rule, our sources generally demonstrate that men tended to be about ten years the senior of their spouses.12” Both the aristocratic mortalities of the civil wars and the age gap in marriage would have resulted in a relatively high incidence of widowhood in this period of Roman history. The Augustan reforms demonstrate that women in such a position were encouraged to remarry, which may have been a result of the imbalanced gender ratio discussed above.

III

Remarriage and Divorce

Remarriage is the crux of the shift between *cum manu* and *sine manu* marriages in the late Roman Republic. If there were such a high incidence of young widows along with encouragement for women in this position to remarry (and there would have been if the widow was still reproductively viable), marriage *sine manu* may have made the most sense. Remarriage was not a rarity in Roman society, and even less rare was women remarrying. In “The Family in Late Antiquity” Geoffrey Nathan claims that “one-third of adult upper-class women could in fact expect three marriages in their lifetime.13” Such a high incidence of remarriage would make sense in a population concerned with fertility. If a woman still in her viable reproductive years were to remain a widow, those years of fecundity would be wasted. Remarriage would be the only recourse in the hopes of producing more offspring. This would particularly be true when the imbalance in female-male ratio is taken into account. If men outnumbered women, widowhood can be thought of as a way of freeing up reproductively viable women to reproduce with more men while still abiding by laws of monogamy and chastity that were ingrained in Roman culture.

However, women in such a position may have been unwilling to remarry. If their husbands died and left them large fortunes, and she were re-married *cum manu*, her possessions were all ceded to her new husband. A widow, therefore, would have to cede inheritance from her previous husband to her new husband. If she remained a widow, she would be financially and legally independent in a way that would be impossible during marriage. Under such circumstances “the impetus to remarry perhaps diminished.14” Thus we can see how an initial *cum manu* marriage may result in relative independence for a widow. While married, she would be under the complete control of her husband, but upon the event of his death she would inherit his property and no longer have ties to her own *patria potestas—*she would then, have legal agency. This situation would be most easily avoided by a marriage *sine manu.* If her husband died under such circumstances, she would then fall back into the *patria potestas* of her *paterfamilias.* He would then be entirely in control of her future, and would have control over possible future marriages. If her *paterfamilias* were also deceased, her family might be able to retain control of her affairs through her *tutor,* whose power she remained under during her marriage (unless she had three or more children)*.* In these circumstances, a marriage *sine manu* would in fact reduce the power of the woman in the event of her husband’s death.

On the flip side of this is the likelihood of a woman’s husband remaining alive, but her father dying, which is just as likely a circumstance to consider in light of high mortality rates among men. In this case, a marriage *sine manu* would also be to the advantage of both the wife and the husband15. Had she been married *cum manu,* the wife would have renounced all ties to her *paterfamilias* and thus be unable to inherit his wealth after his death. In a marriage *sine manu,* she would still have a claim to inheritance, a provision that would benefit both her and her husband, though in this circumstance her wealth is not legally the property of her husband, their marriage would make it functionally his property even without marriage *cum manu.* Thus in the reverse circumstance of the widow and her father, it is still to the advantage of the married parties to be married *sine manu*, so as to have a chance at increasing their wealth in the event of the wife’s *paterfamilias* dying.

The issue of divorce also results from the same demographic processes that result in favorable circumstances for marriage *sine manu.* Divorce in the Augustan marriage legislation is a more difficult proceeding than it had been in the past, but in fact the added difficulty can be seen as making the main goal of divorce easier—that of remarriage. As Nathan says, “we should think of divorce, at least from the man’s perspective, not as an opposite of marriage, but as a means of remarriage.16” The added provisions to divorce under Augustus required more witnesses be present. This would help prevent a future remarriage from being repudiated on the grounds that the divorce was not confirmed. Rather than discouraging divorce, the Augustan reforms simply created a system wherein divorce was more easily confirmed17.

The most common reason cited for divorce is infertility. If the main goal of marriage is to produce offspring, an infertile wife would eligible to divorce. However, the Roman population was not cognizant of the fact that fertility was not simply a variable for women, but also for men. Thus a husband who divorced his infertile wife may have been equally unlucky in producing offspring with his next wife, and so on. In such a circumstance, divorce would not merely be a means of remarriage by the husband, as Nathan posits, but also the wife. Wives who were married *cum manu* did not have the power to initiate divorce. Watson claims that, “Although legally a wife married *cum manu* could have no property of her own and could not take the initiative in instituting divorce proceedings, nonetheless it does not follow that in practice such a wife was necessarily in a very inferior position.18” His reasoning being that, *cum manu* marriage or not, her dowry was still returnable to her. On the contrary, a wife married *cum manu* would be in a very inferior position, for not only did she not own any of her own property (save, perhaps, for the recoverable dowry) but she was not in a position of allegiance to her family or her *paterfamilias* and thus would not have support in the event of divorce.

If divorce can be thought of as another way, like widowhood, of maximizing reproduction of a population, then marriage *cum manu* offers no possibility for fertile wives to divorce their husbands. If married *sine manu,* however, divorce would become an option and a possible recourse to remarriage and the production of more offspring. The reasons for initiating divorce on the part of the wife may differ from the husband’s reasons, but they are not significant to the overall demographic effect that divorce might have on the Roman population.

IV

Empire-Building and Foreign Marriage

High mortality, low fertility, and imbalanced sex-ratios are effects of and factors in the expansion of the Roman Republic into an empire. But one aspect of empire-building that also contributes to the decline of *cum manu* marriage is the acquisition of foreign territories and the assimilation of foreign peoples. By the time of Roman expansion, *connubium*, the right of intermarriage, was a requirement for neighbor states. As we can see from the Augustan reforms, marriage between foreign women and Roman men was permitted and perhaps even encouraged at times. We also know that marriage between Roman women and foreign men was possible—and in fact, Roman women were able to procure Roman citizens for their foreign-born husbands so as to ensure the citizenship of their offspring19. Thus marriage between Roman citizens and their foreign neighbors was not just an eventuality, it was a practice that very much existed.

Marriage between Romans and out-cultures may have fundamentally shifted the marriage practices of the Romans themselves. It is likely that the practice of *cum manu* held no significance for members of acquired territories that might intermarry with the Romans. Particularly in the case of Roman women marrying foreign men, marriage *sine manu* may have been preferable to *cum manu*, as husbands would not have been familiar with this practice. In addition, Roman wives may have wanted to keep ties to their families, and marriage *cum manu* did not allow for that. It is probable, then, that marriage between Roman wives and foreign husbands would have been *sine manu.*

Thus it was not only the demographic causes and effects of empire-building that led to the rise of marriage *sine manu,* but also the direct effects of the empire’s expansion itself that brought about this shift in marriage practices. These demographic reasons for the decline of marriage *cum manu* may have been accompanied by ideological reasons, such as a renewed sense of individuality and autonomy brought on by foreign populations. Whatever the ideological and moral content of the empire at the time, the demographic realities of low fertility, high mortality and an imbalanced sex-ratio accounts for the shifting marriage practices that took place throughout these three centuries.

End Notes

1Treggiari. p.19

2Watson, *XII Tables.* pp.9-10

3Looper-Friedman. p.288

4Treggiari. p.33

5Looper-Friedman. p.290

6Looper-Friedman. p.290

7Treggiari. p.34

8Treggiari. p.34

9Cassius Dio. 56.7

10McGinn. p.201

11 Cassius Dio. 56.6

12Nathan. p.16

13Nathan. p.22

14Nathan. p.22

15Watson, *Persons.* p.21

16Nathan. p.22

17Nathan. p.20

18Watson. *Persons.* p.28

19McGinn. p. 204

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