SOCIAL AND LEGAL APPROACH TO ANCIENT RURAL FAMILY: EXPERIENCE OF DIFFERENT CULTURES AND COUNTRIES

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Annotation
Family is one of the oldest public institutions, in which priests, medics and lawyers have showed an interest throughout the history. However in the earliest historical signs of humans one can find psychological attempts to affect a family’s prosperity and compatibility.

The present work tries to carry out a brief exposition of the evolution of ancient rural families from a social and legal scope as well as the most relevant characters of the family and marriage institutions in a comparative perspective, studying different conceptions and requirements of law of marriage (basically the consent of the couple) and the influence of the religion on them. It is also made an exposition of the most relevant examples of nowadays legislations and their common legal background as well as the more important differences among the different legislations included in the study.

Keywords: family, marriage, rural family.

Introduction
The meaning of marriage and family differs from one person to another, and from one time to another. In ancient times, for example, a marriage meant a condition in which a woman was given to a man almost as property, and often as part of a political, social, or business arrangement of some sort. For much of human history, marriage has been a permanent institution that, once entered into, cannot be dissolved except by the death of one of the spouses. In the modern world, however, marriage is a vastly different thing. On the up side, marriage is today more of a gathering of equals, rather than the subjugation of one to the other. On the down side, marriage often becomes much more temporary than it has been in years past.

In this work it is studied two different things: a) the social and legal evolution of the family institution in the world in a comparative perspective, focused on the major legal systems and the religious or political influence and b) the consent of the parties as a requirement to celebrate a valid marriage without making a difference between heterosexual or homosexual couples. The study starts from the exposition of the roman society, a good example and well known of a social and legal evolution in a lot of aspects as a background of the western legal evolution, and family law and marriage are one of the examples that can be transplanted to other communities whose evolution could be or was quite similar.

The term family comes from the Latin. But the ancient Romans did not use familia to mean blood filiations or kinship. It meant rather the household property – the fields, house, money, and slaves (Collins, 1991).

The ancient Greeks used the word oikos, which is translated “family”. Aristotle said that the family (oikos) was composed of three elements: the male, the female, and the servant.

In Arabia at the time of Mohammed, the word for marriage was Nikan, which literally meant sexual intercourse. In the Koran it was also used to mean a contract. Marriage thus was conceived of as a contract for sexual intercourse(Fustel De Coulanges, 1973).

The meaning of the word “family” can be a matter for elaborate sociological and anthropological discussion. Traditionally, marriage was an essential prerequisite for the creation of a legally recognised family unit (Stephen, 2003).

Family relations are examined also by sociology, ethics, demography, and other subjects of research. To research family relations we should distinguish between family as a social institution and family as a small domestic group. On the one hand, to describe family as a social institution, family is viewed as a system performing particular social functions and as being a part of a larger system (society). On the other hand, the behaviour of a human being is governed not only by social institutions but by individual features, social status and ethnic groups (Navaitis, 2001).

The marriage is formed in ancient Rome and other ancient tribes or countries as a social institution with a legal relevancy, where family is a pillar of the society and marriage is characterized for being monogamic. Other tribes model of marriage was polygamic but we can easily find in all of them common characteristics.
even they are geographically very far, like their rural origin, the governance of a head of the family (norm-
mally a man), the application and existence of a con-
suetudinary law based on custom (oral one and with
the influence of a religion or god), the simple way
of economical survival based on agriculture, cattle or
hunting. This is the same in the case of ancient roman
families, tribes of Africa (for example, the Nuer tribe
in Sudan\(^2\)), the Kunas in central America\(^1\), Mohawk\(^4\)
in northern America or societies in the far East as in
Japan or China (Glenn, 2000).

The family is the closest and the most stable form
of human relations (Leonas, 1931). It is the union of a
man and a woman bound by conjugal, relative, adop-
tion and maintenance relations, living together and
having a common household. The family makes a pri-
mary social cell, i.e. the foundation. It is not the result
of human intellect, will or decision. The family insti-
tution takes origin in human nature. This is proved by
the birth and existence of the human being himself
(Čižiūnas, 1971).

In different periods of human history the unders-
tanding and development of family establishment,
divorce, adoption, and other legal and social family
relations varied, but the family has retained its impor-
tance and has remained the foundation of society and
state.

Purpose of the research is to evaluate the legal and
social evolution of ancient rural family.

Object of the research is the legal and social evolu-
tion of ancient rural family.

Methods of the research – the analysis of scientific
literature, the analysis of legal regulations, the detai-
ling and generalization as well as the logical abstrac-
ting.

**Results of research**

The social and legal evolution of the institution of
marriage in Lithuania

Marriage [is like]… an archaeological site on
which the present is constantly building over the past,
letting history’s many layers twist and tilt into toda-
y’s walls and floors… many people believe their mar-
rriage is the one true claim to this holy ground. But
… marriage has always been a battleground, owned
and defined by different groups. While marriage may
retain its ancient name, very little else has remained
the same, its boundaries, boulevards, or daily habits
have changed, the only part remaining the same is its
inhabitation by human beings. And yet, marriage has
outlasted its many critics and has also outlasted the
doomsayers of so many eras who post marriage’ obitu-
ary notice every time society talks about changing its
marriage rules (Graff, 1999).

In the early feudal times in Lithuania the marriage
was concluded by buying or kidnapping the bride. The
Lithuanians were also familiar with polygamy. When
Christianity was established in Lithuania (1387), mar-
rriage was regulated by the norms of church, customs,
and secular law. Marriage terms were established:
age (13-15 for girls and 18 for men), normal state of
mind, etc. Being close relatives (up to fourth degree
inclusive by canon law), in-laws (up to third degree),
previous marriage, belonging to other religion was
considered to be an obstacle to conclude the marriage.
Peasants could not marry without their master’s con-
sent. Girls marrying to another manor had to receive
their master’s consent and pay a special fee. The mar-
rriages of Orthodox, Jews, Mohammedans (Tartars)
etc. residing in Lithuania was contracted according to
their customs and the rights granted by the rulers. Dif-
ferent church and secular punishments and fines were
applied for the breach of marriage norms. The church
was in charge of marriage contracting, registration,
and dissolution. The secular courts decided only pro-
erty matters related to marriage (Dičius, 1974).

Getting married in the Middle Ages of Lithuania
was a relatively simple process. The man and woman
joined hands and spoke specific words that made the
vows. Mutual consent was required, and the woman
had to be twelve years old and the man fourteen. Until
the late 16th century, no priest was required. In fact,
even witnesses were not necessary, although a sensib-
le person would have them lest words spoken in the
heat of passion be conveniently forgotten the next day
(Dičius, 1974).

In the 16th century the Church finally succeeded
in establishing its control over what had been up until
then an essentially private undertaking. The lack of
control could be attributed to the simple fact that the
priest did not perform the sacrament of marriage, but
only witnessed it. The couples made the sacrament
happen, not a priest. (This is still how it is viewed
in the Catholic Church today). The Church tried to
discourage such independence, but made little head-
way during the centuries under question. However, it
made very sure that secular authorities, who also had
an interest in regulating marriage, did not establish
control either. In some areas the situation developed
where the kind of private sacrament described above
would have been illegal, but still legitimate (that is,
you might get into trouble, but you were still married)
(Dundulienė, 2002).

Considering the regulation of family social and le-
gal relations in XIX century, many essential differen-

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\(^1\text{Nowadays under Sudanese civil laws (Civil Justice Ordenance, s.5).}
\(^2\text{In the case of Panamá, among other tribes, where a family code is applied.}
\(^3\text{In Quebec, where nowadays is observed the Divorce Act of Can-
ada (Loi concernant le divorce et les mesures accessoires, L.R.C.}
\text{1985, c. 3 (2^{nd} suppl.) [L.R.C., c. D-3-4]. Quebec, DORS/97-
237].}
...ances and contradictions can be found in comparison to the modern family law. The differences are related to the political establishment, oppression, exploitation, and economic conditions; may also be found some similarities related to moral values that have not changed during the centuries as well as customs and religious beliefs.

When the Russian Empire occupied Lithuanian territory, Empress Catherine II by her order of 30 October 1794 [Full assembly of Laws of Russian Empire, 1794] approved the incorporation of some Lithuanian lands into Russian Empire. The addendum-manifest of 14 December 1795 to the order contained a promise to leave the previous rights, liberties, religious liberty and property safeguard to Lithuanian inhabitants (Development of Legal Institutions…, 1981).

In XIX century, youth were expected to marry at the age of 20-25. They usually met at village entertainments. The oldest daughter was supposed to marry the first, and the youngest - the last. Peasants did not marry without their parents’ blessing. Parents or foster-parents usually did not interfere with the choice of the bride, unless he or she was not of equal standing. In this case the young people had to part (Fridman, 1890).

Free will marriages were also approved by the first Lithuanian Statute of 1529. When the marriage was concluded without the parents’ consent, the parents could deny their children the right to succession (Fridman, 1890).

The differentiation of society, increasing of migration from the countryside to towns and abroad resulted in family model changes. The Lithuanian intelligentsia tried to adopt a new family model providing that a wife was expected to support the husband’s social aspiration and to breed their children according to Lithuanian traditions (Navaitis, 2001).

The social and legal evolution of the institution of marriage in Spain

Until 1564, the matrimonial Spanish legal system was the Roman one, which was not imposing a concrete form to celebrate a marriage, being enough the mere assent of the spouses on the base of the roman affectio maritales. From 1564 until 1870 the canonical marriage will be applied. It is precisely from 1870 when, for the first time, Spanish civilian establishes a matrimonial system. In it, the State was recognizing neither validity nor efficiency to the marriage celebrated out of the civil established requirements. This system was repealed in 1875 through a Decree of February 19th. In 1889 is approved the civil Spanish Code in which the system of 1875 is gathered, governing for the whole Spain an unitary concept of marriage, establishing general procedure for the case of collision of classifications. It has been the one that has lasted up to the Constitution of 1978 and the later reform of 1981 (Veiga López, 1996). Concretely, the article 32 of the Constitution of 1978 says: “The man and the woman have right to marry with full juridical equality”. Precisely, as it is not contemplated expressly that the marriage must celebrate between a man and woman giving margin to other interpretations, what bases the constitutionality of the legislative modification that made possible to marry between persons of the same sex.

The social and legal evolution of marriage in Europe and in America

Marriage statistics shows a fall of marriages rates in the European Union up to half with the exception of the United Kingdom where marriage (reduced less than half) is more popular than in the rest of the European countries. On the other hand, it is increasing the lone parent families due to divorce and also non-married women who were cohabiting (Losano, 1993.). All these shows that attitudes to family relationships are changing but not only because a demographic or social picture, but also in the legal conceptualization of family relationships, in two different ways: a) the female emancipation and b) the growing recognition of the interests and needs of individual family members (Merryman, 1999.).

In any case, despite these changes in Europe and that in some cases affects in different ways in the European countries as we are going to see briefly. Marriage legal concepts and requirements concerning to the celebration of the marriage are gathered from more or less homogeneous form by the different juridical European classifications summarized in: a) to the age (major of 18 years, with some exceptions) and b) to the matrimonial pre-existing link and kinship. But there are also some differences, for example in the republic of Ireland; the marriage is not defined in any legal text. There exists, nevertheless, a concept proceeding from the consuetudinary English law that says marriage is “the voluntary union for life between a man and a woman...” (Cane et al, 2003.). The above mentioned concept has been recognized like valid in Ireland due to, fundamentally, to its belonging to the Anglo-Saxon system, in which the contractual conception stands out, though with shades, of the marriage, where it fits so much the celebration of the civil wedding like in the religious form. Also, the Italian legis-

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7. Article 44.2.2 of the Constitution of 1937. Was even accepted the absence of witnesses according to an ancient law before the Concile of Trento. Vid. R. PALÀ, La institución del matrimonio en la república de Irlanda, Barcelona, 1993.
ration does not offer a definition of marriage neither in the Constitution nor in the Civil code, though the article 29.1 of the Constitution refers to the marriage when says that “the family is a natural society founded on the marriage”.

On the other hand, in Germany, the BGB expresses a definition of marriage in the paragraph 1353.1 where, concerning to the effects of the marriage says: “the marriage is a contract for life. The spouses are reciprocally obliged to live in conjugal community”. Before 1875, in Germany, the civil marriage was celebrated in a subsidiary way. Also in Portugal, can be found a definition of marriage in the article 1557 of the civil Code: “the marriage is a contract celebrated between two persons of different sex who try to constitute a family as a full community of life”.

In America, we can study some examples like Mexico, where the civil Code for the Federal District and for the whole Republic in Federal matter of 1870, regulates the marriage in the book I, articles 139 to 265. Actually, cannot be found any definition of marriage in the civil code, as in the Argentine civil code and the Paraguayan one. The regulation of the marriage is understood from the contractual point of view, as arranges in the chapter IV (book I, title V). For it, the matrimonial assent is formed as an essential require-ment for the valid celebration of the marriage (David, 1985).

Very different it is the case of Chile, in the initial moments of its independence, where the marriage was ruled by the canon law. Since 1844 the celebration of marriage will be allowed among no Catholics though the ceremony has to be celebrated by a priest. A definition of the marriage can be found in the article 102 of the civil Chilean Code, in which it is said: “the marriage is a contract for which a man and a woman join current and indissolubly and for the whole life in order to live united, of procreating and of be helping mutually”.

Nevertheless, in the Cuban legislation, as in other classifications as in Panama, Puerto Rico or Québec, the marriage is defined. In the Cuban case, the article 2 of the Family code of February 14th, from 1975, at the time that it expresses a legal concept of marriage, establishes some requirements: “the marriage is the union voluntarily coordinated of a man and a woman with legal aptitude for it, in order to do common life”. Also in the Family code, in articles 18 and 19, the not formalized marriage (roman concubinate or not formal unions defined by Modestino) is recognized: “the existence of a matrimonial union between a man and a woman with legal aptitude for contracting it and that assembles the requirements of singularity and stability, will suffer all the proper effects of the marriage formalized legally and will be recognized by competent court”.

The social and legal evolution of marriage in Asia and Africa

In Japan, the family has been organized, traditionally, around a figure similar to the Roman paterfamilias whose duty was of supporting the submitted ones to his authority and these owed respect to him and ask for the assent to marry (Article 750 of the Japanese civil code.). The marriage is conceived as a form of organization of the family more than as a free union between man and woman (Article 772 of the Japanese civil code). This matrimonial conception was relaxing and managed to establish, in the article 808 of the Code of 1898, the possibility of the divorce for mutual agreement of the spouses that coincides with the draft of the current one (Birks et al, 2002.)

In China, 80% of its population lives in the countryside and the feudal patriarchy still has a tenuous hold on the views of the village’s residents. The old saying “no one should marry without a match-maker” is still very influential as young people stay in their own villages and do not have much contact with other places, with very few opportunities to meet young people and fewer chances to fall in love and marry. But that situation is becoming different as society is changing quite quickly and even the ceremonies of celebration of marriages and the influence of the parents to choose husband (Tan, 1997.). Nowadays, marriage is considered as a contract and, in this way, exist a total freedom of the parties to choose husband or wife, the marriages are monogamic, the interests of women and children are protected and both parties (man and woman) enjoy equal status in the home (Bogan, 1994).

The social reality in Africa relating to this part of the work is the correspondent to the south of the Sahara, also known as the Black Africa. The African peoples offer a great diversity of customs and traditions as well as an important shortage of sources to realize a systematizing of their right, of customary and casuistical character (Bitamazire, 1994.).

In the African mind, as in most of antique societies and their laws (also in the nowadays modern Europe), ancestral custom is linked to a mythical order of the universe (Baumann et al, 1967). To obey custom is to pay respect to one’s ancestors whose remains are fused with the soil and whose spirits watch over the living. The African conception of world is essentially static and rejects the idea of progress (Martin, 1982). In this way, there were few codifications till the inde-

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8 Articles 84, 87, 89, 122, 140, 143 bis, 147 and 148, 261 and 317 bis.
9 There exists a definition of marriage (long distance) in articles 173 to 175.

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10 Marriage uno arbitray decision by any third party, mercenary marriage, the exaction of money or gifts, or any other acts of interference in the freedom of marriage are prohibited.
pendence and was not habitual the production of legal laws with few exceptions like Senegal (Tosi, 1981), where in 1973 there was realized a codification of the matrimonial regime in order to support the coexistence of the traditions and the modernization of the matrimonial institution (Botiveau, 1993.), or Rwanda that includes the law of family in the first title of the Civil Code. After independence of the African countries more than 100 codes were promulgated in French-language states and major legislation has been also enacted in the English-speaking countries, though population still lives by the old ways quite obvious to the whole movement towards modernisation (Gonidec, 1968.). The reasons of that can be exposed in some general and common premises like: a) the distrust for the people to which the State could guarantee concerning to their rights, b) the mediating function of the State in the conflicts between families and c) the importance of these that are the real harmonisation of the society. Established these premises, the family is formed as a legal person, partially, similar to the roman configuration, with a common ascendency and of the one that was excluded to the married women who were continuing belonging to their original family (Bennett, et al 1975.).

The head of the family administers the common goods and establishes the familiar agreements, leaving the members, the property of small objects and utensils of scanty economic value. As for the matrimonial system, it fits the celebration of the marriage, generally monogamic, though the polygamy is very generalized by the exception of Madagascar or Rwanda that recognizes a monogamic marriage in the Civil Code (Article 169. And also in article 25 of the Constitution) and polygamic one is prohibited by the Criminal Code (Article 357 that includes a punishment of 1.000 to 20.00 francs and from 3 months to 3 years of prison.).

The assent of the future spouses is a fundamental requirement for the validity of the marriage, as well as that this one is freely given and the parts have come to the puberty. Also the unions that do not have the recognition as a formal marriage has the same legal treatment as it. Actually, the only difference between them is that the marriage carries the constitution and delivery of goods with a view to endows the husband that, in case of divorce, they will have to be returned (Baumann, et al, 1967).

The social and legal evolution of marriage in Islamic law countries

In general, the countries of application of Islamic law, nowadays, have abandoned the consuetudinary law and have assembled in specific codes the procedure about family rights, codes of personal statute, due to the role that plays the family as a base of the society and composed by persons joined by link of consanguinity or kinship (Combalía, 2006.), and basically at the moment of understanding the later development and protection that legally is granted to the marriage and the interest that relapses on its good functioning. For the Islam, the marriage is considered to be a mandate, being a fundamental feature the consideration of the marriage as a contract of private law, which regulates the union of a man and one or several women simultaneously and which has an indefinite character, which does not suppose that, at first is indissoluble. At the moment of forming the above mentioned contract, some authors have inclined for assimilating it to the contract of sale

In Algeria, in agreement with the article 4 of the Algerian code of personal statute says: “the marriage is a contract agreed between a man and a woman according to the legal form, being its aim, among others, to create a family based on the affection, the pity, the mutual help, the moral protection of the spouses and the preservation of the family links”. The marriage in Syria, according to the article 1 of the code of personal statute says: “It is a contract between a man and a woman who is lawful legally being its aim to create a link of life jointly and procreation”. In very similar terms the Yemeni code conceives it in its article 6 where it stands out the marriage as protection form of the adultery as well as of creation of a family which base should be the good living together. Not all the codes of personal statute of the different Islamic countries gather a concept of marriage. In this way, for example, the Egyptian just speaks about the marriage as a contract for which the husband will have to support the wife from the date of its perfection, according to the modification of 1985 established in the law 1000 where only the characters are enunciated. Other codes like the Libyan (Ansell et al, 1972.) in the article 2 or the code of Oman Omani in article 4, introduce innovations in the definitions of marriage as the love and the comprehension that the couple must practise, but they are not general characters that they gather for general norm in the Islamic codes. Others as the Sudanese code in article 11 offers a concept very simple but differentiated from marriage where the mutual support stands out between a man and a woman and declares the possession lawful of each one of them with other one of legal form (Ruiz-Almodóvar, 2005.).

The promulgation of these codes was a consequence of the will of these countries of being provided with their own laws after be constituting as independent States, existing some exceptions. The different

11 The acceptance takes effects since some presents are made by the couple as a proof or evidence of a precontractual relationship. The breach of this precontract does not carry any economical consequence.
codifications are based on a juridical Islamic certain school though also they have adopted beginning of other juridical schools\textsuperscript{12} and prescriptions of statute law, for what, though seemed, they are not exactly equal.

Other changes introduced as a consequence of their legal and social evolution consist in: a) the elimination of the right of the tutor to marry the young man or the young woman without his/her assent\textsuperscript{13}, b) the authorization to the spouses to including clauses in the matrimonial contract, c) the constitution of the notion of puberty to be qualified for the couple by a minimal age\textsuperscript{14}, d) the restriction of the polygamy on having imposed on the married man the obligation to possess the judicial authorization, of his wife or of the future one to contract the new marriage, e) also restricts the right of the wife to be supported, though with different nuances according to the different codes, f) the institutionalization of the divorce by request of the wife and the right of the husband limits itself to breaking the marriage having to indemnify in addition the wife if he repudiates arbitrary, g) ending of the practice of the child slept on having fixed in one year the maximum period of pregnancy, h) the grant to the mother the possibility of being a tutor of her sons and daughters after the father, i) the implantation of the duty to register the matrimonial contract and the repudiation.

In Morocco, the code of the family, also named as Al-mudawwana, expresses in article 2 that it will be of application to all the Moroccans though they have another nationality, as well as to the refugees and stateless included in the Agreement of Geneva of 1951, and to the couples in which one of the members is Moroccan or those in which both Moroccans only one of them is Moslem. The article 4 defines the marriage as "a contract of union and cohesion between a man and a woman of a lasting way being their aim the honesty, the virtue and the creation of a stable family by means of the protection of the spouses".

The marriage is negotiated by the relatives of the woman who are those who decide for her, being alike for a bilateral contract between the designated ones for the law or for the custom to coordinate it in proper person but producing the fiction across which they are different those who turn out to be married. The juridical effects that to this fiction and the succession of events is identical to those who were spreading out in the antiquity diverse categories and legal institutions of the Mediterranean civilizations.

As general conditions, for the valid celebration of the marriage, they had to give the following ones: a) the assent of the parts is expressed. To similarity of the contracts, there must be an offer and a correlatively acceptance that they them must grant and express them, to the possible being the proper contracting parties (or a tutor if is not adolescent) and the representative or agent of the fiancée\textsuperscript{15}, b) celebration of the ritual before, at least, two witnesses in order to assure advertising for the contract, c) must not exist any impediment in order that the parts join in marriage. The impediment of ligament does not exist properly but respect of the woman, while her previous marriage is not still dissolved. Concerning to the men are allowed to be joined of simultaneous form in marriage with several women gathering indicated the Koran: "you marry the women that you like, but if you are afraid not to act fairly, then with the alone one or with your slaves", though limiting himself his number to a maximum of four wives, d) capacity of the contracting parties to express the assent with full validity.

When one speaks about capacity one refers to a sufficient physical established aptitude, in general, in 18 years\textsuperscript{16}, and psychological of the couple in order that they could expire with the purposes of the marriage (Some authors think Islamic marriage means the legalization of sexual relationship between man and woman). The matrimonial assent is very similar to the contractual\textsuperscript{17} one while it can be realized verbally without concrete form is demanding\textsuperscript{18}. The negotiation, as a contract, concludes with the delivery of a quantity of money (dowry) with a view to ability, by which the rights recognized to the husband on the woman it will be based on the fact of having paid the above mentioned quantity to acquire it without, in general, neither a minimal quantity nor maxim has been established (Article 53 of the Code of Kuwait.). The constitution of the ability for the wife will be always obligatory in all the countries of Islamic right and will be able to be composed by everything what is lawful and valuable in money and will be a property of the woman.

\textsuperscript{12} For example codes of personal statutes from Kuwait, Argelia, Morocco, Mauritania and Tunisia, based on maliki school tradition. On the contrary, other codes from Egypt, Jordan, Lebanon, Syria and Sudan based on hanafi school tradition.

\textsuperscript{13} Moroccan code is the only one that let that possibility, but was repealed in 1993.

\textsuperscript{14} A exception of the Sudan code.

\textsuperscript{15} Man, more that eighteen, relative of the bride or, even in some cases other apart form relatives. Fewer than eighteen need assent of their guardian to conclude the marriage. A judge can take part in the case of absence of the guardian.

\textsuperscript{16} In Tunisia it is necessary to be 20 years old men and 17 years old for women, and in Algeria will be required that the man and the woman must be 19 years old to marry. In Jordan (article 5 of the code of personal statute) requires 16 years old for the man and 15 for the woman.

\textsuperscript{17} The difference with sale is that in marriage the man needs to have money to maintain the woman and the children.

\textsuperscript{18} With the exception of the woman that is virgin where her sole silent is enough to be considered as an acceptation.
Conclusions

1. Societies and economical their survival in the antiquity were more or less based on a common model of development, the agrarian and cattle (rural) ones, and, despite of the differences in the family or matrimonial models, the certain thing is that at present, the evolution of the family models has driven to a few very similar results without big differences because of dominant religion in a society (Hindu law, Islamic law), its legal juridical tradition (civil law or common law) or even the political model who governs (capitalism, socialism, communism).

2. The roman private law and, specially, the Corpus Iuris of Justinian indicates the starting point of a long juridical European tradition that comes up to the civil codifications of the 19th century. During the Middle Ages (centuries V A.D. the XV th. A.D.), the Church had legislative competition in matrimonial right and of family appearing, the canon law, as the regulator of such matters and the ecclesiastic courts as the competent ones to explain the controversies. Towards ends of the 17th century and beginning of the XVIII th. a strong Protestant resistance takes place against the conception of the marriages an ecclesiastical matter, considering it to be a purely civil element. Due to the influence of the natural right the secularization of the marriage, it takes place as legal institution. It turns into a contract that chases natural objectives. Up to the 19th century the Spanish law was integrated by the statutory system, consuetudinary laws and Alfonso X’s book of Seven Parties. After the approval, in 1889 of the civil Spanish Code, it governs for the whole Spain as an unitary concept of marriage.

3. At present, as result of social differences, of the different legal systems and of religions, there exist in the world different forms of regulation of the matrimonial systems, which can be synthetized in two big groups: a) classifications that recognize an only exclusively religious form of marriage(couple) (system that reigned in Spain from 1564 until 1870) or exclusively civil marriage (Germany, France, Switzerland, Holland, Belgium, Mexico Uruguay and Spain in the systems of 1870 and 1932) and b) those other classifications that gather a system of plural recognition that can be optional civil wedding or of free choice(nowadays in Spain, United Kingdom, Italy, Denmark, Sweden, Finland, Iceland, Norway) or the subsidiary civil wedding (Spain from 1875 up to the Constitution of 1978 with the exception of 1932).

4. Not in all the juridical classifications, the institution of the marriage is defined and neither is uniform the way of regulating the above mentioned institution and even not always it will have a monogamic character. Some countries regulate the matrimonial system in their civil Codes, others gather it in a specific compilation and even there are some of them where the custom is applied. It is necessary to mention countries that gather expressly the assent as essential requirement for the juridical valid constitution of the marriage since already it was happening in the roman world and others that, though it is not expressed of such a way, they establish that its lack supposes the consideration of void marriage. But it is a common feature the exigency of the specifically matrimonial assent for the validity of the marriage, as a part of the celebration of a sacrament or as essential element of the celebration of a contract.

5. The lack of this requirement determines the dissolution of the marriage. Even there exist countries in which the presentation of the assent gives place to a valid not matrimonial union constituting a real union of law called as not formalized marriage supplying the same effects that the formalized marriage. Its foundation is based on the will of the legislator to offer a juridical alternative to the stable and voluntary unions which components, with sufficient aptitude to understand and will, they take a conjugal life in the same home apart form the marriage but without realizing the formal steps of the same one (Panama, Cuba and the majority of the African countries and some Muslims), that gather Modestino’s idea of that the consortium with a free woman was not concubinate but nuptials raising to the range of matrimonial union other informal unions since over the forms one finds the will of the interested parties.

References

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Teisinis ir socialinis požiūris į senovės kaimo šeimą: skirtinę šalių ir kultūrų patirtis

Santrauka

Šeima yra viena seniausių visuomenės institucijų, kuria istorijos tėkmėje domėjosi teologai, filosofai, medikai, teisininkai. Įstiriinė šeimos instituto raida labai įvairialypė, priklausanti nuo laikotarpio kultūros, pasaulėžiūros bei religinių dogmų. Labiausiai šie visi aspektai, ypač kultūriniai ir religiniai atispindėjo kaimo žmonių santuokų sudaryme. Šeimos santykiai visada vaidino ir vis dar vaidina svarbų visuomenės socialinių sistemų. Šeima yra pirminė socialinė ląstelė; ji vykdo pagrindines funkcijas giminės pratęsimo, jaunosios kartos auklėjimo, ir teikia tarpusavio moralinę ir materialinę paramą šeimos nariams. 

VIeną pagrindinių šeimos kūrimo etapų tiek teisiniu, tiek ir socialiniu požiūriu yra santuoka.

Formalai šeima egzistuoja nuo jos registracijos iki santuokos nutraukos ar pasibaigimo. Psychologinis santuokos ryšys sukuriamas poros santykiam pradėdus veikti žmogaus jausmus, galvos ir elgesį, ir išlieka tol, kol šie ryšiai ir požiūris į jis subjektyvūs yra reikšmingi. 

Šiame darbe autorai atliko trumpą senovės kaimo šeimos raiados analizę, akcentuodami socialinius ir teisinus aspektus šeimos ir santuokos instituto lyginamojoje perspektyvoje. 

Sitraupinėje autorai nagrinėja įvairias koncepcijas ir reikalavimus santuokos sudarymo, taip pat nariaus įtaką santuokos institutui. Darbe taip pat nagrinėjama skirtinę šalių ir kultūrų Santuokos...

Pagrindiniai žodžiai: šeima, vedybos, kaimo šeima