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Ancient Romans led the way in no-fault divorce

STANFORD -- No-fault divorce is not unique to the 20th century - the ancient Romans showed the way.

In fact, the Romans were more liberal in their divorce practices than are contemporary societies, according to Stanford University classics Prof. Susan Treggiari, whose book *Roman Marriage* has just been published by Oxford University Press.

To divorce, one or both parties to a Roman marriage simply had to consider themselves no longer married. It was deemed advisable to notify the other party, but not legally required that one do so. No public authority was involved.

Romans didn't "get a divorce," they simply divorced, Treggiari said.

The "no-fault" divorce evolved over the centuries. In the early years of Roman society, the husband had the right to divorce his wife for major faults - such as adultery - or drinking wine, which was supposed to lead to major faults.

As time went on, husbands acquired the right to divorce their wives for other failures. These included not producing children; since the wife was not viewed as being at fault, however, the husband had to return her dowry so she could re-marry.

By the first century B.C., either spouse could divorce the other or they could agree mutually to divorce. Since marrying another person was an indication that someone considered him or herself divorced from a previous spouse, bigamy was impossible.

As for adultery, Treggiari said, "Romans, as far as I can judge, were less into honor and shame than other Mediterranean peoples since."

In the first century B.C., Emperor Augustus, apparently believing that husbands and fathers were not doing enough to punish adultery, promulgated a law changing adultery from a matter for private settlement into a crime. The law called for severe penalties, including confiscation of property and exile, and allowed for a plea of justifiable homicide in some cases if a husband came home and found his wife in bed with another man.

At least one scholar, Treggiari said, has traced a link between this Augustan law and the Italian "crime of honor" in which, until very recently, courts would impose only light sentences on a man who killed his wife's lover "in the heat of the moment."

Marriage customs, too, changed over the years. In early Rome, from the eighth century B.C., the institution of *patria potestas* gave men absolute power over their wives and children. They could abandon or kill babies, as was often done with deformed infants, and they had power over their children's property, even after the children grew into adults.

This patriarchal system evolved over the centuries, and in later periods women could marry without entering their husband's legal control. In fact, some women married and only later chose to put themselves under the power of their husbands, probably for reasons of property and inheritance, Treggiari said.

Classical Roman law, from 100 B.C. on, required the consent of both bride and groom to an engagement and marriage. As a practical matter, since divorce was easily available, forcing a couple to marry made no sense.

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