

Marriage, Sex and Death:
The Family in the Post-Imperial west

By

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Abstract

This thesis presents a cultural history of families and family roles in the post-Imperial west, here defined as AD 400-700. This thesis questions the ‘tri-partite’ influences of Roman heritage, ‘Germanic’ culture and Christianisation in the post-Imperial west, and identifies the prime driver of change in the construction of families as the development and implementation of Christian thought. This thesis is in two parts. The first considers families in the legal context of the post-Imperial law codes, and provides a systematic overview of the laws using the Theodosian and Justinian codes as a point of comparison. This section concludes that the post-Imperial codes are Roman in nature and that much of the legislation which concerns the family is very similar to the late Roman law of the Theodosian Code. This section considers legal stipulations concerning betrothal, marriage, adultery, divorce, widowhood, and parenthood. Part two considers the issues raised in part one within the literary context of the post-Imperial west, drawing on a wide geographical and chronological range of genres and texts to provide a diachronic analysis. This section considers many of the same concerns which are raised part one, but highlights different perspectives. In particular, part two argues that the development of Christian thought concerning families, and the increasing power of Christian Churches underlies much change that is seen in the literary texts within and throughout this period. These two sections come together to present a broad analysis of families and family roles throughout the lifecycle of the traditional families in the post-Imperial west, highlighting new cultural and religious landscapes as drivers for change rather than ethnic values.

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Abbreviations and Translations

<i>LC</i>	<i>The Burgundian Code</i> , trans. K.F. Drew. [1972, Philadelphia).
<i>Pact. Leg. Sal.</i>	<i>Laws of the Salian Franks</i> , trans. K.F. Drew (Philadelphia, PA. 1991).
<i>Cap.</i>	Capitularies in, <i>Laws of the Salian Franks</i> , trans. K.F. Drew (Philadelphia, PA. 1991).
<i>Lib. Iud.</i>	<i>Liber Iudicorum</i> , trans. S.P. Scott. (Boston, IL. 1846-1929).
<i>CTh</i>	<i>Codex Theodosianus</i> , trans. C. Pharr, T.S. Davison & M. Brown Pharr. [Corpus juris romani 1], (Princeton, NJ, 1952).
<i>LR</i>	<i>Laws of the Salian and Ripuarian Franks</i> , trans. J. Rivers. (New York, NY. 1986).
<i>Edit. Roth.</i>	<i>Edictum Rothari</i> in <i>The Lombard Laws</i> , trans. K. Fischer Drew. [Philadelphia, PA, 1973).
<i>Liut</i>	<i>Edictum Liutprand</i> in <i>The Lombard Laws</i> , trans. K. Fischer Drew. [Philadelphia, PA, 1973).
<i>Grim</i>	<i>Edictum Grimwald</i> in <i>The Lombard Laws</i> , trans. K. Fischer Drew. [Philadelphia, PA, 1973).
<i>Angers</i>	<i>The FormulAriès of Angers and Marculf: Two Merovingian Legal Handbooks</i> , trans. A. Rio. [TTH 46], (Liverpool, 2008).
<i>Marculf</i>	<i>The FormulAriès of Angers and Marculf: Two Merovingian Legal Handbooks</i> , trans. A. Rio. [TTH 46], (Liverpool, 2008).

All other abbreviations correspond to those found in the Oxford Classical Dictionary and L'Annee Philologique.

Introduction

The focus of this thesis is conveniently summarised in a *New York Times* article from September 2012. Titled ‘Till Death, or 20 years, Do Us Part: Marriage Through the Contract Lens’ Matt Richtel highlighted the difficulties facing American marriage and presents the twenty-first century as a crisis period for the conception of modern marriage. Through a number of prominent scholars in modern American demographic and family research, Richtel examined the two contrasting elements of, and the two major players in, modern American marriage: the economic realities mediated by lawyers and the romantic ideals mediated by churches.¹ The family shape - most notably the centrality of a legal marriage - and the clashing sides presented in this article are strikingly similar to those presented in the literature of the period covered by this thesis. The form and function of the family has long been seen as one of the most useful and significant lenses through which to view any given culture, and the family has frequently been viewed as an important site of cultural change and evolution. This is as true of the period AD 400-700 in western Europe as it is for American in the twenty-first century; it is a period of considerable cultural and political change where the family is the locus for changing discourses and apparent behaviours. As the traditional power structures of the Roman political world declined during this period, and the Christian Church rose to fill that power vacuum, the family became a vitally important locus for cultural struggles concerning morality, law and tradition.

The primary focus of this thesis is to examine and question how far the understanding of the family unit changed during these centuries and to consider how these tripartite influences of Roman heritage, alleged ‘Germanic’ custom and emerging Christian traditions and discourses intersect in terms of defining and describing the family, family roles and family relationships. It aims to combine two successful methodological and analytical approaches to produce a more comprehensive synthesis of family discourses and behaviours.

¹ Richtel, 2012

While accepting the current consensus regarding the general structure of the post-Imperial family as a nuclear unit (see below), this thesis emphasises the notion of change in the presentation and discussion of the family throughout this period, and aims to identify and as far as possible explain these changes. This thesis questions a number of the assumptions that are found in the two primary strands of scholarship concerning the post-Imperial family and attempts to tie these strands together. These two strands can broadly be seen as being typified by those who have attempted to identify a Roman/Germanic dichotomy, and those who have examined a Christian/non-Christian dichotomy. Thus, this thesis poses two central questions about the family in the post-Imperial west. First, it questions how far the Roman/Germanic dichotomy is realistically found within the legal and literary sources, once the Merovingian family is removed from the analysis; secondly it asks how far the Christian/Non-Christian dichotomy is evident. Finally, this thesis asks whether these are useful categories of analysis for the post-Imperial family as a lived experience, or whether new ones are needed.

The family of the late antique west has been the focus of a number of studies examining the effects that encroaching Christian cultural hegemony and the ‘barbarian hordes’ had on the structure and expression of the family. Equally there has been a great deal of scholarship concerning the early medieval family, locating the beginning of the early medieval period around AD 800 and the positioning of the ‘dark ages’ of the post-Roman, pre-Carolingian centuries as a defining moment in the creation of a European family. Although these studies often consider the same time periods and even the same geographical locations, they tend to present drastically different versions of the family. The former concentrates entirely on Roman elites and the perceived decline of Roman cultural values and the rise of Christianity in the west, thus looking forward from the high Roman Imperial period and emphasising concepts of ‘fall’ and ‘decline,’² while the latter looks backwards from the high medieval period, and tends to be interested primarily in the new ‘Germanic barbarian’ cultures, viewed primarily through their law codes, and on the developing feudal

² For example Kate Cooper, *The Fall of the Roman Household* (2009) or Geoffrey Nathan *The Family in Late antiquity* (2000).

system.³ Alongside this approach there runs a heavy focus on the Merovingian royal family, primarily due to the seductive details of Gregory of Tours' *Decem Libri Historiarum*.⁴ However, none of these have considered the period AD 400-700 as a discreet or individually important period in the development of the cultural concepts that - as Richtel noted - still underpin the western concepts and ideals of family. The withdrawal of the Imperial, Roman power structures which had defined western Europe for so many centuries, the corresponding rise of the Church as a power structure in itself and the dramatic differences that are found in the way the family is presented in 400 and 700 in the same places makes the post-Imperial period a vitally important period of history in understanding how the medieval - and modern - idea of the family came to be.

This thesis unifies two of the prevailing methodological approaches and moves away from the third to look at the post-Imperial western family as a distinct unit, informed by the Imperial past, by developing Christian tradition and by the new political power structures arising in the post-Imperial kingdoms. It places the family as a central and fundamental facet of the cultural, legal and social shifts that occurred during this period and examines the changing cultural milieu of the west through through the cultural history of this unit. Significantly, this thesis will not consider the Merovingian royal family in any great detail or as examples. There are two key reasons for this: first, that the familial behaviours of the Merovingians as documented by Gregory of Tours have already been studied in some depth;⁵ secondly, the demotion of the Merovingian royals from the centre of any analysis allows for a wider geographical area to be more comprehensively examined. Although, due to the survival of sources, Gaul remains geographically core to this thesis, the relegation of the Merovingian royal family allows much wider questions to be asked of the family and its significance as a

³ For example, Jack Goody *The European Family* (2000); David Herlihy *Medieval Households* (1985); Gerd Althoff *Verwandte, Freunde und Getrue* (1990); Lawrence Stone *The Family, Sex and Marriage in England, 1500-1800* (1977).

⁴ Such as Ian Wood 'Deconstructing the Merovingian Family' (2003), Danuta Shanzer 'History, Romance, Love, and Sex in Gregory of Tours' *Decem Libri Historiarum*' (2002), Suzanne Wemple *Women in Frankish Society: Marriage and the Cloister 500-900* (1983).

⁵ See, Wood, 1994; 1994a; 2000; 2003; 2008; Shanzer, 1997; 2002; Wemple, 1983; 1993; Le Jan, 1995; Heers, 1974; Nelson, 1978; 1991; Stafford, 1983; Ennen, 1989. Affedlt and Vorweck, 1990; Lescouzeres 1993; Fischler, 1994; Cooper, 1996; McDonald, 2000

locus and marker of change in western Europe. Finally, the exclusion of the Merovingian family from this analysis allows this thesis to examine how far the Merovingian royals have skewed previous analyses towards finding ‘Germanic’ influences in the family of the post-Imperial west that are not otherwise present in the broader source material. This question is central to this thesis.

Terminology and Time Frame

The period under consideration here, AD 400-700, is a difficult and contentious one that has been considered from a great many angles. Many aspects of the period therefore suffer from confused terminology, with the same words often used to describe entirely different concepts, and the same concepts described using very different words. With this potential for confusion in mind I would like to clarify the terms I will be using and how I am using them.

This thesis refers to the period under consideration as the post-Imperial period. In this way I hope to distinguish the period from late antiquity, a term which tends to be extended to anywhere between AD 600 and AD 800, and the early middle ages, which is often used to describe the period from between AD 600 to AD 800 onwards. Late antiquity is now a widely accepted periodisation, but has always been a disputed paradigm for historical analysis.⁶ The period has been defined in this thesis as a deliberate attempt to reject traditional periodisations.⁷ It covers the period during which the western Roman Empire was falling, encompassing the Sack of Rome in AD 410, the deposition of Romulus Augustulus in AD 476 and the many battles, incursions and withdrawals between Roman and non-Roman troops up to the incursion of the Lombards. I aim to cover the period during which the political upheavals were the greatest and the most significant changes were taking place. It is during

⁶ See the first issue of the *Journal of Late Antiquity* in 2008, including articles by Clifford Ando, Edward James, and Arnaldo Marcone for a thorough overview of the contentious issues and differing interpretations of the concept of ‘late antiquity.’

⁷ Following the example of Smith, 2005:2-3

this time that the Imperial power structures were losing their significance and the church was rapidly developing as a ‘replacement’ power structure in the west, leading to the church’s growing cultural influence. AD 700 has been chosen as an approximate end point. The cultural landscape of AD 700 looks notably different from that of AD 400, but cannot yet be considered medieval; the Roman cultural legacy was still in the process of transforming.⁸ Nonetheless, the great political and religious changes which accompanied the withdrawal of the Imperial structures and the fragmentation of the west had passed.⁹ This thesis is interested in examining how the political and cultural changes of the centuries immediately following the withdrawal of explicit Imperial power, and not in the entire early middle ages as a whole. The majority of the texts and authors considered in this thesis were active during the period AD 400 – 600, but certain sources up to AD 700 have been employed in order to examine the continuity and development of identified themes.

The use of the particular distinguishing term ‘post-Imperial’ for this period avoids preconceptions which are associated with both these broader period identifiers. This term also avoids the problems which could be raised by the sometimes used ‘post-Roman.’ The primary issue with this term is that the world of the west between AD 400 and 700 is very obviously not post-Roman, but retains a considerable degree of Roman influence, and many peoples of this world still identified and styled themselves as Roman. To refer to the period therefore as post-Roman is both incorrect and misleading, as it leads to the inevitable over-estimation of the ‘other-ness’ of the non-Roman ethnic and political groups. Therefore, I have decided to follow Guy Halsall’s example and use post-Imperial.¹⁰ This term both accurately describes the withdrawal of direct Imperial power from much of the west, and does not carry the academic baggage of the other possible terms. Finally, the non-Roman law codes of the post-Imperial western states provide a significant amount of evidence for this thesis. For ease of understanding and referencing I have employed the term ‘codes’ when describing them as

⁸ Smith, 2006: 3.

⁹ For these best historical overviews of this period see Innes 2006; Wickham, 2010; Heather, 2006; 2009.

¹⁰ Halsall, 2007.

a group.¹¹

This thesis also uses a number of terms which have, in the past, been used as racial epithets, and which therefore require clarification. Where the term ‘Germanic’ is used, it denotes a linguistic group, not an ethnic or cultural group or a race of people. It does not imply any form of homogeneity amongst the non-Roman groups that populated western Europe before or during this period, or any common origin. Where it has been used, it will be in inverted commas (‘Germanic’) in order to differentiate my usage from the older usage which has inferred cultural and biological similarity among the diverse groups. Occasionally, but very rarely, I refer to barbarians. This term is intended as a neutral term and is again common shorthand for the groups that are viewed by both ancient and modern historians as non-Roman. It contains no implication of decline from classical heights or inferiority to Roman culture. As with the term ‘Germanic’, it contains no inference of common culture, biology or origin. The term Roman is primarily used in discussions of legal cultures and the law codes of this period where it is most relevant. As Romans cannot be defined by their territory, instead I have defined Romans by their individual political allegiance – specifically allegiance to the emperor in Constantinople rather than the king of their territory - and self-definition. Sidonius Apollinaris, for example, self-defines as a Roman gentleman of the classical tradition.

The ethnic group terms found within this thesis are used to differentiate each relatively distinct political group which are primarily defined according to territory and allegiance to a ruler. Thus, the Franks are a political group, differentiated from the Visigoths by their territory and their allegiance to the Frankish kings. Religious allegiance can also be taken into account, in that self-defined Romans are exclusively Catholic, while non-Romans are sometimes Arian with different groups (represented by their ruler) converting to Catholicism over time. Not all Catholics are taken to be defined as Roman, but all Romans are taken to be Catholic. Where terms such as Frank, Lombard, or Goth are used I mean them

¹¹Wormald, 2003.

to have the same meaning as those above. They refer to groups and individuals who defined themselves, for multi-layered reasons of birth, territory, political allegiance, military allegiance, cultural similarity, religious practice and belief as members of the group in question. It does not assume that this identification was immutable or static and I have where possible and necessary taken into account political and territorial changes that may have affected personal ethnic identification. At the most simplistic level I have tended to identify groups by their location and political allegiance.

This thesis also uses the generalised terms ‘classical Roman law’ and ‘late Roman law.’ These are broad terms meant to distinguish law which was codified and used within the classical Roman Empire (up to AD 300) and that which was codified and promulgated during and after the reign of Constantine. The majority of the latter is called ‘late Roman law’ throughout this thesis and is drawn from the *Codex Theodosianus* and the *Codex Justinianus*. The former is called ‘classical Roman law’ and is drawn primarily from Ulpian’s *Digest* (c. AD 211 - 222) and Gaius’ *Institutes* (c. AD 161), as well as the jurists Paulus, Modestinus and Papian.¹²

Literature Review

Research into the family of the post-Imperial west during the period AD 400-700 has been relatively static for the past two decades.¹³ While the family of classical and Imperial Rome, Imperial late antiquity and the high and late medieval periods have become vast and dynamic research fields (see above), the post-Imperial, pre-Carolingian period - defined variously as the ‘dark ages’, the early middle ages, the post-Roman period, the post-Imperial

¹² Buckland, 1963; Corbett, 1930; Riggsby, 2010; Barnes, 2003; Harries & Wood, 1993;

¹³ Elements of this historiographical review are drawn from but are not identical to Southon, Harlow, & Callow, 2012. ‘The Family in the late antique west: A Historiographical Review’ in Tougher, S & Brubaker, L (eds) *Approaches to the Byzantine Family*.

period and late antiquity, has stagnated. In large part, this is due to the complicated and difficult history of the field during the nineteenth and twentieth centuries, which has focused heavily on sources from outside the period under examination, such as Tacitus and Caesar, and also on legal evidence which has been constructed as being entirely ‘other’ to the Roman world. Thus, imagined social structures have been accepted as realities. For a long time, much of the work on the Germanic kingdoms focused on the now discredited notion of a supra-familial unit of kinship known as the *Sippe* which, as a supposed pan-Germanic phenomenon, also served to distinguish Germanic structures from Roman.

Roman-Germanic Dichotomy

The theory of a supra-familial unit underpinned the Roman-Germanic dichotomy which accompanied the narrative of the fall and decline of the Roman world. It was all pervasive through the nineteenth century, and well into the twentieth, and debate raged over whether the nature of this ‘pre-migratory,’ prehistoric, system of descent was patrilineal (agnate) or matrilineal (cognate). Proposed near simultaneously by the Swiss Johan Jakob Bachofen, and the British J.F McLennan in the 1860s - both jurists and anthropologists - the matrilineal theory in its most basic form argues that matriliney is an extremely primitive precursor to patriliney from the very earliest of times, which developed or evolved into an agnatic system through a series of other forms.¹⁴ It is a theory that was based on simplistic gender assumptions and that explicitly aims to be universalistic and generalised, with both Bachofen and McLennan writing sweeping world histories. It was also very popular and enormously persuasive, particularly in the English speaking world.¹⁵ This matrilineal form of these evolutionary theories had its popularity and influence exponentially increased when it was adopted by Frederick Engels and became a fundamental facet of Marxist

¹⁴Bachofen, J.J. 1861. *Das Mutterrecht*. Berlin; McLennan, J.F. 1865. *Primitive Marriage*. London.

¹⁵Bachofen’s book was so popular he was compared to Darwin and acclaimed as having ‘perceived one of the most momentous and fundamental facts of social history’. Briffault, R. 1927. *The Mother: A Study of the Origins of Sentiments and Institutions*. New York. 408-9

historiography.¹⁶ Through Marxism and the peculiar lack of innovation in the field of medieval social history, the matriarchal theory of organisation maintains an influence to the present day and is apparent in many of the most prominent works on the society and culture of the Germanic peoples, particularly in the English language scholarship. All posit an underlying and ancient matrilineal descent system beneath the agnate structures perceived in the legal codes of the post-Imperial polities.

The notion that pre-migratory Germanic societies were matrilineal was persuasive because it successfully tapped into the idea that they were primitive. While Bachoven meant to describe ‘modern day primitives’ and societies at the very beginnings of human history, his ideas were easily transposed onto the pre-history of the Germanic ‘barbarians’. Indeed, Bertha Phillpotts in her 1913 work *Kindred and Clan* cited the ‘ample evidence from all parts of the world for a transition from matrilinear to a partially or wholly patrilinear society.’¹⁷ Her equation of pre-migratory Germanic peoples with prehistoric peoples is very clear and informs her entire argument. The same can be said for another English historian, E.A. Thompson, who repeatedly argued for a linear sequence from one form of unilineal descent to the next and who continually emphasises the clan as a basic unit of society.¹⁸ Thompson has been influential in English language scholarship, and a multitude of historians subsequently based their research on his groundwork.¹⁹ In French scholarship the matrilineal theory remains, as is evidenced by Michel Rouche’s introduction to a collection of French language essays on marriage and sexuality in the middle ages published in 2000, in which he declared: ‘D’incontestables survivances d’un ancien regime matriarcal sont détectables

¹⁶Engels’ ideas are drawn almost directly from Lewis Morgan’s *Ancient Society* (1877). Subtitled *Researches in the Lines of Human Progress from Savagery through Barbarism to Civilization* it is a similar evolutionary theory that posits the development of societies through various forms to the ideal form of nineteenth-century America, with matriarchy as a particularly early and uncivilised form.

¹⁷Phillpotts, 1913: 269. Presumably her evidence was the nineteenth century evolutionary and Marxist theories who parroted Bachoven, McLennan and Morgan in their linear progression from uncivilised matriliney onwards

¹⁸Thompson, E.A. 1965. *The Early Germans*. Oxford. 8-28; 1963. ‘The Barbarian Kingdoms in Gaul and Sapin’, *NMS* 7; 1969. *The Goths in Spain*. Oxford. 138; 1966. *The Visigoths in the Time of Ulfilas*. Oxford. 63.

¹⁹For example Anderson, P. 1974. *Passages from Antiquity to Feudalism*. London, the 1970s work of Edward Peters and Malcolm Todd and Suzanne Wemple’s work on women in the middle ages cites Thompson’s version of matrilineal theory as fact.

derrière leur patriarcat officiel'.²⁰

The opposing model of social organisation and the one which gained precedence in German scholarship is the agnatic *Sippe* model of social organisation. In their basic view of the organisation of 'traditional' Germanic society the *Sippe* theorists agree with the matrilineal theorists in positing huge corporate clans. These *Sippen* however are strongly agnatic in their lineage, with the elements of matrilineal descent only recognised in much later times. The evidence base used to prove this agnatic structure is precisely the same legal codes viewed with the influence of a different set of *a priori* assumptions. The concept of the agnatic *Sippe* was never as popular in English language scholarship as in German, with most British and American scholars preferring the Marxist-influenced matrilineal approach. Only two well-known British scholars subscribed fully to the concept of agnatic clans, and only German treatment was translated into English. Tellingly, the latest of these works was published in 1922, after which the *Sippe* theory near disappeared from English language debate.²¹ In German discussion, the *Sippe* theory became a standardised part of the historiography of the Germanic kingdoms. During the nineteenth century it was shaped and re-shaped by German scholars until it reached its final expression in Heinrich Brunner's 1906 work *Deutsche Rechtsgeschichte*. From this point on it remained essentially unmodified or examined for much of its history.²² So effective was this work that in 1960, it could be said by Karl Kroeschell that 'until now, scarcely anything in this theory has been changed.'²³ There were two foundations for this thesis. First the 'Germanic' law codes, which survive for each of the most successful successor kingdoms in the west, and second, the use of first century Roman ethnographic studies by Julius Caesar (c.40BC) and Tacitus (c.98AD). These two sets of sources, now recognised as difficult and multifaceted, were approached through the lens of nineteenth-century social evolutionary theory as accurate descriptions of a

²⁰Rouche, 2000: 8.

²¹These are Vindograft, P. 1911. *The Growth of the Manor*. London. & 1920-22f. *Historical Jurisprudence*. Oxford; Seebohm, F. 1911. *Tribal custom in Anglo-Saxon Law*. London. And Heubner, R. 1918. *A History of Germanic Private Law*. trans. F.S. Philbrick. Boston.

²²Kroeschell, K. 1960. 'Die *Sippe* im germanischen Recht', *ZRG GA* 77: 13; Although Murray suggests that he may have exaggerated this point. 1983: 14-15.

²³Kroeschell, 1960: 13.

homogenous cultural group. Indeed, that the ‘Germanic’ invaders of the Roman world were both entirely ‘other’ from the idealised Romans and yet also internally homogenous in the makeup of their *gentes* were fundamental to the validity of the notion of the pan-Germanic *Sippe* and were rarely, if ever, questioned.

Alexander Callander Murray in 1983 was the first, and so far the only, historian to examine the evidence that forms the foundations of the very concept of the unilineal (particularly the matrilineal) clan and to find them overwhelmingly lacking. Following a thorough analysis of each individual piece of evidence traditionally used to support the clan theory - primarily the ethnographies of Tacitus and Caesar and selected laws from the *Pactus Legis Salicae* and the *Edictum Chilperici*, Murray explicitly rejects the clan as a basis of Germanic society or kinship as being entirely unsupported by evidence:

Despite the extent to which the clan and lineage have figured in modern attempts to describe the social, military and political life of the early Germans, none of the evidence documents extensive uni-lineal, or for that matter cognate, descent groups as the constituent kinship groups of society.²⁴

Instead he suggests that the evidence describes cognatic societies with bilineal descent groups, and argues that the prevalence of the clan theory tells us nothing of Germanic society, and much about nineteenth-century cultural assumptions and twentieth-century historiography. His conclusions not only underlined the importance of viewing the post-Roman kingdoms as separate entities, but also drew explicit attention to the importance of the small family group.

For many historians and anthropologists Murray’s comprehensive dismantling of the clan theory was decisive and seminal. The prominent anthropologist Jack Goody, for example, in his book on the development of the European family based his entire chapter on the Germanic family on Murray’s work.²⁵ His influence was felt immediately in scholarship

²⁴Murray, 1983: 7; 222

²⁵Goody, 2000

on the middle ages, but not always agreed with. David Herlihy in his excellent work *Medieval Households* continues to promote the concept of the *Sippe*, with only two acknowledgements of Murray's pioneering work.²⁶ An identical indicator is seen in P.D. King's chapter on the Visigothic family in which the author states: 'There is precious little trace in Ervig's code of the all-important position which, at an earlier Germanic stage, the kindred had held in society.'²⁷ Even more significantly, Gerd Althoff also promoted the clan thesis in his *Family, Friends and Followers*, even using Tacitus as the main source for the kin group, and Kroeschell as his support.²⁸ This implicit acceptance that the *Sippe* does not exist in the source material, but insistence on supporting the clan theory regardless is symptomatic of the depth to which clan theory was embedded in the historiography of the post-Imperial polities and how reluctantly it has been abandoned.

Both theories are based on the same, or similar, assumptions and are influenced by the same nineteenth-century notions. Correspondingly, they are both primarily focussed on interpreting historical evidence in order to reconstruct an undocumented past; each uses these *a priori* preconceptions to inform their interpretation of unrelated evidence. Furthermore, these established debates outlined here do not discuss families of the Germanic kingdoms, but kinship networks through a legal and anthropological framework. They discuss structures and inheritance customs in order to reconstruct networks through almost exclusively legal evidence

As contemporary gender roles shifted after World War II, so too did historians' attitudes to gender and the family. Although the early middle ages remained somewhat behind other fields, gradually through the work of American and British historians and the

²⁶Herlihy, 1985: 44; 46. The first is his concession that the *Sippe* was almost certainly not unilineal, and his continual removal of his position from that of the nineteenth-century theorists. The second is his repeated statement that 'despite its importance, the *Sippe* is rarely encountered in the early sources.'

²⁷King, 1972: 222

²⁸Althoff, 2004: 23-65 Although Althoff is more interested in the political aspects of the 'kin group' than the social.

rise of interest in social and women's history, priorities began to shift away from exclusive focus on legal texts and towards narrative sources, documents and hagiography. As a result, the understanding of the family in the early middle ages changed considerably in a short space of time. In 1997 Nelson noted that, of medieval history in general, there was 'an increasingly widespread (though still not widespread enough) perception that gender too belongs with family among the central themes [of social, political, economic and cultural history], and that family and domesticity are not interchangeable terms.'²⁹ The field was really given life, however, by Pierre Riche's series of articles in the *Histoire Mondiale de la Femme* (1965), examining women in Germanic society during the 'pagan' period, the 'barbaric' era and the Carolingian era. In the anglophone world, it was Suzanne Wemple's 1981 *Women in Frankish Society: Marriage and the Cloister 500-900* that was hugely influential in this emerging field, and she, along with Jo Ann McNamara and Julia M. Smith, remain at the centre of the field. They concluded that during the early middle ages the decline in 'public power' led to a corresponding growth in 'family power', which enabled 'Germanic' women to gain access to and wield considerable practical and economic power both within the family and in the wider world.³⁰ However the focus of much of this work was on Frankish queens and religious women, and aim to shed light on the advanced position that women had in Germanic society compared to that of the Roman and earlier tribal societies.³¹ Thus, the focus of research has primarily been on how women gained, manipulated and maintained power and the opportunities offered to them during this period, to the detriment of examining women who were not saints, abbesses or queens. This is seen in the work of Janet L. Nelson and Pauline Stafford, who have written pioneering studies of post-Imperial queens and their access to, and use of, power within their roles. However, both have also contributed seminal overviews of familial relationships and roles to the literature, which have been of fundamental importance to this thesis. Pauline Stafford's two review articles 'Did the Priests Plant a Cross on this Woman's Loins? Love and/or Marriage in the Middle Ages' and

²⁹ Nelson, 1997: 155.

³⁰ McNamara & Wemple, 1976 & McNamara. & Wemple, 1976.

³¹ Wemple, 1981; Stafford, 1978 focuses on Anglo-Saxon queens and princes; Nelson, 1978 looks at two Merovingian queens; Stafford, 1983 examines the wives of the Merovingian kings;

‘Parents and Children in the Middle Ages’ highlighted many vitally important themes in gender, emotion and family scholarship and offered a number of paths for future research.³² Even more significant to the historiography has been Janet Nelson’s ‘Family, Gender and Sexuality in the middle ages.’³³ This brief but comprehensive article offered an overview of the historiography of family and gender scholarship up to the turn of the millennium, along with her own interpretations of that historiography. Notably, much of her interpretation and interest remains with her primary interest of female access to power, and indeed in the very first line she implicitly constructs the family as being related primarily to women’s issues.³⁴ Her overview however, demonstrates the move away from structural analyses of ‘kinship’ and normative sources, towards the post-structural, deconstructivist epistemology of families and gender as socially and culturally constructed roles, ideals and concepts. It is these concepts which have been developed with great success by Julia M. Smith. Smith, Nelson and Stafford are leading an historiographical trend which sees the family in fundamentally different ways to that of much previous research. The turn of the millennium has also witnessed the development of critical interest in the history of emotions among early medievalists, most notably Barbara Rosenwein’s 1998 *Anger’s Past: The Social Uses of an Emotion in the Middle Ages*. This groundbreaking work has sparked the beginnings of a new trend in research, highlighted by a special issue of *Early Medieval Europe* dedicated to papers discussing issues raised by Rosenwein.³⁵ This area also moves away from discussion of normative and structural analyses, and towards a cultural and social history of constructed emotions and connections.

Childhood and Parents

Since Phillipe Ariès published his *L’Enfant et la Vie Familiale sous l’Ancien Régime*

³² Stafford, 1997; Nelson, 2001. Nelson also contributed a seminal article on parenthood in 1994 from which Stafford draws.

³³ Nelson, 2002.

³⁴ ‘Interest in the medieval family and the rights and roles of medieval women is not new.’ 2002:153

³⁵ *Early Medieval Europe* in 2001. See also, the Centre for Excellence for the History of Emotions sponsored by the Australian Research Council, which is focussed on the high medieval period 1100-1800. www.historyofemotions.org.au.

in 1960 (translated as *Centuries of Childhood* in 1962) forwarding his – later retracted - thesis that pre-modern parents had no concept of childhood, the topic of children in the ancient and medieval worlds have become enormous areas of research. The debate has moved on very little since the very first reactions to Ariès. The aim of a great many of the works remains – quite explicitly (and quite contrary to Haas and Rosenthal’s assertions that ‘the ghost of Ariès has now been laid to rest’) to refute Ariès’ long debunked hypothesis.³⁶ Most commonly the intention has been to prove the existence of childhood as a particular life stage in the medieval world, and most recently has aimed to prove the existence of affective relationships between adults and children. Thus both Shulamith Shahar and Sally Crawford openly state their intention to prove the existence of a conception of childhood in the early middle ages and to counter Ariès, with Crawford using archaeological evidence as well as literary to support her argument.³⁷ That their central thesis is to disprove Ariès has meant that it is conceptions of childhood stages, images of childhood, parental sentiment (often through examination of child abandonment and infanticide) and educational theory and practice that has been at the forefront of research, not the child within families. Sally Crawford does include a short (19 pages) chapter on relationships between children and their mothers, fathers and grandparents in the Anglo-Saxon world, and another (comprising 17 pages) on adoptive, foster and god parents which give an extremely brief overview of traditional thought on the subject and a general picture drawn from art and literature.³⁸ Shahar, meanwhile, has no specific chapter on family relations, and – for example – only five pages on the role of the mother, one of which is related to oblation.³⁹ The 1997 French work by Danièle Alexandre-Bidon and Didier Lett *Enfants Du Moyen Age* has been feted as an important and influential work drawing on Alexandre-Bidon’s archaeological and art historical study and Lett’s previous work on miraculous children and age ranges to produce a comprehensive overview of childhood both in families and in society.⁴⁰ Although this does

³⁶ Haas & Rosenthal, 2007: 12.

³⁷ Shahar, 1990: ix; Crawford, 1999: xi.

³⁸ Crawford, 1999:102-121; 122-138.

³⁹ Shahar, 1990: 105-6; 115-16; 252. Parental love takes up 2 pages (169-70), while fathers take up 9 pages.

⁴⁰ Translated into English in 1999 as *Children in the middle ages: Fifth – Fifteenth Centuries*. Their previous works are Riché & Alexandre-Bidon, 1994.; Lett, 1997.

contain varied information on family roles and expected relationships, it is flawed in its too brief analysis of its source materials.⁴¹

The first reactions to Ariès tended to strongly agree with his conclusions, for example Edward Shorter (1975. *The Making of the Modern Family.*), Lawrence Stone (1977, *The Family, Sex and Marriage in England, 1500-1800*) and Lloyd deMause (1974, *A History of Childhood*) whose works remain influential today despite maintaining such controversial opinions such as the characterisation of ‘traditional child-rearing’ being undertaken by parents who ‘did not care’ as ‘the ghastly slaughter of innocents’⁴² Following this flurry of support, however, came a severe and lasting backlash which still today forms the foundation for studies into medieval childhood. This forced a focus on the relationships between parents and children and, in particular on their affectionate and emotional bonds.⁴³ This research all focuses on the child as an infant or juvenile. In more recent years some work has been done – entirely in article form – on the relationship between parents and adult offspring, most of which focuses on grown sons.⁴⁴ Thus, all but one of the most significant studies of medieval childhood in the past decade has contained at least a small – but usually an extended – discussion of Ariès’ ideas.⁴⁵ This ‘Affectionate School’ approach to childhood studies dominates the field, and the more institutional studies – for example on education systems and the economic life of children – have become less popular than they had been in previous decades.⁴⁶

Equally, women as mothers have been considered in research extensively since the

⁴¹ Bidon and Lett also have a tendency to make definite statements that are entirely unsupported by references, undermining their historical credibility and the usefulness of their work.

⁴² Shorter, 1975: 204.

⁴³ for example, Heywood, 2001, Ozment, 2001, Hanawalt, 1977; 1993 ; James, 2004; Shahar, 1990; Alexandre-Bidon, 1999; Jochens, 1996; Orme, 2001; Horn & Phenix, 2009; Horn, 2010; and most significantly in the reviews by Haas & Rosenthal, 2007 and Hanawalt, 2002.

⁴⁴ e.g Grundy, 1996; Jorgensen Intyre, 1996; Stafford, 1978

⁴⁵ Haas & Rosenthal, 2007: 12; 21; Ozment, 2001: 9-13; Heywood, 2001: 5-6; 11; 12-15; 17;19; 59; 156-7; Orme, 2001: 4-5; 9-10; Stafford, 2001: 258; Hanawalt, 2002: 440; Haas & Rosenthal, 2007: 13-20; Bailey et al, 2008: 42; A single exception is Fletcher, 2008 who does not even include Ariès in his bibliography.

⁴⁶ Although this approach has not entirely disappeared and certain scholars continue to make very valuable contributions, for example Francine Michaud’s ground-breaking 2007 article on apprenticeships before and after the Black Death, and Barabara Hanawalt’s work.

1970s due to the explosion of interest in social history and women's history.⁴⁷ While there have been many focused monographs and collections on medieval mothers and motherhood, it has also been considered in broader works simply on medieval women as a fundamental and unavoidable facet of womanhood.⁴⁸ Fathers and fatherhood are woefully under-researched in all historical periods and the few scholars who have ventured into the topic have focused very specifically on the relationship between fathers and sons, eschewing the examination of fatherhood as a broader construction in the way that motherhood has been considered.⁴⁹

Ariès's (and Stone's) extraordinary influence essentially created the field of historical childhood studies, while the cultural changes of the 1960s and 1970s opened up new vistas for women's history, both developments encouraging historians to examine the ancient and medieval family in an entirely new light. However, their influence has also shaped the discussion and has served to force the focus of research onto the child of the family itself and away from the adults. This has caused a division between family historians, so parents are considered in entirely separate categories and often by entirely different sets of researchers from their children.⁵⁰

⁴⁷ See the recent summations of increased interest, and the methodological and theoretical developments in the field, Bennett, 2008; Boydston, 2008; Scott, 1986 & 2010;

⁴⁸ The seminal work is Clarissa Atkinson's *The Oldest Vocation* (1991) which remains an unparalleled examination of motherhood as a cultural construction with biological, social and spiritual elements. Recent edited collections on motherhood include Anneke Mulder-Bakker *Sanctity and Motherhood* (1995); John Carmi Parsons & Bonnie Wheeler *medieval Mothering* (1996). Motherhood as a fundamental experience of women's lives is considered in Shahar, 1983; Wemple, 1983; Lucas, 1983; Bardsley, 2007. Also in the edited collections which focus on the lives and experiences of women, none of which are complete without a consideration of motherhood: e.g. Rosenthal, 1990; Mosher Stuard, 1976; Schutte, Kuehn & Seidel Menchi, 2001; Baker, 1978.

⁴⁹ For example Jorgensen Intyre, 1996 on emotional bonds between fathers and sons in the Icelandic Sagas, Lyon, 2008, on noble fathers as socialisers of sons in the twelfth century; Grace, 2006 on metaphors of heat and dryness in framing fathers as strong socialisers and educators; Delumeau & Roche, 2000 now includes a new chapter on medieval fatherhood which also focuses heavily on the later middle ages and which is primarily concerned with methodological issues; or Ebyen, 1991, and Cantarella, 2003, on fathers and sons in classical Rome.

⁵⁰ Thus, women are considered as mothers in books about women, while children are considered in books about childhood and men are never considered at all but there is very rarely an overlap. A convenient example here is Shulamith Shahar whose works *The Fourth Estate: A History of Women in the middle ages* and *Childhood in the middle ages* exemplify this divide.

Marriage

The study of post-Imperial marriage was dominated for much of the nineteenth and twentieth centuries by German and French legal studies.⁵¹ In the second half of the twentieth century, while these ideas of ‘Germanic’ marriage types were still common, the post-war ‘gender revolution’ and the rise of women’s history led to an anglophone interest in the family. These political changes brought with them new examinations of women and female power, which naturally focused on the family. Even more significant was the dramatic rise in interest in the concept of love and affection in medieval marriage, where the roots of high medieval courtly love are often placed in the post-Imperial period.⁵²

British and American scholars began to focus on different source materials that, it was believed, could potentially reveal women’s experiences with enough interrogation: narrative texts, hagiography, religious texts. These new studies enlivened the study of the post-Imperial family, but the focus remained fundamentally on women’s experiences of family. Drawing on the traditional dichotomies of public/private and political/domestic, the private, domestic sphere was seen as the women’s sphere. Thus, driven by feminist scholars Jo Ann McNamara and Suzanne Wemple, the field became dominated by discourses concerning female access to power through the family.⁵³ Wemple’s *Women in Frankish Society: Marriage and the Cloister 500-900* (1983) came to epitomise this strand of investigation, and despite its flaws, remains one of the seminal texts of post-Imperial women’s history. At the same time, another strand of history examined Merovingian and Anglo-Saxon queens and the ways in which their families offered them access to power, epitomised by Janet Nelson and Pauline Stafford.⁵⁴ This focus on women in families and their power relationships through marriage developed into a particular anglophone interest in emotional history and the role of affection and love within post-Imperial and medieval marriage. This led the focus of research concerning late antique and post-Imperial marriage to the effect that the Christianisation of the west has on the social and cultural conception of marriage. In the 1990s late antiquity was seen as being the starting point for a number of cultural shifts in the conception of marriage which crystallised in later centuries; principally Christian marriage was said to be characterised by the consent of the couple and by affective love between them. This thesis was developed by Georges Duby who saw the development of high medieval courtly love as

⁵¹ See overview in 1.1.3

⁵² Sheehan, 1996; Elliot, 1993; McCarthy, 2004;2004a. See also Stafford,1997.

⁵³ See McNamara & Wemple, 1973;1976; McNamara, 2003.

beginning in late antiquity.⁵⁵ Phillip Reynolds' *Marriage in the western Church: The Christianisation of Marriage during the Patristic and Early medieval Periods* (1994) maintains a similar argument, claiming that Christian marriage was – during this period – fundamentally devised to be different from traditional marriage and laying much of this differentiation at the feet of St Augustine.⁵⁶

Christian-Non Christian Dichotomy

As well as demonstrating a dramatic shift of focus onto the affective worlds of the people of the early middle ages, these books also demonstrated a further significant swing: from the Germanic/Roman dichotomy to Christian/non-Christian. As the complexity and ambiguity of the ethnic and cultural milieu of the post-Imperial west became increasingly more apparent, the simplicity of the Germanic/Roman divide became all the more clear. The focus instead progressed to examine the effect that the Christianisation of the west affected social structures with marriage coming under increasing scrutiny. In the 1990s late antiquity was seen as being the starting point for a number of cultural shifts in the conception of marriage which crystallised in later centuries; principally Christian marriage was said to be characterised by the consent of the couple and by affective love between them. This is a thesis (again) presented by Georges Duby in his *Love and Marriage in the Middle Ages*, which is primarily concerned with high medieval courtly love, but which sees the beginning of such changes in earlier centuries. Phillip Reynolds' *Marriage in the Western Church: The Christianisation of Marriage during the Patristic and Early Medieval Periods* (1994) maintains a similar argument, claiming that Christian marriage was – during this period – fundamentally devised to be different from traditional marriage. Reynolds considers Augustine to be the prime mover behind the new conception of marriage and dedicates nearly a quarter of his book to analysing those developments which derived from Augustine's works.⁵⁷ By 2004, sourcebooks such as Conor McCarthy's *Love and marriage in the middle*

⁵⁴ Stafford, 1978;1983;Nelson, 1978.

⁵⁵ Duby, 1994

⁵⁶ Reynolds, 1994: 240-315.

⁵⁷ Reynolds, 2001: 240-315.

ages demonstrated that only was the notion of affection within medieval marriage firmly embedded in the historiography, but also that ecclesiastical sources (the largest section in the early medieval chapters), were recognised as significant.

Studies of the effects of Christianity, particularly ascetic practice have also had an impact on the way we might analyse the internal motivations and workings of marriage, sexuality and sexual behaviour. The work of Peter Brown opened up this debate in the late 1980s and the implications for this for reading law codes taken up by Judith Evans Grubbs and Antii Arjava. Kate Cooper questioned the dominance of asceticism in late fourth and early fifth century Rome. More recently David Hunter has consolidated his own research in this area to demonstrate both the influence of teachings of the Church Fathers on the role of sex and sexuality on family behaviour, again providing a counterbalance to those who privilege the doctrine of ascetic practice and the relationship of such rhetoric on lived reality.⁵⁸

By the 1990s, the older construction of the west in the early middle ages as a period defined by a Roman populace being terrorised and barbarised by a ferocious minority of Germanic invaders was largely alien to the historiography of the family. Instead, the cultural revolution of feminist and social history acted to decrease the focus from legal materials and redirect it towards narrative and ecclesiastical source material in order to find women and social practice. Such methodological shifts fundamentally altered the way the period was viewed and how the family was studied. As the legal sources faded into the background, so did the state to be replaced with literary sources, the church and the female. Some recent overviews of the period 400-700 in the west by British scholars have reverted to an older model of the dramatic fall of the Roman state - British scholars tend to emphasise change more than others anyway – but it remains to be seen whether these will impinge on the social and/or cultural history of the period.⁵⁹ Halsall's more nuanced views are perhaps related to

⁵⁸ Brown, 1988; Evans Grubbs, 1994: 361-412; 1995; Arjava, 1996; Cooper, 1996; 2008; Hunter, 2007;

⁵⁹ O'Donnell, 2005 and Ward-Perkins, 2005,

his own more detailed studies; he dismisses the usefulness of the notion of ‘transformation’ which emerged in the 1990s and recognises the value of a closer (re)investigation of various forms of evidence at the regional level.⁶⁰ Church led (and extraordinarily stringent) incest regulations were a significant development of the post-Imperial west that had an obvious effect on the composition of families, and they have been subject to some analysis often by scholars with deeply problematic theories. These laws have been conceived of as a means for the Church to infiltrate small communities and maintain power;⁶¹ as a way for the church to prevent men from ‘hoarding women’ through polygamy,⁶² and as a Church conspiracy to prevent legitimate offspring and thus to increase their own treasury through bequests.⁶³ All these theories have been decisively refuted by Mayke De Jong, but are indicative of the manner in which the laws and the sources that talk of them have been investigated and used to examine and criticise the Christian Church, and not to look at conceptions of families, either existing or ideal.⁶⁴

These, then, are the only areas in which new light has begun to be shed on the post-Imperial family and they are extremely limited. This is not the fault of the historians and archaeologists themselves who have produced these valuable works, for it has not been their aim to dissect families as an institution but to look at other aspects of ‘Germanic’ society. Even before Alexander Murray’s seminal dissection of the prevailing thought of the time, the ‘Germanic’ family had only fully been studied from an anthropological perspective. Murray’s own work approaches families in these terms and aims only to re-examine the structural theories, not to re-assess families in terms of social or cultural factors. After Murray’s work, only historio-anthropological works have attempted to look at families still, most notably the contentious works of Jack Goody. His 1983 *The Development of Family and Marriage in*

⁶⁰ Halsall, 2007 for his overview; 2010 for updated versions of many of his earlier case studies and a new paper on the life course: 383-412.

⁶¹ Duby, 1977: 28-9; 1978: 17-20.

⁶² Herlihy, 1990; 1995

⁶³ Goody, 1983; 2000.

⁶⁴ De Jong, 1991; 1998. A new work by Karl Ubl (2008) also offers a full and comprehensive overview of the historiography of incest legislations, and argues that they did not reach their nadir until the eleventh century. For a more comprehensive overview of scholarship on incest legislation and spiritual families see 1.2.2

Europe and his 2000 follow up work *The European Family* have been hugely important in their emphasis on denying the ‘special’ status of the European family through comparison to African and Eastern anthropology, and his controversial theory has sparked great debate about the Church and its motivations in the early middle ages. By remaining focussed on the shape and structure of households and the external influences that mould them, however, he has continued the great tradition of viewing the Germanic family as a passive, homogenous institution shaped by external forces and devoid of sentiment or individuality. The old belief that the post-Imperial west offers nothing but legal codes to study and remains ‘the most obscure [period] in all of western history’ still prevails in terms of family history.⁶⁵ In 1996 a review article by Pierre Guichard and Jean-Pierre Cuvillier documented the lack of research on families in post-Imperial Europe and deplored that only the edges of such a fundamental institution had been glimpsed through religious and legal history.⁶⁶ They criticised existing work on the subject as being too anthropological or too loose with the sources and demanded that new work be done.⁶⁷ Pierre Toubert’s article in the same volume considers only polyptych and prosopographical research to be worth including in his review of the historiography of families in the Carolingian period. The field since then has not changed dramatically, and family roles, relations and norms are still only fleetingly perceived through other lenses. Now that the clan and *Sippe* theories have been removed from mainstream academic study and historians are aware the sources can only truly reflect the period in which they are created, families needs to be fully assessed using the techniques refined by Roman and medieval historians over the past three decades.

Family structure

With such a broad selection of fields looking indirectly at the post-Imperial family, but such a small amount of direct focus on families, there is little in the way of a consensus

⁶⁵ Somerville, 1987: 60.

⁶⁶ Guichard & Cuvillier, 1996: 318.

⁶⁷ Guichard & Cuvillier, 1996: 319

on what families looked like during this period. The clan thesis is now considered to be outmoded, and the idea that the ‘Germanic’ peoples of the post-Imperial west lived in large supra-familial units is no longer considered valid. In 2005, Chris Wickham dedicated in his immense and near-comprehensive monograph of the early middle ages just a single paragraph to families, stating that:

All the evidence we have indicates that the normal peasant household in our period in all our regions was that of a nuclear family of a married couple and children, with at most an elderly relative or two. It was not universal...but it was normal.⁶⁸

This is in line with with other broad conclusions on the dominant structure of families in the post-Imperial west. The only overview of recent years to dedicate any significant space to families is Julia M. Smith’s excellent 2005 monograph *Europe After Rome*, but even here Smith focuses heavily on the legal and property aspects of families, in particular the role of women in inheritance networks and again their access to property and power; Smith does, however, stress that ‘kin’ relationships are socially rather than biologically constructed, particularly with regard to spiritual kinship and godparents during this period.⁶⁹ Importantly, Smith agrees that the nuclear family unit was the norm in the post-Imperial west, although with the caveat that the ‘the family in the sense of ‘mum, dad and the kids’ concept was not necessarily openly recognised as a social unit.’⁷⁰ This is the implicit conclusion drawn from the vast majority of the tangential research which considers the post-Imperial or early medieval family: the central unit under consideration in primary sources is always the nuclear unit. In general then, the academic consensus regarding the post-Imperial family in all geographical areas is that it was primarily, and normally, composed of a married couple and their children, that when those children grew into adults they were expected to leave their parents home and start households and families of their own, separate from their parents. This thesis accepts this consensus and as such examines family roles and family relationships within this broadly nuclear construction, with one important addition that has rarely been

⁶⁸ Wickham, 2005: 551.

⁶⁹ Smith, 2005: 86.

⁷⁰ Smith, 2005:87.

considered in any great detail: that of elderly parents, particularly mothers. In order to produce a thorough examination of families they must be a part of any investigation. This thesis acknowledges that there are likely multitudes of family shapes and structures available in the post-Imperial west as there are in any time period, and the cultural construction of the nuclear unit is defined and described with a logic and through lenses that are not familiar to the modern western construction of the nuclear unit. Nonetheless, the conclusion of this thesis, and the consensus of previous research, is that the primary family structure in a household was normally parents, young or adolescent children and surviving grandparents of either or both lineages.

Sources

Central to this thesis, as they are to any examination of the period, are the post-Imperial legal codes. These legal codes can be exceptionally useful in describing normative practice and proscriptive decisions made concerning the family.⁷¹ They are, however, difficult and obscure texts and the legal culture from which they emerged is challenging to understand. The applicability, purpose, meaning and authorship of these texts are matters of continual scholarly debate and re-evaluation, and as such warrants an overview here. The debate has previously been muddled somewhat by the tendency to focus not on the historical period when discussing the ethnic makeup of western Europe, but to instead debate the pre-historical origins of each individual named group (with particular focus on the Goths and the Franks). The on-going debate between those who argue for a theory of ethnogenesis (the *Traditionskern* theory derived from Wenskus) and those who subscribe to anthropological theories remains lively and has supplanted arguments of an immutable biological basis for ethnicity and those who view all barbarian identity as being essentially Roman inventions.⁷²

⁷¹ As is clearly demonstrated by Drew, 1963; Wemple & McNamara, 1976.

⁷² Although some historians maintain that race and biology were a significant and defining part of ethnicity. For example Heather, 1998: 95-112; 2010; See also Halsall, 1998 for an overview of these debates.

Where the nature of the codes have been discussed it has primarily been done so by legal historians, and the debate has centred on whether the laws are derived mainly from ancient ‘Germanic’ custom or from Roman vulgar law. These debates have more recently developed into questioning whether the codes are personal or territorial.⁷³ Much older scholarship has assumed a personal nature for the law codes and has viewed individuals within the early medieval west as being governed by laws which are dependent on their ethnic origin, so the Roman is subject to Roman law while a Burgundian is subject to Burgundian law. The proliferation of apparently separate codes within single territories such as the *Liber Constitutionum* and the *Lex Romana Burgundionum* in Burgundy and the *Lex Romana Visigothorum* (*Breviary of Alaric*) and the *Lex Visigothorum* in Spain, supported by the apparently un-Roman nature of laws on *wergeld*, *morgengabe* and *chrenecruda* have given great weight to the argument for personality of law which presumes that the Roman codes are handbooks of Roman law, but the ‘barbarian’ codes are codified pre-historical custom. In more modern scholarship, this notion has been questioned, and many now view the laws as territorial, meaning that every individual within a defined area (one which is subject to the king who has issued the laws) is subject to the same law.⁷⁴ These scholars have refuted the notion of a pre-migratory tribal law and have emphasised the Roman elements of the codes, beginning with the language in which they were recorded.

The influence of Rome on the codes cannot be underestimated. The very nature of the codes in their composition as royal edicts which are recorded in Latin, automatically frames them as Romanised texts, and there is strong argument for these codes being a significant part of the kings’ continual attempts to demonstrate their power in Roman terms, to emulate the emperors of their present and the classical past. Certainly many of the rulers of their period governed as if their rule were the product of Imperial favour, and many adopted and used

⁷³ Law is defined as being ‘personal’ if it applied on the basis of ethnic identifiers regardless of geographical location: i.e. that all those who were defined as Roman were subject only to Roman law regardless of whether they resided in Italy, Burgundy or Britain. It is defined as being territorial if it is applied on the basis of location rather than ethnicity; when a single law code is applied within the territorial boundAriès under the control of the promulgator.

⁷⁴ See for example Amory, 1993; 1997; Barnwell, 2000; Wood, 1986; 1990.

Imperial titles, framing their kingship as a form of Roman power. Since Constantine the practice of releasing regular edicts on specific matters was a common and defining facet of Imperial power.⁷⁵ Furthermore, the non-Roman kings kept classically trained jurists in their courts, many of whom identified themselves as being culturally Roman.⁷⁶ The similarities between the varied law codes of the non-Romans have often been cited as being a result of the strong influence of Roman vulgar law, while the notion that these parallels result exclusively from a common ‘Germanic’ oral law has been largely dismantled in recent scholarship.⁷⁷

The legal situation of the Late Roman world with regards to Roman law alone was one of considerably complexity and constructed of many layers of edict, custom, and vulgar law: the codes cannot be viewed simplistically.⁷⁸ To argue that Roman law existed for the Romans while custom was codified for the barbarians and that this was uniformly the case across western Europe and across the centuries is simplistic and untenable. There are too many assumptions that must be made in order to accept this, including that the inhabitants of Gaul, Spain and Italy subscribed to a single identity that was either ‘Roman’ or ‘non-Roman’ (such as Goth, Frank or any other); that the codes are all compilations of previously unwritten custom; that during this period ethnicity was primarily considered a biological and immutable trait; that the new kingdoms were populated by ethnically homogenous peoples with a common origin, each of which has been seriously questioned in recent scholarship. There are clearly instances where Romans and non-Romans were treated differently in law, a particularly clear example is seen in the Lombard provision of AD 731 that women who marry Roman men are released from the *mundium* system that was apparently practised and become ‘Roman’ instead.⁷⁹

Laws such as these demonstrate that groups in western Europe identified themselves

⁷⁵ Amory, 1994a: 11; Isidore, *Etymologies* 5.1.7; Humfress, 2007: 390.

⁷⁶ Levy, 1951: 15-16; Mommsen, 1905: 139.

⁷⁷ Amory, 1997: 329; Levy, 1951: 15; Gaudemet, 1963; Wieacker, 1964; Wood, 1986; Amory, 1993:15-19

⁷⁸ By which I mean classical Roman civil law which had become ‘vulgarised’ away from its academic, classical origin by constant use in the provinces.

⁷⁹ *Liut.* 127.

as Roman and non-Roman, and that these identities could be summoned when necessary. They do not however describe how ‘Romans’ and ‘Lombards’ were identified and historians have debated this point for a long time with the possibilities that the two were defined by religion (Arian/Catholic) or by profession (political/non-political) or by social role all being raised.⁸⁰ This does not provide strong support for the idea that law was personal, but rather that ethnicity was a part of personal identity. Indeed, the prevailing current view is that the distinction drawn between Roman and non-Roman in laws such as this one does not define individuals by any biological ethnicity, but by class and profession.⁸¹ Personality of law does not apply well in the case of the ‘Germanic’ kingdoms and so this thesis prefers to regard the codes as principally (but not necessarily consistently) territorial codes, which primarily consist of royal edicts based on vulgar law, common practice and custom filtered through the lens of Roman law.⁸²

Who was responsible for the writing and promulgating these laws and why is a vitally important question. The *Breviary* of the Visigoths and the *Lex Romana* of the Burgundians are now accepted to be abridged versions for the Theodosian Code which includes vulgar law. Whether these collections were meant for private use, like the third-century *Codex Gregorianus* and *Codex Hermogenianus* collections, or for public use for those who were either compelled or who chose to use it is still debated, although the *Breviary* is commonly accepted to have been in use in some form in the Frankish and Visigothic kingdoms.. The legal codes promulgated by the non-Roman rulers fall into two categories: those which appear to have been written and disseminated as a whole, and those which appear to be disordered, collected edicts of different kings released over a period of time, many of which modify, reassert or nullify earlier edicts.⁸³ Codes that fall into these different categories clearly have dramatically different motivations behind their compilation, and each text within the categories will differ from one another. The historiography of these codes has therefore

⁸⁰ Greatrex, 2000: 267; Amory, 1993;

⁸¹ Pohl, 1998: 12; Claude: 1998, Leibeschuetz: 1998; Sivan 1998.

⁸² Pohl-Resl, 1998: 206

⁸³ For individual analyses of each text see 1.1.1.

followed very similar lines. It is common to see the post-Imperial codes now as combinations of Roman law, ancient law and newly created law, written and promulgated in order to fill a void left by the withdrawal of the Roman legal system. However, only the *Lex Visigothorum* demonstrates any evidence of having been used in any genuine judicial proceedings. The rest of the codes give little indication that they genuinely existed as practical law codes, rather than as ideological tools of ‘Romanised’ or - in later periods - ‘Christianised’ leadership. It is therefore the contention of this thesis that these law codes primarily had an ideological and propagandistic function, with any practical application in filling the gaps left by the Roman judiciary being secondary, thus this thesis agrees with the conclusions of Matthew Innes and Guy Halsall. Nonetheless, they are vitally important as theoretical and intellectual tools in revealing what each of the - extremely diverse - post-Imperial rulers wished to codify and memorialise about their perceived culture, particularly with regards to family law. In broad strokes, this thesis views the codes as being developed primarily through edict in order to emphasise political power within a defined territory and within a very particular framework; to provide coherent legal framework for the subjects of the king; and occasionally out of perceived necessity – in reaction to issues arising within a the ruler’s jurisdiction. It is through this lens that the post-Imperial codes will be examined throughout this thesis: as another genre of writing in the post-Imperial world.

Alongside the codes, and given equal weight as evidence, this thesis also uses and considers a number of other source collections. The letter collections of elite late Roman men of Gaul and Italy such as Sidonius Apollinaris, Ruricius and Salvian provide a wealth of information concerning idealised and actual behaviour between family members. These texts include histories, chronicles, hagiographies, letter collections, autobiography, sermons, theological tracts, moral treatises, poetry and didactic texts. The nature of the survival of evidence and the literary communities of the west means that the core of this body of sources comes from fifth and sixth century Gaul, notably the letter collections of Romano-Gallic aristocrats. Sidonius Apollinaris is perhaps the best known of the Gallo-Roman bishops. He is regularly portrayed as the last great Roman, his letters heralding the fall of Roman

culture.⁸⁴ Sidonius was a senator at Rome, the son-in-law of the emperor Avitus, the prefect of Rome under Anthemius and the bishop of Clermont after AD 470.⁸⁵ Sidonius' letters and poems were published at the urging of his friends, and highlight Sidonius' preoccupation with classical Roman culture and ideals.⁸⁶ As a result of his position, Sidonius has been widely studied as a first person resource for the decline of Rome. Indeed, barely a history of the period is written without reference to him.⁸⁷ In the twentieth and twenty-first centuries, Ralph Mathisen has been the most prolific producer of scholarship on Sidonius, alongside Jill Harries' biographies.⁸⁸ Sidonius' letters and poems have been mined for information concerning the withdrawal of Roman power from Gaul without much examination of their rhetorical content and aims. The work of Mathisen and Harries, along with Ian Wood and others has served to balance this view of Sidonius and his works.

The resource which has provided the basis for the majority of research on the post-Imperial family has been Gregory of Tours' *Decem Liber Historiae*. Gregory's *Histories* have had a difficult and complex history of their own and have been subject to many varieties of interpretation. In the earliest historiography, they have been viewed as a linear history of the Frankish kingdoms analogous to Jordanes' *History of the Goths*, and Procopius' Byzantine histories.⁸⁹ However, balancing Gregory's apparently straight narrations of political events and familial feuds with his overt biblical literalism and wholehearted belief in miracles proved difficult for many scholars. Gregory came to be seen as a confused, superstitious historian, symptomatic and demonstrative of a barbarous age.⁹⁰ This is no longer the case, and Gregory's work is no longer seen as an attempt to genuinely depict real events without filter. This re-evaluation of Gregory's place and context as an historian was begun by Walter Goffart in 1988 in his *Narrators of Barbarian History (550-800): Jordanes, Gregory of Tours, Bede, and Paul the Deacon* in which he introduced the idea that Gregory was writing literature with a moral for his contemporaries, not for his descendents.⁹¹ Since Goffart, Gregory's *Histories* have been primarily seen as the literary texts of a religious man, with a moral and philosophical aim.⁹² The most important of these re-evaluations has been

⁸⁴ Shanzer & Wood, 2002; Percivil, 1997; MacDonald, 2000: 34-40

⁸⁵ Harries, 1994; Mathisen, 1993; MacDonald, 2000.

⁸⁶ Harries, 1992: 300; MacDonald, 2000.

⁸⁷ MacDonald, 2000: 34

⁸⁸ See Mathisen, 1981; 1991; 1993; Harries, 1992; 1994

⁸⁹ Murray, 2004: xvii

⁹⁰ See for example Krusch, 1912; Hellman, 1911; Halphen, 1925

⁹¹ Goffart, 1988: 112-234

⁹² For example, De. Nie, 1987; Breuklaar, 1994

Martin Heinzelmann's 2001 *Gregory of Tours: History and Society in the Sixth Century* which views the *Histories* as being a profoundly theological text. Heinzelmann noted in 1992, when his work was first published in German, that research on Gregory in the twentieth century had been stagnant, and that he was a peripheral part of post-Imperial history until the late 1980s.⁹³ However, since the publication of Goffart and Heinzelmann's monographs, there has been a small explosion of work concerning Gregory, most notably Ian Wood's small tome *Gregory of Tours* and Katherine Mitchell and Ian Wood's edited volume *The World of Gregory of Tours*.⁹⁴ These, along with the multitude of papers on aspects of Gregory's histories and his relationships with various kings of the Merovingian world, particularly those by Guy Halsall and Danuta Shanzer, have developed a thriving field examining Gregory's *Histories* from all angles.⁹⁵ Gregory's work is now universally seen as a literary and philosophical work. Some scholars, particularly Guy Halsall, have read overt political themes in the *Histories*, while others have followed Heinzelmann's line that it is a fundamentally theological composition.⁹⁶

Chronicles and Histories, such as that by Gregory of Tours, tend to be concerned with the habits and behaviours of the Royal family and have primarily been used exclusively for such purposes, but also give some evidence about non-royal families and particularly local scandals which often demonstrate the limits of acceptable behaviour. Christian sources, such as hagiographies, canon law, sermons and ecclesiastical letters tend to be normative or proscriptive but they abound in the period under consideration and are very useful for providing an insight into an emerging and evolving set of values, assumptions and rules around the family. All these sets of evidence are examined throughout this thesis, and in combination – although with a constant awareness of genre and genre conventions - in order to construct the broadest and most comprehensive analysis of family roles in this period possible. Using such a broad range of source materials further allows me to question and identify competing and complimentary strands of discourse and behaviour in the culture(s) of the post-Imperial west.

⁹³ Heinzelmann, 2001: i

⁹⁴ Wood, 1994a; Wood & Mitchell, 2002.

⁹⁵ Especially Halsall, 2002; 2003; Shanzer, 2002

⁹⁶ See especially, Halsall, 2002; Wood, 1993; 1994; 1994a

Two sources which do not appear in this thesis are Tacitus' *Germania* and Julius Caesar's *The Gallic Wars*. These texts have been widely used in scholarship concerning the 'Germanic' family, usually to make points about wide kinship networks. These classical Roman ethnographic texts were written during the height of Roman power, for Roman audiences.⁹⁷ They therefore both enshrine dubious Roman views of foreigners and barbarians, and do not shed light on genuine 'Germanic' practice.⁹⁸ The decision was therefore made to exclude them as sources, and to focus only on sources produced during the period under consideration.

Thesis Overview

This thesis has two parts. Part one examines families and family roles as they are seen in the post-Imperial codes. This section particularly questions how far these codes are 'Germanic' or different from Imperial and Classical Roman law. Chapter one outlines the historical and historiographical context of the codes and their survival to define the parameters of part one. The rest of these chapters then examine the most significant laws concerning families and family roles in the codes, which particularly focus on the transitional moments of the family lifecycle: betrothal, marriage, divorce, widowhood and parenthood. These analyses highlight the most common and significant elements of the codes' provisions on these subjects and attempt to answer the first of the research questions. Using canon law, formulae and late Roman Imperial law as point of comparison, this part argues that claims of 'Germanic' influence on these sources have been overstated.

⁹⁷ For an excellent overview of the use and misuse of Tacitus' *Germania* since its composition, see Krebs 2011.

⁹⁸ Murray, 1983: 39-67 for a dismantling of the use of Tacitus and Caesar as sources.

Part two then takes the parameters and conclusions of part one and uses them as a framework to analyse the literary sources which survive from the period. This section questions how far the concerns of the legal codes are found in the literary sources, and whether the concerns are portrayed in the same ways. The chapters of part two also follow the life cycle of the family unit, beginning with betrothal, followed by marriage, divorce, having children, parenthood and older parents with adult children. Part two poses the two research questions of this thesis: first, without the Merovingian royal family as the primary point of reference, are the alleged ‘Germanic’ influences strong in the literature being produced in the post-Imperial kingdoms? Second, is there a noticeable shift in the application of Christian thought to familial concerns that could be identified? This part is wide ranging and diachronic. It looks at a wide range of literary genres in order to produce as comprehensive a synthesis as possible. This thesis aims to produce a cultural history of families and family roles during a well defined and distinct historical period, a period of great social and cultural change for its inhabitants. Therefore, post-structural and deconstructivist methodologies of cultural history have been employed throughout.

Part One: Legal Context

1.1.1 Betrothal and Marriage

This thesis begins with the rituals of betrothal as the starting point for the creation of a new family group. The majority of the law codes consider betrothal in terms of a first betrothal of a younger generation, and have separate laws for second and third betrothals. Therefore, this section will deal primarily with first betrothals.¹ Although there were certainly many forms of long and short term sexual relationships common in the post-Imperial world, only one was marked in the codes as being called marriage (*matrimonium*).² This partnership was qualified by several things in the law, most notably by the property transfers that took place, the contracts which accompanied these negotiations and transfers and the presence of two distinct ceremonies. The first of these ceremonies was the betrothal ceremony. Betrothal marked the passage into adulthood for the younger generation, especially young women, and also denotes the joining of two larger family groups, both in terms of property and obligation.³ Firstly, this chapter will examine betrothal rituals and assumptions about betrothal through the ‘Germanic’ codes. The primary focus of the post-Imperial codes is the negotiation of the transference of property and gifts and the distribution of this property once the marriage is ended. This is a notable facet of law both Imperial and post-Imperial: they tend to be planning for the possible end of a marriage before it has even begun. Although this is just one of the facets of betrothal, it is nonetheless an important one and one which has raised significant questions about the perceived differences between Imperial and post-Imperial betrothal practices and the images they portray of these apparently separate societies. In the late nineteenth and early twentieth centuries, this took the form of legal and ethnographic scholars arguing that the peoples of the post-Imperial west sold women as

¹ Subsequent betrothals tend to be dealt with in laws concerning widowhood. Although the *reipus* payment unique to the Salian laws will be considered here.

² Smith, 2004: 124-5.

³ Smith, 2004; Goody, 1979 2-5; Van Baal, 1975; 75; 80; Rosman & Rubel, 1995: 76.

chattel. This was asserted by such eminent and influential historians as, for example, Julius Ficker (1898), Herbert Meyer (1927), and is still influential in some French scholarship, for example Jean Pierre Poly's *Le Chemin des Amours Barbares: Genese medievale de la sexualité* (2003), and is based on the change demonstrated from the classical Roman dowry, to the systems of *wittimon*, *pretium*, *dos* and *mundium*. These systems are, however, not a simple system of bride-selling, but in fact represent one of the best historical proofs of Jack Goody's assertion that dowry, dower and brideprice are not mutually exclusive, opposite and opposed systems of betrothal. They can, and do, co-exist.⁴

1.1.1.1 Betrothal in the Liber Constitutionum

The *Liber Constitutionum* (LC) is the law of the Burgundian kingdom. Although in modern parlance it is often referred to as the Code of Gundobad, this attribution is not indisputable.⁵ The early absorption of the Burgundian kingdom into the Frankish empire

⁴ Goody & Tambiah, 1979; Hughes, 1978: 263-4 Reynolds, 2007: 117-18 on the use on different terminologies for these gifts from the sixth to the eleventh century. He notes that the Frankish *dos* incorporates two distinct Roman traditions of gift giving: the *dos* and the betrothal gift. See also Le Jan, 2001: 53-67 for an interpretation which agrees with Hughes.

⁵ In all the 13 surviving manuscripts it is titled the *Liber Constitutionum*. Of these surviving MSS, the earliest can be dated to the ninth century and two primary traditions exist: the first contains a prologue that ascribes the codification to Gundobad, while the other ascribes it to his son Sigismund. The confusion caused by these contradictory prologues has traditionally been solved by ascribing the first 41 titles to Gundobad, while titles 42 – 88 are ascribed to Sigismund (Fischer Drew, 1972: 6-7). A more recent interpretation, that has now been broadly accepted, is that that majority of the laws were issued by Gundobad, but that they were officially collated and codified by Sigismund (Collins, 1998: 8; 2006: 230). Of the MSS which survive, eight contain a standard 88 titles, while five contain 105 titles. The additional 17 titles are generally accepted to be later additions to the original text (Wood, 1990: 53; 62; Boyson, D. 1988. 'Romano-Burgundian Society (in the age of Gundobad)' *Nottingham Medieval Studies* 32. 92; Stroeker, 1948: 97; Bosl, 1975: 130. Amory, 1993: 5-7 for criticism). Whether the LC can be seen as an explicitly royal text, in the manner of the Lombard or Visigothic texts, or as an attempt at presenting the laws as being traditional has been debated, although in recent years it has more coherently been viewed as an openly royal work. The co-existence of the LC alongside the *Lex Romana Burgundionum* (LRB) and the ethnic terminologies used by both codifications has been commonly used as evidence of binary divisions between Romans and Barbarians in Burgundy and for 'personality of law' whereby the LC regulated ethnic Burgundians and the LRB served for ethnic Romans. This traditional interpretation of their co-existence has not gone unchallenged, with scholars such as Patrick Amory suggesting that the two codes were designed to work together, not in opposition. Amory himself has posited the theory that the LC existed for rural use, while the LRB was for the city (Amory, 1993: 12-13; 17-18). In this interpretation both the LRB and the LC are considered territorial supplements to classical Roman law, each for specific circumstances, not personalised replacements and it is this interpretation that has prevailed in more recent scholarship (Wormald, 2003: 28; Collins, 1998). That the compilation of the LC had some Roman influence is supported by Sidonius Apollinaris who writes that his friend Syagrius has become a 'Solon to the Burgundians,' a statement that has been taken to mean that Syagrius acted in an advisory capacity for Gundobad as he was formulating his laws. (Sid. Apoll. *Ap Ep* 5.5 'Old Germans bowed with age are said to stand astounded when they see you interpreting their German letters; they actually choose you for arbiter and mediator in their disputes. You are a new Solon in the elucidation of Burgundian law; like a new Amphion you attune a new lyre,

means that the Burgundians as a people or a kingdom have not been particularly well researched, and only Drew's brief 1963 article discusses family in Burgundian law in any detail.⁶ Betrothal in the LC occurred when a man sought a girl or woman's hand in marriage. Regulations existed to discourage widows from seeking a second husband themselves, with more proactive women being severely censured but not explicitly young girls.⁷ It seems likely that this represents the higher personal control and freedom an older widow would have than a young maiden, perhaps as she may also have lost her father. Consent from the girl's father or guardian was imperative, although this does not in itself imply that the groom approached her father for permission before the girl, it does demonstrate a level of parental control over the marriage. There are numerous provisions dealing with women who married without consent that result in a fine for the groom and a sense of social shame on the bride for her lack of chastity.⁸ Such provisions raise important questions with regards to who exactly these laws are legislating, and what the significance of the girl's chastity (or virginity) was within the post-Imperial world. These questions will be examined in more depth in section 2.1.1.

In the Burgundian code, the negotiations regarding property transfer and other gifts must have taken place once the girl's father had given consent, or potentially beforehand, although there is little in the laws regulating these negotiations.⁹ The betrothal was finalised

an instrument of but three strings'; Wormald, 1977: 126; 2003: 25) However, the extent of this Roman influence is of great contention (as it is with all the codes). The traditional view that the LC represents remembered 'Germanic' tribal custom is no longer considered viable, while the Roman influence can be overstated. While the LRB can be accurately described as 'a concise paraphrase' of the Theodosian Code (although it has also been argued that it consists of prefectural edicts in line with the law of the Theodosian Code), the LC is primarily viewed in modern scholarship to be of royal edicts combining Roman advice, traditional law and novel legal inventions (Innes, 2007:283.) A contradictory voice remains in Ian Wood who in 1994 argued that the LC was created as a unitary whole for the Burgundians in the same way that the *Lex Ribuaria* was created by Dagobert for the Ribuarian Franks.

⁶ Drew, 1963 which provides a useful summary of the picture that can be drawn of the Burgundian family from their laws. Ian Wood has also worked on the Burgundians, for example 2008; 1994.

⁷ LC XLIV.2 *Quod si mulier vidua cuicumque se non invita, sed libidine victa, sponte miscuerit et in vocem causantis eruperit nec statutum percepiet numerum solide rum, nec eum cui se tali dedecore sociaverit, coniugio ipsius reclamantem iubemus addici quia iustum est ut actuum suorum vilitate confusa nec matrimonia sit digna, nec praemio.*

⁸ LC. XLIV *Illa vero facinorosa sui dehonesta flagitio omissi pudoris sustinebit infamiam; CI; uaecumque Burgundio alicuius optimastis aut mediocris sine ordinate ione patris cum alicuius filia se coulaverit iubemus ut tripla solutione optimatis ille qui feurit, patri ipse cum cuius filia se copulaverit et eum antea scire no fecit nec consilium petit centum quinquaginta solidos cogatur exsoluere: et multae nomine solido* Drew, 1963: 8 regards this as evidence that girls were not approached by their future husbands.

⁹ Unlike some of later law codes, most notable the *Liber Iudiciorum*.

with a ceremony and sealed with vows and a pledge that a marriage would take place in the future. These procedures are not outlined specifically, but are revealed in a long and peculiar anecdotal law detailing an incident whereby a betrothed woman married someone other than her betrothed. The law refers to vows which were taken by the woman and condemns her in the strongest terms because she ‘broke her pledged faith...violated her vows.’¹⁰ The state of being betrothed was a legally and linguistically defined state different to being unmarried and also different to the state of being married.¹¹ At the point of entering into an engagement, one’s status changed from being a *virgo/juventuus* to being a *sponsa/us*. Furthermore, this indicates that there was a distinction between being betrothed and being married, presumably requiring another ceremony.

The ceremonies of Burgundian betrothal appear to have centred on a payment, referred to in the MSS as both a *pretium* and a *wittimon*, by the groom to the bride’s parents. The concept of a ‘price’ to be paid by the groom is certainly referenced regularly.¹² A single brief reference is also made to a payment made from the groom to the bride, which is designed to protect her from destitution if her husband dies: ‘let her use her *dos*, which she received from her husband, as long as she lives.’¹³ The use of the word *dos*, which in classical Latin refers to a payment made by the bride’s father to the groom known as a dowry, is particularly striking. It appears that it does not refer to a traditional Roman style dowry and it is unclear whether the *dos* and the *pretium/wittimon* are the same thing. If *dos* is a third word being used to describe the marriage gift from the groom’s father or the groom himself it demonstrates a new but still Romanised way of talking about property transactions at betrothal. Drew translates *dotem* as ‘wedding gift’ but otherwise ignores its existence; it is not mentioned in her 1963 article. In this, she only mentions this *pretium/wittimon* and uses it as the basis for her description of Burgundian marriage as being simply ‘a contract between

¹⁰ LC.LII.3 *Fidemque...disrumpens...vota cuccurit*

¹¹ LC LII.

¹² LC XIV.3 *pretium quod por illa datum fuerit* ; XXXIV.2 *pretio...dederat*; XLII.2 *pretium*; LII; LXI *nuptiale pretium* ; LXIX *wittimon*. See Hughes, 1978 who views this as a brideprice, and Reynolds, 2007:118-19 who views this as being derived from Roman practice.

¹³ LC. LXII.2 *Nam si ad alias nuptias transeierit, omnia perdat, dote sane sua quam a marito suo acceperat, quamdiu vixerit* .

the groom and bride's father.'¹⁴

Ruth Mazo Karras has criticised Drew's interpretation of this *dos* and has highlighted the distinct similarity between the Burgundian legal practise and the late Roman, in which property was transferred in both directions in a betrothal.¹⁵ Drew prefers the term *wittimon* to *pretium* as it reduces the complexity of the relationship between this practice and the obviously Roman terms being used. It is clear that the bride's continued use of this *dos* is only to keep her from destitution, even after a second marriage; her sons maintain ownership and gain full use when she dies. A *morgangabe* - a gift given by the groom to the bride on the morning after the wedding ceremony, sometimes referred to as a payment for her virginity - is also mentioned. Again, it is unclear whether this *morgangabe* is the same as the *dos*. On top of this, reference is made to another marriage gift, called *quicquid pater eius dederit* in the text.¹⁶ Finally, a passing reference is made in a law referring to the death of the wife to *quod mulier ad maritum veniens erogaverit* ('that which the woman pays out when she comes to her husband') suggesting that the bride was also obliged or expected to contribute something tangible to the marriage.¹⁷ This bi-lateral flow of property transfer between the families reveals that the bride and her family are the primary recipients of gifts and property, and that the bride was expected to be the final owner of much of the property which was transferred during the negotiations until her death.

1.1.1.2 Betrothal in the Pactus Legis Salicae and the Lex Ribuaria

The laws of the Salian Franks are the most studied and most frequently cited of the law codes, simply because the multitudinous works of Gregory of Tours have led to a focus on the Frankish kingdom of Neustria that has tended to colour much scholarship on the post-

¹⁴ Drew, 1963: 8

¹⁵ Mazo Karras, 2006: 139-140; drawing from Reynolds, 1994: 82-83

¹⁶ This is translated by Fischer Drew as 'what his father gave her' although the 'her' as a recipient is not included in the text. A more accurate translation would simply be 'that which his father gave.' *LC. XXIV.*

¹⁷ *LC. LXXVI; LC. XIV.4 Similiter quod mulier ad maritum veniens erogaverit, defunct sine filiis marito mulier aut parentes mulieris non requirant.*

Imperial west.¹⁸ The Ripuarian code, on the other hand, contains no provisions concerning betrothal or marriage.¹⁹ It is posited by Karras that this is because betrothal and marriage

¹⁸ The laws of the Salian Franks survive in over 80 manuscripts of varying quality, most of which contradict or complicate one another. (Wormald, 1977: 116-7 for examples of contradictions between the various versions of the *Lex Salicae*) Five different versions of the Salic law have been reconstructed from the surviving MSS: the *Lex Salicae* – the 65-title code issued by Clovis; several redactions of up to 100 titles including the *Pro Pactus Legis Pacis* of Childebert I and Lothar I (c.524), Capitularies and the Malberg Glosses (a now near unintelligible corpus of Frankish legal terms); a 100 title redaction by Peppin and the Karolina which is taken to be a redaction by Charlemagne and consists of 75 titles. Today, the major editions of these, reconstructed from the surviving MSS and containing an 8 column running commentary of major MS deviations alongside the reconstructed texts, is Eckhardt's 1963 *Monumenta Germanica Historia* edition. The *Lex Salicae* is commonly – although tentatively – ascribed to Clovis due to a prologue attached to a fraction of the 'A' MSS which ascribes the compilation to the 'first king of the Franks,' assumed to be Clovis; and by the internal evidence (law 47.3) of the *Lex Salicae* which refers to 'Franks who now live beyond the Loire.' This is taken as a reference to Clovis' defeat of the Visigoths in AD 507 (Wood, 1994: 111-118 although he warns that this is not an entirely solid assumption; Collins is equally tentative in his dating Collins, 1998: 11-15; 1999: 172; Wormald, 2003: 28; Fischer Drew, 1991: 28; Rivers, 1986: 2-3. More recently Goosman (2012), citing Karl Ubl (2009) has suggested that the *Lex Salicae* may date from early in the fifth century. That Clovis is the author of the *Pactus* is taken as standard knowledge, as can be seen in its unquestioned inclusion in dictionaries and encyclopaedias of the middle ages as one of his achievements). There are no surviving Frankish MSS of the *Lex Salicae*, with the earliest being commonly dated to c.AD 770. The *Lex Salicae* has been commonly taken as a unitary compilation by Clovis, a single written collection of previously oral 'Germanic' custom based on information from the shorter prologue (McKitterick, 1989: 44&48 on the advice of B. Bischoff; Collins, 1999: 453.n.76. This is the Wolfenbüttel MSS, Weissenburg 97) It is however no longer viewed as either a unitary compilation, or as a codification of oral custom. Instead, legal scholars tend now to view the *Lex Salicae* as being a compilation of royal edicts produced *ad hoc* to regulate relations in post-Roman Gaul, combined with with some modified Roman vulgar law, some codified custom and some entirely new laws developed for a new legal world (Rivers, 1986: 1; the German *Rechtsschule* e.g. Brunner, 1906. The shorter prologue is given an earliest date of 560s, while the longer prologue is dated to Pippin's redaction. Wormald, 2003: 28. Both attribute the original compilation to the four lawmakers, while only the longer prologue mentions the 'first king of the Franks'. Wood, 1994: 109 who assumes that these men are legendary; Collins, 1998: 12). While the Roman influence on the codes has, by some, been emphasised, more recently this emphasis has been tempered with a renewed focus on the circumstances of the Frankish world and a new emphasis that the *Lex Salicae* is neither Germanic nor Roman but is representative of kings using both traditions and practises to deal with situations in a new context (Wood, 1994: Collins, 1999: 172; Halsall, 2007: 463-4; Innes, 2007: 128.). Despite unequivocal agreement that the *Lex Salicae* was promulgated by the Frankish kings, the fact that the texts of the laws themselves attempted to distance lawmaking from the royalty through both the attributions in the prologues and the existence of anonymous capitularies is significant. It indeed strengthens the generalisation that the kings of the post-Imperial west legislated to 'be Roman' by offering an ideological link to the first Decemvirate who were alleged to have written the first Roman laws (Halsall, 2007: 464; Innes, 2007: 128; 283; Collins, 1999: 172. For the Roman Decemvirate, see Livy *Ab Urbe Condita* Book 3)

¹⁹ The *Lex Ribuaria* (*LR*) survives today in thirty-five manuscripts, with the earliest dating from the late eighth century. However, no MS contains any form of royal attribution, which has caused some minor controversy in the dating of the code. Although some scholars have made a case for a Carolingian date of promulgation, this has now been discredited and a consensus has formed dating the code to the reign of Dagobert I, specifically AD 633/4 when he instituted his son Sigibert III as ruler of Austrasia. This dating is based on an attribution in the prologue of the *Lex Bavaria* (Krusch, 1924: 336-338 was the most virulent supporter of the Carolingian date, attributing it to Peppin I. For Dagobert I: Rivers, 1986: 8; Fischer Drew, 1986: 472; Fanning, 1995: 286; Wood, 1994: 116. Eckhardt, 1959.) This dating has also provided support for the general agreement that the *LR* was created by the Merovingian court of Neustria for the recently subsumed Austrasian Franks. Some have seen this move as being a specifically ideological move to provide ethnic markers for non-Salian Franks. (Wormald, 2003: 40-41) Ian Wood has – very tentatively – placed it within a 'remarkable period of lawmaking' by Dagobert and his father Clothar II, making it a small part of a greater lawmaking pattern (Wood, 1994: 117) Elsewhere, he has claimed that it (along with the *Lex Alamannorum* and the *Lex Bavariarum*) demonstrates the power of local aristocracies. (Wood, 1990: 159) As a regional code, potentially bestowed by a beneficent Neustrian overlord, the *LR* has tended to be seen as personal, supported by its overt mentions of Roman law and the equation of Romans with a half-free status (Wood, 1990: 159) The apparent similarities between the *LR* and

were fully private matters, not controlled by the state in the Ripuarian territory.²⁰ This is a notable argument, as were it to be true it would suggest quite different understandings of betrothal in the Ripurian and Salian territories. In discussing Frankish betrothal the *wittimon* is widely considered to be a fundamental part of betrothal practice based on the laws regarding a payment called *reipus* – usually translated as ‘ring-money.’²¹ The *reipus* was a fee of three *denarii* and one *solidus* to be paid by a man who wished to marry a widow to her kin after he has presented himself to a court (*thunginus* or *centenAriès*) to ask permission.²² In the main text of the *Pactus Legis Salicae*, *reipus* is only mentioned as a means of gaining permission to marry a widow, but the *Capitula* of Chilperic mentions it again in order to ‘grant the *reipus* to all our men.’²³ There are some translational difficulties, but it appears that this law has been ‘granted’ to everyone in order to standardise betrothal practice across the Frankish kingdom. This system of *reipus* is unusual in many ways. Most notably, there is no suggestion in either of the laws which mention it that it applied to anything other than the second marriage of widows and it is never applied explicitly or implicitly to first marriages. Furthermore, this complex process, involving presentation at a court and a series of rituals, highlights that these legal texts were not necessarily developed for genuine application, but as ideological texts for the development of a Frankish image for the edification of both the Imperial east and the Gothic kingdoms, with all of whom they maintained diplomatic contact.

Reipus then cannot be seen to be a fundamental aspect of Frankish betrothal. Within the *Pactus* there is also mention of a wedding gift (*donatio nuptialis*), potentially a dowry in

the *LC* have also given credence to this view (Rivers, 1986: 9 (where he describes the *LC* as a ‘prototype’ for the *LR*; Wood, 1990: 159). This has never been refuted at length, although Roger Collins includes it in a selection of codes which he considers territorial in nature (Collins, ref for personality: Fisher Drew, 1986: 472). For the same reasons, the *LR* has not suffered from being viewed as codified ‘Germanic’ custom. Indeed, it has been instead viewed as representing the increasing influence of Roman law and Christianity on Frankish practice (Rivers, 1986: 9-10; Fischer Drew, 1986: 472; Wormald, 2003: 41). The *Lex Ribuaria* is, however, a greatly understudied part of the corpus of early medieval law, and as such very few conclusions have been reached about its specific place and meaning.

²⁰ Karras, 2006: 139

²¹ Indeed, it has been used as a basis for a great many fallacious theories about the ‘Germanic peoples’, including for matrilineality. See Murray, 1983 for a full overview of these theories.

²² *Pact. Leg. Sal.* XLIV

²³ *Pact. Leg. Sal.* . Cap.4 ; 107. *Similiter conuenit ut reipus concederemus omnibus leodibus nostris, ut per modicum rem scandalum non generetur in regione nostra.*

the traditional Roman form, given by the bride's father to his daughter.²⁴ This aligns with the clear reversal of the terms *dos* and *donatio nuptialis* in the *LRB* and *LC*, and strongly suggests that these terms were reversed from their Roman meaning throughout the post-Imperial codes.²⁵ However, this reversal raises the question of how far the post-Imperial legislators genuinely understood the Roman law if they were unable to maintain the meaning of these terms, even with the alleged input of culturally Roman advisers. Again, the validity of these codes as practical legislative documents is questioned. In a Romanised fashion the size of this wedding gift is subject to a degree of official regulation in the capitularies in that it must not be larger or smaller than the portion of patrimony given to any of the father's other children.²⁶ The law concerning widows and *reipus* also discusses this *donatio nuptialis*, which prompted Fischer Drew to claim that it was given by the groom, which would make this *donatio* identical to the *donatio nuptialis* of the Theodosian Code.²⁷ It has been suggested that this payment was developed to provide the first husband with a payment for the rights over the woman involved (her *mundium*), however it is equally probable that it was in fact developed to compensate for the outlay of his original *wittimon*.²⁸ Fischer Drew suggests that the *reipus* became part of the *donatio*, although this is difficult to support based on the law codes, and is particularly difficult to reconcile with the fact that the *reipus* was clearly a nominal amount.²⁹ There is also a *dos* mentioned in the *Pactus* with regards to its ownership after the death of either the husband or wife. In each case the surviving party retains half the *dos* and the deceased's relatives receive the other half.³⁰ From the evidence of the *Pactus*, the most likely conclusion is that this *dos* is the same as the gift given by the father to his daughter and therefore refers to the Roman practice of direct dowry, rather than the form of *wittimon/pretium* seen in the Burgundian code.

In the *Pactus*, betrothal again is a legally recognised state, denoted by the terms

²⁴ *Pact. Leg. Sal. Cap.* 1. LXVII

²⁵ *LRB* c. 21.3

²⁶ *Cap Sal.* 1. LXVII

²⁷ Drew, 1991: 42; *CTh* 3.7.3 Reynolds, 1994: 115 n.43

²⁸ Karras, 2006: 143.

²⁹ Drew, 1991: 42

³⁰ *Pact. Leg. Sal.* CX

sponsus/a, and it is formally entered into through a ceremony which is held in front of relatives.³¹ Parental consent to the union is again essential, and the law legislates again ‘procurers’ who attempt to arrange marriage without parental permission, threatening them with the death penalty.³² This is remarkably similar to a law in the Theodosian Code which punishes nurses who act as go-betweens for the bride and groom with death by molten lead.³³ Once the betrothal was contracted and the ceremony held there was no allowance for annulment by either partner without significant fines.³⁴ Again, this is notably similar to the *CTh*.³⁵

1.1.1.3 Betrothal in the *Liber Iudiciorum*

The *Liber Iudiciorum* the most explicitly organised and detailed of all the codes with regard to betrothal and marriage as the entire third book (of twelve) is dedicated to its regulation.³⁶ The first law of Book Three states, unequivocally, that marriage is not valid

³¹ *Pact. Leg. Sal.* . LXVa

³² *Pact. Leg. Sal.* . LXLIX

³³ *CTh* 9.24.1.1 ‘Since the watchfulness of parents is often frustrated by stories and wicked persuasions of nurses, punishment shall first threaten those nurses whose care is proved to have been detestable and their errands bribed and the penalty shall be that the mouths and throats of those who offer incitement to evil shall be closed by the pouring of molten lead.’

³⁴ *Pact. Leg. Sal.* . LXVa A fine of sixty-two and a half *solidii* was levied against people who cancelled a betrothal.

³⁵ *CTh* 3.5.1.2; 3.5.3; 3.5.6; 3.5.11.1

³⁶ The earliest Visigothic legal text is the Code of Euric (CE), which exists now only as a fragmentary palimpsest in a single, much later manuscript. (Collins, 1983: 25; E. A. Lowe. *Codices Latini Antiquiores*. Vol. 5. No. 626). Only titles 276-336 remain, and many of these are themselves damaged. However, a great deal has been made of these fragments in modern scholarship, particularly their distinctly Roman character which has – along with the perceived size and comprehensiveness of the entire body of Visigothic law – largely freed the CE and subsequent Visigothic lawmaking from the assumption that they represent pre-migratory custom alone. The dating of the CE is unclear, and has been a hotly debated topic. A traditional perspective maintained that because Euric was usurping the lawmaking prerogative of the Roman emperor this would not be possible before 476 (Wormald, 1977). However, in more recent scholarship this assumption has been called into question, particularly by Roger Collins who has strenuously argued that the CE (and other codes of the period) was in fact taking on the role of Roman praetorian prefects and thus it was possible for Euric to be producing legislation prior to the withdrawal of the Roman empire (Collins, 1998: 5-7; 17. Further external evidence for dating comes from Sidonius Apollonius *Ep* 8.3 which gives a date of 477). In more general recent scholarship, it has been deemed sufficient to simply date the CE to the ‘reign of Euric’ (467-484 eg. Halsall, 2007: 462). The CE has been a focus for debate concerning whether it represents the earliest non-Roman lawmaking in western Europe or a continuation of a tradition begun by Theodoric. This debate that has never been entirely settled, but most scholars remain tentative about definitely ascribing lawmaking to Theodoric while keeping options open (E.G. Wolfram, 1979; Collins, 1998: 5; 1983: 26-7). The familiar debate of personality of law has also been a part of scholarship on the CE, with the current consensus being that Visigothic law has always been territorial in nature, refuting a previously popular notion that there was a sudden move from personality into territoriality in the

without a dowry:

For where the dowry has been neither given, nor stated in writing, what expectation can there be of future conjugal dignity, when propriety does not confirm the celebration of the marriage, nor the honourable obligation of the written contract accompany it?³⁷

Under the separation of the laws into *Antiqua* and those created by Recceswinth, this is claimed to be a new law, separate from that which is considered old. Therefore, as Recceswinth places so much value on the making of the contract it can be assumed that this marked the official introduction of a new and different way of viewing contracts in Visigothic

seventh century (King, 1980 for the argument that the CE was personal and other references. Wolfram, 1988: 195-6; Velazquez, 1999: 229; Collins, 1983: 29; 2006: 225 for territoriality). This debate has been complicated by the existence, and apparent popularity, of the Breviary of Alaric II, an abbreviated form of the Codex Theodosianus which is now – like the *LRB* – seen to work in conjunction with, not opposition to, the Visigothic law (Collins, 1998: 7; Halsall, 2007: 466; Innes, 2007: 128; Velazquez, 1999: 227). After Euric, Isidore of Seville attests that Liuvigild revised and reissued the CE, in a move that has often been presumed to be a part of his ‘Romanisation’ of Visigothic government. This is a view particularly held by those who have argued that the Codes are merely ideological attempts by weak kings to ‘be Roman’ and have little to no practical or real world application (Isidore, *HG* 51. This line appears in both versions of the *HG*). This reissue however no longer exists as an extant text and our only evidence for its existence is Isidore’s attestation. The laws contained within the fully extant Liber Iudicorum (which is generally known as the Lex Visigothorum) labelled ‘Antiqua’ have often been taken to refer to Liuvigild’s laws, although this is no longer an assumption that is automatic, and attempts to reconstruct Liuvigild’s code from the ‘Antiqua’ laws have had to be abandoned due to the extreme complexity of such a task. A reconstruction was undertaken, but abandoned after the first five books by R. Gibert in 1968. The *Lex Visigothorum* (*LV*) presents itself as a Romanised text, and has been taken as such. It is organised into twelve titles, explicitly bringing to mind the Roman Twelve Tables, and openly Romanises certain sections of the law – notably the laws of succession (Collins, 2006: 227). That it was primarily promulgated by Recceswinth has not been a greatly debated assumption; although P.D. King has attempted to argue that Recceswinth’s father Chindeswinth was both the author and promulgator of the *LV* and that this MS tradition has been lost leaving only Recceswinth’s reissue extant in the MS record, this is not a notion that has been particularly popular (King, 1980; 1979). An argument developed by P.D. King was that Chindeswinth was the primary author but was unable to complete the code before his death, leaving Recceswinth to complete (or extend) the legislation and to promulgate it, although this argument has not been entirely accepted (King, 1972: 18-19; Stocking, 2000: 175 n.13; 115 n. 70). A further major redaction by Ervig in 681 exists in the MS tradition with the same number of MSS remaining extant as Recceswinth’s version (Zeumer’s ‘R’ and ‘E’ classes. Four exist of each class). A large class of extant MSS is Zeumer’s ‘V’ (Vulgata) class which also includes a variety of laws by other Visigothic kings up to Egica (Collins, 2006: 233-4). These MSS were excluded by Zeumer from his 1902 critical edition of the *LV* as he considered them unofficial private compilations, a decision for which he has been widely criticised (Collins, 2006: 233-4; Velazquez, 1999: 226). This re-examination of the ‘V’ class MSS has begun a recent re-evaluation of the *LV* as a whole and it is no longer seen only as a single unitary code promulgated in a linear fashion, but as a collection of royal edicts much more like the other codes combining Roman, Gothic and new law in a constantly evolving system (Innes, 2007:222).

³⁷ *Lib. Iud.* III.1 The influence of Roman law and Roman mores cannot be underestimated in the creation of this law.

society. The making of the nuptial contract here is not a way of commodifying the marriage, but of underscoring the dignity of the union to the participants and making it special, an emphasis which appears rather defensive on the part of the law makers. It is with this in mind that the financial and contractual arrangements of marriage in the Visigothic laws must be examined. This emphasis on the necessity for a *dos* is a clear attempt to align the Visigothic law of betrothal with the classical Roman law, which places strong emphasis on contractual obligations and dowry. However, by making the contract and dowry a legal requirement for an honourable marriage Recceswinth in fact moves away from the traditional, classical Roman understanding which holds a dowry as a social norm and a proper expectation but not a legal obligation.³⁸ This, perhaps more than any other post-Imperial law, demonstrates the morphing of Roman traditions and cultural markers into new models of a new 'Rome' and 'Roman' behaviour as time passes and the distorting lenses through which the classical Roman world is seen. As the Visigothic kings aim to recreate a Romanised world, and remake their image into that of the Roman, they instead create their own approach to the property transfers associated with betrothal.

The property transfers and marriage gifts of betrothal in the *Liber Iudiciorum* are notably different from the Roman form, and are more in line with other post-Imperial codes. They begin with a *dos* provided by the groom's father and explicitly controlled by the bride once she had received it.³⁹ It is stated in this law that this *dos* could not consist of more than one tenth of the groom's father's property, and it was stipulated both that the bride's parents could not demand any more than this and that the amount could not be changed or contested once the contract was made.⁴⁰ The contents of the *dos* and any gifts to the groom from his father were also controlled, and the very size of the *dos* which is described automatically precludes this law from applying to any male of moderate means. A *dos* must contain ten boys and ten girls,⁴¹ twenty horses or one thousand *solidii* of ornaments. As with the laws of

³⁸ Crook, 1990: 164.

³⁹ *Lib. Iud.* III.1.5.

⁴⁰ *Lib. Iud.* III.1.9.

⁴¹ *Pueros* and *puellae*, their status is unclear but their proposed treatment suggests that they were either slaves or un-free.

the Salian Franks, the provisions of this law regarding the size and contents of the *dos* suggest that this is a law that can apply only to the very richest of Visigothic society, casting doubt on how much the rest of these laws can have been applied to wider sections of society.⁴² Again, this usage of the word *dos* is strikingly different from its original classical Roman usage. It refers to a financial obligation on the part of the groom's father, not the bride's, demonstrating the way that the post-Imperial states used Roman Latin terminology to (inadvertently) create new forms.

As this contract is claimed by the *Liber Iudiciorum* to be essential to a Visigothic betrothal for its symbolic meaning as representing the agreement and consent of all, a betrothal ceremony was likewise an essential element to finalising a betrothal as with both the *LC* and the *Pactus*.⁴³ While there is a greater emphasis on contract in the *Liber Iudiciorum* than in the others examined in this thesis, many of the laws regarding betrothal bear a considerable resemblance to those of other post-Imperial kingdoms and to the Theodosian Code. Again, the consent of the father is a necessity, and *raptus* (marriage through capture or kidnap) is treated very severely, with both bride and groom being put to death, while consensual elopement results in the woman being disinherited. This is another new law ascribed to Recceswinth, but which appears to have been heavily influenced by Constantine's identical law.⁴⁴ The Visigothic laws also, as with the *Pactus* and the *CTh*, drawing on a Roman law of Augustus, punish those who attempt to break a betrothal and impose a strict length of time between betrothal ceremony and marriage ceremony of two years.⁴⁵ The Visigothic code however simply forbids the breaking of betrothals, and do not impose the fines common to the other codes.⁴⁶

⁴² *Lib. Iud.* III.1.5 ,

⁴³ *Lib. Iud.* III.1.4

⁴⁴ *Lib. Iud.* . III.3.21 (*CTh* 9.24.1) III.2.9 (an ancient law). See Evans Grubbs, 1995: 183-92 for an overview of Constantinian law on the matter.

⁴⁵ *Lib. Iud.* III.I.IV; III.VI.III; III.I.V

⁴⁶ *Lib. Iud.* .III. 1.4; III.6.3

1.1.1.4 Betrothal in the Lombard Codes

The Lombard laws were first instituted by king Rothari in c.643 and were subsequently redacted by kings Grimwald (c.668), Liutprand (c.713-88), Ratchis (c. 745) and Aistulf (c.750).⁴⁷ The laws regarding betrothal and marriage do not change significantly across these redactions, although some slight modifications are instituted by later kings.

⁴⁷ The laws of Lombard Italy have been relatively understudied in the Anglophone world, being primarily the focus of German and Italian legal scholars. As such very few of the developments of interpretation that have occurred with regards to the other codes have been comprehensively applied to the Lombard laws, as a result of this, they appear very differently in the secondary literature. A large part of this difference is that they are rather later than the Burgundian, Frankish and *Liber Iudiciorum* and are compiled by a very different culture. Thus, they have rarely been analysed alongside their predecessors despite having much in common. They are included within this analysis for two reasons. First, the *mundium* system which is enforced within the Lombard laws has been taken for much of the nineteenth and twentieth century scholarship on post-Imperial families to be representative of all the 'Germanic' kingdoms. Secondly, as a product of a kingdom with very different, more violent, beginnings they present a convenient counterpoint for the earlier codes. The Lombard laws were first codified and promulgated by Rothari in what is agreed to have been a unitary code, comprehensively covering a great many aspects of Lombard life and well organised. The attribution of the edict to Rothari is unambiguous and has never been disputed (*Edict. Rothari* 386. Wormald, 1999; 2005; Wickham, 1981: 36-7; Christie, 1998: 113-4; Paul *HL* 4:42). The epilogue to Rothari's edict explicitly states that he is codifying ancient custom – a statement that has rarely been questioned and which is supported by a matching statement by Paul the Deacon. A traditional interpretation of this edict is that it is Roman in form, but 'Germanic' in content, and it has thus been seen to have more in common with the Anglo-Saxon and Scandinavian law codes than with the Frankish or Visigothic. As such it is more likely to be presented as an ideologically motivated political text with little practical application than other Codes and a great tradition of 'uncovering' external influences or borrowings in Rothari's edict has developed. That this first instance of Lombard law is particularly 'Germanic' in content remains popular, although many have now begun to question this assumption and to present it more in line with other post-Imperial codes – as a pragmatic project undertaken to fill a vacuum caused by the conflict of custom, Roman vulgar and Byzantine law in Lombard Italy. In common with this line of interpretation, continuities with Roman law have begun to be emphasised (Everett, 2000: 96; Brunner, 1961: 417; Hartmann, 1911: 204; Wormald, 1999: 96-101). The next stage of Lombard lawmaking was undertaken by Liutprand, and his redaction has often been considered the triumph of civilised Roman law over barbaric custom, particularly in non-Anglophone scholarship (Besta, E. 1938. *Fonti del Diritto Italiano dall Caduta dell'Impero sino ai Tempi Nostri*. Padova 47-8; Calasso, F. 1954. *Medoi Evo Del Dirirro* I.: *Le Fonti*. Florence. 220-5; 249-53). However, Liutprand did not abrogate Rothari's laws, but rather modified and added to them while emphasising their original authority. Liutprand's redaction is explicitly Christian in origin and content, and three extant MSS contain a long prologue on the origins of the Lombard peoples which is cast in Christian terms, of which much has been made in secondary scholarship. Later kings Grimwald, Ratchis and Aistulf also added dated edicts of their own over the courses of their reigns, although it is only in a single early MS that the output of all the kings is collected in one continuous, numbered collection such as is presented in both modern critical editions and translations (MS Vercellensis 188, which dates from the late eighth or early ninth century. The standard MGH critical edition glosses over a great deal of textual variation in the MSS in order to construct an *Urtext*. This is then reflected in both Fischer Drew's 1973 English translation and to a lesser extent in Azarra and Gaspari's Italian translation (1992). Pohl, 2000: 11 on problems raised by this approach. Also, Halsall, 2007: 463 n.31). Later MSS are less cohesively arranged, but often contain marginalia and cross references which suggests that these laws were living and in constant use (Everett, 2000: 100) The debate that has often consumed the other codes regarding personality or territoriality of the codes has been less vigorous with the Lombard laws. The repeated references in the laws of both Rothari and Liutprand to Romans and Roman law has meant that the Lombards were seen to practice personality of law even when most scholars would accept territoriality for all other codes (Everett, 2000: 100). However, charter evidence strongly suggests that Lombard law was in practice territorial, even if not in word (Pohl-Resl, 1998: 207-210; 219; Christie, 1998: 120-21).

Indeed, all of the later redactions take pains to assert that their laws do not replace, but simply add to or amend those of Rothari, although that may not have been the truth of the matter.

The Lombard laws are the only post-Imperial code to explicitly espouse the particularly restrictive *mundium* system, which for a long time has been taken as retaining a much older ‘Germanic’ marital system, particularly in the Frankish kingdoms.⁴⁸ Although there are uses of the word *mund* (*mnt*) in the *Pactus*, it is only in the Lombard laws that this system is unambiguously developed. To quote Ruth Mazo Karras with full agreement: ‘I cannot prove by an argument from silence that there was no *mundium* transferred in marriage other than among the Lombards; but one certainly would not be warranted in arguing from silence that there was.’⁴⁹ Potentially this is merely because the Lombard laws are longer and more detailed overall; alternatively the emphasis on the *mundium* system in the Lombard laws but not the Frankish or Visigothic could indicate that the Lombard version of the system was in fact more fragile and more frequently flouted than the Frankish – that Frankish women simply never fought their legal incapacity enough to require legislating. Finally, it may be that the system did not exist in the same overarching and official way in the Frankish kingdoms. It is the opinion of this thesis, based on the lack of clear evidence in favour of any other theory, that the latter is the case. This is not to argue that Frankish women experienced more legal freedom or emancipation *per se* than Lombard women; simply that the ideological mechanisms for removing power from women were not as overtly expressed as in the Lombard laws.

In the Lombard laws women are unequivocally forbidden from having power over themselves or property, and marriage within this system is clearly identified as being related to the possession of a woman's *mundium* from her father.⁵⁰ This does not mean that women

⁴⁸ Karras, 2006: 130

⁴⁹ 2006: 130

⁵⁰ *Edict. Roth.* 204: ‘No free woman who lives according to the law of the Lombards within the jurisdiction of our realm is permitted to live under her own legal control, that is to be legally competent, but she ought always to remain under the control of some man or of the king.’ *Nulli mulieri liberae sub regni nostril ditionem legis Langobardorum viventem liceat in sui potestem mariti de ea facere quod voluerit; simul et de res ipsius mulieris. Nam si illa negaverit, liceat parentibus eam pureficare, aut per sacramentum, aut per camfionem, id*

were at the mercy of or the property of their husbands and several laws from Rothari onwards insist that *mundium* holders (who are not blood relatives) are obliged to protect the women they ‘own’, and are forbidden from harming them in any way.⁵¹ Furthermore, it appears that in cases where the husband violated this relationship, his wife's *mundium* could be removed from his possession and held by a third party, apparently without invalidating or legally changing the marriage itself. Furthermore, laws exist to prevent men who other than a woman’s husband from claiming ownership of her *mundium*, demonstrating clearly that marriage within the Lombard laws cannot be described as the purchase of a woman’s *mundium*.⁵² Although marriage is described as being the purchase of a woman's *mundium*, and in the laws which describe betrothal practises the woman is written as being entirely passive, it is possible that the picture is much less simple than this. Although blood relations could technically arrange a girl’s marriage without her consent, no-one else could and there are hints elsewhere that fathers are excluded from this law essentially because they are trusted not to harm their daughters.⁵³ Indeed, Grimwald’s code states that his additions aim to reduce the harshness of Rothari's edict and five of his nine new laws involve the treatment and position of women.

The financial obligations of Lombard betrothal appear to primarily rest on a gift called the *meta* (‘marriage portion’) given by the bride’s father to the groom.⁵⁴ Thus the *meta* appears to be similar but not identical to the traditional Roman dowry. The later laws of

est per pugna. Cf. 165; 183; 195; *Grim.* 6; *Liut.* 12; 18; 29; 60; 100.

⁵¹ *Edict. Roth.* 195. *Si quis mundum de puella libera aut muliere postestatem habens, excepto pater aut frater, et in animam ipsius puellae at mulieris insiatus fuerit, aut illi invatam ad maritum tradere voluerit aut volentibus as eius violentem faciendam consensum praeberit aut consilium dederit et provatur ammittat mundium ipsius.*

See also *Liut.* 120: ‘He who mistreats his ward shall lose her mundium’. See also Smith, 2007: 121

⁵² *Edict. Roth.* 165 195; 196. *Grim.* 6. *Liut.* 101. This contains a passing reference to the possibility of a woman’s *mundium* being held by her children makes the *mundium* concept even more difficult to understand. *Si filius aut filias habuerit, in quorum mundium* is the line in question, translated by Drew as ‘if she has sons or daughters who posses her *mundium*.’ (1973: 188)

⁵³ *Liut.* 12. ‘We have conceded this privilege because we believe that a father ought not [and will not] give his daughter, or his brother [give] his sister to any man with evil intent contrary to reason.’ (trans. K. Fischer Drew, 1973: 86) *Quoniam ista licentia idea dedimus, eo quod credimus quod pater filiam aut frater sororem suam doloso animo aut contra rationem cuiquam homini dare non debeant.*

⁵⁴ *Edict. Roth.*, 181: if a father gives his daughter or a brother gives his legitimate sister the bridegroom must be content with the amount of the father’s or mother’s property which the father or brother gave him on the day of the carrying out of the nuptials. He should not seek more. 182: ‘If the heir does not wish to accept this gift (from the second husband’s own property) then the woman shall have it together with her *mogengabe* and that which she brought from her own relatives, that is her *faderfio* (translated by Drew as ‘father’s gift’).

Liutprand complicate the situation by implying that the *meta* was in fact given by the groom to the bride, that it was optional and was limited to 400 *solidii*. It seems likely that this use of the word *meta* is possibly a confusion with *morgangabe*, which is also described as being optional and given by the groom.⁵⁵ Again, this raises difficult questions about the use of these terms and whether they have any real world meaning. It is clear, however, that it is incorrect to describe this *meta* as a bride-price.

The wording of at least one of Rothari's laws heavily implies that betrothal was viewed as the purchase of a woman's *mundium*: 'If anyone purchases the *mundium* of a free woman or girl and she is handed over to him as a wife...'⁵⁶ However, other laws concerning nuptial gifts, rather than *mundium* do not carry the implication of bride-price or woman purchase: 'If anyone betroths (*sponsaverit*) a free girl or woman and, after the betrothal (*sponsialis*) has been made and the agreement signed, the groom (*sponsus*) neglects to claim her (*eam*) for two years...'⁵⁷ Here the implication is not of purchase, but of contractual agreement although the woman remains a passive party unable to give or withhold consent. Two laws of Rothari obliquely reference what appears to be a traditional Roman dowry, called by the Lombards a father's gift. Firstly, when he forbids the bridegroom from seeking any more property from the bride's father, mother or brother after the marriage ceremony has been carried out and secondly in a list of those gifts a widowed woman can keep when entering a second marriage.⁵⁸ There is also mention in a law of Liutprand of another optional gift called the *morgengabe* given by the groom after the wedding, and in Rothari's edict of nuptial gifts given by the friends of both the bride and groom.⁵⁹ It seems that the wife owned, but had no actual control over, the *meta* and her other gifts; the owner of her *mundium* both controlled her property and was responsible for reciprocal gifts.⁶⁰

⁵⁵ *Morgangabe*: Liut. 7; *Meta* 89.

⁵⁶ *Edict. Roth.* 183 (trans. K. Fischer Drew, 1973: 86)

⁵⁷ *Edict. Roth.* 178 (trans. mine, modified from K. Fischer Drew, 1973: 84)

⁵⁸ *Edict. Roth.* 181; 182

⁵⁹ *Edict. Roth.* 184; 181 this is a particularly interesting law as it explicitly states that women owned property and passed it on to their children (*de patris vel matris substantia*); Liut. 7; 117.

⁶⁰ *Edict. Roth.* 184: 'If, when a father hands over his daughter to another as a wife or a brotherer hands over his sister, on of his friends wished to give something to the woman and the gift is accepted, then that gift will be under the control of the man who has acquired her *mundium* since the husband must make the *launegild* (return gift) himself if one is required. (trans. K. Fischer Drew, 1973: 86)

Betrothal ceremonies are described in detail in Lombard law. In Lombard law betrothal requires a ceremony, an exchange of rings and a signed document which presumably details the financial arrangements made.⁶¹ This is identical to late Roman practice and, in terms of contract and ceremony, also to that outlined in Visigothic law.⁶² The consent of all parties is crucial to the validity of the betrothal and subsequent marriage. The state of betrothal for women is, again, a protected and special state (and betrothed women are marked out by their rings) with particular laws regarding the kidnap and adultery of betrothed women as with the Burgundian laws, but, as with Roman, Visigothic and Frankish law, there are strict limitations on the length of an engagement.⁶³ Liutprand's laws are the first among the post-Imperial codes to consider minimum age of marriage, where girls can marry at twelve and boys at eighteen, but both can be betrothed up to 2 years prior to reaching these ages.⁶⁴

1.1.1.5 Discussion

It is a truism that Roman law was concerned not with marriage, but with the ancestral, property and financial consequences of marriage.⁶⁵ It is clear that, to an extent, the same can be said for the post-Imperial law codes.⁶⁶ The legal framework for betrothal in the post-Imperial world reveals a complex pattern centred on property exchange. In all of these, and in stark contrast to betrothal in late Roman law, it is the bride and her family who are the primary recipients of property. Equally different is the apparent movement of the bride into the groom's family network at the point of marriage. It is these two features of post-Imperial, non-Roman betrothal which mark it as different in nature to betrothal conducted according to

⁶¹ *Edict. Roth.* 178; *Liut.* 30. If a morning gift is to be given, for example, Liutprand states that it must be announced in full, in public and in advance. *Liut.* 7

⁶² For an overview of such ceremonies in the Roman world see Harlow & Laurence, 2010.

⁶³ *Edict. Roth.* 178. It seems likely that this is lifted straight from the Theodosian code. *CTh.* 3.5.4

⁶⁴ *Liut.* 12; 117.

⁶⁵ Buckland, 1963: 106; Crook, 1990: 166.

⁶⁶ The post-Imperial law codes do demonstrate some significant change in their focus on the moral and religious consequences of marriage too. This will be discussed more fully below in section 1.3.

Roman Imperial law.⁶⁷ Nonetheless, there are notable similarities in the way that these betrothal negotiations are undertaken between the codes and to late Roman law, particularly with regard to the legal and contractual processes of betrothal. In particular, the emphasis on clear negotiations on property transfers, a betrothal ceremony, the use of the term *sponsus/a* to denote a betrothed person and the regulation of a two year time limit between betrothal and marriage are markedly influenced by Roman practises. In the presentation of betrothal, the post-Imperial codes demonstrates a clear attempt to align post-Imperial betrothal with the Roman world by talking about it in a profoundly Romanised fashion.

An area where this is not immediately obvious is in the presentation of property exchange at betrothal. These laws describe a picture of a complex exchange of property between the families of the bride and groom, and the couple themselves, of which the most striking element to many scholars has been the clear shift from Roman dowries, to post-Imperial *dotes*, *morgengabe*, *metae*, *pretii* and *wittemon*. Apparently both families were expected to make a financial contribution in the form of a gift to at least one of the couple, and the couple could also pass gifts between them – although only at the point of betrothal or marriage - a fact which serves to complicate the matter even further. These transfers have been well researched, with particular focus on the change from the classical Roman property exchange practice of *dos* (whereby a dowry is given by the bride's parents to the bride, reverting to the sole control of the bride if widowed or divorced) to a perceived 'Germanic' practice of bride-price (where the groom or his family give a gift of money or property to the bride's family, often simplified in secondary literature to the 'purchase of a wife').⁶⁸ This opposition is both oversimplified and misleading in its definitions.⁶⁹ It has been argued that this shift is in line with a shift that has also taken place in Roman law: from unilateral property giving, to bi-lateral property exchange and it is this interpretation that is supported by this thesis.⁷⁰

⁶⁷ Smith, 2004: 125-27

⁶⁸ See for example Goody, 1973; 1983: 34-48; Hughes, 1978; Wemple, 1983: 12-14; Senn, 1946; Smith, 2003; Reynolds, 2007.

⁶⁹ Goody, 1970; 1973.

⁷⁰ Reynolds, 1994: 82-83; Karras, 2006: 139

It is clear that there is no true bride-price outlined in the codes.⁷¹ In those legal cultures where the gift-giving obligations lay with the groom and his kin, the gift does not go to the bride's family as in 'pure' bride-price, but often to the bride herself and therefore cannot be truly said to be a payment to her father for her *mundium*, of virginity or her services. This is very clear in the Lombard and Visigothic laws and is implied in the Salian.⁷² Only in the LC is it implied the bride-price (*wittimon*) goes to the family when it is specified that a father cannot refuse a *wittimon*.⁷³ However, even here the woman is explicitly said to receive one third of her *wittimon* and so is still a significant recipient.⁷⁴ Furthermore, in almost all of these cases there are voluntary supplementary gifts given either to the bride or the couple by one or both sets of parents. The *Pactus Legis Salicae* and the LC, for example, legislate the size of marriage gifts given from father to daughter while the LC also obliquely refers to 'what the woman pays when she comes to her husband;' the Lombard laws also legislate on the timing and size of marriage gifts given to the couple by both sets of parents and a *morgengabe* given by the groom to the bride; the Ripuarian Franks talk of two forms of gift giving from husband to wife; the Visigothic laws forbid grooms from giving gifts within one year of marriage suggesting that this did indeed occur.⁷⁵ This is clearly a more complicated situation than has always been acknowledged in the secondary literature, and is one in which the bride can accumulate personal wealth which, although it may be technically controlled by her husband during her marriage, in fact belongs solely to her and reverts to her in the case of her divorce or widowhood.⁷⁶ Goody & Tambiah's argument that 'bride-wealth' is a clear misnomer with unhelpful connotations of woman-purchase, and their re-labelling of most of these practises as 'indirect dowry' is more a more helpful analysis of the situation.⁷⁷

⁷¹ In agreement with Reynolds, 2007

⁷² Liut. 7.1; *Lib. Iud.* III.I.IV; *Pact. Leg. Sal.* . C; *Cap* 4.107. Confusingly the Salian Franks referred to this payment, which is given by the husband to the wife, as a *dos* although it is fundamentally different to the *dos* of Roman law which refers to a straight dowry. (Rivers, 1986, 20-21).

⁷³ LC LXXXVI.2; LXVII.

⁷⁴ As n. 6. 'the girl will obtain a third part of the ornaments (of the marriage portion) which the relative has received.' (*quod acceperit, tertium solidum in ornamentis puella accipit*).

⁷⁵ *Pact. Leg. Sal.* . LXVII; LC XIV; LXXXVI; LR. 41 (37); *Edict. Roth.* 181; 184; Liut. 7.1; 117.1; *Lib. Iud.* . III.I.VI. *L.Alam.* LIV.3.

⁷⁶ These provisions for inheritance and the ownership of property in case of divorce will be discussed in greater detail later see 1.2.2

⁷⁷ Goody & Tambiah, 1973: 2.

When these developments are examined in the light of the late Roman legislation after Constantine, recorded in the *CTh* and Justinian's Digest, rather than as texts devoid of context, it becomes clear that the provisions in the majority of these law codes - whereby the husband brings the largest portion of property to the marriage - were not far removed from contemporary Roman custom. There is a clear line of development in Roman law from Constantine onward which encourages and regulates gifts brought by men to a marriage culminating in a law stating that men and women were to bring equal portions at the time of betrothal.⁷⁸ In this cultural milieu the idea that the husband had a responsibility to provide a portion to the marriage looks less like bride-price and even more like Goody's indirect dowry. These developments could also cast some explanatory light, for example, on provisions such as that in the *Pactus Legis Salicae* which refer to the property brought and given by both the man and the woman.

This is not to argue that the codes are describing a betrothal gift-giving situation identical to that which is described and regulated in the late Roman law. However, the differences in betrothal practice between 'Roman' and 'Germanic' legal texts have been exaggerated by scholars of the post-Imperial west who have neglected the east as a point of comparison preferring instead to focus on a laws and customs of classical Rome. It appears that, in legal culture at least, in the Roman east both men and women were contributing or expected to contribute a substantial financial sum (or property or movable goods) to their marriage. This is not a situation unique to the post-Imperial western world, but is part of a wider set of developments.

⁷⁸ Reynolds, 1994; Evans-Grubbs, 2008: 108-9

1.1.2 Betrothal, Sex and Consent

In post-Imperial legal texts it is the pre-marital sexual behaviours of women and the precise negotiations of property transfers and ownership that dominated debate. This subject has been most significantly studied in terms of the social and structural anthropological concepts of gift exchange, as described above, and ‘honour-shame societies.’ The concept of ‘honour-shame’ based societies was first posited by Julian Pitt-Rivers and J.G. Peristiany in the 1960s.⁷⁹ Although some of the fundamentals of this theory have been questioned in recent years, most notably the concept of a Mediterranean cultural unity and the rather suspect insinuation of static, unchanging cultural values, it nonetheless remains useful as a frame for considering the relationships that are implied in the codes with some important caveats.⁸⁰ The most fundamental basis for the concept of honour-shame societies is that they have a strong honour code which is primarily founded in gender roles and in sexual behaviours, in which men are awarded honour and women are ascribed shame where both honour and shame are positive qualities.⁸¹ The concept of betrothal has been studied within this theoretical construct as a process in which sexual shame and honour often move from being abstract concepts to being vital realities with financial consequences.

For the matter at hand here, the theory is largely useful as it can provide a framework on which to map the roles and expectations of men and women experiencing betrothal. There are, however, some significant qualifications: firstly that these concepts of honour, shame and obligation can only be taken as abstract concepts which cannot automatically be assumed to have been conscious thoughts in the minds of the people for whom these processes were a

⁷⁹ Peristiany, 1965. Further developed in Pitt-Rivers, 1977; Peristiany, 1992 & Peristiany & Pitt-Rivers, 2005. ‘Honour’ here is defined as per Pitt-Rivers as ‘the value of a person in his own eyes, but also in the eyes of his society...his claim to pride but also it is the acknowledgement of that claim, his excellence recognised by society, his right to pride.’ (1977:1).

⁸⁰ For a more recent overview of criticisms and developments through the decades see Osiek, 2008.

⁸¹ Pitt-Rivers, 1977: 1; 75-81; Gilmore, 1987: 35-48; 61-74; Osiek, 2008: 325-6.

lived reality;⁸² secondly that these provisions and – in all likelihood – the concepts and behaviours enshrined within, as with all source materials, can only truly apply to members of propertied classes and that it is difficult, if not impossible, to extend any conclusions to lower free or semi-free practises; finally that these concepts of honour, shame, obligation and so on do not represent a complete landscape – there were innumerable further assumptions, beliefs, expectations, behaviours and interpretations of all the above which made up the cultural landscape surrounding marriage and betrothal and to continue without acknowledging this would be to oversimplify. These concepts of honour and shame are merely useful theoretical lenses through which to examine the phenomena of these codified betrothal practices. The concepts of gender, social status, social networks and economic control are equally important.

Women and their sexual behaviour are the main focus of laws regulating betrothal practice in all the codes, far more so than for men. This is apparent in the *LC* and also in the other law codes, each of which has punishments for girls who consent to sexual intercourse prior to marriage, most often connected to legislation on *raptus*.⁸³ In the *Pactus Legis Salicae* for example women who voluntarily lose their virginity while unmarried are put to death while in the Edict of Rothair relatives are given free rein to punish such women as they see fit.⁸⁴ Of the more detailed codes – the Lombard, the *Pactus* and the Visigothic – only the Visigothic remains somewhat obscure on the subject of female premarital sex, with just two specific laws on ‘where a girl (*puella*), or a widow (*vidua*), goes to the house of another, in order to commit adultery’ which results in the girl being disinherited and another in which ‘harlots’ (*meretricibus*) are condemned to lashes.⁸⁵ In no code are there any corresponding provisions for male pre-marital sex or any value placed on male virginity.⁸⁶

⁸² Although it is clear they were in some cultures. For example medieval Iceland, on which see Miller, 1990 and 1995

⁸³ *LC* XI.4; XLIV.1.

⁸⁴ *Pact. Leg. Sal.* XIII.7; *Edict. Roth.* 189

⁸⁵ *Lib. Iud.* . III.III.VII. III.III.XVII

⁸⁶ Christian sermon writers and some canon laws do criticise male sexual promiscuity prior to marriage, and exhort Christian men to remain virgins prior to marriage. This phenomenon will be considered in more detail in 2.1.1

The many laws which cover parental consent and punishments for women who marry without a guardian's consent, and the men who marry them (and in the case of the *Liber Iudiciorum*, any people who act as intermediaries for the couple) further emphasises the notion that a *puella* was to be protected.⁸⁷ The abstract role of the maiden in this system of gift-giving and property transfer then is to resist being sexually despoiled, thereby ruining her family's chance of making a good marriage for her, and connections for themselves with a suitable man and his family. The girl is always presented in a passive role in these laws, and the responsibility falls primarily to her family members to control and protect her shame. This is, of course, entirely abstract and it is unanswerable how many parents would consider in such stark terms how much their daughter's virginity was 'worth.' Nonetheless, the laws present a fairly uniform picture of a set of societies across post-Imperial western Europe in which young unmarried girls were expected to be vigilant in the protection of their virginity, as were their parents and guardians, to protect both their own interests and reputation and those of their family as one is forced to assume that a non-virgin maiden of good family would struggle to make an acceptable marriage; in which their virginity was valued and protected, in some cases over and above the life of the individual. This legal landscape is identical to the legal landscape of late Roman law, and demonstrates no significant divergences.⁸⁸

⁸⁷ *LC* XLIV; CI; LXI; *Pact. Leg. Sal.* LXVa; LXLIX; *LR* 39 (35) 3; *Edict. Roth.* 178; 188; *Lib. Iud.* . III.I.III; III.II.IX; *Liut.* 12.VI. *Raptus*: *Pact. Leg. Sal.* . XIII.12; XIII.14; *Edict. Roth.* 191; *Lib. Iud.* . III.III.V; *L.AI.* LI. *L.Bav.* 7.

⁸⁸ Arjava, 1996; Gardner, 1987: 30-31; Evans Grubbs, 2002: 46-51;

1.1.3 Marriage, Law and Property

The subject of ‘Germanic marriage’ is another idea which has been examined primarily through the ‘barbarian’ law codes, with very little recourse to other forms of evidence, with the result that the subject has suffered from extensive distortion and misrepresentation. The myths of *Friedelehe*, *Muntehe* and *Raubehe* as distinct forms of marriage in the ‘Germanic’ populations of the early middle ages are characteristic of much of the research into what is termed ‘Germanic’ marriage, along with a distinctly moralising tone and tendency towards patronising the ‘primitives.’⁸⁹ Such scholarship was, as with so many areas, primarily concerned with identifying particularly ‘Germanic’ areas of marital practice derived from the ‘Germanic’ law codes. Particularly influential were Julius Ficker’s extensive four-volume examination of ‘barbarian’ inheritance law *Untersuchungen zur Erbenfolge der ostgermanischen Rechte* (1891-1899) and Herbert Meyer’s 1927 article ‘Friedelehe and Mutterrecht’ which invented the concepts of *Friedelehe*, *Raubehe* and *Kaufehe*.⁹⁰ These were identified as distinct and separate forms of marriage, denoted by the different position of the wife within each and the manner of her entering the marriage. *Kaufehe* (also known as *Muntehe*) was described as formal marriage, indicated by the exchange of the bride’s *munt* or *mundium* (guardianship) for a brideprice. This form was invoked in emotive language as ‘marriage by purchase’ or as ‘selling women’ as men’s chattel. *Raubehe* was defined as marriage by capture and described a perceived practice where women and girls were stolen against their own will and that of their parents into marriage. Finally, *Friedelehe* was defined as marriage by mutual consent or romantic marriage. Here, no brideprice was paid, only a *morgengabe* (morning gift) upon the consummation of the marriage, there was no transfer of *munt* from father to husband and the union was therefore more easily dissolved. Many

⁸⁹ E.g. Heubner, 1918 (reprinted 1968): 595-6 ‘When they chose their wives by contact [they] saw in the transaction by which they procured them, nothing more than an actual purchase; that in their eyes there was no more difference in the transaction, as such, whether they purchased a wife or a servant.’ He also refer to it as ‘cold blooded and brutal.’

⁹⁰ Ficker, 1899: 409; Meyer, 1927: 198-286 especially at 224, 242-5.

scholars claimed that *Friedelehe* was not true marriage but that it was differentiated from Roman concubinage. It was thus seen as a type of ‘informal’ marriage. This model has been extensively applied throughout twentieth-century historiography on the post-Imperial family, and is invoked by Suzanne Wemple in her monograph on women. While, Wemple undermined the practice of comparing Roman and Germanic marriage and instead focused on the place and function of women within these marital forms, she nonetheless continued to draw on Tacitus and still supposed a first century author’s view was pertinent to a discussion of the post-Roman world. It was not until the twenty-first century that the actual existence of these phenomena was fully questioned, with scholars accepting their existence as fact well into the 1990s.⁹¹ Their existence was taken to be fundamental; the finer detail of their definition and practice were the loci for discussion. Most recently they have been invoked by Louise J. Wilkinson in the introduction to her 2011 edited volume *A Cultural History of Childhood and Family in the Middle Ages*.⁹² This particular inclusion is unexpected, as Ruth Mazo Karras thoroughly refuted the older work of Ficker and Meyer in 2006 by demonstrating that *Friedelehe*, and *Muntelehe*, as invoked originally by Meyer, are not readily separable forms of marriage and may in fact have had more in common with Roman marriage than previously believed.⁹³ Her seminal article entirely exposes the concepts of separate, ‘Germanic’ forms of marriage as myths developed by German legal scholars with no foundation in surviving evidence.⁹⁴ Thus, influential twentieth-century works still discuss *Friedelehe* and *Raubehe* as forms of marriage widely practised in Frankish society.⁹⁵ A further compounding factor has been a widespread insistence on using Tacitus’s *Germania* as

⁹¹ For example Le Jan, 1995: 271–4. Note Nelson’s dismissal of *Friedelehe*’s validity in 1997: 161 n. 27 and in her review of Le Jan’s 1999: 527.

⁹² Wemple, 1983: 12; Wilkinson, 2011: 8.

⁹³ Meyer, 1906: 225; Mazo Karras, 2006: 123, 130. In particular she refers to the transfer of *mundium* as recorded in seventh-century laws and considers that this is potentially the same practice as the transfer of the *manus* in Republican Rome.

⁹⁴ Meyer, H. 1927. *Friedelehe und Mutterrecht*. was the first to posit the concepts and they are now mostly seen as deriving from his faulty interpretations of his sources rather than from any historical truth. It has been most thoroughly debunked by Karras in 2006. Karras has argued that any discussion of early medieval marriage is hampered by preconceived notions of what marriage is in the modern, western world of the historian, that scholars ‘find’ marriage in its modern form in the sources they examine and are then forced to find explanations for anything that looks different. This, to Karras, is why concepts such as *Friedelehe* which are so glaringly absent in the primary material, gain so much credence in modern scholarship. See also Esmyol, 2002 for a deeper analysis of Meyer’s flawed interpretations.

⁹⁵ For example, Wemple, 1981: 35.

a legitimate and accurate source for ‘Germanic’ marital practice, and therefore persistent practice of forcing the legal evidence to fit Tacitus’ descriptions. So, for example, Wemple cites Tacitus to demonstrate the ‘domestication of Germanic women’ in the Frankish period.⁹⁶ Likewise Lucas refers repeatedly to Tacitus’ ethnography to describe Anglo-Saxon marital practice.⁹⁷ In the past two decades, this practice has fallen out of fashion, primarily because Tacitus’ validity as a historical source for the ‘Germanic’ groups has been seriously questioned. For the most part, however, this has left a gap where a picture of legal discussion of marriage should be in the Anglophone scholarship.⁹⁸ The legislation covering the financial status of the husband and wife in relation to their own assets and their partners is, in some cases, covered in detail, while in others it is left obscure. The earliest codes are the least detailed, with the *LC* stating very simply that the husband controlled both his and his wife’s property ‘just as he has power over her, so also over her property and all her possessions.’⁹⁹ Katherine Fischer Drew has argued in several places that this law did not in fact mean what it appears to – that women had no control over their property – but that women subject to Burgundian law could in fact themselves control their ‘personal property,’ based on laws which indicate that girls and women could write legally binding wills.¹⁰⁰ These laws are very clear in that they only refer to a woman’s right to compose a will and a woman’s legal competence, and do not refer to a woman’s right to dispose of her property while living, for example to sell it or to purchase more, while the latter law is unequivocal. It seems likely then, given these two laws, that women legally retained ownership of their property as accumulated through gifts, ‘in-direct dowry’ and inheritance, but had no legal right to control it during the lifetime of their marriage.¹⁰¹

⁹⁶ Wemple, 1981: 28. She then uses the portrayal of Fredegund in Gregory’s *Histories* to prove that not all Germanic women had yet been ‘domesticated’.

⁹⁷ Lucas, 1983: 61; 68; 69; 72

⁹⁸ A notable exception is Crawford, 2009: 85-88 which is excellent, but extremely brief. See also Nelson, 1997; 2002; Bougard, Feller & Le Jan, 2002 provide a notable example from the Francophone world.

⁹⁹ *LC C*

¹⁰⁰ Drew argues this most explicitly at 1963: 11; using *LC LII.3-5*. The clearest parts of *LC LII* state: ‘But if the [deceased] mother shall have made any disposal of her own ornaments and vestments, there will be no cause for action thereafter’ (3); ‘But if an unmarried girl who has sisters dies, and she has not declared her wish in writing or in the presence of witnesses, let her portion after her death belong to her sisters.’ (4)

¹⁰¹ As always, how far this actually transferred into people’s lives is questionable. Once widowed, the situation changes and this will be dealt in 1.2.3

The Salian and Ripuarian codes are equally as obscure on the topic of control. The Ripuarian laws state clearly that whatever property a wife gains from her husband at the point of betrothal is ‘permanently hers irrevocably.’ This is clear on ownership, and presumably exists to prevent husbands from claiming the property back at the point of divorce or the death of the wife. Where the management and control of property during the life of the marriage is concerned, however, the Ripuarian codes give no information. In the *Pactus Legis Salicae* it is stated outright that women are forbidden from owning land, but this is revised in an Edict of Chilperic I and it is therefore implied by omission that women could own and inherit other movable property and money without legal sanction or control.¹⁰² As with the Ripuarian code it is left obscure and unwritten whether married women had the right to control and dispose of their own property during their lives, and any attempt to draw conclusions from the law codes alone can be little more than guesswork. Not that all historians have been deterred by the absence of information. John Rivers, for example, in the introduction to his translation of the Salian and Ripuarian codes, states confidently that Frankish women lived under a system of *mundium* and could not control their own property while married ‘except personal property,’ and could not dispose of it without their husband’s permission.¹⁰³ The difference between ‘personal’ property and ‘non-personal’ property, or what constitutes either category is not explained, and the distinction does not appear in any of the codes themselves. Wemple, on the other hand, approached the topic from a different angle and while she maintained that women could not control their property while married, she emphasised that the husband could not dispose of her property without her express permission.¹⁰⁴ Both Wemple’s and River’s claims are unsupported by references, and there is little in the Salian or Ripuarian codes to support them.

¹⁰² *Pact. Leg. Sal.* 59.6; revised 108 (*Cap.* IV. 3). See 1.1.1 for laws covering property exchange at time of betrothal where it is implied that the bride is the recipient.

¹⁰³ Rivers, 1986: 21. The difference between personal property and non-personal property (presumably that owned mutually by the couple) is not explained, and the distinction does not appear in the laws themselves. As for *mundium*, the possibly related concept of *mundeburde* is apparent in the Ripuarian laws, but exclusively in the context of the guardianship of the king over widows and orphans (*LR* 39 (35).3; 61 (58). 12-13) as Rivers himself acknowledges (1986:227-28). His insistence upon re-interpreting this and transposing it into the Salian laws then is somewhat baffling.

¹⁰⁴ Wemple, 1983: 45.

The Visigothic and Lombard codes are also the most detailed on legal property relations between married peoples, a concurrence which seems rather less than coincidental given the relative silence of the shorter, earlier codes. The Lombard laws are unequivocal in their description of the relationship and baldly state that

No free woman ...is permitted to live under her own legal control, that is to be legally competent, but she ought always to remain under the control of some man or the king. Nor may a woman have the right to give away or alienate any of her movable or immovable property without the consent of him who possesses her mundium.¹⁰⁵

This unambiguous statement of the position of women (at any stage of their life) in the Lombard kingdom means that it has been used as a basis for a homogenous practice of this type throughout the so-called 'Germanic' world of western and northern Europe.¹⁰⁶ A later law explicitly deals with the buying and selling of property, and states that this requires both the consent of the woman's husband and also the witness of several of her relatives to prove that she is not under any compulsion.¹⁰⁷ Both are clear in stating that which has only been guessed at from the shorter codes: women owned but were not allowed to control their own property, under any circumstances.¹⁰⁸ This did not, however, mean that husband's had unmitigated and uncontrolled access to his wife's property to do with as he wished. The Lombard laws repeatedly emphasise that ownership of a *mundium* is a great privilege, not a right, with the aim of caring for the wife not abusing her and her property.¹⁰⁹ Indeed, it is

¹⁰⁵ *Edict. Roth* 204. *Nulli mulieri liberae sub regni nostril ditione legis Langobardorum viventum liceat in sui potestatem arbitrium, id est selpmundia vivere, nisi semper sub potestatem vivorum aut certe regis debeat permanere; nec aliquid de res mobiles aur immobiles sine voluntante illius, in cuius mundium fuerit, habeat potestatem donandi aut alienandi.*

¹⁰⁶ Fischer Drew, 1991:42-43; Wemple, 1983: 32; Rivers, 1977: 240 n.13

¹⁰⁷ *Liut* 22.4.

¹⁰⁸ With the exception of the *LC*. In Lombard law, the only way in which a woman could gain control of her own wealth was to marry a Roman, at which point she was released from Lombard law and allowed to live under Roman law. Even this was not instituted until 713AD. *Liut*: 127. 11. For women's right to inherit see *Edict. Roth*: 158; 159;160; 199; *Liut*: 1-5; 65; 102; 114; 119; 145; *Aistulf*: 10; 13-14.

¹⁰⁹ *Edict. Roth* 195. *Liut* 100;

indicated at several points that it was perfectly legitimate for someone other than a woman's husband to own her *mundium* without causing the legitimacy of their marriage to be called into question, and after particularly terrible crimes women could choose their own guardian.¹¹⁰ The relationship which is described in such detail throughout the Lombard laws then is a deeply complex one, which the single sentence depiction in which women are oppressed usually given barely describes at all.¹¹¹ It is one into which a woman can enter owning substantial personal property through inheritance, 'in-direct dowry,' *morgengabe* and other gifts but which she has no direct control over.

Importantly, however, this is not a relationship characterised by total male dominance, as her husband has no direct control over the wife's property either. Neither partner can access her property to buy or to sell without the permission of the other, so they are forced into a relationship of mutual agreement – at least where this property is concerned. The explicit laying out of the terms of the practice of *mundium* and its apparent importance in Lombard society (at least at the highest levels) mean that the terms of female consent and agreement are also explicitly laid out, and as such give the clearest expression of a wife's position in the marriage with regards to legal and property matters. It also - alone of all the codes – very clearly expresses the husband's role in the marriage, whether he be her *munwaldi* or not. As a *munwaldi* the role of protector and guardian of her well-being, her property and her honour is fundamentally built into their relationship. He becomes the recipient of any compensation that is paid for any harm against her, and is legally bound to shield her from harm and protect her on a number of levels. *Mundium* holders are severely punished for abusing their power by prostituting their wife, attempting or plotting to kill her, physically harming her or allowing anyone else to do so, making false accusations, allowing her to go hungry or without proper clothes and shoes, striking her, setting her to 'indecent' work or raping her.¹¹² Thus, the balance of the husband's power over his wife is delicate

¹¹⁰ *Edict. Roth* 165. 182; Right to choose guardian: *Edict. Roth* 186; 195; 196; 197; *Grim* 6;

¹¹¹ For example, in Christie, 1995: 122-23; Fischer Drew, 1973:31-33; Bardsley, 2007:102.

¹¹² *Edict. Roth* 195; 197; 196; Liut 120.4; 130.1; The usual punishment is the loss of her *mundium*. For the first, fathers and brothers are explicitly excluded from the law, which puts the emphasis even more heavily on husbands. The later Lombard laws are also alone among the codes in their acknowledgement of and punishment

indeed and it is difficult to read as an unmitigated authority and iron rule as he is prevented from harming her body, her life or her honour. The interpretation of *mundium* holding then as a great privilege that transfers great responsibility to the *munwald* then is more nuanced, and in all probability a more accurate reading of the laws. As an unrelated law says ‘it is a greater evil for a man to give illegal counsel to his wife than to give evil counsel to another man.’¹¹³ The role of wife then is constructed as being passive and legally incompetent and needing the constant supervision of a moral man to ensure that other, immoral, men do not take advantage of her (natural) weakness, as are all women in the Lombard legal system.¹¹⁴

The Visigothic laws are equally as detailed in their discussion of the property rights of husbands and wives, but reveal an entirely different set of roles and norms. There are numerous laws which demonstrate that women not only owned, but also controlled their own property and lands outright. It is repeatedly stated that wives may dispose of their property as they wish, including that given to the couple as wedding gifts or given to the wife by her husband, while it is often restated that husbands have no control over or claim to their wives’ property, land or belongings.¹¹⁵ There is one single exception given in the *Liber Iudicorum*, which mandates that husbands alone can lay claim to ‘any property [acquired] through the labour of his wife's slaves...as stated in the law of the Holy Scriptures.’¹¹⁶ This law also refers to the husband’s power over his wife, derived from the Holy sanction of the Bible, a power which is not borne out in the rest of the laws relating to property control. Indeed, a further law, instituted by Recceswinth, which proscribes that married couples are to share in one another’s fortune, be it good or bad in order to reinforce that neither has the right to right ‘to assume superiority over the other’ which fundamentally undermines the piety offered to

of male adultery. This will be discussed in more detail below.

¹¹³ *Liut* 130.1. *quia adhuc maior malitiam est quando homo ad mulierem suam inlicitum consilium tribuit, quam si ad alterum hominem malum consilium dedisset*

¹¹⁴ Perhaps the most significant factor in the Lombard conception of womanhood is that even once widowed or consecrated to the Church women are forbidden from controlling their own property or living *amundius* – without legal protection, an apparently unusual situation in the codes and one which suggests a fundamentally different conception of womanhood and the place of women in that it does not conceive of women’s status and rights changing at any point in the life course. (*Edict. Roth* 182; *Liut* 30.1). See also laws on adultery with slaves and *aldii* which equally assume a passive and helpless role for women.

¹¹⁵ *Lib. Iud.* . III.I.VI; IV.V.II; IV.V.III; V.II.III; V.II.IV.

¹¹⁶ *Lib. Iud.* IV.II.XV *Maritus si cum servis uxoris sue aliquid adquisierit...suecundum sanctam scripturam.*

the Biblical idea of the all-powerful husband.¹¹⁷ This is the first of the law codes to explicitly mention a biblical, rather than an ecclesiastical, influence on lawmaking and demonstrates the strong influence of the church in the Visigothic courts. In this law that couple are forced to be equals and the idea of the husband's supremacy mentioned in the earlier law is wholly undermined.

The only limit placed on a wife's power to dispose of her property as she wished (aside from her required surrendering of her slaves' gains) was that a minimum of three quarters of the amount of her *dos* must be saved for the benefit of her children.¹¹⁸ The wide range of laws grant women living under Visigothic jurisdiction the right to manage their land and holdings autonomously and indeed make a personal profit from them completely separate from their husbands. This is an entirely different legal world to that depicted in the Lombard legislation, despite being promulgated a mere decade after Rothari's edict.¹¹⁹ Strikingly, however, it is also a dramatically different legal situation to that described by Isidore of Seville in his broadly contemporary *Etymologiae*, which depicts a landscape more analogous to that portrayed in the Lombard laws.¹²⁰ Isidore described *matrimonium* explicitly as the 'lawful passing into a husband's control' and later he states

Women stand under the power of their husbands because they are quite often deceived by the fickleness of their minds. Whence, it is right that they were repressed by the authority of men. Consequently the ancients wanted their unwed women, even those of mature age, to live in guardianship on account of their fickle minds.¹²¹

¹¹⁷ *Lib. Iud.* . IV.II.XVI. *ut unus ex his maioris rei et facultatis dominus sit*. This notion will be examined further in 2.2.3 and especially 2.2.4

¹¹⁸ *Lib. Iud.* IV.V.II The Latin term used is indeed *dos*, but – as stated above – very clearly comes from the groom's father (III.I.VI).

¹¹⁹ As stated previously (introduction), the Visigothic laws are explicitly Romanising which may account for some of the depiction of the place of women within legal culture.

¹²⁰ Dating the *Etymologiae* as per Barney et al (2006: 10) to c. 621-636.

¹²¹ *Et. IX.7.19 Matrimonium est nubilum iusta conventio et condicio*. He further makes clear a difference between *matrimonium* and *coniugium* is which is a 'marital relationship of persons who have met the legal requirement, marked by joining together and sexual intercourse with one another.' *Coniugium est legitimarum personarum inter se coeundi et copulandi nuptiae*; IX.7.30 *Ideo autem feminae sub viri potestate consistunt, quia levitate animi plerumque decipiuntur. Unde et aequum erat eas viri auctoritate reprimi. Proinde et veteres voluerunt feminas innuptas, quamvis perfectae aetatis essent, propter ipsam animi levitatem in tutela consistere*.

This is an image of marriage that is unequivocally archaising, set as it is beside a classical lament for a rose-tinted and imaginary era in which men and women chose their partners for their character and manners rather than their beauty and wealth. Equally, Isidore as an ageing bishop has an openly Christianised view of marriage and gender roles within marriage, which certainly colour his presentation here.¹²² Nonetheless, these conflicting accounts of marriage under Visigothic law and the striking similarity of Isidore's view of marriage to that presented in the Lombard laws, both of which feature passive women who need protection at all times and throughout the life course, raises a number of questions. Firstly, it highlights the way in which the same culture could be described through different perceptual prisms and produce entirely divergent pictures.¹²³ This, in turn, demonstrates the serious problems with the validity of using legal codes alone to accurately map the culture of any given society and once more prompts that caution must be taken at all times when handling them, to constantly bear in mind that they can only describe a normative, legal segment of the culture.

A more significant way of examining how the legal provisions interacted with the lived experience is through the Merovingian and Carolingian formulae from Marculf and Angiers. On top of providing significant information concerning the content and role of wedding gifts, they also consider the ownership and management of such property given in

¹²² It is very possible that Isidore's entire presentation of marriage here is a description of Christian marriage according to Christian custom and law, rather than the secular[/pagan]. I find this difficult to argue convincingly and fully due to the nature of the rest of the *Etymologiae* which are overwhelmingly non-Christian. The particular book in which he expounds his version of marriage and marital roles, also contains information on languages, the origins of nations (which are often Biblical), descriptions of different types of rulers and military leaders such as king, Caesar, general, emperor and so on and the differences between citizens, colonists and foreigners. Of these only the origins of nations section contains any overt Christian material while the rest is very derived from non-Christian sources. In his description of family relationships, only the section on brothers contains any Christian information as it differentiates between usages of the term. The section discussing marriages and weddings not only does not cite Christian ideas or source material, but seems to draw information directly from Classical Roman material, probably Roman law, for example where he writes that 'it is not *conubium* when a Roman citizen is joined to a woman of *Latium*,' (IX.7.21) an issue which seems unlikely to have concerned a bishop in Southern Spain during the seventh-century.

¹²³ It is worth noting that Isidore's language in this description of feminine weakness is significantly more aggressive and oppressive than the language used in the Lombard laws. The laws neither explicitly used the word *reprimis*, nor are they openly derogatory towards their female subjects by referring to them as weak-minded.

this manner. Unfortunately, the formulae only originate from limited times and locations in the post-Imperial west.¹²⁴ Nonetheless, they remain useful resources. With regards to property ownership and management, there are two sections of the formulae that are significant: the mandate and the gift. The mandate is a stylised section, and comprises the wife making an official request for her husband to represent her in court as she is technically forbidden from representing herself:

To my lord and husband A. I ask and beg your sweetest grace that you should represent me in all our legal affairs...and appear in court, make claims and litigate against my relatives and any other man regarding these properties of mine which came to me, will come to me or are justly owed to me from the inheritance of my relatives according to the laws; and what ever you do, perform or accomplish on my behalf regarding this, know that I will accept it.¹²⁵

In this statement, we see two important things. First, as a woman the wife is not allowed to defend or represent herself, in the eyes of a court she is seen as a perpetual minor. This is fully consistent with Roman law, as is the form of the dowry. Second, we see that the wife has full ownership of her inheritance, gifts and dowry not merely usufruct. Again, this is fully consistent with late Roman law, as well as all the post-Imperial codes. The final important facet of the formulae concerns the destination of the gifts: ‘You are to receive all this property written above into your ownership and authority, and leave it to your children.’¹²⁶ Here it is made explicit and irrefutable that the wife - at least in parts of post-Imperial Gaul - maintains full control over her property in the same way a man does.¹²⁷ Despite being a fully

¹²⁴ See Rio, 2008, especially 4-8; 33; 248-65 for an excellent and thorough overview of the problems of the formulae.

¹²⁵ Angers, 1 (b); *Domno mihi iocali meo illo. Rogo adque supplico dulcissima gracia vestra, ut ad vicem meam omnis causa conis nostras, tam in pago quam et in palacio seo in qualibet loqua, accidere faciatis, et illas porciones nostras, quae ex alote parentum meorum mihi legibus obvenisse vel obvenire debet, aut iustissime nobis est redibitum, haec contra parentis meus vel contra cuiuslibet hominum accidere vel admallare seu adliticare faciatis; et quicquid exinde ad vicem nostrum egeris, feceris gesserisve, etenim me abiturum esse cognoscas ratum.*

¹²⁶ Angers 1 (c) *Haec omnia subscripta rem in tuae iure et dominacione hoc recipere debias, vel posteris suis inter nos procreati fuerunt.* See also Angers 34; 35; 40; 54; Marculf II, 15; *Formulae Wisigothica* XV;

¹²⁷ The provision concerning children is fundamental to the vast majority of classical Roman and post-Imperial

Gallic set of documents, from the sixth or seventh century, these *formulæ* outline a situation which is fully divergent from the Burgundian laws, and entirely consistent with the picture outlined in the Visigothic and Roman laws. Perhaps then, it can be concluded that where the legislators failed to legislate moderation rather than repression should be assumed.

Taken together, these provisions highlight the significant differences between these polities with regards to their legal views of the abilities and rights of married (and unmarried) women, and by extension the role of the husband as either carer and supervisor or mutual partner (or something in-between). While the Lombard lawmakers focused heavily on controlling female property management (but not ownership), only the Burgundians seem to join them in legislating the matter. The Visigothic laws present a picture that is divergent (despite their Christianised attempts to suggest otherwise), while the remaining law codes appear to have no interest in passing laws on such matters. This does not give an impression that there was a homogenous practise of restrictive property control or *mundium* across the ‘Germanic’ post-Imperial west. The *Pactus Legis Salicae* conceivably give an indication that restrictions were gradually loosened as time passed, but as these laws refer only to property ownership, it seems dangerous to attempt to extrapolate from this to make conclusions about the management of property. Whether the silence of the Ripuarian and Salian codes on the matter of property control in marriage suggests that these legal cultures had more in common with that of the Visigothic laws is impossible to answer from the law codes themselves. The same themes are developed in these laws as in those we saw concerning betrothal. For the most part, the woman is portrayed as passive and fragile, needing active male support and protection and power relationships are defined primarily in terms of gender constructions. Furthermore, this overview demonstrates that there was apparently a strict separation of property within marriages implied by the laws. It seems that husbands and wives were expected to know and keep track of which moveable and immovable property belonged to whom, and – in the case of the Visigothic laws – exactly how much profit was produced from

property law for both sexes, and will be considered in 1.2.3.

each.

1.2 Death and Divorce

1.2.1 Adultery

The concept of *adulterium*, being defined in Roman law as sexual relations between a man and a married woman, is prominent in some of the post-Imperial codes.¹ The Salian and the Ripuarian codes contain no provisions on *adulterium*, however the Burgundian, Visigothic and Lombard each contain several provisions with varying degrees of complexity and extensiveness. At their simplest, adultery laws deal exclusively with female adultery, in line with classical and late Roman law. Thus it is in the *LC*, where it is punishable by the woman's immediate death at the hands of her husband or father along with her sexual partner. The Burgundian laws make the execution of the woman and her sexual partner at the hands of her husband the fundamental punishment and in fact punishes the husband with fines should he kill only one of the pair, or neither.² This is in line not only with late Roman law, but with Augustus's *Lex Julia de Adulteriis* of AD 18, and Cornelian law *de Sicariis* which concerned homicide and was instituted by Sulla in 82BC derived from the Twelve Tables.³ The *LC* does contain a divorce provision for instances of female adultery, in which adultery is stated to be a cause for legitimate and unpunished divorce, which possibly suggests that a significant number of men did not instantly execute their wives regardless of the letter of the law.⁴ In such instances, the case is referred to a judge where the husband must prove the accusation of adultery and, should she be found guilty, the judge will 'pronounce the letter of the law against her' (*proferat ex lege sententiam*) and she is branded a 'criminal' (*criminosam*) and so

¹ *Adulterium* refers specifically to this event, stuprum is the broader and more nebulous Latin term which refers to general sexual misbehaviour, although it is often - in classical Latin - used to refer to sexual conduct with a virgin or widow. *Dig.* 48.5

² *LC* LXVIII.2 'This must be observed; either let him kill both of them, or if he only kills one, let him pay the price of that one according to the customary price which has been established in earlier laws.' *Nam hoc observandum est; ut aut utrumque occidat, aut unum occiderit pretium ipsius solcat, sub ea traditione pretii, quae est prioribus legibus constituta.*

³ Corbett, 1929: 127-46;

⁴ *LC* XXXIV.3

the case presumably results in her execution by another means.⁵

In the Lombard and Visigothic law codes the provisions for adultery are more detailed and more complex. The Visigothic laws are broadly very similar to the classical Roman law: a man has the full right to kill his wife and her partner if caught in an adulterous position.⁶ Her father also has the right to kill her, but slaves who catch their owners in *adulterium* are forbidden from doing so.⁷ Only the injured party can exact the punishment, and the inclusion of the wife's father in this equation implies that a woman's sexual misconduct harms the reputation of two families. If a husband does not immediately kill his wife and her partner, and she is found guilty of consensual adultery then both are placed into the husband's power 'to do with what he pleases.'⁸ Another law clarifies this by forbidding an injured man from resuming sexual intercourse with his (now ex-) wife once she is placed in his power which reinforces the idea that being handed into the husband's power did not automatically mean death at his hands.⁹ The Visigothic laws further included an additional disincentive for committing adultery for the male partner (if death and slavery were not enough); once convicted he was stripped of all his property and it was handed over to the injured husband. There is, however, an exception to this rule, in that if the the male participant has legitimate children, his property is not given to the injured husband, but is saved for them. The rights of legitimate children to their patrimony outweigh the injury inflicted on a husband's reputation by adultery. If the wife had no children from either a previous or her current marriage then he also received all her property.¹⁰ In a shift from Roman law however, there are further provisions which consider sexual misconduct between two slaves, and between a slave and a free man:

Where either a free man (*ingenuus*) or a slave is convicted of the commission of

⁵ *LC XXXIV.3*

⁶ *Lib. Iud.* . III.IV.IV.

⁷ *Lib. Iud.* . III.IV.V-VI.

⁸ *Lib. Iud.* III.IV.I; III.IV.3; III.IV.XII. *Sit potestas de eis faciendi quod placet.*

⁹ *Lib. Iud.* III.IV.XII. *postquam uxor adultera in potestate fuerit mariti redacta, nulla sit illi ulterius vel fornicandi cum ea vel in coniugium illam sibi sociandi licentia.*

¹⁰ *Lib. Iud.* III.IV.I; III.IV.XII. See below, 1.3.1 on the importance of patrimony in post-Imperial law.

such a crime with a female slave in the house of her master; if he should be freeborn, and the slave of good reputation and superior rank, he shall receive a hundred lashes, without any imputation of infamy. If the slave is of inferior rank, she shall receive fifty lashes; and a male slave, guilty of such an offence with the female slave of another, shall receive a hundred and fifty lashes.¹¹

This is a notable piece of legislation as it presents the possibility of a free man, possibly of noble rank as indicated by *ingenuus* - being convicted and publicly punished for illicit sexual intercourse with a slave, a concept completely alien to Roman law and not found in any of the earlier codes. Additionally, the female slave is not punished for her part in the adultery. Notably, the Latin term *adulterium* is not used to describe these acts, maintaining the classical distinction, and the punishments are less severe than those for *adulterium*. Thus, the law implies that this was viewed rather less seriously. It also carries the implication that sexual contact can only be considered illegal if she is not the perpetrator's slave but nonetheless, this is a surprising and noteworthy development which again may indicate the impact of Christian morals on the codifiers of Visigothic law.¹²

A similar law appears in the edicts of the Lombard king Liutprand from 733, almost a century after the Visigothic law. The law in question is a long and wide ranging one, covering several aspects of illegal sexual activity including male sexual misconduct. It places the responsibility for policing male sexual behaviour with slaves and the semi-free dependants as well as free women, on his wife stating that

If a woman's husband commits adultery with his maidservant or with another woman, the wife herself should proclaim this to the king's court to the judges.¹³

¹¹ *Lib. Iud. III.IV.XV. Si vero ingenuus aut seruus cum ancilla ex consensus in domo domini ancilli repperiuntur talia comisisse, ingenuus quidem pro idonea ancilla absque infamio C verbera fera, pro inferiori vero L; seruus autem CL flagella suscipiat.*

¹² For more on the Christian concept of adultery see 2.2.3

¹³ *Liut. 130.1. Quia si vir euis cum ancillam suam out cum alia femina adulterassit, mulier ipsa as palatium et ad iudicis habuit proclamare.*

The punishment for such behaviour is, unfortunately, not recorded. This edict is equally remarkable as the Visigothic law for its unprecedented inclusion of sexual contact with one's own slave as being of public interest for its illegality. However, it is even more remarkable for its use of the term *adulterassit* to describe male behaviour. This is a new usage and definition of this term to apply to male behaviour. Further, the presence of the notion that women should be policing their husbands as their husbands police them, albeit without the right to exact punishment that husbands had, is also new. The following year, Liutprand issued another edict further reinforcing the idea of legitimate slave and semi-free marriages, and the possibility of adultery within those marriages which explicitly draws comparison between free and slave marriage.¹⁴ This law concerns freemen who engage in adulterous relations with married semi-free (*aldiae*) or slave women, and places all the blame for the adultery onto the male and gives none to the wife, despite there being no notion of force or rape implied in the wording of the law. The man is described as a 'miserable man' who has committed an 'evil deed' (*malum*) and only he is punished.¹⁵

These developments demonstrate the beginnings of a new way of conceptualising adultery and sexual roles. It is probable that Christianity and the theological (and canon law) emphasis on monogamy are at the root of this conceptual shift.¹⁶ Certainly the earlier laws of Rothari contain very little suggestion of this more even-handed approach to sexual roles in marriage; instead they follow the familiar pattern of allowing the injured husband to execute

¹⁴ *Liut* 139.1; 140.2. The sentiment is first expressed in a law of AD729 concerning bigamous slaves (*Liut* 104.1).

¹⁵ The punishment given is a fine, with the amount depending on whether the woman was slave or *aldia* and on the value of the slave. The money goes to the woman's husband. Some have read this law as referring to a case in which a man attempted to encourage his wife to commit adultery in order to have her executed and take her property, which even Balzaretto acknowledged is far fetched. (2008: 21)

¹⁶ Certainly, Christian writers had been discussing the place of male sexuality and denouncing the dual standards of contemporary thought on the matter from the fourth-century. See section 2.2.3 for references. Further, the influence of the Church on Liutprand's laws is well established. Ross Balzaretto notes that by this time *adulterium* referred to 'sexual behaviour that conflicted with the monogamous marital model... which obviously drew on Biblical sanctions against coveting one's neighbour' (2008, 20). He claims this is a reference to *Edict. Roth*: 'This refers back to Rothari 212, which states that a man who discovered his wife with another man or a slave might kill both of them.' (2008: 31 n.80) but does not make the clear connection to classical Roman law or to the other codes. It is first seen in late Roman law in an edict of Justinian (*Dig.* 4,4, 37)

both his wife and her lover without fear of prosecution.¹⁷ A further divergence of the earlier Lombard laws from the others is the heavier emphasis on protection of both men and women from false accusations of adultery and the punishment of those who make such accusations – a set of provisions not seen elsewhere.¹⁸

Adultery in the codes is defined as a public act with serious and damaging public consequences, which requires handing in a public sphere of written law.¹⁹ The roles outlined in the adultery provisions of the codes then present a picture notably consistent with the classical Roman law: the wife's sexual behaviour is considered paramount and the husband (and occasionally her father) is charged with policing her behaviour and protecting everyone's reputation. Again, the reputation of the husband, wife and their families, and the shame of keeping an adulterous wife, is valued far above individual lives and in the case of the *LC* the role of executioner is forced on the husband whether he wishes his wife to die or not; the punishment of an wife's inappropriate behaviour is an obligation to society.²⁰ As Suzanne Wemple indicates, such provisions are closely bound to provisions protecting women's reputation from the affronts of immoral men through such actions as touching their fingers, elbows, arms or hair, to blocking their path, to the lifting of their skirts with ever increasing fines for how much leg was exposed.²¹ These appear to have been considered to be sexual assaults, and indeed in the *LC* the cutting of a woman's hair is considered analogous to

¹⁷ *Edict. Roth.* 212;

¹⁸ For men: *Edict. Roth* 213. The accused has the right to clear his name through the combat ordeal or an oath. For women: *Edict. Roth* 196. *Grim* 7. In the law of Rothari it is left obscure how a woman was to prove that the accusation was malicious, in Grimwald's law women are granted the right to clear their name through combat or the oath of twelve relatives. The accuser is punished through loss of her *mundium* if he is her *munwald* or by paying her *wergeld* if not.

¹⁹ In comparison to modern Britain, for example, where adultery is defined as being potentially emotionally damaging to the unfortunate spouse. This is seen in the current British divorce laws (the only place where adultery is considered relevant in British law) which states that an acceptable ground for divorce is 'that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.' The punishment of adultery is voluntary and the possibility of reconciliation is posited, an option forbidden to those living under the codes. (The Matrimonial Causes Act 1973, c. 18. 1(a) http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1973/cukpga_19730018_en_2#pt1-pb1-l1g1 [accessed 10/02/2010])

²⁰ *LC* LXVIII, with the use of a gerundive of obligation *observandum est* and the punishment of those who do not comply with a murder charge.

²¹ *LC* XXXIII; *Pact. Leg. Sal.* XX.1-4; *LR.* 43 (39); Wemple, 1983: 41-43

rape and fornication, and are absent only in the Visigothic and Lombard codes.²² How far this is related to the greater Roman influence on this particular law code is unclear, but it is certainly worth noting. If the adultery provisions are viewed in the context of these assault provisions then they indicate a culture of female protection which is exceptionally fragile, where inappropriate contact with a single finger can be considered a gross violation. In this context, the punishment of sexual behaviour outside of the permitted parameters with death seems explicable. Not only is *adulterium* the grossest possible violation of her husband's reputation and that of the family, but it is also a voluntary violation that she has inflicted upon herself and her relatives.

These provisions place great responsibility upon both the husband and the wife in the protection of the reputation of their family; the wife's role as guardian for the sexual reputation of two families which can be impugned with an even the smallest of inappropriate touches means that she must maintain a state of constant awareness for threats to her reputation. The husband meanwhile is charged with equal constant vigilance, his role constructed as that of permanent guardian of his wife's actions in and out of the house. We see in two of the codes a hint that perhaps this role was not always a savoury one, as the *LC* enforces its death penalty on husbands, while the *Liber Iudiciorum* forcefully reminds the husbands that they must not resume normal marital practice with their wives after their punishment. Here it seems that occasionally husbands could be reluctant to carry out the actions stipulated for the good of the state and society. These roles appear to be held in common across the codes (excepting those which contain no adultery provisions) and so the changes that are seen in the late Visigothic and in particular the Lombard laws which begin to countenance the possibility that male sexual activity outside of the marital bed could also bring shame on the family, and the newly introduced role of wife as guardian of male behaviour serve to reinforce this interpretation of the adultery laws, while highlighting the gradual effects of the Christian tradition and theology of monogamy on the legal texts.

²² *LC XXXIII* These wergelds have been extensively studied. See Fischer Drew, 1991: 28-51; Wood, 1994a: 104-119; Wood, 1998; Wemple, 1983: 27-28; among a great many others. On wergild and bloodfeud Wallace-Hadrill, 1962 and Wood, 2006;

1.2.2 Divorce

The dissolution of marriage through separation and divorce is a topic important in the post-Imperial world primarily due to theological concerns about indissolubility.¹ However, the dissolution of marriage was also a concern to some of the legal compilers. Interestingly the Frankish codes both omit to legislate on divorce. In all that other codes, divorce and separation are tightly controlled with severe punishments for those who attempt to dissolve their marriages both male and female. Punishments for women who attempt to leave their husbands tend to be considerably more severe than those for men who leave their wives. Punishments for men might most often be categorised as deterrents, whereas women who leave tend to face sterner punishments. Each code however does provide exceptions for improper behaviour, for which divorce is legal.

The Lombard, Visigothic and Burgundian codes are relatively straightforward. In the *LC*, women who attempt to leave their husbands are to be ‘smothered in mire,’ while men are forced to surrender all their guardianship rights to their children and all their property to their wives.² These are rather extreme disincentives, and therefore divorce and separation are illegal in the Burgundian legal world. Three exceptions are given for men only: if a wife commits adultery, practises witchcraft or violates a grave her husband may divorce her with impunity.³ The *Liber Iudiciorum* goes further and declare explicitly that ‘there shall be no divorce between married persons’ with severe punishments of 200 lashes, the full loss of property and the possibility of permanent exile or slavery for both men and women.⁴ They do provide some exceptions for both men and women: men can legally divorce if their wives commit adultery; women can legally divorce if their husbands are convicted of pederasty or attempting to prostitute them to other men.⁵ However, this situation is complicated by a contradictory law. The law immediately preceding this refers to divorced women, which

¹ See below 2.2.6

² *LC* XXXIV.1; XXXIV.2.

³ *LC* XXXIV.3. Wemple (1983: 42) states that infertility was also a reason for legitimate divorce, although this claim goes unreferenced and I have been unable to find any legal reference to such a reason.

⁴ *Lib. Iud.* . XXX.VI.II. *Ne inter coniuges divortium fiat.*

⁵ *Lib. Iud.* . XXX.VI.II.

complicates matters somewhat by directly contradicting the statement that ‘there shall be no divorce between married persons.’⁶ The wording of this law, which is designed to prevent bigamy, suggests that a woman could be abandoned by their husband but continue to be formally married to him and also lays out the methods by which one could divorce: by written testament or testament in front of witnesses.

Jo Ann McNamara and Suzanne Wemple, drawing on Frankish canon law and Merovingian formulAriès, took the law to mean that there could be mutual, bilateral divorce regardless of the apparent lack of ambiguity in the following law.⁷ Their evidence is purely Frankish, and it is therefore problematic to apply their conclusion to the whole ‘Germanic world’ and the Visigothic legal landscape. The situation is clear from the *Liber Iudiciorum* itself. The first law, which allows for divorce, is titled *Antiqua*, old laws which tend to be drawn from late Roman legislation. The second is titled *Flavius Chindavindus Rex*, and is therefore a new law instituted and promulgated with Chindaswinth’s *Liber Iudiciorum*. Therefore, while divorce was allowed prior to this legislation, Chindaswinth has outlawed it. It is not made explicit, but it seems likely that this was related to religious doctrine and the influence of the Visigothic bishops. It is interesting that the original law has been kept in the compilation of the *Liber Iudiciorum*, but it is clear that Chindaswinth’s law has superseded it.

The Lombard laws also punish divorce by men without reason, but remain obscure on the acceptable reasons for divorce. Rothari’s law suggests circuitously, through the laws which protect against false accusations, that adultery and witchcraft were acceptable reasons for repudiation. They also imply that false accusations themselves were a cause for the dissolution of a marriage as they claim that the woman ‘shall have the right to choose whether she wishes to return to her relatives or to commend herself to the court of the king,’ while at the same time excluding fathers and brothers from being able to commit these

⁶ *Lib. Iud.* . XXX.VI.I. No one can legally marry a freewoman who has been repudiated by her husband, unless he knows that they have been divorced, either by written evidence, or in the presence of witnesses. *Mulierem ingenuam a viro suo repudiatam nullas sibi in coniugio adsociare presumat, nisi aut scripta aut coram testibus dovortum inter eos fuisse factum evidenter agnoscat.*

⁷ XXX.VI.II. McNamara & Wemple, 1976: 100; 116 n.41.

offences.⁸ This is however, not made explicit. It is not until Grimwald's laws of AD668 that the possibility of dissolution is openly approached through the matter of abandoned wives, in which Grimwald states:

If anyone puts aside his wife without legal cause...he shall pay 500 *solidii* as compensation...and moreover he shall lose the *mundium* of the woman whom he put aside. If the wife does not wish to return to her husband, she may return to her relatives together with her property and her *mundium*⁹

The legal causes for divorce in Lombard law are at no point explicitly set out. However, that there is very little in the entire corpus of Lombard law to openly specify the behaviours for which men could repudiate their wives, but several which give the circumstances under which a wife can walk away from her husband and 'return to her relatives' can be seen as quite telling about the focus of the Lombard lawmakers not on the powers of the husbands, but on the protection of women from abuses. There is further no consideration of women who might illegitimately leave their husbands. Such issues are also indicative of a situation in which there were significant areas of marriage law (and presumably other areas) which were not recorded in the Lombard law and so that which cannot be tentatively reconstructed from literary sources is now lost to us.¹⁰

These divorce laws have been broadly characterised by scholars as representing a one-sided and unequal legal situation in which men can dismiss their wives 'for very slender reasons' with only a small financial burden being placed upon them.¹¹ This thesis argues that this is an unfair characterisation which oversimplifies and generalises a broader, deeper and more complex set of cultural assumptions. Each law code which legislates on divorce and separation focuses in some way on the unfair abandonment of wives and actually attempts to

⁸ *Edict. Roth* 197; 198. *Et illa potestatem habeat vult ad parentem vult ad regis*

⁹ *Grim* 6 *Si quis uxorem suam absque culpam legitimam pospserit et alia in domo superinduxerit, componat solidos quingentos medietatem regi et medietatem parentibus mulieris; mundio vero eius mulieris quam postposuit amittat et si noluerit ad maritum suum reverti revertatur ad parentes suos cum rebus suis et mundium*

¹⁰ This also raises serious questions about the purpose of the written law code in these cultures if significant areas were not included.

¹¹ For example McNamara & Wemple, 1976: 100 (from which comes the above quote); Wemple, 1983: 42; 132 using Fredegar and Gregory of Tours as evidence for universal practice.

prevent husbands from repudiating their wives ‘for very slender reasons’ with serious punishments from fines to the total loss of property to lashes, exile and slavery. Meanwhile, only the one law code, the *LC*, asserts a significantly more terrible punishment for women attempting to divorce that for men. These are not however significantly more severe than the stipulations laid down by the Theodosian Code, which punished women who divorced their husbands without reason with a complete loss of marital property (marriage gift and dowry) and lifetime exile.¹² Even if fault was ascertained on the husband’s part, the wife was still banned from remarriage.¹³

Men and women both for the most part are prevented from divorcing under all but the most extreme circumstances and that the laws are in fact put in place to protect women from abandonment and destitution, a hypothesis borne out by the preoccupation of many of the laws with the destination of the wife’s property after divorce. These laws then do not bear out the posited situation in which men had unlimited and unchecked power over their wives, and the right to abandon them for any reason. Instead they present a broadly similar cultural landscape in which legislators attempted to prevent divorce, with only the smallest of advantages given to men in the earlier law code which lay out legitimate causes for women to be legitimately divorced without giving the same rights to women. However, the later Visigothic and Lombard laws do begin to record a woman’s right to leave a husband for intolerable behaviour, possibly suggesting the development of more egalitarian assumptions, but more likely to be a result of the influence of late Roman law.¹⁴

¹² *CTh* 3.16.

¹³ *CTh* 3.16.

¹⁴ *CTh* 5.17.8.2; *Nov. Just.* 117.9 This is almost certainly related to Christian thought concerning the indissolubility of marriage see 2.2.6

1.2.3 Childless Widowhood and Property

In the post-Imperial codes, the issue of widowhood in marriages which have produced children is rarely an issue, as in the cases of intestate death property is always inherited by legitimate children. Therefore, the death of a husband or wife tends to affect the children more significantly than the surviving partner.¹⁵ However, all the codes have provisions regulating scenarios in which men or women died without having children, most of them saying or implying that the deceased had been married. The codes have very different ways of dealing with such a situation however and this requires comment. In the Frankish and Burgundian codes, the focus of the laws concerning the childless deceased is on preventing the widow(er) from keeping any of the deceased's property that does not rightfully belong to them while simultaneously protecting childless widows from being left destitute. Thus, the *LC* states that a woman who was widowed before she had children was entitled to keep one third of her deceased husband's property in usufruct from his parents until such a time as she remarried.¹⁶ This allows the widow to be protected from destitution and ensures she is provided for, while equally protecting the husband's patrimony for his family. Once the widow remarries, the husband's parents can reclaim the property in its entirety. Further, the *LC* makes it clear that once the deceased's property has reverted to their parents, the parents must keep it for their other children (the deceased's siblings); it does not enter their personal possession.¹⁷ This stipulation is common to all the Frankish codes with some slight variations: the *Pactus Legis Salicae* stipulates that a childless widow or widower receives half of the *dos* in order to ensure that they are provided for; the deceased's property however returns to their parents or siblings.¹⁸ This is different from the *LC* where widows and widowers are explicitly forbidden from attempting to claim back any *pretium* paid at marriage (apparently paid by both the man and woman) from the deceased's parents in

¹⁵ See 1.3.3

¹⁶ *LC* XLII

¹⁷ *LC* LIII.1; LI.2

¹⁸ *Pac. Leg. Sal.* CX; LIX.

compensation for the lack of children.¹⁹ The Ripuarian code also states that parents inherit from their children should they die without children of their own.²⁰

The *Liber Iudiciorum* allows more freedom for the individual, in allowing those who have no children to dispose of their property via testament or gifts to anyone they wish, as does the Lombard Edict of Rothari. They approach the matter in slightly different ways: the *Liber Iudiciorum* assumes that no children outlived their parents, while Rothari's *Edict* assumes that no children have been born due to infertility or illness.²¹ Neither, however, stipulates that parents inherited, nor attempts to protect the widows and widowers in the same way that the Frankish laws do. Furthermore, this is a notable change from the late-Roman law of the Theodosian Code where there is little concern shown for what happens to the property of a childless person.²²

The important question which arises then is why the Frankish law codes try so hard to protect both the deceased's spouse and the property, while the Roman, Lombard and Visigothic laws do not. The answer relates to two areas that are prominent in other legal texts but which do not appear in the Frankish: adoption and written testaments. Adoption was an extremely important aspect of classical Roman elite society, practised extensively by Roman elites to create social bonds, and provide heirs where there were none. This serves to protect the patrimony by assuring that it is not split up and sold to strangers but remains intact and technically within the family name.²³ Often, the adoptees were adult men, chosen as worthy heirs by the adopter.²⁴ Consequently, classical and late Roman law is full of regulations concerning adoption.²⁵ The same is true for written wills and testaments, and the individual right to dispose of their property as they wished as long as they have no legitimate heirs. The

¹⁹ *LC XIV*. 3-4

²⁰ *LR.57* (56).1.

²¹ *Lib. Iud.* IV.II.XX; IV.V.II; *Edict. Roth.* 171.

²² Evans Grubbs, 1995; Arjava, 1996; Humbert, 1972

²³ For more on the importance and meaning of this in the post-Imperial west see 2.3.4

²⁴ See Corbier, 1991:63-76; Gardner, 1998: 117-208; Lindsay, 2001: 190-204. Roman adoption therefore fell very much into Jack Goody's third category of adoption. Goody, 1969: 57. 'to provide a couple or an individual with an heir to their property.'

²⁵ E.g. *CTh* 5.1.2; 8.47.10; *Dig.* 1.7.2; 11; 36.1.63; 38.6.1.7; 38.17.2.6; 38.7.2.19; 37.4.10.1; Gaius, *Inst* 97-107

vast majority of Roman inheritance law, and Visigothic inheritance law, assume that the deceased will have made some form of will.²⁶

Frankish law, on the other hand, does not assume such things and has a different approach to adoption. The adoption of an heir is considered in the *Pactus Legis Salicae* and in the *Lex Ripuaria*, but is not the straightforward contractual procedure it is in Roman or Visigothic law. In the *Lex Ripuaria* adopting an heir involves a trip to see the king, who must personally approve the adoption which is only possible if the adoptee has no biological children. This highlights again the difficulty of assuming that these legal texts were enforced across Frankish Gaul.²⁷ In the *Pactus Legis Salicae*, the process is even more complicated and archaic and is described using the Germanic term *acfatmire*. It first involves a ceremony in which the adopter throws a stick (*festuca*) into the adoptee's lap. The two then have one year to finalise the adoption, during which time the adoptee must spend three nights at the adopter's house, receive a minimum of three guests and eat porridge at his table. They must both then go to the king and attest that all these conditions have been fulfilled in order for the king to approve the adoption.²⁸ Whether or not such procedures as the *acfatmire* were still - or indeed ever - in frequent use, it is clear that the transfer of property to someone outside of the normal hierarchy of transmission was not an easy task, was perceived to be the personal duty of the king to oversee, and could not be carried out by anyone who did not have a considerable amount of free time and income. Certainly, this does not reflect any Roman practice, and can only be applied to a limited group of landowners and aristocrats, if anyone at all. The Burgundian code, meanwhile, either does not allow for the possibility of giving property away to anyone outside of the family under any circumstances, or does not consider it to be a matter of public interest.²⁹

²⁶ *Lib. Iud.* . II.V.XI-XVII; IV.II.IV; For Roman law, see above.

²⁷ *L. Rip.* 50 (48-9).

²⁸ *Pact. Leg. Sal.* X *Lib. Iud.* I.

²⁹ The Burgundian relationship with property and land is a much debated one, see Goffart, 2006: 119-86, and Appendix 3: 257-63 for example. See also 1.3.1 on disinheritance.

The Salian, Ripuarian and Burgundian laws do not allow property to be transferred outside of the family without the king's explicit permission and those who die without having children are either expected not to have chosen or are not allowed to choose heirs, so the lawmakers are compelled to clarify and enforce succession laws concerning such people.³⁰ Visigothic law, on the other hand, allows individuals to make wills and to will their property to whomever they want as long as their children are not entirely disinherited. Lombard law falls into a middle ground between these two states, in that it allows childless men to make wills and easily transfer their property to individuals of their choosing, but nullifies such property transfers should the man become a father later on.³¹ Thus, it simultaneously protects the children's rights as heirs while allowing for the possibility of transfer outside the family.

It appears then that Frankish law, far more than either Roman law or any of the other codes, concentrates on keeping properties within individual agnate and cognate family lines to the extent that the transfer of property outside that family line is extremely difficult and not possible through any written means in the same way as it is in Roman, Visigothic and Lombard law. It is arguably possible that this difference is as a result of the 'Germanic' nature of the Frankish codes; that they enshrine an ancient, pre-migratory, pre-literate custom of the Franks. Alternatively, it could hint at the lack of a working legal culture prevalent in contemporary Frankish society, although the existence of *formulæ* and other written documents makes this unlikely.³² Mostly, however, it demonstrates the extreme importance of allodial property in Frankish legal texts; it is something that must be protected and maintained at all costs and is fundamental to the (elite) Frankish family.³³ It is clear that it was access to the patrimony which defined the limits of the family.³⁴

³⁰ *Pac. Leg. Sal.* CX; LIX. See appendix #LC XIV. 3-4 LR.57 (56).1.

³¹ *Edict. Roth.* 171.

³² See Rio, 2007; 2008; 2009; , Innes, 2006 ; 1998 on literacy.

³³ See Innes, 2000: 51-93 on the importance of property to Frankish power.

³⁴ See 1.3.1 for a more extensive consideration of this.

1.2.4 Conclusions

Analysis of the post-Imperial law codes concerning the dissolution of marriage via adultery, divorce or death demonstrates a widely varying set of conclusions. The divorce and adultery laws are, as chapter 1.1 concluded, broadly in line with late Roman law. Divorce is frowned upon and strongly discouraged with strict physical punishments for women and financial punishments for men, while men are allowed to repudiate their wives only for specific intolerable behaviours. As the decades pass, however, the later law codes - the Visigothic and the Lombard - again in agreement with late Roman law, offer lists of intolerable behaviour for which a woman can dissolve her marriage. While all the codes maintain a strict ideological stance against divorce, a stance which is likely linked to Christian theology regarding indissolubility, there are hints in some of the codes that ideology and reality perhaps did not always cohere. A similar process of development in line with Christian ideology can be seen in legislation regarding adultery. The earliest codes maintain the ideology of the classical Roman laws, which states that *adulterium* can only be committed by married women. The later Visigothic and Lombard laws however demonstrate a new way of defining *adulterium* and the roles of both partners within marriage by stating that *adulterium* can also be committed by men. This new, Christianised, understanding of the sexual propriety of married men is also seen in the literary texts of the post-Imperial west, as will be discussed later.³⁵

It is only the laws concerning childless widowhood which seem to have a focus which is unique to the post-Imperial world, and which is not influenced clearly by either late Roman or Christian concerns. In the Frankish and Burgundian codes, it seems that the problems of the early post-Imperial aristocracies with regard to gaining and retaining land. Action concerning property was strictly limited by the Frankish codes, which appear concerned with ensuring that familial properties are not distributed to strangers without a written will, and

³⁵ See 2.2.3

which seem to limit the ability of individuals to adopt and create non-biological kin for themselves. This is a shift from the classical and late Roman construction of non-biological families and suggests that different concerns were at work in the codification of these laws.

1.3 Parenthood

1.3.1 *Fathers, Children and Patrimony*

The primary focus of attention for the codes in terms of family law, far more so than any other, is the division of the patrimony upon the death of the parents. This is consistent with both Roman law and the wider focus of the codes on property in general. The amount of time and energy expended on describing and regulating the multifarious ways in which a patrimony could be divided depending on the innumerable possible combinations of surviving relatives by the law-makers has driven the secondary literature to focus on concepts of inter-generational conflict and to place the patrimony at the centre of parent-child relationships.¹ The patrimony is central to parent-child relationships, particularly regarding the father, in the legal texts. Behaviour concerning inheritance defines, legally at least, what it meant to be a 'good' father and child. The patrimony appears at almost all significant points of the son's life course as seen in the legal codes, most notably at birth, at the birth of his own children and at death. We might speculate that it is also raised obliquely at the point of his marriage as he or his father gives the *dos*, *wittimon* or *morgengabe*, which potentially came from his own portion.

There are several important aspects to the patrimony that are worth examining, and have not received the consideration they deserve: first, the importance of the father's moral and legal duty to provide a patrimony, including the emotional meaning of the patrimony; second, the complex interplay of obligation, obedience and respect legally and morally owed

¹ See for example, Saller 1991; 1994; 1999; Eyben 1991; Garnsey 1997; Lacey, 1986; Dixon 1992: 145-8; Bullough 1994: 33-34; Hadley 1999; Veyne 1992.

by the son in return for his father fulfilling his duty. Finally, the importance of the right to inherit itself, and the legal and cultural differentiation between ‘offspring’ and ‘heir’ is examined.

The father’s role as the provider of a patrimony is at the forefront of parent/child relations as depicted in the codes. It is made particularly clear in two forms of legislation: that concerning disinheritance and that concerning illegitimate children. Both manifestations highlight very different aspects of this paternal duty and its multifaceted importance to the legal compilers. The disinheritance of a son is regulated as a crime in all the codes – although not in quite the same ways – as in Roman and late Roman law. In late Roman law, the situation is made very clear: a father cannot expend his entire property on a single child; only men who have no children have full legal rights over their property; fathers are bound by ‘the laws of piety’ to protect and care for their children through the provision of an inheritance.² In Gaius’ *Institutes*, it is made clear that a father, who does not explicitly disinherit his son, must name him as an heir or else any will becomes void. There is, however, little said about the possibility of disinheriting a son in punishment for any filial affront in late Roman law; only the threat of un-emancipation as an ungrateful son ‘do[es] not deserve their liberty.’³ While the act of un-emancipation suggests that the offending son will lose the present ownership of any property he received at the point of emancipation, it does not disallow the son from regaining that ownership and power when his father dies and one must assume that this punishment was a temporary one.

The situation is rather different in the post-Imperial codes, where the paternal duty to provide a patrimony for his son is enforced through the strict regulation of disinheritance as a punishment. From the very earliest law codes it is made very clear that a father is forbidden from disinheriting his son(s).⁴ The Burgundian lawmakers base this law on a specific case of Athila who had not given his son the portion due to him, but had transferred his property to

² *CTh* 2.21.1; 3.8.2.3; 4.4.2; 8.18.1; *NMaj.* 6.8;

³ *CTh* 8.14.

⁴ *LC*: LI

other persons through illegal written title since he wished nothing therefrom to belong to his son.⁵ Here Athila appears to have decided for no recognised or acceptable reason that he will disinherit his son, and has either made a will bequeathing his property to another person, or attempted to alienate his property before death so that his son has no claim to it. Such behaviour is forbidden, both in what are referred to as ‘the old enactments’ and in the new law. While the provision that the will is nullified is notably similar to the provision in Gaius’s *Institutes*, the Burgundian law adds a new element in that Athila is punished, having all his property immediately removed from him and given to his son.⁶ Athila has no right to disinherit his son, but has a duty to provide for him and the court represents itself as having the authority to severely punish any infraction of this familial obligation. This is not a private matter, but a matter of public concern. The circumstances under which one could disinherit a son are unclear, but some indication is given as to the kind of offence that could prompt such action in an unrelated law concerning Roman girls who marry Burgundian men without their father’s consent and who are punished with disinheritance.⁷ This is a crime of familial disobedience as there are no provisions against inter-marriage *per se*, and the crime here seems to be that the girl has married without consent. It can be assumed, then, that it is extreme acts of disobedience which are punishable in this way.

Very similar legislation is laid out, either implicitly or explicitly, in each of the codes with the Visigothic and Lombard describing the circumstances of acceptable disinheritance most clearly. In the Lombard laws of Rothari a father cannot disinherit a son without ‘proper reason’ (*certas culpas*) or alienate any of his property. The ‘proper reasons’ are laid out clearly: plotting against one’s father’s life, physically attacking one’s father and sexual relations with one’s stepmother.⁸ In the *Liber Iudiciorum* disinheritance is only allowed if the

⁵ LC: LI *nec debitam tradisse filio portionem et ita facultatem suam per illicitos scripturarum titulos ad alias transtulisse personas, ut nihil exinde ad filium voluerit pertinere.*

⁶ LC: LI

⁷ LC: XII.5 ‘If indeed a Roman girl, without the consent or knowledge of her parents, unites in marriage with a Burgundian, let her know she will have none of the property of her parents.’ *Romana vero puella, si sine parentum suorum voluntate aut conscientia se Burgundionis coniugio sociaverit, nihil se de parentum facultate noverit habiturum.* On Roman/’Barbarian’ marriage see Sivan, 1996. On consent in this thesis, 1.1.1; 1.1.2

⁸ *Edict. Roth*, 168-169

child attempts to attack their parent physically or if they publicly (and presumably falsely) accuse their parents of a crime.⁹ The Frankish codes contain little in the way of disinheritance legislation, except for offspring who marry slaves under Salian law (both sons and daughters) – a punishment which is certainly connected to the loss of liberty that accompanies it.¹⁰ To give one's property to a person other than one's child then is not only morally wrong, but is also forbidden unless specific wrongs have been committed by the child; wrongs which all equate to extreme disobedience or 'ingratitude.'

These laws demonstrate a complex relationship between father/child relationships and familial property, one based on strongly held mutual obligations and duties within which the ownership of the familial property was central and vital. In the Burgundian, Visigothic and Lombard codes the father technically holds power over both property and the children, however this power is fragile due to the nature of the obligations he owes to his children; he cannot alienate or sell most of the property and must maintain it for his children; he cannot bequeath the property to anyone but his children; he is legally bound to hold and increase – but not decrease – the property until his children are of age or his own death. In these ways, his ownership, such as the word is understood today, is called into question. Indeed, the picture that emerges is not one where a father holds full power over his property and children, but one where he loses that power of ownership as soon as his child is born. At the point of becoming a father he loses his full authority over the property and both legally and morally some part of the ownership passes to his child.¹¹ This is most clearly laid out in the Lombard

⁹ *Lib. Iud.* . IV.V.I. 'And if a son or daughter, grandson or granddaughter, should attempt to inflict any serious injury upon their parents or grandparents; that is to say, if he or she should give any of them a blow with the fist; or a kick; or strike them with a stone, or with a scourge, or with a whip; or should insolently seize any of them by the foot, or by the hair, or even by the hand; or be guilty of any shameless assault upon them; or should publicly accuse them of crime, then, any child or grandchild convicted of such an offence, shall receive fifty lashes with the scourge, in the presence of the judge, and shall forfeit all claim to the inheritance of its grandparents or parents, should the latter so desire.' *Nam si filius filiave, nepos, neptis tam presumptiosi extiteri, ut avum suum aut aviam, sive etiam patrem aut matrem tam gravibus iniuriis conentur afficere, hoc est, si aut alapa, pugno vel calce seu lapide aut fuste vel flagello percutiant, sive per pedem vel per capillos ac per manum etiam vel quocumque inhonesto casu abstraere contumeliose presumant, aut publice quodcumque crimen avo aut avie seu genitoribus suis obiciant: tales, si quidem manifeste convicti, et verberandi sunt ante iudicem quinquagenis flagellis et ab heredi tate supradictorum, si idem avus aut avia, pater vel mater voluerint, repellendi.* On the role of the mother in these laws see below, 1.3.2

¹⁰ *Pact. Leg. Sal. Cap VII.3.3.*

¹¹ By which I mean not biologically a father, but as soon as he accepts a legitimate heir, see 2.3.4 for more on

laws, in provisions which consider the hypothetical situation in which a childless man falls ill and ‘despairs of life’ (*se disperaverit*) so transfers his property to someone outside his family. After this, he recovers and goes on to have ‘legitimate sons...one or more legitimate daughters, or one or more natural sons’. The Lombard lawmakers stipulate that in these circumstances, the gift is broken, the property returned and given to the children.¹² The property so fundamentally belongs to the children, that even when it has legitimately been given away before their birth it must be returned to them. The lawmakers so wished to emphasise the importance of the patrimony that, in legal terms, upon becoming a father, the Lombard man’s power over his own property is diminished even retroactively.

This distinction is made clear also in the *LC* where the lawmakers state that a man who ‘will not hand over portions of his property...belonging to his sons’ is forbidden from transferring it to anyone else.¹³ Simply by existing, the son holds a moral and legal claim to the ownership of the familial property which his father cannot repudiate, an ownership which starts from his birth, not from the point of transference or his father’s death. While the *LC* is the most explicit in expressing this, the exact same notion is implied throughout the codes both in laws which forbid disinheritance and in laws which regulate the division of property among family member; for example those concerning people who die childless, or the protection of a deceased spouse’s property for the children, or those confirming correct orders of hereditary succession.¹⁴ In each of these categories, the right of the child to inherit, and the

this.

¹² *Edict. Roth* 171 *si quis se disperaverit aut propter senectutem out propter aliquam inferitatem corporis, filius non possit habere, et res suas alii thingaverit posteaque eam contegerit filius legitimus procreare: omne thinx quod est donatio, quod prius fecerat, rumpatur et filii legitimii unus aut plures, qui postea nati fuerint, heredes in omne patri succeedant. Si autem filias legitimas una aut pluras, seu folios naturales unum aut plures, post thinx habuerint habeant et ipsi legem suam, sicut supra constitutum est, tanquam si nihil alii thingatum fuisset.* *P* 39-40

¹³ *LC LI* ‘Any man who will not hand over portions of his property legally belonging to his sons may do nothing adverse of prejudicial to them in writing, and if he does, it shall be invalid.’ *Quisque partum filiis competentes substantiae non traderit portiones, nihil contrarium, nihil per scriptorium in praeiudicium faciat filiorum, ac si fecerit, nullius poterit esse momenti.* Fischer Drew’s translation here is rather stronger than the Latin original, and somewhat misleading, with her translation of *competentes substantiae* as ‘legally belonging.’ A more accurate translation would be ‘belonging by the agreement of nature to his son.’

¹⁴ E.g. *LC* I.2; XXIV; LIII.1; XLII; LXXVIII.1; LXXIV.2; CX; LIX; *LR*: 70 (67); *Lib. Iud.* : IV.V.I; IV.II.I; IV.II.II; IV.II.XIX; IV.V.I; IV.V.II; *Edict. Roth*: 154; 155; 158; 168-69; 171; 223; 225; *Grim*: 5; *Liut*: 65 (I. 725); 103 (VII 728); 113 (X. 727).

consequent loss of rights of the parents to alienate, the familial property are emphasised again and again. The Visigothic lawmakers emphasise this point even further, by repeatedly reminding their citizens that were they to refrain from having children, they would maintain full and free ownership over their property and would be able to do with it what they wished.¹⁵

The Frankish codes are an anomaly to this pattern as the only codes to not expressly forbid disinheritance. This is particularly surprising given the emphasis given in the Frankish codes to the maintenance of the patrimony within the correct family when considering the intestate succession of the childless.¹⁶ In all likelihood this demonstrates the limited influence of Roman law on the codification of the *Pactus Legis Salicae* and the *Lex Ripuaria* in comparison to the other codes, in particular the Burgundian and Visigothic.¹⁷

It is not only the father, however, who is held obligated by the patrimony: the children who stand to inherit are also subject to certain strongly enforced duties. Intriguingly, however, these duties are not primarily worked out through the legal sphere in the same way that parental obligations towards a child are. The laws governing disinheritance examined above demonstrate that obedience and respect was expected of a child, but only in quite extreme cases could a child actually be held legally accountable for their lack of gratitude: marrying without consent, attempted parricide or incestuous relationships. There is no legal

¹⁵ *Lib. Iud.* : IV.II.XX ‘*Ut, qui filios non reliquerit, faciendi de rebus suis quod voluerit habeat potestatem. Omnis ingenuus vir adque femina, sive nobilis seu inferior, qui filios vel nepotes aut pronepotes non reliquerit, faciendi de rebus suis quidquid voluerit indubitanter licentiam habebit; nec ab aliis quibuslibet proximis, ex superiori vel ex transverso venientibus, poterit ordinatio eius in quocumque convelli; quia recta linea decurrens non habet originem, que cum successione nature hereditatem possit accipere. Ex intestato autem iuxta legum ordinem debitam sibi hereditare poterunt iure successionem*; Every freeborn man and woman, whether belonging to the nobility or of inferior rank, who has no children, grand-children or great-grandchildren has the unquestionable right to dispose of his or her estate at will.’ IV.V.II: *Nam tres partes legitimis filiis aut nepotibus, seu sit unus, sive forsitan plures, absque dubio relictura est. De tota interim dote tunc facere quod voluerit erit mulieri potestas, quando nullum legitimum filium filiamve, nepotem vel neptem* ‘Three fourths of it [the estate] shall be left, without question, to her children or grandchildren, whether there be one, or many of them. On the other hand, a wife shall have the full power to dispose of her entire dowry, in any way she pleases, when she leaves no legitimate children or grandchildren.’ *Nam tres partes legitimis filiis aut nepotibus, seu sit unus, sive forsitan plures, absque dubio relictura est. De tota interim dote tunc facere quod voluerit erit mulieri potestas, quando nullum legitimum filium filiamve, nepotem vel neptem*

¹⁶ See 1.2.3

¹⁷ Innes, 2006: 41

requirement for children who have received their portion of the patrimony to care for their parents in old age or illness, for example, or to be fully obedient. Even those who had not received their portion and been emancipated could be sure that their parents were legally forbidden from disinheriting them as long as they were not violent: there was no need for a son to be obsequious to receive his portion if it morally already belonged to him. Only in the Lombard code is there any legal obligation on the son who has received his portion while his father is still alive: he is forbidden from alienating any of it until his father is dead, except – importantly – to care for his own legitimate children.¹⁸

The patrimony is bound up in and at the very centre of a hugely complex series of obligations from father to child, and child to father, in which both are duty-bound to care for one another. Only the father's duties, however, are legally determined by the central authority. A vital question then is how these paternal duties concerning the financial care of his offspring were conceived of and written about. Perhaps one of the most striking aspects of discussions concerning patrimony and paternal duties is how regularly, and how strongly, discussions – even in the legal sphere – turn towards emotion. In a great many ways it seems that the maintenance, expansion of and passing on of a patrimony was one of the primary manifestations and indicators of paternal affection.

In the codes this aspect of the patrimony appears in laws concerning illegitimate and 'natural' children. Natural children are defined in the Roman law by Constantine as being children by slaves, freedwomen, women who are involved in certain trades such as tavern keeping and acting, by the daughters of gladiators, and certain other tradesmen.¹⁹ In the codes, 'natural' children are only explicitly recognised in the Lombard laws where they are

¹⁸ *Edict. Roth* 170 'Likewise, just as it is not lawful for a father to disinherit his son without just cause or reason, so it is not lawful for a son to give away or alienate his property by any means while his father is alive, unless the son leaves legitimate sons or daughters or natural sons for whom he may provide according to law.' *Item sicut nec patribus licitum est filium suum sine iusta causa aut culpa exhereditare, ita nec filis leceat vivo patre cuicumque res suas thingare aut per quodlibet titulum alienare, nisi forte filius aut filias legitimas, aut filius naturalis reliquerit, ut ipsius secundum legem suam conservet.* Instead, the obligations of child to father are examined and depicted in the non-legal sphere of religious and moral literature, and through letters and will be examined in 2.3.6

¹⁹ *CTh* 4.6.3.

defined as being the children of slaves or the semi-free (*aldiae*) although not exclusively.²⁰ Illegitimate children, from incestuous marriages primarily, are considered in many of the law codes, however, and the concern is always that fathers will bequeath to these children a portion of their patrimony, whether or not he has any legitimate children. In the *Pactus Legis Salicae* and the Lombard laws fathers are warned that they cannot make their illegitimate children legitimate heirs.²¹ These laws reveal two important things: first, men who fathered children outside of legitimate marriage could be expected to maintain contact with their children and to wish to provide for them, and secondly, that the lawmakers wished to prevent them from doing so. For the emperors, kings and lawmakers keeping the paternal property in the possession of those born in legitimate marriages, and indeed the prevention of any kind of social mobility, was more important than the protection or care of these children born outside of legitimate marriages.

Clearly, there was a fundamental distinction between a biological child born to a woman to whom a man has been illegally married, to a mistress or concubine, or to a slave, and a legitimate heir, born to a legitimate wife and that only the latter were legally considered part of the *familia*. It was the right to inherit, denoted by legitimacy, which decided whether a child was considered a son or not in the eyes of the law. The only exception to this is the Lombard laws with their indisputable legal protection of male children born outside of legally legitimate marriage through the guarantee of a portion of their father's patrimony, albeit smaller than a legitimate son's portion. This protection is reiterated several times in Rothari's *Edict* and again throughout the numerous redactions and additions made by subsequent Lombard kings.²² Fathers are, however, forbidden from giving natural sons the same status and rights as legitimate sons, demonstrating the clear distinction that must be maintained between them. Children born of illegal marriages, however, are treated by the Lombard laws

²⁰ *Edict. Roth.* 156; *Liut.* 105 (2.729); 106 (3.729). It is noteworthy also that Lombard law exclusively and explicitly considers only natural sons; daughters born out of legitimate marriage are not dealt with in any way until Liutprand in AD 729.

²¹ *Pact. Leg. Sal.* XIII.11; *Edict. Roth.* 155; *Liut.* 105 (2.729)

²² *Edict. Roth* 154-158; 161-162; 225; *Grim.* 5; *Liut.* 1 (1. 713).

as they are by the other codes and are categorically denied access to any inheritance.²³

The existence of two forms of fatherhood are being demonstrated here (biological and legitimate), and in the Lombard laws three categories of childhood: biological, ‘natural’ and legitimate. The father is expected to have different levels of legal relationship with his different children, denoted by the child’s right to inherit. The Lombard and the Salian Frankish codes are those which are the most interested in illegitimacy and illegal marriages, and in preventing illegitimate children from accessing their father’s patrimony. It cannot be coincidental that it is these same codes which are so profoundly anxious about the fate of the property of those who die childless. The link between the truly childless – those who are not fathers – and those who are merely biological fathers, who do not have legitimate heirs, is clear. Childlessness is in fact heir-lessness.

1.3.2. Mothers and their Property

The legal construction and handling of mothers and motherhood is one of the few areas of familial law that has received a good amount of scholarly attention. Women in late Roman law have been well covered by Judith Evan Grubbs, Jane F. Gardner, and Antii Arjava, while the Frankish laws have been thoroughly examined by Suzanne Wemple, Jo Ann McNamara, Katherine Fischer Drew, Julia Smith and Clarissa Atkinson, amongst others.²⁴ There are two primary foci of the codes concerning motherhood: the function of the mother as a conduit of property to her children, and the role of the mother as a guardian of her children after the death of the father. In both of these aspects, the law is concerned with one thing above all else: preventing the mother from taking ownership of property she had no right to own. The protection of the children’s inheritance was the primary objective, with the

²³ *Liut* 105 (1.713)

²⁴ Evans Grubbs, 1995; 1999; 2002; 2008; 2009; Arjava, 1996; Gardner, 1991; Wemple & McNamara, 1973; 1976; Wemple, 1983; McNamara, 2003; Fischer Drew, 1963; Smith, 2000; 2004; Atkinson, 1994.

protection of the mother from destitution secondary. It is still notable that the protection of mothers is a concern at all and serves to highlight the self-perceived role of the lawmakers to safeguard women.²⁵

In all the codes, maternal and paternal property is kept distinctly separate, as can be seen in the laws which concern property ownership after the death of a husband or wife. In all the Frankish laws, the Burgundian and the Visigothic, both the mother and the father are compelled to maintain their deceased partner's property in usufruct for their children, forbidden from changing or alienating the property in any way.²⁶ In all the codes, the property is eventually inherited by the woman's children, and is only maintained by their father in usufruct until they are of age. In this way, the mother and child are recognised as a single unit, separate from the mother's agnate line. The woman's parents and siblings inherit only if she has no children; children are the primary heirs of both maternal and paternal property. This suggests that married men and women were expected to know exactly who owned what of their property.²⁷ Furthermore, this system also helps to guarantee that widows will not be left destitute after their husband's death as they are guaranteed an income from the portion of the property they hold until they chose to remarry.²⁸ Such a system ties the mother and her children financially until such a time as the children come of age or the mother remarries.

The only exception to this is the Lombard laws, and this is almost certainly related to the system of female guardianship (*mundium*) they depict. In Lombard law, maternal and paternal property is kept separate, and it is hinted that children can inherit from their mothers, but women are predominantly depicted as part of the agnate inheritance network, not as part

²⁵ See 1.1.1; 1.1.3; 1.1.2

²⁶ *LC* XXIV; *LI*.3; *LXXIV*.2; *Pact. Leg. Sal. Cap.* III.C;CI; *Lib. Iud.* , IV.II.XIII; IV.II.XIV.

²⁷ A detailed discussion of this, and the constant ways in which such knowledge was maintained is provided by John A. Crooks (1990) in an extensive overview of all extant Roman legislation on the matter to expose the strategies and mechanisms by which such negotiations occurred.

²⁸ Although it is clear from a number of literary sources that these provisions were not always successful: see Paulinus' mother and legal battle with Paulinus' brother *Eucheristicos*. 248-54; destitute widow in Avitus *Ep* 1; Gregory on Waddo's widow *Hist.* IX.35

of the conjugal network, with parents and siblings designated as primary heirs.²⁹ This is also demonstrated by the absence of laws concerning widowhood and property in Lombard law. It can only be assumed that Lombard women had no claim over their husband's property - even in usufruct - once the husband was dead. The widow is returned to the house of her father or brother with no more attachment to the family of her deceased husband or expectation that his property should provide for her. Her *mundium* holder is responsible for her care.³⁰

This demonstrates two very different concepts of the family and of the mother's relationship with her children in legal construction. The Burgundian and Visigothic laws, which correspond precisely with the late Roman legal trends concerning such matters, view and describe the mother as being fundamentally a part of a conjugal family unit, where both mother and father are legally and morally bound to provide for and financially protect their children.³¹ In the Visigothic and Burgundian codes mothers are given the right to maintain guardianship over their children if widowed, on the condition that they do not remarry.³² Only on remarriage do they lose the right to guardianship. In the *LC*, this is emphasised, as is its Roman roots, in a law which states: 'If a mother wishes to assume *tutela* [over her children], no *parentela* shall be placed before her.'³³ In the Frankish, Burgundian and Visigothic laws, even after the death of a husband, mothers are still expected to have a legal claim to an income from her spouse's property - although she has no legal claim to ownership - and a relationship with her children in which she still holds significant power through her usufruct of their eventual inheritance. The Lombard laws, however, describe the woman as remaining perpetually a member of her own father's family and do not promote the concept of a conjugal family unit.

²⁹ *Edict. Roth* 158; 160; 182; 199; 385; *Liut.* 1(1 713); 2 (2 713); 3 (3 713) 4 (4.713); 14 (8 717); 65 (1. 725); 102 (7 728).

³⁰ *Edict. Roth* 182; 199. See also, 179.

³¹ Late Roman law on this subject is amply described by Arjava, 1996; Harlow, 1997: 181. Also, Harries, 1984. It primarily focuses on a series of laws issued by Constantine in 315 and 319. (*CTh* 8.18.1; 8.18.2).

³² *LC*. LIX; *Lib. Iud.* . III.I.VIII; This first appears in the *CTh*. C.380.

³³ *LC* LXXXV.1 *Si mater tutelam suscipere voluerit, nulla ei parentela praeponatur*. On the development of mothers right to act as *tutela* and control their children's property see Voulanto, 2002.

Given this, the question which arises is why the Lombard legal system is so dramatically different from the Frankish, Burgundian and Visigothic systems in this matter of the place of women in familial structures when they are so similar in other respects. The most obvious explanation is that not only the Burgundian and Visigothic but also the Frankish codes demonstrate their close relationship with late Roman law most clearly through this issue. Certainly both the *LC* and *Liber Iudiciorum* were written and constructed with significant input from Roman legal advisers, and arguably these advisers were motivated by their desire to demonstrate the continued application of Roman law and practice under new conditions.³⁴ Further, the Visigoths, Franks and Burgundians were in a relationship of relative peace and accommodation with the Roman elite they joined.³⁵ The Lombards, on the other hand, were in a radically different position. They were perpetually in conflict with both their Byzantine (Roman) and Frankish neighbours.³⁶ Furthermore, Rothari was not a Catholic, but was surrounded - both personally and geographically - by Catholic peoples.³⁷ It is not unlikely then, that in creating a Romanised Lombard identity - which Rothari most assuredly did - he created one which was more closely related to classical than late Roman law.³⁸ Traditionally, the Lombard code is seen as being little more than the collation and documentation of 'Germanic custom,' but in recent years attempts have been made, particularly by Nicholas Everett to identify and emphasise the 'Roman' elements in Rothari's *Edict*.³⁹

A happy medium, and possible explanation for this phenomenon regarding maternal

³⁴ See introduction. See also, Innes, 2006: 41. Although Innes does not include the Salian and Ripuarian laws in this, and indeed views them as being 'representative of a very different culture.' While this is certainly the case in many ways, in this case they are very much in line with the Visigoths and Burgundians. Innes, 2007: 251 also argues that *Edict. Roth* had 'Roman' advisers on hand to help with the formation of his edict, although it is difficult to see how far they can be considered culturally 'Roman'.

³⁵ Wood, 2006; 2008; Halsall, 1998; Pohl, 1998.

³⁶ Wickham, 2009: 141-43.

³⁷ It is unclear from the sources whether Rothari was an Arian or a non-Christian, although many have tended to state that he was Arian. His wife and son were Catholic, as were his Byzantine and Frankish neighbours. (Wickham, 2009: 142)

³⁸ See 1.1 Lombard system is very much based on a Roman image of authority and administration, but not content-wise.

³⁹ On the Lombard's perceived barbarism see Tabacco, 1974; Petrucci, 1992: 35-56; Brunner, 1961: 417; Wormald, 1999: 96-101; even Wickham, 1981: 36 (although his views are considerably more nuanced by 2009). On the Roman elements of Rothari's edict, Everett, 2003 & 2009 and, to a lesser extent, Innes, 2007: 251.

guardianship, may be found if Rothari's *Edict* can be seen as a deliberate attempt to legitimise his own rule in a Roman style, drawing on classical Roman law. Thus, the strict regulations regarding *mundium*, and placing women firmly in their agnate inheritance networks can be seen as a possible attempt to legally differentiate Lombard law from their hostile surroundings by drawing from much older legal traditions. Certainly, Rothari along with his grandmother Theudelinda was absolutely central to the creation of a written Lombard history and identity of which the *Edict* was a significant part, if not the most significant.⁴⁰ This would provide a convenient explanation for the emphasis on the *mundium* in Lombard law, as it can be seen as directly analogous to the classical Roman law concerning tutelage, which is extremely similar in form.⁴¹ The classical Roman system is preserved as an artifact by Gaius: 'for the ancestors wanted women, even adult women, to be in tutelage because of their weak judgement (*levitas animi*).'⁴² This thesis preserves Everett's persuasive argument that a good deal of Roman culture was valued and maintained by the Lombard lawmakers, but also offers an explanation for difference in content of Rothari's *Edict* to those of his contemporaries. This is not to say, however, that Rothari's *Edict* is entirely without late Roman influence, as demonstrated by both Innes and Everett, but that - where the role of women in the family is concerned - classical Rome had a far clearer influence than has previously been considered.⁴³

For the vast majority of the legal cultures that are preserved, mothers are portrayed as being part of their conjugal unit, and as having automatic guardianship rights over their children should they be widowed. This is firmly in line with the late-Roman picture of mothers and children, codified by Constantine in 315. In the Frankish codes, a middle ground is to be

⁴⁰ Innes, 2007: 246-47; Wickham, 2009: 142; Paul the Deacon, *History* 4.21-22; 27. It is worth noting that Theudelinda was in fact a Frank by birth, being the daughter of the Duke of Bavaria, but who was vitally important to the diplomatic, religious and cultural history of her nation-by-marriage. (Wickham, 2009: 141-42).

⁴¹ This has also been argued by Mazza Karras, 2006: 140

⁴² Gaius, *Inst.* 1.144-145. Also, Ulpian 11.27 and Cicero, *Pro Murena* 27 By Late antiquity, this situation had changed: Gaius, *Inst.* 1.190-191 'There is, to be sure, no very good reason for adult women being in tutelage. The reason that is commonly given, that they are frequently given through their weak judgement, they are rightly controlled by the authority of *tutores* seems more specious than true since adult women handle their business matters themselves and the tutor grants his authorisation as a matter of form. Often he is compelled by the praetor to give authorisation even against his will. See Arjava, 1996:112-122; 1998.

⁴³ Innes, 2007: 251; Everett, 2003 & 2009: *passim*.

found, in which the mother has rights to her husband's property should she be widowed, and in which children primarily inherit from their mother, but in which the guardianship arrangements for her children are left unclear. The Lombard code takes the other extreme: women are given no access to either their husband's property or their children after widowhood, and children do not appear to be the primary heirs of their mothers. The defining factor in deciding the role of the mother as a guardian, and her rights to her children and her husband's property after widowhood is the role of late Roman law in the creation of each code.

1.3.3 Abortion, Infanticide, Child Abandonment

In the secondary literature it is abandonment and infanticide which have received a considerable amount of attention due to the fascination these acts have to the modern, urban western mind.⁴⁴ In the legal texts, however, these acts are not foremost in the lawmaker's minds and there are very few secular laws concerning abandonment or infanticide as it is envisaged today. All the codes, with the exception of the *LC*, contain provisions against the deliberate or accidental killing of an unborn foetus. Most are connected to the idea of an infant dying as a result of women being subjected to some form of physical injury, with the capitulary of the *Pactus Legis Salicae* being typical:

‘If anyone strikes a pregnant freewoman in the stomach or kidneys with his fist or heel and the foetus is not aborted (*excutiant*), but because of this it becomes so ill that it nearly dies, let him be held liable for 200 *solidii*.

If anyone strikes [a woman so that] the foetus is killed and is aborted (*excusserit*) let him be held liable for 600 *solidii*.

⁴⁴ See, Coleman, 1976; Boswell, 1984; 1988; de Jong, 1996.

But if the woman is killed because of this, let him be held liable for 900 *solidii*.⁴⁵

Here the legislation refers clearly to miscarriage caused by physical abuse; it assumes that the foetus's death is accidental and unwanted solely because the pregnant woman has been attacked. Very similar laws exist in the Ripuarian and Lombard codes.⁴⁶ Only the Visigoths considered the existence of a deliberate abortion of any kind, providing detailed outlawing abortion by potion, by women, by slaves and the deliberate causing of miscarriage. Notably both injury and deliberate abortion by potion are treated as homicide. The punishments for giving or causing an abortion in Visigothic law are severe: a woman who has a medicinal abortion (by potion) is subjected to 200 lashes and loses her freedom; a man who causes an abortion through violence is subject to the punishment for homicide and a 200 *solidii* fine.⁴⁷ These punishments are considerably more severe than any comparable ones from the rest of the codes or Roman law. Roman law did not grant *persona* status to unborn foetuses and therefore, although abortion is seen as a crime, it is not equated with homicide.⁴⁸ It seems likely then that these laws demonstrate the powerful influence of Christian thought on the Visigothic lawmakers, as only Christians promoted the concept of the unborn foetus having the rights of a *persona*.⁴⁹ This seems to demonstrate the substantial influence of bishops and theologians on secular law is highlighted in a very similar way to that of the incest legislation.⁵⁰ The position of the Catholic Church at this time was that foetuses were 'en-

⁴⁵ *Pact. Leg. Sal. Cap. III.CIV. 4-6.4. Si quis mulierem ingenuam pregnantem in uentre aut in renis percusserit pugno aut calce et ei pecus non excutat et illa propter hoc grauata fuerit quasi usque ad mortem, CC solidos culpabilis iudicetur. 5. Si quis uera pecus ortuum excusserit <ei> et ipsa euaserit, DC solidos culpabilis iudicetur. 6. Si uero ipsa mulier, qui mortua est, DCCCC solidos culpabilis iudicetur.*

⁴⁶ *LR. 40 (36); Edict. Roth. 75.*

⁴⁷ *Lib. Iud. . Vi.III.I; VI.III.II.*

⁴⁸ Watts, 1973: 92-93

⁴⁹ See 2.3.3

⁵⁰ See 2.2.2 on incest. The concept of abortion arose very early in Christian thought, arising in the Apocryphal Gospel of Peter (also known as the Apocalypse of Peter.) in his vision of hell where he envisions women who have abortions lying in a lake of gore surrounded by the children they aborted tormenting them (25-26). Tertullian in his *Apologia* (9.8), Clement of Alexandria in his *Paedagogus* (2.10) and Jerome in his infamous letter to Eustochium (Ep. 22: 13-14) all consider abortion and define it as being a form of homicide and punishable (by God) as such. Augustine, however, maintained that abortion was a different crime (*Enchiridion*, 85). In 315 the council of Ancyra legislated that women who take abortifacients are to be excommunicated for ten years (Can.21). This was then codified further by the Sixth Ecumenical council in 680 which stated: 'Those who give drugs procuring abortion and those who receive poisons to kill foetuses are subject to the penalty of murder.' (can. 91) This canon forms the basis of the nineteenth-century canonical collection still in use today in the Orthodox Church.

souled' at the point of conception and was therefore a full person. The classical position maintained that an infant did not become a full person until it had been accepted by its father nine days after birth.⁵¹ It is this idea which is seen in the Frankish law, which entirely corresponds to Roman law and sees an infant as incomplete before paternal acceptance and naming:

'But if anyone kills a child in its mother's womb or within nine nights before [her child] has a name and it can be proven that he did this, let him be held liable for 4000 *denarii*, which make 100 *solidii*.'⁵²

Here the *pretium* set for a foetus is the lowest for a death in the *Pactus*, even less than that for a post-menopausal woman (200 *solidii*).⁵³ Furthermore, the differentiation between a foetus without a name and a homicide is made distinct, as it is in Roman law. This has important repercussions on the theoretical implementation of inheritance and succession. The Roman law concerning *persona* was partially related to the fact that legally a child took its mother's status which impacted on whether it could be considered a legitimate citizen and heir. Thus, in order to prevent claims being made by a potential expected heir, a child is not legally a person until it is accepted by its father.⁵⁴ If the legal culture changed to accept that a foetus became a person at the point of conception, then the child's right to their patrimony also applies from the point of conception. This is in line with the Visigothic legal emphasis on the right of children to inherit a minimum of three quarters of their parent's property and the strict stipulation that children cannot be disinherited.⁵⁵ However, it also changes our

⁵¹ For earlier Roman law on abortion: Gardner, 1989:158-59; Hopkins, 1965; Riddle, 1992; Abortion was not in itself illegal in the Roman world, unless it resulted in the death of the woman concerned.

⁵² *Pact. Leg. Sal. XXIV.6 Si quis mulierem inguenam pregnantem in uetre aut in renis percusserit pugno aut calce et ei pecus non excutiat et illa propter hoc grauata fuerit quasi usque ad mortem, CC solidos culpabilis iudicetur. Si quis uero pecus mortuum excusserit (ei) et ipsa euaserit, DC solidos culpabilis iudicetur. Si uero ipsa mulier propterea mortua fuerit, DCCCC solidos culpabilis iudicetur.*

⁵³ *Pact. Leg. Sal. XXIV.9.*

⁵⁴ Gaius, *Inst.* 1.89-91; *Dig.* 1.5.5; 2; 22; 26; 18; 48.23.4 Gardner, 1986: 139

⁵⁵ See 1.3.1 *Lib. Iud.* . IV.V.II: 'Three fourth of it [the estate] shall be left, without question, to her children or grandchildren, whether there be one, or many of them. On the other hand, a wife shall have the full power to dispose of her entire dowry, in any way she pleases, when she leaves no legitimate children or grandchildren.'

understanding of this, as it must now be considered that the Visigothic lawmakers wished their readers to believe that these stipulations came into practice at the point of conception. Thus, in the Visigothic legal texts men and women became mothers and fathers at the point of conception, not at the point of naming. This is a radically new, Christian way of viewing parenthood.

The Visigothic laws are also the only laws to consider infanticide, again presumably due to the enhanced Christian impact on their compilation and their very different way of conceptualising infancy and parenthood. The act of infanticide is described as the greatest of depravities and as entirely separate from abortion. Those who commit infanticide, or order it to be committed are sentenced to death or, if the judge is feeling generous, they are blinded.⁵⁶ Infanticide is seen as homicide, but as a particularly depraved form. It is clear that there are a wide variety of different assumptions at work here, from the complete lack of interest in the issue displayed by all lawmakers but the Visigothic, and there is no clear pattern to these provisions other than the influence of Christianity. There are two possible explanations for the lack of legislation against abortion and infanticide in the remaining codes: either the lawmakers in each society did not consider such acts to be illegal and thus did not consider them to be murder, possibly due to the weaker influence of the Christian church, or they did consider such acts to be undesirable, but not consider them to be widespread enough to be worth legislating against. The latter finds some support in the wording of the Visigothic law which states that the law is being enacted because ‘this crime is said to be increasing throughout the provinces of our kingdom and as men as well as women are said to be guilty of it...’⁵⁷ In other words, the lawmaker - Chindasvind - claims that he is enacting the law because the extent of the practise throughout the Visigothic lands has been brought to his attention. Of course, the extent of the influence of Roman law on the Visigothic laws should

Nam tres partes legitimis filiis aut nepotibus, seu sit unus, sive forsitam plures, absque dubio relictura est. De tota interim dote tunc facere quod voluerit erit mulieri potestas, quando nullum legitimum filium filiamve, nepotem vel neptem suprestem reliquerit.

⁵⁶ *Lib. Iud. VI.III.VII De his, qui filios suos aut natos au taut in utero necant.*

⁵⁷ *Lib. Iud. VI.III.VII Quorum quia vitium per provincias regni nostril sic inolevisse narrator, ut tam viri quam femine sceleris huius autore esse repperiantur.*

not be underestimated in this case. An enactment of Valentinian, Valens and Gratian in 374 preserved in the Theodosian Code explicitly and without mitigation pronounced that infanticide was considered homicide and was punishable by death.⁵⁸

In legal texts, abortion and infanticide are conflated, sometimes as murder - where they are considered at all, in a trend which seems to correspond to the Christian influence on or allegiance of the lawmakers. Outside of the codes, in the non-normative texts, it is abortion and contraception which are conflated and disapproved of while infanticide is rarely considered at all. In no genre or type of the primary sources are infanticide or abortions examined or described in any great depth or detail, or is any evidence given for either being widespread or common practices.⁵⁹ There has probably been no human society where there have been no unexpected, accidental pregnancies and no desperate women trying to terminate a pregnancy or rid themselves of an unwanted child by any means necessary, as any cursory perusal of a modern newspaper will demonstrate.⁶⁰ There is scant and unreliable evidence to say that infanticide was a more widespread phenomenon in the post-Imperial world, and virtually none to support Emily Coleman's argument of widespread female infanticide.⁶¹ Abortion is even more difficult to trace as a lived experience, particularly because of its intimate connections with both infanticide and generic contraception. Again, common sense and logic forces us to concede that women will always try to end pregnancies, and the evidence tells us that sometimes, in certain circumstances, some men in power will try to stop them, through either legislation or moral guidance. This could be as a result of a moral or a religious belief in the sanctity of life, or an attempt to portray oneself as a good Roman or

⁵⁸ *CTh.* 9.14.1.

⁵⁹ *Contra* Riddle, 1992 whose fundamental argument that the existence of medical handbooks describing abortive techniques is evidence of their efficacy and widespread use is deeply flawed. See 2.3.3

⁶⁰ For example, the widely reported French woman who killed eight of her newborn children in 2010 (<http://www.bbc.co.uk/news/world-europe-10814669> accessed 10/04/2011); or the woman who abandoned her newborn in a plastic bag in 2009: <http://www.independent.co.uk/news/uk/home-news/newborn-baby-girl-abandoned-outside-flat-1631912.html> (accessed 10/04/2011) or, in 2012, the rising numbers of American women accessing unregulated abortifacients from Mexico: <http://www.texastribune.org/texas-health-resources/reproductive-health/looking-mexico-alternative-abortion-clinics/> (accessed 04/09/2012)

⁶¹ Coleman, 1976

Christian. There is no evidence that any woman (or man) was ever actually punished under these Salian or Visigothic (or canon) laws, and the silence of the female voice means we can never know how they were received, and so it is impossible to know how far they actually addressed the genuine behaviours of the citizens, how far they succeeded in changing any genuine behaviours, or how far they truly aimed to in the first place.

Abandonment arises as a different and altogether more complex issue. It is an act which has in the past been portrayed simplistically, and as equivalent to or a subsection of infanticide, in the secondary literature. Thus Shahar writes that infants were ‘abandoned to death’ in the middle ages.⁶² Classicists and medievalists have tended to agree that abandonment was a ‘widespread and common means of getting rid of surplus members of the family, and many have assumed that abandonment equalled exposure’ which aimed at the death of the infant, but was psychologically easier for parents than direct infanticide.⁶³ This thesis takes Vuolanto’s definition of abandonment as distinct from infanticide: ‘the voluntary leaving of newborns by their parents in some place with arrangements to enable them to survive for a time, with the possibility that they are found and taken by others.’⁶⁴

In the codes this concept is not widely considered and where it is, a picture which emerges is complicated and subject to great variation across the codes. First, only two of the codes legislate on child abandonment: the Burgundian and the Visigothic. In the *LC*, a capitulary of King Sigismund states that people are afraid of taking in foundlings for fear of ‘false accusations’ (*calumnians intencio*) of an unspecified kind. The edict goes on to settle the matter in a vague fashion, referring to unspecified ‘rules of Roman law’ and certain litigation ‘as has arisen between Burgundians and Romans’ which hints that the lawsuits perhaps centred on the status and citizenship of the abandoned children.⁶⁵ The edict was

⁶² Shahar, 1990:123-31; This begins with De Mause, 1974, and continues, see Coleman, 1976; Miller, 2003; Bolton, 1994; Herlihy, 1978: 232-34; Nathan, 2009; 277-78; Boswell, 1984; 1988; *Contra* Boswell: de Jong, 1996; Vuolanto, 2005; Hanwalt 2002.

⁶³ Vuolanto, 2012 4-7 (from which this quote comes) provides a comprehensive overview of the historiography of medieval abandonment highlighting the themes of female abandonment, oblation and Roman law as being key.

⁶⁴ 2012:14

⁶⁵ *LC, Constitutiones Extravagantes XX :De collectis edictum : Cum [venerabilis viri] Gimelli episcopi digna et laudabili suggestione conperimus , expositos , quos miseratio colligi faciebat, et ideo praetermitti, dum*

issued as a result of the intercession of a bishop Gimellus and refers repeatedly to the ‘compassion’ (*misericordia*) that citizens should have towards foundlings, suggesting that there was a sense of religious or moral duty for those who were able to care for abandoned infants. Further, the edict does not explicitly refer to infants, but to ‘foundlings’ (*collectis*), and the exposed (*expositos*). This is legislation which aims not to regulate the practice of abandonment, but to protect the ‘foundlings’ by shielding those who take them in from inappropriate lawsuits. Potentially, it also aims to regulate the correct status of the foundlings, as it highlights the differences between Romans and Burgundians, although this is not made explicit.

Such legislation is also seen in the *Liber Iudiciorum*, which again aims not to regulate or prevent child abandonment, but to protect the individuals who take foundlings in from financial loss. However, the Visigothic laws also reveal a much more complicated image than one where parents abandon their infant out of desperation and then having no further contact with that child. Two scenarios are offered in Visigothic law. In the first, free parents have abandoned their child in infancy (*infantulo ingueno*), and then reclaimed it after it has been brought up. The father must either give a slave as payment for the child, or if he does not own a slave, serve as a slave himself or face perpetual exile along with his wife.⁶⁶

The assumptions enshrined in this law are that the child will have been brought up as a slave of the founder, not as a child; that the founder both deserves and requires

collegentes alumnos sibi eripi calumniantum intencionem formidant, et cessante misericordia eorum animae male poterant interire: quapropter iusta suggestionem permoti, quae sanctae memoriae patri nostro de eadem causa suggesta sunt, praesentium edictorum tenore decrevimus [vacuari], statuentes, sicut nostra lex loquitur: ut inter Romanos etiam de hoc negotio legis Romanorum ordo servatur; inter Burgundiones et Romanos exortum tale litigium, qualiter a nobis statutum fuerit, finiatur; illae tantum causae de hoc genere, quae ante diem praesentis edicti finitae sunt, nullatenus [moveantur], pendentium vero negotiorum status memoratis legibus [distringatur]; statuentes, ut, ne quis contra hoc salubre praeceptum audeat in posterum supplicare, proponatur. For detailed consideration of ethnic terminology and the concept of Roman and Burgundian ethnicity in the LC see Wood, 1990; Amory, 1993; Boyson, 1988.

⁶⁶ *Lib. Iud. IV.IV.I* Exile is the punishment given for anyone who tries to take back their child without paying the appropriate compensation. *Ut pro exposito infantulo ingenuo serviat qui proiecit. Si quis puerum aut puellam ubicumque expositum misericordie contemplatione collegerit, et nutritus infans a parentibus postmodum fuerit agnitus, si ingenuorum filius esse dinoscitur, aut servum vicarium reddant, aut pretium. Quod si facere forte neclexerint, a iudice territorii de proprietate parentum expositus redimatur, et parentes huius impietatis auctores exilio perpetuo religentur. Si vero non habuerint, unde filium redimere possint, pro infantulo deserviat qui proiecit, et in libertate maneat propria, quem servabit pietas aliena. Hoc vero facinus, cum fuerit ubi cumque commissum, iudicibus et accusare liceat et damnare.*

compensation for the loss of the child/slave; and that the biological father will be willing to sell himself into slavery in order to save the child he gave up from servitude. It is thus hard to avoid the conclusion that this law refers to the poor free offering their children to be raised by richer men until they can either benefit from their child's labour or afford to care for them themselves. Equally, it is clear that the lawmakers are primarily interested in valorising the richer man's compassion and protecting him from being deprived of property, than protecting the child.

The second scenario outlined describes individuals being paid by parents (one *solidus* per year) to raise infants up to the age of ten. After the age of ten, the child is expected to work for its own upkeep. Again, it raises the possibility of the biological parents reclaiming their child, suggesting that they are able to as long as the required sum has been paid. The child only takes on slave status if their biological parents fail to pay.⁶⁷ This law suggests some form of fosterage, where the upbringing of the infant is 'outsourced' to another family or individual.⁶⁸ The possibility is left open for the child to either return to its parents should they be able to pay, to remain with the foster family working to earn its way, or to be placed into slavery. Again, the lawmakers are concerned primarily with protecting the investment of the individual who accepts the child, not the child or the parents who for whatever reason surrendered their child.

What is explicitly forbidden in the *Liber Iudiciorum*, although not any other, is the selling of children as either infants or for labour or the placing them under the power of another other than their parents.⁶⁹ This suggests that those children who were fostered out, or

⁶⁷ *Lib. Iud. IV.IV. III Qui a parentibus infantulum acceperit nutriendum, quantum mercedis pro nutritione accipiat premium. Si quis a parentibus acceperit infantulum nutriendum, usque ad decem annos per singulos annos singulos solidos pretii pro nutrito infante percipiat. Si vero decimum annum etatis excesserit, nihil postea mercedis addatur; quia ipse, qui nutritus est, mercedem suam suo potest compensare servitio. Quod si hanc summam qui repetit dare noluerit, mancipium in nutrientis potestate permaneat.*

⁶⁸ On early medieval fosterage see Smith, 2004: 84; Callow, 2007 Crawford, 1999; De Jong, 1996: 211-19; Kerlouegan, 1968-9. Fosterage is particularly well documented in early medieval Irish and Medieval Icelandic society but there has also been a tentative broadening of this phenomenon to the post-Imperial west.

⁶⁹ *Lib. Iud. V.IV.XII* It shall not be lawful for parents to sell, give away, or pledge their children. And no one who purchases or receives a child under such circumstances shall have any legal right to it whatever, but, on the other hand, he shall lose the price, or the amount advanced as a loan, which he paid to the parents of said child.

abandoned to others legally remained under the *potestas* of their biological father despite not being raised in their household. Moreover, this law clearly punishes the purchaser, not the parents, as the purchaser not only loses the child but also any money he paid for it. The two scenarios outlined above then cannot be seen as parents selling their children, but as a form of temporary fosterage or slavery.

As both the Visigothic and Roman laws show there was a good deal of potential trouble concerning status and compensation that could arise when a biological parent arrived to claim their child back from the people who had cared for them. Only the Roman laws explicitly mention the extreme states of famine and poverty that drove parents to give up their children, but the Visigothic laws suggest similar dire circumstances. All but the Burgundian laws assume that abandonment was a temporary fix for a drastic situation, and even here it is not made explicit that abandonment was a permanent decision. It seems likely that for the most part abandonment was practised in the west as a strategy by parents hit by difficult times – poverty, famine, plague – to ensure that their child was fed and protected until such a time as they could afford to reclaim their child. Although there are differences between the Burgundian legal consideration of abandonment and the Visigothic, these stem from the explicitly Christian influence on the Burgundian edict which is not so explicitly seen in the Visigothic. Regardless of these differences in presentation the two sets of laws are interested in protecting the same thing, and mirror both classical and late Roman law in this matter. It is the financial investment of the adoptive/foster parents which is paramount.

1.4 Conclusions

This section has examined the concerns of the post-Imperial codes and what they reveal about family relationships and expectations. When compiling laws relating to families,

Non licere parentibus filios suos quocumque contractu alterius dominio subiugare. Parentibus filios suos vendere non liceat, aut donare vel obpignorare. Nec ex illis aliquid iuri suo defendat ille, qui acceperit; sed agis pretium vel sepositionis commodum, quod dederat, perdat qui a parentibus filium comparavit.

it is the ‘nuclear’ unit who are at the forefront of concerns. There is no evidence in laws concerning family matters of a supra-familial unit or wider kin. Legal compilers are primarily occupied with two areas: regulating property transactions and emphasising Christian moral attitudes. Thus the post-Imperial codes are drawn in their majority from Roman law - both classical and late, and from emerging or dominant Christian theology. The post-Imperial codes, when subjected to systematic examination, only deviate from these influences in rare circumstances - for example *acfactmire* - and these deviations serve to highlight the similarities of the the rest of the codes to Roman and Christian thought. There are also deviations from Roman law which can be directly ascribed to Christian influence over lawmakers - most notably the development of the term *adulteria* to encompass Christian ideals of monogamy.

There are some striking changes from Roman and late Roman law that cannot be ascribed to the influence of Christian morality however, most notably the direct change in the usage of the word *dos* to describe a betrothal gift given by the groom rather than the bride’s father. This demonstrates the types of changes that were taking place throughout the post-Imperial period; they were not the introduction or imposition of alien ‘Germanic’ constructs into Roman territory but were the negotiation of remaining Roman systems and Christian morality by individuals who were neither legally nor theologically trained. Thus, the codes display the evolving use of the Latin language and Roman legal terms within a new legal landscape.

The post-Imperial codes do not provide a complete overview of family life in the post-Imperial west. It is clear in each of the codes that there are significant gaps which are left un-regulated by the lawmakers, and the areas that are covered are notably similar to those covered by Roman law and emerging Christian discourses. They can be primarily be seen as compilations of a normative, but not necessarily representative, selection of concerns to a series of individuals who saw law creation as fundamental to legitimisation. Each code under examination in this thesis represented the role and concerns of the royal lawmaker in slightly

different ways, and often these differences can be explained by examining the relationship of each lawmaker to both the late Romans and the western Christian church.

The image of families which is derived from the limited evidence of the codes is that of a unit tied together and defined by property ownership and power. At the centre of families stand the father and mother, where the father (at least theoretically) holds power over the mother. Children are defined by their relationship to their patrimony, which is defined by their mother's status. Full, legitimate children are those born from legitimate marriage. For the most part, legitimate marriage is denoted by the existence of a series of property transfers, contracts and official ceremonies which are very similar across the codes. It is this which allows a child full access to paternal and maternal patrimony, and therefore part of families. It is also the production of children solely within this legal, legitimate relationship and his acceptance of such which defines a man as a father. The existence of sexual relationships other than legitimate marriage, and the production of children from these relationships, is indicated, primarily by the Lombard code. The lack of legitimate marriage however defines these children as 'natural' offspring, and only the Lombard code allows these children limited access to their paternal patrimony. As children grew into adulthood, parents maintained a significant influence over betrothal and marriage through their control of the patrimony; however, children maintained a theoretical, and sometimes tangible, moral claim to their patrimony which could not be denied. The influence of Christian morality on the codes served primarily to limit familial options in a number of ways. First, it limited options for divorce and remarriage through the development of the theology of 'one flesh' and the indissolubility of marriage; second, through the theology of 'en-soulment' at conception it limited family planning options by equating abortion with murder. How far these restraints were genuinely applied to lived experience is broadly unknown but, given the lack of evidence for the application of these laws, was almost certainly limited.

Part Two: Literary context

Introduction

Part two examines families of the post-Imperial west using a body of evidence created from literary texts compiled between 400 and 700 in Gaul, Hispania and Italy. Almost all of these texts are authored by men - although there are a tiny number by women - and all are authored by men of a high aristocratic standing.¹ In part this is also because these authors are the most interested in discussing families and familial issues. Through this approach, this part aims to examine families at as many different levels and through as many different lenses as possible.

Part two follows the parameters outlined by part one and thus follows the common life cycle of families. Where this part differs is that the literary sources are more interested in familial roles as ongoing constructs rather than as static concepts which arise only at transitional points. This allows for considerably more discourses of families, and for a more in depth analysis of the origins, meaning and applications of these discourses. Certain elements are common to almost all genres of literature which is studied in part two: emotional connections between family members, and sexual relationships. These two themes then form the centre of the second half of this thesis.

2.1. Betrothal: Introduction

One of the most significant elements of the post-Imperial family unit which was a focus of much research throughout the twentieth century was the institution of marriage, influenced heavily by German legal scholarship. Most of this previous work has focused on

¹ On the use of the word aristocrat, which will appear throughout this section, see Mathisen, 1993: 10-13 & 17-26. Amory, 1997 uses elite. See also McDonald, 2000.

legal texts, and has been less interested in the literary depictions of betrothal and marriage. Only works which have explicitly examined Christianisation have tended to look at these sources, and even then not in great detail.² This section expands upon and synthesises these earlier approaches to form a more extensive analysis of betrothal. This chapter examines betrothal through three primary lenses: betrothal and sex looks at the changing conception of pre-marital behaviour for men and women driven by Christian ideals of moral purity; Betrothal and consent examines the common hagiographical motif of women rejecting marriage for an ascetic life against resistance from their families and argues that rather than demonstrating a widespread disdain for marriage among women, this in fact highlights the desirability of marriage; finally betrothal and desire examines the concept of affection and desire for one's betrothed and highlights the idealisation of mutual consent and happiness with one's *sponsa/sponsus*. This chapter highlights the encroachment of Christian theology onto discourses about the lived experience of betrothal, and demonstrates that Christian thought drives much of the changing nature of betrothal and its ideals in the post-Imperial period.

² Most notably Phillip Reynolds, 1994

2.1.1 Betrothal and Sex

The theme of male pre-marital sexual activity is not found in any legal text, but in non-legal literature it is a theme which begins to appear in the sixth century. It particularly dominates in two genres: proscriptive Christian texts which aim to modify behaviour, and texts which claim to document actual behaviour such as letters and autobiography. This picture tallies neatly with the suppositions made to fill the gaps left by the legal texts on male sexuality: that men could, and were to an extent expected to, have numerous sexual relationships prior to marriage. Perhaps the best description of this time of life comes from Paulinus of Pella's fifth century autobiographical work the *Eucheristicos*, in which he describes himself during his twenties engaging in frequent and plentiful sexual affairs, fathering at least one child during that time.¹ Although he openly describes this period of his life, with little shame, he is careful to clarify that he never had affairs with married or free women, only with his own slaves.² Very similar periods of socially approved male pre-marital sexual promiscuity with slaves and low class women are described by Sidonius Apollinaris and Ruricius in fifth century letters recounting the behaviour of friends and family.³

Contemporary theological tracts and sermons bear out the possible realities behind this motif. The sermons of Caesarius of Arles particularly stand out as striving to curb the perceived tendency of young men in his congregation to engage in unrestricted and unopposed sexual activities prior to marriage. In particular in his Sermon *On Adulterers and*

¹ *Eucheristicos*: 154-75.

² *Eucheristicos*. 162-67. 'I checked my passions with this chastening rule: that I should never seek an unwilling victim, nor transgress another's rights, and, heedful to keep unstained my cherished reputation, should beware of yielding to free-born loves though voluntarily offered, but be satisfied with servile amours in my own home.' *hac mea castigans lege incentiva repressi; invitam ne quando ullam iurisve alieni adpeterem carumque memor servare pudorem cedere et ingenuis oblatis sponte caverem, contentus domus inlecebris famulantibus uti*

³ Ruricius *Ep* 2.27; Sid. *Apoll. Ep*. 9.6. In which Sidonius describes a young friend who – after a period of promiscuity – had run away with a slave concubine. However, Sidonius claims that he had returned to his senses and married a woman of correct social status who was teaching him the difference between respectable married love and the false blandishments of a slave. See also Augustine's *Confessions*, which may well provide a template for Paulinus in his presentation of his promiscuous youth.

Men who Have Concubines he severely criticises men for their hypocrisy and sinfulness in expecting a virginal bride, while not maintaining the same chastity themselves – an occurrence which Caesarius characterises as a sin so terrible as to warrant excommunication.⁴ He goes on to claim that his interpretation is underscored both in human law – by the pronouncement that children born of free men and slave women are classed as slaves – and canon law, claiming that ‘in Rome, men who are not virgins are forbidden from receiving a Christian blessing at marriage.’⁵ This sentiment is repeated in Sermon 43: *On Conjugal Chastity and Concubines*, in which he is unequivocal about his aims and suggests that this theme is a frequent one in his preaching:

I beg and exhort you again and again in like manner that anyone who desires to marry should observe virginity up to the time of the marriage, just as he wants to find his wife a virgin.⁶

Here too he describes male premarital sex as a grave sin, indeed as a sin greater than adultery. By the sermon *On Conjugal Chastity*, Caesarius is telling his congregation that men who engage in premarital sexual activity are committing such a grave sin as to lose their souls.⁷ Clearly this matter causes Caesarius great anxiety, and is a change he dearly wished to effect. In this he is channelling Augustine, and with his immense popularity in later centuries, paving the way for medieval canon law which treated male and female sexual offences more or less equally.⁸ While there is little in the way of similarly robust criticism of male premarital intemperance in contemporary writings, the tone of other discussions of such occurrences – for example in Paulinus’ defensiveness or Sidonius’ light disapproval – suggest some growing disquiet about such practises among Christian youths. There is also occasional praise of men who do not engage in dalliances with women prior to marriage, for example in

⁴ Caesarius of Arles, *Sermons* 42.5.

⁵ Caesarius of Arles, *Sermons*, 42. 5.

⁶ Caesarius of Arles, *Sermons*, 43.5 *Unde iterum atque iterum rogopariter et contestor, ut qui uxorem optat accipere, sicut illam virginem invenire desiderat, ita et ipse usque ad nuptias virginitatem custodat.*

⁷ Caesarius of Arles, *Sermons* 44.1

⁸ See Brundage, 1990 for a précis of gender ‘equality’ in sexual sins in later canon law, beginning with Gratian. Klingshirn, 1994: 281-86 for Caesarius’ popularity in the eighth and ninth centuries.

Venantius Fortunatus' *epithalamium* on the marriage of Sigibert and Brunhild in which Sigibert is praised for his respect for the 'sanctity of the marriage bed' through his rejection of premarital sexual relationships with slaves.⁹ The emphasis in all discussions relating to premarital sexuality here is on men and male behaviour, and this theme continues into discussion of betrothal.

2.1.2 Betrothal and consent

Betrothal appears in almost all literary sources to have been directed by the parents of the bride and groom thus bearing out the explicit image of betrothal negotiations described in the legal texts. While there are some examples of slaves freely contracting their own marriages, the only hint that this was possible in the world of free men and women comes from a repeated complaint of Isidore of Seville.¹⁰ Isidore, in both his *Etymologiae* and his *De Ecclesiasticis Officiis*, describes the traits that young men and women look for in potential spouses, citing in the *Etymologiae* beauty, wealth, family and character as attributes for women, and valour, family, good looks and wisdom for men. He then goes on to complain that 'nowadays' wives are sought for beauty and wealth over correctness of character.¹¹ In the *De Ecclesiasticis Officiis* the categories are broadly the same: men of the golden age looked for 'generosity, good manners and beauty' while women desired 'virtue, family, attractiveness and the habit of prayer,' but 'now' they desire only money and beauty.¹² In this discussion of the corruption of his modern youth, however, Isidore makes a surprising statement:

'There are, however, arranged marriages that require in the union not pleasure but

⁹ Ven. Fort. *Carm.* 6.1.34-6

¹⁰ Slave marriages: Sid. Apoll. 5.19 in which he writes with restrained fury about a the daughter of a slave of his who has married – without permission – a slave belonging to his friend; and Gregory of Tours, *Hist.* 5.3 in reference to the evil man Rauching who murders his slaves who have married.

¹¹ Isidore *Et* 9.7.28-29. It is worth noting again here that Isidore's use of 'now' is problematic as it is often unclear whether he is using the words of his classical sources or his own words.

¹² Isidore *De Ecc. Off.* 2.xx.9 Men look for *generosa, bene morata esset, pulchra*; while women desired *virtus, genus, pulchritudo, oratio*. The modern youth wants only *magis divitiae...Formosa*.

offspring. For these unions are established, not so that they serve the pleasures of the flesh but only seek the fruit of propagation.’¹³

Isidore’s tone is clearly meant to suggest that such marriages are both praiseworthy and rare giving the impression that the bride and groom could have a great deal of input into the choosing of their spouse and that it was this practice which prevailed. This is an unusual statement for the literature and law of this period. It is, however, related to the ideal of consent and desire for a husband which is espoused in *consolatio* (consolation poems) and *epithalamia* (wedding songs).

This sentiment of consent and desire is best demonstrated by the poems of Venantius Fortunatus who embeds the notion within his *epithalamium* for Sigibert and Brunhild and his epitaph for Vilithuta. In the first, it is to Sigibert that Fortunatus ascribed the desire for Brunhild, depicting him as consumed with fires of passion and love for her as an individual, despite his never having actually met her.¹⁴ This is a technicality that Fortunatus leaves unaddressed as he works to depict the couple as adoringly in love, struck by Cupid across the seas.¹⁵ This poem draws heavily on classical literary models, as is demonstrated by the form, the use of classical rhetoric and tropes (including reference to Roman gods), the reference to Sigibert as ‘Caesar’ and the emphasis on marriage for love over political expedience is classical in its own right. It is notable that the political advantage of the marriage is so thoroughly whitewashed by Fortunatus.¹⁶ The epitaph for Vilithuta draws on the same ideal to repeatedly assure readers that she was united with a husband that she not only consented to, but actively desired as a husband.¹⁷ It seems important to Fortunatus that he presents these

¹³ Isidore *De Ecc. Off.* 2.xx.9 *Illae sunt autem certae nuptae quae in coniugio non libidinem se prolem requirunt. Neque enim institutae sunt carnis uoluptatis seruiant sed tantum ut fructum propaginis quaerant.* The translators here have translated *certae* as ‘arranged’ or ‘fixed’. An equally valid and potentially less loaded translation would be simply ‘certain.’

¹⁴ Ven. Fort. *Carm.* 6.1.51 *Sigibert amans Brunhildae carpitur igne.*

¹⁵ Ven Fort. *Carm.* 6.1. 40-46.

¹⁶ The same cannot be said for Gregory of Tours, who describes the marriage in dramatically different tones as being contracted by Sigibert to embarrass his brothers who had married slaves and women of low birth. (Greg. *Hist.* 4.27.

¹⁷ Ven. Fort. *Carm.* 4.26.35-7. The implication here is not necessarily sexual as the poem further goes on to emphasis the affection shared by Vilithuta and her husband Dagulf, and their shared desires.

two idealised marriages as being contracted for love and passion as well as for the production of legitimate heirs in order for them to be completely ideal.

This ideal however is not a theme which is dominant outside of such idealising poems, and a vast majority of depictions of betrothals are parent directed, with the bride and groom being designated passive players in the procedure.¹⁸ When described from a male perspective, the contracting of a marriage to a ‘good’ woman is often described in terms of marriage being used as a tool to control male sexuality. This is particularly clear in Paulinus of Pella’s description of his marriage, where he claims that his parents chose him a wife to put an end to his promiscuity with their slaves once he had reached an age for which such promiscuity was deemed unacceptable.¹⁹ The same is insinuated by Sidonius when he makes clear the separation between the ‘feigned blandishments’ of a slave and the proper, acceptable, controlled love of a wife of the appropriate breeding.²⁰ When described from a female perspective – or, more accurately, from an imagined female perspective – the passivity of the woman is emphasised. Betrothal is commonly described as the woman being ‘given’ or ‘handed’ over to her husband in both positive and negative portrayals. Fortunatus describes Vilithuta as being ‘united and given into the care of’ Dagulf in the most positive sense, and Salvian’s wife Palladia describes herself as being given by her parents to her Christian husband.²¹ These are positive portrayals of idealised marriages in which both passivity and consent are highlighted. More common than these affirmative representations in female oriented depictions however, are those which are distinctly and evocatively negative. Such portrayals of women being betrothed without their consent are extremely popular in

¹⁸ See 2.1.3 for a specific example of a parent directed marriage, and the apparent role of intermediaries.

¹⁹ Paulinus, *Eucheristicos*. 176-81, ‘Such was the life I led from about my eighteenth year, and so continued until my second decade’s close, when my parents’ anxious care forced me, unwillingly, I admit, to give up this state, grown easy through soft custom, and drove me by way of change to mate with a wife’ *Talis vita mihi a ter senis circiter annis usque duo durans impleta decennia mansit donec me invitum, fateor, pia cura parentum cogeret invecum blanda suetudine ritumdeserere atque novum compelleret esse maritum coniugis*. This is a notable, and probably deliberate, reference to Augustine’s *Confessions*.

²⁰ Sid. Apoll. *Ep* 9.6. This too suggests some anxiety about unrestrained male sexuality, albeit with an age distinction. This fits a tradition of rhetoric which casts the wife as the ‘moral mentor’ of the family, responsible for the unit’s piety as a whole and for her husband’s behaviour, a tradition which is classical but continues well into this period as a trope of the persuading wife. See Smith, 2000: 562; Cooper, 1997; Smith, 1998.

²¹ Ven. Fort. *Carm.* 4.29. 35; Salvian, *Ep*. 4.83. Salvian too describes their marriage as Palladia having been ‘given’ to him.

didactic Christian texts for female audiences such as letters to virgins and hagiography, with the former very often perpetuating the trope of betrothal as the sale of female virginity for the price of a dowry.

These texts, particularly the hagiographies of female figures, have been extremely influential in academic discussions of Late Roman and early medieval marriage as they are uniquely descriptive about aspects of betrothal, expected behaviours and *topoi* concerning marriage and procreation, in particular concerning women.²² There has been a broad argument, summarised neatly by Julia Smith, that there were no specific *topoi* developed in *vitae* of female saints and abbesses until the Carolingian Renaissance due to the fragmented nature of their production and limited geographical distribution.²³ However, it seems clear that there were some, for example the obvious modelling of western hagiographical subjects on Sulpicius Severus' version of the *vitae* of Saint Martin.²⁴ The most significant trope for this discussion is the inclusion of a familial conflict concerning the saint's refusal to marry and insistence on entering an ascetic career instead. This is a trope which is retained and developed for many centuries, long after monasticism had become a central part of western European life and an acceptable and prestigious career path for both men and women. All hagiography in the medieval period is characterised by a test of the subject's spiritual strength. The decline in martyrdom as the route to sanctity forced hagiographers to develop new forms of spiritual testing, through extreme forms of asceticism or disease and, increasingly for women in the post-Imperial west, marriage.²⁵ The refusal to marry takes the form of the subject's parents offering her a husband at the appropriate time in her life course, which she is obligated to refuse and - if faced with pressure from her parents - to run away to

²² Tibbetts Schulenburg, 1990: 285.

²³ Smith, 1995: 13; see also Wemple, 1983: 150-54 who described three stages of development in female hagiography. These three stages are: conflict resolved by subject until the eighth century; in the eighth century a trope is introduced whereby the conflict is resolved by the intercession of a powerful male figure – either a family friend or a religious figure; in the ninth century she argues that Carolingian legislation which imposed restrictions on female monasteries and the lives of female ascetics thereby made monasticism less palatable to women causing a corresponding decline in the conflict element in female hagiographies.

²⁴ McKinley, 2006;

²⁵ See Noble & Head, 1995; Head, 2001; Cooper, 2008 for overviews of other forms of spiritual martyrdom, for example mission, and the concept of *miles Christi*

an ascetic community. This is extremely common throughout the seventh and eighth centuries seen in the *vitae* of Aldegund, Anstrude, Berlilla, Gregoria and Austreberta, all of whom are presented with husbands and firmly oppose them.²⁶

The overall image which develops is one in which neither men or women had significant agency in their betrothal, in the choice of their future spouse or indeed on whether they married at all. In certain didactic Christian texts concerning women this common motif is taken to extreme lengths, to the point of describing betrothal as the negotiation of the sale of a woman's virginity. This is a strong and emotive motif which has had some significant impact on women's history of the period. It is also widespread, with examples being found across the post-Imperial west. Thus Leander of Seville (brother of Isidore) informs his sister that:

Men who take wives are accustomed to furnish dowries, to give presents and to hand over their estates to pay for the loss of chastity, so that they appear to have bought rather than taken their wives...[women] lose their freedom along with their chastity when they compromise their captive virginity for the price of a dowry.²⁷

While the anonymous author of the *Ad Gregoriam* feels able to tell his female audience: 'You have been bought, o *matrona*, and purchased by the contracts of your dowry agreements.'²⁸ This trope appears only in literature which is explicitly didactic, addresses specifically to women and both distinctly religious and distinctly anti-marriage, casting extreme doubt on how far it was part of a common discourse outside of the genre or indeed

²⁶ Gertrude is betrothed by her parents between courses at a royal dinner party, and flatly refuses to accept an earthly husband (*Vita Gertrude*, 1); Aldegund politely refuses her mother's offer to marry her 'in the maternal way' (*Vita Aldegund*, 3); Anstrude again politely refuses a nobleman's offer of marriage at 12 (*Vita Anstrude*, 2); Austreberta's parents accept a *betrothal* on her behalf and set a wedding day causing her to run away (*Vita Austreberta*, 6-7); Berlilla also firmly refuses to obey her parents demand to get married (*Vita Berlilla*, 1); Gregoria in Gregory, *Dial.* 3.14.

²⁷ Leander of Seville, *Regula PL* 72, 876C *Solent erfo qui uxores ducunt dotes tribuere conferre praemia, et ad vicem perdendi pudoris sua trader patrimonium ut emisea potius quam diuise videantur uxores.*

²⁸ *Ad Greg.* 7.11 *empta es, o matron, et instrumentis dotalibus comparata.*

among real women.²⁹ Nonetheless, these statements – which are drawn from the influential works of Jerome - form some of the strongest statements on a religious perception of marriage and the place of women within it. When seen alongside the post-Imperial legal context of betrothal, it is clear that it is in this religious, literary context that woman buying is the more prominent. Rhetoric concerning the alleged un-free status of wives and the unmitigated power of husbands is found within this Christian genre of writing, not in the legal context. As already been argued, the post-Imperial codes depict women as weak, vulnerable and requiring care.³⁰ However, the emphasis in the codes is on the protection of women and their rights. In this Christian context, women are depicted as voluntarily surrendering their rights and power by entering marriage. Indeed, in the *ad Gregoriam* it is this voluntary surrendering of agency which lifts Christian wives above the status of ‘Roman’ wives

These are very different conceptions of what the transfer of property and the legal incompetence of women means in terms of betrothal. While the post-Imperial codes represent the transfer of property as enhancing a marriage, as marking it as legal and correct,³¹ in the Christian rhetorical texts it is seen as debasing a marriage and detracting from the ideals of consent and desire. The transfer of property adds a worldly element to a union which is becoming more spiritual in nature than contractual.³² It is the influence of this mode of thought - that marriage should be consensual, affectionate and indissoluble - that has dominated western European values for several centuries, and it is this, not the codes themselves, which has led to the reading of the codes as representing brideprice and woman buying.³³

One trope of hagiography (particularly female) which both highlights the importance

²⁹ See ch. 2.4 for a more detailed analysis of the role of the *Ad Gregoriam* as a rhetorical text.

³⁰ see 1.1.1 and 1.1.2

³¹ Most clearly demonstrated in the *Liber Iudiciorum* III.I.I

³² For a more detailed analysis of the spiritual nature of Christian marriage, and the development of the ‘one flesh’ theology, see 2.2.6

³³ See Coontz, 2005 for a broad overview of the ‘how love conquered marriage’ narrative.

of consent and role of women in Christian betrothal is that of the saint's refusal to marry as a starting point for a religious life. Marriage as discussed in Christian literature – moral and theological texts and hagiography – usually falls within two distinct categories: marriage as holy and blessed, and marriage as carnal, physical state which confers only suffering. These oppositions are equally inherently gendered in that marriage is only framed in terms of suffering for Christian women and is a part of a popular discourse on marriage which emphasises Pauline hierarchy and subjugation over Augustine's notions of partnership and equality. This discourse of hierarchy is explicitly Christian, supported by both biblical texts and theological exegesis since the second century, and so is exclusively a part of Christian texts with female subjects, most notably female hagiography, moral treatises to Christian women and a series of letters to consecrated virgins.

The most significant trope of female hagiography for this thesis is the framing of familial conflict concerning a child's decision to undertake an ascetic life as being a conflict over marriage. This conflict is ubiquitous in female hagiography, and the genre maintains the notion of parental opposition to asceticism for many centuries, long after monasticism had become a central part of European life and an acceptable and prestigious career path for men and women.³⁴ All hagiography in the medieval period is characterised by a test of the subject's spiritual strength. The decline in martyrdom as route to sanctity forced hagiographers to develop new forms of spiritual test, through extreme forms of asceticism or disease and, increasingly for women in the post-Imperial world, marriage.³⁵ The refusal to marry becomes an exceedingly common trope in female hagiography, and takes the form of the subject's parents offering her a husband at the appropriate time in her life course, which she is obligated to refuse and - if faced with pressure from her parents - to run away to an ascetic community. This is extremely prevalent throughout the seventh and eighth centuries, and by the ninth it is a common trope seen the *vitae* of Aldegund, Anstrude, Berlilla, Gregoria and Austreberta, all of whom are presented with husbands and firmly oppose

³⁴ Voulanto, 2008; McNamara, 1996: 31-202;

³⁵ McNamara, Halborg & Whatley, 1992: 1-2 'Merovingian hagiography was a flourishing literary genre that offered a rough and inexperienced ruling class a new set of Christian heroic models.'

them.³⁶

These tales depict only a low level of conflict, but occasionally there are accounts that demonstrate a serious and dramatic conflict between the girl and her family, thus Burgundofara, whose life is related in Jonas of Bobbio's seventh-century *Vita Columbani*, so reviles the notion of earthly marriage that she falls ill with a fever and loses her vision when her father contracts her marriage, only recovering when he cancels the contract. This is a neat demonstration of a combination of tests – marriage which manifests itself as a test of illness.³⁷ In the case of the late sixth-century saint Rusticula, she is literally abducted by the man who wishes to marry her and is rescued from her captivity and placed in a monastery.³⁸ What is notably consistent in these stories, is the notion of that the subject has 'escaped' or been 'freed' from marriage, that marriage is a trap. This is sometimes made explicit, such as in the *vita* of Saint Genovefa where she is depicted in her role as a powerful religious figure 'saving' a woman from her prospective marriage, with the very institution of marriage being described by the hagiographer as 'the shipwreck and contagion of the world.'³⁹ In its most dramatic manifestation, Radegund's hagiographer explicitly compares the fact of her marriage to the deaths of her parents and the exile of her sister in a passage which presents her as a martyr, enduring the unendurable suffering - of which marriage is a significant part - in the name of Christ.⁴⁰ The fact of being married is explicitly a test of her spiritual resolve.

This is a theme which persists, in ever more extreme forms, in a series of letters from male religious figures in the fifth and sixth centuries to Christian women of their acquaintance, frequently consecrated virgins themselves. So, Avitus of Vienne wrote a 'private' letter to his sister Fuscina and Venantius Fortunatus wrote to Saint Agnes, while an

³⁶ See n.35.

³⁷ Jonas of Bobbio, *Vita Columbani*, 50

³⁸ *Vita Rusticula*, 3.

³⁹ *Vita Genovefa*, 27.

⁴⁰ Venantius Fortunatus *Vita Radegundis*, and especially, *Ep. Ad Artachin.*

anonymous bishop wrote to a married Christian woman Gregoria.⁴¹ These letters all share a purpose: to encourage the female recipient to continue in their current state of either virginity or marriage; and all share the theme that marriage is an appalling state to be in. This is perhaps understandable for Venantius and Avitus who are writing to women who have already rejected the notion of a physical marriage in favour of a metaphorical, spiritual union with Christ, and who presumably therefore already held negative opinions of the institution, at least in comparison to their chosen life. The authors of these two letters are remarkably overt in their purpose of encouraging their correspondents not to give in to the temptations of the pleasures of marriage, and that they remind Fuscina and Agnes of the horrors of marriage to counter these temptations. So Avitus lays out a picture of marriage designed specifically to make monastic life appear endurable in comparison when he tells Fuscina that marriage is death, slavery, dishonour, and constant fear: ‘subject to man and doomed to suffer a master in the chamber... You see how a woman is really a captive, although she bears the empty name of wife and in a hollow charade is called consort and equal.’⁴²

This extended depiction of the pains of marriage covering the concept of sex as rape, the agonies of childbirth, the fear and pain of losing a child and of widowhood, is connected to a long exhortation to stand firm in virginity and not to stray into worldly temptation, interspersed with images of battle and martyrdom and the examples of strong biblical women such as Judith and Jael designed to inspire her.⁴³ Apparently Avitus fears that his sister – allegedly dedicated to virginity from infancy – will be enticed away from her chaste life into a worldly life. A near identical theme is seen in Venantius’ letter to Agnes.⁴⁴ That these authors have gone to such lengths to discourage their correspondents from thoughts of abandoning their religious life in favour of a physical marriage which will include sexual contact and childbearing. This maybe hints at either a fear that marital life was, in actuality,

⁴¹ Avitus acted as bishop of Vienne from AD 496/7 to c. 518. He was a profound influence on the development of theological issues in the post-Imperial west, particularly the development of the spiritual incest legislation which he initiated (Shanzer & Wood, 2002: 9-10).

⁴² Avitus, *De Virg.* 6.169-72 *Quae suniecta viro, dominum passura cubilis... Sic captive tori, cum portet nomen inane coniugis et vana dicatur imagine consors*

⁴³ Avitus, *De Virg.* 6.392-435

⁴⁴ Venantius, *Carm.* VIII.3

so tempting as to be near irresistible for a woman, or an age old fear that women were incapable of controlling or limiting their sexuality. It could hint at potentially genuine phenomenon of women abandoning their positions as consecrated virgins in favour of marriage which Avitus and Venantius feared their female correspondents were in danger of falling prey to, but without further evidence of such a phenomenon any discussion would be pure speculation. What is important is that they make a conscious effort to paint marriage as an oppressive and terrible institution that well educated, exemplary Christian women should always avoid by explicitly and vigorously denigrating the aspects of marriage which they believe a woman would consider most appealing: a sexual relationship with a man, childbearing and the honour and respect that comes with the position of *matrona*. Sex becomes rape, childbearing becomes only different agonies, the name of wife becomes a hollow charade disguising slavery.⁴⁵

Feminist analysis in the past forty years has tended to view this tradition as indicative of a genuine undercurrent of female emancipation during the post-Imperial period (400-c.900); that large numbers of women in the post-Imperial west exploited the emerging tradition of monasticism to avoid a deeply unpleasant, and - in modern terms - abusive system of marriage which was defined, in both the secular and religious worlds, by masculine dominance and female subjugation.⁴⁶ This is a powerful and irrefutable argument; there were indubitably women who used Christianity to change their own world and to choose a path that allowed them autonomy. However, as an overarching theory it is problematic. Firstly, a marriage to a suitable, noble husband for the fulfilment of two families' ambitions in terms of advancement and the continuation of the family through procreation was the default position for a noble woman. A daughter is a valuable asset to a family in terms of continuation and financial advancement, a fact which has made the belief that the betrothal scenes in female

⁴⁵ *Ad Greg* 5; 7.8-10; 11-15; Avitus *De Virg* 115-125; *De Mundi*: 155-160;

⁴⁶ E.g. Wemple, 1983:51-96; 149: 'Contemplation, a reflective mode of existence was an essential aspect of monasticism and the direct opposite of the active life, the life of service expected of women as wives and mothers. Christianity initiated a new era...in the history of feminism...Christian women could transcend biological and sexual roles and find fulfilment in religious life.' Clark, 1994: 127 'Virginity...was liberation from the demands of society.' Clark, 1981; For an overview of this see Castelli, 1986.

hagiographies represent a reality all the more tempting. However, as asceticism became more commonplace through the fourth and fifth centuries, having an ascetic member of the family came to have considerable cultural and spiritual capital in its own right, enhancing a family's reputation within a community and their religious standing.⁴⁷ The letters written by Avitus to his sister, celebrating her for honouring their family name, and the rise of child oblation demonstrate this further. With this in mind, it seems somewhat unlikely that the parents of every female saint in western Europe between the sixth and tenth centuries would so vigorously oppose a child's decision to enter a spiritual rather than physical marriage.

Even if every female religious figure genuinely reviled the notion of physical marriage to such an extent as is portrayed in the hagiographies, the sheer uniformity of the response from both the subjects who reject marriage, and those who obediently accept it and their parents marks it out suspiciously as a trope. Furthermore, the notion that consecrated virginity or widowhood could legitimately be viewed as freedom is difficult.⁴⁸ These women were subject to rules regarding their dress, behaviour and sexual conduct which are far more restrictive and demanding than those placed on women who married or remained unconsecrated widows. The letters examined above which aim, with such vigour, to discourage consecrated women from even fantasising about physical marriage as an earthly pleasure demonstrate that there was, at the very least, a fear that women viewed the physical form as preferable to the spiritual form, and that they may become disillusioned with the orthodoxy of spiritual marriage as freedom – especially if, like Fuscina – they were dedicated to virginity in their infancy.⁴⁹

The fundamental weakness of this feminist analysis however, is that by demonstrating so hard against the lures of marriage, and by presenting the prospect of marriage as a test of a

⁴⁷ Vuolunto, 2008.

⁴⁸ Castelli, 1986

⁴⁹ A letter from Gregory to Boniface, still circulating decades later, that women who abandoned their religious dedication were seen as problematic and were punished with temporary excommunication until a public penance was completed. The letter states that this was also a problem under the previous pope Innocent and that he was also forced to issue a decree on the matter (Innocent, Ep 2). See also Toledo I (397) c. 27; Toledo VI (638) c.8; Arles (314) c.16-17; Chalcedon (451) c.16-17; c.22-2; Ancyra (314) c.24; Rome (382) c.29;

woman's spiritual resolve, the Christian writers of the post-Imperial west are implicitly representing marriage as a desirable and attractive option for women, as something that girls and women wanted and aspired to have. Its frequent appearance in female hagiography as a physical or spiritual test of faith therefore makes it also a metaphorical representation of the subject's inherent spirituality and disdain for the physical world. Furthermore, the rejection of marriage can be seen as a form of asceticism and personal denial. For the women who are the recipients of letters from men such as Avitus and Fortunatus marriage represents the ultimate connection to the physical, secular world, and the ultimate lure back to it. If this is how marriage is viewed in the context of consecrated Christian women, then the ubiquitous betrothal scene in hagiography takes on even more power and meaning: the subject is rejecting not just the world, but the most tempting part of a woman's world, re-asserting her exemplary Christian spirituality, her sacrifices and the extent of her commitment to a monastic (or virginal) Christian life. This is not to say that all the conflict is metaphorical, but that it alongside any basis in lived experience, it has a specific theological and narrative purpose.

The role of marriage as a narrative device is all the more powerful when the presentation of female asceticism as spiritual marriage to Christ is taken into account. Female virgins were required to perform a consecration ceremony which paralleled the Christian wedding ceremony, and which conferred upon them both the ring and veil signifying their state as married women, in the spiritual sense. The conflict in the betrothal scenes in hagiography therefore, become not a rejection of the institution of marriage, nor can it be legitimately viewed as a rejection of the hierarchy of marriage and an assertion of female power. As Brides of Christ, these women were subject to an even more powerful form of subjugation and dependence to their divine husband. This is made clear by the letter writers, who draw on Jerome's letter to Eustochium (albeit somewhat less disturbingly) when they describe the joys of spiritual marriage in comparison to the agonies of physical marriage.⁵⁰

⁵⁰ Jerome, *Ep.* 22.2 'to recount the drawbacks of marriage, such as pregnancy, the crying of infants, the torture caused by a rival, the cares of household management, and all those fancied blessings which death at last cuts short.' 18: 'I would not have you subject to that sentence whereby condemnation has been passed upon mankind. When God says to Eve, "In pain and in sorrow thou shalt bring forth children," say to yourself, "That is a law for a married woman, not for me." And when He continues, "Thy desire shall be to thy husband," say

Instead, it can only be viewed as a rejection of sexual contact and, therefore, as a perpetuation of the patristic ideal of chastity inherited by the Merovingian hagiographers. The very terminology of spiritual marriage makes this clear: virgins are ‘brides’ (*sponsa*) to their ‘bridegroom’ (*sponsus*) Christ, never *uxor* and *maritum*. The spiritual couple never makes it past the wedding to the wedding night in linguistic terms, and so can never imply a sexual relationship between the two that is so defining of physical marriage.⁵¹

Marriage in these ostensibly negative Christian texts then, can in actuality be read as implicitly positive portrayals, the rejection of physical marriage is merely a metaphorical representation of the spiritual strength of outstanding women, women who are depicted as more than women, as transcending their gender and gaining masculinity.⁵² In both the letters and the hagiography, the rejection of marriage is not something meant to be imitated by lay women, but is – in an exclusively Christian context – an act meant to be admired for its strength. These extra-ordinary women are depicted as having rejected something that more ordinary women cannot and would not wish to. Even the overt descriptions of physical marriage as being characterised by rape and subjugation in Avitus and Venantius work only to emphasise their recipients as outstanding Christian women who are able to see this ‘true’ character of physical marriage, in comparison to the ordinary Christian women who cannot perceive it.

If marriage can only be rejected by wholly extraordinary, masculinised women, then it is extremely important for Christian authority figures to maintain a corresponding discourse to which married Christian women can relate. Virginity is always portrayed as the ideal state for women (and later men) in late antique and medieval Christianity. From the very inception

again: “Let her desire be to her husband who has not Christ for her spouse.” And when, last of all, He says, “Thou shalt surely die,” once more, say, “Marriage indeed must end in death; but the life on which I have resolved is independent of sex.”²⁰ ‘Death came through Eve, but life has come through Mary’. The influence of this, and the language of his *Adversus Jovinian* is clear in Avitus’s *De Mund.* and *De Virg.*

⁵¹ See 2.2.3 for more on this.

⁵² Clark, 1981; Burrus, 1994; Cameron, 1989; Macdonald, 1988; Braun, 2002; Radford Reuther, Clark, E.A. 1986; 1983; Shaw, 1996; Brown, 1987; Walker, 1987; Elm, 1994; Pagels, 1988; Beal & Gunn, 1997; Clark, 1998 among many others.

of Christian discourse with St. Paul, the dichotomy between marriage and virginity lead to heated debate, countless heresies and provoked many millions of words to be written on the subject of the acceptability of marriage and the development of theologically appropriate Christian marital behaviours. Clement of Alexandria's *Stromateis* laid the foundations for the concepts of acceptable Christian marriage which was mirrored by Augustine's *De Bono Coniugali*. It emphasised chastity and self control, alongside partnership and equality.⁵³ By the early fourth century, a general agreement had been reached among Church Fathers that marriage was superior to extra-marital sexual activity, and was blessed by God as an institution, while remaining inferior to virginity, on the condition that sexual contact was controlled and essentially without pleasure.⁵⁴ The classic representation of this orthodoxy became the image of virgins, widows and married women in heaven being rewarded a hundred, sixty and forty fold respectively.⁵⁵ The First Council of Nicaea in AD 325 upheld the sanctity of the institution in a variety of forms (defending the individual's right to remarry after widowhood, and maintaining clerical marriages after ordination) and these measures were maintained in synods and councils throughout western Europe.⁵⁶ The practice of denigrating marriage to the wider population became heretical to Catholic Orthodoxy from the mid third century.⁵⁷

In Italian discourse (limited to Rome) during the fifth and sixth century, only chaste or spiritual marriage is considered holy, for example in Cassiodorus' theological works where he is at great pains to emphasise this in his discussion of the psalms, and in Gregory the Great's *Dialogues*.⁵⁸ This discourse is in marked contrast to the Gallic discourse which, across almost all genres, regards physical marriage as a holy thing, even while attacking it as a choice. So, Avitus is scathing in his review of marriage as a choice for holy women, as we

⁵³ Southon, 2008: 12-31.

⁵⁴ See especially Clement, *Paed* 2.10.1; *Strom* 2.23; 3.9; 3.12; Southon, 2008: 24-26

⁵⁵ Jerome, *Ep* 22; 123; *Ad Jov* 1.3; Augustine, *De Virg.* 46. Cyp, *Virg* 3; 23; Origen, *HomJos* 2.1; 15.6; 2.7; Meth, *Symp Thecla* 1-17; Novatian, *Purity* 7

⁵⁶ Brundage, 1987;

⁵⁷ Southon, 2008.

⁵⁸ Cassiodorus, *Psalms*: This is most clearly demonstrated in his exegesis on the Song of Songs (44) where he stresses that both the psalm and his exegesis celebrate chaste, spiritual marriage not worldly, physical marriage. See also 4; 8; 18; 39; 55; 62; 65; 93; 115; 127.3; 131; 132; Gregory, *Dial.* 306.2; 4.12.2-3; *Reg.* 11.27;

have examined above. He espouses very similar sentiments in his *De spiritualis historiae gestis*, a potted history of Bible stories which includes his version of the punishment of Adam and Eve with added dialogue. Avitus envisions their marriage as being divinely created, divinely sanctioned and regulated by divine law.⁵⁹

Although he repeats his themes of marriage as being the site of Eve's punishment through endurance: 'the domination of your husband in bed and fear your lord who I have given to you as a mate. In subjugation you will obey his commands and with bent head accustom yourself to male pleasure,' he considers this to be blessed and correct.⁶⁰ In this context, it is not an attempt to denigrate marriage or present it as off-putting, but to justify certain behaviours which are intimately linked to sexual contact and evil.⁶¹

The perspectives offered on premarital behaviour and betrothal in the literary sources provides some striking divergences from those presented so homogeneously in the legal texts. While the compilers of the legal texts were overwhelmingly preoccupied with female sexuality, parental consent and property transfers, the writers of literature in all the various genres demonstrate that more pressing concerns involved correct male sexual behaviour, and male and female consent to betrothal.

2.1.2 Betrothal and Desire

Ideas of consent and desire (which one must assume refers to sexual desire, although this is not made explicit) tend to be intertwined with discussions concerning marriage. Of the non-theologically motivated works that survive today, only a few late Roman letters are concerned with the elements of betrothal that are discussed in the legal texts. Ruricius' letters

⁵⁹ Avitus, *De Mund* 1. 158-59. 'God joined her to her husband by eternal law and made good the loss with the fruit their marriage would bear.' *Quam deus aetera coniungens lege marito coniugii fructu pensat dispendia membri*

⁶⁰ Avitus, *De Mund*:3.140-43. *Imperium patiere tori dominumque timebis, Quem socium dederam: paribud subdita iussis et curvata caput libitus adsuesce virile.*

⁶¹ Avitus, *De Mund*: 1. 115-60; 2

to his son's future in-laws, Namatius and Ceraunia, are openly concerned with the size of the *donatio nuptialis* that he is providing. It appears that the *donatio* is not as substantial as perhaps the bride's parents would like, but Ruricius attempts to balance this concern with the assurance that 'what is lacking in the amount is not only reimbursed, but even augmented in the husband.'⁶² In the same letter, it is made clear that the marriage being discussed was brought to fruition by a mediator, an otherwise unknown priest called Postuminus, who Ruricius describes as 'our mutual patron.'⁶³ This is the only reference to a marriage arranged by an intermediary, and the subtle negotiations surrounding the contracting of a marriage outside of the legal texts, and subsequent letters between from Ruricius to Namatius and Ceraunia, which cover the deaths of their son and also their daughter, Ruricius' daughter-in-law, demonstrate that a bond has been formed between the two families.⁶⁴ Cassiodorus alludes, somewhat disparagingly, to this element of betrothal several times in his *Commentaries on the Psalms* in which he repeatedly lists well connected marriage to a distinguished family as a particularly jubilant worldly joy but Ruricius's letter is the only first hand account which survives detailing these issues.⁶⁵

In the poems and *epithalamia* betrothal is also presented as being something contracted by the family, with the single exception of Sigibert and Brunhild's marriage in Venantius Fortunatus' *epithalamium*.⁶⁶ This difference is presumably so because of Sigibert's position as a king. Girls are expected to have no particular agency in the decision concerning who they marry, but the idealisation that occurs in *epithalamia* and poetry emphasises their approval of the match, their consent to the marriage and their desire for their betrothed. Thus, Venantius Fortunatus' commemoration poem for the deceased Vilithuta discusses her betrothal to her husband as a wonderful occasion which occurred when she was 13 years old. The fact of her marriage is constructed with her as a passive actor, but Venantius portrays her

⁶² Ruricius, *Ep.* 2.2 *cum hoc quod deest numero non solum compensatum sed etiam auctum agnoscitis in marito.*

⁶³ Ruricius, *Ep.* 2.2 *patroni communis domni Postumnini.*

⁶⁴ Ruricius *Epp* 2.1; 2.3; 2.4; 2.5; 2.15; 2.50; 2.62;

⁶⁵ Cassiodorus, *Psalms*: passim

⁶⁶ Ven Fort, *Carm* 6.5. See below for more on this.

as desiring him as a person, and wanting him as a husband: ‘united and given into the care of a man she desired.’⁶⁷ There is a certain subtle suggestion that she is lucky to be given a suitor of whom she approves.⁶⁸

An identical theme is seen in his *epithelium* for Sigibert and the Visigothic princess Brunhild. This poem was one of the first works the Venantius presented upon his arrival at Metz from his Italian home along with a panegyric, and is therefore a demonstration of his successful attempts to ingratiate himself the Merovingian court.⁶⁹ It can also be assumed from the timing that Venantius in fact had no knowledge of the events that led up to the marriage, but nonetheless he valiantly constructs a long and detailed set of scenes in which Sigibert is struck with a burning and overpowering sexual and emotional love for Brunhild that transcended the distance and seas that separated them: ‘Sigibert, in love, is consumed by passion for Brunhild.’⁷⁰ They are both depicted as longing to be together as a married couple, set against a backdrop of an overtly classical setting of a spring garden, representing fecundity and harmony. This bears no relation at all to Gregory of Tours’ description of the contracting of their marriage, in which he presents Sigibert as being inspired to find a royal wife by his brothers who were marrying slaves and women of low birth.⁷¹ The only claim that is similar is in Venantius’ assertion that Sigibert had always rejected dalliances with slaves and kept himself virginal for the marriage bed.⁷²

This poem does not aim to be an accurate depiction of genuine events; it is an idealisation, one that depicts the same idea that is presented in the poem for Vilithuta: that young men and women desired to be married to someone with whom they would be happy

⁶⁷ Ven. Fort. *Carm.* 4.26: 35-37.

⁶⁸ Ven Fort. *Carm.* 4.26: 42.

⁶⁹ D’Evelyn, 2007: 3.

⁷⁰ Ven. Fort. *Carm.* 6.1:39; 40-46; 51. *Sigibert amans Brunhildae carpitur igne.*

⁷¹ Gregory, *Hist* 4.27. ‘Now when king Sigibert saw that his brothers were taking wives unworthy of them, and to their disgrace were actually marrying slave women, he sent an embassy into Spain and with many gifts asked for Brunhild, daughter of king Athanagild. She was a maiden beautiful in her person, lovely to look at, virtuous and well behaved, with good sense and a pleasant address. Her father did not refuse, but sent her to the king I have named with great treasures. And the king collected his chief men, made ready a feast, and took her as his wife amid great joy and mirth.’

⁷² Ven. Fort. *Carm.* 6.1. 35-36. *Quo no peccat amor, sed casta cubilia servans instaurat de prole lares, ubi luserit heres.*

and for whom they would feel a physical and emotional desire. The alternative possibility is shown in Venantius' poem written on the occasion of Galswinth's death. Galswinth was Brunhild's sister and was taken in marriage by Sigibert's brother Chilperic, apparently in imitation of Sigibert's example. Although Chilperic allegedly agreed to give up his concubines for her, he rescinded on this and Gregory of Tours claimed that, in anger at Galswinth's refusal to accept his other sexual relationships, Chilperic had her strangled.⁷³ Venantius' portrayal of Chilperic and the events surrounding his betrothal to Galswinth are – although he is not accused of murder – not much more flattering. The poem focuses on Galswinth and her mother and their reaction to the news that she is to be married to a foreign king; again this is clearly an entirely fictional construction on Venantius' part, and in his long and detailed depiction of Galswinth's distress is a striking contrast to his idealisation of her sister's delight in the exact same circumstances. Galswinth is portrayed as terrified, and Chilperic is compared to a captor who makes no concession to his hostages.⁷⁴ The marriage itself is compared to a kidnapping, and Galswinth's mother Galswinth laments that she cannot buy her daughter back from her kidnapper.⁷⁵ All this serves to highlight the fundamental failures of the marriage by presenting the reaction to it by both the bride and her (female) family members as the precise opposite of that which is both idealised and expected.⁷⁶ This is not a husband or a marriage that is desired, and it is this that is implied to be responsible for her death.

The intersection between the young men and woman's desire for a suitor they can

⁷³ Gregory, *Hist* 4.28 'When Chilperic saw this, although he had already too many wives, he asked for her sister Galswinth, promising through his ambassadors that he would abandon the others if he could only obtain a wife worthy of himself and the daughter of a king. Her father accepted these promises and sent his daughter with much wealth, as he had done before. Now Galswinth was older than Brunhild. And coming to king Chilperic she was received with great honour, and united to him in marriage, and she was also greatly loved by him. For she had brought great treasures. But because of his love of Fredegund whom he had had before, there arose a great scandal which divided them. Galswinth had already been converted to the catholic law and baptized. And complaining to the king that she was continually enduring outrages and had no honour with him, she asked to leave the treasures which she had brought with her and be permitted to go free to her native land. But he made ingenious pretences and calmed her with gentle words. At length he ordered her to be strangled by a slave and found her dead on the bed.'

⁷⁴ Ven Fort. *Carm.* 6.5: 47-59

⁷⁵ Ven Fort. *Carm.* 6.5: 52 *si nec corde piur, cupidus mihi cederet hostis.ut natum ad pretium Barbara praeda daret.*

⁷⁶ Fredegund is a notable absence in this poem, presumably because of her status and power later on.

love and the parental desire for a well-connected marriage, and the ways in which these came together inside the minds of the people of the early middle ages is demonstrated by the little studied sixth-century poem by Eucheria of Marseilles. This poem was apparently composed by a young aristocratic woman in reaction to the news that a '*rusticus et servus*' has expressed an interest in marrying her.⁷⁷ The poem takes the form of a series of insulting epigrams which present a beautiful, delicate and precious item being paired with an ugly, poor and rough item, what Eucheria describes as 'monstrous couplings': an emerald locked in Gallic bronze; a golden threads intertwined with rough horsehair; a lily joined to a stinging nettle; a dove with a crow.⁷⁸ The imagery throughout is of a delicate and refined object trapped and choked by an ugly object, and is an unsubtle metaphor for her vision of a life as an aristocratic lady married to a poor country man. In this poem we see a woman reacting with horror to the idea of an unsuitable marriage, apparently basing her opinion upon the financial status and social class of her suitor. While her reaction cannot be surprising, that she wrote a poem about the issues, and that the poem survived is interesting. Eucheria eventually married the aristocratic Dynamius so it is clear that she was not opposed to marriage itself, and indeed she gives no indication either of a Christian affiliation or that she rejects the idea of marriage, merely the suitor.⁷⁹ We can thus see how the notions of 'correct' marriage were internalised by the young woman, and how much she considers the social class of her husband to be a part of her happiness.⁸⁰ The poem further provides an interesting perspective on notions of consent and desire. It is clear that, although we cannot know how much control Eucheria had over her eventual betrothal, she has strongly felt opinions on the matter of who her husband should and shouldn't be, and the education and agency to make herself heard. Furthermore, she has a clear image of the man for whom she would expect to feel an emotional (and sexual) attachment to, and the '*rusticus et servus*' of the poem is presented as the precise opposite of her ideal. This image of a secular woman with agency is a picture of

⁷⁷ Eucheria, *Verses* 32. In just 5 of the surviving MSS 2 extra lines are added at the end of the poem in which the suitor is named as Maiorianus, Thiébaux suggests that these lines are spurious (1994: 127). See Rio, 2006 for the best overview of the problems of *servus*, freedom/unfreedom and the unique historiography of these issues in the post-Imperial world.

⁷⁸ Eucheria *Verses* 3-4; 9; 13; 31-32. *Haec monstra incestis mutant*

⁷⁹ Thiébaux, 1994: 126-7

⁸⁰ It is perhaps in this vein that the hagiographical texts examined earlier should be seen.

female experience of betrothal that does not tally with that provided by the female oriented hagiographical texts and the law codes that have formed the basis for much of the modern academic discussion of the subject, presenting these women as exploited and voiceless.

The imagery of Eucheria's hypothesised marriage to the *rusticus* gives some insight into the expectations she held concerning an acceptable marriage. She represents the marriage to the *rusticus* as an imprisonment that would choke her and stifle her, and destroy her excellent traits. She depicts herself in two ways: as a flower, and a small bird, delicate and fragile object to be taken care of; and as a jewel, a 'lofty lioness' and the 'noble purple,' as a proud and splendid aristocrat.⁸¹ In both case, the items representing the *rusticus* not only fails to do what a correct match would do but actively destroys the item that represents her. According to Eucheria, association with him would be defilement and destruction of what she most values about herself. From this we can potentially extract a semblance of her conception of what she desires her marriage to be without the distractions of an overt Christian rhetoric, and it appears that she desired and expected her marriage to be something that enhanced her personally, not something that oppressed or subjugated her. It is to our detriment that no other verses of Eucheria's survive to tell us how she reacted to her betrothal and marriage to Dynamius.⁸²

Desire appears to have been a particularly complex and important issue of the period, with the possibility of being married by one's parents without consent being presented as a genuinely horrifying prospect for both young men and women.⁸³ Nonetheless, the vast majority of betrothals, both real and fictionalised, that are recorded in the literary sources are

⁸¹ Eucheria, *Verses*, 4 *noblis purpula*; 6: *gemma*; 13-14: *liliae, rosam*, 19: *alta leana*; 28-30 *philomela; pulchra columba*.

⁸² Venantius Fortunatus briefly mentions Dynamius and Eucheria as being the centre of a cluster of aristocratic poets (*Carm* 6.9) and Dymanius was evidently a noble, educated and wealthy man, who is noted to have been a guest at Sigibert's wedding and part of a Provençal literary circle, (George, 1995: 55 n.122; 125) so one hopes that Eucheria was pleased with her match. (Thiébaux, 1994: 126).

⁸³ This is not a new development, but is fundamental to Roman legal definitions of marriage (D. 23.1.11-12. See Treggiari, 1982: 34-44; 1991: 16-26; Evans-Grubbs, 1994: 363-64. On how far this legal definition was academic Treggiari, 1992: 83-4.) What is new is the lack of emphasis on consent in the legal sources in comparison to the great emphasis on it in literature suggesting a significant disconnect between the issues absorbing the lawmakers, and those concerning the populations of the post-Roman kingdoms.

depicted as being arranged and directed by the parents of the bride and groom demonstrating a delicately balanced situation in which the consent of both the parents and the individuals to be married is important. Any situation in which the individual's consent is absent is presented as being bad for the individual and in all depictions of idealised marriages, such as Sigibert's or Vilithuta's, emphasis is placed not only on the consent of both partners, but on the desire felt for one another.⁸⁴ Alongside this runs a particularly Christian theme that the exchange of property at marriage debases it as a relationship, and particularly degrades the female role within marriage. Thus, there are very few references to the contractual and financial elements of betrothal in post-Imperial literature. An ideal that marriage is a union of two people based on desire is dominant, and is incompatible with such mundane legal matters.

2.1.3 Conclusions

While the post-Imperial legal codes are not interested in marriage or betrothal in processes or life course stages in and of themselves, but in the property ownership matters which arise as a result of their occurrence, the literary texts have different *foci*. One aspect which seems universal to the literature is that the bride and groom themselves are perceived and presented as having very little agency in the process. It is a process controlled by the parents of young men and women. However, during this period, the themes of mutual consent and desire for marriage that later become so dominant in Christian thought are beginning to emerge. Furthermore, it is clear that often the concept of non-consensual, forced betrothal, or betrothal for familial advantage, is used for ideological and theological purposes by religious

⁸⁴ A unique exception to the former rule is that of the Two Lovers, a story told by Gregory of Tours in both his *Hist* and *GC*. Here, the wife claims to have been married against her will, and weeps on her wedding night. She is saved from her fate as an unhappy wife by persuading her new husband (named Injurius in the *Hist*) to embrace Christianity and to live with her in a chaste marriage. In this way, they share a desire, not for one another, but for Christ. *Hist* 1.47; *GC*. 31. This first book of his *Histories* is the most overtly religious book, telling Biblical chronology of the world combined with anecdotes that have more in common with his devotional literature (*GM*, *GC*, *VP*) than his political histories. Although Heinzelmann, 1994 (English translation 2001) argues that the entire *Hist* is a biblical narrative, the first book is the most openly spiritual in nature.

writers, in using it a motif to demonstrate spiritual strength and perfection. These ideas, that marriage should have a consensual element, and that the consent should be that of the individual man and woman, not their fathers, develop throughout the middle ages and medieval period, and becomes fundamental to Christian ideals of marriage.⁸⁵ In 1994 Philip Reynolds argued that during the post-Imperial, post-Patristic period Christian theologians worked to explicitly differentiate Christian marriage from pre-Christian marriage.⁸⁶ These texts demonstrate that this attempt began early in the post-Imperial period and was successful. Moreover, this analysis highlights an important facet of the post-Imperial world: the fundamental importance of the Christian/non-Christian dichotomy over the more traditional Roman/‘Germanic’ dichotomy. It is the rising power of Christian thought which changes the ways of conceptualising (and eventually practising) betrothal, not the ‘barbarisation’ of the Roman world.

2.2. Marriage

2.2.1 *Introduction*

This thesis, as has been made clear, sees the Christian/non-Christian dichotomy as being the most important distinction during this period, and that in terms of the theology of marriage this differentiation can primarily be traced to Augustine. Thus this analysis of marriage will be significantly influenced the work of Philip Reynolds.⁸⁷ However, this chapter, as with the rest of this thesis, aims to move the focus of the the family away from the domestic sphere of women, and to integrate the male experience into the understanding of the post-Imperial family. This chapter examines the institution of legal marriage from three primary perspectives drawing on previous chapters. The first, 2.2.2, employs the conclusions of the legal context of marriage and examines marriage from the perspective of property

⁸⁵ Duby, 1994; Reynolds, 1994

⁸⁶ Reynolds, 1994: 121-41

⁸⁷ See Introduction for a review of Reynold’s position and the historiography of marriage.

ownership. This section attempts to establish how far the legal provisions can be seen in action within the available literature. Section 2.2.3 and 2.2.4 consider explicit Christian developments in the literature concerning marriage, in particular the respective roles and behaviours of husbands and wives within an idealised Christian marriage. These sections argue that Christian writers attempted to differentiate Christian marriage from non-Christian marriage by offering married Christians new models of behaviour and new power structures. Section 2.2.5 draws on the conclusions of chapter 1.1 concerning consent and desire, and examines the ideal of *concordia* within post-Imperial marriage both Christian and non-Christian. For the purposes of this chapter *concordia* is defined as shared desires, harmony and concord between the married couple. Affection is not necessarily a requisite of *concordia*.⁸⁸ The final section 2.2.6, again building on the legal context, examines the frequency and type of divorce and separation found in the literature to establish how far the dissolution of marriages can be seen to be occurring and accepted outside of the legal context. This section also considers the development of Christian doctrine on divorce from Augustine. This chapter maintains the argument of this thesis that Christianity is the primary driver of any distinct change during the post-Imperial family, but that these changes are often - although not purely - theoretical and idealistic in tone, rather than practical exhortations for changed behaviour.

2.2.2 *Property in Literature*

The issues that concerned the compilers of the legal texts surrounding property management and ownership do not appear to have been so interesting to the non-legal authors. There are only the sparsest references to such an issue, both of which come from men of the same area and time and both of which describe a situation in which they appear to take on sole management of their wives properties. First Paulinus of Pella states that the

⁸⁸ As Lewis and Short. For more on *concordia* in Roman marriage see Treggiarri, 1991: 229-63; Dixon, 1991; Barber, 2011 suggests that this ideal existed prior to the late Republic, and in fact can be seen in the Republican works of Plautus.

management of his new and unwanted wife's estates that distracts him from his youthful pursuit of sexual pleasure with his slaves (not, interestingly, his wife for whom he seems to hold little but contempt).⁸⁹ Secondly, Sidonius Apollinaris describes one of his properties as being sweeter to him due to being a part of his wife's patrimony.⁹⁰

In the first instance, Paulinus is clear that he takes on personal responsibility management of the estate his wife inherited. Furthermore, one of the motivations for their marriage was the poor state her property was in due to the infirmity of her grandfather from whom she inherited the estate, suggesting that the nameless woman had no role in the management of the property prior to her marriage despite apparently being the only heir.⁹¹ Certainly, Paulinus acknowledges no role for his wife in helping him run their estates during their marriage. In the second, Sidonius states that he has fond feelings for the estate in question because of its association with his wife, and describes it as coming 'to him' (*mihi*), which obliquely implies his control. Equally however, the estate is described as being part of his wife's patrimony (*uxorium patrio*) which implies her ownership.

Both men are of Roman descent and identify as Roman men, and both men live in Southern or South Central Gaul and were absorbed into Burgundian rule. In both cases, the property under consideration is property that had been inherited by the wife, which was a part of their patrimony, and brought into the marriage this way rather than through a traditional Roman *dos* or wedding gift. It was thus property that legally belonged to their wives, not property given to the marriage. Potentially, then, these men – despite their Roman cultural

⁸⁹ Paulinus, *Eucheristicos*. 176-91 'when my parents' anxious care forced me, unwillingly, I admit, to give up this state, grown easy through soft custom, and drove me by way of change to mate with a wife, whose property was rather glorious for its ancient name...But once I was resolved to bear the toil laid upon me, youth's zeal seconding my mind's desire, in but few days I was content to enjoy the pleasures of the estate thus gained, and soon forced both myself and my thralls to exchange seductive idleness for unwanted toils' *pia cura parentum cogeret invecum blanda suetudine ritum deserere atque novum compelleret esse maritum coniugis, antiquo potius cuius domus esset nomine magnifica... Sed semel inpositum statuens tolerare laborem, suffragante animi studiis fervore iuventaevix paucis domus indeptae exercere diebus gaudia contentus, malesuada otia curis mutare insolitis*

⁹⁰ Sid. Apoll. Ep. 2.2. '*quia uxorium, patrio mihi dulcius*. 'sweeter because it came to me with my wife'

⁹¹ Paulinus, *Eucheristiocon* 182-86'...Because of the sore anxiety it involved, as long uncared for through the lethargy of its aged lord, to whom, surviving her own father's death, a young grandchild succeeded — she who afterwards acceded to wedlock with me.' *quam quae possessa placere ad praesens posset nimis obnoxia curis, dudum desidia domini neglecta senili, parva cui neptis functo genitore superstes successit, taedisque meis quae postea cessit.*

heritage – are adhering to the Burgundian law that men exercised complete control over women and their personal property during marriage.⁹² An alternative explanation is that these men are representing themselves within the new and powerful Christian image of the controlling, all powerful husband. It is this same model which is deployed by the bishops Avitus, Leander and Venantius when they write to their virginal female relatives.⁹³ In that context, it was used to scare women away from the attractions of marriage and motherhood. Here, it is potentially being subtly used as part of the two authors' creation of their own self-image, allowing them to underplay or simply not mention their wives' roles in running their property in order to allow themselves to be seen as dominant husbands by their readers.⁹⁴

This model of the dominant husband is seen in the contemporary *Ad Gregoriam in Palatio*. This takes the form of a letter written by a Greek bishop named John in response to a real or imagined request from a wealthy and powerful *matrona* based in Rome during the late fifth or sixth century regarding her status as a Christian wife.⁹⁵ It addresses the concerns of such women that marriage - and the necessary sexual duties of a wife - barred the way to heaven. Further, it reflects on Gregoria's perceived opposition to her husband's rightful authority over her and her body.⁹⁶ John is adamant in his emphasis on Gregoria's absolute lack of authority over her body. He compares her position as a Christian wife to that of a slave, telling her that her marriage contracts were a contract of sale of her body to her husband.⁹⁷ The tract contains several long and detailed passages berating Gregoria for any thoughts she may have had about opposing her husband's will in all things. Moreover, he explicitly ties this model of dominant husband/submissive wife with the moral correctness of

⁹² LC C, *contra* Fischer Drew who disputes the application of this law. See 1.1.3

⁹³ See 1.1.2

⁹⁴ For an example of how subtle but effective and conscious Roman self creation and promotion could be, see Reeve, 2012.

⁹⁵ Cooper, 2009 has debated whether the Gregoria addressed is real, or whether the letter is merely a rhetorical exercise in the form of a letter. She concludes that Gregoria is either fictional, or that the situation being discussed is fictional. Certainly, the style is not that of a private letter, and the opening paragraph is particularly indicative of a rhetorical tract.

⁹⁶ Cooper, 2009: 50 calls his style pretentious, and accuses him of ostentatiously demonstrating his rhetorical skill and education, suggesting that a much wider audience was expected for this manual than one woman and indeed was received. She suggests that this manual was in fact fairly widely circulated among the Carolingian court (2009: 91)

⁹⁷ Ref.

Christianity:

I ask you what foolish line of thinking persuades you that Christ, for whose will you stand prepared to die at the hands of the tyrant, may be defied where a husband is concerned.⁹⁸

Previously male authority was despised...But now...you may not by any means oppose his will. Only with the greatest shame may you put forward your free status or your original authority as an impediment!⁹⁹

However, at no point is Gregoria explicitly told that she has no control over her property and indeed, at other points, she is encouraged to give generously to the poor from her moveable wealth.¹⁰⁰ Nonetheless, John strongly indicates that a contemporary Christian ideal allowed women no access to control their own land and estates in a Christian marriage.

This same notion is shown in later texts, for example in Gregory of Tours' *History of the Franks* he refers to a woman named Tetradia, wife of the Count of Auvergne — also in South Central Gaul — whose husband steals her property to pay his gambling debts.¹⁰¹ Here, however it is clear that Gregory only refers to Tertradia's small movable wealth, such as jewellery. The fate of her estates is left unknowable; Gregory does not state whether her husband also stole from them or whether they were protected by his having no legal access to them.

The picture which emerges from these disparate puzzle pieces is one in which women appear to maintain legal ownership of their property, but do not appear to hold formal control over the management of it during the lifetime of their marriage. At least, this image is being

⁹⁸ *Ad Greg 6. 6-9 que rogo ratio stuta persuadit, ut Christum pro cuius uoluntate mori parata sis apud tyrannum, hunc apud maritum censeas inpune contemni.*

⁹⁹ *Ad Greg 7. 5-10 Prius enim quam non liceret contemni uirilis autoritas...ut eius se sciret nullatenus posse resistere uoluntanti, quo pudore ingenuitatis suae obiem uel pristinae potestas opponat.*

¹⁰⁰ *Ad Greg 12.52-54*

¹⁰¹ *Hist 10.8.*

promoted, consciously and unconsciously, by Christian writers in the very rare occasions where property is mentioned in non-legal sources.

2.2.3 Christianity, Sex & Power

In the post-Imperial west, as the Christian church emerged as the successor to the Roman senate as the primary unifying power structure, a ‘knowledge of sex’ became more and more important to those who wielded power in the name of Christ. Nowhere is this more clearly seen than in Christianised discourses of marriage. This chapter begins with an analysis and understanding of the gendered sexual roles of the husband and wife and then, through reference to the Gospels, becomes broadened into a wider discourse of male and female power within a marriage. This section argues that as Christians continued to interpret and re-interpret marriage within existing gender-roles, they also created such roles.¹ As such, marriage in the post-Imperial west is defined fundamentally by its relationship with the limits of theologically acceptable sexual intercourse.

From the very beginning of Christian writing sexual contact in marriage was a significant problem that needed a solution. Among the earliest discussions to appear surrounding conjugal sexual relations focused on reassuring potentially wary Christians that marriage was a Christian act, legitimised by Christ and the Bible. This appears in response to the late fourth century Jovinian heresy, which argued that for women the married state and the virginal were equal and promoted a relaxed Christian morality, prompting a strong backlash from the great Church fathers Jerome and Augustine. Both authored responses to Jovinian with dramatically different modes of attack: Jerome responded in AD 392 with the polemical tract *Adversus Jovinianum* which aimed to elevate virginity to celestial heights over marriage, but which barely discussed actual marriage at all except in negative terms. Augustine aimed for a more neutral ‘third way’ between the two extremes. He responded with his *De Bono Coniugali* in AD 401 in which he dismantled Jovinian’s heretical teachings while still maintaining that marriage had an important and holy role in Christian life, and furthermore that sexual intercourse had a significant place within it.² Indeed, Augustine

¹ Elliot, 1997

² Reynolds, 1994: and especially Hunter, 2005 & 1995

defines the very essence of marriage as being a man and a woman who have agreed to have sexual relations with one another exclusively, as long as they are faithful to that agreement, and contraception is not used.³ Although he maintains throughout that sexual intercourse for pleasure is not ideal, he seems uneasily accepting of the fact that it occurs and is willing to pardon it as long as only one partner is receiving pleasure.⁴ To Augustine, it is sexual fidelity, the production of offspring and insolubility that makes Christian marriage both unique and uniquely good.⁵ Augustine's ideas provided a foundation for Christian thinking about marriage for the next millennium.⁶

The idea that marriage is instituted by God for the licit production of children is widespread and orthodox throughout period under consideration here, and this theology contributes to the fundamental belief that marriage is defined by sexual contact. As per Augustine's definition of matrimony in *De Bono Coniugali*, marriage between a man and a woman is both consciously and unconsciously defined in the same way across genres. It is most explicitly expressed in the seventh century by Isidore of Seville who writes in his *Etymologiae* that *coniugium* is 'a marital relationship of persons who have met the legal requirement, marked by the joining together and sexual intercourse with one another.'⁷ It is seen in a variety of other contexts, for example in the Canons of Valence contained within Caesarius of Arles' correspondence which forbid priests from 'acting as a husband,' and in a stream of early Romano-Gallic texts which aim to limit the numbers of married couples who abstain from sexual contact.⁸

This concept of marriage without sexual contact was heavily promoted in the earliest Christian times as a convenient path to salvation for couples already married, or who could

³ Augustine, *De Bono Coniugali* 5.

⁴ Augustine, *De Bono Coniugali* 10.

⁵ For a considerably more detailed analysis and description of Augustine's views on marriage see Reynolds, 1994: 241-314.

⁶ Elliot, 1993: 7.

⁷ Isidore, *Etymologies*. 9.7.20 *Coniugium est legitimarum personarum inter se coeundi et copulandi nuptiae: coniugium dictum quia coniuncti sunt, vel a iugo quo in nuptiis copulantur, ne resoLib. Iud. ia ut separari possint.*

⁸ Caesarius, *Ep* 14b. 'He who still wishes to behave as a husband has lost the grace of a consecrated man.'

not avoid marriage. It is a frequent trope in the enormously popular Acts of the Apostles which date from the first and second centuries, traditionally depicting women refusing to have sexual contact with their husbands at the encouragement of an apostle, suffering abuses and concocting intrigues along the way.⁹ These popular tales, combined with the constant exaltation of virginity above all else came together to make sexual renunciation within marriage an attractive option. By the fifth century, however, there was no longer any pressing need for complete sexual renunciation of entire populations, and the idea that ‘the time for procreation was past’ was rather less popular.¹⁰ As the Church came instead to begin to draw marriage and marital practises into itself, chaste (or ‘spiritual’) marriages therefore became less fashionable, and could even be seen as undermining Church teaching on correct marriage, and ‘correct’ gender roles as defined by Christian discourse.¹¹ Instead churchmen began to openly criticise chaste marriages, maintaining that they were not theologically acceptable and insisting upon separation into monasteries.¹²

This began fairly early in the fifth century with Salvian in his *De Ecclesiam* expressly chastising those who chose chaste marriages as having ‘cut themselves off from the Word’ and accusing them of not truly being married: ‘without the use of a husband, she has a husband in such a way that she seems not to have one.’¹³ This is a strong criticism of a traditionally encouraged strand of Christian life as it accuses those who undertake such an arrangement as being improper Christians, or not Christian at all. It is mirrored in the *Ad*

⁹ The Apocryphal Acts of the Apostles are filled with such tales. The tale of Thecla and Paul is particularly famous, as is the story of Andrew and Maximilla, in which she forces her slave-girl to stand in for her in the bedroom in order to avoid sexual intercourse with her husband (*The Apocryphal Acts of Andrew* fr. B) and in The Apocryphal Acts of St. Thomas in India where he encourages a newly-wed couple to save themselves and abstain from sexual intercourse and procreation in colourful and emotive language (*Acts of St Thomas in India*: 12-28).

¹⁰ Augustine does make use of it in many texts, but it is less then influential on a wider scale, being only very, very rarely espoused by any Christian writer outside of hagiography. Even within hagiography, it is extremely rare. (*De Bono Coni* 9-10; 15; 17; *De Nupt et Conc* 1.14; *De Gen ad Litt* IX.7 ; *De Adult Coni* II.12,

¹¹ Elliott, 1993: 7; McNamara, 1982 :22-30 claims that chaste marriages were ‘surprisingly popular’ in the face of stern discouragement from such influential men as Augustine and Paulinus of Nola. She argues that the reason for their disapproval was that chaste marriage, with its sibling imagery, represented a free marriage, without subjugation. For her, then, the aspect of wifely subjugation in the conjugal bed is an all important factor to marriage to the men who opposed conjugal chastity, and ‘keeping women down’ so important as to inform their theology.

¹² There are two surviving exceptions to this rule: Paulinus of Nola and Gregory of Tours. See below.

¹³ *De Ecc.* 2.7.32-4.

Gregoriam in which it is implied that she has stopped having sexual intercourse with her husband, and that by allegedly doing so, she has denigrated the fact of her marriage. The author informs his female audience that they have no right to unilaterally impose chastity upon their marriages (framed through the lens of the all-powerful husband and the powerless wife).¹⁴

It is clear that Gregoria's notion of a marriage unsullied by sexual intercourse, in which she is the heroic virginal lead of her own on-going martyrology, is considered out-dated. It is to be replaced with a new Christian vision of marriage in which she is offered an entirely different heroic, martyrial role: the submissive Christian wife. The same discourse is seen in hagiography throughout the period: although subjects – particularly women – can, and frequently do, refuse to be married in the physical sense (or 'in the maternal way' as one hagiographer neatly put it in the ninth-century) those who do obediently marry are never represented as denying their husbands sexual intercourse.¹⁵ This is no longer an appropriate theme for idealised Christian people, and so it is replaced with the new discourse of proper sexual relations: that of controlled sexual contact for the exclusive purpose of having children. Only a few writers of the post-Imperial period openly advocate chaste marriages, most significantly Paulinus of Nola in the fifth century, and Gregory of Tours in the sixth.¹⁶ Paulinus explicitly encourages his community to forgo sexual intercourse, and boasted of his successes in his letters.¹⁷ Gregory is less proactive, but includes stories of couples who remain chaste throughout their marriage and are divinely rewarded in some way.¹⁸ All other

¹⁴ *Ad Greg.* 6.6-9: I ask you what foolish line of thinking persuades you that Christ...might be defied where a husband is concerned.' 7.12-14: 'To be sure you have known your husband carnally for no other reason that you cease to have authority even over your very body.' 'On what account would God by the mystery of the second regeneration adopt as His children those placed in marriage if He saw that being hampered by this bond they could not hasten toward His kingdom?'; 23.8-10.

¹⁵ *Life of Abbess Aldegund*, 3.

¹⁶ Another, much later, example comes from Paul the Deacon's *Lives of the Fathers of Merida* in which the story of a senator and his wife who falls ill. Desperate to cure her, he seeks advice from the local holy man who informs them that he will cure her, but in recompense they must never have sexual intercourse again or else she will suffer further. The couple agree, the wife is cured and they are depicted as living happily ever after in perfect chastity.(4.2).

¹⁷ Paulinus of Nola *Epp.* 20; 30; 38; 39; 44; 51.

¹⁸ Gregory of Tours' enjoyed the tale of the Two Lovers so much that he included it in both his *History* and his miracle collection the *Glory of the Confessors* with some slight differences. In this tale, a young couple are married by their parents and decide to forgo sexual contact forever. In the version given in the *History* the

tales of miraculously rewarded chastity across the ages concern men who are either members of the clergy or are couples who adhere to a version Christian chastity that includes sexual intercourse. Thus, Gregory of Tours includes in his *Glory of the Confessors* a married man named Helarius who ‘is said to have fathered sons’ with his wife, but who is so virtuous that his home was described as being embellished ‘with such chastity and complete purity of both spirit and body that no-one dared to practice adultery there.’¹⁹ Helarius dies, and his wife follows shortly after; as she is lowered into his tomb his skeleton is seen to miraculously open its arms and pull her body into an eternal embrace.²⁰ Although it is the couple’s exceptional and admirable chastity that is the focus of this story as related by Gregory, it is notable that he thought it important to emphasise that they were not entirely virginal by stating that they were ‘said’ to have children, indeed they had sons which would equally be considered a form of reward for their chastity. With the exception of the miraculous Two Lovers, by the sixth century, throughout the west, total continence is no longer to be advocated or encouraged.

Perhaps the most significant example of this new paradigm is in Venantius Fortunatus’ sixth-century *Life of Holy Radegund* in which he cannot deny her marriage to Clothar I, and according to the new conventions of hagiography cannot – as he could have in earlier times – claim that she refused his sexual advances as this would serve to undermine her inherent sanctity, rather than exalt it. Instead, he is forced to present her as acquiescing to Clothar’s sexual demands, but both pre-emptively punishing her body with a hair cloak and simultaneously numbing herself so that she would be physically unaware of her husband’s actions:

women claims to have been married against her will, thus conforming to the hagiographical *topoi* of sacred women, and gives a lengthy speech persuading her husband (named Injuriousus in this version) not to force her to lose her virginity but to join her in lifelong chastity. In the version given in *Glory of the Confessors* the couple are unnamed and ‘mutually agree’ to remain chaste. In both versions, the two are marked out with divine approval upon their deaths; firstly when the women dies and she is briefly brought back to life to converse with her husband and again upon his death when their sarcophagi miraculously move during the night into the same room never to be separated. The first miracle occurs only in *Hist* 1.47. The second occurs both in the *Hist* and in the *GC* 31.

¹⁹ *GC* 41.

²⁰ *GC* 41

‘Then she would prostrate herself in prayer under a hair cloak by the privy so long that the cold pierced her through and through and only her spirit was warm. Her whole flesh prematurely dead, indifferent to her body's torment, she kept her mind intent on Paradise and counted her suffering trivial, if only she might avoid becoming cheap in Christ's eyes.’²¹

In this way, Venantius presents Radegund as an ideal Christian wife submitting herself to her husband's pleasure, while at the same time bestowing on her an approximation of virginal sanctity, an honorary virginity, as she has not spiritually ‘experienced’ sexual intercourse. She becomes a living embodiment of the fact that Christian virginity was a state of mind, not of body.²² This is a new depiction of the phenomenon, but it becomes a common trope in the hagiography of married men and women. For example, the seventh century abbess Saldelberga who is married twice and on both occasions is presented both as the passive partner in sexual matters (‘he had barely enjoyed his conjugal rights for two months..’) and as having sexual relations purely for the production of children.²³

This notion is one that is drawn from the Pauline letters, and is fundamentally intertwined with the argument that marriage legitimises an otherwise intrinsically illegitimate act. It is commonly accepted by the fifth-century that marriage was instituted to allow sexual contact, as is apparently stated by Paul in 1 Corinthians 7:9: ‘But if they cannot contain, let them marry: for it is better to marry than to burn.’ Through Augustine however, interpretation of this subtly shifted; marriage did not allow uncontrolled sexual pleasure, but merely excused the unavoidable sexual contact that was necessary for the production of children and to prevent adultery. Thus, Caesarius of Arles, whose sermons are frequently and explicitly

²¹ Ven. Fort. *Radegund* 5. One can only imagine what Clothar thought she was doing. Baudonivia's *Vita of Radegund* neatly sidesteps the issue by not raising sexual relations directly at all: ‘In the same short time of her marriage, while a bride and in the guise of wife, she conducted herself so as to serve Christ with greater devotion.’ *Vita Radegundis* 1.

²² Smith, 2009: 304-5. Southon, 2008: 16-17.

²³ *Vitae Saldaberga* 6 ; 10-11. At first Saldaberga's attempts to have children are frustrated, despite the correctness of their sexual relations. It must be noted that both Krusch and Wemple believe that Radegund's *Vita* is a ninth century forgery with no basis in reality. (Krusch *MGH SRM* 5:40-66; Wemple, 1983: 153). McNamara *et al* respectfully disagree with their conclusions (1992: 176.)

repetitions of Augustine's own sermons, repeatedly tells his congregations that their marriage does not allow them license to have sexual intercourse at any time simply for pleasure. They are still bound by Christian mores, and must abide by them or be punished.²⁴ In particular, it is common to maintain that illicit sexual intercourse within marriage will result in deformed children.²⁵

This growing notion that Christian marriage is defined by its being the only path to licit sexual activity is new to the post-Imperial west. It provides a new definition of marriage which is fundamentally different to the secular conception of marriage as a legal relationship legitimised by property transfers, one that is - as so many exclusively Christian notions are - redirecting the discourse towards the immortal, heavenly aspects of mortal relationships.²⁶ Further, it logically leads to new ideas about extra-marital sexual relations. In particular, the idea of what constituted *adulterium*.

From the fifth century, a new motif emerges which openly challenges a married man's right to have sexual contact with slaves and concubines, and redefines such behaviour as adultery. Throughout the classical Roman period, adultery was defined simply as the occurrence of a married woman having sexual contact with a man other than her husband.²⁷ In the post-Imperial west, however, with the emergence of the equivalence of correct sexual conduct and marriage, such rights began to be eroded within the church.²⁸ The punishment of men for *adulterium* in canon law is in actuality a rather early late Imperial development, first appearing in the Canons of the Council of Ancyra in AD 314, demanding a punishment of seven years penance.²⁹ However, what precise behaviours are considered *adulterium* by the bishops of Ancyra is left unclear and the canon could easily – as the secular laws do – refer to

²⁴ Caesarius, *Sermons* 21.2; 41.3; 44; Salvian, *De Gub.* 5.10.

²⁵ Caesarius, *Sermons* 44.7; Gregory. *VM* 23;

²⁶ The archetypal example of this is the Christian redefinitions of virginity to refer not to bodily continence, but that of the soul. See n.43 above.

²⁷ *Inst.* 7.3.10; 7.3.9; Treggiari, 1991: 262-322

²⁸ See 1.2.1

²⁹ C. 20: 'If the wife of anyone has committed adultery or if any man commit adultery it seems fit that he shall be restored to full communion after seven years passed in the prescribed degrees [of penance].'

an unmarried man having sexual contact with a married woman as the marital status of the offender is left obscure. It is not until the fifth century that the explicit condemnation of married men who engage in extra-marital sexual intercourse begins, and it specifically condemns men who have sexual contact with their slaves. The absolute right of slave owners to have consequence free sex with their own slaves is one that appears to have been firmly embedded in Roman culture, indeed even those who consider themselves good Christians such as Paulinus of Pella admitted publicly to such behaviour. It is notable, however, that Paulinus emphasises that his incontinent behaviour occurred only prior to his marriage, and indeed his marriage is arranged to curb such behaviour. Even at this early juncture, Gallo-Roman Christians are expected to forgo their rights over their slaves' bodies.³⁰

By the time of Salvian Christian tolerance of such conduct appears to have been dwindling even further, prompting him to launch a scathing attack on men who engaged in sexual unions with slaves and women of their household. In his *De Gubanatione Dei* he accuses men who do engage in extra-marital sexual intercourse of 'evils and depravities of vice.'³¹ This treatise of Salvian's offers a detailed answer to his congregation's assumed concerns over the rapid withdrawal of the Roman armies amid the successes of the Germanic settlers after the fall of Litorius at Toulouse and the Vandal conquest of Carthage in AD 439. He considers at length the specific difficulty of understanding the successes of heathens (including Arians) over the sufferings of good Christian (Catholic) Romans. Salvian's answer to this dilemma is that the inhabitants of these affected areas were being punished by their loving god for their multitude of sins. The 'barbarians' however – particularly the Vandals, whom he singles out for detailed praise – were living excellent Christian lives despite their failure to explicitly declare an adherence to the Christian God, and who were therefore being rewarded. In particular, Salvian focuses on the sins that the Catholic 'Romans' have committed with regards to their wives and children.³²

³⁰ See Weidemann, 1980: 9; Bradley, 1987: 117-19; 121; Bradley, 1994: 176-79. Paulinus, *Eucheristicos*. 154-75. He admits this willingly, but with considerable shame. None the less, his emphasis on the servile status of his paramours suggests that this was a broadly acceptable sexual outlet for men of high status.

³¹ *De Gub* 3.10

³² Salvian, *De Gub* 3.10.

What is notable about Salvian's attack is that it specifically condemns married men having sexual relations with their slaves, and that the line of attack he takes is that such behaviour degrades the position of wives. It is thus illuminating in two ways: firstly in describing (a presumably exaggerated version of) male householders' sexual outlets; and secondly in exposing the fact that Salvian expects that his male audience will react negatively to the accusation of degrading their wives. This suggests that married women were held in high regard at least by their own husbands.³³ If this were not the case then such vitriol as the following could have little effect:

Who among them did not reduce his wife to one of his maid servants and so degraded the vows of holy marriage that no woman in his house seems more vile by marital contempt than she who was the principal party by the dignity of marriage.³⁴

The mother of the house (*matrona*) is not far removed from the lowliest of female slaves when the father of the house (*paterfamilias*) is the husband of the maids.³⁵

Again, we see here the equation of sexual contact with marriage: the *paterfamilias* becomes the 'husband' of maids through his sexual involvement. Further, Salvian equates the wife with the marriage, and claims that sexual contact with a woman of a lower status degrades one's high status wife to a servile one. This is a sudden curtailment of men's sexual freedoms as it places men under the same moral restrictions by which women were bound by

³³ Wemple (1983: 96-97) disagrees to an extent, claiming that married women were not venerated by society until the ninth century after a tightening of legislation on concubinage which left only a few women 'qualified to occupy the lofty position of wife.' Merovingian women, she claims, had fewer responsibilities and so less respect from their husbands and peers. On Classical Roman *matrona*, however see Dixon, 1988.

³⁴ Salvian, *De Gub.* 7.3 *Quis coniugem in numerum ancilium redegit et ad hoc venerabilis conubii sacramenta deiecit, ut nulla in domo eius vilior videretur maritali despectiones quam quae erat princeps matrimonii dignitate.*

³⁵ 7.4. *Haud multi enim matron abest a uirtute seruam ubi paterfamilias ancillarum maritus est.* Here Salvian is talking specifically about Aquitanian men, for whom he has a special contempt. A further noteworthy development here in Christian sexual politics is that Salvian also censures these men for not allowing their slaves to remain chaste, for taking away the religious freedoms of their slaves. (7.4.17)

in secular law. Sexual intercourse is now entirely confined to limited encounters with one's spouse, at specific times and with a mandatory lack of pleasure. Only marriage can permit sexual intercourse.³⁶ Nor is Salvian alone in censuring those in his community who fail to live up to this ideal. Caesarius of Arles in the sixth century also advocated a strict regime of chastity and demonises those men who deviate from such a regime with their slaves by drawing attention to the hypocrisy of the gender inequality. He paints a picture of men boasting to their friends about bedding their slaves and receiving respect and praise from them, while women are harshly punished 'as if God gave two commandments – one for men and another for women!'³⁷ In a litany of possible sexual crimes committed by men, including losing one's virginity prior to marriage, he categorises married men who 'refuse to be chaste' by fornicating with their slaves as the worst sinners.³⁸ On top of all this censure, he then claims that secular law, which pronounces that the offspring of a slave woman and a free man inherits its mother's status, proves that sexual intercourse between the two is a sin.³⁹ Thus, although it is not fundamental to his argument, Caesarius too appears to expect his male audience to empathise with the hypocrisy inflicted upon their wives to an extent. Here another step is taken in limiting acceptable sexual contact to the marriage bed. Where Paulinus of Pella was allowed to engage in sexual relations with his slaves before marriage without genuine censure, he was not expected to enter his marriage a virgin; even his shame is retrospective. Caesarius condemns such practises as un-Christian and sinful. All sexual contact outside of marriage is disallowed, and so Christian marriage comes to be defined primarily as a conduit to sex.

The most damning of all the condemnations of male adultery however comes from Gregory of Tours' *Ten Books of Histories* written in the late sixth century, whether intentionally or not. Throughout the later books of this work, Gregory recounts a series of anecdotes about troubled marriages which centre on an abusive husband who is thoroughly

³⁶ These are fundamentally Augustinian ideas. Reynolds, 1994.

³⁷ Caesarius of Arles, *Sermons* 42.3

³⁸ Caesarius of Arles, *Sermons* 42.1.

³⁹ Caesarius of Arles, *Sermons* 42.5.

censured. In each of these tales, the husband's crime is to have committed adultery.⁴⁰ Sometime, such as in the case of Eulalius and Tetradia, the husband is also guilty of other abuses – in their case physical violence, gambling and stealing – but keeping concubines is a constant factor in the husband's poor behaviour. In the final case he relates, the wife and her family are so unhappy with the adulterous behaviour of her husband with a prostitute that her brother kills him, initiating a feud that entirely extinguishes both families.⁴¹ Clearly, the adultery is not acceptable to either the wife or her brother, regardless of the fact that it is with a prostitute, who under Roman law would be viewed as an acceptable sexual partner, but is in fact a grave dishonour. The same is said in the case of Eulalius and Tetradia in which his first crime is 'the habit of sleeping with the woman servants of the household.'⁴² Gregory describes Tetradia suffering the same fate as the wives described by Salvian she loses 'all standing in her marital home.'⁴³

These three anecdotes of such similar crimes, each of which leads to a dramatic conclusion, come together to form an image of a world inhabited by Gregory in which male sexual activity with slaves and prostitutes was perceived as being damaging to both individual women and wider society and thus worthy of censure. The endurance of this idea in Christian circles is seen in the seventh century chronicle of Fredegar, in which he depicts Saint Columbanus daring to denounce king Theuderic for his unchaste behaviour in keeping mistresses, describing his children as being 'born of adultery.'⁴⁴ Fredegar also describes

⁴⁰ 8.36: Magnovald; 9.13: Beppolen's unnamed son and his three abused wives; 10.8: Eulalius and Tetradia; 10.27: an unnamed couple.

⁴¹ *Hist* 10.27 'Among the Franks of Tournai a great feud arose because the son of one often angrily rebuked the son of another who had married his sister, for leaving his wife and visiting a prostitute. And when reform on the part of the guilty man did not follow, the anger of the youth became so great that he rushed upon his brother-in-law and killed him and his men, and was himself killed by his opponents, and there was only one left from both parties who lacked a slayer.'

⁴² *Hist* 10.8. His second crime is neglecting Tetradia (presumably sexually) as a result. His third is beating her, then running up gambling debts and finally he is also accused of stealing from her to pay off his debts.

⁴³ *Hist.* 10.8 *denique inter has angustias mulier collocata cum honorem omnem qui in domo uiri habuerat perdidissit.*

⁴⁴ Fredegar, *Chronicle* 4.36. This same story is also told by Jonas of Bobbio in the eighth century *Vita Columbani* (31-38). Throughout Fredegar's chronicle he also makes a point of noting which royal children are born of concubines, a fact which is not considered relevant to either the royal family or their chroniclers (however hostile) in earlier centuries. E.g 4.21; 24; 59;

Dagobert as having a corrupted heart due to his ‘mistresses beyond number.’⁴⁵ These are accusations which it was not possible, even in Gregory’s time, to ascribe to a king, as the Merovingian royal family appear to have observed the practise of having many concurrent sexual partners without overt condemnation.⁴⁶ That the confrontation between a religious man and a king over his sexual practises could become the centrepiece of a hagiographical legend in which the religious man is the hero is testament to the spectacular development of this Christian idea of sexual contact being only allowable within marriage.⁴⁷

How far the picture that is painted by these Romano-Gallic men of husband’s continual sexual relations with slaves and low status women is exaggerated is unclear. Certainly, Caesarius’ claim that men regularly boasted of their sexual exploits is undocumented elsewhere, although the overwhelmingly Christian nature of the surviving sources may account to some extent for such a lacuna. However, unlike the hegemonic discussions surrounding marital authority, this motif is one that appears outside of explicitly didactic and religious texts and also appears as a motivating factor in allegedly genuine events, such as in Gregory’s *Histories*. This represents a significant re-evaluation in religious circles of what constitutes adultery and how it affects both the conception of marriage, and the gender roles within a marital relationship. The roles presented when authors are discussing this issue are very different from those advocated and idealised elsewhere. The notion that married men having extra-marital sexual relations could be classed as adultery and a crime is entirely absent from secular law. Equally, Salvian, Gregory and Caesarius all play with the notion that married women deserved and received a respect from their husbands and their households that was diminished by his promiscuous behaviour, a concept alien to the model of the submissive and powerless wife promoted in other religious texts.⁴⁸ These new notions of Christian marriage as a primarily sexual relationship represent the

⁴⁵ Fredegar, *Chronicle* 4.60 *pluremas concubinas*.

⁴⁶ An example to the contrary would be the case of Wisigard and Theudebert, where Theudebert’s failure to complete his marriage after *betrothal* causes widespread outrage. (*Hist.* 3.27).

⁴⁷ See also, Brundage, 1990 for an overview of the development of sexual ‘equality’ in twelfth century canon law.

⁴⁸ See below, ch. 2.3

overwhelming influence of Augustine's theology of marriage in the Post-Imperial west, and demonstrate the ways in which the Church's ever growing role as a political power structure had the potential to have very real effects on individual's sexual and marital lives. Christian marriage was re-conceptualised as a 'legitimate baby-machine' much as Roman marriage had been.⁴⁹

⁴⁹ Brooke, 1997: 278. Here, Brooke examines another reconceptualisation of Christian marriage in the 12th century, with the emergence of consent as a defining factor for a true marriage.

2.2.4 Christian Marriage & Male Authority

By the late third century, orthodox Christianity had rejected the earlier, Pauline anti-familial discourses as being too radical, and had begun to establish correct gender-based roles for family members in line with Romanised culture.¹ Within this new familial discourse, however, earlier radicalised ideas about the female body and soul remained fundamental to a Christian understanding of proper familial roles. In particular, post-Imperial Christian (male) writers maintained the notion that Christian wives should be subject to their husbands, in every way. This section examines this continuing discourse, and argues that unlike the discourse of proper Christian chastity, this remained a theoretical notion constructed for theological and rhetorical purposes.

The idea that wives were to be subject to their husbands is an old Christian notion, one drawn from the Pauline letters.² It is not particularly new to Christian discourse, but the manner and force with which it was expressed and developed in Christian texts marked the subject Christian wife out as substantially different from the Roman trope of the submissive wife.³ During the patristic era, such sentiments were often manifested in hyperbolic texts about the evil nature - and consequent rightful place, dress and behaviour - of Christian women.⁴ While the overt misogyny surrounding 'the nature of woman' is notably missing from these post-patristic texts, there remains a distinct role that is drawn for married women

¹ Voulanto, 2005: 121.

² In particular 1.Cor. 11:3 'But I would have you know, that the head of every man is Christ; and the head of the woman *is* the man; and the head of Christ *is* God' and Eph. 5.23 'For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body.'

³ See Southon 2008: ch.1 for a more thorough analysis of the differences between the Christian and Roman expression of this ideal.

⁴ The most famous example is Tertullian's *De Cultu Feminarum*, which laid a foundation for the rules concerning female dress and behaviour as he berated Christian women for not living up to their pagan counterparts in terms of modesty and humility. It is from here that the infamous passage describing women as 'the devil's gateway' originates. On the motivation for control of women's dress and behaviour in early Christian texts: Schüssler Fiorenza, 1984: 54-5; 265-6 argues that this was a calculated plan by Christian men to handle the strong women who emerged in the first two centuries of Christianity and who were bringing 'unwanted attention' to Christianity; Cameron, 1989a: 186; 191 and Bloch, 1987: 11 argue that the story of the Fall automatically associates woman with artifice, deception and adornment which theologically needs to be confronted.

as the subject and enduring spouse to her husband's unassailable authority.

Perhaps the clearest outline of this role, and its position as an idea limited to rhetoric, is drawn by the anonymous author of the late fifth century conduct manual known as the *Ad Gregoriam in Palatio*.⁵ This takes the form of a letter written by a bishop in response to a real or imagined request from a wealthy and powerful *matrona* regarding her status as a Christian wife. Kate Cooper, who has worked a great deal on this manual, has argued persuasively that this letter was written not as the personal epistle that it is framed as, but as a rhetorical - possibly didactic - document.⁶ She describes his style as 'pretentious,' and accuses him of showing off his rhetorical skill and education, suggesting that a much wider audience was expected for this manual than one woman, and indeed was received. She suggests that this manual was in fact fairly widely circulated among the Carolingian court.⁷ Therefore, the sentiments found within cannot be seen as genuine advice to a genuinely concerned bride, as for example Augustine's letter to Ecdicia is, but as a theoretical display of rhetorical skill and theological ability.⁸ The *Ad Gregoriam* addresses the concerns of such women that marriage barred the way to heaven. Further, it reflects on Gregoria's perceived opposition to her husband's rightful authority over her and her body. In addressing the second of these concerns, the author is unrelenting in his presentation of the 'subject wife' model as the only correct model for a married Christian woman, using a multitude of rhetorical tactics. First, he dedicates two chapters to the virtues of good Christian wives, using biblical examples such as Sarah, Rebekah, Jael and Asenath, of which the highest virtue is *patientia* (endurance).⁹ He places in the mouths of these biblical heroines a paean to *patientia* in which they claim that 'it was endurance that led us to this lofty seat.'¹⁰ Having established the ability to endure all

⁵ For the dating of the *Ad Gregoriam* see Cooper, 2009: 45-46.

⁶ Cooper, 2009: 91

⁷ Cooper, 2009: 50; 91

⁸ Augustine, *Ep* 262.

⁹ *Ad Greg* ch.2-3. Sarah, wife of Abraham (Gen. 18:9-15; 20: 2, 14, 16, 18) is praised for her gentle nature; Rebekah, wife of Isaac (Gen. 24: 15, 29-30, 45, 51, 53, 58-61, 64, 67; 25:20-21; 26:7-8) for being the 'most enduring'; Jael: Wife of Heber (Judges 4:17-18; 21-22; 5:5, 24) for the murder of the 'devil' (Sisera); Asenath, wife of Joseph (Gen 41:45,50; 46:20) for being married to the most chaste of men;

¹⁰ *Ad Greg* 3.8-14. *Ethuius ducatu ad has peruenimus sedes*. Patientem is here claimed to be the mother of all other virtues 'For it is she who gives birth to the other virtues and nurses them with her own breasts, nor is there any other virtue at all which can be conceived or be created without virtue. *Ipsa est quae ceteras virtutes pariit et suorum uberum lacte, necessestali qua omnino virtus, quae possit sine patient uel concipi uel creari.*

sufferings as a fundamental of morals for female Christians, the author goes on to blame Gregoria for causing her own sufferings, asking whether she is suffering affronts ‘justly or unjustly,’ accusing her of a ‘love of contention’ and demanding to know ‘would you disdain those same commandments on account of a slight affront to marital loyalty?’¹¹

Submission and acceptance then are great female virtues, ordained by Christ, and obtained by only the greatest and most holy of Biblical women. John’s next rhetorical tactic is to compare the suffering of a wife to the sufferings of Christ on the cross and a selection of notable female martyrs, such as Saint Anastasia who was tortured by her pagan husband.¹² In John’s analysis, there can be no more holy act than to submit to a husband and endure his domination. Indeed, the wife described by John is entirely and voluntarily powerless, choosing to make herself ‘so good and so compliant as to make [her husband] reluctant to be an authority.’ She manifests her ‘beautiful soul’ by taking special care to always be pleasing to her husband’s eye and ear, her displeasure or the expression of an opinion is tantamount to sacrilege. This idealised Christian wife is a woman who chooses to be obedient. This, as the goal of rejection marriage, cannot be an objective attainable by all Christian women.¹³ Only the most spiritually strong, the most extraordinary and the most holy wives can achieve such standards.

John then describes in detail over two chapters how an ideal Christian wife should behave stating that she ‘may not by any means oppose his will’ and, after comparing her marriage to a purchase as seen above, he states:

nor to be sure have you known your husband carnally for any other reason that

¹¹ *Ad Greg.* 6.11-12 *ad leuem maritalis fiducia iuriam hac eadem iussa contemnas?*

¹² *Ad Greg.* 4.33-6 ‘In every dispute, in every attack, in every blast of insults, and too in every torment, not to abandon endurance is to imitate Christ’ (*in omni ita que iurgio, in omni laceratione, in omni obprobrio, in omni quoque supplicio patientem non neglinquere Christum imitari est.*);

¹³ Cooper, 2009: IX suggest that the development of this theme of voluntary submission is the centrepiece of a Christian attempt to reduce the liminality of wives in families, as in Roman law and culture they stand as a bridge between a husband’s family and their father’s (for an expression of this in post-Roman literature, Sid. Apoll. *Ep* 7.9 as he explains that a woman has not one, but two families). Cooper briefly argues that the emphasis on a submissive wife who is entirely within the power of her husband is an attempt to theoretically bring the wife entirely within the purview of the husband’s family and out of her father’s.

you have ceased to have authority even over your own body since the apostolic authority witnesses that a wife should not have power over her own body.¹⁴

This statement has clear links to the themes developing in Gallic hagiography concerning the female rejection of marriage, and the place of sex within marriage discussed earlier. This tract develops Gregoria as a holy woman in a new way. She is not an active martyr, like the women of early Christian persecution martyrologies, nor is she an active saint like contemporary holy women who worked within the framework of consecrated virginity. Gregoria is a *miles Christi*, in a new cultural framework.¹⁵ Indeed, Gregoria's true holiness is constructed by John as entirely passive; she must surrender her autonomy and agency to her husband completely. Even the metaphorical description of Gregoria's 'fight' keeps her in a passive position: she sits at the top of a tower, observing as the virtues fight the sins.¹⁶ This text, then, cannot be read as a genuine piece of epistolary advice-giving, but - as with the hagiographies - as a work providing aspirational models of extra-ordinary holy behaviour, this time for married women.

A further significant location of the discourse of male authority and female subjugation in marriage is in two works of the popular and influential seventh century Iberian bishop Isidore of Seville: the *Etymologiae* and the *de Officiis Ecclesiasticis*.¹⁷ In the *Etymologiae*, Isidore defines matrimony (*matrimonium*) as the 'lawful passing onto a husband's control' and derives marriage (*conubium*) from *nubo* meaning veil.¹⁸ Having thus defined marriage as the legal control of women by men, he goes on to explain why women

¹⁴ *Ad Greg.* 7.13-16 *Nec ob aliud omnino ingressa ad maritum, nisi ut ipsius quoque corporis tui potestatem habere non possis; si quidem etiam apostolica testator auctoritas, quod mulier sui corporis non habeat potestatem.* This is a direct quotation of 1. Cor. 15.

¹⁵ See Cooper, 2009: 1-55 for a fuller explanation of the construct of the *miles Christi* and Gregoria's place within it.

¹⁶ *Ad Greg.*, ch.10-23

¹⁷ On the influence and MS tradition of Isidore's work: Barney et al, 2006: 24-26 where his popularity is traced from publication to his influence on Chaucer. Dissemination of the *Etymologiae* appears to have been very swift, with MSS from the early seventh century being found in modern day Switzerland, England and Ireland.

¹⁸ *Etymologiae* 9.7.19-21. He is explicit that *conugium* is not derived from *nupta* (married woman) and also emphasises that *conubium* can only be between a man and a woman of equal status.

are kept under their husband's authority:

Women stand under the power of their husband because they are quite often deceived by the fickleness of their minds. Whence, it is right that they were oppressed by the authority of men.¹⁹

Here, however, he is apparently referring to the people he calls 'ancients;' the writers of Late Republican Rome and is probably referring to the Roman law of guardianship which stated that all women were at all times under the power of their father or husband.²⁰ Thus, although he implies that in his own time marriage was defined as the transfer of the guardianship of a woman at first, he then suggests that this is in fact an 'ancient' Roman practice that – although correct – is not necessarily in practice in seventh century Seville.²¹

In his *De Officiis Ecclesiasticis*, however, Isidore outlines his ideals concerning the ideal role of Christian women at length as he expounds his extremely strict version of how a good Christian wife should act. First, he states that the things he describes are considered 'natural law': common to all peoples and societies and therefore inherently correct.²² Next, he states categorically that all married women must be veiled in order to remind them that they must always be subject and humble and that 'power is in the man.'²³ Finally, he completes his tract with a long section stating that woman must always be in 'free servitude,' (*seruitute libera*) using the biblical justification that woman was created for the use of man and for no other purpose.²⁴ This is very similar to the argument presented by the author of the *Ad Gregoriam* and again presents an image of a powerful woman freely rejecting that power for spiritual gain. He argues that even pagan women served their husbands and were subject to

¹⁹ *Etymologiae* 9.7.30.

²⁰ Gaius 1.108-10. Known as *manus*, Treggiari, 1991: 16-20; Corbett, 1979: 68; Reynolds, 1994: 11-19.

²¹ The nature of the *Etymologiae* as a collection of classical Roman knowledge through the medium of extensive quotation makes it very hard for modern readers to establish exactly what time period Isidore refers to in any given section as it is not always entirely clear which lines are quotes and which are Isidore's own words, particularly if the original source is now lost. (Barney et al, 2006:14-15).

²² *De Off. Ecc.* 2.XX.1

²³ *De Off. Ecc.* 2. XX. 6.

²⁴ *De Off. Ecc.* 2.XX.14-24.

them, presumably another reference to Roman guardianship law, in order to prove that such a hierarchy is natural and correct, and ends with the accusation that any woman who fails to live within these restrictions is ‘perverse’ and ‘overturns the natural order.’²⁵ Notably, Isidore himself suggests that such a regime is unpopular among the women he addresses this advice to when he states that the practice of veiling was known colloquially among them as ‘bad luck’ and ‘of Mars’ – neither of which suggest that such a practice was freely undertaken with true, Christian *patientem*. Such profoundly rhetorical texts then can shed very little light on the actual interplay of power and authority between ‘typical’ married couples - although they are extremely illuminating on the topic of religious men’s anxieties about their consecrated relatives’ desires.

Those relationships which are depicted in earlier texts equally do not tend to conform to the ideals presented in the late fifth and sixth century rhetorical texts. This could demonstrate a growing importance of these gendered roles in Christian discourse. Paulinus of Pella’s wife, for example, appears just twice in the early fifth century narrative of his life and only once as a person with agency.²⁶ She is mentioned as the ‘barbarians’ are entering Gaul and threatening Paulinus’ properties, scaring him and prompting him to suggest that his family flee from Gaul to their foreign estates. His divinely authorised position as head of the family and ruler of his subservient, obedient wife however is severely compromised:

I was hindered by my wife who stubbornly refused to yield for our general good, refusing from undue fear to make the voyage; and I held it right for me not to tear her away anywhere against her will, and no less wrong to leave her, tearing her children from her.²⁷

²⁵ *De Off. Ecc.* 2. XX.14-15.

²⁶ The second mention is at her death, which irritates Paulinus inordinately as she rather selfishly managed to die just as ‘might have been more serviceable’ to him. (*Eucheristicos*. 496-97)

²⁷ *Eucheristicon* 385-38 *obstabat flecti ad communia commoda coniunx in docilis nimioque metuna vigarerecusans, quam nec invitam trahe reus quam fas mihi rebar par que ne fasesset subtractis linquerenatis*. McLynn, 1995 calls this a ‘speculative venture’ to estates Paulinus had probably never seen before, and sympathises with his wife’s veto of his desire to abandon land that was both valuable, and probably part of her inheritance. (476-77).

Clearly, Paulinus finds it difficult to assert his alleged conjugal authority. Indeed, Paulinus presents himself, in his own autobiography in which he is constructing an idealised and explicitly Christianised image for himself, surrendering to her ‘undue fear’ evidentially expecting his audience to view this action as the correct and Christian choice and the alternative as cruel. Further, his nameless wife feels no strong pressure - religious or otherwise to prevent her protesting his plan to move the family across the seas, and winning.

Gregory of Tours provides a further litany of women who consistently fail to comply with the Christian ideal of good, subjugated wifely behaviour. Even without recourse to the queens and princesses that make up the majority of anecdotes in his *Histories*, the work contains a wealth of evidence regarding non-royal, aristocratic women who are not subservient, are rarely obedient and who have the agency and will to shape their lives and the lives of their families.²⁸ Most significantly, unlike the queens and princesses, a vast majority of these women are not characterised as ‘evil’ or ‘un-Christian’ and many are praised for their actions. A particularly striking and significant example is that of Alchima, the wife of Apollinaris (Sidonius’ son), who – along with Apollinaris’ sister – engineers her husband’s episcopate. The two women travel to see the incumbent bishop Quintianus to ask him to resign his post and hand it over to Apollinaris. Having been rejected by Quintianus, they then arrange for Apollinaris to petition the king, sending him away with gifts and instructions. Throughout the entire affair, Apollinaris appears to be rather passive while his wife and sister engineer his career for him with astuteness and ruthlessness.²⁹ What is even more significant is that Alchima is not censured by either Apollinaris or Gregory but is presented as a model of excellence. Some women are depicted as travelling great distances to come to their

²⁸ The royal women of Gregory’s histories are well known and well studied as overly powerful villains and as saints. See McNamara & Wemple, 1973; Wemple, 1983: *passim*; Wallace-Hadrill, 1982; Nelson, 1978; Stafford, 1983 (especially chapter 3); Nelson, 1986; Wood, 1995; McNamara, 2003; Wood, 2003; Gradowicz-Pancer, 2006; Tatum, 2009; Petzl, 2003.

²⁹ Greg, *Hist* 3.2 Apollinaris is successful in his visit to Theuderic, and is made bishop of Clermont-Ferrand at the expense it is at the expense of Saint Quintianus. Unfortunately, Apollinaris lasted just four months in the position before dying, leaving Quintianus to assume the role again. In Gregory’s *vita* of Quintianus there is no record of these irregularities. (VP 4).

husband's aid. Such a case is recorded in Gregory's *Vita Julian*, in which a woman whose husband has been sentenced to death in Gaul travels to Spain to witness and then to bury him. In the end, she is responsible for his eventual release as she prays to Saint Julian's tomb and he miraculously nulls the conviction.³⁰ This is not the model Christian wife promoted by John, Isidore, the men who write to consecrated women or the hagiographers, but is something altogether different. What Gregory demonstrates is an image of wifely behaviour which is far from subservient and obedient, but is proactive, independent and has an influential and beneficial role in the marriage.

As well as this anecdote about Alchima, Gregory also relates a story in which Sidonius' wife Papianilla becomes angry at her husband's overly charitable behaviour in giving away some silver vases and she forces him to buy them back.³¹ It is clear that Gregory feels that neither wife is un-Christian. Of all the aristocratic, non-royal wives engaged in any activity recorded by Gregory, only a few are censured for crimes outside of the family, for adultery or for murder.³² None are vilified for being powerful or independent, with the single exception of Bishop Urbicus' wife, who is said to be possessed by the devil when she initiates illicit sexual contact with her husband. This story, however, has very little to do with 'normal' conjugal relations but is a morality tale about married bishops specifically.³³ Throughout the *Histories* Gregory presents the reader with married women who are both good and bad, but almost all of whom are autonomous, not the cowed women of the rhetorical texts who are exhorted to show 'ready love to good husbands and due fear the bad-tempered.'³⁴

³⁰ *VJ* 4.

³¹ Greg, *Hist* 2.22. 'Being a man of wonderful holiness and, as we have said, one of the first of the senators, he often carried silver dishes away from home, unknown to his wife, and gave them to poor people. And whenever she learned of it, she was scandalized at him, and then he used to give the value to the poor and restore the dishes to the house.'

³² E.G. 6.13 Ambrosius' wife condemned for adultery and murder; 8.39: Badegisil's wife; 9.9 Rauching's wife condemned for avarice and luxury.

³³ Greg, *Hist* 1.44. Even this story ends well, with Urbicus and his wife having a daughter and being buried happily next to one another as a family unit. See Shanzer, 2002 for a fuller analysis of Gregory's opinions of ecclesiastical sexual relationships.

³⁴ *Ad Greg.7.4-5 aut amorem laetitia lacrima ut timorem debitum exhibeant.*

What is particularly striking then, in the context of these ‘real women’ drawn by Gregory in his histories is how very different the ‘real women’ of his hagiographical tales and *miracula* are. The clearest demonstration of this is a story which appears in his *Glory of the Martyrs* in which the hero is the Catholic wife and the villain her Arian husband.³⁵ Throughout the tale, the woman is presented as an idealised Christian wife in the tradition of the patristic writers and the rhetorical texts. She is shown asking her husband’s permission to allow her to invite her priest, and when the event occurs Gregory takes great pains to emphasise that her husband sat at the head of the table, while she sat on a stool on his left.³⁶ The behaviours Gregory stresses in this religious context are dramatically different from those he highlights when he is writing history.

Such variations and contradictions strongly suggest that genre is an all defining factor in the discussion of marital power and authority. While in didactic religious texts, the image and ideal of the subject wife deferring to her husband’s natural authority is powerful and dominant to the point of hegemony, in texts from other genres such as epistles and history men and women are seen interacting in ways which diverge from this ideal greatly. Further, it seems that over the course of the sixth century, these ideals of a dominant husband and subject wife grew in importance. How far men and women internalised these images or attempted to live up them is unclear, but the fact remains that they endured as ideals. The popular notion among scholars that marriage was a very structured and unequal hierarchy in which women were powerless over even their own bodies cannot truly be read outside of these genres, making this a potent rhetorical motif which does not appear to have been a lived reality in any widespread or general sense. Instead, it can only be seen as a construct developed to provide an unattainable but aspirational ideal for married Christian women to use as models of holy behaviour in marriage.

³⁵ GM 79. The story tells of the woman inviting her Catholic priest for dinner, and her husband spitefully inviting his Arian priest on the same night. The Arians, being entirely wicked, bless the food in their religion before it is eaten. Eventually, the Catholic priest grows tired of their wickedness and he secretly re-blesses the food. The Arian priest eats the Catholic food and, due to his wicked body ingesting Godly food, bursts into flames.

³⁶ GM 79 *Vir ille cum presbitero dextrae partis cornu occupant, catholicum ad sinistrum statuens, positamque ad laevam eius sellulam in qua coniugis eius resederet.*

2.2.5 Marriage and Concordia

Discourses of expectation of marriage in general are, once stripped of Christian context, theological necessity and religious rhetoric, rather gentle. As we have seen in the previous chapter, where marriage is discussed in a Christian context the dominant discourse is very much one of male domination and female subjugation, and on appropriate, and therefore deeply restrictive, sexual relations. In contexts such as published personal letters in which the author is motivated to present only an idealised version of himself and his actions, or *epithalimea*, marriage is discussed most commonly in terms of archetypes. Keeping in mind the Christian affiliation of all of the major surviving authors of the period, and the positions that most of them held within the Church, it is striking then to see that they promote an idealisation of marriage that is so emphatically unlike that Christian image of domination. It is therefore a discourse and rhetoric of an idealisation of partnership and harmony that permeates the poetry of the age, in *epithalamia* and funerary lamentation. It is a discourse which is common in the late antique and early medieval literature, a discourse of concordia: mutual respect, desires, happiness and harmony not overly dissimilar to that described by Suzanne Dixon for the classical Roman world in 1996.¹

The wish for harmony (*concordia*) is a classic trope in any poetry related to marriage, in particular wedding songs (*epithalamia*). It tends to be the focus of the final lines of the *epithalamia*, rounding off the images painted of the bride preparing for the wedding with good wishes for the future. So the final lines of Venantius' poem for Sigibert and Brunhild present a classic example of the trope:

‘May your necks be yoked in one embrace, and may you pass all your days in peaceful diversions. May each of you wish what the other desires.’²

¹ Dixon, 1996.: 99-113.

² Ven Fort Carm 6.1: 135-38 *Cuius amplexi sint colla conexa sub uno, et tutos placidis peragatis lusibus annos.*

The exact same wishes are repeated in Sidonius Apollonaris' *epithalamia* as he hopes for his recipients to pass their life in eternal concord, and in every *epithalamium* of the period.³ This is a trope of the genre, and its exclusion would be unthinkable to any well educated gentleman (and potentially deeply offensive to the recipient). However, it is a sentiment that is mirrored prominently and repeatedly across genres. For example it is evidents in Venantius' eulogy for Vilithuta in which he develops both classical *topoi* and the Christian theology of 'one flesh' to depict Vilithuta and Dagaulf as being united in love and in affection as well as in body. He does this in order to emphasise their mutual compatibility and to paint their marriage as being characterised by mutual pleasures and desires, and therefore by extension idealised *concordia*.⁴ Venantius even laments that they only 'enjoyed marriage for three years, their hearts binding them together'.⁵ The theme of being united, of becoming one from two is also highlighted. A similar theme is seen in Venantius' letter to Sigibert and Brunhild to celebrate their wedding where the theme of reciprocal love is accentuated. It appears to be very important that the two of them are seen to be marrying for love and pleasure, and that the union is not seen as the political manoeuvring that Gregory describes it as.⁶ Thus, Venantius describes a classicised scenario in which Cupid inflames them both with love for one another, the seas being no protection from his arrows.⁷ In long passages with flowery, poetic language he describes Sigibert being penetrated and consumed by the fires of passion for Brunhild.⁸ Having established that the couple of this poem is deeply in love, he then talks of them being 'joined' and 'one': 'Go, long to be joined in body

Hoc uelit alterutrum quidquid dilexerit aliter. For more on Sigibert in Venantius' poetry, see Brennan, 1984.

³ Sid. Apoll. *Epithalimia* :130 *Feliciter aevum ducite concordēs*; on late Roman *epithalamia*: Pavlovskis, 1965; Roberts, 1989

⁴ Ven. Fort. *Carm* 4.26. 'Joined with him in body on the marriage bed, she was bound to her husband more closely in affection; at the day's end love broke asunder those bonds' (7-10 *Corpore iuncta toro, plus pectore nexa marito: lucis in occasu vincula rupit amor*); 'both were alike in spirit, wishes, hopes, character and actions' (43-4 *Ambo pares animo, uolo, spe, moribus, actu*).

⁵ Ven. Fort. *Ep.* 4.26: 35-37; 42: *Suo cordo ligante frui*; 43-44: 'Both were alike in spirit, wishes, hopes, character and actions' *Ambo parees animo, voto, spe, moribus, actu*.

⁶ *Hist.* 4.27. In this account, Sigibert requests Brunhild's hand because he is upset by his brothers slave wives. The marriage therefore is portrayed as a propaganda tool to show his brothers up.

⁷ Ven. Fort. *Ep.* 6.1.39

⁸ Ven. Fort. *Ep.* 6.1.40-46; 511

and yoked in heart, both equal’ and ‘may your necks be yoked in one embrace’.⁹ Again, the imagery of two becoming one is combined with references to mutual happiness through *concordia*:

May you pass all your days in peaceful diversions; may each of you wish what the other desires, may the same salvation be upon both of you, guarding the two lives, may one love grow linked by living strength.¹⁰

This poem could be dismissed; after all it refers to royal couple from a dynasty whose marital practises have confused scholars for decades. It is, however, propaganda, published to be read by literate Gallo-Roman subjects and to portray an acceptable and popular image of the king and the new foreign queen. It has to be assumed that an image of a politically motivated marriage to a Visigothic stranger was not that popular image. It was a Romanised representation (to the extent that Sigibert is referred to as Caesar), full of lush fertile imagery and classical gods, with the partnership and love of the two being emphasised that was thought to be popular and good for Sigibert to embody.¹¹

The same desire to present genuine, lived marriage as a pleasurable experience - of concord - between two people is present in first person narratives such as letters and autobiography. Sidonius Apollinaris refers to marriage and to his wife, and very tactfully depicts his marriage as being one of closeness while not exposing any un-masculine (indeed, un-Roman) emotion. He describes in several letters a relationship with his wife in which he demonstrates that he values and is close to her and to her family, and that their relationship is harmonious.¹² In a letter to his friend Hesperius, who is reluctantly about to marry, Sidonius assures him – with all the correct, Roman references to Cicero, Ovid, Pliny, Catullus and

⁹ Ven. Fort. Ep 6.1.132: *Ite diu iuncti membris et corde iugati*; 135: *cuius amplexi sint colla conexa sub uno*.

¹⁰ Ven Fort. Ep 6.1.136-143: *totos placidis peragatis lusibus annos. Hoc uelit alterutrum quidquid delixerit alter, aquea salus ambobus eat duo pectoral servans unus amore vivo solidimine iunctus alescat...*

¹¹ Ven For Ep 6.1: 16 *regia Caesareo*

¹² Sid. Apoll. Epp 1.3; 2.2; 5.16; Notably, Sidonius does not use Christian language in his letters. It could be then that as the language of family changes, so do the aspects of family which are expressed. Sidonius does not have access within his persona to express *amate* for his wife.

Lucan - that a wife will 'hold the lamp' and be a partner in his works, presenting marriage as an opportunity not a chore.¹³

Perhaps the most striking demonstration of a discourse of marriage as pleasure is found in Cassiodorus' *Variae* in which he outlines Althalaric's new legislation on adultery. In this edict, Althalaric proclaims that any man who is found guilty of adultery (by which he means sex with a married woman) is to be immediately divorced from his own wife and barred from re-marrying or:

If he should lack married love (*caritate*), I deny him the right of future matrimony since he who has dared to behave without restraint in dividing the marriage bed does not deserve the benefit of a conjugal reverence.¹⁴

This is striking in the strength of language and of the punishment, and in its active promotion of an ideal of marriage as desirable. The expectation here is that marriage is something that men too will desire to do, and preventing men from being able to is a serious punishment. Certainly, the framing of marriage as the only legitimate outlet in which to reproduce, and thereby have heirs, is a significant consideration here. Nonetheless here we see

¹³ Sid. Apoll. *Ep* 2.10 'The auspicious event, now so near, I mean the home-coming of your bride, must not distract you; keep steadily before your mind how many wives have held the lamp for studious or meditative lords - Marcia for Hortensius, Terentia for Tullius, Calpurnia for Pliny, Pudentilla for Apuleius, Rusticana for Symmachus. When you are inclined to complain that feminine companionship may deaden not only your eloquence but your poetic talent as well, and dull the fine edge which long study has set upon your diction, remember how often Corinna helped her Ovid to round off a verse, Lesbia her Catullus, Caesennia her Gaetulicus, Argentaria her Lucan, Cynthia her Propertius, or Delia her Tibullus. Why, it is as clear as day that, to the studious, marriage is opportunity, and only to the idle an excuse.' *ut te ab hoc proposito propediem coniunx domum feliciter ducenda deflectat, sisque oppido meminens, quod olim Marcia Hortensio, Terentia Tullio, Calpurnia Plinio, Pudentilla Apuleio, Rusticana Symmacho legentibus meditantibusque candelas et candelabra tenuerunt. certe si praeter oratoriam contubernio feminarum poeticum ingenium et oris tui limam frequentium studiorum cotibus expositam quereris obtundi, reminiscere, quod saepe versum Corinna cum suo Nasone complevit, Lesbia cum Catullo, Caesennia cum Gaetulico, Argentaria cum Lucano, Cynthia cum Propertio, Delia cum Tibullo. proinde liquido claret studentibus discendi per nuptias occasionem tribui, desidibus excusationem. igitur incumbet, neque apud te litterariam curam turba depretiet imperitorum, quia natura comparatum est,*

¹⁴ Cassiodorus *Variae* IX.18.4. *Qui suasionem plectenda matrimonia dividere nititur aliena, ipsius coniugium habeatur illicitum: ut magis contigisse sentiat sibi, quod in altero malignus exercere temptavit. sive pro coniunctionibus caritate privatur, futurum illi matrimonium iure denegamus, quia non meretur iugalis reverentiae praemia consequi, qui in genialis tori ausus est divisione grassari.* The rest of the edict goes on to legislate – with heavy penalty – against bigamy and concubinage with the clear intention of legislating for a Christian notion of marriage with one man and one woman.

a lawmaker and his aides acknowledging and contributing to a discourse of marriage as desirable. This is a particularly notable inclusion if one accepts the analysis of Shane Bjornlie that Cassiodorus' *Variae* are not a dispassionately selected collection of letters, but actually represent an apology on the part of the Italian bureaucratic class for their collusion with the Ostrogothic court. In his view, the collection is a heavily edited model of Italian moral excellence meant to demonstrate to the Byzantine emperor their suitability for continued rule, despite their involvement with the Ostrogoths after the Ostrogothic fall in AD 554.¹⁵ Viewed through this lens, the inclusion of this romanticised idea that depriving men of the comfort of marriage and legitimate reproductive strategies is striking, as it suggests that he expects that Byzantine court will empathise with the sentiment.

Gregory of Tours is one of the few unmarried authors surviving who promoted the same idea of marriage based on *concordia* rather than physical submission even in his explicitly theological texts such as his hagiographies. For example, throughout his works he presented a singular version of clerical chastity, in that he happily promoted ecclesiastical couples maintaining a physical and emotional (although emphatically not sexual) closeness. His *Glory of the Confessors* contains two stories about bishops whose wives were reluctant to obey regulations about sharing beds. In the first, concerning Simplicius whose wife refused to leave his bed and who undertook an ordeal of hot coals in order to prove her chastity. She was successful, demonstrating divine approval of their chaste union, and was apparently allowed to remain.¹⁶ The second concerns Bishop Felix, whose wife also attempted to be allowed to sleep beside her husband, but who was unsuccessful in her endeavour after the intervention of Christ as a lamb.¹⁷ In both stories, Gregory is comparatively sympathetic to the wife's cause, allowing her success and divine sanction in one. Compare this to Sulpicius Severus' response to a man who tried the same thing, or to Gregory the Great's account of

¹⁵ Bjornlie, 2006; 2009; He describes the *Variae* as a 'polemical and apologetic literary enterprise.' (2009, 144) Bjornlie is the most vocal proponent of this thesis, but is not alone, see also Barnish, 1992: xv.

¹⁶ Gregory. *GC* 73.

¹⁷ Gregory. *GC* 77. There is no indication that Felix's wife attempted to get divine or miraculous approval from God.

Gallus and one sees that Gregory of Tours was much more ambivalent in his approach.¹⁸ In his books of history, intertwined with the more famous tales of warring and court intrigue, are a series of stories involving prominent members of society and their marriages and through his selection and representation of these anecdotes Gregory demonstrates his own vision of marriage. This work too contains a tale concerning a cleric who is unchaste, seduced by his wife while she is possessed by a demon. They have a daughter as a result of the demonic encounter, who - importantly - is not deformed or otherwise afflicted with any divine punishment, thereby not indicating that she was born from sin.¹⁹ When the couple die, they are buried peacefully next to one another with no indication of having suffered any penalty for their transgression.²⁰ Perhaps the posited involvement of a demon clears them of any wrongdoing to Gregory's audience.

Another important theme is that already discussed above: his presentation of apparent domestic abuse, which can be seen at least as being a lack of *concordia*. He includes five separate anecdotes of marriages which lack *concordia* to a dramatic degree.²¹ In his presentation of these marriages without *concordia*, which were apparently such scandals of the time that they merited inclusion in his history, Gregory appears to go against the trends of other Christian authors in condemning the ways in which a husband wielded his power over his wife.²² His inclusion of the feud which erupted over a husband so abusive that his wife's family felt the need to take serious action to protect her perhaps demonstrates that his view of marriage as an institution which should be pleasant and agreeable to both parties was not necessarily a minority view.²³ These are just a few of the small anecdotes which Gregory

¹⁸ Sulpicius Severus, *Dialogues* 1.22; Gregory the Great *Dialogues* 4.11. Gallus who is openly hostile to his wife: 'he loved [her] as a sister, but avoided her like an enemy, refusing to let her come near him, avoiding all intercourse and familiarity.' Even on his death bed when she leans over him to check his breathing, he manages the strength to verbally, and emphatically, prevent her from touching him. Pope Gregory clearly thinks that this is laudable behaviour.

¹⁹ Elsewhere, in his *Miracula*, Gregory explains that illicit sexual intercourse results in disabled children, see Laes, 2012. Most notably VM 2.24

²⁰ Gregory. *Hist* 1.44.

²¹ See above on adultery. Gregory, *Hist* 3.10 (the only royal example); 8.36 (Magnovald); 9.13 (Beppolen's unnamed son); 10.8 (Eulalius, although in the end it is his wife who is punished it is clear the Gregory does not sympathise with Eulalius) and 10.27 (a feud involving an abusive husband).

²² See ch. 1.3

²³ Gregory. *Hist* 10.27.

relates, all of which build to develop an image and an ideal of marriage as being characterised by *concordia*. A further demonstration of this idea of marriage is the repeated refrain that protagonists (and antagonists) in given anecdotes protected their wives and children during dramatic and dangerous times, a refrain often rendered with the words ‘*cum uxore et liberis*.’ This phrase is repeated at least 14 times in the *Decem Liber Historiarum* either to describe a man protecting his family or being kidnapped along with them.²⁴

One of Gregory of Tours’ favourite tales of religious superiority is that of the Two Lovers (*Duos Amantes*), whose story he tells twice – once in his *Histories*, and again in his *Gloria Confessorum* (*GC*).²⁵ The Two Lovers are a husband and wife who – independently of a religious career – decide to live in a continent marriage (the wife is a virgin according to the account in the *Histories*, although there is not indication of Injuriosus’ sexual history). After their deaths they are buried in separate tombs, but during the night their tombs miraculously move closer together, thus offering divine proof of the perfection of their marriage. The first account (in the *Histories*) is the longer, containing lengthy speeches by the wife persuading her husband to accept the correctness of a life of chaste marriage, and by the husband countering her religious arguments with standard arguments about maintaining their family lines. The second account is much shorter, without the long speeches but lingers on the miraculous ending of the story. Both versions, however, contain imagery of a couple living in happiness through their mutual desires. The *Histories* version emphasises the wife as persuading and converting Injuriosus, setting up a classical dialogue structure where eventually Injuriosus is won over to the ‘correct’ reasoning of the Christian arguments, whereas the *GC* version omits this and claims that they reached the decision ‘by common consent’.²⁶ In both versions though, it is a mutual desire for spiritual purity that drives them to a long marriage depicted as peaceful and happy. In the *Histories* version this is made

²⁴ These are: 3.13; 3.15; 4.14; 4.20 (twice); 4.42 (twice); 4.50; 4.51; 6.5; 6.41; 8.45; 9.10; 10.24. This is not unique to Gregory, but is a trope of chronicle writing. It does however appear to be much more frequent in Gregory’s work than in others of comparable length, which may be a result of his style or of his prejudices.

²⁵ Greg, *Hist*:1.47; *GC* 31. The wife also miraculously and temporarily raises herself from the dead to joke with her husband as he thanks God for allowing him to live with her and leave her ‘unsullied’.

²⁶ *Coniuncti coniugio*. The *Hist* contains several dialogue scenes comparable to classical rhetoric, for example the debate between Gregory himself and Aglian the Arian at 4.43 and his debate with Oppila the Arian at 6.38

particularly explicit in the imagery of the couple sleeping side by side, hand in hand for the entirety of their marriage, an image that is resurrected when the two tombs are miraculously reunited.²⁷ This miraculous tale picks up the discourse of shared desires and compromise to bring happiness to a marriage and applies it to an unusual marriage – one that conforms to the most extreme Christian sexual ideals – in order to highlight the ‘goodness’ of an arrangement not commonly practised. In this way it bears considerable similarity to that way in which Avitus uses the theme to make an apparently political marriage more acceptable.

The most significant aspect of this theme of *concordia*, however, is that it only appears in the earliest and most Romanised contexts -Southern Gaul and Italy. After the sixth century, this idea of concord disappears, and only the concept of submission - albeit often in a softer form - remains. It seems possible then that *concordia* as an ideal is in fact a continuation of - in the words of Suzanne Dixon - the Roman sentimental ideal into the post-Imperial age. This is an ideal which is diluted and absorbed into Christian, medieval concepts of how marriage should be as the laws and rituals surrounding marriage change, and change the discourses.

²⁷ ‘Hand in hand they went to sleep, and for many years after this they lay each night in one bed’ *et datis inter se dextris quieverunt, multos postea in uno strato recumbentes annos. Hist 1.47.*

2.2.6 Divorce in Literature

The concept of the indissolubility of Christian marriage is one that was developed rather late in Christian thought as it is not until Augustine and his response to the Jovinian controversy of the late fourth century that a fully coherent narrative and theology is constructed. In Augustine's writings, this *sacramentum* manifests itself in the impossibility of remarriage (for men and women) after divorce because of the creation of 'one flesh' from two bodies at the point of marriage.¹ To Augustine, and those who followed, a marriage between two Christians was more than simply a legal formality for the production of children, but marked the formation of an unchanging and immutable spiritual bond between the two souls.² The separation of this bond is considered to be theologically impossible, a

¹ Phillip Reynolds most expertly discussed Augustine's theory of *sacramentum* and its impact on the 'Christianisation' of marriage in 1994 (241-315).

² In contemporary and later writers in the west a good proportion of the consideration of indissolubility caused by the 'one flesh' theology is focused on incest legislation. The incest legislation – both secular and canon – of the early middle ages, is the literal manifestation of the metaphorical notion that Christian married couples are joined into one unit. The development of incest legislation is remarkably clear, appearing first in the canons of the Council of Orléans in 511, where Clovis' bishops strongly reiterated that marital relations were forbidden between a man and his brother's widow or his wife's sister. (Orléans (511) can. 18). In 517, the first truly extensive canons on incest prohibitions were penned at the Burgundian Council of Epoan called and lead by Avitus of Vienne. This council issued canons which explicitly forbade marriage to a brotherer's widow, a deceased wife's sister, a mother-in-law, cousin, child of a cousin, an uncle's widow (both paternal and maternal) and step-daughter. This was an extreme and unusual extension of the customary provisions on incest, but fortunately, the reasons for this sudden move are apparently clear and fairly well documented in the letters of Avitus of Vienne covering the specific case of Vincomalus and his wife (*Epp* 16-18). This case is dated to approximately 516, and given Avitus' prominent role in the Council of Epoan, is almost certainly the foundation of the legislation which eventually came to be extremely widespread and influential. Ian Wood proposed that a further case, documented in the *Vita* of Apollinaris of Valence (Avitus' brotherer) concerning Stephanus and his brotherer's widow Palladia was considered alongside Vincomalus' case at Epoan, a proposition which suggests that the limits of acceptable sexual contact and the real world implications of theological thought were being debated across Gaul at the same time (Wood, 1998: 298-300; *Vita Apollinaris* 2-3). By the mid-sixth century, the canons of Epoan were widely disseminated, and were extended and reiterated by more councils. In 527 the Second Council of Toledo issued legislation for the Visigothic church, and in 567 the Second Council of Tours cemented incest legislation into the Merovingian. (Toledo II (527) can. 5; Tours II (567) can. 21 (22). Wood suggests that the scandalous behaviour of king Charibert was the motivation for the Tours II legislation as they (and Paris II) explicitly condemned his marital antics (1998: 302). After Tours II - as we have already seen - incest legislation began to creep into secular law, albeit with an explicit Christian leaning. Childebert and Chilperic II both issued laws confirming the canon law, and in the Visigothic kingdom during the mid-seventh century Chindaswinth incorporated extensive prohibitions into the *Liber Iudiciorum* as part of his extensive legal reform. In 721, a papal ban was issued by Gregory II, and letters between Pope Zacharias and Boniface (who claimed to be unaware of the provisions) confirm the extent and severity of the proscriptions signalling a full adoption by a vast majority of the clergy of the Early medieval west. The reasons and causes of this sudden and extraordinary re-definition of incest have been much debated over the decades, with varying degrees of credibility. Giants of the field Jack Goody (1983 & 2000), Georges Duby (1977:28-9; 1978: 17-20) and David Herlihy (1990) have all advanced their own explanations. Mayke de Jong provides an excellent overview and dissection of these various theories in her 1991 article, and again with even more detailed analysis in 1998.

concept which leads to an extremely hard line on the possibility of separation or divorce in Christian thought, a line which corresponds neatly with the broad pattern visible in the secular legal texts. The primary example of this line of thought is found in Isidore's *De Officiis Ecclesiasticis* sandwiched between his expositions on the correct role of married women. He states that a man and wife cannot be separated because the Church and Christ – the epitome of spiritual marriage – cannot be separated. He then gives a litany of presumably common reasons for marital disquiet or separation and states that they are invalid, including sterility, deformity, old age, illness, body odour, intoxication, irritability, immorality, luxuriousness, foolishness, gluttony, a quarrelsome nature, an abusive nature or wandering.³ In common with both the New Testament and the secular laws he does allow female adultery as the sole extenuating circumstance under which a marriage can be ended, although unusually he includes situations in which the wife is merely suspected of adultery.⁴ Apart from this very slight deviation, Isidore's discussion is merely a condensed version of Augustine's theology drawing on very commonly cited biblical quotes as justification.

Incest legislation is considered in many other places, but in terms of its impact rather than conception. Many scholars have tended to focus on incest legislation to support their own biases about the role of the church, and marriage, in the Early middle ages. These explanations are, somewhat peripheral to the topic of this thesis, except in their contribution to the question of what the fixation on conceptions of incest and the continual extension of provisions says about how marriage was conceived by the law makers. The fundamental question here is whether the provisions were motivated by religious and spiritual considerations, or whether there are secular concerns at work in them too. That the proscriptions were promoted by both Christian and secular leaders suggests that they benefitted both groups in different way, but they have (or are at least presented in the surviving source material as having) a purely Christian genesis. This suggest that, whatever the impact they had in the secular world, in conception and promulgation they primarily reflect a Christian idea of what marriage should be and what it was. If this is accepted, then there are several areas that are highlighted by these provisions as being exceptional and important. Firstly, the notion that marriage creates 'one flesh'; second that marrying fundamentally and unalterably modifies a person spiritually (presumably, their soul); and thirdly, although this appears to be a later development, that sexual intercourse is an essential part of the forming this indissoluble, spiritual connection. This is seen primarily in the *Liber Iudiciorum*, in laws instituted by Chindaswinth (563-653) which forbid marriage to anyone with whom an individual's brotherer, father or son has had a sexual relationship. (*Lib. Iud.* . III.5.1; III.5.7). This greatly expands the group to whom marriage is forbidden, and adds an extra layer in including sexual relationships as on a par (regarding incest) with marriage. Much of the preceding discussion of marriage, both in this chapter and in the third and fourth century Latin texts, considers marriage only as a remedy or outlet for sexual desire, a divinely approved institution for the production of children. In this context, however, we see that marriage could also be viewed as a deep, indestructible and fundamentally altering spiritual connection between two souls. By the sixth-century, and the development of these incest prohibitions, the theory of indissolubility (*sacramentum*) seems to have been informally extended to relate to all marriages (not just those blessed in a Christian church) and to encompass a wider range of metaphysical and theological assumptions.

³ Isidore, *De Off. Ecc.* 2.XX.11-12.

⁴ NT: Matt, 19.9; 1.Cor.7:10; Isidore, *De Off. Ecc.* 2.XX.11 'Where there is fornication and the suspicion of fornication, the wife is freely sent away.' The notion that female adultery destroyed the spiritual bond between man and wife is common in the patristic age. E.g Jerome *Comment in Mattheum* 3.19.9 where he argues that the adultery itself dissolves the marriage bond.

There is one major development between Augustine's version of *sacramentum* and Isidore's. The version developed by Augustine and his contemporaries focuses primarily on the prohibition of remarriage after divorce, claiming that such behaviour is always adultery as a marriage cannot be ended by mortal means.⁵ Such a doctrine, however, implicitly accepts that divorce is a possibility and that it occurs as it addresses only behaviours after the event. By the time Isidore is motivated to record his thoughts on Christian divorce he is not dealing with a doctrine that considers post-marital behaviour, but is forbidding his audience from divorcing at all except in one specific circumstance. It is this variation of the principle of indissolubility that eventually forms the cornerstone of divorce doctrine in the western Church, but it is primarily developed through collaboration and canon law rather than extensive theological philosophising of single religious men.⁶

While the philosophical discussion of the legitimacy of divorce was uncommon, the consideration of separation for the purposes of religious devotion became a pressing topic in the early middle ages. There are many examples from various sources of marriages ending with one of the couple entering a religious career, either clerical or monastic most of which are from the earlier centuries. Radegund's decision to dissolve her marriage with Clothar I is probably the most well-known case, although there remains debate over whether Clothar agreed. In the second of her *vitae* by the nun Baudinovia (c. 600-602) the separation is presented as being somewhat acrimonious and unwelcome and Clothar is depicted repeatedly attempting to win her back into the marriage.⁷ There are numerous other cases of non-royal marriages ending in this way too, such as Sulpicius Severus' anecdote concerning a desert monk who attempts to return to his family, Saint Monegund in Gregory's *Life of the Fathers* and Gunthredud in his *Miracles of Saint Martin*.⁸ Sulpicius also includes in his *Dialogues* a

⁵ Augustine, *De Adult* II.15-16, see also Pope Innocent I *Ep* 6.6.12. Both cite Matt. 19.9 and 5.32 as evidence.

⁶ Reynolds, 1994: 213-220 discusses the development of this doctrine through canon law up to the tenth century. McNamara & Wemple, 1976: 97-98 provided a potted history.

⁷ *Vita Radegundis* 4-7. Where Baudinovia claims that Clothar was so unhappy that 'unless he could get her back, he scarcely wanted to go on living.' She also implies that Radegund may have been tempted by his offers and so she subjected herself to extra mortifications in order to 'shut out the love of the world.'

⁸ Sulp Sev. *Vita Martini* 1.27. The man in question is accused of being possessed by Satan after he tries to return

tale put in the mouth of his character Posthumianus concerning abandonment of his family after he (Posthumianus) has left them to embark upon a pilgrimage. To his intense displeasure his family follow him causing him ‘constant embarrassment’ until he is able to abandon them again in Hieronymus.⁹ This was clearly a relatively common occurrence, to the point that it was covered by secular law.¹⁰ The primary focus for debate then centred on whether such an action constituted the true ending of the marriage, or if the couple technically remained married. These were important debates which concerned the very nature of marriage itself.

In many early cases, it is clear that such a separation was certainly considered to be the complete dissolution of a marriage. Sulpicius Severus’ monk, for example, is forcefully denounced and punished by his peers for his attempts to return to his wife, even if he aims to ‘save’ her because he is no longer considered to be married. A similar story of the same text tells of another desert monk who tries to return to his wife to live with her as a sister as he ‘desired the solace of her company.’ Saint Martin’s reply to this entreaty is to inform him that he is not a husband anymore.¹¹ Radegund too is said to be married to the Lord after entering her convent, indicating that her previous mortal marriage is considered to be ended.¹² The same is implied by Salvian’s attack on chaste marriages when he states that a woman who does not have sexual intercourse with her husband does not have a husband, suggesting that the severance of such contact by such an action as entering a religious life would dissolve the marital bond.

This is not, however, a hegemonic opinion and there is considerable argument for the opposite, not least in the letters of Gregory the Great which eventually appear to have settled the matter. Gregory’s letter is explicit and unbending in his analysis of the situation stating

to his wife and child and is locked away until he is ‘cured.’ Monegund: *VP*; Gunthredud, (*MSM* 2.9) is a woman who is cured of blindness by Saint Martin’s tomb and in celebration she abandoned her husband and children and ‘at the instigation of the Lord, became a nun in the church.’

⁹ *Dialogues* 1.9 He describes the abandonment as being the lifting of a heavy burden.

¹⁰ E.g. Justinian, *Nov* 22.5

¹¹ Sulp. Sev. *VM* 2.11.

¹² Baudinovia *Vita Radegundis* 4.

that the decision to separate to serve God categorically does not end a marriage. Although mortal law considers this an acceptable reason for divorce, divine law does not and forbids any re-marriage of either partner. Indeed, he says, the practice is only licit if both partners consent, and both enter the religious life.¹³ Such an approach is mirrored in Gregory of Tours' story concerning Bishop Urbicus and his wife in which he states that upon Urbicus' appointment to the bishopric, his wife had also entered a religious career 'according to the custom of the church.'¹⁴ This interpretation of the situation is again inextricably connected to the doctrine of indissolubility and further cements the Christian conception of marriage as something more mystical, spiritual and binding than a mere social contract for the production of legitimate heirs.¹⁵ In later texts, it is Gregory the Great's interpretation and rule which seems to prevail. Carolingian hagiography, for example, does not venerate individuals who abandon their families in the same way that Gregory of Tours and Sulpicius Severus do, but focuses on widows and couples who are consecrated together. The *vita* of Sadalberga, for example, depicts her persuading her husband to enter a monastic life with her.¹⁶ That this story is potentially entirely fictional lends support to the hypothesis that it was this less dramatic and confrontational model of adult religious consecration that was dominant by this time.

Separation and divorce in idealising, didactic or religious texts then was not encouraged, often to the point of outright prohibition, and separation for religious observance was tolerated only as it was theoretically defined as a continuation of the marriage. This is entirely in keeping with the culture that is recorded in the legal texts where the prohibition or obstruction of divorce is relatively uniform. In documents which allege to record actual events too separation and divorce for reasons other than religious vocation appear rather rarely and there are very few tales of unilateral divorce by both men and women. Many of

¹³ Gregory the Great, *Reg. Ep* 6.49.

¹⁴ Greg. *Hist* 44.

¹⁵ As Reynolds puts it, marriage is defined as a 'mysterious entity above and beyond carnal and life sharing union.' 1994: 37.

¹⁶ Sadalberga was the abbess of Laon c. 605-70. See 146 n.23 for opinions on its 'historical accuracy'.

these anecdotes which survive refer to the Merovingian royal family, and these have on occasion been taken to be paradigmatic of the entire culture. For example, Suzanne Wemple states categorically that divorce for barrenness or the death of a child was common and acceptable based on the story of the queen Marctrud and an interpretation of the *vita* of Monegund which does not include the section recorded by Gregory of Tours where her husband successfully demands that she return home to him.¹⁷ The separation of Radegund and Clothar I has also been thoroughly analysed as evidence for both bi and unilateral divorce.¹⁸ The royal family though, as has been noted, dealt with markedly different pressures regarding procreation and inheritance and operated largely outside of the *mores* which appear to have been practised by the wider populace. Outside of the Merovingians, there are very few examples of unilateral divorce (and none of bilateral) most of which are contained within Gregory's *Histories*. The anecdote about the anonymous son of Beppolen who is characterised by Gregory as being abusive, for example, includes amongst the list of his crimes the fact that he abandoned three wives and remarried after each one.¹⁹ Although Gregory condemns his behaviour as morally wrong and abusive, there is no indication that his behaviour is legally wrong or indeed that he is sanctioned in any way. The same cannot be said for the story of Tetradia and Eulalius outlined above, which conforms very neatly to the Christian legislation, in that her divorce is allowed but her remarriage is declared invalid.²⁰ This verdict, however, comes after Eulalius has brought his case to the attention of a religious court and it is implied by the fact that Tetradia and Desiderius have had several children in the meantime that there was some considerable gap between the divorce and the court case during which there were no objections to the events. Indeed, Eulalius' decision to make his claim in a religious court potentially suggests that there was no strong case to be made in his favour in a secular context. This is a significant example of canon law actually being applied which appears to demonstrate that there was a marked difference between the application of canon and secular law.

¹⁷ Wemple, 1983: 59.

¹⁸ E.g Wemple, 1983: 61;

¹⁹ Greg, *Hist* 9.13.

²⁰ Greg, *Hist* 10.8. See p. 133.

These are the only real examples in the literature of the period which appear to document actual divorces, and it is unclear how far Gregory's version of events can be said to represent any kind of reality. The image that he broadly presents is one in which divorce is a variable topic, with reactions from family and wider society being based on very specific events. It cannot be said that this is a universal image, however. The near complete silence of other sources on the topic of divorce, whether licit or illicit, makes the establishment of any kind of just about impossible. The silence presents a conflict of possibilities: either cases of individuals punished for unilateral divorce in the manner stipulated in some of the law codes (for example, the LC's stipulation that women be 'smothered in mire') are non-existent or so common as to be unworthy of comment.²¹ What is truly documented by the texts of this period is the growth and dispersal of Augustine's doctrine of indissolubility of marriage and the growing definition of marriage as a union which is defined not as a licence for sexual intercourse as in many patristic texts, or by cohabitation as in Roman law, but as a spiritual and mystical and irreversible union of two souls creating one flesh.

2.2.7 *Conclusions*

This chapter has examined the cultural understanding of post-Imperial marriage from two major perspectives: that of property and that of ideals. As with the examination of betrothal, the understanding and portrayal of men and women remains consistent throughout most of the genres. Women are viewed as inherently weak and vulnerable and in need of either protection or domination. Power structures within marriage and without are fundamentally divided along gender lines in both normative and idealising literature, and for rhetorical and theological purposes. Within the post-Imperial codes, the woman in

²¹ Gregory's *GM* contains a single story of a woman being drowned for adultery by her husband. She is, however, innocent and is thus saved by divine intervention and the marriage is dissolved. (1.69).

constructed as needing protecting for example through the system of *mundium* in the Lombard laws. Within the theological literature, women are shown to be in need of divinely ordained domination by their husband, and their suffering of such constructed as a new form of martyrdom. Only in the area of premarital sexual relations do these power structures get examined and highlighted by some for their perceived inequality through a theological lens. These authors are however still in the minority, and their voices are not the dominant ones throughout this post-Imperial period. Nonetheless, these are notable and sometimes dramatic shifts in the thinking about and construction of marriage that demonstrate the beginnings of a new view of marriage through the Christian lens, which is consistent with the shifts shown concerning consent and desire in the betrothal texts.²²

²² As is argued by, for example, Duby, 1994; Reynolds, 1994

2.3 Parenthood

2.3.1 Introduction

The questions that have been previously asked by historians of the family have all been broadly similar, considering constructions of medieval childhood, examining age ranges for different stages of childhood, looking at women as mothers and attempting to establish affective relationships between parents and children. The questions that have not been asked by historians, but which are worth asking, are those which currently absorb sociological consideration of the modern family:²³ how does the arrival of a child into a marriage change the lives and relationships of the parents? What motivations do couples have for having children, or for preventing conception? How do married peoples cope with the responsibilities of caring for, raising and socialising a child? And finally, as children grow up, marry, leave home and procreate themselves – what is the role of the parents? The focus of this chapter is not on how the life of the child changes as it grows, but how the arrival and growth of a child impacts the adults and the marriage. This chapter therefore will maintain the focus of the thesis on the adult couple at the centre of the family unit and examine the transition into parenthood. Furthermore, this chapter explicitly examines the place and role of men as fathers, expectations of paternal behaviour and expressions of paternal affection. This chapter considers three aspects of parenthood. Section 2.3.2 briefly examines professed cultural pressures which motivate couples to procreate. Section 2.3.3 then builds on this

²³ For example: Kahneman, D., Krueger A.B., Schkade D., Schwarz, N., & Stone, A.A. 2004. 'Toward National Well-Being Accounts' *American Economic Review*, 94, 429-43; Kahneman, D., Krueger A.B., Schkade D., Schwarz, N., & Stone, A.A. 2004. 'A Survey Method for Characterizing Daily Life Experience: The Day Reconstruction Method' *Science*, 306, 1776-1780; Bianchi, S.M, Robinson, J.M, Milkie, M.A, Campbell, W.K. & Twlantenge, J. 2006. *Changing Rhythms of American Family Life*. American Sociological Association; Nomaguchi, K.M. & Milkie, M.A. 2006. 'Maternal Employment in Childhood and Adults' Retrospective Reports of Parenting Practices' *Journal of Marriage and Family* 68:573-94. Bierman, A., Fazio, E., & Milkie, M.A. 2006. 'A Multifaceted Approach to the Mental Health Advantage of the Married: Assessing How Explanations Vary by Outcome Measure and Unmarried Group.' *Journal of Family Issues* 27:554-82; Nomaguchi, K.M., and Milkie, M.A. 2003. 'Costs and Rewards of Children: The Effects of Becoming a Parent on Adults' Lives' *Journal of Marriage and Family* 65:356-74; The extensive research undertaken by UCLA's Center on Everyday Lives of Families (<http://www.celf.ucla.edu/pages/publications.php>) See also Jennifer Senior's excellent *New York Magazine* article draws attention to a good deal of current sociological research on the impact of procreation on the wellbeing, mental health and lives of the parents and on experiences of parenting ('All Joy and No Fun: Why Parents Hate Parenting' *New York magazine* 4/07/2010 <http://nymag.com/print/?/news/features/67024/> [accessed 25/09/10])

synthesis and on the legal texts concerning abortion, infanticide and abandonment to analyse what may be considered ‘family planning’ measures. It investigates how these efforts, along with contraception and oblation, were used and how they were discussed throughout the literature. It also briefly considers the motivations and pressures that were perceived to drive such actions. Secondly, sections 2.3.4 and 2.3.5 examines the different roles and expectations of behaviour of men and women as they become mothers and fathers. Drawing on the legal texts, these sections consider the role of the patrimony within affective relationships, and the role of religion in mediating the expression of these relationships. Finally, section 2.3.6 investigates the role of parents in their grown and married children’s lives, the expectations of the relationship between adult children and their parents and the way in which the patrimony mediates this. This chapter will examine how the desire to procreate, childcare and dialogues with juvenile and adult offspring affected the lives and experiences of the married couple as parents. As with the rest of this thesis, it argues that Christian theology and doctrine provided a basis through the post-Imperial period for developments and changes in the expectations and expressions of parental roles.

2.3.2 Having Children

That a married couple would have children is a truism rather taken for granted in modern scholarship on any historical period, reproduction being viewed as a fundamental and unavoidable facet of being married and therefore perhaps not worthy of rigorous exploration. This means that the motivations for deciding to have children cited by the inhabitants of the post-Imperial western world have never been thoroughly examined.¹

A significant reason for this lack of scholarship is the simple fact that outside of legal texts, there are no documented cases of married couples remaining voluntarily childless for

¹ Motivations for choosing not to keep children such as infanticide (sometimes characterised as a form of post-partum abortion), child abandonment (likewise) and oblation have been intensively investigated. Most significantly in the works of Coleman, 1978; Boswell, 1984, 1988; de Jong, 1996. These will be discussed later at 2.2.3

any reason other than religious chastity. Couples mentioned in legal texts as being childless, in cases of premature death of one partner for example, are usually presented as if they desired children but were frustrated.² However, contraception, abortion and post-partum rejection of children through a variety of methods were practised, showing that couples in were interested in limiting and controlling their fertility and deciding when to have children in their own way. Indeed, there is recent, albeit somewhat flawed, evidence from J.M Riddle's exhaustive survey of ancient and medieval contraceptive methods that many may have been more successful than has been previously thought.³ There are two primary motivations for procreation offered by the sources: first for the continuation of the family, often expressed as either the protection of the patrimony, preservation of the family name or as a fulfilment of the marriage contract; secondly, for the emotional fulfilment of the couple. The separation of these two motivations is certainly for the most part artificial; given that it was such a distinct and powerful facet of Roman and post-Imperial society, the idea that ensuring the continuation of a family name and the protection of family estates could be hugely emotionally fulfilling in its own right is not to be dismissed. Nonetheless, dialogues concerning the 'joy' of having a child or of parenting tend to be sharply differentiated from discussions in the surviving primary material which concern inheritance or familial continuity.

The protection of familial assets and assured continuation of a family name are seen to be the strongest factors in the decision to procreate, and this is certainly the case in a vast majority of the religious and devotional literature. However, it is very often used, even by

² See *LC XIV.3-4* for example which states that if a husband or wife dies before they produced children, the surviving partner cannot claim back any property or money that exchanged hands at the *betrothal* (i.e. the *pretium* the husband gave and any gifts given by the bride. This strongly suggests that all marriages were expected to produce children and was, legally at least, its primary function. (see 1.2.2; 1.3.3)

³ Riddle, 1992: 87-107 on the Late Roman and Early medieval texts. He examines an enormous range of medical texts and their contraceptive and abortifacient methods and concludes that herbal methods were widespread and effective. Although many of his conclusions are based on dubious, often animal based and very old, 'scientific' studies into the efficacy of herbal medicine and the oral testimony of modern 'herbalists' and alternative therapists, his fundamental argument is that their usage would not have been so widespread were they not at least partially successful. An important point which he does raise in his argument however is that there are several modern cases of women taking remedies such as those recommended in the ancient and medieval textbooks and dying as a result. (Riddle, 1992: 166-67).

authors who do not consistently denigrate marriage and procreation, as an unacceptable motivation for perfect Christian couples. A particularly good example of this comes from the version of Gregory of Tours' famous tale of the Two Lovers told in the first book of the *Histories*.⁴ In this version, the groom Injurius gives a prolonged speech in which he sets out the reason that he has been married:

Our parents are the most nobly-born in Clermont' he said. 'We are their only children, and they have planned this marriage for us to produce children, so that when they are dead no heir from outside our families may claim the succession.'⁵

Here Injurius frames his marriage in terms of the anxiety of his and his wife's parents, and expects that his bride will share and understand this anxiety; that not only will they have no heir but that this will result in strangers taking ownership of their estates. This can also be seen in the *Vita Eusadoliae* where Eusadolia's parents attempt to persuade her to marry out of fear that their estate will go to strangers.⁶ In this context of spiritual devotion the anxiety for the survival of a family property is presented as a worldly anxiety, and thus unworthy of the concern of a truly Christian person. Nonetheless, the ubiquity of the theme of patrimony, property and inheritance rights throughout the literature concerning the family, both legal and literary, strongly suggests that this was a fundamental – if not *the* fundamental – force driving the choice to produce children.⁷ As Gregory has the father of Leobardus say in his *Life of the Fathers* 'we are just working in vain if no-one comes after us.'⁸

This concern is alluded to in Salvian's theological tract *De Ecclesiam* in which he implores his readers to leave a portion of their property to the church, censuring them for their perceived desire not to separate it. At the end of his emotional tract, in which he gives a thought-provoking insight into how patrimony was conceived of in terms of parent-child

⁴ See 2.1.2 for the narrative and analysis of this tale.

⁵ Greg *Hist* 1.47.

⁶ *Vita Eusadoliae* 2 etc

⁷ See 1.2.3; 1.3.1; 1.3.2; 2.3.4

⁸ *VP* 20.

relations, he decries the practice of adoption in old age for the sole purpose of protecting one's property. He sees this (very Roman) choice to create non-biological children as a financial strategy for the good of the family, and therefore indirectly marks the choice to produce biological heirs in the same way.⁹ Indeed his tract on property and the church implicitly frames children being legitimate heirs as their most important function within the family, a remarkably similar viewpoint to the legal texts. How far secular deathbed adoptions were actually practised in the post-Imperial period is unclear. As has been noted, the legal texts are very quiet on the subject and the Frankish codes claim that adoption had to be personally approved by the king.¹⁰ Further, there are few, if any, examples of the practise of adult outside of the Merovingian Royal family who are notably different from their subjects in many ways.¹¹ There are two possible explanations for this absence of definite evidence: first, it is possible that this scenario is an example of Salvian exhibiting his excellent education by repeating a classical trope about legacy hunters. Alternatively, it is equally possible that the widespread church ordained disapproval of deathbed and adult adoption prevented such incidents from being recorded. The existence of adult adoption within the Merovingian family as a form of creating non-biological heirs, and the apparent acceptance of this as a legitimate method of ensuring familial continuation suggests that the Roman ideas behind adult adoption were still in existence, in particular the importance of protecting one's patrimony and ensuring that it does not get split or sold to strangers. It is this concern that Gregory, the Two Lovers and Salvian are all inciting when they write, and all are fighting against for the purposes of the church.

The primary motivation to have children is to produce heirs for one's familial name and property. The importance of children as heirs is seen in powerful lines a letter of Avitus of Vienne which describes a man who has raped and impregnated a nun as 'a husband without offspring, a father without an heir' forming a clear delineation between a biological

⁹ Salvian, *De Ecc* 4.13-15.

¹⁰ See 1.2.3

¹¹ Guntram adopted his nephew Childebert II in AD 577 (Greg. *Hist.* 5.17). Crawford, 2009: 123 states that the case is the same in Anglo-Saxon England. Although she posits the idea that oblation could be interpreted as a form of religious adoption.

child and an heir.¹² As a product of extra-marital sexual relations, the nun's child can never be an heir, therefore it can never be accepted as a legitimate child by the father, and thus can truly be seen as his father's child. This is clearly not a new development to the sixth century as the same distinction is seen in Paulinus of Pella's much earlier poem in which he disassociates himself from his children born to slaves – who could not be his heirs, as they took their mother's status – and his youthful bad behaviour by reassuring his readers that he was not a father to them. He thus implies that genetic and biological fatherhood is not enough to make one actually a father.¹³ It is the acknowledgement and acceptance of the child as an heir that transforms one into a father. This is the same distinction as is made in the legal texts, where the acceptance of a child as a legitimate heir and one's own is the defining moment of fatherhood.¹⁴ It also seems to be powerfully enduring as it is also implied in Isidore's seventh-century etymological description of parents in which he claims that:

A father is so called because he has a son.

A mother is so called because something is made from her.¹⁵

This version again lays bare the distinct difference between becoming a mother and a father: a father is made by heirs, a mother by the process of birth. There is a strong probability given the archaic nature of Isidore's text that this version of fatherhood in particular is one that has been continued from classical Roman interpretations. The legal ritual of the father accepting a child as a member of the family on the ninth day after birth is also a distinctly Roman one.¹⁶ These writers perpetuate a clear and singular division between biological and legal parenthood in which the right to patrimony forms the central and only identifier.¹⁷ The right to inherit a patrimony becomes the most vital function of a child, and

¹² Avitus, *Ep* 55;

¹³ Paulinus *Eucheristicos.*, 169-72

¹⁴ 1.3.1. The exception is, of course, the Lombard code which allows for and protects the place of 'natural' children by making them minor heirs.

¹⁵ Isidore, *Et* 9.5.3 *Et* 9.5.6.

¹⁶ This is a practise which is sometimes referenced in legal texts (1.3.1) although not in the same detail as in the Roman law. Nonetheless, there is definite reason to believe that such practises of formally accepting the child continued.

¹⁷ In law, only the Lombards and the Romans deal directly with this issue: 1.3.1 This is a distinction apparently

having a child to inherit becomes a societal necessity. This necessity is seen in Isidore's long description of a Christian wedding ceremony in which he describes the bride and groom being bound by two cords, one white and one purple with the white representing 'cleanliness of life' and the purple representing the 'posterity of blood.' Thus, he says, the couple will be chaste but at the same time the obligation (*debitum*) of producing heirs will be paid.¹⁸ Isidore apparently believes, in both spiritual and legal terms, that marriages are created for the production of children and that children are produced in order to ensure the continuation and protection of a family name and property. Moreover, the production of children is more than just a desire, but an obligation reiterated not only by the couple's parents but by a vast cultural and legal expectation.

The anxiety displayed by parents, particularly fathers, concerning the need to safeguard a family's property, combined with the apparently common distinction between mere biological offspring and legitimate heirs in both law and literature places the protection of patrimony as a vital motivation for procreation within marriage. However, it also unavoidably creates the image of a couple as mere conduits for property with little personal agency and without individual choices. Again, this is an image perpetuated from the legal context, where adults' agency with their property is severely restricted once they become parents.¹⁹ Injuriosus' characterisation of his relationship with his unwilling wife depicts the couple, quite deliberately, as pawns in their parents' financial planning without the ability to act for themselves. The only available option to them is to reject worldly things entirely and embrace full chastity. This is an exclusively Christian option, one not available to non-

unavailable to women who are unable to abjure their biological parenthood.

¹⁸ Isidore, *De Off Ecc.* 2.xx.7 White is *munditiam vitae*, purple signifies *sanguinis posteritatem*. In the same work he claims that marriages are contracted exclusively for the production of children, for the 'fruit of propagation.' Isidore, *De Off Ecc.* 2.xx.9-10. This section is slightly confused as he states that 'arranged' or 'certain' (*certae*) marriages exist for the fruit of propagation (*fructum propaginis*) in section 9, but in section 10 declares that all marriages which are contracted for any purpose other than the 'sake of procreating free children' (*causae procreandorum liberorum*) is a sin. His brother, Leander, echoes this statement describing children as the 'form and function of marriage' in a letter to their sister. *Regula PL 72 879 C munus nuptiarum...et fructus*. This is an Augustinian notion that was fundamental to post-Augustinian Christianity.

¹⁹ 1.2.3; 1.3.3 & 1.3.2

Christian or less devout couples, and therefore is a part of an exclusively Christian reconfiguration of the family developed from late antiquity. In this conception of family, individual agency and salvation is of paramount importance, not the legacy of one's name or property. Thus, the traditional conception of procreation as an instrument to ensure continuity was framed as unattractive, worldly and potentially damaging to one's individual salvation from the very earliest Christian texts.²⁰ It is this that writers such as Gregory and Salvian are drawing on when they construct their works. In Salvian's case, this new conception of procreation is used to encourage Christians to give portions of their property to the church in order to ensure their personal salvation, while maintaining their property for their children is framed as being insufficiently selfish and potentially dangerous for one's soul.²¹

The most powerfully affective medium for expressing this desire is *consolatio*. The two most powerful examples come from two men many decades apart: Venantius Fortunatus in his epitaph for Vilithuta and Paulinus of Nola's reference to the loss of his own son in a *consolatio* to a friend. Paulinus reveals his desire for a child very clearly in his mourning for his son Celsus, which he expresses in the conclusion to a letter of consolation written on the occasion of the death of another child of his acquaintance also named Celsus. He writes:

Like our own boy who bore your blessed name and who was summoned the moment he was bestowed, he was a child long desired (*desiderium*) but not awarded to us as we were unworthy to rejoice in the devotion of progeny.²²

Paulinus is explicit that he and his wife desired a child, and implies that they spent some time trying for a pregnancy. He does not frame his son as an heir, but as a child to be rejoiced in and he describes parenthood as an honour and a pleasure. Also notable is the fact that although the child died 'as soon as he was bestowed' – indeed 8 days after his birth – he

²⁰ Southon, 2008:

²¹ Salvian, *De Ecc.* 3.9-10 *Amate itaque, non optimus, amate filios uestros, sed tamen a uobis gradu.* Love you children, I do not object, love your children but in a degree second to yourselves.

²² Paulinus of Nola, *Carm.* 31 591.

still has a name.²³ This does not correspond to the legal and Christian suggestion that a child was not considered a full heir, and the man not considered a father, until after nine days. This suggests that there was an emotional inner world that is not being exhibited in the other genres of text concerning parenthood. Paulinus' words imply a great grief which has not diminished, also demonstrated by the fact that he asks the older Celsus to care for the infant Celsus in heaven.²⁴

Venantius Fortunatus presents a *consolatio* which is very similar, albeit from the point of view of a third party. The letter is an epitaph for Vilithuta, a woman who has died in childbirth along with her baby. In it he describes her husband, Dagulf's, reaction to their deaths thus:

Wanting to be a father, one of three, alas he finds himself alone...he thus wept tears for the burial of a child scarce born, he saw what he should mourn, not what love should possess.²⁵

Vilithuta, Dagulf and their 'scarce born' child are not inert channels for material assets, but individuals, a couple who are described as wanting to reproduce in order to become three and to achieve an emotional fulfilment through their child. This exact same idea is used by Gregory to add pathos to a generic healing story in his *Miracles of Saint Martin*, in which a widowed father begs for divine help in healing his son who he describes as 'the only reminder of my wife's love.'²⁶ As with Dagulf and Vilithuta's child, this son is not only valuable for his role as heir but also as an individual who represents the joining of two people as a family. In this context of loss and sorrow, grief makes only emotional rhetoric appropriate. Equally, this context of mourning and grief is one of the few appropriate settings

²³ Paulinus of Nola *Carm.* 31.617 *Quot tibi Celse, annis, totidem illi vita diebus*. Suggesting that the Celsus of the letter died at 8 years, and his own Celsus at 8 days.

²⁴ Paulinus of Nola, *Carm.* 27: 619

²⁵ Ven. Fort. *Carm.* 4.26. 53: *tertius esse pater cupiens, heu, solus habetur*; 65-6 *pro vixdum genito lacrimas iam soluit humato, uidet quod fleret, non quot haberet amor*.

²⁶ VM 2.43.

for expressing emotional attachment between parent and child. Any focus on property and wealth is improper and unseemly. The focus shifts to the emotional attachment parents were expected to feel for their children and frames the desire to reproduce as the desire or need to experience this emotional attachment.

These are three particularly emotive examples, but there are many more which describe the production of children in similar but more reserved terms, primarily at the point of the successful birth of a child. For example, Sidonius provides a companion for Venantius' lament for Dagulf in a letter to his brother-in-law in which he extends an invitation to stay saying: 'hasten, a couple this time, but next year I hope there will be three of you' while the concept of joyful delighting in the arrival of babies is a common theme across genres both diachronically and geographically.²⁷ In these contexts, a glimpse into the emotional worlds of the parents is offered, as they describe what they believe they have been given or have lost, and it is never framed as a contract unfulfilled, or as a patrimony having lost an heir.

These themes, of parenthood motivated by either concern for familial continuation or for emotional pleasure, are kept mostly separate. Texts concerning patrimony tend to appear in genres which inherently disapprove of such worldly anxieties such as hagiography and sermons, while it is genres which are explicitly concerned with worldly issues, such as *consolatio*, which focus on emotional fulfilment. The only consistent exception to this pattern is the genre of *epithalamia*, in which an idealised but clear picture of the role patrimony played in affective relationships is first suggested. *Epithalamia* of this period are formulaic and generally unoriginal, following a classicising format. Nonetheless, they did not exist in a cultural vacuum and both reflected and influenced the culture in which they were produced.²⁸ Therefore the common assertion that the authors hope that the couple's hopes will live on in

²⁷ Sid. Apoll. Ap, *Ep* 20; on babies as an occasion for joy: Salvian, *Ep* 4; *De Gub, Vita Monegund*, Caesarius of Arles, *Serm* 154.2; Ven. Fort. *Carm.* 9.49; 9.1.33; Cassiodorus, *Psalms* 112.9; Leander of Seville, *Regula*; *PL* 72 179C; Boethius, *Cons.Phil.* 2.4; Greg of Tours, *Hist* 6.23;

²⁸ See Roberts, 1989 on the uses of myth in late Latin *epithalamia* from Statius to Venantius Fortunatus and how such myths are moulded to fit and reflect specific cultural circumstances.

their children can be seen as an important one within late and post-Imperial culture.²⁹ This is an assertion that encompasses both the concept of procreation for continuity and protection of the patrimony, and the acknowledgement and expectation that this relationship is an affective one. The two motivations are bound into one in this context of future hopes where both emotional and financial ties are being celebrated.³⁰ While these lines are rigidly formulaic, they suggest that the focus on patrimony was not the distastefully ‘worldly’ fixation on property over individuals that the Christian sources portrayed it as. Instead it can be seen as a symptom of a more complex and layered understanding of how family was defined and the physical expression of familial affection. It is this intricate and multifaceted meaning of patrimony – as both property and family reputation – which underpins virtually all discussions of procreation and childrearing and which needs to be understood.

These then are the reasons adults brought children into their lives: to protect and continue their family name and property, to protect themselves in old age and for the joy of having and enjoying children. They are compelling reasons, sanctioned and enforced by the prevailing culture in all its multifarious forms. There are however, hints throughout the sources which suggest that couples attempted to limit their fertility through contraception and abortion and to practise family limiting strategies such as infanticide and abandonment.³¹ The question of how widely used such strategies were employed, and what motivated them to engage in such behaviours is an important one as it sheds some considerable light on why people had children.

²⁹ See Ven. Fort, *Carm.* 6.1; 9.49; 9.1.33; others.

³⁰ See also 2.2.5

³¹ Infanticide and abandonment have been extensively studied in the modern scholarship, presumably because of their somewhat exotically titillating nature. In contrast, abortion and contraception have only sporadically been discussed or considered, with John T. Noonan’s 1986 monograph *Contraception: A History of its Treatment by the Catholic Theologians and Canonists* remaining the only truly comprehensive study of such practices although Keith Hopkins’ 1965 ‘Contraception in the Roman Empire’ provides a detailed overview of techniques from the Roman world.

2.3.3 Not Having Children: Contraception, Abortion, Abandonment

On contraception, the only information that is left to us on its use comes from sermons written by unmarried men who aimed to erase the very existence of sexual contact for pleasure, of whom the most focused are Caesarius of Arles and Martin of Braga.¹ Caesarius is particularly strident in his denunciation of such practises, holding forth across three sermons on the evils of contraceptive techniques including ‘herbs, diabolical marks [and] sacrilegious amulets’ none of which can have been effective.² He exhorts his entire province to abandon such practises, repeating the patristic assertion that that any act preventing a conception through contraception is murder.³ This is a damning statement on the practice, making the use of contraception a fundamental sin. Elsewhere he refers to women ‘destroying fertility’ through artificial sterilisation, an act he calls mass murder.⁴ These accusations are fairly detailed, and are correlated to abortion. They are, however, almost direct repetitions of previous accusations made by Jerome and Augustine who claimed that women drank potions and caused themselves to be sterile in order to engage in illicit sexual intercourse with their husbands.⁵ This is a theme which is directly related to the pre-Christian classical Roman accusation that women sterilised themselves in order to engage in extra-marital sexual activity.⁶ However, this stereotype has been reframed by the Church Fathers to be applicable withing an Augustinian understanding of sexual intercourse as an activity that is only undertaken within marriage and for the purpose of procreation.⁷

Within this context, any attempt at preventing conception or aborting a child, even within a legitimate marriage, is inherently un-Christian as it demonstrates that the couple

¹ Martin of Braga, *Chapters from the Synods of the Eastern Fathers*, 77.

² Caesarius, *Serm.* 51.4. Contraception also forms a theme in Sermons 44 and 52. On methodology, it appears that the Greek and Roman medical writers still held sway, with Soranus and Aristotle being particularly common. However, they attest to many more methods than those which Caesarius lists, including suppositories, potions, spermicides, *coitus interruptus*, pessAriès, spermicides, genital salves, post-coital exercises, anaphrodisiacs and the observance of ‘fertile’ and ‘sterile’ periods. Noonan, 1986: 29; Riddle, 1999: 35-63.

³ Caesarius, *Serm.* 51. 4; Noonan, 1986: 147.

⁴ Caesarius, *Serm.* 44.2

⁵ Augustine, *De Nupt.* 1.17; *De Bono* 11-12; Jerome *Ep* 22.13.

⁶ Southon 2008 see especially Juv, *Sat VI*; Sen, *Ad Helv* 20.1; 16.3

⁷ See 2.2.3

have been having sexual intercourse for non-procreative purposes. Given Caesarius' propensity for directly citing Augustine's work and transmitting it to his readers it is possible that these accusations do not accurately represent a genuine problem in Caesarius' community but are a rhetorical trope delineating 'good' and 'bad' Christian behaviour transmitted from an earlier age. Equally abortion is only attested to by Caesarius and thus falls into the same problematic trap.⁸ This absence of abortion in the literature of the post-Imperial world is notable given its emerging presence in the legal literature, and gives some support to Keith Hopkins claim of the Roman world that given the lack of understanding about the biological processes involved in reproduction, abortion and contraception were seen to be interchangeable concepts in ancient literature.⁹

A far more commonly attested recourse allegedly available to couples who wished to limit family size was abandonment or infanticide. As with contraception and abortion, abandonment and infanticide have often been conflated in secondary literature, to the chagrin of John Boswell who is one of the few scholars to have focused on the practice of abandonment exclusively and who has insisted repeatedly that there was a clear distinction between the two, a position with which this thesis agrees.¹⁰ He argues that abandonment was the humane alternative to infanticide, not a method of child killing as has been suggested by others. Those who he accuses of conflating the issues include such luminaries of ancient demography as P.A. Brunt for his statement 'Those who lacked the means to procure abortion...could still resort to infanticide by exposing the newborn child.'¹¹ However, many more recent scholars have disagreed with Boswell's assessment and maintain that abandonment was a form of infanticide.¹² Despite the significant amount of research on the

⁸ Caesarius, *Serm* 19.5. This sermon is titled 'Augustine to the People' suggesting strongly that the ideas and exhortations contained within are Augustine's rather than Caesarius' own.

⁹ Hopkins, 1965: 124

¹⁰ Boswell, 1988: 44; 1984: 13.

¹¹ The quote continues 'it [the child] might then be picked up and reared by the chance finder, either as his child or, more probably, as his slave.' Which potentially undermines Brunt's insistence that this was a form of infanticide. (1971: 148). Bennett, 1923: 341 and Cameron, A. 1932: 14 also come under fire for the same assumption. He has certainly had some influence as the discussion has become considerably more nuanced in recent years. See for example the Icelandic debate summarised by Callow, 2007: 47.

¹² for example Harris, 2004: 1: 'It was the commonest, although not the only, way in which infants were killed and in many, if not most, regions it was a familiar phenomenon.'

topic during the twentieth century, the actual prevalence in the Roman and post-Imperial worlds remains controversial, with historical demographers unable to agree whether infanticide was a widespread phenomenon or whether it was extremely rare.¹³ In the literary sources, there are very few references to infanticide and those which are found exist only in Christian contexts, and refer exclusively to 'evil' pagans where the act of killing an infant is very clearly a trope which serves to highlight how inhuman and un-Christian a story's antagonist is. This is the case in Gregory's story of the prostitute who suffocates eight unwanted babies, and who is so evil that the River Jordan recoils from her.¹⁴ Also, the grandmother of Saint Ludger who is so enraged by the birth of another female grandchild that she attempts to drown her 'before she can take food'. The baby is rescued and fed, thereby apparently rendering her safe. The grandmother is patently a villain in this story.¹⁵ The first example here also highlights another posited motivation for infanticide, which is to cover the shame of a child born of pre or extra-marital sex.¹⁶

Otherwise, evidence for infanticide comes only from canon law, which has the same drawbacks in that it is a genre of literature which is aiming for moral reformation. Thus, although the Third Council of Toledo legislated against an 'abominable and widespread practise of parents killing their children in order not to have to feed them', whether this points to an actually widespread practise or to a Christian mandating of acceptable Christian behaviour is problematic.¹⁷ It is perhaps worth noting however that this wording is remarkably similar to that in the Visigothic law codes which also suggest that infanticide was widespread in the Visigothic kingdom. Given the lack of actual evidence of couples murdering their babies in the literature however, it seems likely that such a practise was not as widespread as is sometimes posited.¹⁸

¹³ On the side arguing for widespread infanticide is Brunt, 1971: 148; Harris, 1982: 114-16; Shahar, 1978: 127; Coleman, 1972. On the opposing side are Alexandre-Bidon & Lett, 2000: 16; Engels, 1980. For broader surveys see Langer, 1973: 353-66.; Etienne, 1973: 15-46; Lyman, 1976: 75-100.

¹⁴ *GM* 1.87

¹⁵ *Altfredi vita sancti Liudgeri episcopi Fordensis* 6-7). There is also the controversial line in Gregory's *VM* 2.24 in which a woman decides to raise her disabled son. See Laes, 2012.

¹⁶ Evans Grubbs, 2012

¹⁷ Toledo III c.17. (589).

¹⁸ In agreement with Alexandre-Bidon & Lett, 2000: 16.

The alternative for those couples who found themselves with a child that contraception and abortifacients had failed to rid them of was abandonment (*exposito*), defined here as the surrendering of a child due to financial difficulties, in a specific place such as a church, in the belief that the child will be raised by others. Abandonment of this form was an option which Boswell claims was as 'common aspect of life in all [post-Imperial] areas as it had been at Rome.'¹⁹ In fact, he claims, it may have been more common during this period due to the 'reduced circumstances' of the post-Imperial west.²⁰ There is a certain amount of evidence for child abandonment in one form or another in hagiographical texts and canon law. It is notably absent from sermons and theological tracts, despite having a considerable presence in second and third century theological literature, and also from most other less spiritually minded genres.²¹ An exception in the post-Imperial theological literature is Caesarius of Arles, who encourages women to give up their unwanted children rather than abort them in a sermon which again is a repetition of Augustine's ideas, stating: 'However many children she conceives let her nurse them herself or give them to others for support.'²² This piece of 'fatherly advice' from Caesarius aims to prevent women from becoming 'murderesses' and thus it is clear that whatever mechanism Caesarius is referring to keeps the infant alive and cared for. It seems then that this does not refer to the type of abandonment referenced for example in the capitulary of Sigismund which refers to exposed infants (*exposito*) and foundlings (*collectis*), which is the form of abandonment most commonly referenced in secondary literature such as John Boswell.²³ It may be closer in form to that described in the Visigothic laws which hold more in common with fosterage than

¹⁹ Boswell, 1988: 183.

²⁰ Boswell, 1988: 200. Notably, and problematically, Boswell sees oblation as a form of 'humane' child abandonment licensed and controlled by the church which may also go some way towards explaining his view that abandonment increased in the post-Imperial world. This hypothesis has been thoroughly criticised by Mayke de Jong and by Ville Voulanto who have demonstrated that oblation was not only a far more complex and nuanced concept than mere 'abandonment', but also that it was generally the preserve of the rich elite who also monopolised the spiritual elite. (de Jong, 1996; Voulanto, 2005;)

²¹ Earlier Christian writers to decry abandonment include Clement of Alexandria (*Paed.* 3.3) and Justin Martyr *1. Apol.* 27.

²² *Serm.* 19.5.

²³ LC, *Constitutiones Extravagantes* XX

abandonment.²⁴ Certainly, the possibility that the infant would not be taken in as a foundling and could die seems anathema to Caesarius's stated belief that all conceived children should live.

There is another, although quite different, reference to a form of surrendering children in Cassiodorus's *Variae*, in which he delights in the sight of children lined up to be sold by their parents while describing a market held on St Cyprian's day. Specifically, these appear to be the children of poor rural families being sold for their own betterment to urban families: There stand ready boys and girls, with the attractions which belong to their respective sexes and ages, whom not captivity but freedom sets a price upon. These are with good reason sold (*vendunt*) by their parents, since they themselves gain by their very servitude (*famulatione*). For one cannot doubt that they are benefited even as *seruos*, by being transferred from the toil of the fields to the service of cities.²⁵ In this description, the term *seruos* is ambiguous, and could refer to either slavery or domestic service. That this refers to domestic service rather than slavery is supported by an Edict of Theodoric of AD 500 child selling for slavery was made illegal, although sending one's children out to work as servants who remained free was not.²⁶ Furthermore, the term *famulatione* is used to describe their condition, which has a weaker connection to the concept of slavery than *servitium*. *Famulatus* is used in classical Latin to refer to slavery, but very rarely. There are just three classical references where this term is used to mean slavery rather than servitude.²⁷ However, to complicate matters, it is used once in the Vulgate (Exodus 1:14). This reference then is ambiguous; it is unclear whether Cassiodorus is referring to desperate parents selling their children into slavery for profit, or poor parents sending their children to work. While both suggest a air of desperate poverty, the former involves selling one's child into the potentially permanent and appalling

²⁴ *Lib. Iud.* IV.IV.I See 1.3.3

²⁵ Cass. Var. 8.33. '*Praesto sunt pueri ac puellae, diverso sexu atque aetate conspicuo, quos non facit captivitas esse sub pretio sed libertas: hos merito parentes vendunt, quoniam de ipsa famulatione proficiunt. Dubium quippe non est servos posse meliorari qui de labore agrorum ad urbana servitia transferuntur.*' A very similar scene is described by Bede as giving Gregory the Great the motivation to send Augustine to England on his mission. (*Hist* 2.1).

²⁶ *Ed.Th* 94, see also *CTh* 5, 8, 1.

²⁷ Cicero, *Lael*, 19:70; Cicero, *Off* 3.33; Seneca, *Hippol.* 991

condition of slavery, while the latter does not but carries the implication of possible betterment - as Cassiodorus himself notes. Boswell considered this to be pure child selling: the 'rural population divesting itself of surplus children by selling them to buyers' to avoid problems arising from partible inheritance.²⁸ This definite conclusion however is supported by little evidence, and does not fit the wording of the description so easily, especially as no motive beyond escape from the countryside is posited by Cassiodorus.

Gregory refers to another form of child surrendering when he describes in his *Miracula* mothers giving their deformed or disabled children to travelling groups of beggars once they reached a certain age. In the first, the child is given away at the age of 12, in another the age of the abandonment is unclear but the child is 15 when he is cured of his blindness.²⁹ Again, in these examples the survival of the child is important to the parents, and there is no suggestion that the child will die. They are unfit for traditional work, and so begging is the only option available to them. Nor is this infant abandonment, the children are raised despite their disabilities to an age where they can be sent out to work. These examples potentially have a great deal in common with the markets of healthy rural children described by Cassiodorus.³⁰

There is also evidence, mostly legal, of parents practicing the 'pure' form of abandonment: anonymously leaving infants in public places or on church steps to be taken into slavery or fosterage by other families. The Councils of Mâcon (581) and Vaison (529) both deal with the particulars of how abandoned children are to be handled in terms which are very familiar to the edict of Sigismund. In Vaison particularly, the anxieties are identical to those expressed by Sigismund:

²⁸ Boswell, 1988: 201-2

²⁹ Greg *VM* 2.24 where the child is given away before the age of 12; *VM* 3.16. where a child is blinded at 3, given away at an unknown age and cured at 15.

³⁰ Laes, 2012 suggested that it was the disabled child's inability to work that prompted abandonment to beggars. He also suggested that as disabled children were viewed as evidence of their parents' sexual sin (for example, *VM* 2.24) abandonment could be seen as a way of expunging that guilt and stigma from the family.

Concerning the exposed, because a complaint goes forth having been cried out by all that they are exposed not to compassion (*miserecordiae*) but to wolves, and the human mind, although affected by the precepts of compassion, fails to collect them out of fear of false accusations, it seems that it must be observed, according to the statutes of the most faithful, pious, and august emperors, that whoever collects an exposed child must call the church to witness, acquire the testimony: nevertheless on Sunday let the priest announce from the altar, that the church might know that an exposed person has been collected, so that within ten days from the day of exposure, if someone shows himself to acknowledge it, let him receive the exposed child: with the pity for those ten days to be paid back to the collector as he should prefer, either in the present by man, or in the hereafter with the grace of God.³¹

Again here the possibility of ambiguous ‘false accusations’ is raised, as is the possibility of the biological parents reclaiming their infant within ten days of exposing it, and a mechanism to deal with these possibilities is suggested. The possibility that parents might reclaim their child raises unanswerable questions about their motivations for abandoning the infant originally.

Across the literary sources there are numerous options offered for couples wishing to limit the size of their family. However, there is little offered to explain why, given the powerful emotional, cultural and financial motivations for married couples to have children, women or couples would want to avoid procreating.³² Two primary motivations for such

³¹ Vaison, c. 9 *De expositis, quia collata ab omnibus querela processit eos non misericordia iam, sed canibus exponi, quos colligere calumniarum metu quamvis infelix a praeceptis misericordiae mens humana detrectet, reservandum es, et secundum statuta fidelissimorum, piissimorum augustissimorumque principum quisquis expositum colligit ecclesiam contestetur, contestationem colligat, nihilominus de altario dominico die minister annuntiet, ut ab ecclesiastico expositum esse collectum, ut intra dies decem ab expositionis die expositum recipiat, si quis se probaverit agnovisse. Collectori pro ipsorum decem dierum misericordia, prout valuerit ad praesens retribuatur in perpetuum cum dei gratia, si voluerit, possideat. Corpus Christianorum, Ser. Lat. 148: 100-101. Mâcon c. 21;*

³² Only one source clearly addresses the issue, referenced by Noonan (1986: 155-59): an eighth century Irish collection of canons in a section entitled ‘Womanly Questions.’ This lists four reasons for women to attempt to control fertility through contraception or abortion, of which one refers to attempts to control a third party’s

strategies are offered: first, in theological literature, it is implied that women used contraception in order to engage in sexual intercourse for pleasure rather than procreation; secondly, particularly in secular and canon law, it is stated that it was financial considerations which motivated abortion and abandonment. Both almost certainly have some basis in reality. It is notable that the different genres not only focus on separate motivations, but also on different methods of family limitation. Legal texts are uninterested in the use of contraception, as they are (for the most part) uninterested in the spiritual salvation of their subjects. Even canon law never officially bans the use of contraception.³³ Religious texts such as sermons and devotional literature, on the other hand, are focused exclusively on personal salvation and thus are primarily interested in the spiritual crimes of preventing conception and aborting fetuses - and thus committing murder - rather than the more worldly concerns of abandonment.

It is the financial element however which has been seen in the secondary literature as the primary motivation for all strategies for controlling one's family size, but particularly post-partum strategies. Abandonment and infanticide are seen, by both the primary and modern literature, as the exclusive recourse of the poor, unable to raise the children that they are also unable to prevent from being born.³⁴ This explanation does not consider the possibility of richer parents abandoning their children, or of the potential efficacy of the available contraceptive treatments as argued by Riddle.³⁵ Nor does it engage with the question of abandoning disabled children, and further it does not consider the fact that both the images of markets and the stories of disabled children show children being abandoned or sold not as infants but as older children who could provide service. It seems that parents were

fertility ('Those who wish to cause sterility out of hostility') while a second refers to unmarried women engaging in illicit sexual relations (called 'simulated virgins'). The remaining two refer to married women whose sexual activity is licit. The first simply states that women wanted to 'avoid childbearing' while only the last offers any concrete motivation referring to economic considerations. However, this is a source far removed from both the temporal and geographical world of the late antique continental society and its usefulness as a source for this time is therefore deeply questionable.

³³ Again, this may be due to the conflation of abortion and contraception.

³⁴ Boswell, 1988: 200; Alexandre-Bidon & Lett, 2000: 17; Brissaud, 1972: 229-56; Brunt, 1971: 148; Shahar, 1978: 127; Nathan, 2000: 24.

³⁵ Some scholars have questioned how far abandonment was a technique used by richer parents, for example Boswell, 1984; but most have concluded that such questions are unanswerable. Vuolanto, 2012: 7

raising their ‘unwanted’ infants and ‘selling’ them into work once they reached older childhood. They may well have been profiting from their children by selling them into work, but not necessarily using this method as a strategy for controlling family size or alleviating the financial burden of feeding another person.

A further financial motivation can also be posited, one which derives directly from the incentives presented in the sources for reproduction and which speaks primarily to the rich: the desire not to split a patrimony into too many pieces. When primogeniture is not applied and each child is entitled to a portion of a property, having a large number of children could potentially be as risky and as damaging to the protection of a property as having none. This is frequently posited by scholars, such as John Boswell, but fails to take into account a number of factors clearly represented in the sources.³⁶ Further, it also overlooks the relative frequency of couples longing for a large amount of children, such as the senatorial couple of Gregory of Tours' *De Miraculis Sancti Martini Episcopi* who so desire a great many children that they agree to leave their entire estate to the church in exchange for the divine gift of many children; or Wadolen and Flavia in Jonas of Bobbio's *Vita Columbani* who finding themselves barren, agree to give their first born child as an oblate in order to be granted many more children; or the testimony of Avitus who claims that his mother consecrated her youngest daughter as a thanks to God for blessing her with so many children.³⁷ Finally, it is a common trope of *epithalimea* to wish for the couple to whom it is dedicated to have many children and grandchildren. Such cases testify to the possibility of the desire for many children overcoming anxiety regarding maintenance of a patrimony.

Finally, perhaps most effective deterrents to procreation and drivers towards abstinence, contraception and abortion are the inherent and great dangers of pregnancy and childbirth to the mother's health and life – which cannot have escaped any person of the post-Imperial world – provides an extremely strong motivating force in and of itself. Demographic

³⁶ Boswell, 1988: 200.

³⁷ Greg, VM 4.11; Jonas of Bobbio, *Vita Columbani*, 22; Avitus, *De Virg.* 4.

studies attest to the high rates of maternal and infant mortality, and it seems likely that most individuals in all social strata were intimately acquainted with the loss and sorrow that procreation could bring.³⁸ When childbearing can be seen as a risky and potential frightening endeavour, a woman's desire to limit how often she undertakes it cannot be surprising, particularly when the deeply affecting emotional responses of the surviving husband such as Dagulf's are taken into consideration. There is also possibly an awareness of such dangers, seen for example in Venantius's *vita* of Saint Germain in which Germain's mother, upon finding out she was pregnant with him, attempted to abort as the conception was too soon after the birth of her previous child.³⁹ Contraception and abortion could be used not only as a way of preventing the extension of a family, but also of protecting the existing members.

There are then a great many motivations, pressures and influences acting on individuals to encourage both the production of children, and the prevention or rejection of parenthood. How widespread the usage of contraceptive and abortive techniques, or post-partum abandonment and infanticide, was across the west is entirely obscure, glimpsed only through sparse references in literature which promotes moral reformation and which therefore has impetuses beyond accurately describing the situation. The only thing that is entirely clear is that all these strategies - other than abandonment - were actively discouraged by the Christian establishment. However, they potentially remained available to couples and likely they were all used to some degree. The strategies are split clearly into two categories, mostly due to the influence of Christianity. The first is ante-partum strategies such as contraception, sterilisation and abortion. These issues are mentioned only in Christian texts, due to the

³⁸ Toddman, 2007; 47: 82-85 estimates a maternal mortality rate of 25 in 1000 births based on comparable evidence from eighteenth-century England. Hanawalt, 1993: 43; 238 suggests 14.4 per 1000, rising to a huge 200 in 1000 when post-partum complications and those arising during pregnancy are taken into accounts based on evidence from fifteenth century Florence. For infant mortality, using the same data, Toddman suggests 300 in 1000 births. Parkin, 1992: 93 suggests 319 in 1000 births. In contrast, for 2006 the UN cites the maternal mortality rate for the UK at 6.7 per 100,000 births and the infant mortality rate at 5 per 1,000 births. (United Nations Statistic Division <http://unstats.un.org/unsd/demographic/sconcerns/mortality/mort2.htm> Table 15 Infant deaths and infant mortality rates, by urban/rural residence: 2002 – 2006 and Table 17 Maternal deaths and maternal death rates: 1997 – 2006. Accessed 27/10/10). Demographic studies of this kind for the distant past are, for the most part, wildly unreliable and usually based on data from drastically different times and locations on the assumption that pre-industrial societies were all broadly similar in such matters as infant and maternal mortality.

³⁹ Ven. Fort. *Vita Germani*.

strong Christian emphasis on the idea that life begins at the point of conception. This is not a belief held prior to Christianity, particularly not in the Roman world, and demonstrates the declining distinction between having a child and having an heir. The motivations offered for ante-partum strategies are primarily therefore linked to religious salvation - preventing a child from being conceived or born is murder, while sexual intercourse for reasons other than conception is also a sin. Thus, ante-partum strategies are spoken about and criticised only by a Christian authors, and a limited number of them. That all these authors were all male potentially obscures a further possible motivation for women: pregnancy and childbirth are dangerous pursuits and women may well have desired to limit the amount of times they exposed themselves to the risks inherent in procreation for them.

In the other category are post-partum strategies such as infanticide, abandonment and child selling. There is very little evidence to support widespread infanticide outside of texts with a clear moral purpose, and certainly Christians were keen to portray infanticide as a sin. Abandonment in the form of infant exposure has some supporting legal and canon evidence, but there is little in the literature that corresponds to the legal evidence. There is a slightly more substantial body of evidence which hints at wider patterns of ‘abandonment’ as the selling or giving away of a child in some capacity. The emphasis of this evidence, highlighted by the abandonment and care of disabled children, seems to be on the child's ability to work as being of great importance at a certain age, at which point they become either burdensome or profitable⁴⁰ This corresponds to some legal evidence but again is not well attested and all the surviving evidence is ambiguous at best. There is, however, no accurate way of estimating either how often couples rejected their new role and responsibilities as parents or that such abandonments were not done out of compassion rather than cruelty. The motivations offered in the literary texts emphasise from abandonment for the purpose of personal salvation by avoiding an abortion, but also highlight the possibility of abandonment for financial reasons. There remains some of legal evidence that the selling of children was

⁴⁰ This is a topic unfortunately outside of the scope of this project, but being explored by Christian Laes, see Laes 2012.

done to ensure their survival during times of famine for example, and it could be argued that this is what Cassiodorus was describing.⁴¹ For the most part, however, the majority of evidence concerning what has traditionally been seen as abandonment cannot be defined as such based on the evidence. Even that evidence which describes abandonment as it is commonly seen - infant exposure - acknowledges the possibility that biological parents might want to reclaim their infant; a possibility not much discussed in modern scholarship. The pressures which encouraged couples to procreate are very clear, encompassing wide concerns about the survival and protection of a family primarily expressed through anxieties about patrimony and the desire to have a legitimate heir, protection of an individual future and finally the emotional desire to produce and enjoy a child (or hoard of children) of one's own. Although these issues tend to be sharply separated in literature, in the lived experience of a couple existing within this cultural milieu they must have been intimately connected to one another. Thus, while both primary, Christian sources and more modern literature has developed moral panics about the prevalence of abortifacients and infanticide, the evidence points to abandonment more akin to fosterage, widespread use of child workers and a possible reliance on magical and herbal forms of contraception.⁴² The mingling of these concerns about patrimony, children and parental roles can be seen in the expression of the roles and responsibilities of father and mother in texts which cover the experiences and expectations that awaited individuals once they had survived the path through pregnancy and childbirth.

⁴¹ See 1.3.3 Although there were no particularly terrible famines, plagues or disasters at the time Cassiodorus was writing.

⁴² For a classic example of the moral panic about infanticide in the ancient and medieval world see Larry S. Milner's (an oncologist, not an historian and also founder of the Society for the Prevention of Infanticide) astonishingly titled *Hardness of Heart/Hardness of Life: The Stain of Human Infanticide* from 1998. He is drawing on the historiographic trends which stem from De Mause, 1974.

2.3.4 *The Emotional World of Fathers and Children*

There are no documented cases in the literary evidence of married couples remaining voluntarily childless, except in the rare cases of those who chose to remain forever virginal for religious reasons such as Injuriosus and his wife, although there are suggestions that involuntary infertility could be a problem. Infertile couples cured by divine miracle are a staple of hagiographical texts.¹ Caesarius of Arles includes in his sermon against abortion and contraception an exhortation to women to stop using potions to improve their fertility and encourage pregnancy. These suggest that there may well have been a thriving market for infertile couples looking for medical or magical solutions.² Becoming a parent is presented in the majority of normative and narrative sources, and likely in common discourse too, as an essential facet of a person's life course – for both men and women. The only alternative offered to those who did not want children was religious consecration, a choice which was not often an option open to or offered to entire populations, but was a mark of a spiritual, and usually cultural, elite.³ For men there was also the option of remaining childfree in an uncloistered religious role in the clergy, a path taken by Caesarius of Arles, Gregory of Tours, Venantius Fortunatus, Avitus of Vienne, Isidore and Leander of Seville to name but a few. Again, this was a path open only to men and predominantly to men of the aristocratic classes. Moreover, even this elite set of women were regularly treated as if they desired to have children by their male correspondents and vigorously reminded of the many dangers of motherhood.⁴ With the inevitability and desirability of parenthood so fundamentally embedded in cultural discourses of the post-Imperial world, a question mark remains over the issue of how parenthood changed the perceived place of men and women within society, and what cultural expectations were placed on them as mothers and fathers rather than just as women and men. It is a question that has rarely been asked, and where it has the answer has

¹ Eg. *Vita Columbani* 22; Greg. *VM* 4.11.

² Caesarius, *Serm* 51.

³ Atkinson, 1991: 238 ; Vuolanto, 2005 : 120 ; 2009.

⁴ See 2.1.1

often been that the effect of childbearing on parents was negligible, an inevitability that had no resounding effects bar the perpetuation of the family. For example, Philippe Ariès ‘saw the ancient family as the institution for the continuation of the patrimony, for providing training and socialisation of children for the good of wider society, none of which required emotional connections’ and this was a central tenet of much research concerning the post-Imperial family for many decades.⁵ Even Suzanne Wemple argued that there was no room for tenderness or compassion in a Frankish parent-child relationship as emotional connections were incompatible with the parental duty of training children to be obedient and disciplined.⁶ On the other hand, Rosenwein argues forcefully that strong emotional bonds did exist, were part of a dominant cultural milieu and that they could be freely expressed but in culturally defined terms which are perhaps not immediately obvious to a reader from outside of the culture in question.⁷ This section, and section 2.3.5, examines the cultural expectations of men and women as they became mothers and fathers, and how interactions between parents and children are constructed and displayed in emotional terms. In particular, these sections look at the role of property within these emotional interactions and attempts to understand how patrimony was conceptualised outside of the legal context, and whether Christian theology had an impact.

The emotional effects of bearing a child for the men and women of the early middle ages are relatively well studied in modern scholarship, and in the primary literature it is clear

⁵ Riddy & Goldberg, 2004: 2

⁶ 1983: 60

⁷ 2006:68 (on epitaphs); 92-94; 113-17; 122; 148-161. A potentially relevant analogy here is that of the 2011 memoir by Amy Chua: *Battle Hymn of the Tiger Mother* and her *Wall Street Journal* article ‘Why Chinese Mothers are Superior’ [<http://online.wsj.com/article/SB10001424052748704111504576059713528698754.html> accessed 8/01/11] accessed 12/01/11) in which she documents her parenting style as a Chinese mother compared to that of a modern ‘western’ mother. Throughout Chua emphasises her perceived role as the trainer of her two children and her responsibility to teach them to become high achieving members of society, a responsibility that involves treating her children in what many western readers saw as a brutal and extreme manner. She explains that her mothering style is not one enacted out of being unloving, but as an expression of her huge love for and extreme pride in her daughters. Chua’s work gives an interestingly analogous glimpse into the way in which parenting behaviours which seem to modern western readers to be abusive can be conceptualised very differently, and enacted with very different intentions

that they are powerful for both new mothers and fathers.⁸ It is also a dominant topic for conversation in a variety of primary texts, far more so than the practical realities of raising and educating a child, and even more than the issue of inheritance. Indeed, where inheritance and patrimony is raised as an issue it is commonly brought up with intense emotional overtones, as an expression of the love a parent – particularly a father – has for his children. This attitude that patrimony was an expression of love and inclusion is most clearly represented in two early texts: a letter from Cassiodorus' *Variae* and Salvian's treatise *De Ecclesiae*. In the first, a letter from King Theodoric to a patrician named Symmachus choosing him to judge the case of a man who has struck his father dated to c. 507-12.⁹ The letter focuses heavily on the 'naturalness' of paternal love through comparisons to the relationship between various birds and their offspring. In the middle of this, while lamenting the shattering tragedy of the crime that has been committed, Cassiodorus writes:

Children are nurtured from their infancy; for them we work; for them we seek riches; and although each man may think his property ample for himself, when fathers continue to pursue it, they sin for the next generation rather than themselves....Shall we not earn the love of those for whose sake we consent to suffer death? A careful father, in the quest for foreign goods to leave his offspring, does not shun the seas themselves, tossed by savage storms.¹⁰

This demonstrates not only that patrimony could be seen as a facet of a father-child relationship in terms much more significant than merely financial, but also that fatherhood was seen as an event which shifted a man's priorities. Ideally, he can no longer be content with his properties, but is compelled to provide more for his offspring; he no longer works for

⁸ The best overviews of modern approaches to parent/child relationships are Barbara Hanawalt's 2002 review article 'medievalists and the Study of Childhood' and Pauline Stafford's review article of 2001 'Parents and Children in the Early middle ages' both of which consider the questions which have consumed the study of parents and children for the past few decades.

⁹ Cass. *Var.* 2.14. Dating from S.J.B. Barnish's 1992 translation.

¹⁰ Cass. *Var.* 2.14.2. *nutriuntur a parvulis, ipsis laboratur, ipsis divitiae conquiruntur: et cum sibi unusquisque credat abundare quod possidet, cum a patribus adhuc quaeritur, pro altera potius aetate peccatur. pro dolor! non merebimur eorum affectum, pro quibus subire non recusamus exitium? Maria ipsa saevis tempestatibus excitata genitoris cura non refugit, ut peregrinis mercibus adquirat quod propriae suboli derelinquat.*

himself and for his own advancement but for the good of the next generation, risking his life in the process. This is certainly an idealised and probably simplified portrayal of the balance of duties which made up a father/child relationship but nonetheless it is one grounded in the reality of a genuine trial of a man for failing to adhere to the bonds of this relationship by rewarding his father with physical violence.

The second work to frame patrimony as a pure expression of paternal love and of the parent/child relationship is Salvian's treatise which aims to persuade readers, both male and female, to leave a portion of their properties to the church.¹¹ A very significant portion of this treatise is dedicated to reassuring his readers that by doing so, and thereby diminishing their children's inheritance, they are not diminishing the love they have for their children:

What is so savage, so inhuman, so inimical to law that if we – who profess that enemies should be loved – say that children should not be loved.¹²

He emphasises again and again that the love of a child is natural, that they 'should be loved in the first place and above all things,' including oneself.¹³ However, he tells his reader, in a good Christian this love should not manifest itself in gold and riches, but in the eternal protection of a Christian upbringing.¹⁴ He orders them to 'lay-up treasures of good training and not of money...bestow everlasting gifts, not gifts that will perish.'¹⁵ Salvian does not encourage the total disinheritance of children, particularly in his tirade against those who do not include consecrated children in their inheritance. Again here the giving of a large and intact patrimony for one's children is presented as being as an ultimate expression of love (*amare*), asking 'Do you hate God so much that you cannot even love your children for the

¹¹ The egalitarian nature of his message is made clear at the very end of his treatise (*De Ecc.* 4.8).

¹² Salvian, *De Ecc.* 1.4.2-8 *quid enim tam ferum, tam inhumanum, tam legi demulum, quam si non amandos dicamus filios qui amandos fatemur inimicos.*

¹³ Salvian, *De Ecc.* 1.4.9-10 (*non solem enim amandos dicimus filios sed praecipue ac super omnia amandos*); 63-4;

¹⁴ Salvian, *De Ecc.* 1.4.

¹⁵ Salvian, *De Ecc.* 3.12.68-9

sole reason that they belong to God?’¹⁶ This question not only frames the giving of patrimony as love, but also the withholding of such as hatred. Salvian’s treatise is a powerful indicator that the creation and protection of a large patrimony was viewed as an intimate and deeply emotional act signifying the immense love a father had for the child. Further, Salvian emphasises again and again how natural and special parental love was seen to be, and how transformative it was in focusing a parent’s attention away from themselves and their own salvation and onto their child’s future happiness.¹⁷ This is a sentiment echoed in another letter of Cassiodorus in which he writes ‘such is the force of family ties that no-one will think himself insulted if he realises that another’s offspring has been preferred to him.’¹⁸

Fatherhood, then, was seen as and could be discussed as emotionally transformative and important. The production of a child being an event which is expected to realign a person’s interests towards the child, with their future welfare becoming more important than even one’s own life. This is seen in the hagiographies where weeping, distressed parents bring their children to be healed or raised from the dead or rage in grief at their child’s decision to take a religious life; in letters from fathers to sons (never to daughters) exhorting them to live right, advising them, forgiving their mistakes and lavishing money upon them, and in theological discourse.¹⁹ Such self-sacrificing transformation is used as the signifier of a true parent/child relationship, for example by Leander of Seville when he says ‘I love [Isidore] as a son, and would place nothing on earth above my concern for him and would

¹⁶ Salvian, *De Ecc* 3.5-8. *Itane tantum odisti deum ut possis etiam filios tuos ob hoc tantum quia deum pertinent, non amare?*

¹⁷ This is particularly clear as he urges parents to love their children second to themselves, and not prefer them to their own soul. Salvian, *De Ecc* 3.4.4-5 (*Ne ullum omnino aliquis quamvis carissimum pignus animae suae praeferat*); 3.10.56-8 (*Amate itaque, non obsistimus, amate filios uestros, sed tamen secundo a uobis gradu*).

¹⁸ Cass. *Var.* 12.5.

¹⁹ On hagiography and parental relationships see Heene, 1997; Crawford, 1999 both of whom examine children being brought to healing sanctuaries and which parent is responsible for them; for grieving parents see Papula *GC* 16; Hilary’s *Vita Honorati* 1-3; *Vita Rusticulae* 1-5; *Vita Columbanii* 6-8; On letters: see Sid. *Apoll. Epp.* 3.13; 5.11; 8.6; 9.1. Ruricius is a particularly good example as he admonishes his son for his un-Christian lifestyle (*Ep* 2.24) but also provides him with the funds to continue it (*Ep* 2.25); he is very focused on protecting his son’s souls (2.28) and also on protecting them from worldly harm, an indulgence his sons are so secure in that they openly take advantage of (2.57-58); in theological discourse see Salvian’s *De Gub* 4.9-10 in which paternal love is given an analogy in God’s love for mankind as the most all consuming and encompassing manifestation of love, also Cassiodorus’s *Psalms* in which both paternal and maternal love and being divine manifestations form significant themes throughout the work (e.g. 2.7; 5.9; 6.1; 6.3; 7.18; 16.6; 26.16; 33.12; 36.15; 43.3; 50.18; 52.3; 54.1; 65.19; 76.8; 80.15; 102.13; 106.20; 127.1; 144.17).

give my life for the love of him.’²⁰ Meanwhile, the lack of such a self-denying feeling is used as an accusation of spectacular moral turpitude, for example in the *Royal Frankish Chronicles* where the honesty of Tassilo of Bavaria is damned with the accusation that he ‘would rather let ten sons perish than keep an oath’ (i.e. was so dishonest that he would more easily watch ten sons die than keep his word) while Caesarius of Arles many centuries earlier declared that men who did not love their sons were ‘certainly detestable’ and surpassed in morality by snakes.²¹

These snippets demonstrate very clearly that fatherhood was expected to cause an emotional transformation, prompting self-sacrifice and the development of an overwhelming love. This emotional connection of parent and child is the issue which consumes most writing on the subject of parenthood throughout the post-Imperial west. There is a clear ideological difference, particularly in theological discourse, between maternal and paternal care, with mothers being constructed as nurturing and nourishing, while fathers are constructed through a love demonstrated primarily through discipline and education, but also through play.²²

It is the role of disciplinarian and educator that is the most dominant in depictions or and discourses regarding fathers, and it appears that this responsibility for guiding and controlling a child’s behaviour is the most significant practical change to a man’s life once he becomes a father. There are many passionate exhortations for men to be examples to their children of perfect Christian behaviour, notably by Caesarius of Arles.²³ There is also the strong expectation that fathers will become role models for their children, particularly their sons, with their lives becoming an example for their children to follow. Fatherhood is thus presented as a great responsibility, bringing stability to a young man’s life for example by Sidonius Apollinaris who notes with relief that an formally wild acquaintance of his has

²⁰ Leander, *Regula* PL 72 892D *Quem eum ego ut vere filium habeam, nec temporale aliquid eius charitati praeponam, atque in eius pronus dilectione recumbam, tanto cum charius dilege.*

²¹ *Royal Frankish Chronicle* 788; *Caes. Sermon*. 21.2.

²² For example, Cass, *Psalms*, 54.1; 56.2; *Reguli Magistri* I, 2.30-31; Salvian, *De Gub.* 1.3; Greg, *Hist* 1.4; Caes, *Serm.* 13.2; 154.2; Ven Fort, *Ep* 11.6.

²³ Caes, *Serm.* 13.2;

finally married a noble woman because the arrival of children will ensure that he remains on a virtuous path in life.²⁴

An even stronger theme running through the literary texts is that which encourages the physical punishment of children. This motif is one which is very powerful in the post-Imperial west, being a facet of almost every discussion of fatherhood and what being a father entails in a Christian setting and is related closely to the parallel Christian motif of kindly, loving physical punishment of children. This frames paternal punishment and discipline as an expression of Christian paternal love on a par with the giving of the patrimony, but without the worldly connotations. It is also an area that is clearly posited as being exclusively within the remit of a father, with mothers never being depicted as disciplinarians or meting out punishments for misbehaviour.²⁵ Theodore de Bruyn traced this concept through late antiquity and notes that it arises from the biblical quote: ‘Whom the Lord loves, he rebukes and he scourges every son he receives’ repeated at Hebrews 12:16 and Proverbs 3:12, and was popularised in late antiquity by Augustine.²⁶ This image of father as loving disciplinarian is theological, as is shown by Salvian’s usage of the image to explain why God has allowed the Romans to be defeated by the barbarians, but is also related often to daily life. Salvian expands his version of fatherly punishment at length in his theological treatise *On the Governance of God*. He argues that the Roman losses were punishments from God for the many sins of the Gallo-Roman people, primarily adultery as discussed in the previous chapter, but that these punishments were the ultimate proof of God’s love for the Romans, as a father only punishes the child he wishes to bring back into his embrace. By the late fourth century the notion of God as the loving father, punishing his children for their own spiritual good, was firmly embedded in the Christian consciousness, a new variation on the classical Roman ideal of a father who punishes for the good of the wider family and society.²⁷

²⁴ Sid. Apoll. Ap *Ep* 9,6.

²⁵ On the development of this concept throughout early Christian literature la Bonnardière, 1975: 101-23; Poque, 1984: 193-224; De Bruyn, 1999.

²⁶ According to de Bruyn Augustine refers to these passages 52 times in his works ‘far more than any of his predecessors in the Latin Christian tradition.’ (1999: 249)

²⁷ *De Gub.* 3.10-4.26; 7.3-7.20; 7.22-7.23

This is especially clear in Salvian's use of the loving paternal God as a metaphor for the relationship between a father and child. He states that God granted mortals with the capacity to love their offspring in order that they can understand how much He loves them in order to truly highlight the strength of God's love.²⁸ This rhetorical trick uses Augustine's concept of the loving, punishing father and reframes it from something to be feared, into a tangible demonstration of a father's love, a trick that can only work if the Salvian's audience understand the concept of mortal paternal love and punishment in the way that Salvian describes it. Thus, Cassiodorus in his commentary on the Psalms not only describes a father as a 'ruler' and a 'lord' but advises his readers that God has ordained that children be schooled in love and control.²⁹

This same concept is used in a more practical, but still theologically related, sense by Ruricius as he describes in a letter to his bishop Faustus his own role as Faustus' student of Christian learning, his metaphorical son. He writes that he would welcome any punishment from Faustus for his sins for 'it is better for me, indeed, to weep because of the father than, condemned by the father, to be disinherited,' and goes on to state that a pious father 'disrupts so that [he] may correct' through blows and whipping.³⁰ He frames his relationship with his bishop as that of a father and son within this model of a loving father who punishes his children to demonstrate his love in order to not be forced to employ the ultimate punishment of disinheritance. This too is the model which is implied by Sidonius in his statement that it is better to think of a child's future prosperity than of their present comfort. Finally, Caesarius of Arles openly advocates whipping and beating one's children in his sermons – many of which are clear abridgments of Augustinian writing, in order to ensure they live 'chastely, justly and soberly.'³¹ Caesarius as bishop of Arles was one of the primary conduits for the

²⁸ Salvian, *De Gub.* 4.9 'From Him we have received all the love where with we love our children' *ab ipso utique affectum omnem quo pignora nostra amamus accepimus*

²⁹ Cass, *Psalms* 2.9; 15.5; 102.13; 116.5.

³⁰ Ruricius Ep. 1.2. The prodigal son: Luke 15:11-32. Although, as we shall see, in his own paternal behaviours he bears far more relation to the latter than the former.

³¹ Caesarius of Arles, *Sermons* 13; 185.1; 200.6

teachings and moral philosophies of Augustine to move into Gaul.³²

Through this Christianising process, the image of the angry, violent father morphs through the association with the notion of God the Father of humanity and the importance of suffering for intangible reward in Christian thought to become something more explicitly connected with affection and care for the individual, over the common, good. The father whipping the child is no longer the classical Roman image of brutality, of a wicked father mistreating his offspring as slaves as described by Richard Saller, but an idealised expression of a pure love performed by a superlative father.³³ This is also clearly influenced by the classical Roman ideal of a *paterfamilias*. For example, Sidonius places his persona as a father within a reimagined classical tradition drawn from republican Roman literature as he berates his friend Simplicus for allowing his sons to be ‘too secure in [his] affections’ causing them to be difficult and unruly students.³⁴ In his descriptions of the education of children he too invokes the classical ideal of unbending strictness with repeated references to students having their education beaten into them, including nostalgic shared memories of his own childhood.³⁵ He maintains a clear ideal of exemplary fatherhood as a man who would rather help his child than to please, describing this man as ‘the stern father, who thinks more of his children's real advantage than of their present comfort.’³⁶ It is within this frame of austerity that Sidonius places himself as a father in his described interactions with his children even in their adulthood, placing the encouragement through strict discipline of their political accomplishments and their enhancing of the family name at the centre of the father-child relationship. In an overtly classicizing style, Sidonius creates a persona for himself in his letters as a solid Roman republican senator (or his interpretation of such a figure) drawn from his classical education.

Sidonius is obviously very proud of his classical education, and leaves no opportunity

³² Klingshirn, 1994: 9-12

³³ Saller, 1994 notes that in classical Roman discourse, the whip was reserved for slaves and never sons.

³⁴ Sid. Apoll. Epp. 5.16; 5.4.

³⁵ Sid. Apoll. Epp. 2.0; 4.1;

³⁶ Sid. Apoll. Ep. 7.9 *severis patribus comparandus, qui iuvenum filiorum non tam cogitant vota quam commoda*

to display it untouched. His *epithalimium*, for example, is a repository of obscure and difficult references to Greek myth and literature. His deep attachment to Rome and an idealized Roman political life is also made very clear in his *epistulae* through his shock and disappointment that some would decide not to involve themselves in such pursuits, a decision he considers shameful.³⁷ Nonetheless, when moments of crisis arise with his children, and the children of his friends, he finds he is unable to act the part outside of his writing.³⁸ Equally in contexts other than his own *epistulae*, removed from his own persona, he is able and willing to describe an entirely different model of father-child relations which bears very little resemblance to the model he has created for himself. It is notable that this form of expression of love is only employed when describing idealised father-son relations and there is no corresponding discourse which relates to father-daughter relationships. Equally, both Gregory the Great and Caesarius of Arles describe the terrible consequences that arise from an overly indulgent parent. Caesarius refers to the biblical events of the books of Samuel claiming that Eli's failure to rebuke his sons caused the deaths of 15,000 people; Gregory is marginally less melodramatic, describing a child whose indulgent father had failed to raise him properly dying surrounded by visions of demons clamouring for his soul and lamenting that his father had not disciplined him properly and allowed him to go to heaven.³⁹

It appears that this image was a powerful one in idealising Christian discourse, although how far it was internalised by Christian men as a model to emulate is difficult to ascertain as there are no documented interactions between fathers and their infant children that involve disobedience or punishment. The only hint comes from Paulinus of Pella who assures his audience that his father raised him with 'due control.' There are, however, a few images of father-infant relations in classicising and idealising texts and again they demonstrate a model which describes great affection and love between father and child. This is particularly evident in Sidonius Apollinaris's panegyric for the emperor Anthemius in

³⁷ *Epp.* 1.3; 1.6; 5.16; 7.7; 8.8. Also his horror at the adoption of Germanic languages over Latin: *Epp.* 3.3; 4.8; 5.5

³⁸ Sid. Apoll. *Epp.* 5.19; 4.23.

³⁹ Caes, *Ep* 14b; Gregory, *Dial.* 3.18

which he describes the emperor as an infant greeting his father on his return from war:

But when the early years of infancy were past he would clamber over his father's armour and – gripping with his two forearms the neck pressed by close fitting metal – he would loosen the helmet and find entrance for his livid kisses.⁴⁰

This is an image of father-child relations that is alien both to Sidonius' descriptions of his own interactions with his own young children and from any classical description. It is, however, in line with late antique and Christian depictions of a father greeting his infant child and is indicative of this changing imagery. In its focus on the neck, it is paralleled by two significant sources - one later and one earlier. The earlier is Jerome for whom the image of a child hanging on a man's neck is a significant topos.⁴¹ Although he rarely relates this specifically to fathers, it is an image that he repeats regularly to demonstrate an affectionate relationship between a child or woman and a male family member and was certainly an influence on the later adoption of this imagery in secular contexts. The later source is Venantius Fortunatus who ends his consolatio to the Merovingian king and queen Chilperic I and Fredegund on the deaths of their young sons with an idealized image of Chilperic playing with his future child, sent by God to replace the deceased, and a wish for the child to 'snuggle around his parent's necks.'⁴² These images of a father being intimate and affectionate with his child all appear in idealised and romanticised scenarios suggesting that this image was evolving into an ideal to be aspired to and a model of superlative father-child relations. In the sources which are more focused on theological than classical concerns, however, there is a clear expectation that becoming a father brings with it the responsibility to socialise and educate one's children through punishment and rigid discipline, and to view that discipline as an expression of a particularly paternal love.

⁴⁰ Sid. Apoll. *Panegyric* 134-7. *At postquam primos infans exagerat annos, reptabat super arma patris, quamque arta terebat lamina cervicam gemina complexus ab ulna livida laxatis intrabat at oscula cristis.*

⁴¹ For the most part Jerome relates the image of a child hanging on a man's neck to uncles and grandfathers. He also uses the image to describe vulnerable women on several occasions. See for example *Epp.* 3; 14; 54; 60; 79; 107; 128.

⁴² Venantius Fortunatus *Carm.* 9.2. *Ille tibi poterit de coniuge cui pater adludat, ubere mater alat, qui madius verstri reprans per colla parentum.*

As this discourse of affective fatherhood gained cultural currency, another facet gradually appears to be emerging by the sixth century: that of a concept of procreation as an emotionally fulfilling endeavour, as well as being a necessary requirement to complete a marriage contract. By the sixth century there is some discussion of childbirth and children in a manner one which depicts fatherhood as a role to be attained in its own right simply for ‘the pleasure of having children and enjoying them to the full.’⁴³ There are two very clear examples of this from two contemporary Christian authors of the sixth century: Venantius Fortunatus and Gregory of Tours.

Venantius Fortunatus discusses fatherhood in just one place – a consolation poem to a man named Dagulf commemorating the death of his wife Vilithuta and their son during childbirth. Unlike many Christian writers of the period, Venantius refrains from an insistence upon controlled mourning under the theological justification that excessive grief was to question God’s will and the idea of eternal life, but instead wrote a letter which maintains an emotional resonance today in his descriptions of Vilithuta’s idealised life and their love for one another.⁴⁴ Venantius deliberately heightens the pathos throughout the poem with emotive descriptions of a perfect woman and marriage which peaks with his account of the woman and child’s death and Dagulf’s reaction to the tragedy.

Despite Venantius’ earlier focus on Vilithuta and her life and marriage, when recounting Dagulf’s reaction to the loss of his wife and child he chooses to emphasise the death of the child over and above the woman in his interpretation of Dagulf’s reaction. This fictionalised version of Dagulf’s thought process is extremely important however, as it describes an apparently acceptable and idealised masculine response to such an incident, one in which Dagulf wants to be a father and who suffers enormous disappointment that he will not have a child to ‘love’ and ‘possess.’ Furthermore, with his remark that Dagulf desired to be ‘one of three’ he suggests that a child could be viewed and depicted as completing a

⁴³ Salvian Ep. 4.2.

⁴⁴ Ven. Fort. *Carm.* 4.26. 53 : *tertius esse pater cupiens, heu, solus habetur; 65-6 pro vixdum genito lacrimas iam soluit humato, uidet quod fleret, non quot haberet amor.*

nuclear family unit as well as an individual desire to be a father.

As this poem is designed to be an epitaph, it can be assumed to depict idealising imagery that depicts the best possible image of both husband and wife to a wider audience, and thus Venantius expects that this audience will understand and empathise with Dagulf. Venantius refers to a shared understanding between himself and his readers with regards to fatherhood and expresses it in emotional language to induce an emotional response from his audience, a shared understanding that fatherhood simply for the pleasure of loving and possessing a child was a laudable ambition and that the frustration of that ambition could be considered emotionally devastating.

The second example is found in Gregory of Tours' collection of the miracles of Saint Martin of Tours. This work, as with most hagiographical texts of the period, was written as a series of vignettes depicting troubled or ill lay people who are helped or cured by the divinely sanctioned intercession of the saint. Throughout late antique and medieval hagiography fathers are a constant presence with sick or deceased children grieving or searching for help. Many are depicted as being with their wives, but many too are shown to be single parents and apparently the sole carers. Gregory includes in his multitude of miracle tales a great many father and child relationships, in all of which the father is openly and unashamedly grief-stricken, often displaying such emotions with public emotional gestures the least of which would be calling upon the local holy man or holy tomb for divine assistance.⁴⁵ In this particular vignette, a new aspect is added to a familiar tale. Gregory describes an infant whose mother died in childbirth and who is now refusing to take milk and gradually dying. His sole guardian is his father, who Gregory portrays as grieving, scared and desperate to cure his son. Gregory describes this man as desiring his son to be cured because 'he was the only reminder of his wife's love.'⁴⁶ Their son here is again depicted as a part of the two people and his birth as an expression of a husband and wife's love for one another. Again this

⁴⁵ For example: *Miracles of Saint Martin*: 1.26; 30; 2.14; 3.2; 6; 27; 41; 51; 4.3; 14; 18; *Miracles of Tomb of Saint Julian* 5; 6; 38; 39; See Van Dam, 1993 for the best overview of Gregory's miracle tales.

⁴⁶ *Miracles of Saint Martin* 43. *Erat enim unicam patri de uxorial dicetuione quodam memoriale*

appears in literature which is by nature morally unambiguous, containing only one dimensional characters who tend to be simply ‘good’ or ‘bad’ Christians. That this passage would be recorded in such demonstrative detail is striking and suggests that the literary discourses which allowed men to be depicted openly and publicly grieving and worrying about their children without embarrassment or shame had developed into strong cultural assumptions about how fathers acted and what fatherhood was.

These two passages contain many similarities: first they both concern a man facing the deaths of his wife and his child and both describe his emotional response to such an incident in a similarly emotive manner; second, each scenario occurs in stylised genres of literature, genres which for good reasons tend towards depicting only ideal behaviours; third, each text is composed by men who chose to never marry and to never have children and so neither can describe such scenes from any semblance of personal experience. These similarities strongly suggest that the image of the emotionally engaged father has by the sixth century gained such cultural currency as to be almost a trope of literature in its own right.

For men then, becoming a parent brings about three significant changes to an individual’s life and expected behaviour: first, there is a huge emotional connection made which is expected to result in the refocusing of one’s attentions onto the wellbeing of the child; secondly, the man becomes redefined as a ‘breadwinner,’ compelled to extend his property for his child’s present and future financial security; finally, the man takes on the responsibility of being the child’s primary educator and – for sons – role model. Becoming a father can be seen as the moment of entering adulthood to an extent, as it is through the role of father that an individual is most clearly expected to take on the responsibilities of a fully mature man. However the image that ‘breadwinner’ and role model implies, of distant and severe *paterfamilias*, is not the only image which is supported in the source material. Affectionate and playful relations between fathers and children are idealised and encouraged as models to aspire to, and fathers are regularly depicted as being intimately involved with

their children as playmates and as carers. Again a clear division is seen between Christian theological concerns, ideals and images and those which are classisicing or at least focused on more worldly concerns. The spread of Christian ideals can be seen to be affecting the ways in which men portray themselves as fathers and the images that they draw upon to make their points understandbale and relevant to their audiences.

2.3.5 Mothers, Children and Nurturing

A similar, although less overt, series of developments can be seen concerning motherhood in the post-Imperial world. In 1988, the author of the seminal work on Roman motherhood Suzanne Dixon wrote that ‘the Roman mother was not associated with the young child or with indiscriminating tenderness...but was viewed primarily as the transmitter of traditional morality - ideally, a firm disciplinarian.’¹ In 1996, John Carmi Parsons and Bonnie Wheeler wrote in their volume on medieval Mothering that the primary facet of the medieval mother was affection characterised by nurturing behaviour.² Clearly something changed in the dominant conception of motherhood between the Roman, late antique and high medieval periods.³ In this section I examine these changes and argue that, as with almost all other changes, this was primarily fuelled by Christianity. Mothers are not common figures in post-Imperial literature of any genre, not least because men tend to be writing about themselves. Motherhood is overlooked on a number of levels and there are few overt models of motherhood or motherly behaviour offered for women to emulate. Even more problematically, there are very few depictions of mothers interacting with their children.⁴ While in earlier Christian centuries the roles and responsibilities of Christian women within

¹ Dixon, 1988: 233

² Carmi Parsons & Wheeler, 1996: ix

³ Contra Nathan, 2000 especially 185-89 in which he lays out Christianity’s ‘negligible effect’ on behaviours in Roman family.

⁴ Dhoudais an obvious exception but lies outside of the timeframe of this thesis, being Carolingian. However, her *Handbook* for her son is a reamarkable source for a mother’s self image. For recent work on Dhouda see, Nelson, 2011; Claussen, 1990;

the household formed a central part of Christian discourse on many topics, after the fourth century and before the eleventh women returned to being all but invisible in the sources.⁵ During this period, neither the misogynistic diatribes nor the icon of Mary as mother is prominent in any Christian discourse. Certainly, there is a considerable decline in the explicit discussion of female roles and behaviours and women as a whole are rather less visible overall.⁶ To consider how motherhood affected a woman's life in any real terms therefore is difficult. The main facet of motherhood which is presented in the sources, across genres, is the notion that a woman was expected to be primarily involved with and attached to her child both emotionally and practically.⁷

The first model offered by Christianity was of course virginity: the possibility of renouncing biological motherhood and womanhood all together. But even in encouraging virginity, and denigrating fecundity, Christian writers drew on motherhood as a model and developed the image of the spiritual mother. At first, the idea of spiritual motherhood remained heavily connected to the Roman idea of mother as educator, and the spiritual mother became one, male or female, who chastely heard the Word of God, nurtured it within themselves, and laboured to generate the *Logos* again either through personal conversion, the conversion of others or the nurturing of others.⁸ In the third century, the concept of nurturing

⁵ Cameron, 1989a; Cameron, 1994; . Clark, 1981; Burrus, 1994; Cameron, 1989; Macdonald, 1988; Braun, 2002; Radford Reuther, Clark, E.A. 1986; 1983; Shaw, 1996; Brown, 1987; Walker, 1987; Elm, 1994; Pagels, 1988; Beal & Gunn, 1997; Clark, 1998 among many others.

⁶ Burnett, 2009:100.; Shahar, 1983: 103; Rubin, 2009: 33 argues that Mary was an influence on the construction of the Christian family in the early Christian centuries, but her examples of Augustine, Jerome and Ambrose all focus overwhelmingly on her role as a wife and on the construction/development of Christian marriage over her role as biological mother and parenthood. She appears to have been presented as a mother in late-Roman catacombs, however, particularly in nativity scenes (Rubin, 2009: 23-24). See also Nathan, 2000: 150 who describes Mary as an 'unsatisfactory model for women who have given birth' as she is presented as a virgin not a mother.

⁷ The Merovingian queens who are profiled so strongly by Gregory of Tours are of course an exception. However, as has been noted previously, their concerns are so alien from the rest of their subjects, and the incidents so unlike the rest of the surviving literature, this thesis has excluded them. For an overview of the queens see Stafford, 1983 & 1997.

⁸ Thus, in the life of the third-century Saint Eugenia, who disguised herself as a man to enter an all male ascetic community, and was swiftly made deacon before being discovered and tried. Her biographer is able to invoke the image of the virginal but fecund Bride of Christ daily as a powerful metaphor in her defence saying of her 'This man [i.e. Christ] himself has a virgin for a wife, who creates children for him every day, [who] bears him innumerable children [since] she joins her flesh with his flesh every day'. She is on trial for licentious behaviour in the guise of a man. *Vitae Eugeniae* 27 (cited in De Nie, 1995: 129) In Methodius, St Paul becomes a mother; while in Clement of Alexandria, it is God. Southon, 2008

was beginning to take precedence over the concept of educating and disciplining in the Christian concept of an idealised mother. Gail Patterson Corrington in particular has demonstrated the evolution of the language of spiritual breastfeeding and the ‘milk’ of spiritual nourishment in writers such as Clement of Alexandria and Cyprian. Clement for example wrote that: ‘As nurses nourish new-born children on milk, so do I also by the Word, the milk of Christ, instilling into you spiritual nutriment.’⁹ Even when describing God as father, he uses the nurturing imagery of motherhood describing God supplying his children with the nourishing milk of love from his breast. It is certainly significant that when considering maternal roles, it is that of the nursing mother and infant which Clement reaches for, not the strict educating mother. This role now belongs to the father. Importantly too, the discourse of spiritual motherhood and the nurturing mother is quite explicitly removed from the female biological experience and given to men.

The image of the distant, strict mother who places the state before her child is already replaced with the image of the caring mother, cradling her child to give him the ‘milk of (spiritual) nourishment’ with the emphasis firmly on the individual salvation of the child. This draws explicitly on the themes of the New Testament, which encouraged Christians to envisage themselves as helpless infants, reborn in baptism with the Church nurturing and protecting them. Thus, the imagery of the Church as mother is passed to the (male) representatives of the church and gradually becomes idealised imagery for biological mothers too. By the fourth century, this image of the mother as carer rather than educator was firmly attached to biological motherhood as well as the spiritual. Even Jerome, a man who had an unusual relationship with women and the idea of motherhood, most famous for saying that the only reason to have children was to produce more virgins, described Paula as a mother: ‘Why, mother, grudge your daughter her virginity? She has been reared on your milk, she has come from your body, she has grown strong in your arms. Your watchful love kept her safe.’¹⁰

⁹ Clement, *Paed.* 1.5. 42.1-2; Cyp, *De Ecc. Unit. Cath.* 6.6. Patterson Corrington, 1989

¹⁰ Jerome, *Ep.* 22. *Quid innides mater, filiae? Tuo lacte nutrita est, tuis educate visceribus in tuo adolevit sinu, tu illam sedula pietate servasti.*

To quote Clarissa Atkinson: ‘The mother of that passage is nurturing, strengthening, protective and loving.’¹¹ In a later epistle he described the difficulties of motherhood, but even here he emphasises the mother as physically caring and nurturing:

She carried you long and she nursed you for many months; her gentle love bore with the peevish ways of your infancy. She washed your soiled napkins and often soiled her hands with their nastiness. She sat by your bed when you were ill and was patient with your sickness.¹²

These are not the images of motherhood that the classical Romans played with or promoted. The physical relationship between the mother and child is heavily emphasised by Christian writers, both to glorify and undermine biological motherhood, in a way that Roman writers would not countenance. Christian writers and theologians very quickly moved away from the Roman image of ideal motherhood and created their own model, a model which focused on the mother’s nurturing role, and their bodies, first and foremost. While the notion of considering an unmarried girl through their bodies is entirely absent from the literature, as they are defined merely by what they are not, once a woman had become a mother her body becomes much more important. All descriptions of childbirth and acts of motherhood are descriptions of physical behaviours, emphasising physical contact in a way that is not mirrored by descriptions of paternal behaviours. Descriptions of childbirth overwhelmingly derive from letters written by men to encourage consecrated virgins to remain virginal and therefore are calculated to be as grotesque and violent as is possible, although one suspects (and presumably the recipients did too) that in a pre-medical age they were often distressingly

¹¹ Atkinson, 1991: 69

¹² Jerome, *Ep* 117.4 *Ille te diu portavit, diu aluit et difficiliores infantiae mores blanda pietate sustinuit. Lavit pannorum sordes et immundo saepe foedata est stercore. Adsedit aegrotanti et, quae propter te sua fastidia sustinuerat, tua quoque passa est.* See Tibbetts Schulenberg, 1998 : 211-15 for more on Jerome’s theories of motherhood.

accurate.¹³ These descriptions reduce motherhood to a violent and disturbing biological act devoid of any further meaning in order to encourage and glorify the act of ‘spiritual motherhood.’¹⁴ Furthermore, in spiritual discourse, where the Church or a superlative (usually male) spiritual teacher is called mother they are given the physical characteristic of motherhood: the swollen belly, the labour, the lactating breasts, the protective arms.¹⁵ Spiritual fathers, meanwhile, are those who educate their spiritual children, prepare their career and guide them through it, punish them when they stray and look on with a proud eye when they succeed.¹⁶

The obvious question then is what caused such changes in the conceptualisation of motherhood. Christianity provides the obvious answer, as each of the surviving sources from this period is heavily steeped in Christian rhetoric however hard they apply their classical education. The most immediate possible answer is that offered by the feminist theologians and historians of the 1970s: early Christian male writers and, as a result, early Christianity worked to fundamentally undermine the role of women as teachers.¹⁷ This sentiment is certainly seen in a great deal of early Christian writing, stemming from the statement of Paul in 1 Timothy ‘But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence.’¹⁸ Such a prevalent discourse of woman’s God-given inability to teach could certainly have had a corresponding effect on the construction role of women as Christian

¹³ See 2.2.3 Avitus, *De Virg*

¹⁴ Atkinson, 1991: 26; 238.

¹⁵ This is not a common trope in this period, not gaining true ground until later centuries (Bynum, 1992) but does occur occasionally. The image of male spiritual leaders as mothers appears as early as the Apocryphal Acts of the Gospels, where it is used to graphically describe Saint Andrew. (AA 7-9) A particularly fan of the trope is Cassiodorus. See also Greg, *GM* 1.28 (referring to Saint Paul); Ven Fort. *Carm* 11.6 (unusually, referring to Radegund).;

¹⁶ The clearest exponent of this model is Cassiodorus. See Cass. *Psalms*. 2.7; 5.9; 6.1; 6.3; 7.18; 16.6; 26.16; 33.12; 36.15; 43.3; 50.18; 52.3; 54.1; 65.19; 76.8; 80.15; 102.13; 106.20; 127.1; 144.17.

¹⁷ For example, Pagels: 1978: 115-17; Schussler Fiorenza, E. 1984. *In Memory of Her:*

A Feminist Theological Reconstruction of Christian Origins. London; Swidler, L. 1971. ‘Jesus Was a Feminist.’ *Catholic World*, January, 1971, 171-183; MacHaffie, B.J. 1986. *Herstory – Women in the Christian Tradition*. Philadelphia. Reuthers, R.R and McLaughlin, E. (eds). 1979. *Women of Spirit: Female Leadership in the Jewish and Christian Tradition*. New York. Daly, M. 1974. *Beyond God the Father: Towards a Philosophy of Women’s Liberation*. Boston; Daly, M. 1978. *Gyn/Ecology: The Metaethics of Radical Feminism*. Boston; Daly, M. 1975. *The Church and the Second Sex*. New York; Goldenberg, N. 1979. *The Changing of the Gods: Feminism and the End of Traditional Religions*. Boston.

¹⁸ 1 Timothy 2:12.

mothers, causing the disciplinarian and moral instructor aspects to be downplayed in idealised representations. Certainly the image of a woman teaching, guiding and disciplining her children, particularly her sons, is not one which is compatible with the Christian vision of passive and subject women. However, mothers quite clearly were taking on this role, particularly in terms of spiritual education. Paulinus of Pella, Augustine, and Gregory of Tours, all speak of their mothers being powerful spiritual influences in their childhood and adult lives with pride.¹⁹ Many decades later, we see Dhuoda laying out the spiritual education she was prevented from imparting in traditional manner in writing, a task which she seems to approach as her fundamental duty as a mother.²⁰ Perhaps then, the two ideals can be seen as being intertwined in the lived experience of post-Imperial Christian families: the ideal of nurturing as expressed through the imparting of moral instruction in much the same way that the patrimony came to be conceptualised as a duty and an expression of paternal love.

There is also an emotional aspect of motherhood which is found in the sources describing motherhood. As with men, women were apparently expected to undergo an emotional transformation which placed the child at the centre of their priorities upon becoming a parent. However, while fathers are depicted as expressing this emotional attachment through external measures, primarily by enhancing the family property to ensure their child's future financial security and providing the child with a role model, both of which are inherently focused outside of the domestic milieu, mothers are depicted as being internally devoted to their child. This is seen in the frequent tendency of authors to claim that women find their principal solace, comfort and joy in their children. The idea that women find ultimate joy and comfort in their relationship with their children is powerful and persistent with mothers in literature repeating it in several examples, mostly when attempting

¹⁹ Paulinus of Pella, *Eucheristicos*. Greg, *Hist* 5.32; 10.08 (censuring a man for failing to have a good relationship with his mother); Ennodius, *Vita Epiphianii* 24; *Liber Pontificalis* Greg. II.10 Nathan argues that the role of mother as spiritual educator was so important as to far outweigh the father's role as an educator. (2000:151;153). This is a conclusion which seems quite extreme given the paucity of his evidence for such an assertion and the complete lack of any primary evidence that states such a thing. While mothers certainly could have a role in the spiritual education of their children, and were perhaps expected on some level to do so, there is no indication – in either the evidence that is cited by Nathan or the evidence from this later period - that this was seen as in any way more important than the father's position as educator and disciplinarian.

²⁰ Nelson, 2011; Claussen, 1990; 1996; Thiebaut, 1998

to prevent their children from entering a religious life.²¹ It is also powerful in idiomatic writing. In chronicles, for example, a frequent trope to emphasise the severity of a siege, crisis or famine is to repeat that it caused ‘mothers even to feed upon the bodies of their own children,’ a deed clearly presented as the ultimate in desperation and depravity.²² Notably, chroniclers never refer to *parentes* being reduced to cannibalism, only ever mothers highlighting that it is the image of the mother killing and eating their own child that is the shocking signifier of horror because it is the mother who is supposed to be devoted to her child above all other things. Avitus draws on the same idea in his depiction of the Pharaoh who released and then tried to re-capture the Jews in his retelling of the book of Exodus. Avitus embellishes his story with new and entirely imaginary details throughout, and in order to truly underscore the sheer evil of the Pharaoh he has him order the Egyptian soldiers to

Let even their mothers perish along with them, their hearts pierced, and let our arrows pin their children tight to their breasts. Let each see her own child fall before her eyes and then offering her neck pray to meet death herself.²³

The horror here lays not only in the mothers being killed, but being forced to watch their child die first, a horror so terrible that they are then expected to want to die rather than live on with the memory.

Indeed, it is the deaths of children, both as infants and adults, that mothers are truly brought to the fore with women being over-represented as such times and always reacting with enormous displays of overwhelming grief. Thus, the woman portrayed in Gregory’s *Glory of the Martyrs* who finds herself unable to stop grieving for the loss of her son: ‘The days of my life are not sufficient for this grief, but so long as I am alive I will always weep

²¹ E.g. Greg. VP 9; *Vitae Rusticulae* 1; 6; *Vitae Columbani* 6;

²² Hydatius, *Chronicle*, 16. AD 410; Isidore, *History* 408; *Liber Pontificalis*, Silliverus AD 538. This is a biblical reference, referring to the prophecy at Lam. 2.20. ‘Behold, O Lord, and consider to whom thou hast done this. Shall the women eat their fruit, and children of a span long? Shall the priest and the prophet be slain in the sanctuary of the Lord?’ Burnett, 2009: 81; Boswell, 1988:141-42,

²³ Avitus, *De Mund* 5. *Ferventibus armis permixtae pereant confesso pectore matres, uberibus iunctos configant spicula natos. Prolem quisque suam cernens ante ora cadentem oblati optet iugulis succerrere mortem.*

for my only son. Tears will never soothe me.’²⁴ In another chapter of the same work, Gregory tells of a woman who mourns for an entire year after her son is drowned.²⁵ In the life of Monegund too, the saint is portrayed as being inconsolable and desolate after the deaths of her two daughters and unable to stop weeping.²⁶ In all these cases, it is only the divine intervention of a saint – or in Monegund’s case, the divine inspiration to become a saint – that can soothe their grief. Even in non-religious literature this is the case, most notably in Venantius’ poem marking the death of Galswinth, the allegedly murdered wife of Chilperic I.²⁷ Regardless of this alleged murder Venantius composed a long poem commemorating Galswinth’s sad life beginning with Chilperic’s decision to marry her against her will. The focus of the poem though is not Galswinth herself but her mother Goiswinth, who is depicted reacting with horror and sadness to the news that her daughter is being sent to Neustria and away from her. While her father is the pragmatic king giving his daughter a good marriage, her mother is distraught and laments at length on the agonies of living life without her daughter close at hand.²⁸ Moreover, after Galswinth has left (Goiswinth attempts to follow her, but is forced to turn back) it is said that ‘she often spoke as though her daughter were by her side, and was seen to clasp the absent girl to her side,’ the loss of Galswinth being so traumatic that she is depicted as becoming unstable. These are not actions which are ever attributed to fathers. Although men are often shown mourning their children, there is no hint that their loss has the profoundly shattering and all-encompassing effect that it does on women’s lives. Mothers are focused primarily on their children in literature, and therefore the loss of a child is depicted as a more stressful event.

One possible explanation for this intimate emotional connection between mother and child is found in Guy Halsall’s most recent work *Cemeteries and Society in Merovingian Gaul*. He suggests, on the basis of burial archaeology from sixth and seventh century Frankia

²⁴ Greg. *GM* 75. *Dies, inquit, vitae meae hunc planctum non expleunt, sed dum ad vixero semper defleam unicum meum, nec unquam mitigabor a lacrimis donec oculos corporis huius debita mors concludat.*

²⁵ Greg. *GM* 35.

²⁶ Greg, *GC*, 1.24

²⁷ Greg, *Hist* 4.28.

²⁸ Ven. Fort. *Carm* 6.5. 25-36; 59-60; 139; 161-3; 189-90.

combined with legal and hagiographical textual materials that from birth until puberty children were viewed as feminine extensions of their mother.²⁹ His primary argument concerns children and transitional stages into adulthood, but tangentially his point can be extrapolated to apply to mothers.³⁰ If pre-pubescent children are viewed as extensions of their mothers rather than as individual persons, then the mother is viewed as being a part of her children. She becomes not merely a creator of new people, but as the creator of extensions to herself. If Halsall's theory were to be an accurate reflection of the contemporary understanding of motherhood, then the both the focus on physicality and the depiction of mothers as being concentrated on their children is potentially explained. Halsall's theory is an intriguing one, but it is formulated as an explanation for a purely Frankish phenomenon in burial archaeology and burial archaeology which is deeply flawed at best.³¹

The one thing that both Halsall's argument indisputably has in common with the post-Imperial writers is that motherhood is constructed as a biological phase, something that happens to women and transforms them from near invisible virgins into nurturers, carers and givers. This is very different to fatherhood, where men volunteer to take on new responsibilities. Women here are constructed as being unable to repudiate their motherhood as men can reject their fatherhood, although through contraception, abortion and the possible usage of abandonment and infanticide it is clear that some women did – at least temporarily – reject motherhood. This is fundamentally seen in Isidore's assertion that 'A mother is so called because something is made from her.'³² To be a mother is literally to be one who has

²⁹ Halsall, 2010: 400. He also states that this conclusion has been reached in 'analogy with other societies' but sadly does not mention which societies these might be.

³⁰ Specifically he argues, quite convincingly, that girls take on characteristics of gender through a sexual identity much earlier than boys as their transition to full adulthood takes place through the very fast process of puberty, marriage and childbearing while male transitions occur over a 10-15 year period encompassing ritualised haircutting, tutoring away from home, entrance into public life and marriage at the age of approximately 30. Halsall, 2010: 400-404. See also Crawford, 2007.

³¹ The problem he is addressing is that infants in Gallic cemeteries tend to be buried with no, or gender neutral, grave goods, but that female child graves begin to receive lavish gender specific grave goods at a much younger age than males. Halsall, 2010: 393-399 For an uncompromising critique of Halsall's methodology and conclusions in this work see Bacharach, 2011 who accuses Halsall of 'epistemologically unsound speculations, tendentious assertions, and slipshod research.'

³² *Et* 9.5.6.

given birth.³³ It has been suggested that this emphasis on physicality is a result of the Christian Church's concerted effort to denigrate and suppress female sexuality and physicality while promoting virginity and spiritual motherhood as superior.³⁴ However, this approach merely considers the religious texts and the glorification of spiritual motherhood within them and does not consider the wider representation of motherhood and its expectations. There is no hint of denigration in the vast majority of these examples and in many, such as the analogies of Paul as mother or Church as mother, the physicality of motherhood is a glory. The physical characteristics of motherhood are merely the defining markers of a mother, not her spiritual downfall.

That a woman should have become entirely focused on her child is perhaps not unexpected in a world where women ideally had very little control over their own lives and where there is always the possibility of being married to a Bernard or a Eulalius. It is even more so when the sheer risk of pregnancy and child-birth is taken into account. Bearing a child must have been genuinely frightening for women with pregnancy being nine months of fear of miscarriage or accident following by an extremely dangerous birth that one had a good chance of not surviving.³⁵ To successfully bring a child to term cannot have been anything but a great joy, and to lose a child after this danger period all the more devastating. However, it is very clear from various accounts from early in this period that all women did not become all consumed by their children. Sidonius Apollinaris writes to his wife about their daughter's welfare, making it clear that she was neither responsible for, nor particularly involved, with her upbringing.³⁶ Paulinus of Pella also claims that he was raised by his nurses, slaves and his grandparents while his parents appear to have been absent.³⁷ It may be that wealthy women throughout the post-Imperial period had the option to not be the primary caregiver for their children, or even a caregiver at all. Alternatively, the literary texts could be

³³ Parsons & Wheeler, 1996: ix. Also, MacLehose, 1996 & Quattrin, 1996; Burnett, 2009:76-82.

³⁴ Atkinson, 1991: 238.

³⁵ See 2.3.3

³⁶ Sid. Apoll. *Ap Ep* 5.16 Their daughter is being raised by his mother and sisters, Sidonius appends an update on her welfare to a letter to his wife which is primarily concerned with other business.

³⁷ Paulinus *Eucheristicos*. 28; 35-40.

demonstrating a growing tendency for the role of women as mothers to be as caregivers and nurturers.

The moment one became a mother, then, is the moment one gives birth and this act brings with it expectations of self-sacrifice and a domestic and emotional focus on the child, ideally above all other occupations. This is a role totally unlike that of the role of father, which not only allows for but is dependent on the cultivation of external interests and employments. Given the total preoccupation of the sources with the relationship between fathers and sons and the emphasis on fathers as role models, it seems likely that mothers in actuality were responsible for the training and socialisation of their daughters to be good wives and mothers.³⁸ Furthermore, there are a great many examples in the sources of adult men having close and loving relationships with their mothers that suggests that the division of care was not as clearly gendered as is suggested by the Christian, idealising source materials.³⁹ There are examples of women, presented as being unusual, who cross the theoretical divide between a father's public role and a mother's private one; for example the unnamed mother of the four Decian Brothers who is praised by Theodoric for her excellent job of raising her four sons without a husband, not only nurturing them but also increasing their estates and engineering honours for them. Despite these obviously public deeds though, which demonstrate a healthy and accomplished life outside of her home and family, Cassiodorus writes: 'My judgement...seeks out even the good of domestic virtue, that it may bestow public honours on even those praised in private.'⁴⁰

Regardless of how very public her activities may have been, as a woman her achievement is nonetheless still private and domestic. The intensity of this theoretical confinement of women to the domestic sphere, and reluctance of men to talk about them in

³⁸ Wemple, 1983: 60. Although she characterises this relationship as mothers 'dominating' their daughters, a characterisation which appears to have been drawn primarily from royal examples.

³⁹ E.g. Gregory of Tours and his mother: *VM Pro*; *GM* 1.83; *VP. Vita Illudii* 2; Also Paulinus of Pella, *Eucheristicos*. Greg, *Hist* 5.32; 10.08 (censuring a man for failing to have a good relationship with his mother); Ennodius, *Vita Epiphianii* 24; *Liber Pontificalis* Greg. II.10.

⁴⁰ Cass. *Var.* 3.6.6.

real terms, means that the true impact of motherhood on a woman and the true responsibilities of a mother will probably never be entirely clear. In ideological terms though, driven by the concerns of Christian theologians, motherhood underwent a full renegotiation and entirely new motifs and models were developed focusing on biological and emotional connections rather than on the role of advice giver, teacher and moral guide.

2.3.6 *Adult Children, Elderly Parents*

The dominant discourses surrounding parenthood then construct both mother and fatherhood as being affectively connected to their children while they are in their infancy. The moment of becoming a parent is expected to fundamentally change the priorities and worldview of both men and women, with the child becoming centre of attention and the motivation for most expected behaviours such as working to increase the patrimony. Once children reached adulthood and were married or in employment their parents fade into the background in the source material. Only rarely are they, and their relationships with their children, depicted. This next section will examine how the relationship between parents and children changed as the child aged, how far the gender of the parent and the child affected their expected relationship, and what roles were parents expected to take when their child reached maturity.

Almost all societies have rituals which determine the point of transition from childhood to adulthood ('social puberty'). In the classical Roman tradition, for boys this took the form of the *toga virilis*, an event usually seen between the ages of fifteen and sixteen in which the boy formally puts away his *bulla* (amulet) and childhood costume of the *toga praetexta* and takes on the *toga virilis*, also known as the *toga libera* and *toga pura*. After this ceremony took place, the boy - now a man - made his first entrance into adult public life,

often characterised by military training.¹ For girls, their transition to adulthood was less gradual, and was marked on the day of her marriage (not betrothal, which could occur in infancy).² Once the toga ceased to have significance in the post-Imperial world, there are some scant mentions of a ritualised first shave (*barbatoria*) being used as a similar form of public transition to manhood, for example by Paulinus of Nola who refers to a young man who dedicated his first beard to a saint.³ An analogous ritual in the Frankish world - or at least Frankish law - comes in the form of the *capillaturia*: the first hair cutting. In Frankish law this is described as being equal to a girl's wedding day, and heavy penalties were imposed for the premature and illegal cutting of a boy's hair.⁴ None of these rituals are as widely attested as the *toga virilis* however, and it is unclear how widespread the use of such rites was. Equally, as Christianity came to cultural prominence, such rituals appear to have faded in importance even in legal literature, and by the ninth century seem to have almost entirely disappeared.⁵ This left the ceremony at marriage as the primary method by which men and women ritually entered adult family life, a ritual which likely occurred at a much younger age for women.⁶ The ceremonies surrounding betrothal and marriage marked the point at which parents were most explicitly involved with their grown children's lives, and very different roles are carved out for mothers and fathers. We have already examined betrothal practises from the perspective of the child being betrothed; we shall now examine them briefly from the perspective of the parent doing the betrothing and how their roles were shaped.⁷

As has been noted elsewhere, the bride's father theoretically held virtually all of the power in betrothal and marriage negotiations and rituals. The consent of her father is vital to a legal marriage in all Roman and post-Imperial societies. The relationship between a father

¹ Harrill, 2002: 255; Dolansky, 1999; Dixon, 1991: 101-2; Crook, 1967:114

² Harlow & Laurence, 2002: 54-64; 79-80

³ Paulinus of Nola, *Carm* 21: 377-78. There is evidence that this also occurred in the classical Roman world, eg. Petr. 73, 6.

⁴ *Pact. Leg. Sal.* 24; 52. Bartlett, 1994: 47-48; Cameron, 1965; Wallace-Hadrill, 155-57; 245-56. Leyser, 1992: 37-42

⁵ Nelson, 1994: 99; Hen, 2009: 21-24; Bartlett, 1994: 48.

⁶ See Halsall, 2010: for his argument that the age of 20 was important for Frankish males as an entrance into Frankish martial culture, based on archaeological evidence.

⁷ 1.1.1; 1.1.2; 2.1

and daughter at this time therefore is regularly portrayed in theological literature as being one fraught with tension with the daughter resisting a father's desire to see her married.⁸ How far this is a true representation of father-daughter relations is open to considerable debate. Nonetheless, there is very little evidence to contradict this fundamental concept of the father as the final arbiter of his daughter's marriage, and this is an area that has been well covered in secondary literature.⁹ An area which has been considerably more neglected is the role of the father and mother of the groom in the betrothal negotiations and in the decision to marry. The picture which develops when such questions are asked of the sources is mixed, but the possibility that the groom's father was in fact heavily involved in such matters in practice is strong, and supports the conclusion that much post-Imperial marriage involved a transfer of property and gifts in both directions.¹⁰ The strongest evidence for such practises however, comes primarily from very early Gallo-Roman writers: Paulinus of Pella and Ruricius. In Paulinus of Pella's autobiographical account of his marriage he depicts himself as being both entirely passive during the process of choosing a bride and marrying her, and also rather reluctant to marry at all, saying:

Such was the life I led from about my eighteenth year, and so continued until my second decade's close, when my parents' anxious care forced me, unwillingly, I admit, to give up this state, grown easy through soft custom, and drove me by way of change take a wife.¹¹

Here both parents (*parentum*) are apparently involved, as they choose his wife and force him to marry her. Any open resistance that Paulinus may have displayed is, unsurprisingly, unrecorded. Paulinus' near contemporary Ruricius provides a further insight into such negotiations and the father's role in them in a series of letters which remain preserved between himself and his daughter-in-law's parents Namatius and Cerunia. In the

⁸ See 1.1.1; and especially 2.1.2

⁹ Most notably Wemple, 1983: 12-16;

¹⁰ 1.1.1; 1.1.3

¹¹ Paulinus *Eucheristicos*. 176-181.

first, Ruricius is seen apologising for the size of the *dos* he is providing.¹² Ruricius' letter makes it clear that it is he, not his son, who is providing the *dos* and therefore he who is primarily responsible for the negotiations. Indeed, as with Paulinus, his son is presented as being a passive player in the betrothal as his father discusses, disguised by flowery language and declarations of thanksgiving and delight, the contracts:

[A]nd I emphasise that, as you requested and was fitting and proper, everything has been examined, passed along and confirmed. Nor have I any fear which might trouble your spirits even a little, that a single syllable would appear to have been subtracted from the dowry contract, because you should know that whatever is lacking in the amount is not only reimbursed by even augmented in the husband.¹³

Ruricius even reveals that a third party – Postuminus – is in fact responsible for introducing the two families.¹⁴ His son and his future daughter-in-law are not even named in the letter, which presents the marriage as a fortuitous contract between himself and Namatius and Cerunia.

In the cases of both Paulinus and Ruricius then, the father and the mother of the bride and groom are presented as being the primary motivators in their children's marriage. In Christian sources however, the role of the mother becoming greatly diminished. This is particularly clear in sixth century hagiographies, where the father of the groom is homogeneously portrayed as being in control of his son's betrothal, while the son is depicted as transcending apparent social norms in opposing his father. Gregory of Tours' *Lives of the Fathers* contains three examples of this trope in the lives of Lupicinus and Romanus, Gallus and Leobardus. Lupicinus and Romanus are brothers. Lupicinus as the oldest is forced

¹² *Dos* here is the 'Germanic' form akin to a bride-price given from groom (or groom's parents) to the bride and more precisely known as a *donatis nuptialis* rather than the traditional Roman version of *dos* meaning dowry. During the fifth century onwards, the terms appear to have been used interchangeably. (See Mathisen, 1999: 135 n. 13; Reynolds, 1994; this thesis, 1.1.1).

¹³ Ruricius *Ep* 2.2.

¹⁴ *Ep* 2.2.

‘without his consent’ into a betrothal when he reaches a suitable age. Romanus, being not yet old enough to be betrothed, consecrates himself without his father’s permission to God and refuses to marry. Thankfully for the brothers, both parents die before Lupicinus’s marriage and before Romanus comes of age, allowing them both to take up the life of desert ascetics.¹⁵ St. Gallus’s story shows another side to this trope, one analogous with Paulinus of Pella’s experience. When Gallus attempts to enter a monastic life, his father and mother attempt to discourage his ambitions with affection (*dilectio patris*) and caresses (*matris blanditae*). When this fails, they betroth him to a suitable bride causing him to run away to the Bishop of Clermont to request a monastic life and his father surrenders to Gallus’s wishes.¹⁶ Leobardus experiences a similar encounter with his father. When it comes time for him to be betrothed, he attempts to resist. After a long speech from his father about the importance of procreation for the continuation of the patrimony, Leobardus demures and is betrothed. Conveniently again, his father dies shortly afterwards allowing Leobardus to enter monastic life.¹⁷

Gregory’s *vita* of St. Patroclus offers a nice contrast to these two tropes. Patroclus is sent away by his father to become a shepherd - a career decision Patroclus disagrees with causing him to leave home in order to educate himself. He returns home only when his father dies, and his mother exhorts him to marry in order to provide for her. Patroclus it appears feels no duty to obey his mother, refuses her exhortation and enters the monastery.¹⁸ All these vignettes exist within the first paragraphs of each of the *vitae*, and are clearly meant to set the scene and highlight their subjects’ spiritual purity and familial *pietas*. In all cases the father is depicted as the driving force behind the betrothal, sometimes both parents. In the one instance where only a mother survives the saint has no difficulty ignoring her desires. This is likely another depiction of the emerging Christian image of the submissive woman who has no power within her family, except that of persuasion.¹⁹

¹⁵ Greg. VP.1.1 *Transisset aetatem genitore cognente, cum animi non praeberet conensum, sponsali vinculo necitur. Romanus uero adolescentior et ipse ad dei opus animum extendere cupiens, nuptias refutauit. Parentibus uero relinquentibus saeculo, hii communi consensu heremum concupescunt*

¹⁶ VP 6.1.

¹⁷ VP 20.1

¹⁸ VP 9.1

¹⁹ See especially 2.2.3

When discussing the relationship between fathers and their adult sons after the son's marriage the primary sources tend to focus on two aspects: the role of the father in guiding and aiding his son in his career, and the duty of the son to respect, obey and care for his father. Secondary to these, but still common, is an idealisation of father-son relationships as being mutually affectionate and friendly. These are not the aspects that have been studied so far in the secondary literature, however, where attention has tended to be focused firmly on the idea of father-son generational tension with particular focus on the role of money in such tensions. Yet, the stories and anecdotes drawn from the chronicles and histories which make up such studies on generational tensions are almost exclusively the preserve of the royal families and, in the seventh and eighth centuries onward, the political elites of dukes and counts. As with so many aspects of what has been traditionally seen as common familial practice, these conflicts appear to have been confined to the royal household, at least where the reporters of such conflicts are concerned. Outside of the royal family, the only area where father-son conflicts are reported is in hagiography where sons follow the trope of refusing their father's desire for the son to marry.²⁰ Here, as with the corresponding trope for female hagiographical subjects, the aim is not necessarily to provide an accurate account of a father-son relationship, but to present the breaking of the cultural norm of a close and respectful relationship as being a profoundly Christian and special.²¹

The role of the father as a moral and practical guide to his grown sons is made clear in a number of sources, particularly the fifth-century Gallo-Roman letters between fathers and sons. Thus both Ruricius and Sidonius include in their collections letters to or about their sons. Sidonius describes his paternal relationship with his adult son Apollinaris as being 'one of those fathers who are so eager, so apprehensive and so ambitious about the progress of their sons that they hardly ever find anything to commend, or if they do, are hardly ever satisfied.'²² This interest in his son's career is mirrored in a surviving letter to Apollinaris in

²⁰ See above

²¹ see 2.1.2

²² Sid. Apoll. Ep.9.1 *qui patribus his iungi non recusaverim, quorum studio voto timori laudabile aliquid in filiis, licet difficile persuadeatur, difficilius sufficit.*

which he advises in the strongest terms that he avoid a certain Gnatho and respects him for avoiding contact with unsavoury elements while in Rome, noting ‘the more you avoid even a first introduction to such company the better you will please me’.²³ This is the entire focus of the letter, which contains no further concerns for his son other than his career and moral purity. It seems that Sidonius wished to present himself in the mould he idealised when he stated to his friend Simplicus (referring to a daughter) ‘you surpass everyone because your children surpass you.’²⁴ In Sidonius’s construction, the role of the father in the relationship with his adult children is to be a moral and practical guide to help them achieve all that can be achieved, not one of emotive language and overt emotional affection. This is mirrored to an extent in Ruricius’s letters to his sons, although his actions do not live up to his ideals. Ruricius has problems with three of his five sons: Ommatius, Constantius and Eparchius. Constantius is the most difficult in Ruricius’s letters, and his father admonishes him twice for a ‘love of Bacchus’ and musical entertainments.²⁵ Ruricius exhorts him gently to remember his obligations to his parents and to his God:

It is good occasionally to retreat from such things and to spend more time with the Lord than with the Liber, and to pay attention to parents rather than to melodies. I direct that tomorrow, which will be the fourth celebration, you hasten to fast with me at Brivam and in a timely manner, which I do not at all think that you are planning to do.²⁶

Ruricius here demonstrates his role as a moral guide to his son who is described as an *adolescens*.²⁷ Nonetheless, this mild rebuke is unsuccessful and shortly afterwards Ruricius is forced to punish his son by withdrawing his financial support of Constantius’s lifestyle:

²³ Sid. Apoll. Ep. 3.13 *igitur ex voto meo feceris si talium sodalitati ne congressu quidem primore sociere,*

²⁴ Sid. Apoll. 3.11.2 *idcirco ceteros vincitis, quod vos filii transierunt.*

²⁵ Ruricius, Ep 2.24. This is a classical euphemism for wine and extramarital sex.

²⁶ Ruricius Ep 2.24 *quia bonum est ab his aliquotiens respirare et magis Domino vocare quam Libero, parentibus quoque operam dare quam cantibus*

²⁷ For life course and age boundAriès in classical Roman and late antiquity see Harlow & Laurence, 2002; Alberici, 2009; Davies, 2012.

With God as your witness, you promised me something different, that you would worship Him, not Iacchus; you even want me to be a participant in this crime so that I would provide delicacies for the cultivation of this error and pour oil on the fire, which you know would benefit neither of us. But perhaps you say ‘you promised!’ With what effrontery do you seek that promised by me when you have violated your own oaths? When you will grant discharge to my promise, as long as I know that you serve your own appetite lest I seem to encourage the activity, whose manner I reubke and lest I serve as a stumbling block for one to whom I should be an example.²⁸

Ruricius clearly states that he perceives his role to be that of an example to his son, and it is this which leads him to refuse his son financial support. In this way he perfectly embodies the recommendation of Caesarius of Arles that fathers should be an example to their children and should lovingly punish those who fail to emulate them.²⁹ He states this again in a letter to Ommantius, his oldest son, who enters the priesthood, when he describes himself as the one ‘who taught you, who nourished you, who with the help of the lord brought you all the way to the priesthood.’³⁰ In this letter however, he gently admonished Ommantius for another crime, for ignoring and neglecting his duty to visit and write to his father thus highlighting the reciprocal nature of the father-child relationship.

Ommantius, however, seems to also be a mild disappointment to his father as in later letters to the Bishop Aprunculus both he and Eparchius are revealed to have committed some form of crime during their time as clergymen in Clermont. In the first letter, Ruricius writes to their bishop asking forgiveness and leniency for his sons stating that his sons’ letters are

²⁸ Ruricius *Ep* 2.25 *Aliud mihi deo teste promiseras, quod ipsum deberes colere non Ianum, cuius criminis etiam me vis esses consotrem, ut ego ad hunc errorem colendum delicias subministrem et oleum incendio superfundam. Quod neutro nostrum noveris expidire. Sed dicis fortasses: pollicitus es! Quo ore a me promissa perquiris, cum tu sacramenta violaversi? Under dabis veniam meae promissioni, quamdiu te his servire congnovero passioni, ne confirmare videamur factum, cuius reprehendimus pactum, et simus scandalo, cui esse debemus exemplo.*

²⁹ Caesarius, *Serm.* 13: 2-5

³⁰ Ruricius, *Ep* 2.28 *qui erudit, qui nutritit, qui adiuuante Domino as sacerdotium utque perduxit.*

full of tears and lamentation.’³¹ However, when he receives a response from Aprunculus, he discovers that the crime committed was considerably worse than his sons had suggested in their letters, and that Eparchius at least should have been excommunicated for his sins. Upon hearing this news Ruricius apologises for his original plea for leniency and offers his approval for the punishment they received again noting that they need to ‘follow and imitate in all things’ in order to be brought back to goodness.³² While Ruricius acknowledges his leniency, he frames his relationship with his sons, as well as that of the bishop and of God, as being paternal and thus as offering a perfect example for Eparchius to follow. Again, this appears to be a biblical idea developed from the Pauline letters. In 1. Corinthians 11.1 Paul exhorts his followers to ‘imitate me, just as I also imitate Christ’ and this sentiment is repeated in a number of his letters.³³ The idea was well established by the fourth century through the idea that Christian martyrs were imitating Christ with their sacrifice, and Augustine argued that for men original sin could be eliminated by the imitation of Christ. Only by following Christ’s example could one be truly saved in Augustine’s thought.³⁴ Thus, the concept of imitation and example in teaching children and subordinates is well attested in Christian thought, and it is this that Ruricius and Caesarius in particular are drawing on. Sidonius, meanwhile, appears to be drawing upon the classical Roman tradition which frames paternal advice giving as being didactic and verbal rather than active.³⁵

The second motif in post-Imperial literature depicting parent and adult offspring relationships is that of affective ties and friendship. This is seen in relationships between fathers and sons and fathers and daughters, but less so between mothers and either sons or daughters. The most immediate and detailed depictions of affectionate relations between parents and adult offspring come from Salvian and from Paulinus of Pella. Paulinus outlines his relationship with his parents, and especially his father, in his *Eucheristicon*. Throughout

³¹ Ruricius, *Ep* 2.57. *Litteras plenas lacrimas et deploratione*

³² Ruricius *Ep* 2.57 *quem nos per omnia et sequi et oportet imitari.*

³³ See 1.Thess.1:6; Romans 8:4; Ephesians 5:1.

³⁴ Augustine, *Conf.* Passim. Especially 8.2 ‘then to encourage me to copy the humility of Christ, which is hidden from the wise and revealed to babes.’ See Kinnard, 2006; Moss, 2010 for an overview of the *imitatio christi* and martyrdom.

³⁵ Saller, 1994: 102-132

his childhood and adolescence, during which he suffers an illness, he has a close relationship with them but once he marries and enters adulthood his relationship with his parents becomes even more affectionate.³⁶ He describes spending up to a third of each year staying with them, despite having several properties of his own, a time he describes as being full of ‘mutual joys and without argument’³⁷ He especially extols his relationship with his father, who dies when Paulinus is approximately 40. Paulinus mourns his father greatly stating that he ‘made both my country and my home itself dear to me. For, indeed, by rendering kindness to each other in genuine affection, we so knit in our uneven ages, that in our agreement we surpassed friends of even ages. He, then, so dear a comrade and trusty chancellor, was withdrawn from me in the early season of my youth’³⁸ Paulinus claims that the grief at losing his father was even worse than his horror at the invasion of the Goths into his territory; such was the closeness of his relationship.

He also seems to have maintained a very close relationship with his mother after his father’s death. His brother disputes his father’s will, and attempts to disinherit their mother, an action which incenses Paulinus: ‘[it] caused me concern the greater as it was natural, my just endeavours being strengthened by this yet greater impulse of affection.’³⁹ This protective relationship seems to have continued, and Paulinus’s mother lived and travelled with him more frequently than his wife for the rest of her life.⁴⁰ Paulinus’s relationship with his parents was potentially somewhat unusual, especially as none of his siblings appears to have been as close to either parent. Moreover, his brother’s attempt to break *pietas* and exclude their mother from their father’s will suggests that their relationship was not emotionally close. Equally, Paulinus’s relationship with his own children is depicted - by Paulinus himself - as

³⁶ *Eucheristicos*. 128-31 Paulinus’s father give up hunting while Paulinus is studying in order to not interrupt his son’s studies or to enjoy any pleasures without his son. When Paulinus is forced to give up his studies due to illness, his father takes up hunting again in order to improve his son’s health.

³⁷ *Eucheristicos*. 220-25

³⁸ *Eucheristicos*. 243-47 *per quem cara mihi et patria et domus ipsa fiebat: tamque etenim fido tradentes mutua nobis officia affectu conserto viximus aevo, vinceret aequaevo nostra ut concordia amicos. Hoc igitur mihi subtracto inter prima iuventaetempora.*

³⁹ *Eucheristicos*. 247-253 *cuius mihi cura tuendae hoc quoque maior erat, quo iustior, et pietatis non minor affectus studium firmabat honestum.*

⁴⁰ *Eucheristicos*. 315-20; 459;

being distant but not emotionally detached. He mentions his daughter only once, noting that he has married her to a man outside of Gaul so he did not have to worry about her well being under the Goths, a note which strongly suggests he maintained concern for her despite their physical distance.⁴¹ His sons he mentions more regularly, having high hopes for their careers. Both move to Bordeaux in their adulthood to the Gothic court, against Paulinus's wishes but with his blessing, and he hopes that they will be able to recover some of his paternal property, lost during the Gothic invasions.⁴² Unfortunately, both his sons die before they are able to make full careers for themselves, and Paulinus mourns not only their loss with 'bitter sorrow' but also the loss of their properties to the Gothic king. While Paulinus does not describe his relationship with his sons as being framed or defined by affection in the same way that he does his relationship with his father, their absences from his home and sudden deaths are sources of emotional distress for him and mark the end of any solace he might find in his family.

An even more emotive set of described relationships appears in a letter of Salvian's. This letter is written from himself, his wife Palladia and their daughter to his wife's parents Hypatius and Quicta. The letter is written after seven years of estrangement between the parents and child as Hypatius and Quicta disapproved strongly of their daughter's conversion to Christianity. Now, however, Salvian and Palladia have heard that her parents have converted themselves and they aim to reconcile the family. The letter is filled with emotive language begging Hypatius and Quicta to forgive their child. They are called *carissime*, *reverentissimi*, *affectus carissime* by Salvian, and he notes that 'affection itself pleads on your behalf, nature itself demands of you.'⁴³ Their opening plea asks 'how can offspring so loving not be loved?'⁴⁴ The second section of the letter is alleged to have been written by Palladia herself, addressing her parents directly. She notes that she has always been an obedient daughter and reminds them of her childhood nicknames *uestra gracula*, *uestra*

⁴¹ *Eucheristicos*. 325-8- 'yet I was spared more serious anxiety by the divine goodness, to whom I owe constant thanks,'

⁴² *Eucheristicos*. 490-507

⁴³ Salvian *Ep* 4 37-38; 61; 77 *affectus ipse pro te orat, natura ipsa tibi postulat*. (translation modified).

⁴⁴ *Ep* 4:37. *Ita possunt pignora sic amentia non amari*.

domnula.⁴⁵ Finally, she describes what they have been missing during their seven year estrangement:

I am she through whom the names of parent and the joys of grandparents especially joined, and, what is above both, the happiness attached to those two conditions, that is, of having children and of enjoying them to the full.⁴⁶

Here Palladia openly appeals to her parents presumed emotional desire to have a relationship with their daughter, emphasising that they are missing out on a joyful affective relationship. Palladia and her husband make no attempt to offer Hypatius and Quicta any form of concrete benefit to rekindling their relationship, only emotional ones, and it is clear that they expect these to be the most successful tactics.

The final significant demonstration of this affective relationship between parents and adult offspring is found in an unusual place, the early sixth century *vita* of St. Honoratus by St Hilary of Arles. This *vita* was composed as a sermon given on the anniversary of Honoratus's death rather than as a traditional written hagiography, which may explain the unusual detail it includes about Honoratus and his father. The *vita* begins with the typical description of Honoratus desiring a consecrated life, but being blocked by his father. It then goes into considerable detail about the father's concerns and attempts to win Honoratus away from the monastic life. His father is described as 'fearing for the common glory of the family', which is a common trope, but also for the continued companionship of his youthful son, that he would lose should Honoratus enter a monastic life. It is for this latter reason that the father takes up hunting and games to spend time with his son. Moreover, Hilary is sympathetic to the father's plight, and asks his audience to feel his pains, and not to scorn them as worldly or unacceptable, in emotive terms:

⁴⁵ *Ep* 4 96-101

⁴⁶ *Ep*.4 103-105 *Ego illa sum, per quam uobis illa primum et parentum nomina et aurum gaudia contigerun et, quot utroque praestat utrumque feliciter, cum fructu adipiscendi, et beatitudine perfruendi.*

Nor was it unreasonable for his worldly father to fear that his son was being snatched from him, the son whom, among all other most excellent young men, he loved entirely as his own.⁴⁷

Honoratus's father is unsuccessful in his attempts, and Honoratus goes on to enter a monastic and ascetic life. In most *vitae* the subject's biological family disappears from the narrative at this point, replaced by the spiritual family of the monastic community. In this case, however, Honoratus's father appears again, visiting his son in his monastic cell. Again, Hilary forces the audience to experience the father's emotions as he is confronted by a son completely changed by his ascetic life. Honoratus is now thin, pale and quiet from constant fasting, with shaved hair and dressed in sack cloth. His father is distraught as his son 'was so completely changed into another man from what he had been that his father grieved as a parent would grieve who had been bereft of his son.'⁴⁸ The father pleads with Honoratus to re-enter public life but is unsuccessful. A short time later, Honoratus's brother also enters a monastic life, beginning a friendly rivalry over who can be the most ascetic, presumably to the horror of their father. This emotional depiction of the parent's experience of having a child enter an ascetic life is extremely unusual, and highlights the difficulties potentially faced by a parent with an ascetic child.⁴⁹ It is unlikely that this depicts genuine events, it is after all a hagiography, but nonetheless the concerns and pains felt by the father and described so vividly were presumably expected to be recognisable by the congregation, and the father's desire for the ongoing love and companionship of his son during his adulthood is thus striking. The concern for familial continuation is not emphasised here, only the desire for a close relationship with a healthy son.

This desire for an affective relationship is potentially related to the expected duty of adult offspring to care for their elderly parents once they reach infirmity. The evidence that a

⁴⁷ *Vita Honorati* 1.

⁴⁸ *Vita Honorati* 1

⁴⁹ Note, however, Voulanto, 2008 who highlights the many social benefits of having an ascetic child.

Hagiography aims to emphasise the difficulties faced by ascetics in order to emphasise their break with worldly concerns and their moral strength regardless of whether this represents a reality.

child (usually a daughter) would be kept deliberately unmarried by her parents to provide them with on-going care is very slight. There are only a very few references to an elderly parent living with an unmarried child and they all appear in Frankish hagiography.⁵⁰ The authors of the *vita* of Caesarius of Arles refer to a deacon named Peter whose daughter lives with him and who is ‘invaluable’ in the running of his household, and also to a young man in Ravenna who supports his widowed mother and who appears to be unmarried.⁵¹ Gregory’s *Miracles of Saint Julian* also give a reference to a woman (*mulier* rather than *matron* suggesting that she was unmarried) being taken by her parents to be cured by Julian’s tomb. There is a further possible reference to a daughter kept at home by Sidonius, in a letter which refers to his parents and sisters raising his daughter, although the marital status of the sisters is not made explicit one may posit that they could be unmarried if they are still living with their parents.⁵² None of these authors, however, hint that children were kept deliberately unmarried as part of a parental strategy for care.

A far more common occurrence is the suggestion that adult children, particularly sons, were expected to take their elderly parents into their homes when they required care. This is especially seen with widowed mothers and their sons. Paulinus of Pella, however, claims that both his mother and mother-in-law became part of his household so it is clear that parents did rely on their daughters for support too, presumably in the absence of sons.⁵³ Demonstrating this, in a letter chastising in the strongest possible terms a man who is accused of striking his father, Cassiodorus draws an analogy between human parents and birds:

For when their parents droop their wings as old age withers them and are incapable of seeking their own food [their children] warm the cold limbs of their progenitors with their plumage and revive their exhausted bodies with

⁵⁰ There are two exceptions: one potential unmarried man living with his mother in the *Hist*(4.39), and one Bonifacius who also lives with his mother in Gregory the Great’s *Dialogues* (1.9).

⁵¹ *Vita Caes.* 1.39 (man at Ravenna); 2.2 (Peter the deacon).

⁵² Sid. Apoll. *Ep* 5.16

⁵³ Paulinus *Eucheristicos*. 459. That Paulinus’s wife was an only child is also suggested by the fact that she seems to be her grandfather’s sole heir.

eatables...the young ones repay, in a pious exchange, what they received when little from their parents.⁵⁴

This expectation that grown children will care for their elderly parents is described by many across the post-Imperial world and again appears to be a continuation or reframing of the Roman notion of *pietas*.⁵⁵ Paulinus of Pella took on the care of his mother throughout his marriage, and as her defender when his brothers turn against her in an inheritance dispute, and also takes on the care of his wife's mother who lives with them until her death.⁵⁶ Gregory of Tours also cared for his mother and maintained a close relationship with her until her death, and in the *Histories* has Fredegund complain that she has no sons to care for her interests.⁵⁷ The *vita* of a Caesarius of Arles contains reference to a deacon whose daughter is vital to the care of his household; Rusticula's mother laments that there will be no one to care for her in her old age when Rusticula enters a monastery; Gertrud is praised for 'serving' her mother through her adulthood; Gregory the Great relates a story of Boniface of Ferentia who lived with his mother, helping her run her estates.⁵⁸ Procreation was not only insured future of the family reputation and estates, but, as with the Roman world, also for one's own old age in a world where there was little in the way of organised palliative care.⁵⁹

The vast majority of the surviving evidence does not support the prevailing scholarly view of parents and children in perpetual conflict concerning the patrimony. Instead, it emphasises the expectation of a continued close relationship between both parents and children of both genders well into the offspring's adulthood, often culminating in the parents living with or being cared for by their children in their old age. The dominant motifs of these expectations concern the continued role of the father as an advice giver, which through the influence of the concept of *imitatio Christi* becomes the necessity to maintain a good example

⁵⁴ Cass. *Var* 2.4.3.

⁵⁵ On *Pietas* see Hagenvoort, 1980; Shaw, 2001.

⁵⁶ Paulinus, *Eucheristicos*.

⁵⁷ *GC* 39; *GM* 83; *VSJ* 24-25; *VP* 222; 82 (see also Van Damm, 1983: 50-81), Fredegund: *Hist* 5.34.

⁵⁸ *Vita Caes.* 22; *Vita Rusticula* 5; *Vita Gertrude*, 2; Greg, *Dial.* 1.9

⁵⁹ Although, there is a passing reference in the *vita* of Pope Gregory II in the *Liber Pontificalis* to him opening an old people's home in Rome suggesting that there was some form of Church organised care at least in some areas and in later centuries.

of ideal behaviour for one's children; and that of affective relationships between parents and children. This affection is notably not often cast through explicit Christian lenses, but through the concept of 'natural' or biological law. While the fundamentals of what constituted natural law were impacted by Christianity, and the language of affection, love and paternal love is strong in Christian thought, it seems significant that the writers do not use overtly Christian models to frame their expectations for their parental relationships in this case.

2.3.7 Conclusions

The primary cultural, societal and personal motivations for having children were to continue family name and protect patrimony, to ensure old age care for parents and for emotional fulfilment of the couple. While the first is the most emphasised throughout the primary literature, it is clear that the latter two were also extremely important. There is, however, evidence that people tried to limit their fertility through contraception and their family size through abortion, abandonment or infanticide. Evidence is patchy and ambiguous on all methods except abandonment which appears to be fairly widespread. Further, abandonment is no longer exclusively seen as a form of infanticide as acceptance of the idea that structures were put in place to care for the abandoned child spreads.

Once a person became a parent, as almost every person did, their lives were expected to change drastically. Both parents were expected to undergo an emotional transformation that placed the child at the centre of their occupations. However, the manifestation of these transformations, and the other facets of the construction of parenthood differed drastically between mother and father. Fathers were constructed as firm disciplinarians, expressing their affection for their child through the provision of a patrimony and good training. Fatherhood is also presented as having an element of choice, with men who have produced biological children able to deny being a father due to the fundamental importance of the patrimony.

Mothers, on the other hand, are constructed as being more physically and emotionally involved with their children. They are seen as nurturers and carers and more reliant on their children. Motherhood is also represented as being a purely biological event, something that cannot be rejected in the same way fatherhood can.

2.4. General Conclusions

The primary focus of this thesis was to examine and question how far the commonly acknowledged tripartite influences of Roman heritage, alleged ‘Germanic’ custom and emerging Christian traditions and discourses intersect in terms of defining and describing the family, family roles and family relationships. Thus, this thesis posed two central questions about the family in the post-Imperial west. First, it questioned how far the Roman/Germanic dichotomy is realistically found within the legal and literary sources, once the Merovingian family are removed from the analysis, and secondly how far the Christian/Non-Christian dichotomy is found. This thesis has also offered a new analysis of family laws within the post-Imperial legal codes. This thesis rejects the conclusion, most recently espoused by Ian Wood, that there was a clear distinction between a ‘Roman’ and a ‘Germanic’ family at any level of society.¹ Finally, this thesis asks whether these are useful categories of analysis for the post-Imperial family as a lived experience, or whether new ones are needed. We turn now to proposing some answers for those questions.

From the analysis presented here, the Roman/Germanic dichotomy can be seen as a false and imagined division, constructed by authors both ancient and more modern for their own purposes. The codes which on their surface provide such strong support for the fall narrative, and the introduction of codified ‘Germanic’ custom into new cultural contexts, do not offer such strong support when they are fully examined. The codes have a considerable amount in common with late Roman law, significantly more than is different. This conclusion

¹ Wood, 2008: While Wood’s analysis rejects most of the major differences proposed by earlier scholars, the underlying assumption that differences existed remains, again using the Merovingian royals as the sole point of ‘Germanic’ comparison: 430: “Comparison between the Roman and the Germanic family, at least at the highest level of society, does not suggest a simple contrast between complex Roman structures and clear-cut, agnatic, Germanic structures. This is true even if one considers a practice supposedly central to the kinbased structures of Germanic society and, one might assume, absent from a society ordered by the rational processes of Roman law: the feud”...436: “There were enough points in common between the leading Germanic families and their Gallo-Roman counterparts to facilitate mutual understanding – and despite the senatorial aristocracy’s social pretensions, even marriage and other liaisons between the two groups followed.”

is not a new one, Ruth Mazo Karras, Nick Everett, Ian Wood and many others have offered the same conclusion looking at individual codes. This thesis offers that this holds true for all the post-Imperial codes, and concludes that the authors of the post-Imperial codes aimed to frame themselves as lawmakers in the Roman tradition. Where dramatic differences from Roman law have been noted, it is the influence of Christian thought which has been the driver of change. The regulations regarding divorce, abortion and infanticide are particularly relevant here as they come to encompass Christian theological ideas about ensoulment, marriage and charity. There are some exceptions, for example the Frankish preoccupation with land ownership which is not a Roman or Christian idea. However even these do not seem to have emerged from a ‘Germanic’ tradition, but from the cultural and social issues of the period and place where land was of extraordinary importance.

In the literary context, this question was focused particularly on the effects that excluding the Merovingian royal family as a primary point of reference would have on the Roman/Germanic dichotomy. It is clear from this analysis that when they are excluded, and even when they are tangentially included, many of the stark differences that have been highlighted by older scholars disappear. Instead, we are left with new differences, which are more in line with those who would highlight a pre-Christian/ Christian shift. In large part, this is because the language of the family was changing fundamentally. The emotive language of Christianity, which based its theology on family metaphors, gave authors a language in which to legitimately express new aspects of familial relationships. Throughout the literature of all the kingdoms under analysis here, but particularly in Gaul, where dramatic shifts from the Imperial to the post-Imperial period are seen it is as a result of Christian thought infiltrating author’s writings, aims and self-presentation. There is no evidence in the literature that there were significant shifts during this period that can be attributed to a new ‘Germanic’ culture, but many which demonstrate that the Christian church was growing in power and in cultural importance among literate people. This is made even clearer by the increased importance and appearance of the tropes highlighted throughout this thesis in the chronologically later texts.

The representations of gender roles particularly are influenced by this, with wives being represented in utopian and dystopian images as being subject and submissive to the point of servility, marriage represented as undesirable and men and women who reject marriage and their parents for consecrated lives as spiritually ideal. So too, the roles of mothers and fathers are changed by theology. Mothers are no longer represented as teachers, guides or disciplinarians but as nurturers and carers; fathers are encouraged to punish their children in ways which would be anathema to a classical Roman, and to act as constant examples for their children rather than as moral tutors. Equally, as Christianity and its language of familial love becomes not just the ideal, but the norm, men and women are given new tools with which to express their feelings for each other and for their children, tools which were not available in the predominantly stoic Roman world. Thus, it is the conclusion of this thesis that in both the legal and literary context, the Christian/pre-Christian dichotomy is supported as a relevant marker of change during the post-Imperial period. While much previous research, including my own, has demonstrated that ideals and images do not reach lived experience immediately, it seems that this category of analysis would be the most useful in examining families as lived experiences, and it is this which would benefit from future research.²

This thesis did not consider lived experiences of individuals within the post-Imperial period to any great extent. Even if the pre-Christian/ Christian dynamic can be seen in the surviving literature to be driving change in the way that families and family roles are constructed and idealised, it is extremely hard to apply these to real lives, particularly if one accepts the thesis that much of the change witnessed here is driven by language and discourse. The post-Imperial world to AD 700 was still a period of internal theological conflict and self-definition; Arianism still existed as a strong force in the west among numerous other Christian heresies. This remained a period of Christian self definition and while many of the ideals and images discussed in this thesis were standardised by the Church

² Southon, 2008

fathers in the fourth century, their application to real world events was still developing. The development of incest regulations and the concept of spiritual kin from the theological proposition that marriage forms ‘one flesh’ of two souls are particularly clear representations of this. Furthermore, many of the texts which survive outline the ideals of radical and hardline Christianity which are perhaps not meant to act as precise models of behaviour for even Christian families. Hagiography which idealises contempt for biological parents and rejection of marriage, for example, extols virtues which are harshly criticised in more moderate circumstances. While the sermons, theological tracts, hagiographies and Christian self presentations which remain available to us today were certainly transmitted to their audiences with the aim of shaping behaviour, where glimpses can be seen of possible real world actions these seem to have been largely unsuccessful in the short term. It is only in much later centuries, when the world can be seen as truly medieval, that these ideals can be seen being enacted.

In this way, this thesis follows on from my previous research concerning ideals in the Roman third century. That thesis concluded that attempts to shape behaviour by Christian authors were largely unsuccessful on a short term basis, and drew from sociology and anthropology to offer a theoretical explanation for this conclusion. Those explanations seem equally valid here. In particular the cultural models theory developed by Holland and Quinn remains relevant. Here cultural models are defined as ‘taken-for-granted models of the world that are widely shared...by members of a society and play an enormous role in their understanding of that world and their behaviour within it.’³ In this case, the Christian world view that a single God exists and that Jesus was the son of God and saviour of humanity is common to all the surviving sources, both legal and literary. This is the dominant cultural model of the post-Imperial west and there are very few implications of people who did not subscribe to this model. While in earlier centuries ‘paganism’ was demonised and differentiated sharply from idealised Christianity, such tropes are uncommon during the

³ Holland and Quinn, 1987: 4

period AD 400-700, appearing only rarely in hagiographical texts. Christian membership has become a ‘taken-for-granted’ facet of life. However, all surviving sources derive from what Holland and Quinn term ‘upper level schema’ - those literate and educated classes who are all a part of the power structures of their communities. In the post-Imperial west, these power structures are entirely Christian. Thus, the filtration of these ideas from the upper-level schema to the lower level schema of the laity is extremely difficult to trace, especially as they do not substantially aim to change the kinds of behaviour which are found easily in the historical record.⁴

Finally, the intended relationship between many of these genres of texts - including the legal codes - and lived experience is open to question. While many genres, such as the letter collections, the laws and the histories, claim to be describing real events and real lives it must not be forgotten that they are all texts written for publication and thus have motivations beyond mere recording. Heinzlemann’s analysis of the *Histories* as a theological history rather than a Frankish history, while his conclusions have been questioned, and the analysis of the hagiographical tropes of the submissive wife and rebellious *sponsa* demonstrate that none of these texts can be taken at face value. Equally, the analysis of feminist scholars has the same effect. Thus, scholars such as Averil Cameron, Kate Cooper and Elizabeth Clark argue that women in the Christian texts are devices for discussing the important issues of male power and control.⁵ Furthermore, many of these texts are drawing on ideas and theology developed in the centuries before them by the Church fathers, and in different cultural milieu. The influence of the writings of Augustine and Jerome, even their idiomatic phrasology, cannot be underestimated and many instances of such have been highlighted within this thesis. To apply these texts to lived experience of families without very careful negotiation of these tropes and authorial aims is difficult at best.

⁴ Holland and Quinn, 1987.

⁵ Cameron, 1989a: 181; 184-5 that woman is a concept used for her ‘convenient polarities’ in theological thought; Cameron, 1994: 153 that marriage is a theoretical battleground where battle for control of the empire and the female body alike plays out. Cooper, 1996: 19; 2008: passim.

There is much work still to be done in this area; this thesis has presented only the broadest and most basic overview of some narrow issues. An area which could be particularly fruitful given the conclusions of this thesis - and the areas that were not covered - could be the issue of non-biological families and spiritual families. This thesis has touched very briefly on the apparent differences between the classical Roman construction and use of non-biological kin in inheritance practises, and the post-Imperial Christian conceptions of spiritual kin, formed by sexual contact and god-parenthood. While both these constructions have been widely studied alone, a comparative analysis questioning what each reveals about the underlying constructions of ‘families’ could be extremely a productive and worthwhile

This thesis aimed to present a new cultural history of families in a period of political and social upheaval. It aimed to analyse the cultural influences of the period as a distinct timeframe and to draw together disparate sources and historiographical trends to produce a synthesised analysis of the nuclear family. It further aimed to identify the most significant drivers of change and continuity. This thesis concludes that the view of the family through the surviving sources looks dramatically different between the letters of Sidonius, the autobiography of Paulinus and the *Etymologies* of Isidore. This thesis has argued the Christian thought and theology was the central driver for change in the period AD 400 - 700 with regard to families and family relationships. These changes were rarely to do with changing behaviours visible to historians, but were focused on changing conceptions and ideals about families and expectations of behaviour. Even more importantly, as the language of Christianity became the language of the dominant cultural model, it offered families new ways to represent and express their relationships. The world and families of the post-Imperial west are of a Romano-Christian culture, where appeals to a ‘Germanic’ homogeneity would seem to have little currency.

Appendix 1: Table of Incidence of Laws Concerning Betrothal and Marriage

Code	Betrothal Ceremony	Annulments	‘Dos’	Indirect Dowry	Morninggift	Divorce	Adultery	Consent	<i>Raptus</i>
CTh	3.5.6 (Constantine 355); 3.7.1 (Valens 371)	3.5.1.2; 3.5.3; 3.5.6; 3.5.11.1	3.13.4; 3.13.1;			3.16.1; 3.16.2; NTh 12;	9.7.1; 9.7.2; 9.7.4; 9.7.7	9.24.1;	9.24.1
LC	LII.3			XIV; XXXIV.2; XLII.2; LII; LXI; LII.3 ; LXIX; LXXXVI		XXXIV	<u>Betrothed:</u> XLIV.1 <u>Married:</u> LXVII	XLIV; CI; LXI;	XI
Pact. Leg. Sal	LXVa	LXVa						LXLIX	XIII; XV; CXXXII; Cap. VI.II
LR									
Lib. Iud.	III.I.IV; II.I.I	III.I.IV; III.VI.III; III.I.V		III.I.I; III.I.VI; III.I.X		III.VI.II	<u>Betrothed:</u> III.IV.II; <u>Married:</u> III.IV.I; III.IV.IV-V; III.IV.IX	III.I.III; III.II.IX	III.III.I; III.III.II; III.III.II; III.III.V; III.III.VII
Lombard	Roth. 178	Roth 178; Liut 119 (III)		Roth 167; 178; 183; Liut 89 (VI)	Roth. 184; Liut 7.1; 117.1	Roth 197; 198; Grim 6; 7; Liut 30.1	<u>Betrothed:</u> Roth 179. <u>Married:</u> 212; Grim 7-8; <u>Male:</u> 196, 213 Liut. 130.1; 140.2	Roth 188; Liut 12 (VI);	Roth 181; 187; 191; Liut 31 (II);

Appendix 2: Table of Incidence of Laws Concerning Parenting

Code	Daughters inherit	Disinheritance	Natural/legitimate children	Adoption	Abandonment or infanticide	Abortion / Causing a Miscarriage	Guardianship after mother's remarriage	Childlessness	Punishment for unlawful disinheritance
CTh	Yes: 3.8.2; 5.1.3-5, 8; 6.4.17; 8.18.7, 9, 10; 9.14.3.2; NTh 14.1; 22.2; NVal 25.1; 35.1; NMaj 6.1;	16.8.28; NMaj 6.1;	Natural: 4.6; NTh 22.1; NAnth 1.1; Incest: 3.12.3;		Abandonment: 5.9.2; Recovery after abandonment: 5.9.1; Infanticide: 9.14.1;		3.17.4; Exemption: 3.31;	Annulment of penalties: 8.16.1;	
LC	Yes: XIV;	Daughters: XII.5;			Foundlings: CE*.XX;		LIX;	XIV.3; XIV; XLII; LI.2;	LI;
Pact. Leg. Sal.	If no sons: Cap. IV. CVIII;	Daughters: Cap. VII.III;	XLVI;		Infanticide: XXIV.6;	Miscarriage: Cap. III. CIV.IV-X;		LIX ; CX ; Cap. IV. CVIII;	Cap. I. LXVII;
LR				50 (48-9)		Miscarriage: 40 (36)		50 (48-9); 57 (56); 70 (67)	
Lib. Iud.	Yes: IV.II.I; IV.II.II; IV.II.IX;	Sons & daughters: IV.V.I;			Foundlings: IV.IV.I - IV.IV.III; Infanticide: IV.III.VII;	Abortion: VI.III.I; Miscarriage: VI.III.II - VI.III.VI;	III.I.VIII; IV.III.I;	IV.II.II; IV.V.II;	IV.V.I;
Edict. Roth & Lombard Law.	Yes: Grim. 5; Liut 1 (AD 713) 2; 4;	Sons: Roth, 168; 169;	Roth, 154; 155; 157; 158; 181; 162; Grim. 5;			Miscarriage: Roth. 75; 334;		Roth. 171; 223; 225; Grim 77 (VIII AD 726); 14 (VIII AD	Roth 168; 155; Grim, 5; Liut65 (I AD 725);

[illegible]

Primary Sources

Abbreviations used:

ACW: Ancient Christian Writers

ANCL: Ante-Nicene Christian Library

FC: Fathers of the Church

LCL: Loeb Classical Library

SPCK: Society for the Promotion of Christian Knowledge

TTH: Translated Texts for Historians

CCSL: Corpus Christianorum Series Latina

MGH: Monumenta Germaniae Historica

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