

INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW

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VOLUME IV

PERSONS AND FAMILY

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Chapter 1

Introduction

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Chapter I

INTRODUCTION

Max Rheinstein

René König

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Chapter 1

INTRODUCTION

Max Rheinstein

René König

I. THE FAMILY AND THE LAW

Max Rheinstein*

A. THE PRESENT VOLUME

1. *Content.* – This volume, the fourth of the International Encyclopedia of Comparative Law, is entitled “Persons and the Family”. In its main part it will deal with Family Law. Topics which in Civil Law countries are frequently discussed under such headings as Law of Natural Persons, Personal Status or *statut personnel* will be surveyed only shortly. Most if not all of these are treated in other parts of the Encyclopedia. But those topics which do not have a place in other parts of the Encyclopedia will be found in chapter 2 of the present volume. They are: beginning and end of an individual’s capacity to have rights and duties (German: *Rechtsfähigkeit*), Name, and Registration of Personal Status.

B. MODES OF FAMILY REGULATION

2. *Scope of family law.* – By far the larger part of this volume deals with those topics which in modern times tend to be discussed under the heading of Family Law, i.e., the private law aspects of marriage, the parent-child relationship, guardianship, and those few matters as to which kinship is still regarded as relevant, i.e., primarily such duties of support as are established in modern laws among kindred other than parent and child. The custom of combining these topics under the heading of Family Law was developed by the German Pandectists of the nineteenth century. In the French Civil Code of 1804 and those codes which followed its pattern, the topics were distributed over different parts. The formation, the incidents and the dissolution of marriage, the relationships of parent and child, other kindred and on guardianship are found in the First Book, entitled On

Persons. But the title on marital property, called On the Marital Contract and on Matrimonial Regimes (*Du contrat de mariage et des régimes matrimoniaux*) is the fifth of the Third book, which is entitled On the Different Ways of Acquiring Property (*Des différentes manières dont on acquiert la propriété*).¹ Similarly the Austrian Civil Code of 1811 deals with the main part of the family law in Part I (On the Law of Persons), but with marital property in chapter 28 (Of Marriage Settlements – *Von den Ehepакten*) which is found in division 2 (On Rights in *personam* – *Von den persönlichen Sachenrechten*) of Part II (On the Law of Property – *Von dem Sachenrechte*). But in the German Code of 1896, the Swiss Civil Code of 1907, and later codifications family law in the sense here defined forms a comprehensive, separate part: Italian Civil Code of 1942, Book I (On Persons and on the Family); Greek Civil Code of 1940/46, Book IV (Family Law); Netherland’s New Civil Code, Book I (Law of Persons and the Family, 1958/69).

In Anglo-American countries the term Family Law has begun to replace the older term of Law of Domestic Relations. Under that label one once included the relations between husband and wife, parent and child, guardian and ward and master and servant. The last topic has long been separated and has been expanded into the vast field of Labor Law.

The separation of Family Law from Private Law in the communist countries had its origin in the fact that the Soviet regime felt the need to give legislative expression to the revolutionary ideas about the family earlier than that of giving shape to those matters of property, contract and tort whose resurgence became apparent under the New Economic Policy of the 1920s. The first Soviet legislative Act on Marriage and Divorce was issued in 1917,² the first version of a Civil Code was

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¹ In the curriculum of the French law schools and in the law treatises the topic of marital property is still separated from the main body of family law. The latter is dealt with in the first year of study and consequently in the first volume of the *traités élémentaires*, the former is treated as one of the “special contracts” which are taught in the fourth year and in the corresponding part of the treatises; see, e.g., *Ripert and Boulanger, Colin, Capitant and Julliot de la Morandière, or Mazeaud. In Planiol and Ripert (ed.), Traité pratique “la Famille”* by *Rouast* constitutes volume 2, while “les Régimes

Matrimoniaux” by *Boulanger and Nast* constitute volumes 8 and 9. In accordance with the German system of classification, the whole field is treated as a unit in *Ferid, Das französische Zivilrecht II* (Frankfurt, Berlin 1971).

² Decree on Divorce of 19 Dec. 1917; Marriage Decree of 18 Dec. 1917; these decrees were replaced by the Decree of the RSFSR on Marriage, Family and Guardianship of 16 Sept. 1918. On the urge generally felt by the leaders of social revolutions to accord priority to the reform of family law, see *Müller-Freienfels* 843. Cf. also *Chloros, Yugoslav Civil Law* (Oxford 1970) 45-48.

enacted in 1922.³ But the special legislative treatment has been preserved through all later phases of Soviet legislation⁴ and has been followed in the other communist countries of Europe.⁵

In its concern with the family the law is by no means confined to those matters which are called Family Law in modern codes or, for that matter, in our present volume. The law must deal with that matter which in the French Code is called *Des donations entre vifs et testaments* (art. 893-1100), and in recent American writing "Family Wealth Transactions". Since in the American context trusts are frequently treated together with decedents' estates, the relevant courses are frequently entitled "On Trusts and Estates". If Family Law is understood in such a broad sense, it covers the whole field of *succession* (*Erbrecht*) or, as it is called in America, the Law of Decedents' Estates or Probate Law.⁶ Society's concern with the family is expressed also in such fields as social security, welfare, housing, criminal law, procedure, taxation, protection of youth, etc.⁷

3. The "nature" of family law. — The nature of family law has been the subject of much discussion in Civil Law and socialist countries. Is it a branch of private law so that its proper place is in the Civil Code, or does it belong to the realm of public law, or to the field vaguely called "social law", or is it an autonomous branch of the law *sui generis*?⁸ The problem has attracted no attention in Anglo-American countries where classification of branches of law plays no practical significance other than the distribution of courses among the members of a law school faculty.

4. "Law" defined in the family context. — The family is what sociologists call a primary group. It is a social institution which simply exists. Its structure is determined pre-legally. It has existed

long before Law was invented as a special technique of social ordering.

Law, of course, is a term of many different meanings. In our discussion it will be understood in that meaning in which the word is commonly used in the parlance of modern lawyers, i.e. as that set of norms regulating human conduct which are sanctioned by the going into action of some special officers of politically organized society. In the modern world that simply means that set of norms of human conduct which is sanctioned by the state. Nobody is, of course, prevented from using the word Law in some other, broader meaning. But for our purposes it appears appropriate to distinguish the norms sanctioned by governmental action from social norms which are sanctioned in some other way. Such other sanctions are those of *religion*. They result from the belief that violation of the norm has consequences of supernatural sort. *Ethics* has its sanction within ourselves, in pangs of conscience or other feelings of spiritual discomfort. The sanction of *convention* is the usually unorganized disapproval of fellow members of our community which may make one feel uncouth or may result in one's being cold-shouldered, boycotted, ostracized or excluded from circles to which one might wish to belong. Also excluded from our definition of Law are those regularities of human conduct which occur simply out of *habit* and continued repetition such as, for instance, the habit of people in the United States to have three meals a day and for the first meal to have coffee or tea. More specifically, our definition of Law also does not include such norm systems as Canon Law or other religious laws insofar as religiously determined norms of conduct are not sanctioned by government action. But Canon Law and other religious laws will be

³ Civil Code of the RSFSR of 30 Oct. 1922.

⁴ Soviet Union: Law of the USSR confirming the Principles for the Marriage and Family Legislation of the USSR and of the Union Republics of 27 June 1968; Marriage and Family Code of the RSFSR of 30 July 1969.

⁵ Albania: Family Code of 23 June 1965; Bulgaria: Family Code of 15 March 1968; Czechoslovakia: Family Code of 4 Dec. 1963; East Germany: Family Code of 20 Dec. 1965; Hungary: Law on Family and Guardianship of 6 June 1955, as amended by Law no. VI of 1957 and the Ordinances no. 18 of 1957 and no. 12 of 1960; Poland: Family and Guardianship Code of 25 Feb. 1964; Rumania: Family Code of 29 Dec. 1953, amended by Law no. 6 of 1956 and Decree no. 179 of 8 Oct. 1966; Yugoslavia: Base Law on Marriage of 3 April 1946, amended on 28 April 1965; Base Law on the Relation Between Parents and Children of 1 Feb. 1947, amended 1 March 1965; Base Law on Adoption

of 1 April 1947, amended 1 March 1965; Base Law on Guardianship of 4 April 1965. These laws were formally abolished two years ago, however, until the Republics pass specific legislation, the old laws shall apply.

Also in the People's Republic of China, where no comprehensive reformulation of private law has so far been undertaken, legislation on family matters was felt to be urgent.

⁶ In this Encyclopedia, the law of succession is treated in vol. V.

⁷ In France numerous matters of family law in this broad sense have been brought together in the *Code de la famille* of 29 July 1939.

⁸ See Grossen, *Quelques remarques sur la situation et les méthodes du droit de la famille*: ZSR 85 (1966) I 42, 48; Nizsalovszky 102; Wolf, *Der Begriff Familienrecht*: FamRZ 1968, 493.

considered insofar as their norms have been or still are being sanctioned by the state. Such situations are indeed of special significance in Family Law. They are particularly relevant in the regulation of certain aspects of marriage in such countries as Spain, Pakistan, Israel or Burma. Family regulation in the pre-law manner of tribal customs will be surveyed in ch. 11 part III.

In order to prevent possible misunderstanding we must emphasize that we do not limit the use of the term Law to norms which are created or promulgated by legislation, judicial precedent or any other form governmental pronouncement. For our purposes Law is to embrace every norm of conduct which is *sanctioned* by governmental action, irrespective of whether the government's enforcement officer or the judicial officer whose authorization is regularly required for individual enforcement in modern society, has "found" the norm in a set of rules "created" by the state, or originating in religion, ethics or convention.

Finally it may not be unnecessary to state that the norm system of the Law does not consist of only those propositions which expressly appear as commands or prohibitions. It also comprises definitions of presuppositions on which the existence of a "norm" depends. Propositions indicating the conditions under which there exists a marriage, a parent-child relation, or the regime of community property are as much part of a country's legal system as those which order a husband to support his wife, or indicate that the employer of a "minor" (another definitional term) is not discharged of his duty to pay the minor's wages if he pays them to the minor, or the propositions which spell out in detail under which circumstances and in which manner a community fund is to be divided.

5. *The family and the state* – general problem. – If we use the word Law in the sense of norms sanctioned by action of the state, we may wonder what the state and its governmental officers have to do with the family, a social, a pre-legal institution. The conduct of its members towards each other is determined by custom, ethics, convention, religion, habit and love. Arrest and imprisonment by police or prison officers, attachment of property by the sheriff, enforced, if necessary, by the *posse comitatus* or the armed forces, are crude means to provide sanctions for marital or parental duty or for a child's filial piety. They are indeed unnecessary where a family functions in the prop-

er way. In Family Law it is particularly true, as *Oliver Wendell Holmes Jr.*, dramatically expressed it, that laws are written for the bad man.⁹

6. *Ancient Rome*. – But when observed within a more general framework of a larger span of history, the significance of law for the regulation of family life has increased.

In the societies of antiquity the state was reluctant to deal with matters of family life as such. We say "as such" because it did concern itself with the family insofar as the state was concerned with religion, and family life was determined by religious command. In its purest form this type of concern was represented in such a theocracy as ancient Israel. Of a similar type are those societies in which law, religion and morals appear as such an undivided whole as they once did in the religions of Islam, Hinduism, Buddhism and, if it may be called a religion, Confucianism.

Some measure of unity of law, religion and ethics also appears to have existed in the early stages of ancient Rome, at the time when the *pontifices* were the oracles and guardians of the law. But in the early Republic *ius* is already separated from *fas*. Marriage which, it seems, was in older times widely, although hardly universally, initiated by a religious ceremony came to be left more or less to the *mores*. The existence of a marriage was indirectly significant for the law when it has to deal with succession on death or with the allocation of responsibility for what we nowadays call tort. Law also came into play in the determination of who may marry whom. *Connubium* did not exist between a Roman and a non-citizen. But for the initiation of a marriage, the law did not establish a test of its own. A marriage existed between a man and a woman when they were regarded by the *mores* as being married to each other, i.e., when they lived together in the manner of husband and wife and did so *animo maritali*.

The role of the law was limited by the structure of Roman society. The Roman state was a consociation of clans rather than individuals. The single being played a role, it is true, as soldier and, consequently, as a participant in political life. He could also be held individually responsible for crime. But in the field of private law the bearer of rights and duties was the *house* as represented by its chief, the *paterfamilias*. He alone had rights of property or claims *ex contractu*, *ex delicto* or arising out of other sources of private obligation. He alone was subject to duties of private law. He was the ruler

⁹ "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his

reasons for conduct, whether inside the law or outside of it in the vaguer sanctions of conscience." (*Oliver Wendell Holmes, Jr., The Path of the Law: 10 Harv.L. Rev. 457, 459 (1897).*)

within the clan, into the internal affairs of which the state's law did not reach. We are told that the *paterfamilias'* power went so far as to recognize in him even the *ius vitae ac necis* over all members of the house. This does not mean that the internal affairs of the house were without social control. But that control was exercised through the sanctions of religion and convention. The *paterfamilias* who abused his legally unlimited power would incur the displeasure of his fellow citizens, who could well let him feel their disapproval. Such disapproval, it seems, could even be expressed by an official, the *censor*, through whom the state could assert a control which it could not exercise by means of direct legal coercion.

7. *Middle Ages.* — Control through the *mores* also seems to have been the way in which family life was regulated among the Germanic peoples by whom the Roman Empire was overrun. But regulation of one of the most important aspects of family life, the creation of the marriage relation, came to be taken over by the Church through its peculiar norm system, the Canon Law. In it, norms of basically supernatural sanction are juridified in a special sense. For the medieval world it would be incorrect to say that norms of religion were made part of the state's legal system as one may say with some justification of the marriage law of Roman-Catholics in present-day Italy,¹⁰ Spain¹¹ or Colombia¹². The state as the omnipotent sovereign did not yet exist. Governmental powers were not yet united in the Leviathan. In the medieval world, law was not equivalent to the norm system sanctioned by the state, because the state was not yet the exclusive political organization. There were, continuously vying with each other, the political organizations of the Emperor, the kings, the barons, the boroughs, the guilds and that of the Church and its head, the Pope.

The norm system of this last-named power center was molded in that shape which in the Roman Empire had been characteristic of law.¹³ In

fact it was elaborated through conscious utilization of the Roman legal system. Its norms were sought to be articulated in the way Roman Jurists and Roman emperors had articulated their norms. The canonists aimed at the formulation of clear concepts and at systematic arrangement. The supernatural sanctions of sin were to be applied through courts acting in minutely regulated procedure. The handling of the elaborate machinery lay with specialists who patterned their ways of thinking and arguing upon those of the law specialists of the Roman state. The canons thus were made to form the body of Canon Law, a "law" which is different from the law of the modern state but which was law in the sense in which this term was applied in the Middle Ages. But the norms of the Canon Law were also norms of religion, *i.e.*, norms the violation of which is sin and thus results in punishment in the other world, in damnation to hell or purgatory. Basic in the Church's view was the sinfulness of all sexual activity outside of marriage and, as the counterpart thereto, the elevation of marriage to the dignity of a sacrament, a channel of divine grace, strictly monogamous and indissoluble. It was this doctrine of indissolubility which made it necessary for the Church to build up its elaborate, complex system of marriage law.¹⁴ It had to be spelled out in minute detail in which circumstances a man-woman relationship was indissoluble in the sense of rendering every other sex relationship of one of the partners non-marital and thus sinful. So the canonists developed their complex system of impediments to marriage, formalities of and preliminaries to the celebration of marriage, of nullity and of procedure in marital causes. Other matters of family life, such as the relation between parents and their children remained widely left to regulation by the *mores*. Disputes concerning others, especially matters of property and succession on death were judged by tribunals of secular potentates such as the king, the borough or the lord of

¹⁰ Concordat between Italy and the Holy See of 11 Feb. 1929 art. 34; Implementation Law of 27 May 1929.

¹¹ Law establishing the Basic Principles for the Civil Code (*Ley de Bases*) of 11 May 1888, Base 3.

¹² Concordat between Colombia and the Holy See of 31 Dec. 1887 art. 17.

¹³ von Schulte, *Geschichte der Quellen und Literatur des Canonischen Rechts* (Stuttgart 1875-1880); on the history of the Canon Law see Cicognani, *Jus Canonium* (2 vol.) (Rome 1925), Engl. version by O'Hara and Brennan (Philadelphia 1934; ed. 2, 1935); *Etudes d'histoire du droit canonique dédiées à Gabriel Le Bras* (2 vol.) (Paris 1965); on Canon Law in general, see Andrieu-Guitrancourt, *Introduction élémentaire à l'étude de droit en général et droit canonique con-*

temporain en particulier (Paris 1963); Bertola, *Diritto canonico* (with bibliography): *Digesto Italiano* 5 (1960) 800.

¹⁴ On Canon law of marriage, see the works cited *supra* n. 13 and also Esmein and Génestal, *Le Mariage en droit canonique* (2 vol.) (ed. 2 Paris 1922-1935) (historical); Gasparri, *Tractatus canonicus de matrimonio* (2 vol.) (new ed. Rome 1932); Eichmann and Mörsdorf, *Lehrbuch des Kirchenrechts II* (ed. 16 Paderborn 1967); Bouscaren, Ellis and Korth, *Canon Law* (ed. 4 Milwaukee 1963). The official text of the Roman Catholic Church is *Codex Iuris Canonici* of 1917, Book III, Part I, Title VII, canons 1012-1143, and Book IV, Part III, Title XX, canons 1960-1992.

the fief or the manor. In that sense they may be said to have been regulated by secular law the contents of which, in turn, were predominantly derived, however, from custom, and thus ultimately the *mores*.

8. *Secularization of family regulations.* – Two great movements set in with the waning of the Middle Ages: the secularization of the law of marriage and the *statization* (*sit venia verbo*) of the major part of the regulation of family matters.

The secularization of marriage began with the Protestant Reformation. In the view of *Martin Luther* marriage was not a sacrament but a “worldly thing” the regulation of which belongs to the sphere of *Caesar* rather than of God.¹⁵ Of course, *he*, as well as *Zwingli* and *Calvin*, insisted upon conformity of the secular regulation with the Christian ideal of marriage, and the new secular laws for a long time carefully adhered to Christian teaching, the Protestant versions of which were stricter than the Catholic in the matters of nullity, but, on the other hand, allowed divorce which was conceived of as punishment of a spouse for grave violation of marital duties, especially adultery. The door was opened for increasing secularization when Christian tradition was subjected to the critique of Enlightenment.

For the conclusion of marriage (for which Canon Law had required an ecclesiastical ceremony since 1563),¹⁶ a ceremony before an officer of secular government was made available in the Calvinist Netherlands and in New England. By the French revolutionaries the civil ceremony was made compulsory in France, and at least optionally it is now admitted the world over.¹⁷ The French Revolution also established that system of secular registration of civil status which had been preceded in France and other places by governmental regulation of ecclesiastical registration and which is now in world-wide use (*infra* ch. 2 II).

The secularization of the law of marriage was not achieved in just one step nor did it occur in all countries at the same time. In Austria, late Josephinism resulted in the inclusion of marriage regulation in the *allgemeine bürgerliche Gesetzbuch* of 1811, but for non-Catholics, especially Jews,

their religious tenets were accommodated by special rules¹⁸ to be applied in the courts of the state. In most countries of Eastern Europe religious marriage law and ecclesiastical marriage jurisdiction were maintained until the Communist accession to power not only for the members of the Orthodox Church but also for those of other denominations. In the Orient the regulation of not only marriage but of all matters of the family has, as the sphere of *statut personnel*, remained under the domination of religious law even after the other parts of the law had been secularized and thereby Westernized. Except in India, where Hindu, (Anglo-) Mohammedan and other religious laws have long been applied by the regular, secular courts, matters of *statut personnel* remained left to *Shari'a* and other religious tribunals. Only in the last few decades have secular governments begun with reforms of the religious family laws of Hinduism and Islam and have some Islamic countries, like Egypt, transferred jurisdiction to the secular courts. The first Islamic country where family law and family jurisdiction were completely secularized was Turkey.¹⁹

In Occidental countries Christian tradition is still powerful in the family *mores* and consequently in family law. The Christian ideal of monogamy has spread beyond the orbit of Christianity. Religious ceremony still suffices for the conclusion of marriage in those numerous countries which do not follow the French and the socialist pattern of compulsory civil marriage. Divorce is still not possible in some strongly Catholic countries. Canon law is still the law of marriage in some of them. Italy even returned from civil to religious regulation and jurisdiction of marriage for Catholics in 1929.

9. *Change and persistence in family law regulation.* – Secularization of family regulation has rendered possible those profound transformations of the law which have been made necessary by industrialization and, in its wake, by individualism and female emancipation. These transformations are not fully completed anywhere. They have gone farthest in the countries of highest industrialization and in those of socialist rule. But they have

¹⁵ *Martin Luther*, Von Ehesachen (ed. Weimar 1910) vol. 50 part 3. On the Reformers and the subsequent course of Protestant views, see *Howard*, History of Matrimonial Institutions (2 vol.) (Chicago 1904) 60.

¹⁶ Decretum Tametsi of the Council of Trent. It was to take effect only where and when it was officially proclaimed.

¹⁷ On the ups and downs of the idea of civil marriage and the distribution of compulsory and optional civil marriage, see *infra* ch. 3.

¹⁸ CC § 44 ss., § 123-136, concerning Jews. A new law, uniform for all persons, the Marriage Law for Greater Germany of 6 July 1938, was introduced in Austria after its accession to the German Reich. Except for some small changes, this law was retained after Austria's separation from Germany in 1945 (Austrian Law of 26 June 1945).

¹⁹ Law of 4 April 1926; for a detailed presentation of the present family law in India and in the Islamic countries, see *infra* ch. 11 I and II.

set in wherever industrialization has obtained a foothold. The degree of "modernization" of family law may indeed be used as an index of a society's degree of Westernization.

In modern society the form of economic life is the same wherever the economy is determined by rationality, as it has of necessity to be in an economy based upon credit, investment and long range planning. Consequently the laws of contract are basically the same not only in countries of capitalist but also in those of socialist structure. The same observation holds true in the field of property. Legal institutions of basically the same kind can be filled with capitalist and socialist content. Those differences which once existed between the Roman system in which *iura in re* were strictly distinguished from *iura in personam* and in which the limited catalogue of *iura in re aliena* appeared as one of the parts cut out from the all embracing *dominium*, and on the other side the Germanic system of coexistence in the same object of a whole scale of interests of varying content, a system which has continued to exist in Anglo-American countries into our own days, tends to disappear under present conditions. The forms in which economic life flows, we repeat, are necessarily the same wherever the economy is structured on the modern pattern or is on the way toward it.

But in the matters of family life societies are more conservative. Family structure and the relations between husband and wife and of parent and child are widely determined by convention, religion and ethics rather than by rational considerations of economic utility. Even if one seeks to derive the shapes of family structure and family life from the relations of production, one has to do that via an alleged dependence of convention, morals and religion upon the relations of production. Irrespective of whether one believes convention, religion and ethics to be functions of the relations of production or more or less independent aspects of social life, one cannot deny that ideas of convention, religious and moral order tend to change more slowly than modes of economic life. Nor can one deny that their contents are indeed influenced by changes in the economy.

The persistence of traditional forms of family life shaped by tribal or religious tenets has resulted in that dualism which is characteristic of societies that have not, or not yet, come under the full impact of industrialization. Family life, in a very broad sense, continues to be subject to traditional religious or customary law, while in all other

respects a system of Western origin has been adopted.

In British India and now in the Republics of India, Pakistan, Bangla Desh, Burma and Ceylon, family law, or, more broadly the law of personal status, although modernised at varying degrees, has remained an island of religious law – Hindu, Islamic or Buddhist – amidst a general law of Western provenience. The same holds true for most of the countries of the Middle and Near East. In Lebanon, for instance, each of the sixteen religious groups of the country – Islamic and Christian – has its own body of religious family law and its own religious tribunal for family law matters.²⁰ In Israel family matters of Jews are subject to Rabbinical law and jurisdiction, those of Moslem and Christian Arabs and of Druses to their respective religious laws and tribunals.²¹ In the countries of sub-Saharan Africa matters of family life are still left to customary law – the tribal or the incipient urban – while the general legal systems of the countries are of Western type (*infra* ch. II III).

When the legal system of Japan was westernized, the family chapter of the Civil Code of 1896 constituted a codification of the traditional system based on the unity of the "house" (*ye*) as the basic cell of social and political life. Not even in Europe, the Americas and Australia has the secularization of family law been complete. Initiation of marriage by religious ceremony still suffices to produce its secular effects in all countries of Anglo-American law, in Scandinavia, and is even required for Catholics in Italy and Spain (*infra* ch. 3).

In accordance with the Roman-Catholic dogma of indissolubility of marriage, restoration to the freedom of remarriage through divorce is still not obtainable in Spain, Eire, Liechtenstein, San Marino, Argentina, Brazil, Chile and Colombia. In Portugal divorce is not available to couples who have initiated their marriage by a Catholic church ceremony, as it is done in some 95 per cent of all Portuguese marriages. In Italy divorce was not obtainable until 1971 and a strong movement to bring about the repeal of the Divorce Law of 1970 is under way (*infra* ch. 5).

C. FAMILY LAW AND FAMILY MORES

10. *Oriental and Occidental Patterns.* – Ideally the system of legal rules ought to coincide with those norms of religion, ethics and convention which are those of the society in question and are held in

²⁰ Bergmann and Ferid III Libanon; Catala and Gervais 53.

²¹ Bergmann and Ferid III (Israel).

that society to require sanctioning by the coercive apparatus of the state. But complete coincidence is not possible. Being handled by specialists, the jurists, the rules of law tend to assume a life of their own. Besides, to which of the several patterns of value judgment and behavior is the law to correspond in a pluralistic society? In such a society there are two ways: the Oriental way of having different laws for each of the definable groups following well-defined patterns of their own; or the Occidental way of working out legal rules which appear to correspond to patterns of belief and behavior which are common to all the groups and sub-groups of which the society is composed, or which leave room for choice or individual formation. Neither method can completely prevent discrepancies between the official law and the *mores* actually lived. Religious laws tend to be conservative. Hence the tension now observable in all Oriental countries. Under the impact of modernity, Islamic, Hindu and Jewish religious traditions are being shaken and transformed, in directions which are not yet clearly settled. Such tenets as the Hinduistic impossibility of remarriage of widows, Hinduistic and Islamic polygamy, the Muslim husband's unlimited possibility to repudiate a wife, or the Jewish impossibility of marriage between a Jew and a non-Jew are increasingly felt to have become untenable. Reforms are thus under way, more or less radical, depending on the power still available to orthodoxy.

The relation between patterns of actual family life and the law of the family is complex. By patterns of actual family life we mean that total congeries of behavior as determined by religious and ethical beliefs, convention and habits which exist in a given society. Complete correspondence between a society's family *mores* and its family law can exist, if at all, only in small groups of homogeneous *mores*. But such societies are unlikely to have organized government and law in the sense in which that term is understood in our context. Such a society does not need "law". Deviance of individual behavior from *mores* that are generally recognized does, of course, meet with social disapproval. Sanctions can be severe, ostracism or death. But, unless there is at least a trace of organized government, the sanctions will be brought about by the unorganized, more or less spontaneous reactions of the community members.

"Law" does not begin to be developed unless the society is not homogenous, *i.e.*, where its social climate permits more than occasional deviances from the "orthodox", or where different

mores prevail among different groups. Wherever family law exists, it cannot fully correspond to all the patterns of life that actually exist in that society. In that sense differences between law and life are inevitable even in societies in which one single ideology, one single *Weltanschauung*, is officially admitted to the exclusion of all others. The Christian society of the pre-Enlightenment era was not in the position of universally enforcing its ideals of impermissibility of all sex relations outside of holy wedlock, and of indissolubility. It had to tolerate bawdy houses and the development of elaborate rules of law – Canon law that is – about nullity of marriage. National-Socialist ideology could not wipe out popular disapproval of non-marital parenthood or even convince everybody of the idea that interracial sex relationship is a "sin against the blood". Complete uniformity of ideology and behavior could hardly have been achieved even if the time of National-Socialist rule had been longer.

The complete social equality of the sexes which constitutes an essential element of the ideology of Marxism does not seem to have been fully achieved in the communist countries. When official Soviet law, in 1944, re-emphasized the importance of stability of home and marriage, its evasion through the establishment of free unions became as much a mass phenomenon as it was in Italy where the ideology prevailing until 1970 declared marriage to be indissoluble.²²

The relation between the family law of the books and the family law in action is even more complex in a pluralistic society, *i.e.*, a society in which no single ideology is officially declared to be alone admissible. The ideology dominant in such a society is that of tolerance. A more or less broad number of ideologies of behavior is permissible under the shield of the dominant base ideology of tolerance. Which of the several permissible patterns of belief and behavior shall find expression in the norms of the law? The broader the band of admissible patterns, and the wider the differences among them, the more difficult is the task.

The so to speak natural way out is for the law to refrain from adopting any one of the admissible patterns so that it attempts no more than defining the limits of permissible diversity and leaving the choice to the individuals concerned. That method is of necessity that generally applied with respect to the shaping of the internal relations of family life. Everywhere, it seems, that at least today the partners to a marriage are free to shape their rela-

²² *Rheinstein, Marriage Stability, Divorce and the Law* (Chicago 1972) 242, 659.

tion to each other as they wish to do. But even in that respect vestiges of older attempts to impose a particular pattern and to ostracize others have not totally disappeared. Intercourse, even marital, other than in the "normal" way is still officially declared punishable in the statutes of a number of American states.²³ In countries, which have shaped their civil codes upon the Napoleonic model and, unlike France, have not yet changed the original wording, the decisive voice in all matters of family life is still given to the husband (*infra* ch. 4).

In all modern systems spouses are given a range of freedom for the regulation of their property relations (*infra* ch. 4). The ordinary matrimonial regime may, within certain limits, be contracted out by the spouses. In countries of Anglo-American law the power so to change the "regular" regime by premarital or postmarital settlement is, on general principle, limited only by the requirement of the parties' being frank and fair toward each other. In some systems of the European type the freedom is limited, as in Switzerland and West Germany, to the choice between a limited number of patterns the details of which are regulated by statute,²⁴ or, as it was under the *Code Napoléon*, to determinations by pre-marital *contrat matrimonial*.²⁵

Resort to the device of *ius dispositivum* is not always possible. Certain aspects of family life must, or it is widely believed that they must, be determined by the compulsion of *ius strictum*. If the dominant ideology requires marriage to be indissoluble, divorce will not be provided. If the prevailing ideal is that of male domination, the powers to manage the family property will be vested in the husband. If the dominant view demands complete subordination of the children, the head of the family will be given the necessary powers. But is there a dominant ideology? Has an ideology which once was dominant still that character? Is an ideology dominant in one group of the society accepted by, or even acceptable to, all others? Discrepancies between family law and

family *mores* are thus frequent and conspicuous.

11. *Discrepancies between laws and mores.* – Much has been said about an alleged general lag of the law behind the *mores*. But in a pluralistic society the question is always: whose *mores*? And if the question is stated in this way it will appear that the pattern of behavior expressed in the law, while being followed or held desirable by the group sufficiently influential to make it the law, may be ahead of or behind patterns followed or held desirable by other groups.

Discrepancy is particularly apt to appear in matters which are so deeply affected by religion as marriage. In the countries of the Christian world secularization of thought and *mores* set in earliest among the intellectuals who also have become politically influential. Secular reforms of the law of marriage and divorce were imposed on their people by absolute monarchs like Frederick the Great of Prussia or by the leaders of revolutions of eighteenth century France or twentieth century Russia before the changes had become a need felt by the masses. After an initial flurry of divorces little use was thus made of the possibility of easy divorce opened up by the Jacobin laws of 1792/1794, and in those strictly Catholic regions of Italy upon which revolutionary laws were imposed in the course of *Napoleon's* conquest they remained unused.²⁶

In Oriental countries the impact of the contact with the Occident was felt earliest by rulers like the *Meiji* reformers of Japan, *Mustafa Kemal* of Turkey or the *Kuo-Min-Tang* of China. In both Japan and Turkey the official recordation of marriage as required by the new Westernized law has not been universally regarded as indispensable for the social respectability of a man-woman relationship.²⁷ In Islamic countries the abolition of polygamy by the official laws has not yet fully penetrated the *mores*. In Christian countries the proscription of all extra-marital intercourse, which seems to have been effective for the "respectable" women has never eliminated prostitution or the mistress system.

²³ These laws appear to be unconstitutional, as far as they apply to marital intercourse, and appear now to be incompatible with the protection of the right of privacy of the marital bedroom declared to be protected by the Constitution of the United States in *Griswold v. State of Connecticut*, 381 U.S. 479, 85 S.Ct. 1678 (1963).

²⁴ CC art. 179 par. 2; on West-Germany see *Beitzke* 77 and *Dölle* 669 ss.

²⁵ Former CC art. 1394, 1395.

²⁶ *Croce*, *Aneddoti e Profili Settecenteschi* (Palermo 1914) 315; *Sagnac*, *La législation civile de la Révolution française* (Paris 1898).

²⁷ On Turkey: *Lipstein*, *The Reception of Law in Turkey*: Ann. Fac. Istanbul 6 (1956) 11, 17; *Velidedeoglu*, *De certains problèmes provenant de la réception de Code Civil Suisse en Turquie*: *ibidem* 99, 111; *Findikoglu*, *Special Aspects of the Turkish Reception of Law*: *ibidem* 155; *Timur*, *De la publication et de la célébration de mariage en Turquie*: *ibidem* 166.

On Japan: *Fueto*, *The Discrepancy between Marriage Law and Mores in Japan*: 3 Am.J.Comp.L. 256, 260 (1956); *Kawashima and Steiner*, *Modernization and Divorce Rate Trends in Japan*: 9 Economic Development and Cultural Change 213, 219 (1960); *Watanabe* 364, 389.

Even where modernization has penetrated into the *mores* of the masses, the secularization of the law, especially of divorce, has in places been prevented or delayed by politically influential religious groups such as the Roman-Catholic Church in Italy or New York, or the Jewish orthodoxy in Israel.

Obviously concordance between the official family law and the *mores* of all of a nation's people can be expected least in societies finding themselves in the rapid transition of the present era. The changes do not universally affect all circles of the population. Necessarily some sub-cultures are ahead of others. The law expressing the ideologies of some part of the people does not correspond to those of others. Such incongruity is particularly conspicuous in three aspects.

- (1) the social and the legal status of women;
- (2) the factual and the legal status of youth;
- (3) the relevance of the family law for the life conditions of the "neglected" groups of society: the poor, the ethnic minorities, the "bohemians".

12. *The legal and social status of women.* – One of the most far-reaching consequences of modern technology has been the gradual obliteration of the traditional division of labor between the two halves of mankind, the male and the female.²⁸ The machine has opened up to women lines of activity which had hitherto been exclusive domains of men; appliances have eased the burdens of the household; contraception has reduced the incidence of woman's most characteristic burden: child bearing. The public through schools, day care institutions, plant mess halls, etc. has assumed many traditional tasks of the home. Women have thus entered economic life and, in consequence, the institutions of education and of political life. So the traditional dominance of the male is yielding to equality of the sexes. But the change is far from being complete. In modern society the old type *Hausfrauenehe* (house-wife marriage) co-exists with the new type of *Doppelverdeinerhe* (double earners' marriage). Schemes of marital property law, of the law of marital support or of the law of divorce, where they are still patterned on the traditional system, are lagging behind the reality of life of those social groups in which new types of relationship between the sexes are coming to the fore. Schemes patterned upon the new model are, in other places, ahead of the actual life styles of substantial parts of the populace. Both situations can result in hardship. But a "progressive" law can have educational effect and, as it has

done in the socialist countries, can effectively speed up the general transformation of society. In both the French Revolution of the eighteenth century and the modern revolutions of Russia and China, family law was initially used as a weapon to break up that mainstay of the old order, the old-type family, and later as a means to use the new type of family as a basis of the new social system.

13. *The changing position of youth.* – Another field of family life in which far-reaching transformations are taking place is that of the position of youth in society and, as part thereof, of the relation between parents and their children (*infra* ch. 7).

Maturity seems to set in at an earlier age than it had before. Although schooling extends over more and more years, dependence of the young on their parents has begun to end earlier. Those legal institutions by which adolescents have been kept under parental control are losing effectiveness and are tending to be modified. In the Far East the traditional dominance of the head of the house over his descendants, including those of full age, was removed in China by the legislation of *Kuo-Min-Tang* and in Japan by the family law reform of 1949. In China the transformation of the parent-child relationship was speeded up by the Communist Revolution. In Japan the efforts of youth to free itself of parental domination and especially to achieve freedom in the choice of the marriage partner has become a significant factor in the political life of the nation. In Western countries such remnants of parental domination over adult children as the requirement of consent to marriage or, somewhat milder, that of informing the parents of the adult child's intention to conclude a marriage, were removed in the nineteenth and early twentieth centuries. But what still survives is the parent's power to disinherit an ungrateful or "unworthy" child, a power which is losing weight as inheritance of wealth is losing significance.

Parental power over minor children still exists as a matter of course, but schooling and other aspects of education have been assumed by the state and other, voluntary or compulsory, organizations. The exercise of parental power is being increasingly supervised by state organs and the age at which parental authority terminates is being reduced. The present trend is to fix the age of majority at 18 years instead of the formerly common age of 21 or the occasional higher limits of some countries.

²⁸ On the position of women in marriage see *infra* ch. 4.

14. *The universalization of family law.* – The third great trend by which the law of the family is being transformed is that of paying increasing attention to the needs and cares of social groups that had hitherto been neglected by the law, *i.e.*, the poor and such ethnic groups as the Indians of Latin-America or the Negro of the United States. The Common Law of England was the law that was built up by the royal courts of Westminster, the courts of His Majesty the King. They were the courts which dealt with the affairs of the great men of the realm or at least of those who owned freehold property. The matters of plain folk were at one time handled in such ancient courts as those of the Hundred and, after their reduction to insignificance, by such bodies as the manorial courts or the borough courts and finally by the courts of the King which remained centralized in London and at which litigation was enormously expensive. So plain folks and quite particularly the poor came to be of concern to the Common Law primarily as the subjects of the criminal law.

When Englishmen began to migrate to the colonies on the continent of North America, the English law that they took with them was not so much the Common Law of the Royal courts as the customary law which was still being applied in the local courts of seventeenth century England. But with the growth of wealth, the expansion of crafts, industry and commerce and the increasing professionalization of the men by whom legal affairs were handled, American law was increasingly identified with the Common Law of England including its technicalities and its predominant concern with the affairs of the owners of property. True, American law never became pronouncedly a law for the wealthy. Care was taken to have the courts accessible to people owning little property, especially small farmers. But little attention was paid to the legal needs of the poor whose numbers tended to coincide with those of new immigrants and of the enslaved, and then, in 1863, emancipated negroes. So the law of marital property, succession on death, support, divorce, parental power or guardianship took elaborate care of the needs of the owners of property, but paid scarce attention to those of the propertyless.²⁹

In Eastern Europe, particularly in Russia, where

the mass of the people, the peasants, had been serfs until 1861, the situation was similar, especially for the urban labor force of the incipient industries. For them the old laws of the peasantry no longer had meaning and their new needs were scarcely recognized in the law of the state.

In continental Western Europe the situation was not quite so drastic. In their power struggle with the nobility, monarchs found it advisable to pay attention to the needs of the bourgeoisie, and the monarchs' bureaucracies were inclined to pay some consideration to the needs of even the poor. Welfare legislation tended to be more benevolent than the English Poor Laws of Elizabethan origin. Social security started to be a legislative concern with *Bismarck's* laws of the 1880s. But what governmental concern there was exhausted itself mainly in institutions of public administration. The "private" law of the family remained concerned primarily with the affairs of the owners of property. While the contrast was not so pronounced as that in England or America as described by *ten Broek* in 1964/65 (*supra* n. 29), critics of the German legislation of the turn of the century could still blame the then young Civil Code for its neglect of the poor.³⁰

While it would be an exaggeration to speak of two different civilizations in the countries of Europe or North America, this observation justly applies to those parts of Latin-America in which Indians still live in a style of life widely different from that of the Spanish-speaking white. In those countries the state's laws in the family field correspond primarily to the life style of the white. In such countries as Argentina, Brazil or Columbia, the ideology of the Roman Catholic Church, still exerts a strong influence in the whites' family law, in other countries, esp. Mexico or Bolivia secular ideologies dominate. In neither group, does the law correspond to the life patterns of the Indians.

Preoccupation with the needs of owners of property, and corresponding neglect of the affairs of those without property or without considerable amounts of it has long dominated the law of support, divorce, adoption, marital property, and also, or, we may even say, in particular, the law dealing with the property of minors.

Now increasing attention is being paid not only

²⁹ *ten Broek*, California's Dual System of Family Law: 16 *Stan.L.Rev.* 16, 256, 900; 17 *ibidem* 614 (1964/65); *Foster, Jr. and Freed*, Unequal Protection – Poverty and Family Law: 42 *Ind.L.J.* 192 (1967); *Weyrauch*, Formal and Informal Marriage: 28 *U. Chi.L.Rev.* 88 (1960); *Foster*, Common Law Divorce: 46 *Minn.L.Rev.* 43 (1961).

³⁰ See esp. *Menger*, Das bürgerliche Gesetzbuch und

die besitzlosen Volksklassen (1890, ed. 3 1904); *Renner*, Die Rechtsinstitute des Privatrechts und ihre sozialen Funktionen (1904 under the pseudonym of *Josef Kerner*: *Marxstudien I* (1928)) (Stuttgart 1965) with Introduction and notes by *Kahn-Freund*; Engl. transl.: *The Legal Institutions of Private Law and their Social Functions*, 1949.

to the poor, but that most neglected group of those who are neither destitute nor sufficiently affluent to be paying customers of the machinery of the law. Legal aid, long neglected particularly in the countries of Anglo-American law, is being broadened. Through procedural reforms, the courts are made more widely accessible, and in the substantive law increasing attention is paid to the legal problems of people owning little property or none at all. Their family life thus becomes protected not only by reforms in the law of instalment buying, garnishment of wages, housing, but also through the laws dealing with guardianship, minors' contracts, adoption, illegitimacy, divorce or support.

D. THE LAW OF THE CHANGING FAMILY

15. *From the society of groups to the society of individuals.* – Pre-industrial societies have been composed of groups rather than individuals. The state was an aggregate not so much of individuals as of clans or "houses". In India the joint family is the rule still today. In black Africa a man still tends to look upon himself as the member of a clan rather than an independent individual. In parts of the Western world the "extended family" has survived into the twentieth century. When in Europe the modern states developed out of the once universal system of feudalism, the monarchs were rulers over groupments of seigneuries, towns, guilds, and above all, families.

With eighteenth century Enlightenment the individualizing view of society began to be preponderant. In the French Revolution the new ideology became official. The nation was to be *une et indivisible*. The state was now clearly conceived to be composed of individual citizens. The intermediate groups of manor, guild, estate, province were swept away; the municipalities were made subdivisions of the state government. But one group, intermediate between the state and its individual citizens was left intact: the family. The French families were to be the basic cells of which the French nation was to be composed, and they were conceived to be firm units, each of them to be headed by the husband-father. The unity of the family and the closeness of its ties found expression in the Napoleonic legislation that emerged from the Revolution: community of movables and acquets between the spouses, but continued connection of the land with the blood family of each spouse; express nomination of the husband

as the head of the household; the family council as the organ of guardianship; the "acts of respect" requiring even adult children to discuss an intended marriage with the parents; strictly limited possibility of divorce, and complete impossibility of divorce after the Restoration of the Bourbon monarchy; limitation of the possibility of contractual regulation of marital property to the time before the conclusion of the marriage, *i.e.*, the stage at which the *contrat matrimonial* tends to be a pact between the two families concerned rather than between an individual husband and an individual wife. As the end of the century approached, French law was gradually adapted to the new ideology of the age of high industrialization and urbanization. Divorce was reintroduced in 1884.³¹ Freedom from the husband's control of the wife's earnings from work outside of the household was established in 1907.³² Other measures indicating the transformation of marriage from a union into a partnership followed or occurred gradually with the continuing facilitation of the termination of a marriage by the judicial practice which turned the *divorce sanction* of the law of 1884 into the *divorce faillite* of modern France.³³ By the reform law of 1965 the preponderance of the husband in the management of the community fund was significantly curtailed. By the law of 4 June 1970, the declaration of the husband as the head of the household was formally deleted from the legislative text (*infra* ch. 4).

16. *The trend toward freedom in marriage.* – The trend of social life and consequently of the law has been the same in one may say all parts of the world, faster and more radical in those of high industrialization and strong preponderance of liberal or socialist ideologies, slower and less radical in countries of lagging industrialization or of greater conservatism. The notion of marriage as a contract between two individuals each conserving his freedom and independence has been a principal aim of the feminist movement by which a new-type marriage is being demanded along with equality of women with men in political, economic and social life. The desire to experiment with styles of life different from that of the Christian tradition has accelerated the transformation of marriage. In the Socialist countries and those industrialized countries in which Catholic ideology is not dominant, the law has reached the stage of expressing full, or almost full, equality of men and women and thereby creating a legal model of marriage as a free partnership between two independent individuals.

³¹ Law of 19 July 1884 (*loi Naquet*).

³² Law of 13 July 1907.

³³ *Rheinstein (supra* n. 22) 216 ss.

But to at least some extent recognition has to be given to the fact that after all a married couple has not entirely ceased to constitute a social unit. Participation in the acquiescence of either spouse is thus recognized even in the countries following the ideology of *Freidrich Engels* and *August Bebel*. Mutual rights of succession on death are universal, also rights of support during marriage, but those after divorce are weakening.

17. *The decline of the blood line.* – Connected with the shift of emphasis from the unity of the family to the increased consideration of the personality of its individual members, one can recognize the also decreasing significance ascribed to the continuity and purity of the bloodline or, more specifically, the paternal bloodline. The origin of the emphasis on or continuity of the bloodline seems to lie in primordial ideas of totemism and ancestor worship. The emphasis on the paternal side was an expression of male dominance and was rationalized by the analogy between human reproduction and the reproduction of plants. The new specimen is determined by the seed rather than the soil or the womb in which it is planted.

In the class society of the past the concern about the purity of the paternal bloodline found legal expression in the abhorrence of female adultery and in the rules of succession on death designed to keep family wealth, particularly landed wealth, within the bloodline of the original "purchaser". Not only in archaic society but rather deep into modernity adultery was what the name still indicates, the adulteration of the pure line of blood, the planting of a cuckoo into the nest. Punishment was meted out to the woman who had allowed her womb to receive the seed of a man other than her husband, and the man who had thus produced the *perturbatio sanguinis*. Both might be put to death; but the married man who had engaged in intercourse with some unmarried woman met with mild punishment or no punishment at all for his breach of his vow of marital fidelity.³⁴ When through the Protestant reformers divorce came into the Christian world, it was the wife's adultery that constituted the archetype of ground of divorce. As the significance of bloodline purity receded into the background of consciousness and female equality became a postulate of the intellectuals, male infidelity was equated with female as both a crime

and a ground of divorce. But punishment was greatly mitigated and made to depend upon the application of the injured spouse, that would be used less and less frequently as time went on. As a ground for divorce male infidelity was recognized only with hesitation. While a man was entitled to repudiate the wife who had committed one single act of adultery, legislative acts like the Napoleonic Code of 1804 or the English statute of 1857 did not release a woman from the bond of marriage unless the husband combined his unfaithfulness with outrageous acts of cruelty or his bringing his paramour into the household. The unequal treatment was not abandoned until the original cause of the condemnation of adultery – confusion of the blood – was forgotten and the different treatment of husbands and wives appeared as that sort of discrimination that was no longer justifiable under the increasing pressures for equality. In the next stage of development adultery, of either wife or husband, was treated as an "absolute" ground of divorce. One single act constituted, and under many laws still constitutes a ground of divorce, unless it has been condoned by the other spouse or was committed with the other spouse's connivance. But under more recent laws as the English Divorce Reform Act of 1966 adultery has been reduced to constituting a "relative" ground; the other spouse is not entitled to a divorce unless he proves that the continuation of the marriage has become intolerable to him. In divorce laws of the most recent type, those of the Socialist countries, of California, Texas or Iowa, or the recent drafts of West Germany and Sweden, adultery as such has disappeared and has been absorbed in the omnibus ground of irremediable disruption of the parties' marriage. The fear that the paternal blood line might be confused has lost its horror.

The same change of attitude appears in the case of succession to property on death by the increased admission of the surviving spouse and of relatives of the half-blood and of illegitimates (*infra* vol. V). The traditional absence of mutual rights of intestate succession between a child born out of wedlock and his biological father is no longer seen as part of the concern for integrity of the bloodline but as a moral discrimination no longer justified.³⁵

The continued tie of land and other wealth with the blood no longer constitutes an important con-

³⁴ See *Mittermaier*, *Verbrechen und Vergehen wider die Sittlichkeit: Vergleichende Darstellung des deutschen und ausländischen Strafrechts. Vorarbeiten zur deutschen Strafrechtsreform IV, Besonderer Teil 1*, 91 (Berlin 1906); *Branco*, *Adulterio-Diritto Romano*:

Enciclopedia del Diritto I (Milan 1958) 620; *Marongiu*, *Adulterio-Diritto Intermedio: ibidem* 622. On adultery as a ground for divorce see *infra* ch. 5.

³⁵ See *Krause*, *Illegitimacy VIII* (Indianapolis 1971) and *infra* ch. 6.