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REWRITING ASPECTS OF WIDOWHOOD IN JUSTINIAN'S NOVELS

Abstract. – Although remarriage was never legally forbidden by the Christian emperors, it wasn't encouraged. Justinian I (r. 527–565) follows a similar stance on this issue as his Christian predecessors by readdressing the topic of remarriage in several of his Novels, seeking to transform recurring problems related to remarriage into coherent and updated legislation. These problems largely stem from the inadequacy of the agnatic system, a relic of the past, whose supporting legal provisions had become ineffective, particularly in matters of remarriage.

This paper examines the fate of a specific category of property: the dowry and prenuptial gift (the so called matrimonial gains) in case the surviving spouse remarries. Justinian's primary concern in such situations is the protection of children's rights and the promotion of equality in spousal and gender relations, particularly regarding property. At the same time, he seeks to safeguard the interests of the remarried partner by granting a lifetime usufruct over this type of property. These reforms are designed to lead his subjects toward σωφροσύνη ('temperance') by correcting the deficiencies of earlier legislation.

Key words. – Remarriage, widowhood, *univira*, Justinian's Novels, cognatic kinship, marriage law, dowry, prenuptial gift

Univira and widowhood

The ideal of the *univira* – a woman who married only once – dates back to the earliest periods of Roman history. While the ideal persisted into the Christian era, its meaning and implications shifted significantly, particularly in relation to attitudes toward female remarriage following widowhood. Remarkably, there was no equivalent concept for men. As Lightman and Ziesel note in their examination of literary and epigraphic evidence from the pagan period, the term "*univira* had two aspects or usages: the prescriptive, which is related to the institutional and ritual activities; and the descriptive, which was a form of social approbation. In its

prescriptive form *univira* applied to living women who had living husbands; in its descriptive form to women who predeceased their husbands.” (Lightman-Ziesel, 1977: 24).

As expected, epitaphs predominantly reflect the descriptive usage of the term, which also prevails in literary texts. A notable example is the *matrona* Cornelia, wife of the consul Lucius Aemilius Paulus, memorialized by Propertius in *Elegy* 4.11 (16 BC). Her status as *univira* was not a result of legal prohibition against remarriage but of personal circumstance. In fact, Roman law and social policy, particularly under Augustus, actively encouraged both marriage and remarriage. Despite the fact that there was no statute dedicated exclusively to remarriage, it was nonetheless promoted through broader legislation aimed at increasing marriage and fertility rates, notably the *Lex Iulia de maritandis ordinibus*, *Lex Papia Poppaea*,¹ and *Lex Iulia de adulteriis coercendis*, which obviously referred to the upper echelons of Roman society. These laws imposed both penalties (*poenae*) and rewards (*praemia*) affecting property rights (e.g., inheritance, dowry, and gifts), as well as legal and social status, thereby incentivizing marriage and remarriage for men and women of childbearing age.²

In contrast, during the Christian period, *univira* became an epithet reserved for widows who chose not to remarry. One had to earn this epithet by living husbandless and in celibacy till the end of their life. Widowhood came to be associated with purity, even quasi-virginité – a notion explicitly articulated in the works of Justinian.³ These women were revered by the Church and held up as moral exemplars.

A decisive break with Augustan policy occurred in AD 320, when Constantine (*CTh* 8.16.1) repealed the penalties on unmarried and childless men and women that Augustus had mandated over three centuries earlier.⁴ His reasons were not religious, but political – aimed at pleasing

¹ In later texts the title *Lex Iulia et Papia Poppaea* is used to refer to two statutes that are considered to complement each other in some way.

² The age range specified is 20–50 for women and 25–60 for men.

³ E.g. *Nov. Just.* 2 ch. 3 “such a woman [sc. who remained widow] we both admire and praise, putting her not far from the state of virginity.” [As translated in Miller-Sarris, 2018: 70] This attitude is confirmed also in *Nov. Just.* 18 and 39. These legal endorsements did not arise in isolation; rather, they reflect a broader Christian discourse on post-marital celibacy that had already been established in patristic literature. Numerous Christian texts predating Justinian’s legislation had laid the ideological groundwork for associating widowhood with moral purity and quasi-virginal status, shaping both the legal norms and the social expectations surrounding remarriage.

⁴ “Those persons who were formerly considered celibates by the ancient law shall be freed from the threatening terrors of the law, and they shall live as though numbered among married men and supported by the bonds of matrimony, and all men shall have an equal status in that they shall be able to accept anything to which they are entitled. Nor indeed shall any person be considered childless, and the prejudices attached to that name

the senatorial order by dismantling elements of Augustan family law. Nonetheless, this change aligned with emerging Christian ideals of post-marital celibacy.⁵ Although celibacy after the death of a spouse was never coercively imposed, it became a normative expectation. This explains why later emperors tolerated remarriage after widowhood or divorce but did not actively encourage it. As has been noted, “The principle of the indissolubility of marriage, as affirmed by Jesus according to the Synoptics’ accounts (Matt. 5:31-32, 19:3-12, Mark 10:2-12; Luke 16:18), never understood indissolubility to be a legal absolute” (Meyendorff, 1990: 102-103), and thus remarriage remained legally permissible.

Widows and their social and legal status particularly attracted the attention of imperial legislation. As Judith Evans Grubbs notes (Grubbs, 2001: 221), “respectable women were of interest because of their wealth and family connections”. Without a male guardian, their wealth was vulnerable, and remarriage complicated these property issues, aside from being ideologically discouraged. This paper examines some legal and ideological aspects of remarriage after widowhood in several Novels of Justinian. Issued in the context of the Byzantine Empire, these legal reforms reflect both the Christian ideals of the state and the emperor’s own aspirations for moral and social order⁶. Importantly, while Justinian does not radically break from earlier Roman traditions regarding remarriage, his *Novels* mark a significant departure in one key area: the dismantling of the agnatic kinship structure, a shift that he would later extend fully to the law of inheritance.⁷

The most ardent legal issues arising from second marriages were property rights, followed by moral considerations and parenting rights – the latter being closely intertwined with inheritance. These matters are not

shall not harm him. 1. We consider that the same provision shall be effective with respect to women, and We release all of them indiscriminately from the legal compulsion imposed as yokes on their necks. 2. But the abuse of this benefit shall not extend to husbands and wives with respect to each other, since their deceptive blandishments, for the most part, are scarcely restrained even by the opposition of the rigor of the law, but between such persons the ancient authority of the law shall remain in force.” (*CTh* 8.16.1) [As translated in Pharr, 1952: 217-218]

⁵ For information on widowhood in early Christianity, refer to Zhao, 2024; on widowhood in the Roman Empire see Evans Grubbs, 2001; also, Evans Grubbs 2002.

⁶ The form of these documents consists of direct address from the emperor to a specific addressee (often a high official), as indicated in the (1) inscription. This is prompted by a particular issue announced in the (2) *προοίμιον*/praefatio, which then becomes a general law detailed in (3) the *capita* – the body of the law. Finally, in the (4) *ἐπίλογος*/epilogus the emperor instructs the addressee on how the law should be disseminated and when it should take effect. Throughout the constitution, the lawgiver emphasizes “their” humane intentions and the will of God.

⁷ In *Nov. Just.* 118 and 127 the emperor finally moves away from the agnatic system of inheritance.

addressed in a single comprehensive constitution but are treated sparsely in several novels. The earliest, *Nov. Just.* 2, initiates a series of reforms with far-reaching implications for inheritance law and gender equality, which are confirmed and expanded in *Nov. Just.* 22. Through a contextualized analysis of these texts, this study explores how Justinian rewrote the legal meaning of widowhood and remarriage, aligning them with his broader legislative agenda of *σωφροσύνη* ('temperance', 'moral purity') and social harmony, by constantly correcting and broadening the relevant legal framework⁸.

Widowhood and the legal status of the prenuptial gift

The issue of remarriage in relation to women's property rights first appears in *Nov. Just.* 2, prompted by the case of a widow named Gregoria, who petitioned the emperor directly. Her case serves as one of many examples of the responsive nature of late Roman imperial legislation. Albeit the constitution is not dedicated exclusively to the question of widowhood, it addresses the inheritance rights of mothers whose children have died intestate, especially when these mothers are remarried or intend to remarry.

As the Greek and Latin titles⁹ of the Novel indicate, this constitution regulates the right to choose (*ἐπιλογή*, *ius eligendi/electionis*), but also, as Justinian announce in ch.2, alienation (*ἐκποίησης*, *alienatio*), and profit (*κέρδος*, *lucrum*) concerning a particular kind of property: the prenuptial gift (*προγαμιαία δωρεά*, *donatio ante nuptias*) and the dowry (*προίξ*, *dos*). These precautions are taken in order to regulate the main issue in Gregoria's petition: the prenuptial gift, which together with the *patrimonium*, is a property derived from the husband or the father. In order to promote equity and justice in marital relationships, Justinian applies the same rules to the inheritance and usufruct of the dowry after the death of the wife.

Gregoria had previously exercised her legal right of choice by transferring ownership of the prenuptial gift to her son while retaining only usufruct, because she had the *ius electionis*. When her son died intestate, leaving no descendants, Gregoria and her daughter were called to the succession of the son and brother respectively. However, her daughter

⁸ Justinian readdresses this issue in numerous Novels, examining it from different angles or amending ineffective provisions, whether they had been introduced by his predecessors or by himself. For example, Novels 39, 91, 94, and 98 also address aspects of remarriage after widowhood, while Novels 2, and especially 22, offer the most comprehensive treatment.

⁹ The Greek title is: Περὶ τοῦ μὴ ἐπιλέγεσθαι τὰς δευτερογαμούσας γυναῖκας, καὶ περὶ ἄλλων κεφαλαίων. (Ἐχει δὲ πρόφασιν ἡ διάταξις Γρεγοριαν τινά). The Latin version of the title is slightly different from the Greek: *De non eligendo secundo nubentes mulieres, et alienatione, et lucro antenuptialis donationis, et de successionibus earum filiis suis*.

contested the mother's right to inherit, given the nature of the inheritance estate and her intention to remarry. The daughter relies upon the previous legislation in the *CJ* (*CJ* 6.56.5, 6.56.6 and 6.56.7). In *CJ* 6.56.5, which is a constitution issued in 426 by Theodosius II and Valentinian III (*CJ* 6.56.5) some aspects of this problem are considered:

“A mother who, in accordance with a will or on intestacy, succeeds a deceased son or daughter without children, if she has not contracted a second marriage after the death of her son or daughter, should claim everything acquired at the death of her child in full right. But if she chooses a marriage with another husband, she should possess property gained independently by her son or daughter with a similar firmness, but she should, in the contemplation of the human lot, only gain possession of a usufruct over the decedent's property inherited from the father, so as to transmit the ownership to the sister and brothers of the decedent.”¹⁰ [As translated in Frier, 2021: 1715.]

This provision clearly restricted a mother to share the inheritance of her predeceased child with the other children if she remarried, if this property contains patrimony. The mother can have only the usufruct of the property that stems from the father, but not the dominion, in order to prevent transfer of property to other agnatic family. This provision doesn't mention the prenuptial gift which is the main issue in *Nov. Just.* 2, but only the patrimony. Also, this provision says nothing about total restriction of the mother's inheritance rights, as the daughter requests. Total restriction is prescribed in the next provision *CJ* 6.56.6, issued by the same emperors. In this provision, the rights of the mother are totally revoked if the predeceased son is a minor and the mother has never instituted a tutor, but has taken the tutelage herself. As a tutor, she had to take an oath not to remarry, and if she remarries, she committed blasphemy and doesn't deserve the property of her son.¹¹

¹⁰ *CJ* 6.56.5 = *CTh* 5.1.8, with some differences in wording.

Imperatores Theodosius, Valentinianus. Mater, quae defuncto filio filiae sine liberis ex testamento vel ab intestato succedit, si matrimonium secundum post mortem filii vel filiae non contraxerit, omnia filii morte delata pleno iure conquirat.

1. Sin vero alterius elegerit coniugium mariti, extrinsecus quidem quaesita filio filiaeve simili firmitate possideat, rerum vero paternarum defuncti solo usu fructu humanitatis contemplatione potiat, proprietatem sorori et fratribus transmissura defuncti.

¹¹ Regarding her tutelage rights over her children, the mother also faces legal impediments if she enters a second marriage, under the same statute: “The same Augusti to Florentius, Praetorian Prefect We wish all succession to be denied to a mother, whether on intestacy or by right of substitution, if her minor (impubes) son dies, if she, after undertaking the tutelage by law of her children, aspires to a second marriage against the oath she has given before she has provided for the appointment of another tutor for him (the son) and pays him what he is owed on the basis of the performance of the tutelage.” (*CJ* 6.56.6) [As translated in Frier, 2021: 1715.]

It is very unlikely that Gregoria's son was a minor, even though he is referred to by Justinian as a young man. Had he been underage, that fact would almost certainly have been used as a legal argument within the case. In *CJ* 6.56.7, a constitution issued by Justinian, the rules regarding remarriage follow those previously established by Theodosius II in *CJ* 6.56.5. However, this provision specifies that when a childless son dies, and only sisters survive, the mother may inherit half of the estate, while the sisters divide the remaining half per capita. This explains why Gregoria claims one-half of her son's estate. The same constitution further provides that if there are brothers, or both brothers and sisters, all – including the mother – inherit per capita.

Since in Gregoria's case there is only one daughter, it is unclear whether the earlier rule – granting half to the mother and dividing the other half among daughters – remains valid. This ambiguity is resolved in *Nov. Just.* 22.47, where Justinian explicitly states:

“As we have not rectified this before, we are now bringing it under due reform, by calling her to inherit, in this case, on the same basis as each of her daughters, so that she gets just as much as each of her daughters has.” (As translated in Miller–Sarris, 2018: 269)

“Gregoria, by contrast, claimed her entitlement not merely as a usufructuary but as an heiress: “this is no longer simply a prenuptial gift, but is now combined with her son's property; and that the ownership, as well as use, of six unciae [*half of the property*] of his estate belongs to her, as being an inheritance, no longer a gift.” [As translated in Miller–Sarris, 2018: 66]

The legal dilemma in this case is not the right to inherit, because she obviously has that right with the exclusion of the patrimony, which has a different arrangement, but the prenuptial gift, which was given to the son and he became the legal owner. So, according to the mother this gift is no longer a gift, but a property along with the other estate of the son. She expects to become owner of this property.

The prenuptial gift was fundamentally different from both dowry and *simplex donatio* (ordinary gift). According to Justinian, it had a unique legal nature and was intended as security for the wife in case she survived her husband. During the husband's lifetime, she has nothing to do with this gift – neither possession, neither *usus*. Initially a voluntary act, the prenuptial gift under the Christian emperors evolved into a recognized legal institution, functioning as a reciprocal to the dowry. The prenuptial gift was first mentioned in a statute by the Emperors Gratian, Valentinian, and Theodosius (*CTh* 3.8.2.) promulgated in 381 in relation to subsequent marriages (*De secundis nuptias*):

“When a woman passes to a subsequent marriage, if she has children born from a prior marriage, anything that she has received from the property of her former husband by right of betrothal gifts, or anything that she has also received upon celebration of the marriage, or anything that she has acquired from the property of her former husband by gifts made in expectation of death' or by testament, either by direct right or under the title of a trust or legacy or as a reward through any other form of munificent liberality, all this she shall have the right to transmit undiminished, just as she received it, to the children which she has from her prior marriage, or to any one of these children upon whom the mother believes she ought to bestow the judgment of her liberality in view of the merits of such child, provided that this child should be one of those whom We consider most worthy of such a succession. Such a woman shall not presume or have the power to alienate any part of such property to any extraneous person whatsoever or to successors born from the union of the second marriage. She shall have the right of possession only to the last day of her life, and she shall not be allowed the power of alienation also. For if any of the aforesaid property, through a fraud of evil intent, should be transferred by the mother who possesses it to any other person whatsoever, it must be restored by compensation out of her own resources, whereby the property shall go undiminished and unimpaired to those persons whom We have designated as heirs.”¹² [As translated in Pharr, 1952: 72]

Thus, in spite of the fact that the woman does not become the legal owner of the prenuptial gift and the other property that derived from the husband directly or indirectly, she retains lifetime usufruct, and this right is not extinguished upon remarriage. This provision is valid in Justinian as well. In Gregoria's case, Justinian confirmed that she could not claim ownership of the prenuptial gift as part of her son's estate since it is legally

¹² *feminae, quae susceptis ex priori matrimonio filiis ad secundas transierint nuptias, quicquid ex facultatibus priorum maritorum sponsaliorum iure, quicquid etiam nuptiarum solennitate perceperint, quicquid aut mortis causa donationibus factis aut testamenti iure directo aut fideicommissi vel legati titulo vel cuiuslibet munificae liberalitatis praemio ex bonis maritorum fuerint assecutae, id totum, ita ut perceperint, integrum ad filios, quos ex praecedenti coniugio habuerint, transmittant vel ad quemlibet ex filiis (dummodo ex his tantum, quos tali successione dignissimos iudicamus), in quem contemplatione meritorum liberalitatis suae iudicium mater crediderit dirigendum. nec quicquam eadem feminae ex iisdem facultatibus abalienandi in quamlibet extraneam personam vel successionem ex alterius matrimonii coniunctione susceptam praesumant, atque habeant potestatem possidendi tantum in diem vitae, non etiam abalienandi facultate concessa. nam si quid ex iisdem rebus per fraudem scaevioris animi in alium quemlibet fuerit a possidente translatum, maternas redintegrabitur compensationibus facultatum, quo illibata ad hos, quos statui-mus, heredes bona et incorrupta perveniant. (CTh 3.8.2.)*

not part of her son's estate, it had never lost its character as a pre-nuptial gift. In *Nov. Just.* 22, 47 he reaffirms this position.¹³

Regarding her son's other property, Gregoria stood on equal legal footing with her daughter, since the son died without descendants. To avoid future confusion, Justinian reformed the law by revoking the *ius electionis* from any parent who remarries. The prenuptial gift remains non-transferable and non-profitable – its *lucrum* belongs solely to the children. What was once a provision for a surviving wife becomes, under Justinian, property held in trust for the children.

Nearly every provision in *Nov. Just.* 2, is reaffirmed in *Nov. Just.* 22, titled *Περὶ δευτερογαμούντων* (“On Those Who Marry Again”) – Latin: *De nuptiis*. Though not limited to widowhood, the text addresses second marriages more broadly, giving a lot of space of the *tempus lugendi* which is a sine qua non for women entering subsequent marriage.¹⁴ The text reiterates the limits on a woman's property rights upon remarriage after widowhood:

“[S]he will be left with no kind of ownership over anything that has come to her from her previous husband; her children will receive it, and will be secure possessors of the ownership from the moment that their mother has married someone else.”¹⁵ [As translated in Miller-Sarris, 2018: 250]

This restriction applies only if the widow has children, namely that the mother have only the *usus* of the patrimony and the prenuptial gift. In cases of childlessness, remarriage poses no threat to the widow's rights of ownership or usufruct. The reform therefore reflects a carefully calibrated approach: on the one hand, it reaffirms Christian moral ideals of chastity

¹³ “Should it turn out that the pre-nuptial gift that has accrued to their mother at her husband's death has come down to the deceased one of her children, and thus formed part of his inheritance, the mother is not, even insofar as she inherits from the child, to enjoy ownership of the property in this pre-nuptial gift, but only the use, and the revenue from it, in her lifetime. Thus this, too, is to count as a free gift to the children of the previous marriage, unless a court order or resolution of dispute between the parties, made prior to the said law, has made a decision on the matter.” [As translated in Miller-Sarris, 2018: 268]

¹⁴ The reason for forcing the mourning period especially towards women is as much religious as it is pragmatic. First of all, it is a religious duty for the widow to show respect towards her deceased husband and to honor the spirits. Secondly, abstaining from consequent marriage within the legal time limit prevents *turbatio sanguinis* (“confusion of blood”) i.e., confusion about the paternity of any child born after the death of the husband. Not respecting *tempus lugendi* was punished with losing inheritance and generally property rights, also with *infamia immediata* which occurred by force of law (*ipso iure*); however, they did not lose their *ius conubii*.

¹⁵ ἅπας αὐτὴν ἐπιλείψει δεσποτείας τρόπος ἐπὶ τοῖς παρὰ τοῦ προτέρου ἀνδρὸς εἰς αὐτὴν ἀφικμένοις, καὶ οἱ παῖδες αὐτὰ λήψονται καὶ τῆς δεσποτείας ἔσονται κύριοι κατὰ τὸν καιρὸν εὐθὺς καθ' ὃν ἡ μήτηρ συνόκησεν ἄλλω. [*Just. Nov.* 22.23]

and loyalty; on the other, it pragmatically secures children's inheritance rights and protects patrimonial continuity. Even though remarriage is not a desirable outcome, Justinian graciously encourage the mother to enter in subsequent marriage, in order not to lose her *σοφροσύνη*. Also, regarding the inheritance of their children, mothers are allowed to inherit their children before the members of the agnate family, together with the other siblings, which was a novelty in comparison to the previous legislation:

“Let her enter honourably on marriage with another husband, refrain from all immorality, and enjoy her succession from her children. In this way she will love them the more, and not see them as among her enemies, as a result of being subject to such severe penalties.”¹⁶ (*Nov. Just.* 2, 3.) [As translated in Sarris-Miller, 2018: 70]

In particular, Justinian's position substantially expanded the rights of widows to inherit their husband's property in the absence of children, often at the expense of the deceased husband's agnatic relatives. In this sense, *Nov. Just.* 22 challenges a cornerstone of traditional Roman marriage law, namely the effort to prevent the transfer of wealth between families through marriage. The emperor's legal interventions both reshape kinship structures and reflect the Christianized vision of the household, in which property, virtue, and legitimacy are increasingly aligned.

Finally, Justinian underscores that mothers and fathers should be treated equally in succession law (*Nov. Just.* 2, 3):

“We do not deprive fathers of succession to their children, should they enter into a second marriage, and there is no law to any such effect; thus, we shall not exclude mothers, either, from succession to their children should the mothers go on to a second husband, whether the children should die before the second marriage or after it. Otherwise, as a result of the law's absurdity, if all the children predecease without children or grandchildren, the penalty will await her all the same; their mother will not succeed them even if they should all die childless, but will be inhumanely disbarred from succession to them.”¹⁷ [As translated in Miller-Sarris, 2018: 70]

¹⁶ ἄλλὰ καὶ εἰς ἀνδρὸς ἑτέρου γάμον ἐλθέτω σεμνῶς καὶ ἀκολασίας ἀπεχέσθω πάσης καὶ ἀπολαυέτω τῆς τῶν παίδων διαδοχῆς. οὕτω γὰρ αὐτοὺς ἔτι μᾶλλον ἀγαπήσει καὶ οὐχ ὥς τινὰς τῶν δυσμενῶν ὄψεται, ποιναῖς οὕτως ὑποβαλλομένη πικραῖς.

¹⁷ Ὡςπερ γὰρ τοὺς πατέρας, εἴπερ εἰς δευτέρους ἔλθοιεν γάμους, οὐκ ἀποστεροῦμεν τῆς τῶν παίδων διαδοχῆς, οὐδὲ τις ἐστὶ νόμος τοιοῦτό τι λέγων, οὕτως οὐδὲ τὰς μητέρας ἀφαιρήσομεν τῆς τῶν παίδων διαδοχῆς, εἴπερ αἱ μητέρες εἰς ἀνδρὸς ἔλθοιεν δευτέρου, κἂν εἰ πρὸ τῶν δευτέρων γάμων κἂν εἰ μετὰ τοὺς δευτέρους οἱ παῖδες τελευτήσαιεν. ἐπεὶ τοιγε ἐκ τῆς ἀτοπίας τοῦ νόμου, κἂν εἰ προαπέλθοιεν οἱ παῖδες ἅπαντες μὴ καταλιπόντες παῖδας ἢ ἐγγόνους, οὐδὲν ἦττον ἢ τιμωρία μενεῖ, καὶ οὐ διαδέξεται τούτους ἢ μήτηρ, οὐδ' ἂν ἄπαιδες τελευτήσαιεν, ἀλλ' ἀπελαθήσεται τῆς αὐτῶν διαδοχῆς ἀπανθρώπως.

Dowry and *bona materna*

Dowry (*dos*) was an older and more established institution than the prenuptial gift. It was governed by extensive legislation that regulated its transfer, use, and restitution. Essentially, the dowry was a temporary contribution, provided by the wife or someone on her behalf, to the husband and his agnatic family. Although the husband did not become the legal owner of the dowry, he held usufruct or rights otherwise stipulated in the *instrumentum dotale*. Functionally, it was a contribution to the marriage household.

Classical Roman law had earlier stipulated that, upon the wife's death, the dowry was to be returned to her father, if he was still alive; otherwise, it remained with the husband (*Ulp. Reg.* 6.4). Ulpian notes:

“If the woman die during the continuance of the marriage a marriage-portion which proceeded from the father returns to the father, a fifth being retained in the husband's control for each child as far as the marriage-portion will.”¹⁸ [As translated in Abdy-Walker, 1874: 369]

This principle reinforced paternal authority and the notion that dowry was a *temporary transfer* rather than a gift.

However, Justinian significantly reformed this norm. According to *CJ* 5.13.1.6¹⁹, he allowed the dowry to pass to the wife's heirs, rather than being retained by the husband, thus repositioning the dowry as part of the wife's hereditary estate, that cannot be inherited by the husband.

While remarriage placed limitations on widows' property rights, widowers were not exempt from similar regulation. According to a constitution issued by Emperor Constantine in 334 (*CTh* 8.18.3), a widower was prohibited from using the *bona materna* – that is, property inherited by his child(ren) from their deceased mother – except in his role as guardian (*tutor*) of the minor child. In this legal framework, all maternal property was to accrue directly to the children, not to the surviving spouse.

However, this restriction was later revoked by Emperor Leo I in AD 468, who granted widowers a lifelong usufruct over the *bona materna*, irrespective of whether they chose to remarry. This change reflects a

¹⁸ Mortua in matrimonio muliere dos a patre profecta ad patrem reuertitur, quintis in singulos liberos in infinitum relictis penes uirum. Quod si pater non sit, apud maritum remanet.

¹⁹ “It must remain far from doubt regarding the action on the stipulation that, if the marriage ends through the death of the wife, the dowry shall not accrue to the benefit of the husband unless pursuant to certain agreements, but that the action on the stipulation inherently shall pass to the heirs of the wife whether the stipulation was actually made or it is understood as implied in accordance with this statute.” [As translated in Frier, 2021: 1193]

gradual shift away from strict agnatic control and toward strengthening the conjugal bond and continuity of household management.

In *Nov. Just.* 39, Justinian took further steps to safeguard the property interests of surviving spouses by protecting dowries and ante-nuptial gifts from claims by other heirs or legatees of the deceased partner. These marital properties were granted protections akin to the Falcidian portion, thereby securing the surviving spouse's right to retain such assets. Yet the ultimate beneficiaries of these measures were not the spouses themselves but the children. As reaffirmed in *Nov. Just.* 98, both the dowry and the prenuptial gift (*γαμικὰ κέρδεα* / *nuptialia lucra*) are deemed to be inalienably tied to the children.

Justinian explicitly states in *Nov. Just.* 98 that parents may retain *usus* (usufruct) over these properties only on the condition that they raise and provide for their children. After the dissolution of the marriage – whether through death or divorce – the wife does not regain full ownership of the dowry; instead, she retains only usufruct, while the ownership passes directly to the children. The same principle applies to the prenuptial gift. This marks a departure from earlier legal practice, where the dowry was returned to the wife (or her family) if the husband died or the marriage ended, and the prenuptial gift reverted to the husband's agnatic family under similar circumstances.

Justinian's Novels make clear that these properties, from the moment of their creation, are intended for the benefit of the children, they don't necessarily return to the agnatic family. Their legal status is not altered by remarriage; neither parent may claim preference or dispossess the children of their future entitlement. This interpretation is confirmed in *Nov. Just.* 2 and 22, which restrict the alienation of such property upon remarriage and emphasize the moral and fiduciary responsibilities of both mothers and fathers toward their offspring's patrimony. But in *Nov. Just.* 98, this is relevant even in case there is no remarriage after the death of one parent. So, from temporary gifts for sustaining the *onera matrimonii*, the dowries became a property safeguarded for the children. In the case of remarriage, the *ius electionis* is revoked, and the property is to be equitably divided among all children, regardless of gender (*Nov. Just.* 2 and 22).

Conclusion

Justinian's reforms represent neither a wholesale rejection of Roman marital tradition nor a complete embrace of Christian celibacy ideals. Rather, they embody a unique fusion: promoting moral integrity and protecting familial continuity through a redefinition of kinship and ownership. By safeguarding the legal and economic roles of widows without

entirely discouraging remarriage, Justinian crafted a legal landscape that recognized women not as dependents, but as central agents within the private sphere. Justinian's reforms address both men and women, promoting legal parity in property and marital rights. Just as widows lose ownership over the *donatio ante nuptias* upon remarriage, so widowers must treat dowries as protected property. Neither spouse holds ownership; both enjoy only usufruct. Ownership passes to the children, reflecting a new model of cognatic rather than agnatic kinship, no matter if there is a remarriage or not (*Nov. Just.* 98). Moreover, Justinian is particularly protective of children from the first marriage, regardless of whether that marriage was dissolved by death or divorce. *Nov. Just.* 98 makes this concern explicit, aiming to prevent misuse or alienation of marital property, and clearly responding to real-life abuses. The reforms thus serve not only to regulate succession and property but also to preserve the integrity of the household and protect its most vulnerable members.

The objective of these legal changes was not merely juridical clarity, but moral realignment: guiding citizens toward *σωφροσύνη* through equity in family law and the reinforcement of social and economic responsibility. As Justinian declares in the preamble to *Novel* 22, marriage is: “the most vital matter of all (τῷ πάντων καιριωτάτῳ τῶν πραγμάτων) [...]. This is so lofty a state that it can be regarded as imparting to the human race a man-made immortality: renewed by procreation, families last continuously, and by God's bountiful goodness our nature is granted immortality, insofar as that is possible.” (*Nov. Just.* 22, preamble) [As translated in Miller-Sarris, 2018: 233]

In this light, Justinian's marriage legislation becomes not only a legal reform but also a theological and moral vision for the ideal Christian household: equitable, enduring, and divinely sanctioned.

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