ABSTRACT

Images of Motherhood in Late Antiquity by Mary Harlow

This thesis examines the nature and role of motherhood as an institution in the later Roman Empire in the west. Using a series of interlinked discourses it builds a composite image of the social ideals and expectations of mothers during a time when Christians were re-examining the cultural assumptions that underpinned family and gender relationships. Using 'medical' writings to examine the origin of assumptions about the female body, it then considers how this information was reinterpreted by patristic writers to suit their new image of the ideal body, and particularly to explain the Virgin Birth. The image of the Virgin Mary and the development of interest in her as Virgin Mother is considered within the parameters of the ascetic debate. The patristic writers developed a discourse that denigrated maternity in favour of virginity and thus displaced mothers from their traditional place of high status in Roman society. The relationship between discourse and reality is a central underlying theme of this thesis and is discussed in close detail in a chapter that examines the effect of this ascetic discourse on mothers using well known case studies. Finally, to balance the patristic and medical writings, the law codes of the period are examined for their effect on mothers both in terms of status and inheritance. The growing acknowledgement of the mother-child bond is recognised and mothers acquire certain legal rights they had not previously held, particularly with regard to the disposition of their own property and in the guardianship of their children. So, while the patristic discourse may undermine the status of a mother, the law makers are according her more privileges than ever before. These diverse sources produce a set of images that reflect the various thinking of the late antique world on one of the most fundamental of institutions.

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Abbreviations

CJ	*Codex Justinianus*
CT	*Codex Theodosianus*
D.	*Digest*
HThR	*Harvard Theological Review*
JECS	*Journal of Early Christian Studies*
JHS	*Journal of Hellenic Studies*
JRS	*Journal of Roman Studies*
JThS	*Journal of Theological Studies*
LH	*Lausiac History (Palladius)*
OO	*Sancti Aurelii Augustini Hipponensis Episcopi Opera Omnia*
PBSR	*Papers of the British School at Rome*
PCPS	*Proceedings of the Cambridge Philological Society*
PG	*Patrologia Graeca*
PL	*Patrologia Latina*
PLRE	*Prosopography of the Later Roman Empire*
SC	*Sources Chrétiennes*
VM	*Vita Melaniae*
ZZS RA	*Zeitschrift der Savigny-Stiftung, Romanistische Abteilung*

Introduction

Motherhood was the fast track to status, worth and security for women in the classical Roman world. This thesis looks at the transformation of motherhood in the fourth and fifth centuries AD, in the period during which the Roman world was itself being transformed. Here motherhood as an institution is examined in terms of social ideals and expectations, and metaphor and symbolism. It is not looked at in terms of children or childcare, but rather in terms of motherhood as a status, in all senses of the word, in a late Roman society obsessed by status. The traditional Roman family (a term that in itself needs some carefully nuanced definitions) underwent fundamental changes with the establishment of Christianity. As a religion Christianity was different from paganism precisely because it was concerned with establishing moral codes and norms of behaviour, something that had not previously been a central concern of religion. Christian teaching presented new readings of the assumptions that were the foundations of the ideology of family relationships. Looking at motherhood and ideas about maternity, and how they were read by contemporaries entails looking at a series of different but interlinking discourses. The post Constantine period experienced evident tensions between traditional Roman practices and the new Christian discourse and these can be seen working at different levels; this is a period of transition wherein new focuses of kinship were developing as different groups of people came to power, new arenas for emotional focus, as well as tensions within the newly emerging Christian groups. Christianity in this period was caught up in the ascetic movement which promoted the lifelong espousal of virginity, the antithesis of motherhood. Also in this period, and a by-product of the ascetic debate, was the evolving image of the Virgin Mary, both virgin and mother, who became a model and metaphor for the Church. One of the questions this thesis poses is what happens to the value placed on motherhood when the dominant discourse places virginity and the denial of sexuality in the highest prestige position?

In order to examine both the social ideals, realities and metaphors of motherhood I have taken four particular areas; medical, theological, legal, and what may be termed 'anecdotal', letters and writings that examine the relationship of mothers and their children in the face of asceticism. My approach has been that of the social historian attempting to use diverse material to build up a stratified model of what maternity meant to different groups. Motherhood is treated as an institution. It is all too common these days simply to acknowledge that something is culturally constructed, here I want to examine the underpinnings of the cultural construction of motherhood. The main thrust of this thesis is to look at the constituent parts that come together to create a multiplicity of images of motherhood in the fourth and fifth centuries of the western Roman empire.

Maternity has certain elements of the universal about it, in that it is a 'natural' biological process that happens to the female of the species. However, even before the moment of conception, every aspect of the process is socially coded, and coded differently by different societies and within societies. Every stage of the process, from conception and gestation through to birth and child rearing, is constructed to fit a particular image that is dependent on culturally determined and historically specific norms. The diverse roles that women fulfil as mothers may appear timeless but on close examination prove to be underpinned by historically specific ideals and environments: biological understandings and technologies, economic strategies, notions of female behaviour, religious beliefs.

In order to establish any sort of historical reality for women of any period in the ancient world, the historian has to decide on a position with relation to the inherent methodological problem of studying a group that is known only through the writings of another group. The source material is diverse but it has in common the fact that it is, for the majority, generated by a small group of intellectual men.

Such writing presents us with a series of stereotypes and male ideals about how women should behave. Each type of evidence has its own genre specific drawbacks, but together they produce a series of discourses that need to be sifted and unpicked in order to create a history of women. The common cultural inheritance of both pagan and Christian writers in this period is evident, particularly in matters of gender and of female behaviour. They share a gendered and hierarchical view of the world in which the assumption is that men form the legitimate body of the community, in which women participate only in so much as they are related to men. Recent studies have been quite pessimistic about understanding women through such texts (cf. Cooper 1993), but I take a more positive approach. While I recognise that there is always a tension in the relationship between discourse and reality, discourse does not exist in a cultural vacuum. Discourse, be it medical or theological, is a way a of rationalising social and cultural identity; it is a way for a society to present itself to itself, and to outsiders, that betrays the preoccupations and preconceptions of that society. Any given discourse is both informed by and formative of those preoccupations and preconceptions. As such, dominant discourses of a society can come to have an effect on the lived reality of that society in the sense that individuals come to understand themselves and their role in society through a given discourse, or set of discourses. It should not come as a surprise that women construct themselves, as far as we can tell, within the dominant male discourse of the ancient world. Also it is as well to remember that when examining a culture's discourse we are looking at a particular representation of reality chosen to fit the agenda of a specific discourse. For instance, in the discourse of medical writing women are a focus of interest almost solely for their reproductive capacity (see Chapter 1), while in the ascetic discourse the maternal image is suppressed in favour of the virgin (see Chapters 2 and 3). A representation or 'image' is similar to a metaphor in that it is a particular way of describing one reality among many and can be selective, or idealised, or generalised, or all three. Such representations provide both a model

for, and a model of, 'real life', and therefore may privilege one particular mode of living over another. In late fourth-century Rome the discourse of virginity had a real effect on the lives of some women, to the extent that one gets the superficial impression that traditional family roles were really changing (see Chapter 4). The danger is that once a discourse becomes dominant and its origin lost in time, it can take on the mantle of orthodoxy, that is, what was once a particular model of the world comes to represent the only reality. The discourse of asceticism has been in danger of becoming the dominant version of late antique Christianity, until recent scholarship placed it more clearly in context (G. Clark 1993; Cooper 1993, 1996).

My position is that despite the patchy, biased and rhetorical nature of these various discourses, they are a product of their time and place and as such offer some insight into the society that produced them. They may contain stereotypical images but stereotypes are informative examples of expectations of behaviour and social norms, and indeed it is those that step outside the stereotype that are often known to us. For instance, the narratives of the mothers who brought their daughters up as virgins, against the will of their peers, betray many assumptions about expectations of maternal and filial behaviour. Writers of these lives often also leave anecdotal evidence about 'daily life' in describing the domestic situation the young women will escape, should she decide for virginity. What is lacking in these texts is any sense of the internal feelings of women. How did women feel about motherhood, or about denying themselves, and their families, children to carry on the family line? The question of women's voice is looked at in relation to the medical texts. The debate on this issue is really at a no-score draw in modern scholarship, and is based as much on common sense as the internal information in the texts. (Cooper, 1993 and 1996; G. Clark 1993; on medical texts, King 1994: 105; Dean-Jones, 1994: 35-40; below, chapter one). Knowledge of the inner workings of the female mind is lost to us but the reactions of women to social duties expected of them can help us to understand something of a woman's life.

The images of motherhood produced by the various discourses do have common links but also demonstrate shifts in the status and value accorded to women in their maternal role. These shifts can be moving in opposite directions during the same time period: in the later fourth-century in the ascetic discourse motherhood is denigrated and loses status, whereas in the same period, the law codes show a clear acceptance of the value and importance of the mother's role by allowing her to be legal guardian of her children, and ensuring the transmission of her property without interruption (Chapter 5). It is by collating these different discourses and accepting the multiplicity of images we can create a composite picture of the institution of motherhood in the late antique period.

The Roman family has been the subject of much attention in the last decade and a half. Such studies, while they originate in the classics, ancient history and archaeology departments of universities, are influenced by other disciplines. Medical history, anthropology, feminist theory, women's history, theology, cultural studies, sociology and law have all influenced and refined approaches to the study of the family. Many of these disciplines find common ground in the study of social relations and particularly those of women in the family. Interest in the Roman family has generated many specialist works on particular aspects of the *domus*: for example, the power of the father (Saller, 1986, 1994; Crook, 1967), the nature of marriage (Treggiari, 1991; Dixon, 1992; Bradley, 1991), types of childcare (Dixon, 1988, 1992; Garnsey 1991; Wiedemann, 1989; Bradley 1991), political use of the dynastic family (Fischler, 1994), household structure (Wallace-Hadrill, 1988, 1994). The role of women within the family has generated a number of works and my debt to Dixon's *The Roman Mother* (1988) and Jane Gardner's *Women in Roman Law and Society* (1986) must be acknowledged (for other works see e.g. Pomeroy 1976, 1991; Cameron and Kuhrt 1983; Hawley and Levick, 1995). Their work is the starting point and springboard for much of this thesis.

Dixon described a Roman mother who as *materfamilias* played a role that bears close relationship to that of the idealised, authoritarian *paterfamilias* . While she does not deny an affective role in relationships with husband and children, (and is more positive about the place of affection and emotion in later works), she sees a Roman matron as judged by her behaviour and considered, as her husband is, to be a 'transmitter of traditional morality' (1988: 233). There is little sign of the intercessive and caring counterpart to the authoritarian father figure in the images of women she examines. Dixon's work was based on literary, iconographic and epigraphic evidence which, given the period in which it was produced, present a certain set of images. These images are supported by Jane Gardner's exhaustive study of women and the law, from both these works and others we can make some generalisations about maternal behaviour in the classical Roman period.

For most of the time span of the classical period the production of the legitimate heirs was the main function for most women, motherhood, or the potential for motherhood was thus the foundation of female status. A woman's position within the marital household was greatly enhanced once she had produced children. Through her status as matron and *materfamilias*, she was accorded a degree of respect, and could use her husband and sons to extend her social network and influence into the public arena. The ideal Roman *domus* cannot be said to revolve around the mother as the patriarchal nature of Roman society precluded such an image, however demographic studies can suggest a reality that does not match this. Given the relative ages at marriage (Hopkins, 1964; Shaw, 1987b), it was not unusual for a woman to find herself widowed and in charge of her children and in control of a fortune, though any control of her husband's wealth would be filtered through her children's guardian or a series of legal instruments (see Chapter 5). Being a mother gave a woman a certain amount of social power. Roman history and mythology offers examples of several formidable women: Volumnia, Cornelia, Terentia, Octavia, Livia, Agrippina, to name but a few. These women

were all recorded by male historians, not always in a good light, but in the context of actions that reflected upon their husbands, sons or brothers. They fulfil and help to create certain stereotypes, but arguably it is their position as mothers, and often widowed mothers, outside direct male control, that is the foundation of their social power. Mothers were respected in Roman society and judged by the behaviour of their offspring; it is almost axiomatic that good mothers have good sons and bad mothers bad ones (though the exception of Volumnia and Coriolanus immediately springs to mind, I think the generalisation can still stand).

My intention is to build on this image, to look at both the assumptions that underpin it, such as the biological understanding of the female body, and to examine how it changes in the Christian period. Women's history has been closely associated with medical history King, (1983, 1994, 1995), Dean-Jones, (1994) have looked at the surviving texts from the classical Greek period and noted the actual knowledge of physiology contained in them in detail and related this both to religious ritual and wider understanding of women's social roles. Understanding of how the body works changed in the period but this had little affect on attitudes to women and their social role in general. Well into the Roman period women were still considered as baby machines for the family, but medical texts can tell us a lot more than just understanding of biology (see also A. E. Hanson 1990 and 1991).[1]

Medical writing at all levels categorised women. It categorised them as inferior to the male, even down to the disparate nature and function of male and female seed. It valued as better all things male and associated with the male, in this case principally the power of generation and the marked differences in the physiological and biological make-up of male and female bodies. Medical texts do not devalue motherhood *per se*. For medical writers this is the female *raison d'être;* a woman is biologically and physiologically constructed the way she is

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[1] Very early on in research Helen King advised me just to get straight to the primary material, advice I did take and am grateful for.

precisely to best fulfil her reproductive function. Woman in her capacity as mother or potential mother is the central concern of 'doctors' writing about women in Greece and Rome. Women are judged inferior only in comparison to citizen men. Because of the intensely physical and visual nature of pregnancy and childbirth, women came to be very much associated with things physical. The female body was presented as open, porous and subject to leakages at certain times, and this in turn was used to produce an image of woman as weak, subject to passion, and unable to control certain aspects of her physical body, and, by association, her mind. Medical discourse is itself heavily influenced by prevailing social ideals and attitudes. Even a society that is essentially patriarchal and patrilinear valued woman as mothers for the production of legitimate heirs. Chapter 1 looks at the medical underpinning of ideas about motherhood and the assumptions that such texts make about the nature of women and female behaviour. Physiology and biology are essential to understanding any notion of maternity, particularly when ideas about how conception occurs and the relative role of each of the sexes in the process is evaluated to support another discourse, that of social power.

The interaction between Christianity and motherhood is bound to be complicated when it becomes part of a discourse that denigrates motherhood in favour of virginity and centres around the figure of the Virgin Mother. One of the dominant messages of the ascetic discourse was that virginity was far better as a life choice for women than marriage and motherhood. The history of asceticism and its attraction for women has brought together those who study women's history and feminist theologians. E. Clark first considered the elite woman of late Roman society who were very involved with formidable figures of Christian history. She, and others, asked why such extreme lifestyles attracted these women (Cameron, 1989; E. Clark, 1979, 1984, 1986; G. Clark, 1993; Cloke, 1995; Elm, 1994; Pagels, 1988; Reuther, 1974).This research in turn raised other issues, such as the nature of sexuality and roles of women in the early church. My research looks the

affects of the ascetic discourse on the actions of women as mothers (Chapter 4) but also on the changed body image the Church Fathers presented that had its basis in their understanding of the physical body, and the relationship of sin to sexuality, and the nature of conception, all coming to focus on the body and role of the Virgin Mother and instrumental in their construction of her (Chapters 2 and 3).

For patristic writers virginity symbolised a return to the state of Adam and Eve in Paradise; it represented a pure unpolluted body that retained both its physical and spiritual integrity. Ascetic practice required a denial of all that was associated with the world but it was predicated on sex and sexuality. This had special resonance for women who were more closely linked to the physical and the sexual, precisely because of the nature of maternity. In patristic thought they were now also closely associated with Eve, and through Eve with sin and the Fall. In theological terms women were, as descendants of Eve, responsible for bringing about the fall of men, and the curse of Eve (*Genesis* 3.16) tied women eternally to a subordinate role defined by their ability to reproduce. Fundamental to the ascetic doctrine was a negative view of sex. It was no longer a 'natural' part of human relationships but the result of the sin of Adam and Eve. Christian writers, and Augustine in particular, entered into a discourse where the value of the sexual act was re-evaluated, biological processes became part of a moral debate that was, in turn, subjugated to the theological debate. In Chapter 2 there is a case study of the dialogue between Augustine and Julian of Eclanum, both Christians, but envisaging quite different worlds for Christians to inhabit. The nature of the sexual act and the constituents of conception were carefully analysed by Augustine, in a debate that was central to the nature of original sin. For Augustine this was passed on in the seed itself and this faulty seed marked all mankind. Thus the processes of biology were appropriated by theology.

The Incarnation of Christ is a central tenet of Christian belief and by the fourth century debates about the relative human and divine nature of Christ had came to focus on the nature of his conception and birth. The conception and birth of Christ had to take place without all the physical elements that were perceived of as part of the Fall, but at the same time, it had to have all the elements of a natural human birth so as not to undermine Christ's full humanity. The body of Mary and the nature of her virginity became central to this understanding. Chapter 3 examines the development of the doctrine of Mary's perpetual virginity. What emerges at the beginning of the fifth century is paradoxical figure, a mother yet a virgin, a figure who is used by ascetic writers as a role model for virgins rather than for mothers. The body of Mary presents quite a different image to that of the medical writers. This is a virgin body, closed and impenetrable, it stands in stark opposition to the open and leaky body of the earlier image. The chapter looks at the slow development of any interest in Mary until the impetus of ascetic thinking. Ambrose and Augustine both tried to make the conception and birth of Christ as natural as possible so as to avoid any hint of heresy, but they both had to fight vigorously to defend their positions. The presence of Mary and the nature of her virginal maternity gave credence to the prestige that virginity now had over motherhood.

The latter part of Chapter 3 briefly examines the use of motherhood as a metaphor for the Church. In the works of Ambrose and Augustine the Church is also a virgin mother and spouse of Christ. Metaphors only work if the audience has some shared understanding of an image. The use of family metaphors begs some comprehension of family roles in 'real life'. The Church as mother is subordinate to the Father, implying that such a hierarchical relationship exists outside the metaphor. Virgins also become spiritual mothers and once the language of motherhood, is freed from the physicality of maternity it is also used of men,

especially of God himself, who becomes nurturing and feeds the faithful with milk.

Chapter 4 looks in detail at the relationship between rhetoric and reality. How were women reacting to such teaching? Were women really stepping outside the nexus of family and inheritance and becoming consecrated virgins? Asceticism denigrated the traditional life choice of women and the model of motherhood it presented was exceptional, and unattainable. From being the *raison d'être* of a woman's life motherhood was now running a poor third behind virginity and consecrated widowhood. Another topos of ascetic literature aimed at women was that they should become like men, i.e. reject and deny all that would normally define them as women. This included styles of dress, make-up, body language, but also included strict physical regimes and fasting, and of course, the rejection of sexual relations. This meant that asceticism demanded that women reject all that had previously endowed them with status should they wish to achieve salvation. In this chapter the life histories of three generations of upper-class Roman families who were closely associated with the ascetic movement are presented. They are examined with particular reference to the behaviour of the mother figure, to examine how far they step out of the norms of Roman society, and how far they construct themselves within the rhetoric.

In the final chapter the law codes of the later empire come under discussion. Here I have to acknowledge my debt to Judith Evans Grubbs (1995) and Antii Arjava (1996), whose books came out while my chapter was still a work in progress. Reading their work helped refine the structure of my chapter and gave me the confidence of my convictions. While I agree with both of them that there is a move towards legal recognition of the mother-child bond and that this cannot be a bad thing for women, it is done always in the context of property transmission, and often the result of much older precedents. However, one of my main reasons for

examining the legal status of women is that these texts offer a balance to the moralising theology of the Christian material. This is not to say that law codes do not embody moral codes, they do, particularly where they are concerned with the correct transfer of property and status. The law codes offer a counter discourse. While the patristic texts are relegating motherhood to second, or indeed third, place, the lawyers were busy enhancing the position of a mother with respect to her power of disposition. The position of women in Roman law is never particularly advantageous but it is much improved from the end of the second century onwards. Roman law is traditionally conservative and reactionary. Law makers produce a series of rules and regulations that attempt to control the vagaries of the ideal world. Theoretically the coming of Christianity should influence laws that affect social relations, given the vociferousness of its voice on such matters. However, apart from laws that directly concern the Church and clergy (mostly gathered in Book XVI of the Theodosian Code) there is little in the laws that affect women that can be directly related to Christian influence. At times legal and Christian discourse may coincide, just as at others they diverge. Most of the rulings that affect mothers are not primarily concerned with mothers *per se* but with the correct transfer of property rights. However this legal right to ensure that her property was passed on in full to her children may have enhanced a mother's social power. Dixon (1988) argues that one of fundamental constituents of a mother's influence over her children was her power of economic disposition. In the final analysis most of the rulings that were passed in the fourth and fifth centuries in favour of women had precedents in earlier social practice, nevertheless they do show a shift in family ideology that undermines that cornerstone of all Roman family relations, the power of the *paterfamilias*. Law makers do not remove the power of the father, if indeed, they could envisage such a thing, but it is diminished in favour of the mother and child. In cases of mothers with natural children the situation is more ambivalent. It is finally resolved in the sixth century in the east, but in the west appears to be subject to the vagaries of particular

emperors. Essentially concubine mothers and their children do find their position enhanced but it is never secure. Slave mothers, another category of motherhood altogether, do not find their position of that of their children much improved, unless they were lucky enough to live on imperially owned land in Sardinia (*CT* 2.25.1).

By integrating all these diverse bits of evidence I hope to build up an image of motherhood that will become part of the debate about the role of women in the family in the late antique world. As I have said often, I am interested in motherhood as an institution, my concern here has not been with childcare or except in the case of chapter four with deconstructing the narratives of particular women, this accounts for the omission of Monica, the most famous mother of this period from this thesis. Over the years she has been in and out of it, but in the end I found I had nothing to say that had not been said already or could not be served by offering her as anecdotal evidence or a passing example (for Monica see Atkinson 1985; Shaw 1987a).

Motherhood deserves a history of its own, it is too often assumed to be universally understood. It has been well studied directly and indirectly in the classical Roman period and equally so, in the medieval period (Atkinson, 1991). I hope this study will help bridge the gap between these two periods. The period of late antiquity has generated intense interest recently because it is a period of transition and transformation, an assimilation of classical culture with the new Christian world view. Family relationships were part of that transformation but they were slow to change, but the foundations of the medieval world were laid down in the discourses that are discussed here.

Chapter One

The Maternal Body

1.1 Introduction

Maternity might seem a fairly simple concept to understand, and on one level it is; it can be simply defined as the ability to bear children. As with all definitions this is an over-simplification. Even if we leave aside for the moment the social implications of motherhood, the biological and physiological definitions are not value-free. This chapter describes and discusses the biological and physiological understanding of the female body in the ancient world and the implications for notions of maternity. Culturally specific understanding of biology and physiology is integral to the social and political roles of the body and how it is perceived to fit into the wider social and physical environments. Ideas about biology are the bedrock of gender relations; there was an essentialism about the biological thinking of the ancient world that fed into social relations. The idea that male and female bodies were fundamentally different in function led to assumptions about the proper roles for each sex in society. For some schools, notably the Hippocratics, sexual difference also meant physiological difference. The maternal body, due to its close links with the reproductive process, was deeply integrated with ideas about physiology and biology. The model of the female body that was widely current in the classical period developed from a well-established tradition of diverse medical, biological and physiological 'knowledge' of the human body that had been evolving since before the fifth century BC. Here I look at how assumptions based on this information helped define and construct the maternal body and its proper role in society. Women were interesting not in themselves but because of their ability to produce heirs, and so make men fathers. What emerges is a surprising continuity, over centuries and contexts, of some of the main themes of gender definition and the role of the sexes in society.

Roman society was patriarchal, with a strong ideology of paternal power. But fatherhood requires motherhood, so women as producers of heirs are always necessary to the continuation of society. This chapter looks at how the process of conception was thought to come about, and at the implications for the construction of maternity, of what mothers are, and, by inference, of paternity. I hope to show how this information was organised by 'medical' writers to fit the social demands of their time. Later chapters will look at the change in attitudes to the body and particularly the ideal female body that came with the advent of Christianity.

Biological and medical sciences are not to be considered as value-free, disinterested bodies of knowledge based on observation and experimentation. Even if this could be said of late twentieth-century scientific advances (and it probably cannot), it is clearly not true of the ancient world. Assumptions about the biological functions of both the male and the female body were based on *apriori* assumptions about how the sexed body should function within that society (Laqueur 1990: 8).

The issue is further problematised by the cultural construction of physiology, which creates a body suited to the needs and social ideals of the dominant group. Throughout the span of ancient history the dominant group was elite, male and patriarchal (at some times and in some places less strongly than at others, but the generalisation is still valid). Ancient writers tended to measure the female body against the normative adult-male-citizen body which was in itself a kind of elite, even in democracies like Athens, and certainly later. Their concern with physiology and the mechanics of reproduction support and justify the view that the male was superior.

The biological definition of the mother as the 'female parent' oversimplifies a complex cultural construction. In the late twentieth century who constitutes a mother has become a highly emotive issue. Is it the woman who conceives, carries and

bears a child, or is it the one who nurtures and raises that child? Technological advances have created the problems of surrogacy and *in vitro* fertilisation programmes have extended the age of motherhood and instigated an accompanying moral debate. Technology has also diminished the role of the father in the reproductive process, and artificial insemination can now be used to deny a paternal role altogether. Feminist thinking has been influential in changing attitudes to the female body and its role in procreation. 'A woman's right to choose', the rallying cry of the 1970s, and the availability of contraception have altered perceptions and moral assumptions not only about birth control but also about the role of the male in reproduction. Current political and social propaganda, notably the 'Year of the Family' in 1994, and the establishment in Britain of the now notorious Child Support Agency, have attempted to redress the balance. All political attempts, however, are still based on *a priori* assumptions of 'traditional family values' which remain indefinable in a multi-cultural society, and often have underlying economic motives. Thus it must be understood that motherhood and maternity are not simplistic notions reducible to such definitions as 'female parent'.

The diverse understanding of the female body and its role in reproduction form the central focus of this and following chapters. Various factors can affect the meaning of maternity: although the biological function of the female body may be to gestate, bear and nurture offspring, the meanings attached to these bodily functions are cultural constructs. For instance, social status does not affect the potential to conceive and give birth, but in the ancient world status could often define the meaning attributed to the process. The motherhood of a legally married citizen wife presented a different meaning to that of a slave who would be *ipso facto* unmarried, and unable to claim rights from the father of her child. Moreover, her own rights over the child were subordinate to those of her master or mistress. It follows that although slaves can be father and mothers in biological terms, in social terms they cannot. A married citizen mother was in a slightly better position in that her relationship with her child

was recognised, but it was still subordinate in law to that of her husband who had, in theory, the final choice in the acceptance of the child into the family.

The linking of the female with the physical was a common ideological motif throughout classical antiquity and greatly influential in early Christian thought. The female body is both more and less definable by its biological form. It is more closely related to 'nature', as opposed to 'culture', by the very visible processes of pregnancy and childbirth. Maternity is self-evident, presenting easily discernible, empirical evidence of women being pregnant, giving birth and lactating. Paternity is, by contrast, 'inferred'. It is a matter of social knowledge and therefore more closely linked and recognised as a culturally defined social construct. Most cultures understand that the male has some role to play in the reproductive process, but how cultures understand that participation and translate it into the social world differs.[1] In the classical period medical and philosophical writers spent time establishing the importance and superiority of the father's role in the generative process, and worked from a standpoint that understood male dominance as part of the natural order, as a given; consequently, much of the writing justified this perceived status quo. This attempt to control biology and physiology at an ideological level can lead to some contradictory results, and discussions that seem to be about the body are not about the body at all but about legitimacy and paternity.

1.2 The Medical Evidence for Sexual Difference and Conception

Physiology and physicality lie at the heart of any understanding of motherhood, and in ancient medical and biological writings the female body is almost totally articulated by its relation to reproduction - a point which emphasises the view that women were regarded primarily in their reproductive capacity, either as mothers or potential mothers. The pool of common knowledge from which Ambrose, Jerome and

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[1] For discussion on the socio-cultural understanding of paternity and maternity see E. Leach 1967: 39-49; for counter-arguments to Leach see Spiro 1968: 242-61; T. Monberg 1975: 34-40;. Delaney 1986: 494-513.

Augustine drew their understanding of the human body was that of the Hippocratic corpus, Aristotle, Galen and Soranus, who remained influential throughout antiquity and whose work was acknowledged and synthesised by late antique writers such as Oribasius and Isidore of Seville.[2] Within this body of knowledge there was no consistently held view of how the body functioned or how the reproductive process worked. However, there was a strong, if implicit, idea of paternity and its meanings, which implies a tacit notion of what maternity might be.

There was no single theory of procreation in the ancient world (Blaney 1986: 230-6; Bestor 1991: 150-67). Theories differed not only in their understanding of the actual mechanics of the process of reproduction and the various roles allotted to each parent, but also in the agenda of the authors. 'Medical' texts are no more neutral than any other literary text: they suffer from similar constraints of genre, intention and audience and are similarly open to varied interpretation. Much work has been done recently on medical writings and the models of the human body and its workings that they present, particularly on the female body and how the understanding of it in classical times was encoded to fit current gender roles and expectations (Hanson 1990, 1991; King 1983; Dean-Jones 1994; Laqueur 1990). The dominant social ideology which held the male citizen to be superior, and all others inferior, was evident throughout antiquity from Aristotle (*Pol.* 1. 2), to Augustine (*De Civ. Dei*, 14. 11; 19. 16). This informed people's understanding of biology and was in turn supported by it. There may not have been a single, all-encompassing theory of procreation, but all theories suffered from the contemporary bias of their society and its implicit and explicit assumptions about gender roles. Whatever school one followed, the child was the product of the father's semen. The female contribution to the process varied: according to some she produced seed that was useful and

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[2] For these writers' continued influence into the Middle Ages, see Atkinson 1991: 49, 62; Nutton 1985: 1-13; Rouselle, 1988; Temkin 1977, 1991. For a fourth-century example of continued Hippocratic notions of wandering wombs see M. W. C. Hassall and R. S. O. Tomlin in 'Roman Britain in 1995' *Britannia* 27: 44 ,which has an inscription dated to the fourth century AD on a lead sheet, invoking the local deity to keep the womb in place and not cause pain.

necessary for procreation, to others this seed did exist but was not essential, to some a female did not produce seed at all.

The female body was rarely considered in medical texts except in relation to reproduction. The questions asked of it were: did the female produce seed and was this seed useful for procreation? What was the substance and function of menstruation? Did a woman have to feel sexual desire and pleasure in order to conceive? These subjects were of interest not only to medical writers but also to their audience. That these texts had a readership wider than their field is not disputed, but it is with less certainty that specific groups can be identified. However, they could include midwives, male citizens and women themselves, who were interested in these issues not as abstract theories but as guides for the best way to achieve healthy heirs. It is also questionable to what extent medical texts reflect theories current in the wider culture.[3]

As for women themselves, two aspects should be considered: can we assess whether or not we can hear a women's voice in any of these texts, and how far did women buy into the image of the female body that these (mostly) male-produced and male-orientated texts portray? In the Hippocratic corpus there does seem to be evidence both of women examining themselves or being examined by other women who report to the doctor, and of doctors examining women. Women are asked how they feel about a remedy and whether it has been efficacious. Some modern commentators also think that the Hippocratic corpus contains the accumulated knowledge of women, written down at some time in the fifth and fourth centuries by men (King 1994: 105; Dean-Jones 1994: 35-40).[4] Since Aristotle was not a practising physician he probably had little close personal experience of how the female body worked, but his theories were nonetheless long-lived. It is harder to assess Galen and Soranus,

[3] For discussion of this point see G. E. R. Lloyd 1983.
[4] For more on the question of 'women's voice' Rouselle 1980: 1089-1115; 1988: 25.

but as they describe muscle tone in some detail it may be safe to assume some 'hands-on' experience. However, such detail could just as easily have been reported to them by a third person. While it is undoubtedly true that when we read these texts we are looking at a male view of the female body, it must be one in which women collaborated to some extent. These diverse theories were all attempting to explain physiological phenomena, and there is no reason why any one theory should not adequately explain to both men and women why the body functioned as it did, in sickness and in health. As to whether women bought into the idea that they were somehow physically, and therefore morally and socially, inferior, it is more difficult to judge. It may be safer to say that they may have shared the general view that sexual difference and its social consequences were part of the natural order. It was through sexual difference that women earned status and worth; their essentialness to the reproductive process may have given them a different viewpoint and, while it is attractive to hypothesise on what this might have been, it would be insulting to the women of the past not to allow that they had an opinion, even if it is lost to us. Evidence from the Greek and Roman world can throw up dozens of examples of women, both fictional and 'real' who, though they might accept a fundamental difference between men and women, did not recognise it in terms of weakness or inferiority to men. And even if they accepted the theory of that view, it does not mean they took it on board as the guiding principle in their lives. It would not, however, be too much of an over-simplification to say that these writings were aimed at the production of legitimate heirs for the *oikos/domus*.

The Hippocratics, for example, held that intercourse and pregnancy were essential to female well-being but only within the context of the *oikos*; they were not advocating sexual freedom for the sake of good health. The Hippocratic writers saw marriage and sexual intercourse as natural parts of a woman's life, no less essential to continuing female good health than to the good health of society, seen in terms of the perpetual renewal of the community. In the Hippocratic scheme sexual activity was

necessary for a woman's continued good health; a pregnant woman was a healthy woman whose body was functioning normally. King, Rouselle, Hanson and Dean-Jones, among others, have commented on the fluidity and openness that characterise the female body in the Hippocratic writings (King 1983; Rouselle 1988; Hanson 1990; Dean-Jones 1994: 55ff). As it is most succinctly put in the first book of *Diseases of Women*, female bodies are differentiated from males by their more spongy, porous and fluid consistency. This loose and spongy flesh causes the body to soak up excess fluid from the stomach. Moisture in the body is dried out by hard physical labour which dissipates the excess, which is why men are drier than women (*Morb. Mul.* 1. 1;viii. 12. 6-22).[5] However, because of their more absorbent flesh women have to regulate their moisture levels, and they do this through loss of excess fluid through regular menstruation and/or pregnancy. Frequent and regular menstruation signified good health, and to ensure this continued a woman should have frequent sexual intercourse (*Morb. Mul.* 1. 2; viii. 14. 8-24. 19.). Such practice would keep the womb moistened and so prevent it from wandering off in search of moisture in other parts of the body (*Morb. Mul.* 1. 2; viii. 14. 16-17; *Genit.* 4; vii. 476. 8-12.). Pregnancy was thought to make menstruation easier, as it was the full opening of the body, previously opened by menstruation and sexual penetration (hopefully in that order but not necessarily so). Once the first child had been born and the first lochial flow came about the veins were opened, as was the body. For women who had not experienced the lochial flow the body was considered more resistant and closed and to have difficulty expelling excess moisture, and this could lead to illness (Littré viii. 11.12-19.5). Pregnancy made the body better able to store the surplus blood, so after the first birth both menstruation and subsequent births were easier. So women should have regular sexual intercourse and be pregnant for the good of their health.

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[5] Interestingly, in contrast to Aristotle and Galen, this writer thinks women are hotter than men because they have more blood (*Morb. Mul.* 1. 1; viii. 12. 22); though, as King (1994: 106) notes, when looking at definition by opposition it is whichever quality or virtue on the male side that is valued positively. So in this case cold is good, i.e. associated with the male.

It followed that childless women, virgins or widows, risked becoming unwell because they were not experiencing the sexual intercourse that kept the menses flowing regularly, thus ensuring their continued good health. Various treatises in the Hippocratic corpus discuss aspects of reproduction,[6] but *On Generation* offers the theory known as *pangenesis*. According to this hypothesis, seed originates in all the fluid in the body and comes from the most potent parts of that fluid. For this writer, both male and female emit seed and the female offers something that mixes with the semen of the male in order to create a child. Conception occurs when the womb, moist from intercourse and the arrival of the male seed, closes up and a child is produced from the mixing together of what is produced by the man and what is produced by the woman (*Genit.* 5; vii. 476. 21). In *Genit.* both male and female produce seed which, though equally necessary for the procreation of the species, is not equal in itself. *A priori* cultural assumptions about gender are applied to the so-called 'medical' facts. The text states:

> καὶ ἔστι καὶ ἐν τῷ ἀνδρὶ τὸ θῆλυ σπέρμα καὶ τὸ ἄρσεν, καὶ ἐν τῇ γυναικὶ
> ὁμοίως· ἰσχυρότερον δέ ἐστι τὸ ἄρσεν τοῦ θήλεος· ἀνάγκη γὰρ ἀπὸ
> ἰσχυροτέρου σπέρματος γίνεσθαι.

> In the male there is the female seed and the male; and similarly in the woman. However, the male seed is stronger than the female; for it must be from the stronger seed that generation takes place (*Genit.* 6; vii.478. 3-6).

The principle that the male is stronger is further rationalised in a series of explanations of how children of different sexes are created: if both partners emit a strong sperm than a male child will result; if both produce weak sperm the outcome will be a female child; a female child will also be conceived if a greater quantity of weak sperm overwhelms a smaller quantity of strong sperm, and *vice versa*. The quantity and quality of the seed that both partners emit may vary at different times.

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[6] There are ten treatises in the Hippocratic Corpus that deal with gynaecological matters: *On the Nature of Women* (*Nat. Mul.*), *Diseases of Women* (*Morb. Mil.*), *Sterility*, *On Generation* or *The Seed* (*Genit.*), *Nature of the Child* (*Nat. Puer.*), *Virginity*, *Superfetation*, *Seventh- and Eighth-month Child* (*Septim./Oct.*). Women are also mentioned in the *Aphorisms* and in *Epidemics*. All are referenced as above and with the reference of the E. Littré *Oeuvres Complètes d'Hippocrate* (Paris, 1839-61; repr. Amsterdam, 1961), volume no. (given in Roman numerals) and page no.

As the sperm comes from the whole body, from strong and weak areas alike, this explains why couples may produce both sons and daughters and both strong and weak children. For the writer of *Genit*. and for this theory of predominance, quantity is more important than quality (*Genit*. 6-8; vii. 478-482. 2).

Aristotle operated within a similar cultural field and his views on the female as 'failed' male are notorious (*GA* 728 a).[10] Aristotle, through observation of animals, was not so sure about certain physiological assumptions of the Hippocratics. He was more convinced that male and female were similar in form but, presumably due to observation of animals, he thought the womb was double. This is typical of his logic: if male and female complement each other so do their functions and anatomical parts. If semen is analogous to menses, reproductive organs must be likewise: two testes *ergo* two wombs. The womb was fixed in place by the seminal passages (*GA* 716b 32-33; 720a 12-14). His theories on sexual difference provided a rationalisation of the status quo and were influential throughout the classical period. On the specifics of generation, Aristotle differed from the Hippocratics in that he put forward the notion that only the male produces seed and that this seed contains both 'efficient cause' and the 'principle of movement of generation' whilst the female provides only 'matter' and a vessel wherein the foetus can develop (*GA* 716a). Aristotle's theory on the process of generation hinged on the central principle that only the male parent has the power of creation. This pivotal position of the father as the active principle justified and legitimated many other sorts of relationships. The standard by which all activity is measured is that of the adult citizen male. Females and also young males, and by implication all non-citizen males, are judged by their failure to meet that standard.

Aristotle's theory of procreation and the role of each sex within it revolves around a series of oppositions that are held to be logically and naturally correct: male/female;

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[10] I have used the Loeb edition of *Generation of Animals* trans. A. L. Peck (1953).

hot/cold; strong/weak. Male and female are distinguished by a certain ability/disability. One feature of this difference is the ability to 'concoct' a process which works by means of heat. For Aristotle, semen is the residue derived from useful nourishment, that is of blood, which has been highly concocted to the optimum temperature and substance (*GA* 726b). This can only be emitted by the male since only the male, by the nature of his very being, possesses the requisite heat to concoct blood to the final state of semen (*GA* 728a; 765b). In Aristotelian logic it therefore follows that: (*a*) the weaker creature must also produce a residue, greater in amount and more blood-like, because less thoroughly concocted; (*b*) that which *by nature* has a smaller share of heat is weaker; (*c*) the female answers to this description; (*d*) menstrual fluid is a residue, and therefore (*e*) menstrual fluid in females is analogous to semen in males (*GA* 726 b-727 a; 766 b). The female has an abundance of blood because of her innate coldness and therefore inability to concoct and *vice versa*. There is, however, a fundamental difference between the male semen and the female menses: semen is active in the sense that it contains 'efficient cause' and 'principle of movement of generation' while the matter (katamenia) of the female is passive in that it is acted upon by the male seed. The hierarchical nature of Aristotle's theory is summed up thus:

δὲ καὶ θειτέρας τὴν φύσιν οὔσης τῆς αἰτίας τῆς κινούσης πρώτης, ᾗ ὁ λόγος ὑπάρχει καὶ τὸ εἶδος, τῆς ὕλης, βέλτιον καὶ τὸ κεχωρίσθαι τὸ κρεῖττον τοῦ χείρονος. διὰ τοῦτ) ἐν ὅσοις ἐνδέχεται καὶ καθ᾽ ὅσον ἐνδέχεται, κεχώρισται τοῦ θήλεος τὸ ἄρρεν. βέλτιον γὰρ καὶ θειότερον ᾗ ἀρχὴ τῆς κινήσεως ἢ ἄρρεν ὑπάρχει τοῖς γινο∝ένοις ὕλη δὲ τὸ θῆλυ. συνέρχεται δὲ καὶ ∝ίγνυται πρὸς τὴν ἐργασίαν τῆς γενέσεως τῷ θήλει τὸ ἄρρεν αὕτη γὰρ κοινὴ ἀ∝φοτέροις.

And as the proximate motive cause, to which belong the logos and the Form, is better and more divine in its nature that the matter, it is better also that the superior one should be separate from the inferior one. That is why whenever possible the male is separate from the female, since it is something better and more divine in that it is the principle of movement for generated things, while the female serves as their matter. The male, however, comes together with the female and mingles with it for the business of generation, because this is something that concern≤ them both (*GA* 732a).

Generation takes place when the semen mixes with menstrual blood, the male producing the 'form' and the principle of 'movement' and the female providing the

'matter'. The division between the sexes is likewise argued in a circular way and adheres to the patriarchal ideology (*GA* 732a). For Aristotle the female lacks the power to generate and also to impart soul to the body, though she is able, through the constituent of matter, to provide the body (*GA* 738b). As with the Hippocratic corpus, this theory does not deny the female a role in procreation but it does imply that the female contribution is in some way less that the males, in the same way that she has less heat.

Aristotle's theory of generation has implications for notions of paternity and maternity at a biological level that legitimate his ideal of society expressed in *Politics* 1. 2 and 1. 5. His political thinking and investigations into the life sciences informed each other. A mother was defined in negative terms against the norm of the adult male citizen father; the female contribution to the reproductive process, though given a different biological rationalisation from that in the Hippocratic corpus, was seen within similar gendered parameters, that is, as both necessary and essential but significantly subordinate to that of the male. Aristotle goes further: his explanation of the origin of semen offered a 'scientific' validation for the importance of agnate relationships in society. It has already been noted how social expectations meant that mothers and fathers were seen to relate in different ways to their children. Aristotle is explicit about each sex's different contribution to the creation and development of the child. His hypothesis of the origin and function of seed, as the final product of highly concocted blood carrying the principle of movement to the inferior residue of the female, suggested that a child was actually biologically more closely related by blood to its father than to its mother. The father has the prime, active, motivating role in procreation. His relationship to his offspring, male or female, was considered both more significant and more important than that of the mother. This notion was reflected throughout classical society, particularly in Athenian and classical Roman law, where legitimacy and inheritance passed ideally and primarily through the paternal line. However, it should also be noted that neither biology nor law codes

reflect the total reality of lived life.

Although the political and social climate was much altered between fourth-century BC Athens and second-century AD Rome, medical assumptions about how the female body worked were still subject to social and cultural coding. The female body was still, in the main, discussed with regard to reproduction, though it was now recognised by some doctors that men and women could be treated similarly for similar symptoms and that not all female complaints were subject to special female circumstances.[7] The most influential (or perhaps those that have survived) of the 'doctors' working in the imperial period were both Greeks: Galen and Soranus.[8] Galen, who was active in Rome in the early second century AD, is instructive not only for his additions to the field of reproductive theory but also because he offered a critique of both the relevant Hippocratic treatises and of Aristotle, demonstrating their continued influence into the Roman period (Temkin 1991: 47-50; Preus 1977: 65-85). Galen retained and reinforced what Laqueur calls the one-sex body: the idea that male and female essentially possessed the same physiology, and that female genitalia were an internal version of male genitalia but with different functions (Laqueur 1990: 19).

The most relevant treatises of Galen are *De Semine* and *De Usu Partium Corporis Humani*, books XIV and XV (see n. 8). Between the time of Aristotle and Galen, anatomical knowledge of the human body had been advanced by the practice of dissection, most notably by Herophilus. Herophilus had discovered that the uterus was anchored in the body, and was not the free-floating entity in search of moisture imagined by the Hippocratic writers. He had also discovered that the female body possessed ovaries, although these were identified as female testes. While this

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[7] See in particular Soranus' discussion on this subject, *Gyn.* 3. 1.

[8] Galen's work used herein: *On the Seed* (*De.Sem.*), *On the Usefulness of Parts of the Body*, books XIV and XV (*UP*), for which I have used C. G. Kuhn (ed. 1964), *Claudii Galeni Opera Omnia* (Hildesheim), vol. IV; *On The Natural Faculties*, book 3 (*Nat. Fac.*), Loeb edn, trans. A. J. Brock, 1916.

discovery may seem highly significant in modern scientific terms, it did not have quite the impact on the understanding the female's role in reproduction that we might imagine.

Galen, following the work of Herophilus, also identified the ovaries as female testes and discovered that they were attached to the uterus. He posited their function as analogous to male testes in that they were receptacles for semen; he thus diverged from the Aristotelian view on two main issues. First, anatomically, on the function of the male testes, which Aristotle held acted like 'loom weights' on the seminal vessels (*GA* 787b), and second, and more radically, in believing that both male and female produced seed.

However, like Aristotle, Galen identified seed as highly concocted blood (*UP* XIV. 10. II. 316 ff.; *K* IV. 183. 10 ff.). However much Galen might accept or reject earlier theories of the mechanics of reproduction, his own theories existed within a similar culturally gendered framework. The fact that the female possessed testes and produced seed did not amount to a suggestion of sexual equality of role in the process of procreation. On the contrary, Galen followed Aristotle in perceiving the female as inferior to the male in terms of heat (*UP*. XIV. 6. II. 296; *K* IV. 158. 3; cf. *UP* XIV. 6. II. 299; *K* IV. 161. 11-162. 13). Men and women may share the same body parts, but those of the female remain internal (*UP* XIV. 6. II. 296; *K* IV. 158. 13) and therefore less perfect because, as a foetus in the womb, the female was not supplied with enough heat to fully develop into the perfect male specimen with its own sufficient heat to maintain external genitalia (*UP* XIV. 6. II. 299; *K* IV. 162. 5). For Galen, half the human race was *mutilated*. This mutilation did have one advantage, in that there must be some reason for it: nature never does anything without a reason, and the reason must be that the female is necessary for generation (*UP* XIV. II. 299-300; *K* IV. 161. 13-164. 1). This placed a woman firmly into her central social role as the producer of heirs. As it was by virtue of her innate coldness

that a woman could not disperse all the residue she concocted, she therefore had sufficient to nourish the foetus during pregnancy (*UP* XIV. 6. II. 299 ff.; *K* IV. 162. 12 ff.).

Following this 'natural' given of female inferiority, Galen inferred that although the female produces seed, her seed, by virtue of her inferior female status, is scantier, colder and wetter than its male counterpart and incapable of generation on its own (*UP* XIV. 6. II. 301; *K* IV. 164. 2 ff.). Galen agreed with Aristotle that the male sperm, having reached the peak of concoction, becomes the efficient principle, while the female seed, though having the possibility of motion, cannot generate alone but needs the power of the male for procreation (*UP* XIV. 7. II. 302-303; *K* IV. 166. 8 ff.). This takes place once the female and male seed mix together in the womb. The female seed serves as nourishment for the male seed, as in Galen's scheme of things it is closer to blood in character than the male semen (cf. Aristotle above: *GA* 726b-727a), and things are nourished by like things (*UP* XIV. 11. II. 320; *K* IV. 189. 1).

Interestingly, Soranus, working in Rome shortly before Galen, had misunderstood current anatomical knowledge about the female body, and this led him into misconceptions about the female role in reproduction. Soranus' work *Gynaecology*, a handbook on choosing a healthy wife, pregnancy, childbirth and the rearing of infants, was produced for a varied audience. It has been suggested that it was a manual for midwives, and also that it could have been used by citizens, male and female, interested in the best ways of producing and rearing healthy heirs. In this work Soranus is hazy as to the female contribution to conception; at times he agrees with Galen that the female produces seed in her testes, but states that this seed cannot be useful in reproduction. This is because in Soranus' construction of the female body the so-called 'seminal ducts' (fallopian tubes) run from the uterus to the bladder and the seed is therefore expelled outside the womb (*Gyn.* 1. 12). At other times he implies that menstrual blood is analogous to male semen, and at yet others he plays

down its role, going so far as to suggest that it might be harmful of health (*Gyn.* 1.19; 1.28). The role of the female in procreation in Soranus' theory is reduced to that of nurturer. A mother provides the place, the uterus, where the male seed is brought to maturity, and the breasts, which will convert surplus blood (no longer being expelled as menstruant) into milk for the coming child (*Gyn.* 1. 15; 1. 33).

Soranus was the first writer to attempt to disentangle the female body from the reproductive processes, and was unusual in thinking that menstruation was not essential to female well-being. He observed that menstruation is useful expressly for childbearing, as those who are either too young or too old to conceive do not experience it (*Gyn.* 1. 28). His active promotion of the virgin state made his work appealing to later Christian writers - Augustine claimed to have read Soranus in order to refute Julian of Eclanum. Soranus made a radical departure from traditional thinking when he claimed 'we maintain that permanent virginity is healthful because the sexual act itself is harmful' (*Gyn.* 1. 32). The irony is that Soranus' surviving text, the *Gynaecology* , had the central theme of how to choose a fertile and healthy wife in order to produce heirs and care for the new-born.

The point of this survey of theories of sexual difference and conception, which all co-existed to a greater and lesser extent throughout late antiquity and the middle ages, it twofold: to illustrate the interaction between biological readings of the body and the social encoding of gender roles. These theories may be different but they have a shared rationale; in the social and civic world the male is ideally dominant and more powerful, so it is in the realm of conception. Male seed is either 'better' in itself or the motivating power in generation. There is also a general acceptance that the female body is somehow different in terms of heat and substance. It is softer, more open, both in a physical and in a metaphysical sense. Women are interesting to these writers primarily in their role as mothers or potential mothers. This aspect should be viewed positively, as it was through maternity that women gained status in the

ancient world. That these texts only address this may present a male view of the world, but it may also hide 'women's knowledge' of their own bodies, which is simply lost to us. Second, this survey illustrates the pool of common knowledge that the later Christian writers drew upon when developing their own theories about the correct functioning of the body in a Christian world. Such theories also provide the basis for their evolving doctrine of the Virgin Birth and the body of Mary, an ideal yet paradoxical mother.

1. 3 Sexual Pleasure and Desire

There is another aspect of the procreative process that must be understood in order to assess later Christian responses: the role of sexual pleasure and desire. It was this that was to prove the crux of the problem for Christian writers, especially those who were ascetically minded. It is in the questioning of sexual desire that we see a real tension in what in modern terms might be termed the 'nature/culture' debate. This is most fully explored in the conflict between Julian of Eclanum and Augustine, discussed later. First, though, I will outline the main theories about the role of desire in the procreative process.

Desire and pleasure in sexual relations are mentioned in the medical texts and are considered at least useful, and at best essential, for successful conception. In the Hippocratic treatise *On Generation* pleasure and desire are equally necessary for both male and female in order to achieve conception. The friction of the penis in the vagina produces pleasure and heat in a woman's body which causes her to secrete moisture into the womb, and sometimes externally, and once intercourse has begun the woman experiences pleasure throughout the whole time until the male ejaculates. Pleasure, however, remains essentially part of the male domain, for the arrival of the male sperm in the womb extinguishes female pleasure (*Genit.* 4; vii. 474. 14-476. 16). Female pleasure, for this writer, was a response to that of the male, not an activity in its own right, though it was necessary for conception to occur.

Aristotle differed from the Hippocratic corpus in that for him sexual pleasure was incidental to conception, though it might occur due to intense stimulation (*GA* 723b). Women might or might not feel sexual pleasure; either way it had no bearing on their ability to conceive, as by Aristotle's definition conception was the action of the male seed on the passive material of the woman. He also noted that even if a woman did experience enjoyment she did not always conceive (*GA* 727b).

Galen returned to the theory that sexual desire was necessary for generation (*UP* XIV. 2. II. 286; *K* IV. 144. 6 ff.):

ἅπα τι τοῖς ζῴοις ὄργανά τε κυήσεως ἡ φύσις ἔδωκε, καί τινα συνῆψεν αὐτοῖς μὲν τοῖς ὀργάνοις ἐξαίρετον δύναμιν γένεσιν ἡδονῆς, τῇ χρησομένῃ δ' αὐτοῖς ψυχῇ θαυμαστήν τινα καὶ ἄρρητον ἐπιθυμίαν τῆς χρήσεως, ὑφ' ἧς ἐπεγείρομενα καὶ κεντριζόμενα, κἂν ἄφρονα, κἂν νέα, κἂν ἄλογα παντάπασιν ᾖ, προνοεῖται τῆς τοῦ γένους διαμονῆς, ὥσπερ εἰ καὶ τελέως ἦν σοφά.

> To all animals Nature has given instruments for conception, and to the instruments themselves she has joined a remarkable faculty to produce pleasure and to the soul that is to make use of them a marvellous, inexpressible longing to do so, which arouses and stings the animal so that even though it is foolish, young, and altogether without reason, it provides for the continuance of the race just as if it were perfectly wise.

So for Galen enjoyment and excitement were actually functions of the body which promoted sexual intercourse. He proposed that pleasure for the female was caused by the movement of moisture within the uterus, the acrid quality of which stimulated the parts to act and made the action pleasurable (*UP* XIV. 2. II. 314; *K* IV. 181. 3 ff.). So, unlike Aristotle, Galen did see desire and pleasure as an essential part of the reproductive process, a function of both the male and female body.

With Soranus there was an even more explicit explanation of the role of desire in procreation. Not only did desire in the female body help dilate the cervix so that the uterus might receive the semen (*Gyn.* 1. 10), but also, in his opinion, desire on the part of the woman was actually necessary for conception to occur. His opinion was so forceful that he considered that women who conceived after being raped must

have felt desire even though the emotion may have been obscured by mental resolve (*Gyn.* 1. 37).

None of these writers, any more than the Christians who followed them, were suggesting a life of sexual pleasure. Such pleasure and desire as there might be should be directed towards legitimate sexual activity for the production of heirs. It should be used within the confines of legitimate marriage and at the appropriate time of life. All 'medical' writing was framed within a moral/philosophical discourse.

The linking of women with the physical and centring of the female body on reproduction is most obviously seen in the consideration of the subsequent stages of pregnancy and childbirth. Again, as with various theories of conception, there were differing ideas about foetal development, childbirth and lactation. Despite differences they have a common concern in the production of healthy babies and mothers. This highlights the value of women as mothers in society. The physiological aspect of these processes also emphasises the openness of the female body as not only a 'natural' but a desirable thing. Both the centrality of maternity to women's lives and the perceived openness of their bodies will be questioned by later Christian writers.

1.4 Gestation

As with conception, there were several theories of how the foetus developed in the womb. The one consistent idea was that as the menses were no longer evacuated from the body they must have some role in the creation and evolution of the embryo. This role was partly determined by the understanding of the body held by the particular school of thought.

There were a number of hypotheses as to how the foetus itself originated after the initial mingling of seeds, or action of the male sperm on the material of the female. In the Hippocratic text, *Nat. Puer.* 12-21 the writer offers an explanation for the early

development of the embryo that follows Hippocratic notions of pangenesis. The essence of the theory is as follows: the male and female seed are thoroughly mixed together and condensed into a mass by the heat of the womb. As it is in a warm environment the foetus acquires breath (*pneuma*). Once it is filled with breath, this breath escapes through a passage it makes for itself in the middle of the seed. Then, as the warm air flows out of the passage, it breathes in cool air from the mother and so the process repeats itself. The writer uses an extended example from nature to consolidate his main point, that the seed, heated in the womb, both holds and expires breath (*Nat. Puer.* 12; vii. 488. 12-13). Heated in the womb and inflated by the *pneuma*, the seed grows a membrane around itself with a perforation in the middle to allow for the entrance and exit of air (*Nat. Puer.* 12; vii. 488. 17-19). This writer claims to have seen a six-day-old foetus. Having been called to advise a mistress on what to do about her valuable, but pregnant, dancing girl, he advised jumping up and down, kicking her heels against her buttocks. This produced the desired effect after only seven jumps, to the surprise of the slave-girl. The aborted foetus was reported as looking like a raw egg without the shell. It was round and red, and within the membrane could be seen thick white fibres surrounded by a thick red humour. On the surrounding membrane were clots of blood. At the centre was a small projection which the writer posited as the umbilicus, through which the air passed in and out (*Nat. Puer.* 13; vii. 490. 9-19).

The seed within the membrane was thought to be nourished by the menses. Menstrual blood, no longer being expelled from the body at monthly intervals, now came down from the whole body and surrounded the membrane. Instead of descending in one great flux every month, the blood now flowed gently into the womb in small amounts each day. This blood was then drawn in with the breath, and coagulated, and now the flesh began to form. As the flesh is formed the membranes also grow in proportion to the foetus. These membranes form pouches in which excess blood is stored, as the foetus, being small, cannot use it all at this

stage. These pouches are called *choria*, and this left-over blood is what forms the lochial discharge after the birth of the child (*Nat. Puer.* 16; vii. 496. 11-16).

The writer of *Nat. Puer.* envisaged the various body parts being developed by the principle of like attracting like. Menstrual fluid from a certain part of the body was drawn to develop that part in the seed, which was likewise drawn from the same part (*Nat. Puer.* 17; vii. 496. 17 ff.). Each part becomes filled with air and separates according to their various affinities, the bones become hard as a result of heat and spread branches like a tree; the head begins to project from the shoulders and the legs separate. Likewise the internal organs form into distinct parts (*Nat. Puer.* 17; vii.498.7 ff.). The foetus is fully formed at thirty days if male, forty-two if female (*Nat. Puer.* 18; vii. 498-500) (for more detail see Lonie 1981: 176-98; Dean-Jones 1994: 203-4).

Aristotle has a different theory on the development of the foetus, though he shares the principle that menses were an essential part of the process. Indeed, for Aristotle, since the female does not produce seed, the menses are her contribution to conception (see above section 1.2). In his scheme conception is achieved by the action (*dynamis*) of the male seed on the secretion of the female. Semen contains the vital heat which 'set' the purest part of the female residue, the menses, acting like rennet on milk (*GA* 739b. 28). Once the seed is set this became the 'form' from which the foetus develops, the first distinct organ being the heart (*GA* 740a). Once fetation has occurred the potential for the body is present but it must get nourishment.

Aristotle takes issue with the like to like principle (*GA* 740b 15), reasoning that the body is formed from the residue of the female, which is potentially the same in character as the future offspring. In order for this potentiality to become actuality, it requires the action and 'principle of movement' of the male (*GA* 740b 18 ff.). Only the male possesses 'sentient soul' which creates this 'principle of movement', which

is why the female cannot generate alone (*GA* 741a 14 cf. *GA* 741b 8 ff.). Aristotle recognises that the embryo received nourishment through the umbilical cord, which he identified as a blood vessel (*GA* 740a 25 ff.; 745b 25 ff.). He describes the umbilicus as a root fixed in the uterus, through which the foetus received sustenance.

For Aristotle the various parts of the body were formed by an elaborate 'cooking' process (*GA* 743a 5 ff.). From the heart, blood vessels extended all over the body, carrying nourishment to the forming flesh. The upper part of the body is formed first; Aristotle argues that the 'most honourable parts' are formed first out of the purest nourishment, and the inferior parts out of the residue. He also seems to agree with the Hippocratic and popular belief that the male is fully developed in the womb in a shorter time than the female (*GA* 775a 10 and cf. *HA* 83b 22 ff.). This follows the logic of the hot/cold opposition: females are colder and take longer to 'cook' in the womb, and, by the same logic, after the birth they mature, age and die earlier than males (*GA* 775a 10 ff.; Dean-Jones 1994: 204-9).

For Galen, once the male seed had entered the womb it adhered to the surface of the uterus which contracted and closed around it. The male semen was then further concocted and nourished by the female seed. The foetus received both nutrient and *pneuma* from the mother because the mother's contribution was closer in character to blood (*UP* XIV. 11. II. 320; *K* IV. 188-9; *UP* XV. 4; *K* IV. 224). Unfortunately Galen's descriptions of the foetus in the womb do not fit the human model; they look apparently more like that of a goat.[9] Galen's construction of the uterus also looks like it follows examples from animal dissection, in that he considers it to have two pockets or sinuses, the number of sinuses in the womb being equivalent to the number of teats, an example of the wonderful work of Nature (*UP*. XIV. 4; *K.IV.* 150. 12 ff.). So the female body has two uteri ending in one neck and also two

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[9] See p. 661 n. 10 of *Galen: On the Usefulness of the Parts of the Body* vol. II; trans., intro. and commentary by Margaret Tallmadge May (1968; Cornell University Press).

breasts. Here Galen is in agreement with the Hippocratics and gives the example from *Aphorisms* V. 38 (Littré IV. 544-545): if a pregnant woman is carrying twins and one breast withers, she loses one child by miscarriage, a male if it is on the right and a female if it is on the left (cf *Aph*. V. 48: Littré, IV. 550). Galen agrees with the oppositional relationships of right/left, hot/cold, male/female and uses them to explain why the right side of the body is stronger, ergo males develop on the right side: 'For in every sort of animal the heart is stronger than the liver, the arteries than the veins, the nerves than the flesh, and all parts on the right side stronger than those on the left'. (*UP* XIV. 7. II. 308; *K* IV. 172-173). He does allow for exceptions to the rule, in that it may differ from the general to the particular and that particular individuals may have a stronger testis on the left. Such an animal is more likely to be a producer of girls. Conversely a female who makes strong semen in her right uterus is likely to be a producer of boys (*UP* XIV. 7. II. 309; *K* IV. 174. 6 ff.).

Soranus' work *De Semine* is lost, but in the *Gynaecology* he is concerned with successful conception and pregnancy. He dismissed the right/left theories of the Hippocratics and Galen and denied that the sex of the child in the womb could be identified (*Gyn*. 1. 45). Soranus thought that the seed was held by the uterus, wherein it would be brought to perfection. At first it was unshaped but after this, provided with sustenance containing blood and *pneuma* from the mother, it developed into an embryo possessing soul (*Gyn*. 1. 43). Soranus envisaged a membrane lying inside the uterus called the *chorion, angeion, deuteron, hysteron* and *prorregma*: *chorion* because it contained the embryo or, according to others, because it contained many units like a choir; *angeion* because it held the embryo like a vessel; *deuteron* and *hysteron* because it came after the removal of the foetus; and *prorregma* because it is ruptured previously and evacuates the fluid to make delivery easier (*Gyn*. 1. 57).

The expected length of pregnancy also varied: it was not firmly fixed and could vary

anywhere between seven and ten months (*Septim./Oct.* 1; vii. 436. 1 ff.; *Nat. Puer.* 30; vii. 532. 14 ff.; Aristotle: *GA* 772b 7 ff. and *HA* 584b 10-14; Soranus: *Gyn.* 2. 66). A seven-month-old foetus was thought able to survive and escape the illness that beset an eight-month-old. The eight-month-old had begun the descent in the womb and was subject to illness, the physical situation of the distended membrane and stretched umbilicus causing grief to both mother and child. The child is heavy and causes fever in the mother, and the writer noted that women themselves say that this is the hardest month (*Septim./Oct.* 3; vii. 438. 19 ff.). In fact, those that give birth to disabled children after previously having healthy ones say that the eighth month was more troublesome with the unhealthy one (*Septim./Oct.* 5; vii. 444. 1 ff.). The eight-month child has to face both the illness of the eighth month and the trauma of birth (*Septim./Oct.* 10; vii. 452. 4-9), so the best time for a child to be born is at the end of the ninth month. At this time it is strong enough to survive both the illness and the birth itself (*Septim/Oct.* 7; vii.446.1-3).

1.5 Parturition

In the earlier texts there seem to be little idea of uterine contractions in the birth process, rather that the infant had run out of food and fought its way out of the mother's body in search of more (*Nat. Puer.* 30; vii. 530. 20; 536. 5-6; *GA* 776a 34-b 4). These theories maintained the idea of an active baby and passive uterus (see Hanson 1991: 88ff.) Birth was seen as the action of the baby, who tossed about in the search for food and eventually ruptured the membranes and forced its way into the outside world, like a chicken embryo in an egg (*Nat. Puer.* 30). This view of physiology obviously had implications for the way a woman in labour was treated. The uterus was envisaged as a sort of upside-down jar from which the baby was making its escape. If it did not emerge in the ideal position, i.e. head-first (*Nat. Puer.* 30; *GA* 777a 28-30), various methods were suggested to literally shake it free from its vessel. Sneezing was one of the least uncomfortable of the therapies suggested; if that did not work, severe succussions were offered. Succussion

involved being tied onto the bed, which was then lifted and dropped from a height, the head end being raised slightly; or being tied to a ladder and shaken; or, if nothing else was possible, being shaken by others while someone held the parturient under the armpits (*Morb. Mul.* 1. 68, 78; vii. 8. 142. 13-144. 16) (Hanson 1991:92).

It was recognised by Aristotle that, compared with other animals, humans suffered more discomfort in gestation and labour due to their poor physical condition. It is easy to see which class of people Aristotle is considering as poorly suited to pregnancy and childbirth when he offers some anthropological examples: in tribes where women live a life of hard work, gestation is not so obvious and they find delivery easy. This is because hard work uses up excess residue and gives the breath exercise so the woman can hold it, and this is one of the factors that determines whether the birth is easy or difficult (*GA* 775a 28-b 2). Women who live sedentary lives cannot dispel these residues, and are therefore more likely to find delivery difficult. Aristotle does identify a few women who are in improved physical condition during pregnancy: the ones whose bodies contain only small amounts of residue which are used up by the embryo (*GA* 775b 23-25). He is obviously not concerned with the slave women of his own society (Dean-Jones 1994: 211-15).

The idea of the uterus an upturned jug persisted in the work of Soranus (*Gyn.* 1. 9) and Galen (*Nat. fac.* 3. 3; *K* II. 148. 15-150. 1). However, following the work of Herophilus and after dissecting animals himself, Galen had recognised the muscular nature of the uterus and was aware that it was an active instrument in the process of childbirth. In *On the Natural Faculties* 3. 3, Galen sees the womb in terms of contractive and propulsive faculties. First, once the seed is taken up the uterus contracts and retains the embryo until it arrives at the proper size. Once this moment comes, the retentive faculty is put aside and the propulsive faculty comes into play. Indeed, if anything goes wrong at any time during the pregnancy this propulsive faculty comes into action. In such a case

. . . ἀνοίγνυται μὲν τὸ στόμα, προέρχεται δ' ὁ πυθμὴν ἅπας ὅσον οἷόν τ'
ἐγγυτάτω τοῦ στόματος ἀπωθούμενος ἔξω τὸ ἔμβρυον, ἅμα δ' αὐτῷ καὶ τὰ
συνεχῆ μέρη τὰ οἷον πλεῦρα τοῦ παντὸς ὀργάνου συνεπιλαμβανόμενα τοῦ
ἔργου θλίβει τε καὶ προωθεῖ πᾶν ἔξω τὸ ἔμβρυον.

> the os opens, whilst the whole of the fundus approaches as near as
> possible to the os, expelling the embryo as it does so; and along with the
> fundus the contiguous parts - which form as it were a girdle round the
> whole organ - co-operate in the work; they squeeze upon the embryo and
> propel it bodily outwards.

Luckily for Galen's patients, shaking and succussion were no longer likely to be
helpful, as he recognised that the uterus, rather than the child, was the active party in
childbirth.

It is in the work of Soranus that we get the most expansive coverage of how to treat
women during pregnancy and childbirth. The second book of *Gynaecology* concerns
the preparation of labour and the care of the new-born infant. There is a description
of the physical signs of the onset of labour and a set of instructions as to what
accessories might be required: 'olive oil, warm water, warm compresses, soft sea-
sponges, somewool, bandages, a pillow, things to smell, a midwife's stool or chair,
two beds and a proper room (*oikon*)'. (*Gyn.* 2. 2).

The description of the midwife's duties during labour are similar to those in Galen
(*Nat. fac.* 3. 3). During the first stage of labour the midwife must examine the
cervix, making sure her nails are cut short and her fingers lubricated with oil (not the
sort used for cooking!). The midwife should massage the cervix until it is dilated to
the right size; this takes place on the hard bed, where the woman lies on her back,
feet drawn together, thighs separated, and propped up beneath her hips so that the
vagina inclines downwards (*Gyn.* 2. 3). Once the cervix is dilated the woman, if she
is strong enough, can be moved to the birthing-chair. Once in the chair the parturient
is expected to do some of the work herself. Soranus recommends that the woman be
advised to bear down by 'driving her breath into the flanks without screaming, rather
with groaning and detention of the breath' (*Gyn.*2. 6; trans. Temkin, p. 74). Galen

says this additional work that the patient does is no longer the work of the uterus but of the epigastric muscles (*Nat. fac.* 3. 3; Loeb, p. 237).

The Roman women whom Soranus treated must have been relieved to know that he did not advise succussion for difficult delivery, and actively spoke against it (*Gyn.* 4. 7). Depending on the particular difficulty, Soranus offered particular remedies and did not allow early recourse to surgery or forcible dilation of the cervix (*Gyn.* 4. 7). Whatever the problem, the midwife was instructed to first promote ease and relaxation. If the labour is difficult because the parturient has concave loins or is fat and fleshy, she should be placed on her knees so the uterus can fall into the right position. If the uterus will not open it should be softened with oil and other substances, and the pubic area likewise, and an oily sitz-bath is recommended. Midwives are to instruct inexperienced mothers in correct breathing (*Gyn.* 4. 7). If, however, it is the foetus that is causing the problem and not the physiology of the mother, different remedies are suggested. If the foetus is out of line in a cephalic presentation, the midwife is instructed to turn the baby internally by hand. If the hands or arms of the foetus have come out, they are to be pushed back inside the mother and laid alongside the body, and then the midwife should grasp the head and gently pull it out. It is a wonder any woman ever survived at all. Again, if there is a foot presentation, the child must be pushed back inside the womb and manipulated into the cephalic presentation (*Gyn.* 4. 8).

The following chapter in Soranus' book is about embryotomy: the removal of a foetus that cannot be born properly or is dead *in utero*. This is considered a last resort in order to save the mother is the child is to be lost (*Gyn.* 4. 9). Embryotomy had been practised by the Hippocratic doctors and described in similar terms (*Morb. Mul.* 1. 70). Soranus describes the insertion of hooks into the foetal body in the hope of slowly pulling it out. If the problem is an unusually large head, it should be crushed with the hand or cut open to expose the brains, which can then be removed,

allowing the skull to collapse and thus enabling the midwife to pull the baby out. On

the other hand, if a large body is the problem other solutions are offered, including

blood-letting from the jugular of the foetus in order to shrink the body, or amputating

the parts that are accessible (*Gyn.* 4. 10-13).

1.6 Lactation

It was generally held in the ancient world that the blood that was used to nourish the

foetus inside the womb was converted to milk and moved to the breasts once the

child was too large to be supported any longer in the uterus. However, this was not

the only theory: the writer of *Nat. Puer.* gives another account which is also found in

some form in other parts of the Hippocratic corpus.

> δι' ἀνάγκην δὲ τοιήνδε γίνεται τὸ γάλα· ὁκόταν αἱ μῆτραι ὀγκηραὶ ἐοῦσαι
> ὑπὸ τοῦ παιδίου πιέζωσι τὴν κοιλίην τῆς γυναικός, τῆς δὲ κοιλίης πλήρεος
> ἐοῦσης ὁ ἐκπιεσμὸς γένηται, ἀποπιδύει τὸ πιότατον ἀπό γε τῶν βρωτῶν καὶ
> τῶν ποτῶν ἔξω ἐς τὸ ἐπίπλοον καὶ τὴν σάρκα· ... ἀπὸ τοῦ πίονος διαθερ-
> μαινομένου καὶ λευκοῦ ἐόντος τὸ γλυκαινόμενον ἀπὸ τῆς θέρμης τῆς ἀπὸ
> τῶν μητρέων ἀποθλιβόμενον ἔρχεται ἐς τοὺς μαζούς· ...

> The cause of lactation is as follows: when the womb becomes swollen
> because of the child it presses against the woman's stomach, and if this
> pressure occurs while the stomach is full, the fatty parts of the food and
> drink are squeezed out into the omentum and the flesh ... Now from
> this fatty substance, which is warmed and white in colour, that portion
> which is made sweet by the action of heat coming from the womb is
> squeezed into the breasts.[10]

A similar theory is found in *Mul.* 1. 73 (viii. 154. 2-5); this is discussed by Dean-

Jones (1994: 218) with regard to whether menstrual blood is the origin of breast milk

in this theory. Dean-Jones disagrees with Lonie, who thinks it is, this being implicit

in the passage. Dean-Jones argues that, had the author wanted to signify menstrual

blood, he would simply have said so and would not have developed the notion of

squeezing. It seems that there could easily have been various notions of the origin of

milk, just as there were of seed. The empirical evidence showed women suckling

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[10] Trans. I. M. Lonie in Lloyd's *Hippocratic Writings* (Penguin, p. 334); Littré, vii. 512. 3 ff.

their offspring on a white substance while at the same time, if the milk supply was good and strong, they did not menstruate. Depending on the line of argument one takes on the construction of the female body and the role and function of menstrual blood, it could seem logical that this blood must now be converted into breast milk. Equally, it could seem logical that it is a different kind of substance. However, since blood comes from food in the first place, it could be thought that this was just a different process of obtaining the right sort of nourishment from a similar starting-point, namely food. The affinity between the womb and the breasts was part of the common understanding of the female body.

Aristotle believed that milk was more highly concocted blood, blood that was no longer feeding the foetus but being redirected to the breasts; it was white because like semen it had been concocted by heat, though the heat in this case was that of the heart, not the natural heat of the male body. Aristotle argued that in the normal course of events women did not conceive or menstruate during lactation, but if they did conceive the milk dried up. This is because the nature of milk is the same as that of menstrual blood, and if this substance is being secreted in one direction it must fail in another; i.e. a lactating mother should not conceive because there is not enough of the menstrual blood that is her contribution to conception in the womb, as it is being converted into milk. However, should she conceive, this blood will then be redirected to nourish the embryo, rather than be diverted to the production of milk (*GA* 777a 11-20) (Dean-Jones 1994: 215-23).

Galen, writing with the advantage of dissection, thought that the uterus and the breasts were connected by vessels 'in order that whenever an embryo is being formed and is growing in the uteri, it alone may be flooded with nutriment from both parts by the common veins, and in order that when the child is born the nutriment may in turn flow to the breasts' (*UP* XIV. 8. II. 310). Excess nutriment produced during pregnancy goes to the breasts. Galen also tries to incorporate the alternative

Hippocratic theory, and says that at the same time the mass of the abdomen presses this nutrient up into the breasts (*UP* XIV. 8. II. 311). For Galen, breast-feeding works by two phenomena happening simultaneously: the milk appears in the breast of the mother, and the infant is full of an eager desire to be nourished by such food (*UP* XV. 7. II. 365).

This natural sympathy between the breasts and the uterus was also acknowledged by Soranus for similar reasons: the breasts and uterus enlarge together in puberty. Soranus puts it most succinctly: 'The uterus itself brings the seed to perfection, whereas the breasts prepare milk as food for the coming child; the menses occurring, the milk stops, whereas lactation occurring, menstruation appears no more' (*Gyn*. 1. 15). Soranus has been extensively studied in terms of child-rearing because of his attention not only to the mother but also to wet nursing. It is clear from Soranus' instructions that he recognised a relationship between food and its conversion into milk, when he talks about the diet of the wet nurse (*Gyn*, 2.25). However he mistook the value of colostrum and advised against feeding a baby on maternal milk in the first twenty days after delivery. Temkin does note that twenty days is often translated as three by modern authors, though he himself considers Soranus to mean twenty (Temkin trans.. p. 89 n. 35). Twenty days does seem an inordinate length of time and it is hard to see how a new mother could tolerate not feeding for that time or maintain milk supply after that without discomfort. The tension between offering practical medical advice and the social conventions of his time are evident in Soranus' comment:

> ἄμεινον γάρ, τῶν ἄλλων ἐπ' ἴσης ἐχόντων, τῷ μητρῴῳ γάλακτι τρέφεσθαι τὸ νήπιον· τοῦτο γὰρ οἰκειότερον αὐτῷ, καὶ πρὸς τὰ γεννηθέντα συμπαθέστεραι μᾶλλον αἱ μητέρες γίνονται, καὶ ὡς φυσικώτερον πρὸ τῆς ἀποτέξεως οὕτως καὶ μετὰ τὴν ἀπότεξιν ἀπὸ τῆς μητρὸς τρέφεσθαι. κωλύοντος δέ τινος, τὴν ἀρίστην ἐκλέγειν τίτθην, ὥστε μηδὲ τὴν μητέρα προγηρᾶσαι διὰ τῆς ἐκμυζήσεως καθ' ἡμέραν δαπανωμένην· . . .

> To be sure, other things being equal, it is better to feed the child with maternal milk; for this is more suited to it, and the mothers become more sympathetic towards the offspring, and it is more natural to be fed from the mother after parturition just as before parturition. But if anything

prevents it one must chose the best wet-nurse, lest the mother grow prematurely old, having spent herself through daily suckling (*Gyn.* 2.18).[11]

1.7 Conclusion

The above discussion has shown, in schematic terms, how, in ancient medical writings, the maternal body was essentially defined as necessary but subordinate to the reproductive process, just as women were deemed necessary but subordinate to the social and political structure. In terms of biological and medical understanding, women were primarily interesting for their ability to produce legitimate heirs for the *oikos/domus* and for the state. By definition, this meant only women of such status as to achieve this.

These constructions of the processes of conception imply that paternity and maternity cannot be considered semantic equivalents. As Delaney has pointed out in a study of modern Turkish peasant attitudes: 'if the biological and physiological contribution of each parent to the development of a child has different cultural and social meanings parents are seen to relate in different ways to their children' (Delaney 1986: 45). This asymmetry between paternity and maternity was inherently understood in the construction of Roman kinship. The ideal model of the Roman family was founded in blood agnate relationships, which in ideal terms excluded the mother; a system that could be upheld by 'scientific facts' detailed above. Roman familial and social relations were constructed to fit a model that attributed the generative power to the father and a nutritive role to the mother. Kinship was based primarily, but not exclusively, on a biological relationship to the father and was reflected in the laws and rituals of society (see below). This ideal model was, however, constantly undermined by social convention that recognised the close bonds between mother and child and the necessity of the mother in the extension and maintenance of kinship

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[11] For the social practice and implications of wet nursing see: K. Bradley 1986: 201-229; 1991: 23-29; P. Garnsey 1991: 48-65.

ties. In a political sense, motherhood itself created and defined other relationships: how a wife related to her husband, that is, their `kinship', was structured through their mutual children. In a *sine manu* marriage indeed, a wife was related to her husband only through their shared children.

The texts used in this chapter come from widely differing times and contexts, but despite this, and despite their sometimes contradictory theories, there is a marked consistency in the assumptions that underlie their writings. Certain theories appear in some form or another across time and over the whole spectrum of authors: namely, the inherent weakness of the female and the identification of male and female along lines of binary opposition (strong/weak, hot/cold, etc.). Women were always recognised as necessary for the continuation of the household, although their role in the reproductive process might have been presented as subordinate to that of the male. Women's bodies were interesting not in themselves but because of their ability to make men fathers, and in order to achieve this attention had to be paid to the process by which offspring were conceived, carried and born. This is what should be highlighted; the positive value that motherhood brought to women in terms of status is reflected in the fact that such writers were interested in them.

It is clear from these texts that the ideal female body in the classical world was a maternal one. In physiological terms it was also an open body; open in terms of soft porous flesh, in terms of menstruation, in terms of sexual penetration and finally childbirth, lochial flow and lactation. Such openness made it fundamentally different to the male body, which was ideally hard and impenetrable, either by weapons or sexually. This soft/hard, open/closed opposition also had social implications as we shall see, but it is also an image that came under scrutiny in the Christian world. This, together with the aligning of the female with the physical and the passive, and of the male with the spiritual/rational and the active, had obvious implications for Christian thinking about the place of women in the new dispensation. The following

chapter will discuss how fourth-century Christian writers dealt with this problem, and how they redefined maternity within the rhetoric of asceticism. First, though, it is necessary to examine the shift in thought that resulted in sexual practice and desire being regarded as inherently sinful, rather than as a natural element in human social relations.

Chapter Two

'Natural' Sex to Sinful Sex

2.1 Introduction

The medical writings, as we saw in chapter one, were focused very much on women as reproductive beings, and traditional social convention both affirmed and was confirmed by this. The expectation of women in the classical period was that they would marry and produce heirs. There were few exceptions to motherhood as a life-plan. Sexuality, sexual behaviour and the sexual act were culturally constructed but, within that construction, they were perceived as part of the natural order. Tradition, backed by the medical writers, held that nature had ordained that there should be sexual difference; Aristotle and Galen thought that one half of the human race was naturally different (and in Aristotle's case inferior). This was so that the human race should continue and that within mankind there was a group defined by its difference, designated for the nurture and production of children. Greco-Roman society hedged this 'natural' characteristic about with taboos and controls but accepted it as a natural part of the human condidition. The natural proclivity of mankind was to procreate, and social value accrued to parenthood.

From its earliest times Christian teaching shifted the goalposts on thinking about the proper place of sexuality and the role of the body in society. From the time of Paul onwards it was more common to see the negative aspects of sexuality highlighted rather than the positive reproductive ones. Early Christianity was a religion predicated on the body, and over time it offered a very different 'body image' to its followers. Varied interpretations of the Genesis story resulted in a general acceptance of the notion that sex was no longer to be thought a 'natural' but a distinct characteristic of the fallen nature of the human race. Christian morality appropriated the understanding of biology, not in any attempt to formulate a Christian biology as such, but in order to (re)define and (re)construct the role of the

body and its sexual functions in the post-Fall world. Christian and pagan understandings of the body co-existed, just as did differing doctrines of seed and procreation; they co-existed because different communities made different demands on the body. The post-Fall body was envisaged as quite different from that of its pre-Fall counterpart; it might continue to work physiologically in the same way as that imagined by the pagans, but the new understanding of sexuality as something to be severely controlled created a different arena for the reproductive body. In the ideal post-Fall world, sexual activity was only sanctioned within marriage for the express purpose of procreation. It was also expected that the expression of sexuality in the sexual act would be a short-term thing, problematic for only a short period of one's life.

By the fourth century certain Church Fathers were becoming entrenched in an ascetic discourse that compounded this denial of sexuality as a natural part of the human condition and questioned the meaning of the sexual act in a Christian world. A direct result of this was that celibacy or lifelong virginity replaced marriage and parenthood as the preferred option. This was a radical shift away from the traditional values of Roman life and was to be highly influential in the later medieval period and on the development of catholic theology. All this thinking has several implications for the construction of maternity: one of the main reasons why Christians were obsessed by the body was because their God was incarnate. How was the true humanity of Christ to be explained without decreasing or denigrating his equally true divinity? At the end of the fourth century the influence of asceticism and the Christological debate came together to focus on the person and body of Mary. Mary is a highly ambiguous and problematic role model for women in the early Christian period. The next chapter will examine how the body of Mary was constructed so as to allow for the full humanity and also the full divinity of Christ. In order to do this it is first necessary to do a little scene-setting: to look at the underlying ascetic agenda and to look at new ideas about the process and meaning of procreation.

Particularly in the hands of Augustine, the notion of how conception came about was brought sharply into focus as an adjunct to the Christological debate and his theory of original sin.

2.2. The influence of the ascetic discourse

In the ascetic discourse biology became inextricably linked with morality and theology. Asceticsm aimed, amongst other things, at least at the limiting of sexual relations to procreation, and at best, at stopping them altogether through a vow of perpetual celibacy. The advocacy of lifelong virginity for women suggests an attitude to the body that most medical writers, with the exception of Soranus, would have found questionable, if not downright unhealthy. Most of the medical writers of the ancient world regarded virginity as a 'passing phase', and social convention reinforced this. It was there for the losing, so to speak, but should be lost in the correct circumstances, those of legal marriage (Sissa 1990: 342). It was not a condition to be jealously guarded for a whole lifetime. Indeed, in the Greco-Roman world, to be a female virgin in your late teens was considered unfortunate and probably suggested there was something wrong with you. To choose not to marry and not to have children was simply not an acceptable life option for the large majority of women in the classical world. Motherhood was the fast track to status and worth in Roman society, and prior to the advent of Christianity one aspired to be a wife and mother, not a virgin.

Within the classical ideology female sexuality was harnassed for the good of the *oikos/domus* and the state. One of the major changes that Christianity brought about was a shift in this social meaning of female sexuality and its role in society. The Church Fathers operated within a inherited cultural field which had, as we have seen, its own validations of gender difference. Part of this thinking also defined women and men and female and male characteristics as in opposition to each other which embodied an underlying assumption that aligned maleness with the active, the

rational and the spiritual and valued these above perceived female traits of passivity, emotion and the physical.[1] One of these oppositions which the Church Fathers, influenced by neo-Platonism, took to heart and made their own was the dichotomy between the body and the spirit. For 'body' read all things to do with the temporal realm, particularly the sexual and physical, but also marriage, family, household and civic duty. Likewise for 'spirit', read contemplation of the divine by prayer and by denial of the physical world, not only the rejection of political duties but also of family ties and obligations, and most significantly, by the denial of sexual act and the suppressing of sexual desire. Not all Christians took their lifestyles to the ascetic extremes but the rhetoric was very pervasive. As said earlier, Christianity was a religion obsessed by the body, and with an ambivalent relationship to it. On the one hand their God had celebrated it by taking on human flesh himself and dying in an excruciatingly painful and demeaning way; on the other, there was a very strong and pervasive cultural perception that held the body to be intrinsically sinful because it was bodily, i.e. sexual, desire that had led to the Fall from grace. The latter was dependent on the reading of Genesis that was prevalent until Augustine's rethink at the beginning of the fifth century.

Readings of Genesis gave a Christian theological dimension to the gender implications of the medical and philosophical writers of the classical world. The argument that was to frame catholic thinking until this century grew essentially from differing interpretations of Genesis 1-4. The story of Adam amd Eve offered an example of ideal male/female relations but also gave a rationale to the eternal question of why suffering and death are part of life. Traditional Christian and Jewish interpretations of the story of the Fall laid the reason for the human condition on the fact that Adam and Eve made the wrong choice in Paradise.[2] According to this reading Adam and Eve were not sexual beings in Paradise and sex and,

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[1]On binary opposition see S. Lovibond 1994: 88-101. For modern theory see T. Moi 1985: 102-26.

[2]See E. Pagels 1988 for early Christian interpretations of Genesis; M. Miles 1992: 85-99.

therefore, marriage and death only entered the world after they were cast out of the Garden of Eden, and had not existed previously. The curse of Adam and Eve had brought toil sweat into the world for men, for women the pain of childbearing and the rule of their husband, and death for both. (*Gen.* 3.16). The implication of this reading for early Christian views on sexuality was that one of the ways of achieving paradise on earth was to regain the virginal state of Adam and Eve, to deny sexual impulses and remain celibate. This was compounded by the writings of Paul, particularly 1. Cor. 7-11.

For women these interpretations were siginificant for the legitimation and justification of gender roles. Women were traditionally more associated with the physical, in contrast to the male association with the mental/spiritual. The female body itself was perceivied as reinforcing this notion, as it visibly changed at certain times, growing breasts at puberty, and being subject to leakages at times of menstruation, lactation and lochia. Through their capacity for reproduction women were perceived as inextricably linked with sexuality, and thus with the material and physical world. The openness of their bodies translated into their social role, they were open to outside influences, and could thus be perceived of as weak, easily swayed, as needing the domination and guidance of their more rational male partners. Openness was also a positive characteristic because it was through it that women could be fertile and accessible for penetration by the male. As we have seen, the female body could be characterised by its openness, opened at first menstruation or by first sexual experience (not necessarily in that order), further opened by the first childbirth; most medical authorities would have held this to signify a healthy female body. However, given the Christian interpretation of the curse of Eve, this association of women with the physical, the sexual and childbirth, the traditional raison d'être of the female sex, was put aside and women's bodies now became powerful signifiers of sin. In theological terms all women shared the guilt of Eve. As her descendants not only were they responsible for bringing about

the Fall of man but the curse laid on Eve tied women to an eternally subordinate role defined by their ability to reproduce. This interpretation set Eve up as a model for the evils of female sex and sexuality, only to be redeemed by the physical and spiritual purity of Mary.

For ascetic writers one of the ways to expiate the guilt of the Fall was to deny all the sexual elements of the human condition. It is no exaggeration to say that early Christianity was obsessed by sex. By the late fourth and early fifth centuries the tensions in the church about the relative merits of the married versus the virgin life threw up an extensive debate, which has had lasting consequences for orthodox catholicism. This tension is particuarly evident in the works and counter-works of Augustine and Julian of Eclanum. In their debate about the relative merits of the married and celibate states and the role of sexual desire, we come closest to a Christian biology: it is a biology, however, that is entirely tied up with theology and morality. Their confrontation, which came to find a focus on the nature of seminal matter, was part of a larger debate about the origin and nature of original sin and the role of free will and grace in the post-Fall world.

2.3 Augustine, Julian, and the planting of seeds

I have chosen to concentrate on Augustine's debate with Julian for several reasons. It is, for better or worse, essentially Augustine's view of sexuality, sin and free will that has become part of the orthodox catholic inheritance. Within the debate it can be shown how each side used medical/biological argument to support their case in terms of the theories of the origin of semen and the mechanics of conception. Alongside this is a view into the differing ideals of the Christian life that were held among Christians themselves. As Peter Brown has said, in typically Brownian terms, in the controversy over the meaning of desire 'we can sense the silent turning of an age' (P. Brown 1983: 63). Finally, the debate has implications for the biology

of the Virgin Birth and the construction of the ideal mother which I shall discuss below.

Towards the end of his life Augustine had come to a radical re-interpretation of the Genesis story and what it meant for mankind as Adam's inheritors. This came about partly as a result of his attempt to rehabilitate marriage from the worst propaganda excesses of Jerome's asceticism, and partly as a rethinking on the nature of free will in man. Opposition to asceticism and its most anti-social aspects had been brought to a head in Rome and the west in the writings of Helvidius and Jovinian and the counter-blasts of Jerome (Hunter 1993; Markus 1990: 39-48). Helvidius, writing in c.383, affirmed the equal value of marriage and virginity. This theme was enlarged upon by Jovinian who questioned the fundamental precepts of asceticism: not only the lifestyle of ascetics but also the high value placed on virginity (see below, Chapter 3). The debate on the relative value of marriage and virginity raged across the Mediterranean and Augustine composed his own response to Jerome's ferocious *Adversus Jovinianum.* In *De bono conjugali* and its companion volume *De sancta virginitate,* (both written in 401), Augustine reinstated marriage firmly within the realms of the good Christian life. However, both these works reiterate the orthodox Christian position: marriage is good but virginity is better.

Soon after completing these two books Augustine began his literal commentary on Genesis. This prompted his re-thinking on the meaning of the Genesis story for mankind and on the role of sexuality in the Christian cosmos, and the nature of free will. Augustine slowly evolved the view that man was marked before birth by original sin. This theory of original sin was part of his reinterpretation of the Genesis story and brought him into conflict with Pelagius and later, with a particular Pelagian bishop, Julian of Eclanum. They resented Augustine's pessimistic view of human nature and argued that once a Christian had been baptised he had the freedom

of moral choices and could make a conscious choice whether or not to commit sin. More significantly for this discussion, the Pelagians denied the concept of original sin and any idea that mankind, as descendants of Adam, were marked by his sin. In his dealings with the Pelagians Augustine found himself in a position where he could be accused of still retaining his old, heretical, Manichean ideas, that the world is divided into good and evil in constant tension with each other.[3] Augustine's definition of original sin was read by Julian as a reversion to the idea that there was a natural evil in the world.

Augustine's theory of original sin was part of his re-interpretation of the Genesis story. Augustine's Christianity was an ascetic one; he thought that being a Christian demanded celibacy on his part, and he saw that his new understanding of the place of marriage and the role of sex within it, as expressed in *De bono coniugali*, coupled with his reading of the Genesis story, meant that the role of sexuality had to be re-thought. It was here that he and those who opposed him, particularly Julian, found the locus of their debate. If sexual activity and sexual desire could be placed in their correct context, all other thinking about the role of human will and of original sin would fall into place. As we shall see, the fundamental problem for Augustine and Julian was that they argued from different basic premises.[4]

Contrary to the traditional view explained above, Augustine now thought that Adam and Eve were sexual beings in Paradise but that the sexual act had not been then as it was now. Augustine's new reading is best expressed in *De Civitate Dei* 14. For him the Fall had brought about a dislocation between the body and the will's ability to control it, so that the post-Fall body was presented to him as radically different from that of Adam and Eve in Paradise. In Augustine's ideal world the seed of

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[3]For Julian accusing Augustine of Manicheanism see for example: *de nuptiis et concupiscentia* 2.15; 34; 38; 49; 50. See Bonner 1986: 312-391 for a full (and pro-Augustine) discussion of the conflict between Augustine and the Pelagians and its theological ramifications.

[4]For fuller background to this and Augustine and the Pelagians see: Markus 1990: 45-62; Brown 1968: 93-114.

offspring would be emitted by the male and received by the woman, at such a time and in such an amount as was needed, their genital organs being directed by will and not by lust (*De Civ. Dei*, 14. 24: *OO* 7. 598; cf. *N&C*.1. 6: *PL*.44. 416). The seed would be transferred into the womb of the wife without damage to her maidenhead (*integritas*) in the same way as the menstrual flow can issue from a maiden's uterus without any damage; seed could be introduced through the same passage through which the menses came out. Conception would come about as the result of the two sexes coming together by act of will (*voluntatis nutu*) rather than by force of lust (*libido*). After this, birth would take place without labour pains (*De Civ. Dei*, 14. 26: *OO* 7. 601; cf. *N&C*. 2. 29: *PL* .44. 453). Lust, then, only entered the world after Adam and Eve had sinned. Before this the first couple had been married in Paradise, but in that first marriage, before sin entered the world, sexual activity took place by act of will, not lust (*De Civ. Dei*, 14. 23: *OO* 7. 597; cf. *N&C*. 2. 17: *PL*. 44. 446; *CJ*. 3.57: *PL*. 44. 732). The lack of bodily control inherent in sexual desire and appetite was a punishment for the sin of disobedience (*De Civ. Dei*, 14. 23: *OO* 7. 597; cf. *N&C*. 1. 17: *PL* 44. 423; *CJ*. 5. 62; *PL* 44. 818). It is the lack of control, the divorcing of the body from the will, that worries Augustine; for him lust takes over the body, heedless of the will, and produces *pleasure unsurpassed* (*De Civ. Dei*. 14. 17-18: *OO* 7. 589-91).

The debate became centred on the nature of carnal desire, *concupiscentia carnis*, probably still best translated as 'lust of the flesh', which has appropriately 'victorian' connotations that suit Augustine's meanings.[5] Augustine thought that the choice of Adam and Eve in Paradise had produced a physiologically different body, one in which the will and the body were now divorced. In his view Adam and Eve were sexual beings in Paradise, but once they were cast out the sexual act could no longer take place 'on demand'. Augustine, therefore, was no longer troubled by the existence of sex itself but rather by the actual mechanics of it. The lack of physical

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[5] On Augustine's use of *concupiscentia, libido, etc.* see Bonner 1986: 398-401; Rist 1994: 321-27.

control necessary for the emission of seed was considered by Augustine to prove his theory of original sin, expounded earlier in *De Civitate Dei*. In Book 13.14 he argued that the whole human race was condemned to sin by Adam's choice:

> Nondum erat nobis singillatum creata et distributa forma, in qua singuli viveremus; sed iam natura est seminalis, ex qua propagaremur: qua scilicet propter peccatum vitiata, et vinculo mortis obstricta, iusteque damnata, non alterius conditionis homo ex homine nasceretur.

> We did not yet possess forms individually created and assigned to us for us to live in them as individuals: but there already existed the seminal nature from which we were to be begotten. And, of course, this was vitiated through sin, and bound with death's fetters in its just condemnation, man could not be born of man in any other condition (*OO* 7. 535-6).

For Augustine we all sinned in Adam; he thought that somehow all future generations were tainted through their seminal connection with the first man. The seed itself was faulty because of the lack of control necessary for its transmission, and in this way all mankind was marked with original sin (Pagels 1988: 109). This reading of the relationship between Adam, sin and all succeeding generations includes, as commentators have noticed, a reading of *Romans* 5.12 that is peculiar to Augustine. He interpreted the Latin translation of Paul's words: *Propterea sicut per unum hominem in hunc modum peccatum intravit, et per peccatum mors, et ita in omnes homines mors transivit, in quo omnes peccaverunt...* (Therefore, just as sin entered this world by one man and through sin, death; so death passed to all men, in whom all sinned...) Authorities have argued about Augustine's correct interpretation of this translation, and his ability to fully understand the Greek; however, it was this reading of Paul that was the basis for his evolving theory on the pervasiveness of original sin.[6] All mankind inherited a damaged nature by virtue of their descent from Adam, and the only exception to this was Christ, who was born without *concupiscentia carnis*.

Augustine considered *concupiscentia carnis* different from any other sort of lust because it caused parts of the body, specifically the penis, to move despite the will

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[6]See Bonner 1986: 372-74; and 394-5 on Augustine's knowledge of Greek; Pagels 1988: 109.

of the owner. Other sorts of passion were not so overwhelming; if roused to anger, for instance, one had the choice to raise one's arm to strike or not; lust for knowledge was likewise a good thing. Proof of the sinfulness of the sexual act is found in the shame that surrounds it. Augustine claims that private parts are called *pudenda* because they arouse shame and that the sexual act itself is performed in private, even in brothels (*De Civ. Dei.* 14. 17-18).

Augustine's theology was developing in the last years of his life and in the face of continual and trenchant criticism from Julian of Eclanum. It is not difficult, but is perhaps oversimplistic, to say that Augustine fell victim to what we would nowadays call the nature/culture debate. For him post-Fall sexual activity, desire and the nature of semen itself have nothing natural about them; they are all faulty because of the sin of Adam and Eve. This opened him up to a wide range of accusations. His theory of original sin was particularly hard for some Christians to take, as it argued against the essential goodness of God's creation and the right of humans to exercise free will in the choice of sin. His view also looked suspiciously Manichean in that it seemed to support the notion of natural evil, if all children were born tainted. It also questioned the validity of baptism; were baptised parents still producing offspring tainted with original sin? Augustine also stood apart from mainstream medical opinion, which held, as we have seen (see above section 1.3) that sexual desire and pleasure were essential for conception, that they were 'natural' in terms of human biology.[7] It was on this issue and that of the vitiated nature of human seed that Julian took Augustine to task.

Julian of Eclanum (born *c*. 384) was the son of a bishop who married the daughter of a bishop, and as such is representative of the Italian clergy entrenched in traditional Roman culture. He was married, but it appears his wife had either

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[7] Aristotle was of course the exception to this, see section 1.4. That Augustine takes this line is developed further below, and has implications for his construction of the Virgin Birth.

entered a convent or died before he took up his appointment. The marriage was anyway praised as a continent one by his married but celibate fellow bishop, Paulinus of Nola (*Carmen* 25). There may be a little rhetorical licence here, given Julian's opinion on marriage as expressed in his confrontations with Augustine. Julian was a supporter of Pelagius, and his refusal to sign the anti-Pelagian letter of Pope Zosimus resulted in his exile in 418, only two years after he had received the bishopric of Eclanum. He entered into a debate with Augustine that was to last until the older man's death in 430.[8] Julian charged Augustine with a number of things: with denying free will; with Manicheanism in his doctrine of original sin; and, in consequence, with denying the goodness of marriage with his definition of *concupiscentia carnis*.

Julian's work is only known to us through Augustine's reporting of it, so we must allow for manipulation and rhetorical play, but it is safe to assume that his basic position, following Pelagius, was that Augustine's interpretation of Genesis was mistaken. That which Augustine saw as permanently altered and corrupted by the Fall, Julian saw as a normal part of the natural world. For Julian, God's creation was good; parts of that creation were sex, sexual desire and death and Augustine should not perceive such natural events, which man shared with other living beings, as punishments. Julian and Augustine started from diametrically opposed premises: what Julian saw as 'natural', Augustine viewed as fatally flawed. In Augustine's post-Fall world the structure of the universe had been changed so that sin, death and disease, and, of course, the dire consequences of the dislocation of the body and

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[8]For more on Julian's life see Brown 1983: 54-5; for a negative assessement of his character see Bonner 1986: 347. The chronology of the debate is as follows: following his refusal to sign Zosimus's *Tractoria* in 418, Julian wrote two letters to the Pope asking for explanation. He then wrote to the *comes* Valerius of Ravenna, who forwarded his demand to Augustine. He replied with the first book of *De nuptiis et concupiscentia* in 419. Augustine continued to refute Julian writing *Contra duas ep. pelagianorum* in response to two of Julian's letters sent to him by Pope Boniface. Julian meanwhile wrote four books *Ad Turbantium*, which prompted the second book of *De nuptiis et concupiscentia* and the *Contra Julianum*. Julian replied to *N&C*. II with eight books *Ad Florum*. Augustine left his reply to this to the end of his life and it remained unfinished, *Contra secundam Iuliani responsionem opus imperfectum*.

mind, were the result of Adam's sin. Nature for Augustine was not 'natural' but tainted.

I shall focus particularly on the biological implications of Augustine's theory of original sin and Julian's counter-arguments, as expressed by Augustine.[9]

Julian made a brave attempt to separate biology from theology and morality, and pulled Augustine up on his understanding of the biological and physiological processes of conception. It can be argued that Augustine had already shifted the goalposts of the debate with his interpretation of Genesis and his redefinition of the role of sexual desire, but it becomes clear that Julian and Augustine argued from different points of view, and had no shared ground in terms of 'natural' human behaviour.

Julian himself was married and shared the mainstream views that the sexual act was not sinful in itself and that desire was a necessary part of that act which promoted conception. In this he had the backing of the medical experts, as noted above. For Julian, as for many of his contemporaries, sexuality was relatively unproblematic as it was a phase in life that would pass in the fullness of time. This was the standard classical interpretation of the sex drive, that in the heat of youth one harnessed it for the propagation of heirs and then could literally set it aside. Out of choice it could be avoided altogether by taking a vow of celibacy (Brown 1983: 55-6). Such a vision of the role of desire might have also been Julian's personal experience, but is less likely to be that of Augustine, who had found celibacy a very dificult decision. Julian had medical expertise on his side when he argued that: *sine appetitu mutuo et sine opere naturali propagationem esse non posse*. (Propagation cannot take place without mutual desire and [the union of bodies] and the natural act) (*CJ*. 5. 62; *PL*.

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[9]For much of what follows below I am endebted to E. A. Clark 1986: 291-349, P. Brown 1983: 49-70, Markus 1990: 45-62 and Pagels 1988: 98-150.

44. 818).[10] In his view physical pleasure could not be separated from the process of conception; it was essential to the event, not an optional side-effect. Augustine had read the medical implications differently: for him the pleasure that was part of the *concupiscentia carnis* was a result of the Fall. The very sensation that was necessary for the procreation of children was a consequence of the original sin.

Clark (1986: 296) has pointed out that Julian thought Augustine was arguing from a dubious biological understanding of the body, against which he argues coherently and logically, in a sense pushing Augustine to the logical conclusion of his first, illogical premise. To a certain extent the difference in basic premise is clear in their use of language; Julian prefers to use phrases like *naturali appetitu [cognovit uxorem]*, (natural appetite) (*N&C* 2. 17; *PL*. 44. 446) and *membrorum vigorem*'(power of the members) (*N&C*. 2. 59: *PL*. 44. 471), for what Augustine regarded as *concupiscentia carnis*. It was not merely a question of semantics; Augustine recognised he was being undermined. He called 'natural appetite' the wish of parents to beget, nourish and educate children, and therefore the property of reason, not of lust; on the other hand Julian, he says, wants to use this phrase for the shameful use of the organs of generation. He says Julian is using words as fig-leaves, under which we will find something he is ashamed of - a nice little analogy, and as near Augustine gets to a sense of humour! (*N&C*. 2. 17; *PL* 44. 446). According to Augustine, Julian only failed to mention lust because he was ashamed, preferring to call it *calor generationis* rather than by its more usual name in sacred writing, *concupiscentia carnis* (*CJ*. 4.8).

Julian wanted Augustine to recognise that he was confusing biology with theology and dogma, whilst Augustine could not separate the physiological from the moral. For Augustine the creation of sperm was entrenched in his idea of the will's inability to control the parts in which the seed functioned. Julian was trying to redraw the

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[10]*cf.* Galen *UP*. XIV. 2. II. 286; *K*. IV. 144.6*ff*; Soranus, *Gyn*. 1. 37 see Section 1.3 above.

lines of argument so that they might stand up in the light of received medical teaching. Julian's view was that the essentials of conception, heat, pleasure and emission of seed, were gifts from God. Augustine actually agreed with the last point, that seed is created by God even though it is inherently faulty, for without the goodwill of God there would be no seeds and therefore no begetting (*N&C* 2.26; *PL* 44. 451; and see Clark 1986: 300). Augustine's position is succinctly put in *De nuptiis et concupiscentia* 2. 25. Here he responds to Julian's claim (see above) and goes against the medical tradition.

> Munus autem piorum propagatio est fecunda filiorum, non commotio pudenda membrorum: quam non haberet in generandis filiis natura sana, nunc autem habet eam natura vitiata. Ac per hoc et qui inde nascitur indiget renasci, ut sit membrum Christi.

> A gift indeed for pious men is the fertile propagation of children, not the shameful excitement of the members, which a healthy nature would not have in the generation of children, but now a faulty nature has it. Because of this he that is born from it needs to be reborn so that he may be a member of Christ: (*N&C*. 2.25; *PL*. 44. 450).

Julian argued that as it was the power of sexual pleasure that actually formed the semen and caused the seminal elements to mix,[11] then surely both are gifts from God and should be treated as such (*N&C*. 2.26) To which Augustine replied:

> ...quo excepto caetera vera esse...ideo non est verum quia voluptas illa concupiscentiae carnalis non conficit semina; sed ea quae iam sunt in corporibus a vero Deo condita, a quo et ipsa conduntur corpora, non fiunt a voluptate, sed excitantur et emittuntur cum voluptate.

> That, with this exception, the rest are true, is untrue for this reason, because the pleasure in question of carnal concupiscence does not form the seminal elements. These are already in the body, and are formed by the same true God who created bodies themselves. They do not receive their existence from the libidinous pleasure but are excited and emitted in company with it. (*N&C*. 2. 26; *PL*. 44. 451).

Augustine goes directly against received medical opinion as expressed by Galen and Hippocratics. Those elements of heat and desire which were considered the essentials of successful conception were now regarded by Augustine as the

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[11]cf Galen *UP* XIV. 2. II. 286; 314; *K* IV. 1446; 181.8ff

consequence of the fall from grace. 'Seed is no longer a biological phenomenon but one element in the morality of human agents' (Clark 1986: 299).

Julian made a brave attempt, thwarted by Augustine, to separate the biological from the physiological discourse, arguing that seed itself was not affected by the manner in which it was used, moral (*ie.* within marriage for procreation) or otherwise:

> ...dicis 'quando adulteri gignunt, nascitur homo de virtute seminum, non de turpitudine flagitiorum.' ita quando conjuges gignunt, nascitur homo de virtute seminum, non de honestate nuptiarum.

> You say: "when adulters beget offspring a man is born from the power of the seeds, not from the depravity of their unlawful act.' In the same way, when the married beget, a man is born from the power of the seeds, not from the soundness of the marriage (*CJ*. 3.53: *PL* 44. 729)

Clearly Julian stood on the argument that sexuality was a natural good, whereas Augustine takes the view *contra Iulianum*, that:

> Eo malo conjuges castos dico uti bene, adulteros male: tu contra eo bono adulteros dicis uti male , castos conjuges bene: continentam melius eo non uti, ambo dicimus; sed ego eo malo, tu eo bono.

> Chaste spouses use this evil [sex] well, adulterers use it evilly, but you say adulterers use this good evilly and chaste spouses use it well. We both say continence is better if not used (at all). I am referring to this evil and you to this good (*CJ*. 3. 49; *PL*. 44. 727).

The nature of desire is where Julian and Augustine cross the nature/culture opposition: for Augustine this is a moral category, and the place of desire is within marriage and for procreation; it is unfortunately necessary for the continuation of mankind but carries with it the mark of sin. For Julian sexuality, sexual desire and intercourse are natural attributes of the human condition, only used to excess if used outside marriage. Julian was not, any more than the medical writers, advocating adultery or sexual freedom; his natural sexuality was still harnessed for the Christian community. Brown, and following him Markus, argue the point further: that Julian represents the last of the classical age, his view reflecting the ideals of the classical civic society, whereas for Augustine the gap between sexual desire and the act itself was unbridgeable. It may be necessary and acceptable within Christian marriage, as

he had argued in *De bono conjugali*, but it was still evidence of the fallen nature of mankind (Brown 1983: 64; Markus 1990: 60-1).

If Augustine would not concede the point on the 'natural' nature of semen, then he had to face the ramifications of this. Julian pushed him on the question of infant baptism, and in the final book of his *Contra Julianum* there are some insights into how Augustine thought conception worked. Julian asks how a baptised woman can produce a child marked by original sin (*CJ*. 6. 43; *PL*. 44. 846) and is promptly rebuked for not recognising the power of God, who can form a child in the body of a prostitute and adopt that child for His own, whereas he can just as equally form a child in the body of a pure woman and not accept it. Infants must be baptised in their own right because when in the womb they are not really part of their mother's bodies. If they were regarded as part of the mother's body they would not have to be baptised (*CJ*. 6. 43; *PL*. 44. 847). Augustine uses this circular logic to prove his point about infant baptism. It is a technique he has used before; his proof that the sexual act was shameful was that people prefer to do it in private.

The relative contributions of male and female to the process of generation had been touched upon in the discussion of the infant's need for baptism above. This point was further raised by Julian in his later works. Augustine's response raised questions both about his understanding of the medical writings he claimed to have read, and about his perception of how conception actually came about. As has been shown above (Chapter 1), it was generally held that the male seed was the prime mover in the act of generation. If Augustine agreed with this, his theory of original sin being transmitted in the seed, seed which is inherently faulty because of the will's inability to control its emission, placed the onus of sin on the male. This seed is presumably male seed as it is the male erection that is beyond control. Augustine often refers to the erection as the physical expression of lust; "the movement produced by concupiscence by which the flesh lusts against the spirit' (*CJ*. 4. 62;

PL.44. 768).[12] This would suggest that sin is a particularly male problem, but he does claim that women also feel desire; it is just that is not visible (*CJ. 4. 62*). However, it does seem that for Augustine female desire is not essential in conception, for in telling the story of Abimelech he says that woman can perform her share in concubinage even if concupiscence has ceased from stimulating her (*N&C. 2. 30: PL. 44. 454*). Taking this together with the notion that the child in the womb is not of the mother's body, and his opinion that lust does not affect women's ability to conceive, we see that Augustine is extremely Aristotelian in his view of conception. In *CJ. 2.16 (PL.44. 685)* he quotes Ambrose, *De Paradiso* 13.67: 'Adam covered his loins with fig-leaves, for in the loins are said to be seeds of generation'. Previously he has also quoted Ambrose to explain that all those formed in concupiscence are conceived in sin and fashioned in it out of blood (*CJ. 2. 15: PL.44. 684*). In explaining the pregnancy of Sarah in her old age, Augustine seems to understand that the menstrual flow is related to fertility and that the womb must be open. He claims to have read medical writers to this effect (*CJ. 3.22*).[13] Earlier in his writings he seems to have equated menstrual flow in women with seed in men. Both are described as a material 'shapelessness', which in the female is there for the development of the body, once conception has occurred (*De Bono Conjugali*, 23: *PL.40: 389*).[14]

His view, however, is not consistent, as elsewhere he appears to claim that both parents have seeds (*CJ. 3.37; PL 44: 722; cf De civ. Dei 7. 9, 13*). This inconsistency is reflected in his argument with Julian over the interpretation of Romans 5: 12 ('Per unum hominem peccatum intravit in mundum': 'Through one man sin entered the world'). Augustine maintained that what Paul was saying was that sin entered the world through the male via the *semen generationis* that is emitted

[12]see also *CJ. 4.53; N&C. 1.6* and particularly his own personal experience in *Confessions* 2.6.
[13]cf *CJ 5.51 (PL 44: 813*) where he mentions Soranus by name and his own comment on this at *Retractiones* 2.62.
[14]This comment comes about in a discussion on purification; men should purify themselves after involuntary nocturnal emissions and women after menstruation. See Joyce Salisbury 1991: 41.

only from the male. Here he argues that Paul is referring to the male contribution to conception; a very Aristotelian view compounded by his belief that women do not have seed that generates, which is the function of the male seed (*OI.* 2.83: *PL* 45. 1175). Augustine reiterates this point several times: females conceive and bear, they do not generate ('quia ille genuit, quod illa peperit' : ' because he generated that which she gave birth to..') (*OI.* 3.85: *PL.*45. 1284). He uses biblical evidence to prove his point that through one man sin entered the world and it is the male seed which generates, as the scripture says: 'Abraham genuit Isaac, Isaac genuit Jacob.....nec dictum est, Abraham et Sara genuerunt Isaac, aut, Isaac et Rebecca genuerunt Jacob' : (Abraham generated Isaac, Isaac generated Jacob... it does not say, Abraham and Sara generated Isaac, or, Isaac and Rebecca generated Jacob.') (*OI.* 3.88: *PL.* 45: 1285) As Clark (1986: 310-12) points out, there can be no doubt of Augustine's meaning: children are marked by original sin because they are created by an engendering seed that is already tainted. This seed comes from the male and the woman receives it, already damaged, and nourishes it to birth. A woman may have seed, but of itself it cannot generate. Augustine is here certainly taking the Aristotelian/Soranian line on the relative contributions of the male and female to conception. Seeing it this way, of course, also has implications for the Virgin Birth, implications of which Augustine was well aware.

2.4.Conclusions

In the battle between Augustine and Julian the lines were drawn that were to frame catholic thinking until the Reformation. Sex and all the biological processes associated with it became marked as consequences of the Fall and so intrinsically sinful. Augustine was prepared to countenance sex within marriage for procreation but he was not going to allow that it was a natural element of human nature. Julian fought his corner well but the tide of opinion, or the power of those holding contrary opinions, was against him. His doggedness matched Augustine's own but he was outmanoevered by sheer number and weight of words in the end. Augustine

expended a huge number of words to argue his case. The two men represent the different strands at work in the Church at the turn of the fifth century. Julian represented a more open and traditional, and perhaps conciliatory, view of marriage and the role sex played inside (and outside) it. Augustine, despite making conciliatory moves to counter the extremes of Jerome's ascetic tirades, was still fairly hardline.

In their conflict we have moved from the classical to the Christian world, in terms of attitudes to sex and sexuality. This, together with Augustine's own view of original sin, meant that theologians had to put in some deft footwork, to adequately explain the motherhood of Mary and the nature of the Virgin Birth. Augustine had successfully removed sex and sexual desire from any realm where it could be used of Mary. The separation of sex from motherhood may have helped create the image of the Virgin Mother but it did little for those women in the Roman world who had previoulsy gained their status through maternity.

Chapter Three

The Virgin and the Metaphorical Mothers

Part One: Mary, Virgin Mother
3.1 Introduction

This chapter will discuss how Mary's virginal maternal body was constructed in the early Christian writings and how through the work of Ambrose, Jerome and Augustine, the doctrine of *virginitas, ante partum, in partu et post partum*, (virginity before, during and after childbirth) developed in the west. This doctrine presented an ideal of maternity and reproduction appropriated by the Church, in which biology was subordinated to morality, and in the case of the perpetual virginity of Mary, also subordinated to theology. In the process it effected a separation between motherhood and sex.

By the late fourth century the debate about the nature of Christ had become focused on his mother and on the nature of his conception and birth. Knowing that certain things - sexual desire and intercourse, mixing of seeds - were essential for successful conception, how did the Church Fathers construct the body of Mary, Mother of Christ, in such a way as to allow Christ to take his humanity from her through the process of gestation and birth, yet avoid all that might taint him with the pollution of original sin? The argument is not a simple one in terms of theology, doctrine or biology. The birth of Christ was one that had to take place without all the sexual elements that had come to be seen as the reason for the Fall. It was necessary to present Mary as a one-off, pure, unpolluted model which while glorifying the maternal role, still subordinated it to second place. Mary is both virgin and mother, but in fact in this instance can be a mother only because of her sexual purity. As a role model she presents an unattainable paradox, but it is the paradox itself that defines her. With the emergence of Mary as virgin mother there also appears a new body image. Instead of the open body of the classical texts, the new ideal is the closed and impenetrable virginal body, a body that looks on the surface as if it has acquired masculine qualities.

This chapter looks first at the development of the doctrine of the virgin birth and then at its interaction with the Christological and ascetic debate. Finally it examines the attempt by the great Church Fathers in the west, namely Ambrose, Jerome and Augustine, to explain the position of Mary and maintain her integrity as both virgin and mother.

3. 2   The tradition of the Virgin Birth before the fourth century

The tradition of the perpetual virginity of Mary was by no means accepted doctrine in the west before the fourth century. The development of such a doctrine was primarily the work of Ambrose, Jerome and Augustine who were working out the implications of the Incarnation in terms of the ascetic discourse. The evolution of Mary's *virginitas, ante partum, in partu et post partum*, came about in response to the accusations of heresy, particularly Arianism, Manicheanism and Docetism, which were levelled at those who claimed such status for Mary.

The tradition of the Virgin Birth, which in effect meant the virginal conception of Christ, does seem to have been accepted from earliest times, although the theological message does not seem to have had any real significance until the middle of the second century. The story of Christ's birth appears in only two of the synoptic gospels, Matthew 1: 18-25, and Luke 2: 2-20, both composed in the late first century.

Matthew 1:18-25, briefly tells the story from the point of view of Joseph. Mary was betrothed to Joseph and was found to be with child by the Holy Spirit before they came to live together. Joseph, being a man of honour, decided to divorce his betrothed quietly to avoid public disgrace. He had made up his mind to do this when an angel appeared to him, telling him to take Mary as his wife and to call the son that she would bear, Jesus, as he would be a saviour. Matthew reiterates two

significant points, that Joseph had not had intercourse with Mary (1: 25) and that all this took place to fulfil the words of the prophet: 'the virgin will conceive and give birth to a son and they will call him Immanuel' (Isaiah 7: 14), (Matt. 1: 23) (see Brown et al. 1978: 83-97).

Luke gives a much fuller account starting with the conception and birth of John the Baptist (1: 5-25; 57-58.). He also relates the story of the Annunciation (1: 26-38) and the Visitation of Mary to Elizabeth (1: 39-56). It is from Luke that we have the traditional nativity story: the journey from Nazareth to Bethlehem for the census, the lack of room at the inn, the birth and laying of the child in the manger, and the visit by the shepherds (2: 1-20).

Both these accounts make a point of the virginal conception of Christ, and state that Mary was pregnant without ever experiencing sexual intercourse, but they do not assume her continued virginity during childbirth or after it. Many scholars have pointed out that the virgin birth itself has little theological significance at this early stage, the exception among the Apostolic Fathers being Ignatius of Antioch (von Campenhausen 1964: 19; Hunter 1993: 61; Plumpe 1948: 567). Ignatius (*fl.* 110-115, executed in the reign of Trajan) stressed the Virgin Birth in order to refute Docetic heresies. Ignatius is a good example of two interesting points, one of geography and one of the theory of orthodoxy. It is dangerous to be geographically determinist, but it is interesting to note that Ignatius hails from the same area from which the gospel of Matthew and the Lucan sources of the nativity are thought to originate. It is also the area from which the apocryphal *Protoevangelium of James* will later come (von Campenhausen 1964: 19-20). In terms of the development of orthodoxy it will become manifest that the evolution of the doctrine of the Virgin Birth often received its impetus from the need to establish orthodoxy in the face of heretical ideas. Several of Ignatius' letters survive in which the nature of Christ is mentioned. In his letter to the Ephesians, Ignatius refers to Christ as the

"physician' of flesh and spirit, originate and unoriginate, God in Man, true Life in Death, son of Mary, son of God, first passible then impassible, Jesus Christ, our Lord' (Eph. 7. 2). Later in the same letter he makes the point of stressing Jesus' human, as well as his divine descent: 'For our God, Jesus Christ, according to God's dispensation, was conceived in the womb of Mary, from the seed of David and from the Holy Spirit' (18. 2).[1] Even more explicitly in his letter to the Trallians, Ignatius warns the people of Tralles not to be deceived by those who say that Christ was merely a phantom, i.e. all spirit and no flesh, and did not suffer on the cross. This was one of the problems which Christians of this period faced in explaining the person of Christ. Jews would say that because Christ suffered on the cross he was not divine. Gnostics, on the other hand, argued that because he was divine he did not suffer. The one denied Christ's divinity, the other his humanity. The need to explain the Incarnation in the face of these differing attitudes was a problem that would not go away in the early Christian era and was part of the impetus that finally came to focus attention on the person of Mary.

Ignatius does seem to have assumed that the Virgin Birth was an acknowledged part of the Christian tradition, and this is also implied in Justin (d. c. 165). Justin came from the same area of the Mediterranean, Palestine/Syria, and he too was engaged in a dialogue with non-Christians. In his dialogue with the Jew Trypho, Justin maintained the Virgin Birth as part of the Christian tradition and recognised that it was a problem for Jews who acknowledged Jesus as Messiah but believed that his conception was natural, i.e. that Joseph was both Jesus' biological and his social father. Justin argued that the birth of Christ was the fulfilment of Old Testament prophecy, particularly Isaiah 7:14: 'The Lord himself, therefore, will give you a sign. It is this: the maiden is with child and will soon give birth to a son whom she will call Immanuel' (Dialogue 100). It is also Justin who first develops the notion

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[1] trans in Stevenson (ed) 1975: 13 and see Brown et al. 1978: 253-4

of a typological parallel between Mary and Eve (Hunter 1993: 62; von Campenhausen 1964: 20-1; 31-3; 41; Graef 1963: 37).

The Eve/Mary connection was developed by Irenaeus in the late second century, though he was more interested in the parallel and the theory of type and anti-type as portrayed in the pairing of Adam and Christ. Irenaeus, like his predecessors, was still writing in terms of the Christological debate. He developed the idea of a parallel between Adam and Christ, and as a corollary of this he also extended the link to include Eve and Mary. In so doing he was building on the implication of Paul in *Romans* 5.21. Christ was a spiritual Adam, redeemer of the first carnal man. To Irenaeus Christ and Adam were both born of virgins, Adam of the earth and Christ of Mary, and neither of them was the product of natural seed. He presents a somewhat disingenuously circular argument wherein the typology becomes the proof, for example:

> Si igitur primus Adam habuit patrem hominem et ex semine viri natus est, merito dicerent et secundum Adam ex Joseph esse generatum.

> If the first Adam had had a man for his father and had been begotten by natural seed then it could rightly be said of the second Adam that he had been begotten by Joseph (Adv. Hae. 3.21.10).

In Irenaeus's work Mary is not central to the virgin birth, but she has a role analogous to Eve, matching Christ's pairing with Adam. The disobedience of Eve was redeemed by the obedience of Mary: where the former brought death into the world, the latter brought Christ. The expansion of the symbolic role of Mary is the beginning of an interest in her that goes beyond her role as Christ's mother and gives her a central role in the doctrine of salvation (von Campenhausen 1964: 38-9).[2]

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[2] On the danger of over-rating the Eve/Mary parallel in the early fathers see Campenhausen 1964: 44-45; Brown et al. 1978: 267-8: 279.

The teaching of these early Fathers remained essentially Christological. It was concerned with the virginal conception of Mary primarily in order to establish Christ's divine and human nature. The important point is that Christ was conceived of the virgin, which proved his divinity, yet was born a man of a woman, which proved his humanity. Most of these writers assume the notion of Mary's *virginitas ante partum* as an accepted part of the tradition, and there is little or no discussion of *virginitas in partu.*

The first mention of *virginitas in partu* comes in the apocryphal texts of the second century. In these texts we see various claims of Mary's continuing intactness during childbirth. The *Ascension of Isaiah* referred to the sudden appearance of the infant Jesus after only five months in the womb.[3] The essential elements of the story follow Matthew until a moment when Mary and Joseph are alone in the house and Mary suddenly sees a baby before her. After this her womb was found to be as it was before. The orthodoxy of this text has been much debated, and despite the evidence of the birth story it is now not considered Docetist in content, as apart from this episode it exhibits no other heretical tendencies (Plumpe 1948: 57-4; Brown et al. 1978: 250-1).

By far the most significant document for the discussion of both *in partu* and *post partum* virginity of Mary is the *Protoevangelium of James.*[4] This was written towards the end of the second century, probably in the area of Syria. This tells the life story of Mary, beginning with the miraculous conception of her previously sterile and aged mother. Mary was dedicated to God from the moment of her conception, and her life is recounted in great detail. In the *Protoevangelium* Mary's

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[3]The length of time the child was in the womb is confused by the ambigous nature of the text, see below Section 3.4.

[4]Translation in J.K. Elliott 1993 *The Apocryphal New Testament* Oxford. See also: von Campenhausen 1964: 54-56; Benko 1993: 196-203; Brown et al. 1978: 258-60. Plumpe 1948: 572 implies that the *Protoevangelium* was contemporaneous with the *Ascension of Isaiah*, suggesting that the question of Mary's state of body was becoming as issue in the mid to late second century.

purity from birth, her virginity and lack of contact with Joseph are stressed. The nativity takes place in a cave and is witnessed by Joseph and a Jewish midwife he has sought out (19.2). The midwife watches the birth and believes she has seen salvation born to Israel, but Mary's state of body is further witnessed by an unbelieving woman named Salome who tries to examine her physically. Salome suffers for her lack of faith, and her hand is withered as if by fire; it is healed only when she takes up the Christ child (20).

The *Protoevangelium* is unique and problematic both in its recognition of *virginitas in partu* and in its focus on Mary herself. Coming from an area of the Greco-Roman (and Christian-Jewish) world acquainted with asceticism, its ascetic content is evidenced by its focusing on the sexual purity of Mary from her own conception onwards. Hunter suggests an Encratite origin, partly geographical and partly theological. The *Protoevangelium* is thought to have originated in Syria from the same area as the Encratites, and the *virginitas in partu* doctrine was read as a redemption from the curse of Eve. That she gave birth without pain or the opening of the body not only denies the punishment of Eve but also stresses the ascetic (and Encratite) idea that the ideal situation was that of Adam and Eve, virgins in Paradise before the Fall (Hunter 1993: 63-4).

The *Protoevangelium* was also the first text which explicitly claimed Mary's continued virginity not only during but also after the birth of Christ. If Mary was to be presented as a model for sexual purity for the purposes of asceticism, it was necessary that she remain so all her life. The writer of the *Protoevangelium* claimed that the brothers of Jesus mentioned in the gospels were stepbrothers from Joseph's previous marriage (9. 2). The implications of the *Protoevangelium* were not fully explored in the west until the late fourth century and the works of Ambrose and Jerome. The *in partu* and *post partum* virginity of Mary continued to be debated by the Church Fathers but was used to prove different ends.

Tertullian and Origen are the last examples to be discussed in this section. They both illustrate how problematic the Christological question was in the early centuries, particularly once it became entrenched in the new notion that sexual relations were the result of the Fall. The writings of Tertullian (c.155-c.230) show how little the version presented in the *Protoevangelium* was either known or accepted among more western Church Fathers. Tertullian, like so many others, was defending Christ's humanity against those who argued that he was purely a spiritual being. Tertullian was putting his case against the Gnostics, particularly Marcion and Apelles, who argued that Christ was never truly man. This of course meant the denial of both the crucifixion and the resurrection (*De carne Christi* 6). To this end, while Tertullian affirmed the virginal conception of Christ he required that his birth be a truly human one in order to maintain his claim that Christ truly became man. Tertullian saw the notion of *virginitas in partu* as denying Christ his humanity. He thought that it implied exactly what the Gnostics claimed, that Christ was merely spirit who had used the Virgin as a channel. In order to claim true humanity for Christ Tertullian described the processes of pregnancy in graphic detail (*De carne Chr.* 4.20, 23; *Adv. Mar.* 4. 21). Salvation was dependent on the true humanity of Christ, in birth and in death, and having a proper gestation and birth were essentials to Tertullian's view. *Post partum* virginity likewise did not concern, or even occur to, Tertullian. As to those before him, so to Tertullian it seemed common sense that the brothers of Jesus mentioned in the gospels were his biological siblings. Tertullian thought that after the birth of Christ the marriage of Mary and Joseph was a true marriage (*De monogamia* 8) and that Mary was mother of others (von Campenhausen 1964: 46-8; Hunter 1993: 65-7).[5] This was a view that had been held by Irenaeus before him and was to be held by Jovinian in the fourth century.

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[5]Brown et al. 1978: 264 for discussion on whether Mary and the brothers stood outside the believers, and 271.

For Origen, on the other hand, *post partum* virginity was essential to his view of the relationship between sin, sexuality and the Incarnation. Virginity was central; it was right and proper that the Son of God came into the world from a woman who was 'still chaste and pure and a virgin' (*Contra Celsum* 1.35). Origen argued that it was possible for Christ as divine to have a soul free from sin and a body that shared the humanity of man, but it was only possible to achieve this by being born of a pure and virginal body, as prophesised(*Isaiah* 7.10-14; *Contra Cel.* 1.34).[6]

Origen, though the first to develop the Virgin Birth in relation to the person of Mary within the ascetic framework, was still doing so within the larger framework of the Incarnation. Mary is not his central focus, but his ideas are important for their future use, particularly by Ambrose. Origen looked at the debate as it stood and considered the ramifications of it carefully, for instance, he was the first to consider why Mary should be betrothed (*Hom. Luc.* 6.). Origen thought the betrothal was to ensure that there could be no stain of adultery attached to Mary and that the betrothal hid the child from the devil. Both Ambrose and Jerome later took up this theme and enlarged on the list of reasons (von Campenhausen 1964: 57-63; P. Brown 1988: 175)[7]

In his *Contra Celsum* Origen explained the reasoning behind the Virgin Birth. In this instance he was not exactly refuting heresy but was countermanding pagan accusations. Christ's conception must come about without any taint of sexuality, as the origin of the body and soul must correspond with each other (*Con. Cel.* 1.32-33 cited in von Campenhausen 1964: 59). So, for Origen, Mary was a model of purity and her body was made holy by association with the Holy Spirit; it was therefore improper for her ever to taint her flesh by indulging in carnal intercourse with Joseph at any time of her life (Hunter 1993: 67). Origen's position on *virginitas*

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[6]Origen: *Contra Celsum* trans. H. Chadwick 1953, Cambridge, pp. 33, 35.
[7]Ambrose, *Expo. Luc.* 2.2; *Ins. virg.* 6.42; Jerome, *Comm. in Matt.* 1.18

post partum is a logical progression from his first position on *ante partum*, under the influence of an ascetic discourse that held sexuality to be a result of the Fall. Origen pre-figured later Church Fathers in interpreting the sexual act as tainting every generation, but for him virginity and the rejection of sexuality were also tied to free will (P. Brown 1988: 170-77).

Origen followed Tertullian on the question of *virginitas in partu*. This was not acceptable, as a real human birth was essential proof of Christ's true humanity. There was, as Tertullian had realised, a danger of being accused of Doceticism if the real birth of Christ was denied. Origen went further. He used medical analogies of the open body to prove his point. In his homily on Luke 14.4 he argued that the body of Mary was opened by the birth of Jesus, when it had not previously been opened by sexual intercourse, as in the normal course of events (Hunter 1993: 69, following Crouzel). We have seen how the female body was considered to be open and to be opened by the processes of impregnation and childbirth. Origen appeals to common knowledge and common sense to justify Christ's full humanity. This idea of Mary's body being opened was to be firmly rejected in the west by the fourth century.

Mary, then, played a relatatively small part in the third-century theology, even among ascetic thinkers. She was marginal to the central debate over the nature of Christ, and interest in her for herself was limited to the apocryphal *Protoevangelium*. The doctrine of *viginitas in partu* appeared only in that context and was thought by Tertullian, Origen and others to be dangerously close to Gnostic thinking. Opinions on Mary's *post partum* virginity are sparse before the fourth century. Origen followed the *Protoevangelium* in this matter, but there is relatively little evidence elsewhere. In the west it was under the influence of increased enthusiasm for asceticism and its associated teaching on the role of sex and sin that Mary came to be the subject of independent interest. Even then she remained an

ambiguous figure, used by both sides to prove their case. As we shall see, it was the relationship of a writer to the ascetic discourse that determined his stand on Mary.

3. 3 The development of Mariology in the Fourth Century in the West

The Mariology of the west grew out of the development of ascetic thought which held that original sin and sexual relations were related and were a result of the Fall. Until the time of Ambrose there was little direct adulation of Mary in Latin texts.[8] It appears that the *Protoevangelium* never received a Latin translation;[9] this is not to say that it was not known in the west, but the doctrine of *virginitas in partu* and *post partum* was little known or discussed. The impetus that brought these issues to the fore was the enthusiasm for eastern-style ascetic life. This inspired a 'trend' for virginity, and in the west the nature of Mary's virginity assumed a special importance. The person and status of Mary became a tool in the hands of both the extreme and more moderate ascetics, as well as those who defended the righteousness and natural place of marriage and the sexual act as a part of Christian life.

When Helvidius, Jovinian and Julian and others attempted to lessen the stringent demands of extreme asceticism by appealing to the subsequent natural marriage of Mary and Joseph, it is clear that they were following an established tradition in the west. Yet they were answered by Ambrose, Jerome and Augustine with the doctrine of perpetual virginity, a doctrine in whose favour Ambrose and Jerome argued vociferously. The teachings of Ambrose and Jerome, tempered by Augustine, became the orthodoxy of the west, but at the end of the fourth century this orthodoxy was by no means certain. The person of Mary and the nature of her body were discussed at length.

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[8] For Hilary of Poitiers and Zeno of Verona see von Campenhausen 1964: 73-74, n. 1.
[9] See Elliott 1993: 48-51 for likely knowldge of *Protoevangelium* in the west. He argues that Origen certainly knew of it, and that Jerome's refutation of Jesus' siblings suggests that the story was known, at least by Jovonian, but also perhaps by those who had spent some time in the east. See von Campenhausen on Hilary in the east, n. 16 (above).

Those who put forward the doctrine of perpetual virginity faced inherent difficulties in justifying their position. How were they to explain something so patently unnatural in terms that did not lay them open to charges of heresy? In terms of the Incarnation it was essential that Christ gain his humanity and physical corporeality through his mother. In terms of the ascetic discourse any hint of sexuality and sex was suspect as it marked the offspring with the sin of Adam and death. Knowing that sexual elements were necessary for the creation of a human child, how did the Church Fathers justify the notion of perpetual virginity of Mary and balance the equation? What is fascinating is the mixture of biological and theological 'knowledge' that is brought to bear by these authorities in what amounts to an attempt to inject some sort of natural verity into what is plainly an unnatural event. The fact that Helvidius, Jovinian, Julian and others offered sophisticated Christian opposition to the ascetic discourse illustrates how 'live' the issue was for late fourth-century Christians. Its outcome had implications for society in general and women in particular, for in the final analysis Mary emerged as a virgin first and a mother second. The new rhetoric sent the message that it was better to be a virgin than a mother, but best of all to be both. Only Mary could achieve the paradox, but, as we shall see, the language of maternity and the rhetoric of fertility and nurturing were transferred to the spiritual and metaphysical realm.

As we have seen, attention became focused on Mary because of the development of the doctrine of the Incarnation, and the doctrine of motherhood became inseparable from that of the Incarnation; they were linked because to deny one was to deny the other. The value of marriage and motherhood also became part of a larger discourse on virginity. Ascetically minded Christian writers had to establish the perpetual virginity of Mary and at the same time proclaim her true maternity, in order to show that through the body of his mother Christ truly became man. In so doing they had to address the understanding and function of reproduction and the workings of the

female body. Despite the fact that Mary, by virtue of her position as Mother of God, had to be a 'one-off' in terms of the virgin birth, to construct her as something alien would be to deny Christ his humanity. Ambrose the others were working within a discourse that held virginity and celibacy in higher esteem than marriage; it had proclaimed sexuality as intrinsically sinful because it had come about as the result of the Fall, and held that through the sin of Adam the taint of sin was passed on to every generation. Once the link between original sin and sexual relations was made, the permanence of Mary's virginity came into question. Ambrose, Jerome and Augustine all asserted a causal connection between the virginal conception and birth and the sinlessness of Christ, which extended to his Mother and this connection was reinforced by ascetic teaching.

That Ambrose, the greatest proponent of Mary's virginity in the west, failed to explain the Virgin Birth adequately in terms of current biological knowledge should come as no surprise, as by its very nature, the Virgin Birth was a miraculous occurrence. However, both Ambrose and Augustine were pressed into dealing with the problem in a way that could incorporate understanding of the female body and the processes of reproduction. Clearly the theological message of the Incarnation is that Christ is both wholly divine and wholly human, born of a divine father and human mother. Both his mother and father contributed something to his conception. Ambrose had to defend himself from charges of Manicheanism in upholding the *in partu* virginity of Mary, and Augustine had to defend his own theory of original sin in the face of criticism by Julian of Eclanum.

Mary's body came under scrutiny as part of the Christological debate. In the face of questions raised about the status of her virginity, Ambrose, Jerome and Augustine all affirmed her virginity *ante partum* but there was some manoeuvring on the notion of *in partu*. This became central to the construction of Mary for Ambrose and Augustine, but Jerome appears to have been either ambivalent or silent on the matter

(see below). The impetus to a doctrinal statement was the preaching of Jovinian, active in Rome in the late 380s. Before discussing the bio/theological implications of the Virgin Birth, it is necessary first to outline the historical development of the doctrine in the fourth century. It is essential to see the development of the theological argument against its historical and social background. This will also place Jerome in context.

The ascetic discourse undoubtedly had a loud and pervasive voice in the later fourth century, but it was not the only voice to be heard. There was a strong opposition movement.[10] Interestingly, the two sides shared much common ground theologically; it was in the social application of that theology that they differed. The works of the detractors are unfortunately known almost entirely from the writings of their refutors, but they can still be taken to represent another, if quieter, voice in late fourth-century society, one which tried to maintain the traditional status and value that was accorded to married life and parenthood.[11]

Helvidius and Jovinian illustrate the anti-ascetic movement within the Church in Rome in the 380s. Their teaching inspired some of the most polemical statements of the western church on the nature of Mary's integrity and the value of the virgin life: Jerome's *Adversus Helvidium* and *Adversus Jovinianum*, and Ambrose's letter (42) to Pope Siricus.

Jerome was one of the most vociferous supporters of the virgin life among the western fathers, and had already written, in 383-4, a long treatise refuting Helvidius and establishing his position on the nature of Mary's virginity. Helvidius argued that Mary could be both virgin and married woman. He fully accepted the doctrine

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[10]The discourse of asceticism has been in danger of becoming the dominant discourse in the history of late antiquity, now pulled back from the brink by G. Clark 1993; D. G. Hunter 1987: 45-64; 1989: 283-99; K. Cooper 1989: 150-64; 1996.

[11]Ambrosiaster is the exception to this, his work survived because it was thought to be by Ambrose, hence his name. See Hunter 1989: 284-7.

of *virginitas ante partu* but saw no reason to extend this virginity to after the birth of Christ. For him Mary could then perform the duties of a typical married woman and indeed present a role model that included, rather than excluded, mothers. Helvidius did not attack virginity as such, but he objected to the elevation of its status above that of marriage. Helvidius himself had written in response to a certain Caterius, who had claimed Mary's perpetual virginity as proof of the superiority of virginity over the married state (Hunter 1993: 49-50). Jerome defended the virginity of Mary, arguing that Christ was conceived without sexual intercourse and that Mary continued in her virgin state after the birth. In the *Adversus Helvidium* Jerome nowhere directly addressed the idea of *virginitas in partu*, but he may or may not have intimated such a belief when he denied the stories of the midwives in the apocryphal gospels: 'There was no midwife; no officious females interfered. She herself was both mother and midwife; for she brought forth her firstborn and wrapped him in swaddling clothes and laid him in a manger' (*Adv. Hel.* 8; *PL* 23. 201). The queston of whether or not Jerome was a believer in the doctrine of *virginitas in partu* is debatable; it seems that he was undecided, but given that he is unequivocal about Mary's virginity both before and after the birth, it is surprising that he avoids the issue.[12]

Helvidius marshalled scriptural references to support his case, using Matt. 1: 24-25 as evidence that Mary and Joseph did marry. Jerome denied that this passage implied intercourse after the birth of Christ. He justified the role of Joseph as Mary's betrothed by saying that the status protected her from charges of adultery (*Adv. Hel.* 4; *PL* 23. 195). Joseph is also described as the social father of Jesus, which is why Mary can rightly be called his wife. Helvidius also argued, like others

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[12]Neumann 1962: 148-52 gathered together many examples of work in which he mentions Mary's virginity *ante* and *post partum* but there is not one instance in which he clearly mentions *in partu*. cf. Graef 1963: 90-2; Jerome also fails to comment on the one point that Ambrose mentions at the Synod of Milan, called to condemn Jovinian; that he claimed '*virgo concepit sed non virgo generavit* (*Ep.* 42.4). Kelly 1975: 185-6 suggests that this proposition did not appear in the copy of Jovinian that Jerome saw, or that Jerome found the inference so objectionable that he passed it over as not worth discussing. See also Hunter 1993: 57.

before him, that Mary had had other children after Jesus and that Jesus is described as first-born, implying that he had siblings. Jerome countermanded this by saying that calling a child first-born merely meant that it had no predecessors and was the first child to open the mother's womb (*Adv. Hel.* 10; *PL* 23. 202). This could be read as following the tradition of Tertullian and Origen and as suggesting no belief in *virginitas in partu*. As to whether Christ had biological siblings or not, Jerome is dismissive. The brethren that Helvidius claims as biological Jerome identifies as cousins, sons of the sister of Mary, also named Mary, the wife of Clopas (*Adv. Hel*, 13; *PL* 23. 205). Others, Jerome says, are spiritual bretheren, as the term could be applied either to those whom Jesus held close in affection or, more generally, to all Christians (*Adv. Hel.* 14; *PL* 23. 206-8). Jerome refused even to acknowledge the evidence of Tertullian as he 'did not belong to the Church' (*Adv. Hel.* 17; *PL* 23. 211), even though it would have supported his argument. Helvidius had concluded his argument with a comparison of the virgin and the married state; are virgins to be considered better than the Patriarchs who married? He also claimed that God's own participation in creating a child was a sign not only of the goodness of creation but also of the goodness of marriage, and that those who denied this only did so because they found birth degrading and dishonourable. Jerome responded that he did not condemn marriage because virginity itself was the fruit of marriage (*Adv. Hel.* 19-20; *PL* 23. 213-4). This was a favourite argument of Jerome's and one that Augustine took exception to.[13] Jerome went on to claim that Joseph too was a virgin, as only a virgin could be worthy to be called the father of the Lord. Furthermore, he claimed that married life cannot be compared with the virgin life, as a married woman must concern herself with matters of the world while a virgin can devote herself to God (*Adv. Hel.* 20-21; *PL* 23. 213-5).

Jerome's position on the virginity of Mary and the nature of the virgin life in general was very much centred on his asceticism. For him it was necessary for Mary to

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[13]Jerome Ep. 22.20 *PL* 22. 406; Augustine DSV.

remain untainted by any hint of sexuality throughout her life, and likewise for Joseph. Their joint sexual purity was essential for the realisation of the Incarnation, as Christ could not be touched by any suspicion of the carnality that had brought sin into the world.

In his *Adversus Jovinianum* Jerome further stressed the superiority of the virgin life. According to Jerome, Jovinian put forward four main propositions that attempted to redress the balance of ascetic teaching which, he claimed, amounted to a devaluation of married life and a denigration of God's creation. Jovinian's arguments, as expressed by Jerome, were as follows: virgins, widows and wives are all equal once they have been baptised; those that have been baptised cannot be overthrown by the devil; there is no real difference between abstinence from food and receiving it with thanks; there is a single reward in heaven for those who keep their baptismal vows (*Adv. Jov.* 1.3; *PL* 23. 224). Jerome's vehement and vitriolic response to Jovinian caused uproar in Rome. His denial of Jovinian's attempt to moderate the exteme views of asceticism met with consternation even among his own supporters. His friend Pammachius attempted to withdraw the treatise and rescue Jerome's repuation. In a letter to him Jerome wrote that his quarrel with Jovinian was really very simple:

> Ego si bene problematis memini, inter Jovinianum et nos ista contentio est, quod ille exaequet virginitati nuptias, nos subjiciamus: ille vel parum, vel nihil: nos multum interesse dicamus. Denique... damnatus est, quod ausus sit perpetuae castitati matrimonium comparare.

> If I remember aright the point of the dispute, the question at issue between myself and Jovinian is that he puts marriage on a level with virginity while I make it inferior; he declares there is little or no difference between the two states, I assert there is a great deal. Finally...he has been condemned because he has dared to set matrimony on an equality with perpetual chastity (*Ep.* 48.2: *PL* 22. 494)[14]

As we have seen, Jerome failed to pass any coment on the point that so fired Ambrose: that Mary had not retained her virginal integrity in the process of giving

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[14]For more on Jovinian and Jerome see Hunter 1987: 45-64 and 1993: 51-8; Pagels 1988: 91-5 and note references above note 14.

birth. Ambrose himself was rather disingenuous in his way, as he failed to mention that Jovinian had accused him of Manicheanism precisely because of his position *vis-à-vis* the birth of Christ. This we learn from Augustine, who mentions it in passing in his treatise to Valerius, *De nuptiis et concupiscentia* 2.15 (*PL* 44: 444-5). Jovinian apparently accused Ambrose of not allowing Christ full humanity because he maintained that he was free from sin, being born of a union without sex, and that the virignity of Mary remained after childbirth, implying that Christ could not be of the same flesh as us because he was not conceived and born in the same way.

Augustine brought Mary into his discussion partly in his own response to Jovinian, which was also a response to the stringent asceticism of Jerome, and partly in his consideration of the nature of original sin and its relations to sexuality. Mary became a symbol by virtue of her originality in being exempt from the sexual elements of conception that transmit original sin, and as such Mary as a model became integral to Augustine's 'marriage is good, but virginity is better' thesis. He was, however, to find himself facing similar charges of Manicheanism by Julian.

Of these three western proponents of virginity, only Jerome made little or no attempt to explain the virginal conception and birth of Christ in terms used to explain normal physical human reproduction. Ambrose and Augustine, on the other hand, attempted to do this, and when the language failed them they shifted into metaphor and imagery. As with most early Christian metaphors the imagery translated itself into a allegorical reality. What was a biological impossibility became a metaphorical reality; virgins became the image of fertility.

3. 4 The theological biology of the Virgin Birth

As we have seen the female body was perceived physiologically primarily in terms of reproduction. It was seen as something cold, porous and open, and as not functioning properly unless 'opened' regularly by menstruation, sexual penetration and childbirth. The notion of the 'open' body also worked on the ideological level, in that females were thought to be weaker, more irrational, more open to temptation. In presenting Mary as a perpetual virgin the Church Fathers were offering an alternative image to the open female, what they presented was a sealed and impenetrable version of the female body. This raised two main issues: how could one explain birth through a closed body without falling into charges of Manicheanism, and, did this amount to a specifically Christian body, closed and sealed; the approriation of biology for theological purposes ?

To recap: the biological processes of reproduction had until now been understood as follows in the ancient world: the male produced seed which was passed into the female womb. This action took place by virtue of sexual desire, which created both pleasure and momentary loss of control in the male at the moment of ejaculation. The female body was penetrated by the male; she might or might not feel desire, depending on which school of thought was followed. Likewise the female might or might not contribute seed, but she contributed something of herself to ensure the conception of the child. The female body which had been opened by sexual penetration was further opened by childbirth, when the foetus, having run out of food, pushed its way into the outside world. The openness of the female body was further evidenced by the lochial flow and lactation.

Interpretations of the Genesis story had challenged the 'naturalness' of reproduction. It was now perceived as the punishment for the Fall. Sex and reproduction were linked with death. The punishment had been that Adam and Eve

recognised themselves as sexual beings and were ashamed. Adam was to labour, Eve was to desire her husband and bring forth her children in pain (*Gen.* 3.16).

Mary's body had to be seen to be human enough to transmit to Christ his humanity, yet not to suffer all those aspects brought about by the Fall of man, i.e. all the sexual elements that were known to be essential for conception. Ambrose, Jerome and Augustine used the biological model of reproduction but changed the meaning so that it developed into theological doctrine.

Conception. Ambrose assumed the *ante partum* virginity, that is virginal conception, as established doctrine. Influenced by Athanasius' *Letter to Virgins* he employed Mary as a model for the virgin life, where, it has to be said, Mary looks more like a fourth-century virgin than a first-century Hebrew woman. Athanasius had given a long description of Mary's life in this work, and it appears that Ambrose borrowed freely from it in his own treatise *De virginibus*.[15] Ambrose makes Mary central to his ascetic discourse in her role as a virgin; it is her sexual purity and avoidance of original sin in terms of the Incarnation that are of interest to him.

Ambrose attempted to make Mary's birth understandable in terms of physiology and theology. The semen that created Christ in Mary's womb was the '*immaculatum semen*' of the Holy Spirit. It was 'infused' into the womb without invading the body, i.e. there was no penetration and no impregnation. The conception of Mary was never considered as similar to a *hieros gamos*, that is, as the impregnation of a mortal woman by a god, as in pagan mythology. God was not thought of as the male sexual partner, rather conception happened discreetly, by the Holy Spirit; but, at the same time, divine begetting was considered analogous to human begetting. God, like the male seed in medical texts, is the creative force (Brown et al. 1978:

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[15]For Athanasius' influence on Ambrose see Neumann 1962: 9-19. For a translation of Athanasius' *First and Second Letters to Virgins* see D. Brakke 1995: 276-309.

120-22). From this comes the divine nature of the child. His human dimension comes from his mother, and Ambrose understood that the mother gave something to the conception of a child, both in this miraculous occasion and in normal human circumstances. For him the motherhood of Mary was very real in human terms, and fitted in with his idea of how conception worked in normal circumstances:

> Ac vero cum usu coniugii iuvencula defloratur, amittit quod suum est, quando ei miscetur alienum.

> And indeed when a young girl is deflowered by conjugal custom, she loses what is hers when it is mixed with something other (*Exhor. virg.* 6.35; *PL.* 16. 361).

There was a mixing of male and female elements in the conception of Christ as there was in a normal conception, but in the case of Mary the semen was of divine origin. The semen that created Christ was not that of the highly concocted blood of the human male. Christ, then, was not a product of semen nor of sexual desire, the essentials of normal human procreation. The semen that created him was immaculate and of the Spirit, not the concocted blood of man. There was no taint of sin in his conception because there was no desire, no lusting of the flesh, while Mary donated what all women give, that is, her flesh:

> Partus enim Virginis non naturam mutavit, sed generandi usum novavit. Denique caro de carne nata est. Habuit ergo do suo Virgo, quod traderet: non enim alienum dedit mater, sed proprium e visceribus suis contulit inusitato modo, sed usitato munere. Habuit igitur carnem Virgo, quam naturae solemnis iure transcripsit in fetum. Eadem igitur secundum carnem generantis Mariae, genitique natura, nec dissimilis fratribus; quia dicit Scriptura, ut per omnia similis fratribus fieret (Hebrews 2.17). Similis utique Dei Filius nostri non secundum divinitatis plenitudinem, sed secundum animae rationabilis, et ut expressius dicamus, humani nostrique corporis veritatem

> For childbirth did not change the nature of the virgin, but established a new method for generating. So flesh was born of flesh. Thus the virgin had of her own what she gave; for the mother did not give something of another, but she contributed her own from her womb in an unusual manner but in a usual function. Therefore the virgin had the flesh which by customary right of nature she transferred to the foetus. Therefore the nature of Mary, who gave birth, and that of the Begotten are the same according to the flesh, and not unlike his human bretheren, therefore the scripture says 'In all things to be made like his brethren (Heb, 2.17)'. Surely the Son of God is like to us not according to the fullness of divinity, but according to our rational soul, and to speak more clearly,

according to the truth of our human body (*De Inc. Dom.* 104; *PL.* 16. 879).

It is evident from this extract that Ambrose both had some knowledge of the common understanding of biological processes and felt the need to envisage the conception of Christ as both 'normal' and divine, and thus, abnormal: '... in an unusual manner but in a usual function'.

Augustine took up many of Ambrose's terms and phrases in explaining his own stance on the Virgin Birth, particularly in response to Julian. Augustine had placed himself in a difficult position over the conception of Christ once he had come to the belief that original sin was passed on in the seed itself. Augustine had proclaimed Mary's perpetual virginity in *De sancta virginitate*. Written in 401 as a companion volume to *De bono coniugali*, this was a treatise in which he moderated but reiterated the ascetic message that marriage is good but virginity better. The work contained an explicit statement of his Mariology: Mary was a perpetual virgin, in the conception and birth of Christ and afterwards; Mary made a vow of virginity (*DSV* 4; *PL* 40. 398), a notion first stated by Augustine; Mary is not only a physical but a spiritual mother, as Mother of Christ's mystical body, the Church. Mary is, like the Church, a virgin who gave birth, Mary to Christ, the Church to all Christians. (*DSV* 3-6; *PL* 40. 397-99).

For Augustine, Mary's virginal conception was integral to his theory of original sin and vice versa. Mary was pregnant not by 'the seed of man' nor by carnal concupiscence, thereby by-passing both the elements that transferred sin onto mortal man. He quoted extensively from Ambrose to back up his theory: '[Ambrose] says that through the bodily union of man and woman no one is without sin. But he who is without sin, that is our Lord Jesus Christ, is without this kind of conception' (*CJ.* 1.32).[16] Christ however, like all human babies, did receive both his human flesh

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[16]*Dicit, per corporum viri et feminae commixtionem neminem expertem esse delicti; qui autem expers delicti est, id est Dominus Christus, etiam huiusmodi esse conceptionis expertem. (PL. 44: 663).* Similar quotes from Ambrose at *CJ.* 2.15; 32.

and, in Christ's case, his mortality from his mother (*CJ.* 2.8; *PL.* 44: 678). This is

a point that Augustine reinforces frequently, for example:

> Caro itaque Christi mortalitatem de mortalitate materni corporis traxit,
> quia mortale corpus eius invenit: contagium vero peccati originalis non
> traxit, quia concumbentis concupiscentiam non invenit.

> The flesh of Christ received mortality from the mortality of his mother's
> body because it found her body mortal; it did not contract the taint of
> original sin, because it did not find the concupiscence of one carnally
> inseminating. (*CJ.* 5.54: *PL.* 44. 814).

Like Ambrose, Augustine wanted to explain virginal conception in a way as similar

to human conception as possible but without the elements that were said to pass on

sin. At times in his sermons Augustine mentions that Christ was conceived without

seed though he uses biological terms:

> Natus est Christus, Deus de Patre, homo de matre. De Patris
> immortalitate, de matris virginitate. De Patre sine matre, de matre sine
> patre. De Patre sine tempore, de matre sine semine.

> Christ as God is born of his Father, as man of his mother. Of the
> immortality of his Father, of the virginity of his mother. From his Father
> without a mother, from his mother without a father. Of his Father withour
> limits of time, of his mother without seed (*Sermo.* 194.1; *OO* 5.1. 1303).

> Dominus enim noster Jesus Christus uterum virginis dignatus intravit,
> membra feminae immaculatus implevit, matrem sine corruptione fetavit...

> As a matter of fact, our Lord Jesus Christ in his dignity entered the
> virgin's womb. Without stain he impregnated a woman's members,
> without corruption he made his mother fertile.....(*Sermo.* 215.3: *OO* 5.1.
> 1381)[17]

It is difficult to imagine how Augustine actually imagined conception occurring: in

order for Christ to be free from sin he had to be free of the normal mode of

conception, but the explanation of his conception could not look too abnormal or

charges of Manicheanism could be brought. After the writing of *De sancta*

virginitate in 401, Augustine again addressed the question in his writings against

Julian. Julian, as we have seen in chapter two took Augustine to task over the

implications of his doctrine of original sin for the Virgin Birth. Julian, in fact, had

no argument with the notion of virginal conception, but he questioned Augustine's

interpretation of it within the parameters of Augustine's own theory of original sin.

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[17]cf also Sermo. 192: *OO* 5.1. 1299; 186.1: *OO* 5.1. 1282; 189.2: *OO* 5.1. 1291.

Julian argued that since Mary was born of sinful flesh, so she must pass on that sin to Christ. Augustine replied that sin had come into the world through concupiscence, but that, although the body of Mary was derived through the same concupiscence, she did not transmit that concupiscence to Christ's body, as that was not conceived in concupiscence. This is why Christ's body is said to be in the 'likeness of sinful flesh' (*CJ.* 5.52: *PL* 44. 813). A little later on Augustine reiterated his point: original sin passes to all men by means of concupiscence of the flesh; it could not have passed to flesh that a virgin conceived without concupiscence (*CJ.* 5.54: *PL* 44. 814).

For Augustine Mary's virginal conception was essential to his theory of original sin and vice versa; he used one to prove the other.

Gestation. I can find little evidence among the Christian writers I have studied, with the exception of the *Ascension of Isaiah*, that Christ was considered to have had anything other than a 'normal' length of gestation. The essential importance was that the seed miraculously entered the uterus without violating the integrity of the Virgin; after that, pregnancy could proceed as normal until the birth likewise took place without physical damage or pain. The Church Fathers did not consider that Mary should have either an especially short or an especially long pregnancy. Indeed, anything other than the 'normal' length would raise doubts as to Christ's true humanity.

The one exception to this is the apocryphal *Ascension of Isaiah*. In this version the child appears miraculously, as if in a vision, seen by Mary but not at first by Joseph. The pregnancy has lasted five months in this case: Joseph had espoused Mary and then found she was with child, but, warned by an angel not to divorce her, he went away for three months. Two months after his return the child was 'born'. This is a problematic text, and this magical appearance of the infant has

meant that the author has been considered a follower of Doceticism, that is, one who thought that God used the body of Mary as a conduit, and that Christ was divine, not human. However, in terms of Christ's gestation this is an exceptional text, and is deemed to be apocryphal from an early period.[18]

Of course, 'normal length of gestation' also demands some definition in terms of ancient medical understanding, as anything from seven to ten months was considered normal.[19] Temporal measures are notoriously difficult to gauge but it seems that those who do mention a specific length of time for the duration of Mary's pregnancy do so to enforce the reality of Christ's humanity, and are therefore not expressing anything special but stressing the similarity with a normal human birth.

Neil Adkins has gathered together examples of specific mentions of the length of Mary's pregnancy which vary within the tradtional parameters of 'normal' (Adkins 1994: 394-7). Apart from a few very specific times, Augustine twice mentions nine months and six days, and Epiphanius of Salamis nine months, fifteen days and four hours.[20] Mary's pregnancy is variously referred to as lasting nine or ten months. The times can be interchangeable in one author and in a single text. Jerome, in the first tract in the west to support Mary's perpetual virginity, *Adversus Helvidium* says *invocandus est dominus Iesus, ut ventris hospitium, cuius decem mensibus inhabitator fuit, ab omni concubitus suspicione tueatur* (Called upon the Lord Jesus to guard the lodging of the womb in which he lived for ten months, from all suspicion of sexual intercourse): while later in the same treatise following Tertullian, he writes *novem mensibus uterum insolescentem* (*Adv. Hel.* 18; *PL* 23. 212).[21]

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[18]*Ascension of Isaiah* trans. R. H. Charles, (1900), London; quoted in Plumbe 1948: 573-4. Hunter 1993: 53 interprets this as Mary being only two months pregnant.
[19]See above Chapter 1, section 1.5: Main texts are Hippocrates *Septim./Oct.*;vii. 436-453; Aristotle *GA* 772b ff; Soranus *Gyn.* 2.66. For discussion see Dean Jones 1994: 209-11; Lonie 1991.
[20]Adkins, 94: 394, n.2: Augustine, *Divers. quaest.* 56 and *Trin.* 4.5.9; Epiphanius, *Haer.* 51.29.6.
[21]Ibid, 395, 394, n.9; Adkins considers that Jerome is taking Tertullian's *De carne Christi*, 4.11 as his model.

As Adkins has adduced, the Fathers referred to both nine and ten months as the normal duration of pregnancy; there is nothing out of the ordinary about the length Christ was in the womb. The variation in length should come as no surprise to us, as women today are commonly thought to be pregnant for nine months wheras hospital ante-natal calendars run over a forty-week duration, which could be construed as ten months. The implication remains that it was not considered necessary for Christ to appear at any time other than the normal end of pregnancy.

The Virgin Birth. *Virginitas in partu*, the continuing integrity of Mary's body during the moment of parturition, was part of the theology of both Ambrose and Augustine. Ambrose, in the face of the claims of Jovinian, contended that this had always been part of the Church's teaching. In his refutation of Jovinian, written to Pope Siricus in 389, Ambrose reapplied texts that had previously been used to support virginal conception in order to support the Virgin Birth:

> Inusitato tamen, quasi Deus, itinere venit in terras, ut quemadmodum dixerat: "Ecce facio omnia nova" (Is. 43.19). partu etiam immaculatae Virginis nasceretur, et sicut scriptum est, ut crederetur nobiscum Deus. Sed de via perversitatis produntur dicere: Virgo concepit, sed non virgo generavit. Potuit ergo virgo concipere, non potuit virgo generare; cum semper conceptus praecedat, partus sequatur? Sed si doctrinis non creditur sacerdotum, credatur oraculis Christi, credatur monitis angelorum dicentium: Quia non est impossibile Deo omne verbum (Luke. 1.37). Credatur Symbolo apostolorum, quod Ecclesia Romana intemeratum semper custodit et servat. Audivit Maria vocem angeli, et quae dixerat: Quomodo fiet istud? non de fide generationis interrogans, respondit postea: Ecce ancilla Domini, contingat mihi secundum verbum tuum. Haec est Virgo quae in utero concepit: virgo quae peperit filium. Sic enim scripta est: Ecce virgo in utero accipiet, et pariet filium (Is. 7.14): non enim concepturam tantummodo virginem, sed et parituram virginem dixit.

> God came to earth in an unusual way, so that as he had said, "Behold, I make everything new" (Is. 43.19). So he might be born from an immaculate virgin, and as it is written, be believed to be God with us. But those on the path of perversity are known to say: "A virgin conceived but a virgin did not give birth". How could a virgin conceive and a virgin not be able to bring forth; since conception always precedes and giving birth follows? But if they do not believe the teaching of the priests, let them believe the prophesies of Christ, let them believe the instructions of the angels saying: "For nothing is impossible for God (Luke 1.37)". Let them believe the apostles' creed which the Roman church keeps and guards always uncorrupted. Mary heard the voice of the angel and she had spoken thus: "How shall this be?". Not questioning belief in generation, she afterwards replied, 'Behold the handmaid of the Lord, be it done to me according to your word.' This is the virgin who conceived

in her womb: the virgin who brought forth a son. For this it is written, "Behold a virgin will conceive in her womb and bring forth a son" (Is. 7.14), and it is said not only that shall a virgin conceive but that a virgin shall give birth (*Ep.* 42.4-6; *PL* 16. 1173-4).

In the above extract Ambrose uses the evidence of the Apostles' creed which uses the prophecy of Isaiah, which he now he interpreted as meaning that Mary was a virgin when she conceived and when she gave birth. He also says that, since we believe the evidence of the other miracles in the scriptures, why should we not believe this one (*Ep.* 42.7; *PL.* 16.1175). He then uses the imagery of the *porta clausa* of Ezekiel 44.2:

> Quae autem est illa porta sanctuarii, porta illa exterior ad Orientem, quae manset clausa; et nemo, inquit, pertransibit per eam, nisi solus Deus Israel? Nonne haec porta Maria est, per quam in hunc mundum redemptor intravit? Haec porta iustitiae, sicut ipse dixit: sine nos implere omnem iustitiam (Matt. 3.15). Haec porta est beata Maria, de qua scriptum est quia Dominus pertransibit per eam, et erit clausa post partum; quia virgo concepit et genuit.

> What is that gate of the sanctuary, the outer door, facing east which remains closed? And no man, it is said, shall pass through it, except the God of Israel, alone. Is not this gate Mary, through which the redeemer came into this world? This is the gate of justice, as he himself said, 'Allow us to fulfil all righteousness' (Matt. 3.15). This gate is the Holy Mary of whom it is written that the Lord will pass through and it will be closed after birth because a virgin conceived and gave birth (*Ep.* 42. 6; *PL.* 16. 1174).

The physical integrity of Mary was maintained by Ambrose and described with extensive use of 'closed' imagery. He even went so far as to list his metaphors explicitly. Virginity is referred to as the 'closed door', the 'enclosed garden', the 'sealed fountain' (*De Inst. virg.* 58. *PL.* 16.335). Like other Church Fathers Ambrose used the imagery of the Song of Songs and applied it to virginity: *porta ergo clausa virginitas est et hortus clausus virginitas, et fons signatus virginitas* (*Cant.* 4.12).[22] Ambrose claimed that this line should be applied to Mary as well as to all virgins and used it to explain the doctrine of *virginitas in partu*.

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[22]E.A. Clark 1986: 401-7; G. Clark 1996: 225 cf. Ambrose *Ep.* 63.36; *PL.* 16. 1250: a similar metaphor applied to the Church: *Christus hoc dicit ad Ecclesiam, quam vult esse virginem, sine macula, sine ruga. Bonus hortus virginitas, quae plurimos boni ferat fructus odoris. 'Hortus clausus' quia undique vallata est muro castitatis. 'Fons signatus', eo quod virginitas sit fons et origo pudicitiae, quae inviolata custodiat integritas signacula: in quo fonte imago Dei luceat, quia cum munditia corporis congruit etiam puritas simplicitatis.* For more on the notion of the Virgin Church see below.

The doctrine of *virginitas in partu* and the imagery of things closed implied a particular view of the female body that stood in opposition to the traditional open model. However, it remains debatable whether late antique writers believed in a physical barrier, the hymen. Medical writers were themselves divided on the matter. There appears to be no knowledge of a virginal hymen in the Hippocratic corpus or in Aristotle. The hymen in both Aristotle and Galen is understood as a membrane that surrounds the bones and vital organs throughout the body, not a specific vaginal membrane (Sissa 1990: 352-3). Soranus says that some people believed that first intercourse ruptured a membrane which sealed the vagina. He himself thinks this idea is a mistaken one, as he had seen no sign of it in dissection and, when virgins were examined, vaginal probes did not meet with obstruction (*Gyn*, 1.17).

However anecdotal or folk evidence does suggest that there was some belief in a physical barrier in the vagina by which virginity could be verified. In Christian texts there is the graphic example of the *Protoevangelium* where Salome the midwife insists on testing the physical intactness of Mary. Such evidence can also be found in the writing of Ambrose and Augustine. In chastising a bishop for allowing an examination of a virgin who has been accused of breaking her vow of chastity, Ambrose raised several objections to the process: midwives could not always tell if the 'barriers of modesty' (*pudoris claustra*) were ruptured or not, while an inexperienced midwife may break them in the process of the examination; this might also set a distasteful precedent for checking the integrity of women. Ambrose's answer to the problem is to wait and see: if the virgin has been unchaste her sin will soon be evident, presumably in pregnancy. Ambrose is of the opinion that virginity is not solely a state of body: *Male tamen se habet causa, ubi potior est carnis quam mentis praerogativa. Malo morum signaculo, quam corporis claustro virginitatem exprimi* (The case is going badly when the body is interrogated rather than the mind.

I prefer virginity to be shown by sign of good character rather than by closure of the body.)(*Ep. 5*; *PL.* 16. 931-934).

Augustine makes a similar comment in a different context in *City of God* 1.18. Concerning rape, he says it is not the integrity of the body so much as the spirit that constitutes holiness. The body is not holy just because its parts are intact. He similarly gives the example of the incompetent or malicious midwife destroying the maidenhead in a manual examination, but says that no one would be stupid enough to imagine that the virgin lost anything of bodily chastity even though the integrity of that part was destroyed.

Gillian Clark has pointed out that, though these texts are looking for some sort of physical barrier, it is not specifically stated that this the hymen (1996: 224). It does sound like a barrier, but it is unclear what exactly they had in mind in terms of anatomy. As she has pointed out, '*claustrum* can mean a closed space or a narrow passage, a barrier which blocks the passage or a bolt that secures the barrier' (Clark 1996: 225-6). Penetration may be implied as much as rupture, but whatever the writer might intend by it the important point is that the barrier is not opened or penetrated. Ambrose used the imagery again of Mary in *De institutione virginis*, his definitive work on the perpetual virginity of Mary:

> porta igitur Maria, per quam Christus intravit in hunc mundum, quando virginali fusus est partu, et genitalia virginitatis claustra non solvit. mansit intemeratum saeptum pudoris, et inviolata integritatis duravere signacula, cum exiret ex virgine.
>
> For Mary is the gate through which Christ entered this world, when he was brought forth (fusus) in a virgin birth, and did not loosen the the genital closure of virginity. The closure of modesty remained intact, and the signs of integrity lasted inviolate when he came out from a virgin (*De inst. virg.* 52; *PL.* 16.334).

The body of Mary was not untied, loosened (solvit) by the birth of Christ, who passed through Mary but did not open her: 'Transivit per eam Christus, sed non aperuit' (*De. inst. virg.* 53; *PL.* 16.334) (Clark 1996: 226). The body of Mary remained closed.

An argument using similar terminology as for *in partu* virginity was also found in an earlier work of Ambrose's, the *Expositionis in Evangelium Secundum Lucam*. At 2.56 Ambrose explains his interpretation of *Exodus* 13.12, ('Every male who opens the vulva shall be called holy to the Lord'), with regard to the birth of Christ, though the implication of this for virginal birth rather than conception is debated:[23]

> Non enim virilis coitus vulvae virginalis secreta reseravit, sed immaculatum semen inviolabili utero spiritus sactus infundit; solus enim per omnia ex natis de femina sanctus dominus Iesus, qui terrenae contigia corruptelae immaculati partus novitate non senserit et caelesti maiestate depulerit.

> male intercourse did not open the secret places of the virginal vulva, but the Holy Spirit infused the immaculate seen into the inviolate womb: for alone among all those born of woman the Lord Jesus is holy, who, by the newness of his immaculate birth did not experience the contagion of earthly corruption and repeled it by his heavenly majesty (*Expo, Luc.* 2.56; *PL* 15. 1654).

Ambrose goes on to interpret the passage allegorically in terms of Christ and the Church, a parallel he then extends to Mary. Christ alone opened the immaculately fruitful womb of the Holy Church, a virgin, to generate the children of God. Ambrose viewed Christ as opening the womb of the Virgin to fashion for Himself a

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[23]Neumann 1962: 113-147; Hunter 1993: 58-61; Graef 1963: 79. In his *Expositio evangelii secundum Lucam*, he gathered together various scriptural references to Mary's virginal conception (Matt. 1: 19-20; Luke, 1: 26, 34; John, 19:26-27; Is. 7:14.) and gives the theological reasons: it is fitting for Christ to have a virginal conception as this is both proof of his divinity and the beginning of the redemption of Eve. Neumann questions whether Ambrose was also putting forward the doctrine of *in partu* virginity in the *Expo. Luc.* as this notion seems to have developed only gradually in his thought. While *ante partum* virginity was assumed, the explanation and justification of the continued intactness of Mary's body emerged most precisely in defense of orthodoxy. Neumann has argued that though the doctrine was understood by Ambrose at this stage (385-388), this is not the point he is making. Hunter on the other hand appears to assume that Ambrose is taking the notion of perpetual virginity on board explicitly as part of the larger ascetic agenda which depended on sexual purity and physical integrity of Mary, marking her out as special. Neumann's analysis states that at the time of writing *Expo. Luc.* Ambrose was not attempting to establish virginal birth but rather Christ's virginal conception. The text in question, Luke, 2:23 (*Expo. Luc.* 2.56) concerns the presentation of Christ in the Temple and the fulfilment of Jewish law: 'Sicut scriptum est in lege Domini: "Quia omne masculum adperiens vulvam sanctum Domino vocabitur"'. It is *adperiens vulvam* that must be explained. Neumann argued that Ambrose interprets this opening of the womb to mean that which occurs at the moment of penetration and conception rather than the moment of birth itself. If Ambrose is interpreting *adperiens vulvam* as the opening of the womb at sexual intercourse, in this instance, as Neumann claims, this does not preclude the notion of *virginitas in partu*. Neumann says as much when he states that within two years of the *Expo. Luc.* Ambrose was unequivocally declaring the perpetual virginity of Mary, *ante, in* and *post partum*, in his letter to Pope Siricus, relating the decision of the Synod of Milan against Jovinian. Graef argues that at though Ambrose's doctrine of the Virgin Birth included *in partu*, this is not clear until the confrontation with Jovinian, for in *Expo Luc.* 2.57 he still wrote that Christ 'opened his mother's womb'.

human body in her, just as in the same way he opens the womb of the virginal church to generate the children of God (Neumann 1962: 118). Ambrose goes on to say, following Origen, that Christ entered his mother's womb virginally so that he might come out immaculately. It does seem that here in *Expo. Luc.*, even before the confrontation with Jovinian, Ambrose, through his close parallel of Mary with the Church was implicitly expounding the doctrine of *in partu* virginity. In *Expo. Luc.* 2.7, Ambrose wrote that Mary was betrothed but a virgin:

> quia est Ecclesia typus, quae est immaculata, sed nupta. Concepit nos virgo de spiritu, parit nos virgo sine gemitu.

> For she is the type of the Church, who is immaculate but married. A virgin conceived us by the spirit, a virgin gave birth to us without groaning. (*PL* 15. 1635-6)

Here Mary is not only a type of the Church, but also implicitly paralleled with Eve, in that she gave birth without groaning, thus denying the curse of Eve (Genesis 3:16) which was the burden of all women since the Fall.

The aligning of Mary with the Church and Eve, and the implications of this, are discussed below. Prior to that, to review Augustine's position on the nature of the Virgin Birth, particularly as he followed much of Ambrose's thought. Jerome, as we have seen, is strangely silent on the question of Mary's virginity while giving birth. His reaction to Jovinian and the reception of his long polemic against him have been commented on above.

Augustine uses the phrase 'the 'newness of the immaculate birth' to explain the miracle of birth without opening the body. He frequently quotes Ambrose, and his thinking about Mary is obviously influenced by him. He also felt the need to defend Ambrose from any charge of Manicheanism. Augustine appeared to understand the biological implications of the closed body. When discussing how Sarah and Abraham came to concieve a son at such a great age, a favourite example of his, Augustine says it is common knowledge that women who have ceased menstruating

are unable to conceive. Sarah would not have been able to conceive because her womb was closed (*CJ* 3.22: *PL.* 44: 713). He repeats this idea again when referring to Abimalech (*Gen.* 20.18), saying that a closed womb meant that a woman who was about to be impregnated or give birth could not do so. What exactly is envisaged in terms of physiology is not clear; did Augustine infer a barrier like a hymen, or did he suppose that the womb was closed in the same way as in times of non-menstruation, or even that it was in some way sealed? Whatever is the case, Augustine saw that in common parlance the closed body was a sterile one, for afterwards God opened the wombs of the women that they might be fruitful (*CJ* 3.37: *PL.* 44: 722; cf *N & C.* 2.30: *PL.* 44: 491). However, Mary's body was also closed but it was not sterile; hers was a fertile closure. Augustine himself marvelled at this as his sermons show:

> Dedit quippe indicium maiestatis eius Virgo mater, quam virgo ante conceptum, tam virgo post partum; a viro pregnans inventa, non facta: gravida masculo, sine masculo: felicior atque mirabilior fecunditate addita, integritate non perdita.

> In fact the Virgin Mother gave testimony to his majesty in that she, a virgin before his conception, remained a virgin after childbirth: found with child she was not made so by man: pregnant with man without man's co-operation she was more blessed and marvellous in that her fecundity was granted without loss of integrity (*Sermo.* 184.1; *OO* 5.1. 1278)[24]

Augustine is quite unequivocal in his support for *virginitas in partu*. He refutes both Jovinian's charges of Manicheanism against Ambrose, and Julian's charges against himself. At the very beginning of the *Contra Julianum* he says that Catholics scorned Jovinian's accusations that to claim Mary was inviolate when she gave birth was tantamount to claiming Christ was just a phantasm, but believed that Mary was not corrupted in giving birth and remained a virgin after birth (*CJ.* 1.4; *PL.* 44: 643). Quite what Augustine means by 'corrupted' can only be guessed, but I would suggest he intends it to be taken in both physical and spiritual terms.[25] Mary was not corrupted by an invasion of her bodily integrity, either by sexual penetration or

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[24]cf. *Sermo.* 186.1 and 189.2; *OO* 5.1. 1282; 1291.
[25]cf. *Sermo.* 215.3, quoted above.

by the stretching and bleeding of the body that occurs in childbirth. Equally, she was not corrupted spiritually; her soul and mind remained pure, pure of any sin of lust or desire that would accompany normal sex. For Augustine the relationship between sin and sex is constantly enforced, and this contrast between human birth and virgin birth was a reminder of the connection between the sexual act and original sin.

Perpetual Virginity. This association of sin with sex became central to the ascetic discourse, and within the Mariological discourse this meant that Mary's virginity had to remain even after she gave birth. Virginity *post partum* requires no biological explanation; one simply refrains from sexual relations. However, in terms of the ascetic discourse it became as important as *virginitas ante* and *in partu* for the social message it sent out. Ambrose, Jerome and Augustine all shared the opinion that Mary was ever-Virgin. Ambrose upheld the perpetual virginity of Mary from very early on. As early as 377 in *De virginibus*, he presented Mary as a model for the virgin life and identified all the virtues that accrued to virginity:

> ...Virgo erat non solum corpore sed etiam mente... corde humilis, verbis gravis animi prudens, loquendi parcior, legendi studiosior: non in incerto divitarium, sed in prece pauperum spem reponens: intenta operi, verecunda sermone...

> '... she was a virgin not only in body but also in mind...humble in heart, grave in speech, prudent in mind, sparing of words, studious in reading, resting her hope not on the uncertainty of riches but on the prayer of the poor, intent in work and modest in discourse...' (*De Virg.* 2.2.7; *PL* 16. 220).

There is much more along the lines of rarely leaving the house, fasting, and helping the needy,...(2.2.8; *PL* 16. 220)....*Haec est imago virginitatis. Talis enim fuit Maria, ut eius unius vita omnium sit disciplina.* (This is the likeness of virginity. For Mary was such that her example alone is a lesson for all) (2.2.15;) (cf. Neumann 1962: 64-5). Ambrose's clearest statement on the *ante partum* virginity of Mary came in *De institutione virginis*, first delivered at the significant occasion of the veiling of the virgin Ambrosia in Milan in 392. In this Ambrose refuted a certain Bonosus who claimed, like Helvidius before him, that Mary had children after

Jesus. Jerome had made his own position on *virginitas post partum* clear in his *Adversus Helvidium* of 383; though he may be doubtful as to the theological import of *virginitas in partu*, he is strident in support of Mary's continued virginity during the rest of her life. Augustine, too, was driven to defend the doctrine in the face of Julian's persistent questioning. His work is later, but continues along similar lines to Ambrose. His opinion on the nature of the marriage of Mary and Joseph was important for his wider teaching on the nature of marriage.

Confrontations over the notion of *virginitas post partum* came from those who attempted to restrain the power of an ever growing ascetic elite in the Church of the late fourth century. The spokesmen for the ascetic movement were seen to be denigrating marriage and with it motherhood; they were implicitly devaluing the processes of procreation, seen by Jovinian, Julian and others as gifts from God and part of human 'nature'. That virginity was held in higher esteem than marriage became the crux of the matter. Jovinian and the rest were not against the ascetic lifestyle or celibacy *per se*, but they did object to the devaluation of the married state.

By the end of the fourth century virginity had come to symbolise much more than a state of body. It had come to symbolise a withdrawal from society, a sign that one had removed one's body from the demands that social expectations might put upon it. It had also, through the figure and body of Mary, paradoxically come to symbolise fertility. The metaphor of fertile virginity was transferred from Mary, mother of Christ, to the Church, mother of all Christians. It was then further extended to all consecrated virgins, who became 'spiritual' mothers.

Ambrose's position on Mary's virginity *post partum* was integral to his idea of Mary as a model for virgins which he had inherited from Athanasius. It appears to have been assumed by him throughout, but he was called upon to defend it explicitly

against Bonosus.[26] Bonosus remains, like Helvidius, a fairly obscure figure, known almost entirely from Ambrose's writings.[27] Bonosus was denounced at a synod at Capua (c.391-2) for holding that Mary had other children besides Jesus, thus rejecting her perpetual virginity. Ambrose's refutation of Bonosus, though he does not mention him by name, comes in *De inst. virg.* 35 ff.

Bonosus had gathered semantic and scriptural evidence to prove that Mary had been married to Joseph in the conventional sense, i.e. had had normal sexual relations with him and subsequent children after the virgin birth and conception of Christ. Neumann has outlined and summarised Bonosus' arguments as follows: Mary is called *mulier* (*Jn.* 2:4; *Gal.* 4.4), and the use at *Matt.* 1:18 of *antequam convenirent* and at 1:25 of *non cognovit eam donec peperit* imply that after the birth of Christ Mary and Joseph had a sexual relationship. Bonosus claimed that this was further confirmed by *Matt.* 1:19, *noluit eam traducere*, showing that Joseph knew that Mary was not a virgin. Bonosus also maintained, like Helvidius and Jovinian before him, that the *fratres Domini* variously mentioned in New Testament texts were the biological siblings of Jesus (Neumann 1962: 236).

Ambrose responded to each objection in turn in a lengthy discourse, and in addition put forward extensive positive arguments explaining why Mary would have to be a perpetual virgin. On the semantic point of Mary being called *mulier*, Ambrose replied that this was the generic term for 'woman'. He did recognise that it was used in common parlance to denote a married woman, that is, a non-virgin, but he insisted that it could equally be used to express the female sex, not the state of body. Further, Ambrose argues that *mulier* was the name given to Eve at her creation, before there was any thought of sexual relations (*Gen.* 2:22; *De inst. virg.* 5.36; *PL* 16. 329).

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[26]For Ambrose's thought prior to the heresy of Bonosus see Neumann 1962: 181-204.
[27] Ambrose, *Ep.* 56 and *Ep. de causa Bonosi; De institutione virginis;* Neumann pp.205-235 on the questionable authorship of *Ep. de causa.*

Ambrose deals with *antequam convenirent* and *cognovit eam donec peperit Filium* in a similar way. The first he deals with quite summarily, and it must be admitted, obscurely: 'Consuetudo autem divinae Scripturae ea est, ut causam quae suscepta est, astruat, incidentem differat' (De inst. virg. 5.38 PL. 16.329). Jerome had offered a much more lengthy discourse on the meaning and intention of the preposition in *Adv. Hel.* 4. To the second premise Ambrose applied grammatical and scriptural evidence in refutation, to offer a different interpretation for *donec*. Ambrose uses Old Testament examples which he takes to prove his point, for example: *Ego sum Deus, et donec senescatis, ego sum (Isa. 46.4) (De inst. virg.* 5.37; *PL.* 16.330). This quibbling over semantics highlights the importance of the nature of this debate for Ambrose. The intensity of his desire to make his position orthodox and explain it in all its ramifications is typical of Ambrose.

Next Ambrose addressed Bonosus' objection that *Matt.* 1:19, *noluit eam traducere*, implied that Mary was not a virgin because even Joseph had considered rejecting her before the birth of Christ. This would suggest that Bonosus was questioning not only the *post partum* virginity of Mary but also the *ante partum*. This would, of course, be very offensive to Ambrose. His response was to reiterate the fact that the Incarnation is a miracle and a mystery, and that it was understandable that Joseph might doubt Mary's virginity until he was advised by the angel, but afterwards he believed *(De inst. virg.* 5. 39-40; *PL.* 16.330). Ambrose's opinions on the role of Joseph varied but his fullest explanation is given in *Expo. Luc.* 2.1-5 (*PL.* 15. 1633-1635). Here he gives six justifications for Joseph's participation in the Incarnation: he was betrothed to Mary to protect her reputation; the crime of the Jews in murdering Christ would have been attenuated had he been considered illegitimate; Christ could not have been said to fulfil the Law had be been born out of wedlock; Joseph, as Mary's betrothed, was a witness to her virginity; had she not been betrothed, Mary would have had to conceal her condition; her state of betrothal

served to conceal the birth of Christ not only from the devil but also from Herod (Neumann 1962: 82-5). Ambrose had attempted to make the conception of Christ look as natural as possible within the contemporary biological understanding, in the same way he also wanted the family of Christ to fit contemporary models and morality. Joseph is seen as the social father of Jesus, even if he is not the 'biological parent', thus protecting both Mary and the child from being social outcasts. He also has a necessary role in the fulfillmment of Scripture.

Finally Ambrose took up the point regarding the *fratres Domini* which Jerome, too, had addressed in the *Adversus Helvidium*. Where Jerome went to great lengths to prove that these brothers were cousins of Christ and that they were not children of Joseph's by his previous marriage (*Adv. Hel.* 19; *PL* 23. 213), Ambrose is quite happy to admit that these brothers could be *ex Joseph, non ex Maria* (*De inst. virg.* 6.43; *PL.* 16.331). In so doing Ambrose follows the tradition of the apocryphal *Protoevangelium of James*, Helvidius and others: he does not share the more extreme idea of Jerome that Joseph must be virgin too.

Ambrose then passes on to the more significant part of his thesis, the arguments that speak positively for the perpetual virginity of Mary. These have greater implications for the Church's evaluation of female sexuality and the devaluation of the role of physical motherhood. It seemed self-evident to Ambrose that only a virgin, pure in mind and body, would be chosen by Christ for the purpose of the Incarnation (*De inst. virg.* 6.44; *PL.* 16.331). It was equally self-evident, therefore, that Mary would retain the dignity of virginity that had become hers at the Incarnation. Ambrose continued this line of argument, begging the question entirely:

> Cuius exemplo caeterae ad integritas studium provocantur, ipsa ab huiusmodi quod per se caeteris propositum foret munere deviaret ?

> By whose example others are called to the pursuit of integrity; would she leave a duty of this sort which was displayed through itself for others?(De inst. virg. 6.44; *PL.* 16.331).

Earlier on in his writings on virginity Ambrose had set Mary up as a model for virgins and an ideal of all the virtues that accrued to virginity, as we have seen. In later parts of *De institutione virginis* he reasoned that Mary would surely receive the same reward as other virgins and that both Mary and Joseph respected and honoured Mary's nobility, a nobility that centred on her virgin state (*De inst. virg.* 45; *PL.* 16. 331-332). He gives as yet another example of her purity the words of Christ on the cross and Mary's own strength in being present at the death of her son (*De inst. virg.* 47-48; *PL.*16. 332-333).

It is clear that Ambrose's thinking is framed within the wider ascetic discourse. He uses the figure of Mary and the image of bodily integrity as examples of holiness. The continued virginity of Mary is integral to his vision of holiness, a vision of the world in which sin is linked with sexuality and in which motherhood must therefore give precedence to virginity.

Augustine found himself defending the *post partum* virginity of Mary within a similar framework, both as part of his own rebuttal of Jovinian and against accusations of Julian of Eclanum who claimed that Mary and Joseph could not have had a proper marriage if they had not had sexual relations. Augustine's thought can be traced through his pair of treatises, *De bono conjugali* and *De sancta virginitate* (AD 401), which were his 'covert work 'Against Jerome" (Markus 1990: 45), and through his work against Julian and the Pelagians, *De nuptiis et concupiscentia* and the *Contra Julianum*.

To confirm the perpetual virginity of Mary Augustine focussed on her sinlessness which, as we have seen, he linked to her lack of sexual knowledge and experience. In accordance with his thinking about the nature of original sin, Christ must be born without any of the elements that pass on original sin, that is, there must have been no feelings of desire, no semen, no sexual contact. The sexual act could not be

separated from sin in Augustine's thought. Mary's body, though it had itself originated in carnal desire, did not pass sin onto Christ because she conceived without the presence of any sexual elements. Julian was unhappy with the notion of continent marriage and argued that bodily marriage had an intrinsically sexual element (*N&C* 2.37: *PL* 44: 458; *CJ*. 5.62: *PL* 44: 818).

In *De bono conjugali* Augustine had laid out his notion of the threefold goods of marriage: offspring, fidelity and sacrament (*De bono conjug.* 4; *PL* 40. 376). He reaffirmed these for Valerius in his first book of *De nuptiis et concupiscentia*, adding, significantly for his assessment of the marriage of Mary and Joseph, that a vow of continence does not cancel out marriage. He did this expressly to show that Mary and Joseph had a true marriage and in so doing reiterated this whole stance on the nature of the Virgin Birth:

> Omne itaque nuptiarum bonum impletum est in illis parentibus Christi, proles, fides, sacramentum. Prolem cognoscimus ipsum Dominum Iesum; fidem, quia nullum adulterium: sacramentum quia nullum divortium. (XII) Solus ibi nuptialis concubitus non fuit, quia in carne peccati fieri non poterat sine illa carnis pudenda concupiscantis, quae accidit ex peccato, sine qua concipi voluit, qui futurus erat sine peccato, non in carne peccati, sed in similitudine carnis peccati: ut hinc etiam doceret, omnem quae de concubitu nascitur, carnem esse peccati; quandoquidem sola quae non inde nata est, non fuit caro peccati.

> The whole good of marriage, therefore, was satisfied in these parents of Christ, children, fidelity and sacrament. We recognise the child in the Lord Jesus himself; the fielity because there was no adultery; the sacrament because there was no divorce. There alone was no nuptial cohabitation because he who would be without sin, not in sinful flesh but in the likeness of sinful flesh, could not have been made in sinful flesh without that shameful lust of the flesh which comes from sin and without which he wanted to be born, in order that he might teach us that everyone born of sexual intercourse is of sinful flesh since that alone which was not born thus was not of sinful flesh (*N & C* 1.13: *PL* 44: 421).

In order to reinforce his point Augustine went so far as to say that a sexless marriage was a good idea for those with the spiritual strength for it (1.13). Julian was clearly not happy with the idea of a sexless marriage, as this seemed to him to deny one of the basic natural acts. At *De nuptiis* 2.37 Augustine quotes Julian: '*Ostende*'

inquit, 'sine commixtione nuptias corporales ('Show me', he says, 'a marriage without the mixing of bodies') (*PL* 44. 458); and similarly in the *Contra Julianum:*

> 'Nihil aliud' dicis, 'esse nuptias, quam corporum commixtionem': et dicis postea, quod et verum est, 'Sine appetitu mutuo et sine opere naturali propagationem esse non posse.
>
> Marriage is nothing' you say, 'except the mixing together of bodies': and you say afterwards, that which is true: 'propagation is not possible without mutual desire and the natural act' (*CJ*. 5.62; *PL* 44: 818).

The debate contained in *De nuptiis* was continued in the *Contra Julianum.* Augustine thought that Julian's definition of the sexual union encouraged adultery, while Julian concluded that if Mary and Joseph did not have intercourse they could not be considered married. Augustine responded by arguing that if Julian followed his own logic, then married people who ceased to have intercourse due to advancing years could no longer be spouses. Augustine repeated his contention that Mary and Joseph were truly married and fulfilled the threefold good of marriage, and that Joseph could be considered Mary's husband as he did not think that the marriage could be dissolved 'because the hope of carnal intercourse is taken away' (*quia spes commiscendae carnis ablata est CJ*. 5. 46-48; *PL* 44: 810-811).

For Augustine Mary was always ever-virgin; it was an essential part of his thinking about original sin. Although he did rehabilitate marriage from the blasting it got from Jerome, he still thought that virginity was by far the better option. In the companion volume to *De bono conjugali, De sancta virginitate*, Augustine affirmed Mary's perpetual virginity and even went so far as to suggest she had made a vow to preserve her integrity. He was the first to claim such a vow had been made by Mary herself, but such a vow fitted in neatly with his agenda.

For both Ambrose and Augustine motherhood had to take a back seat to virginity, but the value of maternity could not be belittled too far, as this would reflect back on the person of Mary herself. It was the sexual aspect that was so troublesome for the ascetics. Mary, of course, had achieved her maternity without experiencing any of

the corruption a normal human mother would of necessity undergo; the question was how to transfer such status as had previously accrued to mothers to the new heroines of the Christian world, the virgins. The answer, inherent in the very nature of Christian rhetoric, was to construct them metaphorically.

Part Two: Metaphorical Mothers and Mothers of Virgins

3.5 Introduction

In the writings of both Ambrose and Augustine there evolved a very intricate relationship between the meaning of physical and spiritual motherhood, between the real and the metaphorical. Essentially what happens is that the virtues of maternity are transferred first to Mary, the Virgin Mother, and thence to all Christian virgins, the metaphorical mothers. This shifting of these virtues and values meant that giving birth was no longer regarded as the primary life choice for women; it resulted in motherhood becoming somewhat ambiguous, not totally denigrated but no longer praised as an end in itself either, unless, as Jerome says, its purpose is to create new virgins (*Ep*. 22.20). Here I examine the different levels at which this discourse of the spiritualisation of motherhood worked; the extensive use of the metaphor of maternity, which could also now be used for institutions, and for men as well as virgins. Metaphors are an efficient shorthand for the translation of complicated messages. Family metaphors are particularly useful because they assume a shared understanding of the relative roles of family members in 'real life'. The Church as mother stands in the same relationship as the mother of the family does to the father, important but under his control and power. The use of metaphors highlights general assumptions about how social relations should work.

3.6. The motherhood of the Church and virgins as mothers

Mary was a perpetual virgin and, most significantly, a fertile virgin, and as such became a model not only for all virgins but also for the Church. Her motherhood became universal; just as she is the physical mother of Christ so she is the spiritual

mother of all Christians. This spirituality was extended to all virgins by their association with Mary, and they too became metaphorical mothers. This spiritual fertility was described by Ambrose in the same way as physical fecundity. His fullest explanation of the connections comes significantly in his collection of semons given to his sister, Marcellina, a dedicated virgin, *De virginibus*.[28]

> Sancta Ecclesia immaculata coitu, fecunda partu, virgo est castitate, mater est prole. Parturit itaque nos virgo non viro plena, sed spiritu. Parit nos virgo non cum dolore membrorum, sed cum gaudiis angelorum. Nutrit nos virgo non corporis lacte, sed apostoli, quo infirmam adhuc crescentis populi lactavit aetatem. Quae igitur nupta plures liberos habet quam sancta Ecclesia, quae virgo est sacramentis, mater est populis, cuius fecunditatem etiam Scriptura testatur...

> You are like the Holy Church, unsullied by intercourse, fruitful in birth, a virgin in chastity, a mother in children. And so she bears us as a virgin, not impregnated by a man but by the Spirit. As a virgin she bears us not with the pain of her body but with the joyful cries of angels. As a virgin she nurses us not with milk of the body but of the Apostle, which he gave as milk to people of tender age still maturing. What married woman, then, has more children than the Holy Church, who is a virgin in sacraments, a mother to her people, whose fertility is witnessed by the Scriptures..... (*De virg.* 1.31; *PL* 16.208).

Through virtue of being both virginal and married, Mary, was like the Church which was also both immaculate and the spouse of Christ. She was a fruitful virgin, both actually through the birth of Christ and metaphorically through her association with the Church as the mother of all Christians. Using the language of biolgical maternity and nursing, Ambrose transfers the nurturing virtues of motherhood to the Church, emphasing the positive attributes of mothering but describing something that cannot physically give birth. Later on in the same text he says that he is not discouraging motherhood but he is 'comparing good things with good things, so that what is superior may be that much more apparent' (*De virg.* 1.35). This superiority, he says, is evident in the fact that newly wedded brides want nothing more than to boast of the beauty of the bridegroom, but who has the more beautiful bridegroom, the wife, or the virgin/Church espoused to Christ (*De virg.* 1.36)

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[28]Dated to 377 and consiting of three semons, two by Ambrose himself and the third by Pope Liberius.

It is the prerogative of the Church to be like Mary, to be both virgin and mother, but she was also paralled, like Mary, to Eve. Like Mary the Church reversed the sin of Eve:

> Bene desponsata, sed virgo; quia est Ecclesia typus, quae est immaculata, sed nupta. Concepit nos virgo de Spiritu, parit nos virgo sine gemitu.

> Well betrothed, but virgin: for she is a type of the Church, who is immaculate but married. A virgin conceived us by the Spirit, a virgin bore us without groaning (*Expo. Luc.* 2.7:*PL.* 15.1635-1636).

Mary and the Church share the same imagery: married yet virgin, mother yet virgin, redeemer of the sin of Eve.

Augustine continued this line of thought, stressing the special relationship of Mary to the Church and extending that relationship to all other Christians. It is a theme that is outlined and repeated in many of his sermons and particularly in *De Sancta virginitate*. He set up a model of motherhood in which the physical motherhood of Mary became, as for Ambrose, a pattern of the motherhood of the Church:

Consider how the Church, obviously, is the bride of Christ and, what is more difficult to understand, yet true, how she is the mother of Christ. As her type has the Virgin Mary preceded her. Whence I ask you, is Mary the mother of Christ, if not because she gave birth to the members of Christ; who has given birth to you? I hear the voice of your heart: Mother Church. This mother is holy, honoured similar to Mary, she brings forth yet is a virgin. That she brings forth I prove through you; for you are born from her; she also brings forth Christ, for you are members of Christ....let the members of Christ give birth in mind, as Mary, as a virgin, gave birth to him in her womb; and thus you will be mothers of Christ.(Sermo. Denis. 25.8: cited in Graef 1963: 97).

All Christians give birth spiritually, 'in mind', to Christ and so all become mothers of Christ. This motherhood is virginal in a spiritual sense, wheras Mary's was virginal in both a physical and spiritual sense. Mary and the Church are both the mother of all Christians, and all Christians are related to the Virgin Birth by their membership of the Church.

Augustine, following Ambrose, played around with this notion of universal motherhood, intertwining his symbols. On one level this gives value to the

traditional goodness of fecundity and the central role of the mother in the Jewish and Greco-Roman family, but the essential difference is in the stress on virginity. This fecundity of virginity happens, in a physical sense, only once in the person of Mary, but it can be repeated almost *ad infinitum* in the spiritual sense. The physical reality of the virgin birth comes to be shared by all Christians through their membership of the Church:

> Quomodo autem non ad partum Virginis pertinetis, quando Christi membra estis? Caput vestrum peperit Maria, vos Ecclesia. Nam ipsa quoque et mater et virgo est: mater visceribus charitatis virgo integritate fidei et pietatis. Populos parit, sed unius membra sunt, cuius ipsa est corpus et conjux, etiam in hoc similitudinem gerens illius virginis, quia et in multis mater est unitatis.

> How are you not also included in the childbirth of the Virgin, when you are members of Christ? Mary gave birth to your Head, the Church to you. For she too is both virgin and mother; mother through the bowels of her charity, virgin through the integrity of her faith and piety. She gives birth to nations, but they are members of the One whose body and bride she is herself, and in this bears likeness to that virgin because she too is the mother of unity in many (*Sermo*. 192.2; *PL* 38. 1012-3).[29]

Mary is the mother of the Head of the Church. The Church gives birth to Christians with Christ as its head, so the Church is like Mary, in that both are virginal yet fertile. This notion of spiritual motherhood and its extension to all consecrated virgins is most explicitly put in *De sancta virginitate*. The relationship of seemingly parardoxical virginity and fertility is also explained.

The essence of *De sancta virginitate* is to show why virginity is better than the married life. Here Augustine explains not only the perpetual virginity of Mary but also her relationship to the Church, and develops the notion of spiritual motherhood for consecrated virgins:

> Ac per hoc illa una femina, non solum spiritu, verum etiam corpore, et mater est et virgo. Et mater quidem spiritu, non capitis nostri, quod est ipse Salvator, ex quo magis illa spiritualiter nata est; quia omnes qui in eum crediderint, in quibus et ipsa est, recte filii sponsi appellantur (Matt. 9.15): sed plane mater membrorum eius, quod nos sumus; quia cooperata est charitate, ut fideles in Ecclesia nascerentur, quae illius capitis membra

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[29]cf, *Sermo*. 188.4: *PL* 38. 1004-5; 189.4: *PL* 38. 1006; 195.2: *PL* 38. 1018; 213.7: *PL* 38. 1063-4.

sunt: corpore vero ipsius capitis mater. Oportebat enim caput nostrum propter insigne miraculum secundum carnem nasci de virgine, quo significaret membra sua de virgine Ecclesia secundum spiritum nascitura. Sola ergo Maria et spiritu et corpore mater et virgo; et mater Christi, et virgo Christi: Ecclesia vero in sanctis regnum Dei possessuris, spiritu quidem tota mater Christi est, tota virgo Christi: corpore autem non tota, sed in quibusdam virgo Christi, in quibusdam mater, sed non Christi.

That one woman, therefore, is both Mother and Virgin, not only in the spirit, but also in the body. She is our mother, indeed, in the spirit, not of our Head, who is our Saviour himself, of whom she was rather born spiritually, since all who believe in Him, among whom she too is included, are rightly called the children of the briedgroom, but she is evidently the mother of us who are his members, because she has co-operated by charity that the faithful, who are members of that Head, might be born in the Church. Indeed, she is the mother of the Head Himself in the body. It behoved our Head to be born of a virgin according to the flesh, for the sake of a wonderful miracle by which he might signify that His members would be born according to the spirit, of a virgin, the Church. Mary alone, therefore, is mother and virgin both in spirit and in body, both Mother of Christ and Virgin of Christ. The Church, on the other hand, in the saints who are to possess the kingdom of God, is indeed wholly the Mother of Christ, wholly the Virgin of Christ in the spirit; in the body, however, not as a whole, but in some she is a virgin of Christ, in others a mother, although not the Mother of Christ (*De san. virg.* 6: *PL* 40. 399)

The relationship is highly complicated and polysemic. The Church, its members and Mary are all related to each other and to Christ, but all are not equal in that relationship. Mary herself is a member of the Church, not above or outside it, even though she gave birth to its Head. Those within the Church are not equal; mothers cannot be like Mary in the same way that virgins can. True, Mary was both mother and virgin, but mothers must not think that the two are equal; preservation of virginal integrity is not compensation for the lack of children, nor does the reward of children in any way compensate for the loss of virginity (*De sanc. virg.* 7; *PL.* 40.399). Mothers must not consider that their fecundity is similar to Mary's, even if the offspring they produce are Christians, as no fecundity of the flesh can be compared with holy virginity (*De sanc. virg.* 8; *PL.* 40.400). In short, mothers should not think that they are entitled to the same honour as virgins.[30] Married people are blessed not purely because they produce more Christians, but because they beget them honourably and chastely and bring them up properly, and because

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[30]cf. *De sanc. virg.* 9; 10; 11; 12: *PL.* 40.400-402

they remain faithful to each other and keep the sacrament of matrimony. These are all social duties of the secular world, and as such merit honour and praise, but holy virginity is an angelic lot and even conjugal chastity cannot assume such honour (*De sanc. virg.* 12: *PL.* 40.401-2). Virgins on the other hand, may have their cake and eat it, so to speak:

> Non est ergo cur Dei virgines contristentur, quod etiam ipsae virginitate servata matres carnis esse non possunt. Illum enim solum virginitas decenter parere posset, qui in sua nativitate parem habere non posset. Verumtamen ille unius sanctae Virginis partus omnium sanctarum virginum est decus. Et ipsae cum Maria matres Christi sunt, si Patris eius faciunt voluntatem.

> There is no reason, therefore, why the virgins of God should be troubled because they cannot likewise, while preserving their virginity, be mothers in the flesh. For virginity could appropriately bear Him alone who in His birth could not have an equal. Nevertheless, the Child of the one holy Virgin is the glory of all holy virgins, and they, together with Mary, are mothers of Christ if they do the will of the Father (*De sanc. virg.* 5: *PL.* 40.399).

Virgins may become spiritual mothers in the sense that their virginity is not a sterile one, they become metaphorical mothers, just as the Church. They cannot, like Mary, conceive Jesus in the flesh, but they preserve their bodies for Christ whom they conceive in their heart (*De sanc. virg.* 11: *PL.* 40. 401). Augustine maintained that also through charity could women achieve a quasi-motherhood while still retaining their bodily integrity; he argues that a rich woman who could devote a large sum of money to ransoming slaves, and in so doing, make Christians, could provide more fruitfully for the begetting of Christ's members than by the very greatest fruitfulness of the womb (*De sanc. virg.* 9: *PL.* 40. 400).

Consecrated virgins were referred to as 'brides of Christ', and both Augustine and Jerome talk about the relationship of Christ and virgin in terms of a lover or spouse: 'Contemplate the beauty of your lover' (*Inspicite pulchritudinem amatoris vestri*) says Augustine (*De sanc. virg.* 55: *PL.*40.428). Jerome says: 'let the bridegroom enter your chamber' (*Ep.* 22.25). In a similar way they extend to virgins the language used of fertility and maternity. The virgins somehow give birth to their

spiritual selves; by consecrating their bodies to Christ, they are reborn spiritually and are both metaphorical bride and mother. The three notions of Mary, the Church and individual consecrated virgins coalesce into an ideal that is both paradoxical and symbolic. The body of Mary, of the Church and of the individual virgin is closed yet fruitful. This is a new image: entirely different from the open and porous body of the medical texts. As, in the medical texts, the underlying assumption of 'open' implies percieved female attributes of lightmindedness, vulnerability, easily influenced etc., so the closed image conjures up the Christian attributes of spiritual strength, withdrawal from the world, chastity etc. but also retains the positive virtue of fecundity.

All is not lost for Christian mothers, though: while virgins can become metaphorical mothers, mothers may, in widowhood or through their own daughters, become born-again virgins, or mothers-in-law of Christ. The question is - where does this leave maternity itself? It is clear that in this ascetic, and, it has to be said, highly intellectual, discourse, maternity has been re-evaluated. Before we go on to discuss the effects of such a rhetoric on women themselves, let us examine briefly the counter image of the virgin mother, the nuturing father.

3.7 The maternal and nurturing father

Family relationships had always had an extra-familial dimension in Christian thought which had early on developed the idea of the eschatalogical family. This was a notion that replicated family terminology to express relationships, it used secular family terminolgy to illustrate the bonds that joined one Christian to another and to God. The use of the language of family is a common enough motif in pre-industrial societies, the important point is that it presupposes a shared understanding in a community of what these terms mean with regard to power structures and gender roles.

As we have seen women who do not give birth become mothers; the role of the Church is described as that of a mother; this ability to become a spiritual mother was also extended to celibate men. All Christians were encouraged to envisage themsleves as helpless infants, spiritually naked and reborn in baptism and fed on the milk of basic instruction before they moved onto the solid food of the Scriptures. This gave the Church a nurturing role, a role traditionally given to mothers. It also turned bishops into fathers in the role of teacher but also into mothers as nurturers of 'infant' Christians. The bishop and holy man turned into spiritual mothers who bore spiritual fruit and cared for the immature convert. This is a common motif in the earliest Christian texts, first found in Paul: 'Brothers, I myself was unable to speak to you as people of the Spirit: I treated you as sensual men, still infants in Christ. What I fed you was with milk, not solid food, for you were not ready for it' (1. Cor. 3.1-3; cf. 1 Peter 2.1-2).

By the early second century Clement of Alexandria had fully extended the maternal metaphor to the person of God the Father. In *Paedogogus* 1.6, Clement refers to the nourishing milk and soothing breast of the Father, and in very visual terms describes the Father who 'supplies us children with the milk of love and those are truly blessed who suck his breast'. This is but one example among many in Clement's treatise. He used the full range of possibilities for this metaphor: following curent medical understanding he believed that breast milk was processed blood and so he made full use of the symbolism of Christ's blood, of wine and of links between blood, flesh and milk. Clement does not go so far as to call God mother but it is significant for the understanding of maternal roles that he finds the image of a nursing mother an appropriate description of a loving God. As we have seen in the works of later authors the influence of thinking such as Clement's does not result in a positive revaluation of the maternal role in the late antique period, in fact we see the use of similar imagery by Ambrose of Christ:

[Christ] is a virgin then, who married; he is a virgin who bore us in his womb; he is a virgin who brought us forth;he is a virgin who nursed us with his own milk (*De virg.* 1. 22).

Caroline Walker Bynum has looked at the notion of Jesus as mother in late medieval texts and the way that religious symbolism is used differently by male and female writers. Bynum noted that there is a process of inversion of symbols at work in the way that men use or apply gender symbols to themselves, where women tend to build from a sociological and biological experience, men tend to invert such symbols (Bynum 1986: 13) She argues that in the later Middle Ages male writers, particularly abbots, were comfortable with such imagery applied to men precisely because they were writing to and about an alternative family, that of the community of monks. The removal of the imagery from its physical and female origin freed it up to be applied to men without any loss of masculinity (Bynum 1986: 267-9).[31] Using the work of Bynum and visual imagery Gail Corrington has argued that we can apply a similar theory to the ealier period by looking at representations of Mary and the Christchild. She argued that despite a precedent for images of nursing divinites, particularly Isis and Osiris, it is not an image favoured by Christian artists in the fourth and fifth centuries (Corrington 1989: 411-13). The detachment of women from the role of mother enables the metaphor to be applied to both God and men in general, as givers of life and nurturers, as in Clement above.

The essence of this argument is that once the physical side of sexual difference is removed the language of difference could be applied to either sex in some circumstances. However there is a lot of burring going on; men might appropriate feminine imagery in that they may become spiritual mothers, female virgins may become both 'female men of God' and spiritual mothers but they do not become fathers. Male roles are more encompassing than the limited opportunites of women. In addition, when god is referred to in language and symbolism that is usually associated with women as mother, it does not validate the physical maternal role,

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[31]C. Walker Bynum 1977: 257-284 (particularly pp. 272-3 on Clement and 276); 1982: chapter 4.

rather, following Bynum, it is precisely because the physicality is removed that the metaphor can be appropriated by men. Moreover, at no time does God become God the Mother. As Pagels has pointed out, sects that did try to claim a female, or shared persona of God, like the Gnostics, were swiftly outlawed by the Church (Pagels 1979:). Despite theological protestations on the *Imago Dei*, that God should not be considered in sexual terms at all, the language used by the Scriptures and the Church Fathers does, for the most part, give the impression of a masculine God. God is addressed as father and not as mother and the person of Mary is revered as the Mother of God, not as God the Mother. The notion of a male divinity is further compounded by the doctrine of the Incarnation, in that Christ did become man. It is through the figure of Christ as man that humanity in general achieves salvation. The use of the word *logos* to define Christ comes imbued with qualities associated with the male, inherited from Aristotle and inherent in late antique thought - authority, reason, sovereign power. Also Christ did become man, and virgin man, with all that virginity implied to the early Christians, but still man, known as the Son of God. Masculine and paternal symbolism was pre-eminent.

3.8 Conclusions

In this chapter I have tried to demonstrate the effect of the ascetic rhetoric on the physiological representation of the body of Mary. Mary evolved into a role model for virgins but the language that was used to describe her total bodily and spirtual integrity used the vocabulary of the medical writers. However, in the hands of Ambrose and Augustine, this language was manipulated so as to present a female body that was quite different from the ideal female body of the classical world. The new image was 'closed', 'sealed' and 'locked'. Such terms were used not only to refer to the physical image of the female body but also to the social image of women. Ideally they should be modest, chaste, sober in dress and thought. The ideals of female social behaviour were much the same as in the classical period but now underpinned by Christian theology and morality.

The use of Mary as a role model for virgins was fully exploited by Ambrose, Jerome and Augustine. The early development of the notion of Mary's perpetual virginity evolved into a tool for the ascetic discourse, it is therefore not surprising that it is in the fourth century that it comes to its fullest expression. Mary was a figure upon whom the Churh Fathers could impose layers of meanings. She served primarily as a model for virgins, her bodily interity closely associated with spiritual integrity. In giving birth, albeit miraculously, she could also serve as a model for mothers, but this was very much secondary. Her humanity was essential to the theological message of the Incarnation, while her virginal motherhood gave her a redeeming role in the doctrine of salvation.

The imagery of virginal motherhood was extended to the Church, in the process validating virginity and valuing it above maternity. In this period Mary is not the nurturing and intercessive mother of the High Middle Ages, or a persona who would inspire images such as Michelangelo's Pietà. Her mothering of Christ is important not for its nurturing aspect but for the sexual purity with which it occurred. The whole concentration of these texts is on Mary's bodily integrity. In turn, images of nurturing, more commonly associated with mothers are transferred first to Christ and then to male representatives of Christ, the bishops and clergy. Having been removed, or indeed, not used of Mary, they can be employed for male figures without fear of effeminising those they are associated with.

In the end, although Augustine redeemed mothers and the role of married women somewhat, Mary was, in this period, primarily a role model for virgins. Her closed and impenetrable body stood in opposition to the open and reproductive body which served as the (male) ideal for women in earlier periods.

Ascetically minded writers such as Ambrose, Jerome and Augustine must take responsibility for a fundamental change in outlook on matters such as sexuality, marital relations and the value of reproduction, that was to last until the Reformation, and arguably in some Catholic countries, until the present day. The question is, how far did this rhetorical praise of virginity actually affect the way women lived their lives? While it could be argued that all we have in these texts is three intellectuals talking to one another in the somewhat rarified atmosphere of late antique Christian theology, it must also be recognised that rhetoric does not exist in a vaccuum. Jerome's teaching directly affected the lives of those women close to him while both Ambrose and Augustine also had pastoral care of their congregations. In their writings there are many examples of women as mothers, and the following section will put this rhetoric to the test.

Chapter Four

Mothers, daughters and the rhetoric of virginity

4.1 Introduction

While the rhetoric of virginity would seem to undermine motherhood and the values attached to maternity, the reality of late Roman life, as far as we can ascertain it, actually highlights some examples of very close mother-daughter relationships that thrive and benefit from choosing virginity over marriage. So far this thesis has examined the physicality of motherhood and the shift from a position of valuing the female body for its open, reproductive capacity to one of closed imagery wherein the mechanics of reproduction, and so the status of motherhood, were re-evaluated negatively. Through the paradox of the Virgin Mother, Church Fathers were creating a new ideal of woman and a new hierarchy for female status that relegated maternity to the lowest rank behind virginity and widowhood. This chapter looks at the effect of this rhetoric on the lives of the few women known to us from this period. It will examine the range of the evidence, focusing three case studies, and discuss the nature of mothering and mother-daughter relationships pictured therein.

There is a methodological double jeopardy here; we only know of these women from the writings of those very Christian intellectuals who were instrumental in constructing the new ideal of virginity. My approach, as explained in the Introduction, is a 'positivist' one: while I recognise that we cannot extract 'real' women from these various texts, we cannot simply dismiss all reality from these pictures and assign them to the position of rhetorical stereotypes thereby disregarding them as evidence. The fact that many of the texts used in this chapter are letters is evidence that we are dealing with fundamentally real figures, and there are some assumptions we can make about them, despite the fact that our view of them is filtered. Admittedly, we cannot know their innermost thoughts and motivations, even though at times Jerome may pretend to share them with us, but

we can make some judgements about their relationships with others both inside and outside their families, and the reactions of outsiders to them and their actions. Stereotypes cannot simply be written off; they are a product of a specific time and place and reflect the concerns and anxieties of a society, and, as such, have value for the historian. However, we must also be wary of moving from the generalisation of the stereotype to the specifics of an individual, for undoubtedly the actions of many of these women are narrative devices serving a greater discourse.

The women that form the central focus of this chapter are representative of three generations of progressive Christianisation in the late fourth and fifth century: the Melanias and Albina; Paula, Eustochium and the younger Paula; Proba, Juliana and Demetrias. Our evidence for them comes primarily from personal letters and from funerary encomia; Melania the Younger is the only one to have a 'Life'. Cooper (1996) has argued that these women fulfil the role of heroine similar to that found in Hellenistic romances, transposed into a Christian literature that is hagiographic. There is little doubt that 'lives' were highly influential in the development of Christian discourse (Cameron 1991: 144ff). In the form of hagiographies, panegyrics and eulogies, writers could produce an easily comprehended narrative that included explicit exempla, and appealed to a wide audience cutting across class and gender. It is also a literary form that by its very nature incorporates both the public and the private, including not only ideals of civic virtue but also incidental domestic details. In the Christian case 'lives' often also included moments of spiritual insight and inspiration, purporting to narrate the innermost thoughts of their subjects. In the classical world all biographies were primarily didactic but Christian lives were different from their pagan counterparts in including women as their subjects. [1]

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[1] For more on the nature of Christian hagiography see Cameron 1991; P. Cox 1983; T. Hägg 1983; On pagan biography: G. Fowden 1982 : 33-59.

The question is always: how far is anyone influenced by rhetoric? My position is that rhetoric does not exist in a vacuum and is both a product of, and part of the creation of, the preoccupations and ideals of the society in which it exists. I am trying in this chapter to tread the fine line between rhetoric and reality, but I feel it is time to put some flesh on the bones of the arguments laid down by the thinkers of the period and examine how far this rhetoric might have affected the lives of women. My main interest here is to look at the strength of the maternal relationship in the face of a discourse that is fundamentally both anti-family and anti-female.

Ascetic rhetoric was aimed at both men and women, but it was women who developed as central to the discourse on the nature of virginity. The basic assumption of the rhetoric was that woman was inextricably linked to sin: Eve had corrupted Adam and brought about the Fall from grace. Sexuality and sexual reproduction, or at least the sexual desire that was necessary for conception (see Chapter 2), were seen as the result of the Fall, and only by returning to prelapsarian state of virginity, exemplified by Adam and Eve before the Fall or more significantly by Jesus and his Mother, could mankind redeem the fallen nature of creation. The implications for women were explicit in the rhetoric; they must deny all that had previously defined them as female and become 'like men'. It was a rhetoric that embraced a set of unquestioned assumptions about positive male virtues and negative female vices, and essentially required women to reject one set and adopt the other. The ideal method and practice of this was to remain virgin. In order to avoid any taint of sexuality women were expected to undergo a regime of physical denial that regulated their appearance, diet and social behaviour. The suppression of all physical desires would liberate the mind for

prayer and contemplation of the divine. By so doing women could earn the highest accolade of male writers and be known as 'female man of God'.[2]

As Brown (1988) and others have shown, this rhetoric had potentially profound implications for the public realm as well as the private. By encouraging and validating a rejection of marriage it was undermining the nexus of family responsibilities and civic obligations that maintained the Roman state. It presented the rejection of traditional social networks as a viable option for both men and women. For women in particular, it demoted their traditional career path and access to status to a poor third behind perpetual virginity and celibate widowhood. The Church Fathers' teaching on sexuality and salvation amounted to a heavy moral disincentive to marriage and motherhood.

Scholars have debated why the ascetic life was attractive to women. Elizabeth Clark and those following her have suggested that it offered women new freedoms. It allowed them to control their own bodies, to escape the dangers of childbirth; to have intellectual intercourse and friendship with men outside their traditional social circles, the freedom to pursue academic study, travelling, in the form of pilgrimage to holy places, and the power to extend their own patronage networks, and it endowed them with a degree of personal authority and autonomy (Brown 1961, 1988; E. Clark 1979, 1986a; G. Clark 1993; Cloke 1995; Salisbury 1991; Yarborough 1976). More recently others have argued that reading such texts in this way ignores the pitfalls of the rhetoric. They argue that we are looking at women who are fulfilling the traditional roles of Roman women as adjuncts to their husband's prestige, but are expressing their value and worth in the mode of the period, in this case, Christian asceticism (e.g. Cooper 1992, 1996; Sivan 1993) As this chapter will demonstrate, I take a middle ground, aware of the dangers of

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[2]There is an extensive literature on this subject for the most relevant to this chapter see Aspergen 1990; Brown 1988; Cameron 1989; E. Clark 1986a; G. Clark 1993; Cloke 1995;Vogt 1991. For the effect of this rhetoric on the east see S. Elm 1994.

taking the rhetoric at face value (not that Clark *et al.* did this at all) but also willing to allow the actions of these women to speak for them. I agree with those who claim that these women are constructing themselves as part of the ascetic world, that they frame their lives within the confines laid down by men, but that does not deny them a voice (Cameron 1988: 187; Cloke 1995: 6).

There is no doubting that the ascetic voice became the dominant discourse of the period and that the works of Ambrose, Jerome and Augustine remained influential throughout the Middle Ages, and, equally, no doubting that many dissenting voices are lost to us. Even so, within these pro-ascetic texts certain related events give insight into the other side of the argument. Subjects that become axiomatic in the lives of these women are instructive in terms of the attitudes they expose. One of the many common topoi is the rejection of traditional family values, and in the case studies below the tension between the demands of the narrative and the strong affinity that existed between female relatives is evident.

Here I want to look at three groups of related women for whom the ascetic lifestyle was progressively followed through three generations: grandmother, daughter or daughter-in-law, and consecrated virgin granddaughter. This was potentially a demographic dead end for three aristocratic families, but it was a choice that was presented by the Church, and was believed by some of the Roman aristocracy, but not all, to endow a spiritual prestige far more significant than the traditional honour of civic offices and the continuation of wealth and family. These case studies are as follows: Melania the Elder, her daughter-in-law Albina and granddaughter Melania the Younger; Paula, her daughter Eustochium, and her granddaughter (by her son) the younger Paula; Proba, her daughter-in-law Anicia Juliana, and her granddaughter Demetrias. These groups of women have several elements in common: they were all members of the highest aristocracy in Rome and, as such, were used to a certain amount of influence and authority in their

lives; the older women, in their position as widows, were attracted with varying enthusiasm to the ascetic life. These mothers, in different ways, fulfilled the traditional demands of society before taking up the ascetic life themselves or allowing their daughters greater freedom of choice. While they maintain traditional family roles in the older generations, the decision taken by, or on behalf of, the younger subverts the hierarchy of authority in the family: virgin daughters are the spiritual superiors of their mothers. I am looking at these women primarily in their role as mothers, for they are all well documented in modern texts in terms of other aspects of their lives.[3] They are presented as case histories in the first instance, and common themes are drawn together in the subsequent discussion

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4.2 Case Studies

Melania the Elder, Albina and Melania the Younger

Melania the Elder was of aristocratic background, and was one of the first women in Rome to leave for the holy places of the east and not return for many years. We know little of her life prior to *c.*370. According to Palladius she came from a Spanish family; her grandfather Marcellinus was consul in 341 and her husband urban prefect 361-3 (Palladius claims to have forgotten his name). Melania was widowed by the time she was twenty-two. She had three children, two of whom died within months of their father (*LH* 46.1). On their deaths she came to Rome with her surviving son Valerius Publicola (born *c.*365) (Paulinus of Nola, *Ep.* 29.8; *PL.* 61.316-7).[4] Once in Rome, it appears she arranged for his education and then 'abandoned' him, heading off on the pilgrimage route, and did not return to the city for over twenty years. During this period she visited holy men and women and founded a convent on the Mount of Olives (*LH* 46.5).

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[3] see above n. 2.
[4] On Melania the Elder's background see: *PLRE* 1, 592; *Vie de Sainte Mélanie* D. Gorce (ed.) *SC* 90, introduction; E. Clark 1984: 83-4; F. X. Murphy 1947 1947: 52-77.

Melania's son, Publicola, certainly grew up to be a traditional member of the aristocracy in Rome at the end of the fourth century. He was an extremely wealthy man who made an advantageous marriage and acquired the prestige and status that accompanies the holding of office (Palladius *LH* 54.3). Our inherited views of this late Roman aristocrat are diverse. Paulinus of Nola paints him as his mother's son, a devout man, who, though not attracted to the demands of the ascetic life, did perform generous acts of charity (*Ep.* 45.3; *PL.* 61.393), and this is confirmed in Palladius (*LH* 54.2; *PL* 61.392). However, the biographer of his daughter puts him in the role of the traditional upper-class parent, insisting his daughter marry and fulfil her social obligations, hindering her desire of the ascetic life at every turn (*VM.* 1, 12). Publicola died *c.*407, predeceasing his mother. Paulinus' description of her grief is vivid: she was silent but 'sorrow could not restrain a mother's tears' (*Ep.* 45.2). This description is given in a letter to Augustine who, according to Paulinus, shared a 'maternal' heart with Melania and witnessed the true causes of her grief: that her son had died before her, and before he had renounced the things of the world. Melania's grief is presented as the natural sentiment of a mother who loses her son untimely, and of a Christian who recognises he has not achieved a direct passage to heaven. We will see a similar reaction to the death of an adult child in the depiction of Paula (see below).

Publicola was required to play the hostile parent according to the demands of hagiographic narrative of the *Life of Melania the Younger* (*VM*). Overcoming the resistance of the family was the first step for the aspiring nun or monk. What is interesting is that Albina, Melania the Younger's mother, plays two contrary roles in the narrative: early in her daughter's life she joins with her husband in thwarting her daughter's ascetic ambitions, but later on, significantly after she is widowed, she joins with Melania, leaves Rome and shares the rest of her life with her. We know about Albina from the *VM*, Palladius and some letters of Augustine. As with all these women it is difficult to pin down a historical figure because of the nature

of the sources, but if we examine her in her role as mother we can see certain patterns emerging. With the exception of Augustine's letters Albina is not the central focus of these texts, which are centred around her daughter Melania. Albina plays a supporting role, that of understudy to her saintly daughter. Albina was of a background to match her husband. She came from the family of the Ceioni Rufii; her father, Ceionius Rufius Albinus, was prefect of Rome 389-91.[5] She appears to have come from a mixed pagan and Christian background but seems to have been an example of yet another family where the daughters were brought up Christian and the sons followed the traditional pattern of a classical 'pagan' education.[6] Albina was certainly related to the great Christian families in Rome, including her namesake, the mother of Asella and Marcella.[7]

In the *VM* Albina and Publicola have only one child, Melania, but Palladius mentions a son (*LH* 54.3 and 6). In writing about Melania the Elder and her return to Italy, Palladius says that she lent moral support to her granddaughter and husband and 'taught' her son's wife, Albina, implying that Albina's change of mind over her daughter and son-in-law's future was influenced by the elder woman (*LH* 54.4). He goes on to say that when they all left Rome, just prior to Alaric's attack, 'she taught the younger son of Publicola and led him to Sicily' (*LH* 54.6). The question of whether or not there was a younger son is further confused by Palladius when he claims, in a later section, that Melania the Younger gave her slaves to her brother (*LH* 61.5). In the *VM* the slaves ask to be sold to Pinianus' brother (*VM.* 10), so Palladius could just be mistaken here. On the other hand, the existence of a brother would lessen the nature and enormity of the inheritance problem that is one of Melania's ties to the world and one of the major obstacles to

[5]*PLRE* 1, 33 and Stemmata 13; E. Clark 1984: 84.
[6]This idea of Christianity spread through women in the upper classes has been disputed by Salzman 1989: 207-20. Her argument is convincing but among the case studies here the old orthodoxy holds good: Albina's brother Volusian was a pagan until his deathbed conversion by his niece (*VM.* 55), and Paula's son Toxotius was also brought up pagan while her daughters appear to all have been Christian.
[7]*PLRE* 1, 32 and Stemmata 13; Jerome *Ep.* 23, 24, 127. Marcella was the recipient of at least twelve letters from Jerome.

her ascetic progress. E. Clark has posited that if this child did exist he may either have died young, or his association with her grandmother meant that he was excluded from the *VM* (E. Clark 1984: 91). Whether there was a second child or not, Albina remained physically close to her daughter after the death of her husband.

There are many reasons why Melania's parents might press her to marry, but the primary one must have been inheritance. Melania and her husband were the joint heirs to an immense fortune when they married in 399.[8] The pair did produce two children, both of whom died at birth or soon after, before Melania could persuade her husband to join her in a life of celibacy and self-denial. When the couple started trying to dispense with their wealth they were blocked not only by members of their respective families but also by the combined forces of the aristocracy in Rome. To deplete the wealth of one branch of the aristocracy was to deplete the wealth of the whole, and was not to be tolerated (Harries 1984: 66-8).[9] This should not necessarily be viewed as a pagan/Christian contest, as even more moderate Christians were finding this sort of extreme asceticism and the elitism it was creating among Christian groups distasteful (Hunter 1987). On a personal level, the sort of deprivations that Melania was putting herself through - wearing coarse wool, praying on her knees all night (*VM* 4, 5.), together with the pregnancies, dangers of childbirth and consequent deaths of the infants, would perhaps not have been what a mother wanted as a life choice for her only child. It is this side of the maternal bond that we see in Albina after the death of her husband. She remained loyal to her daughter and abandoned Rome with her, and was continually anxious about her health and well-being. Palladius records Melania as having 'with her also her mother Albina, who lived a life as ascetic as her own and who had made a private distribution of her own wealth' (*LH* 61.6).

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[8]For the extent of Melania and Pinianus' wealth and property see *VM* 10, 19. E. Clark 1984: 95-101.

[9] see also M. K. Hopkins 1965: 12-26.

The family moved from Rome before the sack of Alaric, and lived for a while in Campania and Sicily, but had decamped to Africa by 411. During their time in Africa it is Albina who appears to have acted as a nominal head of household and mediator with the wider world. While at their estate at Thegaste an event occurred which is not recorded in the *Life of Melania*. It shows Pinianus and Melania in a rather poor light, which may explain its omission. We know of it from the correspondence of Augustine, who was a major actor in the episode. It appears that the people of Hippo wanted Pinianus as their priest, and had so intimidated him that he swore that if he should be ordained against his will he would leave Africa and not return. This happened while Augustine was present, having already preached that he would not allow Pinianus to be ordained against his will. In the end Augustine, Alypius, who was also present, and Pinianus came up with a compromise: he would not be their priest, but should he ever consider ordination he would receive it nowhere else but Hippo (*Ep.* 126.3; *OO.* 2. 550-1). There does appear to have been real fear of the mob, as Augustine tries to explain in his letter of justification to Albina. Albina had written in outrage, claiming that the citizens of Hippo had been after Pinianus' money, not his spiritual capacity, and that he should not be bound by an oath extorted by force. Augustine tries to prove otherwise. He says he must take the matter personally and implies that Albina has demanded some sort of promise from him, to the effect that he does not covet the wealth donated to the Church (*Ep.* 126.7-8; *OO.* 2. 552-3). Augustine also wrote in a similar vein explaining the situation and his position to Alypius. Here he says that he does not blame Albina for her suspicions but also does not allow for Pinianus to escape his promise (*Ep.* 125.2, 4; *OO.* 2. 545, 547). For our purpose this correspondence is interesting because it highlights Albina's role as elder matron, a woman whose opinion had force and had to be taken into account, especially as it was backed by great wealth, no matter what Augustine might claim. It shows Albina behaving as a upper-class *materfamilias*, defending her rights and

those of her daughter. The younger Melania may have cut herself off from the world but her mother acted as mediator and protector. Albina has the assurance that comes with wealth and status in the Roman world, and the necessity of action given the lack of male authority in her life, since her son-in-law had also given up the world.

Albina shared her daughter's life in Africa. Although it appears she shared the ascetic lifestyle, she seems to have always worried about Melania's excessive behaviour, first in the early years at Rome and Africa, and later in Jerusalem. Melania's fasting and physical deprivation is presented by her biographer as being more extreme than everyone elses; when she extended her Lenten fast to Easter Day, Albina was very upset and chided Melania, finally persuading her to take oil for the three days of the holiday before returning to her usual regime (*VM* 25). It is not necessary to believe the exact details of Melania's diet; it was part of the hagiographic technique that the subject fasted more strictly than anyone else. The relevant point is that Albina is shown as constantly solicitous about her daughter's life, expressing her pain at seeing Melania being so hard on herself and comparing herself to the mother of the Maccabees (*VM* 33). After seven years in Africa they moved to Jerusalem, where Melania and her mother lived together until Melania decided she would visit the monks in Egypt. While she was gone Albina was charged with building a cell for her on the Mount of Olives (*VM* 36, 37). Melania then spent the next fourteen years living in this cell from Epiphany to Easter and spending the rest of the year in the city with her mother (E. Clark 1984: 116). Albina died in Jerusalem *c*.431; Melania was so distressed that she spent a year grieving, and then finally quit her cell and moved to a monastery she had constructed on the Mount of Olives (*VM* 41). She spent the rest of her life here, apart from a trip to Constantinople to convert her maternal uncle Volusianus (*VM* 50-56).

Melania the Elder and Albina's loyalty to their children is portrayed in different ways, but it can be argued that they retained a bond that lasted over time, and that a mother's relationship to her son was different to that of her virgin daughter. The strength of the bond between mother and daughter is shown in our next two case studies, where again the conflict between the demands of society, sometimes represented by the family, and the desire for the rejection of social norms is a central part of the image.

Paula, Eustochium and Paula the Younger

The bald narrative of the lives of Paula, her daughter Eustochium, and her granddaughter Paula the Younger, runs as follows: Paula, according to Jerome, was descended from the Scipios and the Gracchi, her husband, Toxotius, from Aeneas (*Ep*. 108.1, 3, 4.). They had five children, four daughters and finally a son, named after his father. This young Toxotius was brought up in the traditional Roman religion. Three of the daughters, Blesilla, Paulina and Rufina, appear to have led lives typical of daughters of upper-class Roman families and married in the traditional way, without, it seems, any objections or anxiety on their mother's part. One daughter, Eustochium, was dedicated to virginity at an early age; if we are to believe Jerome this was the child's own choice. Paula was widowed in 379. She met Jerome and became his patron in Rome in 382-3 and appears to have been influenced by him in taking up the ascetic life (*Ep* 45. 3; *PL*. 22. 481; Kelly 1975: 92ff).

Her eldest daughter, Blesilla, apparently a girl of her time, was married, but lost her husband after only seven months. On his death she appears to have undergone a conversion to the ascetic life and was herself dead within six months. Her death roused the general sense of offence felt by many members of the Roman aristocracy over this new craze sweeping through their already unstable society. It also proved to be the catalyst for Jerome's expulsion from Rome in 385. Jerome

defended his conduct as Blesilla's spiritual mentor in a letter to Marcella (*Ep.* 38).

He claimed that before her conversion Blesilla was fastidious in her dress, spent whole days in front of the mirror, had maids to arrange her hair and make-up, wore gold and silver jewellery and slept in a feather bed. Once she had turned to the chaste life she wore dark clothes, her hair loose under a veil and when not spending time in prayer, she slept fitfully on the bare ground. The gold girdles and silver jewellery were given for alms (*Ep.* 38.4; *PL* 22. 464). In his letter to console Paula on the loss of her daughter he continues in the same vein, only more emphatically. He chides Paula for continued mourning, particularly reminding her of a higher calling than motherhood:

> Redit tibi in memoriam confabulatio eius, blanditae sermo, consortium; et quod his careas, pati non potes. Ignoscimus matris lacrymis, sed modum quaerimus in dolore. Si parentem cognito, non reprehendo quod plangis; et Christianam et monacham, istis nominibus mater excluditur.

> You call to mind Blesilla's companionship and her conversation and her endearing ways and you cannot endure the thought that you have lost them all. I pardon you the tears of a mother but ask you to restrain your grief. When I think of the parent I cannot blame you for weeping; but when I think of the Christian and the recluse, the mother disappears from view (Ep. 39.4; *PL* 22. 471).

In the same passage he reminds her of Melania the Elder who, having lost two children, abandoned her sole surviving son and set sail for Jerusalem. This was a motif he was to make more of when Paula did a similar thing. Blesilla's death provoked criticism of Jerome and his like at Rome, and perhaps the critics at her funeral were actually voicing a more mainstream Christian opinion :

> Dolet filiam ieiunis interfectam, quod non vel de secundo eius matrimonio tenuerit nepotes. Quousque genus detestabile monachorum non urbe pellitur? non lapidus obruitur? non praecepitur in fluctus? Matronam miserabilem seduxerunt, quae cum monacha esse noluerit, hinc probatur, quod nulla Gentilium ita suos unquam fleverit filios.

> She weeps for her daughter, killed with fasting. She wanted her to marry again, that she might have children..How long must we refrain from driving.these detestable monks from the city? Why do we not stone them or throw them in the river? They have misled this unhappy lady: that she is not a nun from choice is clear (Ep 39.5; *PL* 22. 472).

Jerome's subtext is that Paula should not grieve over earthly matters and the values of her aristocratic peers but should reject all that. At the same time the recognition of the depth of Paula's grief, matched later by her reaction to the news of the illnesses of her other children (*Ep.* 108.19; *PL* 22, 897), highlights the strength of the maternal bond and the difficulties of overcoming it.

As noted above, to put Paula's grief into some perspective Jerome mentions the departure of Melania the Elder. Jerome says that Melania regarded the deaths of her husband and children as a release, leaving her free to pursue a higher calling. When Jerome reports Paula's own departure in 385 he uses similar language: Paula was anxious, he says, to disregard her property, her children, and anything that tied her to the world so she could go to the desert of Antony:

> Parvus Toxotius supplices manus tendebat in littore. Rufina iam nubilis, ut suas exspectaret nuptias, tacens fletibus obsecrabat. Et tamen illa siccos tendebat ad coelum oculos, pietatem in filios, pietate in Deum superans. Nesciebat se matrem ut Christi probaret ancillam.

> On the shore little Toxotius stretched forth his hands in entreaty, while Rufina, now grown up, with silent sobs besought her mother to wait until she should be married. But still Paula's eyes were dry as she turned them heavenwards and she overcome her love for her children by her love for God. She knew herself no more a mother that she might approve herself a handmaid of Christ (Ep. 108.6; *PL* 22. 881).

She took with her Eustochium, and as the ship set sail:

> ...ipsa aversos tenebat oculos, ne videret quos sine tormento videre non poterat. Fateor, nulla sic amavit filios.

> ...she turned away her eyes that she might not see what she could not behold without agony. No mother, it must be confessed, ever loved her children so dearly (Ep. 108.6; *PL* 22. 882).

Blesilla's death was the final impetus to Jerome's departure, in disgrace, from Rome in 385. Paula followed him, taking Eustochium with her but leaving behind her remaining children. She spent the rest of her life in Jerusalem in a convent founded by her and supported by her own funds (*Ep.* 108.30; *PL* 22. 905). She died there in 404, leaving the community in the charge of Eustochium.

By far the greater part of the information we have on the elder Paula's life comes from Jerome's letters.[10] I would argue, however, that although we are looking at the world through Jerome's own peculiar ascetic prism, it is possible to see more than just a two dimensional image of Paula. It is much more difficult to establish much about her daughter or granddaughter. Paula seems to have led a normal upper-class life prior to coming into Jerome's influence, though she was probably acquainted with Marcella, and perhaps even part of her group on the Aventine.

Eustochium grew up first at Rome and then in the Holy Land, as an avowed virgin. She appears to have lived a very different life from that of her sisters and was the recipient of Jerome's controversial tract on the virgin life, his *Letter* 22, written in 384. She spent her whole adult life within the confines of the community in Jerusalem, living an exemplary ascetic life. Paula's relationship with Eustochium was different to that with her other children. Like that of Albina and Melania the Younger, her decision to deny earthly pleasures, including family ties, seems, paradoxically, to have made the bond between mother and daughter stronger. Eustochium is a far more shadowy figure than her mother, known to us only through Jerome's references and used almost exclusively as a model for virgins.[11] Her person is lost to us in a similar way to that of Melania the Younger, because of the demands of hagiographic depiction. Without examining the texts that mention her in any great depth we can say that she was consecrated to virginity from an early age, and accompanied her mother to Jerusalem in 385. She remained by her mother's side, sharing the ascetic life and nursing Paula through her last illness in 404, when she stepped into her shoes as head of the community (*Ep.* 108. 28; *PL* 22. 904).

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[10]Apart from passing remarks from Palladius that Jerome stood in her way and claimed her work as his own (*LH* 41.2); that Paula was going to die to escape Jerome's meanness (*LH* 36.6); these say more about Palladius' antipathy to Jerome than anything else; *PLRE* 1, 674.

[11]Also a brief mention by Palladius *LH* 41.2: He says he never met her but that she was said to be very modest and kept the company of fifty virgins.

In his advice on the virgin life, written to Eustochium in early 380s, Jerome sets up the familiar scene of familial opposition to her choice, implying that she has made a free choice in the first place, which is possible, but unlikely since she was about ten: 'let no one dare forbid you, not mother nor sister, nor kinsman, nor brother.' Such opposition did exist in Paula's family, especially after the death of the *paterfamilias*. According to Jerome, warning another mother of similar dangers, Eustochium's paternal aunt and uncle, Praetextata and Hymetius, tried to rectify the young girl's drab clothing and have her do her hair in the current style. These relations obviously felt they had both a right and a duty to interfere but, unfortunately for Praetextata, she paid the price all persecutors of Christians pay with an early and painful death (*Ep.* 107.5; *PL* 22. 873). According to Jerome, Eustochium was first instructed by Marcella, so it is interesting that he felt the need to portray the situation in terms of conflict. As we have seen, Eustochium already had sisters and a brother committed to the world, and she could be an early version of the surplus daughter given to the convent (Yarborough 1976: 162; Cloke 1995: 123). Or we can read her situation as one that enhances the spiritual capital of her family, an 'angel in the house' as Cooper has claimed (Cooper 1996: 74-82). Enough had been done in Paula's household to maintain the tradition and ensure the continuance of the family, and for once it seemed there were enough surviving children to bring the Christian and spiritual dimension to that traditional status. Hindsight might have made Paula act differently, as the only offspring of the third generation was Paula the Younger, a dedicated virgin.

In terms of Paula's relationship with her virgin daughter the rhetoric takes us a little further. Eustochium is a model for virgins, and is also described as a dutiful daughter:

> ...quae ita semper adhaesit matri, et eius obedivit imperiis, ut nunquam cibum caperet, ne unum quidem nummum haberet potestatis suae, sed et paternam et maternam substantiolam, a matre distribui pauperibus laetaretur, et pietatem in parentem, haereditatem maximam et divitas crederet.

> ... who always kept close to her mother's side, obeyed all her commands,
> never slept apart from her, never walked abroad or took a meal without
> her, never had a penny to call her own, rejoiced when her mother gave
> to the poor her little patrimony, and fully believed that in filial affection
> she had the best heritage and the truest riches (Ep. 108.26; PL 22. 903).

Closeness between mother and daughter had already been emphasised earlier in the letter, when, having said a tearful good-bye to her other children on the quayside, Paula '...concentrated herself quietly upon Eustochium alone, the partner alike of her vows and of her voyage' (*Ep.* 108.5; *PL* 22. 882). The bond between mother and daughter who share the ascetic life remains strong. As with Albina and Melania, there is a fundamental loyalty that is seen to be part of the biological and social link. Paula is concerned for her daughter and her daughter is loyal and obedient to her; the mother is, in this case, the role model for the daughter in a traditional sense of mutual *pietas*.

When Eustochium took over the community she had allegedly to face the poverty and debts her mother had left her (*Ep.* 108. 27, 15; Harries 1984: 61) She struggled on until *c*.419 when she herself died and bequeathed the community to the care of her niece, Paula the Younger, the daughter of her brother, Toxotius, and his Christian wife, Laeta.[12] Paula the Younger, like her aunt, had the dubious benefit of Jerome's advice on her upbringing (*Ep.* 107; *PL* 22. 867-78). Jerome's letters on this subject written in his old age are much gentler in their tone and milder in their instructions than that to Eustochium. He owes much of his educational theory to Quintilian, suggesting a system of rewards and educational play for the little girl (Petersen 1994: 34). Paula should be dressed in simple clothes with no knowledge of cosmetics and jewellery (107. 5; *PL* 22. 872). He does also suggest lots of bible reading and psalm singing in the company of a aged virgin who can teach her hymns and prayers (107. 9; *PL* 22. 875). More significantly, she should always be near her mother (107. 11; *PL* 22. 876). Such teaching may not look particularly

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[12] Yet another example of Christianity spreading via women. Laeta was a member of the Ceionii Ruffii and related to Melania the Younger. She herself was the product of a mixed marriage and her brothers were brought up in the traditional pagan way.

enlightened, but it should be examined in context. Like maternal love, education is structured to fit the social demands of a given time, and children tend to be raised for the adult world in which they are going to live. (It is no accident that league tables, exam results and training schemes have come to the fore in the late twentieth century.) We must consider the notion that in asking for advice Laeta and Toxotius were doing what they thought best for their child and gaining both social and spiritual kudos for their families. Jerome does recognise that Laeta might find the burden of bringing up a saint too onerous for someone living in Rome, and urges her to send her daughter to Jerusalem as soon as possible (107.13; *PL* 22. 877). Parental love and abandonment of children go side by side in these texts.

Paula may have been trained for the virgin life by her mother and then by her grandmother and aunt, but leading a community of holy women was a high-status position by the fifth century and brought with it prestige (E. Clark 1986a: 214-17). According to another source, the younger Paula did not learn the virtue of humility in this tough regime and had to be reminded of this by her cousin, Melania (*VM* 40). In Paula's defence it could be said that in the narrative of the *VM* no-one is allowed to surpass Melania in any of the Christian virtues, so Paula was unlikely to shine. Paula ended up being the only member of the third generation of her grandmother's family; Blesilla and Rufina died before they had any children, Paulina lived a celibate life with her husband (*Ep.* 66. 2; *PL* 22. 639), and Toxotius and Laeta did not have any more children. Following the rhetoric of virginity had its ultimate outcome in the family of Paula.

Proba, Anicia Juliana and Demetrias

The final group of women I want to present as a case study is Proba, Anicia Juliana and Demetrias - mother, daughter-in-law and granddaughter. Their lives followed a

similar pattern to those already mentioned, and they came from the same group of upper-class Roman aristocrats, indeed were probably able to claim purer ancestry and more wealth than either of the Melanias or Paula. Anicia Faltonia Proba came from one of the greatest families of fourth-century Rome. Jerome refers to them her as 'a lady whose birth and riches make her second to none in the Roman world.' (*Ep.* 130.1; *PL* 22. 1107).[13] Unlike the other women mentioned above, this family could claim Christian ancestry coupled with successful political careers; they could list ten consuls in the past hundred years. Proba's grandmother, Faltonia Betitia Proba, is one of the few Christian women whose literary efforts have survived.[14] Proba herself married one of the greatest men of her time, Sextus Petronius Probus, and they produced five children, one of whom, Anicius Hermogenianus Olybrius (cos. 395) married Anicia Juliana and produced, among other children, the virgin Demetrias.[15] By the early fifth century the Anician clan had lost most of its elder male members and was in the control of Proba and her daughter-in-law, Anicia Juliana. After the death of her husband, Proba consecrated herself to God and gathered to herself a group of like-minded women (Jerome *Ep.* 130.4; *PL* 22. 1108; Augustine *Ep.* 130.30; *OO.* 2. 588). They were involved in the Church politics of their time and supported John Chrysostom (Kelly 1995: 264-5).[16] They appear to have remained in Rome during the attacks of Alaric, and, according to Procopius, they were accused of collusion with the Goths (*Vand:* 1.2.27, cited in Sivan 1993: 84). Soon after 410 they fled, like many of their contemporaries, including Melania and Albina, to their estates in North Africa. At some point soon after their arrival they heard of the death of Olybrius, and Juliana joined her mother-in-law in consecrated widowhood. They also came into contact with the *comes Africae,* Heraclian. He was the assassin of Stilicho, and was ruling Africa and supporting the Emperor Honorius. Zosimus gives a picture of Heraclian as a

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[13]*PLRE* 732; Stemma 7.
[14]E. A. Clark and D. F. Hatch: 1981; E. Clark 1986a: 124-52.
[15]Sextus Petronius Probus: *PLRE* 1. 736; stemmata 24; Ammianus 27.11; Croke and Harries 1982: 115-7; Anicius Hermogenianus Olybrius *PLRE* 1, 639.
[16]John Chrysostom's letters 168 and 169 addressed to Proba and Juliana (*PG* 52. 709).

loyal supporter of Honorius, starving Rome out by blockading the ports of North Africa (*NH* 6.10-11). Jerome, on the other hand, describes him as greedy and heartless, wanting only wine and money; he accuses him of selling high-born virgins to Syrian merchants, but the Virgilian and Lactantian echoes, make Jerome's picture a little suspect.[17] Proba fled from one set of barbarians into the hands of Heraclian, and had to buy safe passage for herself and her companions (Jerome *Ep.* 130.7; *PL* 22. 1112; E. Clark 1984: 112). The women settled at Carthage and by 412 were in correspondence with Augustine.[18]

Despite the upheavals of the move to North Africa, the social norms of the upper class seem to have been firmly in place. Not long after their arrival the wedding of Demetrias was to take place. On the eve of her wedding the young girl decided that she would rather remain a virgin. In his letter to Demetrias, solicited it seems by her mother and grandmother, Jerome presents the reader with the now familiar topos of parental objection, but in this case he gives it a particular slant, given the established Christian credentials of the family in question. He pictures a scene wherein Demetrias fears first the opposition of her mother and grandmother, then martyrdom in defence of her chastity, and finally exile in a foreign land (*Ep.* 130.5; *PL* 22. 1109-10). This is Jerome at his rhetorical best; martyrdom was no longer a real possibility, and exile in Romanised North Africa, on rich and extensive estates owned by her family was hardly exile; finally, her mother and grandmother offered no opposition to her decision, but rather rejoiced in it:

> Certatim in oscula neptis, et filia, mater et avia ruunt. Ubertim flere prae gaudio, iacentem manu attollere, amplexarique trepidantem. Agnoscere in illius proposito mentem suam, et gratulari, quod nobilem familiam, virgo virginitate sua nobiliorem faceret.

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[17]cf Virgil *Aeneid* 10. 79; also Lactantius *De mortibus persecutorum* 38 - selling off virgins was a topos of the wicked.
[18]For the background to Augustine's relationship with Proba and Juliana see the introduction to *The Excellence of Widowhood* Fathers of the Church vol. 14: 267-74. Chronology of Augustine's correspondence with the Anician women: AD 412: *Epp.* 130 and 131 to Proba; AD 413: *Ep.* 150 to Proba and Juliana thanking them for a souvenir of Demetrias' consecration; AD 413/4*On the good of widowhood* to Juliana; AD417/8: *Ep.* 188 from Augustine and Alypius to Juliana.

Mother and child, grandmother and granddaughter, kissed each other over and over again. The elder women wept copiously for joy, they raised the prostrate girl, they embraced her trembling form. In her purpose they recognised their own mind and congratulated each other that now a virgin was to make a noble house more noble still by her virginity' (Ep. 130.6; *PL* 22. 1110).

This is 'Aunt Sally' rhetoric: set up a hypothesis and knock it down to create the effect you want. Jerome had never met the women of this family as he himself says (130.7; *PL* 22. 1113), and he was not a witness to Demetrias' night of indecision, if it ever took place. However, the story does show that, despite two generations of ascetic rhetoric, social expectations were still focused on marriage and the transference of property. Demetrias' story has a different ending to that of Melania, who agreed to marry in the first instance. However, the Anicii were not about to die out with the ending of Demetrias' prospective marriage; Anicia Juliana had other children, and the family was generally prolific enough to survive into the fifth century and even provided occupants for the imperial throne in 455 and 472. By the early fifth century the ascetic rhetoric was so pervasive that Demetrias, like Paula the Younger, could enhance the spiritual capital of her family in a way that did as much social good as an advantageous marriage. Her mother and grandmother could afford to support her decision because the family had a prolific number of heirs. It may also be that the loss of estates in Rome and the persecution of count Heraclian has depleted family fortunes to the extent that they could not support another dowry at this point. In the Roman world at this time life was relatively precarious for women without male protection. After the Gothic attack on Rome there was a general sense of insecurity, particularly among those exiled and away from their established social networks.

The three women and their companions settled at Carthage and remained close and together for the rest of their lives. Demetrias was consecrated to virginity by Bishop Aurelius at Carthage in 413 and in the following years we can see her and her mother and grandmother in close contact with influential Churchmen. As wealthy Christians with powerful connections, they were potential patronesses and

were courted by great churchmen attempting to place themselves as the spiritual mentors for the women. In response to the request by the older women for advice for Demetrias, many of the leading Christian figures of the day replied, including Jerome in the letter noted above. Augustine responded with a treatise addressed to her mother: *On the good of widowhood*, in which he suggests Demetrias read his early work, *On holy virginity* (*De bono vid.* 29; *OO*. VI. 650). Migne also lists a letter written to Demetrias, allegedly by Pope Leo but now attributed to Prosper of Aquitaine (*PL* 55. 161-80: *Epistola ad sacram Demetriadem*). She also received, apparently solicited by her mother, a letter from Pelagius (*PL* 33. 1098-1121: *Ad Demetriadem c* AD 415). Pelagius had been in Rome in the ten years prior to Alaric's attack and had been popular among upper class citizens there, both for his austerity and for his ideas that God's grace was not essential for salvation (Brown 1970). It seems Juliana was still in contact with him during their time in Carthage. Augustine's *On the good of widowhood* had several references to false teachings, and in her thanks for the treatise, Juliana assures Augustine that she is free from such influence. However, Augustine pressed the point by writing a second time and demanding to know if Demetrias had received communication from Pelagius, saying that he knows Juliana had requested such a letter and reiterating the points of *On the good of widowhood* (Augustine *Ep.* 188.14; *OO*. 2. 1045).

It is worth examining the strength of family bonds evidenced in these texts, both in terms of personnel and in textual content. Proba and Juliana were probably a formidable pair of women for men like Augustine and Jerome to approach. The women present a solidarity and loyalty to one another and to their fellow women that is remarkable. Both grandmother and mother share concern for Demetrias and want advice for her. As in the case of Albina, Augustine writes to her mother as nominal head of household, not addressing himself directly to Demetrias. In his earliest correspondence with the trio, a letter to Proba on prayer, he recognises her as 'a widow of high rank and wealth and the mother of a large family who are still

140

with you' (*Ep.* 130.6; *OO.* 2. 574). He also advises her that one of the main things to pray for is her family.

On the good of widowhood is in much the same vein as Augustine's earlier works on the good of virginity and marriage, and much of what is said there is reiterated in this letter to Juliana. He starts by repeating the spiritual hierarchy of virgin, widow and wife (2-3; *OO.* 6. 627-9), then praises Juliana for her motherhood and the good rearing of her children (14; *OO.* 6. 638), and finally praises Proba for the spiritual 'beauty' of the widowhood she shares with Juliana (24; *OO.* 6. 644). The main thrust, though, is that despite their saintly status mother and grandmother are not the spiritual equals of Demetrias. Juliana may fulfil her motherly duty by caring for her other children and watching over Demetrias, and Proba may be a widow of the first order and make praying for her daughter-in-law and granddaughter her first priority, but neither can claim the place assigned to Demetrias. Much of *On the good of widowhood* is addressed to Demetrias, even though the addressee is her mother:

> Illa itaque sancta virgo, quam Christo volentem et petentem obtulisitis, vidualibus aviae matrisque meritis addidit aliquid de merito virginali. Non enim nihil inde habetis, quae hanc habetis: et in illa estis, quod in vobis non estis. Nam ut sancta virginitas adimeretur nubentibus vobis, ideo factum est, ut nasceretur ex vobis.

> That holy maiden, whom you have offered to Christ in accordance with her own free will and desire, has by her virginal merit enhanced the merits of widowhood of her mother and grandmother. It is no small advantage for both of you to have this child, and in her you are what you are not in yourselves. God willed that marriage should deprive you both of the privileged of holy virginity in order that she might be born of you (18; *OO.* 6. 639).

In later years Augustine wrote to Juliana in a similar vein:

> Hinc ergo et sancta virginitas, qua te filia volentem gaudentemque vicit, natu posterior, actu prior, genere ex te, honore ante te, aetate subsequens, sanctitate praecedens; in qua etiam esse coepit quod in te esse non potuit. Illa quippe carnaliter non nupsit, ut non tantum sibi, sed etiam tibi ultra te spiritualiter augeretur: quoniam et tu ea compensatione minor illa es, quod ita nupsisti ut nasceretur.

> This is the source of the holy virginity in which you daughter surpasses you, to your joy and satisfaction; after you in age, before you in conduct;

141

of you by birth, before you in honour; inferior to you in years, excelling you in holiness. In her you begin to have for yours what you could not have in yourself. She indeed, did not contract a carnal marriage and as a result she was spiritually enriched more than you, yet not only for herself but for you; though you are inferior to her, in this you are made equal to her that your marriage was the cause of her birth. (*Ep*. 188. 6; *OO*. 2. 1041-2).

Proba, Juliana and Demetrias are good evidence of the rhetoric of asceticism working alongside traditional family structures. As a family they use female relatives to follow the new set of Christian precepts while the male line continued in the traditional way.

4.3 Discussion

An understanding of the general nature of Roman assumptions of mother-child relations is essential in reading these texts. It is implicit in the tension between the demands of the ascetic narrative that tend to create a situation of family opposition, and in the strong affective bonds that exist between mothers and daughters in these texts. Incidentally, they all show a marked difference in the way mothers responded to sons and daughters. This may be due again to Roman assumptions of the norms of mother-son relationships, but also to the specific religious and cultural context of this aristocratic group at this time.

Certain mutual expectations of family obligations existed between parents and children. Parents expected children to be obedient and to perform two primary duties: the continuation of the family name and the transmission of wealth to the next generation. Children could expect to be supported and educated and to inherit from both their parents, and would rely on them to arrange suitably advantageous marriages. Both sides were bound by mutual *pietas*, which, in theory, encompassed obedience, loyalty, support and affection. Dixon has examined mother-daughter relationships in her definitive book, *The Roman Mother* (1988: ch. 8). She rightly notes that evidence for such relationships is not nearly so plentiful as for that

between daughters and fathers (Dixon 1988: 210).[19] In addition to this drawback, what evidence we do have is framed by male writers to fit their view of social life and family relationships, and, as we know, the view of women in those same families may be different. However, we can make some generalisations about expectations of maternal behaviour towards children, and daughters in particular. It hardly needs saying that these apply primarily to the upper classes.

Traditionally mothers were meant to be particularly involved in the upbringing of their young children. Ideally, as we have seen (see Chapter one) they should nurse their infants themselves or, at least, supervise their care and choice of wet-nurses and nursemaids.[20] Mothers were expected to be interested in their child's development and to worry over childhood illnesses. As a daughter grew, much of her education and socialisation would take place under her mother's direction. Mothers were also actively involved in the choice of husbands and the provision of dowry (Dixon 1988: 215). On marriage a daughter would leave the parental home, but the expectation seems to be that she would retain a close tie with her mother, seeking her advice on household matters and her own childcare. A young wife in a new household may also develop close ties with her mother-in-law. The arrival of grandchildren may have enhanced the bond; as we have seen, the grandmothers in the case studies above were all active in shaping their granddaughters' lives. The realities of upper-class Roman life may also have meant that a child experienced a series of step-parents and surrogate carers. In such cases the ideal was that the biological mother would retain a closeness but this could not be guaranteed, and presumably would depend on the nature of the persons involved.[21] Inheritance networks were structured to cater for this, and a mother's inheritance was legally earmarked for her offspring (see following chapter). It is perhaps the prevalence of legal evidence that influences Dixon's pragmatic conclusion: a mother 'was above

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[19]For fathers and daughters see J. Hallett 1984.
[20]On wet-nursing and child care see chapter one, n. 24.
[21]For the effect of marriage and divorce on parent-child relations see Bradley 1991: 125-76.

all a figure of authority, to be deferred to... the authority was enhanced by her power of (economic) disposition' (1988: 227). Dixon does not deny a close emotional bond between mothers and daughters but recognises that this is hard to track in the evidence 'and to press it any further would be an exercise of creative sentimentality rather than legitimate scholarship' (1988: 228).

With that caveat in mind, how are we to view Melania the Elder and Paula's abandonment of their children portrayed above? It must be said that to a late twentieth-century mind the picture presented in the sources is, as Gillian Clark has said, 'all extremely hard to take' (Clark 1994: 3). However, as we have seen, the relinquishing of family ties, especially those that are most dear to you, is one of the topoi of the ascetic *bios*. Writers played up this giving up of the world, and the harder it was the greater the grace that accrued. For the aspiring ascetic fighting the demands of family opposition was the greatest obstacle. As Ambrose said: 'If you conquer your home, you conquer the world' (*De Virginibus* 1.12.63). We get the impression, deliberately created by writers such as Paulinus and Jerome, that mothers willingly 'abandoned' their children and put their pursuit of Christian piety and virtue before the needs and demands of the family. It is presented as a hard choice, but one that a mother can conquer.

Widows such as Melania and Paula could argue that they had fulfilled the demands of society by producing heirs and leaving them well provided for, and were within their rights in retiring from life. Indeed, being a *univira* was an honoured position in Roman ideology and even more so in the Christian world (Lightman and Zeisel 1977). They could also claim that in providing for their children they had done all that was required of them in terms of social expectations. In the context of late Roman Christian family relationships it is significant that all the elder women are widows. They can claim a certain freedom from male control, and the respectability of widowhood, especially consecrated widowhood. None makes the

choice for asceticism while their husbands are alive. Unilateral decisions of this nature were frowned upon. Augustine writes to Ecdicia, who has taken up the celibate life and so forced her husband into adultery, and who appeared to be disinheriting her son by giving away all her possessions to passing monks. Augustine reproves Ecdicia for not submitting to her husband's wishes but also for taking her son away. He advises her to return to her husband, to dress so as not to annoy him and most of all to return the son to his father (*Ep.* 262; *OO.* 2. 1348-54). Augustine takes the line that she has done wrong in choosing asceticism over family, and has abandoned her obligations to husband and son. To part with all your wealth was not acceptable as it left the son destitute; this was not behaving as a mother should. In this case Augustine makes the choice for marriage over asceticism, for him the one should not negate the other unless it is by mutual consent. Ecdicia was not at liberty in the same way that Melania and Paula were to leave their families.[22]

Melania and Paula, on the other hand, had performed the duties required of a mother in the late Roman world. Melania left her son well provided for, to the extent that by aristocratic social and political standards he was a successful individual. She returned to help her family during the troubles of the early fifth century. That said, the story of Melania deserting Publicola as presented by Paulinus - 'she loved her child by neglecting him and kept him by relinquishing him' (*Ep.* 29.9; *PL* 61. 317) - is perhaps disingenuous. Melania may have left her son in Rome as a small boy, but she may also have remained long enough to ensure his start on a successful public career; his age at her departure is unclear (Harries 1984: 59; G. Clark 1994: 2). Melania the Elder may not look like a 'good mother' to a modern eye, but she can be said to have fulfilled the social expectations of her time in allowing her son to be brought up to perform his civic duties. Publicola certainly had the values of the late Roman aristocracy well

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[22]For more on Ecdicia see Cloke 1995: 128-31; Cooper 1996: 106-8.

imprinted in his character, if we are to believe the *VM*. If, on the other hand, we look at the letters of Paulinus of Nola and the Lausiac History, it could be said that he was a credit to the values of both Rome and his mother.

Jerome presents an even more heart-rending picture of the young Toxotius and Rufina weeping on the shore and holding their arms out to their mother, Paula, as she sails east (*Ep*. 108.6). This is a very moving piece of rhetoric to make Paula's choice seem all the more heroic. Like Melania and Publicola, we can assume some dissembling here. Jerome, after all was not present at this touching scene and is relating it as part of his encomium on Paula, written almost twenty years after her departure. It may be safe to imagine that she was already somewhat distanced from her son to the extent that he was being brought up in the pagan tradition, perhaps, by the same uncle and aunt who attempted to dissuade his sister from her virgin life.[23] Of Paula's remaining children, Blesilla was already dead, Paulina married and Rufina ready to be so. The choice of a spouse for either Toxotius or Rufina may have been finalised already, since marriage arrangements were made while the partners were still relatively young, and in any case would not have been left to Paula alone. Any marriage alliance would have involved the redistribution of the patrimony and the family name, and the paternal family would have expected a say in the matter. Like Melania, Paula appears to have provided for her remaining children and so could be considered to have filled at least the minimum of maternal obligations. Jerome also says that like Melania, and obviously as equally dissembling, that before she left Paula gave her children all she had and disinherited herself. This is patently not so, as Paula managed to support Jerome for many years yet, founding and supporting a community in Jerusalem. Most likely she did pass over any inheritance they may have received from their father and which she may have had control of, but she would be under no obligation to part with her own fortune yet.[24]

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[23]This is a suggestion of Gillian Clark.
[24]see next chap. and Harries 1984.

The mother-son relationship, as depicted in the lives of Melania and Publicola and those Paula and Toxotius, can be said to reflect traditional expectations of such relationships. Sons were traditionally expected to be socialised by their fathers or close male relatives. As they grew, however, they might maintain closeness with their mothers, particularly if their father died. Mothers could not introduce their sons to the public world in the same way that other males could, but sons could give their mothers access to the public and civic arena (Dixon 1988: ch. 7). Only during the period in question did mothers finally gain the right to be legal guardians for their children (*CT* 3.17. 4, AD 390: see Ch. 5, section 5.6), although it appears they had been performing the role informally for many years. In the case of the father predeceasing, a widowed mother would obviously have more power over and interest in her son's affairs. The situation for Paula and Melania was further compounded by their religious faith. They seem to have followed a now established practice in Rome of allowing the son to assume the pagan traditions and responsibilities of the family. Toxotius was raised in Rome as a pagan and was finally converted by his wife, who herself came from a family in which her brothers were raised as pagans. Albina came from a similar mixed background, for her brother Volusian remained a pagan until converted by his niece on his deathbed (*VM* 55; Yarborough 1976: 156-7). The evidence for mixed marriages also illustrates a significant point, that mothers are not necessarily conduits for Christianization (Salzman 1989: 214). In all these cases male offspring were brought up along traditional lines. Albina's brother, Volusianus, was finally converted by his niece; Toxotius by his wife; Publicola's religious status is unclear but he could, like the Probii, exist easily in both worlds. This is rather a striking comment on the vibrancy of paganism at Rome in the late fourth and early fifth centuries.

It seems that this rhetoric exposes two important issues: first, that mothers were expected to love their children and care for them, particularly in the early years but even after they are grown up; second, that mothers ideally remained close to their children, but that sons and daughters could be treated differently. This may appear commonplace, but much modern scholarship has argued that affective ties were not an expected part of family life in the ancient world. My opinion is that these sentiments, rhetorical though they may be, are another nail in the coffin of that argument.[25] True, Jerome is dissembling; he is writing many years after an event at which he was not present. The story of Paula's departure is from his encomium on her, sent to Eustochium on her mother's death in 404. But he presents an image that would have had meaning and pathos for his readers, creating the sympathy he required to enhance Paula's choice. However, the behaviour of Paula and Melania must be put into context. Affection is a culturally constructed emotion and ways of expressing it differ in time and place and even within societies. One person may think it shows affection to give children the best opportunities in sending them off to boarding school, another may feel the opposite and educate them at home - these are extremes, but they make the point. Studies in the Roman family are divided on the nature and role of affective bonds, but do recognise the importance of examining them in context (Garnsey 1991).

One of the ways historians often use to look at sentiment is to consider reactions to death. Descriptions of grief and records of funerary inscriptions are difficult to use as evidence of private emotions because of their formulaic and public nature. However, it is generally assumed that parents did mourn their children, and a certain degree of grieving was considered right and proper, which of course does not guarantee its genuineness. Both Paula and Melania lost grown-up children and mourned their deaths. Melania is portrayed as a good stoic (Paulinus of Nola *Ep.* 45.2; *PL* 61. 392), Paula as out of control at Blesilla's funeral and, more

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[25]For a summary of the 'indifference debate' see Dixon 1992: 98-108.

appropriately, sedately grief-stricken in Jerusalem on the news of the deaths of her other children (Jerome *Ep.* 108.20; *Pl.* 22. 898). These representations of maternal grief can, admittedly, be read as suiting the demands of narrative and as formulaic in construction, but they do show a lasting emotional bond between mother and child. Despite distance in time and place, both Melania and Paula consider themselves as mothers, and they do not abandon the role when they take up the ascetic life.

The common theme that runs through these lives is the presence of real or imagined opposition to their life choices. Within Paula's family the tension with family and wider society is first shown in the person of Praetextata, Eustochium's paternal aunt and representative of traditional Roman society, then in the adverse reaction to Blesilla's early and perhaps ascetically induced death. The writers present a picture of a group of vociferous critics who resent both the potential loss of wealth and the extreme, and no doubt alarming behaviour of a number of young women. That there was an anti-ascetic movement in the Church is shown by the writings of Pelagius and Jovinian, but they did not win the intellectual battle and so, unfortunately, are mostly lost to us, or are known only from the work of their detractors, as with Julian of Eclanum (see above, chs. 2 and 3.). The role of these critics in this literature is to point up the strength of conviction in those that triumphed over opposition. For instance, Albina's objections to her daughter's deprivations would probably have seemed reasonable and been understood by her contemporaries in Rome, and the realities of the ascetic life were known to Albina at first hand from her relatives, Marcella and Asella.[26] What is paradoxical is that, despite this anti-family rhetoric, all the case studies offer examples of close and enduring relationships between mothers and daughters. Albina's relationship with her daughter was obviously strong. Whatever role the narrative of the *VM* might require her to take, it appears that the bond between mother and daughter was

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[26]For Marcella and Asella's way of life see Jerome *Ep.* 23, 24, 127: *PL* 22. 425; 427; 1087ff.

always close and, indeed, was strengthened by the choice of asceticism rather than broken by it, as the anti-familial rhetoric of some ascetics might have us believe. Likewise that of Eustochium and Paula.

The absence of male authority also placed the mother as mediator between the outside world and the reclusive 'cell' of the virgin daughter (Harvey 1996: 50). Albina and Anicia Juliana act as heads of households in their exile; it is they who interact with the wider world and so allow their spiritually superior daughters to remain hidden. As mothers they continued to take responsibility for their daughters' well-being. Albina protected Melania and Pinianus' financial interests as well as being continually anxious about her daughter's health. Taking up the celibate life could then allow mothers and daughters to stay together and share a life of mutual support without the interruption of marriage. We know very little about the interior workings of these relationships, but we can see from the writings of Jerome that Paula and Eustochium enjoyed a shared life of intellectual and biblical study as well as one of prayer. They learnt Greek and Hebrew together and were constantly demanding more exegesis on the scriptures from Jerome (LeMoine 1996: 230-41).

Yet again, the paradoxes of the ascetic rhetoric and the virgin life are revealed. The virgin life takes women out of the nexus of family, marriage and inheritance, but at the same time it can be used to highlight the closeness of family bonds, particularly between women. Demetrias' choice had the advantage of enhancing the prestige of her family. The rhetoric of virginity has offered a new hierarchy of authority and status for women, one which places virginity above widowhood and marriage. This new order has some effect on the relationship of mother and daughter; the virgin daughter now surpasses, in spiritual status, her widowed, or married mother, thus subverting the traditional order of authority within the household. We can see instances of this in other case studies: Albina considers herself guided by her

daughter (*VM* 33); Eustochium is spiritually superior to her married sister Blesilla (Jerome *Ep.* 22.15; *PL.* 22. 403). This reversal of moral authority is made fully explicit by Augustine in his letters to Juliana: Demetrias must obey her mother but Juliana must recognise that her daughter is her spiritual superior. He expressed similar sentiments in a letter to a deacon, Felix (*Ep.* 3*). This letter concerns a matter that cannot have been uncommon in the period: a mother had dedicated her infant daughter to a life of consecrated virginity when the child was near death, on the condition that the child should live. Now that the child has survived (it is not clear how old she is at the time of writing), the mother wants to offer her own consecrated widowhood in exchange. It is also unclear whether the mother herself could remarry and have other children, or whether she now wants her daughter to have the chance of motherhood and so herself have grandchildren. Augustine is unimpressed by her wishes; he says that on the one hand the vow she made on her daughter's behalf is not ratified until the daughter herself makes the decision, on the other that her consecrated widowhood cannot counterbalance her daughter's consecrated virginity, as virginity is more powerful than widowhood (*Ep.* 3*.2). There is the impression that Augustine feels this mother is doing something a little shabby. Not only is she only offering her own sacrifice conditionally but she is pre-empting her daughter's greater offering. His final advice is that they both live consecrated lives, together as widow and virgin. In this case the status hierarchy will be observed as with Demetrias and Juliana, for the virgin daughter is superior to her widowed mother (*Ep.* 3*.3).[27] The virgin daughter can become a spiritual mother, she can accrue to herself that which her mother lost in having her. There is a reward for the mother, though - she can become Christ's mother-in-law (Jerome *Ep.* 22. 20; *PL.* 22. 407)!

It is also instructive to note how few times Mary is held up as a role model in the texts studied in this chapter. She is referred to twice in Jerome's letter to

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[27]For more information on these letters, discovered by Divjak, see translation with commentary by R. B. Eno 1989:31-3

Eustochium (*Ep.* 22. 21, 38; *PL.* 22. 408, 422); once in his letter to Paula, to comfort her on the death of Blesilla (*Ep.* 39.6; *PL.* 22. 473)once in the letter to Laeta on the younger Paula's education (*Ep.* 107.7; *PL.* 22. 874); and once in Augustine's treatise to Juliana, *On the good of widowhood* (16; *OO.* 6. 640). This amounts to surprisingly few mentions, and all, but one, project Mary as a model for the virgin life, not in her role as mother. Eustochium and the young Paula are to emulate her, in her seclusion and terror at the visit of Gabriel, implying they should live reclusive lives and not be used to visitors. Augustine advises Juliana that she should pray after the example of Anna, while Demetrias pray after the example of Mary. In all these examples Mary is a symbol of virginity, her motherhood is suppressed, and it is the virgin daughters who are to follow her. Mary's motherhood is used to comfort Paula, grieving over the death of a child. Jerome imagines Blesilla talking to her mother from heaven, saying 'In place of you I now have Mary, the Mother of the Lord'. This shows how the figure of Mary can be manipulated as a symbol, but also reveals that for both Augustine and Jerome it is her virginity that is paramount. It may also suggest that, despite the ongoing discussion on the nature of Mary and her theological role, she was not yet a figure of particular devotion for women.

4. 4 Conclusions

Did the rhetoric make a difference to the lives of women? It can be said that in some particular instances some women were persuaded to live their lives differently from traditional practices. However, despite the strong anti-family thrust of the ascetic rhetoric, what we see in these particular examples is the very strength of the family unit as conceived by women. In terms of social expectations of mother-child relationships there is not much to distinguish these ascetic Christian families from their late Roman pagan counterparts. In the older generations there is no reneging on maternal responsibilities: children are cared for, or care is provided for them, marriages are arranged and inheritances are

settled, and, finally, deaths are mourned. Only in the case of Melania the Younger are there no other heirs to continue the family name; in all other instances the next generation is potentially assured. Indeed, perhaps the difference lies in the very strong bonds that existed between the mothers and daughters who shared a life of devotion. A difference also exists in the new ideology of virginity which subverted the traditional norms of moral authority within the family. Traditionally the older generation were seen and moral guides; now virgin daughters were perceived as spiritually superior to their mothers. This would have had little affect on the public realm, however, as these daughters are secluded and it is their mothers who continue to pursue the traditional role of protecting their children's interests.

What these families do achieve is to transform their biological relationship, one that was denigrated in the ascetic rhetoric, into a spiritual one. Christian rhetoric had made a virtue of praising the spiritual family over the biological one, but in these examples the two become one through the strength of the relationship between consecrated widowed mother and consecrated virgin daughter (Harvey 1996: 55). These are only a very small group of women and they are privileged in the evidence, but they represent an image of Christian motherhood at work. They were influenced by the rhetoric, it had a real effect on their lives, but they were also making it work for them. While many of their actions serve a narrative purpose that defeats the establishment of any 'real' historical figures, at times we can glimpse moments of independent actions where aristocratic women use their role as mother as a position from which to act.

Chapter Five

Mothers and the law [1]

For ease of reference the main laws referred to here are contained in two tables found at the back of the chapter. Table 1 displays the laws only by Code number, in chronological order under subject headings. Table 2 is an expanded version of this material, containing a brief explanation of the content of the law.

5.1 Introduction

The lawcodes of the later Roman empire concerned women as mothers in two primary and interconnected ways: they defined legal status, and thus the ability to both inherit and bequeath. Lawcodes tend to be traditional and conservative and thus to enshrine a society's general assumptions about kinship relations and gender, so it may be possible, where we see changes in laws that affect family life, to assume a shift in social behaviour and expectations. Also, as law is traditionally reactive rather than proactive in the Roman world, it is reasonable to expect that legal rulings may be late in recognising what has become common social practice. The major shifts that are identifiable in this period are the increased legal recognition given to the mother-child bond, notably in the transference of property, and the improved position of illegitimate children. A series of laws sought to safeguard the inheritance of children from both their parents at the expense of the wider agnate family and alongside this evolved the legal recognition of the widowed mother in the role of guardian. Such legislation might also appear to undermine the traditional position of the father and the institution of *patria potestas*, one of the defining elements of the classical Roman family. However, as we shall see the notion of *patria potestas* and its implications for the transference of property remained remarkably persistent. Rulings on status also give an insight into non-elite groups in society. It is in the law codes that we can uncover attitudes to family groups in other social classes, such as coloni, and those

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[1]This chapter was first drafted in March 1995, it was then rewritten to take account of Judith Evans Grubbs' *Law and the Family in Late Antiquity* , Clarendon Press, which I first saw in summer 1995, and my debt to her work is hereby acknowledged. The publication of Antii Arjava's *Women and the Law in Late Antiquity,* Clarendon Press, in summer 1996, added yet more to the scholarship on this subject. I have incorporated relevant references where possible. Arjava offers a summary of the arguments included here at pp. 76-108.

outside lawfully recognised marriage, like slaves. The tension between the traditionalist nature of law-makers and changes in social practice is evidenced in the apparently contradictory nature of some laws and the frequent annulling of a ruling of one emperor by his successor.

First it must be said that the law and legal rulings in the main remain concerned with preserving the integrity of the *familia* and its property. Successive generations of lawmakers were concerned to ensure that property stayed with the correct line of succession within the *familia*. The law was rarely concerned with mothers *per se*, and laws relating to women and children regarding status and inheritance served interests other than those of the woman as mother or her offspring, though they often had legal and social consequences for both. This chapter will argue, among other things, that, while the law was still concerned primarily with conserving the *familia* and property, we can see a subtle change in the definition of the *familia* with an increasing legal recognition of the mother-child bond and a loosening of the consequences of *patria potestas*, if not the ideal. Moments in the legal relationship of the mother-child-*familia*-property nexus, such as guardianship and the transference of property to concubines and their children, which were the occasion of special legal instruments in the classical period, became part of the code of legal practice of the fourth and fifth centuries.

Law has its limitations as a source of information for the lives of women, but it can offer a balance to the images offered by other sources, particularly the rhetoric of the Church Fathers. Because of its conservative nature it tends to support the traditional view of how women should live their lives. In addition, particularly in discussions about status, it can offer a glimpse of the non-elite groups in society, albeit from the top down.

5.2 The Texts:

Editions used:

Corpus Iuris Civilis, ii. *Codex Iustinianus*, Paul Krueger (ed.) 15th ed. 1970, Zurich. (*CJ.*)

Corpus Iuris Civilis : The Civil Law vols. 12-14. *The Code of Justinian* P. Scott (ed. and trans.) 1932 (repr. 1973). AMS Press: New York.

Theodosiani Libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes vols. 1.1, 1.2 and 2, T. Mommsen and P. M. Meyer (eds.) 1905 (repr. 1962) Weidmann: Berlin. (*CT.*)

The Theodosian Code and Novels and the Sirmondian Constitutions C. Pharr (ed. and trans.) 1952, Princeton University Press: Princeton.

The Digest of Justinian vols. 1-4 T. Mommsen and P. M. Meyer (ed.). A. Watson (trans.) 1985 University of Pennsylvania Press: Pennsylvania. (*D.*).

The body of Roman law that has come down to us consists of two main corpora: the *Corpus Iuris Civilis* and the Theodosian Code. These were compiled in the fifth and sixth centuries AD but include both rulings of emperors and opinions of jurists from the second century onwards and records of the earliest Roman law, the Twelve Tables.

The Theodosian Code is a compilation of imperial edicts dating from the reign of Constantine to 437, the date of publication. It represents the first half of a great project of Theodosius II, whose aim was to rationalise the huge body of legal opinion that was already in existence. It contains a series of imperial edicts gathered together in sixteen books and arranged under subject headings. Under each subject the rulings were arranged in chronological order. This arrangement presents problems: since all the laws on a certain subject were collected under one heading, it is difficult to tell whether later laws superseded earlier ones on the same matter. Such an arrangement may be helpful in that the rationale behind the process of change may be documented, but it also has its drawbacks; certain rulings may have covered more than one subject, and it is possible to find several laws that the compilers split up so as to fit their subject format, resulting in some laws being given out of context (see, for example, Section 5.4.2). For most of the surviving edicts the date, place of issue and addressee are given, so in theory disparate pieces of a single law could be brought together. Unfortunately dating is also often a problem, as is interpolation. One of the briefs of the compilers was to

make changes where the original wording was unclear, and some laws are deliberately or mistakenly attributed. Many of the laws also include fifth-century 'interpretations', although the interpretation may often be more obscure than the law itself.[2]

The laws that are included in the Theodosian Code and the accompanying Novels (new laws published by subsequent fifth-century emperors) are considered to be edicts, that is rulings of the emperor that, though sometimes addressed to an individual, are understood to be considered as general law (*leges generales*: Harries and Wood 1993: 3). Many imperial rulings from the second to the sixth century are also included in the Code of Justinian, but many of these are rescripts rather than edicts. A rescript was an imperial response to the queries of a particular group, be it a community, an official or an individual, and it is therefore difficult to ascertain how widespread their application might have been. Rescripts often did reflect general law or set a precedent, but we cannot assume empire-wide application for any single law. It is also difficult to know if the questions they answer reflect a general query or a specific and personal anxiety on the part of the applicant. That this ambiguity was a problem for the Romans themselves is reflected in a ruling of Arcadius in 398 stating that rescripts should apply only for the cases for which they had been issued and therefore cannot be considered as *leges generales* (*CT.* 1.2.11; Harries and Wood 1993: 3). The present chapter uses primarily the imperial rulings contained in both the Theodosian Code and Novels and the Code of Justinian. When a law is referred to as authored by a particular emperor, this does not mean the emperor or emperors themselves wrote such a law, though some emperors were more interested in the law than others. It was the convention to begin a law with the name(s) of the emperor(s) and place of issue, so using the emperor's name is a system of quick reference for the

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[2]For the making of the Theodosian Code eee T. Honoré 1986 133-222; J. Harries and I. Wood 1993.

chronology of a law and the area of the empire in which it may have been promulgated.

The Digest, a collection of excerpts from the writings of classical jurists of the second and third centuries and part of the *Corpus Iuris Civilis*, is also used extensively as background and precedents for later laws. The Digest also contains parts of the Institutes, the textbook rules of Gaius and others. Like the Codes, the Digest is collected under titles and gathers together the opinions of various jurists on a single subject. The jurists themselves would often give case histories to illustrate a point, but it is often difficult to tell if these noted cases are real examples or imaginary hypotheses. In close reading one often gets the sense of the jurists offering 'worst case scenarios' in order to cover every ramification of a certain law. As with the imperial codes, the process of compilation presents problems in that the mechanics of excerpting means that points are often made and taken out of context. In addition, in the case of both the Digest and the Codes the compilers of the sixth century were working to serve the needs of their own age rather than an archive operation, so we have no idea how much they may have interpolated or omitted.

5.2.1. Law and Society

Lawcodes essentially offer a society a set of rules which it can choose to obey or not. The relationship between law and the society that creates it is complex. To paraphrase Geertz's analysis of ritual, a society may look to the law codes for models *of* correct practice, but it also looks to the law to create precedents *for* correct practice (Geertz 1972: 167). The question is, how far do legal texts represent the social conditions of their time? Anachronism, interpolation and the general conservative nature of Roman law, in all periods, create problems for relating the codes to social practice. On the one hand it could be argued that since the sixth-century compilers of the Digest considered it proper to include extracts

from the Twelve Tables to third-century jurists as relevant to their own day, there was a great deal of continuity between the fourth century BC and the sixth century AD. This is highly unlikely, but some ideals and self-images of society remain strong and did have a remarkable continuity throughout the span of the empire, though they may have changed over time. A prime example of this is the predominance of the agnate family and the institution of *patria potestas*, which do alter both in application and significance but remain strong as ideals of family structure.[3] Due to the reactive and conservative nature of the law it is difficult to track change. Roman lawmakers, be they the people, or the senate, the jurists of the emperors and their quaestors, tended not to be innovative or active in the lawmaking process. Most laws were a response to a particular issue. The issue may have been one that affected the general population or an individual, and so it is not possible to judge the extent of change. It is equally impossible to know how many people were affected by the law. Then, as nowadays, most people probably had little recourse to or knowledge of the law until they either came into conflict with it or required its support. Additionally, in the Roman empire, law theoretically concerned only Roman citizens, though after 212 this was a vastly extended group. Even among citizens the majority of the population probably had little contact with the legal system, and those most affected by the law must have been the property-owning classes.

It is also a constant in this chapter that law is rarely concerned with women for themselves but usually as part of the *familia*. It is their position in the structure of the family and their role as heirs and conduits for property that bring women to the lawmakers' attention. Quite often a law that concerns marital or quasi-marital relationships also embodies comments on female behaviour or *a priori* assumptions about the proper place of women in society. It is unlikely that the sixth-century compilers worried themselves overmuch about women's position in

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[3]For more on the nuancing of *patria potestas* see R. Saller 1994.

society unless it was to do with crossing status boundaries improperly, and in such cases they were far more concerned with the outcome for inheritance than for the women themselves. Law did affect women's lives, however, not so much in their daily behaviour but certainly in controlling certain aspects of family life, particularly their rights over their children and property.

It is almost superfluous to state that women were not part of the lawmaking process or, ideally, part of the process of the law. In the classical period it was preferred that women did not attend courts but had a male representative to do so for them. The law literally considered women *infirmitas* and in need of guidance, and in the earlier empire of tutors throughout their lives.[4] Increasingly in the third and fourth centuries we see imperial rescripts addressed to women, but they remain a very small proportion within the body of the law as a whole.

On the positive side, legal texts must embody the ideals and social expectations of both the social groups who create them and the groups who use them - probably one and the same in the ancient world. As social expectations change over time, so lawmakers follow, but usually a step behind. The time lapse between social realities and the passing of the law may disguise the chronology, but it is still a marker of change. In fact, the very passive and conservative nature of the law makes changes within it all the more significant as they must reflect the change going on in the wider social world. There are obvious ways of using the legal codes to track social change: laws that are repeated often must reflect not only on-going problems and a consequential need to do something about a situation, but also the ingenuity of certain groups to constantly get round the law. Conversely, legal statutes and judgements can reflect social practice by directly contradicting it. Several of the issues dealt with directly or tangentially in this chapter reflect

[4]For female 'frailty' in the legal texts see S. Dixon *'Infirmitas sexux:* womanly weakness in Roman law (*Tijdschrift voor Rechtsgeschiedenis* 52), 343-71; J. Beauchamp 'Le vocabulaire de la faiblesse féminine dans les textes juridiques romains du 3e au 6e siecle', (*Revue de l'histoire du droit français et étranger,* 4), 485-508.

such patterns: control by a surviving parent over a deceased parent's property; the role of guardians; the various methods of filling the curia that had ramifications for the status of illegitimate children. It also appears to be a characteristic of later Roman law that it formalizes processes that were the subject of a plethora of legal technicalities in the classical period.

5.3 Status

It is important to define legal status, because upon that hangs a whole series of legal relationships. This was not at all clear-cut in the Roman world, where there were whole groups of people who literally stood outside the law. Slaves and non-citizens were among these groups, and though laws could be passed that concerned them, they did not possess legal personae and had no right of recourse to Roman law. Furthermore, legal status may not equate with social status and may encompass ideals far wider than might be assumed; both these aspects are apparent when examining the relationship between law and women as mothers.

All women who give birth are mothers, but under Roman law, their rights over their children were dependent on their legal, not their social or biological status. It is important to identify the legal status of a mother in order to define the legal status of her offspring. A mother's legal status was dependent on a number of factors: her birth status, which was in turn dependent on that of her parents and the type of union they had, and her marital status, which was affected by her own birth status and that of her partner. The essential and fundamental point is that a child, male or female, who was the product of a *iustum matrimonium* was considered legitimate and took their status from their father; they related to their father as agnates and therefore had full inheritance rights to the patrimony. Such a child related to their mother as a cognate in law. The mother-child relationship was therefore structured differently in law from that of the father-child. A child born outside *iustum matrimonium* was regarded as illegitimate, and Roman law

161

considered it a law of nature (*lex naturae*) that such children belonged to the mother, thus emphasising the idea that motherhood was a part of nature, something we have seen in the medical texts, and hotly debated by Augustine and Julian. A 'natural child' took on the status of the mother and had no legal right to the father's name or property (*D.* 1.5.24).

There were large numbers of illegitimate or natural children in the Roman world because of the narrow definition of legitimacy as the product of *iustum matrimonium*. *Iustum matrimonium* was itself restricted to certain groups. *Conubium*, the right to enter legitimate marriage, only existed if the couple fulfilled certain conditions: they must not be within the prohibited kinship group, must be of a suitable age, should both be citizens and both be willing.[5] The consequence of *conubium* was that the children took the status and name of their father, and were born Roman citizens and in the power of their father and became his heirs on intestacy (*D.* 1.5.19).

The strict restrictions on who could contract *iustum matrimonium* are an example of where law and social custom diverge. In practice the Romans recognised and accepted all sorts of relationships that could not by law be considered legitimate marriage. By law, *iustum matrimonium* could exist only between citizens (excluding senators and certain other groups, see below) and had a different standing in law to other quasi-marital unions. Other relationships that were regarded as marriage were known technically as *concubinatus* and *contubernium*. Following Treggiari, *concubinatus*, translated as 'concubinage', implied that for one reason or another full legal marriage was not desired or possible. The relationship is usually taken to denote that of a higher-class male with a lower-class, but free or freed, female who lived with a man without being his wife. The

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[5]Legal definition of marriage: *D..23.2.1-4*; on prohibited groups: *D.23.2.53-5*; *CT.* 3.12.1-4, on incestuous marriages, punishment was loss of property and death; Treggiari 91: 37-9; Gardner 1986:31-44; Evans Grubbs 1995:141-2; on ages at marriage: *D.* 23.2.4; K. Hopkins 1964 : 309-27; B. Shaw 1987:30-46.

advantage for the male was twofold: one, he could enjoy a stable sexual, and perhaps loving relationship with a woman, and two, such a woman could not claim his property nor introduce heirs into the succession, as offspring of such a union were illegitimate and therefore had no claim on his property (Treggiari 1991: 52).[6] There is evidence for at least three 'good' emperors taking concubines after the death of their wives, presumably as companions but without the danger of subverting the succession that might have come had they contracted legitimate second marriages. Vespasian took a freedwoman concubine, Caenis, after the death of his wife; Antoninus Pius' concubine was his own deceased wife's freedwoman; the status of Marcus Aurelius' partner is unknown. The point is that all these relationships were public and not considered dishonourable.[7] From the later Roman period two of the best-documented relationships with concubines must be those of Augustine and Libanius. Augustine obviously loved his unnamed partner and their relationship produced a child. The relationship was ended when a suitable marriage was arranged for Augustine at the appropriate stage in his career. Augustine talks of his sadness at their parting, which was necessary prior to the marriage as it was never considered acceptable behaviour for a man to have both a concubine and a wife. Both Augustine's and Libanius' relationships produced children of whom their fathers were not only fond but for whom they also took responsibility. For Libanius the illegitimacy of his child was to prove complicated when it came to inheritance(see below, Section 5.4.5).[8]

Sexual relationships outside marriage had always been an acknowledged part of Roman life, for men. If these relationships were stable they were socially accepted and acknowledged in law but as concubinage, not legal marriage. The advantages for a woman in such a relationship in the classical period were various.

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[6] See also: B.Rawson, 1974: 279-305; S. Treggiari, 1981: 59-81.
[7] Vespasian: Suet. *Vesp.*3,21. *Dom.* 12; dio 65.14; Antoninus Pius: *SHA Ant. Pius* 8.9; Marcus Aurelius: *SHA Marcus* 29. Treggiari 1991:52.
[8] For Augustine see *Conf.* 4.2; 6.25; for status of Libanius' concubine see *Or.* 1.278; *Ep.* 169.2; 188.5; 189.1.

If she was of lower class she might find herself with a better standard of living and with a certain amount of social standing, as the relationship was accepted as monogamous and therefore any offspring were accepted as those of her partner. Her children would be illegitimate but could, in classical law, inherit from their father if they were Roman citizens and expressly included in his will. They had no rights on intestacy, however, and being illegitimate took on the status of their mother (Gardner 1986: 141-4). Ironically a mother in a *concubinatus* relationship perhaps had a closer connection with her children than a woman in *iustum matrimonium*, whose children were seen primarily as part of her husband's family and under his *potestas*. As a concubine a woman could also receive gifts from her 'husband' where a legitimate wife could not (*D.* 39.5.31). Later Roman law addressed concubinage in two seemingly contradictory ways: on the one hand Constantine expanded the groups that were prohibited from forming such a relationship, while on the other there were attempts to legitimise natural children if their parents married (*CT* 4.6.4; *CJ* 5.27.5, both *c.* 336). The recognition of the place of concubines and natural children in the structure of the legitimate family is one of the major changes apparent in later Roman law and will be addressed in more detail below.

The third form of relationship that was recognised in law was that of *contubernium*. This defined a union in which at least one partner was a slave. In such a relationship *iustum matrimonium* could not exist as slaves did not have the right of *conubium*. The term *contubernium* covered a variety of relationships that involved slave and freed or free. It could evolve into marriage once the slaves were freed, as freedmen and women did have the capacity for *iustum matrimonium*. As with concubinage, the children took on the status of the mother; if she was a slave, so were they. Those who were *contubernales* whilst still slaves were, of course, subject to the whim of their masters, who could determine whether partnerships stayed together or children with their mothers. Treggiari has shown, through a

study of inscriptions in Rome, that *contubernium* relationships often imitated marriage and family formation in terms of commemoration (Treggiari 1981: 42-69). For slave women motherhood was a tenuous status. It had no legal implications as a slave had no legal persona. Legal definitions of maternity were so constructed as to exclude slave women. This did not mean that slave families did not exist or were unaffected by laws. For some slave mothers their situation improved in the fourth century with a ruling of Constantine that slave families on imperially owned land should not be split up (*CT*. 2.25.1).[9] Such relationships also came under scrutiny by later Roman emperors who reiterated the first-century law, the *sc Claudianum*. This reflects not only another aspect of the general anxiety about status but also the very real possibility of mistaken identity in the later Roman world.

To recap: the legal status of a child was a consequence of the legal status of the parents' relationship. A child who was the product of *iustum matrimonium* was born legitimate and in the *potestas* of his/her father or grandfather. This had ramifications for inheritance that are discussed below, but in terms of legal status such a child's position is quite clear. Outside *iustum matrimonium*, relationships produced 'natural children'. The legal status of natural children was dependent on that of the mother and thus was varied. Natural children were illegitimate and in law were fatherless; this meant they were not under anyone's *potestas* and thus legally *sui iuris*. A mother could not have *potestas* over them as women did not have the legal capacity for power. Natural children had no automatic right of inheritance from their father, though they could be named in a will. Given the strict definition of *iustum matrimonium*, natural children were common in the Roman world. All slaves and slave-born freedmen and women were illegitimate, as were the children of concubines, and of soldiers. The status of offspring of a

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[9] This addressed specifically to estates in Sardinia so its difficult to ascertain how widespread its application might have been. See Evans Grubbs 1995: 307-8.

concubinatus relationship was complicated and became more so in the later empire. The prohibitions on certain social groups contracting such unions established by Augustus were extended by Constantine, and for other groups retrospective legitimacy was offered. Laws governing the rights of inheritance for natural children also came under review.

As we have seen, particularly with the example of the slave, legal status might not equate to social status. In attempting to define the difference between *matrona* and *materfamilias*, Aulus Gellius explained that the words *matrona, matrimonium* and *materfamilias* all had the same derivation and defined a married woman whether she had given birth or had the potential to do so. However, he went on to differentiate between *matrona* and *materfamilias* in a totally spurious way, defining a *materfamilias* as a woman in the power of her husband. He thus described a *cum manu* marriage, long out of fashion by his own time (*NA.* 18.6.8-9.). This is obviously a bit of Roman dilettantism, as *materfamilias* was the common term for the wife of a *paterfamilias*, or potential *paterfamilias*. A woman married in *iustum matrimonium*, which comprised, as we have seen, a relatively narrow group of persons, became a *materfamilias* whether or not she had children and whether or not her husband was *sui iuris* and so not a *paterfamilias* in his own right. The title *materfamilias* was constructed legally so as to define maternity within the narrow terms of the motherhood of a legally wedded citizen wife. It also, according to Ulpian, encompassed much more than that:

> *Matrem familias* accipere debemus eam, quae non inhoneste vixit: matrem enim familias a ceteris feminis mores discernunt atque separant. Proinde nihil interit, nupta sit an vidua, ingenua sit an libertina: nam neque nuptiae neque natales faciunt *matrem familias*, sed boni mores.

> We ought to regard as the '*materfamilias*' a woman who has not lived dishonourably; for her behaviour separates and distinguishes a *materfamilias* from other women. It will make no difference whether she is married or a widow, freeborn or freed; for neither marriage nor birth make a *materfamilias* but good morals. *D.* 50.16.46.

According to this it would appear that by the second century any woman of good behaviour could call herself a *materfamilias*; the title therefore encompassed much more that being a wife and mother. It meant that certain ideals of female behaviour had to be lived up to. The term *materfamilias* had both legal and social meaning, but it still implicitly assumed a certain class and rank of woman (Thomas 1991: 116-18; Treggiari 1991: 279-80).

5.4 Inheritance

One of the foremost preoccupations of lawmakers was to ensure the correct transmission of property from one generation to the next. A woman's role in this system was twofold. The Romans practised a system of partible inheritance which meant that daughters inherited equally with sons. The system of marriage by which a woman cohabited with her husband but remained in the inheritance networks of her natal family was so structured as to favour the agnate family when it came to the transmission of property. Social practice, however, dictated from a very early period that women considered their children their primary heirs, rather than their nearest agnates. This section examines the changing laws that governed the transfer of property from mother to child and vice versa, with reference to both legitimate and natural children. It covers the early legislation that underpinned the laws of the fourth and fifth centuries through to the final judgements of Justinian. The underlying themes are: the increased recognition of the wider cognate family as the focus of attention, at the expense of the agnate; the slow erosion of *patria potestas* which, however, remained one of the defining elements of legitimacy; the recognition of the rights of concubines and their children and a gradual attempt to convert concubinage into marriage until the effective removal of the differences in terms of inheritance; the concern over the remarriage of one partner and the ramifications of that for the transfer of property and the upbringing of children; and the role of mothers as guardians. In the fourth century we see a reworking of

the rules concerning the transfer of property that in effect convert the special legal instruments of the Digest into general law.

5.4.1 *Ius liberorum, sc Tertullianum* and *sc Orphitianum*

In the fourth century there were still three important classical legal rulings that affected a mother's right to bequeath goods to her children and to inherit from them: the *ius liberorum* of Augustus and the *sc Tertullianum* and *sc Orphitianum* of the late second century. The ideal traditional inheritance pattern kept a woman out of the inheritance networks of her children. A mother in a *sine manu* marriage ideally remained in the inheritance network of her natal family, while her children were in that of their father. In reality, however, it became common practice for mothers to leave property to their children, thus bypassing their own agnates. It is in the question of transmission of property that law and social practice particularly diverge and, in order to achieve the transmission they wanted, Romans could bring an almost infinite variety of legal instruments into play, many of which subverted the traditionally accepted lines of succession.[10]

Under Augustus' marriage laws (*lex Iulia de maritandis ordinibus,* 18 BC, *lex Papia Poppaea,* AD 9) couples who produced three children (or four if of freed status) were rewarded while those who remained unmarried and childless were penalised. For men the *ius liberorum* meant privileged access to offices and for women it meant the right to be without a guardian; for both it meant the right to receive the full amount of any bequests left to them. This *ius liberorum* remained tied to a mother's right to inherit from her children throughout the Roman period, diminished in importance during the fourth and fifth centuries, but was not finally abolished until the reign of Justinian.[11] In 320 Constantine had repealed the penalties against celibacy that were a central part of Augustus' legislation, but he

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[10]seeR. Saller 1991a: 26-47. M. Corbier 1991: 173-96.

[11]For more on the realites of Augustan marriage laws see A. Wallace-Hadrill 1981: 58-80; On the grant of *ius liberorum* as an honourific see Pliny. *Ep.* 2.13; 10.2; For the full implications of the *ius liberorum* for freedwomen see Gardner 1986: 194-200.

retained the *ius liberorum* and the financial advantages and exemptions that went with it. A couple still required it to inherit from one another and, as we shall see, it continued to improve a mother's inheritance rights from her children (*CT.* 8.16.1).[12]

Dixon and Gardner have outlined clearly the position of the Roman mother with regard to inheritance and bequest and the legal and social practices of the late Republic and early Principate (Dixon 1988:41-70; Gardner 1986:163-204). During this period a mother had no legal obligation to leave her estate to her children, nor did she have any right to inherit from a child who died intestate. In strictly legal terms a mother's property would devolve to her surviving agnates; her father if still living, her brothers and sisters, and her brother's children. Women did not enter the family of their husband on marriage but remained in the inheritance line of their natal family. Mothers related to their children as cognates. The father's family were a child's agnates and any property that was left to a legitimate child belonged, in law, to the *paterfamilias*. However, it is precisely in the area of the conjugal family that the divergence of law and social practice can be clearly seen. Dixon has shown that certainly from the late Republic, and probably earlier, there is plenty of evidence of women making wills and leaving their property where they wished, primarily to their children. Intrinsic to Dixon's portrait of the Roman *materfamilias* is precisely the power and respect she commanded because of her ability to dispose of her fortune as she wished. Children could expect to receive a reward for their filial devotion to their mother during her lifetime in the concrete form of a bequest (Dixon 1988: chap. 3).

A mother had a variety of goods (*bona materna*) she could leave: primarily her dowry, but also other property or goods that she might have received from her

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[12]see Evans Grubbs 1993b:122-6; 1995: 119- 22; Arjava 1996: 78-9. It was abolished as a prerequisite for inheritance between husband and wife by Theodosius II in 410 (*CT.* 8.17.2).

natal family or from extraneous sources; these could include property she might own in her own right, or estates she held in trust for her children should her husband pre-decease her. A young widow, for instance, who held her husband's property in trust for her children, would have enhanced authority over her children and perhaps be in control of extensive wealth. This situation could cause anxiety should the widow chose to remarry, and indeed was the subject of much legislation in the later empire. Women could, in theory, leave their wealth where they wished as long as they followed the correct procedure in writing their wills. However, it was not until the second century that the law recognised what had long been social practice and adjusted the legal relationship between mother and child.

In the traditional praetorian hierarchy of succession a mother, as cognate, stood further away from her children in the line of succession than did the deceased's children and paternal uncles. Prior to Hadrian the line of succession was as follows:

1. *liberi* - children, both *sui heredes* and emancipated. [13]
2. *legitimi* - other agnates, e.g. paternal uncles and their children; deceased's brother's sons; patrons of freedmen and women.
3. cognates - mother and all blood relations to the sixth degree, including those through the mother.

The *sc Tertullianum*, late second century AD, dealt with the transference of property from child to mother. Under this law a mother who had the right of *ius liberorum* was given the right to succeed to her children if they died intestate and there was no surviving father or *sui heredes* of the child. This is the first time in law that the mother was privileged in front of other agnates; under the new conditions only the child's father and/or *sui heredes* ranked above her; consanguineous brothers and sisters of the deceased ranked equally with her. A mother moved up the hierarchy into the second level of heirs(*D.* 38.17.2; Dixon

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[13] *D.* 38.7; see Gardner 1986: 193, in strictly legal terms emancipated children had renounced their agnate relationship, but it was felt that the blood relationship should be recognised. See also Dixon, 1988: 54-55.

1988: 54-5; Gardner 1986: 192-200; Thomas 1991: 106-11). There were conditions that a mother had to fulfil in order to inherit under the *sc Tertullianum*: she must have had three children, or four if she was a freedwoman, to benefit from the rights of the *ius liberorum*, and to have appointed a tutor for children on the death of their father (*D.* 38.17.2. 23-46 on the problems of curators and tutors). Significantly these privileges applied equally to the mothers of legitimate and illegitimate children.

The *sc Orphitianum* passed in AD 178 represented an even more radical change in the traditional hierarchy of succession. This addressed the transmission of *bona* from mother to child and allowed both legitimate and natural children the right to inherit from a mother who died intestate. This placed children above all agnates. Prior to 178 children held the place of cognates and would only have inherited if their mother had no surviving agnates. The *sc Orphitianum* meant that the mother's agnates were displaced by her offspring who, regardless of their birth status, became legitimate heirs. There was a subtle asymmetry still extant; such offspring inherited as *legitimi* rather than *liberi*. The distinction is important in legal terms. *Liberi* had an absolute right to the inheritance of a father's estate, *legitimi* on the other hand were in the same class as paternal collaterals, that is, of lower rank in the succession than *liberi*. *Liberi*, heirs of the male, were placed higher than *legitimi*, heirs of the female, even though such heirs were one and the same person. As *legitimi* the heir had to formally accept a bequest and had the right of refusal, as *liberi* the inheritance from the father had to be accepted, debts and all (*D.* 38.17.2. 10-11; Thomas 1991: 108-110). This illustrates the imbalance in Roman law between inheriting from a father and a mother which stems from the fact that a woman had no legal authority, a quality, or lack of it that was intrinsic to the legal attitude towards women.

One of the most significant points about both of these laws is that they did not distinguish between legitimate and natural children. The *sc Orphitianum* recognised a woman's children as her heirs, regardless of their birth or the marital status of the mother. This recognition of the biological relationship between mother and child is part of an ongoing process in the later empire. It is almost certainly the case that these laws acknowledged patterns of inheritance that already existed among Roman citizens. This has led both Dixon and Crook to argue that this change in the line of succession illustrates a shift away from the agnatic family and an acceptance of the 'nuclear conjugal unit as the primary focus of loyalty'. (Crook 1986: 84-85, cited in Dixon 1988: 46). Dixon argues that this recognition of the maternal bond, as expressed in terms of inheritance and producing a change in the law, must reflect an acknowledgement of the feeling that a mother's natural heirs were her children rather than her natal family. She has also noted, quite rightly, that such a change required the collusion of agnates, since it is they who lost out in terms of inheritance. This means that the position of a mother is similar to that of the earlier form of *cum manu* marriage, where a woman entered her husband's inheritance network. By the second century, however, where in Dixon's view, the mother's place is firmly back with her husband and children, forming a conjugal unit that commands loyalty before the natal or extended family, her position is enhanced by giving her legal rights for herself, not by virtue of her relationship to her husband. (Dixon 1988: 45-6;). The fact that these new laws of the second century recognised the rights of natural children may suggest that we are looking at the legal recognition and acceptance of concubinage and other quasi-marital relationships, which do strengthen the notion of the enhanced status of the nuclear conjugal unit, but perhaps also recognise the huge numbers in society for whom *iustum matrimonium* was not possible.

Despite this, asymmetry between the maternal and paternal rights of succession continued. Is it reasonable to see the increasing practice and expectation of

mothers leaving estates to children as a loosening of agnatic ties and a corresponding enhancing of cognate ones when there was a continuing disparity between maternal and paternal rights of succession? Mothers could make wills, and no doubt this gave substance to the maternal bond, but offspring could still query an undutiful will and/or refuse to accept an inheritance from their mother whereas, in the paternal case, the heir had to inherit, debts and all.

The legislation recorded in the law codes of the later empire that affected the transmission of property and goods between mother and child was concerned first and foremost with ensuring the rights of children over their inheritance. It addressed maternal inheritance in two ways: the correct transference of maternal property should the mother pre-decease the father and conversely, the correct transference of the patrimony if the father died first. Both scenarios presented the additional problem of the remarriage of the surviving partner. Step-parents were almost always seen as threatening the inheritance of the children of the first marriage.[14] In the event that the father pre-deceased the mother the question of guardianship was also raised. In both these cases the later Roman situation was markedly different to that of classical law.

5.4.2. Succession from mother to child

In a series of laws entitled *de maternis bonis et materni generis et cretione sublata*, (*CT*. 8.18.1-10), it is evident that customs that were the subject of special rulings by second century jurists had now become part and parcel of the law. The laws gathered together in *CT*. 8.18 sought to protect the rights of children to inherit from their mother and the mother's right to bequeath her property to her offspring without fear of disruption.[15]

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[14]For attitudes to step-parents see: D. Noy 1991: 345-61; M. J. G. Gray-Fow 1988: 741-57.

[15]It is suggested by Mommsen and Seeck and followed by Evans Grubbs (Mommsen in *Theodosiani Libri XVI*, Mommsen and Meyer (eds.) vol.1.1, ccxv; Evans Grubbs, 95:119) that a whole series of Constantine's laws dealing with status and succession, including his abolition of the Augustan penalties for celibacy and childlessness (*CT*. 8.16.1) were part of one package that the fifth century compilers of the code edited and filed under various subject headings. Many of the

Traditionally anything that belonged or was bequeathed to a child still under the *potestas* of his father legally belonged to the father. This meant that should the mother pre-decease the father anything she left to her children was legally his. The father was expected, though not legally bound, to pass such an inheritance on to their mutual children. The Digest recorded various ways a mother might ensure, using the instruments of the law, that her property passed to her children, should she pre-decease her husband; she could charge him with a fideicommissum which would ensure that her share went directly to the children; or she might allow the husband usufruct of her property with the stipulation that the children be given an allowance; or she might charge him with a fideicommissum with emancipation.[16]

In 315 Constantine passed a law which restructured the rights of fathers over the *bona materna*. In *CT*. 8.18.1, addressed to the consuls, praetors, tribunes of the plebs and the senate (perhaps reflecting Constantine's appeal to all of importance in Rome, so soon after the defeat of Maxentius), Constantine dealt with the property of the mother left to children that were still in the *potestas* of their father. The father was awarded usufruct of such *bona* until his death, but it was not to be absorbed into the patrimony. He did not have the right to alienate any of the bequest and on his death it was to be passed wholly to the children. If the father emancipated a child he was to hand over the maternal inheritance. In return, a son was expected to offer the father a third of the property, as a sign of gratitude; this third the father was allowed to alienate. The father was also expected to look after the property, over which he had usufruct, with all due diligence to ensure there was no loss of value. This was reiterated four years later, with the added comment

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earliest laws in this package were made prior to 324 when Constantine only really had influence in the west. It should also be noted that while Constantine removed the Augustan penalties for childlessness, he and his successors retained the rewards for fertility (*CT* 12.1.55, 363; 12.17.1, 324) now also see Arjava: 1996: 78.
[16]Saller 1991a and his references, particularly, *D*. 31.77.7; 32.41.12; 35.2.95; 36.1.17.11; 36.1.20; 36.1.80.10; 33.1.25

that the child should strive by filial devotion (*pio sedulitatis affectu*) to merit the recovery of this third, presumably on the father's death (*CT*. 8.18.2).

This new regime established by Constantine did not resemble exactly any of the previous ways a mother had employed to ensure the transference of her property intact but it did protect the children's rights to their inheritance. The father was not allowed to alienate any of the *bona materna* but he was permitted to have a limited *dominium*. The idea that *bona paterna* and *materna* be kept separate, which had been merely a moral obligation in classical law, was now a legal one. It does appear that the children's rights were more protected by the new ruling, as the father could not actually do anything with the property. He does retain the right of usufruct, which he would not have had under a fideicommissum of emancipation. Humbert considers this a vulgarisation of the concept of usufruct, now meaning something more akin to 'temporary ownership' and thus limiting the power of the *paterfamilias* whose power over his children is curtailed, at least over the issue of *bona materna*.[17] Previously anything left to a child still in *potestas* would be absorbed into the patrimony, and so be controlled by the *paterfamilias* and redistributed at his discretion. Now he was compelled by law to maintain the value of the bequest and pass it on to his children.

The question of the father's remarriage was dealt with in a law of 334, addressed to Severus, Count of Spain (*CT*. 8.18.3). This is said to have been given in response to information that fathers were remarrying and appropriating the *bona* of their children over which they had usufruct and converting them to their own use. Constantine ruled that in such a case the father could only hold the property of his first wife as a guardian for his children until they come of legal age. This is actually not far from a fideicommissum emancipation which, in effect, deprived

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[17]Humbert 1972:398-405 argues that this might be the result of influence of Hellenistic law, but it seems unnecessary to look for outside influences as Constantine is merely encoding what has long been the preferred practice in the west, see Saller 1991a:40-41; Evans Grubbs 1995: 115-6; Arjava 1996: 101.

the father of usufruct and freed the children from his *potestas*. In either event, the father had no right to alienate the *bona materna*, neither could he enjoy the fruits; more significantly, both of these measures implied the partial restriction of his *potestas* over his children. The law of 334 did not actually say that the father should emancipate his children, but it did limit his power in respect of the *bona materna*, should he choose to remarry. Constantine's rulings put into law customs that had previously been part of the social expectation of family succession. The unclear nature and ambiguity of this law were finally settled in 468 by the Emperor Leo who ruled that in order to dispose of all doubt and confusion, a father might have usufruct of a mother's estate even if he married a second time (*CJ.* 6.60.4). Similar laws were passed to limit the mother's control of the father's property in a similar situation (see below, Section 5.4.4).

The problems of the *bona materna* continued to be addressed throughout the fourth century. In 339 Constans and Constantius issued a new constitution which amended a previous one now lost. The earlier decision had obviously reverted back to the idea that inheritances of children should belong to the father; this was amended in *CT.* 8.18.4 so that if there were no children the wife's property reverted to her natal family, and also that if any child to whom she left property died before the age of six, that property also reverted to the mother's family. Later emperors continued the extension of children's rights over the *bona materna* and bequests from maternal grandparents. *CT.* 8.18.6-9 all reiterated similar themes: that maternal property should be held by the father but not alienated; that should children be emancipated during the lifetime of the father he must pass over the inheritance from the mother, but might retain a third; that any property the child received from extraneous sources, the father might acquire by right of *patria potestas*. In 426 Theodosius and Valentinian ruled that the property of a childless adult who died leaving a surviving father should go to the father. However, if the father remarried he could only have the ususfruct of that part of the deceased

child's estate that had come from the mother. On the father's death this portion would be shared between surviving siblings (*CT* 8.18.10).[18] At the same time these emperors also instituted a ruling that property acquired by married children from their partners could not be acquired by the fathers even if such children were still under paternal power (*CT*. 8.19). Both these laws support the notion that the conjugal unit is being seen as the primary focus of family, at the expense of the wider agnate group, but also that paternal and maternal property be kept separate. The culmination of this legislation came in 439 in Novel 14 of Theodosius. This legislation protected the rights of chilren to inherit from the parent who predeceased. It made the transmission of *bona materna* via the father clear and paralleled it with the passing of *bona paterna* to children if the mother was the surviving parent. It protected the rights of children to come into full inheritance from each parent and made obvious the fact that maternal and paternal property were to be regarded as separate entities.

The social practice of the earlier empire thus became general law in the later empire, with a mother being able to bequeath her goods to her children and expect the law to support her. She no longer had to involve herself in the intricacies of the 'legal gymnastics' of the classical law system. The father was not allowed to absorb such property into the patrimony and, should he chose to remarry, his control over the *bona materna* was even more severely restricted. A woman's children, whether they were in the *potestas* of their father or grandfather, could expect to come into the *bona materna* once they became *sui iuris*. The implication of this legislation is two-fold: it recognised continued separation of maternal and paternal goods while at the same time ensured their separate transmission to the same child or children. In the second generation, and certainly by the third, property that had previously been separate was held by descendents as undifferentiated. So while the

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[18]cf. *CT*. 5.1.8, part of the same law that imposed similar conditions on a mother inheriting from a childless son or daughter.

legislation did allow a mother and her natal family some confidence that her property would pass to her children in tact, its main thrust was to ensure the transmission of wealth from one generation to the next.

In 327 Constantine passed a law that allowed the division of a mother's property while she was still alive (*CT* 2.24.2). We might assume that women like Melania the Elder and Paula might have made use of such a provision. Publicola does seem to have had control of at least some of his mother's fortune during her absence from Rome. Paula likewise may have left a share of her own property with Toxotius, Rufina and Paulina, who remained in Rome. They would also have left their children their rightful share of the patrimony, if it had been left in their care by their deceased husbands (see below, section 5.4.4).

5.4.3. Succession from child to mother

The question of the mother's right to inherit from children was also considered. The *sc Tertullianum* had already granted mothers the right to inherit from children who died intestate, as long as the mother had the right of *ius liberorum* and had appointed a tutor for her fatherless children. Variations and expansions of the *sc Tertullianum* and *sc Orphitianum* were carried out during the period of the Tetrarchy. For instance, in 291 Diocletian and Maximian ruled that although infants (defined as those who cannot speak) could not succeed to mothers who die intestate, mothers were allowed succession to their infant child. And two years later, presumably in response to a certain Resa, the same emperors confirmed the letter of the *sc Tertullianum*, in that on the death of a child, agnates precede cognates, that is brothers, sisters and the father of the deceased inherit before the mother (*CJ*. 6.65.1 and 2). The *sc Tertullianum* and *sc Orphitianum* continued to be refined throughout the fourth and fifth centuries. Constantine passed a series of rulings addressed to Bassus as Prefect of the City. These are divided up in the

Theodosian Code but may have originally all been part of the same law.[19] One of these rulings, placed under the heading of *De Legitimis Hereditatibus* (On Statutory Inheritances), further revised the *sc Tertullianum* by granting a mother the right of intestate succession to one-third of a child's estate even if the mother did not possess the right of *ius liberorum* (*CT.* 5.1.1). This, and a law that may be of the same period, granted right of succession to a mother of a child who died in puberty, even if she had failed to appoint a guardian, vastly extending the previous rights a mother had over a child's property (*CJ.* 6.56.3).[20] Under the new provisions a woman without *ius liberorum* could expect to inherit up to one-third of a deceased child's estate and up to two-thirds should she have the *ius liberorum*. The rest of the child's estate would devolve upon surviving paternal uncles and their descendants. It appears that although lawmakers were increasingly willing to recognise the mother-child bond, they were not yet prepared to abandon the agnatic principle entirely.

Constantine also facilitated the transmission of property between mother and child by allowing both to contest an 'unduteous' will (*inofficiosum testamentum*). *CT.* 2.19.2 (321), addressed to Claudius, *Praeses* of Dacia, gave a son, who was left out of a mother's will, a prescribed amount of time in which to prove the will undutiful. If they could prove their claims the will was put aside and the child inherited as on intestacy. If a mother was excluded from a son's will with no just cause, the will was likewise set aside and the mother inherited according to the rules of *CT.* 5.1.1, providing there were no consanguineous agnates. The law listed various ways a mother may be considered to have offended:

> ...mater inhonestis factis atque indecentibus votis filium forte obsedit insidiisque eum vel clandestinis vel manifestis adpetit vel inimicis eius suas amicitias copulavit atque in aliis sic versata est, ut inimica eius potius quam mater crederetur...

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[19]See Evans Grubbs, 1995:117, n.59: Bassus was *praefectus urbi* 317-319, so the laws must date from this period (*CT.* 2.6.3; 11.35.1). cf. *CT.* 8.12.4 allowing gifts between parents and children to stand even if they had not followed the complicated legal procedure.

[20]*CJ.* 6.56.3 addressed to Catulinus, Proconsul of Africa. Wrongly dated to 354 in Code, Evans Grubbs 1995: 116-7.

[if] the mother should beset her son with dishonourable deeds and unbecoming desires or should seek to entrap him either secretly or openly or should unite herself with his enemies in friendship and should conduct herself in other particulars so as to be considered an enemy rather than a mother.....(*CT*. 2.19.2)

Obviously, if a mother behaved in such a way as to deny family obligations she was not to be permitted to share in the benefits of family.

The various permutations of descent from mother to child and vice versa were considered at intervals throughout the fourth and fifth centuries, and the basic premise that children had a right to expect that maternal property would devolve to them was generally strengthened despite occasional attempts to re-enforce the agnatic connection: in 369, Valentinian and Valens modified Constantine's law of 318 and added a consanguineous brother to the list of agnates who should succeed ahead of the mother on intestacy; in 383, the question of the *bona materna* of an emancipated daughter with surviving mother, father and children was raised. It was ruled that her children should succeed to the exclusion of the parents, thus placing children ahead of other agnates (*CT*. 5.1.2, 368, in the east; 5.1.3, 383, in the west). Later laws addressed the transmission of property of grandparents. The division of such property among surviving children and grandchildren was outlined so that the share that would have gone to a deceased daughter was shared between her surviving children and her consanguineous brothers and sisters, in similar terms to the division of property in Constantine's law of 318; that is, the children of the deceased daughter lose a third of her portion to their aunts and uncles (*CT*. 5.1.4, 389).

Throughout this period the paternal family maintained a right to inherit at least a part of what was presumably originally part of their shared patrimony. A mother could expect to inherit from a child providing the child had not surviving brothers in *potesta*s. If there were consanguineous sisters or emancipated brothers, a mother would inherit equally with them. If there were no other children, the mother shared

a child's goods with the child's nearest agnates. She did take precedence over other relatives but the recognition of the origin of the child's wealth in the paternal patrimony is explicit and priviledged. The idea that property should stay within the agnate family was fading, in that they were only entitled to a proportion and did not oust the mother completely, but it persisted. Yet again the main thrust of the legislation is to ensure smooth transmission of property to the next generation.

5.4.4. Mother's control of the patrimony

The growing legal recognition that maternal property should devolve onto children without interference enhanced the notion that the mother and her children were now legally recognised as a unit, as much as the father and his children. The idea that paternal and maternal goods should remain separate still existed, but children could look equally to both parents to provide for them. Legal texts were careful to keep these two groups separate even though they constituted the same personnel. The notion of the conjugal unit as the focus for transmission of property enhanced the position of the mother once she was given control over the property of her husband should he predecease her, and by the radical laws of the later fourth century which allowed a mother to become guardian to her children. In laws controlling the mother's charge of the patrimony, the persistence of the agnatic principle is evidenced. As we have seen, part of the inheritance of a child always returned to the agnate relations. Presumably this was to protect the wealth of the larger paternal family, since anything a child possessed, if they were still *in potestate,* belonged to the patrimony, or if they were *sui iuris,* had derived mostly from it. When a mother inherited from a child, that share of the patrimony passed outside the traditional line of inheritance into another family. Several safeguards were put in place to prevent the mother acquiring anything that belonged to the children, in the same way as *bona materna* were protected from the designs of a greedy father.

Laws governing the mother's control of the patrimony were similar to those of the father over the *bona materna*, with similar caveats should the mother choose to remarry. In classical law the death of a father presented problems if his children were minors. The ideal procedure was for the father to appoint a tutor in his will who would oversee the financial and legal side of the child's upbringing.[21] Given the difference in ages at marriage it was not uncommon for a woman to find herself a widow, or for her husband to have brought a series of legal instruments into play in his will in order to ensure that the *bona paterna* passed through the mother to the children (Saller 1991a: 41).[22] Saller lists the various methods available to a husband for ensuring his property was passed to his children but he had to stipulate particular methods to ensure his wife still retained some control: he could institute his children as heirs but leave his wife *usufructus* and *usus* of the property, together with the children. Such an arrangement would allow the mother to manage the inheritance while protecting the children's interest; he could ask for wife and children to hold property in common; he could instruct a tutor to listen to his wife's wishes and grant her certain privileges, like the choice of residence with her children, or the right to chose a husband for her daughter, which, though not legally binding, at least gave the mother some moral leverage. (Saller 1991a: 41).[23] What these various examples illustrate is that mothers were often the natural choice as guardians because they were thought to have their children's interests at heart. Husband's were obviously attempting to leave their wives as *de facto* tutors long before such a thing was allowed by law (cf *Laudatio Murdiae*; Dixon 1988: 62-5).

As with the *bona materna*, the lawmakers concerned themselves with ensuring that the patrimony passed intact to the children, and the remarriage of the mother was

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[21]See Saller 1991a for problems of tutelage; Having a tutor did not guarentee the maintenance of the patrimony.
[22] Saller 1991a:40-43 his refs. *D.* 31.88.2; 35.1.77.3; 36.1.76.1; 36.1.80.14; 36.2.26.2; 37.77.12; 31.67.10.
[23]wife with usufruct, *D.* 33.2.37; holding property in common, *D.* 31.89.3; 36.1.80;tutor to listen to wife, *D.* 4.4.47; 26.7.5.8; 38.17.2.23; residence, 33.1.7; daughter's husband, 23.2.62.

seen as one of the major threats to the accomplishment of this. As previously mentioned, step-parents were almost universally regarded as a threat to the children of the first marriage, and mothers who remarried were thought to put their affection for their second husband over that of their children (see above, Section 5.4.1; n. 17). In 382 Gratian, Valentinian and Theodosius ruled that a mother who contracted a subsequent marriage had the right and duty to pass on anything that came to her from her first husband, in the form of gifts or legacies, to the children of the first marriage. She had the right of possession of such goods or property until her death, but not the right to alienate it. If a child from the first marriage should die and the mother inherit a share under the provisions of the *sc Tertullianum*, she had a similar right, i.e. she might have possession until her death but not the right to alienate. In inheriting from a deceased child in this way the mother was indirectly receiving a portion of the original patrimony, and it is to avoid alienating this that such a rule was imposed. Everything that came to the mother by virtue of her first marriage must be transmitted to the children of that marriage. The mother had the use of it in her lifetime and throughout her subsequent marriage, but was restricted by law from diminishing the property. This law ensured that the mother was bound by legal obligation to keep property or goods she had received from her husband and transmit them to their mutual children. Husbands were reminded that they should act similarly, but they are bound by 'law of religion (*religionis...iure)*', not by law to protect the interests of the children of their first marriage, should they subsequently remarry (*CT*. 3.8.2) (Humbert 1972: 418-29).[24]

Subsequent marriages of the mother continued to be the subject of increasingly refined legislation. The general thrust of the laws was the same, that children had a right to their father's estate and anything that had been given to the mother

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[24] See also Arjava, 1996: 175, who follows Humbert. It was made law for fathers to retain anything that came to them from a deceased wife for the children of that marriage by Theodosius II, *NTh*. 14.3 (AD 439).

during her marriage should pass to the children of that marriage. The refinements particularly concerned the destination of the dowry and nuptial donation.[25]

There was anxiety over the mother controlling or coming into the patrimony, not only because she was a woman but because wealth then passed outside the agnate family and diminished the holding of the group as a whole, unless it was passed through the mother to her children. As with the father, remarriage was considered a problem. However, it was precisely in the mother's role in this situation that we see one of the most radical acknowledgements of changing social practice by the lawmakers. By 390 a mother was allowed to be guardian of her children, on condition that she remained a widow (see below, section 5.6). As with the father and control of the *bona materna* the primary concern was that goods should pass to the children, and not be side-tracked and perhaps devolve outside the conjugal unit.

5. 4. 5 Natural children and inheritance

As explained earlier, a large number of children in the Roman world were illegitimate due to the narrow definition of *iustum matrimonium*. Slaves and non-citizens did not have the legal capacity for marriage, *conubium*, and their offspring were *ipso facto* illegitimate. One of the few instances where we can glimpse the lower classes in the Roman world is in the laws concerning 'marriages' of slaves and ex-slaves with citizens, and their consequences. Equally, it was not uncommon for men of higher classes to take concubines, before or after marriage, and given the haphazard knowledge of contraception in ancient world, it was equally common for such relationships to produce offspring. Under classical law the transference of property to concubines and their children was allowed so long as they were expressly included in the will, and provided the legitimate family did not suffer by such a bequest (*D.* 31.9; 34.9.16.1). The transference of property to

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[25]*CT.* 3.13.1; 5.1.8; 8.18.10; *CJ.* 5.9.4.

concubines and their children is addressed in this section, as is the position of men and women who cohabit with slaves. A ruling of Constantine's changed the classical position radically, at least for the upper classes:[26]

> Senatores seu perfectissimos, vel quos (in civ)itatibus duumviralitas vel quinquennalitas vel fla[monii] vel sacerdotii provinciae ornamenta condecorant, pla(cet m)aculam subire infamiae et peregrinos a Romanis legibus (fieri s)i ex ancilla vel ancillae filia vel liberta vel libertae (filia), sive Romana facta seu Latina, vel scaenica (vel scaenicae) filia, vel ex ta(bernaria vel ex tabernari filia vel humili vel abiecta vel leno(nis ve)l harenarii filia vel quae mercimoniis publicis praefuit, (suscep)tos filios in numero legitimorum habere voluerint (aut pr)oprio iudicio aut nostri praerogativa rescribti, ita ut, (quidq)uid talibus liberis pater donaverit, sive illos legitimos (seu natur)ales dixerit, totum retractum legitimae subol(li redda)tur aut fratri aut sorori aut patri aut matri. Sed et (uxori t)ali quodcumque datum quolibet genere fuerit vel empti(one c)onlatum, etiam hoc retractum reddi praecipimus: ip(sas et)iam, quarum venenis inficiuntur animi perditorum, (si qui)d quaeritur vel commendatum dicitur, quod his red(dend)um est, quibus iussimus, aut fisco nostro, tormentis (subici) iubemus. Sive itaque per ipsum donatum est qui pater (dicitu)r vel per alium sive per suppositam personam sive (ab eo e)mptum vel ab alio sive ipsorum nomine conparatum, (stati)m retractum reddatur quibus iussimus, aut, si non exis(tunt, f)isci viribus vindicetur. Quod si existentes et in praesen(tia re)rum constituti agere noluerint pacto vel iureiu(rand)o exclusi, totum sine more fiscus invadat. Quibus tacen(tibus et) dissimulantibus a defensione fiscali duum mensuum (temp)ora limitentur, intra quae si non retraxerint vel (propter) retra(hendum) rectorem provinciae interpellaverint, quidquid ta(libus fil)iis vel uxoribus liberalitas inpura contulerit, fiscus nos(ter inv)adat, donatas vel commendatas res (sub po)ena quadrupli severa quaestione perquirens. Licinniani autem filius, qui fugens comprehensus est, conpe[dibus vinc]tus ad gynaecei Carthaginis minsterium deputetur.

> It is our pleasure that senators or persons of the rank of most perfect or those adorned with the honours of the duumvirate and the quinquennaliate in the municipalities or with the honour of flamen or of the civil priesthood of a province shall suffer the brand of infamy and shall become foreigners in the eyes of the Roman law, if by their own judgement or by the prerogative of our rescript they should wish to consider legitimate the children born to them of a slave woman, or the daughter of a slave woman, a freedwoman, or the daughter of a freedwoman, whether made a Roman or a Latin, an actress or the daughter of an actress, a mistress of a tavern, a daughter of a tavern keeper, a low or degraded woman, the daughter of a procurer or a gladiator or a woman who has charge of wares for sale to the public. Thus if a father should give anything to such children, whether he calls them legitimate or natural, all such property shall be taken from them and restored to his legitimate offspring, or to his brother, or sister or father or mother. Also if any property of any kind should be given in any way to such a wife or bestowed upon her pursuant to a purchase, we command that such property also shall be taken from her and returned.

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[26]Several laws on natural children gathered together in the *CT* into a section entitled *de naturalibus filiis et matribus eorum*, *CT.* 4.6.1-8. 1 and most of 2 is lost, but partly recorded at *CJ.* 5.27.1.

We also order that if anything that is to be restored to those persons to whom we have so ordered or to our fisc should be sought or should be said to have been entrusted to such women by whose venomous charms the minds of these ruined men are infected, these women shall be subjected to examination under torture. Whether, therefore, the gift is made by the person himself who is called the father or through another or through a suborned person or whether the property is bought by such a father or by another in the name of themselves, it shall immediately be taken away and restored to those persons to whom we have so ordered, or if there are no such persons, such property shall be vindicated to the account of the fisc. But if there should be such persons and they should be living but unwilling to bring suit, because they are prevented by a pact or by an oath, the fisc shall immediately confiscate the entire estate. If such persons should remain silent and should dissimulate, they have a time limit of two months in which to exclude the claim of the fisc. If within this time they have not applied to the governor of the province for that purpose, our fisc will confiscate the property which by an impure liberality was given to such children or wives and shall seek out by means of a severe examination under torture and the threat of a fourfold penalty everything that was entrusted to them. Moreover, the son of Licinianus, who escaped but has been apprehended, shall be bound in fetters and consigned to service in the imperial weaving establishment in Carthage (*CT* 4.6.3)

Given at Carthage in July 336 and addressed to Gregorius, this law repeated, reinforced and extended the Augustan prohibitions on marriage with particular reference to legitimacy and inheritance. In this ruling Constantine extended the groups who could not marry certain sorts of women. Augustus had banned senators and their sons and grandsons from marrying freedwomen, and senator's daughters and son's daughters from marrying freedmen. Prostitutes, actresses and other professional women were also not allowed to contract *iustum matrimonium* with senators or their descendants (*D.* 23.2.44). Constantine expanded the groups who could not marry certain sorts of women to include provincial officials holding the offices of duumvirate and quinquennaliate and those holding civic priesthoods. The prohibited groups of women included slave women and their daughters, freedwomen and their daughters, actresses and daughters, tavern keepers and daughters, a low or degraded woman,[27] daughters of procuresses and gladiators or someone who sold goods in public. The punishments for those men from the listed groups who attempted to legitimise any children from a relationship with a prohibited woman were severe: they would suffer *infamia*, which meant they were

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[27]This phrase called for clarification, see N. Marc, 4.1-2, AD 454.

reduced to peregrine status, excluded from holding public office, could not bequeath or receive under a will, and would suffer loss of property. If a man had left anything to such children it would be returned to any legitimate offspring or his nearest agnates. *CT.* 4.6.2, partly lost, says that if there were no surviving agnates then the property was forfeit to the fisc. Likewise if anything had been given to the 'wife' and children it must be returned. The concubine was subject to torture, punishment for those who were deemed *humiliores*. The law assumed that the male partners had had their minds infected by the 'venomous charms of these women (*quarum venenis inficiuntur animi*)'. A further clause stated that if a claim was not made by the family, the property was subject to confiscation by the fisc and the wife and children subject to torture.[28]

Constantine implemented a series of changes to classical law in this ruling. Firstly, he extended the groups of upper-class men who would now suffer penalties for entering a *concubinatus* relationship and trying to pass it off as legitimate. Evans Grubbs argues that the main thrust of this ruling was to protect the *dignitas* of certain groups and to avoid the risk of pollution by those considered unworthy of holding civic office. Constantine was attempting to ensure that those who were *indigni* were not claiming rights to which they were not entitled (1995: 286-94). In so doing he was very much imitating Augustus. It is often said that Constantine compounded the confusion over status that resulted from the third-century upheavals with his own legislation. He was accused by later writers of increasing the number of those able to claim rank and the accompanying advantages, by expanding the number of offices in the imperial service and by

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[28]*CT.* 4.6.2 and 3 contain clauses referring to the son of Licinianus. This person may be the son of Constantine's once co-emperor, Licinius (the diminutive form used as a derogatory sign), who by virtue of an imperila rescript had previously acquired senatorial status under false pretences. In 4.6.2, issued in April 336, he was to be whipped, fettered and reduced to his original status, by July (4.6.3.5) he has escaped, been recaptured and sentenced to work in the imperial weaving establishment in Carthage. This may be an illegitimate son of Licinius against whom Constantine has been prompted to enforce the Augustan law, it may be an otherwise unknown individual; the point is that he is an individual who has claimed high status that was not his by birth. See Evans Grubbs, 95:284-6.

conferring grants of rank on those who were either not eligible previously or who held the honour but not the office, as a result of which there developed a sense of unease and anxiety over social status. The new prohibition affected both the upper class men, and the women they were not allowed to marry. Constantine extended the list to include provincial office holders and priests. The groups of ineligible women were also extended; previously freedwomen could have contracted *iustum matrimonium* with all but senators and their descendants.[29] The second major change was the fact that gifts between the man and his concubine were now prohibited; previously this had been allowed. Third, the whole *familia* would suffer if they colluded in accepting such a relationship and in the deception of legitimacy, in that all the property would be confiscated by the fisc. This last issue points up two connected aspects of later Roman society, that there could be genuine confusion over status and that often it was difficult to distinguish *concubinatus* from *iustum matrimonium*. The extent of laws that concern status in the Theodosian Code illustrates a real anxiety among lawmakers to establish correct status for people to ensure that they are not claiming rank, honour or property to which they are not entitled (see extensive legislation on decurions in Book 12 of the Theodosian Code). It appears that in the fourth century there could be genuine confusion or ignorance of status, especially among the lower levels of society where the distinction between slave and poor free was becoming more and more blurred. However, distinguishing between free and unfree among the upper classes, to whom this law was addressed, was not so difficult, though it could happen, knowingly or unknowingly.[30] The final irony is, of course, that Constantine was himself illegitimate and probably produced at least one illegitimate son, Crispus. Perhaps this is a question of an outsider attempting to belong; is what we see Constantine entrenching his position among the upper classes by adopting even more stringent versions of their traditional rules?

[29]Had been exceptions, e.g. patronus and liberta.
[30]See the case of Julia, *NovAnt.* 1 AD 468; see section 5.4.6

Constantine's ruling of 336 penalised those men of high rank who lived with women from prohibited groups as concubines and attempted to pass off the children of such a relationship as legitimate. The relationship may have been one subsequent to marriage, as the father may be considered to have legitimate heirs. This law might have particularly affected those from the lower echelons of the upper classes who had previously been allowed to contract *iustum matrimonium* with freedwomen, or newly created senators who had contracted marriages that would have been considered legitimate for a lower rank. The personnel of the imperial burearocracy and high office was fluid in the fourth century, many new entrants coming from provinces and from non elite groups. However, since the law penalised not only the male but also the woman and any offspring and the wider *familia*, we might assume it was aimed at establishing a class that would perpetuate itself and maintain the ideals of the western Roman aristocracy. Women from the prohibited groups who entered such a relationship could now expect very little for themselves or their children. Should they be left anything by way of a legacy, despite the attempt to use legal instruments to ensure it,[31] it could be reclaimed either by the family or the fisc. They also risked examination by torture, a punishment legal only for those of *humiliores* class, implying they must be of low status. Penalties for the man were equally severe as we have seen, and now they were extended to his family in that property was removed from the ownership of the family into the hands of the fisc. This meant that even if a family condoned a relationship that produced natural children it would suffer if it did not report the illegal inheritance within the stipulated time period. The assumption that the wider *familia* might accept such a partnership suggests that it was not an uncommon occurrence and carried little social stigma, and also highlights the

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[31]*CT.* 4.6.2 is mostly lost but it may have included an acknowledgement that husbands were naming concubines and children in their wills: *...fecit vel si ipsorum nomine comparavit, totum legitima suboles recipiat* (...has made, or if he acquired anything in their name, his legitimate heirs shall recover all of it.)

difficulty that sometimes occurred in distinguishing between concubinage and *iustum matrimonium*.

It must be said that regardless of any attempt to regulate such relationships, continued legislation on the status of natural children illustrates that outside the prohibited groups concubinage continued and presumably was considered socially acceptable. Indeed, subsequent legislation modified Constantine's rulings to the advantage of the concubine and her children. In 371 Valens, Valentinian and Gratian issued a law that modified Constantine's law (*CT.* 4.6.4). This gave a man the right to leave a proportion of his estate to his concubine and their mutual offspring. The proportion that could be left to them was dependent on the existence of legitimate heirs; if the man had legitimate heirs from a previous legal marriage, or surviving parents, he had the right to leave, by will, up to one-twelfth of his estate to his concubine and natural children. Should he have no surviving legitimate heirs he could bequeath them up to a quarter. The fifth-century interpretation adds the additional stipulation that the woman must be freeborn, or made free (*id est ingenua nata vel facta*). Libanius noted the passing of this law in his autobiography (*Or.* 1.145) and its personal application for himself, as he had an illegitimate son, Cimon. Cimon's mother was of low status, probably a freedwoman (Evans Grubbs 1995: 301; Arjava 1996: 214). This law would have allowed Libanius to pass at least some of his property on to his son, but he was thwarted by a reversal of policy by Honorius and forced to take a different approach.[32] Libanius then considered instituting a trust whereby he left his estate to his friends in the confidence that they would pass it on to his son. This was presumably common practice, though there was risk of someone informing and having the will declared illegal. The final arrangement, however, is also a good

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[32]This law is lost but is presumambly that mentioned in *CT.* 4.6.5: *Legibus Constantini et genitoris nostri praeceptis edocti praecipimus, ut exclusis,naturalibus filiis ad fiscum transferatur, quod ab ipsorum persona decidit...* (Instructed by the laws of Constantine and by the ordinances of our father, we command that natural children should be excluded, and all property shall be transferred to the fisc [in so far as it becomes caducous as a consequence of their legal status.]) Issued at Milan, 397.

example of yet another way of legitimising a child (see below, Section 5.5) With the support of the local *curia* Libanius received a grant of legitimacy for Cimon, from the emperor, by enrolling him in the local *curia*, and thus allowing him to inherit fully (*Or.* 1.195). Presumbaly Augustine would have faced similar problems had his own son lived.

Honorius' law of 397 was, however, short-lived; by 405 they had returned to the ruling of 371 (*CT.* 4.6.6). The status and right of natural children to inherit continued to be the subject of rulings by later emperors. Two laws passed in the period 426-428, in the names of Theodosius and Valentinian, altered the situation slightly and introduced some innovations that reflected the different approaches to the question of illegitimate children and their mothers that were developing in the eastern and western halves of the empire. First *CT* 4.6.7, addressed to Bassus, Praetorian Prefect, defined natural children as '*Quos sine honesta celebratione matrimonii procreatos legitima coniunctio fuderit in lucem*'. This is the first mention of a ceremony as the defining factor of legitimate marriage. However, the amount of property it was lawful to bequeath natural children and their mothers, was reduced again, from three-twelfths to one-eighth; anything above this amount could be reclaimed by legitimate heirs. In another ruling passed in the names of the same emperors but given at Constantinople and addressed to Hierius, Praetorian Prefect, and thus most likely applicable in the eastern empire, the law of 405 (*CT.* 4.6.6) was reinstated (if it had ever been annulled by 4.6.7), and once the Code was valid in the west this was the most recent law on the subject and therefore became valid throughout the empire (Evans Grubbs 1995: 302-3).

Legislation concerning concubines and their children is confusing and the situation not secure from one reign to the next, which no doubts reflects the general social unease about illegitimacy. Constantine tightened up the penalties for a wider number of the upper classes and increased their severity, exhibiting a generally

less lax attitude than had existed in classical law. Natural children were not allowed to displace legitimate heirs, and concubines of upper-class men who became mothers could expect very little from their 'husbands' and certainly not the support of his family. The family was recruited onto the side of the law by the threat of forfeiture. Over the period the harshness of these laws was modified, provided the concubine was freeborn or freed; indeed, this remained a defining element in any concubine's right to expect any form of inheritance. Although the legislation on natural children developed differently in the west and east of the empire, by the fifth century a concubine mother and her children could expect to inherit at least a small portion of the father's estate. The law, while recognising the existence of concubines and natural children and a father's desire to provide for them and protect their interests, was not prepared to override the rights of either legitimate children of the same father or the wider agnate group. It took the legislation on legitimation and the willingness of the couple to convert their relationship from *concubinatus* to *iustum matrimonium* to do this (see below, section 5.5).

Legislation concerning natural children evolved over the later fifth and into the sixth century, to be finally completed by Justinian. Justinian's personal interest in getting the Augustan/Constantinian prohibitions on certain mixed marriages lifted had a knock-on effect for the definition of *iustum matrimonium* and the legitimacy of children.[33] An early sixth-century law of Anastasius had given fathers without legitimate children the right to *potestas* over their natural children and to make these children their heirs (*CJ*. 5.27.6, 508), but was soon overturned by Justin (*CJ*. 5.27.7, 519). The legislation of Justinian essentially transformed concubinage into marriage once the prohibitions on certain unions were lifted. In 528 he ruled that a father could leave to his natural children and their up to half his estate in his will, provided he had no legitimate children of a living legal wife (*CJ*. 5.27.8,

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[33]*CJ*. 5.4.23, 520; see D.Daube, 1967: 380-99.

528). The concubine and her children still had no right to intestate succession but were now entitled to much more than previous laws had allowed. The amount a father could leave to his natural children was later raised to the entire estate, so long as there were no living legitimate heirs. Justinian's legislation was radical and tied into his legislation on legitimation (see below, section 5.5), but it was also only valid in the eastern half of the empire.

It was Justinian who really made a difference for concubines and their children but for most of the period of this thesis the position of such women was precarious and somewhat ambivalent. Moreover, even when conditions were in their favour, concubine mothers were always passive actors in the process. They may have been pleased to see their children secure but any decision was always up to the father and even when the situation was in their favour it was dependent on the existence, or non-existence of legitimate heirs. As with most of the legislation examined in this chapter the transmission of property to the right and proper heirs was paramount. Perhaps it was the enduring strength of this notion in Roman minds that influenced the indecisiveness of legislation on natural children, despite huge numbers of them in the upper-classes, or aspiring upper-classes. However, in the case of a concubine wife and her natural children, both had a right to inherit from each other, regardless of the father. As such they could present a discreet and independent unit, so long as they did not claim a share of the 'father's' goods.

5.4.6 Free mothers and slave fathers

As can be seen from the evidence above, the law was not particularly interested in women as mothers, but in their legal status, the implications of that for the legal status of their children and the ramifications for the succession. Lawmakers were primarily concerned with free women whose offspring would be free but illegitimate. All the above laws also assume that it is the woman who is of lower

class; it was quite a different matter if a woman took up with a man of lower or, even worse, slave class. Such women and their children were subject to much harsher rulings. Roman law had traditionally penalised unions of women with slaves, which had been the subject of legislation since the passing of the *sc Claudianum* in AD 52 and were to remain so until the time of Justinian, who, of course, if we are to believe Procopius' *Secret History*, had personal reasons for changing such laws. Prior to AD 52 if a Roman woman had children by a slave they were regarded in the same way as other natural children, that is, they took the status of their mother and were freeborn but illegitimate citizens. The *sc Claudianum*, passed at a time when wealthy imperial slaves were forming unions with freeborn Roman women, stated that if the owner of the slave partner condoned the union, the woman was reduced to the status of a freedwoman; if the owner was ignorant of the union, the woman became his slave (Buckland 1975: 70)[34] The Theodosian Code has a section that collected together the amendments to the *sc Claudianum* made by Constantine and his successors, which reflects the increased scrutiny that such relationships drew. Once again these laws are much more concerned with defining status, property rights and their implications than with the individuals and their 'families'. However, they illustrate the consequences for children of their mother's status and actions. Here, presumably at the lower end of the social scale, there was a similar anxiety over people claiming rights to which they were not entitled.

CT. 4.12.1, addressed to Probus and dated to 314 was presumably one of the earliest pieces of legislation passed by Constantine once he was in control of Rome, and may be a response to a particular situation. It stated that a free woman who suffered violence at the hands of a slave or was joined with a slave against her will would be avenged by the law. If, on the other hand, a free woman was '*suae...immemor honestatis*' to have willingly united with a slave then she would

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[34]Gardner 1986:141 for exceptions to the rule.

became a slave of her partner's owner and her children would be slaves. The relationship was referred to as *contubernium*, clearly differentiating it from *iustum matrimonium*. Within three years another law was passed of which only the fifth-century interpretation survives; this stated that a woman must be warned of her loss of status three times in front of seven witnesses, in accordance with the *sc Claudianum*. (*CT*. 4.12.2). In 320 Constantine passed yet another law on the subject, this time dealing with women who cohabited, knowingly or unknowingly, with slaves of the imperial fisc. Such women no longer lost their freeborn status: their children ranked as free and illegitimate but held Latin status. The children were not slaves but were bound by obligations to their patron, i.e. their father's owner (*CT*. 4.12.3). This ruling applied only to slaves on imperial estates and presumably may have benefited many lower-class free woman who were joined in *contubernium* with such slaves, who might previously have lost their freedom under the *sc Claudianum* if they remained in the relationship after being warned.[35]

The problem of free women cohabiting with slaves obviously continued to worry Constantine, who passed yet another law on the subject in 331. This was concise and stated that if a woman persisted in *contubernium* with a slave after this law, then even if she had not been warned, she would forfeit her free status (*CT*. 4.12.4). Constantine's laws appear contradictory, and it is unclear whether 4.12.4 overrode 4.12.3; presumably this contradiction was why Julian issued his own ruling in 362. In this he reinforced the *sc Claudianum*, but reintroduced the three formal warnings and made it clear that women cohabiting with imperially owned slaves were exempt (*CT*. 4.12.5) (Evans Grubbs, 1993b: 136-7; 1995: 268-9).[36] It would appear that the problem was ever present, as yet another law was passed in 366 in the west by Valentinian, Valens and Gratian. In this law it is a woman's lustful nature (*si apud libidinosam mulierem plus valuit cupiditas quam libertas*)

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[35]Constantine passed a later law that prevented slave families on imperial land in Sicily from being separated (*CT*. 2.25.1, date uncertain).
[36]Evans Grubbs suggests that Julian also enjoyed overturning Constantine's laws. See also Arjava 1996: 222-3; P. R .C. Weaver 1986: 145-169.

that is blamed for her willingness to join with a slave, and thus both she and her children lose their freedom (*CT.* 4.12.6.). This fails to mention the warnings which were reintroduced in 398 by Arcadius and Honorius (*CT.* 4.12.7).

There are several points at issue here: why would a free woman want to 'marry' a slave? What were the implications for her children? One reason why the *sc Claudianum* might be so reiterated in the fourth century may be that there could be, especially at the lower levels of society, real confusion and ignorance about status. This might be particularly so between poor free and unfree. There were various ways a free person could find themselves enslaved; they could have been abandoned or sold as a child and raised as a slave. This was a common literary topos wherein the hero or heroine eventually discovered their true free identity, thus enabling them to live happily ever after, presumably such things happened occasionally in real life. It was not unknown, particularly in border areas for people to be kidnapped and enslaved or sold back into the empire as slaves. It was equally not unknown for slaves to assume free status without having been officially manumitted.[37] There were a series of rulings passed during the third and fourth centuries and collected together in the Code of Justinian that attest to confusion over status and address cases where people are attempting to prove their freeborn status and by others trying to prove otherwise.[38] The Theodosian Code also has a series of laws that seem to allow for the clarification of anomalous status, allowing those in slavery to find sponsors to speak for them in court and establish that they are living as slave either against their will or in ignorance of their true status.[39] The system also offered protection to those who had managed to live as free for sixteen years or more without their status being questioned. This law, however, expressly did not apply to children of slave mothers and free

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[37]See T. Hägg 1983: 81-86; J. Boswell 1988: 98-100; M. Reinhold, 1971: 275-302; P. Ramin and P. Veyne, 1981: 472-97.
[38]e.g. *CJ.* 7.16, 17, 18, 20, 21, 22, 24.
[39]*CT.* 4.8.4-8: *CT.* 4.8.1-3 and most of 4 are lost. 4.8.9, passed by Theodosius in 393 is on a similar subject. 4.8.5 on sponsors; 4.8.6 on minors sold into slavery.

fathers, who were not allowed to claim such privilege unless their father could prove that he had paid for their freedom or supplied a substitute slave. This law, *CT*. 4.8.7, passed by Constantine in 331, clearly stated the general practice regarding the passing on of status if the mother was a slave:

> ...iure enim communi maternam condicionem natum sequi necesse est, ita ut, etsi herilem lectulum ancilla ascenderit, non liberorum domino, sed servorum partum suscipiat.

> For in accordance with the common law, the child must follow the birth status of the mother, so that even though a slave woman should mount the couch of her master, she bears not freeborn children of her master but slaves

A famous case of mistaken status is recorded at *CJ*. 5.18.3. This is the reply of the emperor Caracalla to a certain Hostilia. Hostilia had married Eros and given him a dowry on the mistaken understanding that he was a free man. Caracalla ruled that having discovered that Eros was in fact a slave, Hostilia could reclaim her dowry from his *peculium*. Their children followed the status of their mother and were considered freeborn but because of the status of their father were illegitimate. This law is dated to 216 and is an early example of questions of uncertain status, but it does illustrate the fact that among certain classes there could be a real danger of contracting improper relationships without realising it. Presumably with the social disintegration and unrest in some parts of the empire in the mid-third century the situation only worsened. In times of conflict it was easier for slaves to escape and maintain the pretence that they were free, just as it was for free men to be captured and enslaved (Evans Grubbs, 1993b: 135-6; 1995: 269-70).

It was generally assumed by the fourth century that the freeborn women who were cohabiting with slaves and were the concern of the *sc Claudianum* and of *CT*. 4.12.1-7 were of the lower classes. They could be of *colona* status and living very much alongside slaves in the later empire, or they could be ex-slaves, maintaining a long-standing relationship with a fellow slave. In many of these cases it may be

difficult to distinguish between poor free and slave. If most of these women are from the lower classes it can be assumed that they had little to lose in the way of status and presumably little property to pass on to their children. Indeed, life may have been more secure as a slave than as a poor free person in some parts of the empire. In terms of succession, women who were enslaved under the *sc Claudianum* lost their property along with their freedom. We are not told what happened to the property but Buckland suggests that the term '*successio miserabilis*' implies that it went to her children. Presumably if the mother was in one of the exempted categories this was so, however, if the woman was enslaved and the children also made slaves it should all go to the new owner (Buckland 1921, 3rd ed. repr. 1975: 402). If it was mostly women of the lower classes who were entering such relationships then the question of inheritance may be largely academic, and as there appear to be no lengthy disquisitions on the subject of the property of a woman condemned under the *sc Claudianum* this may support the theory that they often were from precisely those classes. This may also explain why there was an exception made for women who cohabited with imperial slaves; these women may have had more to lose both in the way of status and of property. It would be unusual for the law to concern itself with such women, so perhaps what we are seeing here is not so much a general anxiety about status, though that may be part of it, but rather a more specific example of landowners identifying and then profiting from the status of their workers, at a time when slaves were getting harder to obtain.

All of the laws discussed above with reference to the *sc Claudianum* concern women who unite with someone else's slave; it was quite another matter if a free woman took up with her own slave and attempted to pass the relationship off as *iustum matrimonium*. It had never been any more socially acceptable for female members of the upper classes to marry out of their class than it was for males. Augustus had made the marriage of a senator's daughter with a freedman one of

the unions prohibited in the *lex Iulia et Papia* (*D.* 23.2.44). In May of 326
Constantine passed a law, addressed *ad populum*, that dealt with the worse crime
of a free woman having a relationship with her own slave (*CT.* 9.9.1).

Constantine to the people, given at Serdica, 29th May 326.

> Si qua cum servo occulte rem habere detegitur, capitali sententia
> subiugetur tradendo ignibus verberone, sitque omnibus facultas crimen
> publicum arguendi, sit officio copia nuntiandi, sit etiam servo licentia
> deferendi, cui probato crimine libertas dabitur, cum falsae accusationi
> poena immineat. Ante legem nupta tali consortio segregetur, non solum
> domo, verum etiam provinciae communione privata, amati abcessum
> defleat relegati. Filii etaim, quos ex hac coniunctione habuerit, exuti
> omnibus dignitatis insignibus in nuda maneant libertate, neque per se
> neque inter positam personam quolibet titulo voluntatis accepturi aliquid
> ex facultatibus mulieris. Successio autem mulieris ab intestato vel filiis,
> si erunt legitimi, vel proximis cognatisque deferatur vel ei, quem ratio
> iuris admittit, ita ut et quod ille, qui quondam amatus est, et quod ex eo
> suscepti filii quolibet casu in sua videntur habuisse substantia, dominio
> mulieris sociatum a memoratis successoribus vindicetur. His ita omnibus
> observandis et si ante legem decessit mulier vel amatus, quoniam vel
> unus auctor vitii censurae occurrit. Sin vero iam uterque decessit, suboli
> parcimus, ne defunctorum parentum vitiis praegravetur; sint filii, sint
> potiores fratribus, proximis adque cognatis, sint relictae successionis
> heredes. Post legem enim hoc committentes morte punimus. Qui vero
> ex lege disiuncti clam denuo convenerint congressos vetitos renovantes,
> hi servorum indicio vel speculantis officii vel etiam proximorum
> delatione convicti poenam similem sustinebunt.
>
> INTERPRETATIO: Si qua ingenua mulier servo proprio se occulte
> miscuerit, capitaliter puniatur. Servus etiam, qui in adulterio dominae
> convictus fuerit, ignibus exuratur. In potestate habeat huiusmodi crimen
> quicumque voluerit accusare. Servi etiam aut ancillae si de hoc crimine
> accusationem detulerint, audiantur: ea tamen ratione, ut, si probaverint,
> libertatem consequantur, si fefellerint, puniantur. Hereditas mulieris,
> quae se tali crimine maculaverit, vel filiis, si sunt ex marito suscepti, vel
> propinquis ex lege venientibus tribuatur.
>
> If any woman is discovered to have a secret affair with her slave, she is
> to undergo a capital sentence, and the scoundrel slave handed over to the
> flames. Let everyone have the right to bring an accusation of this public
> crime; let all announce it to the authorities; let even a slave have licence
> to bring information, and freedom shall be granted to him if the crime is
> proved, but punishment threatens for a false accusation. A woman
> married before this law, shall be separated from such an association and
> deprived not only of her home but also of the community of the province.
> and shall mourn the absence of her exiled lover. Also the children whom
> she had from this union shall be stripped of all signs of rank and remain
> in bare freedom, and neither through themselves not through the
> interposition of another shall they receive anything under the title of a
> will from the property of the woman. But intestate succession the
> inheritance of the woman shall be granted either to her children if they
> are legitimate, or to her nearest kin and cognates, or to one whom the
> rule of law admits, so that anything of that man who was once her lover,

and the children conceived from him appear by any chance to have had, shall be joined to the property of the woman and may be vindicated by the aforementioned successors. All these things must be observed in this way, even if the woman or her lover has died before the law, since even one author of the fault incurs the censure. But if both have already died, we spare the offspring, and they shall not be burdened with the crimes of their deceased parents. They shall be [recognised as] children and preferred to brothers, next of kin, and cognates; they shall be heirs of the inheritance that has been left. After this law we punish those persons who commit this crime by death. Moreover those who have been separated in accordance with this law and secretly come together again, renewing the forbidden union, will suffer a similar punishment, whether convicted on the evidence of slaves, by the office of the special investigator or by next of kin.

INTERPRETATION: If any freeborn woman should join herself secretly to her own slave, she shall suffer capital punishment. Also a slave who is convicted of adultery with his mistress, shall be burned by fire. Anyone who wishes shall have it in his power to bring accusation of a crime of this kind. Even slaves and maidservants shall be heard, if they should bring an accusation of this crime; on this condition, however, that if proved, their freedom will follow; that if they falsely testify, they shall be punished. The inheritance of a woman who blemishes herself with such a crime shall be granted either to her children, if they were conceived from her husband, or to those near kinsmen who succeed according to the law.

This ruling confusingly addressed two scenarios at once: first, it stated that any woman discovered having a secret affair with her own slave should undergo a capital penalty and loss of property while the slave partner would suffer death by the flames; second, any woman married (*nupta*) before the law was deprived of her property and her lover exiled. Any children from the union shall remain free but be denied rank. They were also prohibited from receiving any of their mother's property. If the mother had legitimate children by a former marriage these could claim all the property, plus anything that had been acquired by the slave partner. All this could still happen even if one of the partners was dead. However, in the event of both the free mother and the slave father being dead the children were not to be penalised and could inherit before other agnates and cognates. Anyone entering such a relationship after the law was to be punished by death, similarly those who separated because of the law and came together again. The enforcement of this law was to be ensured by informers, be they kin or slaves or professional (Evans Grubbs 1993b: 142-7; 1995: 273-7).

The fact that a woman might have both legitimate and illegitimate children suggests that the relationship with the slave might be a 'second marriage' and that she already had legitimate offspring by a previous *iustum matrimonium*. Roman law had previously dealt with a particular case that raised just this issue. In 290 a certain Theodora had elicited a response from Diocletian and Maximian. She had reported that her mother had been having a sexual relationship with a slave and was planning to have him declared of freeborn status, claiming he had been falsely captured. The mother had not attempted to manumit the slave but rather had tried to have him declared free by fraudulent means. Diocletian and Maximian ruled that the slave therefore remained a slave (*CJ* 7.20.1; Evans Grubbs 1993b: 138-40; 1995: 276-7; Arjava: 1996: 225-7). Theodora presumably had an eye to her inheritance as well as her mother's reputation and behaviour. Should the new 'husband' and her mother have produced offspring without the fraudulent nature of their relationship being discovered, such children would have had a share at least in Theodora's mother's property, though they would not be entitled by law to anything Theodora might have been left by her own father.

Illegitimate children, those of the woman and her own slave, fared better if their mother and father were already dead when the impropriety of the relationship was discovered. In this case they were recognised as '*proximiis adque cognatis*' and allowed to inherit, presumably both property and rank, although social ostracism might result once their birth status was made public. If, however, the relationship was discovered whilst either parent was still living then the children suffered not only loss of rank and property but also the loss of their parents. Presumably the positive encouragement given to *delatores* in this law addressed the larger *familia* in particular. A woman's family would have had a vested interest in making such accusations, and they stood to gain by way of inheritance. Slave members of the household might be 'in the know', as it were, if the lover were one of their number, they stood to gain their freedom by reporting.

The confusion over status and correct behaviour was obviously more worrying for those who had status in the first place. The laws assumed that women who formed relationships with their slaves were of the upper classes, that is, of a class that should maintain its *dignitas*. Presumably this was why the penalties were so severe for the male and the consequences for woman and their children relatively better than if they had come under the provisions of the *sc Claudianum*. Constantine's law had left anomalies, though, one of which is illustrated in Novel 1 of Anthemius, given in March 468 and prompted by a particular case. A woman named Julia appealed to the emperor not to be penalised under the provisions of *CT.* 9.9.1, as she had married her freedman who had been freed 'by the splendid qualities of his character' (*sed libertatem morum claritate meruit*). Julia argued that Constantine's law should not apply to her because she had married her ex-slave, a union not previously prohibited by law. According to Ulpian, Julia was, in fact, legally correct: *D.* 23.2.13 states: 'If a patroness is so degraded that she thinks that marriage with her own freedman is honourable, it should not be prohibited by the judge who is investigating the matter.[40] Anthemius' reply is that such unions shall be valid if entered into before the publication of this law, as per Ulpian:

> ...ita ut cum libertis suis iustas nuptias contraxisse videantur natique et nascendi ex his liberi nullam umquam de parentum suorum coniunctione sustineant quaestionem, sed matris ac patris hereditatem legum more percipiant.

> Such women who appear to have contracted legal marriages with their freedmen, and the children who have been born or who will be born from them shall never sustain any investigation in regard to the union of their parents but shall receive the inheritance of their father and mother according to the custom of the laws.

But, after the passing of this law though, such unions are prohibited:

> ... cum servis et libertis dominas et patronas ineundi matrimonia facultatem habere prohibemus, ne insignium familiarum clara nobilitas indigni consortii foeditate vilescat et, quod splendore fortisan senatoriae

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[40]*D.* 23.2.13 *Si patrona tam ignobilis sit, ut ei honestae sint vel saltem liberti sui nuptiae, officio iudicis super hoc cognoscentis hae prohiberi non debent.*

generositatis obtinuit, contractu vilissimae societatis amittat aut nudo tantum ingenuae libertatis fulgore perspicuum genus in femina impudentior conplexus inminuat:

> We prohibit that mistresses and patronesses shall have the right to enter marriages with their slaves and freedmen, lest the renowned nobility of distinguished families be debased by the disgrace of an unworthy union and may not lose, by the contract of a very debased union, what it had obtained by the splendour of senatorial birth, and in order that by the bare distinction of free birth only, a woman in shamful embrace may not diminish the honour of her distinguished family.'

If women did enter unions with freedmen after this law the penalties were severe. They risked having all their property confiscated and suffering perpetual deportation. Any children were enslaved to the fisc. We do not know Julia's exact status, but had she been of senatorial rank her relationship would have been prohibited under classical law; however, Constantine did fail to make provision for such a situation in his 326 ruling and such anomalies may have occurred, particularly in the lower ranks of the upper classes.[41] The fact that Julia married her freedman for his good character may suggest a relationship based on affection; the wording of the law suggests that, for senatorial women at least, this was not of prime concern when choosing a marriage partner. Anthemius reiterated the concerns of Augustus, four hundred and fifty years earlier, in wanting to maintain the purity of the upper-classes. It was not only a question of expectation of upper class female behaviour but also of the consequences for the children and for inheritance. Julia may have found herself informed upon by one of the informers of *CT*. 9.9.1, perhaps in the hope of reward or retaining the family wealth. If a woman had children in such a relationship after the passing of this law she risked all her property. The law does not say whether the property can go to legitimate heirs or is confiscated by the fisc, but her children by the illegitimate relationship certainly become the property of the fisc (Evans Grubbs 1993b: 151-2; 1995: 275).

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[41] In classical law marriage with freed men and women was allowed for all but the senatorial class. Constantine had extended the prohition to other groups, see above, section 5.4.5.

It does seem that attitudes to mixed-status relationships where the woman is of the higher class met with increasingly harsh penalties during the fourth and fifth centuries. The regular attempts to restrict and punish such unions suggest that they were, if not common, at least not rare, at all levels of society. If a woman took up with a slave she risked not only her freedom and her property but also condemned her children to a life in slavery. Despite the precariousness of life for the lower levels of society it can never have been a good thing to be reduced to slave status. Women who took up with their own slaves and produced children were forbidden to pass on rank or property to them, but the children could retain their free status. Only in the event of their parents' death prior to the discovery of the illicit nature of their 'marriage' could such children claim inheritance. The law was harsh and punished with death anyone who entered such a union after the promulgation of the ruling. That anomalies still existed and that the question still troubled later generations is evidenced by the case of Julia in 458. There is a recognisable continuity in Anthemius' reply with the legislation of Augustus on status and attempts to maintain the purity of the elite, and with Constantine's own legislation on the matter. That emperors continued to be concerned with the exclusivity of rank and the worthiness of those holding honours is a sign of the strength of some of the fundamental ideals of the Roman social world in the face of social change.[42] In the legislation concerning natural children it was far better for the children and their mother if it was her who held the lower status, not surprising in the patriarchal world of Rome.

5.5 Legitimisation

Alongside the legislation on the status and inheritance rights of natural children there was a move by some emperors to encourage men and women to marry and so legitimise their children. Due to the informal nature of Roman marriage it was

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[42]See also *N.Maj.*6 which amounts to a reiteration of much of Augustus' marriage law in an attempt to restrict so many of the aristocratic women taking up the celibate life.

often difficult to tell the difference between *concubinatus* and *iustum matrimonium*, particularly if both partners did have the capacity for *conubium*, i.e. were citizens from outside the prohibited groups.[43] Prior to 336 and his reiteration of Augustus' prohibitions on upper-class marriages, Constantine had tried to address the institution of *concubinatus* by encouraging those who had the capacity for *conubium* to marry. In a law of Zeno's (*CJ*. 5.27.5), dated to 471, Constantine's law is quoted extensively. Evans Grubbs suggests this is the lost law of *CT* 4.6.1 (1995: 296).

> Divi Constantini, qui veneranda Christianorum fide Romanum munivit imperium, super ingenuis concubinis ducendis uxoribus, filiis quin etiam ex isdem vel ante matrimonium vel postea progenitis suis ac legitimis habendis, sacratissimam constitutionem renovantes iubemus eos, qui ante hanc legem ingenuarum mulierum (nuptiis minime intercedentibus) electo contubernio cuiuslibet sexus filios procreaverunt, quibus nulla videlicet uxor est, nulla ex iusto matrimonio legitima proles suscepta, si voluerint eas uxores ducere, quae antea fuerant concubinae, tam coniugium legitimum cum huiusmodi mulieribus ingenuis, ut dictum est, posse contrahere, quam filios utriusque sexus ex earundem mulierum priore contubernio procreatos, mox quam nuptiae cum matribus eorum fuerint celebratae, suos patri et in potestate fieri at cum his, qui postea ex eodem matrimonio suscepti fuerint, vel solos, si nullus alius deinde nascatur, tam ex testamento volentibus patribus etiam ex integro succedere quam ab intestato petere hereditatem paternam: pactis, quae matrimonii tempore super dotalibus vel ante nuptias donationis rebus subsecuta fuerint, etiam ad ipsorum personas pertinentibus, ut una cum fratribus suis postea ex isdem parentibus forte progenitis, aut soli, si nullus alius sit procreatus, dotis et ante nuptias donationis pro tenore legum nec minus pactorum emolumenta recipiant. Hi vero, qui tempore huius sacratissimae iussionis necdum prolem aliquam ex ingenuarum concubinarum consortio meruerunt, minime huius legis beneficio perfruantur, cum liceat easdem mulieres sibi prius iure matrimonii copulare non extantibus legitimis liberis aut uxoribus ac legitimos filios utpote nuptiis procedentibus procreare, nec debeant, quos ex ingenua concubina dilato post hanc legem matrimonio nasci voluerint, ut iusti ac legitimi postea videantur, magnopere postulare.

> Renewing the most sacred constitution of the Divine Constantine, who provided the Roman Empire with the revered faith of the Christians, with reference to the taking as freeborn concubines as wives, and children born to them either before or after marriage should be descendents and legitimate, we order that if those who, before the promulgation of this law, had, appeared to be in marriage with freeborn women, as concubines and had children of either sex by them; these shall not be considered legitimate, for the reason that their mothers were not their father's wives. If they should wish to marry those who were formerly their concubines, it is possible to contract lawful matrimony

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[43]Gardner, 1986: 56; Treggiari, 1991: chap. 2; see above for *CT*. 4.6.7 (426-7) for the first legal mention of a ceremony as a defining factor in marriage.

with freeborn women of this kind, as has been said stated; and the children of both sexes begotten of the same women, formerly concubines, shall, as soon as the marriage with their mothers has been celebrated, become legitimate, and enter the *potestas* of their fathers, and shall succeed to the entire estates, along with those who may be conceived after the marriages, or alone; and, if none is born afterwards, they can claim their estates not only under the last will of their fathers, but also as heirs at law. Any agreements which may have been entered into during the marriage with reference to dowries or ante-nuptial donations, in which they themselves are interested are concerned, they shall, nonetheless, be entitled to the benefit of the same, either alone (if no other child has been begotten) or along with their brothers born to the same parents, in accordance with the provisions of the laws.

Those however, who, up to the time of this most sacred decree, have had no issue by freeborn concubines, shall, by no means, enjoy the benefit of this law; for as they are permitted to unite themselves in matrimony with these women, when there are no free children or wives living, they can, by marrying said women, beget lawful offspring; and persons who have had issue by freeborn concubines, but have neglected to marry them after the promulgation of this law, must not presume to urgently demand that their children shall afterwards be considered legitimate.

This law, in effect, offered retrospective legitimation of children of a *concubinatus* relationship, should their parents marry. If the couple chose to marry then children of either sex, born before or after the marriage, became legitimate. Children were then in the *potestas* of their father and able to inherit both by will and as heirs at law, i.e. on intestacy. The law did have a cut-off point though; couples who continued to live in concubinage after the promulgation of the law could not presume to marry in order to legitimise their children. The essential point, as Evans Grubbs has recognised, is that the law is concerned with *ingenuae*, freeborn women who have the right of *conubium* (Evans Grubbs, 1995: 297). This may reflect a recognition by Constantine of the social reality of the period and an attempt at using the law both to recognise a situation and to regulate it.

There were other ways to legitimise your children in the face of ever changing laws. Presumably, for instance there were many men in Libanius' position anxious to provide for their concubine and natural children in the event of their death. As with much legislation that concerned the family the motivation often had little to do with the family *per se*. One of the social groups in which the status of natural children could be improved was that of the decurion class. This was a group that

fell outside the limit of Constantine's prohibitions (*CT.* 4.6.3). Natural children could not normally inherit their father's rank, but pragmatic emperors recognised that one of the ways to fill the seemingly ever-decreasing ranks of the decurion class would be to enrol such children in the local curia. These laws are, of course, not concerned with mothers *per se* but had ramifications for women of the decurion class and those who had relationships with decurions. Some of them even allowed a child to claim status through the mother if it suited the needs of the local municipality.

The compilers of the Theodosian Code collected most of the edicts concerning decurions in Book 12, of which over one hundred and ninety address the problems of filling the local curia. There was a constant seepage of available decurions both up and down the social scale. Many attempted to avoid the financial burdens of the office by taking up posts in the imperial bureaucracy or palatine armies, others slipped down the social ladder into the colonate. The majority of rulings in Book 12 deal with bringing those that had attempted to evade their duties back to their local curia to fulfil their obligations. Over the period some groups were given exemptions, but these were often rescinded by subsequent emperors.[44] The constant reiteration of these laws also suggests that filling vacancies was a continuing problem and perhaps is also evidence of a general confusion over rank and responsibility as well as a reluctance to shoulder such burdens. Many of the laws reflect an anxiety about inappropriate or unworthy men assuming posts.[45]

One of the ways of filling these posts was to count status inherited from the mother. This meant that women of decurion class who had married a man outside of her class could have her children enrolled in the local senate. Julian ruled as such for the curia at Antioch in 362 (*CT.* 12.1.51). It is not clear whether this

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[44]Jones *LRE* 737-57; Reinhold, 1971: 299-301; Garnsey 1974: 229-252; Macmullen, 1988; 46-9; Evans Grubbs, 1995: 24-25; 303.
[45]e.g. exemptions: *CT* 12.1.1; evasion: 12.1.6; 13; 22; 37; 38; 63; 100

applied to natural children who only had the status of their mother, or simply to children of legitimate marriages. Presumably the father would be of lower class, otherwise the son would simply take on the duties of his father's rank. This law was in any event undermined by one of 393 which recalled absconding decurions and stated that 'no man shall be bound solely by maternal ancestry, because the frailty of women has never rendered their children subject to such compulsory services from which the women themselves are exempt' (*CT.* 12.1.137, Theodosius, Arcadius and Honorius)[46]. The contradiction of these two laws is typical of later imperial rulings on status and women's status in particular. Emperors never seem to be quite sure how to strike the balance between what would be considered socially correct and what would best serve the needs of the particular situation. A later law of Honorius and Theodosius II is even more significant as it appears to do away with the penalties of the *sc Claudianum* for women of the decurion class:

> Omnes, qui curiali genere origine vel stirpe gignuntur, curiarum nexibus obligentur. Aequum est enim, ut ingenua matre nascentes et quorum natales origo demonstrat, ex matre ingenua nati maiorum suorum dignitatibus socientur. Nec quisquam privatorum suorum iuri lege nostra putet aliquid derogatum, qua, eorum morem secuti, rei publicae nostrae ex feminis cupimus esse consultum. (CT. 12.1.178, Jan. 21st 415, Ravenna).

> Senatusconsulti Claudiani auctoritatem firmantes ingenua stirpe creatos, quorum maiores curiae servierunt, civitatibus iussimus redhiberi. Quod non solum de futuris, sed etiam de praeteritis observandum esse censemus. (CT. 12.1.179, Jan 21st, 415, Ravenna).[47]
> All persons who are descended by birth status or blood descent, from a decurion family, shall be obligated to the bonds of the curia. For it is equitable that persons born of a freeborn mother and whose birth status proves their birthrights, should be associated with the honours of their ancestors, on the ground that they are born of a freeborn mother. No private citizen shall suppose that any derogation is made by our law from his rights, since we thereby follow custom in our desire to provide wisely for the state by the use of the children born of such women.

> In confirmation of the authority of the Claudian decree of the senate, we order that those persons born of freeborn stock whose ancestore served the curia shall be restored to the their cities. We decree that this

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[46]*Nullus sane solis materni sanguinis vinculis inligetur, quia mulierum infirmitas numquam huiusmodi functionibus reddit obnoxios, a quibus ipsa habeatur immunis.*
[47]dating would suggest that these were once part of the same law.

regulation shall be observed not only with reference to future cases but also for those that are past.

The implication of this is that the child of a freeborn mother of decurion family, whatever the status of his father, decurion, *colonus* or slave, had to undertake curial duties. Under the *sc Claudianum* a free woman who lived with a slave and disregarded the statutory three warnings was reduced in status to a freedwoman while her children became slaves of her partner's master (*CT*. 4.12; above, section 5.4.6). This new ruling made the *sc Claudianum* redundant for decurion women: to serve the needs of the local curia, their children no longer became slaves but were required to serve on the local council. The child inherited his mother's status, this time, in theory, to his advantage. Obviously the needs of the state could overcome the social handicaps of low birth; however, it only takes a little imagination to realise that this up-grading of status may not be a desirable thing for a family which would now have to put itself at financial risk for succeeding generations in order to fulfil its curial obligations. A mixed-status union may have been chosen for a daughter precisely to avoid this happening.

In the mid-fifth century Theodosius II once again addressed the problems of the still troublesome decurionate and the status of natural children in a single law, attempting to kill two birds with one stone (*Nov. Th.* 22.1.3; AD 442, given at Constantinople).

> ...horum condicioni et curiarum commoditati subveniendum esse perspeximus, ut, cum et naturalium liberorum vilitas splendidiorem fortunam et decurionum nobilitas multitudinem desideret auctiorem, utriusque generis utilitatibus in commune perpensis ab altero commodetur quod alteri defecit lexque undique temperatissima conlocetur, quae et naturae vitium dignitatis inpertitione soletur et ordinum dignitatem a corporum exiguitate defendat..

> We realised that we should come to the aid of both these children and the interests of municipal councils. Thus when the base condition of natural children demands a more honourable fortune and the nobility of decurions demands an increase in number, the welfare of both groups should be weighed in common, and each shall bestow on the other what the other lacks. A law that is most moderate in all respects which shall

both console a fault of nature by importing high rank, and shall protect the dignity of municipal orders from scarcity of members.

This new approach allowed decurions who had no legitimate offspring to make their natural sons legitimate heirs if they enrolled them in the local *curia*. This does not override earlier rulings whereby a father could leave up to an eighth of the inheritance to natural children and their mother, should he choose to do so. (*Nov. Th.* 22.4-5). The father must leave the correct portion of his estate (a quarter) to any surviving ascendants (*NTh.* 22.6). Buckland argues that this did not make an illegitimate son legitimate as he still lacked agnates and cognates (Buckland 1921 (3rd ed. repr. 1975:129). However, the natural child had no choice over accepting his inheritance once it was made in a will or by public record, but must accept both the estate and the obligation to serve on the local *curia* (*NTh.* 22.9). This made the acceptance of the legacy by the natural child the same as a legitimate child's acceptance of a legacy from a father in whose power he was. He had no right to refuse, but must receive the bequest, obligations and/or debts and all. The natural child appears to rank among *liberi* but does not have the right to succeed on intestacy. While the difficult position of natural children was recognised it was still not allowed to jeopardise that of the agnatic family. In this case, as with others, the natural child was only allowed to succeed if there were no surviving legitimate heirs.

The idea of making natural children legitimate heirs no doubt reflected the large amount of unions there were in Roman society that could not count as *iusta matrimonia* particularly among the decurion class and below. It also meant that women who became partners in such relationships at this social level were no longer at such a social disadvantage as they might have been, since there was a chance that at least one of their children could become a legitimate heir, though in the case of being made a member of the decurion class this may have been a mixed blessing.

The problem was not solved by this ruling, and Theodosius was forced to make yet another law the following year in which the preamble attacks the fact that 'Almost nothing is devised for the welfare of the human race which is not converted by the clever plans of men into fraud and malice', of which the decurions are particularly guilty (*NTh*. 22.2. 443).[48] This concerned the property of decurions and attempted to ensure that the property was transmitted in such a way as to ensure that the positions in the *curia* would continue to be filled. It impacted on women in the family in that they could receive their full inheritance on intestacy only if they married into the decurion class. If, however, the daughter was either a widow or under age a quarter of the inheritance was retained until such time as she should marry. If she chose not to marry or failed to do so within three years, that portion was retained by the municipality (*NTh*. 22.7-8). However, a mother or grandmother married to a decurion at the time when her son or grandson predeceased her was permitted to keep this quarter, as was any extraneous heir who is also a member of the curia (*NTh*. 22.9-10). Fathers were given the right to make their natural daughters their heirs, with the proviso that they should not displace legitimate children and that the daughter should marry a decurion who could continue the family obligation to the local council; 'For what difference does it make whether provision is made to the welfare of municipalities through sons or through sons-in-law, or whether the law makes new decurions or cherishes the ones whom it finds?'[49] The same provision for retaining a portion for any surviving parents or grandparent of the deceased father was included (*NTh*. 22.11).

This last quote makes it clear that these laws are interested in women only so far as they were useful as a mechanism for filling local curial vacancies, but it also shows that the rules could be bent for natural children of decurions, and that any change in the law that affected children must by implication affect their mothers.

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[48]*Nulla paene res adeo pro utilitate humani generis invenitur, quae non callidis hominum consiliis ad fraudem malitiamque convertitur.*

[49]*Quid enim interest utrum per filios an per generos civitatem commoditatibus consulatur et utrum novos lex faciat curiales an foveat quos invenit?*

In permitting natural children to inherit should their fathers wish, it may also have changed the nature of the relationship between men of decurion class and their concubines. Decurion men may have entered such a relationship precisely to avoid passing on the curial obligations; this may be particularly true of those that fled to the colonate, rather than upwards into the imperial service where many of the posts were also hereditary. The law of 443 ensured the rights of *sc Tertullianum* for the female ascendants of decurions in allowing them to retain their statutory quarter share if the deceased was a member of the *curia*. Thus we can see that the rewards for maternity were still very much part of the legal ethos. It also offered financial advantages to those who did take up the duties. Similar rights were granted to fathers over their natural daughters as the law of the previous year had given them over sons. A natural daughter could now become her father's heir on condition that she married into the decurion class of his home city. A mother could now have the same expectations for a daughter as for a son. The law allowed for as many children to be made heirs as were obligated to serve on the council, so a father could, in effect, make more than one natural child his heir. Given the amount of money required to fulfil curial duties, the father would have had to be a wealthy man to so do.

The problem did not go away, and a Novel of Majorian's of 458 attacked those of decurion class who descended to the colonate. The emperor accused such men of not only deserting the 'splendour of their birth status' (*natalium splendore neglecto*) by abandoning their property to more powerful patrons but also 'pollut[ing] themselves by unions with *colonae* and slave women (...*colonarum se ancillarumque coniunctione polluerunt*) (*NMaj.* 7.1). He therefore insisted on the return of all such men and their 'wives' to their cities. Certain groups were exempt: those who had already fulfilled local obligations, those with exemptions, those who had managed to stay away for more than thirty years, and those that were on imperially owned land. The owners were to be punished by the loss of the

woman's services, but any daughters born to the couple had to remain on the land. Natural sons, on the other hand, were to accompany their parents. These sons were then assigned obligations in the home city dependent on the status of their mother: sons of *colonae* were to be enrolled in the *curia* while sons of slaves were assigned to the guilds 'so that the splendour of the municipal senate may not be polluted by the baseness of their maternal blood' (*ne materni sanguinis vilitate splendor ordinum polluatur, NMaj.* 7.1-2). Daughters of decurions who were united by a landowner to one of his slaves must be restored to the city and her rightful status, so that she could succeed to her parents on intestacy, along with any siblings, because her heirs must also serve the municipality. If her 'husband' had 'married' her willingly he suffered a fate in line with his status; if a *colonus* then he was assigned to the guilds, if a slave he died (*NMaj.* 7.5). If a woman of decurion class married into another municipality she must leave a portion (a quarter) of her resources to her home city (*NMaj.* 7.6).

The main thrust of Majorian's ruling was again to fill the local curial posts, but this time it made exceptions for those who had dropped off the bottom of the social ladder. This situation had previously been partly addressed by Constantine (*CT.* 12.1.6 AD 319). This had stated that in the case of a decurion fleeing to the land and living with a slave woman, he would be exiled to an island while she was sent to the mines. If he was *sui iuris* and had no legitimate offspring or agnates, then his property was confiscated by the municipality. Constantine also stated firmly that any children born of such a union were slaves (Evans Grubbs 1995: 278-80). Local interests were obviously demanding enough for Majorian to completely overturn this ruling, though the punishments meted out to landowners and their foremen remained harsh (*NMaj.* 7.4; *CT.* 12.1.6). Mothers of slave origin benefited by the new ruling in the sense that they were no longer assigned to the mines and their sons were not rural slaves. However, being assigned to the guilds,

while it might help out the municipality was not necessarily a step up in life.[50] The law implied that the sons of slave women retained the status of their mother while the sons of *colonae* were promoted to the decurion class, and thus took on the status of the father and came into the benefits (*sic*) of the law of 442. The difference free birth made is again emphasised. Majorian's law also recognised the earlier practice of Julian (*CT*. 12.1.51), that maternal descent would entitle a son to a place on the *curia*. Presumably, since her sons were obliged to serve the city, they were not tarnished by the baseness of their paternal blood. Some of their fathers were not so lucky. Like the previous law, this annulled the *sc Claudianum* for women of the decurion class, thus proving once again that the needs of the local cities were more important than the stigma of low birth. The women were forced to return to their city whether they desired it or not.

Majorian's laws were only promulgated in the west; the situation in the east was somewhat different. Here the legislation was equally unclear, swinging first in favour of natural children, only to be rescinded by a subsequent emperor. In 470 the emperor Leo decided that any father who invested his natural son into the local *curia* had shown 'by paternal affection' that he intended him as his heir. The son was not allowed to refuse either the bequest or the obligation, even if his father died intestate. Obviously the very act of enrolling a son in the curia was considered tantamount to making him a legitimate heir, and in this case fully into the rank of *liberi* in the succession. This law was most likely the result of a case involving a certain Philocalus, who is named in the text. Philocalus was an heir at law, and was therefore obliged to take up the entire estate of his father and perform the duties required. His heirs were also bound by this condition, imposed upon him by his father (*CJ*. 5.27.4.). This law was followed within six years by Zeno's reiteration of Constantine's law discussed above. This had encouraged men to marry their concubines and retroactively legitimated their natural children.

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[50]Being sentenced to life in 'factories': cf. *CT*. 4.6.3.5.

In the same year that he passed the legislation on the inheritance rights of concubines and illegitimate children (see above, section 5.4.5), Justinian, in an attempt to further clarify the situation, passed yet another law that stressed that natural children who were called to the *curia* became the legitimate heirs of their father. He added that natural children could do so even if there were legitimate children still living; they shared the inheritance impartially. More importantly, Justinian made the position of inheritance from natural son to mother clear: his mother would inherit one-third of her son's estate and the *curia* the rest, but if his mother were dead her cognates were called to the succession. In this case anything the decurion inherited from his father went to the *curia* and the maternal relatives received anything he had received from his mother. These rules were subject to an overriding concept, that is, if anyone from the same family was prepared to attach himself to the *curia*, the property that came to the deceased from his father passed to him. The mother or her relatives kept only that to which she was sole heir (*CJ*. 5.27.9, 528). There are two main points here: first, the inheritance hierarchy for natural children and their mothers continued to keep maternal and paternal property separate, and, second, in permitting the father to enrol both natural and legitimate sons in the *curia*, Justinian was allowing natural children to inherit on the same level as legitimate offspring.

The following year he passed a law that allowed father to legitimise all their children if they married their freeborn concubine, regardless of when the children were born (*CJ*. 5.27.10). During the 530s general legislation was slowly converting concubinage into marriage, and by the time of the publication of the *Institutes* lawmakers could state that natural children come into the *potestas* of their fathers when they are enrolled in the *curia* or when their parents marry (*Inst.* 1.10.13). These laws all applied to free or freed status concubines, but slave mistresses could now expect freedom for themselves and their children on the

death of their partner, unless this was expressly denied in his will (*CJ*. 7.15.3, 531; *Nov*. 78.3, 539). That people remained doubtful about these rulings is evidenced by the amount of times they were reiterated in one form or another (*CJ* 6.57.5, AD 529; *Nov*. 12.4, AD 535; 18.11, AD 536; 89, AD 539; Buckland (3rd ed. 1975): 130; Evans Grubbs 1995: 304; Arjava 1996: 212-7).

5.6 Guardianship

The guardianship of children was an area where the law was clearly out of synch with social practice until the late fourth century. A ruling of Theodosius in 390 represented the legal recognition of what was obviously common practice in allowing mothers to become the legal guardians of their children:

> Matres, quae amissis viris tutelam administrandorum negotiorum in liberos postulant, priusquam confirmatio officii talis in eas iure veniat, fateantur actis ad alias se nuptias non venire. Sane in optione huiuscemodi nulla cogitur, sed libera in condiciones quas praestituimus voluntate descendat; nam si malunt alia optare matrimonia, tutelas filiorum administrare non debent. Sed ne sit facilis in eas post tutelam iure susceptam inruptio, bona eius primitus, qui tutelam gerentis affectaverit nuptias, in obligationem venire et teneri obnoxia rationibus parvulorum praecipimus, ne quid incuria, ne quid fraude depereat. His illud adiungimus, ut mulier, si aetate maior est, tum demum petendae tutelae ius habeat, cum tutor legitimus defuerit vel privilegio a tutela excusetur vel suspecti genere submoveatur vel ne suis quidem per animi aut corporis valetudinem administrandis facultatibus idoneus inveniatur. Quod si feminae tutelas refugerint et praeoptaverint nuptias neque quisquam legitimus ad pares possit causas vocari, tunc demum vir inlustris praefectus urbi adscito praetore, qui inpertiendis tutoribus praesidet, sive iudices, qui in provinciis iura restituunt, de alio ordine per inquisitionem dari minoribus defensores iubebunt.

> If mothers who have lost their husbands should demand tutelage over their children for the administration of their affairs, before confirmation of such an office legally comes to them, they shall state in the public records that they will not proceed to another marriage. Certainly, no woman is forced to such a choice, but she shall comply of her own free will with the conditions which we have prescribed. For if she prefers to choose another marriage, she must not administer the guardianship of her children. In order that such a woman may not easily be taken by storm after she has lawfully undertaken the guardianship, we order that, first of all, the property of any man who eagerly seeks the marriage of a woman who is administering a guardianship shall be obligated and held liable for the accounts of the children, so that nothing may be lost to them through negligence or through fraud. To this we add the following: that a woman who has attained her majority shall have the right to petition for a guardianship when a statutory tutor is lacking or when such a person is excused from serving as tutor by reason of his privilege, or when he is excluded as being of the class of suspect, or

when he is found to be incapable of managing even his own property because of physical or mental infirmity. But if women should avoid the guardianship and should prefer marriage, and no statutory tutor can be called to such cases, then either the illustrious Prefect of the city, with the assistance of the praetor who presides over the appointment of tutors, or the judges who administer the law in the provinces, shall, after investigation, order guardians of another order to be appointed for minors. (*CT*. 3.17.4, AD 390).

The law stated that mothers who wanted to become legal guardians of their children could do so on the provision that they took a public oath not to remarry. Should a widow chose to remarry, the children's patrimony was protected from the new husband by making him liable for any maladministration or loss. A woman was not forced to undertake the duty, and if she preferred not to she should arrange to have a tutor appointed in the traditional way, i.e. approach the nearest agnates and, if none of them was suitable, apply to the magistrate to appoint one.

There seems to be some confusion in classical law as to whether women could actually be tutors to their children. Both the jurists and the later imperial rulings appear to contradict one another. The Digest contains various comments on the matter: Gaius says: 'Tutelage is for the most part a masculine office' (*Tutela plerumque virile officium est. D.26.1.16*), while Neratius states: 'women cannot be appointed tutors, because this is a duty for males, unless they petition the emperor, especially for the tutelage of their sons.' (*Feminae tutores dari non possunt, quia id munus masculorum est, nisi a principe filiorum tutelam specialiter postulent.*) (*D.26.1.18*).[51] The *sc Tertullianum* stated that mothers could not inherit from children who died intestate unless they had appointed tutors for them (*D. 38.17.2.23-25*). The situation was made no clearer by the rulings of third-century emperors recorded in the Code of Justinian. A reply of Severus Alexander to a certain Otacilia clearly stated that women could undertake the office of tutor because of the weakness of their sex (*CJ. 5.35.1*; 225),[52] while less than forty

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[51]cf. *D. 26.2.26* (Papinian) 'In our law it is of no effect for the tutelage of the children they have in common to be entrusted to the mother by the father's will... (*Iure nostro tutela communium liberorum matri testamento patris frustra mandatur...*).

[52]cf. *CJ. 5.31.6* part of the same reply to Otacilia.

years later a ruling of Valerian and Gallienus appears to belie the view of Severus Alexander, by assuming that women are acting as tutors, stating that women who administered the affairs of wards in the capacity of guardians were required to render accounts (*CJ*. 5.45.1; 260). Presumably this confusion in the law reflects the variety of social practice the lawmakers saw in action around them and the fact that it conflicted with the ideal situation.

Under classical law children who were *impuberes* and *sui iuris* were meant to have a tutor. The tutor's duty was to administer the child's inheritance and give assent or authorisation for certain actions, represent his ward in court, etc. It was considered quite a burden and could involve the tutor in some financial risk, if he was honest. Tutors could be appointed in a number of ways: they could be named by the father in his will, or if he failed to do this or died intestate the nearest male agnate would become *tutor legitimus*. Failing this the magistrate would appoint a suitable person. (Gardner, 1986: 14; Saller, 1991a: 38.) Demographic studies have suggested that perhaps as many as 50 per cent of Roman children would be legally *impuberes* on the death of their father, which would suggest that guardianship was a frequent and common duty, particularly for paternal relations (Saller, 1991a: 37). The amount of space it gets in the Digest would also suggest that the role of tutor was not an easy one and that social practice was remarkably diverse. The right to avoid being a tutor was one of the perks of *ius liberorum*.

There is also the problem of how far such laws affected illegitimate children. Natural children were *sui iuris* at birth; they had no agnates and therefore no available *tutor legitimus*. The conditions of the *sc Tertullianum* which allowed for mothers to inherit from illegitimate children required them to have appointed a tutor for those children. Such a mother would have to apply to the magistrate. The fact that such a clause existed implies that women were not doing so and must therefore have been taking the responsibility of anything their children might

possess upon themselves. The control of one's own property was, of course, one of the advantages of being outside *patria potestas*. A natural child, in theory, owned anything that was given to him/her.

There is, in fact, plenty of evidence to show that mothers were acting as tutors or in lieu of tutors from the late Republic onwards. The various ways in which husbands attempted to ensure that their wives took care of the patrimony on behalf of their mutual children suggests that for many families this was seen as the natural option. Mothers were thought to be the best people to safeguard the interests of their children. As noted above, a husband had various legal mechanisms whereby he could ensure that his wife held his property in trust for their mutual children (see Section 5.4.4). Neither of these mechanisms prevented a mother from remarrying. Should she do so, the estate should be preserved for the children of the first marriage (see above, section 5.4.4). A mother could always have some control due to her own independent financial position within the conjugal unit, but a father could enhance her authority by suggesting that a tutor take her guidance in certain matters (*D.* 26.7.5.8). As we have seen there were ways a father could stipulate in his will the amount of control his wife might have over his estate and the care of their children (*D.* 33.1.7; 23.2.62; Saller, 1991a: 41.) The expectation that the mother would continue to care for the children could be encouraged by arranging for an allowance to be paid to her by the heirs (tutors) to care for children who remained living with her (*D.* 35.1.8.). There is a difference here, in that 'care and control' were perceived as separate entities: a mother could continue to raise her children, but they could still have a tutor to take responsibility in legal and business matters where a woman was still ideally excluded. Given the relative ages at marriage, many women could expect to be widows at what we might consider a young age, and, as Clark has pointed out, a woman could find herself a grandmother in her late twenties (Clark, 1993:60). Some young widows may have found it preferable to have a tutor to take responsibility for the

management of estates and finances, others may have been suspicious of the interference.

Legal evidence is not the only illustration of mothers acting as tutors or raising their children alone. There is certainly a general assumption that a mother could be trusted to have her children's interests at heart, particularly illegitimate children who had no legal father (*D*. 25.3.5.4). The jurists' ruling of the second century confirmed what had been practice since the Republic, indeed Roman history is full of widows bringing up their children: Cornelia, the archetypal Roman mother, had brought up her surviving three children and declined to remarry; Octavia raised her own and all of Antony's various offspring; Seneca praised his mother for her careful administration of his inheritance (*ad Helviam* 14.3). In the fourth century we have the example of Augustine and Monica, and both Libanius and John Chrysostom praise their widowed mothers for their upbringing (*On the Priesthood* 1.5, *PG* 48.624.). Libanius, in fact, says that after his father's death his mother raised her children herself because she feared the dishonesty of guardians (*Or*. 1.4). There are, then, some precedents for mothers acting in the role of tutors.

The law of 390 begins to look as if it fits in with the pattern of much late imperial law, in that it is finally recognising in law a social practice which had long been the norm. This law allowed mothers to petition for the guardianship of their children, with the proviso that they did not remarry. If a mother chose to remarry she must renounce the guardianship, and to discourage a second marriage the law stated that the new husband's property was to be held liable to the children against any loss they might incur. Mothers were not under any obligation to accept the duty of tutor, and if they preferred not to, one would be appointed in the traditional way; either a suitable *tutor legitimus* or one selected by a magistrate. There are two main aspects to this law: to discourage a mother who wanted to be her children's tutor from remarrying, and to make any second husband liable to her

children for any diminution of the patrimony. The underlying assumptions were that a woman probably would remarry, and that the children's inheritance would be damaged either by their mother's new loyalties or by the stepfather's machinations. This general cultural assumption that women who remarried immediately abandoned the interests of their children to those of their new husband is paralleled by the legislation on *bona materna* and the remarriage of the *paterfamilias* (see above, section 5.4.2). There is also a legal precedent in a law of Constantine's which dealt with the duties of a tutor and had a passing reference to mothers: 'This law had in view not only the interests of minors as against their guardians, but also as against prodigal and intemperate women, who, for the most part, not only abandon the property of their children but also their life to their new husbands.' (*CJ*. 5.37.22; Humbert, 1972: 405-10).[53] It is not clear whether this earlier legislation referred to widows who were acting as tutors or continuing to have primary care of their children with the assistance of a tutor. Either way it appears that remarriage was considered bad news for the children of the first marriage. If the mother was acting as tutor, the law could be read as restricting her powers should she remarry, in the same way as tutors were restricted by this law. On the other hand, it may have been attempting to provide protection for children whose upbringing and education was deemed to be put at risk by their mother's subsequent marriage. The point is that both are seen to be put at risk by remarriage. Theodosius' law made clear the fear of disruption of the child's education and inheritance and attempted to forestall it by making the new husband liable.

It does appear that, despite the requirement of a public declaration and a pressure on the mother to remain a widow in the interests of her children, remarriage was considered highly probable. Women who did remain widows were highly praised

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[53]*CJ* 5.37.22.5 *Lex enim non solum contra tutores, sed etiam contra feminas immoderatas atque intemperantes prospexit minoribus, quae plerum novis matitus non solum res filiorum, sed etiam vitam addicunt.*

as an ideal both in pagan and Christian culture. The abolition of Augustus' laws meant there was no longer any pressure to remarry, and Christian teaching certainly supported the idea of *univira*. (Lightman and Zeisel 1977: 19-32). Despite this, the wording of the law assumed that a widow would at least by approached by suitors, perhaps after her children's inheritance; at least, this was the standard argument offered by Church. Widows tended to argue the other way, that they needed the protection and authority that a new marriage would provide (John Chrysostom, *On the Priesthood*, 1.5). It seems that the law was approaching the situation in a (typically Roman) pragmatic way: women probably will remarry, therefore let us consider the consequences in terms of the children's inheritance. Subsequent laws reflect the fact that women were remarrying. A Novel of Theodosius II (*NTh.* 11. AD 439) mentions a previous penalty for a mother not instituting a tutor, or presumably applying for the job herself. This may be part of the non-extant remainder of *CT.* 3.19-29; the Novel makes it clear that it was once part of the body of the Code. The penalty restricted the right to make wills, and branded the mother with infamy if she failed either to appoint a tutor or make an inventory of her children's property. Theodosius II considered this too harsh a punishment and abolished it (*NTh.* 11.) However, he tightened up the ruling on remarriage, and the mother was now under an obligation to appoint a new tutor and render her accounts of her guardianship before she remarried (*NTh.* 11.2). If she remarried before so doing, the property of the second husband was held as a pledge until her accounts were made up in full (*NTh.* 11.3). The Novel also contained a clause similar to that of the *sc Tertullianum*, in that should a tutor not be provided for a child who was *impuber* on the death of his father, those with the responsibility for such a duty (i.e. mother or agnates) could not inherit from the child should he/she die (*NTh.* 11.1). This clause was put in primarily to protect the child and the patrimonial inheritance. This law of 439 is similar to that of 390 in that there was a presumption that remarriage was likely and that no stigma was attached to the breaking of the oath. It differed from the earlier ruling in that now

the mother was obliged to find a replacement tutor; there was no question of her continuing in the role in the event of a second marriage. The children might, of course, continue to live with her, and their upbringing and education remain her responsibility, but their property would be controlled by another (Humbert, 1972: 411-12).[54]

Subsequent laws of Justinian maintained the general rule of these laws and extended them to the tutorship of natural children. *CJ.* 5.35.3 (AD 530) agreed with the laws of the two Theodosius' in allowing a mother whose husband had not stated a testamentary tutor to assume the guardianship of her children. She must still swear an oath not to remarry and 'preserve her chastity intact', and must now also renounce the benefits of the Velleian decree, thus rendering her own property liable for any debts or losses she might incur on her children's patrimony.[55] This law also extended the same privileges to mothers over their natural children. Under Justinian the oath became more serious: Novel 22.40 imposed severe penalties on the breaking of the oath and violation of mourning. It came to take on the respect of a religious act and was to be seen as part of *caritas liberorum*. The mother was still free not to accept the office but if she did remarriage was now portrayed as a violation of her love for her children (Humbert 1972: 412).

The laws on mothers becoming guardians were somewhat typical of later Roman law practices, in that the law finally acknowledged what was common social practice. Instead of challenging the patterns of family life, the law interposed itself only in terms of the protection of property; as with other legislation, the concern was that property and goods were not wrongfully diverted. The law stood to safeguard the rights and property of the *familia* against any encroachment by an outsider. The lawmakers also, almost incidentally, gave away stereotypical

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[54]*Nov.* 11.2 = *CJ.* 6.56.6; 6.58.10.
[55]*sc Velleianum D.* 16.1; Clark 1993:60; Gardner, 1986:234-5; Crook 1986: 83-92; Buckland, 1921:151.

attitudes to women and their behaviour, in the assumption that women will abandon the children of the first marriage in favour of the second, and so finally imposed a religious sanction on the promise to remain a widow. This may be one of the few areas where we can actually see the influence of the Church at work. Certainly Humbert thinks that in the question of remarriage 'les préoccupations du législateur chrétien correspondent aux craintes des Pères de l'Eglise' (1972: 415). Church Fathers had religious, moral and arguably, economic motives, for arguing against second and subsequent marriages.[56] It is true that in this instance the thinking of Church Fathers and lawmakers coincide, but their motives are different. We can see the law of 390 alongside those that protect the transmission of the patrimony and *bona materna* as yet another strategy to ensure the correct line of inheritance. The law does recognise the social power and responsibility of mothers, and does coincide with Church teaching, however, the fact that by the sixth century the idea of oaths and religious sanctions give it weight, points to the thrust of the law being the protection a child's right to inherit the patrimony in tact.

5.7 Conclusions

It is disconcerting to have studied so much of the body of Roman law only to find that there are remarkable continuities over a period of almost six hundred years. Common sense baulks at such a conclusion, especially given the extent of social, political and economic change that occured in the empire in the first six centuries AD. The situation is mitigated by the fact that continuites in the legal texts do not necessarily represent continuities in the social world, law is slow to match social practice. In addition, most of the legal texts studied in this chapter are concerned with status and inheritance, precisely the areas where law makers tend to be most conservative and traditional. Death and inheritance issues, hedged about as they

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[56]There are many treatises by the Church Fathers on the question of remarriage: e.g., Tertullian, *De monogamia*; John Chrysostom, *Against remarriage*; Augustine, *On the good of widowhood.*; Ambrose, *On widows.*

are with ritual and tradition, tend to impose a reluctance to change. Since on the one hand law tends to be conservative, and on the other is dealing with issues closely related to death, it is perhaps less surprising that there is recognisable continuity. Roman law in general was not innovative but reactionary.

What change there was was gradual and primarily the recognition of much existing social practice, or acts that had previously required special legal rulings to allow them. Not one of the rulings mentioned in this chapter can be considered a piece of revolutionary thinking or a proactive attempt to instigate social change. It has been argued by Humbert and others that late Roman law amounted to a vulgarisation of classical law. If, by that, they mean that the law is recognising the social practices of groups other than the urban elites of the high empire, then the definition might be appropriate. It is certain that in the fourth and fifth centuries different groups were coming to power, emperors themselves were not from the old classical elites.

Laws governing mother-child relations would support such an interpretation. The recognition of concubinage and maternal guardianship may reflect the common practice of those without extensive wealth and lacking in agnatic family networks. Such groups may also have had little recourse to the law previously. In the lack of a wider agnate group families would naturally look to the conjugal unit for financial and emotional support. This unit then became the natural focus of both wealth and affection. In this scenario the conjugal unit displaced the agnate family, who lost importance, and the cognate family gained correspondingly. However, as we have seen, the agnate family never lost all rights; it is the sustaining of at least these nominal rights that is one of the remarkable continuities of the period. Lawmakers were never bold enough to undermine *patria potestas* and the dominance of the paternal line completely, if indeed they would ever have framed such an intention. It is fairly clear that the shift in balance away from the

agnate family must have occurred with the collusion of its members, so that the shift to the conjugal unit must have come to be the accepted norm.

With the decrease in the influence of the agnate family came a decrease in the role and extent of the *potestas* of the father. To make this claim this does beg the question of how extensive the powers of *patria potestas* were in practice over this period, but some idea of the tenaciousness of the ideal is evident in the fact that the right of life and death was law until the fourth century and that even in Justinian's Institutes a definition of it is given which states that it is an institution particular to Rome and that no other people have such power over their children (*Inst.* 1.9.2). Saller has shown that there were a number of factors that mitigated the fullest expression of paternal power, notably demographic patterns and strong social expectations of mutual respect and *pietas* (Saller 1994:12-42; 102-132). However, during the fourth and fifth centuries certain laws did undermine some of the traditional elements of *patria potestas*, particularly those regarding the transmission of property. In the case of the *bona materna* the father's traditional frame of action was severely restricted by law where previously it had been assumed that good will would had stayed any acquisitiveness. By this period the father was forbidden by the law to alienate or otherwise diminish the greater part of the mother's legacy to her children. This incidentally put married women on a par with concubines, whose offspring were not in *potestas* and so could inherit from their mothers without fear of disruption. The separation of maternal and paternal goods that was intrinsic to traditional practice continued, with the father now required by law to ensure that the *bona materna* were not absorbed into the patrimony. Such a transmission of the *bona materna* must also have had the collusion of maternal agnates who lost out on a proportion of their inheritance. The rights of mothers to become guardians, likewise, was an intrusion into an area traditionally controlled by the agnate family and shifted power away from them. Presumably, if the property was safeguarded for the children there was less fear

that it would be acquired by another family, either the maternal agnates or the family of her subsequent marriage. The encoding of such practice in the law may be part of the history of this period, but it is safe to assume that the social change it represents probably preceded it by several generations. Arguably the laws that really made a difference to women had came at the end of the second century (*sc Tertullianum* and *sc Orphitianum*). These had allowed mothers to inherit from both legitimate and illegimate children who died intestate and for mothers to be secure in the fact that their children would inherit from them. Legislation in the Theodosian Code builds on this and enforces it by ensuring that such an inheritance was not absorbed into the patrimony by a surviving husband. The law does recognise the mother-child relationship but its first concern is the transmission of property.

The process of legitimation which made natural children full heirs of their father also had an effect on *patria potestas*. Such adrogated children did not always enter the power of their father, which left them free to inherit independently from their mother and any other extraneous sources without interference. Perhaps this was one of the reasons why *concubinatus* relationships were preferred, particularly if a woman were independently wealthy and without an extensive agnate network of her own. It does seem that the idea that a woman's natural heir was her child came fully into legal practice in this period, but it should be remembered that for concubine women this had always been the case. This may support Evans Grubbs' conclusion that we are not looking at a re-working of the *familia* in this period, but at the *familia* as seen from the 'perspective of the non-elite' (Evans Grubbs 1995:339). Such a hypothesis is supported by the notion of the weakening of *patria potestas* and the agnate family, as these were of less importance for those of non-elite groups who had previously had little recourse to law and transmitted property in time-honoured local patterns, and for whom the conjugal family was both an economic and emotional safety net. The greater part of the law now

reflected a *familia* that mirrored the social patterns of a wider group of society, though, the elite as a group were still subject to special regulations (*CT* 4.6.3; *NMaj*. 6). In this wider group the focus was on the conjugal unit, and such a shift undoubtedly enhanced a mother's position. The law reflected this shift and enshrined the mother-child bond within the code, but, it is worth repeating, the thrust of the legislation was to ensure continuation of inheritance.

Table 1: Laws affecting mother-child relations discussed in Chapter 5 (short form)

Date	Status through mother	Concubines and natural children	Property: Mother - child	Property: child to mother	Property: Father to child via mother	Guardianship
	sc Tertulianum					
178	sc Orphitianum					
314	CT 4 12 1					
315/9			CT 8.18.1			
317/9				CT 5.1.1		
319			CT 8.18.2			
320	CT 4 12 3					
321			CT 2.19.2	CT 2.19.2		
326	CT 9 9 1					
331	CT 4 12 4					
331	CT 4 8 7					
334			CT 8.18 3			
<336		CJ 5.27 5				
336		CT 4 6 3				
339			CT 8.18.4			
362	CT 4 12 5					
362	CT 12 1 5					
362	CT 4 12 6					
369				CT 5.1.2		
371		CT 4.6 4				
379			CT 8.18.6			
382					CT 3.8.2	
383			CT 5.1.3			
389			CT 5.1.4			
390						CT 3 17 4
405		CT 4 6 6				
426		CT 4.6 7	CT 8.18.9			
426			CT 8.18.10			
428		CT 4 6 8				
468	Nov Anth 1		CJ 6.60.4			
508		CJ 5.27 6			CJ 5.27.6	
528		CJ 5.27 8				

Table 2: Laws affecting mother-child relations discussed in Chapter 5

Date	Law	Status through mother	Concubines and natural children	Property: Mother - child	Property: child to mother	Property: Father to child via mother	Guardianship
reign of Hadrian	sc Tertulianum				A mother with ius liberorum could succeed to intestate children if no surviving father or sui heredes of the child.		
178	sc Orphitaneum			Children (legitimate and natural) gained priority of inheritance from intestate mother.			
314	CT 4.12.1	If a free woman cohabited willingly with a slave, she lost her freedom their children would be of slave status; 317 CT 4.12.2: She should be warned three times before losing status.					
315/9	CT 8.18.1			Bona materna: Maternal property left to children still in potestas; father had usufruct but could not alienate, nor absorb into patrimany. Had to pass it on intact at his death. If child emancipated he should return one third to his father.			
317/9	CT 5.1.1				Expanded sc Tertulianum: mother without ius liberorum could inherit one third of intestate child's estate; two thirds, if she had ius liberorum.		
319	CT 8.18.2			Re-iterated 8.18.1 and stated that child should strive by affection to merit the return of the third that had given to father on emancipation.			
320	CT 4.12.3	Free women who 'marry' slaves of the imperial fisc: children free but illegitimate and of Latin status. Mother retained freedom.					
321	CT 2.19.2			Mother could claim unduteous will if left out of son's will.			
321	CT 2.19.2				Son could claim unduteous will if left out of mother's will.		
326	CT 9.9.1	Woman who 'married' own slave: children free but no rank and denied inheritance from mother. However if parents deceased children not penalised and could inherit.					
331	CT 4.12.4	Riterated 4.12.1 and ignored three warnings rule.					
331	CT 4.8.7	Slave mothers have slave children even if they are those of her master.					
334	CT 8.18.3			Bona materna: if father remarried he could only hold the usufruct of his first wife's property until their mutual children came of age.			
336	CJ 5.27.5		If a man married his concubine, children born before and after the marrige were legitimate and in his power.				
336	CT 4.6.3		Expanded Augustus' bans on marriage between upper classes and other groups. If a man tried to leave anything to concubine wife and natural children after this he and concubine punished. If familia did not report such a request, they too were penalised.				
339	CT 8.18.4			Bona materna: If a wife died without children or a child under 6, her property returned to her natal family.			

Chapter Six

Conclusions

One of the underlying questions of this thesis has been: 'what difference did Christianity make?' In theory Christianity should have made a big difference to the way people lived their lives, viewed their social and political roles and interacted with each other. As a religion it certainly held strong views on all these matters. However, as we have seen, the purveyors of the Christian message shared a cultural framework with their pagan counterparts and in some areas of life this framework was remarkably persistent. There were changes, and certainly the foundations of later changes were laid in this period, but we should not forget the persistence and continuity of traditional culture, particularly in the western empire. It is a salutary lesson to read Ambrose and Ammianus and remember they shared the same world. Ammianus rarely mentions Christians, and though Ambrose certainly has long tirades against the old gods, his world view is quite apart from Ammianus.

Motherhood is a biological event, and as such was unproblematic for ancient Greek medical writers. The necessity to reproduce and continue the human race meant that there had to be a group that would bear such heirs. The mother's role was never deemed as important as the father's and this gendered perception was extended even to the nature of seed itself. However the placing of women in a subordinate position was made positive due to the high value accorded to mothers and the reproductive role. A women's body was constructed in a certain form that suited the social expectations of female behaviour. This image persisted despite what must have been fairly extensive anatomical knowledge of female animals from sacrifice, and doubtless even the odd female body. The idea of the wandering womb had a remarkably long history, as the find of a curse tablet from fourth century AD Roman Britain has shown. Even among those who rejected this idea,

the idea the female body was either intrinsically different, or not fully developed and somehow lacking, remained strong. The female body was articulated around its reproductive capacity within a very patriarchal society. Cultural conditioning overcame any empirical observations, medical writers continued to interpret what they saw within the terms of that conditioning. The nature of that society meant that the male role in reproduction was seen as better, more creative, more active, with the mother providing material, or lesser seed, or simply a place for the male seed to grow. This was still unproblematic, though probably not very pleasant for women who had to undergo some strange cures for their perceived 'illnesses'.

One of the important elements of conception was sexual desire. It was seen to be necessary for successful conception by most writers, with the exception of Aristotle. Like other elements in the procreative process it was culturally encoded but not problematic. Christian writers, especially those who worked within the ascetic discourse, made the big step that changed the image of motherhood in this period. They separated it from sex. The place of the sexual act and the role of sex in society was reassessed by the Church Fathers. Using the Genesis story they claimed that sex was intrinsically sinful, closely associated the Fall and with Eve, and therefore all women. Once sex is perceived of as sinful and a transmitter of original sin, it meant mothers, who obviously had had sex, suffered a loss of status. This was not a state of affairs conceded by all churchmen as the debate between Julian and Augustine illustrates. Augustine is, in fact, less severe than many of his contemporaries, but he maintained a position that valued virginity above motherhood.

One of the earliest papers I gave on my research argued that the Christianisation of motherhood did little for 'real' mothers. Rather, it took value and status away from them and shifted the language of fertility into the spiritual realm and used it of virgins. Once virgins held the highest position in the spiritual hierarchy, this led to

an inversion of traditional lines of power and authority within the family, with the mother considered somehow less in virtue than her virgin daughter. The daughter held the moral high ground, a situation that completely reversed that of Dixon's *materfamilias* as the transmitter of morals and standards. I find much of this argument still holds good but can reinstate the mother somewhat. While it is true that a virgin daughter may be considered the spiritual superior to her mother by certain Christian intellectuals, when particular relationships are examined closely, they present an image of mothers as powerful mediators between the ideally secluded virgin and the outside world. What a mother lost in spiritual prestige simply because she is a mother, she now gained in social power. The women we know about are wealthy aristocrats and no doubt used to a certain amount of power and influence, but they manage, by manipulating the image they are presented with by the likes of Jerome and Augustine, to use that power within the Christian community. I am not suggesting that they consciously did this, but it is inherent in the way they acted. Juliana for instance, has no qualms about writing to Augustine and his adversary Pelagius, and, reading between the lines, being slightly disingenuous in her reply to Augustine when he asks her about it. Albina, likewise, will have no truck with the people of Thegaste when they want Pinianus to be their priest. Arguably these mothers are constructing themselves within two different images, a more traditional and aristocratic mode, and a Christian one, for them the boundaries are blurred. They exist on the boundary, with one foot in either world. They engaged with the world in the form of the tax man, the local notables, household servants, while, at the same time, they protected the space, both physical and spiritual, that their daughters inhabited. They could also lay claim to spirituality themselves through consecrated widowhood, through learning and through patronage.

The ideals and traditions that surround family and kinship groups are embedded in, and fundamental to a culture and so tend to change very slowly over time, certainly

this is something evidenced in the law codes. Partly due to the nature of law and law makers but also because changes in law codes tend to respond to social custom. In contrast to the Christian discourse, the law codes of the later empire present an image of a mother who has much in common with Dixon's *materfamilias* of the earlier period; property and status are the prime concerns of law makers but there must also have been a desire on the part of women, and agreed to by their husbands, that allowed a woman to leave her goods to her children without fear that they would get absorbed into the patrimony, as had previously been the father's right under *patria potestas*. This loosening of *patria potestas* is perhaps more surprising than the rights accorded to mothers but the two go hand-in-hand. More surprising and equally as undermining to the rights of *patria potestas* is the recognition of natural children as heirs of their father, however even this only occurs if there are no surviving legitimate heirs. All in all it was still better for mothers to become so inside legitimate marriage. However mothers who are independently wealthy might be financially more secure, if not socially so. Mothers of natural children were from the end of second century allowed to inherit from those children and these rights were kept in place in the later Roman empire for those outside the highest classes in society. For children the situation was improved because their separate inheritances from their parents were now secured against encroachment by the surviving parent. If they were illegitimate they could claim legitimacy retrospectively if their parents married, assuming that marriage was not prohibited between the couple. Such children may also inherit from their 'father' by the later period, but this was still dependent on the existence of any surviving legitimate heirs, though they were considered above other agnates. This move was also dependent on such bequests being granted in a will, so the power of disposition remained with the father, it did not become a right.

Law codes of the later empire reflect a society wherein social practices were changing but in which social ideals remained remarkably persistent. Such a claim is supported by evidence from other areas. As we have seen, in the discourse of medical writing the image of woman as reproductive female and inferior being because physiologically different, was remarkably persistent even after the anatomical discoveries of Herophilus and Galen. Christian writing inherited this cultural framework and employed it, together with theological justification to maintain a remarkably similar gendered viewpoint. Church Fathers used medical understanding of the female body and the different role the sexes took in reproduction to produce a new image of the female body, fully exemplified by the closed and guarded body of the Virgin Mother. This new image was employed to explain the Incarnation and keep it free of the now tainted elements of conception that would render the body of Christ and his mother sinful.

Once the sexual aspects are removed the ideal becomes the Virgin Mother. In the hands of the ascetic discourse the Virgin Mary developed into an image that excluded mothers. In this period Mary was a important first and foremost for her virginity, it is not until the late medieval period that she develops as an intercessive figure with a 'softer' image. This change had its foundations in the shared common currency of the post-classical Mediterranean. However, even those mothers who did construct themselves within the ascetic discourse, employed their own common understanding of the role of mothers to exploit their situation.

This period is indeed one of transition, a time when new groups were coming to power and new boundaries experimented with. Christianity was part of that change but in this time span was not yet the dominant discourse. It could not yet present its reality as the only reality. The ideal of motherhood may have suffered somewhat but the needs of the secular world were granting mothers privileges they had not previously held. The integration of these various views on the roles and functions

of mother in society produces a set of images that dovetail and diverge in places, but they attempt to expose some of the underpinnings of the cultural assumtions that surround the institution and status of mothers.

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242

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