

# Ancient Law of Rome

As in all ancient societies, Roman law began with custom. A custom is a way of doing things over time. Perhaps the most unique and far-reaching custom of the ancient Romans was the idea of *patria potestas*. This Latin term meant that the oldest living male held power as head of the family.

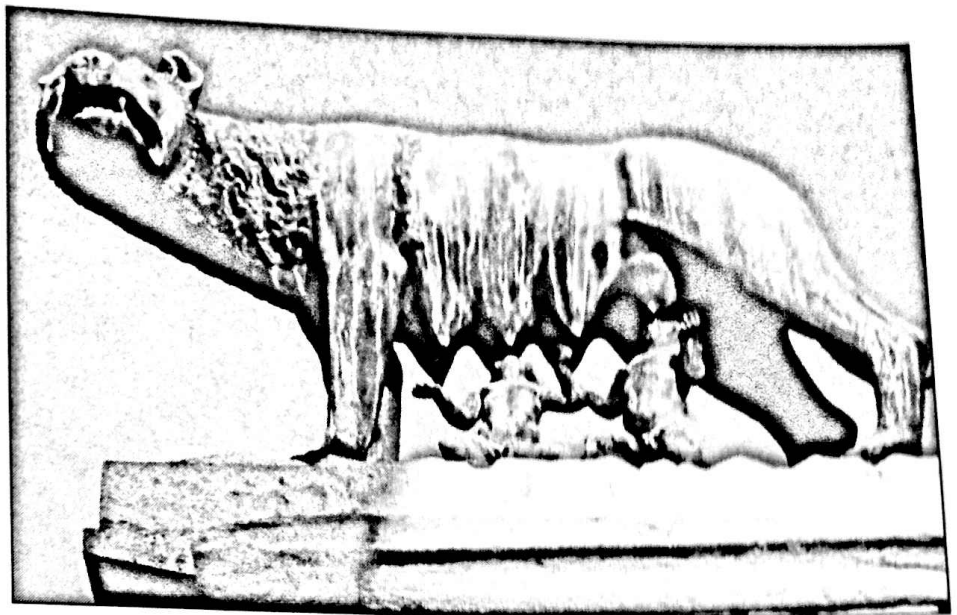
Imagine that a family has the following living male family members (representing four generations):

- Great-grandfather Julius (age 80)
- Grandfather Claudius (age 60)
- Father Fabius (age 40)
- Son Liberius (age 20)

The head of the family is the great grandfather. When the great grandfather dies, the grandfather heads the family. The son will not head the family until all his male ancestors are dead.

The head of the family's word was literally the law. He held life and death power over his family. He could leave an unwanted or deformed newborn infant in the forest to die of exposure. He could also sell family members into slavery. If a child sold into slavery were freed, the child would be once again under the head of the family's control.

Other family members, even adults, could not own property. The head of the family legally owned all the possessions of the family. But he could not easily sell or will away the property, because he held the property in trust for the whole family. When the head of the family died, the new head would inherit all the family's possessions and debts.



According to myth, the founders of Rome were Romulus and Remus, two children raised by a wolf. This 5th-century B.C. bronze sculpture stands today in Rome.

The head of the family could legally emancipate, or free, male family members to become independent. But emancipation cut off the male from his father's family. The freed male could not become the head of his father's family. Nor could he inherit property from his father's family.

A couple who wanted to get married needed the consent from the heads of both families. Once they had consent, all the couple had to do was live together with the intent to be married.

There were two types of marriage. In one, the wife joined her husband's family. In the other, which was more common, she remained part of her father's family. (Her husband remained as part of his father's family.)

Divorce was also simple. The husband or wife just had to leave with the intention of not being married anymore. Even so, divorce was rare.

Getting married or divorced was much simpler than making business deals. For important sales, one could not simply exchange money for the property. A contract required a ritual in front of witnesses. For example, the sale of a slave required five witnesses to watch the ritual. The buyer put one arm around the slave and held a bronze piece in his hand. One witness held

bronze scales. The buyer said: "I declare that I own this slave and I paid for him with this bronze piece and scales." The buyer hit the scales with the bronze piece and gave it to the seller.

The Romans had reasons for insisting on the formality. The ritual had developed when there was no writing to record transactions. The ritual made sure that people remembered the transaction. If a ritual were performed, it would be hard for the seller later to claim that he had not sold the slave, but had merely loaned him to the buyer.

When disputes arose outside the family, they were settled by the college of pontiffs. This group was made up of five priests, all patricians. Romans entrusted them with knowing the law and settling disputes. For example, if someone struck another person, the priests would decide the case using *lex talionis*, the law of retaliation. The wrongdoer would have to submit to being struck or making a payment instead of being struck.

Before presenting their evidence in the case, the parties had to perform a legal ritual. It was an elaborate form of charge and denial, known as *legis actiones*. No lawyers were allowed. Each action and word had to be performed perfectly or the party lost the case. For example, if two people claimed they owned a cow, they would both grab it and go through a formalized ritual. If anyone said a wrong word or performed an action incorrectly, that party would lose regardless of the merit of the case. Only after this elaborate ritual was the case heard.

This was the law of an ancient people. It was not written down. Each family was ruled by the oldest male. When disputes arose outside families, the priests handled them. Much of the law was rigid, inflexible, and full of ritual. The law worked for Romans because it fit their culture. The law of a great empire, however, needed to be more flexible and meet the needs a diverse people. The history of Roman law is the history of how the ancient law changed.

## For Discussion

1. Who was the head of each family? What power did this person have?
2. Who settled disputes in ancient Rome?
3. If you were a young person in ancient Rome, would you want to be emancipated from your family when you became an adult? Explain.
4. What practical value did rituals serve in Roman society?
5. What rituals do we have today in modern society?

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## ACTIVITY

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### Rituals

The ancient Romans used rituals in making contracts and going to court. Imagine that our society did the same. In your group, create a ritual for one of the following events:

- A. Someone is suing another person over an automobile accident.
- B. Someone is getting a court order to stop a person from holding loud parties during the week.
- C. Someone is buying a house from another person.
- D. Someone wants to will property to another person.