United States’ divorce rates have risen dramatically since the introduction of no-fault divorce. Before no-fault divorce, spouses had to provide specific evidence of marital fault and could not divorce simply based on incompatibility. Although some might believe the resulting rise in divorce rates, from 25% to 50%, have created a net negative impact on society, many of the individual data points in this abstract statistic represent life-changing, long considered decisions. The introduction of no-fault divorce allowed couples to make decisions they had wanted to make for a long time.

The beginnings of no-fault divorce first took place thousands of years ago under the Roman Empire, where was first seen a similar transition from fault-based divorce to no-fault divorce. Rather than force couples to remain married unless serious fault could be proven, both the Roman and American societies had the foresight to alter their stance and understand that otherwise incompatible couples should be allowed to dissolve their marriages. The most notable differences between Roman and American divorce law lie in the formal legal requirements for divorce, division of property, and treatment of women in divorce. The American and Roman approaches, however, share similar roots in that they each recognized the necessity of no-fault divorce in order to ensure that the institution of marriage continue to exist based on intent and compatibility.

In early Roman years, husbands only had the right to a divorce in the cases of adultery, poisoning the children, or other severe acts for which the wife was at fault. According to Plutarch, a Greek historian, if the husband divorced for no good reason, he had to give half of his property to his wife and half to Ceres, the goddess of agriculture, grain crops, fertility, and motherly relationships. Freedom to divorce slightly expanded thanks to the divorce case of Carvilius Ruga, a court case that established that if a husband divorced a wife for sterility, he would not be punished, and as she was not at fault, she could claim her dowry. This precedent opened up the possibility of penalty-free divorce for non-moral reasons, but only to men. By the late Republic, manus marriages, marriages in which the wife was under the husband’s legal power, were much less common, meaning more women were sui iuris, in their own power, and had greater capacity to make legal decisions. With increased legal ability, women could eventually initiate divorce as easily as their husbands, and this reciprocal ability to initiate divorce developed into the Roman practice of no-fault divorce.

Under no-fault divorce, Roman ideology reasoned...
that if marriage is formed on the basis of consent, the couple should be able to end the marriage based on withdrawal of that consent, with minimal official involvement from the state. Formation of marriage depended so heavily on the consent of the spouses that there was no exact form of words, actions, or written contract that had to be used at each wedding. Marriage ceremonies, witnesses, dowry documents, and cohabitation all made it easier to prove the legal existence of a marriage. Even without these elements, Romans held that the desire to be married and continued marital affection when apart would be sufficient to be defined as a legal marriage.

Following similar reasoning, the Roman state also did not intervene to register or regulate divorces. Just as in marriage, specific procedures for divorce made it easier to establish legal evidence of the timing in order to divide property or determine legitimacy of children, but the procedure itself was not essential to establish a valid divorce.

The idea of free, no-fault divorce meant that divorce was determined by a mental state. Under this ideology, the Romans could not be obligated by other individuals or state to stay married if they no longer wanted to be: “Long standing tradition holds that marriages are free. So it is settled that agreements preventing divorce are invalid, and stipulations imposing penalties on the party who divorced are invalid.” Couples could neither be penalized for divorce nor be forced to divorce by the will of a parent. This held significance because the paterfamilias, the male head of a Roman family, was seen as all-powerful in regard to the decisions of their kin. These conditions spoke to the couple’s mental state and desire to be married as the most important element for determining the status or termination of the marriage. Specifically, the couple’s mental state must be one based upon the desire for a permanent, long-lasting union. As such, any couple that underwent a short break in their relationship was still considered married. The divorce could even be amicable and end with goodwill from both spouses if the marriage became too hard to maintain, as in the cases of “a priesthood, infertility, old age, or health.” Roman law and society seemed to be more interested in ensuring harmonious marriages than attempting to sustain forcible unions.

In fact, status of divorce became so heavily based on the will of the partners that, although there was an accepted traditional procedure to indicate divorce, there were many exceptions to this procedure. To initiate divorce, the accepted words “have your own property” were ideally spoken either while the other party was present or to a person in his or her power, or to his or her paterfamilias. However, in other cases, the simple departure of one’s wife from the family household was enough to qualify as a divorce procedure. Ulpian, a Roman jurist, holds that the repudiation document did not have to be “handed over nor known to the husband” for the marriage to be dissolved as long as the divorce was known to husband’s paterfamilias, child, or slave. This meant that spouses could be legally divorced without the consent of both parties involved. This principle was demonstrated in a case where a husband left his pregnant wife without notifying her of divorce and married a second woman. Although the case caused debate among jurists, a Republican court held that the husband’s marriage to his second wife was evidence of his intent to no longer be married, and thus validated his divorce from his first wife. Such ambiguous cases motivated the upper-class to formalize the divorce procedure as to prevent misunderstandings. If a husband failed to provide sufficient evidence to divorce, such as seven witnesses in an adultery case, he himself could be punished for prosecuting his wife.

“Roman law and society seemed to be more interested in ensuring harmonious marriages than attempting to sustain forcible unions”

Even though women had the reciprocal right to divorce, the legal code did not always ensure their financial protection throughout the divorce. After a divorce, the wife had to sue for the return of her dowry, and deductions could be made for children, fault, or items given or removed. If the woman or her father were considered seriously at fault for ending the marriage, a sixth of the dowry is withheld for each child, and an eighth of the dowry would be withheld for offenses considered less egregious than adultery. Even though the law was theoretically designed to allow the woman to receive her full dowry back upon divorce, which was in the interest of the state because dowries allow women to marry, there were many circumstances that decreased the woman’s dowry. For instance, a woman could not demand accounting of her dowry during marriage, and in some cases the husband was only responsible for “what he could provide.” The husband was entitled to retain the dowry money based on any offense for which he considered his wife guilty.

In comparison, the American legal approach to divorce developed in a path parallel to the Romans’. Similarly to the Romans, America once used a fault-based system in which the spouse needed to present evidence of serious offenses such as adultery, cruelty, or desertion to prove a need for divorce. There were strict requirements for cruelty and
adultery that were often hard to prove, so it was common for spouses to feign an affair, especially in New York, where adultery was the only ground for divorce until 1967. In fact, with fault-based divorce as the only available option, lawyers even came to expect and understand “a certain amount of lying and perjury” to prove cases of adultery.20 This need to manipulate the system serves as proof that the divorce laws were not in line with current thinking and did not satisfy a modern need for different requirements. In 1969, California was the first state to pass a no-fault divorce law, and by 2001 all states had revised their divorce laws accordingly.21

Contrary to the Roman approach of minimal state involvement, the United States appears to see a much greater need for regulating divorce affairs and outcomes. Couples must get a divorce through a state court judgment, which involves a petition signed by both parties, a sworn affidavit that there is an irretrievable breakdown in the marriage, and a signed separation agreement.22 Both parties must therefore be present, aware, and state their agreement to the divorce, in contrast to the Roman approach, which did not require documentation or even the presence or knowledge of both parties. United States divorce courts now also actively play a role in regulating division of property, alimony calculations, and child custody. Such involvement was not possible or necessary under Roman rule as the legal system was far less encompassing than the modern United States one.23 Despite this, the legal codes show many parallels between ancient and modern reasons for divorce, with both referencing adultery, infertility, abuse, and “irretrievable breakdown of the marriage” as formal legal grounds.24

A second major difference between Roman and American divorce code is the regulation of division of property. Property is either considered to be separate property or marital property, and courts attempt to evaluate the contributions of each party to these holdings.25 While Roman division of property was comparatively simple, as couples kept their property separate and rarely had communal property, American divorce law has complex methods for categorizing property and determining the divisio of communal property.26 American law has moved away from the more ideologically Roman approach of the common law system that holds “he who holds title takes the property” in order to make way for a more equitable approach.27 This consideration is noticeably similar to the Romans’ evaluation of dowry-based expenses; “necessary” expenses would maintain the exact value of the dowry, and “useful” expenses would increase its value in the eyes of the court.28 Division of communal property has also become more complex with the inclusion of intangible assets such as stocks, interests in business, and debt.29 These modern considerations have also shaped and bettered the treatment of women in court settlements.

In accordance with today’s society, American divorce code has moved towards a system that protects women, rather than neglect them, as seen during the Roman era. From the 18th through the early 20th centuries, many studies found that American women were generally financially weakened by divorce, as Roman women often were.30 In the case of the Romans, this financial burden stemmed from the loss of dowry, while American inequity was largely attributed to the tendency for women to stay out of the workforce in order to cater to their families. The legal code accounted for the husband’s financial contributions to the marriage, but it did not account for the wife’s contributions as a homemaker or mother, so she was consistently left with less after division of property.31 Consideration of marital property has recently expanded to include the intangible value of time contributed in raising children. These factors greatly increase the wife’s calculated contribution and grant her a higher amount in property distribution.32 Unlike during the Roman period, American women can also request alimony, which further considers the husband’s earning ability and the wife’s needs (or the other way around), as a means to “maintain the station of life” she was used to during marriage.33 The American goal of equitability based on contribution to the marriage is in some ways similar to the Romans’ reasoning: in both cases the women are “returned” that which they contributed to the marriage, whether it be time and care, or dowry. However, American divorce code ensures greater financial protection for women and aims for financial self-sufficiency for both parties, whereas Roman divorce code only considered contribution of tangible property and was more concerned with returning the
wife’s dowry for the purpose of re-marriage.

Despite clear differences in legal requirements, division of property, and treatment of women, Roman and American divorce code both shared a common evolution towards prioritizing the will and intent of the married couple. Both the American and Roman governments have an interest in sustaining marriage. Both aim to encourage greater birth rates, which was especially important for the Roman population that suffered high mortality rates, as well as preserve societal stability. Romans viewed the family as a microcosm of the state, and a breakdown in family order could lead to state decline. Additionally, both states want to prevent negative psychological side effects on children. Ultimately, both governments recognize that it is harmful to society to force couples to remain married against their will. Examining attitudes toward flawed marriages in Roman literature, Seneca, a Roman philosopher, references “the quarrels of inharmonious couples which are more shameful than divorce,” maintaining that divorce is preferable to continuing a dysfunctional marriage.34

Attitudes about the moral implications of the greater ease or frequency of divorce show further parallels between Roman and American viewpoints can be drawn from the moral implications of divorce. Just as modern American priests sometimes warn of the decline in the sanctity of marriage caused by rising divorce rates, Roman philosophers similarly spoke of the link between increased divorce rates and moral decline, equating serial marriage to adultery: “Is any woman now ashamed because she is divorced, when various illustrious and nobly born women count their age not by adding up consuls but by husbands?”35 Roman literature repeatedly demonstrates that the Romans’ ease of divorce and minimal legal requirements did not necessarily mean they viewed divorce with any less moral or emotional weight than modern Americans do. Irresponsible divorce, especially to a faithful husband or wife, was socially condemned. Specific examples of the emotional trauma accompanied with divorce include Lepidius, who died of anxiety caused by his divorce, and Domitian who was claimed to be unable to endure his divorce from Domitia.36

Despite clear differences in legal requirements, division of property, and treatment of women, American and Roman divorce codes share many fundamental similarities. Each developed from a system of fault-based divorce into no-fault divorce, recognizing that the intent and compatibility of the spouses is essential for functional, harmonious marriages. Both Roman and American legal code reflect the idea that marriage is based on reciprocal consent, so withdrawal of that consent is sufficient grounds to dissolve the marriage. Roman legal code relies more heavily on the pure intent and mental state of the partners for establishment of divorce, whereas American legal code adds greater procedural requirements to that foundation of intent. Unlike Roman law, American divorce code takes intangible contributions to the marriage into account, ensuring women greater financial protection and self-sufficiency in the event of divorce. Even though the Romans lacked the formal requirements for divorce Americans are accustomed to, Romans’ moral standards of divorce are similar to American attitudes: both generally view divorce as a regrettable necessity for incompatible couples that should be avoided when possible, but accepted when necessary.

Allicen Dichiara is an Economics and International Studies double major, Class of 2016


15 “Saudi Arabia aims to be world’s largest renewable energy market.” arabnews.com

16 “Saudi Arabia’s nuclear, renewable energy plans pushed back.” Reuters

17 Quoting Keisuke Sadamori from Saudi Arabia aims to be world’s largest renewable energy market

18 The company falls under the auspices of the Public Pension Agency and the Public Investment Fund’s Sanabil Direct Investment

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20 Tweed. Katherine. IAE: ‘The cost of fossil fuels to an economy is not reduced by subsidies; it is just redistributed.” http://www.greentechmedia.com/articles/read/IEA-The-Cost-of-Fossil-Fuels-to-an-Economy-is-Not-Reduced-by-Subsidies-i (Note: the original source for this material, the 2014 World Energy Outlook, was not available. This article is a summation of its key points.)

Image 1: http://i.kinja-img.com/gawker-media/image/upload/s--NUwxJPbw--/18lqyyv5cfmdzjpg.jpg

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The Modern American Divorce Law and Its Roman Roots

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3. Treggiari, Roman Marriage, 443.


7. Ibid, case 78.

8. Ibid, case 75.


11. Frier et al, case 80.

12. Ibid, case 78.

13. Ibid.

14. Treggiari, Roman Marriage, 448.
15. Grubbs, 189.
16. Frier et al, case 78.
17. Grubbs, 190.
18. Treggiari, Roman Marriage, 466.
21. Ibid.
22. Ibid.
25. HG 2015.
26. Treggiari, Roman Marriage, 466.
27. Katz, 87.
29. Frier et al, cases 84 and 86.
31. Ibid.
33. Ibid.
34. Katz, 94.
35. Treggiari, Roman Marriage, 476.
36. Ibid.
37. Ibid, 471.

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4. Ibid, 2.
5. Yonemoto, 175.
6. Unno, 347.
8. Ibid, 349.