This is the second part of Carla Fayer's magnum opus devoted to the Roman family. The first volume appeared in 1994. This second volume follows a similar vein, insofar as it is a book for consultation which updates the bibliography on this subject. It is worth pointing out that not always these new features have been unequally integrated in this book, which is written from a purely juridical perspective. Thus Roman Law is the main focus of this complex work and it also determines the way in which the bibliography is included. Like the first volume, *La familia romana* ('familia' in Latin, not 'famiglia' in Italian) stands out by dint of its broad documentary basis: juridical, as well as literary and epigraphic sources are, on the whole, accurately quoted. The author also includes translations of the Greek and Latin texts in her eagerness to be as didactic as possible.

The first chapter ("Gli sponsalia", 15-184), a term that the author translates using the Italian term 'fidanzamento', i.e. 'engagement', begins with the observation made to Dio. Cass 59.12.1 about the sponsalia between Caligula and Lollia Paulina, in order to introduce the question of whether the sponsalia were an institution with legal effect or merely social use. Fayer examines the problem starting from Volterra. The references to Volterra, as well as to Orestano and Astolfi, are constant throughout this book due to the decisive role played by these authors in explaining the essential notions of marriage law. The author reviews the evolution of the sponsalia in archaic (15-58), classical (58-87) and post-classical times (95-102). With respect to the possible religious origin of this institution, the author refers to the old book by Danz. Today, this subject has been studied by scholars such as Magadelain, Kaser, Talamanca and Albanese. In the ensuing pages, Fayer reconstructs the archaic regulation of the sponsalia from the literary sources, specifically Plautus and Terentius.

The author reminds us that, contrary to Paoli's view [1], this material is useful, according to new studies by Volterra, Astolfi and Albanese. She proceeds to quote the famous text *de iure atque morum veterum sponsaliorum* by Sulpicius Rufus (Gell. 4.4.1), in which sponsalia are described as an exchange of stipulations. The following paragraph is about the *actio ex sponsu*. In some texts of the Compilation we can
discover the *denegatio actionis* or the *exceptio doli* because the *praetor* took control of this figure and eventually distorted the original meaning of the *sponsio* in the *ius civile* on the basis of acting *contra bonos mores*. On the subject of the *sponsalia* in classical law, the Italian scholar emphasises that from the very outset the decisive feature is the consensus in a non-formalistic way, as Ulpian stated in D. 23.1.4 pr. (Ulp. 35 ad Sab.): *Sufficit nudus consensus ad constituenda sponsalia.* Furthermore, Paul insists that not even a written document is necessary (D. 23.1.7 pr. Paul 35 ad ed): *In sponsalibus nihil interest, utrum testatio interponatur an aliquis sine scriptura spondeat.*

There follow some paragraphs referring to rites (*annulus pronubus*, 66-73), the *aetas non definta est* (74-87) and the *repudium* (87-94). These rites appear to have been of considerable social and traditional importance (Plin. Ep. 1.9.2), and the promulgation of the *lex Cincia* indicates that there was a social habit of exchanging gifts. The second part of this book (chapter II, 184-325) is devoted to the *conventio in manu*, and the author starts from the theory that up until the works of Volterra and Robleda, and even today in some books, it was standard to make a clear distinction between *matrimonium cum manu* and *matrimonium sine manu*. In this part Fayer is, as always, quite accurate in quoting the bibliography from the nineteenth century up to the present day, including the most important element in the configuration of the standard theory, i.e. Karlowa's handbook *Römische Rechtsgeschichte* II, which commented on and popularised a book written in 1868, *Die Formen der Römischen Ehe und Manus*. These details would be no more than futile erudition but for the fact that this theory played an important role in the past and that its identification of three forms of *conventio in manu* is still easy to mistake for the three forms of the *matrimonium cum manu*.

Bonfante and Di Marzo had warned about some associations of this point of view with the modern concept of marriage. In fact, this is just one form of marriage, a common and unique type of marriage, but one with different consequences for the wife in the field of patrimonial effects. Following Volterra and Robleda, the author presents this theory quoting literary sources (cf. Cic. Top. 14:), dealing with the question of the *uxor in manu* (199ff.) on the basis of Gai 1.110. The way in which the author explains the *confarreatio* and the red veil (231 n. 138) is extremely interesting. This interpretation of the words *velatis capitibus* by Servius - quite common in the usual handbooks - derives from the cinerary urn (2660) of Chiusi, dated between the 6th and the 4th centuries BC. [2] After the *confarreatio*, Fayer tackles the *coemptio* (246ff.) and the question of the *materfamilias*.

Chapter III deals with marriage in general terms (327-672). The first section focuses on the structure of the classical marriage (327-350), starting from the idea that there is not an autonomous conception of this until the Nov. 22 by Justinian. The author insists that back in the nineteenth century, Manenti (328) defined life together as the essential element. The next section is devoted to one idea present in all of them,
the *affectio maritallis*, as the correct way to understand the notion of *consensus*. The following one is about the requirements (*consensus*, puberty and *conubium*) and then the author explains the rites (election of the *dies nuptialis*, ornatus, deductio...).

The legislation of marriage by Augustus is the main topic of the next section, and the author refers to both the modern bibliography (Astolfi, Mette-Dittman) and the old bibliography, in this case the books by Jörs, re-edited by Spanuolo Vigorita. Some observations on the birth returns and the register of births that this legislation and the *lex Aelia Sentia* established simply follow the main theory and do not even quote my recently published opinions, which I am not best situated to comment on. In § 8 Fayer studies the changes that the institution undergoes in post-classical and Justinian law. In Diocletian's reign some facets appear to remain the same; furthermore, the emperor seems to reaffirm the classical theories, at least in aspects such as not requiring *instrumenta dotalia* (C 5.4.13), but it is at this time that foreign elements derived from Christianity or provincial law have a strong influence. It is a paradox outlined by Orestano that many of these new features have their roots in classical law. Orestano is against the source of the observation on C. 5.4.22, a constitution by Theodosius II and Valentinian III. Amelotti can claim some merit for having correctly analysed this constitution that is actually very important for understanding certain new features of post-classical law. In short, it involves limiting the classical principle of *consensus factit nuptias* to the marriage *inter pares honestate personas* and requiring the written document as proof only in the case of marriage between people of different origins. The author explores Orestano's theory about C. Th. 4.67, an earlier *constitutio* that was, to a certain extent, more demanding in its requirements, so perhaps C. 5.4.22 implies a rectification. This theory of a previous regulation of a *forma matrimonii* has not been accepted by Volterra or Sargenti, who state that the text of the Fathers of the Church used as proof by Orestano did not in fact refer to a legal requirement, but only to a desideratum of the Church. The curious case of C. 5.4.3 sets the tone for the pages that follow. This is unanimously considered as a constitution by Justin rather than by Justinian and clearly states, confirming a classical rule, that: *not enim dotibus, sed affectu matrimonio contrahuntur*. Therefore, the *instrumenta* may be understood as a way of expressing the *affectus* and they were only required in three cases according to Justinian legislation (C. 5.27.11; I. 1. 10.13): in cohabitation that becomes marriage, in marriage with a *scenica* or with her daughters, and in the marriage of the slave girl freed by her patron to marry a freeman.

The ensuing pages focus on the *Novellae* of Justinian concerning marriage: Nov 18 and Nov 22, which deal with the *affectio*; and Nov. 74, which concerns the celebration and some related problems such as the *filii naturales* and their *legitimatio*. The content of § 9 is of importance: the Christian marriage and its influence (634-672). Grasping the complexities of some theological debates, Fayer declares that at first the Church accepted the Roman Law of marriage and even accepted some
pagan ceremonies, applying a new interpretation to these, of course. Thus she quotes some texts by the Fathers of the Church such as the *Epistle of Mathetes to Diognetus* (P. G. 21174), the theological principle which compares marriage to the union between Christ and His Church, as Saint Paul proposes in Eph. 5.25-26, the basis on which marriage is considered to be a *sacramentum*.

The fourth and final chapter (673-750) reveals some problems about the dowry. The first paragraph tackles the main concepts and the original function of this institution. The *dote*, as defined by Varro and Festus, is the first quotation used by the author to construct her discourse and she insists on its social value. It is not surprising that Plautus (Trin 688) compares a marriage without dowry to concubinage. A considerable number of literary sources are quoted in this respect and even some strictly juridical sources of some significance, such as D. 23.3.56 (Paul 6 ad Plaut.). However, this question, the author warns (682 ff.), is a controversial one, and the literature on this subject from the nineteenth century (A. Bechmann; C. Czyhlarz) to the present day (C. Sanfilippo, C. A. Cannata, M. Talamanca) is complex. As for its original function (680-686), Fayer insists on the standard thesis about the relationship of the dowry with the compensation of the woman who is *alieni iuris* because she had lost her expectations of an inheritance from her paternal family.

The next paragraphs are concerned with the classification of the dowry (§ 2 686-689) and the ways in which it became effective within the law. Tit Ulp. 6.1 is the principal text, but there are significant literary sources which Fayer rightly comments on (§ 3, 689-697), and she includes an interesting note (697. n. 110) about the *iura controversa* (D. 23.3.7.3 and 23.3.9 pr. Ulp. 31 ad Sab.) which had generated the question of the *traditio dotis causa*. § 4 (698-714) studies the problem of the restitution and the use of the *actio rei uxoriae*, likened by some jurists to the *bonae fidei iudicia*, despite not being included in the list of Q. Mucius Scaevola (Cic. de off. 3.70). The ownership of the dowry (§ 5 714-717) reflects an evolution from a peculiar form of ownership by the husband to the benefit of his wife to a no less peculiar kind of *ususfructus* of the husband and the ownership of the wife in Justinian law. § 6 (717-732) explores the possible legal obligation to constitute a dowry, a thesis based on the old book by Czyhlarz and defended even today by Voci. The subject of § 7 is the dowry in post-classical and Justinian law, and begins with the interpretation of C Th 3.23.4 by Theodosius II and Valentinian III, who, according to some scholars, changed the system of constituting the dowry. One of the most important reforms by Justinian is the generalisation of the *actio dotis* and the abolition of the *actio rei uxoriae* (C. 5.13.1). The last paragraph contains a section about the donatio propria nuptias or, as it was known before Justinian, *donatio ante nuptias*, of controversial origin (semitic, oriental, Germanic or the result of a development of the donations among *sponsi*). The author analyses the constitution of Valentinian I, Valens and Gracian (C. Th. 3.5.9), the first reference to this institution and the subsequent legislation up until Justinian, present in I. 2.7.3 and C. 5.3.20 (739-746). However, and this
is one of my few criticisms, there are no references to the *parapherna*.

This is a book of nearly 1,000 pages, with a long bibliography. My intention has been to outline its contents and, according to my interest and personal evaluation, to comment in greater detail on some specific problems included in it, although of course other observers might choose to highlight other aspects covered by Fayer. Clearly, this is an immense work of great learning, and it is certainly useful as a tool with which to find one's way around the labyrinth of bibliography on Roman family law.

Notes:

[1] According to U. E. Paoli, ("Comici latini e diritto attico", in: Altri studi di diritto greco e romano, Milano 1976, 31ff.) the term *sponsio* is translated from the Greek εγγυω. This affirmation is based on the edition of Discolos by Menander as a source of two plays by Plautus: *Trinummus* 1157-58 and *Curcilio* 674 (op. cit. 76). The problem is quite difficult to resolve, especially bearing in mind that Paoli is far from simplistic with these matters.