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**CONCUBINAGE** (Lat. *concubina*, a concubine; from *con-*, with, and *cubare*, to lie), the state of a man and woman cohabiting as married persons without the full sanctions of legal marriage. In early historical times, when marriage laws had scarcely advanced beyond the purely customary stage, the concubine was definitely recognized as a sort of inferior wife, differing from those of the first rank mainly by the absence of permanent guarantees. The history of Abraham's family shows us clearly that the concubine might be dismissed at any time, and her children were liable to be cast off equally summarily with gifts, in order to leave the inheritance free for the wife's sons (Genesis xxi. 9 ff., xxv. 5 ff.).

The Roman law recognized two classes of legal marriage: (1) with the definite public ceremonies of *confarreatio* or *coemptio*, and (2) without any public form whatever and resting merely on the *affectio maritalis*, *i.e.* the fixed intention of taking a particular woman as a permanent spouse.[1] Next to these strictly lawful marriages came concubinage as a recognized legal status, so long as the two parties were not married and had no other concubines. It differed from the formless marriage in the absence (1) of *affectio maritalis*, and therefore (2) of full conjugal rights. For instance, the concubine was not raised, like the wife, to her husband's rank, nor were her children legitimate, though they enjoyed legal rights forbidden to mere bastards, *e.g.* the father was bound to maintain them and to leave

them (in the absence of legitimate children) one-sixth of his property; moreover, they might be fully legitimated by the subsequent marriage of their parents.

In the East, the emperor Leo the Philosopher (d. 911) insisted on formal marriage as the only legal status; but in the Western Empire concubinage was still recognized even by the Christian emperors. The early Christians had naturally preferred the formless marriage of the Roman law as being free from all taint of pagan idolatry; and the ecclesiastical authorities recognized concubinage also. The first council of Toledo (398) bids the faithful restrict himself "to a single wife or concubine, as it shall please him";[2] and there is a similar canon of the Roman synod held by Pope Eugenius II. in 826. Even as late as the Roman councils of 1052 and 1063, the suspension from communion of laymen who had a wife and a concubine *at the same time* implies that mere concubinage was tolerated. It was also recognized by many early civil codes. In Germany "left-handed" or "morganatic" marriages were allowed by the Salic law between nobles and women of lower rank. In different states of Spain the laws of the later middle ages recognized concubinage under the name of *barragania*, the contract being lifelong, the woman obtaining by it a right to maintenance during life, and sometimes also to part of the succession, and the sons ranking as nobles if their father was a noble. In Iceland, the concubine was recognized in addition to the lawful wife, though it was forbidden that they should dwell in the same

house. The Norwegian law of the later middle ages provided definitely that in default of legitimate sons, the kingdom should descend to illegitimates. In the Danish code of Valdemar II., which was in force from 1280 to 1683, it was provided that a concubine kept openly for three years shall thereby become a legal wife; this was the custom of *hand vesten*, the "handfasting" of the English and Scottish borders, which appears in Scott's *Monastery*. In Scotland, the laws of William the Lion (d. 1214) speak of concubinage as a recognized institution; and, in the same century, the great English legist Bracton treats the "concubina *legitima*" as entitled to certain rights.[3] There seems to have been at times a pardonable confusion between some quasi-legitimate unions and those marriages by mere word of mouth, without ecclesiastical or other ceremonies, which the church, after some natural hesitation, pronounced to be valid.[4] Another and more serious confusion between concubinage and marriage was caused by the gradual enforcement of clerical celibacy (see CELIBACY). During the bitter conflict between laws which forbade sacerdotal marriages and long custom which had permitted them, it was natural that the legislators and the ascetic party generally should studiously speak of the priests' wives as concubines, and do all in their power to reduce them to this position. This very naturally resulted in a too frequent substitution of clerical concubinage for marriage; and the resultant evils form one of the commonest themes of complaint in church councils of the later middle

ages.[5] Concubinage in general was struck at by the concordat between the Pope Leo X. and Francis I. of France in 1516; and the council of Trent, while insisting on far more stringent conditions for lawful marriage than those which had prevailed in the middle ages, imposed at last heavy ecclesiastical penalties on concubinage and appealed to the secular arm for help against contumacious offenders (Sessio xxiv. cap. 8).

AUTHORITIES.—Besides those quoted in the notes, the reader may consult with advantage Du Cange's *Glossarium*, *s.v. Concubina*, the article "Concubinat" in Wetzer and Welte's *Kirchenlexikon* (2nd ed., Freiburg i/B., 1884), and Dr H. C. Lea's *History of Sacerdotal Celibacy* (3rd ed., London, 1907).

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1. ↑ The difference between English and Scottish law, which once made "Gretna Green marriages" so frequent, is due to the fact that Scotland adopted the Roman law (which on this particular point was followed by the whole medieval church).
2. ↑ Gratian, in the 12th century, tried to explain this away by assuming that concubinage here referred to meant a formless marriage; but in 398 a church council can scarcely so have misused the technical terms of the then current civil law (Gratian, *Decretum*, pars i. dist. xxiv. c. 4).
3. ↑ Bracton, *De Legibus*, lib. iii. tract. ii. c. 28, § I, and lib. iv. tract. vi. c. 8, § 4.
4. ↑ F. Pollock and F. W. Maitland, *Hist. of English Law*, 2nd ed. vol. ii. p. 370. In the case of Richard de

Anesty, decided by papal rescript in 1143, “a marriage solemnly celebrated in church, a marriage of which a child had been born, was set aside as null in favour of an earlier marriage constituted by a mere exchange of consenting words” (ibid. p. 367; cf. the similar decretal of Alexander III. on p. 371). The great medieval canon lawyer Lyndwood illustrates the difficulty of distinguishing, even as late as the middle of the 15th century, between concubinage and a clandestine, though legal, marriage. He falls back on the definition of an earlier canonist that if the woman eats out of the same dish with the man, and if he takes her to church, she may be presumed to be his wife; if, however, he sends her to draw water and dresses her in vile clothing, she is probably a concubine (*Provinciale*, ed. Oxon. 1679, p. 10, *s.v. concubinarios*).

5. ↑ It may be gathered from the Dominican C. L. Richard’s *Analysis Conciliorum* (vol. ii., 1778) that there were more than 110 such complaints in councils and synods between the years 1009 and 1528. Dr Rashdall (*Universities of Europe in the Middle Ages*, vol. ii. p. 691, note) points out that a master of the university of Prague, in 1499, complained openly to the authorities against a bachelor for assaulting his concubine.

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