

The Emancipation of Women in Ancient Rome

Roger VIGNERON et Jean-François GERKENS¹
(Université de Liège)

Only twice in the History of Mankind, have women been considered legally equal to men. As far as we can see, this has occurred but twice : in Rome in Antiquity, and now in North America and Europe. We would like to tell you the amazing story of women's emancipation in Rome.

We qualify it as amazing, as it began rather badly. As you certainly know, the early Romans were patriarchal peasants, who considered their women as "submen" (if we dare say, "Untermenschen", in German). The antifeminist Cato, in a public speech, recalled what the custom was under his forefathers :

Liv., 34.2.11 :

Maiores nostri nullam, ne privatam quidem rem agere feminas sine tutore auctore voluerunt, in manu esse parentium, fratrum, virorum ;(...).

Our forefathers did not want women to be allowed to make any agreements, even private ones, without the consent of their tutor, so that they remain under the *manus* of either their parents, brothers or husbands...²

During their entire lifetime, they were under the jurisdiction of a tutor. How was it then possible, that starting from such a sad condition, the Roman woman was able to reach emancipation ? We think we can find the answer by looking at the first important piece of legislation in Ancient Rome, the so-called Twelve Tables. There

¹ Ce texte a été présenté par J.-F. Gerken, à Antalya, à l'occasion de la 54^{ème} session de la Société Fernand de Visscher pour l'Histoire des Droits de l'Antiquité.

² Translation : R. Vigneron.

we can see some unusual particularities for a patriarchal society, which could explain the beginning of the emancipation process, and that at four levels :

First, in the matter of succession law : most authors now agree that the rule contained in the *Sententiae* of the Jurist Paul is really genuine :

Pauli Sententiae 4.8.20 :

Feminae ad hereditates legitimas ultra consanguineas successiones non admittuntur: idque iure civili Voconiana ratione videtur effectum. Ceterum lex duodecim tabularum nulla discretione sexus cognatos admittit.

Women beyond consanguineous are not admitted in legitimate inheritances. This was decided by civil law in connection with the Voconia law. Moreover, the Twelve Tables made no differentiation between relatives of both sexes³.

The Twelve Tables admitted agnatic parents (Let us remind that “agnation is the tie connecting those related to each other by legitimate descent through males⁴”) without any discrimination by sex. At the beginning of the previous century, this rule seemed so unlikely to many scholars that they asserted that it must have been a copist’s mistake ! But nowadays the rule is admitted to have been in force as far back as the fifth century BC. Thus, daughters could inherit equally with their brothers. If you compare this with Islamic law, for instance, which provides “the son should obtain two parts of a daughter”, the difference is undeniable !

Secondly, let’s consider the Roman conception of the right to property. It has correctly been written by Buckland and Thomas in their “Textbooks of Roman Law” that Roman ownership, the *dominium*, “is the ultimate right, that which has no right behind it⁵”, “the ultimate legal title beyond and above which there was no other⁶”. A power undifferentiated from that which the head of the household had over his wife and children. This power enabled the *paterfamilias* to dispose of his goods even after his death by

³ Translation : R. Vigneron.

⁴ W.W.BUCKLAND, *A Textbook of Roman Law*, 3rd edition, by P.STEIN, Cambridge 1975, p.368.

⁵ W.W.BUCKLAND, *op.cit.*, p.188.

⁶ J.A.C.THOMAS, *Textbook of Roman Law*, Amsterdam-New York-Oxford 1976, p.134.

means of a testament. His last will was to be observed without any restriction, as the Twelve Tables declared :

XII Tab., 5, 3 :

Uti legassit super pecunia tutelave suae rei, ita ius esto.

As he disposed of his goods and the guardianship, so shall be the law⁷.

That rule could be beneficial to a woman in two ways : she could inherit the man's estate, facilitating in that way her economic independence. But furthermore and thirdly, her father and *paterfamilias* could legally nominate an outsider as tutor in his testament, instead of a relative. And this outsider, having no prospect of inheritance from the woman (contrary to a relative), could let her manage her business just as she saw fit.

The law of the Twelve Tables provided a fourth means for female independence : the so-called *ius trinoctii*. The teacher of Roman law, Gaius, explained the phenomenon to his students in this way :

Gai.1.111 :

Usu in manum conveniebat, quae anno continuo nupta perseverabat: nam velut annua possessione usu capiebatur, in familiam viri transiebat filiaeque locum optinebat. Itaque lege duodecim tabularum cautum est, ut si qua nollet eo modo in manum mariti convenire, ea quotannis trinoctio abesset atque eo modo cuiusque anni usum interrumpere. Sed hoc totum ius partim legibus sublatum est, partim ipsa desuetudine oblitteratum est.

A woman used to fall into marital subordination by usage if she remained in the married state for a continuous period of one year : for she was, as it were, usucaptured by a year's possession, and would pass into her husband's kin in the relationship of a daughter. The Twelve Tables therefore provided that if any woman did not wish to become subordinate to her husband in this way, she should each year absent herself for a period of three nights, and in this way interrupt the usage of each year. But this whole legal state was in part repealed by statute, in part blotted out by simple disuse⁸.

A wife who didn't go through a specific ceremony (*confarreatio* or *coemptio*) in order to enter in her husband's

⁷ Translation : R. Vigneron.

⁸ Translation by M.R. LEFKOWITZ and M.B. FANT, in *Women's Life in Greece and Rome*², Baltimore 1992, p. 112.

family and be placed under his *manus*, fell nevertheless under his power after living with him for one full year. But she could escape this fate by sleeping outside the home three nights each year. In this way she remained in her family, staying thus submitted to her father, but living the rest of the year with her husband, out of her father's reach.

So, from the very beginning of Roman law, Roman women had better opportunities to become emancipated than in many other cultures.

But the real process of independence took place at the start of the second century BC. In the year 214, a so-called *Lex Oppia* was voted, which forbade all women in the city of Rome any luxury expenses (for example, having more than a half-ounce of gold, wearing multicoloured dresses, etc.). These prohibitions were perhaps justified by the hardships of the Punic War⁹. But in the year 195, the war was over and the women made several public demonstrations in order to abolish the *Lex Oppia*. Precisely on this occasion, Cato made the speech we already mentioned¹⁰ but his efforts were in vain : the *Lex* was abrogated !

26 years later, the same Cato got a bit of his own back by having the *Lex Voconia* adopted ; it prohibited men of the first class of the census (the wealthiest) from nominating henceforth a woman as heiress ; neither could she receive more than half the estate as legatee. Why did Cato obtain such prohibitions from the *consilium plebis* ? Professor Vigneron once wrote a paper about the *Lex Voconia* : he then found in the literature 14 reasons to explain Cato's attitude¹¹. Actually, we think that two reasons are sufficient : Cato was an antifeminist (that's well known !) and politically he was a conservative : the wives of first class men were politically the most dangerous. For they could, by becoming widowed or divorced and then re-marrying a man from another class of the census, and giving him her dowry and her other goods, unsettle the political power. We must remember that it was in fact

⁹ Comp. C. HERRMANN, *Le rôle judiciaire et politique des femmes sous la République romaine*, Bruxelles 1964, p. 54 ss.

¹⁰ Liv.34.2.11.

¹¹ R. VIGNERON, *L'antiféministe Loi Voconia et les "Schleichwege des Lebens"*, Labéo 29 (1983) p. 140 ss.

men of the first class of the census who had the political power in Rome.

Whatever the purpose of this law might have been, what is most interesting about the *Lex Voconia* is to observe how many tricks were used to avoid its application. Tricks discovered by both jurists and people.

First of all, we must remember that men of the first class were those having an estate of 100.000 sesterius. But, as jurists have explained, having such an estate was not sufficient to be bound by the law. It was also necessary to be noted as a man of the first class in the census. And the census occurred only once every five years. Meanwhile, the testator could nominate his wife or daughter as heiress.

Another of the jurists' inventions is the so-called *legatum partitionis*, which was a legacy of part of the inheritance as such : the gift did not make the legatee an heir and so avoided the prohibition of the *Lex Voconia* (an example of this trick can be found in the next Text) :

Cic., *pro Caec.* 4.12 :

(...) *Nam brevi tempore M. Fulcinus adolescens mortuus est ; heredem P. Caesennium fecit ; uxori grande pondus argenti matrique partem maiorem bonorum legavit. Itaque in partem mulieres vocatae sunt.*

(...) For soon after, the young Marcus Fulcinus died, making Publius Caesennius his heir, subject to the payment of a large sum of money to his wife and the greater part of his property to his mother. In these circumstances the two women were called for an aliquot part of the inheritance¹².

According to many recent authors, the *legatum partitionis* was invented precisely with this aim in mind.

A third discovery of Roman jurists was the *fideicommissum*. As Professor J.A.C. Thomas describes, " They were, originally, charges upon the instituted heir or on a legatee to transfer, upon his honour what he received under the will to another designated ultimate beneficiary and (...) could be used, e.g. to convey to a woman more than she was allowed under the *lex Voconia*(...). This " he continues, " postulates their legal efficacy. In the

¹² Translation : R. Vigneron ; see BUCKLAND, *op.cit.*, p.353.

Republic, they had none (...). A change came, however, in the earlier empire (...) ¹³” and the *fideicommissum* became enforceable.

What the Roman people themselves invented to promote the economic independence of Roman women is easy to show in the juristic literature : their testaments, for example, were often very favourable to wives, particularly concerning the dowry. The dowry indeed played an important part in the life of Roman wives. As their husbands were obliged to give the dowry back in the case of a marriage's dissolution, it was a bridle on divorce. And if the marriage came to an end, by divorce or by the husband's death, the wife was certain to get her dowry back. For instance, if there were any difficulties between the heir and the widow concerning her dowry, the testator very often took the woman's side and the jurists always did. We are presenting only one example of this phenomenon, but there are many others :

D.33.4.6pr. (Lab., l.2 post. a Iav. epit.) :

Cum scriptum esset: "quae pecunia propter uxorem meam ad me venit quinquaginta, tantundem pro ea dote heres meus dato", quamvis quadraginta dotis fuissent, tamen quinquaginta debere Alfenus Varus Servium respondisse scribit, quia proposita summa quinquaginta adiecta sit.

When it had been written, “ as for that money, fifty, which came to me on account of my wife, let my heir give her so much in lieu of that dowry ”, although the dowry had been of forty, nevertheless, Alfenus Varus writes that Servius replied that he owed fifty, because the sum intended had been written in as fifty¹⁴.

The last (but not the least) manner to consolidate a widow's economic destiny was undoubtedly to legate to her the usufruct of her husband's whole estate. The *ususfructus* of an entire estate, bequeathed to a young widow during her lifetime, could represent much more than the value of half the estate and would thus violate the *Lex Voconia*. But the Roman jurists seem never to have been aware of that reality. On the contrary, when a certain *Lex Falcidia* provided, in the year 40 BC, that legacies were not to exceed three-

¹³ THOMAS, *op.cit.*, p.511.

¹⁴ The English translation of the Digest sources is edited by Alan WATSON, 4 vol., Philadelphia 1985.

quarters of the net value of the estate, jurists immediately¹⁵ discussed how to evaluate the usufructs. It seems to us that such a difference in attitude about the same problem is unlikely to have been a mere stroke of luck. And if the jurists didn't care about the evaluation of the widow's usufruct, this can perhaps be explained, when we remember Cato's fear, that is that the first class of citizens could be unsettled by outsiders becoming new husbands. But this fear didn't exist with an usufruct legacy, since it necessarily ends at the very latest at the widow's death. The legacy then returns to the children, thus remaining inside the same family.

As the economic independence of women was thus largely ensured, their juridical independence was yet to be attained. This occurred in five different areas :

1.- First of all, let's consider the area of guardianship or *tutela*. It has been said that Roman women initially were under the authority of their *tutor* their entire life. But the first rift in the tutor's authority was the so-called *optio tutoris* : a husband who had his wife under his power (his *manus*) was able to give her through his testament the right to choose herself the guardian she preferred. She could use this option sometimes once, sometimes twice, or as often as she liked. In such cases, the acting *tutor* undoubtedly was usually not highly motivated to thwart her wishes...

Secondly, when August tried favouring an increase in the birth rate, he exempted from guardianship all Roman free women who had three children (and all manumitted women who had four). This law definitively removed any previous justification for women's guardianship : the so-called *imbecillitas* or *levitas sexus*, i.e. their silliness. In fact, if they were really silly, how could having a third or fourth child make them suddenly sane ?

A few decades later, the emperor Claudius abolished the agnatic relatives' guardianship, except for manumitted and emancipated women. Meanwhile, the magistrate *praetor* had strongly contributed to women's freedom in two ways : when the tutor refused to authorise a contract the woman wanted to make, she could appeal to the *praetor* and the latter would force the tutor to admit the contract. And finally, when her *tutor* was absent, the

¹⁵ See Paul., Fr.Vat., 68 : “ *veteres* ” v. Aristo.

woman could ask the magistrate to give her another. And that rule, as we learn from the teacher Gaius, was provided by a *senatus-consultus*. But the jurists gave a broad interpretation of the word “absence” : a short absence was enough to replace the *tutor*... who, finally, had very little to say, as Gaius synthesises in :

Gai., *Inst.* 1.190

Feminas vero perfectae aetatis in tutela esse fere nulla pretiosa ratio suasisse videtur. Nam quae vulgo creditur, quia levitate animi plerumque decipiuntur et aequum erat eas tutorum auctoritate regi, magis speciosa videtur quam vera: mulieres enim quae perfectae aetatis sunt, ipsae sibi negotia tractant, et in quibusdam causis dicis gratia tutor interponit auctoritatem suam; saepe etiam invitus auctor fieri a praetore cogitur.

There seems, on the other hand, to have been no very worthwhile reason why women who have reached the age of maturity should be in guardianship ; for the argument which is commonly believed, that because they are scatterbrained they are frequently subject to deception and that it was proper for them to be under guardian’s authority, seems to be specious rather than true. For women of full age deal with their own affairs for themselves, and while in certain instances that guardian interposes his authorisation for form’s sake, he is often compelled by the praetor to give authorisation, even against his wishes¹⁶.

2.- The second area in which Roman women, but Roman men as well, gained a great deal of freedom is betrothal. Initially the fathers of the future fiancés concluded an agreement with each other, one promising his daughter, the other warranting that his son would marry her. And both promises were enforceable : in case of non-fulfilment either a sum was foreseen and had to be paid or a condemnation by a judge was obtainable. In the classical period of Roman Law, things had completely changed : breach of promise was no longer actionable, even though there was a penal stipulation for failure to honour the marriage agreement ; such stipulations were regarded (...) as *contra bonos mores*¹⁷, immoral !

D.45.1.134pr. (Paul., *l.15 Resp.*) :

Titia, quae ex alio filium habebat, in matrimonium coit Gaio Seio habente familiam: et tempore matrimonii consenserunt, ut filia Gaii Seii filio Titiae desponderetur, et interpositum est instrumentum et adiecta

¹⁶ Translation by LEFKOWITZ and FANT, *op.cit.*, p.99.

¹⁷ J.A.C. THOMAS, *op.cit.*, p.420.

poena, si quis eorum nuptiis impedimento fuisset: postea Gaius Seius constante matrimonio diem suum obiit et filia eius noluit nubere: quaero, an Gaii Seii heredes teneantur ex stipulatione. Respondit ex stipulatione, quae proponeretur, cum non secundum bonos mores interposita sit, agenti exceptionem doli mali obstaturam, quia inhonestum visum est vinculo poenae matrimonia obstringi sive futura sive iam contracta.

Titia, who had a son by another man, married Gaius Seius, who had a daughter. During the marriage, they agreed that the husband's daughter should be engaged to the wife's son. A deed was drawn up and a penalty attached in case either spouse impeded the marriage. Later Gaius Seius, still married to Titia, died. His daughter refused to marry. Are the heirs of Gaius Seius bound by the stipulation? Paul replied that the stipulation mentioned was contrary to sound morals, so that an action on it would be met by the defense of fraud. It is regarded as degrading for the bond of marriage, present or future, to be secured by a penalty.

3.- The end of this text demonstrates the third area of freedom: it concerns the marriage itself, which was conceived in Antiquity as a purely private affair, regarding by no means either the State or any other authority (by the way: it's with the Christian emperors that the authorities intervene for the first time in these matters, not earlier). This private affair was juridically a contract of society (*consortium omnis vitae*, as it was told). And like any society under Roman law, the marriage rested only on the continuing agreement of the parties. This conception implies that each spouse – the wife like the husband – could decide at any time that the marriage was over. Such a decision was sufficient to end the marriage and provoke divorce. We can see an amazing example of this phenomenon in a letter sent to Cicero in which a friend of his tells him the latest gossip in Rome:

Cic., *ad fam.* 8.7:

1.- (...) Breuiores has litteras properanti publicanorum tabellario subito dedi; tuo liberto pluribus verbis scriptas pridie dederam. 2.- Res autem novae nullae sane acciderunt, nisi haec vis tibi scribi... quae certe vis: Cornificius adulescens Orestillae filiam sibi despondit; Paula Valeria, soror Triarii, divortium sine causa, quo die vir e provincia venturus erat, fecit; nuptura est Decimo Bruto. Mundum rettuleram. Multa in hoc genere incredibilia te absente acciderunt. Servius Ocella nemini persuasisset se moechum esse, nisi triduo bis depensus esset. Quaeres, ubi. Ubi hercules ego minime vellem.

1. (...) I handed this unusually brief letter to a carrier employed by the *publicani*, at short notice, because he was in a hurry. I had handed a longer one on the preceding day to your freedman. 2.- But absolutely nothing new has occurred, unless you want such tittle-tattle as what follows – and I am sure you do – to be put in a letter to you. Cornificius the younger has promised to marry Orestilla’s daughter. Paula Valeria, the sister of Triarius, has divorced her husband without assigning any reason, on the very day that he was to arrive from his province. She is going to marry Decimus Brutus. She had sent back her whole wardrobe. Many incredible things of that sort have occurred in your absence. Servius Ocella would never have convinced anybody that he was an adulterer, had he not been caught in the act twice within three days. You will ask where? Well, I swear it was in the very last place I could have wished...¹⁸

And if we return for just a moment to the end of the previous text, we see that not only was the divorce easy to obtain, but it was also forbidden to try to maintain a marriage by a penalty: *sive iam contracta (matrimonia)* “a present marriage has not to be secured by a penalty”.

4.- The fourth area of women’s emancipation brings us to a fairy tale: in this very way, Professor Andreas Wacke tells the story of many Cinderella-like slaves who were delivered from their sad destiny by a Prince Charming¹⁹. Not really always a Prince Charming, if we remember that senators, their sons and grandsons couldn’t marry a manumitted slave woman; but all the other Roman citizens could. And they could even buy such a slave woman, and manumit her with the aim of marrying her. And August’s laws, which restricted the possibility of manumitting (the manumitter had to be at least 20 years old and the manumitted at least 30) precisely provided some exceptions, among them the *manumissio matrimonii causa*, manumission with the aim of marrying the manumitted. In this case, there was no age requirement (except, of course the age of nubility). The emperor thus promoted slave women’s freedom. It must be admitted that he didn’t have the same opinion in the opposite case, when a free

¹⁸ Translation by T.E.PAGE, E.CAPPS and W.H.D.RONSE, *Cicero – The Letters to his Friends II*, London *undated*, p.127.

¹⁹ A. WACKE, *Manumissio matrimonii causa: le mariage d’affranchies d’après les lois d’Auguste*, RH 67(1989) p.413ss.

woman manumitted a male slave in order to marry him. Such a situation must have occurred only rarely, and was considered as immoral. With one exception however : when the woman had herself been a slave, had been manumitted and had acquired the property of the slave with whom she had lived previously (a so-called *contubernium*). In this case, Love was taken into account !

The same reason (we mean : Love) led the Roman people to yet another indulgence, in the case of the abduction of a woman. There is a Latin proverb which says : *raptor aut pereat aut ducat* : “ the abductor either perishes or espouses ”. That’s to say : if the girl really loves him and is willing to marry him, he escapes from any penalty. This is not in a fairy tale, but a real juridical story !

To come back to the manumitted women slaves who were to marry, there was obviously a danger in such manumissions : that the slave woman, eager for freedom, would promise to marry her master but would change her mind after her manumission. But Augustus’ laws provided the catch : the manumitted bride had six months to effectively marry her former master. After that time, if the marriage had not taken place, the manumission was void : she would again return to slavery ! So, her freedom was thus in “ suspension ”, and so was the status of her future child, in the case – not very unlikely – where the bride was pregnant : the next text shows us such a case :

D.40.2.19pr. (Cels., *l. 29 Dig.*) :

Si minor annis apud consilium matrimonii causa praegnatam manumiserit eaque interim pepererit, in pendentem erit, servus an liber sit, quem ea peperit.

If a *minor* with a council has manumitted a pregnant woman for the purpose of marriage and she has given birth in the interim, it is not settled whether the child is slave or free.

After the wedding, the former slave woman, who had become definitively free and had acquired her husband’s dignity, was not allowed to divorce without his permission. It’s one of the rare exceptions to the rule of freedom of divorce, due to the fact that she was not only the wife but also manumitted and as such, had to pay the duty of respectful conduct towards her “ patron ”. The same duty was to be paid in the case where her former master, after having manumitted her, didn’t marry her but lived with her in

concubinage: she could not leave against the will of her concubinary.

5.- This leads us to the fifth area of women's emancipation: concubinage, or better said, concubinate (for concubinate in Rome was a juridical institution). The story of this institution is rather amazing too. For a Roman jurist once said ironically that the concubinate was born from August's laws²⁰. Indeed this emperor pursued the aim of moralising the Roman people. He therefore forbade a whole range of marriages: for example, a Roman free-born citizen was not allowed to marry a woman condemned for adultery, nor a prostitute, a bawd, a stage-performer nor a woman condemned by a criminal court. Of course, senators and their family couldn't marry any of those women, but they were forbidden to wed any freedwoman as well! Now, if we remember that all these women were at the same time considered as *feminae in quas stuprum non committitur*, women with whom sexual intercourse was not punishable, if a senator, for instance, fell in love with a freedwoman, he had no other solution than to live with her in concubinate. Some emperors did the same, after the death of their wives. And outside Rome, the provincials, following the example of the Romans, began practising concubinate too, even when they had the legal possibility to marry!

What were the advantages of that practice? For the woman, they are undoubtedly: first, as she usually has a lower social status than her partner, she shares his status, for a concubine suffers no social disapproval. Secondly, no dowry was needed (a poor woman could thus have a normal relationship with a man); thirdly gifts – that are always prohibited between husband and wife and vice-versa – are on the contrary permitted between concubines, who may leave all their legacy to each other as they wished, as the *Lex Voconia* did not apply in this case. And the fifth advantage is that Augustus' law on adultery did not apply either. Finally, concubines were allowed to make all kinds of agreements together, even those that could be considered as immoral today, as the following juristic text shows us:

D.44.7.61.1 (Scaev., *l. 28 Dig.*):

²⁰ Marcel.-Marcian., *l. 12 inst.*, D. 25.7.3.1.

Seia, cum salarium constituere vellet, ita epistulam emisit: " Lucio Titio salutem. Si in eodem animo et eadem affectione circa me es, quo semper fuisti, ex continenti acceptis litteris meis distracta re tua veni hoc: tibi quamdiu vivam praestabo annuos decem. Scio enim quia valde me bene ames ". Quaero, cum et rem suam distraxerit Lucius Titius et ad eam profectus sit et ex eo cum ea sit, an ei ex his epistulis salarium annuum debeatur. Respondit ex personis causisque eum cuius notio sit aestimaturum, an actio danda sit.

Seia, wishing to fix a salary, sent a letter as follows: " To Lucius Titius, greeting. If you are of the same mind and of the same regard to me as you have always been, then, on receipt of my letter, forthwith dispose of your estate, and come here. I shall provide you with ten yearly for as long as I live. For I know that you love me very well ". My question is whether, if Lucius Titius did sell his estate and went to her and since that time has been with her, the annual salary is due to him in terms of this letter. The answer was that the person having cognizance of the case shall have to decide from the persons and the circumstances whether an action ought to be granted.

As says the jurist : *an actio danda sit* : it's possible that Lucius Titius can institute proceedings against his lover Seia ! And now comes the big question in conclusion : why did Roman legislators, Roman magistrates, Roman jurists, Roman lawyers and Roman judges – all men, without any exception – promote women's emancipation ? In our civilisation today, the answer is easy to find : we now know that men and women are genetically equal, that only an iota of difference makes an embryo a boy rather than a girl, and vice-versa. But why did the ancient Romans have a similar view ? We sincerely don't know the answer. We can just venture an opinion : they all had a deep sense of equality. Our opinion is based on a sentence found at the beginning of Justinian's famous Digest : it's the definition of law by the jurisconsult Celsius : *ius est ars boni et aequi* :

D.1.1.1pr. (Ulp., *l. 1 Inst.*) :

Iuri operam daturum prius nosse oportet, unde nomen iuris descendat. Est autem a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi.

A law student at the outset of his studies ought first to know the derivation of the word *ius*. Its derivation is from the word *iustitia*. For, in

terms of Celsus' elegant definition, the law is the art of goodness and fairness.

If Law is a mixture of *bonum*, that's to say the common good, and *aequum*, that means fairness in trials, but in a broader sense, equality, if Law must be equal, that implies that human beings, subjects of rights, are necessarily equal. There would be no sense in defining the law as something that ought to be equal in a society divided in casts : the law there must be unequal ! Of course, the Romans lived in a world with many inequalities : there were slaves, peregrines and barbaric peoples. But inside the Roman people itself, the rule of juridical equality was the duty to be pursued. And a famous author writing about Roman and European law, Helmut Coing, said that in this definition of law lay the embryo of the famous slogan of the French Revolution : "Liberté, égalité, fraternité"²¹.

It took 16 centuries for this embryo to be born, two more centuries before the Universal Declaration of Human Rights and it will perhaps take a millennium more to see these rights universally enforced. But we believe, and we are not alone to do so, that the very idea of equality between men – and women – is already to be found in the definition of Celsus.

Now we would like to take just a few seconds in closing, to observe that this period of women's emancipation ended abruptly at the beginning of the fourth century AD with the arrival of the Christian emperors. In the opinion of the apostle Paul (First epistle to the Corinthians 11.3), "...the head of every man is Christ ; and the head of the woman is man ; and the head of Christ is God". The Roman legislator again placed women in their secular, second rank. Let's look at just one example, one concerning betrothal, a constitution of the emperor Constantine provides :

CTh.3.5.5 :

Constantinus A. ad Pacatianum Pf. U. : Patri puellae aut tutori aut curatori aut cuilibet eius affini non liceat, quum prius militi puellam desponderit, eandem alii in matrimonium tradere. quod si intra biennium, ut perfidiae reus in insulam relegatur. (...)

²¹ H.COING, *Europäisches Privatrecht I*, München 1985, p.31.

Emperor Constantine Augustus to Pacatianus Praetorian Prefect : The father of a girl or her tutor, curator, or any kinsman shall not be permitted to give her in marriage to another after having previously betrothed her to a soldier. If the girl should be given in marriage to another within two years, the guilty of such perfidy shall be exiled by relegation to an island (...)²².

As you can see, the girl is once again “ given ” to a soldier without asking if she is willing. And this betrothal was binding for two years under strong penalty. But this is yet another story, we don't have the time to tell you that one today.

²² Translation by C. PHARR, *The Theodosian Code*, New York 1952, p.67.